



Factors Affecting the Issuance of a Letter of Absolute Responsibility

Sukma Asmarandani Ramelan

Faculty of Law, State University of Gorontalo, Indonesia. E-mail: ramelansukma@gmail.com

Sri Nanang Meiske Kamba

Faculty of Law Gorontalo State University, Indonesia. E-mail: meiskekamba@gmail.com

Abstract:

The purpose of this research is to find out how the factors affecting the issuance of absolute responsibility letters for children's birth certificates in siri marriages. The research method used is Empris legal research. The research location is the Office of the Population and Civil Registration Office of Bone Bolango Regency. The data obtained are primary, secondary and tertiary data. The data collection techniques used by the author are observation, interview, and documentation. The results of the research on the Legality of the Letter of Absolute Responsibility for the Issuance of Child Birth Certificates in a Siri Marriage at the Population and Civil Registration Office are in accordance with the provisions of the applicable rules as stated in Article 22 and article 23 of law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law article 100 that the consequences of children born siri, only have a civil relationship with the mother and the mother's family. This means that the child does not have a legal relationship with the father. Even in the birth certificate, his status is considered as an extra-marital child, so that the name of the mother who gave birth to him is included. Absolute Accountability has been enforced by the government since the Minister of Home Affairs issued Minister of Home Affairs Regulation No. 9/2016 on Accelerating the Increase in Birth Certificate Ownership Coverage. This regulation was issued with the consideration that the ownership of birth certificates as a form of state recognition of children's identity is still low.

Keywords: *Illegitimate Marriage; Children; Declaration of Absolute Responsibility.*

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Introduction

A birth certificate is the first population document that residents receive from birth in accordance with the provisions of Article 5 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection which states that a child has the right to a name as identity and citizenship status, then emphasized in Article 27 which explains that the identity of each child must be given from birth, and this identity is stated in the birth certificate (“View of PERANAN SURAT PERNYATAAN TANGGUNG JAWAB MUTLAK (SPTJM) DALAM PENINGKATAN CAKUPAN KEPEMILIKAN AKTA KELAHIRAN DI SURAKARTA” n.d.)

A birth certificate is a person's identification that distinguishes one person from another. The birth certificate contains the name, place and date of birth, as well as the names of the parents, namely the mother and father of the child, so that the birth certificate has the meaning and power to prove the existence of a legal relationship between the child and the child, the parents' children. Logically, it is impossible for a mother to give birth to a child without the role of the man (father of the child) causing the birth of the child. However, according to the law, the status of a child can only be related to his mother, and even then the child does not necessarily have a legal relationship with his parents.

Among the factors that affect a person's legal status, marriage is the factor that most influences the legal status of a person who is bound by marriage. Because from the beginning a husband and wife marriage has entered into a legal relationship, so if a child is born in the marriage, then the relationship between the parents and the child and the relationship with the husband and wife's family is valid. The formation of a legal relationship gives rise to reciprocal responsibilities regulated in the rule of law.(PRABOWO, n.d.)

In general, marriage documents must be submitted to the Office of Religious Affairs (KUA). However, marriage registration is not a legal event, but an important event whose details are regulated in the law governing marriage. Administrative events include birth, death, marriage, divorce, adoption, parental death, child birth,



parental death, child adoption, child name change, and country name change. Islamic law recognizes "secret marriages", but does not require documentation. However, there is an authoritative source of Islamic law which states that the registration of a marriage is not a prerequisite for a valid marriage but rather a tool to prevent fraudulent marriages.

Marriage basically has to be registered with the Office of Religious Affairs. Marriage Registration According to Law No. 1 of 1974 concerning Marriage After the enactment of Law No. 1 of 1974 concerning Marriage, marriages must be registered according to the applicable laws and regulations. Article 1 number 17, states that "Significant events are events experienced by a person including birth, death, stillbirth, marriage, divorce, child recognition, child validation, child adoption, name change, and change of citizenship status". (Tagel 2019)

Some cases involved children whose parents' marriages were not registered with the government, while others involved children whose parents' marriages were registered with the government (KUA). In terms of birth registration, children born out of wedlock are only recorded as children of their mothers without mentioning their fathers. This is a direct result of Article 43 (1) of the 1974 Marriage Law which states that children born out of wedlock are only allowed to maintain a biological relationship with their mother. The trust relationship with the father will result in the father's name on the birth certificate.

Based on the interview results, in 2021 there will be an increase in the number of birth certificates recorded as children of a mother by 291% for children aged 0-2 months, 44% for children aged 0-18 months and 171% for children aged 18 years and over. In 2022, the number of children recorded as a mother's child will decrease by 63% for children 0-2 years, and 11% for children aged 0-18. This means that the Bone Bolango Regency Civil Registration Office has been quite successful in reducing the problem of birth certificates being recorded as the child of a mother.

According to the legal view, a country does not recognize the existence of children born out of wedlock that are legally recognized. As a result, many newborns do not have identity documents such as name, family and country of origin. This of



course will affect the future of the child itself. Children resulting from unregistered marriages will find it difficult to obtain their rights, because their legal status is not clear. While in mental development, children from unregistered marriages will experience mental pressure. Tends to feel embarrassed, so that its development becomes not optimal.

In obtaining birth certificates so far, residents often find it difficult to complete the requirements set by the government, such as the requirements for a birth certificate from a doctor/midwife/birth attendant. Especially for those who apply for birth certificates when they reach adulthood. This is because the birth certificate was not there at birth, or it was not kept properly by the parents. If you don't have a birth certificate, of course the requirements will be incomplete, so you can't get the birth certificate. That is why, as in the example above, the government issues an Absolute Accountability Letter as a solution.

SPTJM is a Statement of Absolute Responsibility made by the person concerned or the guardian or applicant as truthful with full responsibility which is known by 2 (two) witnesses. SPTJM Correctness of Birth Data, is a statement made by biological parents/guardians/applicant with full responsibility for the accuracy of a person's birth data, with the knowledge of 2 (two) witnesses. SPTJM Truth as Husband and Wife, is a statement made by biological parents/guardians/applicant with full responsibility for the marital status of a person whose family card is listed as Husband and Wife with the knowledge of 2 (two) witnesses. SPTJM Truth as a Husband and Wife, is a statement made by the biological parents/guardians/applicant with full responsibility for the status of a person's marital relationship with the knowledge of 2 (two) witnesses.

Method

The type of research used is Empirical legal research in completing research findings related to the object of research. This research is an empirical legal research that is used as a method to study an applicable legal provision, as well as how the realization and reality of these provisions in people's lives.



Discussion

1. Factors Influencing The Issuance Of An Absolute Liability Letter For The Issuance Of Birth Certificates For Children In Unregistered Marriages

a). Internal factors

The Department of Population and Civil Registration of Bone Bolango Regency has made various efforts to reduce unregistered marriages and absolute liability statements. However, this is constrained by the requirements that must be met by the husband and wife in order to obtain a statement of absolute liability.

Based on the results of observations and documentation regarding unregistered marriages in Bone Bolango Regency, there has been a significant increase. In 2021 there were 256 cases of unregistered marriages and in 2022 it decreased to 192 cases. This indicates that the unregistered marriage that occurs increases the number of children that must be made into the SPTJM as the birth certificate of the child. (Maya 2021)

Currently, the Indonesian government, through the Directorate General of Population and Civil Registration of the Ministry of Home Affairs, is intensively accelerating the increase in the scope of birth certificate ownership for all Indonesian residents, especially children. Such is the importance of birth certificates as proof of one's identity and citizenship, so the government requires all Indonesian citizens to have birth certificates. Until now, there are still very many residents who do not have birth certificates, apart from the lack of awareness of the population to take care of their birth certificates, also because residents still have difficulty accessing this population administration public service. Residents still have difficulties in terms of distance, cost and time from their place of domicile to the location of population administration services (Fikri 2020).

Based on Article 52 paragraph (1) letter a Presidential Regulation No. 25 of 2008, registration of child births requires a birth certificate from a doctor/midwife/birth attendant. This is assumed to cause juridical problems, if a



birth certificate from the doctor/midwife/birth attendant is not obtained (doesn't exist). This juridical problem can be solved by issuing a policy. Government, namely Regulation of the Minister of Home Affairs Number 9 of 2016 concerning the Acceleration of Increasing Coverage of Birth Certificate Ownership (hereinafter abbreviated as Permendagri No. 9 of 2016). Furthermore, based on Article 3 paragraph (1) Permendagri No. 9 of 2016, it is determined that the requirements for birth registration as referred to in Article 2 letter a fulfill the conditions in the form of: (1) a birth certificate from a doctor/midwife/birth attendant; (2) marriage certificate/quotation of marriage certificate; (3) KK where residents will be registered as family members; (4) e-KTP of parents/guardians/reporters; or (5) passports for non-resident Indonesian citizens and foreigners, whereas in Article 4 paragraph (1), it is determined that in the event that the requirements are in the form of a birth certificate from a doctor/midwife/birth attendant, as referred to in Article 3 paragraph (1) letter a not fulfilled, the applicant attaches a Statement of Absolute Responsibility (SPTJM) for the correctness of birth data.(Falini 2019)

The SPTJM was put into effect by the government since the Minister of Home Affairs of the Republic of Indonesia issued Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership. This Permendagri was issued with the consideration that ownership of birth certificates as a form of state recognition of a child's identity is still low (Nomor 9)

SPTJM is a Statement of Absolute Responsibility made by the person concerned or the guardian or applicant as truthful with full responsibility which

is known by 2 (two) witnesses. Making a Statement of Absolute Responsibility (SPTJM) for the correctness of birth data must be signed by at least 2 (two) witnesses, because based on Article 1 number 20 Permendagri No. 9 of 2016, it is stated that witnesses in the Statement of Absolute Responsibility are people who have seen or know the signing of the Statement of Absolute Responsibility. This provision can also cause juridical problems, because the witnesses referred to in Permendagri No. 9 of 2016 is not a witness who saw the birth event, but a witness who saw or knew the signing of the SPTJM.(EDININGSIH DWI UTAMI 2021)

b). External Factors

The external factor referred to in making a Statement of Absolute Responsibility is the husband and wife. Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage defines marriage as an inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Godhead. Almighty (Indonesia and Bab 1974).

1) Witness Siri's Marriage

The unregistered marriage is related to the position of the witness and the requirements for the witness himself. By paying attention to the conditions for the validity of the marriage, the witness has the status of being a legal condition for the marriage, not a condition for completion (perfect). So when the marriage contract takes place, it must be witnessed by at least two male witnesses. In a marriage contract, it is not appropriate if the marriage witness is sufficient with one male and two female witnesses except in very emergency situations. By taking alternative witnesses and two men turning to witnesses one man and two women means lowering the degree of the marriage contract.



In the Compilation of Islamic Law, marriage witnesses in article 24 paragraph (1) explain that witnesses in marriage are pillars of the implementation of the marriage contract. Paragraph (2) states that every marriage must be witnessed by two witnesses. Based on the sound of the dictum above, that the position of the witness is not as a requirement, but as pillars. This means that the witness is an element or part of the implementation of the marriage contract that must exist. In paragraph (2) it is stated that the number of witnesses must be two people. Regarding the conditions for witnesses confirmed in article (25); regarding the gender of the witness is male (Rahmatillah and Khofify 2017)

The presence of two witnesses in the SPTJM document also requires explanation. The qualifications of the two witnesses are residents who knew when the SPTJM document was made, so it has nothing to do with proving when the unregistered marriage was carried out. The full burden of responsibility remains on the biological parents/guardians/applicant who made the SPTJM statement so that the strength of proof is still weak and cannot be binding on other parties. It is important to realize that actually the urgency of the SPTJM document is in the interests of the child from an unregistered marriage who must be registered in the KK as a citizen.(PATRIANSYAH, Sofyan, and Sagita 2021)

Therefore, marriage must be based on Belief in the One and Only God as stated in the elucidation of Article 1 of Law no. 1 of 1974, Article 2 paragraph (1) and paragraph (2): (a) That marriage is legal if it is carried out according to the laws of each religion and belief. (b) Each marriage is recorded according to the applicable laws and regulations. Marriage can be carried out based on



religious law or individual beliefs so that the state is obliged to fulfill the legality aspect of the implementation of the marriage by issuing official documents in the form of a marriage book or marriage certificate. (Munawar 2015)

In addition, it is explained in Government Regulation Number 40 of 2019 concerning the Implementation of the Population Administration Law that the institution where marriage registration is differentiated based on the religion of the bride and groom, namely for Muslim brides it is carried out at the Office of Religious Affairs (KUA) and registration of marriages of brides with religions other than Islam and appreciation of beliefs carried out by employees of the marriage registrar at the Population and Civil Registration Service. However, in practice, many residents previously had not registered their marriages at the implementing agencies, so their marriages were not recognized from a positive legal perspective (Utama 2022)

2) Difficulties in Managing SPTJM

The factor of using the SPTJM in making birth certificates is due to cover up marriages that were not recorded in the past. The use of the SPTJM does not necessarily apply to all residents who cannot show a marriage book/marriage certificate, but only for residents who were married before the issuance of Permendagri Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership.

The factor in using the SPTJM was also caused by residents who could not show proof of marriage and birth registration because the documents were lost/damaged due to natural disasters, documents damaged by insects, and other reasons. Provisions for using the SPTJM in the event that proof of



marriage cannot be shown only applies to marriages carried out before the enactment of Permendagri Number 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership, then these residents must also be able to show other evidence of the occurrence of marriage such as a photocopy of a marriage certificate/book or family card with registered marriage, as well as going through an interview/screening process with the head of the civil registration division of Disdukcapil which aims to provide an understanding that STPJM is the applicant's full responsibility for all legal consequences.(Hendro 2018)

Strictness regarding the application of the SPTJM marriage is a form of preventive action against misuse of population documents in which the results of the registration produce a deed that has permanent legal force and can be perfect evidence in court.

This SPTJM document is very important in its function as a replacement condition for the complete absence of a Marriage Certificate/Citation of an official Marriage Certificate which is required to obtain a Birth Certificate document for a child of a siri marriage partner. This is stated in the provisions of Permendagri No. 9/2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership: Article 5 paragraph (2) states: "In the event that the requirements in the form of a marriage certificate/quotation of a marriage certificate as referred to in Article 3 paragraph (1) letter b are not fulfilled, and the relationship status in the family at The KK shows the status of the marital relationship as husband and wife, recorded in the birth certificate register and birth certificate excerpts with the data elements as listed in the attachment which is an integral part of this Ministerial Regulation.



Article 3 paragraph (1) states: "The requirements for birth registration as referred to in Article 2 letter a by fulfilling the conditions are: a) a birth certificate from a doctor/midwife/birth attendant; b) marriage certificate/quotation of marriage certificate; c) KK where residents will be registered as family members; d) KTP-el of parents/guardians/reporters; or e) passports for non-resident Indonesian citizens and foreigners."

Article 4 paragraph (2) states: "In the event that the requirements in the form of a marriage certificate/quotation of a marriage certificate as referred to in Article 3 paragraph (1) letter b are not met, the applicant attaches a valid SPTJM as husband and wife." Arrangement of Birth Certificates for children of unregistered marriages can be carried out using the SPTJM of Truth as Husband and Wife supported by a KK, which is then recorded in the birth certificate register and birth certificate excerpts with the data elements as listed in the attachment which is an integral part of Permendagri No. 9/2016.

The new KK will include the statement "marriage or marriage has not been registered". Thus, the ease of making a child's birth certificate is not closed even if the parents are unregistered. This is because the purpose of the issuance of Permendagri No. 9/2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership, it is stated that all citizens must be registered in the Family Card, for the child after having a Birth Certificate it will be recorded in the Family Card. However, the "new" Family Card obtained after going through the SPTJM document for Truth as a Husband and Wife still raises questions in practice. The reason is that one of the factors causing unregistered marriage is that the husband is not allowed to remarry by his partner, or does not get court approval.(Apriyanita, n.d.)

In this case, it must be ascertained in advance what the status of the family card is with the old wife. Because it is unlikely that the name of the old wife will still be recorded in the KK with the new wife of the series. Or does the old CoW have to be revoked and declared no longer valid? If so, what the status of the family relationship with the old wife is as recorded in the previous KK, because actually the old marriage was still going on and there was no divorce. The coercion of revocation of the old KK certainly raises other very serious problems that lead to the crime of document forgery. Therefore it can be understood that the making of this new KK is more possible only for unregistered marriage partners who did not have a previous partner, or not for marriages that have more than one partner.

3) Impact of SPTJM

SPTJM has a negative influence on husbands and wives and children. For husband and wife, their marriage is considered to have never existed. This is because there is no legal proof of their marriage in the form of a marriage certificate, family card, and information on the birth of a child from the hospital. Because these documents are also a requirement for making a birth certificate, the child is at risk of not being recognized by the state.

The wife is not a legal wife, so she does not have the right to earn a living, a place to live, assets like this and inheritance. Children are not legitimate children. Because according to Article 42 of the Marriage Law and Article 99 of the Compilation of Islamic Law, a legitimate child is a child born in or as a result of a legal marriage.

Furthermore, in Article 43 paragraph (1) of the Marriage Law and Article 100 of the Compilation of Islamic Law, children born out of wedlock only have



civil relations with their mothers and their mothers' families. So that the child loses the right to his father's name or lineage, spiritual and physical living, residence, education, and inheritance if his father dies. Children do not have a legal relationship with their father. This will have an impact on the child's soul because he is considered a child out of wedlock, especially if the father does not want to be responsible and does not carry out his function as a father.

Articles 42 and 43 UUP Number 16 of 2019 concerning Amendments to No. 1/1974 concerning Marriage Article 43 Paragraph 1 states that a child born outside of a legal marriage only has a civil relationship with his mother and his mother's family. So the risk due to a woman's ignorance of the laws in force in Indonesia causes her to be among the losers when she chooses to marry in unregistered marriage.

Thus even if a marriage is legal but if it is not registered, then the child born from a legal marriage that is not registered is classified as a child born out of wedlock. Children born out of wedlock are usually the result of an underhand marriage, even then it is also popularly called unregistered marriage. Not a few problems that arise in society stem from underhand marriage, including the recognition of a child born out of wedlock. Although on the other hand there are those who accept this situation as it is, even though in terms of legal formalities, children born out of wedlock have difficulty understanding their status.

The legal interests of children from unregistered marriages are less protected. Even though there is a Constitutional Court Decision No. 46/PUU-VIII/2010, which states: Children born out of wedlock have civil relations with their mothers and their mothers' families as well as with men as their fathers which can be proven based on science and technology and or other evidence



according to law has a relationship blood, including civil relations with his father's family (Apriyanita, n.d.).

2. Application of Legal Principles in Permendagri No. 108/2019

Legislation in Indonesia based on the positive legal system in Indonesia, there are several types of levels, starting from the highest degree, namely the basic law of the state, to the lowest degree, according to the systematic order or hierarchy of laws and regulations. Meanwhile, the type of legislation is a rule formed based on the authority granted by law, so that it is not only qualified hierarchically, but also juridically recognized as legislation formed by state and government institutions (Mustapa, Abdussamad, and Towadi 2022).

In the science that discusses laws and regulations, there are legal principles that can be applied in the enactment of laws and regulations. Among the uses of these legal principles, there are legal principles that are used to resolve conflicts or contradictions between laws and regulations in their application. In this legal principle, a lower regulation cannot contradict a higher regulation, there is also a legal principle that prioritizes equal regulations in a hierarchical system of legislation but the latest regulation takes precedence, and there is also a regulation that prioritizes specific regulations from general regulations. The legal principles are as follows:

1. Asas lex superior derogat legi inferiori;
2. Asas lex specialis derogat legi generali;
3. Asas lex posterior derogat legi priori.

The legal principle of *lex superior derogat legi inferiori* is a principle in the science of legislation that overcomes conflicts between laws and regulations in terms of the order of these regulations in the hierarchy of laws and regulations. This principle states that lower regulations must not conflict with higher regulations. Thus, higher regulations will override lower regulations. This



principle only applies to two regulations that are not hierarchically equal and contradict each other. Meanwhile, the principle of *lex specialis derogat legi generali* is used when there is a conflict of norms between equal laws and regulations, but the priority is the substance aspect of the regulation. In this case, if the regulation regulates a substance that is general in nature and broad in scope dealing with regulations whose substance is more specific, then the regulation whose substance is more specific is used. (Haq, n.d.)

Furthermore, the principle of *lex posterior derogat legi priori* is a legal principle used when there is a horizontal conflict of norms. This principle overcomes norm conflicts that occur between laws and regulations that are equal and have the same and similar substance, then the conflict is resolved with the latest juridical validity aspects between the conflicting laws and regulations. The three legal principles described above are legal principles that can be applied when there is a conflict of norms between laws and regulations, both conflicts of norms between vertical and horizontal laws and regulations.

Hans Kelsen argues that legal norms have levels and are layered in a hierarchical regulatory system, where a lower norm applies, originates, and is based on a higher norm. And so on up to a basic norm (*Grundnorm*). Hans Kelsen's theory of the level of legal norms was inspired by a student named Adolf Merkl who argued that a legal norm must always have two faces (*das Doppelte Rechtsanlitz*), namely that the legal norm to the top is sourced and based on the norm above it, and the legal norm downwards is also the basis for the norm below it.



If we connect Permendagri No. 108 of 2019 with Law No. 1 of 1974, that in Law No. 1 of 1974 every marriage must be recorded based on statutory regulations (Abdjul, Kasim, and Ismail 2023). Of course, the existence of marriage registration is to ensure legal certainty for the parties involved in the marriage, so that the marriage partner can record their marital status in the population documents issued by the Disdukcapil of the Ministry of Home Affairs. However, with the issuance of Permendagri No. 108/2019, siri marriage couples can also record their marital status on population documents such as family cards and birth certificates with an additional phrase in the population document in the form of a statement that their marriage has not been recorded based on statutory regulations (Setiawati 2018). Based on the two regulations, it seems that there is a conflict with each other, so that between these regulations the legal principle can be applied in the form of the principle of *lex superior derogat legi inferiori* based on this legal principle that higher regulations take precedence over lower regulations in the hierarchy of laws and regulations. So in this case, if there is a conflict between the two regulations, then Law No. 1 of 1974 takes precedence, because in the hierarchical system of laws and regulations, the position of laws is higher than Ministerial regulations.

Conclusion

A birth certificate is a person's identification that distinguishes one person from another. The birth certificate contains the name, place and date of birth, as well as the names of the parents, namely the mother and father of the child, so that the birth certificate has the meaning and power to prove the existence of a legal relationship between the child and the child, the parents' children. Logically, it is impossible for a mother to give birth to a child without the role of the man (father of the child) causing the



birth of the child. However, according to the law, the status of a child can only be related to his mother, and even then the child does not necessarily have a legal relationship with his parents.

Among the factors that affect a person's legal status, marriage is the factor that most influences the legal status of a person who is bound by marriage. Because from the beginning a husband and wife marriage has entered into a legal relationship, so if a child is born in the marriage, then the relationship between the parents and the child and the relationship with the husband and wife's family is valid. Based on the research results above, it can be seen that this SPTJM is the basis for issuing birth certificates for children with the mother's name without a father. Factors that influence the issuance of SPTJM on the issuance of birth certificates for children in siri marriages at the Population and Civil Registry Office of Bone Bolango Regency are (1) Witnesses of unregistered marriages, (2) Difficulties in administering SPTJM, and (3) Impact of SPTJM.

Recommendation

The Head of the Office of Population and Civil Registration of Bone Bolango Regency should carry out continuous socialization both directly and through social media to the public. In addition, it can also cooperate with related agencies in disseminating information about siri marriages and the weaknesses of the statement of absolute responsibility for the status of siri marriages and also the birth of children. The Office of Religious Affairs can socialize about unregistered marriages and the impact of these unregistered marriages. In addition to providing guidance to youth and society about the importance of legal marriage according to religion and state. For the community, it is better to increase people's knowledge and compliance with legal provisions and regulations, especially regarding unregistered marriage and its impact on families and offspring.



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