




Marriage Registration Law Reformulation in Indonesia (Studi of Law and Regulations on Marriage)

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Abstract

Introduction: Marriage registration serves to create order in the administration of marriage in society as well as to ensure the upholding of the rights and obligations of husband and wife. This is a preventive state law policy to coordinate the community for the realization of order and order in the system of life, including in marital problems which are believed to be inseparable from various irregularities and disputes between husband and wife. Therefore, the involvement of the authorities/state in regulating marriage in the form of registration is a must.

Purposes of the Research: The purpose of this study is to examine and analyze the formulation of legal substance regulation of marriage registration in Indonesia and to analyze and formulate the ideal concept of reformulation of marriage registration law in Indonesia.

Methods of the Research: This research is a type of qualitative study that starts from the constructivism paradigm. The approach method used in this study is the socio-legal approach method (socio legal study). A study that examines law as a social fact that can be seen in the realm of experience as a pattern of behavior in the form of social institutions.

Results of the Research: The reformulation concept offered by the author is to revise the sound of Article 2 paragraphs 1 and 2 which requires registration of marriages and contains criminal sanctions in it with the aim of providing a deterrent effect for perpetrators of underhand marriages. in the sense that this criminal sanction is used if the previous related sanctions are no longer powerless in the sense that this criminal sanction is a criminal sanction that is used after civil or administrative sanctions are applied.

1. INTRODUCTION

Marriage registration is one of the policies issued by the Indonesian government as an effort to protect marriages, as well as provide legal certainty to the parties concerned in marital relations. In this regard, the government issues policies for the sake of maintaining the benefit and the policies must of course be followed as long as it is for the good of legal protection for the people.¹

¹ Nuril Farida Maratus, "Efektifitas Pencatatan Perkawinan Di Indonesia (Tinjauan Sosiologi Hukum),," *Jurnal Khuluqiyah* 2, no. 1 (2020).

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These events are individual events (private) but the legal facts become public events, because they directly and indirectly have legal consequences not only for themselves but also for their families and communities, as well as placing the responsibility of the state to ensure the fulfillment of human rights (*to promote, to respect, to protect, to fulfill*).² The purpose of marriage according to Law Number 1 of 1974 is to "form a happy and eternal household or family based on the One Godhead". In the Compilation of Islamic Law it is stated that "marriage aims to create a *sakinah, mawaddah and rahmah* household."³ To find out the validity of marriage according to the law, it can be seen in the formulation of Article 2 of Law Number 1 of 1974 as follows:

- (1) Marriage is legal if it is carried out according to the law of each religion and belief.
- (2) Every marriage is recorded according to the prevailing laws and regulations.

Article 2 of the Marriage Law emphasizes more on the religious dimension, namely that marriage is legal if it is carried out according to the law of each religion and belief. In a contrario it can be interpreted that a marriage is invalid if it is carried out not based on the religious law adopted.

For Muslims, it is based on Islamic law as contained in the Al-Qur'an, the Hadith of the Prophet, and the *ijtihad* of the Ulama. Then for Christians, Catholics, Hindus and Buddhists based on their respective religious laws as contained in the Injil, Weda, and Tripida.⁴ In understanding Law Number 1 of 1974, Article 2 paragraphs (1) and (2), legal experts can be grouped into two: first, legal experts who adhere to the interpretation of *legism* (language). They argue that marriages carried out based on religious rules and beliefs of both parties who carry out the marriage are legal, marriage registration is not a legal requirement for marriage, but only as a condition for completeness of marriage administration.⁵ Second, legal experts who adhere to a systematic way of interpretation (interpretation of the law with the assumption that between one article and another article explain each other and form a single unit). They argue that marriage registration is a legal requirement for a marriage. Therefore, unregistered marriages (underhand marriages) are considered to have no legal force.⁶ This article has the meaning, the validity of marriages is based on the law of each religion, however, a marriage cannot be recognized by positive law in Indonesia if the marriage is not recorded in accordance with the provisions of the legislation.

Marriage registration is something that is certainly very important, even though it is only administrative in nature, but this marriage registration has a very large juridical influence on a legal acknowledgment of the existence of a marriage. With the existence of a registration in a marriage carried out by the Marriage Registrar of course then a Marriage Certificate Quotation Book is issued, as authentic evidence that a legal marriage has taken place, which is recognized both religiously and legally.⁷ In its development, Law Number 1

² Todung Mulya Lubis, *Jalan Panjang Hak Asasi Manusia* (Jakarta: Gramedia Pustaka Utama, 2005).

³ Abdi Koro, *Perlindungan Anak Di Bawah Umur Dalam Perkawinan Usia Muda Dan Perkawinan Siri* (Bandung: Alumni, 2012).

⁴ Abdul Ghofur Anshori, *Hukum Perkawinan Islam Perspektif Fikih Dan Hukum Positif* (Yogyakarta: UII Press, 2011).

⁵ Jaih Mubarak, *Pembaruan Hukum Perkawinan Di Indonesia*, (Bandung: Simbiosis Rekatama Media, 2015).

⁶ Jaih Mubarak.

⁷ Mahmuddin Benyamin and Agus Hermanto, *Hukum Perkawinan Islam, Cetakan I* (Bandung: Pustaka Setia, 2017).

of 1974 concerning marriage places the position of recording as being very important as a basis for proving that a marriage event has taken place.⁸

Demands for legal changes begin to arise when there is a gap between conditions, relationships, and events in society and existing legal arrangements. Therefore, there is a need for a legal system reform where marriage registration is a must/mandatory, because the purpose and urgency for the current context is very urgent, so there is nothing wrong if marriage registration becomes one of the basic components of modern society's marriages. This research is focused on 2 main issues including How is the formulation of legal substance regulation of marriage registration in Indonesia? What is the ideal concept of reformulation of marriage registration law in Indonesia?.

2. METHOD

This research is a type of qualitative study that starts from the constructivism paradigm. The approach method used in this study is the socio-legal approach method (socio legal study). A study that examines law as a social fact that can be seen in the realm of experience as a pattern of behavior in the form of social institutions, or social institutions, a legal study that conceptualizes and theorizes law as a positive and empirical social fact.

3. RESULTS AND DISCUSSION

3.1 Legal Substance of Marriage Registration

a. Law Number 22 of 1946 Concerning Registration of Marriage, Divorce, and Reconciliation.

The enactment of a statutory regulation has gone through a very long process. Historically, the government of the Republic of Indonesia, with the approval of the National Committee Working Body, has enacted Law No. 22 of 1946 concerning the Registration of Marriage, Divorce, and Reconciliation. This law only applies to the areas of Java and Madura. Then in 1954 Law No. 32 of 1954 was enacted concerning the enactment of the Law of the Republic of Indonesia dated November 21, 1946 No. 22 of 1946 concerning the Registration of Marriage, Divorce, and Reconciliation in all regions outside Java and Madura.

The key word in Law Number 22 of 1946 relating to Marriage Registration is marriage supervision. In the Act it is stated explicitly that marriage is supervised by a Marriage Registrar (PPN) who is appointed by the Minister of Religion. In addition, divorce and reconciliation carried out based on Islamic law are notified to the PPN.⁹ Law Number 22 of 1946 does not contain an explicit statement stating that marriages carried out without being registered by the Marriage Registrar (PPN) are invalid. However, in the law there is a provision that stipulates that "a person who gets married is required to pay a registration fee, the amount of which is determined by the Minister of Religion". Those who are unable to pay the fees for registration of marriage, divorce, and reconciliation can be released from this obligation as long as they bring a certificate from the village or sub-district head stating

⁸ Muhammad Nasir, "Maqashid Al-Syari'ah Dalam Pencatatan Perkawinan Di Indonesia," *Jurnal At-Tafkir* 9, no. 1 (2016): 38-51.

⁹ Pasal 1 Ayat 1, "Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk." (n.d.).

that they cannot afford it. Marriage registration fees are included in the state treasury according to the rules set by the Minister of Religion.¹⁰

Article 3 stipulates that "Whoever performs a marriage contract with a woman who is not under the supervision of the employee referred to in paragraph (2) Article 1 or her representative, shall be punished with a maximum fine of Rp. 50 (fifty rupiah)"¹¹ In addition, it is also stipulated that "the party who divorces and reconciles does not notify the Marriage Registrar (VAT) (after one week) is sentenced to a maximum fine of fifty rupiahs".¹²

Based on Article 3 paragraph (1) of Law Number 22 of 1946 it can be seen that the marriage must indeed be carried out in the presence of a Marriage Registrar. For anyone (a man) who performs a marriage contract with a woman who is not under the supervision of an employee, then he can be subject to a maximum fine of Rp. 50 (fifty rupiah). In this provision, it is very clear that the husband who can be subject to a fine is the husband.

b. Law Number 1 of 1974 Concerning Marriage.

The background of the birth of Law Number 1 of 1974 concerning marriage is the idea of legal unification and legal reform. The idea of legal unification is an effort to enforce a legal provision that is national and applies to every citizen.¹³ Article 1 of Law Number 1 of 1974 concerning Marriage states that the purpose of marriage is to form a happy and eternal family (household) based on God Almighty, then it is explained that forming a happy family is closely related to offspring, whose maintenance and education, becomes parental rights and obligations. For this reason, husband and wife need to help and complement each other so that each of them can develop their personality to help and achieve spiritual and material welfare. Thus, it can be said that the form of a happy and eternal family (household) must be based on the teachings of the religions embraced by the Indonesian people.

The formulation regarding the validity of marriages and registration of marriages is stated in one article in Article 2 of Law Number 1 of 1974 concerning Marriage as follows:

- (1) Marriage is legal if it is carried out according to the law of each religion and belief.
- (2) Every marriage is recorded according to the prevailing laws and regulations.¹⁴

If the provisions of Article 2 paragraph (2) are connected with Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, then it is clear that every marriage which is carried out legally according to the law of each religion and belief must be recorded according to the laws and regulations. the applicable law so that the validity of the marriage is recognized. Marriages that are carried out according to the laws of their respective religions and religious beliefs, but are not recorded by themselves do not have validity as a marriage according to Law Number 1 of 1974 concerning Marriage.

¹⁰ Pasal 1 Ayat 4, "Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk." (n.d.).

¹¹ Pasal 3 Ayat 1, "Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk." (n.d.).

¹² Pasal 3 Ayat 3, "Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk." (n.d.).

¹³ Nafi' Mubarak, "Sejarah Hukum Pencatatan Perkawinan Di Indonesia, Jurnal; Justicia Islamica," *Jurnal Justicia Islamica* 14, no. 1 (2017), <https://doi.org/>. <https://doi.org/10.21154/justicia.v14i1.1220>.

¹⁴ Team Citra Umbara, *Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan & Kompilasi Hukum Islam, Cetakan Kesembilan*.

The sound of Article 2 of the Marriage Law turns out to give rise to two meanings among scientists that does the registration of a marriage determine whether a marriage is legal or not? There are two opinions of legal scholars regarding this matter. The first opinion tends to separate the interpretation of Article 2 paragraph (1) from paragraph (2), that marriage is legal if it is carried out according to the laws of each religion and belief, while registration is an administrative requirement only. Failure to register a marriage will not result in a marriage being invalid or invalid. The second opinion interprets Article 2 paragraph (1) and paragraph (2) not only from a juridical point of view, namely related to the validity of a marriage, but also related to sociological aspects. Therefore, Article 2 paragraph (1) and paragraph (2) cannot be separated, because they are interrelated. The two verses are likened to knitting intertwined, which if one of the strands is loose, the strength of the knitting will decrease and even disappear altogether. Because a marriage will essentially give birth to legal consequences attached to husband and wife. Therefore, registering a marriage is one thing that must be done for the realization of benefit and legal certainty. The registration of a marriage will help keep each party from getting their rights, and at the same time be authentic evidence if there is a dispute or default.

In addition, the marriage certificate is also one of the legal evidence. This it can be said that the existence of a marriage certificate legally plays a very important role, especially in the effort to maintain and protect one's rights and to prove that a legal event has been committed. Therefore, when there is a claim or lawsuit from another party regarding the validity of a legal act, the role of evidence in this case the marriage certificate becomes very important.¹⁵

Rules regarding recording are civil activities whose existence is certainly inseparable from the situation and conditions of the community that demand the existence of these rules. this does not mean that the law of registration of marriage and divorce is something that violates the initial rules of the law of marriage and divorce. The raw rules or texts that regulate marriage law do not explicitly regulate it, while the problems that accompany people's lives continue to experience rapid dynamics and develop.¹⁶

c. Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 Concerning Marriage.

Government Regulation Number 9 of 1975 concerning Implementing Regulations of Law Number 1 of 1974 concerning Marriage consists of 49 Articles and 10 Chapters of Implementation which are regulated in this regulation, there are two parts, namely (1) Implementation related to the implementation of marriage which is the duty of the Employee Marriage Registrar (PPN) and, (2) Implementation carried out by the Court, which in this case is carried out by the General Court for non-Muslim citizens and the Religious Court for Muslims. The implementation of the latter is carried out on several legal issues relating to the implementation of marriage and divorce.¹⁷

¹⁵ Dian Mustika, "Pencatatan Perkawinan Dalam Undang-Undang Hukum Keluarga Dunia Islam," *Jurnal Inovatif Ilmu Hukum* 4, no. 5 (2011): 52-64.

¹⁶ Mohsi, "Pencatatan Perkawinan Sebagai Rekonseptualisasi Sistem Saksi Perkawinan Berbasis Masalah," *Jurnal Al-Adalah:Syariah Dan Hukum Islam* 4, no. 2 (2019), <https://doi.org/https://doi.org/10.31538/adlh.v4i2.529>.

¹⁷ Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia, Ed. 1, Cetakan Pertama* (Jakarta: Kencana Media Group, 2006).

In the Regulation of the Government of the Republic of Indonesia Number 9 of 1975 it is stipulated that: first, the registration of marriages carried out according to the Islamic religion is carried out by the Marriage Registrar. Second, everyone who is going to get married will notify the marriage registrar (PPN) at the place where the wedding will take place at least 10 working days.

Notification can be made orally or in writing by the person concerned, his/her parents or representatives. Third, the marriage was held in front of the Marriage Registrar and attended by two witnesses. Deviations from these provisions are classified as criminal offenses punishable by a maximum of Rp.7,500 (seven thousand five hundred rupiah), meaning that marriages carried out without the supervision of a marriage registrar (PPN) are included as criminal offenses. Thus, this provision further strengthens the systematic interpretation that requires registration of marriages to be used as a condition for marriage.

d. Instruction of the President of the Republic of Indonesia Number 1 of 1991 Dated July 10, 1991 Concerning The Compilation of Islamic Law.

The obligation of lovers of Islam remains to apply the will of the Koran and Sunnah in the preparation of implementing regulations.

Article 2 of the Compilation of Islamic Law (KHI) formulates that marriage according to Islamic law is marriage, which is a very strong contract or *mitsaaqan ghalizhan* to obey Allah's commands and do it according to worship. Article 3 KHI states that the purpose of marriage is to realize a *sakinah, mawaddah, and rahmah* household life.

Regarding the validity of marriage, it is stipulated in Article 4 of the KHI, that marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage. As has been explained that a legal marriage according to Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage is a marriage carried out according to religious law. Marriage conducted according to religious law is a legal event that cannot be annulled by Article 2 Paragraph (2) of Law Number 1 of 1974 concerning Marriage, which determines the registration of marriages. Thus, it can be argued that the formulation of Article 4 of the KHI emphasizes that a legal marriage is a marriage according to Islamic law, in accordance with Article 2 Paragraph (1) of Law Number 1 of 1974 concerning Marriage.

Marriage registration is regulated in Article 5 KHI, that:

(1) In order to ensure the orderliness of marriage for the Islamic community, every marriage must be recorded.

(2) Marriage registration as referred to in Paragraph (1) is carried out by Marriage Registrar Officers as regulated in Law Number 22 of 1946 jo. Law Number 32 of 1954.¹⁸

In Article 5 Paragraph (1) of the KHI it is stated that marriages must be recorded, this is a manifestation of the general explanation number 4 letter b of Law Number 1 of 1974 concerning Marriage as quoted above. However, the word must be recorded in the general explanation of Number 4 letter b does not mean that the registration of marriages is equal or commensurate with the provisions on the validity of marriages as stipulated in Article 2 Paragraph (1) *junto* Article 1 of the Marriage Law as interpreted above. Article 2 Paragraph (2) of the Marriage Law does not result in a marriage being invalid if it is not recorded.

¹⁸Pasal 5, "Kompilasi Hukum Islam" (n.d.).

Therefore, the term must be noted in Article 5 Paragraph (1) KHI also only aims to guarantee marriage order for the Islamic community alone.

Article 6 KHI formulates that:

- (1) To comply with the provisions of Article 5, every marriage must be held before and under the supervision of a Marriage Registrar.
- (2) Marriages carried out outside the supervision of the Marriage Registrar have no legal force.¹⁹

Article 6 Paragraph (2) KHI appears to be the beginning of the emergence of weaknesses in legal marriages based on Islamic law that have not been registered at the District KUA (marriages are not recorded or marriages have not been recorded). The weakness of Islamic marriage after the abolition of secularization and receipt theory in Law number 1 of 1974, was re-emerged through Article 6 Paragraph (2) KHI, then strengthened in Article 5 Paragraph (2) junto Article 6 Paragraph (4) junto Article 143 of the Bill- HM-PA-B Marriage in 2007.

The provisions of Article 6 Paragraph (2) of the KHI are not in accordance with other provisions in the KHI, namely: first, the provisions of Article 2 of the KHI which formulate the meaning of marriage, second, the provisions of Article 3 of the KHI which formulate the purpose of marriage, and third, Article 4 of the KHI which determines the validity of marriage according to Islamic law in accordance with Article 2 Paragraph (1) of Law Number 1 of 1974.

Article 5 of the KHI which contains the purpose of recording marriages is to ensure the orderliness of marriages for the Islamic community, therefore marriages must be recorded, is a further provision of Article 2 Paragraph (2) of Law Number 1 of 1974, the implementation of which is contained in Government Regulation Number 9 1975 Chapter II Concerning Marriage Registration. Article 2 Paragraph (1) Government Regulation Number 9 of 1975 stipulates that marriage registration for Muslims is carried out by Marriage Registrar Employees as referred to in Law Number 22 of 1946 jo. Law Number 32 of 1954. Article 5 of the KHI contains the same provisions.

Based on the series of provisions for registering marriages in these laws and regulations, it appears that the soul contained in Article 2 Paragraph (2) of Law Number 1 of 1974, is manifested again in Government Regulation Number 9 of 1975 Article 2 Paragraph (1) and KHI Article 5. Therefore, it can be stated that marriage registration for Muslims aims to and functions as a means of orderly marriage for the Islamic community and as a complement to marriages that have not been or are not recorded, namely marriages that are legal based on Article 2 Paragraph (1) of Law Number 1 1974 junto Article 2, Article 3, Article 4 KHI. Article 6 Paragraph (2) of the KHI is not the only article that weakens or paralyzes Islamic marriage law in Indonesia because there are still other articles that are not in accordance with Islamic law. This error is certainly not something impossible, but should not be used as a reference to enlarge and continue the error.

Mistakes regarding the contents of the provisions in several articles of the KHI are in Article 99 concerning the definition of a legitimate child and Article 177 concerning the inheritance portion for the father. Efforts to improve the provisions of Article 177 of the KHI have issued a Circular Letter of the Supreme Court Number 2 of 1994 concerning the

¹⁹Pasal 6, "Kompilasi Hukum Islam," n.d.

Definition of Article 177 of the KHI, but even that does not solve the problem. To understand it, it must first be linked to Article 178 of the KHI, which is the article that determines the share of the mother's inheritance.²⁰

With regard to Article 99 and Article 177 of the KHI, in 1994, prior to the issuance of the Circular Letter of the Supreme Court Number 2 of 1994, according to Wasit Aulawi stated that in understanding Article 42 of Law Number 1 of 1974, Article 99 and Article 177 of the KHI must be understood based on Islamic law. Therefore, it is not surprising that there are provisions regarding the registration of marriages that are secular in color, because Article 6 Paragraph (2) of the KHI is not the only article that weakens or cripples Islamic law in Indonesia. However, these mistakes must be corrected, not strengthened, so that violations of the human rights of Muslims in Indonesia are not sustainable. Article 6 Paragraph (2) of the KHI which stipulates that marriages that have not been registered have no legal force, appear to be a bridge for those who agree to Article 2 of the 1973 Marriage Bill and its explanations. As it has been explained that the validity of marriage according to Article 2 of the Marriage Bill of 1973 is based on the registration of marriages, although it does not leave religious law which functions as a complement.

3.2 Reformulation of Article 2 Paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage

Based on the aspect of the legal substance of marriage registration, according to the author's view, the legal product produced by the government related to the law of marriage registration is still lacking, in this case it is not firm so that some people are still apathetic to the rule. From these shortcomings, it creates a lot of doubts in its enforcement and the understanding of the wider community is influenced by the existence of double validity which refers to Law Number 1 of 1974 concerning Marriage. Finally, there are still many people who practice unregistered/underhanded marriages because the legal arrangements are still not firm.

Religious behavior in general is a reflection of a person's understanding of his religion. If someone understands religion formally or emphasizes only outward aspects, as seen in existing religious rites, then of course it will give birth to religious behavior that prioritizes formality or outward forms as well. In the context of underhand marriage, as long as it fulfills the requirements and pillars, Islam allows the marriage to occur. This is a formal religious framework of thought, but if you think about it substantively, Islam actually provides protection for women and children. In his time when the Prophet announced the marriage of the spouses, in fact it was a recording process, this social recording process in his day was binding. From this trend, it seems that the formalism of religious understanding is very strong in local religious figures, a number of religious figures who play a role in marrying in a sirri way or without being registered at the Office of Religious Affairs (KUA).

Several phenomena related to marriage under the author's hands conducted a search from various previous studies as follows; The custom of unregistered marriage carried out by some women from Rembang, Pasuruan, East Java, can be considered as a local culture because it is supported by all members of the community, in the sense that none of the residents hinder or oppose unregistered marriage. On the contrary, in their hearts they always hope for the main siri marriage of the brokers or brokers of the unregistered

²⁰ Yati Soelistijono Neng Djubaidah, *No Title, Hukum Kewarisan Islam Di Indonesia, Cetakan Kedua*, (Jakarta: Lembaga Penerbitan Fakultas Hukum Universitas Indonesia, 2008).

marriage because in the process of carrying out the siri marriage it is possible to get benefits, both materially and spiritually.²¹

Unlike what happened in Gorontalo, the Siendeng village became very popular, not because of achievements or other advantages, this area became popular because this is where unregistered marriage services are available which are generally known by the Muslim community in Gorontalo. The motive for people to do unregistered marriages is because the couple who complains are in legal trouble. What is revealed from cases involving civil servants and even officials, generally boils down to one cause, namely the desire to remarry, while state regulations limit it and due to pressure from circumstances forcing the couples to choose to solve their problems in ways that are considered easy.²²

In addition, the phenomenon of unregistered marriages carried out by residents of "Sumber Baru" Hamlet who are still students at the Al-Qusyairy Islamic Boarding School, the perpetrators of this serial marriage are teenage girls and the age range is 18-21 years and 21-23 years for boys. It's just for the husband who in this case is still a santri and does not have a proper job to support his wife, because they are still studying or teaching at the Islamic boarding school.²³ From several studies related to unregistered/underhanded marriages that occurred in several areas, of course, it is the Kyai or religious leaders who have a very large role in the process of organizing the sirri marriage, using fiqh doctrines.

Seeing the reality that is happening in the midst of the community, it is understood that there are several problems that occur related to the problem of registering marriages, including sociological problems. Sociological problems are the conditions and practices of society that save from the formulation of laws and regulations regarding marriage.²⁴

From some of these facts, according to the author's view, the Marriage Law is not completely completed in regulating marriage registration, because it still creates ambiguity in legal understanding and dualism in its implementation. On the one hand, the community recognizes the registration of marriages as the formulation of the law, but on the other hand, the community still believes that the Islamic view/fiqh of marriages that are not registered are still valid. This understanding is one of the factors why underhand marriages still occur among the community. Social problems that arise as a result of indecision in the legal substance of marriage registration have caused problems from various parties, including the rise of illegal/unregistered polygamy practices, the prevalence of under-handed/sirri marriages and the marriage of minors. The absence of a marriage certificate will certainly lead to the neglect of the rights of the wife and children due to unclear marital status, the absence of a marriage certificate will make it difficult to administer a child's birth certificate and of course there are many more social problems that will arise as a result of not registering a marriage event.

²¹ Sukaryanto, "Budaya Nikah Siri Di Rembang Dalam Perspektif Gender," *Jurnal Masyarakat, Kebudayaan Dan Politik* 23, no. 1 (2010): 48-55.

²² Mahmud Bakari and Ahmad Faisal, "Layanan Nikah Tidak Tercatat Di Gorontalo: Explorasi Dan Rekonstruksi," *Jurnal Ilmiah AL-Jauhari: Jurnal Studi Islam Dan Interdisipliner* 4, no. 1 (2019): 219-38, <https://doi.org/10.30603/jiaj.v4i1.852>.

²³ Ahmad Muktafi, "Pola Relasi Suami Istri Pada Pernikahan Siri Di Kalangan Santri Perspektif Konstruksi Sosial (Studi Kasus Di Dusun Sumber Baru Desa Kalibaru Wetan Kecamatan Kalibaru Kabupaten Bayuwangi)" (UIN Maulana Malik Ibrahim, 2019).

²⁴ Zulfan, "Fenomena Nikah Siri Indonesia Dari Aspek Sosiologi Hukum Dan Kaitannya Dengan Legislasi Pencatatan Perkawinan," *Jurnal: FITRAH* 8, no. 2 (2014).

Although the marriage law has been in effect for a long time, the practice of marriage that violates this law continues to this day. There are even symptoms that occur, namely the struggle for authority between the ulama and the state, this is where an easy form of administrative system is needed so that it can provide enlightenment to the public about the importance of registering marriages at the Office of Religious Affairs (KUA).²⁵

An understanding of law as a cultural and traditional institution allows the emergence of a definition that is more open-ended, so that it can cover all normative orders originating from any source, namely from state and non-state, sacred or secular. Thus the term law by itself can be applied to the various social norms produced by the normative order and any norms that are maintained in areas of public life can be considered to reflect the manifestation of law. As a result, the truth of legal phenomena is not only understood in terms of the diversity of its forms, but also in the diversity of its sources.²⁶

The role of law in society as the purpose of law which guarantees legal certainty, justice and the benefit of law, in society there is always a difference between the pattern of community behavior and the pattern of behavior desired by legal norms. In order to build public legal awareness by fulfilling several elements including; rules of law/regulations, officers who enforce or apply the law, facilities which are of course expected to support the implementation of the rule of law and the community affected by the scope of the regulation. A citizen's legal awareness depends on the extent to which the community adheres to a law. In a legal event / legal event in a marriage bond, there are several parties involved in the process. The parties involved in the process can be said to be legal subjects because they are parties who have/support rights and obligations.²⁷

From the various descriptions that the author has previously stated, the legal formulation of marriage registration which has been regulated in Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 still gives rise to different perspectives in providing interpretations in the articles contained therein. So that the meaning is still ambiguous, in principle this marriage registration can cause legal uncertainty and injustice. Basically, every marriage must be recorded so that certainty and legal protection for husband and wife are guaranteed along with the legal consequences caused by the marriage event, which indicates that marriage registration is a must that must be fulfilled, in addition to having to fulfill the terms and conditions of marriage according to their respective laws. each religion and belief. The existence of religious norms and legal norms in the same legislation will have the potential to weaken each other and even contradict each other. Regarding the existence of legal dualism in this country, it will never end if there is no effort to carry out a legal reform to strengthen the legislation. Indeed, administratively, the government has legitimized Islamic law in Indonesia as evidenced by the many laws and regulations that accommodate and annul the aspirations of the Islamic community in Indonesia, but at the applicable level it has not led to what is aspired.

²⁵ Muh. Afied Hambali, "Implikasi Perkawinan Yang Tidak Di Daftarkan Di Kantor Urusan Agama Ditinjau Dari Perspektif Hukum Di Indonesia," *Jurnal Rechtsstaat Nieuw* 1, no. 1 (n.d.).

²⁶ Ratno Lukito, *Hukum Sakral Dan Hukum Sekuler (Studi Tentang Konflik Dan Resolusi Dalam Sistem Hukum Indonesia)* (Jakarta: Pustaka Alvabet, 2008).

²⁷ Pristiwiyanto, "Fungsi Pencatatan Perkawinan Dan Implikasi Hukumnya," *Jurnal: Fikroh Pemikiran Dan Pendidikan Islam* 11, no. 1 (2018), <https://doi.org/https://doi.org/10.37812/fikroh.v11i1.33>.

As an effort to realize this, the writer formulated a reformulation model for Article 2 Paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, carried out by changing the sound of the article, based on the following table:

Table 1.
Reformulation of Marriage Registration Law.

Law No. 1 of 1974 concerning Marriage	Reformulation	Information
ARTICLE 2 Paragraphs 1 and 2	ARTICLE 2 Paragraphs 1 and 2	Article Change
(1) Marriage is legal if it is carried out according to the law of each religion and belief. (2) Every marriage is recorded according to the prevailing laws and regulations.	(1) Marriage is legal if it is carried out according to the law of each religion, belief, and (2) Every marriage must be registered according to the prevailing laws and regulations.	Based on the reformulation, of course, it no longer creates ambiguity in the implementation of marriage registration, because it has provided legal certainty in a normative manner, no longer creates doubts (multi-interpretation) and is very logical in the sense that it does not conflict or cause a conflict of norms. Article 2 paragraph (1) and paragraph (2) have become a single unit in their interpretation, there is no longer a dichotomy that marriage is legal in religion and marriage is legal in the state.

With the amendment of the article, of course, it needs to be accompanied by strict sanctions in its implementing regulations, both action sanctions, administrative sanctions and criminal threats for violators, both the perpetrators and those who marry. Then for a more effective implementation of the legal provisions that marriage registration is a legal requirement for marriage, the results of the legal formulation must obtain an amendment to the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. It's just that the rules and provisions of the articles and paragraphs in the Marriage Law must be more firm and binding. The Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage as referred to in Article 2 Paragraph (1) and Paragraph (2) Marriage is valid if it is carried out according to the law of each religion and belief, then each marriage must be registered according to the laws and regulations. Thus, it is very urgent to revise the substance of the regulation of marriage registration so that it contains administrative sanctions and strict confinement sanctions in positive law and is able to realize community

protection that contains benefits and benefits as well as great goodness in the life of society and the state.

In relation to the theory of legal compliance, a strict legal substance arrangement is a form of community legal compliance caused by sanctions for violators of these rules, so that the purpose of legal compliance is only to avoid existing legal sanctions. In the absence of the application of strict sanctions against perpetrators who do not register their marriages, it will lead to less than optimal rules in marriage law in Indonesia. Therefore, with the provisions of strict sanctions in the form of administrative sanctions and criminal sanctions against perpetrators of unregiste

Marriages that the authors offer in an effort to reformulate the legal substance of marriage registration, then of course optimally it can achieve legal compliance for all citizens to carry out the recording of every marriage event. Associated with the existence of criminal sanctions contained in the substance of the rules of marriage registration, of course, can be seen from the nature and function of the law itself. As the nature of law, namely regulating, forcing and protecting. The provision of criminal sanctions is one way to realize the coercive nature of the law. As we know that there are still many people who still carry out marriages without being registered, then with the existence of these rules as an obligation to register marriages it is very clear, it is intended that the law is a means to change the behavior of citizens.

Regardless of what is lacking in the substance of the current recording legal arrangements, of course, with the reformulation offered by the author by rearranging or revising the Article related to marriage registration, it is mandatory to do so by loading sanctions in the form of administrative sanctions in the form of fines and containing elements The criminal sanction of confinement certainly has implications for the implementation of marriage registration, which is still being violated by most people. Therefore, the public should always be given education about the importance of registering marriages as an effort to provide legal awareness in order to better understand and register their marriages according to the applicable laws and regulations.

4. CONCLUSION

Law Number 1 of 1974 concerning Marriage in Article 2 paragraphs (1) and (2) the meaning is still ambiguous so that it creates legal uncertainty, and there is no firmness in the form of administrative sanctions and criminal sanctions in confinement, so there is still an opportunity for unregistered marriages among the people. Public. Differences of opinion in the formulation of a statutory regulation will certainly have implications for interpretation and legal certainty in the law. Legal dualism in the legal regulation of marriage registration is caused by several aspects and factors. Aspects of language used in making rules related to marriage registration are not in harmony between one article and another, giving rise to dualism in its interpretation. The marriage incident shows that such behavior is influenced by low religious understanding. The enactment of a legal norm that requires the registration of marriages as regulated in Article 2 paragraph 2 of Law Number 1 of 1974 concerning Marriage, should be able to change the conception of people's thinking and behavior regarding the benefits and objectives of marriage registration, but in a situation that is in fact very difficult. Change the fabric of values that have been polarized in the practice of people's lives, especially in terms of dealing with issues of cultural and religious customs. Reformulation of the Marriage Law, namely by revising the substance of

the legal norms of marriage registration in Article 2 Paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, the reformulation model of Article 2 Paragraph (1) and (2) of the Law. Law Number 1 of 1974 concerning Marriage is carried out by changing the sound of the article, namely: (1) Marriage is legal if it is carried out according to the law of each religion, belief, and (2) Every marriage must be registered according to the laws and regulations. Valid invitation, and included with firmness in the form of sanctions, both administrative sanctions and criminal sanctions confinement. Sanctions for violations of marriage registration will be a reference for law enforcement in the field of marriage. In this case, of course, it can minimize the negative impact of a marriage that ignores the process of state legality. Thus, of course, still paying attention to legal principles and religious norms, these rules still need improvement so that they do not violate the nature of the law it self.

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