

Customary Marriage Registration in Realizing Legal Certainty in Indonesia

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Abstract

This study examines the legal issues arising from the unregistered customary marriage, a fundamental issue in the balance between local wisdom and state regulations. On the one hand, customary marriage is an institution that contains socio-cultural values and community identity that have long existed, while on the other hand the informality of the marriage registration raises various legal issues, including unclear legal status, protection of inheritance rights, and access to socio-bureaucratic facilities. The absence of official registration triggers a conflict between positive legal norms and religious and customary values that are still upheld, thus creating a gap in the enforcement of rights and obligations at the local and national levels. In addition, the phenomenon of marriage without official registration also has an impact on vulnerable groups, such as adolescents, who are at risk of experiencing abuse of rights and minimal legal protection. The research method used is normative legal research with a literature approach, considering that the data processed are in the form of laws and regulations and scientific literature. The results of the study indicate that the integration of customary law and positive law through the active role of institutions such as the Office of Religious Affairs and the Population and Civil Registration Service is a strategic step to synergize the two systems, so that it can provide comprehensive legal certainty for the recognition of rights, clarity of marital status, protection of inheritance, and guarantee of access to administrative facilities. Inclusive legal reform and increasing socialization and human resource competence are the keys to reconciling local traditions with modern legal requirements in order to realize social justice and protection of citizen rights).

1. Introduction

Traditional marriage is a manifestation of the noble values that have been inherent in the socio-cultural life of the Indonesian people since ancient times. Fundamentally, customary marriage is not only seen as a formal bond between two individuals, but as a symbol of the link between humans and ancestors, nature, and spiritual values that live in the community order. In this context, traditional marriage rituals contain deep symbolic meanings, where each procession-from the introductory procession of honoring ancestors to sacred rituals such as the basumpah kawin-is an effort to purify inner relationships and integrate moral and ethical values derived from local wisdom (Sali et al., 2023; , Gunawan, 2019).

In addition to the spiritual and symbolic dimensions, the philosophical foundation of traditional marriage is also rooted in the social value system that underlies the order and sustainability of community life. The social values contained in traditional marriage ceremonies and traditions, such as justice, solidarity, and recognition of roles and responsibilities in the family, strengthen the existence of the institution of marriage as a foundation for forming a harmonious social structure (Diana, 2019; , (Asmaniar, 2018). This perspective is evident in the implementation of traditional marriages in various regions, for example in the Minangkabau community which prioritizes the matrilineal family system and in the Dayak Maanyan community which places family and kinship values as the core aspect of marriage (Asmaniar, 2018).

In addition, the dynamics of legal pluralism in Indonesia have contributed to the formation of the philosophical basis of customary marriage. In the context of pluralism, adat becomes a forum for communities to maintain their own cultural identity that is in line with universal values of humanity and social justice. This can be seen from efforts to integrate customary norms with positive legal norms in order to accommodate the diversity of cultural identities that exist in Indonesia, as well as to overcome the impact of the rigidity of formal laws that are not always able to reflect local values (Aditya, 2019). Here, the presence of ritual elements and traditions in customary marriage becomes a medium for the transformation of philosophical values into concrete practices of social life. Furthermore, a philosophical analysis of customary traditions shows that the institution of customary marriage also functions as a social legitimization mechanism, where the marriage rite is seen as a union of two social entities that carry historical and spiritual significance. Traditions such as panai in Bugis marriage ceremonies, for example, not only reflect symbols of property exchange, but also contain values of trust, respect,

and mutually binding responsibilities between the two parties (Alfariz, 2020). Thus, philosophically, the existence of customary marriage brings together rational and transcendental aspects that not only strengthen relationships between individuals, but also strengthen the social structure as a whole. Overall, the philosophical basis of customary marriage in Indonesia can be summarized as the result of a synthesis between spiritual, social, and cultural values that have been integrated in hereditary traditions. Through a symbolic and normative ritual process, customary marriage shows how people strive for a balance between social order and continuity of cultural identity, which is also a response to the dynamics of changing times within the framework of legal pluralism and modernization (Sali et al., 2023; , Khusairi & Mandala, 2023). This philosophical approach not only reflects local wisdom, but also opens space for dialogue between traditional norms and contemporary legal needs in order to build a harmonious and just society (Alfariz, 2020).

The background of legal issues regarding unregistered customary marriages is a fundamental issue in the balance between local wisdom and state regulations, because marriage not only has socio-cultural values but also has a major impact on legal certainty, protection of rights, and the status of citizens. On the one hand, customary marriage is an institution that has long been applied in various communities in Indonesia as a manifestation of cultural identity and customs, but on the other hand, the irregularity of the marriage if it is not registered with state agencies raises various legal issues, especially in terms of recognition of marital status, inheritance rights, and protection of the personal rights of both parties (Siregar et al., 2022), Fanani, 2024). Legal problems arise due to the unclear legal status of unregistered customary marriages, which creates uncertainty in the enforcement of rights and obligations, as well as in the resolution of disputes arising from the marital relationship. For example, the absence of official registration can result in legal disadvantages, such as the inability to obtain inheritance rights, access to social and financial facilities, and negative impacts on the legal protection of children born from such marriages (Sandi et al., 2022; Susilo et al., 2022). This condition is exacerbated by the gap between positive legal norms and religious and customary values that are still upheld in the community, resulting in clashes of interpretation and application of the law at the local and national levels (Khalilurrahman et al., 2022; , Siregar et al., 2022).

In addition, the emergence of the phenomenon of marriage without official registration is also experienced by vulnerable groups, such as adolescents involved in customary marriages that are not administratively recognized, which then increases the

risk of abuse of rights and minimal legal protection Susilo et al., 2022). This practice often creates a dilemma between the preservation of local culture and the need to modernize the population administration system, where state policies have not been able to fully accommodate the plurality of marriage practices without ignoring the principles of legal certainty that are the foundation of the rule of law. This requires legal reform that is able to synergize customary law with the positive legal framework so that the rights of the individuals involved can be fulfilled as a whole (Muhtada, 2023; , Dali et al., 2022).

From the perspective of the government and related parties, the main challenge is to optimize the role of institutions such as the Office of Religious Affairs and the Population and Civil Registration Office to be able to integrate and legitimize customary marriage practices without eroding local cultural values. These efforts include increasing legal socialization, improving the competence of human resources, and providing supporting facilities and infrastructure so that marriage registration can be carried out inclusively for all levels of society (Mite et al., 2022; , Dali et al., 2022). Thus, reform and harmonization between customary law and positive law is a must in order to overcome legal problems arising from the non-registration of customary marriages, as well as to provide guarantees for the rights that have arisen from the implementation of customary marriages (Sandi et al., 2022; Susilo et al., 2022).

2. Research Method

In this research, the type of research used is normative legal research or library legal research because it is in the form of secondary data such as laws and literature books. "In this research, the way of accessing and research takes a lot from library materials, namely materials that contain new or up-to-date scientific knowledge, or new understanding of known facts or ideas, in this case including books, journals, dissertations or theses and other legal materials. This normative legal research fully uses primary legal materials and secondary legal materials. (Johan Nasution, 2008).

3. Results and Discussion

The Process of Recording Customary Marriages, Referring to the Efforts to Record Marriages Performed by the State.

The process of recording customary marriages in the context of Indonesian law is an issue that raises dualism between customary law and applicable positive law. Marriage

registration in Indonesia has an important role in providing legality to the husband-wife bond, but its implementation is often inconsistent between community customs and national legal provisions. This can be seen in the practice of marriages that are not officially registered, such as sirri marriages. Sirri marriages, although valid according to religious law, often encounter problems in formal registration. Firdaus and Maskur state that while sirri marriages are valid from an Islamic perspective, their registration often violates the provisions of Indonesian positive law, which requires registration through a civil registration office or KUA (Firdaus & Maskur, 2024). In this context, official recognition of such marriages is necessary so that children born from such marriages receive birth certificates and appropriate civil rights. Speaking of customary marriage registration, Law No. 1/1974 on Marriage provides the legal basis that every marriage must be recorded. However, the application of the law is often complicated by the customs and norms prevailing in indigenous communities. The administrative requirements that must be met in registering marriages at the KUA sometimes conflict with customary norms, so more attention is needed in this regard to achieve harmony (Mustafid et al., 2024). In addition, the KUA (Kantor Urusan Agama) has an important role in bridging between positive law and customary law and assisting the community in registering marriages (Afifah & Rojak, 2022). Conflicts between customary law and state law are most visible in areas with strong traditions, such as the Mandailing community. Zulfah et al. showed that Mandailing people pay great attention to customary law and the process of resolving conflicts related to marriage (zulfah et al., 2024). This suggests that there is a need to integrate the two legal systems to avoid conflicts that harm the community. On the other hand, challenges to marriage registration also come from a lack of legal awareness in the community, which sometimes leads to the practice of nikah sirri without legal registration. This affects the rights of children from these marriages and the recording of their birth certificates, which sometimes require the use of a Statement of Absolute Responsibility (SPTJM), which is not always legally recognized (Manurung & Sulastri, 2021; Ramelan et al., 2023). Resolving this issue requires a careful approach so that the legal rights of each individual are protected without ignoring local traditions. In conclusion, customary marriage registration in Indonesia is a complex process in which customary and positive laws need to be synergized. The government's efforts to simplify the registration process, along with the public's understanding of the importance of the formality of registration, are important steps

towards social justice and the protection of individual rights, especially in the context of marriages that are not officially registered.

The Integration Process Between Customary Norms Formed from Cultural Practices and Formal Legal Norms Regulated in the Marriage Law

In the context of legal pluralism in Indonesia, the integration process between customary norms formed from cultural practices and formal legal norms regulated in the Marriage Law is a complex and dynamic endeavor. This integration not only reflects cultural diversity, but also concerns the substance of traditional values that live in the community and modern legal mechanisms that guarantee legal certainty over marital relations. Research shows that the existence of the two legal systems requires synchronization so that local wisdom values can be accommodated within the framework of national law without compromising the principles of social benefit and unity (Khusairi & Mandala, 2023; Fuadi et al., 2023). First, customary norms that develop from cultural practices have familial characteristics, distinctive ceremonies and procedures that are passed down from generation to generation. For example, Talang Mamak customary marriage practices in Talang Jerinjing Village have carved out a distinctive social structure and norms of relationships between community members. Kristina Kristina, 2023; reveals how these customary values give strength to cultural identity and social interactions, which often differ from the standards set by the Marriage Law. On the other hand, the Marriage Law sets out administrative and formal requirements that must be met to ensure legal validity, such as marriage registration and contractual requirements of marriage agreements. The mismatch between customary practices and formal regulations often creates challenges in terms of documentation, legitimacy and legal protection of the parties involved Kristina, 2023; Furthermore, empirical studies related to Dayak traditions, particularly the "ticak kacang" tradition, illustrate that customary marriage rules must be harmonized with the national legal framework to ensure that there is no dissonance between traditional practices and legal provisions. In the study, Mulyawan et al. Mulyawan et al. found that although customary marriages have been implemented since ancestral times, the compatibility of these customary procedures with the formal provisions of the Marriage Law is a crucial issue, especially in terms of the distribution of inheritance rights and the legal status of children born from these marriages. Harmony between the two legal systems is the key to avoiding legal conflicts and ensuring the

continuation of cultural identity without disturbing formal legal certainty Mulyawan et al.

The theory of legal pluralism provides a conceptual basis that a diversity of norms - both customary and formal - can coexist if there is a harmonization mechanism that facilitates the integration of the two systems. Nugroho et al. Nugroho et al., 2022; argued that the integration of customary norms into the national legal system does not merely mean accommodation of cultural practices, but must also meet the requirements of legal justice and administrative certainty. This, according to a study conducted by Fuadi et al. Fuadi et al., 2023), requires the involvement of legal officials and indigenous community leaders in the process of drafting, refining and implementing policies that recognize customary values as an integral part of the formal legal system. Thus, this integration process can ideally minimize conflicts between norms derived from local traditions and norms derived from national legislation (Nugroho et al., 2022; , Fuadi et al., 2023).

Overall, the integration of customary norms and formal legal norms in the Marriage Law must be seen as a multidimensional process that requires active participation from all parties, from indigenous peoples, government officials, to legal experts. This process not only serves to preserve long-established cultural values, but also as an effort to adjust the law so that it is able to protect individual rights and maintain social harmony in a pluralistic society. The key to successful integration lies in a constructive dialog between tradition and modernity, as well as regulatory adjustments that are able to embrace local distinctiveness without reducing the strength of universal national laws (Khusairi & Mandala, 2023; , Kristina, 2023; , Mulyawan et al., 2023; , Nugroho et al., 2022; , Fuadi et al., 2023).

Legal Certainty, Measured Through Recognition of Legal Rights, Clarity of Marital Status, Protection of Inheritance, and Guaranteed Access to Various Facilities

Based on the results of the research, legal certainty in the context of marriage can be measured through four main indicators, namely recognition of legal rights, clarity of marital status, protection of inheritance, and guaranteed access to various socialbureaucratic facilities. The final results show that the integration of formal legal norms and customary practices - when recognized and implemented synergistically - contributes significantly to the realization of legal certainty in the field of marriage. First, the recognition of legal rights includes the right of individuals and families to have their

marital status officially recognized-so that each spouse and the children born from that marriage receive complete legal protection. If a marriage is not officially recorded, there is a dissonance between civil rights and state-recognized legal protection, which in turn has a negative impact on access to various bureaucratic facilities such as the issuance of identity documents, birth certificates, and ownership of inheritance (Anto, 2024; . Anto's research (Anto, 2024) states that the problems of unregistered marriages result in unclear legal status, resulting in uncertainty in the determination of inheritance rights and protection of children, which then hampers access to social services and bureaucratic facilities.

Second, the clarity of marital status is a crucial indicator that shows that formal registration provides a clear legal basis for each couple to have a legal status in the eyes of the law. This clear status not only guarantees the exercise of rights and obligations in the marital relationship, but also facilitates the administrative process in resolving disputes or legal issues in the future. Thus, a transparent and integrated recording mechanism between customary arrangements and national legislation is needed to avoid legal loopholes that can be exploited for certain interests (Anto, 2024; Widodo, 2023). Furthermore, inheritance protection is an integral part of legal certainty. The marriage registration document serves as the basis for proving the legitimacy of the marital relationship, which in turn becomes the main reference in determining inheritance rights. Studies show that when marital status is not recognized or formally documented, claims to inheritance are often disputed, resulting in conflict and injustice, in the distribution of rights (Anto, 2024; . With legal certainty through official documentation, each party involved-both spouses and children-will have legal security over property and inheritance rights in accordance with applicable regulations.

Finally, guaranteed access to socio-bureaucratic facilities is an additional indicator in measuring legal certainty. The integration of technology-based information systems, highlighted by Huda and Susanti Huda & Susanti, 2021), has been proven to improve administrative efficiency and transparency in marriage registration. Thus public access to public services-such as document registration, licensing services, and verification of legal status-is faster and more accurate. This not only strengthens public trust in the justice system, but also ensures that social and economic rights can be secured for the entire community, including those who practice customary marriage that has been integrated into the formal legal system (Huda & Susanti, 2021). Overall, the results confirm that legal certainty in the field of marriage requires a synergy between customary norms and formal

legal norms. Comprehensive legal rights recognition, clarity of marital status, optimal inheritance protection, and guaranteed access to social-bureaucratic facilities are key indicators that must be met in order to create a fair and transparent marriage system. The application of information technology in the registration process and adjustments to legal regulations that are responsive to local cultural dynamics are key to the success of this integration, so that legal protection can be felt equally by the community (Anto, 2024; , Huda & Susanti, 2021).

4. Conclusion

This research shows that the process of recording customary marriages in the context of formal marriage registration efforts by the state presents a dualism between customary law practices and positive law provisions. On the one hand, formal registration through the civil registration office or KUA is very important to provide legal certainty, which includes recognition of civil rights, clarity of marital status, protection of inheritance, and easy access to social-bureaucratic facilities. On the other hand, customary norms that have developed over generations are often not in line with formal administrative requirements, creating challenges in harmonizing the two legal systems. Therefore, efforts to integrate customary norms and formal legal norms require constructive dialogue and regulatory adjustments so that the value of local wisdom is preserved without sacrificing the legal certainty expected by the state. Thus, synergy between the two systems is key in realizing a marriage registration system that is fair, transparent, and protects the rights of each individual as a whole.

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