

LEGAL REVIEW OF RECORD-KEEPING CUSTOMARY MARRIAGE IN THE SUNDANESE COMMUNITY "GET ALONG"

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Abstract: *State recognition is fundamental in the implementation of human rights in a country. Through state recognition, the fulfillment of other rights and rights by the state can be fulfilled. Our Constitution has mandated to fulfill all the rights of citizens regardless of ethnicity, religion or belief. However, the state's recognition of believers in Indonesia still faces obstacles. Many rights and rights of believers have not been fully fulfilled, one of which is the right to get recognition of the marriage that they have performed. This study aims to analyze the legal provisions regarding marriage registration and the legal consequences of unregistered marriages for the Indigenous Peoples of "AKUR" Sunda Wiwitan, Kuningan Regency. The research method used is normative juridical research. The results obtained by the author from this study are what are the legal provisions that regulate the registration of marriage in the Indigenous People of "Akur" Sunda Wiwitan, Cigugur District, Kuningan Regency and what are the legal consequences for residents of the AKUR Sunda Wiwitan Community whose marriage is not recorded.*

Keywords: State Recognition, Customary Marriage, Sunda Wiwitan "AKUR" Community

I. INTRODUCTION

After the enactment of Law Number 1 of 1974 concerning Marriage, there was a legal unification in marriage in Indonesia, where marriage has a very close relationship with religion/spirituality. The legal regulations on marriage have been applied equally to all citizens, therefore, every citizen must obey the applicable laws, including the Marriage Law which is the basis for creating legal certainty, both from the perspective of family law, property, and the legal consequences of a marriage.

The provisions of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage explain that:

"A marriage is valid if it is carried out in accordance with the law of each religion and belief."

This statement illustrates the principle of marriage of the Indonesian nation which is based on Pancasila, which can be seen from the explanation of Article 2 paragraph (1) of the Marriage Law that a marriage contract carried out in accordance with each religion is a violation of the main principle of a valid marriage contract.

Article 2 paragraph (2) of the Marriage Law states that: "Every marriage is recorded according to the applicable laws".

The validity of the marriage ceremony according to the Marriage Law is based on religious law and the beliefs of each person, so that since the validity of this Marriage Law, the marriage ceremony according to religious law is intended to reflect the validity or otherwise of the marriage. This is because many people do not register at the civil registry office. Based on the explanation of the Islamic Law of Marriage, recording marriage, recording births, recording deaths is an important event. Recording marriage in a marriage certificate is a marriage certificate. A marriage certificate is a document about a marriage and is a complete document that records the existence of a marriage.

In Kuningan Regency, precisely in Cigugur District, where in that area there is a community of Indigenous Peoples, namely the "Akur" Sunda Wiwitan Indigenous Peoples. The "Akur" Sunda Wiwitan Indigenous Peoples have their own customary laws or traditions that have been inherent in them which are a reference or guideline for life for this indigenous people, including in terms of Marriage. The author found that they adhere to the customs that are carried out from generation to generation, both in the form of worship rituals and other things including Marriage. However, in terms of Marriage, until now their marriage registration has only been internal in the form of Pranata Jatuk Rami. This marriage registration has not been continued to state marriage registration because there are several requirements in the rules that prevent them from doing so. Because their marriage registration has not been recorded, until now in Population Documents such as Family Cards, the statement "Marriage has not been registered" is listed and in Birth Certificates it is listed as "child to ... of a woman". This is what according to the author's view there is a difference in the state's treatment of the "Akur" Sunda Wiwitan Indigenous Community in obtaining services from the Government compared to the general public.

II. RESEARCH METHODS

In this study, the author uses a qualitative research type, qualitative research is a research process to understand human or social phenomena by creating a comprehensive and complex picture that can be presented in words, reporting detailed views obtained from informant sources, and carried out in a natural setting.

The approach method used is normative juridical, namely the approach used in discussing this problem is by using the Statute Approach (Statuta Appolach) carried out by reviewing the laws and regulations that are interrelated with the legal issues being handled. The normative juridical approach is used to analyze various legal regulations that have a relationship

(correlation) with the implementation of marriage according to customary law in the "Akur" Sunda Wiwitan Indigenous Community in Cigugur District, Kuningan Regency. While the empirical approach, namely a critical effort to answer the problem by studying it not only from the side of the legal norms that regulate customary marriage law, but also the behavior of the Akur Sunda Wiwitan indigenous community in Cigugur District, Kuningan Regency.

III. RESEARCH RESULTS

1. Legal Rules for Marriage Registration in the Sunda Wiwitan "AKUR" Community

Some of the rules mentioned above regulate the technical aspects of marriage registration, there are also laws and regulations that correlate with the rights of citizens, both those related to public services, human rights, child protection rights and those related to marriage agreements. This is important to describe in order to be able to see marriage registration from various perspectives. Especially concerning the rights of citizens that have been guaranteed by the Constitution. Seeing the construction of the Law, especially related to marriage registration for the Sunda Wiwitan "AKUR" Indigenous Community, it is actually very complete. Starting from the Law to the Decree of the Director of Belief in God Almighty. However, in reality there are still many Sunda Wiwitan "AKUR" Indigenous Communities who have not registered their marriages. Why did that happen? The author will try to explain in the next section.

2. Organization as a requirement for marriage registration

Regarding the marriage registration procedure, it is actually not burdensome for the "AKUR" Sunda Wiwitan Community, the obstacle is the establishment of an organization as one of the requirements for the appointment of the "AKUR" Sunda Wiwitan traditional leader by the Supreme Council of Belief in God Almighty. This is what is an obstacle for adherents of the traditional community's beliefs to obtain a Marriage Certificate extract.

The explanation of the obligation of the "AKUR" Indigenous Community of Sulawesi Wiwitan was first discussed by the Trust Organization starting from the Decree in Article 39 paragraphs (1), (2), (3) and (4) of the Decree of the Government of the Republic of Indonesia Number 40 of 2019 concerning the implementation of the Law of Number 23 of 2006 concerning the Administration of the Trust which was amended by the Law of Number 24 of 2013 concerning Amendments to the Law of Number 23 of 2006 concerning the Administration of the Trust which contains the following:

1. The marriage of believers in the One Almighty God is carried out in the presence of a leader of believers in the One Almighty God.
2. The initiation of believers in the One Almighty God as referred to in paragraph (1) is appointed and determined by the organization of believers in the One Almighty God.
3. The organization and initiation of believers in the One Almighty God as referred to in paragraph (2) must be registered with the Kelmellntellrian whose field of duty is to technically foster organizations of believers in the One Almighty God.
4. The person who believes in the Almighty God as referred to in paragraph (1) must complete and sign the marriage certificate for the person who believes in the Almighty God.

From verse 2 above, the term "Organization of Belief" begins to emerge as a legal standing institution for believers to fulfill and sign the marriage certificate of believers to God Almighty (explained in article 4).

The next question that arises is what organization is currently registered with the Kelmellntellrian whose field of duty is to technically develop organizations of believers in the

Almighty God who have the highest desire to raise and establish believers in the Almighty God? Further explanation of the matter can be seen in the appendix of the Decree of the Directorate of Belief in Almighty God and Indigenous Peoples Nolmolr 1481/F2/KB/2020 concerning the Standards for the Prohibition of the Registration of Belief in Almighty God in the Requirements column, which contains various descriptions:

“A letter of submission from the management of the organization concerned or the Council of the Almighty God of Indonesia submits a letter of submission to the Directorate of the Almighty God and the Indigenous Peoples.”

If we read the above statement, it is clear that the customary groups or indigenous communities are directed to form organizations, both separate organizations and organizations under the auspices of the Supreme Council of Belief in God Almighty. This is certainly a very encouraging statement for the members of the Sunda Wiwitan "AKUR" Indigenous Community who have had bitter experiences in establishing organizations in the past. In addition, looking at the reality in society, many indigenous communities or indigenous groups do not recognize organizations like the Baduly Community in Cilembak. Until whenever the Baduly community will not be able to obtain a marriage certificate because they are not organized.

The bitter experience of the Sunda Wiwitan “AKUR” Indigenous Community in the organization was reported by Ollellh Maman Suldirman 45 years (Maman Suldirman in the Structure of the Sunda Wiwitan “AKUR” Indigenous Community Organization as the Head of the Community Development Committee) in an interview conducted on May 7, 2024 at 16.00 at his home.

Maman told that Prince Teja Buana registered ADS with the Indonesian Spiritual Coordination Board (ISCB) after the Belief in Almighty God (HPK) association was established in 1981. In its further development, ADS manifested itself as the Traditional Community Organization of Cara Karuhun Urang (PACKU) under the leadership of Prince Djatikusumah. The community is also registered with the Directorate of Bina Hayat as a formal institution with Number 192/R.3/N.1/1982 which operates in the West Java Region and its surroundings.

As a result of the establishment of PACKU, 2,000 former members of ADS (Agama Djawa Sunda) who had converted to Catholicism declared their resignation from the church and turned to PACKU members. There were many quarrels between family members, fathers and children, wives and husbands. A year after the incident, PACKU was banned by the Decree of the Head of the West Java High Prosecutor's Office Number: Kep.44/K.2.3/8/82. As a result of the ban, the legal status of around 2,000 PACKU followers became illegal and politically incorrect. Faced with this situation, a small number converted to Islam, some converted to Pasundan Christianity. The rest, including Prince Djatikusumah and his family, continued to officially declare themselves as adherents of his home belief system.

As a result of the event, a sense of trauma arose among the Sunda Wiwitan "AKUR" Indigenous Community in the organization. Because they assumed that if they were to dissolve the organization, they would be able to disband the organization. In addition, when they were dissolved, they would be disbanded in the organization's regulations that were included in the AD/ART. In addition, this has only made the Customary Law disband the regulation of daily life with the AD/ART as stated by Maman Suldirman in an interview on May 7, 2024.

If we look further in the attachment to the Decree of the Director of Belief in Almighty God and Indigenous Peoples Number 1481/F2/KB/2020 concerning the Service Standards for Certificates of Registration of Belief Leaders in Almighty God, then the Belief Organization is listed in this case the Supreme Council of Belief in Almighty God which was established by notarial deed number 01 dated September 4, 2014 Notary Indah Setyaningsih Decree of the Minister of Law and Human Rights Number AHU-00554.60.10.2014 concerning the

ratification of the establishment of the Legal Entity of the Association of the Supreme Council of Belief in Almighty God (MLKI) which has the Special Right to appoint and determine Belief Leaders in signing marriage certificates. Currently, MLKI may be the only organization that has this Special Right.

This is explained by the articles contained in the MLKI Articles of Association and Bylaws, Article 9 paragraph (1) which states that MLKI as the sole partner of the government is obliged to facilitate members in terms of verifying the Organization, certification of believers and other matters related to Belief in the Almighty God which will be regulated later. This means that there is no opportunity for other Believer Organizations to obtain special rights in determining the believers' belief. Although the determination of a single organization in the implementation of religious beliefs must come from the government.

In another explanation in article 18 paragraph (2) it is explained that members of the Council of Belief in Almighty God are Organizations/Groups of Believers in Belief in Almighty God. From this article it is clear that individual believers or believers who do not want to organize cannot become members of MLKI and automatically when they do not want to organize, then the believers of their beliefs cannot be appointed to sign marriage certificates.

The regulation of belief organizations is regulated by the issuance of Joint Regulation of the Minister of Home Affairs and the Minister of Culture and Tourism No. 43 and No. 41 concerning Guidelines for Services to Believers in Belief in God Almighty. This Joint Regulation regulates services to believers in belief covering three things, namely the administration of belief organizations, burials and facilities for seminars or other names. Regarding the SKT (Registered Certificate) as proof that the belief organization has been registered as a community organization.

3. Analysis with the Theory of Legislative Hierarchy

In Hans Kelsen's book "General Theory of Law and State" the translation of the general theory of law and state outlined by Jimly Assihiddiqie with the title Hans Kelsen's Theory of Law among others that legal analysis, which reveals the dynamic character of the norm system and the function of basic norms, also reveals a further peculiarity of law: law regulates its own formation because a legal norm determines how to create another legal norm, and also to a certain degree, determines the content of the other norm. Because, one legal norm is valid because it is made in a way determined by another legal norm, and also to a certain degree, determines the content of the other norm. Because, one legal norm is valid because it is made in a way determined by another legal norm, and this other legal norm becomes the basis for the validity of the first-mentioned legal norm (Hans Kelsen, 2009).

According to Hans Kelsen, the norm is tiered in layers in a hierarchical structure. The meaning is, the legal norms below apply and originate, and are based on higher norms, and higher norms also originate and are based on higher norms and so on until they stop at the highest norm called the Basic Norm (Grundnorm) and according to Hans Kelsen are included in the dynamic norm system. Therefore, the law is always formed and abolished by the institutions of the authorities who have the authority to form it, based on higher norms, so that lower norms (Inferior) can be formed based on higher norms (superior), in the end the law becomes tiered and layered forming a Hierarchy (Aziz Syamsuddi, 2011).

Hans Nawiasky, one of Hans Kelsen's students, developed his teacher's theory about the theory of norm levels in relation to a country. Hans Kelsen in his book: *allegemeine Rechtslehre* stated that according to Hans Kelsen's theory, a legal norm from any country is always layered and tiered, where the lower norm applies, is based on and originates from a higher norm, the higher norm applies, is based on and originates from a higher norm, up to a highest norm called the Basic Norm. But Hans Nawiasky also argues that in addition to the norms being layered and

tiered, the legal norms of a country are also grouped. Hans Nawiasky also groups the legal norms in a country into four large groups consisting of:

1. Group I: State Fundamental Norms.
2. Group II: Basic/Principal State Rules
3. Group III: Formal Laws
4. Group IV: Implementing Rules and Autonomous Rules (Hans Nawiasky, 1948).

If the rules for registering marriages are followed up based on Hans Nawiasky's opinion, then they can be presented as follows:

Table 1. Hans Nawiasky's opinion

No	Rules Group	Marriage Rules
1	Fundamental Norms	Pancasila and the Preamble to the 1945 Constitution
2	<i>Staatgrundselltz</i> (basic rules of the state)	Body of the 1945 Constitution Article 18B and Article 28D
3	<i>Formell Gesetz</i> ()	Article 2 paragraph (1) and paragraph (2) of Law Number 16 of 2019 concerning Marriage, Article 34 paragraph (1) and Article 105 of Law Number 24 of 2013 concerning Population Administration
4	<i>Verordnung and autonome satzung</i> (Implementation Rules and Autonomous Rules)	Article 2 PP 9 of 1975. Article 39 PP 40 of 2019

So by tracing the source or basis for the implementation of marriage registration in the form of civil registration, especially the provisions for marriage registration in indigenous communities, it begins with the recognition of the state in Pancasila and the Opening of the 1945 Constitution of the Republic of Indonesia as the *staatspulndamentalnorm* and the body of the 1945 Constitution of the Republic of Indonesia as *Staatgrundsetz* (basic/main rules of the state) Article 18B states: "The state recognizes and respects the units of indigenous legal communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law" and also in Article 28D paragraph (1) states: "every person has the right to justice, guarantees, protection and certainty of fair law and equal treatment before law".

It is necessary to pay attention to the contents of *Staatgrundsetz* (basic/fundamental rules of the state) Article 18B and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which is entitled the State's recognition of the rights of indigenous peoples and the certainty of fairness and equal treatment before the law based on conditions which in the context of marriage are regulated in Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1) which states that a marriage is valid according to the State if it is carried out according to the laws of each religion and belief.

So based on the pure monotoism conditions of the AKUR Sunda Wiwitan indigenous community, the marriages they carry out in accordance with the procedures and methods based on their religious books are valid according to their beliefs and the state because of the recognition of the unity of customary rights based on *Staatgrundsetz* (basic rules/state principles) Article 18B of the 1945 Constitution of the Republic of Indonesia.

That based on Article 2 paragraph (2) of the Law of the Republic of Indonesia Number 1 of 1974, it states that every legal marriage that is valid because of the law and religion and/or the respective beliefs of each party must be registered based on the applicable laws and regulations, but there are still legal problems which at the cultural and legal level are hampered by the technical aspects of the Law of the Republic of Indonesia Number 40 of 2019 regarding the implementation of Law of the Republic of Indonesia Number 23 of 2006 regarding the administration of marriages, which have been amended by the Law. Noldm 24 Year 2013

regarding Amendment to Laws No. 23 Year 2006 regarding Marriage Administration which states that customary marriages are valid because their beliefs and marriage registration are carried out by the Marriage Administration of Faithful Believers appointed and determined by the Faith Organization in God Almighty.

The dilemma is due to Government Regulation Number 40 of 2019 concerning the implementation of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration Article 39 paragraphs (1), (2), (3) and (4) limiting the independence of indigenous communities in organizing marriage registration due to bureaucratic processes that are often not coherent or continuous, that based on the principles of *medebewind* and *stufenbau* theory a regulation must have input and output that are in line with the objectives contained in higher regulations, where the Belief Organization which has the authority to appoint and determine the leader of the belief adherents to sign the Marriage Certificate of Belief Adherents requires the Sunda Wiwitan 'AKUR' Indigenous Community to be in the form of a Community Organization (Ormas) as also explained in the attachment to the Decree of the Director of Belief in God Almighty and Indigenous Communities Number 1481/F2/KB/2020 concerning the Standards of Service for Certificates of Registration of Leaders of Belief in the Almighty God, which states that the requirements must be submitted by the Belief Organization or by MLKI.

In this case, based on Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2006 concerning Marriage Administration, it is stated that in the political process, material and formal requirements are valid in the State because they are based on the law of religion and/or their respective beliefs, so that the legitimacy of the MLKI belief adherents should not have a legal basis or any other legal basis for the requirements that have been fulfilled by the AKUR Sunda Wiwitan indigenous community, by adding new norms outside of Law Number 1 of 1974 concerning Marriage and Law Number 24 of 2013 concerning Population Administration.

In essence, the 2019 Constitution of the Republic of Indonesia concerning the implementation of Law No. 23 of 2006 concerning the Administration of the Law was amended by Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning the Administration of the Law. Article 39 paragraphs (1), (2), (3) and (4) require every believer/collection of believers to submit an application for the organization. Likewise, the MLKI Organization in its legal interpretation has the main function of regulating the marriage order of the believers in the belief system independently, so that it can carry out marriages according to the beliefs that are in accordance with the marriage registration process, so that what is the regulation of the MLKI Organization regarding the obligations of the indigenous people of Sulawesi Wiwitan must be in the community service is not based on law and does not have binding power because it is contrary to the Law of the Republic of Indonesia Number 1 of 1974. The Marriage and Marriage Law of 24th Year 2013 on Marriage Administration was revised.

Thus, if analyzing using the theory of Legislation Hierarchy, especially Hans Nawiasky's theory, then in the author's opinion there is an inconsistency between the highest rules and the technical rules at the lower level. Where the "AKUR" Sunda Wiwitan Indigenous Community should receive the same treatment in accordance with what is outlined in the Pancasila and the 1945 Constitution of the Republic of Indonesia as the basic norms that regulate national and state life. However, in the technical implementation regulations below there are provisions that regulate Indigenous Peoples beyond the ability of Indigenous Peoples to do so, namely the order to organize.

This different treatment means that the “AKUR” Sunda Wiwitan Indigenous Community members do not receive the same rights as citizens compared to other citizens outside of the Belief in Almighty God. The rights in question will be explained in the next section.

4. Legal Consequences of Unregistered Marriage for the Sundanese Wiwitan Indigenous Community "AKUR"

The registration of marriages that cannot be carried out due to their absence in the organization results in the loss of their rights as citizens, besides in daily life there is a sense of inferiority that is felt, especially for their children who study at Islamic universities.

In the current family records that we have, at first glance there is nothing surprising. However, if we look deeper, there are some details in several parts: in the Family Card, the prohibition column states “Registered marriage” and in the Birth Certificate it states “born from a mother”.

The prohibition of registered marriages is simply a matter of what Maman Suldirman, 45, said in an interview conducted on May 7, 2024. The prohibition of “unregistered marriages” gives a stigma to women, their marriages are illegal marriages. In addition to the stigma, the prohibition of “unregistered marriages” also gives a threat of losing benefits for citizens who are registered as ASN, both wife allowances and child allowances. Of course, this has become a very detrimental situation for people because they are not getting their rights.

However, the policy of the Customary Council has already given freedom to AKUR residents who are forced to register their marriages through the customary organization which is currently called Ajidipa. This was taken into consideration of humanity. As conveyed by Maman Suldirman, from around 300 residents in Cigugur, there are some who registered their marriages through the Ajidipa customary organization.

The prohibition of “born from a single mother” in the birth certificate also provides psychological counseling for newborn children. A sense of inferiority exists in newborn children because their status is different from other children. This is certainly not good for the growth and development of children in the future. This is contrary to the Child Protection Law Number 23 of 2002, Article 4, which states that: "Every child has the right to live, grow, develop and participate fairly in accordance with human dignity and honor, and to receive protection from violence and discrimination."

Based on the results of interviews with the customary law community of the Sunda Wiwitan AKUR community, it was also explained that for the Sunda Wiwitan AKUR community who work as State Civil Apparatus (ASN), the failure to register their marriage at the Civil Registration and Registration Office resulted in the loss of allowances that should have been paid to their children and wives.

The termination of the allowance for children and wives is a causal consequence because the State only recognizes marriages that are "registered" at the Disdukcapil office, contrary to the fact that in fact the customary marriage process in material and formal terms has been carried out in accordance with statutory regulations, namely Law Number 1 of 1974 concerning Marriage and the state's obligation to register it based on Law Number 23 of 2006 concerning Population Administration.

IV. CONCLUSION

That the registration of marriages is a part of the administrative law that functions to carry out and implement state policies. The regulatory instruments through legal products issued by the state to regulate the registration of marriages for indigenous peoples are already very complete down to the technical level. However, based on the theory of the hierarchy of laws, registration at a lower level must be in harmony and not contradict registration at a higher level. In the registration process for the registration of marriages of indigenous peoples, the

State's implementation of the rights of customary legal communities is regulated in Article 18B of the Basic Laws of the Indonesian State of 1945, which are finally explained in the National Laws of 1 of 1974 concerning Marriage Laws. However, the implementation of the technical procedures through the 2019 Law on the Implementation of the 2006 Law on the Implementation of the 2006 Law has raised a dilemma, because it requires customary marriages to be recognized if they are carried out by the Religious Faith Council of Indonesia (MLKI).

The consequence of not registering the marriage of the AKUR Sunda Wiwitan Customary Community in the Civil Registry Office resulted in the loss of civil rights such as child support from biological fathers and allowances for ASN children and wives. In positive law, this causes the civil relationship between children and fathers to be lost, making it difficult to divide inheritances between families, although according to custom this can be resolved. This is contrary to the principle of the rule of law which should be based on "law for humans", where law must serve the interests of humans and vice versa. This condition shows the need for the ratification of the agreement to be more collaborative and in harmony with the higher agreement, ensuring that the rights of indigenous peoples are fully recognized and protected.

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