

LEGALITY OF MINOR MARRIAGE ACCORDING TO POSITIVE LAW IN INDONESIA

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Abstract

This study aims to analyze the legal aspects of the legality of underage marriage according to positive law in Indonesia. This research is Normative Empirical, namely research by looking at the conditions in the field by linking the legal sources of the regulations in force in the Republic of Indonesia. The benefits that will be received from the results of this study are to find out and analyze the mechanism of marriage in court. To find out and analyze the existence of marriage. The results of the study indicate that first, the results of the study indicate that the application for marriage is the method taken by both husband and wife or one of the husband and wife, children, guardians, marriage and other parties with an interest in the marriage by submitting an application to the Religious Court/Syar'iyah Court in the jurisdiction where the applicant resides, accompanied by clear and concrete reasons and interests in which the application is voluntary. Second, the application for marriage is one way that can be taken for purposes and to complete the Administration of Marriage Book Management and Population Administration which will ultimately have implications for the inheritance rights of the wife/husband and children from the marriage. All of which have a purpose to protect the rights between husband and wife and the children born of the marriage.

Keywords: Legality, Child Marriage, Minors

1. INTRODUCTION

1.1 Background

Marriage is a legal action that has legal consequences. Indonesia provides rules about whether or not a legal act is determined by positive law. Marriage Law No. 1 of 1974 and the Compilation of Islamic Law are the basic provisions regarding marriage registration and marriage certificates. The implementation of marriage in Indonesia must be carried out according to the procedures stipulated by the applicable laws and regulations, so that if it is not done so, then the marriage carried out is only under the hands or commonly referred to as customary marriage.

In the provisions of Article 2 of Law No. 1 of 1974 it has been emphasized that every marriage must be registered according to the applicable laws and regulations. In line with that, the Compilation of Islamic Law also states that marriages carried out outside the supervision of the marriage registrar have no legal force and marriages that are declared valid can only be proven by a marriage certificate.¹ Law Number 1 of 1974 also states that a marriage is legal if it is carried out according to that religion and belief, besides that marriage must be recorded according to applicable regulations. The recording of each marriage is the same as recording important events in a person's life, such as births, deaths which are stated in certificates, an

official certificate which is also included in the register of records. So it is clear that there is a need to register a marriage in terms of formality. Marriage registration for those who carry out their marriage according to Islam is carried out by the Marriage Registrar at the Office of Religious Affairs (KUA) as referred to in Law Number 32 of 1954 concerning marriage registration, divorce and reconciliation.²

People who want to get married must notify their wishes to the Marriage Registrar or to P3 NTR³ which covers the place where the marriage contract will take place as stated in the provisions of Article 5 of the Regulation of the Minister of Religion Number 3 of 1975 concerning the obligations of Marriage Registration Officers and the work procedures of the religious courts in implementing the marriage laws and regulations for those who are Muslim.⁴ In the provisions of the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, it is stated that marriages are carried out after the tenth day since the announcement of the marriage will by the Marriage Registrar. The marriage procedure is carried out according to the law of each religion and belief. By observing the marriage procedure according to each religious law and belief, the marriage is carried out before the Registrar and is attended by two witnesses.⁵

Shortly after the marriage takes place in accordance with legal provisions, the bride and groom sign the marriage certificate which has been prepared by the Marriage Registrar based on applicable regulations.⁶ The marriage certificate, which has been signed by the bride and groom, is then also signed by the two witnesses and the Registrar who attended the marriage and for those who carry out the marriage according to the Islamic religion, it is also signed by the marriage guardian or his representative. By signing the marriage certificate, the marriage has been officially registered.⁷ The marriage certificate is made in 2 (two) copies, the first piece is kept by the Registrar, the second is kept at the Court Registrar in the area where the Marriage Registration Office is located. The husband and wife are each given a marriage certificate.⁸

After the issuance of the provisions of the Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the legal provisions for the age limit of men have reached the age of 19 (nineteen) years and the women have reached the age of 16 (sixteen) years have been made changes in which marriage can only be permitted and or carried out when the age limit for men and women has reached the age of 19 (Nineteen) years.⁹ The legal provisions for the age limit of the child as confirmed in the provisions of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage will essentially be fulfilled if the conditions and conditions are good, or with other words in a non-urgent condition with the understanding that if a child who has not fulfilled 19 years has the patience to wait until the child is an adult (until he is 19 years old). On the other hand, if a child is impatient to get married, even though it is known that the age of the child has not reached the age of 19 years, then in accordance with the applicable legal provisions, the parent of the male and/or the parent of the female may request a dispensation from the Court.¹⁰ The birth of the provisions of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 which has outlined that the age to be allowed to marry for men and women is 19 years, making the community / young people who

will carry out marriages legally valid by the State become constrained. Regardless that the community / young people who will carry out this marriage have been pregnant first or not. Underhand marriage (siri marriage) is a solution offered when at the time of the marriage, the prospective bride is already pregnant. The steps taken by carrying out an underhand marriage (marriage siri) will certainly provide more benefit than waiting until the child is born before getting married. Although the marriage was not registered at the local Office of Religious Affairs (KUA). Marriages that are carried out outside the supervision of the Marriage Registrar do not have legal force, but marriages that occur before the enactment of Law No. 1 of 1974 (not yet received a marriage certificate), can submit a marriage certificate to the Religious Court. Furthermore, after the age limit of the husband and wife who carried out the marriage under the hands (nikah siri) has reached the age of 19 (nineteen) years, then this married couple (marriage siri) can apply for Itsbat Nikah to the local Religious Court in the area of residence. the husband and wife pair (sirri marriage). Itsbat Nikah is a method or method for determining the validity of a marriage that has not been registered at the local Religious Affairs Office or Civil Registry Office, in accordance with the applicable legal provisions. Isbat nikah is a combination of two words, namely isbat and marriage. Isbat is a masdar word taken from a word which means determination.¹¹ While the word marriage is an inner and outer bond between a man and a woman as husband and wife and aims to form a happy and eternal family based on the Almighty God. From the merging of the two sentences above, it can be interpreted that the marriage isbat is a determination by the court of a bond or contract that allows husband and wife relations to occur as formulated in the Indonesian dictionary that isbat marriage is a determination of the truth (legitimacy) of marriage.¹² The provisions that form the legal basis for marriage isbat is contained in the Compilation of Islamic Law (KHI) book 1 article 7 which contains article 64 of the Marriage Law No. 1 of 1974 concerning marriage which is qualified as a legal remedy called marriage isbat. Article 7 of the Compilation of Islamic Law (KHI) states:

"Marriage can only be proven by a marriage certificate made by a marriage registrar.

In fact, in the jurisdiction of Labuhanbatu Regency there are still many marriages that are not registered at all and or do not get a marriage book / certificate. Based on the pre-research that was conducted, the unregistered marriage was motivated by several factors, namely because the age of the bride and groom who was not yet 19 years old and the background of the position of the bride and groom who did not have the economy to carry out the wedding so they chose a simple process. With regard to problems like this, Marriage Itsbat is a method or method of determining the validity of a marriage that has not been registered at the local KUA, in accordance with applicable legal provisions. Therefore,

1.2 Formulation of the problem

Based on the explanation of the description stated above, the main issues to be researched and discussed in this paper are as follows:

- 1) What is the procedure for legalizing the marriage of minors in the Religious Courts?
- 2) How the legality of child marriage according to positive law in Indonesia?

1.3 Research purposes

In accordance with the formulation of the problem that has been stated, the objectives of this research are as follows:

- 1) To find out and analyze the procedures for legalizing the marriage of minors in the Religious Courts.
- 2) To find out and analyze the legality of child marriage according to positive law in Indonesia.

2. RESEARCH METHODS

The research method is an important factor in research in order to obtain data and results that are in accordance with the research objectives. The research method will also be able to influence and at the same time facilitate the development of data, so that the preparation of legal writing will be in accordance with the scientific method. This research is Normative Empirical, namely research by looking at the conditions that exist in the field by linking the legal sources of the regulations in force in the Republic of Indonesia. In this research, the research method used is a literature study technique in the form of document studies and other supporting techniques, namely examining existing documents namely by collecting data and information from books, scientific essays, laws and regulations and other written materials related to this research, namely by searching, studying and recording and interpreting matters relating to the object of research.¹³

Considering that this research focuses on secondary data, data collection is taken by conducting field research, literature and document studies. In data collection, as much data as possible is obtained and collected on issues related to this research.

3. DISCUSSION

3.1 Procedures for Legalizing the Marriage of Minors in Religious Courts

Legalizing a Marriage what is meant is the legal effort taken to legalize the marriage of minors, namely by filing a Marriage Itsbat. Itsbat Marriage is a method or method in determining the validity of a marriage that has not been registered at the local KUA, in accordance with the applicable legal provisions. Isbat nikah is a combination of two words, namely isbat and marriage. Isbat is a masdar word taken from a word which means determination.¹⁴ While the word marriage is an inner and outer bond between a man and a woman as husband and wife and aims to form a happy and eternal family based on the Almighty God. From the merging of the two sentences above, it can be interpreted that the marriage isbat is a determination by the court of a bond or contract that allows husband and wife relations to occur as formulated in the Indonesian dictionary that isbat marriage is a determination of the truth (legitimacy) of marriage.¹⁵

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1974 concerning marriage which is qualified as a legal effort called marriage isbat. Article 7 of the Compilation of Islamic Law (KHI) states: "Marriage can only be proven by a marriage certificate made by a marriage registrar.

In Book II of the 2010 Edition of the Technical Administration and Technical Guidelines for Religious Courts, it is stated that the process of submitting, examining and completing applications for marriage ratification / marriage itsbat must guide the following matters:

1. The application for itsbat marriage can be made by both husband and wife or one of the husband and wife, children, guardians, marriage and other parties with an interest in the marriage to the Religious Court/Syar'iyah Court in the jurisdiction where the applicant resides, and the application for itsbat marriage must be completed. with clear and concrete reasons and interests.
2. The process of examining the application for itsbat marriage submitted by both husband and wife is voluntary, the product is a determination. If the contents of the stipulation reject the application for itsbat marriage, then the husband and wife together or husband and wife can each file an appeal.
3. The process of examining the application for itsbat marriage submitted by one of the husbands or wives is contentious by placing the wife or husband who does not submit the application as the Respondent, the product is in the form of a decision and against the decision an appeal and cassation can be filed.
4. If in the process of examining the application for itsbat marriage in numbers (2) and (3) above it is known that her husband is still bound in a legal marriage with another woman, then the previous wife must be made a party in the case. If the Petitioner does not want to change his application by including his previous wife as a party, the application must be declared unacceptable.
5. Applications for itsbat marriage made by children, marriage guardians and other interested parties must be contentious, by placing the husband and wife and/or other heirs as the Respondent.
6. The husband or wife who has been abandoned by their wife or husband, may submit an application for itsbat marriage contentiously by placing the other heirs as the Respondent, the product is in the form of a decision and an appeal and cassation can be sought on the decision.
7. In the event that the husband or wife who is left behind in death does not know that there are other heirs other than himself, the application for itsbat marriage is submitted voluntarily, the product is in the form of a determination. If the application is rejected, the Petitioner may file a cassation.
8. Other people who have an interest and are not a party to the case for the application for itsbat marriage referred to in points (2) and (6), may take a fight to the Religious Court/Syar'iyah Court which decides, after knowing that there has been a determination of itsbat marriage.

9. Other people who have an interest and are not a party to the case for the application for itsbat marriage referred to in numbers (3), (4) and (5), can apply for intervention to the Religious Court/Syar'iyah Court which examines the case for itsbat marriage as long as the case has not been decided. .
10. Other parties who have legal interests and are not parties to the case for the application for itsbat marriage referred to in numbers (3), (4) and (5), while the application has been decided by the Religious Court/Syar'iyah Court, may file a lawsuit for annulment of marriage which has been ratified by the Religious Court/Syar'iyah Court.
11. The Chairperson of the Panel of Judges 3 (three) days after receiving PMH, makes PHS and at the same time orders a substitute bailiff to announce the application for ratification of the marriage 14 (fourteen) days from the date of announcement in printed or electronic mass media or at least announced on the announcement board of the Religious Courts / Syar'iyah Court.
12. The Panel of Judges in determining the trial day no later than 3 (three) days after the end of the announcement. After the announcement day ends, the Panel of Judges immediately sets a trial day.

In addition to the legal procedures as mentioned above, marriage isbath can only be carried out for marriages between the two of which are the first marriages and there is no other legal wife from the other. The manLikewise, the wife has never been bound or has never married before and has never had another husband and between the married couples who are married in the Islamic religion there are no obstacles or prohibitions on marriage. What is meant by hindrance or prohibition of marriage is the prohibition to marry (marry) between a man and a woman based on the provisions of syarak. Barriers to marriage or mawani' an-nikah are matters of ties between a man and a woman that prevent marriage from occurring and it is forbidden to perform a marriage contract between the two.¹⁶

Furthermore, the conditions that are entitled to apply for a marriage certificate include: ¹⁷

- a) Husband or wife
- b) Their children
- c) guardian of marriage; and
- d) The parties with an interest in it.

The provisions that have been stated above show how important it is to register a legal marriage to protect the rights between husband and wife and the children born of the marriage. Marriage registration is also in the interest of the orderly population administration in Indonesia.

3.2 Legality of Child Marriage according to Positive Law in Indonesia

Marriage in Islam is intended to fulfill one's inner needs in a lawful manner and to carry out their offspring in an atmosphere of mutual love (mawaddah) and affection (rahmah) between husband and wife.¹⁸ Marriage is also a method chosen by God as a way for humans to have children and preserve their lives, after each partner is ready to play a positive role in realizing the purpose of marriage.¹⁹

Article 4 of the Compilation of Islamic Law affirms that marriage is legal if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1974 concerning Marriage.²⁰ Furthermore, in order for a marriage to take place, Article 14 of the Compilation of Islamic Law states that in terms of carrying out a marriage there must be: a prospective husband, a prospective wife, a guardian of marriage, two witnesses, and an Ijab and qabul.²¹ The importance of legal marriage registration is to protect the rights between husband and wife and children born from the marriage. Marriage registration is in the interest of orderly population administration in Indonesia. Marriages that are not registered at the local KUA, even though their religion or belief is considered valid, but marriages that are carried out outside the knowledge and supervision of the marriage registrar do not have permanent legal force and are not recognized in the eyes of state law. In Article 7 of the Compilation of Islamic Law (KHI) it has been stated that marriage can only be proven by a marriage certificate made by a marriage registrar.²²

As for legal remedies that can be taken when previously someone's marriage was not or has not been registered at the local KUA, namely by submitting a marriage isbath at the local Religious Court which covers the domicile of the bride and groom. In practice, based on research at the Rantauprapat Religious Court, several examples of cases were motivated by the age position of the bride and groom who were not yet 19 years old at the time of marriage, as listed in Case Register 177/Pdt.P/2021/PA.RAP which was registered with the Registrar of the Rantauprapat Religious Court. In his application as register of cases 177/Pdt.P/2021/PA.RAP stated that the reason for submitting the marriage isbath is because the bride at the time of marriage did not meet the age required by law, so that when the application was submitted both the bride and groom were of sufficient age and really need the Determination of Marriage Isbath from the Rantauprapat Religious Court as proof of the marriage between Petitioner I and Petitioner II, for the purposes and for the completeness of the Administration of Marriage Book Management and Population Administration on behalf of the Petitioners. In another case, the background of the position of the bride and groom who does not have the economy at all to get married at the time of the marriage is as stated in the Case Register Number: 218/Pdt.G/2022/PA.Rap. In this case, the Petitioner filed a marriage certificate at the same time as a divorce for and for administrative purposes and completeness because the husband and wife had been separated for 5 years in which their previous marriage was not registered and/or not registered at the local KUA. In addition to the examples mentioned above, in the case register number 41/Pdt.G/2022/PA.Rap which is also registered at the Rantauprapat Religious Court, the applicant submits an isbath marriage after the death of her husband and the Respondent's biological child of her late husband. The purpose of submitting the marriage isbath is as a condition of the applicant's authority in the capacity as a wife to use and to take a number of funds deposited by her late husband in a private bank.

From the several examples of cases mentioned above, it shows that if the previous marriage was not registered and or not registered at the local KUA, then the application for marriage isbath is one way that can be taken for purposes and for the completeness of the Marriage Book Management Administration and Population Administration which in the end will have implications for the inheritance rights of the wife/husband and children from the marriage.

With regard to the application for marriage isbath which is based on the birth of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage which at the time of the marriage between a man and a woman the age has not yet reached 19 years, that the Panel of Judges of the Rantauaprat Religious Court agrees with the opinions of Islamic law experts in which the judge takes legal considerations in his stipulation are as follows:

- 1) In the Book of Fath al-Mu'in, page 91, explains that: "The pledge (confession) of a mukallaf who is not forced to be legally accepted";²³
- 2) In the Book of I' Anah Al-Thalibin, Juz 2 page 308, it is explained that: "It is acceptable for a mature and reasonable man to admit his marriage to a woman, and vice versa the wife confirms the confession";²⁴

In line with this, in the provisions of Article 2 paragraph 2 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 Jo. Article 5 of the Compilation of Islamic Law, that in order to create legal certainty and orderly state administration, the purpose of the application for marriage isbath is to ratify the marriage with the aim that the marriage can be recorded, so that proof of marriage can be obtained in the form of a Marriage Certificate Book / Quotation. Thus, marriages carried out according to Islam are considered valid, but in the eyes of the state the marriage is considered invalid and never existed so that it has implications for the position of inheritance rights for the husband and wife and/or the child they are born with. On the other hand, with the determination of the Religious Courts regarding the legality of one's marriage through the legal effort of marriage isbath in the Religious Courts, marriages carried out according to Islam have been considered valid in the eyes of state law and will have implications for the position of inheritance rights for the husband and wife and/or children who born. The provisions that have been stated above show how important it is to register a legal marriage to protect the rights between husband and wife and the children born of the marriage. Marriage registration is also in the interest of the orderly population administration in Indonesia.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusion

Based on the descriptions of the previous chapters, the following conclusions can be drawn:

1. The results of the study indicate that to legalize the marriage of minors, the application for marriage isbath is one way that can be taken for purposes and to complete the Marriage Book Management Administration and Population Administration which will ultimately have implications for the inheritance rights of the wife/husband and children of the the result of the marriageall of which have a purposeto protect the rights between husband and wife and the children born of the marriage.
2. With the stipulation of the Religious Courts concerning the legality of one's marriage through the legal effort of marriage isbath in the Religious Courts, then marriages carried out under the age of / according to Islam have been considered valid in the eyes

of state law and will have implications for the position of inheritance rights for the husband and wife and/or against child born

4.2 Suggestions

Based on the conclusions above, the authors provide the following suggestions:

1. The government needs to pay attention again to the age limit for marriage based on the provisions of the legislation and the amount of administrative costs for marriage.
2. It is hoped that the government will play an active role in providing legal education on marriage, especially in the jurisdiction of Labuhanbatu Raya Regency.

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2. Legislation;

- ❖ Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.
- ❖ Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974;
- ❖ Regulation of the Minister of Religion Number 3 of 1975 concerning the obligations of Marriage Registration Officers
- ❖ Government Regulation Number 9 of 1975.
- ❖ Presidential Instruction No. 1/1991 on the Compilation of Islamic Law.

3. Verdict:

- ❖ Rantaprapat Religious Court Decision No.218/Pdt.G/2022/PA.Rap;
- ❖ Rantaprapat Religious Court Decision No.41/Pdt.G/2022/PA.Rap;
- ❖ Rantaprapat Religious Court Decision No.177/Pdt.P/2021/PA.Rap