

THE FORMAL VALIDITY OF CHILDREN'S STATUS REVIEWED IN TERMS OF MASLAHAH MURSALAH

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Abstract

Children born from sirri marriages still have the right to receive state administrative services and be recognized as citizens without requiring verification of their parents' marital status, as stipulated in Article 4 paragraph (2) of the Ministry of Home Affairs Regulation Number 9 of 2016. Therefore, it is important to assess the validity of Article 4 paragraph (2) through the perspective of masalah mursalah. This study aims to analyze the validity of this provision in light of the principles of masalah mursalah in Islamic law, using a field study approach. The research was conducted in a specific region, involving key informants, including state administrative officials, couples in sirri marriages, and religious leaders. Data collection methods included in-depth interviews, observation, and documentation. The results show that the implementation of Article 4 paragraph (2) provides a real solution for couples unable to fulfill the requirements for isbat nikah. This policy not only facilitates administrative services for children born from sirri marriages but also aligns with Islamic law's goal of achieving masalah, particularly in protecting the rights of children. This research contributes significantly by examining the legal validity of sirri marriages from the perspective of masalah mursalah and offering recommendations for regulatory reform to accommodate the rights of children born from sirri marriages in a fair and just manner according to Islamic legal principles.

Abstrak

Anak yang lahir dari perkawinan sirri tetap memiliki hak untuk menerima layanan administrasi negara dan diakui sebagai warga negara tanpa memerlukan verifikasi status perkawinan orang tua mereka, sebagaimana diatur dalam Pasal 4 ayat (2) Peraturan Menteri Dalam Negeri Nomor 9 Tahun 2016. Oleh karena itu, penting untuk menilai keabsahan Pasal 4 ayat (2) tersebut melalui perspektif masalah mursalah. Penelitian ini bertujuan untuk menganalisis keabsahan ketentuan ini dalam kaitannya dengan prinsip-prinsip masalah mursalah dalam hukum Islam, dengan menggunakan pendekatan studi lapangan. Penelitian ini dilakukan di suatu wilayah tertentu, melibatkan informan kunci, termasuk pejabat administrasi negara, pasangan dalam perkawinan sirri, dan tokoh agama. Metode pengumpulan data meliputi wawancara mendalam, observasi, dan dokumentasi. Hasil penelitian menunjukkan bahwa implementasi Pasal 4 ayat (2) memberikan solusi nyata bagi pasangan yang tidak dapat memenuhi syarat untuk melakukan isbat nikah. Kebijakan ini tidak hanya mempermudah layanan administrasi bagi anak yang lahir dari perkawinan sirri, tetapi juga sejalan dengan tujuan hukum Islam untuk mencapai masalah, khususnya dalam melindungi hak-hak anak. Penelitian ini memberikan kontribusi yang signifikan dengan mengkaji keabsahan hukum perkawinan sirri dari perspektif masalah mursalah dan menawarkan rekomendasi untuk reformasi regulasi yang dapat mengakomodasi hak-hak anak yang lahir dari perkawinan sirri secara adil dan bijaksana sesuai dengan prinsip-prinsip hukum Islam.

INTRODUCTION

Humans are social creatures who live in groups and depend on each other for survival (Husni et al. 2024). One of the basic needs of human beings is to have a life partner, which allows them to continue their offspring as the caliph of Allah on earth. Marriage is the main means that is sharia to meet this need. Apart from being a preventive solution to adultery, marriage also functions as a medium for the legitimate distribution of biological desires according to religion and law. In Islam, the commandment to marry has been affirmed through the word of Allah, as in the Qur'an. An – Nur:32 and QS. Ar – Rum:21, which emphasizes that marriage is part of the essential human need. In Indonesia, as a legal country where the majority of the population is Muslim, marriage is not only regulated from a religious perspective but is also required to be recorded by the state. Law Number 1 of 1974 concerning Marriage, as well as its derivative rules, require marriage registration as a measure to protect family rights. However, the phenomenon of unrecorded marriages (nikah siri) is still rampant (Husni et al. 2024). Nikah siri is a marriage that is legal according to religion but does not have administrative legality in the eyes of the state, so that it has an impact on the limited civil rights of the spouse and children born from the marriage.

Problems arise when children from unregistered marriages face administrative constraints, especially in the management of birth certificates. Children from serial marriages can only obtain a birth certificate by including the mother's name, unless the couple performs isbat nikah first. The government is trying to overcome this through Permendagri Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership. In Article 4 paragraph (2), this regulation provides the option of recognizing children through a Statement of Absolute Responsibility (SPTJM). However, this policy has caused controversy regarding its validity in terms of mashlahah mursalah, especially because of the difference with the mechanism for legalizing marriage through isbat nikah in the Religious Court (van Noort–van der Spek et al. 2021). Unregistered marriages have a number of serious legal implications. Couples who are married do not have civil rights, such as the right to joint property, maintenance, or the settlement of legal cases such as Domestic Violence (KDRT). In addition, children born from the marriage only have a civil relationship with their mother, so the right to father's recognition on the birth certificate cannot be fulfilled without isbat nikah. Therefore, the focus of this research is directed to the analysis of the validity of Article 4 paragraph (2) of Permendagri 9/2016 as an alternative to the recognition of children resulting from unrecorded marriages, reviewed from the mashlahah mursalah, and strategic steps to protect the civil rights of the child.

The purpose of this research lies in efforts to provide solutions to the problem of children from unrecorded marriages. In the context of public service, the legal status of children who are only recognized through SPTJM has serious implications for their access to civil rights. By reviewing the validity of this policy based on mashlahah mursalah, this research is expected to provide constructive recommendations, both in terms of policy implementation and the development of regulations that are in line with sharia values and state law. This research has the potential to have a wide impact, both for the development of family law policies, the protection of children's rights, and public understanding of legal marriage according to religion and state law. By looking at the validity of Article 4 paragraph (2) of Permendagri No. 9/2016 from the perspective of mashlahah mursalah, it is hoped that a solution can be found that is not only legally valid, but also beneficial for the welfare of the family and the protection of children's civil rights. This research is expected to contribute to improving the family legal system in Indonesia and ensuring that all children, without exception, get equal and fair civil rights.

METHOD

This type of research is field research approach. Qualitative research aims to describe the phenomenon in depth and thoroughly according to the existing context. In field research, data is collected directly from relevant sources through observation, interviews,

and document collection (Yusuf, 2016). This approach allows researchers to gain a richer understanding of the problem being researched by considering the perspectives of the sources who are directly involved in the phenomenon being analyzed. This study aims to evaluate the validity of Article 4 paragraph 2 of Permendagri No. 9 of 2016 on the formal status of children, by considering the principle of *mashlahah mursalah* as a basis for consideration. The data collection technique was carried out through in – depth interviews with legal practitioners, relevant government officials, and experts in the field of child protection, in addition to observing the implementation of the policy in the field. In addition, researchers also collect data from relevant legal documents, as well as related records and reports that can provide additional information. Data analysis is carried out using descriptive – qualitative analysis techniques, which include data reduction, data presentation, and drawing conclusions based on findings in the field.

RESULT AND DISCUSSION

a. The Role of Permendagri No. 9 of 2016 in Ensuring Equal Rights and Legal Protection for Children

Permendagri No. 9 of 2016 is a law and regulation that aims to accelerate the expansion of birth certificate ownership in Indonesia. This is because there are still many children in Indonesia who do not have a birth certificate because their families do not meet the administrative requirements to obtain one. The following are the factors that are considered in the preparation of this legislation. Birth certificates are one of the means to protect the rights of children, regardless of their place of birth, both inside and outside the territory of the Unitary State of the Republic of Indonesia (NKRI), and the state is obliged to keep and recognize these provisions. The number of people who have birth certificates is still low (Maddoux et al. 2016). This is a problem because the birth certificate serves as valid proof of the child's identity issued by the state. Considering this in the previous point, it is necessary to stipulate a Regulation of the Minister of Home Affairs on the Acceleration of Increasing the Coverage of Birth Certificate Ownership. Based on the first point (Feng et al. 2023), the main goal of the state is to uphold and recognize the individual and legal rights of every citizen from birth, including the protection of children's rights through the use of birth certificates. As far as the author knows, the meaning of this provision is the same as the intent of Law Number 23 of 2006 as amended by Law Number 24 of 2013, which also regulates population administration.

Children born in marriages that are valid according to religious law but not according to state law are the only ones who are entitled to legalization and recognition, according to the provisions of the law (Article 49 Paragraph 2). "Every marriage is recorded in accordance with the applicable laws and regulations." is the actual application of Article 2 Paragraph 2 of Law Number 1 of 1974 concerning Marriage. The purpose of this law is to increase the awareness of the Indonesian people about the need for official marriage registration to ensure the fulfillment of the rights of husband and wife and children as they should be. According to Article 49 paragraph 2, a child born from a marriage that is valid according to religious law but not recognized by state law is the only one who is eligible for legalization and recognition (Barnett et al. 2015). Departing from this common goal, Permendagri No. 9 of 2016 essentially takes a different stance from the laws and regulations that have been outlined by its drafters (Croft et al. 2015). This is because Permendagri No. 9 of 2016 regulates the administrative identity of a father for children born from unregistered marriages. Thus, there is no longer any distinction and the social status of the child is the same as that of a child born from a legally valid marriage. Thus, by following the guidelines of Permendagri No. 9 of 2016, the protection of children born from unregistered marriages can be achieved.

In the *second point*, it is stated that the ownership of birth certificates as a form of state recognition The ownership of birth certificates must be accelerated because the identity of children is still low (Kesete et al. 2020). Based on the author's review of this issue, the government has made efforts to create a plan that can encourage Indonesians to register birth certificates for themselves or their children. In order for the state to

recognize their existence and allow them to complete their education as the next generation of the nation, it is hoped that there will be no more children in Indonesia who do not have birth certificates thanks to the various facilities that have been provided by the government (Sing et al. 2024). The purpose that is the reason for the determination of this Permendagri is a goal that can improve the welfare of Indonesian citizens. This new idea from the Ministry of Home Affairs is an action taken in order to provide shortcuts to citizens, but not out of the limits of the applicable law. The third point states that the Regulation of the Minister of Home Affairs on the Acceleration of Increasing the Coverage of Birth Certificate Ownership must be stipulated by taking into account the factors mentioned in the previous paragraph. Currently, we can understand that the determination of the Ministry of Home Affairs in advancing the welfare of citizens in Indonesia is very high. So that this Permendagri is not only formulated for legal interests, but also related to the interests of citizens.

b. Legal and Social Implications of Birth Registration for Children from Unregistered Marriages in Indonesia

To ensure the rights and obligations of Indonesian citizens, birth registration, often called a birth certificate, is very important for the life of the nation and state. A child born from an unregistered marriage only has a civil relationship with his mother and his family, according to the birth certificate made for him (Landale et al. 2015). To meet the requirements for making a child's birth certificate, the child's mother and father can apply for a marriage certificate to the court, even though the child is the child of a man who claims to be his father and wants to have a civil relationship with the child. Prospective children must go through the following steps: The applicant must submit 6 copies of the Application Letter (Firdaus et al. 2023). Officers at the judicial institution receive and check the completeness of the Application letter. The applicant was asked for a certificate that the marriage was not registered in the District KUA. The applicant makes a letter of application for *isbat nikah*. *Isbat nikah* is a media provided by the government in legalizing the marriage status for unregistered married couples and legalizing the birth status of their children. So that the civil relationship of children born from unrecorded marriages is not only with their mother, but also with their fathers.

The purpose of birth registration is to create order in the life of the state with the identity of a child so that his existence can be recognized by the State legally (De Los Reyes et al. 2015). The implementation of this birth registration will have an impact on the emergence of a person's rights and obligations in the life of the state. In this case, a citizen will get his right through the implementation of his obligation to bring in authentic evidence in order to meet the requirements related to legal recognition of his existence in the Indonesian state. Although the government has offered *isbat media* as a solution to the problem of legalization of births in the community, there are still many newborns in Indonesia who are born without a birth certificate, in addition to the privileges and obligations related to birth registration. About 5 million children in Indonesia do not have birth certificates, according to Endah Sri Rejeki, Assistant Deputy for Civil Rights Fulfillment, Information and Participation at the Ministry of PPPA. This is due to the fact that many parents postpone the registration of children's births because they consider the process very difficult (Ensink et al. 2015). However, in practice, the birth certificate is strong enough evidence that the child is an Indonesian citizen and is needed to fulfill all the rights of the child, both in the fields of law, education, and other fields (Firdaus et al. 2023). In addition, they also have difficulty taking care of obligations required by the government, such as Family Cards (KK), marriage certificates, and birth certificates (Rahman 2022).

Answering this problem, the Ministry of Home Affairs then came up with a new idea that could be a stepping stone in solving the problems experienced by citizens in Indonesia in fulfilling their obligations as citizens (Rishan 2021). The idea is Permendagri No.9 of 2016. Through the Statement of Responsibility (SPTJM) contained in Article 4 Paragraph 2 of Permendagri No.9 of 2016, the Ministry of Home Affairs hopes that the media in the form of SPTJM can be a stepping stone to make it easier for citizens who

are in the status of unregistered marriage related to the fulfillment of their obligations as citizens, namely legalizing their marriage in the state life order and registering the birth of their children. Legal certainty for the women and children in question cannot be ensured by the government's efforts to make birth certificates through SPTJM. The boy is actually listed as the child of a married couple in his birth certificate. However, there is no civil relationship between the father and the child because the marital status of the parents is not recorded. This makes the child's interests vulnerable if the father commits a civil violation (such as not providing alimony, inheritance, and so on). That way, indirectly the civil relationship between the child and his father is just nonsense. In writing, the child has a legal connection with his father. However, if there are problems related to matters related to civil matters (Brabeck et al. 2016), the case cannot be brought to the legal realm. This is due to the phrase that is in addition to the marital status of his parents in the Family Card (KK). Marriages that are legalized through SPTJM, then the marital status in the KK reads "Marriage (not yet recorded)". Thus, how can the law act on the problems arising from the existence of the marriage, when the marriage has been recognized as not recorded in writing (Sungkar et al. 2022). Complicating matters, the purpose of the establishment of Permendagri No. 9 of 2016 in the form of citizens' welfare has even resulted in the threat to the safety or benefit of citizens who use this SPTJM system.

Seeing the vulnerability of the impact caused by the implementation of Permendagri No. 9 of 2016 related to SPTJM, the author can assume that the establishment of Permendagri No. 9 of 2016 in order to provide convenience regarding the issuance of birth certificates, was actually not formed for the benefit of citizens alone. Rather, it is only to add to the collection of laws in Indonesia. The reason for this author's assumption can be seen from the comparison of the legal consequences arising from the *isbat nikah* with the legal consequences arising from the implementation of SPTJM (as a form of formulation of Permendagri No. 9 of 2016 Article 4 Paragraph 2). The marriage is registered at the local Religious Affairs Office and becomes legally valid once confirmed. There is no longer any distinction and social status of the child is the same as that of a child born from a legally valid marriage, if the Office of Religious Affairs issues a copy of the marriage certificate or an excerpt of the marriage certificate (Widiastuti and Wibowo 2022). Thus, children born from unregistered marriages can be protected by complying with the criteria set out in Permendagri No. 9 of 2016. Marriage registration for those who marry according to Islam is carried out by the Marriage Registration Officer (PPN). In this regard, Government Regulation (PP) concerning the Implementation of Law Number 1 of 1974 Article 2 Paragraph 1 reads: In order for a child to obtain the same birth certificate as a child born from a legally valid marriage from birth, the legal consequences of marriage registration include recognition by the Judicial Institution of the mother and father of the child born from the marriage. After the marriage is confirmed, a marriage certificate pick-up book is issued that functions to take care of passports, family cards, birth certificates, and other important documents in accordance with the provisions of the law.

The government expressly through the legal consequences of the implementation of this *isbat nikah* explained that marriage is recorded as an important point of all state administrative affairs related to the identity or status of individuals in the life of the state. So it can be ascertained that, if the marriage occurs without being recorded in the authorized VAT (Brabeck and Sibley 2016), it will affect the process of making other important documents, one of which is the birth certificate of a child from the result of an unrecorded marriage. Because the marriage took place before it was officially recognized, a child born from an unregistered marriage was considered the biological offspring of his parents. The requirements that must be met in submitting a marriage *isbat* to the Judicial institution are of certain value and do not contain futility (Oropesa, Landale, and Hillemeier 2015). This is because the legal consequences of *isbat nikah* contain legal values that are more than enough to advance the benefits and welfare of family members (especially wives and children). Thus, although the requirements for *isbat nikah* often seem burdensome to the applicants, the effect caused by this *isbat nikah* is a legal consequence that does not cause legal complications in it (Clark 2015), so that the status

obtained by the applicant from the results of the isbat nikah process does not contain legal doubts regarding the status and rights of children from the marriage of both parents before the isbat nikah occurs. As a result, a child's civil relationship with his father and his family is essentially included in the civil relationship with his mother and family.

To meet the needs of the child concerned in terms of education, job search, and marriage, the confirmation of marriage is very helpful in terms of data management. The explanation related to this point is almost the same as the explanation contained in the second legal consequences, namely, if the marriage of the two parents of a child is not recorded in the state administration, it will affect the future of the child concerned. This is because their identities are not registered in the state administration. This will result in the child being unable to work for state or government agencies. In addition, if the child carries out a marriage, then this child cannot perform a registered marriage before his parents apply for isbat nikah. In today's financial institutions, marriage certificates are very helpful in managing the finances of husbands (Gonzales and Ruszczyk 2021), wives, and children, including insurance claims, disbursement of bank funds, and so on. The determination of isbat nikah can legalize marriages that were not previously recorded in the state administration, so that what is the right of a husband also contains the rights of his wife and children (Oropesa, Landale, and Hillemeier 2017), and vice versa. A simple example of this legal consequence is an insurance claim filed by the father if his child dies. If the person who submits this insurance claim is a person who does not have a civil relationship with the child concerned, then this insurance will not be disbursed (Millett, Seay, and Kohl 2015). Likewise, if the deceased is the father, then the child can file an insurance claim, so that the funds will be disbursed because the child has a civil relationship with his father.

Isbat nikah has legal consequences for free stay for couples and children in hotels that implement the sharia system (Garcna Valdivia 2022). The issuance of a marriage certificate known by the judge to the Judiciary is authentic evidence in all activities carried out by family members who apply for isbat. So if this family goes on a long trip that results in them spending the night in a hotel (Rahbari 2022), then this married couple will not be considered a wild couple, because they have authentic proof that they are married. In addition, children from these families will not be suspected of being adulterous children, because they have evidence that the child was really born from a legitimate marriage, both religiously and legally positively. Isbat nikah is beneficial for the management of inheritance dispute cases at the Religious Court (Finno – Velasquez, Seay, and He 2016). Inheritance disputes cannot be resolved without a registered marriage. This is because the applicable courts in the world cannot prove that the spouse or child of the heir really has a civil relationship with her husband or father so that the law cannot interfere in the case of inheritance disputes in the family.

The legal consequences caused to the formal status of the child, in the implementation of Article 4 Paragraph 2 of Permendagri No. 9 of 2016 in the form of a Statement of Absolute Responsibility (SPTJM), based on the author's analysis, affects the acceleration of the issuance of birth certificates, with the father's recognition of the child's formal status. Because, the requirements that must be met are not as complicated as the requirements in the isbat nikah. Thus, the author can analyze that the validity of Permendagri No. 9 of 2016 is a means that can complement the regulations that have been previously stipulated regarding the issuance of birth certificates for children born from unrecorded marriages. This can save the child from the severity of social bullying for children born from undocumented marriages. As a result, the benefits of the children concerned can be realized through the existence of Permendagri No. 9 of 2016: *Daru' al-maf sidi muqaddamun 'al jalbi al-maṣ liḥ'* Meaning: *Efforts to reject damage must take precedence over efforts to take advantage*. The purpose of this rule is that if the SPTJM in order to issue a child's birth certificate is not enforced, it is feared that there will be more Indonesian children who do not have a birth certificate as it should. This is feared to have an effect on the child's identity in the future. If the Indonesian government remains firm in its stance to legalize marriage and the birth of children with isbat nikah, it is feared that people who are unable to meet the requirements of isbat nikah prefer not

to issue birth certificates for their children, without thinking about the consequences for their children in the long term (Bedner and Van Huis 2010).

This is also strengthened by referring to Civil Code Article 280 which reads: "with the recognition of a child out of wedlock, a civil relationship is born between the child and his or her father or mother." Based on Article 280 of the Civil Code above, a child's civil relationship with his father can be recognized only by the father's acknowledgement, that the child is indeed the child of an unregistered marriage with the child's mother, even though there is no marriage registration between the father and mother of the child. Furthermore, if studied from the perspective of *Mashlahah mursalah* which arises between the implementation of isbat nikah and the implementation of Permendagri No. 9 of 2016 Article 4 Paragraph 2 in the form of SPTJM (Mardoni 2023), then the author's analysis in this case, namely, the implementation of SPTJM is an appropriate alternative and even has a fairly high priority for the benefit of children from unrecorded marriages. How could it not, the use of SPTJM in the formation of birth certificates for children born to unregistered marriage couples can strengthen the existence or identity of children from unregistered marriages (Iwan 2022), with requirements that are not so complicated to be fulfilled in fighting for the benefit of children in having birth certificates and their father's recognition of himself.

Mashlahah mursalah is used in order to eliminate difficulties and bring convenience (Oropesa, Landale, and Hillemeier 2016). When linked to the implementation of SPTJM, it is found that the implementation of SPTJM can bring convenience to children so that they can be recognized by their biological father (legally). Meanwhile, if the means of isbat nikah are used, then the child can only be recognized by his mother, even if there is a confession of his father, then he must bring in two witnesses who directly witness the marriage of his parents (M. Yunus and Dwi Oktavia 2023). Therefore, with the existence of a new regulation that can improve the previous law, the author can ensure that the SPTJM contained in article 4 paragraph 2 of Permendagri No. 9 of 2016 is an effective alternative to the use of isbat nikah when viewed in terms of *Mashlahah mursalah*. Although the use of SPTJM still has a risk to the benefit of the child, but with the recognition by the father, the life of the child born from an unregistered marriage can be guaranteed in terms of state administration. Therefore, the use of SPTJM is in accordance with the rules of ushul fiqh which reads: "*Al-Mashaqqatu Tajlibu At-taysir*" (difficulty causes ease).

CONCLUSION

Based on the results of the research, it can be concluded that philosophically, Permendagri No. 9 of 2016 is a progressive step by the government in making it easier for couples who are not registered to obtain their child's birth certificate. This policy ensures that fathers recognize their children in writing through a Statement of Absolute Responsibility (SPTJM), thereby encouraging the legalization of marital status and registration of children's births. With this policy, children born from unregistered marriages can have birth certificates, reduce the number of children without legal identity, and support the protection of their civil rights. The validity of Article 4 Paragraph 2 of Permendagri No. 9 of 2016 reviewed from the perspective of *mashlahah mursalah* shows that this policy is effective and in accordance with sharia principles. This can be seen from the government's efforts to overcome administrative obstacles that were previously an obstacle for couples to register the birth of their children. The provision that only requires witnesses for the preparation of SPTJM, not for marriage proof, makes this process more accessible to the public. Therefore, this policy is considered to provide significant benefits, especially in guaranteeing children's rights and encouraging legal awareness in society.

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