

Legal Sociological Perspective on Marriage Under the Hand (Case Study Understanding of the Cipadung Community, Bandung City)

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Abstract: This research is motivated by the phenomenon of the rampant practice of underhand marriage in the community of Cipadung Village, Bandung City, which raises various legal and social issues. This research aims to analyze the Cipadung community's understanding of underhand marriage and the factors that drive the practice. This research used a qualitative approach with a case study method, focusing on the community in a particular neighborhood to gain in-depth insights. Data was collected from religious leaders and other relevant parties using in-depth interview techniques, direct observation, and documentary studies. The data was also analyzed using descriptive-qualitative methods to identify patterns and perceptions that emerged in the community. The results of this study show that the community's understanding of Islamic law with nikah siri remains diverse and is influenced by education levels and social and economic factors. Most people understand nikah siri as religiously valid but do not understand its formal legal implications. The findings of this study suggest the need for more intensive legal education and a more effective approach by the government and religious leaders to raise public awareness of the importance of registering marriages. This is necessary to protect women's and children's rights and bring order to Indonesia's family law system.

Keyword: Marriage, Law, Society.

INTRODUCTION

A phenomenon that still occurs in various parts of Indonesia, including in the city of Bandung, is underhand marriage. Underhand marriages are also known as nikah sirri and marriages are not recorded in the civil registry or Religious Affairs Office (KUA) or other state institutions. This practice occurs for various reasons, such as economic factors, social pressure, or limited understanding of the importance of marriage legality (Aisyah, 2018). In Cipadung Village, Bandung City, underhand marriage is considered a practical solution for couples facing administrative or financial constraints. However, this phenomenon raises a number of issues, such as the lack of legal protection for wives and children, the potential for family conflict, and the risk of marginalization of women in marriage. In addition, people's understanding of nikah siri as religiously valid reinforces the sustainability of the practice (Farid et al., 2023).

According to the view of Islamic law, an underhand marriage is considered valid if it has fulfilled the conditions of marriage, such as the implementation of ijab kabul, the presence of a guardian, and the presence of witnesses. Meanwhile, according to positive law in Indonesia, unregistered marriages violate Article 2 Paragraph 2 of Law Number 1 of 1974 concerning Marriage, which was later updated through Law Number 16 of 2019. Marriage registration aims to ensure the protection of the rights of spouses and children in the family, as well as providing clear legal certainty (Rovika et al., 2024).

The diverse perceptions of the community on this matter reflect the different levels of understanding of Islamic law and state law. Educational factors, culture, and the role of religious leaders are important elements that influence the way people perceive this phenomenon. The incompatibility between Islamic law and state law is often a point of conflict that needs to be studied further to reach a harmonious solution (A. Abdullah, 2010). For the Cipadung community, underhand marriage occurs because it is influenced by local social and economic dynamics. This shows the need for a more holistic approach in educating the community about the importance of marriage registration. This education should include legal, religious and social aspects so that people understand the risks and benefits of marriage legality (Adillah, 2011).

The purpose of this article is to analyze the Cipadung community's understanding of underhand marriage and identify some of the causal factors that drive the practice. In addition, it aims to provide recommendations for legal and religious education-based solutions to encourage public awareness of the importance of marriage registration as a form of family rights protection. What is the level of understanding of the Cipadung community towards the concept of underhand marriage in the perspective of Islamic law and positive law in Indonesia, what are the factors that influence the decision of the parties to carry it out, as well as the social and legal impacts caused to the couple and family.

METHOD

This research method uses an empirical juridical approach with a descriptive analysis method to deeply understand the phenomenon of underhand marriage in the Cipadung community, Bandung City. The data sources used include primary data in the form of indepth interviews with key informants, as well as secondary data in the form of official documents and relevant literature. Data collection techniques were conducted through semistructured interviews and documentation studies. The data that has been obtained is analyzed using thematic analysis techniques to identify patterns and main themes related to the community's understanding of underhand marriage. This research also considers aspects of data validity through triangulation of sources and research methods (Sugiyono, 2021).

RESULTS AND DISCUSSION

Progressive Law Analysis of Underhand Marriage Practices

In analyzing the practice of underhand marriage or nikah sirri through the perspective of progressive law, it is important to highlight that progressive law seeks to deconstruct the formalistic approach and provide solutions that are more socially just. According to Satjipto Rahardjo, progressive law views law not as a rigid rule, but as a tool to achieve the goal of substantive justice in accordance with the social context of society. This approach is relevant in understanding the phenomenon of nikah sirri in Cipadung, where the practice is often rooted in various social and economic issues, not just administrative violations (Aulia, 2018).

In the context of the Cipadung community, the practice of nikah sirri is often not just a matter of administrative violations, but has more to do with social and economic complexities. Many couples choose nikah siri because of administrative cost barriers, complicated bureaucratic procedures, or to avoid violating the law as in the case of polygamy. Progressive law offers a solution by encouraging legal system reforms that are inclusive and responsive to the needs of marginalized communities (Faizal, 2019).

Furthermore, progressive law emphasizes the importance of empathy and direct involvement in understanding legal issues in society. For example, instead of simply punishing perpetrators of nikah siri, this approach encourages more humane solutions such as legal counseling and increased access to marriage registration services for underprivileged groups. In this regard, progressive law supports policies that prioritize the welfare of the community, in accordance with the principle that law is for people, not the other way around (Faizal, 2019).

Cipadung Community Understanding of Underhand Marriage

The practice of underhand marriage or nikah sirri in the Cipadung community, Bandung City, shows a variety of understandings regarding the validity of marriage from the perspective of Islamic law and state law. Based on the results of interviews with religious leaders and local residents, most of the Cipadung community understands that siri marriages are valid according to Islamic law, as long as they fulfill the requirements of ijab kabul, guardians, and witnessesInterview with Mrs. Omah, head of Rt 04 Rw 05 Cisalatri Cipadung Village, Bandung City. However, they also acknowledge that marriage registration at the KUA or state institutions is not always carried out due to economic, administrative, or ignorance of the importance of legal marriage registration. This phenomenon demonstrates that despite a strong religious understanding, practical and social factors often dominate the decision to enter into an underhand marriage (Interview Mrs. Ismar).

One of the main reasons for underhand marriage is the administrative cost and bureaucratic complexity of registering a legal marriage. For some people with limited economic means, this cost is a significant barrier. In addition, some couples choose nikah siri to avoid the legal process of a second marriage (polygamy) without the consent of the first wife or for other personal reasons. Under Indonesian law, nikah siri has significant implications, particularly for women and the children born from such marriages. Under Law No. 1/1974 on Marriage and the Compilation of Islamic Law (KHI), a marriage is only considered valid under state law if it is registered. This lack of registration means that the marriage has no legal force, which affects civil rights. Children from siri marriages, for example, often face difficulties in obtaining birth certificates and inheritance rights. Women in siri marriages also lack legal protection in the event of divorce. The importance of legal understanding and public awareness of the consequences of siri marriage needs to be improved. Education and socialization efforts on legal marriage are key to minimizing this practice, especially in rural areas such as Cipadung.

Contextual Factors and Legal Flexibility

Underhand marriage in the Cipadung community occurs for several fundamental reasons, such as economic limitations, administrative obstacles, and the need to get married immediately without fulfilling formal legal requirements. Progressive law argues that the legal system must be able to understand these conditions and offer solutions that are not only repressive, but also educative and solutive (Syamdan and Purwoatmodjo, 2019). In this

context, the government and related institutions should provide more inclusive access to marriage registration, especially for underprivileged groups (Bina et al., 2021).

Progressive law, as initiated by Satjipto Rahardjo, emphasizes the importance of flexibility in the legal system. This approach suggests that the law should not only be repressive, but also able to understand social reality and provide inclusive solutions (Satjipto Rahardjo, 1986). In the context of Cipadung, this means that the government should facilitate marriage registration more easily for the poor.

Underhand marriage also has significant legal implications, especially for women and children. They are vulnerable to losing their rights because the marriage is not legally recognized, so they do not receive adequate legal protection. Therefore, progressive law encourages reform in the approach to marriage administration to create substantive justice in society (Paijar, 2022). Economics and culture play a significant role in the practice of nikah siri in Cipadung.

In addition, there is a view that underhand marriage can avoid the negative stigma of promiscuity or relationships without legal ties. On the other hand, ignorance of the legal consequences and unfamiliarity with the correct marriage procedures are also major reasons why some people prefer to marry under the hand. Religious factors also play a role, with some believing that as long as the marriage contract is valid according to sharia, formal registration is not important (Syamdan & Purwoatmodjo, 2019).

a.Administrative Costs and Bureaucratic Procedures; One of the main reasons people choose to marry under the table is because the administrative costs of legal marriage are considered expensive. In addition, bureaucratic procedures at the KUA that require complete documents are sometimes considered complicated and burdensome, especially for the middle to lower economic classes.

b.Unauthorized Polygamy; In some cases, men who want to engage in polygamy but do not have permission from their first wife choose a shortcut by entering into an underhand marriage. This is done to avoid legal and administrative sanctions from the government.

c.Age Limitations; Some couples marry siri because they have not reached the legal age of marriage according to the law. They are worried that an official marriage will be rejected by the KUA because they are not old enough. They are also reluctant to apply for marriage dispensation to the religious court. This is considered by the community to be complicated and costly.

d.Social and Religious Factors; Some people choose siri marriage for religious reasons, namely to avoid adultery. In their view, siri marriage is better than living together without a legal bond according to religion. There are also those who argue that siri marriage is more in line with Islamic teachings which emphasize simplicity in marriage.

The community's diverse understanding of the legality and legal implications of siri marriage is also one of the driving factors. Ineffective legal socialization and a lack of public knowledge about the importance of marriage registration exacerbate this situation. By understanding these factors, it is hoped that a more contextual and social justice-oriented solution approach can be applied to overcome the problem of nikah siri in various layers of society (Andri, 2021).

The Role of the State and Progressive Law on Underhand Marriage

The state has the responsibility to ensure that every citizen receives adequate legal protection, including in the institution of marriage (Subarman, 2013). In a progressive legal approach, marriage registration should not be seen as a mere administrative requirement, but as an effort to protect the rights of women and children who are often the most disadvantaged parties in siri marriages (Aulia, 2018). Therefore, the policies implemented must be oriented towards the needs of the community and be able to bridge between formal law and social

reality. So that it can protect legal rights such as inheritance rights, maintenance and protection from neglect (Faizal, 2019).

In the progressive legal approach initiated by Satjipto Rahardjo, the law must be flexible and contextual, paying attention to the needs and social conditions of society. State policy should not only enforce formal rules, but also answer the social problems behind nikah siri. The government needs to create solutive and educative policies, such as easy access to marriage registration for underprivileged people (Satjipto Rahardjo, 1981).

The policy must reflect protection efforts, especially for women and children who are often victims of unclear legal status due to nikah siri. Article 42 of Law No. 1/1974 on Marriage states that "a legitimate child is a child born in or as a result of a valid marriage" (Law No. 1/1974 on Marriage). In addition, it has emphasized the importance of marriage registration to provide legal certainty and avoid harm to the rights of weaker parties. Therefore, the progressive legal approach offers solutions that prioritize substantive justice and social welfare, not just the enforcement of formal rules (Aisyah, 2018).

Social Context of Marriage under the Hand

Interviews with community leaders in Cipadung Village revealed that the understanding of underhand marriage or nikah sirri varies widely. The head of the local RT highlighted that many couples perform nikah siri because they feel that the process at the KUA is too complicated and time consumingInterview with Mrs. Omah, Head of Rt 04 Rw 05 Cisalatri Village, Cipadung, Bandung City. As stipulated in Article 3 Paragraph 2 of Ministerial Regulation Number 9 of 1975, which is the implementation of Law Number 1 of 1974 concerning Marriage. That the marriage can be carried out after 10 working days of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974. Meanwhile, one resident stated that siri marriages were conducted to avoid family conflict, especially in the case of polygamy. This shows the need for a more flexible and contextual approach in understanding this practice. The practice of siri marriage in Cipadung reflects a variety of deep social realities. Based on interviews with local community leaders, the Head of the RT explained that many couples choose siri marriage because of economic limitations and the view that the process at the KUA is too complicated and long. This process is considered burdensome for those who have limited access to administration.

One resident revealed that the decision to enter into a nikah siri was also influenced by family conflict, particularly in the case of polygamy where it was difficult to obtain the consent of the first wife. This suggests that nikah siri is not simply a personal choice, but rather a response to existing social and bureaucratic conditions. In a progressive legal perspective, a flexible and contextual approach is key. This theory emphasizes that the law must be able to respond to the real needs of society and not only prioritize formal rules (Faizal, 2019). Thus, marriage registration at the KUA should not only be an administrative requirement, but an instrument of protection, especially for women and children. The government is expected to provide a more inclusive recording mechanism to prevent losses arising from unclear legal status (Lathifah, 2015). Overall, these interviews underscore the importance of policy reform to bridge the gap between formal law and social reality, in accordance with progressive legal principles.

Relevance of Progressive Legal Theory

In progressive legal theory, law is not just a formal normative device, but a tool to realize substantive justice in accordance with the needs of society. This concept, which was initiated by Satjipto Rahardjo, emphasizes that the law must be human-oriented and not trapped in mere proceduralism (Aulia, 2018). In the context of the practice of nikah siri, this approach requires the government to understand the socio-economic conditions of the

community, such as in Cipadung, Bandung, where nikah siri is often based on limited access to administrative, economic and time constraints that must wait for / marry other couples (Sukur, 2023).

Progressive solutions include ongoing legal education about the importance of marriage registration. The government needs to provide an easy and affordable registration mechanism for underprivileged groups. By doing so, the law can function inclusively and empower people without only acting repressively against formal violations.

This approach also emphasizes the need to integrate social values with formal legal systems to ensure the protection of women and children. In the case of nikah siri, the absence of official registration can lead to legal vulnerability for women, especially in inheritance rights and economic protection. Therefore, the policies implemented must be responsive to social realities and pay attention to the welfare of all parties involved, in line with progressive legal principles that prioritize justice over formal rules (Asiva Noor Rachmayani, 2015).

Social and Legal Implications

By applying the principles of progressive law, the government can create policies that are more inclusive and equitable. This approach emphasizes the flexibility and responsiveness of the law to social dynamics, so that the law is not only a means of control, but also a means of achieving substantive justice. One implementation of this approach is the simplification of marriage registration procedures. A simpler and more affordable process would encourage couples to officially register their marriage, so that their legal status is recognized by the state. This is important to ensure the legal rights of married couples and their children (Hadad, 2022).

In addition, effective legal counseling at the community level is crucial. By providing education on the importance of marriage registration and the legal consequences of nikah siri, communities will be more aware and motivated to follow the correct procedures. It can also build collective awareness of the importance of legal protection for all parties involved (Matnuh et al., 2016). Through these efforts, the practice of nikah siri can be minimized. As more marriages are officially recorded, legal protection for women and children will increase (Handayani et al., 2024). They will have better access to their rights, such as inheritance rights, maintenance, and other legal recognition. Overall, the application of progressive law in this context not only strengthens the legal system, but also ensures that the law serves to protect and empower society, especially vulnerable groups such as women and children (Paijar, 2022).

Social and Legal Impact of Underhand Marriage

The practice of underhand marriage in Cipadung Village has a significant impact on the parties involved. Socially, although siri-married couples consider their relationship to be legitimate, they cannot enjoy the rights granted by state law, such as inheritance rights, child custody, and legal protection of women and children. In addition, children born from siri marriages often face administrative problems, such as difficulties in obtaining birth certificates and official identities. In many cases, this can impact on the education and health rights that the child should receive. This legal uncertainty is one of the reasons why it is important for people to understand the consequences of the practice of nikah siri and the importance of official marriage registration at the KUA (Sukur, 2023).

Nikah di bawah tangan, or commonly known as nikah siri, is a marriage that is recognized as valid according to Islamic law, but is not officially registered at the Office of Religious Affairs (KUA). In Indonesia, especially in rural areas, the practice of nikah siri often occurs for various reasons (Syamdan & Purwoatmodjo, 2019) One of them is the high administrative costs of official marriage, as well as the convenience obtained by not following complicated bureaucratic procedures and a short time. This practice is also often chosen because of the desire to practice polygamy without obtaining permission from the first wife or because of other personal factors (Soerjono Soekanto, 1981).

However, while underhand marriage is legal according to religion, the practice presents a number of significant social and legal repercussions. Under state law, siri marriages are not recognized, which implies a lack of legal protection for the couple, including inheritance rights, maintenance rights, and the rights of children born from the marriage (Paijar, 2022). Children born from siri marriages, according to Article 43 paragraph (1) of the Marriage Law, are considered as extra-marital children, which means they do not have a recognized legal status in terms of inheritance or maintenance rights because the child's civil status is with the mother and the mother's family so that inheritance rights and others are not attached to the child in accordance with this article (Law Number 1 Year 1974 concerning Marriage).

This has the potential to cause legal problems in the event of separation or divorce in the marriage, because couples who marry siri must face a more complicated legal process, including divorce issues that must go through a religious court to get legalization or itsbat nikah. In addition to legal impacts, siri marriage can also have social impacts, such as the stigma experienced by couples who marry siri. (Sukur, 2023)

Society often underestimates couples who are not legally married, so they have difficulty in obtaining social recognition. This has the potential to affect the quality of their relationships in the community and can have implications for difficulties in obtaining social support. It is therefore important for society to better understand the risks and consequences of nikah siri, and to promote the importance of legal marriage registration so that couples can obtain appropriate rights protection (Paijar, 2022).

CONCLUSION

This research reveals that the level of understanding of the Cipadung community towards the concept of underhand marriage in the perspective of Islamic law and positive law still varies. Some people consider that this practice is religiously valid as long as the pillars and conditions of marriage are fulfilled, such as the presence of a guardian, witnesses and consent. However, their understanding of the positive legal implications is limited. Many do not realize that marriages without official registration do not have legal force, which has the potential to cause various problems, such as difficulty in accessing legal rights for the couple and children.

The Cipadung community's decision to conduct an underhand marriage is influenced by several factors. Economic factors are the dominant reason, where the cost of marriage registration is considered burdensome. In addition, social factors, such as family pressure to marry immediately, differences in social status, or the need to maintain privacy, also influence this decision. Lack of knowledge about the importance of marriage registration and low legal awareness also contribute to the high practice of underhand marriage in the region.

The practice of underhand marriage has significant social and legal implications for couples and families. Socially, couples who marry underhand often face stigma from the community and difficulties in accessing administrative services and government assistance. Legally, the absence of official registration means that women and children do not have adequate legal protection, such as inheritance rights, maintenance, or recognition of child status. Therefore, continuous legal education and outreach efforts, as well as simplification of marriage registration procedures, are needed to reduce this practice and protect the rights of all parties involved.

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