JURIDICAL ANALYSIS LOSS OF AB INTESTATO HEIRS RIGHT AS A RESULT OF UNREGISTERED MARRIAGE

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ABSTRACT
Inheritance law is part of civil law as well as part of family law. It regulates the transfer of assets left by someone who dies and the consequences for the heirs in family relations or with third parties. In one case, a marriage that was not recorded was invalid. The results of the study concluded that the consequences of marriage were not recorded as marriages that were never considered to exist. What was the legal consideration of the judge in deciding this case? Marriage is legal if it is done in accordance with their respective religions and beliefs, so each marriage must be registered. Because the marriage was not registered, it was not legal so the lawsuit was granted in full. According to the authors of marriages that are not recorded remain valid, legal marriages are marriages conducted in accordance with their respective religions and beliefs. This lawsuit should have been completely rejected because the Plaintiff as a father does not have a legal position, heirs must be sons and husbands and not fathers.

Keywords: Heirs; Marriage; Not Registered.

A. INTRODUCTION

Inheritance law is part of the overall civil law and is the smallest part of the family law that regulates the transfer of assets left by a deceased person and the consequences for his heirs both in their relationship with them and in their relationship with third parties.

The legal consequences arising from the occurrence of a person's death event include the issue of how the maintenance and continuation of the rights and obligations of someone who died. It is known, that in Indonesia more than one system of Inheritance Law is, Western Law (European Civil Law), Customary Law and Islamic Law. All three legal systems also regulate, among other things, the manner in which inheritance is distributed. This Civil Inheritance Law is used for people who override the Customary Law in obtaining settlement of inheritance. Inheritance Law is a legal event that regulates the transfer of inheritance from an event due to death to an heir or an appointed person. Whereas A. Pitlo defines, that the Law of Inheritance is as follows: A collection of rules governing the law regarding wealth due to one's death that is regarding the transfer of wealth left by the dead and the consequences of this transfer for those who obtain it both in their relationship with them, as well as in their relationships with third parties. Inheritance only takes place because of "death".

1Abdul Kadir Muhammad, 1993, Hukum Perdata Indonesia, Citra Aditya Bakti, Bandung, p. 266-267
Understanding that can be understood from the short sentence is, that if a person dies, then all of his rights and obligations shift or move to the heirs.  

Heir is a family member of the deceased who replaces the position of the testator in the field of wealth law due to the death of the testator. The Civil Code has determined the orderly family that is entitled to be the heir, namely the husband or wife left behind and the legal or illegitimate family of the testator According to the law there are 2 (two) ways to get an inheritance, namely:

1. As heirs according to the Law (ab intestato).
2. Because it was appointed in a will (testamentair).  

Heirs according to the law (ab intestato) are those who have a family relationship due to blood ties and relationships due to marriage, so that one of the causes of inheritance is due to marriage, of course, is a legal marriage. In Law Number 1 of 1974 Concerning Marriage confirms Article 2 states that:

a) Marriage is legal, if it is done according to the law of each religion and its beliefs;
b) Each marriage is recorded according to applicable laws and regulations.

Based on Article 2 paragraph (1) and paragraph (2) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage that the registration of marriages of those who carry out their marriages according to Islam, is carried out by Registrar. Meanwhile, the registration of marriages other than Islam, carried out by marriage registrar at the civil registry office.

As a result of a marriage that is not recorded is that the marriage is considered to have never existed or never happened, so that if a marriage certificate is not obtained, the parties are required to prove the existence of a marriage before the judge. This is in accordance with the provisions of article 100 of the Civil Code which states as follows:

"The existence of a marriage cannot be proven in another way than by the marriage certificate which is registered in the Civil Registry lists, except in matters set forth in the following articles"  

Furthermore, in Article 101 of the Civil Code it states:

"If it turns out that the lists never existed, or have been lost, or the marriage certificate is not in it, then an assessment of the adequacy of the evidence of a marriage is submitted to the Judge, as long as a clear relationship exists as a husband and wife."

Based on the aforementioned provisions the marriage is not recorded as long as it is done legally according to their respective religion and beliefs and can be proven before the trial of the existence of the marriage, then the marriage is legal according to law.

From the research results obtained Batam District Court Decision Number 117 / Pdt.G / 2015 / PN.Btm which was strengthened by the Pekanbaru High Court. 12 / PDT / 2016 jo

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Decision of the Supreme Court No. 2951.K / PDT / 2016 dated December 14, 2016, stated that the marriage that was not recorded was invalid.

B. RESULTS AND DISCUSSION
1. Analysis of unregistered marriages due to the rights of AB Intestato’s heirs.

Marriage is an inner and outer bond between men and women that aims to foster a happy family, this bond is based on the Godhead. The understanding of marriage is closely related to religious orientation, so that marriage does not only contain physical elements but also spiritual elements.

The law that applies to all Indonesian citizens to marriages is regulated in Law Number 1 of 1974 jo. Government Regulation Number 9 of 1975 refers to the law of each religion and the beliefs of its adherents (Article 2 of Law Number 1 of 1974 in conjunction with Article 10 paragraph (3) Government Regulation Number 9 of 1975). Thus, the law is a unification that fully respects variations based on religion and belief in the belief in the Almighty, so that there are no unlawful marriages of each religion and that belief is not in accordance with the 1945 Constitution. In order to provide guidelines for the policy makers of the development of an orderly national law so that it is always in accordance with the ideals of the Indonesian nation’s law, it is necessary to state the formulation of the legal ideals (recht idee) of the Indonesian nation by summarizing them from the main ideas in the Preamble to the 1945 Constitution and the values contained in all Pancasila precepts harmoniously and as a whole.5

Phenomenon that occurs in the community lately the existence of marriage is not registered which is then called the term marriage siri. Siri marriage is not regulated in state laws and regulations. The term siri or under-marital marriage is commonly used by Indonesian people for people who do marriages without procedures. Underhand marriages are carried out based on religion or the customs of the prospective husband and future wife. because it is carried out in a religious or customary manner, the marriage is legally or religiously valid. Neither the Marriage Law nor the previous regulations, does not regulate underage marriages or marital marriages.

In religious and customary law, a marriage under the hand is declared valid. But legally positive, the marriage was not officially recognized by the state. Siri marriage is considered never to exist, so the impact is very detrimental to the wife or child born from the marriage. The wife is not entitled to inheritance from the husband who has died, if there is

separation, and does not get income and wealth gono-gini. Legitimate children under the 
Marriage Law are children born in or as a result of a legal marriage.\textsuperscript{6}

In reality, Indonesian people still have marriages that are only carried out in a 
religious manner, but are not registered at the Marriage Registration Employees according to 
the law, the marriages are considered to have illegal legal status, and bring legal impact on 
wives and children who will then be born from marriages. One result of marriages that are 
not registered with the Registrar of Marriage is that children born in marriages that are not 
registered as marriages.

Positive law or national law regarding marriage in force in Indonesia has now been 
regulated in Law Number 1 of 1974 concerning Marriage and for Muslims also based on the 
Compilation of Islamic Law as contained in Presidential Instruction No. 1 of 1991.

In Article 2 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning 
Marriage, it is stated that:
a) Marriage is legal, if it is done according to the law of each religion and its beliefs;
b) Each marriage is recorded according to applicable laws and regulations.

Based on Article 2 paragraph (1) and paragraph (2) Government Regulation Number 
9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage that 
the registration of marriages of those who carry out their marriages according to Islam, is 
carried out by Registrar. Meanwhile, the registration of marriages other than Islam, carried 
carried out by marriage registrar at the civil registry office.

As proof of a marriage has been held, by recording the marriage, the bride and 
groom will get a marriage certificate or marriage book from the Registrar of Marriage.

Akhmad Khisni states that the criteria regarding the validity of a marriage are stated 
in Article 4, Article 5, Article 6, and Article 7 Compilation of Islamic Law as follows:\textsuperscript{7}

1. Article 4 which confirms that: "Marriage is valid if it is carried out according to Islamic law 
in accordance with Article 2 paragraph (1) of Law Number 1 of 1974 concerning 
Marriage", which is stated in the article and Act as follows: "Marriage is valid if carried out 
according to the law of each religion and his belief ";

2. Article 5 paragraph (1) of the Compilation of Islamic Law states that: "In order to 
guarantee the order of marriage for the Islamic community every marriage must be 
recorded", Article 5 paragraph (2) that: "The recording of the marriage referred to in 
paragraph (1) shall be carried out by the Registrar of Marriage as required. regulated in 
Act Number 22 of 1946 jo. Law Number 32 of 1954 ";

3. Article 6 paragraph (1) states that: "To fulfill the provisions in Article 5, each marriage 
must take place before and under the supervision of a Marriage Registrar, Article 6 
paragraph (2) that:" A marriage conducted outside the supervision of a Marriage Registrar 
is not have legal force ";

\textsuperscript{6} http://www.gresnews.com/berita./detail-print.php/seo=138249-hukum-nikah-siri-d--indonesia, 
accessed 16 September 2019

\textsuperscript{7} A. Khisni, 2010, \textit{Hukum Islam}, Cetakan Pertama, Unissula Press, Semarang, p. 60 and 61
4. Article 7 paragraph (1) states that: "A marriage can only be proven by a marriage certificate made by a Registrar of Marriage, and Article 7 paragraph (2) that:" In the case of a marriage cannot be proven by a marriage certificate, the marriage registration can be submitted to the Court Religion".

The Civil Code does not explain the legal requirements for marriage, because as stipulated in article 26 the Civil Code states that the law considers marriages only as civil relations, so according to the author the legal requirements for marriages according to civil law refer to article 1320 of the Civil Code regarding the legal requirements of the agreement, because marriage which is only a civil relationship so that marriage between a man and a woman is a form of agreement between the two parties, however in the case of this marriage agreement there are provisions on prohibitions in conducting marriages, so that a legal marriage according to civil law is besides fulfilling the requirements as stipulated in article 1320 of the Civil Code but also does not violate the provisions of the marriage ban.

According to the term some judges at the Religious Court said that under-the-table marriages or illegal marriages by most Muslims were considered legal according to religious law, even though they were not registered or recorded at the head of the local Office of Religious Affairs. 8

Mohd. Idris Ramulyo argues that marriages and divorces carried out under the hand are more likely to be declared invalid according to Islamic law, and the marriage is null and void (verneitigbaar). 9

From a legal marriage will cause legal consequences including children born from the marriage become legitimate children, arises the husband’s obligation to finance and educate his children and wife and seek a place to live together, the right to inherit each other between husband and wife and children children with parents, fathers have the right to be guardians of their daughters, and if one of their husbands or wives dies, the other has the right to be a supervisor of their children and property. 10

As a result of marital siri not describe the existence of legal certainty for the next generation. Likewise, Law Number 1 of 1974 is a consensus of the scholars who must be followed by Muslims to ensure legal certainty and public benefit. 11

Then whether by not registering a marriage, the marriage becomes invalid? Of course, it cannot be directly concluded that way. Marriages performed in places of worship are religiously valid. However, due to the absence of registration, the marriage was considered to have never existed by Indonesian law. That is, based on Indonesian law this married couple is still in status single or not married.

8 Ibid
10 Ibid
11 Ibid
Regarding the status of children born from marriages that are not registered at the Office of Religious Affairs or the Civil Registry Office, it is because children are born outside a legal marriage, the child is a child outside marriage. According to Article 43 of the Marriage Law, out-of-marriage children only have legal relations with the mother and her mother's family.

The consequences arising from the status of out-of-wedlock children are as follows.

a. Birth certificates for out-of-wedlock children will only record the mother's name as a legal parent without the father's name.

b. Because the Birth Certificate of an out-of-wedlock child only records the name of the mother, the out-of-wedlock child is not entitled to inherit from his father and will only inherit from his mother according to the inheritance portion of the out-of-wedlock child as determined by law.

2. Analysis of Judge's Legal Considerations in Decision Number 117 / Pdt.G / 2015 / PN.Btm in Relation to the Loss of the Inheritance Ab Abestato's Rights as a Result of an Unregistered Marriage

Based on the results of research by the author of the Batam District Court Decision Number 117 / Pdt.G / 2015 / PN.Btm obtained the following results in the case between:

1. Case Position;

The Plaintiff has filed a written lawsuit dated 12 February 2015 and has been registered at the Registrar's Office of the Batam District Court, under register number: 117 / Pdt.G / 2015 / PN.BTM, as follows:

Plaintiffs are parents of victims of traffic accidents, which occurred on March 8, 2014 on the Trans Barelang public road near Battalion 134 Tembesi Batam according to Police Report Number LP / 10.01 / 313 / III / 2014 / LANTAS, the dead victim named Meldarida Nainggolan is a child the Plaintiff's biological body;

The Plaintiff's biological son is the wife of Hengki Dunan Siagian (Defendant II) who is responsible for the traffic accident, has been prosecuted in the Batam District Court, sentenced to 4 (four) years imprisonment and in the process of Appeals in Pekanbaru High Court sentenced imprisonment 3 (three) years, now still in the process of cassation.

Meldarida Nainggolan's marriage with Hengki Dunan Siagian took place by receiving the Marriage Blessing from Rev. Pdt. Disron Sinurat on Friday, December 16, 2011 at Tanjung Pinang Seventh-day Adventist Church in accordance with the Marriage Blessing Letter issued by the Seventh-day Adventist Church, Western Indonesia Union.

That from the marriage a child was born on Saturday, November 9, 2013 in Sibolga and was given the name Mickael Sion Santopaulus Amando-S, as the Birth Certificate issued by Midwife Ralisma Marbun, Eben Ezer Street No.16 Parolunan Sibolga, now the child is cared for and lives with the Plaintiff, as is Family Card No. 1273032909070336 on behalf of the Head of the Guntur Nainggolan Family (Plaintiff) issued by the Head of the Population and Civil Registration Office of Sibolga City.
With the existence of the victim of the traffic accident, the Plaintiff as the biological father of Meldarida Nainggolan, the victim died, demanding the right by submitting a request for compensation for the traffic accident directly to the Office of PT. Jasa Raharja, Riau Islands Branch in Batam (Defendant 1), which is one of the State-Owned Enterprises in charge of providing insurance services for victims of traffic accidents with compensation to every victim who suffered an accident.

That the Plaintiff has filled out the form by attaching the required documents and become a requirement in the service process of paying traffic accidents, but there is also no realization and after the Plaintiff has found out, the Plaintiff has known that there are obstacles to the problem in payment of compensation funds due to other parties namely Hengki Dunan Siagian, the victim's husband (Defendant II) who felt entitled and demanded payment of the compensation fund.

While the request for compensation funds in the process, the Plaintiff as the father of the victim took care of everything due to a traffic accident, took him to the hospital, took over the care of his grandchildren / child victims who were then 3 (three) months old, taking care of the administration of bringing the bodies buried to the yard in Sibolga.

Finally, through a letter of attorney, the Plaintiff learned that the compensation fund on 12 August 2014 was realized to Hengki Dunan Siagian (Defendant II) as a legitimate husband based on the Marriage Blessing Letter from the Seventh-day Adventist Church in Tanjung Pinang on December 16, 2011 according to the Letter of the Chief PT. Jasa Raharja, Riau Islands Branch No.P / R / 326/2014 dated 7 October 2014 concerning Explanation on Compensation for Compensation An. Meldarida Nainggolan.

That Defendant 1 in his letter number 8 above also confirms on page two number 4 (four) which reads: "Those who are entitled to receive payment of funds in the event of death of the victim are their legal widows, their children are legitimate and in the case of absence his widow / his parents and their legal children, to their legal parents ".

Law Number 1 of 1974 concerning Marriage, states that a marriage is legal if it is carried out according to the law of each religion and belief, and besides that each marriage must be registered. Registered marriages will provide certainty and protection as well as legal force for husbands, wives and children, as well as guaranteeing and protecting certain rights arising from marriage, including the right to inherit, the right to obtain a birth certificate, the right to a living life, the right to make a Family Card and Identity Card. Thus a marriage is not valid if it is not recorded.

A legal marriage can only be proven with a legal marriage certificate, meaning that a marriage that cannot be proven with a marriage certificate, then the marriage has no legal consequences. Law Number 23 of 2006 concerning Population Administration, in particular article 60 and article 61, explains the Family Card containing information including but not limited to Marriage Status and Marriage Certificate Number.

Children born from unregistered marriages only have a civil relationship with their mother and mother's family. A Marriage Blessing Letter from the Seventh-day Adventist
Church in Tanjung Pinang on December 16, 2011 is not the same as a Marriage Certificate. Marriage certificates can only be obtained if marriages are conducted according to the laws of each religion and are registered at the Office of Population and Civil Registry.

Based on legal facts as described above, Defendant 1's actions made compensation payments for death. Meldarida Nainggolan to Hengki Dunan Siagian (Defendant II) is an act that contains an element of error that is against the law, because the marriage between Hengki Dunan Siagian with Meldarida Naionggolan cannot be proven by a marriage certificate and therefore the marriage has no legal consequences.

Defendant II (Hengki Dunan Siagian) who has received death compensation money is an act without rights, violates subjective rights and is detrimental to others, namely the Plaintiff who bears the costs of the needs of the death toll since he was hospitalized in Batam in Riau Islands Province until he was brought buried in his hometown in Sibolga Selatan, North Sumatra Province.

The death compensation funds received by Defendant II from Defendant I by Defendant II not being used for the needs of the victims of death are dishonorable acts in social life and thus are illegal acts.

The actions of Defendant I and Defendant II who violated the law have caused losses to the Plaintiff both morally and materially.

Based on the reasons stated above, the Plaintiff appealed to the Chairperson of the District Court / Panel of Judges who examined and tried this case to deign:

a. Grant the Plaintiff's claim in full;
b. Stating that the Defendant's actions, paid the victim's death compensation funds. Meldarida Nainggolan to Hengki Dunan Siagian is against the law;
c. Stating that the actions of Defendant II received payment of compensation funds for death. Meldarida Naionggolan from Defendant I is an act without rights and against the law;
d. Stating that the Plaintiff as the legitimate biological father of the victim then died. Meldarida Nainggolan is the party entitled to the compensation fund then;
e. Punish Defendant I for paying the compensation for the death of a traffic accident on behalf of Meldarida Nainggolan, to the Plaintiff who has the right to be a legitimate biological father;
f. Sentencing Defendant I and Defendant jointly to pay compensation of Rp.50,000,000 (fifty million rupiah) to the Plaintiff;
g. Punish Defendant I and Defendant II pay the court fees incurred in examining this case jointly.

2. Legal Considerations

Based on the plaintiff's lawsuit the judge gave the following considerations: Considering, that the Plaintiff had submitted evidence of letters marked P-1 through P-11,
while Defendant I submitted evidence of letters marked TI-1 through TI-15. That which must be proven in a quo case, namely:

a. Is Defendant II the legal husband of the late Meldarida Nainggolan?
b. Is Defendant II entitled to receive compensation funds from Defendant I?

Based on the provisions of Article 2 of Law No. 1 of 1974 concerning Marriage, namely: Paragraph (1): "Marriage is legal, if it is done according to the law of each religion and that belief; Paragraph (2): "Every marriage is recorded according to the applicable laws and regulations".

Regarding marriage registration, it is regulated further in Appendix V of the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1), namely for those who carry out marriages according to Islam, conducted by Employees Recording as referred to in Law No. 32 of 1954 concerning the Registration of Marriage, Divorce and Referral and paragraph (2), that is, in addition to Islam, is carried out by the Registrar of Marriage at the civil registry office as referred to in various legislation concerning marriage registration.

In connection with the legal definition of a marriage in the a quo case, based on evidence P-2 in the form of a Marriage Blessing Letter in the Seventh-day Adventist Church, between Hengki Dunan Siagian (Defendant II) and Melda Rida Nainggolan (biological child of the Plaintiff / vide evidence P-4 in the form of photocopy of Birth Certificate Quotation on behalf of Meldarida Nainggolan), in Tanjung Pinang, on December 16, 2011, and proof of P-5, P-6 and P-7 respectively in the form of photocopy of KK).

For this blessing, Defendant II and the late Meldarida Nainggolan did not register it with the Population and Civil Registry Office, as required by Article 2 paragraph (2) of Law No. 1 of 1974 in conjunction with Article 2 paragraph (2) PP No. 9 of 1975 so that a marriage can be said to be valid. Because the marriage blessings were not recorded, the marriage between Defendant II and the late Meldarida Nainggolan was invalid.

Furthermore, the deceased Meldarida Nainggolan died on March 8, 2014, due to a traffic accident, on the Trans Barelang public road near Battalion 134 Tembesi Batam and for that, as a parent, the Plaintiff submitted an application to Defendant I regarding the compensation of alharmarhumah Meldarida Nainggolan (vide evidence) P-1).

In the explanation letter dated 7 October 2014, made by Defendant I addressed to the Plaintiff, regarding the explanation of compensation. Meldarida Nainggolan, in point 4, namely: "Based on Article 12 paragraph (1) Government Regulation No. 18 of 1965 concerning Provisions for the Implementation of Road Traffic Accident Funds, it is regulated that "Those who are entitled to receive payment of funds in the case of the death of the victim are their legal widows / children, their legal children, and in the absence of their widows / children and children legitimate child, to his legal parents ".

Furthermore in the letter stated "in connection with the available evidence and referring to the provisions of Government Regulation No. 18 of 1965, that compensation
payments died. Ms. Meldarida Nainggolan was realized to Br. Hengki Dunan Siagian as a legitimate husband on August 12, 2014.

Concerning the party entitled to receive the aforementioned compensation, to be said to be his legal doom, that is, it is obligatory to refer to the provisions of Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 in conjunction with Article 2 paragraph (1) and paragraph (2) PP No. 9 of 1975 concerning legal marriages, so because Defendant II's marriage with Meldarida Nainggolan is invalid, the legal act of requesting compensation, giving and receiving compensation, by using a Marriage Marriage Certificate as the legal basis for marriage, is an illegal act that is against the law applicable and of course an error due to providing compensation to Defendant II as an unauthorized party, thereby causing harm to the Plaintiff as biological parents of the deceased Meldarida Nainggolan,

Based on the legal considerations above, the second petitum must state that the actions of Defendant I paid the compensation funds of the victim who died. Meldarida Nainggolan to Hengki Dunan Siagian was an act against the law and the third petitum to state that Defendant II's actions received payment of compensation funds to die. Meldarida Nainggolan from Defendant I is an act without rights and against the law, can be granted.

As the legal parents of the deceased as described above, the Assembly believes based on the provisions of Article 12 paragraph (1) PP No. 18 of 1965, against the fourth petitum to state that the Plaintiff as the legal father of the victim of a traffic accident died. Meldarida Nainggolan is the party entitled to the traffic accident compensation fund and the fifth petitum to punish Defendant I for paying the death accident traffic compensation fund on behalf of Meldarida Nainggolan, to the Plaintiff who has the right as a legitimate father, may be granted.

Based on the provisions of Article 1370 of the Civil Code, the Plaintiff as the biological parent of the deceased Meldarida Nainggolan, has the right to claim compensation, especially the death of the deceased due to the inadvertence of Defendant II, so that traffic accidents occur and for that the Assembly believes it is worth the sixth petitum to punish Defendants I and Defendant II jointly and jointly paid Rp. 50,000,000 (fifty million rupiah) to the Plaintiff, may be granted.

Based on the description above, because the Plaintiff can prove the arguments of the lawsuit, while Defendants I and II cannot prove the refutation, then the first petitum to grant the plaintiff's claim in its entirety, it can be granted.

3. Verdict;
   That upon the lawsuit of the Plaintiff, the Judicial Assembly gave the following sentence:
   a. Grant the Plaintiff's claim in full;
   b. Stating that the actions of Defendant I, paid the compensation money for the victim who died. Meldarida Nainggolan to Hengki Dunan Siagian (Defendant II) is an illegal act;
c. Stating that the actions of Defendant II received payment of compensation funds for death. Meldarida Naionggolan from Defendant I is an act without rights and against the law;
d. Stating that the Plaintiff as the legitimate father of a traffic accident victim has died. Meldarida Nainggolan is the party entitled to the compensation for the traffic accident;
e. Punish Defendant I for paying the compensation for the death of a traffic accident in the name of Meldarida Nainggolan, to the Plaintiff who has the right as a real biological father;
f. Punish Defendant I and Defendant II jointly and severally to pay compensation in the amount of Rp. 50,000,000 (fifty million rupiah) to the Plaintiff;
g. Sentencing Defendant I and Defendant II to pay the costs incurred in this case amounting to Rp. 926,000 (nine hundred twenty six thousand rupiah).

Based on the above ruling, according to the analysis of the marriage author which is done traditionally with the blessing in the Church is religiously valid and according to Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the marriage is legally valid, although it is not recorded in the Civil Registry Office. This is in accordance with the provisions of articles 100 and 101 of the Civil Code which states as follows:

"The existence of a marriage cannot be proven in another way than by the marriage certificate which is registered in the Civil Registry lists, except in matters set forth in the following articles"

Furthermore, in Article 101 of the Civil Code it states:
"If it turns out that the lists never existed, or have been lost, or the marriage certificate is not in it, then an assessment of the adequacy of the evidence of a marriage is submitted to the Judge, as long as a clear relationship exists as a husband and wife."

That according to the evidence submitted, it has revealed the fact that the trial had taken place between the defendant II and Meldarida Nainggolan (the plaintiff’s son), so that the marriage between Defendant II and Meldarida Nainggolan should have been declared lawful.

This is also consistent with the consideration of judges in the Bengkayang District Court Decision Number 03 / Pdt.G / 2013 / PN.Bky, which in its legal considerations the Panel of Judges explains as follows:

Considering, that from the testimony of witnesses and PI evidence that is Testimonium Matrimoni, it is proven that the Plaintiff and Defendant were married according to the ceremony of the Catholic Church in the Most (Sanggau Ledo) in the Parish area of ST. Pius X Bengkayang Archdiocese of Pontianak with witnesses, witness 1 and witness 2 by the priest on April 18, 1982;

Considering, that from the description above it is proven that the marriage of the Plaintiff and Defendant was carried out according to the religious procedures, namely Catholicism so that the marriage of the Plaintiff and Defendant is valid as determined in
Article 2 paragraph (1) of Law Number 1 of 1974 concerning the Marriage of Article 2 paragraph (1) 1) PP Number 9 of 1975;

Considering, that even though the legal marriage was not recorded in the Civil Registry according to the Panel of Judges, it did not make the marriage invalid, the Plaintiff and Defendant's negligence did not register their marriage in the Civil Registry should be seen as administrative negligence because the provisions of the legislation did not regulate the material. the marriage but only regulates the formality of the marriage while the marriage must still be seen as a legal marriage if it has been done according to the religion or belief of the person who carried out the marriage.

On 1 August 2009 a Day Seminar was held by the Pusat Pengkajian Hukum Islam dan Mayarakat Madani (PPHIMM) located at the Red Top Hotel Jakarta. The theme raised in this one-day seminar was "Problems of Family Law in the National Legal System: Between Reality and Legal Certainty".

The results of the study of experts in this seminar produced a very surprising conclusion. Professor Bagir Manan (former Chief Justice of the Supreme Court) concluded that, "Marriage registration is an important thing to do, therefore it does not reduce the validity of the marriage itself". While Professor Machfud MD, (Chief Justice of the Constitutional Court) stated that an unregistered marriage does not violate the constitution, because it is carried out in accordance with religious principles protected by the 1945 Constitution. Doctor Harifin A. Tumpa (Chairperson of the Supreme Court) holds, "An unregistered marriage is a symptom general and based on good faith or emergency factors, the judge must consider ".

Interim Jurisprudence of the Supreme Court of the Republic of Indonesia. RI Supreme Court Decision Number 1776 K / PDT / 2007. Tjia Mie Joeng's marriage to Lion Tjoeng Tjen was carried out in a customary manner, and was not recorded in civil registration as legal. This case was decided on July 28, 2008 by the Judicial Team consisting of M. Hatta Ali, Andar Purba, SH and Harifin A. Tumpa, SH, MH.

In Article 2 paragraph (1) of the Marriage Law it is stated that, a Marriage is valid if it is carried out according to the law of each of its religions and beliefs, in paragraph (2) Each marriage is recorded according to applicable laws and regulations. In the above article, there is no clause that states that a marriage is not legal if it is not registered or that the marriage is legal if it is registered. we will not find this sentence in the article above.

Strictly in Article 2 paragraph (1), the marriage is valid if done according to the law of each religion and belief. So the validity of a marriage is not determined by the recording, but is required by the respective religious law. As stated by Prof. Bagir Manan, the recording is something that is important, does not reduce the validity marriage if not registered. From his words, it can be concluded that, the legality of marriage is not related to the recording. This means that Indonesia's positive law views marriages that are not

12 https://www.kompasiana.com, accessed on 17 September 2019
13 Ibid
registered as legal (legal). The consequence of a legal marriage is to have a legal partner, legitimate children (if born during a legal marriage), and they can inherit each other. But for the sake of security and to make it easier to prove, it would be better if the marriage that was held was also recorded at the Office of Religious Affairs (for Muslims) or the Civil Registry Office (for Non-Muslims). Because there are some legal practitioners such as judges and opinion, the validity of a marriage is also determined by being recorded or not registered.\textsuperscript{14}

Based on the above analysis, the writer concludes that the Plaintiff’s claim should be rejected for all because in addition to the legal considerations of the marriage which are not recorded as long as it can be proven in court, it must still be considered valid, the Plaintiff also does not have a legal standing to file a lawsuit in this case because it is in accordance with the argument of the claimant and according to the facts which was revealed at the trial, the Plaintiff was the victim’s father, while the facts revealed in the trial besides the victim named Meldarida Nainggolan were bound by a legal marriage with Henki Daunan Siagian (Defendant II), also the fact that the victim Meldarida Nainggolan had a child named Mickeal Sion Santo Paulus Amando S who was born on November 9, 2013.

Based on the provisions of article 832 KUHPerdata According to the Law, those who are entitled to become heirs are blood relatives, both those legally and illegitimate and the husband or wife who lives the longest, therefore those who can act and be domiciled as heirs of the deceased Meldarida Nainggolan are her husband and children and not her father.

C. CONCLUSIONS AND RECOMMENDATIONS

Based on the description and analysis in the previous chapters, the following conclusions are presented which are answers to the problems in this study. Marriage is a spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on a Godhead. According to Article 2 of Law No. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), a marriage is legal if it is carried out according to their respective religious laws and beliefs; and. Noted according to applicable law. That is, based on that article, a marriage between husband and wife is legal if it is done according to religious law and is registered. Based on Article 2 of Government Regulation Number 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage, there are two institutions authorized to register marriages, namely the Office of Religious Affairs (KUA) for Muslim religious couples and the Office of Population and Civil Registration (or commonly called the Civil Registry Office) for non-Muslim religious couples. Marriages performed in places of worship are religiously valid. However, due to the absence of registration, the marriage was considered to have never existed by Indonesian law. That is, based on Indonesian law this married couple is still in status single or not married. According to

\textsuperscript{14} Ibid
the authors of marriages that are carried out traditionally with the Blessing in the Church are religiously valid and according to Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the marriage is legally valid, although it is not recorded in the Civil Registry Office. In the above article, there is no clause that states that a marriage is not legal if it is not registered or that the marriage is legal if it is registered. we will not find this sentence in the chapter above. Strictly in Article 2 paragraph (1), the marriage is valid if done according to the law of each religion and belief. So the validity of a marriage is not determined by the recording, but is required by the respective religious law. Mickeal Sion Santo Paulus Amando S, who was born on November 9, 2013, so according to the provisions of article 832 of the Civil Code that can act and occupy the heirs of the late Meldarida Nainggolan are her husband and children and not her father.

The author suggests that revisions to Law Number 1 of 1974 concerning Marriage specifically related to whether the marriage must be registered or recorded are in accordance with statutory regulations so as not to cause differences in views among law enforcers. Government regulations should also be made as implementing regulations of Law Number 1 of 1974 concerning Marriage, as an affirmation of Government regulation Number 9 of 1975.

REFERENCES

The 1945 Constitution of the Republic Indonesia
The Civil Code (Civil Code)
Law Number 1 of 1974 concerning Marriage
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