

The Impact of Siri Marriage Law Seen from Indonesian Criminal Law

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Abstract. Marriage is often referred to by various names such as elopement and contract marriage for various justifiable reasons, thus giving birth to marriages currently the most popular in society, namely unregistered marriages or underhanded marriages. To determine whether a marriage is legal or not, "People can marry if it is done out for each religious matters," says Article 2 paragraph (1) of Law No. 1 of 1974. Unregistered marriages are not only haram. They are also haram. Socially unacceptable. Not everyone understands that a fraudulent or unregistered marriage history can lead to unfavorable perceptions, such as the assumption of living together without official ties due to infidelity, polygamy, parental disapproval, pregnancy, etc. In reality, a similar view can be directed at women. Second wives, mistresses, unplanned pregnancies, and other stereotypes exist as if women were solely to blame. They have legal protection to protect women. Why not take advantage of it. According to Indonesian law, this study aims to determine the legal status and the impact of criminal law on unregistered marriages. The research approach uses normative juridical. Legal research that examines literature or secondary materials is known as norm jurist research. The author uses secondary data in a library research approach, "data collected from library materials." This study indicates that unregistered marriages in Indonesia have criminal consequences for the practice of unregistered marriages, mainly if the Siri marriage is carried out by the husband married without the permission of his first wife.

Keywords: Unregistered Marriage; Marriage Law; Impact of Criminal Law

1 Introduction

Marriage is an important and sacred event in human life.[1] Traditional marriage and a woman has body and soul consequences for each community's households, as well as for the property acquired between them both before and after marriage. Marriage is defined as a man and a woman's outer and inner bond as husband and wife in order to create a happy and everlasting marriage based on only One Deity, as stated in Article 1 of Law Number 1 of 1974 about Marriage. The right first step to obtaining legal protection for marriage is registering it with the authorities. This applies to Muslims and Christians, Catholics, Hindus, and Buddhists. As stated in Law number 22 of 1946, j.o. Law number 32 1954 concerning Registration of Marriage, Divorce, and Reconciliation (explanation of article 1) and in law no. 1 1974 concerning marriage, article 2 paragraph 2 was strengthened by the Presidential Instruction no. 1 of 1991 concerning the Compilation of Islamic Law Articles 5 and 6.

The term Siri/underhand marriage can also be a secret marriage that is well known among scholars. But the intention of unregistered marriage in ancient times was different from today. In ancient times, Siri marriages were marriages under the pillars of marriage, and the conditions were following the Shari'ah. Witnesses were asked not to announce or notify that the marriage had taken place to other people, the community, and naturally, there was no walimatul-"ursy. Unregistered marriages that are known to the public today are marriages carried out by guardians or representatives of guardians and witnessed by witnesses but are not carried out before the Marriage Administration Officer or are not registered at the Office of Religious Affairs for those who are Muslim or at the Civil Registry Office for those who are not Muslim.

So far, underhand marriage is more likely to harm the woman (wife) and children or children born from unregistered marriages. This is because a husband should provide a living for his wife and children born from a serial union. Still, because of the absence of a black and white agreement (written evidence, especially a marriage book), the husband easily breaks his promise to carry out his obligations as husband or even leaves or abandons his wife and children resulting from an unregistered marriage. In contrast, the wife and children cannot do much because there is no legally binding evidence.

While it is generally recognized that unregistered marriages are inherently harmful to women, the practice continues to expand. Underhand marriages occur among illegitimate, have a low level of education, or are from the lower middle economic class, but also among those who are educated, understand the law, or live in the upper-middle style—economically viable society. Established companies Students, artists, scholars, and even government leaders are not uncommon targets.

According to Article 2 paragraph (1) of Legislation No. 1 of 1974, marriage is legal if it is performed in accordance with the law of each faith and belief. Marriage, being a legal act, necessitates legal certainty, as stated in Article 2 paragraph (2): "Every marriage is recorded in accordance with the applicable laws and regulations." According to Article 4 of the KHI, "marriage is lawful if it is performed in accordance with Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage." Discusses whether or not marriage is legal in juridical, legal marriage must comply with article 2 paragraph (1) of Law no. 1 of 1974 concerning marriage, which is to carry out according to Islamic law by fulfilling the conditions and pillars perfectly, marriage registration is not a legal requirement for marriage but administrative obligations. According to Law no. 1 of 1974, marriage is monogamous. Still, it does not rule out the possibility that a husband wants to remarry to fulfill the provisions of the marriage law in terms of regulating that a prospective husband makes it possible to ask for the blessing or permission to marry more than one person (polygamy).

The validity of a marriage is viewed from a civil point of view if the marriage has been registered or registered with the Civil Registry Office. As long as the union has not been reported, the wedding is considered invalid according to legal provisions, even though it has fulfilled the procedures and procedures according to religious clauses.

When viewed in religion, marriage registration is only an administrative fulfillment of the marriage. It does not determine whether the marriage is legal or not in researching the legal laws about the legitimacy of a marriage. "Marriage is legal if it is conducted in accordance with the laws of their own religions and beliefs," says the author. according to the National Marriage Act. Marriages are recorded under the appropriate laws and regulations. According to the applicable laws, unregistered or underhanded unions do not have binding legal force. They are not guaranteed legal protection for both husband and wife, so the legal status and consequences for the perpetrators of unregistered marriages are unclear.

Unregistered marriages are not only illegal, but they are also socially unacceptable. Not everyone understands because a history of underhanded or unregistered marriages can lead to unfavorable perceptions, such as the assumption of living together without official ties due to infidelity, polygamy, parental disapproval, pregnancy, etc. Even if the Siri marriage is performed by a man and a woman, the result is the same, in reality, a similar view may be directed at women. Second wives, mistresses, unplanned pregnancies, and other stereotypes exist as if women were solely to blame. So, as long as there is a legal protection that has the potential to protect women, why not take advantage of it.

Based on this description, the author is interested in doing legal writing with the title Siri's Marriage Legal Status and Its Legal Consequences According to Indonesian Positive Law.

2 Research Methods

The research method is an element that is necessary for scientific research because the research method can bring the problems contained in the study closer to the related theory. Research is usually distinguished from data obtained directly from the community (primary) and library materials.

A normative legal research approach was adopted in this work. Legal research that examines library or secondary materials is normative juridical research. The author uses secondary data in the library research method, "that is, data obtained from library materials. The type of data used in this study is secondary data which includes:

1. Primary legal materials are legal materials that have binding power in society. This study used materials in the form of data needed for secondary data in this investigation. From an imperative point of view, secondary data in the legal field can be distinguished from basic decisions, statutory regulations, official records, state sheets of explanations, minutes, judges' decisions, and jurisprudence. In this case, the author uses primary legal materials, including the Law of the Republic of Indonesia Number 1 of 1974 concerning marriage.
2. Subordinate legislation resources, or those that describe basic legal information, are available in the form of work from the legal community in books or articles. Secondary legal materials are used because primary data alone cannot fully explain reality, so it is necessary to use primary and secondary legal sources as secondary data to complete the description of reality.

Secondary data was collected by compiling a list of laws, regulations, official documents, and literature, which were then categorized according to their relevance to the subject matter and analyzed. The research is produced in narrative text, which is arranged in a logical order. The term "systematic" refers to the fact that all primary data will be used to obtain secondary data and that the subject matter understudy will be treated as a whole.

3 Results and Discussion

3.1 Marriage Overview

Marriage is a long-term commitment here between man and a woman who is recognized as valid by the community concerned based on the applicable marriage regulations. Depending on the local culture, the form of marriage can be different and the purpose can be other. However, in general, marriage is exclusive and sees adultery as a violation of marriage. Marriage is usually done to start a family. The existence of a document in a marriage certificate establishes a valid marriage bond.

Socio-culturally, this wedding party (walimatul ursy) is essential so that the couple is known and recognized by the community. On the other hand, Secret marriages will create mistrust and negative prejudice among the locals.

The word cirri stem from the phrase assirru, which means "secret" in Al-Arabic-Indonesian Munawwir's dictionary. According to Zuhdi, a Siri marriage is one in which the witnesses, on the husband's request, keep the marriage a secret from his wife or congregation, even if it is a local family. So, unregistered marriage in the perspective of fiqh is a marriage that is not attended by two male witnesses or is attended by witnesses, but the number is not sufficient. This kind of marriage is not legal. If there is an unregistered marriage, the judge must difasakh. Children born from serial marriages are connected to their mothers.

Siri marriages can also be said to be underhanded marriages. Siri marriage is sufficient with the presence of a guardian from the bride, ijab-qabul, dowry, and two male witnesses. It does not need to involve officers from the local Religious Affairs Office. Siri marriages are usually done because neither party wants to be officially announced or energized at the reception. Moreover, the usual reason is to avoid getting involved in things forbidden by religion.

The Legal Basis of Siri Marriage

In Indonesia, marriage law is regulated in the Marriage Law no. 1 of 1974 Article 2 as follows:

- a. Marriage is great if it is performed following each religion's and belief's laws.
- b. Every wedding is documented under the applicable laws.

Some sections of the Marriage Law No. 1 of 1974 (Public Archive of the Republic of Indonesia, Number 1, Amendment to the Official Gazette of the Republic of Indonesia, Number 3019) have been revised as chooses to follow:

Article 7's provisions are changed to read as follows:
chapter 7:

- Marriage is only authorized if the following conditions are met both the bride and groom reach the age of 19 (nineteen) years.
- Suppose the age provisions have deviated as described in paragraph (1). In that case, the male parent and female parent may petition the Court for a dispensation because it is incredibly urgent, backed by sufficient supporting evidence.
- In granting a dispensation, as described in paragraph (2), the Court must consider the views of the two prospective brides who will carry out the marriage.
- In the case with one or even both parent of the prospective bride and groom, as described in Article 6 paragraphs (3) and (4), the criteria of paragraph (2) regarding the request for dispensation apply without regard to the conditions described in Article 6 paragraph (6)."

Legal Consequences of Siri's Marriage

Negative Impact on Women (wife)

The opposing legal impacts of women (wives) are as follows:

- a. They were not recognized as a wife because the marriage was considered invalid. Therefore, women who carry out marriages under their hands do not have evidence such as a marriage book. As a result, if the husband does not want to be responsible, the wife may not be recognized as a wife, even though the marriage is carried out under religion and belief. Still, in the eyes of the state, unregistered or underhanded marriages are considered illegal. Valid if it is not recorded at the Office of Religious Affairs (KUA) or the Civil Registry (KCS).

- b. Husbands can be negligent of their responsibilities; those who carry out unregistered marriages can easily underestimate their rights and obligations both physically and mentally. It is easy to be irresponsible as a husband to the wife they marry in a sirri way because there is no evidence as authentic evidence in the form of a marriage book.
- c. Not entitled to a living, inheritance, or distribution of joint property. Another consequence of unregistered marriages is that the wife is not entitled to demand a living if her husband is still alive and is not responsible. She has no right to claim an inheritance from her husband if she dies because the marriage was never considered to exist under Indonesian law. There is no right to demand the division of joint property if they are divorced because there is no authentic evidence that they have been married in a sirri way.
- d. They are not getting legal certainty. Due to the absence of binding evidence, unregistered marriages do not provide legal certainty, especially when there is a legal dispute (for example, when they want to carry out legal actions such as buying and selling land or houses, applying for credit to a bank, and so on). Marriage is never considered to exist, according to Indonesian law. In addition, unregistered marriages are more likely to experience domestic violence. Because if the husband is not responsible, he can act irrationally.

The Legal Status of Siri's Marriage According to Indonesian Law

Unregistered underhand marriages are legal but are not permitted in state administration. Legal or legal unions in the state administration are regulated by the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. The practice of unregistered or unregistered marriages in Indonesia is not correct. It is necessary to refer to applicable law to minimize marriage procedures that cause ongoing problems and harm the parties.

3.2 The Legal Status of Siri Marriage According to the Compilation of Islamic Law (KHI)

According to Law Number 1 of 1974 concerning Marriage, it is a codification and unification of national marriage law, which places Islamic law as having existence without being accepted by customary law. The government's policy to make marriage registration regulations is siyasah as-syar'iyah, namely approaches taken by the government which is believed to be able to bring its people into a life that contains masalah even though no law regulates it.

In general, Islamic law aims to achieve profit. The achievement of the purpose of marriage must be supported by all means, including the registration of marriages. Article 14 of the Islamic law collection regulates the pillars and requirements of marriage. a. prospective marriage; b. hopeful lady; c. marital parent; d. witness; e. acceptance and acceptance.

The law of unregistered marriage according to religious rules is legal. Siri marriage is permitted or permitted if the conditions and pillars of marriage are met. It is not valid when viewed legally in force in our country regarding statutory marriage regulations because the legislation is administratively incomplete.

3.3 The Legal Status of Siri's Marriage According to the Marriage Act

In the Complications of Islamic Law, more than one marriage is allowed. However, in the marriage law, a husband who wants to have a second or more wedding must have permission from his wife or the party concerned, whether legally married or under the hand (Siri). Here are the relevant articles:[2]

Chapter 2

- a. Marriage is fine if it is done in accordance with the laws of each religion and faith.
- b. All wedding is recorded in compliance with applicable laws and rules.

Chapter 3

- a. In theory, a guy can only have one wife. A lady is only permitted to marry once.
- b. The Court may allow a husband to have more than one wife if the parties agree.

And from the hierarchy of laws and regulations regulated in Article 7 of Law Number 10 of 2004 concerning the legislative system, it can be seen that the formulation of Islamic law directed by the President is not included in the legislative hierarchy and its level. Islamic law is under a hierarchical system. Therefore, the provisions in the presidential order must not conflict with the law. If the conditions of Islamic law conflict with the requirements of higher statutes or regulations, then the provisions of the presidential directive cannot be implemented. This aligns with the principle that a higher right overrides the underlying right (Lex Superior Derogate Legi Inferior) [3].

3.4 The Impact of Siri Marriage Criminal Law in Indonesia

Unregistered or underhanded marriages in Indonesia have a criminal influence on the technique. What's more, unauthorized union is carried out by a married man without his first wife's permission. Unregistered marriages can be subject to criminal penalties, using Article 279 of the criminal code of law in which unions are prevented from using other marriages. A husband who wants to have an unregistered marriage is precluded from using his marriage, which is claimed for the first time, as for the woman whose marriage is hindered by the other unions mentioned in the second element.

Chapter 279 KUHP

By a maximum sentence of five years in prison:

1. anyone enters into a marriage with the knowledge that his or her previous marriage or marriages are a legal impediment;
2. anyone enters into a marriage knowing that another party's marriage or marriages will be an impediment to that marriage
3. Suppose the person is committing the act according to paragraph 1 point 1 hides to another party that an existing marriage is a legal barrier for that. In that case, they are threatened with a maximum imprisonment of seven years.
4. It is possible to state that rights have been revoked based on articles 35 no. 1 - 5.

Explanation According to R. Sugandhi, The punishments in this article are:

1. a person who marries (marries) for the second time, while he knows that his first marriage is a legal obstacle for him to carry out the marriage;
2. a person who marries (marries), while he knows that his marriage is a legal obstacle for his mate to match a second time
3. A person who marries for the second time by hiding from his mate, his first marriage is a legal obstacle for him to carry out the marriage.

According to the marriage regulations in the Civil Code, people who are not allowed to marry a second time are people who are subject to that regulation, namely Europeans, Indonesians, Chinese, and others. Who are Christians? For them, the first marriage is a legal obstacle to remarrying. And if they remarry, they can be prosecuted.

This is an exception for those who have separated from their first marriage. According to article 199 of the Civil Code, the marriage (marriage) becomes free:

- a. for death;
- b. because one of them left him for ten years and was followed by the wedding of one of them;
- c. because of the verdict of divorce by the judge;
- d. because ordinary divorce according to the regulations in the Civil Code.

According to regulations, Muslim people, men are allowed to marry up to four times. It must also have permission from the first wife. For women, it is only permissible to marry a man.[4] Apart from being subject to the main punishment as determined in each paragraph, this crime can also be subject to additional penalties as referred to in Article 35 No. 1-5.

Explanation According to R. Soesilo, The punishments in this article are:[5]

1. A condition for a person to be punished according to article 279 is that the person must know that he was previously married and this marriage has not been released. According to chapter 199 B.W. (civil law), the marriage (marriage) becomes void:
 - a. for death;
 - b. because someone leaves him for ten years and is followed by the wedding of one of them with another;
 - c. because there is a verdict on divorce by the judge;
 - d. due to common divorce according to the rules in B.W.
2. Subject to marriage regulations in B.W. is Europeans, Indonesian people, Chinese, and so on. If you are a Christian, you are also subject to this rule.

For those subject to B.W. regulations, the existence of one marriage (marriage) is already an obstacle to holding another wedding (marriage twice is called bigamy and is punished according to this article). Before the enactment of the U.U. Marriage (U.U. No. 1 of 1974) a Muslim man in Indonesia can marry up to four wives, which means that the existence of unions more than four times will then be a violation of Article 279 of the Criminal Code. [4]

However, after the issuance of the Indonesian Marriage Law, it is no longer possible to marry more than one person together unless the marriage has permission in the form of a decision from the local District Court. Indonesian women, Chinese, and others who are Muslim are only allowed to marry together with a man, so their position is the same as those subject to B.W. regulations.

The law governing wedding in Indonesia is written forth in Law No. 1 on Marriage, which was enacted in 1974. As a result, occurrences of adultery must be investigated by the Marriage Law and its levels (overspel). Article 2 paragraph (1) of the Marriage Law states, "Marriage is fine if it is conducted out in compliance with applicable laws of each faith and belief."

Furthermore, according to Article 2 paragraph (2) of the Marriage Law, every marriage is documented under the applicable laws. Each wedding is recorded in the same way as other significant events in a person's life, including births and deaths, written in certificates and an official deed recorded in the register of records (regulated in the Criminal Code). Based on Article 284 paragraph (1) of the Criminal Code (KUHP), adultery is punishable by a maximum imprisonment of nine months. In Article 284 paragraph (1) 1st: "a. a married man who performs gendak (overspel), even though it is known that Article 27 B.W. applies to him; b. a married woman who commits gendak, even though it is known that Article 27 B.W. applies to her."

According to Article 284 paragraph (1) 2, "a. a man who participates in the conduct, even if he knows the guilty person is married; b. a married woman who participates in the act, even if she knows the guilty party is married, and Article 27 B.W. applies to her."

In positive law, Indonesia does not recognize unregistered marriage (sirri marriage). Moreover, it regulates explicitly unregistered marriage in statutory regulation. Siri marriage has pros and cons against unregistered marriage in Indonesia, and also betel marriage has criminal consequences for its practice. Moreover, if the unregistered marriage is carried out by a married man and married without the permission of his first wife. In several cases, Siri marriages in Indonesia are always associated with adultery articles, even though Siri marriages are legal marriages according to religion. The marriage is based on consensual. So it can be said that couples who marry in betel are still legal in faith but are not permitted and are not recorded in law.

However, unregistered marriages can be subject to Article 279, where other marriages hinder the union. The husband who wants to have an unregistered marriage is hampered by his marriage, which is mentioned first. Meanwhile, women whose marriage is hindered by other unions are mentioned in the second element.

Chapter 279 KUHP

1. Faced with a potential sentence of five years in prison:
 - a. anyone enters into a marriage with the knowledge that his or her previous marriage or marriages are a legal impediment;
 - b. anyone enters into a marriage knowing that another party's marriage or marriages will be an impediment to that marriage
2. Assume the person undertaking the act in accordance with paragraph 1 point 1 conceals the fact that an existing marriage is a legal barrier to another party. In that instance, they face a maximum sentence of seven years in prison.
3. Revocation of rights based on Article 35 No. 1 - 5 can be stated.

4 Conclusion

A sirri marriage is one that is not performed in accordance with the applicable laws and regulations, as outlined by Law No. 1 of 1974. A sirri marriage is one that is not carried out in accordance with the terms of the appropriate rules and regulations, as specified by Indonesian law. Based on the provisions of Law No. 1 of 1974, Article 2 paragraphs (1) and (2). Article 4 and Article 5 paragraphs (1) and (2) of the Compilation of Islamic Law, a marriage must be carried out legally in addition to religious law (pillars of Islam). And conditions) must also be recorded by the competent authority.

Thus, in the Perspective of Legislation, sirri marriages are marriages that do not have legal force. They do not get legal protection and services from the competent authority as they should. Their marriage is not recognized in the residency register. A Muslim man in Indonesia can marry up to four wives if he gets the consent of his first wife, which means that having more than four marriages will be a violation. Unregistered marriages can be subject to Article 279 if the marriage is prevented by marriage. A husband who wants an unregistered marriage will not be able to do so because of the first-mentioned marriage. Meanwhile, the second factor is mentioned for women whose marriage is prevented by another marriage.

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