



## SIRI MARRIAGE IN INDONESIAN LEGAL THINKING: AN ANALYSIS OF PROHIBITIONS AND CRIMINAL SANCTIONS

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**Abstract:** Unregistered marriage (nikah siri) refers to a marital union conducted according to Islamic religious procedures but not officially recorded at the Office of Religious Affairs (KUA) or other authorized state institutions. Within the Indonesian legal framework, nikah siri has generated significant debate, particularly concerning legal status, the protection of women and children, and the potential imposition of criminal sanctions. This study aims to analyze Indonesian legal perspectives on the practice of nikah siri, with a specific focus on prohibitions and the possibility of criminal sanctions. The research employs a normative juridical method with statutory and Islamic legal approaches. The findings indicate that although nikah siri is religiously valid, it lacks administrative legal recognition and evidentiary force within the state legal system, thereby creating legal vulnerability for the individuals involved. The government has attempted to regulate the issue through the Marriage Law and its derivative regulations; however, there is still no explicit criminal provision addressing unregistered marriage, except in certain cases such as polygamy without permission or document falsification. This study recommends strengthening legal regulations to ensure legal certainty and protection for women and children involved in unregistered marriages.

**Keywords:** Nikah siri; Legal Thought; Criminal Sanctions; Fiqh Siyasa

**Abstrak :** Nikah siri merupakan bentuk perkawinan yang dilaksanakan secara agama namun tidak dicatatkan secara resmi di Kantor Urusan Agama (KUA) atau instansi pemerintah terkait. Dalam konteks hukum di Indonesia, nikah siri menimbulkan polemik, terutama terkait dengan status hukum, perlindungan perempuan dan anak, serta kemungkinan pemberian sanksi pidana. Penelitian ini bertujuan untuk menganalisis pemikiran hukum di Indonesia terhadap praktik nikah siri, khususnya dalam hal pelarangan dan potensi sanksi pidana yang dapat dikenakan. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan, konsep hukum Islam. Hasil penelitian menunjukkan bahwa meskipun nikah siri sah secara agama, secara

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*hukum negara perkawinan tersebut tidak memiliki kekuatan pembuktian administratif, sehingga menimbulkan kerentanan hukum bagi pihak-pihak yang terlibat. Pemerintah telah mengupayakan pengaturan melalui Undang-Undang Perkawinan dan aturan turunannya, namun hingga kini belum terdapat ketentuan pidana yang tegas terhadap pelaku nikah siri, kecuali dalam konteks tertentu seperti poligami tanpa izin atau pemalsuan dokumen. Kajian ini merekomendasikan perlunya penguatan regulasi untuk memberikan kepastian hukum dan perlindungan bagi perempuan dan anak dalam perkawinan yang tidak tercatat.*

**Kata Kunci:** Nikah siri; Pemikiran Hukum; Sanksi Pidana; Fiqh Siyash

## INTRODUCTION

Islam has a better system in terms of forming a household through an interaction between a man and a woman in the form of marriage. Marriage is a social and religious institution that plays a central role in Indonesian society. Law No. 1 of 1974 on Marriage explicitly states that the purpose of marriage is to form a happy and lasting family (household) based on belief in One God. Within the framework of national law, every marriage in Indonesia must be registered by the state as a form of formal legality in order to obtain legal recognition and legal rights and obligations between the parties (Article 2, paragraph 2 of Law No. 1 of 1974). Marriage is a form of behaviour that has been passed down by the Prophet Muhammad SAW as sunnah for mankind. It is considered sunnah because it was practised by the Prophet as the foundation of life in this world and also as salvation in the hereafter. By getting married, people will avoid adultery, which is strictly prohibited by religion; not only is it forbidden to commit adultery, but even approaching it is not allowed.

Indonesian marriage law has inspired Muslims to conduct marriages based on Islamic law. In addition, *fiqh* serves as a reinforcement and support in the organisation of human life, as can be seen from the four areas of organisation mentioned, namely: (1) *Rub'al ibdah*, which regulates the relationship between humans as creatures and their Creator; (2) *Rub'al muamalat*, which regulates human interactions with one another to fulfil their daily needs; (3) *Rub'al munakahat*; which regulates human relationships within the family environment, and (4) *Rub'al jinayat*; which regulates security within an orderly society that guarantees peace.<sup>1</sup> The purpose of marriage is very noble, according to Zakiyah Darajat, who mentions five purposes of marriage, namely: (1) to have and raise offspring, (2) to fulfil human desires and express love, (3) fulfilling religious obligations, protecting oneself from evil and destruction, (4) fostering a sense of

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<sup>1</sup> Tihami dan Sohari Sahrani, *Fikih Munakahat; Kajian Fikih Nikah lengkap*, (dalam Ali Yafie, *Pandangan Islam terhadap kependudukan dan keluarga Berenca*), Cet. 1 (Jakarta: Raja Grafindo Persada, 2009), p. 15

responsibility to accept rights and obligations, as well as a sincere desire to acquire lawful wealth, and (5) building a household to create a peaceful society based on ideals and affection.<sup>2</sup>

The Marriage Law states that a new marriage is considered valid if it is conducted in accordance with the laws of the respective religion and beliefs. Another section of the law states that a marriage that has been conducted must be registered with the Marriage Registration Agency, which is the KUA for Islam and the Civil Registry for other religions.<sup>3</sup> This affirmation is also stated in the Compilation of Islamic Law (KHI) in Book I, Chapter II, Article 4, which states that a marriage is valid if it is conducted in accordance with Islamic law as stipulated in Article 2, paragraph (1) of the Marriage Law.

However, in practice, there is a form of marriage that is not officially registered by the state, known as *nikah siri*. The term “*Siri*” comes from the Arabic word *sirr*, which means secret. *Nikah siri* is generally considered valid according to Islamic law, but it is not registered with the Office of Religious Affairs (KUA), so it has no legal force from the perspective of the state administration.<sup>4</sup> (Sudarsono, 2016). The phenomenon of unregistered marriages raises various issues, particularly regarding legal protection for wives and children born from such marriages. Without official registration, the legal status of the parties becomes vulnerable; for example, in terms of inheritance, alimony rights, and the citizenship status of children.<sup>5</sup> On the other hand, some people consider unregistered marriages to be a form of religious observance that is valid under Islamic law, and therefore does not require state legitimisation.

Therefore, every marriage must comply with the applicable regulations. With regard to the pillars of marriage, Islamic law stipulates that the pillars of marriage consist of: a *Wali* (*Wali nasab*), two witnesses, two prospective spouses, and the *ijab qabul* ceremony.<sup>6</sup> Regulations governing the marriage process are intended to better organise human life and also aim to establish a way of life that is in accordance with religious guidance. The Qur’an mentions this in Surah Ar-Rum, verse 21, which states:

ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات  
لقوم يتفكرون

<sup>2</sup> Tihami dan Sohari Sahrani, *Fikih Munakahat; Kajian Fikih Nikah lengkap*, (dalam Zakiah Darajat, Dkk, Ilmu Fikih), *ibid*

<sup>3</sup> Pasal 2 ayat (1) Undang-Undang No. 1 Tahun 1974, lihat juga Pasal 2, Bab II PP No. 9 Tahun 1975.

<sup>4</sup> Sudarsono. *Hukum Perkawinan Nasional*. Jakarta: Rineka Cipta, 2016

<sup>5</sup> Marzuki, P. M. *Pengantar Ilmu Hukum*. Jakarta: Kencana, 2017.

<sup>6</sup> Bab IV tentang Rukun dan Syarat Perkawinan, Pasal 14 KHI.

*“Among His signs is that He created for you mates from among yourselves, that you may find tranquillity in them, and He has put love and mercy between you. Verily, in that are signs for those who reflect.”* (QS. Ar-Rum: 21)<sup>7</sup>

Indonesian marriage law is often subject to various irregularities in its implementation, irregularities that occur because they are not in accordance with the provisions of the Marriage Law and the KHI. Several issues often disrupt a marriage, thereby also disrupting the understanding of marriage law among the Islamic community itself. For example, the issue of *siri* marriages (*nikah siri*) that occur among Muslims. This phenomenon arises from attempts to enter into a polygamous marriage without the consent of the first wife. *Siri* marriages are conducted secretly and are not registered with the Office of Religious Affairs (KUA). Neither the Marriage Law nor the KHI regulates the issue of *siri* marriages, but the Marriage Law does.<sup>8</sup> as well as KHI Indonesia<sup>9</sup> Stating that the marriage should be registered.

Marriage is basically valid according to Islamic law if it fulfils the stipulated conditions and requirements. However, *siri* marriages are often abused by certain people to practise polygamy. Marriage *siri* is often referred to as marriage under the hand, meaning that it is not registered with the KUA or official marriage registration agency. *Siri* marriage is a phenomenon in the development of the institution of marriage that is believed to occur not only among followers of Islam but also among followers of other heavenly religions. Of course, this issue attracts the attention of the general public because it is not carried out in accordance with Islamic tradition, whereby marriages are conducted openly and are known to the wider community.

Therefore, many people disagree with *siri* marriages, and the draft Religious Court Law will impose sanctions on those who perform *siri* marriages. The Indonesian Ulema Council (MUI) has also agreed to impose sanctions on those who perform *siri* marriages. According to the MUI, if consistent with Law No. 1 of 1974 concerning unregistered marriages, such

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<sup>7</sup> Al-Qur'an dan terjemahannya, Departemen Agama.

<sup>8</sup> See Article 2 paragraph (1) which states that a marriage is valid if it is conducted in accordance with the laws of their respective religions and beliefs and (2) states that every marriage shall be registered in accordance with the applicable laws and regulations, and also in its explanation, it states that the formulation in Article 2 paragraph (1) means that there is no marriage outside the laws of their respective religions and beliefs in accordance with the 1945 Constitution. What is meant by the laws of their respective religions and beliefs includes the applicable laws and regulations for their religious and belief groups as long as they do not conflict with or are not otherwise specified in this Law.

<sup>9</sup> See also Article 5 paragraph (1) which states that in order to ensure orderly marriages for the Islamic community, every marriage must be registered, and (2) which states that the registration of marriages referred to in paragraph (1) shall be carried out by Marriage Registrars as stipulated in Law -Law No. 22 of 1946 Jo Law No. 32 of 1954.

marriages are not recognised by the State. The discourse on unregistered marriages places Indonesian law in a complex position. On the one hand, the state seeks to regulate marriage administration to ensure legal certainty and protection; on the other hand, there is individual freedom to practise religious teachings. Therefore, it is important to examine unregistered marriages from the perspective of national law and Islamic legal thought in Indonesia in order to find common ground between religious prohibitions and sanctions and state law.

## RESEARCH METHODS

This research approach is a descriptive qualitative approach, which is research that aims to describe a condition, situation, phenomenon, or characteristics of an object systematically without linking cause and effect and without hypotheses. This research is more literature-based, focusing on an in-depth literature study of unregistered marriages in the Indonesian legal system, particularly regarding prohibitions and possible criminal sanctions. The data used to support this analysis is based on several descriptive qualitative approaches to strengthen the argument, including Law No. 1/1974 and its amendments, KHI, as well as conceptual approaches in Islamic law. In addition, secondary data sources in the form of reading materials or references that discuss the issue under study were also used. Furthermore, implicit data was used to explain terms that have multiple meanings or are difficult for readers to understand, and legal dictionaries and encyclopaedias were used to strengthen the data support.

## RESULTS AND DISCUSSION

### About Secret Marriages

*Nikah siri* comes from the Arabic word *sirrun*, plural *asrarun*, which means secret.<sup>10</sup> This term can be understood to mean that a secret marriage is a marriage that is conducted in secret or kept confidential, unlike marriages in general, which are conducted openly by the community. A secret marriage can be defined as a form of marriage that is conducted solely on the basis of religion and customs without following the applicable national legal procedures. This form of marriage is not registered or recorded at the District Religious Affairs Office or, for those who are not Muslim, at the Civil Registry Office. This unregistered marriage is sometimes referred to as *nikah misyar*, while others equate it with *nikah 'urfi*, which is a marriage based on custom.<sup>11</sup> All of these terms or definitions actually refer to marriages that are not announced (secret marriages) and marriages that are not registered with the relevant authorities.

<sup>10</sup> Abdurrahman Partosantono, *Qamus Dars al-Lughah al-'Arabiyyah li al-Mudarisi al-'aliyah*, (Jakarta: Dharma Bakti, 1982), p. 99

<sup>11</sup> Happy Santoso, *Nikah Siri Apa Untungnya*, Cet. 1, (Jakarta: Visimedia, 2007), p. 22

The legal status of unregistered marriages in Indonesia has evolved since the 1970s, when the Indonesian government opened up opportunities for foreign entrepreneurs to invest in Kalimantan. Many entrepreneurs came to Indonesia without their families, which led to turmoil due to human desires. As one way to fulfil these desires, foreign entrepreneurs approached women in the region, but it was not easy to get married due to regulations, customs, and religions that were different from their own, so they looked for other ways to get married. The most feasible option at that time was to conduct a *siri* (underhand) marriage through the mediation of a number of religious scholars or community leaders in the area who advised that the marriage was still valid because it was conducted in harmony and met the requirements, even though it was not registered and recorded at the relevant office.

Among scholars and the Muslim community, there are differing views on *siri* marriages. Some consider them permissible, while others consider them impermissible. These differences are very natural in society, depending on how one views such marriages. Jawahir Thantawi identifies three views in the debate on *siri* marriages, namely:

1. The first group considers that *siri* marriages are not prohibited and are permissible, based on the following principles:
  - a. *Siri's* marriage is intended as an effort to prevent violations of relationships between men and women.
  - b. A *siri* marriage is conducted in accordance with the conditions and pillars outlined in Islamic law.
  - c. *Siri* marriages are conducted based on the consideration that Islam teaches that marriage should be facilitated and not delayed, even if there are economic burdens. In addition to being based on Islamic law, the practice of *siri* marriages is usually determined by the circumstances of each family.
2. The second group considers that *siri* marriages are prohibited because they cause more harm than good, for the following reasons:
  - a. The law that should be adopted is positive law, considering that Islamic law is already included in it.
  - b. This may lead to dualism in the application of the law, thereby undermining the unification and certainty of the law on marriage.
  - c. It will cause problems if a divorce occurs, which will make things difficult for both parties because the marriage was not officially registered.

- d. In unregistered marriages, husbands do not have significant and binding responsibilities because there is a tendency for each spouse to be responsible for their own family's finances.
  - e. Secret marriages have become a common practice among officials and civil servants.
3. The third group tends to take a middle ground, allowing it as long as it complies with positive law, i.e., officially registering it through the authorised officials, even without having to immediately hold a *walimah*. This third view attempts to bridge the needs of those for and against unregistered marriages. In addition, it contains the interest that Muslims comply with and have a high awareness of the laws adopted in the country.

The differences in opinion above show that the law of unregistered marriage is a subject of debate among scholars and other Muslim communities, given the permissibility of such marriages. In addition, differences regarding the law of unregistered marriage should not have a significant and fatal impact on the lives of other Muslims. There are many reasons why someone might choose to enter into a *siri* marriage, including *economic hardship*. It is understandable if this is the reason for entering into a *siri* marriage, as the high cost of the marriage process at the KUA (Office of Religious Affairs) has discouraged people from getting married as stipulated by Law No. 1 of 1974. For those who, due to weak economic reasons, do not consider marriage registration important, what is important is that the marriage is carried out in accordance with the pillars and requirements determined by Islamic law; *the reason of urgency in marriage* is something that needs attention so as not to fall into adultery or pregnancy outside of marriage, which can result in abortion or other consequences.

Priyo Sembodo, in his book "*Nikah siri dalam tinjauan Psikososial*" (Secret marriages from a psychosocial perspective), puts forward several reasons, namely:<sup>12</sup>

1. The secret marriage was conducted because they were still in secondary school and did not want the school to know about their marriage.
2. Several perpetrators entered into unregistered marriages because they were bound by agreements with the places where they were studying or undergoing training, or other commitments during that period.

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<sup>12</sup> R.B. Priyo Sembodo, *Nikah Siri dalam tinjauan Psikososial*, makalah disampaikan dalam seminar Nikah siri dalam tinjauan Hukum Syar'i, Psikososial dan Hukum Positif, Yogyakarta, 2003

3. Some people who enter into unregistered marriages do so because they have not yet completed the administrative process of divorcing their previous spouse.
4. Marriages opposed by parents are the reason behind some secret marriages.
5. Some members of society have beliefs that are not based on Islamic law, which are sometimes considered an obstacle to marriage as it is commonly understood.

From various circumstances, we will find many reasons that are used to justify secret marriages as a reality and a symptom of the increasing practice of secret marriages, the effects of which are not only negative but also positive. Early pregnancy before marriage is a valid reason for conducting a secret marriage. Even more tragically, the prevalence of secret marriages stems from the public's ignorance of the consequences that will arise afterwards, including:

1. Poor people only think in the short term
2. The community believes that becoming the mistress of a businessman, community leader, official, or other prominent figure can accelerate one's attainment of status as a respected wife in society.
3. The above thoughts are reinforced by the assumption that they themselves see unregistered marriage as a destiny that must be accepted.

### **Siri Marriage from the Perspective of Islamic Legal Thought**

#### **1. Wali Marriage**

One of the pillars of marriage is the presence of a *Wali*. The *Wali* in marriage is a principle agreed upon by scholars for the validity of marriage. A *Wali* can act on behalf of the bride and also act as the person who is asked for permission for the marriage of a daughter. This is as narrated in a hadith from Aisha, namely.

عن عائشة قالت : قال رسول الله صلى الله عليه وسلم : إياها نكحت بغير إذن وليها فنكاحها باطل، ثلاث مرات وإن دخل بها فلمهوله بما أصاب منها فإن استجروا فالسلطان ولي من لا ولي له (رواه الترمذي)

*"Aisyah said: The Messenger of Allah (peace be upon him) said, "Any woman who marries without the permission of her Wali, her marriage is invalid (said three times). If her husband has consummated the marriage, then her mahram*

*is for her (the woman) because of what she has obtained from him. Then if they quarrel, the ruler becomes the Wali for those who do not have a Wali ."*<sup>13</sup>

The position of the *Wali* in marriage is inseparable, so the presence of the *Wali* largely determines the validity of the marriage. The Hadith of the Prophet also mentions

لانكاح إلا بوالي

Meaning: *"marriage is not valid unless there is a Wali "*

The importance of a *Wali* in marriage has been agreed upon by the majority of scholars in accordance with Islamic law. Therefore, a woman cannot be married without a *Wali*. The presence of a *Wali* in a marriage indicates that the girl to be married is the child of a father and mother who are legally married according to Islamic law and also according to formal legal law. However, the issue of a *Wali* for a prospective bride has been debated among scholars. Some scholars tend to allow a woman to marry without a *Wali*, based on the general meaning of the Qur'anic verse in Surah al-Baqarah; verse 232, which means: *"Let us not (O Wali s) prevent them (women who have divorced) from marrying (again) to their former husbands, if there is mutual consent between them in a reasonable manner"*. The scholars Abu Hanifah, Abu Zufar, and Az-Zuhri tend to argue that if a woman marries without a *Wali*, the marriage is still considered valid as long as the couple are *sekufu* (equal). According to Imam Abu Hanifah, the *Wali* is not a prerequisite for marriage, but rather a condition for marriage. Therefore, the followers of the Hanafi school of thought adhere to the generality of the verse in Surah al-Baqarah, verse 234, which means: *"When the waiting period (for women whose husbands have died) has ended, there is no sin on us (the Wali s) in allowing them to do what is appropriate for themselves"*.

If we look further at the description in the above verse, the absence of a *Wali* in marriage is limited only to widows, not to girls. *Qurash Syihab*, in his book *"Membumikan al-Qur'an; fungsi dan peran wahyu dalam kehidupan Masyarakat,"* suggests that the presence of a *Wali* should still be required in marriages, both for girls and widows, as this is very important in such a significant matter (*aqad nikah*). If something undesirable happens in the future, it can be used as a basis or reference. *"Grounding the Qur'an: the function and role of revelation in community life."* Generally, a *Wali* is required to be Muslim, of age, of sound mind,

<sup>13</sup> Tihami dan Sohari Sahrani, *Fikih Munakahat*..... p. 93, lihat juga dalam Amir Syarifuddin, *Hukum perkawinan Islam di Indonesia*..., p. 72. Lihat juga dalam Abdul Rahman Ghozali, *Fiqh Munakahat*, Cet. Ke 3, (Jakarta:Kencana Prenada Media Group, 2008), hal 47

fair, and male. In a marriage contract, other than the biological father of the bride, the following individuals may also serve as *Wali* s:

- a. Grandfather further up the male line
- b. Brother from the father's or mother's side
- c. The son of a brother on the father's side, the Uncle on the father's side. The son of the uncle who is related to the father
- d. Sultan (supreme ruler) also known as *Wali Hakim*
- e. The prospective husband and wife appoint *Wali*, referred to as *Wali muhakkam*

*Zahri Hamid*, in his book *The Fundamentals of Islamic Marriage Law and Marriage Law in Indonesia*, states that there are four types of marriage *Wal*is:

- a. *Wali Nasab*
- b. *Wali Mu'tiq*
- c. *Wali Hakim*
- d. *Wali Muhakkam*

In addition to the *Wali* mentioned above, there is a *Wali* in marriage who can marry off a girl without having to ask for her permission. This *Wali* is called the *Wali mujbir*. The requirements include:

- a. The chosen man, *Wali*, must be compatible with the girl he is going to marry.
- b. There is no animosity between the *Wali* and the girl who is to be married.
- c. There is no animosity between the girl and her prospective husband.
- d. The chosen man, *Wali*, will be able to fulfil his obligations towards his fiancée/ wife properly.

In some cases of unregistered marriages, the *Wali* judge is often appointed as a substitute for the *Wali*, or if the *Wali* of the prospective bride is unable to attend, or other reasons prevent the marriage from being conducted by the *Wali*. This situation allows the blood *Wali* to approve the marriage, but it is not recorded at the marriage registry office, namely the KUA. In this *shari'a* marriage, the *Wali Hakim*, who is appointed as the *Wali*, is not from the authorised party (government/KUA) but is a person considered knowledgeable about religion or a religious figure. It should be noted that the appointment of the substitute *Wali* does not meet the requirements and conditions of the *Wali*.<sup>14</sup> For having disregarded the rights of *Wali-Wali* in the order of *Wali*.

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<sup>14</sup> See the Compilation of Islamic Law (KHI) Article 21 paragraphs (1), (2), (3), (4) and Article 22.

## 2. Witnesses at a wedding

According to the majority of scholars, a marriage that is not witnessed is invalid. If there are no witnesses to the *ijab qabul*, even if it is announced to the public in another manner, the marriage remains invalid.<sup>15</sup> This is based on a hadith from Aisha, may Allah be pleased with her, in which the Messenger of Allah said:

لانكاح إلا بولي وشاهدي عدل (رواه درقطنی)

"A marriage is not valid unless it is performed by a Wali and two just witnesses." (HR. Daruquthni)

There are several reasons used to reinforce the importance of witnesses in marriage, including: a) Based on the Hadith narrated by Daruquthni above, b) The words "not" in the hadith mean "not valid," which indicates that witnessing the *ijab qabul* is a requirement for marriage. c) That Umar bin Khatthab received a complaint about a marriage that was only witnessed by a man and a woman, so Umar bin Khatthab stated, "This is an illicit marriage, and I do not approve of it. If I had been present at the time, I would have stoned them."<sup>16</sup> d) Because there are other parties involved in the rights of both parties to the contract, namely the children, as the contract requires witnesses so that the father will not deny his offspring.<sup>17</sup>

Witnesses are required in marriages conducted at marriage institutions, as well as in the case of unregistered marriages. Witnesses are also required because this matter relates to Islamic law provisions, as stated in the Compilation of Islamic Law (KHI), Article 14.

## 3. The law announcing marriage

In addition to fulfilling the requirements and conditions of a marriage, namely the presence of a *Wali*, two witnesses, the bride and groom, and the *ijab qabul* (marriage vows), it is also essential that the

<sup>15</sup> According to Imam Malik and his companions, witnesses in marriage are not obligatory and it is sufficient to simply announce the marriage. The reason for this is that buying and selling in marriage is referred to as witnessing when the buying and selling takes place, as mentioned in the Qur'an, and is not part of the conditions that must be fulfilled in buying and selling, whereas in the case of marriage, Allah does not mention in the Qur'an that there is a requirement for witnesses. Therefore, it is more appropriate that in marriage, the matter of witnesses is not included as one of the requirements. Sayyid Sabiq, alih bahasa Mohd. Thalib, *Fikih Sunnah*, Jilid 6 (Bandung: al-Ma'arif), p. 72

<sup>16</sup> Imam Malik narrated from Abu Zubai al-Makki that Umar bin Khatthab once attended a wedding that was witnessed only by a man and a woman, so Umar said, "This is a secret marriage, and I do not permit it." See Syaikh Hasan Ayyub, *Fiqh al-Asratul Muslimah, Fikih Keluarga*, terjemah M. Abdul Ghoffar, cet. 1 (Jakarta: Pustaka al-Kautsar, 2001), p. 66

<sup>17</sup> Sayyid Sabiq, *Fikih Sunnah*, Jilid 6 alih bahasa Mohd. Thalib, (Bandung: al-Ma'arif), P. 72 dan lihat juga *jilid 2*, pengantar Hasan al-Banna, Cet. 1, (Jakarta: Pena Pundi Aksara, 2006), p. 542

marriage be announced to all parties so that it is not considered secret or hidden from the community. The aspect of announcing the marriage is crucial because it signals the agreement of the ulama (religious scholars) to marriages that are conducted secretly or in private, so that it becomes clear to the community that a woman and a man have been bound by the bonds of marriage.

However, the aspect of announcing a marriage is not included in the requirements or pillars of a marriage, and there is still debate among scholars regarding the meaning and purpose of announcing a marriage. Similarly, a secret marriage is one in which the marriage process is kept confidential; in other words, it is not announced to the public. Therefore, a secret marriage is a marriage that is kept confidential and does not take place openly. Although the announcement of a marriage is not obligatory, it is important to announce it because the majority of scholars are of the opinion that a marriage cannot be considered valid unless it is announced openly, even if the announcement is made by other means. Announcing a marriage can protect the husband and wife from harm, whereas a marriage that is conducted secretly or covertly will lead the community to negative assumptions.

#### 4. Marriage Registration Law

One of the verses of the Qur'an that can be used as a basis for record-keeping is Surah al-Baqarah, verse 282, which requires (the obligation) to keep records in the aspect of *mu'amalah*. Upon closer examination, it is not only in matters of *mu'amalah* related to trade, debt, buying and selling, or other such matters, but also more broadly in matters of civil law; therefore, marriage is one aspect that falls under the category of civil law. Recording is included here to strengthen the testimony of a marriage event that is documented in writing. With written evidence, the status is fairer and correct in the eyes of Allah and society, and can avoid doubt.

According to the law, marriage registration is stipulated in Law No. 1 of 1974, Article 2, paragraph (2), which states that every marriage must be registered in accordance with the applicable laws and regulations. Indonesia is a country governed by the rule of law; therefore, all activities that result in legal consequences must be based on the applicable laws and regulations. The Compilation of Islamic Law (KHI) in Article 5 states that in order for marriages to be orderly and guaranteed in society, they must be registered by the competent authorities (officials appointed for that purpose).

A marriage should be planned to prevent harm that may occur if the household is not managed correctly and responsibly. Avoiding

harm is far more critical than fulfilling benefits. This means that legal action is not solely based on efforts to fulfil benefits (interests) but, more importantly, on how to avoid the negative impacts of such actions.

Suppose we consider that unregistered marriages in reality cause many problems, it is best to avoid them. Marriage is not sufficient if it only involves a verbal agreement between the two parties (the groom and the bride); rather, it is far more essential to register the marriage contract so that a valid and legally binding written proof can be obtained. Therefore, marriage should be accompanied by registration. In addition, Muslims are required always to submit and obey the laws enacted by trusted leaders (the government), because Islam (the Qur'an) has commanded us to obey Allah, obey the Messenger, and also obey our leaders.

Since the time of the Prophet Muhammad SAW, the practice of marriage in society has been entirely "private" and was not recorded at all in the state registry at that time. In its development, Islamic law also views that registration is not included in the requirements and pillars of marriage, because marriage registration is considered to be solely a worldly matter. For Indonesian citizens, the rules regarding registration have been regulated in the form of legislation, both Law No. 1 of 1974 and the KHI through Presidential Instruction No. 1 of 1991.

Basically, the purpose of registering a marriage is to obtain written evidence so that when the marriage is registered with the Marriage Registry (KUA), a person will have an official document that can be used as evidence in court in the event of a dispute related to the marriage or a dispute arising from the marriage.

Philosophically, the institution of marriage registration exists to bring order to society and provide legal certainty. Marriage registration is a new form of understanding the Prophet's command to announce marriages, even if it is only by slaughtering a goat. This command was actually intended for small, closed tribal communities in the Hijaz region in the past, for whom a goat slaughtering ceremony was sufficient as an announcement.<sup>18</sup>

The obligation to register marriages is not only regulated in the Marriage Law and the Compilation of Islamic Law (KHI), which is a guideline for Muslims in Indonesia, but also provides the same indication. Both of these national positive laws are consistent with religious law regarding unregistered marriages, so an unregistered

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<sup>18</sup> Eko Mardiono, *Peraturan Nikah Siri akan kembali ke belakang*, <http://google.com/nikah-siri/> diakses pada tanggal 14 Oktober 2010

marriage not only violates positive law but also religious law. It is therefore advisable to register such marriages.

### **Prohibition of Secret Marriages**

The prohibition of unregistered marriages is a proposal put forward by the government through the Religious Court Law, aimed at fulfilling the government's desire for regulations that provide clarity on marriage practices conducted outside of religious and legal provisions. The discourse on the prohibition of unregistered marriages included in the Religious Court Bill has received a positive response from one legal institution, namely the Constitutional Court (MK). According to the Chief Justice of the Constitutional Court (MK), Mahfud MD, in the current context of Indonesia, unregistered marriages must be prohibited by law to protect the victims from adverse consequences. In his opinion, the prohibition does not violate religious principles.<sup>19</sup> In relation to the Draft Law on Religious Courts, there are criminal provisions for those who perform unregistered marriages, who are subject to a maximum prison sentence of 3 (three) months and a fine of 5 (five) million rupiah. Not only that, but the prison sentence can also be imposed on people who marry or are married in secret marriages, polygamous marriages, or contract marriages (*mut'ah*). These provisions also apply to the officiant or marriage registrar who validates the unregistered marriage; for them, the penalty is a fine of 6 million rupiah and imprisonment for one year.<sup>20</sup>

Regarding the imposition of sanctions on those who engage in unregistered marriages, several elements of society have expressed differing opinions. The Indonesian Ulema Council (MUI) in Jakarta has stated that criminal sanctions are necessary for those who engage in unregistered marriages so that no parties are harmed by such actions. Ma'ruf Amin, as Chairman of the MUI in Jakarta, stated that if the law prohibits unregistered marriages, then we are obliged to comply and obey it. He added that the reason for banning unregistered marriages is that marriage is lawful if the requirements and conditions are met, but it can be unlawful if it causes harm to the mother or child; then it is illegal, lawful but unlawful, he said firmly.<sup>21</sup>

The term *nikah siri* is not found in the books of Fiqh. This term is only known and more popular locally in Indonesian marriage law. Therefore, there is no definite definition agreed upon by the scholars in terms of Sharia, and thus, there is no standard and agreed-upon legal status. This is because

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<sup>19</sup> RUU Peradilan Agama: Pelaku Nikah Sirri akan dipenjara 3 Tahun, [http://google.com/voa-islam.com/nikah\\_siri/akses\\_pada\\_tanggal\\_14\\_Oktober\\_2010](http://google.com/voa-islam.com/nikah_siri/akses_pada_tanggal_14_Oktober_2010)

<sup>20</sup> Hukum Islam tentang Nikah Sirri; [http://suryaonline/diakses\\_pada\\_tanggal\\_14\\_Oktober\\_2010](http://suryaonline/diakses_pada_tanggal_14_Oktober_2010)

<sup>21</sup> Indra Subagja - <http://www.detikNews>, akses senin/8/11/2010/15.12WIB

in the books of Fiqh, it is said that “the law is to what is named, not to the name itself”. In the context of marriage, the permissibility or impermissibility, or validity or invalidity, of a marriage is not determined by its name but by the procedures and practices of the marriage itself.

In the context of Indonesian society, *nikah siri* often has three meanings: **First**, A marriage that is conducted in secret, without inviting outsiders other than the families of the bride and groom, and which is not registered with the Office of Religious Affairs, meaning that the marriage has no formal legal status under the law. **Second**: A marriage conducted secretly by a man and a woman without the knowledge of both families, in other words, without a *wali*, perhaps because the *wali* did not agree or simply considered a marriage without a *wali* to be shameful. **Third**: Marriages that are kept secret due to specific considerations, for example, due to fear of receiving negative stigma from a society that considers unregistered marriages to be taboo, or due to complicated considerations that force someone to keep it a secret.

Even though the draft Religious Court Law will be revised to include criminal sanctions for those who perform unregistered marriages, differences of opinion regarding the implementation of unregistered marriages are inevitable. Those who argue that unregistered marriages remain valid under Islamic law view them from the perspective that the marriage fulfils the necessary requirements and that the perpetrators cannot be considered to have committed a sin and are therefore not subject to punishment in this world or the hereafter, as such acts are categorised as “doing what is forbidden” or “neglecting what is obligatory”.

There is a positive aspect to the Religious Courts Bill in that it includes criminal sanctions or a ban on unregistered marriages, which can prevent people from entering into marriages that threaten a woman’s legal rights from her husband. For example, inheritance rights in the future, if the couple divorces either during their lifetime or through death. In addition, the Religious Court Bill also protects children from the legal uncertainty of their parents’ marriage.

Indonesian law does not recognise the term *nikah siri*, but the law does refer to *nikah siri* in the sense of a marriage that is not registered or recorded at a marriage registry office. For those who marry according to Islamic law, the marriage is registered at the KUA (Office of Religious Affairs), while for those who marry outside of Islamic law, the marriage is registered at the Civil Registry Office. Under national legislation, unregistered marriages are considered a violation punishable by criminal sanctions, as stipulated in Article 45 of Government Regulation No. 9 of 1975, specifically *paragraph (1)*. *Unless otherwise specified in the applicable laws and regulations, then:*

1. Any person who violates the provisions stipulated in Article 3, Article 10 paragraph (3), and Article 40 of this Government Regulation shall be punished with a maximum fine of Rp 7,500 (seven thousand five hundred rupiah).
2. Registration officers who violate the provisions stipulated in Articles 6, 7, 8, 9, 10 paragraph (1), 11, 13, 44 of this Government Regulation shall be punished with imprisonment for a maximum of 3 (three) months or a maximum fine of Rp 7,500 (seven thousand five hundred rupiah). Paragraph (2), the criminal offence referred to in paragraph (1) above constitutes a violation..

### **The Maqashid Syar'iyah Approach to Family Protection**

The *Maqashid Syar'iyah* approach is a highly relevant theoretical framework for analysing the legal and social impacts of unregistered marriages, particularly in the context of family protection. *Maqashid al-shariah*—often interpreted as the main objectives or purposes of shariah—is named *maqashid al-shariah* according to Imam al-Shatibi (died 1388 AD) and aims to maintain the interests and avoid harm to humans (*al-maslaha wa-d-darara*). In the development of modern fiqh, Muhammad Hashim Kamali clarified the five main *maqashid* that must be upheld in the application of Sharia, namely: protection of religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*).<sup>22</sup>

In the context of unregistered marriages, the two most relevant and prominent *maqasid* principles are *hifz al-nasl* and *Hifz al-'Ird*. Both are directly related to the protection of the family institution and the rights of individuals within it.

1. *Hifz al-nasl* (Protection of Offspring)

*Hifz al-nasl* is the most critical foundation in preserving the continuity of generations by ensuring the legal clarity of lineage status. In Islam and many national legal systems, the clarity of lineage status determines the legal rights of children, such as inheritance rights, recognition of a child's identity, and protection of social and economic rights.<sup>23</sup>

The practice of unregistered marriages, which are not officially recorded by the state, has profound implications for the unclear status of the children born from such unions. This is because without marriage registration, the children are potentially considered illegitimate under state law, leading to uncertainty regarding inheritance rights and even

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<sup>22</sup> Muhammad Hashim Kamali, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: International Institute of Islamic Thought, 2008).

<sup>23</sup> Imam al-Nawawi, *Al-Majmu' Syarh al-Muhadzab* (Beirut: Dar al-Fikr, 1996).

the risk of social and legal discrimination. Therefore, the practice of unregistered marriages contradicts the principle of *hifz al-nasl*, which is a maqasidi obligation to ensure the continuity of legitimate, protected, and recognised descendants in society in a fair manner.

Furthermore, *hifz al-nasl* is not merely a matter of administrative clarity, but also concerns the continuity of family values as the smallest social unit that forms the foundation of society. This uncertainty also has the potential to increase social problems such as family conflicts, an increase in neglected children, and social divisions, which ultimately affect the welfare of the community in general.

## 2. *Hifz al-'Ird* (Protection of Family Honour and Dignity)

In addition to protecting offspring, *Maqashid Syar'iyah* also places great importance on protecting the honour and dignity of individuals within the family, known as *Hifz al-'Ird*.<sup>24</sup> *Hifz al-'Ird* is not only related to the concept of honouring women as wives and mothers, but also includes protecting their social and psychological rights against stigma, discrimination, and potential exploitation.

Unregistered marriages (*nikah siri*) that are conducted in secret and are not recognised by state law clearly create vulnerability for women and their children. Without adequate legal protection, women as wives are vulnerable to injustice in their rights, including the right to financial support, social rights, and protection from violence or discrimination. Children also often face social stigma due to their parents' unofficial marital status, which can impact their psychosocial development and dignity.

This legal uncertainty has led to disparities in treatment within society and even within the state legal system, ultimately threatening the realisation of *Hifz al-'Ird* as the primary objective of maqashid, namely to preserve the honour and dignity of the family. Therefore, the prohibition and enforcement of sanctions against unregistered marriages can be seen as an effort to maintain *Hifz al-'Ird*, preserving communal and individual dignity and honour within the framework of law and religion.

## 3. The Correlation between the Prohibition of Unregistered Marriages and the Enforcement of Criminal Sanctions with Maqashid Sharia

Based on the above explanation, the prohibition of unregistered marriages and the application of criminal sanctions against this practice can be interpreted as systematic protection of the objectives of sharia

<sup>24</sup> Yusuf al-Qardhawi, *Fiqh al-Qur'an* (Kairo: Maktabah Wahbah, 2000).

law, particularly maintaining family stability and the welfare of society at large. This is in line with the idea that state law, as a representation of the public interest, has an obligation to uphold justice and ensure the protection of individual rights, especially those who are most vulnerable, such as women and children. However, a repressive legal approach must be balanced with policies that facilitate easy and affordable marriage registration, so that people who enter into unregistered marriages are not driven by administrative limitations or ignorance of the law. Thus, the synergy between *Maqashid Syar'iyah* and state law is key to ensuring the protection of families while preventing harmful marriage practices.

### Author Analysis

Legal policy is a strategic effort used by the state to formulate, implement, and oversee the legal system as a means of achieving national legal objectives, namely to realise public welfare and protect the rights of every individual, including family rights. In the context of regulating unregistered marriages, legal policy must be able to accommodate two main interrelated aspects, namely:

1. Harmonisation of Religious Norms and State Law

Islamic religious norms provide legitimacy and a moral basis for the implementation of marriage, including unregistered marriages, as a sacred bond under Islamic law. From a spiritual perspective, unregistered marriages are considered valid as long as they fulfil the pillars and requirements of marriage under Islamic law. State law, as stipulated in Law No. 1 of 1974 on Marriage, considers official registration to be necessary as part of the legal protection of the family and the state regarding the certainty of marital status and the rights arising from marriage (children, inheritance, alimony, etc.).

The harmonisation of these two norms means integrating religious legitimacy with the formal aspects of state legality without sacrificing the goal of comprehensive family protection. Through harmonisation, religious norms and positive law complement each other, thereby preventing conflicts or legal uncertainties that could have a negative impact on families, especially children and women.

2. Synthesis of Solution-Oriented Policies

To realise this harmonisation in practice, the government and relevant institutions need to develop policies that not only prohibit unilateral unregistered marriages, but also provide easy access for the community so that official marriage registration becomes easier and in line with religious values. Concrete steps that can be taken to

simplify Sharia-friendly registration procedures are essential so that marriage registration does not become a burden or conflict with Islamic marriage procedures. The registration system must be designed in such a way that it accommodates all requirements and approvals in accordance with religious provisions, without eliminating the legal aspects of the state. In addition, marriage registration services must be available evenly in various regions at an affordable cost, so that couples who wish to marry do not face administrative or financial obstacles that could encourage them to enter into illegal, unregistered marriages.

Intensive socialisation and education are also key elements in efforts to reduce the practice of unregistered marriages. Such educational programmes must involve various stakeholders, including religious leaders, government officials, and civil society, to jointly raise public awareness of the importance of officially registering marriages in the eyes of the law. With a better understanding, the public is expected to be no longer trapped in unregistered marriages, which can be detrimental from a legal and social perspective due to ignorance or limited information about the correct registration procedures.

In addition, revitalising and strengthening marriage registration institutions is crucial to ensuring the continuity and ease of access to marriage registration services. Marriage registration institutions that are geographically dispersed and administratively accessible will minimise the difficulties faced by the public in conducting official registration. Restructuring and improving the functions and infrastructure of these registration institutions can make marriage registration a responsive and inclusive service, thereby effectively reducing unregistered marriages and providing optimal legal protection for families.

### 3. Criminal Sanctions as a Last Resort

Criminal sanctions against unregistered marriages should be used as a last resort (*ultimum remedium*) when law enforcement officials find practices that clearly harm women and children and threaten the legal interests of the state. The application of these sanctions must be supported by preventive and educational approaches, such as providing warnings, legal assistance, and advocacy to the community, so that they are aware and encouraged to register marriages that are legally valid under the state.

Thus, law enforcement is not only repressive, but also constructive, so that the values of *maqashid sharia* (protection of

offspring and honour) are maintained alongside the enforcement of state law. This approach will encourage the integration of legal and religious norms, strengthen the social and legal legitimacy of state regulations, and ensure comprehensive justice and protection of family rights without causing conflicts of norms in society.

## CONCLUSION

*Nikah siri* is a marriage conducted by the *Wali* of the woman with a man and witnessed by witnesses requested for that purpose. *Siri* marriage is not recognised in legislation, but it is understood and recognised among Indonesians in the 20th century today, by Government Regulation No. 9 of 1975. Such marriages are referred to as unreported marriages or marriages that are not registered at the Office of Religious Affairs (KUA) for Muslims or the Civil Registry Office for non-Muslims. Therefore, *nikah siri* is a secret or clandestine marriage, which can be equated with an “under the table” marriage.

The prohibition of unregistered marriages is not possible under Islamic law (*sharia*) because such marriages fulfil the requirements and conditions of sharia. Furthermore, the practice of unregistered marriages is not a sin or a crime and therefore cannot be punished. However, the prohibition of unregistered marriages can be enforced through legislation, as stipulated in Government Regulation No. 9 of 1975 in Article 45 concerning Criminal Provisions, and also through the Compilation of Islamic Law (KHI), which emphasises the registration of marriages at religious institutions/offices.

In the Draft Law on Religious Courts, the Government, through the Ministry of Religious Affairs, has included a criminal element of three months’ imprisonment and a fine of 5 million rupiah for those who perform unregistered marriages or those involved in the implementation of such marriages. However, the draft law has sparked pros and cons regarding the criminal element that will be enforced. Some circles consider it inappropriate to include criminal penalties in the Draft Law on Religious Courts on the grounds that the practice of “unregistered” marriages allows the fulfilment of the pillars and requirements in accordance with Islamic law. Furthermore, the practice of unregistered marriages is not a crime for which the person should be punished.

In Indonesian Islamic law, the prohibition of unregistered marriages is intended to maintain administrative order and legality in terms of applicable laws and regulations. In addition, it can protect women from being deprived of their rights and the rights of their children in the event of divorce.

## BIBLIOGRAPHY

- Al-Qur`an dan Terjemahan, Departemen Agama RI, Tahun 2000
- Abdul Rahman Ghozali, *Fiqh Munakahat*, Cet. Ke 3, Jakarta:Kencana Prenada Media Group, 2008
- Abdurrahman Partosantono, *Qamus Dars al-Lughah al-'Arabiyyah li al-Mudarisi al-'aliyah*, Jakarta: Dharma Bakti, 1982.
- Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia; antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Cet. 1, Jakarta: Prenada Media, 2006
- Eko Mardiono, *Peraturan Nikah siri akan kembali ke belakang*, [http://google.com/nikah siri/](http://google.com/nikah_siri/) diakses pada tanggal 14 Oktober 2010
- Happy Santoso, *Nikah siri Apa Untungnya*, Cet. 1, Jakarta: Visimedia, 2007.
- R.B. Priyo Sembodo, *Nikah siri dalam tinjauan Psikososial*, makalah disampaikan dalam seminar *Nikah sirii* dalam tinjauan Hukum Syar'i, Psikososial dan Hukum Positif, Yogyakarta, 2003.
- Tihami dan Sohari Sahrani, *Fikih Munakahat; Kajian Fikih Nikah lengkap*, Cet. 1 Jakarta: Raja Grafindo Persada, 2009
- Sayyid Sabiq, alih bahasa Mohd. Thalib, *Fikih Sunnah*, Jilid 6, Bandung: al-Ma'arif
- Syaikh Hasan Ayyub, *Fiqh al-Asratul Muslimah; Fikih Keluarga*, terjemah M. Abdul Ghoffar, cet. 1, Jakarta: Pustaka al-Kautsar, 2001.
- Sayyid Sabiq, *Fikih Sunnah*, pengantar Hasan al-Banna, Cet. 1, Jakarta: Pena Pundi Aksara, 2006.
- Undang-Undang Nomor 1 Tahun 1974
- Undang-Undang Nomor 22 Tahun 1946
- Kompilasi Hukum Islam (KHI)
- Hukum Islam tentang Nikah Sirri; <http://suryaonline/> diakses pada tanggal 14 Oktober 2010

| Siri Marriage in Indonesian Legal Thought: Analysis of Prohibition and Criminal Sanctions

RUU Peradilan Agama: Pelaku Nikah Sirri akan dipenjara 3 Tahun,  
[http//google.com/voa-islam.com/nikah siri/](http://google.com/voa-islam.com/nikah_siri/) akses pada tanggal  
14 Oktober 2010