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## Abstract

This study aims to determine legal protection for children born of unregistered marriages in Nisam Antara District, to determine the juridical impact on children born of unregistered marriages, and to find out what efforts can be made so that these children receive legal protection.

Based on the results of this study, namely to obtain legal protection for children born from unregistered marriages, one of them is by registering marriages (Isbat nikah) which is carried out at the Office of Religious Affairs (KUA) and at the local Sharia Court. So that the legal protection that can be given by parents to these children can be done through making birth certificates, being registered on the family card (KK), and getting equality before the law.

## Keywords

(Protection of Children, Law, Marriage, Unregistered)

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## 1. Introduction

Humans are social beings who live side by side and need one another. From the desire to live together, a marriage occurs as a form of union of two human beings who are legitimate as husband and wife. However, there are times when marriages become problematic due to ignorance of the importance of registering marriages as a legal condition for marriages that are recognized by the Indonesian people. Wedding processions that are held in private have become an open secret in the community with the aim of achieving a certain reason and are only attended by the families and close relatives of the two bride and groom, without realizing the impact resulting from the marriage is very important in the life that will be lived in the future.

Basically marriage is one of the phases of life lived by every adult human being (akil baligh), ready physically and mentally, and has a sense of responsibility responsible for building a household. Everyone who has complied these requirements are recommended to set foot on the ladder wedding. This level marks a very important phase of life important for one's future survival. Compared by living alone, family life has many challenges and at the same time contains a number of positive expectations. It cannot be denied in Marriage has many benefits if we can manage it properly good.(Happy Santoso, 2007:1)

Marriages carried out in Indonesia are subject to the provisions in Law Number 1 of 1974 concerning Marriage (UUP), according to Article 1 of Law no. 1 of 1974 formulated that marriage is a

physical and spiritual bond between a man and a woman to form a happy and eternal household based on the one and only God. Whereas in Article 2 paragraph (1) it states that "marriage is legal if it is carried out according to the religion and belief" however, in paragraph (2) it is also explained that it requires "every marriage to be recorded according to the applicable laws and regulations".

So that the legal marriage gave birth to legal children or children with all the rights and protection obtained from both parents. Protection of children born from a marriage is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning child protection, article 1 paragraph (2) states that "Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination." But in reality, to this day it is possible that there are still many people and parties who enter into marriages that can be said to be legal in the eyes of religion and the state.

So that an unregistered marriage bond is defined as a form of marriage that does not meet the requirements and procedures of laws and regulations. This marriage is also known as underhand marriage or unregistered marriage. Siri marriage means secret marriage, also commonly called wild marriage. In Maliki fiqh, unregistered marriage is defined as a marriage that, on the message of the husband, the witnesses keep it secret for his wife or congregation, even if it is a local family. (M. Ansari MK, 2010:25)

Even though the marriage was carried out in an unregistered manner and was not recorded, it was still a form of sacred act, because the marriage bond was not only based on physical ties, but also on the inner bond which could give birth to a sakinah, mawaddah, and warahmah family. Marriage is a religious order for every human being who is able to carry it out, because with marriage it can reduce the immorality of sight, protect oneself from adultery. (Chuzaimah Tahido, 2002:56)

Based on the data sources that the researchers obtained, which were located in 2 (two) Gampongs, namely Gampong Blang Jrat and Gampong Alue Papeun, Nisam Antara District, at least in the 2018-2021 period there were 7 (seven) couples, with two of them being middle-aged couples who married for the second time after holding the status of a widow or widower and several young couples who got married suddenly so they did not have an authentic marriage certificate. Therefore, it cannot be denied that this marriage produces children who need rights, obligations and protection that must be provided by both parents, be it social protection, education to inheritance from the child.

thus, the phenomenon of unrecorded marriages that occur among the community is caused by the ignorance of the community regarding how big the influence that could arise in the future. This occurs due to the absence of official marriage registration which is recorded at the Office of Religious Affairs (KUA) as the official institution that regulates and records a marriage throughout Indonesia. Marriage laws that are not registered with the KUA and marriages that are carried out without being supervised by marriage registrars (PPN) Marriages do not have legal force (Abdurrahman, 2007: 114), even though they are considered legal according to religion, because they have fulfilled the requirements and pillars of marriage, but this marriage still remains a problem.

This study formulates three main issues, namely how is the form of legal protection for children born from unregistered marriages in Nisam Antara District, North Aceh Regency. What are

the juridical impacts on children born out of unrecorded marriages. What efforts can be made by parents so that these children get legal protection.

The type of research chosen by researchers is qualitative research (qualitative research). happens in society. The scope of this research uses empirical juridical methods which are research that links law with real human behavior. Therefore, empirical legal research is the effectiveness of law, which means to what extent the law actually applies in real life. (Soejono Soekanto, 2006: 7).

To answer this question, we need an appropriate method to be able to answer it. The nature of this research is descriptive research that aims to accurately describe individual characteristics, conditions, symptoms or the spread of a symptom or the frequency of a certain relationship between a symptom and other symptoms in society. (Faculty of Law, Malikussaleh University, 2006: 112). The research results are emphasized to provide an objective picture of the actual condition of the object under study. Descriptive research methods are used to solve or answer the problems being faced in the current situation, namely regarding legal protection for children born from unregistered marriages.

The data collection technique itself is a data collection technique which is the most strategic step in research, because the main objective of research is to obtain data. Without knowing data collection techniques, researchers will not get data and understand the data sources specified. (Sugiono, 2005:62). Data collection tools referred to by this research are interviews and observations.

And the method in terms of data analysis itself is done qualitatively. Research that uses an induction approach which has the goal of compiling theory and hypothesis construction through disclosing facts is research that uses a qualitative paradigm. (Abi Aggito, 2018: 9).

## **2. Discussion**

Legal protection for a child is absolutely for every parent who has given birth to it. Every parent has rights and obligations that must be fulfilled regardless of whether the marital status is registered or not, because the marriage is religiously valid by following the conditions and pillars and recognized by the local community. Legal protection that must be fulfilled by parents for a child such as the right to support, upbringing, maintenance, education and affection. Jurisprudently, the position of a child born from an unregistered marriage is a legitimate child. A child born from this marriage has fulfilled the requirements and pillars of the legality of a marriage according to the Islamic religion so that he is a legitimate child of his father and mother. So that,

Children are not the result of a weak and limited human agreement, but children's rights are an obligation from Allah SWT to those who must fulfill them. therefore fulfilling children's rights is part of worship or proof of their submission to Allah SWT, not just activities based on mere human logic or just activities driven by humanity. Children's rights that must be guaranteed fulfillment in Islam include:

1. Right to live
2. The right to affection
3. The right to protection and livelihood in the family
4. The right to obtain basic needs as citizens

Therefore, the Islamic religion does not discriminate between the position of children born from unregistered marriages as long as the marriage carried out fulfills the conditions and pillars and other provisions regulated by Islam, so that the marriage is legal and the position of the child who is the same as children born from registered marriages and obtaining their rights as legitimate children.

However, according to Indonesian positive law, children born from a marriage or offspring are divided into two, namely legal and illegitimate offspring. Legitimate offspring is based on the existence of a legal marriage, both religiously and nationally, which is interpreted as birth in a legal consequence of a legal marriage, such children are referred to as legitimate children.

Thus, a child born from an unregistered marriage or a child out of wedlock can be legally recognized as a legitimate child by law by registering the marriage so that it can be proven that there is a blood relationship or biological relationship between a child and his father based on science and technology. or other evidence in order to obtain a civil relationship with the father and mother who can legally protect and guarantee.

Based on the results of observations and research conducted by the author, six out of seven respondents who have children from unregistered marriages that occurred in Nisam Antara District, especially in Gampong Blang Jrat, have provided protection and rights for children from both parents who were born from unregistered marriages. This is through providing a living both physically and spiritually, proper parenting, giving love, providing basic education to children, and protecting children from all the rights attached to them.

Therefore, the author believes that the people of Gampong Blang Jrat, Nisam Antara District, have understood the obligations that must be fulfilled by parents in providing protection for children, both those born from registered and unregistered marriages, non-materially and protecting children's rights. before carrying out the registration of a lawful marriage by law at the Office of Religious Affairs (KUA) or the local Sharia Court in order to guarantee the legal status of a child from both parents and provide material legal protection for these children which the state recognizes as legal.

The real impact of unregistered marriages or unregistered marriages is that there is no concrete evidence in the form of a marriage book which can show that a marriage has taken place, this results in the absence of a birth certificate for a child born. Therefore, even though the marriage has fulfilled the pillars and requirements for the legality of religious marriage, according to the state, the marriage does not have permanent legal force and is not recognized in the eyes of state law.

The legal consequence is that if the marriage is not registered, the status of the child born from the marriage will be uncertain, because the marriage of the two parents is only valid according to religion. In other words, even though the child is a legitimate child, there is no authentic evidence that can confirm that the child is legitimate from both parents. This has an adverse impact on the child's life in the future, the rights of the child can be violated such as the child does not have the right to inherit from his father according to state law, even though religiously the child has the right to do so. So that legal action is needed so that the child obtains the status of a legitimate child from both parents. The position of a child born from an unregistered marriage only has a civil relationship with the mother, while the father has no legal relationship except for the recognition of the child

which must be done with an authentic deed. Besides that, children born from unregistered marriages will have difficulty obtaining a birth certificate.

As a result of the absence of a marriage certificate or marriage book which can show evidence of the existence of a marriage, it is not possible to register the birth of a child by an authorized official, as stated in Article 55 paragraph (1) of Law No. 1 of 1974 which states that: "The origin of a child can only be proven by an authentic birth certificate issued by an authorized official". Thus it is important for residents to know the importance of registering marriages in order to get clarity on the origins of the children born and prevent unwanted things from happening in the future.

Based on the results of the research that the authors conducted, it shows that respondents in the Nisam Antara Subdistrict, especially the Blang Jrat Gampong studied, have a belief that there are impacts or consequences arising from unregistered marriages. One example of the case was presented by a community leader regarding a respondent who divorced her husband after giving birth to a child while her marital status had not been registered by the state. This resulted in the divorce process being undertaken, the divorce process became longer and costly because both parties had to agree to make a marriage certificate issued by the Sharia Court first before filing a divorce suit to the court.

Another case also occurred in Gampong Alue Papeun, Nisam Antara District, as conveyed by a youth leader in Gampong Alue Papeun where there was a middle-aged couple who married for the second time but could not make a marriage certificate because the man had not provided a divorce certificate to his previous ex-wife. The legal consequences that occur from this apart from not being able to register a new marriage also have an impact on the status of the children born because these children cannot have their birth certificates made because the marriages entered into by both parents are not recorded.

Likewise, other legal impacts arising from unregistered marriages, namely when a divorce occurs which often ignores the rights of the children of the family carrying out the marriage. Because the man from the marriage was not willing to be responsible for the education costs and needs of his child. It will be difficult for children who are born to obtain a birth certificate, because their parents have separated before obtaining validation (*isbat nikah*) for the unregistered marriage.

The Office of Religious Affairs or abbreviated as KUA is an agency of the Ministry of Religion which is tasked with carrying out some of the duties of the Ministry of Religion in the Regency/City in the field of Islamic religious affairs in the District area. The KUA is led by the head of the KUA/*penghulu* who is under and responsible to the Director General of Islamic Community Guidance and is operationally fostered by the Head of the Regency/City Ministry of Religion Office. Registration of marriage itself aims to bring about order in marriage in society. This is one of the efforts regulated through legislation to protect the dignity and sanctity of marriage, especially for the wife in married life.

Through the registration of marriages as evidenced by a deed, if a dispute occurs, one of the parties can make legal efforts to defend or obtain their respective rights because there is authentic evidence of the legal actions they have committed. Therefore, with the existence of a marriage certificate, the legal protection that can be provided by parents to these children can be done through making birth certificates, registering them in the family card (KK), and obtaining equality before the law.

Marriages that are registered with government officials appointed by the state are obliged to register unregistered marriages as proof of the validity of a marriage bond in order to issue a marriage certificate. The marriage certificate aims to regulate the legal relationship between husband and wife. Thus, marriage law and marriage certificate become legal events that can protect and be protected and have legal consequences.

Efforts to protect children need to be implemented as early as possible, namely from the fetus in the womb until the child is 18 (eighteen) years old. This starts from the conception of child protection that is whole, comprehensive and comprehensive. The child protection law must also place the obligation to provide protection to children based on non-discriminatory children, the best interests of the child, the right to life, survival and development, as well as respect for the child's opinion.

Each of the four young couples already has children from the unregistered marriages they have had and is aware of the importance of registering marriages in order to obtain legal protection for the children who are born. So the five couples above have registered their marriages through marriage consecrations which are held at the Office of Religious Affairs (KUA) of Nisam Antara District every year. From the process of isbad nikah, respondents can fulfill their obligations as parents in providing legal protection for children, especially in making child birth certificates, registering them on family cards (KK), obtaining other legal protections recognized by the state such as education, parenting, maintenance and protection. other children's rights.

However, this was not the case with one (1) middle-aged couple who married for the second time, because they remarried at the age of 55, so according to him, the marriage they entered into at an old age no longer needed a marriage book as recognition from the state. because they believed that the two of them could not give birth to any more offspring due to the old age factor and to carry out village marriages and were not recorded in Gampong Blang Jrat, Nisam Antara District.

Thus, the author can conclude that legal protection for these children can be provided to the fullest both materially and non-materially, obtain equality before the law and society, obtain their rights as citizens, as well as physical and spiritual rights that are given by his parents.

Based on the description that has been stated in the previous chapters, the author finally concludes that legal protection that must be fulfilled by parents for a child such as the right to provide physical and spiritual support, care, care, educate and provide affection as regulated in article 26 paragraph (1) 1) Law no. 35 of 2014 concerning Child Protection which states that:

Parents are obliged and responsible for:

- 1) Caring for, nurturing, educating, and protecting children;
- 2) Growing children according to their abilities, talents and interests;
- 3) Prevent marriage at a young age;
- 4) Providing character education and instilling moral values in children.

The real impact of unregistered marriages is that there is no concrete evidence in the form of a marriage book which can show that a marriage has occurred, this results in the absence of a birth certificate for a child being born and cannot guarantee the protection and position of the child in the eyes of the law. Apart from birth certificates, there are other impacts, such as not being able to make a KTP or renewing a KTP as a personal identity, not being able to make a family card, and not getting other rights in society.

Efforts that can be made by parents to get legal protection for their children start with registering marriages legally through marriage confirmation at the Office of Religious Affairs (KUA) or at the local Sharia Court. So that these parents can apply for a Family Card (KK) to then make a birth certificate for the child in order to get material legal protection from their parents and get equality in the eyes of the law.

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