

**URGENCY IN REGULATING MARRIAGE REGISTRATION
FROM THE PERSPECTIVES OF
ISLAMIC LAW AND INDONESIAN POSITIVE LAW**

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ABSTRACT

This study aims at ensuring the existence and sufficiency of regulations on marriage registration based on the Islamic law and the Indonesian legislative regulations. It also seeks to identify the reasons and causes for why some people choose not to register their marriage at the authorized state institution as well as the harms that come with such decision. In addition, the necessary efforts to discourage *sirri* marriage (religiously valid yet unregistered marriage) and to prompt people to register their union are also laid out. To achieve these purposes, this study employs the juridical-normative method with a sociological approach in the writing. The findings are as follows: (1) registration is important and necessary to regulate marriages in Indonesia; (2) registration does not determine the validity of a marriage because it is not a basic principle or requirement of matrimony; (3) Islam allows a government to require marriage registration if it is beneficial or good for the community, and if it can help them avoid any form of oppression, damage, and risk; (4) Indonesia already has a sufficient set of legislative regulations on marriage registration, although some of them need to be clarified further; (5) different reasons and causes for not registering a marriage at the authorized institution include: religious validity is considered adequate, the official registration process is deemed impractical, pre-marital pregnancy, the marriage is part of a polygamy, the marriage is interreligious, the marriage involves underage individual(s), and the punishment is simply not serious enough; (6) unregistered marriage is prone to risks such as a slander or suspiciousness by other people, unrecognized by the state, bearing the status of a mistress or having an extra-marital child, vulnerability to conflicts, and disordered and disorganized household management.

Keywords: marriage registration, *sirri* marriage, Islamic law, positive law, marriage law

Introduction

Marriage is a union between two or more individuals, which is sacred as it is encouraged by religion and so must be conducted according to religious provisions and the applicable legislative regulations. Marriage is the more noble kind of union for it has a virtuous purpose, including to bring up a happy family—one that is *sakinah, mawaddah wa rahmah* (peaceful, and loving and caring for one another).

It should be conducted openly and let known to relatives, friends, and the surrounding community. Other than as a notice, this is also for the happiness of everyone involved. To protect the parties' rights, to meet the demands of modernity, and to comply with the state administrative requirement, marriage should also be officially registered at the authorized state institution. Article 2 sub article 2 of Law No. 1 of 1974 on Marriage seeks to conduct this matter.

Unfortunately, it is not yet a universal practice in the community. Until today, many people keep their marriage away from the public and are reluctant to have it officially registered. And such type of marriage is growing in number from time to time that it has become a phenomenon.

Oddly and interestingly, this is not only the case among people at the lower social strata; it has also been prevalent in the middle class or higher and among the educated (Priatmi, 2012). A lot of public figures such as lawmakers, ulamas, government officials, and celebrities do that as well with print and electronic mass media regularly disclosing the news to the public (Iftidayasar, 2009).

Having a marriage but not officially registering it means having a religiously valid yet administratively nonexistent marriage. In Indonesia, this is called *kawin di bawah tangan* (private marriage) and also commonly termed *nikah siri* (Priatmi, 2012). *Siri*, or more accurately *sirri*, is an Arabic adjective that means done in a hidden or secret manner. So *sirri* marriage means one carried out in a hidden or secret way and without the knowledge of other people, especially the marriage registry official, and official registration.

The authorized state employee in charge of marriage registration for Muslims is the marriage registry official at the Religious Affairs Office, and for people of other religious beliefs, Civil Registry Office (see Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage and Hadikusuma, 2007).

The issue of unregistered marriage keeps on emerging from time to time and often leads to a disagreement. This sparks the author's scientific interest to conduct an in-depth study on the urgency of regulating marriage registration from the perspectives of the Islamic law and the Indonesian positive law. To do so, the author has come up with four principal problems related to the regulation of marriage registration in Indonesia, which can be expressed through the following questions:

1. How should marriage registration be regulated according to the Islamic law? And what are the rules according to the Indonesian legislative regulations? Also, are these legal provisions sufficient for regulating marriage registration?
2. What are the reasons and causes for some people's decision of not registering their marriage at the authorized state institution?
3. What are the impacts and consequences of not officially registering a marriage?
4. What are the necessary efforts to discourage *sirri* marriage and to prompt people to register their union?

Method of Study

This study deals with problems concerning the regulation of marriage registration by employing a juridical-normative approach. It illustrates and describes the revealed facts on the subject according to the Islamic law and the legislative regulations in a descriptive-analytic manner. A sociological approach is implemented to analyze the causes for and harms of Indonesians' reluctance to register their marriage at the authorized state institution, then an analysis is provided concerning the efforts and solutions to prevent *sirri* marriage and push the community to register their marriage officially.

Discussion

Definition of Marriage and Its Benefits

Marriage has been defined in different ways in Indonesia, depending on the perspective from which it is viewed. From the point of view of the Indonesian

legislative regulations, marriage is a physical and mental union between a man and a woman as husband and wife (Law No. 1 of 1974 on Marriage).

This definition clearly specifies marriage as a union between a man and a woman. It is a union or a "contract" (*verbinten*). Moreover, marriage is not merely a "civil union" but also a "religious union". This aligns with the purpose of marriage as specified in Article 1 of the above law that the purpose of marriage is to raise a family (household) that is happy and everlasting based on the principle of the One and Only God (Hadikusuma, 2007: 7-8).

From the perspective of the customary law in general throughout the country, other than a "civil union", marriage also forms a "customary union" and a "kinship and neighborhood union".

Not only does a marriage carry consequences for certain civil matters such as the rights and responsibilities of husband and wife, joint property arrangement, the status of the children, and the rights and responsibilities of parents, it also affects certain customary aspects regarding inheritance, family relationship, kinship, and neighborhood as well as traditional and religious ceremonies. Marriage is also seen as an obligation to abide by religious orders and prohibitions regarding man's relationship with God (*ibadah*) and among themselves (*muamalah*) to be safe in this world and the afterlife (Hadikusuma, 2007:8).

In Islam, marriage is called *nikah*, which signifies a very strong contract (*mitsaqan ghalidzan*) to obey God's orders, and its performance is considered a service to God (see Presidential Instruction No. 1 of 1991 to the Indonesian Minister of Religious Affairs on the Islamic Law Compilation, hereinafter ILC, Article 2).

This definition specifies that marriage means the same thing as *nikah*. It is a very strong contract, a physical and mental union to abide by Allah's orders and guidance that carries religious, legal consequences for both parties and their families.

By the above definitions, marriage represents a very strong physical and mental commitment that has legal impacts on the couple's civil, customary, and religious relationships.

When Islam declares or stipulates marriage as one of its teachings, it must be because it has many benefits. As Yusuf ad-Duraiwisy wrote in brief, marriage helps: (1) ensure the conservation of mankind; (2) satisfy human beings' sexual desire; (3) protect one's spiritual dignity and control one's sexual desire; (4) raise a good family and preserve the lineage; (5) achieve spiritual peace; (6) increase the population of Muslims (in case of Islamic marriages) to bring us closer to the global community the Prophet PBUH would be proud of; and (7) distribute responsibilities between husband and wife (Ad-Duraiwisy, 2010:30-34).

Legal Principles of Islamic Marriage

Family law experts have discussed the principles that form the basis of matrimonial law according to Islam. Mohammad Daud Ali, for example, noted that there are six legal principles of Islamic marriage according to Islam and the marriage regulations applicable to Muslims in Indonesia (Ali, 2007: 139-141).

Meanwhile, Neng Djubaedah added one more important principle, the Principle of Islamic Personality, so that there are seven principles as follows (Djubaedah, 2012: 94-106). (1) *The Principle of Islamic Personality*. This principle dictates that because a marriage is only valid if conducted in accordance with the laws of each own religion and belief as specified in Article 2 sub article 1 of Law No. 1 of 1974 on Marriage, a marriage that is noncompliant with the law of the couple' religion(s) shall be considered inconsistent with the 1945 Constitution. As such, for Muslims, it is not

possible to enter into a marriage by violating "their own religious law". Likewise, for followers of other religions, they cannot violate the law of their own religion. In the Islamic law, this principle is based on the Quran, surah al-Baqarah: 221. (2) *The Principle of Voluntarism*. It means that each of the marrying individuals and their parents shall enter into the marriage voluntarily and without any force. As narrated by Abu Musa, the Prophet PBUH once said: "There is no marriage without a guardian" (compiled by Abu Dawud). (3) *The Principle of Agreement*. In choosing a partner to marry, a Muslim woman has the freedom to accept or reject a man's proposal. As narrated by Ibnu Abbas, the Prophet PBUH once said: "A widow is more rightful of herself than her guardian, while a woman who has never previously married should be asked for agreement and her agreement is her silence" (compiled by Muslim). (4) *The Principle of Freedom in Choosing a Partner*. Men and women are free in choosing a partner to marry as long as it is in accordance with the Islamic law, not violating the Islamic prohibitions concerning marriage. As narrated by Khansak bin Khidzam al-Ansoriyah, "His father married her when she was already a widow and she was not happy with the marriage so she went to see the Prophet PBUH and he rejected the marriage" (compiled by al-Bukhari). (5) *The Principle of Husband-Wife Partnership*. The principle assigns husband and wife with different tasks and functions because of their gender-related differences (inborn traits, disposition) as mentioned in the Quran, surah an-Nisa: 34. (6) *The Principle of Everlastingness*. Marriage is intended for life, not for a temporary period and not just for fun or recreation. This is based on a hadith narrated by ar Rabi' bin Sabrah from his father that on the opening day of Mecca, the Prophet PBUH forbade men to marry a woman in a *nikah mutah* (temporary marriage contract) (compiled by Muslim). (7) *The Principle of Open Monogamy*. It means that in Islam marriage is principally a monogamous union. However, in certain conditions, a man is allowed to practice polygamy with up to four wives. This is based on the Quran, surah an-Nisa: 3.

Pillars and Requirements of Marriage

It is simply not possible to discuss "marriage registration" without touching on the provisions regarding the pillars and requirements of marriage applicable to Muslims in Indonesia. These pillars and requirements must exist or be fulfilled for a marriage to be valid and legal.

Pillar (*rukun*) refers to things that without them an action would be considered invalid according to the Islamic law. It can also be defined as something that must be present in order for something else to be realized (Al-Zuhaili, 2006: 9/30). In other words, pillar refers to the inseparable elements of an action or institution that determines whether or not such action or institution is valid and existent. Therefore, the pillars of marriage should mean the essential aspects of a marriage contract that affect its validity.

Ulamas' opinions are diverse regarding what to be considered a pillar. According to the majority of ulamas, there are three pillars of marriage namely *'aqid* (the individuals entering into the marriage contract, i.e. the bride and groom-to-be and the bride side's guardian), *ma'qud 'alaih* (the object of the marriage contract, i.e. the halal status of the husband-wife relationship), and *sighah* (i.e. the solemnization of the marriage). According to the Hanafi school, however, there is only one pillar: *sighah* or the solemnization of a marriage (Al-Zuhaili, 2006: 9/30).

As for requirement, it refers to the conditions on which the realization of an object is dependent and these conditions are external to the essence of that object (Al-

Zuhaili, 2006: 9/41). Accordingly, marriage requirements refer to the conditions that define the validity of a marriage but are external to the marriage itself.

The majority of ulamas say marriage has many requirements, including each pillar of marriage and other requirements such as the presence of two witnesses and a *mahr* (dower) (Al-Zuhaili, 2006: 9/41-85). According to the ILC, however, the presence of two witnesses is actually a marriage pillar (Article 14) and the *mahr* is the groom's obligation to the bride rather than a marriage requirement (Article 30).

In the context of services to God (*ibadah mahdhah*), requirements determine the validity of the deeds, but in worldly matters (*muamalah*) such as marriage, the absence of pillars and requirements comes with different consequences. If one or more pillars are not satisfied, a marriage shall be deemed "legally null and void" and if one or more requirements are not met, a marriage "may be annulled" (Djubaedah, 2012: 92-93).

From the investigation into and the explanation of ulama opinions in Islamic legal books on marriage pillars and requirements, it is found that no school or ulama says marriage registration is a pillar or requirement thus an unregistered marriage is still valid according to the Islamic law.

That said, it must immediately be clarified here that the validity of a *sirri* marriage as practiced by some people hangs on the fulfillment of the above pillars and requirements. If they are not served, the marriage is invalid according to the Islamic law and at the same time noncompliant to the applicable legislative regulations in Indonesia.

Recommendation to Announce Marriage

A *sirri* marriage means one that goes through the proper religious procedure but is not registered at the authorized state institution, in this case, the Religious Affairs Office or Civil Registry Office. Usually, the practice tends to avoid public knowledge. It is not announced and made known as recommended by religions and the customs of many regions in the country. In such marriage, only certain and limited people are aware. Perhaps there has never been a case where an unregistered marriage is held openly.

This is, of course, contradictory to the Islamic teaching that recommends (*sunnah*) to announce and make marriage known, by playing the tambourine and serving wedding dishes (*walimatul 'urs*). In a *da'if* (weak) hadith narrated by Aisha who said that the Prophet PBUH once said, "Announce this marriage, hold it at a mosque, and play the tambourines during the ceremony" (compiled by al-Tirmidzi).

In another hadith, narrated by Anas RA, the Prophet PBUH saw a yellow mark on Abdurrahman bin Auf. The Prophet asked, "What is this?" Abdurrahman answered, "Verily I have married a woman with a *mahr* worth one gold piece (five dirhams)." The Prophet replied, "May Allah bless you. Do serve dishes even with only a goat" (compiled by al-Bukhari).

Playing the tambourines and providing food is a form of gratefulness to Allah and serve to mark the official recognition of the marriage so people know the couple is validly married, pray for them, acknowledge them, and not think suspiciously of or annoy them.

Furthermore, making a marriage known can prevent slanders by other people. For example, if a woman gets pregnant but her marriage is not known, people may be suspicious of her.

Regulating Marriage Registration Based on Islamic Law

In general, Muslims are ordered to fulfill every contract or *akad* they make. This is in line with God's word in surah al-Maidah verse 1. Any kind of contract, be it a purchase, a rent, a mortgage, and not to mention a marriage, shall be performed and fulfilled properly.

To do so, Islam suggests that there be records and witnesses of such contracts. In the case of debt transaction, for example, Allah orders that it be recorded and conducted in the presence of a witness. This is written down in God's word in surah al-Baqarah verse 282, often called *ayat ad-dain* or the debt verse.

Ulamas have different opinions on the above order of God: is it mandatory or just recommended? The majority of ulamas say that God's order to record and enter into a debt contract in the presence of a witness is *irsyad* or guiding/suggested in nature (Ibn Katsir, 1999: 1/723). Meaning, it is suggested and rewarded if performed and not sinful otherwise.

But times have changed. In the past, it was only recommended that debt contracts be recorded and witnessed because people were considered generally reliable and dependable to settle their debts in a good manner. Now many ulamas believe things are different. Today many people prove to be untrustworthy. Frauds prevalent. Debts left unpaid. All this makes contemporary ulamas think that recording debt contracts and having it witnessed are mandatory. Furthermore, debts are usually long-term and thus prone to being forgotten, potentially causing conflicts and disputes. Moreover, modern financial institutions such as banks, cooperatives, and BMTs have practiced this order and require recording and witnesses for any debt contract they are entering into with a customer. Records and witnesses are considered authentic evidence of debt contracts, in a normal state and even more so during a dispute between the parties.

If debt contracts need to be recorded and witnessed, many ulamas believe marriage contracts are more important to be treated the same. The latter are considered stronger and more meaningful than the former. In the Quran, marriage contract is called *mitsaqan ghalidhan* or strong union. Numerous rights and responsibilities arise from marriage contracts, such as the wife's right to be financially supported by her husband, the right to guardianship, and the right to inheritance.

Indeed, there is no order to register or record a marriage in the Quran and hadiths. There is no evidence that Prophet Muhammad PBUH, his companions, and even Muslims of several subsequent generations registered their marriages. They did not need it yet. Their marriages needed only to be witnessed by two individuals and announced by playing the tambourines and serving dishes, cooking at least a goat and providing food for the invited guests. At the time, this would suffice to prove a marriage.

Ulamas also agree that registration is not a marriage pillar or requirement. No ulama from any Islamic school says registration is one of the pillars or requirements. Therefore, the validity of a marriage should not be contingent on its registration.

While an order to register a marriage in the Quran and hadiths is non-existent, there is no prohibition either to do so. Thus, marriage registration is a subject left by the Islamic law for the authority to regulate, in accordance with the needs and demands of the time.

For this reason, according to *Siyasah Syar'iyah*—the study of state affairs regulation based on the principles and rules of the Islamic law ('Athwah, 1993: 52-53), marriage registration may be regulated and required by the authority if doing so

is believed to have benefits or advantages for the community or prevent evil or any harm or risk.

The above is in line with the principles of *maslahah mursalah* and *sadd adz-dzarai'*. *Maslahah mursalah* means goodness that is not recognized nor ruled out by the Islamic law but left open (Al-Syaukani, 1999: 2/134). As long as this left-open goodness is not contradictory to the Quran and hadiths, it may be justified. In the case of marriage registration, for instance, there is no order nor prohibition in the Quran and hadiths. It is not incompatible with the two either, in fact, it could bring benefits and advantages to the community. For example, with their marriage registered, the husband and wife will have a solid proof of their marriage, so the right of and responsibility for financial support can be fulfilled, joint property can be settled properly in case of divorce, they will have the legal right to act on behalf of each other, and they will have the right to each other's inheritance in case of death. Besides, the married couple will also have evidence of parenthood of their child, so the responsibility to financially support them, the right to be their daughter's guardian in her wedding, and the right to each other's inheritance between parents and children can be proven and enforced without any doubt. Registered marriages will help the community live harmoniously and orderly with their rights fulfilled.

Sadd adz-dzarai' means closing the paths to forbidden or bad things (Al-Syaukani, 1999: 2/193). When the Islamic law forbids a matter, all the paths to that matter are also forbidden. Otherwise, people may gradually come closer to the forbidden matter. This is how the Islamic law prevents harm to the community. In the context of marriage, in order to foreclose injustice or oppression, the Islamic law shuts the doors that may lead to it, such as marriages that are not registered at the authorized state institution. Unregistered marriages are more prone to risks as explained in the respective section in this study.

Therefore, based on the understanding of the *Siyasah Syar'iyah*, the government may punish anyone failing to abide by the applicable regulations, including the obligation to register marriages, with a sanction determined at the judge's or the government's discretion (*ta'zir*).

Regulating Marriage Registration Based on Indonesian Legislative Regulations

Regarding marriage registration, Indonesia has had a set of legislative regulations namely:

1. Law No. 22 of 1946 on Marriage, Repudiation, and Remarriage Registrations;
2. Law No. 1 of 1974 on Marriage and its implementing regulations;
3. Presidential Instruction No. 1 of 1991 to the Indonesian Minister of Religious Affairs on the Islamic Law Compilation;
4. Law No. No. 23 of 2006 on Residential Administration.

More detailed explanation on each of the above legislative regulations are as follows:

1. Law No. 22 of 1946 on Marriage, Repudiation, and Remarriage Registrations

Only one year after proclaiming its independence in 1945, Indonesia has had a legislative regulation on marriage registration in place with Law No. 22 of 1946 on Marriage, Repudiation, and Remarriage Registrations.

In Article 1 sub article (1) of the Law, it is stated that "an Islamic marriage ceremony, hereinafter *nikah*, shall be overseen by a Marriage Registry Official appointed by the Minister of Religious Affairs or by a designated employee."

Sub article (2) furthermore asserts that “the only authorized person to oversee a *nikah* and receive a notification of a repudiation (*talaq*) and remarriage is the official appointed by the Minister of Religious Affairs or another employee designated by the official.

On the responsibilities of the Marriage Registry Official, Article 2 sub article (1) states: “The Marriage Registry Official and the person specified in Article 1 sub article (3) shall keep a record of all marriages carried out under their oversight and of all repudiations and remarriages notified to them, with the record specified in Article 1 entered into each own registration book specifically made for this purpose, of which each example has been provided by the Minister of Religious Affairs.”

On the violation to the above provision, Article 3 sub article (1) specifies: “Anyone entering into a marriage contract with a woman without an official’s oversight as specified in Article 1 sub article (2) shall be subject to a fine of maximum Rp50 (fifty rupiahs).”

Now we can see that our country has required marriage registration since 1946, that the Marriage Registry Official has the responsibilities for officially recording marriages, and that anyone failing to register their marriage to the official is to be fined.

2. Law No. 1 of 1974 on Marriage and its implementing regulations

The subject of marriage registration in Law No. 1 of 1974 is mentioned in Article 2 sub article (2), “Each marriage shall be recorded in accordance with the applicable legislative regulations.”

The explanation of Article 2 sub article (2) reads: “Marriage registration is similar to the registration of other significant events in an individual’s life, such as birth and death.”

From Article 2 sub article (2) and its explanation, many legal experts believe that marriage registration is an “important event” in an individual’s life, rather than a “legal event”. What constitutes a “legal event” is the valid marriage according to the bride’s and the groom’s own religion and it cannot be annulled by the “important event”. Therefore, marriage registration is merely an administrative requirement instead of a determinant of the validity of a marriage. (Djubaedah, 2012: 214).

The General Explanation under number 4 letter b of Law No. 1 of 1974 confirms the above: “In this law it is specified that a marriage is valid if conducted according to the law of the bride’s and the groom’s religion and belief, and in addition, each marriage shall be recorded according to the applicable legislative regulations. The recording of a marriage shall be similar to the recording of other important events in an individual’s life, such as birth and death, which is by a statement in a declaration letter or a certificate that is also documented in a registry.”

Furthermore, Article 2 sub article (1) of Government Regulation No. 9 of 1975 on the Regulation of the Implementation of Law No. 1 of 1974 on Marriage, determines that marriage registration for Muslims shall be carried out by a Marriage Registry Official. This is in line with Law No. 22 of 1946 in conjunction with Law No. 32 of 1954.

And according to Article 45 of Government Regulation No. 9 of 1975, the punishment for anyone failing to register their marriage with a Marriage Registry Official is a fine of maximum Rp7,500 (seven thousand five hundred rupiahs) that may be imposed on the husband, the wife or both. This is different from the provision of Law No. 22 of 1946 that specifies the fine of Rp50 (fifty rupiahs) shall be imposed on the husband only.

3. Presidential Instruction No. 1 of 1991 to the Indonesian Minister of Religious Affairs on the Islamic Law Compilation

Marriage registration is specified in Article 5 of the Islamic Law Compilation (ICL), which reads:

- (1) To ensure the proper regulation of marriage for the Muslim community, every marriage shall be registered.
- (2) Marriage registration as specified in sub article (1) shall be carried out by a Marriage Registry Official as determined by Law No. 22 of 1946 in conjunction with Law No. 32 of 1954.

These above sub articles assert that every marriage shall be registered and the registration shall be carried out by a Marriage Registry Official. The phrase “shall be registered” does not at all indicate that a marriage is invalid unless registered. That said, the subsequent article, Article 6, reads:

- (1) To comply with the provision of Article 5, every marriage ceremony shall be held before and under the oversight of a Marriage Registry Official.
- (2) Marriage ceremonies conducted without the oversight of a Marriage Registry Official do not have a legal force.

The provision that a marriage does not have a legal force if entered into without the oversight of a Marriage Registry Official means that such marriage is invalid unless registered. This is contradictory to Article 4 of the ILC which determines the validity of a marriage according to the Islamic law, as specified in Article 2 sub article (1) of Law No. 1 of 1974. Moreover, registration should be required to regulate marriages in the community as per Article 5 sub article (1), not to determine the validity of a marriage.

4. Law No. No. 23 of 2006 on Residential Administration

Marriage registration for Muslim citizens under Law No. 23 of 2006 is specified at least in Article 8 and Article 34.

Article 8 stipulates that the responsibility for the registration of marriage, repudiation, divorce, and remarriage of Muslim citizens at the subdistrict level shall be assumed by the registry official at the Subdistrict Religious Affairs Office.

On another aspect, Article 34 specifies:

- (1) For a marriage to be valid, according to the applicable laws and regulations, it shall be reported to the local administrative institution at the place of marriage no later than 60 (sixty) days since the date of marriage.
- (2) Based on the report specified in sub article (1), the Civil Registry Official shall record the marriage in the Marriage Certificate Registry and issue Excerpts of Marriage Certificate.
- (3) The Excerpts of Marriage Certificate referred to in sub article (2) shall be given each to the husband and the wife.
- (4) The reporting process specified in sub article (1) for Muslim citizens shall be performed by the Subdistrict Religious Affairs Office.
- (5) The data from the registration of events as specified in sub article (4) and in Article 8 sub article (2) shall be submitted by the Subdistrict Religious Affairs Office to the Administrative Institution no later than 10 (ten) days after the marriage is registered.
- (6) Data registration as specified in sub article (5) does not require the issuance of Civil Registry Excerpts.
- (7) At the sub district level, reports, as specified in sub article (1), shall be submitted to the Administrative Institution’s Regional Technical Implementation Unit (UPTD).

The explanation of Article 34 sub article (1) specifies that “Marriages for Muslim citizens are registered by a Subdistrict Religious Affairs Office in accordance with the legislative regulations.” This means the provision of Article 2 sub article (2) of Law No. 1 of 1974, of which implementation is regulated by Law No. 9 of 1975 Chapter II on Marriage Registration, prevails. Likewise, the provisions of Article 1 sub article (1) and (2) of Law No. 22 of 1946 in conjunction with Law No. 32 of 1954 are applicable as well.

As for Article 35, it specifies the provisions on interreligious marriage: “Marriage registration as referred to in Article 34 shall apply to:

- a. Court-legalized marriages, and
- b. Marriages between foreign citizens performed in Indonesia upon the foreign citizens’ request.

In the explanation of Article 35 above, it is mentioned that “Court-legalized marriages” mean marriages between two followers of different religions. And of course, interreligious marriage registration is not to be done at the Religious Affairs Office.

Furthermore, Article 36 seeks to regulate marriages that cannot be proven with a marriage certificate. Article 36 reads: “If a marriage cannot be proven with a Marriage Certificate, its registration shall be carried out after the marriage is legalized by the court.

A marriage that cannot be proven with a Marriage Certificate refers to a *sirri* marriage or a marriage that is unregistered or not yet registered by the Marriage Registry Official. Such marriages must go through the *itsbat nikah* or legalization by the religious court before they can be registered.

Law No. 23 of 2006 does not determine the punishment for a violation of Article 36, either administrative or criminal. In other words, anyone not registering their marriage to the Marriage Registry Official is not subject to any punishments. Weirdly, there is a sanction for a person that registers their marriage but they do it after 60 days since the date of marriage. To them applies an administrative sanction in the form of a fine of maximum Rp1,000,000 (one million rupiahs) as specified in Article 90 sub articles (1) and (2).

From this review on Indonesia’s applicable laws and regulation on marriage registration, the findings are as follows:

First: There are differences in the terminological understanding. Among legal experts, some believe that “*sirri* marriage” and “private marriage” are not valid according to Islam, so these terms are not used to refer to marriages valid according to Islam yet unregistered by a Marriage Registry Official. For the latter, the preferred terms are “unregistered marriage” or “not registered marriage”. According to the author, the terms “*sirri* marriage” and “private marriage” should mean marriages that are not or not yet registered officially by a Marriage Registry Official at the Religious Affairs Office, regardless of whether they are valid according to Islam or not.

Second: Legal experts agree that marriage registration is necessary and important. The remaining dispute among them is about “whether or not marriage registration shall determine the validity of a marriage according to the state?” or in other words, “Does marriage registration grant legal force before the state, which consequently means that unregistered marriages shall be considered legally weak?” According to some experts, marriages registered by a Marriage Registry Official are valid and have legal force. Unregistered marriages, however, are not valid and lack legal force, and the agents shall be subjected to an administrative and/or criminal punishment. This is based on Law No. 22 of 1946 Article 3 sub article (1),

Government Regulation No. 9 of 1975 Article 45, and the ILC Article 6 sub article (2). This is the prevailing view in Indonesia until today. And according to other experts, including the author, registration should not determine whether a marriage is valid or not according to the state. A marriage's validity is determined by the bride's and the groom's own religion. Marriage registration is only the record of a marriage as an important event. So even without it, a marriage should remain valid in accordance with each of the couple's own religion, similar to birth or death (is a birth or death invalid unless registered?) This is based on Law No. 1 of 1974 Article 2 sub article (2), the General Explanation of Law No. 1 of 1974 number 4 letter b, and Law No. 23 of 2006 Article 36. In addition, the Indonesian Ulama Council (MUI) has issued Decree No. 10 of 2008:

- a. Private marriages are valid as long as they satisfy the pillars and requirements of marriage, but forbidden if it is harmful (*mudharat*).
- b. Marriages shall be officially registered at the authorized institution as a prevention against any harm (*mudharat*) (*saddan lidz-dzari'ah*).

Provision a shall be construed as meaning that private or unregistered marriages are valid as long as they satisfy the pillars and requirements of marriages, and allowed if there is no harm. Even if there is, such marriages should remain valid according to Islam—they are only unregistered or not yet registered. It does not necessarily make them legally invalid. Registration is not a marriage pillar or requirement, and the harms of not registering a marriage may be overcome by the process of *itsbat nikah* at the Religious Court.

Third: It is the same case about the punishment for anyone not registering their marriage at the authorized institution. According to some experts, anyone not registering their marriage is criminally punishable. Others, though, believe that such person shall be fined for committing an administrative violation by not registering their marriage. They should not be criminally punishable. In fact, considering their failure in registering their marriage a crime means rendering the religious law of marriage validity null and void. In conclusion, a marriage should stand if it is valid according to the bride's and the groom's religious belief regardless of its registration (Djubaedah, 2012: 230).

Causes and Reasons for Not Registering Marriage

The causes and reasons for why some Indonesians, of which majority are Muslims, decide not to officially register their marriage at the authorized institution are:

- People consider the only important thing about marriage is religious validity. Based on interviews, those who practice a *sirri* marriage and not register it at the authorized institution say that validity according to Islam is enough for their marriage. State recognition is not really important to them. Many are aware that registration is not a marriage pillar or requirement, so it does not determine the validity. They are willing to deal with the consequences later because they just need to get religiously married to avoid committing fornication or a domestic partnership, which is forbidden by Islam. So, rather than committing such sinful actions, they choose to enter into a *sirri* marriage.

- Official registration is thought to be too complicated. Some people practicing a *sirri* marriage consider the marriage administration process too complicated and difficult. Nowadays, everyone wants things quick and easy and they want to avoid anything inconvenient and troublesome. This is acceptable, yet reality

shows that nobody genuinely has this as a reason, especially if they need to rush the marriage because of some reason. When they want to get married easily, for example.

- The woman is already pregnant. Social intercourse among young people often goes too far and results in an extramarital pregnancy. If this is the case, religious regulations and state laws are no longer a consideration. A marriage ceremony needs to be set up as quickly as possible to cover for the embarrassment of an extramarital pregnancy or having a fatherless child, although such marriage may not be recognized by the religion or state. In fact, there have been cases where a premarital pregnancy is planned intentionally to force a marriage amidst other people's opposition.

- Polygamy. Many men want to practice polygamy but because the requirements are not easy, they marry for the second, third, or fourth time in secret without registering it to the Marriage Registry Official. Sometimes, it is also because their first wife does not permit them and will ask for a divorce if they insist. To keep their first family safe, they do it intentionally behind closed doors.

- Interreligious marriage. Interreligious marriage is one of the kinds of marriage unrecognized in Indonesia. The Religious Affairs Office does not marry a Muslim with someone of a different religion. However, interreligious couple who have fallen in love with one another and want to bring their relationship to the next level will seek a way. Many of them decide to have a *sirri* or secret marriage. Some tie the knot abroad and come back home to register their marriage at the Civil Registry Office.

- Underage marriage. Underage marriage is prohibited in Indonesia. Law No. 1 of 1974 on Marriage specifies the limits on marriageable ages, which is 16 years old for women and 19 years old for men. In some regions in the country, such as Indramayu, underage marriage has long been a custom. As such marriage is prohibited by the law, people do it secretly. They do not register their marriage at the Religious Affairs Office.

- Insufficient punishments. The punishments on those practicing a *sirri* or unregistered marriage cannot prevent people from doing it as they are not powerful enough to induce fear or worry. The punishments for not registering a marriage at the authorized institution are a mere fine of Rp50 (fifty rupiahs) as specified in Law No. 22 of 1946, or Rp7,500 (seven thousand five hundred rupiahs) according to Article 45 of Government Regulation No. 9 of 1975, or at maximum Rp1,000,000 (one million rupiahs) according to Law No. 23 of 2006.

Impacts and Consequences of Not Registering Marriage

Anyone practicing a *sirri* marriage and not registering their marriage at the authorized institution will face and have many legal problems, risks, and consequences of their choice. It will not only impact themselves, but also their spouse, children, and property.

- Slanders and suspicions. Secret and unregistered marriages will generate slanders and suspicions from neighbors and other people. This is understandable because the community is not aware. Although the marriage is valid according to their religion, because the couple did not serve dishes nor register it at the authorized institution, many people do not know about it and may be suspicious of them having a domestic partnership, which is not acceptable in our society. Likewise, if a couple is found in a hotel during a raid, they will not be able to prove the validity of their marriage.

- Not recognized by the state. The most serious impact of unregistered marriage comes from the fact that it is not unrecognized by the state. This is because

the state sees such marriage as non-existent and therefore invalid and legally powerless. As a consequence, the agents and everyone involved may have a problem. For the husband, for example, his civil rights are not acknowledged by the state. He will not have the right to his portion of the marriage's joint property in case of a divorce neither the right to his wife's inheritance in case of death. The wife's situation may be worse as her civil rights are not acknowledged and neither is her legal status as a wife. She will not have the rights to financial support from her husband, to her portion of the marriage's joint property in case of a separation, and to her husband's inheritance in case of death. Their child will also miss their civil rights. Considered an extramarital child, they will not be legally recognized as a child, not have a legal relationship with their father, and only have a civil relationship with their mother and her family.

- Status as a secret wife and an extramarital child. Another consequence of not registering a marriage is that the woman may be considered a secret wife, and the child an extramarital child. This, of course, will have a very significant impact on the social and psychological aspects of the wife and the child's lives. Our society still only respects a marriage that is valid according to religion and registered at the authorized government institution, i.e. the Religious Affairs Office for Muslims.

- Prone to conflicts. Unregistered marriages are prone to conflicts and disputes. The couple's sense of responsibility to preserve the marriage and their household harmony is weak as only a few people are aware of their relationship. It is no wonder that even a small dispute in such household may grow and result in a divorce. This is not the case with recognized and publicly-known marriages. The couple will be embarrassed to have an argument, let alone going for a divorce.

- Disorder and confusion in household administration. When too many people commit *sirri* and unregistered marriages, there will be disorder and confusion in the administration by the state. Though hypothetical, it will certainly be harmful to the community in general. Disputes related to divorce, guardianship, family lineage, financial support, inheritance, and so on will arise and the state will have a difficult time settling them properly.

Efforts to Discourage *Sirri* Marriage and Promote Marriage Registration

There need to be serious efforts from all parties, especially the government, to discourage *sirri* marriage while at the same time urging people to register their marriage at the authorized state institution, i.e. the Religious Affairs Office for Muslims. Some of the efforts are as follows:

1. Raising awareness of marriage registration. People need to be provided with sufficient information on the obligation and benefits of registering their marriage at the authorized institution. At the same time, they need to be shown the risks and harms that come with *sirri* marriage by means of talks, preaching, legal education, as well as continuous and systematic seminars. Social media like Facebook, Instagram, and WhatsApp may also be used to raise awareness of the urgency of marriage registration.

2. Educating students. Students at schools and universities need to be educated on marriage, especially on the obligation and importance of registering a marriage at the authorized institution. This education is essential for young people to learn about the matter and use it as a guidance in the future.

3. Simplifying the administrative process of marriage and the *itsbat nikah*. The nuptial administrative process should be simplified. For example, providing good facilities and service in every subdistrict, charging a minimum fee for marriage

administration, and if necessary, facilitating a mass wedding free of charge for poor people. This effort should include *itsbat nikah*, which needs to be made easier so those who have not registered their marriage will have a solution to their issue.

4. Imposing heavier punishment. The government needs to impose heavier punishment for anyone failing to register their marriage at the authorized institution. The purpose is to give them a lesson and also to prevent others from doing the same. Even so, the punishment should not take the form of a criminal kind but rather, a fine as the violation is administrative in nature. Furthermore, if a person's marriage is valid according to Islam, imposing a criminal punishment on them would mean annulling the Islamic law.

Conclusion

Marriage registration is important and necessary to regulate marriages in Indonesia. However, registration should not determine whether a marriage is valid or not because it is not a basic principle or requirement of matrimony. And based on the understanding of *Siyasah Syar'iyah*, Islam allows a government to require marriage registration if it is beneficial or good for the community, and if it can help avoid any form of oppression, damage, and risk.

Indonesia has had a set of regulations in place on marriage registration, but there is still an issue about whether it should determine the validity of a marriage. Those committing an unregistered marriage, whatever the reason or the cause may be, should not be subjected to criminal prosecution, as otherwise, it would be as if annulling the Islamic law or deeming it invalid. It should be sufficient to fine them for violating an administrative regulation. Efforts by all parties are needed to discourage *sirri* marriage and at the same time to promote marriage registration.

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