

Dualism and Unworthy Legal Practice: The Marginalization of Women's Rights in Sirri and Early Marriages

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Abstract: Marriage is a constitutional right of Indonesian citizens, but not all marriages end in favour to women. From a legal and normative standpoint, this study examines how sirri and early marriage marginalize women. This article is library research. Datas were collected by conducting study of primary and secondary legal materials. The findings of this study demonstrate that sirri marriage is manifestly ineffective and contrary to the Indonesian Marriage Law. Women in sirri marriages do not have proper inheritance rights because sirri marriages are not recognized by state law, despite the fact that they are valid under religious law. In a similar vein, it appears that women's rights are not guaranteed in early marriage because couples in general lack the capacity and maturity to manage rights, obligations, and roles within the household; even early marriage appears to be "forced."

Keywords: *Sirri marriage; early marriage; marginalization of women's rights.*

Abstrak: Pernikahan merupakan hak konstitusional warga negara Indonesia. Akan tetapi, tidak semua pernikahan, baik praktik maupun aturan hukumnya menguntungkan bagi semua pihak, terutama bagi perempuan. Artikel ini mengkaji marginalisasi perempuan dalam kasus nikah sirri dan nikah dini dengan perspektif yuridis-normatif. Data-data dikumpulkan dari bahan hukum primer dan sekunder. Hasil dari penelitian ini menunjukkan bahwa pernikahan sirri jelas tidak efektif dan cukup menyimpang dari ketentuan Undang-undang Perkawinan Indonesia. Kaum perempuan dalam pernikahan sirri tidak diuntungkan dalam pembagian harta warisan karena pernikahan mereka tidak dikuatkan dengan akta nikah, walaupun pernikahan tersebut dinilai sah menurut hukum agama. Hal yang sama juga terjadi pada pernikahan dini karena hak-hak perempuan pada

kenyataannya tidak terjamin. Hal ini disebabkan para pasangan dalam pernikahan dini, umumnya, belum memiliki kapasitas dan kedewasaan yang cukup dalam manajemen hak, kewajiban, dan peran dalam rumah tangga. Pernikahan dini bahkan terkesan sebagai pernikahan yang “dipaksakan”.

Kata kunci: *pernikahan sirri; pernikahan dini; marginalisasi hak perempuan.*

Introduction

According to Murniati, the term "marginalization" refers to placing or shifting to the margins.¹ Meanwhile, according to Fitra, marginalization is a process of neglecting the rights that should be obtained by marginalized parties.² Furthermore, according to Suhada, the marginalization process is the same as the term impoverishment or being impoverished. This is because those who are left behind or marginalized do not have the opportunity to develop. The same thing also happens to women when this process of marginalization occurs in gender relations. Women are at a disadvantage compared to men in this gender inequality.³ For example, the wage gap between men and women is treated differently because women workers are only considered to add to their family income.

According to Yuarsi, the lowest position and wages are often experienced by most women in work, even though in terms of education and ability women are not inferior to men.⁴ This is because according to sociologists the view that men are more flexible in various ways than women is considered unproductive. If women need maternity and maternity leave, and also women are rarely able to work overtime because of the double burden of taking care of their family

¹ Murniati, *Getar Gender (Perempuan Indonesia Dalam Perspektif Sosial, Politik, Ekonomi, Hukum Dan HAM)* (Magelang: Indonesiatera, 2004).

² Fitra Pebrianti, "Implementation of Gender Equality in Sumpang Binangae Sub-District, Barru District," *Meraja Journal* 4, no. 2 (2021), pp. 103–20.

³ Djilzaran Nurul Suhada, "Feminisme Dalam Dinamika Perjuangan Gender Di Indonesia," *Indonesian Journal of Sociology, Education, and Development* 3, no. 1 (2021), pp. 15–27.

⁴ Yuarsi, *Wanita Dan Akar Ketimpangan Gender* (Yogyakarta: Pustaka Pelajar, 2006).

at home, this is not the case for men.⁵ Women are often treated unfairly not only at work but also in their families in the form of discrimination by male relatives against women. As a result, women's families do not have the same rights as men in making family decisions.⁶ Therefore, the head of the family has absolute power over the lives of his wife and children as well as the status and authority of his family. If someone dies or dies, the son will immediately replace the father, even though the daughter has a high position in the household.

The lower the female education level, the higher the male status. This is demonstrated when there is a financial crisis in the family. In this situation, boys have priority over girls for tertiary education. Girls devote more energy to assisting with family issues.⁷ This is due to the belief that in patriarchal societies, sons replace the head of the family and are the breadwinners, whereas upon marriage, women become housewives. Family life is hampered by the social belief that women are superior to men at performing housework rather than working outside. If the wife works to take care of all household duties, she can continue to financially support her husband in accordance with his wishes.⁸ A woman whose husband has deserted her lacks the resources to continue her life, including providing for her children.

Regarding the marginalization of women, unregistered marriages constitute a legal form of marginalization. The registration of marriages is a legal requirement, and unregistered sirri marriages create a chasm of inconsistency between Islamic religious law and

⁵ Tantimin Tantimin and Elizabeth Sinukaban, "Perlindungan Hukum Terhadap Hak Tenaga Kerja Perempuan Terkait Ketidaksetaraan Gender Di Indonesia," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 3 (2021), pp. 395–406.

⁶ Sifa Mulya Nurani, "Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)," *Al-Syakhsiyah: Journal of Law & Family Studies* 3, no. 1 (2021), pp. 98–116.

⁷ Rohmelawati Rohmelawati, "PERAN PEREMPUAN DALAM MENINGKATKAN SEKTOR EKONOMI KELUARGA (STUDI KASUS PETUGAS KEBERSIHAN JALAN PEREMPUAN)," *Magenta* 8, no. 2 (2020), pp. 93–110.

⁸ A Fatih Syuhud, *Merajut Rumah Tangga Babagia* (Pondok Pesantren Al-Khoiroh, 2014).

government policies, causing controversy. After performing the sirri ceremony, they agreed to keep their marriage a secret. This type of sirri marriage is invalid because it does not meet the requirements for the guardian and witness, and because the couple keeps their marriage a secret from both their partner and from society. In addition, in early marriages, the interests of the parents take precedence over those of the children. Under such conditions, children will be incapable of making independent decisions. Given that children need protection, this is ironic to the extreme. The functional distinction between women's and men's positions does not diminish their dignity.⁹

Fakih explained that the first manifestation of gender inequality is economic alienation, or poverty, as one of the multiple forms of injustice.¹⁰ Existing laws and regulations governing the role of spouses in the home have received scant attention from the current administration. Numerous advocates for women's rights have challenged the constitutionality of Marriage Law No. 1 of 1974, especially in regards to unregistered and early marriages.¹¹

A sirri marriage is a marriage that is not registered in Indonesia or as a state marriage administration under the supervision of a registration agency as registered by a marriage officer at the KUA.¹² This is because unregistered marriages are mentioned in Indonesia, both according to the provisions of fiqh and from a scientific point of view, of course, they do not include marriages that are illegitimate or unlawful because they are not registered with the religious bureau or the Office of Religious Affairs (KUA), despite the fact that the Islamic marriage requirements and pillars as determined by the fiqh

⁹ Anisa Dwi Makrufi, "Peran Wanita Karir Dalam Pendidikan Islam Di Era Digital," *Vicratina: Jurnal Ilmiah Keagamaan* 2, no. 2 (2018), pp. 10–25.

¹⁰ Samsidar Samsidar, "Peran Ganda Wanita Dalam Rumah Tangga," *AN-NISA: Jurnal Studi Gender Dan Anak* 12, no. 2 (2020), pp 655–63.

¹¹ Khaeron Sirin, *Perkawinan Mazhab Indonesia: Pergulatan Antara Negara, Agama, Dan Perempuan* (Yogyakarta: Deepublish, 2018).

¹² Roiko Frans Sianturi et al., "KEBIJAKAN HUKUM DALAM MELINDUNGI PEREMPUAN DARI PERZINAAN DAN PROBLEMATIKA NIKAH SIRRI," (2021), pp. 585–91.

experts of the classical scholars have been met or are sufficient.¹³ In Indonesia, however, the main issue of the problem of unregistered marriages is the debate over the registration of marriages as one of the requirements for a valid marriage. This debate is between Islamic law and domestic (national) law as government policy.

According to Al-Fatih et al., one of the causes of unregistered marriages is that the union has not attained physical, material, or psychological maturity.¹⁴ Meanwhile, according to Apriyanti, the number of cases of early or underage marriages in Indonesia continues to grow every year and is still phenomenal. In nearly every region of Indonesia, marriage at a young age is prevalent.¹⁵ The majority of women who choose to marry at a young age come from low socioeconomic backgrounds. In accordance with Nurhikmah et al., the family income of the respondent had a significant relationship with their age at marriage, according to the results of a survey conducted with a representative sample of respondents. With an OR value of 6.920, adolescents from low-income families are 6.920 times more likely to marry young than adolescents from high-income families. With a low income, economic factors can influence numerous aspects of human life. This factor often affects the Indonesian population, and apart from that, it is also a family factor that requires high living costs. Most parents choose to marry off their daughters early because they have many children, which are household needs that are claimed to add to the financial burden on the family.¹⁶

¹³ Asep Saepudin Jahar, Euis Nurlaelawati, dan Jaenal Aripin, *Hukum Keluarga, Pidana & Bisnis: Kajian Perundang-undangan Indonesia, Fikih dan Hubungan Internasional*, Cet. I (Jakarta: Kencana Prenadamedia Group, 2013).

¹⁴ Hari Sutra Disemadi, Sholahuddin Al-Fatih, and Mochammad Abizar Yusro, "Indonesian Children Protection against Commercial Sexual Exploitation through Siri Marriage Practices in Maqashid Al-Shariah Perspective," *Brawijaya Law Journal* 7, no. 2 (2020), pp. 195–212.

¹⁵ Dwi Anggun Apriyanti, "Perlindungan Perempuan Dan Pernikahan Di Bawah Umur," *PAMPAS: Journal of Criminal Law* 2, no. 1 (2021), pp. 115–24.

¹⁶ Sinta Herlinda, "EFFORTS TO PROTECT ADOLESCENTS IN EARLY MARRIAGE THROUGH THE GENERATION PLANNING PROGRAM MASLAHAH MURSALAH NAJAMUDDIN AL-THUFI THEORY PERSPECTIVE (STUDI BKKBN JAMBI PROVINCE)," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 6, no. 1 (2021), pp. 164–84.

Based on the importance of marriage, what must be considered besides the pillars and conditions of marriage according to Islamic law and national law? If this is not done, the marriage will not take place, and problems will arise. Of course, this is a contradiction because it is not in accordance with the purpose of marriage. Therefore, in relation to the problems above, it is interesting to study unregistered and early marriages more critically. With a study of normative juridical approaches in the Marginalization of Women from the Perspective of Islamic Family Law. This research method uses descriptive qualitative research with a normative juridical research approach. The purpose of this study aims to describe, examine and explain the research question, namely how is the marginalization of women against unregistered marriages and underage marriages in the perspective of Islamic family law?

The normative juridical approach differs from the developing empirical and normative perspectives in law. This approach is crucial because understanding the perspectives that develop in the law lays the groundwork for constructing legal arguments when solving legal problems. This study uses library research to collect primary data in the form of legal, secondary, and tertiary materials, which are then analyzed using data analysis techniques, and conclusions are drawn to determine the results and truth of this study.

Defining Sirri Marriage and Early Marriage: Legal Rules

The language term explains that the word nikah series comes from two words namely nikah and series. The word marriage comes from the Arabic language *an-nikah*, some say that marriage according to the terms of the science of fiqh uses the word marriage and the word *ṣawaj*.¹⁷ Literally, *nickh* comes from terms in *an-nikah* which mean *al-'uqd* (bonds or agreements that have been determined) and *al-wat'* (legal intercourse).¹⁸ The word marriage is often referred to as marriage, and the word marriage itself lexically comes from the word "marriage". This means the process of marriage between a man and a

¹⁷ Nur Ihdatul Musyarrafa and Subehan Khalik, "Batas Usia Pernikahan Dalam Islam; Analisis Ulama Mazhab Terhadap Batas Usia Nikah," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, (2020).

¹⁸ Sabarudin Ahmad, *Transformasi Hukum Pembuktian Perkawinan Dalam Islam* (Surabaya: Airlangga University Press, 2020).

woman becomes legal in religion and state. So the term marriage means the process of matchmaking of a man and a woman to become a legal and registered husband and wife.¹⁹ Thus the fiqh experts or fiqh scholars in the placement of the language agree in terms of the two meanings which are the original meaning. Some are looking *al-aqd* as the meaning of the original and *al-wat'* as the meaning of the metaphor.²⁰ In terms of language, an *an-nikah* is a marriage contract carried out by Muslims based on the pillars and conditions that have been determined according to Islamic law.²¹

The meaning of the word *said* in terms of the language of *sirri* marriage comes from Arabic, namely *sirrun* which means to hide or hide. Through this root word, unregistered marriage means a marriage that is kept secret, in contrast to legal and registered marriages in general, which are carried out openl.²² Therefore, with this basic word, *sirri* marriage is interpreted as a veiled or hidden marriage that is different from marriage in general. This means silently and secretly in the sense that it creates two meanings, namely marriages that are disclosed in secret and marriages that are not known to the public or not registered with a state institution or religious bureau (KUA). Meanwhile, in the elaboration of Islamic law, the opposite of the word *mystery* is *i'lan* (announcement). Ibn Faris mentions that words are made up of letters *blue* and *day* which are *fingers'* if they have various branches of meaning, all of which are combined into one meaning that refers to the term "to hide something".²³ Hence, a marriage *mystery* is a marriage that is not announced or communicated to the religious bureau.

Therefore, a legal and registered marriage is a sacred marriage that must be announced so that it is free from social slander. It is not the same as a *sirri* marriage because it is not announced and is done secretly. So that the term *sirri* prohibits being informed, namely, that it

¹⁹ Mahmud Huda and Siti Louis Layalif, "Nikah Siri Dalam Motif Santri Pondok Pesantren," *Jurnal Hukum Keluarga Islam* 6, no. 1 (2021), pp. 18–38.

²⁰ Abdur Rohman, "Seksual Dalam Al-Qur'an," *Jurnal Studi Ilmu-Ilmu Al-Qur'an Dan Hadis* 20, no. 1 (2019), pp. 105–25.

²¹ Happy Susanto, *Nikah Siri Apa Untungnya?* (Jakarta: Visimedia, 2007).

²² Susanto., p 22

²³ Novrizal Wendy, "Kajian Analisis Wacana," *TASAMUH: Jurnal Studi Islam* 12, no. 1 (2020), pp. 197–223.

is not mandatory or it is not recommended to the wider community, including close family. If, on the contrary, a marriage registered at the Office of Religious Affairs (KUA) is legally religious, it means that the marriage must be announced to the wider community as an obligation or necessity. However, if it is interpreted as a suggestion, it means that it is not obligatory.²⁴ That is, announcing a marriage is not a religious obligation but a necessity to inform the public so as not to cause slander.

According to scholars, unregistered marriage is a form of marriage that is prohibited by Islam because it is believed to ignore the pillars of marriage and the conditions of marriage. Unregistered marriage does not present valid witnesses, so it cannot be legally registered as regulated in statutory regulations.²⁵ According to *fiqh* scholars, *sirri* marriage, which means clandestinely, is considered by some Maliki scholars as an act carried out in front of witnesses, but the witness is asked not to inform the public about holding an unregistered marriage which is considered valid, so it is called a secret marriage.²⁶ According to the Islamic Law Compilation (KHI) in Article 7 Paragraph 2, "If the marriage certificate cannot prove marriage, then the marriage certificate can be submitted to the Inquisition (Religious Court)." The Compilation of Islamic Law states that unregistered marriage is an illegal marriage. Here it becomes clear how the existing rule of law differs from the social understanding of society.²⁷

On the contrary, according to Law Number 1 of 1974, in Article 2 paragraphs 1 and 2 state that "Marriage is only valid if it is carried out on the basis of religion or belief and is registered according to the applicable registration rules." Also Government Regulation No. 9 of 1975, in Article 2 paragraph 1 and paragraph 2, Muslims must register with the Religious Affairs Office and non-

²⁴ Vivi Kurniawati, *Nikah Siri* (Jakarta: Lentera Islam, 2019).

²⁵ Rizem Aizid, *Fiqh Keluarga Terlengkap* (Jakarta: LAKSANA, 2018).

²⁶ Masykurotus Syarifah and Nur Jamal, "LEGISLASI SISTEM NIKAH SIRRI," *Jurnal Yustitia* 20, no. 1 (2019).

²⁷ Kharisudin Kharisudin, "Nikah Siri Dalam Perspektif Kompilasi Hukum Islam Dan Undang-Undang Perkawinan Indonesia," *Perspektif* 26, no. 1 (2021), pp. 48–56.

Muslims must register with the Civil Registry Office.²⁸ So, it is clear here that according to the perspective of Islamic family law and Indonesian Marriage Law, marriage outside of marriage is unlawful because it violates and is not following the existing laws and regulations in Indonesia. Islamic law has made it clear that marriage was enacted long before there was a regulation requiring approval for the registration of marriage certificates, making it difficult to stem the tide of unregistered marriages which have caused problems in society. In fact, in this case, questions regarding the rights of women and children often become fundamental questions in society.

Socio-Legal Consequences of *Sirri* Marriage and Early Marriage for Women

Women have legal consequences. For example, if a woman divorces or separates from an undeclared marriage, the woman cannot claim her share of the undeclared marriage, because there is no proof of marriage. Likewise, a child from an unregistered marriage cannot claim inheritance rights from his parents (father) because there is no valid evidence that he is the heir of his parents. This is because the marriage of the parents cannot be proven from the registration of the marriage. What should be the law says that marriage must be legal from religion and registered in the state. Therefore, if you continue to carry out unregistered marriages, it will cause great losses to the couple, especially women, of course, will not be able to achieve the main goal of the marriage which is *Sakinah, mawaddah wa rahmah*. So, the best marriage is one that fulfills the principles and conditions of marriage related to the law that governs religion and the country. With the reason to make good in the household and will be a harmonious family.

Furthermore, in the social life of the Indonesian people, it is still a problem among the community, especially young people, one of which is early marriage or marriage that is not sufficient to the age determined by law, which is commonplace in Indonesian society.²⁹ Psychologically, child marriage is very worrying. Because marriage

²⁸ Aisyah Arsyad, *Polemik Nikah Siri: Dualisme Hukum Memapankan Sistem Patriarki* (Yogyakarta: Pustaka Insan Madani, 2017).

²⁹ Rima Wirenviona, Istri Dalem, and Cinthya Riris, *Edukasi Kesehatan Reproduksi Remaja* (Surabaya: Airlangga University Press, 2020).

takes place at a vulnerable age under 19 years, the preparation is not optimal materially, mentally, or psychologically. Therefore, the Amendment to the Marriage Law focuses on changing the minimum age for marriage for women to 19 years. Because the stipulation of the previous marriage age limit of 16 years is not in sync with the provisions in the Child Protection Act which states that a child is someone who is not yet 18 years old.³⁰ Even though it is sufficient from an economic point of view, marriage requires adequate maturity and mental preparation, but there is no guarantee that a person will be responsible for his family.

Marriage is a long act of worship and must be matured by the couple both physically, biologically, economically, and most importantly, through faith, because faith is self-defense in order to avoid conflict in the household because people who believe must be afraid of Allah SWT. A good marriage is one that is not flawed from a legal point of view, whether recognized according to religious law or state law. According to religious law, marriages must meet the requirements and be harmonious, while under the law of this country, marriages must be recorded according to the regulations that apply to the registration of marriages. Marriage requires maturity and spiritual motivation from both men and women to become husband and wife, not only because of their biological distribution but also to create a harmonious, happy family so that they become *sakinah, Mawaddah warahmah*.³¹ The high number of divorces in Indonesia is caused by the inability of husband and wife to resolve conflict problems in the household properly. This is what makes it one of the entry points for the government's consideration of setting a minimum age limit for marriage for women and men in Indonesia.

According to existing Indonesian laws and regulations, the age of marriage for men and women is 19 years after the revision of the Marriage Law. Based on Article 7 Paragraph 1, there was a change in Law Number 1 of 1974, which became Law Number 16 of 2019, and

³⁰ Sahuri Lasmadi, Kartika Sasi Wahyuningrum, and Hari Sutra Disemadi, "Kebijakan Perbaikan Norma Dalam Menjangkau Batasan Minimal Umur Perkawinan," *Gorontalo Law Review* 3, no. 1 (2020), pp. 1–16.

³¹ Abdul Kholik, "Konsep Keluarga Sakinah, Mawaddah Dan Rahmah Dalam Perspektif Hukum Islam," *MASILE* 1, no. 1 (2019), pp. 108–26.

the age limit has been increased from 16 years for girls and 19 years for boys.³² Therefore, the existence of this law is the step to socialize changes in the age of marriage and to hold schools or premarital education routinely by related institutions. There should be no loss for women or children from early marriage. Because in the amendment to Law Number 1 of 1974 concerning marriage in Law Number 16 of 2019, it is explained that the age limit of 19 years is sufficient physically and mentally to enable marriage, carry out the purpose of marriage correctly, so that it does not end in divorce, and give birth to healthy offspring and good quality.

The age regulation for marriage is regulated in the Marriage Law, and the collection of Islamic Laws is included in this category of open law and legally protected under the provisions of the Constitutional Court. However, the legal policy must be positioned without violating the morality and rationality of the law itself, acting unfairly, which violates human rights, clearly being consistent with the 1945 Constitution, and without violating legal authority. In the same reading or analysis, not only is the context of exercising the right to start a family looked at, but so is the fact that setting a minimum age for marriage that is different for men and women, as guaranteed in Article 28B paragraph 1, does not only go against the protection and fulfillment of human rights.³³ In addition, the Constitutional Court (MK) of the Republic of Indonesia has issued a Decision in Number 22/PUU-XV/2017, one of which is the consideration of the Constitutional Court in its decision namely: "However, if the difference in treatment between men and women affects or impedes the performance of basic or constitutional rights of citizens, then the rights of groups of civil and political rights, economic rights, educational, social and cultural rights due to gender equality are one

³² Wahyudi Setiawan, Khoirul Asfiyak, and Nur Hasan, "Dasar Yuridis Sosiologis Pengesahan RUU No 16 Tahun 2019 Tentang Batas Usia Menikah Bagi Laki-Laki Dan Perempuan," *Jurnal Hikmatina* 2, no. 3 (2020), pp. 221–27.

³³ S Laurensius Arliman, "Problematisasi Dan Solusi Pemenuhan Perlindungan Hak Anak Sebagai Tersangka Tindak Pidana Di Satlantas Polresta Pariaman," *Justicia Islamica* 13 (n.d.).

reason on the basis of these differences is clearly called discriminatory.³⁴

In the same reading or analysis, not only is the context of exercising the right to start a family looked at, but so is the fact that setting a minimum age for marriage that is different for men and women, as guaranteed in Article 28B paragraph 1, does not only go against the protection and fulfillment of human rights according to the 1945 Constitution, paragraph 28B paragraph 1 of the 1945 Constitution, but if it causes discrimination, it will be guaranteed by Article 28B paragraph 2 of the 1945 Constitution.³⁵ Therefore, the age limit in question allows a person to get married without ending in divorce, without having healthy, good-quality children. Raising the age limit for marriage for women to at least 19 years of marriage aims to reduce fertility and reduce the risk of maternal and child mortality. In addition, it can also fulfill children's rights so that they can optimize children's growth and development, including access to parental care and the highest possible education for children.

When the minimum age of marriage for women is lower than for men, women can legally start a family more quickly. Therefore, in its decision, the Constitutional Court ordered the legislators to amend Law Number 1 of 1974 concerning marriage within a maximum period of three years.³⁶ Based on the *Ijtihad* of the Ulama and the study of the Book of Fiqh so as to create a Compilation of Islamic law that regulates marriage law in Islam and Law Number 1 of 1974 concerning Marriage, a marriage that is entitled or appropriate to be carried out is if the prospective bridegroom and bride are at least 19 years old. If they are not yet 19 years old, to get married, each

³⁴ Moch Nurcholis, "Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017)," *Mabakim: Journal of Islamic Family Law* 3, no. 1 (2019), pp. 1–18.

³⁵ Gabrila Christy Mumeik, "Perlindungan Dan Upaya Hukum Dalam Menekan Maraknya Perkawinan Anak Di Indonesia," *Lex Et Societatis* 8, no. 1 (2020).

³⁶ Siti Qomariatul Waqiah, "Diskursus Perlindungan Anak Perempuan Di Bawah Umur Pasca Perubahan Undang-Undang Perkawinan," *An-Nawazil: Jurnal Hukum Dan Syariah Kontemporer* 1, no. 02 (2019), pp. 65–79.

prospective bride and groom must ask permission from their parents and ask for a dispensation from the Religious Court.³⁷

Therefore, the reason for the change in Marriage Law No. 1 of 1974 to Law Number 16 of 2019 was that the age limit for entering into a marriage was more stringent. There are several important reasons to get married. First, the explanation in Article 7 says that the number of urgent reasons to get married is still very high and has not reached the age limit of 19 years, so it is very unfortunate to have to do an early marriage. But in this clause, the subjective nature of reasons that happen right away is still very important.³⁸ That is, if the marriage of the bride and groom is still underage, the parties, especially the parents of the prospective bride and groom, can easily indicate a state of urgency to carry out their child's marriage. This is stated in the explanation of Article 7 Paragraph 3, namely: "Granting dispensation or relief by the Religious Court for those who are Muslim and Granting dispensation or relief by the District Court for adherents of religions other than Islam based on the spirit to prevent child marriage or early marriage, morals, religion, customs and cultural considerations, psychological aspects, health aspects, and the impacts they cause. Third, it must make it difficult to get permission for early marriage by removing the article on marital dispensation for underage marriages, because this can support or show a reform trend in the application of Islamic family law in Indonesia, which is pro-women and children in a better direction. Even though it is known that it needs to be improved more carefully for the benefit of the couple to build a household life, there is a subject where early marriage can still survive to this day in Indonesia.

³⁷ Fika Burlian, "Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974," *Mizan: Jurnal Ilmu Hukum* 8, no. 2 (2019), pp. 77–84.

³⁸ Mohamad Rana, Tajul Arifin, and Cecep Soleh Kurniawan, "WHEN RELIGION AND CULTURE MEET ECONOMY: Socio-Legal Factors for the Early Marriages of Muslim Families in Cirebon," *Al-Abwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (n.d.), pp. 82–100.

Marginalization of Women's Rights in *Sirri* Marriage and Early Marriage: Negative Legal Impact

According to Marriage Law, marriages that are not registered are marriages that are illegal or illegal by the state and are considered illegal because they are not in accordance with the applicable law based on Article 2, Paragraph 1, and Paragraph 2 of the law in force in Indonesia. The content of Law Number 1 of 1974 concerning Marriage, which is contained in Article 4, Article 5 paragraph 1 and 2, and Article 6 in the Compilation of Islamic Law (KHI) stipulates that marriage must be in an orderly administration that is carried out illegally or legally according to Islamic religious law and registered in the country, like the law that has been in force in Indonesia. Everyone who wants to get married must have an orderly administration under the supervision of the Marriage Registrar at the Office of Special Religious Affairs for Islam. Therefore, marriages that take place outside the supervision of the registrar do not have strong legal force. Therefore, unregistered marriages have no legal effect on the spouse or children. According to Hussein, in-law marriages that are not registered in the state have the effect of demeaning women in terms of the economy, livelihood rights, children's rights, marital property rights, and divorce rights.³⁹

Regarding rights and obligations to children who are born from marriage, from here on, there are rights and obligations of parents regarding basic rights to their biological children, especially daughters, namely child custody, birth certificate rights as recognition, inheritance rights, and guardianship rights, or the legal period, then a marriage must be clearly the result of a marriage that is legal and registered in the state. Therefore, legal protection can be provided through short-term protection, namely the legalization of unregistered marriages with of the Constitutional Court Number 46/PUUVIII/2010, and long-term protection is possible through a comprehensive reform of Islamic marriage law to organize the legal system, a combination of law and legal culture. One of the factors causing marriages that are not registered in the state is the existence

³⁹ Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai Atas Wacana Agama Dan Gender* (Yogyakarta: LKiS, 2009).

of underage marriages, especially among women under the age of 19.⁴⁰

Meanwhile, according to the Marriage Law, child marriage or early marriage is invalid because it is not carried out by the laws and regulations in force in Indonesia as stipulated in Law Number 16 of 2019, which is a change from Law Number 1 of 2019. Increasing the age of marriage for women is necessary because the age limit for marriage is the implementation of the norms that have been regulated. The minimum age for marriage for women is the same as the age limit for marriage for men, which is 19 years old.⁴¹ Thus there is an age limit in question because it is considered mature physically and spiritually to be able to marry with the aim of getting married to avoid divorce and create harmony marriage life.⁴²

In preparing the amendments, paying attention to several aspects, starting from the contents of Law Number 1 of 1974, namely the meaning of "maturity", the aspect of the relationship between the Marriage Law itself using the Protection Law for Children, and viewed from a medical or health perspective. As well as based on aspects of the analysis of juridical theory, sociological theory, and philosophical theory, which conclude that institutionally, the marriage institution in Indonesia is believed to be a clean institution because it determines the fate of married couples and responds using a good mindset dispersion which is inseparable from Al-Qur'an and Al-Hadith in Islam, in order to concern the desires of the Indonesian people as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia.

According to Shofiyyulloh, the age of 19 is considered capable of doing household chores, so the concept *abliyyah*⁴³ is a way to

⁴⁰ Winengan Winengan, "Politik Hukum Keluarga Islam Di Aras Lokal: Analisis Terhadap Kebijakan Pendewasaan Usia Pernikahan Di Nusa Tenggara Barat," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2018), pp. 1–12.

⁴¹ See Law Number 16 of 2019 for amendments to Law Number 1 of 1974 concerning Marriage.

⁴² Sheila Fakhria, "Menyoal Legalitas Nikah Sirri: Analisis Metode Istiṣlāḥiyyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016), pp. 185–200.

⁴³ *Abliyyah* is a trait that states that a person is at a perfect stage starting from his body and mind, so that all his actions can be judged by the teachings of Islam.

emphasize age in planning a wedding.⁴⁴ For example, in the following statement, it is the duty of a husband to support the family as an obligation to fulfill his rights and obligations, and the duty of a wife is to serve her husband and raise her children. Therefore, both parties must be able to deal with problems that arise and understand their rights and obligations as parents. In Indonesia, unregistered marriages and early marriages are considered illegitimate marriages because they were not previously registered or under the supervision of marriage registration, resulting in the alienation of women. This has many implications, especially for women. If an unregistered marriage occurs, the state considers the marriage non-existent or illegal because there is no authentic evidence in the form of a marriage certificate that is not recorded at the KUA. Therefore, if something happens, it has no legal force at all when it comes to the rights of women and children.

In addition, it also affects the fulfillment of daily life needs. That is, the husband is not obliged to provide maintenance and inheritance rights for his wife and children. Therefore, religion and the state strictly prohibit marriages that are not legally registered, because there are many disadvantages to marriages that are not registered in the country. There is a potential for conflict between husband and wife who are in unregistered marriages to be stronger because there is an indication that there is a weak bond between the two partners. Except in the case of unregistered marriages between boys and girls because of the fear of adultery, problems with unregistered marriages stem from the unequal position between the couple. A woman who becomes a wife in a marriage that is not registered in the state, because the woman is already pregnant or pregnant out of wedlock so she is worried that her husband's first wife will find out, is in a weak position in front of the man who is her husband. So in this way, it will be easy for them to cause conflict in the household, the relationship between the husband, the first wife, and the weak party, namely the *sirri* wife. This is why religion

⁴⁴ Shofiyulloh Shofiyulloh, "Target Usia Perkawinan Bagi Perempuan: Studi Di Pondok Pesantren Darussalam Dukuwaluh Purwokerto," *Yinyang: Jurnal Studi Islam Gender Dan Anak* 14, no. 2 (2019), pp. 201–20.

prohibits unregistered early marriages and unregistered marriages in the country.

According to Jalaludin in the theory of feminism, the family is a source of exploitation for women. The division of roles, functions, and responsibilities is unfair and unbalanced, which results in gender inequality.⁴⁵ Thus, according to this explanation, marriage must be built on a solid or close foundation that is fair and emphasizes gender equality, where husband and wife both have rights and obligations, roles and opportunities to respect each other, respect each other, help each other, cooperate, and protect each other in the family. Whereas *sirri* marriages are built on the opposite foundation because there is an unfair context and marginalization of women, where the *sirri* wife does not have material rights at all because women's rights are in the hands of her husband.

Moreover, early marriage often results in divorce, so the divorce rate is high among those in early marriage in Indonesia.⁴⁶ One of the couples argued that because there were constant fights, the balance in the household led to emotional stability occurring at such a young age due to early marriage for the husband and wife. The high rate of underage marriages greatly affects the divorce rate at a young age because in Indonesia itself the marriage system is still not strict for early marriage.⁴⁷ In addition, early marriage can have a huge impact on domestic violence (domestic violence), both physically and psychologically, because it is caused by uncontrolled emotions when there is a fight in the household. Domestic violence can occur due to economic factors because the economy is a necessity of life that must be met in a household. If a small income is clearly not sufficient for

⁴⁵ Akhmad Jalaludin and Triana Sofiani, "Pola Relasi Gender Dalam Keluarga Nikah Siri," *Muwazab* 12, no. 2 (2020), pp. 181–96.

⁴⁶ Muhammad Julijanto, "Pernikahan Dini Di Lereng Merapi Dan Sumbing," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 13, no. 1 (2020), pp. 1–9.

⁴⁷ Muhammad Fahrezi and Nunung Nurwati, "Pengaruh Perkawinan Dibawah Umur Terhadap Tingkat Perceraian," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 7, no. 1 (2020), p. 80.

household needs, early marriage can also affect sexual or reproductive health for women and their children.⁴⁸

In general, the perpetrators of unregistered marriages and the perpetrators of early marriages interpret marriage as worship and an obligation that must be carried out from generation to generation in a reasonable manner, not considering the negative impacts of the marriage. Currently, community leaders, religious scholars, and the government disagree with unregistered marriages and early marriages, because they have more negative impacts than positive impacts. Therefore, various efforts have been made to overcome and inhibit the occurrence of unregistered marriages and early marriages among the community, especially the Indonesian Muslim community, including strengthening the socialization of marriage law and Islamic law regarding the Copy of Islamic Law (KHI), arranging legal counseling related to marriage, socializing the negative impacts of unregistered marriages and early marriages, and socializing how to orderly administration in marriages.

Conclusion

Marginalization of women is equivalent to restricting women's mobility. *Sirri* marriages are not back up by the state law. In spite of this, the community continues to believe that unregistered marriage is legal under both religion and state law, as this marriage is sanctioned by religion based on the *ijtihad* of previous scholars. State law does not expressly prohibit or declare *sirri* marriages invalid. This dualism in the law produces legal ambiguity in society. In spite of the fact that there is already a law regulating marriage in Indonesia, *sirri* marriages continue to occur and are difficult for the government to eradicate. Early marriage is included in the category of social and economic issues because it is rooted in the traditions and culture of society. In reality, marriage at a young age has numerous negative effects on married couples, affecting their personal and social lives. Even though there is a marriage exemption according to state law, the dispensation provisions do not provide a means to reduce the number of child

⁴⁸ Ahmad Badrut Tamam, "NIKAH SIRRI Solusi Pernikahan Anak Di Bawah Umur Di Desa Petung, Panceng, Gresik," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 3, no. 1 (2010), pp. 41–70.

marriages in Indonesia. In addition, this law lacks a principle of protection for women, despite its origins in the discourse on gender equality between men and women.

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