



## **The Granting of Family Card for *Siri* Marriage in Banda City: Perspective of Islamic Family Law**

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### **Abstract**

Law No. 1 of 1974, as does the Compilation of Islamic Law, concerning marriage mandates the registration of every marriage to obtain legal validity such as a marriage certificate, which later becomes a requirement for making a family card. A family card is obtained if a marriage is registered in accordance with applicable laws and regulations. *Siri* (i.e., unregistered) marriage previously had various consequences, including children not having birth certificates, not having family cards, and, not being able to obtain their rights as husband and wife in the event of marital disputes. Therefore, marriage must be officially registered in order to obtain all the documents needed to create a family card. This will minimize the prevalence of *siri* marriage. However, the issuance of Minister of Home Affairs Regulation (PERMENDAGRI) No. 108 of 2019, which adds the status of unregistered marriage and unregistered divorce to the provision of family card, has allowed the registration of a family card without attaching a marriage certificate and accommodated providing family cards for unregistered marriages. On the one hand, having family cards is deemed necessary; yet, on the other hand, it is contrary to Law No. 1 of 1974 on Marriage. From a sociological point of view, it can have a negative impact on the increase of *siri* marriage as it no longer has any consequence at all. Thus, it is important to review the application of PERMENDAGRI No. 108 of 2019 sociologically from the perspective of Islamic family law using the theory of *maslahah* (benefit). This empirical study used the descriptive qualitative approach, which took place in Banda Aceh City. The study collected legal materials through document study. Sociologically, many negative effects have occurred on the issuance of family cards from the perspective of Islamic family law as well as the consequences of the implementation of PERMENDAGRI No. 108 of 2019 for women and children.

**Keywords:** Family card, *siri* marriage, Islamic family law

### **Abstrak**

*Undang-undang Nomor 1 Tahun 1974, begitu pula Kompilasi Hukum Islam, tentang perkawinan mengamanatkan pencatatan setiap perkawinan untuk memperoleh keabsahan hukum seperti akta nikah yang nantinya menjadi syarat pembuatan kartu keluarga. Kartu keluarga diperoleh apabila suatu perkawinan dicatatkan sesuai dengan peraturan perundang-undangan yang berlaku. Perkawinan siri (yaitu perkawinan siri) yang sebelumnya mempunyai berbagai akibat, antara lain tidak mempunyai akta kelahiran, tidak mempunyai kartu keluarga, dan tidak dapat memperoleh haknya sebagai suami istri jika terjadi perselisihan perkawinan. Oleh karena itu, perkawinan harus dicatat secara resmi agar diperoleh seluruh dokumen yang diperlukan untuk membuat kartu keluarga. Hal ini akan meminimalisir maraknya pernikahan siri. Namun dengan terbitnya Peraturan Menteri Dalam Negeri (PERMENDAGRI) Nomor 108 Tahun 2019 yang menambahkan status nikah siri dan perceraian siri ke dalam pemberian kartu keluarga, telah memperbolehkan pencatatan kartu keluarga tanpa melampirkan akta nikah dan diakomodir pemberian kartu keluarga bagi pernikahan siri. Di satu sisi, keberadaan kartu keluarga dipandang perlu; namun di sisi lain bertentangan dengan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Dari segi sosiologis, hal ini dapat berdampak negatif terhadap maraknya pernikahan siri karena tidak lagi mempunyai konsekuensi sama sekali. Oleh karena itu, penting untuk mengkaji penerapan PERMENDAGRI No. 108 Tahun 2019 secara sosiologis dalam perspektif hukum keluarga Islam dengan menggunakan teori masalah (manfaat). Penelitian empiris ini menggunakan pendekatan deskriptif kualitatif yang mengambil lokasi di Kota Banda Aceh. Penelitian ini mengumpulkan bahan hukum melalui studi dokumen. Secara sosiologis banyak dampak negatif yang terjadi terhadap penerbitan Kartu Keluarga dari sudut pandang hukum keluarga Islam serta akibat dari pemberlakuan PERMENDAGRI No 108 Tahun 2019 bagi perempuan dan anak.*

**Kata Kunci:** *Kartu Keluarga, nikah siri, hukum keluarga Islam*

### **Introduction**

Marriage is a social interaction encouraged in Islamic teachings when a person is able or capable of carrying it out. Marriage is a fortress of noble morals that can keep oneself away from bad deeds (i.e., *zina*/adultery) and fulfill biological needs, obtain offspring, and preserve love in an ideal household.<sup>1</sup> The word “*nikah*”

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<sup>1</sup> Sam'ani Sam'ani, et.al., “Pragmatism of Polygamous Family in Muslim Society: Beyond Islamic Law,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023). Mursyid Djawas, et.al., *Creating Family Resilience in Indonesia: A Study of “Marriage Guidance” Program in Aceh*

(marriage) is derived from the Arabic words “*nakaha-yankahu*” which means to gather or have sexual intercourse. In Indonesian, “*nikah*” is also known as “*kawin*”. Generally, every marriage aims to form a family that is long lasting or *sakinah mawaddah wa rahmah* (marital bliss).

Law No. 1 of 1974 concerning Marriage states, “Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God.”<sup>2</sup> Marriage is a physical and spiritual bond that binds a man and a woman in a household aiming to create a family that is *sakinah mawaddah warahmah*, in which the bond is recognized when the *ijab* (offer) and *qabul* (acceptance) are pronounced. However, to ensure legal certainty for the wife and future offspring, the law regulates that the marriage must be registered.

Article 2 Paragraph 2 of Law No. 1 of 1974 stipulates, “Every marriage shall be registered in accordance with the law.”<sup>3</sup> Thus, a marriage recognized by the state is a marriage that is registered based on the applicable laws and regulations. If the marriage is not registered with the state, the state cannot provide legal protection for the parties who perform it. One example is the *siri* marriage. The term *siri* marriage in classical Islamic literature refers to a marriage process that has at least two meanings. First, a marriage that is not announced, or is conducted in private, even to the point of being hidden. Second, a marriage that is defective in terms of its witnesses, i.e., the requirement of two male witnesses in a marriage is not met.<sup>4</sup>

According to *fiqh ulema* (Muslim scholars), *siri* marriage is valid as long as the conditions and pillars are met. Many *siri* marriage in society do not meet the established conditions and pillars. These *siri* marriages are not registered with the civil registry or the Office of Religious Affairs (*Kantor Urusan Agama/KUA*), and thus, the existing laws cannot protect the parties involved in these marriages, in terms of the granting or prosecuting the violation of rights and obligations as a family. Hence, *siri* marriage is not valid before the state.

The Regulation of the Minister of Home Affairs (PERMENDAGRI) No. 108 of 2019 concerning Family Card Form, Register, and Excerpt of Civil Registration Certificate states that all marriages that cannot be proven by showing a marriage book or marriage certificate can now be registered in the family card with the format “unregistered marriage”. On the one hand, the law stipulates the urgency of marriage registration to obtain legal protection and minimize the practice of *siri* marriage. However, on the other hand, the PERMENDAGRI itself seems to provide a loophole or facilitate any parties to carry out the practice of *siri* marriage.

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and South Sumatera,” *al-Ihkam: Jurnal Hukum dan pranata Sosial* 17, No. 1 (2022). Ahmad Sobari, “Nikah Siri Dalam Perspektif Islam,” *Mizan: Journal of Islamic Law* 1, no. 1 (2018).

<sup>2</sup> Kementerian Agama RI Direktorat Jenderal Bimbingan Masyarakat Islam Direktorat Bina KUA Dan Keluarga Sakinah Tahun 2018.

<sup>3</sup> “Law No.1 of 1974 on Marriage,” n.d.

<sup>4</sup> Nurinayah, “Studi Analisis Tentang Makna Nikah Sirri Dalam Perspektif Hadis,” *Familia: Jurnal Hukum Keluarga* 3, no. 1 (2022).

A study by M. Adib Hamzawi examined the procedures for obtaining family cards for underhand marriages according to the PERMENDAGRI. The study used a library research method with a juridical-normative approach. The findings of the study reveal that there is a conflict of norms (contradiction between norms) between vertical-level regulations. Thus, to provide legal certainty to the public, PERMENDAGRI Number 108 of 2019 concerning Family Card Form, Register, and Excerpt of Civil Registration Certificate must be subjected to judicial review. In addition, it shall seek an alternative way by making some considerations so that no party will feel disadvantaged by the regulation and it does not affect other administrative requirements and provisions.<sup>5</sup>

Research by Iwan Kustiawan et al. investigated the inclusion of unregistered married and unregistered divorce status in family cards in Banjar prior to the enactment of PERMENDAGRI 108/2019 jo. PERMENDAGRI 109/2019 and the sociological review of the inclusion of unregistered married status and unregistered divorce in family cards as a consequence of the implementation of PERMENDAGRI 108/2019 jo. PERMENDAGRI 109/2019 in Banjar City. Using a descriptive-analytical research method and a juridical-sociological approach, the study concludes that the inclusion of unregistered married status and unregistered divorce in family cards before the enactment of PERMENDAGRI 108/2019 jo. PERMENDAGRI 109/2019 is contrary to law and a disorder. Sociologically, the inclusion of unregistered married status and unregistered divorce in family cards as a consequence of the implementation of PERMENDAGRI 108/2019 jo. PERMENDAGRI 109/2019 in Banjar City contradicts the Law No. 1/1974, as such inclusion seems to legalize *siri* marriage and provides concrete benefits felt by the community.<sup>6</sup>

Another study by Daffa Alif Utama et al. analyzed the issuance of family cards for *siri* marriage couples and the legal consequences of such issuance from the perspective of state administrative law. One of the government's policies related to unregistered marriages is the issuance of family cards for *siri* marriage couples. This policy is a positive step in the context of providing equal protection and rights for citizens; however, other problems also arise due to the implementation of this policy. The study employed a normative legal research approach with the statutory framework. The findings indicate that *siri* marriage couples applying for family cards must meet additional requirements. Once issued, family cards may have

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<sup>5</sup> Hamzawi M. Adib, "Sinkronisasi Permendagri Dan Undang-Undang Perkawinan Terhadap Penerbitan Kartu Keluarga Bagi Pasangan," *Jurih: Jurnal Ilmu Hukum 1*, No. 1 (2023), p. 147–61.

<sup>6</sup> Nurmuttaqin, Romlah Ai Kustiawan Iwan, "Tinjauan Sosiologis Terhadap Pencantuman Status Kawin Belum Tercatat Dan Cerai Hidup Belum Tercatat Dalam Kartu Keluarga Sebagai Akibat Penerapan Peraturan Menteri," *Case Law Journal of Law 3* (2022).

administrative implications for children, wives, and husbands related to population administration.<sup>7</sup>

Riyandi's research describes that the requirement for a wife's consent to polygamy, as mandated by positive law in the Marriage Law No. 1 of 1974, Government Regulation No. 9 of 1975, and Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), is considered burdensome for men (i.e., husbands) who wish to practice polygamy. As a result, many men practice polygamy secretly without the consent of their first wives. This qualitative research employed a normative approach. The findings of the study reveal that the condition for polygamy in Shafi'i *fiqh* is the husband's ability to provide financial support for his wives and their families fairly. In Shafi'i *fiqh*, there is no requirement for a wife's consent to polygamy. The requirement for a wife's consent to polygamy as stipulated in the Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and Compilation of Islamic Law (KHI) can be understood through the method of *istislahiyah*. A wife's consent can be a consideration to allow polygamy on the basis that it is part of *maqasid sharia* (objectives of Islamic law), namely maintaining religion, mind, lineage, honor, and property.<sup>8</sup>

In light of the aforementioned studies, this present study sought to fill the research gap. While previous studies focused on the synchronization of PERMENDAGRI and the Marriage Law, the sociological review of unregistered marriage and unregistered divorce status, the issuance of family cards from the perspective of state administrative law, and the reasons for secret polygamy, this study concerned with the issuance of family cards for *siri* marriages from the perspective of Islamic family law.

This study, conducted in Banda Aceh City, employed the empirical approach using a qualitative descriptive research method, referring to the facts on the research site, legal norms in regulations and court rulings, and norms that grow and develop within society. This approach allowed the study to discuss the research findings in accordance with what actually happened, i.e., describing an event that occurs in the site using a qualitative research method.

The data were analyzed using descriptive analysis to provide an overview of a social phenomenon. Data analysis in the study was deductive, drawing conclusions from general statements to specific statements using rational thinking. The conclusions were drawn based on the formulated research problems. Thus, the analysis is expected to produce conclusions correctly and accurately.

This study aims to review the implementation and reasons for issuing family cards (*kartu keluarga*) from the Islamic family law perspective and the consequences

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<sup>7</sup> Daffa Alif Utama, Endah Pujiastuti, and Dian Septiandani, "Penerbitan Kartu Keluarga Bagi Pasangan Nikah Siri Dan Akibat Hukumnya Terhadap Para Pihak," *JURNAL USM LAW REVIEW* 5, no. 2 (2023).

<sup>8</sup> S. Riyandi, "Syarat Adanya Persetujuan Isteri Untuk Berpoligami (Analisis Ushul Fikih Syafi'iyah Terhadap Undang-Undang Perkawinan Nomor 1 Tahun 1974)," *Jurnal Ilmiah Islam Futura* 15 (2015), p. 111–42.

from the issuance of the family cards. The urgency of this study is to determine the impact of the implementation of PERMENDAGRI No. 108 of 2019, which is considered unsynchronized with the policies in other ministries. As a result, the purpose of marriage registration as stipulated in Law No.1 of 1974 becomes less optimal from the Islamic family law perspective.

### **Marriage in Islamic Family Law**

Contemporary marriage registration is of great urgency because marriage is not merely about the permissibility of sexual relations, but rather, it is the center of life in society. The family established in a valid marriage is also the key to the formation of strong patterns and foundations in society.<sup>9</sup> For this reason, the state regulates marriage registration in the Law No. 1 of 1974 concerning Marriage. In Article 2 paragraph (2) of the Law, it is stated that every marriage must be registered according to the applicable laws and regulations. Thus, marriages that are not registered, or *siri* marriage, will not receive legal protection. *Siri* marriage also has many consequences that tend to be detrimental, especially for women and children.<sup>10</sup>

Marriage registration is not only for administrative purposes, but also for many other benefits, which include guaranteeing legal certainty and protecting the parties who marry, e.g., protection and legal services by authorized institutions and recognition in the population register. Various consequences in marriage will also be benefited from registering the marriage, including the wife's maintenance, parent-children relationship, inheritance, and other rights related to the state administration that must be fulfilled.

Marriage registration in the course of marriage is to strengthen the testimony in marriage. Witnesses in marriage function as the determinants of the validity of marriage and also help to avoid slander and denial by one of the parties for the husband or wife. However, incidents among witnesses may happen, e.g., memory loss or death, and therefore, to prevent these, marriage registration is necessary.<sup>11</sup>

Indonesia, a country that recognizes six religions, has different marriage registration procedures. The institutions responsible for registering marriages in Indonesia consist of the District/City Religious Affairs Office (*Kantor Urusan Agama/KUA*) and Civil Registration Office (*Kantor Catatan Sipil/KCP*). The KUA is responsible for serving marriage (*nikah*), reconciliation (*ruju*), and divorce (*talaq*) activities for Indonesian citizens who are Muslim. The KCP is responsible for

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<sup>9</sup> Dyah Ochtorina Susanti, "Urgensi Pencatatan Perkawinan (Perspektif Utilities)," *Rechtidee* 11, no. 2 (2017).

<sup>10</sup> Sauqi Noer Firdaus, et.al., "Dampak Nikah Siri Terhadap Istri Dan Anak Perspektif Maqashid Al-Syari'ah Al-Syathibi (Studi Desa Bangsalsari Kecamatan Bangsalsari Kabupaten Jember)," *Jurnal Al-Ijtima'iyyah* 7, no. 2 (2021).

<sup>11</sup> Ridwan Jamal, et.al., "Pencatatan Nikah Di Kantor Urusan Agama Sebagai Fakta Hukum Perkawinan Masyarakat Muslim," *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 2 (2022).

serving marriage registration activities for Indonesian citizens who adhere to religions other than Islam.<sup>12</sup>

The forms of marriage registration in Indonesia are as follows:

- a. Marriage Certificate (*Akta Nikah*): A document that serves as proof of the validity of a marriage ceremony
- b. Marriage Book (*Buku Nikah*): A booklet containing the contents of the marriage certificate
- c. Marriage Card (*Kartu Nikah*): A card-sized version of the marriage book
- d. Marriage Book Duplicate (*Duplikat Buku Nikah*): A replacement document for a lost, damaged, or otherwise unusable marriage book
- e. Reconciliation Certificate (*Akta Rujuk*): A document that serves as proof of a reconciliation between a divorced couple
- f. Extract of Reconciliation Certificate (*Kutipan Akta Rujuk*): A document containing the details of a reconciliation certificate, issued to reconciled couples.<sup>13</sup>

In the early days of Islam, there was no specific term for registering marriage. The only term used was “*i’lan an-nikah*” (i.e., announcing the marriage to the local community). The practice of *i’lan an-nikah* in early Islam was encouraged by the Prophet Muhammad. One form of *i’lan an-nikah* was *walimah al-’ursy*, i.e., wedding reception.<sup>14</sup>

While the registration of marriages is not explicitly mentioned in the Qur’an, its importance today can be drawn from or compared to Surah Al-Baqarah verse 282: “O believers! When you contract a loan for a fixed period of time, commit it to writing. Let the scribe maintain justice between the parties. The scribe should not refuse to write as Allah has taught them to write. They will write what the debtor dictates, bearing Allah in mind and not defrauding the debt. If the debtor is incompetent, weak, or unable to dictate, let their guardian dictate for them with justice. Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her. The witnesses must not refuse when they are summoned. You must not be against writing (contracts) for a fixed period—whether the sum is small or great. This is more just (for you) in the sight of Allah, and more convenient to establish evidence and remove doubts. However, if you conduct an immediate transaction among yourselves, then there is no need for you to record it, but call upon witnesses when a deal is finalized. Let no harm come to the scribe or witnesses. If

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<sup>12</sup> Shofiatul Jannah et al., “Urgensi Pencatatan Pernikahan Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia” 8, no. 2 (2021).

<sup>13</sup> Supreme Court Regulation No. 20 of 2019 concerning Marriage Registration in Part 4 Marriage Registration Article 20.

<sup>14</sup> Raafilia Khairunnisa and Ramdan Fawzi, “Analisis Hukum Islam Dan Implementasi Permenag Nomor 20 Tahun 2019 Tentang Pencatatan Pernikahan,” *Jurnal Riset Hukum Keluarga Islam*, 2022.

you do, then you have gravely exceeded (your limits). Be mindful of Allah, for Allah (is the One Who) teaches you. and Allah has (perfect) knowledge of all things.”<sup>15</sup>

The above verse emphasizes the importance of recording all financial transactions, e.g., sale and purchase, loan, and lease, with the presence of two male witnesses to avoid doubt and error. Marriage is also considered a financial transaction with similarities in pillars, *sighah* (offer and acceptance), and witnesses. Therefore, the recording of marriage, although not explicitly mentioned in the sharia, can be equated to loan transactions due to the similarity of *'illat* (legal cause), which is evidence of the validity of agreements/financial transactions (*bayyinah sharia*).<sup>16</sup>

If loan transactions are encouraged to be recorded, then surely the sacred marriage contract should also be recorded. In modern times, individual mobility is easier; therefore, it requires clear information about marital status to avoid polygamy or *siri* marriage carried out by irresponsible individuals. The obligation to register marriages is also due to the *mudharat* (harm) that may arise from unregistered marriages, especially in terms of fulfilling the rights of women and children before the law.<sup>17</sup>

### **The Granting of Family Card for *Siri* Marriage in Banda City**

In Indonesian society, marriage has legal dualism. Namely marriages (which) should be registered at the Religious Affairs Office (KUA) and marriages which are not registered (*nikah sirri*). In fact, if we examine it more seriously, there are many unregistered marriages that cause harm, especially to women and children. And in fact there are quite a few negative impacts resulting from sirri marriages. Indeed, there is no order to register marriages and there is no prohibition on unregistered marriages which are not stated explicitly either in the Qur'an or hadith, so to determine the law (*istinbat al-hukmi*), Islamic legal experts (in this case) carry out *ijtihad* where Sirri marriage is included in the *al maslahat al muralah* category, which refers to *maqasid al-shari'ah*. However, sirri marriage is actually problematic for several reasons. First, sirri marriage is not part of the prophetic tradition. Because, the Prophet recommended and held a wedding party (*walimah al-'Ursy*) with the aim of announcing marriage to the public (*i'lanun nikah*). Meanwhile, marriage registration is an order from the leader (Ulil Amri). Meanwhile, Allah and the Prophet ordered to obey their leader (Amri Ulil). Because marriage registration will provide benefits for Muslims (*maslahah*), Muslims should avoid evil (*mudharat*). Second, sirri marriage is not in accordance with national marriage law, because there is no 'marriage record' element in the concept of sirri marriage. Therefore, marriage registration is regulated in Article 2 paragraph 2 of Marriage Law No. 1 of 1974 and

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<sup>15</sup> Departemen Agama RI., *Al-Qur'an dan Terjemahan*, Jakarta: Daus Sukses Mandiri, 2012.

<sup>16</sup> Nenan Julir, et. al., “Pencatatan Perkawinan Di Indonesia Perspektif Ushul Fikih,” *Ekonomi Dan Keagamaan*, vol. 4, 2017.

<sup>17</sup> Kewajiban Pencatatan et al., “Obligation of Marriage Registration in Qiyas Review and Legal Assurance,” vol. 7, 2022.



article 2 paragraphs 1, 2, 3 of Law no. 9 of 1975, the Civil Code (KUHP) and the Compilation of Islamic Law (KHI).<sup>18</sup>

Marriage registration, which aims to maintain order in marriage administration, shares the same goal as Islamic law, i.e., to create *maslahah* (benefit) and avoid *mudharat* (harm). Therefore, marriage registration is in line with the *maqashid sharia* with the theories of *qiyas* (analogy), *maslahah mursalah* (general benefit), and *sadd al-dhari'ah* (blocking the means to evil), as the fundamental principles in the formation of Islamic law. Marriage registration provides varied benefits and advantages for the families and for the parties involved in the marriage, both before and after the marriage.<sup>19</sup>

Since the PERMENDAGRI No. 108 of 2019 came into effect, birth certificate that used to be non-issuable as a consequence of *siri* marriage has now become issuable. Thus, *siri* marriage no longer has any relevant consequence because whether or not a marriage is registered, any marriage will still have a family card. This is an implication of the concept of marriage registration regulations that are still ambiguous, open to multiple interpretations, and can lead to dualism. To this end, in order to maximize the goals and principles of marriage registration by the law, law reform of marriage can be one of the solutions to create a more comprehensive law.<sup>20</sup>

The findings from the interview conducted with the official of the Banda Aceh Civil Registry and Population Office reveal that the majority of family cards with unregistered marriage status are *siri* marriage without marriage certificates. The following table describes the families with unregistered marriage status as follows.<sup>21</sup>

**Table 1. Family card status as of December 31, 2023**

No.	Sub-district	Number of Married Residents	Registered Marriage	Unregistered Marriage
1	Baiturrahman	13,791	10,656	3,135
2	Kuta Alam	18,412	13,923	4,489
3	Meuraxa	11,783	9,406	2,377
4	Syiah Kuala	15,396	12,242	3,154
5	Lueng Bata	11,222	8,978	2,244
6	Kuta Raja	6,401	4,851	1,550

<sup>18</sup> Masturiyah Masturiyah, "Nikah Sirri: Prespektif Hukum Islam Dan Hukum Perkawinan Nasional," *Jurnal Musawa* 12, No. 1 (2013), p. 43.

<sup>19</sup> M Fahmi et al., "Pencatatan Perkawinan Dan Problematika Kawin Siri," *Jurnal Umumul Syar'19*, no. 2 (2020).

<sup>20</sup> Jamal, Makka, and Rahmatillah, "Pencatatan Nikah Di Kantor Urusan Agama Sebagai Fakta Hukum Perkawinan Masyarakat Muslim."

<sup>21</sup> Interview with Irayana, Division Head of Information Management, Population Administration, Office of Population and Civil Registry, Banda Aceh, June 2024.

7	Bandar Baru	11,662	9,617	2,045
8	Jaya Baru	11,837	9,307	2,530
9	Ulee Kareng	12,708	10,596	2,112
Total		113,212	89,576	23,636

The findings also suggest that the underlying factors of marriage with unregistered marital status include:

- 1) Lack of understanding of the applicable laws
- 2) Not wanting the marriage known to others
- 3) Polygamy
- 4) Underage
- 5) Having different beliefs or religions
- 6) Avoiding *zina* (adultery)<sup>22</sup>

It is undeniable that there is also a legal vacuum in cases of interfaith marriage, which is one of the unresolved issues in Indonesia. This is related to civil rights, and thus, such marriages cannot be registered at the KUA. As a result, those who undergo interfaith marriages usually only register themselves at the Civil Registry Office (Dukcapil).<sup>23</sup>

Being underage is also a factor of *siri* marriage, in addition to the lack of understanding to the applicable laws. Some people even dare to contact customary leaders without following the relevant marriage procedures. They believe that they can get married first and take care of the administrative matters later. This move certainly does not have any legal validity.<sup>24</sup>

Currently, marriages carried out in secret are synonymous with "elopement" and are not registered with the KUA. The phenomenon of "elopement" of minors also occurs frequently in Indonesia, including in Aceh. Sirri's marriage did not go as smoothly as they had hoped, so the marriage was not registered and in the end the women and children were the victims. In several cases in Aceh, perpetrators of unregistered marriages were forced to abandon their education and did not continue their studies because they felt ashamed and inferior to their friends. Marriage registration is carried out by the State or Government through statutory regulations in order to create marriage order in society.<sup>25</sup>

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<sup>22</sup> Ahmad Muzaki and Mohammad Arifin, "Motif Nikah Siri Dan Ketahanan Keluarga Pasangan Nikah Siri (Studi Kasus Di Daerah Desa Sumberkare Kecamatan Wonomerto Kabupaten Probolinggo)," *El-USRAH: Jurnal Hukum Keluarga Islam* 4, no. 1 (2023).

<sup>23</sup> Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, "Legitimacy on Inter-Faith Marriages: An Analysis of the Role of Religious Councils on the Policy in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019), p. 81–96.

<sup>24</sup> Agustin Hanapi and Edi Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum Keluarga dan Hukum Keluarga Islam* 4, No. 2 (2020).

<sup>25</sup> Agustin Hanapi and Edi Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection, p. 529.

The following figure 1 displays a family card with an unregistered marriage format at the Civil Registry Office.



## KARTU KELUARGA

No. **728C**



Nama Kepala Keluarga : JUNADI, IS  
 Alamat : JL. KAMBAJO LR. MATAHARI DUSUN. T. TUAN DIPULO  
 Desa/Kelurahan : LAMPULO  
 Kecamatan : KUTA ALAM  
 Kabupaten/Kota : KOTA BANDA ACEH  
 Provinsi : ACEH

No	Nama Lengkap	NIK	Jenis Kelamin	Tempat Lahir	Tanggal Lahir	Agama	Pendidikan	Jenis Pekerjaan	Color/gam Darah
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	JUNADI, IS		LAKSAMI	SEONG BUNPANG		ISLAM	TKANBELUM BERKOLAH	NELEMAN PERKERJAAN	TKAN (+H)
2	NIURHAYATI		PEREMPUAN	SEONG BUNPANG		ISLAM	TKAN BELUM BERKOLAH	PERUMAHAN RUMAH TANGGA	TKAN (+H)
3	AIFHA ALILIA		PEREMPUAN	SEONG BUNPANG		ISLAM	TKAN BELUM BERKOLAH	PELAJARAN MAHASISWA	TKAN (+H)
4	REZKI AMELIA		PEREMPUAN	ACEH BAKAT		ISLAM	TKAN BELUM BERKOLAH	BELANTUM SISWA	TKAN (+H)
5									
6									
7									
8									
9									
10									

No	Status Pendaftaran	Tanggal Pendaftaran	Status Hubungan Dalam Keluarga	Kewarganegaraan	Dokumen Imigrasi		Nama Orang Tua	
					No. Paspor	No. KITAP	Ayah	Ibu
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	KAWIN BELUM TERCATAT		KEPALA KELUARGA	WNI			IBNU HAJI	ALOH, H
2	KAWIN BELUM TERCATAT		IBTI	WNI			HARUN, AB	WARDIANA
3	BELUM KAWIN		ANAK	WNI			JUNADI, IS	NIURHAYATI
4	BELUM KAWIN		ANAK	WNI			JUNADI, IS	NIURHAYATI
5								
6								
7								
8								
9								
10								

Dikeluarkan Tanggal: **27-05-2024**

 KEPALA KELUARGA 
 KEPALA DINAS KEPENDUDUKAN DAN PENCATATAN SIPIL 

JUNADI, IS  
 Tanda Tangan/Cap Jempol  
 Dit. EMILA SOVAYANA, M.S.  
 NIP. 197406041983022001

Dokumen ini telah didaftarkan secara elektronik menggunakan sertifikat elektronik yang diterbitkan oleh Balai Sertifikasi Elektronik (BSiE), BSSN

Figure 1. Family card of unregistered marriage status

The PERMENDAGRI under study is certainly intended to create order in population administration; however, it should also consider and pay attention to the spirit of the Marriage Law. The ease of processing family cards can be a loophole for people to conduct *siri* marriage. This is because despite being unregistered, *siri* marriage couples still have a room to process family cards to the Dukcapil.<sup>26</sup>

Confusion of marital status within the family is also a consequence that should be taken into account, as it is generally detrimental to women and children. Granting family cards to unregistered married couples with the format “marriage not yet registered” can change the marital status on the National ID Card (i.e., KTP) to “married”. Thus, when traveling and staying at hotels, they can be free from being caught in adultery raids, because the family card itself is a valid proof. Husbands can divorce wives at any time or husbands can be polygamous without their first wives’ permission. The husband can even deny the marriage and the children from an unregistered marriage.<sup>27</sup>

In terms of marital support, the wife is entitled to both physical and emotional support. However, if such support is not provided in an unregistered marriage, the wife cannot sue her husband in court because she does not have a marriage

<sup>26</sup> Fadli Fadli, “Implikasi Yuridis Terhadap Penerbitan Kartu Keluarga Bagi Pasangan Nikah Siri di Indonesia,” *Jurnal Mediasas: Media Ilmu Syari’ah Dan Ahwal Al-Syakhshiyah* 4, no. 1 (2021).

<sup>27</sup> Zulham Wahyudani, “Keabsahan Nikah Siri Dalam Perspektif Maslahah,” *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Dan Ekonomi Islam* 12, no. 1 (2020), p. 44–63.

certificate. Similarly, if domestic violence occurs, the husband cannot be charged under the Domestic Violence Act (i.e., UU PKDRT). This is because the threat of the Criminal Code (i.e., KUHP) for assault is lower than that of the Domestic Violence Act.

Children born from unregistered marriages will only have a civil law relationship with their mothers and their mothers' families. A civil law relationship with their fathers can be obtained if the father recognizes the child and this can be proven with accurate data. However, if the child's rights are violated in the future, there is no legal force to claim those rights.<sup>28</sup>

In essence, children born in *siri* marriage fall into the category of legitimate children because their biological father marries their biological mother according to their religion. Therefore, their inheritance should be the same as that of children from legal marriage. The division of inheritance for legitimate children is equal, i.e., one to one ratio. However, the position of children from *siri* marriage as legitimate children can be denied with the requirement to register the marriage. Hence, they can only be recognized by the state as legitimate children after marriage registration as regulated in the Law Number 1 of 1974, taking into effect the principle of *lex specialis derogate legi generalis*.<sup>29</sup>

The interview with the head of the KUA in one of the sub-districts of Banda Aceh describes that the marital status of "marriage not yet registered" in the family card and the married status in the KTP will cause the wife being rejected from remarrying at the KUA. This will become a huge concern for the wives if they are divorced by their husbands and for the children if their fathers abandon them. In addition, if the wives hope to remarry legally at the KUA with other men, their applications will be rejected.

Another alternative to register marriage at the KUA is by way of a court decision of *istbat nikah* (i.e., judicial declaration of marriage). The head of the KUA also states that, "This regulatory difference causes a lack of synchronization between the regulations in Dukcapil and those in other ministries. So, if we really want everyone's marriages to be registered, we should not issue KK (i.e., Family Card) immediately, making them unable to register because they are already married. In such cases, before a KK is issued by Dukcapil, an *istbat nikah* should be carried out in the relevant court. Then, a marriage certificate should be made to the KUA, and later a KK should be issued, and not the other way around, registering first with Dukcapil, and then *istbat*, and later to the KUA".<sup>30</sup>

The PERMENDAGRI under study accommodates the provision of family cards with the aim of orderly population administration. However, family law does

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<sup>28</sup> Irwan Safaruddin Harahap, et al., "Perlindungan Hukum Terhadap Anak Akibat Dari Perkawinan Siri," n.d.

<sup>29</sup> Ury Ayu Masitoh, "Anak Hasil Perkawinan Siri Sebagai Ahli Waris Ditinjau Dari Hukum Perdata Dan Hukum Islam," *Diversi: Jurnal Hukum* 4, No. 2 (2018).

<sup>30</sup> Interview with Erman Jaya, Head of Office of Religious Affairs (KUA), Kuta Alam, Banda Aceh, June 2024.

not conform to this, since it does not comply with statutory regulations, is contrary to those in other ministries, and has negative impacts. Violating a statutory regulation will certainly bear the risk. Thus, if the risk is minimized by the policy issued by the Minister of Home Affairs (MENDAGRI), there will be many marriages that are carried out secretly or *siri*.

## Conclusions

The study concludes that marriage registration at present has the urgency to suppress the practice of *siri* marriage. However, in reality, PERMENDAGRI No. 108 of 2019 facilitates *siri* marriage, resulting in approximately 20.88% of the entire married population of Banda Aceh City being categorized as “unregistered marriage” on their family cards. From the perspective of Islamic family law, the principle of loan record bears a similar *‘illat* to recording (i.e., registering) marriage. Therefore, marriage, which is a sacred and solemn covenant and allows for what is prohibited (e.g., sexual relations), should also be recorded with clear validity. The status of “unregistered marriage” has generated a number of consequences toward the people involved. These include the increased prevalence of *siri* marriage in society due to having “facilitated” administrative procedures, the ambiguity of the marital status of the spouses, and the issuance “unregistered marriage” family cards for unregistered married couples can change their marital status on the KTP to “married”. In the event of desertion or divorce, the wife in *siri* marriage cannot sue her husband because she does not have a valid marriage certificate. Consequently, if domestic violence occurs, the husband cannot be prosecuted under the Domestic Violence Act.

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## Interviews

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- Interview with Suryani, Junior Expert, Administration Database, Office of Population and Civil Registry, Banda Aceh, June 2024
- Interview Erman Jaya, Head of Office of Religious Affairs (KUA), Kuta Alam, Banda Aceh, June 2024.