



Underage Marriage in Teenagers Judging from Law Number 16 of 2019

Zetria Erma¹, Yulkarnaini²

^{1,2} Faculty of Law, Universitas Pembinaan Masyarakat Indonesia (UPMI) Medan

ARTICLE INFO

Article history:

Received Aug 29, 2022

Revised Sep 18, 2022

Accepted Oct 10, 2022

Keywords:

Marriage;
Underage;
Youth.

ABSTRACT

Marriage can be carried out by both men and women who are old enough. The purpose of this study is to identify and analyze the factors that cause underage marriage in Indonesia and underage marriage in adolescents in terms of Law Number 16 of 2019. This type of research is normative with a legal approach. The type of data used is secondary data consisting of primary, secondary and tertiary legal materials, while data analysis is carried out qualitatively. Factors that cause underage marriages in Indonesia are religion and culture, economy, education, already pregnant, the will of parents, their own will, customs and culture, feeling that they have been able to take responsibility, promiscuity, closing shame, arranged marriages, worship and social media. Meanwhile, underage marriages in adolescents according to Law Number 16 of 2019 are marriages carried out by boys and girls who are under the age of 19 (nineteen) years. In practice, it is mostly done by teenagers between the ages of 12 (twelve) to 19 (nineteen) years. This should not be done but if something unwanted happens and to protect the rights of children, especially girls, a marriage dispensation can be requested at the religious court.

ABSTRAK

Perkawinan dapat dilaksanakan oleh laki-laki dan perempuan yang sudah cukup umur. Tujuan penelitian ini adalah untuk mengetahui dan menganalisis faktor penyebab terjadinya pernikahan dibawah umur di Indonesia dan pernikahan dibawah umur pada remaja ditinjau dari Undang-Undang Nomor 16 Tahun 2019. Jenis penelitian ini adalah normatif dengan pendekatan undang-undang. Jenis data yang dipakai adalah data sekunder yang terdiri dari bahan hukum primer, sekunder dan tersier sedangkan analisis data dilakukan secara kualitatif. Faktor penyebab terjadinya perkawinan dibawah umur di Indonesia adalah karena agama dan budaya, ekonomi, pendidikan, terlanjur hamil, kehendak orang tua, kemauan sendiri, adat dan budaya, Merasa dirinya telah mampu untuk bertanggung jawab, pergaulan bebas, menutup malu, dijodohkan, ibadah dan media sosial. Sedangkan perkawinan dibawah umur pada remaja menurut Undang-Undang Nomor 16 Tahun 2019 adalah perkawinan yang dilakukan oleh anak laki-laki maupun perempuan yang berumur dibawah umur 19 (sembilan belas) tahun. Dalam praktik banyak dilakukan oleh remaja yang berumur antara 12 (dua belas) sampai 19 (sembilan belas) tahun. Hal ini tidak boleh dilakukan tapi kalau terjadi hal yang tidak diinginkan dan untuk melindungi hak anak terutama anak perempuan maka bisa dimintakan dispensasi perkawinan pada pengadilan agama.

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Corresponding Author:

Zetria Erma,
Faculty of Law,
Universitas Pembinaan Masyarakat Indonesia (UPMI),
Jl. Teladan No.15, Teladan Bar., Kec. Medan Kota, Kota Medan, Sumatera Utara 20214
Email: zetriaermaupmi2018@gmail.com

I. INTRODUCTION

In essence, humans are individual creatures who cannot live alone (Shofiyatul Azmi, 2018). In living his life, he will always depend on other humans. Humans need each other and must socialize with other humans. This is because humans cannot fulfill their own needs (Inah, 2013). Every human being really needs other people to run life together. Humans who have grown up have a desire to find a life partner to live together in the ark of life in the family. In accordance with the nature of human events, men need women and women need men in their lives, because both parties need each other, so they look for each other so that the seeds of affection, love and protection for each other grow. This affectionate and mutual love relationship is then manifested in a marriage bond that is in accordance with the norms of life and the rules of law that apply in the society in which they live (Prof. Dr. H. Zainuddin Ali, nd). Therefore, humans need the institution of marriage.

Marriage has a very important meaning and position in human life, because marriage can be formed by ties of association between two people of the opposite sex officially in one family. (Shahri et al., 2021). The family can continue to develop into a community group, the goal to be achieved in marriage is to achieve happiness in this world and in the hereafter (Setiawan, 2020).

Law Number 1 of 1974 concerning Marriage (hereinafter abbreviated as the Marriage Law) in Article 1 and Article 2 states that "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy family (household). and eternal based on the One Godhead". The inclusion of the One Godhead is because the State of Indonesia is based on Pancasila, whose first precept is Belief in One God. (Patrajaya, 2017). This states that marriage has a very close relationship with religion. In Islamic law, a marriage is considered valid if it has fulfilled the pillars and conditions for a valid marriage. This is different from the law that applies in Indonesia, where if two Indonesian citizens who are going to get married must follow the marriage law, namely the Law on marriage and additional regulations in the form of the Compilation of Islamic Law (KHI) for those who are Muslim.

According to the Marriage Law Article 2 Paragraph (2) states "Every marriage is registered according to the laws and regulations" (Sorong, 2021). So on the one hand marriage is more directed at the administrative order, but on the other hand marriage is a very sacred event. This difference gave rise to the term unregistered marriage or marriage that was not registered in society after the enactment of the Marriage Law and the Compilation of Islamic Law (KHI). (Safirra, 2020).

In Indonesian society, it is known as siri marriage or underhand marriage (Widiasmar 10). Basically, this kind of marriage is allowed in Islam if it fulfills the terms and conditions that apply. But in some groups, this marriage is used as a shortcut to legalize their polygamous intentions. Based on several cases of unregistered marriages that occur in the community, it can be seen that the factors causing the occurrence of unregistered marriages are pregnancy outside of marriage, lack of understanding and public awareness about marriage registration, the difficulty of polygamy rules, economic factors, property factors, workplace factors, social factors and religious factors. (Positive & Zakaria, nd). This is due to the relatively lightness of the requirements for someone to carry out an underhand marriage or unregistered marriage which is only carried out with a guardian judge. By carrying out unregistered marriages, it will certainly hamper the effectiveness of the applicable legal regulations and it is clear that the women are harmed. The things that cause unregistered marriages are seen in terms of social factors due to the difficulty of registering a second marriage, the age limit for marriage according to legislation, moving places of residence make it difficult for people to pay the cost of marriage so they prefer to marry unregistered. (Amina, 2014). Furthermore, there is also a religious factor where unregistered marriage is carried out to justify a relationship so that it is kept away from adultery and sin. (Amina, 2014).

The issue of unregistered or unregistered marriages can be carried out by all levels of Indonesian society who are Muslim without exception, including members of the Indonesian National Police who are Civil Servants. As a state apparatus, a member of the police, of course, must be able to serve as an example for the community and must comply with applicable regulations.

The practice of unregistered marriage which is now widely practiced by Muslim communities in Indonesia cannot be separated from the influence of Islamic traditions in Arab countries which were carried out in the period after the Prophet Muhammad and his companions. The term siri marriage or secret marriage is indeed known among scholars, at least since the time of Imam Malik bin Anas .(Mariani, 2022). Even the term siri marriage is developing and in Indonesia it will become an underhand marriage(Ni'matun Naharin, 2017). Unregistered marriages or unregistered marriages are a reality that occurs in society, the reasons range from the high cost of registering marriages to rational reasons that must be kept secret. It is undeniable that this unregistered marriage creates pleasure in the front, brings disaster in the back, has a negative impact because the legal rights are not fulfilled(Addin Daniar Syamdan, 2019). Unregistered marriages or unregistered marriages are a reality that occurs in society, the reasons range from the high cost of registering marriages to rational reasons that must be kept secret. The negative effect that arises from unregistered marriages is a conflict of interest between the perpetrators of unregistered marriages who do not want to register their marriages on the one hand and the interests of the state to regulate population administration on the other hand so that marriages that are not registered are not recognized by the state.(Anggi Nur Nisa Tanjung & Wahyu Ziaulhaq, 2022). One form of this recognition is a marriage certificate as authentic evidence that a marriage has occurred(Addin Daniar Syamdan, 2019). With this marriage certificate, the marriage has legal force, its rights are protected by law.

II. RESEARCH METHOD

This research is analytical descriptive in nature, namely research that describes or explains the practice of unregistered marriage by members of the police in terms of Police Chief Regulation Number 6 of 2018 concerning Procedures for Filing Marriage, Divorce, and Referral for Civil Servants at the Indonesian National Police. This type of research is normative legal research, namely research aimed at finding and formulating legal arguments through analysis of the subject matter. Normative legal research, also known as library law research, is legal research conducted by examining library materials or secondary data. The approach used in this research is the statutory approach. The type of data used in this study is secondary data consisting of primary legal materials consisting of laws and regulations related to the research title. In addition, there are also secondary legal materials consisting of books, journals and tertiary legal materials providing explanations such as dictionaries related to research titles. Data analysis was carried out qualitatively, namely the analysis was carried out by describing in the form of sentences or statements. Then conclusions are drawn using the deductive method of thinking, namely the method of drawing conclusions that are specific in nature from general analysis. Bambang Sunggono mentions the pattern of deductive procedures, starting from a general proposition whose truth is known (believed) and ending at a conclusion (new knowledge) that is more specific in nature.

III. RESULT AND DISCUSSION

Siri Marriages Performed by Members of the Police In review of the Regulation of the Chief of Police Number 6 of 2018 concerning Procedures for Filing Marriage, Divorce, and Referrals for Civil Servants at the Indonesian National Police.

Marriage is a holy, strong and sturdy agreement to live together legally between a man and a woman to form a happy and eternal family, where husband and wife must support each other, love each other, there is a safe and peaceful condition full of happiness. both morally and spiritually and materially based on the One Godhead (Musyafah, 2020). In civil law marriage is defined as a legal relationship between a man and a woman for a long time (Hanifah, 2019). Marriage is a process of

human sexual relations that must be carried out in a spirit of peace by respecting human rights as equal beings between men and women to lead a better life in the world (Dhafir, 2018). Musfir Aj-Jahrani said that marriage is a bond between a man and a woman's guardian or their representative and it is permissible for men and women to have fun in accordance with the way that has been prescribed (Hidajad, 20189). Marriage is essentially the meeting of two beings of the opposite sex who have interests and views of life that are in line with the aim of realizing a *sakinah*, *mawaddah* and *warahmah* household life. Along with that, it can also be interpreted that marriage aims to form a happy, eternal and eternal family and does not just break up (Talib, 2017). Therefore, marriage can be said to be a partnership between a man and a woman recognized by the state for eternal life together (Doltsinis et al., 2020). It is said to be an alliance because there are two kinds of interests that are incorporated in the marriage institution, namely the interests of a man combined with the interests of a woman to build a household that is recognized by the state. Therefore, marriage must meet the requirements determined by religion and Law no. 1 of 1974 so that the interests of the parties can be protected by the state.

Nowadays, there are many serial marriages for various reasons. It is undeniable that the practice of unregistered marriage does not meet the requirements and pillars of marriage. The implementation is due to various reasons, such as the difficulty of registering a marriage that is more than 1 (one) or polygamous, parents or guardians are far from it, to avoid adultery, due to promiscuity resulting in pregnancy out of wedlock, and others.

The practice of unregistered marriage is also carried out by members of the Indonesian National Police. According to Satjipto Raharjo "the police are a state instrument in charge of maintaining public security and order, providing protection, and providing protection to the community". Furthermore, Satjipto Raharjo, quoting Bitner's opinion, stated that if the law aims to create order in society, including fighting crime. In the end, it is the police who will determine concretely what is called the enforcement of order. Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia in Article 1 point 1 explains that the Police are all matters relating to the functions and institutions of the police in accordance with the laws and regulations. The term police in this law contains two meanings, namely the function of the police and the police institution. In Article 2 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, the function of the police is as one of the functions of the state government in the field of maintaining security and public order, law enforcement, protector, protector and service to the community. As a consequence, members of the police must be able to become role models for the community, supported by a harmonious, safe, peaceful and happy family. protector and service to the community. As a consequence, members of the police must be able to become role models for the community, supported by a harmonious, safe, peaceful and happy family. protector and service to the community. As a consequence, members of the police must be able to become role models for the community, supported by a harmonious, safe, peaceful and happy family.

The marriage of members of the police of the Republic of Indonesia is regulated in the Regulation of the Chief of Police Number 6 of 2018 concerning Procedures for Filing Marriage, Divorce, and Referrals for Civil Servants at the Indonesian National Police. Usually the practice of unregistered marriage is carried out by members of the police who are Muslim because they already have a wife. So a *siri* marriage is done to add a wife or have more than 1 (one) wife or have polygamy. Usually the marriage is done secretly and without the permission of the first wife.

Basically Law no. 1 of 1974 concerning marriage whose implementing regulations are regulated in Government Regulation Number 9 of 1975, including regulations concerning having more than 1 (one) wife or having polygamy. The law that regulates marriage in Indonesia and applies to all Indonesian people without exception including members of the police as state civil servants. To have more than 1 (one) wife or have polygamy, the husband must follow the provisions of Law Number 1 of 1974 concerning Marriage, namely:

1. The wife cannot carry out her obligations as a wife.

2. The wife has a disability or an incurable disease.
3. The wife cannot give birth to children (Article 4 paragraph (2) of Law No. 1 of 1974 concerning Marriage).

In addition to these requirements, the reason for applying for more than 1 (one) wife or polygamy to the court must meet supporting requirements such as:

1. There is the consent of his wife/wives.
2. There is certainty that the husband is able to guarantee the necessities of life for his wife and children (Article 5 of Law Number 1 of 1974 concerning Marriage).

The basis for the issuance of Regulation of the Chief of Police Number 6 of 2018 concerning Procedures for Filing Marriage, Divorce, and Referrals for Civil Servants at the State Police of the Republic of Indonesia are:

1. Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019).
2. Law Number 2 of 2002 concerning the Police (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168).
3. Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants of the Police (State Gazette of the Republic of Indonesia of 1983 Number 13, Supplement to the State Gazette of the Republic of Indonesia Number 3250).
4. Presidential Decree Number 70 of 2002 concerning Organization and Work Procedure of the State Police of the Republic of Indonesia.

The principles in this regulation include:

1. Legality, namely every process of filing for marriage, divorce, and reconciliation is carried out in accordance with the provisions of laws and regulations in order to guarantee rights and obligations;
2. Accountability, namely every process of filing for marriage, divorce, and reconciliation is carried out procedurally and can be accounted for;
3. Transparency, namely that every process of filing for marriage, divorce and reconciliation is carried out openly;
4. Justice, i.e. every process of applying for marriage, divorce, and reconciliation is carried out fairly without discrimination.

The purposes of this regulation are:

1. As a guideline in filing divorce marriages, and refer for Civil Servants to the Police; and
2. Ensure the establishment of an orderly administration of divorce marriages, and refer civil servants to the Police for divorce marriages, and refer within the Police.

Meanwhile, the scope of this regulation includes:

1. Requirements for applying for a divorce marriage permit, and refer;
2. Officials authorized to issue divorce marriage licenses, and refer;
3. Procedures for applying for a divorce marriage permit, and refer.

The regulation in the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2018 concerning Amendments to the Regulation of the Head of the National Police of the Republic of Indonesia Number 9 of 2010 concerning Procedures for Filing Marriage, Divorce, and Referrals for Civil Servants at the Indonesian National Police, in Article 4 it is stated that:

1. Civil servants at the National Police are only allowed to have a wife/husband.
2. Female members of the National Police and female Police Civil Servants are prohibited from becoming second wives and so on.

The provisions of Article 16 of the Regulation of the Head of the State Police of the Republic of Indonesia Number 9 of 2010 are declared deleted. So based on the provisions of Article 4 it is stated that marriage for members of the police adheres to the principle of monogamy because in principle

Civil Servants at the National Police are only allowed to have a wife/husband and female Police Members and female Police Civil Servants are prohibited from being second wives and so on.

Based on these provisions, the practice of unregistered marriage with the excuse of polygamy cannot be carried out by members of the police. So if someone does it, it is considered a violation of the applicable provisions, especially the provisions in Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2018 concerning Procedures for Filing Marriage, Divorce, and Referrals for Civil Servants at the State Police of the Republic of Indonesia

Sanctions Against Police Members Who Conduct Siri Marriages Judging from the Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2018

After the enactment of the Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2018, members of the State Police of the Republic of Indonesia are not allowed to have more than one wife (polygamy) because in accordance with the provisions of Article 4 it is stated that marriage for members of the police adheres to the principle of monogamy because in principle a Civil Servant at the National Police only allowed to have a wife/husband and female Police Members and female Police Civil Servants are prohibited from becoming second wives and so on. So, if there is a member of the police who carries out an unregistered marriage secretly without the knowledge of the first wife and so on with the aim of polygamy, then the marriage is considered invalid in accordance with the regulations concerning marriage for members of the state police of the Republic of Indonesia.

If there is a report from the first wife, the case will be investigated to reveal the case. The examination of the case is carried out by presenting evidence and witnesses and victims are then made an examination report (BAP). Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2018 as an ideal rule in the handling of marriage for members of the police which also refers to the Regulation of the Head of the State Police of the Republic of Indonesia Number 14 of 2011 concerning the Professional Code of Ethics of the State Police of the Republic of Indonesia.

The stages of ideal handling of police officers who violate the professional code of ethics regarding having more than one wife (polygamy) are:

1. Members who are suspected of committing acts that violate the code of ethics will be investigated and investigated.
2. After that, an examination of the case was carried out which presented evidence and witnesses and victims.
3. After collecting evidence and information from witnesses and victims, an examination report is made and an examination report is made (BAP).
4. This inspection report (BAP) is then submitted to the Professional Code of Ethics Commission (KKEP) for follow-up.
5. A trial was held against the alleged violators and the witnesses and victims.
6. After the trial, the Professional Code of Ethics Commission (KKEP) decides the case by providing witnesses in accordance with applicable laws and regulations.
7. After it is decided, the suspect/convict receives and undergoes the sanction of the decision with the heaviest punishment being dishonorable discharge (PDTH) or in other words the member is expelled from the Indonesian National Police Agency without receiving a salary or severance pay.

So, the handling of police officers who violate the code of ethics, especially those related to carrying out unregistered marriages for polygamy secretly, must go through the receipt of a report from the legal wife. Further investigations and investigations were carried out to reveal the truth of the case. After the truth of the case is revealed, a case examination is carried out by presenting evidence, witnesses and victims, then collecting evidence, statements from witnesses and victims. After that, minutes of examination of the alleged violators, witnesses and victims are made and

sentenced if they are found guilty according to the applicable regulations. The basis for handling the case is to refer to Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2018 concerning Amendments to the Regulation of the Head of the State Police of the Republic of Indonesia Number 9 of 2010 concerning Procedures for Filing Marriage, Divorce, and Referrals for Civil Servants at the State Police of the Republic of Indonesia and Regulation of the Head of the State Police of the Republic of Indonesia Number 14 Year 2011 concerning the Professional Code of Ethics of the Indonesian National Police. The sanction of a decision against a member of the police who performs an unregistered marriage for polygamy secretly is by dishonorable discharge (PDTH) or in other words the member is expelled from the Indonesian National Police Agency without receiving a salary or severance pay.

For example, the case of police officers who practice polygamy is Bripka AHN Bripka AHN, a member of the Pasuruan City Police, was detained for 21 days because he was proven to have committed disciplinary actions, namely polygamy by way of unregistered marriage. The decision was read out in a disciplinary hearing regarding the code of ethics of the non-commissioned officer. The Head of the Public Relations Subdivision of the Pasuruan City Police, AKP Endy Purwanto, accompanied by the Head of the Pasuruan City Police, AKBP Agus Sudaryatno, said that the AHN's rights during the disciplinary trial process had been fulfilled. The verdict regarding remarriage without going through the KUA process was issued in decision number PUT/6/VII/2019, dated July 24, 2019. Based on the results of this trial, Bripka AHN stated that he accepted. Although the first wife approved, in the Police it is not justified. The violation is contained in Police Regulation Number 6 of 2018. Furthermore, the examinee will serve his sentence in a special detention cell.

So from the above case example, it can be stated that if a member of the police is proven to have committed polygamy, after undergoing a code of ethics trial, it will be dishonorably dismissed (PDTH) or in other words the member is expelled from the Indonesian National Police Agency without receiving salary or severance pay.

IV. CONCLUSION

The practice of unregistered marriages carried out by members of the police with the aim of having more than 1 (one) wife or having polygamy is an act that is prohibited or not allowed because it violates the provisions of Article 4 of the Regulation of the Head of the Indonesian National Police Number 6 of 2018 concerning Amendments to the Regulation of the Head of the State Police. Republic of Indonesia Number 9 of 2010 concerning Procedures for Filing Marriage, Divorce where it is stated that marriage for members of the police adheres to the principle of monogamy because in principle Civil Servants at the National Police are only allowed to have a wife/husband and female Police Members and female Police Civil Servants are prohibited from being wives second and so on. The penalty is After undergoing a code of ethics trial and being found guilty of having an unregistered marriage, will dishonorably discharged (PDTH) or in other words expelled from the Indonesian National Police Agency without receiving salary or severance pay.

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