

## LEGAL ANALYSIS OF CHILDREN'S RIGHTS FROM SIRI MARRIAGES (CASE STUDY IN BATAM CITY)

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### Abstract

Unregistered marriages are still a common phenomenon in Batam City, causing serious impacts on the status and legal protection of children. Because these marriages are not recognized, children lose their basic rights such as identity, financial support, inheritance, and proper education. This problem is not only individual in nature, but has become a widespread social issue, exacerbated by the high population dynamics in Batam, which are characterized by urbanization, population mobility, and cultural heterogeneity, all of which influence marriage practices in society. This study aims to analyze the legal arrangements for children from unregistered marriages according to Indonesian positive law, the implementation of the rights of children from unregistered marriages in Batam City, and to identify relevant obstacles and solutions. The research focuses on how existing regulations, such as Constitutional Court Decision No. 46/PUU-VIII/2010 and the Child Protection Law, are applied in the field and the challenges faced in ensuring the fulfillment of these children's rights. The research method used is a normative and empirical juridical approach. Data was obtained through an in-depth literature study of legislation and legal doctrine, as well as direct interviews with key informants such as judges from the Religious Court and District Court, the Head of Civil Registration Services at the Batam City Population and Civil Registration Office, and couples who had entered into unregistered marriages. This approach allowed for a comprehensive analysis of the applicable legal norms and the social reality in the field. The research results suggest that the Batam City Government and related agencies should strengthen the protection of children born from unofficial marriages through clear regional policies, administrative sanctions, and simple child recognition procedures. The implementation of children's rights needs to be strengthened through legal socialization, integrated services, community leader involvement, and outreach programs in areas with low registration rates to ensure that every child receives proper recognition and protection.

**Keywords:** *Children's rights, Unregistered marriages, Batam City*

### INTRODUCTION

Marriage is a legal event that has a significant impact on the husband and wife and any children born from the relationship. Under the Indonesian legal system, marriage must be conducted in accordance with religious provisions and officially registered in order to have legal force. Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage stipulates that every marriage must be registered in order to provide legal certainty for the parties involved, including children born from the marriage. Marriage registration plays an important role as legal evidence that can protect children's rights in the future, especially in the event of disputes related to the civil status of children (Idawati, 2016). However, in practice, many couples still choose to marry unofficially, which is a marriage that is valid according to religious law but is not registered with state agencies. Although religious marriages are valid according to religion, they become a legal problem from a positive law perspective because they are not officially recorded in the state administration. Because religious marriages are not recorded, they give rise to a number of legal problems, especially those related to the status of children born from such relationships. Children from religious marriages often do not obtain their rights, such as the right to a proper education, the right to financial support, and the right to inheritance, which are automatically granted to children born in legal marriages. The problem is not only individual in nature, but has become a widespread social issue that affects many aspects of community life, especially in areas with high population dynamics. One area that clearly demonstrates this phenomenon is the city of Batam, which has unique social characteristics, marked by high levels of urbanization and population mobility, cultural

heterogeneity, and the dominance of the industrial and trade sectors, which attract many migrants from various regions (Arsal, 2020). This greatly influences marriage practices in society, including the high rate of unregistered marriages, which then has an impact on the legal status of children born from unregistered marriages. Considering these issues, it is important to conduct a study on the legal implications for children of unregistered marriages, particularly with regard to the uncertainty of their legal status and the consequences for the fulfillment of children's rights as stipulated in national legislation and international legal instruments. Unregistered marriages in Indonesia, including in the city of Batam, are generally chosen by couples with financial limitations as an alternative to official marriages, which are considered expensive and administratively complicated. Although legally, marriage registration at the Office of Religious Affairs (KUA) is free if done on weekdays, there are still additional costs such as marriage outside the office, document processing, transportation, and consumption.

This situation makes it difficult for low-income groups, especially informal sector workers, so they choose a shortcut in the form of marriages based on religious law without going through the state registration procedure (Ikhtiarina et al., 2020). Unregistered marriages in the city of Batam are largely influenced by the community's understanding that a religious marriage contract is sufficient without the need for state registration. From their perspective, as long as the conditions and requirements for marriage are met, such as the presence of the bride and groom, guardians, witnesses, *ijab qabul*, and dowry, the marriage is considered valid according to Islamic law. This view makes registration at the KUA or Civil Registry Office understood only as an administrative procedure, not a legal obligation, even though Law Number 1 of 1974 Article 2 Paragraph (2) states otherwise. Based on this background, this research is relevant in providing legal solutions that can guarantee the rights of children born from unregistered marriages, both in terms of legal identity, civil recognition, and social protection. Therefore, the results of this study are expected to contribute to the development of family law in Indonesia, particularly in relation to justice and the protection of children's rights.

## **LITERATURE REVIEW**

### **Marriage**

Marriage, according to Law Number 1 of 1974 concerning 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 based on God Almighty. In this law, marriage is not only viewed as a legal bond between two individuals, but also as the foundation for forming a family that functions as an important social unit in society. However, in some cases, a *siri* marriage is a marriage that is conducted without official registration before the state, even though religiously or culturally, the marriage is recognized as valid. *Siri* marriages are usually conducted based on certain religious or customary provisions, but are not registered with the competent state institutions. Therefore, even though these marriages are valid according to religion or custom, in terms of state law, the status of the marriage and any children born from it are often not officially recognized.

### **The Rights of Children**

Marriages that are not officially registered with the state, even though they are recognized as valid according to religion or custom. Children born from unregistered marriages often face legal problems related to the recognition of their status, which can affect their inheritance rights, custody rights, and alimony rights. Even though the marriage is valid according to religious or customary norms, children born from unregistered marriages may not automatically obtain these rights in the eyes of the state law, because there is no official record that guarantees the legal recognition of the child's status (Maulana & Hulaifi, 2025). In civil law, children from unregistered marriages are classified as illegitimate children, which are divided into several categories based on applicable legal provisions. Children born before a legal marriage, namely children born less than 180 days after their parents' marriage vows, or after 300 days since their parents' divorce, are regulated in Article 255 of the Civil Code. Children from unregistered marriages are referred to as illegitimate children or children born out of wedlock. In addition, there are also illegitimate children who are not recognized, namely children born outside of marriage and not recognized by their father or mother, so that their status is not recognized by law (Article 255 of the Civil Code).

### **Regulatory Weaknesses and Challenges in Implementing Constitutional Court Decision No. 46/PUU-VIII/2010**

The Constitutional Court (MK) ruling that amended Article 43 of the Marriage Law had a significant impact on the legal status of children born from unregistered marriages. Previously, Article 43 stipulated that children born from unregistered marriages only had a legal relationship with their mother, without clear rights to their father. This resulted in children born from unregistered marriages not having the same civil rights as children born from legal marriages. However, following the Constitutional Court's decision No. 46/PUU-VIII/2010, children born from

unregistered marriages can now have a legal relationship with their fathers, provided that this can be proven through science and technology, one of which is by using DNA testing. This ruling provides space for children from unregistered marriages to obtain rights that they previously could not access, such as inheritance rights and other civil rights, if the biological relationship with their father can be proven through DNA testing.

### **Implementation Related to Children's Rights**

Implementation of protection for the rights of children born from unregistered marriages, within the legal system applicable in Indonesia. Protection of children's rights is regulated based on principles contained in national legislation that prioritizes the welfare and fulfillment of children's basic rights, such as the right to life, development, and protection from violence and discrimination (Sabid, 2002). Although children born from unregistered marriages face challenges in terms of legal status recognition, their rights must still be fulfilled without discrimination. The protection of children's rights is based on the basic principles contained in Law No. 23 of 2002 concerning Child Protection, which regulates the right of children to obtain legal protection from all forms of violence, neglect, and discrimination. Based on applicable positive law, every child, regardless of their parents' marital status, has the right to have their rights fulfilled, such as the right to receive financial support, education, and other forms of protection (Febrian, 2022).

### **METHOD**

This study uses qualitative methods with a normative legal and empirical legal approach to analyze legal protection for children from unregistered marriages in Batam City. The normative legal approach is used to examine legislation, Constitutional Court decisions, and relevant legal doctrines in order to understand the provisions of positive law regarding the status of children born from unregistered marriages. Meanwhile, the empirical legal approach was used to gather factual data through interviews with judges from the Batam Religious Court and the Batam District Court, officials from the Population and Civil Registry Office, and couples who had entered into unregistered marriages, thereby obtaining a picture of the implementation of the law in the social reality of the community. The combination of these two approaches enables a comprehensive analysis of legal norms and practices in the field, as well as revealing structural and cultural barriers to the fulfillment of the rights of children from unregistered marriages.

### **RESULTS AND DISCUSSION**

#### **Legal Provisions Regarding Children from Unregistered Marriages According to Indonesian Positive Law**

Legal protection for children born from unregistered marriages is an issue that involves many aspects that cannot be separated from a deep understanding of the definition, social context, and legal implications of unregistered marriages themselves. A comprehensive legal analysis requires a review of various aspects, ranging from the legal basis of marriage in Indonesia to the challenges of implementing child protection in the field. Etymologically, the word “siri” comes from the Arabic word “sirrun” (سِرٌّ), which means secret, hidden, or unpublished. In the Indonesian context, “nikah siri” refers to a marriage that is conducted religiously but is not administratively registered by the state through the Office of Religious Affairs (KUA) for Muslims or the Population and Civil Registration Office for non-Muslims. Although the Compilation of Islamic Law (KHI) does not explicitly regulate unregistered marriages, Article 2 of the KHI explicitly states that “Marriage can only be proven by a marriage certificate issued by a Marriage Registrar.” This statement indicates the importance of dual legality, namely religious validity and legal validity through registration. Therefore, marriages that are not registered have no formal legal force before the state.

Public opinion on unregistered marriages varies greatly. Some people consider unregistered marriages to be valid as long as they fulfill the requirements of Islam, especially the pillars of marriage, without prioritizing state registration. This understanding is often found in rural communities or among people with low levels of legal education, where registration is considered burdensome due to the costs and procedures involved. The sociological reality on the ground, particularly in Batam City with its high level of social mobility, shows how unregistered marriages directly impact the legal protection of children born from such marriages. The high rate of urbanization in Batam has resulted in many residents not fully understanding or being able to access legal and administrative services, which ultimately makes it difficult for children from unregistered marriages to obtain legal protection. The direct consequence of the practice of unregistered marriages is the status of children born from such relationships. Law Number 1 of 1974 concerning Marriage (Marriage Law), as amended by Law Number 16 of 2019, adheres to the principle of dualism in the validity of marriage (Article 2 paragraphs 1 and 2). Article 4 of the KHI also reinforces this principle by stating: “A marriage is valid if it is conducted in accordance with Islamic law and registered in accordance with applicable laws and regulations.” Therefore, children born from unregistered marriages, even if valid according to religion, are considered “illegitimate children” under Article 42 of the Marriage Law, which states

that “legitimate children are children born in or as a result of a valid marriage.” This “child born out of wedlock” status has direct implications for the child's civil rights vis-à-vis their biological father, such as inheritance rights, the right to use their father's name on their birth certificate, and the right to financial support. Despite the legal status obstacles, the Indonesian legal system seeks to protect children from unregistered marriages through several important regulations and rulings: Child Protection Law (Law No. 35 of 2014): This law is the general basis for child protection, which includes efforts to guarantee children's rights to grow and develop optimally, as well as protect them from all forms of violence and discrimination. The principles of non-discrimination, the best interests of the child, the right to life and development, and respect for the views of the child are important foundations for this protection. The Child Protection Law emphasizes that every child, regardless of the marital status of their parents, is entitled to the fulfillment of their basic rights, such as financial support and education. Constitutional Court (MK) Decision Number 46/PUU-VIII/2010: This decision is an important milestone in the protection of children's rights from unregistered marriages. Prior to this decision, Article 43 paragraph (1) of the Marriage Law discriminatorily stated that “children born outside of marriage only have a civil relationship with their mother and their mother's family.” However, through this Constitutional Court Decision, Article 43 was amended to read: “children born outside of marriage have civil relations with their mother and her family as well as with the man who can be proven to be their father based on science and technology and/or other evidence according to the law that they have a blood relationship, including civil relations with their father's family.”

### **Implementation of Children's Rights from Unregistered Marriages in Batam City**

The phenomenon of unregistered marriages is not new in society, but their impact on the rights of children born from such unions is often overlooked. In Batam City, with its unique demographic and social characteristics, the challenge of guaranteeing the rights of children from unregistered marriages becomes even more complex. This discussion will outline the efforts and obstacles in implementing these rights in Batam. The implementation of administrative rights protection for children from unregistered marriages has been facilitated by the Batam City Population and Civil Registration Office (Disdukcapil) through the procedure of issuing birth certificates. Disdukcapil emphasizes that birth certificates will still be issued even if the child is only registered as the mother's child. From the results of the researcher's interviews, according to Mr. Nur Amri Arif, Head of the Civil Registration Services Division of Disdukcapil Batam City: “Discrimination would be if, for example, the child of the mother was not issued a birth certificate. That would be discrimination. But here, it is still issued. Even for abandoned children without the names of their parents, we issue birth certificates.” Permendagri Number 108 of 2019 stipulates that if there is no marriage certificate, the child's birth certificate will be issued with only the mother's name listed. The Population and Civil Registration Office acknowledges that socially, children without a father's name still have the potential to face stigma and other legal consequences such as not being recognized as having inheritance rights, lineage, or guardianship, because their status is not recorded as the legitimate child of their biological father. Therefore, the isbat hearing is the key to confirming the child's status.

In addition, the Batam City Disdukcapil continues to provide information to the public about the importance of marriage registration and its implications for children's rights. This information is provided regularly to sub-districts and villages, as well as through outreach activities for death certificates, birth certificates, and non-Muslim marriage certificates. On every occasion, Disdukcapil officers always encourage couples in unregistered marriages to immediately hold an isbat hearing at the religious court and register their marriage at the KUA. This aims to provide legal certainty and protection of children's rights, especially regarding inheritance and lineage, which are not legally recognized by the state if only based on an unregistered marriage. Although the requirements for issuing a birth certificate for a child are very easy and standard, such as a birth certificate, a statement from the mother, a form, the mother's ID card and family card, and the witness's ID card, many couples still choose to have a secret marriage. Some of the reasons revealed include the view that divorce is easier to obtain without going through the courts if the marriage is unofficial. In addition, there are also cases where parents do not consider the legal and social implications for their children in the future. Disdukcapil has also found cases where couples live together without any marriage bond at all, even though they already have children. This phenomenon shows the challenge of changing people's understanding and awareness of the importance of legal marriage. Even though Disdukcapil has simplified the administrative procedures for issuing birth certificates for children from unregistered marriages, obstacles arise from the community itself, which lacks understanding of the regulations or is even reluctant to be legally bound. Therefore, continuous education and a more persuasive approach are needed to raise awareness of children's rights and the importance of legally registering marriages in the eyes of the state.



**Factors Hindering Children's Rights Born From Unregistered Marriages in Batam City and Solutions**

Although legal and administrative channels are available to protect the rights of children from unregistered marriages, their implementation in Batam City does not always run smoothly. There are many obstacles that affect efforts to fulfill these children's rights, both from a legal, administrative, and social perspective.

**1) Lack of Public Awareness of the Law**

One of the main causes of the difficulty in fulfilling the rights of children from unregistered marriages in Batam City is the low level of legal awareness among the community. Many couples consider unregistered marriages to be sufficiently valid in religious terms (with a contract, witnesses, and dowry) without feeling the need to register the marriage with the state. In fact, registration is an important requirement for legal protection, not only for the husband and wife, but also for the children. This lack of understanding even encourages marriage practices that deviate from religious requirements, such as the use of an invalid or fake marriage guardian. This shows that the issue of unregistered marriages is not solely due to economic or administrative factors, but also due to ignorance and indifference towards religious and state laws. Without official registration, the status of children becomes unclear, potentially not recognized legally by their biological fathers, and impacting on rights such as identity, inheritance, and access to education and public services. Legal awareness usually only arises when parents face administrative obstacles (for example, registering children for school or obtaining birth certificates), indicating a reactive mindset. This low level of awareness is exacerbated by poor legal literacy, a lack of education from the government, and cultural influences that consider legal matters to be troublesome or taboo. As stated by the Batam City Disdukcapil, the main obstacle is not the administrative procedure, but rather the low level of public awareness regarding the registration of marriages. According to one Disdukcapil officer, "couples come here to register the birth certificates of their children, who already have three children from their unregistered marriages, and to date have not legalized their marriages on the grounds that it is okay for the birth certificates of their children to only include the mother's name. Therefore, based on the parents' reasoning, technical obstacles are not the reason, but rather a lack of awareness on the part of the parents."

**2) Limited Socialization by State Officials**

An interview with a judge at the Batam Religious Court revealed that the judiciary has never conducted direct socialization to the community regarding marriage validation or the determination of a child's origin, because its main function is focused on case resolution. However, the judge emphasized that ideally there should be collaboration between institutions (Religious Court, Office of Religious Affairs (KUA), Office of Women's Empowerment and Child Protection (DPPPA), and local government) so that education and information about this legal mechanism can be disseminated more widely. On the other hand, an official from the Batam City Disdukcapil stated that Disdukcapil routinely conducts outreach at the sub-district level, including outreach programs to assist with civil document processing. However, the outreach focuses more on technical and administrative aspects, while discussions on the legal consequences of unregistered marriages or child recognition have not been a major topic. This gap has resulted in the public having a limited understanding of the relationship between marriage registration, children's rights, and legal protection.

**3) Absence of Legal Sanctions for Unregistered Marriages**

One of the root causes of the prevalence of unregistered marriages is the absence of strict legal sanctions for couples who do not officially register their marriages. Law No. 1 of 1974 on Marriage does state that a marriage is considered valid if it is registered, but it is not followed by criminal or administrative provisions that provide legal consequences. As a result, many couples feel that they are not legally obliged to register their marriage, considering it morally and spiritually valid even though it has no legal force in the eyes of the state. Without official registration, the marriage has no legal consequences, either for the husband and wife or for any children born to them. The absence of sanctions reinforces the public perception that marriage registration is optional. This is exacerbated by the lack of legal awareness and weak supervision by the authorities. The state seems to only be present to record reported legal events, but has not been able to create a mechanism to systematically prevent unregistered marriages, which directly impacts children's difficulties in obtaining identity recognition, civil rights, and access to social protection. This condition contradicts the principle of the best interests of the child and reflects weak legal protection, both preventively and repressively, as stated by Philipus M. Hadjon.

**CONCLUSION**

Based on the findings of data analysis in the discussion, the following conclusions can be drawn; Constitutional Court Decision No. 46/PUU-VIII/2010 provides protection for civil relations with biological fathers. However, the lack of implementation of lawsuits based on this decision in Batam means that these children are still considered illegitimate children without legal marriage certificates. As a consequence, fundamental rights such as birth certificates, inheritance, and alimony are not automatically fulfilled, requiring further legal proceedings for

their legality; The implementation of the fulfillment of the rights of children from unregistered marriages in Batam City is still far from optimal. The reality on the ground shows that the majority of children are only registered under their mother's name on their birth certificates, hindering access to civil rights from their biological fathers, including alimony. The gap between existing child protection regulations and the reality on the ground confirms the vulnerability of children to the neglect of their rights; Various obstacles hinder the fulfillment of children's rights due to legal barriers, namely the lack of public understanding of itsbat nikah and its legal procedures. Socially, the negative stigma against unregistered marriages and their children remains strong. Economically, the cost and complexity of the itsbat process are burdensome, exacerbated by a lack of coordination and integrated programs between relevant agencies in providing comprehensive assistance.

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