



## Legal Analysis of Unregistered Marriage Service Providers According to the Compilation of Islamic Law and Act No. 1 of 1974 on Marriage

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### **ABSTRACT**

*The news of a valid marriage or a series marriage is often controversial, resulting in uncertainty of the marriage status, which has a negative impact on the parties involved, both wife, husband and child. Where it is explicitly stipulated in the Compilation of Articles 5 and 6 that marriages must be recorded before the Marriage Registrar (PPN) and registered with the KUA. The Law No. 1 of 1974, concerning Marriages, provides that every marriage shall be recorded according to the law in force, because it shall be performed in accordance with the terms and conditions in force which shall be confirmed before the law by the marriage record. The study aims to identify and analyze the phenomenon of online series weddings in Jakarta in particular and various legal issues arising from online series wedding practices and to study the series wedding using the wedding service provider that is distributed through social media. The aim of this study is to give thought to the development of legal science especially in the field of marriage law. Based on the conclusion, the author suggests the need for public awareness to be able to understand that whatever the reason, the negative impact of serial marriages is greater than the benefits. The issue of legal marriage or serial marriage is often a controversy that leads to uncertainty about the status of the marriage, which has a negative impact on the parties involved, both wife, husband and child.*

**Keywords:** *unregistered marriage, service providers*

### **A. Introduction**

Today, technological advances have opened up opportunities to facilitate communication and news. Evidently today in the virtual world there are a variety of sites related to the use of religious ritual concepts in particular Islamic beliefs that is to use websites related to cases of marriage practices carried out online. The marriage is by marriage, by the testimony of the woman's guardian, followed by the husband, and by a witness of the male and the female. In article 2 KHI, marriage according to Islamic law is a marriage that is relatively strong. Serial marriages have no legal aspects as they are regulated in Act No. 1 of 1974 on Marriage. Article 2 (2) states that: Every marriage shall be recorded according to the rules of the law in force.<sup>1</sup> A serial marriage or a series marriage means a secret marriage.<sup>2</sup> The word "siri" comes from Arabic which means secret, hidden, and secret. A "marriage in series" is a marriage carried out according to religious or customary rules and not registered at the office of the marriage registrar. (KUA).

<sup>1</sup> Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

<sup>2</sup> Anshary MK, 2010, *Hukum Perkawinan di Indonesia. Masalah-maslah Krusial*. (Yogyakarta : Pustaka Pelajar, hlm.25.



These online series weddings are very difficult to monitor by the authorities, because they are married without the authority's knowledge by using services offered through online series wedding sites that are unclear about the legality of their existence. Online series marriage practices do not provide educational value in the formation of a decent family as programmed by the government. The view of scholars in interpreting, related to the development and progress of the times. When the terms and conditions are fulfilled, the marriage becomes valid and, if not, will be invalid. With the advent of online marriages, the influence of social media is growing.

An example is Marriage Siri on the services of marriage.com. A service that promotes an unregistered formal marriage. The service is headquartered in Jakarta and has been active since 2015. This service allows marriage according to the second wishes of the groom.

If a marriage is not registered according to the rules, then it matters that the marriage's consequences are not able to be resolved in accordance with the rules. For instance, the right of a wife to receive birth and inherent livelihood, the birth certificate of a child is often disputed, as are the rights of child custody, the education of the child, the inheritance of the wife, the authority of the daughter to be married and many other matters.<sup>3</sup> The complexity of the case has a negative impact on women becoming married parties, while men are not burdened with formal responsibilities. Even if a man denies the marriage, he will not receive any punishment according to the rule, for there is no authentic proof that it has taken place. This condition creates a vulnerability even transmission to women.

According to the Indonesian Child Protection Commission (KPAI), the social construction of unrecorded marriage is distinguished between three (three) forms:

- 1) An unregistered marriage (serial marriage) of an exploitative nature in the form of a "contractual marriage" that in certain cases occurs between a foreign citizen and a local woman.
- 2) Unregistered marriages because they do not have access to public service.
- 3) Unrecorded marriages aimed solely at satisfying sexual desires.<sup>4</sup>

<sup>3</sup> Fuad Syakir Muhammad, *Perkawinan Terlarang*, (Jakarta: Cendekia, 2002), hlm.55-58.

<sup>4</sup> Komisi Perlindungan Anak Indonesia KPAI 2013. *Perkawinan Tidak Dicatatkan: Dampaknya bagi Anak* Ditayangkan oleh Tim KPAI 6,6, 2013, diakses 5 Desember 2021.



As a result of this, a variety of online series of wedding service providers have emerged. Where a series of online marriage sites that have a negative and adverse impact can be blocked in accordance with the provisions of article 1 paragraph (1) of the Cake Communications Act No. 19 of 2004: The blocking of Negative Loaded Websites, hereinafter referred to as the blocking, is an attempt to prevent access to a negative-loaded website.<sup>5</sup> Article 2 of the Act No. 19 of 2004 also explains:

The purpose of this ministerial regulation is to:

1. Provide a basis for Government and public understanding of negative-loaded websites and shared roles in their handling; and
2. Protected the public interest from Internet content that may have a negative and/or detrimental impact.

The public's fear of the impact of these technological developments is caused by the fear of misuse of technology by irresponsible people. The use of Internet technology is a common necessity for many people today. According to this rule it is known that a marriage must be registered in order to establish a marital order in society. Although a marriage has been declared religiously lawful.

## **B. Research Methods**

In conducting a study entitled "Legal Analysis Against Sirri Marriage Service Providers Online" under Compilation and Act No. 1 of 1974, the author used the type of Juridic-Normative researcher. The method of normative law research can also be called doctrinal law research or library research. Research in libraries is a method or method used through existing libraries.<sup>6</sup> The research approach used by the author is by using the Statute Approach approach, which is research that prioritizes legal materials such as legislative regulations as a basic reference in conducting research. Legislative approaches are typically used to study regulations of laws that are still lacking in standardization or even favor practices that deviate both at the technical level and when applied on the ground. Therefore, to solve a legal

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<sup>5</sup> Peraturan Menteri Komunikasi dan Informatika Undang-Undang Nomro 19 Tahun 2004 Pasal 1 ayat (1) Tentang Penanganan Situs Internet Bermuatan Negatif.

<sup>6</sup> Bambang Sugono, *Metodologi Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2007) hlm 27-28



issue that is being investigated or faced, it is necessary to use legal material as a source in legal research.<sup>7</sup>

In this study, the source of legal material used by the author is derived from secondary data. Secondary data is data that has been previously processed and has just been obtained by researchers from other sources as additional information by means of reading, learning and understanding through other media sources from literature, books and documents.

In this study, the author's method of processing and analysis of legal materials uses legal materials obtained from research activities, The following analysis emphasizes a new overview of the data that has been collected aimed at describing subjectively the online series of marriage service providers reviewed from the perspective of the Compilation of Islamic Law (KHI) and the Marriage Law in force in Indonesia. The legal materials that have been collected are analyzed by reference to the qualitative method, i.e. a way of research that produces descriptive-analytical information and is collected to then disaggregate the facts that already exist in this research and draw a conclusion and suggestion using deductive thinking methods that draw from things of a general nature to things of a special nature.

Thus, this study can describe and analyze a picture that relates to the situation, phenomenon, or event or fact that occurs in this study.<sup>8</sup>

### **C. Results and Discussion**

In an increasingly sophisticated digital age, technological advances have paved the way for easier communication and news. So sometimes the news is more dominated by the appearance or provision that is more negative. Proved in this time in the virtual world there are various kinds of sites that are related to the use of religious ritual concepts, especially Islamic beliefs, that is, using sites related to cases of marriage practice series carried out online. The appearance of this website or series of wedding sites has put its own challenge to Islamic law in this country.

In the Government Regulation of the Republic of Indonesia No.71 of 2019 on Electronic Systems and Transactions Maintenance, it is stated that:

#### Article 3

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<sup>7</sup> Dyah Ochtorina Susanti,A'aaan efendi, *Penelitian Hukum (Legal Research)*, Jakarta : Sinar Grafika, 2014) hlm. 48

<sup>8</sup> Albi Anggito,John Setiawan, *Metodologi Penelitian Kualitatif*, (Sukabumi : CV Jeja,2018) hlm.11



1. Each Electronic System Operator shall maintain the Electronic Systems in a reliable and secure manner and shall be responsible for the proper operation of the electronic systems.
2. The Electronic System Administrator is responsible for the maintenance of the Electronic Systems.
3. The provisions referred to in paragraph (2) do not apply in the event of proven circumstances of coercion, error, and/ or negligence by the User of the Electronic System.<sup>9</sup>

It appears that the practice of online series marriages is an act against the law, because all the elements of this marriage are unclear. From the man who married the guardian and the witness, it cannot be explained that the guardians and witnesses are not women. As a result of this fact, a kind of legal dualism emerged in the country of Indonesia, namely, marriage is legal according to the law of religion (Islam) but does not have the official legal force of the state or is not recognized by the state.<sup>10</sup> It can be explained that the marriage certificate series through Jasanikahresmi.com is merely a fake or fake certificate, in the sense that it is only fake because the service provider and the prospective bride have not fulfilled or enforced all the certificates, and representation is considered to be a legitimate marriage according to religion in order to have a free biological relationship with the opposite sex. According to scholars, the practice of marriage is a reason for the perpetrators to prove adultery on the grounds that they have fulfilled the marriage mandate so that they can freely have biological relationships with the opposite sex. It could be said that this series of marriages is inappropriate, or that the idea of a nervous scholar of a marriage to be carried out in the assembly has nothing to do with it.

Every marriage must be recorded in order to guarantee the order of marriage for the Muslim community. The registration of the marriage is carried out by the Marriage Registrar as provided for in Act No. 22 of 1946 jointly with Law No. 32 of 1954. In order to comply with the provisions of section 5, any marriage must be celebrated in the presence and under the supervision of an Officer. Marriage can only

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<sup>9</sup> Peraturan Pemerintah Nomor 71 Tahun 2019 Tentang Penyelenggaraan Sitem dan Transaksi Elektronik

<sup>10</sup> Burhanuddin, *Nikah Siri : Menjawab Semua Pertanyaan tentang Nikah Siri*, Yogyakarta : MedPress Digital, 2012 hlm. 18.



be proven by a Marriage Act made by the Marriage Registrar. Whereas a marriage performed in the presence of an unauthorized official has no legal force because the conditions prescribed by the applicable law are not fulfilled.

The compilation of Islamic law also covers the issue of registration of this marriage, in article 5 as follows :

1. In order to guarantee the order of marriage for the Islamic community, every marriage must be recorded.
2. The registration of such marriage in paragraph (1) is made by the Registrar of Marriage as regulated in the Act No. 22 Year 1946 Jo. Law No. 32 Year 1954.<sup>11</sup>

The Compilation of Islamic Law mentions in article 6 concerning marriage registration that<sup>12</sup>:

1. To comply with the provisions of the section
2. Every marriage must take place in the presence and under the supervision of the Marriage Registrar.
3. Marriages carried out outside the supervision of the Marriage Registrar have no legal force.

Rukun Marriage is regulated in Article 14 of the Compilation of Islamic Law (KHI).

According to article 14 of this law, for marriage to be performed there must be:<sup>13</sup>

- a) Candidate Bride
- b) Marriage Warden
- c) Marriage Witnesses
- d) Academic Marriage (ijab qabul)
- e) Mahar

Three indicators that should always accompany a registered marriage:

1. The marriage counselor, the husband, the wife, and the marriage guardian, are two witnesses.
2. The legal certificate of the marriage is the presence of the Registrar at the time of the wedding ceremony.

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<sup>11</sup> Pasal 5 Kompilasi Hukum Islam

<sup>12</sup> Pasal 6 Kompilasi Hukum Islam

<sup>13</sup> Kompilasi Hukum Islam



3. *Walimatul 'uryy*, a condition that was deliberately created to show the general public that between the two prospective husbands and the future wives has been officially married.

The most unsatisfied indicators in online series weddings are indicators 2 and 3. In Article 28 D paragraph (1) UUD 1945 : "Everyone is entitled to the recognition, guarantee, protection and certainty of justice and equal treatment before the law." Thus, this online series of marriage practices provides a marriage letter stating that the marriage between a woman and a man is true.

Of course, with the Statement submitted by Prof. Dr. Zudan Arif Fakrulloh S.H.,M.H Selaku at the seminar on November 6, 2021 organized by the Faculty of Law of the University of Brawijaya, he stated that couples who have not registered their marriage to KUA/Civil Records can make a Family Card and Birth Certificate for their children later when they are born. The Inter-Ministerial Coordination Meeting / Institution for the Discussion of Married Couples Who Still Do Not Have Marriage Acts / Wedding Books was held on Monday, November 1, 2021 in the Bima Room of the Second Floor of Bidakara Hotel, South Jakarta.

The issuance of the new Family Card is regulated by Presidential Regulation No. 96 of 2018 on the conditions and procedures for the registration of the population and the civil registration. The condition of registration is also quite easy, i.e. only with a declaration of absolute responsibility (SPTJM) the truth of the spouse and wife known two witnesses. Later on in the family card will be written unrecorded marriage or unrecording marriage. A letter of absolute responsibility (SPTJM) is a statement made by the parent of the spouse with full responsibility for the status of a person's marital relationship, with the knowledge of two (two) witnesses.<sup>14</sup>

The basic elements of the Implementation of the Letter of Absolute Liability (SPTJM) are :

1. Implementation of SPJM for residents who cannot meet the conditions of;
  - a) Photo Copy birth certificate from hospital/puskesmas/health facility/doctor/sister or birth from place

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<sup>14</sup> Prof,Dr. Zulfan Zudan Arif Fakrulloh,Final kawin belum tercatat ( Yang disampaikan pada Seminar Universitas Brawijaya 6 November 2021 Pukul 08.00.



- b) Photo copy of the marriage certificate/ other valid evidence
2. SPTJM is entirely the responsibility of the applicant
3. Addition of the phrase "The marriage has not been registered in accordance with the provisions of the law" in the framework of the registration and citation of the birth certificate, when it does not have a marriage certificate/marital certificate but the status of relations in the family on the family card indicates as a spouse.

Talk about marriage under this hand is quite plentiful. With regard to the case, the members agreed that marriage under the hands of the law was valid, if the conditions of marriage were fulfilled. But the marriage is forbidden when there is harm in the latter day, just as the wife and the child are forgiven. KH, Ma'ruf Amin who is also the Chairman of the Fatwa Commission of MUI affirmed that the law of marriage which was originally valid because of the qualification and rule of marriages, will be illegal because some are victims. So, "The damage has come lately. His own marriage was not annulled, but he sinned because he was forsaken, so that he had sinned for his wife or for his children. The marriage is legal, but it's illegal if there's a victim. Although legitimate by religion, marriage under the hand is not barocco and out of the protection of marriage law. In order to anticipate the negative impact of marriage under the hand, in particular the protection of wives, the MUI's Fatwa recommends that marriages under the arm should be officially registered with the authorities.

If the marriage under the hand has already taken place, then the attempt that can be made to make the marriages under that hand valid according to the law of the national marriage, is to register marriage with a marriage certificate and to make a new marriage.

#### **D. Conclusions and Advice**

Implementation of regulations relating to serial marriage service providers online has not been explicitly addressed in the Act. However, the phenomenon of serial marriages online today is numerous, both in the centre and in the region, carried out by the lower, middle and even upper economic community. Article 2 (1) of the Marriage Act No. 1 of 1974 states that marriage is lawful if it is made in accordance with the law of each of its religions and beliefs. Every marriage is



recorded according to the law. Every marriage that has been legally performed according to the religious norms followed by both brides, must be registered by the Marriage Registrar (PPN), for Muslims at the Office of Religious Affairs (KUA) of the Ministry of Religion of RI, and for non-Muslims in the Civil Registration Office. The purpose of marriage registration is to protect the rights and obligations of the community (either of the husband or wife) as a result of the law arising from the existence of a marital bond, which concerns property, inheritance, custody of children, livelihood, and so on.

Some of the factors that influenced the occurrence of series weddings, among them are: Work/work or school bonding factors, underage factors, out-of-marriage pregnancy factors as the effect of free marriage, lack of public understanding and awareness about marriage registration, difficulties with polygamy rules, social factors and uncertain marital registration provisions. Thus, the consequences of serial marriages online through the site provided by the service provider are that there is no permanent legal force against the legality of marriage, inheritance of descendants because without the registration of the wedding, the child born does not have a clear identity.

It is up to the government to make regulations on online series wedding service providers so that they are not abused by malicious people. With the phenomenon of serial marriage under control in the State of the Republic of Indonesia, this indicates that the rules or regulations governing marriage in Indonesia still have weaknesses in terms of enforcement for serial marriages that make use of religious grounds but cannot be fully held accountable, as a consequence of the sacred bonds that have been proclaimed.

Therefore, there is a need for rigour and clarity in the legislation governing the punishment of perpetrators of harmful marriages, so that it can cause the effect of jera and so that the public can be more cautious in carrying out the marriage procession. The Government also needs to pay attention to the Regulations of the Minister of the Interior (MENDAGRI) No. 108 Year 2019 on the terms and procedures of the registration of the population and the Civil Registration in which couples married in series can obtain the Family Card only with the SPTJM (Letter of Absolute Responsibility) which will later make the practice of serial online marriages a lot done among the public. Public awareness of the importance of marriage



registration and legal awareness about marriage needs to be further enhanced, this can be achieved by having public authorization on the material of unrecorded or serial marriages, and by having well-systemed education on the significance of building a family in a legitimate marital bond and having strong legality to provide adequate legal protection and legal certainty. So that people don't get caught up with marriages that are provided to visit sites that will have a bad impact on future lives.



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