

Legal Protection for Children Against Unregistered Marriages

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ABSTRACT: Unregistered marriages, or nikah siri, are still widespread in Indonesia. An unregistered marriage is one that is not registered with the appropriate authorities. Such marriages are not recognized by the state due to the absence of marriage documents. This phenomenon has legal implications, particularly regarding the status and rights of children born from such marriages. This study aims to determine how children from unregistered marriages are protected by law. This study is a normative legal study. The research data used consists of secondary data. Data collection was conducted through a document review. The secondary data obtained was then analyzed using descriptive qualitative methods. The conclusion of this study is that the status of children born from unregistered marriages can be considered legitimate if their parents' marriage is a valid one. Legal protection for children born of unregistered marriages remains weak, as evidenced by disparities in inheritance rights compared to legitimate children born of legally registered marriages. Full legal protection can be obtained through the legal recognition (itsbat nikah) of their parents' marriage.

KEYWORDS: Unregistered Marriage, Legal status of children, Legal protection of children

I. INTRODUCTION

God created humankind as living beings in pairs, consisting of male and female. The marriage of Adam and Eve produced descendants who multiplied upon the earth, thereby forming successive generations through the institution of marriage. Marriage is a natural human practice ordained by the Almighty to ensure the continuation of life in this world. In Indonesia, marriage is not only regarded as a socio-cultural institution but also as a legal event that generates legal consequences for individuals and families. Normatively, marriage is regulated to guarantee certainty of rights and obligations for husband and wife as well as for the children born of the union. This purpose is reflected in Law No. 1 of 1974 on Marriage, which defines marriage as a physical and spiritual bond between a man and a woman, established to form a happy and enduring family based on belief in God Almighty. Furthermore, the national legal system acknowledges the religious dimension of marriage: Article 2(1) of Law No. 1/1974 stipulates that a marriage is valid if conducted according to the laws of the parties' respective religions and beliefs, while Article 2(2) emphasizes the obligation to register every marriage in accordance with prevailing legislation. Thus, within the framework of national law, marriage is not merely viewed as a religious bond but also as an institution with administrative and legal consequences.

Marriages conducted within Indonesian society are still found to exhibit inconsistencies in their procedural implementation. One of the practices that continues to exist is unregistered marriage, commonly referred to as nikah siri, which is widely recognized as a marriage not recorded by the state. The persistence of unregistered marriages is driven by various reasons, such as economic factors or the desire to avoid administrative procedures. The continuation of such practices has created a legal dilemma, as marriage under national law requires official registration, while these unions are performed solely on the basis of religious law.¹

The purpose of marriage registration is to provide legal certainty, protection of rights, and legitimacy for the marital status as well as for the children born from such unions. Therefore, marriage registration constitutes an essential aspect in safeguarding the rights of individuals and families. In general, unregistered marriages that occur within society are known as marriages conducted in accordance with the essential requirements and pillars of marriage, yet without being performed before a marriage registrar, or marriages not recorded at the Office of Religious Affairs for Muslims and at the Civil Registry Office for non-Muslims. Failure to register a marriage with the competent authority results in legal vulnerability, which essentially contravenes the prevailing marriage law in Indonesia. Such marriages lack legal certainty and binding force, and are not protected by law. The regulation on marriage registration is stipulated in the Regulation of the Minister of Religious Affairs No. 20 of 2019, which defines marriage

¹ Rahmah, H. M., Nisa', N., & Al Amruzi, F. (2026), "Konflik Hukum Pencatatan Perkawinan Dalam Praktik Nikah Siri", *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, Vol. 4, Nomor 2 (Apr-June), hlm. 2146-2162

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registration as the administrative recording of marital events. Hence, it is necessary to register marriages at the Office of Religious Affairs or the Civil Registry Office.²

The obligation of registration is further reinforced by regulations in the field of civil administration, particularly Law No. 24 of 2013 on Population Administration, which requires the recording of vital events experienced by individuals at the implementing agency appointed in accordance with statutory provisions. Vital events include occurrences such as birth, death, stillbirth, marriage, divorce, child acknowledgment, child legalization, child adoption, name changes, and changes in citizenship status.

Unregistered marriage is a form of union not recognized by the state, thereby resulting in weak legal protection. Within the framework of family law, unregistered marriage poses risks to the recognition of children and the fulfillment of their rights. In principle, a child's rights are inherent from birth; however, due to the parents' marriage not being conducted in accordance with applicable regulations, the fulfillment of these rights faces obstacles. Based on the foregoing, the formulation of the problem is how is the legal protection afforded to children born from unregistered marriages.

II. RESEARCH METHOD

This research is a normative legal study, namely a study aimed at examining principles, norms, and rules derived from existing legislation or secondary data. Normative legal research is conducted by utilizing library materials as the primary source of data.³ The legal materials employed include primary legal materials consisting of statutory regulations related to marriage, as well as secondary legal materials obtained from legal books, scholarly journals, and previous research relevant to the subject matter.⁴ The collection of legal materials is carried out through library research by reviewing various relevant legal sources. The data obtained from the library research are organized systematically to provide a comprehensive overview of the principles and legal provisions related to the issues under study. Subsequently, the data are analyzed using a descriptive method with a qualitative approach, followed by an in-depth and comprehensive exposition.

III. RESULT AND DISCUSSION

1. Legal Status of Child Born of an Unregistered Marriage

In the preamble of Law No. 23 of 2002 on Child Protection, it is stated that a child is a trust and blessing from God Almighty, inherently endowed with dignity and worth as a complete human being. Therefore, children require care, affection, and an environment that enables them to grow and develop properly.

Within the family context, children can be classified into two categories: legitimate children and illegitimate children. The definition of a legitimate child is explained in Article 42 of Law No. 1 of 1974 on Marriage, which states: "A legitimate child is a child born in or as a result of a lawful marriage." Furthermore, in the Compilation of Islamic Law, the definition of a legitimate child is found in Article 99, which reads: "A legitimate child is a child born in or as a result of a lawful marriage, the product of a lawful husband and wife relationship outside the womb, and delivered by the wife."

From these two provisions, it can be concluded that the status of a legitimate child is determined by the marital status of the parents. There are two benchmarks in establishing the legitimacy of a child under Article 42 of the Marriage Law. First, the child is born within a lawful marriage, meaning the child is born after the marriage has taken place. Second, the child is born as a result of a lawful marriage, meaning the child is the product of a lawful husband-and-wife relationship, even if the child's birth occurs after the dissolution of the marriage.

Meanwhile, the status of an illegitimate child is referred to in Article 43 paragraph (1) of the Marriage Law, which states: "A child born outside of marriage has only a civil relationship with the mother and her family." Similarly, Article 100 of the Compilation of Islamic Law stipulates: "A child born outside of marriage has only a lineage relationship with the mother and her family." Based on these provisions, an illegitimate child can only have civil relations with the mother and her family.

The status of a child is determined by the marital status of the parents. If the marriage is conducted in accordance with proper procedures and fulfills the legal requirements of marriage, then the child born from such a marriage is considered legitimate. Conversely, if the marriage of the parents is not conducted in accordance with the legal requirements, then the child resulting from such a marriage is not considered legitimate.

A child born from an unregistered marriage may be considered legitimate or illegitimate. The legal status of the child is determined by the manner in which the parents' marriage is conducted. If the marriage fulfills the legal requirements of marriage, then it is deemed valid. This is based on Article 2 paragraph (1) of the Marriage Law and Article 4 of the Compilation of Islamic

² Anshary M K, M. (2015), *Hukum Perkawinan Indonesia*, Yogyakarta, Pustaka Pelajar, hlm. 27

³ Kristiawanto, H. (2004), *Pengantar Mudah Memahami Metode Penelitian Hukum*, Makassar, Nas Media Indonesia, hlm. 28

⁴ Ali, Z. (2009), *Metode Penelitian Hukum*, Cet. 1, Jakarta, Sinar Grafika, hlm. 54

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Law, which stipulate that a marriage is valid if conducted according to the laws of each religion and belief. Thus, if an unregistered marriage is performed in accordance with the religious requirements, the children born from such a marriage are considered legitimate and possess full civil relations with both parents. However, if the unregistered marriage is not conducted in accordance with religious law, then the marriage is invalid, and the children born from it are considered illegitimate or classified as children born outside of marriage, thereby having civil relations only with the mother and her family.

2. The Legal Protection of Children Born Out of Unregistered Marriages

Child protection constitutes an essential element within the national legal system, as reflected in various constitutional provisions and statutory regulations in Indonesia. Children possess fundamental rights to grow and develop properly, as well as the right to be protected from all forms of violence and discrimination. This explanation is consistent with the mandate of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination.

a. Protection of Children's Right to Identity

For children born from unregistered marriages, although they may be considered legitimate, such children still face limitations in the fulfillment of their rights. These limitations arise from the fact that the parents' marriage is not officially recorded, making it impossible to prove the marital event due to the absence of documentary evidence, namely a marriage certificate, which demonstrates the existence of a lawful marriage recognized by the state.

Although the rights of children born from unregistered marriages are not fully granted, the principle of the best interests of the child ensures that certain rights can still be fulfilled, including the right to identity. Protection of identity rights continues to be provided and guaranteed by the state as a form of recognition of the child's existence, through the issuance of a birth certificate. This provision is in line with Law No. 39 of 1999 on Human Rights, which guarantees children the right to protection against discrimination, and Law No. 23 of 2006 on Population Administration, which mandates the registration of births without discrimination.

Birth certificates for children born from unregistered marriages are issued with an additional phrase. Such certificates are granted to children whose parents have not registered their marriage, yet whose marital status is already recorded in the Family Card, indicating both as husband and wife. In the issuance of a Family Card for couples whose marriage has not been registered, the requirement of a marriage book or marriage certificate excerpt is replaced with a Statement of Absolute Responsibility (Surat Pernyataan Tanggung Jawab Mutlak, SPTJM).⁵ The use of SPTJM, as stipulated in Minister of Home Affairs Regulation No. 109 of 2019, serves as a prerequisite for recording marital or divorce status in the Family Card for residents who do not possess official marriage documents.

b. Protection regarding alimony, living expenses, and education costs

Protection of children in terms of sustenance, living expenses, care, and education is essential. Children born from unregistered marriages encounter difficulties in claiming maintenance, living expenses, and inheritance from their fathers if the father does not voluntarily fulfill these obligations. The rights of children born from unregistered marriages are particularly weak, as they cannot legally demand recognition of their parents as father and mother,⁶ even though Article 26 paragraph (1) of Law No. 35 of 2014 on Child Protection stipulates that parents are obliged and responsible for nurturing, caring for, educating, and protecting their children. Furthermore, individuals who neglect their children are subject to criminal sanctions under Article 77B. This signifies that the state guarantees the fulfillment of children's rights to sustenance, care, and education without exception. Parents are legally required to provide for their children's living expenses, care, and education. The fulfillment of these rights is grounded in the principle of the best interests of the child.

Protection of children in relation to the fulfillment of their rights also extends to participation in parental income allowances. Specifically, children whose parents are employed as Civil Servants (ASN) are entitled to family allowances, which include child allowances amounting to 2% of the basic salary. Child allowances can be directly obtained by legitimate children, proven through family status recorded in the Family Card and Birth Certificate, accompanied by the parents' marriage certificate. However, if an ASN enters into an unregistered marriage, meaning the marriage is not officially recorded, then children born from such unions are not eligible to receive child allowances from their parent's basic salary as an ASN. Based on Article 14 of Government Regulation No. 45 of 1990, civil servants are prohibited from cohabiting with a partner without a lawful marriage. A valid marriage for ASN must fulfill two primary requirements: it must conform to the laws of the respective religion and be

⁵ Ayunia, S., & Ridwan. (2023), "Surat Pernyataan Tanggung Jawab Mutlak Dalam Penerbitan Akta Kelahiran Anak", *Lex LATA*, Volume 5, No. 3 (November), 289-301

⁶ Risdalina. (2020), *Perlindungan Hukum Anak Dalam Perspektif Hukum Administrasi Negara*, Rantauprapat, CV. Putra Maharatu, hlm. 68

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officially registered by a marriage registrar at the Office of Religious Affairs (KUA), as stipulated in Law No. 32 of 1954 on the Registration of Marriage, Divorce, and Reconciliation for Muslims. For adherents of other religions, marriage registration is conducted at the Civil Registry Office. Thus, marriages conducted by ASN without official registration are deemed invalid and consequently affect the rights of children to receive allowances from their parents' salary.

c. Protection of the Right to Inheritance

Inheritance rights for children born from unregistered marriages are not the same as those of legitimate children. Thus, although children resulting from unregistered marriages may be considered legitimate, differences remain in matters of inheritance. Legitimate children are unquestionably recognized as primary heirs, entitled to inherit from both their father's and mother's estates. In contrast, children born from unregistered marriages may only inherit through wasiat wajibah (mandatory bequest) for those adhering to Islam. The existence of wasiat wajibah serves as a form of protection for children born from unregistered marriages. Supreme Court Circular (SEMA) No. 3 of 2023 stipulates that biological children from marriages conducted according to Islamic law but not officially registered may be designated as recipients of wasiat wajibah. The portion granted through wasiat wajibah must not exceed one-third of the estate, as regulated in Article 209 of the Compilation of Islamic Law (KHI). The primary objective is to provide legal protection, reduce discrimination in inheritance matters, and uphold the principle of justice in inheritance law. The granting of wasiat wajibah is contingent upon the court's recognition of the child's lineage as a biological child.⁷

d. Protection Through Itsbat Nikah.

Protection for children can be pursued through the submission of itsbat nikah for the marriage of their parents. Itsbat nikah refers to the judicial confirmation or legalization of a marriage that has been conducted in accordance with Islamic law but was not supervised by a marriage registrar, and therefore was not recorded nor included in the marriage register of the local Office of Religious Affairs.⁸ The itsbat nikah process serves as a necessary mechanism to ensure certainty of legal status.⁹ Its primary purpose is to obtain formal recognition of the marriage under state law. Once itsbat nikah is granted, the marriage acquires binding legal force, thereby ensuring that children born from such unions are officially recognized by the state, granted full rights as legitimate children, and afforded complete legal protection.

IV. CONCLUSIONS

The status of children born from unregistered marriages is considered legitimate if the marriage of their parents is conducted in accordance with their respective religious laws, as stipulated in Article 2 paragraph (1) of the Marriage Law and Article 4 of the Compilation of Islamic Law. The legal protection afforded to children born from unregistered marriages includes the right to identity, namely a birth certificate, inheritance rights, and the right to receive maintenance from their father, although these rights remain limited. Such limitations occur when the child cannot be included in parental income allowances due to the absence of a marriage certificate. One form of comprehensive legal protection for children born from unregistered marriages can be achieved through the judicial confirmation (itsbat nikah) of their parents' marriage.

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