

# Analysis of Government Policy on Data Collection and Recording of Population Documents as An Implementation of The Principle of Legal Certainty

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## ABSTRACT

The government's efforts in collecting and painting population documents have the purpose of making policies to ensure the legal certainty of citizens and to make it easier for the community to fulfill their interests. Civil registration is part of the overall population administration system consisting of sub-systems of population registration and civil registration. Documents issued by institutions / agencies that handle various affairs and interests of residents certainly cannot be separated from a series of administrative processes which will eventually be recorded / stored in an archive / data file. The issue raised in this study is how government policies related to Data Collection and Recording of Population Documents can provide legal certainty for all Indonesian people. Based on the provisions for name registration as stipulated in the Minister of Home Affairs Regulation Number 73 of 2022 concerning Name Recording on Population Documents, the name registration is carried out on the birth certificate in the event that the resident experiences an important event about the birth of a child, so that the name registration is carried out on the child's birth certificate in the family or resident concerned. The goal is to know and understand the legal certainty of the data collection and recording of resident documents so that it will provide legal protection. To answer this issue, research methods are used with normative research types, namely research using legal materials in the form of regulations, books, scientific articles related to data collection and recording of population documents. The results of this study provide confidence that the existence of data collection and recording of resident documents has indeed provided legal certainty for residents of the Republic of Indonesia.

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## 1. INTRODUCTION

Civil registration in population administration was originally regulated in Law Number 23 of 2006 concerning Population Administration, there was an

impression that the scope of population administration became narrower which should be accommodated by this law. This law does not explicitly state (implicitly) the scope of population administration, however,

in Chapter II of Population Rights and Obligations Article 2 has touched on the rights and obligations of residents which include:

- a. The right to obtain residence documents;
- b. The right to equal service in population registration and civil registration;
- c. The right to obtain protection of personal data;
- d. The right to obtain legal certainty over the ownership of documents;
- e. The right to obtain information on the results of population registration and civil registration of himself and/or his family; and
- f. The right to obtain redress and restoration as a result of errors in population registration and civil registration and misuse of personal data by implementing agencies;
- g. The obligation to report population events and important events experienced to the implementing agency by fulfilling the necessary requirements in population registration and civil registration or Indonesian citizens who are outside the territory of the Republic of Indonesia report to the local state Civil Registration implementing agency and / or to the representative of the Republic of Indonesia by fulfilling the necessary requirements in population registration and civil registration.

Government efforts in collecting and painting population documents, have the purpose of making policies, ensuring the legal certainty of citizens and making it easier for the community to fulfill their interests. Civil registration is part of the overall population administration system consisting of sub-systems of population registration and civil registration. Both include human rights for all human beings within a state. However, this does not mean that population registration is synonymous with civil registration. Both can be categorized under public service, however,

between the two there is a prominent difference, where civil registration has legal aspects that bring broad legal consequences for every citizen [1]. The existence of parties who confuse civil registration is the same as population registration. This is evident in the decree of the Minister of Home Affairs number 54 of 1999 concerning guidelines for the implementation of population registration (Kepmendagri. No. 54 of 1999) that population registration is the activity of registering and / or recording population data along with its changes, marriage, divorce, death, and population mutation, issuance of residence identification numbers, temporary residence identification numbers, family cards, identity cards and population registration deeds as well as population data management, and counseling [1].

According to Philipus Ngorang, public service is defined as all efforts made by people or entities in meeting the needs of the community. This can be done by the private sector, but the most important role in meeting the needs of the people is the state, through the state apparatus. However, when public services provide opportunities for profit, the practice of public services by the state apparatus which was originally solely to serve the needs of the community gradually turned around looking for profit, an advantage enjoyed by the state apparatus itself [2].

Starting from Philipus Ngorang's statement about the potential emergence of profit-seeking practices by the state apparatus for the benefit of the state apparatus itself, such public service practices must of course be eliminated or at least reduced so that the face of public services in this country looks good and brings welfare, justice, and solidarity between the people.

Population data collected from population registration and civil registration into population aggregate data, namely data collection on population events, important events, gender, age group, religion, education and employment. The population data is used for all purposes originating from the Ministry of Home Affairs, used for public service purposes, including for the issuance of

driver's licenses, business licenses, taxpayer services, banking services, certificate issuance services, and others. These affairs and interests will eventually give birth to various types and forms of documents that can be used as legality to be used as a basis for continuing into other fields of affairs.

Documents issued by institutions / agencies that handle various affairs and interests of the population are certainly inseparable from a series of administrative processes which will eventually be recorded / stored in an archive file / data. This will continue to repeat, resulting in a stacked archive/data file warehouse. In general, all types and forms of documents held by residents have the aim of making it easier for institutions / agencies that handle the affairs and interests of residents to verify and validate the correctness of documents held by residents with archive files / data owned (recorded / stored) by institutions / agencies that handle the affairs and interests of these residents [3].

According to Victor M. Situmorang and Cormentya Sitanggang, giving the limits of the civil registry as follows "civil registration is an institution deliberately held by the government whose duty is to record, register and record as completely as possible important events for a person's civil status, such as marriage, birth, recognition / legalization of children, divorce and death, and change of name"[4]. That civil registration as mentioned above is a recording carried out by state institutions / agencies in terms of interests, fulfillment of human rights as mentioned in the 1945 Constitution, for the purposes or interests of the legality of everyone in population administration.

By Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, Article 1 Number 1, states:

"Population Administration is a series of structuring and regulating activities in the issuance of documents and Population Data through Population Registration, Civil Registration, management of Population Administration information and utilization of

the results for public services and development of other sectors.

For the definition of population documents, population data and population registration are mentioned in Article 1 numbers 8 to 10, as follows:

"Population Document is an official document issued by the Implementing Agency that has legal force as authentic evidence resulting from the Population Registration and Civil Registration services. Population Data is individual data and /or aggregate data that is structured as a result of Population Registration and Civil Registration activities. Population Registration is the recording of Resident biodata, recording of Population Event reporting and data collection of vulnerable Population Administration and issuance of Population Documents in the form of identity cards or residence certificates."

The essence of the meaning of population administration is a series of activities to organize (fix) and regulate (regulate) the issuance of population documents and data. The process of issuing population documents and data is carried out through population registration, and civil registration, including the management of population administration information. The registration and recording activities are obtained from population data, the results of which will be utilized for public services and the development of other sectors. In other words, the services provided in the administration include resident registration services and resident registration services [1].

In terms of the implementation of the authority for population administration affairs as referred to in Government Regulation Number 40 of 2019 concerning the Implementation of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration as the implementing rule of the law states that the implementation of administrative affairs authority The population is stated in Article 2 which states

that "Population Administration Affairs are organized by the Government, provincial Regional Governments, and Regency / City Regional Governments".

Based on the above understanding, it is known that there is relevance between the population administration law and government regulations on population administration to be a guideline as population administration regulations, as government affairs in the field of population administration that the Ministry of Home Affairs has the authority in population administration affairs as a state institution in charge of population affairs, then the Ministry of Home Affairs issued a Ministerial Regulation Home Affairs Regarding the Recording of Names on Population Documents, namely Minister of Home Affairs Regulation 73 of 2022 concerning Recording Names on Population Documents. Furthermore, what is considered by the Ministry of Home Affairs to issue a Regulation on Recording Names on Population Documents, it is stated that:

"The recording of names on population documents is required by every resident as an identity so that the state can provide protection in the fulfillment of constitutional rights and orderly population administration; Recording of names on population documents needs to be regulated as a guideline for residents and officials authorized to carry out records to facilitate public services;

Recording names on population documents is the duty and responsibility of the government in charge of civil registration and population affairs as part of the mandate of the Law and Implementing Regulations in order to be able to provide regular and informable data management to the public on personal data or ownership of personal data of citizens. The scope of residence documents includes: resident biodata, family card, identity card, child identity card, electronic identity card, residence certificate; and the Civil Registration Deed. In the event that the recording of names on population documents is known to be carried out by the District / City

Disdukcapil, the District / City Disdukcapil UPT, or the Representative of the Republic of Indonesia.

## 2. METHODS

Method in its sense can be formulated as a certain way to carry out a procedure [5].

The Big Dictionary Indonesian defines method as "an orderly way used to carry out a work in order to achieve as desired; a systematic way of working to facilitate the implementation of an activity to achieve the specified goals"[6].

Based on the problems raised in this writing, the type of research that is included in the type of normative legal research (Literature Research) is if the research uses library materials as a basis / material for research and then writes it (secondary materials only) [5].

## 3. RESULTS AND DISCUSSION

### 3.1 Theory of Legal Certainty

One of the goals of law is to get justice, where justice can be achieved, one of which is with legal certainty. Law only exists if there are two or more people who agree to jointly make rules and obey them according to terms *ubi societas, ibi ius* (where there is society there is law). Regarding the purpose of law is to achieve order and justice, the law must be sought to effectively regulate matters that have not been regulated by really paying attention to the legal principles attached to the regulation plan. The law must also pay attention to the element of efficiency at the time of its implementation and attach importance to the content and not the formalities, substance over form.

According to Hans Kelsen, law is a system of norms. A norm is a statement that emphasizes the "should" aspect or This is supposed to be by including some rules on what to do. Norms are products and human actions that deliberative. Laws that contain general rules become guidelines for individuals to behave in society, both in relations with fellow individuals and in relations with society. These rules become

restrictions for society in burdening or taking action against individuals. The existence of the rule and the implementation of the rule creates legal certainty [7].

Based on Gustav Radbruch's view, the law must contain 3 (three) identity values, namely:

- 1) The basis of legal certainty (rechmatigheid), This basis reviews from the point of view of *yuridis*.
- 2) The principle of legal justice (gerechtigheit), this principle is viewed from a philosophical point of view, where justice is equal rights for all people before the court.
- 3) The principle of legal expediency (zwechmatigheid) or *doelmatigheid* or utility.

For legal purposes, namely legal certainty and legal expediency, where Positivism emphasizes more on legal certainty, while Functionalists prioritize legal expediency, and if it can be stated that "summon ius, summa injuria, summa lex, summa crux" Which means that harsh laws can hurt, except justice can help them, thus although justice is not the sole purpose of law but the substantive purpose of law is justice [8].

According to Utrecht, legal certainty contains two understandings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government arbitrariness because with the general rules, individuals can know what the state can charge or do to individuals. This legal certainty comes from Juridical-Dogmatic teachings based on the Positivist school of thought in the legal world which tends to see law as something independent autonomous, because for adherents of this school, the purpose of law is nothing but to guarantee the realization of general law. The general nature of the rules of law proves that law does not aim to bring about justice or expediency, but merely for certainty [9].

Flow view normative dogmatic Basically, law is solely to create legal certainty.

One of the adherents of this school is John Austin and Van Kant, whose source is positivist thinking that sees law as something autonomous or law in the form of written rules. That is, because the law is autonomous so that the purpose of the law is solely for legal certainty in legalizing the certainty of one's rights and obligations. Van Kant argued that the purpose of law is to keep every law is to keep every human interest from being disturbed and guaranteed its certainty [10].

Therefore, it can be believed that legal certainty is an inseparable feature of law, especially for written norms. Law without certainty loses meaning because it can no longer be used as a code of conduct for everyone, in Latin terms *Ubi jus incertum, ibi jus nulum* Which means where there is no legal certainty, there is no law [11].

### ***3.2 Government Policy on Data Collection and Recording of Population Documents Related to the Principle of Legal Certainty***

The current civil registration laws still use Dutch colonial legacy laws, such as the regulations for the administration of civil registration for Chinese groups (stb. 1917-30), for some groups of the Indonesian population who are not included in the *swapraja* areas in Java and Madura (Stb. 1920-751). State page It still selects the population based on race, ethnicity and religion and applies to certain regions. After independence, Law Number 4 of 1962 concerning the change of surname was issued, Presidium Cabinet Decree Number 127/U/Kep/12/1966 concerning the change of name of Indonesian Citizens (WNI) using Chinese names, and Presidential Decree Number. 12 of 1983 concerning the Arrangement and Improvement of Civil Registration Development. The regulation mentioned above only partially regulates the change of family name, changing the name of an Indonesian Citizen (WNI), so that other arrangements still use State page [12].

Based on data collection and recording of names in accordance with the provisions when analyzed in the Civil Code contained in Part 2 concerning Names, Name Changes, and First Name Changes as

mentioned in Article 5a and Article 6 of the Civil Code, namely:

Article 5a:

"A legitimate child, as well as an illegitimate child but recognized by his father, bears the name of his father's descendants; illegitimate children who are not recognized by their father, bear the name of their mother's descendants"

Article 6:

"No one is allowed to change the name of his descendants, or add any other name to his name without the permission of the President. Whoever has no known ancestry or first name may take a descendant name or first name, provided with the permission of the President."

The relationship of giving a name to a person from birth is a human right, meaning that it is a person's human right to choose a preferred name, which is also the obligation of parents to give a name to their child. The guarantee that every human being has the right to a name is affirmed in international and national human rights instruments. In international instruments, the right to a name for a person is regulated in Article 7 paragraph (1) of the Convention on the Rights of the Child, which reads as follows:

"the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire an nationality and as far as possible, the right to know and be cared for by his or her parents".

The free sense is that a child must be registered immediately after birth and must be fought from birth for his name, as is his right to citizenship, the right to know and be cared for by his parents.

Based on Law Number 39 of 1999 concerning Human Rights in Article 53 paragraph (2) which states: "every child from birth, has the right to a name and citizenship status". Then in Law Number 23 of 2002 as amended by Law Number 35 of 2014 in Article 5 and Article 27, each of which reads: "every child has the right to a name as self-identity and citizenship status". The identity of every child must be given from birth".

The population document as mentioned contains resident biodata to be recorded in the Birth Certificate, Family Card (KK), Identity Card (KTP) which is valid for Indonesian citizens and foreigners living in Indonesia with the requirements described above. According to the provisions of Article 5 of the Minister of Home Affairs Regulation Number 73 of 2022 concerning Recording Names on Population Documents, it contains procedures for recording names on population documents including:

- a. Use Latin letters in accordance with the rules of Indonesian;
- b. Surname, family name or so-called by other names can be listed on residence documents; and
- c. Educational, customary and religious degrees can be listed on family cards and electronic identity cards whose writing can be abbreviated.

Surnames, families, or those referred to by other names are a unity with names. The procedure for recording names on population documents has prohibitions in recording, the prohibitions are as follows:

- a. Abbreviated, unless otherwise interpreted;
- b. Use numbers and punctuation; and
- c. Include educational and religious degrees on the civil registration deed.

Based on the provisions for name registration as stipulated in the Minister of Home Affairs Regulation Number 73 of 2022 concerning Name Recording on Population Documents, the name registration is carried out on the birth certificate in the event that the resident experiences an important event about the birth of a child, so that the name registration is carried out on the child's birth certificate in the family or resident concerned.

#### 4. CONCLUSION

Based on the results of the analysis of the research conducted, it was concluded that the implementation of population document recording has the main purpose of fulfilling the community's rights in making and updating population data. Population

documents are not only as an identity, but also as a means to ensure legal certainty for every citizen. Therefore, it should also be noted that legal certainty in data collection and recording on population documents is in accordance with the orders of Article 5 Minister of Home Affairs Regulation Number 73 of 2022 concerning Recording of Names on Population Documents In this case it does not

contradict what is intended in human rights. Public awareness of data collection and name recording in accordance with the provisions is the fulfillment of administrative obligations, meaning that it will facilitate Indonesian citizens in management related to administrative matters, such as data collection of identity cards, data collection of family cards, and so on.

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