

Siri Marriage Due To Not Having A Divorce Certificate: Case Study In Negara Sakti Village, Pakuan Ratu Sub-District, Way Kanan District

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Article Info	Abstract
<p>Received: 07-08-2024 Revised: 23-09-2024 Accepted: 27-09-2024 Published: 15-10-2024</p> <p>Keywords: Divorce; Siri Marriage; Unregistered Divorce;</p>	<p><i>The focus of this research is on unregistered divorce, which subsequently impacts the occurrence of a second unregistered marriage because one administrative requirement cannot be fulfilled, namely a divorce certificate. What is interesting about this second unregistered marriage is that it was carried out by the wife, who, according to positive law, has committed polyandry. This type of research is classified as empirical legal research with a socio-legal approach or static sociology of law. The data analysis technique used in empirical legal research involves taking a systematic and factual picture. The results showed that the practice of unregistered divorce in Negara Sakti Village, Pakuan Ratu Subdistrict, was caused by several factors such as the distance to the Religious Court, economic factors, lack of knowledge about the law, and hereditary habits. Meanwhile, the practice of unregistered divorce in Negara Sakti Village involves the couple who are divorcing signing a divorce statement witnessed by village officials, village elders, and the village mudin (not before the Court), which is not in accordance with state regulations. The phenomenon of unregistered divorce in Negara Sakti Village has led to the occurrence of second unregistered marriages, identity falsification, confusion of lineage, and polyandry for ex-wives who marry other men.</i></p>
Info Artikel	Abstrak
<p>Kata Kunci: Perceraian tidak tercatat; Perceraian; perkawinan siri. .</p>	<p>Fokus penelitian ini adalah pada perceraian yang tidak terdaftar, yang berdampak pada terjadinya pernikahan kedua yang juga tidak terdaftar karena salah satu syarat administratif tidak dapat dipenuhi, yaitu sertifikat perceraian. Menariknya, pernikahan kedua yang tidak terdaftar ini dilakukan oleh istri, yang menurut hukum positif, telah melakukan poliandri. Jenis penelitian ini diklasifikasikan sebagai penelitian hukum empiris dengan pendekatan sosio-hukum atau sosiologi hukum statis. Teknik analisis data yang digunakan dalam penelitian hukum empiris melibatkan pengambilan gambaran sistematis dan faktual. Hasil penelitian menunjukkan bahwa praktik perceraian yang tidak terdaftar di Desa Negara Sakti, Kecamatan Pakuan Ratu, disebabkan oleh beberapa faktor seperti jarak ke Pengadilan Agama, faktor ekonomi, kurangnya pengetahuan tentang hukum, dan kebiasaan turun-temurun. Sementara itu, praktik perceraian yang tidak terdaftar di Desa Negara Sakti melibatkan pasangan yang bercerai menandatangani pernyataan perceraian yang disaksikan oleh pejabat desa, tokoh masyarakat, dan mudin desa</p>

(bukan di hadapan Pengadilan), yang tidak sesuai dengan peraturan negara. Fenomena perceraian yang tidak terdaftar di Desa Negara Sakti telah menyebabkan terjadinya pernikahan kedua yang tidak terdaftar, pemalsuan identitas, kebingungan garis keturunan, dan poliandri bagi mantan istri yang menikah dengan pria lain.



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INTRODUCTION

The marriage bond is called mitsaqan-ghalizhan (a very heavy covenant), which is mentioned three times in the Quran. The encouragement to marry in Islam is a form of realizing the objectives of Sharia (maqosid Sharia), and as a form of completing half of the religion. The Prophet said, "When a person starts a family, he has completed half of his religion. So fear Allah for the other half." (HR. Ath Thabrani)(Amalia et al., 2018, p. 130). Apart from following the Prophet's sunnah, marriage aims to build a household that is *sakinah*, *mawaddah*, and *rahmah*.

To distinguish marriage between animals and humans lies in the existence of goals and rules for the implementation of marriage. The implementation of marriage in each country has different rules, taking into account the legal values of a country and the religious norms that apply in that country (Dahwadin et al., 2019, p. 26). In Indonesia, marriage is regulated by Law No. 1/1974, the Compilation of Islamic Law, and its implementing regulations. Article 2 paragraph (1) of Law Number 1 Year 1974 states that: "A marriage is valid if its implementation is carried out based on the laws of each religion and belief." So that a marriage is considered valid if it fulfills the requirements for the validity of a marriage according to the religion adhered to by the couple who will enter into marriage. Meanwhile, the provisions of Article 2 paragraph (2) explain that: "Every marriage is recorded according to the prevailing laws and regulations." Even though the marriage is religiously valid, but has not been registered in accordance with applicable regulations, the marriage is considered never to have existed by the state (Zainuddin, 2017: 2).

Not only do marriage events need to be reported to the state, but divorce must also be carried out in accordance with the procedures of the laws and regulations in a country. Divorce will only be considered valid if the divorce is carried out in court, and if the divorce is not carried out in court then the divorce is not considered valid or called an

underhand divorce. Religious Courts for Muslims, and District Courts for non-Muslims. This is in accordance with Article 39 paragraph (1) of Marriage Law No.1 of 1974 and Article 115 paragraph (5) of the Compilation of Islamic Law (KHI). Divorce or synonymous in Islamic law is known as talak, linguistically taken from the word *ithlâq* which means to untie, leave, and separate, which means to be untied and free from it, meaning that divorce is the release of a marital bond and the end of the marital relationship (2002).

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Based on the results of observations by the author, the phenomenon of siri marriage occurred several times in Negara Sakti Village, Pakuan Ratu District, Way Kanan Regency. Siri marriage is a common phenomenon in Negara Sakti Village with various patterns of life of the surrounding community. For this reason, this research differs in location and practices carried out by the community with the research of Dewi Patimah, Hermanto Harun, and D.I. Ansusa Putra who studied the practice of divorce under the hands of the Palipan Village community, Sungai Manau District, Merangin Regency in Review of Marriage Law No. 1 of 1974, with the results of research that the practice of divorce under the hands of the Palipan Village community is only carried out at home with the presence of traditional elders and witnesses (Patimah et al., 2022: 103).

Abrar Zym's research on the Legal Validity of Underhand Divorce (Analysis of Tengku Dayah's Perspective in Aceh Besar District, Aceh, Indonesia), that there are several causes of underhand divorce in Aceh Besar Regency including being a habit, lack of legal awareness, personal problems that must be covered, previous marriages through wild qadhi, economic factors, the trial process is so long and also the most basic reason is that

many people think that KHI is not Islamic law, so that when there are differences between KHI and Islamic Law, especially the Syafi'i school of thought, then the community will make the figure of tengku dayah as the main reference in Islamic law issues (Zym, 2020: 22).

Nadya Khoiriyah, Moh. Nafik, and Moch. Choirul Rizal on siri marriage because they do not have a divorce certificate from a previous marriage (case study in Sedayulawas village, Brondong sub-district, Lamongan district), that divorce is carried out in several different ways, namely in front of the village mudin, divorce through direct divorce through whatsapp messages, divorce through oral speech in front of the wife. From these events, the divorce carried out by the five of them was based on the wishes of the husband, and the wife only agreed with the reasons they held (Khoiriyah et al., 2023: 184).

Research on the practice of cerai lebe as a local initiative in an effort to minimize the practice of illegal divorce (Case Study in Cangkring Village, Indramayu Regency) by Wardah Nuroniyah, with the results of research that cerai lebe is a divorce settlement process carried out by involving community leaders, namely Lebe, without involving the Religious Court as an official institution that handles divorce issues. Lebe in Cangkring village (assistant marriage registration officer) becomes a facilitator and media in terms of divorce issues in the village, including in terms of administratively handling community data that has been divorced without submitting to the Religious Court (Nuroniyah, 2020, p. 127).

Based on the research conducted, there are some people who prefer to divorce in front of Lebe rather than divorce in a Religious Court session. The causes of divorce in front of Lebe in Cangkring Village, Indramayu Regency, are motivated by various factors. One of the Lebe divorce factors is due to the difficulty of arranging a divorce in the Religious Court which takes a long time, and costs a lot of money. Other factors are early marriage, low human resources, economy, third party influence, cheap dowry, nikah sirri, and social cultural factors. Meanwhile, the impact of Cerai Lebe is that it affects the family, community order, and religious understanding.

Research on the review of legal sociology on the settlement of divorce under the hand: a case study of Wakan Village, Jerowaru sub-district, East Lombok district by Ahmad Fikrul Islam, Based on the results of research that researchers found in the field, the people of Wakan Village still do a lot of divorce under the hand with the process of resolving the divorce: first there is a word of divorce from the husband, secondly informing religious

leaders, thirdly informing the head of the hamlet and the fourth is the final process, namely sorong serah (handover, namely the man delivering his ex-wife nicely to his parents' house) (Islam, 2021: 59).

The legal culture of divorce under the hand and its legal consequences on the rights of the wife and children (Study in Pasirkartonkramat Village, West Pekalongan District, Pekalongan City) by Eky Fallah Septiani, with the results of the research that divorce under the hand is caused by the mindset of the community about divorce under the hand, economic and time constraints, community habits. Second, the legal culture of divorce under the hand is based on the community's understanding of divorce under the hand, the existence of patriarchal cultural values, and the attitude of the community that ignores the laws and regulations regarding divorce (Septiani, 2021: 12).

Juridical and Sociological Review of the Phenomenon of Marriage and Divorce Under Hand in Tanjung Limau Hamlet, Sapeken District by Adif Alifi and Munir, the accountability report for this research is a report on socialization activities regarding divorce certificates which are community empowerment programs in the legal field based on direct counseling from the religious court which is carried out in Tanjung Limau Hamlet rt / rw 001 / 002 Saur-Saebus Village, Sapeken District, This program was held on Wednesday 25 August 2021, this event has the aim of providing an understanding of the importance of divorce certificates and marriage certificates for everyday life both in the legal and social fields, of course, this socialization activity involves many parties including government officials and local community leaders (Alifi & Munir, 2021: 37).

Research on siri marriage for official couples who are divorced under the hand in luwijawa village, jatinegara sub-district, tegal district by Sinta Putri Kumaladewi, that first, siri marriages in Luwijawa Village are dominated by official couples who are divorced under the hand. The couple has reasons for their secret marriage such as to avoid adultery and clarify the bond with the intention of avoiding slander. This is motivated by the factors of underhand divorce, namely economic and welfare factors, coercion factors, lack of knowledge and understanding, and social environmental factors. Thus this shows the low level of legal awareness of marriage and divorce registration at authorized institutions (Kumaladewi, 2022: 11).

Unlike previous research locations, this study addresses the same theme and urgency as earlier studies, focusing on the phenomenon of informal divorce practices, particularly in terms of the process, contributing factors, and resulting impacts. The only difference lies in

the research location, which is set in Desa Negara Sakti, Kecamatan Pakuan Ratu, Kabupaten Way Kanan, Lampung Province.

RESEARCH METHOD

This research is a field research. This type of research is empirical legal research with a socio-legal approach or sociology of law because it focuses on the behavior that develops in society (Ishaq, 2017: 17). Empirical legal research obtained data in the form of interviews conducted with the perpetrators of siri marriage in Negara Sakti Village, Pakuan Ratu District, Way Kanan Regency and the parties involved in the implementation of the siri marriage. The sampling technique used in this research is purposive sampling where the sample taken has a specific purpose in the research subject. This research was conducted for two weeks, from April 14 to 27, 2024. The research involved in-depth interviews with a number of village religious leaders, village heads, village officials, and key actors in Negara Sakti Village, Waykanan Regency, Lampung.

Secondary data used by researchers are literatures such as journals, books, theses and the results of previous studies related to this research. This research was conducted by making descriptions systematically and factually, then analyzed with data analysis techniques in this research is descriptive and prescriptive qualitative, which is a research that aims to get solutions or alternative solutions to certain problems (Ashofa, 2007: 10). The analysis model used is the Spradley model analysis. This model analysis is divided into several stages, namely domain analysis, taxonomy analysis, componential analysis, and cultural theme analysis (Sugiyono, 2013: 266).

By analyzing domains, taxonomies, components and cultural themes, the complexities underlying this practice, including social, legal and cultural influences, can be explored. This is the focus of this study, which is to examine and assess how the Marriage Law is applied in this village, especially in the case of divorce registration which has an impact on the emergence of siri marriages in Negara Sakti Village, Pakuan Ratu Sub-district, Way Kanan Regency, with the aim of providing insight for researchers and policy makers to understand and respond to issues related to marriage and divorce in society.

RESULTS AND DISCUSSION

The Practice of Unrecorded Divorce in Negara Sakti Village, Pakuan Ratu Sub-district, Way Kanan Regency

The dissolution of marriage between husband and wife can be in Article 38 of Law Number 1 Year 1974 on Marriage regulates the end of a marriage, namely, due to death, divorce and court decisions. All three situations have certain legal and administrative processes that must be followed to ensure that the end of the marriage is recorded and officially recognized by the state. This is important to maintain clarity on the legal status of each individual involved, as well as for other administrative purposes such as child custody arrangements, division of joint property, including the requirements for a new marriage to take place, and so on.

Divorce should indeed be the last resort or solution when a couple is in ongoing conflict. Incompatibility, differences of opinion, vision and mission, or even economic factors, are not uncommon causes of divorce. In Islam, there is no prohibition on divorce, as the following Prophetic Hadith reads (Chuldri, 2009: 136);

"From Ibn Umar R.a he said, the Messenger of Allah SAW. said: "Something that is lawful but hated by Allah is divorce." (HR Abu Daud).

The word divorce is derived from the word *ithlâq* which means to untie, leave, and separate (Az-Zuhaili, 1406: 318). Whereas divorce in terms of removing the rope of the marriage contract with the word divorce and the like, whether pronounced openly or figuratively (Ghazali, 2010: 192). According to the Ahlusunnah madhhab. The phrase "I divorce you" is an example of a clear utterance of divorce. This utterance is considered valid even if there is no intention or witnesses who saw the husband say it (Anshori, 2011: 120).

According to Imam Shafi'i, divorce means the dissolution of the marriage contract with a clear expression or with a word that is similar to the word divorce. According to Imam Hanbali and Hanafi, divorce is an action in the form of speech intended to break the marriage bond directly by using a certain lafaz. Meanwhile, Imam Maliki said that divorce is seen as an action to a special legal nature that causes the forbidden relationship between husband and wife. The Compilation of Islamic Law (KHI) explains that the presence of witnesses in divorce is mandatory because it will result in the validity of the divorce. While the testimony of divorce in fiqh which was later applied by KHI became a pledge in front

of a court session. So that Law No. 1 of 1974 and KHI regulate these requirements more difficult (Yuniarti & Saifullah, 2023: 61).

When viewed in terms of its benefit, the ruling on divorce is:

- a. It is obligatory, if there is continuous dispute between the husband and wife and there is no way out except to bring two ahkam. The two ahkam see that divorce is a good way for both of them, so divorce becomes obligatory for him. Talak as intended is like the wife who is nusyuz, apostate or adulterous. In these circumstances the husband is obliged to divorce his wife (Lutfiah & Samsudin, 2021: 5).
- b. It is considered makruh (disliked) if divorce (talak) is performed without any reason or demand (Saebani, 2008: 55).
- c. Because it can cause harm to oneself.
- d. Haram (forbidden), there are two possible situations. Firstly, when pronouncing divorce (talak) to the wife during her menstrual period. Secondly, when pronouncing divorce to the wife after her purity from menstruation, but it is mixed with her purity time (Mubarak, 2021: 19).
- e. Mubah (permissible), if divorce is done out of necessity. For example, if one party can endanger the continuation of the marriage if it continues.
- f. Sunnah (recommended), if the wife neglects the rights of Allah that have been obligated to her, such as prayer, fasting, and other obligations, while the husband is unable to enforce them or the wife does not maintain her honor in this regard, then it is recommended to divorce her (Mubarak, 2021: 250).

If we look at the aspect of the influence of divorce (talak) on the permissibility of reconciliation, then divorce is divided into two: first, talak raj'i, which is divorce where both parties are still allowed to reconcile as long as the wife is still in the waiting period (iddah) without entering into a new marriage contract (Ghazali, 2010: 191). A wife who is still in the waiting period (iddah) of talak raj'i is considered to be still legally married and still retains the right to inherit from her husband, and vice versa, if one of them passes away before the iddah period is completed (Az-Zuhaili, 1406: 6879). The second type is talak bain, which is further divided into two: talak bain sughra and talak bain kubra.

Talak bain sughra is divorce where the former husband no longer has the right to reconcile with his former wife, whether during or after her iddah period, except through a new marriage contract. Talak bain sughra occurs under several conditions such as when the

husband pronounces divorce to the wife before consummation (*dukhl*), after the *iddah* period of the wife in *talak raj'i* has ended, or through *khulu'*, which is divorce initiated by the wife by paying a certain amount of compensation (*'iwadh*) to the husband. As for *talak bain kubra*, it refers to a triple divorce. This type of divorce results in the husband losing his right to reconcile with his former wife, unless the former wife has remarried another man and that man subsequently divorces her, and her *iddah* period has ended (Lutfiah & Samsudin, 2021: 12).

Although divorce is permissible in Islam, preventing divorce is preferable. As long as reconciliation is possible, efforts to reconcile between husband and wife should be made. This is because marriage is considered a strong covenant (*Mitsaqon Ghalidan*) in Islam, intended for mutual support in goodness and achieving happiness in family life.

The phenomenon of divorce practices in Negara Sakti Village, Pakuan Ratu Subdistrict, Way Kanan Regency, involves methods different from those regulated by Indonesian laws. Based on interviews with six practitioners of unofficial marriages in the village, it was found that three of them engaged in divorce practices without considering the potential consequences. The common divorce practice among the people of Negara Sakti Village involves signing a notarized divorce agreement. This agreement states that the divorce marks the end of the relationship between the parties, and they will not disturb each other or raise any issues if they remarry in the future. After signing the agreement, the husband then pronounces divorce to his wife (M. Modin, personal communication, April 20, 2024).

In this context, no official recording is conducted as the divorce proceedings are only witnessed by the village cleric (*modin*), village elders, religious leaders, and village officials such as the head of neighborhood associations (*RT/RW*), sub-village heads, and village chiefs. The divorcing parties do not consider the potential consequences of their actions due to their lack of legal knowledge. During interviews, the individuals involved admitted to having a low understanding of the law, and they were primarily focused on resolving the issue quickly. The village is geographically located amidst sugarcane plantations owned by sugar companies. Inadequate facilities such as road access and limited access to mobile phone and internet networks also hinder the village's ability to easily access information (Village Community, personal communication, April 19, 2024).

In the interview Ani revealed that she had divorced her ex-husband by signing a divorce agreement. She claimed to have been married three times and had used this

method of divorce twice. Ani's first marriage was conducted in the State and her second and third marriages were conducted in siri. The reason for the first divorce was that her husband had divorced her three times. Actually, Ani and her ex-husband were going to reconcile again, briefly reconciling by means of Bangun Nikah or doing a new marriage contract with the solution of the village elders and the village modin at that time. However, this marriage did not last long because there was a change of modin who said that they had to separate because her marriage to her ex-husband was not valid because it was divorced three times. Eventually, Ani and her first ex-husband separated.

Ani remarried her second husband, and only lasted one year. The reason for their divorce was that her second husband was impotent. Then Ani asked the village modin to divorce her and her husband. Ani and her husband were asked to sign a divorce agreement as before. After a long time, Ani finally remarried her third husband and is still surviving until this interview was conducted (Ani, personal communication, April 17, 2024).

The second interview was with Eni, who revealed that she also divorced using this method. Eni and her ex-husband were legally married, and had one son when they divorced. A year later Eni remarried another man who became her current husband. Eni and her second husband's marriage took place through the state, changing Eni's status to that of a virgin again and her son's status to that of her biological sister. This change was assisted by Eni's father who served as RK Desa Negara Sakti and assistance from the head of Negara Sakti Village (Eni, personal communication, April 18, 2024).

The third interview was with Arni who revealed that she had divorced using this method. But Arni reconciled with her husband again. However, according to the narrative of the modin of Negara Sakti Village, that Arni and her husband were married siri and divorced because her husband gave a fake divorce letter when marrying Arni, while Arni was not a widow but was still the wife of someone in her home village. Both of them are not natives of this village but they are migrants who have lived in Negara Sakti Village for a long time. They claimed to have remarried in another village after being divorced by the village modin and returned to live in Negara Sakti Village as husband and wife (Arni, personal communication, April 18, 2024).

According to Ani and Arni, their divorces did not significantly affect their ability to remarry. This contrasts with Eni, who faced difficulties when she wanted to remarry, even to the point of having to falsify her documents. The stigma in society did not result in gossip or strange looks due to their unregistered marriages, as what mattered most was that

their marriages were religiously valid. However, in Arni's case, the community initially reacted strongly after discovering her lie about her divorce status, although things eventually returned to normal and the community accepted the situation.

In conclusion, society's general acceptance of unregistered marriages is relatively open as long as the marriage is considered religiously valid, even if it is not legally recognized. However, falsifying documents and lying about divorce status can provoke a significant negative response from the surrounding community, although this reaction may gradually subside over time.

In the interview with the modin kampong, it was mentioned that there are some people who are aware of the law who can officially divorce in court with the help of a lawyer/advocate, having to spend a considerable amount of money to obtain an official divorce certificate from the court, without the need to attend and present witnesses. For this reason, some people who are less well-off can only use this kind of divorce. However, there are some people, including those interviewed by the author, who are aware that the divorce they know about is a divorce through the signing of an agreement.

According to the modin of the village, the interview revealed that there was one couple who had not been divorced until the day of the interview who had been separated for two years since three days after the marriage took place because the wife wanted a divorce but the husband did not want to sign a divorce agreement. The marriage occurred because of an arranged marriage, and the wife did not accept the arranged marriage (M. Modin, personal communication, April 20, 2024).

Divorce outside of the court, or unofficial divorce, occurs due to various reasons, ranging from injustice in providing alimony, infidelity, incompatibility between husband and wife, to disputes or arguments within the household. However, in practice, many divorcees are not aware that the lack of divorce registration can impact the unresolved marital status, potentially leading to unofficial remarriages (Azharuddin, 2023, p. 102). The public's understanding of divorce law tends to be based on the assumption that divorces conducted outside of the court are acceptable. However, under the prevailing positive law in Indonesia, divorces conducted outside of the court do not comply with the applicable regulations. Article 19 of Government Regulation No. 9 of 1975 states that divorce cannot be carried out without clear reasons, and several important considerations must be taken into account by the court before granting a divorce.

The issue of unofficial divorces carried out by the people of Negara Sakti Village is closely related to long-standing customs, economic issues, and the mindset of the villagers themselves. In general, the practice of unofficial divorce in Negara Sakti Village can be summarized based on data obtained from individuals who have undergone divorce, namely:

- a. **The Location of the Religious Court:** The reason why the people of Negara Sakti Village resort to unofficial divorces is due to the distance of the court from the village. The village is approximately 58 km away from the Religious Court, located in the district, which requires a journey of about 2.15 hours through roads passing through the sugarcane plantation of PT PSMI, and is also prone to criminal activities (robbery). Therefore, going to court burdens the people of Negara Sakti Village significantly, compounded by the expensive transportation costs
- b. **Economic Factors:** Economic limitations are one of the causes why the people of Negara Sakti Village choose to settle divorces outside the court. The economy of Negara Sakti Village largely depends on the sugarcane plantation of PT PSMI. Settling matters in the Religious Court requires considerable expenses, which the people of Negara Sakti Village find burdensome.
- c. **Lack of Access to Information:** One of the reasons for unofficial divorces in Negara Sakti Village is the lack of information and knowledge about the necessity to settle divorces in the Religious Court. Information obtained from the village cleric, the Village Head of Negara Sakti, indicates that there is no counseling from the Religious Court to Negara Sakti Village. Furthermore, the villagers have limited understanding of the procedures for settling divorces in the Religious Court, leading them to choose to settle matters outside the court with the assistance of local elders.
- d. **Established Community Practice:** The prevailing community practice also contributes to unofficial divorces in Negara Sakti Village, as they follow the divorce practices of previous generations. Unofficial divorces have been a customary practice in Negara Sakti Village before the enactment of Marriage Law Article 39 paragraph (1) and related regulations on divorce. Traditionally, divorces were conducted by signing divorce agreements and pronouncing talak vows by

the husband, witnessed by village elders, the village cleric, and village officials as witnesses.

In the context of unregistered divorces conducted by some members of the Negara Sakti Village community, various factors contribute to this phenomenon. To address this issue, it is crucial to enhance public understanding of the importance of marriage and divorce registration and provide education on the applicable legal processes. Institutions such as the Office of Religious Affairs (KUA) and legal counseling at the village level can assist in reducing the practice of unregistered divorces and preventing unofficial marriages in the community.

The Impact of an Unregistered Divorce

Unregistered divorces also have consequences as follows. For the wife, these include the inability to remarry through the KUA, the inability to claim maintenance expenses through religious court, and difficulty in obtaining joint property. For the husband, consequences include the inability to remarry through the KUA and difficulty in obtaining joint property. Meanwhile, for the children, the consequence is the difficulty in obtaining a share of the inheritance (Patimah et al., 2022: 102).

The further consequence of unofficial divorces is when a new marriage is conducted unofficially with a different partner. The invalid status of the new marriage that occurs after an unofficial divorce applies to both the wife and husband, and the husband may remarry with another woman through polygamy under specified conditions. Unlike the husband's invalid status, the wife's invalid status stems from indirectly engaging in polyandry (one wife with multiple husbands) due to the continuing valid marital bond with her previous husband in the context of Law No. 1 of 1974. Polyandry itself constitutes a prohibited form of marriage in Islamic teachings.

Thus, the new marriage conducted after an illegal divorce process is deemed invalid according to Law No. 1 of 1974 and other relevant laws due to its invalid status within the context of Law No. 1 of 1974. Consequently, due to the invalid status following the illegal divorce, the status of children born from the new marriage is also affected, resulting in illegitimate children under positive law. This is based on Article 99 of the Compilation of Islamic Law (KHI), which stipulates that legitimate children are those born within or as a result of a valid marriage. Therefore, new marriages following an illegal divorce are considered invalid under positive law, along with their offspring (Patimah et al., 2022: 103).

In this scenario, Eni and her former husband's child are impacted by their parents' divorce. The child's status becomes legally recognized as their mother's sibling. Additionally, Eni falsifies her identity, claiming to be a virgin again despite being legally married. Furthermore, unofficial marriages do not guarantee certainty regarding the virginity of either party or whether a person is widowed or divorced. For instance, in the case of Arni and her husband, both still have existing marital ties with other individuals.

Moreover, the consequences include the wife's inability to obtain post-divorce rights such as economic rights guaranteed under Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). These rights encompass: the settlement of the dowry if not yet paid in full, compensation for past unpaid maintenance, a three-month iddah period maintenance, mut'ah money (consolation payment from the husband for the divorce) as agreed upon, and the right to child custody until adulthood (Falah et al., 2023, p. 173; Sholeh et al., 2019: 86).

Regarding the fulfillment of post-divorce maintenance rights, there are consequences if the former husband fails to fulfill or refuses to provide these rights. In such cases, the wife can seek recourse through the courts. In Indonesia, under the Marriage Law and the Compilation of Islamic Law (KHI), regulations concerning post-divorce women's rights such as iddah maintenance are as follows: (a) The court may compel the former husband to provide living expenses and/or determine obligations for the former wife, (b) The husband is obliged to protect his wife and provide all necessary household needs according to his ability, (c) The husband is obliged to provide maintenance, shelter, and clothing to the former wife during the iddah period, unless the former wife has been divorced with talak ba'in or due to her disobedience and is not pregnant, (d) The place of residence should be suitable for the wife during the marriage, or during the iddah period following divorce or death (e) The husband is obliged to furnish the residence according to his ability and in accordance with the environmental conditions of his residence, whether in the form of household appliances or other supporting facilities (Hammad, 2014: 23).

One of the reasons for the termination of marriage is divorce, marked by the husband's pronouncement of talak. According to Article 117 of the Compilation of Islamic Law (KHI) and Law Number 1 of 1974, talak is considered valid when a husband pronounces it in front of a court session at the Religious Court. Divorce itself is a part of marriage because divorce occurs after the initial event of marriage. Subsequently, unofficial

divorce (divorce outside the court) emerges as a phenomenon in society due to the implementation of divorce laws not adhering to the provisions of positive law.

In Law Number 1 of 1974 on Marriage, Article 39 paragraph (1) of Chapter VII Regarding the Dissolution of Marriage and Its Consequences states:

Article 38: Marriage may be considered terminated if:

- a) Death
- b) Divorce
- c) Court decision

Article 39:

- a) Divorce can only be conducted in front of a court session after the respective court has attempted and failed to reconcile both parties.
- b) Sufficient reasons must exist for divorce, indicating that harmony as husband and wife cannot be achieved.
- c) The procedure for divorce in front of a court session is regulated in the relevant legislation.

Article 40:

- a) Divorce petitions are submitted to the court.
- b) The procedure for submitting such petitions in paragraph (1) of this article is regulated in separate legislation.

Article 41:

- a) The consequences of marriage termination due to divorce are:
- b) Both the mother and father remain obligated to care for and educate their children, solely based on the children's interests. In case of disputes over child custody, the court makes decisions.
- c) The father is responsible for all expenses required for the maintenance and education of the children. If the father is unable to fulfill this obligation, the court may determine that he shares the expenses.
- d) The court may compel the former husband to provide living expenses and/or determine obligations for the former wife (Khoiriyah et al., 2023, p. 117).

In Article 20 of Law Number 7 of 1975 regarding the implementation of Law Number 1 of 1974, it is stated that:

- a) Divorce petitions are filed by the husband or wife or their representatives to the Court within the jurisdiction of the defendant's residence.

- b) If the defendant's residence is unclear, unknown, or does not have a fixed residence, the divorce petition is filed with the Court at the petitioner's residence.
- c) If the defendant resides abroad, the divorce petition is filed with the Court at the petitioner's residence. The Chief Justice of the Court forwards the petition to the defendant through the local representative of the Republic of Indonesia.

Government Regulation No. 9 of 1975 has regulated the procedures for divorce from Article 14 to Article 18 and Article 20 to Article 36. According to Article 14 of this regulation, a husband who has solemnized his marriage according to Islamic law and wishes to divorce his wife must submit a divorce letter to the court where he resides. This letter should contain a notification of his intention to divorce his wife along with the reasons for it, and request the Religious Court to hold a trial for the matter. The court decides to conduct a trial, examines and considers the reasons for divorce, and after attempting reconciliation between both parties unsuccessfully, witnesses the divorce conducted by the husband in front of the court, as stipulated in Article 16 of the government regulation (Latif, 1985: 109).

Article 67 of Law Number 7 of 1989 explains that in filing for divorce by talak, the following must be included:

- a) The name, age, and residence of the applicant, namely the husband, and the respondent, namely the wife.
- b) The reasons that serve as the basis for the talak divorce. This article also applies to the wife if she is filing for divorce.

The resolution of divorce cases often takes a long time due to the legal procedures chosen by the parties involved. The divorce settlement is also accompanied by various new issues arising from the divorce, such as the division of marital assets, child custody rights, and so on. This is regulated in Article 86 paragraph (1) of Law Number 7 of 1989 as amended by Law Number 3 of 2003 concerning Religious Courts, which allows for the submission of joint property claims or counterclaims (reconvention). The regulations or laws used as references in the resolution of divorce cases are:

- a) Law Number 1 of 1974 concerning Marriage
 - i. This regulation applies to regulate divorce in broad terms (less detailed as it does not distinguish between divorce procedures in Islamic and non-Islamic marriages).

- ii. The procedure for divorce in non-Islamic marriages is guided by Law Number 1 of 1974.
- b) Compilation of Islamic Law (KHI) applies to couples who are Muslims, and the procedure for resolving their divorce follows the KHI.
- c) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974
 - i. Regulates the details regarding the jurisdiction of the Court in processing divorce cases.
 - ii. Regulates the detailed practice of divorce procedures.
- d) Law Number 23 of 2004 concerning the Elimination of Domestic Violence

The principles applied in examining divorce cases are the same for both divorce claims and divorce by talak, including:

 - a) Examination conducted by the Panel of Judges.
 - b) Examination conducted in closed sessions.
 - c) Examination within 30 days from the date of registration of the claim.
 - d) The examination in the Courtroom is attended by the husband and wife or representatives duly authorized by the parties.
 - e) Reconciliation efforts are sought throughout the examination.

The procedure for resolution is as follows:

- a) Preliminary Stage

This stage involves the plaintiff or petitioner submitting or registering their case to the Religious Court, and the Court accepting the submission of the lawsuit or application.
- b) Examination and Decision Stage
 - 1) Summoning of the parties.
 - 2) Dismissal or default judgment.
 - 3) Mediation efforts.
 - 4) Reading of changes to the lawsuit.
 - 5) Defendant's response, exceptions (objections), and counterclaims.
 - 6) Replication and rejoinder.
 - 7) Presentation of evidence.
 - 8) Deliberation by the Panel of Judges.

In the perspective of positive law, juridically an unrecorded divorce (not before the Court) is invalid and must be annulled because the wife is still tied to the old husband. The wife cannot enter into a second marriage before the divorce with the first husband is legally carried out according to positive law. The absence of legal certainty in the practice of out-of-court divorce in the form of authentic evidence, namely a divorce certificate, which is one of the requirements for a new marriage contract, so this has led to the possibility of the practice of nikah siri, as practiced by Ani and Arni. There is even falsification of identity as practiced by Eni, to obtain the validity of marriage by the state.

CONCLUSION

The practice of unrecorded divorce in Negara Sakti Village, Pakuan ratu Sub-district, Way Kanan District, shows a variety of reasons behind the decision to divorce. Interviews with three divorcees revealed that the divorce process was carried out by signing a divorce agreement and followed by the husband pronouncing the divorce. The reasons behind the divorce varied, ranging from financial problems to domestic disputes. However, what is interesting is that the majority of these divorcees later remarried siri, because they did not have a divorce certificate. Another thing that needs to be considered is the status of women before the state who are still married, because divorces conducted outside the court are not recognized as valid according to positive law, and the status of children from siri marriages before the state, which will cause difficulties in taking care of the child's identity for state-related purposes such as schooling, making bank accounts, and so on.

In this case, the continuing impact that occurs as a result of underhand divorce in addition to siri marriage is the fabrication of identity, confusion of lineage, and polyandrous marriage because the legal status under applicable state law Eni, Ani, and Arni are the legal wives of their previous husbands. Article 39 paragraph (1) of Law No. 1/1974 confirms that divorce must be carried out in accordance with applicable legal regulations and not contrary to Islamic law, which emphasizes the importance of preventing damage or madharat. In this context, unrecorded divorces are considered invalid. To address this issue, the suggested first step is to conduct divorce registration in accordance with the applicable procedures and introduce sanctions for divorce offenders who violate the rules. It is important for the community to understand the importance of following a legal divorce process in accordance with positive law and Islamic law to prevent unrecorded divorces and the potential for siri marriages.

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