THE IMPLEMENTATION OF NIKAH SIRI WITH THE PURPOSE OF MAINTAINING FAMILY SALARY BENEFITS: THE PERSPECTIVE OF ISLAMIC LAW

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Abstract: This paper aims to determine the implementation of “Nikah Siri” (Unofficially, unregistered marriages) with the aim of maintaining family salaries. “Nikah Siri” namely marriages carried out under the hands, not officially registered in front of the Office of Religious Affairs (it is called KUA in Indonesia), or they are not published because they are secret, but they are carried out in accordance with Islamic law. There are two opinions of Nikah Siri in terms of the perspective of Islamic law, namely ‘allowed’ or ‘prohibited’. It is permissible if the marriage under the hand (siri) is carried out in accordance with the terms and pillars of Islamic marriage. It is prohibited when it is invalid because it does not describe legal certainty for future generations and violates the rules contained in Law no. 1 of 1974. This law is the consensus of the Ulama’ that Muslims must obey to ensure legal certainty and the benefit of the ummah. The implementation of Nikah Siri with the purpose of maintaining family salaries, including fraud against the state, which should be a husband who receives a pension from his deceased wife if he remarries another woman, the pension salary is stopped according to Indonesian laws and regulations.

Keyword: nikah siri, family allowance, Islamic law


Keyword: nikah siri, tunjangan keluarga, dan hukum Islam
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I. Introduction

From the past until now, Nikah Siri has not stopped yet and being carried out by the Indonesian people and are always actual to be investigated, even though there is a legal basis that regulates it, so that marriages must be recorded in front of the authorized official (PPN), but this provision still violated by the perpetrators who are supported by the existence of various interests for the perpetrators. The Office of Religious Affairs does not tolerate Nikah Siri model, but a phenomenon in the community that some Indonesian Islamic communities secretly implement it. The perpetrators are not only found in ordinary people, but also occur in public figures, political elites, government officials, members of the legislature, clerics in Islamic boarding schools, community leaders, religious leaders who are considered like gossip and are notified through information on the media. The occurrence of Nikah Siri is not only done for the first marriage, but also for the second marriage and the third marriage and so on. Nikah Siris are carried out due to several factors, among others, to save costs and avoid administrative procedures that are considered complicated (such as administrative requirements from the RT, Lurah, and Office of Religious Affairs (KUA), lack of legal awareness of the community, pregnancy outside marriage, avoiding lawsuits, economic factors, strict polygamy, and religious factors. In addition, there are also other factors, which Nikah Siri is carried out with the purpose of maintaining family allowances (salary).

From this factor, the perpetrators of Nikah Siri in its implementation is legally classified as illegal under national law. The Qur'an explains Obey Allah, the Messenger, and ulil amri. Ulil amri means the government is including the Marriage Registrar.

Nikah Siri is marriage whose implementation is not carried out in front of the Office of Religious Affairs, namely the head of the Religious Affairs Office belongs to unregistered marriages as described in Law no. 1 of 1975 concerning marriage. According to Law No. 1 of 1974 concerning marriage, only two types of marriage are known, first, registered marriage, and unregistered marriage. In Fiqh marriage is divided into: 1. Shighar marriage., 2. Mut'ah marriage, 3. Marrying a woman who is still in 'iddah, and 4. Nihak Muhallil. The division of marriage according to Fiqh is classified as marriage which is prohibited in Islam. In Indonesian society, which is known for its diverse customs and cultures, there are also kinds of marriages such as Nikah Siri, unregistered marriage, secret marriage, secret marriage, and elopement.

The government has regulated that marriages must be recorded, as regulated in Law no. 22 of 1946, law no. 32 of 1954. Meanwhile, the obligations of the marriage registrar (PPN) are regulated in the Regulation of the Minister of Religion of the Republic of Indonesia No. 1 of 1955 and No. 2 of 1954, and Law no. 1 of 1974 concerning marriage. This law is the legal basis for marriages to be registered in front of the competent authorities. The compliance of the Indonesian people with this rule is not fully implemented, some people violate the rules made by the government. This violation was carried out by various factors as mentioned above.

The compliance level of the Indonesian people regarding the registration of this marriage faces with two different understandings. First, the perspective of ‘Fiqh’ in which the marriage registration has not found the necessity to be recorded, even though there

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1Al-Qur’an Surah an-Nisa’ verse: 59.


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are verses in the Qur'an that recommend recording all forms of Muamalah transactions\(^4\). This may be that some Muslim communities still adhere to the traditional ‘fiqh’ perspective, namely marriage is valid if the terms and conditions contained in the ‘fiqh’ books have been fulfilled, there is no need for recording from the Office of Religious Affairs and no marriage certificate is needed because from time immemorial the implementation of marriage was carried out like that\(^5\). Second, the perspective of the marriage registration law is an administrative requirement in carrying out marriages that must be carried out, however, the urgency of marriage registration is very important, one of which is to regulate marriage in the community, and has an effect on other sides of state life, such as in the making of ID cards, Family card, SIM and so on. Thus, the registration of marriages is a mandatory law set by the state\(^6\). Likewise, the urgency and registration of marriages contains benefits in accordance with the objectives of the Shari'a.

II. UNDERSTANDING OF NIKAH SIRI

1. Nikah Siri (Unofficial, unregister marriage).

The word Sirri (Arabic) Sirra means secret or secret\(^7\). The word ‘al-Sirru’ etymological means confidential matter. The plural form is ‘asrarun’, when it is said ‘Asarra al-Syaia’, it means to keep and hide it. While the word ”Al-Surriyatun” means female slaves who are property rights and for the purpose of having sexual relations. The word ‘al-Sirru’ is found in Surah Al-Baqarah verse 235: it means (at the same time) do not hold marriage promises with them in secret\(^8\). The meaning of Nikah Siri in terminology is marriage that is ordered in secret\(^9\).

The emergence of the term Nikah Siri after the birth of Law no. 1 of 1974 concerning Marriage became effective on October 1, 1975, with registered marriages and unregistered marriages. Nikah Siri is a marriage whose implementation is not according to the law (illegal marriage)\(^10\). The MUI Fatwa No. 10 of 2008 concerning Nikah Siri states that Nikah Siri) is a marriage that fulfils all the pillars and conditions stipulated in Fiqh (Islamic Law) but without official registration in the competent authority as stipulated in the legislation\(^11\). Nikah Siri, also known as un register marriage - a marriage that is carried out without meeting the requirements of statutory procedures\(^12\).

The conception of Nikah Siri in the study of Fiqh is different from the conception in the understanding of Indonesian society. In the context of Fiqh, ‘Nikah Siri’ can be seen from two meanings. First, marriages that are not announced to the public, by hitting a duff, or marriages that do not present witnesses or due to lack of witnesses. According to Imam Syafi', two witnesses are a condition for a valid marriage, meaning that a marriage without enough witnesses is classified as a ‘Sirri’. This opinion is taken from 'Umar bin Khaththab, namely When Umar bin

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\(^{4}\)Amiur Nuruddin dan Azhari Tarigan, *Hukum Perdata Islam di Indonesia Studi Kritis Perkembangan hukum Islam dari Fikih sampai UU. Nomor 1/1974 sampai KHI*, (Jakarta: Kencana, 2016), p. 120.


\(^{8}\)Surah al-baqarah, verse: 235.


Khaththab came to a wedding which was only witnessed by one male witness and one female witness, he stated that this marriage was classified as ‘Sirri’, so I could stone it if it continued.13

Second, marriages that are classified as Nikah Siri are marriages that are not announced with a ‘duff’ or burning something (until smoke is seen) as a sign of marriage. Nikah Siri in this form was once asked by the Messenger of Allah and Umar bin Khattab as explained by Sahnun, namely: When the Messenger of Allah passed by a people singing voices were heard, while asking, "What is that sound" then the companions replied: "Someone's marriage", Rasulullah saw. He also said, "Complete his religion" is not classified ‘sirri’ after duff or visible smoke"14.

2. The urgency of recorded marriages

Among the functions of recorded marriages is as a control tool for ‘NTR’ marriage data. Therefore, the Office of Religious Affairs must record marriages carried out within their respective jurisdictions. The marriage registrar may be subject to sanctions if he neglects his obligations (to record) the marriage. Article 2 of Law no. I of 1974 explains: Marriage is legal if it is carried out according to the law of each religion and belief. Every marriage is recorded according to the applicable laws and regulations15.

Article 45 paragraph 1 of regulations no. 9 of 1975 explains a. whoever violates the provisions stipulated in article 3, 10 paragraph (3), 40 of this government regulation shall be punished with a maximum fine of 7,500 rupiah. b. Registrars who violate the provisions stipulated in Article 6, 7, 8, 9, 10 paragraphs (10, 11, 13, 44 of this Government Regulation shall be punished with imprisonment for a maximum of 3 (three) months or a fine of not more than 7,500 rupiah. Paragraph 2 (two) The crime referred to in paragraph (1) above is a violation16. The marriage registrar is a requirement not only in Indonesia but also in other Muslim nations; while the offender of an unregistered marriage may face punishment, the marriage itself (which is afterwards registered) is not void17. Pakistan, Tunisia, Iraq, and other Muslim nations are among the nations that submit applications for marriage registration.

A characteristic of contemporary civilization, which requires the use of acts and letters as reliable evidence, has been a change from oral to written culture in step with the times and the advancement of science. Written requirements is needed since it is possible for living witnesses in a legal event to disappear owing to death. Marriage registration thus forms a part of the modernizing of Islamic family law.18

The importance of a marriage must be recorded because the recording is a condition for whether or not the state recognizes a marriage. Marriage books obtained by married couples are authentic evidence of their marriage's legitimacy, according to religion and state. For individuals who violate this registered marriage, they can be subject to fines from the State of Iraq; for example, violators are subject

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16Ibid., p. 47.
17Shomad, Op cit., p. 299.
to sanctions in the form of a minimum fine of 300 dinars and a maximum of 1000 dinars and imprisonment for a minimum of 6 months and a maximum of 1 year\textsuperscript{19}. So important is the role of registration of marriages so that marriages become organized both religiously and stately, as a deterrent to possible impacts arising from such marriages.

III. FACTORS CAUSED ON UNDERSTANDING OF MARRIAGE

The factors that cause \textit{Nikah Siri} are: 1. There is a lack of public knowledge about understanding the values contained in marriage, which considers marriage problems as a private matter, no government intervention is necessary. 2. There is a concern that someone will lose his widow's pension right, if his new marriage is registered with the marriage registrar; 3. Not getting permission from the first wife or from the court to practice polygamy; 4. There is a parent's concern for their child who has been closely associated with the prospective wife/husband, so that negative things happen, then the child is secretly married; 5. There is excessive parental concern about their child's mate, then they will marry secretly, if one day their child has reached the age of marriage, a new marriage will be carried out in accordance with state regulations (registered)\textsuperscript{20}. According to the Hanafi and Shafi‘iyah scholars, \textit{Nikah Siri} is a marriage that is carried out without presenting witnesses. If the marriage is attended by two witnesses, it is not classified as a \textit{Nikah Siri}\textsuperscript{21}.

Among the factors that cause \textit{Nikah Siri} are:

1. Legal Awareness Factor

According to Paul Scholten, legal awareness is an awareness that exists within every human being regarding existing laws or expected legal matters, so that there is the ability to distinguish between good laws and bad laws\textsuperscript{22}. This legal awareness contains values that exist in humans about existing laws or about laws that are expected to exist, and more emphasis is placed on values about the function of law.

According to Grotius theory, everyone has a tendency to live together, have ratios, and want to live, peacefully. Human sociability as the ontological foundation and foundation of all law. The law originates from the awareness of “social human beings” so that sociality is maintained. The law is needed so that everyone returns to their nature as a virtuous social human being. Law is a guard in human sociality to ensure that the principles of the virtuous “social individual” remain upright. These principles consist of 1. The property of others must be respected. Yours”, not always “mine”. If we want to borrow and make a profit, it must be rewarded. 2. Faithfulness to promises. Contracts must be respected. 3. There must be compensation for any losses suffered. 4. There must be a punishment for every violation\textsuperscript{23}. According to this theory the law comes from human consciousness. A collection of humans is called a society that is required to obey the laws that are applied to it, because that law, is a guardian in the life of human sociability.

\textsuperscript{22}Soejono Soekanto, \textit{Hukum Adat Indonesia}, (Jakarta: Pt. Raja Grafindo Persada, 2008), p. 316
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If you look at it in our society, there are still many people who do not fully understand the existence of Law no. 1 of 1974 concerning Marriage and Government Regulation No. 9 of 1975, in this regulation stipulates that marriage must be registered by an authorized official. For people who do not understand the function and essence of this marriage regulation, it shows that their legal awareness is weak considering that registered and unregistered marriages are the same and there is no need for government intervention.

2. Religion factor

Although there are still many requirements that must be met in the implementation of the marriage in order to prevent any effects from it later on, there remains a limited understanding of the Fiqh of Munakahat among the community when it comes to the notion that the marriage is valid once it has been performed ijab qabul. In addition to the ijab and qabul (both male and female bridegroom, guardian), the Fiqh Munakahat, which discusses the laws of marriage in Islam, has very clearly regulated how marriage is carried out in accordance with Islamic teachings; that is, there are also witnesses, performed in front of an authorized official, and later Walimatul Urus, which serve to announce the marriage to the public so that there is no slander against the association of the husband and wife. Marriages carried out secretly can impact later on, especially on their children.

3. Customary and Economic Factors

Social conventions can affect marriage laws; these traditions are handed down from ancestors to descendants orally and are not written down. In this instance, marriages are frequently performed in accordance with local customs, so the laws requiring the registering of marriages are disregarded and not reported to the authorities. As seen in the Renah Pembarap District, economic concerns continue to play a large role in many clandestine unions. He or she does not pursue higher education after completing elementary school or MTS (Islamic Junior School), as there is not enough money to do so. Take the effort to get married so that his or her life is oriented rather than waiting for a purpose in life that is not yet evident. Another case, the parents were afraid of promiscuity. The daughter stayed in the village while her parents spent the night in the garden once a week before returning home.

LEGAL CONSEQUENCES OF NIKAH SIRI

To find out the legal consequences of Nikah Siri which means here is the opposite of legal marriage law, namely: It becomes lawful to have sexual relations and have fun between the husband and wife. The dowry (dowry) given by the husband becomes the property of the wife. The emergence of rights and obligations of husband and wife. The husband is the head of the family and the wife is the housewife. The child born from the marriage relationship becomes a legal child. The husband is obliged to support the life of his wife and children. The emergence of the prohibition of marriage due to marriage relations. A father has the right to be a marriage guardian for his daughter. When one of the parties dies, the other party has the right to become a guardian for both the children and their

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property. Between husband and wife have the right to inherit from each other, as well as between children born from marriage and their parents can inherit each other.

Children born from Nikah Siri can bring problems, namely their existence is not recognized, as well as in inheritance issues, due to the background of the occurrence of Nikah Siri. If Nikah Siri takes place because the woman is pregnant first, it means that the child is classified as an adulterous child. Adultery children are only assigned to their mothers as explained in Articles 42 and 43 of the Marriage Law, that legitimate children are children born in legal marriages, while children born from illegitimate marriages only have a legal relationship with their mother.  

ANALYSIS OF THE IMPLEMENTATION OF NIKAH SIRI WITH THE MOTIVATION OF MAINTAINING FAMILY SALARY ALLOWANCES

Discussion of Nikah Siri can be traced in the following points:

1. The implementation of a Nikah Siri that took place in Jambi City

There is one case in Jambi City regarding the implementation of an Nikah Siri carried out by A and B on September 1, 2021. A (groom to be) and B (bride to be). A is a widower where his first wife has died and has a child who is still a university student. A's first wife is a Civil Servant who bequeaths her pension rights to A (husband) and the child. In the provisions of the employment regulations, the wife or husband who receives a pension from between the two, if one of the two remarries, the right to receive a pensioner's salary automatically disappears.

A (deceased's husband) remarried with B (new wife) to carry out a Nikah Siri, with the reason that pensioner A's salary remained (still receiving retirement salary) from his first wife to help children who were in college. When the child gets a job in the future, then they are remarried in accordance with Indonesian marriage rules, which is carried out in front of a Marriage Registrar.

The reason for the courage of A (bridegroom) and B (the new bride) to perform a Nikah Siri is to maintain the pension benefits (salary) of A's first wife who had died, then B is also guided by Islamic teachings that says "Janda boleh menikahkan dirinya sendiri" (translated: widows may marry themselves). The understanding of this Islamic teaching is done by B (the new bride) without considering the purpose of the context. Furthermore, the marriage guardian who marries A and B under this hand consists of B's nephew from the mother's side. However, this case is contrary to Islamic law, where the guardian is taken from the mother's side. In Fiqh, it is explained that the guardian is taken from the father's side of the bride to be, if the lineage guardian is unable to do so, it can be taken by the guardian judge. While the guardian judge in this case is not an authorized official marriage registrar.

2. Analysis of Nikah Siri with Motivation to Maintain Family Allowances (salary).
   The analysis is seen from the aspects:

   a. Nikah Siri seen from the aspect of Fiqh

   Most of scholars (ulama) of fiqh explains that marriages which take place between a bride and a groom without being attended by a guardian and witnesses or attended by a guardian alone without witnesses, then they will to keep the marriage secret, and the case of this marriage is not valid because it does not meet the requirements of the law. Marriage requirements are the presence of a guardian

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and witnesses. This includes adultery and is in accordance with the word of Allah SWT in Surah An-Nisa' verse 25 which means “… sedang merekapun wanita-wanita yang memelihara diri, bukan penzina dan bukan pula wanita yang mengambil laki-laki lain sebagai piaraannya” 27 (translated: while they are also women who take care of themselves, not adulterers and not women who take other men as her pet).

In the opinion of Junhur Ulama', the implementation of marriage without the presence of a guardian, and those who were present advised each other to cover it up from the guardian and the community. This case is illegal marriages and was prohibited by the Messenger of Allah.

Ulamas’ opinion differs on the marriage that took place. In this case, the pillars are complete, and are attended by the groom and the bride to be, guardians, and witnesses, but they agreed to keep it a secret from the crowd, especially the husband, he asked two witnesses to cover it up. In this case, according to the Junhur Ulama’ from among the Hanafi, Shafi’i, and Hanbali schools, they think that this kind of marriage is ‘makruh’. This opinion is one of the popular opinions of Imam Ahmad. This marriage is no longer confidential because it already has the terms and conditions of marriage, and if there are more than two people present, then it is not a secrecy. However, the concealment (publication) of the marriage is still considered ‘makruh’ so as not to appear oblique accusations against the groom and the bride 28.

According to Maliki, the marriage like this is null and void. It is one of the narrations of Imam Ahmad. The reason is because there is a request (the husband asks two witnesses to keep his marriage secret, meaning that the mission to publicate this marriage is not complete (not publised) and the marriage of this category according to the Prophet SAW is prohibited 29. Nikah Siri according to Malikiyah as stated by ad-Dardir that Nikah Siri is a marriage when the marriage contract is held, the witnesses are ordered to keep it secret, it is the same whether the other party is asked to remain silent or not. Of course, the husband is the one who asks for such a message, whether accompanied by the wife, guardian or not. Also included in this category as stated by al-Baji that requests to people other than witnesses to keep it a secret as well as if husband and wife and guardians agree to cover it up without asking witnesses to do so.

According to Rajih, Nikah Siri is carried out in accordance with the terms and conditions of the marriage, the marriage is valid, even though the marriage is not publicized by the public. Because the presence of guardians and witnesses has been considered as a form of socialization that removes the marriage from its secrecy nature. The more intensive the socialization, the more important it will be. Therefore, it is forbidden to keep the marriage secret so that husband and wife are

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not viewed with suspicion and get bad prejudice from others. According to Islamic law, *Nikah Siri* is valid, as long as the pillars of marriage have been fulfilled.

Idris Ramulyo argues that *Nikah Siri* is invalid under Islamic law because it does not provide legal certainty for future generations, as opposed to Law No. 30 and the interests of the population. Because the requirements and pillars of marriage have been met, *Nikah Siri* is valid, according to the Fatwa of the Indonesian Ulama Council (MUI). If there is mudharat, it is still harmful. As a safeguard against adverse effects/madhrat, marriage must be formally registered with the appropriate agency (Saddah li dz-dzariah).

As a result of a fiqh-centric worldview in which marriage registration is hardly ever discussed, Ahmad Rafiq claims that some people still need socialization about marriage registration. The order to register marriages using the istishlah or Maslahah Mursalah method is then consistent with the circumstances at the time that fiqh was formulated in the past. The content of the maslahahis is in line with Syara's acts, namely realizing the benefit of the people, even though there isn't a verse or sunnah provision that mandates the registration of marriages. As a result, all persons involved in the marriage must register it. This marriage registration complies with Islamic law's *Maqashid al-Shariah*, which is concerned with raising children through marriage. The advantage must be preserved, and harm must not be done.

The term "*Maqashid al-Syariah*" refers to the rationale behind which Allah and His Messenger created Islamic law. This objective can be found in the Qur'anic verses and the Prophet Muhammad's *Sunnah* as a logical justification for the formation of a rule that is focused on the welfare of mankind. According to Abu Ishaq al-Syatibi, there are three categories of public benefit: 1. *Dharuriyah* (primary need), if this need is not fulfilled it will threaten the safety of mankind, which belongs to this need there are five first, maintaining religion, second, preserving the soul. Third, keep the mind. Fourth, maintain honor and lineage. Fifth, protect property. 2. *Hajiyat* (secondary need), namely the need if it does not materialize, does not threaten safety but this case is a difficult experience. Islamic law eliminates all difficulties; the existence of the law of *rukhshah* (relief), such as travelling or being sick, may make up for prayer. 3. *Tahsiniyyah*, namely the level of needs which, if not met, does not threaten the existence of any of the five main needs above and does not cause difficulties. This level *tahshiniyah* is a complementary need such as avoiding things that are not pleasing to the eye, such as Islam forbids extravagance, miserliness and so on. Therefore, Legitimate children are born from legal marriages.

**b. Nikah Siri from the legislative aspects**

*Nikah Siri* is viewed from the perspective of the laws and regulations in Indonesia. The regulation of Family law in Muslim countries applied recorded marriages because considering the urgency of registering marriages it is very important in determining the legal limits that must be carried out by people who carry out

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marriages. However, they are not included in the legal requirements of marriage but the benefits are greater in fostering a household according to the rules. In the Family Law Law in Indonesia, it explains the sanctions against marriage registrar officers who marry a husband who will have polygamy without court permission, the maximum penalty is 3 months in prison and a maximum fine of IDR 7,500. Iraqi law explains that marriage registration is mandatory and is followed by a doctor's certificate (free from infectious diseases), the sanction for violators is a minimum of 6 months and a maximum of 1 year in prison or a minimum fine of 300 dinars and a maximum of 1000 dinars for those who are not married, and 3 years and a maximum of 5 years in prison for those who have been married.

As stated in article 1 of Law No. 22 of 1946, there are regulations in Indonesia that control marriage and require that it be recorded. The article says that "Nikah yang dilakukan menurut Agama Islam diawasi oleh Pegawai Pencatat Nikah yang diangkat oleh Menteri Agama atau Pegawai yang ditunjuk olehnya" (Translated: Marriages carried out according to Islam are supervised by Marriage Registrar Officers who are appointed by the Minister of Religion or employees appointed by him). Then it is also regulated at article 3-11 Government Regulation No. 9/1975:

(a). Inform the registrar the place where someone will carry out the marriage (Article 3). (b). There is an announcement held by the registrar at the marriage registration office regarding the will to carry out the marriage (Article 8). (c). The marriage must be carried out in front of a registrar in the presence of two witnesses by observing the marriage procedure according to the law of each religion and belief (Article 10). (d). Shortly after the marriage held, the bride and groom are required to sign a marriage certificate, which is followed by the two witnesses, the registrar, and the marriage guardian or his representative for those who are Muslim. (Article 11). (e). To provide legal certainty regarding the existence of a marriage, the bride and groom are given a marriage certificate/marriage certificate as evidence (Article 12).

Marriage registration in the perspective of laws and regulations in Indonesia. Article 2 paragraph 2 of Law no. 1 of 1974 says “tiap-tiap perkawinan di catat menurut peraturan perundang-undangan yang berlaku” (Translated: every marriage is recorded according to the applicable laws and regulations). In this law there is only one article that discusses marriage registration, but this law has its implementing regulations, namely Government Rule (PP) No. 9 of 1975 concerning the Implementation of Law no. I of 1974 concerning marriage. In article 2 paragraph 1 government rule (PP) No. 9 of 1975 states that the registration of marriages of those who carry out their marriages according to the Islamic religion, is carried out by the marriage registrar as referred to the law no. 32 of 1954 concerning registration of marriage, divorce, and reconciliation.

Article 3 stated that: (1). Every person who will enter into a marriage shall notify the Registrar of his wishes to the Registrar at the place where the marriage will take place; (2). The notification referred to paragraph 1, which is carried out at least 10 working days before the marriage takes place. (3). The exception to the

36 Bakry, Op cit., p. 47.
38 Bakry, Op cit., p. 140
39 Ibid., pp. 34-37.
40 Ibid., p. 3.
time period referred to paragraph 2 due to an important reason, is notified by the subdistrict head on behalf of the regent of the regional head.\(^{41}\)

There are pros and cons about whether or not a *Nikah Siri* is legal. Mohd. Idris Ramulyo that some Muslims say that *Nikah Siri* is legal according to Islamic law because since ancient times the belief of Muslims in carrying out marriages has not been recorded administratively. On the other hand, Mohd. Idris Ramulyo added that *Nikah Siri* is not legal according to Islamic law because *Nikah Siri* does not represent legal certainty for future generations and violates the rules contained in the law. No. 1 of 1974, where this law is called ‘*ijma*’ (an agreement of the ‘ulama’) which must be obeyed by Muslims to ensure legal certainty and the benefit of the people.\(^{43}\)

Marriages that are not registered or are reluctant to enter into marriages in front of a marriage registrar will bear legal risks. Their marriages are qualified as illegal marriages in the form of cohabitation or compassionate marriages. Marriage registration is not a requirement for a valid marriage. Marriage is considered valid if it is carried out according to the provisions of the religion, even though it is not or has not been registered. The perpetrators of unregistered marriages may be subject to sanctions, as contained in the Decision Letter of the High Islamic Court in 1953/19 (Surat Keputusan Mahkamah Tinggi) which emphasized that if the pillars of marriage are complete, but not registered, then the marriage is valid, while the person concerned is subjected to a fine because it is not registered.\(^{44}\)

The application of unregistered marriages are known as *Nikah Siri* or unregistered marriages. *Nikah Siri* according to the Compilation of Islamic Law has no legal force. *Nikah Siri* is classified as illegitimate marriages in the form of compassionate marriages or ‘cohabitation’. Unregistered marriages are legal according to religion but their rights are not guaranteed by laws and regulations. Children born from *Nikah Siri* is not considered valid by law, the children only have a civil relationship with their mother.\(^{45}\)

c. Status Wali

The prospective wife's aunt's child served as the guardian during the Jambi City Nikah Sirih (B). it is very contrary to the concept of guardian contained in Islamic law. According to Article 20 (1), The one who acts as a marriage guardian is a man who meets the requirements of Islamic law, namely Muslim, aqil and baliqha. (2) The guardian of marriage consists of: a. Lineage guardian, b. Guardian judge.

In Article 21:

(1) In order of position, there are four groups that make up the lineage guardian. Depending on how closely related the kinship structure is to the prospective bride, one group is given preference over the other groups. First, a straight line of male ancestors starting with the father, including the grandpa from the father's side, and so on. Second, the group of male descendants who are biological brothers or brothers who share the same father. Third, the uncle's family group, which includes the biological brother of the father, the brother

\(^{41}\) *Ibid.*, p. 34..


of his father, and their male descendants. The fourth group consists of the male descendants of the biological and half brothers of the grandpa.

(2) If there are multiple guardians for a marriage who are all equally qualified, the guardians who are closest in kinship to the prospective bride are those who are most qualified to serve as guardians.

(3) If the degree of kinship within a group is the same, biological relatives of relatives who share just a father are the ones who are most qualified to serve as guardians of marriage.

(4) Members of a group who share the same degree of kinship—either genetically or fatherly—are equally eligible to serve as guardians of marriage, with the older individuals who best meet the requirements for guardianship being given preference.

In addition, Article 22 states that the right to serve as a guardian passes to another marriage guardian in accordance with the next degree if the most entitled marriage guardian does not meet the conditions to do so or if they are too old, deaf, or suffer from speech impediment.

According to Article 23, (1) the new guardian judge may serve as the marriage guardian if the lineage guardian is unavailable, unable to be shown, or whose address is unknown, invisible, adhlal, or unwilling, (2) The guardian judge can only serve as a marriage guardian if the guardian is unwilling or adlal and the Religious Courts have made a decision respecting the guardian.

A marriage guardian appointed by the Minister of Religion, or a representative so authorized by him, is a person who has the legal right and power to act in such a capacity. The guardianship hierarchy in marriage: Biological father; Grandfather of biological father; Siblings; Siblings of the same father; Sibling's son; The brother's son; Uncle; Uncle's children.

Everything is carried out in order. The guy who frees him becomes his ashabah, and if there are none, the judge or ulil amri, have the right to become guardian marriage if the ashabah (relative) does not exist at all.

Article 19 KHI: The guardian of marriage is a pillar that must be fulfilled for the prospective bride. Furthermore, according to the Hadith, the Prophet of Allah said “Wanita janda lebih berhak terhadap dirinya, sedangkan gadis perawan dimintai persetujuannya mengenai dirinya, dan tanda persetujuannya adalah diamnya” (Translated: widow women have more rights over themselves, while virgin girls are asked for their consent regarding her, and the sign of acceptance is silence. (Hadits 1421) Rawahu Muslim. This Hadith was told by Malik from Abdullah bin A-Fadhli from Nafi bin Jubair bin Mut'imin, and from Abdullah bin Abbas, explained that a widow has more rights over herself. This hadith states that widow is more entitled to make her own marriage decisions. This is the meaning of the sentence.

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46 Undang-undang Republik Indonesia Nomor 7 tahun 1989 Tentang Peradilan Agama dilengkapi Kompilasi Hukum Islam di Indonesia, (Surabaya : Pustaka Tinta Mas, 1994), pp. 82-84.
Additionally, Malik in Hadistst told that from Sa'id bin Musyaiyyab that “Umar Bin Khaththab mengatakan bahwa wanita tidak boleh dinkahkan kecuali dengan seizin walinya, atau orang yang pandai berpendapat dari kalangan keluarganya, atau penguasa”.\(^{50}\) (Translated: Umar Bin Khaththab said that Virgin girl could not be married unless by her marriage guardian’s permission, or by persons who are eligible from the group in which they are associated, or by government.

Therefore, a marriage guardian is taken from groups of male relatives (father, grandfather and other eligible relatives) as the guardians of the marriage. If the prerequisites and pillars of an Islamic marriage are not met, the marriage is invalid. A marriage must be performed in line with these regulations.

d. Maintaining Family Salary by conducting Nikah Siri

Islam has regulated marriage, where the aim is to fulfill biological needs to produce offspring. Article 1 of Law no. 1 of 1974 states that the purpose of marriage is to form a happy and eternal family (household) based on the One Godhead\(^{51}\). Article 3 of the Compilation of Islamic Law states that marriage aims to realize a sakinah, mawaddah, and rahmah household life. According to Islamic law, marriage is a very strong contract or mitsaqan hgalizhan to obey Allah's commands and carry it out in worship\(^{52}\). From the purpose and formulation of this marriage, it can be seen how noble marriage is following Islamic teachings. If a marriage is carried out with the wrong intention or is accompanied by another element, such as Nikah Siri to maintain the family salary, it has deviated from the goal of the marriage. Because if the marriage is carried out by being registered with the KUA, A (husband of the deceased with a civil servant status) will be lost because A has remarried B (the second wife). The salary will be used to finance the deceased child's education costs and A's. After this child already has a job in the future, then the marriage of A and B will be renewed again, meaning remarriage.

When it is associated with Islamic law, Nikah Siri with the motivation to maintain family salaries is a violation because there is an element of fraud, namely that when the husband (A) married his second wife, his pension obtained from his deceased first wife was automatically cut off. But the fact is that the pension is not interrupted because Nikah Siri between husband (A) with his second wife is carried out, and it is not reported to the competent authority (KUA).

IV. Closing

In reality, many people in Indonesian society are still unaware of the existence of Law No. 1 of 1974 about marriage, which regulates the processes for carrying out marriages and must be carried out in front of an authorized official (KUA). Some people comprehend the law but purposefully break it because they believe that marriages that are registered and those that are not registered are equivalent because, in Fiqh, marriages do not need to be registered.

Nikah Siri is driven to sustain family incomes through fraud offences in accordance with Islamic law and Indonesian law. The element of this deception that can be considered as a secret marriage that is not reported to the competent authority (KUA) under the laws.

\(^{50}\)Ibid., p. 725.
\(^{51}\)Bakry, \textit{Op cit.}, p. 3.
pretence that the salary will still be paid even though the husband is married to his second wife is called a hidden secret. Similarly, the guardian's function in this marriage does not correspond to the guardian's obligations under Islamic law. In this marriage, the guardian comes from the mother's side, whereas in Islam, the guardian comes from the male side (father, grandfather, and so on).

**BIBLIOGRAPHY**


