

Analyzed of Legal Siri Marriage Registration in a Population Administration (Family Card) a Study on Legal Protection for Children

Galluh Laraszaty¹, Syaiful Asmi Hasibuan², J.E.Melky Purba³

^{1,2,3}Faculty of Social and Sciences, Universitas Pembangunan Pancabudi, Medan, Indonesia

Email: galularasaty@gmail.com

Abstract:

Every marriage is not only based on biological needs between men and women who are recognized as legitimate, but as executor of the natural process of human life. Likewise, Islamic marriage law contains the main elements of a psychological and spiritual nature including inner and outer life, humanity, and truth. The formulation of the problem in this study is how the law on the registration of unregistered marriages into the population administration is a study of the analysis of legal protection for children. This research is a type of normative juridical research, using a law approach method. Basically, every marriage is recorded according to the applicable laws and regulations. This marriage registration is very important, because if it is not recorded, then the marriage is not recognized by the state and has certain legal consequences. Even though there are legal consequences if the marriage is not registered or in this case the siri marriage, because every resident must be recorded on the family card.

Keywords:

siri marriage; family card; and legal protection for children

I. Introduction

Every marriage is not only based on biological needs between men and women who are recognized as legitimate, but as executor of the natural process of human life. Likewise, Islamic marriage law contains the main elements that are psychological and spiritual, including inner and outer life, humanity and truth. In addition, marriage is also based on religion, meaning that religious aspects become the main basis of domestic life by carrying out faith and devotion to God. While the basics of understanding marriage are based on three wholes that need to be possessed by a person before implementing it, namely faith, Islam and sincerity.

Marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage, what is meant by marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. Thus, marriage is a contract which in its entirety is contained in the word nikah or tazwīj and is a sacred ceremonial speech.

Marriage is one of the dimensions of life that is very important in human life in any world. With the importance of marriage, it is not surprising that the world's religions regulate marriage issues, even the traditions or customs of the community and state institutions do not lag behind in regulating marriages that apply among their people. It is a common fact that the regulation of marital problems in the world does not show any uniformity. The differences are not only between one religion and another, even within one religion there can be differences

in marriage arrangements due to different ways of thinking because they adhere to different schools or sects.

Family life is bound by the existence of relationships between family members (Djamarah in Hendra, Y. et al. 2019). The family is a basic family unit consisting of a husband, wife and children (Batubara, 2019). The family is a universal social institution, found in all levels and groups of people in the world, in addition to religion. The family is a miniature of society, nation and state. The two institutions, family and religion, are the institutions that are hardest hit by the currents of globalization and modern life. In the era of globalization, people's lives tend to be materialistic, individualistic, social control is getting weaker, husband and wife relationships are getting stretched, the relationship between children and parents is shifting, the sacredness of the family is getting thinner. In order to maintain, protect the family and improve the welfare and happiness of the family, laws governing marriage and family were drafted.

Law Number 1 of 1974 concerning Marriage is a law that has privileges, it regulates all members of the community who have reached adulthood who will carry out marriages. Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage ("Marriage Law"), each marriage is recorded according to the applicable laws and regulations. This is also confirmed in Article 5 paragraph (1) of Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law ("KHI"), which requires that every marriage be recorded in order to ensure the orderliness of marriage for the Islamic community. Marriage registration is carried out by a marriage registrar. This marriage registration is very important, because if it is not recorded, even though it is legal in the eyes of religion, the marriage is not recognized by the state. As a result, children and wives from unregistered marriages do not have legal status before the state.

II. Review of Literatures

Local government in making a policy must look at the consequences of the policy. Policies can make it easier for the community to solve the problem or can harm the community in obtaining services public provided by the government. In the implementation of local government policies. There are activities related to population activities, namely administrative services population.

One of the population administration services is the correction of data on a certificate which is a record of changes in a person's data on a birth certificate. Recording the change in the data on the birth certificate is intended to make it easier for Dinas employees Population and Civil Registration in providing services to the community to have the truth and validity of the desired residence document.

With the enactment of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, it aims to: to create an orderly population administration of the community to have the truth and validity of population documents issued by implementing agencies and protect the determination of a person's legal status and protect individual rights experienced by the Indonesian population. In Article 1 Number (1) of the Law

Administration explains that Population Administration is a series of structuring and controlling activities in the issuance of documents and data population through Population Registration, Civil Registration, information management Population Administration and the utilization of the results for public services and other sector development. Resident documents referred to in the Act Number 23 of 2006 concerning Population Administration is an official document issued by an Implementing Agency that has legal force as evidence of authentic products generated from the Population Registration and Civil Registration services. As for There are various types of Resident Documents, namely:

- a. Population Biodata.
- b. Family Card (KK).
- c. Identity Card (KTP).
- d. Transfer Certificate.
- e. Civil Registration Deed.

Some of the population documents mentioned above are of course very important in have for Indonesian residents because the population document is a form of protection of the state against the status of civil rights of the population and is used as one of the requirements in managing other public services. Resident Documents that first owned by someone and becomes the basis of self-identity as the initial evidence of citizenship is a birth certificate. A birth certificate is one of the civil registration certificates issued by the authorized civil registration office to obtain or determine the legal status of a person.

In reality, there are various problems regarding population documents in particular on birth certificates that occurred in the Disdukcapil one of which was a change in the data on the birth certificate birth. At the Disdukcapil of Karanganyar Regency, there are cases of changes to the data on the deed.

Based on the description of the case, it was taken from the civil registration archive of the Regency Disdukcapil Karanganyar. Request for correction of civil registration certificate regarding name correction the parents as stipulated in Article 71 of Law Number 23 of 2006 concerning Population Administration which reads: "Civil Registration Deed Correction is only carried out for the deed that has an editorial error. Correction because editorial writing errors can be made by civil registration officials by his authority the process for correcting the name of the policy parent from the Disdukcapil in the solution is carried out by Disdukcapil officials according to their authority.

III. Results and Discussion

Marriage registration has been a problem since the establishment of the 1973 Draft Marriage Law (RUUP) which became 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; henceforth called Law 1/1974) until today. This is related to the legal meaning of marriage registration in marriage laws and regulations.

From the provisions of Article 2 of Law 1/1974 it is clear that every marriage must be recorded according to the applicable laws and regulations. This means that every marriage must be followed by a marriage registration according to the applicable laws and regulations. If the two paragraphs in Article 2 of Law 1/1974 are related to each other, it can be considered that marriage registration is an integral part that determines the validity of a

marriage, in addition to following the terms and conditions of marriage according to the laws of each religion and belief.

While others argue that marriage registration is not a condition for the validity of a marriage, but only as a condition for completeness of marriage administration. The validity of the marriage is carried out according to the method based on the religious rules and beliefs of the two parties who make the marriage. The act of registering a marriage does not determine whether a marriage is legal or not. The registration is administrative in nature, which states that the marriage event did exist and occurred.

With this registration, the marriage becomes clear, both for the person concerned and for other parties. A marriage that is not recorded in the Marriage Certificate is considered non-existent by the state and does not receive legal certainty. Likewise, all the consequences arising from marriage are not recorded.

The principle of registration of marriages adopted in Law 1/1974 becomes meaningless if the validity of a marriage is not related to the registration of marriages in accordance with applicable laws and regulations. However, this is not explicitly stipulated in Law 1/1974, so Law 1/1974 provides an opportunity for unregistered marriages. Indeed, the discussion of marriage registration in traditional fiqh books is not found, therefore Muslims who think fiqh centric take it lightly and tend to ignore marriage registration by state institutions authorized for it.

3.1 Marriage Registration in Civil Law

Article 2 paragraph (2) of Law 1/1974 expressly stipulates that every marriage must be recorded according to the prevailing laws and regulations. When the provisions of Article 2 paragraph (2) of Law 1/1974 are linked with Article 2 paragraph (1) of Law 1/1974, it is clear that every marriage which is legally performed according to the law of each religion and belief must be recorded according to the statutory regulations that apply so that the validity of the marriage is recognized. Marriages which are carried out according to the laws of each religion and their religious beliefs, but are not recorded by themselves do not have validity as a marriage according to Law 1/1974.

Previously in the 1973 RUUP explicitly determined the validity of a marriage based on the registration of the marriage. This is emphasized in Article 2 paragraph (2) of the 1973 RUUP, that "a marriage is valid if it is carried out in the presence of a marriage registrar, recorded in the marriage registration register by the employee, and carried out according to the provisions of this law and/or the legal provisions of the marriage of the other party. - the party who performs the marriage, as long as it does not conflict with this law".

Based on this provision, a marriage is recognized as valid if: (1) it is performed in the presence of a marriage registrar and (2) it is registered by a marriage registrar in the marriage registrar's register. Thus, the registration of marriage is the thing that determines the validity of a marriage. In the General Elucidation of the 1973 RUUP related to the legality of marriages it is stated among other things that in this Law it is stated that a marriage is valid if it is carried out before a marriage registrar and is recorded in the marriage registrar by the marriage registrar concerned and carried out according to this Law and/or the provisions of the marriage law of the parties to the marriage as long as it does not conflict with this Law.

Thus, the introduction of religion that carries out marriages between religious groups needs to be seen in the implementation of its function as a marriage registrar which is one aspect of civil registration. Civil registration as it is known aims to state with the relevant materials the status of a person. For this reason, important events in a person's life such as birth, marriage, death, are stated in certificates, deeds contained in the civil registration register. So, if an introductory religion records marriages between those who adhere to a religion, he will function as a state official and as a marriage registrar, declaring the marriage valid according to law.

Thus, marriage according to adat as mentioned above is recognized, but it is necessary to make requirements for the validity of a marriage registration. Before there is a statutory regulation, what is needed is an existing regulation.

The formulation of Article 2 paragraph (2) of the 1973 RUUP was strongly opposed by scholars, because it was considered contrary to Islamic law, so Article 2 paragraph (1) of the 1973 RUUP was approved to be formulated: "Marriage is legal if it is carried out according to the law of his religion and belief". Meanwhile Article 2 paragraph (2) of the 1973 RUUP is formulated: "Every marriage must be recorded for the sake of orderly state administration". Regarding the principle of registration of marriages, the Government provided information on the application for judicial review of Law 1/1974 that according to the a quo Law, the validity of marriages is based on the laws of their respective religions, however, a marriage cannot be recognized as valid if it is not recorded in accordance with the provisions of the legislation. -invitation. Marriage registration as referred to in Article 2 paragraph (2) aims to:

- a. orderly marriage administration;
- b. provide certainty and protection of the legal status of husband, wife and children; and
- c. provide guarantees and protection for certain rights arising from marriage such as inheritance rights, the right to obtain a birth certificate, and others;

Whereas Article 2 paragraph (2) of the a quo Law does not stand alone, because the phrase "recorded according to the applicable laws and regulations" has the meaning that marriage registration is not immediately possible, but that registration must follow the requirements and procedures stipulated in the legislation. -invitation. This is intended so that the rights of husbands, wives and children can be guaranteed and protected by the state. These requirements and procedures include the provisions stipulated in Article 3 paragraph (2), Article 4, Article 5, Article 9, and Article 12 of the Marriage Law, and Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, especially Articles 2 to 9.

Likewise, the House of Representatives (DPR) related to the review of Law 1/1974 stated that to guarantee civil rights and obligations arising from legal marriages, every marriage needs to be recorded. Although marriage is included in the civil sphere, the state is obliged to guarantee legal certainty and provide legal protection to the parties involved in marriage (husband, wife and children), especially in relation to population administration records related to civil rights and obligations.

Therefore, the recording of each marriage becomes a formal requirement for the legality of an event that can result in a juridical consequence in civil rights and obligations such as the obligation to provide a living and inheritance rights. Marriage registration is stated in an official deed (authentic deed) and included in the register of records issued by the institution that has the authority. The purposes of registration of marriages are as follows:

1. for the orderly administration of marriage;
2. guarantee of obtaining certain rights (obtaining a birth certificate, making an identity card, making a family card, etc.);
3. provide protection against marital status;
4. provide certainty on the legal status of husband, wife and children;
5. provide protection for civil rights caused by marriage

Based on this argument, the provisions of Article 2 paragraph (2) of the Marriage Law which reads "every marriage is recorded according to the applicable laws and regulations" is a norm that contains legality as a formal form of marriage. Marriage registration in the form of a marriage certificate (authentic certificate) is important to provide legal certainty and legal protection for every marriage. Therefore, the DPR is of the view that marriages that are not recorded in accordance with the provisions of the legislation can be interpreted as a marriage event that does not meet the formal requirements, so this has implications for civil rights arising from the consequences of marriage, including children born from marriages that are illegal. not recorded as specified in the provisions of the legislation.

3.2 Child Protection Rights in Marriage

In Article 1 paragraph (1) of Law Number 23 of 2002 concerning Child Protection it is stated that a child is someone who is under 18 (eighteen) years old, including children who are still in the womb. This law also does not explicitly mention the minimum age for children to get married. According to Law Number 4 of 1979 concerning Child Welfare, it is stated that a child is someone who has not reached the age of 21 years and has never been married. The age limit of 21 years is determined based on considerations of child welfare efforts, where the social, personal and mental maturity of a child is achieved at that age.

Based on the description above, it is clear that there are very basic differences in provisions regarding children between the marriage law, child protection law and child welfare law. According to the author, there must be a synchronization of regulations regarding the age limit of children that apply in Indonesia. Synchronization of regulations must reflect the best interests of children by looking at various aspects. This is in accordance with the direction and policy of the development of Indonesian national law, including arranging a comprehensive and coherent national legal system by acknowledging religious and customary laws and updating colonial inheritance laws.

In Law Number 23 of 2002 concerning Child Protection it is stated that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination. The guidance carried out in the context of child protection is based on the following strategies:

- a. Survival, is directed at efforts to fulfill basic needs for the survival of children.
- b. Developmental, directed at efforts to develop potential, creativity, initiative and personal formation of children.
- c. Protection, is directed at efforts to provide protection for children from various consequences of disturbances such as: neglect, exploitation and wrong treatment.
- d. Participation is directed at providing opportunities for children to actively participate in carrying out their rights and obligations, through involvement in various activities carried out in the context of fostering children's social welfare.

Basically, child protection aims to ensure the fulfillment of two things, namely children's rights and child welfare. Whatever actions are carried out by parents or the parties involved with children must pay attention to these two goals. The best interests of the child must come first. Taking into account the four strategies in child protection, the author argues that underage marriage will have a negative impact on the fulfillment of developmental, protection and will also reduce participation. Children's rights are various basic needs that should be obtained by children to ensure survival, growth and protection from all forms of abuse, exploitation and neglect of children, including civil, economic, social and cultural rights.

Children's rights as regulated in Law no. 23 of 2002 concerning Child Protection, includes:

1. The right to be able to live, grow, develop and participate fairly in accordance with human dignity, and protection from violence and discrimination, for the sake of realizing quality, noble and prosperous Indonesian children (Article 4).
2. The right to obtain education and teaching in the context of personal development and level of intelligence in accordance with their interests and talents (Article 9 paragraph 1).
3. The right to rest and take advantage of free time, socialize with children of the same age, play, and have recreation according to their interests, talents, and intelligence levels for self-development (Article 11).
4. Every child while in the care of parents, guardians, or any other party who is responsible for the care, has the right to be protected from discrimination, exploitation, both economic and sexual, neglect, cruelty, violence, and persecution, injustice, and other mistreatment (Article 13 paragraph 1).

Taking into account the description, it is clear that underage marriages will have the potential to cause various things that can have a negative impact on the prospective bride and groom and also on children born from underage marriages. Child welfare is a way of life and livelihood of children that can ensure their growth and development properly, both spiritually, physically and socially. The policies set out in handling children's social problems are implemented technically through the following efforts:

- a) Child welfare efforts are carried out as a whole in order to improve quality and effectiveness, both for people with social welfare problems as well as for the coaches and implementers.
- b) Child welfare efforts are carried out on a family and community basis, as an effort to expand the reach of social services for people with social welfare problems.
- c) Child welfare efforts are a shared responsibility between the government and the community and are carried out professionally in cross-programme and cross-sectoral coverage.
- d) Child welfare efforts are directed at creating a conducive social welfare climate, based on the active role of the community in realizing the welfare and protection of Indonesian children.

The practical implications of child marriage have a negative impact on the normal growth and development of children. Parents are obliged to prevent marriage if it is felt that the marriage will actually result in negative things for the prospective bride and groom. Parents bear full responsibility for all the negative consequences of their children's marriage. This parental obligation is in accordance with the provisions of Article 26 paragraph (1) letter (c) of Law Number 23 of 2002 concerning Child Protection. The Criminal Code (KUHP) Article 288 paragraph (1), paragraph (2) and paragraph (3) has provided legal protection for

children, especially women who for some reason are bound by marriage. This legal protection is reflected in the existence of criminal sanctions for someone who has sex with an underage woman.

Article 3 of the child protection law states that the purpose of child protection is to create quality, noble and prosperous Indonesian children. In other words, the drafting of the child protection law is to ensure the realization of an ideal life for children and not to legitimize the child's unnatural will, such as the desire to get married at a young age. The basis of consideration for the passing of the child protection law, which includes that children are buds, potentials, and the younger generation who will succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.

In order for every child to be able to take on these responsibilities, he/she needs to get the widest possible opportunity to grow and develop optimally, physically, mentally and socially. Therefore, child marriage should be avoided and is a last resort. Determination of the age of marriage as regulated in the marriage law is actually based on the *maslahat al-mursalah* method, namely *maslahah* in which there is no explicit evidence that admits it or rejects it. Because the provisions on the age limit for marriage are *ijtiha*, the truth of which is relative, the provisions are not rigid.

IV. Conclusion

Basically, every marriage is recorded according to the applicable laws and regulations. This marriage registration is very important, because if it is not registered, then the marriage is not recognized by the state and has certain legal consequences. Even though there are legal consequences if the marriage is not registered or in this case the *siri* marriage, because every resident must be recorded on the family card.

The House of Representatives (DPR) related to the review of Law 1/1974 stated that in order to guarantee civil rights and obligations arising from legal marriages, every marriage needs to be recorded. Although marriage is included in the civil sphere, the state is obliged to guarantee legal certainty and provide legal protection to the parties involved in marriage (husband, wife and children), especially in relation to population administration records related to civil rights and obligations. If the marriage is not recorded, the marriage which is carried out by the parties does not have legal force and evidence as a marriage.

References

- Abdul Djamali, Islamic Law (Based on the Curriculum Provisions of the Legal Studies Consortium), Masdar Maju, Bandung, 2002. p. 75-76.
- Abdurrahman and Riduan Syahrani, Legal Problems of Marriage in Indonesia, Alumni, Bandung, 1986, p. 16.
- Arif Marsal and Ryna Parlyna, Marriage Registration: Between Pillars of Marriage and Administrative Requirements, An-Nur, Volume 4 Number 1, Sultan Syarif Kasim State Islamic University, Riau, 2015, p. 50.
- Batubara, M. (2019). Islamic Communication Pattern of Judges in Dealing Conflict of Muslim Families in the Religious Court Medan. *Budapest International Research and Critics Institute (BIRCI-Journal)*, p. 373-386.
- Constitutional Court Decision Number 46/PUU-VIII/2010 dated 13 February 2012, p. 20-21.
- Directorate General of Law and Legislation, Ministry of Justice, undated, History of the Formation of the Marriage Law, Directorate General of Law and Legislation, Ministry of Justice, Jakarta, p. 10.
- DY Witanto, Family Law: Rights and Position of Out-of-Marriage Children After the issuance of the Constitutional Court's Decision on the Judicial Review of the Marriage Law, Achievement of Publisher Libraries, Jakarta, 2012, p. 142.
- Hendra, Y. et al. (2019). Family Communication Model in Forming Pious Children. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. P.28-38
- Kutbuddin Aibak, Contemporary Fiqh Studies, Teras, Yogyakarta, 2009. p. 39.
- MA Tihami and Sohari Sahrani, Jurisprudence Munakahat (Complete Study of Marriage Jurisprudence), PT. RajaGrafindo Persada, Jakarta, 2014. p. 8
- Moeljatno, The Criminal Code (Jakarta: Bumi Aksara, 2006), p. 105-106.
- Moh Zahid, Twenty-Five Years of Implementing the Marriage Law, Ministry of Religion RI Agency for Religious Research and Development and Religious Education and Training, 2002. p. 2.
- Muladi, Democratization of Human Rights and Legal Reform in Indonesia (Jakarta: The Habibi Center, 2008), p. 4-5.
- Neng Djubaidah, , Marriage Registration and Unregistered Marriages according to Indonesian Written Law and Islamic Law, Sinar Graphic, Jakarta, 2010, p. 1.
- Rofiq, Renewal of Islamic Law, Sinar Graphic, Jakarta, 2013, p. 78.
- Sholeh Soeaidy and Zulkhair, Legal Basis for Child Protection (Jakarta: Novindo Pustaka Mandiri, 2001), p. 3.
- Supani, Marriage Registration in the Text of Marriage Laws in Several Islamic Countries from the Perspective of Proposed Fiqh, 2011, <http://almanahij.net/.../Penjaringan%20perkawinan%20dlm%20teks%20per%20> (accessed December 10, 2021)