

The Position of Unlawful Marriage in Batu Gajah Village Reviewed from the Perspective of Indonesian Positive Law

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Abstract. The term "unclear marriage," also known as "nikah sirri," emerged after the enactment of Law Number 1 of 1974 concerning marriage. "Unclear marriage" describes a marriage that is kept secret and conducted according to religion alone, fulfilling the pillars and requirements for a valid marriage without registration in the state. As a result, the lack of a marriage certificate, which harms the rights of the wife and children, is detrimental. This study uses a sociological juridical approach based on primary and secondary data to describe the relevant topic through direct interviews with the local community. The data were then collected from various legal sources and analyzed qualitatively. The data analyzed using this qualitative method will be linked to the theory of legal protection and legal certainty. Based on the results of this study, it can be concluded: 1) The status of unclear marriage in Batu Gajah Village, Kab. Indragiri Hulu, when linked to positive legal provisions, is highly contradictory. As stated in Law Number 1 of 1974 in conjunction with Law No. 16 of 2019, this marriage is considered invalid and not recognized by the state because the marriage was not officially registered by the Marriage Registrar. Article 2 paragraph (2) of the Marriage Law states "every marriage is registered according to the applicable laws and regulations." The rules regarding this marriage are so clear in state law, but in reality many still carry out underhanded marriages, so this marriage is considered a marriage that does not meet the requirements in the state. On the other hand, the status of the wife and the status of the child is also problematic in this marriage, where the wife is not entitled to maintenance, inheritance or joint property if a divorce occurs or one of the partners dies. This is because the marriage does not have a Marriage Certificate. However, the results of the study also found that many people in Batu Gajah Village, Kab. Indragiri Hulu do not really care about the issue of the wife's status, they only prioritize the status of the child because the child must obtain a birth certificate to continue their education and future. 2) Children are considered illegitimate children because their parents' marriage is not officially registered, so that legally the state is considered to have never existed. Based on Article 43 paragraph (1) of the Marriage Law before its

amendment, a child only has a civil relationship with his mother and her mother's family. This made it difficult for children to obtain legal certainty in the form of a birth certificate. The child would also not be an heir to his father and would not have the right to legally claim maintenance or education costs. In Constitutional Court Decision No. 46/PUU-VIII/2010, a child can have a civil relationship with his biological father if proven through a DNA test or other evidence. However, this procedure is very complicated and expensive. Therefore, to obtain full legal protection, parents need to have their marriage legalized in a Religious Court.

Keywords: Children; Marriage; Position; Unlawful; Wife.

1. Introduction

Humans cannot live alone and depend on each other, so men and women form relationships in the form of marriage institutions according to Islamic teachings.¹ Marriage is crucial to human life because it is always driven by religious norms and societal customs. Marriage, according to Islamic law, is a crucial principle of life in a perfect society.² In Article 2 of the Compilation of Islamic Law (KHI)³ explains that marriage is a strong contract, or *miltsaaqon gholiidhan*, to obey God's commands and is an act of worship when carried out. Meanwhile, Article 3 states that the purpose of marriage is to create a harmonious, loving, and compassionate household. In our country, a marriage is valid if it is conducted according to the laws of each religion and belief. Every marriage must be registered according to applicable regulations. If someone marries without meeting these requirements, their marriage lacks legal certainty, or what we call an underhand marriage.⁴ Sociologically, the term "marriage under the hand" means that the marriage is not registered without fulfilling the provisions of Law Number 1 of 1974 concerning the registration of marriages as regulated in Article 2 paragraph 2. The enactment of this marriage law does not eliminate all marriage practices or patterns that do not comply with state legal procedures. Article 2 paragraph (1) of the Marriage Law states:

"A marriage is valid if it is carried out according to the laws of each religion and its beliefs."

¹Huzaemah T. Yanggo, 2013, Family Law in Islam, YAMIBA, Jakarta, p. 137

²R. Abdul Jamali, 2002, Islamic Law Book, PT Mandarmaju, Bandung, p. 39

³Abdurrahman, 1995, Compilation of Law in Indonesia, Akademika Presindo, Jakarta, p. 116

⁴Djoko Prakoso I Ketut Murtika, 2004, Principles of Marriage Law in Indonesia, PT Bina Aksara, Jakarta, p. 141.

The understanding in this article gives rise to the perception that a marriage is valid if its religious law declares it valid. In Islamic religious law, a marriage is valid if its conditions and pillars are met. The registration of marriage as stated in Article 2 paragraph (2) reads:⁵"Every marriage is recorded according to applicable laws and regulations."

Marriage registration is regulated because if a marriage is not legally binding, problems will arise. And if one party neglects their obligations, the other party cannot take legal action because they lack legal proof of their marriage. This completely contradicts the purpose of marriage itself.⁶

As time goes by, we see a lot of discussion about less common marriages, such as "unclear marriages" or "*sirihani siri*" (a type of marriage that involves unregistered marriages). These unlicensed marriages sometimes lead to conflict because they are not legally registered in Indonesia, but are instead conducted through the laws of their respective religions and beliefs, secretly and without the knowledge of others. On the other hand, some argue that these unlicensed marriages are conducted in confined spaces, without registration or supervision by the PPN (VAT Office), and without obtaining a marriage certificate. The intention is to circumvent the provisions of marriage law itself.⁷In practice, underhand marriages have become controversial and under scrutiny due to their vulnerability to illegal marriage practices and abuse. In reality, this practice aims to circumvent formal marriage procedures, such as providing a dowry or even significant wedding expenses.

In the village of Batu Gajah, located in Indragiri Hulu Regency, a closer look reveals that some residents who engage in informal marriages here have only received elementary school education. Lacking knowledge of the importance of marriage registration, they willingly marry under the law. Although religion considers such marriages valid, marriages conducted outside the supervision of marriage registrars have no legal force and are invalid under Indonesian law. The mandate for marriage registration is not explicitly stated in the texts; it is based solely on the *ijtihad* of Islamic scholars and has been adopted by the state in statutory regulations. Marriage registration is carried out by those intending to marry because it provides authentic proof in the form of a marriage certificate, ensuring their marriage is legally valid and produces legitimate offspring, thus ensuring their rights. This mandatory registration is intended to prevent violations against women, wives, and children born from the marriage.⁸

⁵Marriage Law article 2 paragraph (2)

⁶Ibid, p. 29

⁷Amir, Syarifuddin, 2007, *Islamic Marriage Law in Indonesia*, Kencana, Jakarta, p. 57

⁸A. Hasyim Nawawi, 2015, *Legal Protection and Legal Consequences for Children from Unregistered Marriages*, Ahkam, Vol. 3, Number 1, p. 115

In fact, what is more worrying is when a wife is not recognized, then she does not receive maintenance and inheritance and even her children are considered illegitimate.⁹ The Marriage Law recognizes two types of child status: legitimate and illegitimate. Legitimate children are children born within a legal marriage, and the law does not specify a time limit for a child's legitimacy. This is explained in Article 42 of the Marriage Law. Meanwhile, the Compilation of Islamic Law (KHI) states that a child is considered legitimate by the mother's husband if the child is born within six months of the marriage or within four months and ten days after the marriage is dissolved or divorced.¹⁰

It turns out that, broadly speaking, the legal status of illegitimate children is lower than that of legitimate children. Legitimate children are under the control of their parents, while illegitimate children are under guardianship. The guardianship referred to refers to the rulers or judges who will become the guardians of illegitimate children when they marry. It is also explained that parents' inheritance rights to legitimate children are greater than those of illegitimate children, who can only inherit through a will, and even then, within limits.¹¹

Based on the explanation above, these underhand marriages can be legalized by the state by registering the marriage with *itsbat nikah* (marriage confirmation) or remarriage, then following the procedures and regulations set by the PPN (National Land Office) or KUA (Office of Religious Affairs) in each region. This will also ensure the child's status is more certain. Marriage registration is a formal requirement for marriage in the eyes of the law and is both procedural and administrative. By registering, we can uphold the legal system so that it runs more effectively going forward.

2. Research Methods

This study employed an empirical approach with qualitative data drawn from the community through direct interviews in the research area. This data was then combined with various sources of information from various literature sources as needed by the researcher. This qualitative data processing connects the observed phenomena using scientific logic, with the results presented descriptively, clearly and in detail, describing the research under study.

⁹Burhanuddin S, 2010, Answering All Questions about Siri Marriage, Pustaka Yustisia, Yogyakarta, p. 11

¹⁰ Wirjono Prodjodikoro, 2010, Marriage Law in Indonesia, Sumur, Bandung, p. 72

¹¹J Satrio, 2005, Family Law Concerning the Position of Children in the Law, Citra Aditya Bakti, Bandung, p. 11

3. Results and Discussion

3.1. The Status of Underprivileged Marriages in Batu Gajah Village Based on Positive Legal Provisions in Indonesia

Unregistered marriages are often referred to as unregistered marriages, meaning that these marriages fulfill the requirements and conditions according to Islamic law but are not registered at the KUA/PPN.¹² In ancient times, underhand marriages were commonly known as *nikah sirri* (unclear marriages). These marriages, based on Islamic law, involved the bride and groom, and the marriage contract (*ijab qabul*) conducted by a guardian and witnessed by two witnesses. However, the witnesses were required to keep the marriage secret and not disclose information to others, leading to ongoing disputes over whether the marriage was valid.

Underhand marriages performed by a guardian and witnessed by witnesses are known in society as *nikah sirri* (unclear marriage), even though they are not performed by government officials or a Marriage Registrar. Muslims always have to deal with the Religious Affairs Office, while non-Muslims have to deal with the Civil Registry Office, but they don't have a government-issued marriage certificate.¹³ However, this unregistered marriage is considered valid if its pillars and requirements are met. Islamic law, in the Quran and Sunnah, does not specifically stipulate marriage registration. However, positive law specifies that this marriage is invalid if it fails to fulfill one of the requirements for valid marriage, namely registration with a Marriage Registrar. Without this registration, the marriage lacks an authentic deed, known as a marriage book.

The issue of marriage registration has become a major conflict in the era of modern Islamic jurisprudence. The numerous issues arising from marriage registration have consistently been a hot topic, raising questions about the parentage of children, inheritance, and provisions for maintenance. In fact, this administrative streamlining has simplified the recording of contracts and transactions involving immovable property. It has eliminated the difficulty of understanding these aspects of marriage records, contracts, and various transactions.¹⁴

Despite the widespread controversy surrounding these clandestine marriages, they are at least religiously valid and do not lead to accusations of adultery. We

¹²Faishal Agil Al-Munawar, 2020, "Review of Fatwa on Siri Marriage", Journal of Islamic Economics and Law Vol. 4 No. 1, p. 23. url: <https://repository.uinmalang.ac.id>. Accessed April 20, 2026, at 2:00 PM

¹³Vivi Kurniawati, 2019, Secret Marriage, Rumah Fiqh Publishing, South Jakarta, p. 123

¹⁴Muhammad Siraj, 1993, "Family Law in Egypt and Pakistan" in Islam, State and Law, INIS Series XVI Collection of Essays Under the Editorial of Johannes den Heijer, Syamsul Anwar, INIS, Jakarta, p. 105.

also know that these marriages lack legal force, as the husband and wife lack a marriage certificate as evidence of a legally valid marriage. Over time, the term clandestine marriage has been applied to unregistered marriages conducted without fulfilling the requirements of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage.

The regulations regarding marriage in this law should be socialized to the public so they understand the importance of marriage registration. As society develops, legal certainty becomes increasingly necessary to prevent harm to anyone. Furthermore, when we examine these informal marriages from the public perspective, some still don't understand the importance of registration. They assume a marriage is valid because it meets religious requirements and is the same as a marriage under applicable law. The mindset of the people of Batu Gajah village in Indragiri Hulu Regency is that there is no difference between a registered marriage and an informal marriage.

Several cases of underhand marriages have been described as above, the reasons that are factors in the occurrence of underhand marriages in the Batu Gajah village community are:

- 1) There's a tendency for people to avoid the requirements and procedures of the Marriage Law, citing the complexity and hassle involved. This leads them to become impatient and opt for informal marriages, which are practical and require little time. Furthermore, they don't involve other parties in their marriages.
- 2) There's still a lack of public understanding regarding the importance of marriage registration, and this lack of knowledge is due to the low level of education in the local community. For them, this registration is merely a legal formality, as stipulated in the marriage law. However, in reality, marriage registration can provide legal protection for future spouses and children.
- 3) There is encouragement from parents to marry off their children for several reasons, one of which is the tradition passed down from generation to generation from the family of carrying out underhand marriages.
- 4) To avoid committing adultery and things that are prohibited by religion

The reasons mentioned above are dominant in the occurrence of underhand marriages, but the underlying cause of these underhand marriages is a lack of public understanding. Despite their diverse intellectual backgrounds, their formal education only reaches elementary school. It is also known that these underhand marriages have a significant negative impact, especially on the woman, the wife, and the children of the marriage. They fail to consider the fate and future of their children, who may one day need a birth certificate for educational administration. A birth certificate is obtained when the parents obtain a marriage

certificate, so this is necessary for the woman to officially register her marriage with a marriage registrar or religious affairs office. If any victims are involved, the wife will be solely responsible.

From the statements above, we have observed that the status of underhand marriage in Batu Gajah village, Indragiri Hulu district, can have negative impacts from a legal and social perspective.

First, A wife is not considered a legitimate wife. Women who enter into an informal marriage do not have a marriage certificate as proof of their marriage, so the marriage is considered legally invalid because it is not registered with the Office of Religious Affairs (KUA), even though it is valid according to their religion and beliefs.

Second, Wives and children are not entitled to maintenance. If a marriage is conducted under the law, the wife has no right to demand maintenance or responsibility from her husband while he is still alive, does not receive an inheritance upon his death, and does not receive marital property in the event of a divorce. This is due to the lack of authentic proof that they were married.

Third, vulnerable to domestic violence (DV). Families formed in these informal marriages are at risk of experiencing domestic violence. Husbands can sometimes abuse their wives and children because there is no legal protection for wives.

Fourth, Children find it difficult to obtain birth certificates. For couples who have children in informal marriages, obtaining a birth certificate is difficult, as a photocopy of the parents' marriage certificate is required. This birth certificate lists the father's name, so if a marriage certificate is not available, the child is considered an illegitimate child, which has significant social and psychological consequences. This unclear legal status results in a weak relationship between the child and the father, and the father may eventually deny the child is his biological child. The child also receives no living expenses, no education expenses, no maintenance, and no inheritance from the father.

The status of underage marriages in this village is clearly evident, with the community ultimately regretting and disillusioning them and the resulting harm. This makes marriage registration crucial for the community as authentic proof for obtaining legal protection.

3.2. Legal Impact on Children from Unlawful Marriages According to Indonesian Laws and Regulations

The prevalence of these marriages in the current era, however, is such that the people of Batu Gajah village in Indragiri Hulu district do not fully understand the consequences of underhanded marriages. We need to examine the numerous problems that arise from underhanded marriages, one of which is the

criminalization of perpetrators of underhanded marriages, which leads to a lack of understanding among those reporting the legal sanctions for those reported as perpetrators of these underhanded marriages.

The perpetrators of clandestine marriages in Batu Gajah Village, Indragiri Hulu Regency, frequently encounter legal challenges, particularly regarding the status and status of children born within these marriages. Children born within these marriages do not have birth certificates listing their father's name, as they only have a civil relationship with their mother. This leaves the child vulnerable and discriminatory. Other obstacles include the child's lack of inheritance rights and difficulty accessing certain public services.

Referring to Article 43 paragraph (1) which identifies the existence of discrimination against a child born outside of marriage, which states that the child only has a civil relationship with the mother and the mother's family, whereas in reality the child was born from a legal marriage bond according to religion which should also have a civil relationship with the father. Children born outside of marriage or children resulting from an informal marriage receive legal restrictions on their civil relationship with their father, whose rights should be protected.

The existence of recognition between the civil relationship of an illegitimate child and his biological father has a principle that aims to obtain benefits in the form of legal protection for children resulting from an unlawful marriage, but based on the context, this illegitimate child has benefits that are assumptive or *masalah mauhumah* because this violates a text, and there is a benefit in a real form that is in accordance with the text or is called *masalah haqiqiyah*.

Under Islamic law, illegitimate children do not inherit from their biological father, but this does not mean they are not allowed to inherit from their parents. The way for illegitimate children to inherit from their biological father is by making a will, and the child can also apply to the religious court for a mandatory will. The amount of inheritance for illegitimate children cannot exceed the legal heir's share, whichever is smaller. In the distribution of inheritance for illegitimate children, one-third of the entire inheritance is allocated to the illegitimate child, after which the remaining assets are distributed to the heirs. The same share applies to inheritances left by illegitimate children in the form of gifts.¹⁵

The existence of an unclear legal status as mentioned above, actually not only impacts the administration of population administration, but can also affect the psychological, social and economic conditions of children in the future. In this context, children are the most disadvantaged parties and become victims of

¹⁵Witanto, 2012, Family Law, Rights and Status of Children Born Outside of Marriage, Following the Issuance of the Supreme Court Decision on the Judicial Review of the Marriage Law, Prestasi Pustaka, Jakarta, p. 23

parental negligence when conducting an underhand marriage. The perspective of Islamic law puts forward a concept in child protection, namely by efforts to care for, maintain and protect children in meeting their life needs physically and spiritually. This is one form of implementing the maintenance of offspring or *hifz an-nasl* and is the goal of the establishment in Islamic law or commonly called *maqasid al-syari'ah*.

As in Child Protection Law no. 23 of 2002:

"Ensure that every child has the right to survival, growth, development, and protection from violence and discrimination."

This clearly contradicts the principle of child protection, which requires children to receive guarantees and certainty from the state. A child's status on a birth certificate is not that of an illegitimate child, but a marriage resulting from an unlawful marriage cannot be registered as such, as a marriage certificate is required. Children born out of wedlock or from an unlawful marriage can still have a birth certificate, provided only the mother's name is listed on the certificate.¹⁶The view on the status of children's rights contained in the Marriage Law is also explained in the Constitutional Court Decision Number 46/PUU-VIII/2010. The issuance of this Constitutional Court Decision creates a legal relationship between illegitimate children and their biological fathers, but basically illegitimate children do not receive proof from their fathers and their fathers' families so that this proof is returned to the Court which states that the Court judge can determine whether the child is a legitimate child or an illegitimate child.

The Constitutional Court's ruling also stipulates that illegitimate children can have a civil relationship with their fathers based on science, technology, and other evidence in accordance with applicable law. Illegitimate children will obtain their biological status from their fathers through DNA or genetic testing, the results of which will be presented to the court.¹⁷DNA testing is a form of proof created by technology from science and is the most accurate value for determining concrete evidence of blood ties between one and another, which proves the parentage of the child which will later be decided in court. On the other hand, legal protection for the rights of children born outside of marriage whose biological father has died will be difficult to prove in this Constitutional Court Decision which is said to be sufficient to protect children outside of marriage, so in practice it is necessary

¹⁶DY Witanto, 2012, Family Law: The Rights and Status of Children Born Outside of Marriage Following the Issuance of the Constitutional Court Decision on the Material Review of the Marriage Law, Jawa Pos Daily, p. 7

¹⁷Sanny Budi Kusuma, The Process of Proving the Identity of an Illegitimate Child Against His Biological Paternity Through DNA Testing, Kertha Semaya: Journal of Legal Studies, p. 32

to provide evidence from the mother if you want to prove it in the Religious Court.¹⁸

Concerns about the impact of this Constitutional Court ruling actually create opportunities for those committing adultery in Indonesia, so the legal consequences of this Constitutional Court ruling can be either positive or negative. There are two possible outcomes: first, the rights of illegitimate children can be fulfilled. Men who are scientifically proven to have children can be held accountable, emphasizing polygamy or not. Second, issues of lineage, guardianship and inheritance rights, and relationships between *mahrams* with in Islamic families can sometimes have negative consequences.¹⁹

Under Islamic law, illegitimate children whose parents' marriages are not registered receive civil rights and lineage from their father and his family because they have fulfilled the pillars and requirements of religious marriage. Failure to do so also forfeits the lineage between father and child, leaving the child fatherless, unable to inherit, and unable to act as guardian in their marriage. Their relationship is limited to blood relations, which are recognized as biological children, but not legitimate children.²⁰ In this case, of course, proving the existence of illegitimate children or children resulting from an unlawful marriage based on Islamic law, should be done in the Religious Court, which is clearly stated in the legal regulations in Indonesia, can give rise to legal consequences both written and unwritten, so it is necessary to record it according to the applicable regulations to obtain protection and certainty from the state.

4. Conclusion

The status of this underhand marriage has no concrete rules in the Qur'an and Sunnah regarding marriage registration, but in state law it has been explained in Marriage Law Number 1 of 1974 which was amended to Law Number 16 of 2019, this marriage is often not recognized and invalid because it does not have a marriage book, so it has an impact on weak legal protection for wives and children, especially related to inheritance rights and maintenance. The people of Batu Gajah village who have this underhand marriage have encountered several difficulties, such as they cannot claim joint property or joint property when a divorce occurs or one of the parties has died, cannot claim the right to maintenance and inheritance against wives and children, and do not receive legal

¹⁸Diah Ayu Sulistiya, 2015, Proof of Childhood with Biological Father According to Constitutional Court Decision No. 46/PUU-VII-2010, Jurnal Pro Hukum, Volume IV. Number 2, Gresik University, Gresik, p. 100

¹⁹Shania Dwi Hidayatia, et.al., 2022, Legal Protection of the Rights of Children Born in Unreligious Marriages Based on Constitutional Court Decision Number 46/Puu-Viii/2010 and the Compilation of Islamic Law, Jurnal Poros Hukum Padjadjaran vol.4 no. 1, FH UNPAD, page 44

²⁰Ahmad Zaki Yamani, 1977, Eternal Islamic Sharia, Current Issues, Institute for the Study of Social Sciences, Jakarta, p. 71

protection because the marriage they did was not registered in the state and did not have a marriage certificate as authentic proof. Children born from underhand marriages in Batu Gajah village have caused significant impacts from a legal and social perspective. Children born out of an unregistered marriage or unregistered marriage are always considered illegitimate children with an unclear status because their parents' marriage is not considered to exist in the marriage law. According to state law as explained in Article 43 paragraph (1) of the Marriage Law, "A child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father who can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family." Based on the marriage law, a child born out of an unregistered marriage also does not have inheritance rights from his biological father even though a DNA test proves the father-child relationship following the Constitutional Court's decision No. 46/PUU-VIII/2010. In terms of maintenance and proper protection, a child still receives it from both parents even though their parents have been bound in an unregistered marriage. Even without registration or an official marriage, children should be in a legally and socially vulnerable position, so this is very important for legal certainty and the protection of children's rights. The Batu Gajah community lacks understanding and awareness regarding the importance of legally registering their marriages. Many do not fully understand the legal consequences of not registering their marriages. Some also enter into underage marriages without seeking court dispensation because the process is complicated and time-consuming. Therefore, a more humane, accessible, and less burdensome approach to registering marriages is urgently needed, so that they always prioritize registering at the Office of Religious Affairs (KUA) or the Village Office of Religious Affairs (PPN), which offer simpler administration. The involvement of the Social and Child Protection Agency, especially in remote areas such as Batu Gajah village in Indragiri Hulu district, is also needed to conduct outreach on the importance of marriage registration and the rights of children in underage marriages, including the right to basic needs. The Population and Civil Registration Agency should also provide information and services related to marriages, including the potential impacts of not officially registering them.

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Constitutional Court Decision No. 46/PUU-VIII/2010

Marriage Law no. 1 in 1974