



Measuring Walimah In Hadith: Maqashid Shari'ah In The Framework Of Family Law Reform In Islamic Countries Related To Siri Marriage

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Abstract. A marriage certificate is authentic evidence for a husband or wife when one party neglects their obligations. Thus, a marriage without a marriage certificate has no legal protection. Contemporary nikah siri is a term for marriages performed without registration. The growing practice of nikah siri prompted the government to take decisive action to spur people to register their marriages. However, the birth of this formulation contains pros and cons. This research is a library research, the primary data source of this research is Hadith related to nikah siri. While the book fiqh munakahat and several books that discuss methodology including the opinions of scholars related to the hadith in this discussion are placed as secondary sources, including related writings. The data collected will then be presented using the descriptive analysis method. Based on the hadith, it is known that at the time of the prophet it was important to hold a walimah as a means of announcing the marriage. However, in this day and age, a marriage certificate is required to maintain the marriage under a legal umbrella. Therefore, illegal marriage is not allowed. Seeing the maqashid al-syari'ah desired by the law of nikah siri, making the sanction of nikah siri is at the level of hajiyyah to maintain nasl. Although there are already clear regulations, the benefits of marriage registration, there are still many phenomena of this nikah siri in society for various reasons. So to eliminate this phenomenon requires government involvement in establishing sanctions for the perpetrators.

Keywords: Siri Marriage, Hadith, Islamic Law, Sanctions

1. Introduction

Miitsaqan ghaliizha which means a strong bond in QS An-nisa' verse 21 describes the relationship between husband and wife. (Shihab, 2002, p. 387) The purpose of marriage is to enable people to live their lives in accordance with their nature and to avoid the loss of offspring. Marriage is a very strong bond with the aim of achieving various benefits from it. That is why marriage is not just a legalization of the distribution of biological needs or the legalization of intercourse (Wahyudi et al., 2023).

Marriage also requires a civil relationship, namely the existence of a record that is proven by the existence of a marriage certificate. A marriage certificate is authentic evidence for a husband or wife when one party neglects their obligations. Thus, a marriage without a marriage certificate has no legal protection. Nikah siri is a term for marriages performed without registration. (Faizah, 2014) Currently, nikah siri has become a profitable trend with a variety of objectives. The practice of siri marriage is not only among the general public, but also among public figures. In addition, siri marriage is often an option when someone wants to commit polygamy. (Aminah, 2014) In practice, nikah siri often leads to various problems, such as identity forgery, unsupervised polygamy, neglect of children and wives, and non-recognition of children. Historically, it is not found when the term nikah siri first appeared,

but siri here is taken from the Arabic word "al-sirru" which means secret. So that the ideals of marriage to create a *sakinah, mawaddah, wa rahmah* family become questionable. (Faizah, 2014)

The growing practice of *nikah siri* has prompted the government to take decisive action to spur people to register their marriages. One of the steps taken by the government is to criminalize marriages that are not officially registered. This is contained in the Draft Law on the Material Law of Religious Courts in the field of Marriage which was prepared by the government and included in the National Legislation Program in 2010. One of the articles contains the formulation: every person who intentionally solemnizes a marriage not in the presence of a marriage registration official, shall be punished with a maximum fine of Rp. 6,000,000.00 (six million rupiah) or imprisonment of 6 (six) months (Marni et al., 2023).

The birth of this formulation contained pros and cons. Those who agree are of the view that unregistered marriages cause harm to the wife and children who are born. On the other hand, those who disagree argue that the criminalization of unrecorded marriages is excessive and violates human rights. Criminalizing something that is legalized by religion is a prohibition of the case. (Efendi, 2019) In the discourse on marriage, violations of the provisions of marriage are an issue that cannot be separated from the study of *fiqh*. Some Muslim scholars view that *siri* marriage is not a violation, considering that the process also follows the rules of *fiqh*. However, others see that marriages that are not registered with the state cause great harm. The marriage laws of several Muslim countries such as Pakistan, Iran, and others have marriage laws and sanctions for violators, which are rarely found in classical *fiqh*. (Ali, 2016) This is a concern for the author, thus encouraging the author to make a more in-depth observation in the form of this scientific journal (Liza et al., 2023).

2. Methods

This research is a library research that exploits sources in a specialized field related to this research, so the primary data sources of this research are Hadith and Legislation related to *nikah siri*. While *fiqh* books related to *fiqh munakahat* and several books that discuss methodology including the opinions of scholars related to the hadith in this discussion are placed as secondary sources, including writings related to this research. The data collected will then be presented using the descriptive analysis method, namely research data clearly on each theme discussed. (Winartha, 2006)

3. Results and Discussion

3.1. *Nikah Siri*

In general, in the perspective of Islamic law, *nikah siri* tends to be allowed as long as it fulfills the terms and conditions of marriage. In contrast, in national positive law, *nikah siri* has been emphasized as an illegal marriage. In fact, none of the regulations and the Compilation of Islamic Law mention *siri* marriage. This shows that *siri* marriage is not considered in national marriage law. *Siri* marriage is better known in religious and customary law. (Susanto, 2007, p. 64).

3.1.1. *Siri* Marriage in the Perspective of Hadith and Practice

The term *nikah siri* or secret marriage is known among scholars, there are two kinds of understanding of this *nikah siri*. First, the term *nikah siri* is not a new term among Muslims, because in the book *al-Muwaththa'* by Imam Malik it is recorded that the term *kawin siri* comes from the words of Umar bin al-Khattab Ra. At that time there was a marriage that was not attended by witnesses who met the criteria determined by *shari'a*, the marriage was only

attended by a male witness and a woman then the news reached Umar Ra. then he said:(Al-Syafi'i, 2001, p. 58)

أخبرنا مالك عن أبي الزبير قال: أتى عمرُ بنكاحٍ لم يشهد عليه إلا الرجلُ وامرأةٌ فقال: هَذَا النِّكَاحُ السِّرُّ وَلَا أَجِيزُهُ، لَوْ كُنْتُ تَقَدَّمْتُ لَرَجَمْتُ

“Malik reported from Abi Zubayr. He said: One day Umar was told about a marriage that was not witnessed by anyone other than a man and a woman. Umar replied: This is a nikah sirri and I do not approve of it, if I had known about it earlier I would have stoned it.”

Based on these atsar, nikah siri has been known among scholars since long ago, but nikah siri according to Umar's perception is based on a marriage that only presents a man and a woman. In addition, it is also known in the community that nikah siri is a marriage performed by a guardian and witnessed by two male witnesses, but the marriage is not carried out in front of an authorized official, namely a marriage registration official who is an official apparatus of the government so that the marriage is not recorded at the Office of Religious Affairs. Such a marriage is also known as an underhand marriage. As a result, it does not have a marriage certificate issued by the Office of Religious Affairs and the marriage does not have a legal umbrella in the sense that this kind of marriage does not have legitimacy in Indonesian law. (Zainuddin & Z, 2017, pp. 45–47)

The Qur'an and Hadith that discuss the prohibition of nikah siri explicitly do not exist. However, implicitly it is found in QS Al-Baqarah 282 concerning the recording of debts and the hadith related to the Prophet's recommendation to announce marriage and the Prophet's recommendation to hold a walimah (marriage celebration). Among them:

Shahih Bukhari

حدثنا علي قال: حدثنا سفيان قال: حدثني حميد: سمع أنس رضي الله عنه قال: سأل النبي ﷺ عبد الرحمن بن عوف و تزوج امرأة من الأنصار: كم أصدقتها؟ قال وزن نواة من ذهب. قال النبي ﷺ: أولم ولو بشاة (Al-Bukhari, 2002, p. 2350)
Ali, Sufyan, Humaid narrated to us that they heard Anas Ra saying: The Prophet asked Abdurrahman bin Auf who married a woman from Anshar: how much dowry did you give her? He said: a grain of gold. Then the Prophet said: Hold a wedding banquet even if it is only with a sheep.

Shahih Muslim

حدثان ابن يحيى التميمي وابو الربيع عن سليمان ابن داود العتكي و قتيبة ابن سعيد و اللفظ ليحيى (قال يحيى: أخبرنا، وقال الأخران: حدثنا حماد ابن زيد)، عن ثابت عن أنس ابن مالك أن النبي صلى الله عليه وسلم رأى على عبد الرحمن بن عوف أثر صُفرة، فقال: ما هذا؟ قال: يا رسول الله إني تزوجت امرأة على وزن نواة من ذهب، قال: فبارك الله لك. أولم ولو بشاة (An-Naisaburi, 1998, p. 561)

Ibn Yahya at-Tamimi and Abu Rabi' reported to us from Sulaiman Ibn Dawud Al-'atakiy and Quthaibah Ibn Sa'id reported from Tsabit reported from Anas Ibn Malik that the Prophet saw Abdurrahman with a yellow color and said: What is this? He said: O Messenger of Allah, I married a woman with the size of a seed of gold, the Messenger of Allah said: May Allah bless you, celebrate even if it is only with a goat.

Based on the above traditions, it can be concluded that the purpose of holding a walimah is as evidence that a marriage has taken place between a man and a woman. Where the asbabul wurud of the hadith is related to the Prophet's ignorance of the marriage of Abdurrahman bin Auf, the Prophet recommended that a walimah be held. At that time, walimah was enough to prove someone's marriage, perhaps because at that time the territory of Islam was not as wide as it is today.

During the time of the Prophet and the early period of Islam, marriage registration did not exist, this is understandable because the tools and means of writing and the ability to write at that time had not yet developed and the problems of society were not so complex.

(Lutfiyah et al., 2015) Hence the Prophet recommended holding a walimah as a means of announcing the marriage.

Meanwhile, the times continue to develop, for now the need for formal legal evidence ranging from birth certificates, ID cards, marriage certificates, KK is a primary need for a person for the existence of their rights. This means that without authentic evidence such as these various kinds of identity, one's rights are lost before the law. Likewise with marriage, if you do not have a marriage certificate, then your status as husband and wife in the eyes of the law cannot be recognized, as well as the children born from the marriage, so that their rights do not receive legal protection. (Lutfiyah et al., 2015) Judging from the Prophetic traditions, this marriage registration is actually in line with the benefit to be achieved by the walimah recommended by the Prophet.

The rise of the implementation of siri marriage in Indonesia is due to several things, including: (Gunawan, 2013)

1. A siri marriage due to a relationship that is not approved by the parents.
2. A siri marriage because one of the parties or both have previously been legally married but want to remarry someone else, where he has not been officially divorced.
3. Siri marriage on the pretext of avoiding adultery, but they are not ready materially and socially.
4. Nikah siri is often placed as an option when someone wants to be polygamous.
5. A siri marriage is done because the couple does not know and does not want to know about legal procedures, it could be done to avoid the burden of costs and administrative procedures.
6. A siri marriage is done for reasons of different religions.
7. A siri marriage is done to legalize sexual relations only, if there is no compatibility then it can be divorced immediately without complicated procedures.

Among the many factors above, it seems that none of the reasons for this nikah siri is very strong to be allowed, there are weaknesses in each of the factors above. The first reason is that if the parents do not approve, then this is definitely against the will of the parents, while Allah commands that saying "ah" is not allowed. The second reason could be that it turns out that there is no talaq sentence from her husband and the divorce has not been decided by the court, this could open up space for polyandry if the divorce certificate has not been obtained by the woman. The third reason, if it is not ready or not istiitha'ah the Prophet ordered to fast as a solution. The fourth reason is that Allah permits polygamy on the condition that it is fair, and the judge has the right to consider this fairness, so the law of polygamy is conditional. The fifth reason is not appropriate because the legal procedure is to safeguard the common good in the future. The sixth and seventh reasons are clearly prohibited, especially number seven which can be considered as a legalization of mut'ah marriage (Hizbullah et al., 2023).

The positive impacts of holding nikah siri include: The need to perform a nikah siri can be covered. Meanwhile, siri marriage has many negative impacts on women and children, it is an advantage for men who want to run away from responsibility or can claim to be single when they want to remarry. Some of the negative impacts of this siri marriage are as follows: Not recognized as a wife, because the marriage does not have valid evidence in the eyes of the law, It does not provide legal certainty, because the marriage is never considered to have existed by the law, which means that there is no legal protection in it, and many more. The negative impact of this nikah siri is not only felt by women, but will also result in children born from the marriage, including the child only has a civil relationship with the mother and the mother's family. Because the marriage of the father and mother is not considered in the eyes of the law, so he is considered an illegitimate child and others. (Adillah, 2011)

Today, an understanding of fiqh that only emphasizes the validity of marriage in terms of pillars and conditions seems to need to be added with additional administrative requirements, such as provisions that require marriage through official state institutions in order to have a marriage certificate. However, it can be seen that the negative impact caused by the practice of nikah siri is very much compared to the positive side. The purpose of recording marriage is so that the legal consequences arising from marriage can be accounted for not only in terms of classical fiqh but also administratively as corroborating evidence.

3.1.2. Sanctioning Siri Nikah in Iran and Pakistan and Draft Siri Nikah Sanctions in Indonesia

In general, Islamic countries differ from classical fiqh in that they require marriage registration. Iran officially regulates marriage in 1931, Article 1 of which states that every marriage before it is performed must be registered with the authorized institution, violation of this rule will result in imprisonment of one to 6 months. This sanction is only administrative, where the marriage remains valid. Similarly, in Pakistan, in 1961, marriage registration was required. Violation of this will result in imprisonment of approximately three months or a fine of 100 rupees. Article 5 of the Pakistan Ordinance states that if the marriage is not performed by the Marriage Registrar, the person who performs the consent must report it to the Marriage Registrar, otherwise it is an offense. (Muar, 2021)

The development of the practice of nikah siri in Indonesia has encouraged the government to work hard and take steps to make people obedient to register their marriages. One of these steps is to criminalize the act of marriage that is not registered, in the Draft Law on the Material Law of Religious Courts in the Field of Marriage in order to force people to register their marriages. This draft law was included in the National Legislation Program (Prolegnas) in 2010. Article 143 contains the formulation: Every person who intentionally solemnizes a marriage not in the presence of a marriage registration officer as referred to in Article 5 paragraph (1) shall be punished with a maximum fine of Rp. 6,000,000.00 (six million rupiah) or 6 (six) months imprisonment. (Efendi, 2019)

This bill is proposed in relation to the protection of human values. This bill will make it easier for children to obtain their rights such as guardianship, inheritance, making ID cards, passports, and health benefits and so on. (Efendi, 2019) Efforts to increase sanctions for violations of marriage registration have indeed had an idea to realize it, namely the Draft Applied Law for Religious Courts or this bill. However, the draft could not be finalized. (Ali, 2016)

3.2. *Measuring Walimah in Hadith: Maqashid Shari'ah in the Framework of Family Law Reform in Islamic Countries related to Siri Marriage*

Today there are those who are of the view that marriage needs to be added with additional administrative requirements, such as provisions that require marriage through an official state institution in order to have a marriage certificate. The aim is that the legal consequences arising from marriage can be accounted for not only from a shara' perspective but also from an administrative perspective as corroborative evidence. Perhaps in the past evidence such as deeds was not taken into account in Islam, but today it can be very strong evidence.

In fact, this is in line with the wisdom of the marriage testimony, which is to show the importance of the marriage and to make it visible to the people in order to ward off all kinds of prejudice and accusations against the bride and groom. This is because usually the lawful is exposed, while the unlawful tends to be covered up. That is why sharee'ah recommends announcing the marriage and inviting people to the wedding banquet. (Al-Zuhaili, 1985) This is in line with the above traditions, where the Prophet ordered to publicize the marriage.

This is also in line with the purpose of the ordinance of publication of marriage through walimah contained in the traditions of the Prophet, where one of the wisdom of organizing walimah is as an official sign of the marriage contract, in the past the Prophet emphasized with walimah because indeed the problems at that time were not as complex as they are today, and the area was also still not as wide as it is today. The purpose of this walimah is as an announcement to the community, that the bride and groom have officially become husband and wife, so that the community is not suspicious of the bride and groom. (Basri, 2019, p. 148)

Considering the purpose of the Prophet's hadith on the command to publicize marriage, marriage registration is one of the solutions offered in order to provide corroborating evidence for the marriage. A written deed as strong evidence can be easily carried around. If a husband and wife do not have this deed, it will certainly be difficult to get legal recognition. They say that they are legally married, complete with the pillars and conditions, but the witness is no longer there or cannot be proven, of course the authorities will not just believe it. Bringing a witness to the marriage every time they need to acknowledge it would be impossible. Thus, for a husband and wife who do not have a marriage certificate, they will definitely experience difficulties when they have to deal with the law. (Burhanuddin, 2012, p. 77)

In addition, marriage registration can also be used as valid written evidence to take care of important needs in the lives of husband and wife and their children. In addition to fulfilling legal regulations, marriage registration is also intended to anticipate all possible negative influences that may arise as a result of the irresponsible practice of nikah siri. This is as mentioned in the negative impact of nikah siri in the previous point. For example, marriage registration can function as a traffic regulator for the practice of polygamy or polyandry. The marriage is projected to prevent the mudharat that will occur if household development is not managed properly and responsibly. (Susanto, 2007) Based on this, nikah siri is forbidden.

The purpose of sharia (maqashid sharia) itself is to attract benefits or things that provide benefits. (Asy-Syathibi, 2004) and rejecting mischief or things that cause harm (Jalbul Mashalih wa Dar'ul Mafasid). Based on the previous explanation, it can be understood that marriage registration in the form of a marriage certificate is a necessity that cannot be denied, because it brings great benefits to Muslims. Therefore, the form of prohibition of nikah siri is also considered the right policy, so that the perpetrators can be subject to legal sanctions. That is why the prohibition must be obeyed in order to achieve benefits for Muslims, especially in order to protect the rights of children and wives. (Burhanuddin, 2012)

But it is unfortunate that until now there are still many women who do not know or realize how the negative effects and consequences of siri marriage. There are also those who easily accept the invitation to marry siri on the grounds that someday they will definitely step into an official marriage. But who can guarantee that? (Susanto, 2007) This phenomenon has forced the government to plan criminal sanctions against the perpetrators. Because if you look at the regulations governing marriage registration, there are already very many, such as Law No. 1 of 1974 concerning marriage, but this is not the first, it was preceded by Law No. 22 of 1946 which regulates the registration of marriage, talaq, and reconciliation. In the Compilation of Islamic Law, the issue of marriage registration is regulated in Articles 5-7. (Rizal, 2018)

The Draft Law on the Material Law of Religious Courts (RUU HMPA) is a draft law to be implemented in the context of family law regulation. This draft regulation is still being processed by authorized institutions. In simple terms, this bill rests on the issue of criminalizing the perpetrators of nikah siri. It is not a natural thing, shifting the civil sphere to the criminal sphere, but this can be analogized to the phenomenon of domestic violence,

where this case also shifts the civil sphere into the criminal sphere. The assumption in the social community that still categorizes positive law as different from Islamic law, causes a lack of public awareness of marriage registration. Whereas in relation to marriage registration, this can be compromised by looking at the benefits realized in it and this is in accordance with *maslahah mursalah* in Islamic law. (Rizal, 2018)

The discourse on sanctions is reasonable, considering that the state has an obligation to protect its citizens. An act is entitled to be sanctioned if it endangers property and life, in addition to creating a deterrent effect on the perpetrator, and also reducing access to losses that will arise if the act is committed. The discourse on the existence of criminal sanctions, when viewed from the positive side, has very noble goals, including upholding the authority of the institution of marriage, so as not only to legalize adultery, infidelity and prostitution, and certainly to protect certain parties who can be harmed by the practice of unregistered marriage, especially for children and women. The *maqashid Sharia* approach is worth considering in this case. Where according to Imam Shathibi, discussing a matter can be seen from two things, namely: *Jalbul Mashalih* (achieving benefit) and *Dar'ul Mafasid* (rejecting harm). Likewise, in the case of this *siri* marriage sanction, it can be seen from the benefits or misfortunes that are caused in its determination. It can be seen that this prohibition of *nikah siri* is a preventive attitude towards religion, soul, intellect, lineage, and property which is used as a reference for the basis of this rule. Protection from the practice of *nikah siri* can be achieved one of them by applying sanctions to the perpetrators of *nikah siri* and this can prevent the harm or *kemafsadatan* that will be caused by *nikah siri*. The implementation of legislation will not be effective if it is not accompanied by law enforcement. One of the law enforcement against legislation is expressed in the form of sanctions. (Setiadi, 2009)

According to the author, looking at the harm of *nikah siri*, this is in line with the holding of sanctions for the perpetrators of this *nikah siri*. Without sanctions, someone can just lure their marriage later in *itsbatkan*. In the current state and conditions, looking at the causes of *siri* marriage in Indonesia, the sanctions for the perpetrators of this *siri* marriage are at the level of *hajiyyah*, where this is to eliminate the difficulties arising from the *siri* marriage later. If you still see *itsbat nikah* as a solution, then marriage registration is not important in the eyes of the community. The potential to hold this *itsbat nikah* in a *siri* marriage is feared not to happen, so that forever the marriage becomes *siri*, and forever the child does not get the protection of his rights. To limit the rise of *siri* marriages that arise for various reasons, where these reasons are also reasons that will potentially hurt many parties or reasons that are inadequate according to reason to be used as a reason for not registering their marriage, it is necessary to impose sanctions on the perpetrators of *siri* marriages to minimize and even eliminate this *siri* marriage, so as to realize the benefits to be achieved by marriage registration. Looking at *sad zari'ah* too, because the benefits of *siri* marriage without sanctions are better closed first and look more at the benefits that arise with sanctions. Where with the sanctions will minimize underhand marriage in Indonesia. This sanction is administrative and still legalizes the marriage.

4. Conclusions

Based on the hadith related to *walimah* as an announcement of marriage in the Prophet's time, this has an impact on the law of *nikah siri*. Where at the time of the prophet it was important to do *walimah* as a means of announcing a marriage. However, at this time, it is necessary to have authentic proof that someone is married, namely with a marriage certificate, this makes it easier to prove a marriage and provide legal certainty for a marriage so that the rights of the wife and children are protected by the legal umbrella.

That way, the author tends to understand that nikah siri or underhand marriage is not allowed.

Even so, there are still many cases of this siri marriage phenomenon in society for various reasons. So to eliminate this phenomenon, government involvement is needed in determining sanctions for the perpetrators. Seeing the maqashid al-syari'ah desired by the law of nikah siri, making the application of sanctions for nikah siri at this time is at the level of hajiyyah to maintain nasl through marriage, because it has become a phenomenon in society.

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