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Islamic Family Law in Facing the Widespread Phenomenon of Siri Marriage: Legal and Social Implication

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ABSTRACT

The purpose of this study is to examine in depth the position of children from siri marriages according to the constitution in force in Indonesia and to analyze the legal position of illegitimate children from siri marriages as heirs according to civil law and Islamic law. The research method used is a literature study (Information and Reference Study, abbreviated as SIR) by reviewing various literature, articles, journals, and policies related to the phenomenon of siri marriage in the context of Islamic family law. This method was chosen because of its descriptive and analytical nature, where the study emphasizes more on collecting and analyzing various relevant secondary sources to answer existing problems. The results of the study show that siri marriages, although valid according to Islamic law, have significant legal and social implications. From the perspective of Islamic family law, siri marriages often ignore aspects of protecting the rights of women and children that should be guaranteed in the country's legal system. The legal implications of siri marriages include difficulties in obtaining birth certificates for children born from the marriage, which has an impact on access to education and health services. In addition, wives in unregistered marriages do not have the same legal protection as in officially registered marriages, making them vulnerable to injustice in terms of inheritance rights, maintenance, and protection from domestic violence. From a social perspective, unregistered marriages can cause stigma and discrimination against the women and children involved.

INTRODUCTION

Marriage is a sacred bond between two individuals that is recognized socially, culturally, and legally. In various traditions and religions, marriage is considered the main foundation in building a family and society (Afif, A. 2024). Marriage not only involves commitment between partners, but also the responsibility to support, love, and respect each other. In Islam, marriage is referred to as "nikah" and is considered a legal contract between a man and a woman (Asyiqin, LN 2023). Marriage in Islam aims to build a harmonious family, maintain purity, and fulfill the emotional and physical needs of the couple. Marriage is also considered a form of worship that brings us closer to Allah SWT (Hayati, et al. 2024). Marriage in Islam must meet several requirements and pillars, including the presence of a prospective husband and wife, the presence of a guardian, the presence of witnesses, the presence of a dowry, and the *ijab* and *qabul*. Marriage also has significant legal and social implications. Legally, a valid marriage provides rights and obligations to the couple, such as inheritance rights, living expenses, and legal protection (Musyafah, AA 2020).

Prophet Muhammad SAW highly recommended marriage for Muslims as a way to maintain purity, build a harmonious family, and fulfill human emotional and physical needs (Nariti, RC, & Setiyani, NA 2024). In various hadiths, Prophet Muhammad SAW emphasized the importance of marriage and provided guidance for Muslims in living their married life. Allah SWT says in QS. An-Nisa verse 1:

يَا أَيُّهَا النَّاسُ اتَّقُوا اللَّهَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا
كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾

Meaning: O people, fear your God who created you from one person (Adam) and He created from him his partner (Eve). From both of them, Allah produced many men and women. Fear Allah in Whose name you ask each other and (maintain) family relationships. Indeed, Allah always guards and watches over you (Surah An-Nisa (4:1))

Socially, marriage is expected to build a harmonious family and contribute positively to society. However, the phenomenon of unregistered marriages or marriages that are not officially registered at the religious affairs office raises various legal and social problems (Gultom, MY 2024). Children born from unregistered marriages often face difficulties in obtaining birth certificates, which impacts their rights such as access to education and health services. In addition, wives in unregistered marriages do not have the same legal protection as in registered marriages, making them vulnerable to injustice in terms of inheritance rights, maintenance, and protection from domestic violence (Fitri, E. 2023). Therefore, it is important to understand how Islamic family law and positive law in Indonesia can work together to address this phenomenon, ensuring that the rights of all parties are protected and the best interests of the child remain a top priority. Thus, it is hoped that a fairer and more comprehensive solution can be found in dealing with the rampant phenomenon of unregistered marriage.

The phenomenon of unregistered marriage, also known as unregistered marriage, has become an issue that is increasingly attracting attention among legal practitioners, the public, and the government in many countries with a Muslim majority. Although unregistered marriages are carried out with the aim of fulfilling

religious demands, namely to maintain purity, in reality many parties ignore the legal aspects that should be regulated by the state (Wardhana, WR 2023). This shows an imbalance between religious teachings and existing laws and regulations, especially those related to legal recognition of marriage and the rights of couples and children born from the marriage. This practice becomes more complex when we see differences in understanding among scholars regarding the law of unregistered marriage and its application in real life.

In Indonesia, the phenomenon of unregistered marriages is becoming more common along with the increasing awareness of the importance of religious teachings in everyday life. Some people consider unregistered marriages as a solution for those who want to marry legally according to religious law, but do not want to go through state registration procedures that are considered complicated or expensive. (Kamila, FY 2023). In the context of positive Indonesian law, unregistered marriages can have implications for various legal rights, such as inheritance rights, maintenance rights, and children's rights. Although unregistered marriages are considered legitimate by some groups, many parties doubt the validity and legal justice for women and children involved in such marriages (Widayati, T. 2024).

Islamic family law in Indonesia that regulates marriage in general provides clear limitations and provisions regarding the validity of a marriage, but there is still a gray area regarding unregistered marriages. The legal implications of unregistered marriages include the legal status of children born from the marriage, the rights of the wife, and inheritance rights. Children born from unregistered marriages often face difficulties in obtaining birth certificates, which impacts their rights such as access to education and health services. In addition, wives in unregistered marriages do not have the same legal protection as in registered marriages, making them vulnerable to injustice in terms of inheritance rights, maintenance, and protection from domestic violence (Hernawati, 2023). From a social perspective, unregistered marriages can cause stigma and discrimination against women and children involved. Society often looks down on women who are married unregistered, and children from these marriages may face discriminatory treatment.

Therefore, it is important to understand how Islamic family law and positive law in Indonesia can work together to address this phenomenon, ensuring that the rights of all parties are protected and the best interests of the child remain a top priority. In doing so, it is hoped that a fairer and more comprehensive solution can be found in dealing with the rampant phenomenon of unregistered marriages. In this regard, the Indonesian Government through the Ministry of Religion and related institutions has attempted to provide a solution by regulating marriage registration as an obligation. However, despite legal efforts made, unregistered marriages continue to take place and can have very serious social impacts on the parties involved. For women who are married unregistered, they often face uncertainty in terms of their legal rights, both in inheritance rights and in terms of other legal protection.

The importance of studying this unregistered marriage is not only limited to the realm of Islamic law, but also to the social dimensions that are developing in society. Changes in social values that are developing in society require a better understanding of the social implications of the practice of unregistered marriage. Therefore, this study aims to provide a more comprehensive understanding of the phenomenon of unregistered marriage, with a focus on legal and social implications, as well as

providing recommendations for improving the Islamic legal system in facing these modern challenges.

METHODOLOGY

This study uses a literature study method (Information and Reference Study, abbreviated as SIR) by reviewing various literature, articles, journals, and policies related to the phenomenon of unregistered marriage in the context of Islamic family law (Khoiriah, HM 2022). This method was chosen because of its descriptive and analytical nature, where the study emphasizes more on collecting and analyzing various relevant secondary sources to answer existing problems. The sources used in this study include Islamic legal literature, scientific journals, reference books, and government policies related to marriage and family. In data analysis, this study identified various laws and regulations governing marriage, both from the perspective of positive Indonesian law and Islamic law. Then, a discussion was held regarding the inconsistency between state law and Islamic law regarding unregistered marriage, as well as the legal impact on the parties involved, especially women and children. This study also examines the views of Islamic scholars and legal experts regarding the validity of unregistered marriage and its position in the Islamic family law system (Yulianti, 2024).

In addition, this study also considers various case studies that are relevant to the phenomenon of unregistered marriage in Indonesia. This aims to describe more clearly the social implications that arise as a result of unregistered marriage, both in terms of the social status of the husband and wife, the rights of the children born, and the issue of legal protection for the families involved. By using this approach, it is hoped that a more appropriate solution can be found for the problems that arise as a result of the practice of unregistered marriage.

RESULTS AND DISCUSSION

Definition and Concept of Siri Marriage

A siri marriage is a marriage that is legally performed according to Islamic law, but is not officially registered with the religious affairs office or authorized government agency. This practice is often carried out for reasons of religion, tradition, or other personal reasons. Although a siri marriage is considered valid according to religion if it meets certain requirements such as the presence of a guardian, witnesses, and a dowry, this marriage is not recognized by positive law in Indonesia because it is not officially registered. In society, siri marriages are often carried out by couples who want to avoid administrative procedures or costs associated with registering a marriage. There are also those who do it for certain reasons, such as differences in social status, family pressure, or a desire to maintain privacy. However, this practice has various significant legal and social implications. (Yusuf, MYM 2020).

Legally, children born from unregistered marriages often face difficulties in obtaining birth certificates, which impacts their rights such as access to education and health services. In addition, wives in unregistered marriages do not have the same legal protection as in registered marriages, making them vulnerable to injustice in terms of inheritance rights, maintenance, and protection from domestic violence. From a social perspective, unregistered marriages can lead to stigma and discrimination against the women and children involved. Society often looks down on women who marry unregistered, and children from these marriages may face discriminatory treatment. Therefore, it is important to understand how Islamic family law and positive law in

Indonesia can work together to address this phenomenon, ensuring that the rights of all parties are protected and the best interests of the child remain the top priority. In doing so, it is hoped that a fairer and more comprehensive solution can be found in dealing with the rampant phenomenon of unregistered marriages (Kamba, SNM, & Kasim, NM 2023).

The phenomenon of unregistered marriage is not only a legal problem, but also a fairly complex social issue. From an Islamic legal perspective, unregistered marriage is considered valid as long as it meets the pillars and requirements of marriage that have been set, such as the presence of a guardian, witnesses, and dowry. However, even though it is valid according to religion, unregistered marriage is not recognized by the state if it is not registered in the civil registry. This creates legal uncertainty for couples who are married unregistered, especially for women who may not get the rights they should receive, such as inheritance rights and decent living (Mashuri, M. 2023).

Foundation of Islamic Law regarding Siri Marriage

The Qur'an provides general guidance on marriage, including the importance of fulfilling certain conditions such as having a guardian, witnesses, and a dowry. For example, in Surah An-Nisa (4:3):

وَأِنْ خِفْتُمْ أَلَّا تَفْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

Meaning: And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) just one person, or the slaves you have. That is closer to not committing wrongdoing (QS. An-Nisa Verse 3)

Surah An-Nisa (4:3) provides guidance on marriage, particularly regarding justice in polygamy. This verse states that if a man fears that he will not be able to deal justly with the orphans he marries, then he is advised to marry other women of his choice, whether two, three, or four. However, if he fears that he will not be able to deal justly between the wives, then he is advised to marry only one or to marry the slaves he owns. The purpose of this guidance is to avoid injustice and ensure that each wife is treated fairly and that none is wronged. This verse emphasizes the importance of justice in marriage, especially in the context of polygamy. Islam permits a man to marry more than one woman, but on the condition that he must be able to deal justly with all of his wives. If a man feels that he is unable to deal justly, then he is advised to marry only one woman. This is to prevent injustice and unfair treatment of the wives. Thus, this verse provides clear guidance on the importance of justice in marriage and sets out the boundaries that must be adhered to in order to ensure that each wife is treated fairly and that none is wronged. This shows that Islam greatly emphasizes the principle of justice in all aspects of life, including in marital relationships (Alfaozi, M., & Umam, I. 2023).

Ijma' (consensus of scholars) and qiyas (analogy) are two sources of law in Islam that are used to determine the validity of a marriage. Ijma' is an agreement of Muslim scholars or scholars on a legal issue after the death of the Prophet Muhammad

SAW. In the context of marriage, ijma' is used to determine the conditions that must be met for a marriage to be considered valid. Scholars agree that a marriage must meet certain conditions, such as the presence of a guardian, witnesses, and a dowry. This agreement is based on a shared understanding of the teachings of the Qur'an and Hadith. Qiyas is a method of analogy used to determine the law on a matter that is not explicitly mentioned in the Qur'an or Hadith by comparing it to a similar matter that already has a legal determination. In the context of marriage, qiyas is used to relate new cases to principles that already exist in Islamic law. For example, if there is a new situation that is not directly regulated in the Qur'an or Hadith, scholars can use qiyas to determine its law based on similar cases that already exist. By using ijma' and qiyas, scholars can ensure that the marriage meets the requirements set by Islamic law, such as the presence of a guardian, witnesses, and a dowry. This is important to maintain the sanctity and validity of the marriage and ensure that the rights of all parties involved are protected. (M Almas, A. 2020).

The Role of Religious Institutions in Providing Education and Socialization about Secret Marriage.

Religious institutions such as the Indonesian Ulema Council (MUI), Islamic boarding schools, and other religious organizations provide education to the public about Islamic marriage law. They explain the requirements for a valid marriage, including the importance of officially registering the marriage to obtain legal protection. In addition, religious institutions also emphasize the importance of officially registering the marriage at the religious affairs office or authorized government agency. This marriage registration is important to obtain legal protection for all parties involved, including the wife and children born from the marriage. With official registration, the rights of the wife and children, such as inheritance rights, maintenance, and protection from domestic violence, can be better guaranteed (Midu, MF 2022).

Religious institutions also often hold seminars, lectures, and discussions to socialize Islamic marriage laws and the importance of marriage registration. They work with the government and community organizations to raise awareness about the negative impacts of unregistered marriages, such as unregistered marriages. Through this education and socialization, it is hoped that the public can better understand the importance of undergoing a legal and officially registered marriage, so that the rights of all parties are protected and the best interests of the child remain the main priority (Mujiono, S., & Islam, MR 2024). Religious institutions also play a role in socializing the negative impacts of unregistered marriages, both in terms of law and society. They provide the public with an understanding of the legal implications of unregistered marriages, such as difficulties in obtaining birth certificates for children, the unprotected rights of wives, and inheritance issues. In addition, they also highlight the social impacts such as stigma and discrimination against women and children involved in unregistered marriages. In addition, religious institutions also explain that wives in unregistered marriages do not have the same legal protection as in officially registered marriages (Fani, 2024). This means that wives in unregistered marriages are vulnerable to injustice in terms of inheritance rights, maintenance, and protection from domestic violence. Without official registration, wives may have difficulty claiming their rights in court in the event of a dispute or divorce. From a social perspective, religious institutions highlight the negative impacts of unregistered marriages on the women and children involved. Society often looks down on women who marry unregistered, and

children from these marriages may face stigma and discrimination. This social stigma can have a negative impact on their psychological and social well-being, as well as hinder their integration into society (Li'umah, RD 2024).

By socializing the negative impacts of unregistered marriages, religious institutions strive to raise public awareness about the importance of officially registering marriages. They also provide education about the rights that must be protected in marriage, and encourage couples to undergo legal and registered marriages so that the rights of all parties are protected and the best interests of the child remain the main priority (Trinadi, T. 2023). The social impact of unregistered marriages is also very large, especially related to the status of children born from these marriages. Children born from unregistered marriages often do not have a clear legal status, which prevents them from obtaining social rights such as access to education and health. The social stigma against children from unregistered marriages often marginalizes them, both in society and in the education system. This is a social problem that must be addressed by increasing public understanding and better legal protection for these children (Masitoh, UA 2019).

In addition, unregistered marriages are often carried out for practical reasons, such as avoiding registration fees or because of other administrative problems. However, in many cases, unregistered marriages often occur in the context of power imbalances between husband and wife. Many women are forced to marry unregistered due to economic constraints or social pressures, which prevent them from enjoying their rights as legally valid wives. This exacerbates injustice in the household and adds to the social burden on women. The Indonesian government has issued various policies to address unregistered marriages, including requiring marriage registration so that the marriage is legally recognized. Despite these efforts, the phenomenon of unregistered marriages continues, especially in areas far from the reach of state administration. Therefore, it is necessary to increase accessibility to marriage registration services and education regarding the importance of marriage registration from a state legal perspective. (Asman, A. 2024).

In addition, it is also important to involve the community in creating awareness that unregistered marriages can have detrimental legal and social impacts, especially for women and children. Educating the community about the legal rights of married couples who are registered, as well as the rights of children born from legitimate marriages, is a very important step to reduce the practice of unregistered marriages and their negative impacts.

CONCLUSION

Unregistered marriages, although valid under Islamic law, have significant legal and social implications, both for the husband and wife and for the children born from the marriage. From an Islamic family law perspective, unregistered marriages often ignore aspects of the protection of women's and children's rights that should be guaranteed in the country's legal system. Therefore, it is very important to make efforts to improve legal and social understanding in order to overcome the problems caused by the practice of unregistered marriages. The legal implications of unregistered marriages include difficulties in obtaining birth certificates for children born from the marriage. Without birth certificates, these children may face barriers in accessing education, health services, and other rights guaranteed by the state. In addition, wives in unregistered marriages do not have the same legal protections as those in officially

registered marriages. This means that wives in unregistered marriages are vulnerable to injustice in terms of inheritance rights, maintenance, and protection from domestic violence. From a social perspective, unregistered marriages can lead to stigma and discrimination against the women and children involved. Society often looks down on women who are married unregistered, and the children of these marriages may face stigma and discrimination. This social stigma can negatively impact their psychological and social well-being, and hinder their integration into society. To address this issue, there needs to be reform in the Islamic family law system and government policies that are more responsive to social developments and community needs. These reforms can include stricter enforcement of the law on marriage registration and increasing public awareness of the importance of marriage registration. In addition, it is also important to increase public awareness of the importance of marriage registration in order to ensure fair legal protection for all parties involved. Religious institutions, such as the Indonesian Ulema Council (MUI), Islamic boarding schools, and other religious organizations, have an important role in educating the public about Islamic marriage law. They explain the requirements for a valid marriage, including the importance of officially registering a marriage in order to obtain legal protection. Religious institutions also play a role in socializing the negative impacts of unregistered marriages, both in terms of law and society. They provide the public with an understanding of the legal implications of unregistered marriages, such as the difficulty in obtaining birth certificates for children, the unprotected rights of wives, and inheritance issues. In addition, they also highlight the social impacts such as stigma and discrimination against women and children involved in unregistered marriages. With these efforts, it is hoped that a fairer and more comprehensive solution can be found in dealing with the rampant phenomenon of unregistered marriages, so that the rights of all parties are protected and the best interests of the child remain the main priority.

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