



MUI Fatwa Number 10 of 2008 Concerning Unrecorded Marriages From Islamic Legal Sociological Perspective

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Abstract. This article discusses the MUI Fatwa Number 10 of 2008 concerning Unregistered Marriages from the Sociological Perspective of Islamic Law, using a literature research method that explores the norms in the MUI fatwa Number 10 of 2008 concerning Unregistered Marriages. Sociological Perspective of Islamic Law with Problem Formulation. What is the sociological review of Islamic law regarding MUI fatwa MUI Fatwa Number 10 of 2008 with the results of research on marriage under the hand in Indonesia in accordance with the MUI Fatwa No. 10 of 2008 concerning marriage under the hand, which is legally valid as long as the requirements and harmony of marriage are fulfilled, because there are still many Indonesian Muslim communities who are below the poverty line, living in a very remote area, plus the bureaucratic regulations regarding marriage and polygamy are still difficult. However, under normal conditions the law is haram, this is to avoid harm that has a negative impact on the wife and children's future and to achieve benefits in human life. For this reason, marriage registration is very important and mandatory under normal conditions. The influence of sociology in this article is related to human activities based on moral issues which are influenced by culture, economics and so on.

Keywords: MUI Fatwa, Unregistered Marriage, Sociology of Islamic Law

1. Introduction

Marriage is a spiritual and physical bond between a man and a woman that is institutionalized in a strong institution, recognized both religiously and legally. Marriage according to Islam is a strong and sturdy sacred agreement to legally live together between a man and a woman to form an eternal family, courteous, loving, peaceful, happy and eternal. Article 2 of the Compilation of Islamic Law (KHI) provides the definition of marriage according to Islamic law as marriage, namely a very strong contract or *miitsaaqan ghalizhan* to obey Allah's commands and doing so constitutes worship. Based on the Koran and Hadith, *Jumhur ulama* concluded that the pillars of marriage are the prospective husband, prospective wife, marriage guardian, and consent and *qabul*. Meanwhile, two witnesses, the number of *ulama*, placed conditions. (Aljarofi and E-mail, 2019)

Meanwhile, according to Imam Hanafi, it is only consent and *qabul*. Meanwhile, the conditions for a marriage to be valid are that the husband and wife have no ancestry relationship, the consent agreement is not limited by time, there is testimony, there is no coercion, there is clarity about the future husband and wife, they are not in *ihram*, there is a dowry, there is no agreement to hide the marriage contract, one of which is The prospective bride and groom are not suffering from chronic diseases, and there is a guardian. Looking at the criteria for harmony and marriage requirements above, there is no mention of marriage registration. The presence of witnesses is considered to strengthen the validity of a marriage. Relevant parties cannot violate a contract that has already occurred. It could be that this is based on the fact that none of the marriages during the time of the Prophet Muhammad were

recorded. Even in classical jurisprudence books there is no discussion about marriage registration. (Zuhrah, Husnah, 2020)

The discussion of marriage registration in Indonesia is discussed in Law No. 1 of 1974 in chapter II, article 2 concerning marriage, which states that marriage registration is carried out using various procedures. This is made clear in KHI (Compilation of Islamic Law) article 5 (1) which states, "In order to ensure marital order for the Islamic community, every marriage must be recorded." Likewise, article 6 (2) states that "Marriages conducted outside the supervision of Marriage Registrar Employees have no legal force." However, in practice, many marriages in society still do not refer to this law, and there are still many marriages that have not been registered, because most of these marriages are carried out based on the rules of Islamic law. As a consequence, legal choices in the family sector tend to be left to personal authority and religious demands that must be obeyed, for example marriages that are not registered, or what is usually called sirri marriage or private marriage. (Hamdani, Mansar and Erwinsyahbana, 2022)

These unregistered marriages are considered valid by some groups because they fulfill the criteria for marriage validity, namely the fulfillment of the harmony and conditions of marriage. However, there are also some groups who say that marriage should be reviewed, because it can cause problems in marriage and be detrimental to women and children. For this reason, the author is interested in discussing this problem, and the author will use the Intiqai method or ijihad in writing this paper. Ijtihad Intaqa'I is by re-examining (re-ijihad) the results of the ijihad of previous scholars along with their postulates which are the legacy of classical jurisprudence, then comparing them with each other, then choosing which of these opinions is stronger (tarjih). According to al-Qardhawi, in choosing the strongest opinion when carrying out ijihad intiqai'iy, a contemporary mujtahid must consider other factors, such as; socio-political changes at the national and international levels, the development of modern science, as well as the demands and needs of the times. The problem formulation in this paper is: What is the sociological review of Islamic law regarding the MUI fatwa, MUI Fatwa Number 10 of 2008?

2. Methods

This research is library research whose research source comes from reading books and references in the library. This research is library-based legal research which examines legal literature which is also called normative study research. which discusses norms or rules from the procedure for making them, to the trial for making them and to the results of the decision on these norms. Data sources in this research are divided into two types, namely primary sources and secondary sources. Primary sources are sources obtained first hand or can also be called the main source of the research object. In relation to this author's research, the primary source that the author uses is MUI Fatwa Number 10 of 2008 concerning Unregistered Marriages. The secondary sources are the second source. Secondary sources related to Unregistered Marriages and the Sociology of Islamic Law are verses from the Koran on marriage, the Sunnahs of the Prophet Muhammad regarding marriage, and articles on marriage according to the sociology of Islamic Law. (Nasution, 2007)

Data Collection Method: The data contained in the primary sources and secondary sources above is then collected by the author in the following order: a. Read primary sources and secondary sources related to the object being studied and it is possible to answer the research questions that have been raised previously. b. Take notes and write down information adapted from the reading results in a note book (special notebook). c. Classify the notes according to the research theme which has been systematized according to the

provisions of scientific writing. Data Analysis Method: After the data has been collected and has been properly systematized, the next step is to carry out an analysis of the data. Data analysis is carried out in various ways, including by describing the data longer and in more detail (descriptive) and comparing one data with other data (comparative). (Tan, 2021)

3. Results and Discussion

3.1. Definition of unregistered marriage

According to fiqh experts, marriage is a contract regulated by religion to give a man the right to own and enjoy the vagina and all of the woman's body and form a household. The property right in question is milk al-intifa' (the right to use an object), therefore the marriage contract does not give rise to milk al-rraqabah (the right to own an object that can be transferred to anyone) nor does it give rise to milk almanfa'ah (the right to have benefits that may be transferred to another party). According to Law No. 1 of 1974, chapter 1, article 1, it 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 based on the one and only God. Unregistered marriages are also known as underhanded marriages, but some people also call them unregistered marriages. (Hamdani, Mansar and Erwinsyahbana, 2022)

An unregistered marriage is a marriage that is valid in accordance with the provisions of Islamic law, but has not been registered, so it has not been registered at the Religious Affairs Office where the marriage took place. In the fatwa of the Indonesian Ulema Council (MUI) number 10 of 2008, the term underhanded marriage is referred to as "a marriage that fulfills all the pillars and conditions stipulated in fiqh (Islamic law) but without official registration at the competent authority as regulated in statutory regulations. ". The Muhammadiyah Tarjih Council in its fatwa session on Friday, 8 Jumadil Ula 1428 H / 25 May 2007 AD referred to the term sirri marriage. (Syofiyullah, Susanti and Setiawan, 2023)

Sirri marriage is known to the Indonesian people today as a marriage that is carried out in compliance with the pillars and requirements set by the religion, but is not registered at the Office of Religious Affairs (KUA), so it does not have a marriage certificate issued by the government. According to Nahdhatul Ulama (NU), in its Bahtsul Masail, marriage is under the hand, namely a form of marriage that meets the pillars and conditions set by Islamic law, even without official registration at the KUA. Even though this sirri marriage is religiously legal, administratively the marriage still does not receive recognition from the government. Therefore, all consequences arising from the existence of an unregistered marriage cannot be processed legally. (Fakhrudin, 2015)

Among Arabs it is known as al-Zawaj al-urfi, "urfi, which is a new term intended for marriage contracts that are not documented by an official certificate, whether written or not" or "Every marriage contract, complete with the pillars and conditions of marriage according to the Shari'a, whether it is documented through notes or not, but the contract is not recorded in a document through an official institution.(Wahyudi, Hanani and Nofiardi, 2023)" So from the definitions above, it can be concluded that an unregistered marriage is a marriage that is carried out in accordance with the pillars and conditions of marriage but is not registered with an official institution, namely the Office of Religious Affairs (KUA).

3.2. Legal consequences of unregistered marriages

Marriage registration has several benefits, namely as a way to obtain formal legal protection and facilitate other legal actions related to marriage, for example in terms of the transfer of civil rights and ensuring security from the possibility of forgery and fraud by one of the partners. The legal consequences of an unregistered marriage is the absence of legal

recognition of the event of a marriage that took place, resulting in the rights claims of each party entering into the marriage not being resolved, the legal status of the wife and children from an unregistered marriage being unclear as well as the wife and children from an unregistered marriage was recorded as not having the right to support and inheritance if there was a divorce, or if her husband died (Marni, Hanani and Nofiard, 2023). Tragically, the child she gave birth to was also considered an illegitimate child according to state law. (Fakhrudin, 2015)

3.3. Fatwas regarding unregistered marriages

A fatwa is an answer in the form of a legal product that is born or issued because of problems in society. Fatwa can also be interpreted as an answer (decision, opinion) given by a mufti about a problem, or advice from a pious person, or good lessons and advice. a. Classic Fatwa The majority of fuqaha consisting of Hanafiyyah, Syafiiyyah and Hanabilah are of the opinion that unregistered marriages are legal and permissible. In this opinion, a marriage is considered valid with the presence of a guardian and two fair witnesses. This is different from the opinion of Ibn Hazm, Ibn Mundzir, and Dawud al-Dhahiri who consider that unregistered marriage is makruh. Ibn Qudamah narrated that Umar bin Khathab, Urwah, and a number of the Prophet's companions also confirmed it (Liza, Hanani and Nofiard, 2023). Friends and scholars who condemn sirri marriages are based on hadiths that recommend wedding celebrations. as the hadith of the Prophet said: "Announce this marriage. Place it in the Mosque. Strike the tambourine. And slaughter an animal, even if it's just a goat." (Bulan, 2021)

This word of the Prophet is a recommendation and not a binding command so that marriages that are kept secret are makruh. In contrast to the two opinions above, Malikiyyah believes that unregistered marriages are haram based on the hadith which means: The difference between what is halal and what is haram in marriage is the sound of the tambourine and the sound of celebration. This hadith is understood by the Malikiyyah as a binding command (al-amr al-mulzim) to celebrate a wedding, even if it is simple, so that the wedding celebration and announcement become one of the requirements for the validity of the marriage. By celebrating and announcing it, the wider community will know that the bride and groom have officially married. (Syofiyullah, Susanti and Setiawan, 2023)

According to Malikiyyah, guardianship and witnessing alone are not enough to fulfill the requirements for the obligation to announce and celebrate a marriage. b. MUI Fatwa Number 10/2008 Concerning Underhand Marriage The MUI Fatwa regarding underhanded marriage number 10 of 2008, was decided simultaneously with the Ijtima' Ulama of the Indonesian Fatwa Commission on 28 Rabiul Tsani 1427 H or 26 May 2006 in Jakarta. The background to the issuance of this fatwa legal product is because unregistered marriages or marriages under maids often occur which are not registered in accordance with the provisions of the law, thus causing a negative impact on the wife and children who are born. (Hamdani, Mansar and Erwinsyahbana, 2022)

The results (content) of the fatwa of the Indonesian Ulema Council are as follows: a. General provisions: Underhand marriage referred to in this fatwa is a marriage that fulfills all the pillars and conditions stipulated in fiqh but without official registration at the authorized agency as regulated in statutory regulations. b. Legal Provisions: 1). Underhand marriage is legally valid because the conditions and pillars of marriage have been fulfilled, but it is haram if there is mudharat; 2). Marriages must be officially registered with the competent authority, as a preventive measure to prevent negative impacts (Hizbullah, Hanani and Nofiard, 2023).

3.4. Provisions of the Fatwa of the Indonesian Ulema Council regarding unregistered marriages

Marriage is not only based on the dimensions of religious law, but also the dimensions of state law must also be heeded, such as the provisions of the law regarding marriage registration. Underhand marriage Private marriages are still considered valid according to religious law. Because what determines whether a job is valid, including a marriage contract, is whether or not the terms and conditions of marriage are fulfilled. However, it is necessary to register the marriage. In the marriage law there are two general rules, namely as follows: a. Sharia regulations. These are the regulations that determine whether a marriage is valid or not. These regulations are regulations that have been established by syara' which relate to the terms and conditions of marriage. b. Tawsiqy regulations. This is an additional regulation which means that Muslim marriages are not illegal, but are recorded using an official marriage certificate issued by the authorities. In this case, the use of recording is to avoid negative consequences that could harm each party. (Syofiyullah, Susanti and Setiawan, 2023)

3.5. Understanding the MUI Fatwa

In principle, the fatwa is not binding in the context of state law. In connection with the fatwa which states the connection between the harm aspect and the incident of underhanded marriage, it indirectly states that underhanded marriage is forbidden. This is proven by the sentence of the decision which states: "Marriage under the Hand is legally valid because the conditions and pillars of marriage have been fulfilled, but it is haram if there is harm" From the sound of this decision, it can be understood that the MUI basically does not expressly state that it is forbidden to marry under the hand, because the legal provisions regarding the prohibition of marriage under the hand are related only if there is a detrimental aspect. (Zuhrah, Husnah, 2020)

And the statement of the decision states: "Marriages must be officially registered with the competent authority, as a preventive measure to prevent negative/harmful impacts (saddan lidz-dzari'ah)" From these two aspects, private or unregistered marriages have negative impacts, so to avoid these negative impacts, prevention is carried out by registering marriages. So it can be concluded that the MUI views that marriage under the law is haram, but its legal status is still valid, because it has fulfilled the requirements and harmony of marriage.

3.6. Fatwa on Underhand Marriage from the perspective of the Sociology of Islamic Law

Marriage is something natural and human. Every human being who is physically and psychologically normal will of course experience a marriage phase. Because marriage is a basic human need to carry out the regeneration of life. In principle, marriage is proof of Islamic teachings to protect the lineage of mankind. So the marriage is arranged and carried out based on the provisions of the Shari'ah. The marriage practices that many religious communities carry out are in accordance with the times, the model of hand-to-hand marriage, this practice has existed since the early days of Islam, but it continues to develop and spread to become a tradition and culture that is deeply rooted in society. Some people consider that marriages that meet the requirements and harmony according to Islamic law are valid even if they are not registered in official government institutions. There are many causes of underhanded marriages, and the majority are motivated by social factors and general symptoms that occur in society. (Syofiyullah, Susanti and Setiawan, 2023)

Among the factors behind the occurrence of underhanded marriages include: First, husbands who wish to have polygamy, for civil servants or the like, must ask permission from their superiors, permission from their first wife, or seek approval from the religious court. According to husbands, this is very burdensome. Early marriage, restrictions on the age of

marriage in some areas are considered a barrier for young people who want to marry at an early age, as are economic factors that ensnare one party into the practice of early marriage. In Indonesia, the age limit for marriage is based on Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Third, husbands often travel out of town and for long periods of time, this phenomenon is often experienced by husbands who have extensive flying hours outside the city.

According to him, it is better to marry under one's hand than to cheat or commit adultery. The problem of dowries being very expensive and burdensome is that traditional customs in some regions in Indonesia impose burdensome dowries on men. Many husbands cannot afford to pay, but their future wives and guardians accept their future husband's condition, so private marriage is a solution for them. Private marriages are carried out because each partner does not know and does not want to know the legal procedures. This can happen to people in remote rural areas who rarely have contact with the outside world. This is different from certain congregational communities, for example, which consider that the Kiyai or congregational leader is the main reference in all matters including marriage matters.

As long as the chaplain has married them, the marriage is legal according to Islam and does not need to be registered. Private marriages are carried out to avoid costs and complicated administrative procedures. Usually this kind of marriage is carried out by immigrants who do not have ID cards. In Jakarta, it often occurs among immigrants who live in slums and are not settled. Apart from cost reasons, administrative reasons are also an obstacle. In the sociological aspect, namely the existence of social problems and negative impacts. In legal sociology, the view that law can only be understood by looking at the social system of society. If the marriage takes place, it will have a social impact that is harmful to the wife and children, therefore the MUI forbids it. To cover all forms that could result in damage to the values and social order of society, the MUI considers it necessary for the marriage to be registered at an official government institution. (Zuhrah, Husnah, 2020)

Official registration as regulated in Marriage Law number 1 of 1974 and the Compilation of Islamic Law (KHI) is also in line with one of the spirits of الشريعة مقاصد (goals of sharia), namely realizing human benefit by protecting it, as one of the goals of sharia to achieve and maintain public benefit. and reject harm. That official registration of marriages through government institutions is one of the aspects of dharuriyat (an important element) to safeguard offspring (hifdhu al-nasl). Indonesia as a developing country, the inequality of life is still very worrying, the level of economy and education is still low and the geographical distance of Indonesia's territory to this day still has many remote areas that have not been touched. These sociological facts are what caused the MUI to issue a fatwa. This sociological fact is in accordance with the fiqh principle "taghaiyur al-fatwa bi taghaiyur al-azman wa al-makan" (changes in fatwas due to changes in times and circumstances).(Hamdani, Mansar and Erwinsyahbana, 2022).

4. Conclusions

From the discussion above, the author concludes that marriage under the hand in Indonesia is in accordance with the MUI Fatwa No. 10 of 2008 concerning marriage under the hand, which is legally valid as long as the requirements and harmony of marriage are fulfilled, because there are still many Indonesian Muslim communities who are below the poverty line, living in very poor areas. remote, plus the bureaucratic regulations regarding marriage and polygamy are still difficult. However, under normal conditions the law is haram, this is to

avoid harm that has a negative impact on the wife and children's future and to achieve benefits in human life. For this reason, marriage registration is very important and mandatory under normal conditions. The influence of sociology in this article is related to human activities based on moral issues which are influenced by culture, economics and so on.

Acknowledgements

In the process of preparing this paper, the author realizes that this paper is still far from perfect. There are still shortcomings both in terms of writing and in terms of the material presented. Therefore, the author hopes for constructive criticism and suggestions from teaching lecturers and fellow readers, so that this paper can be improved in the future.

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