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## Negotiating Religious Legitimacy and State Legality: *Sirri* Marriage in Islamic Family Law in Asam Jujuhan District

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### ABSTRACT

*Sirri* marriage remains one of the most troubling paradoxes in Muslim family life: religiously accepted by many communities, yet legally invisible in ways that often leave women and children unprotected. This study aims to examine the problem of *sirri* marriage in Asam Jujuhan District from the perspective of Islamic family law, with particular attention to its practice, the factors sustaining it, its legal consequences, and the limited use of the *isbat nikah* mechanism. Employing a qualitative phenomenological design, the research collected data through semi-structured interviews, observations, and documentation involving judges, KUA officials, religious counselors, local leaders, and couples engaged in *sirri* marriage. The findings show that *sirri* marriage persists not merely because of legal ignorance, but due to the interaction of geographical isolation, weak institutional access, administrative barriers, economic hardship, and limited legal awareness. The discussion reveals that while *sirri* marriage is regarded as valid under Islamic law when its essential elements are fulfilled, it remains unrecognized under state law, creating serious vulnerabilities for spouses and children, especially in relation to legal status, maintenance, inheritance, and civil documentation. The study concludes that *sirri* marriage in Asam Jujuhan reflects an unresolved tension between religious legitimacy and state legality, and that its persistence is rooted in structural and socio-legal constraints rather than in doctrine alone. The study implies the need to strengthen legal outreach, improve access to marriage registration, and optimize *isbat nikah* as an institutional bridge between Islamic family law and state legal protection.

**Keywords:** Islamic Family Law; Marriage Registration; *Sirri* Marriage.

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## Introduction

*Sirri* marriage has long been a focus of scholarly attention, yet it continues to stand as a disturbing paradox: regarded as valid according to the beliefs of certain communities, but fragile in the eyes of the state, and most often leaving women and children in conditions of legal vulnerability. O'Sullivan emphasizes that Muslim marriages lacking state recognition create serious implications for the legal status of spouses and their access to family rights protection (O'Sullivan & Jackson, 2017), while Vora shows that the problem of non-recognition of religious marriage continues to produce a "marriage conundrum" that is not merely administrative in nature, but also concerns dignity, legal security, and justice for the parties involved (Vora, 2020). In the same vein, Azzouz underlines the need for marriage law reform when religious practices operate outside the formal legal framework of the state (Azzouz, 2022), whereas Vahed demonstrates that the absence of adequate regulation places courts and the state in a persistent dilemma over the recognition of Muslim marriages (Vahed, 2022). Qureshi further shows that, within Muslim societies, the issue of unregistered marriage cannot be separated from informal religious authority and women's limited access to fair legal remedies (Qureshi, 2014). Thus, *sirri* marriage is not merely a matter of administrative non-compliance, but a serious problem situated at the intersection of religious legitimacy, state legality, and the protection of family rights.

Indonesia is a rule-of-law country, it has regulations for every action and behavior. These rules are outlined in various laws, including those regarding marriage. A marriage that is recognized in Indonesia and has legal force is one that is registered according to the applicable laws. This is stated in Article 2, paragraph 2 of the Marriage Law, which stipulates that every marriage must be registered according to the prevailing laws. For Muslims, this marriage is recognized by the state through the Religious Affairs Office (KUA), while for non-Muslims, it is registered through the Civil Registry.

This is the principle of the Marriage Law. Its existence determines the legality of a marriage, in addition to following the provisions of religious laws or beliefs as a condition for a valid marriage. Therefore, marriage registration and the creation of a marriage certificate are mandatory under the marriage law in Indonesia. (Rachmadi Usman, 2017).

According to Bagir Manan in *Elimarti*, marriage registration is very important to ensure the validity of the marriage itself. However, referring back to the purpose of marriage according to Law No. 1 of 1974, Article 1, as mentioned

above, it is essential for both the husband and wife to complement each other to achieve prosperity in the household, both spiritually and materially.

In Islamic jurisprudence, the concept of *maslahah* (public interest) is a goal to be achieved in every issue. Clearly, *maslahah* cannot be achieved without a legal process that is carried out according to Shari'ah. In Article 2, paragraph 2 of Law No. 1 of 1974 on Marriage, it mentions that marriage is valid if it is conducted according to the laws of each religion and belief, and paragraph (2) specifies that every marriage must be registered according to the prevailing laws. This is further clarified in Article 5 (1) of the Compilation of Islamic Law (KHI), which states, "To ensure order in marriage for the Islamic community, every marriage must be registered." Also, in Article 6 (2), it is emphasized that "A marriage conducted outside the supervision of a marriage registrar has no legal force."

Looking at the Marriage Law above, it can be concluded that to achieve orderly marriages, they must be registered. This is in contrast to *sirri* marriages, which make it difficult to create a happy family life because they lack legal recognition, leading to legal problems in the future, such as: The wife cannot file for divorce if the marriage ends and cannot claim maintenance if abandoned; Divorce issues are only settled through customary law; Children born from a *sirri* marriage do not have a clear status because they do not have a birth certificate.

Therefore, *sirri* marriage contradicts the very purpose of marriage in achieving a happy family life. On the contrary, it leads to harm. In Islamic teachings, what is prohibited should be avoided to prevent greater harm rather than temporary benefit, as in the case of *sirri* marriage. This is reflected in the Islamic maxim "Preventing harm takes precedence over gaining benefit".

*Sirri* marriages that occur in Indonesian society today cannot be justified. The changes in time, place, and circumstances have made what was once permissible in Islam, now impermissible in a different time, place, or condition. Initially, *sirri* marriages were allowed because of the societal context that highly valued responsibility and the oral tradition could still be trusted. However, as time has passed, the nature of *sirri* marriages has changed and is now exploited by irresponsible individuals to satisfy their desires.

The widespread phenomenon of *sirri* marriages in Dharmasraya can be seen from the data I gathered. As of June 30, 2021, the population of Dharmasraya was 226,264, with 114,775 males and 111,489 females. The number of households in Dharmasraya was 69,144 as of the same date. Regarding unregistered marriages (*sirri* marriages), from 2019 to 2021, there were 22,453 instances.

The data above shows that in the past three years (2019-2021), only 194 *sirri* marriages in Dharmasraya utilized the *isbat nikah* (marriage validation) service at the Religious Court of Pulau Punjung. During this period, 66 cases were withdrawn and 22 were rejected. (Information from a judge at the Religious Court of Pulau Punjung, October 26, 2021).

This issue is further highlighted by the fact that many *sirri* marriages have not been validated due to various factors and reasons. Many couples are unaware of the importance of *isbat nikah*, and some choose not to pursue it due to stigma and the complexity of the process.

More recent scholarship has further demonstrated that the problem of unregistered Muslim marriage is not confined to doctrinal validity, but extends to broader questions of legal vulnerability, institutional recognition, and legal pluralism. Bone underlines that unregistered Muslim marriages often leave women without adequate legal protection (Bone, 2020), while Uddin shows that Muslim matrimonial practices frequently develop outside formal state frameworks and therefore expose tensions between religious norms and legal authority (Uddin, 2020). In a comparative perspective, Amien argues that the recognition of religious family law requires not only legal accommodation but also a coherent strategy of integration (Amien, 2024), whereas Afary highlights the growing prevalence of informal marriages across the Muslim world as a transnational socio-legal phenomenon rather than a purely local irregularity (Afary & Friedland, 2024). Likewise, Pilgram demonstrates that Muslim family law must be understood within the wider dynamics of citizenship and legal pluralism, where state law competes with religious and social authority (Pilgram, 2012).

These studies are highly relevant to the case of Asam Jujuhan, where *sirri* marriage is shaped not only by religious understanding, but also by geographical isolation, weak institutional access, economic hardship, and limited legal awareness. However, existing scholarship has not adequately examined how these structural and socio-legal factors interact in a rural Indonesian context, nor has it sufficiently explored why communities continue to avoid both marriage registration and the *isbat nikah* mechanism despite the legal risks involved.

Accordingly, this study fills that gap by analyzing *sirri* marriage in Asam Jujuhan from the perspective of Islamic family law, with particular attention to the phenomenon of *sirri* marriage, the factors driving its persistence, its legal consequences for spouses and children, and the underutilization of marriage validation as a bridge between religious legitimacy and state legality.

In this respect, the novelty of the article lies in its effort to move beyond a purely normative discussion of *sirri* marriage by situating it within the lived realities of a rural Muslim community and by showing how Islamic family law can contribute to narrowing the gap between religiously valid marriage and legally recognized marriage.

## **Methods**

This study employed a qualitative phenomenological design to examine the practice of *sirri* marriage in Asam Jujuhan District within its social, religious, and legal context. Data were collected through semi-structured interviews, observations, and documentation involving key informants, including judges of the Pulau Punjung Religious Court, officials of the Office of Religious Affairs (KUA), Islamic religious counselors, local government representatives, and couples engaged in *sirri* marriages; the researcher served as the primary instrument, supported by a smartphone, recorder, camera, and field notes. Primary data from interviews and observations were complemented by secondary data from institutional documents, including records from KUA, Disdukcapil, and other relevant administrative sources. Data were analyzed qualitatively through stages of reduction, categorization, and narrative interpretation to identify patterns and meanings related to *sirri* marriage practices, while source and technique triangulation were applied to ensure the credibility and consistency of the findings.

## **Findings**

### **The Phenomenon of *Sirri* Marriages in the Community of Asam Jujuhan Subdistrict**

The findings of this study reveal that the persistence of *sirri* marriage in Asam Jujuhan District is not merely a result of legal ignorance, but rather a complex interaction of structural, cultural, and economic factors. Limited access to formal institutions, geographical constraints, and administrative difficulties encourage people to choose *sirri* marriage as a practical alternative to fulfill religious obligations. These findings are important as they challenge the assumption that unregistered marriage is solely caused by low legal awareness. In fact, the study shows that even individuals who understand legal requirements may still opt for *sirri* marriage due to situational limitations, highlighting a gap between normative legal frameworks and their implementation in society. From a theoretical perspective, this phenomenon can be understood through the concept of *masalahah* in Islamic law, which emphasizes

the protection of public interest. Although *sirri* marriage may be considered valid religiously, its lack of legal recognition under state law creates vulnerabilities, particularly in protecting the rights of women and children. Compared to previous studies, this research not only confirms the role of economic and educational factors but also emphasizes the influence of geographical and institutional limitations in rural contexts. Therefore, this study implies the need to strengthen legal awareness, improve access to marriage registration services, and optimize the role of marriage validation (*isbat nikah*) institutions to bridge the gap between religious legitimacy and state legality.

The phenomenon of *sirri* marriages in the Asam Jujuhan has been common. Counselor of Asam Jujuhan Subdistrict said that The absence of a KUA (Office of Religious Affairs) in the subdistrict has led couples wishing to marry to travel to the KUA in Sungai Rumbai Subdistrict, which is located 50 km away, or approximately a 2-hour journey. Moreover, in order to register their marriage at the KUA, couples are required to submit documents in accordance with the regulations set by the KUA, which means they must make multiple trips to the KUA in Sungai Rumbai. The KUA in Asam Jujuhan was only established about two years ago, in 2019. This has caused difficulties for the local community in registering and managing marriage administration”.

Ruslan, Head of KUA Asam Jujuhan said that the geographical conditions in Asam Jujuhan Subdistrict, including poorly maintained roads, make it difficult to travel, especially during the rainy season when roads are impassable. Public transportation is rare in the area, and many residents cannot afford personal vehicles due to economic limitations. As a result, many people choose to simplify their marriage process by resorting to *sirri* marriages, or unregistered marriages.

The authors also conducted interviews with several community members Asam Jujuhan. They said that the presence of marriage registration officers as the extension of the KUA from Sungai Rumbai Subdistrict in the area means that couples intending to marry submit the required marriage documents to these officers. However, there have been many issues with the handling of this process, such as delays in the issuance of marriage books by the KUA of Sungai Rumbai through the marriage registration officers. Some people have waited for years without receiving their marriage book, leading them to be classified as having undergone *sirri* marriages. Based on interviews with some community members, neglect by the P2N (Marriage Registration Officer) has also been a contributing factor to the delay in issuing the marriage books.

The community leader of Asam Jujuhan said that the lack of awareness and knowledge among the community about the law, especially regarding

Marriage Law, has contributed to the prevalence of *sirri* marriages. Many people are unaware of the law, which ultimately harms them, especially women, who are often neglected, abandoned, or even deprived of support.

Counselor of Asam Jujuhan Subdistrict added that the community in Asam Jujuhan feel comfortable with the simplicity of *sirri* marriages, which are quick, easy, and inexpensive. They often use the services of local religious leaders, known as *Buya*. However, couples who engage in *sirri* marriages often fail to consider the potential consequences of such decisions.

Ruslan explained that a *sirri* marriage in Asam Jujuhan Subdistrict is a marriage that is recognized in religion but not registered by the Ministry of Religious Affairs, and therefore lacks legal recognition. The community in Asam Jujuhan generally lacks knowledge about the law. However, in terms of Islamic law, the community has some understanding of the essentials of a marriage, which include the presence of a male and female bride and groom, a guardian, witnesses, the marriage vows (*ijab* and *qabul*), and the dowry (*mahar*). Therefore, the *sirri* marriages occurring in Asam Jujuhan are considered valid according to religious law.

The findings from the interviews indicate that the community in Asam Jujuhan Subdistrict generally perceives *sirri* marriage as religiously valid, despite its lack of legal recognition by the state. This perception is strongly influenced by their understanding of Islamic marriage requirements, which they consider sufficient to legitimize a marital union.

Ruslan said “A *sirri* marriage is a marriage that is valid according to religion but not registered with the Ministry of Religious Affairs, so it does not have legal force in the eyes of the state”. Furthermore, the interview reveals that the community possesses a basic understanding of the essential elements of marriage in Islamic law, including the presence of the bride and groom, a guardian (*wali*), witnesses, the marriage contract (*ijab and qabul*), and the dowry (*mahar*). However, legal awareness regarding the importance of marriage registration remains relatively low. As a result, many individuals consider religious validity to be sufficient, without taking into account the legal consequences that may arise from unregistered marriages.

An interview conducted by the author with Ninik Mamak as a traditional leader who witnessed a *sirri* marriage on July 25, 2021, in Asam Jujuhan stated that *sirri* marriages are held at the couple's home and attended by family members from both the husband and wife's sides, as well as close neighbors and community members who are asked to act as witnesses to the marriage.

In an interview with Y (pseudonym) of the couples who had a *sirri* marriage in Asam Jujuhan on May 25, 2021, the wife was under 16 years old and the husband was 23 years old. The ceremony was not much different from other *sirri* marriages commonly held in Asam Jujuhan. The bride's father acted as the guardian (*wali*) in the marriage, and the ceremony was officiated by a local religious leader, also known as *Buya* M. Jaiz, who is trusted by the community as a knowledgeable figure in Islamic law and as an Imam at the local mosque. He is frequently asked by the local community to officiate marriages in place of an official marriage registrar. The marriage ceremony was attended by the wife's and husband's families and neighbors, who acted as witnesses to the marriage.

### **The Community's Failure to Utilize The *Isbat Nikah* Institution in Asam Jujuhan Subdistrict**

From an Islamic perspective, a *sirri* marriage is a marriage conducted in accordance with the essential requirements for a valid marriage contract, fulfilling its pillars and conditions, such as the presence of a prospective bride and groom, a guardian (*wali*), two witnesses, and the marriage contract (*ijab* and *qabul*) (Moh. Amin, 2015). Meanwhile, according to the Compilation of Islamic Law (KHI) and Law No. 1 of 1974, a *sirri* marriage is considered religiously valid, as stated in Article 4 of the KHI, which declares that "a marriage is valid if it is conducted according to religious law" (KHI and Law No. 1 of 1974).

Although under Islamic law a *sirri* marriage is deemed valid because it fulfills the pillars and conditions of marriage, under positive law a *sirri* marriage is not legally valid. Such a marriage is considered as never having occurred because it is not registered by a Marriage Registration Officer (*Pegawai Pencatat Nikah/PPN*). Consequently, couples who enter into *sirri* marriages do not possess an official marriage certificate, resulting in their marriage not being recognized by the state. This is in accordance with the Compilation of Islamic Law (KHI), as stipulated in Articles 5 and 6:

#### Article 5

- 1) To ensure the orderly administration of marriage for the Muslim community, every marriage must be registered.
- 2) The registration of marriages referred to in paragraph (1) shall be carried out by a Marriage Registration Officer as regulated by law.

#### Article 6

- 1) In order to fulfill the provisions set out in Article 5, every marriage must be conducted in the presence of and under the supervision of a Marriage Registration Officer.

- 2) A marriage conducted outside the supervision of a Marriage Registration Officer has no legal force.

Based on an interview conducted by the author with a judge of the Pulau Punjung Religious Court on May 25, 2022, several factors were identified as reasons why people in Dharmasraya Regency, particularly in Asam Jujuhan Subdistrict, do not apply for *isbat nikah*, as follows:

1. Many couples who have entered into *sirri* marriages have not applied for *isbat nikah* due to a negative stigma within the community, which considers *isbat nikah* to be un-Islamic, based on the belief that *sirri* marriage does not contradict religious teachings.
2. Limited dissemination of information regarding *isbat nikah* among the community has resulted in many people being unaware of the existence of government programs related to *isbat nikah*.
3. The marriages to be legalized through *isbat nikah* are often problematic, as many *sirri* marriages involve third or fourth marriages.
4. There is a prevailing stigma that the process of applying for *isbat nikah* is complicated due to the numerous administrative requirements that must be completed and fulfilled.
5. The distance of the Pulau Punjung Religious Court poses an obstacle for couples who have entered into *sirri* marriages and wish to apply for *isbat nikah*.

In contrast, based on an interview conducted by the author with a community leader in Asam Jujuhan Subdistrict on May 19, 2022, it was revealed that there are cases in which a man who is legally separated from his lawful wife but not through formal court divorce proceedings subsequently marries another woman through a *sirri* marriage. Although he was advised to legalize the marriage through *isbat nikah*, the man firmly refused, arguing that the process would be complicated due to the extensive administrative procedures that would have to be completed.

The community leader further emphasized that this situation has recently become a trigger for the increasing number of *sirri* marriages in Asam Jujuhan Subdistrict, as illustrated in the case above. This occurs because the man is unwilling and lacks legal knowledge regarding divorce procedures through the court. As a result, instead of legally resolving his previous marriage, he chooses a shortcut by entering into another marriage with a different woman through a *sirri* marriage.

There is also a prevailing stigma among the people of Asam Jujuhan that the process of *isbat nikah* is costly, administratively complicated, and time-

consuming. This perception is further reinforced by the long distance between their residence and the Religious Court, which requires approximately two and a half hours of travel. Consequently, this stigma discourages the community from pursuing *isbat nikah*, leading many couples to remain in unregistered (*sirri*) marriages without concern.

Economic factors also contribute to the reluctance of the community in Asam Jujuhan Subdistrict to apply for *isbat nikah*. Financial hardship is a major constraint. For individuals struggling to meet their daily needs, the costs associated with traveling to the Religious Court—including transportation expenses, meals during the journey, and other related costs—are considered unaffordable. As a result, applying for *isbat nikah* becomes a low priority compared to fulfilling basic living necessities.

## **Discussion**

### **Social Factors Affecting *Sirri* Marriage**

The phenomenon of *sirri* marriage in Asam Jujuhan is influenced by various social factors. One of the main factors is the limited access to formal marriage registration facilities. Previously, couples wishing to marry had to travel to the KUA (Office of Religious Affairs) in Sungai Rumbai Subdistrict, which is about 50 km away, with a travel time of around 2 hours. This caused couples to choose secret marriages, considering the long and costly administrative process. Additionally, the lack of public transportation and the economic conditions of the local community, where many do not have personal vehicles, also contributed to the prevalence of *sirri* marriage.

Moreover, economic factors also play a significant role. Many couples do not have sufficient funds to cover the administrative costs of a formal marriage. The costs involved in obtaining a marriage book and traveling to the KUA lead them to opt for a simpler and cheaper solution, i.e., *sirri* marriage. The community feels that secret marriages offer convenience with a quick and inexpensive process.

### **Legal Impact of *Sirri* Marriages on the Rights of Women and Children**

Secret marriages that are not registered by the authorized officials have significant legal consequences, especially concerning the rights of women and children. Legally, a secret marriage is considered invalid in the eyes of the state, and thus, the woman involved in a secret marriage cannot claim her rights legally. In the case of divorce, the woman cannot file for divorce in court, and if the husband dies, she does not have the right to inherit (Uhlman & Kisselburg, 2013).

Furthermore, children born from a secret marriage cannot obtain a birth certificate, as there is no registered marriage certificate. These children also cannot inherit from their father, creating uncertainty about their legal status. This situation adds to the difficulties faced by women and children in secret marriages, as they do not have strong legal recognition in the eyes of the state.

### ***Isbat Nikah* as a Legal Solution to Ensure Marriage Legitimacy**

Although secret marriages are not officially recorded by the KUA and are considered invalid under Indonesian positive law, there is a legal solution that allows secret marriages to gain legal recognition: the process of *isbat nikah*. *Isbat nikah* is a process of legalization for marriages that have been carried out according to religious law but have not been officially registered (Yani et al., 2025).

*Isbat nikah* is important because it provides an authentic proof for married couples who previously conducted a secret marriage, ensuring their legal rights as husband and wife and protecting the rights of their children. With a legitimate marriage certificate, couples who previously married secretly can access legal rights such as inheritance, child recognition, and other protected rights.

However, the main obstacle in applying for *isbat nikah* is the lack of information about this process among the public. Many couples are unaware that they can apply for *isbat nikah* at the Religious Court, while others feel reluctant to do so due to social stigma and the costs that are considered expensive.

### **Comparison of Islamic Law and Positive Law in Indonesia Regarding Secret Marriages**

In the perspective of Islamic law, secret marriages are considered valid as long as they fulfill the requirements and conditions for marriage, which include the presence of a guardian (*wali*), two witnesses, and the declaration of consent (*ijab* and *qabul*). However, positive law in Indonesia states that a marriage is only valid if it is officially registered at the KUA for Muslims and at the Civil Registry for non-Muslims. Article 2 Paragraph (2) of the Marriage Law No. 1 of 1974 asserts that a marriage that is not officially registered does not have legal force.

This discrepancy creates a dilemma in society where a secret marriage is considered valid by religious law but invalid under state law. To address this issue, the process of *isbat nikah* provides a solution for couples who married secretly to gain official legal recognition.

### **Marriage Registration in the Context of Islamic Law and State Law**

Marriage registration is a crucial aspect to ensure legal order in society. According to Islamic law, although a marriage is valid under religious terms if it fulfills the necessary conditions, marriage registration provides stronger legal

recognition in the eyes of the state. The registration aims to protect the rights of both husband and wife, children, and provide legal guarantees in cases of divorce, inheritance, and other related rights.

Positive law in Indonesia mandates that every marriage must be registered in accordance with the applicable regulations in Marriage Law No. 1 of 1974. This indicates that marriage registration is not only an administrative matter, but also an essential tool to protect individuals' rights in marriage.

### **Solutions to Improve Access and Legal Education for the Public**

To address the widespread issue of secret marriages in Asam Jujuhan, it is essential for the government and related institutions to enhance legal education for the public. One key aspect is providing more information about the *isbat nikah* process and the importance of marriage registration. Consistent legal education will increase public awareness about marital rights and prevent the negative consequences of secret marriages.

Additionally, the government could provide financial assistance to low-income individuals to help cover the costs of marriage registration or *isbat nikah*. This initiative would help reduce the economic barriers that are one of the primary reasons for secret marriages.

### **Social Impact of the Lack of Awareness about Secret Marriages**

Many couples do not understand that the secret marriages they enter into may lead to serious legal issues for both them and their children. Without a marriage certificate, couples cannot prove the validity of their marriage in the eyes of the law, which results in legal ambiguity, especially regarding inheritance, maintenance, and other obligations. This highlights the importance of marriage registration and the *isbat nikah* process as a means to guarantee marital rights. Legal education on these issues needs to be conducted so that the community can better understand the consequences of secret marriages and the importance of following the legitimate legal procedures.

### **The Perspective of Islamic Family Law on the Problematics of *Sirri* Marriage in the Community of Asam Jujuhan Subdistrict**

A marriage that is considered valid in Islam is one that fulfills the pillars (*rukun*) and conditions (*syarat*) of marriage, namely the presence of two prospective spouses (male and female), whether conducted face-to-face or remotely, a guardian (*wali*) from the bride's side, witnesses, and the marriage contract (*ijab* and *qabul*). In addition, those who intend to marry must not belong to categories prohibited from marriage under Islamic law, such as marrying a *mahram* (Al-Saai, 2025). Meanwhile, under positive law, a valid marriage is one that is conducted according to religious provisions and officially registered.

Based on these provisions, the problem of *sirri* marriages occurring in Asam Jujuhan Subdistrict cannot be legally validated; however, there remains an opportunity for legalization through *isbat nikah*.

Marriage law in Islam holds a very important position because it is regulated and explained clearly and comprehensively. This is reflected, among others, in Government Regulation No. 9 of 1975 concerning the procedures for the implementation of marriage. Islamic law does not merely regulate the procedures of marriage but also governs various matters closely related to marriage, such as the rights and obligations of spouses, the regulation of marital property or assets acquired during marriage, living expenses that must be borne after the dissolution of marriage, and other related issues (Compilation of Islamic Law, 1998/1999).

The urgency of marriage in human life, particularly for Muslims, can be explained as follows (Al-Sharmani, 2018):

- a. A legally conducted marriage has a positive impact on social relations, both individually and collectively, between men and women in a dignified and lawful manner, in accordance with the noble status of human beings among God's creations.
- b. Marriage serves to establish a peaceful, harmonious, and enduring household, accompanied by affection and compassion within the family.
- c. A valid marriage is expected to produce legitimate offspring within society, thereby ensuring the continuity and well-being of the family.
- d. Marriage gives rise to a family unit, which constitutes the core of an orderly and peaceful social life.
- e. A marriage conducted in accordance with the provisions of Islamic law (*shari'a*) is regarded as an act of worship for Muslims.

Marriage in Islamic teachings aims to fulfill fundamental human needs by regulating the relationship between men and women in order to establish a household and family that are happy and prosperous, founded upon mutual love and affection. It also seeks to ensure the birth of legitimate offspring within society, in accordance with the provisions prescribed by Islamic law.

Law No. 1 of 1974 on Marriage, Article 1, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of forming a happy and enduring family (household) based on belief in the One and Only God. The objectives of marriage as envisioned by the Marriage Law are not limited merely to its outward contractual aspects, but also encompass a profound inner bond between husband and wife, aimed at establishing and nurturing a lasting and harmonious family founded upon belief

in the One and Only God. The outward bond refers to a relationship that is visibly recognized, both between the spouses themselves and by the surrounding community, while the inner bond reflects the harmony and unity required to sustain a peaceful marital relationship.

The legal validity of marriage is regulated in Article 2 of Law No. 1 of 1974, which stipulates that:

- (1) A marriage is valid if it is conducted in accordance with the laws of the respective religions and beliefs of the parties.
- (2) Every marriage shall be registered in accordance with the applicable laws and regulations.

With regard to Article 2 above, there are two differing views. The first view holds that a marriage is valid once it has been conducted according to the parties' religion and belief, without the need for registration by an authorized official. According to this view, registration is merely the recording of an ordinary legal event, similar to the registration of death, birth, and other civil events. Marriage is regarded as a private right of an individual and therefore does not require registration. Registration by an authorized official is not considered a requirement for the validity of a marriage, but merely an administrative act.

The second view considers Article 2 paragraph (1) and paragraph (2) as an inseparable unity. Accordingly, if one of the elements stipulated in these provisions is not fulfilled, the marriage is deemed legally invalid (Wibowo, 1982). Based on these perspectives, the author agrees with the second view. The legal arguments supporting this position are as follows:

1. Article 2 paragraph (2) is organically formulated by Article 2 paragraph (1), as well as Articles 3–9 of Government Regulation No. 9 of 1975 concerning the procedures for the implementation of the Marriage Law.
2. The Compilation of Islamic Law as stipulated in Presidential Instruction No. 1 of 1991 and the Regulation of the Ministry of Religious Affairs No. 154 of 1991, Articles 5, 6, and 7 paragraph (1), reinforce that marriage registration constitutes a requirement for the validity of the marriage contract.
3. The jurisprudence of the Supreme Court of the Republic of Indonesia No. 1948/K/Pid/1991 provides legal consideration that marriage as referred to in Law No. 1 of 1974 is a marriage conducted before an official of the Office of Religious Affairs (KUA).
4. Circular Letter of the State Personnel Administration Agency (SE BAKN) No. 48/SE/1990 concerning the guidelines for the implementation of Government Regulation No. 45 of 1990, Section IX, states that a civil servant's

wife is legally married only if the marriage complies with Article 2 paragraph (1) and Article 2 paragraph (2) of the Marriage Law.

The requirements for marriage are regulated in Articles 6 to 12 of Law No. 1 of 1974. Article 6 stipulates the following provisions:

1. A marriage must be based on the consent of both prospective spouses.
2. In order to enter into a marriage, a person who has not yet reached the age of 21 must obtain the consent of both parents.
3. In the event that one of the parents has passed away or is unable to express his or her will, the consent referred to in paragraph (2) of this Article may be obtained from the surviving parent or from the parent who is able to express his or her will.
4. In the event that both parents have passed away or are unable to express their will, consent shall be obtained from a guardian, caregiver, or family members who have a blood relationship in the direct ascending line, as long as they are still alive and capable of expressing their will.

As explained above, a marriage is considered valid if it is conducted in accordance with the laws of the respective religion and belief of the parties, and every marriage must be registered in accordance with the applicable laws and regulations (Article 2 of Law No. 1 of 1974). A *sirri* marriage does not fulfill these statutory provisions; therefore, such a marriage is legally invalid. Consequently, the marital relationship between husband and wife is based solely on religious belief. While the status of the husband and wife is considered valid under religious law and belief, under state law the marriage is deemed never to have occurred.

According to Law No. 1 of 1974, a marriage conducted *under the hand* (unregistered marriage) does not fulfill the requirements stipulated in Article 2 paragraph (2) of the law and is not recognized by the Office of Religious Affairs (KUA) as the authorized institution for marriage registration. Such a marriage only fulfills the requirements set forth in Article 2 paragraph (1) of Law No. 1 of 1974. It can therefore be stated that because an unregistered marriage is not recognized by the state, neither the validity of the marriage nor the legal consequences arising from it are acknowledged.

The Compilation of Islamic Law provides an opportunity or solution for individuals who have entered into a *sirri* marriage to submit an application for *itsbat nikah* to the Religious Court, with the aim of obtaining a Marriage Certificate. *Itsbat nikah* is a judicial determination of marriage issued by the Religious Court upon application, due to the inability of the husband and wife to prove their marriage through an official marriage certificate (Ahmad Rofiq, 6th

ed., p. 117). *Itsbat nikah* is also defined as an application for the legalization of a marriage submitted to the Religious Court in order to declare the validity of a marriage conducted in accordance with Islamic law and to grant it legal force.

The *itsbat nikah* process results in the issuance of a marriage certificate (act), which serves as an authentic document to prove the certainty that the marriage has indeed taken place. With the marriage certificate, couples can more easily assert their rights in the event of divorce and facilitate the issuance of their children's birth certificates (Shabana, 2021).

As part of the government's efforts to provide services to those who do not have a marriage certificate, *itsbat nikah* has a positive aspect in simplifying the process for the community to register a marriage that has already been conducted. The legal status of *itsbat nikah* is recognized through existing regulations, such as those stated in Article 7 paragraphs (2) and (3) of the Compilation of Islamic Law (KHI), which stipulate that *itsbat nikah* can be submitted to the Religious Court.

*Itsbat nikah* can be requested for several reasons, including the loss of a marriage certificate or doubts about the validity of one of the marriage requirements. In relation to this issue, the Bireuen Regency has implemented an initiative by the Religious Court to assist couples who do not have a marriage certificate, allowing them to legalize their marriage through a mobile *itsbat nikah* program.

The regulation regarding *itsbat nikah* is found in Article 7 of the Compilation of Islamic Law, which states:

Article 7 (2) *Itsbat nikah* can be submitted to the Religious Court; (3) The scope of *itsbat nikah* submitted to the Religious Court is limited to:

- a. Marriages related to divorce proceedings;
- b. Loss of a marriage certificate;
- c. Doubts regarding the validity of one of the marriage requirements;
- d. Marriages conducted by those who do not have legal impediments to marriage according to Law No. 1 of 1974.

As previously outlined, *itsbat nikah* is a judicial determination of a marriage conducted by a couple who have married in accordance with Islamic law, fulfilling the pillars and conditions of marriage. Therefore, in terms of Islamic jurisprudence (*fiqh*), the marriage is deemed valid. Looking at the explanation of Article 7 paragraphs (2) and (3) of the KHI, the law grants more authority than what is provided by both Law No. 1 of 1974 on Marriage and Law No. 7 of 1989 on Religious Courts.

Article 7 paragraph (2) of the Compilation of Islamic Law provides very broad absolute competence regarding *itsbat nikah* without restrictions or exceptions, whereas the explanation of its provisions only states that this article is effective after the enactment of Law No. 7 of 1989 on Religious Courts.

According to Article 7 paragraph (3) letter a of the KHI, *itsbat nikah* can only be requested in cases involving a marriage in connection with divorce proceedings. However, Neng Djubaidah argues, "This formulation does not fully guarantee the inheritance rights of wives and children who are legally married under Islamic law but whose marriage has not been registered. This is because there are still court decisions that reject *itsbat nikah* when the husband has passed away. Divorce proceedings are conducted while the husband is still alive, but if the divorce is due to death, it is not included as a reason to submit an *itsbat nikah* application" (Neng Djubaidah, 2012).

Furthermore, *itsbat nikah* is also addressed in Article 39 paragraph (4) of Minister of Religious Affairs Regulation No. 3 of 1975, which stipulates that if the KUA (Office of Religious Affairs) is unable to issue a duplicate marriage certificate due to the record being damaged or lost, or for other reasons, the existence of the marriage, divorce, or reconciliation must be determined through a decision (in the form of a decree) from the Religious Court.

From the explanation above, it can be understood that *itsbat nikah* is recognized by law and forms part of the authority of the court to resolve marital issues within its absolute jurisdiction (specifically the Religious Court). The process of *itsbat nikah* is carried out through the submission of a request by the parties involved.

As stated in Article 7, paragraph (4) of the Compilation of Islamic Law, it is explained that those who are entitled to submit a request for *itsbat nikah* are the husband or wife, their children, the marriage guardian (*wali nikah*), and those with a vested interest in the marriage. From this explanation, it can be understood that for a couple who have entered into a marriage that is valid according to their religion but face difficulties in proving the validity of their marriage, they must submit a request to have their marriage officially recognized through the *itsbat nikah* process.

Marriage is governed by the regulations that have been prescribed in Islam. It regulates the life of the household and the family. This is very important because the family is considered a small but solid unit of society. Its bond is established through a strong spiritual connection, built on deep affection. This is also regulated in Law No. 1 of 1974 on Marriage, specifically in Articles 1 and 2. Article 1 states that marriage is a physical and spiritual bond between a man and

a woman as husband and wife, with the aim of forming a happy and lasting family, based on belief in the One and Only God. Then, Article 2, paragraph (1), stipulates that a marriage is valid if it is conducted according to the laws of the respective religions and beliefs of the parties involved.

From the above explanation, a valid marriage is one that meets the requirements of religious law, specifically in accordance with the Islamic jurisprudence (*fiqh*) for Muslims. This valid marriage must fulfill the pillars and conditions of marriage. In the author's opinion, a marriage that has fulfilled the necessary pillars and conditions can be *itsbat* (legalized). Since the marriage is not registered, it does not have an authentic proof (Marriage Certificate). Therefore, the legal regulations provide a solution for unregistered marriages, such as *sirri* marriages, to obtain legal recognition through the process of marriage validation by court decision.

The author concludes that *sirri* marriages that occur in Asam Jujuhan Subdistrict are not legally recognized unless the parties involved have their marriage legalized or *itsbat nikah* through the Religious Court of Pulau Punjung, which has jurisdiction over Asam Jujuhan Subdistrict.

## Conclusion

This study shows that the persistence of *sirri* marriage in Asam Jujuhan District cannot be explained merely as a matter of legal ignorance or religious conservatism. The novelty of this research lies in its finding that *sirri* marriage is better understood as a rational and socially embedded response to the intersection of structural constraints, limited institutional access, geographical isolation, economic hardship, and weak legal outreach in a rural Muslim community. In this respect, the study moves beyond a purely normative reading of *sirri* marriage and demonstrates how the gap between religious legitimacy and state legality is produced and sustained in everyday life.

In answering the research questions, the study finds that *sirri* marriage in Asam Jujuhan is practiced as a religiously valid marriage that fulfills the essential requirements of Islamic law, yet remains legally unrecognized under state law because it is not registered. The community's preference for *sirri* marriage is shaped by distance to formal institutions, administrative difficulty, economic limitations, low legal awareness, and a social preference for a quick and simple marriage process. The study further shows that this legal non-recognition produces concrete vulnerabilities, particularly for women and children, while the *isbat nikah* mechanism remains underutilized due to stigma, limited information, perceived procedural complexity, and cost barriers.

The contribution of this study lies in enriching Islamic family law scholarship by showing that the problem of *sirri* marriage is not simply doctrinal, but also socio-legal and institutional. Its practical implication is that strengthening the effectiveness of marriage law requires more than formal regulation: it also requires improving legal access, expanding community-based legal education, simplifying administrative procedures, and optimizing the role of *isbat nikah* as a bridge between religious validity and legal recognition. In this sense, the study supports a more integrative approach to Islamic family law, one that is attentive not only to legal norms but also to the social realities that shape compliance.

This study is limited by its focus on a single rural district and its reliance on qualitative field data, which means that its findings should be read as context-specific rather than broadly generalizable. Future research is therefore recommended to compare *sirri* marriage practices across different regions, to incorporate broader socio-legal and comparative methods, and to examine more closely the long-term effectiveness of legal education, institutional reform, and *isbat nikah* policies in reducing unregistered marriages and protecting family rights.

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