

## The Woman's Position and Undocumented Marriage (A case in a village at East Java Province, Indonesia)

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### Abstract

The term of undocumented marriage is only known in Muslim community in Indonesia. Undocumented marriage is a legal type of marriage based on Islam as long as it meets the marriage's legal requirements; however, it is diverge from the state rules because it is not registered in the authorized institution for marriage. A woman who married with this type of marriage, based on law and administration, has no clear identity before the state. It will make her difficult to have her right as a wife. Undocumented marriage will give weak position for children by law. In addition, women's position in this type of marriage is the disadvantage object. Although undocumented marriage has negative impact especially on women and children; in Warurejo, however, this marriage is widely dispersed among the community. Research is conducted in Warurejo village, East Java using qualitative, quantitative and semantic approaches. Research result shows that the women's position in this undocumented marriage is having discrimination, subordination, no bargaining power in the family, and susceptible for cervix cancer. They do not have any option for the future because it is determined by family, norm and value system prevailed in the community.

**Keywords:** Undocumented marriage, norm, value system, subordinate

### Introduction

Undocumented marriage exists overtime and often raises controversy. It is named with this term because it is conducted silently, closed, secret or hidden without any publication. Undocumented marriage is considered a divergence from state rules because it is not recorded in the authorized institution for marriage. A marriage is considered legal if it is admitted by the state. The state arranges every, but not all, marriage conducted in the society; for example, undocumented marriage conducted in the society is in line with the state's marriage law norm.

Refers to Islamic jurisprudence from various *mazhab, fiqh* or Islam encyclopedia, it is hard to find the terminology of undocumented marriage and it is not actual in *fuqoha* (Islamic law experts) environment. The term of undocumented marriage is only popular or popularized in Muslim community environment in Indonesia, either at rural or urban community and becoming a phenomenon (Zahrah, 1958; Mujib, 1980). The phenomenon of undocumented marriage is only known in the Muslim society and not in other religions, such as Catholic.

The luster of this marriage has brought thoughtfulness among the government and religionist because it has social problems such as the vulnerability of domestic violence, and the ignorance of law rights for wife and children. This marriage is illegitimate compare to the official marriage based on religion and wedding acts determined by the state. The conducted marriage will be invalid based on the law state if it is not registered, because it is considered breaking the state law; therefore, sanction will be given to the actors. A draft made by Indonesian Ministry of Religious Affair in 2004 (Islamic Law Complication) states that marriage registration is one of the legal requirements of a marriage (*Kliping.depag.co.id*).

The importance of marriage registration is related to the status of wife and children. If a marriage has registered to Marriage Registration Officer proven with a marriage book (*buku nikah*) it will have law consequences. On the contrary, a marriage that is not in line with the wedding act and Islamic Law Compilation, unregistered and no prove of marriage book, it will have no law power. It will, later, raises problem for family members especially wife and children of undocumented marriage.

A woman bound in an undocumented marriage has disadvantage position and often become a victim or even subordinated. The impacts will be in term of identity as a wife in an undocumented marriage and this will be felt by children who born in this marriage. This woman, based on legal notice or administration, has no clear identify before the state. Consequently, it will be hard for her to get her rights as a wife. This type of marriage also causes children to have weak position in front of the law. Children are susceptible for not getting their right because they are legally weak.

In addition, the position of a woman in an undocumented marriage mostly become the disadvantage object; because from heredity verification side, problems of joint property between husband and wife, mutual inherit right in family relationship and other social problems are become inherent part of a marriage relationship. However, in practice, this marriage is still exists and develops causing controversy with all its implication.

Effort has been conducted by the Ministry of Religious Affair of Indonesia to reduce and make the actors realize about the negative impact of undocumented marriage by proposing a motion to criminalizing the actors of undocumented marriage with consideration that it is against the state law and also causing domestic

violence among couple who bound in this type of marriage.

The phenomenon of undocumented marriage is not only develop in Indonesia but also several Arabic countries and Islamic countries which is known as *urfi* and *misyar* marriage (Duraiwisy, 2010; Hoda, Osman dan Fahimi, 2005). Egyptian government has closed the right to get citizenship for children who were born from women who married with Arabic or non-Arabic men in *urfi* and *misyar* marriage and determine that they do not have a right to get the citizenship.

Undocumented marriage is similar with *misyar* marriage. The similarity of terms is rest on the fact that all terms are containing meaning as a form of secret marriage and unregistered officially through authorized officer (Jabarti, 2005; Zakaria, 2010).

Arab countries, Egypt and Indonesia have similarity in clarifying rules to gain citizenship right for children who were born from *misyar*, *urfi* and undocumented marriages that a certified and legal marriage statement is one of main requirements to gain citizenship right for children who were born from *misyar*, *urfi* and undocumented marriages.

In Egypt and Saudi Arabia, *misyar*, *mut'ah* and undocumented marriage is a common thing among the communities that also called prostitution (Jabarti, 2005). *Misyar*, *mut'ah* and undocumented marriage are cursed by conservative scholars and women observers; and have been a spotlight on various media because it is considered against the state law. The emergence of *misyar* marriage in Egypt and Saudi Arabia is to suppress social burden and expensive marriage expense to get state certificate.

In several countries in East, North and Central Africa, in family law manner, women are experiencing discrimination in term of law arrangement for marriage, divorcement, right to nurturing child and legacy, especially woman who conducting unregistered marriage (Moghadam and Fahimi, 2005).

Discrimination against women is not just from the state, community and family but also from themselves (Abdullah, 2001). Due to uncertainty in law in women side, when divorcement and thus hereditary dispute occurs, because of her marriage is considered never exist by law she cannot demand her rights. Besides, domestic violence also susceptible to be happened because there's exist an opinion that husband's responsibility is visible. However, for children, the problem will be the lost of their inheritance right and they won't be admitted as a child from a father because the marriage is never exist.

Undocumented marriage is an acceptable type of marriage in Islam, but it is not ideal because the general perception of this marriage is still negative and is a social phenomenon that expected to be appropriate and not in contradiction with cultures, norms and social ethic prevailing at the community.

#### Research Benefit

Research on undocumented marriage in rural community is relevance to studied due to several reasons. *First*, marriage is not common event involving only individuals who want to get married but it is a life cycle and involving community even the state; how individual and community define a marriage, because a marriage has lasting goals and related to the frame of reference of individual concerned. *Second*, this research study is expected to give contribution to the government, in this case the Ministry of Religious Affair, the officer of marriage registration, *modin* (village religious functionary for marriage), and both couple who want to have undocumented marriage or already have one, especially about the implications, either positive or negative, caused by undocumented marriage practice.

## THEORETICAL FRAME

### Family Conception

Which groups can be called as a family and which are not? The definition of family has obvious and important order for all of us. A family might receive benefits such as housing, health care and sick leave, or acknowledgement from community. Ideas on what is a family mostly came from people around us. Since we are little, we have been faced with ideas about what is a family as we seen and how it supposes to be functioned. A family is a clear model, there are the elder relatives who can give imagination of families and relatives from the past and even about a structure of family differs from neighbors and friends.

Unlike other social groups, a family is considered as social institution in a broader meaning and has been developed in the community. To become part of family groups is more than just to be connected with other people. It is also mean having legal and culture certainty about the ability of rights and responsibility described in the formal law of a state and informal norm, custom and tradition (Klein and White, 1996; Goode, 2007).

A family consists of a father, a mother and children or known as nuclear family consisting two adults from different sex, living together in form of recognized social relationship and children either biologically or socially related with the adults (Parsons and Bales, 1955; Morgan, 1975; Murdock, 1949).

The essence of a family is a consanguinal relationship or with addition (adoption) arranged through a marriage life, together and in line with decendants which is a special unit.

### Marriage Conception

A marriage is one of cultural practices that attract formulation effort from various societies in a community. An activity to be believed as the actualization of an ideal love relationship between two individuals

only has become a matter for many people or institution, from parent, expanded family, religious institution to the State. However, this personal view will be reduced by constraints set by family, community or religious tenet and state law; therefore, a good will to build relationship and develop each self in common space, will be stagnant, or often defeated.

A marriage as: the union of a man and woman by a ceremony in law and the state of being so united institutionalized through official appointment of man and woman by religious institution and the state to establish a family. Moreover, for the sake of inheritance system regularity and the security of family's property based on patrilineal descent for generations (Collins, 2000). Murdock (1949) states that, basically, marriage is to develop relationship and normative behavior with mutual responsibility.

Definition of marriage according to Duvall and Miller (1985) "*marriage is socially recognized relationship between a man and women that provides for sexual relation, legitimized child bearing and establishing a division of labour between spouses*"

Barnard and Good (1984) state that, from cultural aspect, marriage is a bond between a man and a woman to legalize their children who were born from the marriage. Marriage is not about incarnating relationship between the marriage couple, but also involving families and relatives from both sides.

Perception within the society about marriage is strongly related to social values, cultures and religion. In case of Indonesian society, especially who live in rural area, marriage means a social responsibility instead of manifestation of desire of each individual (especially woman); however, in traditional society, the sense of marriage as a social requirement is a tradition considered as sacred and holy and can function as a ceremony.

#### Functional Structural

The context of the research is using functional structural theory analysis by Merton about the functional and disfunctional of undocumented marriage in the society.

Merton's functionalism theory, stressing on the objective consequence of individual behavior, the necessity for the existence of objective consequences either functional or dysfunctional and the existence of functional alternative concepts in its analysis, is appropriate to implement in a society with diverse groups.

Merton (1949; 1969) suggests that a reference group theory is used as self appraisal, comparison and moral guidance. The reference group theory consists of normative reference group, comparative reference group and membership reference group.

#### Weber Rationality

Weber (Ritzer and Goodman, 2007; Ritzer, 2003) states that social act or behavior streamed on individual act has subjective meaning. Social act should be understood in relation to subjective meaning consist within; therefore, a method is needed to understand the subjective meaning in objective way and analyze it using inter-subjectivity. Based on rationality of social act, Weber (Ritzer and Goodman, 2004; Ritzer, 2003) identifies two types of rational acts and two types of irrational acts, which are:

1. *Zwercrational*
2. *Werktrational*
3. *Affectual action*
4. *Traditional action*

Weber ideal-type analysis (Coleman, 2008) allows special events solution and gives comparative analysis using general theoretical categories. The whole approach stresses that ideal and material interests regulate people's act, and the relationship between religion-ideal and economic interest is interdependent and reciprocal. According to Morrison (1995); Andreski (1989); Sibeon (2004), in micro level, Weber's starting point is about the social reality on acting-individual, in which their act can be understood only from the subjective meaning.

#### Research Method

The research is conducted in Warurejo Village, one of villages in East Java, Indonesia. The main informants for the research are actor/elite (institutional and leadership), undocumented marriage performers and related parties with focus on research problems. The informants are selected using snowball sampling (Danim, 2004).

Qualitative method is used to reveal who the performers and formal and informal leaders are and society's categorization supporting the existence of undocumented marriage. This method also used to observe women's position in undocumented marriage and the typology of undocumented marriage. In addition, quantitative method is also used as an option of post-positivism paradigm. Creswell (2010) suggests that quantitative research includes experiment and non-experiment research designs along with causalities and identification of double variable power. Variables used in the analysis consist of economical, psychological and stratification variables. The use of qualitative and quantitative methods is also called mix method. Qualitative and quantitative methods are used mutually to strengthen research result analysis about undocumented marriage as social fact.

The unit analysis taken is community and individual (man and woman as the actor of undocumented marriage) with assumption that individual's subjective act to decide to do undocumented marriage is due to

support by local structure and social institutions, following Weber's terminology (Weber, 1964)

#### Data Analysis Technique

Data analysis technique used in the research is qualitative analysis. Qualitative analysis is conducted on data and information about the process of events and motivation for social acts conducting by undocumented marriage actors related to social act.

### **RESEARCH LOCATION DESCRIPTION**

#### Economical Condition

The economic life of Warurejo Village's society is hard to describe precisely whether the society is poor or no based on the natural physical condition. Most of the lands in the village are less fertile, arid, barren, and dry. Several rivers have no water especially in dry season. Even with this natural condition, village's headman admitted that Warurejo's society cannot be considered poor because none of the population is starving. However, the population is experiencing uncertainty in income.

This uncertainty in income is experienced by people who work as farmer, serviceman such as carpenter and mason, *ojek* (people who offer transportation service using motorcycle), and used-goods scavenger. On the other hand, people who work in governmental sector experiences routine income; however, the amount is less compare to the whole population. This economic condition has caused some people in the population to arrange and utilize statement letter of poor for every matters that allowing them to use society's health security facility (*jamkesmas*).

From the physical condition of buildings, houses in Warurejo village, generally, are semi-permanent and hut made from bamboo netting called *gedhek*. The floors are compacted soil and the roofs are tiled-roof.

There are houses that permanent, made from masonry wall or brick and the floors are cemented or tiled. These houses usually owned by women who have been married using undocumented marriage for several times or *ojek* with side job as *broker* for men who want to have undocumented marriage or clergies who help any couples who want to married under undocumented marriage arrangement. They can build and renovate their houses through undocumented marriage practice.

#### Society's Social Construction

Socially, the life of Warurejo society is built on social construction consists of two elite groups. First, few social elites occupying governmental position such as governmental leaders, civil servants, employees, and teachers. Second, farmworkers, people who work in service sector, merchant, and second-goods scavenger.

Socially, there are actors who have no better economic condition but have respectful position in the society because of their function in religious institutions to coordinate traditional religious activities, for example *kyai* (clergy in Muslim community) has higher position in society's social stratification.

#### The impact of Undocumented Marriage for Women' Reproduction

The undocumented marriage is developing and exist in Warurejo because it has function for community and individual; especially, for woman as an actor of this marriage. Undocumented marriage network such as broker, *kyai* who marries couple with undocumented marriage, security, village apparatus and family from women side whom conducting undocumented marriage. Undocumented marriage is not only has positive function for the actors but also negative impact for the actors and children who were born from the marriage, such as vulnerable for venereal diseases and no economic security after divorcement.

Even though undocumented marriage has been going on for generations and can be done anytime, but there are no exact data about how many women who have been married with this type of marriage because women in Warurejo often married more than one. If one hundred percent of women population at the village are permitted and able to married with undocumented marriage it does not mean we can calculate the people who do that because there are possibilities that a woman, the beautiful one especially, can do that marriage for two or three times in a month.

A woman who married with the system for many times is a form of exploitation on her own body. Married in several times makes woman has relationship with multiple partners. This situation put him on vulnerable status for various venereal diseases such as HIV/AIDS and cervix cancer. There is no guarantee that a man who came to Warurejo looking for a spouse is clean from venereal diseases.

Based on data collected by researcher at the location starting from 1993 to 2012, 605 people in Y regency are identified as having HIV and AIDS, with men victim of 57% and women are 43% (10 percent is household mother with husband likes to play around with other women). 348 of them have shown opportunities infection. These high numbers made the location is in the 5<sup>th</sup> place among the regencies in East Java province.

The high number of HIV and AIDS in the location mostly caused by heterosexuality with multiple partners of 71 percent, injecting drug of 21 percent, homosexuality of 6 percent and prenatal of 2 percent. Cervix cancer found 100 cases, with 95 people has died. Referring to the data, no place that sterile from HIV and AIDS spread.

With the high number of HIV/AIDS or cervix victims does not make people learn the lesson or even traumatic for doing undocumented marriage, it is proven with the persistence of this type of marriage until now.

Cervix cancer and HIV/AIDS cases are ignored by community who thought that the diseases are a destiny and everyone can experience that.

These high numbers are caused more by unhealthy sex life, which is having relationship with mutual partners. In addition, community's knowledge on HIV and AIDS is limited such as about the infection process and the impact. The main purpose of undocumented married is economic; consequently, no matter what the impact is, it will keep ignored. They see undocumented marriage as a way to earn the life and increase their economic life. Undocumented marriage is a sex business that brings profit to many parties. This sex business (covert prostitution) form is not just famous in regency level but also East Java Province.

According to Abdullah (2001), formal prostitution, covert sex practice, and sex before married or between legal couple give contribution to HIV and AIDS cases in Indonesia.

Practicing undocumented marriage for several times resulting in that someone has to have relationship with mutual partners (husband); thus, makes them vulnerable to be infected with those diseases. However, this situation is ignored by every parties involved in undocumented marriage network with economic reason. It is woman who suffers most and she put her life in danger by changing partners.

Description about women who became object in sexual practice has become social reality historically formed by various social process that later became a power structure in which women are in subordinated position in sexual life (Firestone, 1972).

Blood (1972) found that sex industry in Africa is developed by bringing in widowers who need money. Modernization in Africa is not just weakening old family pattern, but also creating a vacuum family filled with *promiscuous* and commercialized through sexual relationship. According to Abdullah (2001), sex practice is an expression of value system and norms prevailing in the society. Sexuality is tightly bond in certain value system. Value system is a normative source regulating life order and value, in which the measurement will be which one is permitted and which one is not.

Social compliance of women cannot be separated from nature and culture or object and subject, in which women are situated as object in men's world. The subject and object relationship is relationship between man and woman as a couple who married with undocumented marriage. Data collected by researcher in field shows that most actors actually do not have attention to make their marriage last for long by registered it to authorized institution.

Reasons why women want to do undocumented marriage are economic and norm demand, while men are just for fun, a trial, wanted to prove a myth developed in Warurejo community or just wanted to have legal and *halal* (allowable by religion) polygamy based on Islamic law. Using excuses such as legal and avoiding engaging in illicit sex, the marriage only last for several days even only in one day or one night.

Whatever the purposes of undocumented marriage actors, especially men who want to have a legal and *halal* sex relationship, Singarimbun (1992), however, states that the purpose of sex relationship is to continue the generation, but then it is manipulated by human so the function became to satisfy sex passion and sometimes became social status or even an important industry under the cloak of to increase work opportunity and increase economic. According to sex and sexuality is the reflection of society's values, customs, religion and big institutions such as the state.

Statements suggested by Singarimbun, if related to the fact in the field, show that to look for pleasure and to satisfying their sexual desire, they took easy, practical, cheap, save, *halal* and legal ways through undocumented marriage. In addition, they look for a place where couple who married with undocumented marriage is legitimated by either formal or informal socialite.

Undocumented Marriage and Economic Interest.

Undocumented marriage in Warurejo has been a tradition since away back. Although many gloomy stories about the impact of undocumented marriage, such as abandoning children and wife, divorcement and domestic violence, but undocumented marriage still exists in the society. Economic factor and weak bargaining power of women leave them with fewer choices.

An adult girl should be married as soon as possible. If someone proposing her and she refuse it, it means that she refuse with arrogance (*megaya*). Later, if no one proposing her and she became old virgin, society considers it as a form of damnation upon her arrogance to refuse man's proposal. Therefore, many parents want their daughter to get married as soon as she is mature to avoid negative stigma from the society. In the process, parents ask broker or *kyai* to help them looking for a spouse for their daughter or maybe the *kyai* offers them a man who want to propose their daughter.

Parents usually agree immediately and give their daughter's picture without any prior approval. The daughter who afraid to be damned or considered as seditious to her parent will be forced to accept it. One of requirements of undocumented marriage is the future husband gives dowry (*mahar*) that agreed by the bride, generally in form of money, house reparation, gold, business, sewing machine, etc.

The wedding, later, will be processed in a simple way because of economic reason, means that the wedding is conducted in undocumented way. At the wedding ceremony, they only invite neighbors from both sides. Because undocumented marriage is considered as a simple and cheap way, "happy news" about this type

of marriage is used by certain parties by bringing in outsiders. Since this mode is conducted several times so that it is patterned and form a network; someone who search for women, broker, someone who marries the couple, witnesses and guests who attend the wedding.

Parents in Warurejo will force their daughter who already adult (*akil balig*<sup>1</sup>) to get married even she is under age. This is different with other countries that have their own rules in arranging the age to get married.

Indian government (Blood, 1972) complicates the change of customs in forming a family (through restriction on minimum age to get married). In the United States of America, legislation in several states basically stressing on restriction on age to get married. In Tennessee, since 1940s, the minimum age is 12 years for girl and 14 years for boy (with permission from parents). In Tippecanoe County Indiana, there are under age marriages with permission from parents (18 years old for girl, 21 years old for boy).

Parent's role in early marriage is happened not only in Warurejo but also in Madras and India. Based on research result of Gandhi (1970), in Madras, under age children has become a wife before reaching 13 years old. According to Gandhi (1970), another consequence of early marriage is the increase of young mothers who died in childbirth and the increase of widower children. In Indian tradition influenced by Hinduism, a woman who became widower will be impossible for her to remarry. This tradition is different with Islamic society that allow widower to remarry with condition following *iddah*<sup>2</sup> (the waiting period) determined in Islam tenet.

Cases of underage undocumented marriage still happened a lot in other places in part of the world including Warurejo village that still hold custom and tradition to marry their underage children. Besides afraid that their daughter unable to get married, there is also opinion that if parents do not matchmaking their daughter, the girls will choose her own spouse that might not appropriate with parent's hope. A habit to marry their underage children is a crime either from moral consideration or from physical ability. This habit is demoralized and caused physical damage especially reproduction damage.

Parent's choice to marry off their children earlier strongly influenced by economic factors because if their children get married it will reduce family's economic burden; therefore, girl does not have any choice except accepting the man chosen by her parents. For adult girls who are not married yet will receive negative treatment from society, which is being removed from social-society life.

Based on social-cultural values prevailing in the community, a woman who reaches her *akil-baliq* is demanded to get married. This social demand often brings people to choose their spouse arbitrarily just to achieve their age target (especially for women). Quality factor is no longer a consideration to choose a spouse.

Children loyalty to their parents is high especially for girls. No refusal from girls because they do not have feeling to choose the spouse and yet there is a sense of love for the opposite sex, besides, they do not understand the meaning of marriage itself. By marrying their children that considered appropriate for marriage, parents abdicate their responsibility to support their children, their burden is lower and they also expecting that their children will support and help their parents economic through their son in law.

Married children are asset for a family to contribute financially, increase family income through the hand of their son in law. Woman who bond in undocumented marriage is demanded by her parent to help her parent's economy. Therefore, parent is willing if their daughter married in a relative young age with any man even they do not know his origin. It does not matter whether the man has married, what his education or job is, how old is he, and else. This condition makes a marriage does not last longer. If their daughter divorced by the husband, parents hope that their daughter to remarry for the sake of family economy.

#### The Woman's Position in Undocumented Marriage

A woman who married, especially with a wealthy man, although through undocumented marriage, will have higher position in social stratification and get more respect and honor. Society will scoff and disrespect a woman who is not married yet even though she is beautiful.

Woman who single will be excommunicated in life and social interaction. They should get married soon so she will avoid fornication, not causing scandal, maintain her integration and harmony of society life. Therefore, *kyai*<sup>3</sup> as a community and religious leader always provide socialization to community especially women, widower or virgin, to get married soon.

For woman in Warurejo, a marriage is not "a pressing biological need", but only to fulfill social structure demand in the family or society; therefore, if they are not married when they are mature, it will consider as something negative.

In certain society, "old virgin" is a social law must be faced not only by woman who still single but also for her family. There are no opportunities for woman to think whether she will get married or not, when she is going to get married, with whom, when she is going to have children, how many children she wants, how is her

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<sup>1</sup> *akil-balig* means knowing the bad and the good (man usually above 15 years old); old enough, enough minds and mature.

<sup>2</sup> *Iddah* is certain period of time that must be passed by a woman because of a divorcement, either live or dead divorcement.

<sup>3</sup> *Kyai*: Islamic religion figure or ulama who is become a model or example for the people.

fate if she is being divorced by her husband, and who is going to guarantee her economic life. Woman does not have many choices to determine her future because it is determined by family, parent, norm, custom and value system in a society.

Eventhough man also experiencing matchmaking like woman, but not all men are willing to fulfill the parents will. If a man refuses to have matchmaking, parent will not force him. On the contrary, if a girl refuses the matchmaking, parents will do anything to forced their daughter to accept that.

The community is not making a claim in order for a man to get married when he reaches 14 years old as experienced by women. The necessity to get married in early age is only prevailing for woman. This different demand causes discrimination, subordination and gender injustice. Man has a right to refuse the matchmaking made by his parent, while woman has no choice except obeying her parent's will. Man also not required to remarry if he became a widower. Woman has no bargaining position to determine whether she has to remarry or not.

According to Fakh (1995), in this condition, family and social institution in a society tend to produce value especially in socializing gender status by giving different attribute to woman and man by making different rules between man and woman. Culture and custom legitimize unstable gender relationship structure. Woman is demanded to remarry while man is able to determine his choice whether to remarry or stay as widower.

A woman is demanded to obey rules prevailing in the society, which is an ideology influencing any form of actions impose to a woman. The existence of an ideology can be seen from the common concepts used, such as "weak woman", "woman will ride along with her husband to heaven and follow her husband to hell" or "friend behind" (Abdullah, 2001). These concepts also can be seen in undocumented marriage in Warurejo when a man married to a woman with condition for not registering the marriage to the Office of Religious Affair. In avoiding unwanted things from parties who object with the marriage, this condition is offered to the woman side, if they do not agree with the condition, no marriage will be held and this condition not only offered to widower but also to virgin women.

Immaturity of children make easier for people around them to give influence and development, with their position and role. Therefore, family is called the primary group, because this small group has big role in influencing the development of its individual members. This is a group that gives birth of individuals with various personalities in the society. It is undeniable that family, actually, is not only to continue the generation because many things about someone's personality that will go down from the family.

Underage children who have been married by their parent do not understand the real concept of a marriage and a family, they are only obeying their family, defenseless and unable to do anything because they are still young. They only know that they were born from a family where their parent also actors of undocumented marriage and maybe they will share their parent future.

#### The Norm and Value System

Marriage pattern in Warurejo society has its own norm, custom and ritual. It is related to a belief that a marriage is one of important phases in human life so anything related to a marriage need to be considered thoroughly. A marriage as individual activity is a gift for every human being in the world. From social aspect, a marriage has interest to maintain the survival of human being, either to maintain generation or to keep society welfare from moral decadence and keep the peace.

Value system, norm and cultural determination prevailing in Warurejo society is playing role in undocumented marriage act. An understanding about the sacred of a marriage is no longer a principle for Warurejo society. The important thing for parent is that when a girl is mature (*akil baliq*), she is demanded by her social environment to be independent, and parent will be satisfy having fulfilling their social task and responsibility. A wedding became a usual event and a formality to fulfill their social status.

A marriage is conducted only to satisfy parent and society, not for the future interest of the girl herself. Therefore, for Warurejo society, the sense of marriage is also as the release of duty and responsibility of parent because they have fulfilled social demand of society. Space for freedom and girls' right to choose and determine her spouse and planning their future are almost gone. A girl who reaches her maturity (*akil baliq*), means that she is already considered mature, should married soon to prevent violation caused by free intercourse that can lead to pre-married sex. This rule is not prevailed for boys. Even though, they reach their maturity, boys are not demanded to get married soon. This different treatment causes women to experience discrimination and subordination in determining their future choice. Therefore, women should be married even though through undocumented marriage.

The negative impacts of undocumented marriage mostly bear by women. Other parties that involved in an undocumented marriage such as society's leaders and family will not experience what the woman felt. They, actually, get the positive impact of it especially from economic aspect. In the name of Islam, *kyai* can enjoy economic profit upon undocumented marriage happens in the society. Likewise, the family from the woman side (parent) brings their children to a marriage to lighten family's responsibility and economic burden.

Based on the negative impact caused by undocumented marriage, the woman will be the disadvantage party. From pre-married stage, family, society and future husband (a man who chosen by her parent to be

married to), woman's opinion is never been in consideration, such as her decision to get married or not, when she will get married, and her agreement on the matchmaking. In this situation, woman has no chance to determine her attitude and the quality of her marriage life. A marriage is conducted only to fulfill social demand.

Warurejo Village is one of areas strongly influenced by Islam that forming its own cultural law. A cultural law, in this case Islamic law, internalized in undocumented marriage, is part of social-cultural within the society and made reference to habits, norms, views and ways of act. The role of Islamic ideology is a strong conservative power to interpret the tenets manifested in marriage sector.

Warurejo society is strongly hold the certain norms or principles regulating marriage that influenced by Islamic law. Undocumented marriage is an institution that traditionally gives status to woman; even though a marriage generally earn bless and support from religion followed by a paternalistic society.

Islamic law is very tight and rigid. It does not give justification for excessive interaction between man and woman and living together before married considers undocumented marriage as the safe one. The strong concept of undocumented marriage in Warurejo society cognition makes it as a natural thing. With this law foundation, Warurejo society formed marriage behavior and act that not in line with the state law.

As a paternalistic society, the community is very obedient to *kyai* and hold to interpretations of Islamic tenets socialized by *kyai*. This *kyai* has power to interpret Islamic law to rationalized and legitimized undocumented marriage rather than committing adultery. Islamic law interpretation that continuously socialized by *kyai* is that a marriage is considered legal according to Islamic law if *ijab qobul*<sup>1</sup> is done, while the celebration is not necessary. In Islamic law, a man can have more than one wife, so that a pattern is formed in form of rules and norms to legalize undocumented marriage.

Warurejo society uses Islamic law as legalistic principle to base the implementation of undocumented marriage. Therefore, Islamic law based on *kyai* interpretation legitimizes undocumented marriage manifested in various social-cultural acts.

Undocumented marriage in the society, generally, is conducted by considering three values: economic value, cultural value system and norm. These three values are contained in the family and society, both in local society and outside society that came to Warurejo to get married through undocumented marriage.

Undocumented marriage has been plotted as a norm in society's structure, therefore, the negative impact of this marriage still unable to reduce the practice and to change the tradition that has lasted generations. This plotted structural condition is a proof that norm and cultural system followed by society are hard to be changed and will still be considered as solution to prevent acts that breaking the society's norm. Even though actors of undocumented marriage will be sanctioned and the state law does not recognize children who are born from this marriage, this marriage still exist and widely practice among the society in Warurejo.

The norm and culture of undocumented marriage has lasted from generation to generation and women who conducted this marriage have parents that also the actors of undocumented marriage. Every society has norm to follow to create society order, and obviously, the norm and rules made are not against the law state, such as undocumented marriage. Tradition, norm and value system in Warurejo society give influence on the formation of society's behavior to immediately bring their daughter to a marriage if she reaches her maturity (*akil baliq*), as well as, widowers should married soon if someone proposes her. The legitimacy to establish undocumented marriage gives opportunity for parties who want to use and get economic advantage from it.

#### Undocumented Marriage in Functional Structural Theory

Undocumented marriage in the society, generally, is conducted by considering three values: economic value, cultural value system and norm. These three values are contained in the family and society, both in local society and outside society that came to Warurejo to get married through undocumented marriage.

The role of parent, brokers, *kyai* or undocumented marriage network is very important in looking for spouse, either for patient or for women. Especially parent who has daughter who mature enough to get married, they will do the matchmaking; either with their own relatives or looking for a mate for their daughter through *broker*<sup>2</sup> or *kyai*.

Economic rationality behind the decision for woman to get married through undocumented marriage is to get legitimacy from structure so that any negative impact caused by undocumented marriage is a consequence that should be faced and accepted.

Related to the structural theory, especially functional and disfunctional concepts and the influence of norm on women position in an undocumented marriage, a woman who married even with undocumented marriage is more respected and appreciated than widower or virgin who are not married (single). The basic of this consideration is that a married woman will maintain the integration and harmonization of a society.

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1 Ijab is a lafal which is said by male relative legally responsible for a bride, which the essence is a cession from the male relative legally responsible for a bride to the groom.

Qobul is a lafal which is said by the groom, which the essence is an acceptance by the groom for the cession from the male relative legally responsible for a bride.

2 Broker is a mediator or an agent for the couple who will be doing undocumented marriage.



The function of undocumented marriage is not only to improve the economic life of the actors but the whole society enjoys the function in economic sector. Even though undocumented marriage can caused disfunction for woman, but it will be maintained in the society by ignoring all the negative impacts of it. They are more interest to the positive impact of the marriage than the negative one. Therefore, reason that undocumented marriage has function so that it still exist in the society is true.

The existence of undocumented marriage is resting in its function that able to increase the economic life of society, not only for actors but also for them who involved in undocumented marriage network. Unconsciously, together they give legitimacy on undocumented marriage and the legitimacy is supported by the understanding on religious values and norm that mutually integrated in the society; therefore, it is perpetuate the undocumented marriage.

This explanation is also give evidence for the proposition described by the researcher that in Warurejo society, religion is made as instrument to justify undocumented marriage, therefore undocumented marriage is legal and *halal* based on Islam. Based on understanding and interpretation of Islam believed by the actors of undocumented marriage, *kyai* and society in Warurejo, an undocumented marriage is not deviation for local society because it gain legitimacy and structural support in form of value system, norm and culture prevailed in the society and it has been a tradition for generations. Economic factor is the dominant factor motivating the undocumented marriage so that it is widely practice. By going through on several undocumented marriage, the financial ability will increase.

## CONCLUSION

A married woman, even though in undocumented marriage, will have higher position by gaining more respect and appreciation within the society compare to widower or virgin who mature enough to get married but not married yet (single). *Kyai* has power to interpret Islamic law and rationalize it in form of legitimation for undocumented marriage that considered as better than committing deed that forbid by religion, which is adultery. The interpretation of religious law that continuously socialized by *kyai* is that in Islamic law the important thing is meeting the legal requirement of a marriage; the existence of *ijab qobul*, whereas the celebration is not necessary (*sumnah*). Likewise, Islamic law allows a man to have more than one wife; therefore, a pattern is formed in form of rules and norms to legalized undocumented marriage. Undocumented marriage is entrenched and institutionalized within the society because it is inherited from generation to generation.

Socially, a woman who became a widower is easier to be highlighted by the community. a widower should married even through undocumented marriage with a guy who is a widower or who has a wife than live as a widow. It is due to the society demand in understanding the virginity that more respected than non-virgin in order to avoid adultery and sin. Widower woman is more vulnerable to norm violation. Unlike men who are not demanded to remarry when he became a widower. Women do not have bargaining position to decide whether they should remarry or no.

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