

THE AMBIGUITY OF USING THE STATEMENT OF ABSOLUTE RESPONSIBILITY BASED ON MINISTER OF HOME AFFAIRS REGULATION NUMBER 109 OF 2019: Study in Dharmasraya Regency, West Sumatra Province, Indonesia

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Abstract: Marriages are required to be registered under the provisions of Law Number 1 of 1974, specifically Article 2. This registration plays a crucial role in establishing the legality of marriages and enables the utilization of different associated benefits. Meanwhile, unregistered marriages give rise to a range of legal issues, including uncertainties regarding lineage, concerns related to maintenance, and inheritance rights. In line with the Ministry of Home Affairs Regulation Number 109 of 2019 regarding Population Administration, couples involved have the option to obtain important documents such as the Population Identification Card (KTP), Birth Certificate, and Family Card (KK) by signing a Statement of Absolute Responsibility (SPTJM). This situation raises significant concerns regarding the legal implications of unregistered marriages. Therefore, this study aimed to employ an empirical legal approach with qualitative methods and obtained data through interviews, observations, and documentation. The data analysis used Miles and Huberman's method to uncover the meaning within Ministry of Home Affairs Regulation Number 109 of 2019 regarding Unregistered Marriages and unveiled the ambiguity in understanding the true meaning. Furthermore, a study conducted in Dharmasraya Regency in 2021 discovered the issuance of 69,144 Family Cards by the Directorate General of Population and Civil Registration, and 22,453 (32.47%) were unregistered marriages. Only 194 individuals applied for validation (*isbat*) within 3 years, where 101, 27, and 66 were accepted, rejected, and revoked, respectively. In conclusion, the community perceived their marriages to be legal due to the issuance of Ministry of Home Affairs

Regulation Number 109 of 2019, even though the SPTJM did not legalize the concept or hold legal authority over the consequences.

Keywords: Ambiguity, SPTJM, Unregistered Marriages

Abstrak: Perkawinan harus tercatat berdasarkan UU Nomor 1 Tahun 1974 Pasal 2. Pencatatan Perkawinan merupakan urgensi untuk legalitas dalam pemanfaatan akibat perkawinan. Perkawinan yang tidak tercatat menimbulkan masalah hukum, tidak jelasnya nasab, masalah nafkah dan hak waris. Ditetapkan Permendagri No 109 Tahun 2019 Tentang administrasi kependudukan dinyatakan bahwa pasangan yang melakukan pernikahan tidak tercatat dapat memperoleh Kartu Tanda Penduduk (KTP), Akta Kelahiran dan Kartu Keluarga (KK) dengan menandatangani Surat Pernyataan Tanggung Jawab Mutlak (SPTJM). Kondisi ini menimbulkan permasalahan tentang akibat hukum yang ditimbulkan dari perkawinan yang sah. Penelitian merupakan hukum empiris dengan pendekatan kualitatif, teknik pengumpulan data berdasarkan wawancara, observasi dan dokumentasi, analisis data memakai metode Miles dan Huberman yang bertujuan menggali makna yang terdapat dalam Permendagri Nomor 109 Tahun 2019 berkaitan dengan pernikahan tidak tercatat (nikah Siri) sehingga dapat menyingkap ambiguitas pemahaman atas makna yang sebenarnya. Temuan penelitian di kabupaten Dharmasraya pada tahun 2021 ada 69.144 kartu keluarga yang telah dikeluarkan DUKCAPIL, sebanyak 22.453 (32,47%) diantaranya adalah pernikahan yang tidak tercatat. Dari 22.543 tersebut hanya 194 yang mengajukan isbath nikah dalam jangka tiga tahun dengan rincian 101 diterima, ditolak 27 dan dicabut 66. Penelitian menyimpulkan, masyarakat memiliki pemahaman terbitnya Permendagri Nomor 109 Tahun 2019 dianggap perkawinannya legal. Padahal SPTJM tidak dapat melegalkan dan tidak mempunyai kekuatan hukum terhadap akibat perkawinan.

Kata Kunci: Ambiguitas, SPTJM, Nikah Siri

Introduction

The presence of substantiated evidence for marriage is highly important,¹ and the responsibility for registration rests with husbands, ensuring legal protection for their wives and children. The aim is to foster societal well-being and establish a framework of legal assurance regarding the occurrence.² Meanwhile, marriage certificate serves as

evidence for the wives and children to claim the husbands' obligation of financial support, determine the guardian, and establish inheritance rights. The increasing prevalence of unregistered marriages also complicates population administration data. The certificate is a primary requirement for managing population administration, such as Family Cards and Birth Certificates.

¹ Rachmadi Usman, "Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan di Indonesia," 2017.

² Itsnaatul Lathifah, "Pencatatan Perkawinan: Melacak Akar Budaya Hukum Dan Respon

Masyarakat Indonesia Terhadap Pencatatan Perkawinan," *Al-Mazaahib: Jurnal Perbandingan Hukum* 3, no. 1 (2015).

Therefore, the Minister of Home Affairs issued Regulation Number 109 of 2019 using Form F 1.05.³

Marriages are a completeness of administrative requirements, and the validity depends on religious rules. The registration serves as a form of protection for the civil rights of wives and children, such as inheritance rights. In practice, many people do not register their marriages with the Registrar (PPN). Although these marriages hold significant religious significance, they fail to fulfill the essential administrative criteria, resulting in the absence of certificates. In this situation, the husbands and wives cannot engage in legal actions, and their children are only recognized by the state as having civil rights. Therefore, clear regulations are needed to ensure that all marriages are registered with legal implications.⁴

Unregistered marriages lack documented evidence of their existence due to non-inclusion in official records. The purpose of registration is to achieve welfare and obtain legal certainty regarding the occurrence of a union.⁵ However, many people engage in unregistered marriages due to various reasons and limitations. These marriages are selected for their practicality and simplicity,⁶ because administrative documents from the

village, sub-district, or Office of Religious Affairs (KUA) are not required.⁷ Some factors that lead people to opt for these marriages include 1) social factors related to age limits, second marriages, and changes in domicile, 2) economic limitations, and 3) religious factors where unregistered marriages are often seen as a solution to avoid adultery and sin.⁸

Marriage registration in the Civil Registry is based on Article 33 of Presidential Regulation Number 96 of 2018 regarding the Requirements and Procedures for Population Registration and Civil Registration,⁹ including 1) a Birth Certificate, 2) a Marriage Book/Certificate or other valid proof, 3) Family Card (KK), 4) Electronic Identity Card (e-KTP). Furthermore, Article 34 states that individuals can submit a Statement of Absolute Responsibility (SPTJM) regarding the accuracy of data when they do not possess a Marriage Book/Certificate or any other valid document. This Presidential Regulation is followed up by Ministry of Home Affairs Regulation Number 109 of 2019 regarding the Forms and Books Used in Population Administration.

The negative impact caused by the absence of a Marriage Book is the incomplete requirements for population data entry conducted by the Department of Population and Civil Registration.¹⁰ To gather data on

³ Rofik Samsul Hidayat, "Kontroversi SPTJM (Surat Pernyataan Tanggung Jawab Mutlak) Dalam Permendagri Nomor: 109 Tahun 2019," *Jurnal Pendidikan Tambusai* 6, no. 1 (2022): 2409-15.

⁴ Ibid.

⁵ Eko Setiawan, "Fenomena Nikah Siri Dalam Perspektif Sosiologi Hukum," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 13, no. 1 (2016): 135-55.

⁶ Eddie Gunawan, "Siri's Marriage and Its Legal Consequences According to the Marriage Law," *STAIN Sharia Department. Manado*, 2013.

⁷ Rihlatul Khoiriyah, "Aspek Hukum Perlindungan Perempuan Dan Anak Dalam Nikah Siri," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2017): 397-408.

⁸ Siti Aminah, "Hukum Nikah Di Bawah Tangan (Nikah Siri)," *Jurnal Cendekia* 12, no. 1 (2014).

⁹ Kadek Dwiky Nugraha Yoga Trisna, Ketut Sudiatmaka, and Ni Ketut Sari Adnyani, "Implementasi Peraturan Presiden Nomor 96 Tahun 2018 tentang Persyaratan dan Tata Cara Pendaftaran Penduduk dan Pencatatan Sipil terhadap Proses Perceraian pada Perkawinan Tidak Tercatat di Kabupaten Buleleng" *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 297-314.

¹⁰ Monica Putri Maharani and Anjar Sri Ciptorukmi Nugraheni, "Legalitas Dan Akibat Hukum Kedudukan Anak Yang Lahir Dari Perkawinan Siri Pada Dinas Kependudukan Dan Pencatatan Sipil Kabupaten Sukoharjo," *Jurnal Inovasi Penelitian* 2, no. 3 (2021): 849-54.

unregistered marriages and fulfill the necessary administrative materials, an SPTJM is issued that serves as a substitute for the Marriage Book for processing Birth Certificates and Family Cards.¹¹

The need for SPTJM arises from the requirement to manage family administrative documents, such as obtaining Birth Certificates to complete the necessary educational records for children. The practice of unregistered marriages using Form F 1.05 leads to various problems in addressing the legal consequences. These problems include a low amount of marriage validation (*isbat*), lack of legal certainty, the stigma surrounding unregistered marriages, and the attempts to legitimize marital relationships and prevent adultery.

This study aims to explore the meaning contained within Ministry of Home Affairs Regulation Number 109 of 2019 regarding the use of SPTJM concerning unregistered marriages, thereby uncovering the ambiguity in the legal understanding of the resulting meaning within the community and analyzing the legal dualism.¹²

Method

The study employed juridical empirical and normative approaches using qualitative methods. Data collection was conducted through interviews, documentation, and observation. The primary data sources included the Dhamasraya Regency Religious Court Office, consisting of Salman SHI., M.A. (Head), Zam Zami Saleh Lc., M.A., and Rashid Adilla, S.H. (judges), as well as Rudi Aldrin (Secretary of the Department of Population and Civil Registration). Meanwhile, the secondary data sources were archives and data from the Department of

Population and Civil Registration as well as documents from the Office of Religious Affairs and the Court. The data analysis technique used the Miles and Huberman method.

Results and Discussion

Findings

The population of Dhamasraya Regency was 226,264 people with a density of 77 people/km², consisting of 114,775 males and 111,489 females. The number of Family Cards was 69,144 where 22,453 were unregistered marriages, which required the issuance of SPTJM for the Family Cards based on Ministry of Home Affairs Regulation Number 109 of 2019 using Form F1.05.

Table 1. Residents of Dhamasraya Regency in 2019

No	Family Cards	Unregistered Marriages	Gender	Number
1	69,144, 1	22,453	Male	114,775 peoples
2			Female	111,489 peoples
				226,264 peoples

Source: Minister of Home Affairs Regulation Number 109 of 2019

Many people in Dhamasraya Regency engage in unregistered marriages based on information from the Civil Registry Office. Obtaining a Family Card is crucial for individuals. Furthermore, it serves as their identity and proof of family membership in the nation, contributing to citizenship status.¹³ People without a Family Card face difficulties in obtaining and owning an Electronic Identity Card (e-KTP). Moreover, they are unable to access social assistance due to a lack of proof as citizens as well as an

¹¹ Hidayat, "Kontroversi SPTJM..."
¹² Duta Agung Rohmansyah, "Analisis Sinkronisasi Hukum Tentang Peraturan Pencatatan Perkawinan Di Indonesia Antara Undang-Undang Nomor 1

Tahun 1974 Dengan Peraturan Menteri Dalam Negeri Nomor 9 Tahun 2016" (UIN Sunan Ampel Surabaya, 2022).
¹³ Setiawan, "Fenomena Nikah Siri..."

official address and residential area. Employees of the Dhamasraya Civil Registry Office (interviewed on October 28, 2021) explained the requirements for obtaining a Family Card under Article 11 of Presidential Regulation Number 96 of 2018.¹⁴ These requirements include:

1. Proof of marriage, which can be a Marriage Book/Certificate or a divorce certificate.
2. Proof of changes in domicile (specifically for Indonesian citizens who have moved within Indonesia).
3. Proof of changes in domicile for Indonesian citizens returning from abroad.

Individuals with unregistered marriages who wish to apply for a Family Card,¹⁵ should complete and attach Form F1.05 in the form of a statement signed by 2 witnesses. This form is part of the requirements for services concerning identification documents as well as issues related to marriage and divorce as stated in Article (1) letter b. These documents include:

1. Form F-1.04 (certificate of not having identification documents)
2. Form F-1.05 (SPTJM)
3. Form F-1.06 (certificate of changes in population data)
4. Form F-1.07 (certificate of administrative service authority)
5. Form F-2.03 (certificate of the correctness of birth data)
6. Form F-2.04 (certificate of being legitimate husbands and wives)

Many couples who engage in unregistered marriages do not utilize the Validation Institution¹⁶ to legalize their marriages and have official records. The results of interviews with judges from the Religious Court of Dhamasraya ReGENCY showed the following:

1. Many couples who enter into unregistered marriages refrain from seeking validation due to the societal stigma suggesting that such validation is not in line with Islamic principles.
2. Limited information about validation is available to the community, resulting in a lack of awareness regarding government programs related to this validation.
3. Troubles arise when attempting to validate marriages because the unregistered marriages performed involve unauthorized polygamy, and the women lack proof of divorce from their previous husbands (polyandry).
4. There is a stigma that the process of obtaining marriage validation is complicated, involving different administrative requirements.
5. Many couples under unregistered marriages are reluctant to pursue validation due to the distance between the Religious Court and their place of residence (Interview with Zam Zami Saleh Lc., M.A, and Rashid Adilla, S.H., October 28, 2021).

Problems faced by the community in obtaining marriage validation¹⁷ include:

1. Most of the community members reside in areas far from the regency capital or the Office of Religious Affairs.
2. The cost of obtaining marriage validation is too expensive.
3. Most of the community still holds the belief that marriages only require the involvement of a religious figure.
4. The community has been influenced by prominent figures, both community and religious leaders, specifically those who officiate or present themselves as authorized guardians, who claim that

¹⁴ Trisna, Sudiarmaka, and Adnyani, "Implementasi Peraturan Presiden Nomor 96 Tahun 2018..."

¹⁵ Elimartati, "Bunga Rampai Perkawinan Di Indonesia," 2014.

¹⁶ Ramdani Wahyu Sururie, "Polemik Di Seputar Hukum Isbat Nikah Dalam Sistem Hukum Perkawinan Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 2 (2017): 233–46.

¹⁷ Hidayat, "Kontroversi SPTJM..."

there is no need to register the marriages. They consider it troublesome and believe that religious marriages alone are sufficient.

5. Marriage performed by a judge's guardian (unauthorized individual), who is considered a religious figure, is claimed to be valid according to religious beliefs (Interview with a participant in an unregistered marriage, October 28, 2021).

Legal Implications of Unregistered Marriages

Based on observations and information from informants, the number of couples who are engaging in unregistered marriages is proliferating rapidly.¹⁸ According to data obtained from the Civil Registry Office, 22,453 individuals (32.47%) who registered for a family card declared that their marriages were not recorded.¹⁹ A study in the Junjuhan Sub-district indicated that most unregistered marriages fulfill the necessary conditions and requirements, but remained unrecorded. Due to the distance between their residences and the Office of Religious Affairs, they opted to marry through informal means such as Marriage Registrar Assistant officers and community leaders. The registrar did not process their marriage certificates (interviews with individuals committing unregistered marriages).²⁰

Information from the Religious Court of Dhamasraya Regency regarding marriage validation shows 103, 55, and 36 cases in 2019,

2020, and September 2021, respectively. Based on the data obtained, the total number of cases over three years amounts to 194. The number is significant compared to the number of unregistered marriages recorded for family card purposes at the Civil Registry Office, which amounted to 22,453, as shown in the following table or diagram.

Table 2. Marriage Validation Cases at the Religious Court of Dhamasraya Regency

No	Year	Total Cases
1.	2019	103 Cases
2.	2020	55 Cases
3.	2021	36 Cases
	Total	194 Cases

The data documented by the Civil Registry Office shows a significant figure within the community, as individuals who apply for a family card are genuinely in need. Furthermore, individuals who seek validation from the Religious Court are those who require a marriage certificate.²¹

Besides determining the marriage legality according to applicable laws, both civil and Islamic, applying for validation at the Religious Court is also urged by several specific interests in fulfilling administrative requirements for document processing. The document processing includes registering their child's birth certificate, enlisting for Hajj or Umrah, and accessing government services, requiring official documents to confirm marriage status (Interview with

¹⁸ Nailasara Hasniyati, "Implikasi Pelayanan Terpadu Isbat Nikah, Penerbitan Akta Nikah, dan Akta Kelahiran terhadap Perlindungan Hak Identitas Hukum (Studi Kasus di Kabupaten Purbalingga Tahun 2015-2016)," n.d.

¹⁹ Natasya Immanuel Sandjojo and Agus Yudha Hernoko, "Akibat Hukum Pembatalan Akta Kelahiran terhadap Anak," *Perspektif* 23, no. 2 (2018): 84-93.

²⁰ Muhammad Dliyaul Haq, "Dampak Hukum Penggunaan Surat Pernyataan Tanggung Jawab Mutlak Terhadap Legalitas Anak Dalam Membuat

Dokumen Kependudukan. Program Studi Hukum Keluarga" (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, n.d.).

²¹ Helmi Muti Sofie, "Surat Pernyataan Tanggung Jawab Mutlak (SPTJM) Sebagai Kebijakan Afirmatif Dalam Menyelesaikan Problematika Perkawinan Tidak Tercatat Perspektif Perlindungan Hukum Dan Mashlahah Mursalah Al-Ghazali" (Universitas Islam Negeri Maulana Malik Ibrahim, 2022).

judges and Civil Registry Office employees, October 28, 2021).

Some applications were withdrawn, amounting to 22, 25, and 19 cases in 2019, 2020, and 2021.

Table 3. Marriage Validation Applications at the Religious Court

No	Year	Total Cases
1.	2019	22 Cases
2.	2020	25 Cases
3.	2021	19 Cases

Instances for withdrawing marriage validation applications encompass situations where the applicants have been married for 2 to 3 months and have yet to experience parenthood.²² In such circumstances, it is advisable to proceed with registering the marriage at the Office of Religious Affairs instead.

There are also many rejected cases, with 9, 10, and 8 in 2019, 2020, and 2021, because of incompatibility with Law Number 1 of 1974²³ on Marriage and the Compilation of Islamic Law. These reasons include underage and elopement marriages, as well as marriages attended by only 1 witness or a guardian who is not the biological father or legal guardian of the bride.

The proliferation of unregistered marriages is triggered by facilitators. There is a stigma in the community that marriage serves as an alternative to prevent young

generations from committing adultery.²⁴ Additionally, the community may be reluctant or lazy to process the necessary documents at the Office of Religious Affairs.

Unregistered marriages have significant consequences and problems within the community, particularly for the women involved as wives and children. These issues include difficulties in seeking alimony, obtaining a guardian, inheritance rights, and establishing the lineage of the children.²⁵ Moreover, there are challenges in dealing with administrative documents such as birth certificates and family cards. Unregistered married couples also face difficulties in accessing government services that require a registered marriage certificate.²⁶ This includes receiving government assistance, such as health cards and social aid (Interview with judges and Civil Registry Office employees, October 28, 2021).

Unregistered marriages have significant negative impacts on women and children. To minimize the occurrence,²⁷ the Religious Court makes efforts such as increasing the socialization of marriage validation by involving various parties, including community leaders, religious figures, and traditional leaders.²⁸ It is incorporated into preaching and sermons on marriage topics (Interview with a judge from the Religious Court of Dhamasraya, October 28, 2021).

²² Rahmat Hidayat et al., "Review of Maqāsid Al-Syarī'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency," in *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, vol. 22, 2022, 213–28.

²³ Law Number, "1974 on Marriages," 1AD.

²⁴ Juraeri Tahir et al., "Faktor-Faktor Penyebab Nikah Siri Di Sulawesi Barat," *Jurnal Diskursus Islam* 5, no. 2 (2017): 283–302.

²⁵ Edi Gunawan, "Nikah Siri Dan Akibat Hukumnya Menurut UU Perkawinan," *Jurnal Ilmiah Al-Syir'ah* 11, no. 1 (2013).

²⁶ Agus Manurung and Lusiana Sulastri, "Polemik Pencatatan Anak Dari Nikah Siri," *Jurnal Hukum Sasana* 7, no. 2 (2021): 322–32.

²⁷ M Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga," *At-Taujih: Bimbingan Dan Konseling Islam* 2, no. 2 (2020): 96–108.

²⁸ Fitria Olivia, "Pelaksanaan Perolehan Akta Kelahiran Bagi Anak Luar Kawin Dan Kendalanya Di Suku Dinas Kependudukan Dan Catatan Sipil Kotamadya Jakarta Barat," *Lex Jurnalica* 9, no. 1 (2012): 18043.

The Process of Registering a Birth Certificate at the Civil Registry Office

The marriage registration at the Civil Registry Office refers to Article 33 of the Presidential Regulation Number 96 of 2018 regarding the Requirements and Procedures for Population and Civil Registration.²⁹ It states that birth registration should meet several requirements and when unfulfilled, a different type of birth certificate will be issued:

1. Regular birth certificate requirements include 1) birth certificate, 2) Marriage Certificate or other valid proof, 3) Family Card (KK), and 4) Electronic Identity Card (e-KTP).
2. In the case of children born from unregistered marriages, when the parents' marriage is not officially recorded as required by Article 34, it is possible to obtain a substitute for the birth certificate by completing Form F 1.05. This form serves to verify the accuracy of the information provided and should be accompanied by the presence of two witnesses.³⁰
3. A single mother's certificate is issued to applicants who cannot provide SPTJM.³¹ The certificate is only granted to applicants who do not have a marriage certificate or a copy and do not possess SPTJM. Therefore, the child is only recognized as the biological child of the mother without an acknowledged father. (Interview with Rudi Adrin, Secretary of the Department of Population and Civil Registration, Dhamasraya Regency, October 28, 2021).³²

Discussion

The Minister of Home Affairs regulation governing the management of family cards and birth certificates has caused an ambiguity in the meaning of Law Number 1 of 1974³³ on marriages, specifically Article 2 regarding registration. There is ambiguity in the true meaning of the marriage institution and the origin of children. The existence of the family card encounters numerous obstacles and serves as weak proof to explain the presence of family members since it is unilaterally created through the proof of signature.

The legal position of wives is undermined and marriages do not establish a reciprocal legal relationship of rights and obligations between husbands and wives. The fulfillment of rights and obligations by each party cannot be based on legal claims but is only limited to a goodwill stage by each party. This creates legal ambiguity regarding the origin of children. There is reluctance among the community to seek marriage validation. According to the majority of the community, the issuance of the family card and birth certificate gives the impression that their unregistered marriages are legally recognized according to state regulations³⁴. However, family cards and birth certificates cannot serve as evidence to claim rights and obligations arising from invalid marriages.

Furthermore, marriage validation is not a priority for the community, mainly due to its lengthy process. This led to the utilization of SPTJM in civil registration and population administration, disrupting the rules governing marriages. The new regulations

²⁹ Trisna, Sudiarmaka, and Adnyani, "Implementasi Peraturan Presiden Nomor 96 Tahun 2018..."

³⁰ Olivia, "Pelaksanaan Perolehan Akta Kelahiran ..."

³¹ Salsa Devi Sisti Alifianti et al., "Degradasi Otoritas KUA Sebagai Lembaga Pencatatan Perkawinan Pasca Berlakunya SPTJM Dalam Permendagri No. 9 Tahun 2016," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 4, no. 1 (2023): 59-80.

³² Migel M. Al-Parisy, "Analisa Pasal 4 ayat 2 Peraturan Menteri Dalam Negeri No. 9 Tahun 2016 tentang Surat Pernyataan Tanggung Jawab Mutlak (SPTJM) bagi Pelaku Nikah Sirri pada Dinas Kependudukan dan Pencatatan Sipil Bangkinang Perspektif Maqashid al-Syariah" (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2023).

³³ Number, "of 1974 on Marriages."

³⁴ Hidayat, "Kontroversi SPTJM..."

provide a lenient approach to serving the community with unregistered marriages, which has resulted in a decrease in interest among the community to seek validation for their unregistered marriages. These fulfill the requirements and conditions for marriages conducted at the Office of Religious Affairs to avoid engaging in illegitimate relationships.

The regulation governing the phrase "unregistered marriages" on the family card is under Minister of Home Affairs Regulation Number 109 of 2019. This aligns with the mandate of Law Number 1 of 1974 regarding marriages, which requires registration. Therefore, the law takes precedence over ministerial regulations. It is proper for the law to be the primary guide in application and action, under the legal principle: *Lex Superior Derogat Legi Inferior* (that higher regulations override lower regulations). Furthermore, the provision of the SPTJM regarding marital status becomes counterproductive with the Minister of Home Affairs Regulation since the family card recognizes 3 statuses, namely unmarried/married, widow, and widower.

The issuance of the SPTJM serves as evidence for civil registration administration required for children in obtaining birth certificates for education and other purposes. However, it does not fulfill the provisions of Maqasid Shariah in preserving religious values by prohibiting adultery and maintaining lineage. This is because the status of children and the appointment of a guardian for girls born from unregistered marriages become uncertain. This also includes the preservation of property rights since the material rights, such as maintenance, inheritance, and *mut'ah* in the event of dissolution, are not safeguarded. In addition, SPTJM cannot resolve urgent matters that disrupt the continuity of life. This is related to the lack of maintenance of legal

certainty regarding the upbringing of children and the rights of wives related to the preservation of religion, lineage, wealth, and honor (*maqashid syariah*).

The community's practice of engaging in unregistered marriages and using the SPTJM form for family card and birth certificate administration creates legal uncertainty. Information from the Office of Religious Affairs and the Religious Court shows that many unregistered marriages do not fulfill the requirements and conditions, rendering them invalid. Therefore, these marital relationships are equivalent to adultery where Allah SWT equates the act with polytheism (Q.S 24:3), resulting in children born outside of marriages. Couples engaged in unregistered marriages should remarry at the Office of Religious Affairs to legalize their union. The marriage management information system (SIMKAH) indicates their marital status when they apply for a family card using the SPTJM.

Judicial authorities at the Dhamasraya Religious Court have communicated that legal measures are conducted to reduce the prevalence of unregistered marriages and the utilization of SPTJM (Certificate of Marriage Solemnization) for population administration purposes. These efforts encompass empowering communities and the media, promoting the dissemination of regulations and informational resources on marriages. The measures aim to address the concerns of unregistered marriages that undermine the legal foundations of valid marriages under positive and Islamic family law.

Based on the Minister of Home Affairs Regulation Number 9 of 2016,³⁵ when 2 individuals enter into an unregistered marriage, a Family Card can be obtained by completing and attaching the SPTJM. Therefore, their marriage is administratively

³⁵ Trisna, Sudiarmaka, and Adnyani, "Implementasi Peraturan Presiden Nomor 96 Tahun 2018..."

"legal" (recognized by the government), as evidenced by the marital status mentioned on their identity card (KTP) or unregistered marriage on the Family Card (KK). The legal status resulting from the SPTJM holds no legal force and is not recognized by government agencies other than the Ministry of Home Affairs.

The emergence of a new marital status known as unregistered marriages is based on the Minister of Home Affairs Regulation Number 118 of 2017 concerning Family Card Blanks, Registration, and Quotation of Civil Registry Certificate, which is a follow-up to the Minister of Home Affairs Regulation Number 9 of 2016. This status is included in the SIAK (Population Administration Information System) version 7. The implementation of the population database transition to SIAK 7 has created a discrepancy within the marriage registration system. This discrepancy contradicts the purpose of the marriage registration system to establish legal order and provide certainty through marriage evidence. It conflicts with the obligation of marriage registration as outlined in Article 2, Paragraph 2 of Law Number 1/1974 and Article 2 of Government Regulation 9/1975 on the Implementation of Law Number 1/1974 on Marriages. Consequently, this situation has resulted in an unclear understanding of the rules governing marital status, leading to a sense of ambiguity and uncertainty.

For unregistered marriages recorded by the Civil Registry, the community may be ambiguous since their marriages are already legal³⁶. The individuals involved believe that their marriages are recognized by the state. By fully using the existing rules and regulations, they perceive no necessity for

obtaining the SPTJM (Certificate of Marriage Solemnization).

Firstly, through the Religious Court, individuals who have entered into unregistered marriages can voluntarily apply for the validation. This is regulated in Article 49 paragraph (2) of Law Number 7 of 1989, as amended by Law Number 3 of 2006 and Law Number 50 of 2009 concerning Religious Court and its explanations.³⁷

The marriage validation only regulates 4 aspects, such as marriages before the enactment of Law Number 1 of 1974, the loss of marriage certificates, marriages carried out to settle divorce, and doubts about the validity of requirement. However, due to social developments, Supreme Court Regulation Number 1 of 2015 was issued, which permits validation as stipulated in Article 7 Paragraph (3) Letter e of the Compilation of Islamic Law (KHI). This law allows the submission of validation for individuals without legal impediments to marriages according to Law Number 1/1974.³⁸

Secondly, remarriage at the Office of Religious Affairs, after completing the necessary registration process, is allowed provided the concept remains in compliance with the prevailing rules and provisions. The registration cannot be backdated and should be based on the actual date. Children who are already born become a risk and have a deterrent effect on couples involved in unregistered marriages.

By implementing these measures to their maximum extent, the administrative order within various state institutions will be upheld. Consequently, the occurrence of unregistered marriages will be eliminated.

³⁶ Harnis Syafitri, "Eksistensi Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan terhadap Peraturan Poligami dan Nikah Siri dengan Ketentuan Mendapatkan Izin kepada Istri," *Jurnal Lex Justitia* 2, no. 1 (2020): 78–92.

³⁷ Arini Indika Arifin, "Reformasi Kekuasaan Mengadili Pengadilan Agama Berdasarkan

Undang-Undang Nomor 50 Tahun 2009 Tentang Perubahan Atas Undang-Undang Nomor 3 Tahun 2006 Tentang Peradilan Agama," *Millah: Jurnal Studi Agama*, 2017, 341–62.

³⁸ Ferdiyan Syah, "Kajian Yuridis Penetapan/Putusan Itsbat Nikah Sirri di Pengadilan Agama Slawi," (Universitas Pancasakti Tegal, 2022).

Conclusion

In conclusion, based on the Minister of Home Affairs Regulation Number 109 of 2019, couples in unregistered marriages were able to process their population administration according to existing regulations by attaching the SPTJM. This phenomenon led to a weakening of the Marriage Validation Institution since it was underutilized by the community. Furthermore, the community considered their marriages legal to handle Family Cards and children's Birth Certificates. Despite having a family card, it could not replace a marriage certificate as proof of the marriage's legal status.

The issuance of a single birth certificate is under Islamic law and serves as legal certainty for children born outside of valid marriages. From an Islamic legal perspective, children born outside of valid marriages only have lineage to their mothers. This was based on the concept of *maqasid al-shariah* to protect lineage (*hifz al-nasal*). Therefore, there was certainty in the status of children who only have lineage to their mothers. It also served as protection for property ownership (*hifz al-mal*) since the issuance of a single birth certificate establishes their position as heirs.

A birth certificate with a marriage record was not recognized by the law as a protection for lineage (*hifz al-nasal*), which provided clear and definite proof of the children's legitimate status. It also served as protection for property ownership (*hifz al-mal*), thereby ensuring their position as heirs.

SPTJM did not legalize or have legal force regarding the consequences of marriages. Unregistered marriages that fulfilled the pillars and requirements should be officially registered with the Religious Court, while invalid marriages should be solemnized at the Office of Religious Affairs.

SPTJM did not address urgent matters that disrupt the continuity of life. This was related

to the lack of preservation of legal certainty in the lives of children and wives regarding the preservation of religion, lineage, property, and honor (*maqasid al-shariah*). SPTJM created a significant loophole that contributed to the increase of unregistered marriages within society.

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