



Phenomenology of Siri Marriage in Indonesia: An Analytical Study from a Legal Sociology Perspective

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Abstract

Siri marriage is a phenomenon that exists and occurs in Indonesian society. The existence of dualism in the rules for carrying out Muslim marriages in Indonesia has given rise to polemics among ulama who are pro and anti towards the reform of Islamic law. This research aims to answer the question of the phenomenon of unregistered marriages that occur among people in Indonesia and why are unregistered marriages so common in this country? This research uses qualitative research (library), the nature of the research used is descriptive-analysis, namely by describing related problems. The conclusion of this research is that the rejection of the discourse on criminalizing perpetrators of unregistered marriages is dominated by the ulama who are strongly affiliated with the Syafii school of thought. There are at least three reasons for that; first, the social culture of Muslims which does not respond to changes in their religious traditions; second, the religious beliefs of Indonesian Muslims who still adhere to the Syafii school of thought; third, the Law and KHI as well as existing practices in the Religious Courts seem to legalize the occurrence of unregistered marriages. Therefore, one solution that can be taken to minimize unregistered marriages in Indonesia is to create strict rules that do not have multiple interpretations. Even if this cannot be done, then to save and provide legal certainty for the generations resulting from unregistered marriages, it is necessary to create clear regulations to continue marriage itsbat programs in the Religious Courts in a more aggressive and sustainable manner.

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INTRODUCTION

Unregistered marriages, also known as underhanded marriages or unregistered marriages, are a phenomenon that exists and occurs in Indonesian society. The existence of dualism in the rules for carrying out Muslim marriages in Indonesia has given rise to polemics among ulama who are pro and anti towards the reform of Islamic law. Even though the rules for registering marriages are contained in Law no. 1 of 1974 and the Compilation of Islamic Law, but some people still carry out their marriages by sirri or privately. Their belief in the validity of unregistered marriage is based on the opinions and practices carried out by ulama in the country (Akbar, 2014; Said, 2018; Sagita, & Nur, 2022).

In a sociological review of Islamic law, the alignment of the majority of ulama towards the Syafi'i school of jurisprudence and the adoption of the Syafi'i school of thought by the majority of Indonesian Islamic society is likely to have a significant influence on the obstacles to the reform of Islamic law relating to marriage registration in particular and marriage laws in general. others contained in Law No. 1 of 1974 concerning Marriage and Presidential Instruction No. 1 of 1991 Compilation of Islamic Law. In this research, we will discuss the phenomenon of unregistered marriages that occur among people in Indonesia and why are unregistered marriages so common in this country? while there are already regulations in Law no. 1 of 1974 and Presidential Instruction no. 1 of 1991 Compilation of Islamic Law which regulates marriage registration (Alfin & Busyro, 2017; Syafi'i, 2019).

METHODS

This research uses qualitative research library, the nature of the research used is descriptive-analysis, namely by describing related problems (Dalimunthe, & Ismiati, 2016; Supriani et al 2022). So the researcher used techniques obtained from the library and obtained from these books, namely the results of reading and taking notes from scientific books related to discussions and problems. Because this type of research is a library study, all of this research data, both primary and secondary data, is based on library data (Sofiah et al., 2020; Aryanti et al., 2022; Ulfah et al., 2022).

Data Analysis Method The method used in analyzing data uses content analysis and comparative, namely analyzing and understanding the contents of classical books and a number of different data by comparing one data with other data, to arrive at a conclusion. Apart from that, the purpose of this analysis is to explain Serial marriage phenomenon in Indonesia and then analyze the factors behind the unregistered marriage (Fauziyah, 2017; Elmubarok, & Qutni, 2020).

RESULT AND DISCUSSION

Marriage Provisions in the Book of Fiqh and Legislation in Indonesia

The words marriage and marriage are two terms that are often used with the same meaning. The word marriage or marriage in fiqh literature is referred to by two words, namely *marry* and *zawaj*. These two words are used in the daily life of Arabs and are widely found in the Qur'an and the prophet's hadith. Linguistically, *marry* means "joining" or sexual intercourse and also means contract. عقد according to sharia' is, *a contract set by syar'a to enable pleasure between men and women and legalize pleasure between women and men* (Ilham, 2020; Rana & Saepullah, 2021).

According to Hasan al-Ayyubi in the book *Family Fiqh*, marriage means contract in the real sense and means sexual intercourse in the majazi (metaphorical) sense. This is based on the words of Allah SWT in Surah an-Nisa verse 25 as follows:

“And whoever among you (free people) does not have enough expenses to marry a free and believing woman, he can marry a believing woman, from among the slaves you have. God knows your faith; some of you are from another part, therefore marry them with the permission of their masters, and give them dowries according to what is appropriate, while they are women who keep themselves, not adulterers and not (also) women who take other men as their wives ; and if they have taken care of themselves by marrying, then they commit an abominable act (adultery), then on them is half the punishment of the punishment of free married women. (The ability to marry a slave) is for those who fear the evil of keeping themselves (from adultery) among you, and patience is better for you. And God is Forgiving and Merciful (Surah an-Nisa verse 25)

In Indonesian, marriage comes from the word marry, which means forming a family with the opposite sex, having sexual relations or having sexual intercourse. Meanwhile, according to the term, there are differences of opinion among the ulama in defining the meaning of marriage. According to *Wahbah al-Zuhaily* marriage is: A contract that allows al-istimta' (coitus) with a woman, or doing wathi and gathering with a woman who is not a woman who is forbidden either because of heredity or breast milk. This opinion emphasizes marriage on the ability to have sexual relations with a woman who is not a woman who is prohibited by Sharia. Another definition put forward by *Abu Yahya Zakaria al Ansary* in the book *Fath al-Wahhab*, that is: Marriage is a contract that contains the legal provisions of the ability to have sexual relations with the word marriage or with words similar to it. According to scholars *Hanabilah* Marriage is: A contract that uses words *sinkah* which means with *tazwij* with the intention of taking advantage for fun (Santoso, 2016; Suryantoro, & Rofiq, 2021).

Abu Zahra in his book *al-ahwal al-syaksiah* defines marriage as Nikah as a contract that gives rise to legal consequences in the form of halal sexual relations between a man and a woman, helping each other and giving rise to rights and obligations between the two.. In a different editorial it was also expressed by *Imam Taqiyudin* in the book *Kifayat al-Akhyar* marriage is: Marriage is, like a famous contract which consists of pillars and conditions, and what is meant by contract is *al-wata'* (Halfiah, 2019; Nasir, & Badri, 2022).

Apart from the fiqh scholars above, Indonesian scholars and Indonesian positive law also provide definitions of marriage. Among them, according to Ibrahim Hosen, marriage is a contract by which sexual relations between a man and a woman become lawful. More strictly, marriage can be defined as sexual relations (coitus). An interesting opinion was also expressed by Tahir Mahmood who defined marriage as a physical and spiritual bond between a man and a woman who become husband and wife respectively in order to obtain happiness in life and build a family in the light of God (Kurniawati, 2021).

Along with the definition of marriage above, Article 1 of Law Number 1 of 1974 explains that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God (Fauziah, & Amanita, 2020; Harlina, 2020).

Meanwhile, Article 2 of the Compilation of Islamic Law (KHI) also explains that marriage according to Islamic law is a marriage, namely a strong contract or *mitsaqon gholidhan* to obey God's commands and carry them out in worship. The same thing was also said by Sayyid Sabiq in his book *Fiqh Sunnah* that marriage is one of the *sunnah* that applies to all God's creatures. Marriage is a way chosen by God as a way for humans to procreate, multiply, and preserve their lives after each is ready to play their positive role in realizing the purpose of marriage. In order to take care of this, God established the law according to the dignity and glory of the human being (Putri et al., 2019; Fatimah, 2021) As for the basis of marriage legislation, there are many in the Qur'an, including Surat ar-Rum verse 21.

It means: And among the signs of His power is that He creates for you wives of your own kind, so that you are inclined and feel at peace with them and He makes between you a feeling of love and affection. Verily, in that there are signs for those who know Surat an-Nisa' verse 3.

Meaning: And if you fear that you will not be able to do justice to (the rights of) the orphan (when you marry her), then marry (other) women that you like: two, three or four. Then if you fear that you will not be able to act justly, then (marry) only one person, or a slave that you have. That is closer to not doing wrong Surat an-Nur ayat 32

Meaning: And marry those who are single among you and those who are worthy (to marry) among your male servants and your female servants. If they are poor, God will give them the ability with His grace. And God is wide (His gifts) and All-Knowing.

In the hadith of the Prophet Muhammad SAW narrated by Jama'ah from Ibn Mas'ud, he gave marriage advice to his people through his hadith which reads as follows

Meaning: O young men, whoever among you has the ability in terms of "al-baah" should get married, because that marriage is better to close the eyes from bad vision and more to protect honor. If he is unable to marry, he should fast; because fasting is for him a restraint of lust.

The scholars have agreed that marriage is commanded, however, they differ in opinion regarding the law. In this case the scholars are divided into three groups: (Muhajir, 2017; Harahap, 2019).

First, marriage is obligatory for everyone who is able to do it once in their life, according to the opinion of Dawud ad-Dhahiry, ibn Hazm and others. The evidence on which this opinion is based is from the texts, both in the form of verses from the Koran and the hadith of the Prophet which commands marriage. This group understands textually that all these commands use *sighat amar* (form of command) and every command indicates obligatory therefore, marriage is also obligatory, *al-aslu fil amr lil wujub*, basically the command points to the obligatory

Second opinion, said that marriage is only a *sunnah* law. This opinion is the opinion of the majority of scholars. *Second opinion* this understands the marriage command found in the Qur'an and Sunnah to the Sunnah law is not obligatory. The word of God found in Surat An-Nisa verse 3 as mentioned above.

Third opinion, is an opinion that says that marriage laws vary, depending on a person's condition. This opinion is a strong opinion in the Malikiyah, Syafi'iyah and Hanabilah schools of thought. The marriage laws are: *Must* for people who have the will and ability to marry and are feared that they will fall into adultery if they do not marry. *Sunnah* is for people who have the will

and ability to get married, but if they don't get married, there is no fear that they will commit adultery. *Haram* for people who don't have the desire and don't have the ability and responsibility to carry out the obligations in the household so that when the marriage takes place, he and his wife will be abandoned. *Makruh* for people who have the ability to marry also have the ability to restrain themselves so that it is not possible for them to slip into committing adultery if they do not marry. It's just that this person does not have a strong desire to be able to fulfill the obligations of husband and wife well. *Licit* for people who have the ability to do it, but if they don't do it they don't worry about committing adultery and if they do it they won't abandon their wife. This person's marriage is only based on fulfilling pleasure, not with the aim of maintaining the honor of his religion and building a prosperous family.

Marriage Registration.

A marriage that normatively must be registered is already a marriage *National Agreement* which aims to realize legal goals for society in order to realize order, certainty and legal protection. Therefore, violations of this rule are subject to criminal sanctions.

Underhanded marriages have a very detrimental impact on wives and women in general, both legally and socially. These disadvantages are: a) Being considered a legal wife. b) Not entitled to maintenance and inheritance from her husband if he dies. c) Not entitled to maintenance and inheritance from her husband if he dies. d) You are not entitled to joint assets if separation occurs, because legally your marriage is considered to have never occurred. e) Socially, it will be difficult to socialize because women who enter into private marriages are often considered to be living in the same house as men without marriage ties (aka cohabiting) or you are considered to be a mistress (Syamdan, & Purwoatmodjo, 2019).

Towards Children

Meanwhile, for children, the invalidity of private marriages according to state law has a negative impact on the child's status born in the eyes of the law, namely: a) The status of the child born is considered an illegitimate child. As a consequence, the child only has a civil relationship 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). Even on his birth certificate, his status is considered an illegitimate child, so only the name of the mother who gave birth to him is listed. This is regulated in Government Regulation Number 37 of 2007 concerning the implementation of Law Number 3 of 2006 on Population Administration, specifically in Chapter IV Article 35 which reads: a) Records of important events are personal data of residents; b) Records of important events as intended in paragraph (1) include: c) Children born outside of marriage, which are recorded are the child's name, day and date of birth, birth order, mother's name, and mother's date of birth; and d) Adoption of a child, what is recorded is the name of the biological mother and father. Information in the form of status as an illegitimate child and the absence of the father's name will have a very deep social and psychological impact on the child and mother. The unclear status of the child before the law means that the relationship between father and child is not strong, so that one day the father may deny that the child is his biological child. What is clearly detrimental is that children are not entitled to living expenses and education, living expenses and inheritance from their father (Ulfah et al., 2022).

Against men or husbands

There are almost no very worrying or detrimental impacts on men or husbands who marry under their hands with a woman, what happens is actually more beneficial for the husband. Husbands are free to remarry, because previous marriages under the hand are considered invalid in the eyes

According to the law, husbands can circumvent and avoid their obligations to provide support to both their wives and children. They don't have to worry about the distribution of shared assets, inheritance and so on.

However, the only disadvantage is that if in the marriage the wife is the one who owns the property and meets household needs, then a husband cannot demand anything from the wife. The form of punishment for perpetrators of unregistered marriages is: a) Law Number 22 of 1946 concerning Marriage Registration, Divorce and Reconciliation Article 3 has determined a maximum fine for a man who marries a woman not in the presence of a marriage registrar. Rp. 50.00 (fifty rupiah). In this law, the only person who can be subject to a fine is the husband. b) Then Article 45 of Government Regulation Number 9 of 1975 concerning Implementing Regulations of Law Number 1 of 1974 concerning marriage, determines that marriages that are carried out not in the presence of a Marriage Registrar Officer are subject to a fine of up to Rp. 7,500.00 (seven thousand five hundred rupiah). What is meant by parties who violate the marriage registration regulations are the bride and groom, namely husband and wife. c) Article 143 of the 2007 Draft Bill-HM-PA-BPerkwn stipulates that every person who deliberately enters into a marriage without entering the presence of a Marriage Registrar Official as intended in article 5 paragraph (1) shall be punished with a fine of a maximum of Rp. 6,000,000, 00 or a maximum prison sentence of 6 (six) months in prison.

The Sirri Marriage Phenomenon in Indonesia.

The Mystery of Marriage This is a problem that occurs quite often in society today. *Problem the secret of marriage* This is phenomenal in Indonesia, because the perpetrators are not only ordinary people, but also many public figures such as artists, and even government officials. Among the sirri marriages carried out by public figures is the marriage of the King of Dangdut Rhoma Irama when he married Richa Rahim, or the marriage of Rhoma Irama to Angel Elga. Likewise with the marriage of Sheikh Puji who married an underage girl, and what is still hot is the marriage carried out by Aceng HM Fikri when he served as Mayor of Garut who also married a young girl Fani Oktora. *secret* and then divorced him after four days of marriage. This incident ultimately led to the impeachment of Aceng HM Fikri from the position of Mayor of Garut based on the Supreme Court Decision. Despite the provisions regarding the obligation to register marriages, as stated above, whether registering marriages through the KUA for those who are Muslim, or through civil registration for others, in reality there are quite a lot of cases of unregistered marriages in society. Whether it is carried out by ordinary people or by public figures, it becomes the focus of much public attention, as in some of the cases stated above.

Looking at the reality that occurs in society, it is understood that there are several problems that occur related to the issue of marriage registration, including sociological problems. Sociological problems are the conditions and practices of society that deviate from the formulation of statutory regulations regarding marriage. There are some people who do not take care of the administration of their marriage registration. In connection with unregistered

marriages, various terms have emerged that are already popular among the public, such as illegal marriages, elopement, Sirri marriages or underhanded marriages, some call them syar'i marriages and others call modin marriages and kiyai marriages. The various terms referred to still need to be criticized to state that all marriages are meant to be marriages that are not recorded by the Marriage Registrar (VAT). Marriages that are not under VAT supervision are considered religiously valid but do not have legal force, because they do not have proof of a valid marriage according to applicable laws and regulations. Juridically, there is no legal basis for various terms which are already popular, therefore, the more appropriate term to put forward is marriage which does not go through the procedures of the applicable laws and regulations.

Even though the issue of marriage registration has been socialized for quite some time, in Article 2 Paragraph (2) of Law Number 1 of 1974 and Articles 5 and 6 of the KHI, to this day there are still obstacles in its implementation. One of the reasons is that some Muslim communities still adhere to traditional Fiqh perspectives. According to their understanding, a marriage is valid if the provisions stated in the Fiqh books have been fulfilled, there is no need for registration at the KUA and no need for a marriage certificate because this was not regulated at the time of the Prophet and was just a hassle.

Apart from juridical and sociological problems, in the author's opinion there are idealistic problems. The idealist problem means that various ideas, thoughts and notions develop which are different from each other and some of which are contradictory. These differences exist in efforts to interpret various formulations of legal rules as well as translating or interpreting practices that develop in society. Since the marriage law is closely related to marriage registration, the existing ideas can at least be patterned into two groups, namely; *First*, a group that believes marriage registration is a legal requirement for marriage; *second*, a group that believes that marriage registration is only an administrative matter generally among Muslims, does not affect the validity/invalidity of a marriage.

Based on several cases of unregistered marriages that occur in society, it can be seen that among the factors causing the occurrence of unregistered marriages in society are:

Unwed pregnancy.

Western culture, which spreads and is swallowed whole, has a big influence in changing a person's behavior and thought patterns without being filtered first, as a result, the interactions they make sometimes go beyond limits, no longer paying attention to religious norms and rules. As a result, there are other things that arise due to promiscuity, such as pregnancy outside of marriage. Pregnancy that occurs outside of marriage is a disgrace to the family, which will invite ridicule from society. From there, parents marry their children to the man who got them pregnant, for the reason of saving the family's good name, and without involving PPN officers, but only by navigators or Kyai without keeping records. a) Lack of public understanding and awareness regarding marriage registration. With very minimal public understanding, as a result, public awareness influences carrying out unregistered marriages. There is an assumption that registered and unregistered marriages are the same. b) Difficult Rules for Polygamy. If the conditions for polygamy are not met, especially if there is no consent from the previous wife, the person will carry out an unregistered marriage, only in front of a religious leader. c) Economic Factors. Some people, especially those from

middle to lower economic levels, feel unable to pay for registration administration which sometimes exceeds twice the official costs. d) Asset Factor. In some tribes, the custom of selling dowries is still entrenched, so it has become an area of pride for them, and when a husband and wife are happy with a relatively cheap dowry, they resort to this unregistered marriage, because they are afraid of being ridiculed by the community. e) Workplace Factors. The rules of his workplace or office do not allow him to marry while he is working, or marry more than one wife. d) Social Factors. Society has already given a negative stigma to anyone who marries more than one person, so to avoid this negative stigma, a person does not register their marriage with an official institution. And there is also because his family does not approve of it. e) Religious Factor. Some people believe that it is not necessary to register, but that it is enough for the Kyai and because registration is not a requirement or pillar of marriage. After looking at several factors above, it cannot be avoided that bad consequences will arise. Even though the requirements according to religion are met, a marriage will have bad consequences for the continuity of the marriage if it is not recorded by the Marriage Registrar.

Marriage Registration with *Itsbat Marriage*.

Itsbat Marriage comes from Arabic, namely اثبات, which means fixed or determined. According to Iskandar Ritonga *Itsbat Marriage* is an application submitted by the applicant to the Religious Court with the intention that a marriage (a marriage that is not registered or a marriage that does not have a marriage certificate) be declared valid and based on the decision of the Religious Court, the authorized official, in this case the sub-district PPN or KUA, also grants Excerpt from Marriage Certificate (Syafi'AS, 2018; Masruhan, 2019).

Legal basis *itsbat marriage* regulated in the Compilation of Islamic Law (KHI) comes from article 7 which reads as follows: a) Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar. b) In the event that the marriage cannot be proven by a Marriage Certificate, it can be submitted *itsbat marriage* to the Religious Court. c) *Itsbat Marriage* that can be submitted to the Religious Court is limited to matters relating to: The existence of a marriage in the context of resolving a divorce. Loss of Marriage Certificate. There are doubts about whether one of the conditions of marriage is valid or not. The existence of a marriage that occurred before the enactment of Law no. 1 of 1974. Marriages carried out by those who do not have marriage obstacles. Who has the right to submit an application *itsbat marriage* namely the husband or wife, their children, the marriage guardian, and parties who have an interest in the marriage.

Rules regarding legalization of marriage/ *itsbat marriage* It has also been regulated in Book II as a technical guideline for the administration and technical matters of religious justice stipulated by the Supreme Court of the Republic of Indonesia, these rules include: Rules for validating marriages/ *itsbat marriage* made on the basis of a marriage being solemnized based on religion or not recorded by the authorized PPN. Many marriages registered by PPN have indications of legal smuggling to facilitate polygamy without legal procedures and obtain other rights. Therefore, Religious Courts must be careful in examining and deciding on applications for legalization of marriage/ *itsbat marriage*. So that the process of validating the marriage/ *itsbat marriage* not used as a tool to legalize legal smuggling. The Religious Court can only grant the request *itsbat marriage*, as long as the marriage that has taken place meets the requirements and pillars of marriage according to

Islamic law and the marriage does not violate the prohibition on marriage as regulated in Articles 8 to 10 of Law Number 1 of 1974 jo. Articles 39 to article 44 of the Compilation of Islamic Law.

Uses of *itsbat marriage* itself is to cover the legal consequences arising from a marriage that is not registered, use *itsbat marriage* In principle, this is to validate marriages that do not yet have a Marriage Certificate as evidence that has legal force.

In detail the uses of *itsbat marriage* What is carried out at the Religious Courts is: To explain the legal status of a marriage that does not have a Marriage Certificate from the KUA or as a guide for the husband or wife. Even though marriages are carried out according to religion and belief, in the eyes of the state your marriage is considered invalid if it has not been registered by the Religious Affairs Office or the Civil Registry Office. Children will have a civil relationship with the father. Children born out of wedlock or unregistered marriages, apart from being considered an illegitimate child, they also only have a civil relationship with the mother or the mother's family (Articles 42 and 43 of the Marriage Law). There is no civil relationship with his father. The child and mother will be entitled to return to support and inheritance.

In resolving matter *sitsbat marriage* or a statement regarding the validity of a marriage. Religious Courts also have provisions, because not all marriages that do not have a Marriage Certificate can be submitted for application *itsbat marriage* to the Religious Court. This provision has been regulated in book II issued by the Supreme Court as *Administrative and Technical Guidelines for Religious Courts*, stipulates that: Rules for validating marriage *oritsbatmarriage*, made on the basis of a marriage that was held based on religion or was not registered by an authorized Marriage Registrar (VAT).

The Religious Court can only grant the request *itsbat marriage*, as long as the marriage that has taken place meets the requirements and pillars of marriage according to Islamic law and the marriage does not violate the prohibition on marriage as regulated in Articles 8 to 10 of Law number 1 of 1974 jo. Articles 39 to Article 44 Compilation of Islamic Law.

Based on the provisions mentioned above, it can be understood that *itsbat marriage* can provide opportunities for marriage problems that do not have a marriage certificate. Various problems and losses that may occur due to marriages that do not have a marriage certificate if they make an application *itsbat marriage* to the Religious Court, provided that the marriage that was held in the past was carried out in accordance with religious regulations. This is in accordance with the technical guidelines issued by the Supreme Court in point (c) which emphasizes that Religious Courts can only grant requests *itsbat marriage*, as long as the marriage that has taken place meets the requirements and pillars of marriage according to Islamic law and the marriage does not violate the prohibition on marriage as regulated in Articles 8 to 10 of Law Number 1 of 1974 jo. Articles 39 to article 44 of the Compilation of Islamic Law.

Although there are solutions provided by legislation for people who do not have a marriage certificate by submitting an application *itsbat marriage* to the Religious Courts, but on the other hand, provisions related to *itsbat marriage* This seems to be a paradox with the marriage registration provisions which require marriage registration for every marriage event, either through the KUA or civil registry.

These administrative obligations can be seen from two perspectives, namely; Firstly, from a state perspective, the recording in question is required in order to fulfill the state's function of providing guarantees for the protection, promotion, enforcement and fulfillment of the relevant human rights which are the responsibility of the state and must be carried out in accordance with the principles of the rule of law as contained in Article 281 paragraph 4 and paragraph (5) of the 1945 Constitution. If the recording is considered a limitation, then such a limitation does not conflict with the provisions of the constitution because the limitation is intended solely to guarantee recognition and respect for the rights and freedoms of other people. Secondly, the administrative registration carried out by the state is intended to make marriage an important legal act which has very broad implications for legal consequences, and in the future the marriage can be proven with perfect evidence with an authentic deed. Therefore, the Constitutional Court is of the opinion that Article 2 paragraph (2) of Law Number 1 of 1974 does not conflict with the constitution.

In an effort to disentangle its *missing link* understanding of the validity of marriage according to statutory regulations, it is very interesting to put forward the fatwa of the former Grand Sheikh of al-Azhar DR. Jaad al-Haq 'Ali Jaad al-Haq about *al-zawaj al-'urfy* is a marriage that is not properly registered according to applicable laws and regulations. Sheikh Jaad al-Haq classifies the provisions governing marriage into two categories, namely regulations *advice* and rules of nature *al-tawtsiqiy*.

Rules *advice* is the rule that determines the validity or invalidity of a marriage. This rule is a rule set by the Islamic Shari'at as formulated in books of jurisprudence from various madhhabs, the essence of which is that there must be consent and acceptance from each of the two people who have entered into a contract (guardian and prospective husband) which is said in an assembly that the same, by using the pronouncement that shows the occurrence of *ijab* and *kabul* spoken by each of two people who have the ability to make a contract according to syaria law and attended by two witnesses who have reached puberty and are Muslim, where the two witnesses are required listen directly to the pronouncement of acceptance. The two witnesses understood the content of the *ijab* and the acceptance and other conditions as presented in the study of fiqh, and there is no prohibition of *syara*'.

The regulations above are the elements that form a marriage contract. If the constituent elements as regulated in Islamic Sharia have been perfectly fulfilled, then according to Sharia the marriage contract is considered valid, so that it is *halal* to get along as a legitimate husband and wife and the children of the husband and wife relationship are considered children. legitimate.

Rules of nature *tautsiqi* is an additional regulation with the aim of ensuring that marriages among the Muslim community are not illegal, but are recorded in the Marriage Certificate register book made by the authorized party for this purpose as regulated in state administrative laws and regulations. Its purpose is so that a marriage institution which is a very important and strategic place in Islamic society can be protected from negative efforts from irresponsible parties. For example, as an effort to anticipate the violation of the marriage contract by a husband in the future, even though witnesses can basically be protected, it will of course be further protected by having an official registration at an institution that has the authority to do so. According to the Marriage Law of the Arab Republic of Egypt Number 78 of 1931, it is stated that no complaint will be heard about

marriage or about matters based on marriage, unless it is based on an official marriage document. However, according to Jad al-Haq Ali Jaad al-Haq's fatwa, without fulfilling the statutory regulations, according to the law, the marriage is considered valid, if it has fulfilled all the requirements and harmony as regulated in Islamic Sharia.

Sheikh Al-Azhar's fatwa does not mean that someone can just arbitrarily violate the laws of a country, because in the fatwa he continues to remind the importance of marriage registration, he reminds that marriages should be registered according to the applicable laws and regulations, and also emphasizes that The legal regulations governing marriage are something that must be implemented by every Muslim who enters a marriage, in anticipation of the need to deal with the judiciary. For example, if in the future one of the husband and wife denies the marriage or the denial arises when the inheritance is divided between the heirs.

Wahbah Al-Zulaily in his works *Al-Fiqh Al-Islami wa Adillatuhu*, strictly divides the terms of marriage into term *syar'iy* and condition *tautsiqiy*. Requirement *syar'iy* is a condition regarding the validity of a legal event depending on it, which in this case is the pillars of marriage with predetermined conditions. Meanwhile the terms *tautsiqiy* is something that is formulated to serve as proof of the truth of an action as an effort to anticipate future uncertainty. Condition *tautsiqiy* not related to the legal requirements of an act, but as evidence of the existence of that act. For example, the presence of two witnesses in every form of transaction is a requirement *tautsiqiy*, unless the presence of two witnesses in the marriage contract is a requirement *syar'iy*, because it is an element that forms the wedding procession and also determines the validity or invalidity of a marriage event, in addition to being a condition *tautsiqiy*.

Examples of conditions *tautsiqiy* in the Qur'an is a requirement for recording sales and purchases without cash, as emphasized in Surah al-Baqarah verse 282, "Ya ayyuhalladzina aamanuu idza tadayantum bidaidin illa ajalin musamma faktubuh" and in the following verse it states, "wa in kuntum 'ala safarin wa lam tajidu katiban farihanumm maqbuudlah" If these two paragraphs are understood purely textually without linking them to the teachings in the following paragraph, then the conclusion that is immediately reached is that there is a requirement to record debts and receivables and an obligation to provide dependent assets as collateral for debts. It is as if debts are not considered valid if they are not recorded and/or there is no collateral. This kind of understanding is not in line with the understanding of scholars who are experts in their fields. Because according to the conclusions of the ulama, the position of recording and collateral is only as evidence and as a guarantee that the debt will be paid according to the time promised. The conclusion of these scholars is that the understanding of the verse above is connected to the verse that follows, "Fa in Amen Ba'dlukun 'Alla Ba'dlin Falyuaddi Alladzi U'tumina Amanatahu" This last paragraph shows that records and collateral are tools *tautsiqiy*, when *tautsiqiy* or the trust already exists in each party, then the recording and collateral are no longer needed and the debts and receivables are a trust that must be paid.

CONCLUSION

From the discussion above, it can be concluded that in the study in the sociology of law in Indonesia, especially Islamic law, the rejection of the discourse on criminalizing perpetrators of unregistered marriages is

dominated by the ulama who are strongly affiliated with the Syafii school of thought. There are at least three reasons for that; first, the social culture of Muslims which does not respond to changes in their religious traditions; second, the religious beliefs of Indonesian Muslims who still adhere to the Syafii school of thought; third, the Law and KHI as well as existing practices in the Religious Courts seem to legalize the occurrence of unregistered marriages. Therefore, one solution that can be taken to minimize unregistered marriages in Indonesia is to create strict rules that do not have multiple interpretations. Even if this cannot be done, then to save and provide legal certainty for the generations resulting from unregistered marriages, it is necessary to create clear regulations to continue marriage itsbat programs in the Religious Courts in a more aggressive and sustainable manner. The rise of cases of unregistered marriages that occur in Indonesia, in addition to the sociological factor of society understanding that a marriage is valid if it fulfills the pillars and requirements of marriage according to religious provisions without being registered, also shows that legislation on marriage registration provisions in Indonesia has been attempted in statutory regulations, but has not yet been implemented. can be implemented. Apart from that, there is also a paradox in the applicable provisions

REFERENCES

- Adillah, S. U. (2011). Analisis Hukum Terhadap Faktor-Faktor Yang Melatarbelakangi Terjadinya Nikah Sirri Dan Dampaknya Terhadap Perempuan (Istri) Dan Anak-Anak. *Jurnal Dinamika Hukum*, 11, 104-112. <http://dx.doi.org/10.20884/1.jdh.2011.11.Edsus.267>
- Akbar, A. (2014). Nikah Sirri Menurut Perspektif Al-Quran. *Jurnal Ushuluddin*, 22(2), 213-223. <http://dx.doi.org/10.24014/jush.v22i2.737>
- Alfin, A., & Busyro, B. (2017). Nikah Siri dalam Tinjauan Hukum Teoritis dan Sosiologi Hukum Islam Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, 11(1), 61-78. <https://doi.org/10.24090/mnh.v11i1.1268>
- Aryanti, Y., Mutathahirin, M., Rahman, I., & Mulyani, R. (2022). Teacher Analysis Study According to Imam Al Ghazali in the Book of Al Adab Fi Al-Din. *Ahlussunnah: Journal of Islamic Education*, 1(2), 46-58. <https://doi.org/10.58485/jie.v1i2.177>
- Dalimunthe, N., & Ismiati, C. (2016). Analisis tingkat kepuasan pengguna online public access catalog (opac) dengan metode eucs (studi kasus: Perpustakaan uin suska riau). *Jurnal Ilmiah Rekayasa dan Manajemen Sistem Informasi*, 2(1), 71-75 <http://dx.doi.org/10.24014/rmsi.v2i1.1905>
- Elmubarok, Z., & Qutni, D. (2020). Bahasa Arab Pegon sebagai tradisi pemahaman agama islam di pesisir Jawa. *Lisanul Arab: Journal of Arabic Learning and Teaching*, 9(1), 61-73. <https://doi.org/10.15294/la.v9i1.39312>
- Fatimah, F. (2021). Komparasi Terhadap Perkawinan Wanita Hamil Karena Zina Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam. *Jurnal Hukum Samudra Keadilan*, 16(1), 168-180 <https://doi.org/10.33059/jhsk.v16i1.3300>
- Fauziah, N. P. N., & Amanita, A. (2020). Pelaksanaan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terkait Perkawinan Di Bawah Umur Di Kantor Urusan Agama Kecamatan Cipatat, Kabupaten Bandung Barat. *Jurnal Dialektika Hukum*, 2(2), 129-147 <https://doi.org/10.36859/jdh.v2i2.513>

- Fauziyah, R. (2017). *Pendidikan Akhlak dalam Perspektif Al-Ghazali dan Syaikh Muhammad Syakir (Studi Analisis dan Perbandingan Kitab Ayyuhâ al-Waladdan Waşâyâ al-Âbâ'li al-Abnâ')* (Doctoral dissertation, IAIN Pekalongan). <http://etheses.uingusdur.ac.id/id/eprint/2068>
- Halfiah, H. (2019). *Praktek Poligami Melalui Nikah Siri (Studi Kasus di Kecamatan Kotabumi Selatan)* (Doctoral dissertation, Pascasarjana Magister). <http://repository.radenintan.ac.id/>
- Harahap, S. (2019). Pengaruh Taq'id Dengan Istidlal Pada Perbedaan Pendapat Ulama Fiqih (Al-Istishab, Al-Istislahi, Dan Qiyas Al-Istidlal). *HUKUMAH: Jurnal Hukum Islam*, 2(1), 81-93 <http://dx.doi.org/10.55403/hukumah.v2i1.237>
- Harlina, Y. (2020). Tinjauan usia perkawinan menurut hukum islam (Studi UU no. 16 tahun 2019 perubahan atas UU no. 1 tahun 1974 tentang perkawinan). *Hukum Islam*, 20(2), 219-238. <http://dx.doi.org/10.24014/jhi.v20i2.9786>
- Ilham, M. (2020). Nikah Beda Agama Dalam Kajian Hukum Islam Dan Tatanan Hukum Nasional. *TAQNIN: Jurnal Syariah Dan Hukum*, 2(1). <http://dx.doi.org/10.30821/taqnin.v2i1.7513>
- Kurniawati, R. D. (2021). Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA). *Journal Presumption of Law*, 3(2), 160-180. <https://doi.org/10.31949/jpl.v3i2.1505>
- Masruhan, M. (2019). Pandangan Masyarakat Islam Surabaya terhadap Kriminalisasi Nikah Sirri dalam Reformasi Hukum Keluarga di Indonesia. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 5(1), 195-231 <https://doi.org/10.15642/aj.2019.5.1.195-231>
- Muhajir, A. (2017). hadhanah dalam islam (hak Pengasuhan anak dalam sektor Pendidikan Rumah). *SAP (Susunan Artikel Pendidikan)*, 2(2) <http://dx.doi.org/10.30998/sap.v2i2.2089>
- Musyafah, A. A. (2020). Perkawinan Dalam Perspektif Filosofis Hukum Islam. *Crepido*, 2(2), 111-122 <https://doi.org/10.14710/crepido.2.2.111-122>
- Nasir, M., & Badri, A. (2022). Ijtihad dan Perkembangan Hukum Islam di Aceh. *Politica: Jurnal Hukum Tata Negara dan Politik Islam*, 9(1), 41-51. <https://doi.org/10.32505/politica.v9i1.3924>
- Putri, A. D., Darmawan, D., & Mansur, T. M. (2019). Peralihan Harta Bersama Melalui Hibah Tanpa Izin Salah Satu Pihak Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam. *Syiah Kuala Law Journal*, 3(1), 81-94. <https://doi.org/10.24815/sklj.v3i1.12369>
- Rana, M., & Saepullah, U. (2021). Prinsip-Prinsip Perkawinan (Analisis Filosofis Implementasi dalam Meminimalisir Angka Perceraian). *Mahkamah: Jurnal Kajian Hukum Islam*, 6(1), 119-136. <http://dx.doi.org/10.24235/mahkamah.v6i1.8287>
- Sagita, F., & Nur, D. U. H. (2022). Perbedaan Nikah Dibawah Tangan Dan Nikah Siri Dalam Perspektif Hukum Islam. *QISTHOSIA: Jurnal Syariah dan Hukum*, 3(1), 31-45. <https://doi.org/10.46870/jhki.v3i1.228>
- Said, A. (2018). Nikah Dibawah Tangan Dalam Perspektif Islam. *Maleo Law Journal*, 2(1), 1-16. <https://doi.org/10.56338/mlj.v2i1.251>
- Santoso, S. (2016). Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam dan Hukum Adat. *YUDISIA: Jurnal Pemikiran*

- Hukum dan Hukum Islam*, 7(2), 412-434.
<http://dx.doi.org/10.21043/yudisia.v7i2.2162>
- Sofiah, R., Suhartono, S., & Hidayah, R. (2020). Analisis karakteristik sains teknologi masyarakat (STM) sebagai model pembelajaran: sebuah studi literatur. *Pedagogi: Jurnal Penelitian Pendidikan*, 7(1).
<https://doi.org/10.25134/pedagogi.v7i1.2611>
- Supriani, Y., Tanjung, R., Mayasari, A., & Arifudin, O. (2022). Peran Manajemen Kepemimpinan dalam Pengelolaan Lembaga Pendidikan Islam. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, 5(1), 332-338.
<https://doi.org/10.54371/jiip.v5i1.417>
- Suryantoro, D. D., & Rofiq, A. (2021). Nikah Dalam Pandangan Hukum Islam. *AHSANA MEDIA: Jurnal Pemikiran, Pendidikan dan Penelitian Ke-Islaman*, 7(02), 38-45
<https://doi.org/10.31102/ahsanamedia.7.02.2021.38-45>
- Syafi'AS, A. (2018). Fenomena Nikah Sirri Perspektif Hukum Islam (Studi Kasus di Dusun Gendok Kelurahan Balerejo Kecamatan Dempet Kabupaten Demak Jawa Tengah). *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 3(1), 29-58. <https://doi.org/10.25217/jm.v3i1.181>
- Syafi'i, A. (2019). Menggagas Hukum Islam Yang Akomodatif-Transformatif Dalam Konteks Legal Pluralism di Indonesia. *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, 1(1), 1-25.
<https://ejournal.insuriponorogo.ac.id/index.php/almanhaj/issue/view/14>
- Syam, A. S. M. (2021). Analisis Spiritual Character Pelaku Isbat Nikah Di Pengadilan Agama Watampone. *Jurnal Ar-Risalah*, 1(1), 25-45
<http://dx.doi.org/10.30863/arrisalah.v1i1.4166>
- Syamdan, A. D., & Purwoatmodjo, D. D. (2019). Aspek hukum perkawinan siri dan akibat hukumnya. *Notarius*, 12(1), 452-466.
<https://doi.org/10.14710/nts.v12i1.28897>
- Ulfah, U., Supriani, Y., & Arifudin, O. (2022). Kepemimpinan Pendidikan di Era Disrupsi. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, 5(1), 153-161.
<https://doi.org/10.54371/jiip.v5i1.392>

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