

Research article

Establish Family Card Towards Unregistered Marriage Couple (Implications of Law No. 1 Of 1974 And Compilation of Islamic Law)

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Abstract.

The high popularity of the practice of sirri marriage in Indonesia causes many residents who are not registered in the office of population and civil records (Dukcapil). Siri marriage is a method of marriage that is done religiously, has a guardian, and meets the pillars and conditions of marriage, but does not register the marriage at the Office of Religious Affairs (KUA). It makes the ministry of home affairs Zudan Arif Fakrullah statement on October 07, 2021, that if a married couple carries out the practice of marriage, sirri can get a family card (KK). The issue of legal marriage or not is often a polemic that results in unclear marital status, resulting in a negative impact for the parties involved, both wives, husbands, and children. This study is a qualitative descriptive study using normative phenomenological shorts. The results showed pros and cons among the public about the statement because it is not following the Government's law. The regulation of Law No. 1 of 1974 on Marriage Article 42 paragraph 1 states, "Legitimate children are children born in or as a result of a valid marriage." While what happens in sirri marriage is unrepresented, the child does not get the right. Thus, a new policy for serial marriage couples to get a family card with the provider must meet certain conditions.

Keywords: Siri Marriage; Marriage; Family Card

1. Introduction

The phenomenon of Siri marriage cannot be ruled out among the people of Indonesia. The practice of Siri marriage has become public consumption among the people of Indonesia; of course, this practice is done for various reasons, for example, a husband who does not get polygamy permission from his wife and the Court. Siri marriage is carried out by fulfilling marriage requirements following the rules in religion or customs without recording in the KUA office for Muslims and the Civil Registry Office for non-Muslims. Serial marriage is also called under-the-hand marriage in some opinions. The word Siri comes from the Arabic sirrun, which means something kept secret or hidden in him or his soul. By WJS. Poerwadarminta mentioned in an article written

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by Supriyadi that the word sir is interpreted as unseen or secret or hiding. Meaning when viewed from both meanings, Siri marriage is a marriage that is held by a married couple in front of ustad or kyai witnessed by two witnesses without any recording of marriage. In Islam, the practice of serial marriage already meets the legal requirements of marriage.⁽¹⁾ However, his marital status in the eyes of the law is not recognized and valid. The result of the continuity of Siri marriage practice is the status of sacrificed children. Because Siri's marital son cannot get his rights from their biological father, this reality provides obstacles and obstacles for children born due to Siri's marriage to be recognized by the state and gain freedom for its future. From there, as we know the case of a Machica Muchtar who had children from the results of her marriage to Moerdiono who conducted a judicial review (material test) on the testing of article 2 paragraph 2 and article 43 paragraph 1 of Law No. 1 of 1974 to the Constitutional Court. Then in 2012, the Constitutional Court (MK) issued a ruling No. 46/PUU-VIII/2010 on the legal position for children outside of legal marriage. It states that the Court received an application submitted by Machica Muchtar, who then recognized the status of the child and got his rights as expressed in article 43 paragraph (1) of Law No. 1 of 1974, whose provisions have been reviewed MK "children born outside of marriage have a civil relationship with his mother and mother's family and the man as his father that can be proven based on science and technology or other evidence according to the law has blood, including a civil relationship with his father's family."⁽²⁾ By article 47 of UUMK and the provisions of article 43 paragraph (1) and Article 100 of the Compilation of Islamic Law, there is no binding legal force. However, the Constitutional Court's decision is a valid ruling. It applies as a general, non-individual, and non-discriminatory law. Since siding opened on February 27, 2012, the Constitutional Court's decision has been binding on all Indonesian people. Recently, precisely on October 7, 2021, the Director-General of Population and Civil Registration (Dukcapil) of the Ministry of Home Affairs (Kemendagri), Zudan Arif Fakrulloh, stated that couples from Siri marriage could record family cards. That is as quoted from detikNews mass media published on Thursday, October 7, 2021; Zudan said, "later in the Family Card (KK) will be recorded marriage has not been recorded or marriage has not been recorded," which means the purpose of making KK for serial mating couples is to facilitate the Government in the collection of residents.⁽³⁾ Zudan also confirmed on the CNN Indonesia website, "we only note that there has been a marriage. Later in the KK will be written marriage has not been recorded or marriage has not been recorded," which means that Dukcapil's obligation is only limited to recording the marriage and its position is not to marry. The conditions that need to be met to create KK are additional conditions that the authorities have determined; namely,

Siri couples make a statement of absolute responsibility (SPTJM) with the truth of the married couple and known to two witnesses. From the statement, it is necessary to further examine the influence of the creation of KK for serial marriage couples by being associated with the implications of Law No. 1 of 1974 and the compilation of Islamic law.(4)

2. Methodology

This research is qualitative descriptive research with a normative juridical approach. The data sources in this study are taken from several references, namely journals, articles, laws, and other information related to the ownership of family cards for serial marriage couples. Literature research or literature studies (literature research, review literature serves as a systematic way to collect data that has been done. They used a different perspective of empirical evidence by getting multiple answers to questions. Data collection techniques are carried out by reading and collecting literature in the form of norm references related to the discussion of researchers. In managing the data, this study uses descriptive analysis.

3. Result and Discussion

3.1. Pros and Cons of Family Card Ownership for Married Couples Siri

Lately, social media has been flooded with news related to serial marriage couples who are not registered and recorded to obtain family cards (KK) in the same way as couples who are officially registered with the Ministry of Religious Affairs. The Government has established this directive through Executive Order No. 96 of 2018 and the Minister of Home Affairs 108 of 2019. However, experts, critics, and the public are busy discussing policies contrary to marriage law No. 1 of 1974.(5) So this makes the pros and cons of the practice of marriage not recorded. Some pro opinions about the ownership of family cards for serial marriage couples include the following:

3.1.1. Fulfillment of Citizens' Rights

The presence of family card ownership (KK) is essential, especially for children born from the results of the Siri marriage. Children born from Siri marriage have difficulty

taking care of birth certificates. Usually, the family card (KK) can only be taken care of from the mother's side. The child of the series marriage is considered invalid because the marriage is not allowed. An invalid affidavit must accompany the recording from the mother who gave birth to it. So the children tend to be ignored by their fathers because there is no evidence to link. This policy certainly gives better control over state documents on children's rights and is recognized by fathers. Thus the state should be able to fulfill the rights of its citizens without discrimination because it is appropriate to disclose related cases of serial marriage that are not recorded under the radar through record-keeping management.

3.1.2. Improper Socialization Can Lead to The Assumption That Siri Marriage Is Recognized By The State Due to The Influx of Family Cards

It is feared that this loophole will make Siri marriage practices can pay off—the party who intentionally cancels the registration for the sake of selfishness. For example, polygamy believes that a person does not need to ask permission from the first wife to remarry. Those who see an undocumented marriage as a cover for adultery without liability will remain married to an underage spouse. These types of people are the diseases in society that are needed to solve the problem because they will always look for legal loopholes themselves, So that should need to find and provide solutions and educate the disadvantaged parties, especially in this case for women. Then, on the other hand, there are also some cons to the ownership of family cards (KK) for serial marriage couples are as follows:(6)

a) Increasing Siri Marriage Practices

One of the issues that arise from the rules that allow husbands and wives to participate in family card ownership (KK) is the increasing number of Siri marriage practices in the community. This result is, of course, contrary to the goal that the Marriage Law wants to achieve, which is to expect administrative order in the field of marriage. The purposes of the laws and regulations are to marry officially and protect women and children's rights in the dynamics of family life.

b) Increase Marriage Book Application Through Itsbat

Another legal implication is to open up new avenues for issuing marriage books. Namely, first through itsbat, then through the Bureau of Religious Affairs (KUA). That raises the workload of the Kua in issuing marriage books for legally married couples and issuing marriage books based on marriage certificates issued by the Judge of the shari'ah court.

c) Increasing Demands of Marriage Istbat

The following legal implications may add to the burden of the Inquisition or the Syar'iyah Court to create a serial marriage for unregistered and recorded couples. First, one can choose to perform isbat marriage in the Shari'ah Courts. There is an opportunity to marry Siri; it will most likely increase the number of marriage isbat applications. Then, in addition, it can also increase the frequency of marriage isbat applications for serial marriage couples.

d) Punishment for Domestic Offenders Cannot Refer to PKDRT Law

Granting permission for the ownership of family cards (KK) for serial marriage couples does not affect domestic violence law because, in this case, someone later can use the elimination of domestic violence (PKDRT). The criminal threat in the Law on Domestic Violence is higher than the threat stipulated in the Criminal Code in terms of persecution. Article 44 Paragraph 1 of the PDKRT Law imposes a maximum prison term of 5 years or a maximum fine of 5 years for anyone who commits physical violence in the household framework as referred to in Article 5. Set a fine of Rp. 15,000,000.00 (15 million rupiah).

According to TDP News, based on interviews conducted with Zidan Arif Fakhrolloh (Director General of Dukcapil Kemendagri) in Jakarta, there are many facts found in the community related to the number of perpetrators for serial marriage couples. Before 2016 Dukcapil had taken a Siri marriage policy to be recorded in one family card (KK). The existing policy in Indonesia for each resident must be recorded in the family card and written relationships. So, the family card (KK) is not allowed if there is no marital status. Because each of these marital statuses has its own variants. Then Dukcapil provides legal protection by recording marriage status in the law to clarify the father of the child of Siri marriage. Because by being written on the family card (KK), the child born the result of Siri marriage can be contained on the birth certificate by including the father and mother's names. Zudan Arif Fakhrulloh also explained that Indonesia had known four birth certificates. First, the birth certificate for a child with a complete father and mother is recorded. Second, the birth certificate for children who have a full father and mother and has not been recorded (Siri marriage) than in the birth certificate will be given the father's information, and married mother has not been registered. Third, birth certificates for children born out of wedlock who do not have a father and only include the mother's name. Fourth, the birth certificate with the child's name only because the child's origin is unknown. He also said that "All residents in Indonesia must be recorded on the family card. For couples, Siri can be included in one family card (KK)". The policy that Dukcapil has done is to protect the wife and child that has happened in Siri's marriage. When it has qualified and gets along with marriage, Siri marriage has been

considered legal. In the family card (KK) later, if it has been written the status of marriage has not been recorded, the child can be written the name of the mother and father in full. That will make the child of Siri marriage not lose nasab and get inheritance rights and the right to get a father as a guardian of marriage if the child is a daughter. Facts in the community have shown so many serial marriages that Dukcapil and the state have provided legal protection, especially for women and children of Siri marriage, their rights.(7) The requirement to register ownership of a family card (KK) for serial marriage couples is an absolute statement of responsibility to state that the couple is married and is known by the testimony of two witnesses. The category of witnesses is people who see, hear, and know the occurrence of the wedding. In the SPTJM document, it has been written that if the applicant has given false information, then the document that has been issued is declared null and void.(7)

3.2. Position of KHI and Law No. 1 of 1974 on Family Card Ownership for Serial Married Couples

In article 2 paragraph (2) of Law No. 1 of 1974, every marriage is recorded according to applicable laws and regulations. Also, in the KHI in article 5 paragraph (1), every marriage must be registered to ensure marriage order for the Islamic community.(8) While in the case of making KK in serial marriage couples, there is no marriage registration, so the absence of a marriage book is a condition of the making of the KK. Although it is written later in the KK that "marriage has not been recorded." Whereas the matter of administration is usually only a statement of marriage, not marriage, divorce life, and divorce died. Then the problem that arises after this rule's existence is the increasing practice of Siri marriage. According to Islamic law, Siri marriage has indeed been halal if the requirements and pillars of marriage are in accordance. First, there are two sides, a woman and a man. Second, there is a guardian. Third, there are witnesses. Fourth, there is a dowry. The fifth is the existence of a contract (ijab Kabul).(9) As mentioned in KHI article 14, there must be a prospective husband, wife, guardian of marriage, two witnesses, and ijab Kabul. Then in Law No. 1 of 1974 article 2 paragraph (1), marriage is legal if done according to the law of each religion and its beliefs. This article explains that the marriage carried out follows the terms and pillars of marriage then legally valid. While according to the positive law that applies in Indonesia, Siri marriage is a marriage that does not have a legal legality principle whose meaning is not following existing legislation as described in article 2 paragraph (2) and KHI article 5 paragraph (1) and (2). Furthermore, in article 7, paragraph (1) of KHI, it is mentioned that marriage

certificates made by marriage registrars can only prove marriage. While in the case of Siri marriage, which means the absence of marriage registration, the making of KK should not be able to be done. Then the existence of article 7 paragraph (2) of KHI that is in the case of marriage cannot be proven by a marriage certificate, can be submitted to the Religious Court. That is why the increase in marriage isbat application because of the new rule. Indeed, the purpose of the marriage isbat itself is that the union gets legal protection from the state. Therefore, every citizen who performs Siri marriage will eventually apply for marriage to the Religious Court to have the necessary personal papers and guarantee legal protection for married couples and children resulting from Siri marriage will get his rights, namely, birth certificates and other residency rights.⁽¹⁰⁾ The positive impact obtained from this rule is especially on the child's legal status, who will later get a birth certificate because the child resulting from Siri marriage is said to be less protected. It is due to the absence of a birth certificate so that the child does not have authentic evidence to prove the child's legal parents. However, in Law No. 1 of 1974 article 42, a legitimate child is born in or due to a legal marriage. While on the issue of the legal protection of children can be seen in the constitutional court decision No. 46 / PUU-VIII / 2010, where the child from extramarital results can be recognized by his father if proven by science and technology.⁽¹¹⁾

In addition to the problems outlined above, the creation of KK for serial marriage couples will also be legally weak because in KK written, "marriage has not been recorded." It is exemplified in cases when domestic violence (KDRT) cannot ensnare couples with Law No. 24 of 2004 on domestic violence, which means it will only be entangled in general criminal acts. Whereas in the law on the elimination of domestic violence article 44 paragraph (1) explained that every human who commits physical violence in the household, as referred to in article 5 letter a is punishable by imprisonment of a maximum of 5 years or a maximum fine of Rp 15,000,000, - which means the penalty rules in the PKDRT Law are higher than the rules stipulated in the Criminal Code. Therefore, KK's creation for married couples in this series is proven to rebel against other practices.⁽⁶⁾ Then explained again by the Ministry of Home Affairs Dukcapil, Zudan Arif Fakhrulloh, that the collection of family cards associated with Law No. 1 of 1974 article 2 paragraph (2) must be a marriage registration, while the output of marriage registration is a marriage certificate. He said that the creation of KK itself is intended for the collection of each resident to show the status of family relationships that have been regulated in the Population Administration Law No. 24 of 2013.

4. Conclusion

The emergence of the ministry of home affairs statement about the creation of KK for serial marriage couples raises pros and cons for the community. However, based on the above description, there are two conclusions, namely:

1. The constitutional court decision No. 46/PUU-VIII/2010 on the right to the position of children of extramarital outcomes has now been established as law and applies to all Indonesian citizens. The rules listed in article 43, paragraph 1 of Law No. 1 of 1974 concerning Marriage are revised. Therefore, the existence of a family card refers to the Court's ruling with a record of children born will get their rights. The ministry's statement on creating family cards for serial marriage couples aims to facilitate the collection of residents and provide legal protection, especially for wives and children of Siri marriage.
2. Ownership of family cards for serial marriage couples raises pros and cons among the community. The cons are that this regulation bumps into other norms, namely Law No. 1 of 1974 and the compilation of Islamic law (KHI) related to marriage registration. Meanwhile, according to Zudan Fakhruulloh, family cards for serial marriage couples are intended to collect residents to show the status of family relationships. Therefore, the conditions for obtaining a family card for serial marriage couples are only to deliver a letter of absolute responsibility (SPTJM) and be known to two witnesses.

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References

- [1] Supriyadi. Perkawinan Sirri dalam Perspektif Hukum di Indonesia. Yudisia J Pemikir Huk dan Huk Islam. 2017;8(1).
- [2] Ghusairi. Pengaruh Keputusan Kasus Machica Mochtar Terhadap Status Nasab Anak Luar Nikah Di Indonesia. Madania. 2014;04(01).

- [3] detikcom T. Pasangan Nikah Sirri Bisa Buat Kartu Keluarga, Ini Contoh Dokumennya. detikNews. 2021.
- [4] Indonesia C. Kemendagri: Pasangan Nikah Siri Bisa Buat Kartu Keluarga. CNNIndonesia. 2021.
- [5] Tribunnews.com. Kemendagri: Pasangan Nikah Siri Tak Punya Buku Nikah, Bisa Punya Kartu Keluarga, Apa Syaratnya. 2021.
- [6] Fadli. Implikasi Yuridis Terhadap Penerbitan Kartu Keluarga Bagi Pasangan Nikah Siri di Indonesia. Mediasas. 2021;04(01).
- [7] Metrotvnews. Pasutri Nikah Siri Kok Bisa Dapat Kartu Keluarga? 2021.
- [8] Direktorat Pembinaan Peradilan Agama Islam DAITJEN Pembinaan Kelembagaan Islam Departemen Agama. Kompilasi Hukum Islam. 2001.
- [9] Asripa. Nikah Sirri Dalam Perspektif Islam. imtiyaz. 2020;04(01).
- [10] Sanawiah. Isbat Nikah Melegalkan Pernikahan Sirri Menurut Hukum Positif Dan Hukum Agama (Studi Di Pengadilan Agama Palangka Raya). Anterior J. 2015;15(01).
- [11] Deby D. Implementasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang anak di luar nikah (studi kasus di kabupaten kuningan). logika. 2018;09(01).