

Legal Analysis of the Impact of Unregistered Marriage on Voter Data in Palu City

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ABSTRACT

The aim of the study is to describe sirri marriage as one of the factors in the problems that occur in voter data and the implications of the impact of sirri marriage on voter data in Palu City. The issues raised are how the implications of the impact of sirri marriages on voter data in Palu City and how the legal analysis of the results of sirri marriages on voter data in Palu City. The research method used is qualitative method and the data was gathered through field observation, in-depth interview, and documentation. The methodology was reinforced by the Maqashid Asy-Syariah approach. The results of the study indicate that sirri marriage is one of the problems with voter data, namely in the process of updating voter data. The impact is that it has a negative impact on the election process, namely the loss of voting rights, the occurrence of multiple voter list problems, and for children if there is no data recording, they also cannot be registered on the voter list. With the Minister of Home Affairs No. 8 of 2019, children from sirri marriages can record their identities, it's just that many other children's rights will be lost, it is better for the perpetrators of this sirri marriage and their children to be advised to do isbat marriage so that their marriage is recorded.

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1. Introduction

Regular elections are one of the most distinguishing characteristics of countries that adopt a democratic system of government. The essential premise of a democratic state, as we all know, is that the people have the highest authority. The definition of popular sovereignty states that democracy places the people in the position of owner and holder of sovereignty (Kasfir, 1992). Elections are also an essential agenda in a democratic country like Indonesia. This is because elections are necessary for democratic government, and democracy is a system that respects people's opinions.

Voter data is a list of voters compiled and determined by the General Election Commission at the time of the election (Katz & King, 2014). Carry out the stage of updating voter data. Compilation of the voter list begins with sending population data, namely population data for prospective voters, from the government to the Ministry of Home Affairs of the Republic of Indonesia to the General Election Commission of the Republic of Indonesia. The Indonesian General Election Commission also synchronized the government to have voter data from the previous election. Then, it continued updating voter data.

According to Bagijo, voters are Indonesian citizens aged 17 years or over or married. Regardless of whether a citizen's physical condition is healthy or not, they have political rights and entitlements, and according to Bagijo, the law is that participating in elections and making choices should not be discriminated against based on any background (Halimatusa'diyah & Prihatini, 2021). Obstacles to regional elections are caused by underage marriages, which usually means that people who marry underage also carry out unregistered marriages because they do not meet the requirements for legally carrying out marriages by the state (Koski & Heymann, 2018). However, some ask for marriage dispensation because underage children who want to get married can cause problems with voter data. After all, one of the requirements for voting is that they are married. What if they are under 17 years old and don't have an Electronic Identity Card but are already married? The Office of Religious Matters does not record their marriage, which is a big problem when updating voter data.

Marriage has a noble purpose: to glorify humans and elevate human dignity above other creations (Lewis, 1987). Sheikh Sulaiman Ahmad Yahya Al-Faifi shows in the book "Sirri Marriage Law" that marriage is the best way to realize human nature, guide desires, and give vent to sexual desires. KH. Abdullah Fauzi explains in the book "Sirri Marriage Law" that marriage is the best way to serve, get closer to Allah, follow the Prophet Muhammad's hadith, and give birth to offspring.

Children born from unregistered marriages do not receive recognition from the government because, administratively, they are not registered with the population and civil registration services (Dake & Fuseini, 2018). As a result, they do not have the right to vote in regional elections when they are adults. The issue of the rights of children resulting from unregistered marriages in this regional election needs to receive attention from researchers to help resolve this problem. Because of this, this research focuses on the rights of children resulting from unregistered marriages in regional elections to provide understanding to academics and the government.

2. Literature Review

2.1 The Concept of Marriage in Islam

In Islam, marriage comes from the word "Kawin" which means "forming a family with the opposite sex or having sex." Marriage means "to gather, enter into one another, and sexual intercourse (wathi) (Finnis, 2008)." The word marriage is often used to indicate sexual intercourse (coitus), as well as the meaning of the marriage contract.

The word marriage comes from the words *nakaha* and *zawaja*. These two words are the main terms the Qur'an uses to denote marriage. The word *zauj* means couple, while *nikah* means to gather. Thus, from a linguistic perspective, marriage represents the coming together of two previously separate and independent people to become one complete and partnered unit. The word *zauj* also gives the meaning of complementarity.

Marriage is obligatory for every Muslim man or woman who has the ability and conditions for it (Razack, 2004). Therefore, if they are deemed capable and have the requirements determined by religion, they must enter into a marriage legally according to religion. Islam

encourages its followers to marry, and this recommendation is expressed in several different editorials. For example, Islam states that marriage is the guidance of the Prophets and Apostles, while they are role models that we must follow. As Allah SWT says, in QS al-Nur (24): 32, which means the following:

“And marry those who are alone among you and worthy (to marry) of your male and female servants. If they are poor, Allah will enable them with His grace. And Allah is All-Encompassing (His gifts) and All-Knowing.”

This verse explains that if he is afraid of harming his religion or his world, then marriage is obligatory; However, if he can control himself (not scared of his religion) and there is room to marry a free person, that is sunnah for him. For a person who does not have bread, it is better if he refrains from fasting, even if he is fasting, to break his lust. It should also be noted that the directions in this verse are recommendations, not requirements unless the woman specifically requests them. The fact that people were allowed to remain celibate during the prophet's time proves this commandment was not mandatory. However, if it is considered that not marrying a single individual may result in defamation, such an order may be deemed necessary.

2.2 *Sirri* Marriage

If discussed in fiqh, *sirri* marriage is a type of marriage that is forbidden in Islam because this kind of marriage is seen as not fulfilling the pillars of marriage, especially the marriage statement made by and being the reason for the presence of witnesses (Latif Fauzi & Fauzi, 2023). *Sirri*, which implies surreptitiousness, is considered by certain clerics, such as the Maliki clerics, as a demonstration that deviates from these pillars. So, a marriage that is performed in front of witnesses but is approached by observers to cover up the events of the marriage is seen as an invalid marriage.

The words *Sirri* Marriage in Indonesia then, at that time, experienced a change in significance. Abdul Ghofir Anshori recently expressed that in everyday life, *sirri* marriage is carried out according to Islamic law, but this still needs to be registered by the Marriage Registrar. When "*sirri*" is associated with marriage, we get a compound term as "*Sirri* Marriage." The significance of this word becomes "secret marriage" or "kept marriage." "*Sirri*" in the expression "*Sirri* Marriage" is a restricted word.

Assuming a married couple has no marriage record, documents, high contrast, or any term comparing them, in the Civil Registry or Religious Affairs Office, the marriage is referred to as *Sirri* Marriage. So, if you have an out-of-wedlock marriage, this means that the marriage was covered up or hidden from public authorities. This means that the Religious Affairs Office or Civil Registry office is unaware that someone is married.

According to scholars that unregistered marriages were illegal (F Nisa, 2018). According to him, a marriage that is not registered is kept secret or confidential so that other people do not know about it. In contrast, a private marriage fulfills the needs and principles of marriage according to the rules of fiqh but is not officially registered by the competent authority, especially the Marriage Registrar.

2.3 Types of *Sirri* Marriages

1. Marriage without a guardian.

Because the woman's guardian does not approve of it or believes that a marriage without a guardian is halal, or because she has to fulfill her wishes without a guardian, this kind of marriage is carried out in secret (*sirri*). Sharia law is the subject of this book. In such marriages, it can be ensured that marriages carried out without a guardian are invalid because the gatekeeper is the mainstay of a substantial marriage.

2. Marriage without witnesses or witnesses is not strong enough

Due to various reasons, such as embarrassment, fear, or deliberately not having or taking only one witness, such marriages are concluded in multiple ways. It is also worth making a justification that you need to fulfill your desires without following the norms of Sharia.

1. A marriage that is religiously legal but not registered with the state registration agency.

Marriage is valid from a theological point of view but not from a positive legal point of view. A person must have proof (*bayyinah*) that they have married another person to establish a relationship at a civil registration institution. Cost factors, especially not being able to pay taxes or fear of being caught abusing the principle of prohibiting civil servants from remarrying, are also why such marriages are carried out serially over a long period from one

individual, keeping the marriage a secret from other family members, etc.

Unregistered relationships have been common in Indonesia for some time. According to Moh Idris Ramulyo, marriages carried out by Indonesian Muslims fulfill the pillars and marital status but are not registered with the marriage registrar.

2.3 Voter data in regional elections

Elections are political markets in which individuals or networks collaborate to implement collective agreements (local territorial arrangements) between members of political races (ideological groups) and citizens (individuals) who have the option to vote. Political progress Missions, announcements, and publicity aimed at being carried out generally, directly, mysteriously, and freely, which is also an absolute prerequisite for the political race as a whole, through the media of print, voice, and other broad communications. States based on votes are routinely relegated to the "Electoral Committee."

The definition of regional elections in political examinations is that elections can be said to be a political act where race is an organization and political practice that allows for an agent government, so that is when the overall political decision is very likely to be the most imperative thing. One of the limits to predicting whether a majority rule system is a vote-based country or not is how that country conducts the overall political race. Vote-based systems are a type of governance by individuals. In the overall political race, the voters in the political decision are called constituents, and it is from them that the members of the political decision provide their guarantees and projects during the mission term. This mission is carried out for a predetermined period before the day of democracy.

The interactional significance of promises relating to the exercise of power is well known. A system of democratic rule will never be felt as long as it is not carried out through decisions to decide which individuals are qualified to involve government seats and individual delegates in parliament. Meanwhile, to recognize and protect the advantages of the majority rule system, implementing direct decisions is more appropriate, considering that individuals as power holders can directly take part in determining the chairperson.

3. Methodology

This study uses qualitative methods. In qualitative research, the use of theory is only a guide so that the research focus is in accordance with the facts in the field (Nurdin & Pettalangi, 2022; Nurdin, Stockdale, & Scheepers, 2016). The data was collected through direct observation, in-depth interviews, and written document analysis at the research site (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2022). This research was conducted at the Palu City General Election Commission. The reason for choosing this research location was that there were many problems with voter data, and researchers wanted to examine whether unregistered marriage was one of the factors.

The interviews involved five local election commission members, local citizens, and three local government staff. We also interview five figures from the Department of Religious Affairs. The interviews were recorded and transcribed. The results of the transcripts were consulted with the participants to obtain their consent (Nurdin, Scheepers, & Stockdale, 2022). The data analysis technique in this research used a deductive thinking technique, which can be interpreted as a research procedure that produces deductive data from the interviews and field notes. Data analysis was conducted using thematic analysis from Strauss and Corbin (1998). The analysis started with open, axial, and selective coding. The final result of the data analysis is themes found from the data.

4. Results and Discussion

4.1 Regional Election Voter Data Problems

Indonesia is one of the countries that upholds democracy. In Southeast Asia, Indonesia is the country that best implements democracy (Hadiz, 2004; Rosyidin, 2020). Today's democracy is a wealth that always fills the discussion of various levels of society, starting from elite class society such as political elites, bureaucrats, government, community shops, activities of non-governmental organizations, intellectuals, students, and other professionals. Etymologically, democracy consists of two words originating from Greece: "demos," which means the people or power of a place, and "cratesin," which means power or sovereignty (Anastasiadis, 1999). So, "demos-cratos"

(democracy) is the power or sovereignty of the people. The highest power is in the people's decisions, and the people are in power, the government of the people, and power by the people.

In practice, it is not the people who run the government but the elite, whose numbers are much smaller. There are also never any results from the government for the people equally, but there is always a difference between those who get much more and those who earn much less. Therefore, when the definition of "populistic democracy" was to be maintained (Mair, 2002), Dahl proposed the concept of "polyarchy" as a replacement for the idea of "populistic democracy." Polyarchy is considered more realistic to describe a particular political phenomenon in the history of human civilization because polyarchy refers to a system of government by "many people," not by "all the people," not by "everyone" (Pappas, 2013). Characteristics of the word "democracy" over time have had many meanings. However, among the many different meanings, several significant similarities show the universality of the concept of democracy based on criteria that reflect the realization of this concept. At least eight main characteristics must be considered to assess whether a society is democratic or not.

1. There is peaceful and voluntary resolution of disputes.
2. There is a guarantee for peaceful change in a changing society.
3. There is a regular change of rulers.
4. There are restrictions on the use of minimum force.
5. There is recognition and respect for diversity.
6. There is a guarantee of upholding justice.
7. There are efforts to advance science.
8. There is recognition and respect for freedom.

General elections are a form of democracy. The definition of a General Election is a process for selecting people who will occupy government seats. This general election was held to create a democratic country where the leaders are elected based on the majority votes. Even though every Indonesian citizen has the right to vote, the Election Law imposes an age limit on being able to participate in general elections. The time limit for determining available limits is the voter registration time for general elections. Regarding voter data, one informant said the following:

One of the main problems that often arises in the implementation of elections is related to the

preparation of voter lists, which still experience problems regarding accuracy, comprehensiveness, and up-to-date data. As the stage with the most extended period, the accuracy of updating the voter list is crucial because it determines the level of political participation, which has long been considered to be the core domain of democracy. The quality of the voter list that has been selected is one of the elements for holding elections with integrity, impartiality, and accountability. Election Supervisors have duties, functions, authority, and obligations as election organizers.

Voter data is also related to the marital status of the voter's parents (Hobbs, Christakis, & Fowler, 2014). Suppose the marriage status of the voter's parents is not registered with the religious affairs office. In that case, the children of that family do not have the right to vote because they usually do not have an identity card. So this result is a problem for the general election commission, as stated by the following informant:

The problem that often occurs is that voters who do not meet the requirements as voters, such as people who are in unregistered marriages, are included in the voter list whose data needs to be completed. Couples in unregistered marriages who have identity cards can still vote because they have an identity; the problem is the children of unregistered married couples who do not have identity cards. There are unregistered married couples who don't have identity cards or marriage books and can't vote.

Thus, unregistered marriages are also one of the causes of obstacles in compiling voter lists. The main problems that often arise in the implementation of elections are related to the preparation of voter lists, which still experience issues regarding accuracy, comprehensiveness, and up-to-date data. Voter data in elections in Indonesia is not a simple matter. Voter data is produced through a long and complicated data processing process involving many participants, institutions, and regulations.

4.2 The Impact of Sirri Marriage on Voter Data

Humans are social creatures who cannot live alone. This shows that humans, physically and mentally, without other people's help, need other people's help. This indicates that there is a need for cooperation between humans and one another, including in building a household. Islam recommends marriage; this is general, in the sense that anyone who already has the ability to marry should immediately marry rather than remain single. The ability in question is being able physically and mentally.

Sirri marriage or underhand marriage has no legal basis or legality. This can be seen in Law Number 1 of 1974 concerning marriage, amended into Law No. 16 of 2019, Article 2 paragraph (2) states that "every marriage is recorded according to the applicable laws and regulations". Many impacts will occur if this *sirri* marriage is carried out, one of which is that this marriage is considered non-existent (not registered) even though the *sirri* marriage is still valid according to *sharia* and *fiqhi*. Therefore, couples who have had an unregistered marriage and want to obtain legality or register their marriage must submit a marriage isbat hearing at the local court. The marriage law requires every couple who wants to get married to carry out it at the religious affairs office, aiming for the marriage to be registered and recognized by the state. The purpose of registering marriages is to safeguard property and protect offspring. Islam has regulated marriage and forbids adultery. One of the objectives of Islamic law is that by registering marriages, humans can live in peace and affection with one another. However, marriages that are not registered or under the hand are a big problem for humanity, especially in the current millennial era. Some individuals have carried out marriages under the hand or marriages that have not been registered or have carried out baseless polygamy and violate existing norms; it is better to reaffirm the marriage that has already been carried out, better known as marriage isbat. Marriage isbat is a marriage not registered at the local Religious Affairs Office.

According to Idrus, the impact that occurs on the election as a result of *sirri* marriage is as follows;

Marriage is a very noble path, and it is said by Islamic scholars, ustads, and intellectuals that marriage is the longest form of worship. This is the most essential thing that must be understood. Just imagine that by getting

married, we gain or perfect part of our faith; we intend to get married and follow Allah SWT's commands, and the Sunnah of the Prophet Muhammad is already a reward, especially if we have carried out these actions. However, the problem is how we can get a reward if we marry not following existing regulations. In fact, with this marriage, we get problems and lose existing rights.

To provide an in-depth picture, the author interviewed the perpetrator of the *Sirri* marriage and his child; in this case, the researcher disguised the informant's identity due to a request from the informant, who did not want to know about his personal life. The results of the interview with the informant of the perpetrator of the *Sirri* marriage were as follows:

I got married in 2003 until now. My marriage was not held at the religious affairs office because, at that time, we were not old enough to marry, so in the end, we only married based on religion, namely the presence of witnesses and a priest, and then I gave birth to my child in 2005, so far our marriage has been okay. Because we have never been involved in legal matters, until now, my husband and I have only participated in elections once, namely in 2020, because there was pressure from the family and community, so we reported it to the local village head. We don't take part in elections or participate in voting because we consider elections to be just a political drama.

Thus, the implication of the impact of children from unregistered marriages on voter data in Palu City is that it has a negative impact on updating data, which causes perpetrators of unregistered marriages not to be recorded and not be eligible to vote.

However, with the existence of regulations that require all citizens to register themselves with the Population and Civil Registration Service as stated in Article 34 of Presidential Regulation Number 96 of 2018, which says, "Residents can make a statement of absolute responsibility for the correctness of the data with the knowledge of 2 (two) witnesses in the case of:

- a. Do not have a birth certificate; and/or
- b. Don't have a marriage certificate or other valid evidence, but the relationship status on the Family Card shows that they are husband and wife.

Furthermore, the Minister of Home Affairs Regulation number 108 of 2019 Article 10

Paragraph 2 states: "issuance of a new Family Card for forming a new family by fulfilling the requirements following the provisions of the Presidential Regulation regarding the requirements and procedures for population registration and civil registration and is accompanied by other conditions in the form of a statement of absolute responsibility for marriage/divorce that has not been registered."

With the existence of Presidential Regulation Number 96 of 2018 and Minister of Home Affairs Regulation Number 108 of 2019, it can be seen that perpetrators of *sirri* marriages can issue family cards, which means that the children of perpetrators of *sirri* marriages can also have an identity, only the Family Card owned by the perpetrator of *sirri* marriages and the family cards owned by married couples that the state has recorded are different.

5. Conclusion

Sirri marriages cause problems with voter data, while the main problem that often arises is the preparation of voter lists, which still needs to improve in accuracy, comprehensiveness, and up-to-date data. *Sirri* marriages cause loss of voting rights for the community itself. Then, with Government Regulation Number 96 of 2018 and Minister of Home Affairs Regulation Number 108 of 2019, the family of the perpetrator of an unregistered marriage can make a family card by signing an absolute signature agreement.

From a legal perspective, the impact of children from unregistered marriages on voter data in Palu City is that it has a negative impact. The negative impact is on updating data, which causes perpetrators of unregistered marriages not to be recorded and will not meet the requirements to vote, with a judicial review of Article 28 and Article 111 of the Law Number 42 of 2008 concerning the General Election of President and Vice President which was then decided based on the decision of the Constitutional Court Number 102/PUU-VII/2009, the fundamental rights guaranteed in the constitution are increasingly strengthened so that citizens who are not registered on the Permanent Voter List can continue to exercise their rights with a Resident Identity Card accompanied by a Family Card or Passport for Indonesian citizens who are outside Indonesia with certain conditions.

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