

# ANALYSIS OF LEGAL CERTAINTY ASPECTS IN INDONESIAN MARRIAGE REGISTRATION RULE

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## Abstract

This paper examines the legal certainty aspects of marriage registration regulations in Indonesia. The controversy over whether or not a marriage is lawful without registration is still ongoing, depending on how Article 2 of Act No. 1/1974 regulating marriage is interpreted. The research method used in writing this paper is a literature study with normative legal research and descriptive analysis. Using the legal certainty aspect approach, the author analyzes various laws and regulations regarding marriage registration objectively. According to the findings of this study, the Marriage Act requires that every marriage be documented or registered by the marriage registration officer. However, Presidential Regulation (PERPRES) Number 96 of 2018 and Minister of Home Affairs Regulation (PERMENDAGRI) Number 9 of 2016 provide an alternative for those whose marriages have not been documented to create various population administrations by attaching a Statement of Absolute Responsibility (SPTJM). These two contradicting requirements have generated legal uncertainty in Indonesian marriage registration.

**Keywords:** Legal certainty, marriage, registration, regulation.

## Introduction

Act No. 1/1974 on marriage is the only act regulating marriage in Indonesia. Fundamental legislation governs crucial aspects of the marriage process, such as requirements, procedures, and married couples' rights and obligations. This law defines *marriage* as a physical and mental relationship between a man and a woman as husband and wife to build a happy and permanent family.<sup>1</sup>

This Act requires every marriage to be registered and documented. The registration process can be conducted by the married couple at either the Office of Religious Affairs (KUA) or the Population and Civil Registration Office (DISDUKCAPIL), as specified in Article 2, paragraphs 1 and 2. These paragraphs state that, *"(1) Marriage is considered legal if it adheres to the laws of each respective religion and belief. (2) Every marriage must be registered in compliance with the existing laws and regulations."*

The issue then becomes whether the legal relationship between paragraphs (1) and (2) of Article 2 of the Marriage Act is an inseparable element or both stand independently. To answer that issue, it is necessary to analyze the legal connection between the two paragraphs thoroughly. This debate is critical in the future struggle to modify marriage legislation. Without it, numerous unresolved societal differences will continue to grow, threatening legal certainty. Firmly establishing the position of registration in the context of the legality of marriage will have an extensive impact, not only in terms of protecting the rights of the married couple, particularly the rights of the wife but also in terms of the rights of children born from the marriage and inheritance law. Due to their extensive legal importance, marriage registration cases frequently garner attention from the general public and scholars.

According to Zudan Arif Fakrulloh, almost 34 million married couples have yet to be registered with the Directorate General of Population and Civil Registration (DIRJEN DUKCAPIL).<sup>2</sup> According to him, this is owing to the ongoing argument over marriage

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<sup>1</sup> Darmawan Darmawan et al., "Relative Competence of the Sharia Court: Talaq Divorce Lawsuit and Protection of Women's Rights," *Samarah* 7, no. 1 (2023).

<sup>2</sup> Subhan Abidi, 34 Juta Pasangan Suami-Istri Belum Tercatat di Dukcapil. Retrieved from <https://www.nu.or.id/nasional/34-juta-pasangan-suami-istri-belum-tercatat-di-dukcapi-HHx31> accessed 8 Nov 2021.

registration, which has yet to be addressed. In addition to this statement, the author speculates another cause is recent population administration regulations that make it far too easy for people to create civil registration documents where a marriage book or marriage certificate is not required. As a result, people undervalue the importance of registering their marriage. In contrast, Ade Manansyah, Misbahul Huda,<sup>3</sup> and Abdul Khalik<sup>4</sup> Believe the latest population administration regulations can increase Indonesians' awareness of the importance of registering their marriages.

The discourse on marriage registration has been studied by many researchers with various approaches, both *maqashid* sharia and *maslahah* approaches, as written by Dwi Arini Zubaidah,<sup>5</sup> Ahmad Maskur and Abdul Kholiq Syafa'at,<sup>6</sup> and Mohamad Kasim, Nur, Sri Nanang M. Kamba, Zakiyah, and Fibriyanti Kari.<sup>7</sup> Then, other articles discuss marriage registration from the perspective of Islamic law and Law No. 1/1974, as written by Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin,<sup>8</sup> including marriage registration, which is associated with good governance, as in the article written by Barzah Latupono.<sup>9</sup>

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<sup>3</sup> Ade Manansyah and Misbahul Huda, "Kewajiban Pencatatan Perkawinan Pasca Lahirnya Peraturan Presiden No. 96 Tahun 2018," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 2, no. 1 (2022).

<sup>4</sup> Khalik, Abdul. *Kedudukan Pencatatan Perkawinan Terkait Lahirnya Perpres No. 96 Tahun 2018*. Banjarmasin: Thesis ilmu Syari'ah, 2019. <https://idr.uin-antasari.ac.id/12637/>

<sup>5</sup> Dwi Arini Zubaidah, "PENCATATAN PERKAWINAN SEBAGAI PERLINDUNGAN HUKUM DALAM PERSPEKTIF MAQĀSHID ASY-SYARĪAH," *Al-Ahwal* 12, no. 1 (2019).

<sup>6</sup> Toha Ma'arif, "PENCATATAN PERNIKAHAN (Analisis Dengan Pendekatan Qiyas, Istihsan, Sadd al-Dzari'ah, Masalahah Mursalah Dan Hukum Positif Di Indonesia)," *ASAS* 11, no. 01 (2019).

<sup>7</sup> Kasim, Mohamad, Nur, Sri Nanang M. Kamba, Zakiyah & Fibriyanti Karim. "Optimization of Marriage Registration as Legal Certainty of Children's Rights in the Perspective of Maqasid Shariah." *KnE Social Sciences* 7, no. 15 (October 4, 2022): 1–9. <https://knepublishing.com/index.php/KnE-Social/article/view/12070>.

<sup>8</sup> Abu Yazid Adnan Quthny, Ahmad Muzakki, and Zainuddin, "Pencatatan Pernikahan Perspektif Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974," *Ay-Syari'ah : Jurnal Hukum Islam* 8, no. 1 (2022).

<sup>9</sup> Barzah Latupono, "Pencatatan Perkawinan Di Indonesia Dikaitkan Dengan Good Governance," *SAJI* 24, no. 2 (2019).

No article in the author's research analyzes in detail and precisely the regulation of Marriage Registration assessed with a legal certainty approach. Therefore, in this paper, the author will investigate the discussion in depth and explicitly according to the topic. The aim is to assess the extent to which the legal certainty of marriage registration regulations is applied in Indonesia, ensuring that the expected administrative order operates smoothly.

The research method used in this paper is a literature review combined with descriptive normative legal research. Normative legal research explores legal issues from the normative side (analyzing textual legal norms), with secondary data or literature studies employed as research data sources.<sup>10</sup> Using the legal certainty approach, the author objectively explores the various laws and regulations concerning marriage registration.

### **The Historical Development of Indonesia's Draft Marriage Registration Act**

The regulation of marriage registration in Indonesia was regulated at the beginning of the independence period by Act no. 22/1946 on the Recording of Nikah, Talak, and Rujuk and Act no. 32/1954 on Stipulating the Applicability of Act no. 22/1946 on Recording of Nikah, Talak, and Rujuk in All Regions of Java and Madura.<sup>11</sup> The act was enacted as a form of government attention to the necessity of marriage registration to reduce the negative impact of an unregistered marriage.<sup>12</sup>

The government drafted a marriage act in 1973, tabled in a plenary session of the Parliament (DPR-RI), and eventually adopted and legislated on January 2, 1974. The enactment of Marriage Act No. 1/1974 was motivated by two fundamental ideas: legal unification and legal reform.<sup>13</sup> Legal unification aims to create a single national legal regulation that applies to all citizens equally. Meanwhile, legal reform seeks to react to emancipation ideals and contemporary demands and

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<sup>10</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020).

<sup>11</sup> Asriadi Zainuddin, Abdul Jamil, and Dedi Sumanto, "Marriage Registration Law Reformulation in Indonesia (Studi of Law and Regulations on Marriage)," *SASI* 28, no. 3 (2022).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

to equalize the position of husband and wife in marriage regarding rights and obligations.<sup>14</sup>

In general, the provisions in the Draft Marriage Act on marriage registration are identical to those in Article 2 of the current Marriage Act. However, there was a lengthy debate in parliament before this clause was passed. The reason for this was that the Draft Marriage Act required marriage registration. The following phrasing was proposed in the Draft Marriage Act:<sup>15</sup>

- 1) A marriage is valid if it is performed in the presence of a marriage registration officer, recorded in the register of marriage records by that officer, and carried out following the provisions of this act or the conditions of the parties' marriage law insofar as they do not conflict with this act.
- 2) The marriage registration referred to in paragraph (1) shall be carried out by a state official by separate rules.

The Draft Marriage Act states that a marriage is considered valid if it meets certain conditions: (1) The marriage must be performed in the presence of a marriage registration officer; (2) The marriage must be recorded by the marriage registration officer in the marriage record register; and (3) The marriage must comply with the rule of the marriage act or the relevant provisions for the individuals involved as long as it does not violate the provisions of the marriage act.

The Draft Marriage Act encountered significant opposition due to its perceived inconsistency with the precepts of Islamic Sharia. The Partai Persatuan Pembangunan (PPP), representing the interests of Muslims in the House of Representatives (DPR RI), constantly opposed the wording of Article 2 in the proposed legislation. After multiple attempts, a consensus was ultimately reached to articulate the criteria of Article 2, paragraph (1) of the proposed legislation: *"Marriage is valid if it is conducted according to the law of the religion and belief."* Article 2, paragraph (2) states that *"every marriage shall be recorded following the prevailing laws and regulations."* The wording mentioned above was adopted as the official version and is now included in Article 2, paragraphs (1) and (2) of Act no. 1/1974. The concept was derived through a consensus-building process that considered diverse aspirations. Once implemented, the

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

comprehension of these two sections of Article 2 is relatively straightforward due to the clarity of the language used.<sup>16</sup>

The issue arises when the question of whether paragraphs (1) and (2) of Article 2 have independent legal relationships or are inseparable aspects is raised. Significant disparities in opinion come from these two alternative interpretations. The initial opinion concludes that a marriage is valid if it follows religious laws and meets the spiritual prerequisites, even if it was not registered. According to this viewpoint, marriages outside of the statutory provisions, such as *nikah siri*, *nikah di bawah tangan*, or marriages with other names, are valid, even though they are not registered following the applicable legal provisions.

According to the second opinion, paragraphs (1) and (2) are two inseparable elements. Marriage registration is a necessary condition for the validity of a marriage. Marriages not followed by official registration, such as *nikah siri*, *nikah di bawah tangan*, or marriages with other names, are considered invalid. These two points of view have been the topic of unresolved discussions among jurists.

### **Marriage Registration According to the Constitutional Court (MK), Parliament (DPR-RI) and the Government**

About the discussion of marriage registration, Hj. Aisyah Mochtar alias Machica binti H. Mochtar Ibrahim and Muhammad Iqbal Ramadhan bin Moerdiono filed a judicial review in the Constitutional Court (MK) of Article 2 paragraph (2) of the Marriage Act, as well as Article 43 paragraph 1.<sup>17</sup> This judicial review is based on the fact that the petitioners married following their religious views and the fundamental principles of marriage in Islam. However, because the marriage was not registered with an authorized institution, the marriage, which was initially regarded acceptable according to these religious principles, was stripped of legitimacy and became invalid. As a result, the petitioners claim that Article 2(2) of the Marriage Act violates Articles 28B (1) and (2), as well as Article 28D (1) of the Republic of Indonesia's 1945 Constitution.

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<sup>16</sup> R M Sirait, "Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia Marriage Registration In Indonesia's Marriage Law Regulations," *Jurnal Juristic* 1, no. 1 (2021).

<sup>17</sup> Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VII/2010

In this judicial review examination, the Constitutional Court partially approved the petition in Decision Number 46/PUU-VIII/2010. The Court approved a request for a judicial review of Article 43 (1) of the Marriage Act while rejecting the request for a judicial review of Article 2 paragraph (2).<sup>18</sup> The Constitutional Court concluded that the Marriage Act explains that marriage registration is just an administrative responsibility governed by law. The registration does not determine the validity of a marriage. Only the conditions specified by the religious beliefs of each party to the marriage determine whether or not a marriage is valid. Thus, the Constitutional Court ensures that the validity of a marriage must comply with the religious norms of those who will marry and that registration is just an administrative feature that governs the procedures for registering the marriage.

From the state's perspective, marriage registration is an administrative requirement performed in the context of the state's responsibility to offer guarantees for protecting, enforcing, and realizing human rights. Registering a marriage is essential for establishing a legal structure within society rather than being intended to restrict individuals from entering into marriage. Even if marriage registration is considered a restriction, it is not contrary to the Constitution's provisions. This is because such restrictions are governed by law. The purpose of that is to ensure recognition and respect for the rights and freedoms of others, as well as to meet just demands following moral considerations, religious values, security, and public order in a democratic society, as stated in Article 28 paragraph (2) of the 1945 Constitution. Thus, marriage registration is an administrative requirement that does not violate the Constitution.

Furthermore, the state's registration of marriages attempts to ensure that the individuals participating have legitimate evidence that they have entered a lawful marriage. This legitimate evidence will ensure all legal acts conducted after the marriage, ensuring that the state's protection and services are guaranteed and well executed. In the event of a dispute or problem, the parties who register their marriage do not require a time-consuming, expensive, energy-consuming, and mentally

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<sup>18</sup> Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VII/2010

taxing evidentiary process. For example, if there is no marriage certificate, the evidentiary process in the case of an application for determination of the origin of the child under the requirements of Article 55 of Act No. 1/1974 will be far more problematic and wasteful. This also applies to determining heirs, inheritance disputes, joint property, and other civil cases.

This perspective is consistent with the government's explanation in the judicial review case, which emphasized that marriage registration is intended to protect citizens in establishing families, continuing offspring, and providing legal certainty over the rights of husbands, wives, and their children, rather than to limit citizens' human rights. The wording "*recorded according to the applicable laws and regulations*" in Article 2 paragraph (2) of the Marriage Act suggests that marriage registration must align with the requirements and processes outlined in the laws and regulations. The goal of this, as mentioned above, is for the state to fully guarantee and protect the rights of the husband, wife, and children. The state can ensure that marriages are lawfully recognized and the rights associated with them are appropriately executed in line with relevant law by following current processes.<sup>19</sup>

According to the explanation, all marriages that do not conform with the Marriage Act's provisions, including polygamous marriages that do not get judicial permission, will not be documented at the Office of Religious Affairs or the Civil Registry Office.<sup>20</sup> As a result, the parties to the marriage do not have a formal marital status, which means that the husband, wife, and children do not have inheritance rights, nor does the wife have joint property rights.<sup>21</sup> The Marriage Act's regulations apply to all Indonesian citizens and are not discriminatory against certain people or groups. The goal is to respect and protect the rights of the community, the public interest, and state order. Article 28 J paragraph (2) of the 1945 Constitution states that "*in exercising their rights and freedoms, every person shall be subject to restrictions imposed by law to ensure recognition and respect for the rights and freedoms of others and meeting just demands*

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<sup>19</sup> Rosyadi, Imron. *Rekonstruksi Epistemologi Hukum Keluarga Islam*, (Jakarta: Kencana, 2022), 56-57

<sup>20</sup> Fathimah Shalehah, "DISPUTES IN THE SECOND MARRIAGE WITHOUT THE PERMISSION WIFEFIRST," *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum* 1, no. 1 (2022).

<sup>21</sup> Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah* 54, no. 2 (2016).



*following moral considerations, religious values, security, and public order in a democratic society."*

The government's position in the judicial review was consistent with the Parliament's (DPR-RI) standing. According to the Parliament, marriage is a physical and mental relationship between a man and a woman as husband and wife to build a happy and sustainable family or household based on God Almighty's ideal. Marriage is deemed valid if performed according to their religious views.<sup>22</sup> However, because marriage has a broader impact, including consequences for civil rights and obligations, marriage registration is crucial to assure the protection of rights and fulfillment of civil obligations arising from a legitimate marriage. In other words, marriage registration does not seek to restrict persons' human rights but rather to protect rights and fulfill civil obligations. This is consistent with the legal principles that regulate preserving individual rights and liberties and the principle of justice in a democratic society.

*Marriage registration* is a formal necessity that promotes legal certainty and protects the parties involved in marriage, particularly in population administration connected to the husband-and-wife rights and obligations.<sup>23</sup> Thus, marriage registration is a formal procedure needed to confirm the legality of a legal event that can have legal implications related to the rights and responsibilities of husband and wife, such as the right to receive maintenance and inheritance rights.

### **Marriage Registration Rule in Terms of Legal Certainty**

The legal foundation for marriage registration is derived from the stipulations outlined in Article 2 of the Marriage Act, as previously described. Following the passage and enactment of the Marriage Act, the Indonesian government subsequently released Government Regulation (PP) No. 9/1975, which concerns implementing Act Number 1 of 1974 about Marriage. The Government Regulation on marriage registration explicitly addresses the responsibility for registration. According to CHAPTER II Article 2, paragraph 2, marriage registration for those who marry according to religions and

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<sup>22</sup> Rosyadi, Imron. *Rekonstruksi Epistemologi Hukum Keluarga Islam*, (Jakarta: Kencana, 2022), 57

<sup>23</sup> Cholidatul Rizky Amalia et al., "LEGALITY ISSUANCE OF FAMILY CARD IN SIRI MARRIAGE," *JCH (Jurnal Cendekia Hukum)* 7, no. 2 (2022).

beliefs other than Islam must be handled by a marriage registration officer at the civil registry office, as specified in numerous marriage registration laws.<sup>24</sup>

Marriage registration is inextricably linked to population management. To complete the regulation of marriage registration, the government released Act No. 23/2006 concerning Population Administration (Population Administration Act), later amended by Act No. 24/2013. Article 34 expressly addresses marriage registration and states:

1. In conformity with the Act and rules, a legitimate marriage must be reported to the Governing Body sixty days after the marriage date.
2. The Civil Registration Officer shall register the report referred to in paragraph (1) in the Marriage Certificate Register and issue a Marriage Certificate Excerpt based on it.
3. The husband and wife will be provided the Marriage Certificate Excerpt mentioned in paragraph (2).
4. The Sub-district Religious Affairs Office (KUA) oversees the reporting referred to in paragraph (1) for Muslim citizens.
5. The KUA Sub-district must transmit to the Implementing Agency data on the outcomes of the event recording referred to in paragraph (4) and Article 8 paragraph (2) by ten days after the marriage registration is done.
6. The outcome of the data recording referred to in paragraph (5) does not necessitate issuing a Civil Registration Certificate Excerpt.
7. The report referred to in paragraph (1) is carried out at the sub-district level by the Implementing Agency's Regional Technical Implementation Unit (UPTD).

Article 2, paragraph 2 of the Marriage Act, is administratively relevant to Article 34, paragraph 1 of the Population Administration Act. In reality, the Population Administration Act exclusively governs marriage registration for non-Muslim people as stated: *"The Resident must notify legal marriages to the Implementing Agency in the place where the marriage is held no later than sixty days after the date of marriage, according to the Laws and*

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<sup>24</sup> Endri Nugraha Laksana, "Kewajiban Pencatatan Nikah Dalam Tinjauan Qiyas Dan Kepastian Hukum," *Al-'Adalah: Jurnal Syariah dan Hukum Islam* 7, no. 2 (2022).

*Regulations.*" Meanwhile, the rules for Muslim marriage registration are governed by the Minister of Religious Affairs Regulation (PERMENAG) No. 20/2019 about Marriage Registration.<sup>25</sup> According to Article 17, paragraph 1 of the PERMENAG, marriage contracts performed by Muslims must be signed before the Head of the District KUA. For Muslims, the report on intent to marry is completed before signing the marriage contract by meeting all of the requirements in Article 4, paragraphs 1 and 2.

As previously stated, marriage registration is an administrative requirement to preserve citizens' legal rights. As a result, marriage registration must be implemented. The state cannot provide adequate legal protection to those not registering a marriage. According to the most recent rules, those whose marriages are not registered can still have letters for administrative purposes for themselves and their children, such as family cards and birth certificates, with the letters "Unregistered Marriage" or "Unregistered Marriage." On the one hand, the most recent regulation makes it easier for people to obtain government services. Conversely, this convenience may be interpreted as legalizing unregistered marriages (*nikah sirri*) or *nikah di bawah tangan*. Unregistered marriages impede people's access to more crucial legal protection guarantees, such as maintenance, inheritance, joint property, child status, and others. The ease of recognizing unregistered marriages is addressed in Regulation of the Minister of Home Affairs (PERMENDAGRI) No. 9/2016, specifically in Article 3, paragraph 1. This paragraph states that one of the requirements for registering a birth is a marriage certificate or a citation of a marriage certificate. Furthermore, article 4, paragraph 2 explains that if the requirement of a marriage certificate or excerpt of a marriage certificate, as mentioned in Article 3, paragraph 1, letter b, is not met, the applicant must provide a Statement of Truth as a married couple through SPTJM or Statement of Absolute Responsibility.

The most recent regulation is then strengthened by Presidential Regulation (PERPRES) No. 96/2018 concerning Requirements and Procedures for Population Registration and Civil Registration, which regulates that residents can make SPTJM in two circumstances, one of

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<sup>25</sup> Muhammad Latif Fauzi, "Registering Muslim Marriages: Penghulu, Modin, and the Struggles for Influence," *Al-Jami'ah* 57, no. 2 (2019).

which is held in article 34-point b, which states that "*does not have a marriage book/ marriage certificate or other valid evidence but the relationship status in the Family Card shows that they are husband and wife.*" Then, in Article 10 paragraph 2 of PERMENDAGRI No. 108/2019 concerning Regulations on the Implementation of Presidential Regulation No. 96/2018, it states: "*The issuance of new family cards is necessary when a new family is formed, as stated in paragraph (1) letter a. This can be done by meeting the requirements outlined in the Presidential regulation on population registration and Civil Registration, as well as providing a Statement of absolute responsibility (STMJ) for unrecorded marriage/ divorce.*"

In substance, Article 2 Paragraph 2 of the Marriage Act demands that every marriage be registered; nevertheless, the act does not explicitly oblige or need people to register their marriage because a lawful marriage is only based on Article 2 Paragraph 1. As a result, the legislation concerning the duty to register a marriage needs to be clarified and creates uncertainty. The passage of PERPRES and PERMENDAGRI, which make it simple for those who do not register their marriages to get civil administration through SPTJM, contributes to and exacerbates this confusion.<sup>26</sup> Legal certainty is an element of society that must be guaranteed in a state. People will need legal certainty to understand what to do. Legal uncertainty will create ambiguity and lead to violence (chaos) due to the current legal system's uncertainty.<sup>27</sup>

According to Radbruch, there are three fundamental values in law: justice (*gerechtigkeit*), expediency (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*)<sup>28</sup> Radbruch's theory does not contradict justice, certainty, and expediency. Certainty and practicality must be integrated within the justice framework; they are inseparable. Legal certainty must

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<sup>26</sup> Agus Manurung and Lusia Sulastri, "Polemik Pencatatan Anak Dari Nikah Siri," *Jurnal Hukum Sasana* 7, no. 2 (2021).

<sup>27</sup> Mario Julyano and Aditya Yuli Sulistyawan, "PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM," *CREPIDO* 1, no. 1 (2019).

<sup>28</sup> James Alan Laub, "Assessing the Servant Organization; Development of the Organizational Leadership Assessment (OLA) Model. Dissertation Abstracts International," *Procedia - Social and Behavioral Sciences* 1, no. 2 (1999).

take into consideration aspects of justice as well as legality. Likewise, practicality must be balanced against justice and human values.<sup>29</sup>

As the most significant concept in the rule of law, the principle of legal certainty accommodates various derived principles that are part of the principle of legal certainty itself. These principles include:<sup>30</sup>

- a. The principle of legality, constitutionality, and rule of law requires that all activities be based on clear laws, constitutions, and applicable law enforcement.
- b. The principle of the law requires that various provisions governing the conduct of the government and its officials in carrying out government tasks be based on the law.
- c. The principle of non-retroactive legislation states that laws are not applied backward or retroactively. Therefore, rules do not apply to events before the law was created.
- d. The principle of non-*liquet* asserts that in law, there should be no scenario in which the law does not govern or clarify an issue.
- e. The principle of *similia similibus* (non-discrimination in law) highlights that the law should not discriminate unfairly against specific individuals or groups.
- f. The principle of Human Rights Protection emphasizes that legal principles should be based on protecting individuals' fundamental rights and freedoms following the rule of law and justice.

According to the description above, legal certainty is a condition in which the law has been made unmistakable because it has certainty, allowing the community to understand the law quickly. Due to this clarity, the community can take measures that are their obligations or avoid forbidden behaviors. As a result, people will avoid arbitrariness and obtain the expected situation.<sup>31</sup> However, legal certainty can sometimes conflict with justice because only some law provisions can

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<sup>29</sup> Mengesti, Yovita A & Bernar L., *Tanya Moralitas Hukum* (Yogyakarta: Genta Publishing, 2014), p. 74.

<sup>30</sup> Zulfahmi Nur, "Rekonstruksi Negara Hukum Dalam Paradigma Hukum Islam Dan Ketatanegaraan Di Indonesia," *Misykat al-Anwar Jurnal Kajian Islam dan Masyarakat* 6, no. 1 (2023).

<sup>31</sup> Julyano and Sulistyawan, "PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM."

be implemented in every situation. In this case, Mafhud MD remarked that legal certainty should be established to ensure fairness.<sup>32</sup>

Furthermore, justice may be confronted with expediency or legal clarity in other instances. In dealing with situations like this, Gustav Radbruch provides a solution by establishing specific priorities and building a framework for making decisions in a case. According to him, justice comes first, then expediency, and finally legal certainty. This concept of priority is considered to be more thoughtful and careful than other extreme schools, such as the Ethical Law School, which focuses solely on justice; the Utilitarian School, which focuses exclusively on legal benefits or expediency; and the Legalistic Dogmatic School (legal positivism), which focuses solely on legal certainty.<sup>33</sup>

In the context of legal certainty, Satjipto Rahardjo explained the concept of "legal certainty" in Indonesia. He argued that what is currently taking place is just "regulatory certainty." Such conditions are less definite than true legal certainty. According to him, regulatory certainty is the product of human law enforcement. Satjipto Rahardjo underlines the distinction between the two concepts (legal certainty and regulatory certainty). Equating two distinct concepts can result in incorrect interpretations. Because regulatory certainty refers to legislation, it only shows the surface element. On the other hand, no law is perfect, and no law is without flaws when it is issued and adopted. Conversely, laws can be used to solve societal problems but can also be a source of contention.<sup>34</sup>

In Satjipto Rahardjo's opinion, marriage registration, which is still a cause of contention in society, is a source of trouble. Although the necessity for marriage registration is only administrative, it considerably impacts other administrative laws, particularly those relating to legal events and actions, as discussed in the previous discussion. In this context, the marriage certificate is one of the legal types of evidence with the significant goals of confirming one's rights, proving that another person does not have the same rights as one, and stating that a

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.; Mohammad Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch," *Legalitas* 4, no. 1 (2013).

<sup>34</sup> Buana, Mirza Satria. *Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstitusi*. Yogyakarta: Thesis Magister Ilmu Hukum Universitas Islam Indonesia, 2010

particular circumstance or event has occurred. A marriage certificate, thus, plays an important legal role, particularly in protecting individual rights and demonstrating the reality of legal affairs, particularly in the resolution of court proceedings where written evidence is frequently employed.<sup>35</sup>

Satjipto Rahardjo underlined the importance of establishing certainty about the rules before creating legal certainty. This is because regulations must always be consistent.<sup>36</sup> However, the spirit of creating administrative order in marriage registration appears to have disappeared with the introduction of recent population administration rules. The existence of an alternative SPTJM for people who conduct unregistered marriages (*nikah sirri* or *nikah di bawah tangan*) can reduce public awareness of the importance of marriage registration to a level where the public no longer requires a marriage certificate because they no longer face administrative problems. Furthermore, regarding divorce status, the people can make an SPTJM if such occurs. This circumstance suggests that the administrative order expected in marriage registration needs to be revised, undermining the legal certainty of marriage registration's requirement as provided in the Population Administration Act.

Based on those above, the author strongly disagrees with the conclusion reached by Ade Manansyah, Misbahul Huda,<sup>37</sup> and Abdul Khalik<sup>38</sup> in their study, which states that PERPRES No. 96/2016 and the most recent population administration regulations can raise the awareness of Indonesians to register their marriages. According to the author, the most current population administration regulations may lower public awareness of the importance of registering marriages. The recent rule makes it easier for people to care for other population

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<sup>35</sup> Ma'arif, "PENCATATAN PERNIKAHAN (Analisis Dengan Pendekatan Qiyas, Istihsan, Sadd al-Dzari'ah, Maslahah Mursalah Dan Hukum Positif Di Indonesia)."

<sup>36</sup> Ratnaningsih and Sudjatmiko, "Menakar Nilai Keadilan, Kemanfaatan, Dan Kepastian Hukum Pencegahan Perkawinan Anak," *Jurnal Of Economic and Business Law Review* 1, no. 1 (2021).

<sup>37</sup> Manansyah and Huda, "Kewajiban Pencatatan Perkawinan Pasca Lahirnya Peraturan Presiden No. 96 Tahun 2018."

<sup>38</sup> Khalik, Abdul. *Kedudukan Pencatatan Perkawinan Terkait Labirnya Perpres No. 96 Tahun 2018*. Banjarmasin: Thesis ilmu Syari'ah, 2019. <https://idr.uin-antasari.ac.id/12637/>

documents, indirectly producing uncertainty and backfiring on the Marriage Act.

Article 2 in the Marriage Act introduces a notable degree of legal uncertainty within the legal certainty framework. First, Article 2, paragraph 1 provides legal certainty that a valid marriage is performed based on their respective religions and beliefs without registration, which is still a point of discussion among legal experts. Second, Article 2, paragraph 2 states that every marriage must be registered for state administrative order, but the state recognizes marriages that are not registered through other regulations. As a result, the registration rules need to be more consistent to protect people. Unregistered marriages will result in the absence of a marriage certificate. Consequently, the state will face challenges in guaranteeing full protection, including protecting their children's legal status, joint property, inheritance rights, and other related matters.

## **Conclusion**

The issue of marriage registration has remained unsettled since the enactment of the Marriage Act. The discussion is followed by the latest population administration rules, which facilitate the issuance of population administration documents to those who have yet to register their marriages without requiring a marriage certificate. On one hand, the State aims to establish control over the population by implementing marriage registration. Conversely, the State is obligated to provide protection and acknowledgment of the individual and legal status of every occurrence of birth. Individuals who do not officially register their marriage can obtain this status through the SPTJM. Nevertheless, it is necessary to provide further clarification regarding the convenience of the Marriage Act's mandate for marriage registration. Consequently, the government should adopt a firm and consistent approach in implementing the Marriage Act, guaranteeing that marriages are officially registered without providing any choices that create uncertainty.



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