

Distribution of Joint Assets For Divorced Wife in Unrecorded Marriage (Bima District)

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Abstract

The practice of undisputed marriages is the same in the case of breaking up of marital relations and has implications for the process of dividing joint assets. So the purpose of this study is how the legal consequences and provisions for the distribution of assets for divorced wives from marriage are not recorded in the distribution of joint assets in civil law and how legal remedies for wives for the right to share joint assets for divorced wives in marriage are not recorded in Bima Regency. This study uses empirical legal research, with a Case Approach, a legal approach (approach status) and a conceptual approach (conceptual approach) using primary data, data analysis using qualitative descriptive with inductive thinking. The results of this study indicate that first a marriage is valid if it is carried out according to religious law and consecutive beliefs. Second, if the marriage is not registered, then it is not and the validity of the marriage, both in the distribution of joint property or gonorrhea property. Third, the legal consequences of unregistered marriages on the position of joint assets, marriages without official documents or commonly referred to as unregistered marriages, so that in the position of joint property the State is not entitled to regulate the distribution because it is not recorded in the marriage registration, but in the distribution of joint property it can still be carried out on condition that an agreement is made in the distribution of its assets.

Keywords: Joint Property, Wife, Unregistered Marriage.

Abstrak

Praktik nikah siri sama saja dalam kasus putusannya hubungan perkawinan dan berimplikasi pada proses pembagian harta bersama. Maka tujuan dari penelitian ini adalah bagaimana akibat hukum dan ketentuan pembagian harta bagi istri yang bercerai perkawinan tidak dicatat dalam pembagian harta bersama dalam hukum perdata dan bagaimana upaya hukum bagi istri atas hak berbagi harta bersama bagi istri yang bercerai dalam perkawinan tidak dicatat di Kabupaten Bima. Penelitian ini menggunakan penelitian hukum empiris, dengan Pendekatan Kasus, pendekatan hukum (pendekatan status) dan pendekatan konseptual (pendekatan konseptual) menggunakan data primer, analisis data menggunakan deskriptif kualitatif dengan pemikiran induktif. Hasil penelitian ini menunjukkan bahwa pertama perkawinan itu sah jika dilakukan menurut hukum agama dan kepercayaan yang berurutan. Kedua, jika perkawinan itu tidak dicatat, maka tidak dan sahnya perkawinan itu, baik dalam pembagian harta bersama atau harta gonorea. Ketiga, akibat hukum perkawinan nikah siri terhadap kedudukan harta bersama, perkawinan tanpa akta resmi atau yang biasa disebut dengan perkawinan nikah siri, sehingga dalam kedudukan harta bersama Negara tidak berhak mengatur pembagiannya karena tidak dicatat dalam pencatatan perkawinan, tetapi dalam pembagian harta bersama tetap dapat dilakukan dengan syarat dibuat kesepakatan dalam pembagian hartanya.

Kata kunci: Harta Bersama, Istri, Perkawinan Nikah.

INTRODUCTION

Marriage is not recorded in the context of society often intended in two senses. First, a marriage that is carried out clandestinely by a pair of women without being noticed by the families of both parties of the bride and groom. It is usually done without the fulfillment of the conditions and the marriage harmony perfectly. Second, marriages are carried out in secret, in the sense that the bride and groom's spouse does not register and does not register their marriage with the Religious Majlis or the Religious Usrusan Office (KUA), so that both spouses do not have a marriage certificate. The marriage referred to here is an unregistered marriage. (Binti, 2018)

In the Big Dictionary of Indonesian, unrecorded marriage is defined as a marriage that does not go through the Office of Religious Affairs, but according to Islam it is legal. Marriage is not recorded as the formulation is also commonly referred to as underhand marriage or wild marriage. In the Islamic view, this type of marriage is still considered valid considering the fulfillment of the conditions and the pillars of marriage perfectly.

According to the perspective of laws and regulations, in addition to the fulfillment of the conditions and pillars of marriage religiously, it must also be registered at the Office of Religious Affairs (KUA). It is useful to gain the power of punishment. Unregistered marriages are seen as under-marriages or wild marriages. Given that its implementation is not carried out under the mandate of the law.

In the Compilation of Islamic Law, carrying out marriage means obeying Allah's commands and is worship. According to the provisions of Law No. 1 of 1974 concerning Marriage, Article 2, paragraph 1 confirms that marriage in Indonesia must or must be carried out in accordance with the religious laws and beliefs adopted by each Indonesian citizen and does not conflict with laws and regulations. (Sri, 2019). This is in accordance with the first precept of Pancasila. Meanwhile, Article 2 paragraph 2 states that marriages recorded according to laws and regulations give rise to a procontra whether things include the legal conditions of marriage or as administrative requirements so as not to affect the validity of the marriage.

In practice, many people perform sirri marriages where the marriage is valid according to their religion but do not register marriages with authorized officials. With various reasons such as improving the family economy, constraints on the desire to be polygamous, community culture, economic improvement, and so on. The expected married life forms an eternal and happy family that lasts not just a day, a week, or a month but until death separates.

However, people who do marriage are not recorded as based on love and affection, unplanned in the course of various problems or trials, especially in complexity which affects the integrity of the household that has been fostered, causing the breaking of the marriage bond. One of the breakups of marriages is caused by divorce. Divorce certainly has legal consequences for the rights of husbands and wives who are separated.

If a valid marriage is registered, of course, it will have legal consequences that are protected by laws and regulations, but if it is not registered, there are no regulations that specifically regulate it. One of them is about common property. Joint property or gono gini property is a mixture of husband and wife's property starting from the time the marriage contract is carried out. The common property here does not include the inherited property, inheritance, grants and gifts obtained by each husband and wife.

In Indonesia, arrangements related to common property are in Article 119 of the Civil Code, Chapter VII on marital property Law Number 1 of 1974 concerning marriage consisting of Article 35, Article 36, and Article 37, Article 1 letter e and f, Article 89, Article 90, Article 94, and Article 96 paragraph 1 compilation of Islamic Law. Such regulations are carried out by the division of common property which is settled through the judiciary. However, if the marriage performed is a marriage, it is not recorded whether the concept of division of common property applies and the parties can get their rights even though the marriage is religiously valid and not registered. (Dwiasa, 2018)

From the above problems, a conclusion can be drawn that marriage is not recorded as having no legal force. From the above problems, a conclusion can be drawn that marriage is not recorded as having no legal force,

Based on the description above, it is interesting to study it comprehensively related to legal products regarding unregistered marriages. Therefore, the authors want to study the research title: "Sharing of Joint Assets for Divorced Wives in Unregistered Marriages. What are the legal consequences and the provisions on the distribution of assets for divorced wives from marriage are not recorded in the distribution of joint assets in civil law? Legal remedies for How the wife has the right to share joint assets for divorced wives in marriage is not recorded

Overview of Shared Assets

1. Definition of joint property

The term joint property consists of two words. Assets means goods (money and so on) that become property, or property of a person, or tangible and intangible assets of value and legally owned by the company. (Phoenix Library Team, 2012) Abu Karim Zaidin defines property as anything that can be controlled and used. Ingris (Institut Kefahaman Islam, 2003) Meanwhile, together means together, simultaneously, all, or all. So what is meant by joint property is property that is used (used) together. Ingris In classical fiqh studies, there is no formulation of joint property. However, in community practice, the term joint property is known by various names, for example, mixed assets in Malaysia. In East Java it is called treasure gono-gini, in Minangkabau it is called the sound of property, in Aceh it is called hareutaseuhareukat. In terms, joint property is property acquired during marriage apart from gifts or inheritance. That is, the joint property is an asset obtained for their business (husband and wife), or individually during the period of the marriage bond. (Universiti Islam Antarabangsa Malaysia), (2003).

In another formulation, it is stated that joint assets are assets obtained during marriage, excluding gifts or inheritance, namely assets obtained through their own efforts or independently as long as husband and wife are still in a legal marriage bond in which both parties contribute directly or indirectly to the acquisition or ownership of the property. In addition, joint property is usually also defined as income or assets obtained from joint business between husband and wife, including income obtained from capital between husband and wife. (Azlinabint Abdul Latif, 2004) Enabling the Domestic Islamic Family Law, defines joint property as property acquired by husband and wife when the marriage applies according to the provisions stipulated by sharia law. (Universiti Islam Antarabangsa Malaysia, 2003) Departing from the explanation above, one conclusion can be drawn that joint property is property that is jointly acquired between husband and wife during the marriage period. A new property can be said to be joint property of husband and wife when it fulfills two elements, i.e. the property is obtained from a joint business, and the income of the property must be within the time of marriage.

2. Kinds of common property

There are several assets relating to joint assets that are commonly known in Indonesia, including: (Idris, 2004)

- a. Assets obtained before the marriage by the parties due to their respective efforts, these labor assets are the rights and are controlled by each of the husband or wife parties.
- b. Assets which at the time of their marriage were given to the bride and groom may be in the form of business capital or household furniture or residence, in the event of a divorce, the property is returned to the parents or family who gave it originally.
- c. Assets acquired during the marriage but because of a gift or inheritance from their parents or next of kin.
- d. Assets obtained after they are in a marriage relationship or their business together or one of them are also called livelihood assets, and this type of property becomes joint property

3. Common property according to law

a. Definition of Joint Assets according to the Marriage Law No. 1/1974. 1 Year 1974 that the property acquired during the marriage becomes joint property. Meanwhile, the innate property of each husband and wife, either as a gift or inheritance, is under their respective control as long as the parties do not specify otherwise (Article 35).

Regarding joint property, husband or wife can act with the consent of both parties. While the innate property of each husband and wife has the full right to carry out legal actions regarding their property (Article 36). If the marriage breaks up due to divorce, property together are regulated according to their respective laws. What is meant by "the law" respectively is religious law and other laws.

b. Joint Assets according to the Compilation of Islamic Law (KHI)

In the Indonesian Islamic Law Compilation (KHI), the definition of joint property is in line with the definition of joint property in Law Number 1 of 1974, Article 35, namely property obtained by husband and wife during the marriage. In article 85 of the KHI it is stated that the existence of joint property in marriage does not rule out the possibility of property belonging to each husband and wife, even in article 86 paragraph (1) it is stated that basically there is no mixing between joint property and wife because of marriage.

c. Joint assets in the Civil Code.

In the Civil Code (BW) concerning the joint assets of the Management, it is regulated in Chapter VI Articles 119-138, which consists of three parts. Part One concerning Joint Assets according to the Law (Articles 119-123), Part Two concerning Management of Joint Assets (Article 124-125) and Part Three concerning Dissolution of Joint Assets and the Right to Dismiss Him (Article 126). (Hilman Hadikusuma. 1990)

According to the Civil Code, from the time the marriage takes place, according to the law, there is a total joint property between husband and wife, as long as there are no provisions in the marriage agreement. The joint property during the marriage may not be abolished or changed with an agreement between husband and wife (Article 119). With regard to profit, the joint property includes movable and immovable property of the husband and wife, both existing and future ones, as well as goods which they obtain free of charge, except if in the last case This is the one who inherits or the grantor determines the opposite firmly (Article 120).

In Article 122 of the Civil Code or Burgerlijk Wetboek "From the moment the marriage takes place for the sake of law, does a unanimous union between husband and wife's assets apply? just regarding that, with a marriage agreement, there are no other provisions. This regulation as long as the marriage cannot be abolished or changed with an agreement between husband and wife. All debts and losses throughout the marriage must be calculated for the unfortunate fortune of the union. For those who are subject to Western Civil Law (BW) regarding assets obtained during marriage in Article 119 BW (Civil Code) states; From the moment the marriage takes place For the sake of law, there is a union between the month's union between husband and wife's assets, only regarding this matter with a marriage agreement, there are no other provisions. This union as long as the marriage cannot be abolished or changed with an agreement between husband and wife. Thus, this article indicates that as long as the property becomes joint property or mixed property by law it becomes a joint relationship, or if a husband and wife before entering into marriage enter into an agreement before a notary regarding their assets, then husband and wife can take deviations.

Thus, it is clear here for those who submit to the BW regarding the union of assets it is coercive, which means that after the marriage is held, as long as it is related to joint property, no other agreement can be made. Here we must be able to distinguish it does not mean that the parties become the right to joint property, if then one of the parties dies, what we know as goods go on like this in the Customary Law. Or this mixture of assets would be more correct if we stated that each husband and wife have the right to property, but for them they can not exercise control (beschekking) over their respective shares.

Overview of Marriage

1. Definition of marriage

Marriage is an initial process of forming family life and is the beginning of the realization of forms of human life. The daily life of humans of different sexes created by the Almighty God male and women are said to naturally have an attraction between one another for various affections in realizing a life together or it can be said that they want to form physical and spiritual bonds to create a happy, harmonious and eternal family or household.

Marriage is not only to meet biological needs, while biological needs are a very important factor as a support or impetus in order to realize a life together both to get biological needs. Marriage must be an inner bond. This is because it can also happen that living together between men and women is without touching.

According to the Marriage Law No. 1 of 1974 article 1 the purpose of marriage is "to form a household family. The happy and eternal based on the One Godhead". For this reason, husband and wife need to help and complement each other so that each can develop their personality to achieve spiritual and material well-being. Can achieve this happiness in the hope of eternity in a marriage,

namely that people who marry will not divorce unless divorced by death or in other words married once in a lifetime. "According to Subekti, marriage is a legal relationship between a man and a person for a long time. Marriage is one of the most important events in the life of our society, because marriage does not only concern the groom and bride-to-be, but also the parents of both parties, their brothers and sisters, and even their respective families.

According to the term Abu Zahra Zakaria defines: is a contract that contains legal provisions on the permissibility of sexual relations with the wording of marriage or with words that have a meaning with it. In the compilation of Islamic law, it is stated that marriage is a very strong contract or mitsaqoongholdzhan to obey Allah's commands and is worship.

2. Terms of marriage

Conditions are things that are regulated before or must exist before we marry and after marriage, if one of the conditions of marriage is not fulfilled then the marriage is invalid. In Law Number 1 of 1974 concerning Marriage, Articles 6, 7 and 8 state that there are several requirements that must be met before a marriage takes place, among others: Article 6 reads: Marriage must be based on the consent of the bride and groom.

- a. To carry out a marriage, a person who has not reached the age of 21 (twenty one) years must obtain the permission of both parents. In the case of one of the two o's, the permission referred to in paragraph (2) of this article is sufficient to obtain from parents who are still alive or from parents who are able to express their will.
- b. In the event that both parents have died or are in a state of being unable to express their will, then permission is obtained from the guardian, the person who maintains it or a family who has blood relations in a straight line of descent as long as they are still alive and in a state of being able to express their will.
- c. In the event that there is a difference of opinion between the persons referred to in paragraphs (2), (3) and (4) of this article, or one or more of them do not express their opinion, then the Court in the jurisdiction where the person resides shall to enter into a marriage at the request of that person may grant permission after first hearing the persons referred to in paragraphs (2), (3) and (4) of this article.
- d. The provisions in paragraphs (1) to (5) of this article apply as long as the law of each religion and belief does not determine otherwise..

In addition to the marriage requirements above, there are still pillars of marriage according to the Compilation of Islamic Law, namely:

- a. The existence of a prospective bride (1) The prospective husband must be 19 years old and the prospective wife 16 years old in accordance with Article 7 of Law Number 1 of 1974 concerning Marriage.

- b. Candidates who are not yet 21 years of age must obtain a permit, in accordance with Article 6 paragraphs (2), (3), (4) and (5) of Law no. 1 of 1974, must have the permission of the parents, if both parents are absent or have died or are unable to convey the will then they must obtain permission from the guardian, namely the person who maintains or is a family member who is still related by blood and if one or more cannot express his opinion, then the Court is in the jurisdiction where the person who is going to carry out the marriage lives.
- c. Marriage is based on the approval of the prospective bride and groom
- d. The form of approval of the prospective bride can be in the form of a firm and tangible statement in writing, verbally or with gestures but can also be in the form of silence in the sense as long as there is no firm refusal.
- e. Before the marriage takes place, the marriage registrar shall state in advance the approval of the prospective bride and groom in front of two marriage witnesses.
- f. If it turns out that the marriage is not approved by one of the prospective brides, then the marriage cannot take place

Overview of Divorce

Divorce is also called talak or furqah, talak means breaking the bond and canceling the agreement, while furkah means divorce. The two words are used by experts as a term which means the divorce of a husband and wife, according to Islamic law, talak can mean:

1. Eliminate marital ties or reduce their attachment by using certain words.
2. Releasing marital ties and ending the husband and wife relationship.
3. Releasing the marriage bond by saying divorce or equivalent.

Divorce must be based on one strong reason, because this is the last resort taken by a husband or wife if there is no longer a way to make peace and restore the integrity of the household. Article 38 of the Marriage Law Number 1 of 1974 states that a marriage can be broken up because:

1. Death;
2. divorce and;
3. on the Court's decision

In the Compilation of Islamic Law there are several reasons that divorce can be carried out, these are stated in Article 116 which among other things states:

1. One of the parties commits adultery or becomes a drunkard, gambler and so on which is difficult to cure.
2. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond the ability.
3. One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place.
4. One of the parties commits cruelty or serious mistreatment that endangers the other party.
5. One of the parties gets a disability or disease with the result that he is unable to carry out his obligations as husband or wife.
6. Husband and wife constantly quarrel and fight and there is no hope of living in harmony in the household.
7. Husband violates taklik talak. The conversion of religion and apostasy which causes disharmony in the household.

RESEARCH METHOD

The approach used in this paper is a statutory approach because what is being studied are various legal regulations which are the focus as well as the central theme in the research. Conceptual approach (conceptual approach) which examines the views of legal doctrine that develops in the science of law. Case approach, namely regarding cases that have been decided as seen in jurisprudence on cases that are the focus of research.

RESEARCH RESULTS AND DISCUSSION

Legal Consequences in Provisions for Divorced Wife's Property Distribution from Marriage Not Recorded in Civil Law.

a. Unregistered marriage

Marriage as an important thing in people's lives is regulated in every religion. Religion regulates the procedures to be valid in carrying out a marriage in accordance with the provisions of their respective religions and beliefs. Indonesia is a country that recognizes five religions adhered to by its people. Each of these religions has rules and regulations regarding what its adherents can and cannot do. This results in the need for national legal guidance by the government regarding the Law on marriage which applies to all citizens.

Thus, the Marriage Law Number 1 of 1974 and the issuance of Government Regulation Number 9 of 1975, on April 1, 1975. The Law on Marriage Number 1 of 1974 came into effect as of October 1, 1975. Prior to the Law on Marriage, Citizens The state that will carry out the marriage is only required to fulfill the provisions that apply to its religion, so that the marriage is legal according to its religion and belief. For 100 percent of Muslims, marriage is valid if it meets the provisions in the Qur'an and hadith. To ensure legal certainty for citizens, every citizen must complete the conditions set by the government regarding marriage. Because of the marriage will arise the relationship between husband, wife and children. Marriages that are legal and recognized by the government must be registered according to applicable regulations. This is besides being important for administrative order, as well as hadith. To ensure legal certainty for citizens, every citizen must complete the conditions set by the government regarding marriage. Because of the marriage will arise the relationship between husband, wife and children.

Marriages that are legal and recognized by the government must be registered according to applicable regulations. This is in addition to being important for administrative order, it is also important for those who carry out marriages, namely as authentic evidence from the government regarding the relationship between a man and a woman. In accordance with religious provisions, must also complete the requirements determined by the government.

However, in reality, now that there is Law Number 1 of 1974, there are still citizens who do not have a marriage certificate or who do not marry according to government regulations. As a consequence, they do not have a marriage certificate, and cannot prove their marriage and their relationship with the children who were born.

Basically a marriage that violates the provisions for recording marriages and the marriage is not attended by authorized officials, then the marriage is called an unregistered (underhand) marriage. This unregistered marriage creates legal uncertainty for the institution of the marriage, and affects the position of husband and wife in marriage, the position of children born in marriage and the position of joint property in marriage. Therefore, citizens, especially those who are Muslim, ask the Religious Courts to be able to tie their marriages to make it clearer and obtain legal certainty.

Here the author will describe some cases of unregistered marriages in Bima Regency, but not all. This is because after being researched there are several cases that represent and can describe the problems of this research. In addition, several other cases have similarities so that it is not efficient if all of them are written down.

Unregistered marriage cases will be shown in the table below.

1). Mr. Hamdin and Mrs. Asmani

Based on the results of interviews with Asmani's mother, she said that after they divorced in an unrecorded marriage, all the joint assets they had while they were still running the household were transferred to their biological children. This was done based on consultation with the family of Mr. Hamdin and Asmani's mother's family and followed by their two children. From the results of consensus deliberation, which was accompanied by a marriage guardian and the village government of Bima Regency, it was decided that all the assets they owned would become the full rights of the children.

2). Legal consequences of unregistered marriage

a. Wealth Position

Marriage has legal consequences not only for those who carry out the marriage, the rights and obligations that bind the husband and wife personally, have legal consequences for the property of the husband and wife. The relationship between family law and property law is so close that they can be distinguished but cannot be separated. Family law relationships determine the legal relationship of wealth and marital property law is nothing but family property law.

Like what happened to one of the perpetrators of unregistered marriage in Bima district, where this married couple did not have a registered marriage due to several factors, one of which was economic factors, where the marriage can be carried out as soon as possible and it is enough to do it religiously so that a siri marriage is considered more economical and helpful because it is enough to do it in front of local clerics or religious leaders. In addition to saving on wedding costs, it can also avoid administrative procedures that are considered convoluted. This is also supported by the low understanding of the consequences caused in the marriage so that their marriage is not recorded.

The impact of unregistered marriages has an effect when there is a property problem between husband and wife which has implications for the distribution of assets. When the unregistered marriage experiences problems such as divorce, it will cause new problems, especially regarding marital property. In this case, efforts to solve these problems will experience difficulties. Because indeed, in terms of managing the distribution of joint assets, there is no authorized party to help resolve the problem.

In unregistered marriages, there is no mixing of marital property. So it is very difficult to solve the problem of joint property in a siri marriage. Basically, in every marriage, each party of the husband or wife has property that was brought and obtained before entering into the marriage contract. A husband or wife who has married has assets obtained during the marriage which are called joint assets.

Both husband and wife have the right to use the joint property that has been obtained for the benefit of their household, of course with the consent of both parties. This is different from innate property, both of which have the right to use it without the consent of both or each has the right to control it as long as the parties do not determine otherwise (Hilman, 1990).

Whereas in the above case the husband is more dominant in controlling the wife's property, this will be very detrimental to the wife. Because indeed in unregistered marriages it is certain that women who are married in an unregistered marriage will experience a major impact on being harmed. The resolution of property problems in unregistered marriages is difficult to resolve because there is no authority in managing the distribution of assets in unregistered marriages. Besides that, Efforts that are usually made for the distribution of assets are taken by women/wives with a persuasive approach by involving the husband's family. Because indeed for the settlement of joint assets, the judiciary does not have the authority to resolve it. However, in general, one of the efforts that is usually taken is by way of kinship.

So that the legal consequences of unregistered marriages on marital assets do not have legal force so that it will be very difficult to regulate joint assets in unregistered marriages. The impact of unregistered marriages will also affect the position of the wife and the status of children.

b. Wife's Position

By law, a woman who is married in an unregistered marriage is not considered a legal wife. In other words, the marriage is considered invalid. Therefore, an unregistered wife is not entitled to a living and her husband's inheritance if the husband dies. An unregistered wife is not entitled to such property in the event of a divorce. An unregistered wife is not entitled to a wife's allowance and pension allowance from her husband. Meanwhile, socially, undocumented wives will find it difficult to socialize because women who carry out underhand marriages are often considered by the community to live in the same house with men without marital ties (aka kumpul kebo) and many are considered as mistresses. They are

vulnerable to being manipulated by irresponsible men because they do not have any legal force, are easily neglected, are not given sufficient income and there is no certainty of status from their husbands, because unregistered marriages are not recognized by law.

Wives in unregistered marriages do not have authentic evidence that is recognized by law as valid. If there is a dispute in the household, whether alive or dead, one or both parties cannot demand a settlement through the judiciary. So that in this case it cannot be sued formally except only in a familial manner. The parties, both husband and wife, cannot obtain rights in terms of legal protection for the marriage they are undergoing. The rights of husband or wife can be protected by law after they have authentic evidence regarding So to get legal certainty and protection, one way is to do Isbat of marriage as regulated through Article 7 of the KHI.

c. Child Position

The clarity of the marital status of husband and wife through authentic evidence of their marriage, becomes the basis for the clarity of the legal status of a child. As for the management of the child's birth certificate, the basis is a marriage certificate. If the husband and wife have never registered their marriage, then when a child is born and requires a birth certificate, the population office will not issue the birth certificate.

In addition, with unregistered marriages, the certainty of the rights and obligations of parents and children cannot be fully protected by law. The origin of a child can only be proven by an authentic birth certificate issued by an authorized official or by the District Court after conduct a thorough examination of the application in question (Article 55A legitimate child is a child born in or as a result of a legal marriage. Meanwhile, if the marriage is not registered, the clarity regarding the status of the child will only have a civil relationship with his mother and his mother's family.

Legal Efforts for Illegal Wives on the Right to Share Shared Assets Due to Divorce in the Bima District.

This unregistered marriage ceremony still often happens in Bima district. This practice is based on various factors, namely economic factors, in which the marriage can be carried out as soon as possible and it is enough to do it religiously so that unregistered marriages are considered more economical and helpful because they are enough to be done in front of local clerics or religious leaders. In addition to saving on wedding costs, it can also avoid administrative procedures that are considered convoluted.

Seeing that this practice is a violation of the law, there should be legal remedies for rights and interests in order to obtain justice and protection or legal certainty, demanding the methods stipulated in the law, the contents of which show how to record a legal marriage and obtain permanent legal force.

The following are the types of legal remedies in turning an unregistered marriage into a registered marriage, namely:

1. Itsbat Marriage

The first legal effort that can be taken to obtain state recognition for unregistered marriages is through the submission of a marriage determination (Itsbat nikah). Itsbat marriage is a marriage that was originally not registered to be registered and legalized by the state and has legal force (Salikin, 2008). Itsbat marriage is a new term in fiqh munakahat, which literally means the determination, or confirmation of marriage. Substantially this concept functions as an effort so that marriages are registered and have legal force.

The basis of itsbat marriage Article 7 KHI:

- a. Marriage can only be proven by a Marriage Certificate made by the Marriage Registrar.
- b. In the event that the marriage cannot be proven by a marriage certificate, the marriage itsbat can be submitted to the Religious Court.
- c. The marriage itsbat that can be submitted to the Religious Courts is limited.
- d. Regarding matters relating to:

- 1) The existence of a marriage in the context of a divorce settlement; Loss of Marriage Certificate.
- 2) There are doubts about whether or not one of the conditions for a marriage occurred before the enactment of Law no. 1/1974.
- 3) Marriages carried out by those who do not have marital barriers according to Law no. 1/1974.
- 4) Those who are entitled to apply for itsbat marriage are husband or wife, their children, marriage guardians and parties with an interest in the marriage.

From the clause in Article 7 of the KHI, the application for itsbat marriage for unregistered marriages was carried out prior to the ratification of Law no. 1/1974 (UUP) as long as it meets the requirements, in practice, the Religious Courts grant. However, the application for a marriage Itsbat for an unregistered marriage which was carried out at the time after the UUUP was ratified was indeed quite difficult to be granted unless the application for a marriage Itsbat was in the context of divorce. Of course this was very difficult for couples who did not want a divorce. In addition, the process that will be carried out will also take a long time (Undip, n.d.).

In understanding the KHI Article 7, in general the itsbat of marriage is needed so that the marriage has legal force. However, the process can only be carried out while the unregistered marriage is still in progress, with the aim of strengthening and improving the quality of the marriage bond itself, in addition to making the marriage registered and legally binding. The marriage itsbat cannot be carried out when the marriage is no longer there, or when the divorce has occurred. Because, what does it mean when the marriage itself is gone. No later than the itsbat of marriage may be done when the divorce process begins and the bond is marriage still exists. When the divorce has occurred, especially after the idah period has expired, the marriage itsbat is no longer relevant.

There are several procedures in submitting a marriage certificate, namely:

- a. Submit a letter of application for itsbat marriage to the Religious Court.
- b. Certificate from local KUA
- c. Certificate from the village head or lurah explaining that the applicant is married.
- d. Photocopy of KTP of the applicant for Itsbat Marriage.
- e. Pay court fees,
- f. And others to be determined by the judge in the trial.

The purpose of holding a marriage itsbat is that it is used in order to get recognition from the state for marriages whose status is only legal according to religion so that the marriage is legally binding. Meanwhile, to get the ratification of children born from unregistered marriages, it must also be included along with the application for Itsbat marriage in order to get the same determination as the ratification of the marriage of their parents.

2. Remarriage

Remarriage is carried out like marriage according to Islam (Tajdid). This tajdid is not because it considers the first marriage to be invalid but is carried out to complete the shortcomings that exist in the first unrecorded marriage. However, marriage must be accompanied by a marriage registration by an authorized official (KUA). Marriage registration is important so that there is clarity of status for husband and wife marriages. However, if there are already children, the status of children born in a (previous) unregistered marriage will still be considered as a child out of wedlock, because remarriage does not apply retroactively to the status of children born before the re-marriage takes place.

Therefore, in the birth certificate, children born before remarriage remain as children out of wedlock, on the contrary, children born after remarriage have the status as legal children born in marriage. legitimate (according to positive law) only have a nasab/civil relationship with the mother and her mother's family, the remarriage effort becomes

meaningless for the sake of the legal status of her child, unless no child has been born before remarriage.

CONCLUSION

1. The legal consequences if a marriage is not registered regarding the validity of a good marriage according to Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, the marriage is invalid. Children born from marriages that are not registered when one of the parties dies based on Law Number 1 of 1974 concerning Marriage, only has a civil relationship with their mother and their mother's family.
2. The first legal effort that can be taken to obtain state recognition for marriages that are not registered is through the submission of a marriage determination (Itsbat nikah). Itsbat marriage is a marriage that was originally not registered to be registered and legalized by the state and has legal force. Remarriage is carried out as if Marriage according to Islam (Tajdid). However, marriage must be accompanied by a marriage registration by an authorized official (KUA). This marriage registration is important so that there is clarity of status for husband and wife marriage. However, if there are children, the status of the children born in a siri (previous) marriage will still be considered a child out of wedlock.

SUGGESTIONS

1. It is recommended to the public about how important it is to register their marriage at the Office of Religious Affairs, in addition to the requirements for orderly administration of marriage and determining it is legal in the eyes of state law, also because unregistered marriages have an impact on the validity of marriages, also cause harm to the wife and children. born in obtaining rights and obligations when the husband/father dies
2. It is recommended to the public to register their marriages, in order to provide legal protection to married couples not only for the parties carrying out the marriage, but also provide legal protection for children born from marriages, then it is also directed to the government to socialize the importance of marriage registration aims to provide legal protection and legal certainty for marriage.

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