

Normative study of siri marriage from the perspective of employment law in Indonesia

Sri Hartini, Tenang Haryanto, Al Fiani Nenden Iryatin

Lecturer, Faculty of Law, University Jenderal Soedirman, Indonesia

Abstract

According to religious law, siri marriage is valid, as regulated in the Al-Quran, surah an-Nuur verse 32. Siri marriage or underhanded marriage is a marriage that is not recorded at the Office of Religious Affairs (KUA). This article will examine how civil servants carry out unregistered marriages and what the legal consequences are for the rights, obligations and marital status of civil servants who carry out unregistered marriages. Based on the data inventory, it can be analyzed that unregistered marriages are legal according to the Islamic religion. However, from the perspective of employment law, a marriage that is considered valid must go through a procedure of being registered at the KUA. This is to provide legal validity and obtain certainty in employment. This registration will have an impact on the wife/husband and legitimate children, especially if in the future the death of the Civil Servant (PNS) in question occurs. This research uses a Normative Juridical approach. Based on Government Regulation (PP) Number 45 of 1990 concerning amendments to PP Number 10 of 1983 concerning marriage and divorce permits for civil servants, civil servant marriages must be registered at the KUA as a basis for being registered in civil service. The existence of this recording has only been declared valid according to statutory regulations. The civil servant will receive severe disciplinary punishment, as stated in PP Number 94 of 2021 Article 8 paragraph (4) if unregistered they marriage.

Keywords: Civil service, unregistered marriages, legality, disciplinary sanctions, civil servants

Introduction

Laws are created as a means to regulate citizens. Every country that uses the name of the rule of law must be able to protect and protect its citizens. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, as the basis for a rule of law, means that every administration of government affair must be based on applicable law^[1].

These legal regulations include divorce and marriage permits carried out by a Civil Servant (PNS) as regulated in Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants (hereinafter abbreviated as PP Number 45 of 1990). This arrangement is intended to provide a sense of security and order for civil servants. The hope is that civil servants will be able to concentrate on working as state officials well.

The enactment of Law Number 20 of 2023 concerning State Civil Apparatus (ASN) (hereinafter abbreviated to the ASN Law) is part of structuring uniform personnel management through the establishment of clear norms, standards and procedures in the implementation of personnel management. One of the regulations in the personnel sector is Marriage and Divorce for Civil Servants.

Initial data is based on the results of research by Unsoed Law Faculty students from 3 regions, Cilegon, Cilacap and Kudus. Data was obtained that in each of these regions there were cases of unregistered marriages carried out by civil servants. Siri marriage is religiously legal, but according to civil service law it cannot be registered. This will be a study of how siri marriages are carried out by civil servants from the perspective of Civil Service Law.

The formulation of the problem is

1. How are siri marriages carried out by Civil Servants?
2. What are the legal consequences if there is a siri marriage carried out by a Civil Servant?

The research purposes are to find out and analyze siri marriage carried out by Civil Servants.

Materials and Methods

The approach method used in this research is the Juridical-Normative Approach, namely a legal research approach using approaches/theories/concepts and analysis methods on the legal consequences of unregistered marriages carried out by Civil Servants. The research specifications in this study are analytical descriptive which aims to describe the object of research regarding personnel which will be used to draw conclusions about problems involving unregistered marriages. and legal consequences carried out by Civil Servants.

Data collection techniques in this research, primary data and secondary data will be examined, with the main activity carried out in carrying out this activity, namely literature study (*Library Research*) and field studies (*Field Research*). The technique used in collecting this data is document study, namely looking for secondary data originating from primary, secondary and tertiary legal materials and supported by other supporting data.

Analyze qualitative descriptive data using the following steps

1. The research data was inventoried, classified as relating to unregistered marriages, from the aspects of religious law, employment law and civil servant discipline law.
2. The results of the data classification are then inventoried, classified and systematized through the Civil Service Law, Marriage Law, Siri Marriage Regulations, as well as PP on civil servant discipline.
3. The data that has been systematized is then analyzed to be used as a basis for drawing conclusions.

Discussion

Siri Marriages Conducted by Civil Servants

In Article 1 of Law Number 1 of 1974 concerning Marriage (hereinafter abbreviated to the Marriage Law), it is said that marriage is an inner and outer bond between a man and a woman as husband and wife whose aim is to form a happy and eternal family (household) based on the belief in the Almighty God ^[2].

Based on these provisions, Indonesian Marriage Law is based on monogamy, as stated in Article 3 Paragraph (1) of the Marriage Law which explains "Basically in a marriage a man can only have one wife and a woman can only have one husband."

In PP Number 45 of 1990, civil servants are prohibited from carrying out unregistered marriages. This provision emphasizes that all civil servants are required to report their marriages to office the competent authority is in Article 2 Paragraph (1) which reads, "PNS carries out first marriage, must notify the official in writing through hierarchical channels no later than one year after the marriage takes place." This provision also applies to civil servants who have become widowers or Widow and has married again. This provision emphasizes the obligation of civil servants to register marriages and divorces at the state registration agency.

Furthermore, Article 14 PP Number 45 of 1990 reads, "PNS are prohibited from living together with women who are not their wives or with men who are not their husbands as husband wife without a legal marriage bond. What is meant by living together in this article is carrying out relations as husband and wife outside of the legal ties of marriage which seem to constitute a House ladder. This is contrary to the Marriage Law which was amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. In Article 2 of the Marriage Law, a marriage is considered valid if it is carried out in accordance with law religion and belief, and recorded according to applicable laws and regulations.

Normatively, there are many verses and hadiths that encourage his people to marry, among others the words of God in Surat An-Nur verse 32: Which means: "And marry those who are alone among you, and those who are worthy (married) of your female servants. If they are poor, God will enable them with His grace. And God is wide-ranging in His gifts and All-Knowing". (QS. An-Nur: 32). In Surat An-Nahl verse 72, God explains that marriage is a blessing that God gives, "And God made for you a partner (husband or wife) from your own kind and made children and grandchildren for you from your partner, and gave you sustenance from the good. Why do they believe in falsehood and deny the favor of God?". (QS. An-Nahl: 72).

According to the Al-Quran Perspective by Ali Akbar, a siri marriage, also known as a private marriage in the context of Indonesian society, is a marriage performed by a guardian or deputy guardian and witnessed by witnesses, but not carried out in the presence of a Marriage Registrar (PPN) as an official government official or a marriage that is not registered at the Religious Affairs Office (KUA) ^[3]. Islam as a teaching that is in accordance with human nature has mandated marriage for every human being. Marriage, also known as marriage, is a physical and spiritual bond between a man and a woman to fulfill the goal of married life as husband and wife by fulfilling the requirements and harmony determined by Islamic law.

A. Wasit Aulawi, explained that "unregistered marriage" is a marriage that has not been formalized, has not been publicly announced to the public or a marriage that has not been registered with a registration agency. This could be both, it has not been announced openly to the public, or maybe only one of them, namely it has been recorded but no wedding reception/walimatul has been held ^[4]. Based on this description, it can be concluded that unregistered marriages are marriages carried out in accordance with the terms and conditions established by the Shari'ah, but they are carried out secretly, some are recorded but hidden from the public and some are not registered with the Marriage Registrar (VAT) and are not registered with the Religious Affairs Office (KUA) ^[3].

Normatively, there is no text in the Koran or hadith that regulates marriage registration. Meanwhile, the marriage law which is not registered with the KUA, even though it is considered legal according to religion, this marriage still leaves problems because there will be greater harm for the woman and her children. Apart from that, the person concerned is considered "sinful" because he ignored Allah SWT's command to follow government regulations (ulil amri) ^[3].

Siri marriage is not recognized in civil service law. Civil Service Law in the field of state administration where employee/person status is a public service relationship, whereas in the field of Labor Law or Employment Agreement Law it is regulated independently, namely in the Civil Code ^[5].

According to Logeman, the relationship between civil servants and the state is known as a public service relationship, namely when a person binds himself to submit to orders from the government to carry out something or several types of positions where carrying out one or several positions is rewarded with a salary and several other benefits ^[6]. The essence of public service relations is the obligation for employees to submit to appointment by the government in one or several specific positions ^[7].

Public service relationships are analyzed in a siri marriage, requiring a civil servant in his or her marriage to comply with applicable regulations. A siri marriage is a marriage that is still kept secret, meaning it has not been publicly announced. Usually the ijab is carried out, in a limited circle, in front of a Kyai or religious figure, without the presence of a KUA officer, and of course without having an official marriage certificate ^[8].

Thus, siri marriages carried out by civil servants are examined from public service relationships, namely that the civil servant concerned must submit and obey the applicable regulations. In this context, civil servants must comply with the ASN Law, PP Number 45 of 1990, BKN Regulations and Circular Letter of the Minister for Administrative Reform and Bureaucratic Reform Number 1 of 2021 concerning Enforcement of Discipline for State Civil Service Employees (ASN) within Government Agencies. Civil servants who carry out unregistered marriages from a civil service perspective must be registered and obtain permission from authorized officials. Siri marriages are not legal according to PP Number 45 of 1990 ^[9].

Legal Impact of Siri Marriages Performed by Civil Servants

In Article 14 of PP Number 45 of 1990 it is stated that "Civil servants are prohibited from living together with a

woman who is not their wife or with a man who is not their husband as husband and wife without a legal marriage bond." This regulation has the aim of relating to legal objectives, including the following: In the book entitled Basics of Law and Courts, Prof. Subekti, S.H. said that the law serves the state's objectives, which in essence are: bringing prosperity and happiness to its people^[10].

Prof. Van Apeldoorn in his book "Introduction to the study of Dutch law" said that the purpose of law is to regulate human interaction peacefully. The law requires peace^[10].

Next, Prof. Mr J. Van Kan said that the law aims to safeguard the interests of every human being so that these interests cannot be disturbed. It is clear here that the law has a duty to ensure legal certainty in society. Apart from that, it can also be stated that the law protects and prevents each person from being his own judge, not judging and punishing every violation of the law against him^[10].

It turns out that many problems occur related to the domestic life of civil servants who carry out unregistered marriages. Siri marriage according to the Al-Quran perspective by Ali Akbar, siri marriage or also commonly called underhanded marriage in the context of Indonesian society is a marriage carried out by a guardian or deputy guardian and witnessed by witnesses, but not carried out in the presence of a Marriage Registrar (PPN) as an official (KUA)^[3].

Siri marriages, which are marriages that are not registered, will only make women (wives) and children unable to obtain their rights in marriage and will actually make them victims. Especially if the unregistered marriage is a polygamous marriage without permission from the previous wife^[11].

One of the violations of civil servant discipline is living together without being registered with the KUA or the relevant civil servant agency. Siri marriage will have an impact on the status of the family in marriage law and in employment law. The importance of this recording applies to all civil servants, both Muslim and other, including those who are Christian, Catholic, Confucian, Hindu or Buddhist. This is as stated in Law Number 22 of 1946 j.o. Law Number 32 of 1954 concerning Marriage Registration, Divorce and Reconciliation, (Explanation of Article 1) also in Article 2 Paragraph (2) of the Marriage Law, which is strengthened by Article 5 of the Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

Marriage registration is something that must be carried out by every citizen, including Indonesian citizens. Violating or not implementing it will of course have consequences that will impact the husband and wife. Indonesia itself regulates sanctions for not registering marriages as regulated in Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration (hereinafter abbreviated to the Adminduk Law), which explains that anyone who does not register a marriage (an important event) will be subject to sanctions in the form of an administrative fine of a maximum of one million rupiah^[12].

The purpose of the state in regulating civil servant marriages is, among other things, to ensure that their lives are guaranteed from legal, economic and social aspects.

Legal impacts if a divorce occurs in a siri marriage: If a divorce occurs, divorce proceedings are not regulated,

resulting in a lack of clarity regarding other impacts, for example, assets and the status of children. Marriages registered by the state: If a divorce occurs, the divorce process will be clearer and regulated by state law. This includes the rights of both parties, division of joint assets, child custody, and so on, all of which are officially recorded in state documents.

Impact on child status in unregistered marriages

Children born from unregistered marriages often face difficulties in obtaining legal status according to state law. Even though according to religion, the child is recognized, legally the child does not automatically have the same rights as a child born from a state-registered marriage. Meanwhile on marriages registered by the state: Children born from marriages registered by the state are automatically recognized as legitimate children and have equal rights to other children, including inheritance rights and the right to receive official documents such as birth certificates.

Unregistered marriages result in children born not being recorded in the civil registry. The impact is that children cannot have an identity because the Administering Law requires that applications for birth certificates must be accompanied by marriage documents from the state. In fact, without a birth certificate, children will have difficulty getting an Identity Card, Passport, registering for school or obtaining other rights^[13].

It is explained in Article 43 Paragraph (1) of the Marriage Law that "Children born outside of marriage only have a civil relationship with their mother and her mother's family." This article essentially explains the legal position of children only having a relationship with their mother and their mother's family. So, quoting from this article, it can be concluded that if a child is born from an unregistered marriage, he cannot ask his father for his rights, such as living, educational rights, health rights, and so on, especially regarding inheritance rights from his father. Of course, based on this article, the child will not get any of his father's inheritance rights^[12].

Administratively, the function and position of marriage registration is to ensure legal order (*legal order*) which functions as an instrument of legal certainty, legal convenience and as a means of proof of marriage. Ali Uraidy revealed that the legal consequences of unregistered marriages include the fact that there is no permanent legal force regarding the legality of the marriage^[14].

Confirmation of the prohibition on civil servant marriages is regulated in PP Number 45 of 1990 which, if proven to be violated, will result in the witness being subject to severe discipline in accordance with the provisions of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline (hereinafter abbreviated as PP Civil Servant Discipline) (Article 41 PP Civil Servant Discipline).

1. Not disclosing his first marriage no later than 1 year (Article 2).
2. Divorce without permission (for the plaintiff) or without a certificate (for the defendant) (Article 3 Paragraph (1)).
3. Having more than 1 (one) wife without permission (Article 4 paragraph (1)).
4. Living together outside of legal marriage (Article 14).
5. Not reporting divorce no later than 1 month (Article 15 paragraph (1)).

6. Failure to report marriage II/III/IV no later than 1 year (Article 15 paragraph (1)).
7. Female civil servants who become wives II/III/IV are subject to the sanction of being honorably dismissed not at their own request (Article 4 paragraph (2)).

As a result of carrying out an unregistered marriage, a civil servant can be sentenced to one of the following punishment heavy discipline. Civil Servant Discipline is the ability of Civil Servants to comply with obligations and avoid prohibitions specified in statutory regulations and/or official regulations which, if not obeyed or violated, will be subject to disciplinary punishment. Meanwhile, Disciplinary Violations are any words, writings or actions of civil servants that do not comply with their obligations and/or violate prohibitions on civil servant disciplinary provisions, whether committed inside or outside working hours. Disciplinary Punishment is a punishment imposed on civil servants for violating civil servant disciplinary regulations ^[15].

In Article 8 paragraph (4) PP Civil Servant Discipline, there are three types of severe disciplinary punishment, namely

1. Demotion to a lower level for 12 months,
2. Release from his position to acting position for 12 months, and
3. Dismissal with respect is not above request himself as a civil servant.

The existence of this disciplinary punishment is a strong warning for Civil Servants (PNS) not to commit polygamy (more than one wife) or enter into an unregistered marriage. If this is done, you will be punished with a disciplinary violation, ranging from a reprimand, written warning, to expulsion from the civil service, aka being fired ^[16].

As a civil servant, it is important to understand the law of unregistered marriage. Legal knowledge is very important for employees, so that when carrying out actions that violate disciplinary regulations, civil servants can immediately understand the legal consequences of each unlawful action. Likewise, information about the law is also important to be on guard, both to protect yourself, your family and the surrounding environment ^[17].

Conclusion

According to religious law, unregistered marriages are valid, as regulated in the Al-Quran, Surah an-Nuur verse 32, "And marry those who are alone among you, and those who are worthy (to marry) of your female servants. But marriages that are not registered with the KUA are not recognized by the state, so many rights are not guaranteed. By registering a marriage by the state, it has legal recognition and provides legal rights for the couple and children born from the marriage. Marriage arrangements for Civil servants are strictly regulated in PP No. 45 of 1990 concerning Civil Servant Divorce and Marriage Permits. This means that civil servant marriages and divorces must be registered with the aim of providing legal validity and obtaining certainty in employment, wives/husbands and legal children, if in the future the death of civil servants occurs and as a legal consequence, from the perspective of civil service law, unregistered marriages cannot be registered. If an unregistered marriage is registered as a valid marriage, then this becomes the basis for assessing an unregistered marriage that has been entered into by a civil servant as a violation of civil servant discipline.

Suggestion

To ensure legal certainty and reduce the impact of unsecured unregistered marriages for civil servants, PP 45 of 1990 concerning Divorce and Marriage Permits for Civil Servants should be given the authority to immediately resolve problems if there are civil servants who commit violations.

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