



Sociological Analysis of Siri Marriage in Pesisir Selatan Regency Towards the Half Century of the Marriage Law

Zakiyah Ulya¹ 

¹ State Islamic University Sjech M. Djamil Djambek, Bukittinggi, Indonesia

Abstract. The endless phenomenon of the practice of siri marriage is of course a dilemma. The opening of the opportunity for itsbat nikah makes the practice of siri marriage continue to occur in the community. Because even though they violate the rules of marriage registration by conducting siri marriage, the State seems to justify it by providing itsbat nikah facilities to declare the validity of this siri marriage. Often this siri marriage is carried out because of violations of the provisions of marriage administration and an element of deliberation by the couple. Dualism about the validity of marriage. Marriage, as long as it is carried out in accordance with Islam, is considered valid even though it is not recorded at the religious affairs office. Another opinion is that even though the pillars of marriage are fulfilled, if it is not recorded, it is considered invalid because it fulfills the registration requirements. The main factors of siri marriage are due to the negligence of the marriage registration officer, the non-fulfillment of the pillars or conditions of marriage and the community's lack of understanding of the importance of marriage registration.

Keywords: itsbat nikah, siri marriage

1. Introduction

Marriage is a means of maintaining offspring as one of the important parts in the study of maqashid al-syari'ah. Marriage is not only to fulfill the needs of lust but also to maintain and protect mutual affection between husband and wife (Asmawi 2004: 4). The provisions of marriage in Islam have been clearly regulated in the Qur'an, sunnah and become a discussion of fiqh experts. Starting from pre-marriage, Ijab Kabul to the implementation of walimah. Marriage in Indonesia has been regulated in positive law in the form of Law Number 1 of 1974 concerning marriage (hereinafter referred to as the Marriage Law) and the compilation of Islamic law. Article 2 of the Marriage Law confirms that marriage is valid if it is carried out in accordance with the provisions of Islamic law and must be registered with the authorized agency (Wahyudi et al., 2023). The marriage law has two requirements, namely material and formal requirements. The material requirements are regulated in articles 6 and 7 of the Marriage Law, while the formal requirements are related to the registration of marriage in the state administration. A recorded marriage results in the marriage not fulfilling the rule of law and will not obtain state recognition and protection (Arsal 2012). Marriages conducted outside the provisions of the applicable laws and regulations are categorized as siri marriages. Siri marriages are usually carried out secretly without any notification to the state in the sense that they are not registered at the religious affairs office (Akmal and Asti 2021).

The debate about siri marriage among scholars and academics. On the one hand, this marriage is considered valid because the pillars and conditions set by religion have been fulfilled, while registration is only an administrative requirement that has no effect on the

validity of marriage (Aidil Alfin 2017). However, on the other hand, such marriages are considered invalid because they are not registered at the religious affairs office and thus do not receive legitimacy from the state. This dualism in the understanding of marriage regulations has caused polemics in the community. Although there are already regulations on marriage registration, the practice of siri marriage is still rampant in various regions in Indonesia even until 2023 or half a century before the enactment of the law. This is evidenced by the number of itsbat nikah and divorce cases accumulated by itsbat nikah in religious courts. Itsbat nikah can be interpreted as a court decision on the validity of the implementation of a marriage that has been carried out according to the concept of fiqh munakahat without the supervision of a marriage registration officer from the local religious affairs office (Marni et al., 2023).

In general, from the practice of siri marriage, several factors are found to cause the occurrence of siri marriage, including the difficulty of polygamy rules, restrictions on the age of marriage set by the Law, difficulties in administrative management and marriage registration procedures, limited costs to pay marriage fees, fears of committing sins and immorality, the assumption that siri marriage is considered valid according to religion, pregnancy outside of marriage, lack of public awareness about marriage registration, and the absence of strict rules and sanctions for perpetrators of siri marriage and marriage opposed by parents. (Setiawan 2016). When a religious court receives an application for itsbat nikah, of course, it does not immediately grant the application. In the religious courts themselves, there is a dualism of opinion among judges when resolving itsbat nikah cases, especially for marriages that occurred in 2022 and 2023. First, the itsbat nikah can be granted because it is not obstructed according to Law No. 1 of 1974. Second, the itsbat nikah must be rejected because it occurred long after the enactment of the marriage law, even before the 50th anniversary of the enactment of the law. Painan Religious Court with relative authority throughout the Pesisir Selatan Regency has the authority to handle itsbat nikah cases. In the span of 2022 to 2023 there were 121 itsbat nikah cases received by the Painan Religious Court, both pure itsbat nikah and cumulation with divorce cases (Liza et al., 2023).

Research on this siri marriage has been conducted by many previous researchers, including research conducted by Akhmad Farid Mawardi Sufyan. This study analyzes the factors that cause siri marriage in Pamekasan Regency in general due to the mindset and public ignorance of the importance of marriage registration, its functions and legal consequences, the public assumption that marriage costs are expensive and the complexity of administrative arrangements and the assumption that marriage is considered valid according to religion and law. (Sufyan 2019).

Similar research was also conducted by Iwan Zaenal Fuad. In his research, Iwan concluded that siri marriage is part of criminal behavior in the social life of Indonesian society. The criminalization of siri marriage is due to religious, ethical, social impact prevention, and legal rejection motives other than state law (Fuad et al. 2011). Another study conducted by Nafi' Mubarak states that one of the causes of siri marriage behavior is due to the ambiguity of the legal substance of the siri marriage. In deciding the case of itsbat nikah, there is a lack of uniformity of religious court judges in their considerations. There are judges who argue that the marriage is invalid and other opinions state that the marriage is a marriage that can be legalized (Mubarak 2016).

Based on the above background, there are two problems in this study, what is the background of the practice of siri marriage in the Pesisir Selatan Regency area, especially those that occurred in 2022 to 2023, what is the impact and what are the alternative solutions to minimize the occurrence of siri marriage (Hizbullah et al., 2023).

2. Methods

This research was conducted normatively (Muhammad 2004: 157) with a field approach. This research answers questions that arise in the research by looking at existing laws and regulations and then directly comparing their implementation in the field. In addition, it also examines real concepts and behaviors that show unwritten social symptoms, which are experienced by the community or individuals in social relations in the midst of community life (Miswardi, Nasfi, and Antoni 2021). After that, qualitative data will be associated with normative juridical research, which refers to the legal norms contained in fiqh and positive law. (Alih 2010: 105) The research was conducted at the Painan Religious Court with the consideration that in 2022 and 2023 there are still many practices of siri marriage carried out by the community and submitted to the Painan Religious Court in the form of an application for itsbat nikah. In this study using qualitative data types collected from data findings in the field. The data source in this research is the determination of the Painan Religious Court judge in 2022 and 2023 and legal books and journals relevant to marriage and siri marriage.

3. Results and Discussion

3.1. Description and practice of siri marriage

Siri marriage is understood as a marriage that is attended by several people but is kept secret from being published to others. Siri marriage is also defined as a marriage that has fulfilled the pillars and conditions of Islam, but is not officially recorded by authorized officials (Aminah 2014). According to Rekso Wibisono (Wibowo 1982: 41) siri marriage is included in the category of marriages that are not valid according to Indonesian legislation because the validity of marriage according to religion and state registration is an inseparable unity. Imam Malik prohibited this kind of marriage, but Imam Abu Hanifah and Imam al-Shafi'i tolerated the act. (Zulfan, Siregar, and Rashid 2023). The marriage is carried out in accordance with the terms and conditions of marriage according to Islam, but is kept secret from public knowledge. Meanwhile, according to Imam Abu Hanifah and Imam al-Shafi'i, the validity of marriage is not related to the publication of the marriage, whether it is hidden or disseminated to others.

Basically, siri marriage is not recommended because it has negative impacts in the future. Among the purposes of disseminating information about marriage is to dismiss negative allegations of sexual relations outside marriage. In addition, it protects the rights arising from the marriage both for the married couple and the children born from the marriage such as nasab, nafkah rights, inheritance and so on. In addition, the Prophet SAW ordered to announce the marriage through walimah al-'ursy (wedding party) even though it was simple. (Al-Shukâni n.d.: 143)

A valid marriage according to Islam is one that fulfills the pillars and conditions of marriage. The pillars and conditions of marriage according to fiqh are (Al-Anshari n.d.: 306): First, the prospective husband, who must be a Muslim as emphasized in the Qur'an surat Mumtahanan verse 10 and marry of his own free will without coercion from others. Second, the prospective wife with the condition that she is not a person who is forbidden to marry, is not in the proposal of another person and is not in the iddah period, third, the Wali is required to be Muslim, male, sensible, pubescent and independent and fair (Al-Husaini n.d.: 4), fourth, 2 witnesses, required to be Muslim, legally capable, fair, independent and can clearly understand the Ijab Kabul (Al-Zuhaili 1989: 76), and fifth, Sighat (Ijab Kabul). In addition to

these pillars and conditions, the implementation of walimah al-'ursy is also an important part in announcing the marriage. (Aidil Alfin 2017) because in addition to providing a banquet, it is also a way to publicize to the community the occurrence of a marriage and avoid any suspicion of adultery.

As confirmed in the marriage law and the Compilation of Islamic Law in Indonesia, a marriage that is not registered at the religious affairs office is a marriage whose validity is not recognized. Some people consider siri marriages to be religiously valid as long as they fulfill all the provisions of marriage stipulated by religion. This understanding is one of the reasons many people do siri marriages. Besides that, there is an *itsbat nikah* door for siri marriages. Article 7 paragraph (2) of the Compilation of Islamic Law states that a marriage that cannot be proven by a marriage certificate can be submitted for *isbat nikah* to the Religious Court. Then Article 7 paragraph (3) describes the conditions for marriage that can be *isbatized*, including the reason that the marriage certificate is missing, marriage before the enactment of the marriage law, and marriage that has no marriage impediment according to Law No. 1 of 1974. This article explicitly explains the indication of recognition of the validity of siri marriage to be registered after going through the *itsbat nikah* process.

3.2. *Itsbat siri marriage at Painan Religious Court*

Painan Religious Court as one of the religious courts in the jurisdiction of the Padang Religious High Court which has the authority to hear *itsbat nikah* cases as stated in Article 49 of Law No. 7 of 1989. Painan Religious Court has relative authority over the entire area of Pesisir Selatan Regency which consists of 15 sub-districts. The vast area of Pesisir Selatan Regency and the limitations of transportation and information in the past were one of the reasons for the high rate of siri marriage. However, technological advances and the development of the current era have not discouraged the practice of siri marriage in this area. This should no longer be the case when transportation is no longer a problem and socialization of various information is easily obtained. The enactment of the Marriage Law has been almost half a century so there is no longer any excuse for not knowing the rules of this registration. But still the practice of siri marriage occurs in the community, even until 2023, there are still couples who perform siri marriage, of course for various reasons. One instrument that can be used as the basis for calculating the number of siri marriages in the Painan Religious Court is the number of *itsbat nikah* cases for siri marriages registered at the Painan Religious Court. In 2022 and 2023 there were a number of ... *itsbat nikah* cases, both cumulated with divorce and pure *itsbat nikah*. Some of these siri marriages were carried out several years earlier, but some were carried out in 2020, with details as follows:

1. Pre 1974 : 5 cases, the reasons are There was no regulation on marriage registration
2. 1974 -1991 : 23 cases, mostly due to the negligence of officers and unscrupulous P3N, the rest due to missing marriage certificates, pregnancy and invalid guardians.
3. 1992-2000 : 30 cases, mostly due to the negligence of officers and unscrupulous P3N, the rest due to lack of funds, pregnancy, invalid guardian, missing marriage certificate, bound by marriage with another person
4. 2001-2010 : 21 cases, mostly due to the negligence of the officer / P3N, the side is not approved by the family, deliberately do not take care of the administration of marriage, marriage abroad
5. 2011-2019 : 57 cases, mostly due to the negligence of the officer / P3N, still bound by marriage to another party, invalid guardian, no fees, underage, marriage in *iddah* period and not approved by the family, and not fulfilling the pillars of marriage

6. 2020-2023 : 61 cases, mostly due to the negligence of the officer / P3N, officer negligence Not approved by the family, still underage, bound by marriage with another party and deliberately did not take care of the marriage administration

From the table above it can be understood that in 2022 until 2023 there were approximately 198 itsbat nikah cases against siri marriages registered at the Painan Religious Court. 61 of them are siri marriages conducted from 2020 to 2022. From the reasons for siri marriage put forward, it turns out that the cause of siri marriage is dominated by the negligence and delinquency of marriage registration officers who do not register and record marriages at the religious affairs office. In addition, public ignorance about the rules for the appointment of P3N and the end of their term of office no longer has the authority to marry prospective couples. So that this is utilized by rogue officers to take advantage of the fees paid by the couple. In addition, the marriage was underage and did not fulfill the pillars and conditions of marriage and the absence of parental blessing. Of all the cases submitted, all decisions were granted by the judge, especially marriages that did not fulfill the pillars and conditions of marriage.

3.3. *Legal consequences of siri marriage and alternative solutions*

Marriage registration aims so that the state can provide protection to married couples from bad intentions that will be carried out by irresponsible parties. Even though the marriage has fulfilled the requirements in accordance with the provisions of religious rules without a valid official document, it will still be problematic when dealing with the court. (Zein 2002: 33-34) The legitimacy of siri marriage from a fiqh perspective opens up opportunities for the practice of siri marriage in the community. Without marriage registration, it will result in a guarantee of legal certainty, especially for women and children born from these siri marriages.

In practice, siri marriage has a number of negative impacts, so the community must be educated about the losses that will be experienced by women and children. Siri marriages are not legal according to state law, making it difficult for women and children to obtain their rights. If there is a divorce or separation in a siri marriage, women cannot claim their rights from the property obtained during the siri marriage, because there is no proof of their marriage. In addition to the views of the community, siri marriages are often considered cohabitation (Arsal 2012) because they cannot prove their marriage with a marriage book which is proof of marriage registration. Other problems that will arise in terms of inheritance because women cannot claim inheritance rights from either their husband or father because it will be difficult to prove the inheritance relationship between the heir and the heir. One of the reasons for the inheritance relationship is through marriage and lineage. Lineage can only be proven by the marriage of parents. So it is very clear that the most disadvantaged legal consequences of siri marriage are women and children.

The effort to reform the concept of marriage requirements is to eliminate the practice of siri marriage by including marriage registration as a mandatory requirement and even a pillar of marriage in Indonesia. According to Aisyah Arsyad as cited by (Kharisudin 2021) this was done for two reasons, namely: first, based on the argument of legal analogy (qiyas awlawy). If a debt involving only two people must be recorded, it should be more obligatory to record a marriage, which is a legal event that has implications for nasab, inheritance, and social status. Secondly, in line with the sadd al dzari'ah argument, unregistered marriages can result in the loss of legal protection for women and children.

In addition, there needs to be cooperation between various parties that can provide a deterrent effect to the perpetrators of siri marriage so that the practice of siri marriage can be

reduced or even eliminated. Cooperation is intended both at the national level or ministries and institutions and at the regional level, such as local governments, religious affairs offices and religious courts. Local governments play a role in socializing and educating the community regarding population administration and documents. Meanwhile, the religious affairs office provides counseling on the rules of marriage stipulated in Indonesian positive law and imposes strict sanctions on unscrupulous individuals, even if it is necessary to punish people who take over the authority of the head of the religious affairs office because they have defamed the religious affairs office. The religious court in its decision considers the concept of *sadd al dzari'ah* as a preventive measure for the recurrence of marriage registration violations.

4. Conclusions

The practice of siri marriage in the Pesisir Selatan Regency area still occurs a lot. Among the motivations for the occurrence of siri marriages are marriages that are not approved by the family of one of the couples, unscrupulous marriage registration officers, marriages that do not fulfill the pillars and conditions of marriage according to Islam. To reduce the number of siri marriages in Pesisir Selatan Regency, cooperation between the local government, religious affairs office and religious court is needed. The local government is responsible for socializing regulations related to changes and recording of population documents. Meanwhile, the religious affairs office, in accordance with its main tasks and functions, conducts counseling and socialization about the rules of marriage according to Indonesian positive law, especially with regard to marriage registration. In addition, it is also obliged to provide firm action and even criminalize unscrupulous P3N or former employees of the religious affairs office who are still free to take advantage of the weaknesses and difficulties of the community who are still unfamiliar with marriage registration and are urged to get married.

References

- Aidil Alfin, Busyro. 2017. "Siri marriage Dalam Tinjauan Hukum Teoritis Dan Sosiologi Hukum Islam Indonesia." *Al-Manahij Jurnal Kajian Hukum Islam* IX(1):61–77.
- Akmal, Andi Muhammad, and Mulham Jaki Asti. 2021. "Problematika Siri marriage, Nikah Online Dan Talak Siri Serta Implikasi Hukumnya Dalam Fikih Nikah." *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 1(1):45. doi: 10.24252/al-risalah.v1i1.22247.
- Al-Anshari, Zakariya. n.d. *Hasyiyah Al-Jamal, Juz XVI*. al-Maktabah al-Syamilah.
- Al-Husaini, Abu Bakar Muhammad. n.d. *Kifayah Al-Akhyar*. al-Maktabah al-Syamilah.
- Al-Syaukâni, Muhammad ibn Ali. n.d. *Nail Al-Autar Jilid V*.
- Al-Zuhaili, Wahbah. 1989. *Al-Fiqh Al-Islâmi Wa Adillatuhu, VII*. Beirut: Dar al-Fikr.
- Alih, Zainuddin. 2010. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- Aminah, Siti. 2014. "Hukum Nikah Di Bawah Tangan (Siri marriage)." *Jurnal Cendekia* 12:21–29.
- Arsal, Thriwaty. 2012. "Siri marriage Dalam Tinjauan Demografi Siri marriage in Demographic Overview." 06(02):2302–7517.
- Asmawi, Mohammad. 2004. *Nikah Dalam Perbincangan Dan Perbedaan, Cet. 1*. Yogyakarta: Darussalam.
- Fuad, Iwan Zaenul, Agus Fakhрина, Abdul Aziz, and Ahmad Rosyid. 2011. "Kriminalisasi Sosiologis." *Journal Penelitian* 8(1):23–36.
- Hizbullah, S., Hanani, S., & Nofiardi, N. (2023). Delik Zina Controversy in the Kuhp. *GIC Proceeding*, 1, 356–362. <https://doi.org/10.30983/gic.v1i1.126>
- Kharisudin, Kharisudin. 2021. "Siri marriage Dalam Perspektif Kompilasi Hukum Islam Dan

- Undang-Undang Perkawinan Indonesia." *Perspektif* 26(1):48-56. doi: 10.30742/perspektif.v26i1.791.
- Liza, A., Hanani, S., & Nofiardi, N. (2023). Reflection of Islamic Law on Living Al-Hijr When Baganyi in The Community Nagari Canduang Koto Laweh. *GIC Proceeding*, 1, 338-347. <https://doi.org/10.30983/gic.v1i1.134>
- Marni, T. S., Hanani, S., & Nofiardi, N. (2023). Modernisation of Islamic Family Law in Indonesia (Analysis of Counter Legal Draft- Compilation of Islamic Law in Inheritance Law). *GIC Proceeding*, 1, 317-325. <https://doi.org/10.30983/gic.v1i1.131>
- Mubarok, Nafi. 2016. "Disparitas Putusan Hakim Dalam Kasus Siri marriage." *Al Daulah: Jurnal Hukum Dan Perundangan Islam* 6(117):502-32.
- Muhammad, Abdulkadir. 2004. *Hukum Dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- Setiawan, Eko. 2016. "Fenomena Siri marriage Dalam Perspektif Sosiologi Hukum." *Justicia Islamica* 13(1):135.
- Sufyan, Akhmad Farid Mawardi. 2019. "Analisis Terhadap Tingginya Siri marriage Di Kabupaten Pamekasan." *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1(2):161. doi: 10.19105/al-manhaj.v1i2.3234.
- Wibowo, Rekso. 1982. *Hukum Perkawinan Nasional*. Semarang: Seksi Perdata Fakultas Hukum UNDIP.
- Wahyudi, D., Hanani, S., & Nofiardi, N. (2023). Sociological Analysis of Islamic Law Regarding Law Number 22 of 2009 Related to the Sale and Purchase of Vehicles Without Complete Documents. *GIC Proceeding*, 1(22), 308-316. <https://doi.org/10.30983/gic.v1i1.113>
- Zein, Satria Effendi M. 2002. *Problematika Hukum Keluarga Islam Kontemporer*. Jakarta: Prenada Media.
- Zulfan, Z., I. Siregar, and A. Rasyid. 2023. "Analisis Hukum Islam Terhadap Tanggungjawab Orang Tua Pada Anak Dari Pernikahan Sirri Di Kecamatan Angkola Sangkunur Kabupaten Tapanuli Selatan." *Jurnal Pendidikan Tambusai* 7(1):27647-55.