

# Legal Consequences on *Sirri* Marriage Performers Without the Permission of the First Wife: Perspective of Islamic Law and Positive Law

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## ABSTRACT

The aim of this study is to examine the existence of *sirri* marriages occasionally. Some people even do it without the first wife's permission, resulting in losses for the perpetrators even though the law has determined that marriage must be brought before the official marriage registrar to be registered. On this issue, the researchers focused on investigating the legal consequences for *sirri* marriage perpetrators without the first wife's permission and the perspective of Islamic law and positive law for *sirri* marriage perpetrators without the first wife's consent. The provisions for *sirri* marriage in Islamic law are not found in the Al-Quran and Hadith. *Sirri* marriage can be made a criminal act in Islamic law, but the provisions fall into *jarimah ta'zir*. The *ta'zir* punishment is not directly found in the Al-Quran and Hadith, this type of punishment becomes the judge's or local government's competence. Meanwhile, according to the positive law of *sirri* marriages that do not comply with or follow the legal procedures for marriage or without asking for the first wife's permission, the marriage can be punished under Article 279. This type of research used a literature review. The researchers suggest that this university should socialize regarding this matter, and registration of marriages must continue to be carried out by the government and the community, in this case, religious leaders.

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## ARTICLE INFORMATION

### Keywords:

Legal, *Sirri* marriage, unregistered marriage, wife permission, Islamic law, positive law

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## 1. Introduction

Law of the Republic of Indonesia Number 22 of 1946 in Article 3 Concerning the Criminal Act of Violating the Administration of Marriage is also contained in Chapter IX Article 45 of Government Regulation Number 9 of 1975 that marriage is only considered perfect if it has fulfilled the conditions that have been set. However, in reality, many sirri marriage practices still occur in society. This kind of marriage is a criminal act of administrative violation that can be subjected to criminal sanctions, both for the perpetrator and the officer who carried out the wedding. Sirri marriage originates from the tradition of Islamic society in Arab countries. The term is not a new thing in Islamic culture. In his book, Imam Malik mentions that the term sirri marriage came from the words of Umar bin Khattab when there was a report that a marriage without other witnesses was being undergone. Umar responded, "This is Sirri marriage, and I will not allow it. If I come, I will stone him" (Ibnu Rusyd,(tt.h).

Based on the marriage case, which only presented one male witness and one female witness. In this case, the conditions for witnesses still need to be met. Umar thus considered this marriage to be Sirri marriage. Some great scholars who followed Imam Malik, such as Abu Hanifah and Syafi'i, believed that sirri marriages are not permissible and if this happened, they should be gradually abolished (canceled). In the view of Islam, sirri marriage is defined as a secret marriage. This can happen because there are considerations where the couple does not want other people to know about the marriage and keep their marriage a secret. Some interpret that sirri marriage occurs when the marriage takes place without a guardian. This is because if the parents know about it, they cannot approve it. Marriage like this is clearly forbidden in terms of its pillars and conditions, and practicing it means ignoring Islamic law. According to Umar bin Khattab, I received reports that I had witnessed a marriage between a man and a woman. As the hadith stated, that marriage is called sirri because the pillars and conditions are not fulfilled (Sanjaya and Rahim, 2017: 166).

حَدَّثَنَا عَمْرُو بْنُ زَافِعٍ حَدَّثَنَا هُشَيْمٌ عَنْ أَبِي بَلَجٍ عَنْ مُحَمَّدِ بْنِ خَاتِبٍ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَضْلٌ مَا بَيْنَ الْحَلَالِ وَالْحَرَامِ الدُّفُّ وَالصُّوْتُ فِي النَّكَاحِ

Translation: "It was narrated from Muhammad bin Hatib that the Messenger of Allah

said: "What differentiates between the lawful and the unlawful is (beating) the Daff and raising the voices (in song) at the time of marriage." (Sunan Ibn Majah 1896)

If someone marries intending to leave other people, the rule that applies is:

الضرر يزال.

Translation: The loss must be removed (Yahya and Fatchurrahman, 1986:487).

Next, the rule reads:

درء المفسد مقدم على جلب المصالح

Translation:

Rejecting damage and attracting benefit

It is emphasized that the most essential and fundamental objectives of Islamic law are tahqiqul and jalbun maslaha (2002, 140-143). There are five main elements that must be considered in maqashid addharuri. The five basic needs sequentially are maintaining religion (ظفد), preserving the soul (نيد دلا), preserving the mind (سفنلا ظفد), preserving the offspring (لفعلا ظفد), and protecting property (لاملا ظفد) (Yahya dan Fatchurrahman, 1986:172-179). Furthermore, to be healthy, dynamic, and full of happiness, people must avoid danger, destruction, and disturbance of morality. Islam encourages humans to do good. This deed is noble and considered a sign of faith (Ar-Raudli, 2015: 162). Regarding the judge's decision, Allah SWT. Stated in Q.S. Sad/38: 26 as follows. "O Daud, indeed We have made you caliphs (rulers) on earth, So judge (cases) among people fairly and do not follow your desires (2021:454).

Next, Allah SWT. said in Q.S. Al-Maidah/5: 49: "And judge between them (O Prophet) by what Allah has revealed and do not follow their desires. And beware, so they do not lure you away from some of what Allah has revealed to you. If they turn away (from Allah's judgment), then know that it is Allah's Will to repay them for some of their sins and that many people are indeed rebellious."

From these two arguments, it is clear that the judiciary is a necessity whose legal basis has been established through the Qur'an (Koto, 2012:1). Based on the verse above, the interpretation of Surah shad verse 26 is: يَدَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ This is explained in the following narration: Muhammad bin Husain told me, he said: Ahmad bin Mufadhhdhal told us, he said: Asbath tells us from As-Suddi, about the Word of God, يَدَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ O Daud; indeed We have made you caliphs (rulers) on

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earth," he said, "The meaning is Allah made him king on earth. Translation of Allah's words **فَأَخَذَ مِنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَى فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ** (So judge (cases) among people fairly and do not follow your desires, because it will lead you astray from the way of Allah). The meaning is to give a fair decision **وَلَا تَتَّبِعِ الْهَوَى** "And do not follow your desires," in deciding matters between them, so you deviate from the truth. **فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ** "Meaning, your actions following your desires in making decisions, will shift you from the path of Allah, which He has outlined for believers so that you become one of those who perish (Muhammad Sakir Dan Muhammad Syakir:143-144).

Then the interpretation of Surah Al-Maidah verse 49 is "And judge between them (O Prophet) by what Allah has revealed." It means O Muhammad, give a decision among humankind, both Arabs and non-Arabs, who are illiterate or good at reading, according to what Allah Ta'ala has revealed to you in this holy book (Quran), and according to what Allah has ordained for you in the form of law for the Prophets before you, who have not been enshrined in your shariat. Those are the meaning put forward by Ibn Jarir. Ibn Abi Hatim said from Ibn 'Abbas, he said, The Prophet had two choices: If he wished, he would make a decision for them, and if he did not wish, then he refused to give them a verdict, so he returned them to their judgment, then the verse came down: **وَأَنْ أَحْكَمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعِ أَهْوَاءَهُمْ** "And judge between them (O Prophet) by what Allah has revealed, and do not follow their desires. Thus, Allah ordered Rasulullah SAW. to decide for them according to what is stipulated in the book (Al-Qur'an). His words, **وَلَا تَتَّبِعِ أَهْوَاءَهُمْ** "and do not follow their desires." That is, their views that they have agreed upon, and therefore they left what Allah Ta'ala sent down to His Messengers. (Abdullah Bin Muhammad Bin Abdurahman Bin Ishaq Al-Sheikh, 2003,102-104)

Then the issue of the sirri marriage phenomenon is contrary to Indonesian law, and this phenomenon poses many risks. The risks can occur when a husband refuses to carry out his obligations toward his wife, the wife does not have a marriage certificate as solid proof, and cannot sue anything in civil matters. A marriage certificate is urgently needed at this time. An unregistered marriage at the civil registry office is considered invalid according to the laws in force in that country. Furthermore, material and immaterial losses, both physical and

psychological harm, not only for spouses but also for children who have nothing to do with their parent's decisions. According to the 2012 Census data, around 25% of Indonesia's population had gone through sirri marriage (religious or customary ceremony). This census was conducted in 111 villages in 17 provinces. The provinces with the highest number of sirri marriages are NTT 78%, Banten 65%, and NTB 54%. The number of sirri marriages does not only include one case of marriage crime that appears to have been done by practicing sirri polygamy and ending with isbath (Setyo, 2015).

Referring to Supreme Court data for 2021, the number of underage marriage dispensations in 2020 reached 65,301 cases, much higher than in 2019, only 25,281 cases. In 2021, the number of underage marriage dispensation cases decreased to 54,894, but in absolute terms, the number is still higher than in 2019. Furthermore, in Indonesia, there are still many cases of underhanded child marriage (sirri). Woro estimates that more than 330.000 child and youth marriages yearly cannot be registered by the Office of Religious Affairs (KUA) or Civil Registry because they do not go through the courts (Yoanes Litha,2022).

Based on the information above, even though laws and regulations exist, unregistered marriages still occur frequently. Marriage without the wife's consent is declared in court and without prior approval for marriage, but the perpetrators still practice polygamy. The consequence experienced by the perpetrators of sirri marriage is that there is no access to administrative matters such as divorce settlements, child custody, and inheritance. The government does not recognize this marriage because their position in the eyes of the law is fragile. This arrangement aims to avoid problems in the future, such as divorce, inheritance as children's rights, and distribution of joint assets. As previously mentioned, sirri marriages have taken a heavy toll on women and children, meant only to satisfy impulses and desires (Sirin).

From this phenomenon, the recent criminalization of unregistered marriages has recently become a focus of discussion in the bill on the substantive law of religious courts in the field of marriage, which can later replace the position of Islamic law enforcement. Because of the position of the Compilation of Islamic Law, it can be understood that the Compilation of Islamic Law is not legally binding on Indonesian

citizens. Article 4 of the bill on the Substantive Law of the Religious Courts in the Field of Marriage confirms that the Registrar must register all marriages according to the law. The penalties under Chapter 21, Article 143 are as follows:

*"Any person who deliberately enters into a marriage without being in the presence of the Marriage Registrar, as referred to in Article 5 paragraph (1), shall be subject to a maximum fine of Rp. 6,000,000.- (six million rupiah) or imprisonment for a maximum of 6 (six) months."*

Based on the information above, even though laws and regulations already exist, unregistered marriages still occur frequently. Therefore, records are needed to avoid such damage. Moreover, marriage is a form of reform that occurs in Islamic marriages because there is no obligation to register marriages in the Qur'an and Sunnah. On this basis, fiqh scholars in the past should have paid more attention to the registration of marriages. The main problem here is that sirri marriages continue to exist without interruption, even though they contradict the state's legal procedures.

## 2. Literature Review

### 2.1 Marriage

Marriage is a contract that justifies association, limits rights, obligations, and mutual assistance between a man and a woman who is not a mahram (Katz & Katz, 1975; Sukaenah, Rusli, & B, 2020). Regarding the command to marry, Allah SWT. said in Q.S. An-Nur/24: 32. Translation: "Marry those of you that are single, (whether men or women), and those of your male and female slaves that are righteous. If they are poor, Allah will enrich them with His bounty. (Djamali, 2000 :77-78) According to R. Abdul Djamali, based on the provisions of the curriculum of the consortium of jurisprudence that the term marriage according to Islamic law is nikah or ziwaj. These two terms in Bahasa have different meanings. The word "nikah" means sexual relations between husband and wife, while "ziwaj" means an agreement between a man and a woman who bind themselves in a husband-wife relationship to achieve the goal of life in carrying out worship devotion to Allah.

### 2.2 Marriage Law

The law of conducting marriages, based on the texts, both the Qur'an and the Sunnah, Islam strongly recommends Muslims who can get married (Jawad & Elmali-Karakaya, 2020; Kefalas, Furstenberg, Carr, & Napolitano, 2011). However, viewed from the perspective of the condition of the person who performs it and the purpose of carrying it out, marriage can be subject to mandatory law, *sunnah*, *haram*, *makruh* or *mubah*.<sup>1</sup> Some of the laws are:

#### a. Mandatory

The marriage law is obligatory if a person worries that he will commit adultery. At the same time, he has been able to bear the responsibilities of marriage and the maintenance because marriage is a way to maintain his honor and keep him from falling into something illegitimate. As the word of Allah SWT. in Q.S. An-Nur/24: 33.

*"But let them who find not [the means for] marriage abstain [from sexual relations] until Allah enriches them from His bounty. And those who seek a contract [for eventual emancipation] from among whom your right hands possess - then make a contract with them if you know there is within them goodness and give them from the wealth of Allah which He has given you. And do not compel your slave girls to prostitution, if they desire chastity, to seek [thereby] the temporary interests of worldly life. And if someone should compel them, Allah is [to them], after their compulsion, Forgiving and Merciful".*

As also mentioned in the hadith:

*"From Amru bin Hafsh bin Ghiyats from my father from Al A'masy, he said; Had told me Umarah from Abdurrahman bin Yazid he said; Alqamah, Al Aswad, and I once met Abdullah, then he said; We were with the Prophet (peace be upon him) while we were young and had no wealth whatever. So, Allah's Apostle said, "O young people! Whoever among you can marry should marry because it helps him lower his gaze and guard his modesty (i.e., his private parts from committing illegal sexual intercourse, etc.), and whoever cannot marry should fast, as*

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<sup>1</sup>Al-Manar, *FikihNikah*, 9-11.

*fasting diminishes his sexual power."*  
(Narrated by Bukhari).

*b. Sunnah*

The law was being sunnah and recommended if a person lusts for the opposite sex, can pay for the maintenance, and has a sense of responsibility. Still, he is not worried about falling into adultery. As for the arguments in Q.S An-Nisa verse 3:

*"And if you fear that you shall not be able to deal justly with the orphans, then marry two, three, four (other permissible) women that you like; but if you fear that you will not do justice (between them), then be pleased with (concubines) what you have with you. That is more appropriate for you not to part from justice."*

*c. Haram (unlawful)*

Marriage becomes unlawful when a person is sure that if he is married, he will wrong his wife, cannot provide for his wife, and can not become a good leader of the family.

*d. Makruh*

The law becomes makruh if someone believes he will fall into harm and disobedience if he gets married. This is caused by, for example, being unable to support and lead the family. However, this belief needs to reach the level of confidence in the mandatory law above (Riswanto, 2010:80).

*e. Mubah*

This mubah law applies to a man who is not pressured by reasons that require immediate marriage or for reasons that prohibit marriage. Mubah means that marriage is permissible for anyone (male and female) who has reached puberty (mukallaf), and no cause or obstacle hinders it. (Labib, 2000: 207).

### 2.3 Conditions and Pillars of Marriage

According to Jumhur Ulama, pillars are things that cause something to stand and exist (Ituma & Simpson, 2007). Something will not exist without it, which means it is a must. Pillars are the things that determine the essence of something, whether it is part of it or not. On the other hand, conditions determine the existence of something and are not part of it.

Conditions determine the existence of something, and it is outside the essence of that

thing. There are four types of requirements for each contract, including the marriage contract: in'iqaad requirements (implementation), shihhah requirements (valid), nafaadz conditions (execution), and luzuum requirements (permanence). In'iqaad requirements are the conditions that must be met in the pillars of the contract or the principles. If one of the conditions does not exist, according to the consensus of the scholars, the warranty will be void (invalid). Shihhah requirements are the conditions that must be met because they have syar'i consequences for the contract.

If one of these conditions is not present, according to the Hanafiah scholars, the contract will be broken, and according to jumhur ulama, the contract was canceled. Nafaadz conditions determine the consequences of the agreement if it is carried out after the conditions for implementation and validity are fulfilled. If one of the conditions of this nafaadz condition does not exist, according to the Hanafiah and Malikiyah scholars, the contract is mauquf (suspended). Luzuum conditions are conditions that determine the continuity and longevity of the contract. If one of these conditions is absent, the contract becomes jaiz (permissible) or unusual, which means one of the parties other than both may cancel the contract.

Etymologically, pillars must be fulfilled for a job to be valid, while conditions are provisions (rules, instructions) that must be heeded and carried out.<sup>2</sup> Marriage is only considered valid if it fulfills the following conditions:

1. There is permission from the guardian (parent). If there are no parents or lineage guardians, permission must be obtained from the sultan because the sultan or ruler is the guardian for women who do not have guardians;
2. A prospective husband and a prospective wife are not mahrams to each other.
3. Attended by two fair witnesses. Marriage is also valid if it is attended by two witnesses whose presence is closed;
4. There are ijab and qabul (Islamic marriage contracts), which are pronounced in a language that is understood by both parties in the agreement, namely the guardian and the prospective husband, or the person

representing them both (al-Gazali, 2016:215).

Abd al-Wahhab Khalaf stated that a condition is something where the existence of a law depends on the presence of that thing, and from the absence of the thing, the stipulation of the lack of the law is obtained. What is meant is the existence of *syara'*, which causes the effect (Khalaf: 118). For Muslims, marriage is valid if it is carried out according to Islamic marriage law. A marriage contract is deemed accurate if it has fulfilled all the pillars and conditions so that *syara'* law recognizes the condition of the contract. There are five pillars of the marriage contract, namely:

- 1) For prospective husbands, the conditions are:
  - a. Muslim
  - b. Male
  - c. Not currently in ihram for Hajj/Umrah.
  - d. Not having four wives, including a wife who is still undergoing iddah *thalakraj'i*.
  - e. Not having a wife who is forbidden to have the same husband as the prospective bride, including a wife who is still undergoing iddah *thalak raj'iy*
  - f. Not being forced
  - g. Not the mahram of the prospective wife.
- 2) For prospective wife, the conditions are:
  - a). Muslim
  - b). Female
  - c). Not currently in ihram for Hajj/Umrah.
  - d). Never been sworn in *li'an* by the prospective husband
  - e). Not having a husband or undergoing iddah *thalak raj'I* from other men.
  - f). Has given permission or shown a willingness to the guardian to marry her off.
  - g). Not the mahram of the prospective husband (Abidin dan Aminuddin, 1999: 6).
- 3) Guardian, the conditions are:
  - a). Muslim, if the prospective wife is Muslim.
  - b). Male
  - c). *Baligh* (Mature).
  - d). Reasonable/mentally healthy (not having mental disorder).
  - e). Not currently in ihram for Hajj/Umrah
  - f). Not *mahjur bissafah* (not being revoked from his obligations).
  - g). Not being forced
  - h). Not having cognitive damage due to age or other reasons
  - i). Not ungodly
- 4) Two male witnesses. The conditions are:

- a). Muslim, if the prospective wife is muslim.
- b). Male
- c). *Baligh* (Mature).
- d). Reasonable/mentally healthy (not having mental disorder).
- e). Can maintain self-esteem (*bermuru'ah*)
- f). Not ungodly
- g). Not forgetful
- h). Able to see (not blind or visually impaired)
  - i). Able to hear (not deaf or hard of hearing)
- j). Able to speak (not mute or speech impaired)
- k). Not appointed as guardian of marriage
- l). Understanding the meaning of the sentence in the *ijab qabul*.

#### 5) Ijab and Qabul

Ijab marriage contract is A series of words uttered by the marriage guardian or his representative in the marriage contract to marry off the prospective husband. The legal requirements to become the bride's guardian are according to the arrangement below.

1. His father
2. His grandfather (father of the bride's father)
3. A brother from the same mother and father as the prospective bride
4. A brother from the same father as the prospective bride
5. A son of the brother from the same mother and father as the prospective bride
6. A son of the brother from the same father as the prospective bride
7. A brother of the prospective bride's father (paternal uncle).
8. A son of his paternal uncle
9. Judge

Guardians and witnesses are responsible for the validity of the marriage contract. Therefore, they should fulfill the following characteristics:

- a Muslim. A Non-muslim is not valid to be a guardian or witness.
- b *Baligh* (mature) (at least 15 years old)
- c Reasonable/mentally healthy (not having a mental disorder)
- d Free (Not a slave)
- e Male
- f Fair (Saebani & Ecep Taufiqurrahman, 2015 :158).

#### 2.4 Legal consequences

Legal consequences result from an action taken to obtain an effect desired by the perpetrator and regulated by law. His action is a legal action taken to get the desired effect of the law (Bickel & Wellington, 1957). Legal consequences occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by specific events by the law concerning that have been determined or considered as legal consequences.

### **2.5 Sirri Marriages**

Sirri marriage is a marriage that is only witnessed by a modin or mosque employee and a witness, not through the Office of Religious Affairs (KUA) (Kurniawati: 10). The word sirri comes from the Arabic word sirrun (السري) which means mysterious (the unseen, hidden, secret) (Al Munawir:626).

### **2.6 Positive Law**

The government enforces positive laws in a particular society (country). Positive law is the law that applies in society at the current place and time (Baude & Stern, 2016).

### **2.7 Islamic Law**

Islamic law, in simple terms, is a set of rules regarding human behavior that a group of people recognizes, compiled by people who are given authorization by the community, and valid and binding for all its members. Islam comes from the Arabic word Salima which means safe, secure, peaceful, and prosperous. The word Salima is then changed to aslama, which means surrender, maintain a safe state of mind, submit, and obey. Islamic law can be seen from two aspects, broad and narrow understanding. Islamic law, in a general sense, covers all kinds of things, both human and divine. Both are a series of relationships between humans and Allah, humans and humans, and humans and the natural surroundings (Sahid, 2016:6).

## **3. Methodology**

This study employed qualitative method to understand the fatwa of the Indonesian Ulema Council on the Legal Consequences of Violations of Divorce Taklik in Momunu District, Buol Regency. This research was conducted by taking the research location at the Buol Religious Court.

Qualitative research is characterized by collecting descriptive data, including the

informants' words, actions, and feelings, who serve as the needed data sources (Nurdin & Pettalongi, 2022). The collected data is supported by textual and documentary data (files, audio, visual, audiovisual) that support the research (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2022). With this approach, the researcher aims to provide a detailed description of the phenomena occurring in the field, the nature of the phenomena, and all aspects related to the theme under investigation (Nurdin, Stockdale, & Scheepers, 2013).

This study is classified as a case study research. Case study research delves more intensively into the current situation to gather information (Nurdin, Scheepers, & Stockdale, 2022). In other words, the researcher must build good relationships with various individuals and entities to become sources of information within the environment, such as academic units, social groups, individuals, institutions, and communities. The researcher also immerse themselves in the surrounding environment to gather as much data as possible.

## **4. Results and Discussion**

### **4.1 Legal Consequences for Sirri Marriage Perpetrators Without First Wife's Permission**

Marriage has not only legal consequences for those who enter into marriage and for children born as a result of the marriage, but it also has legal consequences for the assets of the husband and wife. Family law and wealth are very closely related to one another. The legal relationship in the family determines the legal relationship in marital assets, which is none other than the law of family wealth. Below will be described the legal consequences for the perpetrators of sirri marriages without the first wife's permission.

In Indonesia, marriage registration is placed as something important. The existence of a precise regulatory mechanism characterizes this. Besides that, there are also legal consequences behind the stipulation of this regulation. This provision, in general, is regulated in Law Number 1 of 1974 in Article 2 Paragraph 2 of the Law that every marriage is recorded according to the applicable laws and regulations. Then, with the development of the times, the government regulated the matter of registering marriages as stated in articles 5 to 7 of the Compilation of Islamic Law in Article 5

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paragraph (1) "In order to ensure orderliness of marriages for the Islamic community, every marriage must be recorded." Paragraph (2) "The registration of the marriage referred to in paragraph (1) is carried out by the Marriage Registrar Officer".

Article 6, paragraph (2) "Marriage performed outside the supervision of the Marriage Registrar has no legal force." Article 7, paragraph (1), "Marriage can only be evidenced by a marriage certificate made by a Marriage Registrar." In the provisions of the articles above, marriage is not only required to fulfill the conditions and pillars of marriage but also must fulfill legal administrative provisions, that is being recorded in the marriage record as evidenced by a Marriage Certificate. The reason is the order of marriage (article 5). There are two of the most fundamental legal issues with registration at the KUA, namely:

1. The problem of selecting the bride and groom. By recording at the KUA, it can be seen whether or not a marriage is permissible according to Islamic material law (Quran and Hadith).
2. Legal evidence. The registration of marriages by the KUA is proven by issuing a marriage certificate book, written civil evidence that a legal marriage has occurred. There is no prohibition on marriage between the two, and it has fulfilled the requirements and pillars of marriage. Marriage is considered to have only existed with a marriage certificate book. It is a special completeness requirement for a lawsuit or application for a case submitted to the Religious Court as formal law that applies (Sarmadi, 2007:49)

Based on that, the legal consequence for the perpetrator of the sirri marriage without the first wife's permission is that the interests of the other husband and the sirri wife in living a married life cannot be protected because there is no proof of the marriage. Children from sirri marriages are not entitled to a marriage certificate; getting inheritance and legal protection is challenging.

#### ***4.2 The Perspective of Positive Law and Islamic Law for Sirri Marriage Perpetrators Without the Permission of the First Wife***

The provisions for sirri marriage in Islamic law are not found in the Al-Quran and Hadith. Sirri marriage can be made a criminal act in Islamic law, but the provisions fall into jarimah ta'zir. Because the ta'zir punishment is not

directly found in the Al-Quran and Hadith, this type of punishment becomes the judge's or local government's competence.

In simple terms, crime is defined as suffering intentionally inflicted by the state on one or more people due to an act prohibited by criminal law rules. Therefore, in every crime, it is necessary to clearly state prohibited actions and impose severe criminal penalties if they do not comply. The forms of suffering in the form of punishments imposed by the state are regulated and detailed, including how the criminal sanctions are imposed and enforced. The Criminal Code includes all the regulations governing what is prohibited, what constitutes a crime, and what penalties can be imposed.

The criminal elements include elements of societal behavior, consequential factors (in substantive crimes), psychological factors (intentional or negligent), and objective elements related to the circumstances of the crime. From this definition, the elements of a criminal act are (1) human behavior in a broad sense (positive or permissive) and (2) illegality (objective and subjective). (3) nobody's fault. (4) threatened by criminals; First, the definition of crime only includes actions and consequences, criminal threats, and acts against the law. On the other hand, there is criminal liability or negligence, including its form (intentional or negligent) and weakness. Talking about the elements of crime, it is said in the subsociality theory that the criminal element includes sub-social elements (sub-sociality elements) apart from illegality and dishonesty. Subsociality means that behavior becomes criminally significant if it harms society, even if the risk is relatively small. If there is no danger, there is no element of subsociality. The subsocial element (subsociality) is present in the breakdown of law and order. Harm from criminal activity as a subsocial component includes four circumstances:

- 1 The perpetrator himself has a fault in it;
- 2 The victim has a feeling of dissatisfaction/disappointment;
- 3 The immediate environment, there is a tendency to imitate doing evil;
- 4 The general public, in the form of feelings of anxiety.

The subsocial theory reads: "If the judge considers it appropriate due to the small meaning of an act, the perpetrator's personality, or the circumstances at the time the act was

committed. Criminal sanctions in marriage, as mentioned previously, are an act or responsibility to bind compliance with applicable laws. A form of negative reward defined by law. As the rule of law, regulations in Indonesia will only work effectively if sanctions in law enforcement accompany them. Legal sanctions can also take various forms, such as criminal, civil, and administrative sanctions.

The Registrar, who receives notification of the intention to marry, should check whether the conditions for marriage have been fulfilled and whether there are no obstacles to marriage according to law. Then check, when both parties (guardian and future husband) face the marriage registrar, whether there are obstacles to marriage and whether the conditions determined by Islamic religious law have not been violated. When observed further, Article 9 of Law No. 1 of 1974 and Article 279 of the Criminal Code refer to a valid marriage by fully complying with the applicable law. Sirri marriage that does not comply with the marriage procedure can be punished.

#### **4 Conclusion**

Based on the discussion above, the researchers can conclude that the legal consequences for the perpetrator of a sirri marriage without the first wife's permission are that the interests of the husband and the sirri wife in living a married life cannot be protected. Because there is no proof of the marriage, children from sirri marriages are not entitled to a marriage certificate. It is also tricky to get inheritance and legal protection.

The provisions for sirri marriage in Islamic law are not found in the Al-Quran and Hadith. Sirri marriage can be made a criminal act in Islamic law, but the provisions fall into jarimah ta'zir. Because the ta'zir punishment is not directly found in the Al-Quran and Hadith, this type of punishment becomes the judge's competence. The Registrar, who receives notification of the intention to marry, should check whether the conditions for marriage have been fulfilled and whether there are no obstacles to marriage according to law. Then check, when both parties (guardian and future husband) face the marriage registrar, whether there are obstacles to marriage and whether the conditions determined by Islamic religious law have not been violated. When observed further,

Article 9 of Law No. 1 of 1974 and Article 279 of the Criminal Code refer to a valid marriage by fully complying with the applicable law. Sirri marriage that does not comply with the marriage procedure can be punished.

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