



Conflict of Norms Resolution of Family Card Issuance for Siri Married Couples in Indonesia

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Abstract. The Ministry of Home Affairs' policy regarding the issuance of Family Cards for unregistered married couples has a positive impact because it guarantees legal protection for citizens. However, from the other point of view, the issuance also has legal implications for the community. The Ministry of Home Affairs through the Directorate General of Department of Population and Civil Registration has made a policy that unregistered marriages can be included in the Family Cards with the statement "unregistered marriage". The statement was conveyed by the Director-General of the Department of Population and Civil Registration through his personal Instagram account. In fact, the basic principle of marriage is the principle of registration, as stated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage. The purpose of this study is to determine the urgency of the Ministry of Home Affairs in making a policy for issuing Family Cards for unregistered married couples and to understand the legal status of the "unregistered marriage" nomenclature that is included in the Family Card according to Indonesian laws and regulations. This study uses a normative legal research method with a statutes approach. Based on the results of the study, it shows that the issuance of Family Card for unregistered married couples is contrary to several positive laws in Indonesia, namely Law Number 1 of 1974 concerning Marriage, Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, and the Compilation of Islamic Law and it is hoped that the Ministry of Home Affairs will conduct an in-depth study and coordination between institutions related to the policy so that there is no disharmony and conflict of norms.

Keywords: Ministry of Home Affairs policy · Family card · Unregistered married · Conflict of norms

1 Introduction

Indonesia is a country with the fourth largest population in the world. As of January 21, 2021, according to the official annual projection of the Central Statistics Agency of the Republic of Indonesia, the population of Indonesia will reach 271,349,889 people [1]. This means that with such a large population of Indonesia, accurate data collection is needed, through population administration from the center to the regions. The data is very useful as a consideration for the central government in policy making.

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S. Februanty et al. (Eds.): MICon 2021, ASSEHR 708, pp. 421–430, 2023.

https://doi.org/10.2991/978-2-38476-022-0_45

In this regard, the government has issued policies related to population through Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. In this law it is explained that what is meant by population administration is a series of structuring and controlling activities in the issuance of population documents and data through population registration, civil registration, management of population administration information and the utilization of the results for public services and development of other sectors.

Regulations on population administration need to be made to provide protection, recognition, determination of personal status and legal status for every demographic and important event experienced by Indonesian residents and Indonesian citizens outside the territory of the Unitary State of the Republic of Indonesia.

The Ministry of Home Affairs of the Republic of Indonesia in this case the Directorate General of Population and Civil Registration is the institution that is given the authority to manage population data, namely by issuing a Population Identification Number for each resident through the implementing agency in the district/city. Population Identification Number will be poured into a Family Card which is a family identity card containing data on names, composition and relationships in the family, as well as the identity of family members. Every resident is required to have a Family Card as proof of the clarity of the relationship and composition of a group of residents who live together and form a family unit and become the basis for issuing Identity Cards and other community services [2]. While the Identity Card is the official identity of the population as proof of self issued by the Implementing Agency which is valid throughout the territory of the Unitary State of the Republic of Indonesia.

One of the population data contained in the Family Cars is marital status. The loading of marital status in the Family Card becomes important because marriage is a population event that should be recorded so that it will become a "public memory". Because if the marriage is not registered, it will have an impact on many aspects.

Meanwhile, unregistered marriage is a common phenomenon in Indonesian society, because most of the Indonesian population is Muslim and there is an assumption that unregistered marriage does not violate norms because it is legal according to religion even though it is not legal according to positive law. Siri marriage is a secret marriage, in the sense that there is no notification or announcement of the marriage to the public or the public [3]. In some studies, this has been controversial. By including the marital status in the Family Card as unregistered marriage and the marital status in the Identity Card as married, the state has recognized the marriage as not formally registered [4].

Some time ago, Prof. Zudan Arif Fakrulloh as Director General of Department of Population and Civil Registration of the Ministry of Home Affairs made a statement in a YouTube video uploaded on October 5, 2021 and also through his personal Instagram account and stated that all Indonesian residents must be recorded on a family card, for those who have unregistered marriages can be included in one family card. In this case, the Ditjen Dukcapil does not marry but only records, it will be written 'unregistered marriage' with the condition that a Statement of Absolute Responsibility is made, the truth of the husband and wife is known by two witnesses [5].

In article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, it is explained that every marriage is recorded according to the applicable laws and regulations. Likewise, in Article 5 paragraph (1) of the Compilation of Islamic Law, it is explained that in order to ensure marriage order for the Islamic community, every marriage must be recorded. This of course reaps the pros and cons in various circles. Although it has not yet become a written regulation, a statement from a Director General is considered to represent his institution in making policies for the community. The status of 'unregistered marriage' on the Family Card will be very influential when taking care of other important documents, considering that unregistered marital status is the same as marriages that are not legal by state law but are only legal by religion [6].

Based on what was stated above, the unregistered marital status included in the Family Card is interesting to study. Especially in the perspective of legal harmonization between the Marriage Law and the Regulation of the Minister of Home Affairs where one of the norms requires that marriages be recorded in accordance with the applicable laws and regulations. On the other hand, other norms require that an unregistered marriage can also be given a Family Card with the addition of a marriage certificate that has not been registered [7]. If you pay close attention here, there is an overlap between the two norms. Family Card which is actually a state document, it must be ensured that all data contained in it is valid data as well.

2 Problems

Looking at the legal issues raised above, the problem formulations that can be raised are: (1) Urgency of the Ministry of Home Affairs to make a Policy for Issuing Family Cards for Siri Married Couples; (2) The legal status of the "unregistered marriage" nomenclature that is included in the Family Card according to Indonesian laws and regulations.

3 Research Method

The method used in this research is a normative juridical research method using a statutory approach. The approach to legislation is used to find out the rules related to population status and unregistered marriages as well as synchronization between one rule and another. The primary legal material in this study is Law Number 1 of 1974 concerning Marriage, Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration and Presidential Instruction Number 1 of 1991 concerning Dissemination of Compilation of Islamic Law, while the secondary legal materials in this study are literature, journal articles and statements by the Director General of Civil Registration in his personal Instagram account. The collection of legal materials is carried out by means of a literature study, which is then analyzed in a qualitative juridical manner.

4 Discussion and Result

4.1 The Urgency of the Ministry of Home Affairs to Make a Policy for Issuing Family Cards for Siri Married Couples

4.1.1 Definition of Siri Marriage

Law Number 1 of 1974 concerning Marriage, in article 1 explains the meaning of marriage. Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. This understanding explains that marriage is not only a legal act, but also a religious act, so that whether or not a marriage is legal must be based on the laws of each religion and belief held by the Indonesian people. This is clearly seen in the inclusion of the word 'based on God Almighty' in the definition of marriage.

Siri marriage is a marriage that is carried out in secret. Etymologically the word siri comes from Arabic, namely *sirrun* which means secret, silent, hidden as opposed to the word '*alaniyyah*, which is open. The word siri is then combined with the word marriage so that it becomes a siri marriage to mention that the marriage is done secretly or hidden. This tacit and hidden meaning gives rise to two understandings, namely marriages that are secretly not announced to the public or marriages that are not known or registered in state institutions [8].

In the Big Indonesian Dictionary, siri marriage means a marriage which is only witnessed by a *modin* and a witness, not through the Office of Religious Affairs, so that according to Islam the marriage is legal [9]. Specific provisions regarding siri marriages have not yet been regulated in the existing laws and regulations. In positive law, Indonesia does not recognize the term siri marriage, moreover, it specifically regulates siri marriage in a statutory regulation.

4.1.2 Legal Marriage in the Indonesian Legal System

Marriage is something that is considered sacred. Where marriage is a legal act. Therefore, the legal consequences of marriage are closely related to the validity of the marriage itself. Indonesia regulates the conditions for the validity of a marriage. This is stated in Article 2 of Law Number 1 of 1974 concerning Marriage which reads: (1) Marriage is legal if it is carried out according to the laws of each religion and belief. (2) Each marriage is recorded according to the prevailing laws and regulations [10].

In Articles 4 to 6 of the Compilation of Islamic Law also states that a marriage is valid if it is carried out according to Islamic law in accordance with Article 2 paragraph 1 of Law Number 1 of 1974 concerning Marriage and in order to ensure orderliness of marriage for the Muslim community, every marriage must be recorded, marriage registration is carried out by a marriage registrar as regulated in Law Number 22 of 1946 in conjunction with Law Number 32 of 1954. Religious affairs for those who are Muslim are based on Law Number 22 of 1954 regarding divorced marriages, while for those who are non-Muslim, marriage registration is carried out at the Civil Registry Office. And to fulfill the provisions in Article 5, namely marriage registration, every marriage must be held before and under the supervision of the Marriage Registrar. Marriages carried out

outside the supervision of the Marriage Registrar do not have legal force. This means that a new marriage is considered valid after it has been registered.

4.1.3 Study of Statutory Theory

Hans Kelsen argued that legal norms are tiered and layered in a hierarchy (organization), in the sense that a lower norm applies, originates and is based on a higher norm, a higher norm, sourced and based on the prevailing norms again, so on until a norm that cannot be resolved higher and is hypothetical and fictitious [11]. For Hans Kelsen, norms are products of deliberative human thought. Something becomes a norm if it is desired to become a norm, the determination of which is based on morality and good values. According to him, the considerations that underlie a norm are meta-juridical. Something that is meta-juridical in nature is *das sollen*, and has not yet become a law that applies to bind the community. In short, for Hans Kelsen, legal norms are always created through the will. These norms will become binding on the community, if these norms are desired to become law and must be stated in written form, issued by an authorized institution and contain orders [12].

Meanwhile, Hans Nawiasky, one of Hans Kelsen's students, developed his teacher's theory of norm level theory in relation to a country. Hans Nawiasky in his book "Allgemeine Rechtslehre" suggests that according to Hans Kelsen's theory, Hans Nawiasky added that in addition to norms that are layered and tiered, legal norms are also grouped. Nawiasky grouped into 4 major groups, namely [13]:

- a. *Staatsfundamentalnorn* (fundamental norms of the state);
- b. *Staatsgrundgezets* (basic rules of the state);
- c. *Formell Gezetz* (formal law);
- d. *Verordnung* and *Autonome Satzung* (executing rules and autonomous rules)

The legal force of laws and regulations is in accordance with their hierarchy, in which the the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945) is the highest regulation in the legal system in Indonesia and forms the basis for the laws and regulations below it. Legislation theory is a written regulation that contains binding legal norms generally formed or formed by state institutions or officials, who have the authority through the procedures stipulated in the legislation. The lower hierarchy of laws and regulations must not conflict with higher laws and regulations Article 1 paragraph (3) of the UUD NRI 1945 mandates that "the State of Indonesia is a State of Law" that adheres to decentralization in the administration of government, as implied in Article 18 paragraph (1) of the UUD NRI 1945 "The Unitary State of the Republic of Indonesia is divided into provincial areas and the province is divided into districts, and cities have regional governments, which are regulated by law".

The rule of law means that everything must be done according to the law. As a state of law, every administration of government affairs must be based on applicable law (*wetmatigheid van bestuur*) [14].

Law Number 12 of 2011 concerning the Formation of Legislations explains the hierarchy of legislation, where high laws ignore lower laws. In this case, the position of the Ministry of Home Affairs' policy regarding the issuance of KK for siri married

couples is lower than the Marriage Law or the Population Administration Law. And the policy presented by the director general of Dukcapil contradicts the recording principle contained in the Marriage Law and the Compilation of Islamic Law. So, here there has been a conflict of norms.

4.1.4 Study of Population Theory

Thomas Robert Malthus, in his first book entitled "*Essay on the Principle of Population as it affects the future improvement of society; With remarks on the speculations of Mr. Godwin, M. Condorcet, and other writers*"; written in 1798. From his book Malthus put forward systematically describes the relationship between the effects of population growth and its causes. Malthus argued that if the population was not controlled, it would multiply according to a geometric series, while food ingredients would increase according to an arithmetic series. This assumption was supported by all the evidence he knew at the time.

Malthus also stated that efforts to inhibit the rate of population growth can be done in two ways. First, is what is called a preventive check. This effort is related to the delay of marriage. The second way, is a positive check. A positive test is anything that contributes to death. For example, poverty, disease, war, suffering, and others. The theory put forward by Malthus relates the variables of population and development and makes sense. This is then the basis for population policies in many countries using this logic [15].

4.1.5 Siri Marriage Gap in Status of Residence

The practice of siri marriage is a phenomenon that often occurs in Indonesian society. The registration activity for siri marriages to obtain a Family Card is a new legal breakthrough facilitated by Directorate General of Population and Civil Registration. Of course, Directorate General of Population and Civil Registration made this breakthrough not without reason, one of which was following the order of the Constitutional Court Decision No. 46/PUU-VII/2010. This decision illustrates one solution that children can be linked with their parents if the marriage of their parents can be proven true (really married religiously) [16]. This decision clearly recognizes and provides protection for the rights of children born due to siri marriages because children cannot be victims of the marriage of their parents. Even if the child resulting from a siri marriage is not recognized by his father, but if it can be proven scientifically or technologically (DNA test) then the child has a civil relationship with his father. Of course, this kind of recognition is not born by itself, but needs a decision from the court.

In addition, Directorate General of Population and Civil Registration as a recording agency also carries out the orders of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration where the main task is to record important events for the Indonesian population into the population database. Marriages and births are examples of important events that are recognized in Indonesia, so they must be recorded in the database, but the implementation of this registration should be in line with the requirements that exist in the implementing regulations regarding marriage. The requirements for granting Family Card in siri marriages have almost

the same essence as the registration of marriages, except that the reporting is carried out after siri marriages and given a special sign that it has not been recorded.

Based on the statement of the Director General of Dukcapil, it can be seen that the urgency of issuing Family Card for siri marriage couples is that all Indonesians must be registered in Family Card, including to find out the number of people who are married. Issuance of Family Card for siri married couples is important so that the couple concerned gets legal protection. In addition, the registration of siri marriages is expected to provide a legal protection for the family's children.

All types of population administration will be based on the Population Identification Number which starts from the Family Card. Because so far the perpetrators of siri marriages are not recorded as married residents. So that the population data in the Directorate General of Department of Population and Civil Registration has the potential to be out of sync with the data in the Central Statistics Agency. Population data collection is something important to improve public services and government policy making in development.

4.2 The Legal Status of the “Unregistered Marriage” Nomenclature that is Included in the Family Card According to Indonesian Laws and Regulations

4.2.1 The Status of Siri Marriage in the Indonesian Legal System

Siri marriage is a marriage that is against the laws and regulations. Based on Article 2 of Government Regulation Number 9 of 1975 as a regulation regarding the implementation of Law Number 1 of 1974 it is stated that marriages for the application of Islam are carried out by registrar employees with the recording procedure. Where in this case the marriage under the hand or unregistered marriage is a marriage that is carried out outside the supervision of the marriage registrar and is not registered with the Office of Religious Affairs [17].

In general, in the perspective of Islamic law, as previously explained, siri marriages tend to be allowed as long as they meet the requirements and pillars of marriage. On the other hand, in positive Indonesian law, siri marriages have been confirmed as illegal marriages. Even in the national legislation on marriage, both in the marriage law and in the Compilation of Islamic Law, there is not a single word that mentions the rules for the practice of siri marriage. What is discussed is marriage in general. This shows that siri marriage is not considered in the national marriage law [18].

4.2.2 The Implications of Issuance Family Cards for Siri Married Couples

According to the Compilation of Islamic Law, the conditions for a valid marriage are regulated in Article 4 which reads “Marriage is legal, if it is carried out according to Islamic law; Article 5 paragraph (1) which reads “In order to ensure the orderliness of marriage for the Islamic community every marriage must be recorded”; Article 7 paragraph (1) which reads “Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar”; and paragraph (2) which reads “In the event that the marriage cannot be proven by a marriage certificate, the marriage certificate can be submitted to the Religious Court”.

Thus, it means that there is an obligation to register marriages by marriage registrar employees with the issuance of a Marriage Certificate to obtain legal protection against civil relations that arise after marriage and to facilitate services and national development. By being registered according to statutory regulations, the marriage has legal force. If the marriage is not registered, the marriage, including the children born from the marriage, will not receive legal protection and guarantee their rights and obligations to the fullest.

In addition, the issuance of Family Card for siri married couples will foster the practice of siri marriage in society. There will be an assumption that the state legalizes siri marriage as a marriage recorded in the Family Card even though it says “unregistered marriage”. This of course will be disharmonious in the regulations.

The writing of marital status as “unregistered marriage” in the Family Card has an impact that is not simple. The potential that arises from this regulation will logically foster the practice of siri marriage in the midst and contrary to the basic principles of marriage, namely the recording principle as stated in Article 2 paragraph (2) of Law Number 1 of 1974, namely that every marriage is recorded according to the Law. The existence of the “unregistered marriage” nomenclature will actually have an impact on legal uncertainty for women [19].

5 Conclusion

From the explanation above, it can be concluded that the urgency of the Ministry of Home Affairs to making policy for issuing the Family Card for siri married couples is that all Indonesians must be registered in Family Card, including to find out the number of people who are married. Issuance of Family Card for siri married couples is important so that the couple concerned gets legal protection. In addition, the registration of siri marriages is expected to provide a legal protection for the family’s children. All types of population administration will be based on the Population Identification Number which starts from the Family Card. Population data collection is something important to improve public services and government policy making in development.

Meanwhile, the writing of marital status as “unregistered marriage” in the Family Card has an impact that is not simple. The potential that arises from this regulation will logically foster the practice of siri marriage in the midst and contrary to the basic principles of marriage, namely the recording principle as stated in Article 2 paragraph (2) of Law Number 1 of 1974, namely that every marriage is recorded according to the Law. The existence of the “unregistered marriage” nomenclature will actually have an impact on legal uncertainty for women.

It is recommended for that: (1) Cross-sectoral coordination is needed in making comprehensive policies or laws and regulations based on Law Number 12 of 2011 concerning the Formation of Legislations, theories and principles of laws and regulations so that there is no disharmony and conflict of norms in Indonesian positive law. (2). It is necessary to harmonize the legal politics of the marriage law and the population administration law to ensure legal certainty regarding the recognition or the legitimacy of unregistered marriage in the Indonesian legal system, which is regulated in the form of statutory regulations drawn up based on the norms in Law Number 12 of 2011 concerning the Formation of Legislations.

Acknowledgments. The authors are fully aware if this legal research will never be completed without the help of various parties, both morally and materially. The authors on this occasion would like to express gratitude to Rector of Muhammadiyah University of Surabaya, Dean of Faculty of Law, Muhammadiyah University of Surabaya and all academic civitas Faculty of Law, Muhammadiyah University of Surabaya that have provided infinite support so that the writing of this legal research can be completed properly.

Authors' Contributions. Author 1, 2 and 3 are in charge of collecting field data, Author 4 is in charge of formulating the summary, analyzing the data, and so on. There is no potential conflict of interest in the research, authorship, and/or publication of this article.

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