

THE POWER OF PROOF OF A SIRI MARRIAGE DEED

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ABSTRACT; Humans are biological beings who require partners for the continuity of their existence. Therefore, legal marriage binds the existence of each partner. However, a marriage is considered valid when it complies with both religious and state laws. In this era, it is common to have unregistered or "siri" marriages, which are perceived as a way to save the costs of a publicly declared marriage. From these marriages, unregistered marriage certificates, or "siri" certificates, emerge, which is the core issue of this topic. Considering that a certificate is one of the pieces of evidence that can be submitted in civil procedural law, this becomes a significant matter. This type of research is normative with statute, conceptual, and case approaches. Several regulations are used in this discussion, making the presence of systematic interpretation an essential element in the analysis. Additionally, the conclusion uses the deductive method to simplify the general to the specific. The research results show that the unregistered marriage certificate is equivalent to a private document. When used as evidence in court, it does not have legal force. The marriage certificate that holds legal force is issued by the sub-district religious affairs office. However, although it does not have legal force, the unregistered marriage certificate can be used as supplementary evidence only.

Keyword : *Certificate, Unregistered Marriage, Unregistered Marriage Certificate*

INTRODUCTION

In this life, every human being definitely needs love. To fulfill this, the role of the partner is very necessary. With the presence of a partner beside us, life will not feel lonely because there is someone who always accompanies us and is a place to share our joys and sorrows. This relationship is then bound by marriage. Marriage is a new chapter in everyone's life where they begin new responsibilities and share new roles with their partner. These new roles will determine the responsibilities and responsibilities of each person in a harmonious family.

Marriage according to Law No. 1/1974 is a physical and spiritual bond between a husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God. Apart from being regulated by law, this matter is also regulated in the Compilation of Islamic Law in Article 2 which states: "In Islam, marriage is a very strong contract or *imtsaqanighalidzan* to obey Allah's commands and carry it out as worship."

The marriage system in Indonesia is regulated by various laws. The main regulation is Law Number 1 of 1974 which has been amended by Law Number 16 of 2019 concerning Marriage. This law includes the definition of marriage, conditions, registration, rights and obligations of husband and wife, as well as resolving marital problems. Apart from that, there is Law Number 23 of 2006 concerning Population Administration which regulates marriage registration and population documents that must be owned by married couples.

For Muslims, there is a Compilation of Islamic Law which is a guide to marriage law that is recognized and used by religious courts. Apart from that, there is also Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage and Minister of Religion Regulation Number 11 of 2007 concerning Marriage Registration.

The rules above are always inseparable from what is called marriage registration, which means "in writing". Because its existence is a sacred thing to prove that a marriage has occurred. So, apart from having to be legal in the eyes of religion, marriage must be legal in the eyes of state law. Legal existence in state law is a force of proof for husband and wife, apart from being legal standing it can also be used as a marriage agreement (*sighat taklik talak*).

Marriage is always related to certain harmony and conditions. In Islamic law, the pillars of marriage are cumulative, which includes three things: consent, *qabul*, and the bride and groom not having a *mahram* relationship of descent or consanguinity. The requirements for marriage in Islam include four things, namely the name of each prospective bride and groom has been determined, the consent of the bride and groom, the presence of a marriage guardian, and the presence of marriage witnesses.¹

Apart from requirements according to Islam, there are also requirements in positive

¹ Dwi Cahyani, T. (2020). *hukum perkawinan*. Universitas Muhammadiyah Malang.

law, which are divided into material requirements and formal requirements. The absolute material requirements include that the bride and groom are not married, as stated in BW Article 27. The age must comply with the applicable provisions. Women may not remarry before 300 days have passed since the end of their previous marriage, in accordance with BW Pasal34. BW Pasal28 also mentioned the need for permission from a third party. Relative material requirements include the absence of a very close blood or family relationship between the bride and groom, as regulated in BW Articles 30 and 31.

Apart from that, the bride and groom should never overspel, as stated in BW Pasal32. Then, the formal requirements are regulated in BW Articles 50 to 51, which state that the marriage must be notified first to the Civil Registry Officer and then recorded in the marriage notification register. The Marriage Law also explains the requirements that must be met to consummate a marriage.

Academics and practitioners, especially religious court judges, continue to disagree about the legal legal definition of marriage. First, several academics and legal practitioners are of the opinion that the main requirement for a valid marriage is to fulfill Article 2i (1) of the Marriage Law, which means that the marriage must be carried out completely according to Islamic law (fulfilling all the pillars and conditions of marriage).

They are of the opinion that marriage registration by a Marriage Registrar (VAT) is only an administrative obligation and not a requirement for a marriage to be valid. Second, several academics and legal practitioners argue that the provisions of Article 2 (1) regarding religious procedures and paragraph (2) regarding registration of marriages by PPN must be fulfilled simultaneously to ensure that the marriage is valid. This group believes that the provisions of Article 2 paragraphs (1) and (2) are cumulative requirements rather than alternatives. Therefore, marriages carried out in accordance with the provisions of Islamic law without registration by PPN are not yet considered valid marriages.²

According to Government Regulation Number 9 of 1975, a marriage that is not legally registered is called a private marriage. People who marry according to the Islamic religion but do not register their marriage at the Religious Affairs Office or the Marriage Registrar (VAT) or people who marry outside the Islamic religion but do not register their marriage with the Marriage Registrar at the Civil Registry Office are considered to have a private marriage.

As a result, perpetrators of underhanded marriages do not have a marriage certificate or marriage certificate. This marriage can be carried out by anyone, both Muslims and non-Muslims, and is basically a form of unregistered marriage (Prasetyo, 2018). However, currently, siri marriages (underhand marriages) are very common in Indonesia.

This is usually due to the cost of the wedding or often the age does not meet the statutory regulations. In terms of convenience, unregistered marriages, known as marriages that are not registered with VAT, now have a deed, which in the deed is

² Andri, M. (2020). Implikasi Isbath Nikah Terhadap Status Istri, Anak Dan Harta Perkawinan Dalam Perkawinan Dibawah Tangan. *Jurnal Penegakan Hukum Indonesia (JPHI)*, 1(1), 60. <https://bldk.mahkamahagung.go.id/id/puslitbang-hukum-dan-peradilan/dok->

entitled Islamic religious marriage certificate, and contains the names of the bride and groom, guardians and witnesses to the marriage. This is a deviation from applicable regulations.

Because as an Indonesian citizen you should comply with the applicable regulations. The presence of regulations is a tool for deciding cases in court. In procedural law, there is the principle "whoever argues must prove it" (*actori incumbit onus probandi*), which means that the party making the claim or argument (actor) must prove his claim.

This means that if someone raises a fact or claim in a legal case, he or she is responsible for providing sufficient evidence to support the claim. This principle ensures that one cannot make arbitrary claims without providing sufficient evidence to support them.

Evidence itself is regulated in Article 1866 of the Civil Code/Article 164 HIR. The existence of the case above needs to be studied more deeply, because written/written/letter evidence is placed in first place, which is important for discussing the standardization of the main evidence. If you see that the marriage itself is not in accordance with the regulations then what will happen to the marriage certificate obtained by the people who do this?

Therefore, the issue raised is "Does a private marriage certificate meet the standardization of evidence contained in the procedural law?"

Sudikno Mertokusumo is of the opinion that written evidence or a letter is something that contains punctuation which is intended to express one's feelings or to convey one's thoughts and is used as evidence. He also divided into two types of evidence, namely the first is Positive Evidence, stating that evidence is an effort to convince the judge about the truth of a disputed event.

Positive proof focuses on facts that can be proven concretely. Second, Negative Evidence which emphasizes that evidence also involves efforts to eliminate doubts in the judge's mind. Negative proof attempts to show the untruth of the opponent's claim (Mertokusumo, 2013). Measuring the standardization of evidence is important for certainty, because certainty is one of the most important elements in law. The condition must have a clear meaning and does not give rise to multiple interpretations.

Punishment must essentially be certain and fair. Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation that is created and promulgated regulates it with certainty and logic. Apeldoorn explained that legal certainty consists of two components. First, how law can be formed in certain situations. This means that parties seeking justice will want to know the law of a particular case before starting a case.

Second, legal certainty means legal security, namely protection for parties against arbitrariness by judges. According to the positivism paradigm, the definition of law must reject all regulations that are similar to law, even if they are not directives from the government. Whatever the outcome, legal certainty must always be upheld, and there is no reason not to do so because, in the positive law paradigm, positive law is

the only law.³

This research is new, because it has never discussed the strength of a serial marriage certificate. Similar research related to documentary evidence was researched by with⁴ the title *The Strength of Proof of Photocopies of Letters that Cannot Be Matched with the Originals in Civil Cases* in the journal *UU: Jurnal Hukum* volume 2 number 2, in his writing focused on the decision of the Supreme Court Decision Number 112 K/Pdt/1996 concerning evidence of documents that are not genuine.

PROBLEM

1. If a marriage is no longer in accordance with the regulations, then what will happen to the marriage certificate obtained by the people who do this?
2. Does the private marriage certificate meet the standardization of evidence contained in the procedural law?

RESEARCH METHODS

This type of research is normative, which is also known as doctrinal legal research. This is because the doctrinal method involves library research or document studies, which are carried out or aimed at written regulations or other legal materials.⁵ Meanwhile, the approach taken in this research includes two things, namely the Statute Approach, Conceptual Approach and Case Approach, which are sourced from books, journals and the web from legal experts. To unite these two approaches, it is important to have a systematic interpretation that will produce descriptive analysis. Conclusions are drawn using a deductive method that starts with a general statement or hypothesis, then applies it to a specific case or fact to reach a more specific conclusion.

DISCUSSION

Siri Marriage

Siri marriage is a word that comes from an Arabic term which is believed to be an Islamic phrase. There are 2 words "marriage" and the word "siri". The word nikah is the same as marriage, while siri "sirrun" means secret, or something that is hidden. Hrough this word, unregistered marriage is defined as a secret marriage, which is different from marriage or marriage in general which is carried out openly or openly.⁶

Siri marriage is sometimes called misyar marriage. There are some scholars who equate this term, but there are also scholars who differentiate it. Sometimes this unregistered marriage is also called an 'urfi marriage, namely a marriage according to traditional customs. Siri marriage in Indonesia has developed since the 1970s, which initially occurred in the Kalimantan area.

There are several types of unregistered marriages, including marriages without the

³ Lengkong, L. Y. (2020). *Keterangan Ahli Sebagai Alat Bukti Dalam Penyelesaian Sengketa Perdata. Jurnal Hukum: Huku Untuk Mengatur Dan Melindungi Masyarakat*, 6(3), 321.

⁴ Sari, D. P. (2020). *Kekuatan Pembuktian Fotokopi Surat yang Tidak Dapat Dcocokkan dengan Aslinya dalam Perkara Perdata. Undang: Jurnal Hukum*, 2(2), 323–352. <https://doi.org/10.22437/ujh.2.2.323-352>

⁵ Soekanto, S., & Mamudji, S. (2014). *Penelitian Hukum Normatif*. PT Raja Grafindo Persada.

⁶ Hasan, M. A. (2003). *Pedoman Hidup Berumah Tangga Dalam Islam*. Prenada Media.

presence of a guardian, marriages that are legal according to religion but not registered with the Marriage Registry Officer, then the last is marriages that are deliberately kept secret due to certain considerations.⁷ The fiqh of the Imams of the Hanafi madzhab and the Imams of the Syafi'i madzhab, and the Imams of the Hambali madzhab, Siri marriage are not permitted in Islam. Likewise in fiqh according to Maliki madzhab imams, Siri Marriage is a marriage based on the husband's request, because everyone is asked to keep the marriage a secret.

The term "Underhand Marriage" is a marriage carried out without the marriage being registered by an authorized official. This can be said to be unregistered because there is no recording with the officers.⁸ In line with that, the Indonesian Ulema Council (MUI) in 1980 stated that marriage under the law is valid according to fiqh, but can become haram when there is harm.

Marriages must be registered with authorized officials to prevent negative impacts/harms in the future. Because marriage registration is very important, especially for women. For muamalah, Islam always regulates records, especially those related to marriage.⁹ In fact, the main purpose of sirri marriage in general society is to prevent adultery, limit family relationships with one another, eliminate negative views about local society, and prevent sons and daughters from mingling too much with other people.

Furthermore, their husband and wife relationship is strengthened by religion and customs (Royana, 2023). Apart from that, there are other factors in life such as the economy, promiscuity, mass media or social media, parenting patterns and religion.¹⁰

Unregistered marriages are considered invalid by Indonesian law, which means they have an effect on the validity of the husband and wife relationship and related rights. For example, the status of children born from unregistered marriages can be influenced by law. The child's status is considered illegitimate.

Therefore, children only have a civil relationship with their mother. This is in accordance with Articles 42 and 43 of the Marriage Law and Article 100 of the Compilation of Islamic Law, which also affect birth certificates which only display the mother's name. However, the court provided a solution for unregistered marriage to be determined through marriage isbat.¹¹

Equipment Of Letterial Evidence and Its Power Of Proof

Proof is a process carried out by the parties to a dispute to convince the judge of the truth of an event or incident proposed by each party. This process is carried out using evidence that is limited by law. Therefore, evidence is used to give the judge

⁷ Naharin, N., & Fadhilah, N. (2017). Perkawinan Di Bawah Tangan (Nikah Siri) Dalam Perspektif Feminis . *Jurnal Hukum Islam*, 5(2), 364.

⁸ Hanafi, A., & Mauliana, S. (2021). Penerapan Saksi Bagi Pelaku Nikah Siri Dalam Fatwa MPU Aceh Nomor 1 tahun 2010 Tentang Nikah Siri . *Universitas Islam Negeri Ar-Raniry Banda Aceh*, 1(1), 9.

⁹ Sagita, F., & Hudaya, D. U. (2022). Nikah Dibawah Tangan Dalam Persepktif Hukum Islam. *Ahkam Jurnal Hukum Islam*, 3(1), 34.

¹⁰ Yani, I., Arianto, J., & Supentri. (2022). Analysis Of Causes Of Early Siri Marriage In Pujud District Rokan Hilir Regency. *Jurnal Pendidikan Tambusai* , 6(2), 11208-11211.

¹¹ Fauzi, A. (2021). Isbat Nikah Solusi Bagi Nikah Siri. *Jurnal Sosial Dan Sains*, 1(9), 982.

confidence about the truth of the events that are the subject of the dispute. The judge evaluates the evidence presented by the parties based on existing facts.

Judges are positively bound to certain types of evidence, so they do not have complete freedom to evaluate it, but they do have freedom to evaluate the evidence. Therefore, an evidentiary assessment is an assessment that is in accordance with reality (Sari, 2020). There are four things in the theory of evidence in civil law, which are to maintain legal certainty. These theories include:¹²

1. Positiefiwettelijkbewijstheorie is a theory that says judges are positively bound to statutory evidence. Thus, a judge can make a decision without considering their personal beliefs if he or she already considers that an act has been proven.
2. Conviction In Time means that judges can make decisions based solely on their personal beliefs without being bound by evidence.
3. Conviction Rationnée is where judges carry out evidence based on their own beliefs which are supported by rational reasons. Judges have the freedom to use whatever evidence they want, but they must provide a rational explanation.
4. Negative Evidence Theory According to Law is a theory of evidence which states that evidence must be based on the judge's belief obtained from evidence regulated by law, taking into account negative aspects or shortcomings.

In Indonesian civil procedural law, the positive evidence system—or positive law—assesses evidence based on evidence that has been positively determined by law, without requiring the judge's personal beliefs. Legal evidence, as established by law, is binding on judges, so their decisions can be based only on that evidence.

Article 138 paragraph (2), Article 150 paragraph (3), Article 154 paragraph (1), Article 155 paragraph (1), and Article 156 paragraph (1) of the HIR indicate this provision. In civil cases, the truth sought is formal truth, which means that the judge must not exceed the limits proposed by the party involved in the case.

As explained previously in the introduction, the provisions for evidence are contained in Article 1866 of the Civil Code/Article 164HIR/Article 284 Rbg. These are written evidence or letters, witness evidence, allegations, confessions and oaths. Provisions regarding written evidence or letters are regulated in Articles 138, i165, 167 HIR, Articles 164, i285, i305 Rbg., or Articles 1867-1894 of the Civil Code.

Two types of written evidence or letters are deeds and non-deeds. Deeds include authentic deeds, such as deeds made by officials (*acta ambtelijk*, *processe verbal acte*) or deeds made in front of officials (*partij acte*), and deeds given privately. A deed executed by an official and made in front of the official has permanent legal force and is called an authentic deed.

¹² Putu Riyani Kartika Sari, N., & Luh Putu Geney Sri Kusuma Dewi, N. (2020). Eksistensi Teori Pembuktian Positief Wettelijk Bewijstheorie Dalam Pembuktian Perkara Perdata. *Jurnal Akses*, 12(2), 135–136.

These officials are called notaries and PPAT. They have different regulatory standards. Notaries comply with the Notary Position Law (UUJN) Number 2 of 2014 while PPAT Government Regulation Number 24 of 2016. However, even though they are different, the process of making the deed still refers to article 1886 BW.¹³

A deed made independently by interested parties without the assistance of a public official with the aim of being used as evidence is called a private deed. During the trial, there was an attempt to obtain additional evidence to support the evidence which was deemed sufficient according to law if the evidence presented was only a private deed. Therefore, private deeds can only be accepted as written evidence (Article 1871 of the Civil Code).¹⁴

Legal Strength of A Siri Deed as Burden Of Proof

Indonesia is a country that has the principle of being a rule of law. Apart from that, it is also known as a country with a civil law system. This shows that whatever humans do there must be written rules governing it. This is in order to achieve order between people. However, the law is still the law, while humans reform faster than the law. The human mind, which is used for thinking, has various ways to fulfill its desires and wishes for something.

The existence of a serial marriage certificate, for example, is an expansion of human reason, because humans know that anything written can be used as evidence. However, they forget that every piece of evidence has standards so that it can be used as evidence in court. As explained previously, regarding the concept of the legal strength of documentary evidence, this time there is a statute and case approach through systematic interpretation to analyze the case.

A certificate of unregistered marriage is an incarnation of a marriage under the hand, so the deed automatically follows what is stated in the provisions of the certificate under the hand in Article 1874 Burgerlijk Wetboek. The legal force of this deed is actually inseparable from the so-called benchmark. Because, it is said to be strong if the elements have been fulfilled, whereas it is said to be not strong if one of the elements is not fulfilled so that there are defects in the deed.

A private deed is essentially the same as a private agreement, where the requirements for making it are contained in Article 1320 BW. However, even though they look the same in manufacture, they still have significant differences. The difference lies in function. The deed functions as proof of the existence of a legal event or legal action. Meanwhile, the agreement functions as a basis for implementing agreed rights and obligations.

In the case of a serial marriage certificate, this can be compared to a private agreement which can function as an agreement, but to be used as evidence it will be

¹³ Gaurifa, B. (2022). Pertanggungjawaban pidana pejabat pembuat akta tanah dalam pembuatan akta jual beli tanah. *Jurnal panah hukum*, 1(1), 13–15. <https://jurnal.uniraya.ac.id/index.php/JPHUKUM>

¹⁴ Samosir, D. (2011). *Hukum Acara Perdata, Tahap-Tahap Penyelesaian Perkara Perdata*. Nuansa Aulia.

studied further. In the article above, in relation to a siri marriage certificate, it is required that there be a competent relationship between both parties. In this case regarding age, it is subject to article 7 number (1) of Law Number 16 of 2019, namely the age of 19 years for both men and women. Then the next requirement is that there is an object.

In marriage, the object that can be stated in the deed is related to the arrangement of assets as in Article 29 of Law Number 1 of 1974 concerning Marriage. Then the last one is related to something that is not prohibited. In marriage, the most important thing that is prohibited is marriage between different religions, this is strictly prohibited as stated in the Supreme Court circular no. 2i of 2023 and article 2 of the Constitutional Court Marriage and Judgment Law no. 68/PUU-XII/2014.

Another element in this case, as in article Article 1902i of the Civil Code, stipulates the conditions for initial written evidence: the deed must exist, be made by the person against whom the claim is being made or by the person he represents, and allow for the truth of the events that have occurred.

In cases of unregistered marriage, it only fulfills the last element contained in the article. Furthermore, if in the trial evidence to validate the unregistered marriage with the evidence of the unregistered marriage certificate at the judicial institution, no one is allowed to deny it, because if this happens the judge will use the theory of negative evidence by looking at the signature of the deed. While the signature is recognized as having formal and material evidentiary power (perfect and binding), but the signature under the hand does not have external power (external proof), so it is not binding on third parties.

Another thing related to this deed is contained in Article 1876i which states that there is an acknowledgment from a third party, in this case the role of the witness and the person marrying must acknowledge the deed. Because a private deed is not binding or free on third parties because the signature can still be denied. Siri marriages, which are not recognized by the state because they are not officially registered at the Religious Affairs Office (KUA) or the Population and Civil Registry Service (Dukcapil), result in the siri marriage certificate not having the same legal force as an officially valid marriage certificate.

From this explanation, it can be understood that a siri marriage certificate has two important aspects. First, a siri marriage certificate can be used as temporary or supporting evidence in several civil cases such as lawsuits for maintenance, recognition of children, or division of joint assets. Second, because it is not officially recognized, the court usually asks for additional evidence other than the siri marriage certificate to consider the validity of the marriage, such as witnesses, other supporting documents, or confessions from related parties.

Judging from Alperdoorn's thinking, the first thought of parties seeking justice must be to know the law. In the practice of unregistered marriages, people know that essentially a marriage must be registered at the Religious Affairs Office with various procedures to legalize the marriage. The government facilitates KUA at the sub-

district level to make it easier for the public to register marriages and to simplify the administration, accessibility and effectiveness of public services in terms of religious matters.

However, because the costs are often expensive, people carry out serial marriages, which in my opinion are marriages that are forced and lack preparation. Because, in the marriage procedures at the Office, marriage guidance will be prepared so that a *sakinah mawadah warahmah* marriage is created and the community gets legal protection if something happens in the future. The second thought is that legal certainty is security and legal protection. In the case of a serial marriage certificate, there is actually no legal protection.

Because the deed does not legally bind the parties, couples in unregistered marriages may experience difficulties in claiming their legal rights, such as inheritance rights, maintenance rights, and other rights that are usually recognized in officially registered marriages. And the rights of children born from unregistered marriages have the right to be recognized and receive legal protection, but the legal process for this recognition may require additional steps, such as filing a lawsuit in court to obtain a determination of the child's legal status.

CONCLUSION

The legal force of this deed is actually inseparable from the so-called benchmarks. Because, it is said to be strong if the elements have been fulfilled, whereas it is said to be not strong if there are elements that are not fulfilled so that there are defects in the deed. A private deed is essentially the same as a private agreement, where the requirements for making it are contained in Article 1320 BW. The certificate of unregistered marriage is a replica of a marriage under the hand, so the deed automatically follows what is stated in the provisions of the certificate under the hand in Article 1874. In the process of proving a serial deed, if it is used as evidence before a trial, it does not have sufficient strength like an authentic deed. Because, if the deed is denied by one of the spouses then the deed is defective. Other things can also be proven by a third party, but if the third party also denies it, the unregistered marriage certificate cannot be said to have strong legal force in proof. So it can be understood that it can only be used as additional evidence to strengthen the arguments of the parties after the existence of witnesses.

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