

Urgency of Regulation of Marriage Registration in Indonesia

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Abstract

Regulation of marriage registration contained in Article 2, paragraph 2 of Law No. 1 of 1974 on Marriage, which in practice they give rise to various interpretations. Because of the vagueness of the norm raises a lot of people who still perform the marriage without registration, with a variety of backgrounds. Though unregistered marriage has caused adverse effects, especially for children and women. Therefore, a urgency of regulation marriage registration in order to realize the legal certainty, justice and expediency. Besides setting required registration of marriages in the context of the protection of human rights and justice. In the context of human rights protection, because the social contract with the people hand over their rights to the state, but in order to protect that individual rights are not violated by other individuals. While the role in the context of justice, a regulation marriage registration is to make the rules as a guide to develop policies that correct the injustice suffered by the weak.

Keywords: regulation, marriage registrattion, human rights, and justice

1. Introduction

Marriage is one of the necessities of human life, and one way to get happiness in his life. Therefore it is not wrong to say that marriage is the nature of human beings.¹

Norms as rules and conventions in everyday life, none of which prohibit their marriage. Such religious norms is more likely to set it up, so that the marriage be marriage perfect and ideal in view of religious norms.² Here comes the role of religious norms put a perfect human beings, unlike any other. Suppose prohibited sexual intercourse with no mating, by cohabiting, relationships outside of marriage; or perform same-sex marriage, lesbian, gay, and so forth.

So also with the legal norms, the rules are also more likely to favor and order. One of them with the Law No. 1 of 1974 on Marriage, promulgated on January 2, 1974 and entered into force simultaneously with the issuance of implementing regulations, ie Government Regulation No. 9 of 1975 on the implementation of Law No. 1 of 1974 on Marriage.

Regarding the definition of marriage, Article 1 of the Marriage Act states: "Marriage is physical and spiritual bond between a man and a woman as husband and wife, having the purpose of establishing a happy and lasting family founded on the Belief in God Almighty." This article not only defines marriage legally, but also philosophically, with the words "physical and spiritual bond", "establishing a happy and lasting family", and "founded on the Belief in God Almighty". Thus, all marriages should be based on three categories.

Furthermore, in relation to the validity of the marriage, Article 2 explains:

- (1) Marriage is lawfull when entered in accordance with the laws of the respective religion and beliefs of the parties.
- (2) Each marriage shall be entered in register conform to statutory regulations.)

Interpretation of Article 2, paragraph 1 is obvious, that the validity of marriage refers to the religious law of each person who was about to perform marriages, because the phrase "marriage is lawful". While the interpretation of Article 2 paragraph 2 of the registration of marriages do not mention the word "lawful", so open to a lot of interpretations, whether it is a legitimate requirement of marriage or not.

Most legal scholars argue that Article 2 of the Marriage Law should be read as a whole. This is because, that the marriage certificate is the only evidence of a marriage, as in Article 100 BW and Article 34 HOCl.³

Whereas some other legal scholars argue that Article 2 of the Marriage Law are two separate things. Registration of marriage is not a condition of lawful of a marriage, because every marriage is considered lawful when the law and the trust has been declared lawful.⁴ Therefore, every marriage qualified and pillars of the respective reliions and beliefs, although not (yet) listed, according to positive law has been recognized as lawful.

¹ Yazid bin Abdul Qadir Jawas, "Pernikahan adalah Fitrah bagi Manusia", <http://almanhaj.or.id/content/3234/slash/0/pernikahan-adalah-fitrah-bagi-manusia/>, accessed 12/12/2013.

² Yusna Melianti, "Pernikahan Dini dalam Perspektif Agama dan Negara", *Papers at the Seminar PUSDITABNG-KS Universitas Negeri Medan, Medan*, May 13, 2009, p. 5.

³ Saidus Syahar, *Undang-undang Perkawinan dan masalah Pelaksanaannya: Ditinjau dari Segi Hukum Islam*, (Bandung: Alumni 1981), p. 21.

⁴ Riduan Syahrani dan Abdurrahman, *Masalah-masalah Hukum Perkawinan di Indonesia*, (Bandung: Alumni, 1978), p. 13.

It is based on The Elucidation of Article 2 of the Marriage Law: "... no marriage ages contracted outside the laws of the respective religions and beliefs, which is in accordance with the Constitution of 1945".¹ According to Bagir Manan, that registration of marriages is administrative in nature, based Elucidation this law that: "Recording of marriages is like recording other important occurrences in one's life-time, such as birth and death stated in a certificate, a legal document which is also entered in the registers."²

As a result of ambiguity and vagueness of the obligation to make registration of marriages, then there are many people who ignore the registration of marriages. According to them, to register marriages not a necessity. However, the most important thing for them is to do a lawful marriage by religion or belief.

Taufiqurrahman explained that in the village of Cirebon city Sinirancang majority of its people are unregistered their marriages. Of the 2,000 couples who are in the village, there are 1,200 unregistered marriages. Among them were village officials who are unregistered their marriages.³

In fact, marriage is a legal act, so it has some legal consequences. Therefore, even though the registration of marriages is administrative, but in reality is often referred to as the recognition of the state of the existence *pebuatan marriage*.

According to Lutfi Muntaha after conducting research in the area Mondokan Sragen, the background of the unregistered marriage is:

1. From the legal structure, due to resource or implementation of policies marriage and facilities are inadequate, making it difficult for the operational implementation of the work.
2. From the substance of the law, because they escape of the contents of a legal substance registration of marriages and the low of sanctions against the perpetrators of unregistered marriage.
3. From the legal culture, because of the assumption that the registration of marriage is not a legitimate of a marriage, even more particularly when carried out by a *kyai*. Also, because of the bureaucratic process is difficult and long.⁴

Based on the explanation above, the writer felt the need to conduct a study on the theme: "The urgency of Regulation of Marriage Registration in Indonesia ". Discussions focused to answer: (1) the urgency of regulation of marriage registration, and (2) registration of marriage in the context of human rights and justice)

2. Theoretical Framework

In this research, the authors used the theory as the analysis knife which includes: theory of Human Rights of J.J. Rousseau and theory of justice of John Rawls.

2.1. Theory of Human Rights

Human rights are rights inherent in every human being from birth which is valid for life and can not be contested by anyone. Human rights are based on the fundamental principle that all human beings have the internal dignity irrespective of gender, race, color, language, national origin, age, class, political beliefs, and religion.⁵ Due to the diversity of community characteristics, ideology and religion, will seen a difference of concept and implementation of one another, which is an argumentative fact led to various concepts in human right history.⁶

Required three basic conditions in the application of human rights: "*Three conditions are necessary for a doctrine of human rights. First, human beings as such must be recognized as having value. Second, this recognition must be given legal expression. Finally, this legal status must be guaranteed by political authorities.*"⁷

One of the concepts of human rights is what is offered by the Social Contract Theory, with the figure of Thomas Hobbes, John Locke and J.J. Rousseau. According to Thomas Hobbes, that all men have the same nature, which is to preserve liberty and freedom of others. Conflicts arise when people follow her instincts. To avoid conflict, people must waive the right to be free to do as his own with a united through social agreement (du contract social / social contract). They agreed to form a government, which is obliged to realize the welfare and protection of citizens to feel safe. Once the government is formed, the rights of citizens to be lost and the citizens can not rebel.⁸

¹ Saidus Syahar, Saidus Syahar, *Undang-undang Perkawinan dan masalah Pelaksanaannya*, p. 22.

² Neng Djubaidah, *Pencatatan Perkawinan dan Perkainan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam*, (Jakarta: Sinar Grafika, 2010), p. 158.

³ Taufiqurrahman Al-Azizy, *Jangan Sirri-kan Nikahmu*, (Jakarta: Himmah Media, 2010), p. 13-16.

⁴ Muntaha Luthfi, "Abstrak: Faktor-faktor Penyebab Terjadinya Perkawinan di Bawah Tangan di Kecamatan Mondokan Kabupaten Sragen", *www.digilib.uns.ac.id*, accessed 17/11/2010.

⁵ Moh. Yasir Alimi, *Advokasi Hak-hak Perempuan: Membela Hak Mewujudkan Perubahan* (Yogyakarta: LKIS 1999,) p. 13.

⁶ Abdul Rochim, "Hak Asasi manusia Menurut Pandangan Islam", *http://digilib.uinsuka.ac.id/gdl.php?mod=browse&op=read&id=digilib-uinsuka--abdulrochi-3710*, accessed 12/03/2011.

⁷ Blandine Kriegel, *The State and the Rule of Law*, (New Jersey: Princeton University Press, 1995), p. 34.

⁸ Ahmad Samawi, *Pendidikan Hak Asasi Manusia*, (Jakarta: DIRJEN DIKTI KEMENDIKNAS RI, 2007), p. 3-4.

Meanwhile, according to John Locke that: "... *that men are naturally in a state of perfect freedom and equality, and that each person has natural rights to freedom and equality. Locke actually wrote that men were naturally in a state of perfect freedom to order their actions, and dispose of their possessions and persons as they thought fit, "within the bounds of the Law of Nature."*¹

Meanwhile, according to J.J. Rousseau that: humans are natural creatures, so the laws of nature prevailing in society. In the natural state of human freedom, the right to life and property. Someone's life depends on the protection of the law as the general will, which is set in a community agreement (social contract). Social contract as a form of general will protect that individual rights are not violated by other individuals.²

Human rights concepts in the theory of cultural relativism is that there is not a human Human rights are universal, because of the different traditions of culture and civilization make man to be different, except when people have the condition desosialisasi or deculturation.³

The idea of cultural relativism argues that culture is the only source of legitimacy of the rights or moral rules, so that human rights need to be understood in the context of the culture of each country, because all cultures have the right to life and the same dignity that must be respected. Figures of this idea is Lee Kwan Yew and Mahathir Mohammad.⁴

2.2. Theory of Justice

The word "fair" in Arabic is a good thing, the attitude of an impartial, secure the rights of a person and the proper way to make decisions. Justice is also used to describe other words (synonyms) as qisth, hukm, and so forth.⁵ Whereas in English means: "*Justice is (1) fairness; (2) moral rightness; (3) a scheme or system of law in which every person receives its, including all rights, both natural and legal.*"⁶

The dialectic of law and justice is an old problem, and always interesting. Because, basically humans always need justice, truth and the law, because it is a basic human values and needs for the community of civilized man. Justice is a right and for every person and every community, so that the absence of justice will lead to the destruction and the chaos of existence of society itself.⁷

One concept of justice is proposed by John Rawls, an American philosopher of the 20th century with a monumental work "A Theory of Justice" which became a reference philosophy, law, economics, and politics.⁸

John Rawls explained that his idea of justice is a continuation of the social contract theory of John Locke, Rousseau, and Kant: "*What I have attempted to do is to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant.*"⁹

About the importance of justice, Rawls explains: "*Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others.*"¹⁰

Furthermore, according to Rawls: "*Now let us say that a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. In this case while men may put forth excessive demands on one another, they nevertheless acknowledge a common point of view from which their claims may be adjudicated.*"¹¹

In his idea, Rawls argues that there are two important steps to promote justice, namely (1) the need for the original position and (2) implementing agencies: "*The primary subject of the principles of social justice is*

¹ Michael Freeman, "The Problem of Secularism in Human Rights Theory", *Human Rights Quarterly*, Vol. 26, 2004, p. 387.

² Ahmad Samawi, *Pendidikan Hak Asasi Manusia*, p. 3-6.

³ Bahder Johan Nasution, *Negara Hukum dan Hak Asasi Manusia*, (Bandung: Mandar Maju, 2011), p. 181-182.

⁴ Rhona K.M. Smith (et.al), *Hukum Hak Asasi Manusia*, (Yogyakarta: PUSHAM UII, 2008), p. 20.

⁵ Ali Safaat, "Pemikiran Keadilan (Plato, Aristoteles dan John Rawls)", <http://alisafaat.wordpress.com/2008/04/10/pemikiran-keadilan-plato-aristoteles-dan-john-rawls/>, accessed 08/05/ 2013.

⁶ Admin, "Justice", <http://legal-dictionary.thefreedictionary.com/justice>, accessed 20/04/2015.

⁷ M. Shidqon Prabowo, "Refleksi Filsafat Hukum: Menilik Orientasi Nilai Keadilan Sosial", *Makalah Filsafat Hukum*, Magister Ilmu Hukum UII Yogyakarta, p. 2.

⁸ Vania Dianty, "Manusia dan Keadilan", <http://vaniaibd.blogspot.no/2013/01/manusia-dan-keadilan.html>, accessed 08/05/2013.

⁹ John Rawls, *A Theory of Justice: Revised Edition*. (Cambridge: The Belknap Press of Harvard University Press, 1999), p. xviii.

¹⁰ *Ibid.*, p. 3.

¹¹ *Ibid.*, p. 4.

the basic structure of society, the arrangement of major social institutions into one scheme of cooperation. We have seen that these principles are to govern the assignment of rights and duties in these institutions and they are to determine the appropriate distribution of the benefits and burdens of social life.”¹

Furthermore: *“Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur.”²*

For Rawls, the principles of justice is an agreement made by the parties that were in the original position from two hypotheses: *“ ... First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”³*

Furthermore, John Rawls describes the theory of social justice as the difference principle and the principle of fair equality of opportunity: *“According to the difference principle, it is justifiable only if the difference in expectation is to the advantage of the representative man who is worse off, in this case the representative unskilled worker.”⁴*

Furthermore: *“The role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range. Now the practical advantage of pure procedural justice is that it is no longer necessary to keep track of the endless variety of circumstances and the changing relative positions of particular persons.”⁵*

It can be concluded that “the difference principle” is social and economic differences must be regulated so as to provide great benefits for those most disadvantaged. While “the principle of fair equality of opportunity” shows that they are the least likely to achieve prosperity prospects, opinion and authority, then these shall be given special protection. This means that social justice must strive to make corrections and improvements to conditions of inequality experienced by presenting the weak social institutions, economic, and political empowerment. Also, for every rule should be positioned as a guide for developing a corrective policy for the injustice suffered by the weak.

3. Reseach Results

3.1. Juridical Aspects of Marriage Registration

Rules on the registration of marriages tardapat in Article 2 paragraph (2) of Law No. 1 of 1974 on Marriage, “Each marriage shall be entered in register conform to statutory regulations.” There are two opinions in respect of that Article, as follows:

1. The marriage registration as a condition of lawful marriage

That between Article 2 (1) of Law No. 1 of 1974 on Marriage with paragraph (2) in its application should not be separated. Thus, the validity of the marriage must satisfy two elements are: (1) the process of implementation of the marriage must be performed according to respective religion and beliefs of the parties, and (2) the marriage shall be entered in register conform to statutory regulations.. The argument is:

a. Interpretation systematic, by linking paragraph (1) and (2) of Article 2 of Law No. 1 Year 1974 on Marriage.⁶

b. Registration of marriage is part of a principle of national marriage law.⁷

c. Certificate of marriage is the only proof of a marriage, as in Article 100 BW and Article 34 HOCI.⁸

2. Registration of marriage is not a legitimate requirement of marriage.

That need separation of the validity of marriage in Article 2 paragraph (1) of paragraph (2) of the Law No. 1 of 1974 on Marriage, so the marriage valid if carried out according to the laws of the respective religion and beliefs of the parties. While the registration of marriages only obligation is administrative liability. The argument is:

a. Taking into The Elucidation of the Law No. 1 of 1974 on marriage, are:

⇒ legitimate marriage is in accordance with laws of the respective religion and beliefs.¹

¹ *Ibid.*, p. 47.

² *Ibid.*, p. 48.

³ *Ibid.*, p. 53.

⁴ *Ibid.*, p. 67.

⁵ *Ibid.*, p. 76.

⁶ Masruhan, “Pembaruan Hukum Pencatatan Perkawinan di Indonesia Perspektif *Maqasid al-Shari’ah*”, *Al-Tahrir*, Vol. 13, No. 2 November 2013, p. 238.

⁷ See The Elucidation of Law No. 1 of 1974 on Marriage.

⁸ Masruhan, *Pembaruan Hukum Pencatatan Perkawinan di Indonesia*, p. 238.

⇒ marriage registration only purely administrative nature.²

- b. Historical interpretation, by looking at draft legislation debated by Parliament. That the birth of the separation of paragraph (1) regulating the validity of a marriage based on religious law with paragraph (2) which regulates the registration of marriage was a compromise of various protests and objections of some members of the House of the provisions of the validity of a marriage based on registration of marriages.³
- c. The history of marriage law in Indonesia, namely with regard to Law No. 22 of 1946 on Registration of Marriage, Marriage, Divorce and Refer. The elucidation of Article 1 that the registration of marriages likened registration of births and deaths, so it is only an administrative regulation which does not affect the validity.⁴

Furthermore, in the Compilation of Islamic Law, which is a positive Islamic law and become a judge referral Religious Courts,⁵ there is the vagueness of the terms of registration of marriage, are:

1. Registration of marriage is not a valid marriage requirement, as in Article 4 KHI that: "Marriage is legal, if done according to Islamic law in accordance with Article 2 (1) of Law No. 1 of 1974 on Marriage. "Also, in Article 5 (1) KHI that: "In order to secure the order of marriage for Muslims every marriage shall be registered."
2. Registration of marriage is a valid marriage requirement, as in Article 6 paragraph (1) KHI that: "In order to meet the provisions of Article 5, every marriage should take place in the presence and under the supervision of the Registrar of Marriage Officer." Also, Article 6 paragraph (2) KHI that: "Marriage is done outside the supervision of the Registrar of Marriage Employees do not have the force of law."⁶

Thus, it can be concluded that the existence of the judicial aspect of marriage registration as a condition for the validity of a marriage is still unclear, as the two opinions as mentioned above.

3.2. Sociological Aspects of Marriage Registration

Sociological aspects of unregistered marriage can be traced from two things, are the background of occurrence and impact. The background of the unregistered marriage according to Suhaeri, among others:

1. The procedure is not easy and the cost is not cheap.
2. Early marriage without parental consent, but already love.
3. The existence of civil service rules should not take more than one.
4. A solution for the polygamists because of the difficulty of the existing rules.⁷

Meanwhile, according to Saeroni and Indiah Revelation Andari, factors supporting the marriage is not registered is:

1. Awareness of the law, by not knowing the legal consequences of marriage.
2. An understanding of religion, that the marriage had taken place in the religion is legal and legitimate.
3. Views on Gender, that men have superiority over the couple and their families.
4. Violence against women, such as rape or coercion seksual relationships that result in pregnancy.⁸

While the impact of unregistered marriage by Dewi Chandraningrum, is putting women and children in a very weak position, as susceptible to various cases of domestic violence and sexual abuse. This can be proven by:

1. Unregistered marriage vulnerable to exploitation practices, abuse of power and violence against women.
2. Unregistered marriage cause of children born to experience difficulties in administrative proceedings and legal, as well as experiencing psychological burden.⁹

Meanwhile, according to Mardian, legal effects of marriage are not recorded, are:

1. The marriage is considered invalid because it was not listed by the Office of Religious Affairs or the Office of Civil Registry, so it is considered there is no legal act of marriage that any legal consequences.
2. Women do not have a legal relationship with her husband.

¹ Saidus Syahar, Saidus Syahar, Saidus Syahar, *Undang-undang Perkawinan dan masalah Pelaksanaannya*, p. 22.

² Neng Djubaidah, *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat*, p. 158.

³ Masruhan, *Pembaruan Hukum Pencatatan Perkawinan di Indonesia*, p. 239.

⁴ Hendra Umar, "Dilema Hukum Pencatatan Nikah Di Indonesia", <http://hendra-umar-penghulu.blogspot.com/2012/11/dilema-hukum-pencatatan-nikah-di.html>, accessed 10/04/2014.

⁵ Yufi Wiyos Rini, "Pandangan Politik Hukum Islam terhadap KHI di Indonesia", *Jurnal Asas*, Vol.3, No.1, Januari 2011, p. 34.

⁶ Hendra Umar, *Dilema Hukum Pencatatan Nikah di Indonesia*.

⁷ Suhaeri, "Mengurai Benang Kusut Dualisme Nikah Sirri (Upaya Meratifikasi Rancangan Undang-Undang Nikah Sirri)", *Musâwa*, Vol. 12 No 1 Januari 2013, p. 95.

⁸ Saeroni dan Indiah Wahyu Andari, "Kekerasan terhadap Perempuan dalam Relasi Pernikahan Sirri", *Musâwa*, Vol. 12 No 1 Januari 2013, p. 152-154.

⁹ Fina 'Ulya, "Nikah Sirri: Dimana Perempuan?", *Jurnal Musâwa*, Vol. 12 No 1 Januari 2013, p. 12.

3. Children born deemed illegitimate children, so just have a civil relationship with the mother and the mother's family.
4. A child and his mother are not entitled to make a living and heritage.¹

From the aspect of the background can be concluded, as described Neng Djubaidah that is necessary to distinguish between the marriage is not registered with the "accident" with "intentionally". If "accidentally" there is no intent to not register and do not intend to make a waiver of rights tibul of marriage, whereas if "intentionally" was deliberately not recorded because there are ulterior motives, one of which is the neglect the rights and obligations arising from the marriage, or the perpetrator had meant to hide a marriage that is not known by others.²

3.3. Aspects of The Protection of Children and Women in The Regulation of Marriage Registration

There are three basic rights of child neglect relating to unregistered marriage, are:

1. The right to survival. The form of:
 - a. The right in family law, such as the impact on civil relationships, recognition of kinship and descent, the right to inherit, maintenance and the cost of living. In fact, love and responsible parenthood.³ Against the children born of the unregistered marriage affecting the realization of children's rights in family law.
 - b. The right to identity, such as unregistered in the register system, and therefore does not have a formal document issued by the State. This is a disincentive juridical in the fulfillment of the right to identity, is the right to a birth certificate. Whereas the right to identity is also related to the rights of children as subjects of citizens, such as the right of citizenship.⁴
2. The right to survival / growth and development, in the form of neglect of the right to social security and education of children. Regulatory and social security policies are likely to lead to a formal document result that children without birth certificates increasingly excluded from access to social security.⁵
3. Rights of the child's best interests, especially the right to the protection of child exploitation and early marriages. In various forms of exploitation of children, including child trafficking, one reason is the lack of birth certificates of children.⁶

In this condition, the state need to be present to provide legal protection for children, in the form of regulation of marriage registration. Due, one of the characteristics of the state of law is the guarantee of the protection of human rights, which in this context are the rights of children Besides, the child is not worthy of the status of guilt by the various effects of unregistered marriage, because his birth is not his will, but the impact of application of Article 43 (paragraph 1) of the Law No. 1 of 1974 on Marriage.⁷

In addition, a regulation of marriage registration needed in order to provide protection for women. Because, the marriage is not registered, there is ignoring the rights of women, are:

1. The woman is hard to socialize with people around, because they live at home without legal ties. Especially if they become pregnant before marriage. Everything leads to the abuse of women's status.
2. Women as a party that should be protected, it harmed from various aspects. By law women are not recognized, and sometimes her husband treated her unfairly. The new load off, if the husband is willing to divorce, or after "ithbat nikah" (the institution of marriage).⁸
3. Women expressed as the guilty party and must suffer the consequences, because they do not obey the law, do consciously and knowledge of the risks he would face in the future.⁹

4. Discussion

4.1. Urgency of Regulation of Marriage Registration

Urgency of regulation of marriage registration, can be seen from the three elements of the basic values of law as described by Gustav Radbuch, are:

1. The basic value of legal certainty, its shape:

¹ Mardian Alisyaban Hidayat, "Makalah: Nikah Sirri", <http://www.mardianaly.co.cc/2010/makalah-nikah-sirri.html>, accessed 10/01/2010.

² Neng Djubaidah, *Pencatatan Perkawinan dan Perkainan Tidak Dicatat*, p. 373.

³ Muhammad Joni, "Perkawinan yang Tidak Dicatatkan: Dampaknya bagi Anak", *Jurnal Musâwa*, Vol. 12 No 2 Juli 2013, p. 249.

⁴ *Ibid.*, hlm. 250.

⁵ *Ibid.*, hlm. 254.

⁶ Irwanto, dkk, *Perdagangan Anak di Indonesia*, (Jakarta: Kantor Perburuhan Internasional PIPPA-FISIP- UI, 2001), p. 41.

⁷ Habib Shulton Asnawi, "Politik Hukum Kesetaraan Kaum Perempuan dalam Organisasi Masyarakat Islam di Indonesia", *Jurnal Musawa*, Vol. 11, No. 1, Januari 2012, p. 68-69.

⁸ Suhaeri, *Mengurai Benang Kusut Dualisme Nikah Sirri*, p. 92.

⁹ Decision of Constitutional Court No.46/PUU-VIII/2010, p. 16.

- a. Certainty that have actually occurred marriage.
By doing the registration of marriages there will be proof of a marriage with a marriage certificate given to each party.¹ In addition, authentic proof of a marriage is a marriage certificate, as in Article 100 BW, Article 34 HOCI,² and Article 7 paragraph (1) Compilation of Islamic Law. Article 1865 BW explains that the purpose of the proof, are:
 - (1) For the proposition that a person has the right
 - (2) To confirm and strengthen that someone has the right
 - (3) To deny or assert the untruth that other people have the right
 - (4) To show and stated that there have been a situation or an event has occurred.
 - b. Certainty that the marriage has been done according to the law.
Registration of marriages serves to overcome in order to avoid shortages and irregularities on the terms and the pillars of marriage, according to both the laws of the respective religion and beliefs of the bride and groom, as well as according to the legislation. Because, before to the registration of marriage, there are several procedures that must be passed which can certainly detect if there is a deficiency or deviation, as in Article 3 of Government Regulation No. 9 of 1975 on the implementation of Law No. 1 of 1974 on Marriage.³
2. The basic values of justice
Justice here in the form of legal justice is supposed to provide protection to those entitled. In the case of registration of marriage, there has been some legal protection as follows:
 - a. The legal protection for the parties related to marriage (husband, wife and children) in the rights and obligations of each on a reciprocal basis.⁴
 - b. The legal protection on future needs in the event of divorce. Because it has had the Marriage Certificate, making it easy to examine keabasahan marriage.⁵
 - c. The legal protection will also be given to children born of the marriage, the birth certificates. A birth certificate is a personal document given to a person by the government of their country of birth as proof of the records of his birth, which is required to gain access to public services and to gain fullness of the rights of the others.⁶ The function of the birth certificate for child are:
 - 1) The initial proof of citizenship and identity first owned subsidiary
 - 2) the proof is very strong for children to get the inheritance rights of parents
 - 3) prevent the falsification of age, underage marriage, violence against children, child trafficking, illegal adoption and sexual exploitation
 - 4) children are legally entitled to receive protection, health, education, housing and other rights as citizens.⁷
 3. The basic values of benefits
There are various benefits of registration of marriage, as well as explanations and Ahmad Yulianto Joko Adi Nuryani, among others:
 - a. Got the legal protection
 - b. Facilitate the affairs of other legal acts related to marriage
 - c. Legality formal marriage before the law
 - d. Secured safety.⁸

4.2. Regulation of Marriage Registration in The Context of Human Rights and Justice John Rawls

In the context of human rights protection, it is necessary to regulation of marriage registration. As in the theory of social contract rights proposed by J.J. Rousseau, that the social contract with the people hand over their rights to the state, but in order to protect that individual rights are not violated by other individuals. While regulation of marriage registration is meant that the state is present and to protect the rights of individuals are not violated by other individuals. Even so, the application uses the theory of cultural relativism proposed by Lee Kwan Yew and

¹ Kamal Muchtar, "Nikah Sirri di Indonesia", *Jurnal Al Jami'ah*, No. 56 Tahun 1994, p. 14-15

² Saidus Syahar, Saidus Syahar, *Undang-undang Perkawinan dan masalah Pelaksanaannya*, p. 21.

³ AT Senjaya, "Pencatatan Perkawinan dan Akta Nikah", <http://atsenjaya.blogspot.com/2011/01/pencatatan-perkawinan-dan-akta-nikah.html>, accessed 13/01/2014.

⁴ Abd. Rasyid, "Urgensi Pencatatan Perkawinan Dalam Perspektif Filsafat Hukum", http://www.pamojokerto.go.id/index.php?option=com_content&view=article&id=275:urgensi-pencatatan-perkawinan-dalam-perspektif-filsafat-hukum&catid=38:artikel&Itemid=97, accessed 21/02/2014.

⁵ *Ibid.*,

⁶ Natha Middlemas, *Pendaftaran Kelahiran Dan Pencapaian Hak-Hak Anak: Studi Kasus Kota Malang*.

⁷ *Ibid.*, p. 8.

⁸ Joko Adi Yulianto, "Pencatatan Perkawinan dan Akta Nikah", <http://pandidikan.blogspot.com/2011/05/pencatatan-perkawinan-dan-akta-nikah.html>, accessed 13/01/2014.

Mahathir Mohammad, that culture is the only source of legitimacy of the rights or moral rules, so that human rights need to be understood in the context of the culture of each country. With cultural relativism, then the application of the registration of marriages in the context of a new human rights protection were seen as legitimate if it could understand the cultural context of each region or country.

While the concept of justice necessary role in the provision of registration of marriages. Justice here is justice as proposed by John Rawls, that the principle of fairness departing from “the difference principle” and “the principle of fair equality of opportunity”.

Marriage is essentially an act that is individualized, so that in the group of civil law. However, marriage requires administrative information by the State, which becomes important in the context of citizenship. Recording of marital status by the state underpinned the law in Indonesia, in order to protect the welfare of all citizens, including women and children.¹ Similarly, the presence of children from the marriage, then his status is uncertain. Although the child is legitimate child, but do not have proof of authenticity, so the impact in the form of violation of children's rights, such as not having the right to inherit from his father. While the marriage laws only recognize two kinds of status of children is a legitimate child and the child outside of mating, as in Article 42 and Article 43. These differences bring about legal consequences in the form of a child standing outside of mating is inferior than legitimate children. Legitimate child under the authority of parents, while children outside of mating is under guardianship.² Especially if that child eksploitatatif indication exists, is not recognized familial status and excluded from social gatherings of family and friends.

Arguments need for the presence of a regulation of marriage registration with knives analysis of John Rawls's theory of justice is:

1. Countries need to make corrections and improvements to the conditions experienced by the weak inequality. By conducting in-depth study on unregistered marriage, mainly on its impact, it will show there are those who are in a weak position, are women and children of the unregistered marriage. So we need a correction, shaped by forming a institutions of marriage registration more empowering.
2. Any rules should be positioned as a guide to develop policies to correct the injustice suffered by the weak. In the unregistered marriage there injustice suffered by the weak, women and children born out of unregistered marriage. Therefore steps must be taken correcting the injustice and partiality to the weak, form a regulation of marriage registration.

5. Conclusion

Based on the above presentation it can be concluded that:

1. Urgency of a regulation of marriage registration contains three elements, are:
 - a. The basic values of legal certainty, that has really happened marriage and the marriage has been done according to the law.
 - b. The basic values of justice, namely to provide legal protection for the parties related to marriage (husband, wife and children).
 - c. The basic values of benefits, namely (1) facilitate other legal acts related to marriage, (2) the formal legality of marriage, and (3) guaranteed security.
2. In the context of human rights protection, need to regulation of marriage registration, because in the concept of social contract that individuals surrender their rights to the state, but in order to protect that individual rights are not violated by other individuals, by taking into the cultural context role in its implementation. While role in the context of "justice John Rawls", regulation of marriage registration is to make the rules as a guide to develop policies that correct the injustice suffered by the weak.

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¹ Haryo Kastrio Utomo, “Nikah Siri dan Hak Perempuan sebagai Warga Negara”, <http://edukasi.kompasiana.com/2013/06/03/nikah-siri-dan-hak-perempuan-sebagai-warga-negara-561908.html>, accessed 12/03/2014.

² *Ibid.*

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