

The Validity of Wali *Muhakkam* in the Practice of Unregister Marriages and Legal Consequences at East Aceh Regency

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Abstract

This study aims to determine and analyze the process of unregistered marriage through the guardian of Muhakkam. This study uses an empirical juridical method with a statutory and socio-legal approach. The results of this study indicate that the unregister marriage process carried out by the people in East Aceh by the guardian of Muhakkam still follows the understanding of the tengku and ulama but is not in accordance with the Marriage Act. Marriage without legal evidence and registration at the KUA can bring harm. There are several factors that influence the practice of unregistered marriages, including economic factors, not getting parental approval, low levels of education, lack of understanding and awareness of the importance of registering marriages, the absence of sanctions for perpetrators of unregistered marriages, and problems with polygamy permits

1. INTRODUCTION

A marriage is a holy bond (*mitsaqan ghalidzan*) for soul to build a household between a man and woman become a family with full of peace (*sakinah*) and love (*mawaddah warrahmah*) from the principle of this agreement to live together need a regulation not only formal regulation according to trust and social aspects. In order to minimize discriminatory against perpetrator unregister marriages or underhanded marriage done in secret, so need regulation about marriage registration at KUA and registry office¹

At Fiqh, secret marriage because condition and the pillars of marriage that are not perfectly are meaning of unregister marriage that doesn't use Islamic rules. In Indonesia, there are two meanings of unregister marriage, namely marriage is not fulfil the conditions and the pillars of marriage perfectly and unregister marriage in Pegawai Pecatat Nikah (PPN) or it usually claimed as an underhand or unregistered marriage.

Unregister marriage is incompatible marriages based on UU No.1 Tahun 1974 Jo UU No. 16 tahun 2019 about marriage. In the law, decided that a marriage was said

¹Felly Annisa, Fuji Agustin, and Imanuddin Abil Fida, "Status Of Children Out Of Married In Fiqih Perspective" 1, no. 3 (2020): 49–57.

to be valid if done based on rules of religious belief and every marriages are register base on UU and valid marriage if done sync using of their respective believe or based on belief, eventhough the marriage is not register.

There is authentic evidence and the increase in the human movement show the existence of two witnesses who are considered insufficient in resolving various marriage problems firmly. Although the Islamic rules didn't included in the conditions and pillars of marriage. In order to avoid future difficulties, it is mandatory to register marriages. This is in accordance with Chapter II article two of Law No. 1 of 1974 in conjunction with Law no. 16 of 2019 and also clarified in Article 5 (1) of the KHI which states, "In order to ensure the orderliness of marriage for the Muslim people, every marriage must be recorded." Likewise, in article 6 (two) it is emphasized that "Marriages carried out outside the supervision of the marriage registrar do not have legal force.²

In fact, there are many factors that influence the Acehnese people to carry out unregistered marriages which consist of not getting the approval of the first wife, lack of understanding about aspects of underhand marriage rules, finding it difficult to fulfill the requirements of marriage administration and pregnancy outside of marriage. These factors are behind many unregister marriages in East Aceh using wali *Muhakkam* as guardians appointed by the bride in carrying out the unregister wedding procession. Based on the above, it shows that some Acehnese are still subject to the provisions of fiqh rather than the prevailing laws and regulations in Indonesia.

2. METHOD

This research was conducted using a legal system method through with socio-legal and qualitative. This research is narrative in nature which aims to provide a description on the basis of empirical phenomena and tries to examine a legal concept that is still considered as a discourse. The primary data sources came from married couples who did unregistered marriages and other informants such as the Head of the East Aceh KUA, Camat, Lurah/Village Head and Religious/Community Leaders. Meanwhile, secondary data sources are obtained from documentation, documents, and objects that can be used to complement primary data. Data sources are classified into 3, namely people (people), place (places), and paper (symbols).

3. RESULT AND DISCUSSION

1. Unregister Marriage Process By Wali Muhakkam at East Aceh

Based on the theory of Lawrence M. Friedman's Legal System, when viewed from the aspect of legal substance, marriage is legal if it is carried out in accordance with religion and is registered with the KUA, this is in accordance with Article 2

² M. Tahir Maloko, "Unregistered Marriage in Islamic Law Perspective a Critical Study of Islamic Law Compilation," *Al-Mawarid* 15, no. 2 (2015): 49–68.

Paragraph 2 of Law No.1 of 1974 concerning marriage. In line with the Compilation of Islamic Law (KHI) also regulates the same thing in accordance with Article 5 and Article 6. This arrangement aims to ensure orderliness of every marriage registration for the Islamic community so that it has legal force.

The Office of Religious Affairs (KUA) is a legal structure that has the authority to supervise marriage and receive notification of divorce and reconciliation appointed by the Minister of Religion or an employee appointed by him as stated in Article 1 Paragraph 2 No. 22 of 1946 concerning Registration of Marriage, Divorce and Reconciliation. If the marriage is not registered with the KUA, it will cause problems.

The importance of recording marriage will bring good, benefit and order of all kinds related to the family. If an obligation depends on something else, then something else must be done. Therefore, in guardianship, inheritance and so on, a marriage certificate is needed.

Another rule that can be used is Saddu Dzari'ah and Fathu Dzari'ah, the path that leads to something may be the act that is forbidden to do because it brings harm to Allah and brings benefit so it is required to be carried out. *الذريعة* As an illustration for Saddu Dzari'ah. Likewise, marriage without evidence and registration can bring harm when dealing with the law or others that require evidence and marriage. Likewise, what is related to Fathu Dzari'ah is an act that is recommended and even required because it will lead to benefit.

In addition to marriages that are officially registered, there are also hidden marriages, which are termed unregister marriages. At first this unregister marriage was a marriage that did not meet the requirements and was in harmony. Shaykhul Islam Ibn Taimiyah was once asked about a person who married mushafahah, namely a unregister marriage or marriage without a guardian and without a witness with a dowry of 5 dinars, and he had lived with him and interfered with it. Is the marriage valid, then Ibn Taymiyya says the marriage is invalid or invalid³. However, currently the meaning of unregister marriage is expanded, namely marriage that meets the pillars and requirements of marriage, but has not/not been registered at the District Office of Religious Affairs (KUA) for those who are Muslim. Thus a marriage that meets the requirements and pillars of marriage according to Islamic law, but has not been/not recorded is called a siri marriage.⁴

Wildan Mustofa divides unregister marriage into two groups. First, the marriage contract is carried out by a man and a woman without the presence of the woman's parents/guardians and only two witnesses and a cleric are present.

³ Ibnu Taimiyah, *Hukum-Hukum Perkawinan, Alih bahasa Rusnan Yahya*, (Jakarta: Pustaka al-Kautsar, 1997), hlm. 10

⁴ Neng Zubaedah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat*, (Jakarta: Sinar Grafika, 2010), hlm. 345

Second, a marriage contract that has fulfilled the legal requirements and pillars of marriage according to the provisions of Islamic law, but is not registered according to the will of the marriage law in Indonesia.⁵

In Maliki fiqh, unregister marriage is defined as a marriage in which the witness' husband keeps it a secret for his wife or congregation, even if it is a local family. The Maliki school does not allow unregister marriages, this marriage can be canceled and the perpetrators can be punished with hadd. The Shafi'i and Hanafi schools also do not allow unregister marriages. Caliph Umar once threatened people who married unregister with hadd punishment⁶. Therefore, it can be concluded that a unregister marriage is a marriage that is carried out informally, not according to the applicable laws and regulations, and is somewhat closed in its implementation

The phenomenon of unregistered marriage occurs in society which is divided into two groups, namely the first group to marry unregister by fulfilling all the pillars and conditions of marriage, in the sense that there is a guardian who has the right to marry, there are two husbands and wives who are married, there is a fair witness, and there is a contract. (ijab-qabul) marriage. While the second group, namely unregister marriages in practice that occurs in the community, many are in the second form, by not using the procedure of guardian judges, but using guardian muhakkam. Muhakkam is isim maf'ul which can be interpreted as appointing someone as a judge and giving full rights to the muhakkam guardian⁷

2. Causes of unregister marriage

Unregister marriage is a marriage contract between a man and a woman carried out with the provisions of religious law without regard to the provisions of positive law, namely the Marriage Law, the Compilation of Islamic Law (KHI) and the Qanun for the special region of Aceh.

The definition of unregistered marriage above is in accordance with Mr. Heri's statement that:

"Unregister's wedding in East Aceh Regency has various meanings and motifs. Actually this unregister marriage has a very broad meaning because it includes all forms of marriage that are not in accordance with the legislation, including the unregister marriage itself is carried out not in accordance with the procedures established by law by not being registered at the Office of Religious Affairs (KUA)"⁸

⁵ M. Anshari MK, *Hukum Perkawinan di Indonesia Masalah-masalah Krusial*, (Yogyakarta: Pustaka Pelajar, 2010), hlm. 24.

⁶ Ibid., hlm. 25-26.

⁷ Lili Hidayati, "Khuluqiyya, Vol 3 No 1 Januari 2021," *Fenomena Tingginya Angka Perceraian* 3, no. 1 (2021): 71-87.

⁸ Heri, Tokoh Agama Desa Peunaron Putih Kec.Peunaron, Wawancara, Sabtu, 27 April 2021

The practice of unregistered marriages in East Aceh is still widely found. This is in accordance with the explanation of Mr. Muhsin as follows:

"The practice of Unregistered Marriage in East Aceh is still found in this case, there are still marriage events that are carried out by ignoring the provisions of the applicable legislation, for example conducting or holding a marriage without prior recording, in terms of the provisions or the Marriage Act are very strict it is stated that all Wedding events must be recorded at least 10 days before the wedding"⁹

The factors of unregistered practice carried out by the people of East Aceh Regency are as follows:

2.1. Economic factors

Due to limited funds, the prospective husband and wife prefer to hold a unregistered marriage, which is legal according to the Shari'a and the pillars of Islam. This is in accordance with Solomon's statement, as follows.

"The occurrence of Unregistered marriages or unregistered marriages, is generally caused by the inability of the economy to carry out the marriage contract, which costs money. According to them they cannot afford it, therefore to make it easier for the marriage to be carried out by not registering the marriage at the Office of Religious Affairs (KUA)"¹⁰

In Simpang Jernih Subdistrict, apart from the dowry, there is also a fee for handovers, namely the provision of fees for organizing weddings and also this clear intersection is that the condition of the first village is far away and requires a lot of money to cross using water transportation. This reason is as expressed by the perpetrator of unregistered HB marriage (pseudonym) that:

"I dared to do a unregistered marriage because it was constrained by costs, especially Hagus's money, which was requested by my future wife's family at that time while we both liked each other and couldn't be separated, so I dared to go to one of the village priests to marry us both even though the two of us didn't approve of it. our parents because of the economy"¹¹

2.2. Don't Get the Blessing of Parents

Unregistered's marriage was carried out in secret because the female guardian did not agree or because she did not present a female guardian. There is no blessing from parents so that they do a sirri marriage in accordance with Mr. Izal's statement as follows:

"The occurrence of the Sirri marriage was influenced by the absence of the blessing of the parents of both parties, especially the parents of the bride

⁹ Muhsin, Kepala KUA Kecamatan Bireun Bayeun, Wawancara, Jum'at, tanggal 26 November 2021 di Kantor KUA Kec. Bireun Bayeun.

¹⁰ Sulaiman KUA Simpang Jernih Kecamatan Simpang Jernanih, Wawancara, Jum'at, 26 November 2021

¹¹ HB.Warga Desa Simpang Jernih Kabupaten Aceh Timur, Wawancara, pada hari Jum'at tanggal 26 November 2022

as guardians, so that men and women who have been in a relationship for a long time take shortcuts by visiting the Penghulu/Walimuhakkam to get married, even without the blessing. both parents and after living a household life and having got offspring then they come to their parents asking for their marriage's blessing ".¹²

This was also conveyed by the perpetrators of unregister marriage DR (pseudonym), that:

"I did a unregister marriage with my wife because there was no blessing from my parents, especially my wife's parents because at that time we were both underage. I was only 19 years old and my wife was not yet 16 so I went to the priest to get married.¹³

Likewise, stated by RA (pseudonym) that:

"I did a unregister marriage because I loved each other even with the result of love, both of us had time to do things that were forbidden by religion, namely having sex before marriage while I didn't have the blessing of my parents so I went to the house of a religious leader to ask for a marriage. "¹⁴

2.3. Low Education Level

the perpetrators of unregister marriages mostly have low educational backgrounds so that their knowledge of the agreements that exist in marriages must be realized in the marriage certificate book is very limited. This is as stated by Mr. Lukman that:

"The occurrence of unregister marriage in Pante Bidadari District is due to the low level of education, so knowledge of the rules or legislation regarding marriage does not become the basis for conducting a marriage, therefore according to him, marriage is sufficient to meet the requirements and pillars of marriage. then the marriage is considered valid"¹⁵

2.4. Lack of understanding and awareness of the importance of marriage registration.

The lack of public understanding and awareness about marriage registration affects people to carry out unregister marriages. There is an assumption that marriages that are recorded and not recorded are the same.

This is explained by Mr. Hayyun that:

"Due to the low legal awareness of the community towards the marriage law which is a factor in the occurrence of unregistered marriages, therefore

¹² Izal tokoh Masyarakat Kec.simpang ulim, Wawancara, pada hari sabtu, 27 November 2021.

¹³ DR, Warga Desa Pasir Putih Kecamatan Peureulak Kabupaten Aceh Timur, Wawancara, pada hari Jum'at tanggal 27 November 2021.

¹⁴ RA, Warga Desa Peenaron Kecamatan Kampong beusa Kabupaten Aceh Timur, Wawancara, pada hari Sabtu tanggal 27 November 2021

¹⁵ Lukman Kepala KUA, Kecamatan Pante Bidadari, Wawancara, Jum'at, 26 November 2021.

it is better to carry out outreach activities related to the implementation of worship, such as prayer, fasting, zakat, hajj including legal issues such as laws and regulations. marriage law, this is very important because violation of applicable regulations is also part of the prohibition in Islamic teachings”¹⁶

2.5. There are no sanctions for the perpetrators of unregistor marriages

The imposition of sanctions on the perpetrators of unregistered marriages or underhanded marriages has actually been in effect since the enactment of Law no. 22 of 1946 article 3 which states that the perpetrators can be sentenced to criminal sanctions with a maximum imprisonment of three months or a maximum fine of Rp. 7,500, - (seven thousand five hundred rupiah) which is also contained in PP No. 9 of 1975 article 45. However, the sanctions are considered ineffective so that they do not have a deterrent effect on the perpetrators. Because the prison sentence is very short and the amount of the fine is very small when compared to the current value of the rupiah.

The bill in Article 143 states that any person who intentionally conducts a marriage not before a marriage registrar, shall be punished with a maximum fine of Rp. 6,000,000.00 (six million rupiah) or a maximum imprisonment of 6 months. Furthermore, Article 144 stipulates that anyone who marries within a certain period of time or contracts marriage, is sentenced to a maximum imprisonment of 3 years and his marriage is null and void.¹⁷ However, the bill has not yet been realized because it is still in the form of a draft and has not yet been ratified into law.

The absence of sanctions for perpetrators of unregistor marriages was also emphasized by Mr. Fadli as follows:

“Unregister marriages, especially in East Aceh, are due to weak law enforcement given to people who carry out unregistor marriages or the penghulu who do them. It can even be said that there is no firm action from the competent authorities against the perpetrators of unregistor marriages, while unregistor marriages are considered the most effective way. practical and the cheapest way to do a wedding.”¹⁸

2.6. Polygamy Permit Constraints

Islam allows a man to have up to four wives on the condition that the husband must be "fair" to all his wives (Surat an-Nisa Verse 3). Unregister marriage is used as an easy way to practice polygamy, but most wives do

¹⁶ Hayyun, penyuluh agama, Desa Pasir Putih Kecamatan Peureulak Kabupaten Aceh Timur, Wawancara, pada hari Jum'at tanggal 27 November 2021

¹⁷ Amin Fauzi, “Menimbang Kriminalisasi Pelaku Nikah Siri”, yang dikutip Saifuddin Zhuhri dalam Sanksi Pidana bagi Pelaku Nikah Siri dalam Perspektif Hukum Islam, Jurnal al-Syir'ah, Volume 48, No. 2, Desember 2014, h. 2

¹⁸ Tibri Tokoh Masyarakat Pasir Putih, Wawancara, pada hari Jum'at, tanggal 27 April 2021.

not approve of it for fear that their husband will not be able to do justice and prioritize their second wife.

“Unregister's wedding which took place in Kec. Bireun Bayeun Kab. East Aceh, also found in the form of polygamy, ie men are polygamous or have more than one wife, and in general only the first marriage is recorded while the second marriage is not recorded, especially at the KUA Kec. Bireun Bayeun Unregister's marriage in the form of polygamy is always carried out secretly without notification to the competent authorities. Meanwhile, people who want to have polygamy only need to ask for approval from the female guardian and then go to the head or religious expert for marriage.”¹⁹

It was also added by Mr. Khadri that:

“Almost all marriages by means of polygamy are carried out with unregistered marriages or not in accordance with procedures, this is done to avoid or not to be known by the family, especially from the wife. Besides that, marriages with polygamy are not registered or carried out with unregistered marriages because the conditions for polygamy are very difficult and difficult to fulfill. Therefore, polygamous marriages are carried out in secret and are not carried out through registration as stipulated by the marriage law”²⁰

The results of interviews in the field concluded that the people of East Aceh Regency considered unregistered marriages to be in accordance with the rules of Syafi'i fiqh. The assumptions of the community are generally based on the opinion of Syafi'i which was socialized by the Salafiyah Islamic Boarding School scholars to the community through the study of Shafi'i fiqh books and other books.

The description above illustrates that there are many factors that influence the practice of unregistered marriages in East Aceh District. This is certainly very influential on the number of unregistered marriage practices. Therefore, prevention efforts are needed based on the factors that cause the practice of unregistered marriage.

4. Conclusion

Based on the discussion that has been described in previous chapters, the conclusions in this study was found that unregistered Marriage process carried out by Wali Muhakkam in East Aceh Regency, the marriage still adhered to the old book of jurisprudence, which did not comply with Article 2 Paragraph 2 of the Marriage Law No. 1 of 1974 and Article 5 Paragraph 1, Article 7 Paragraph 1 Compilation of Islamic Law. So that it has a bad impact where the rights of children and wives are neglected in the event of a divorce. So prevention efforts are needed for the development of this sirri marriage in the East Aceh area, so the efforts made

¹⁹ Kasyi Kepala KUA, Kec. Bireun Bayeun, Wawancara, pada, tanggal 26 November 2021

²⁰ Khadri Imam Masjid Bireun Bayeun Kec. Bireun Bayeun, Wawancara, pada hari selasa, tanggal 26 November 2021

are outreach to the community the importance of marriage registration at the KUA, in collaboration with the education office, so that they can be disseminated to education at the high school level, play a role KUA is active to monitor the condition of the local community so that there are no unregistered marriages

References

- Amin Fauzi, "Menimbang Kriminalisasi Pelaku Nikah Siri", yang dikutip Saifuddin Zhuhri dalam Sanksi Pidana bagi Pelaku Nikah Siri dalam Perspektif Hukum Islam, Jurnal al-Syir'ah, Volume 48, No. 2, Desember 2014.
- DR, Warga Desa Pasir Putih Kecamatan Peureulak Kabupaten Aceh Timur, Wawancara, pada hari Jum'at tanggal 27 November 2021.
- Felly Annisa, Fuji Agustin, and Imanuddin Abil Fida, "Status Of Children Out Of Married In Fiqih Perspective" 1, no. 3 (2020).
- Hayyun, penyuluh agama, Desa Pasir Putih Kecamatan Peureulak Kabupaten Aceh Timur, Wawancara, pada hari Jum'at tanggal 27 November 2021.
- HB.Warga Desa Simpang Jernih Kabupaten Aceh Timur, Wawancara, pada hari Jum'at tanggal 26 November 2022
- Heri. Tokoh Agama Desa Peunaron Putih Kec.Peunaron, Wawancara, Sabtu, 27 April 2021
- Ibnu Taimiyah, *Hukum-Hukum Perkawinan*, Alih bahasa Rusnan Yahya, (Jakarta: Pustaka al-Kautsar, 1997).
- Izal tokoh Masyarakat Kec.simpang ulim, Wawancara, pada hari sabtu, 27 November 2021.
- Kasyi Kepala KUA, Kec. Bireun Beyeun, Wawancara, pada, tanggal 26 November 2021Khadri Imam Masjid Bireun Bayeun Kec. Bireun Bayeun, Wawancara, pada hari selasa, tanggal 26 November 2021
- Lili Hidayati, "Khuluqiyya, Vol 3 No 1 Januari 2021," *Fenomena Tingginya Angka Perceraian* 3, no. 1 (2021).
- Lukman Kepala KUA, Kecamatan Pante Bidadari, Wawancara, Jum'at, 26 November 2021. M. Anshari MK, *Hukum Perkawinan di Indonesia Masalah-Masalah Krusial*, (Yogyakarta: Pustaka Pelajar, 2010).
- M. Tahir Maloko, "Unregistered Marriage in Islamic Law Perspective a Critical Study of Islamic Law Compilation," *Al-Mawarid* 15, no. 2 (2015).
- Muhsin, Kepala KUA Kecamatan Bireun Bayeun, Wawancara, Jum'at, tanggal 26 November 2021 di Kantor KUA Kec. Bireun Bayeun.
- Neng Zubaedah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat*, (Jakarta: Sinar Grafika, 2010).

Sulaiman KUA Simpang Jernih Kecamatan Simpang Jernanih, *Wawancara*, Jum'at, 26 November 2021.

Tibri Tokoh Masyarakat Pasir Putih, *Wawancara*, pada hari Jum'at, tanggal 27 April 2021.