

NIKAH SIRI (UNREGISTERED MARRIAGE) AND LEGALITY OF MARRIAGE (SOCIAL AND LEGAL IMPACTS OF NIKAH SIRI IN INDONESIA)

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Abstract: Marriage in Islam has some conditions and pillars, if fulfilled then the law of the marriage is valid. It is different from the marriage regulations in Indonesia that state a marriage is not registered with an authorized official, then the marriage has no legal force. The law in Indonesia regulates the procedures for a marriage that is valid according to religion and law. A legal marriage will have social and legal impacts on both partners.

The purpose of writing this article is to explain the validity and legality of unregistered marriages, as well as their impact on society and law.

This article used qualitative legal research and normative research. specifically describing legal problems and legal systems.

Conventional Islamic legal concept, a marriage is valid if it meets the conditions and pillars. Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage states that a marriage is valid if carried out according to the laws of each religion and belief. In chapter 11 of Government Regulation Number 9 of 1975 it states: "Every marriage must be recorded in the applicable laws and regulations". A legal marriage has legal force if it is carried out according to religious rules and registered by a marriage registrar. The aims "to ensure order for society, both partners get a legal umbrella, and the perpetrators are socially protected".

Keywords: *Marriage, Siri, legality, social, law*

Introduction

Nikah Siri (unregistered marriage) is a marriage carried out secretly without official registration at the KUA/Civil Registry. Duraiwisy said that siri comes from the word "sir" or "sirrun" that comes from Arabic means silent or secret. Nikah Siri (unregistered marriage) according to the meaning of diction means a marriage whose implementation process is carried out secretly or secretly, then in its development the term state. Siri marriage means a marriage that is not registered.(Aminah, 2014). There are several types of unregistered marriages, including marriages without a guardian. Such marriages are sometimes carried out by someone in secret or unregistered, since the guardian of the prospective bride may not approve, and it could be done since the validity of the marriage has not been fulfilled. It is also possible that the marriage is only based on satisfying lust so that it does not follow the true teachings of sharia. Then the marriages are invalid, since the presence of a marriage guardian is one of the pillars of a valid marriage.

Nikah siri is widely interpreted by the community as; first; a marriage that is carried out without a guardian. Nikah siri is carried out secretly since the guardian of the prospective bride does not approve of the marriage; and since they consider that a marriage carried out without a guardian is valid; or since it is only intended to satisfy lust without paying attention to the rules of religious law; second, a siri marriage is a marriage that is recognized as valid by religion but recorded in a marriage registration institution.(Kharisudin, 221)

There are many factors that cause someone to get married but not register the marriage at the marriage registration institution. One of these factors is financial factors, means that the prospective bride and groom cannot afford to pay the cost of registering the marriage either at the KUA or at civil registry; there is also the fear of being found out that the marriage is not in accordance with the rules since the state does not allow a civil servant to marry more than once; and other factors; third, the marriage is hidden for various reasons; for instance, since of the fear of getting negative attention from residents who still view unregistered marriage as something taboo.(Burhamzah, 2016)

The unregistered marriage has the following characteristics: a. Done secretly. b. Without official registration. It is done for reasons of love, pregnancy outside of marriage, differences in religion/tribe and for economic reasons.

Law No. 1 of 1974 concerning Marriage stipulates that marriages must be conducted legally and registered. However, many couples choose to have unregistered marriages for various reasons, such as differences in religion, ethnicity, or social status. According to the Central Statistics Agency (BPS), in 2020, 13.4% of marriages in Indonesia were not officially registered. Although not legally recognized, unregistered marriages are still widespread in Indonesia. Indonesian law regulates the procedures for marriage that are valid according to Islam and valid according to State Law, that have been regulated in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 and the Compilation of Islamic Law (KHI). Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage states that: "Every marriage must be recorded in the applicable laws and regulations."(Law Number 1 of 1974 Article 5 paragraph 1)

This provision is further clarified in chapter 11 of Government Regulation Number 9 of 1975, the essence of that is: That a marriage is considered to have legal force before the law if it is carried out according to religious rules and has been registered by a marriage registrar. The Compilation of Islamic Law states that "In order to ensure order for the Islamic community, every marriage must be registered."(Law Number 1 of 1974 Article 5 paragraph 1)Meanwhile, based on the Conventional concept, a marriage is said to be valid if it has met the conditions and pillars of marriage. In addition, Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage also states that a marriage is valid if it is carried out according to the laws of each religion and belief.

Literature Review

There are several articles that have revealed the issue of unregistered marriage, including:

1. Nikah Siri, according to Islamic law and positive law, by Endang Zakaria and Muhammad Sa'ad, the research article provides the conclusion that a marriage carried out is valid according to religious law, if it is in accordance with the pillars and conditions of marriage. Likewise with marriages that are carried out in secret (nikah

siri) in the sense of Indonesian pihq. Different from secret marriages in ancient times where the majority of scholars forbade marriages that were carried out in secret. Based on the hadith of the prophet who encouraged his people to announce marriages. Registration of marriages in Islamic law is a requirement that completes the validity of a marriage. This is an analogy of the law of recording sales and purchases in muamalah, and included in the maqosyidu sharia section, namely hifh zul nasl. In the perspective of positive Indonesian law, according to statutory regulations, nikah siri is not based on legality. It does not have legal force. It does not have legal force that have legal impact on the rights of public services by authorized agencies for the perpetrators. They do not receive legal protection and services from the authorized agencies as they should. Their marriages are not recognized in the population register, their children cannot obtain birth certificates and so on. In other words, nikah siri bring many harms to the life of society, nation and state. While registering a marriage brings more benefits to society and the nation. We often find nikah siri in our society; this happens for various reasons. In general, nikah siri can occur due to: 1. Lack of awareness and understanding of the law in society 2. Apathy of some people towards the law 3. Unclear provisions for registering marriages 4. Difficulty in obtaining polygamy permits 5. Age factors and pregnancy outside of marriage 6. Different religions.(Endang Zakaria, 2021)

2. Nikah siri and its legal consequences, Edi Gunawan's article, provides an explanation that a. Nikah Siri, according to positive law is a marriage that is not carried out in accordance with Law No. 1 of 1974 concerning marriage. The legislation states that a marriage is valid if it is carried out according to the laws of each religion and belief, and recorded according to the applicable laws and regulations. b. The factors behind the occurrence of sirih marriage include; Nikah Siri is carried out since the relationship is not approved by the parents of both parties or one party, an illicit relationship, someone feels unhappy with their partner, so that the intention arises to find another partner, to avoid sin (adultery), the couple feels not ready materially and socially, does not get permission to practice polygamy, the couple does not know and does not want to know the legal procedures, for exploration and to legalize sexual relations only, to avoid the burden of costs and complicated administrative procedures, for reasons such as. c. Legal impacts that can arise from sirih marriage, include; can cause conflict in the family, for example since it is not approved, interfaith marriage, polygamy and so on, economic and educational impacts, this is usually done by students, legal impacts, namely unregistered marriage is a violation of the law, social and psychological problems and impacts on religion, for example unregistered marriage carried out by ustaz or kyai.(Gunawan, 2013)
3. The Impact of nikah siri on Families, article by M. Yusuf. This article explains that: a. The impact of nikah siri on family behavior, including it has an impact on the continuity of a husband's responsibility for his family and children, since the legal force of the State is weak against the status of the legitimacy of a husband's descendants and can eliminate the rights of his children in terms of inheritance. b. Nikah siri has a bad impact on the family regarding the husband's responsibility for his wife and children. c. That the husband loses responsibility, both responsibility for his role as a husband for his wife and his role as a father for his children. d. It is difficult to establish harmony in

the family, there is no mutual respect, favoritism towards children, and fear of spreading.(Yusuf, 2019)

4. Legal Consequences and Social Impacts of Siri Marriage on Women and Children According to Islamic Law and the Marriage Law, Citra Qurani Kurniawa and Shofiatul Jannah, M.Pd. in the SAMAWA Journal of Islamic Family Law, 2024 concluded that nikah siri has negative social and legal impacts on women and children, both in terms of law and family welfare. Nikah siri is not legally recognized and can result in injustice to the rights of women and children in terms of property, legal protection, and recognition of status. Although some people consider nikah siri to be a valid marriage according to religion, this cannot be legally recognized and can cause problems in the process of proving marriage in court. Therefore, it is very important to raise awareness so that the public will be aware of the consequences of marriage and understand and comply with the applicable laws and regulations regarding marriage, as well as to avoid siri marriage that can harm the parties involved.(Image of Qurani Gunawan, 2024)

Method

This study focused on library research, namely searching for theories and concepts that are used as the basis for research. This study used a qualitative approach. It is also used a descriptive research type. Descriptive research attempts to describe and interpret existing data, in addition, it is limited to efforts of reveal a problem or in a state or event as it is, so that it is merely revealing facts (fact finding). This study began with empirical facts, that aim to obtain a factual, objective, complete picture of the problem in this study.

The documentation method is a research method to obtain information by examining and recording existing document reports. According to Djumhur and Muhammad Surya, the documentation method is a method of collecting data that has been documented in written books such as master books, personal books, letters of reference and so on. After various data have been collected, descriptive analysis techniques are used to analyze them.(Arikunto, 2010)This means that researchers are trying to re-describe the data collected regarding an in-depth description of Nikah Siri and the Legality of Marriage (Social and Legal Impacts in Indonesia).

This type of research is normative legal research or library research that examines document studies, namely using various secondary data such as laws and regulations, legal theories and can be in the form of opinions of scholars. The author used a normative type of research using qualitative analysis, namely explaining existing data with words or statements rather than numbers, besides that the author also used a literature approach (statute approach) where this approach emphasizes the approach to laws and other regulations.

Results and Discussion

Regarding *nikah siri* or unregistered marriages, based on Muhammadiyah Tarjih Council regarding marriage registration, initially Islamic law did not specifically regulate it. During the time of the Prophet Muhammad SAW and his companions, marriage registration was not yet known. At that time, a marriage was valid if it had fulfilled the elements and requirements. In addition, a marriage that had been carried out should be advertised, announced to the public, including through the media walimatul-'ursy. The Prophet said:

Hold a walimah (event) even if it is only by slaughtering a goat [HR. al-Bukhari from 'Abdurrahman bin 'Auf].

If there is a dispute or denial that a marriage has occurred, the proof is sufficient with evidence of testimony. However, in subsequent developments due to changes and demands of the times and with consideration of the public interest, in several Muslim countries, including Indonesia, regulations have been made that regulate marriage and its registration. It is done for the orderly implementation of marriage in society, the certainty of the law, and to protect the parties who are carrying out the marriage itself and the consequences of the marriage, such as the wife's maintenance, the relationship between parents and children, inheritance, and others. Through the registration of marriage as evidenced by a marriage certificate, if there is a dispute between the husband and wife, or one party is not responsible, then the other can take legal action to defend or obtain their respective rights, since with a marriage certificate the husband and wife have authentic evidence of the marriage that occurred between them. Changes to something including the institution of marriage by making laws or other regulations, are an unavoidable necessity and are not something wrong according to Islamic law. This kind of legal change is valid according to the *fiqhiyah* principle that states: "It is not denied that the law changes due to changes in the times."

Ibn al-Qayyim stated: Changes in *fatwas* and their differences occur according to changes in time, place, circumstances, intentions and customs. (I'lam al-Muwaqqi'in, n.d.)

The marriage registration, in addition to its substance to realize legal order, also has preventive benefits, such as preventing deviations from the pillars and requirements of marriage, both according to religious provisions and laws and regulations. There is no marriage between a man and a woman who are prohibited from performing a marriage contract. Avoiding falsification of the identities of the parties to the marriage, such as a man who claims to be single but actually has a wife and children. This preventive action in laws and regulations is realized in the form of research into marriage requirements by the Registrar, as regulated in Article 6 of PP Number 9 of 1975. The requirement to register a marriage and make a marriage certificate, in Islamic law, is likened to the registration in the *mudayanah* issue that in certain situations is ordered to be recorded, as stated in the word of Allah in the letter of al-Baqarah verse 282:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَ.....

"O you who believe, if you don't pay charity in cash for a specified time, you should write it down..."

The marriage contract is not an ordinary *muamalah* but a very strong agreement, as stated in the Qur'an surah an-Nisa' verse 21:

وَكَيفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِّيثَاقًا غَلِيظًا

"How can you take it back, when some of you have mixed with each other as husband and wife, and they (your wives) have taken from you a strong covenant.

Thus, registering a marriage contains benefits or welfare, great goodness in the life of society. On the other hand, if the marriage is not clearly regulated through laws and regulations and is not registered, it will be used by the parties who carry out the marriage only for personal interests and harm other parties, especially the wife and children. Determining the law on the basis of welfare is one of the principles in determining Islamic

law, as stated in the qaidah: "a government action is based on guaranteeing the interests and welfare of its people".

Based on the above considerations, it is obligatory for Muhammadiyah members to register their marriages. This is also reinforced by the Muhammadiyah Personality text as decided in the 35th Muhammadiyah Congress, that among the characteristics of Muhammadiyah is "respecting all laws, statutes, regulations, and the legitimate foundations and philosophies of the state". (<https://tarjih.or.id/Hukum-nikah-sirri/>, 206)

The impacts of unregistered marriage, both socially and legally, are as follows:

- a. social impacts for those who practice *nikah siri* or unregistered marriages include; 1. Disparities in women's and children's rights. Women and children born from *nikah siri* often do not have the same rights as those born from official marriages. 2. Social stigma and discrimination. Couples who practice *nikah siri* are often considered immoral and discriminated against by society. 3. Limited access to education and health. Children from *nikah siri* often do not have the same access to education and health as children from official marriages. While education is the most important investment for the nation. Since development can only be carried out by humans who are prepared for it through education. Educational development is held to answer today's global needs and challenges. (Fanreza, 2017) 4. Increased risk of domestic violence. *Nikah siri* can increase the risk of domestic violence since there is no supervision and legal protection.
- b. The legal impacts for those who have a secret marriage include; 1. No legal force. *Nikah siri* has no legal force and is not officially recognized. 2. Not officially registered. The marriage is not officially registered, so there is no authentic evidence of the existence of the marriage. 3. Difficulty obtaining a child's birth certificate. Children from *nikah siri* often do not have a valid birth certificate. 4. Risk of legal penalties for couples who have *nikah siri* can be subject to legal penalties if caught.

In the Journal of Sociology written by Sri Hilmi Pujihartati from the Faculty of Social and Political Sciences, Universitas Sebelas Maret (UNS), legally speaking, *nikah siri* is an incomplete legal act since it is not officially recorded in government records. Children born from *nikah siri* are considered unable to be legalized by the state through a birth certificate. (Mela Arnani, 2022) Every Indonesian citizen who marries must register their marriage with the KUA or Civil Registry Office to obtain a marriage certificate or letter.

Marriage can only be proven by a marriage certificate made by a marriage registrar. The legal impacts arising from a secret marriage occur if there is a divorce, namely the wife has difficulty obtaining rights to joint property, if the husband does not provide it. In addition, if there is an inheritance left by the husband due to death, it is very difficult for the wife and children to obtain rights from the inheritance. If a husband works as a civil servant, neither the wife nor the children are entitled to any benefits. (Mela Arnani, 2022)

Since *nikah siri* or unregistered marriage is not recognized by law, the wife has no right to sue if the husband violates his obligations, since unregistered marriage is not recognized by law. This problem may get worse, the following will explain the provisions in the Compilation of Islamic Law (KHI):

1. Wife and children lose their right to marital support. (Image of Qurani Gunawan, 2024)
Nikah Siri cancels the husband's obligation in the form of maintenance as regulated in Article 80 paragraph (4), namely "In accordance with his income, the husband is responsible for:

- a. Livelihood, decent clothing, and a place to live for the wife.
 - b. Household expenses, maintenance costs, and medical costs for wife and children.
 - c. Education costs for children.
2. If a divorce occurs, the wife does not have the right to receive joint marital property. (Image of Qurani Gunawan, 2024)
- Marriages need to be officially registered. In essence, the KHI regulates household assets, including inheritance and joint assets. The wife is legally entitled to part of the joint assets (*gono-gini*) after a divorce. Article 97 of the KHI states that "Widows or widowers who are divorced are each entitled to half of the joint assets as long as it is not determined otherwise in the marriage agreement." However, *since nikah siri* are not recognized by law, this aspect of the situation is difficult to resolve legally. The following statement in Article 88 of the KHI illustrates this kind of difficulty: "If there is a dispute between husband and wife regarding joint assets, the settlement of the dispute is submitted to the Religious Court."
3. The status of the child is not recognized by law (considered an illegitimate child) and only bears the birth of the mother and the father's inheritance rights are lost. (Image of Qurani Gunawan, 2024)
- Article 99 of the KHI states, "A legitimate child is a child born in or as a result of a legitimate marriage." The status of a legitimate child itself must be proven by a birth certificate that can be made based on the marriage certificate of the parents as evidence needed to determine the legal status of a child. While in *nikah siri*, a child's birth certificate is difficult to obtain since there is no marriage certificate of the parents. This provision can be seen from Article 103 of the KHI that states:
- a. The origin of a child can only be proven by a birth certificate or other evidence.
 - b. If a birth certificate or other evidence referred to in paragraph (1) does not exist, the Religious Court may issue a determination regarding the origin of a child after conducting a thorough examination based on valid evidence.
 - c. Based on the Religious Court's decision in paragraph (2), the Birth Registration Agency within the jurisdiction of the Religious Court issues a birth certificate for the child in question. Meanwhile, a marriage is valid if it is registered at the KUA or at the Marriage Registrar (PPN). Therefore, children born out of wedlock are those born from a marriage that is not registered (that therefore the marriage is considered void). Indeed, according to the provisions of Article 100 of the KHI, "A child born out of wedlock only has a blood relationship with his mother and his mother's family." In civil matters, it is also true that a child born from *nikah siri* does not have any relationship other than with his mother and her family. As a result, the child loses his inheritance rights from his father. Emphasizing this issue further, as stated in Article 186 of the KHI, "A child born out of wedlock only has a mutual inheritance relationship with his mother and his mother's family."
4. If the husband dies, the wife has no right to inherit. (Image of Qurani Gunawan, 2024)
- Legally, an unregistered wife (*siri* wife) is not considered a legitimate wife. For example, in a polygamous marriage, the legitimate wife and her family will receive an inheritance upon the husband's death, but an unregistered wife (*siri* wife) cannot sue. Whereas in article 96 of the KHI it is stated that "If a divorce occurs due to death, then half of the joint property becomes the right of the spouse who survives longer", the rights of an

unregistered wife (siri wife) cannot be fulfilled by this clause since it is not recognized by law.

If we look closely at Law Number 23 of 2006 concerning Population Administration that was later amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, then marriage registration is an obligation and at the same time a right of every resident in Indonesia. (Erwinsyahbana, 2018)

Efforts to overcome unregistered marriages can be done in the following ways: 1. Increasing public legal awareness. It is about the importance of official marriages. 2. Strengthening the role of the Office of Religious Affairs (KUA)/Civil Registry. Increasing the role of the KUA/Civil Registry in supervising and recording marriages. 3. Establishing a marriage counseling institution. It helps couples understand the importance of official marriages. 4. Advocacy for women's and children's rights. Increasing advocacy for women's and children's rights to protect them from the impacts of unregistered marriages.

Marriage registration services need to be strengthened with verses that can be used as a basis for requiring marriage registration. In Islamic jurisprudence, it is ordered that the law of buying and selling and borrowing must be recorded, let alone marriage.

The need for massive education and socialization to provide public awareness by involving clerics and online media including TV stations, immediately implementing civil registration, data integration between Ministries/Institutions, especially the Religious Court Agency (Badilag), the Ministry of Religion and the Ministry of Home Affairs; in the long term, it is necessary to revise the Marriage Law by implementing sanctions for violations and articles related to marriage registration that need to be strengthened.

It is expected that all parties who are in direct contact with the community, government officials, religious leaders, and all related parties can collaborate in providing education and socialization, as well as other constructive activities to increase public knowledge, especially related to Marriage. Law Number 1 of 1974 that highlights the importance and benefits of marriage registration and the impact of unregistered marriages. With the hope that the community will be aware of the law, so that they understand it and practice it. (Mohamad Irvan Fahrizal Ginintu, 2024).

Conclusion

Nikah Siri (unregistered marriage) has serious social and legal impacts in Indonesia. Therefore, it is necessary to have awareness and cooperation from the community, government, and related institutions to overcome the practice of siri marriage and protect the rights of women and children. Creating stricter regulations and building an effective marriage data system.

It is expected that all parties who are in direct contact with the community, government officials, religious leaders, and all related parties can collaborate in providing education and socialization, as well as other constructive activities to increase public knowledge, especially related to Marriage. Law Number 1 of 1974 that highlights the importance and benefits of marriage registration and the impact of nikah siri or unregistered marriages. With the hope that the community will be aware of the law, so that they understand it and practice it.

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