



**Problems of *Sirri* Marriage and Prisoners:
A Case Study in Sukadana, East Lampung, Indonesia**

Andi Zainuri¹; Ahmad Muslimin¹; Ahmad Mukhlishin¹

¹ Universitas Ma'arif Metro Lampung, Indonesia

✉ andizainuri@gmail.com

Abstract

Sirri marriage is a marriage carried out using the provisions outlined and determined by custom but does not fulfill state law. The state has established legal marriage through the Marriage Law and the Compilation of Islamic Law (KHI). This study aims to explain the legal perception of *sirri* marriage from the view of the Compilation of Islamic Law and Marriage Law in Indonesia. This research is an empirical legal study using a statutory approach. The data collection techniques used are interviews and documentation studies. Interviews were conducted with informants with religious leaders, the Head of the Religious Affairs Office, perpetrators of *sirri* marriage, and community leaders. The study concluded that marriage in Indonesia is legally regulated according to marriage law and the Compilation of Islamic Law, which states that marriage must be recorded. Meanwhile, marriages that are not recorded are not legally valid. The factors that cause the occurrence of *sirri* marriages are personal factors, including the characteristics of community understanding used as justification, the level of legal awareness factor, namely the level of understanding of community law, and the rules of law that exist and apply in Indonesia, which are less considered. The *sirri* marriage will have impacts and victims on women and children. Therefore, this research recommends that all parties create legal awareness in the community regarding the legal rules of marriage.

Keywords: *Sirri* marriage, Divorce, Prisoners, Islamic Law

Abstrak

Nikah sirri adalah pernikahan yang dilakukan dengan menggunakan ketentuan yang digariskan dan ditentukan oleh adat namun tidak memenuhi hukum negara. Negara telah menetapkan pernikahan yang sah melalui Undang-Undang Perkawinan dan Kompilasi Hukum Islam (KHI). Penelitian ini bertujuan untuk menjelaskan persepsi hukum terhadap pernikahan sirri dari pandangan Kompilasi Hukum Islam dan Undang-Undang Perkawinan di Indonesia. Penelitian ini merupakan penelitian hukum empiris dengan menggunakan pendekatan perundang-undangan. Teknik pengumpulan data yang digunakan adalah wawancara dan studi dokumentasi. Wawancara dilakukan dengan beberapa informan yaitu pemuka agama, Kepala Kantor Urusan Agama, pelaku nikah sirri, dan tokoh masyarakat. Penelitian ini menyimpulkan bahwa pernikahan di Indonesia diatur secara hukum menurut Undang-Undang Perkawinan dan Kompilasi Hukum Islam, yang menyatakan bahwa pernikahan harus dicatatkan. Perkawinan yang tidak dicatatkan tidak sah secara hukum. Faktor-faktor yang menyebabkan terjadinya perkawinan sirri adalah faktor personal, antara lain karakteristik pemahaman masyarakat yang dijadikan pembenaran, faktor tingkat kesadaran hukum, yaitu tingkat pemahaman hukum masyarakat, dan faktor aturan hukum yang ada dan berlaku di Indonesia yang kurang diperhatikan. Perkawinan sirri akan menimbulkan dampak dan korban terhadap perempuan dan anak. Maka dari itu, penelitian ini merekomendasikan agar semua pihak menciptakan kesadaran hukum di masyarakat mengenai aturan hukum perkawinan.

Katakunci: Nikah Sirri, Perceraian, Narapidana, Hukum Islam

Introduction

Marriage is a contract to legalize the relationship between a man and a woman to create a happy family life that is approved by Allah. This definition can create a happy family life, legalize the relationship between a man and a woman, and build a peaceful household based on love and affection.¹

According to Law No. 1 of 1974 concerning Marriage stated in Article 1, marriage is a physical and mental bond between a man and a woman as husband and wife to form a family (household), which is happy and eternal based on the Almighty God."² Meanwhile, the Compilation of Islamic Law explains that marriage is a firm

¹ Anthin Lathifah, "State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 15, No. 1 (2020). Inayatillah Inayatillah, "Social History of Islamic Law from Gender Perspective in Aceh: A Study of Marriage Traditions in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 2 (2022).

² Law No. 1 of 1974 concerning Marriage, especially Article 1. Abu Sahladan Nurul Nazar, *Buku Pintar Pernikahan*, (Jakarta: Belanoor, 2011), p. 104.

contract or *mitsaqan ghalizhan* to obey the commands of Allah, and carrying it out is an act of worship.³

Marriage is not only a matter of worship and law, but also a manifestation of obedience to the commands of Allah Almighty in the Quran and the hadith of the Prophet Muhammad Peace be upon Him (PBUH).⁴ Quran Among the signs of His power is that "He created for you wives of your own kind, so that you may tend to them and feel secure in them, and He made between you love and affection; indeed, in such things, there are signs for those who think" (QS. Al-Rum: 21). Also, the Hadith of the Prophet Muhammad SAW stating that "a young man who is able to settle down, then let him get married because marriage protects the eyes and preserves honor. But whoever is unable to marry, perform fasting, for fasting is a shield for him."

The source of Islamic law, the verses of the Qur'an and the hadith of the Prophet Muhammad PBUH above, explains that Allah orders humans to get married because marriage can prevent the eyes from things that are prohibited by Islamic law. In addition, marriage can maintain the honor of the self from falling from sexual damage, and most importantly, humans can achieve *maqashid al-syariat*, which is obtaining offspring.⁵ Marriage is a general *sunnatullah* (divine laws) and applies to all His creatures, whether humans, animals, or plants. Allah Almighty chooses it as a way for His creatures to reproduce and preserve their lives.⁶ Therefore, being single or unmarried is against Islamic law.

Nevertheless, marriage is not an easy issue; instead, it is a sacred matter. Not everyone has the opportunity to marry. The marriage cannot take place until certain requirements are fulfilled. Allah does not desire His servants to live in a society devoid of laws, such as those pertaining to marriage. Marriages that are forbidden are clarified by Allah and His messenger. Thus, Muslims have to stay away from them.⁷

Islamic law clarifies the permissible and forbidden marriages in the religion. The marriage that is forbidden, including those that should not be performed, like *mut'ah*, *muhallil*, and *shighar*, as well as those that still have ties to the former, like a wife being married again before the court dissolves the marriage, and others. These

³ Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law. Ansori Ansori, "Qawā'id Fiqhiyyah as Islamic Epistemology and Its Application at Marriage Law in Indonesia," *JURIS: Jurnal Ilmiah Syar'iah* 21, No. 1 (2022).

⁴Uzlah Wahidah and Fenita Ayuning Lestari Lestari, "Sunnah Monogami dalam Al-Quran dan Hadist Perspektif Faqihudin Abdul Kodir," *el-Bait Jurnal Hukum Keluarga Islam* 1, No. 2 (2022), p. 152-173. Muh Nashirudin, "Fikih Pernikahan Dalam Tafsir Aḍwa' Al-Bayān," *Jurnal al-Maslahah* (2015).

⁵Habibi Al Amin and Muhdi Muhdi, "Catch Marriage in Maqashid Al-Syari'ah aAnd Indonesian Law Perspective," *Shakhsiyah Burhaniyah: Jurnal Penelitian Hukum Islam* 6, No. 2 (2021), hlm. 115-128. Nur Rofiq, et.al., "Hukum Keluarga Islam: Perspektif Maqāshid Asy-Syari'ah Terhadap Dasar Wajib Patuh Pada Undang-undang Perkawinan dan Kompilasi Hukum Islam," *Wahana Islamika Jurnal Studi Keislaman* 9, No. 2 (2023), p. 173-193.

⁶Tihami M.A dan Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap*, (Jakarta Raja Grafindo Persada, 2013), p. 6.

⁷ Abu Sahla dan Nurul Nazar, *Buku Pintar Pernikahan*, p. 105.

types of marriage have their roots in the *Jahiliyah* period when people lived like animals and the law was governed by a strong society.⁸

A marriage contract is said to be valid if all the pillars and conditions have been fulfilled in the marriage contract. It is an invalid marriage contract if it lacks one or more pillars and conditions. If the invalidity of a marriage contract occurs because one of the pillars is not fulfilled, then the marriage contract is void. If one of the conditions is not fulfilled in the marriage contract, then the marriage contract is invalid.

Law No. 1 of 1974 Article 2 paragraph 2 states that every marriage is recorded, demanding legislation that applies later. This implies that if an individual gets married legally, their divorce must be finalized by the relevant legal regulations. The divorce is then considered legal, allowing him to marry again.⁹

Numerous research studies have been conducted on *sirri* marriages or marriages that are not publicly recorded. However, the author has not found a study comparable to the topic in Sukadana, East Lampung. Nonetheless, this discussion will review findings conducted elsewhere. For instance, Wardana's study talks about the *sirri* marriage that took place in the Samarinda Religious Court between 2016 and 2020, during which 944 cases of marriage *isbat* petitions were registered. Most religious authorities interpret *sirri* marriage as a law that has religious rather than state validity. Realizing that they do not have the same rights and responsibilities as state authorities, religious leaders resolve to refrain from marrying members of the community in a *sirri* manner and to educate others about the negative effects of *sirri* marriage, which include harm to the wife and children.¹⁰

According to Taufiq's study, *sirri* marriage has raised pros and cons among many people, including scholars, legal practitioners, and community leaders. Legal practitioners, however, believe that *sirri* marriage is not abiding by the Marriage Law and the KHI. Leaders in the community and the ulema perceive additional threats to the social order. As a result, the law of *sirri* marriage causes more harm when viewed from the perspective of *maqashid sharia*, which weighs *maslahat* and *mafsadat* in the study of Islamic legal theory.¹¹

Rahmatullah underlined how difficult it is for women in *sirri* marriages and underage marriages to get justice and legal certainty. Although it is claimed that Islamic law permits teenage marriage, this does not imply that it is always acceptable for all women in all situations. The reason for this is that there are circumstances that, for certain women, suggest it is preferable to delay marriage. The lack of state

⁸ Ahmad Mukhlisin, et.al., "Metode Penetapan Hukum Dalam Berfatwa," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 (2018), p. 167-84.

⁹ Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage.

¹⁰ Mohammad Syahrul Wardana, "Penanggulangan Sirri marriage Di Kota Samarinda: Peranan Tokoh Agama Dengan Konsep Sadd Adz-Dzari'ah," *Legitima: Jurnal Hukum Keluarga Islam* 4, No. 1 (2022), p. 51-67.

¹¹ Muhammad Taufiq, "Sirri marriage Perspektif Maqashid Syariah," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, No. 2 (2019), p. 114.

recognition of *sirri* marriage creates legal ambiguity regarding the status of the marriage and any offspring.¹²

Hanapi and Yuhermansyah examine the importance of marriage registration for women and children in Aceh. Unrecorded marriages will result in the loss and denial of the rights of women and children. In the case of students who elope (whose marriages are not recorded), in general, they no longer continue their schooling because they feel embarrassed and inferior to their friends. Therefore, this is where marriage registration is essential. It is carried out by the state, which aims to protect women and children and create order in society.¹³

From the previous research above, this study will explain and analyze the problem of *sirri* marriage that previously occurred in women with husbands who were convicts that occurred in the community of Sukadana, East Lampung. Therefore, this study is an empirical legal study using a statutory approach.¹⁴ The data collection technique used is interviews with informants with religious leaders, the Head of the Religious Affairs Office, perpetrators of *sirri* marriage, and community leaders.

***Sirri* Marriage and Divorce Due to Prisoners in Sukadana Village, Sukadana Subdistrict, East Lampung**

Sukadana is a sub-district and the capital of East Lampung Regency, Lampung, Indonesia. Sukadana was inaugurated as the administrative center of East Lampung on April 27, 1999, based on Law No.12 of 1999. Sukadana is an old town that was an Onder Afdeling during the Dutch East Indies administration. In the past, Onder Afdeling or Sukadana District was divided into clans, namely: Sukadana clan, Subing clan, Tiga clan, Nuban clan, and Unyai clan. Sukadana's closed and overly fanatical culture has caused Sukadana to experience slow economic and political progress. Economically, Sukadana is still far behind historically younger regions such as Way Jepara, Bandar Sribhawono, and Metro City. Sukadana is abundant with economic potential and natural resources that can be managed. Many people suspect that cultural issues and local perspectives need to be addressed. With the Decree of the Regent of East Lampung, Number 13 of 2003, Dated December 10, 2003, concerning Status Change and Village to Urban Village, five villages in Sukadana Sub-district were transformed into urban villages, namely Pasar Sukadana, Sukadana Iilir, Negara Nabung, Sukadana and Mataram Marga.

Geographically, Sukadana is bordered by Purbolinggo Sub-district and Way Kambas National Park to the north, Bumi Agung Sub-district, Sekampung Sub-district, Margatiga Sub-district and Sekampung Udik Sub-district to the south,

¹² Nursalam Rahmatullah, "Marginalisasi Perempuan Dalam Perkawinan (Telaah Atas *Sirri* marriage Dan Nikah Anak Di Bawa Usia Perspektif Hukum Islam), *Familia: Jurnal Hukum Keluarga* 2, No. 2 (2021), p. 137-164.

¹³ Agustin Hanapi and Edi Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 2 (2020).

¹⁴Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2015).

Labuhan Ratu Sub-district and Way Jepara Sub-district to the east and Batanghari Nuban Sub-district to the west. In terms of topography, all villages have a flat topography.

The use of agricultural land as rice fields in Sukadana 2014 only reached 2%. Most of the non-rice field agricultural land was used as other areas, which is 70%, then fields (15%), yards (9%), and plantations (4%). Meanwhile, goats are the livestock subsector's most widely cultivated agricultural commodity, totaling 21,664 in 2014. In addition, cattle, buffalo, sheep, and various other types of livestock are also cultivated in this district.

Related to the problem of *sirri* marriage and the marriage of a woman with a husband who has the status of the perpetrator of the prisoner in the Sukadana Subdistrict is a community issue. A case is a woman who has not divorced her husband with a man who is her husband's cousin because her husband is in prison. The case occurred when a married couple named MA and MSH married for approximately 12 years. They had two children from that marriage, a boy and a girl. During their marriage, they lived in harmony and peace. However, in early 2020, their household began to fall apart because the husband molested and sexually abused his stepdaughter from his first wife several times. Hence, the child told his stepfather's wife about his behavior. Hearing the story, the mother was immediately emotional and reported the incident to the police station, so BS was arrested and sentenced to 9 years in prison. It has been more than two years now. During the husband's imprisonment, the husband could not provide physical and mental support, so the wife had economic difficulties in fulfilling her daily needs. It is the reason why the wife remarried.¹⁵

In line with that, regarding the state of society related to marriage, it is a legitimacy that unites a man and a woman as a true husband and wife couple based on Indonesian state regulations. An unregistered marriage is a marriage model that is not appropriate and does not comply with legal procedures. *Sirri* comes from the word "*sir*" or "*sirrun*," which comes from Arabic and means quiet or secret. According to the meaning of the diction, *Sirri* marriage means a marriage whose implementation process is carried out in secret. Then, in its development, the term *sirri* marriage is tied to state law. *Sirri* marriage means a marriage that is not registered.

In particular, in Sukadana Village, there was a marriage between Masamah and Safarudin, with Masamah still having the status of the wife of a BS prisoner. Based on interviews with Masamah, it is known that Masamah and BS have been married for approximately 12 years, and from that marriage, they were blessed with two children, a boy and a girl. During their marriage, the two of them lived in harmony and peace. However, at the beginning of 2020, their household began to fall apart because the husband molested and sexually assaulted his first wife's

¹⁵ Interview with Ahmad, Wedding officiant from Sukadana Sub-district, August 17, 2022

stepdaughter several times, causing the child to tell her stepfather's behavior to her stepfather's wife.¹⁶

It is supported by an interview with Masamah's sister, Rosita, who stated that she felt terrible for the family because Masamah struggled to raise and educate her two children, thus justifying the marriage between Masamah and Safarudin. Particularly the financial aspect, which is advantageous if Masamah remarries Safarudin while not having formally divorced BS.¹⁷

There are other forms of *sirri* marriages, such as guardianship-free marriages. These marriages are occasionally performed covertly or without official registration because the prospective bride's guardian may not consent. It could be done because the validity of the marriage cannot be fulfilled. It's also possible that the marriage does not adhere to the Sharia's true precepts because it is solely motivated by lust. This kind of marriage is void, as one of the requirements for a marriage's legitimacy is the presence of a guardian.¹⁸

Many often interpret *sirri* marriage as a first marriage performed without a guardian. *Sirri* marriages are carried out secretly because the prospective bride's guardian disapproves. After all, it considers that marriages carried out without a guardian are valid or because it only aims to satisfy lust without paying attention to the rules of religious law; secondly, a *sirri* marriage is a marriage that is recognized as valid by religion but is registered with a marriage registrar.

Like the marriage carried out by MSH and MA, although it was carried out *sirri*, it was known by Idris as Salamah's parents who said that they allowed their children to conduct *sirri* marriage due to economic factors after her first husband became a prisoner. Idris said that he was willing to accept a proposal from Safarudin even though his daughter performed *sirri* marriage.¹⁹

A religious leader named Sarbingun claims that low education is another reason why *sirri* marriage occurs in Sukadana Village, in addition to economic issues affecting women. Those who performed *sirri* marriage, typically just completed their elementary education or did not even complete their junior high education.²⁰ Educational factors cannot be separated from a person's attitude and thoughts. Therefore, it can be said, in general, that the level of education affects divorce in society.

Many factors cause a person to marry but not record the marriage at a marriage registration institution. One of these factors is the factor of funds or costs, which means that the prospective bride and groom cannot afford to pay the cost of registering the marriage both at the Religious Affairs Office (KUA) and at the civil

¹⁶ Interview with MSH, Perpetrator of *Sirri* marriage in Sukadana Village, December 26, 2022

¹⁷ Interview with Rosita, Sister of the Perpetrator of *Sirri* marriage in Sukadana Village, December 28, 2022

¹⁸ Siti Aminah. "Hukum Nikah di Bawah Tangan (*Sirri* marriage)". *Cendekia*. Vol. 12 Nomor 1 Januari 2014, p. 24

¹⁹ Interview with Idris, Parents of *Sirri* Nikah Perpetrators in Sukadana Village, December 28, 2022

²⁰ Interview with Sarbingun, Religious Leader of Sukadana Village, December 28, 2022.

registry; there is also a factor of fear that it will be discovered that the marriage is not following the rules because the state does not allow a civil servant to marry more than one; and there are many other factors; third, the marriage is hidden because of certain considerations; for example, because of the fear of getting negative attention from citizens who still view *sirri* marriage as something taboo.²¹

It is clear from the informant interviews described above that economic factors play a significant role in *sirri* marriage. The likelihood of a *sirri* marriage is also influenced by a woman's need for her husband's protection. The incidence of *sirri* marriages is also affected by the human resources issue, which is caused by the low level of education.

The legal position of the marriage of a woman who has not divorced her convict husband in the Sukadana District can be said to be a polyandrous marriage. When referring to the case regarding the law of marriage of a woman who has not been divorced according to legal regulations such as the Marriage Law and the Compilation of Islamic Law, it is clear that a second marriage should not be carried out. Because legally, the marriage bond with the first husband has not ended because there has never been a divorce.

***Sirri* Marriage from the Perspective of Islamic Law**

Sirri marriage, in the view of Islamic law, is a marriage that is carried out to fulfill the absolute provisions of the validity of a marriage contract, which is characterized by the presence of the prospective bride and groom, the bride's guardian, and two witnesses, *ijab* and *qabul*. Some people view *sirri* marriage as a marriage declared valid according to religion, provided that it fulfills all the provisions stipulated by religion. Such is the understanding that until now, some people are still adamant about this understanding by ignoring marriage registration following existing and applicable laws and regulations.

The understanding that "according to religious law it is valid" is the cause of many people practicing *sirri* marriage. In addition, there is an attitude of doubt about the regulations on marriage, which regulate the existence of *isbat nikah*. Article 7, paragraph (2) KHI states, "If a marriage certificate cannot prove a marriage, an *isbat nikah* can be submitted to the Religious Court." Furthermore, Article 7 paragraph (3) states that "*isbat* referred to in paragraph (2) is limited and only regarding matters relating to: matters in the context of divorce settlement; there is a loss of marriage certificate owned; there is doubt in a marriage whether the marriage is valid or not; marriages conducted before the enactment of Marriage Law No. 1 of 1974; and the existence of marriages conducted by those who do not have marriage impediments according to the Law."²²

²¹ Oky Deviany Burhamzah. "Sirri marriage Dalam Perspektif Hukum Perkawinan Nasional". *University of Bengkulu Law Journal (UBELAJ)*. Vol. 1 No. 1 2016.

²²Barzah Latupono, "Penyelesaian Perkawinan yang Tidak Memenuhi Syarat Perkawinan Melalui Isbath Nikah," *Jurnal Hukum & Pembangunan* 49, No. 4 (2020), p. 959. Pidayan Sasnifa, "Fungsi Dan Kedudukan Isbat Nikah Di Pengadilan Agama Kota Jambi Suatu Tinjauan Yuridis Dari Kompilasi Hukum Islam," *Islamika Jurnal Ilmu-Ilmu Keislaman* 15, No. 1 (2016).

Meanwhile, Article 7 paragraph (4) KHI further states that "those entitled to apply for *isbat nikah* are the husband and wife, their children, marriage guardians and parties with an interest in the marriage."²³ As for the *isbat nikah* mentioned in Article 7 of the Compilation of Islamic Law, it explicitly explains the indication of the recognition of the validity of unregistered marriages so that they can be registered at a later date. And, of course, this *isbat nikah* is intended so that the *sirri* marriage that is carried out can be recorded and benefit those who deliberately carry it out. This is widely practiced by the Religious Courts in Indonesia with the basis allowed by KHI. If the reasons in the KHI have been carried out and used as guidelines by the Religious Courts, it means that for *sirri* marriage, *isbat nikah* can be done.

Based on the explanation above regarding the implementation of *sirri* marriage in Bumiharjo Village, the perspective of Islamic law is valid because all the pillars and conditions of marriage have been fulfilled and do not violate Islamic religious rules. However, the Marriage Registration Officer did not register the marriage because the party conducting the marriage did not report it. So, the state is considered invalid because the marriage is considered to have never occurred. After all, it was not recorded by the Marriage Registration Officer (PPN).

Similar to birth, death, and other events, marriage is a necessary legal occurrence. Without written documentation based on enrollment at an approved institution, proving the event's occurrence alone is insufficient to establish the existence of a marriage. For this reason, the marriage certificate serves as flawless evidence after it is recorded and issued by an authorized official (authentic). If not, it is against the law for some communities in East Lampung Regency, Sukadana Village, and Sukadana Subdistrict to perform marriages.

In Indonesia, the practice of unrecorded marriage, as understood so far, is not what *fiqh* (Islamic jurisprudence) means with unrecorded marriage. Most people see an unrecorded marriage as unregistered, even though it fulfills the conditions and pillars of marriage and is known to many people. This kind of marriage, in Islamic law, is valid so that, as a result, everything that is permitted by the existence of a marriage contract can be done by husband and wife. Although religiously or customarily considered valid, marriages conducted outside the knowledge and supervision of a marriage registration officer have no legal force. They are considered invalid according to the law.

The existence of explicit recognition of *sirri* marriage through *isbat nikah* and the idiom "valid according to religious law" is not necessarily related to the publication of marriage. However, a hadith of the Prophet Muhammad PBUH recommends that a marriage be announced if al-Tirmidzi narrates a hadith from 'Aisha, that the Prophet PBUH gave orders to announce a marriage with *walimatul'ursy* (wedding party) even though only slaughtering one goat.

Wahbah Al-Zuhaily defines a *sirri* marriage as the existence of *ijab-qabul* in its implementation. There are two brides (male and female), marriage guardians, and

²³ Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. Article 7.

two witnesses. In a *sirri* marriage, the prospective groom may message the witness to hide or keep the marriage a secret, even against his family. The Shafi'i madhhab and the Hanafi madhhab allow *sirri* marriage. The Maliki madhhab allows it with a note that it must be in a situation or emergency, while the Hanafi madhhab punishes *sirri* marriage as *makruh* (reprehensible, detested, odious).²⁴

Although *sirri* marriage is not recorded and is considered valid according to religious law, *sirri* marriage can be a cause of sin for the perpetrator because it does not implement what is applied by the state and the House of Representatives (DPR), both institutions in the perspective of Islamic law are *ulil amri* (those in authority) which must be obeyed. It is because the Qur'an gives orders to all Muslims to obey *ulil amri* (leaders) as long as these *ulil amri* do not conflict with the laws of Allah. In the case of registering the marriage, not only is it not contradictory, but it is also following Islamic law, which has been legalized by the state.²⁵ To protect women and children as vulnerable parties to damage, the state is implemented by the judge's decision and legal material, such as laws and regulations, through the system of legal growth, namely the Religious Court.²⁶

Sirri marriage, in the sense of marriage without registration, also occurs in Egypt and is known as *al-zawaj al' urfiy*. Sheikh Ali Jad al Haq, who is one of the Sheikhs of al-Azhar, provides a division of the rules governing marriage into two, namely: *Shara'* rules are the rules that determine the validity or invalidity of a marriage. This rule is the result of the formulation of the scholars of the madhhabs in *fiqh* as the elements of the marriage contract, namely: *Ijab-Qabul*, a prospective husband, a prospective wife, a guardian, and two witnesses; *Tawsiqy* regulations are additional regulations that aim to ensure that marriages are recorded in a legal certificate issued by an official appointed by the government.

In line with that, *sirri* marriage is seen as the purpose of marriage in Islamic law, which is to create a *sakinah mawaddah wa rahmah* (happy, loving, and supportive) family, which is bound by a sacred bond through *ijab qabul*. So *sirri* marriage is contrary to Islamic law in the sense of sharia and law and the compilation of Islamic law.²⁷ Moreover, a *sirri* marriage will have a significant impact on the disadvantages of women and children. Women will not get their rights, and neither will children, and the future of children will be uncertain and indeterminate.

²⁴Wahbah Al-Zuhailiy, *Fiqh Islam wa Adillatuhu* (Beirut: Dar al-Fikr, 2010).

²⁵ Rifqi Ghufron Maula, "Ulil Amri dalam Perspektif Al-Qur'an Serta Penafsirannya Menurut Ahmad Mustafā Al-Marāgī dan Wahbah Zuhaili," *Jurnal Al-Fath* 13, No. 2 (2019), p.132. Sirajuddin M., "Sejarah Pergulatan Politik Hukum Islam di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 10, No. 2 (2017), p. 281-294.

²⁶Fajri M. Kasim, et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022).

²⁷Hamsah Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah menurut Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam," *Al Hurriyah: Jurnal Hukum Islam* 5, No. 2) (2020), p. 172.

Conclusion

According to Article 7 paragraph (2) of the KHI, which states that "if a marriage certificate cannot prove the marriage, it can submit a marriage *isbat* to the Religious Court," a woman whose husband has not yet been divorced because he is a prisoner from an Islamic legal perspective in Sukadana Village, Sukadana District, East Lampung, is entitled to valid marriage law and the legitimacy of religious law. This means a *sirri* marriage can be determined by submitting a marriage *isbat* to the Religious Court. However, Law 1/1974 stipulates that a lawful marriage is performed in conformity with the bride and groom's respective religions and beliefs and is documented by applicable legal provisions. Therefore, according to the laws and regulations in force in Indonesia, unregistered marriages are declared invalid and legally void. Apart from that, the legal consequences of an unregistered marriage are that if problems occur in the future, there will be no legal guarantees for the parties because the state considers that the marriage never existed. After all, there is no proof of marriage registration. Furthermore, unregistered marriages will result in victims and losses for women and children because they cannot obtain their rights as wives and children.

References

Journals and Books

- Al Amin, Habibi and Muhdi Muhdi, "Catch Marriage in Maqashid Al-Syari'ah and Indonesian Law Perspective," *Shakhsiyah Burhaniyah: Jurnal Penelitian Hukum Islam* 6, No. 2 (2021). DOI:10.33752/sbjphi.v6i2.3948.
- Al-Zuhailiy, Wahbah, *Fiqh Islam wa Adillatuhu*, Beirut: Dar al-Fikr, 2010.
- Aminah, Siti, "Hukum Nikah di Bawah Tangan (Sirri marriage)". *Cendekia* 12, No.1 (2014).
- Ansori Ansori, "Qawā'id Fiqhiyyah as Islamic Epistemology and Its Application at Marriage Law in Indonesia," *JURIS: Jurnal Ilmiah Syar'iah* 21, No. 1 (2022). DOI: <http://dx.doi.org/10.31958/juris.v21i1.5529>.
- Burhamzah, Oky Deviany, "Sirri marriage Dalam Perspektif Hukum Perkawinan Nasional". *University of Bengkulu Law Journal (UBELAJ)* 1, No. 1 (2016). <https://doi.org/10.33369/ubelaj.1.1>.
- Hanapi, Agustin and Edi Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum keluarga dan Hukum Islam* 4, No, 2 (2020). DOI: 10.22373/sjhc.v4i2.7942.
- Hudafi, Hamsah, "Pembentukan Keluarga Sakinah Mawaddah Warahmah menurut Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam," *Al Hurriyah: Jurnal Hukum Islam* 5, No. 2) (2020). DOI:10.30983/alhurriyah.v5i2.3647.
- Inayatillah Inayatillah, "Social History of Islamic Law from Gender Perspective in Aceh: A Study of Marriage Traditions in South Aceh, Indonesia," *Samarah:*

- Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 2 (2022). DOI: <http://dx.doi.org/10.22373/sjhc.v6i2.14598>.
- Instruksi Presiden No. 1 Tahun 1991 tentang Kompilasi Hukum Islam.
- Kasim, Fajri M. et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022). DOI: 10.15408/ajis.v22i2.28747.
- Lathifah, Anthin, "State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 15, No. 1 (2020). <https://doi.org/10.19105/al-lhkam.v15i1.2689>.
- Latupono, Barzah, "Penyelesaian Perkawinan yang Tidak Memenuhi Syarat Perkawinan Melalui Isbath Nikah," *Jurnal Hukum & Pembangunan* 49, No. 4 (2020). DOI:10.21143/jhp.vol49.no4.2351.
- M., Sirajuddin, "Sejarah Pergulatan Politik Hukum Islam di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 10, No. 2 (2017). DOI:10.24090/mnh.v10i2.939.
- Marzuki, Peter Mahmud, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2015).
- Maula, Rifqi Ghufron, "Ulil Amri dalam Perspektif Al-Qur'an Serta Penafsirannya Menurut Ahmad Mustafā Al-Marāgī dan Wahbah Zuḥailī," *Jurnal Al-Fath* 13, No. 2 (2019). DOI:10.32678/alfath.v13i2.2896.
- Mukhlisin, Ahmad, et.al., "Metode Penetapan Hukum Dalam Berfatwa," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 (2018). <https://doi.org/10.29240/jhi.v3i2.444>.
- Sasnifa, Pidayan, "Fungsi Dan Kedudukan Isbat Nikah Di Pengadilan Agama Kota Jambi Suatu Tinjauan Yuridis Dari Kompilasi Hukum Islam," *Islamika Jurnal Ilmu-Ilmu Keislaman* 15, No. 1 (2016). DOI:10.32939/islamika.v15i1.32.
- Nashirudin, Muh., "Fikih Pernikahan Dalam Tafsir Aḍwa' Al-Bayān," *Jurnal al-Maslahah* (2015). DOI:10.24260/almaslahah.v11i1.124.
- Rahmatullah, Nursalam, "Marginalisasi Perempuan Dalam Perkawinan (Telaah Atas Sirri marriage Dan Nikah Anak Di Bawa Usia Perspektif Hukum Islam), *Familia: Jurnal Hukum Keluarga* 2, No. 2 (2021). DOI:10.24239/familia.v2i2.29.
- Rofiq, Nur, et.al., "Hukum Keluarga Islam: Perspektif Maqāṣid Asy-Syarīah Terhadap Dasar Wajib Patuh Pada Undang-undang Perkawinan dan Kompilasi Hukum Islam," *Wahana Islamika Jurnal Studi Keislaman* 9, No. 2 (2023). DOI:10.61136/cbgbze13.
- Sahla, Abu and Nurul Nazar, *Buku Pintar Pernikahan*, Jakarta: Belanoor, 2011.
- Taufiq, Muhammad, "Sirri marriage Perspektif Maqashid Syariah," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, No. 2 (2019). DOI:10.19105/al-manhaj.v1i2.3138.
- Tihami M.A dan Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap*, Jakarta: Raja Grafindo Persada, 2013.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.

Wahidah, Uzlal and Fenita Ayuning Lestari Lestari, "Sunnah Monogami dalam Al-Quran dan Hadist Perpektif Faqihudin Abdul Kodir," *el-Bait Jurnal Hukum Keluarga Islam* 1, No. 2 (2022). DOI:10.53515/ebjhki.v1i2.18.

Wardana, Mohammad Syahrul, "Penanggulangan *Sirri* marriage Di Kota Samarinda: Peranan Tokoh Agama Dengan Konsep Sadd Adz-Dzari'ah," *Legitima: Jurnal Hukum Keluarga Islam* 4, No. 1 (2022). DOI:10.33367/legitima.v4i1.2145.

Interview

Interview with Ahmad, Penghulu of Sukadana District, 17 August 2022

Interview with MSH, a perpetrator of *Sirri* marriage in Sukadana Village, December 26, 2022

Interview with Rosita, Brother of the *Sirri* Marriage Actor in Sukadana Village, December 28, 2022

Interview with Idris, Parents of *Sirri* Marriage Actor in Sukadana Village, 28 December 2022

Interview with Sarbingun, Sukadana Village Religious Figure, December 28, 2022