

Legal Status Analysis of Children Born From Siri Marriage in Birth Certification Production

(Reviewing from Law Number 1 Year 1974 Concerning Marriage and Permendagri Number 9 Year 2016 Regarding Acceleration of Increasing Coverage of Birth Certificate Ownership) in Ternate City



Iyam Irahlatmi Kaharu¹, Gamar Muhdar²

^{1,2}Khairun University Ternate

ABSTRACT: This study aims to find out (a) whether children born from unregistered marriages can have a legal birth certificate (b) what are the legal consequences for children born from unregistered marriages in having a legal birth certificate. The research method used is that this research is a normative juridical law research (legal research), where the concept of normative legal research or library research is research that examines document studies, using various secondary data such as legislation, court decisions, legal theory, and can be in the form of opinions of legal scholars.

The results of the study show that 1) Children from serial marriages can make legal birth certificates based on the provisions explicitly regulated in Article 99 of the Compilation of Islamic Law, namely legal children are children born from legal marriages in accordance with Article 42 of Law Number 1 In 1974 concerning Marriage, as well as civil relations, children from unregistered marriages only have civil relations with the mother and her mother's family as explained in Article 43 of the Marriage Law. A valid marriage is a marriage that fulfills not only the terms and pillars of Islam, even administrative processes such as registration of marriages are provisions for the legal position of the marriage. 2) The legal consequence for a child from an unregistered marriage to make a legal birth certificate is if the birth certificate of a child from an unregistered marriage can be issued by including the name of the father, which is a requirement for a determination from the Court regarding the origin of the child. The child's parents apply for a court order regarding the legalization of the child by bringing evidence that proves they are related by blood. Complementing the decision of the Constitutional Court to be more accurate, serial marriages can be registered and then registered through civil registration so that birth certificates can be issued, on the basis of a valid marriage certificate in accordance with Article paragraph (1) of Law Number 1 of 1974 concerning Marriage stating the origin of a child is only can be proven by an authentic birth certificate,

KEYWORDS: Siri Marriage, Making Birth Certificate.

PRELIMINARY

Marriage is a legal bond between a man and a woman to jointly make household life in an orderly manner. Marriage is considered valid if it has fulfilled the pillars and conditions of marriage as stipulated in Islamic law. According to Law Number 1 of 1974 concerning marriage, marriage is required so that humans have legitimate offspring and families towards a happy life in this world and the hereafter, under the auspices of divine love and pleasure. As stated in Article 1 of Law Number 1 of 1974 concerning Marriage which states that 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.¹

Legal marriages in Indonesia are marriages carried out according to the applicable laws and regulations. However, in reality there are still many marriages that are carried out without following what has been stipulated in the law, such as marriages carried out under the hands or better known as siri marriages. Siri marriages or underhanded marriages are marriages that are still carried out by fulfilling the pillars and conditions that have been determined according to Islamic law but its implementation is not carried

¹ Neng Djubaidah. 2013. Pencatatan Perkawinan dan Perkawinan tidak dicatat menurut hukum Tertulis di Indonesia dan Hukum Islam, Sinar Grafika. Jakarta. Hlm 153

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out through registration or registration at the Office of Religious Affairs in their area of residence. Unlawful siri marriages or underhanded marriages according to state law also have a negative impact on the status of children born in the eyes of the law,²

A child is also a person who is born from a marriage between a woman and a man without considering that someone who is born by a woman even though she has never married is still called a child. nation and human resources for national development. The future of the nation and state in the future is in the hands of today's children. The better the child's personality now, the better the future life of the nation. And vice versa, if the child's personality is bad then the life of the nation will also be dilapidated. In general, people think that childhood is a long period in the life span.³

Law number 1 of 1974 does not directly regulate the benchmarks for when someone is classified as a child, but this is implied in Article 6 paragraph (2) which contains provisions for marriage conditions for people who have not reached the age of 21 years to obtain permission from both parents.

Article 7 paragraph (1) of the Law states that the minimum age for marriage for men is 19 (nineteen) years and for women 16 (sixteen) years. According to Prof. Hilman Hadikusuma.SH, drawing the line between a minor and an adult is actually not an issue. This is because in fact, even though a person is not yet an adult, he or she has taken legal actions, for example, an immature child has traded, traded and so on, even though he is not married.⁴ Article 47 paragraph (1) states that children who have not reached the age of 18 (eighteen) years or have never married are under the control of their parents as long as their parental authority is not revoked. Article 50 paragraph (1) states that children who have not reached the age of 18 (eighteen) years and have not been married, are not under the authority of their parents, are under the authority of a guardian. Number 1 of 1974 is for those who are not yet mature and have matured, namely 16 (sixteen) years for women and 19 (nineteen) years for men.⁵

Marriage is legal if it is carried out according to the laws of each religion and belief.⁶ There is an obligation for every marriage to be recorded according to the applicable laws and regulations. Marriages are registered to obtain a marriage certificate. A marriage certificate is evidence that a marriage has occurred or has taken place, not one that determines whether a marriage is legal or not. This absence of evidence causes the children and wives of unregistered marriages to have no legal status (legality) before the State. PMarriages which are held in front of religious leaders based on the provisions of Islamic law/shari'a without being held in front of a marriage registrar (in this case the Office of Religious Affairs) include siri (underhanded) marriages.⁷

Based on the starting point of the description above, interesting issue can be raised in this research are: Legal Analysis of the Status of Children Born from Siri Marriages in Making Birth Certificates in the review of Law Number 1 of 1974 concerning Marriage and Permendagri Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership).

Formulation of the problem

Starting from the background and identification of the problems described above, several problems are formulated as follows:

- 1) Can a child from a serial marriage be legally able to make a birth certificate?
- 2) What are the legal consequences for a child from a serial marriage to make a legal birth certificate?

LITERATURE REVIEW

A. Conceptual Foundations of Marriage

Marriage According to Law Number 1 Year 1974 namely for administrative and legal order. The procedure for carrying out a marriage must follow the procedure as regulated in a government regulation regarding the implementation of law no. 1 of 1974.⁸

Marriages carried out in Indonesia are subject to the provisions of Law no. 1 of 1974 concerning Marriage which stipulates the principles or principles of marriage, including that the purpose of marriage is to form a happy and eternal family. For that

² Idris Ramulyo, 2006, *Hukum Pernikahan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam*, Jakarta: Sinar Grafika, hlm.71.

³ D.Y. Witanto, 2012, *Hak dan Kedudukan Anak Luar Kawin*, Kencana, Jakarta: hlm. 59.

⁴ Hilman Hadikusuma. 2007. *Hukum Perkawinan Indonesia*, Mandar Maju, Jakarta. Hlm 1

⁵ Batasan Usia dikatakan Anak Berdasarkan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

⁶ Pasal 2 ayat 1 Undang-Undang Perkawinan.

⁷ <https://www.hukumonline.com/klinik/a/mendapatkan-akta-kelahiran-tanpa-surat-kawin-cl4576>

⁸ *Pernikahan Menurut Undang-Undang Nomor 1 Tahun 1974..*

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husband and wife help and complement each other so that each can develop his personality to help and achieve spiritual and material well-being.⁹

A marriage is legal if it is carried out according to the law of each religion and belief, and besides that each marriage must be recorded according to the applicable laws and regulations.¹⁰

If the marriage is not carried out based on religion and belief and is registered at the KUA (for those who are Muslim) or at the Civil Registry Office (for those who are non-Muslim) then the marriage carried out is invalid and not recognized by the state.

The current phenomenon is that many people do not carry out marriages based on the requirements mentioned above for various reasons when marriages are carried out religiously, the men are still bound by marriage to other people, both with awareness from the women themselves and there are elements of promises from the men. men that he is in the process of divorcing his wife and soon to be married, on the other hand for groups of people who cannot afford they do not register their marriages because of the costs that must be incurred for recording this marriage, or the prospective wife does not know that her future husband is married to a woman who others and others. Whatever the reason, women should be aware of the impact of underhanded marriages or unregistered marriages on their rights as wives and children born in these marriages and be prepared for the risks they will face.¹¹

Previous marriage regulations did not regulate underhanded marriages or unregistered marriages. The term underhanded marriage or unregistered marriage is commonly used by the community for people who carry out marriages without procedures regulated by the Marriage Act. Usually underhand marriages are carried out based on the religion or customs of the prospective husband or wife. By religion and custom, the marriage is legal but legally the marriage is not officially recognized by the state.¹²

B. Conceptual Foundations of Children

A son is someone who is born from a marriage between a woman and a man without considering that someone who is born by a woman even though they have never married is still called a child, a child is also the forerunner of the birth of a new generation which is the successor to the ideals of the nation's struggle. and human resources for national development.¹³

Children are the nation's assets, the future of the nation and state in the future is in the hands of children. The better the personality of the child now, the better the future life of the nation. Vice versa, if the child's personality is bad, the life of the nation will be bad too. In general, people think that childhood is a long period in the life span. For children's lives, childhood is often considered endless, so they can't wait for the coveted moment, namely the recognition from society that they are no longer children but adults.¹⁴

According to Hurlock (1980), humans develop through several stages that take place sequentially, continuously and at a certain development tempo, continuously and within a certain developmental tempo and can be generally accepted. For more details, the stages of development can be seen in the description of the prenatal period, which starts from the time of conception at birth - the baby's period of one day to two weeks. Infancy; two weeks to a year. Childhood is the period of early childhood: 1 year - 6 years, Children born are from 6 years to 12/13 years. And adolescence is 12/13 years to 21 years. Adulthood is 21 years to 40 years. And the middle age is from 40 years to 60 years and the old age is 60 years until death.¹⁵

C. Conceptual Basis About the Process of Making a Birth Certificate

birth certificate is a civil registration certificate resulting from the recording of a person's birth, in another sense a birth certificate is a form of identity for each child which is an integral part of the civil and political rights of citizens. The right to identity is a form of state recognition of a person's existence before the law.

⁹ Taufiqurrohman Syahuri. 2013. *Legislasi Hukum Perkawinan di Indonesia, Pro Kontra Pembentukannya Hingga Putusan Mahkamah Agung*. Kencana Prenada Media Group, Bandung. Hlm 197-198

¹⁰ Witanto, D.Y. 2012. *Hukum Keluarga: Hak Kedudukan Anak Luar Kawin*. Prestasi Pustaka. Jakarta. Hlm 45-46

¹¹ Fathurrahman Djamil. 2002. *Pengakuan Anak Luar Nikah Akibat Hukumnya dalam Chuzaimah T. Yanggo dan Hafiz Anshary, Problematikan Hukum Islam Kontemporer*. Firdaus. Jakarta. Hlm 129

¹² <https://business-law.binus.ac.id/2018/07/09/perkawinan-di-bawah-tangan-nikah-siri-dan-akibat-hukumnya..>

¹³ Amir Syarifuddin. 2007. *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*. Kencana. Jakarta. Hlm. 36

¹⁴ <https://andibooks.wordpress.com/definisi-anak>,

¹⁵ Hurlock, Elizabeth B, *Developmental Psychology: A Life-Span Approach, 5 th ed*. Terjemahan Istiwidayanti dan Soedjarwo, *Psikologi Perkembangan: Suatu Pendekatan Sepanjang Rentang Kehidupan*, Jakarta, Erlangga, 1980

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The right of identity for a child is stated firmly in Article 5 of Law no. 23 of 2002 concerning Child Protection. The article states that every child has the right to a name as self-identity and citizenship status. Then this is also emphasized in Article 27 paragraphs (1) and (2) which states, paragraph (1) The identity of each child must be given from birth, and paragraph (2) reads that the identity as referred to in paragraph (1) is stated in the birth certificate. Meanwhile, Article 28 D paragraph (1) of the 1945 Constitution states that "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law."¹⁶

The 1945 Constitution of the Republic of Indonesia also provides guarantees for citizenship status as regulated in 28 D paragraph (4) which states that everyone has the right to citizenship status. The purpose of birth registration according to Law no.1 of 1974 As one of the existing registration systems in a country, universal birth registration is basically a state recognition of a person's civil status. In a more concrete sense, birth registration provides legal recognition from the state to a person's identity, genealogy and citizenship, which is realized through a birth registration document, namely a birth certificate.¹⁷

Birth is the presence of a new family member that must be reported immediately. Ownership of a birth certificate is a form of fulfilling the obligations and responsibilities of parents to their children. Although birth certificates are very important documents, there are still many people who are reluctant to process them quickly. They often delay the management because they are lazy. Some still don't want to take care of it at all. Whereas ideally, the making of a birth certificate is done within 60 days of delivery.

RESEARCH METHODS

A. Research Type

This research is a normative juridical law research (legal research), where the concept of normative legal research or library research is research that examines document studies, which uses various secondary data such as legislation, court decisions, legal theory, and can be in the form of opinions. law scholars

Research Approach

The approach used in this research is the statutory approach and the conceptual approach. The statute approach is an approach taken by examining laws and regulations relating to the legal issues being handled. This conceptual approach is also carried out when the relevant laws and regulations do not or do not regulate the problem at hand.¹⁸

To build strong legal arguments, not only based on the provisions of the legislation but also moving on to a conceptual approach, namely the views of scholars and legal doctrines contained in books (treatises) and court decisions.¹⁹

In this regard, the statutory and conceptual approach is used to answer legal issues and build a strong legal argument in this research.²⁰

The analysis of legal materials in this study will use deductive logic analysis methods with qualitative normative analysis methods.²¹The method of deductive logic analysis is to draw conclusions from a general problem to the concrete problem under study.

RESEARCH RESULTS AND DISCUSSION

A. Children from Siri Marriages Can Have a Legal Birth Certificate

A child born through a legal marriage process both based on religious law and state law bears the title as a legitimate child, and vice versa if a child born not through a legal marriage process will bear the title as an illegitimate child, namely a child out of wedlock (children who are not married). adultery). It is these illegitimate children who have their own problems and require serious solutions from all parties, both from those who are responsible for the implementation of religious law, as well as state law, especially in making birth certificates to obtain self-legality in the continuation of life in the future, both in education and

¹⁶Abdul Rahman Ghazali. 2008. *Fiqh Munakahat*. Cet. III; Kencana. Jakarta. Hlm. 103..

¹⁷Mahmuda Junus. 1989. *Hukum Perkawinan Islam Menurut Mazhad : Sayfi'l, Hanafi, Maliki dan Hambali*. Pustaka Mahmudiyah. Jakarta. Hlm. 110.

¹⁸Lexy J. Moleong. 2002. *Metode Penelitian Kualitatif*. Remaja Rosda Karya. Bandung. Hlm. 3

¹⁹Soerjono Soekanto. 1998. *Pengantar Penelitian Hukum*. UI Press. Jakarta, Hlm. 2

²⁰Johan Nasution dan Bahder, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung.,

²¹ Ronny Hanitijo Soemitro, 1988, *Metode Penelitian Hukum dan Jurimetri*, Jakarta, Alumni, hlm. 98

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education. the future of legal recognition of children. Likewise, underhand marriages or "siri marriages" are marriages that are not accompanied by registration before a religious leader.

Marriage like this is contrary to Law Number 1 of 1974 article 2 paragraph 2 "every marriage is recorded according to the applicable laws and regulations"²²Therefore, marriages that do not go through with formal legal registration cannot be justified in the sense that their validity is not recognized by the state, so they cannot obtain marriage certificate information.

Underhanded marriages / unregistered marriages, there are differences in the views of scholars or Islamic law enforcers, including differences in the interpretation of Article 2 paragraph 2 of Law Number 1 of 1974 concerning marital status which has implications for the status of children born. However, according to Law Number 1 of 1974 Article 2 paragraph 2 and Article 43, that a legitimate child is a child born through a legal marriage, namely a marriage that is registered according to the applicable laws and regulations. Meanwhile, children born out of wedlock only have a civil relationship with their mother and their mother's family, so they do not get the rights from their biological father as well as legitimate children.

A marriage becomes legal according to the legislation that has been regulated in Article 2 paragraph (1) of the marriage law stating "a marriage is valid if it is carried out according to the law of each religion and belief which can be classified in marriage:

a) Children Born According to National Marriage

Legal marriages according to law in national marriages are marriages carried out according to the applicable law of every religion that can go through procedures and can give birth to children, which can be classified as follows:

1. Legal Child

Legitimate children are closely related to the validity of marriage. Marriage that goes through the correct legal procedures and provisions will give birth to legal children. As Article 42 of Law Number 1 of 1974 reads "Legal children" are children born in or as a result of legal marriages. This can also be related to the Compilation of Islamic Law in Article 99 which states that a legitimate child is a child born in or as a result of a legal marriage.

Analysis of the explanation of the good article based on Law Number 1 of 1974 and the Compilation of Islamic Law if the marriage has been carried out according to the rules of religious law, then the marriage is considered valid according to customary law and the child born becomes a legal child.

2. Invalid Child

Article 42 of the Marriage Law states that a legitimate child is a child born in or as a result of a legal marriage, so to interpret an illegitimate child or an illegitimate child is a child not born in or as a result of a legal marriage.²³This can also be related to the Compilation of Islamic Law in Article 99 which states that a legitimate child is a child born in or as a result of a legal marriage. As the data produced from the Civil Registry Office of Ternate City in the last three years shows that the birth rates of children aged 0 to 18 years are:

Table 1.

No	Year Data	Amount	Note:
1.	2020	68893	
2.	2021	61934	
3.	2022	64389	January to August

Data Source: Child birth rate at the age of 0 to 18 based on recapitulation from the Ternate City Civil Registry Office.

This data shows the total number in each year. However, in 2020 the overall figure is 68893 which is a very high number when compared to 2021 data, based on an interview from one of the respondents in the civil registry of Ternate City that the highest number is the number where the overall number in the registration of birth certificates is in 2020, but in 2020 in 2021 the number decreased due to the recording of family cards proposing to move residents to other areas so that the data decreased. Then in

²²Sudarsono, 2007, *Hukum Perkawinan Nasional*, Jakarta: PT. Rineka Cipta, hlm. 289

²³I Nyoman Sujana, 2015, *Kedudukan Hukum Anak Luar Kawin Dalam Perspektif Putusan Mahkamah Konstitusi Nomor 46/PUU-Viii/2010*, Yogyakarta, Aswaja Pressindo. hlm. 64

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2022 until August the data achievement increased again, this was due to the increase in the number of births in service in 2022 again.²⁴

Analysis of the explanation of the good article based on Law Number 1 of 1974 and the Compilation of Islamic Law if the marriage has been carried out according to the rules of religious law, then the marriage is considered valid according to customary law and the child born becomes a legal child.

b) The reasons for the birth of an illegitimate child:

- 1) a child born to a woman but the woman does not have a marriage bond with the man who had sex with her;
- 2) a child born to a woman, the birth is known and desired by the parents, only one of them is still bound by another marriage;
- 3) a child born to a woman in the iddah period of divorce but the child born is the result of a relationship with a man who is not her husband, there is a possibility that this illegitimate child is accepted by the families of both parties naturally if the woman who gave birth is married to the man who had intercourse with her;
- 4) a child born to a woman whose husband has left her for more than 300 days is not recognized by her husband;
- 5) children born to women in the religion they embrace determine otherwise, for example in the Catholic religion there is no divorce, but it is also done then he remarries and gives birth to children. The child is considered an illegitimate child;
- 6) children born to a woman, while in them state provisions prohibit marriage, for example Indonesian citizens (WNI) and foreign citizens (WNA) do not get permission from the embassy to hold a marriage because one of them already has a wife but they interfere and give birth to a child, the child is also called an illegitimate child;
- 7) a child born to a woman but the child does not know his parents at all.²⁵

The legal status of an illegitimate child only has a civil relationship with the mother and her mother's family, but with the biological father and her family, the illegitimate child has absolutely no civil relationship.²⁶

Likewise, making a child's identity in the form of a birth certificate may not be made, even if it is made what is listed in it is a child out of wedlock by only including the name of the mother, while the name of the father is not listed, so that children from unregistered marriages do not get legal protection.²⁷The data source for the Coverage of Birth Certificate Ownership at the Ternate City Civil Registry Office based on birth certificates aged 0 to 18 years from couples whose marriages have not been registered can be explained in the table below:

Table 2.

No	Year Data	Amount	Information
1.	2020	-	
2.	2021	-	
3.	2022	91	January to August

Source of data: Coverage of Birth Certificate Ownership of Ternate City Civil Registry Office based on birth certificates aged 0 to 18 years from couples whose marriages have not been registered.

Based on data sources in 2020 and 2021, it shows that it has not been recorded at the Ternate City Civil Registry office. However, in 2022, from January to August 2022, only 91 birth certificates were recorded.

From the description above, it can be understood that the legal system in force in Indonesia does not recognize unregistered marriages or is more popularly known as unregistered marriage, let alone regulates its implementation in a law. Although marriages carried out without registration under religious law and customary law are considered valid, the national law of marriages carried out is outside of knowledge and supervision. The marriage registrar does not have legal force and is still

²⁴Sumber data Cakupan Kepemilikan Akta Kelahiran Kantor Catatan Sipil Kota Ternate

²⁵Zuhdi Masjufuk. 1996. *Nikah Siri, Nikah di Bawah Tangan dan Status Anaknya Menurut Hukum Islam dan Hukum Positif*, *Mimbar Hukum* No.28 tahun VII. Hlm 211-227

²⁶Hartono Marjono. 1995. Syarat Manakah yang menentukan Sahnya Perkawinan, *Mimbar Hukum* No. 23. Hal 57-71

²⁷Rika Saraswati, 2015, *Hukum Perlindungan Anak di Indonesia*. Bandung: PT. Citra Aditya Bakti, hlm. 47

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considered invalid and women who are married without going through the registration process cannot obtain a marriage certificate, so that even if they give birth to children, their children are categorized as illegitimate children in the eyes of the law.

c) Rights and Obligations of Illegitimate Children or Children Out of Wedlock

According to Article 43 of the Marriage Law, it is stated that children born out of wedlock only have a civil relationship with their mother and their mother's family. This condition has a very negative impact on children who are born, especially their rights which include:

1. The status of a child born as an illegitimate child, he or she will not get the same rights as children born through a legal marriage process according to national law;
2. The unclear status of the child before the law, results in the relationship between the child and the father being not strong, so that it has the potential for a father to deny that the child is not his biological child.²⁸

B. Legal Consequences For Children From Siri Marriage To Make Legal Birth Certificates

In order to understand the legal consequences for children from serial marriages to obtain a birth certificate, it can be understood based on several legal rules, namely:

1. Based on Law Number 1 of 1974 concerning Marriage

The provisions of Law number 1 of 1974 concerning Marriage that marriage aims to form a happy and eternal family based on the One Godhead. Unregistered marriages or underhanded marriages are marriages that are not recorded by the Marriage Registrar (PPN). Marriages that are not under the supervision of VAT are considered religiously valid, but do not have legal force because they do not have proof of a valid marriage according to the applicable laws and regulations. Another opinion states that unregistered marriages or underhanded marriages are marriages carried out without meeting the requirements and procedures of the legislation. There is a difference of opinion about whether the marriage is legal or not.

The legal position of unregistered marriage is the same as a legal marriage as stipulated in Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage. However, no records were made from the administrative side of unregistered marriages as stipulated in Article 2 paragraph (2) of Law no. 1 of 1974, legally, the status of unregistered marriage cannot be recognized. Then legally due to unregistered marriage on the position of the child when reviewed according to Law no. 1 of 1974 concerning Marriage, among others, is to make the status and position of a child unrecognized where the child was born before the marriage of both parents is registered and legally recognized.

The status of a child born from an unregistered marriage cannot be stated as a child in a legal marriage. In the eyes of the law, his birth status will be the same as that of a child out of wedlock. We can see this in Article 42 of Law Number 1 of 1974 concerning Marriage which states "A legitimate child is a child born in or as a result of a legal marriage." And its position in Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states "Children born outside of marriage only have a civil relationship with their mother and their mother's family" jo. Article 100 of the Compilation of Islamic Law which states "Children born out of wedlock only have a kinship relationship with their mother and their mother's family." As a child who is considered to be born outside the legal marriage of both parents, but still can get a birth certificate through birth registration. In the birth certificate only the name of the mother is listed, if you want to include the name of the father in the deed, it is necessary to determine as a form of acknowledgment of the child by the father.²⁹

As for children, the illegitimacy of unregistered marriages according to state law has a negative impact on the status of children born in the eyes of the law, namely the status of children who are born are considered illegitimate children. Consequently, the child only has a civil relationship with the mother and the mother's family. This means that the child does not have a legal relationship with his father whose status is also considered in his birth certificate as an illegitimate child, so the name of the mother who gave birth to him is included. Information in the form of status as an illegitimate child and the absence of the father's name will have a very deep social and psychological impact on the child and his mother. Then, the unclear status of the child before the law, resulted in the relationship between father and son not being strong, so that one day the father could deny that the child was not his biological child.

²⁸I Nyoman Sujana, *Op., Cit.*, hlm. 121

²⁹<https://yuridis.id/akibat-hukum-bagi-anak-pernikahan-siri/diunduh-pada-tanggal-3-juli-2022>.

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2. Issuance of a Birth Certificate of a Child from an Unregistered Marriage by a civil registration agency after the decision of the Constitutional Court Number 46/PUU-VIII/2010 concerning the issue of the child's civil relationship with his biological father

The decision of the Constitutional Court in decision number: 46/PUU-VIII/2010 dated 17 February 2012 stipulates that children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and / or other evidence according to the law having blood relations, including ties to his father's family. The purpose of this Constitutional Court decision is to clarify the position of children out of wedlock, that children out of wedlock are also entitled to legal protection as well as children born from legal marriages. The law must provide fair legal protection and certainty for the status of a child who is born and the rights that exist in him, including for children born out of wedlock.³⁰

Referring to the decision of the Constitutional Court as mentioned above, it is an injustice when the law stipulates that a child born from a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as the mother. Meanwhile, a man who has sexual intercourse that causes pregnancy and the birth of a child is separated from his responsibilities as a father and the child who is born does not get the rights of the man as the father.³¹

In the process of law enforcement in certain cases, it is necessary to involve various other sciences. For example, in relation to the origin of offspring, geneticists can use genetics to make a match so that a child can be ascertained that there are similarities with the man who is thought to be his biological father. If the results of the examination show conformity, then the origin of the offspring can be proven before the law.³²DNA (Deoxyribonucleic acid) is the repository of all genetic information from living things, including humans.

Article 42 of Law Number 1 of 1974 concerning Marriage states that a legitimate child is a child born in or as a result of a legal marriage, a valid marriage is a marriage that is registered in a legal institution according to law, while a siri marriage is not registered at a civil registration agency. thus causing the issuance of the birth certificate of the child of the unregistered marriage to be made by only including the name of the mother, not including the name of the father by attaching the marriage certificate under the hand or the unregistered marriage.

After the decision of the Constitutional Court Number 46/PUU-VIII/2010 concerning the issue of a child's civil relationship with his biological father, the birth certificate of a child from an unregistered marriage does not only include the father's name on condition that the court places the child's origin. The child's parents submit an application for a court decision regarding the legalization of the child by bringing evidence such as a statement of child recognition or evidence through science and technology and/or other evidence according to law that proves to have blood relations, then a birth certificate can be issued with the name of the father .

Complementing the Constitutional Court's decision to be more accurate, it is better if the unregistered marriage is registered and then registered through civil registration, so that the birth certificate can be issued on the basis of a valid marriage certificate in accordance with Article 55 paragraph (1) of Law Number 1 of 1974 concerning Marriage. "The origin of a child can only be proven by an authentic birth certificate, issued by an authorized official, of course a birth certificate that includes the names of the mother and father for the legal status of the child as a basis for obtaining rights as a child.

3. Based on Minister of Home Affairs Regulation Number 9 of 2016 concerning the Acceleration of Increasing Coverage of Birth Certificate Owners

Unregistered marriages, which have fulfilled all the pillars and conditions set out in fiqh law (Islamic law), but without official registration at the competent authority as regulated by the applicable laws and regulations.

The status of children born from unregistered marriages only has a civil relationship with their mother and their mother's family. This has the consequence that children born from marriages that are not registered under state law, the child does not have a civil relationship with his father. children resulting from unregistered marriages do not have inheritance rights or inheritance from their fathers. The juridical consequence of the enactment of Permendagri Number 9 of 2016 is related to legal

³⁰I Nyoman Sujana, *Op.,Cit.*, hlm. 184

³¹D.Y. Witanto, 2012, *Hak dan Kedudukan Anak Luar Kawin*, Kencana, Jakarta: 2012., hlm. 232-233

³²*Ibid*

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protection for children born from unregistered marriages, namely the child will remain with his mother even though the child is determined not to be legal in the eyes of the law. The child's birth certificate is recorded based on the SPTJM, the truth as a married couple is an authentic certificate issued by an authorized official.

According to the researcher's opinion, the data collected from the Office of Civil Registry of Ternate City that the socialization related to Permendagri Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership has been carried out in all villages in Ternate City through representatives of the respective Village Heads held at the Ternate City Civil Registry Office. So that all children born are required to have a Birth Certificate. This condition provides a logical consequence, that between the existing legal rules and the development of science and technology to obtain certainty of the origin of children born out of wedlock, so that the child can obtain his rights as a child and at the same time can give devotion and respect to his mother and to his family. biological father.

Likewise, children born from marriages that are not registered at the Office of Religious Affairs (KUA) or authorized agencies because they do not go through a legal marriage process, which causes their parents not to get a marriage certificate and children born do not get a birth certificate, so the marriage is categorized as an illegitimate marriage and children born are equated with children out of wedlock. Therefore, according to the Constitutional Court, marriage registration is not a factor that determines the validity of a marriage, so the validity of marriage remains the domain of religious law and belief rather than the two prospective brides. Meanwhile, the state does not interfere in the issue of whether or not marriage is legal. The state cannot impose a provision on the validity of marriage based on the size of a particular religion.³³

The Constitutional Court is of the opinion that the relationship between a child and a man as his biological father is not solely due to marital ties, but can also be based on proving the existence of a blood relationship between the child and his father. Apart from the matter of the administrative procedure of the marriage, children born must have the same rights as children in general who are born from a legal marriage. If this is not the case, it will have a negative impact on children born outside of legal marriages who actually never asked to be born in the world. Children who are legal subjects who do not have the ability to defend their own law, so that every legal action taken by a child must be represented by his parents or legal guardian. If there is a marital dispute between the two parents, the children born are not allowed to become victims. This does not only apply to disputes relating to annulment of marriage. This means that whether the marriage is legal or not, the consequences should not be borne by the child. Because the law must provide fair protection by providing equal opportunities for every child to grow and develop as children in general.³⁴

It can be understood that the Constitutional Court is trying to draw a common thread between the legal impasse that has occurred so far and that every child wants to find his identity by knowing the father who caused him to be born, even though he is in his position as the biological father, both in the context of fighting for civil interests as well as for the interests of society. other interests arising from the clarity of the lineage of the child concerned.

CONCLUSION

- 1) Children from serial marriages can make legal birth certificates based on the provisions explicitly regulated in Article 99 of the Compilation of Islamic Law, namely legal children are children born from legal marriages in accordance with Article 42 of Law Number 1 of 1974 concerning Marriage, so also with civil relations, children from unregistered marriages only have civil relations with the mother and her mother's family as described in Article 43 of the Marriage Law. A valid marriage is a marriage that fulfills not only the terms and pillars of Islam, even administrative processes such as registration of marriages are provisions for the legal position of the marriage. Thus, to get the position of the child, it will be easy to obtain then the rights of the child will be guaranteed, including having a relationship with the mother and even the father who must be responsible for caring for, educating, and providing for one of the rights of the child that must be given. The decision of the Constitutional Court is one of the efforts in protecting the position of children from unregistered marriages which complements Article 43 of the Marriage Law, children born from unregistered marriages not only have a relationship with the father and his father's family based on legal evidence that proves to have blood relations.

³³*Ibid.*, hlm. 229

³⁴*Ibid.*, hlm. 246-247

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- 2) The legal consequence for a child from an unregistered marriage to make a legal birth certificate is if the Birth Certificate of a child from an unregistered marriage can be issued by including the name of the father, which is a requirement for a determination from the Court regarding the origin of the child. The child's parents apply for a court order for ratification of the child by bringing evidence proving they are related by blood. Complementing the decision of the Constitutional Court to be more accurate, serial marriages can be registered and then registered through civil registration so that birth certificates can be issued, on the basis of a valid marriage certificate in accordance with Article paragraph (1) of Law Number 1 of 1974 concerning Marriage stating the origin of a child is only can be proven by an authentic birth certificate,

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