

# Alasan terjadinya perkawinan di bawah tangan di kota Bengkulu ditinjau dari Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan

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## Abstrak

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Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agama dan kepercayaannya, perkawinan dicatat menurut peraturan perundang-undangan yang berlaku. Kenyataan di masyarakat terjadi penyimpangan terhadap ketentuan peraturan perundang-undangan, dengan melakukan perkawinan di bawah tangan. Apakah alasan suami istri memilih melakukan perkawinan di bawah tangan di kota Bengkulu? Apa akibat hukum dari perkawinan tersebut terhadap istri, anak dan harta bersama? Bagaimana prosedur hukum yang harus dilalui oleh suami istri bila ingin meningkatkan status perkawinan di bawah tangan menjadi perkawinan sah?. Penelitian kepustakaan yang didukung dengan data dari lapangan berupa wawancara dengan nara sumber yang kompeten. Alasan seseorang melakukan perkawinan dibawah tangan karena biaya mahal, suami yang melakukan poligami, Pegawai Negeri Sipil yang tunduk pada PP Nomor 10 Tahun 1983 direvisi PP Nomor 45 Tahun 1990, alasan agama untuk menghindari perbuatan zina dan belum diakui oleh negara suatu penganut Kepercayaan sebagai agama. Akibat hukum dari perkawinan di bawah tangan terhadap status istri, yaitu tidak dianggap sebagai istri sah, tidak berhak atas warisan dan pensiunan suami, apabila terjadinya perceraian istri tidak berhak atas harta bersama. Terhadap status anak dianggap sebagai anak luar kawin, anak hanya mempunyai hubungan perdata dengan ibu dan keluarga ibunya. Terhadap harta bersama, tidak ada harta bersama. Prosedur hukum yang dilalui suami istri bila ingin meningkatkan status perkawinan di bawah tangan menjadi perkawinan sah di mata hukum bagi beragama Islam mengajukan permohonan Itsbat Nikah pada Pengadilan Agama sesuai KHI Pasal 7. Mengurangi perkawinan diantara mereka disertai pencatatan perkawinan di KUA maupun di Kantor Catatan Sipil. Untuk menghindari terjadinya perkawinan dibawah tangan yang berdampak pada status istri dan anak, diharapkan pemerintah memberikan penyuluhan pada masyarakat tentang pentingnya pencatatan perkawinan.

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A marriage is considered as legally valid, if it is conducted in accordance to the respective applicable religious law and belief of the parties involved (the bride and the groom). However, in reality it is found out that unofficial marriage still often happen, or in other word, not it accordance with the applicable law. What are the reasons that cause a couple prefers to conduct their marriage in such a way? What are the legal consequences particularly for the wife, the kids as well as the properties? What are the procedures should be conducted if the couple would like to enhance their marital status to a legal one? This research is conducted by applying a literature study supported by indepth interview with competent sources. Some of the reasons that make someone decide to conduct his/her marriage in such a way are due to the high cost in conducting a legal marriage, a husband applying polygamy marriage, while he is a government functionary who is bound with the Government Law No. 10 Year 1983, revised with the Government Law No. 45 Year 1990, religious reason, that is, to avoid considered as commit adultery, or regarding his/her status which is not yet recognized by the government due to his/her belief (which is not yet considered as a religion). The

consequences of being a wife in a un-legal marriage would be particularly related to her status, that are, she is not considered as a legal wife, she has no right to inherit the husband's assets and pensions, and in case they had a divorce, she would have no right to get any of the assets earned during their living as a couple. Meanwhile, the consequences also happen to the child/children, in term that they will not be considered as legal children, and they only have legal civil relationship with their mother and her family. In term of family's assets, they have no right to them. The procedures that should be undergone by the couple that would like to enhance their status to a legal marriage, then to them who are Moslems, is that they should apply a request of the so-called Its bat Nikah in a religious court, which is in accordance with the Islamic Law Book Article 7. Then they should re-proceed their marriage ceremony while being noted and registered both in Office of Religious Affaires (Kantor Urusan Agama) as well as Civil Registration Office (Kantor Catatan Sipil). In order to avoid the occurrence of any unofficial marriage that brings inconvenient effect to the status of the wife and the child/children, the government is expected to give more socialization and education about the importance of the marriage registration to the society.</i>