

The Absence of the Bride-to-be in the Practice of Marriage Ceremony: A Perspective on Legal Certainty Theory

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Abstract

This study aims to examine the absence of the bride-to-be in the practice of marriage ceremony on the marriage administrative process and analyze its impact through the application of Gustav Radbruch's Theory of Legal Certainty. This research is a type of empirical juridical research using a qualitative descriptive approach. The research was conducted at KUA, Ringinrejo District, Kediri Regency with the object of research being the Head of KUA as an informant who can provide information about the absence of the bride-to-be in the practice of marriage rapak. In this study, the researcher used primary and secondary data sources. The data collection methods used are interviews and documentation. The data analysis methods used are data processing, data classification, data analysis, and conclusion. The main findings of this study show that in KUA Ringinrejo District there is flexibility when the prospective husband is unable to attend the practice of marriage cards such as through representatives or confirmation via telephone. Although administratively this allows the continuation of the marriage process, from the perspective of Gustav Radbruch's theory of Legal Certainty, which includes justice, utility, and legal certainty, it is found that the absence of the bride-to-be has the potential to cause legal vulnerability, especially related to the legitimacy and administration of the marriage. This research contributes to the discourse on marriage administration reform and the urgency of establishing more adaptive regulations in ensuring legal certainty in the midst of social dynamics of society.

Keywords: Absence; Practice of Marriage; Legal Theory

Abstrak

Penelitian ini bertujuan untuk mengkaji ketidakhadiran calon pengantin dalam praktik rapak nikah terhadap proses administratif pernikahan serta menganalisis dampaknya melalui penerapan Teori Kepastian Hukum Gustav Radbruch. Penelitian ini termasuk jenis penelitian yuridis empiris dengan menggunakan pendekatan deskriptif kualitatif. Penelitian dilakukan di KUA Kecamatan Ringinrejo Kabupaten Kediri dengan objek penelitian Kepala KUA sebagai informan yang dapat memberikan informasi mengenai ketidakhadiran calon pengantin dalam praktik rapak nikah. Dalam penelitian ini, peneliti menggunakan sumber data primer dan sekunder. Metode pengumpulan data yang digunakan adalah wawancara dan dokumentasi. Adapun metode analisis data yang digunakan adalah pengolahan data, klasifikasi data, analisis data, dan Kesimpulan. Temuan utama penelitian ini menunjukkan bahwa di KUA Kecamatan Ringinrejo terdapat fleksibilitas ketika calon suami berhalangan hadir dalam praktik rapak nikah seperti melalui perwakilan atau konfirmasi via telepon. Meskipun secara administratif hal ini memungkinkan kelanjutan proses pernikahan, namun dari perspektif teori Kepastian Hukum Gustav Radbruch yang meliputi keadilan, kemanfaatan, dan kepastian hukum ditemukan bahwa ketidakhadiran calon pengantin berpotensi menimbulkan kerentanan hukum, khususnya terkait legitimasi dan administrasi pernikahan. Penelitian ini berkontribusi pada wacana reformasi administrasi pernikahan dan urgensi pembentukan regulasi yang lebih adaptif dalam menjamin kepastian hukum di tengah dinamika sosial masyarakat.

Kata Kunci: Ketidakhadiran; Praktek Pernikahan; Teori Hukum

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INTRODUCTION

One of the commandments from Allah SWT for mankind to be able to maintain its existence and regulate the development of generations in a way that is in accordance with religious norms is marriage.¹ Marriage is characterized by the existence of a contract between a man and a woman from different families which aims to bind the inner relationship of both parties, both from the male and female sides so as to form a unity in the family bond.² Apart from being part of social worship, marriage also functions as a means to build a household, pass on offspring, and strengthen *Islamic ukhuwah*.³

In order for marriage to have permanent legal force, it is necessary to register the marriage on the legal basis of Article 2 paragraph (1) of Law Number 1 of 1974, Government Regulation Number 9 of 1975, Regulation of the Minister of Religion Number 30 Number 2024, as well as Article 6 paragraph (2) and Article 7 of the Compilation of Islamic Law (KHI).⁴ The validity of a marriage is not only judged from the fulfillment of existing requirements, but also from its civil aspect. A marriage is considered valid if it has been registered at the Office of Religious Affairs (KUA) for the bride-to-be who is Muslim.⁵ Marriage registration is a principle of national marriage law that originates from Law Number 1 of 1974 concerning marriage. Therefore, the recording and making of marriage certificates is an obligation for people who will hold a marriage contract so that the husband and wife and children born get legal protection.⁶

The lack of public understanding of the marriage registration procedure often makes it difficult for those who want to get married. This begins with the collection of various documents and data required by the KUA as a condition for carrying out the marriage. Obstacles are also faced by brides-to-be who do not live in their place of origin or are working outside the city or even abroad who often find it difficult with complicated procedures and limited time. In several sub-districts in Kediri Regency, there are several residents who work outside the city which results in various obstacles in the process of managing marriage administration.⁷ So that the practice of document checking or known as *rapak* occurs in the absence of one of the brides-to-be. *The rapak* is regulated in Article 6 of PMA Number 30 of

¹ Hadis Purba, "Membangun Keluarga Islami: Tinjauan Terhadap Ayat-Ayat Alquran dan Hadis Rasul SAW," *Almufida: Jurnal Ilmu-Ilmu Keislaman* Vol. 3, no. 1 (2018): 1-28, <https://doi.org/10.46576/almufida.v3i1.91>, <https://doi.org/https://doi.org/10.46576/almufida.v3i1.91>

² M. Lutfi Chakim, "Perkawinan Menurut Hukum Adat dan Menurut Hukum Islam," 2012, <http://www.lutfichakim.com/2012/01/perkawinan-menurut-hukum-adat-dan.html>

<http://www.lutfichakim.com/2012/01/perkawinan-menurut-hukum-adat-dan.html>

³ Saharuddin, "Perkawinan Ideal dan Hubungannya dengan Kecerdasan Anak Menurut Ilmu Pendidikan Islam" (Universitas Islam Negeri Alauddin Makassar, 2011). <http://repositori.uin-alauddin.ac.id/id/eprint/14454>

⁴ Imam Faishol, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia," *Jurnal Ulumul Syar'i* Vol. 8, no. 2 (2019): 1-25. file:///C:/Users/user/Downloads/53-Article Text-180-1-10-20200610 (1).pdf

⁵ Risna Amelia, Nurjaya, dan Salmawati, "Keabsahan Kawin Sirri," *Qawanin: Jurnal Ilmu Hukum* Vol. 1, no. 1 (2020): 1-40. <https://jurnal.fh.umi.ac.id/index.php/qawaninjih/article/view/328/87>

⁶ Rachmadi Usman, "Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan di Indonesia," *Jurnal Legislasi Indonesia* Vol. 14, no. 3 (2017): 255-74. <https://repo-dosen.ulm.ac.id/handle/123456789/11811>

⁷ Adi Nugroho, "Kisah Sukses Para TKI di Desa Deyeng, Kecamatan Ringinrejo," *Radarkediri*, 2018, <https://radarkediri.jawapos.com/nasional/781275505/kisah-sukses-para-tki-di-desa-deyeng-kecamatan-ringinrejo>, <https://radarkediri.jawapos.com/nasional/781275505/kisah-sukses-para-tki-di-desa-deyeng-kecamatan-ringinrejo>

2024, which states that marriage audits aim to ensure the completeness of documents and marriage requirements by presenting prospective husbands, future wives, and marriage guardians to ensure whether or not there are obstacles to marriage and ensure the accuracy and correctness of data by making statements. However, in various cases, it can cause one of the brides-to-be to not be able to carry out *the rapak*.

From the results of the pre-research of researchers at KUA, Ringinrejo District, Regency, there was a case of *rapak practice* that was not attended by the husband-to-be. The percentage of the number of brides-to-be who did not attend was 10% of the total data on marriage events, the statement was in accordance with the results of the researcher's interview with Mr. Yudha as the Head of KUA Ringinrejo District, Kediri Regency. In general, the practice of *marriage cards* at the KUA of Ringinrejo District is carried out every Tuesday and Thursday during working hours. In addition to the examination, the bride-to-be will also receive marriage guidance from the headman and health counseling from the Health Office.⁸ Therefore, *the practice of rapak* at KUA is very important to be attended by the bride-to-be. This is in accordance with the Circular Letter of the Director General of Islamic Guidance No. 2 of 2024 concerning Marriage Guidance for Brides-to-be.⁹

KUA of Ringinrejo District in responding to the absence of the bride-to-be in the practice of *marriage certificates*, namely for the prospective husband who is not present, the marriage certificate is represented by the prospective wife to sign the marriage file.¹⁰ From the KUA policy, if there is an error regarding the documents of the bride-to-be, the head will not continue the marriage contract procession. A literature review shows that the practice of the absence of the bride-to-be at the *marriage ceremony* is not new. Research by Shinta Nazilatunni'mah revealed that in the Lamongan District KUA, "tawkil rafa" was applied on an emergency basis, where the bride-to-be made a stamped power of attorney to represent her presence.¹¹ Meanwhile, research by Muhamad Sodiqin shows that the absence of guardians at the meeting at KUA, Semen District, causes administrative defects that hinder the marriage registration process.¹² However, the two studies have not specifically examined the absence of the bride-to-be and have not discussed it in the perspective of Gustav Radbruch's theory of legal certainty.

Research on the validity of a marriage contract without the presence of the bride-to-be has become a topic of discussion in various studies of Islamic law and positive law. In a study conducted by Asrori et. al., it was stated that in Islamic law, the presence of the bride is not an absolute requirement in the implementation of the marriage contract, as long as there is a legal

⁸ Fauzi, Interview, March 18, 2025

⁹ Moh Khoeron, "Mulai Akhir Juli 2024, Bimas Islam Wajibkan Calon Pengantin Ikut Bimbingan Perkawinan," Kementerian Agama RI, 2024, <https://kemenag.go.id/nasional/mulai-akhir-juli-2024-bimas-islam-wajibkan-calon-pengantin-ikut-bimbingan-perkawinan-wR00p>. <https://kemenag.go.id/nasional/mulai-akhir-juli-2024-bimas-islam-wajibkan-calon-pengantin-ikut-bimbingan-perkawinan-wR00p>

¹⁰ Interview, March 17, 2025

¹¹ Shinta Nazilatunni'mah, "Analisis Yuridis Terhadap Tawkil Rafa' pada Masa Pandemi Covid-19" (Universitas Islam Negeri Sunan Ampel Surabaya, 2022). <http://digilib.uinsa.ac.id/id/eprint/54330>

¹² Muhamad Sodiqin, "Fenomena Rapak (Pemeriksaan Nikah) untuk Mewujudkan Ketertiban Administrasi Pencatatan Perkawinan Perspektif Peraturan Menteri Agama No 20 Tahun 2019" (Universitas Islam Tribakti Lirboyo, 2023). <http://repo.uit-lirboyo.ac.id/id/eprint/1620>.

guardian and both parties have given prior consent. However, the study also emphasizes that the absence of a bride-to-be can create legal uncertainty if it is not accompanied by administratively valid evidence of consent or credible witnesses.¹³ Furthermore, according to research by Taufiqurohman Taufiqurohman and M. Ulul Albab Musaffa, the practice of marriage without the presence of the bride often occurs in remote areas and is actually a source of legal conflicts, especially when there is a marriage dispute or divorce in the future. This study shows that although it is permissible in *fiqhiyah*, in the context of the state of law, the absence of the bride during the marriage contract has the potential to weaken legal certainty, especially in marriage registration and the protection of women's rights.¹⁴

Research by Ahmad Rasyidi Halim et al., discusses the practice of wali *mujbir nikah*, which is a marriage performed by a wali without the presence of the bride, which is often found in traditional societies in several regions of Indonesia. In such practice, the guardian acts on behalf of the bride based on cultural reasons and religious beliefs.¹⁵ Although this is considered legally legal, That the practice can be contrary to the principles of justice and protection of women's rights within Indonesia's positive legal framework, especially if it is not followed by the explicit consent of the bride.¹⁶ Meanwhile, a study by Angela Ekene Anekwe, emphasizes the importance of formal legality aspects in every marriage process, including the presence of the bride, to prevent the emergence of legal problems in the future such as marriage annulment lawsuits or inheritance disputes. They concluded that the absence of the prospective wife in the marriage contract can cause legal uncertainty if there is no regulation that expressly regulates the procedure and documentation of her consent.¹⁷ Thus, the two studies reinforce the urgency of the need for legal certainty in the practice of marriage, so that it is not only valid according to religion, but also legally recognized and does not violate the civil rights of the parties involved, especially women.

This research is focused on finding out how the Head of KUA views the absence of the bride-to-be in the practice of *marriage* and its impact on the marriage administrative process at KUA. In addition, this study also aims to examine the application of Gustav Radbruch's Theory of Legal Certainty in analyzing the consequences of such absence. This research is important to make an academic contribution in understanding the administrative policy of

¹³ Asrori Asrori, A. Kumedi Ja'far, dan Linda Firdawaty, "GIVING A MARRIAGE DOWRY IN JURIDICAL, SOCIOLOGICAL, AND PHILOSOPHICAL PERSPECTIVES," *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 17, no. 1 (2024): 139–162.

¹⁴ Taufiqurohman Taufiqurohman dan M. Ulul Albab Musaffa, "Decoding Polygamy Permits: Unraveling Sociological and Legal Anthropological Perspectives on Marriage Motives and Conditions," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 8, no. 2 (2023): 163–175.

¹⁵ Ahmad Rasyidi Halim, M. Fahmi Al Amruzi, dan Jalaluddin Jalaluddin, "Legal Formulation for Forced Marriage Prevention through the Decision of Wali Mujbir in Religious Courts and Its Relevance with Maqāṣid Syari'ah and Human Rights," *Mazahib* 23, no. 1 (2024): 79–116.

¹⁶ Sellin Fathinah Qonitah dan Garnetta Liya Widyanti, "Requirements for Political Rights of Former Convicts to Become Regional Representative Council Member Candidates from the Perspective of Fiqh Siyāsah (Study of Constitutional Court Decision Number," diakses 10 Juni 2025, <https://repository.uinsaizu.ac.id/29543/1/prosiding%20182.pdf>.

¹⁷ Angela Ekene Anekwe, "Legal Framework for the Dissolution of Marriage in Nigeria: Prospects, Challenges and the Way Forward," *Challenges and the Way Forward* (September 29, 2024), 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4971062.

KUA in responding to the problem of the absence of brides-to-be in the practice of *marriage ceremony*. This research is also expected to be a consideration for the Ministry of Religion in drafting more uniform regulations and ensuring legal certainty and administrative protection in the implementation of marriage registration, especially if there is one of the brides-to-be who cannot attend.

RESEARCH METHOD

This research is a legal research with an empirical juridical approach, which is a type of research that not only examines legal norms in laws and regulations (normative juridical), but also how these norms are applied in community practice. In this context, the research focuses on the practice of marriage marriage in KUA, Ringinrejo District, Kediri Regency. With a qualitative descriptive approach, the researcher wants to gain an in-depth understanding of the process and theoretical analysis in the implementation of marriage rapak. The data was collected through a semi-structured interview with the main informant, namely Mr. Yudha Ahmad as the Head of KUA Ringinrejo District. The interview process is carried out directly using a flexible open-ended question guide so that the researcher can adjust the direction of the conversation.

The data collected consists of primary data and secondary data. Primary data comes from direct interviews with the main sources, while secondary data includes legal documents such as Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, PMA Number 30 of 2024 concerning Marriage Registration, as well as scientific articles related to cases of marriage marriage. Data analysis is carried out through several stages, namely data processing and classification by filtering important information from interview results, data analysis using the theoretical framework of Legal Certainty from Gustav Radbruch. The results of this analysis are used to answer the main problem in the study, namely related to the absence of the bride-to-be in the implementation of the marriage ceremony at the KUA of Ringinrejo District

RESULTS AND DISCUSSION

Marriage Registration at KUA, Ringinrejo District, Kediri Regency

Marriage is an important moment in human life, so its registration is mandatory as a form of recognition and legal protection for citizens. This recording has legal impacts in various aspects that arise from marriage, such as the legal status of husband and wife, the status of children born, ownership of joint property, and other civil aspects.¹⁸ In Indonesia, the marriage registration process varies depending on the religion adhered to by the married couple. Every citizen has the right to practice the law according to his or her religious beliefs. For Muslims, registration is carried out at the sub-district KUA, while for followers of Christianity, Catholicism, Hinduism, and Buddhism, registration is carried out at the Civil Registration Office.¹⁹ Marriage Registrar Employees (PPN) are civil servants appointed by the Minister of

¹⁸ Faishol, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia."

¹⁹ Imam Wahyujati, "Pengaturan Perkawinan Beda Agama Di Indonesia," *'Aainul Haq: Jurnal Hukum Keluarga Islam* Vol. 2, no. 1 (2022). <https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/399>

Religion based on Law Number 2 of 1946 in each sub-district Religious Affairs Office. VAT has a clearly regulated role in Indonesian legislation since Law Number 22 of 1946 until now, as the only official authorized to register marriages according to Islam in its territory.²⁰

Brides-to-be who want to register their marriage must go through several stages. Couples who are about to get married need to tell their intention to get married. The following is the procedure for submitting marriage wills. Take care of a letter of introduction from the local RT/RW, then submit it to the village office. Submit a letter of introduction from RT/RW to the village for further processing. The bride-to-be will receive marriage documents in the form of a marriage cover letter model N1, N2, N3, and N4 from the village, which must then be brought to the KUA. If the wedding is held outside the sub-district where you live, the KUA will issue a letter of recommendation that must be brought to the KUA at the wedding location. However, if the wedding is held at the local KUA, this letter of recommendation is not required. The KUA officer will ask the time of the wedding, whether it will be carried out in less than 10 working days or more. If the marriage is less than 10 working days, then go to the sub-district office where the marriage contract is made to apply for a marriage dispensation. The bride-to-be will also be asked about the location of the wedding, whether it will be held at the KUA office or outside the office. If it is done at the KUA office, then no fees are charged, and the administrative process can be continued. However, if the wedding is held outside the office, a fee of Rp. 600,000 will be charged in accordance with Government Regulation of the Republic of Indonesia Number 48 of 2004 concerning Tariffs on Non-Tax State Revenues Applicable to the Ministry of Religion.²¹

Marriage checks (*rapak*) are carried out by the Marriage Registrar (PPN) on the bride and groom to ensure that there are no obstacles to marriage according to Islamic law and check the completeness of the necessary requirements. After the examination is completed, the results are stated in the minutes of the marriage examination which must be signed by the VAT, the prospective bride, and the marriage guardian.²² If the examination finds a lack of files, VAT is obliged to immediately notify the bride-to-be so that they can complete it immediately. In addition, if there is a difference in the name of the bride-to-be in various documents such as diplomas, Family Card (KK), ID card, or birth certificate, VAT will ask the bride-to-be to choose one of the names to be used in the marriage certificate to avoid errors or administrative problems in the future.²³

VAT or VAT helper will announce the marriage wishes after all the requirements for marriage registration are met. This announcement is made using a model (NC) and is installed on the notice board at the KUA office according to the domicile of each bride-to-be. VAT or VAT

²⁰ Achmad Murtadho Usman, "Kewenangan Pencatatan Nikah Melalui Penghulu Dan Kepala KUA Dalam Perspektif Peraturan Menteri Agama Dengan Peraturan Pendayagunaan Aparatur Negara," *HARMONI* Vol. 20, no. 1 (2021), <https://doi.org/https://doi.org/10.32488/harmoni.v20i1.468>

²¹ Kemenag RI, "SIMKAH (Sistem Informasi Manajemen Nikah)," t.t., <https://simkah4.kemenag.go.id/>

²² Interview, March 17, 2025

²³ "Pemeriksaan Nikah," Kanwil Kemenag Jatim, 2007, <https://jatim.kemenag.go.id/artikel/8872/pemeriksaan-nikah>.
<https://jatim.kemenag.go.id/artikel/8872/pemeriksaan-nikah>

helper is not allowed to hold a marriage contract before ten working days from the announcement, except in urgent circumstances as stipulated in Article 3 Paragraph (3) of Government Regulation Number 9 of 1975. For example, if one of the prospective brides has to immediately go abroad, then he can apply for a dispensation to the sub-district head, which then on behalf of the Regent can grant permission. During the ten days, the bride-to-be will receive marriage guidance from the local BP4.²⁴ The marriage contract is carried out in front of the VAT or the head of the area where the prospective wife lives. If the marriage contract is carried out outside the specified area, then the bride-to-be, both male and female, is obliged to notify the VAT officer in their area to obtain a marriage recommendation letter. In addition, VAT officers cannot carry out the marriage contract before passing the ten-day waiting period. However, if there is an emergency or urgent condition, the bride-to-be must submit a certificate from the sub-district office. The letter must then be submitted back to the KUA after being signed by the sub-district head and affixed with the sub-district stamp.²⁵

The Head of KUA Ringinrejo District on the Absence of Brides-to-be in the Practice of Marriage Ceremony

The rapak is regulated in Article 6 of PMA Number 30 of 2024, which states that marriage audits aim to ensure the completeness of documents and marriage requirements by presenting prospective husbands, future wives, and marriage guardians to ensure whether or not there are obstacles to marriage and ensure the accuracy and correctness of data by making statements.²⁶ However, in various cases, it can cause one of the brides-to-be to not be able to carry out *the rapak*. Based on the results of research conducted on the practice of checking documents (*rapak*) without the presence of the prospective husband at the KUA of Ringinrejo District, it is known that the process of registering the marriage will of the bride and groom is basically similar to the marriage procedure in Islamic society in general. The bride-to-be submits an application for marriage registration to the KUA, completes the administrative requirements, and undergoes a document check. If an obstacle is found in the examination of documents, the marriage application can be rejected. However, if there are no obstacles, the next step is the announcement of the marriage will. The execution of the marriage is carried out after ten days of the announcement with the representative party if necessary. The last stage is the registration of a marriage which is considered valid if it has been officially registered and the marriage certificate has been signed by the bride and groom, two witnesses, the marriage registrar, and the guardian or representative of the Muslim couple.²⁷

In the process of checking documents (*rapak*), the prospective husband does not attend the examination, the examination is only carried out on the prospective wife and guardian

²⁴ "Pengumuman Kehendak Nikah," Kanwil Kemenag Jatim, 2007, <https://jatim.kemenag.go.id/artikel/8873/pengumuman-kehendak-nikah>.
<https://jatim.kemenag.go.id/artikel/8873/pengumuman-kehendak-nikah>

²⁵ Ari Azhari, "Penyesuaian Pelaksanaan Perkawinan di Kantor Urusan Agama Pada Masa Pandemi Covid-19," *Jurnal Alwatzikhoebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora* 8, no. 2 (2022): 331–43, <https://doi.org/10.37567/alwatzikhoebillah.v8i2.2166>.

<https://doi.org/https://doi.org/10.37567/alwatzikhoebillah.v8i2.2166>

²⁶ "Peraturan Menteri Agama (PMA) Nomor 30 Tahun 2024 tentang Pencatatan Pernikahan" (t.t.).

²⁷ Interview, March 17, 2025

because the prospective husband lives far from the KUA where the marriage is registered. The practice of examining marriage documents (*rapak*) at the KUA of Ringinrejo District is carried out regularly on Tuesdays and Thursdays. This examination is an important stage in the marriage administration process which aims to ensure the completeness and validity of the documents of the bride and groom before the marriage contract procession is carried out. Ideally, this examination is attended by both brides-to-be along with guardians and witnesses, but in certain conditions, the future husband may be unable to attend. If the husband-to-be is unable to attend the meeting, the examination process can still take place by being represented by the wife-to-be to sign the necessary documents. In addition, as another alternative, the KUA also allows confirmation through phone calls, where the prospective husband can give approval and verification of documents directly to the marriage registrar. This is done to ensure that all procedures continue to run according to the rules without hindering the planned wedding schedule. With this flexibility, the KUA of Ringinrejo District still upholds the principle of the validity of marriage administration while providing convenience for brides-to-be who face obstacles in attending the ceremony process in person. Another alternative that can be done in the examination of the documents of the prospective husband is carried out before the marriage contract procession.²⁸ From this explanation, it can be concluded that the implementation of this marriage is in accordance with the provisions of Law Number 1 of 1974 and the applicable marriage procedures and does not contradict PMA Number 30 of 2024 concerning marriage registration.

The Absence of the Bride-to-be in the Practice of Marriage Gathering From the Perspective of Legal Certainty

The theory of legal certainty is one of the main goals of law and plays an important role in realizing justice. Legal certainty is realized through the implementation and enforcement of laws that apply fairly regardless of who the perpetrator is. With legal certainty, every individual can estimate the consequences that will be faced if he commits a certain legal action.²⁹ Legal certainty is also an important element to ensure the principle of equality before the law and prevent discrimination. The term certainty is closely related to the principle of truth which means that certainty in law must be able to be formulated legally formally through a logical and systematic approach.³⁰ Through legal certainty, a person is guaranteed to act in accordance with the applicable rules and the rules provide clear guidelines regarding expected behavior. Conversely, in the absence of legal certainty, individuals will have no definite basis for action.

²⁸ Interview, March 17, 2025

²⁹ Muhammad Riswan, "Dilema Penegak Hukum: Peran Penting Penegakan Hukum Untuk Mewujudkan Keadilan," Universitas Ahmad Dahlan, 2023, <https://law.uad.ac.id/dilema-penegak-hukum-peran-penting-penegakan-hukum-untuk-mewujudkan-keadilan/>. <https://law.uad.ac.id/dilema-penegak-hukum-peran-penting-penegakan-hukum-untuk-mewujudkan-keadilan/>

³⁰ Mario Julyano dan Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat dan Ilmu Hukum* Vol. 1, no. 1 (2019): 13-22, <https://doi.org/10.14710/crepido.1.1.13-22>. <https://doi.org/https://doi.org/10.14710/crepido.1.1.13-22>

In this context, Gustav Radbruch also affirmed that legal certainty is one of the main goals of law itself. Legal certainty creates stability in social life, so as to prevent conflicts that arise due to unclear rules.³¹ Gustav Radbruch explained that the theory of legal certainty that he initiated contains four fundamental principles that are interrelated with the essence of legal certainty itself, namely, law as something positive, which means that positive law is identified as laws and regulations. Law is based on facts, so its formation is always based on existing reality or reality. The facts in the law must be formulated clearly so that there are no errors in understanding and interpretation as well as facilitating their implementation. Positive laws should not be changed carelessly, so that their stability is maintained.³²

According to Gustav Radbruch's view, legal certainty is one of the results of law, especially the law contained in legislation. For Gustav Radbruch, positive laws serve to regulate the interests of society and must be obeyed even if they are considered to be less than meets the sense of justice. More broadly, legal certainty can be interpreted as a fixed, clear, and binding condition. As well as being an important foundation in creating legal stability.³³ The concept of the principle of legal certainty introduced by Gustav Radbruch is contained in his book entitled *"Einführung in die Rechtswissenschaften."* In this work, Gustav Radbruch argues that law contains three main basic values, namely, justice (*Gerechtigkeit*), as a principle that guarantees equality and fair treatment for all parties. Utility (*Zweckmäßigkeit*), which focuses on the achievement of legal goals for the common good. Legal certainty (*Rechtssicherheit*), which provides guarantees of legal stability and clarity, so that it can be relied upon by society.³⁴

In this case, Gustav's Legal Certainty theory consisting of 3 (three) indicators will be used as an analysis knife in a case study of the absence of the bride-to-be in the practice of marriage ceremony at KUA, Ringinrejo District, Kediri Regency. First, justice in Gustav Radbruch's theory refers to how law can reflect fair treatment for all parties involved. In the context of the absence of the bride-to-be in the marriage ceremony, the aspect of justice can be questioned. The absence of the husband-to-be in the document verification process can cause potential injustice, especially for the wife-to-be. In some cases, the wife-to-be who has to represent the husband-to-be may not have a full understanding of the contents of the signed document. This can cause the future wife to bear the administrative burden that should be the responsibility of both parties. In addition, the potential for falsification or administrative manipulation is also a concern in the aspect of justice. The absence of one party in the marriage ceremony can open up opportunities for other parties to abuse the process, either through falsification of

³¹ Roki Arnanda Saputra, Syifa' Silvana, dan Emir Fabrian Marino, "Penyelesaian Sengketa Sertifikat Tanah Ganda Serta Bentuk Kepastian Hukumnya," *Jentera: Jurnal Hukum* Vol. 4, no. 2 (2021): 555-73. <file:///C:/Users/user/Downloads/40-Article Text-254-1-10-20230605.pdf>

³² Julyano dan Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum."

³³ Sita Dewi Hapsari, "Kemanfaatan, Keadilan dan Kepastian Hukum Restorative Justice pada Ketentuan Perpajakan," *Scientax: Jurnal Kajian Ilmiah Perpajakan Indonesia* Vol. 6, no. 1 (2024): 52-66, <https://doi.org/10.52869/st.v6i1.788>. <https://doi.org/https://doi.org/10.52869/st.v6i1.788>

³⁴ Julyano dan Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum."

documents or other actions that can harm one of the parties. For example, in cases where the marriage takes place without the legal consent of the future husband, this can be detrimental to the future wife and potentially lead to legal disputes in the future. From the perspective of justice, every couple who wants to get married must get the same treatment before the law. The presence of the two brides-to-be in the marriage *ceremony* is a form of legal protection so that each party can directly understand their rights and obligations in the marriage. Therefore, even though there is a solution in the form of a representative of the prospective wife or verification by telephone, it is important for the KUA to still ensure that the decision does not harm one of the parties and still meets the principles of justice in the marriage law.

Second, the usefulness, the aspect of usefulness in Radbruch's theory is related to the extent to which the law provides benefits to society. In the practice of *marriage cards* at KUA Ringinrejo District, flexibility in document examination procedures aims to make it easier for couples who experience attendance constraints. When the husband-to-be is unable to attend, solutions such as representation by the wife-to-be or verification by telephone are alternatives that allow the marriage to continue without significant administrative barriers. This administrative convenience certainly provides benefits for couples who have limitations, for example due to distance or busy work. In the short term, this can speed up the wedding administration process and reduce the burden on the bride-to-be in taking care of documents. However, these benefits must be balanced with the assurance that the process still meets applicable legal standards. If the absence of the prospective husband is still allowed without a stricter verification mechanism, then the short-term benefits in the form of ease of administration can potentially cause legal problems in the future. For example, in the case of a marriage dispute or annulment of a marriage, the absence of the prospective husband in the *marriage ceremony* can be a reason for one of the parties to sue the validity of the marriage. If there is no concrete evidence that the future husband actually gives consent, then the marriage can be considered legally flawed. Therefore, in order to ensure the benefits of the *marriage ceremony* procedure, a more accurate verification system is needed, such as the use of digital signatures or video communication as proof that the prospective husband really gives consent to the marriage to be held.

Third, legal certainty is a key element in every regulation. In the context of *marriage rapak*, the absence of the bride-to-be can cause legal uncertainty, especially if there is no clear mechanism to ensure that the prospective husband actually gives consent to the marriage. Without direct presence, there is potential for abuse in the administration of marriage such as falsification of identity or the organization of a wedding without the legal consent of both parties. Stricter regulations, such as the use of video communication technology or verified digital signatures, can help ensure that the *marriage ceremony* remains legally certain even if one party is unable to attend. Currently, some KUA have started implementing alternative verification methods, such as direct confirmation by phone with conversation recordings as evidence. However, this method still has its drawbacks, as it is difficult to be sure that the speaking party is really the prospective husband in question. Legal uncertainty can also arise if there are differences in interpretation in the implementation of rules in various KUAs. Some

KUAs may be more flexible in allowing the wife-to-be to represent the husband-to-be, while others may require the physical presence of both parties. These differences can lead to inconsistencies in the application of the law and cause confusion for people who want to get married. In order for legal certainty to be maintained, clearer guidelines are needed on how *marriage can* remain valid even if the prospective husband is not present. For example, regulations requiring digital signatures or recorded video calls can be a step forward in ensuring that marriages continue to take place legally and avoid potential disputes down the road. With stricter mechanisms, legal certainty in marriage can still be maintained and provide protection for both parties.

CONCLUSION

The phenomenon of the absence of the bride-to-be in the practice of *Rapak Nikah* is an important issue that must be understood in the context of legal certainty. This practice is crucial because *Rapak* is a document check stage that functions to ensure the completeness of the marriage requirements so that the presence of the two brides-to-be is very necessary. The absence of one of the candidates, especially the prospective husband, can cause serious legal consequences such as falsification of documents, administrative incompatibilities, and injustice in marriage management. Various factors cause this absence including the limited geographical distance between the bride-to-be's residence and the Office of Religious Affairs (KUA) and strict deadlines in administrative preparation. This is a challenge for KUA in ensuring that the marriage procedure continues to run in accordance with the applicable legal rules. From the perspective of Gustav Radbruch's theory of legal certainty, this issue highlights the need for clearer and stricter regulation in the practice of *Rapak Nikah*. Unclear regulations regarding how the KUA must handle the absence of the bride-to-be has the potential to create legal uncertainty. The results of this study confirm that although *Rapak Nikah* has established procedural standards, flexibility is still needed so that marriage administration policies can be more responsive to the needs of the community. Therefore, further studies on improving regulations and the application of technology in the marriage ceremony are expected to contribute to increasing legal certainty in marriage in Indonesia and minimize the negative impact of the absence of the bride-to-be in the administrative process.

REFERENCES

- Amelia, Risna, Nurjaya, dan Salmawati. "Keabsahan Kawin Sirri." *Qawanin: Jurnal Ilmu Hukum* Vol. 1, no. 1 (2020): 1–40.
- Anekwe, Angela Ekene. "Legal Framework for the Dissolution of Marriage in Nigeria: Prospects, Challenges and the Way Forward." *Challenges and the Way Forward (September 29, 2024)*, 2024. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4971062.
- Asrori, Asrori, A. Kumedi Ja'far, dan Linda Firdawaty. "GIVING A MARRIAGE DOWRY IN JURIDICAL, SOCIOLOGICAL, AND PHILOSOPHICAL PERSPECTIVES." *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 17, no. 1 (2024): 139–162.
- Azhari, Ari. "Penyesuaian Pelaksanaan Perkawinan di Kantor Urusan Agama Pada Masa Pandemi Covid-19." *Jurnal Alwatzikhoebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora* 8, no. 2 (2022): 331–43. <https://doi.org/10.37567/alwatzikhoebillah.v8i2.2166>.

- Chakim, M. Lutfi. "Perkawinan Menurut Hukum Adat dan Menurut Hukum Islam," 2012. <http://www.lutfichakim.com/2012/01/perkawinan-menurut-hukum-adat-dan.html>.
- Faishol, Imam. "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia." *Jurnal Ulumul Syar'i* Vol. 8, no. 2 (2019): 1–25.
- Halim, Ahmad Rasyidi, M. Fahmi Al Amruzi, dan Jalaluddin Jalaluddin. "Legal Formulation for Forced Marriage Prevention through the Decision of Wali Mujbir in Religious Courts and Its Relevance with Maqāṣid Syari 'ah and Human Rights." *Mazahib* 23, no. 1 (2024): 79–116.
- Hapsari, Sita Dewi. "Kemanfaatan, Keadilan dan Kepastian Hukum Restorative Justice pada Ketentuan Perpajakan." *Scientax: Jurnal Kajian Ilmiah Perpajakan Indonesia* Vol. 6, no. 1 (2024): 52–66. <https://doi.org/10.52869/st.v6i1.788>.
- Julyano, Mario, dan Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat dan Ilmu Hukum* Vol. 1, no. 1 (2019): 13–22. <https://doi.org/10.14710/crepido.1.1.13-22>.
- Kanwil Kemenag Jatim. "Pemeriksaan Nikah," 2007. <https://jatim.kemenag.go.id/artikel/8872/pemeriksaan-nikah>.
- Kanwil Kemenag Jatim. "Pengumuman Kehendak Nikah," 2007. <https://jatim.kemenag.go.id/artikel/8873/pengumuman-kehendak-nikah>.
- Khoeron, Moh. "Mulai Akhir Juli 2024, Bimas Islam Wajibkan Calon Pengantin Ikut Bimbingan Perkawinan." Kementerian Agama RI, 2024. <https://kemenag.go.id/nasional/mulai-akhir-juli-2024-bimas-islam-wajibkan-calon-pengantin-ikut-bimbingan-perkawinan-wR00p>.
- Nazilatunni'mah, Shinta. "Analisis Yuridis Terhadap Tawkil Rafa' pada Masa Pandemi Covid-19." Universitas Islam Negeri Sunan Ampel Surabaya, 2022.
- Nugroho, Adi. "Kisah Sukses Para TKI di Desa Deyeng, Kecamatan Ringinrejo." Radar Kediri, 2018. <https://radarkediri.jawapos.com/nasional/781275505/kisah-sukses-para-tki-di-desa-deyeng-kecamatan-ringinrejo>.
- Peraturan Menteri Agama (PMA) Nomor 30 Tahun 2024 tentang Pencatatan Pernikahan (t.t.).
- Purba, Hadis. "Membangun Keluarga Islami: Tinjauan Terhadap Ayat-Ayat Alquran dan Hadis Rasul SAW." *Almufida: Jurnal Ilmu-Ilmu Keislaman* Vol. 3, no. 1 (2018): 1–28. <https://doi.org/10.46576/almufida.v3i1.91>.
- Qonitah, Sellin Fathinah, dan Garnetta Liya Widyanti. "Requirements for Political Rights of Former Convicts to Become Regional Representative Council Member Candidates from the Perspective of Fiqh Siyāsah (Study of Constitutional Court Decision Number." Diakses 10 Juni 2025. <https://repository.uinsaizu.ac.id/29543/1/prosiding%20182.pdf>.
- RI, Kemenag. "SIMKAH (Sistem Informasi Manajemen Nikah)," t.t. <https://simkah4.kemenag.go.id/>.
- Riswan, Muhammad. "Dilema Penegak Hukum: Peran Penting Penegakan Hukum Untuk Mewujudkan Keadilan." Universitas Ahmad Dahlan, 2023. <https://law.uad.ac.id/dilema-penegak-hukum-peran-penting-penegakan-hukum-untuk-mewujudkan-keadilan/>.
- Saharuddin. "Perkawinan Ideal dan Hubungannya dengan Kecerdasan Anak Menurut Ilmu Pendidikan Islam." Universitas Islam Negeri Alauddin Makassar, 2011.
- Saputra, Roki Arnanda, Syifa' Silvana, dan Emir Fabrian Marino. "Penyelesaian Sengketa Sertifikat Tanah Ganda Serta Bentuk Kepastian Hukumnya." *Jentera: Jurnal Hukum* Vol. 4, no. 2 (2021): 555–73.

- Sodiqin, Muhamad. "Fenomena Rapak (Pemeriksaan Nikah) untuk Mewujudkan Ketertiban Administrasi Pencatatan Perkawinan Perspektif Peraturan Menteri Agama No 20 Tahun 2019." Universitas Islam Tribakti Lirboyo, 2023.
- Taufiqurohman, Taufiqurohman, dan M. Ulul Albab Musaffa. "Decoding Polygamy Permits: Unraveling Sociological and Legal Anthropological Perspectives on Marriage Motives and Conditions." *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 8, no. 2 (2023): 163–175.
- Usman, Achmad Murtadho. "Kewenangan Pencatatan Nikah Melalui Penghulu Dan Kepala KUA Dalam Perspektif Peraturan Menteri Agama Dengan Peraturan Pendayagunaan Aparatur Negara." *HARMONI* Vol. 20, no. 1 (2021). <https://doi.org/10.32488/harmoni.v20i1.468>.
- Usman, Rachmadi. "Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan di Indonesia." *Jurnal Legislasi Indonesia* Vol. 14, no. 3 (2017): 255–74.
- Wahyujati, Imam. "Pengaturan Perkawinan Beda Agama Di Indonesia." *'Aainul Haq : Jurnal Hukum Keluarga Islam* Vol. 2, no. 1 (2022).

