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## Issuance of Family Cards: An Overview of *Maslahah* Against Legitimacy of Marital Status for *Sirri* Married Couples

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### Abstract

*This study aims to comprehensively describe the issuance of Family Cards in the perspective of maslahah (social benefit) and justice for the legitimacy of marriage for sirri married couples in Bengkulu Province. This research is a qualitative empirical research with a statutory approach, a case and field approach, and a concept approach. This study found that the issuance of Family Cards for marriages of unmarried couples is a form of upholding justice in a social (commutative) framework where everyone has the same rights over marital status. On the other hand, the issuance of a Family Card for unmarried couples can be categorized as maslahah al-khassah (special benefit) which benefits only a few parties, not maslahah al-ammah (general benefit) which applies to the whole community. This study also found that the impact of including the statement "Unregistered Marriage" in the issuance of Family Cards for unregistered married couples can lead to maslahah al-mulghah in the form of legal confusion regarding the legality of one's marriage while at the same time hindering the updating of centralized data which is on the government's agenda.*

Keywords: Family Card, Sirri Marriage, social benefit, Justice

## Penerbitan Kartu Keluarga: Tinjauan Kemaslahatan terhadap Legitimasi Status Perkawinan Bagi Pasangan Nikah Siri

### Abstrak

*Penelitian ini bertujuan untuk mendeskripsikan secara komprehensif penerbitan Kartu Keluarga dalam perspektif kemaslahatan dan keadilan terhadap legitimasi perkawinan bagi pasangan nikah sirri di Propinsi Bengkulu. Penelitian ini berjenis penelitian empiris kualitatif dengan pendekatan perundang-undangan, pendekatan kasus dan lapangan, dan pendekatan konsep. Penelitian ini menemukan bahwa penerbitan Kartu Keluarga bagi perkawinan pasangan nikah sirri merupakan bentuk penegakan keadilan dalam kerangka sosial (komutatif) di mana setiap orang memiliki hak yang sama atas status perkawinan. Disisi yang lain, penerbitan Kartu Keluarga bagi pasangan nikah sirri dapat dikategorikan sebagai maslahah al-khassah (maslahat khusus) yang menguntungkan beberapa pihak saja, bukan maslahah al-ammah (maslahat umum) yang berlaku bagi seluruh masyarakat. Penelitian ini juga menemukan bahwa dampak dari pencantuman keterangan "Kawin Tidak Tercatat" dalam penerbitan Kartu Keluarga bagi pasangan nikah sirri tersebut dapat menimbulkan maslahah al-mulghah berupa kekacauan hukum mengenai legalitas perkawinan seseorang sekaligus menghambat pemutakhiran data terpusat yang menjadi agenda pemerintah.*

Kata kunci: Kartu Keluarga; Nikah Sirri; *Maslahah*; Keadilan .

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## A. Introduction

The state of Indonesia is a country that upholds the rule of law in all fields, so that all existing rules both within the scope of public law and private law must be enforced imperatively. Marriage registration is an administrative requirement<sup>12</sup> which must be carried out by the government based on the mandate of statutory regulations that have long been in force. Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage, in Article 2 paragraph (1) states that:

Registration of marriages for those who carry out their marriages according to the Islamic religion, is carried out by Registrar Employees as referred to in Law Number 32 of 1954 concerning Registration of Marriages, Divorces and Reconciliation.<sup>3</sup>

In Article 3 paragraphs (1) and (2) it is also stated that: Paragraph (1): Every person who is going to get married shall notify his wish to the Registrar at the place where the marriage will take place; Paragraph (2) : The notification referred to in paragraph (1) is made at least 10 (ten) working days before the marriage takes place.

Violation of the provisions on the registration of marriages can be subject to criminal penalties as regulated in Article 45 paragraph (1) of the same regulation, namely: ... whoever violates the provisions regulated in Article 3, 10 paragraph (3), 40 of this Government Regulation is punished by a maximum fine of Rp. 7,500 (seven thousand five hundred rupiah).<sup>4</sup>

In addition to the government regulations above, there are also two other regulations governing the registration of marriages, namely Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia and Regulation of the Minister of Religion Number 20 of 2019. Article 5 of the

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<sup>1</sup> This means that the marriage remains valid, because the standard of whether or not a marriage is valid is determined by the religious norms of the parties carrying out the marriage. Marriage registration is regulated because without registration, a marriage has no legal force, See. Ahmad Rofiq, *Hukum Perdata Islam Indonesia*, (Jakarta: Rajawali Pers, 2013): 93.

<sup>2</sup> Rofiq Ahmad, "Hukum Perdata Islam Di Indonesia," (*Jakarta: Raja Grafindo Persada*), 2013.

<sup>3</sup> See. Pasal 1 ayat (1) Undang Undang Nomor 22 Tahun 1946 tentang Pencatatan Nikah, Talak, dan Rujuk, terutama mengenai sanksi yang ditetapkan bagi pelanggarnya dalam Pasal 3 ayat (1).

<sup>4</sup> See. Pasal 3 ayat (1) Undang Undang Nomor 22 Tahun 1946 tentang Pencatatan Nikah, Talak, dan Rujuk, mengenai sanksi asal yang ditetapkan bagi pelanggarnya.

Compilation of Islamic Law states that: Paragraph (1) : In order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded. Paragraph (2) : The registration of the marriage referred to in paragraph (1) is carried out by the Marriage Registrar as stipulated in Law Number 22 of 1946 jo. Law Number 32 of 1954. Furthermore, it also mentions the technical implementation and legal status of marriages that are not registered by the state. Article 6 paragraph (1) and (2) of the Compilation of Islamic Law states that: Paragraph (1) : To fulfill the provisions in Article 5, every marriage must take place before and under the supervision of a Marriage Registrar. Paragraph (2) : Marriages performed outside the supervision of a Marriage Registrar do not have legal force.

In order to carry out orderly administration, transparency and legal certainty in the implementation of Islamic marriages, the Minister of Religion Regulation Number 20 of 2019 concerning Marriage Registration was issued. The regulation regulates the registration of the will of marriage, examination of documents of the will of marriage, rejection of the will of marriage, announcement of the will of marriage, marriage agreements, the implementation of registration of marriages to the handover of the Marriage Book to the bridal couple.

Based on the several regulations above, it can be concluded that the registration of marriages has long had an important meaning in marriage law in the positive law of the Indonesian state. Marriage registration is a procession that must be carried out for married couples.

Registration of marriage actually has a legal basis in the Qur'an which can be used as evidence to support its realization in society. Al-Qur'an Surah Al-Baqarah / 2 verse 282 states which means: Meaning: "O you who believe, if you don't do mu'amalah in cash for a specified time, you should write it down. and let a writer among you write it correctly."

Based on qiyas – as a method of interpretation of Islamic law, the registration of marriages which is a mu'amalah legal act becomes an important thing to do as is the importance of recording non-cash transactions in mu'amalah activities among Muslims. In other words, it can be formulated that marriages which are sacred are of course far more important to be recorded for the sake of orderly government administration.

It should be underlined that the registration of marriages is only done for marriages registered with the Office of Religious Affairs (KUA). As for marriages that are not registered beforehand, they will be termed "underhand marriage" or "sirri marriage". Talking about sirri marriages, these administratively flawed marriages are still often found in society today. Marriage without the role of the marriage registrar tends to harm the woman (wife). Apart from not providing civil legitimacy for a wife, unregistered marriages tend to harm the wife's position in her family.<sup>5</sup>

At the beginning of October 2021 an interesting phenomenon related to sirri marriages occurred, namely the massive issuance of Family Cards by the Population and Civil Registry Service (Dukcapil) in a number of regions to accommodate the needs of sirri marriage partners.<sup>6</sup> The issuance of the Family Card is intended to provide legal certainty regarding sirri marriage status as well as proof of marital status for sirri marriage partners.<sup>7</sup> The Family Card will then be used as a requirement for managing other population needs.

The issuance of the Family Card is based on Government Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, as well as Minister of Home Affairs Regulation Number 109 of 2019 concerning Forms and Books Used in Population Administration.

Government Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration implies a stipulation that all important events in a person's life can be recorded in the civil registration register at the Dukcapil Service. Article 1 paragraph (2) states that:

Civil Registration is the recording of important events experienced by a person in the Civil Registration register at the Regency/Municipal Population and

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<sup>5</sup> Jahar, "Hukum Keluarga, Pidana Dan Bisnis: Kajian Perundang-Undangan Indonesia, Fikih Dan Hukum Internasional. Jakarta: Kencana Prenadamedia Group & UIN Jakarta Press, 2013"

<sup>6</sup> Ismet Selamat, "Disdukcapil Cetak 50 Ribu KK Pasangan Nikah Sirri di Cianjur", *detiknews.com*, October 08, 2021. <https://news.detik.com/berita-jawa-barat/d-5758824/disdukcapil-cetak-50-ribu-kk-pasangan-nikah-sirri-di-cianjur>, Rahmat Hidayat, "Ratusan Pasangan Nikah Sirri Buat KK di Bekasi", *okezone.com*, October 13, 2021. <https://megapolitan.okezone.com/read/2021/10/13/338/2485459/ratusan-pasangan-nikah-sirri-buat-kk-di-bekasi>, October 9 2021.

<sup>7</sup> Andi Saputra, "Nikah Sirri Nasibmu Kini, Bisa Dicatat di KK tapi Tak Diakui UU Perkawinan", *detikNews.com*, October 13, 2021. <https://news.detik.com/berita/d-5764657/nikah-sirri-nasibmu-kini-bisa-dicatat-di-kk-tapi-tak-diakui-uu-perkawinan>.

Civil Registration Service or the Technical Implementation Unit of the Population and Civil Registration Service.

Based on the provisions of the government regulations above, there is a loophole for recording *sirri* marriages on the Family Card, with the assumption that *sirri* marriages can be categorized as an important event in one's life journey. On the basis of this legal logic, the registration of *sirri* marriages is necessary to continue to be carried out. Article 12 letter b of the intended government regulation can be the basis for issuing a Family Card for unregistered married couples by attaching a Statement of Absolute Responsibility (SPTJM) as proof of a religious marriage or a statement of *sirri* marriage. The SPTJM will act as a description of changes in population events and important events required.

There were pros and cons regarding the issuance of Family Cards for unmarried married couples by the Department of Population and Civil Registry. On the one hand, the issuance of the intended Family Card provides a space for public recognition of unmarried married couples in the form of a Family Card, but on the other hand, this issuance creates the impression of overlapping main tasks and functions (*tupoksi*) between the Dukcapil Office and Marriage Registrars from the Office of Religious Affairs (KUA) and even the The Religious Courts have the authority to issue marriage certificates.

Even though it was later acknowledged that the Dukcapil were not in a position to marry – they only noted that a marriage had taken place.<sup>8</sup> This kind of condition can risk other legal consequences in the future, so it is necessary to examine its legal certainty, its compatibility with the values of justice in society, and its *maslahah*

s among Muslims.

The theory of justice is a very important norm/principle in Islamic law. The word "fair" is mentioned in many places in the Qur'an, even to the third place after the names of Allah and science.<sup>9</sup> Justice in Islam is placing things only in their place

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<sup>8</sup> Statement of Zudan Arif Fakrullah (Direktur Jenderal Kependudukan dan Pencatatan Sipil Kementerian Dalam Negeri) dalam Marlinda Oktavia Erwanti, "Pasangan Nikah *Sirri* Ternyata Bisa Buat Kartu Keluarga", October 07, 2021, <https://news.detik.com/berita/d-5756446/pasangan-nikah-sirri-ternyata-bisa-buat-kartu-keluarga>.

<sup>9</sup> Muhammad Daud and H Ali, "Asas-Asas Hukum Islam," *Jakarta: Rajawali Pers*, 1991.

and giving things only to those who are entitled and treating things according to their position.<sup>10</sup> "Mashlahah" is definitively interpreted as everything that is beneficial to humans,<sup>11</sup> that can be achieved by humans by obtaining it or by avoiding it. The essence of syara' orders and prohibitions is basically to realize the goals of sharia which are returned to a rule, namely *jalb al-mashalih wa dar'ul mafasid* (attracting benefit and rejecting damage).<sup>12</sup> This article examines the Issuance of Family Cards for Siri Marriage Couples in Bengkulu Province and its *maslahahs* for the Legitimacy of Marital Status for Siri Marriage Couple. It becomes an interesting thing when the conflict of interest above is confronted diametrically with the theory of *maslahah* and the theory of justice contained in Islamic law, because Islamic law recognizes the theory of *maslahah* initiated by Imam Maliki and popularized by Ash-Syatibi, as well as the theory of justice which is disseminated by Imam al-Ghazali. Both types of theory will be used as a "scalpel" for the analysis of the problems studied using a combination of approaches that are relevant to the research objectives.

## B. Methods

The research conducted is qualitative empirical research. The approach used is a statutory approach, a case and field approach, and a conceptual approach. The research team uses primary data and secondary data. The primary data used comes from the object under study and/or other objects related to research, while the secondary data in this study includes three legal materials, namely: Primary legal materials, secondary legal materials and tertiary legal materials.<sup>13</sup> Data were obtained directly from the object under study, namely the Dukcapil and KUA in Bengkulu Province or other parties related to them in the field through deep interview techniques (deep interviews in field research). Several informants were selected by purposive sampling according to research needs. Collection of secondary and tertiary legal data was obtained by means of literature searches (documentation

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<sup>10</sup> Fathurrahman Djamil, *Hukum Ekonomi Islam: Sejarah, Teori, Dan Konsep* (Sinar Grafika, 2023).

<sup>11</sup> Totok Jumentoro and Samsul Munir Amin, *Kamus Ilmu Ushul Fikih* (Amzah, 2005).

<sup>12</sup> Ika Yunia Fauzia, *Prinsip Dasar Ekonomi Islam Perspektif Maqashid Al-Syariah* (Kencana, 2014).

<sup>13</sup> Peter Mahmud Marzuki, "Penelitian Hukum, Kencana" (Jakarta, 2005).

studies), both through studies in libraries and data searches through websites (websites). The secondary data in question were collected through the method of documentation study (library research) in various places including available libraries.

The next step is to process and analyze the data, so that the meaning contained in it can be interpreted. Both legal material obtained in the field and obtained from documentation studies, both of which will be processed by coding, then through the editing and classifying stages according to the needs of the researcher. The legal material that has been classified is then analyzed by interpreting and describing the data based on the principles of *maslahah* and justice theory.<sup>14</sup> The research used the cycling method popularized by Milles and Huberman in conducting content analysis from the data collection stage, followed by data display, then data reduction, and ended with a conclusion drawing (verifying).<sup>15</sup>

### C. Result and Discussion

#### a. Legal Arguments for the Issuance of Family Cards for *Sirri* Married Couples by the Population and Civil Registry Service (Dukcapil) in Bengkulu

Law is a tool, not a goal,<sup>16</sup> but the goal is human. The existence of law in society, in fact, can not only be interpreted as a means of controlling people's lives, but also as a means that can change people's mindsets and behavior patterns.<sup>17</sup> The main objective of law is to create an orderly social order, to create order and balance. In achieving this goal, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating how to solve legal problems and maintaining legal certainty.<sup>18</sup>

Certainty is a matter (statement) that is certain, conditions or provisions. The law essentially must be certain and fair. Legal certainty is a question that can only

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<sup>14</sup> Burhan Ashshofa, "Metode Penelitian Hukum, Cetakan Keenam, PT," *Rineka Cipta, Jakarta*, 2010.

<sup>15</sup> Dr Sugiyono, "Memahami Penelitian Kualitatif," 2010.

<sup>16</sup> P T RajaGrafindo Persada, "Problematika Hukum Indonesia, Teori Dan Praktik," n.d.

<sup>17</sup> Ellya Rosana, "Hukum Dan Perkembangan Masyarakat," *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 9, no. 1 (2013): 99–118.

<sup>18</sup> Laurensius Arliman, "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia," *Dialogia Iuridicia: Jurnal Hukum Bisnis Dan Investasi* 11, no. 1 (2019): 1–20.

be answered normatively, not sociologically.<sup>19</sup> Legal certainty is a situation in which human behavior, both individuals, groups and organizations, is bound and is in the corridor that has been outlined by the rule of law.<sup>20</sup>

Legal certainty according to Jan Michiel Otto defines as the possibility that in certain situations:

- 1) Availability of rules that are clear (clear), consistent and easy to obtain, issued by and recognized due to (power) of the state.
- 2) Authorities (government) apply these legal rules consistently and also submit and obey them.
- 3) Citizens in principle adjust their behavior to these rules.
- 4) Independent and thoughtful judges (judiciary) apply the legal rules consistently when they resolve legal disputes.
- 5) The court's decision is concretely implemented.<sup>21</sup>

Based on the facts and findings obtained in the research field through interviews with informants with the status of Heads of the Dukcapil Service in various Regencies and Cities in Bengkulu Province (or those representing them), a common perspective of argumentation was obtained which stated that the issuance of Family Cards was the authority of the Dukcapil Office and has become its main task and function, namely to record events that occur in society. Not only recording marriage events, other events such as birth events (which are manifested in birth certificates) and death events (which are manifested in death certificates), both are recorded by the Dukcapil Service for population administration in accordance with applicable laws and regulations.<sup>22</sup>

The Dukcapil Service stated that the legal basis for issuing the Family Card can be found in Government Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration and confirmed by Minister of Home Affairs Regulation Number 109 of 2019

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<sup>19</sup> Dominikus Rato, "Realisme Hukum: Peradilan Adat Dalam Perspektif Keadilan Sosial," *Jurnal Kajian Pembaruan Hukum* 1, no. 2 (2021): 285–308.

<sup>20</sup> Samudra Putra Indratanto and Kristoforus Laga Kleden Nurainun, "Asas Kepastian Hukum Dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara Dan Peraturan Pemerintah Pengganti Undang-Undang," *Samudra* 2020 (2020).

<sup>21</sup> Raharjo Soeroso, *Pengantar Ilmu Hukum* (Sinar Grafika, 2020).

<sup>22</sup> Suwanto, "Interview with the Head of Dukcapil North Bengkulu Regency" (2022).



concerning Forms and Books Used in Population Administration.<sup>23</sup> Government Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration mandates that all important events in a person's life can be recorded in the civil registration register at the Dukcapil Service. Minister of Home Affairs Regulation Number 109 of 2019 concerning Forms and Books Used in Population Administration in Article 1 paragraph (2) states that:

Civil Registration is the recording of important events experienced by a person in the Civil Registration register at the Regency/Municipal Population and Civil Registration Service or the Technical Implementation Unit of the Population and Civil Registration Service.

The Dukcapil Office does not question the status of the Family Card applicant, whether the applicant is in a marital status that has been registered at the Office of Religious Affairs (KUA) or vice versa, has never registered a marriage. The focus of Dukcapil is to collect data according to events that occur in the midst of society, so that someone whose marriage is underhanded or unregistered marriage must still be able to be recorded according to the reality that is happening in society.<sup>24</sup>

There is a public opinion – which has been conveyed to the Dukcapil Office – that arranging marriages at the Office of Religious Affairs (KUA) takes a long time, costs a lot, and is impractical, as a result, the administrative documents needed by unregistered marriage partners quickly in order to obtain rights recognition of population and participation in social assistance provided by the government seem less accommodated.<sup>25</sup> On the other hand, there is an assumption that the community can "take cover" behind the opinion of classical scholars who think that unregistered marriage is a religiously valid marriage, so it does not need to be registered again at the local Religious Affairs Office.<sup>26</sup>

The author found an interesting fact in the field research conducted, that all Dukcapil Agencies agreed on one thing, that the "recording" of marital status listed on the Family Card does not require a recommendation from the KUA or proof of a

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<sup>23</sup> Dewi Ilmiawanti, "Interview with the Head of Dukcapil North Bengkulu Regency" (2022).

<sup>24</sup> Muradi, "Interview with the Head of Dukcapil Rejang Lebong Bengkulu Regency" (2022).

<sup>25</sup> Widodo, "Interview with the Head of Bengkulu City" (2022)

<sup>26</sup> Muradi, "interview".

Marriage Book.<sup>27</sup> A person who has performed unregistered marriage can obtain a Family Card by simply submitting an Absolute Accountability Letter (SPTJM) with the knowledge of the local regional apparatus. The SPTJM will be the basis for the issuance of the Family Card and is deemed sufficient to represent a legal instrument that justifies the information contained in the Family Card.

In addition, the Dukcapil Office also said that it has no interest in further checking regarding the status of a sirri marriage that has been carried out, whether it was actually carried out after obtaining permission from the first wife (for those who are polygamous) or whether the sirri marriage was carried out in accordance with the pillars and conditions marriage (for example related to the existence of a marriage guardian and the issue of itsbat marriage). According to the Dukcapil Office, the main duties and functions (tupoksi) of Dukcapil are only limited to recording important events that occur in society. In other words, the Dukcapil Office does not see any urgency to coordinate intensively with the Office of Religious Affairs and the Religious Courts in carrying out these basic tasks and functions.<sup>28</sup>

#### **b. Legal Arguments for the Issuance of Family Cards for Sirri Married Couples According to the Office of Religious Affairs (KUA) in Bengkulu**

##### **1. Marriage Sirri and the Urgency of Marriage Registration in the Office of Religious Affairs (KUA)**

Marriage is considered valid and occurs with the consent (submitting) uttered by the guardian of the prospective wife and the qabul (accepting) uttered by the male party in the presence of witnesses along with the availability of a dowry (dowry). This is the provision of the classical Islamic marriage doctrine, which is hereinafter widely known as the pillars of marriage.<sup>29</sup> There are no rules regarding the obligation to register marriages in classical Islamic law. Furthermore, the development of the times and the complexity of life have encouraged the scholars to carry out a reform related to marriage. Muslim countries realize the importance of carrying out marriage registration in order to obtain a clear basis for marital

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<sup>27</sup> Ilmiawati. interview".

<sup>28</sup> Oly Stupevis, interview with the head of Dukcapil Kepahiyang Regency" (2022).

<sup>29</sup> Heparpton, interview with the Head of KUA Kepahiyang Regency' (2022).

activities. In other words, marriage registration is a guarantee of legal certainty for marriage ties in the modern era.<sup>30</sup>

Currently, marriage registration is enforced in almost all Muslim countries in the world, even though the provisions differ from each other. There are countries that require registration of marriages for the sake of orderly administration with the threat of sanctions for violators, such as Brunei Darussalam, Iran and Pakistan. However, there are also countries that only make marriage registration an administrative requirement without any sanctions for those who do not register their marriages, such as marriage registration in Morocco and Libya. As for Syria, it is an example of a country that requires the registration of marriages and still recognizes marriages that are not registered.<sup>31</sup>

Indonesia is included in the category of countries that require marriage registration to be carried out by married couples who are about to get married. Couples who do not register their marriage at the Office of Religious Affairs do not obtain legal certainty about their marital status. The legal certainty in question is proven by the existence of a Marriage Book which is given to married couples who have registered their marital status at the Office of Religious Affairs through a Marriage Registrar. This mandatory registration provision gave birth to the term *sirri* marriage for marriages that are not registered at the Office of Religious Affairs.

Some Muslim communities still understand that the validity of marriage emphasizes a *fiqh*-centric perspective. This understanding has the substance that marriage is considered valid, if the conditions and pillars have been fulfilled based on the provisions of *fiqh*. As a consequence, marriage registration and marriage certificates are not seen as something important until there is an emergency need for them. This fact gives fresh air to the practice of *sirri* marriage, without involving Marriage Registrar (PPN) officers as officers entrusted with recording marriages. It will become a big problem if society's denial of the role of registering marriages is protracted, illegal polygamy without the permission of the first wife or without following the procedures of the Religious Courts can become a major obstacle to the realization of the implementation of Law Number 1 of 1974 concerning Marriage.

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<sup>30</sup> Ismul Kholidin, "interview with the Head of KUA Rejang Lebong Regency" (2022).

<sup>31</sup> Ahmad Tholabi Kharlie, *Hukum Keluarga Indonesia* (Sinar Grafika, 2022).

The above issues are disclosed to the reader with the intention that all parties – both the Dukcapil Office, the Office of Religious Affairs, the Religious Courts, and the general public – are aware of the urgency of justice and order (*masalah*) in a marriage. Further details regarding the obligation to register marriages can be found in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, in Article 5 paragraphs (1) and (2), Article 6 paragraphs (1) and (2) jo. Government Regulation Number 9 of 1975 Article 2.<sup>32</sup>

The two regulations above clearly state that the registration of marriages which is the prerogative of the Marriage Registrar is an attempt to guarantee the orderliness of the marriage. In addition, there are null and void sanctions against marriages carried out outside the supervision of the Marriage Registrar. With regard to this provision, the inclusion of the phrase "Unrecorded Marriage" by the Dukcapil Office on the Family Card –although it is not meant to legalize it – still gives the impression of acknowledging the marital status of unregistered married couples. In fact, in some cases it was found that sirri marriages that occurred were not in accordance with the pillars and conditions of marriage in Islam, for example mistakes in determining marriage guardians and violations of Law Number 1 of 1974 concerning Marriage,<sup>33</sup> namely Article 5 paragraph (1) when an unregistered marriage occurs without the permission of the first wife/previous wives.<sup>34</sup>

Marriages that are not registered at the Office of Religious Affairs as well as not recorded by the Marriage Registrar have serious consequences in Islamic civil law. In addition to not obtaining legal certainty regarding their marital status, married couples of sirri marriages – especially sirri wives – have the potential to suffer losses

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<sup>32</sup> Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law in Indonesia (KHI) Article 5 paragraph (1) "In order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded", (2) "The registration of the marriage mentioned in paragraph (1) is carried out by Marriage Registrar as regulated in Law Number 22 of 1946 jo. Law Number 32 of 1954"; Article 6 paragraph (1) "To comply with the provisions in Article 5, every marriage must take place before and under the supervision of a Marriage Registrar", (2) "Marriage performed outside the supervision of a Marriage Registrar has no legal force."; Government Regulation Number 9 of 1975, Article 2 "The registration of marriages of those who carry out their marriages according to the Islamic religion, is carried out by Registrar Employees, as stipulated in Law number 32 of 1954 concerning Registration of Marriages, Divorces and Reconciliation".

<sup>33</sup> Imam Setiawan, "Interview with the Head of KUA Central Bengkulu Regency" (2022).

<sup>34</sup> Law Number 1 of 1974 concerning Marriage, Article 5 paragraph (1) "To be able to submit an application to the court, as referred to in Article 4 paragraph (1) of this law, the following conditions must be fulfilled: a) There is approval from the wife/ wives."

in the future, if problems occur in the form of divorce disputes (gonogyny) or inheritance issues. If a dispute occurs in a sirri marriage – whether it is a divorce dispute or an inheritance dispute – then the dispute cannot be filed/resolved in the Religious Courts, because there is no legal basis for the validity of the marriage from the start, even though there is a Family Card stating the sirri marriage status. Underhanded marriages (sirri marriage) must also be resolved underhanded when a dispute arises in the marriage.<sup>35</sup>

The legal basis for registration of marriages by the Office of Religious Affairs is Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1) states that registration of marriages according to the Islamic religion is carried out by Registrar Employees as referred to in the Law Number 32 of 1954 concerning Registration of Marriage, Divorce and Referrals. Furthermore, in Article 3 paragraphs (1) and (2) it also regulates notification of the will to marry to the Registrar at the place where the marriage will take place no later than 10 (ten) working days before the marriage takes place. Violation of the provisions on the registration of marriages can be subject to fines as stipulated in Article 45 paragraph (1).

The above regulation is the only government regulation that clearly regulates the registration of marital status in Indonesian Muslim society. A provision that has been broadly and uniformly applicable throughout Indonesia since 1975. This fact should be a concern, consideration, as well as a reference before implementing Government Regulation Number 96 of 2018 jo. Regulation of the Minister of Home Affairs Number 109 of 2019 which is the basis for issuing Family Cards for unmarried married couples.

With regard to the SPTJM made as evidence of the occurrence of an unregistered marriage, it cannot be used as a basis for the validity of the marital status. Because the validity of marriage has been regulated in Article 6 paragraph (1) of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law in Indonesia which states that a marriage performed outside the supervision of a Marriage Registrar does not have legal force as previously stated. Registration of marriages

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<sup>35</sup> Mukmin Nuryadin, "Interview with the Head of KUA Selebar Bengkulu City" (2022)

by Marriage Registrars from the Office of Religious Affairs (KUA) is carried out as an effort to protect the state against orderly marriages for Islamic communities. The above regulations were further strengthened by Minister of Religion Regulation Number 20 of 2019 concerning Marriage Registration.

## 2. Legal Argumentation of the Office of Religious Affairs (KUA) regarding Issuance Regarding the Issuance of Family Cards for Sirri Marriage Couples

The Office of Religious Affairs gave various responses to the issuance of the Family Card by the Dukcapil Office. The research team found 2 (two) opinions regarding the issuance of a Family Card which contains information on a person's unregistered marital status. On the one hand there are parties who oppose the issuance of a Family Card which contains a person's sirri marriage status and on the other hand there are parties who agree to the issuance of the Family Card. Furthermore, the two groups in question can be referred to as retentionist groups<sup>36</sup> and abolitionist groups<sup>37</sup> regarding the issuance of Family Cards for husband and wife married sirri.

The retentionist group stated that the issuance of a Family Card which contained a statement of Unregistered Marriage was a violation that violated the applicable legal provisions, because the display of an Unregistered Marriage certificate originating from unregistered marriage meant legitimizing one's marital status indirectly. This act equates marriages registered at the Office of Religious Affairs with unregistered marriages which are actually violations. According to this group, registration of marriages is only the domain of the Office of Religious Affairs, not the authority of the Dukcapil Office as stipulated in Government Regulations, therefore there is no eligibility standard for the Dukcapil Service to include information on Unregistered Marriages in the Family Card.

Unlike the retentionist group, the abolitionist group is of the opinion that the issuance of a Family Card with the title of Unregistered Marriage is not a serious

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<sup>36</sup> Parties who refuse the issuance of Family Cards by the Dukcapil Office for applicants who carry out unregistered marriages.

<sup>37</sup> Parties who do not respond negatively to the issuance of Family Cards by the Dukcapil Office for applicants who carry out unregistered marriages.

problem. Precisely with the information on Unregistered Marriages, it is hoped that there will be coordination from the Dukcapil Office to follow up on married couples of unregistered marriages so that they can immediately register their marriages at the Office of Religious Affairs with the aim of obtaining legal certainty. What's more, the issuance of the Family Card is carried out for emergency needs where other solutions cannot be found to eliminate the emergency, so the issuance of such a Family Card does not include acts that are destructive to the authority of the Office of Religious Affairs, even though it is a deviation from the applicable provisions.

### 3. Issuance of Family Cards for *Sirri* Married Couples in Bengkulu Province in the Perspective of *Maslahah*

The Family Card is a human right for every family from the perspective of its function as an identity. Consequently, every family must have a Family Card, regardless of their status. The theory of justice in Islam which is oriented towards fulfilling individual needs within a social framework outlines the provision that every individual and family must obtain the same rights if there are indeed provisions governing them. The state must be active in meeting the primary needs of the community. This concept is similar to commutative justice which applies equal treatment to all legal subjects receiving rights in a country.

Allah SWT. in QS. Shaad/38: 26 orders rulers and law enforcers, as caliphs on earth to administer the law as well as possible, to apply justice to all mankind. With regard to the issue of the obligation to uphold justice.

Islam teaches that basically all humans are equal before the law. Rulers are not protected by their power when they commit tyranny, so are rich and high-ranking people not protected by their wealth and rank when faced with the court of Allah SWT. In QS. Al-Maaidah/5: 8 Allah SWT. orders that humans act fairly as a witness, act straightly in carrying out the law even though there are obstacles in the form of threats, pressure, or temptations in any form. Justice is the main general rule that must be considered in applying the law.<sup>38</sup>

Moreover, in an emergency situation, there are demands that must be met by the

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<sup>38</sup> Hasbi Ash-Shiddieqy, "Fakta Keagungan Syariat Islam" (Jakarta: Bulan Bintang, 1975).

state with regard to issues of self-identity and family. For example, the need for identity to register children in school, get social assistance, and so on. Here, the nuclear family as the smallest part of society must obtain identity-making facilities initiated by the state. In short, the issuance of Family Cards to all citizens who need them has fulfilled the principle of justice in Islam, especially in accordance with commutative justice which has a social dimension.

#### 4. Issuance of Family Cards in the Perspective of Maslahah Theory

The theory of legal expediency was initiated by Jeremy Bentham (1748-1832).<sup>39</sup> Jeremy Bentham defines utility as a property in any object with which the object tends to produce pleasure, good or happiness or to prevent damage, suffering or evil and unhappiness for those whose interests are considered.<sup>40</sup> Meaning Utilitis states, that the purpose of law is nothing but how to provide the maximum *maslahah* for the majority of society.<sup>41</sup>

The *ushul fiqh* experts divide *maslahat* into several types, seen from several aspects. In terms of quality and importance, *maslahah* is divided into 3 (three) types, namely: first, *Maslahah adh-Dharuriyah*,<sup>42</sup> which is divided into five, namely: Preserving religion, maintaining the soul, maintaining the mind, maintaining offspring, and maintaining property. Second, *Maslahah al-Hajiyah*, namely the *maslahah* needed in perfecting the basic (fundamental) *maslahahs* before those in the form of relief to maintain and maintain basic human needs. Third, *Maslahah at-Tahsiniah*, *maslahah* for which the needs of human life do not reach the level of

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<sup>39</sup> Jeremy Bentham is a Utilist with John Stuart Mill and Rudolf von Jhering even though there are different views, where Jeremy Bentham is known as the Father of Individual Utilitarianism (the father of legal utilitarianism) who is the most radical of the utility experts. Meanwhile, Rudolf von Jhering is the father of sociological utilitarianism). Jeremy Bentham was a philosopher, economist, jurist and legal reformer who had the ability to weave from the threads of the "principle of utility" into a broad tapestry of ethical and legal doctrine known as utilitarianism or the schools of utilities. The Principle of Utility was put forward by Bentham in his monumental work, *Introduction to the Principles of Morals and Legislation* (1789)

<sup>40</sup> L J Van Apeldoorn, "Pengantar Ilmu Hukum, Terj," *Oetarid Sadino, Jakarta: Pradnya Paramita*, 2006.

<sup>41</sup> Rahardjo Satjipto, "Ilmu Hukum" (Cetakan ke-IV, PT. Citra Aditya Bakti, Bandung, 2006).

<sup>42</sup> Jumantoro and Amin, *Kamus Ilmu Ushul Fikih* (2005).



dharuri, nor do they reach the level of hajiyah, but these needs need to be fulfilled in order to give perfection and beauty to human life.<sup>43</sup>

In terms of *maslahah* content, it is divided into two. The first is *Maslahah al-'Ammah*, namely *maslahah* that concerns the interests of many people. This *maslahah* does not mean for the *maslahah* of everyone, but can be in the form of the interests of the majority of the people or most of the people. Second, *Maslahat al-Khashshah*, namely personal *maslahah* and this is rare.

In terms of whether or not the *maslahahs* change, according to Mustafa asy-Sya'labi, it is divided into two. The first is *Maslahah ats-Tsabitah*, namely *maslahah* that is permanent, does not change until the end of time. The second is *Maslahah al-Mutaghayyirah*, namely *maslahah* that changes according to changes in place, time, and legal objects. *Maslahah* like this is related to issues of muamalah and customs.<sup>44</sup> In terms of the existence of *maslahah* according to *syara'*, it is divided into three. The first is *Maslahah al-Mu'tabarah*, namely *maslahah* supported by *syara'*. Second, *Maslahah al-Mulghah*, namely *maslahahs* that are rejected by *syara'* because they conflict with *syara'* provisions. The third is *Maslahah al-Mursalah*, namely *maslahah* that is not mentioned by *syara'* and there are also no comprehensive arguments for doing or leaving it, whereas if it is done it will bring great good or *maslahah*.<sup>45</sup>

Viewed from the theory of *maslahah* in general, the issuance of a Family Card with the statement "Unrecorded Marriage" in the marital status column only *maslahahs* certain individuals – namely the perpetrators of unregistered marriages, so that issuance falls into the category of special *maslahahs* (*maslahah al-khassah*). The Family Card obtained from the Dukcapil Office can assist applicants in their efforts to complete administrative documents for public service needs such as registering school children, receiving social assistance, and so on. However, if this issue is viewed through a broader lens of benefit (*maslahah al-ammah*), the issuance of a Family Card including the statement "Unrecorded Marriage" in the marital status column poses potential problems in the future.

Inclusion of the statement "Unregistered Marriage" can be classified as *maslahah*

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<sup>43</sup> Jumantoro and Amin.

<sup>44</sup> Jumantoro and Amin,

<sup>45</sup> Jumantoro and Amin.

al-mulghah considering the impact that may arise in society as a result of differences in Government Regulation Number 9 of 1975 concerning Marriage Registration. There are several negative implications of issuing a Family Card for unregistered marriages, namely:

- a. There is no centralization of data, because the Dukcapil Office and the Office of Religious Affairs cannot synergize in an effort to support the completeness of administrative data for the state. This means that data on marital status will become chaotic;
- b. Disregard for the contents of the article in Government Regulation Number 9 of 1975 concerning Marriage Registration<sup>46</sup> This will raise concerns about the rise of sirri marriages which are carried out illegally without involving the registration process at the Office of Religious Affairs. Even though marriage registration is a public benefit, namely maintaining public order, preventing falsification or other legal deviations such as the identity of the prospective bride and groom and their marital status, including the possibility of differences in their religion.
- c. Neglect of the obligation to register marriages by registrars at the Office of Religious Affairs has resulted in people having different views about the legality of a marriage. There will be a perception among the public that in order to obtain marital status, the bride and groom no longer need to register through the Office of Religious Affairs, but it is enough to do a sirri marriage and obtain an SPTJM as a provision to obtain a Family Card from the Dukcapil Service which they see as a legality for the marriage being carried out. This kind of reality will obviously cause big problems in society and be classified as bad masalah (*masalah mazmumah*) not good masalah (*masalah mursalah*).

Some of the points of potential problems that have been stated above are evidence that the inclusion of the statement "Unrecorded Marriage" in the Family

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<sup>46</sup> Government Regulation Number 9 of 1975 in Chapter II Article 2 paragraph (1) states that: "The registration of marriages of those who carry out their marriages according to the Islamic religion is carried out by Registrar Employees, while intended in Law Number 32 of 1954 concerning Registration of Marriages, Divorces and Refer."

Card issued by the Dukcapil Office for unregistered marriage actors will eventually cause harm if it is not addressed properly.

There are several principles of *fiqh* that can be used with regard to harm that can arise from the issuance of a Family Card for perpetrators of unregistered marriages<sup>47</sup>, namely:

دَفْعُ الضَّرَرِ أَوْلَى مِنْ جَلْبِ النَّفْعِ

Meaning: "Rejecting harm is more important than achieving *maslahah*"

دَفْعُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Meaning: "Rejecting evil takes precedence over gaining *maslahah*"

الضَّرَرُ يُزَالُ

Meaning: "Embarrassment must be eliminated"

The purpose of sharia is to achieve goodness (*maslahat*) and reject evil (*mafsadat*). The word *adh-dharar* can be applied to *maslahahs* from one side and harm from the other.<sup>48</sup> Based on the two conceptions above, in the long term perspective, the disadvantages that can arise as an effect of issuing a Family Card for unregistered marriage actors must take precedence over taking the *maslahahs* contained therein. It is a different case if the issuance of a Family Card for the *Sirri* marriage partner is given a deadline for its validity, for example only for the need to complete administrative documents that are sudden or emergency in nature.

#### D. Conclusion

The Department of Population and Civil Registry (Dukcapil) believes that the issuance of Family Cards for *sirri* marriage couples is part of the main duties and functions (*tupoksi*) that must be carried out by agencies based on applicable laws and regulations, this issuance has an urgency for recording events as well as administrative documents for unregistered married couples; while the Office of Religious Affairs (KUA) generally stated that the issuance of Family Cards for

<sup>47</sup> Ahmad Djazuli, "Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Masalah-Masalah Yang Praktis," *Jakarta: Kencana*, 2006.

<sup>48</sup> A. Djazuli, *Kaidah-kaidah Fikih...*, h. 68.

unmarried married couples was an act that deviated from existing legal norms and at the same time violated the standard order that had long been in effect in society.

The theory of justice in Islamic law views the issuance of Family Cards for sirri married couples by Dukcapil in Bengkulu Province as an enforcement of justice within a social (commutative) framework in which everyone has the same rights over marital status. Based on this social justice, the purpose of publishing it must be just to meet emergency needs such as taking care of children going to school, making motor vehicle correspondence, buying and selling land, and other civil law actions. However, the issuance of Family Cards for sirri marriage couples by Dukcapil in Bengkulu Province can be categorized as *masalah al-khassah* (special benefit) which benefits only a few parties, not *masalah al-ammah* (general benefit) which applies to the whole community. In fact, the impact of including the statement "Unrecorded Marriage" in the issuance of Family Cards for unregistered marriage actors can cause *masalah al-mulghah* in the form of legal confusion regarding the legality of one's marriage while at the same time hindering updating of centralized data which is on the government's agenda.

### References

- Ahmad, Rofiq. "Hukum Perdata Islam Di Indonesia." *Jakarta: Raja Grafindo Persada*, 2013.
- Apeldoorn, L J Van. "Pengantar Ilmu Hukum, Terj." *Oetarid Sadino, Jakarta: Pradnya Paramita*, 2006.
- Arliman, Laurensius. "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia." *Dialogia Iuridicia: Jurnal Hukum Bisnis Dan Investasi* 11, no. 1 (2019): 1-20.
- Ash-Shiddieqy, Hasbi. "Fakta Keagungan Syariat Islam." Jakarta: Bulan Bintang, 1975.
- Ashshofa, Burhan. "Metode Penelitian Hukum, Cetakan Keenam, PT." *Rineka Cipta, Jakarta*, 2010.
- Andi Saputra, "Nikah Sirri Nasibmu Kini, Bisa Dicatat di KK tapi Tak Diakui UU Perkawinan", detikNews.com, october 13, 2021. <https://news.detik.com/berita/d-5764657/nikah-sirri-nasibmu-kini-bisa-dicatat-di-kk-tapi-tak-diakui-uu-perkawinan>
- Daud, Ali Muhammad, and H Ali. "Asas-Asas Hukum Islam." *Jakarta: Rajawali Pers*, 1991.
- Djamil, Fathurrahman. *Hukum Ekonomi Islam: Sejarah, Teori, Dan Konsep*. Sinar

Grafika, 2023.

- Djazuli, Ahmad. "Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Masalah-Masalah Yang Praktis." *Jakarta: Kencana*, 2006.
- Fauzia, Ika Yunia. *Prinsip Dasar Ekonomi Islam Perspektif Maqashid Al-Syariah*. Kencana, 2014.
- Indratanto, Samudra Putra, and Kristoforus Laga Kleden Nurainun. "Asas Kepastian Hukum Dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara Dan Peraturan Pemerintah Pengganti Undang-Undang." *Samudra 2020* (2020)
- Ismet Selamat, "Disdukcapil Cetak 50 Ribu KK Pasangan Nikah *Sirri* di Cianjur", *detiknews.com*, October 08, 2021. <https://news.detik.com/berita-jawa-barat/d-5758824/disdukcapil-cetak-50-ribu-kk-pasangan-nikah-sirri-di-cianjur>
- Jahar, Asep Saepudin. "Hukum Keluarga, Pidana Dan Bisnis: Kajian Perundang-Undangan Indonesia, Fikih Dan Hukum Internasional," 2013.
- Jumantoro, Totok, and Samsul Munir Amin. *Kamus Ilmu Ushul Fikih*. Amzah, 2005.
- Kharlie, Ahmad Tholabi. *Hukum Keluarga Indonesia*. Sinar Grafika, 2022.
- Marzuki, Peter Mahmud. "Penelitian Hukum, Kencana." Jakarta, 2005.
- Persada, P T RajaGrafindo. "Problematika Hukum Indonesia, Teori Dan Praktik," n.d.
- Rato, Dominikus. "Realisme Hukum: Peradilan Adat Dalam Perspektif Keadilan Sosial." *Jurnal Kajian Pembaruan Hukum* 1, no. 2 (2021): 285–308.
- Rahmat Hidayat, "Ratusan Pasangan Nikah *Sirri* Buat KK di Bekasi", *okezone.com*, October 13, 2021. <https://megapolitan.okezone.com/read/2021/10/13/338/2485459/ratusa-n-pasangan-nikah-sirri-buat-kk-di-bekasi,October> 9 2021.
- Rosana, Ellya. "Hukum Dan Perkembangan Masyarakat." *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 9, no. 1 (2013): 99–118.
- Satjipto, Rahardjo. "Ilmu Hukum." Cetakan ke-IV, PT. Citra Aditya Bakti, Bandung, 2006.
- Soeroso, Raharjo. *Pengantar Ilmu Hukum*. Sinar Grafika, 2020.
- Sugiyono, Dr. "Memahami Penelitian Kualitatif," 2010.