

## **Legal Review of Siri's Marriage Based on Law**

### **Number 1 of 1974 Concerning Marriage**

**Yossi Aries Prasetya<sup>1</sup>, M. Hidayat<sup>2</sup>, Handyka PrayogiLesmana<sup>3</sup>**

Faculty of Law, Merdeka University Surabaya, Indonesia

E-mail:yossiariesprasetya@gmail.com

#### **ABSTRACT**

Marriage is a living together of a man and a woman who fulfill the conditions included in the regulation. The purpose of the research is to describe and identify the legal review of siri marriage and to know and analyze the legal consequences of siri marriage according to Law Number 1 1974 concerning Marriage. The research method uses the legal sociological juridical method, which means a research approach that studies the influence of society on law. The results of this research are unregistered marriages or marriages between a man and a woman that are not announced and without the presence of wedding witnesses, carried out without being registered with the marriage registrar with the aim that the general public will not know about them. The legal consequences of the perpetrators of unregistered marriages, That legally, unregistered marriages are invalid if there is no legal record, as explained in Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage. Unregistered marriages have many negative impacts on women (wives) and children.

**Keywords:** Marriage, Siri Marriage, Law, UUD

#### **1. INTRODUCTION**

It is natural that two people of different sexes, namely a woman and a man, have the power to attract each other to live together. Therefore, if living together is not continued to the level of legal marriage according to applicable legal provisions, this will have very important impacts and consequences in society, both regarding their marital status and the status of their offspring so that with very important consequences this is where society needs an order or legal rules governing the conditions needed in the implementation of living together (Wibawa et al., 2021).

According to R. Wirjono Prodjodikoro, these rules and provisions are one of the arrangements that give rise to the notion of "marriage". Marriage is a living together of a man and a woman who meet the conditions included in these regulations. This is further according to what is meant by the regulation by him is the marriage law that applies in Indonesia, namely Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) and its implementing regulations (Irawan & Rofiq, 2021).

More important than these legal regulations are practices within a country that may differ and deviate from the applicable legal regulations. As we know, there has been a lot of discussion about marriage problems that often occur in people's lives, especially those that are clouded by the legal norms of marriage that apply in Indonesia. In connection with this statement, the problem



raised by the author is the problem of unregistered marriage which has attracted attention both in public life and among jurists who are involved in the world of justice, especially Juris in the Religious Courts (Ridhanti et al., 2022) ).

Indonesian law regulates procedures for marriage that are legal according to Islam and legal according to state law which have been regulated in the Marriage Law as amended by Law Number 16 of 2019 and the Compilation of Islamic Law (KHI). The Marriage Law as amended by Law Number 16 of 2019 states that: "Every marriage must be recorded in the applicable laws and regulations." This provision is further clarified in chapter 11 of Government Regulation Number 9 of 1975 which in essence: "A new 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 (PPN) (Alfin & Busyro, 2017 )."

The Compilation of Islamic Law states that "In order to ensure order in the Islamic community, every marriage must be recorded" (Article 5 paragraph 1). Meanwhile, based on the conventional concept, marriage is said to be valid if it meets the requirements and pillars of marriage. According to the Syafi'i school of thought, what is included in the pillars of marriage are the contract, the prospective bride and groom, witnesses and guardians. Apart from that, the Marriage Law as amended by Law Number 16 of 2019 also states that marriage is legal if it is carried out according to the laws of each religion and belief (Malik, 2019). In the current context, especially in Indonesia, this rule is coupled with the obligation to register marriages with the Office of Religious Affairs (KUA) with the intention that the two couples get a legal umbrella if unwanted things happen in the future. If in navigating the household life they encounter problems, then they will get help from the applicable law.

Islamic law is not stipulated only for an individual without a family, and is not stipulated only for a family without a community, nor is it stipulated for one community separately from other communities within the scope of the Muslim community, nor is it stipulated only for one nation separately from other nations. other nations of the world, both peoples who adhere to the religion of the People of the Book and idol worshipers (paganists). It is necessary to understand the legal reasoning in the verse above comprehensively in this context (Nurdiana, 2018). Therefore, the approach to reasoning on the meaning of Ulil Amri in relation to the obligation to register marriages for Muslims, it can be understood that the Marriage Law and other laws and regulations related to it are products of national legislation whose drafting process involves various elements starting from the Government, the DPR, Scholars and intellectuals as well as other experts who are all Ahlu al-Halli wa al-'Aqdi. Thus, if the law orders marriages to be recorded, then it is obligatory



for Muslims in Indonesia to comply with the provisions of the law. Marriage for Muslims is a necessity and it is an absolute truth. Therefore, marriage needs a legal system that regulates it.

There are some opinions that say that unregistered marriage is the same as "cohabitation", thus the law is the same as *samen leven* or according to the term usually used by the Javanese is "dampulan" and there are many other terms used to refer to this. Siri marriage in the sense is not registered but legal according to Islamic law. It is said to be valid according to the Shari'a because it fulfills the pillar requirements. Meanwhile the problem is how the issue of unregistered marriage is viewed from the perspective of positive law in Indonesia, in this case the Marriage Law and Government Regulation Number 9 of 1975 as the implementing regulations.

## **2. RESEARCH METHOD**

This study uses a legal sociological juridical method, which means a research approach that studies the influence of society on law, the extent to which the symptoms that exist in society can affect law and vice versa and based on the paradigm of empirical science. legal review of unregistered marriages based on Law Number 1 of 1974 concerning Marriage and the causes or factors that influence the occurrence of unregistered marriages in society.

## **3. RESULTS AND DISCUSSION**

### **Serial Marriage Forms**

1. Illegal marriage, namely marrying without fulfilling the proper procedures as stipulated in the statutory regulations.
2. Illegal marriages, these marriages are considered by most Muslims to be legal according to religion, even though they are not registered or recorded at the local Office of Religious Affairs (KUA).
3. Marriage secretly, one alternative that is often thought of by our relatives who are married is to do a siri marriage. Religion. This kind of marriage is religiously valid, but does not have formal legality that functions as legal protection and can cause problems at any time. Second, some of our brothers and sisters understand unregistered marriage as a form of marriage that is truly secret, and there is also no walimah whose function is to announce it.
4. Civil marriage, namely marriage carried out in secret because there are reasons, either because of fear or hiding from other people.



5. Marriage (wedding) hanging, namely marriage between a man and a woman whose relationship as husband and wife depends on a situation or time in the future. According to Hadikusumo, a hanging marriage is a marriage that takes place according to the provisions of Islamic law, but the husband and wife do not live in the same house and live together as husband and wife. The background to the occurrence of hanging marriages is generally because the girls are immature, so to live as husband and wife it takes time until the girls become adults.

From the forms of marriage in the series above, most of the community only knows what is often or commonly mentioned by people such as clandestine marriage.

#### **Legal Consequences Arising From Siri Marriage and Islamic Law's View of Siri Marriage**

If you look at the reality that is usually done in people's lives, they assume that unregistered marriages generally fulfill the pillar requirements determined by religion. Religiously unregistered marriage law is valid or legal if the conditions for the marriage are met at the time the unregistered marriage is held. In principle, as long as the unregistered marriage fulfills the pillars and conditions of marriage agreed upon by the clergy, it can be ascertained that the basic law is valid. It's just that it is contrary to the orders of the Prophet Muhammad SAW who recommended that marriage be open and announced to others so that it would not become slander. Requirements for something that must exist in a marriage but do not include a part of the nature of the marriage, for example the requirements for a guardian are male, baligh, intelligent, and so on. One of the pillars of marriage is the marriage contract or consent granted. A marriage is not valid if it is not done with consent and qabul.

With the explanation above, even though the marriage is not registered with the marriage registrar or in other words, the marriage is not written on the marriage certificate, but it is attended by witnesses who are authorized to disseminate the marriage so that it is no longer a secret, then the marriage is legal according to Islam. Thus, even if the marriage does not receive a marriage certificate from the competent authority, but fulfills the conditions specified as above, the marriage is considered valid. However, if on the other hand a marriage gets a marriage certificate but does not meet the above requirements then the marriage is considered invalid according to the Islamic view.

In short, the marriage certificate is only used as a complement for administrative purposes, but does not solely determine whether the marriage is valid or not. When we look at the teachings of the Islamic religion about marriage and the procedure for its implementation, as the main one is about ijab or marriage contract, then holding a walimah as a thanksgiving party for those who can



afford it, so that religiously the marriage can be considered valid in the sense of meeting the conditions and principles. Further, witnessing the marriage itself contains 2 purposes, namely:

1. Advertisements or announcements for the public;
2. He believed the announcement to be true news because it was witnessed by a true/fair person.

In connection with the opinion of the Fiqh experts and Islamic Jurists regarding the issue of marriage when it is connected with the word of Allah which reads: "And for the favors of your Lord, you should mention them with gratitude." Marriage is one of the many blessings bestowed by God so that it is not proper if it is hidden, not grateful for, not mentioned, and not told to others. As for being announced to the public for the sake of legal certainty in modern society, this can be realized in the form of registration before the authorized official. So that the marriage will get legal, formal and authentic recognition (Nugroho, 2019). Meanwhile, if a marriage is not manifested in the form of registration before official officials, then this will encounter many problems which in the end will certainly require them to apply for legalization of the marriage or determination of a marriage certificate in a religious court, so that it is not as easy as what the Jurists imagine. in accordance with the procedural law used.

With the passing of the Marriage Law it is clear that according to the legal system religious principles are used as the basis for forming a marriage and this is evidenced by the provisions of Article 1 which states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a harmonious family. happy and eternal based on Belief in the One and Only God. From the provisions of the article it is clear that the validity of a marriage is measured by the criteria of a religion.

### **Serial Marriage According to Positive Law**

At present, a marriage is not enough with the presence of one or two witnesses, but must also be accompanied by a statement from the prince even though the certificate is not a condition or pillar of marriage but the benefits are so great for one's marriage (Roesli et al., 2019). This is the basis for holding a marriage registration or registering a marriage so that it can strengthen a marriage bond if there are accusations from other people regarding the validity of their marriage. Unregistered marriage according to positive law is a marriage that is not in accordance with the Marriage Law (Liwa et al., 2022). The statutory regulations state that marriage is valid if it is carried out according to the laws of each religion and belief and each marriage is recorded according to the applicable laws and regulations.



According to Edi Gunawan, if the government views that there is a law that requires the registration of marriage contracts, then it is a valid law and it is mandatory for the people to comply with it and not violate it (Rusydi, 2019). Siri marriages are prohibited and illegal according to Islamic law, because there is an element of siri (the marriage being kept secret) which is contrary to Islamic teachings and can invite slander, and can pose a risk to the offender and his family. Siri marriages are also not valid according to positive law, because they do not implement standard and correct munakahat legal provisions, and the marriage registration is not held by the KUA/KCS.

Based on the legal point of view in force in Indonesia, unregistered marriage is a marriage that is carried out not in accordance with the provisions of the applicable laws and regulations. As it is understood that based on the provisions of Article 2 paragraph (1) and (2) of the Marriage Law as amended by Law Number 16 of 2019 concerning Amendments to the Marriage Law jo. Article 4 and Article 5 paragraphs (1) and (2) KHI, apart from having to carry out a marriage legally according to religious law, must also be registered by an authorized official. Thus, in the perspective of legislation, unregistered marriage is classified as an illegal and invalid marriage (Sudirman, 2015). There are two main requirements that must be conditioned as cumulative conditions for Indonesian Muslims to make their marriage valid according to positive law, namely:

1. Marriage must be performed according to Islamic law
2. Every marriage must be recorded

The registration of the marriage is carried out by PPN in accordance with Law Number 22 of 1946 jo. Law Number 32 of 1954. Thus, failure to fulfill one of the provisions in Article 2 will cause the marriage to be void or at least legally disabled and can be cancelled. However, if the provisions of this article are still understood as alternative conditions, then the marriage is considered valid even though it is only carried out according to Islamic religious law and is not registered at the KUA (Watikno, 2014). Legal issues regarding whether or not a marriage that is not registered will always be a prolonged polemic if the provisions of the law itself do not regulate it explicitly. In the sense that the obligation to record must be stated explicitly accompanied by sanctions for those who violate it. For Muslims, the importance of recording itself actually has a strong Islamic legal basis considering that marriage is a noble contractual bond and is a high-level legal act. That is, Islam views marriage as more than just an ordinary contract. In Islam, marriage is a very strong agreement.

With the issuance of the Marriage Law, the provisions stipulated in the previous law, ordinances and regulations, in so far as they have been regulated in the new law, are declared no





longer valid. Actually, unregistered marriage has an impact on husbands, wives and children, both from a positive and negative side, it's just that the positive side is not balanced with the negative impact and when viewed from many cases, the negative side is experienced more by women (wives) and children -children than the husband experienced. In the following, several things will be described as the impact of the implementation of unregistered marriages, both from the positive and negative sides for women (wives) and children legally.

### **The Positive Impact of Siri Marriage on Women (Wives) and Children Legally**

Individual rights can be covered. The interests of the parties behind the unregistered marriage can be covered, for example due to pregnancy out of wedlock, the unregistered marriage is carried out as an effort to cover up the disgrace in the family so that the public does not know about the pregnancy that occurred out of wedlock. Likewise, for example because of official ties or still in school. Because they are bound by a work agreement, while there are urgent matters that someone must marry, then a siri marriage is carried out, as well as those who are still in school, because of a need, one of the prospective brides wants to study abroad, so a siri marriage is carried out to bind the bride and groom and their families .

Disappearance of fears of adultery, this reason is sometimes the reason why unregistered marriages are carried out, both in adults (where the men are already married or have a wife) or teenagers who are still in school or college. Instead of falling into adultery or committing sins, the solution that is considered the best is to do unregistered marriage. Developments that occur among adolescents, especially certain students who are members of certain recitation groups, if there is a pair of teenagers who feel they are already compatible and instead of falling into adultery, they will marry in an unregistered marriage or be married in a series (not recorded in the KUA) ) by their "teacher". This is done for various reasons, firstly when asking for their parents' blessing, worrying that they will not be allowed because they are still in college and are afraid of disrupting lectures, second reason is due to economic reasons considering their needs are still dependent on their parents, and for sure the third reason is fear consideration commit sin/adultery. By having an unregistered marriage, there are no worries from each party and they feel that the marriage that is being carried out does not violate religion. Unregistered marriages have many negative impacts on women (wives) and children, if the husband is not responsible, on the other hand for men (husbands) there is almost no worrying or detrimental impact, what happens actually benefits the men, namely if the husband wants to run away from responsibility or claiming to be single if you want to remarry.

### **Negative Impact on Women (Wives) Legally**



Not recognized as a wife, because the marriage is considered invalid. Because a woman who is in unregistered marriage does not have proof in the form of a marriage certificate, the consequence is that if the husband is not responsible, he is not considered a wife, even though the marriage is carried out according to religion and belief, in the eyes of the state, unregistered marriage is considered invalid if it has not been registered by the Office of Public Affairs. Religion (KUA) or Civil Registry Office (KCS).

Neglect of rights and obligations. A husband who enters into an unregistered marriage easily ignores his rights and obligations both physically and mentally and is easy to be irresponsible as a husband towards his wife who marries him in an unregistered manner because there is no evidence in the form of a marriage certificate, as authentic proof.

Not entitled to maintenance, inheritance and distribution of joint assets. A further consequence of unregistered marriage is that the wife does not have the right to demand a living if her husband is still alive and is irresponsible, cannot claim inheritance from her husband if he dies, because his marriage has never been deemed to have existed according to Indonesian law, and cannot claim the distribution of joint assets if there was a divorce, because there was no authentic evidence stating that they had married in unregistered marriage.

Does not provide legal certainty. Unregistered marriages do not provide legal certainty, namely when there is a legal dispute (for example, wanting to carry out legal actions such as buying and selling land or houses, applying for credit to a bank, and so on) because there is no authentic evidence, so the marriage is never considered to exist according to Indonesian law. In addition, unregistered marriages are prone to problems of domestic violence, because if the husband is not responsible, he can act arbitrarily.

Makes it difficult to identify someone's status is married or not. Siri marriages or marriages that are not broadcast or kept secret cause many people not to know the identity of the couple's status. In Islam there is an order to announce marriage. This is so that if someone has a crush on or has a crush on him, he will back down because the person he has an eye on is already married, so that the person's status is clear, namely already married or already married.

There is anxiety/concern about carrying out an unregistered marriage, because they do not have a marriage certificate. They (husband and wife) are worried that if they travel far or stay overnight on the road they will not be able to prove that they are husband and wife, due to the many raids on prostitutes.

Social sanctions from the community against the perpetrators of unregistered marriages. There is slander, the risk of unregistered marriage is the emergence of slander, the community





thinks that marriages carried out in siri are an attempt by themselves (married couples) to cover up the disgrace surrounding pregnancies outside of marriage. Even though this speculation is not necessarily true or there are other things that are hidden and make people have bad prejudices (suudzon).

Difficult to socialize. Women (wives) who are in unregistered marriages will find it difficult to socialize because they are often considered to have lived in the same house with men without marital ties (aka cohabitation) or considered as mistresses. On this basis, the recommendation to register marriages at state registration institutions is relevant, in order to create convenience for husbands and wives and the community and to prevent negative stigma against unregistered marriage partners.

It makes it difficult for the public to testify, if later there are problems involving the bride and groom. Because of unregistered marriage, many people do not know that the bride and groom are married, as a result, if there is a dispute between the unregistered marriage partners or there is neglect of their wife and/or children economically, for example, the community will have difficulty to help or testify.

There is an assumption of polygamy against the perpetrators of unregistered marriages. If there are couples who do unregistered marriages, then society will suspect. The community considers that unregistered marriage is an attempt to cover up the existence of polygamy so that the marriage is carried out secretly, so that the previous wife or first wife does not know about this polygamy. Although this assumption is not true.

### **Negative Impact on Legal Children Born from Siri Marriage**

The child only has civil relations with the mother and the mother's family. Siri marriage has a negative impact on the status of children who are born in the eyes of the law, namely: the status of children who are born are considered as illegitimate children. Consequently, the child only has civil relations with the mother and the mother's family. This means that the child has no legal relationship with his father (Article 42 and Article 43 of the Marriage Law, Article 100 KHI) (Sandy, 2019). The status of the child on the birth certificate is considered an illegitimate child, so only the name of the mother who gave birth to it is included. In making a birth certificate, for example, the child will only be recorded as following the mother because civil registration for the birth of a child requires an official marriage certificate from the State, so that his identity rights will not be recognized that he is the child of a father who has done unregistered marriage, so his nasab (bin or bintinya) ) to follow his mother.



Children are not entitled to maintenance, inheritance and other rights. As long as there is no denial from the father of unregistered marriage or the perpetrator is responsible, there is no problem in terms of providing maintenance or other rights. However, if there is denial or the father is irresponsible by simply leaving the child of a siri marriage, this will harm the child. Children are not entitled to the cost of living and education, living and inheritance from their father (Rachardi, 2015). The right to support and inheritance will be lost because the child does not have any evidence, so the child will get his rights only from his mother. Unregistered marriages are detrimental to children in the future, because to enter school a birth certificate is required, while a birth certificate can be made if there is a marriage certificate. Husband and wife who are married in unregistered marriage do not have a marriage certificate or marriage certificate, so as a result they cannot have a family card.

Children from unregistered marriages are vulnerable to becoming victims of exploitation. Among them, such as prostitution and child trafficking. This is because in general, children of unregistered marriage victims are usually neglected and poorly cared for both in terms of their economy, health, education and future. This happened because the children of unregistered marriages were raised by mothers who (for example) were not economically independent or were only entrusted to their parents in villages with relatively low health insurance. As a result, they suffer from malnutrition.

#### **4. CONCLUSION**

Siri marriage is underhand marriage or clandestine marriage. It was called secretly because it was not reported to the Office of Religious Affairs for Muslims or the Civil Registry Office for non-Muslims. The impact of unregistered marriage has more disadvantages than the advantages. The biggest disadvantage of unregistered marriage is the impact on the woman and her child for her future. Siri marriage is a secret marriage or marriage between a man and a woman that is not announced and without the presence of wedding witnesses, carried out without being registered with the marriage registrar with the aim that it is not known to the general public.

The legal consequences of the perpetrators of unregistered marriages, That legally, unregistered marriages are invalid if there is no legal record, as explained in Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage. Unregistered marriages have many negative impacts on women (wives) and children.

#### **REFERENCES**



- Alfin, A., & Busyro, B. (2017). Siri's Marriage in Review of Theoretical Law and Sociology of Indonesian Islamic Law. *Al-Manahij: Journal of Islamic Law Studies*, 11(1), 61–78.
- Irawan, F. P. P., & Rofiq, N. (2021). Siri's Marriage in a Review of Islamic Law and Law Number 1 of 1974 Concerning Marriage. *Iqtisad: Reconstruction of Justice and Welfare for Indonesia*, 8(1), 35–46.
- Death, M.A., Kursiswanti, E.T., & Pheasant, Y.A. (2022). effectiveness Enforcement of Law Number 1 of 1974 Concerning Marriage Against Siri Marriage. *Collegium Student Journal*, 5(1), 31–38.
- Malik, A. (2019). *Review of Law Number 1 of 1974 and Islamic Law Regarding Polygamy and Its Implications for Siri Marriage (Case Study of Ujung Bulu District, Bulukumba Regency)*. Alauddin State Islamic University Makassar.
- Nugroho, N. (2019). JURIDICAL IMPLICATIONS OF SIRI MARRIAGE IN THE PERSPECTIVE OF LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE. *Scientific Journal of Law and Community Dynamics*, 16(2).
- Nurdiana, P. (2018). *Juridical Review of Siri Marriage and Its Legal Consequences According to Law Number 1 of 1974 (Case Study in Medang Deras District, Batu Bara Regency)*.
- Rachardi, M. (2015). Legal Consequences of Marriage Not Being Recorded When One of the Parties Dies According to Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law. *Premise Law Journal*, 12, 14122.
- Ridhanti, A., Fitra, R., & Hamzah, R. (2022). Legal Review Regarding the Implementation of Siri's Marriage in Pekan Heran Village, Rengat Barat District, Indragiri Hulu Regency According to Marriage Law No. 1 of 1974: Legal Overview of the Conduct of Siri's Marriage In Pekan Heran Village, Rengat Barat District, Indragiri Hulu Regency According to the Marriage Law Number 1 of 1974. *JKIH: Journal of Legal Studies*, 1(1), 77–88.
- Roesli, M., Lestari, S. E., Prasetyo, K. D., & Mahrus, Y. I. P. (2019). *Consumer Protection Laws For Bank Customers*.
- Rusydi, I. (2019). Juridical Review of the Inheritance Rights of Children Out of a Siri Marriage. *Galuh Justisi Scientific Journal*, 7(1), 1–10.
- Sendy, B. (2019). Rights Obtained by Children from Marriage Are Not Recorded. *Responsive Law Journal*, 7(7), 1–10.
- Sudirman, L. (2015). Siri Marriage Divorce Settlement That Has Been Disbatkan Based on Law Number 1 of 1974 (a Juridical Review). *DIKTUM: Journal of Sharia and Law*, 13(2), 129–138.
- Watikno, A. R. (2014). The Consequences of the Siri Marriage Law on the Position of the Child in terms of Islamic Law and Marriage Law No. 1 of 1974 in Karanganyar Regency. *RULE OF LAW*, 8(2).



---

Wibawa, K. P. A., Sudiatmaka, K., & Dantes, K. F. (2021). Juridical Review of Siri Marriage According to Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 Concerning Marriage (Case Study in Singaraja Village). *Journal of the Yustisia Community*, 4(2), 301–311.

