



## The Phenomenon of Unregistered (*Sirri*) Marriages in Surabaya

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### Abstract

*Sirri* marriage is valid regarding religion but is not registered at the KUA; consequently, its legal force is still problematic. This article answers two problems: first, the phenomenon of *sirri* marriage in Surabaya; second, *maqasid al-syariah* analysis of the phenomenon of *sirri* marriage in Surabaya. This research used descriptive qualitative methodology. The data collection technique used documentation and interview techniques. The results showed that many *sirri* marriage practices were carried out by the Surabaya community. Many factors cause the choice of *sirri* marriage, namely the lack of understanding of legal awareness of the mandatory registration of marriage in Indonesia, the factor of pregnancy outside of marriage, and the polygamy factor. Responding to the phenomenon of *sirri* marriage in Surabaya, the KUA also made various prevention and handling efforts, such as socialization about the importance of marriage registration, the impact of *sirri* marriage, coaching for perpetrators of *sirri* marriage, and others. Based on the *maqasid al-syariah* study, the phenomenon of *sirri* marriage is not an ideal marriage for Indonesian society because it cannot realize the objectives of sharia.

**Keywords:** *Mafsadat* and *mudarat*, *Maqasid al-syariah*, *Sirri* marriage.

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## Introduction

A legal marriage fulfils the terms and conditions (Yunus, 2024: 89). However, in Indonesia, a legal marriage is not enough if it is not registered at the religious affairs office (KUA), which is what is known as *sirri* marriage. In Indonesia, *sirri* marriage is one of the most complex problems. The Indonesian government is trying to strengthen the system to ensure that all people entering marriage are legally protected. The problem is that there are no strict rules prohibiting *sirri* marriages, and there is no clear statement that *sirri* marriages are not legal (Hasan, et al., 2022: 106). Although *sirri* marriages are considered religiously valid, they raise various legal and social issues that affect the rights of individuals, especially women and children (Dimyathi, et al., 2022: 31).

Nine factors cause the occurrence of *sirri* marriage, namely the factor of not being old enough, economic factors, factors of official, work, or school ties, and factors of a belief that the law of *sirri* marriage is valid according to religion. At the same time, recording is a matter of administration only, factors of pregnancy outside of marriage, lack of knowledge and/or public awareness of the importance of marriage registration, social factors, the difficulty of polygamous rules for men who want to marry more than one wife so that they choose *sirri* marriage, and factors of lack of public awareness so that people do *sirri* marriage because there is no strict punishment for the perpetrators of *sirri* marriage (Adillah, 2011: 106-107).

*Sirri* marriages have a far-reaching impact. It requires a concerted effort to reduce and prevent the occurrence of *sirri* marriages, especially the government. The Ministry of Religious Affairs, through the Office of Religious Affairs (KUA) in the regions, is a representation of the government that is in direct contact with the community and has a substantial share in efforts to reduce or prevent *sirri* marriages (Adillah, 2011: 106-107).

In addition to increasing public awareness about the importance of marriage registration, the government can also conduct counselling, public campaigns, and free mass marriage programs facilitated by the government are some of the concrete steps that have been taken. In addition, firmer regulations regarding marriage registration are expected to reduce the number of *sirri* marriages, as there remains legal dualism regarding the validity of *sirri* marriages. This dualism is also reinforced by the existence of opinions about the validity of *sirri* marriages because registration is not considered a requirement for the validity of marriage (Fathoni, 2018: 106-141). In line with this, it is interesting to conduct a study on the prevention and handling of *sirri* marriages carried out at the KUA as a government representative. In this case, the researcher focuses on the KUA in Surabaya to deal with *sirri* marriages and the forms of prevention of *sirri* marriages in Surabaya.

## Method

According to Suryana (2010:18). Based on the nature of the problem, this research is designed as descriptive research, which aims to make a systematic, factual and accurate description of the existing facts related to the phenomenon of *sirri* marriage in Surabaya, as well as the prevention and handling of *sirri* marriage carried out by the KUA in Surabaya. Moleong (2004:157) states that the primary data sources in qualitative research are words and actions. In this regard, the words referred to in this study are words obtained from interviews and documents related to the focus of the research. This study's data collection method was interviews, a review of *sirri* marriage literature and documents related to the research object, and data analysis using inductive descriptive analysis.

## Result and Discussion

### Unregistered Marriage in Surabaya

Cases of *sirri* marriages often occur as it is easy to find a religious teacher (*Ustaz*) on social media to marry married couples *sirri* without being registered at the local Religious Affairs Office. For example, on [jasapernikahansiri.com](http://jasapernikahansiri.com) (2022), where the dexterity of couples who marry *sirri*, in the experience of the judge of the Bojonegoro Religious Court (2022), includes not getting the blessing of his family, obscuring the authenticity of his data/identity for his second marriage so that it is carried out *sirri*, and others. Even though this *sirri* marriage has an evident impact on both the woman and child (Rifqi, 2020: 99), there are still those who practice it. This *sirri* marriage is considered valid according to *fiqh* because the pillars and conditions of marriage have been fulfilled, and there are no obstacles to the validity of the marriage (Rohman, 2022: 187). As long as the conditions and pillars have been fulfilled, the marriage is valid and has legal consequences, such as the birth of the obligations of husband and wife, the emergence of inheritance rights, and others.

Meanwhile, in Surabaya, the practice of *sirri* marriages is still widely practised by the community. Data on *sirri* marriages were found when they legalized their marriages at the Surabaya Religious Court. The following is the verdict (2022):

**Table 1.** Marriage Validation

#### Marriage Validation (Isbat Nikah) Decree

Year	2017	2018	2019	2020	2021	2022
Surabaya	278	226	249	173		121

In 2023, *isbat sirri* marriage in the city of Surabaya was also intensively carried out and even facilitated by the Surabaya City Government through the Lontong Kupang program, namely the Latest Online Service One Gate System between the Surabaya Population and Civil Registration Office (*Dispendukcapil*) Surabaya, the Ministry of Religion and the Surabaya Religious Court. In this program, 217 married couples who had married *sirri* were legalized by the Surabaya Religious Court. Meanwhile, in 2024, the Surabaya City Government and the Surabaya Religious Court again held a mass *isbat nikah* at Surabaya City Hall. There were more *isbat al-nikah* participants in 2024 than in 2023, with 330 couples who had been married illegally having their marriages legalized through the *isbat nikah* route by the Surabaya Religious Court (2024).

### The *Sirri* Marriage and The Problem of Married.

In this paper, two cases of the practice of *sirri* marriage by Surabaya residents are explained in detail. In the first case, a wife who had been *sirri* married for three years and lost communication for two months. The reason for marrying *sirri* was because her husband had a first wife who he said was still in the process of divorce, although religiously (*fiqh*) the marriage was valid. After all, the husband had divorced his wife. Because the husband's divorce certificate from his former first wife did not yet exist, he and his first wife knew each other well. The husband also showed a serious commitment to marriage, the marriage contract was held in a *sirri* manner because the husband's status was still recorded as the legal husband of the first wife, so it could not be registered at the KUA (Personal Interview, 2024).

Listening to the wife's explanation means that the husband is dishonest and, even from his first wife, who said that the divorce process had been carried out in court. Even so, his marriage went on like any other marriage. She feels peace and tranquillity in her

marriage. Moreover, her extended family also approved her marriage, and it was not a marriage because there were blemishes or she did not get her parents' blessing, but purely because the administration files were incomplete. The marriage contract was also attended by many big families from both sides. She said that it was not her father who was the guardian of her marriage because he had died, but her younger brother and the younger brother did not come at the time of the marriage contract (Personal Interview, 2024).

In addition to the problem of uncertainty, she also shared another problem: she felt afraid and intimidated because her husband left debts and leases on her behalf. If the goods purchased with leasing services existed, she could return them. The problem was that the goods did not exist, and the collectors from the leasing company kept coming to collect, usually men. Since he was so afraid of being visited by male collectors, she had to sleep at her sister's house.

In the second case, a woman was widowed and married to a man who was already married and had children. It means that the marriage was polygamous. The motive for the marriage was that she fell in love with her husband even though he already had a wife and children. She told me that she had been polygamous with a man. The marriage was held without a guardian through an Event Organizer (EO). The EO asked for the woman's guardian. Still, because the woman did not want anyone to know about her marriage, including her guardian, the EO finally married her without a guardian because of her status as a widow.

The following fact is that the marriage was conducted without permission and the first wife's knowledge, and the husband also deliberately did not want his second marriage to be known to the first wife and her family. Although the marriage was hidden, it was eventually discovered. The first wife was angry and asked the second wife to leave if she still wanted to be with the first wife. To appease the first wife, the husband expressed his willingness to end his relationship with the second wife. After this incident, the husband found it increasingly difficult to communicate with his second wife, let alone meet. The husband could not leave the house, and if he wanted to go out of town for some issues, the first wife and her child would come along. The husband called the second wife secretly and told her to remain patient and wait for the right time. The problem was that there was no certainty of time. When the second wife asked for clarity, there was still no certainty about their marriage relationship. Finally, the second wife said her husband had not visited her for about five months. Because of this condition, the second wife became quite ill (Rohman, 2023: 141-143).

Several KUAs responded to the number of *sirri* marriage practices in Surabaya. At the Benowo KUA, in preventing *sirri* marriages, they carry out several tactics and methods, first by carrying out marriage guidance or guidance for prospective brides who will carry out marriage. This marriage guidance aims to make prospective brides understand the importance of registering marriages at the KUA. Marriage guidance not only explains the importance of registering a marriage but also explains reproductive health between men and women, the importance of mental and physical health in facing a household, and other essential materials about marriage. Furthermore, the KUA invites highly experienced speakers or mentors in their respective fields, such as representatives from the local Community Health Center (Puskesmas), and brings in experienced parties to register marriages.

In addition to the Benowo KUA, the Genteng KUA also prevented and handled *Sirri's* marriage practice. The number of people who still think that marriage registered at the KUA is a complicated process, so they choose the path to carry out *sirri* marriage. Consequently, parents find it difficult to make a certificate for their children, so they must carry out *isbat nikah* first. In this case, although *sirri* marriage is legal in Islam, Indonesia itself has laws that must also be implemented. It is also for the common good that later, in taking care of matters relating to children, there is no need to experience difficult things first. In today's modern era, the author questions why there are still many who perform *sirri* marriages even though marriage registration or registration is also required in accordance with existing laws in Indonesia and marriages held at the KUA do not cost anything. It differs from the marriage/marriage ceremony outside the Office of Religious Affairs (KUA). Of course, there are several factors encountered in *sirri* marriage, including a. Lack of understanding of legal awareness of the mandatory registration of marriages in Indonesia. b. The factor of pregnancy outside of marriage. c. And the polygamy factor (Wasi'ah, 2024).

### **Maqasid Al-Syariah Analysis of the Phenomenon Sirri Marriage**

*Maqasid al-syariah* is the purpose, goal or purpose of Islamic law. Al-Juwaini uses the terms *al-maqasid* and *al-masalih al-ammah* interchangeably (Maghfur, et al., 2024). According to Jasser Audah, *maqasid al-syariah* is a benefit or collection of benefits that are the purpose of establishing the law based on the explanation of the sharia or according to the firm opinion of a mujtahid. If this benefit did not exist, the law would not be enacted (Audah, 2011: 17).

Jasser Audah divides the hierarchy of *al-maqasid* into three groups, namely (1) *al-maqasid al-'ammah* (general *maqasid*), (2) *al-maqasid al-khasah* (specific *maqasid*), dan (3) *al-maqasid al-juz'iyah* (partial *maqasid*) (Audah, 2011: 36-37). This paper focuses on the specific purpose of marriage. It is briefly explained that the objectives of the chapter on marriage are, first, the purpose of marriage in accordance with sharia law. To achieve this goal, two things need to be realized and implemented, namely improving the marriage system and traditions of the Jahiliyah era (Al-Alwani, 2012: 82-83) and establishing the principles of Islamic marriage (Al-Alwani, 2012: 88); second, the purpose of *Sakan* (peace) and family integrity (Al-Alwani, 2012: 91); third, the purpose of establishing relationships between men and women (Al-Alwani, 2012: 98), fourth, the purpose of preserving and continuing offspring (Al-Alwani, 2012: 115), fifth, the purpose of divorce in a good way (Al-Alwani, 2012: 121). Each objective is the basis for analyzing the phenomenon of *sirri* marriages, especially those in Surabaya.

*First*, creating a family that is *sakinah, mawaddah, wa rahmah*. The purpose of marriage is not just to channel biological needs. Still, it is also closely related to creating a psychological condition that is calm, peaceful, and serene with love and affection between husband and wife (Rohman, et al., 2017), as confirmed by Allah in the Qur'an Surah Ar-Rum Verse 21. For this goal to be realized, Islam regulates the pattern of husband-and-wife relationships described by "*mu'asharah bi al-ma'ruf*", namely treating husbands or wives in the best ways that will not hurt both partners; Islam also regulates sexual manners and other rules ('Atiyyah, 2001: 150). In the practice of *sirri* marriage, the goal of "creating a *sakinah, mawaddah, wa rahmah* family" cannot be achieved maximally.

*Second*, good relationship patterns in the family should be organized. Having a family will have an impact on the birth of new relationship patterns equipped with binding rules, such as patterns of kinship relationships and patterns of mahram relationships (Mahrams due to marriage are divided into three groups, namely: offspring, parents, and ex-wives of fathers-in-law) (Al-Jaziri, 2014: 60-61), pattern of guardianship relationship (Wali in marriage is someone without whom marriage is not valid) (Al-Syarwani, et al., t.th: 94), patterns of guardianship relationships (Wali in marriage is someone without whom, marriage is not valid) and other relationship patterns. In *sirri* marriages that are not registered at the KUA, children who are born have no legal force and are considered to have no legal ties to their biological father.

*Third*, the financial aspects of the family should be regulated. In the case of *sirri* marriage, when the marriage is carried out without being registered at the KUA, the purpose of "protecting property and regulating the financial aspects of the family" as explained in KHI Chapter XVII article 149 (*nafkah mut'ah*, *nafkah iddah*, dowry owed, and caring for children or *hadlanah*) becomes difficult to realize. Irregular marriage causes the loss of children's rights to maintenance and identity in a legally valid marriage. The legal consequences are related to the rights obtained by the child, especially the child's right to maintenance from his parents, identity rights and education rights. *Sirri* marriages that do not have legal force in the eyes of the state also cause the loss of the wife's rights to maintenance, joint property, and inheritance. Rights such as maintenance or shared property upon divorce and inheritance rights in the event of the husband's death would be legally forfeited. Article 65, paragraph 1 letter c states that wives have equal rights to joint property that occurs since the marriage took place (Sukiati, et al., 2020:128).

*Fourth*, the principles of Islamic marriage must be established. In addition to correcting marriage practices and traditions that are considered contradictory, the purpose of Islamic marriage law is to establish the main principles that must be the basis for every rule and action related to Islamic marriage law. These principles are: Covering and complementing each other like clothes (*libās*), doing good to each other (*ma'ruf*), *mawaddah* and *rahmah*, *tranquillity (sakan)*, *ifdā'* (inner and outer continuity), *al-harth* (paddy field or field), mutual consent (*tarādin*), *al-taṣāwur*.

*Fifth*, preserving and continuing offspring. Some Ulama argue that the primary purpose of marriage is to protect offspring, both by producing offspring through marriage, preventing things that can damage offspring, such as adultery, and also by perpetuating offspring by caring for and educating offspring as best as possible (Al-Alwani, 2012: 115). The purpose of marriage "to preserve and continue offspring" can be challenging to realize in a *sirri* marriage. In practice, *sirri* marriages in Indonesia lead to the loss of children's rights to maintenance and identity. Legally registered marriages have legal consequences for children and wives. These legal consequences relate to the rights obtained by the child, especially the child's right to maintenance from their parents, identity rights and education rights.

*Sixth*, it regulates the relationship between men and women. One of the purposes of the enactment of Islamic marriage law is to regulate the relationship between men and women. This goal will be challenging to realize in the practice of *sirri* marriages that occur in Indonesia, especially in the aspect of the rights that wives and children should obtain. This is as explained by the Ministry of Women's Empowerment and Child Protection, which released the findings of their research that unregistered marriages have

adverse effects on women, such as weakening women's social status, increasingly heavy burdens for women, and a weak position before the law. Meanwhile, children's rights are neglected when marriage is not recorded, such as decreasing the quality of life of children, experiencing obstacles regarding inheritance, essential children's rights are not fulfilled, having an impact on the psychological and social life of children, and the weak status of children in the eyes of the law.

*Seventh*, divorce should be done in a good way. Divorce is one of the rules prescribed by Islam in a marriage. The existence of the divorce law is a correction to the practice of divorce in the Jahiliyah era, where men were free to divorce their wives at will and refer to them at will. Islamic law regulates divorce as a last resort when the marriage bond can no longer be maintained. In *sirri* marriages, achieving the goal of "getting a good divorce" is difficult. When the husband can unilaterally declare divorce without involving a third party, such as the Religious Court, and without adhering to its conditions and administrative processes, the husband holds significant power to preserve or dissolve the marital relationship.

Meanwhile, the husband has an extreme "power" to maintain or break the marriage bond, while the wife is weak and helpless. When the husband divorces her without any reason, while the wife is classified as a woman who obeys and tries to make her husband happy, the divorce still occurs even without the wife's will. In this context, the wife can only surrender and cannot do anything.

## Conclusion

Based on the study, it is concluded that *sirri* marriage is still a marriage option for Surabaya residents. In the last five years, data shows that *isbat sirri* marriage at the Surabaya Religious Court still occurs a lot, even facilitated by the Surabaya City Government. Several factors cause *sirri* marriages, including the factor of pregnancy outside of marriage and the polygamy factor. Responding to the phenomenon of *sirri* marriage in Surabaya, there are many efforts to prevent and handle *sirri* marriage by the KUA in Surabaya, including socialization about the importance of marriage registration, socialization of the impact of *sirri* marriage, guidance for perpetrators of *sirri* marriage, and other.

*Sirri* marriage is not ideal. It leads to harm and negative consequences, deviating from the objectives of the regulations outlined in Islamic marriage law. Therefore, all efforts and actions that lead to *sirri* marriage must be prevented to realize a marriage that is *sakinah*, *maslahah*, and full of love and affection.

In this context, the prevention and handling of *sirri* marriage are one of the media so that *mafsadat* and *mudarat* that will occur due to *sirri* marriage can be prevented as early as possible. Because it benefits society, the prevention and handling of *sirri* marriages by the KUA is an action that can be carried out and should not be prohibited or even recommended. In the context of this research, efforts to prevent and handle *sirri* marriages are categorized as *fath al-zarāi'*, opening the way to realize the benefit so that people are spared from the *mafsadat* and *mudarat* of *sirri* marriage. This process is called *fath al-zarāi'*.

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