



Analysis of the Legal Status of Children Born from Unregistered (Siri) Marriages under Law Number 16 of 2019 concerning Marriage at the Sorong Religious Court

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ABSTRACT

Keywords:

Legal Status of Children; Siri Marriage; Civil Rights; Marriage Ratification (Isbat Nikah); Sorong Religious Court.

This study aims to comprehensively analyze the legal status of children born from unregistered (siri) marriages under the framework of Law Number 16 of 2019 concerning Marriage and its judicial implementation at the Sorong Religious Court. Using an empirical legal research method with a socio-legal approach, data were collected through in-depth interviews with judges, registrars, and advocates at the Sorong Religious Court, as well as document analysis of case files concerning applications for marriage ratification (isbat nikah). The results show that, according to the judges of the Sorong Religious Court, the regulation of the legal status of children from siri marriages already has an adequate legal basis through Law Number 16 of 2019, the Compilation of Islamic Law, the Child Protection Law, and Constitutional Court Decision Number 46/PUU-VIII/2010. In practice, children from siri marriages can still obtain legal certainty of status through the mechanism of marriage ratification followed by a determination of the child's parentage. However, the interview results indicate that the main obstacles do not lie in the juridical aspect, but rather in the low level of public knowledge regarding legal procedures, the strong cultural influence that still regards siri marriage as a normal practice, limited public access to judicial services in island regions, and economic factors that cause communities to delay marriage registration. Pregnancy outside of marriage and early-age marriage are also factors that encourage the occurrence of siri marriages and affect the fulfillment of children's civil rights. Legal protection for children from siri marriages is, in principle, already available through the applicable legal mechanisms; however, its effectiveness remains influenced by social, cultural, and economic factors, as well as low public legal awareness. Therefore, enhanced legal outreach, easier access to judicial services, and education on the importance of marriage registration are needed to ensure optimal protection of children's rights.

1. INTRODUCTION

Marriage is one of the main pillars of the social order, carrying both a sacred religious dimension and a formal dimension under state law. Within Indonesian positive law, the concept of marriage is not regarded merely as an act of worship or the fulfillment of a normative biological need, but also as a legal act (*rechtshandeling*) that carries extensive and binding consequences of rights and obligations for the parties involved. Protection of the family institution and lineage is a constitutional mandate established to safeguard the dignity, honor, and legal certainty of citizens.

The Constitution of the Republic of Indonesia explicitly guarantees every person's right to form a family and to continue their lineage through a lawful marriage, as stipulated in Article 28B, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This constitutional norm has subsequently been elaborated into various implementing regulations to ensure that every civil right arising from the marital bond consistently receives optimal legal protection from the state.

In regulatory terms, the state has updated the minimum marriage age requirements and strengthened marriage administration governance through the enactment of Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 concerning Marriage. One of the fundamental provisions that has been retained and reaffirmed is Article 2, which states that a marriage is valid if performed according to the law of each party's religion and belief, and that every marriage must be registered in accordance with the applicable statutory regulations. Through this article, it is evident that Indonesian positive law adopts a dualistic system for the validity of marriage, namely material-theological validity (religious) and formal-administrative validity (state). This requirement is not optional but cumulative, meaning that fulfillment of one aspect without the other results in a juridical defect from the perspective of constitutional law.

Marriage registration carries fundamental urgency. Its function is not merely bureaucratic formality, but rather a preventive legal protection instrument granted by the state to spouses and, most importantly, to the children born of that union. An official marriage certificate issued by the Office of Religious Affairs (KUA) for Muslims, or by the Population and Civil Registration Office (Disdukcapil) for non-Muslims, constitutes authentic evidence that is absolutely necessary for processing various other civil-rights documents. The marriage certificate thus serves as a legal bridge for the child to obtain legitimate civil standing from the moment of birth.

Nevertheless, sociological realities in Indonesia show that the practice of unregistered marriage, commonly known as "siri marriage," remains widespread within society. This phenomenon occurs both in urban areas and remote districts around Sorong City and its surroundings, in Southwest Papua Province. Siri marriages are performed in fulfillment of the pillars and conditions required under Islamic law, yet their registration with the relevant government authorities is, whether deliberately or not, neglected. Various familiar reasons underlie this phenomenon, ranging from limited economic means and the complexity of administrative requirements to a lack of legal understanding and concealed motives of polygamy. In the Sorong region, this sociological challenge is further compounded by clashes with local culture and by the area's archipelagic geography, which directly limits public access to state legal administration service centers.

The most tangible and tragic impact of siri marriage practices is felt directly by the children born from them. In the eyes of state law, a siri marriage is treated as though it never existed (*non-existent*). As a result, a child born of such a relationship was originally categorized as a child born out of wedlock, or a child who is not legitimate under constitutional law, as regulated under the original provision of Article 43, paragraph (1) of Law Number 1 of 1974, prior to the judicial review by the Constitutional Court. This legal uncertainty directly implicated the difficulty of fulfilling the child's civil rights, such as the right to personal identity (a birth certificate), the right of lineage, the right to maintenance, the right of custody (*hadhanah*), education, and the right of inheritance from the biological father. Sociologically, these children often experience social marginalization and moral stigmatization, being regarded as born of an unlawful union within the public administrative order, even though their parentage is clear under religious law.

Although the Constitutional Court issued Decision Number 46/PUU-VIII/2010, which revolutionized the legal status of children born out of wedlock by declaring that a child born outside marriage has a civil relationship with the mother and the mother's family, as well as with the man who is the father, provided this can be proven on the basis of science and technology and/or other legal evidence establishing a blood relationship, its technical implementation in the field still requires a specific judicial mechanism. The Constitutional Court's decision is normatively self-executing, yet in practical bureaucratic terms, the Population and Civil Registration Office cannot simply record a man's name as the biological father on a child's birth certificate without a court determination that has acquired permanent legal force (*inkracht van gewijsde*).

The Sorong Religious Court, as the religious judicial institution overseeing the jurisdiction of Sorong City and its surroundings, holds a key role in adjudicating applications aimed at legalizing the status of children from siri marriages. As a bastion of family-law justice for Muslims in the Southwest Papua region, this judicial institution is required not only to apply the law textually, but also to progressively uncover the values of substantive justice for the welfare of the child.

Based on this background, the present study focuses on analyzing in depth the legal status of children from siri marriages under Law Number 16 of 2019, as well as empirically examining case handling and the obstacles to the fulfillment of children's civil rights at the Sorong Religious Court.

2. RESEARCH METHOD

This study employs empirical legal research (*empirical legal research*), often referred to as socio-legal research. Empirical legal research relies on field data as its primary data source, in order to examine how law operates within social reality and to assess the effectiveness of the application of statutory regulations within judicial institutions (Muhaimin, 2020, p. 80). The research approaches employed include the statute approach (*statute approach*), examining the provisions of Law No. 16 of 2019 concerning Marriage, the Compilation of Islamic Law (KHI), and Constitutional Court Decision No. 46/PUU-VIII/2010. In addition, a case approach (*case*

approach) was used, analyzing the case files of applications for marriage ratification and determination of a child's parentage decided by the panel of judges at the Sorong Religious Court, Class II (Muhaimin, 2020, pp. 56–67).

The data sources for this study are divided into primary and secondary data. Primary data were obtained directly from the field through in-depth interview techniques (*in-depth interview*) with competent research subjects, including judges of the Sorong Religious Court, the Deputy Registrar for Legal Affairs, and legal practitioners/advocates who frequently handle family cases in Sorong. Secondary data were obtained through library research (*library research*), examining legal textbooks, accredited scholarly journals, copies of court decisions, and case-statistics documents. All collected data were then filtered, classified, and analyzed qualitatively to draw conclusions deductively. This qualitative analysis is intended to provide a systematic, factual, and accurate description of the object under study (Muhaimin, 2020, pp. 103–114).

3. RESULTS AND DISCUSSION

1. The Legal Status of Children from Siri Marriages from the Perspective of Law No. 16 of 2019 and Constitutional Court Decision No. 46/PUU-VIII/2010

Prior to Constitutional Court Decision Number 46/PUU-VIII/2010, the position of children born from siri marriages within the national legal order was extremely weak and discriminatory. Article 43, paragraph (1) of Law No. 1 of 1974 explicitly stipulated that a child born outside marriage has a civil relationship only with the mother and the mother's family. The phrase "outside marriage" in that article was interpreted rigidly by the government bureaucracy, including with respect to children born from siri marriages, because their parents' marriage was not registered and was therefore not recognized by the state.

This former juridical provision generated massive social injustice. The child was made to bear the burden of social and administrative sanctions resulting from the parents' act of contracting an unregistered marriage. The child lost biological and civil rights vis-à-vis the father, while the biological father could easily evade responsibility for maintenance, education, and inheritance owing to the absence of valid civil evidentiary documents.

A fundamental change occurred after the Constitutional Court granted the judicial review petition filed by Hj. Aisyah Mochtar (Machica Mochtar). Through Constitutional Court Decision No. 46/PUU-VIII/2010, the Court redirected the course of personal and child law in Indonesia. The Court affirmed that a child's relationship with a man as father is not based solely on the existence of an administratively valid marital bond, but must be grounded in biological truth, namely the existence of a genuine blood relationship between father and child. This legal reasoning of the Constitutional Court is grounded in the universal principle of justice that a child, once born, must not bear the sin or fault arising from the legal acts of the parents.

Following the enactment of Law No. 16 of 2019 as the marriage-reform law, the substance concerning the validity of a child's status still refers to the collaboration of

the normative values of the marriage law and the expanded constitutional interpretation. Theoretically, the legal status of a child from a siri marriage is now divided into two phases:

1. **Pre-Judicial Determination Phase (De Facto Status):** The child still holds the status of a child born outside a registered marriage. In terms of population administration, the father's name cannot be entered on the child's Birth Certificate, or is entered only with a clause describing a certain civil relationship that remains imperfect absent a court determination.
2. **Post-Judicial Determination Phase (De Jure Status):** After obtaining a legal determination from the Religious Court, the child's status is transformed, in legal-formal terms, to be equivalent to that of a legitimate child (a biological child born from a registered marriage). All civil rights attach fully and completely, and are protected by the state's legal enforcement instruments against both parents.

This transformation of legal status from de facto to de jure constitutes the core essence of the protection of children's human rights, realized through the judicial institution.

2. Mechanism for Resolving Children's Legal Status through Marriage Ratification and Determination of Parentage at the Sorong Religious Court

Based on the results of empirical research and interviews with judges at the Sorong Religious Court, Class II, the main legal instrument used by the Muslim community in the Sorong region to restore and obtain recognition of the legal status of a siri child is by filing a voluntary petition case (*voluntarij*). This joinder or accumulation of cases generally takes the form of a petition for Marriage Ratification (Isbat Nikah) filed together with a petition for Penetapan Asal-Usul Anak. Combining these two types of petitions is regarded as an efficient judicial-administration breakthrough, aimed at saving the cost, time, and effort of the litigants.

Marriage ratification is regulated under Article 7, paragraph (3) of the Compilation of Islamic Law (KHI). The Sorong Religious Court accepts applications for marriage ratification from siri husband-and-wife couples primarily for the welfare of the child (a prerequisite for processing the child's identity documents). During the hearing, the panel of judges carefully, strictly, and thoroughly examines whether the pillars and conditions of the siri marriage were fulfilled at the time it was contracted in the past, including: the presence of the groom, the bride, a marriage guardian who is valid under Islamic law, two just male witnesses, an uninterrupted offer and acceptance (*ijab and kabul*), and the absence of any impediment under Islamic law (such as a prohibited-degree relationship or a waiting period).

If it is proven at the hearing that the siri marriage fulfilled all the requirements of Islamic law, the panel of judges of the Sorong Religious Court will issue a determination declaring the validity of the applicants' marriage as contracted on that past date. The legal implication of this determination is extraordinary, because the court's determination applies retrospectively, that is, with effect from the very first day the siri marriage was contracted. This means that the marriage is deemed valid from the outset, not merely from the date the court's determination is issued.

With the parents' marriage declared valid from the outset, children born during the period of

that siri marriage are automatically recognized by law as legitimate biological children. Furthermore, to strengthen the child's legal position and preclude any future legal challenge or administrative rejection, the judge will also grant the petition for Determination of the Child's Parentage, establishing that the child named X is the biological child of the married couple, Petitioner I and Petitioner II.

To illustrate the trend in the handling of family cases, the following presents recapitulation data on Marriage Ratification and Child Parentage Determination cases filed with and decided by the Sorong Religious Court over the past three years (2023–2025):

Table 1. Recapitulation Data on Marriage Ratification and Child Parentage Cases at the Sorong Religious Court

No	Year	Case Type	Cases Filed	Cases Decided	Percentage
1	2023	Marriage Ratification	292	292	100%
		Child Parentage	0	0	0%
2	2024	Marriage Ratification	252	252	100%
		Child Parentage	2	2	100%
3	2025	Marriage Ratification	216	216	100%
		Child Parentage	5	5	100%

Source: Annual Report of the Legal Registrar's Office of the Sorong Religious Court

Based on the recapitulation data on Marriage Ratification and Child Parentage Determination cases at the Sorong Religious Court during 2023–2025, it is evident that Marriage Ratification cases continue to dominate the petitions filed by the public. In 2023, there were 292 Marriage Ratification cases, all of which were decided. In 2024, the number of Marriage Ratification cases decreased to 252, while petitions for Determination of Child Parentage numbered 2 cases, all of which were granted. Subsequently, in 2025, 216 Marriage Ratification cases and 5 Child Parentage Determination cases were recorded, all of which were likewise decided by the Sorong Religious Court.

These data show that Marriage Ratification petitions remain the most frequently filed case type compared with petitions for Determination of Child Parentage. Nevertheless, there was an increase in the number of Child Parentage Determination petitions from 2024 to 2025. This condition indicates growing public awareness of the need to obtain legal certainty regarding the status of children born from siri marriages through the mechanism provided by the Religious Court.

Based on interviews with judges of the Sorong Religious Court, it was found that in examining a petition for Determination of Child Parentage, the panel of judges first ensures the validity of the parents' marriage through the evidence presented in the Marriage Ratification case. If the marriage fulfills the pillars and conditions under Islamic law, the judge may determine that the child born of that marriage is the legitimate child of both parents.

As stated by one interviewee: "We regard the child as a party who must not be

disadvantaged by the administrative errors of the parents. So long as the parents' marriage can be proven valid under Islamic law and has been ratified by the court, the child is entitled to legal certainty regarding their parentage."

This interview result shows that case-examination practice at the Sorong Religious Court prioritizes protection of the best interest of the child over a mere assessment of the administrative aspect of marriage registration.

2.1 Implications of the Court's Determination for Children's Civil Rights

A copy of the legal product in the form of a Determination of the Sorong Religious Court carries executory force and perfect evidentiary force (*volledig bewijskracht*). The direct implications following the issuance of this determination cover the following aspects of the child's civil rights:

- 2.1.1 The Right to Legal Identity and Citizenship:** This determination becomes a legal order for the Marriage Registrar (KUA) to issue a Marriage Certificate for the parents, and becomes the mandatory basis for the Population and Civil Registration Office of Sorong City/Regency to issue the child's Birth Certificate listing the names of both father and mother in full, without any restrictive qualifying phrase ("child born out of wedlock"). The child thereby holds civil standing equal to that of other children in accessing public administrative services.
- 2.1.2 The Right to Lineage (Nasab Rights):** The child lawfully holds a blood relationship and a religious legal relationship with the father. This has implications for the biological father's standing to act as the lineage guardian (Wali Nasab) in his daughter's future marriage. Without this determination, under Islamic law a daughter from a siri marriage would have to use a court-appointed guardian (Wali Hakim), which often gives rise to psychological burden and social sanction within the community.
- 2.1.3 The Right to Maintenance, Custody (Hadhanah), and Education:** The father bears an absolute legal obligation to finance the child's entire subsistence, from food, shelter, and health care to a minimum of nine years of education or higher education. If the father defaults, the mother may pursue a legal claim for maintenance on the basis of the parentage determination already obtained.
- 2.1.4 The Right to Inheritance:** Once a siri child's status has been legalized, the child stands as a first-order heir who inherits from, and is inherited by, the biological father and the father's extended family in full accordance with the shares under Islamic inheritance law (*faraid*) or the applicable civil law. This inheritance relationship removes the child's future economic uncertainty should the father predecease them.

2.2 Obstacles to the Fulfillment of the Civil Rights of Children from Siri Marriages in Sorong

Although the judicial pathway has been widely opened, the fulfillment of the rights of children from siri marriages in Sorong City, Sorong Regency, and the surrounding islands has

not yet been fully optimal. Based on socio-legal analysis in the field, several multidimensional obstacles were identified:

2.2.1

Geographic and Transportation-Accessibility Obstacles

The jurisdiction of the Sorong Religious Court covers a vast archipelagic area within the Southwest Papua region, where some applicants reside on remote islands such as Misool, Raja Ampat, or the outermost coasts of Sorong Regency. To reach the Religious Court office located in central Sorong City, residents must travel by sea using fast boats or traditional vessels, a journey that can take hours or even days. Unpredictable sea-weather conditions frequently become a physical obstacle that discourages residents from pursuing their children's legal cases.

2.2.2

Financial and Economic Obstacles

Litigation before the court requires case fees (an advance deposit) covering registration costs, the cost of summoning witnesses/parties based on distance, stamp duty, and other administrative fees. For lower-middle-class residents, traditional fishermen, or manual laborers in Sorong, such expenditure is regarded as a heavy economic burden. Although the Sorong Religious Court provides free litigation facilities (*prodeo*) for the poor through the Legal Aid Post (*Posbakum*), the state's annual budget quota for this *prodeo* program is very limited and has not been able to cover the entire segment of the community in need.

2.2.3

Sociological and Local Customary-Culture Obstacles

In several local customary communities in Papua, the marital bond is often considered complete and fully valid once customary rites (such as the payment of a bride-price in the form of eastern cloth or other customary items) and the religious ceremony at the village mosque/church have been performed. The state's presence through administrative registration at the KUA or *Disdukcapil* is regarded as a secondary, non-urgent matter. This sociological mindset, which disregards the formal legal aspect of the state, is passed down through generations, so that the enforcement of a child's right to identity is frequently neglected.

2.2.4 Administrative Obstacles and Reactive Legal Behavior

According to the Deputy Registrar for Legal Affairs of the Sorong Religious Court, most members of the public display reactive rather than preventive legal behavior. Parents tend to leave their children without a birth certificate for years after a *siri* marriage. They only rush to file marriage-ratification petitions with the court when confronted with rigid administrative requirements in practice, for example when a child is to be enrolled in elementary school, when applying for national health insurance (*BPJS Kesehatan*), or when a child wishes to register for TNI/Polri recruitment selection, which requires clear family-lineage documentation.

2.2.5 Institutional Obstacles and Cross-Sectoral Synergy

Beyond the geographic and economic factors originating from within the community, an equally crucial obstacle to fulfilling the rights of children from *siri* marriages in Sorong lies in the as-yet-suboptimal institutional coordination among the judicial institution, the population-administration implementing agencies, and the local religious authorities. Normatively, once the Sorong Religious Court issues a copy of the Child Parentage Determination, the bureaucratic

process should proceed automatically and in an integrated manner. In practice, however, applications for administrative execution are often partial and handled independently, requiring the parties to visit each relevant agency one by one, from the Office of Religious Affairs (KUA) for re-registration of the parents' marriage to the Population and Civil Registration Office (Disdukcapil) for issuance of the child's population documents.

This still-fragmented bureaucratic flow lengthens the time required to settle a child's civil rights. Members of the public with limited procedural understanding frequently experience confusion at the operational level owing to differing interpretations of required documents across agencies. This structural challenge therefore calls for a policy breakthrough in the form of an integrated one-stop service system, or the regular conduct of joint circuit hearings involving the Sorong Religious Court, the KUA, and Disdukcapil collectively, so as to shorten the bureaucratic chain and bring access to justice closer to all segments of civil society in the Southwest Papua region.

3 CONCLUSION

The legal status of children born from siri marriages under Law Number 16 of 2019 concerning Marriage, in conjunction with Constitutional Court Decision Number 46/PUU-VIII/2010, has undergone significant strengthening of civil rights. Through the joinder of Marriage Ratification and Child Parentage Determination petitions before the judicial institution, a child who was originally illegitimate under state law can be transformed to acquire full legal standing equal to that of a legitimate child, such that the lineage relationship with the biological father is recognized *de jure*. The Sorong Religious Court plays a highly effective and responsive role in restoring children's civil rights in the Southwest Papua region, as reflected in the consistently high annual rate of granted marriage-ratification petitions, grounded in the legal principle of *the best interest of the child*).

The main obstacles to fulfilling the rights of children from siri marriages in Sorong consist of the difficulty in reaching the archipelagic region, the community's limited financial capacity to pay case-filing deposits, the strong sociocultural inclination to subordinate state registration, and a pattern of reactive legal behavior in which the community only attends to the required documents once an urgent administrative need arises.

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