

## Legal Analysis Of Siri Marriage Registration In The Family Card In The Directorate General Of Population And Civil Registration (Dukcapil)

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### ABSTRACT

Some people still carry out the practice of marriages that are not officially registered before the Marriage Registrar (PPN) and the Office of Religious Affairs (KUA) which are known as "sirri" marriages and some call them religious marriages or underhanded marriages. However, at this time through the Directorate General of Occupation and Civil Registry (DUKCAPIL) it is possible to issue Family Cards (KK) for unregistered married couples with a special mark because of the spirit of providing legal protection to citizens. Based on the issues raised above, the issue related to the juridical implications of the issuance of Family Cards for unregistered married couples becomes interesting to study. Especially in the perspective of legal harmonization between the Marriage Law and the Minister of Home Affairs Regulation. The purpose of this study was to analyze the juridical implications of registering unregistered marriages in family cards (KK) in DUKCAPIL. This type of research falls into the category of normative legal research, because it examines and analyzes normatively regulations related to legal implications as a consequence of the issuance of KK.

### ABSTRAK

Sebagian masyarakat masih melaksanakan praktik nikah yang tidak tercatat secara resmi dihadapan Petugas Pencatat Nikah (PPN) dan Kantor Urusan Agama (KUA) yang dikenal dengan sebutan nikah "sirri" dan sebagian ada yang menyebutnya nikah agama atau nikah di bawah tangan. Namun saat ini melalui Lembaga Direktorat Jenderal Pendudukan dan Catatan Sipil ( DUKCAPIL ) bias menerbitkan Kartu Keluarga (KK) bagi pasangan nikah siri dengan diberi tanda khusus karena semangat memberikan perlindungan hukum terhadap warga Negara. Berdasarkan persoalan yang dikemukakan di atas, maka persoalan berkaitan dengan implikasi yuridis terhadap penerbitan Kartu Keluarga bagi pasangan nikah siri menjadi menarik dikaji. Terutama dalam perspektif harmonisasi hukum antara Undang-Undang Perkawinan dengan Peraturan Menteri dalam Negeri. Tujuan penelitian ini adalah untuk menganalisis implikasi yuridis terhadap pencatatan perkawinan siri dalam kartu keluarga ( KK ) di DUKCAPIL. Jenis penelitian masuk ke dalam katagori penelitian hukum normatif, karena mengkaji dan menganalisis secara normatif pengaturan terkait implikasi hukum sebagai konsekuensi dari penerbitan KK.

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## I. INTRODUCTION

Marriage registration in the legal system in Indonesia is regulated in Law Number 1 of 1974. In this law it is stated that a marriage is legal if it is carried out according to the laws of each religion and belief; and In addition, every marriage must be recorded according to the applicable laws and regulations. The recording of each marriage is the same as the recording of important events in marriage a person's life, for example birth, death stated in Certificates, a deed which is also included in the register of records.

The birth of Law Number 1 of 1974 concerning Marriage is the idea of legal unification and legal reform. The idea of legal unification is an effort to enforce a current legal provision and place the position of husband and wife in marriage on the same level, both in terms of rights and obligations that are national and apply to all citizens. While the idea of legal reform is basically trying to accommodate the aspirations of the emancipation of the demands of the masses. Provisions for registration of marriages in Law no. 1 of 1974 concerning marriage is contained in Article 2 paragraph (2), namely: "Every marriage is recorded according to the applicable laws and regulations." Furthermore, the implementation of registration of marriage registrations related to Article 2 paragraphs (1) and (2) is regulated in Government Regulation Number 9 of 1975, namely: (1) The registration of marriages of those who carry out their marriages according to the Islamic religion, is carried out by Registrar Officers as referred to in the Law. - Law Number 32 of 1954 concerning Marriage Registration, Divorce and Reconciliation. (2) Marriage registration of those who hold their marriage according to their religion and belief other than Islam, is carried out by the Marriage Registrar at the registry office.

One of the basic types of public services is in the field of population administration, because it relates to the existence of individuals as Indonesian citizens. This is related to the service in the field of population administration which is one of the services that has many jobs such as serving identity cards, marriage certificates, family cards, birth certificates, death certificates, which are then devoted to birth certificates. Generally, a person's legal position begins at the time he is born and ends when he dies. Meanwhile, the birth to the death event will have very important legal consequences, not only related to oneself but also to the people around them. A letter of proof of identity is important for his position in the law and legal certainty.

In fact, not all Muslim communities in Indonesia follow the applicable procedures or rules. This is evident that some people still carry out the practice of marriages that are not officially registered before the Marriage Registrar (PPN) and the Office of Religious Affairs (KUA) which are known as "sirri" marriages and some call them religious marriages or underhanded marriages. "Sirri" marriage is a marriage that basically has a negative impact, especially for the wife and children resulting from the "sirri" marriage. This happened because the "sirri" marriage from a religious point of view was legal, but from the perspective of legal protection and economic responsibility as well as the education of their children still needed to be reviewed. A wife who is married in a sirri manner if she has problems in her marriage, for example, is treated arbitrarily by her husband, the wife certainly does not have legal force as marriages registered with the KUA, because their marriage does not have written evidence. (Tsuroya Kiswati, et al., Marriage, 2003)

The issue of unregistered marriage has always been a hotly discussed issue in various perspectives. This is related to the problems that arise after the marriage is carried out. The impact that arises from unregistered marriage is not only for those who do it, but problems will also be faced by children born from the marriage. The problems faced are both related to population administration and juridical issues for those who do it. Likewise for children who also directly feel the consequences of unregistered marriages carried out by their parents.

Legal issues arising from the marriage are related to the validity of the marriage. Positive law does not justify unregistered marriage and only recognizes that a valid marriage is one that is recorded in accordance with the applicable laws and regulations. Article 2 Paragraph 2 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage stipulates that every marriage is

recorded according to the applicable laws and regulations. This provision confirms that every marriage performed is recorded in accordance with the applicable laws and regulations.

While the Regulation of the Minister of Home Affairs Number 108 of 2019 concerning the requirements and procedures for population registration and civil registration, this provision provides space for married couples who are married in a serial manner to have a Family Card on the condition that there is a special note listed on the Family Card that the marriage carried out not recorded. Giving a Family Card for couples who are married in an unregistered marriage actually has a positive impact because it is with the Family Card that the child can make a birth certificate.

On the other hand, the issuance of the Family Card has actually caused a number of problems for women and children. In addition, the existence of leniency for couples who marry in an unregistered manner is not in accordance with the wishes of the legislators who want administrative order to be realized by registering marriages. This regulation is counterproductive resulting in ineffective marriage registration in the future. This is because the leeway given to obtain a marriage book can be done after a marriage in the form of a siri marriage is carried out.

Based on the issues raised above, the issue related to the juridical implications of the issuance of Family Cards for unregistered married couples becomes interesting to study. Especially in the perspective of legal harmonization between the Marriage Law and the Regulation of the Minister of Home Affairs where one of the norms wants marriages to be recorded in accordance with the applicable laws and regulations. On the other hand, other norms that require sirri marriages can also be given a family card with the addition of a marriage certificate that has not been registered. So this research was chosen, as the title in this study that made researchers interested in further researching and discussing this matter, namely: "Legal Analysis of Siri Marriage Registration in Family Cards at the Directorate General of Population and Civil Registration (Dukcapil).

## II. RESEARCH METHOD

### **Types of research**

From the background and problem formulation described above, this type of research is included in the category of normative legal research, because in its analysis it uses library materials as a source of research data. Normative research here on the juridical implications of registering unregistered marriages in family cards (KK) at DUKCAPIL. This research is classified as literature or literature research. In legal research, this type is included in the category of normative legal research or library law research, therefore in this study library materials are basic data which in research science is classified as secondary data. The use of this research method is because the researcher only examines the juridical aspects related to the issuance of new Family Cards for unregistered married couples by analyzing it in the perspective of positive law that applies in Indonesia and the legal principles and rules that apply.

### **Data Sources**

The data source is the object from which the data was obtained because this research is classified as library research, so the entire data is secondary data consisting of legal materials. Therefore, this research is a normative research in which library materials is the basis of (science) research classified as secondary data. The legal materials used consist of primary legal materials, namely the Marriage Law and the Regulation of the Minister of Home Affairs which regulates the permitting of making Family Cards for unregistered married couples. The secondary legal materials used are legal materials contained in library literature, especially those that discuss unregistered marriage, the impact of unregistered marriage on women and children and other related literature:

#### a. Primary Material

This study obtained from original sources regarding the subject matter that is the discussion in this author. Data sources can be obtained through: Civil Law Code, Law no. 1 of 1974

concerning Marriage, Compilation of Islamic Law. Regulation of the Minister of Home Affairs Number 108 of 2019*i*

b. Secondary Material

Secondary materials are data obtained from library materials contains information about primary materials by conducting a study bibliography regarding expected data such as books, scientific works, journals, articles, and others.

c. Data Collection Techniques

In a study, data collection is one of the stages in the research process that absolutely must be done. Thus, this study aims to obtain secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The secondary data in this study were obtained through:

- a) Literature study, namely by using a study of legislation, and legal books related to the problems to be studied in this research, also through the internet, magazines, and legal dictionaries related to the problems to be studied in this research.
- b) Documentation study is to find and collect materials in the form of literature and official government documents in the form of court decisions and other documents that can support this research.

### **Data Analysis Techniques**

The analysis carried out in this thesis research is through manager of legal materials that have been collected in advance then arranged in a systematic and directed manner. Steps in conducting legal research above is an analysis of materials law against a legal research that has used the type normative research. The purpose of the analysis of the legal material is to find answers to the main problems discussed. In the analysis related to the problem of this thesis by analyzing books, scientific works, articles, and others regarding the views related to this thesis. Data analysis was carried out qualitatively by providing interpretations of primary legal materials and secondary legal materials. Then it is arranged systematically so that it can be understood easily in accordance with existing legal rules and principles.

## **III. RESULT AND DISCUSSION**

Legal implications related to the registration of Siri Marriages in Family Cards at the Directorate General of Population and Civil Registration (Dukcapil). The government currently allows the issuance of a family card for couples who have unregistered marriages, in order to provide opportunities for unregistered married couples to take care of a marriage certificate. This is a good step, but it must pay attention to the considerations and spirit of the Marriage Law. The existence of the obligation to register marriages actually aims to provide legal protection for women and children.

The government's consideration, in this case the Ministry of Home Affairs (Kemendagri) regarding the provision of KK for unregistered married couples, is based on the provisions of Article 2 paragraph (1) of the Marriage Law which states that marriage is legal if it is carried out according to the laws of each religion and belief. The issuance of this KK is of course accompanied by several conditions, such as showing documents that have carried out a religious marriage (siri), attaching a statement of absolute responsibility (SPTJM), statements of two (2) witnesses by attaching residence identities. The convenience provided to take care of the KK is actually also an encouragement for the community to carry out unregistered marriages.

a. Improving Siri Marriage Practices

One of the problems that arise due to the existence of regulations that allow including husband and wife couples in the KK is to increase the number of Siri marriage practices in the community. The aim is to protect women and children so that their rights are protected when dynamics occur in living life in a married life. ladder.

b. Increasing Applications for Marriage Books Through Itsbat

Another legal implication is to open a new route for the issuance of marriage books, namely with itsbat first and then taking the marriage book at the Office of Religious Affairs (KUA). This issue has resulted in the workload of the KUA where in addition to serving the management of Marriage Books for couples who are officially married, they also serve the issuance of Marriage Books on the basis of the marriage certificate issued by the Religious Court judges.

c. Increasing Applications for Marriage Istbat

The next legal implication is that it can add to the burden of the Religious Courts to carry out itsbat marriage for couples who have unregistered marriages. This is because people prefer to do a serial marriage and then do istbat to the Religious Court. If there is an opportunity for an unregistered marriage, the possibility of increasing the application for marriage isbat becomes something that is very likely to happen in the community. So that it can increase the frequency of cases of marriage istbat applications for married couples who are married in an unregistered manner. In marriage istbat for unregistered marriages, there are indeed two possibilities that occur in the Religious Courts, namely the possibility of being rejected by the judge or accepted depending on the reasons for the marriage istbat submitted by the applicant and the evidence submitted to the trial.

The Compilation of Islamic Law regulates several conditions that must be met as a basis for judges to accept marriage istbat, namely: For divorce settlement, Loss of Marriage Book. If you are in doubt about whether or not one of the conditions of Marriage is valid. If your marriage is not registered and occurred before 1974. Unregistered marriages that occurred after 1974 and did not violate the provisions of the Act.

With the istbat marriage can provide protection for women and children if one day there is a problem in living married life. The wife can claim her rights to the authorized institution because of the marriage bond which is a legal relationship between a wife and husband and the children born from the marriage. Punishment for Domestic Violence Actors Cannot Refer to the PKDRT Law The fourth issue that arises as a consequence of granting permission to include husband and wife in one family is not being able to refer to the Law on the Elimination of Domestic Violence (PKDRT) in the event of domestic violence. the punishment in the PKDRT Law is higher than the threat regulated in the Criminal Code related to persecution.

The granting of waivers to enter unregistered married couples into the KK is not to protect women and children, but can actually be detrimental to both. The wife does not get legal protection because the marriage is not recorded by the competent authority which in this case is the KUA, because the provision of a special code in the KK that the marriage of husband and wife is not recorded does not cause legal consequences and does not result in that the marriage is legal. Regarding legal protection for children, it has actually been accommodated through the Constitutional Court Decision Number 46/PUU-VIII/2010. Through this decision.

The Constitutional Court has provided legal protection for children born from parental marriages that are not recorded by granting civil rights to the child. The child in addition to obtaining civil rights to the mother and the mother's family also has civil rights with the biological father as evidenced by the So, even though the parents are not recorded in one KK due to unregistered marriage, a child is still entitled to civil rights from both parties. It was different before the judicial review of Article 43 of the Marriage Law to the Constitutional Court which only regulated children born from legal marriages only having civil relations with their mother and mother's family. This means that related to living and living expenses as well as the right to inherit from each other, it is only obtained from one party, namely from the mother and mother's side.

The Supreme Court's decision Number 46/PUU-VIII/2010 has actually legitimized the protection of children because the Constitutional Court's decision must be followed and implemented by law enforcers. Including the judges of the Syar'iyah Court who must follow the substance of the Constitutional Court's decision in granting civil rights to children born from unregistered marriages.

Regulations that allow inclusion in one family card are only beneficial for children in terms of managing population administration such as birth certificates in an effort to expand the scope of birth certificates for children. The provision of population administration is also a concrete manifestation of the fulfillment of children in addition to rights in the field of legal protection stating that there are two forms of child protection, namely protection in the context of obtaining population administration as well as protection from a juridical perspective.

#### IV. CONCLUSION

Based on the foregoing, it can be concluded that the issuance of KK for unregistered married couples with the inclusion of the phrase marriage has not been recorded can cause problems as a consequence. The legal consequence that will arise is that it can allow the practice of unregistered marriage in Indonesia because the community can take care of the istbah of marriage. Of course, Dukcapil in terms of making this breakthrough is not without reasons, one of which is to provide protection for the rights of children born from unregistered marriages. Children should not be victims of the marriage of their parents. Even if the child resulting from an unregistered marriage is not recognized by his father, but if it can be proven scientifically or technologically (DNA test) then the child has a civil relationship with his father. Of course, this kind of recognition is not born by itself, but needs a decision from the court. Thus, it has something in common with the history of the birth of the marriage law in Indonesia, namely the spirit of legal protection for women and children. Protection from the arbitrariness of unscrupulous men when doing: marriage, divorce, and polygamy so that quite strict (administrative) conditions are born to do so. All conditions are clearly stated in the Act and its implementing regulations, so that marriages that meet the requirements will receive recognition and protection from the state.

#### Referensi

- Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, (Jakarta:Kencana, 2006).
- Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Penerbit Toko Gunung Agung, Jakarta, 2002.
- Ahmad Rofiq, *Hukum Islam Di Indonesia*, (Jakarta: Raja Grafindo Persada, cet. Ke IV, 2000).
- Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia : Antara Fiqh Munakahat dan*
- Amir Syarifudin, *Garis-garis Besar Fiqh*, Prenada Media, Jakarta.
- Amirul Nurdin, Azhari Akmal Targian, *Hukum Perdata Islam Di Indonesia* (Jakarta: PT. Kasrina Putra Utama, 2004).
- Aulawi Wasit, *Pernikahan Harus Melibatkan Masyarakat*, *Mimbar Hukum*.No.28.1996
- Boedi Abdullah Dan Beni Ahmad Saebani, 2013, *Perkawinan & Perceraian Keluarga Muslim*, Bandung, Pustaka Setia.
- Dominikus Rato, *Filsafat Hukum Mencari: Memahami Dan Memahami Hukum*, Laksbang Pressindo, Yogyakarta, 2010.
- Dr.H. Saifudin Zuhri, *Sanksi Pidana Bagi Pelaku Nikah Siri Dan Kumpul Kebo*, semarang:CV.Bima Sejati,2013.

- Hadikusuma Hilman, 2007, Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama, Bandung, Mandar Maju.
- K.Ng. Soebaktu Poesponoto, Hukum Adat, Terjemah dari Ter Haar, Begibsel en srelsel van Adatrecht, (Jakarta: Pradnya Paramita, 1953).
- Peter Mahmud Marzuki, 2008, Pengantar Ilmu Hukum, Jakarta, Kencana Pranada Media.
- Philipus M. Hadjon, 1987, Perlindungan Hukum Bagi Rakyat Di Indonesia, Surabaya, PT Bina Ilmu.
- Quraish Shihab, Wawasan Al-Qur'an :Tafsir Maudhu'i Atas Berbagai Persoalan Umat, (Cet. VIII; Jakarta:Mizan, 1998).
- Soemiyati, 1999, Hukum Perkawinan Islam Dan Undang-Undang Perkawinan (Undang-Undang No. 1 Tahun 1974, Tentang Perkawinan), Yogyakarta, Liberty.
- Sudikno Mertokusumo, 1988, Mengenal Hukum (suatu Pengantar), Yogyakarta, liberty.
- Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-undang No 1 Tahun 1974 tentang Perkawinan
- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.
- Peraturan Menteri Dalam Negeri Nomor 108 Tahun 2019 Tettang DUKCAPIL.
- Bagir Manan, "Keabsahan dan syarat-syarat Perkawinan Antar Orang Islam menurut UU No.1 Tahun 1974", Makalah Seminar Nasional disampaikan di Hotel Redtop, Sabtu, 1 Agustus 2009.
- Ketika Kalla menyampaikan Fatwa, dalam Majalah Suara Rahima: Media Islam Untuk Hak-Hak Perempuan, No.13 Th. VI Agustus 2006.
- Handini, W. P. (2019). Hak Konstitusional Anak Di Luar Perkawinan Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Jurnal Legislasi Indonesia, 16(1), 107-116.
- Lamaluta, D. (2013). Hak dan Kedudukan Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi. LEX ET SOCIETATIS, 1(3).
- Mansari, M. M., Mahmuddin, M. M., & Rizkal, R. R. (2018). Pencatatan Kelahiran Online: Model Pelayanan Dalam Rangka Mewujudkan Good Governance. Al-Ijtimai: International Journal of Government and Social Science, 3(2), 145-157
- Mansari, M., & Maulana, R. (2018). Kepastian hukum terhadap pengasuhan anak mumayiz pasca perceraian. Jurnal Yudisial, 11(1), 55-74. Mansari, M., & Moriyanti, M. (2019). Sensitivitas Hakim Terhadap Perlindungan Nafkah Isteri Pasca Perceraian. Gender Equality: International Journal of Child and Gender Studies, 5(1), 43-58.
- Oelangan, M. D. (2013). Isbat Nikah Dalam Hukum Islam Dan PerundangUndangan Di Indonesia. Pranata Hukum, 8(2).
- Syam, T, R. (2020). Pencatatan Perkawinan dan Problematika Isbat Nikah Poliandri Serta Akibat Hukumnya Terhadap Anak, Yogyakarta: UII Press.