

Factors that Cause the Occurrence of Siri Marriage in Tualang District

Paisal Ahmad Dalimunthe✉

State Islamic University of Sultan Syarif Kasim, Riau, Indonesia

✉ paisalahmad26@gmail.com

ABSTRACT

Purpose – In the procedural rules of marriage within the Indonesian Islamic society, it is stipulated that marriages must be officially recorded and published in accordance with Marriage Law No. 1 of 1974. In reality, not all segments of the Indonesian population adhere to the established procedures or rules. This is evidenced by the fact that a portion of the population in the Tualang District of Siak Regency still engages in unregistered marriages that are not officially documented or published, which deviates from the provisions of Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law. This study aimed to identify the factors underlying the occurrence of unregistered marriages in the Tualang District.

Methods – To achieve this objective, the researcher employed qualitative research methodology. Data collection was carried out using observation, interview, and documentation methods. The data validity testing technique used was triangulation of sources and methods. Data analysis was conducted using an interactive analysis model consisting of data collection, data reduction, data presentation, and drawing conclusions.

Findings – The research findings indicate that the practice of unregistered marriages in the Tualang District is similar to regular marriages, with the key distinction being the lack of official documentation. The factors contributing to unregistered marriages in the Tualang District include: out-of-wedlock pregnancies, economic factors, and the desire for polygamy.

Research implications/limitations – The impacts of unregistered marriages on the community include ease of conducting marriages, difficulties in obtaining birth certificates for children, a higher likelihood of divorce, document forgery, and conflicts.

Originality/value – The results of this research are expected to be a practical reference for the community and government to overcome the problem of nikah siri. The factors that cause nikah siri described in this research can be an illustration for the government to be able to formulate policies related to the problem of siri marriage.

Keywords: *Siri Marriage, Marriage Registration, Legal Certainty.*

Introduction

According to Article 1 of Law Number 1 of 1974 concerning Marriage, what is meant by marriage is the inward and outward bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on

God Almighty. Thus, marriage is a contract whose overall aspect is conceived in the word nikah or "tazwīj" and is a sacred ceremonial utterance.¹

The purpose of marriage itself is not only to fulfil biological needs, but to obey the commands of Allah and His Messenger, which is worth worship, namely to build a prosperous family that brings benefits to the perpetrators of marriage, children and relatives. Marriage as a strong bond, is required to make benefits for society and the nation in general.²

According to Abdul Somad, siri marriage, also known as underhand marriage, is “a marriage that is carried out without fulfilling the requirements and procedures of the laws and regulations”. Basically, if the requirements of the pillars of marriage are fulfilled, then a siri marriage is considered valid in Islamic law. However, because it has not been recorded in terms of the law, this type of marriage is incomplete.³ In terms of terms, a siri marriage is “a marriage in which the pillars and conditions are fulfilled, but it is carried out in secret and generally without being recorded in the registry of an authorised body in a country”.⁴

Siri marriage is no longer a new phenomenon. The perpetrators come from various walks of life, including age, education level and economic status. In addition, siri marriage has attracted controversy because it is considered detrimental to women. A siri marriage is a type of marriage that is conducted behind closed doors. Some marriages of this type are recorded, but hidden from the community. On the other hand, there are marriages that are not recorded with the Marriage Registration Officer (PPN) and are not registered at the Office of Religious Affairs (KUA). Conceptually, these two types of marriage are known as nikah siri.⁵

Some people in Tualang District were found to be still conducting siri marriages. Researchers found that there are several factors that encourage people to marry underhand. These factors include being pregnant outside of marriage, not having finalised the divorce papers because they are working away from their wives, and the wife not wanting to leave with her husband.

¹ Santoso, “Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat,” *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 7, no. 2 (Desember 2016): 413.

² Aisyah Ayu Musyafah, “Perkawinan Dalam Perspektif Filosofis Hukum Islam,” *Jurnal Crepido* 2, no. 2 (2020): 112.

³ Abd. Somad, *Hukum Islam: Pernormaan Prinsip Syariah Dalam Hukum Indonesia* (Jakarta: Kencana, 2017), 309.

⁴ M. Mustafa Luthfi dan Mulyadi Luthfi, *Nikah Sirri* (Surakarta: WIP, 2010), 42.

⁵ Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern* (Yogyakarta: Graha Ilmu, 2011), 17.

When conducting field research, the researcher also conducted an interview with the party who married off the couple who were married siri about what was the reason he married off the couple in siri marriage, and he said that he married them off because there were several factors, including because there had been pregnancy outside of marriage and the perpetrator was underage, because it was a family disgrace so that the family came to him as a religious figure in the village. So that their child is married off to cover the disgrace. When the researcher asked about why he wanted to marry the couple. He said that he just wanted to help him, and he received payment according to their ability.⁶

According to the Compilation of Islamic Law and the Indonesian Marriage Law, nikah siri is considered a marriage that is not in line with the applicable legal law so that its status is invalid. As a result, the legal consequences of siri marriage are clear so that those who suffer losses and become victims are women and children resulting from these siri marriages.

However, from a *maslahah* perspective, the government has the authority to make registration a condition of marriage legality. Therefore, the Government can include marriage registration in the revision of the Marriage Law No. 1 of 1974. Marriage registration is a form of publication or legal evidence that can legalise a person's marriage and protect the rights and obligations of the people involved, such as the protection of offspring or children, property, and souls.⁷

Women who marry illegally often experience difficulties as wives and mothers from a juridical and sociological perspective. The disadvantages from a juridical point of view include that the illegally married woman will not receive full recognition as a wife, and any children born are considered to be out of wedlock.⁸ It is very important for the bride and groom to record their marriage because the marriage book is the original proof of the originality of their marriage both in religion and in the state. The existence of a marriage book allows them to show that they are the legitimate offspring of their marriage and have the right to be heirs.⁹

⁶ Interview with Muhammad Yaqub, 18 January 2022 at Pinang Sebatang

⁷ Zulham Wahyudani, "Keabsahan Nikah Siri Dalam Perspektif Masalahah," *Jurisprudensi: Jurnal Ilmu Syari'ah, Perundang-Undangan dan Ekonomi Islam* 12, no. 1 (2020).

⁸ Siska Ikhtiarina, Ardiah Anggreni, dan Ashar, "Fenomena Pernikahan Siri di Kabupaten Penajam Paser Utara dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Superma* 2, no. 2 (2020): 245.

⁹ Duray Achmad, "Pencatatan Perkawinan di Kantor Urusan Agama (KUA) (Studi di Bantargebang, Kota Bekasi)" (Skripsi, Jakarta, Universitas Islam Negeri Syarif Hidayatullah, 2016), 31.

In civil matters, a marriage is considered valid if it has been registered or recorded at the Office of Religious Affairs (KUA) or the Civil Registry Office in accordance with the religion of the couple. Unregistered marriages are still not considered official by state regulations even though they have fulfilled the religious requirements.¹⁰ This phenomenon of siri marriage still occurs in Tualang District, where couples marry without registering at the KUA first. There are several factors behind these siri marriages such as the lack of public understanding of marriage procedures and the occurrence of pregnancy outside of marriage.

Siri marriages are still considered illegal in positive law even though they are religiously valid, because they do not have written evidence in the form of a deed. Siri marriage can cause many problems in the future, but there are many reasons why people do it, such as in Tualang District. This study will investigate all the factors that influence siri marriage in Tualang District.

Methods

The method used in this research is qualitative descriptive type. In accordance with the objectives of this study, namely knowing the factors behind siri marriage in Tualang District. The data sources in the research are divided into two types, namely primary and secondary data sources. Primary data sources include the Head of the KUA of Tualang District, and couples who married siri in Tualang Subdistrict. While secondary data sources consist of books, journal articles, theses, and other written sources. Data collection techniques are observation, interviews and documentation and are analysed using phenomenological techniques.

Result

Siri Marriage in the Perspective of Islamic Law

Marriage is derived from the word "nikah", which linguistically means "union (adhdhamm), collection (al-jam'u), or intercourse (al-wath'u)". Nikah in shar'i terms is a contract that legalises intimate relations by using the words "marry", "marrying", or a

¹⁰ Mahdi Syahbandir Ruhdiya dan Mujibussalim, "Kewajiban Pencatatan Perkawinan Bagi Pasangan yang Telah Menikah Beserta Konsekuensi Yuridisnya," *Ilmu Hukum Pascasarjana Universitas Syiah Kuala* 02, no. 02 (2013): 97.

combination of both. However, denotatively, the word "nikah" refers to a contract.¹¹ In Islamic law, especially as regulated in the science of fiqh, the definition of marriage or marriage contract is “a bond that legalises association and limits rights and obligations and helps between a man and a woman who are not muhrim between them”.¹²

According to the majority of scholars, marriage is Sunnah. According to the Zhahiri group, marriage is obligatory. According to the late Malikiyah scholars, marriage is obligatory for some, Sunnah for some, and permissible for others. This difference of opinion stems from the question of whether the commands in the verses and traditions relating to marriage should be interpreted as recommended, permissible or obligatory.¹³

In terms of Shari'ah implementation, marriage is recommended (mustahab) for those who need or desire to have sexual relations. The condition is being able to pay the cost of marriage and aims to maintain religion, perpetuate offspring, preserve lineage, and realise benefits, as said by the Prophet Muhammad SAW¹⁴:

يا معشر الشباب من استطع منكم الباءة فليتزوج فاعنه اغض للبصر واحصن للفرج ومن لم يستطع فعليه بالصوم فاعنه له وجاء ((متفق عليه))

Meaning: : “O young people, whoever among you is able and willing to get married, let him get married. For indeed, marriage can subdue the eyes and preserve the private parts. And whoever among you is not able to do so, let him fast. For fasting curbs desire”. (Hadith narrated by al-Bukhari and Muslim).

The hadith above substantially states that marriage was really carried out by the Prophet Muhammad SAW, he performed and guarded it. His companions also did the same, married and kept it. The people of the Prophet Muhammad SAW also did the same thing. Seeing all the actions of the Prophet Muhammad SAW shows that marriage has the legal status of sunnah. A marriage that is not reported or not registered at the Office of Religious Affairs is called nikah siri if the woman's guardian marries a man and is witnessed by two witnesses. This unreported marriage is also known as nikah siri. These marriages are conducted according to religious or customary rules.¹⁵

¹¹ Wahbah Zuhaili, *Fiqh Imam Syafi'i: Mengupas Masalah Fiqhiyah Berdasarkan Al-Qur'an dan Hadits*, trans. oleh Muhammad Afifi (Jakarta: Niaga Swadaya, 2010), 449.

¹² Ahmad Sudirman Abbas, *Pengantar Pernikahan: Analisa Perbandingan Antar Madzhab* (Jakarta: Prima Heza Lestari, 2006), 1.

¹³ Teungku Muhammad Hasbi Ash-Shiddieqy, *Hukum-hukum Fiqh Islam: Tinjauan Antar Madzhab* (Semarang: Pustaka Rizki Putra, 2001), 222.

¹⁴ Ash-Shiddieqy, 452.

¹⁵ M. Yusuf, “Dampak Nikah Siri Terhadap Perilaku Keluarga,” *Jurnal At-Taujih*, 2019, 2, no. 2 (Juli-Desember): 99.

“Sirri” comes from the Arabic word “sirrun”, which means secret, quiet, silent and hidden, as opposed to “alaniyyah”, which means openly. Later, the word “sirri” was added to the word “nikah”, so it was called “nikah sirri”, meaning “a marriage performed secretly or in secret”. This meaning of "secretly or hidden" leads to two interpretations: “a marriage that is not publicly announced or a marriage that is not known or registered with a state institution”. However, the definition of nikah is the same as the term “nikah di bawah tangan”, which is “the process of marriage with Islamic requirements such as guardians, witnesses and ijab qabul”.¹⁶

Nikah siri according to terminology, scholars interpret it with three different meanings. The following is the description:

a) Marriage without being Recorded by the Office of Religious Affairs (KUA)

Nikah siri is “a marriage performed by a couple without any notification (recorded) at the Office of Religious Affairs (KUA), but this marriage has fulfilled the elements of marriage in Islam, which include two brides, two witnesses, guardian, consent and dowry”. This siri marriage is legal according to religion, but invalid according to positive law (state law) by ignoring some or several applicable positive legal rules, as explained in Law No. 1 of 1974 concerning Marriage, Article 2 that “every marriage is officially registered at the Office of Religious Affairs (KUA)”. Meanwhile, the agencies that can perform marriages are the Office of Religious Affairs (KUA) for Muslims and the Civil Registry Office (KCS) for non-Muslims.¹⁷

Therefore, siri marriages that are not registered at the KUA have no legal force. As a result, if they both have problems at home such as divorce, domestic violence, inheritance, or child custody, the KUA and religious courts cannot decide or receive complaints from them.¹⁸

b) Marriage without a Guardian or Witnesses

Because it does not fulfil the conditions of marriage, a marriage performed without a guardian or witnesses is considered invalid by all fiqh scholars, such as the presence of a guardian and witnesses. It even falls under the category of

¹⁶ Addin Daniar Syamdan dan Djumadi Purwoatmodjo, “Aspek Perkawinan Hukum Siri dan Akibat Hukumnya,” *Notarius* 12, no. 1 (2019): 458.

¹⁷ Happy Susanto, *Nikah Sirri Apa Untungnya?* (Jakarta: Visimedia, 2007), 22.

¹⁸ Nasiri, *Praktik Prostitusi Gigolo ala Yusuf Al-Qardawi (Tinjauan Hukum Islam)* (Surabaya: Khalista, 2010), 45.

adultery (ittikhazul akhdan), which means using a woman or man as a pet to satisfy sexual appetite. However, according to Abu Bakr al-Husaini in his book *Kifayah al-Akhyar*, if two witnesses are present with the bride and groom, but the guardian is not present, then the marriage is also invalid.

يَشْتَرِطُ فِي صِحَّةِ عَقْدِ النِّكَاحِ حُضُورُ أَرْبَعَةٍ وَلِيِّ وَزَوْجٍ وَشَاهِدَيْنِ عَدْلٍ

Meaning: “The validity of the marriage contract requires the presence of four people, namely: the guardian, the bride and groom and two fair witnesses.”¹⁹

This is in accordance with the hadith of the Prophet Muhammad:

لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاهِدَيْنِ عَدْلٍ (رواه البيهقي)

Meaning: “No marriage is valid without a guardian and two witnesses” (HR al-Baihaqi).²⁰

The word “La” in the above Hadith means not only “incomplete” but also “invalid”. According to some Hanafiyah scholars, a nikah siri is valid, and the guardian cannot annul it unless the bridegroom is not compatible.

c) Siri Marriage from an Islamic Perspective

Nikah siri is a marriage that is carried out under certain conditions, such as consent, guardian, and witnesses. However, the husband and wife, guardians, and witnesses agree to hide this marriage from the community. In this case, it is usually the man who asks for two witnesses to seal the news of the marriage.²¹

Legal Effects of Siri Marriage According to the Indonesian Marriage Law

Marriage registration aims to realise marital order in society. This is an effort regulated through legislation, to protect the dignity and sanctity of marriage. Furthermore, this marriage registration can be proven by a marriage certificate, of which each husband and wife receive a copy. If there is a dispute or disagreement between them, or one of them

¹⁹ Taqiyy al-Din Abu Bakar bin Muhammad al-Huseini al-Hisni, *Kifayah al-Akhyar fi Hill Gayah al-Ikhtisar* (Beirut: Dar al-Kutub al-Ilmiyah, 2001), 477.

²⁰ Abu Bakar Ahmad bin al-Husein bin ‘Ali al-Baihaqi, *Al-Sunan Al-Kubra* (Beirut: Dar al-Kutub al-Ilmiyah, 2003), 202.

²¹ Tanwirul Afkar, *Fiqh Rakyat* (Yogyakarta: LKiS, 2000), 288.

is not responsible, then the other can take legal action to defend or obtain their respective rights.²²

The legal basis for marriage registration is contained in Law Number 1 of 1974 concerning Marriage Article 2 paragraph (2), which states that "Every marriage shall be recorded in accordance with the applicable laws and regulations". Furthermore, according to Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law in Article 3, it is confirmed as follows.

1. Every person who intends to enter into a marriage shall notify the Recording Officer at the place where the marriage will take place.
2. The notification mentioned in paragraph (1) shall be made at least 10 working days before the marriage takes place.
3. An exception to the period mentioned in paragraph (2) due to an important reason, shall be granted by the Sub-District Head (on behalf of) the District Head.

Thus, although marriage registration is only regulated in one paragraph in the UUP, the issue of registration is very dominant. This will be clearly seen regarding the marriage procedure itself, which is all related to recording. It is not excessive if there are legal experts who place it as an administrative requirement that also determines the validity of a marriage.²³

Another legal basis for marriage registration is found in the Compilation of Islamic Law (KHI). The provisions that contain the issue of marriage registration are in Article 5, namely:

1. In order to ensure the orderliness of marriage for the Islamic community, every marriage must be recorded.
2. The recording of the marriage mentioned in paragraph (1) shall be carried out by the Marriage Registrar as stipulated in Law No. 22 of 1946 jo Law No. 32 of 1954.

Based on the description above, it can be seen that nikah siri in the view of Indonesian positive law is invalid and cannot be justified based on the Marriage Law Article 2 Paragraph 2 and its implementation is contained in Government Regulation

²² Faizah Bafadhal, "Nikah Siri dalam Perspektif Undang-undang Perkawinan," *Jurnal Ilmu Hukum Jambi* 2, no. 2 (2011): 24.

²³ Amiur Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia; Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 sampai KHI* (Jakarta: Kencana Prenada Media Group, 2012), 123.

Number 9 Article 2 paragraph (2). In general, the existence of an unregistered marriage means that it has allowed a man and a woman to live together outside of marriage, and this is very detrimental to the parties involved (especially women), especially if they already have children born from extramarital relationships.²⁴

Siri or underhand marriages are valid according to religion, but are not valid according to the law, because they do not have legal force that can be used as authentic evidence that a marriage has taken place. Furthermore, regarding siri marriage according to positive law, there are two opinions from legal experts. The first opinion says that siri marriages are valid, with the consideration that marriage registration is only an administrative requirement, not determining whether a marriage is valid or not. Meanwhile, the second opinion says that siri marriages are not valid, because every marriage is recorded according to the applicable law.²⁵

Siri marriage can be categorised as an unlawful act. If the Government can be more assertive in responding to this phenomenon, then the perpetrators of siri marriage can be subject to legal sanctions. Legal problems in siri marriage occur on the part of women and children. As a religiously legal wife, the wife cannot claim the right to physical and mental maintenance and inheritance rights in the event of divorce, the right to complain in the event of domestic violence, or the right to legal protection if left without a message. The husband's position, which is not subject to the law, creates a wide space for domestic violence committed by the husband against his wife.²⁶

Siri marriages have a very detrimental impact on wives and women in general, both legally and socially.

- a. Legal impact: a) The wife is not considered a legal wife; b) The wife is not entitled to maintenance and inheritance from the husband if he dies; c) The wife is not entitled to gono-gini property in the event of a divorce, because legally the marriage is considered to have never taken place.

²⁴ Endang Zakaria dan Muhammad Saad, "Nikah Sirri Menurut Hukum Islam dan Hukum Positif," *Kordinat* XX, no. 2 (2021): 251.

²⁵ Oky Deviany Burhamzah, "Nikah Siri Dalam Perspektif Hukum Perkawinan Nasional," *Ubelaj* 1, no. 1 (2016): 45.

²⁶ Edi Gumawan, "Nikah Siri dan Akibat Hukumnya Menurut UU Perkawinan," *Jurnal Ilmiah Al-Syir'ah* 11, no. 1 (2013): 14.

- b. Social Impact. The wife will find it difficult to socialise because women who enter into siri or underhand marriages are often considered to have lived in a house with a man without a marriage bond or the wife is considered to be a mistress.²⁷

Discussion

Implementation of Siri Marriage in Tualang District, Siak Regency

Marriages that are conducted in accordance with their respective religions and beliefs are commonly known by many people. One type of marriage that exists in Indonesia is siri marriage, which most people know is only carried out with an Islamic religious procession. The implementation of a siri marriage is in accordance with the narrative of the informant who is the head of the siri marriage, namely MY "A siri marriage is carried out like an ordinary marriage. Using ijab qabul, attended by guardians, witnesses, then there is a dowry. In addition, the siri marriage is attended by the head of the local neighbourhood association".²⁸

SY, the perpetrator of the siri marriage, said that her siri marriage was carried out in accordance with marriage in general, namely there was ijab qabul, attended by witnesses, guardians and there were also family members who attended as well as the local RT.²⁹

Factors Encouraging Siri Marriage in Tualang District, Siak Regency

In general, siri marriages are conducted behind closed doors and are hidden and without being recorded at the KUA. Wildan Mustofa divides the category of nikah siri into two groups. The first group is a marriage contract without the presence of the woman's parents or guardians. There is only the bride and groom, two witnesses, and the person who marries without obtaining guardianship from the rightful person. Secondly, a marriage contract that is not recorded in accordance with the Marriage Law but the terms and conditions are valid in the view of Islam.³⁰

The problems arising from nikah siri are very complex. In Tualang Sub-district, researchers found two couples who had a siri marriage. This is due to several factors including:

²⁷ Syamdan dan Purwoatmodjo, "Aspek Perkawinan Hukum Siri dan Akibat Hukumnya," 461.

²⁸ Interview with MY As the Person Who Married the Siri Nikah on 19 February 2023.

²⁹ Interview with SY on 22 February 2023

³⁰ Ikhtiarina, Anggreni, dan Ashar, "Fenomena Pernikahan Siri di Kabupaten Penajam Paser Utara dalam Tinjauan Sosiologi Hukum," 239.

1) Pregnancy Outside of Marriage

In Tualang Subdistrict, siri marriages occur because of pregnant women who are not married. Both the perpetrator and her family prefer to marry siri to cover their shame and disgrace. The behaviour of today's teenagers is heavily influenced by technological advances and Western cultural trends. If not scrutinised beforehand, this will cause their behaviour to deviate from religious and religious norms.

2) Economic Factors

Partly due to the poor economic conditions of the local community, they are unable to pay the marriage fee at the Religious Affairs Office. As a result, people choose to get married siri instead of getting married officially.

3) Age Factor for Marriage

According to Law No. 16/2019 on the Amendment to Law No. 1/1974 on Marriage, the minimum age for marriage is 19 years old. This encourages people to marry siri rather than apply to the court for marriage dispensation, which takes time and money.

4) Social Factors

It can be said that siri marriage is an easy and fast process so many people do it. Another factor is usually caused by the presence of a village headman or unofficial headman in the village. These pengulu allow people to ask to be married simply by coming to the KUA. This phenomenon has long been the norm.

5) The desire for polygamy

It is important to remember that "Law No. 1/1974 on Marriage, as amended by Law No. 16/2019 on the Amendment to Law No. 1/1974 on Marriage, allows polygamy. Articles 4 and 5 of the Marriage Law regulate polygamy, where the husband can apply for a polygamy licence to the Religious Court as long as they fulfil the conditions mentioned in the articles. However, most husbands do not want to overly follow these provisions, especially if one of the conditions is permission from the first wife. Husbands face a big challenge in this regard as most wives will not agree. This is because siri marriage is done to achieve the goal of polygamy without the court and the wife knowing about it.

The Impact of Siri Marriage in Tualang District, Siak Regency

Siri marriages lack legality, which makes them detrimental to women. Women are always at a legal disadvantage in siri marriages. Among the consequences of siri marriage are the following:

1) Marital Status Has No Legality

There is no recognition of legality by the state on the status of husband and wife for couples who marry siri. This is due to the fact that they do not record their marriage at the KUA or an institution authorised to record marriages. Of course, this is because their marriage lacks legality. Although recognised by religion, in the eyes of the state, the marriage is invalid because it is not recorded and has no deed.³¹

2) Wives and children are not entitled to maintenance.

When divorced, women will not get the right to gono-gini property, because there was never a definite legal status to the marriage. This situation certainly causes losses for the woman herself.

3) Neglect of Rights and Obligations

The lack of legal status of the marriage has caused husbands to neglect their physical and mental obligations. The responsibility that lies on his shoulders seems to no longer receive attention by men, the reason is the unclear status of marriage so that he feels no burden to carry out his duties as a husband.

4) Children's Civil Status is Limited to the Mother.

This is due to the lack of legality of their marriage so that children born from siri marriages will be considered children born outside of marital status.

5) Impact on Administrative Population

Population administration is also affected by the implementation of siri marriage. This is because only the mother's name is listed on the child's certificate. Furthermore, access to education for children is also hampered because the legal status of the parents' marriage is still unclear. In addition, applying for a passport to travel abroad will also be constrained due to the blurred marital status.

³¹ Ikhtiarina, Anggreni, dan Ashar, 241.

Analysis of Islamic Law on the Phenomenon of Siri Marriage in Tualang District

There are several terms known by the community to refer to nikah siri, for example kawin syar'i, kawin kyai, or kawin modin. In the dictionary "At-Ta'rifat" it is stated that siri marriage is: "nikah siri is marriage without a reputation (wedding party)".

In addition, there is a definition given by the scholars regarding nikah siri, which is "a male witness and a female witness". This opinion was put forward by Imam Maliki which was based on a hadith from Abi Zubair Al-Maliki. Umar ibn Khattab asserted that such marriages are prohibited because they tend to be hidden and the pillars and conditions are incomplete. So the law is not valid. Then, if it continues, the relationship will become adultery and deserves to be punished with flogging.

In general, nikah siri is understood as a form of marriage without announcement or an attempt to publicise it. According to the Syafi'iyah, nikah siri is "a marriage that is not broadcast or a reception is not held, even if it is very simple". Meanwhile, the Hanafiyah definition says that nikah siri is a marriage that is not attended by two witnesses. Another case with the Malikiyah where this group asserts that the marriage is not valid because the process is shrouded in secrecy. This clearly contradicts the hadith which states that marriage must be announced and it is forbidden to keep it a secret, which reads "Announce the marriage and sound the flags for its performance".³²

Regarding marriage registration, initially Islamic law did not concretely regulate it. During the time of the Prophet Muhammad SAW. and the companions were not known to have marriage registration. At that time marriage was valid if it fulfilled the pillars and conditions. To be known to the public, the marriage that has been held should be announced to a wide audience, among others through the media walimatul 'ursy. Rasulullah SAW said: "Announce the marriage". (HR. Ahmad). In another hadith he said: "Hold a walimah (for marriage) even if only by slaughtering a goat".(HR. Muslim).

The following will present the opinions of several scholars/experts in Islamic law and fihiyyah rules relating to marriage registration:

- a. Wahbah az-Zuhaili.

With regard to marriage registration, he expressed a fiqh rule as follows: "Among the rules of Shar'iyyah is that the ruler/government is allowed to order something permissible according to the consideration of the maslahat he sees. If the

³² Saifudin Zuhri, *Sanksi Pidana Sebagai Pendidikan Bagi Pelaku Nikah Siri dalam Prespektif Hukum Islam* (Semarang: LPPM IAIN Walisongo, 2012), 20.

ruler has ordered it, then it is obligatory to obey it". If it is for the benefit of the people, the state is authorised to make any regulation as long as it does not violate the provisions of Shari'ah. Even the state has the right to oblige things whose original law is permissible as in the rule above. All policies/regulations made by the government should refer to the benefit of the community. As the rules of fiqh: "the policy/rule of the leader imposed on his people must be orientated for their benefit".

b. Ahmad as-Sarbahi

Dr Ahmad al-Sarbahi expressed an opinion that is in line with the rules presented by Dr Wahbah az-Zuhaili above: "As long as the ruler in enacting marriage registration intends to realise the mashlahah for the community, then it is obligatory for the community to obey his orders and register their marriage contracts so as to avoid negative consequences and be safe from attempts at deceit and betrayal."

Based on the opinions of the two contemporary scholars mentioned above, it can be considered the use of the argument of *maslahah mursalah* as the legal basis for the law of marriage registration. Basically, fiqh (Islamic law) products are extracted from the Qur'an and the Sunnah of the Prophet. However, when there are problems that are not mentioned *sharih* (clearly) in it, then to determine legal decisions, other methodologies can be used, such as the benefit of the people (public interest) and customs (*'urf*). Consideration of *maslahah* not only causes certain laws to change, but can also create new laws, especially in matters where no legal provisions were previously found in the *nash*. Included in this realm is the issue of marriage registration.³³

In the fiqh paradigm, all things that contain legal consequences must be carried out based on the sources of Islamic law, namely the Qur'an and *hadith*. When referring to the legal opinion of the *Madzhab* Imams, then *siri* marriage in Tualang District is valid according to Islamic law. This is because the pillars and conditions of marriage, which include guardian, consent, dowry, and bride and groom, have been fulfilled. In addition, their marriage is also known by community leaders and neighbourhood residents.

However, it would be better if the people of Tualang Sub-district conducted official marriages based on *maslahat* considerations. Regarding marriage registration, the Ulama

³³ Abu Yazid Adnan Quthny, Ahmad Muzakki, dan Zainuddin, "Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974," *Ay-Syari'ah: Jurnal Hukum Islam* 8, no. 1 (2022): 34.

explain that the obligation to register marriages stipulated by the government does not contradict Islamic law because it is in accordance with the syllabus of marriage. With the registration of marriage, in addition to the realisation of public marital order, each man and woman who has been bound by marriage has authentic evidence as a married couple. Thus, his marriage has legal certainty. However, if there is a marriage that is not registered, it is still religiously valid as long as the terms and conditions are fulfilled.

Conclusion

When viewed from the procedure, siri marriage is almost no different from marriage in general, because the pillars and conditions are complete. The slight difference is in terms of recording, where siri marriages are not registered at the KUA. The factors that encourage the occurrence of siri marriage in Tualang Sub-district include the weak economic situation that makes people unable to pay the marriage fee at the KUA; the age of the bride and groom who are not sufficient according to the law; pregnancy outside marriage; and the desire for polygamy.

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