Siri Marriage Provisions in Ngebong Village Regulation No. 5 of 2016 Concerning Guests, Workers and Secret Marriage

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Abstract

Secret marriage is one of the marriage problems that often occur in rural communities. The decision to carry out secret marriage by the community is due to several factors, one of which is economic. Secret marriage which is not valid in the eyes of the state because it does not have authentic proof of marriage is one of the reasons for the formation of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriage as the best way out of this problem. This study aims to explain in detail how the implementation and effectiveness of regulations on secret marriage provisions in Ngebong Village Regulation No. 5 of 2016. This type of research is empirical legal research with a socio-legal approach. The results of this study explain that the implementation of village regulations is divided into three processes, namely the planning process, socialization of regulations and implementation of regulations. In each process, there are several obstacles and encouragements. When viewed from the effectiveness of the law, the implementation of Ngebong Village Regulation No. 5 of 2016 is considered not optimal. Based on the factors of infrastructure, community factors and cultural factors are considered effective. However, the factors of legal products and law enforcement of these regulations are considered ineffective.

Keywords: Effectiveness of Law; Siri Marriage; Village Regulations.

INTRODUCTION

An unregistered marriage is called an underhanded marriage or a siri marriage according to the concept of positive law. (Hermanto, 2022, p. 47) A secret marriage is valid according to religion because the pillars and requirements of marriage are fulfilled, but it is not registered so it is not valid before the state. (Burhanudin, 2002, p. 13) Secret marriages often occur in rural communities due to several factors, including economic difficulties and the perception in society that registering marriages is complicated. (Saputri, 2023) The phenomenon of unregistered marriages in one village is not necessarily the same as in other villages. Based on Law Number 5 of 2016 concerning Villages, it states that the village government has the right to make village regulations for the public interest on the condition that it does not conflict with higher regulations. Secret marriage is one of the important problems to be resolved because it has an impact not only on the husband and wife, but also on the children born from the secret marriage. (Lukman & Abdussahid, 2021)

Secret marriage is one of the problems of marriage because it does not follow the established administrative process. The unclear administration makes secret marriages invalid according to the state because they do not have authentic evidence of a valid marriage. In dealing with this problem, the Ngebong Village government has made regulations relating to the provisions of secret marriages for the people of Ngebong Village. The provisions of secret marriages are stated in Ngebong Village Regulation Number 5 of 2016 concerning Guests, Workers and Secret Marriages.

In Indonesia, unregistered marriages have a controversial position, because they contradict the legal principles of marriage as stipulated in the Marriage Law which requires that marriages must be officially registered. However, unregistered marriages are still often found in various regions, including in rural areas, and are part of the social dynamics that require special attention.(Zaim, 2024) The regulation explaining that every marriage must be registered based on the applicable statutory regulations is stated in Article 2 Paragraph (2) of Law No. 1 of 1974 concerning Marriage.(Asnawi, 2024) Explained in detail in Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.(Zamroni, 2018, p. 62) Article 5 and Article 6 of the Compilation of Islamic Law also state that every marriage conducted by the Islamic community must be registered and conducted before a Marriage Registrar. Several of these provisions provide an explanation that registration of marriage is one of the requirements for a valid marriage under state law.

A valid marriage according to the state is a marriage that is registered administratively by the state. The marriage is registered before an authorized marriage registrar in accordance with the Law. Thus, a secret marriage that is not registered is an invalid marriage and cannot be recognized under state law.(Akmal et al., 2021) Secret marriages do not significantly impact couples who have secret marriages, but the existence of administrative problems with marriage will cause further problems for the marriage and all matters related to the marriage. In other words, the impact of a secret marriage is not only felt by a husband and wife but also the rights of the children and families involved in the marriage. (M.Yusuf, 2019).

The legal consequences of secret marriages have been clearly stated in Article 2 Paragraph (2) of Law Number 1 of 1974 concerning Marriage. However, for the people of Ngebong Village who conduct secret marriages, they are also subject to the legal consequences stated in Ngebong Village Regulation No. 5 of 2016. There are several provisions for secret marriages for the people of Ngebong Village that are stated in the regulation, so it is necessary to know how the implementation of the village regulation is. In addition, a regulation that is applied in society needs to be known whether it is effective or not.(Orlando, 2022) This study will use Soerjono Sokanto's theory of legal effectiveness which analyzes the effectiveness of the law using five factors, namely legal factors, law enforcement, facilities and infrastructure, society, and cultural factors that exist in the community.

This research is important to do because of the differences in the law of unregistered marriage according to Islamic law and state law. The existence of Ngebong Village Regulation Number 5 of 2016 concerning Guests, Guests, Workers and Secret Marriages is one of the steps taken by the village government in dealing with the disharmony of unregistered marriage law. The implications of this research are expected to add to the scientific knowledge of family law as well as considerations and references for regulation makers in implementing the Law. Because basically a study will continue to be refined and updated in further research. (Herlinda et al., 2010)

RESEARCH METHODS

This research is included in empirical legal research, namely research based on primary data obtained directly from the community. Empirical research looks at the law in real terms, or examines how a law works in society. (Efendi & Ibrahim, 2016, pp. 149–150) This research uses a socio-legal approach, namely an approach that combines social sciences and legal sciences in examining the resolution of legal problems. (Efendi & Ibrahim, 2016, p. 153) Thus, this study collects facts and social realities with concepts related to the provisions of unregistered marriage

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in Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages. This study was conducted in Ngebong Village, Pakel District, Tulungagung Regency. Data in a study can be obtained from several sources, either direct data from the field or library data. Primary research data was obtained by interviewing several respondents. Secondary data was obtained from several existing sources. The existing data was then analyzed using Soerjono Soekanto's legal effectiveness theory which was considered suitable in this study

RESULT AND DISCUSSION

The creation of regulations on unregistered marriages is carried out in several stages, namely planning, socialization and implementation. In the planning process, the Ngebong Village Government considered that there was a need for a policy that could provide rules to the community regarding the many unregistered marriages that were carried out. Reports from local residents who felt uncomfortable with the unregistered marriages became the basis for the Ngebong Village Government's consideration in establishing this regulation. "The formation of the village regulation was due to reports of residents' concerns about people outside Ngebong Village who lived in the same house in Ngebong Village, when asked about their identities but they did not have proof that they were legally husband and wife." (Interview with Rohmat, Head of Ngebong Village, December 18, 2024).

Secret marriages in Ngebong Village occur due to several factors that influence someone to get married. For the people of Ngebong Village, they believe that secret marriages are permissible because they do not violate the religious rules practiced by the people of Ngebong Village. In addition, it is also influenced by the worrying economic situation so that marriages are carried out to save their economy. The reason for wanting to practice polygamy also occurs in the people of Ngebong Village, so that in practice the secret marriage cannot be registered until the couple obtains permission from the first wife. The factor of pregnancy outside of marriage is also one of the factors that often becomes the reason for the people of Ngebong Village to carry out secret marriages. So in reality the people of Ngebong Village carry out secret marriages because of several factors that make them choose not to register their marriages.

The community's complaint to the village government regarding the concerns felt towards the perpetrators of unregistered marriages was then followed up with a deliberation between the Head of Ngebong Village and the Ngebong Village Consultative Body. The enactment of Ngebong Village Regulation No. 5 of 2016 as an effort to handle the problem of marriages without proof of registration, it is hoped that the village regulation can be implemented well as a whole. The rules related to unregistered marriages are implemented after this village regulation is enacted and announced to the entire community of Ngebong Village. With the enactment of Ngebong Village Regulation No. 5 of 2016, it is hoped that the village regulation can be a solution to the administrative problems caused by unregistered marriages.

The implementation of village regulations is influenced by how the village regulations are communicated so that they are known and implemented by the entire village community. In a regulation that is set, there are often several problems with how the village regulations can be communicated to the entire village community. In this study, the village regulation in question is Ngebong Village Regulation No. 5 of 2016. The community is the object of the village regulations that are set because the community will feel the impact of the village regulations. In addition, the community is one of the parties authorized in social control over the implementation of village regulations. So together the community plays an important role in supervision in order to help implement Ngebong Village Regulation No. 5 of 2016.

Based on interviews conducted with MKN, residents of Ngebong Village stated that "the regulation on unregistered marriage is a village regulation. So everyone already knows. If you want to have an unregistered marriage, you are given 3 months to register it". It can be seen that the village regulation has been widely socialized to the people of Ngebong Village. Socialization is carried out through the Head of the Neighborhood Association (RT) to be conveyed to the people of Ngebong Village widely. With the socialization of Ngebong Village Regulation No. 5 of 2016, it is hoped that the entire community will know and then implement it.

The Community Welfare Section of Ngebong Village stated that "In the past, there were still many people who had unregistered marriages, asking for a letter here because they did not have a certificate. Now it has decreased quite a bit, very rarely". Based on the interview, it can be seen that the good socialization carried out by the Ngebong Village Government regarding the provisions of unregistered marriages has had a good impact on the community. The community's awareness and compliance with the law in implementing the village regulations is one of the factors in achieving legal objectives. Thus, according to the researcher, the possibility of someone not registering a marriage in Ngebong Village is very small. The Ngebong Village community plays an active role in helping to supervise and implement village regulations so that they are easier to do. The researcher is of the opinion that the Village Government has maximally socialized Ngebong Village Regulation No. 5 of 2016 to all levels of village society. In fact, the existence of the village regulation cannot be underestimated in influencing the community to immediately register marriages or directly carry out legal marriages according to the state at the Religious Affairs Office.

The implementation of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages which will be discussed in this study focuses on Chapter II Article 3 Secret Marriages. Thus, the implementation of the regulation is explained based on the verses contained in the article. Article 3 paragraph (1) of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages states "The implementation of Secret Marriages must be known by the Ngebong Village community". The requirement for the Ngebong Village community to know about secret marriages in this case is carried out by reporting to the head of the Neighborhood Association (RT) as the smallest village government institution. Originating from the head of the Neighborhood Association (RT) then it is notified to the village government and the village community that there has been a secret marriage among the Ngebong Village community. The Village Government together with the village community carries out a supervisory function in the implementation of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages.

The provisions for unregistered marriages are further stated in Article 3 Paragraph (2) of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages, which states "After carrying out Ijab Siri within 3 (three) months, a valid ijab must be carried out according to the State." This provision can be interpreted to mean that the government does not prohibit unregistered marriages, but must meet the time limit that has been determined to register the marriage. An unregistered marriage is valid according to religion but does not have permanent legal force. The 3-month period between the unregistered marriage and the maximum limit for registering a marriage as stated in Article 3 Paragraph (2) of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages is stated to be very appropriate.

The opportunity given through the village regulation to register a marriage if not complied with has sanctions listed in the following paragraph. Article 3 Paragraph (3) of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages states "If within 3 (three) months the person concerned does not immediately take care of it, sanctions will be imposed according to the provisions of each environment." The sanctions

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referred to in Article 3 Paragraph (3) of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages are not clearly stated, but the form of sanctions is left to the community of each environment.

The implementation of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages has been generally carried out well starting from planning, socialization and implementation. As explained based on interviews conducted by researchers, the process of implementing siri marriages is carried out by the community in accordance with the provisions. However, the sanctions listed in Article 3 Paragraph (3) of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages do not have clear certainty so that in the process of implementing it a person does not have a definite basis or foothold.

Legal Effectiveness

The realization of justice, certainty and usefulness in society to create peace is the purpose of law. Effective means a state of success for what has been implemented. While effectiveness is a result or effect that occurs in an act. The effectiveness of law is an indicator that can be known by the reality that the rule of law is running and succeeding in achieving the goal of law or failing in its implementation. The purpose of law is one indication of the effectiveness of law. Including sanctions is one of the efforts that are usually made to make society comply with the rule of law.(Siregar, 2018)

The effectiveness of law states that the main problem in law enforcement lies in the factors that influence it. The factors of law enforcement according to Soerjono Soekanto include, *first*, legal factors. Legal factors in this case are limited to the Law only. Several principles in the application of the Law in order to achieve its objectives so that it is effective include the Law not being retroactive, having a position based on the maker of the Law, specific laws override general ones if the maker is the same, old laws do not apply if there is a new Law, are inviolable, the Law as a means of achieving welfare.(Soekanto, 2007, pp. 11–13)

Second, the law enforcement factor. Parties related to the formation and implementation of laws are included in the law enforcement factor. Law enforcers are role models in society who should have certain abilities in accommodating the aspirations of the community. Regulations that are of good quality but law enforcers are not good will become a problem in achieving the goals of the law itself.

Third, the supporting facilities and infrastructure factors. Software and hardware are important factors in law enforcement. Soerjono Soekanto explained that law enforcers will not work well if they are not supported by professional vehicles and tools. Without quality facilities and infrastructure, law enforcers cannot carry out their roles. The facilities or infrastructure in question include educated and skilled human resources, good organization, adequate equipment, good finances and so on.

Fourth, community factors. Law enforcers come from the community and are carried out to create peace in the community. Law according to society is interpreted in various variations including law as a science, discipline, rule, legal system, officer, official decision, government process, regular and unique behavior, value network, and as art. A society that knows their rights and obligations according to the law, then they will also know the legal competence with the existing rules.

Fifth, cultural factors. Basically, culture encompasses the values that are the basis for the creation and implementation of laws that apply in society. The pairs of values that apply in law are the values of order and tranquility, physical values and spiritual values, and the values of permanence and novelty. Culture is a concept that lives in society so that what is considered good is followed and what is considered bad is avoided. Statutory laws must reflect the values that

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come from customary law so that these laws and regulations can apply effectively.(Kurdi & Mazjah, 2024)

From the explanation above, it can be seen that in measuring society, several indicators are needed. In this case, the effectiveness of a regulation's law can be influenced by five indicators according to Soerjono Soekanto. This study will explain in detail the implementation of the village regulation with Soerjono Soekanto's five indicators of legal effectiveness so that clear results are obtained.

Legal events carried out by legal subjects give rise to legal consequences. The legal event referred to in this study is the event of a secret marriage. The researcher is of the opinion that the registration of marriage referred to in the Marriage Law does not yet have clarity regarding the rules regarding the failure to register a marriage. Article 6 of the Compilation of Islamic Law explains that a marriage that is not registered is not valid in the state and therefore does not have permanent legal force. However, in terms of religion, the marriage is said to be valid because it has met the requirements and pillars of marriage. The sanctions contained in this article can be referred to as administrative sanctions, namely the absence of legal force for a secret marriage.

In relation to this, the unregistered marriages carried out by the people of Ngebong Village have legal consequences as stated in Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages. In the regulation, every Ngebong Village resident who carries out unregistered marriages must be known to the Ngebong village community and is given a time limit of three months to register the marriage and there are sanctions for violating it.

Violation of the law of unregistered marriage based on the village regulation is that someone who carries out an unregistered marriage and does not register the marriage within a period of 3 months. So in practice based on the applicable village regulations, the perpetrator of the unregistered marriage will be subject to sanctions based on the provisions around in this community in line with the statement that sanctions as a result of the law are given for violating the law or committing an unlawful act.(Peter Mahmud Marzuki, 2009, pp. 250–251) Article 3 Paragraph (3) of Ngebong Village Regulation No. 5 of 2016 explains that "If within 3 (three) months the person concerned does not immediately take care of it, sanctions will be imposed in accordance with the provisions of each environment." It can be seen that the sanctions in question are not clearly stated in their form. So that in practice it gives rise to several different interpretations regarding the form of sanctions for perpetrators of secret marriages.

Regarding the form of sanctions, it is known that "The sanctions are up to the local community. I leave it directly to them for deliberation. Usually sanctions are given that can support environmental development." Interview with the Head of Ngebong Village. The Head of Ngebong Village explained that the sanctions referred to according to the environmental provisions can be in the form of several types of sanctions that change according to the agreement of the local community. The Head of Ngebong Village provided options by mentioning several fines. This provides an understanding that the legal product related to the sanctions does not have a clear meaning. In practice, SB, the perpetrator of a secret marriage, stated that "by the community, my husband and I are not allowed to sleep in the same house in Ngebong Village, because we have no proof of marriage. So my husband comes here during the day and goes home at night". In contrast to other perpetrators of secret marriages, RY stated "I was warned by the local RT to immediately register. Not evicted because we don't live here. We are both workers abroad. From marriage until now we have never lived in the same house in this village".

The uncertain form of sanctions gives rise to several different perceptions in each environment. In practice, the people of Ngebong Village give social sanctions by expelling one of the husband or wife who are not native residents of Ngebong Village and are treated like guests. However, the other couple is not expelled on the grounds that they work abroad so they

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are rarely together in one house in Ngebong Village. The sanctions are in the form of warnings from community leaders to immediately register the marriage.

When connected with the five factors of law enforcement according to Soerjono Soekanto, namely legal product factors, law enforcers, facilities and infrastructure, society and culture. It is concluded that there are three factors that are considered effective in enforcing Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages, namely facilities or infrastructure factors, society factors, and culture factors. However, the central position among all these factors is the law enforcement factor. This is because laws are drafted and implemented by law enforcers. In enforcing Ngebong Village Regulation No. 5 of 2016, law enforcers as village regulation makers are considered ineffective, because there is no certainty of sanctions listed in the making of the village regulation. In addition, there are various offers by law enforcers related to the form of sanctions without clear limitations so that in its implementation it does not have a definite basis.

The legal product made by the Ngebong Village Government as a law enforcer is considered ineffective due to the uncertainty of the meaning of the form of sanctions in Article 3 Paragraph (3) of Ngebong Village Regulation No. 5 of 2016 which states "If within 3 (three) months the person concerned does not immediately take care of it, sanctions will be imposed according to the provisions of each environment." The word sanctions according to the provisions of each environment have an unclear meaning which results in confusion in the interpretation and application of the village regulation. The government as the maker and enforcer of the law does not have a clear stance regarding the form of sanctions for perpetrators of unregistered marriages who violate the provisions.

This fact can be evidence that the factor of public awareness and compliance if not accompanied by good legal products and law enforcement in the implementation of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages will make law enforcement not run optimally effectively. The existence of confusion over the meaning of sanctions in the village regulation makes someone unable to carry out something based on the standard provisions that have been set. Sanctions given by the community cannot change the status of a secret marriage into a legal marriage by the state. However, with these sanctions, couples are expected to get a deterrent effect and pressure to immediately register their marriage

CONCLUSION

The implementation of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages in the Ngebong Village community, Pakel District, Tulungagung Regency is divided into several stages. The planning for the creation of the Village Regulation was based on complaints about the concerns of the Ngebong Village community. The socialization of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages was considered to have been maximized, as evidenced by the community's knowledge of the contents of the village regulation so that it cannot be underestimated in influencing the community to register marriages. The implementation stage focuses on Article 3 of the Ijab Siri. The implementation of the regulation can be carried out through reports to community leaders in Ngebong Village. Then the report is notified to the Village Government and the wider community. If within three months the siri marriage is not registered, sanctions will be imposed. In general, the implementation of the village regulation has been going well, but not optimally because the meaning of the sanctions stated in the village regulation is unclear.

The legal consequences of Ngebong Village Regulation No. 5 of 2016 concerning Guests, Workers and Secret Marriages against perpetrators of unregistered marriages in Ngebong

Village are not clearly written. The Ngebong Village Government offers a fine, while in practice the community imposes social sanctions. The unclear meaning of the sanctions referred to in the village regulation results in confusion in its interpretation and application. If viewed based on Soerjono Soekanto's theory of legal effectiveness, it can be concluded that there are several effective factors and several ineffective factors. Infrastructure factors, community factors and cultural factors are considered effective in implementing the regulation. While legal product and law enforcement factors are considered ineffective. So that overall the implementation of the village regulation is considered less effective.

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