

Legal Review Of Rejection Of Application For Marriage Confirmation By The Religious Court (Study Of Singaraja Religious Court Decision Number 46/Pdt.P/2023/Pa.Sgr)

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Abstract

This research aims to (1) analyze the basis of the judge's consideration in rejecting the application for marriage registration in decision Number 46/Pdt.P/2023/PA.Sgr; (2) analyze the legal consequences of the Religious Court's rejection of the application for itsbat marriage in determination Number 46/Pdt.P/2023/PA.Sgr. This type of research is normative legal research, with a statue approach, conceptual approach, and case approach. Sources of legal materials in this research include primary, secondary and tertiary legal materials. The data collection technique used in this research is by means of literature study and document study. The processing and analysis technique for legal materials is carried out using qualitative descriptive techniques. The results of the research show that (1) The basis for the judge's consideration in rejecting the application for marriage registration in the decision Number 46/Pdt.P/2023/PA.Sgr is a form of caution by the Judge of the Singaraja Religious Court in deciding a case so that legal smuggling does not occur; (2) The legal consequences of the Religious Court rejecting the application for itsbat marriage in decision Number 46/Pdt.P/2023/PA.Sgr have quite a big impact, namely on the husband, wife and children born from the marriage.

1. Introduction

Marriage is one of the constitutional rights of citizens of the Republic of Indonesia as stated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), which states that:

"Everyone has the right to form a family and continue their lineage through a legal marriage."

Law Number 1 of 1974 concerning Marriage in Article 1 states that:

"Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God."

The definition of marriage is a bond between a man and a woman as husband and wife based on the law (Law), religious law or customs that apply (Hawari, 2006). Marriage according to Islamic Law as stated in Article 2 of the Compilation of Islamic Law (hereinafter referred to as KHI) which has the same meaning as marriage, namely a very strong contract or *mitsaqan ghalidzan* to obey Allah's command and carry it out is worship. Marriage according to Article 3 of the Compilation of Islamic Law (KHI) aims to realize a household life that is *sakinah, mawaddah, and rahmah*.

Indonesia is a country of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Therefore, every legal event in an individual's life needs to be recorded in order to ensure a person's legal status, one of which is marriage. Marriage must be registered even though it is valid according to religion. Whether or not a marriage is considered valid is one of the important things for a marriage itself, so the question arises whether a marriage is considered valid in the eyes of the law if it is not registered or recorded (Setianto, 2022). If a marriage is not valid according to law, then the consequences arising from the marriage will automatically be invalid. Article 2 paragraph (1) of Law Number 1 of 1974 states that:

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

The phenomenon of unregistered marriages in Indonesia or what is known as unregistered marriages is still very common. Factors that contribute to the prevalence of unregistered marriages include the lack of public awareness of the importance of registering marriages, pregnancy outside of marriage, the assumption that society prioritizes religious validity, underage marriages, and the need for polygamy. Unregistered marriages do not have legality because Article 2 paragraph (2) of Law Number 1 of 1974 (hereinafter referred to as Law No. 1 of 1974) concerning Marriage states that:

"Every marriage is recorded according to applicable laws and regulations."

What is regulated by Law No. 1 of 1974 is in line with Article 81 of the Civil Code (hereinafter referred to as the Civil Code) which reads:

"No religious ceremony may be carried out before both parties prove to their religious officials that the marriage has taken place before a Civil Registry Officer." and Article 76 *in conjunction with* Article 100 of the Civil Code which stipulates that the existence of a marriage cannot be proven except by a marriage certificate. So the meaning of these articles is to place the registration as a formal element of the validity of the marriage bond.

For marriages that have not been registered at the KUA, then to avoid the consequences that will arise later, a legal solution can be taken for the marriage, namely by submitting an application for marriage validation (*itsbat al-nikah*) to the Religious Court in the area where the person is getting married. According to article 7 Article (2) of the KHI states that:

"In cases where the marriage cannot be proven by a Marriage Certificate, the marriage confirmation can be submitted to the Religious Court."

Continuing in Article 7 paragraph (3) it states that:

"The marriage validation that can be submitted to the Religious Court is limited to matters relating to: (a) The existence of a marriage in the context of a divorce settlement; (b) The loss of a marriage certificate; (c) The existence of doubts about the validity or otherwise of one of the requirements of marriage; (d) The existence of a marriage that occurred before the enactment of Law No. 1 of 1974 and; (e) Marriages conducted by

those who do not have an obstacle to marriage according to Law No. 1 of 1974.”

This is not only intended to have the marriage recognized by the state, but also so that the marriage has legal certainty. However, in practice, the application for *itsbat nikah* submitted to the Religious Court today is made by someone whose marriage took place after the enactment of Law No. 1 of 1974 concerning Marriage. Due to this, there is a gap in the norm in *itsbat nikah* which has not been or is not regulated either in the Marriage Law or the KHI regarding marriages that took place after the enactment of Law No. 1 of 1974 concerning Marriage, so that it can raise questions about what basis is used by the Religious Court in confirming the marriage.

Marriage ratification or *itsbat nikah* aims to obtain legal certainty or legality of a marriage relationship, with legal certainty it is expected to be able to guarantee the rights and obligations of citizens. Based on this, it is necessary and important for legality by registering the marriage to make the marriage under hand valid in the perspective of state law by submitting an application for *itsbat nikah* to the Religious Court that oversees the jurisdiction of their place of residence.

Marriage confirmation is one of the cases that is quite often resolved by the Singaraja Religious Court. This can be seen from the large number of applications for marriage confirmation to the Singaraja Religious Court. The number of marriage confirmation cases in 2020 was 27 cases, then in 2021 it increased to 30 cases, in 2022 there were 40 cases, and as of September 2023 the number of marriage confirmations at the Singaraja Religious Court was 25 cases. In the trial, the Religious Court judge will examine and declare whether or not the unregistered marriage is valid, in the form of a marriage confirmation determination. This marriage confirmation determination will be used as the legal basis for the Religious Affairs Office (KUA), to issue a marriage certificate by stating the date of the previous marriage. However, if it turns out that the judge states that the previous marriage is invalid, the KUA will remarry the husband and wife. Registration of this marriage is important so that there is clarity in the status of the marriage.

As the problem that occurred in Singaraja with case number 46/Pdt.P/2023/PA.Sgr. there was a request for marriage validation that was rejected by the Panel of Judges. Where the applicant had conducted a *siri* marriage/underhand marriage on May 18, 2020, in which case the applicants' marriage was carried out after the enactment of Law No. 1 of 1974 concerning Marriage and from the marriage a child was born. Furthermore, the applicants really need a determination of marriage validation/marriage validation from the Singaraja Religious Court to obtain valid proof of their marriage so that they get a Marriage Certificate Extract from the Religious Affairs Office as a requirement to process a Child Birth Certificate and other needs related to the Marriage Certificate. However, in its determination, the Panel of Judges rejected the request. The problem in the applicant's marriage is that at the time the marriage took place, the age of Applicant II was not old enough, namely still less than 19 years old and the guardian of Applicant II's marriage was Applicant II's older sibling, even though Applicant II's biological father was still alive and was Muslim, and did not represent Applicant II's older sibling. The Panel of Judges rejected the application because the applicant was deemed not to have fulfilled the requirements for marriage, namely regarding a marriage guardian.

Based on the background description above, the author is interested in studying and conducting research with the title **"Legal Review of the Rejection of the Application for Marriage Confirmation by the Religious Court (Study of the Determination of the**

Singaraja Religious Court Number 46/Pdt.P/2023/PA.Sgr)".

2. Research Methods

Study This is Study law normative which aims For dig information and also obtain answer on formulation existing problems , which in the research This there is the absence of norms in marriage confirmation . Various approach used by the author namely approach regulation legislation (*statue approach*), approach conceptual approach , and *the approach case approach* . The legal materials used are Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. The technique of collecting legal materials in this study is through literature studies and document studies. This study use Analysis method through road descriptive qualitative.

3. Results and Discussion

3.1 The Judge's Consideration in Rejecting the Application for Marriage Confirmation in Decision Number 46/Pdt.P/2023/PA.Sgr

Marriage confirmation is the authority of the Religious Court and is a type of *voluntary case*. *Voluntary* cases are types of cases that are in the nature of a request, there is only the applicant, and there is no opposing party. The emergence of the provisions of marriage confirmation cannot be separated from the provisions on the requirement for marriage registration, as mandated by the Law. Judges in the Religious Court as officials have the capacity to adjudicate cases and in issuing decisions or verdicts, namely through considerations and legal basis, either in the form of Laws, opinions of scholars, the Qur'an, or the Hadith of the Prophet in accordance with the case that has been submitted so as not to harm the parties to the case.

Marriage validation and the legal basis for marriage validation for marriages that occurred after the enactment of Law No. 1 of 1974 concerning Marriage are not based on the Law, but are based on the KHI based on Presidential Instruction Number 1 of 1991. So regarding marriage validation for marriages that occurred after the enactment of Law No. 1 of 1974, there are quite a lot, which means that there are still many marriages carried out by the community after the enactment of Law No. 1 of 1974 that have not followed the provisions for registering marriages. Furthermore, to what extent is the power of Presidential Instruction Number 1 of 1991 concerning KHI which allows marriage validation for marriages that are not registered after the enactment of Law No. 1 of 1974 concerning Marriage seen from Article 7 paragraph (3).

If it is connected with the provisions of the Law, namely in Article 49 letter a number 22 of Law Number 3 of 2006 concerning Religious Courts which explicitly *does* not open up space for the validation of unregistered marriages after the enactment of Law Number 1 of 1974 concerning Marriage. Thus, actually according to Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 concerning Religious Courts, it is impossible for there to be a marriage validation for a marriage that is not registered and that occurs after the enactment of Law Number 1 of 1974 concerning Marriage, this means that there is a gap in norms for marriages that are to be validated through marriage validation in the Religious Court. The problems that arise from marriage validation after or above 1974 are related to the provisions on the time of implementation of marriages before the enactment of Law Number 1 of 1974 concerning Marriage as regulated in Article 7 paragraph (3) letter d KHI, while in reality the application for marriage validation is submitted for marriages that are carried out after the enactment of Law Number. 1 of 1974 concerning Marriage. Therefore, it is necessary to find a legal

reason that allows the Religious Court to accept marriage validation cases even though the marriage requested for validation occurred after the enactment of Law No. 1 of 1974 concerning Marriage. According to Purnadi Purbatjaraka and Soerjono Soekanto, judges have free discretion, their feelings about what is right and what is wrong are the real direction to achieve justice. Furthermore, there is a free legal teaching (*freirechtslehre*) which gives judges free will in decision making.

Judges can determine their decisions without having to be bound by the Law. Indonesia as a country that adheres to the teachings of free law, gives judges the freedom to explore legal values that live in society to be used as a basis for making their decisions, this is in accordance with what is stated in Article 5 paragraph (1) and Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Therefore, the function and role of judges to explore the laws that live in society due to the incompleteness of laws and regulations to meet all legal events or legal demands, then based on the teachings of Cicero, namely *ubi societas ibi ius* which means where there is society there is law. Where the existing law will certainly change and develop along with the changes and developments that occur in society. Therefore, a legal vacuum is considered to never exist, on the grounds that every society has a mechanism to create legal rules if official law is inadequate or does not exist.

In the case of the application for itsbat nikah with register Number 46/Pdt.P/2023/PA.Sgr is one of the cases of itsbat nikah where the judge has decided and determined to reject the application for itsbat nikah submitted by the applicants. This is because the Applicants have violated several applicable regulations, violations that are clearly visible in the copy of the determination of the case of itsbat nikah and in accordance with the considerations of the judge handling the case, namely the violation of the provisions of Article 21 of the KHI, where the marriage between the Applicants is a marriage that is considered not to meet the requirements and harmony and therefore rejected.

The application for marriage validation submitted by the Applicants is for no other purpose than to obtain legal certainty regarding their marriage, which is in line with Article 7 paragraph (3) letter c of the KHI which states:

"The marriage validation that can be submitted to the Religious Court is limited to matters relating to:

(c) There is doubt about the validity or otherwise of one of the conditions of marriage."

In addition, according to Article 7 paragraph (3) letter e of the KHI, it is stated that the marriage conducted by the applicants is a marriage that has no obstacles to being carried out according to Law No. 1 of 1974 concerning Marriage.

The marriage that was carried out between Applicant I and Applicant II, whose guardian in the marriage was Applicant II's biological brother, not Applicant II's biological father, even though Applicant II's biological father was still alive and was Muslim and did not delegate the marriage to Applicant II's biological brother, so according to the Judge's consideration, legally Applicant II still had a guardian by lineage, therefore the one who had the right to marry was Applicant II's biological father who had the position of the woman's bloodline guardian in his authority to marry the woman to her prospective husband.

The judge of the Singaraja Religious Court also considered based on the order of guardianship that has been stated in the science of Islamic jurisprudence that if the order of guardianship is violated, the marriage can be declared invalid. In the decision No.

46/Pdt.P/2023/PA.Sgr, the judge of the Singaraja Religious Court included a verse in the Al-Bajuri Book, Juz II, page 105, which means:

"The one who has the right to be a guardian (to marry) is the father, then the grandfather, then the grandfather's father, then the biological brother, then the half-brother, then the biological brother's son, then the half-brother's son, then the biological uncle, then the half-uncle, then the child."

The Singaraja Religious Court judge also included a fragment of a verse in the Book Kifayatul Akhyar Juz II page 33 which means:

"A guardian (who is far in rank) may not perform a marriage if there is a guardian who is closer than him."

Considering that the marriage of Applicant I and Applicant II was conducted with an ineligible guardian because there was still a closer marriage guardian, the Panel of Judges is of the opinion that the marriage of Applicant I and Applicant II does not meet the requirements of the pillars of marriage, namely regarding the marriage guardian. The KHI has explained in detail regarding the marriage guardian, this is stated in Article 20, Article 21, and Article 22.

The panel of judges is of the opinion that if in a group of marriage guardians there are several people who are equally entitled to be guardians, then the one who is most entitled to be guardian is the one who is closer in kinship to the prospective bride. Due to the above matters and based on the judge's considerations, the application submitted by the applicants was rejected by the Singaraja Religious Court which resulted in the unregistered marriage or underhand marriage carried out by the two applicants being considered invalid and having to remarry at the local Religious Affairs Office.

In deciding a case, a judge makes legal reasoning which is of course guided by the Law, KHI, and matters related to the case being tried. Judges in determining a decision have their own basis and opinion. The decision in the Singaraja Religious Court regarding the marriage confirmation case, namely a siri marriage or an underhand marriage represented by the older sibling of Applicant II, was rejected, but in other Religious Courts it is not certain that they will also reject cases like this. This difference cannot be a reason to blame the judge, because the judge decides the case as fairly as possible and based on strong legal considerations.

Based on the matters explained above, the marriage conducted by the applicants is legally flawed because it was not registered in a formal legal manner. Applicant II is a woman who is not yet of age at the time of the marriage, namely still under 19 years old and the guardian of Applicant II's marriage is Applicant II's older sibling even though Applicant II's biological father is still alive and is Muslim and did not represent Applicant II's older sibling. The Panel of Judges of the Singaraja Religious Court regarding its determination is in accordance with Islamic law, in which the determination through the examination and proof of marriage confirmation process is not in accordance with applicable legal procedures. And more clearly, Applicant I and Applicant II are legally flawed as husband and wife according to the law.

The author agrees with the consideration of the Panel of Judges who determined that the actions carried out by the Applicants, have clearly and firmly carried out a marriage that is not in accordance with Islamic law. Therefore, the Panel of Judges has determined a decision in accordance with the regulations applicable in this case. The author is of the opinion that as long as the marriage has met the requirements and pillars according to Islam, then the marriage is valid according to Islamic law. The author agrees with the opinion of the Singaraja Religious Court Judge by rejecting the applicants'

application with the considerations explained above. The author also agrees with the results of the determination because it is a form of caution so that in the future there will be no benefit or harm.

3.2 Legal Consequences Arising From Rejection of Application for Marriage Validation by Religious Court in Decision Number 46/Pdt.P/2023/PA.Sgr

Legal acts are all acts whose implementation has legal consequences. In the decision of the Singaraja Religious Court No. 46/Pdt.P/2023/PA.Sgr. namely regarding the rejection of the marriage confirmation submitted by the applicants, this certainly also has consequences for the applicants and the children born from the marriage. The judge has decided to reject the marriage confirmation case No. 46/Pdt.P/2023/PA.Sgr, so the legal status of the marriage remains a secret marriage.

Based on the results of the author's research, the marriage that has been carried out by the applicants in the Singaraja Religious Court Decree No. 46/Pdt.P/2023/PA.Sgr is categorized as a *fasid marriage* or *invalid marriage*. A *fasid marriage* is a marriage that does not meet one of the requirements of the marriage requirements stipulated in Islamic law. While an invalid marriage is a marriage that does not meet the pillars of marriage stipulated in Islamic law. The law on *fasid* and *invalid marriages* is equally invalid. A marriage that is defective or has damaged pillars and requirements is considered an invalid marriage. The requirements for annulment of marriage in the Compilation of Islamic Law are stated in Articles 70 to 73. From the perspective of the legislation in force in Indonesia, it is stated in Article 22 of Law No. 1 of 1974 concerning Marriage, which states:

"A marriage can be annulled if the parties do not meet the conditions."

The marriage carried out by the applicants in the Singaraja Religious Court Decree No. 46/Pdt.P/2023/PA.Sgr is categorized as a *fasid marriage* or *invalid marriage* because one of the pillars of marriage is not fulfilled, namely the marriage guardian. Where the marriage guardian should be the biological father, not the older brother of the bride. Therefore, the marriage carried out by the applicants is also considered flawed. As a result of the rejection of the marriage confirmation by the Religious Court regarding the marital status between the applicants, although it is valid according to religion, the marriage is not recognized by the state because there is no marriage certificate or court decision so that it has no legal force. Likewise, an underhand marriage or siri marriage is a marriage that is not accompanied by registration before the Marriage Registrar (PPN). This kind of marriage is contrary to the Law. A marriage that goes through the correct legal procedures and provisions will produce legitimate children.

Based on the application rejected by the Religious Court, this certainly has a very big impact on the husband, wife, and children born. The impacts the includes :

1. Impact to husband

Impact to husband , where not There is adverse impact for self man or husband married below hand with a women . That's exactly what happened profitable self husband because husband free For Marry again , because marriage previously considered No legitimate in the eyes law and not There is liability Because husband the Can dodge dodge from his obligation give living Good to the ground wife and also children . There is no dispute over property with the division of marital property, inheritance, and others.

2. Impact to wife

Impact to wife in a way law , wife No considered as wife legitimate in the eyes law and not can sue inheritance from husband If husband died , wife also not entitled on

treasure gono like this If happen farewell Because in a way law marriage considered No Once happened . As for the impact in a way social that is , sometimes difficult socialize and become material mockery neighbor Because considered gather buffalo or considered become woman savings .

3. Impact to child

Impact to child in a way legal Because No legitimacy marriage series according to law positive own impact negative for the status of the child born among others:

- a. The child is considered an illegitimate child;
- b. The child only has a civil relationship with the mother and the mother's family (Article 4 and Article 42 of the Marriage Law, Article 100 KHI);
- c. The unclear status of children before the law results in a weak relationship between father and child.
- d. The social and psychological impact is that children become a psychological and mental burden, become the laughing stock and ridicule of their peers and do not want to socialize, and find it difficult to interact with children their own age.

Based on this, the Religious Court provides direction to the applicants to remarry at the local Religious Affairs Office (KUA) so that the marriage is valid both in the eyes of religion and the state. After this is done, the applicants will receive a marriage book to take care of the necessary administration for their children. This is what has an impact on the children born to the applicants. Where the status of this child becomes unclear, whether a legitimate child or an illegitimate child.

Based on Article 55 paragraph (1) of Law No. 1 of 1974 concerning Marriage, it is explained regarding proof of the origin of a child which can only be proven by an authentic birth certificate issued by an authorized official, namely the Civil Registry Office. Clarity of the child's status must again involve the Court in order to obtain a determination regarding the origin of the child. An application for the origin of a child is an application submitted to the local Religious Court to find out the status of the child, whether the child is really a child from a marriage between his/her parents or not. In the determination No. 46/Pdt.P/2023/PA.Sgr. this child is categorized as a child born from a *fasid* or *invalid marriage* . Where both parents are required to remarry at the local KUA, and after that they can submit an application for the origin of the child. In the application file at the Religious Court regarding the origin of the child, one of the petitums is to determine that a child is the child of both parents.

Writer has do studies literature with read determinations about origin child from a *fasid* marriage use know what is the actual status from child born from a *fasid* marriage . On submission application origin child this , in the trial The Panel of Judges will dig return about marriage that was carried out between the applicants , to to clarify whether Correct child This is child from legitimate applicants through bond marriage or no . Not all applications submitted to the Religious Court are accepted and are often rejected. The court only grants a request for the origin of a child if the request is based on and has legal grounds. If the request is not based on and has no legal grounds, the request will be rejected (Asrofi, 2019). Based on this, of course the Judge has carried out legal reasoning and considerations in accordance with the chronology of the case submitted to the Religious Court.

The results of this study are to provide *output* and clarification on the legal consequences and status of husband, wife, and children born if their marriage confirmation application is rejected. So far, the public thinks that children born from unregistered marriages whose marriage confirmation is rejected are illegitimate

children, because if only seen without being based on the law, the unregistered marriage carried out by both parents of the child is invalid. However, it is different if reasoned with the existing law, the child is categorized as a legitimate child of both parents. Therefore, this study is an insight into the public that not always children born from unregistered marriages or underhand marriages whose marriage confirmation application is rejected are illegitimate children.

4. Conclusion

Based on the description above, the author puts forward the following conclusions:

1. Based on the Civil Code, Positive Law applicable in Indonesia, and the Compilation of Islamic Law, the consideration of the Singaraja Religious Court Judge No. 46/Pdt.P/2023/PA.Sgr regarding the rejection of the application for marriage validation due to the unregistered marriage represented by the older sibling of Applicant II is correct. This rejection is a form of caution by the Singaraja Religious Court Judge in deciding a case. The author agrees with the results of the determination because it is a form of caution so that in the future there will be no benefit or harm.
2. The marriage conducted by the applicants in case No. 46/Pdt.P/2023/PA.Sgr is categorized as a *fasid marriage or invalid marriage*, which means that in this marriage there is a defect or damage to the pillars of the marriage. Regarding the impacts experienced by the husband, wife, and children born from this marriage, the solution that can be taken is to remarry at the local KUA so that the marriage is valid both in the eyes of religion and the state. In addition, regarding the status of the child, this can be done by submitting an application for the origin of the child to the local Religious Court. Meanwhile, regarding the absence of norms that occur in the validation of marriage, Cicero's teachings are used, namely *ubi societas ibi ius*, which means where there is society, there is law. So with so, emptiness law viewed No Once There is.

5. Recommendation

The suggestions that can be given are as follows:

1. For the Office of Religious Affairs
To executor Officer Marriage Registration Office (PPN) or Religious Affairs Office for maximize about importance recording marriage with method dissemination information through seminars or socialization as well as counseling about importance recording marriage For the life that will be come Good That regarding marital status That alone, children's status and also property acquired in a marriage under hand the.
2. For the Community
 - a. Need existence straightening thinking public that fulfil terms and conditions in marriage is very important and influential to legitimate or whether or not a marriage.
 - b. Society needs add outlook about importance recording marriage which is one of the element important use get a protection and certainty law.
3. For the Judges of the Singaraja Religious Court
With rejected application about The Marriage Confirmation, for the Singaraja Religious Court Judge in inspect application as well as before to drop determination

to remain apply principle caution and attitude firmly so as not to the occurrence smuggling law continuously.

1. For Applicants

For Petitioner I and Petitioner II, please: quick to record his marriage with do marriage repeat in accordance procedures of the Office of Religious Affairs (KUA) and submitting application origin children at the local Religious Court in order to obtain certainty of status law.

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