



The Implementation of Itsbat Marriage for the Customary Community of South Malalak through Maninjau Religious Court Class II

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Abstract

The aim of this research is to know why part of community conducts a Itsbat Marriage and the Itsbat Marriage is conducted in the Customary Community of South Malalak by Maninjau Religious Court Class II. The method used in this research is judicial-empirical. The research results are (1). The community starts to realize the benefit of recorded marriage and the community starts to realize how important the marriage status acknowledged by the country and realize the legal consequence if the marriage is not recorded. (2) in terms of marriage recording, it is by doing notification activity towards customary community of South Malalak, and notifying the requirements needed to conduct approval and to give explanation regarding the procedure from the Itsbat Marriage. 3). The legal consequence after conducting Itsbat Marriage is the guarantee of legal certainty for the spouses that do not have marriage certificate, the protection on particular rights as the citizens after marriage, for the divorce interest (divorced/death divorced), the marriage book issued after approval becomes one of the proofs for divorce requirement which can be processed in the Religious Court, the assets obtained during marriage becomes shared assets since the beginning of the previous marriage, and the certainty of inheritance right on children, wife/husband if one of in the families is passed away.

Keywords: Unregistered Marriage; Legal consequences of Itsbat marriage; Itsbat Marriage

Introduction

Marriage is a binding which has a characteristic that the marriage will last for entire life, meaning that the promise is started when the marriage is conducted. Marriage is a legal relation which is the legal binding between a man and a woman that have fulfilled marriage requirements, for the period as long as possible.¹ Marriage is a binding in family law which has special characteristics namely forcing regulations which is the judicial consequence from the marriage is the promise is freed from the authorities of parties.²

Marriage can be stated as a promise in a wider definition because for the sake of marriage legality, it needs requirements as desired, as stipulated in Article 28 of Civil Law that the principle of marriage

¹ Rien G. Kartaapoetra, *The Introduction of Legal Studies*, (Jakarta: Bina Aksara, 1988), Printed I p. 9.

² Muchsin, *Marriage Promise in National Law Perspective*, Faria Peradilan, Jakarta, 2008, p.7.

requires free approval from the spouse candidate, meaning that no force and fraud.³ It is related to Article 6, Law Number 1 of 1974, that marriage must be based on approval of two spouse candidate, meaning that it should be with sincerity after marriage to accept the man as husband and the woman as wife and having rights and obligations as regulated in Law.

The absence of marriage record can cause legal uncertainty based on Law Number 1 of 1974 regarding Marriage.⁴ Consequently, the rights and the obligations of parties based on positive law are not there. The cause is on the community that considers marriage record as an unimportant event because the marriage is already legal based on religion. The marriage record is for the sake of legal order and legal protection for men and women who conduct a marriage.⁵

The solution that can be taken by them is proposing *Itsbat Marriage* to the Religious Court. The determination of *Itsbat Marriage* is issued by the religious court itself, then it is used as the base to record their marriage to the Marriage Recording Officer of Religious Affairs Office and then the Religious Affairs Office will issue Marriage Book or Marriage Certificate. *Itsbat Marriage* is a process of marriage record on the marriage that has been done to get marriage certificate as the legality proof of marriage that has been done, as has been explained in Law Number 1 of 1974 aforementioned.

The importance of marriage record is not only a statement that the marriage is legal in the eyes of the country, but its presence will affect the status of children, wife, and assets during marriage. For the marriage which has not been recorded in the Religious Affairs Office, to avoid its negative effect, it should take legal resolution for the marriage which is by proposing marriage attestation or *Itsbat Marriage* to the Religious Court in the region where they conduct the marriage. It aims not only that the marriage is acknowledged by the country, but also that the marriage has legal certainty. *Itsbat Marriage* is the determination regarding legality of marriage. *Itsbat Marriage* sometimes uses a term of marriage legality or marriage validity. *Itsbat Marriage* proposal can be proposed by the interested parties like husband, wife, children, to the Religious Court.⁶

In the region of West Sumatera especially in the Customary region of South Malalak, Malalak District, Agam Regency, because of the economy limit, the lack of knowledge regarding the procedure of marriage record, distance and place factor, negligence of Marriage Recording Officer Assistant in the marriage record, parents' permission, these factors lead to the Marriage Recording Officer who do not wed them because it violates the Law of Marriage. In this case, in June 20, 2013, there are 71 spouses who propose *Itsbat Marriage*, and in October 14, 2014, there are 18 spouses who propose *Itsbat Marriage* to the Maninjau Religious Court Class II which convened in Customary Malalak, Malalak District collectively.

Therefore, *Itsbat Marriage* program is conducted in Customary South Malalak, Malalak District from 2013 to 2014 which cooperate with Maninjau Religious Court and Religious Affairs Office of Malalak District. This *Itsbat Marriage* procedure is done by the judge of Maninjau Religious Court who directly comes to the customary region of South Malalak, in which the trial schedule of *Itsbat Marriage* is determined previously.

³ Dharmabra Wahyono, *Marriage Promise and the Setting Pattern in Marriage Law*. Jakarta, 1996, p.15.

⁴ What is meant by a marriage is the binding of soul between a man and a woman as a spouse with the purpose of forming a family (household) that is happy and eternal based on the Almighty God. See, Article 1 of Law Number 1 of 1974 regarding marriage.

⁵ J.Satrio, *Marriage Asset Law*, Citra Aditya Bhakti, Bandung, 1993, p.28.

⁶ Muhammad Daud Ali, *Islamic Law and Religious Court*, Rajawali Press, Jakarta 1997, p.319.

Research Method

The method used in this research is judicial empirical which is the research based on the field research to obtain primary data in law aspect. The tools of legal research used for field research are observation, interview, and documentation. Then, the tool to collect supporting theory is library research.⁷

The population in this research is the entire Itsbat Marriage in the Customary Community of South Malalak issued by Maninjau Religious Court Class II. In this research, *non-probability sampling* is done which is by using purposive sampling technique in which the sample is chosen based on the intention to choose some samplings which have been determined previously with the aim to make the researcher easy in collecting research data. The sample of this research is 10 (ten) Itsbat Marriage determinations in 2013 and 5 (five) Itsbat Marriage determinations in 2014 in Customary Community of South Malalak issued by Maninjau Religious Court Class II.

This research is from field research and library research to support the field research result. The observation done is direct observation which is to obtain data from the subject with participant observation which is the research by doing deep and whole observation regarding things related to the research object.⁸ The deep interview is used in this research which is the interaction done between two people; in this case, the researcher uses qualitative method which is mostly used to obtain data regarding a person's background where its implementation is based on the interviewer's skill. This deep interview consists of one party called researcher and the other party is called respondent or informant. The data analysis used in this research is by using qualitative analysis which is the analysis by understanding data meaning invisibly or by seeking the quality of research, so that at the end, research conclusion is obtained inductively, which is making a conclusion from a special thing to be a general one.⁹

Result and Discussion

1. *The Reason why Most of Customary Community of South Malalak Conduct Itsbat Marriage to Maninjau Religious Court Class II*

The basic reason that makes most of community choose to do Itsbat Marriage in Maninjau Religious Court Class II is because the community has started to realize the benefits of the recorded marriage. In addition, the community has also realized the negative effects if the marriage is not recorded.¹⁰

The causing factor of collective Itsbat Marriage in Customary South Malalak, Malalak District is because unregistered/unrecorded marriage, but it is still considered legal as long as the realization is in line with the religious law and the belief of the concerned parties. It is the people's opinion mostly, but there is also assuming that the marriage is considered legal if it has fulfilled the regulation of Article 2 subsection (2).¹¹

The Itsbat Marriage reasons can be accepted by Maninjau Religious Court Class II in Customary South Malalak related to the unregistered marriage by the authorized parties to Religious Affairs Office while the person has completed the administration requirements to get married. Besides, according to Circular Letter of Supreme Court Number 3 of 2018 that Itsbat Marriage cannot be made or rejected, but if the Itsbat Marriage's requirements are fulfilled and completed with witnesses and the marriage guard, it can be accepted.

⁷ Bambang Sunggono, *Methodology of Legal Research*, Jakarta, PT.Raja Grafindo Persada, 2003, p. 43.

⁸ Cholid Nabuko, *Research Method*, Jakarta, Bumi Aksara, 2001, p.81.

⁹ Lexy J Maleong, *The Methodology of Qualitative Research*, Remaja Rosdakarya, Bandung, 2007, p.86.

¹⁰ Interview with Syafrul. Judge of Maninjau Religious Court Class II. Dated 15 February 2019. At 13.20 Local Time.

¹¹ Interview with Fajri. Judge of Maninjau Religious Court Class II. Dated 15 February 2019. At 14.30 Local Time.

Based on the above interview, then the researcher concluded that the Customary Community of South Malak conducts Itsbat Marriage with some motives, such as:

- a) The community's law awareness on the importance of marriage book.
- b) Law knowledge
- c) Distance and place factor
- d) Cost and time factor
- e) The ignorance of Marriage Recording Official Assistant
- f) Parents' permit
- g) The demand of community that needs marriage certificate for population documents like family card, child's birth certificate.

The cause of action that regulated about the legal certainty addressing for marriage recording has been there based on Law Number 1 of 1974 regarding Marriage, Law Number 7 of 1989 regarding Religious Court, Government Regulation Number 9 of 1975 regarding Implementing Regulation of Law Number 1 of 1974, President Instruction Number 1 of 1991 regarding Compilation of Islamic Law and Regulation of Supreme Court Number 19 of 2018 regarding Marriage Record.

The implementation of Article 2 of Marriage Law and Article 7 of President Instruction Number 1 of 1991 in giving legal certainty for marriage record in the implementation of Article 2 subsection (1,2) Law Number 1 of 1974 is legal marriage is done according to religion which is based on the provision and the condition of marriage that have been fulfilled and the administration process according to country that the marriage is recorded to Religious Affairs Office. Basically, the marriage record is the responsibility of Religious Affairs Office itself, but unrecorded marriage in Religious Affairs Office, in accordance with Article 7 of President Instruction of 1991 for unrecorded marriage can conduct Itsbat Marriage to Religious Court with the reasons that have been determined in President Instruction Number 1 of 1991. With this Itsbat Marriage determination, the Religious Affairs Office issues marriage certificate as the authentic proof of marriage with the purpose of community's welfare.

2. *The Implementation of Itsbat Marriage in Customary Community of South Malak through Maninjau Religious Court Class II*

The implementation of Itsbat Marriage can be done through Religious Court and it can also be conducted out of Religious Court. It is caused by the reason of a remote area or far from religious court.¹² Itsbat Marriage is conducted in Customary Malak because the access of community is far to get services from Religious Court so that the court and the officials take an action to conduct mobile court. The reason a marriage is acknowledged or not is not by the place of trial because whenever the trial takes place, it will be acknowledged by law as long as the requirements are in line with the positive law.

After all requirements is fulfilled, then the Customary Government of South Malak coordinate with all parties of Religious Court to conduct Itsbat Marriage program. Then, the Religious Court party comes directly to Customary Head of South Malak and takes steps to conduct the Itsbat Marriage, in this case the community in the day that has been determined to visit Customary Head office.

Basically, regarding to the implementation process of collective Itsbat Marriage in Customary South Malak, the process of proposal until the determination is issued is same as the approval trial

¹² Interview with Mawardi, the Clerk of Maninjau Religious Court Class II, Dated February 18, 2019, at 13.10 Local Time.

conducted in the Religious Court, but there is a difference which is the implementation is done directly in Customary South Malalak, Malalak District.¹³

The implementation of Itsbat Marriage in Maninjau Religious Court Class II consists of steps starting from request proposal, registration, parties calling, procedure of trial, and decision determination that are conducted in the Customary Head Office of South Malalak in Malalak District. The procedure of Itsbat Marriage implementation in Customary South Malalak is done as follows:

a. Request Proposal

In terms of proposing a request of Itsbat Marriage to Religious Court, it must have coordination first between related parties which are from the party of Customary Government of South Malalak, Religious Affairs Office of South Malalak, and the party of Maninjau Religious Court according to Syaharuddin, community figure of Customary South Malalak stating that the party of Maninjau Religious Court visits Customary Head Office of South Malalak in terms of request proposal.¹⁴ In addition, the requirements needed in the request proposal of Itsbat Marriage are:

- 1) Copy of Family Card
- 2) Copy of Spouses' Identity Card KTP pasangan suami istri
- 3) For those who do not have identity card, it can be represented by domicile certificate in the customary region.¹⁵

Based on the research to the field, the researcher finds that those who are willing to propose marriage legality to the Religious Court, it can be proposed by two forms namely written and oral forms.

b. Registration

After the officer of table I examines the proposal letter and estimates the case cost, then the result is made in form of general attorney letter to pay. If the proposal letter is lack of number (copy) of the appellant, then the appellant is asked to copy it. Afterwards, the officer submits the proposal letter back to the appellant completed with general attorney letter to pay and is asked to come to the cashier to pay down payment of the case as in line with what is shown in the General Attorney Letter to Pay.

Based on the interview with the staff of Maninjau Religious Court stating that the cashier is referred to General Attorney Letter to Pay, accept the money from the appellant and record it in the journal book of proposal case, then the cashier signs it.¹⁶ After the cashier signs General Attorney Letter to pay, then the cashier gives it to the appellant as the receipt and other sheets united with proposal letter and the proposal letter is submitted and it is returned to the appellant, to be submitted to table II.

Afterwards, the appellant comes to table II by showing the proposal letter and receipt (General Attorney Letter to Pay) and the officer of table II registers the case in case book in line with the number and the date in the General Attorney Letter to Pay. After doing the record by the officer in Table II, the appellant is given one sheet of proposal letter which has been registered consisting number and date of case registration.

In 3 (three) days, the officer of table II submits the case sheets completed with the form of Appointment of the Panel of Judges to the Head of Religious Court through clerk and deputy clerk to get the appointment of Panel of Judges that will try the case. After the head appoints the Panel of Judges that

¹³ Interview with Ahsan Dhawi, the Vice Head of Maninjau Reigious Court Class II, Dated March 9, 2019, at 15.10 Local Time.

¹⁴ Interview with Syaharudin, The Community Figure of Customary South Malalak, Dated February 13, 2019, at 09.00 Local Time.

¹⁵ Interview with Mawardi, the Clerk of Maninjau Religious Court Class II, Dated February 22, 2019, at 15.00 Local Time.

¹⁶ Interview with Hasby, the Staff of Maninjau Religious Court Class II, Dated February 22, 2019, at 14.00 Local Time.

will try the case, the case file is returned to table II to record the Panel of Judges that is appointed by attaching form of Trial Day Determination (PHS).

In the period of 7 (seven) days, the panel of judges will determine the trial day and it must be also recorded in the case book. In the determination of trial day, the Chief Judge governs bailiff to call the parties in case that must be delivered to the related parties no later than 3 (three) working days before the trial is started.

c. Procedure for Trial

As in line with the schedule, the panel of judges that have been appointed conducts a trial under the command of Chief Judge and assisted by a substitute clerk. If the appellant presents in the trial that has been determined, the proposal of the appellant is directly read. Then, it is continued by the verification of two witnesses. After the proposal theorem is proven, the panel of judges will drop assignment and grants the appellant's proposal.

The witness, if seen from the definition of terminology, means that the person who shows, reveals, and has a position as a proof. Hence, the witness here means that a living human. If it is intended that the witness is a person who is truly a witness because he witnesses a case then it is measured that the witness is one of the proofs in the verification law.

Regarding to the position of a witness in verification law, it is as a proving tool, among other proving tools that can be proposed by the parties in case. However, in several reasons for the sake of proving a truth between the parties in case, until a witness is there as the proving tool proposed by the parties in law, it is not directly accepted before the witness proposed before the court fulfills the criteria determined by verification law.

To notify the witness that is acceptable and can be taken as a strong verification, it must fulfill particular requirements such as:

- 1) Believing in Islam
- 2) Adult
- 3) Rational
- 4) Independent
- 5) Fair

This is based on the interview with the judges of the Religious Court stating that the requirements of a witness generally are Moslem, adult, rational, independent, and fair".¹⁷ In the trial of Itsbat Marriage, there is a witness named *de auditu* in which it means that those who are appointed as witnesses but not witnessing directly the marriage process conducted by the involved parties in the Itsbat Marriage trial.¹⁸

De auditu or *testimonium de auditu* is the witness' statement obtained from others. He does not listen to it or experience it; he only listens to it from others about the event or the presence of the things. For instance, "the witness states that he listens to it from his grandfather, that the initial A (Male) married to B (Female) in 1978".¹⁹

¹⁷ Interview with Syafrul. The Judge of Maninjau Religious Court Class II. Dated 15 February 2019.at 13.20 Local Time.

¹⁸ Interview with Syafrul. The Judge of Maninjau Religious Court Class II. Dated 15 February 2019.at 13.20 Local Time.

¹⁹ Retnowulan Sutantio, and Iskandar Oerikartawinata, *Civil Procedure Law in Theory and Practice*, CV.Mandar Maju, Bandung, 1997, p 74.

In the regulation regarding civil law, there is not an absolute requirement to be accepted as a witness, both from gender, nature, and some ideal numbers. The religion difference does not become a problem to be accepted as a witness because the main principle in verification is the expose of a truth of an event that becomes the dispute between the parties before the panel of judges. Therefore, justice and truth can be enforced.

d. Decision Making/Determination

If it exceeds 14 (fourteen) days of a decision or a determination is made by panel of judges, the appellation can accept the decision or the Itsbat Marriage determination to the Religious Court through the officer of table III, without expensing administration fee. If it has got the copy of the determination, it means that the marriage has a legal proof.²⁰ In the Customary South Malalak, Malalak District, with the accomplishment of the collective Itsbat Marriage trial which then leads to a legal proof namely the determination of Itsbat Marriage, then the determination is addressed to the spouses who conduct the Itsbat Marriage. Based on the research result, the participant of Itsbat Marriage in the Customary South Malalak can be seen in the table below:

The Data of Itsbat Marriage for Customary Community of South Malalak that Has Been Issued by Maninjau Religious Court Class II Year of 2013 to 2014

Table1. The Data of Itsbat Marriage for Customary Community of South Malalak

Number	Maninjau Religious Court Class II			The Number of Itsbat Marriage Determined
	Itsbat Marriage Case	2013	2014	
1	South Malalak	71		71
2	South Malalak		18	18
	Total	71	18	89

Data Source: Data of Maninjau Religious Court Class compiled from 2013 to 2014.

In the Customary South Malalak, after issuing the determination of their Itsbat Marriage, then the people concerned manage for the making of Marriage Certificate to the Religious Affairs Office of Malalak. The requirements are as follows:

- 1) The copy of Itsbat Marriage Determination
- 2) Copy of Family Card
- 3) Copy of Spouses' Identity Card
- 4) Copy of Two Marriage Witnesses
- 5) Copy of Marriage Guardian's Identity Card
- 6) 2 x 3 Photograph (5 sheets), 3 x 4 photograph (1 sheet) for spouses
- 7) For the marriage guardian and the witness who have passed away, notification letter is made in Customary Head Office.²¹

²⁰ Interview with Syafrul. The Judge of Maninjau Religious Court Class II. Dated 16 March 2019, at 13.15 Local Time.

²¹ Interview with Hanidar, the staff of Religious Affairs Office of Malalak District, Dated 19 February 2019, at 11.00 Local Time.

Generally, the implementer of marriage record is the Religious Affairs Office itself but for the marriage which is not recorded yet, the marriage can be approved to the Religious Court until the determination is issued. Afterwards, the Religious Affairs Office with the determination can issue the marriage certificate with the purpose of the community's welfare in terms of giving legal certainty on the marriage. The other article that regulates the marriage record is Law Number 1 of 1974 and President's Instruction Number 1 of 1991. Regarding to this, in Qur'an and *Fiqh* book about the importance of marriage record like the presence of debt record, it is a portrayal regarding marriage recording; therefore, based on *Fiqh* element, it can be explained that a debt also needs to be recorded let alone the marriage record".²²

As in line with the Law Number 1 of 1974 that has been mentioned above, in Indonesia itself, there are some different regulations for each believers regarding the regulation of marriage record. For moslem, the process of marriage record is done in the Religious Affairs Office of District and for non-moslem Indonesian citizens, the marriage record can be done in the Registry Office. It is similar to the mixed marriage (Indonesian citizen married to the Foreign Citizen), then the marriage must also be reported to the concerned party to obtain marriage record based on law. Special for mixed marriage, it is regulated in Article 61 Law 1/1974 that mixed marriage is recorded by the authorized recording officer. Therefore, the implementation of Itsbat Marriage is only for the Moslem Indonesian Citizen.

3. *The Legal Consequence after Issuing Itsbat Marriage in the Customary South Malalak by Maninjau Religious Court Class II*

The Head of Religious Affairs Office of Malalak District stating that the legal consequence of marriage record through Itsbat Marriage is the legal certainty for marriage for spouses who have conducted the marriage previously.²³ With the presence of marriage certificate for spouses after conducting Itsbat Marriage, thus, their marriage is legal because it is in line with the prevailing law. If the spouse has done Itsbat Marriage, absolutely they are recognized by the country as a legal spouse because they are recorded based on governance administration which is in line with the prevailing regulation".²⁴

The presence of guarantee and protection towards particular rights as citizens after the marriage is there. The right to obtain citizenship and registry record documents likes Birth Certificate, Family Card, Right to Have Passport and Right to Obtain Family Support/Retirement.

For divorce, (divorced/death divorced), the marriage book issued after the approval becomes one of the proof of divorce requirements to be processed in the Religious Court. In doing divorce in the Religious Court, it should be the marriage that is in line with the regulation which is having marriage certificate. If the marriage does not provide marriage certificate or it is not issued by the Marriage Recording Officer or the Marriage Certificate is lost or broken, then the divorce cannot be done. Therefore, it is better for them to propose their marriage to the Religious Court.

An unregistered marriage is possible to conduct Itsbat Marriage to the Religious Court with the reason of divorce. While, the proposal of the Itsbat Marriage with other reasons like the presence of the willingness to marry with other is only allowed if the marriage certificate is already provided previously by the authorized official. If it is the death divorce, one of the requirements of proposing Itsbat Marriage is it must be followed by the divorce suit. Therefore, it has a legal power on the marriage conducted in the next future. In this case, the Religious Court suggests to the person to do compilation case in which the approval case is done firstly and continued to the divorce case.

The assets obtained during marriage become the collective assets since the beginning of the previous marriage. Unrecorded marriage is really harmful for wife and children both based on law and

²² Interview with Ahsan Dhawi, the Vice Head of Maninjau Religious Court Class II, Dated 12 April 2019, at 15.11 Local Time.

²³ Interview with Hizra, the Head of Religious Affairs Office of Malalak District, Dated 13 March 2019, at 11.00 Local Time.

²⁴ Interview with Mawardi, the Clerk of Maninjau Religious Court Class II, Dated 22 March 2019, at 15.45 Local Time.

based on social. In law perspective, the woman is not considered as the legal wife so that she does not deserve to get the sustenance and the inheritance of the husband if he is passed away. Besides, the wife and the children do not deserve to get the collective assets if the divorce is there because based on law the marriage is considered never happen at all.

Therefore, the process of unregistered marriage record is through Itsbat Marriage to the Religious Court. By issuing the Itsbat Marriage, their marriage directly gets a legal certainty. Consequently, the asset of marriage becomes theirs and the children born from the marriage are the legal children, and also in terms of heritage, the wife and the children become the legal heirs. The community in Customary South Malalak is included into the region of Minang Kabau. It means that in the region, it still has a matrilineal concept. Matrilineal is the lineage that follows the blood from the mother. It becomes the foundation for the Customary Community of South Malalak because by the presence of mother's descent clarity, the parties who divorce later will be naturally planted with the concept in themselves that the assets that cannot be shared will become the assets from their children.

The reality is the marriage with initial K (male) and U (female) has four children namely T (male), YM (Female), A (Female), RFY (Male) and Z (Male), following the Itsbat Marriage in 2013 towards the shared assets with his wife living with the children or in the wife's place, while K (male) returns to live together with the parents.²⁵

The position of shared assets if the divorce happens in fact in Customary South Malalak is not clear and is not able to be shared. It is because of the concept of matrilineal, the husband lives at the wife's house so that it affects on the shared assets. Consequently, the husband is divorced and gone so that the legal consequence on shared assets, inheritance, and treasure are not clear except the Itsbat Marriage which is similar to the marriage commonly that has been recorded does not also problematize the assets.

The legal base of shared assets is regulated in Law Number 1 of 1974 regarding marriage, in Chapter IV entitled with assets in marriage. This chapter consists of three articles namely:

Article 35

- 1) The assets obtained during marriage becomes shared assets.
- 2) The inheritance from each husband and wife and the assets obtained by each are as presents or inheritance, are under the control of each as long as the parties does not decide other things.

Article 36

- 1) Regarding to shared assets, the husband or the wife can act based on the agreement of both sides.
- 2) Regarding to the inheritance of each, the husband and the wife have full right to do legal action regarding to their assets.

Article 37

- 1) If the marriage is ended because of the divorce, the shared assets are regulated according to each law.

In Islamic Law Compilation, it also regulates about the shared assets.

Systematically, it is stated as follows:

Article 85

- 1) The presence of shared assets in the marriage will not close the possibility of assets owned by each husband or wife.

²⁵ Interview with Karimi, the Community of Customary South Malalak, Dated 18 February 2019, at 13.20 Local Time.

Article 86

- 1) Mainly, there is not mixing between the husband's assets and the wife's assets because of the marriage.
- 2) The wife's assets will always be the right of the wife and controlled by her. It is also same as the husband's assets that will always be the right of the husband and controlled by him.

Article 87

- 1) The inheritance of each husband and wife and the assets obtained from each as presents or inheritance are under the control of each parties except the parties do not decide other things in the marriage promise.
- 2) Husband and wife have full right to do legal action on respective assets in form of grant, present, alms or others.

Article 88

- 1) If dispute happens between husband and wife regarding shared assets, the dispute resolution will be proposed to the Religious Court.

Generally, it is indeed that every shared asset can be shared as in line with the regulation that has been set by Law prevailing in the region of Indonesia. However, if the shared asset is mixed in the private asset (inheritance), then the asset is still in the control of the previous owner. However, if the asset is developed in the area that is not in the *Ulayat* land or not mixing between shared assets and inheritance, then the assets can be shared as set in the prevailing law.

The clarity of a heir on child, wife/husband if one of them in the family is passed away based on Article 830 of Civil Law, it is stated that the new heir can be inherited to other parties if the heir has passed away. The heir or the heirs must be there when the heir is passed away. This regulation does not mean that it reduces the meaning of regulation in Article 2 of Civil Law stating that **“the child in the woman's womb is considered as has been born if the expects for it”**. If he is passed away when he is born, he is considered never exist. Therefore, it means that the baby's right in the womb has also been set by law as the heir and has been considered being able to heir. A heir must be competent and must deserve to heir; meaning that he is not stated by the Law as someone who does not deserve to be inherited because of the death or not considered as not competent to be a heir.

Based on the Article 832 of Civil Law, the one who deserves to be the heirs are the family, both who is legal based on Law and out of marriage, and husband or wife who live longest. If the husband is dead, the distribution of inheritance is set based on the heir's religion or the husband' religion who is dead.

It can be known from the identity card or the religion he believes in. If he is a moslem, the inheritance law used is Islamic Law. If the heir is a non-moslem, the inheritance law used refers to Civil Law Book. Both based on Civil Law and Islamic Law, the heir is categorized based on the family which has blood relation and the wife who is still alive. If all heirs is still alive, the inheritance distribution is only on the children, father, mother, and wife. If the same-blood family and the wife are not there, all inheritance becomes the country's assets.

Therefore, it must be ensured that an asset is the shared asset or not. It can be known when the asset exists, whether it is after the marriage or previously. If before the marriage, then the asset is called inheritance and can be stated as the shared assets if the assets are obtained after marriage. It means that during the marriage of husband and wife, although it is only husband who works, the wife also deserves to get 1/2 from the assets gained by the husband. In the second point, the wife left also deserves to accept 1/2 from the shared assets added with the inheritance of the husband before marriage.

Then, for moslem, the inheritance obtained by the wife is set in Islamic Law, so if the husband is dead, then the assets can be shared after paying all debts left by the heir during his life previously. If children are there, the wife deserves to get the inheritance from her husband of 1/8 portion and the wife will get 1/4 portion if the children are not there.

By the presence of the authentic proof on a marriage, it will decrease the impacts that are not expected if one of the families is dead. The implementation of Itsbat Marriage extremely influences the heir. The presence of Itsbat Marriage will enable the heir to obtain his rights without violating the prevailing regulation both based on law or based on the religious regulation prevailing.

Conclusion

1. The reason of Customary Community of South Malalak conducts Itsbat Marriage to Maninjau Religious Court Class II is the presence of legal awareness of the community regarding to the importance of marriage book, lack of knowledge, distance and place factor, time and cost, the negligence of Marriage Recording Officer Assistant in the marriage record, parents' permission, the increasing number of community who is in need of marriage certificate for citizenship documents like birth certificate and family card.
2. The implementation of Itsbat Marriage for Customary Community of South Malalak in Maninjau Religious Court Class II is through several phases such as: the request proposal; it can be done in written and in oral form with the requirement that has been determined; registering the case number and recording it in case register book; paying case fee; judges appointment by the head of Religious Court through clerk to try the case; determination of trial day recorded in the case book; the trial procedure is by reading the appellant's proposal, two parties between the appellant and the respondent are present; and the determination of Itsbat Marriage case.
3. The legal consequence after the Itsbat Marriage is issued in the Customary Community of South Malalak by Maninjau Religious Court Class II is as follows: the guarantee of legal certainty for spouse who do not have marriage certificate yet, guarantee and protection providing on particular rights as the citizen after the marriage, for the marriage book divorce interest that has been issued after the Itsbat Marriage becoming one of the requirements of divorce can be processed in the Religious Court, and if the next widow of death is willing to marry again while she does not have marriage book, then the Religious Court suggests compilation case request which is the Itsbat Marriage case and the divorce case in a request, the asset obtained during the marriage becomes the shared assets since the beginning of the previous marriage. The clarity of inheritance on children, wife or husband is there if one of them in a family is dead.

Suggestion

1. It is expected to the Head of Maninjau Religious Court Class II to provide a more intensive service on the process of marriage legality (Itsbat Marriage).
2. It is expected to the Head of Religious Affairs Office of Malalak District to provide legal socialization regarding marriage record which is the obligation in order to get legal certainty on the marriage done in order that the marriage can be recorded in the Religious Affairs Office for the sake of minimizing the future Itsbat Marriage.

It is expected that the Customary Community of South Malalak to do marriage legality (Itsbat Marriage) to Maninjau Religious Court Class II for those who do not have the marriage certificate yet.

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