

# The Problematic Of Siri Marriage On Women's Destination And Dignity Indonesian Positive Legal Perspective (Law No. 1 Of 1974 Concerning Marriage)

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## ABSTRACT

*Apart from being regulated by Islamic law, in Indonesia marriage is also regulated by the state, as is the registration of marriages which is regulated by article 2 of Law No. 1 of 1974 concerning marriage. These regulations were not made without reason, but these regulations were made to ensure orderly marriages for the Islamic community in Indonesia. The practice of unregistered marriages is based on different reasons, whether due to economic factors, not wanting to have difficulties with marriage administration, and so on. The research method used in this work is normative legal research or what can also be called literature study with various data sources which are then analyzed in depth and presented descriptively. Until we reach a simple conclusion that according to positive state law, a wife is not considered a legal wife, because there is no authentic evidence, because in the Compilation of Islamic Law the truth about the existence of a marriage can only be proven by the existence of a "marriage certificate" made by a Marriage Registrar.*

**Keywords:** Siri Marriage, Women & Marriage Law

## INTRODUCTION

Marriage in Indonesia, apart from being regulated by Islamic law for its adherents, marriage is also regulated by state statutory law, as is the example of "marriage registration" which is regulated in article 2, paragraphs 1 and 2 of Law No. 1 of 1974 concerning Marriage. , which reads: (1) Marriage is valid if it is carried out according to the laws of each respective religion and belief . (2) Every marriage is recorded according to the applicable laws and regulations. (Law No. 1 of 1974)

This regulation was not made without a reason, but this regulation was made for no other reason than to guarantee marriage order for the Islamic community in Indonesia, this is as stated in the Compilation of Islamic Law article 5 paragraph 1, which reads: "To ensure

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marriage order for the Islamic community at every marriage. must be noted." And marriage registration can only be done by employees a marriage registrar who has been officially appointed and legally appointed by the government, as regulated in Law No. 22 of 1946 in conjunction with law no. 32 of 1954. (KHI, article 5 paragraph 1)

However, in practice, in Indonesia there are still many people who still practice unregistered marriages based on different reasons, either due to economic factors, not wanting to bother with marriage administration at the Office of Religious Affairs, direct applications for unregistered marriages because they are afraid of sin when touching and so on. so on, up to unregistered marriages due to polygamy without the knowledge of the first wife.

The case above shows that the fundamental problem in this country is religious apologies for perpetrators of unregistered marriages because of the dichotomy between state law and Islamic law. In fact, if you want to follow God's orders *kaffah* , then the order to obey a leader who does not order disobedience is an absolute obligation. ( Rajafi , 2015) This is also reinforced in the statement ( Qazwini , et al., 2018) that the shortcut in carrying out polygamy through private marriage or living together without marriage ties is considered easier than submitting a request for polygamy to the court with a simpler procedure. complicated.

Therefore, by not following and complying with the statutory regulations that have been established, especially article 2 paragraphs 1 and 2 of Law No. 1 of 1974 concerning marriage, the marriage has no legal force, because it is not recognized in the eyes of state law. So when there is a dispute between a husband and wife who are married in an unregistered marriage, where the dispute even goes to the stage of divorce, then the party who is really disadvantaged by the results of the divorce is the wife, because from the divorce the wife will not receive any assets . like this even a penny and the husband can at will neglect his obligations towards his wife, such as not providing support and so on, and what is even sadder is that the wife cannot sue her husband in court to ask for justice, because their marriage (siri marriage) has no legal force. .

From the researcher's brief statement above, the researcher is very interested in this problem, therefore the researcher raised the research title with the title: "Problematics of Siri Marriage on Women's Value and Dignity from Indonesian Positive Legal Perspective (Law No. 1 of 1974 concerning Marriage)".

## RESEARCH METHODS

This research is normative legal research or can also be called a literature study, in which the researcher focuses on one of Law No. 1 of 1974 concerning Marriage as the

analytical tool for this research. This research is presented descriptively, namely an approach to determining facts with precise and in-depth interpretation to get to know the phenomena and to accurately describe several phenomena being researched. (Nazir, 1999). The data collection technique in this research is by reading, studying, understanding and reviewing various books and other written sources, and also through documentation in the form of books, laws and regulations related to this research. (Prastowo, 2016)

## **DISCUSSION**

### **1. Understanding Sirri Marriage**

The journey to change provisions in marriage law in Indonesia is entering a new chapter in the modern world. The occurrence of *unregistered* marriages by couples who cannot be recognized by the provisions of positive law in Indonesia is one of the triggers for change. ( ADHKI Team , 2020) As a result of understanding polygamy in a bayani way, the practice of polygamy is widely practiced in Islam by certain individuals openly or secretly as another term for unregistered marriage or cheating which is widespread today. So the meaning of polygamy should not be understood only in bayani, it also needs to be understood in irfani and burhani . In this way, a respectable man does not simply engage in the practice of unregistered marriages, let alone cheating , which can ultimately destroy his career and honor, both in front of his family and society. ( Mahmudah , 2019)

Literally the term "siri marriage" comes from the Arabic word "nikah" which means to gather, enter into each other, and is also sometimes used to mean sexual intercourse ( wathi ). The word "marriage" is also sometimes used to mean a marriage contract . Meanwhile, the word "siri" means secret. Thus, sirri marriage can be interpreted as a marriage that is carried out in secret or in secret . It is said to be a secret wedding because this wedding procession is usually deliberately hidden from the public for various reasons, and is usually attended only by a limited circle of close family members, not celebrated in the form of a walimatul ursy reception open to the public.

*Sirri* marriage is thus a marriage that only fulfills religious procedures. ( Mushaf al-Qur'an, 2008) Meanwhile, sirri marriage in the juridical context in Indonesia is a syar'i marriage (in the context of jurisprudence ) which is known by many people, but it is not registered at the Office of Religious Affairs so that is the difference between siri marriage and Official marriage is the existence of a marriage certificate as proof that a marriage has occurred. ( Sudrajat , et al., 2016 ).

### **2. The Concept of Underhand Marriage (Nikah Siri)**

Furthermore, when explaining the definition and status of sirri marriage, Sahnun also noted that marriages that have proof but are requested kept secret, including the group of invalid marriages. Even if the evidence is abundant but there are efforts to keep it secret the marriage is still considered an invalid marriage ( *fasid* ). ( Adawiyah , 2019) *Sirri marriage* is usually carried out because both parties of the prospective bride and groom are not yet ready to make it official or enliven it, but on the other hand, *sirri marriage* is intended to prevent young couples from falling into adultery, becoming pregnant out of wedlock, or simply protecting wrongdoing. approaching adultery which is also prohibited by religion, so that the purity of men and women is guaranteed in accordance with Islamic morals. ( Mushaf al-Qur'an , 2008)

If we are guided by the etymological understanding of sirri marriage as above, then there are at least 3 (three) forms or models of sirri marriage carried out in society ( Mahmudah , 2019 ), namely: First: marriage between a man and a woman who is of legal age. held in the presence and recorded by the Marriage Registrar but only attended by a limited circle of close family members, it was not announced at a walimatul ursy reception. Second, marriage between a man and a woman who are underage according to the law, both of whom are still in school. After they have finished school and have reached marriageable age, they are officially married again before the PPN, which according to Javanese terms is called mungguh. Third, the marriage model is between a man and a woman who are of legal age law, but they deliberately carried out this marriage under their hands, not registering it with the KUA for various reasons such as costs and illegal polygamy.

In the book *alMudawwanah* Sahnun's work (160-240/ 776-854) found the concept of *sirri marriage* as well as discussions about the function of witnesses in marriage by other fukoha. Imam Malik is of the opinion that witnesses are not a pillar or a legal requirement for marriage. The basis is the word of Allah in QS. Al-Baqarah: 282 and QS. At-Talaq: 2. In *alMudawwanah*, Sahnun also notes that Imam Malik differentiates between sirri marriages (*nikah sirri*) and marriages that are not accompanied by evidence ( *nikah bigair al- bayyinah* ). A sirri marriage is a marriage that is deliberately kept secret by the parties involved in the marriage. This kind of marriage law is invalid. On the other hand, the marriage law has no evidence but is announced to the public the crowd (society) is valid. ( Adawiyah . 2019)

If the marriage is to continue, it can be carried out in a sirri manner which will legally be considered a polyandry marriage, because the marriage is still legally valid as

the wife of her first husband . Likewise, children born will include illegitimate children who only have a civil relationship with their biological father . ( ADHKI Team , 2020 ) Regarding polygamy, it is only permitted if you get the wife's permission. In addition, family law in Egypt also threatens sanctions against people who make false claims about the marital status or address of a divorced wife or wives . While an employee Marriage registrars who are negligent or fail to carry out their duties can be punished with a maximum prison sentence of one month and a fine of up to 50 Egyptian pounds, as well as the employee concerned being inactivated for a maximum of one year. ( Adawiyah , 2019 )

### **3. Underhand Marriage Factors (Nikah Sirri)**

Several allegations have emerged about the reasons why unregistered marriage with all its risks is still used as an alternative. Among people who are unfamiliar with the law and economically weak communities, it is possible due to limited funds that with practical procedures at no cost , marriages can be carried out. When viewed from a religious aspect, there is a possibility that because they are worried about committing sins and being trapped in immoral acts, ( Sudrajat , et al., 2016 ) Women who experience polygamous violence, whether official polygamy or sirri, are in reality very vulnerable to experiencing injustice and various forms of violence in their lives. other households. The weak position of those in polygamy then has an impact on patterns of dependency , subordination and marginalization of women towards men, both in the economic field, family decision making and others. ( Dzuhayatin , et al. 2013)

This case shows the gap between the change in the paradigm of the wider community regarding sirri marriage, polygamy and even the right to divorce which is solely in the hands of the husband and the religious rules contained in Indonesian Marriage Law which still adhere to traditional concepts. ( Adawiyah , 2019) Factors of sirri marriage: ( Mahmudah , 2019)

- a. Lack of Community Legal Awareness: Building legal awareness and the benefits of marriage registration for the community is one way of fulfilling their civil rights. Because with this awareness, at least if they marry off their children, they won't repeat the same mistakes they made. Such a low level of public legal awareness needs to be increased through legal education activities both formally carried out by relevant agencies and informally through lecturers at Islamic boarding school study forums and so on.

- b. Apathy of Some People towards the Law: This kind of apathy , especially by a public figure, is truly a big obstacle to the implementation of the law. Because what a character does will usually be imitated by those who idolize him . Therefore, legal handling of this case is appropriate so as not to set a bad precedent for the Indonesian nation which is currently trying to establish the supremacy of the law.
- c. Unclear Marriage Registration Provisions : Article 4 of the Bill confirms: every marriage must be registered by PPN based on applicable laws and regulations. Then article 5 paragraph states: to fulfill the provisions of article 4, every marriage must take place before the PPN. The obligation to record as stipulated in article 4 and article 5 paragraph (1) is accompanied by criminal threats for those who violate it. Thus, the lack of certainty in the registration provisions in the current law still provides quite wide room for the implementation of sirri marriages for some people who do so and is one of the factors causing the occurrence of sirri marriages.
- d. Strict Polygamy Permits: Strict polygamy permits also cause those concerned to prefer private marriages or sirri marriages because carrying out (procedures) of private marriages is simpler and quicker to achieve the goal, namely the marriage itself.

The phenomenon of *unregistered* marriages is carried out for certain reasons, without the guardian of the prospective bride , sometimes even without witnesses and without the knowledge of the woman's parents. Marriages like this are not valid religiously and even more so according to applicable laws and regulations or what is called positive law. ( Mushaf al-Qur'an, 2008 ) So the author strongly agrees as according to ( Rajafi , 2015 ), currently it is necessary to re-socialize marriage fiqh which is responsive to the rules of thinking of the Indonesian people, namely opinions that have the enthusiasm to make marriage registration a the most important part that must be implemented in marriage law in Indonesia because its positive value is greater than marriages that do not use marriage registration in it

#### **4. Marriage Under the Arms of an Islamic Perspective**

Historical evidence that existed during the time of Caliph Umar bin Khaththab ra. , explains: ( Rajafi , 2015) "From Abi Zubair al- Makki ; In fact, Umar bin Khaththab attended a wedding that was not witnessed except by the two candidates bride and groom , then Umar said, this is an unregistered marriage and I do not allow it , and if that happens then I will file a case to be punished by stoning ." (HR Malik) (Ahmad Sarwat. 2011. Fiqh of Life Series (8): Marriage. South Jakarta: DU Publishing)



Announcing the law of marriage is *mustahabb* based on the opinion of most scholars, while Az -Zuhri is of the opinion that it is fardhu , so he is of the opinion that if someone marries secretly (unregistered marriage) with two witnesses, then both of them are ordered to hide it , then it is obligatory to separate them. both partners. ( Sudrajat , et al. 2016) In the development of contemporary fiqh thinking, there should no longer be a dichotomy between state and religion in terms of marriage law, everything is one law. Regarding unregistered marriage, it can be categorized as an unlawful act when it is based on the intention of "lying" in carrying out *the mitsaqan. ghalizha* from a marriage. ( Rajafi , 2015)

In fact, there is no term unregistered marriage in the Islamic perspective, because all marriage acts that fulfill the pillars and conditions in the eyes of Islam are valid. What gives rise to the word unregistered marriage from an Islamic perspective is more to compare it with the word unregistered marriage from a legal perspective . Marriage in the Islamic religion only pays attention to pillars and conditions: (Haris & Aunur, 2017)

- a. The presence of prospective grooms and brides;
- b. The presence of a guardian for the bride;
- c. There were two witnesses from each side;
- d. There is consent and qobul .

As long as the pillars and conditions above are met, the marriage is valid based on the Islamic religion. Therefore, if there is an unregistered marriage that does not fulfill the pillars and requirements above, then it cannot be said to have occurred as a valid marriage. Thus, a *sirri marriage* that does not meet the requirements and pillars of marriage clearly brings *mafsadāt* (damage) rather than benefit; whereas *sirri marriage* which is valid according to religion only keeps him away from adultery , but makes things difficult for him in worldly life. ( Mushaf al-Qur'an, 2008)

Aceh Ulama (MPU) number 1 of 2010 regarding siri marriage as in its description , FIRST, " *Siri marriage is a marriage that is carried out not in the presence of a marriage registrar and is not registered at the District Religious Affairs Office or other legitimate agency . SECOND: In the view of Sharia', some unregistered marriages are valid and some are invalid; a. A valid Siri marriage is a Siri marriage which has complete harmony and conditions ; b. An invalid siri marriage is a siri marriage that does not have perfect harmony and conditions . THIRD: a. Marriage registration is not a pillar and condition for a valid marriage. b. A valid unregistered marriage contract must be reported by the bride and groom (husband/wife) to be recorded and the marriage registrar must record it*

. c. *Legal registration of unregistered marriages can be carried out after the marriage ceremony within an unspecified time limit and the registrar is obliged to facilitate its implementation.* d. *Perpetrators of illegal unregistered marriages need to be subject to sanctions ."* ( ADHKI Team , 2020)

Although viewed from an Islamic perspective, unregistered marriage is relatively considered legal, but based on the postulates of *ushuliyyun* and the rules of *fiqhiyah*, the *fukaha* classifying whether or not a *siri* marriage can take place, depending on whether or not the terms and conditions of marriage are complete, as well as from the aspects of the benefits and *madarat*. ( Sudrajat , et al., 2016) However, if this continues and becomes a new legal culture to carry out *the façade of fi al- ardhi* (damage on earth) based on religious apologies , then of course we should be afraid of the survival of all our children and grandchildren in the future. ( Rajafi , 2015) For example, in terms of getting married, this will be hampered if the status of the prospective bride and groom is a widower or widow whose divorce was not carried out in front of the Religious Court. Because in the view of positive law the prospective bride and groom are still legally the husband or wife of their previous partner . ( Mahmudah , 2019)

Amin Abdullah and other contextual thinkers such as Roswanto, et al. (2013), prioritizes the *ratio- legis aspect* ( borrowing Fazlur Rahman) or *maqashidus -syariah* ( borrowing the jargon of the *fiqh*) in religion. If you want to be more academic : the sharia dimension is more universally ethical , while the *fiqh* dimension is more operative - conditional. So the issue of sharia enforcement put forward by the textual-literalists is more precisely an enforcement of *fiqh*, such as the recent issue of the prohibition of straddling women on piggyback rides in Lhokseumawe , Aceh. This is a form of Aceh's conditional regional regulation (*fiqh adhoc* ). It is not a standard universal sharia , because in the Al-Qur'an-Hadith there are no formal rules about it. Likewise, the issue of unregistered marriage is always claimed to be an Islamic teaching (*syariah*), even though it is only a local-conditional "*fiqh*", which today is no longer relevant because it contradicts universal sharia values which require respect for the dignity or psychological-sociological condition of children and women. , even from social psychology it has been rejected by many people.

By thinking positively about the implementation of marriage law as a product of "Indonesian *fiqh*", of course greater benefits can be achieved . Especially if you look at marriage law from a *taklifiyyah perspective* , where marriage law becomes haram when there is an intention to cause harm . And in this case, unregistered marriages occur more



often simply because, (1) they want to find a new atmosphere and do not dare to get permission from their first wife, (2) they are afraid of the rule of law because they are public officials or state servants, and again -Again, he didn't dare to ask permission from his first wife, and (3) he was afraid of being found out by the leadership because of his work contract which required *single status*. (Rajafi, 2015) The only solution for couples who have already done it carrying out a siri marriage is by submitting a marriage itbat to the local Religious Court (KHI: Article 7). The marriage certificate is submitted to obtain a marriage certificate as formal proof that a marriage has occurred. (Sudrajat, et al. 2016)

## **5. Analysis of Marriage Under the Hand of a Positive Legal Perspective**

The Legal Position of Sirri Marriages in a Positive Law Perspective: For Indonesian Muslims, there are two main requirements that must be conditioned as cumulative conditions that make their marriage valid according to positive law, namely: first, the marriage must be carried out according to Islamic law, and second, every marriage must be noted. (Mahmudah, 2019) It is considered that Indonesian marriage law still has problems of injustice related to women's rights, starting from cases of polygamy without court permission which is very detrimental to the wife, divorce unilaterally by the husband outside the court session, marriage of minors, *sirri marriage*, *mut'ah marriage* (contract marriage), forced marriage, and many cases of domestic violence (KDRT). (Adawiyah, 2019)

From a legal perspective, what is meant by unregistered marriage is a marriage under the hand. That is, a marriage that is carried out without regard Law no. 1 of 1974 article 2 paragraph (2) where every marriage is recorded according to the applicable laws and regulations. Article 2 paragraph (2) means that people who want to get married should notify the state. As detailed in the notification in Government Regulation no. 9 of 1975 article 3: (Harris & Aunur, 2017)

- a. Every person who is going to get married informs the employee of his wishes registrar at the place where the marriage takes place;
- b. notification in paragraph (1) is made at least 10 working days before the marriage takes place;
- c. The exception to the period stated in paragraph (2) is due to an important reason given by the sub-district head (on behalf of) the regional head regent.

For perpetrators of unregistered marriages at the Banda Aceh Police, one of the obstacles is that a person cannot be legally processed, and the state also cannot provide legal protection to him due to not having proof of a marriage certificate. Even a victim of

an *unregistered marriage* whose husband behaved arbitrarily and irresponsibly, abandoned himself and his children and even received physical violence, could not do anything except mourn and regret his actions, instead he had to work hard to support his children. . ( ADHKI Team . 2020) Seeing the extraordinary impact of unregistered marriages, it is natural that Indonesian legislation regulates the urgency of registering marriages in accordance with Law Number 1 of 1974 Article 2.

Therefore, marriage under the hand has no legal consequences, as a result, one of the injured parties, either husband or wife , in the future cannot get legal protection with the assumption that: (Harris & Aunur, 2017)

- a. A marriage under the hand is considered invalid, even if the marriage is carried out in accordance with one's religion and beliefs . However, none of this has legal force as long as the private marriage is not registered at the Religious Affairs Office and the Civil Registry Office.
- b. If a child is born in a private marriage, then the child born will only have a civil relationship with the mother and the mother's family. The child born has no civil relationship with the father. This civil relationship means that legally only the mother must be responsible for the child's life, she cannot ask the father to be responsible. Furthermore, he did not even inherit any inheritance from his father.
- c. Children who are born may not necessarily be able to take care of the child's legal status as a legal subject in Indonesia. This means that the child may not be able to obtain a birth certificate , family card , KTP and enjoy public services, meaning the child is not registered . This could be said to violate children's human rights.

Marriage procedures in Indonesia are not only regulated by Islamic law for its adherents, marriages in Indonesia are also regulated by established statutory law, such as the example of "marriage registration" which is regulated in article 2, paragraph 1 and paragraph 2 of the law. No. 1 of 1974 concerning marriage, which reads: Law No. 1 of 1974)

- a) Marriage is valid if it is carried out according to the laws of each religion and belief .
- b) Every marriage is recorded according to applicable laws and regulations.

By looking at the article above, it can be concluded that unregistered marriages are said to be ( condemned ) valid according to religion and state if they are carried out in accordance with the laws and provisions of the respective religion or belief . For example, a siri marriage is carried out in accordance with the provisions and laws of the Islamic religion, by fulfilling the terms and conditions , then the siri marriage is said to be legal,

both religiously and state-wise, this is in line with article 2 paragraph 1 of law no 1 of 1974 concerning marriage, which reads: Marriage is valid, if it is carried out according to the laws of each religion and belief .

In fact, the aim of making laws and regulations regarding marriage registration is none other than to maintain the order of marriage in Indonesian society, this is as explained in the Compilation of Islamic Law, article 5 paragraph 1, which reads: "In order to guarantee marriage order for Islamic society, every marriage must be recorded."

And marriage registration cannot be done by everyone, but can only be done by employees a marriage registrar who has been officially appointed and legally appointed by the government, as regulated in Law No. 22 of 1946 in conjunction with law no. 32 of 1954. ( Compilation of Islamic Law article 5 paragraph 1)

- a) This law is called "The Law on Registration of Marriages, Talak and Reconciliation " and applies to Java and Madura on a day to be determined by the Minister of Religion.
- b) The application of this Law in areas outside Java and Madura is determined by another Law. ( Law No. 22 of 1946)

Law no. 32 of 1954: Concerning the Determination of the Applicability of the Law of the Republic of Indonesia dated 21 November 1946 No. 22 of 1946 concerning the Registration of Marriages, Divorce and Reconciliation in All Regions Outside Java and Madura. ( Law No. 32 of 1954)

## **6. Problems of Siri Marriage on Women's Value and Dignity from a Legal Perspective**

Before the era of civilization came, as we already know , the value and dignity of women was very low, this was also caused by the existence of a patriarchal culture that was developing so rapidly. However, after civilization came, women's dignity was equal to that of men.

In Article 1 Paragraph 2 of Law Number 1 of 2017 concerning Gender Equality it is also explained that : "Gender Equality and Justice is the condition of the relationship between women and men as equal partners so that they receive fair treatment in accessing resources, controlling, participating and obtain the same development benefits". ( Law Number 1 of 2017 concerning Gender Equality)

Apart from implementing the article above, to maintain the honor and dignity of women you can also implement Law No. 1 of 1974 concerning marriage, especially in article 2 paragraph 2, which reads: "Every marriage must be registered according to the applicable laws and regulations" . Because in fact the paragraph in the article, apart from

aiming to guarantee orderly marriages in Indonesian society, the paragraph in the article implies a protection for the dignity and worth of women, namely that by having "marriage registration" the rights of women (wives) will be guaranteed and safe. Because if there is a dispute or the husband does not want to carry out his obligations properly, the wife can take him to court to demand justice.

This is different from unregistered marriages, because when there is a dispute between a husband and wife who are in an unregistered marriage, where the dispute even reaches the stage of divorce, then the party who is most disadvantaged by the divorce is the wife, because from the divorce the wife will not receive any assets . like this even a penny and the husband can at will neglect his obligations towards his wife, such as not providing support and so on, and what is even sadder is that the wife cannot sue her husband in court to ask for justice, because their marriage (siri marriage) has no legal force. .

Therefore, from the information above it can be concluded that: unregistered marriage indirectly damages the dignity of women (wives). And the negative impact of unregistered marriages for women legally is: the wife is not considered a legal wife, because there is no authentic evidence, because in the Compilation of Islamic Law the truth about the existence of a marriage can only be proven by the existence of a "marriage certificate" made by the Marriage Registrar,

The negative impact of a siri marriage is that the wife is not entitled to an inheritance if her husband dies, this is because their marriage (a siri marriage) has no legal force, nor is they entitled to receive the inheritance price in the event of separation. This siri marriage also has an impact on the rights of the biological children of the siri marriage, due to the weak strength of state law regarding the legal status of a husband's offspring and can eliminate the rights of children in inheritance matters.

## **7. Solutions for Women (Wives) Who Have Continued Married to Siri**

For people who are Muslim and whose marriage cannot be proven by a "Marriage Certificate", it can be submitted Itsbat Marriage to the Religious Court, this is in line with the Compilation of Islamic Law article 7 paragraph 2. Itsbat marriage is possible if it concerns the following things:

- a) There is a marriage in the context of resolving a divorce.
- b) Loss of Marriage Certificate.
- c) There are doubts about whether one of the conditions of marriage is valid or not.
- d) Marriages that occurred before the enactment of Law No. 1 of 1974.

- e) The marriage carried out by them is a marriage that has no obstacles to marriage according to Law No. 1 of 1974. ( Compilation of Islamic Law article 7 paragraph 2 points 1 – 5)

If one of the five reasons can be used, then the request for legalization of the marriage through itsbat nikah can be submitted to the Religious Court. However, for unregistered marriages carried out after the enactment of Law No. 1 of 1974, this is only possible itsbat marriage for the purpose of divorce proceedings only. So this will be difficult for unregistered marriage couples who actually want to perpetuate it officially married . However, if the court rejects the application for marriage istbat , then the only solution that can be taken by them is to officially remarry at the Religious Affairs Office in the presence of and recorded by the marriage registration officer. ( Fathudin & Fitria , 2010)

## **CLOSING**

From the brief information above, it can be concluded that although unregistered marriages are legally considered valid both according to religion and the state when they are carried out in accordance with the provisions of each religion or belief (Article 2 paragraph 1 of Law No. 1 of 1974). However, unregistered marriages are contrary to the provisions of the article in paragraph 2, namely regarding marriage registration. And also unregistered marriages damage the dignity of women (wives) if viewed from the perspective of Law No. 1 of 1974, because they have many negative impacts on women (wives). According to state law, the wife is not considered a legal wife, because there is no authentic evidence, because in the Compilation of Islamic Law the truth about the existence of a marriage can only be proven by the existence of a "marriage certificate" made by the Marriage Registrar. And if there is a dispute between the husband and wife and a divorce occurs, then the party who is most disadvantaged by the divorce is the wife, because the wife will not receive any of her assets. like this a penny , and so on.

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