

Legal Protection of Joint Property in Serial Marriage

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ABSTRACT

Nowadays, there are still many people in Indonesia who hold or carry out marriages that are legally legal but are not registered in the state. Marriages that are legally valid in religion but not registered in the state (sirri marriage or underhand marriage) raise various legal problems, one of which is regarding the legality of including the name of the spouse on the assets obtained during the marriage. This is related to many problems, especially in the protection of the rights of women and children in legally valid marriages but not registered in the state. Meanwhile, the State has sought to protect the rights of Women and Children, one of which is the issuance of Law No: 1 of 1974 concerning Marriage and the Compilation of Islamic Law and stipulates that a valid marriage is a marriage that is carried out according to the laws of their respective religions and recorded in accordance with the applicable laws and regulations. Assets in marriage in Indonesia are divided into two main categories, namely inherited/personal property and joint property (gonogini). Based on Law No: 1 of 1974, all assets before marriage are inheritances, or gifts are the personal property of each and all assets obtained in marriage become joint property, unless there is a prenuptial agreement. In marriages that are religiously valid but not recorded in the state, it does not rule out the possibility of the birth of children and the emergence of property obtained in the marriage. However, in this case, in the event of divorce or breakup, the state cannot be present to protect the rights of women and children in terms of the division of property or the distribution of inheritance to property or assets obtained in a marriage that is legally religious but not recorded in the country. So that it causes many problems for families who are abandoned or the separation of marriages, the impact of which is felt by many people, especially women and children. This article examines in depth the legal position of marriage that is not recorded in the Indonesian legal system, the status of joint property in the marriage, as well as the technical/juridical issues of including the name of the spouse in asset ownership documents such as land rights certificates, sale and purchase deeds, fiduciary deeds, and banking documents and examines the importance of providing legal awareness for the wider community, especially women, about the legal consequences or impacts of legal marriage religiously but not recorded in the state. Thus, it is hoped that the community will better

understand and reduce religious legal marriages that are not recorded according to applicable laws and regulations, become legally and recorded marriages so that the state can be present to protect the rights of all its citizens, especially women and children.

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1. INTRODUCTION

Indonesia is the largest archipelagic country in the world with a land area of about 1.9 million km² and an ocean area of 3.25 million m². This vast area is divided into 38 provinces, 514 districts/cities, and more than 83,000 villages spread from Sabang to Merauke. . This geographical condition is one of the most determinant variables that shape the complexity of population administration governance in Indonesia, including marriage registration matters. One of the most obvious impacts of Indonesia's vast territory is the limited physical access of the public to marriage registration services. The World Bank notes that about 30% of Indonesians living in remote areas do not have complete residency documents. This condition is closely related to the lack of interregional transportation, especially in the archipelago and inland areas of Kalimantan, Papua, and Nusa Tenggara.

Indonesia has more than 17,000 inhabited islands, with thousands of them lacking access to regular transportation. For the people who inhabit these small islands, to reach the nearest KUA or Disdukcapil office often requires a sea trip of hours to days at a considerable cost. The financial and physical inability to reach the registrar eventually prompted many couples not to formally register their marriages.

Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead. Thus the formulation of Article 1 of Law Number 1 of 1974 concerning Marriage which is the normative basis of marriage law in Indonesia. This law affirms that marriage is valid if it is carried out according to the laws of each religion and belief, and is recorded in accordance with the applicable laws and regulations.

Marriage registration is a legal obligation regulated in Law Number 1 of 1974 concerning Marriage, which emphasizes that every marriage must be recorded in accordance with applicable laws and regulations. However, the implementation of these obligations faces obstacles that cannot be separated from Indonesia's very diverse geographical conditions. The problems of distance, infrastructure, limited human resources, and low access to technology in the archipelago and inland areas are real obstacles that have not been fully resolved. Normatively, marriage registration is regulated through various legal instruments. Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration affirms the obligation of every citizen to register their marriage events with the authorized agencies. For Muslim citizens, registration is carried out at the Religious Affairs Office (KUA), while for nonMuslims it is carried out at the Population and Civil Registration Office (Disdukcapil).

Although regulations have been comprehensively available, the Ministry of Home Affairs report shows that the level of compliance with marriage registration nationwide is still not optimal. This is mainly due to the inequality of institutional capacity and accessibility of services between infrastructuredense urban areas and rural areas, mountains, and remote islands.

In practice, the phenomenon of marriage that is religiously valid but not recorded in the authorized agencies – which in society is known by various names such as nikah sirri, nikah under hand, or religious marriage – is still very common in Indonesia. This condition is not solely caused by the

intentional avoidance of legal obligations, but also by a variety of complex sociological, economic, and cultural factors. These factors include limited access to population administration services, public ignorance of marriage registration procedures, economic considerations such as the high cost of an official marriage, to certain conditions such as previous divorces that have not received an official divorce certificate.

The compilation of Islamic Law¹⁰ as one of the sources of material law for Muslims in Indonesia does recognize the validity of marriage that meets the principles and requirements of marriage according to Islamic law, but the marriage is not recognized by the state if it is not recorded. The Supreme Court has affirmed in its various rulings¹¹ that unregistered marriages have no legal force before the state, so the various legal consequences of marriage — including the issue of joint property, inheritance, and other civil rights — cannot be fulfilled automatically.

The most complicated issue with a significant economic impact is the fact that the assets acquired during the marriage are not recorded. In a valid and registered marriage, the assets acquired during the marriage are joint property (*gonogini*) whose ownership rights are jointly owned by the husband and wife. However, what about assets acquired in an unregistered marriage? Do couples who do not have a formal marriage certificate still have legal rights to the assets? Can his name be included in the asset ownership document? These questions are what prompted the writing of this article.

2. METHODS

This article was prepared using the normative legal research method, which is research that examines law from an internal perspective with the object of study being legal norms.¹² The approaches used include: (1) statute approach, which is to analyze various applicable laws and regulations; (2) conceptual approach, namely examining relevant legal doctrines and theories; and (3) case approach, which is to analyze court decisions related to the problem being studied. The legal materials used include primary legal materials in the form of laws and regulations and court decisions, secondary legal materials in the form of law books, journals, and scientific papers, and tertiary legal materials in the form of legal dictionaries and encyclopedias.

3. FINDINGS AND DISCUSSION

A. Definition and Scope of Joint property

Joint property in marriage, which in the Javanese legal tradition is called *gonogini*, is property obtained during the course of the marriage, either through joint efforts between husband and wife or individually by each spouse. The Marriage Law regulates joint property in Article 35 which states that property acquired during marriage becomes joint property. Meanwhile, the inherited property of each husband and wife before marriage, as well as the property obtained by each of them as a gift or inheritance, are under the control of each other as long as the parties do not specify otherwise.

J. Satrio in his study of the law of marital property distinguishes three types of property in marriage: first, joint property which is property acquired during marriage; second, the husband's personal property in the form of the husband's inherited property and the property received by the husband as a gift or inheritance; and third, the wife's personal property in the form of the wife's inherited property and the property received by the wife as a gift or inheritance. This distinction is important to determine the rights of each party in the event of divorce or death of one of the parties.

Article 36 of the Marriage Law regulates the right to manage joint property, where the husband or wife can act on joint property with the consent of both parties. Meanwhile, Article 37 regulates the distribution of joint property if the marriage is dissolved, which is carried out according to their respective laws. This provision shows that the law recognizes equal rights between husband and wife over joint property.

B. Problems of Common Property in Marriage not Recorded

The main problem that arises from an unrecorded marriage is the unclear legal status of the property acquired during the marriage. Because marriage does not have a marriage certificate, there is no formal easy proof of the existence of marriage, and as a result, there is no easy proof of the existence of joint property.

The Supreme Court in Decision No. 1644 K/Pdt/2013 has provided interesting legal considerations on this matter. The Court emphasized that even though the marriage is not recorded, if it is proven that there has been a legally legal marital relationship and has lived together as husband and wife, then the property obtained during the cohabitation can still be claimed as joint property by the parties. Proof of the existence of marriage and joint property in this context can be done through various evidence, including testimonies, confessions, and other documents.

Eman Suparman underlined that the absence of a marriage certificate does not necessarily erase the civil rights that should be owned by couples who have established a real marital relationship. However, to be able to enforce these rights, more complex legal remedies are needed compared to registered marriages. This is one of the real losses experienced by couples in unrecorded marriages, especially the women's side who are generally more economically and legally vulnerable.

C. Supreme Court Jurisprudence on Unrecorded Matrimonial Joint Property

The South Jakarta Religious Court in Decision Number 1644/Pdt.G/2019/PA.JS29 has decided the case of the division of joint property in a marriage of sirri. In its consideration, the court stated that even if the marriage is not recorded, but since it is proven that the marriage is valid according to Islamic law and the parties have been living together as husband and wife for many years, the property acquired during the marriage is joint property that must be divided fairly.

Ali Afandi in his study on family law and inheritance emphasized that the court has the authority to examine and adjudicate the issue of joint property from an unregistered marriage, as long as the parties can prove the existence of a marital relationship and the existence of property acquired during the marriage. This proof can be done through testimony from family members, neighbors, or community leaders who know about the marital relationship.

This development of jurisprudence shows that there is a tendency for courts to provide legal protection to couples in unregistered marriages, especially in terms of the right to joint property. However, this protection is not automatic and requires a lengthy and complex judicial process, which in practice often makes it difficult for economically weak parties.

4. CONCLUSION

Based on the description and analysis that has been carried out in this article, several conclusions can be drawn as follows.

First, unregistered marriages are in legally ambiguous conditions. On the one hand, the marriage is recognized as religiously and religiously valid. On the other hand, the state does not provide formal recognition due to the absence of records. This ambiguity condition results in various legal problems, including in terms of asset ownership management and documentation.

Second, property obtained during the marriage is not recorded can basically be claimed as joint property through the court, if the parties can prove the existence of a legally legal marital relationship and the existence of property acquired jointly during the marriage. However, this proof requires legal remedies that are not easy and not cheap.

Third, the inclusion of the spouse's name on assets in an unregistered marriage can be done through several mechanisms: (a) isbat nikah to obtain official recognition from the state of the marriage, which then allows the inclusion of names on the basis of joint property; (b) a joint ownership agreement made before a notary; (c) the writing of the names of both parties in the sale and purchase deed or other ownership documents on the basis of coownership. Each mechanism has its own advantages and limitations.

Fourth, legal protection for couples in unrecorded marriage is still inadequate and consistent. Although there are several court decisions that provide protection, there is no regulation that comprehensively and systematically regulates the civil rights of couples in unrecorded marriage. This is a gap in the legal system that needs to be addressed immediately.

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