

Legal Status of Children Born as a Result of Unregistered Marriage (Siri) on the Position of Children According to Marriage Law

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Abstract. The analysis of the community situation describes the phenomenon that among the societies there are still many people who do not understand the legal consequences of unregistered marriages, such as regarding inheritance and the legal status of children born as a result of unregistered marriages. The problems that may arise when there are still people who carry out unregistered marriages, then problems arise regarding the position of children born out of wedlock and inheritance rights when the husband dies and joint property rights when a divorce occurs. It is possible that the community around us will experience it. Unregistered marriage is very legally detrimental to the wife. Legal wives are not given to women. If his husband passes away, he will not receive an inheritance or a living. Additionally, the wife does not have the right to gono-gini property in the event of a divorce because the marriage is legally regarded as having never taken place. Because there is no legitimate evidence in the form of a marriage certificate, a husband who performs an unregistered and irresponsible marriage easily ignores his rights and obligations to his wife, who is married multiple times. The legal consequences of unregistered marriages also apply to children born of those marriages. The clarity of the husband and wife's marital status through genuine evidence of their union is the basis for determining the child's legal status. A marriage certificate serves as the foundation for managing the child's birth certificate. When a child is born and needs a birth certificate, the population office will not issue one if the husband and wife have never registered their marriage. In order to maximize legal protection for the parties to a marriage, legal awareness is needed. The implementation method is a solution offered to overcome the problems faced by the community. In accordance with the priority issues faced by the community as mentioned above, the approach method offered to solve this problem is a descriptive normative empirical method. The results obtained can be seen on the position of the child in Article 55 of the Marriage Law which offers a solution if there is a child whose origin is unclear because he does not have a birth certificate, then the child's parents can apply for a determination of the origin of the child to the Religious Court.

Keywords: unregistered (*Siri*) marriage, legal consequences; status

1 Introduction

One of life's most significant events is marriage. Marriages between men and women have physical and spiritual effects not only on the families of each community but also on the assets they acquire together before and after the marriage..

Every living creature has the human right to continue their offspring through marriage, namely through culture in carrying out a marriage carried out in Indonesia. Every person or

couple (male and female) if they are married, then there is a bond of obligations and rights between them and the children born from that marriage. Marriage according to law no. 1 of 1974 on marriage (hereinafter referred to as matrimonial law), is not only a civil act, but also a religious one, because, regardless of whether a marriage is legal or not, the point of reference is all in matrimonial law. every religion. and the beliefs they hold.

As required by Law No. As husband and wife, a man and a woman form an external and internal bond with the goal of creating a happy and eternal family (household) based on a single deity. One of the initial frameworks for obtaining legal guarantees in the union is the process of registering a marriage with the appropriate authority, which was established in Section 1 of the Marriage Act of 1974. This has an effect on Muslims, Christians, Hindus, Buddhists, Muslims, and Catholics. In accordance with Law No. 22 of 1946, Law No. Law No. An explanation of article 1 regarding the registration of marriage, divorce, and reconciliation is also included in Section 32 of 1954. By Presidential Instruction No. 2, the Marriage Act of 1974's Article 2 paragraph 2 was strengthened. Articles 5 and 6 of the 1991 Compilation of Islamic Law.

Marriage is a sacred phase of life because it must adhere to social norms. In addition, marriage is frequently performed under a variety of justifiable names, including carrying and running away, underhanded marriage, and contract marriage, making marriages, specifically unregistered marriages or unregistered marriages, the most common in the community. Unregistered marriages are those that take place in accordance with religious norms but are not recorded with the Marriage Registry Office (KUA). In his book, Supriyadi asserts that, in accordance with the Marriage Law Number 1 of 1974, a marriage performed without the presence of an authorized official constitutes a marriage performed under the hands. A siri marriage is one in which a female guardian marries a male, is witnessed by two people, and is not reported or registered with the Office of Religious Affairs (KUA).

Scholars are already aware of the term "siri marriage," also known as "secret marriage."It's just that the term "unregistered marriage" has a different meaning today than it did in the past.In the past, "siri marriage" meant getting married in accordance with the Shari'ah's pillars and conditions, with witnesses being asked not to tell the public about the marriage, and naturally, there was no "walimatul-ursy."The siri marriage, as it is known to Indonesians today, is a marriage performed by a guardian or deputy guardian and witnessed by witnesses. It is not registered at the Office of Religious Affairs for Muslims or the Civil Registry Office for non-Muslims, nor is it performed in the presence of a Marriage Registrar, an official government official.

Underhanded marriage is more likely to affect women (wife) and children (or children born of unregistered marriages) at this time. This is because a husband is obligated to support his wife and children who are the result of multiple marriages. However, since there is no written agreement (especially a marriage certificate), it is simple for the husband to break his promises or even abandon or neglect his children. Because of this, only the wife and child are the beneficiaries of an unregistered marriage, and because of this, the wife and child are unable to.

Although it is widely known that in principle, unregistered marriages are detrimental to women, until now this phenomenon is still often encountered. The practice of unregistered marriage does not only occur in people who are not legally educated, have low education, or middle to lower economic groups, but also occur in educated people who understand the law, or in the middle to upper class society which can be said to be economically viable. very well established. Not infrequently found among the general public, students, artists, scholars and even officials.

The implication of being invalid and not allowing the legal force of a marriage often lies in the position of the child resulting from the marriage. In other words, even though the child is legitimate, it does not have authentic evidence that can confirm that the child is legitimate from both parents. This has an unfavorable impact on the lives of children born from underhanded marriages because children born from underhanded marriages tend to receive negative views and unfair treatment in society. In addition, in civil relations, these children will experience difficulties in obtaining their rights regarding the legality of their parents' marriage.

The position of children born from a marriage that does not have legal force has a juridical impact on the rights of public services that should be provided by an authorized agency. Wives who carry out unregistered marriages or children born from unregistered marriages cannot get legal protection and services. The status of a husband or wife who has an unregistered marriage is not recorded in the population register, so the child who is born cannot obtain a birth certificate, even if the biological father dies, the child cannot claim his inheritance rights (Rusydi, 2019). Except, the father's acknowledgment of the child must be done with an authentic deed.

marriages that are not registered and are commonly referred to as "marriage siri," "marriage under the hand," or "marriage siri." The Arabic word for "secret" is "sirra," which is the origin of the word "siri." According to Wasian (2010), the term "sirri marriage" refers to a secret or covert union. According to Siri, "marriage is a marriage between a man and a woman," and its application is solely based on Islamic law without regard to Law No. 16 of 2019 amending Law No. 1 of 1974 regarding marriage. Unregistered marriages typically take place only in the presence of a *ustad*, also known as a community leader, or only on the basis of customs.

The marriage must be carried out in accordance with Article 2 paragraph (1) of Law No. One of 1974 reads, "Marriage is legitimate, on the off chance that it is done by the law of every religion and conviction". Furthermore, legal certainty is required for a legal act, as stated in Article 2 paragraph 2: Every marriage is recorded in accordance with the regulations and laws in place." "Marriage is legal, if it is carried out in accordance with Islamic law in accordance with Article 2 paragraph (1) of Law No." In the meantime, is stated in relation to marriage in Article 4 of the KHI.1 of 1974. Marriage registration is only an administrative obligation and not a requirement for a valid marriage, according to those who argue that the only requirement for a marriage to be recognized legally is that it complies with Article 2 paragraph 1 of Law No. 1 of 1974 regarding marriage, which is carried out in accordance with Islamic law by perfectly fulfilling the conditions and pillars. In principle, in accordance with Law No. Marriage is monogamous in accordance with Section 1 of the 1974 Marriage Act; However, in order for a husband to remarry, he must follow the marriage law's rules allowing him to request permission to marry multiple people (polygamy).

Another understanding that arises from this article is that marriage is permissible so long as the law is interpreted in accordance with one's religion. Marriage is legal under Islamic law if the conditions and pillars are met. In Islamic law, the conditions and pillars of marriage do not require marriage registration to be valid, while Article 2 paragraph (2) of the Marriage Law does "The marriage registration of those who carry out their marriages according to their religion and belief other than Islam, is carried out by civil servants. marriage registrar at the civil registry office as referred to in various laws regarding marriage registration", Article 2 paragraph (2) means that people who want to get married should notify the state.

According to the two paragraphs of Article 2 of the Marriage Act, there is a legal debate about whether or not religious marriages that are not recorded in state legal documents are valid. This issue has led to the existence of a marriage that is approved by religion but is not

recognized as such by state law. As a result, the state does not fully protect men and women's rights and responsibilities.

In the event that a marriage has been enlisted or enrolled with the Common Library Office, it is thought of as legitimate from a common point of view. Legal provisions declare a marriage to be invalid even if it meets religious and legal requirements and has not been registered.

If it goes back to Islamic Marriage Law, the marriage is valid and entitled to the provisions of Islamic Marriage Law as long as it meets the requirements and pillars, such as: B. the legal relationship between the wife and husband, between the children and their parents, inheritance, and divorce settlement. or if one partner passes away.

Marriage registration is nothing more than an administrative step in the marriage from a religious perspective; It does not establish the legality of the marriage. when the legal provisions regarding a marriage's validity are examined. The following is how national marriage works: Marriage is legitimate, on the off chance that it is done by the law of every religion and conviction". Additionally, it is stated that every marriage is recorded in accordance with the applicable regulations and laws. In accordance with the preceding law, marriages that have not been registered are void of any legal force that provides husband and wife with legal protection. so that the perpetrators of the unregistered marriage's legal status and consequences are unclear.

Apart from being flawed in the eyes of the law, unregistered marriages are also socially flawed. Not all people can understand, because the background of holding a series of marriages gives rise to negative views, for example the assumption of living together in a house without official ties due to infidelity, polygamy, disapproval of parents, already pregnant and so on. Even though in real terms, it is a man and a woman who carry out unregistered marriages, these opinions are also directed at women. People's perception of second wives, mistresses, unwanted pregnancies and so on is a stereotype as if only women are at fault. Therefore, as long as there are legal guarantees that can provide protection to women, why not take advantage of them.

In the interim, Constitutional Court Decision No. Regarding the decision 46/PUU-VIII/2010 of the Constitutional Court, which granted judicial review of the 1974 Marriage Law No. 1. Regarding children born out of wedlock as stated in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage, the article states that "children born out of wedlock have a civil relationship with their mother and mother's family as well as with men as their fathers who can be proven based on science and technology and/or other evidence which according to law has blood relations, including civil relations with his father's family. Based on this background, the author takes the title "**Legal Status of Children Born as A Result of Unregistered Marriage (Siri) on the Position of Children according to the Marriage Law**"

Formulation of the Problem

Based on the above contextual, the writer formulates the problem as follows:

1. What is the legal status of unregistered marriage on the position of children according to Indonesian Marriage Law?
2. What are the legal consequences of unregistered marriages on the position of children according to the Indonesian Marriage Law?

Research Objectives and Benefits

The purpose of this paper is to provide legal knowledge to the public regarding the legal status and legal consequences of unregistered marriages according to Indonesian law. However, specifically, the aim is to contribute to the author's thoughts on the importance of knowing and understanding the law regarding the legal status of unregistered marriages and their legal consequences in accordance with the laws that govern them.

2 Research Methods

The method used in this study is an empirical juridical research method by analyzing the problem carried out by combining legal materials (which are secondary data with primary data) obtained in the field, namely about unregistered marriage and its legal consequences.

The normative juridical approach is based on the main legal material by examining theories, legal principles and laws and regulations related to this research. This research is a qualitative and descriptive research

3 Results and Discussion

The legal status of Siri's marriage to the position of the child according to the marriage law in Indonesia

Legal Status of Siri Marriage According to Law Number 1 of 1974 concerning Siri Marriage, it is religiously legal but not legal in state administration. Marriage that is legal or legal under state administration is regulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning marriage. Marriage practices carried out in Indonesia must refer to the applicable law, because to minimize any wrong steps or marriage procedures and result in prolonged problems and harm the parties concerned.

The Legal Status of Siri Marriage According to the Compilation of Islamic Law (KHI) and according to Law Number 1 of 1974 concerning Marriage is a codification and unification of national marriage law which places Islamic law as having its own existence without being accepted by customary law.

The government's policy to make marriage registration regulations is *siyasa as-syar'iyah*, namely policies taken by the government which are believed to be able to bring its people into a life that contains *maslahah* (advantages) even though there is no law that regulates it. In general, Islamic law aims to achieve benefit. The achievement of the purpose of marriage must be supported by all means that must be taken, one of which is the registration of marriages.

According to the Compilation of Islamic Law, Article 14 states the pillars and conditions of marriage, namely:

- a. Future husband
- b. Future wife
- c. Guardian of marriage
- d. Two witnesses
- e. Acceptance and acceptance.

The law of unregistered marriage according to religious rules is legal. Siri marriage is permitted or permitted if the conditions and pillars of marriage are met.

When viewed legally in force in our country regarding the marriage legislation it is not valid because in the legislation there are administratively incomplete.

The Legal Consequences of Siri Marriage on the Position of the Child according to the Marriage Law in Indonesia

In addition to violating the marriage law in Indonesia, married in a serial manner also has many negative impacts, especially for women and children.

1. The legal negative impacts on women (wives) are as follows:
 - a. Not recognized as a wife, because the marriage is considered invalid. Because women who marry sirri do not have proof in the form of a marriage certificate, the result is that if the husband is not responsible, he is not considered a wife, even though the marriage is carried out according to religion and belief, but in the eyes of the state, sirri marriage is considered invalid if it has not been recorded by the Office of Religious Affairs. (KUA) or the Civil Registry Office (KCS).
 - b. Neglect of rights and obligations. A husband who does a sirri marriage is easy to ignore his rights and obligations both physically and mentally and it is easy to be irresponsible as a husband to the wife he married sirri because there is no evidence in the form of a marriage certificate, as authentic evidence.
 - c. Not entitled to a living, inheritance and distribution of joint property. A further consequence of unregistered marriage is that the wife has no right to demand a living if her husband is still alive and is not responsible, cannot claim inheritance from her husband if he dies, because the marriage was never considered to exist according to Indonesian law, and cannot demand the distribution of joint property if there was a divorce, because there was no authentic evidence stating that they had married sirri.
 - d. Does not provide legal certainty. Sirri marriages do not provide legal certainty, namely when there is a legal dispute (eg wanting to take legal actions such as buying and selling land or houses, applying for credit to a bank, and so on) because there is no authentic evidence, so the marriage is never considered to exist according to Indonesian law. In addition, sirri marriages are prone to problems of domestic violence. stairs, because if the husband is not responsible, he can act arbitrarily.
2. Negative Impact on Children The following are the negative impacts on children legally born from unregistered marriages:
 - a. The child only has a civil relationship with the mother and the mother's family. Sirri marriages have a negative impact on the status of children born in the eyes of the law, namely: the status of children born is considered as an illegitimate child. Consequently, the child only has a civil relationship with the mother and the mother's family. That is, the child has no legal relationship with his father (Article 42 and Article 43 of Law No. 1 of 1974, Article 100 KHI).
 - b. Children are not entitled to a living, inheritance and other rights. As long as there is no denial from the father of the sirri marriage or the perpetrator is responsible, then in terms of providing a living or other rights there is no problem. However, if there is denial or the father is not responsible for leaving the child from a sirri marriage, this will harm the child. Children are not entitled to the cost of living and education, maintenance and inheritance from their father. The right of maintenance and inheritance will be lost because the child does not have any evidence, then the child will get his rights only from his mother.

- c. Children resulting from unregistered marriages are vulnerable to being victims of exploitation. Among them, such as prostitution and child trafficking. Because in general, children who are victims of unregistered marriages are usually neglected and not taken care of both in terms of economy, health, education and their future. This happens because children who are married sirri are cared for by their mothers who (for example) are not economically independent or are only entrusted to their parents in the village with relatively low health insurance. As a result, they suffer from malnutrition.

4 Conclusion

First, the Legal Status of Siri Marriage According to Law No. 1 of 1974 concerning Marriage Siri marriages are religiously legal but not legal in state administration. Marriage that is legal or legal in state administration is regulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning marriage. Even though a unregistered marriage is a legal marriage, it must still be registered. Marriage registration is an administrative rule, and there are no legal sanctions for those who do not register their marriages, it's just that these unregistered marriages do not have legal force.

Second, the legal consequence of Siri's marriage to women is that they are not recognized as wives, because marriages are considered invalid. Because women who marry sirri do not have proof in the form of a marriage certificate, the result is that if the husband is not responsible, he is not considered a wife, even though the marriage is carried out according to religion and belief, but in the eyes of the state, sirri marriage is considered invalid if it has not been recorded by the Office of Religious Affairs. (KUA) or the Civil Registry Office (KCS). As a result, unregistered marriages do not provide legal certainty because there is no authentic evidence, so the marriage is never considered to exist according to Indonesian law and the wife is not entitled to a living, inheritance and distribution of joint assets. In addition, the legal consequences of unregistered marriages also affect children born from such unregistered marriages. The clarity of the marital status of husband and wife through authentic evidence of their marriage becomes the basis for the clarity of the legal status of the child. As for the management of the child's birth certificate, the basis is a marriage certificate.

5 Suggestion

First, the parties, especially women who carry out unregistered marriages, even though marriages are legally valid, must still be registered with the Office of Religious Affairs (KUA) or the Civil Registry Office (KCS) in order to have legal certainty.

Second, to minimize the legal consequences arising from unregistered marriages and provide legal certainty, registered unregistered marriages will have authentic evidence, so that the wife is entitled to a living, inheritance and distribution of joint assets. Likewise, children born from unregistered marriages have authentic evidence of their marriage, which becomes the basis for clarity on the legal status of the child.

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