

Identification and Evaluation of Indigenous Marriage Factors without Official Registration with Sociological Laws

Rosdiana Tarigan, Runtung S., Budiman G. and Rosnidar S.

Faculty of Law, Universitas Sumatera Utara, Jl. Universitas Number 4 USU Campus, Medan 20155, Indonesia

Keywords: Indigenous Marriage, Official Registration, Sociological Laws.

Abstract: Marriages in the Karo area are generally still carried out only in traditional ways without official registration. This method is completely inconsistent with Law Number 1 of 1974 concerning Marriage in Indonesia. To identify and evaluate these problem factors, the research was conducted using juridical empirical methods or sociological law. The results of the research on this problem found several factors related to the cause of the Karo traditional marriage which were not recorded in the government in the form of economic factors, education, and pregnancy outside of marriage. Karo traditional marriages that are not officially registered according to Law Number 1 of 1974 concerning the status and position of the wife and husband as well as the status and position of the child are considered invalid and never exist. The Karo indigenous people must marry according to the applicable rules so as not to cause problems in the future.

1 INTRODUCTION

The provisions of Article 28 B paragraph (1) of the 1945 Constitution state that every individual has the right to build a family and offspring through a legal marriage. Every human being must have their own choices in fulfilling their welfare, including the choice of how to marry to build a family. Humans are social creatures which by their nature in a certain period of time will need lasting relationships with other humans of the opposite sex, hereinafter known as marriage.

Cultural values that characterize people's lives are usually contained in literature, oral and cultural sources. One of the culture that still preserved in indigenous community is the marriage process. Marriage is not only about women and men relationship but also the matters of relatives, family, relationships, dignity and personal affairs depending on the concerned society structure. Marriage is first stage of the long life cycle of human (Fahmi, 2019).

The eternal relationship will be forged together through the bond of marriage. The foundation of marriage is formed by the natural elements of human life itself which include love and brotherhood, raising children to become perfect members of society (volwaardig) (Triwulan & Trianto, 2007). Apart from religious rules, the area of marriage is also regulated by tradition. Even more extreme, marriage also

involves transactions in which highly educated people trade status for the ethnic advantage of an uneducated original spouse (Potarca & Bernardi, 2017). The level of education affects the way a person mind set. A women with low education and poor families have a greater chance of getting married earlier (early marriage) (Ardi & Maizura, 2019). Marriage at a young age is one of the problems that is not only related to marriage law but also issues of child protection and human rights (Muntamah, Latifiani, & Arifin, 2019).

Humans are God's creatures who have various needs in life. Every human being certainly wants to fulfill his needs appropriately to be able to live as a perfect human being, both individually and as part of society. Maslow said that humans will always be motivated to meet their needs with a variety of levels (hierarchy) (Maslow, 1970).

Indonesia is a unitary state consisting of various tribes and cultures. Some of the Indonesian ethnic groups in the northern part of the island of Sumatra are the Karo Tribe. The Karo tribe is one of the ethnic groups in North Sumatra who inhabit the Karo highlands, Deli Serdang, Tanah Deli (Medan), Binjai, Langkat, and Dairi. The Karo tribe is spread in various regions in Indonesia with various professions. The name of this tribe is used as one of the names of the regency in one of the areas where it lives (Karo Highlands), namely Tanah Karo. Like the tribes in North Sumatra, the Karo tribe has a patrilineal kinship

system in which boys will inherit the clan from their children (Bangun, 1986).

Marriage in the Karo indigenous community is called *nereh empo* or *erjabu*. The bride is called *sereh* from the word *si reh* which means coming from her family to the place of the person who is her husband (*empo*). For the groom it is called *empo* from the word *empuna* which means owner (master). The traditional ceremony was attended by the bride and groom and their relatives with the status of *Anakberu*, *Senina*, and *Kalimbubu* (*Rakut Sitelu*). Traditional ceremonies at *mama belo selambar* usually begin with a meal together then supplemented with *runggu* (family meeting), to determine the course of the party on the day of the wedding (Nuraeny & Kuswandi, 2019).

Unregistered traditional marriages have been carried out from generation to generation by some of Karo indigenous communities. According to Karo traditional culture, this marriage is considered valid since it is a legacy from their ancestors that must be upheld and preserved. Marriage shows a high conformity with cultural values and kinship systems. The decision to choose a mate and get married is based the values set by the community rather than personal wants and needs (Puspitasari, Nurhaeni, & Muktiyo, 2019). The reasons for unregistered of Karo traditional marriages are economic, educational, and extramarital pregnancy factors. Social inequality and unemployment also greatly affect a marriage without thinking about the outcome of the marriage. (Laura Stark 2018).

According to the traditions of the ancient people, the wedding ceremony was carried out in cooperation. As the time changes, the marriage contract changed from simple to consumerism. The principle of consumerism that occurs in Karo customary culture, assumes that marriage is valid if both parties agree to carry out the marriage process according to custom and without a marriage certificate. However, this is against the law of marriage and has legal consequences for both the marital status and the status of children. A series of marriages will cause problems and marriages will cause juridical problems (Erwinsyahbana, 2018).

Marriage is the strongest relationship in terms of controlling human behavior. There are various reasons why men and women want to get married, such as religious, economic, social, cultural, and even political factors. In this case, cultural factors have special characteristics since it was believed to be a product of creativity, feelings, and human intentions that are carried from birth and are passed down from generation to generation. (Dewi, et al., 2019).

Patterns, attitudes and material consumer behavior are influenced by the globalization of lifestyle, popular culture, and a lack of understanding of the meaning of traditional wedding ceremonies (Siregar, 2019). Marriage is recorded as an effort to guarantee legal protection in marriage.

In cases of domestic problems and divorce, each party can get protection of their rights. A marriage certificate will assist husband and wife in carrying out other needs related to the law, both for the needs of husbands, wives, and children born in marriage. Another case with marriage cancellations. The legal consequences of a marriage cancellation have a good impact on children from the cancellation of the marriage. This has a legal consequence that children born from aborted marriages are still legitimate children who have civil rights (Herlina, Asikin, & Husni, 2019).

2 METHOD

The type of research used is juridical empirical, which is research by looking at the legal realities that exist in society, is used to see the legal aspects of social interaction in society, and serves as a support to identify and clarify the findings of non-legal material (Ali, 2011).

This research is included in sociological or juridical empirical legal research, where it will be known the form of legal arrangements regarding marriages carried out according to Karo customs which are not recorded in *Juhar Village*, Karo Regency. The empirical juridical approach is a procedure used to solve research problems by examining secondary data first and then continuing with research on primary data in society.

Sociological research is used to collect data and information through realm studies by observation, interviews with the Karo indigenous people regarding traditional marriages that are not recorded in Law Number 1 of 1974 concerning Marriage. Interviews were conducted with several traditional leaders such as A. Tarigan (67 years) and S. Pinem (65 years). Both were appointed as traditional leaders to continue the position of their parents as traditional leaders. Interviews were also conducted with several couples who had married in Karo adat and were not recorded.

3 RESULTS AND DISCUSSIONS

3.1 Definition and Marriage System in Traditional Culture

Marriage, which is known in generally culture, is a way of life that is developed and followed by a group of people who have been passed down from generation to generation. Cultural values that characterize people's lives are usually contained in literature, oral and mobile (community characters). One of the cultures that is still preserved in indigenous community is marriage. Marriage for indigenous community like Karo was not just marrying off the bride and groom, but has a deeper social meaning, namely marrying into a large family of both parties. Kinship ties develop from small families to large families (Tarigan, 2019). Marriage according to Karo culture was a physical and spiritual bond between men and women, including the whole family and ancestral spirits (Prinst, 1996). A marriage in Karo society has a broad meaning and one of the goals was to strengthen brotherhood. Furthermore, marriage aims to continue the male generation or clan descent because only men can continue the clan.

Karo traditional marriages adhere to a patrilineal marriage kinship system known as the honest giving of money. The honest marriage is a form of marriage that is carried out by handing over a number of magical objects or an amount of money from the male family to the woman's family which is referred to as replacement money or buyer (*tukur*) for the woman's transfer. The male clan should maintains a magical balance in the female family. The *Tukur* or dowry was also known as *gantang Tumba* or *Perunjuk* (dowry). Initially, the dowry was in the form of heirloom belonging to the male family that was given to women, but over time (because heirlooms became increasingly difficult to find) the form has changed with money (Runtung, 1998).

3.2 Systems and Forms of Marriage in Traditonal Culture

The Karo traditional marriage system is exogamous in that a person must marry someone other than their clan. A person is required to marry someone outside his family's tribe (outside Klein). In the course of time, the exogamy system experienced a softening process where the prohibition of marriage was only applied to very small families. Thus, the system in this kind of area will change to approach the Eleutherogamie system in the future (Peranginangin,

1978). In the marriage process implementation of Karo culture were divided into several parts and stages as follows (Asmin, 1986): (i) honest siri marriage, by mean of the man pays a dowry of money to the woman before being transferred to her husband's clan; (ii) Children who become their descendants belong to the clan of the father; (ii) The husband dominates in the brayat family (one family house); (iv) It is known that there are leviraat marriages (friends who move to a medun bed, namely a widow who is married to her deceased husband's brother) and surorat marriages (wulu marriage, which is a widower married to his deceased wife's sister); and (v) In essence, the wife has no right to own marital assets.

3.3 Factors Causing an Unrecorded Marriage

Marriage is the strongest relationship in terms of controlling human behavior. There were various reasons why men and women want to get married, such as religious, economic, social, cultural and even political factors. Cultural factors have special characteristics because they are products of creativity, feelings and human intentions that are carried from birth which are passed down from generation to generation.

Marriage in its provisions must be recorded as in the provisions of Law Number 1 of 1974 concerning Marriage. If a marriage is not recorded or registered, then basically the marriage is declared invalid according to the applicable law. As stated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, every marriage is recorded by the prevailing laws and regulations. Some of the factors that cause the unregistered mariage in the Karo indigenous community are economic, educational, and extramarital pregnancy factors.

3.3.1 Economi Factor

Economic limitations greatly affect the values and culture of a person's life. Economic deficiencies can result in a person's behavior beyond logic. The inability of a girl to earn a living and the very high level of dependence on men to support herself greatly affect the acceleration of marriage for women (Stark, 2018). Economic factors were an unrecorded problem related to Karo traditional marriages. Parents who marry off their children have the principle that traditional Karo marriages can reduce family costs and burdens.

3.3.2 Education Factor

Involves a transaction whereby a highly educated person trades status for the ethnic benefit of his uneducated partner (Potarca & Bernardi, 2017). The level of education affects the way a person thinks. Women with low education and from underprivileged families have a greater chance of getting married at a young age (Ardi & Maizura, 2019). Marriage at a young age was one of the problems that is not only related to marriage law but also issues of child protection and human rights (Muntamah, Latifiani, & Arifin, 2019). The educational factor and the lack of knowledge of the Karo indigenous people about the legality of marriage were one of the reasons for marriage only in customary ways without official registration.

3.3.3 Unmerried Pregnancy Factor

Regarding the incidence of pregnancy before marriage, the community tends to be positive, they don't want it, but they tend to cover up the behavior of underage marriages due to free sex and pregnancy before marriage. Most people already understand the impact of household poverty due to underage marriage, but people tend to ignore it and do not consider it a problem (Aisyah, 2018). The occurrence of pregnancies before marriage has resulted in the occurrence of many unregistered marriages, which aim to eliminate traces of family shame. By only carrying out traditional marriages, women can enter the male family (become part of the male family).

3.4 Marriage According to Law No.1 of 1974

The provisions in Article 1 of Law Number 1 Year 1974 concerning Marriage state that marriage is a physical and spiritual bond between a man and a woman (husband and wife to form a happy and lasting family or household based on God Almighty). A legal marriage will give birth to a strong bond between a man and a woman as husband and wife. The formed bond is a real formal relationship for the community which binds itself and other people or the community. Based on this definition, there are three elements in marriage, namely (Saleh, 1976): The physical and mental bonds between men and women, as husband and wife, form a happy and lasting family (household).

The provisions of Article 2 paragraph (2) of Law Number 1 Year 1974 concerning Marriage state that every marriage must be recorded according to the

prevailing laws and regulations. In the general explanation, it is stated that marriage registration is the same as important events in a person's life such as birth and death which are stated in an official certificate which is also included in the registration list. The registration does not determine the validity of the marriage but states that the event did exist and occurred so that it is purely administrative in nature (Prawirohamidjojo, 1986).

Basically the couple have already knows the need to register a marriage, but does not register for various reasons. Do not have a marriage book even though they have been married for a long time. To achieve this goal, it is necessary to carry out 2 (two) stages of activities, namely (1) legal counseling with the theme of introduction, use and benefits of marriage registration as well as legal consequences for not recording marriage and (2) assistance in making marriage books (Sembiring, Chairi, & Aflah, 2018).

Marriage must be registered to ensure legal protection in a marriage such as when facing family problems and divorce, so that each party will get protection of their rights. A marriage certificate will assist husband and wife in carrying out other needs related to the law, both for the needs of husband, wife, and children born from marriage. Another case with the cancellation of marriage where the legal consequences will have a direct impact on the children. This has a legal consequence that children born from aborted marriages are still legitimate children who have civil rights.

According to R. Wantjik Saleh, in the application for marriage registration it was agreed that the marriage registrar is intended to make a clear marriage report to all parties in the form of an official document. These documents can be used to prevent certain people from taking unwanted actions. There are several comparisons of the marriage system in Indonesia with the marriage system in England, namely regarding the formality of marriage.

In Indonesia: (i) Marriage notification is made within 10 working days before the marriage takes place by the prospective bride orally or in writing (Articles 3 and 4 of Government Regulation Number 9 of 1975); (ii) Announcement of marriage by posting it in the space provided at the Marriage Registry Office. The purpose of this announcement is to ask who has an interest in preventing the intention to marry (if any laws are violated or for some reason). The announcement is made after the Recruitment Officer records the implementation requirements and documents required to get the approval of the bride and groom.

In United Kingdom (UK): Marriage can be done through a church that has a marriage certificate. For marriages conducted through the church, a marriage certificate is issued by the church. Meanwhile, marriages conducted at the Civil Registry Office or in other places that have received permission from the local government will issue a marriage certificate from the Civil Registry Office. For marriages through the registry office, the announcement must be posted for fifteen days at the registry office.

The difference in the informality of marriage between Indonesia and UK according to British law is that marriage can only be carried out in churches that have a marriage certificate so that a marriage certificate will be issued or as proof of marriage registration. Whereas in Indonesia, marriages must be carried out based on religion and the prevailing laws and regulations (marriage registration). Meanwhile, the similarity of the marriage formalities between Indonesia and the UK is that both of them must carry out a process of announcing that the marriage will be carried out by the prospective couple who will marry.

3.5 Factors Causing an Unrecorded Marriage

According to R. Wantjik Saleh, marriage registration aims to clarify the marriage contract, both for the person concerned and for others (because it can be read in an official letter). Marriage shows a high conformity with cultural values and kinship systems. In married life, satisfaction can be a goal for couples. Many factors contribute to achieving marital satisfaction and failure to fulfill it will lead to dissatisfaction and may end in unhappiness (Bashirun, Badrollhisam, Zolkapli, Johari, & Samudin, 2018).

Marriages that are not recorded will cancel the status and position of husband and wife. This is related to the failure of a marriage which results in state demands for rights during marriage (inheritance and fulfillment of children's needs) because the marriage is deemed not fulfilling the requirements and provisions of the Marriage Law. The status and position of marriages conducted according to Karo custom which are not recorded are invalid and the marriage is considered never to have existed. Article 2 of Law Number 1 Year 1974 states that every marriage must be recorded by the prevailing laws and regulations.

Marriage is a rule to legalize the relationship between the sexes to become husband and wife. Sociologically, some marriages have been carried out based on religious law but are not registered by the

state and even give birth to children (Sendy & Tarigan, 2020). The Constitutional Court ruled that children born from Siri's marriage have a civil relationship with their biological father as long as it can be proven based on science and technology or other legal evidence that can prove blood relations as a father (Bakti, Achmad, & Rivai, 2019). The provisions of article 2 provide the understanding that Siri's marital status will bring legal consequences for a child born from that marriage to be declared invalid and considered never to exist. The provisions of the marriage law also state that: (i) A legal child is a child born from or as a result of a legal marriage; (ii) Children which born before married only have civil relations with their mothers and relatives. Thus, children which born from marriages according to Karo customs who are not recorded have a legal impact that is detrimental to the development of the child's life. In this case, the position of the child is only recognized by custom but not recognized by the state.

4 CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusion

The results showed that some Karo indigenous people still practice marriage only by custom and not registered. The contributing factors are economy, education, and pregnancy before marriage. Unregistered marital status and status are deemed to have never existed (illegitimate) as regulated in Article 2 paragraph 2 of Law no. No.1 1974 (which states that every marriage must be carried out according to the provisions of the applicable law). By law, the marital status, the position of husband and wife, and the children status are considered invalid and the marriage is considered non-existent. If the marriage is not supported by an authentic deed as valid evidence, then the status and position of the marriage does not have legal protection and certainty, and the civil rights related to the marriage are disturbed.

4.2 Recommendations

Based on the conducted research results, the suggestions are as follows: (i) Every marriage by Karo indigenous community must be reistered in accordance with the provisions of Law Number 1 of 1974 concerning Marriage. This is very necessary to

avoid the futurerisk where the marriage is considered invalid and is never considered to be implemented; (ii) The government needs to conduct public socialization regarding marriage registration to increase understanding, benefit, and impact of the marriage registration. Socialization can be carried out through village officials and other related parties with the theme of introduction, use, and benefits of marriage registration.

ACKNOWLEDGEMENTS

Our advisor and student of the doctoral program of law in Universitas Sumatera Utara have supported us in our research.

REFERENCES

- Aisyah., 2018. Children's legal and Authorities Status of the Devotive. *International Journal on Language, Research and Education Studies*, Vol.2 No.3, 408-419.
- Ali, Z., 2011. *Legal Research Methods*. Jakarta: Sinar Grafika.
- Ardi, Z., & Maizura, N., 2019. The Psychological Analysis of Divorce at Early Marriage. *International Journal of Research in Counseling and Education*.
- Asmin. 1986. *Marriage Status between Religions in terms of Law Number 1 of 1974*. Jakarta: Dian Rakyat.
- Bakti, F., Achmad, & Rivai, A., 2019. Marriage Agreement for Indonesian Citizens Involved in Mixed Marriages. *International Journal of Global Community*, 83-96.
- Bangun, T., 1986. *Custon and Wedding Ceremonies of Batak Karo*. Jakarta: Kesaint Blanc.
- Bashirun , S. N., Badrolhisam, N. I., Zolkapli, N. M., Johari, F. S., & Samudin, N. R., 2018. Customer Service Approach on Determinants of Marriage Satisfaction. *International Conference on Economics Education, Economics, Business and Management, Accounting and Entrepreneurship (PICEEBA)*.
- Dewi, S. F., Montessori, M., Saputra, R. A., Farsalena, S., Fatmariza, F., Febriani, R., & Yulika, F., 2019. The Role of Culture in Cross-Cultural Marriage among Minangkabau Women. *Journal of International Women's Studies*, p. 68-82.
- Erwinsyahbana, T., 2018. Aspect of the Law of Inter-Religious Marriage and Juridical Problems. *Journal of Law*, Vol. 3 No. 1, p. 97-114. doi:<https://doi.org/10.24246/jrh.2018.v3.i1.p97-114>
- Fahmi, A., 2019. Construction of the Customary Law of Marriage For the Malay People of Palembang Based on Islamic Law. *Medina-Te: Jurnal Studi Islam*, Vol. 15 No. 1, p. 16-38.
- Government Regulation No 9 about The Implementation of Law No 1 Year 1974 on Marriage
- Herlina, N., Asikin, Z., & Husni, L., 2019. Legal Protection of Civils Rights on Childrens' Birth from the Unrecorded Marriage. *International Journal of Multicultural and Multireligious Understanding*, Vol. 6(Issue. 3), p. 908-914.
- Law No. 1 Year 1974 about Marriage
- Maslow, A. H., 1970. *Motivation and Personality*. New York: Harper and Row Publisher.
- Muntamah, A. L., Latifiani, D., & Arifin, R., 2019. Early Marriage in Indonesia: Factors and Role of Government (Perspective of Law Enforcement and Protection of Children). *International Journal of Research in Counseling and education (IJRiCE)*.
- Nuraeny, & Kuswandi, H., 2019. Legal Protection for Contract Marriage Victims Indonesia. *Journal of Legal, Ethnical and Regulatory Issues*, Vol. 22(Iss 3), p. 1-7.
- Peranganingin, A., 1978. *Custom in the Framework of the Formation of National Law*. Bandung: Tarsito.
- Potarca, G., & Bernardi, L., 2017. Educational Sorting in Mixed Mariages in Switzerland. *Swiss Journal of Sociology*, Vol. 43 No.3, 515-541.
- Prawirohamidjojo, R., 1986. *Pluralism in Marriage Legislation in Indonesia*. Surabaya: Airlangga University Press.
- Prinst, D., 1996. *Tradition*. Medan: Kongres Kebudayaan Karo.
- Puspitasari, A. H., Nurhaeni, I. D., & Muktiyo, W., 2019. Conformity of javanese Cultural Values in Early Marriage: Case Study of Farmer Family Communication. *International Journal of Multicultural and Multireligious Understanding*, Vol. 6(Issue 2), p. 1-7.
- Runtung., 1998. *Ownership and Use of Inherited Assets in a Marriage in the Karo Muslim Study Community, Tigapanah District, Karo Regency*. Thesis Magister Hukum USU.
- Saleh, K., 1976. *Law of Marriage in Indonesia*. Jakarta: Ghalia Indonesia.
- Sembiring, I. A., Chairi, Z., & Aflah., 2018. recording and Publishing of Marriage Book in Order to Prevent Unregistered Marriage in Batangkuis District. *Jurnal Pengabdian Masyarakat*.
- Sendy, B., & Tarigan, V. C., 2020. Study of Children's Rights From Illegal Marriage. *International Journal of Research and Review*, Vol. 7(Issue 3).
- Siregar, M., 2019. Marriage Ceremony in Batak Toba Tribe: Between Consumerism and Purpose of Life. *Intenational Journal of Applied Science*, Vol.2 No.3, p.40. doi:<https://doi.org/10.30560/ijas.v2n3p40>
- Stark, L., 2018. Early Marriage and Cultural Construction of Adulthood in Two Slums in dar es Salaam. *An International Journal for Research, Invention, and Care*, Vo. 20(issue. 8), p. 888-901.
- Sunaryanto, H., 2019. Analysis of socio-economic determinants of child marriage in bengkulu: in government and society perspective. *Jurnal Sosiologi Nusantara*, 122.
- Tarigan, A., 2019. *Karo Customary Marriage System*. (R. Tarigan, Interviewer)

Triwulan, T., & Trianto., 2007. Perspective Polygamy.
Jakarta: Literature Achievement.

