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Under Marital Hand Seen from Positive Law in Indonesia (Study Timbang Lawan Bahorok Village Sumatera Utara)

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Abstract:

Marriage under the hand known to the public came after the enactment of Law No. 1 of 1974 on Marriage and the issuance of Government Regulation No. 9 of 1975 as the implementation of Law No. 1 of 1974. In both of these rules states that every wedding, also, must be done according to religious requirements should also be recorded. For those who are Muslims and will do a divorce but cannot prove the marriage with a wedding certificate, can apply for a wedding that (determination or approval of the wedding) to the Religious Court as provided for in Article 7 Compilation of Islamic Law (KHI). This study aims to determine the position of marriage under the hand regarding Islamic law and the provisions of Positive Law in force in Indonesia and the obstacles faced by the perpetrators of marriage under the hand according to Islamic Law and Positive Law in Indonesia and solutions legal, using the methodology of normative legal research. The primary data obtained through interviews with the respondent. The data used is secondary data, which get from the library, literature, law. Analysis of the data used normative analysis, the data collected is poured in the form of a logical and systematic description, then analyzed to obtain clarity settlement of the problem, then the conclusions drawn deductively, from things that are common toward things that are special.

Keywords: *Marriage under the hand, islamic law, implementation of law*

1. Introduction

Indonesia from time to time is becoming familiar with a variety of social problems; it can evidence by the emergence of a phenomenon that became the topic of public debate, namely marriage underhand, is a matter of discussion controversial and require legal certainty. The importance of law the general public because there are still many who do not know the concept of marriage and the impacts that will occur in the future whether the impact is positive or negative.

Married is a phase of life that commonly do by every adult human being (legally blight). Ready inwardly and outwardly and has a sense of responsibility in building the household. Everyone who has met these requirements it is recommended to set foot on marriage. This case the level that marks a phase of life that is essential for the survival of a person in the future. Compared with living alone (bachelor or single), family life has many challenges, and it also contains some expectations positive. Undenied in marriage there are many benefits if we can manage it well. Departing from this in mind, we need to know how the concept of the right of marriage that does not violate the rules of law in our country.

A marriage not only includes requirements for the prospective bridegroom and the bride. In principle, the marriage was considered valid if it meets the requirements. Ignoring one of the general conditions that determine the validity of a wedding are as follows: (a) Bride lawful marriage by the groom who would become her husband. (B) Attended two male witnesses. (C) There are a guardian wife women who contract marriage.

Terms of a validity of the wedding must consider by each of the parties relating to a (contract) wedding, both the bride or guardian and his witnesses so that no problems arise in the future. Therefore, carrying out the marriage contract invalid, the contract that does not meet the conditions, then according to Islamic law seen as an act of futile, has no meaning, even seen as against the law. These actions include the category sinful deeds and contain immoral.

Once we know the meaning of a good marriage is also the marriage siri the terms of the teachings of Islam, we must also be able to understand the marriage according to the laws in force in Indonesia, which has set Perkawinan. With Act by marriage found in Article 1, namely: " marriage is the emotional and physical bond between a man and a woman as husband and wife with the objective form of the family (household) are happy and everlasting based on God.

As for the reasons listed in article for the validity of marriage, namely, marriage is legal if carried out according to the laws of each religion and belief it; and in addition every marriage shall be recorded in accordance with the legislation in force, in order to recording to prove the existence of the wedding, contained in Article 100 of the Civil Code whose contents "The existence of a marriage cannot be established by other means, but by deed marriage, which has been written off in the registers of civil records, except in certain cases. Based on the facts that exist in society, both from print and television media of marriage under the hand (Marriage siri) The

impact many disadvantaged it is a woman, because when there are a conflict or problems in the household, such as inheritance, child custody, Violence in the home (domestic violence) and others, which when brought into the path of law country, this problem cannot resolve because there was no legal force. Once we review the concept of marriage from the view of Islamic law and the law applicable in Indonesia and also impacts that will occur in the future, then the government should be able to provide the best solutions and also efforts after seeing cases of the marriage under a hand in the community general. So, that no more cases repeatedly.

2. Method Approach

1. Time and Place Research

The research will be carried out during the five (5) months, which will begin in January of 2012 to May 2012. The study is in the village of Bahorok sub district weigh opponent Langkat district.

2. Variable Research

The variables in this study are as follows: (a) the causes of the marriage under the hand in the village weigh opponent, (b) right views of Islamic law and positive law in Indonesia, (c) the effects arising from the marriage under the hand,

3. Research Model

This study used survey method with qualitative approaches (moelong, 2001). To obtain the data, researchers conducted interviews directly to the village head and village communities Weigh opponent.

4. The study design

The study design already was done as shown in Figure 1 below:

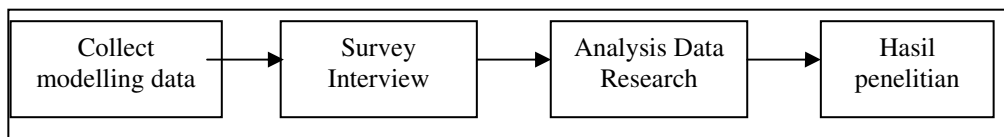


Figure 1: Research Design with kualitatif approach

5. Metode collect sample.

Metode collect sample using method *snowball sampling*. (Yudhislibra. wordpress, 2010)

6. Method Collect data

Collect data research using interview with direct hearing of village and people in the village *timbang lawan*

7. method compile data

Metode compile data using analysis kualitatif with data kuantitatif.

3. Results and Discussion

Based on the data collection methods literature and field, while the cause of the marriage under the hand in the village Weigh Opponent is:

1. The absence of official divorce papers from previous marriages;
2. Weak economy so that the bride is not able to complete the file or marriage requirements, and
3. Parents do not agree with the prospective husband and wife for his son

Based on research data obtained from literature review and field studies conducted in the village Weigh opponents, according to Islamic law marriage under the hand that marriages performed outside the supervision of the registrar of marriage so that the marriages were not recorded in the Office of Religious Affairs (KUA) for a Muslim and the Department of Population and Civil Registration for the non-Muslims. In the village, Weigh marriage opponents, have called *Nikah Wali*. Meanwhile, according to Law - Law No. 1 of 1974 on Marriage,

Marriage is a bond physically and mentally between a man and a woman as husband and wife with the intention of forming a family (household) are happy and everlasting based on God (Article 1 of Law Marriage).

Based on the interview to the perpetrators of the marriage under the hand, the head of the village, and the Religious Court Stabat Class IB has an impact on the wives Legally wife considered invalid so that he is not entitled to make a living and the legacy of her husband if the husband dies and does not have the right also to property *Gono* -gain in case of separation, while the child legally considered to only have a civil relationship with the mother, so it is difficult when it will make the administration of residence, e.g., birth certificate, family card, and others.

However, with the Constitutional Court Decision No. 46 / PUU-VIII / 2010 in the case of the petition for judicial review of Law No. 1 of 1974 on Marriage filed by Hj. Aisyah Mochtar alias Machica H.Mochtar bint Ibrahim and Muhammad Iqbal Ramadhan bin Moerdiono so that the latest developments are decided on Monday February 13, 2012 and are pronounced in the Plenary Session of the Constitutional Court open for public on Friday, February 17, 2012 which requires the addition of Article 43 paragraph 1 of Law No. 1 of 1974 which is directly related to marriage under the hand, especially regarding the status of the child which reads "Children born out of wedlock have links civil with her mother and her mother's family as well as with men as a father who can be proved by science science and technology and other evidence according to the law have blood relations, including civil relations with his father's family "; so marriage under the hand raises multi-interpretation specifically in legislation.

4. Conclusions and Recommendations

4.1. Conclusion

Based on the research results can be concluded that

1. Marriage under arms in the village Weigh Opponents also called marriage guardian is mostly done by a widow or widower.
2. Marriage under the hands of Islamic law according to which marriages performed outside the supervision of the registrar of marriage so that the marriages were not recorded in the Office of Religious Affairs (KUA) for a Muslim and at the Department of Population and Civil Registration for the non-Muslims. In the village, Weigh marriage opponents, have called Nikah Wali. Meanwhile, according to Law - Law No. 1 of 1974 on Marriage, Marriage is a bond physically and mentally between a man and a woman as husband and wife with the intention of forming a family (household) are happy and everlasting based on God (Article 1 of Law Marriage).
3. The presence of the consequences of the marriage under the hand especially for his wife and children.

4.2. Suggestions

The necessity of Islamic Court Stabat Class IB held a car around a minimum of 1 month to the District Bahorok mileage due to factors that are far from Bahorok to Stabat (Islamic Court Stabat Class IB).

5. References

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