

The Authority of Religious Courts and Religious Affairs Offices on the Issue of Marriage and Divorce Recording After the Publication of the Indonesian Minister of Home Affairs Regulation Number 108 of 2019

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Abstract

Marriage and divorce registration issues are specifically mentioned in Law Number 16 of 2019, which amends Law Number 1 of 1974 on marriage, however there remains ambiguity. How is the jurisdiction of religious courts on the matter of marriage and divorce registration following the publication of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019? is the formulation of the problem in this study. Empirical legal research is the type of research that is conducted. Based on findings, research indicates that religious courts and religious affairs offices have the authority to prohibit marriage and divorce registration issues. Due to alleged uncertainty, its jurisdiction has been reduced since the Minister of Home Affairs of the Republic of Indonesia issued Regulation Number 108 of 2019. Religious courts perform judicial duties and provide rulings or decisions as their final output. While the power of the government is responsible for the administration of the marriage industry.

Keywords: Authority, Religious Courts, Marriage and Divorce Registration.

INTRODUCTION

Indonesian society is a diverse entity with diverse legal systems, including in marriage law. There are many systems of marriage law that apply in Indonesia, including customary marriage and religious marriage. Given that the majority of Indonesia's population is Muslim, the marriage system that applies among the majority is the Islamic marriage system. According to Islamic law, a marriage is considered valid if it fulfils the conditions and pillars of marriage. In reality, marriages that occur in society reap various problems. The dynamics of a rapidly developing society greatly affect human legal behaviour. On the other hand, Islamic law regulations are not sufficient to accommodate the needs of today's society. Therefore, there is a need for revolutioner legal regulations related to marriage rules. (Sabiq, 1982).

In order to fulfil the needs and unify the legal system, the Indonesian government established regulations governing marriage, namely Law Number 1 Year 1974. In this law, the state considers a marriage valid if it is registered as stated in Article 1 paragraph (2). Various responses have emerged regarding marriage registration, both positive and negative (Lathifah, 2015). In reality, many Indonesian citizens do not register their marriages with the Marriage Registration Officer (PPN). The marriages performed by them only fulfil their religious demands without fulfilling administrative demands. One of the reasons is because of the lack of legal enforcement of marriage registration. As a result, their marriages do not receive a marriage certificate, so the husband or wife cannot take civil legal action in relation to their household. The children they give birth to are only recognised by the state as unmarried children who only have a civil relationship with their mother and her family. The implication is that if a wife and her children are neglected by her husband or biological father, then they cannot make legal claims for the fulfilment of both economic rights and joint property. (Usman, 2017)

A happy, prosperous, and peaceful life between husband and wife who are bound in a legal marriage is a dream for every human being on earth. (Dahwadin, 2020).

The welfare, peace and harmony of life in society are highly dependent on the welfare, peace and harmony of a family as the smallest unit of society. According to Moh. Zahid (2002: 1), it is said that: The family is formed through marriage, which is a bond between two people of different sexes with the aim of forming a family. The bond between husband and wife, which is based on holy intentions, is expected to grow into a happy eternal household family based on God Almighty, and in this family environment, a human child is also raised, educated and directed so that later he becomes a human being and member of society who has faith, piety, science, technology and insight into the archipelago. The purpose of marriage as mentioned above is sometimes difficult to realize, and it often happens that even though a married couple has tried to build their household life as well as possible, there are problems that can cause an unhappy household. In marriage, there are also not only civil issues that arise, sometimes in marriage there will also be problems involving criminal matters. Responding to the problems that occur in marriage, the role of law is needed to anticipate and resolve problems that can cause disputes in marriage (including the consequences of marriage itself) and of course the marriage law that has been positivized this effort has been carried out, namely with the enactment of Law Number 1 of 1974 concerning Marriage (Law No. 1 of 1974). The enactment of Law No. 1 of 1974 is expected to solve various problems related to marriage, but in fact, after this law came into force, there were obstacles (obstacles) in the application stage, one of which was related to the problem of polygamy which was still carried out without following the procedures according to the law (Asliani Harahap, 2018).

The 1945 Constitution of the Republic of Indonesia states that "Every citizen shall be equal before the law and government and shall uphold the law and government with no exception". From this formulation, it is intended that every citizen, both men and women have the same position in the law without exception. In accordance with the provisions of the 1945 Constitution, when viewed from the provisions in Article 1 of Law Number 1 of 1974 concerning Marriage. It appears that the legal position between men and women is the same. The provision states that the legal position between husband and wife in the family is balanced and equal. This is in accordance with Article 30 and Article 31 of these provisions which indicate a balance between the rights and obligations of husband and wife in the household and

community. Based on these provisions, Law No. 1/1974 on Marriage appears to adequately reflect the principle of non-discrimination. Although in some cases, these provisions are still considered by some parties to imply discrimination against women. Namely in relation to the issue of polygamy. With regard to this matter, some views state the need for a guideline for the implementation of these provisions in order to better realize a sense of justice.

The marriage institution is a noble institution with a high position in both Indonesian national law and Islamic law. Marriage in society has significant cultural, social and legal impacts. This is shown by the enactment of Law Number 16 of 2019 concerning marriage. Marriage is a relationship of birth, as stated in Article 1 of Law Number 16 of 2019. The intention of a man and woman as husband and wife is to create a lasting family (*tang rumah*) on the basis of God Almighty. (Asliani Harahap, 2018).

Marriage Registration is a recording carried out by state officials of marriage events when a marriage contract is to be carried out between a prospective husband and a prospective wife (Alshodiq, 2005).

Marriage registration provides protection for the status and rights of children, if the marriage is not registered, it will have an impact on the status of the child and the child will be considered an illegitimate child before the state. Therefore, through marriage registration and proven by a marriage certificate, a person can prove that he is bound in a marriage bond, so that the parties can claim their rights and are required to fulfil their obligations. Thus, marriage registration is also to prove the status of a child as a child of a married couple. (Imam Faishol, 2019).

Marriage registration is an administrative action carried out by authorized officials in terms of registering marriage events. Marriage registration aims to create administrative order in addition to guaranteeing the rights of the parties to it, (Ali Firdaus, 2015). Similarly, with divorce Divorce is the dissolution of marital ties between a man and a woman as husband and wife, which is carried out in front of a court session, namely the District Court for non-Muslims and the Religious Court for Muslims So that the court can declare that a marriage has ended due to divorce must go through (Hakim, 2017):

- a. Only after the two parties have been unsuccessfully reconciled by the court involved, can a divorce be brought before the court;
- b. The inability of the couple to coexist peacefully as husband and wife must be sufficient grounds for divorce before proceeding. According to Article 39 of Law Number 16 of 2019 concerning the principal amendment to Law Number 1 of 1974 concerning Marriage, there must be justification. Article 19 of the 1975 Government Regulation on the Application of the Marriage Law; and
- c. The divorce process that occurs is contained in the legislation has various provisions for court proceedings;

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 concerning Recorded and Unrecorded Marriages and Divorces Upon Issuance. The birth certificate service procedure is only prepared by the Population and Civil Registry by letter. The birth certificate service procedure is only prepared by the Population and Civil Registry by letter. In particular, the birth certificate is completed with the mention of the parents' names. If the divorced person is still alive, he or she must provide the original Divorce Certificate from

the Religious Court. If the divorced person is no longer alive, he or she must provide a letter explaining the death of his or her spouse and a copy of the Death Certificate from the Civil Registry Office. (Sudibyo, 2017).

Problems and debates have arisen at the the Religious Affairs Office (KUA) about the status of new marriages or divorces, i.e., marriages that have not been registered or divorces that have not been registered recently. On the KTP it says married or divorced, but on the family card it says "Unrecorded Marriage" or "Divorce has not been recorded." This is a problem for citizens who want to register a marriage. Since there are currently only two possible statuses-married/unmarried or divorced-it becomes very difficult to understand. Upon investigation, it is found that the subject has been involved in a sirri marriage or a fraudulent marriage and has never been registered at the Religious Affairs Office (KUA) or that they have been divorced by imposing talak three and have been separated from their bed for many years but it has never been officially recorded at the Religious Affairs Office (KUA) and has not been officially recorded on their family card. Or someone who wants to apply for polygamy or Isbat Nikah but is unable to do so because both Isbat Nikah and divorce are denied. This is because there is no written record of the marriage in the family card (KK), the change in status cannot be significantly inhibited.(Syahroni & Subairi, 2020).

Many siri marriages are carried out, with the reason that the perpetrators avoid the sin of adultery Sirri Marriage, namely: a marriage conducted by Indonesian Muslims, fulfilling both the pillars and conditions of marriage, but not registered with the Nikah Registrar official, as regulated and determined by Law Number 1 of 1974 concerning Marriage. (Isnaini, 2014).

Siri marriage is religiously valid, because it fulfils the pillars of marriage, but in Indonesian marriage law, which is not recorded at the KUA, its existence is not recognized. This actually also has an effect on the development of children who are born later. The marriage law is one of the laws established by Allah SWT. For the benefit of all mankind, in order to channel human nature in channeling lust properly and regularly to provide legal offspring, in addition to creating a household atmosphere that is sakinah, mawaddah and Warrahmah.

This is the situation in the Sekayu Religious Court, for example in decision number 0618/Pdt.G/2020/PA. Where the polygamy case concerned (which has not been granted). The applicants' written marriage is not reflected on their family card (KK). However, Sekayu's religious petition, which was rejected after divorce and isbat nikah, was not granted by the court. Due to the applicant's married status on the permanent identity card (KTP). The following is an illustration of the population complexity of administrative products that fall under the Republic of Indonesia's Minister of Home Affairs Regulation No. 108 In 2019, two individuals who were not legally married were able to combine their families and identities on one card. "Divorced or married" by capitalizing on the Statement of Absolute Responsibility (SPTJM) of marriage or divorce.

If a marriage applicant has the status of 'Married or divorced' on his KTP, the assumption of the Religious Affairs Office (KUA) officer is for a second / third wife, aka polygamy, then the KUA will ask for proof of stipulation / polygamy permit from the Religious Court. If he argues that he has been divorced alive, it is mandatory for him to submit the original Certificate of Divorce from the Religious Court, if he argues that he has been divorced dead, he will be asked to submit a Certificate of Death of the Spouse and a copy of the Death Certificate from the Civil Registry Office. This is very clearly regulated in PMA Number 20 of 2019 Article 4

concerning administrative requirements for marriage registration. Even then, it is still coupled with the need to first validate the marital status to the Civil Registry Office so that the KTP is in accordance with the actual facts.

The emergence of this strange new status, namely marriage that has not been recorded or divorce that has not been recorded, is based on Permendagri No. 118/2017 concerning Family Card Blanks, Registration and Certificate Excerpts of Spil Registration as a follow-up to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019. This status officially began to be used in the SAK (Population Administration Information System), where the development of the population database that switched to SIAK indirectly caused the position of marriage or divorce registration, which originally functioned to ensure legal order as an instrument of legal certainty through marriage evidence, to conflict with the obligation to record marriage or divorce registration as stipulated in Article 2 paragraph 2 (Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning Marriage). (Demak, 2018).

Administratively, their marriage or divorce should have been 'legal' based on the evidence of the KTP and KK, even though there is an appendage 'Unrecorded'. However, in reality, the writing of an unrecorded marriage or unrecorded divorce does not give any effect. This is why they register for marriage or divorce to the KUA or in order to obtain a Marriage Book or divorce certificate but precisely the writing 'Unrecorded Marriage or unrecorded divorce' is actually a barrier, because the regulations and administrative systems that are the basis for the work of the KUA only recognize the status of Married or Unmarried or Divorced Life/Divorced Death, meaning that KUA officers will not serve marriage registrations with unrecorded marital status or divorce applications with unrecorded divorce status. Even if the registration is accepted, the person concerned must submit a Certificate of Divorce from the Religious Court or a Death Certificate from the Civil Registry Office because it is categorized as having been married and that can never be fulfilled. All of the above legal references indicate that the registration of marriage or divorce is mandatory, not voluntary.

In this context, it is rather difficult to understand the existence of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 with its SPTJM which results in the status of 'unrecorded marriages and unrecorded divorces. As a result, this is not a breakthrough or solution to the legal impasse, but a policy that not only degrades the authority of marriage recording institutions (KUA and civil registry offices) but also abuses the community, creates wider chaos and at the same time violates higher regulations, namely the Marriage Law and PP 9/1975 concerning the implementation of Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning Marriage). (Heryanti, 2021).

The matter of marriage and divorce registration is explicitly written in Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 on Marriage but it is ambiguous. It is not a substantive requirement that determines the validity of a marriage or divorce, which can lead to legal uncertainty and injustice. The word recording loses its meaning when it is not explicitly stipulated as a condition for the validity of marriage. So that it opens up opportunities for unrecorded marriages or divorces, the fact that many citizens carry out unrecorded marriages and divorces.

The registration of a marriage or divorce is not something that determines the validity of a marriage or the validity of a divorce, but only an administrative obligation based on laws and

regulations. This administrative obligation has two perspectives. Firstly, from the perspective of the state, registration is required in the context of the state's function to guarantee the protection, enforcement and fulfilment of human rights. Second from an individual perspective; marriage or divorce is an important legal action in life carried out by the person concerned which has implications for very broad legal consequences in the future, which to prove it requires authentic evidence so that the state can provide the functions of guarantee, protection and legal certainty effectively and efficiently. (Ahmad, 2020).

The Indonesian Minister of Home Affairs' Regulation Number 108 of 2019 causes overlapping authority with the Religious Courts for the implementation of isbat nikah, giving birth to legal uncertainty where the status of "marriage has not been recorded or divorce has not been recorded". People feel that their marriage has been recognized by the state but in reality, it has not. People who feel that their divorce has been recognized by the state and feel that they are widows or widowers freely marry men when in reality it is not or has not been recognized by the state. In addition, it is also considered to erode the authority of the Office of Religious Affairs (KUA) as an institution for recording marriages or divorces of Muslims and the authority of the religious court as the only institution that can determine the validity of an unrecorded marriage or divorce, as well as the bad impact of this. Based on the above background, the author tries to write with the title "The Authority of Religious Courts and Religious Affairs Offices on the Issue of Marriage and Divorce Recording After the Publication of the Indonesian Minister of Home Affairs 'Regulation Number 108 of 2019'".

RESEARCH METHOD

A study cannot be said to be research if it does not have a research method because the purpose of research is to reveal a truth systematically (Lubis & Koto, 2020). This research will be prepared using empirical juridical research type. The main data in this study are secondary data and primary data, where what is meant by primary data is data obtained from the first source such as interviews and documentation at the Sekayu Religious Court, while secondary data is data that is not obtained from the first source, but data obtained from library material. Such as data obtained from official documents, books, research reports, diaries, newspapers, papers, and so on. (Zainuddin Ali, 2014).

DISCUSS AND ANALYSIS

The Authority of Religious Courts and Religious Affairs Offices on the Issue of Recording Marriage and Divorce After the Publication of the Indonesian Minister of Home Affairs Regulation Number 108 of 2019

The religious court is one of the organizers of judicial power or carries out a judicial function whose product is a decision or determination. However, there are still legal issues regarding the authority of religious courts to organize divorce registration with the authority to issue divorce certificates based on Article 84 paragraph (4) of Law No. 7 of 1989 concerning Religious Courts as amended by Law No. 3 of 2006 and the second amendment by Law No. 50 of 2009 (Religious Courts Law) which confirms that this authority is the authority of religious court clerks (judicial). On the other hand, Law No. 23/2006 on Population Administration as

amended by Law No. 24/2013 (Population Administration Law) stipulates that the authority to record divorces is the domain of government authority (executive) (Atmaja et al., 2020).

Regarding registered and unregistered marriages and divorces after the issuance of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019. Such is the case that occurred in the Sekayu Religious Court, as in decision number 0618/Pdt.G/2020/PA. Sky where the polygamy isbat case (which is currently not possible to be granted). The status of the applicant in the family card (KK) is written as an unrecorded marriage, the applicant wants to change the status of his unrecorded marriage. However, the Sekayu Religious Court did not grant her application, and her isbat nikah and divorce were rejected. The legal system is consistent in resolving conflicts and provides the means to resolve conflicts so that the legal system will not allow the conflict to continue. (Sudikno Mertokusomo, 2017). In the event of a conflict of legal norms (legal antinomy), the principle of norm conflict resolution called the principle of legal preference applies as follows:

- a. *Lex postereore derogat legi priore*, i.e. the new law confirms or defeats the old law. If there is a conflict of norms between two laws with the same material, while the norms in the old law are not revoked and declared invalid by the new law so that at the same time two laws governing the same material but contradict each other apply, then to resolve the conflict, the principle of the new law negates or defeats the old law applies;
- b. *Lex supreiore derogat legi infirioire*, i.e. higher legislation negates or defeats lower legislation; and
- c. *Lex specialis derogat lex generalis*, i.e. a special law negates or defeats a general law. or defeats laws that are general in nature.

This research is conducted to answer the applicability of norms due to the conflict of norms between Article 84 paragraph (4) of the Religious Courts Law and the norms in the Civil Registration Law. Based on legal facts, it was found that there are two laws regulating the same material, namely the authority to record divorce based on a religious court decision or stipulation. Article 84 paragraph (4) of the Religious Courts Law regulates that the authority is the authority of the clerk of the religious court, while the norm in the Civil Registration Law regulates that the authority is the authority of the registrar at the KUA. The norm that regulates divorce registration as the authority of the clerk of the religious court is contained in Article 84 paragraph (4) of Law No. 7 of 1989 concerning Religious Courts promulgated on 29 December 1989. When the law was amended by Law No. 3/2006 on 28 February 2006, the norm was not among those amended. Similarly, when the second amendment was made by Law No. 50 of 2009 on 29 October 2009, the norm was not amended. The norm that regulates divorce registration as the authority of the registrar at the KUA. is contained in Law No. 23/2006 on Population Administration promulgated on 29 December 2006. The law was amended by Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration on 24 December 2013 (Puniman, 2018).

In the transitional provisions of Law No. 23/2006 on Population Administration, there is no provision that revokes or declares invalid the provisions of Article 84 paragraph (4) of Law No. 7/1989 on Religious Courts, which was amended by Law No. 3/2006. Similarly, in Law No. 24 of 2013 on the Amendment to Law No. 23 of 2006 on Population Administration, there is no provision that revokes or declares invalid the provisions of Article 84 paragraph (4) of

Law No. 7 of 1989 on Religious Courts as amended by Law No. 3 of 2006 and Law No. 50 of 2009. As a result, there are two equally applicable norms regulating the same material that contradict each other. One of the principles of legal reference is the principle of *lex postereore derogat legi priore*, meaning that the new law negates or defeats the old law. The new law in this norm conflict is Law No. 23/2006 on Population Administration as amended by Law No. 24/2013.

The law is an elaboration of the mandate of the 1945 Constitution of the Republic of Indonesia in Article 26 paragraph (3) that "matters concerning citizens and residents shall be regulated by law." The old regulation in this norm conflict is Law No. 7 of 1989 on Religious Courts which was established to implement the provisions of Article 12 of Law No. 14 of 1970 on Basic Provisions of Judicial Power. Although Law No. 7 of 1989 on Religious Courts has been amended in the Reform era by Law No. 3 of 2006 and the second amendment by Law No. 50 of 2009, the norm regulating the authority to record divorces in Article 84 paragraph (4) has not been changed. Therefore, in accordance with the principle of *lex postereore derogat legi priore*, the norm governing the authority of divorce registration in Law No. 23 of 2006 concerning Population Administration amended by Law No. 24 of 2013 negates the norm of Article 84 paragraph (4) of Law No. 7 of 1989 concerning Religious Courts amended by Law No. 3 of 2006 and the second amendment by Law No. 50 of 2009 (Rahmawati et al., 2018).

Other principles of legal preference are *lex supreiore derogat legi infiriore* and *lex specialis derogat lex generalis*. The legal facts in the form of norm conflicts in this research occur in two laws that have the same position and not between general and special laws. The use of *lex supreiore derogat legi infiriore* and *lex specialis derogat lex generalis* principles must apply in the same and equal legal regime (Bagir Manan, 2017) so that these principles cannot be used to resolve conflicts of norms in this discussion. These principles are addressed to the implementer or the one who carries out the law, not addressed to the legislator. The legislator must determine the certainty of the applicable norm by explicitly regulating if it wants to change the old norm. If there is negligence in the formation of the law so that there is a conflict of norms as in this discussion, then the principle of legal preference applies, namely the new law negates the old law. This principle gave birth to a theory and research called the level of synchronization of vertical legislation (Soerjono Soekanto and Sri Mamudji, 2017), and also known as the level of synchronisation or conformity of equal legislation regulating the same field or the level of synchronization of horizontal legislation.

The results show that Article 84 paragraph (4) of the Religious Courts Law is also vertically inconsistent with Law No. 48 on Judicial Power and Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and horizontally disharmonious with laws regulating the same material. The results of the discussion regarding the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 where two people who are married unrecorded can unite themselves in one Family Card and on their KTP written as 'married or divorced' with the capital of a Statement of Absolute Responsibility (SPTJM) marriage or divorce. This means that their marriage or divorce is administratively 'legal' (recognized by the Government) as evidenced by the existence of a certificate of marital status or divorce certificate on the KTP or unrecorded marriage or unrecorded divorce on the KK. However, the legal status produced by this SPTJM has no legal

force and is not recognized by any government agency (other than the Ministry of Home Affairs) (Dwinopianti, 2017).

Article 84 paragraph (4) of the Religious Courts Law is no longer valid after the enactment of the Civil Registration Law, which is vertically synchronized and horizontally harmonized with the equivalent legislation, namely Law No. 22 of 1946 in conjunction with Law No. 32 of 1954 on Registration of Numbers. 32 of 1954 concerning Registration of Nikah, Talak, and Rujuk, Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 concerning Marriage in conjunction with Government Regulation No. 9 of 1975, and Law No. 23 of 2014 concerning Regional Government amended by Law No. 2 of 2015 and and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019. Divorce registration is the recording of divorce events in the divorce certificate register and the issuance of divorce certificates. The authority to record divorce is the authority to take legal actions including recording divorce events in the divorce certificate register and issuing divorce certificates to be given to the parties (Rohman, 2021).

In Article 84 paragraph (4) of the Religious Courts Law, the following normative fact is found: "The Registrar is obliged to provide a divorce certificate as proof of divorce to the parties no later than 7 (seven) days after the decision that has obtained permanent legal force is notified to the parties." The legal norms in the Civil Registration Law, among others in Article 1 point 23, Article 8, and Article 40, stipulate that the authority to record divorces is the realm of government or executive authority. The law does not revoke the provisions of Article 84 paragraph (4) of the Religious Courts Law so the norms are still in effect. In contrast, the norms in the Civil Registration Law do not function because the authority to record divorces is carried out by the clerks of religious courts until now. There are two norms in different laws regulating the same authority by two different institutions or positions, resulting in a conflict of norms and dualism in the authority to record divorces for divorce events based on religious court decisions or stipulations. Law aims to create order in society. (Sudikno Mertokusumo, 2017).

Norms are guidelines for behaviour (standards behavior) to create order in society. When a norm is not functioning, the cause must be investigated. Therefore, it is relevant to conduct research to explain the applicable norms so that it can be used as a reference to determine which norms should be replaced or removed. This is very clearly regulated in PMA Number 20 of 2019 Article 4 concerning administrative requirements for marriage registration. Even then, it is still coupled with the necessity to first validate the marital status to the Civil Registry Office so that the KTP matches the actual facts. The emergence of this strange new status, namely unregistered marriage or unregistered marriage, is based on Permendagri Nor-nor 118/2017 concerning Family Card Blanks, Registration and Certificate Excerpts of Spil Registration as a follow-up to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019. This status officially began to be used in the SAK (Population Administration Information System), where the development of the population database that switched to SIAK indirectly caused the position of marriage or divorce registration which originally functioned to ensure legal order as an instrument of legal certainty through marriage evidence to conflict with the obligation to record marriage or divorce registration as stipulated in Article 2 paragraph 2 (JU Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning Marriage).(Prasetyo, 2020).

As for the urgency of recording marriages and divorces, that with the recording of marriages at the Marriage Registration Officer (PPN) at the Office of Religious Affairs for Muslims and the Civil Registry Office for non-Muslims, the marriages and divorces have received legal certainty and protection, including against the consequences that arise later from the marriage. Administratively, their marriage or divorce should have been 'legal' based on the evidence of the KTP and KK, even though there is a 'Not Recorded' appendage. However, in reality, the words 'unrecorded marriage' or 'unrecorded divorce' do not have any effect. This is why they register for marriage or divorce with the KUA or in order to get a Marriage Book or divorce certificate but instead the writing Unregistered marriage or divorce has not been recorded is actually a barrier, because the regulations and administrative systems that are the basis for the work of the KUA only recognize the status of Married or Unmarried or Divorced Life / Divorced Death, meaning that KUA officers will not serve marriage registrations with unrecorded marital status or divorce applications with unrecorded divorce status (Zainuri, 2019).

Even if the registration is accepted, the person concerned must submit a Certificate of Divorce from the Religious Court or a Death Certificate from the Civil Registry Office because it is categorized as having been married and it will never be fulfilled. The authority of the Religious Court on the Problem of Recording Nikah and Divorce After the Issuance of Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019, its authority has weakened because of the ambiguity that the religious court should carry out a judicial function with a product in the form of a decision or determination while the administrative function in the field of marriage is the authority of the government. The problem of Recording Nikah and Divorce After the Issuance of Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 can lead to legal uncertainty and injustice. opens up opportunities for unrecorded marriages or divorces in the fact that many citizens are marrying and divorcing unrecorded. Divorce registration is part of civil registration which is included in the realm of government authority. This, if related to the theory of court authority, refers to the theory of Philipus M. Hadjon Attribution is the authority to make decisions (*besluit*) which are directly sourced to the law in a material sense. Attribution is also said to be a normal way to obtain government authority. So, it is clear that the authority obtained through attribution by government organs is an original authority, because the authority is obtained directly from laws and regulations (mainly the 1945 Constitution) (Arliman, 2019).

In other words, attribution means the creation of a new authority that was not previously possessed by the government organ concerned. The matter of marriage and divorce registration is explicitly written in Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 on Marriage but it is ambiguous. One is not a substantive requirement that determines the validity of a marriage or divorce, which can lead to legal uncertainty and injustice. The word recording loses its meaning when it is not explicitly stipulated as a condition for the validity of marriage.

Obstacles Faced by Religious Courts and Religious Affairs Offices on the Issue of Recording Nikah and Divorce After the Publication of the Indonesian Minister of Home Affairs 'Regulation Number 108 of 2019

Systematically, it has implemented the Minister of Religion Regulation (PMA) No. 20 of 2019 concerning marriage registration after the issuance of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019, but in its implementation, it still has obstacles in implementing the regulation, be it. First, obstacles in terms of the legal factor itself. Where the complexity of population administration products under the umbrella of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 where two people who are married unrecorded can unite themselves on one Family Card and on their KTP written as 'married or divorced' with the capital Statement of Absolute Responsibility (SPTJM) marriage or divorce. As expressed by stating that the terms of recording marriage and divorce are explicitly written in Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning Marriage but it is ambiguous the problem of differences in status on KTP and Family Card certainly creates legal uncertainty. The existence of a new marital or divorce status, namely unrecorded marriage or unrecorded divorce recently, has raised problems and polemics at the Office of Religious Affairs (KUA). Citizens who intend to register for marriage, on their KTP written marriage or divorce but on their Family Card written 'Unrecorded Marriage or unrecorded divorce'. This is very confusing because so far only the status of Married / Unmarried or Divorced / Dead is known. (Burhanudin, 2017).

After look closer, it turns out that the person concerned has been married in a sirri or underhand marriage and has never been registered at any Office of Religious Affairs (KUA) or they have been divorced by dropping divorce three and have been separated for years, but have never been registered at the Office of Religious Affairs (KUA) and in the Family Card written divorce has not been recorded. Or someone who wants to apply for isbat nikah or isbat polygamy, but cannot be granted isbat nikah and his divorce is rejected. This is because the change of status cannot be hindered because the family card (KK) says unregistered marriage. Second, community factors. Obstacles that come from the community itself, namely the community. The importance of marriage and divorce registration must be carried out by the community and marriage registration is very important for legal certainty and protection for the community When the orderly updating of population data and biodata is found, it turns out that there are still many residents who do not or have not registered their marriages with the state, so only the implementation of marriage according to their religion (Fariz, 2022).

This was revealed when administrative checks were carried out, namely through Family Card data. When the status is declared married and has children, but it is not supported by attachment of marriage proof data, namely a marriage certificate or marriage book. So that it can be concluded, that the marriage is only carried out only according to their religion. Marriage registration is important and the community must comply when entering into a marriage, because by registering, the marriage has legal certainty and automatically receives legal protection. Based on statistical data, it is known that there are still many marriages that have not been recorded, and many steps have been taken by the Government to curb people whose marriages have not been recorded. To facilitate the registration of marriages that have not been carried out, it is hoped that all the smallest apparatus in the government can do so, including through villages and sub-districts which can be an ideal place for population-based development

to begin, it would be nice for Disdukcapil to have a service unit at that level, one of which is to facilitate Marriage Registration which can be carried out directly or by reporting so that the administration of the reporting is more well organized (Jamal et al., 2022).

Officers who carry out or are known as Registration Officers can also carry out population and civil registration functions without having to be attached to the Village Government or Village Government so that political influence and bad elements can be minimized and easier to supervise. Third, the employee/agent factor itself. Referring to the theory of legislation, namely the principle of conformity between the type and content material, the meaning is that in the formation of laws and regulations must really pay attention to the right content material with the type of legislation.

CLOSURE

Conclusion

The Authority of Religious Courts and Religious Affairs Offices on the Issue of Marriage and Divorce Recording After the Publication of the Indonesian Minister of Home Affairs 'Regulation Number 108 of 2019, the authority of both has weakened because of the ambiguity that the religious court should carry out a judicial function with a product in the form of a decision or determination while the administrative function in the field of marriage is the authority of the government. The problem of of Marriage and Divorce Recording After the Publication of the Indonesian Minister of Home Affairs 'Regulation Number 108 of 2019 can lead to legal uncertainty and injustice. opens up opportunities for unrecorded marriages or divorces in the fact that many citizens are marrying and divorcing unrecorded. The obstacles faced by the Religious Courts and Religious Affairs Offices on the issue of of Marriage and Divorce Recording After the Publication of the Indonesian Minister of Home Affairs 'Regulation Number 108 of 2019. First, obstacles in terms of the legal factor itself. Where the complexity of population administration products under the umbrella of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 where two people who are married are not recorded can unite themselves in one Family Card and on the KTP it is written as 'married or divorced with the capital of a Statement of Absolute Responsibility (SPTJM) marriage or divorce. Second, the community factor. The community still lacks discipline in administrative instructions in marriage registration procedures, and identity falsification carried out by the community, namely age aging in the KTP of marriage registrants and underage divorce registrants. Third, the employee / apparatus factor itself. In this case, the obstacles of the available Human Resources in this case are religious court judges and the lack of manpower so that there are still many employees who double work so that it creates a lack of maximization in work, the lack of accuracy of employees who take care of the administration so that there is still often identity forgery.

Suggestion

The government should reconsider the policy of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 and steps and solutions to the problem of recording marriages and divorces that have created ambiguities that have eroded the authority of the Religious Court as the only institution or institution that can provide a determination of the validity of an unrecorded marriage and divorce To Religious Court judges should propose

a revision of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 108 of 2019 related to the problem of recording divorces and unregistered marriages or divorces in order to restore their authority so that they can realize justice.

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