



Unregistered Marriage in the Perspective of Islamic Legal Sociology

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Abstract. Nikah siri, or unregistered marriage, is a common practice among Muslim communities, especially in Indonesia. This phenomenon has attracted attention from various disciplines, including Islamic legal sociology. In this research, we explore the sociological aspects of nikah siri within the context of Islamic law. By utilizing Islamic legal principles and sociological theories, this study aims to examine the prevalence, motivations, and consequences of nikah siri. Factors such as financial constraints, social pressures, and cultural norms contribute to the perpetuation of this practice. Additionally, nikah siri has significant ramifications for individuals, families, and society at large, impacting legal rights, social standing, and familial dynamics. Through a comprehensive analysis of nikah siri from a sociological standpoint grounded in Islamic legal principles, this research seeks to provide insights into the intricacies of this phenomenon. By understanding the socio-legal dynamics surrounding nikah siri, policymakers, legal practitioners, and community leaders can develop more effective strategies to address its challenges and mitigate its adverse effects on individuals and society.

Keywords: Unregistered marriage, Islamic legal sociology, Indonesia.

1. Introduction

The term "nikah siri," adopted from Arabic, has become part of the Indonesian language. In Islamic legal literature, nikah siri is referred to as "إل سواج ال سري," comprised of two words, "إل سواج" and "إل سري." The word "nikah" ("إل سواج") is the verbal noun form of "زوج," meaning marriage, while "siri" ("إل سري") is the verbal noun form of "سر," which means secret. In this context, "az-zawaj as-siri" ("إل سواج ال سري") can be interpreted as a marriage conducted covertly or secretly (Mashuri 2023).

Marriage issues are complex, occurring not only among individuals of different religions but also within the same religion when viewed from the perspective of applicable laws, both religious and formal, in our country. There are two main problems related to marriage: firstly, marriages between individuals of different religions, and secondly, marriages that occur unofficially, often referred to as nikah siri (Eko Setiawan 2016). Nikah siri is a form of marriage conducted by Muslims in Indonesia, fulfilling the requirements and pillars of marriage, but not registered under Law Number 1 of 1974 concerning Marriage (Ramulyo 2000).

The essence of marriage is a legal relationship between legal subjects involved in marriage, namely between a man and a woman. According to Law Number 1 of 1974 concerning Marriage, marriage is considered a contract in the broad sense. This is because to solemnize a marriage, there must be agreement between a man and a woman, and evidence of this agreement (Wanjik Saleh, 1992).

Legally, nikah siri is a marriage conducted in accordance with religious or customary provisions, carried out without official supervision from government officials, and therefore

not recorded in the marriage registration office or KUA (Office of Religious Affairs). From a fiqh perspective, nikah siri is a marriage where all the pillars and conditions set by Islamic law have been fulfilled, but there is no official registration with the competent authorities as required by statutory regulations (Wahyudi, Hanani, and Nofiardi 2023).

Nikah siri, as known by Indonesian society today, is a marriage that meets religious requirements but is not performed in front of a Marriage Registrar or KUA as a government official institution. As a result, such marriages do not have a Marriage Certificate issued by the government (Marni, Hanani, and Nofiardi 2023).

Hasan (2003) noted that the practice of unofficial marriage, known as "nikah siri," is not a new phenomenon but has existed since the time of the companions of Prophet Muhammad. This term originated from a statement by Umar bin Khattab, commenting on a marriage that took place without witnesses other than a man and a woman. In a famous narration, Umar bin Khattab stated, "This is nikah siri, I do not allow it, and if I had known beforehand, I would certainly have punished (Hasan 2003)."

In society, various reasons are given for conducting unofficial marriages; however, regardless of these reasons, unregistered marriages violate the law, according to Article 2 of Chapter II of Law Number 1 of 1974 concerning Marriage, which regulates marriage registration procedures. This is further explained in the Compilation of Islamic Law (KHI) Article 5 (1), which states, "to ensure the order of marriage for the Muslim community, every marriage must be recorded." Similarly, Article 6 (2) emphasizes that "marriages performed outside the supervision of a marriage registrar have no legal force" (Hafidz Muftisany 2021).

Despite these legal provisions, the fundamental issue lies in the prevalence of social practices related to unofficial marriages in society. Even officials and community leaders may be involved in this practice. Upon closer examination, marriage is not a simple matter that only binds a man and a woman. Marriage is a contract or agreement that has various legal consequences, such as permission for the couple to engage in marital relations, the obligation to establish a harmonious household, the birth of legitimate offspring, and the emergence of rights and obligations between husband and wife (Mardani 2001). To ensure that these legal consequences are properly adhered to, marriage must be performed officially to avoid potential hazards (Liza, Hanani, and Nofiardi 2023).

2. Methods

In conducting this research, the method used is qualitative method in the form of library research, namely literature review by collecting as many references as possible in the form of books and journal articles to be later analyzed based on the principles of Islamic law as well as positive law. Regarding the data sources, the author uses data covering primary and secondary materials. Since normative research focuses solely on library materials or secondary data, secondary data is data not directly obtained by the researcher from the research subjects but obtained through other parties. Primary legal materials include legally binding materials, while secondary legal materials are those that explain primary legal materials.

Once the data is collected, the researcher proceeds to analyze the gathered information through two methods. Firstly, Content analysis, which involves various techniques used to draw conclusions by striving to identify the characteristics of a message in an objective and systematic manner. Subsequently, Comparative Analysis, which is a technique aimed at determining the units or entities studied in a case study.

3. Results and Discussion

3.1. Nikah Siri

Nikah siri is a form of marriage that is valid according to certain religious norms but not recognized legally by the state or government. In the context of Islam, nikah siri is a marriage conducted according to Islamic religious law (Sharia), but it is not officially registered with civil authorities or the government. This means that couples who marry in this way do not have the same legal protections as those who marry in a manner recognized by state law (Hizbullah, Hanani, and Nofiardhi 2023).

Nikah siri is often performed for various reasons, such as financial constraints, inability to meet the legal requirements for official marriage, or religious reasons. Although valid according to religious teachings, nikah siri can lead to a number of legal and social issues, particularly concerning the rights and protections of women and children, as well as inheritance rights (Aidil Alfin dkk, 2017).

It is important to note that the recognition and status of nikah siri can vary between countries and based on the interpretation of religious law in place. Therefore, nikah siri is a complex issue that can have significant legal consequences depending on the jurisdiction and prevailing norms.

3.2 Unregistered Marriage in the Perspective of Islamic Legal Sociology

Research on the Analysis of Nikah Siri in the Perspective of Islamic Legal Sociology aims to understand and evaluate the practice of nikah siri within Muslim communities from the viewpoint of Islamic legal sociology. Motivations behind nikah siri include financial constraints preventing formal marriage ceremonies, the desire to avoid negative consequences such as out-of-wedlock pregnancies or abortions, the need to preserve reputation within school or community environments, parental opposition to marriage, or to conceal shame resulting from out-of-wedlock pregnancies (Mashuri 2023).

However, marriage is not merely a bond between two individuals but carries broader implications for children, family relationships, society, and the state. Marriage entails obligations for husbands to provide for their families, both materially and emotionally, and for wives to manage households and support their husbands in meeting family needs. Furthermore, ensuring a good education for children is also the responsibility of both parents. However, nikah siri may hinder children's rights, such as the right to formal education due to the inability to obtain birth certificates.

Divorce in a nikah siri marriage can also complicate children's rights to support, especially if the divorce is not officially registered. In such cases, the court cannot compel the father to provide support to his children or designate them as legitimate heirs if the father passes away. Thus, children become victims of their parents' nikah siri marriage in this regard (Indrawati, 2015).

Nikah siri not only potentially harms children but also has negative impacts on women. These disadvantages can occur throughout the marriage. A wife who has married without an official marriage certificate may be easily exploited by an irresponsible husband for personal gain. Similarly, a man who is still considered a lawful husband by religious standards may claim to have divorced without written proof from the court, forcing a woman to become a second wife without her knowledge. Therefore, women are vulnerable to deception in nikah siri marriages (khairunisa. A 2020).

Furthermore, after divorce in a nikah siri marriage, wives have no right to claim a share of joint property (marital property) if their ex-husbands refuse to divide it. Wives also cannot

petition the court to compel their ex-husbands to fulfill their rights. During marriage, wives also cannot seek court assistance to enforce their rights fairly, thus nikah siri marriages should be avoided.

Nikah siri often occurs due to a lack of understanding of the division of roles between husbands and wives. However, the main issue is the lack of clarity and legal recognition of this marriage process, which keeps women in a second-class status. To prevent issues such as polygamy, polyandry, or adultery, marriages should be recorded to provide protection for both parties.

Although traditional, economic, and social considerations are important in legal decision-making, the primary priorities are protecting women, preserving children's status, and fostering peace within households. In this entire discussion, the main objective is to provide an in-depth understanding of the practice of nikah siri from various perspectives and analyze its impacts in the context of sociology of Islamic law.

4. Conclusions

Unregistered marriage (unregistered marriage) is a complex phenomenon with significant implications for Muslim communities when viewed from the perspective of Islamic Legal Sociology. Although often pursued for religious recognition, this practice remains governed by various regulations. Perceptions of the authority of religious law compared to state law often differ, with religion often considered more authoritative. However, it is important to recognize that women are often the most affected by this phenomenon, as unregistered marriages can create legal and social instability for them. Therefore, research in the field of Islamic Legal Sociology plays an important role in raising awareness of the importance of officially registering marriages to protect women's rights and strengthen family and societal structures as a whole.

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