

Between Rules and Freedom : A Legal Perspective on Unregistered Marriages for Civil Servants

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Abstract. *This research aims to analyze the role of legislation in addressing cases of unregistered marriages conducted by Civil Servants (PNS). Utilizing a normative legal research method with a statute approach, this study employs library research, expert opinions, and an examination of Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990 concerning Marriage and Divorce Licenses for Civil Servants. These regulations have a hierarchy that refers to Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 on marriage. The perspective of this research is to evaluate the extent to which government regulations can control the functions and positions of civil servants as state apparatus faced with freedom of perspective, both from administrative, legal norms, and religious values.*

Keywords: *Unregistered Marriages, Civil Servants, Legislation*

1. INTRODUCTION

Marriage is a spiritual and physical bond between a man and a woman with the aim of building a household, finding a life partner, producing offspring, and mutually providing for each other's material and emotional needs. A marriage is considered valid if it is conducted in accordance with the laws of the respective religion or belief. This means that if a marriage meets the requirements and conditions of marriage and is accompanied by an exchange of vows, then the marriage is deemed valid according to the religion and beliefs of the community. The foundation of the Republic of Indonesia is Pancasila, thus marriage can also have a relationship with Pancasila. The first principle illustrates that marriage is closely related to religion, as it contains both physical and spiritual elements, with religion playing an important role within it. (Dwi Cahyani, 2020)

Marriage is recognized by the broader community because it is formed through various processes in accordance with customs, culture, and religion, thus binding it in a legitimate and sacred manner, which is then referred to as marriage. The legal principle of marriage in Indonesia falls under the category of non-absolute monogamy, commonly referred to as open monogamy. This is due to Law No. 16 of 2019 in conjunction with Law No. 1 of 1974 concerning marriage, which allows the validity of a marriage to depend on the legal provisions of each religion, and subsequently, each marriage must be registered by the state. Every religion certainly has its own characteristics in interpreting marriage; however, all of them will inevitably relate to the notion of a sacred covenant to form a

family between a man and a woman, or a man with several women. This is due to the conditions and requirements in religion that allow a man to marry two, three, or at most four women at one time. Particularly in Indonesia, the religion that permits these conditions and requirements is the majority religion, namely Islam.

Historically, the phenomenon of polygamy has indeed existed since pre-Islamic times. Before the time of the Prophet Muhammad, tribal leaders commonly practiced having multiple wives, with some reportedly having hundreds of them. (Izomiddin, 2018) This illustrates that in the pre-Islamic era, polygamy was a practice already established by ancestors. However, this practice was not fully regulated and lacked clear limitations. As a result, polygamy during that time was often conducted without regard for fairness and welfare for all parties involved, particularly for women.

The provisions regarding polygamy in the Marriage Law are found in Article 4, paragraphs (1) and (2). This law serves as a positive response to regulate a husband who wishes to marry more than one wife. (Masri, 2019) Polygamy is permitted under certain reasons, conditions, and procedures that do not contradict Islamic teachings. Similarly, the presence of the Compilation of Islamic Law regulates the provisions of polygamy for Muslims.

The main requirement in polygamy is the obligation to treat wives fairly, both in fulfilling their material and emotional needs, providing attention to the family, and demonstrating love and protection to create a harmonious relationship. For the public interest, specific reasons are necessary for polygamous marriages. For example, infertility in a woman or declining physical or mental conditions often triggers divorce more than polygamy.

Etymologically, the word "sirri" comes from Arabic, meaning "secret," "quiet," "silent," or "hidden," which is the opposite of "alaniyyah," meaning "public" or "open." The term "sirri" is then combined with the word "marriage" to form " marriage sirri," indicating a marriage that is conducted discreetly or covertly. The meanings of discreet and hidden give rise to two understandings: a marriage that is not announced to the public or a marriage that is unknown or unregistered with state institutions. The term "marriage sirri" as it has developed in society is similar to the term "Under-the-table marriage," which refers to a marriage process that adheres to the rules and regulations applicable in Islam (such as having a guardian, witnesses, and an exchange of vows).(A.Sobari, 2013)

The issue that arises when a Civil Servant (PNS) engages in polygamy without reporting the marriage to their superior, not following the procedures set by government regulations, and remaining undetected due to it being conducted secretly, is significant. On the other hand, PNS are expected to be responsible individuals, both to the state and themselves, as they have a moral obligation to the community and are expected to serve as role models in their actions, attitudes, and behaviors. To fulfill such obligations, the lives of Civil Servants must be supported by a harmonious, prosperous, and happy life. This ensures that each Civil Servant can perform their duties without being significantly disturbed by family issues. (Yuli, 2022)

Based on Government Regulation Number 10 of 1983, which has been amended by Government Regulation Number 45 of 1990, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and everlasting family based on the belief in the One and Only God. In this context, having more than one wife and divorce should be avoided as much as possible. Civil Servants, as part of the state apparatus and public servants, are expected to be good role models in behavior, actions, and adherence to applicable laws, including in the organization of family life. (Andi Airiza Rezki Syafa'at et al., 2024)

Polygamy conducted by Civil Servants is fundamentally not prohibited as long as it meets the requirements and conditions outlined in the legislation. Philosophically, juridically, and sociologically, the specificity of the establishment of Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990 consists of three aspects: 1) achieving a happy life based on the belief in the One and Only God, which is inseparable from religious values; 2) serving as a model for Civil Servants; and 3) fostering harmony, prosperity, and happiness to ensure that Civil Servants are free from issues that may arise within a family. (Siska Putriana et al., 2021)

Several factors contribute to the occurrence of secret marriages among Civil Servants. Internal employment factors, although less likely, can play a role in a Civil Servant's desire to engage in secret marriages. The eight-hour workday, five days a week, can reduce the intensity of communication between husband and wife. Additionally, promotions that require Civil Servants to be assigned outside their home area can lead to situations where they are far from their families. Especially during promotions, the individual may receive a significant salary increase compared to their previous position. The opportunity created by being away from family, combined with an increased income,

may lead the Civil Servant to feel capable of supporting more than one household and pursuing a secret marriage.

Various external factors can also encourage the desire to engage in secret marriages. The most common reason often cited is the wish to avoid committing adultery. In addition to increasing economic factors, there is also a perception that the marriage registration mandated by the Marriage Law is not a religious requirement. The most striking aspect, in this case, is when a male Civil Servant obtains approval from his legal wife for the secret marriage that has taken place and requests that this marriage not be reported to superiors or relevant officials, as it could tarnish their reputation and lead to severe disciplinary sanctions. Such sanctions may include demotion or loss of position, resulting in the loss of benefits and state facilities, thereby reducing the income allocated to the legal wife. This certainly poses a unique threat, as in employment records, the wife listed for family benefits is the legally recognized wife by the state.

In the context of secret marriages for Civil Servants, an alternative solution that can be proposed is for the government and all relevant stakeholders to promptly address the legal aspects governing marriage and employment status. This aims to provide clear legal protection for Civil Servants involved in secret marriages, both in terms of marital status and the family rights that arise. One practical step that can be taken is to clarify the regulations regarding the registration of legitimate marriages, including secret marriages, so that Civil Servants can obtain better legal protection concerning their marital status. In the future, to avoid potential legal issues, there needs to be stricter policies that provide legal certainty.

2. LITERATURE REVIEW

Civil Servants who wish to marry, divorce, or practice polygamy are regulated under Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990 regarding Marriage and Divorce Permits for Civil Servants. For a bachelor who is getting married for the first time, as well as for widows or widowers who are remarrying, it is mandatory to report their marriage to their superiors within a maximum of one year. In the case of divorce, a Civil Servant must obtain written permission from their superior before proceeding with the process in the Religious Court. Male Civil Servants intending to practice polygamy are required to secure written permission from their superiors, while female Civil Servants are completely prohibited from becoming second, third, or fourth wives.

In this context, it can be seen that the role of the state in controlling Civil Servants through legal mechanisms is not only viewed from the perspective of its duties and functions in bureaucratic administration and governance but also extends to the personal lives of Civil Servants, including their family life. Theoretically, law can be understood as a set of rules that positively regulate relationships between individuals and groups. According to John Austin, positive law is defined as the command of the sovereign. In practice, Austin emphasizes that positive law is created by those who hold sovereignty. Similarly, Hans Kelsen asserts that law consists of a set of norms aimed at regulating human behavior.(Hans Kelsen, 2009) Bronwen Morgan and Karen Young emphasize that law consists of regulations established by authorized entities and is supported by coercive power enforced by the state.(S.Purwandi, 2009)

Civil Servants are public servants who, according to their duties and functions, work for the government, are appointed by personnel officials, and are assigned tasks in either structural or functional positions within the government or other state duties, receiving compensation based on legal regulations. The role of Civil Servants is not only to fulfill their duties and functions to the state but also conversely, the state has the right and obligation to provide control over Civil Servants, covering several aspects such as strict recruitment and selection processes to produce qualified and competent individuals, supervision, performance evaluation, training and development, as well as establishing laws and regulations that require Civil Servants to comply with and adhere to the rules governing their behavior regarding discipline and the code of ethics for Civil Servants.

The code of ethics is a set of ethical values that must be upheld by every Civil Servant, serving as a foundation for governance, organization, and social interaction within the community. Therefore, the state regulates this through Government Regulation No. 42 of 2004 concerning the development of the corps spirit and the code of ethics for Civil Servants. The corps spirit regulated in this government regulation requires Civil Servants to uphold honor and serve as role models in their attitudes, behaviors, and actions while carrying out their official duties and daily interactions. The code of ethics is viewed as a foundation that can realize these ideals, and if a Civil Servant is involved and proven to have violated the code of ethics, they will face social sanctions, either privately or publicly. They may also receive recommendations from the officials conducting the investigation for disciplinary action. Civil Servants must be prepared to face the risks that arise from their work. The actions taken by Civil servants should continue to uphold positive values in maintaining the honor of their workplace.(Triyanti et al., 2022)

The Ethics of State Civil Apparatus contains moral teachings and principles of good behavior for government officials in carrying out their duties and actions in their positions. The ethics of Civil Servants serve as guidelines for the attitudes, behaviors, and actions of Civil Servants in performing their official duties as well as in everyday social interactions. The development of Civil Servants will be successful if accompanied by the implementation and application of ethics or codes of conduct in carrying out tasks and daily social interactions, including ethics in governance, ethics in organizations/agencies, ethics in society, ethics within oneself, and ethics towards fellow Civil Servants.

Government Regulation No. 94 of 2021 concerning the discipline of Civil Servants consists of three fundamental aspects in imposing disciplinary sanctions: 1) prohibitions, 2) obligations, and 3) attendance. These three controls are instruments that can be linked to the code of ethics mentioned above. The attitudes and behaviors of each Civil Servant are always monitored by their respective superiors and reported hierarchically, allowing for summons, investigations, and the imposition of disciplinary sanctions if a Civil Servant is proven to have committed a disciplinary violation.

3. METHODS

This research is a type of Normative Legal Research based on the Statute Approach, involving library research methods, expert opinions, and an analysis of Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 17 of 1990 concerning Marriage Permits for Civil Servants, which hierarchically refers to Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 on marriage.

4. RESULTS AND DISCUSSION.

Wife's Consent and Official Authority

Polygamy regulations for Civil Servants are not prohibited as long as they adhere to government rules regarding marriage and divorce permits for Civil Servants. Similar to polygamy rules for the general public, polygamy among Civil Servants is regulated more strictly. Civil Servants wishing to practice polygamy are specifically governed by Government Regulation No. 10 of 1983 and Government Regulation No. 45 of 1990. (Nisa & Hasan, 2022) Civil Servants cannot engage in polygamous marriages without permission from their superiors and cannot submit a request to the court without first obtaining written permission from the relevant authorities. Civil Servants are also not

allowed to be second, third, or fourth wives. This is stipulated in Government Regulation No. 45 of 1990 concerning Amendments to Government Regulation No. 10 of 1983 regarding Marriage and Divorce Permits for Civil Servants.

Literally, Government Regulation No. 10 of 1983 in conjunction with No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants does not specifically mention or regulate religious marriages that are not registered with the state, commonly referred to as "marriage sirri" (secret marriages). This has led many to exploit this opportunity to protect themselves from administrative penalties that could jeopardize their careers as Civil Servants.

The Indonesian Penal Code (KUHP) does not specifically regulate secret marriages; it only addresses adultery. Article 284 of the KUHP defines adultery as sexual intercourse conducted by a man or woman who is married with someone who is not their spouse. According to criminal law, adultery is understood in a much narrower sense than the act itself, as it can only occur if one or both parties are married. This differs from the communal and religious concepts of Indonesian society, where any form of adultery, whether the individuals are married or not, is considered a taboo that violates moral values. (Insani et al., n.d.)

Adultery can be subject to criminal penalties if there is a complaint from the spouse of the perpetrator. Without such a complaint, or without a report from the spouse who is the victim, the act of adultery is not considered a violation of the law. This differs from the communal and religious conceptions of Indonesian society, where the majority of the population is Muslim. (Sobari, 2019)

Interestingly, the absolute complaint offense in this article can actually protect a husband who is a Civil Servant to remarry by "securing" the legal wife who has that complaint offense, especially if the husband holds a significant position, benefits, and allowances that can "persuade" the legal wife not to report her husband's secret marriage. The common reason used is the fear that such a complaint could reduce income and damage the husband's reputation, ultimately affecting the monthly income and benefits for the wife. Thus, secret marriages conducted discreetly without publicity are considered a safe practice for male Civil Servants who wish to marry more than one, even without permission from superiors and without being registered with the state.

The situation also impacts the authority of officials when receiving reports of alleged disciplinary violations or codes of ethics related to secret marriages, especially when the report does not originate from the legal wife. This situation is akin to a double-

edged sword, where if an investigation is conducted, the authority of the officials or the inspection team is limited to imposing administrative sanctions. Proving a secret marriage requires documents or evidence based on the principle of legal certainty, which means it must go through court processes and be followed by administrative sanctions. On the other hand, if the alleged violation is not investigated, officials may be deemed negligent, leading to maladministration in terms of personnel discipline.

Historical Context and Interests of Rule-Making

During the New Order era, Islamic law in Indonesia underwent a transformation involving community participation. One important moment was the student demonstrations that entered the People's Representative Council building during a meeting, voicing objections to the policies of the Minister of Religious Affairs of the Republic of Indonesia, which they considered an attempt to secularize the law. Some points they highlighted included the establishment of marriage registration as a requirement for legal marriage, recognition of polygamy and divorce only if decided by a court, and plans to allow interfaith marriages.

During this period, Islamic law in Indonesia experienced a lengthy debate that ultimately culminated in Law No. 1 of 1974 concerning Marriage (UUP), which came into effect on January 2, 1974, but was effectively implemented on October 1, 1975. This delay was due to the fact that many institutions related to the law were still being prepared (Ahmad, 2016)

After the enactment of the UUP, implementing regulations were established, such as Government Regulation No. 9 of 1975, regulations from the Minister of Religious Affairs and the Minister of Home Affairs, and guidelines from the Supreme Court of the Republic of Indonesia for judges across the archipelago (to ensure uniformity in decisions and arguments in adjudicating cases). Law No. 10 of 1983 also emerged, reportedly due to a government official marrying a babysitter without registering the child, which left his first wife without legal protection. There are also claims that it arose at the request of the First Lady, Tien Soeharto. (Khoiruddin Nasution, 2009).

During her lifetime, Tien Soeharto was known as a First Lady with significant influence. One of her notable actions was opposing polygamy and advocating for a ban on polygamy for civil servants, which was later realized in Government Regulation No. 10 of 1983. (Tempo, 2024) As the wife of President Soeharto, Tien Soeharto had direct access to the circle of policymakers at the central level. Her direct involvement in the process of

establishing Government Regulation No. 10 of 1983 was certainly based on various reasons. One of the motivations behind the emergence of PP No. 10 of 1983 was related to several artists who were often rumored to have special relationships with the Cendana family. Not only his children and grandchildren, but Pak Harto was also reported to have a mistress from among the artists. It was said that Pak Harto's mistress was a famous film star of her time. Furthermore, it was rumored that the late Bu Tien once became enraged.(detik.com, 2008)

It cannot be denied that the entire formation of this regulation is inseparable from the interests and interventions of Tien Soeharto, although it contains positive values and good intentions within the bureaucracy. However, the practical politics involved will likely overlook several studies and literature from philosophical, moral, and religious perspectives. Studies on the Legal Perspective of Sirri Marriage for Civil Servants have demonstrated the relationship between the history of its formation and individual freedoms in the legal perspective concerning sirri marriage for civil servants.

5. CONCLUSION

Based on the previous results and discussions, the author concludes that sirri marriage for civil servants, when examined from the perspective of individual freedom, does not constitute a violation of norms, ethics, or morals in religious law. However, when considered under state law and within the framework of positive law, sirri marriage can be subject to civil and criminal law, leading to a legal conflict between state law and religious law.

Revisions are needed for Government Regulation No. 45 of 1990 regarding marriage and divorce permits for civil servants, which does not specifically regulate sirri marriage. The process of forming this regulation, considering various interests and interventions, may have overlooked comprehensive academic studies and other normative considerations. Furthermore, given that this regulation has been in place for over three decades, there is a substantial mismatch with contemporary social and legal dynamics. As a result, the legal framework underlying the development and management of the State Civil Apparatus cannot be optimally implemented, which in turn hinders the achievement of professionalism and the sustainability of the state civil administration system.

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