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Unregistered Marriage Among Muslim University Students: Between State Legality and Religious Legitimacy

Pernikahan Siri di Kalangan Mahasiswa Muslim: Antara Legalitas Negara dan Legitimasi Agama

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Abstract

Unregistered marriage (*nikah siri*) among Muslim university students presents a persistent tension between state legality and religious legitimacy. This article critically examines the phenomenon occurring in Indonesian Muslim campus environments by analyzing its normative constructions, socioeconomic driving factors, and socio-legal consequences. Under classical Islamic jurisprudence, *nikah siri* is considered valid once its pillars and conditions are fulfilled; however, the Indonesian state does not recognize its validity because the marriage is unrecorded by the Office of Religious Affairs (KUA). This legal dualism structurally places women and children in a vulnerable position. Students choose this path due to economic pressure, the desire to avoid premarital relations, and insufficient awareness of legal implications. Drawing on legal pluralism theory and a socio-legal approach, this article concludes that *nikah siri* is not merely a religious preference but a response to complex social and legal conditions requiring comprehensive action from the state, educational institutions, and religious communities.

Keywords: unregistered marriage; Muslim students; state legality; religious legitimacy; Islamic family law

Abstrak

Pernikahan siri di kalangan mahasiswa Muslim menghadirkan tegangan antara legalitas negara dan legitimasi agama. Artikel ini mengkaji fenomena yang terjadi di lingkungan kampus Muslim Indonesia dengan menelaah konstruksi normatif, faktor pendorong sosial-ekonomi, dan dampak sosio-hukumnya. Secara hukum Islam, pernikahan siri dipandang sah apabila rukun dan syaratnya terpenuhi,

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namun negara tidak mengakui validitasnya karena tidak tercatat di Kantor Urusan Agama. Kondisi ini menciptakan dualisme hukum yang menempatkan perempuan dan anak pada posisi rentan. Mahasiswa memilih jalur ini karena tekanan ekonomi, dorongan menghindari zina, dan ketidaktahuan tentang implikasi hukum. Dengan menggunakan teori pluralisme hukum dan pendekatan sosio-legal, artikel ini menyimpulkan bahwa pernikahan siri bukan semata pilihan keagamaan, melainkan respons terhadap kompleksitas sosial dan hukum yang memerlukan pendekatan komprehensif dari negara, institusi pendidikan, dan komunitas agama.

Kata Kunci: *pernikahan siri; mahasiswa Muslim; legalitas negara; legitimasi agama; hukum keluarga Islam*

Introduction

Marriage is one of the most fundamental legal institutions in human life, functioning as the cornerstone of family formation and a regulator of social relations within society. In the context of pluralistic Indonesia, marriage is governed by two interacting legal systems: state law through Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, and Islamic law derived from the Qur'an, Hadith, and scholarly consensus (ijma'). The interplay between these two systems creates a legal grey zone in which the practice of unregistered marriage (nikah siri) quietly thrives, particularly among Muslim university students who face multiple social and biological pressures. Understanding this phenomenon requires an analytical lens that goes beyond doctrinal legal analysis and engages with the social realities that shape individual legal choices.

Nikah siri, also referred to as marriage under the hand (nikah di bawah tangan), is a marriage conducted in accordance with Islamic religious requirements but not registered with any competent government authority, specifically the Office of Religious Affairs (Kantor Urusan Agama or KUA). This practice is by no means a new development in Indonesian Muslim society; however, the twin pressures of modernization and campus life have extended it to educated segments of the population who, paradoxically, might be expected to be more legally aware. Nuruddin and Tarigan (2019) assert that the misalignment between marriage registration as an administrative obligation and the religious validity of marriage has long been a source of normative conflict within Indonesian

Islamic family law, one that continues to generate practical and doctrinal controversies.

From the perspective of sociology of law, *nikah siri* illustrates the phenomenon of legal pluralism and living law, wherein Indonesian Muslim communities selectively apply religious norms while deferring or bypassing compliance with state norms. As argued by Nurlaelawati (2021), the construction of Islamic identity among university students frequently prioritizes religious textual authority over state regulation, such that a religiously valid marriage is deemed sufficient without the need for state validation. This perspective is deeply rooted in classical Islamic jurisprudence, which does not recognize marriage registration as a pillar (*rukun*) or condition (*syarat*) of a valid marriage. Consequently, students who operate within this normative framework perceive *nikah siri* as a fully legitimate marital option.

The proliferation of digital media and social networks has further accelerated the normalization of *nikah siri* among university students. Religious digital content that promotes *nikah siri* as an Islamic solution to the risks of premarital relations is increasingly accessible and widely consumed by young Muslim adults. Wardah and Basri (2022) found in their research that exposure to religious narratives on social media significantly shapes students' perceptions of *nikah siri*, with a majority of respondents viewing it as an Islamically dignified alternative to extended courtship without commitment. This finding highlights how technology plays a critical role in the reproduction and normalization of legal practices that operate outside the boundaries of state formality.

Theoretically, the study of *nikah siri* cannot be separated from the framework of legal pluralism initially developed by Griffiths and subsequently operationalized in the context of Islamic law by numerous Muslim scholars. Within this perspective, society is not subject to a single unified legal system but rather inhabits a field of multiple, competing, and negotiating legal orders. Buehler (2016) explains that the Islamization of law in Indonesia reflects efforts to shift normative authority from the state to the religious community, thereby reinforcing the legitimacy of informal

Islamic legal practices such as nikah siri. This theoretical framework helps explain why even educated students may opt for a form of marriage that lacks state recognition, situating their choice within a broader logic of religious normativity.

The legal consequences of nikah siri fall most heavily upon women and children. A wife in a nikah siri has no marriage certificate, which is the authentic legal proof of marriage, and therefore cannot pursue legal rights such as maintenance, inheritance, or division of marital property through judicial channels. Children born of nikah siri can only obtain birth certificates through their mother's line, which under state law precludes the legal recognition of patrilineal descent. Mulia (2020) emphasizes that patriarchal constructions within classical Islamic jurisprudence, which position women in a subordinate role, constitute one of the structural factors that perpetuate nikah siri, since men obtain a religiously sanctioned sexual relationship without incurring legally enforceable responsibilities toward the state.

Within the university environment, the phenomenon of nikah siri intersects with issues of reproductive health, psychological well-being, and academic continuity. Female students who enter into nikah siri frequently face a profound dilemma between maintaining a legally unrecognized household and continuing the education they have begun. Azra (2020) notes that the transformation of Islamic thought in Indonesia has produced a paradoxical group of educated Muslims who possess strong religious conviction but lack a nuanced understanding of the legal implications of religiously-motivated choices. This condition underscores the urgency of comprehensive family law education within university settings as a form of student empowerment and harm prevention.

This article aims to critically examine three dimensions of nikah siri among Muslim university students in Indonesia: first, the normative constructions that legitimate nikah siri from the perspectives of Islamic law and state law; second, the social, economic, and psychological factors that drive students toward nikah siri; and third, the socio-legal consequences produced and their implications for policy and family law education in higher education institutions. By employing a doctrinal

analytical approach combined with a socio-legal perspective, this article seeks to contribute to a more comprehensive understanding of the tension between state legality and religious legitimacy in contemporary Indonesian marriage practice.

Discussion

1. Normative Construction: Islamic Law versus State Law

In classical Islamic jurisprudence, a valid marriage (*nikah shahih*) requires the fulfillment of five pillars: the prospective husband, the prospective wife, the guardian (*wali*), two witnesses, and the offer and acceptance formula (*ijab kabul*). No source in classical *fiqh* identifies the registration of marriage before a state official as part of the pillars or conditions of a valid marriage. This normative construction forms the doctrinal foundation upon which many regard *nikah siri* as a complete and religiously sound union. Such a position finds strong roots in *pesantren* traditions and Salafi circles, which tend to rely on classical textual authority when resolving contemporary legal questions.

On the other side, Indonesian positive law through Article 2(2) of Law Number 1 of 1974 obligates every marriage to be registered in accordance with prevailing legislation. This registration requirement is reinforced by Articles 5 and 6 of the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI), which state that a marriage can only be evidenced by a marriage certificate issued by the Marriage Registration Officer. Nonetheless, the state does not explicitly declare an unregistered marriage null and void or religiously invalid; it merely does not recognize or protect it. This dualism creates space for *nikah siri* to be viewed as religiously valid while remaining legally invisible, a status that generates asymmetric risks for the parties involved.

The debate over the legal status of *nikah siri* becomes more complex when it intersects with the principle of *maslahah mursalah* in *usul al-fiqh*. A number of contemporary scholars argue that marriage registration constitutes an obligation grounded in considerations of *maslahah* (public interest) because it protects the rights of all parties, especially women and children. On this basis, *nikah siri*, which structurally disadvantages women, may be categorized as contrary to the

objectives of Islamic law (maqashid al-shari'ah) even if its formal elements are satisfied. This maqashid-based approach opens a pathway for reinterpreting marriage registration as an integral component of marital validity within the context of the modern nation-state.

The Constitutional Court, through Decision Number 46/PUU-VIII/2010, introduced an important development in this discourse by affirming that children born outside registered marriage may obtain a civil relationship with their biological father through the evidence of science and technology. Although this decision does not directly legalize nikah siri, it opens a limited legal protection channel for children born of such unions. However, existing restrictions continue to place women and children in a considerably more vulnerable position compared to those born of formally registered marriages, underscoring the structural inequality embedded in the current legal framework.

2. Driving Factors Behind Nikah Siri Among University Students

The phenomenon of nikah siri among Muslim university students does not emerge in a social vacuum but is propelled by a combination of structural and cultural factors that reinforce one another. The first and most dominant factor is economic pressure. The cost of a formal wedding ceremony, which typically encompasses various customary rituals and a public reception, frequently exceeds the financial capacity of students. Nikah siri is perceived as a middle way that allows a student couple to legitimize their relationship without bearing significant financial burden, while postponing the formal wedding until economic circumstances permit. This condition reflects a social irony in which a religious obligation is modified to adapt to economic limitations.

The second factor is the motivation to avoid zina, or premarital sexual relations, which in Islam constitutes a major sin. Students who have formed romantic attachments and fear falling into prohibited relations view nikah siri as a religiously legitimate solution. Wardah and Basri (2022) found that the majority of students who opt for nikah siri are motivated by religious anxiety rather than an absence of desire for formal marriage. This narrow construction of religiosity,

which focuses exclusively on the sanctification of the sexual relationship without accounting for broader social and legal responsibilities, represents a root problem that must be addressed through education and pastoral guidance within university communities.

The third factor is ignorance or incomplete understanding of the legal implications of *nikah siri*. Many students are unaware that an unregistered marriage places the wife in an extremely precarious legal position, particularly if the husband abandons or divorces her without formal legal procedure. This ignorance is compounded by the absence of family law education in most university curricula, even in Islamic-based institutions. Mulia (2020) demonstrates that patriarchal constructions in religious education frequently neglect the dimension of women's legal protection, leaving female students unprepared to understand the legal risks of the marital choices they make. The result is a structural information asymmetry that systematically disadvantages women.

The fourth factor is social influence and peer pressure within certain Muslim communities that regard *nikah siri* as a marker of religious maturity or Islamic commitment. In campus environments with a strong Islamic character, students who choose *nikah siri* often receive social support from peers who view the decision as more authentically Islamic than prolonged courtship. This social normalization renders *nikah siri* as a natural and even commendable choice rather than a violation of state law that ought to be avoided. The convergence of peer approval, religious framing, and social pressure creates a powerful situational logic that guides individual decision-making away from legal compliance.

3. Socio-Legal Consequences and Policy Implications

The most immediate consequence of *nikah siri* is felt by women in the form of an absence of legal protection. Without a marriage certificate, a wife lacks the legal standing to file for divorce in court, demand maintenance, or claim a share of marital property. If the marriage ends through a unilateral *talak* pronounced by the husband, the wife has no effective legal mechanism to protect herself. This

condition structurally positions women as the party most exposed to risk within an asymmetric legal construction. Nuruddin and Tarigan (2019) emphasize that the absence of legal protection is precisely what makes nikah siri a form of gender injustice that is perpetuated in the name of religion, one that requires both doctrinal and legislative responses.

From the perspective of the child, nikah siri has the potential to create a generation without secure legal identity. A child born of nikah siri, though biologically possessing a father, can only be legally registered as the child of the mother under state law. This affects the child's civil rights, including access to education, healthcare, and inheritance. Although Constitutional Court Decision Number 46/PUU-VIII/2010 has provided a limited protective channel through biological evidence, this mechanism is procedurally demanding and requires lengthy legal proceedings. This reality demonstrates that the consequences of nikah siri extend far beyond the spousal relationship and carry intergenerational implications that compound over time.

The policy implications of this phenomenon point toward the necessity of a comprehensive and multi-stakeholder approach. First, universities need to integrate family law education into their curricula, either as a standalone course or as part of character education and civic education programs. This education must encompass not only the religious dimensions of marriage but also the legal rights and obligations that accompany it, equipping students with the knowledge to make informed decisions. Second, the government through the Ministry of Religious Affairs needs to enhance the accessibility and affordability of marriage registration services, including the possibility of waiving fees for students and streamlining bureaucratic procedures.

Third, Islamic educational institutions need to reorient their teaching of fiqh munakahat so that it does not focus exclusively on the formal-ritual validity of marriage but also encompasses the dimensions of rights protection and gender justice. Azra (2020) reminds us that the modernization of Indonesian Islam requires a reconstruction of legal thought that is responsive to contemporary

needs and realities, including the protection of women within the institution of marriage. This reorientation does not mean abandoning classical fiqh tradition but rather developing it contextually so that it can provide relevant guidance for modern Muslim life, including for university students confronting complex social pressures.

Conclusion

Unregistered marriage (nikah siri) among Indonesian Muslim university students is a complex phenomenon positioned at the intersection of state legality and religious legitimacy, driven by a combination of normative, economic, social, and cultural factors. The classical fiqh construction that does not require registration as part of the pillars of marriage, combined with economic pressure, the desire to avoid premarital relations, and social environment influences, has made nikah siri appear as a rational option for a significant segment of students. However, its legal consequences, particularly for women and children, clearly demonstrate that nikah siri is not an equitable solution but rather a reflection of structural imbalances that require a serious response from the state, educational institutions, and the religious community through comprehensive policy, inclusive family law education, and a contextually responsive reinterpretation of Islamic jurisprudence that is sensitive to the imperatives of gender justice.

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