

Legal Protection for Children in Unregistered Marriages (*Nikah Siri*) in Indonesia

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ABSTRACT

A marriage is considered valid if it complies with religious law and is registered with the state (Law No. 1/1974). However, many unregistered marriages (*nikah siri*) are religiously valid but not legally recognized, resulting in children losing legal rights such as birth certificates and inheritance. This study analyzes the legal status of children born from *nikah siri*, their legal protection, implementation challenges, and effective legal solutions. This research employs a normative legal method with a statutory and conceptual approach. Data is collected through a literature review of primary, secondary, and tertiary legal sources. A descriptive-analytical approach is used to understand the legal protection of children from unregistered marriages and to formulate regulatory improvements to safeguard children's rights in accordance with Indonesian law. Children born from unregistered marriages (*nikah siri*) face legal uncertainty, particularly regarding inheritance and financial support. Constitutional Court Decision No. 46/PUU-VIII/2010 allows children to have a civil relationship with their biological father if proven legally. Legal protection includes birth certificates, recognition of lineage, financial support rights, and legal advocacy. Social, economic, and bureaucratic challenges can be addressed through education, administrative reforms, and improved legal access. Children from

unregistered marriages face legal uncertainty. Constitutional Court Decision No. 46/PUU-VIII/2010 recognizes their civil relationship with their biological father. Legal protection includes birth certificates, civil rights, *isbat nikah* (marriage validation), and legal advocacy. Administrative, social, and legal barriers must be addressed through regulatory reforms and increased public awareness to ensure the best interests of the child.

Keywords: *Legal Protection, Children, Unregistered Marriage, Secret Marriage.*

INTRODUCTION

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 the belief in Almighty God. This definition is outlined in Article 1 of Law No. 1 of 1974 on Marriage. In the context of Indonesian law, a marriage is considered valid if it meets two main requirements as stipulated in Article 2 of Law No. 1 of 1974, namely:

1. A marriage is valid if conducted according to the religious laws and beliefs of the parties involved.
2. Every marriage must be registered according to the applicable laws and regulations.

However, in social reality, many marriages remain unregistered, commonly referred to as **nikah siri** (Anggelia and Purwanti, 2020). Such marriages, while religiously

valid as they fulfill the essential and formal requirements of marriage, lack legal recognition by the state due to their failure to be officially registered under Article 2(2) of Law No. 1 of 1974. The absence of registration leads to various legal issues, particularly concerning the protection of the rights of children born from these marriages.

Children born from unregistered marriages face multiple challenges in obtaining their fundamental rights, such as birth certificates, inheritance rights, and other civil rights. Legally, they only have a civil relationship with their mother and their mother's family, as regulated in Article 43(1) of the Marriage Law, which states:

"A child born outside of marriage only has a civil relationship with their mother and their mother's family."

This provision has several legal implications, particularly regarding inheritance rights, legal recognition as a legitimate child, and access to financial support and protection from the biological father. Although Constitutional Court Decision No. 46/PUU-VIII/2010 grants legal recognition to children born outside of marriage by stating that they may have a civil relationship with their biological father if proven scientifically and/or legally, its implementation still faces significant challenges in practice.

The complexity of this issue is further heightened by the high prevalence of unregistered marriages in Indonesia, influenced by various factors such as social, economic, cultural aspects, and a lack of public awareness regarding marriage laws. As a result, many children from unregistered marriages experience discrimination and difficulties in accessing essential services such as education, healthcare, and legal protection for their rights (Hikmah and Subagyo, 2020).

From the perspective of child protection law, this situation contradicts Law No. 35 of 2014 on Child Protection, which emphasizes that every child has the right to protection from discrimination, exploitation, and other

fundamental rights without exception (Hawana, Aziz, and Hafidati, 2024). Therefore, an in-depth study is needed to find comprehensive and effective legal solutions to provide protection for children born from unregistered marriages without disregarding the existing legal provisions.

Based on the issues outlined above, several legal concerns arise due to unregistered marriages, particularly regarding the legal protection of children born from such unions. Therefore, this research seeks to answer the following key questions:

- 1) What is the legal status of children born from unregistered marriages according to the Indonesian legal system?
- 2) What forms of legal protection can be provided to children born from unregistered marriages?
- 3) What are the obstacles in implementing legal protection for children born from unregistered marriages, and what solutions can be proposed to address them?

This study aims to analyze the legal status of children born from unregistered marriages based on the provisions of Law No. 1 of 1974 on Marriage and other related regulations. Additionally, the study seeks to identify and evaluate the forms of legal protection that can be provided to children born from unregistered marriages to ensure their rights are safeguarded in accordance with child protection principles in Indonesian law.

Furthermore, this research examines the challenges in implementing child protection policies for children from unregistered marriages and formulates alternative solutions to strengthen the legal protection system for such children. Thus, this study is expected to contribute to the development of more comprehensive policies to ensure children's rights within Indonesia's legal system.

MATERIAL AND METHODS

This research employs a normative legal research method with a statute approach and a conceptual approach (Nanda Dwi Rizkia and Fardiansyah 2018). Normative legal research is conducted by examining various relevant laws and regulations, legal doctrines, and court decisions related to legal protection for children born from unregistered marriages (nikah siri).

The data collection technique used in this research is library research, which involves reviewing various primary, secondary, and tertiary legal sources (Qamar and Rezah 2020). Primary legal sources include laws and regulations such as Law Number 1 of 1974 on Marriage, Law Number 35 of 2014 on Child Protection, and Constitutional Court Decision Number 46/PUU-VIII/2010, which relates to the legal status of children born out of wedlock. Secondary legal sources consist of books, academic journals, and previous studies discussing legal protection for children in unregistered marriages. Tertiary legal sources include legal dictionaries and legal encyclopedias that support the research analysis.

The data analysis in this research is carried out using a descriptive-analytical method (David Tan 2021), which involves describing the applicable legal provisions and analyzing their implications for child protection in unregistered marriages. The collected data is systematically analyzed to understand how existing regulations provide protection for children and to identify legal loopholes or challenges in their implementation. Additionally, this research compares various legal concepts applied in Indonesia with legal practices in other countries that have more comprehensive child protection systems.

Through this normative approach and library research, the study aims to provide an in-depth understanding of legal protection for children in unregistered marriages and to offer regulatory improvement recommendations to ensure children's rights are better protected in accordance with the principles of justice and

child protection mandated by Indonesian law.

RESULTS AND DISCUSSION

Legal Status of Children Born from Unregistered Marriages in the Indonesian Legal System

In the Indonesian legal system, the legal status of children born from unregistered marriages (nikah siri) faces various uncertainties, particularly concerning their civil rights. According to Article 2(2) of Law Number 1 of 1974 on Marriage, marriage registration is an administrative requirement that determines the validity of a marriage in the eyes of the state. If a marriage is not registered, the state does not recognize the legal relationship between husband and wife, which ultimately affects the legal status of children born from such marriages.

According to Article 43(1) of the Marriage Law, a child born outside of a legally recognized marriage only has a civil relationship with their mother and the mother's family. This provision means that, under Indonesian positive law, children from unregistered marriages are considered illegitimate children. Consequently, they have no legal relationship with their biological father, preventing them from claiming inheritance rights or financial support from him.

However, the Constitutional Court Decision Number 46/PUU-VIII/2010 introduced a significant shift in the recognition of illegitimate children's rights (Fitriani et al., 2024). The Constitutional Court interpreted that a child born outside of marriage can still have a civil relationship with their biological father, provided that the relationship can be scientifically proven (e.g., through DNA testing) and/or supported by other legally valid evidence. With this ruling, children from unregistered marriages can claim civil rights from their biological fathers, including financial support and inheritance rights, as long as there is verifiable biological proof (Gistaloka, Baharudin, and Jainah, 2024).

Additionally, Law Number 35 of 2014 on Child Protection, which amends Law Number 23 of 2002, emphasizes that every child has the right to legal protection without discrimination. Article 3 of the Child Protection Law states that children's rights, including the right to legal identity such as a birth certificate, must be guaranteed by the state (Putro et al., 2024). In practice, however, children born from unregistered marriages often face difficulties in obtaining birth certificates due to the lack of legal proof of their parents' marriage (Hanapi and Manshur, 2024). To address this issue, the Minister of Home Affairs Regulation Number 9 of 2016 was issued, allowing the registration of a child's birth with the father's name included, provided that the father formally acknowledges the child.

Although there has been progress in recognizing the rights of children born from unregistered marriages, the implementation of legal protection for them still faces challenges. One of the main obstacles is the lack of public awareness regarding the importance of marriage registration, as well as the social stigma that persists against children considered illegitimate (Devinda, Nadhifah, and Arifin, 2024). Therefore, further efforts are needed, including legal awareness campaigns, regulatory improvements, and better access to civil registration services to ensure that the rights of children from unregistered marriages are better protected, in accordance with constitutional principles and applicable laws in Indonesia.

Forms of Legal Protection for Children Born from Unregistered Marriages

Legal protection for children born from unregistered marriages (nikah siri) is a state responsibility guaranteed by the constitution and statutory regulations. Despite being born from unregistered marriages, these children still have the right to legal protection to ensure their growth and future well-being. The following are forms of legal

protection that can be provided to children born from unregistered marriages:

First, protection through the court's determination of the child's origin. Parents can submit a request for the determination of the child's origin to the Religious Court to obtain legal recognition of the child's status (Fitriana et al., 2024). In this process, the petitioner must provide evidence that a religious marriage took place between the child's biological parents. This court determination serves as a strong legal basis to ensure the child's civil rights, including the right to obtain a birth certificate that lists both parents' names.

Second, protection through the issuance of a birth certificate. Based on Constitutional Court Decision No. 46/PUU-VIII/2010, children born outside of marriage have the right to obtain a birth certificate listing both biological parents' names. This can be done using a court ruling on the child's origin as a basis for issuing the certificate (Maria, Irawan, and Wati, 2023). A birth certificate is a vital document required for children to access various public services, including education, healthcare, and other civil administration processes.

Third, protection of children's civil rights. Even if they are born from unregistered marriages, children still have civil rights that can be pursued through legal channels. These rights include the right to parental care and education, the right to financial support from their biological father (which can be enforced through the courts), and the right to inheritance, which can be pursued through legal claims (Indrawati and Sasmita, 2022). The fulfillment of these rights can be strengthened by the biological father's acknowledgment or through a court ruling that establishes a civil relationship between the child and the biological father.

Fourth, protection through Isbat Nikah (Marriage Validation Process). Parents can file a request for Isbat Nikah at the Religious Court to obtain legal recognition of their marriage. If granted, the marriage is legally recognized retroactively from the date it was conducted (Gilberd, 2021). As a

result, the child born from such a marriage automatically gains legitimate status along with all associated rights, including inheritance and financial support.

Fifth, protection of identity rights and access to public services. Children born from unregistered marriages have the right to obtain identity documents such as a Family Card (Kartu Keluarga) and an ID card (KTP) when they reach the required age. They also have the right to obtain a passport and other travel documents, as well as guarantees of citizenship status (Asman, 2024). In the field of education, they have the right to enroll in formal education, receive scholarships, and take national examinations to obtain diplomas. In the healthcare sector, they have the right to access medical services, health insurance through BPJS, and other health programs such as immunization and vaccinations.

Sixth, protection through legal advocacy and assistance. Children and their families have the right to receive legal assistance during court proceedings, legal aid to fight for their rights, and legal consultation regarding the child's status and entitlements. Legal aid organizations and child protection institutions can play an active role in providing this assistance to ensure that children's rights are upheld according to applicable laws (Akmal and Asti, 2021).

Seventh, social protection and preventive measures. The state is responsible for protecting children from all forms of discrimination and providing social security and proper care. This can be realized through social programs targeted at families with unregistered marriages (Hidayati, Judiasih, and Nasution, 2022). Additionally, preventive efforts are needed through awareness campaigns on the importance of marriage registration and public education on children's rights to prevent unregistered marriages in the future (Alif Utama, Pujiastuti, and Septiandani, 2023).

In practice, all forms of legal protection must be implemented with the child's best interests as the top priority, in accordance with the principles outlined in Law No. 35

of 2014 on Child Protection and the Convention on the Rights of the Child, which Indonesia has ratified. Effective coordination between various stakeholders, including the government, judiciary, civil society organizations, and the public, is necessary to ensure that legal protection for children from unregistered marriages is upheld.

Obstacles and Solutions in the Implementation of Legal Protection for Children in Unregistered Marriages

The implementation of legal protection for children born from unregistered marriages faces various complex obstacles that require a comprehensive approach to overcome. These obstacles include administrative, socio-cultural, legal, economic, institutional, and geographical aspects that are interrelated. In terms of administration and bureaucracy, the main obstacle encountered is the complicated and time-consuming process of obtaining necessary documents. People often face complex administrative requirements when obtaining identity documents for their children, such as birth certificates, family cards, and other civil registry documents (Fadli 2021). This situation is worsened by limited access to civil registration services in remote areas and the bureaucratic hurdles in establishing the child's legal origins. To address this issue, it is necessary to simplify administrative procedures through a one-stop service system, enhance mobile civil registration services for remote areas, and provide fee waivers or exemptions for underprivileged families. Digitalizing service systems can also be a solution to accelerate administrative processes (Nurhayati et al. 2022).

Social and cultural barriers also play a significant role in hindering the implementation of legal protection. The social stigma against children born from unregistered marriages remains strong in society, coupled with a lack of awareness about the importance of marriage registration (Ardani and Suhadi 2024). In

some areas, the practice of siri (unregistered) marriages is still considered normal and even socially legitimized. Limited public understanding of children's rights also poses a serious challenge. To overcome these obstacles, intensive socialization and public education programs on the importance of marriage registration and children's rights are needed (Nofia Sari, Sari Damayanti, and Hadrian 2023). Community empowerment programs involving religious and community leaders in marriage registration campaigns should also be strengthened. Additionally, social assistance programs for families in unregistered marriages can help mitigate the negative impacts on children.

From a legal and regulatory perspective, the lack of harmony between state law and religious/customary law remains a major challenge. Limited access to legal aid and inconsistencies in law enforcement across different regions further complicate the issue (Yuniarlin 2023). The absence of comprehensive technical regulations also makes implementation difficult. Solutions that can be applied include harmonizing laws related to marriage and child protection, strengthening the role of legal aid institutions in case assistance, and drafting more detailed and applicable technical regulations. Strengthening coordination between law enforcement agencies is also essential to ensure consistent implementation.

Economic barriers are equally important factors affecting access to legal protection (Al-Amruzi 2021). The high costs associated with court processes and obtaining legal documents often pose challenges for low-income families. Financial difficulties and transportation costs to legal service institutions also act as additional barriers. To address this issue, free legal aid programs for underprivileged families should be developed, collaboration with social organizations for financial assistance should be strengthened, and support programs for document processing fees should be established. Expanding

access to pro bono legal services can also help alleviate families' economic burdens. Institutional barriers, such as limited human resources in legal service institutions and lack of coordination among related agencies, should be addressed by improving human resource capacity through ongoing training and education. Establishing an integrated coordination system between institutions and developing supporting infrastructure for legal services are also necessary (Nadriana and Yunani 2023). Strengthening monitoring and evaluation systems for legal protection programs can help ensure effective implementation.

Geographical obstacles, including long distances to legal service institutions and accessibility challenges in remote areas, can be addressed by developing mobile legal services and establishing legal service posts at the sub-district level. The use of technology for remote legal services and improving the equitable distribution of legal services should also be enhanced to reach communities in remote areas. To effectively implement these solutions, a comprehensive and integrated approach involving various stakeholders is required. Strengthening cross-sectoral coordination through the establishment of an integrated coordination team and the development of a shared information system is crucial for success. Sustainable community empowerment programs and institutional capacity building should also be systematically implemented (Kharisudin 2021).

With the implementation of comprehensive and coordinated solutions, the obstacles to legal protection for children from unregistered marriages can be effectively addressed. Commitment from all parties, including the government, judicial institutions, civil society organizations, and the general public, is essential to ensure the realization of optimal legal protection for children born from unregistered marriages.

CONCLUSION

Based on the discussion above, several key conclusions can be drawn regarding the

legal protection of children born from unregistered marriages (*nikah siri*) in Indonesia as follows:

- 1) The legal status of children born from unregistered marriages faces uncertainty within the Indonesian legal system. However, Constitutional Court Decision No. 46/PUU-VIII/2010 has provided a legal breakthrough by recognizing the civil relationship between a child and their biological father, provided it can be scientifically proven. This is reinforced by Law No. 35 of 2014 on Child Protection, which affirms the right of children to legal protection without discrimination.
- 2) The forms of legal protection available to children from unregistered marriages include: determination of the child's lineage through court proceedings, issuance of birth certificates, protection of civil rights, protection through *Isbat Nikah* (marriage legalization) proceedings, protection of identity rights and access to public services, protection through legal advocacy and assistance, as well as social protection and preventive measures. All these forms of protection must be implemented with the best interests of the child as the top priority.
- 3) The implementation of legal protection for children in unregistered marriages faces various challenges, including administrative and bureaucratic hurdles, socio-cultural barriers, legal and regulatory issues, economic constraints, institutional limitations, and geographical obstacles. To overcome these challenges, a comprehensive and integrated solution is required, involving multiple stakeholders. This includes simplifying administrative procedures, increasing public awareness, harmonizing regulations, providing legal aid, and enhancing institutional capacity.

Thus, strong commitment and collaboration from all parties—including the government, judicial institutions, civil society

organizations, and the general public—are essential to ensure the effective implementation of legal protection for children from unregistered marriages. This aligns with the principle of the best interests of the child, as guaranteed by the Indonesian Constitution and relevant laws and regulations.

Declaration by Authors

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