

Registration of Unregistered Marriages on the Family Card from the Perspective of Soerjono Soekanto's Legal Effectiveness Theory

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Abstract

This study will discuss the registration of unregistered marriages on the Family Card from the perspective of Soerjono Soekanto's legal effectiveness theory. The purpose of this study is to find out what is the legal basis for registering unregistered marriages on a family card? And how is the registration of unregistered marriages on the Family Card from the perspective of Soerjono Soekanto's theory of legal effectiveness? This research uses normative juridical research. Meanwhile, in terms of approach, the authors use the statute approach and conceptual approach. The result of this research is that the registration of unregistered marriages on the Family Card is based on Permendagri No. 108 of 2019 and Permendagri No. 109 of 2019. Meanwhile, the perspective of Soerjono Soekanto's legal effectiveness theory, in terms of legal principles, has a good goal, namely to protect children's rights and accelerate birth certificate ownership. However, the preparation of these legal principles is considered to be less than optimal because it does not meet the principles of drafting legislation so that it overlaps with other laws and regulations. This legal rule also has the potential to produce negative impacts in society, namely the increasingly widespread practice of unregistered marriages.

Keyword: Registration; Unregistered Marriages; Family Card; Legal Effectiveness Theory.

Introduction

This study will discuss the registration of unregistered marriages on the Family Card from the perspective of Soerjono Soekanto's legal effectiveness theory. As a response to Government policy through Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration and Permendagri No. 108 of 2019 concerning Regulations for Implementing Presidential Regulation Number 96 of 2018.

As is known, before the birth of Presidential Regulation Number 96 of 2018 and Permendagri Number 108 of 2019, that unregistered marriages cannot manage or record the status of siri marriages on the Family Card. However, after the issuance of this regulation, unregistered marriages can now be recorded in the Family Card. This of

course invites pro and con reactions among academics and legal practitioners, and raises questions about the effectiveness of the policy.

According to the opinion of the Dean of the Faculty of Syari'ah and Law at the State Islamic University of Jakarta and Chair of the Dean Forum of the Faculty of Sharia and Law of Islamic Religious Universities (PTKI) throughout Indonesia, A. Tholabi Kharlie, the impact of writing marital status as “unregistered marriage” or “marriage has not been registered” on the Family Card has an impact that is not simple. The potential impact that emerges from these regulations will logically foster the practice of unregistered marriages in society. In fact, the basic principle of marriage is the principle of registration as stated in Article 2 paragraph (2) of Law No. 1 of 1974, namely that each marriage is recorded according to the law.¹

Meanwhile, according to Umar Haris Sanjaya, Lecturer at the Law Faculty of UII, the Department of Civil Law is of the opinion that the registration of unregistered marriages on KK is a new legal breakthrough facilitated by the Population and Civil Registration Office (Dukcapil). Of course, the Dukcapil made this breakthrough not without reason, one of which was to follow the order of the Constitutional Court Decision Number 46/PUU-VII/2010. This decision illustrates one of the solutions that children can be related to their parents if the marriage of their parents can be proven true (truly married according to religion). This decision clearly recognizes and provides protection for the rights of children born in unregistered marriages because children may not become victims as a result of their parents' marriage. Even if a child from an unregistered marriage is not recognized by his father, but if it can be scientifically or technologically proven through a DNA test, then the child has a civil relationship with his father. Of course, this kind of recognition does not come by itself, but requires a court order.²

While the Monthly Discussion Forum for the Head of KUA South Kalimantan. Saying that the policy of the Department of Population and Civil Registry to serve the

¹ Penaku.id ‘Dean of UIN Jakarta Highlights Inclusion of Siri Marriage in KK’ (Penaku.id 2021) <https://penaku.id/dekan-uin-jakarta-soroti-pencantuman-nikah-siri-di-kk/> accessed on 22 November 2021.

² Umar Haris Sanjaya, ‘Unregistered Marriages KK’ (Fakultas Hukum UII 2021) <https://law.uui.ac.id/blog/2021/10/21/kk-nikah-siri/> accessed on 22 November 2021.

making of birth certificates only with a Letter of Absolute Responsibility (SPTJM) without a copy of the marriage book is considered to have weakened the authority of

the marriage registrar of the Office of Religious Affairs and the Office of Civil Registry itself. Moreover, the complete birth certificate includes the names of the father and mother. It is feared that policies that violate the Marriage Law will further foster the practice of unregistered marriages, in which people will think that the urgency of a marriage book is no longer important, because all population services can still be enjoyed even if they do not have a marriage book.³

By explaining the problem of registering unregistered marriages on the family card as above, the author will analyze it with the theory of legal effectiveness. Legal effectiveness is an activity that demonstrates a general problem formulation strategy, namely a comparison of legal reality with legal ideals. Specifically, there is a ladder between law in action and law in theory,⁴ The author uses the theory of legal effectiveness because the writer wants to know the effectiveness of the policy of registering unregistered marriages on family cards, especially in terms of the legal basis (the aspect of making regulations).

The purpose of this study is to find out what is the legal basis for registering unregistered marriages on a family card? And how is the registration of unregistered marriages on the Family Card from the perspective of Soerjono Soekanto's theory of legal effectiveness? The author hopes to explain in detail the two formulations of the problem.

This research uses normative juridical research. Normative juridical research can also be referred to as research whose objects of study are documents, regulations, and library materials. Meanwhile, in terms of approach, the authors use the statute approach and conceptual approach. Primary legal materials use related laws and regulations, such as; Presidential Regulation Number 96 of 2018 and Permendagri No. 108 of 2019. The secondary legal material uses a book on the theory of legal

³ Saubari 'Problems with Marriage Registration Post SPTJM Policy Permendagri 9/2016' (Kamenag Central Kalimantan Regional Office 2020) <https://kalsel.kemenag.go.id/opini/702/Problem-Pencatatan-Nikah-Pasca-Kebijakan-SPTJM-Permendagri-92016> accessed on 22 November 2021.

⁴ Djaenab, 'The Effectiveness and Functioning of Law in Society' (2018) 04 As-Shabah. [151].



effectiveness. The method of collecting legal materials is through reviewing documents, laws, or other library materials. And the method of processing legal

materials through the stages of editing, classification, verification, analysis, drawing conclusions.

Sub Title

A. The Legal Basis for Registration of Unregistered Marriages on the Family Card

The registration of unregistered marriages on the family card began with the formation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing Coverage of Birth Certificate Ownership, then followed up through Permendagri No. 108 of 2019 concerning Regulations for Implementing Presidential Regulation Number 96 of 2018 and Permendagri No. 109 of 2019 concerning Forms and Books Used in Population Administration.

The establishment of Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing Coverage of Birth Certificate Ownership takes into account two factors namely: first, in essence the State is obliged to provide protection and recognition of the determination of personal status and legal status of every birth event experienced by the population including protection on the rights of children who are inside and or outside the territory of the Unitary State of the Republic of Indonesia in the form of a birth certificate. Second, ownership of birth certificates as a form of state recognition of children's identities is still low, so it is necessary to accelerate the ownership of birth certificates.⁵

The scope of Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership includes two matters, namely regarding the requirements for birth registration and procedures for birth registration. Birth

⁵ Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership.

registration can be done online and manually or by coming directly to the agency's office.

The requirements for registering a child's birth must meet the following requirements: (1) a birth certificate from a doctor or midwife or birth attendant, (2) a marriage certificate/quotation of a marriage certificate, (3) a family card where residents will be registered as family members, (4)) Electronic ID cards of parents or guardians or reporters, or (5) passports for non-resident Indonesian citizens and foreigners. Meanwhile, the registration of the birth of a child whose origin or whereabouts are unknown is carried out by attaching an Inspection Report (BAP) from the Police, or using the SPTJM for the correctness of the birth data signed by the guardian or person in charge.

In the event that the requirements in the form of a birth certificate from a doctor or midwife or birth attendant are not met, the applicant attaches a SPTJM for the correct birth data. Then if in terms of the requirements in the form of a marriage certificate or an excerpt of a marriage certificate are not met, the applicant attaches the SPTJM of truth as husband and wife.

Statement of Absolute Responsibility (SPTJM) for the accuracy of birth data is a statement made by a biological parent or guardian or applicant with full responsibility for the accuracy of a person's birth data, with the knowledge of two witnesses. Then the Statement of Absolute Responsibility (SPTJM) for the truth as husband and wife is a statement made by the biological parents or guardians or the applicant with full responsibility for the status of a person's marital relationship, with the knowledge of two witnesses. Witnesses in the Statement of Absolute Responsibility are people who have seen or know the signing of the Statement of Absolute Responsibility (SPTJM).

In the event that the requirements in the form of a marriage certificate or marriage certificate quote are not met, and the family relationship status on the KK, either showing or not showing the status of marital relations as husband and wife, then it is recorded in the birth certificate register and the birth certificate quotation with the data elements as listed in the attachment which is an integral part of the Ministerial Regulation.

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing Coverage of Birth Certificate Ownership was later revoked and replaced by Permendagri No. 108 of 2019

concerning Regulations for Implementing Presidential Regulation Number 96 of 2018 and Permendagri No. 109 of 2019 concerning Forms and Books Used in Population Administration.

Permendagri No. 109 of 2019 and Permendagri No. 108 of 2019 which revokes and replaces Permendagri Number 9 of 2016 is actually the implementing regulation of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. So that it can be said, it was in this Presidential Decree that the legal basis for registering unregistered marriages on the family card was found.

In Article 10 of Perpers Number 96 of 2018 it is explained that the issuance of Family Cards for Indonesian citizens or foreign residents consists of: (1) issuance of new KK, (2) issuance of KK due to data changes, (3) issuance of KK due to loss or damage. While in Article 10 it is explained that the issuance of a Family Card due to changes in data must meet the requirements, namely the old KK and a statement or proof of changes in Population Events and Important Events.

Population Events are events experienced by residents that must be reported because they result in the issuance or change of KK, identity card and/or other residence certificates including moving, changing address, and limited status of residence to permanent residence. While what is meant by Important Events are events experienced by a person including birth, death, stillbirth, marriage, divorce, child recognition, child validation, child adoption, change of name and change of citizenship status.⁶

In Chapter 6 Article 79 concerning Transitional Provisions of Perpres Number 96 of 2018 explains that the Issuance of KK is due to changes in data for marriages that have not been registered before this Presidential Regulation came into force, but the

⁶ Permendagri No. 108 of 2019 concerning Regulations for Implementing Presidential Regulation Number 96 of 2018

relationship status in KK shows as husband and wife, carried out with the requirement of a statement of absolute responsibility for truth marriage data signed by both parties and known by 2 (two) witnesses. Issuance of KK due to changes in data for divorce that have not been recorded before this Presidential Regulation came into force but the

relationship status in the KK shows as husband and wife, carried out with the requirement of a statement of absolute responsibility for the accuracy of the divorce data, signed by both parties and known by 2 (two) people witness.

More detailed provisions are regulated in Permendagri No. 108 of 2019. Issuance of new family card for Indonesian citizens is carried out due to: (a) forming a new family, (b) changing the head of the family, (c) separating the family members (d) moving to come Residents who are not accompanied by the head of the family (e) Indonesian citizens who come from outside the territory of the Republic of Indonesia due to moving, (f) vulnerable to population administration, (g) foreigners who acquire Indonesian citizenship and for Indonesian citizens who were originally foreign citizens.

Issuance of a new KK for forming a new family as mentioned above must meet the requirements in accordance with the provisions of the Presidential Regulation regarding the requirements and procedures for population registration and civil registration and are accompanied by other conditions in the form of a statement of absolute responsibility for marriage or divorce that has not been registered..

Issuance of KK due to changes in data consists of changes due to: (a) Population Events, (b) Significant Events, (c) changes to data elements listed in KK. The term "population event" is meant to consist of: (a) migration of residents within the territory of the Unitary State of the Republic of Indonesia, (b) movement between countries. While what is meant by "Significant Events" are consisting of: (a) birth, (b) marriage, (c) marriage annulment, (d) divorce, (e) divorce annulment, (f) death, (g) adoption, (h) recognition of the child, (i) legalization of the child, (j) change of name, (k) change of citizenship status, (l) correction of the Civil Registration certificate, (m) cancellation of the Civil Registration certificate. Then what is meant by "Change of Elements" consists of: (a) name of head of family or family member, (b) gender, (c) place of birth, (d) date

of birth, (e) religion or belief, (f) education, (g) job, (h) marital status, (i) family relationship status, (j) citizenship, (k) immigration documents.⁷

As stated in Presidential Regulation Number 96 of 2018 states that the Population Registration and Civil Registration Services are carried out with the principles of: (a) providing convenience for users and the public; (b) have a verification and validation system to ensure the correctness and validity of Population data; (c) data integration and connectivity between agencies and/or cross-agencies concerned while respecting the confidentiality of personal data; (d) accurate, valid and accountable data management; (e) can adapt to developments in information technology; (f) efficient and effective.⁸

B. Registration of Unregistered Marriage on the Family Card the Perspective of Soerjono Soekanto's Legal Effectiveness Theory

According to Soerjono Soekanto, if someone says that a rule of law succeeds or fails to achieve a goal, then this is usually measured by the success or failure of managing certain attitudes or behaviors, so that they are in accordance with their goals or not. There are four factors to be able to make the law effective in society, including (1) rule of law (2) law enforcement factors, (3) factors of facilities or facilities that support law enforcement (4) community factors. Of these four factors, the author will focus on the first factor, namely the rule of law factor.⁹

Regarding the application of the law, there are several principles that must be used as benchmarks, what is meant by the principles of the application of the law is about the recognition of a law in a material sense.¹⁰

The goal is for the law to have a positive impact. The meaning is that the law can achieve the stated goals, so that it is effective. The principles in the formation of laws include:¹¹

⁷ Permendagri No. 108 of 2019 concerning Regulations for Implementing Presidential Regulation Number 96 of 2018.

⁸ Presidential Regulation Number 96 of 2018 Concerning Requirements and Procedures for Population Registration and Civil Registration.

⁹ Soerjono Soekanto, Mustafa Abdullah, *Sociology of Law in Society* (Rajawali 1980). [49].

¹⁰ Soerjono Soekanto, Sri Mamudji, *Normative Legal Research a Brief Overview* (Rajawali 1985). [77].

¹¹ Soerjono Soenkanto, *Factors Influencing Law Enforcement* (Rajawali Pers 2022). [12].

- 1) The law is not retroactive; the meaning is that the law may only be applied to events or actions after the law has been ratified and declared effective. Laws may also only be applied to events referred to or referred to by the law.
- 2) Laws made by higher authorities have a higher position.
- 3) Laws issued by the same institution apply the principle of specific laws overriding general laws. This means that specific events must be enforced by laws that specifically regulate these events, although these events can also be enforced by laws governing these events in general.
- 4) The new law cancels or aborts the old law. This means that if there is a law that deals with the same thing, the most recent law cancels the old law.
- 5) The law cannot be contested.
- 6) 6) The law is an instrument to deliver society to physical and spiritual well-being through preservation or renewal. Therefore, so that lawmakers are not arbitrary and so that the law does not become a dead rule of law, certain conditions must be fulfilled in the process of making laws, including; openness in the process of making laws and involving the public through certain communications.

Regarding the effectiveness of the law which has a focus on highlighting the goals to be achieved by a law. So it is necessary to distinguish between direct goals with indirect goals. The direct goal means the attitude or behavior desired by the rule of law, for example, orders or prohibitions, while the indirect goal is the basis. If a rule of law states what must be done or what cannot be done, then that is an immediate goal. Meanwhile, the indirect goal lies in the expectation of what must be done if someone obeys the rule of law.

Gusfield once distinguished between the objectives of legal rules that are symbolic and those that are instrumental in nature, as explained in an article entitled "moral passage: the symbolic process in public designations of deviance". A rule of law is instrumental, if the aim is directed at a concrete attitude or behavior, so that the effect of the law will be very small if it is not applied in reality.¹²

¹² Soerjono Soekanto, Legal Effectiveness and the Role of Sanctions (Remadja Karya 2019). [9].

The rule of symbolic law does not depend on its application, so that the law has a certain effect. The rule of law will have meaning because it is a symbol of a general statement regarding the social ideals of society, social rules, and direct social control. For example, the rule of law regarding liquor has an instrumental effect, if members of the public stop drinking liquor. The rule of law will have a symbolic effect if it can convince people that drinking alcohol is wrong. In other words, those who do not commit these acts are classified as good people when compared to those who do.¹³

A symbolic goal is actually directed at attitude, which is a disposition to do or not do something, both towards humans, objects, and circumstances. In laws and regulations it is not uncommon for symbolic purposes to be found in explanations.

In addition, a distinction is made between the primary attitudes, actions or behaviors that are desired by legal rules, and the consequences that are actually unwanted. That is, it is necessary to take into account the side effects, both positive and negative. The primary effect is the effect that was originally desired, while the side effect is the result that is not actually desired (although in the end there are positive side effects that were not originally desired, but then approved). The primary effect desired by a particular law can be found in the dictum "considering a law".

Side effects can usually be noticed when certain legislation is implemented, although this is not always the case. Legislators should be able to predict what side effects may occur and which cannot be prevented.

If the theory of legal effectiveness is applied to the problem of registering unregistered marriages on family cards, then what needs to be known first is what is the purpose of making legal rules governing this matter. After the author traced it, the purpose of recording unregistered marriages on the Family Card can be found through the Regulation of the Minister of Home Affairs No. 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership, namely: (1) in essence the State is obliged to provide protection and recognition of the determination of personal status and status the law of every birth event experienced by residents

¹³ Soerjono Soekanto, *Legal Effectiveness and the Role of Sanctions* (Remadja Karya 2019). [10].

including protection of the rights of children who are inside and/or outside the territory of the Unitary State of the Republic of Indonesia in the form of birth certificates, (2) ownership of birth certificates as a form of state recognition of the identity of children is still low, so it is necessary acceleration in possession of birth certificates.

The next stage is to trace the status of the laws and regulations governing the registration of unregistered marriages on the family card. This stage is important because it is to find out the position of a law in the midst of many other laws and regulations, so that there are no conflicting and overlapping legal rules. Apart from that, it is also to ensure that the drafting of the law has gone through the correct process and follows the established principles.

The laws and regulations governing the registration of unregistered marriages on the family card, as explained in the previous sub-chapter, are regulated in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership. Then followed up through Permendagri No. 108 of 2019 concerning Regulations for Implementing Presidential Regulation Number 96 of 2018 and Permendagri No. 109 of 2019 concerning Forms and Books Used in Population Administration.

If examined more deeply, the "direct goal" in registering unregistered marriages on family cards is to open up the right to the perpetrators of unregistered marriages so that they can arrange birth certificates for children without going through a process at the Religious Courts and the Office of Religious Affairs. Meanwhile, the "indirect goal" is to protect the rights of children born in unregistered marriages and to accelerate the ownership of birth certificates for children.

The symbolic purpose of registering unregistered marriages in the family is to form a value in society that children born through unregistered marriages still have the right to obtain birth certificates, and parents who arrange birth certificates for children are seen as better parents than parents who do not take care of birth certificates for children. While the instrumental goal is for the perpetrators of unregistered marriages to take care of the child's birth certificate at the Population and Civil Registration Service.



Regarding the laws and regulations that contain legal principles for registering unregistered marriages on the Family Card, namely Permendagri No. 108 of 2019 and Permendagri No. 109 of 2019, overlaps or can be said to collide with existing laws and regulations, laws and regulations that regulate marriage matters.

Article 1 paragraph (1) of Law Number 22 of 1946 concerning Registration of Marriage, Divorce and Referral states that "Marriage performed according to the Islamic religion, hereinafter referred to as marriage, is supervised by a marriage registrar appointed by the Minister of Religion or an employee appointed by him. Divorce and reconciliation which are carried out according to the Islamic religion, hereinafter referred to as divorce and reconciliation, shall be notified to the marriage registrar."

Furthermore, in Article 1 paragraph (2) of Law Number 22 of 1946 it is stated that "those who have the right to supervise marriages and receive notifications about divorce and reconciliation are only employees appointed by the Minister of Religion or employees appointed by him".

Article 2 paragraph (2) of Law Number 01 of 1974 concerning Marriage states that "Every marriage is recorded according to the applicable laws and regulations".

Furthermore, in Regulation of the Minister of Religion Number 20 of 2019 concerning Registration of Marriages Article 2 paragraph (1) states that "Marriage between a man and a woman of the religion of Islam is recorded in a Marriage Certificate." Whereas in Article 2 paragraph (2) it is stated that "Recording of Marriage in the Marriage Certificate as referred to in paragraph (1) is carried out by the Head of the KUA (Office of Religious Affairs) in the District or PPN LN (Foreign Marriage Registrar)".

From the explanation above, it means that for people who are Muslim, their marriage is valid only if it is carried out according to Islamic law, but in addition there is a requirement for registration according to applicable laws and regulations.¹⁴ If the

¹⁴ Amanda Zubaidah Aljarofi 'The category of marriage that has not been recorded on the form of a family card from a juridical perspective (2019) 09 Al-Hukama. [303].

perpetrator has already carried out an unregistered marriage, then the perpetrators must carry out a isbat marriage or marriage determination. Isbat marriage is a product of the Religious Courts, termed voluntary jurisdiction. Because in the case there is only the applicant, who is asking for a marriage determination to be determined.¹⁵

Marriage registration is a legal policy that is preventive in society, to coordinate the community for the sake of creating order and regularity in the life system, including in matters of marriage which are believed to be inseparable from various kinds of conflicts..¹⁶ The existence of leeway for couples who marry in unregistered marriages is actually not in accordance with the wishes of the legislators who want an orderly administration to be realized with the registration of marriages.¹⁷

Registration of marriages at the Office of Religious Affairs has the objective of guaranteeing legal order which functions as an instrument of legal certainty, legal convenience, and a means of proof of marriage.¹⁸ Because marriage cannot be considered complete with only the marriage contract taking place. This is closely related to population documents in the perspective of state administrative law. Issuance of family cards for unregistered married couples has an administrative impact on related parties, especially children, wife and husband.¹⁹

If guided by the laws and regulations in Indonesia regarding the statutory hierarchy in Article 7 paragraph (1) of Law No. 11 of 2002 as follows:

- 1) the 1945 Constitution of the Republic of Indonesia;
- 2) Decree of the People's Consultative Assembly;
- 3) Laws/Government Regulations in lieu of laws;
- 4) Government Regulations;

¹⁵ Mahmud Huda, Noriyatul Azmi 'Legalization of Siri Marriage Through Marriage Isbat' (2020) 05 Journal of Islamic Family Law. [104].

¹⁶ Yusup Setiawan 'Analysis of Marriage Registration (Marriage Not Registered) on KK in the Perspective of Disdukcapil Purwakarta' (2022) 03 Muttaqien. [199].

¹⁷ Fadli 'Juridical Implications for the Issuance of Family Cards for Siri Marriage Couples in Indonesia' (2021) 04 Medias. [84].

¹⁸ Muhammad Musyaffak, Nurul Hikmah 'Juridical Analysis of the Use of a Statement of Absolute Responsibility as a Complementary to the Requirements for Making a Family Card (2022) 01 Novum Law Journal. [2]

¹⁹ Daffa Alif Utama, et al. 'Issuance of Family Cards for Siri Marriage Couples and Its Legal Consequences on the Parties' (2022) 05 Journal of USM Law Review. [828].

- 5) Presidential Regulation;
- 6) Provincial Regulations;
- 7) Regency/City Regional Regulations.

So the legal rules for registering unregistered marriages on the Family Card in Permendagri No. 108 of 2019 and Permendagri No. 109 of 2019 must be set aside and prioritize the use and application of Law Number 22 of 1946, Law Number 01 of 1974, and Regulation of the Minister of Religion Number 20 of 2019.

Of course, this is also guided by the principles of making laws that have been discussed above, including; The principle of laws made by higher authorities has a higher position and the principles of specific laws override general laws.

It is also necessary to take into account the side effects of applying the legal rules for registering unregistered marriages on the Family Card, both positive and negative. The positive side effect of implementing the registration of unregistered marriages on the family card is of course the achievement of the stated goals, namely the protection of children's rights and the acceleration of ownership of children's birth certificates.

While the negative effect is that there is legal dualism in terms of marriage registration, it will give rise to the view that marriage registration at the religious affairs office is no longer important, there is a degradation of the authority of the Office of Religious Affairs by the Population and Civil Registration Office, and the practice of unregistered marriages is increasingly fertile.

According to Sorjono Soekanto, every correct activity has certain benchmarks which are conditions that must be met. In carrying out the role of state law there are also various requirements that must be met, so that the implementation takes place correctly. These conditions are; (1) suitability of time, facilities and work methods, (2) direction, (3) conformity with the law which includes conformity with the legislation.

The purpose of registering unregistered marriages on the Family Card is both to protect the rights of children from unregistered marriages and to increase ownership of Birth Certificates. However, it would be nice if the way of working to achieve this goal was also through the preparation of good legal principles so that there would be no



overlap between one law and another. One way is that the Ministry of Home Affairs needs to coordinate with the Ministry of Religion so that the Population and Civil Registration Service has a relationship with the Office of Religious Affairs, so that children from unregistered marriages can still have birth certificates and siri marriages can perform isbat so that they become a legal marriage according to the state.

Direction also needs to be built even more optimally, bearing in mind that the initial problem with registering unregistered marriages on the family card was because there was still the practice of unregistered marriages in people's lives. In Article 3 paragraph (1) and paragraph (2) of Law Number 22 of 1946 it is stated; “Anyone who enters into a marriage contract or marriage with a woman who is not under the supervision of the employee referred to in paragraph (2) of Article 1 or his representative, shall be punished with a maximum fine of Rp. 50,-(fifty rupiah). Whoever carries out the work referred to in paragraph (2) of article 1 with no rights, is punished with imprisonment for a maximum of 3 (three) months or a fine of up to Rp. 100,-(one hundred rupiah)”.

The application of this article needs to be emphasized again so that unregistered marriages can be minimized. So that the number of children born from unregistered marriages can be reduced and the problem of registering unregistered marriages on the Family Card can be eliminated.

Conclusion

1. The legal basis for registering unregistered marriages on a family card is the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing Coverage of Birth Certificate Ownership, Presidential Regulation Number 96 of 2018 Requirements and Procedures for Population Registration and Civil Registration, Permendagri No. 108 of 2019 concerning Regulations for Implementing Presidential Regulation Number 96 of 2018 and Permendagri No. 109 of 2019 concerning Forms and Books Used in Population Administration.
2. Registration of unregistered marriages on the Family Card from the perspective of legal effectiveness theory, in terms of legal principles, has a good purpose, namely to protect children's rights and accelerate birth certificate ownership. However, the preparation of

these legal principles is considered to be less than optimal because it does not meet the principles of drafting legislation so that it

overlaps with other laws and regulations. This legal rule also has the potential to produce negative impacts in society, namely the increasingly widespread practice of unregistered marriages.

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