

The Problem of Marital Legitimacy has not been Recorded Based on Permendagri Number 108 of 2019 Concerning Civil Registration

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ABSTRACT

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The introduction of Minister of Home Affairs Regulation No. 108 of 2019 has raised concerns regarding marriage registration in Indonesia. It presents a challenge for couples whose marriages lack official documentation, as they have the option to register their union at the Population and Civil Registration Office through the endorsement of a Letter of Absolute Responsibility (SPIJM). Subsequently, they receive a Family Card affirming their marital status despite the absence of a marriage certificate, which is also reflected in their Identity Card (KTP). However, this practice of informal marriage registration deviates from the *maqasid* of sharia, which seeks to uphold the welfare of the community by failing to satisfy the fundamental human necessities of religion, life, intellect, lineage, and property. Such non-compliance with the sharia objectives contradicts the utilitarian principle, which dictates that moral actions should promote overall happiness. Consequently, unofficial marriages can have adverse effects on spouses and offspring, running counter to the utilitarian notion of maximizing happiness. This research endeavors to scrutinize the challenges surrounding the legitimacy of unregistered marriages in Indonesia, focusing on the stipulations delineated in Minister of Home Affairs Regulation No. 108 of 2019 regarding the prerequisites and processes for population and civil registration. Employing a normative approach to library research, this study reveals that marriages deemed valid by religious standards yet lacking official documentation often give rise to myriad legal complications affecting both couples and their progeny. The lack of alignment between Permendagri 108 of 2019 and Law Number 1 of 1974 engenders inefficiencies in marriage registration procedures, potentially fostering concerns about the escalating prevalence of informal marriages or successive unions, thereby undermining the efficacy of marriage registration mechanisms in the foreseeable future.



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Introduction

Marriage is widely regarded as a pivotal institution essential for the equilibrium of human existence, catering to the legitimate satisfaction of biological needs, the preservation of psychological equilibrium¹ and the promotion of harmonious familial welfare². nregistered marriages, commonly known as "marriages under the hand," are viewed as being in conflict with *Maqasid al-Shari'ah* and the tenets of utilitarianism as

¹ Zaeni Asyhadie, *Hukum Keluarga Menurut Hukum Positif Di Indonesia* (depok: rajawali pers, 2020). p. 31.

² Rino Riyaldi and Muhammad Al Mansur, "Efektivitas Pelaksanaan Kegiatan Kampung Binaan Keluarga Sakinah Di Kabupaten Siak," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 9, no. 1 (2024): 217–34, <https://doi.org/10.47200/jnajpm.v9i1.2129>. p. 34

they neglect to safeguard the five fundamental principles of life and jeopardize the well-being of both the wife and children³.

According to the legislative framework in Indonesia, a valid marriage represents an intrinsic union aimed at cultivating a contented family unit grounded in monotheistic beliefs (Law No. 1/1974, Article 1). The legitimacy of a marriage hinges on its compliance with religious doctrines and tenets (Law No. 1/1974, Article 2 Paragraph 1).⁴ Despite its religious validity, for the sake of legal order and definiteness, every marriage necessitates registration by the Marriage Registrar (KHI, Article 5),⁵ a measure that functions as concrete proof to forestall potential harm in the future⁶.

Unregistered marriages, while possessing religious validity, lack recognition under state law and consequently do not benefit from legal safeguards. To address this issue, the institution of Isbat Nikah (Marriage Legalization) has been established. Isbat Nikah constitutes a legal procedure conducted in the Religious Court to validate a religiously recognized but unrecorded marriage, with the objective of securing legal certainty and a Marriage Certificate.⁷

As stipulated in the Compilation of Islamic Law (KHI, Article 7), petitions for Isbat Nikah are admissible under specific circumstances, including instances of misplaced Marriage Certificates, uncertainties surrounding the marriage conditions, unions predating the enactment of Law No. 1/1974, or in the context of divorce proceedings for couples lacking a recorded marriage and devoid of legal impediments to marriage.⁸

The formal request for the validation of a marriage, known as Isbat Nikah, was formally lodged with the Religious Court (PA) in pursuit of establishing legal validity through the issuance of a Marriage Book for couples whose marriage is solely religious and lacks administrative registration⁹. Nonetheless, the process of accessing Isbat Nikah is subject to stringent constraints, exemplified by the instance at the Bengkalis PA, where such requests may be declined if the marriage contravenes fundamental legal prerequisites, notably infringing upon the stipulated minimum age for marriage as mandated by Law No. 16 of 2019¹⁰; In such instances of rejection, the concerned party is obligated to undergo a marriage rejuvenation ceremony (tajdid nikah) before reapplying for validation.

Table. 1.1
Isbat Nikah Data at the Bengkalis Religious Court

Year	Marriage Isbat		
	2022	2023	2024
Accepted	174 Items	57 Items	55 Items
Rejected	0	16 Items	11 Things

On the contrary, Minister of Home Affairs Regulation No. 108 of 2019 was introduced with the intention of streamlining population management processes.¹¹ This regulation enables unregistered married couples to procure a Family Card (KK) denoting their status as "Marriage Not Registered" and an ID card

³ Erni Juniyati and Miftakur Rohman, "PERNIKAHAN DIBAWAH TANGAN DALAM TINJAUAN MAQĀSĪD AL-SHARĪ'AH DAN UTILITARIANISME," *MASADIR: Jurnal Hukum Islam* 03, no. 02 (2023): 761.

⁴ Marriage Law No. 1 of 1974

⁵ Compilation of Islamic Law Chapter 5

⁶ muhammad syarif Hidayat, *Rekontruksi Hukum Hak Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi* (semarang: CV Rafi Sarana Perkasa, 2021). 3

⁷ Enas Nasruddin, "Ikhwal Isbat Nilah," *Artikel Dalam Mimbar Hukum*, no. 33 (1977): 87.

⁸ Rita Khairani - and Royan Bawono, "Suatu Analisis Hukum Tentang Isbat Nikah Menurut KUH Perdata Dan KHI Indonesia," *Lentera: Indonesian Journal of Multidisciplinary Islamic Studies* 4, no. 2 (2022): 67–82, <https://doi.org/10.32505/lentera.v4i2.3960>.

⁹ Gusti Muzainah and Miftah Faridh, *FENOMENA ITS BAT NIKAH PADA MASYARAKAT METROPOLITAN (Studi Di Kota Banjarmasin)* (2021).

¹⁰ Compilation of Islamic Law, Marriage Law, Article 7

¹¹ Ahyuni Yunus, *Hukum Perkawinan Dan Isbat Nikah Antara Perlindungan Dan Kepastian Hukum* (makasar: humanites genius, 2020).

indicating them as "Married" by simply executing an Absolute Responsibility Letter (SPTJM)¹² at the Disdukcapil¹³. The Family Card includes pertinent information regarding individuals' names,¹⁴ arrangements, and familial connections¹⁵. Despite facilitating the issuance of birth certificates for offspring,¹⁶ this directive has sparked controversy and is seen as conflicting with the Marriage Law¹⁷ and potentially fostering a rise in serial marriages¹⁸. Concerns have been raised that the issuance of population documentation based on SPTJM could encroach upon the authority of the PA in determining Isbat,¹⁹ while the legal implications concerning inheritance rights and protection from domestic violence remain unresolved due to the lack of a valid Marriage Book or court declaration..²⁰

Method

This research employs a qualitative methodology characterized by descriptive elucidation, a technique that concentrates on empirical entities to generate reliable descriptive information.²¹ Specifically, this investigation is categorized as normative legal research or library research, which centers on the examination and evaluation of library resources such as books, periodicals, documents, and literature pertinent to legal matters.²² The utilized approach is Normative Juridical Research, wherein the inquiry is conducted by scrutinizing secondary data as a foundation, involving the review of the Minister of Home Affairs Regulation Number 108 of 2019 and relevant literature concerning unrecorded issues regarding the legitimacy of marriages.²³ The research data comprises primary data (findings from literature reviews) and secondary data (books, periodicals, scholarly articles, and statutes) that are germane to the study.²⁴ The primary method of data collection involves exploring and evaluating diverse literature, legal documents, and scholarly works through inventorying, critically assessing, documenting, and synthesizing and interpreting them to formulate a comprehensive analytical framework. Ultimately, the data analysis method employed is content analysis with a qualitative perspective, where the researcher peruses, assesses, and comprehends the content of written sources, evaluates them in light of Permendagri 108 of 2019, and

¹² Permendagri 108 of 2019, accessed January 8, 2025 at <https://peraturan.bpk.go.id/Details/138582/permendagri-no-108-tahun-2019>

¹³ Adib M. Hamzawi and Miftakhur Hana Rochmah, "Sinkronisasi Permendagri Dan Undang-Undang Perkawinan Terhadap Penerbitan Kartu Keluarga Bagi Pasangan Nikah Siri," *Jurnal Ilmu Hukum* 1, no. 2 (2023): 147-61.

¹⁴ Great Dictionary of the Indonesian Language, <https://kbbi.kemdikbud.go.id/> Accessed ON October 12, 2024

¹⁵ Dian Amelia, Ulfanora, and M. Iflah Febrizal, "Akibat Hukum Kartu Keluarga Bagi Pasangan Kawin Tidak Tercatat Menggunakan Surat Pernyataan Tanggungjawab Mutlak Berdasarkan Peraturan Menteri Dalam Negeri Nomor 108 Tahun 2019 Tentang Persyaratan Dan Tata Cara Pendaftaran Penduduk Dan Pencatatan Sipil," *Unes Law Review* 6, no. 2 (2023): 4615-27.

¹⁶ Amanda Zubaidah Aljarofi, *Kategori Perkawinan Belum Tercatat Dalam Belangko Kartu Keluarga Perspektif Yuridis*, Vol. 09, no. 02 (2019): 299.

¹⁷ rian m. Sirait, "Pencatatan Perkawinan Dalam Peraturan Perundangundangan Perkawinan Di Indonesia," *Jurnal JURISTIC* Vol. 1, no. No. 1 (2021). 5

¹⁸ Sukardi Paraga, "Nikah Siri (Perspektif Hukum Islam Kontemporer)," *Jurnal Pedais* Vol. 1, no. No. 2 (2019): 144.

¹⁹ *ibid*

²⁰ Fulthoni, *Aemahami Kebijakan Madministrasi Kependudukan* (jakarta: ILRC, 2009). 55

²¹ Zuchri Abdussamad, *Qualitative Research Methods*, (Makassar: CV. Syakir Media Press, 2021), p. 79

²² Qatar unruly dan Reach shay Farah, *Metode Penelitian Hukum Normatif* (makassar: CV Sosial Politic Genius (SIGn), 2020). 47

²³ soerjono soekanto dan sri Mamudja, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (jakarta: Rajawali Pers, 2001). 13-14

²⁴ Siswanto Sunarno, *Hukum Pemerintahan Daerah Di Indonesia* (jakarta: Sinar Grafika, 2006). 65

subsequently deduces conclusions deductively—progressing from general principles to specific findings, maintaining a descriptive approach to fully expound upon the issue.²⁵

Results and Discussion

The urgency of the legitimacy of marriage in the legal and social context

Legitimacy refers to the validity or information that validates something, which etymologically has a synonym of validity and foundation [KBBI]. In the context of marriage, which is defined as a heterosexual bond between a man and a woman to form a family²⁶, legitimacy is crucial. The approach to legitimacy can be seen strategically—where legitimacy becomes an operational resource derived from the social environment—or institutionally, where an organization (including the institution of marriage) is shaped by the acceptance of a broad belief system²⁷. There are diverse typologies of legitimacy, influenced by elements of regulation, norms, and cognition culture, all of which aim to provide stability in human interaction.

The Role of Administration and Civil Registration

Marriage Registration gains legal urgency through the Population Administration, which is an important pillar in the country's administrative and development system²⁸. The Population Administration, which is carried out by the Population and Civil Registration Office (Dukcapil) at the district/city level (Law No. 23 of 2006), has the authority to record important population events as a whole. Civil Registration is the process of recording Important Events, which include events such as births, deaths, divorces, and marriages, in the official register at the Implementing Agency²⁹. Therefore, marriage registration is not just a religious or social formality, but is a legal foundation (legitimacy) that guarantees administrative order, as well as providing full validity for the marriage bond and the accompanying legal consequences.

Explanation/ Civil registration procedure:

1. Indonesian citizens fill out F.1.01;
2. Indonesian citizens submit a letter of introduction for RT and RW (not required for newborn children with parents who are already registered in the population database);
3. Indonesian citizens submit photocopies of documents or evidence of population events and important events (such as passports, birth certificates from hospitals/health centers/clinics);
4. Indonesian citizens submit a photocopy of the last proof of education (diploma);
5. If the letters c and d are not owned, then the Indonesian citizen fills out F.1.04 Statement Letter of No Population Documents
6. Indonesian citizens submit a statement letter (original) that they do not object from the homeowner if they are riding a family, renting a house, contract and boarding house;
7. The agency publishes Biodata. In the event that Biodata is requested by the residents, the Agency provides the Biodata. Note: For online/online services, the requirements scanned/photographed for upload must be original.³⁰

The Role of the Government in Civil Registration

In simple terms, population administration activities are based on Article 1 Number 1 of Law No. 23 of 2006 concerning Population Administration, population administration is a series of structuring and regulating activities in the issuance of Population Documents and Data through Population Registration, Civil Registration, Population Administration information management and utilization of the results for

²⁵ Burhan Bangi, *Penelitian Kualitatif: Komunikasi, Ekonomi Kebijakan Publik Dan Ilmu Sosial Lainnya* (Jakarta: kencana, 2008). 108

²⁶ setyanigsih dan Aline Gratika Nugrahani, *Buku Ajar Hukum Perkawinan* (Depok: PT Rajawali Buana Pusaka, 2021). 5

²⁷ Budi Muliando dan Rijalul Fikri, *Struktur Legitimasi Dalam Masyarakat Indonesia (Studi Pengukuhan Kembali Kerajaan Gunung Sahilan Kabupaten Kampar Provinsi Riau)*, Vol. IV, no. 1 (2018). 493

²⁸ Dkk Junaidi Abdillah, *Implementasi Pendaftaran Penduduk Sebagai Upaya Tertib Administrasi Ditinjau Dari Hukum Administrasi Negara Di Kota Palembang*, Vol. 20, no. 2 (2022). 163

²⁹ <https://kependudukancapil.jakarta.go.id/pencatatan-sipil/> accessed on October 14, 2024, 20.26 WIB

³⁰ <https://dukcapil.ngalwikalb.go.id/stalndalr-pelalyalnaln-publik/> at ALkses Palaldal Talnggall October 14, 2024, 20.31 WIB

public services and the development of other sectors. That in essence there is the utilization of results that are ultimately for the benefit of the community in the form of *public services* provided by the state to every citizen.³¹

In an effort to create a good population system, Law No. 23 of 2006 concerning Population Administration, which as an effort to create a population administration system, lays down the rights and obligations of residents as an effort to implement the law, as follows:

Table. 1.2

1. Population Documents;	1. Each Resident is obliged to report Population Events and Important Events experienced to the Implementing Agency by fulfilling the requirements required in Population Registration and Civil Registration.
2. Similar services in Population Registration and Civil Registration;	
3. Protection of Personal Data;	
4. Legal certainty on document ownership;	
5. Information regarding the data of the results of Population Registration and Civil Registration on him and/or his family; and	2. Indonesian citizens who are outside the territory of the Republic of Indonesia are required to report Population Events and Important Events experienced by them to the Civil Registration Implementing Agency of the local country and/or to the Representative of the Republic of Indonesia by fulfilling the requirements required in the Population Registration and Civil Registration.
6. Compensation and restoration of good name as a result of errors in Population Registration and Civil Registration as well as misuse of Personal Data by Implementing Agencies.	

Rights and Obligations of Residents

The rights and obligations of residents are a fundamental effort to create an orderly Population Administration system, aiming to provide public services and ensure the clarity of data collection of every citizen and his citizenship status, which demands the reporting of every important incident to the government³². In line with Law No. 23 of 2006 concerning Population Administration, the Government through the Minister of Home Affairs issued Permendagri No. 108 of 2019 as an implementing regulation of Presidential Regulation No. 96 of 2018, which regulates the requirements and procedures for population registration and civil registration³³. The main purpose of this Permendagri is to ensure that every resident is registered in the state administration for the purposes of managing Family Cards (KK), Identity Cards (KTP), and child birth certificates [4]. Permendagri No. 108 of 2019 allows couples whose marriages have not been registered—in contrast to the provisions of the Compilation of Islamic Law (KHI) Article 5 which requires the registration of marriages for legal certainty³⁴—to continue to record their marital status on population documents, such as KK and birth certificates, using an Absolute Responsibility Letter (SPTJM). However, this status must be accompanied by a phrase explaining that the marriage has not been registered under laws and regulations.

Basis and Purpose of the Issuance of Regulation of the Minister of Home Affairs Number 108 of 2019

The basis of population administration arrangements began in 2003 with a Joint Decree of the Minister of Home Affairs and the Minister of Religion regarding the reporting of marriage registration,

³¹Coleta Maskikit et al., "Penerapan Sistem Informasi Administrasi Kependudukan Pada Kantor Distrik Merauke," *Jurnal Administrasi Karya Dharma* 2, no. 1 (2023): 2023.

³²uum ummul Muhimah, *Peran Pemerintah Dalam Bidang Administrasi Kependudukan Dalam Kerangka Perlindungan Hukum Warga Negara Ditinjau Dari Undang-Undang No. 23 Tahun 2006 Tentang Administrasi Kependudukan*, Vol. 2, no. 2 (2022). 56

³³ Andrizal dan Akbarizan, "Hak Konstitusional Penduduk Dalam Pernikahan Yang Tidak Tercatat Menurut Hukum Di Indonesia," *Jurnal Sains Sosial Humaniora* Vol. 6, no. 2 (2022): 27.

³⁴ Supriyadi dan Rahayu, "Analisis Implementasi Permendagri No. 108 Tahun 2019 Tentang Pendaftaran Penduduk," *Jurnal Administrasi Publik* Vol. 12, no. 1 (2020). 45

talaq, divorce, and referral³⁵. This legal framework was strengthened in 2006 through the Law on Population Administration, which aims to bring population data and documents in order³⁶. This law guarantees the right of every resident to obtain documents, equal services, and legal certainty for personal data³⁷, and requires residents to report important events³⁸. The philosophical foundation is the state's obligation to provide protection and recognition of legal status and the need for professional and non-discriminatory services³⁹. The amendment of the Law in 2013 further emphasized the improvement of excellent services in population administration.

As a derivative of the implementation of Population Administration, the Ministry of Home Affairs (MoH) has gradually developed instruments to overcome the low state recognition of identity, especially children. Permendagri No. 9 of 2016 introduced the concept of a Statement of Absolute Responsibility (SPTJM)—a statement with full responsibility regarding marital status⁴⁰, signed in the presence of two⁴¹ witnesses—aimed at accelerating the ownership of birth certificates. This policy was later affirmed in Presidential Regulation No. 96 of 2018⁴², which explicitly allows the use of SPTJM for unregistered or unregistered divorced couples for the issuance of Family Cards (KK).⁴³

In 2019, the Ministry of Home Affairs stipulated Permendagri No. 108 of 2019⁴⁴ which strengthened the use of SPTJM for the issuance of new KK for unregistered marriages, along with the issuance of Permendagri No. 109 of 2019 regarding population forms. However, this regulation creates legal inconsistencies⁴⁵. Although the goal is to facilitate access to documents and guarantee citizens' rights, the practice of issuing population documents based on SPTJM is seen as ignoring authentic evidence of official marriage registration. It is feared that in the social context it can nourish the practice of serial marriage, so that there is an urgent need for synchronization and harmonization between marriage regulations and population administration regulations to overcome the existing legal dualism⁴⁶.

The Position of the Minister of Home Affairs in the Laws and Regulations System in Indonesia

The authority of the Ministry of Home Affairs (Kemendagri) in issuing policies such as Permendagri No. 108 of 2019 and Permendagri No. 109 of 2019—which regulates the requirements for the use of Absolute Responsibility Statement Letters (SPTJM) for unregistered marriages to obtain population documents—is in the realm of State⁴⁷ Administrative Law. This authority is obtained by attribution, namely the granting of new authority by laws and regulations, which regulate the implementation of government duties in protecting the administrative rights⁴⁸ of the people. Although this policy does not directly affect

³⁵ See Article 10 of the Joint Decree of the Minister of Home Affairs and the Minister of Religion Number 125 of 2003

³⁶ See Article 1 of Law Number 23 of 2006 concerning Population Administration

³⁷ See Article 2 of Law Number 23 of 2006 concerning Population Administration

³⁸ See Article 3 of Law Number 23 of 2006 concerning Population Administration

³⁹ See Article 3 of Law Number 23 of 2006 concerning Population Administration

⁴⁰ See Article 1 number 19 of the Regulation of the Minister of Home Affairs Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Ownership of Birth Certificates

⁴¹ See Article 1 number 20 of the Regulation of the Minister of Home Affairs Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership

⁴² Yusup Setiawan, "Analisa Pencatatan Nikah (Kawin Belum Tercatat) Pada KK Dalam Perspektif Disdukcapil Purwakarta A . Pendahuluan Pernikahan Adalah Ikatan Lahir Batin Antara Seorang Pria Dengan Wanita Secara Sosial , Kemudian Terbangun Hubungan Atau Ikatan Perjanjian Huk," *Muttaqien* 3, no. 2 (2022): 195–218.

⁴³ Akhisna Dinda Insyira dan Hanny Purnamasari, "Evektifitas Pelayanan Administrasi Kependudukan Di Desa Jomin Timur," *Jurnal Pemerintahan Dan Kebijakan (JPK)* Vol. 5, no. 3 (2024).

⁴⁴ See also in the journal *Improving the Accuracy of Population Data Through Assistance in Making Population Books at the Rt and Rw Levels*, which was researched by Hanjar Ikrima Nanda et al., in 2018

⁴⁵ Germana Cicit Wahyuni, "Pelaksanaan Permendagri Nomor 7 Tahun 2019 Tentang Pelayanan Administrasi Kependudukan Secara Daring Dikota Denpasar," *Jurnal Kertha Desa* Vol. 10, no. 8 (2023).

⁴⁶ *Ibid*, p. 6

⁴⁷ Riawan Tjandra, *Hukum Administarsi Negara* (jakarta: sinar Grafika, 2018). 19

⁴⁸ Ridwan, *Hukum Administrasi Negara* (jakarta: PT Raja Grafindo Persada, 2013). 99

material legal aspects such as judicial proceedings, the issued residence deed has the nature of an authentic deed. Therefore, ambiguity arises regarding the evidentiary power of "unregistered marriage" in court, which demands the synchronization and affirmation of rules between executive, legislative, and judicial institutions⁴⁹.

The issuance of this Permendagri is based on the state's obligation to provide protection and recognition of legal status and personal status for every Population Event and Important Event experienced by the population⁵⁰. Important events, including marriages and divorces, must be reported to record changes in identity data⁵¹. In the Indonesian system of government, which divides power into executive, legislative, and judicial institutions⁵², the executive institution (led by the President) has the authority to make derivative regulations such as Ministerial Regulations (Permen).⁵³ Based on Presidential Regulation No. 11 of 2015, the task of the Ministry of Home Affairs is to organize domestic government affairs⁵⁴, including population and civil registration⁵⁵. Therefore, the Ministry of Home Affairs' policy related to SPTJM is in the realm of its function⁵⁶.

Although the Ministerial Regulation is not explicitly listed in the list of the hierarchy of major laws and regulations (Law No. 12 of 2011 Article 7 Paragraph 1),⁵⁷ its existence is recognized by Article 8 Paragraph (1) and (2) of the same Law⁵⁸. The Ministerial Regulation is recognized for its existence and has binding legal force as long as it is formed based on authority or ordered by a higher regulation⁵⁹. This binding force is the basis for the Ministry of Home Affairs in making regulations related to population administration. However, the fact that the SPTJM policy can affect the status of marriage which is the realm of material law (regulated by the judiciary and legislature) raises debate⁶⁰, demanding synergy between institutions to avoid overlap and legal dualism.

Application of Legal Principles in Permendagri No. 108 of 2019

The positive legal system in Indonesia is based on the order or hierarchy of laws and⁶¹ regulations [1]. In law, there are principles used to resolve conflicts of norms between rules, such as *lex superior derogat legi inferiori* (higher rules override inferior ones), *lex specialis derogat legi generali* (special rules override general ones), and *lex posterior derogat legi priori* (new rules override old ones). The principle of *lex superior derogat legi inferiori* specifically addresses the vertical conflict between two unequal rules⁶², in line with Hans Kelsen's

⁴⁹ Sri Nanang Meiske Kamba and Nur Mohamad Kasim, "Dampak Kebijakan Surat Pernyataan Tanggung Jawab Mutlak Peraturan Menteri Dalam Negeri Nomor 9 Tahun 2016 Terhadap Pencatatan Perkawinan," *Jurnal Hukum PRIORIS* 11, no. 1 (2023): 15–34, <https://doi.org/10.25105/prio.v11i1.18354>.p. 17

⁵⁰ See also the journal *Implementation of Population Administration Policy in Bandung Regency*, which was researched by Endah Christianingsih, in 2020

⁵¹ Agus Manurung and Lusia Sulastris, h. 325.

⁵² Gusmansyah, "Trias Politica Dalam Perspektif Fikih Siyasah," *Al-Imarah: Jurnal Pemerintahan Dan Politik Islam* Vol. 2, no. 2 (2017).

⁵³ Rohmah, "Perbandingan Sistem Pemerintahan Indonesia, Iran, Dan Prancis," *Ummul Qura Jurnal Institut Pesantren Sunan Drajat (INSUD) Lamongan* Vol. 13, no. 1 (2019). 117

⁵⁴ See Article 2 of Presidential Decree No. 11 of 2015 concerning the Ministry of Home Affairs

⁵⁵ Article 3 Point A of Presidential Decree No. 11 of 2015 concerning the Ministry of Home Affairs

⁵⁶ Coleta Maskikit, *Application of Population Administration Information System....* p. 20

⁵⁷ See Article 7 Paragraph (1) of Law No. 12 of 2011 concerning the type and hierarchy of Laws and Regulations

⁵⁸ See Article 8 Paragraph (1) of Law No. 12 of 2011 concerning the types and hierarchy of Laws and Regulations

⁵⁹ See Article 8 Paragraph (2) of Law No. 12 of 2011 concerning the types and hierarchy of Laws and Regulations

⁶⁰ Coleta Maskikit, *Application of Population Administration Information System....* p. 20

⁶¹ Nurul Qamar dan Farah Rezah, *Ilmu Dan Teknik Pembentukan Peraturan Perundang-Undangan* (makassar: CV. Social Politic Genius, 2020). 3

⁶² <https://www.hukumonline.com/klinik/a/3-asas-hukum--ilex-superior-i--ilex-specialis-i--dan-ilex-posterior-i-beserta-contohnya-cl6806> accessed on October 18, 2025, 21.25 WIB.

theory of norm levels which states that lower legal norms must be sourced and based on higher norms⁶³. The principle of *lex specialis* applies to conflicts of equivalent norms with different substances (general vs. special), ⁶⁴while *lex posterior* applies to conflicts of equivalent norms of the same substance (giving preference to the latest). ⁶⁵

There are allegations of a conflict of norms between Permendagri No. 108 of 2019 and Law No. 1 of 1974 concerning Marriage. Law No. 1 of 1974 expressly requires that every marriage be recorded to ensure legal certainty, so that the marital status can be recorded in the population document. However, Permendagri No. 108 of 2019 allows married couples to record their marital status on population documents (such as Family Cards and birth certificates) with the phrase that their marriage has not been recorded based on laws and regulations. Based on the principle of *lex superior derogat legi inferiori*, if there is a conflict between these two regulations, Law No. 1 of 1974 must take precedence, considering that the position of the Law in the hierarchy of laws and regulations is higher than the Ministerial Regulation⁶⁶.

The Problem of Marriage Legitimacy Has Not Been Recorded: A Critical Study of Permendagri No.108 of 2019 concerning Requirements and Procedures for Population Registration and Civil Registration.

A critical analysis of Permendagri No. 108 of 2019 shows that the policy of using SPTJM for married couples has not been recorded to cause a fundamental normative contradiction between administrative law (population registration) and material law (marital validity), which has an impact on legal dualism and uncertainty of civil status.

I. Main Normative Contradictions (Administrative vs. Material)

Permendagri No. 108 of 2019, through Article 10 paragraph (2) ⁶⁷ and Article 48 paragraph (2), ⁶⁸ provides administrative rights (issuance of KK and Child Birth Certificates) for couples who marry in series using SPTJM marriage/divorce that has not been recorded ⁶⁹. The government's goal is to realize administrative order and fulfill the civil rights of citizens in a non-discriminatory manner⁷⁰, supported by preventive factors that provide certainty of the status of relationships in the family⁷¹. However, this policy is fundamentally contrary to:

1. Principle of Marriage Legality: Law No. 1 of 1974 Article 2 paragraph (2) ⁷² and KHI Article 5 expressly require the registration of marriage⁷³ by an authorized official as a condition of legality in the eyes of the state⁷⁴. This registration, which is also seen as a requirement *for tsanqiy* in Islamic

⁶³ <https://www.saplaw.top/tag/teori-hans-kelsen/> accessed on October 18, 2025, 22.35 WIB

⁶⁴ Dkk umar anwar, *Pengantar Ilmu Hukum* (aceh: yayasan penerbit muhammad zaini, 2022). 137

⁶⁵ *Ibid*

⁶⁶ Addin Daniar Syamdan and Djumadi Purwoatmodjo, "Aspek Hukum Perkawinan Siri Dan Akibat Hukumnya," *Notarius* 12, no. 1 (2019): 452–66.

⁶⁷ See Permendagri article 10 paragraph (2)

⁶⁸ Article 48 paragraph (2) of PERMENDAGRI Number 108 of 2019 concerning the Implementation of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration

⁶⁹ *Ibid*. Article 48 paragraph (2)

⁷⁰ Sastraseni Saphietry and Asep Ajidin, "Analisis Kebijakan Surat Pernyataan Tanggung Jawab Mutlak (SPTJM) Perkawinan Belum Tercatat Dalam Kartu Keluarga Di Dinas Dukcapil Kota Bukittinggi," *Jurnal Ekonomi Manajemen Dan Bisnis (JEMB)* 2, no. 2 (2023): 211–20, <https://doi.org/10.47233/jemb.v2i2.1103>.p. 220

⁷¹ Hazar Kusmayanti, Sherly Ayuna Puteri, and Linda Rachmainy, "Praktik Pengajuan Itsbat Nikah Di Pengadilan Agama," *Jurnal Pengabdian Kepada Masyarakat* 2, no. No. 10 (2018). 5-6

⁷² Law Number 1 of 1974 concerning Marriage

⁷³ Government Regulation No. 9 of 1975 concerning the Implementation of the Law

⁷⁴ Civil Code Article 81

law^{75,76}, is not just an administrative matter⁷⁷, but an instrument to ensure legal certainty and civil rights^{78,79}

2. Evidentiary Force: The SPTJM, although it is a statement of absolute responsibility, does not have the legal force equivalent to an official document (Marriage Certificate).⁸⁰ With the existence of SPTJM, the Minister of Home Affairs *de facto* recognizes the status of marriage that is *de jure* invalid in the realm of civil/religious material law.

This conflict can be analyzed using legal principles: although the Permendagri is a legitimate technical regulation based on authority (Article 8 of Law No. 12/2011), it substantially violates the principle *of lex superior derogat legi inferiori* because it is contrary to Law No. 1/1974⁸¹, which has a higher position.

II. Complex Juridical and Social Implications

The implementation of SPTJM in the Permendagri raises dilemmas and negative impacts:

1. Nurturing of Siri Marriage: This policy is considered to send a signal to the public that the Siri marriage is now partially recognized by the state (for administrative purposes), so that it can legitimize the practice of marriage under the hands⁸².
2. Protection of the Rights of Children and Pseudo-Wives: Although children from unregistered marriages can be listed in the family and have the potential to obtain inheritance rights⁸³, the civil rights of wives and children remain weak without a Marriage Certificate. In the event of divorce or death, the wife and children must still go through the Isbat Nikah process at the Religious Court⁸⁴ to obtain full civil rights⁸⁵. Isbat Nikah, therefore, remains a legal remedy^{86,87}
3. Isbat Nikah Debate: There is a judicial inconsistency, where the court requires Isbat Nikah (ratification)⁸⁸ which is considered by some experts to contradict Law No. 1/1974 Article 2

⁷⁵ Zainuddin Ali, *Hukum Perdata Islam Indonesia* (Jakarta: Sinar Grafika, 2014). 35-36

⁷⁶ Rizal, "Efektifitas Rancangan Undang-Undang Hukum Materil Peradilan Agama (RUU HMPA) Dalam Penanggulangan Nikah Sirri," *Tafa'quh: Jurnal Penelitian Dan Kajian Keislaman* Vol. 6, no. 2 (2018). 227

⁷⁷ Halim, "Pencatatan Perkawinan Menurut Hukum Islam," *Al Mabhats: Jurnal Penelitian Sosial Agama* Vol. 5, no. 1 (2020). 18

⁷⁸ Dkk fatimah ratu azzahra, "Penerapan Asas Legalitas Dalam Putusan Perkawinan Beda Agama Dan Undang-Undang Perkawinan Di Indonesia," *Jurnal Qistie* Vol. 17, no. 2 (2024). 100

⁷⁹ Habib Shulton Asnawi, *Sejarah, Urgensi Dan Tipologi Pencatatan Perkawinan Dalam Undang-Undang Keluarga Islam Di Negara Muslim*, Vol. 4, no. 2 (2024). 536

⁸⁰ Saphietry and Ajidin, "Analisis Kebijakan Surat Pernyataan Tanggung Jawab Mutlak (SPTJM) Perkawinan Belum Tercatat Dalam Kartu Keluarga Di Dinas Dukcapil Kota Bukittinggi." p. 220

⁸¹ Government Regulation No. 9 of 1975 concerning the Implementation of the Law

⁸² Saphietry and Ajidin, "Analisis Kebijakan Surat Pernyataan Tanggung Jawab Mutlak (SPTJM) Perkawinan Belum Tercatat Dalam Kartu Keluarga Di Dinas Dukcapil Kota Bukittinggi." p. 220

⁸³ Sarjiyati dan Yuni Purwati, "Dampak Perkawinan Yang Tidak Dicatat," *Yustisia Merdeka* Vol. 5, no. 2 (2019). 55-56

⁸⁴ St. Syahrini Usman, "Solusi Penyelesaian Perceraian Yang Tidak Dicatat," *Tahkim* XI, no. 1 (2015): 68-81. 72

⁸⁵ *Ibid*, p. 73

⁸⁶ Mohammad Daud Ali, *Hukum Islam, Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: RajaGrafindo Persada, 2005). 74

⁸⁷ Ali. 74

⁸⁸ Faishal dan Faisar Ananda ARFA, "Hukum Perkawinan Di Tinjau Dari Hukum Islam Dan Hukum Positif Di Indonesia," *Jurnal Riview Pendidikan Dan Pengajaran* Vol. 7, no. 3 (2024). 9234

paragraph (1), which states that a valid marriage according to religion is materially valid and does not need to be repeated/re-legalized^{89,90}

III. Factors Causing Legal Inconsistencies

The inconsistency of Permendagri No. 108 of 2019 is mainly due to failures in coordination and systems:

Table. 1.3

Factors	Sharpening Description
Sectoral vs. Sectoral Approach System	The Ministry of Home Affairs operates with a sectoral approach (Population Administration) without integrating the material legal aspects of marriage (Ministry of Religion and Judiciary), ignoring the rules of marriage law that are already in force ⁹¹ .
Legislation Gap	The birth of this Permendagri creates an inconsistency in the objectives of legislation ⁹² . The Marriage Law aims to regulate the validity and material rights, while the Minister of Home Affairs focuses on administrative completeness, thus causing a clash of norms ⁹³ .
Coordination Limitations	The formation of regulations is carried out by different institutions with different focuses and times ⁹⁴ , showing the weak harmonization and coordination of legalization to find affirmative solutions that do not collide with legal norms in other ⁹⁵ realms.
Access to Participation	The limited public participation in the formation of the Minister of Home Affairs can result in rules that do not comprehensively accommodate the aspirations of the community, especially the legal impact it causes ⁹⁶ .

⁸⁹ Asnawi, *Sejarah, Urgensi Dan Tipologi Pencatatan Perkawinan Dalam Undang-Undang Keluarga Islam Di Negara Muslim*. 536

⁹⁰ Rinandu Kusumajaya Ningrum, "Itsbat Nikah Sebagai Upaya Pencatatan Perkawinan Terhadap Perkawinan Yang Belum Dicatatkan," *Jurnal Hukum Pidana Dan Pembangunan Hukum* 1, no. 1 (2023): 13–19.

⁹¹ Ida Surya and Abdul Wahab, "Harmonisasi Peraturan Perundang Undangan Dalam Mewujudkan Pemerintahan Yang Baik," *Jurnal Kompilasi Hukum* 8, no. 2 (2023): 108–17. 113

⁹² Budiarti, "Analisis Yuridis Perkawinan Beda Agama Dengan Pendekatan Maqashid Al- Syariah Dalam Kontenks Negara Hukum Pancasila," *Justicia Islamica* Vol. 15, no. 1 (2018). 48

⁹³ Daimun dan Husain, "Dialetika Hukum Islam Dan Perubahan Sosial, Ekonomi Dan Politik," *Sibaliparriq Jurnal Hukum Keluarga Dan Literasi Syariah* Vol. 1, no. 1 (2024). 31

⁹⁴ Dkk Imanuel, "Implementasi Kebijakan Peningkatan Kualitas Sumber Daya (BKPSDM) Kabupaten Murung Raya," *Ednomics Journal*, Vol. 4, no. 1 (2023). 86

⁹⁵ Surya and Wahab, "Harmonisasi Peraturan Perundang Undangan Dalam Mewujudkan Pemerintahan Yang Baik." 113

⁹⁶ Dinda, "Efektifitas Penegakan Hukum Terhadap Kejahatan Siber Di Indonesia," *AL- DALIL: Jurnal Ilmu Sosial , Politik Dan Hukum* Vol. 2, no. 2 (2024). 77

Overall, this Permendagri is an administrative intervention that tries to solve social problems⁹⁷, but fails to align itself with the established material legal regime, thus giving rise to further dualism and legal uncertainty⁹⁸.

The crisis study on the implementation of marital legitimacy has not been recorded related to the Regulation of the Minister of Home Affairs Number 108 of 2019

The implementation of Permendagri No. 108 of 2019 in the context of the legitimacy of marriage is not recorded reveals that there are substantial tensions that threaten the consistency of the national legal system. This administrative policy, although based on good intentions to bring population data in order, inevitably creates jurisdictional conflicts with the main pillars of Indonesian family law.

I. Philosophical Foundations of Family Law and Normative Violations

Marriage law in Indonesia is built on a philosophical foundation that is firmly rooted in religious and sociological values, the culmination of which is manifested in Law Number 1 of 1974 (Marriage Law).⁹⁹ This law affirms that marriage is a sacred bond that goes beyond ordinary covenants, but one that involves family, society, and divine values, and therefore requires good faith and obedience¹⁰⁰.

The obligation to register marriages, which is strengthened by Law No. 1/1974, is not just an administrative procedure, but a prerequisite for the recognition of the validity of marriage in the eyes of the state¹⁰¹. This obligation emerged as a historical response to guarantee legal standing, especially for women, after previous regulations were deemed inadequate. The threat of sanctions (fines or imprisonment) for violators of the registration provisions shows how serious the state is in making registration a requirement for formal legality.

II. Failure to Overcome Legal Dualism and the Role of the Minister of Home Affairs

Complexity arises due to the dualism of law in society, where religious law is often dissotomized with positive state law. This perception is exacerbated by the assumption that the government only has the right to regulate worldly affairs, while religious affairs (the validity of marriage) are the domain of the ulama/kiai¹⁰². This dualism is the root of the practice of unrecorded marriage (nikah siri). The government, through the Ministry of Religious Affairs, has tried to overcome this fragmentation through the technical codification of registration in PMA Number 19 of 2018, which unites various technical rules (such as guardian judges, legalization of marriage books, and the use of information technology) into one comprehensive reference¹⁰³.

However, Permendagri No. 108 of 2019 appears as if it overrides the harmonization effort. By allowing the issuance of population documents based on SPTJM for unregistered marriages, the Permendagri is considered to create a direct contradiction to higher legal norms¹⁰⁴. This policy has caused misinterpretation in the community because it is considered inconsistent in the implementation of basic regulations, namely the Marriage Law¹⁰⁵.

⁹⁷ Saphietry and Ajidin, "Analisis Kebijakan Surat Pernyataan Tanggung Jawab Mutlak (SPTJM) Perkawinan Belum Tercatat Dalam Kartu Keluarga Di Dinas Dukcapil Kota Bukittinggi." p. 220

⁹⁸ Usman, "Solusi Penyelesaian Perceraian Yang Tidak Dicatat." 72

⁹⁹ Usman. 72

¹⁰⁰ Yasin, "Pencatatan Nikah, Talak, Dan Rujuk Menurut Undang-Undang No. 1/1974 Dan PP No. 9/1975," *Jurnal Ilmiah Al- Syir'ah*, vIL. 13, no. 2 (2015). 2

¹⁰¹ *Ibid*, p. 9

¹⁰² Ahmad Rifai, "Sejarah Undang-Undang Perkawinan Atas Pendapat Hingga Pertentangan Dari Masyarakat Dan Dewan Perwakilan Rakyat Tahun 1973-1974," *Journal of Indonesian History* 4, no. 1 (2015): 6.

¹⁰³ *Ibid*, p. 10

¹⁰⁴ Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 50, <https://doi.org/10.30984/jifl.v1i1.1639>.p. 55

¹⁰⁵ Aristoni dan Junaidi Abdullah, *4 Dekade Hukum Perkawinan Di Indonesia: Menelusik Problematika Hukum Dalam Perkawinan Di Era Moderasi*, Vol. 7, no. 1 (2016). 90

III. Jurisdictional Contradictions and Inconsistencies in the Legal System

At the heart of this crisis lies in the violation of jurisdiction and legal tiers:

1. Violation of Material Legal Jurisdiction: The rules on the validity of marriage and the resolution of legal problems arising from it are expressly in the realm of marriage law (UU) and religious courts. The Minister of Home Affairs, which is limited to regulating population administration services (Disdukcapil), actually provides partial recognition of marital status that is not materially valid. This causes the regulation that is authorized to provide administrative services (Permendagri) to clash with the regulation that is authorized to provide substantial legality (Marriage Law).¹⁰⁶
2. Creating Ambiguity and Inconsistency: Although the evolution of the law aims to accommodate social changes and improve services, the insertion of rules related to marriage is not recorded in the Permendagri is considered a step that is not harmonized properly. The Minister of Home Affairs tries to adapt to the social context (people who have already married in series) but does so in a way that creates ambiguity and complexity in the legal system as a whole¹⁰⁷. This shows a failure of coordination between state institutions in harmonizing legal and administrative objectives.

Thus, although administratively the Permendagri has good intentions, the juridical impact is to create a new dualism that has the potential to weaken the preventive function of the Marriage Law and blur the boundary between legal (registered) and invalid (unregistered) marriages.

Conclusion

Based on the results of the discussion and research, it can be concluded that the Regulation of the Minister of Home Affairs (Permendagri) Number 108 of 2019 concerning Requirements and Procedures for Population Registration and Civil Registration raises serious legitimacy problems regarding unregistered marriages. This Permendagri is considered to be contrary to the obligation to register marriages which are strictly regulated in Law Number 1 of 1974 and Government Regulation Number 9 of 1975, as well as the principle of legal order in the Compilation of Islamic Law (KHI) Article 5 and Regulation of the Minister of Religion Number 19 of 2018. The main problems that arise include legal uncertainty because the issuance of Family Cards (KK) and Identity Cards (KTP) based on the Letter of Absolute Responsibility (SPTJM) does not necessarily legalize the marriage, thus creating legal ambiguity. As a result, spouses and children face limited civil rights, difficulty accessing inheritance, custody, and alimony. In addition, difficulties arise in population administration because the document is not strong enough for legal proceedings such as filing for divorce (which still requires marriage certificate first) or other vital needs such as bank loans. This problem is exacerbated by the lack of public understanding of the importance of marriage registration.

The issue of critical study on the implementation of marriage legitimacy has not been recorded related to the regulation of the Minister of Home Affairs number 108 of 2019, namely: The existence of the potential of this Permendagri weakens the legal marriage system. By providing the "convenience" of population registration through SPTJM without a process of proving the validity of the marriage, the public may be less motivated to follow legal marriage procedures according to the Marriage Law. This can encourage the practice of unregistered marriage because it is considered more practical and easy. SPTJM alone is not enough. SPTJM only serves as administrative evidence for the purpose of population registration. The SPTJM does not provide legal legitimacy for marriage, so women and children in unrecorded marriages remain vulnerable to neglect, discrimination, and difficulties in accessing civil rights (e.g., inheritance and common property). Harmonize between the Minister of Home Affairs and the Marriage Law. If necessary, the Permendagri should be revised to conform to the applicable principles of marriage law, provide clear interpretation guidelines to judges and law enforcement officials on how to implement the Permendagri and the Marriage Law consistently and fairly, encourage the settlement of marital disputes through mediation and conciliation to achieve a fair solution for all parties, and increase the legal awareness of the community regarding their rights and obligations in marriage.

Acknowledgement

¹⁰⁶ Tantri Naratama et al., "Perceraian Pada Perkawinan Campuran Di Indonesia Dalam Perspektif Hukum Perdata Internasional," *Warta Dharmawangsa* 17 (2023): 1283-94.c.1292

¹⁰⁷ Kartika Septiani Amir, *Legal Developments and Problems.....*, p. 57

Alhamdulillah, we praise and thank Allah SWT for all His blessings and grace that have enabled us to complete this research successfully.

This research provides an in-depth examination of the problems surrounding the legitimacy of unregistered marriages in relation to the Minister of Home Affairs Regulation (Permendagri) Number 108 of 2019 concerning Requirements and Procedures for Population Registration and Civil Registration. We recognize that the completion of this research could not have proceeded smoothly without the support and assistance from various parties.

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This research is expected to contribute to understanding the complexity of marriage law in Indonesia, particularly regarding unregistered marriages, and to serve as a reference for efforts to harmonize regulations between marriage law and population administration.

May this work be beneficial for the advancement of knowledge, the rule of law, and the welfare of the Indonesian people.

Author Contributions Statement

MA conceived the research idea and designed the overall research framework for examining the normative contradictions between Permendagri No. 108 of 2019 and Indonesian marriage law; MN conducted the comprehensive literature review on population administration regulations, civil registration procedures, and relevant legal statutes; MS performed the critical legal analysis of the conflict between administrative law and material law, including application of legal principles such as *lex superior derogat legi inferiori*; NS drafted the manuscript, synthesized the findings on jurisdictional contradictions, and contributed to the discussion on implications for unregistered marriages (*nikah sir*). All authors reviewed the manuscript, discussed the empirical data from Bengkalis Religious Court, refined the critical analysis sections, and approved the final version for publication.

Conflict of Interest

This section is a statement from the author that this article has not a conflict of interest.

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