

FACTORS CAUSING UNREGISTERED MARRIAGES IN BENGKULU PROVINCE AND THE PROBLEMATIC

By :

Isra Puspa Dewi, Sirman Dahwal, M. Darudin

Abstract

Unregistered marriage is marriage that is widely occurred nowadays. There are many factors that cause a person to do unregistered marriage, however unregistered marriage can cause legal problem in the future time due do several reasons. The aim of this study was to comprehend and to analyze factors causing the occurrence of unregistered marriage in Bengkulu Province and the problematic. In analyzing the issue in this study, the researcher used descriptive analysis method which produce research result that showed that unregistered marriages were motivated by factors such as one party of the couples did not get blessing, money, administration, and regulation which considered to inhibit a person to perform a marriage so that each couple decided to still perform wedding through religious way. Unregistered marriage also had been developing and had been long done by Indonesian community particularly in Bengkulu Province. Unregistered marriage clearly did not receive legal protection and legal certainty provided by the State, because that marriage is only performed through religious way and did not officially registered at Religion Affairs Office.

Keywords: Causing factors, Unregistered Marriage.

A.INTRODUCTION

1. Background

According to Sirman Dahwal, marriage is a sacred relationship which is one of religion commandments. A marriage has a goal in which the goal is have children, to create happy, prosperous, safe and sound, affectionate family.¹ To gain legal certainty, a marriage should be register to authorized institution. The provision in Article 26 of Civil Code stated that a marriage only will be considered to be official if it has permanent legal power which can be proven by a marriage certificate issued by Marriage Registration Staff at Civil Registration Office.² Registered marriage according to law will raise legal effects such as:³

1. The occurrence of relationship between husband and wife;
2. The occurrence of belongings in

the marriage; and

3. The occurrence of the relationships between parents and children.

The fact in the field there were many marriages in the society happened without legal basis of Marriage Law, in which such marriage was only performed based on the provision of one's religion institution. A marriage which was performed without registering it first to the official institution is called *nikah siri* (unregistered marriage). The issue of unregistered marriage in contemporary fiqh is known as "zawai 'urfi", which is a marriage which fulfilled the requirements for wedding, but does not officially registered by government staffs who are in charge for marriage issue which Religious Affairs Office.⁴ It is called 'urfi zawaj urfi ", because this marriage is customary in Muslim societies since of the Prophet and their noble companions. They do not need to record their wedding ceremony, and does not cause problems for their household.⁵

¹ Sirman Dahwal, *Hukum Perkawinan Beda Agama Dalam Teori dan Praktiknya di Indonesia*, Mandar Maju, Bandung, 2016, p.87.

² Rahmadi Usman, *Aspek-aspek Hukum Perorangan dan Keluarga di Indonesia*, Sinar Grafika, Jakarta, 2006, p.29.

³ Mulyadi, *Hukum Perkawinan Indonesia*, Publishing Board of Universitas Diponegoro Semarang, 2008, p.41.

⁴ Usamah Al-Asyqor, *Mustajaddat Fikihiyyah fi Qa>d}a>ya Zawaj wa ta>laq*, t.t, 130.

⁵ *Ibid.*

The unregistered marriage according to Zuhdi Muhdlor is a marriage that was held from the official officers of the Marriage Officer or the Office of Religious Affairs.⁶ The unregistered marriage is a marriage that was hidden, secret and unknown to the outside community. The unregistered marriage in the law context in Indonesia is a religious marriage with known by many people, but it just not recorded in the Office of Religious Affairs that does not have a marriage certificate as the evidence of marriage.⁷

Based on the data from pre-research that has been done, the researchers obtained information about the fact that the rate of unregistered marriage in the Bengkulu City society has increased. According to the information that the author got from Efendi as *Adat leader* of Bengkulu province, where in 2016 the number of unregistered marriage included 30 cases in the Bengkulu City and in 2017 increased by 50 cases of unregistered marriage for the Bengkulu City.⁸

While the number of unregistered marriage in the South of Bengkulu precisely in *Manna City* also increased, where in from the number of unregistered marriage that annually no more than 10 to 15 cases of unregistered marriage increased in 2017 to 20 cases conducted by the Civil Servants, the young couples and state and private officials.⁹

The increase of unregistered marriage alson ensued in Curup, where the marriage was conducted by the officers in the police or military, civil servants and among children with the amount of increase on unregistered marriage cases in the Curup City approximately 30% of cases per year and the number of unregistered marriage for the year of 2017 increased as much as 20 cases of increase in unregistered marriages.¹⁰ As for North Bengkulu Regency, especially Ketahun area which is a plantation and mining area, the unregistered marriage is done by plantation workers and miners who do not live in Ketahun and private

⁶ M. Zuhdi, *The Understanding of the Marriage Law (Marriage, Divorce and Refer) According to Islamic law*, Mizan, Bandung, p 22

⁷ Ajat Sudrajat, et al, *Din Al-Islam Islamic Education in Public Higher Education*. UNY Press, Yogyakarta, 2008.hlm.3

⁸ The results of Pre Research conducted by

researchers through interviews with Efendi as *Adat Leader* of Bengkulu Province On August 10, 2017.

⁹ The results of Pre Research conducted by researchers through interviews with Lukman Hamid as *Adat Leader* of Manna City On 28 September 2017.

¹⁰ The results of Pre Research conducted by researchers through interviews with Arbi Saipul as *Adat Leader* of Manna City On October 3, 2017.

employees, where the increase is 10%.¹¹

The increase of unregistered marriage number in each district at the Bengkulu Province is motivated by several factors, including:¹²

1. The young couples are not old enough to be legally married and not yet sufficiently established;
2. The factor of distance between husband and wife and to avoid fornication;
3. The factor of love and care for each other, but hampered by a first wife's blessing.

Based on these things make the researchers interested in researching the problems of unregistered marriage as well as its impact and lifted into a single entity in the form of a thesis with the title: **“FACTORS CAUSING UNREGISTERED MARRIAGES IN BENGKULU PROVINCE AND THE PROBLEMATIC”**.

2. Identification of The problems

¹¹ The results of Pre Research conducted by researchers through interviews with Makmur as *Adat Leader* of Ketahun On 30 September 2017.

¹² The results of Pre Research conducted by researchers through interviews with Efendi as *Adat Leader* of Bengkulu Province On August 10, 2017.

The formulation of the issues raised in this journal are: What are the factors causing unregistered marriage in Bengkulu Province and the problematics?

B. RESEARCH METHODS

The method used in this research by its nature is a qualitative research by the empirical law approach. The qualitative research is a research using holistic approach, that is approach which require various information to be analyzed, so that can be understood certain aspect of human attitude.¹³ The research location is at the Bengkulu Province.

C. RESULTS AND DISCUSSION

Factors Causing Unregistered Marriage in Bengkulu Province and The Problematics

According to the scholars' syafi'i the origin of marriage law is *mubah*, in addition there are *sunnat*, *mandatory*, *haram* and *makruh*.¹⁴ Personally, marriage law is different due to differences in *mukallaf*

¹³ Sirman Dahwal, *The Implementation of Interfaith Marriage (Various Case Studies in Indones at the year period from 1986 to 2010)*, Legal Studies Journal of Bengkoelen Justice, Law Graduate Program vol.2.No.2.2012, hlm.464-465.

¹⁴ Abdul Aziz Muhammad Azzam and Abdul Wahab Sayyed Hawwas, *Fiqh Munakahat*, Graphic Offset, Jakarta, 2009. pp: 43.

conditions, both in terms of human character and in terms of his property ability.¹⁵ The unregistered marriage was a marriage that is still a secret, its mean that has not been notified to the public. It's usually done in limited circles, in the presence of *Pak Kiai* or religious leaders, without the presence of *KUA* officers, and certainly does not have an official marriage certificate. In Article 2, paragraph 2 of Law No. 1 of 1974 on Marriage affirmed that every marriage is recorded in accordance with the legislation in force. According Zuhdi divide understanding of unregistered marriage into three forms:¹⁶

- 1) The unregistered marriage defined as a marriage that is held according to the provisions of religious *syari'at*, are internal family and has not been registered by the *PPN* and has not done wedding reception. The husband and wife have not lived and live together as husband and wife because the wife is generally still a child.
- 2) The unregistered marriage can be interpreted as a marriage that has fulfilled the provisions of Islamic *syari'at*, it have been registered by *PPN* and obtain marriage certificate. However, the marriage are internal family

and not living together as husband and wife because maybe one or both still finish the study or have not obtained a job.

- 3) The unregistered marriage defined as a marriage that is only carried out according to the provisions of Islamic *syari'at* because it collided with government regulations. The marriage like this was done in secret to avoid the law and also the motive is to avoid adultery.

Many factors that influence a person to do the unregistered marriage, these factors according to Efendi as *Adat leader* of Bengkulu Province among others:¹⁷

- a. The cost factor, which many couples are still unable to legitimately marry due to cost factors that must be incurred both for marriage registration and for the cost of the wedding reception that became the tradition of society in general;
- b. To save money and avoid the administrative procedures that are considered convoluted (such as administrative requirements of the *RT*, *Lurah* and *KUA*, first wife permits, Religious Court permits, permission from the superiors if Civil Servants / *TNI* / *Polri* etc);
- c. Because the prospective wife already pregnant out of wedlock;
- d. The prospective husband already has a wife and to perform the marriage with a new partner does not have permission from his

¹⁵ Abd.Rahman Ghazaly, *Fiqh Munakahat*. Kencana, Jakarta, 2003, p 18

¹⁶ Effi Seriwati, *The Unregistered Marriage Lost in the Right Way*. Eja Insani, Bandung, 2005. pp 36

¹⁷ The research result that researchers get from structured interviews to Efendi as *Adat Leader* of Bengkulu Province on the 24th Friday, 2017

- legal partner;
- e. For fear of getting caught breaking the rules that forbid Civil Servants marriage is more than one;
- f. The wedding secret because of certain considerations. The statement of Efendi as *Adat leader* of Bengkulu Province;
- g. Not yet mature

According to Efendi as *Adat leader* of Bengkulu Province, the unregistered marriage cases at the Bengkulu city in 2016 amounted to 30 cases of unregistered marriage and in 2017 increased by 50 cases of unregistered marriage for the Bengkulu city. The unregistered marriage in Bengkulu called underhand wedding. The information that the author got from Efendi as *Adat leader* of Bengkulu Province was also confirmed by Abdul wahin as *imam*/ religious leader at the village of Rawa Makmur Permai. Abdul Wahin revealed that unregistered marriages performed without reporting mechanism to the custom device or religious leaders, unregistered marriages or marriage under the hand is usually performed because the background by several factors, such as insufficient ages, couples caught in adultery and forced into marriage by custom, equally loved but is hampered by approval,

civil servants status or public officials and avoid adultery.¹⁸

The reasons of unregistered marriage act according to one of the couple with the initials TY who domiciled in Bengkulu City revealed that the reason they do unregistered marriage is:¹⁹

- a. Her husband is an ASN which is bound by a rule that says that ASN prohibited from marriage more than one;
- b. Husband did not have permission from the first wife;
- c. To avoid adultery;

The emergence of a reason to avoid adultery that causes a person to get unregistered marriage with a partner also recognized by some of the samples that interviewed by the researcher, among others:

1. Unregistered marriage conducted by students who become sample by a researcher with initials WL revealed that the marriage of WL with the partner was to avoid adultery of dating relationships, if carried officially, the marriage was certainly would

¹⁸ Research Result that the researchers obtained from structured interview to Abdul Wahin as priest / religious leaders at Rawa Makmur Permai village on the 25th of Friday, 2017

¹⁹ Research results that researchers obtained from structured interviews of TY that conducted the unregistered marriages who live in Bengkulu. Interviewed on Saturday of November 26th, 2017

not be sanctioned by parents because of the status of *WL* and partner were equally still in college. The marriage that they were considered as unregistered marriage is conducted by using Magistrate guardian and stay married in the region of their friends;²⁰

2. Unregistered marriage conducted by the widow or widower who was become samples, with the initials *EV* claimed that the unregistered marriage is conducted because still not sure to register it to the State institution concerned, it is caused by trauma that still scars from a previous marriage, *EV* did not want later if the marriage is failed then the status of widowhood increased, other than that if not married *EV* fear of being slander and fornicate. So for that reason, *EV* and partner did the unregistered marriage.²¹

Factors of unregistered

²⁰ Research results that researchers obtained from a structured interview, *WL* who is conducting unregistered marriage who is living in Bengkulu. Interviewed on January 10th, 2018

²¹ Research results that researchers obtained from structured interviews, *EV* who conducting unregistered marriage who is living in Bengkulu. Interviewed on January 13rd, 2018

marriage and the increasing of unregistered marriage in South Bengkulu Regency, especially at Manna City. According to Lukman Hamid as Traditional Leaders of South Bengkulu regency, the causes of the unregistered marriage in South Bengkulu Regency, especially in Manna city were as follows:²²

- a. equally loved but is hampered by spouse's blessing;
- b. civil servants status or public officials;
- c. avoid adultery
- d. one couple has been pregnant first;
- e. limited funds owned by the couple;
- f. the incomplete of marriage documents and administrative requirements that are considered convoluted;
- g. there are still a couple that is not quite of age;
- h. The reason for not wanting the marriage is revealed.

Based on the causative factors, according to Lukman Hamid as the Traditional Leaders of South Bengkulu Regency, the number of unregistered marriage in South Bengkulu Regency at Manna City also increased, where the number of unregistered marriage which annually

²² Research results that researchers obtained from structured interviews to Lukman Hamid as

no more than 10 to 15 cases of unregistered marriage increased in 2017 become 20 cases of unregistered marriage performed by civil servants, young couples and state and private officials. Unregistered marriage in Manna Regency is taboo and commonly called as marriage under the hands, unregistered marriages are usually done by children who are minors and apparatus personnel, where they do unregistered marriage to avoid adultery. In the South Bengkulu Region especially in Manna area, although they were not married in Manna, they still have to report to the priest / religious leaders. For those who are unregistered marriages in Manna, there is still a religiously married procedure and no customary provisions should be fulfilled. For the data of civil servants who perform unregistered marriages, as the traditional leaders, Lukman Hamid cannot mention it by reason of being a secret.

The reason for unregistered marriages according to several people who perform unregistered marriages in South Bengkulu was:

a. *PR* who are teenagers who

conduct unregistered marriages with one of the officers in the region of Manna revealed that the unregistered marriages conducted is of accomplishments based on the several factors including the mutual love of both parties, the marriage is conducted because *PR* has been pregnant first, obscured by the blessing of the first wife and the husband who was an official who did not want to get negative stigma.²³

b. *AQ* which is one of the entrepreneur women in Manna who conducted unregistered marriage revealed that the background factor of *AQ* did the unregistered marriages because the *AQ*' husband is someone else's husband. Unregistered marriage is conducted in the middle of *AQ*' husband is still in the process of divorce, and the unregistered is conducted to avoid adultery.²⁴

Unregistered marriage is not only done in the area of

²³ Research Result that researchers obtained from structured interviews to *PR* on Friday of December

²⁴ Research result that researchers obtained from structured interviews to *AQ* on Friday of December

Bengkulu and South Bengkulu. Unregistered marriage is also done in some areas, including of Karang Anyar area of Curup of Rejang Lebong. According to Saipul Arby as the Traditional Leaders of Karang Anyar of Curup of Rejang Lebong mention the factors that resulted someone did unregistered marriage is them is constrained by costs, administrative requirements that are considered complicated, husband is an ASN which is bound by a rule that says that the ASN is prohibited from marriage in more than one, the husband is one of the elements of law enforcement officers, the husband did not have permission from the first wife, to avoid adultery and aged of couples who are still underage.

According Arby Saipul as the Traditional Leader of Karang Anyar of Curup of Rejang Lebong, the increase of number of unregistered marriages also occurred in Curup, which the unregistered marriage was conducted by the local police apparatus or the military, civil servants and teenager with the amount of increase of unregistered

marriage cases in Curup approximately 30% of cases per year and the number of unregistered marriage for 2017 increased into 20 cases. The increasing of the number of unregistered marriages is caused by several factors:²⁵

- a. Cold geographical factors of Curup that affect a person's physical;
- b. the number of apparatus placed in the curup area is away from his wife so that they need a legal wife to avoid adultery;
- c. the rise of the number of infidelity among civil servants and many of the men are who are civil servants tempted by the widow or girls under age in Curup thus affecting an increase of number of unregistered marriages.

The unregistered marriages or marriage under the hand in Curup region remains the same with other regions. People who did the unregistered marriages not charged customary money or traditional party and customary procedures. Unregistered marriages are conducted through the religious way. Unregistered marriages that are rife in Curup region actually brought a negative impact to the

²⁵ Research results that researchers obtained from structured interviews to Arby Saipul as Traditional Leader of Karang Anyar of Curup of Rejang Lebong on Tuesday of December 5th, 2017

region of Curup, sometimes after performing an unregistered marriage, the man left his wife without a permission and there is no responsibility to their children. According Hasby as head of the neighborhood (RT) of Haji Rohin RT 11 RW 4 of Karang Anyar Village of Curup, unregistered marriage or marriage under the hand in Curup region remains the same other regions, people who perform unregistered marriage did not charge customary money or traditional festivities and customary procedures, unregistered marriage is conducted by religious way. Unregistered marriages that are rife in Curup region actually brought a negative impact to the region of Curup, sometimes after performing unregistered marriages, the man left his wife without a permission and there is no responsibility to their children. People who unregistered marriages usually if he wanted to settle in the area that I lead should give a report to me as the head of the neighbourhood, it is also easier for me in the data collection of the residents.²⁶

²⁶ Research results that researchers obtained from structured interviews to Hasby as head of th neighborhood of Haji rohin RT 11 RW 4 of

According to M. Raiz SAG as a priest in the area of Haji Rohin RT 11 RW 4 of Karang Anyar Village of Curup, unregistered marriage or marriage under the hand is not prohibited if the mechanisms and procedures for its implementation is in accordance with the provisions of the religion. Unregistered marriages are frequent and include me as a priest or witnesses of marriage is a marriage conducted by apparatus and state officials in which they do so to avoid adultery and cannot do official marriage due to statutory provisions that prohibit them to have more than one wife and there is no blessing of his wife. Unregistered marriage or a marriage under the hand among officials and apparatus in Curup area is not something new, in addition to officials from Curup, there are many officials who come from other regions and marriage in Curup in order to maintain the confidentiality and security of both sides. Unregistered marriage or marriage under the hand is very rarely done by the young couple. Marriages under the hand are usually done by one of

Karang Anyar Village of Curup on Tuesday of December 6th, 2017

the older couples and the young woman.²⁷ According to MA who perform the unregistered marriage in Rejang Lebong Curup mention factors that led him/her did the unregistered marriage because the husband is an ASN, hindered approval of the first wife, equally loved and to avoid adultery.²⁸

Unregistered marriage in the North Bengkulu Regency, in Ketahun particular area which is an area of the plantation and mining, unregistered marriage performed by plantation workers and miners who did not settle in Ketahun and by private employees, that have the increase amounted to 10%. Unregistered marriage is usually done by a man who already has a wife but lives away to a widow or girl at Ketahun. This unregistered marriage is done with the procedures of Islam and there is no traditional procession. According to Makmur at Head of Tribe at Ketahun said that

the reasons among many couple who commit unregistered marriages are one of the partner is Law Officer or Civil Servant Apparatus, avoiding complicated administrative procedures, personal matters, inability to gain parents' blessing and legitimate wife permit.

According to the interview result that the researcher conducted in Bengkulu City, South Bengkulu and Curup, it can be concluded that the causes of the unregistered marriage are as follows:

1. The husband failed to gain a permit from the first legitimate wife, where as the letter of permit to marry is one of the requirements in order to marry another woman. This procedure is regulated in the provision of marriage constitution and Islamic Law. To gain that letter of permit and its legal status is not an easy matter, where after the letter was obtained, there would be a court hearing for the husband and wife extracting the reason behind that polygamy decision. This situation was the reason why the husband who was intending to marry could not proceed to the marriage that can

²⁷ Research Result that researchers obtained from structured interviews to M. Raiz SAG as a priest in the area of Haji Rohin RT 11 RW 4 of Karang Anyar Village of Curup on Tuesday of December 6th, 2017

²⁸ Research Result that researchers obtained from structured interviews MA that conducted Unregistered marriage in Curup region on Thursday of December 7th, 2017

be registered to the state and commit he unregistered one.

2. There had been a forbidden love before the marriage and that marriage happened to underage couple, therefore did not refer to the provision of Marriage Constitution, the marriage can not be administratively processed as was unable to meet the administrative requirements;
3. One of the actor was a Civil Servant Apparatus who was bound to general and specific condition.

The unregistered marriage was conducted to avoid adultery, where among several samples and respondents that were interviewed that the unregistered marriage was done to avoid adultery, where in their perspective adultery was a big sin.

The factors behind unregistered marriage above in the writer's opinion was dominated more by the case where one party had had a legally legitimate spouse therefore could not pursue another marriage legally acknowledge by the legitimate law. The practice of unregistered marriage committed by some of Indonesian people is the reflection of narrow minded of devoted Islamic followers who perceive

a marriage from only one side. In addition, in the writer's opinion, the unregistered marriage that were committed was more on the temptation of the forbidden love between a husband to a maid or widow.

In the writer's opinion, the unregistered marriage is not the best solution where there is no legal certainty and can disadvantage the woman side. Unregistered marriage, reviewed from the theory of certainty of law according to Utrecht, therefore it can be said that the unregistered marriage does not reflect any legal certainty. It can be outlined as follows:

1. Legal Certainty

In the writer's opinion, law regulation, marriage constitution or Islamic Law Compilation has made a general and clear rules that a legitimate marriage is a marriage that is conducted according to the sharia's law and legally recorded in the Religious Affair Office and possessed legal-certainty status. This is due to the unregistered marriage that is conducted not through a mechanisms that is regulated under the constitution and not registered as the legal basis and legal certainty.

2. The second one, the protection for an individual from government abuse due to the existence of that general regulation

the individual can know what the government can impose and do.

3. Based on the writer's analysis, the element of individual protection seemed to be ignored in the unregistered marriage, where the couple who committed the unregistered marriage did not refer to the that general rule, the individual can know what can be imposed or done by the state in the member of legal certainty and the protection of rights and responsibility as the consequence of that marriage.

4. The elements of legal ceter rtainty that were mentioned by Utrecht above can be found in the practical level of unregistered marriage therefore in the writer's opinion that the unregistered marriage does not give a legal certainty, the inability of legal certainty provision will lead to a conflict or a new problem in the marriage relation, where each of the couple or one of them can not ask for a certainty , towards the fulfillment of rights that is supposed to be done by one of them.

The unregistered marriage that does not have legal certainty will lead to chaos and social conflicts in the family and society and each member of the society will act arrogantly and go against law. In the writer's opinion, the aim of *sakinah* can not be achieved from the unregistered

marriage committed by one of the couple who has had a wife but fails to obtain the permit from her and the couple who have a secret that want to be closed from the family and other people because the unregistered marriage is committed without the parent's blessing and the secrecy will t lead to happiness as quoted from Surah 30:20 (Ar-Rum). The dis-presence of happiness was caused by feeling of insecurity, fear of being discovered, anxiousness of legitimate wife's anger and etc., which become the triggers to hinder the achievement of happy ending marriage. Unregistered marriages mostly committed due to factor where one of the couple can not obtain permission and financial support and administrative requirements and rules that can hinder an individual from committing the marriage according religious rules. Unregistered marriages are not forbidden in Islam.

D. CLOSING

1. Conclusion

According to the research and the explanation above, it can be concluded that, mostly, unregistered marriages were motivated by factor of one party that did not get blessing and budget and administration and rules that were felt hindering an

individual to conduct a marriage so each spouse decided to still continue the wedding according to the religious system. Unregistered marriages have been developing and committed by Indonesia Society especially in Bengkulu Province. The unregistered marriage clearly do not obtain legal protection and certainty by the state because that type of marriage are only done according to religious way and not registered legally to Religious Affairs Office.

2. Suggestion

Based on the conclusions above, the suggestion that the writer suggests is that the government is expected to give a holistic understanding about the unregistered marriage to the society as well as facilitate the process of marriages for the low income individuals so that the rate of this type of marriage will be decrease.