



MASLAHAH ON SIRI MARRIAGE FAMILY CARDS IN PERATURAN MENTERI DALAM NEGERI NUMBER 108 OF 2019

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Received 05-01-2023 | Received in revised form 02-02-2023 | Accepted 09-02-2023

Abstract

Peraturan Menteri Dalam Negeri (Permendagri) No. 108/2019 Article 10 regulates the issuance of Family Cards for siri marriage couples. This policy provides benefits in the form of a statement of relationship status in the form of family ties consisting of the head of the family, wife and children. However, the issuance of this Family Card has a *mudharat*, namely that it will increase the number of siri marriages because it weakens the provisions of marriage registration regulated in Article 2 paragraph 2 of Law Number 1 Year 1974 concerning Marriage. This research examines the Family Card for siri marriage from a *Maslahah* perspective. Does this siri marriage family card bring *maslahah* or even bring *mudharat*. This research aims to provide information and knowledge about *Maslahah* on siri marriage family cards. The method used in this research is a normative method with a literature study that refers to the literature as the basis for analyzing the topic that is the object of research. To obtain the data needed in the research, the author searches for legal materials, conducted by reading, viewing, listening and searching through internet media. The findings in this study indicate that the Family Card of nikah siri contains *maslahah* at the *dharuriyat* level considering so many benefits, basically all of which are in the context of maintaining the objectives of Islamic law, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining offspring, and maintaining property.

Abstrak

Peraturan Menteri Dalam Negeri (Permendagri) Nomor 108 Tahun 2019 Pasal 10 mengatur penerbitan Kartu Keluarga bagi pasangan nikah siri. Kebijakan ini memberikan kemaslahatan berupa adanya keterangan status hubungan dalam bentuk ikatan keluarga yang terdiri dari kepala keluarga, istri dan anak. Akan tetapi, penerbitan Kartu Keluarga ini memiliki *mudharat* yakni akan meningkatkan angka pernikahan siri sebab memperlemah ketentuan pencatatan perkawinan yang diatur dalam Pasal 2 ayat 2 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Penelitian ini mengkaji Kartu Keluarga nikah siri ditinjau dari perspektif *Maslahah*. Apakah Kartu Keluarga nikah siri ini mendatangkan masalah atau malah mendatangkan *mudharat*. Penelitian ini bertujuan untuk

memberikan informasi dan pengetahuan tentang *Maslahah* pada Kartu Keluarga nikah siri. Metode yang digunakan dalam penelitian ini adalah metode normatif dengan studi pustaka yang mengacu kepada literature-literatur sebagai basis analisis terhadap topik yang dijadikan obyek penelitian. Untuk memperoleh data yang diperlukan dalam penelitian maka penulis melakukan penelusuran bahan-bahan hukum, dilakukan dengan membaca, melihat, mendengarkan dan menelusuri melalui media internet. Temuan dalam penelitian ini menunjukkan bahwa Kartu Keluarga nikah siri mengandung *maslahah* pada tingkatan *dharuriyat* mengingat begitu banyak manfaat yang pada dasarnya kesemuanya itu adalah dalam rangka memelihara tujuan hukum Islam yakni memelihara agama, memelihara jiwa, memelihara akal, memelihara keturunan, dan memelihara harta.

Kata kunci: *Maslahah*, Kartu Keluarga nikah siri, Permendagri Nomor 10 Tahun 2019.

1. INTRODUCTION

Marriage is a Sunnah of the Prophet Muhammad SAW that should be done because marriage is a human right granted by Allah SWT to his servants to get good offspring. In this way, relationships that were originally haram become halal.¹

In realizing marriage, basically is to carry out religious teachings, marriage is considered valid if the pillars and conditions have been fulfilled which have been determined by the Qur'an and the Sunnah of the Prophet. In addition to the pillars and conditions of marriage regulated by religion, the state also regulates in such a way that marriage is contained in its laws, taking into account that our country is a state of law. In its regulation, the state regulates the orderliness of marriage through marriage registration in Article 2 paragraph 2 of Law Number 1 of 1974 concerning Marriage.

The issuance of the Minister of Home Affairs Regulation No. 108/2019 on the Implementation Regulation of Presidential Regulation No. 96/2018 on Requirements and Procedures for Population Registration and Civil Registration. In the Permendagri, there is an article that regulates the issuance of Family Cards. Article 10 paragraph (2) reads Issuance of a New Family Card due to forming a new family as referred to in paragraph (1) letter a, by fulfilling the requirements in accordance with the provisions of the Presidential Regulation regarding the requirements and procedures for Population Registration and Civil Registration and equipped with other requirements in the form of a statement of absolute responsibility for unrecorded marriage/divorce.

Based on this article, now people who have married siri and children from siri marriages can issue a Family Card only by filling out a statement of absolute responsibility for unrecorded marriages as a substitute for a marriage book or marriage certificate. The marital status on the family card becomes unregistered marriage. The issuance of this policy is based on the increasing statistics of siri marriages and the rampant news about

¹ Sayyid Sabiq, *Fiqh Sunnah Volume 3*. Translator, Abu Aulia and Abu Syauqina (Jakarta: Republika Publishers, 2017), p. 209. 209.

siri marriages conducted by public figures so that people imitate their actions and then conduct siri marriages.²

One definition of siri marriage is a religiously valid marriage, namely a marriage in which the conditions and pillars of marriage are fulfilled, but the marriage is not registered with a marriage registration institution, namely the Office of Religious Affairs (KUA) for Muslims and the Directorate General of Population and Civil Registration (Dukcapil) for non-Muslims.³

This policy is affirmative. Which means a temporary policy until *isbat nikah* or marriage legalization is carried out. As well as providing space for married couples who married siri to have a Family Card with the condition that there is a special note listed on the Family Card that the marriage has not been recorded.

Article 10 paragraph (2) of Permendagri Number 108/2019 is considered to be contrary to the provisions on marriage registration contained in Article 2 paragraph 2 of Law Number 1 Year 1974 concerning Marriage. Which reads, (2) Every marriage is recorded according to the applicable laws and regulations. It is considered contradictory because this policy makes it easier for siri marriage communities to be able to issue Family Cards without having to have a marriage book or marriage certificate so that they have the same rights as people who have been officially married. Although considered contradictory, this policy aims to tackle siri marriage in order to create a common good.

The issuance of Family Cards for people in siri marriages provides benefits in the form of information on the status of relationships in the form of family ties consisting of the head of the family, wife and children. However, the issuance of this Family Card has the *mudharat* that it will increase the number of siri marriages because it weakens the provisions of marriage registration regulated in Article 2 paragraph 2 of Law Number 1 of 1974 concerning Marriage.

Based on this background, this article will discuss how the Family Card of siri marriage is viewed from the perspective of *Maslahah*. Does this siri marriage family card bring *maslahah* or even bring *mudharat*.

2. MASLAHAH

2.1. Definition of *Maslahah*

Maslahah mursalah according to the term consists of two words, namely *maslahah* and *mursalah*. The word *maslahah* according to the language means "benefit", and *mursalah* means "loose". So, *maslahah mursalah* according to terms, as stated by Abdul Wahhab Khallaf, means "something that is considered *maslahat* but there is no firmness

² Edi Gunawan and Budi Rahmat Hakim, "Implementation of *Itsbat Nikah* After the Enactment of Law No. 1 of 1974 Concerning Marriage in Religious Courts," *Syariah: Journal of Law and Thought* 18, no. 2 (2018): 258-83.

³ Edi Gunawan and Budi Rahmat Hakim, "The Implementation of *Itsbat Nikah* After the Enactment of Law No. 1 of 1974 Concerning Marriage in the Religious Courts," pp. 260.

of the law to realize it and there is no specific evidence that supports or rejects it," so it is called *maslahah mursalah* (*maslahah* that is separated from the specific evidence).⁴

2.2. Levels of *Maslahah*

In the use of *maslahah* there are three levels, namely:⁵

1. *Maslahah Dharuriyah*

Everything that must exist for the establishment of human life, *diniyah* and *duniawiyah*, in the sense that if this *maslahah* is not realized then human life in the world is damaged. This *dharuriyah maslahah* includes, maintaining religion, maintaining the soul, maintaining offspring, maintaining property and maintaining the mind.

2. *Maslahah Hajiyah*

All forms of actions and actions that are not bound by other bases (which exist in *maslahah dharuriyah*) that are needed by the community are also realized, but can avoid difficulties. To avoid hardship and destitution in their lives. Such as marrying off children.

3. *Maslahah Tahsiniyah*

The use of whatever is proper and appropriate is justified by good custom, and all of this is covered by the *mahasinul akhlaq*. In order to maintain good manners and etiquette in life. Such as marrying off a woman to a man of equal status.

2.3. Conditions for Judgment by *al-Maslahah al-Mursalah*

Scholars who accept *al-maslahah al-mursalah* as an argument to establish the law set a number of conditions.⁶

1. That the benefit is essential is not based on mere presumption. Strictly speaking, the *maslahat* can be accepted logically. This is because the purpose of enacting a law in Islam is to bring benefit or eliminate harm. This will not be realized if the determination of the law is based on benefits based on presumption (*wahmiah*).

2. The benefit is in line with *maqasid al-Shari'* and does not contradict the text or *qath'i* arguments. In other words, the benefit is in line with the benefit that has been determined by *Shari'*. On this basis, the opinion that equalizes the rights of sons and daughters in inheritance is not accepted, even if it is based on *maslahat*. This is because such a benefit contradicts the *qath'i* texts and scholarly consensus.

3. The benefit is general for many people, not the benefit of a particular individual or a number of individuals. This is because Islamic law applies to all people. Therefore, ruling on the basis of *maslahah* for a particular group, such as the ruler, the leader and his family, is not valid and is not permissible because it contradicts the principles of Islam that apply to all people.

⁴ Satria Effendi, *USHUL FIQH* (Jakarta: Kencana, 2015).

⁵ Amrullah Hayatudin, *Ushul Fiqh The Middle Way of Understanding Islamic Law* (Jakarta: AMZAH, 2019).

⁶ Firdaus, *USHUL Fiqh Methods of Studying and Understanding Islamic Law Comprehensively* (Depok: Rajawali Pers, 2017).

3. METHODOLOGY

This research is normative legal research, namely research conducted by examining library materials (*library research*). Examining Ministerial Regulations as Legislation, namely Permendagri Number 108 of 2019 Article 10 concerning the Issuance of Family Cards.⁷

3.1. Research Design

The research approach that the author uses in this research is a statutory approach, namely by examining all laws and regulations relating to the legal issues being discussed (researched), namely examining all laws and regulations relating to siri marriage family cards reviewed from a *maslahah* perspective.⁸

3.2. Data Source

The data source in this research uses secondary data. Which in normative legal research terms is referred to as legal material. The legal materials used in this research are:

1. Primary legal materials are legal materials that are authoritative or have authority.⁹ The materials to be used consist of: 1) Law Number 1 of 1974 concerning Marriage. 2) Regulation of the Minister of Home Affairs Number 108 of 2019 concerning Implementation Regulations of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. 3) Permendagri Number 109 of 2019 concerning Forms and Books Used in Population Administration. 4) Compilation of Islamic Law.

2. Secondary legal materials are materials that provide explanations of primary legal materials, such as draft laws, textbooks, research results in journals and magazines, or opinions of experts in the field of law¹⁰.

3. Tertiary legal materials are legal materials that provide an explanation of primary legal materials and secondary legal materials.¹¹ Tertiary materials that will be used in this research are dictionaries and encyclopedias.

3.3. Instruments

1. The technique of collecting legal materials by literature study of legal materials, both primary, secondary and tertiary legal materials.¹² The search for legal materials will be carried out by reading, seeing, listening and searching through the internet media,

⁷ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview* (Jakarta: PT Raja Grafindo Persada, 1995), pp. 15

⁸ Mukti Fajar ND and Yulianto Achmad, *Dualism of Legal Research: Normative & Empirical* (Yogyakarta: Student Library, 2010), p. 156.

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2006), p. 141.

¹⁰ Amirudin Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: Raja Grafindo, 2004), pp. 31.

¹¹ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2009), p. 24.

¹² Mukti Fajar ND and Yulianto Achmad, *Dualism of Legal Research: Normative & Empirical*, p. 160.

namely in the form of searches obtained from books, laws and regulations, scientific journals, and articles.

2. Legal material processing techniques with. A) Editing, namely selecting and selecting data from various aspects, namely suitability, completeness, clarity and relevance to the problem. In this case, the author will edit the legal material that has been obtained relating to the legal protection of women and children on the siri marriage family card. B) Organizing, namely arranging and compiling the data in such a way as to produce material to compile a thesis report properly.

3.4. Data Analysis Techniques

The analysis used in this research uses a qualitative analysis method, namely by interpreting the legal materials that have been processed. The use of this interpretation method aims to interpret the law, whether the legal material, especially primary legal material, contains a vacuum of legal norms, antinomy of legal norms and vague legal norms.

4. RESULTS

Family Cards have many benefits for the people of Indonesia because with the ownership of a Family Card, it can issue birth certificates for children, can issue ID cards and so on. It is also useful as strong and valid evidence of the identity status of the family and family members regarding the position of one's residence.

The way to be able to make a siri marriage Family Card is to fulfill the requirements in the form of filling out a form of statement of absolute responsibility for unrecorded marriage/divorce contained in Article 10 paragraph (2) of Permendagri Number 108 of 2019. The unrecorded marriage/divorce declaration form is then used as one of the requirements for the inclusion of marital/divorce status in the Family Card for residents who do not have marriage documents in the form of a marriage book, marriage certificate or divorce certificate quotation based on 5 paragraph (2) letter b of Permendagri Number 109 of 2019 concerning Forms and Books Used in Population Administration.

The requirements for being able to make a statement of absolute responsibility for unregistered marriage/divorce based on Director General's Letter 472.2/15145/DUKCAPIL concerning Guidelines for Inclusion of Unregistered Marital Status in the Family Card are that both spouses are 19 years old and for second or more marriages there must be written permission from the previous wife.

This regulation resulted in changes to the format of the Family Card. One of them is the marital status column. Namely, the increase in marital status in the Family Card in the form of unrecorded marriage and unrecorded divorce.

Based on these provisions, the Family Card is divided into two groupings. The first is a registered marriage certificate for couples who have married in a registered manner at a marriage registration institution as evidenced by the existence of a marriage book or marriage certificate. Meanwhile, the second unrecorded marriage or divorce certificate is intended for couples who have married but did not register their marriage with the marriage registration institution (siri marriage).

Couples who have entered into a siri marriage, then the marriage is not recorded so that the marriage does not have authentic evidence, therefore the government through this regulation provides convenience so that they can take care of matters related to government. This regulation is intended to realize the orderly administration of marriage registration.

Through the legalization of the making of Family Cards for the community of siri marriage couples and the provision of space for the community to be able to take care of Family Cards to the local Dukcapil. One of the considerations and reasons that the government through the Ministry of Home Affairs (Kemendagri) issued a regulation on the issuance of Family Cards for siri marriage couples is based on the provisions contained in Article 2 paragraph (1) of the Law on Marriage.

Based on this article, the Ministry of Home Affairs recognizes the existence of siri marriages because these marriages can be considered valid according to the legal provisions governing religion. Therefore, the Ministry of Home Affairs considers it possible for siri marriage couples to make and obtain a Family Card.

The following are the results of the issuance of the nikah siri Family Card policy.

1. Clarity of Relationship Status in the Family Card

The siri marriage Family Card provides certainty regarding marital status, namely the unification of the names of husband and wife in the Family Card can be done with the statement "marriage has not been recorded" and can change the status of the KTP to "Marriage". Also, children can be included in the Family Card with both parents.

With the unification of the husband and wife's names on the Family Card through unregistered marital status, the husband and wife, when traveling and staying at hotels, can now be free from being caught in adultery raids by the Pamong Praja Police Unit. This is because this siri marriage Family Card is evidence that a legal marriage event has occurred in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 that Marriage is valid, if it is carried out according to the laws of each religion and belief. Because this evidence shows that they are really a married couple who are staying at the hotel, not people who commit adultery and can be free from the slander of the community who say they are a cohabiting couple.

Not only in the event of being caught in a raid. The inclusion as a family can be used by the wife and child as proof that this person is indeed the wife and child of a man. From this evidence, the husband and his family cannot deny the existence of the wife and child. For example, if the husband dies and the wife and children of this siri ask for their rights in the form of inheritance rights and joint property from the deceased husband to his family, they can get their rights because of the proof of information. Previously, the wife and children had difficulty showing proof that the wife and children were really the family of the husband, which resulted in the wife not being able to get inheritance rights and joint property rights.¹³

¹³ M. Fahmi Al-Amruzi, "Marriage Registration and the Problems of Kawin Siri," *Ilmu Syar'i: Journal of Legal and Sharia Sciences* 9, no. 2 (2020), pp. 12

Then it can also be used by the wife and child as her right to the husband's maintenance. It can also be used as evidence by the child in the case of a marriage guardian as a statement that shows he is a child born from a legal marriage in religion, not as a child born out of wedlock, which gives rise to his father having the right to be a marriage guardian.

And now husbands cannot simply leave their wives and remarry other women because of this evidence. Before the birth of this policy, husbands could freely leave their wives, then remarry other women and not recognize their illegitimate wives.¹⁴

With this policy, the Family Card of siri marriage can be used as evidence of information by the wife and children from denial by the husband or his family. So that it gives rise to the right to maintenance, heirs, joint property and marriage guardians. However, it is only limited in terms of being a form of information, if the rights are still not given. Then the wife and children cannot claim their rights to the Court because their marital status is still not valid in the eyes of the law because Dukcapil only records, not changing the marital status to become valid in the eyes of state law.

2. Not Recognized as Authentic Evidence by the KUA

With the addition of marital status on the Family Card to unrecorded marriage and unrecorded divorce, this siri marriage couple if they want to remarry at the KUA. Then there will be a rejection when applying for marriage by the KUA. This is because the KUA only recognizes the status of unmarried, married, divorced and divorced when accepting a marriage application file.

The KUA cannot process the marriage file because the KUA does not recognize the status of unregistered marriage and unregistered divorce. The KUA only recognizes the status of unmarried, married, divorced alive and divorced dead.¹⁵ This also happens to girls born from siri marriages, the right of guardianship by the father becomes invalidated due to the absence of authentic evidence of the marriage of the two parents.¹⁶

Although it has been recorded on the Family Card and wants to change its marital status to become legal in the eyes of the law through registering its marriage with the KUA. However, in fact, the Family Card is not recognized as authentic evidence by the KUA, resulting in the rejection of marriage registration and marriage guardian. Due to the change in status on the Family Card to unregistered marriage.

3. Cannot refer to the Law on the Elimination of Domestic Violence

If a husband commits violence against his wife, be it physical or psychological violence, the wife cannot report the husband by referring to the Law on the Elimination of

¹⁴ Afwan Zainuddin and Zainuddin, *Legal Certainty of Siri Marriage & Its Problems in Review of Law Number 1 of 1974* (Yogyakarta: Deepublish, 2015), p. 74. 74.

¹⁵ Salsa Devi Sisti Alifianti et al., "The Degradation of the KUA's Authority as a Marriage Registration Institution After the Enactment of SPTJM in Permendagri No. 9 of 2016," *Ma'mal: Journal of Sharia and Law Laboratory* 4, no. 1 (2023), pp. 75.

¹⁶ Gusti Muzainah and Miftah Faridl, *The Phenomenon of Itsbat Nikah in Metropolitan Communities (Study in Banjarmasin City)* (Pusaka Pranala, 2021), p. 89. 89.

Domestic Violence (PKDRT) but can only refer to acts of persecution regulated in the Criminal Code.

The penalties for maltreatment are stipulated in the Criminal Code. Article 51 paragraph 1 of the Criminal Code states that maltreatment shall be punished with a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs.

The threat of punishment contained in 51 paragraph 1 is lower than the threat contained in the PKDRT Law. Article 44 paragraph 1 of the PKDRT Law states that every person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with a maximum imprisonment of 5 (years) years or a maximum fine of Rp.15,000,000.00 (fifteen million rupiah).¹⁷

The relationship status in the Family Card shows husband and wife, but the marital status is only unregistered marriage, which means it is not yet legal in the eyes of the law because to be able to report the husband by referring to the PKDRT Law, the wife must show a marriage book or marriage certificate. Therefore, in the event of domestic violence committed by the husband to his wife, the wife can only report the husband with maltreatment in the Criminal Code stipulated in Article 51 paragraph 1 where the criminal penalties stipulated in this Criminal Code are much lighter, namely imprisonment for a maximum of 2 years 8 months compared to the threats contained in the PKDRT Law Article 44 paragraph 1, which is 5 years.

4. Ease of Government Administration

The existence of a Family Card with an unregistered marital status by parents makes it easier for children to get a birth certificate. So that after the issuance of the birth certificate, the child can be included in the Family Card, then with the Family Card and Birth Certificate, the child can make a Child Identity Card (KIA).

There are several benefits obtained by children such as being able to get an education because KIA is needed as a requirement for the child's school administration, as a condition for making a savings account for children, as a means of accessing public transportation, immigration services, health and others. With the KIA, it can prevent child trafficking and kidnapping because every child's data is already owned and stored by the government.

This policy provides benefits for children from siri marriage because the administrative rights of these children can be protected and fulfilled. The government has carried out its duties in the form of fulfilling children's rights from an administrative point of view regardless of the status of the child as a child resulting from a siri marriage. This is stated in the provisions of Article 21 paragraph (1) of Law No.35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.

¹⁷ Ahmad Nurozi et al., "Establish Family Card Towards Unregistered Marriage Couple (Implications of Law No. 1 Of 1974 And Compilation of Islamic Law)," *KnE Social Sciences*, 2022, p. 224. 224.

Prior to this policy, if a siri marriage couple wanted to remarry, the application file could be accepted by the KUA because the status on the Family Card was not married and the status on the KTP was not married.

5. Increased rate of arranged marriages

Permendagri No. 108/2019 Article 10 paragraph 2 actually fosters the practice of siri marriage because they will feel satisfied and sufficient because they can unite themselves as a family on the Family Card.

This is evident based on the data obtained by the author at the Dukcapil National Coordination Meeting in 2023 at the National Coordination Meeting, the unrecorded marital status data reached 67,867,541 while the recorded marital status data reached 68,095,879 in 38 Provinces on December 31, 2022.¹⁸ A surprising figure because the unrecorded marital status data almost equals the recorded marital status data.

5. DISCUSSION

The Family Card of siri marriage is something new and there is no provision in *qarh'* (firm) and *sharih* (clear) in the Qur'an and as-Sunnah. Although the use of a siri marriage family card does not exist in the Qur'an and as-Sunnah, it does not mean that Islam is ignorant of the issue. Further explanation of the application of siri marriage family cards can be found in the legal *istinbat* method, one of which is *mashlahah mursalah*.

Mashlahah mursalah according to the term consists of two words, namely *maslahah* and *mursalah*. The word *maslahah* according to the language means "benefit", and *mursalah* means "loose". So, *maslahah mursalah* according to terms, as stated by Abdul Wahhab Khallaf, means "something that is considered *maslahat* but there is no firmness of the law to realize it and there is no specific evidence that supports or rejects it," so it is called *maslahah mursalah* (*maslahah* that is separated from the specific evidence).

Mashlahah mursalah is very well used for the development of times that are always changing, as cases that occur in this modern era. As we all know that this *maslahah* besides referring to Islamic laws, we must also pay attention to the conditions that exist in the community.

To be able to assess whether a problem whose law will be determined has an element of *maslahah* or not. Scholars who accept *al-maslahah al-mursalah* as an argument to determine the law set a number of conditions.¹⁹

1. That the benefit is essential is not based on mere presumption. Strictly speaking, the *maslahat* can be accepted logically. This is because the purpose of enacting a law in Islam is to bring benefit or eliminate harm. This will not be realized if the determination of the law is based on benefits based on presumption (*wahmiah*).

2. The benefit is in line with *maqasid al-Syari'* and does not contradict the text or *qath'i* arguments. In other words, the benefit is in line with the benefit that has been determined by Shari'. On this basis, the opinion that equalizes the rights of sons and

¹⁸ Dukcapil National Coordination Meeting 2023 Manado City

¹⁹ Firdaus, *USHUL FIQH Methods of Studying and Understanding Islamic Law Comprehensively*.

daughters in inheritance is not accepted, even if it is based on *maslahat*. This is because such a benefit contradicts the *qath'i* texts and scholarly consensus.

3. The benefit is general for many people, not the benefit of a particular individual or a number of individuals. This is because Islamic law applies to all people. Therefore, ruling on the basis of *maslahah* for a particular group, such as the ruler, the leader and his family, is not valid and is not permissible because it contradicts the principles of Islam that apply to all people.

Based on the conditions set by the scholars in making *maslahah mursalah* as a legal *istinbat* methodology, the issue of using a siri marriage family card must first be seen from the aspect of Islamic law. To achieve a human benefit, it is necessary to pay attention to five main things, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining offspring and maintaining property. Therefore, the Director General of Dukcapil's policy in the context of *maslahah* is oriented towards these five main things. The following is a description of these five things.

1. Preserving Religion

The unification of siri marriage couples in the Family Card will make the position and rights and responsibilities of each party clear and also avoid the slander of cohabiting couples. A head of household (husband/father) is obliged to provide guidance to his family members, both to his wife and children in religious matters such as fostering faith, worship and learning religious laws.

2. Nurturing the Soul

Siri marriage can result in mental/spiritual disruption of the wife and children, the husband can commit polygamy without the knowledge of the wife, deny the wife and children so that the wife and children who are married to siri become neglected. Through recording into the Family Card, the husband cannot commit polygamy without the wife's permission again because the requirements for issuing a Family Card for siri marriage for those who are polygamous must be with the permission of the previous wife and the husband cannot deny the existence of siri wives and children because there is evidence of relationship status information in the Family Card.

3. Maintaining offspring

With the existence of a Family Card of siri marriage, children born from unregistered marriages can already be registered birth certificates with the names of both parents included. Thus, the *nasab* of a child born from an unregistered marriage can be maintained.

4. Preserving the Intellect

The problem is to make it easier to make a birth certificate. So that children can enroll in school. Because they have the right to develop their minds or intelligence, get a good education.

5. Preserving the Treasure

With the existence of a Family Card for siri marriage, the wife and children can become heirs of their husband because there is proof of relationship status on the Family

Card. Whereas before this policy, if the husband died, the husband's family could deny and not give the inheritance because there was no evidence that showed whether the person was really the husband's family.

From all that has been described above, it can be ascertained that the siri marriage Family Card policy contains *maslahah* at the *dharuriyat* level considering that there are so many benefits, basically all of which are in the context of maintaining the objectives of Islamic law, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining offspring, and maintaining property.

Nevertheless, the Family Card contains *maslahah* at the *dharuriyat* level considering that there are so many benefits, but it will actually increase the number of siri marriages because they will feel satisfied and sufficient because they can unite themselves as a family on the Family Card. It will also increase the number of siri divorces because there is no need to register a divorce with the Religious Court because only by filling out a statement of absolute responsibility for unrecorded divorce can divorce and then remarry siri so that in this case it will be very detrimental to the wife and children because they cannot get post-divorce rights.

In this case, the author recognizes the *maslahah* contained in the Family Card of siri marriage, but the problem is that the party who has issued the Family Card of siri marriage does not want to do *isbat* nikah to the Religious Court so that his nikah becomes valid in the eyes of state law. Because they will feel satisfied and sufficient because they can unite themselves as a family on the Family Card and also the ease of divorce without having to go through a trial process at the Religious Court which will eliminate post-divorce rights that should be received by the wife and children that have been regulated in statutory provisions. It is therefore necessary for the government to think of an effort against siri marriages instead of facilitating them by recording them on the Family Card.

6. CONCLUSION

The Family Card for siri marriages is contained in the provisions of Article 10 paragraph (2) of Permendagri Number 108 of 2019, which states that the conditions for issuing a Family Card for siri marriages are 19 years of age and for the second marriage, permission from the previous wife has been obtained.

The Family Card of nikah siri contains *maslahah* at the *dharuriyat* level considering that there are so many benefits, basically all of which are in the context of maintaining the objectives of Islamic law, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining offspring, and maintaining property.

Although it has *maslahah*, it will result in *mudharat* if the couple who has issued the Family Card does not make *Isbat Nikah* to the Religious Court so that their marriage becomes valid in the eyes of state law. The *mudharat* is the increase in the number of siri divorces because of the ease of obtaining population administration without the need to conduct a trial process at the Religious Court, only by filling out a statement of absolute responsibility for unrecorded divorce, which is detrimental to the wife and children because it eliminates post-divorce rights. From the ease of doing divorce, it is possible to do a siri marriage again by filling out a statement of responsibility for unregistered

marriage. So the need for the government to think of an effort against siri marriages instead of facilitating them by recording them on the Family Card.

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