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Legal Protection of Siri Wives Who Have Not Been Registered at the Dukcapil

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Abstract: A siri marriage is a marriage carried out in accordance with Islamic law, but not officially recorded at the Office of Religious Affairs (KUA) or other government institutions. In other words, this marriage is valid religiously, but not recognized by state law. Siri marriages that are not registered in Dukcapil place wives in a vulnerable position to legal injustice. This research aims to find out and examine the legal protection for Siri wives who have not been registered in Dukcapil. This research is a type of normative legal research. This research uses a statutory approach, this research also uses secondary and primary data so that the research results prove that it is based on law. This research shows that a form of legal protection for unregistered wives can actually be included in one family but only records that the marriage has occurred. And in the KK there will be written the statement "marriage has not been registered"

Keyword: Siri marriage, Legal Protection, Wife.

INTRODUCTION

Marriage is a physical and mental bond between a man and a woman that is written in a strong institution and is accepted both religiously and legally. Normatively, many encourage someone to get married, namely to create a happy and peaceful family. In connection with marital status, the Qur'an also mentions in Surah An-Nisa 4:21, that marriage is a "mitsaaqan galidhan", namely a very strong agreement. The agreement begins to be recognized after the utterance of an agreement in the form of ijab and qabul (Widodo & Fitria, 2010). Every marriage is not only based on biological needs between a man and a woman that are recognized as legitimate but as an implementer of the process of human nature. Meanwhile, marriage is also based on worship, which means that from a religious perspective, it is also the main basis for household life by implementing faith and devotion to Allah. The origin of the definition of marriage is faith, Islam, and ikhlas (Djamali, 2002). Given the importance of the issue of marriage, the ins and outs of marriage have been regulated so that both in state law, religion, and community norms. In Law No. 1 of 1974 concerning Marriage which states that the purpose of Marriage is a Happy and Lasting Household Based on God Almighty (Wikisumber, 1974). This goal explains that

marriage is not only a legal act, but also a religious act, so that whether or not a marriage is valid must be based on the laws of each religion and belief adopted by the Indonesian people. Furthermore, Article 2 Paragraph (2) of Law No. 1 of 1974 explains that “Every marriage is recorded according to the provisions of the applicable laws and regulations.” The recording of each marriage is the same as the recording of important experiences in a person's life, for example, births, deaths which are stated in certificates, a deeds which are also included in the list of records (Syarifuddin, 2011).

The purpose of marriage registration is so that the validity of marriage has legal force, so it does not determine the validity of a marriage. The parties to a marriage must fulfill certain requirements, both material and formal requirements (Mahdi et al., 2005). Material requirements are requirements that concern the personalities of prospective husbands and wives, while formal requirements are requirements relating to the formalities or procedures that must be followed by prospective husbands and wife both before and during the marriage (Mahdi et al., 2005).

The phenomenon that occurs today is that many marriages are carried out by Siri, siri marriage is also called underhand marriage. Siri marriage is sufficient with the presence of a guardian of the bride, ijab-qabul, dowry, and two male witnesses and does not need to involve officers from the local Religious Affairs Office. Nikah Siri is usually carried out because both parties are not ready to formalize or enliven it with a reception. In addition, the usual reason is to keep from falling into things that are prohibited by religion (Irfan, 2007).

Regardless of whether it is legal or not, sociologically, underage marriage is a social phenomenon in Indonesia and is needed by the community, and it is difficult to avoid considering the diversity (plurality) within the Indonesian nation itself in terms of ethnicity, race, socio-culture, and religion (Irfan, 2007). In addition, it is the result of the recognition of Pancasila and the 1945 Constitution, in which human rights are recognized, including the freedom to form a family (Online, n.d.), Freedom to obtain fair treatment, guarantees, protection, and legal certainty as well as equal treatment before the law, and freedom of religion (Dewi Rukmini, 2023).

METHOD

This study uses a normative method, which prioritizes secondary data in the form of primary legal materials derived from laws and regulations related to the research studied, and also uses literature studies related to the study of Legal Protection of Siri wives who have not been recorded in dukcapil (Soekanto, 2007). Normative legal studies are often referred to as doctrinal research, whose objects are legislative documents and library materials. This study also uses a statute approach and a conceptual approach (Marzuki, 2011). The types and sources of legal materials used are primary legal materials and secondary legal materials obtained through literature studies. The analysis method applies grammatical, systematic, and restrictive interpretation.

Grammatical interpretation is an interpretation in terms of grammar where the provisions contained in the laws and regulations are interpreted by referring to the meaning of words according to grammar (Taqiuddin, 2019). Systematic interpretation is an interpretation carried out by reviewing the structure in relation to other articles, both in the same law and with other laws. Restrictive interpretation is an interpretation carried out by narrowing the meaning of words contained in a statutory regulation (Abdillah et al., 2021).

RESULTS AND DISCUSSION

Legal Status of Step Wives Who Have Not Been Recorded in Dukcapil

a. Siri Marriage in the Perspective of National Law

In terms of the prevailing laws and regulations in Indonesia, an unregistered marriage is a marriage that is not carried out in accordance with the provisions of the prevailing laws and regulations. In the provisions of Article 2 Paragraphs (1) and (2) of Law Number 1 of 1974, KHI Articles 4 and 5 Paragraphs (1) and (2), a marriage, in addition to being carried out legally according to religious law, must also be recorded by an authorized official. Thus, in the perspective of legislation, *nikah sirri* is a marriage that has no legal force (Ridwan, 2014).

Marriages that do not have legal force have a juridical impact on the rights of public services by the authorized agencies for the perpetrators. They do not receive legal protection and services from the competent authorities as they should. Their marriage is not recognized in the civil registry, their children cannot obtain birth certificates, and so on. In other words, *Siri* marriages bring many *madharat* into the life of society, nation, and state. Meanwhile, registering a marriage brings more benefits to society and the nation. The law stipulates that every marriage must be performed before an official and recorded in the register provided for that purpose. The necessity to be carried out before an official and recorded is intended to create order and legal certainty, so that every citizen who enters into a marriage, apart from being legal in Islamic law, also receives the protection of state law. Marriage is the beginning of the formation of the smallest family unit of a large Indonesian nation. Therefore, strengthening the legal rules of marriage is a necessity for the Indonesian nation.

Siri marriage is actually only given for marriages that are not recorded, but fulfill the pillars and conditions based on the laws of each religion and belief. There are some people who consider *Siri* marriages to be invalid, but on the other hand, some consider them to be valid marriages. Until now, at the level of thought, the issue of *Siri* marriage is disputed by people, including scholars, regarding its legal status. There are those who forbid it, which means they consider it illegal, but there are also those who legalize it, which means they consider it legal. Those who consider *Siri* marriages to be illegitimate say that these marriages are not blessed and escape the protection of marriage law (Prawirohamidjojo, 1986). However, those who consider it legal argue that Article 2 paragraph (1) of Law No. 1/1974 stipulates that a marriage is valid if it is conducted according to the laws of each religion and belief, not because it is recorded.

When referring to Law No. 1/1974 as the mother law of Indonesia's national family law, marriage registration is mentioned in Article 2 paragraph (2), which reads that "every marriage is recorded according to the applicable laws and regulations". Unlike Article 2 paragraph (1), Article 2 paragraph (2) does not give an explanation and annotation of "clear" which indicates its meaning is clear by the legislator. This indicates two things: firstly, that the meaning of this article is unclear; secondly, that there is doubt amongst the legislators as to whether or not marriage registration is mandatory. Thus, Article 2 paragraph (2) does not have legal consequences for marriage registration. In law, a new clause can be seen as a legal norm that can give legal consequences to legal action if it contains the words obligatory/must, prohibited/must not, or may. Article 2 paragraph (2), on the other hand, does not contain any of these words. Therefore, it is not an unlawful act for a couple to enter into an underhand marriage.

b. *Siri* Marriage in the Perspective of Islamic Law

The law of *Siri* marriage in Islam is valid or legal and is legalized or allowed if the conditions and pillars of marriage are fulfilled when *Siri* marriage is held. The pillars of marriage are: (1) There is a bride and groom, (2) There is a guardian, (3) There are witnesses to the marriage, (4) There is a dowry or *mascawin*, (5) There is an *ijab kabul* or contract (Ramulyo, 2006).

Based on Islamic law, *Siri* marriage is valid if (there is a guardian, witnesses, *ijab qabul*, and dowry) (Miftah, 1999). In the Compilation of Islamic Law Article 2 Paragraph 1, it is explained that a marriage is valid if it is carried out according to the laws of each religion and belief. This means that if a marriage has fulfilled the conditions and pillars of marriage or *ijab kabul* has

been carried out (for Muslims), then the marriage is valid, especially in the eyes of Islam and the beliefs of the community. According to the authentic explanation of this article, no marriage can be performed outside the law of each religion and belief in accordance with the 1945 Constitution. Because the law determines the validity of a marriage based on or based on the laws of each religion and belief, this means that for people who are Muslims, the marriage is carried out according to Islamic religious law, while for people of religions other than Islam, it is according to the laws of religions other than Islam as well. But the validity of this marriage in the eyes of Islam and the beliefs of the community needs to be legalized again by the state, which in this case the provisions are contained in Article 2 Paragraph 2 of the Marriage Law, concerning marriage registration. For those who marry according to Islam, registration is carried out at the KUA to obtain a Marriage Certificate as proof of the existence of the marriage. (Article 7 paragraph 1 of the Compilation of Islamic Law (KHI) “marriage can only be proven by a Marriage Certificate made by a Marriage Registration Officer”) (Ramulyo, 2006). Regarding marriage registration, it is explained in Chapter II Article 2 of Government Regulation No. 9 of 1975 concerning marriage registration. For those who perform marriage according to Islam, the registration is carried out at the KUA. Every person who intends to enter into a marriage notifies the orally or in writing of his or her marriage plan to the registrar at the place where the marriage will take place, no later than 10 working days before the marriage takes place. Then the registrar examines whether the conditions for marriage have been fulfilled and whether there are no obstacles. Then, after the procedures and requirements for notification have been fulfilled and no obstacle to marriage is found, the registrar's employee announces and signs an announcement about the notification of the intention to marry by attaching the announcement letter to a place that has been determined and is easily read by the public. Thus, the legal position of religion is a positive law in Indonesia in the field of marriage and therefore must be implemented.

Meanwhile, in the Compilation of Islamic Law (KHI) Article 3 states that the purpose of holding a marriage is to create a family life that is *sakinah*, *mawaddah*, and *rahmah*. This goal requires that a marriage must provide certainty, guarantee, and protection in forming a harmonious family. Marriage requirements are regulated according to Law Number 1 of 1974 concerning Marriage. First, marriage is carried out with the consent of the prospective spouses. Second, the marriage is carried out based on their respective beliefs and customs as long as it does not conflict with the law. Third, the marriage must also be approved by both parents of the prospective spouses. Fourthly, if one of the parents dies it is sufficient to seek the consent of the surviving parent. Fifth, if both parents are dead, consent can be sought through the guardian who manages it. Furthermore, related to the marriage procedure itself is contained in Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage in Chapter III Article 10 letter b which reads: Marriage procedures are carried out according to the laws of each religion and belief and letter c which reads: By observing the procedures for marriage according to each religious law and belief, the marriage is carried out in front of a Recording Officer and attended by two witnesses (Nomor, 1 C.E.). Meanwhile, the Indonesian fatwa institution, the Indonesian Ulema Council (MUI) issued a fatwa on underhand marriage or *Siri* marriage, namely:

“Fatwa of the Indonesian Ulema Council (MUI) Number 10 of 2008 on Underhand Marriage decides and stipulates general provisions and special provisions. According to the general provisions, the *Kawin Di Bawah Tangan* referred to in this fatwa is “a marriage that fulfills all the pillars and conditions stipulated in *fiqh* (Islamic law) but without official registration at the authorized agency as regulated in the legislation.

Meanwhile, based on special provisions, underhand marriage is legal because the conditions and pillars of marriage are fulfilled, but it is *haram* if there is *madharrah*, and marriage must be

officially registered with the authorized agency, as a preventive measure to reject negative impacts / madharra (Indonesia, 2011).

Based on the explanation above, the legal status of recording marriage events in Islamic law is not regulated. Something whose law is not regulated cannot know its status. This shows that marriage registration is not urgent according to Islamic law. Therefore, a husband and wife who do not register their marriage are not in a state of breaking the law. Thus, what is meant by Article 2 paragraph (1) of Law No. 1/1974 that there is no marriage outside the law of each religion and belief, is related to the scope of the pillars and legal conditions of marriage only, not marriage registration. From this, it can be concluded that underhand marriage according to Islamic law is a justified or legal marriage.

Legal Protection for Step Wives Who Have Not Been Recorded in Dukcapil

Indonesia as a state of law provides protection to Indonesian citizens based on the 1945 Constitution of the Republic of Indonesia. Human rights are one of the protections that should be upheld in order to provide welfare and legal certainty, this is contained in Article 28 A to Article 28 J of the 1945 Constitution of the Republic of Indonesia. Every Indonesian citizen also has the opportunity to continue life by building a household and having offspring. Every Indonesian citizen has the opportunity to also continue life by building a household and having offspring. The survival given by society to be able to marry is as in Article 28 B paragraph 9 (1) of the 1945 Constitution and according to Islamic law, marriage is an act of worship, so the protection of Muslims in carrying out worship through the implementation of marriage. Marriage is the order of community life. Marriage is carried out based on the religion and beliefs of each and in Islamic law marriage is one of the most widely applied aspects by Muslims throughout the world compared to the laws of muamalah (Anderson, 1994).

Based on the legal regulation of marriage in Indonesia, it appears that there is a close relationship between marriage and religion. Religion has a very strong role in the formation of households. From the perspective of fiqh, this Siri marriage is a valid marriage because all the pillars and conditions stipulated by fiqh are fulfilled, it's just that this marriage is not officially recorded at the authorized agency according to our positive law. Siri marriage or what is sometimes also called a marriage that is carried out under the hand means that the marriage is still validly carried out properly according to the pillars and conditions that have been determined according to Islamic law, it's just that in its later implementation the marriage was not registered or recorded at the KUA (Setiawan, 2016). The definition of Siri marriage itself is very diverse from the point of view of each science. The classification Siri marriages known in the community are sorted into 3 (three) categories, namely Siri marriages whose implementation is carried out by kiai or community leaders, marriages whose implementation is not registered at the religious affairs office (KUA), or the marriage contract is not under the supervision of recording officers from the KUA, and Siri marriages between a man and a woman who carry out the contract themselves by their guardian (Munir, 2006). There is also a view that Siri can be considered positive as long as the man does not have a wife, but if he does have a wife then this will have an impact on his wife and children. The issue of nikah siri is one of the issues that is hotly discussed in various perspectives. This is because of the many problems that arise after the marriage occurs. The problems faced are related to juridical issues and administrative issues related to population registration. The juridical issues relate to the validity of Siri marriages in the eyes of the state. After previously being discussed because of the discourse of criminalizing the perpetrators, Siri marriage was again discussed because of a policy issued by the government contained in the Regulation of the Minister of Home Affairs, namely related to the permissibility of recording Siri marriages in family cards which are also known from the remarks of the Director General of Population and Civil Registration of the

Ministry of Home Affairs, as follows: "Those who are married Siri can be included in one KK. We from Dukcapil do not marry, but only record that a marriage has occurred."

Meanwhile, many people still perform Siri marriages, which implies that they do not make birth certificates. Permendagri Number 109/2019 aims to protect wives and their children to have legal certainty. Dukcapil does not record marriages and does not legalize marriages. Dukcapil only records who has a Siri marriage and who has a registered marriage, then the data is included in the family card, registered marriage, and unregistered marriage.

The enactment of Permendagri Number 109 of 2019 certainly contradicts Law Number 1 of 1974 concerning Marriage which has drawn pros and cons in various circles. The reason is, in Article 2 Paragraph (2) of Law Number 1 of 1974 concerning Marriage. And in Article 5 paragraph (2) letter b Permendagri Number 109 of 2019 states that:

"Form of declaration of absolute responsibility for unregistered marriage/divorce as one of the requirements for the inclusion of marital/divorce status in the family card for residents who do not have marriage documents in the form of a marriage book, marriage certificate or divorce certificate" (Peraturan, 2019).

The granting of access to couples who conduct Siri marriages to be able to make a Family Card provides more opportunities for couples who conduct their marriages without going through the Marriage Registration Officer (PPN) and the Office of Religious Affairs (KUA). The community will consider the urgency of marriage registration no longer important because the Minister of Home Affairs regulation has facilitated access to all available civil registration services even without marriage registration. SPTJM is also considered to usurp the authority of the judiciary in matters of determining siri marriages (isbat). This. Only with SPTJM capital can citizens claim legal marital status without having to go through a court decision.

Marriage also needs to be recorded for the sake of order and legal certainty of the parties to the marriage. Marriage registration is an effort regulated through legislation for the purpose of orderly administration, transparency, and legal certainty in the implementation of marriage (Meliannadya, 2020).

The status of a registered marriage is reserved for couples who already have a marriage certificate or marriage certificate. Meanwhile, for couples who do nikah siri, the status is written: "not yet recorded". With only SPTJM and KTP, Siri marriage couples can already be recorded on the Family Card. However, juridically, this "unrecorded" marriage still has no force in the eyes of the law. So that this cannot be used as a foothold in obtaining legal certainty for justice seekers. With the registration of Siri marriages on the Family Card, it can be said that this is not in line with the principles of the Marriage Law as well as degrading the authority of the marriage registration institution. The recording of a Siri marriage on the Family Card can weaken the integrity of a legal marriage under state law.

Meanwhile, the registration service for Siri marriages to obtain a family card is a new finding facilitated by Dukcapil. Of course, Dukcapil did this one of them following the order of the Constitutional Court decision No. 46 / PUU VII / 2010. This decision illustrates one of the solutions that children can be linked to their parents if this marriage is truly proven to be religiously married. In addition, Dukcapil is also carrying out the orders of Law No. 23/2006 amending Law No.24/2013 on the Right to Order in the National Population Administration. The state essentially provides protection and recognition of the determination of personal status and legal status for all important events experienced by every resident and citizen of the country. That is the basis or solution for the dukcapil to provide family cards.

Furthermore, in making a KK, couples who marry Siri must also complete the steps that apply to :

1. Presidential Regulation No. 96/2018 on Requirements and Procedures for Population Registration and Civil Registration and its implementing regulation (Permendagri No. 108/2019).

2. Permendagri No. 109 of 2019 on Forms and Books Used in Population Administration in Population Administration.

For wives who are married Siri, administratively, although the family card contains a statement that the marriage has not been recorded, the identity card contains a married status. This will be a problem in itself when the husband later loses responsibility and when the wife wants to marry another man. There are two things that need to be observed here, namely related to isbat nikah and a letter of absolute responsibility for unregistered divorce. To change marital status, it must be based on strong evidence documents, in this Siri marriage, it must be formalized through isbat first so that the marriage becomes an official marriage according to the law. There are other problems when going for Isbat, the Siri husband disappears in the sense that he cannot be contacted and does not know where he is. Although in religious law when during the marriage period there are quarrels and the husband divorces his wife three times, it can be considered that the marriage has ended, but in state law, it is not considered a divorce. As stated in Article 115 of the Compilation of Islamic Law states that "Divorce can only be carried out in front of a religious court session after the religious court has tried and failed to reconcile the two parties". Thus, according to KHI, divorce that is carried out outside of a religious court session, even if it is done more than three times, is considered invalid (Utama et al., 2023). The form of legal protection against Siri marriage can be done by conducting isbat nikah so that with the court's decision related to marriages that have occurred Siri, marriage registration can then be carried out and from the determination, it then becomes the basis for issuing a marriage book. The Siri marriage that has been recorded with legal efforts becomes legal paying for the rights arising so that it can minimize the occurrence of problems in fulfilling the rights between husband and wife as well as the rights of children born from marriage.

CONCLUSION

Marriage is one of the most important parts of the human life cycle, where two people of different genders are brought together with the conditions and laws that apply for the same purpose, namely to form a family for an unlimited period of time and apply for life. As legal protections for siri marriages that have been carried out, to obtain marriage documents, you must apply for marriage isbat at the local religious court and for population documents, with the existence of Permendagri No. 108 of 2019 concerning Regulations on the Implementation of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, siri marriages can be processed in the family card with a record that the marital status has not been recorded. The legal status of Siri marriage, both in terms of religion and legislation, is a marriage that is permitted/legal according to Indonesian national law so that it is binding on the parties to it and has legal consequences for the children and property of the marriage. Meanwhile, in Permendagri Number 109 of 2019, a married couple whose marriage is not recorded or does not have a marriage book can also register their marriage at dukcapil by signing a SPTJM (Letter of Absolute Responsibility) and can issue a Family Card stating that they are husband and wife / unrecorded marriage and also in the Identity Card (KTP) with married status.

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