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The Legal Position and Legal Implications of Siri (Unregistered) Marriage Following the Enactment of Law Number 1 of 2023 (New Penal Code): A Review from the Perspective of *Maqashid Syari'ah*¹

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Abstract:

This study examines the legal position and legal implications of siri (unregistered) marriage from the perspective of fiqh munakahat and Article 403 of Law Number 1 of 2023 on the Criminal Code. It is motivated by the persistence of siri marriage practices in Indonesian society despite the divergence between Islamic law and positive law in regulating marriage registration. The study aims to describe the legal status of siri marriage and analyze the legal consequences it entails under both legal systems. A qualitative approach combining library research and field study was applied, using normative-juridical and empirical approaches. Primary data were drawn from classical and contemporary fiqh literature, Law Number 1 of 2023, the 1974 Marriage Law, and the Compilation of Islamic Law, while secondary data were obtained through in-depth interviews with a marriage registrar (penghulu) at the Cibinong Religious Affairs Office and an Islamic scholar (kyai). Data were analyzed using the Miles and Huberman model, with data reduction, categorization, comparison, and conclusion drawing. The findings show that siri marriage, which fulfills the pillars and conditions of marriage, is valid under fiqh munakahat, yet marriage registration is regarded as obligatory on the basis of masalah mursalah and the legal maxim mā lā yatimmu al-wājib illā bihi fahuwa wājib, in order to safeguard justice, lineage, and family rights. Under Article 403 of Law Number 1 of 2023, siri marriage has no civil legal standing because it is not registered with the competent authority, and it may give rise to criminal liability only when it involves concealment of a lawful marriage impediment, under a complaint-based (delik aduan) mechanism. The legal implications include weakened protections for wives and children, administrative difficulties, and uncertainty regarding civil rights, such as inheritance and birth registration.

Keywords: Fiqh Munakahat; Legal Implications; Legal Position; Law Number 1 of 2023; Siri Marriage

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A. INTRODUCTION

Family life through marriage is one of the stages of life that every human being will go through, a moment that demands the maturity of a husband and wife in order to build a family founded on tranquility, love, and compassion (*sakinah, mawaddah, and rahmah*). Islamic law is established for the welfare of the community, both individually and socially, because the family is a miniature of society; thus, the welfare of society depends heavily on the welfare of the family (Ghozali, 2023). Allah SWT states in QS. Ar-Rum/30:21 that among the signs of His power is the creation of life partners so that human beings may find tranquility, and that He placed between them love and affection.

The word “*nikah*” (marriage) literally derives from a root meaning “*to join*” and “*contract*,” while as a technical term it refers to a formal agreement between a man and a woman to form a family (Dasa Suryantoro & Rofiq, 2022). Article 2 of the Compilation of Islamic Law affirms that marriage is a very strong bond (*mīṣāqan ghalīẓan*) undertaken to obey the command of Allah, and that its performance constitutes an act of worship. Amid this noble meaning, the practice of siri marriage remains a persistent socio-legal phenomenon. Siri marriage is a marital bond conducted secretly, without involving the competent authorities and without following the administrative procedures recognized by the state, generally driven by reasons of privacy, economics, religion, or culture (Sobari, 2024).

The term “*siri*” derives from the Arabic word *sirr* or *sirrun*, meaning quiet or secret. In classical fiqh literature, siri marriage is understood as a marriage that fulfills the pillars and conditions of Islamic law, but in which the witnesses are asked not to publicize the news of the marriage (Zakaria et al., 2021). However, in contemporary usage, the meaning of the term has shifted: siri marriage is now more commonly understood as a marriage that is valid according to the religious pillars and conditions, but is not registered with the competent state institution, namely the Office of Religious Affairs (KUA) for Muslim couples (Luthfi & Mulyadi, 2019).

In Indonesia, Law Number 1 of 1974 on Marriage requires that a marriage be valid if it is conducted according to the law of each party’s religion and belief (Article 2 paragraph 1), and at the same time must be registered in accordance with the applicable laws and regulations (Article 2 paragraph 2). This disjointed public understanding of the two paragraphs, which should form a single unity, is often the root cause of siri marriage (Kharisudin, 2021). A recent development that underscores the urgency of this study is the enactment of Law Number 1 of 2023 on the Criminal Code (New Penal Code), which took effect in 2026. Article 403 of that law provides that any person who enters into marriage without informing the other party of a lawful impediment, such that the marriage is later declared invalid, shall be subject to imprisonment for a maximum of 6 (*six*) years or a maximum Category IV fine. This provision confirms that the state does not absolutely prohibit siri marriage, but rather imposes a criminal penalty for concealing a lawful marriage impediment, so that siri marriage, which is religiously valid, still carries the potential to generate serious legal consequences, particularly for wives and children.

Several previous studies have examined this issue from various perspectives. Zakaria and Saad (2021) affirm that, from the perspective of positive law, siri marriage does not fulfill the principle of legality and therefore has no legal force, even though it is religiously valid if its pillars and conditions are met. Nur Qalbi et al. (2022) found that the legal consequences of siri marriage include the loss of inheritance rights, rights to joint marital property, and children's civil registration rights, resulting in a weak legal position under positive law. Novitasari et al. (2023) note that siri marriage is often used as an alternative to avoid illicit relationships, yet it still generates civil and criminal consequences that need to be examined specifically. Gistaloka and Baharudin (2024) emphasize that the validity of marriage fundamentally rests on the fulfillment of religious requirements, while registration functions as an administrative instrument of the state. Zulhendra and Dwikornida (2025) and Siswandi et al. (2026) show that the legal consequences of siri marriage, including those related to polygamy without permission, remain relevant to examine alongside the reform of national criminal law.

These studies generally still focus on the framework of Law Number 1 of 1974 and the Compilation of Islamic Law as references to positive law. The novelty offered by this study lies in situating the discussion of the legal position and legal implications of siri marriage within the framework of Article 403 of Law Number 1 of 2023 (New Penal Code), which specifically criminalizes the element of concealing a lawful marriage impediment and has not been widely studied in depth alongside the perspective of fiqh munakahat. In addition, this study strengthens its argument through interviews with a marriage registrar and a fiqh scholar, thereby combining normative analysis with empirical realities in the field.

This study is also important to situate within a broader context, namely the enduring tension between Islamic law as a living law within society and positive law as a formal instrument of the state. Marriage, from the perspective of fiqh, is a religious event that is complete once its pillars and conditions are fulfilled, without requiring authorization from any authority outside of Islamic law itself. Nevertheless, the modern state requires administrative certainty to carry out its function of protecting its citizens, so that marriage registration becomes a state instrument to ensure that citizens' civil rights, such as inheritance, maintenance, and children's status, can be legally enforced. This tension gives rise to the phenomenon of siri marriage as both a meeting point and a point of friction between two legal systems with different paradigms.

It should also be noted that the enactment of Law Number 1 of 2023 on the Penal Code brings new nuance to the regulation of unregistered marriage. Unlike Law Number 1 of 1974, which is administrative-civil in nature, the provisions of Article 403 of the New Penal Code have a criminal character and carry the threat of imprisonment, although their application is strictly limited to the element of concealing a lawful marriage impediment and is a complaint-based offense. This paradigm shift, from a mere administrative consequence to a potential criminal consequence, creates a particular urgency for the public to fully understand the legal implications of siri marriage, while also opening an academic gap that needs to be studied comprehensively by presenting the perspective of fiqh munakahat as both a comparison and a normative religious foundation.

Based on the description above, this article is prepared to answer two research questions, namely: (1) what is the legal position of siri marriage according to fiqh munakahat and Article 403 of Law Number 1 of 2023?; and (2) what are the legal implications arising from the act of siri marriage according to fiqh munakahat and Article 403 of Law Number 1 of 2023? The objectives of this study are to analyze the legal position of siri marriage from both perspectives and to examine the legal implications it generates. Theoretically, this study is expected to become a foundational framework for further research on the legal position and implications of siri marriage, while practically, it is expected to serve as legal literacy material for the public and a consideration for related institutions in formulating more inclusive policies.

The main argument put forward in this study is that although siri marriage remains religiously valid if its pillars and conditions are fulfilled, marriage registration shifts into a shar'i obligation on the basis of the principle of *maslahah mursalah*, while under positive law the absence of registration creates a vacuum of legal protection for wives and children and opens the possibility of criminalization under Article 403 of the New Penal Code. In other words, the legal position of siri marriage is dual in nature: valid vertically (in relation to Allah SWT) yet vulnerable and powerless horizontally (in civil relations with the state and third parties).

B. METHODE

This study employs a qualitative approach using a mixed-methods design combining library research and field study. The library research was conducted by examining and analyzing various literary sources related to siri marriage in accordance with fiqh munakahat and Article 403 of Law Number 1 of 2023, while the field study was conducted through interviews with a fiqh scholar and a marriage registrar directly involved in this subject. A qualitative approach was chosen because this study aims to gain an in-depth understanding of a legal phenomenon within its surrounding context and situation, without manipulating the objective conditions in the field (Narbuko & Achmadi, 2021).

Two approaches were used simultaneously in this study. First, the normative-juridical approach was used to examine the legal norms governing siri marriage, sourced from both classical fiqh munakahat literature and statutory regulations, particularly Law Number 1 of 2023. Second, an empirical approach was used to obtain a realistic picture of legal implementation in the field through in-depth interviews with relevant parties (Wiraguna, 2024). The combination of these two approaches was chosen because the normative approach provides a strong theoretical basis, while the empirical approach provides in-depth insight into legal practice within society.

The primary data in this study were sourced from fiqh texts discussing marriage (*fiqh munakahat*), Law Number 1 of 2023 (New Penal Code), Law Number 1 of 1974 on Marriage as a comparative instrument, and the Compilation of Islamic Law (KHI). Secondary data were obtained through interviews with two informants, namely H. Saiful Ikhwan, S.H.I., M.H., as the Marriage Registrar (Penghulu) at the Cibinong Sub-District Office of Religious Affairs, and Kiai Abdullah Syafi'i, as the caretaker of the Roudhoh Al-Bayan Islamic Boarding School in Cibinong, Bogor, in addition to

documentation and supporting literature in the form of journal articles and previous research.

Data collection was conducted through semi-structured interviews and documentation. The validity of the data was examined using triangulation, combining various methods and data sources to test the credibility of the findings (Sugiyono, 2021). Data analysis referred to the interactive model of Miles and Huberman, consisting of four stages: data reduction, grouping of data based on discussion topics (legal position according to fiqh munakahat, legal position according to positive law, and their legal implications), comparison between the views of Islamic law and positive law, and drawing conclusions to answer the research questions (Ash-Shiddiqi et al., 2025).

C. RESULTS AND DISCUSSION

Based on the results of the literature review, interviews, and documentation that have been carried out, this study obtained findings regarding the legal position and legal implications of siri marriage, presented in the following four sections:

The Legal Position of Siri Marriage from the Perspective of Fiqh Munakahat

Marriage is a very strong bond, known in fiqh terminology as *mīṣāqan ghalīẓan*, so that its existence needs to be protected by state law in addition to its validity under Islamic law (Supriyadi, 2023). The term "siri marriage" has long been known among Islamic scholars, but its meaning has shifted over time. The findings of this study indicate a fundamental epistemological difference between the understanding of siri marriage in classical fiqh literature and the meaning it has taken on in contemporary society.

In classical fiqh, the word "siri" derives from the Arabic "*as-sirr*," meaning secret. Based on an interview with H. Saiful Ikhwan, S.H.I., M.H., the classical concept of siri marriage relies heavily on the presence of witnesses: in the Shafi'i school, a marriage concealed to the point of not being attended by at least two just witnesses is declared invalid (*bathil*), because the public announcement (*walimah*) and testimony are considered part of the conditions for a valid marriage. However, this study finds a shift in meaning on the ground: siri marriage as it occurs today no longer refers to the absence of witnesses, but rather to a marriage that has fully met the pillars and conditions, yet is not registered with the official registering institution given legal authority by the state, namely the KUA for Muslim couples.

A similar affirmation was conveyed by Kiai Abdullah Syafi'i, caretaker of the Roudhoh Al-Bayan Islamic Boarding School, who explained that the four major schools of Islamic jurisprudence (Shafi'i, Hanafi, Maliki, and Hanbali) agree that the validity of marriage rests on the fulfillment of its pillars and conditions. Once the marriage contract has been pronounced by the guardian (*wali*) and accepted by the groom in the presence of witnesses, the relationship of husband and wife has legally come into existence under religious law. However, an important finding of this study is that contemporary scholars no longer view the validity of marriage solely in terms of the fulfillment of its pillars and conditions, but also consider the fulfillment of formal and administrative aspects. This shift in perspective rests on the ushul fiqh maxim *mā lā yatimmu al-wājib illā bihi fahuwa*

wājib — that which is necessary to complete an obligation likewise becomes obligatory. Rights such as justice, maintenance, protection of women, and clarity of lineage are, in the present day, impossible to protect without state intervention through civil registration. For this reason, contemporary scholars such as Sheik Wahbah Az-Zuhaili have ruled that marriage registration is obligatory in order to preserve religion, life, and the purity of lineage (Kurniawan, 2022).

Thus, siri marriage in the sense of being unregistered remains valid under classical fiqh, but its validity exists in an imperfect condition and contains an element of harm (*mudharat*) toward the policy of the lawful ruling authority (*ulil amri*), because it violates regulations made for the public good, in line with the maxim *dar'u al-mafāsīd muqaddamun 'alā jalbi al-maṣāliḥ* — preventing harm must take precedence over securing benefit (Sukanan & Khairudin, 2018).

The Position of Siri Marriage within Indonesia's Positive Legal System

According to Article 2 paragraph (1) of Law Number 1 of 1974 on Marriage, a marriage is valid if it is conducted according to the law of each party's religion and belief, while paragraph (2) requires that every marriage be registered in accordance with the applicable laws and regulations. This study's findings show that the main cause of the prevalence of siri marriage in society is a mistaken understanding of these two paragraphs: the public tends to separate them and consider that paragraph (1) alone is sufficient to validate a marriage, while the registration required under paragraph (2) is regarded merely as an administrative formality. According to H. Saiful Ikhwan, S.H.I., M.H., these two paragraphs actually form an integral unity; a marriage cannot be declared fully valid if it rests solely on the religious aspect without also resting on the state aspect.

Indonesia has carried out criminal law reform through the enactment of Law Number 1 of 2023 on the Criminal Code, which regulates not only conventional criminal acts but also addresses the protection of the family and the marriage institution (Arifin et al., 2025). The absence of an authentic marriage certificate issued by the Marriage Registration Officer (PPN) causes all legal consequences of the marriage to be void in civil terms, so that the wife has no formal legal standing to claim her rights, and any child born from the marriage may have no civil legal relationship with the father. Although siri marriage is not directly subject to criminal punishment in every case, the practice may generate legal consequences when it is connected with the violation of other provisions, such as document forgery or the violation of family rights (Siswandi et al., 2026). These findings confirm that the position of siri marriage under positive law carries no legal force whatsoever in the civil domain, functioning both as a form of protection and as an indirect consequence imposed by the state to safeguard the rights of every citizen.

The Legal Implications of Siri Marriage according to Fiqh Munakahat

Contemporary fiqh scholars generally hold that siri marriage has the potential to violate the maqāṣid asy-syarī'ah and opens the possibility of harm to the parties

involved, particularly wives and children, even though the marriage remains religiously valid (Suprayogi, 2022). Viewed from the principle of *maslahah mursalah*, Sheik Wahbah Az-Zuhaili regards the obligation of marriage registration as a step of *sadd az-zarī'ah*, closing off the possibility of harm in order to protect a greater benefit, so that from the perspective of maqashid syariah, the practice of siri marriage should be avoided for the sake of legal certainty and broader protection of rights (Kurniawan, 2022). There are at least four core issues arising from siri marriage, relating to the shariah objectives of protecting lineage (*hifz an-nasl*) and protecting property (*hifz al-māl*).

First, the issue of the marriage certificate. Couples who marry through siri marriage have no marriage certificate as authentic proof of a marriage that is valid both religiously and before the state, which becomes the starting point of legal harm for the couple. *Second*, the issue of the child's status. The absence of the parents' marriage certificate makes it difficult for the child to obtain a birth certificate listing the father's name and prevents the child from being registered on the family card, which, in turn, harms the child's interests in various administrative respects. *Third*, the issue of inheritance. A child born from siri marriage risks losing the right to inherit the parents' property due to the absence of authentic proof establishing the lineage relationship as an heir. *Fourth*, the issue of divorce. Couples married through siri marriage can be separated at any time without a clear legal process, and the husband can easily deny that the marriage ever took place, so that the wife's rights, such as maintenance during the waiting period (*iddah*) and joint marital property, cannot be fulfilled.

The Legal Implications of Siri Marriage under Article 403 of Law Number 1 of 2023

Article 403 of Law Number 1 of 2023 concerning criminal offenses relating to the origin of marriage provides that any person who enters into marriage without informing the other party of a lawful impediment, such that the marriage is later declared invalid, shall be subject to imprisonment for a maximum of 6 (*six*) years or a maximum Category IV fine. The most significant finding of this study relates to the legal implications arising after the enactment of Articles 401 to 403 of the New Penal Code, which shift the issue of siri marriage from a mere administrative violation into a potential criminal offense (*criminalization*). At least three dimensions of legal implications were identified in this study.

C. CONCLUSION

Based on the research and discussion, two main conclusions can be drawn. *First*, the legal position of siri marriage according to fiqh munakahat is valid if it has fulfilled the pillars and conditions of marriage, although it remains in an imperfect condition because it contains an element of harm (*mudharat*) toward the policy of the lawful ruling authority (*ulil amri*). Contemporary scholars, as affirmed by Wahbah Az-Zuhaili, view marriage registration as an obligation based on the maxim *mā lā yatimmu al-wājib illā bihi fahuwa wājib* and the principle of *maslahah mursalah*, in order to guarantee justice, lineage, and family rights. Meanwhile, according to Article 403 of Law Number 1 of 2023, siri marriage has no legal position in the civil domain because it is not registered with the competent institution, so that the state does not recognize the existence of such a marital bond, even though the marriage itself is not automatically subject to criminal

punishment as long as it is not accompanied by the element of concealing a lawful marriage impediment.

Second, the legal implications arising from the act of siri marriage according to fiqh munakahat consist of an element of harm (*mudharat*) toward the policy of the lawful ruling authority (*ulil amri*), which aims to protect the common good, even though the marriage's status remains religiously valid. Meanwhile, according to Article 403 of Law Number 1 of 2023, the implications are broader and more concrete, namely the absence of an authentic marriage certificate resulting in weakened legal protection for the wife, such as the loss of the right to maintenance and joint marital property, as well as making it easier for the husband to unilaterally divorce the wife without a clear legal process. For children, the implications include the absence of a birth certificate listing the father's name, the loss of inheritance rights and lineage, and difficulties in managing civil registration and educational administration. Perpetrators of siri marriage may be subject to a maximum criminal penalty of 6 (six) years' imprisonment if proven to have concealed a lawful marriage impediment, in the nature of a complaint-based offense that can only be processed upon the complaint of the aggrieved party.

Based on these conclusions, this study makes several recommendations. Couples who have entered into siri marriage are advised to promptly file for marriage ratification (*isbat nikah*) at the Religious Court so that their marriage acquires valid legal force, thereby protecting the rights of the wife and children. The Office of Religious Affairs and religious leaders are advised to increase pre-marital education on the importance of marriage registration as a form of legal protection for the family, in line with the principle of *maslahah mursalah*. The government and law enforcement officers are advised to conduct more intensive dissemination regarding the provisions of Articles 401–403 of Law Number 1 of 2023, particularly their nature as complaint-based offenses and their criminal threats, so that the public fully understands the legal consequences of siri marriage without creating the misunderstanding that the state prohibits religiously valid siri marriage. State administrators are advised to continue developing more inclusive policies and to ease access to marriage ratification and registration, particularly for communities with limited economic means and legal knowledge, so that the gap between Islamic law and positive law can be narrowed without disregarding the principles of shariah.

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