

Legal study of the granting of spousal consent in the transfer of land rights from joint property due to unregistered marriage

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Abstract

Purpose: The purpose of this study is to determine the implementation of granting spousal consent in the transfer of land rights from joint property due to unrecorded marriage and to find out the factors that become obstacles and solutions in granting spousal consent in the transfer of land rights from joint property due to unrecorded marriage.

Research Methodology: The research method used in this research is normative research method by involving analysis of legal regulations, policies, and legal instruments related to applicable laws and regulations.

Results: The result of the research shows that the granting of spousal consent in the transfer of land rights from joint property due to unregistered marriage in Batam City, until now does not have a special regulation, so it still refers to the same provisions as spousal consent to joint property in registered marriages contained in Article 36 of the Marriage Law, and Article 92 KHI and Article 119 KUHPperdata.

Limitations: The study is limited to jurisdiction-specific laws and regulations concerning land rights and spousal consent in the context of unregistered marriages. It does not delve into broader family law aspects unrelated to property transfers.

Contribution: This research contributes a comprehensive analysis of the legal intricacies involved in transferring land rights from joint property due to unregistered marriages, shedding light on gaps in existing regulations and proposing potential legal remedies. It serves as a valuable resource for legal practitioners, policymakers, and scholars seeking insight into this nuanced area.

Practical Implication: The findings of this study have practical implications for legal professionals advising clients on property transactions involving unregistered marriages. Additionally, it provides a basis for legislative reform to address gaps and uncertainties in current legal frameworks.

Keywords: *Spousal consent, land rights, joint property, unregistered marriage, legal study, property transfer, family law*

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1. Introduction

In Indonesia, marriage is a legal act in which the parties to it have been determined by law and it will have legal consequences for these parties. In addition to legal acts, marriage is also a sacred religious

act whose implementation is always associated with the rules of the teachings of each religion and belief.

In the Indonesian language, marriage comes from the word "kawin" which means forming a family with the opposite sex; having sex; having sex or having intercourse (Compilation Team, 2018). Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Meanwhile, marriage according to Islamic law is marriage, which is a very strong contract or *mitssaqan ghalidzan* to obey Allah's commands and carrying it out is an act of worship. A new marriage is declared valid if according to God's law and State law it fulfills the pillars and conditions ([Penyusun](#)).

An official / legal marriage is a marriage in accordance with the provisions of Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, namely marriage is valid if it is carried out according to the laws of each religion and belief and each marriage is recorded according to the applicable laws and regulations. This means that in addition to being carried out according to the teachings of each religion, the marriage must also be registered with the relevant agencies, namely for adherents of Islam, the marriage must be registered at the Office of Religious Affairs, while for adherents of religions other than Islam, the marriage must be registered at the Civil Registration Office.

According to Neng Djubaidah, unregistered marriages are valid according to statutory regulations because they are in accordance with the Islamic Marriage Law applicable in Indonesia based on Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 4 of the Compilation of Islamic Law (as *ius constitutum*) in conjunction with Article 3 of the 2007 Draft Law (as *ius constituendum*) ([Djubaedah, 2010](#)).

As a result, from a juridical aspect, the marriage is not recognized by the government, so it has no legal force. Therefore, the marriage is not protected by law, and is even considered to have never existed ([Usman, 2018](#)). In reality, unregistered marriages are still very much found both in villages and in big cities, and the perpetrators of these unregistered marriages come from various circles of society, ranging from the lower class, middle class and up to the upper class or elite groups. In addition to the groups mentioned above, it is also certain that unregistered marriages occur among people who practice polygamy without the consent of their wives, underage marriages because the law does not allow it unless there is permission in the form of dispensation from the Religious Court due to certain conditions, such as pregnancy before the marriage contract or marriage by accident ([Febriyanti, 2021](#)).

In addition, marriage registration is an important event from the aspect of population administration, so that the marriage certificate is an authentic certificate in the administrative system ([Zainuddin, 2017](#)). Recently, the issue of *siri* marriage or unrecorded marriage has become a hot topic in Indonesian society, after the issuance of a circular letter from the Directorate General of the Population and Civil Registration Service Number 472.2/15145 / DUKCAPIL dated November 04, 2021 concerning Instructions for Inclusion of Unrecorded Marital Status in Family Cards.

Based on the Circular Letter, it can be concluded that every couple whose marriage is carried out *siri* or has not been registered or cannot be registered can include their marital status in the Family Card with the status of unregistered marriage, by submitting an application to the Population and Civil Registration Office of their respective local areas by making a Statement of Absolute Responsibility for Unregistered Marriage, signed by the husband and wife and known by two witnesses.

Joint assets are assets obtained since the occurrence of a legally valid marriage and are still ongoing. As long as the other provisions in the marriage agreement are not negated. Then in the event that a legal action will be carried out, for example the transfer of land rights on the joint property, the husband and wife cannot act individually but must give each other consent.

The consent can be in the form of direct consent of the husband or wife in front of a Notary and/or Land Deed Official by signing the deed of transfer of land rights directly, or by indirect consent by providing a letter of consent and power of attorney to transfer or sell.

However, in daily practice, the problem that often arises in the process of transferring land rights is that the couple has divorced and the division of joint property (*gono gini*) has not been made and the whereabouts of the former spouse is no longer known. The problem will be more complex when those who have separated are a married couple who have entered into a siri marriage, but they have listed their marital status on the Family Card with the status of Unregistered Marriage, which automatically means that the marital status on their Identity Card is also written as Married.

This will certainly make it difficult for the Notary and/or the Land Deed Official to make a comparative deed of transfer of rights to property in their marriage. Because in practice, the Land Office, especially the Land Office of Batam City, will ask for the consent of the husband or wife, either direct consent or indirect consent. Meanwhile, in the absence of a Marriage Registration Deed, a Notary and/or a Land Deed Official will have difficulty analyzing whether the property is included as joint property or their respective assets.

Based on the above background, the author is interested in researching and writing the results in a scientific journal entitled "Legal Study of the Granting of Spousal Consent in the Transfer of Land Rights from Joint Property as a Result of Unrecorded Marriage". From the background of the problems described above, the problems to be discussed are as follows:

1. How is the implementation of giving spousal consent in the transfer of land rights from joint property due to unrecorded marriage?
2. What are the obstacles/ constraints and solutions in granting spousal consent in the transfer of land rights from joint property due to unregistered marriage?

2. Research methodology

The research method is an effort or effort made by researchers by studying, responding, analyzing a problem. To produce an answer or solution to the problem to be studied. Then compiled in a scientific data ([Marlia, Ridwan, & Priatna, 2018](#)). The research method used in this research is a normative research method involving analysis of legal regulations, policies, and related legal instruments ([Suriasumantri, 1993](#)).

The data sources used in this research are secondary data consisting of primary legal materials which are a collection of related laws and regulations, secondary legal materials consisting of literature books, articles, and papers related to the issues studied, and also tertiary legal materials consisting of legal dictionaries, encyclopedias, and so on ([Pramono & Nopritama, 2020](#)).

The approach method used is empirical juridical which consists of field research conducted through a series of interviews with respondents and informants related to the object of research ([Kurikulum](#)), and ([Zulfiani, 2021](#)). And also library research, which is research that seeks to explore theories that have developed in the field of science related to a problem of methods ([Pramono & Safarini, 2021](#)), as well as research techniques that have been used by previous researchers, obtain a broader orientation in the selected problem and avoid unwanted duplication by leading to the development of existing concepts and facts ([Muhammad & Djaali, 2005](#)).

Analysis of Legal Materials used in this research uses research data obtained in the field and then analyzed qualitatively ([Fadlan, 2020](#)) and ([Riski & Widiyana, 2020](#)). Legal materials that are analyzed qualitatively will be described in the form of a systematic description by explaining the relationship between various types of legal materials, then all legal materials are selected and processed and then analyzed descriptively so that in addition to describing and revealing the legal basis, it can also provide a clear picture as a whole and a solution to the problem ([Parameshwara & Riza, 2023](#)).

3. Results and discussions

3.1 Implementation of the Granting of Spousal Consent in the Transfer of Land Rights from Joint Property as a Result of Unrecorded Marriage

According to Article 5 of Government Regulation No. 24/1997 on Land Registration, it is stipulated that land registration in Indonesia is organized by the National Land Agency ([Pramono & Pratama, 2020](#)), which is a non-departmental government agency whose duties include land. The task of the National Land Agency is to manage and develop land administration both based on the Basic Agrarian Law and other laws and regulations which include regulating the use, control and maintenance of land, managing land rights, managing and registering land, and others related to land issues based on policies set by the President ([Syarief, 2014](#)).

In the context of organizing land registration organized by the National Land Agency, the task of implementing land registration is carried out by the Head of the Land Office, except for certain activities which are assigned to other officials by Government Regulation Number 24 of 1997 or the relevant laws and regulations ([Putra & Suprapti, 2019](#)).

The Land Office is a working unit of the National Land Agency in the Regency or City area, which conducts registration of land rights and maintenance of the general register of land registration. To implement the above provisions, the Head of the Land Office is authorized to register rights and issue a decree granting land rights applied for by a person or entity.

In carrying out its daily duties, some of the authority to grant land rights is delegated to the Provincial Land Agency Office and the District or Municipal Land Agency Office ([Putra & Herawati, 2017](#)). The duties of the Land Office are specified in Article 30 of the Regulation of the Head of the National Land Agency Number 4 of 2006 concerning the Organization and Work Procedures of the Regional Office of the National Land Agency and the Land Office which stipulates that: The Land Office has the duties and functions of the National Land Agency in the relevant Regency/City.

The Land Office as the frontline of the National Land Agency, is tasked with providing services in the land sector directly to the community, by carrying out three main tasks, namely (Herman Hermit, 2004):

1. Preparing activities in the field of land tenure regulation, land use, management of land rights, as well as measurement and registration of land rights;
2. Carrying out service activities in the field of regulating land tenure, land stewardship, managing land rights, measuring and registering land rights; and
3. Conducting administrative and household affairs.

One of the implementations of land registration activities can be in the form of recording the transfer of land rights, both on land that has not been titled and that has been titled. Article 37 of Government Regulation No. 24/1997 on Land Registration states that the transfer of land rights and ownership rights over apartment units through sale and purchase, exchange, grants, inclusion in companies and other legal acts of transfer of rights, except transfer of rights through auctions, can only be registered if proven by a deed made by a Land Deed Official authorized according to the provisions of the applicable laws and regulations.

Therefore, as a public official who is authorized to make authentic deeds regarding certain legal acts concerning land rights or property rights over apartment units, Land Deed Official is authorized to make deeds of transfer of land rights in its working area. Land Deed Official has the main task of carrying out part of the land registration activities by making deeds as proof that certain legal actions have been carried out regarding land rights or property rights over apartment units, which will be used as the basis for registering changes in land registration data caused by the legal action.

Regarding certain legal acts referred to are sale and purchase; exchange; grant; entry into a company (*inbreng*); division of joint rights; granting of building use rights / rights of use on freehold land; granting of mortgage rights; and granting power of attorney to impose a mortgage right. In the provisions of Article 2 paragraph (1) of Government Regulation No. 37 of 1998 there is the phrase

"carry out some land registration activities" in the description of the main tasks of Land Deed Official. Regarding the word "part", it refers to the provisions of Article 6 of Government Regulation No. 24 of 1997 which basically states that land registration activities are carried out by the head of the land office assisted by Land Deed Officials and other officials.

From the formulation of Article 6, it can be concluded that some land registration activities are carried out by the head of the land office and some are carried out by Land Deed Official and other officials, such as auction officials and adjudication committees ([Utomo & SH, 2020](#)). So that the process of land registration activities can run well and have legal certainty, the Land Deed Official and the land office must have synergy and the same understanding of the regulations governing the implementation of land registration. However, in the daily implementation of these land registration activities, Land Deed Official and the land office often experience complicated problems and obstacles as well as different understandings of the interpretation of a regulation ([Pramono & Pratama, 2020](#)). One of them is the transfer of rights carried out by a right owner/seller who is married, but has not registered his marriage either with the Office of Religious Affairs or the Civil Registry Office.

This problem has been encountered for a long time, but recently the problem has become more complicated since the issuance of a Circular Letter from the Directorate General of the Population and Civil Registration Service Number 472.2/15145/DUKCAPIL dated November 04, 2021 concerning Guidelines for Inclusion of Unrecorded Marital Status in Family Cards, which contains the following points:

1. Residents whose marriages have not been recorded or cannot be recorded can have their marital status included in the Family Card with the status of unrecorded marriage, as an affirmative policy for the time being until marriage registration is carried out.
2. The inclusion of unrecorded marriage status in the Family Card is carried out based on an application and each husband and wife make a Letter of Declaration of Absolute Liability for Unrecorded Marriage.
3. The application of Letter of Declaration of Absolute Liability for Unrecorded Marriage is not intended for underage marriages (not yet 19 years old), while for second or more marriages there must be written permission from the previous wife.
4. Data on the population with unregistered marital status in the population database becomes the basis for each region to program isbat nikah/marriage validation and mass marriage registration.
5. The inclusion of unregistered married status in the Family Card does not constitute marriage legalization.
6. Each region should proactively socialize so that every marriage must be registered.

Based on the Circular Letter, it can be concluded that every couple whose marriage is carried out siri or has not been recorded or cannot be recorded can include their marital status in the Family Card with the status of unregistered marriage ([Pramono & Indriyani, 2019](#)), by submitting an application to the Population and Civil Registration Office of their respective local areas by making a Letter of Declaration of Absolute Liability for Unregistered Marriage, signed by the husband and wife and known by two witnesses.

Taking into account the circular letter, it will be written on the Family Card that a person's marital status will be distinguished into Unmarried, Registered Marriage and Unregistered Married. With the appearance of the status information " Unregistered Married" on the Family Card, it will be followed by the inclusion of the status "Kawin" on the Identity Card.

When a person is about to transfer land rights, either through sale and purchase, exchange, grant or incorporation into a company (*inbreng*), the person must submit the required documents to the Land Deed Official, including data about the land (object of transfer) and data about the prospective seller and prospective buyer (subject of transfer) as described above. When a Land Deed Official has received these documents ([Pramono & Indriyani, 2019](#)), the Land Deed Official will check and match the correctness and suitability of the data, including the suitability of the name and date of birth of the right owner / prospective seller on the Identity Card with the name and date of birth written on the land title

certificate. This is intended to prove that the person appearing before the Land Deed Official is the one entitled to the land and building to be transferred.

In addition to checking the suitability of the name and date of birth, a Land Deed Official will also check the marital status of the owner of the right / prospective seller written on the Identity Card and Family Card, Marriage Certificate and previous Sale and Purchase Certificate. The purpose of this is to determine whether the property to be transferred is innate property or joint property based on the history of the record of the date of marriage in the marriage certificate and the record of the date of the previous transfer of rights in the land title certificate.

If the date of marriage is earlier than the date of transfer of rights, it can be concluded that the land and buildings are joint property. Conversely, if the date of the transfer of rights precedes the date of marriage, it can be concluded that the land and buildings are the inherited property of the owner whose name appears on the land title certificate.

If the type of property is known, the Land Deed Official will reconfirm with the owner of the right / prospective seller when the land and building was obtained. After the formal data is in accordance with the information submitted by the owner of the right / prospective seller, it can be seen whether the process of transferring land rights requires the consent of the married couple or not.

Referring to the provisions in Article 36 of Law Number 1 of 1974 concerning Marriage, if the land and buildings are joint property, the husband and wife must give their consent to each other (unless a marriage agreement has been made), otherwise if the land and buildings are inherited property, the owner of the rights whose name is written on the certificate has the full right to carry out legal actions regarding the property without the consent of his husband or wife. Consent is an expression of will and in law there are several ways of expressing a will. It can be given expressly or tacitly. The Marriage Law only requires consent. It does not require the form / manifestation of consent, nor does it require express consent ([Chirozva & Damba, 2021](#)).

After the issuance of Circular Letter from the Directorate General of the Population and Civil Registration Office Number 472.2/15145/DUKCAPIL dated November 04, 2021 concerning Guidelines for the Inclusion of Unregistered Marital Status in the Family Card mentioned above, many people, especially in Batam City, have found that their marital status on the Identity Card and Family Card is "married", but they do not have a valid Marriage Certificate issued by the Religious Affairs Office or the Population and Civil Registration Office. This raises various kinds of problems, one of which is the problem related to the ownership of joint property in this unregistered marriage.

As explained above, one of the ways in which Land Deed Official and the Land Office determine the type of joint or shared property is by comparing the date of marriage on the Marriage Certificate with the date of transfer of rights on the land title certificate. When they do not have an official marriage certificate, it is difficult for a Land Deed Official to determine the formal validity of their marriage, which in turn makes it difficult to determine the type of property from an unregistered marriage.

Referring to Article 100 of the Civil Code, which states that the existence of a marriage cannot be proven in any other way than by the deed of execution of the marriage registered in the registers of the Civil Registry, except in matters regulated in the following articles. So it can be concluded that a marriage is considered valid by the State, if it has been registered both at the Religious Affairs Office and at the Population and Civil Registration Office. In addition, Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage also states that marriage is valid if it is carried out according to the laws of each religion and belief. Meanwhile, Article 2 paragraph (2) states that every marriage is recorded according to the applicable laws and regulations.

Law No. 1 of 1974 Concerning Marriage mentioned above has caused many interpretations of several articles, one of which is Article 2, both from scholars, the government and the community, including Land Deed Official and the Land Office of Batam City. Some are of the opinion that Law Number 1

Year 1974 on Marriage has a universal nature for all Indonesian Citizens, and is also deferential, because the validity of marriage if performed in accordance with each religious law.

Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage explains that "Marriage is valid if it is carried out according to the laws of each religion and belief". Therefore, marriage according to religious law is a legal event, which cannot be annulled by an important event specified in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage which explains that "Every marriage is recorded according to the applicable laws and regulations". However, there are also those who argue that the essence of validity desired by Law Number 1 of 1974 concerning Marriage is valid according to religious law and State law. So that Article 2 paragraph (1) and paragraph (2) are a unity that cannot be separated.

Regarding the regulation of joint property in marriage according to the Civil Code, it is explained in Article 119 which states that from the time of marriage, according to the law, there is a comprehensive joint property between husband and wife, to the extent that no other provisions are made in the marriage agreement. The joint property, as long as the marriage goes on, may not be eliminated or changed by an agreement between the husband and wife. This means that if before or at the time of marriage between the prospective husband and wife is not agreed otherwise regarding their property, then between the husband and wife concerned according to the law there has been a complete mixing of property ([Paramita, 2017](#)).

The mixing of property (wealth) is referred to as round mixing. Thus, a marriage causes the melting of husband-wife property as a joint property. All assets of each husband and wife, both those they bring at the beginning of the marriage and those they acquire during the marriage, are mixed into one joint wealth of the husband and wife. The togetherness or unity of property in marriage is a bound joint property right, namely the togetherness of property that occurs due to marital ties between the owners ([Judiasih, 2015](#)).

In a marriage with a unanimous system of mixing property, the husband acts as a manager (beheer) of the property of the union / mixture. Against the mixing of marital property the husband cannot be considered as the owner of the mixing of property, although the husband who takes care of it can basically transfer the goods mixing property, especially movable objects without the knowledge or permission of the wife ([Putra & Herawati, 2017](#)).

However, in practice, usually the alienation of marital property by the husband, especially for fixed or immovable objects, always asks for the wife's consent. The notary and/or Land Deed Official will always ask the wife to sign the deed of transfer of land/house rights executed by the husband, as a form of consent, even though the land/house certificate is in the husband's name. The regulation of marital property in the Marriage Law is slightly different from that in the Civil Code.

With the policy issued by the Land Office of Batam City mentioned above, all Land Deed Officials in Batam City must follow the policy, i.e., all transfers of land and building rights made by the owner/seller whose marital status in his/her Identity Card and Family Card is written as "Kawin", must obtain the consent of his/her spouse, unless the property is obviously acquired before the marriage is held or included in the inherited property.

This policy initially caused pros and cons among Land Deed Officials in Batam City, because most of the Land Deed Officials in Batam City are of the opinion that joint property can be obtained in a marriage that is valid by the State and a marriage that is valid by the State is a marriage that complies with the provisions of Article 2 paragraph (1) and (2) of the Marriage Law and Article 100 of the Civil Code, namely a marriage that is valid in terms of religion and belief, recorded according to the prevailing laws and regulations and can be proven by the existence of a deed of marriage implementation registered at the Civil Registry or Religious Affairs Office. Therefore, in an unregistered marriage, there is no joint property in the marriage, so that in the transfer of rights to a property, the consent of the spouse is not required.

3.2 Obstacles/Constraints and Solutions in Granting Spousal Consent in the Transfer of Land Rights from Joint Property as a Result of Unrecorded Marriage

After conducting the stages of research on the juridical analysis of the granting of spousal consent in the transfer of land rights from joint property due to unregistered marriage conducted at Batam City, the author finds several factors that hinder the implementation of the granting of spousal consent in the transfer of land rights from joint property due to unregistered marriage at Batam City, which will be described as follows:

1. Multiple Interpretations of the Meaning of State-Legal Marriage and Joint Property in Marriage

In this study, it is found that there are multiple interpretations of the meaning of a valid marriage according to the state and joint property in marriage, because there are differences in understanding between the meaning of a valid marriage and joint property in marriage according to the Marriage Law and the Civil Code. In Article 2 paragraph (1) of the Marriage Law, it is said that marriage is valid, if it is carried out according to the laws of each religion and belief, and in paragraph (2) it is said that every marriage is recorded according to the applicable laws and regulations.

Article 2 of the Marriage Law alone has given rise to multiple interpretations and different opinions on the meaning of a valid marriage. This is due, among other things, to the ambiguity in the use of conjunctions or conjunctions. In paragraph (1) it is said that marriage is valid if it is carried out according to the laws of each religion and belief. However, in paragraph (2) it is directly said that every marriage is recorded according to the applicable laws and regulations, without the use of a conjunction or conjunction between these two paragraphs.

Thus, law enforcers and the public will be confused by the absence of conjunction between the two verses. For example, some Land Deed Officials in Batam City and relevant officials in the Land Office of Batam City interpret that a marriage is valid if it is conducted according to the law of each religion and belief and each marriage is recorded according to the prevailing laws and regulations. This means that a legally valid marriage is a marriage that is not only valid according to religion and belief but also must be recorded according to laws and regulations, i.e. recorded at the Office of Religious Affairs for those who are Muslims, while those who are non-Muslims are recorded at the Office of Population and Civil Registration. Those of this opinion interpret Article 2 by combining the meanings of paragraphs (1) and (2) by adding a conjunction between these two paragraphs, either a coordinative conjunction or a correlative conjunction.

A marriage is legally valid if it is carried out according to their respective religions and beliefs only. This is based on the interpretation and separation of meaning in Article 2 paragraph (1) of the Marriage Law, while the marriage registration contained in paragraph (2) is only optional for administrative order, because there are no words "must" or words of coercion and threats to register their marriage in Article 2 paragraph (2) of the Marriage Law. This means that even without the registration of marriage either at the Office of Religious Affairs or from the Population and Civil Registration Office, as long as it is valid according to religion and belief, the marriage is also legally valid which gives rise to legal rights and obligations between husband and wife. Those who have this opinion only adhere to the provisions of Article 2 paragraph (1) of the Marriage Law by overriding the provisions in Article 100 of the Civil Code and Article 6 of the Compilation of Islamic Law.

2. Married couple's whereabouts are unknown

Based on the provisions contained in Article 36 of the Marriage Law which states that (1) Regarding joint property, the husband or wife can act on the consent of both parties ([Hasyimzum, 2021](#)). (2) Regarding their respective assets, the husband and wife have the full right to take legal actions regarding their property. This means that based on Article 36 paragraph (1) above, any transfer of land rights which is joint property in marriage must be approved by the husband or wife, because each party, both husband and wife, gets an equal share, namely half of all joint property.

Thus, one of the parties, either husband or wife, cannot exclude or leave the other party to carry out a legal action related to the joint property, because their position is equal, namely as the owner of the

joint property. This is due to the status of husband and wife in marriage without a marriage agreement after marriage, there will be a mixture of personal property obtained from each husband and wife into joint property.

If the husband or wife is unable to attend the signing of the Deed of Transfer of Rights, the Land Deed Official will ask the owner of the land rights for a letter of consent and power of attorney from the spouse who is unable to attend the transfer of land rights which is made authentically (notarially) or legalized by a Notary. This means that the signature of the spouse in the letter of consent must be done in front of the Notary where the spouse is located. If the procedure for the transfer of land rights is violated, in the sense that either the owner of the land rights or the Land Deed Official negligently overrides the consent of the spouse, then the process of transferring land rights is invalid according to the law, which means that the legal action is null and void. Parties who violate the procedure intentionally or due to negligence can be sued under Article 1365 of the Civil Code regarding unlawful acts.

3. Lack of Public Awareness in Recording Their Marriages

The low awareness of the community in registering their marriage certainly has consequences in the future, including: (a) The marriage law becomes ineffective, so that the purpose of the birth of the UUP is not achieved. (b) The normative purpose of marriage registration is not fulfilled as desired by Article 2 of the UUP. (c) The increase and decrease in population is uncontrollable and difficult to record correctly by the Civil Registry. (d) There is irregularity, both in terms of marriage and the breakdown of marriage which can be done freely, which can cause harm to certain parties, especially the wife. (e) It has no legal force and has no legal effect. (f) The wife will find it difficult to state her marital status, because she does not have a marriage certificate. So that the wife does not have inheritance rights, and will have difficulty in claiming joint property to the court as a result of divorce because she does not have a marriage certificate. (g) The status of the child legally becomes a child outside of marriage (extra-marital child) and has no father according to the applicable law, so that the child only follows the mother and becomes the responsibility of the mother. The child only has a civil relationship with his mother and his mother's family. The child cannot claim the rights of the father. (h) Cannot be used as a basis for binding rights by the woman as a wife, as well as her children ([Hasyimzum, 2021](#)).

In normative juridical terms, the consequences as above can be said that unregistered marriages lack or do not even obtain legal recognition in terms of national law and the Marriage Law. This also has a legal impact on the existence and position of the husband or wife born from a siri marriage, giving rise to problems with the authority to act on each husband or wife either individually or jointly. In addition, there are also legal problems in the form of difficulty in obtaining the fulfillment of the rights and obligations of the husband over the wife, such as the obligation to provide maintenance if the husband is negligent, recognition of the husband's inheritance rights and joint property obtained during marriage.

4. Expensive and Complicated Procedures for Conducting a Legal Marriage

As mentioned above, one of the reasons that underlies or gives birth to the phenomenon of nikah siri which causes people to be reluctant to conduct official or registered marriages directly is to save costs and avoid administrative procedures that are considered convoluted, such as administrative requirements from neighbourhood, headman, religious affairs office, first wife's permission, religious court permission, permission from superiors if civil servants / members of the Indonesian National Army/ Indonesian republic police and so on ([Hasyimzum, 2021](#)). With the high cost of marriage and the complicated procedures that must be followed by prospective bridal couples, many people choose to marry under the hand or nikah siri, because it is considered more cost-effective because they do not need to pay for marriage registration fees and the time required can also be faster because they do not need to prepare documents or requirements for marriage registration.

From several factors that hinder the implementation of the granting of spousal consent in the transfer of land rights from joint property due to unregistered marriage at Batam City mentioned above, the solutions that can be taken from the above problems are as follows:

a. Revision of Articles in the Marriage Law that Give rise to Multiple Interpretations

With the existence of multiple interpretations of several words or sentences in a law, especially the definition of a valid marriage in the Marriage Law, the House of Representatives of the Republic of Indonesia through Commission I needs to immediately revise the Marriage Law, especially regarding the restrictions or benchmarks for a marriage that is valid in religion and the state contained in Article 2 of the Marriage Law.

The discussion of the revision needs to ask for the help of linguists to interpret the sentences in Article 2. So that in the future there are clear rules and meanings regarding legal marriage, both religiously and by state. With the assertiveness regarding the meaning of a valid marriage in religion and the state, it is hoped that there will be no more underhand marriages or unregistered marriages.

b. Arrange for a Stipulation of Afwezigheid (Absence) to be made with the Court.

Based on Articles 467-468 of the Civil Code, a person whose whereabouts are unknown, then for legal actions must obtain a determination from the District Court, on the grounds that "there is a legal presumption may have died" against the absent person. Based on Article 483 of the Civil Code, the husband or wife who is left in the period of "may have died" has the right to do one of the following things, namely (A) Choosing to continue the commingling of assets for a maximum period of 10 years; the wife or husband left behind gets priority to manage the commingling of assets so that the heirs who are expected to be unable to demand the separation and distribution of inheritance. (B) Does not object to the presumed heirs controlling the property, but he is allowed to take his own property, while for his share in the inheritance the provisions of the presumed heirs apply.

In real life there is also a wife / husband whose whereabouts are unknown, and the husband / wife will sell their joint property (gono-gini) and need the consent of their spouse, if this happens, then the husband / wife can apply for a determination to the court so that the spouse whose whereabouts are no longer known is determined as a person whose whereabouts are no longer known and the husband / wife is allowed to sell their joint property. The proceeds from the sale of the spouse's share will still be their respective shares, because the spouse's whereabouts are unknown, so the spouse's share will be handed over to the BHP (Balai Harta Peninggalan). This is in accordance with the duties of the BHP, namely (a) Guardianship of children in the womb. (b) Guardianship and conservatorship. (c) Representing absent persons. (d) Administering wills. (e) Management of abandoned estates, and (f) Management of bankruptcy.

1. Socializing the Importance of Marriage Registration and Facilitating the Marriage Registration Process

One of the ways that can be taken to overcome the problem of the lack of public awareness in registering their marriages is through the active role of the government, especially the Religious Affairs Office and the Civil Registry Office, to socialize the importance of conducting Marriage Registration and facilitate the Marriage Registration process with a fast process and affordable costs for the community. This socialization can be done in various ways both online and offline, starting from distributing brochures or writings explaining the importance of marriage registration and the process/template of marriage registration in housing complexes and/or public places that are heavily traversed by the community (such as shopping centers) by involving various elements of the government, to conducting direct socialization with the community face-to-face. For those who marry according to the Islamic religion, registration is carried out at the Office of Religious Affairs. Meanwhile, for those with religions other than Islam (such as Catholicism, Christianity, Buddhism, Hinduism, Confucianism, Penghayat and others), the registration is carried out at the Civil Registry Office.

2. Government Simplifies Procedures and Supervises Collection of Marriage Registration Fees

With the many requirements and lengthy procedures that must be passed and the still large collection of marriage fees at the Religious Affairs Office which causes many people to be reluctant to carry out registered marriages, the government should issue strict rules governing easier marriage requirements and procedures and costs that are truly free and make strict sanctions for Religious Affairs Office officers who are proven to complicate and ask for fees to prospective brides. In addition, the government

must also socialize these regulations regularly to the wider community so that the public can fully understand these regulations so that they are not exploited by irresponsible individuals ([Roy, 2022](#)).

4. Conclusions

Based on the discussion related to the problem, the following conclusions can be drawn:

1. Implementation of the granting of spousal consent in the transfer of land rights from joint property as a result of unregistered marriage at Batam City, for those who have not registered their marriage and have a Marriage Certificate issued by either the Office of Religious Affairs or the Civil Registry Office, is carried out by reference to the marital status of the owner of the land rights written on the Identity Card and Family Card. If the marital status is written as "married", then in the transfer of land rights, the Land Deed Official and Land Office of Batam City shall request the consent of the married couple by attaching a marriage certificate from a religious leader or a Statement of Absolute Responsibility of Unrecorded Marriage.
2. Factors hindering the implementation of spousal consent in the transfer of land rights from joint property due to unregistered marriage at Batam City are (a) multiple interpretations of the meaning of state legal marriage and joint property in marriage; (b) the whereabouts of the married couple are unknown; (c) low public awareness in registering the marriage; (d) high cost and complicated procedures in conducting official marriage.

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