



Siri Marriage In The Review of Islamic Law, Positive Law, Human Rights And Maqashid Al-Syari'ah

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Abstract

The issue of siri marriage is a conflict of norms, namely the norms of Islamic law, marriage law, human rights, and Maqashid al-Syariah. So that its existence that develops in society there are pros and cons. This research is a literature research using the Maqasid al-Syari'ah approach as an analytical tool. The findings of this study state that siri marriage according to the provisions of Islamic Law is valid, while positive law states that it is invalid (void) or can be canceled. As for human rights, siri marriage is not against the law, because the issue of marriage is a basic right for humans which is a gift from God and it has been regulated in the constitution (1945 Constitution) as well as in Law Number 39 of 1999 concerning human rights. While Maqashid al-Syari'ah views siri marriage as an act that can cause harm, then to prevent it from being registered with the authorities, it is based on the method of al-maslahah al-mursalah and sadd al-zari'ah considering that marriage has a fixed law as a means of realizing benefit

Keywords: *Siri Marriage, Islamic Law, Positive Law, Human Rights, and Maqashid al-Syari'ah*

Abstrak

Masalah pernikahan siri merupakan konflik norma, yaitu norma hukum Islam, hukum perkawinan, hak asasi manusia, dan Maqashid al-Syariah. Sehingga keberadaannya yang berkembang di masyarakat terdapat pro dan kontra. Penelitian ini merupakan penelitian kepustakaan dengan menggunakan pendekatan Maqasid al-Syari'ah sebagai alat analisisnya. Temuan penelitian ini menyatakan bahwa pernikahan siri menurut ketentuan Hukum Islam adalah sah, sedangkan hukum positif menyatakan tidak sah (batal) atau dapat dibatalkan. Adapun hak asasi manusia menganggap pernikahan siri tidak bertentangan dengan hukum, karena masalah perkawinan merupakan hak dasar bagi manusia yang merupakan anugerah dari Tuhan dan itu telah diatur dalam konstitusi (UUD 1945) maupun dalam Undang Undang Nomor 39 Tahun 1999 tentang hak asasi manusia. Sementara Maqashid al-Syari'ah memandang pernikahan siri sebagai perbuatan yang dapat menimbulkan madharat, maka untuk mencegahnya dicatatkan ke pihak berwenang, hal itu berdasarkan metode al-maslahah al-mursalah dan sadd al-zari'ah mengingat pernikahan mempunyai hukum yang tetap sebagai sarana untuk mewujudkan kemaslahatan.

Kata Kunci : *Pernikahan Siri, Hukum Islam, Hukum Positif, HAM, dan Maqashid al-Syari'ah*

INTRODUCTION

Marriage is a way taken to justify the relationship between women and men. As Allah has made men and women as partners under the bonds of marriage and therefore they have a family relationship (Surah al-Furqan [25]: 54). Even so, it does not mean that marriage is only for sexual satisfaction and to continue offspring. The purpose of marriage is to form a happy and eternal family (household) based on Belief in the One and Only God.

Islam has rules regarding the validity of a marriage based on the pillars and conditions of marriage that have been determined by the clergy. Unlike the case in the Marriage Law in Indonesia, the validity of marriage as referred to in Article 2 paragraph (2): "Every marriage is recorded according to the applicable laws and regulations." The consequence of this article is that marriages that are not recorded, even though they fulfill the terms and conditions, are considered invalid in the eyes of the law, even though in the eyes of Islam, marriages are considered

valid.¹

The background to the issuance of fatwa No. 10 regarding underhand marriage is because in society there are often practices of marriages that are not recorded. This creates various negative impacts, especially on wives and children who do not have the force of law. In fact, the purpose of the marriage registration itself is none other than to ensure that there is benefit, including for women and children who are most vulnerable to the effects of unregistered marriages. This is in accordance with the mission of Islam to be a mercy to the universe as mentioned in QS al-Anbiya' (21): 107.²

So it is not surprising that the registration of marriages has received the main attention of the CLD-KHI, and even includes one of the pillars of marriage.³ This is confirmed by recording muamalah activities or accounts payable and the sadd al-Zari'ah method by making a prohibition (unrecorded marriage) to prevent damage. not recorded. On the other hand, a registered marriage guarantees legal protection for women and children and this is in accordance with the aim of marriage to create a beneficial family.⁴

All rules that lead to benefit are part of Islamic teachings. On the other hand, all rules that lead to tyranny and corruption are not Islamic teachings. So, the aim of sharia must target all parties, men, women, children and other parties who are considered weak.

In harmony with what was stated by a contemporary maqasid shari'ah expert, Jasser Auda, that Islam is always in accordance with human values and also as a solution to human problems to create a harmonious and balanced human life. Jasser Auda offers the maqasid concept based on HR development. With the

¹ Abd Salam Arief, "Ijtihad Dan Dinamika Hukum Islam," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 7, no. 1 (2017).

² Fitri Komala and Muannif Ridwan, "KEINDAHAN HUKUM ISLAM," *Jurnal Indragiri Penelitian Multidisiplin* 2, no. 3 (2022): 140–46.

³ Fitria Olivia, "Akibat Hukum Terhadap Anak Hasil Perkawinan Siri Pasca Putusan Mahkamah Konstitusi," *Lex Jurnalica* 11, no. 2 (2014): 18085.

⁴ Jimly Asshiddiqie, "Gagasan Negara Hukum Indonesia," in *Makalah Disampaikan Dalam Forum Dialog Perencanaan Pembangunan Hukum Nasional Yang Diselenggarakan Oleh Badan Pembinaan Hukum Nasional Kementerian Hukum Dan*, 2011.

maqasid concept, it is hoped that Islamic law can be implemented as well as possible, the benefits of which can be achieved by all mankind.⁵

The discussion on maqasid syari'ah as a methodology has been widely used to read legislation in Indonesia. One of them can be used as an effort to reconstruct Islamic law. Some are used to research family law in Indonesia, as in the article entitled "Law No. 1 of 1974 Concerning Marriage in the View of Maqashid Sharia", this paper analyzes and proves that Law No. 1 of 1974 is loaded with maqasid syari'ah values. This can be seen from the suitability of the Articles and verses with the principles of maqasid, one of which is the principle of Hifzi al-Din wa al-Nasl (safeguarding religion and offspring) in a recorded marriage contract. This proves that laws and regulations must be adjusted to the maqasid principle, and must even be harmonized if they are no longer relevant in the future.⁶

Other studies such as in the Compilation of Laws Islam, which was written by Muhammad Habib Adi Putra and Umi Sumbulah in an article entitled "Reinterpreting the Nusyuz Concept in the Compilation of Islamic Law from a Gender Perspective and Maqashid Shariah Jasser Auda." This article discusses the concept of nusyuz in the Compilation of Islamic Law because it is considered ambiguous and unfair to women. So it is necessary to bring up the concept of husband nusyuz by using Jasser Auda's maqasid view so that we don't only see an issue (in this case nusyuz) from a man's point of view. There must be other dimensions that need to be raised, such as women's rights not to be discriminated against. Based on his understanding of maqasid shari'ah and the spirit to pay attention to benefit and human rights.⁷

Another regulation that is examined using the maqasid syari'ah lens is Law no. 22 of 2009 concerning traffic in an article entitled "Maqasid al-Syari'ah in Traffic Law Enforcement in Indonesia." Using the maqasid classification approach of Jamaluddin al-Athiya where he divides the maqasid into 4 main lines: individual, family, community and humanity. Traffic law enforcement itself is included in the

⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Rajawali Pers, 2001).

⁶ Usman Betawi, "Maqashid Al-Syariah Sebagai Dasar Hukum Islam Dalam Pandangan Al-Syatibi Dan Jasser Audha," *Jurnal Hukum Responsif* 6, no. 6 (2019): 32–43.

⁷ Ridwan Muannif et al., "Ham Ditinjau Dari Berbagai Perspektif Hukum" (Nuta Media, 2021).

realm of the people, especially its relationship with maintaining security stability so as not to harm others and minimize damage on the road.⁸

From the review above, the use of maqasid as a method is still very relevant when used to review legislation in Indonesia. If we look at marriage as an Islamic teaching that has been arranged by Allah ta'ala, it has meaning and purpose (*Maqāṣid ash-Syarī'Ah*) for the sake of providing benefits to humans (Al-Syatibiy, 2010). If we look at Islamic law, siri marriage is not the same as the intent and purpose of harm for Muslims and is better known as *Maqā.ṣid ash-Syarī'Ah*. In studying *Maqāṣid ash-Syarī'Ah*, according to the scholars, there are four criteria that must be met, namely: (1) *Maqāṣid ash-Syarī'Ah* must be stable, meaning that a lesson from legal requirements can be strengthened as a goal of shari'at if its presence can be ascertained, or dhann (assumptions) can be obtained that can approach certainty, (2) *Maqāṣid ash-Syarī'Ah* must be zhahir, meaning that the scholars do not dispute the form of its presence as the aim of the shari'at ('illat). Like the shari'atan of marriage which has the aim of preserving lineage, this kind of goal is not contested by a scholar, (3) *Maqāṣid asy-Syarī'Ah* must be mundlabith, meaning that a wisdom must have a fixed and clear value (jami 'mani), such as protection of reason (hifzh al-aql) with the aim of prohibiting khamr, and (4) *Maqāṣid ash-Syarī'Ah* must be mutharid, meaning that a lesson must remain unchanged and sustainable. For example in choosing one's religious affairs (Asyur, 2001).

In Maqā theory *ṣid ash-Syarī'Ah* put forward and developed by Abu Ishaq Al-Syathibi, namely the ultimate goal of law is maslahah or the good and welfare of humans. None of the laws of Allah ta'ala have no purpose.⁹ Like the registration of religiously valid/religious new marriages on the family card, the aim is to provide certainty regarding the status of the relationship in the family on the family card regarding marital status and to provide certainty regarding the status of the relationship on the family card and birth certificate regarding who the father and

⁸ Auffah Yumni, "Kemaslahatan Dalam Konsep Maqashid Al-Syar'iah," *NIZHAMIYAH* 6, no. 2 (2016).

⁹ Muannif Ridwan, "PEMIKIRAN ISLAM TERHADAP MAQASHID AL-SYARIAH DAN HAK ASASI MANUSIA," *JURNAL RISET INDRAGIRI* 1, no. 3 (2022): 160–73.

mother are, providing an alternative policy. regarding unregistered marriages (registered marriages/religiously valid marriages, marriages before the enactment of Law Number 16 of 2019 concerning marriages, (traditional marriages, marriages outside of religion.

METHOD

This research is library research (*library research*) using the *Maqasid al-Syari'ah approach as an analytical tool*. Data is obtained and processed using documentation techniques, namely by collecting and recording existing data.¹⁰ The data were then analyzed using a descriptive-analytical method, namely by describing unregistered marriage from various legal perspectives, such as the views of Islamic law, positive law, human rights and *Maqashid al-Shariah*.¹¹

This research is also referred to as normative research, because it refers to legal norms contained in laws and regulations and court decisions as well as norms that live and develop in society.¹² Because it is library research, the type of data is secondary data. The collection of data related to this research was carried out by means of a documentation study, then analyzed descriptively qualitatively.¹³

RESULTS AND DISCUSSION

Siri Marriage According to Islamic Law

Seen from the social aspect, that a marriage has an important and special meaning where this has happened to two human beings who previously had no relationship whatsoever (are other people), if there is a husband and wife bond, actually the bond doesn't stop there. but to family relations, relatives and kinship relations. So that all religions view that marriage is a very important and privileged event.

Besides that, there are many general assessments that argue that people who are married or have been married have a position that is more respected than those

¹⁰ Lexy J. Moleong, *Metodologi Penelitian Kualitatif, Cet. XI. Bandung: PT Remaja Rosdakarya*, 2018.

¹¹ Risa Nur Sa'adah, *METODE PENELITIAN R&D (Research and Development) Kajian Teoretis Dan Aplikatif (CV Literasi Nusantara Abadi*, 2021).

¹² Tjutju Soendari, "Metode Penelitian Deskriptif," *Bandung, UPI. Stuss, Magdalena & Herdan, Agnieszka* 17 (2012).

¹³ Muannif Ridwan and A M Suhar, "Ideal Formulation of Human Rights Regulation in Indonesia," *Ilomata International Journal of Social Science* 4, no. 4 (2023): 537–47.

who are not yet married. Especially for women, marriage will give them a high social position, because she as a wife and a woman gets certain rights and can take legal action in various fields of mu'amalat. and parental supervision.¹⁴

From the perspective of the community mentioned above, it is in this society that sirri marriages are still carried out. In this case, apart from being found in villages, there are also some urban communities who still carry out an unregistered marriage, both those with high and low levels of education.

The author has stated above that an unregistered marriage is a marriage performed by Indonesians who are Muslim, who have fulfilled both the pillars and conditions of marriage but have not been registered with the official marriage registrar, as determined by law. Number 1 of 1974. By not registering this sirri marriage, the marriage is not registered in a state deed. Sirri marriage is part of Islamic marriage, so if they carry out a sirri marriage the conditions and pillars that must be fulfilled are in accordance with those in marriage according to Islam.¹⁵

In Islamic law, a siri marriage can be recognized as valid if it meets certain conditions:

1. Consent: The prospective bride and groom (husband and wife) must give their voluntary consent to marry. A siri marriage cannot be entered into by force.
2. *Wali* (Guardian): In a siri marriage, the woman's guardian (*wali*) must give permission or *wakalah* (power of attorney) to the bride-to-be to marry. This female guardian is usually the father or a legal guardian, such as a brother or grandfather, depending on the situation.
3. *Mahr* (Dowry): *Mahr* is the dowry or dowry that must be agreed upon and paid by the prospective husband to the prospective wife. It is an important part of an Islamic marriage and must be agreed upon before the wedding.

¹⁴ Enik Isnaini, "Perkawinan Siri Dalam Perspektif Hukum Islam, Hukum Positif Dan Hak Asasi Manusia," *Jurnal Independent* 2, no. 1 (2014): 51, <https://doi.org/10.30736/ji.v2i1.18>.

¹⁵ Kekerasan Seksual et al., "TINJAUAN MAQASHID SYARIAH PADA PIDANA PEMAксаAN PERKAWINAN DALAM UNDANG-UNDANG TINDAK PIDANA Tinjauan Maqashid Syariah Pada Pidana Pemaksaan Perkawinan Dalam Undang-Undang Tindak Pidana Kekerasan Seksual (UU TPKS) Pendahuluan," no. 12 (n.d.): 19–33.

4. *Witnesses*: A siri marriage must be witnessed by two fair witnesses (fairness is an important requirement in Islamic marriage). They must witness the marriage contract and confirm that the marriage was properly performed.
5. *Notification*: Although a siri marriage does not require official registration, it is good to inform the family and community about the marriage, especially to avoid legal and social problems.¹⁶

It is important to remember that the status of a siri marriage can vary in different countries and depends on local laws and regulations. Some countries recognize siri marriages as legally valid, while others do not. In some countries, a siri marriage may have limitations in terms of legal and inheritance rights. It is recommended that before deciding to enter into a siri marriage, consult an Islamic jurist or local legal authority to ensure that the marriage meets the requirements of Islamic law and applicable local laws.¹⁷

Sirri Marriage According to Law Number 1 of 1974

Regardless of the various kind of society with various styles in the process of carrying out marriages in accordance with their customs, but with the issuance of Law Number 1 of 1974 concerning implementing regulations it is intended as a unification of law, especially in the field of marriage in Indonesia.¹⁸ Given the increasing urgency of the demands of the times and the complexity of the problems that occur with marriage, so in this case the registration of marriages is necessary. According to the provisions of Law Number 1 of 1974 it is not only a legal act, but also a religious act.¹⁹

Based on the provisions of article 2 paragraph 1 of the Marriage Law, a marriage is considered valid if it is carried out according to the laws of their respective religions and beliefs. According to the explanation, what is meant by the law of each religion and belief includes statutory provisions that apply to groups of

¹⁶ Ridwan and Suhar, "Ideal Formulation of Human Rights Regulation in Indonesia."

¹⁷ Ishaq Ishaq and Muannif Ridwan, "A Study of Umar Bin Khatab's Ijtihad in an Effort to Formulate Islamic Law Reform," *Cogent Social Sciences* 9, no. 2 (2023): 2265522.

¹⁸ Isnaini, "Perkawinan Siri Dalam Perspektif Hukum Islam, Hukum Positif Dan Hak Asasi Manusia."

¹⁹ Abdullah Wasian, "AKIBAT HUKUM PERKAWINAN SIRI (IDAK DICATATKAN) TERHADAP KEDUDUKAN ISTRI, ANAK, DAN HARTA KEKAYAANNYA TINJAUAN HUKUM ISLAM DAN UNDANG-UNDANG PERKAWINAN" (UNIVERSITAS DIPONEGORO, 2010).

religions and beliefs as long as they do not contradict/otherwise stipulated in this law. So therefore whether or not a marriage is valid depends entirely on each religious law and belief held by the people of Indonesia. Thus the validity of a marriage does not depend on the existence of marriage registration, but to determine whether the marriage is valid or not, the respective religious laws are determined.²⁰

In an era of legal pluralism marriage before the enactment of the Marriage Law, which is now such a difference, is very visible, where for one population group, for example, those who are subject to the BW (Book of the Civil Code), only admit that a marriage is only a civil act, who considers that the event -the religious ceremony adopted by the bride and groom is only a formality so that it is a prohibition against a religious official to carry out a marriage before the civil procedure is fulfilled. This is based on article 26 BW which states that the law views a problem in marriage only in civil relations. For those who are Muslim, even though they do not explicitly recognize marriage, it is only in civil relations. For groups who are Muslim, even though they do not explicitly recognize marriage, they are still seen as a religious act whose procedures and procedures must be carried out according to Islamic law.²¹ For the validity of a marriage viewed from a civil perspective, before the marriage has been registered or registered at the Civil Registry Office, as long as the marriage has not been registered, the marriage is still not considered valid according to legal provisions even though they have complied with procedures and procedures according to religious provisions, so that from there is a possibility of what is called "Civil illegitimate child" in addition to the term illegitimate child according to the provisions of Islamic law, or according to the provisions of religious law.

Siri marriages, which are conducted without official registration at the KUA, are not legally recognized in Indonesia under Law No. 1/1974. In the context of the country's laws, siri marriages do not provide the same legal rights as legal

²⁰ Muhammad Irwan, "Kebutuhan Dan Pengelolaan Harta Dalam Maqashid Syariah," *Elastisitas-Jurnal Ekonomi Pembangunan* 3, no. 2 (2021): 160–74.

²¹ Addin Daniar Syamdan and Djumadi Djumadi Purwoatmodjo, "Aspek Hukum Perkawinan Siri Dan Akibat Hukumnya," *Notarius* 12, no. 1 (2019): 452–66.

marriages and do not have a strong legal basis. As siri marriages are not recognized by Indonesian law, there is a risk that couples in siri marriages may not have the same legal protection and rights as couples who are legally married at the KUA. Therefore, it is important to understand the legal and social consequences of a siri marriage and comply with the country's regulations regarding marriage.²²

Sirri Marriage According to Human Rights Perspective

Based on Article 3 paragraph 2 of Law Number 39 of 1999 concerning Human Rights explains that all people have the right to recognition, guarantee, protection and fair treatment, legal certainty and equal treatment before the law.²³ The law states that human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.

Sirri marriage has the right to legal protection. The registration of unregistered marriages on the family card is actually not intended to legalize or consider the practice of unregistered marriages legal. This registration has no legal force and the inclusion of unregistered marriages in this family card has the aim of providing protection and legal certainty for children born from unregistered marriages.²⁴

The Qur'an and Hadith do not recognize the registration of marriages and there is no order to make it obligatory, but with the increasing demands of the times, paying attention to various needs, as well as the many new problems in today's society, are complex. So the government as *ulul amri berijtihad* to make policies in the form of regulations regarding the registration of marriages to realize the benefit of mankind in general and be able to provide guarantees of legal protection from

²² Olivia, Fitria. "Akibat Hukum Terhadap Anak Hasil Perkawinan Siri Pasca Putusan Mahkamah Konstitusi." *Iex Jurnalica* 11.2 (2014): 18085.

²³ Anggi Nur Nisa Tanjung and Wahyu Ziaulhaq, "Analisis Terhadap Hukum Positif Dan Fiqih Pada Perkawinan Siri Dan Pengaruhnya Terhadap Kepemilikan Harta Kekayaan," *SOSMANIORA: Jurnal Ilmu Sosial Dan Humaniora* 1, no. 1 (2022): 62–66.

²⁴ Naili Suroya, "Perspektif Maqashid Syari'ah Terhadap Fatwa Majelis Ulama Indonesia Nomor 10 Tahun 2008 Tentang Nikah Di Bawah Tangan," *Jatishwara* 37, no. 2 (2022): 195–204.

the state for the benefit especially for children (Manan, 2012). This is in accordance with the theory of society as stated by John Locke, the state must guarantee all citizens' rights which are protected by law.²⁵

An unregistered marriage will definitely result in children, because the status of a child is illegitimate in the eyes of the law. This treatment is of course psychologically can affect the development of children. Thus, this is very inconsistent with the concept of protecting children, because treatment like this can hinder their growth, both mentally, physically and even socially.²⁶

Sirri marriage is an unregistered marriage. Therefore, the perpetrators will face obstacles when applying for a Family Card (KK), because they must attach official proof of marriage. If you don't have a family card, you will have difficulty getting a child's birth certificate. However, this is not the case is again a problem, as said by the Director General of Population and Civil Registry of the Ministry of Home Affairs that all citizens must be recorded in the KK without exception even for unregistered marriages. The condition is that there is a Statement of Absolute Responsibility (SPTJM) which explains that the couple is husband and wife.²⁷

Thus, related to the protection of children's rights, namely obtaining a birth certificate, this can be realized even birth certificates can also be owned by children born out of wedlock. This is as stated by the Head of the Population and Civil Registry Service that all citizens must have an identity card, even children born out of wedlock must also be recorded on every population document (radarutara.id, 2019). In Islam, a child born out of wedlock is a child who must be protected even though he has the status of an illegitimate child.²⁸

It is important for every child to have a birth certificate, because birth is one of the most important legal events so clear and written rules are needed. Events of birth must have concrete evidence that can legally show a person's identity. In this

²⁵ St Salehah Madjid, "Prinsip-Prinsip (Asas-Asas) Muamalah," *Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2018): 14–28.

²⁶ Qadriani Arifuddin and Anwar Sewang, "Ijtihad Umar Bin Khattab Dan Relevansinya Terhadap Hukum Islam Kontemporer," *JISH: Jurnal Ilmu Syariah Dan Hukum* 1, no. 1 (2021): 69–83.

²⁷ Arief, "Ijtihad Dan Dinamika Hukum Islam."

²⁸ Muhammad Ridwan, "Implementasi Syariat Islam: Telaah Atas Praktik Ijtihad Umar Bin Khattab," *TSAQAFAH* 13, no. 2 (2017): 231–54.

case the evidence can be seen from a person's birth certificate (Prodjohamidjojo, 2004). The deed functions as valid evidence even in international law.²⁹

The human rights described above are the rights of citizenship status. The right to citizenship status is one of the rights that must be guaranteed by the constitution. In the 1945 Constitution these rights are listed in article 28D paragraphs 1 and 4. This article explains that the state has an obligation to protect and recognize the citizenship status of all Indonesian citizens. In addition, this article also explains that all people have the right to be recognized, protected and receive equal treatment before the law.

Siri Marriage in terms of *Maqāshid asy-Syarī'ah*.

Maqāshid ash-Syarī'Ah consists of two words namely *Maqāshid* and *asy-Syarī'Ah*. *Maqāshid* means purpose or purpose. Sharia means the way to the spring. The path to the spring is intended as a path to the main source of life (Wehr, 1980). There is an opinion that states that *maqashid* is *mashlahah*, that is, *mashlahah* is taken and *mafsadah* is rejected (Al-Jauziyah, 2001). Yusuf Al-Qaradawi defines *Maqāshid ash-Syarī'Ah* as "every purpose of revelation (nash) be it commanded, prohibited, or permissible for the mukalaf (person in charge), he emphasized this definition by stating that *maqashid sharia* is the name of the wisdom contained behind sharia law.³⁰

Some ushul fiqh scholars divide into three groups in stipulating law. First, the Shari'a which deals with primary human needs (*Maqāshid adl-dlaruriyāt*). The primary needs are divided into 5 parts, namely, protection of religion, protection of soul, protection of reason, protection of honor, and protection of property.³¹

Regarding the issue of marriage in Indonesia, it is appropriate that it be carried out in accordance with Islamic law and positive law. This positive law regulates the administration of marriages which enhances the quality of marriages, in this case the registration of marriages. This regulation on marriage registration

²⁹ Muhammad Ali Rusdi, "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam," *DIKTUM: Jurnal Syariah Dan Hukum* 15, no. 2 (2017): 151–68.

³⁰ Rusdi.

³¹ Muannif Ridwan, M Hasbi Umar, and Abdul Ghafar, "SUMBER-SUMBER HUKUM ISLAM DAN IMPLEMENTASINYA," *Borneo: Journal of Islamic Studies* 1, no. 2 (2021): 28–41.

aims to provide convenience and guarantee legal certainty for husbands, wives and children. This means that the rules regarding the registration of marriages have a good effect on all people involved and the benefits are enormous. Therefore, when viewed from the perspective of *maqashid sharia*, the rules for registering marriages have benefits (Khallaf, 2001). Marriage is a matter of special concern in Islam, because it relates to the goal of *maqashid sharia*, namely protecting offspring.³²

As previously explained, marriage registration will affect children's rights. With regard to children's rights, Islam explicitly reminds parents of their obligations towards their children. Children have the right to be protected, have the right to get a good living, have the right to inherit, and have the right to be treated fairly. Islam teaches parents to protect their children from the time they are still in the womb. Parents are prohibited from discriminating against their children.³³

When viewed from the perspective of *maqashid sharia*, especially those concerning primary needs, it is emphasized that arrangements related to marriage registration are aimed at realizing and maintaining the benefit of all people. In addition, it aims to distance humanity from destruction both in society in general and in the family environment in particular.³⁴ As emphasized by Imam Al-Ghazali, *masalah* is maintaining the goals of *syara'* which consist of maintaining religion, soul, intellect, lineage and property. Thus, all things that contain this protection, then it is *masalah*.³⁵

Furthermore, the relevance of Sirri marriage registration in KK is seen from the concept of *maqashid sharia*, so there is a goal to provide protection for offspring. As it is known that a child must have a birth certificate to prove that he is a legitimate child from a legal marriage as well so that by having a birth certificate, a child can receive legal recognition from the state. This statement is contained in

³² Muannif Ridwan, "Ijtihad Pada Era Kontemporer (Konteks Pemikiran Islam Dalam Fiqih Dan Maqashid al-Syariah)," *Masohi* 1, no. 2 (2020): 110–21.

³³ Khairatun Hisan and Arif Dian Santoso, "Analisis Syar'iyah Ijtihad Umar Bin Khattab Terhadap Hadd Sariqah," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 2 (2020): 319–97.

³⁴ Faiz Rahman and Rizka Nur Faiza, "Perkawinan Siri Online Ditinjau Dari Prespektif Hukum Perkawinan Islam Yang Berlaku Di Indonesia," *Jurnal Penelitian Hukum-Fakultas Hukum Universitas Gadjah Mada* 1, no. 1 (2014): 36–52.

³⁵ Ridwan, "PEMIKIRAN ISLAM TERHADAP MAQASHID AL-SYARIAH DAN HAK ASASI MANUSIA."

the Marriage Law. In making a child's birth certificate, an attachment to a KK is required. Therefore, in order to fulfill his rights, it is indeed appropriate for him to be registered in the KK so that he can make a birth certificate.³⁶ The purpose of registering sirri marriages in this case is to protect children so that they avoid discriminatory and violent actions, so that he can grow and develop properly as well as get achievements. This is in accordance with what is contained in the Child Protection Act.³⁷

The next goal is for the child to get inheritance rights from his family, especially his parents. If he does not get these rights, then with authentic evidence, namely the KK and birth certificate, he can file a lawsuit in court. With the registration of unregistered marriages, children can receive inheritance from their parents' families, especially their father's family, if an unexpected event occurs. In the maqasid sharia analysis, this is included in the category of protection for assets. Wealth is an important thing for everyone's life to live their life in the world.³⁸

Based on maqashid sharia, the registration of marriages in sirri has broad benefits both for the social life of a wife, children and even for all members of the family. The registration of sirri marriages in the KK is a government policy/ulil amri in the context of striving for prosperity, peace and happiness for all citizens, especially the protection of children.

CONCLUSION

From all the description above, it can be concluded that unregistered marriage is included in the category of marriages carried out under the hand. According to the provisions of Islamic law, it is valid, while positive law states that it is invalid (canceled) or can be canceled. Meanwhile, according to human rights, sirri marriage is not against the law, because marriage is a basic right for humans which is a gift from God and it has been regulated in the constitution (1945 Constitution) as well as in Law Number 39 of 1999 concerning human rights. While Maqasid al-

³⁶ Anjani Sipahutar, "Tinjauan Yuridis Terhadap Perlindungan Anak Dari Hasil Perkawinan Siri Yang Ditelantarkan Menurut Hukum Islam Dan Undang-Undang Perlindungan Anak," *Doktrina: Journal of Law* 2, no. 1 (2019): 66–82.

³⁷ Olivia, "Akibat Hukum Terhadap Anak Hasil Perkawinan Siri Pasca Putusan Mahkamah Konstitusi."

³⁸ Ramlah Ramlah Ramlah, "THE IMPLEMENTATION OF NIKAH SIRI WITH THE PURPOSE OF MAINTAINING FAMILY SALARY BENEFITS: THE PERSPECTIVE OF ISLAMIC LAW," *INNOVATIO: Journal for Religious Innovations Studies* 22, no. 2 (2022): 126–40.

Shari'ah views unregistered marriage as an act that can cause harm, so to prevent it Maqashid requires it to be registered with the authorities, this is based on the al-maslahah method al-murlahand sadd al-zari'ah remembering that marriage has a fixed law as a means to create benefits.

In closing of this study, the authors provide suggestions, among others: For Indonesian people who are Muslim, in carrying out marriages, follow the regulatory method stated in Law Number 1 of 1974. Officials of the Religious Courts and the Office of Religious Affairs should conduct counseling on Law Number 1 of 1974 more frequently to the people in the villages as well as to the younger generation so that they know the contents of Law Number 1 of 1974.

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