

## **Juridical Implications Of Family Card Issuance For Siri Marriage Couples On Child Status**

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### **Abstract**

*Marriage is not legally valid or not listed as an issue that is hotly discussed in various perspectives. Registration of marriage is basically necessary as a protection of the state to the parties to the marriage, and also to avoid the tendency of inconsistency in the application of religious teachings and beliefs in a perfect or intact marriage that took place according to religion and belief. This study is a type of normative juridical research. This is because normative juridical research is the type of research that is most relevant to the conflict of norms that occurs and can find detailed and detailed answers to the formulation of the problem to be studied. Based on the Marriage Act No. 1 of 1974 article 1 that marriage is the inner and outer bond between a man and a woman as husband and wife whose purpose is to form a prosperous and eternal family based on the Supreme Godhead. Understanding the inner inner Bond in this marriage is a bond or legal relationship between one man and one woman whose purpose is to live together as husband and wife status. According to the Quran a Muslim is one who has absolutely surrendered to Allah and his commands and believes in pure Tawhid (the oneness of God) that isn't tainted with any shirk and this is why the Almighty has introduced prophet Abraham as a true worshipper. In The Marriage Act No.1 of 1974 Article 2 Paragraph (1) explained that marriage is valid if it is done according to religion and beliefs, with the added sound in Paragraph (2) that each marriage is recorded according to applicable laws and regulations. If the marriage is valid, then the child born from the marriage will obtain legal status as a legitimate child as stipulated by Article 42 of the marriage law. It can be concluded that if the marriage is invalid, then the child born from the marriage does not occupy the position of a legitimate child.*

**Keywords:** *Siri Marriage, Child Status, Family Card, Legal Status*

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## **INTRODUCTION**

Marriage is a fundamental right guaranteed in Article 28B paragraph (1) Amendment II of the 1945 Constitution and then in the practical level regulated in Law No. 1 of 1974. In Article 1 of Law Number 1 Year 1974 on marriage which is then called Law No. 1 year 1974, it is said that "marriage is the inner bond between a man with a woman as a husband and wife with the aim of forming happy and eternal family (household) based on Divinity The One". According to the Constitution, a marriage is the bond between a man and a woman, which means marriage is not only it is an alliance, but it is an alliance.

According To Hadikusuma, 2007. Law No. 1 of 1974 was promulgated and enacted in conjunction with the issuance of implementing regulations, namely regulations Government No. 9 of 1975 on the implementation of marriage. According to The law of marriage says " " marriage is a bond born and between a man and a woman as husband and wife with the aim of to create a happy and eternal family."

The issue of invalid or unregistered marriage which is only based on Article 2 Paragraph 1 of Law No. 1 of 1974 on marriage without a marriage registration has always been a hot issue discussed in various perspectives. Registration of marriage is basically necessary as a protection of the state to the parties to the marriage, and also to avoid the tendency of inconsistency in the application of religious teachings and beliefs in a perfect or intact marriage that took place according to religion and belief.

This is related to the problems that arise after the decision Number 46/PUU-VIII/2010 that children born outside of marriage have a civil relationship with their mother and their mother's family and with men as their father which can be proven based on science and technology and/or other evidence according to the law have a blood relationship, including a civil relationship with their father's family, so that the decision has implications for the position of children born from legal marriage.

The provision of Family Cards for married couples who are not registered actually has a positive impact because of the existence of child birth certificates and Family Cards. On the other hand, the provision of Family Cards actually raises a number of problems for mothers and children. In addition, the leeway for couples who marry this series is not in accordance with the will of the formulator of the law that requires that administrative order is realized with the registration of marriage. Counterproductive this regulation resulted in ineffective registration of marriage in the future. This is due to the allowance given by the population office to obtain a child's birth certificate and family card even though the marriage is not registered under the applicable provisions.

The unclear legality of these parties raises new problems in the downstream part of the marriage ecosystem, namely the difficulty of writing one's marital status correctly on the child's certificate and family card, because, when the Family Card is written with marital status but marriage is not based on the marriage law, it will cause different legal implications for the husband, wife.

Siti Juwariyah, Master's Program (S2) Law graduate program Sultan Agung Islamic University Semarang 2019 thesis explains the status of children according to Law Number 1 of 1974 on marriage divided into legal children and children outside of marriage. According to Islamic law, children are divided into legitimate children and children outside of marriage. Both statuses have legal consequences related to the civil rights of children, the right to know the lineage of both parents, the right to earn a living, the right to inherit from both parents and the right to obtain the identity of the child such as a birth certificate. The statement of absolute responsibility serves as a complement to the data because it does not meet one of the requirements of making a birth certificate, namely birth data, marriage data, and children of unknown origin. Therefore, it will affect the status of the child listed in the birth certificate.

Tulus Prijanto, 2021, *Edunomika* scientific journal explains that marriages that are not registered by the government have a large legal impact, especially on the status of children from marriage and on property from marriage. Unregistered marriages are valid according to religion but cause harm to women and children and have no legal force. Based on the view of the legal side, the most affected party is the offspring.

Based on the questions raised above, the question related to the juridical implications of the issuance of Family Cards for married couples is not recorded to be interesting to study. Especially in the perspective of legal harmonization between the Marriage Law and Permendagri No. 9 of 2016 which in one of the norms wants marriage to be recorded in accordance with applicable laws and regulations.

## RESEARCH METHODS

This study is a type of normative juridical research. This is because normative juridical research is the type of research that is most relevant to the conflict of norms that occurs and can find detailed and detailed answers to the formulation of the problem to be studied. Normative legal research is legal research that analyzes written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope, material, consistency,

general explanation and article by Article, formality and binding force of a law and legal language used but does not analyze the applied aspects or implementation of the law (Abdulkadir, 2004). By doing the approach :

### **Legislative approach**

It is an approach that is carried out by reviewing all laws and regulations related to the legal issues presented. In conducting the legislative approach, the researchers found a legal conflict that was used to follow up on the law of the Republic of Indonesia Number 1 of 1974 on marriage as amended by the law of the Republic of Indonesia Number 16 of 2019 with Permendagri 9 of 2016 the regulation on SPTJM was strengthened in the president of the Republic of Indonesia No. 96 of 2018 on the requirements and procedure for Population Registration and Civil Registration

### **Historical approach**

This approach is an approach that aims to seek the rule of law from time to time in order to understand the philosophy of the rule of law and study the development of the rule of law.

### **Sources of legal materials.**

Sources of legal materials used in this study are sourced from the library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. Sources of primary legal material consist of:

- a. Law No. 1 of 1974 and government regulation no. 9 of 1975 on marriage.
- b. Constitutional Court Decision No. 46 / PUUVIII/2010A1
- c. legislation
- d. literature books
- e. Civil Code (Bugelijk Wetboek) Secondary legal material consists of:
- f. legal journals related to marriage have not been listed
- g. books written by experts in the field of heir rights to bulum marriage are listed as long as there is relevance to the problem under study.
- h. research results as far as there is relevance to the problem under study.

## **RESULT AND DISCUSSION**

### **1. Status of Statement of absolute responsibility according to the perspective of Article 2 Paragraph 2 of Law No. 1 of 1974**

Based on the Marriage Act No. 1 of 1974 article 1 that marriage is the inner and outer bond between a man and a woman as husband and wife whose purpose is to form a prosperous and eternal family based on the Supreme Godhead. Understanding the inner inner Bond in this marriage is a bond or legal relationship between one man and one woman whose purpose is to live together as husband and wife status. In Article 2 Paragraph 1 of the Marriage Law, it is stated that "marriage is valid if it is carried out according to the laws of each religion and belief." This means that if a marriage has fulfilled the conditions and pillars of marriage consent or blessing, the marriage is valid, especially in the eyes of religion and public belief. So the validity of this marriage in the eyes of religion and public trust needs to be legalized again by the state, which in this case the provisions contained in Article 2 Paragraph 2 of the Marriage Law on Marriage Registration.

In Article 2 Paragraph 2 it is stated that "every marriage is recorded according to the prevailing laws and regulations". This means that the registration of marriage is to create certainty in law and order, and is related to the civil status of a person, especially with his civil status so that children born from the marriage are really from parents who have proof of marriage or marriage certificate. All events that occur in the family that have a legal aspect

need to be recorded and recorded, so that both the person concerned and other interested persons have authentic evidence of the event, thus the legal position of a person becomes firm and clear.

The purpose of marriage registration is to establish the order of marriage in society. This is an effort stipulated in the legislation, to protect the dignity and sanctity of marriage and more specifically for women in domestic life. Through the registration of marriage as evidenced by the marriage certificate that each husband and wife get a copy, if there is a dispute between them or there is between one of the parties does not want to be responsible then the other party can take legal action in order to maintain or obtain their respective rights. Because with the deed, the husband and wife have authentic evidence of the legal acts they have done (Rofiq, 2000). However, in reality there are still people whose marriages are carried out without the knowledge of the marriage registrar. Sometimes parents or those who consider themselves a cleric or religious leader, feel that without the presence of authorized officials is also valid according to Islamic religious law and they consider it is just an administrative nature. In some media informing about an unregistered marriage is allowed and they consider that the marriage is legal. Meanwhile, when viewed from the perspective of government law and social norms, an unregistered marriage is a deviant marriage because it is not recorded at the Religious Affairs Office as an authorized institution so that it does not have legal force.

Indonesia's current legal rules, if a marriage is carried out without being registered will result in further consequences. Among them, the state cannot protect marital status, joint property, inheritance rights, and other rights that arise as a result of the marriage (Mubarok, 2016). Because to know that there really is the right of a wife or child born in marriage must be with the proof of the existence of a valid marriage according to religion and according to the state between the wife and her husband (Soedharyo, 2004).

- a. According to Law No. 1 of 1974 the legal terms of marriage are : a. Material requirements, namely requirements related to the personal self of the prospective husband and wife, these requirements are divided into two, namely the first general material requirements consisting of an agreement or agreement, age requirements, the principle of monogamy and a waiting period. The two special material conditions consist of permission to enter into marriage and prohibition to enter into marriage.
- b. b. Formal requirements, this requirement is a condition related to the formalities after the marriage takes place such as marriage procedures. Marriage registration is only administrative but must be considered important because through the marriage registration will be issued a marriage certificate citation book that will be authentic evidence of the implementation of a valid marriage. The marriage certificate is a civil written proof that there has been a legally valid marriage, there is no prohibition on marriage between the two and has fulfilled the conditions and pillars of marriage. Without proof of a marriage certificate, a marriage is considered to have never existed. A marriage certificate is a special completeness requirement for a lawsuit or application for a case filed with a religious court as a formal applicable law. Marriage registration is not a legal requirement, but only an administrative requirement. As stated by Wasit Aulawi, expressly this law (UUP No. 1/1974) only regulates the registration of marriage, divorce and referral, which means only the event is not legal material (Wasit, 1996).

Marriage creates legal consequences for the husband and wife in the marriage, including the legal relationship between husband and wife, the formation of marital property, the position and status of legitimate children, as well as inheritance relations. The people of Pasir Jae village did not register their marriage at the civil registry office which resulted in many other things, such as:

1. Position and status of the born child Article 42 of the Marriage Law explains that “a legitimate child is a child born in or as a result of a legitimate marriage”. Legal marriage is a marriage according to each religion. Marriages are registered at the Office of religious affairs for Muslims, and at the registry office for non-Muslims. The recording is evidenced by the marriage certificate. This is stipulated in Article 2 paragraphs (1) and (2) of the Marriage Act. Therefore, if a child is born from an unregistered marriage, then the status of the child born is the same as that of an illegitimate child. As a result, the child will have a birth certificate that only contains the name of the mother. This will affect the child psychologically, because he feels different from other children.
2. Inheritance As already explained above, that children born to parents whose marriages are not listed, then the same as the child out of wedlock. As a result, the right to inherit the child only has the right to inherit his mother and his mother's family only. It is also explained in Article 43 paragraph (1) of Law No. 1 of 1974 concerning marriage that “children born outside of marriage only have a civil relationship with their mother and their mother's family”. Therefore, the child cannot inherit from his father and there is no civil relationship with his father's family.
3. Economic impact The delay in lending money to the bank is due to the absence of evidence regarding the marriage certificate.
4. Psychological impact The existence of discrimination against administration among Indonesian citizens (WNI), who should have the same rights in the fulfillment of administration.

## 2. Legal Implications Of Issuing Birth Certificates Of Children From Marriages That Are Not Registered According To The Perspective Of Article 2 Paragraph 2 Of Law Number 1 Of 1974

According to the Quran a Muslim is one who has absolutely surrendered to Allah and his commands and believes in pure Tawhid (the oneness of God) that isn't tainted with any shirk and this is why the Almighty has introduced prophet Abraham as a true worshipper. In The Marriage Act No.1 of 1974 Article 2 Paragraph (1) explained that marriage is valid if it is done according to religion and beliefs, with the added sound in Paragraph (2) that each marriage is recorded according to applicable laws and regulations. In the Civil Code refers to children outside of marriage with the term as *Naturalijk Kind* (natural child). An illegitimate child is a child born outside of a legal marriage, in this case a child born to a mother, but not seeded by a man who is in a legal marriage with the mother of the child, and does not belong to the group of adulterous and incestuous children. Then the position of the child out of wedlock here as an illegitimate child (Syahrini, 1992). The offspring born or conceived in marriage are legitimate offspring. If a child is conceived in a marriage but is born after the marriage of his parents is dissolved, then the child is valid. If the child is conceived outside of marriage, but is born in marriage, then the child is also valid. Thus , a child born without fulfilling the provisions earlier is an illegitimate child (Afandi, 1997).

Regarding legitimate children and children out of wedlock, Law No. 1 of 1974 on marriage, has been regulated in Article 42, Article 43, and Article 44, namely:  
Article 42

- 1) A legitimate child is a child born in or as a result of a legal marriage Article 43 1) a child born out of wedlock has only a civil relationship with his mother and his mother's family
- 2) *the position of the child in Paragraph (1) above will be regulated in government regulations*

#### Article 44

- 1) a husband can deny the validity of a child born to his wife when he can prove that his wife has committed adultery and the child is akubat of the perizaan
- 2) 2) The Court gives a decision on the validity or not of ana katas request of the interested party.

Based on several laws and regulations governing the understanding of legitimate children. Article 42 of the Marriage Law explains that a legal child is a child born in or as a result of a legal marriage. Related to the legal status of children from serial marriages, if the marriage is valid in Islamic law, then the children from the marriage should also be valid. The problem is, the validity has not been legally recognized. A legal child is a child resulting from a legal marriage, that is, it is recorded in state documents.

If you look at Article 42 of the Marriage Law, it can be concluded that in the article it still gives legal tolerance to children born from a legal marriage, even though the distance between the marriage of their parents and the birth of their child is less than the minimum time limit of at least 6 months ' gestation. So, as long as the baby is born when the mother is in a legal marriage, then the child is a legitimate child. Regarding the legal position of children is regulated in Article 42 to Article 44 and Article 55 of the Marriage Law. In this case, it is necessary to know that the marriage law distinguishes children in marriage from legitimate children and illegitimate children. Both have different legal positions in the family. The provisions of Article 42 of the Marriage Law determine that a legitimate child is a child born in or as a result of a legal marriage, this means that the legitimate child includes:

- 1) children born as a result of legal marriage. that is, children born after a legal marriage is made but then their parents divorced (Rosnidar, 2015).
- 2) 2) children born in a legal marriage, namely children born after a legal marriage is entered into, including pregnant marriage.

Based on Article 43 paragraph (1) of the marriage law, it is clearly stipulated that children outside of marriage do not get legal protection for their inheritance rights. From the foregoing, it can be noted that marital status greatly affects and determines the status of children. A legal child is born out of a legal marriage, if the child is not born out of a legal marriage under Article 2 (2) of Law No.1 year 1974 about marriage means that the child is not a legitimate child in the eyes of the law. A marriage will be valid if it is conducted according to the law of religion and belief, and the marriage is registered with the Office of Religious Affairs. If the marriage is only done according to religious law and belief alone, without recording at the Office of Religious Affairs, the marriage is not perfect. However, based on the practice in society, there are still many marriages that are held by not following the existing rules. Like a marriage that is done under the hand or what is often called a serial marriage. It can be known that there are several types of legal status for a child, namely : legitimate children, children out of wedlock and adopted or adopted children. A legitimate child is a child born in or as a result of a legal marriage. This is stipulated in the Marriage Law Article 42. The status of a legitimate child gets clearer legal protection compared to the status of other children. Extramarital child is a child born outside of marriage and only has a civil relationship with his mother and his mother's family. This is stipulated in the Marriage Law Article 43.

Children born from unregistered marriages will be illegitimate children as stipulated in Article 43 paragraph (1) of the marriage law, that "children born outside of marriage only have a civil relationship with the mother and the mother's family". This provision provides for the difference in legal treatment of children born out of wedlock and children born out of legal wedlock. By law, a child born from a serial marriage or a marriage that is not recorded, and the birth of a child is not legally recorded, means that there has been a violation of the rights of the

child. Thus the child becomes a status as a child out of wedlock, the legal consequences for children born out of wedlock are not recorded is not having a legal relationship with his father.

Thus, as a result of unregistered marriage, even though it is religiously and religiously valid, but marriages that are carried out outside the knowledge and supervision of marriage registration employees do not have permanent legal force and are not recognized in the eyes of the state, so women in the eyes of the law are not considered legal wives in the division of joint property. That the status of the child as a result of an illegitimate or unregistered marriage is an illegitimate child, the lack of clarity of the legal status of the child as a result of an unregistered marriage results in the relationship between father and child becomes not strong, so the child does not receive inheritance rights from his biological father.

The legal certainty of the child's status depends on the results of the marriage from his parents whether the marriage is valid or Invalid. To regulate the administration of marriage, "each marriage is recorded according to the prevailing laws and Regulations" (Article 2 Paragraph 2). This means that the registration of marriage is to create certainty in law and order, and is related to the civil status of a person, especially with his civil status so that children born from the marriage are really from parents who have proof of marriage or marriage certificate.

The provisions of Article 2 paragraphs (1) and (2) indicate that a marriage is considered valid if it meets the provisions of religion. Legislation does not regulate marriage material at all, marriage is considered valid if it is carried out according to the laws of each religion and belief. Legal regulations only regulate marriage from its formality, namely marriage as a legal event that must be carried out according to legal regulations.

## CONCLUSION

Based on the results of research on the juridical implications of Family card issuance for siri marriage couples on the status of children can be concluded as follows:

1. Unregistered marriage is the same as underhand marriage and urfi marriage, which is the practice of marriage in which the pillars and conditions of marriage have been met, but do not register it with the Marriage Registrar. If a child is born from an unregistered marriage, then the status of the child born is the same as outside of marriage. As a result, the child will have a birth certificate that only lists the name of the mother. In addition, the birth certificate of a child from an unregistered marriage cannot be used perfectly as the birth certificate of a child from a legal marriage. Absolute liability letter (SPTJM) as the fulfillment of children's rights in terms of issuing birth certificates. So in this case, if the child of serial marriage claims his civil rights to his father, he still has to go through a court decision because under the law, the child of serial marriage is still not said to be a legitimate child because the status of the parents ' marriage is not clear. So that the rights of children from serial marriages cannot be legally fulfilled perfectly and will only be fulfilled in terms of administration. In the process, the Sptjm of truth as a married couple against the serial marriage was not attended by 2 (two) witnesses who witnessed when the serial marriage took place, but the witnesses presented were witnesses who knew when the serial marriage SPTJM was made. Therefore, sptjm serial marriage can not be used as authentic evidence as the marriage certificate/marriage book.
2. The validity of a marriage will determine the legal position of the child born. If the marriage is valid, then the child born from the marriage will obtain legal status as a legitimate child as

stipulated by Article 42 of the marriage law. If the marriage is invalid, then the child born from the marriage does not occupy the position of a legitimate child. A legal child is a child resulting from a legal marriage, that is, it is recorded in state documents. Thus the child has the status of a child out of wedlock, the legal consequences for children born out of wedlock are not recorded is not having a legal relationship with his father. If there is no recognition by the father regarding the absence of a valid marriage then the child only has a civil relationship with his mother and his mother's family in accordance with the enforceability of Islamic law. That is, the child is only bound by legal relations, both rights and/or obligations and other legal relations with his mother and his mother's family. But the child does not have a legal relationship (civil relationship) with his father, so the child cannot inherit from his father or his father's family.

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