

Constitutional Rights of Children from Unregistered Marriages: A Juridical Analysis of Islamic Family Law and Residency Administration Law in Indonesia in *Maqashid Sharia* Perspective

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Article Info

Received: 2024-10-10

Revised: 2024-12-28

Accepted: 2024-12-30

Keywords:

Legal protection;
Geographical Indications;
Robusta Coffee; West
Lampung; Economic
Boost

Abstract

this article aims to compare the legal standing of unregistered marriages children from different legal system, Islamic marriage law and residency law in Indonesia. Due the Act no. 1 /1974 and Islamic Law Compilation no. 1/1991 every unregistered marriages children can obtain legal status by pursuing a marriage decree (isbat nikah) or through the jurisprudence of a Constitutional Court Decision otherwise he does not have legal protection by the state because his parents' marriage is not recognized and he cannot obtain birth certificates for children and other civil relations. On the contrary according to Regulation Of The Minister Of Internal Affairs Of The Republic Of Indonesia Number 9 Of 2016 About Accelerate Increasing Coverage Of Birth Certificate Ownership he can acquire the birth certificate by the letter of absolute liability (SPTJM) provided by the parents. From the maqashid sharia perspective this contradiction impact the legal standig of unregistered marriage children. This research is literary research with a comparative study with qualitative approach. In accordance with maqashid sharia every child must equal legal standing as resident without any discriminatory position since it is included in the area of basic necessity (mashlahat dharuriyat) as the origin of all rights relating to legal subjects. ____

I. Introduction

The populace matter is the essential rights that must be ensured by the State. Hence, the 1945 Indonesia's Constitution ensures that the state ensure the protection and acknowledgment of the every citizen legitimate status both locally and overseas. For this reason, the government has stipulated the Law Number 24 of 2013 as amendments act to Populace Administration Law 23 of 2006. One of the critical issues in residency administration which incorporates the method of recording populace biodata, recording populace occasion announcing and information collection of helpless populace in population organization and issuance of populace papers.¹

In this case, there's a issue around how to record in a family card which is included within the domain of respectful enrollment due to unregistered relational unions. So distant, the enlistment of relational unions that have occurred only comprises of enlistment of relational unions within the region of the Republic of Indonesia and enlistment of relational unions exterior the domain of the Unitary State of the Republic of Indonesia. There are no rules that serve as a legal umbrella for relational unions that are not recorded in populace reports.² This can be based on the legitimate rule of chapter 2 paragraph (2) of Marriage Law 1 of 1974 which states: "*Each marriage is recorded agreeing to the appropriate laws and directions*". This chapter suggests that the presence of an unregistered marriage does not incorporates a lawful affect on the rights of open administrations by authorized organizations for the culprits. The culprits of unregistered relational unions don't get security and lawful administrations from authorized organizations as they ought to. Their relational unions are not recognized within the populace enlist and cannot get birth certificates for children and other gracious relations.³

Within the improvement of laws and controls, these respectful relations have ended up a concern for the government in securing the populace rights of citizens, counting the results of unregistered relational unions. Based on Presidential Direction of the Republic of Indonesia (Perpres) 96 of 2018 concerning Necessities and Methods for Populace Enrollment and Respectful Enrollment in chapter 34 it is expressed: *Inhabitants can make a explanation of outright duty for the exactness of the information with the information of 2 (two) witnesses within the case not having a birth certificate; and not having a marriage book/marriage certificate extricate or other substantial prove but the relationship status within the Family Card (KK) appears as*

¹ Koesmoyo Ponco Aji, "Implementasi Hak Asasi Manusia Dalam Undang-Undang Kewarganegaraan Republik Indonesia," *Jurnal Ilmiah Kajian Keimigrasian* I, no. 1 (218AD): 7–96.

² Imam Faishol, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia," *Jurnal Ulumul Syar'i*, Juni 8, no. 2 (2019), <http://kbbi.web.id/catat,>

³ Made Widya Sekarbuana, Ida Ayu Putu Widiawati, and I Wayan Arthanaya, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia," *Jurnal Preferensi Hukum* 2, no. 1 (March 19, 2021): 16–21, <https://doi.org/10.22225/jph.2.1.3044.16-21>.

spouse.⁴

The regulation above puts on a space for citizens to require care of populace rights included as well the presence of children of unregistered relational unions. Moreover, this Presidential Regulation is directed actually within the Regulation of Ministry of Home Affairs Republic of Indonesia 108 of 2019 concerning the Executing Directions of Presidential Direction Number 96 of 2018. In chapter 48 section (1) clarifies: *Within the case of birth registration as alluded to in Article 42 does not meet the necessities within the shape of: marriage book/marriage certificate extricate or other substantial prove and the status of the family relationship within the Family Card does not show the conjugal status as spouse and spouse, it is recorded within the birth certificate enlist and birth certificate extricate as the child of one mother*. Passage (2) says: *Within the case of birth enrollment as alluded to in Article 42 does not meet the necessities within the shape of a marriage book/marriage certificate extricate or other substantial prove; and the status of the family relationship within the Family Card appears the conjugal status as spouse and spouse, it is recorded within the birth certificate enroll and birth certificate extricate as the child of the father and mother with the extra state: whose marriage has not been enlisted in understanding with the arrangements of laws and controls*.⁵

This regulation shows the state provides legal protection for unregistered marriages children. Therefore this article is interesting to explain further position of populace registration of unregistered marriages children in the perspective of Islamic and Indonesia Populace Administration law.

Research Methods

This article is arranged by a qualitative method with a normative approach that focuses primarily on the legal system, concepts, lawful standards and laws and directions related to this inquire about.⁶ The most ponder of this inquire about is an examination of the standards contained in different laws and directions, specifically Marriage Law 1 of 1974, the Compilation of Islamic Law (KHI), Presidential Direction Number 96 of 2018 concerning Increasing The Settlement and Methods for Populace Enrollment and Gracious Enlistment, Control of the Serve of Domestic Issues No. 9 of 2016 concerning Speeding up of Birth Certificate Proprietorship and Control of the ministry of home affairs No. 109 of 2019 concerning shapes and books utilized in populace organization to build

⁴ Abdul Gani Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Gema Insani, 1994).

⁵ Chapter 48 paragraph (1) the Regulation of Ministry of Home Affairs Republic of Indonesia 108 of 2019 concerning the Executing Directions of Presidential Direction Number 96 of 2018.

⁶ Tunggul Ansari and Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1-9.

Islamic law related to the issue of legitimate security of the lawful status of unregistered relational unions through the maqashid sharia approach. This article compare the Islamic Family law and the population law in Indonesia to harmonize the reciprocal standards with respect to the lawful standing of children of unregistered hitched some time recently the law.

The Position of Marriage Registration in Islamic Law and Positive Law in Indonesia

Within the setting of marriage enlistment, numerous terms are utilized to allude to an unregistered marriage, a few call it an underhand marriage, a mystery marriage, a sharia marriage, a marriage went with by a devout figure (kawin modin), and different other terms. In Islamic law, the term unregistered marriage is usually distinguished with the term “sirri” marriage. The phrasing of *sirri* marriage (a concealed marriage) has been known among researchers, at slightest since the period of Imam Malik canister Anas. It's fair that the sirri marriage known within the past contains a distinctive meaning from the *sirri* marriage of nowadays. Within the past, what was implied by *sirri* marriage was a marriage that met the necessities and columns agreeing to sharia, but was not enlisted or there was no marriage declaration (*i'lanun-nikah*) within the shape of wedding gathering (*walimatul-'ursy*) or another.⁷

The concealed marriage known by the Indonesian Muslim community nowadays may be a marriage that's carried out agreeing to Islamic law, but isn't carried out some time recently a Marriage Enlistment center as an official government official and/or isn't enlisted at the Office of Religious affairs, so that it does not get a marriage certificate as the as it were formal legitimate evidence. Such a marriage agreeing to legitimate terms is called an underhand marriage.⁸

For the welfare of mankind in the era of the Prophet Mohammed. every event of marriage, divorce, reconciliation and so on was always brought before the Prophet, then the Prophet punished this and that, this indicates that every event of marriage was always known by the Prophet, because of the position of the Prophet as a judge and sovereignty ruler.⁹ At this time this welfare became more important, if the marriage was not registered there would be chaos and harm all mankind, because most likely the marriage would not be controlled, many people who got married and divorced, or had

⁷ Faishol, “Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia.” Jurnal Ulumul Syar'i, Juni 2019 Vol. 8, No. 2

⁸ Nurwahidah, “Nikah Sirri Dalam Perspektif Yuridis Dan Sosiologis,” *Syariah Jurnal Hukum Dan Pemikiran*, 16, no. 1 (2016): 33–46.

⁹ Atho Mudzhar, *Pendekatan Studi Islam: Dalam Teori Dan Praktek* (Pustaka Pelajar, 1998).

been married many times would claim to have never been married. This circumstance ultimately harms the unregistered marriages children, as it was not certainable who the real biological father was, because it would not be possible to decesive the marital status. But if it was registered, a person's marriage would be determined and controlled and so the names of a person's parents.¹⁰

The description above shows the urgency of registering marriages based on the welfare that is present based on the needs of society by the Maslahah mursalah. The determination of law based on the benefit is one of the basic concepts in the determination of Islamic jus so that in several Muslim countries, including Indonesia, regulations have been made that regulate marriage and its registration. This is done for the orderly implementation of marriage in society, the certainty of the law, and to preserve the perpetrators and the consequences of the marriage, such as the wife's care, the relationship between parents and children, inheritance, and others. Through the registration of marriage as evidenced by a marriage certificate, if there is a dispute between the husband and wife, or when husband is not responsible, or take legal action to maintain/obtain legal protection from the state.¹¹

However, in several Islamic legal literature, especially in the classical era, the term registration is not known in marriage. The validity of a marriage is not dependent on the presence or absence of registration, but is measured by the conditions and pillars of marriage suitability. Unregistered marriages are included in the area of modern Islamic law because the making of a marriage certificate was previously unknown in fiqh, because it is not included in the conditions and pillars of marriage.¹² Registration of marriages was required in Indonesia after the issuance the Marriage Law Act No. 1 of 1974.¹³ Likewise, chapter 5 of the Islamic Compilation Law (KHI) explains that in order to ensure orderly marriage for the moslem society, every marriage must be registered. Meanwhile, chapter 6 emphasizes that marriages implemented sine the supervision of the Marriage Logger (PPN) have no legal standing.¹⁴ This principle of registration of marriage in positive law in Indonesia has developed

¹⁰ Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia: Studi Kritis Perkembangan Hukum Islam Dari Fikih, Undang-Undang Nomor 1 Tahun 1974 Sampai Kompilasi Hukum Islam* (Jakarta: Kencana, 2019).

¹¹ Muhammad Ngizzul et al., "Unregistered Marriage Between Indonesian Citizens And Foreign Citizens With The Legal Perspective Of Marriage In Indonesia," *Ekonomi Dan Keagamaan* 7, no. 2 (2020), <https://republika.co.id/berita/pt8fvc459/>.

¹² Aisyah Arsyad, "Menuju Fikih Gender: Analisis Hadis Tentang Perintah Mengumumkan Pernikahan," *TAHDIS* 8 (2017).

¹³ Adrianto, "Makna Pencatatan Perkawinan Pada Perundang-Undangan Ditinjau Dalam Hukum Islam," *El-Ahli: Jurnal Hukum Keluarga Islam* 4, no. 2 (2023): 75–92.

¹⁴ Abdullah Abdul Gani, *Pengantar Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Gema Insani, 1994)

into one of the most principled things in the Marriage Law. The registration situation of marriage can be seen in several legal norms of the following laws and regulations:

1. The 1945 Indonesia Constitution, in chapter 28-B paragraph (1), namely: "Everyone has the authorization to form a family and carry out their descendants through a legitimate marriage";
2. Act Number 1 of 1974 concerning Marriage, chapter 2 verse (1), namely: "Marriage is valid if it is implemented due to the laws of each religion and faith";
3. Chapter 2 Verse (2), namely: "Every marriage is acknowledge due the applicable laws and regulations.

The main legal problem regarding the registration of marriages according to laws and regulations is regarding the legal meaning of the registration of marriages. Regarding this problem, the registration of all marriages is important in all events in a person's life, for example birth, death which is stated in certificates, a deed which is also included in the registration list".¹⁵ Based on the Law 1/1974 above, the registration of marriage is not a factor that determines the validity of a marriage and registration is an administrative obligation that is required based on laws and regulations obviously. The factors that determine the validity of a marriage are the requirements determined by the religion of each prospective couple. The requirement for the state to register marriages through statutory regulations is an administrative obligation. Therefore the enrollment of each marriage is the same as the enrollment of vital occasions in a person's life, for case birth, passing which is expressed in certificates, a deed which is additionally included within the enrollment list". Based on the Clarification of Law 1/1974 over, the enrollment of marriage isn't a factor that decides the legitimacy of a marriage and enrollment is an authoritative commitment that's required based on laws and controls clearly.¹⁶

The variables that decide the legitimacy of a marriage are the prerequisites decided by the religion of each imminent couple. The prerequisite for the state to enlist relational unions through statutory directions is an regulatory commitment. The importance of the authoritative commitment within the shape of marriage enlistment can be seen from the reason of requiring enrollment, to be specific within the setting of the state's work of giving ensures of security, headway, requirement, and fulfillment of the human rights of the individual concerned, which is the duty of the state and must be carried out in understanding with the principles of a majority rule state of law that's directed and

¹⁵ Ahmad Rifai, *Penemuan Hukum Oleh Hakim: Dalam Perspektif Hukum Progresif* (Grafiti, 2011).

¹⁶ Moh Aqil Syofiullah, Dyah Ochtorina Susanti, and Fendy Setiawan, "Kepastian Hukum Bagi Istri Dan Anak Dalam Perkawinan Tidak Tercatat Di Indonesia," *HUKMY : Jurnal Hukum* 3, no. 1 (2023).

expressed in laws and directions. Such enrollment does not struggle with protected arrangements since it is carried out with the sole deliberate of ensuring acknowledgment and regard for the rights and opportunities of others, and to fulfill fair demands in understanding with ethical contemplations, devout values, security, and open arrange in a majority rule society.¹⁷

Marriage enlistment is an authoritative region carried out by the state planning so that marriage, as an imperative lawful act within the life of the individual concerned, which has suggestions for the event of exceptionally wide lawful results, can afterward be demonstrated with culminate prove with an true deed, so that security and administrations by the state related to the rights emerging from a marriage in address can be carried out successfully and productively.¹⁸

This implies that by having true prove of marriage, the rights emerging as a result of marriage can be secured and served well, since there's no require for a handle of verification that takes more time, cash, vitality, and thought, such as verification of the root of the child in Article 55 of the Marriage Law which stipulates that in case the root of the child cannot be proven by an bona fide deed, at that point it'll be decided by a choice of the competent court. Such verification is certainly not more viable and effective when compared to having an bona fide deed as proof. Based on the arrangements of the lawful rules, there's a distinction in law with respect to the assurance of natural children based on marriage enrollment where agreeing to Islamic law, both as controlled within the Islamic Compilation Law additionally the Marriage Law, it does not recognize the legitimacy of an unregistered marriage, but in conditions decided by the court it can be recognized based on prove and court choices.¹⁹

Within the position of marriage enlistment as the premise for the legitimacy of the marriage. Based on the rule of positivization of Islamic law, unregistered marriage is an commitment after the issuance of Marriage Law. This is often not utilized as a guideline so that marriage registration is not a calculate that decides the legitimacy of a marriage. Enlistment is an authoritative commitment that's required by law. The components that decide the legitimacy of a marriage are the necessities decided by the religion of each imminent couple. The commitment to enlist a marriage by the state through

¹⁷ Sekarbuana, Widiawati, and Arthanaya, "Perkawinan Beda Agama Dalam Perspektif Hak Asasi Manusia Di Indonesia." *Preferensi Hukum*, 16 no 2 (2021)

¹⁸ Muhammad Yusman and Soffyan Angga Fahlani, "Problematisa Pencatatan Perkawinan Di Indonesia : Telaah Perbandingan Pencatatan Perkawinan Di Beberapa Negara Asia Tenggara," *Banua Law Review* 4 (2022): 184–95, <http://balrev.ulm.ac.id/index.php/balrev>.

¹⁹ Siah Khosyi'ah et al., "Akibat Hukum Perkawinan Tidak Dicatat Terhadap Istri Dan Anak Atas Hak Kebendaan Menurut Hukum Islam Di Indonesia," *Asy-Syari'ah*, no. 3 (2015): 185–200.

law is an authoritative commitment.²⁰

Hence, it can be understood that in Islamic law, enlistment gets to be a matter of guideline with the appropriation of the Marriage Law as positive law, but enrollment of marriage is an authoritative commitment in arrange to supply ensures of security, headway, requirement, and fulfillment of the human rights concerned which are the duty of the state and must be carried out in agreement with the standards of a equitable protected state that are controlled and expressed in laws and directions.

Civil Registration Rights for Unregistered Marriages According to Islamic Law and Positive Law

Basically, the State has an obligation to provide protection and legal recognition for every Indonesian citizen. State administrative services in the form of processing official identities that must be owned by every Indonesian citizen are one of the services provided by the government to the community, including the right to citizenship status. Registration or recording of residents is very important in efforts to regulate population administration. The development of population administration as a system is part of government administration and state administration in providing legal certainty and protection for the rights of individual residents who have been fully registered.²¹

The problems that occur in this technological era are more problematic in society such as the reluctance and lack of awareness of residents to report every population event and the many residents who consider that they have obtained their rights and obligations as in Islamic law which does not make registration as a benchmark. In the traditional Islamic law, the position of citizens is viewed from a territorial perspective in the sense that the area where they live has a binding agreement with the Islamic government.²²

In this perspective, Islamic jurisprudence scholars divide a person's citizenship among relationship between Muslim and non-Muslim. The population so called based on the are they are living as *dar al-amni* (safe zone) or *dar al-Islam* (peace zone) and *dar al-harbi* (war zone). Those who live in *dar al-Islam* have a strong commitment to maintaining in the Muslim group, while non-Muslims who live

²⁰ Muhammad Andri et al., "Implikasi Isbath Nikah Terhadap Status Istri, Anak Dan Harta Perkawinan Dalam Perkawinan Dibawah Tangan," Jurnal Penegakan Hukum Indonesia (JPHI) 1, no. 1 (October 2020): 59–70, <https://bldk.mahkamahagung.go.id/id/puslitbang-hukum-dan-peradilan/dok->.

²¹ Nasruddin Yusuf, Nur Azizah, and Faradila Hasan, "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts," *Al-Adalah* 20, no. 2 (2023): 283–308, <https://doi.org/10.24042/adalah.v20i2.16177>.

²² Khalid Jindan and Masrohin, *Teori Politik Islam: Telaah Kritis Ibnu Taimiyah Tentang Pemerintahan Islam* (Jakarta: Risalah Gusti, 1995).

temporarily in Islamic countries are called *musta'min* and remain committed to Islam and recognize Islamic government. Their property and lives are preserved. Meanwhile, the protected population (*ahl al-dzimmi*) are those who have a guaranteed agreement with Muslims to live in security under the protection of Islam and within an Islamic society. They are guaranteed for the safety of Muslims based on the protection agreement. The implication is that they are included in the citizens of Islam territory (*darul Islam*) that contract contains provisions to allow non-Muslims to remain in their beliefs/religions, in addition to enjoying the right to obtain security guarantees and attention from Muslims. The condition is that they pay individual tax (*jizyah*) and remain steadfast to Islamic laws in public matters.²³

Meanwhile, the the protected population according to Fiqh experts are people who enter another area with a guarantee of security from the local government, whether they are moslem or hostail person (*harabiyun*) againts Islam. Another short of residents known as *Harbiyun* or *Kafir Harbi* for every infidel who is not included in the protection agreement (*dzimmah*) of Muslims. In comparizen to positive law, population rights are related to the term population where chapter 26 of the Indonesia constitution states that residents are Indonesian citizens and foreigners who reside in Indonesia.²⁴

Thus, in the context of positive law, territorial differences that exist in society, whether controlled by an Islamic government or not, are not a categorization of population rights because the population is viewed from the perspective of Indonesian or foreign citizens. The rights of citizens to the state are regulated in the 1945 Constitution, articles 27-34, as the right to equal standing before the law and government, to work and a decent living for humanity. to express opinions / freedom of association and assembly, to embrace religion, to defend the country, to receive education and to social justice.²⁵ To decide somebody as a citizen, an organization necessity is required that permits a citizen to be recognized and ensured by the state. Populace organization may be a arrangement of exercises for orchestrating and organizing the issuance of populace records and information through populace enlistment, respectful enrollment and data administration and utilization of the comes about for

²³ Muhammad Iqbal, *Fiqh Siyasah Konstekstualisasi Doktrin Politik Islam* (Jakarta: Kencana, 2016).

²⁴ Ahmad Muhtadi Anshor, "Dar Al-Islam, Dar Al-Harb, Dar Al-Shulh Kajian Fikih Siyasah," *Episteme* 8, no. 1 (2013): 5–68.

²⁵ 1945 Constitution, articles 27paragraph (1) All citizens have equal status under the law and government and are obliged to uphold the law and government without exception. Article 28D paragraph (1) Every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. (4) Every person has the right to citizenship status.)

public services and improvement.²⁶

Populace enrollment could be a populace enlistment handle that incorporates enlistment of biodata, helpless populaces and detailing of populace occasions and issuance of populace records within the frame of personality, cards or data issued by the executing organization. The methods and strategies for organizing populace enrollment are a arrangement of forms carried out in organizing populace enrollment counting necessities, shapes of input and yield. Populace occasions are occasions experienced by inhabitants that must be detailed since they have implications for the issuance or alter of Family Card, Character Card or other Populace Certificates. For that, within the positive lawful angle, Law no. 23 of 2006 concerning Populace Organization was born, where chapter 3 talks about the commitments of inhabitants, specifically: *each inhabitant is required to report populace occasions and imperative occasions they involvement to the executing organization, by satisfying the prerequisites required in populace enrollment and respectful enrollment.*

Populace Occasions alluded to within the legitimate standards of this Law are events experienced by Inhabitants that must be reported because they result within the issuance or alter of Family Cards and/or other populace certificates counting moving in, changing addresses, and changing restricted home status to permanent residence. These occasions are occasions experienced by a individual counting birth, passing, stillbirth, marriage, separate, child acknowledgment, child approval, appropriation, title changes and changes in citizenship status.²⁷

Regarding the registration of marriages, the Ministry of Home Affairs no. 9 year 2016 issued the acceleration of the coverage of the property of the birth certificate, which contains the implementation of the SPTJM , which is useful to replace the requirements for the creation of a card of family and a birth certificate, if the applicant cannot meet the requirements in the form of a marriage certificate and a birth certificate from a doctor or a birth attendant. If the requirements for the issuance of a birth certificate in the form of a birth certificate from a doctor / midwife / birth attendant are not met, then the applicant must attach the SPTJM of the truth of birth data. Similarly, when the requirements in the form of a marriage certificate / marriage certificate extract are not met, then the applicant must add the SPTJM of the truth as a married couple. And the letter attached by

²⁶ Fadilah Hapidz et al., "Implementasi Pendaftaran Penduduk Sebagai Upaya Tertib Administrasi Ditinjau Dari Hukum Administrasi Negara," *JLEB: Journal of Law Education and Business* 2, no. 1 (2024): 5–64.

²⁷ Amanda Zubaidah, Aljarofi Tulungagung, and Jawa Timur, "Kategori Perkawinan Belum Tercatat Dalam Blangko Kartu Keluarga Perspektif Yuridis," *Al-Hukama: The Indonesian Journal of Islamic Family Law* 09 (2019): 2089–7480.

the candidate in the form of SPTJM is the full responsibility of the candidate.²⁸

The application of a similar SPTJM also applies to husbands and wives in unregistered marriages who want to include their civil status in the family card, as well as the application of the SPTJM to the authors of unregistered marriages who cannot meet the requirements for the issuance of a birth certificate in the form of a marriage certificate and a birth certificate. This is stated in chapter 5 verse (2) of the Regulation of the Ministry of Home Affairs no. 109 of 2019 on the forms and books used in the administration of the population, which says:

- a. *The form for the declaration of absolute responsibility in case of unregistered marriage/divorce as one of the requirements to indicate the marital/divorce status in the family card for residents who do not have documentation in the form of a marriage book, a marriage certificate or extract. by a divorce certificate.*
- b. *Declaration of responsibility for the authenticity of birth records, for birth registration requests if the applicant cannot provide a birth certificate from a doctor / midwife / birth attendant.*
- c. *Declaration of truth as a form of responsibility of a married couple, for the requirements of birth registration if the applicant cannot provide the extract of the marriage book/marriage certificate, but the relationship status of the parents on the family card it shows mate couple.*

So there is a difference in validity between a birth and family certificate for a marriage implemented based on religious faith only and the one that has been registered by the state, and a birth certificate or family card for a marriage that meets only religious rules. The differences lie in the state recorded in the document. The "married" status is noted on the birth and family certificate of a valid marriage according to religion and registered by the state, while for residents who are married only according to religion and are not registered by the state, it is noted. in the marital status column as "unregistered marital status".²⁹ This difference is based on article 5 of Regulation No. 9 of 2016 of the Minister of home affairs regarding the acceleration of the possession of the birth certificate: In case the requirements in the form of the marriage certificate/the extract of the marriage certificate mentioned in article 3, par. 1, letter b, are not provided and the status of the relationship on the family card does not indicate the civil status of the husband and wife, so the Family Paper is registered in the register of birth certificates or the extract of the birth certificate with the data elements listed in the annex which is an integral part of this ministerial regulation.³⁰

²⁸ Burhanuddin, "Pemenuhan Hak-Hak Dasar Anak Dalam Perspektif Islam," *Adliya* 8, no. 1 (2014): 287–300.

²⁹ Muhammad Rizal Firdaus and Ali Maskur, "Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Pencatatan Perkawinan Menurut Ketentuan Yang Berlaku Di Indonesia (Hukum Positif)," *Isti'dal : Jurnal Studi Hukum Islam* II, no. 1 (2024): 52–72.

³⁰ Iwan Kustiawan, Nurmuttaqin, and Ai Romlah, "Tinjauan Sosiologis Terhadap Pencantuman Status Kawin Belum Tercatat Dan Cerai Hidup Belum Tercatat Dalam Kartu Keluarga Sebagai Akibat Penerapan Peraturan Menteri Dalam Negeri Nomor 108 Tahun 2019 Jo Peraturan Menteri Dalam Negeri Nomor 109 Tahun 2019 Di Kota Banjar," *Case Journal: Journal Of Law* 3, no. 2 (2022): 106–20.

The legal provisions in the Minister of Home Affairs Regulation are a form of facilitation for unregistered marriages by still obtaining a family card as a mean to protect unregistered marriages by registering them in the population administration. Thus, the existence of an unregistered marriage meets the requirements of population administration even though it does not provide legal force in the problems that will be faced because civil issues such as inheritance, maintenance and child care must still be based on a court decision. This policy is only carried out to protect children born from unregistered marriages in obtaining their rights as cited in the Republic of Indonesia Constitution. Facilitating family cards and birth certificates does not mean legalizing unregistered marriages but only as a solution for a marriage that is in fact not registered from the beginning. So this policy is a temporary solution because an unregistered marriage can only be legalized by being confirmed or recorded later in a Religious Court.³¹

Protection of children is an important issue because one of the characteristics of the maqashid sharia of the Islamic teachings of descent protection (*hifzun nasl*). The blood relationship (*nasab*) between parents and children is the strongest civil relationship and cannot be removed by any other relationship. The relationship of blood in Islamic law has implications for at least several legal aspects, such as the obligation to provide for a living, guardianship, inheritance and prohibition of marriage. In this terms, every father is obligated to provide all live necessities both biological or legal child in life and after death. Thus, Islam has a legal interest in regulating the flow of human lineage relationships. From this perspective, Islam broadly divides children into two categories, namely sharia and thabi'iy children. They are called sharia children because religion stipulates a legal relationship with their parents and are called thabi'iy children because legally the child is considered to have no relationship with his parents except for his mother. A sharia child is a child born in a legal marriage who legally have a bloodline relationship with their male parents and both of them still have the rights and obligations as parents towards their child and vice versa. On the other hand, thabi'iy child (child out of wedlock) who legally does not recognized relationship with his father and only has legal relationship with the mother who delivered child. In Civil Law, there is also a categorization of children into two, firstly legal children and secondly the children out of wedlock. Legal children are those who are considered to be born from a legal mating and children of wedlock can be recognized only by their father and mother avowal. Through the recognition of children, children out of wedlock

³¹ Siti Ukhtiya Zulfa and Sri Indrahti, "Analisis Penerapan Permendagri Nomor 19 Tahun 2012 Dalam Pengelolaan Arsip Akta Perkawinan Di Dinas Kependudukan Dan Pencatatan Sipil Kota Semarang," Jurnal Ilmu Perpustakaan UNDIP 6, no. 3 (2019): 611–20.

gain a relationship with the person who acknowledges them, but is limited to those who acknowledge them only.³²

The legal connection between the children with the father and mother's family is only answered through the validation of the child which requires them both to be legally married. Nevertheless the Civil Law does not acknowledge the recognition of children resulting from adultery. So, the children grouping as unregistered mating is included in the category of sharia children because basically they were born in a legal marriage but were not noted in the state document. Therefore, their populace rights must not be lost as an administrative need even though it requires a court decision to obtain their constitutional rights.³³

Maqashid Sharia Approach

The Maqhasid approach in ijtiḥad substantively and methodologically is also in line with the concept of context-based ijtiḥad which is carried out by understanding problems in historical and modern contexts. In the study of the Islamic family law renewal, ijtiḥad based on Maqhasid Syari'ah has the spirit of bringing Islamic law in line with various situations faced, including in the contemporary context nowadays. In addition, Maqhasid-based ijtiḥad has a relatively adequate conceptual and methodological structure as a basis for the construction and development of Islamic law as a form of multidisciplinary approach that allows the involvement of various modern scientific disciplines in providing legal considerations.³⁴

Islamic family law through the maqashid syari'ah approach shows that the objective of marriage law is to strengthen the marriage bonds (usrah al-nikah). Allah SWT confirms his marriage with the sharia of marriage which is accompanied by a number of conditions and pillars. According to Ibn 'Ashur, the issuance of marriage with a number of conditions and pillars has the following main objectives:³⁵

1. To realize the difference in legal status between marriage and adultery with the presence of a marriage brides, dowry, and two witnesses as the pillars of the implementation of the marriage contract.

³² Hamid Farihi, "Kawin Siri Dalam Perspektif Hukum Islam Dan Administrasi Kependudukan (," Salam: Jurnal Sosial Dan Budaya Syari 10, no. 5 (2023): 1451–66, <https://doi.org/10.15408/sjsbs.v10i5.35714>.

³³ Yusuf Setiawan, "Analisa Pencatatan Nikah (Kawin Belum Tercatat) Pada Kk Dalam Perspektif Disdukcapil Purwakarta," *Muttaqien; Indonesian Journal of Multidiciplinary Islamic Studies* 3, no. 2 (July 30, 2022), <https://doi.org/10.52593/mtq.03.2.02>.

³⁴ Ilham Tohari and Moh Anas Kholish, "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia," *Arena Hukum* 13, no. 2 (August 2020): 314328.

³⁵ Thahir bin 'Ashur, *Maqashid Al-Sharia*, (Tunisia: Dar Sahnun, 1997).

2. To show the distinction mating between the marriage and the transactional contract. The marriage is forever, and it is not permissible to carry out the contract for a certain period of time unlike the transactional contract.
3. Strengthening the ties of lineage and close family kinship (usrah al-nasāb wa al-qurābah).

One of the main maqashid of family law rules is to strengthen the ties of lineage from things that can give rise to suspicions that doubt the authenticity of the lineage. The substance of the legal provisions in question is to prevent things that can give rise to suspicions that doubt the validity of the wife's child's lineage to her husband.

The maqashid approach in family law is also very urgent in resolving conflicts within the family. In this term, the purpose of Islamic family law is to regulate the rules regarding how to resolve conflicts arising from the bonds of marriage, lineage and kinship. Islamic law stipulates the rules for terminating these bonds ethically and humanely. Based on the reasoning above, it can be concluded that maqashid sharia as a reasoning model that prioritizes the purpose of tasyri` in various legal issues makes contemporary family issues a new area that must be sought for its legal standing. Therefore, this method becomes an instrument of legal reasoning used in order to examine the legal implication of the compliance to the constitutional rights of children from unregistered marriages against civil rights such as in terms of inheritance, maintenance, marriage and divorce. Tahir Mahmud, as quoted in Salim, claims that Islamic family law explained all matters that are generally trusted regarding family rules, relationships within the family, household duties, inheritances, giving dowries, protections, etc. Based on the conception above, civil rights are closely related to the scope of family law studies.³⁶

The Indonesia Constitution in 1945 as the basis of legal position of citizens has regulated that citizens are the native Indonesian population and those who are from another nations and approved by law as resident while. With this clause, basically all citizens are equal in law, so the government have the obligation to obey the law without exception. Based on the article, the constitution of the State of Indonesia recognizes that rights as citizens have been guaranteed and become basic rights that have existed since humans were born obviously. Therefore, the same recognition, guarantees, protection and legal certainty for all citizens emerged without distinguishing them from any aspect, especially in the aspect of citizenship.

This constitutional protection in relation to financial rights is realized in the form of ownership of a birth certificate which has a formal function (formalitascausa) and a function as evidence (probationis

³⁶ Salim Hs, Pengantar Hukum Perdata Tertulis (BW), (Jakarta: Sinar Grafika, 2008).

causa) for a deed as a formal function, meaning that a legal action will become more complete if a deed is made. It implicates that wedlock children are the loss of various legal rights like the right to obtain recognition of their lineage with all its legal consequences, the right to receive education costs, the right to receive grants, the right to inherit from their parents and so on. In families who are married in the Islamic religion and are not registered, but whose families are founded on the principle of “samara” sakinah, mawaddah, warahmah, children who are born should receive their civil rights. However, there are differences with children born from adultery or illegitimate children. In Indonesian law, the Civil Code states that children born out of wedlock are those born before 6 months from the mating vow and children born three hundred days since the dissolution of their parents' marriage.³⁷

The institution that processes the denial is the court by requiring the person concerned to take an oath. In the course of time, children from Sirry marriages whose parties are Muslim can be asked for validation through the court, as long as it can be proven by science and technology. Meanwhile Islamic Law Compiltaiion (KHI) states that children of unregistered marriage do not receive legal protection. In contrast to the amended content of Article 43 of the Marriage Law, the rules for child protection in the KHI have not changed. KHI is still an old product that adheres to Article 43 (old) that children from unregistered marriage only have a civil relationship with their mother. In conclusion, both Marriage Law and KHI do not protect the civil rights of children born from marriage and are not recorded. Children only have a civil relationship with their mother, unless it can be proven by science and technology.

With these different consequences, children born into unregistered marriages can have two possibilities, namely legitimate children and illegitimate children depending on the birth and determination of the parents' marriage vows. This implicates the potential use of self-identity that is incompatible with the actual conditions of legal events. The letter provisions in the Criminal Code also include all letters, whether written by hand, printed or written using a typewriter, and others that can give rise to rights, or it can issue an agreement or be used as information for an act or event. Thus, in falsifying a population identity, it can fulfill the criminal elements of the crime of falsifying letters because it intentionally means using the population document and he really knows that the

³⁷ Farihi, “Syar-i Kawin Siri Dalam Perspektif Hukum Islam Dan Administrasi Kependudukan ”, SALAM Jurnal Sosial Dan Budaya

letter he used was fake.³⁸

Therefore, the civil registration deed is very important because in this way people can easily obtain certainty. This is in accordance with the objectives of the civil registration institution, namely an institution that provides maximum and complete certainty, as well as clarity regarding events or events as above, because these events or occurrences must be recorded or registered so that both the person concerned himself or someone else interested has their own evidence or legal certainty about the event.³⁹

One of the certificates issued by the civil registry is a birth certificate. This deed is very important for a person, meaning that this deed shows a person's true identity, legal position and status. Apart from that, a birth certificate can prove that the person concerned has reached a certain age as determined by law to carry out certain legal acts, for example marriage. A birth certificate can also be used as proof that he is the legal heir of an heir.⁴⁰

Based on the description above, apart from legitimate children who are protected by statutory regulations in obtaining birth certificates for illegitimate children or children born out of wedlock or children whose marriage is not registered so that they do not have an extract from the marriage certificate/marriage certificate, their parents are also protected in obtaining birth certificates as stated in Presidential Regulation No. 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration Article 52 paragraph (2) states that in the event that birth reporting is not accompanied by a marriage certificate/parental marriage certificate, birth registration is still carried out. However, in practice, officers do not want to register birth certificates for children outside marriage because they cannot show a marriage certificate and parents do not want to include only their mother's name on their child's birth certificate as a result of Law Number 1 of 1974.⁴¹

In Marriage Law no. 1 of 1974, the norms in article 2 paragraph (1) and paragraph (2) show the legal provisions regarding the validity of a marriage according to religious law which is believed and by the State. Both provide protection for all citizens, who obtain protection through recording their marriage in accordance with the religion of each citizen. Chapter 1 was reaffirmed, which actually proves that there is protection of human rights through the registration of the marriage as proven in

³⁸ Raden Soesilo and Kitab Undang-Undang Hukum Pidana, Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal, (Bogor, Politeia, 1991.)

³⁹ R Soeroso, Praktik Hukum Acara Perdata: Tata Cara Dan Proses Persidangan (Jakarta: Sinar Grafika, 1994).

⁴⁰ R Soepomo, Hukum Acara Perdata Pengadilan Negeri, (Jakarta, Pradnya Paramita, 1994).

⁴¹ Fitria Olivia and Jhony, "Pelaksanaan Perolehan Akta Kelahiran Bagi Anak Luar Kawin Dan Kendalanya Di Suku Dinas Kependudukan Dan Catatan Sipil Kotamadya Jakarta Barat," Lex Jurnalica 9, no. 1 (2012): 51–60.

the form of a marriage certificate/book from the competent State/government agency which is one of the conditions for obtaining a birth certificate.

In chapter 2 paragraphs (1) and (2) of Law No. 1 of 1974 it must be read in full as follows paragraph (1): Marriage is valid if it is carried out according to the laws of each religion and belief. Paragraph (2): each marriage shall be registered in accordance with the legislation in force. The Compilation of Islamic Law article 4 also states that marriage is valid, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage, but still leaves legal issues such as unregistered marriages not yet considered valid according to Law No.1 of 1974 as state law. Likewise, children born into unregistered marriages do not have a legal relationship with the father. Children only have a legal relationship with the mother as stated in Article 43 paragraph (1) of Law no. 1 of 1974 states that children born out of wedlock only have a civil relationship with their mother and their mother's family.

This has the implication that unregistered marriages are not protected by the State/government in the form of a marriage certificate/marriage book by authorized officials. For children born into unregistered marriages, the birth certificate will state the child's status as an illegitimate child. Such a status of the child will certainly have a psychological impact on the child regarding the child's origin because birth registration is carried out without the requirement of a Marriage Certificate/Marriage Certificate Quotation, so the Birth Certificate only states the child of a mother in accordance with Law No. 1 of 1974 in Article 43 paragraph 1 concerning Marriage.

By fulfilling the rights of population administration, every child who is included in an unregistered marriage can have the position of a legal subject. Legal subjects are anything that can acquire, have or bear rights and obligations as well as legal authority or authority. The authority to act means the position of humans in an active state. Among the many rights that humans must have or demand is the right to naming. Humans as subjects of law (*naturlijke person*) usually have an identity as subjects of law which indicates the existence of humans in social life and society. By assuming identity, legal subjects will be easily identified in social and social life.⁴²

Apart from that, the application of a letter of absolute responsibility and the requirement for witnesses to record their identity when filling out a family card blank or requesting a birth certificate are forms of legal action that free the government service or agency from facing the possibility of

⁴² Dede Agus and Lia Riesta Dewi, "Pelaksanaan Jaminan Hak Keperdataan Subyek Hukum Manusia Atas Perubahan Atau Penambahan Nama Dalam Hukum Positif Indonesia Di Serang Banten," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 1 (February 8, 2021): 227, <https://doi.org/10.33087/jiubj.v21i1.1140>.

misuse of information in filling in population data.⁴³

In Minister of Home Affairs Regulation Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership, it is stated that the Statement of Absolute Responsibility for the Truth of Birth Data is a statement made by the biological parent/guardian/applicant with full responsibility for the truth of a person's birth data, with 2 (two) witnesses known. Meanwhile, Article 1 number 19 states that the Statement of Absolute Responsibility as a Husband and Wife, is a statement made by the biological parent/guardian/applicant with full responsibility for a person's marital relationship status, with 2 (two) witnesses known. Apart from its function of increasing ownership of birth certificates, SPTJM is expected to be able to guarantee the administrative rights of residents in serving population documents without any discriminatory treatment as mandated by Article 2 of Government Regulation of the Republic of Indonesia Number 40 of 2019 concerning the Implementation of the Population Administration Law.

So that the presence of this SPTJM can provide a sense of justice for every resident by getting the same services without any differences and protecting and guaranteeing the fulfillment of the rights of every resident. The emergence of SPTJM was not fully accepted by society and instead became a new debate among marriage law experts regarding SPTJM's position in the validity of marriage. The provision of the SPTJM position as a replacement for attachments/marriage certificate documents/marriage certificate quotations in the service of birth certificates implies that the SPTJM position is not the same as a marriage certificate/marriage certificate quotation because determining (isbat) whether an unregistered marriage is valid is still the authority of the religious court through the marriage isbat instrument.⁴⁴

The new format in the family card block in the SIAK version 7 application regarding marital status contains a change in status consisting of "recorded marriages", "unregistered marriages", "unmarried", "live divorces" and dead divorces". Thus there is a new format slot to increase the marital status of those who were originally married or unmarried to "recorded marriages", or "unrecorded marriages." This shows that the government is committed to protecting citizens'

⁴³ Iwan Kustiawan, Nurmuttaqin, and Ai Romlah, "Tinjauan Sosiologis Terhadap Pencantuman Status Kawin Belum Tercatat Dan Cerai Hidup Belum Tercatat Dalam Kartu Keluarga Sebagai Akibat Penerapan Peraturan Menteri Dalam Negeri Nomor 108 Tahun 2019 Jo Peraturan Menteri Dalam Negeri Nomor 109 Tahun 2019 Di Kota Banjar."

⁴⁴ Setiawan, "Analisa Pencatatan Nikah (Kawin Belum Tercatat) Pada Kk Dalam Perspektif Disdukcapil Purwakarta."

residence rights because many married couples do not have a marriage certificate/marriage certificate due to various issues.⁴⁵

Then, for people who want their marriage status in the family card to be “registered marriages”, they must attach a marriage certificate/marriage certificate and if they do not attach proof of the marriage certificate number, the consequence is that they are considered not to have a marriage certificate from the local sub-district Religious Office (*KUA*) so that the family card says marriage has not been recorded.⁴⁶ Thus, “marital status has not been recorded” on the family card has two possibilities, namely that the marriage has not been registered or the marital status has been recorded at the *KUA* but does not attach proof of the marriage certificate when processing the creation of a new family card.

In Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration Chapter VI Transitional Provisions Article 79 paragraph (1) explains that : “*Family Card issuance due to changes in data for marriages that have not been registered before this presidential regulation came into effect but the relationship status on the Family Card shows that as husband and wife it is carried out with the requirements of the Absolute Statement of Responsibility for the Correctness of the marriage data signed by both parties known by 2 (two) witnesses*”. Based on the provisions of the article above, couples who have shown their status as husband and wife on the Family Card, but cannot be proven by a marriage certificate/marriage certificate, can still unite themselves on the Family Card as husband and wife on the condition that they make a SPTJM Correct Marriage Data and there are two witnesses in the SPTJM that was made. Thus, the use of SPTJM in terms of the validity of marriage is not a shortcut for a person to enter into a valid marriage without registration by the Marriage Registrar and is not a basis for marriage. In order for a marriage to be perfect and have strong legal force, the solution is still to carry out marriage isbat in court. SPTJM's position is only limited to an affirmative policy (a special and temporary policy) to resolve problems upstream in order to provide legal protection and legal certainty for the parties, especially wives and children.⁴⁷

⁴⁵ Zubaidah, Tulungagung, and Timur, “Kategori Perkawinan Belum Tercatat Dalam Blangko Kartu Keluarga Perspektif Yuridis.” *Al-Hukama: The Indonesian Journal of Islamic Family Law* 09 (2019): 2089–7480

⁴⁶ Muhammad Rizal Firdaus and Ali Maskur, “Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Pencatatan Perkawinan Menurut Ketentuan Yang Berlaku Di Indonesia (Hukum Positif).” *Isti'dal : Jurnal Studi Hukum Islam* II, no. 1 (2024): 52–72.

⁴⁷ Dian Amelia, Ulfanora, and M. Iflah Febrizal, “Akibat Hukum Kartu Keluarga Bagi Pasangan Kawin Tidak Tercatat Menggunakan Surat Pernyataan Tanggungjawab Mutlak Berdasarkan Peraturan Menteri Dalam Negeri

The implementation of SPTJM is essentially to make it easier for every Indonesian citizen to make a deed issued by the Population and Civil Registration Service in order to create an acceleration in the ownership of deeds containing personal identity and family identity regardless of the citizen's status in terms of their marital relationship, both those that have been recorded and those that have not been recorded. SPTJM is a form of preventive legal protection, namely efforts to prevent actions that could harm parties in a household, especially children and wives, because there is no clarity on status in the family. In Islam, children's human rights are a gift from Allah which must be guaranteed, protected and fulfilled by parents, family, society, government and state. Therefore, protecting children's rights is very important and must be heeded. As referring to the aim of Islamic law, namely the creation of a benefit for mankind, the protection of children's rights is closely related to efforts to maintain offspring (hifdz an-nasl) which in the formula of maqashid ash-syari'ah is one of the pillars that must be upheld for the creation of a benefit.⁴⁸

Fulfillment of children's administrative rights will have a broad impact on the other side, namely the existence of certainty for children in obtaining their rights, such as certainty to obtain the right to support, the right to education, and the right to receive good maintenance without discrimination, so that if one day the child's rights are violated by the parents, such as being abandoned, experiencing violence, discrimination, then the parents can be held accountable. From an Islamic perspective, we really pay attention to a child's lineage. Lineage ties are very closely related in determining a child's position in law. Guardianship, inheritance, marriage in Islamic law are closely related to lineage. Therefore, a child from the perspective of Islamic law must have certainty of lineage. Birth certificates are made in order to maintain certainty of lineage. It can be assessed that a birth certificate is a necessity in maintaining the child's existence. A birth certificate is authentic proof of lineage. Therefore, a birth certificate has the degree needed to protect lineage certainty. In the perspective of maqashid al-syari'ah, the aim of Islamic law is that birth certificates have a degree of daruriyah.⁴⁹ With a birth certificate, it can be concluded that a child has a clear status to whom he is assigned.

Conclusion

Based on the description above, it can be concluded that marriages carried out based on religion and

Nomor 108 Tahun 2019 Tentang Persyaratan Dan Tata Cara Pendaftaran Penduduk Dan Pencatatan Sipil,” *Unes Law Review* 6, no. 2 (2023): 4615–27.

⁴⁸ Burhanudin Hamnash, “Pemenuhan Hak-Hak Dasar Anak Dalam Perspektif Islam,” *Adliya* Vol. 8, No. 1 (2014): 289, <https://doi.org/10.15575>.

⁴⁹ Adrianto, “Makna Pencatatan Perkawinan Pada Perundang-Undangan Ditinjau Dalam Hukum Islam.” *El-Ahli: Jurnal Hukum Keluarga Islam* 4, no. 2 (2023): 75–92.

belief are recognized by the state as valid if they meet the legal provisions set by religion. It's just that in terms of legal force, it is not protected because it does not have an authentic deed in the form of a marriage book that registers the marriage event that occurred. To protect administratively, several laws and regulations in positive law in Indonesia have given birth to recognition by recording in population documents in the form of family cards and birth certificates. This is based on the legal provisions in Presidential Decree Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, Minister of Home Affairs Regulation No. 9 of 2016 concerning Acceleration of Birth Certificate Ownership and Minister of Home Affairs Regulation No. 109 of 2019 concerning forms and books used in population administration. In the three Regulations, there is facilitation for unregistered marriages by still obtaining a family card or birth certificate but does not provide legal force in various legal issues. This policy is only a temporary solution because unregistered marriages can only be made legal by being confirmed or recorded later in a religious court.

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