



# **MARRIAGE UNREGISTERED AFTER DECISION CONSTITUTIONAL COURT AND POPULATION ADMINISTRATION POLICIES: ULAMA PERSPECTIVES, IMPLICATIONS AND SOLUTIONS**

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**Abstrak:** Marriage Unregistered are a long-standing problem that has never been resolved, especially after the arrival of decision number 46 /PUU-VIII/2010 and the policy of the Population and Civil Registration Service regarding registration of marriages for couples who have not officially married and registered at the Office of Affairs. Religion, this also causes disharmony regarding the opinions of ulama, such as the fatwa of the Indonesian Ulema Council, and Muhammadiyah which opposes the process of unregistered marriages by declaring the marriage annulled, while Nahdatul Ulama, on the other hand, states that the provisions on registration of marriages cannot annul or not validate a marriage because it is not harmonious. and conditions of marriage, from the results of the research analysis it can be illustrated that in the context of a legal state, marriage registration is a benefit and deviation from it is a harm, therefore it is necessary to have registration as a form of protection of the status and rights of someone in the marriage, by Therefore, in this case, it is necessary to strengthen solutions related to prevention and protection for someone who has married unregistered, namely by having a marriage isbat institution and comprehensive outreach regarding the impact of

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unregistered marriages so as to make people legally aware of the importance of registering their marriages.

**Key Words:** Marriage Unregistered, Implication, Solution.

## **A. Introduction**

Marriage is the main foundation and beginning of a family structure. With the occurrence of marriage, rights and obligations will arise for everyone in a family. These rights and obligations must of course be in accordance with religious spirit. In principle, marriage will also elevate human status. So that marriage is not only to channel biological needs, but also to maintain the lineage as per the *maqasid syar'i* of a marriage law. A marriage can only be declared valid if it meets the pillars and conditions of marriage according to Islamic law. In the Compilation of Islamic Law, the pillars and terms of marriage are regulated in detail in Articles 14 to 29 of the Compilation of Islamic Law in Indonesia. The implication of not fulfilling either one or all of the pillars and conditions of marriage is that the marriage is declared invalid and as long as there is no marriage contract, the relationship between husband and wife is considered adultery.<sup>1</sup>

Marriage in Indonesia is regulated in Positive law, including Law Number 1 of 1974 concerning Marriage as amended into Law Number 16 of 2019, Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, to various policies of the Minister of Religion and the Supreme Court in the form of regulations and circulars. As stipulated in Article 1 paragraph (2) of Law Number 1 of 1974 concerning Marriage, it is stated that every marriage must be recorded. The registration must be carried out by a Registration Officer from the Religious Affairs Office if the prospective bride and groom are Muslim or registered at

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<sup>1</sup> M. Tahir Maloko, 'Unregistered Marriage in Islamic Law Perspective a Critical Study of Islamic Law Compilation', *Al-Mawarid Journal of Islamic Law* XV, no. 1 (Agustus 2015): 51, <https://doi.org/10.20885/mawarid>.

the Population and Civil Registration Service if they are non-Muslim. The purpose of these records, apart from fulfilling administrative requirements, is also to protect the rights of husbands, wives and children.<sup>2</sup>

However, in reality, based on a census conducted by the non-governmental organization (NGO) Empowering Women Headed of Families, 25 percent of people in Indonesia carried out unregistered and customary marriages in 2012. This means that these marriages are not registered in the state. This census was carried out in 111 villages from 17 provinces. There are several provinces where the secret marriage rate is above 50 percent. In East Nusa Tenggara it is 78 percent, Banten 65 percent, and West Nusa Tenggara 54 percent.<sup>3</sup>

There are many factors that influence the still high number of unregistered marriages in Indonesia, including public awareness of the law, the persistence of certain ideologies, lack of socialization, the rise of fake marriage leaders, weak regulations and sanctions, and the Ulama in Indonesia not yet firmly addressing the phenomenon of the rise of marriage unregistered. The issue of unregistered marriages became more complex when the Constitutional Court decision Number 46/PUU-VIII/2010 and various policies of the Population and Civil Registration Service emerged. The disharmony between the opinions of Ulama in Indonesia, statutory regulations, Constitutional Court decisions and related service policies has implications for the proliferation of unregistered marriage practices which do not necessarily fulfill the harmony and requirements of marriage. Apart from that, the rights of women and children are also threatened with being sacrificed in order to launch the slogan of the practice of unregistered marriage, namely "Fear of Falling into Adultery".<sup>4</sup>

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<sup>2</sup> See Regulated in the Provisions of Law No. 1 of 1974 Concerning Marriage', n.d.; 'See Presidential Instruction Number 1 of 1991 Concerning the Implementation of the Compilation of Islamic Law', n.d.

<sup>3</sup> Universal Periodic Review on Indonesia Women', 2013, 3.

<sup>4</sup> Moh. Dhiwa Ulfajri A. Ismail Nur Mohamad Kasim, 'Implications of Legislation on the Status of Children Born from Marriages That are Not Recorded in the Law', *Damhil Law Journal* 3, no. 1 (2023): 23.

## **B. Discussion**

### **1. Unregistered Marriage According to the Perspective of the Indonesian Ulama Council, Nahdhatul Ulama and Muhammadiyah**

Etymologically, the word marriage (*al-zawaj*) means sexual intercourse (*al-watha'*) or joining (*al-dham*). Marriage also means contract, because the contract is the reason why sexual intercourse is permitted. The following is the definition of marriage according to the jurists; The Hanafiyah define marriage as a contract that means having, having fun on purpose. The Syafi'iyah school explains that marriage is a contract that contains legal provisions solely to allow *watha'* with the lafadz nikah or *jazwij* or something similar. The Malikiyah group believes that marriage is a contract that contains legal provisions solely to allow *watha'*, to have fun and enjoy what is in a woman who is allowed to marry him. Meanwhile, the Hanabilah describe marriage as a contract that uses nikah lafadz or *tazwij* so that they are allowed to take advantage of and have fun with women.<sup>5</sup>

Unregistered marriage is a marriage carried out in secret in Indonesia usually called "Kawin Sirri". Etymologically, the word sirri comes from Arabic, namely *sirrun*, which means secret, silent, still, hidden as the opposite of *'alaniyah*, which is overt. The word sirri was then combined with the word marriage to indicate that marriage is carried out secretly or hidden. This secret and hidden meaning gives rise to two understandings, namely marriages that are secretly not

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<sup>5</sup> Dahlia Haliah Ma'u, 'Nikah Sirri dan Perlindungan Hak-Hak Wanita dan Anak (Analisis dan Solusi dalam Bingkai Syariah)', *Al Ahkam* 1, no. 1 (June 2016): 37.

announced to the public or marriages that are not known or registered in state institutions.<sup>6</sup>

The definition of unregistered marriage is always linked to marriage law, namely law number 1 of 1974, because the term sirri marriage emerged since the issuance of this law. unregistered marriages are marriages carried out based on religious rules or customs and are not registered at the Religious Affairs Office for Muslims, or the Civil Registry Office for non-Muslims. There is an opinion which equates that sirri marriage is part of underhanded marriage, which means something that is kept secret or something that is hidden in oneself or in one's soul, then entered the Indonesian vocabulary which by W.J.S. Poerwadarminta mentions the words sir which means unseen or secret or hidden. The definition of the term sirri marriage in everyday language is a marriage that is not registered with a marriage registrar. This marriage is carried out in front of a modin or kyai with two witnesses or can be interpreted as a marriage without any formal legal ties in force. In connection with the marriage under the hand, Dadang Hawari (Psychiatrist & Ulama) is of the opinion that There has been an attempt to change marriage from a grand procession to being just an occasion to satisfy human desires. or more, so that according to him this marriage is invalid marriage.<sup>7</sup>

In another context, Indonesia, whose population is predominantly Muslim, has several Islamic organizations whose fatwas are adhered to by the community, namely the Indonesian Ulama Council, Nahdatul Ulama, and Muhamadiyah, each of which has its own opinion regarding unregistered marriages which will be explained as follows.

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<sup>6</sup> Irfan Islami, 'Perkawinan di Bawah Tangan (Kawin Sirri) dan Akibat Hukumnya', *ADIL Jurnal Hukum* 8, no. 1 (2017): 76, <https://doi.org/10.33476/ajl.v8i1.454>.

<sup>7</sup> Supriyadi, 'Perkawinan Sirri dalam Perspektif Hukum di Indonesia', *Jurnal Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 8, no. 1 (2017): 2, <http://dx.doi.org/10.21043/yudisia.v8i1.3229>.

a. Perspective of the Indonesian Ulama Council

The Indonesian Ulama Council, in responding to the phenomenon of unregistered marriages, has issued fatwa Number 10 of 2008 concerning Underhand Marriage. The Indonesian Ulama Council itself does not use the term unregistered marriage, but in its fatwa it uses underhanded marriage, Underhand marriage is defined as "a marriage that fulfills the harmony and conditions stipulated in fiqh (Islamic law) but without official registration at the competent authority as regulated in statutory regulations. Because in reality underhand marriages can be divided into two types, namely fulfilling the pillars and conditions of marriage or vice versa, namely not fulfilling the pillars and conditions.<sup>8</sup>

In its fatwa, the Indonesian Ulama Council stated that marriage under the hand is legal because the conditions and pillars of marriage have been fulfilled, but haram if there is madharrat. So as a preventive measure against this harm, marriages must be officially registered with the agency authorized to register marriages,

b. Perspective of Nahdatul Ulama

In the Results of the Decision Bahtsul Masa'il Fmpp XXI for Java-Madura in the Commemoration of the Centenary of the PP. Lirboyo 02-03 June 2010 was discussed about unregistered marriage which was based on unregistered marriage, contract marriage and polygamy were seen to be detrimental to women and were often misused to become hidden adultery which was used as a means of gratification and sexual outlet without responsibility, which resulted in abandoned wives and children, there is no recognition from the first wife and others. It is also hoped that this bill will make it easier for

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<sup>8</sup> Fatwa Majelis Ulama Indonesia Nomor 10 Tahun 2008 Tanggal 17 September 2008.', n.d.

wives or children to obtain their positive legal rights, such as inheritance rights, guardianship rights, health benefits, obtaining an Identity Card or passport and so on.<sup>9</sup>

According to Nahdhatul Ulama, specifically the bill on unregistered marriage and polygamy received a strong response from various groups, because apart from being seen as cornering and complicating the practice of Muslims, it was also feared that the bill would actually make someone choose to commit adultery rather than marry. Moreover, punishment with fines and/or prison sentences for marriages without documentation is considered to be very excessive, because the practice of unregistered marriages is actually only a civil administrative violation, namely violating Article 2 of Law Number 1 concerning Marriage, not a form of criminal violation so it is disproportionate if necessary. criminalized.<sup>10</sup>

In the end, the conclusion of Bahtsul Masail Nahdatul Ulama emphasized that the Marriage Law as stated in the compilation of Islamic law (KHI) which limits unregistered marriages by not validating them, cannot be justified because it pronounces marriages that are already valid according to Sharia to be invalid.

c. Perspective of Muhammadiyah

In the 35th Muhammadiyah Congress, the Tarjih Council decided that marriage registration, apart from its substance of creating legal order, also has preventive benefits, such as preventing deviations from the harmony and conditions of marriage, both according to religious provisions and statutory regulations. There is no marriage between a man and a woman where both are prohibited

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<sup>9</sup> See Keputusan Bahtsul Masa'il Fmpp XXI Se Jawa-Madura dalam Rangka Peringatan Satu Abad PP. Lirboyo', n.d.

<sup>10</sup> See Keputusan Bahtsul Masa'il Fmpp XXI Se Jawa-Madura dalam Rangka Peringatan Satu Abad PP. Lirboyo'.

from entering into a marriage contract. Avoiding falsification of the identity of the parties who are getting married, such as a man who claims to be a man but actually has a wife and children. This preventive action in statutory regulations is realized in the form of researching marriage requirements by Registrar Employees, as regulated in Article 6 government regulations Number 9 of 1975. The requirement to register marriages and make marriage certificates, in Islamic law, is required to be recorded in mudayanah matters which in certain situations ordered to record it, as stated in the word of Allah surah al-Baqarah verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ.....

If debt contracts or other work relationships have to be registered, marriage contracts which are so noble, majestic and sacred should be even more important to be recorded. Thus, registering a marriage contains benefits or benefits, great goodness in people's lives. On the other hand, if the marriage is not clearly regulated through statutory regulations and is not registered, it will be used by the parties entering into the marriage only for personal gain and will harm other parties, especially the wife and children. Determining law on the basis of benefit is one of the principles in establishing Islamic law.<sup>11</sup>

So for Muhammadiyah members, it is obligatory by law to register their marriages. This is also reinforced by the Muhammadiyah Personality text as decided in the 35th Muhammadiyah Congress, that among the characteristics of Muhammadiyah is "paying heed to all laws, statutes, regulations, as well as the legitimate foundations and philosophy of the state".

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<sup>11</sup> Wawan Gunawan Abdul Wahid, 'Pandangan Majelis Tarjih dan Tajdid Muhammadiyah Tentang Nikah Sirri dan Itsbat Nikah: Analisis Maqashid Asy-Yari'ah', *Musāwa Journal of Gender Studies and Islam* 12, no. 2 (2013): 26, <https://doi.org/10.14421/musawa.2013.122.215-236>.



Muhammadiyah's view regarding the obligation to register marriages substantively is actually the same as confirming that the law on unregistered marriages is invalid.<sup>12</sup>

## **2. Implications of an Unregistered Marriage**

Various opinions about unregistered marriages certainly have implications for uncertainty about marital status. Thus, it is felt that it is important to discuss Sirri' marriage from a legal perspective so that it is hoped that it will provide enlightenment for society.

Before we explain the implications of unregistered marriages, we first provide the following background;<sup>13</sup>

- a. As an effort to prevent negative actions outside of marriage, this can happen if the prospective bride and groom are so intimate, there is concern that undesirable things will happen;
- b. To avoid negative views from society;
- c. Because there are no financial facilities needed to organize an official marriage, both from an administrative and ceremonial perspective;
- d. The existence of good faith by marrying privately can also be intended so that a person can be free from the responsibilities that must be borne by a husband, if this happens it is the wife who will suffer, because she does not have a marriage certificate or marriage certificate.

Still below the marriage age regulated by statutory regulations;

The various legal consequences that occur from unregistered marriages include the following;<sup>14</sup>

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<sup>12</sup> Ibid, ..227.

<sup>13</sup> 'Perkawinan Sirri dalam Perspektif Hukum di Indonesia', 3.

<sup>14</sup> Perkawinan di Bawah Tangan (Kawin Sirri) dan Akibat Hukumnya', 87.

- a. There is no permanent legal force regarding the legality of the marriage, so that if the wife's rights are violated by the husband, the wife cannot claim these rights legally;
- b. The marriage contract carried out tends not to be legally proven and the husband and wife who carry out the sirri marriage contract cannot prove that the two of them are a legal couple in the eyes of Islamic law or the State;
- c. Other interests of husband and wife in living married life cannot be protected;
- d. Because there is no proof of the existence of the marriage, interests such as those related to obtaining an Identity Card, Family Card, Passport, child's birth certificate or those related to politics, namely the right to vote or be elected in general elections, cannot be served. All of this is because there is no proof of marriage in the form of a Marriage Certificate/Marriage Book which ultimately means that you cannot make an Identity Card and Family Card, while to make a child's birth certificate or passport you are required to have an Identity Card, Family Card and marriage book;
- e. Unregistered marriages tend to give one of the partners, especially the husband, more freedom to abandon his obligations, and even treat his wife with violence;
- f. Marriages are not officially recorded in the presence of an authorized official, namely the Marriage Registrar, so marriage contracts like this tend to be uncontrollable. Finally, it can open up opportunities for husbands to remarry with other women without first obtaining official approval from the first wife through a trial process. Behavior like this tends to be repeated until finally the husband has the potential to have a wife in excess of religious regulations. Finally, the benefit of religion is also disturbed by behavior as described;

- g. An unregistered marriage contract can affect the psychological well-being of the wife and children, making them feel uncomfortable and uneasy. Moreover, when children enter school age and when they are registered, every educational institution always requires the registrant (child's parents) one of them is a birth certificate. The requirement for making a child's birth certificate is a marriage book and the person who has the marriage book is the person who, when carrying out the marriage contract, registered their marriage. If you don't have a marriage certificate, you can't provide a birth certificate because you don't have legal evidence to state that the child is the legitimate child of the husband and wife who want to get the child's birth certificate;
  - h. Unregistered marriages can impact the benefit of assets, both joint assets and inherited assets. Identification of the origin of joint property cannot be done because the unregistered marriage was not registered, so the initial acquisition of joint property is unknown. Likewise, it is difficult to prove legal standing as an heir;
- 3. The Marriage Unregistered After the Constitutional Court Decision Number 46/PUU-VIII/2010**

In fact, the Constitutional Court decision Number 46/PUU-VIII/2010 is not directly related to unregistered marriages, but the decision is to provide legal certainty for illegitimate children. However, in its development after the decision was issued, a debate arose about the meaning of illegitimate children, which meant children born outside a registered marriage or children born without marriage.

Constitutional Court Decision Number 46/PUU-VIII/2010 regarding illegitimate children which was determined on February 13 2012 by the Constitutional Court, is the momentum for the results of the material review of Law Number 1 of 1974 concerning Marriage, which was proposed by Machica Mochtar in order to fight for the rights of the rights

of the children she gave birth to as a result of her marriage to Moerdiono. The contents of the Constitutional Court's decision resulted in a change in the status of illegitimate children according to the Marriage Law, from previously illegitimate children only having a civil relationship with their mother and their mother's family, to having a civil relationship with their father and their father's family.<sup>15</sup>

In its decision the Constitutional Court stated "Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) which states, "Children born outside "marriage only has a civil relationship with the mother and her mother's family," is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is interpreted as eliminating civil relationships with men which can be proven based on science and technology and/or other evidence according to the law, it turns out to have blood relation as his father.<sup>16</sup>

Apart from that, the Constitutional Court also decided that "Children born out of wedlock only have a civil relationship with their mother and their mother's family", do not have binding legal force as long as they are interpreted as eliminating civil relationships with men which can be proven based on science and technology and/or other evidence according to the law turns out to be blood related to the father, so the verse must read, "Children born out of wedlock have a civil relationship with their mother and their mother's family and with a man as their father which can be proven based on

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<sup>15</sup> Megawati, 'Analisis Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Mengenai Anak Luar Kawin Perspektif Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak dan Hukum Islam', *Jurnal QIYAS* 2, no. 2 (2017): 182.

<sup>16</sup> Habib Shulton Asnawi, 'Politik Hukum Putusan MK No. 46/PUU-VIII/2010 Tentang Status Anak di Luar Nikah: Upaya Membongkar Positivisme Hukum Menuju Perlindungan HAM', *Jurnal Konstitusi* 10, no. 2 (2013): 246.

science and technology and/ or other evidence according to the law of having a blood relationship, including a civil relationship with the father's family.<sup>17</sup>

If the Constitutional Court Decision Number 46/PUU-VIII/2010 is related to unregistered marriages, then it can be concluded that the Constitutional Court accommodates the rights of children born outside marriage, whether children born outside a registered marriage (unregistered marriage) or children born outside of wedlock. In one of the considerations of the Constitutional Court in this case, it was stated that the relationship between a child and a man as the father is not solely due to the existence of a marriage bond, but can also be based on proof of the existence of a blood relationship between the child and the man as the father. Thus, regardless of the procedure/administration of the marriage, children born must receive legal protection. If this is not the case, then the person who is harmed is the child who was born out of wedlock, even though the child is innocent because he was born against his will. Children who are born without a clear father's status often receive unfair treatment and stigma in society. The law must provide fair legal protection and certainty regarding the status of a child who is born and the rights he or she has, including for children who are born even though the validity of the marriage is still in dispute.<sup>18</sup>

The Indonesian Ulama Council responded to the decision of the Constitutional Court Number 46/PUU-VIII/2010 by issuing fatwa Number 11 of 2012. In essence, the fatwa decided;<sup>19</sup>

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<sup>17</sup> Analisis Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/ 2010 Mengenai Anak Luar Kawin Perspektif Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak dan Hukum Islam', 183.

<sup>18</sup> 'Politik Hukum Putusan MK No. 46/PUU-VIII/2010 Tentang Status Anak di Luar Nikah: Upaya Membongkar Positivisme Hukum Menuju Perlindungan HAM', 247.

<sup>19</sup> 'See MUI Fatwa No. 11 of 2012', n.d.

- a. The child resulting from adultery has no relationship with the man who gave birth to him or her by birth.
- b. Children resulting from adultery only have a relationship of lineage, inheritance and livelihood with their mother and her mother's family.
- c. Children resulting from adultery do not bear the sin of adultery committed by the person who gave birth to them.
- d. Adulterers are subject to hadd punishment by the authorities, in the interest of maintaining legitimate offspring (hifzh alnasl).
- e. The government has the authority to impose ta'zir punishment on an adulterous man who results in the birth of a child by requiring him to meet the child's living needs and giving assets after he dies through a mandatory will.
- f. The punishment as referred to in number 5 is aimed at protecting the child, not to validate the cross-breeding relationship between the child and the man who resulted in its birth.

#### **4. Unregistered Marriage Following the Population and Civil Registry Service Policy**

Based on the Policy of the Directorate General of Population and Civil Registration Number 472.2/15145/DUKCAPIL dated 4 November 2021 concerning the Inclusion of Unregistered Marital Status in Family Cards, with the following provisions:<sup>20</sup>

- a. Residents whose marriages have not been registered or cannot be registered can have their marital status listed on their Family Card with their marital status not yet registered, as an affirmative policy for the time being

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<sup>20</sup> 'Surat Direktorat Jenderal Kependudukan dan Pencatatan Sipil Nomor 472.2/15145/DUKCAPIL Tanggal 4 November 2021 Tentang Pencantuman Status Kawin Belum Tercatat dalam Kartu Keluarga', n.d.

until marriage registration or marriage isbat/marriage legalization is carried out.

- b. The inclusion of unregistered marriage status in the Family Card is carried out based on a request and each husband and wife make a Statement of Absolute Responsibility for Unregistered Marriage.
- c. Application of the Statement of Absolute Responsibility for Marriages that have not been Registered is not intended for underage marriages (under 19 years of age), while for second or more marriages there must be written permission from the previous wife.
- d. Data on residents whose marital status has not been recorded in the population database is the basis for each region to program marriage isbat/marriage validation and mass marriage registration.
- e. Inclusion of marital status as not yet recorded in the Family Card does not constitute validation of the marriage.
- f. Each region is proactive in socializing that every marriage must be registered

Based on Article 34 of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, the community can attach a Letter of Absolute Responsibility based on two reasons, namely not having a birth certificate and/or not having a marriage book/certificate extract. marriage or other valid evidence but the relationship status in the family card shows that they are husband and wife.

This provision provides space for married couples whose marriages are not registered to have a Family Card provided that there is a special note stated on the Family Card that the marriage was not recorded. Providing a Family Card to married couples in an unregistered marriage actually has a positive impact because with the Family Card the child can produce a

birth certificate. On the other hand, granting Family Cards actually creates a number of problems for women and children

However, on the other hand, the solution to making it easier to manage family cards then gives rise to various other problems, including the following:<sup>21</sup>

- a. Potential to increase the number of unregistered marriages

One of the problems that arises from the existence of regulations that allow the inclusion of unregistered marriages on Family Cards is the potential to increase the number of unregistered marriages or the potential for the number of under-handed marriages to increase. This breakthrough is of course contrary to the aim of the Marriage Law which hopes for orderly administration in the field of marriage. Apart from realizing an official marriage, registering a marriage is to protect the rights of women and children in a marriage.

- b. There is potential for women's rights not being protected after divorce

In a letter from the Director General of the Population and Civil Registration Service Number 472.2/15145/DUKCAPIL dated November 4 2021, it is emphasized that the inclusion of marital status as not yet recorded in the Family Card does not constitute validation of the marriage. This has implications for women's post-divorce rights not being protected, such as iddah, mut'ah and madhiyah living, unless the wife files a marriage istbat cumulation case for divorce at the Religious Court.<sup>22</sup>

- c. Punishment for perpetrators of Domestic Violence cannot refer to the Law on the Elimination of Domestic Violence

Another problem that arises if a marriage is not registered in the Family Card is that the form of

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<sup>21</sup> Fadli, 'Implikasi Yuridis terhadap Penerbitan Kartu Keluarga bagi Pasangan Nikah Siri di Indonesia', *Jurnal Mediasas: Media Ilmu Syari Jurnal dan Ahwal Al-Syakhsyiyah* 4, no. 1 (2021): 84.

<sup>22</sup> Ibid.. 87.



punishment for perpetrators of domestic violence for married couples cannot refer to the Law on the Elimination of Domestic Violence. In the Law on the Elimination of Domestic Violence, the threat of punishment is higher than the threat regulated in the Criminal Code regarding abuse.

In Article 44 paragraph 1 of the Law on the Elimination of Domestic Violence, it is stated that every person who commits acts of physical violence within the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of IDR 15,000,000.00 (fifteen million rupiah). Meanwhile, Article 51 Paragraph 1 of the Criminal Code states that maltreatment is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah. Apart from that, the offense of domestic neglect cannot be given to the husband because the couple is not bound by a valid marriage, that is, it is not recorded in accordance with the applicable laws and regulations.<sup>23</sup>

## **5. Solutions to Protect the Rights of Women and Children in Unregistered Marriages**

Various kinds of problems arise from unregistered marriages, especially the unprotected rights of women and children. The solution to protect the rights of women and children in sirri marriages is as follows:

### **a. Isbat Nikah**

Isbat nikah or legalization of marriage aims to provide legal certainty for the community so that their marriages receive legal protection from the state. Having a marriage contract can provide protection for women and children if one day there are problems in living married life. A wife can claim her rights from an authorized

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<sup>23</sup> Ibid...88.

institution because of the existence of a marriage bond which is a legal relationship between a wife and husband and the children born from the marriage.<sup>24</sup>

Apart from that, isbat nikah is also a piece of legislation related to marriage which is carried out in accordance with the provisions of article 7 paragraph 1 of the Compilation of Islamic Law which states that the only proof of marriage is the existence of a marriage certificate (*probatinus causa*) so that the legal status of couples who marry unmarried can be accommodated and has force. law in its position in the country.<sup>25</sup>

b. Socialization and education due to unregistered marriages

Whole of Government between Ministries and Institutions, including Regional Government, Ministry of Religion, Population and Civil Registration Service, Women's Empowerment Service, Child Protection, Population Control and Family Planning as well as the Religious Courts work hand in hand and collaborate with each other to provide systematic and massive socialization and education to society about the consequences of sirri marriage.<sup>26</sup>

The hope of socialization and education resulting from unregistered marriages is to further increase public legal awareness regarding the urgency of registering marriages and the legal consequences.

### **C. Conclusion**

The opinion of the Indonesian Ulema Council, Nahdatul Ulama and Muhammadiyah regarding Sirri Marriage is: The Indonesian

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<sup>24</sup> Aldy Darmawan Nurul Izzat, 'Legalization of Nikah Sirri: A Solution to Obtain Marital Status Recognition Among Diverse Cultural Groups in Indonesia', *Kawanua International Journal of Multicultural Studies* 4, no. 2 (2023): 167.

<sup>25</sup> Legalization of Nikah Sirri: A Solution to Obtain Marital Status Recognition Among Diverse Cultural Groups in Indonesia, 168.

<sup>26</sup> Fadhly Kharisma Rahman, 'Marriage Registration as a Form of Maşlahah Mursalah', *MAQASID: Jurnal Studi Hukum Islam* 12, no. 2 (2023): 42.

Ulema Council states that marriage under the hand is legal because the conditions and harmony of marriage have been fulfilled, but it is haram if there is madharrat. So as a preventive measure against this harm, marriages must be officially registered with the agency authorized to register marriages. Nahdatul Ulama, as in Bahtsul Masail, emphasized that the Marriage Law as stated in the Compilation of Islamic Law, which limits sirri marriages by not validating them, cannot be justified because it pronounces marriages that are legally valid according to the Sharia, whereas Muhammadiyah emphasized that Muhammadiyah citizens are obliged to register marriages. what he did. This is a preventive measure so that there are no deviations from the harmony and terms of marriage, both according to religious provisions and statutory regulations. There is no marriage between a man and a woman where both are prohibited from entering into a marriage contract. Prevents falsification of the identity of the parties getting married. This preventive action in statutory regulations is realized in the form of research into marriage requirements by the Registrar's Officer.

The implications of an unregistered marriage are firstly: There is no permanent legal force regarding the legality of an unregistered marriage, so that if the wife's rights are violated by the husband, the wife cannot claim these rights legally; secondly, registered marriages tend not to be legally proven, thirdly, other interests of husband and wife in living married life cannot be protected; fourthly, it is difficult to process a Resident's Identity Card (KTP), Family Card (KK), Passport, child's birth certificate or anything related to politics, namely the right to vote or be elected in general elections cannot be served. Fifth, unregistered marriage contracts tend to give one of the partners, especially the husband, more freedom to abandon his obligations, even treating his wife with violence. Sixth, it opens up opportunities for husbands to carry out remarriage contracts with other women without first obtaining official approval from the first wife through a trial process. Seventh, the sirri marriage contract can

have an impact on the benefit of assets, both joint assets and inherited assets.

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