

UNREGISTERED MARRIED TYPOLOGY IN EAST JAVA, INDONESIA

*Sudjak 1, Udji Asiyah 2, Zaenal Fanani 3, Ratna Aziz Prasetyo2

1. Department of Dirosah Islamiyah, Faculty of Adab, Sunan Ampel State Islamic University, Jalan Ahmad Yani 117, Surabaya, 60237, East Java, Indonesia.
Tel: (+6231) 8410298, Fax.: (+6231) 8413300

* Corresponding author email: hm.sudjak@gmail.com

2. Department of Sociology, Faculty of Social and Political Sciences, Airlangga University, Kampus B Dharmawangsa Dalam, Surabaya 60286, East Java, Indonesia.
Telp: (+6231) 5011744, Fax.: (+6231) 5047754
Email: udji.asiyah@fisip.unair.ac.id; ratna.azis.prasetyo@fisip.unair.ac.id

3. Brawijaya University, Jalan Veteran, Malang 65145, East Java, Indonesia
Email: prof_zaenalfanani@yahoo.co.id

Abstract

An unregistered marriage considered legitimate by sharia actually raises many problems which impact on the disadvantage for women. Therefore, the researchers conducted a study on unregistered marriage in the perspective of East Java ulama with a qualitative approach. In this study, marriage typology followed Weber's idea which distinguishes between four major types of social action: Zwerck rational (instrumentally rational), Wert rational (value-oriented rational), affective (affection) action, and traditional action. The informants were chosen purposively from 7 districts/municipalities of East Java consisting of Kyai of Pondok Pesantren (Islamic Boarding School) and officials of the Ministry of Religious Affairs. The findings obtained in this study are (1) the factors behind the unregistered marriages (2) East Java ulama's perspective, and (3) the patterns of unregistered marriage in nine social action-oriented typologies.

Keywords: Affective Action; Sirri Marriage; Unregistered Marriage; Wert Rational; Zwerck Rational

1. INTRODUCTION

Sirri marriage is an illegally authorized marriage by the government because it is done in a confidential manner. This marriage includes broader male subjects-it could be carried out by married or not married man- and covers narrower women subjects. Married women are prohibited to do sirri marriage because both Islamic and Marriage Law prohibit polyandry. Unregistered marriage is a marriage conducted without legal records legalized by the government in accordance with the applicable law in Indonesia (Syaltut, 1984). Meanwhile, unregistered marriage in this study is a marriage which is

not recorded by the government, whether the implementation is witnessed in public (jahr) or not (sirri), and is attended by Penghulu (officer of marriage registration office), Modin (officer's assistant of marriage registration office), or not attended by both of them. Unregistered marriages in Indonesia occurred when the Indonesian government granted the permission of foreign companies to open logging and timber processing business in Kalimantan. Many workers from foreign countries such as Singapore, Philippines, Taiwan, Japan, and so forth entered Indonesia. Most of the workforce went to Indonesia without their wives. Biological impulses demanded the presence of a wife's companion, so they tried to approach the local population. However, their efforts often failed, due to the strength of culture and religion of the local people, while prostitution was strictly prohibited in the area. In response to the question of marriage procedure in Indonesia, MUI (the Indonesian Council of Ulama) states that there are two important points to be used and implemented by Muslims in Indonesia. These are: (1) general provisions concerning the validity of marriage according to Islam are the presence of the bride and groom, two witnesses, a guardian, and ijab kabul; (2) the provision of marriage for Indonesian citizens must refer to Law No.1/1974 which is a general law provisions in Indonesia, binding and eliminating differences of opinion in accordance with the principles of ushul fiqh "Government decisions that bind the opinion difference". MUI also supports the government's efforts that every marriage in Indonesia, especially Muslims, must comply with Law No.1/1974. MUI explicitly states that unregistered marriage law is invalid before being registered by an officer of marriage registration office. Marriage is not only viewed from rukun (essential principles) and syarat (prerequisites) of marriage, but also there is an element of obligatory obedience to the government, so that unregistered marriage in Indonesia is invalid because it does not have the legal power of state administration. Marriage is considered valid when it fulfills rukun and syarat of Islamic marriage and is registered by an officer of local KUA.

Various legal views, both in the view of Islamic law and Marriage Law, indicate that a secret marriage is prohibited within a marriage without formal register by KUA. However, in fact, there are still many legal deviations regarding marriage. Therefore, unregistered marriages in the region of East Java are more interesting to be studied, especially the ulama's perspective on the phenomenon.

Thus, this article reveals the factors behind the unregistered marriage in East Java society and East Java ulama's perspective on it and the pattern and orientation of unregistered marriage social acts committed by some people of East Java. Practically, it is hoped that this behavior can be used as a reference for logical and practical considerations in making policies related to unregistered marriage, both regarding to community counseling and the settlement of related cases.

2.THEORETICAL BASIS

2.1.Social Action Theory

Society is the product of individuals' actions within values, motives and rational calculations framework. To explain socially, we must be aware of the way humans interpret their actions. Max Weber also asserts that a social action is a meaningful act that a person considers the existence of others or an individual action may affect others in society. It should be noted that social action becomes the embodiment of social

interaction. In other words, a social action is an act or human behavior that has a subjective purpose to achieve a certain goal and also the embodiment of the mindset of the individual. In investigating individual actions and subjective reasons, Weber uses the *verstehende* approach that seeks to understand the underlying meaning of social and historical events. Weber separates four social actions, among others:

First, *zwerck* rational (instrumentally rational) which is social action relies on rational human reasoning when responding to its external environment (as well as responding to others in order to try to make ends meet). For example, someone decides to buy a house rather than a car because the house is a basic need that must be met for his family members than a car that may be just secondary needs.

Second, *wert* rational (value-oriented rational) which is rational social action, but relies on a certain absolute value. These values can be ethical, aesthetical, religious, or others. So, in this kind of rational, man always rely on the rational action on a belief of a certain value.

Third, affective action which is a social action happened because of emotional impulse or motivation. A person's outbursts of anger or expressions of love and pity or the expression of a mother's love for her child by hugging or kissing are examples of this.

Fourth, a traditional action which is a social action driven by the traditions. Tradition is a habit of action developed in the past. This mechanism of action is always based on normative laws that have been established by society without careful calculation, but rather because of the habits prevailed in this society. That is why this action tends to be done without planning the purpose and the way in advance because it basically repeats from what has already done before.

These four social actions, according to Weber, affect the patterns of social relations and structure of society. Actions performed by individuals in their social relationships cannot be separated from the process of subjective thought or meaning built by individuals. This social action is a process in which the actor is engaged in making subjective decisions about means and methods to achieve a particular chosen goal which may have been limited by the cultural system in the form of social norms, ideas, and values. Interpretative understanding (*Verstehen* approach) is a way Weber believes can be used to understand the subject's meaning of action by the individual in explaining the social action and the consequences in the social environment. Weber focuses more on the individual seen as an influential person in society. However, Weber notes that the social action of the individual must be related or on the basis of rationality. Weber uses his ideal type methodology to explain the meaning of action by identifying four basic types of action (Ritzer & Goodman, 2009). Weber's theory of social action was utilized to see action orientation toward unregistered marriage related to the problems and objectives of this research.

2.2. Sirri Marriage

Sirri marriage can be interpreted as a secret or confidential marriage. It is said to be an undisclosed marriage because the wedding is purposely hidden from the public for various reasons, is usually attended only by a limited circle of immediate families, and is not celebrated through *walimah* al 'ursh receptions open to the public. The term sirri marriage or a secret marriage is already known among *ulama*. However, the understanding of sirri marriage in the past and the present is different. Formerly, the meaning of sirri marriage is a marriage in accordance with the *rukun* and *syarat* of

marriage under sharia, only the witness is asked not to inform the occurrence of the marriage to the public, to the society, and, therefore, there is no walimah al-'ursh. Among ulama, sirri marriage is still being debated, causing difficulty to decide the validity of sirri marriage. This is because many ulama and some people still think that sirri marriage is better than adultery. Yet, viewed from the various existing cases, sirri marriage brings more disadvantages than the benefits. Some ulama consider the sirri marriage is lawful as long as it fulfills rukun and syarat for marriage. Islam does not require the registration of marriage by the state. However, Hawari (2006), stated that an Indonesian psychiatrist, ulama, and marriage consultants disagree with the reason. According to him, sirri marriage law is invalid because there has been an attempt to deceive marriage from a great procession becomes merely a medium to satisfy the human desires. He assumes that the present sirri marriage is mostly done as an attempt to legalize the affair or remarry for the second times or more. According to Hawari (2006), marriages of Indonesian Muslims have been regulated in Marriage Law of the Republic of Indonesia No. 1/1974 which not only regulates state affairs but also includes Islamic sharia. The Act clearly states that marriage must be recorded in accordance with applicable legislation. For Muslims, specifically, the marriage should be officially registered on KUA to get a marriage certificate. Aulawi (1996), an Indonesian expert on Islamic law and the former Director of Religious Courts, states that in the teachings of Islam, marriage is not only a civil relationship only, but also mitsaqan galidhan as stated in Qur'an. Marriage in Islam must be seen from various aspects. At least, there are three aspects underlying marriage, namely religion, law and social. Marriage based on sharia should contain these three aspects, or imbalance occurs (Aulawi, 1996). Similarly with (Ali, 1997), one of the Indonesian legal experts, argued that sirri marriage is a problematic marriage because the deliberately undisclosed process may intend to hide some problems. In Indonesia, the trouble-free marriage is a marriage done according to the laws and regulations. For Muslims, the trouble-free marriage is a marriage organized according to Islamic law as mentioned in article 2 paragraph 1 of Marriage Law no. 1/1974 and recorded according to paragraph (2) of the same article. From these various arguments, it can be seen that classical fikh ulama, contemporary ulama, Indonesian legal experts, and Indonesian ulama generally oppose sirri marriage, because it gives more disadvantages than benefits. On the other hands, some ulama allow sirri marriage with the excuse of avoiding adultery. However, sirri marriage is not the one and only way to avoid adultery. Marriage done by the right process recognized by religious law and the state will better guarantee the future of the marriage institution.

3. RESEARCH METHODS

This research was done by focusing attention on the factors behind the occurrence of unregistered marriage and East Java ulama's perspective on unregistered marriage and the pattern and orientation of unregistered marriage social acts committed by some people of East Java. The method of this research was qualitative inductive as it is said by Oetomo (2005) that inductive qualitative is not based on the prior assumptions (assumptions based on unreliable facts) but rather based on the empirical reality that can be understood through observation or field observations (Oetomo, 2005). The research conducted is qualitative to gain empirical understanding in accordance with social reality comprehensively (Denzin & Lincoln, 2009). Qualitative research includes the use of studied subjects and a collection of empirical data such as

case studies, personal experiences, introspection, life journeys, interviews, research, historical, interactional and visual texts all of which represent the present day and daily meanings and problems faced in one's life. Research with qualitative features focuses on the effort to construct a detailed view of the subject or informant from words, a holistic and complicated picture of what subjects experienced such as behavior, perception, motivation, action and all human issues being investigated (Moleong, 2004). By considering the important position of the subjects (informants) in the research activity, the subjects were chosen purposively from 7 districts/municipalities of East Java consisting of Kyai Pondok Pesantren and officials of the Ministry of Religious Affairs.

4.DATA COLLECTION

This qualitative study was based on various types and strategies for collecting data, among others: a) observation b) utilization of primary data; c) in-depth interviews with guideline interview instruments d) secondary data collection through source sharing as long as the data is relevant and enriching to make more comprehensive and meaningful research results. The use of multiple sources and various strategies in the process of data collection is intended to collect data that can support and complement each other so that understanding and explanation of the social reality being studied becomes more comprehensive and complete. Robert argues that by using multiple sources of data, the researchers also get the opportunity to perform triangulation techniques from different sources of information and essentially provide various kinds of proof of similar phenomenon or reality (Denzin & Lincoln, 2009).

5.DATA PROCESSING AND ANALYSIS

This study was conducted with a scientific goal to obtain and explain the knowledge about: First, the mapping background factor of the unregistered marriage, Second, East Java ulama's perspective about unregistered marriage, and Third, pattern and orientation of unregistered marriage social action done by some people of East Java. In this research, the analysis was concentrated in 2 stages. The first stage was to analyze the background factors of the unregistered marriage, to describe the pattern and orientation of unregistered marriage social action and the ulama's perspective on unregistered marriage. The second stage was to conduct analysis in accordance with the principle in a critical perspective. (Alvesson & Skoldberg, 2000) state that qualitative research conducted with reflective and critical perspective tends to use two interpretive strategies. The first strategy is codifying or presenting facts taken from the life of the subjects studied, naming, problematizing or asking something both related to the social reality and surrounding structures. The second strategy is conducting a systematic reflection on the results of the initial interpretation or reflecting the researchers asked the fundamental question to find the root cause of why something happened and able to show how to explain it. Through this stage, researchers have used critical and reflective thinking (Alvesson & Skoldberg, 2000).

6.RESULT AND DISCUSSION

6.1.Unregistered Marriage Typology

The existence of a legal marriage certificate plays a very important role, especially in the effort to maintain and protect the rights of a person and to prove that a legal event has been done. Therefore, when there is a claim or accusation from the other party about the validity of a legal act, then the role of evidence (a marriage certificate) becomes very important. The existence of written evidence, particularly in a court settlement, plays an important role, even being the most widely used evidence. Thus, marriage registration is an urgent matter, even an administrative requirement. The purpose is for the marriage to be valid and to prove that the marriage has taken place, both for the concerned person, the families of both parties, others, and for society because the marriage event is already registered so that at any time it can be used, especially as an authentic written proof (Mughtar, 1994). With such a proof, it is legally possible to prevent the occurrence of another act. Therefore, although the provisions of marriage registration are only an administrative requirement, this provision has considerable influence on other administrative provisions, particularly those relating to legal events and acts. The marriage certificate is essentially one of the legitimate instruments of evidence. In the fourth book, Chapter I, article 1865 of the Civil Code states that the purpose of the evidence is: (a) as the argument that a person has the right, (b) to affirm that a person has the right, (c) to deny or declare untruthfulness that others have rights, (d) to indicate and declare that there has been an occurred situation or event.

6.2. Background factors of the unregistered marriage.

Some of the background factors of the unregistered marriage in East Java are (1) lack of public understanding of positive law and religious law, (2) lack of the society's responses to marriage law, (3) unreliable marriage registration sanctions, (4) strictness of polygamy permits, (5) family disharmony, (6) economic weakness, (7) legal irregularities in society, (8) social and psychological factors, (9) false understanding of role models.

1. Lack of public understanding of the provisions of positive law and religious law

As stated by informant H.M:

I notice that the implementation of the law in Indonesia is relative. Indeed, the existing law is expected to be the action guidelines for the community, although it must be imposed. Nevertheless, there are some people who do not fully understand the purpose of the law, resulting in unconsciousness and legal disobedience. Such disobedience or legal unconscious may also be due to their ignorance or incomprehension of the law itself, including their lack of understanding of marriage law in Indonesia.

The existing law is expected to be action guidelines for the community, although it must be forced. However, there are some people who do not fully understand the purpose of the law, resulting in the unconscious and lawless disobedience. There are still people in East Java who have not yet fully understood the importance of marriage registration.

Even if the marriage is listed in KUA, they consider the marriage registration as a trend or a tradition commonly done by the local community. Even the recording of the marriage is only seen as a matter of administration, not yet accompanied by a full awareness of the useful aspects of the marriage recording.

2. The lack of response of some people to the marriage law

Some people in East Java have an apathetic attitude towards marriage rules. The case of public figures marriage in some areas of the Ministry of Religious Affairs of Bangkalan, Pasuruan, Jember, and other areas in East Java, as revealed in the mass media is a real example of apathy towards the validity of state law. From the mass media coverage, it is understandable that two things are ignored by them, namely, first, the marriage is polygamy that is not permitted in court, and secondly, in case of unregistered or sirri marriage, they do not want to apply for a marriage dispensation even though the wife is underage according to the marriage law.

3. Unreliable marriage registration sanctions

There are still two antagonistic viewpoints of existing legal or regulatory norms among Islamic societies. On the one hand, the rule of law which is claimed to originate from Qur'an, Sunnah, and fuqaha thought even though it has the dimension of khilafiah, is considered sacred and obligatory. Whereas the shaped and formulated legal norms in the form of legislation, although being a part of the first Islamic law framework which is even absorbed from and is not contrary to the first law is still seen as a rule having no sacred value so it can be easily disregarded. The society still considers the necessity of the marriage registration as something new and common. Marriage is initially a relationship between man and woman with specific rights and obligations. Rules are required to guard the rights and obligations go well with tranquility and happiness as the purposes. Then, for the rule to be carried out with all legal consequences, it must be governed by a law. This is the philosophical basis of marriage law. Law No. 1/1974 on Marriage defines marriage as a spiritual bond between a man and a woman as a husband and a wife in order to form a happy and eternal family (household) based on the God. Following the definition, the ultimate goal of marriage is essentially happiness. Happiness means the benefit or justice for all family members that arise due to the marriage relationship. The important thing when discussing marriage is the validity of the marriage. Law No. 1/1974 on Marriage Article 1 Paragraph 1 states that "Marriage is valid as long as it is done according to the law of each religion and belief". The next paragraph states that "Every marriage is registered according to the prevailing laws and regulations". These two paragraphs seem not problematic because they regulate two different things; the first one is regulating the validity of marriage, while the latter is regulating the marriage registration. However, there are later provisions of more strict marriage registration which include a mandatory registration of marriages, marriages under the supervision of the officer of marriage registration office, the penalty for the offenders, and the illegality of unregistered marriage. Sam, one of the informants, states that: I think citizens in Bangkalan, especially in Tanjung Bumi, already realized the importance of marriage book. All marriages with the officers' presence are always registered. As an officer, I feel pity for unregistered marriage in Jember. I think it should not happen because the citizens get the most disadvantages. If it hasn't, they usually refuse to do legalization. Intensified socialization about the importance of marriage book is needed to prevent this incidence in the future. Citizens in Bangkalan, especially in Tanjung Bumi, already realized the importance of marriage book. All marriages with the officers' presence are always registered. As an officer, I feel pity for unregistered marriage in Jember. I think it should not happen because the citizens get the most disadvantages. When the citizens need the function of the marriage book, they automatically require legalization from local KUA.

4. Strictness of polygamy permits

Terminologically, polygamy means "a man having more than one wife, but up to a total of four" (Mujib, Tholhah, & Syafi'ah, 1994). Great Dictionary of the Indonesian Language defines polygamy as a system used by a man (husband) who marries more than one woman (wife). The definition of polygamy in the above terminology refers to God's guidance allowing polygamy up to four wives as long as the husband can treat all wives equally. If a man fears that he will not be able to meet these conditions, then he is allowed to have one wife only (monogamy). The opinion of KH. Mujib Imran about Qur'an 4:3 is:

In my opinion, God allows polygamy up to a total of four with the requirement to be fair among them in various affairs, such as food, clothing, shelter, and so on without discriminating between each other. If the husband fears that he will not be able to fulfill the wives' rights equally, then it is forbidden for him to be a polygamist. If a husband can only fulfill the rights of the three wives, then it is unlawful for him to marry the fourth. Polygamy practice continues until now with various background reasons. Some are based on the guidance of Islam, some are only on behalf of Islam, and some are not based on Islamic values at all. It is better to give strict requirements for men who want to be a polygamist. If violated, he must be subject to severe sanctions, and so on. The marriage regulations in Indonesia are based on open monogamous principles. The marriage of a husband with more than one wife is possible if it is desired or approved by the related parties. However, it can be conducted only after certain conditions fulfillment and the court approval. This is regulated by Law no. 1/1974 Article 3 (2), Article 4 (1) and Article 5 (1) and (2). PP no. 9/1975, which regulates the implementation of the Act has been issued to support the implementation of Law no. 1/1974 (Utomo, 1993).

5. Family disharmony

Unregistered marriages can be conducted not with the consent of parents (as happened in some industrial areas of Pasuruan) or vice versa, and the pressure from parents (as happened in Bangkalan and other areas on Madura). After marriage, the women are very depressed because of the cold war with her extended family. The smooth communication must be disconnected because of the decision to marry without the consent of the parents. The feeling is getting protracted because of not only her mother and father who are disappointed with her decisions but also her brothers, her extended family, and even her husband's family. They (women) feel alienated from the family who once loved her so much. This psychological problem disturbs the marriage harmony. In addition, the problem of infidelity raises a more complicated family problem. Problems with legitimate wives cannot be considered insignificant. The unregistered wife must bear the prolonged conflict with the family of the first wife as in the case in various regions of East Java such as Kediri, Lamongan, and Nganjuk. In addition, the unregistered wife should face the society's negative judgment and endure from the pressure of the first wife and her legitimate children. This kind of unregistered marriage creates much more complicated problems. Unregistered marriages occurred in various areas of the Ministry of Religious Affairs in East Java is recently related to infidelity and polygamy. In some areas of the Ministry of Religious Affairs in Nganjuk and Pasuruan Regencies, the second wife has no problem with the first wife, but her status and position are not accepted in her husband's workplace.

6. Economic weakness

Economic factor also triggers a person to conduct the unregistered marriage. As stated by SY (student from Jombang) below:

This economic problem usually accompanies the students in Jombang and Jember to do unregistered marriage without parental consent. In the midst of her activities as a student, she should be able to divide her time between studying and her new family. Because university costs a lot, she decides to get married so her husband can pay for her university tuition. However, this will certainly impact on her studies because the marriage also brings a lot of problems. Her study can be delayed, even unfinished. The problems may occur because she does not have parental consent. According to SY, a student conducted unregistered marriage without parental consent in the middle of her activities as a student due to economic factors. She hopes that marriage can increase her income which can be used for university tuition. However, in fact, her problems are getting increased. This may be due to the absence of the parental consent. Strengthening the above exposure, based on data from the Counselor of Islamic Center Foundation for Democracy and Human Right Empowerment (ICDGRE) Pasuruan, sirri marriage occurred in Rembang District, Pasuruan Regency causes more disadvantages to women as well as her children. In Pasuruan, there are now 4,741 married couples but are not legally registered by the state. The economic status of poor women in the rural area who are willing to do sirri marriage because of an economic factor has not been increased. Unregistered marriages undermine women's legal position. The women left by her sirri husband have no power to claim her rights. The economic burden of families is increasing when they have children. The fate of the nasab (offspring) from the marriage is also neglected. The children of the sirri marriage have certainly lost their rights such as the right to know their heredity as evidenced by birth certificates, inheritance, and so forth.

7. Legal irregularities in the society factor

According to the Head of the Pasuruan Regency's Ministry of Religious Affairs, unregistered marriage actors can be imposed by legal sanction as stated in Law No.1 of 1974. Although the penalty is enacted, the punishment is very light. Criminal law may be difficult to implement because it conflicts with Islamic law, although Islam is not necessarily legitimate if sirri marriage brings many disadvantages, Legal factors in unregistered marriage occur in women and children. As a religiously legal wife, the wife cannot claim an inner and outer right, inheritance rights in divorce, a complaint right in domestic violence, or legal protection right if being left without a message. The unlawful position of the husband creates a wide opportunity for domestic violence perpetrated by husbands against wives.

8. Social and psychological

Living in one home without being able to show official marriage certificate is something that not everyone can tolerate. The public will question the reason for confidentially unregistered marriage. These questions will spread negative image for unregistered marriage women.

For example, whether the woman is pregnant, or whether she is a mistress, or whether they are not approved by parents and more similar assumptions which cause gossip among the public. The village officials are also difficult to record the status of the family because there is no written evidence. This condition can cause difficulty in the environment and neighborhood adaptation. Finally, they can be isolated from the neighborhood, which will affect the psychological condition, especially women.

9. Wrong understanding of role models

Unregistered marriages in polygamy by some ulama as public figures in some areas of the Ministry of Religion of East Java is a real picture, that their actions actually reinforce the public's assumption that unregistered marriage is an alternative done when someone wants to have a marital relationship in a halal way or to have polygamy. Given the many negative impacts, the role of religious leaders should be to give an understanding that the sirri marriage is not a positive thing, especially for women. However, in fact, religious leaders do unregistered marriage. It shows that although unregistered marriage is legitimate according to Islamic law, it becomes a religious problem that must be immediately solved.

6.3. The East Java Ulama's Perspective on Unregistered Marriages

The Ministry of Religious Affairs of East Java in 1998 found quite astonishing fact that many people had unregistered marriages (marriages not registered at the local KUA). This can be known by the number of people applying for marriage approval (istbat nikah) to the local Religious Courts to get their legal marriage legalization of the State in a mobile court program. There were 17,937 cases, which consists of existing NB (List of Marriage Inspection) model of 3,928, and no NB model of 14.009, with religious courts' approval of 11,813 and disapproval of 22,196. One of the interesting facts is that those who engage in unregistered marriages (marriages not registered with the local KUA) are due to the high cost of marriage registration process, the existence of unscrupulous persons, the lack of understanding about marriage law and the importance of marriage registration. From such a reality, the perspectives of the East Java ulama on the phenomenon of unregistered marriage are:

1. In general, unregistered marriage or sirri marriage is legal according to Islamic law

The majority agree that the marriage is legal according to Islamic law as long as it fulfills syarat and rukun of marriage. As stated by KH. Abdul Aziz Masyhuri:

Sirri marriage is commonly conducted because the family has no much time. Generally, sirri marriage is not celebrated. NU congress allows sirri marriage, but it also brings many problems. The family has limited time maybe because the bride or his/her families are working away as long as it fulfills syarat and rukun of marriage, then the marriage is legitimate. Or because there is a problem between the family and the government. Perhaps the family is a respectable one but having a problem with the government. Consequently, they do the reception but without registering the marriage to the government. I personally allow sirri marriage. There are many kinds of sirri marriage. Some people interpret sirri marriage as unregistered marriage, not confidential one. Based on the explanation from East Java ulama above, sirri marriage is valid based on Islamic law as long as it fulfills syarat and rukun of marriage. However, sirri marriage brings more negative impacts. Thus, registering marriage is better to bring a great benefit and goodness in society life.

2. More disadvantages for women and children resulting from unregistered marriage

A woman in unregistered marriage will have legal difficulty because there is no authentic evidence of a legal marriage. One example is when her husband is negligent or neglects her obligations, and she wants to sue her husband to fulfill his obligations at court as stipulated in Article 34 paragraph (3) of Law No. 1/1974 on Marriage and in

Article 9 of Law No. 23/2004 on Elimination of Domestic Violence. As stated by Sam, Once there was a woman who had a son from unregistered marriage. When the child wants to go to school, she should forge the data to obtain the birth certificate. When she did sirri marriage for the second time, she was left with her husband and the child of the last marriage did not get his rights. For the women (wife), sirri marriage has a legal and social impact. By state law, she is not considered as a legal wife; not entitled to the income and inheritance of the husband if the husband dies, and not entitled to joint property in case of divorce. Based on marriage law, sirri marriage is considered never happened because it is not registered. Socially, the wife is difficult to socialize because she is considered to live with a man without marriage bonds.

For married couples who do not have Marriage Books, the Civil Registry Office will issue Birth Certificates of children without the names of their fathers. Such birth certificates are the same as birth certificates of a child who does not have a father or an illegitimate child because they are only attributed to her mother. Unlike the birth certificate of a child whose parent's marriage is recorded, the names of both parents will be listed on the birth certificate. Similarly, married couples who do not have Marriage Books because their marriage is not registered, the divorce process requires a longer process than the person who has Marriage Books. As stated by KH. Zaim, Viewed from the negative side, sirri marriage brings more disadvantages than advantages.

3. Difficulty socializing with the community

Sirri's wife will be difficult to socialize because women who do sirri marriage is often considered to live in a house with men without marriage bond even many are considered as mistresses. As a result, it will reduce their civil rights as citizens. They are vulnerable to be mocked by irresponsible men because they have no legal power to sue, be abandoned, not sufficiently provided and there is no certainty of the status of their husbands, because sirri marriage is not recognized by law, and so on.

4. Absence clarity of wife and child status both in law and society

The result of the sirri marriage is a wife cannot sue the husband to give both inner and outer income. Then, there is no relationship of civility and responsibility as a husband to the children.

5. There will be many cases of polygamy

Polygamy cases that mostly occur today when viewed from the perspective of justice are very difficult because the husband has enough material, but he cannot treat his wives equally. Problems in polygamy practices are increasing. More deeply thought and more mature considerations are needed in taking this kind of action.

6. Register to the Officer of Marriage Registration Office immediately if did unregistered marriage already.

In Islam, the marriage is a very strong agreement. In other words, the marriage contract is not an ordinary muamalah, but a very strong covenant, as mentioned in the Qur'an 4:21. According to contemporary Islamic ulama, there are at least two legal reasons to register the marriage. The first reason is based on qiyas (analogy) and the second one is based on the maslahah mursalah (utility). The requirement to register marriages for a marriage certificate, in Islamic law, is analogized to the record of debt transactions. It is affirmed in Qur'an 2:282. Based on these two words of God above, a simple but definite legal logic can be taken. While marriage as a very strong bond does not need to be recorded, the usual covenant bond, for example, some sort of accounts receivable debt, should be noted. Therefore, we can understand that in the provisions of Article 4 - 10 of Compilation of Islamic Law, marriage is not only required to meet syarat

and rukun of marriage, but also to meet the legal administrative requirements of being recorded in the marriage register as evidenced by the marriage certificate. The reason is for the order of marriage (art. 5).

6.4. Unregistered Marriage Patterns and Social Action Orientation

There are nine patterns or the following typology and orientation of social action of unregistered marriages by some people in East Java.

1. **Adult Unregistered Jahr Marriage** has characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the marriage is attended by the close family by holding a quite festive reception or walimah al 'ursh, but the marriage is not registered by an officer of marriage registration office. The first marriage typology is still unregistered. This action is oriented to Wert rational (based on value) that is a rational social action but relying on a certain absolute value (value orientation) of religious value.
2. **Adult Unregistered Sirri Marriage** has characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the men get no permission from the previous wife, the marriage is not attended by close family, there is no walimah al 'ursh reception, marriage is not registered to officer of marriage registration office. This second marriage typology is still unregistered. It is said to be unregistered because there is no initiative from both brides to register the marriage. This kind of affective action is a social action that arises from an emotional/affection (based on feeling) motivation.
3. **Underage Unregistered Jahr Marriage** has characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are not old enough, the marriage is witnessed by the public, and the bride and the groom are still in school. This marriage is based on the initiative of the parents of the bride and the groom who's agreed to match their children in order to ensure the matches and establish a more intimate fraternity. The bride and groom usually live in different places after the marriage ceremony. After finishing their school and reaching the age of marriage, they are officially married again in the presence of an officer of marriage registration office. This action is a traditional act of social action that is encouraged and oriented to the past traditions or habits of the past.
4. **Underage Unregistered Sirri Marriage** has characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are not old enough, the marriage is witnessed by a little (limited) people, and the bride and the groom are still in school. This marriage is based on the initiative of the parents of the bride and the groom who's agreed to match their children in order to ensure the matches and establish a more intimate fraternity. The bride and the groom usually live in different places after the marriage ceremony. After finishing their school and reaching the age of marriage, they are officially married again in the presence of an officer of marriage registration office. This action is a traditional act of social action that is encouraged and oriented to the past traditions or habits of the past.
5. **Practical Unregistered Marriage** has the characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the bride and the groom get approval from both families, the bride and the groom do not have enough money, the bride and the groom are reluctant to deal with

administration in KUA, and the marriage is not registered in KUA for various reasons. Since there is no willingness to register the marriage in KUA for various reasons, this marriage is still unregistered. This action is included in Zwerck rational (instrumentally rational), which is a social action that relies on rational human considerations when responding to its external environment which is having not enough money, so they are reluctant to deal with the administration in KUA.

6. **Import Unregistered Marriage** has the following characteristics: syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the bride and the groom get approval from both families, the marriage is held outside the region or abroad, a marriage certificate is from outside the region or from abroad. If there is a divorce or need for the marriage book, then they should ask the marriage book in Indonesia KUA. This unregistered marriage typology is illegal tentative because the bride and groom are eager to manage the administration to obtain marriage book in KUA. This action is included in Zwerck rational (instrumentally rational), which is a social action that relies on rational human reasoning when responding to external environment which is the marriage is done abroad.
7. **Official Unregistered Marriage** has characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the purpose is to avoid adultery and to meet biological needs, the bride or groom is in service/education, and the marriage is not registered in KUA. Since it is not registered in KUA, then this is still unregistered marriage. This action is included in Zwerck rational (instrumentally rational), which is a social action that relies on rational human reasoning when responding to its external environment which is avoiding adultery and fulfilling biological needs.
8. **Grief Unregistered Marriage** has characteristics such as syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the marriage is attended by close family, the reason is because one of the parents of either the bride or the groom died in the one year period of marriage, the marriage is not in accordance with KUA schedule, the marriage follows the local custom, the marriage is witnessed by public including the mourners, and the marriage is not recorded by the officer of marriage registration office. This eighth marriage typology is tentatively unregistered because the marriage will be conducted again according to KUA schedule. This action is a traditional act of social action that is encouraged and oriented to the past traditions or habits of the past.
9. **Unlawful Individual Unregistered Marriage** has the characteristics such as: syarat and rukun of marriage are fulfilled, the bride and the groom are old enough, the marriage is held in public, and the marriage is attended by unlawful assistant officer of marriage registration office. However, the identity of the bride and groom has been falsified by unlawful unscrupulous. This identity fraud is known after the bride and the groom want to get Marriage Certificate in KUA. This ninth marriage typology is illegal tentative. To legalize the marriage, the bride and the groom must register their marriage again. This action is included in Zwerck rational (instrumentally rational), which is social action that relies on rational human considerations when responding to external environment which is the identity of the bride and groom have been falsified by unlawful unscrupulous and the couple must register their marriage again.

7.CONCLUSION

The background factors for the unregistered marriage of East Java people, East Java ulama's perspective on unregistered marriage, and unregistered marriage pattern and social action orientation can be summarized as follows:

Firstly, the factors behind the unregistered marriages are: (1) lack of public understanding of positive law and religious law, (2) lack of the society's responses to marriage law, (3) unreliable marriage registration sanctions, (4) Strictness of polygamy permits, (5) family disharmony, (6) economic weakness, (7) legal irregularities in society, (8) social and psychological factors, (9) false understanding of role models.

Secondly, the East Java ulama's perspective: (1) In general, unregistered marriage or sirri marriage is legal according to Islamic law, (2) More disadvantages for women and children resulting from unregistered marriage, (3) Difficulty socializing with the community, (4) Absence clarity of wife and child status both in law and society, (5) There will be many cases of polygamy, (6) register to the Officer of Marriage Registration Office immediately if did unregistered marriage already.

Third, the patterns of Unregistered Marriage are nine social action-oriented typologies: (1) Zwerck rational (Practical Unregistered Marriage, Import Unregistered Marriage, Official Unregistered Marriage, Unlawful Individual Unregistered Marriage); (2) Wert rational (Adult Unregistered Jahr Marriage); (3) Traditional (Underage Unregistered Jahr Marriage, Underage Unregistered Sirri Marriage, Grief Unregistered Marriage); (4) Affective/affection (Adult Sirri Marriage).

REFERENCES

1. Ali, M. D. (1997). *Islamic Law and Religious Courts: a Collection of Writings*. Jakarta: Raja Grafindo Persada.
2. Alvesson, M. & Skoldberg, K. (2000). *Reflexive Methodology: New Vistas For Qualitative Research*. London: SAGE Publication.
3. Aulawi, A. W. (1996). *The Marriage Must Involve the Community*. *Mimbar Hukum*, 28.
4. Denzin, N. K., & Lincoln, Y. S. (2009). *Handbook of Qualitative Research*. Yogyakarta: Pustaka Pelajar.
5. Hawari, D. (2006). *Marriage Consultation*. Jakarta: FKUI.
6. Muchtar, K. (1994). *Nikah Sirri di Indonesia*. *Jurnal Al Jamiah*. 56: 1-12.
7. Moleong, L. J. (2004). *The qualitative research methodology*. Bandung: Remaja Rosdakarya.
8. Mujib, M. A., Tholhah, M., & Syafi'ah A. M. (1994). *The Fiqh Terms Dictionary*. Jakarta: Pustaka Firdaus.
9. Oetomo, D. (2005). *Qualitative Research: Flow and Themes*. In B. Suyanto & Sutinah (Eds.). *Methods of social research: various alternatives and approaches*. Jakarta: Kencana.
10. Ritzer, G., & Goodman, D. J. (2009). *The theory of Sociology: From Theory of Classical Sociology to Postmodern Theory of Social Development*. Yogyakarta: Kreasi Wacana.
11. Syaltut, M. (1984). *Aqidah dan Islamic Syariah*. Jakarta: Bumi Aksara.
12. Utomo, S. B. (1983). *Fiqh Issues: Complete Answers to Contemporary Problems*. Jakarta: Gema Insani Press.