

The Method of Legal Istinbath in The Shafi'i and Hambali Madhhab on The Practice Of Marriage Siri

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ABSTRACT : The practice of marriage siri in Indonesia is a socio-religious phenomenon that raises various problems, both from the aspect of Islamic family law and from the aspect of legal protection in the context of the modern state. This article aims to examine the legal istinbath method used by the Shafi'i and Hambali schools in assessing the validity of the practice of serial marriage, as well as how it is relevant to the positive legal system in Indonesia. This research uses a normative qualitative approach with a comparative analysis method, examining the classical literature of each school and applicable laws and regulations. The Shafi'i and Hambali schools both stipulate that the condition for the validity of marriage is the presence of a guardian and two witnesses. However, the two differ in assessing the urgency of the announcement of marriage (i'lan) to the public. The Shafi'i school views the announcement as an encouragement (sunnah), while the Hambali school considers it as a condition of perfection which, if not met, can have an impact on the invalidity of the contract. In the context of a series marriage that is carried out in secret and without official registration, both schools state that the marriage is valid if it meets the principles and conditions, but tends to be discouraged because it has the potential to cause harm. In the Indonesian legal system, marriage registration is a normative imperative that is administrative in nature but has a substantive impact on legal protection. This article concludes that although nikah siri is legal according to classical fiqh, the approach of maqashid sharia and the public interest requires official registration as an effort to protect the rights of women and children. Therefore, synergy between Islamic law and positive law is inevitable in responding to this phenomenon.

KEYWORDS: Marriage Siri; Istinbath Law; Madhhab Shafi'i; Madhhab Hambali.

INTRODUCTION

Marriage is a sacred institution in Islam that is not only worth worship but also serves as a social foundation that regulates relationships between individuals in society.

In practice, marriage in Indonesia is regulated through two systems that go hand in hand: the Islamic legal system (fiqh) and the positive legal system of the state. However, during the times, various forms of marriage practices have emerged that are not always in line with state law, one of

which is the practice of serial marriage. (Cahyani, 2020)

Nikah siri, in general, is understood by the community as a legally valid marriage but is not officially recorded by the state. This phenomenon has become increasingly prevalent in the last two decades, not only among rural communities with minimal access to the law, but also to more educated urban communities. (Asti, 2021) This practice is carried out for various reasons, ranging from economic factors, wanting to become a second wife secretly, to the desire to avoid administrative procedures that are considered complicated or restrictive. Unfortunately, this practice is often carried out without a complete understanding of the law and ignores the social and legal implications that come with it. (Yusuf, 2020)

The absence of marriage registration at the Office of Religious Affairs (KUA) has serious consequences, especially for the wife and children born from the marriage. In many cases, women become victims because they do not have the legal power to demand their rights as wives, such as alimony, protection from domestic violence, and inheritance rights. Children from serial marriages also experience administrative difficulties, especially in terms of birth registration, inheritance rights, and legal identity. This is where the urgency of a deeper study of the legal position of serial marriage lies, not only from a positive legal perspective, but also from the approach of Islamic law itself. (Sufyan, 2018)

In classical Islamic law, a marriage that fulfils the principles and conditions of fiqh is considered valid, even if it is not widely announced or administratively recorded. This is in line with the character of classical fiqh that developed in the medieval social

context, where the state did not have the administrative authority as it is today. However, scholars from various schools have different approaches in assessing the validity of a marriage that is carried out secretly. This difference is interesting to study, especially in the Shafi'i and Hambali schools which are known to have a strict and systematic legal istinbath. (Serlika Aprita, 2024)

The Shafi'i school, which is the majority school in Indonesia, stipulates that the presence of a guardian and two witnesses is a condition for the validity of marriage. However, this school does not explicitly require the existence of administrative records or the announcement of marriage widely (i'lan) as a pillar or legal condition for marriage. In contrast to the Hambani madhhab, which although it also requires the presence of guardians and witnesses, it emphasizes the importance of i'lan and transparency in marriage as part of the sharia maqashid to avoid fitnah and protect the nasab. In some opinions, Hambali scholars even consider marriage that is carried out secretly without announcement as a defective form of marriage and can even approach adultery if it is done without fulfilling the purpose of sharia. (Widjaja, 2022)

On the other hand, Indonesia's positive law, through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), stipulates that marriage registration is an administrative requirement that must be met for a marriage to obtain legal legality. Although it does not explicitly regulate the legal status of serial marriage, Indonesia's positive law does not provide recognition for marriages that are not registered in the KUA. As a result, nikah siri is considered religiously valid, but it

does not have the force of law in the state. This difference in perception between classical fiqh and positive law often causes confusion among the public, even among law enforcers and state apparatus. (Ulya, 2023)

This difference of views is not only a matter of formality, but touches on a more fundamental aspect, namely the protection of the rights of women and children in marriage. In the context of *maqashid shariah*, one of the main purposes of marriage is to protect honor (*al-'ird*), protect offspring (*hifz al-nasl*), and guarantee the rights of each party. (Faishol, 2019) Therefore, the practice of *nikah siri* that tends to harm women and children needs to be seriously studied through a fiqh approach that is not only textual, but also considers benefits and social realities.

METHOD

This research uses a qualitative approach with the type of library research. This approach was chosen because the focus of the study lies in the study of the concept of *gharar* in the perspective of sharia economic law as well as an analysis of consumer protection practices in e-commerce transactions in Indonesia. The data used in this study comes from relevant secondary sources, in the form of classic and contemporary *muamalah fiqh* books, articles from national and international scientific journals, applicable laws and regulations, and official documents from authority institutions such as the Indonesian Ulema Council (MUI), the Financial Services Authority (OJK), and the Ministry of Trade. (Abdussamad, 2021)

Data collection was carried out by tracing and reviewing literature that discusses the central themes in this study,

including: the concept of *gharar* in contracts, the principle of consumer protection in Islam, the development of e-commerce in Indonesia, as well as positive legal regulations that regulate digital transactions and consumer protection. All data are analyzed descriptively-analytically, namely by describing the concepts and phenomena found, then critically analyzed based on the perspective of Islamic economic law. (Ishaq, 2017) This study also adopts a comparative method to see the differences and meeting points between sharia principles and positive Indonesian law in the context of e-commerce consumer protection. The purpose of this approach is to provide a theoretical and practical basis in formulating solutions and policy recommendations that are applicable and in accordance with Islamic values. (Nugrahani, 2014).

RESULT AND DISCUSSION

Nikah Siri in the Perspective of Islamic Law and Social Context in Indonesia

Nikah siri is a complex phenomenon in Indonesian society, which often raises polemics both in terms of legal, religious, and social. Terminologically, the term "nikah siri" comes from the Arabic word "sirran" or "sirri", which means "secret" or "hidden". In the context of classical Islamic law, *nikah siri* refers to the practice of marriage that is legally performed according to the principles and conditions of marriage, but is not publicly announced to the wider community. (Bahri, 2023) This is different from the concept of "*i'lan al-nikah*" (marriage announcement) which is recommended in Islam to avoid *fitnah* and protect the descendants. In the Shafi'i madhhab, which is widely practiced in Indonesia, the announcement of marriage is part of the

sunnah of muakkadah, and is recommended to be carried out as a form of protection for the honor and dignity of women, as well as to prevent accusations of adultery or covert adultery. (Munawar, 2020)

In fiqh, scholars have different views on the validity or not of serial marriage. Scholars from the Hanafi school and some scholars of the Maliki school allow marriages that are not widely announced, as long as they meet the principles and conditions of marriage, such as the presence of a wali, ijab kabul, and two fair witnesses. (Wahidah, 2018) However, scholars from the Shafi'i and Hambali schools emphasize the importance of announcement as an important element to avoid fitnah, even though marriage is still considered valid by religious law if the main elements have been met. However, the practice of nikah siri that is not administratively registered to the state, as often happens in Indonesia, poses its own problems, especially in terms of the protection of the rights of women and children, inheritance, and the legal status of the marriage in the eyes of the state. (Aini, 2025)

In Indonesia, nikah siri has become a widespread social phenomenon and has various forms or types depending on the motive and background of the perpetrator. In the social context, nikah siri is not only interpreted as a marriage without official registration at the Office of Religious Affairs (KUA), but also as a marriage practice that is carried out secretly without involving social elements such as guardians or family. Based on various studies and social observations, the types of series marriage in Indonesia can be classified into several categories. (Tarmizi, 2016)

1. Nikah series for economic reasons, where couples, especially from the underprivileged community, perform marriages religiously only because they cannot afford to pay the administrative costs of marriage registration or do not understand the importance of marriage registration. (Sufyan, Analysis of the High Number of Siri Marriages in Pamekasan Regency, 2019)
2. Nikah siri due to hidden polygamy, which is a marriage carried out by a man who has married without the knowledge or permission of his legal wife and without the approval of the Religious Court, as stipulated in Law No. 1 of 1974 concerning Marriage. In this case, the man chose the route of marriage siri to avoid the legal and administrative processes that govern polygamy. (Musorif, 2022)
3. Nikah Siri due to differences in religion or legal status, for example when a couple of different religions who cannot marry officially according to the law of the country, then choose to do nikah siri so that their relationship is recognized spiritually even though not legally. There is also nikah siri due to sexual motives or temporary relationships, which in practice is very close to the form of nikah mut'ah, although in Indonesian society, the term mut'ah is very much avoided due to its negative connotations and rejection from the majority of Sunni scholars. In this type, marriage is carried out secretly and sometimes without the intention of building a permanent household, but rather the fulfillment of mere biological needs. In addition, there are also series marriages due to certain legal status, such as marriages between Indonesian

citizens and foreigners who have not obtained permission from the government or embassy, or because the status of the Indonesian citizen has not been officially divorced but has been de facto separated from the previous spouse. (Paijar, 2022)

This phenomenon of serial marriage has a huge social impact, especially for women and children resulting from the marriage. When the marriage is not legally recorded, then women do not have legal standing in demanding their rights in the event of divorce or domestic violence. Children born from these marriages are also often not legally recognized as legal children, making it difficult to record births, education, and inheritance rights. This makes the practice of serial marriage a problem that is not only personal and religious, but also a legal and social issue that needs to be strictly regulated and supervised. The Government of Indonesia, through Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), has emphasized the importance of marriage registration as an administrative requirement in order to ensure the rights and obligations of husband and wife as well as the protection of children. However, implementation on the ground still leaves many challenges, especially in rural areas and marginalized communities that do not yet fully understand the importance of the formal legality of a marriage. (Adillah, 2016)

Thus, the discussion of nikah siri cannot be separated from three main domains: Islamic law, state law, and social reality. The three intersect and must be understood holistically. In an academic context, the study of nikah siri provides a space for reflection on how Islamic law is applied in modern society governed by state

law, as well as how state law can provide protection without neglecting the basic principles in Islamic law. Therefore, the need for socialization, legal education, and regulatory reform is an important part of suppressing the practice of serial marriage which has the potential to harm weak parties in the social structure of Indonesian society. (Zahara, 2022)

1. The Method of Legal Istimbath in the Shafi'i School related to series marriage

In the Shafi'i School, the method of legal istimbath or the method of excavating Islamic law is carried out through a very systematic approach, starting from the Qur'an as the main source, then al-Sunnah, followed by Ijma' (consensus of scholars), and Qiyas (analogy). In the context of the issue of serial marriage, these four sources of law are used as a basis for assessing whether the practice is legal or not. Nikah siri, in a general sense in Indonesian society, refers to a marriage contract that is carried out secretly or without being officially recorded by the state. (Zulkarnain, 2020) In classical fiqh, the term "nikah siri" is not explicitly mentioned, but its practice can be analyzed based on the provisions on the harmony and conditions of marriage that have been described by scholars, especially in the Shafi'i School. (Fauzi, 2021)

First, the Qur'an as a primary source of law contains a number of verses that are important bases in the implementation of marriage. In Surah an-Nisa verses 3 and 4, Allah SWT gives instructions on marriage, including the need to be fair and give dowry. Meanwhile, in Surah ar-Rum verse 21, marriage is referred to as one of the signs of Allah's power that gives birth to calmness, affection, and love between married couples. The Qur'an does not explicitly discuss the necessity of marriage registration, but the

emphasis is on the clarity of the contract, the existence of a guardian, and justice in domestic life. Therefore, in the context of serial marriage, as long as the harmony and conditions of marriage are fulfilled according to the Qur'an, the marriage contract remains valid according to religious law, even though it is not administratively recorded by the state. (Hasan, 2018)

The second source of law is al-Sunnah, which is all the words, deeds, and decrees of the Prophet Muhammad PBUH. One of the hadiths that is often used as a basis is the words of the Prophet: "*A'linu hadzan-nikah wa aj'iluhu fil masjid*" (Announce the marriage and hold it in the mosque) (HR. Tirmidhi). This hadith shows that marriage should not be done in secret, because the announcement is aimed at avoiding slander and maintaining the honor of the spouse and family. (Basri, 2019) However, other hadiths also show that the conditions for the validity of marriage do not only depend on recording or announcing it, but on the fulfillment of the harmony and conditions of marriage as stipulated by the sharia. In this case, if a marriage meets the conditions and harmony set out in Islam, then even if it is not announced or recorded by a state institution, the marriage is still valid according to sharia. (Hasanah, 2020)

The ijma' ulama in the Shafi'i madhhab stipulate that the conditions for the validity of marriage include the presence of a guardian, two fair male witnesses, dowry, as well as the existence of ijab and qabul between the prospective husband and the guardian of the woman. If one of these pillars is not fulfilled, then the marriage is considered invalid. In this case, ijma' ulama does not require state registration or legalization as a condition for the validity of marriage, because in classical times the civil

registration system was not known as it is now. Therefore, from the point of view of ijma', nikah siri can still be considered valid if all the main elements are met. However, ijma' also does not deny the importance of protecting the rights of women and children in marriage, which in the modern context can be strengthened through official registration. (Multazim, 2020)

The fourth method of istinbath used by the Shafi'i School is qiyas. Qiyas is used in connecting new cases with laws that have been established through nash (text). In the context of nikah siri, qiyas can be used to connect the provisions about the need for announcement in marriage with the negative impact of the practice of nikah siri, such as the absence of legal protection for wives and children, or the potential for neglect. (Al-Bugha, 2016) Therefore, although nikah siri may be valid in fiqh if it meets the principles and conditions, but through qiyas, Shafi'iyah scholars can develop the law towards prudence by advocating the recording and announcement of marriage as a form of legal and social protection for women. (Arisman, 2021)

In the view of the Shafi'i School, the pillars of marriage consist of five: the groom, the bride, the guardian of the woman's side, two fair witnesses, and ijab qabul. While the legal condition is that the wali must come from the nasab or judge line, the bride and groom must have no marriage obstacles, and there is clarity in the ijab qabul. In the practice of serial marriage, there are many marriages that are only witnessed by two witnesses without a guardian or vice versa, or even carried out without adequate clarity. In this case, the Shafi'i School strongly emphasizes the role of guardians, even rejecting the legality of marriage without guardians. (Faizah, 2024) This is based on

the hadith of the Prophet PBUH: *"It is not valid to marry without a guardian"* (HR. Abu Dawud and Tirmidhi). So, if the series marriage is carried out without a guardian, then according to the Shafi'i madhhab, the marriage is invalid. (Khoiri, 2022)

In analyzing the practice of serial marriage as a whole, the Shafi'i School takes a moderate but firm position. As long as the marriage fulfills the harmony and legal requirements, it is still recognized as valid according to sharia. However, nikah siri is still not recommended because it goes against the principles of clarity, openness, and protection of rights. Especially in the current Indonesian social context, where marriage registration is important to ensure the rights of women and children in positive law, nikah siri can cause great harm. In this case, scholars of the Shafi'i School recommend following administrative procedures for the benefit and avoiding damage (mafsadat). (Mustafa, 2021) Therefore, although nikah siri can be valid according to sharia if it meets all the conditions and harmony, but in terms of benefits, marriage registration should be carried out as a form of protection and social responsibility.

2. The Method of Legal Istimbath in the Hambali School related to Siri Marriage

The Hambali school as one of the four main schools of fiqh in Islam has distinctive characteristics of the legal istimbath methodology and is different from other schools. In interpreting the law, the Hambali School emphasizes a literal approach to the text, which is to strictly adhere to the narration of the Qur'an and Hadith by paying attention to the understanding of the companions and prioritizing *atsar*. (Apriliani, 2022) Imam Ahmad bin Hanbal as the founder of this school was very careful in

using *ra'yu* (reason), and therefore he prioritized *nash* over *qiyas*, except in emergency situations or when there was no *nash* or *ijma'*. In terms of the determination of marriage law, including the issue of serial marriage, these methodological principles play an important role in determining whether a form of marriage contract is valid or not according to the perspective of the Hambali School. (Nurliana, 2017)

In order of legal sources, the Hambali school places the Qur'an as the main source, followed by the Sunnah of the Prophet PBUH, then the fatwa of the companions, and *ijma'*. *Qiyas* is only used if the four previous sources do not provide adequate legal answers. Imam Ahmad bin Hanbal also gave a fairly important place to the hadith of *dha'if* as long as it does not contradict the *sahih* hadith or the basic principles of sharia. This leads to a breadth in reaching branch laws, including in the realm of family law such as marriage. In the context of serial marriage, which is generally understood as a marriage without official registration by the state or without the presence of guardians and witnesses (depending on the definition used), the Hambali School assesses the validity of a marriage contract by highly dependent on the existence of marriage harmony and conditions, not administrative registration. (Silahuddin, 2021)

In general, the Hambali school views that a marriage contract is considered valid if it fulfills the principles and conditions, namely the existence of *ijab qabul* between the prospective husband and the guardian of the future wife, the presence of two fair male witnesses, and dowry. With the fulfillment of these elements, marriage according to the view of the Hambali School is valid according to sharia, even though it has not been recorded in the state administrative

system. (Sallom, 2022) Therefore, in the context of classical fiqh, nikah siri which is carried out in the presence of a wali and two fair witnesses but is not administratively recorded is still valid according to the Hambali School. However, marriages performed without guardians, or without witnesses, are not considered valid and are even considered a form of veiled adultery. Imam Ahmad emphatically stated that there is no marriage without a wali and two witnesses, in line with the hadith of the Prophet PBUH: *"It is not valid to marry without a wali and two just witnesses."* (HR. Abu Daud and Tirmidhi). This hadith is the main basis in the Hambali School in assessing the validity of a marriage contract. (Mukhsin, 2019)

However, the Hambali School does not necessarily accept all forms of marriage that are carried out secretly (siri). On the contrary, Imam Ahmad strongly emphasized the principle of al-i'lan (marriage publication), which is the importance of marriage being announced in the community as a form of safeguarding women's dignity and avoiding fitnah. (Isyanto, 2016) Marriages that are carried out in secret (without being announced to the public), even though they meet the minimum legal principles and conditions, are still considered makruh according to the Hambali School, even some of the Hambali scholars view it as close to haram because it is contrary to the wisdom of the sharia which requires transparency and openness in the marriage contract. In Hambali fiqh works such as *Al-Mughni* by Ibn Qudamah, it is stated that a marriage contract that is not announced even though it meets the minimum legal elements is still considered to be in conflict with the adab of the sharia. (Khusairi, 2016)

In contemporary practice, nikah siri is often associated with efforts to avoid administrative obligations such as state registration, alimony, or legal status of children, which are actually contrary to the maqashid sharia in marriage. From the point of view of the Hambali School, if the practice of serial marriage causes *madarat* to women, such as not getting legal protection, inheritance rights, or unclear status of children, then such a contract can be classified as *fasid* (damaged) in terms of its implementation, even though it is valid in terms of harmony and conditions. Therefore, it is important to note that the Hambali School emphasizes the aspect of maslahat (benefit), especially in the social and family context. When the marriage contract secretly leads to social damage, then the principle of al-mafsadah arising from the marriage can be used as an excuse to prohibit it from the point of view of maslahat mursalah. (Hafas, 2021)

Thus, the analysis of the practice of nikah siri according to the Hambali School must be viewed comprehensively from two aspects: the formalistic aspect and the substantialist aspect. From a formalistic aspect, marriages carried out with guardians, witnesses, and ijab qabul are still valid even if they are not recorded. However, from a substantial aspect, if serial marriage causes harm to the wife, children, or society in general, then the practice is contrary to the spirit of Islamic sharia which aims to preserve religion, soul, offspring, and honor. (Fauzi A. , 2021) Therefore, the Hambali School provides space to respond to the practice of nikah siri contextually and not only adhere to literal laws, but also consider *the maslahah* and *mafsadah* that arise from the practice in real life.

Critical Comparison between Shafi'i and Hambali Schools: Similarities and Differences in Istinbath Methods related to Siri Marriage

In the study of Islamic family law, one of the aspects that is interesting to be studied in depth is the views and methods of legal istinbath of various schools towards the practice of marriage that is not officially recorded or known in Indonesian society as "nikah siri." The term "nikah siri" itself is not a classic fiqh term, but a local term that refers to the practice of marriage that is carried out legally according to sharia but is not recorded in the state administration. The Shafi'i and Hambali schools, as two of the four major schools in Islam, have different methodological frameworks and orientations of thought in formulating laws, which in turn influences their views on practices such as nikah siri. Therefore, the comparison between the two is important in order to enrich contemporary fiqh discourse, especially in the context of Indonesia, which combines the Islamic legal system with the national legal system. (Ilyas, 2025)

In general, both the Shafi'i and Hambali schools agree that one of the conditions for the validity of marriage is the existence of a guardian and two fair witnesses. This is based on the hadith of the Prophet Muhammad PBUH which reads: "There is no marriage except with a guardian and two fair witnesses." (HR. Abu Dawud and Tirmidhi). This agreement shows that essentially, the two schools recognize the validity of marriage according to shari'i if it has fulfilled the principles and conditions set, even though it is not administratively recorded by the state. Therefore, in the eyes of classical fiqh, the practice of nikah siri as long as it fulfills the elements of guardians

and witnesses is still considered valid. In this case, there is no significant difference between the Shafi'i and Hambali schools. However, when studied further at the methodological level of legal istinbath, there are a number of differences in principle that affect how the two schools understand and respond to the possible social impacts and legal implications of the practice of serial marriage. (Hidayah, 2024)

The Shafi'i school is known as a very strict school in terms of the systematics of law making. Imam Shafi'i placed the Qur'an as the first source of law, followed by Sunnah, Ijma', and Qiyas. In matters that are not explicitly mentioned in the Qur'an or the Sunnah, this school is very careful in using ra'yu (reason), so that it often tends to be literal and textual in understanding the nash. In the context of serial marriage, the Shafi'i School will assess the validity of the marriage based on the fulfillment of the marriage principles and conditions. (Hidayah A. , 2024) Since the registration of marriage is not explicitly mentioned in the Qur'an or the Sunnah, according to the methodology of this madhhab's istinbath, the absence of a marriage does not automatically make it null or void. However, the Shafi'i School still emphasizes the importance of maintaining maslahat and rejecting mafsadat, so that in a broader social context, the practice of nikah siri can be considered not ideal because it has the potential to cause legal problems such as the absence of legal protection for wives and children, as well as complicating the process of proving in legal disputes. (Hidayah S. A., 2024)

Meanwhile, the Hambali School, although it has a similar istinbath structure to Shafi'i in terms of placing the Qur'an and Sunnah as the main sources, is known to be

looser in its use of non-nash postulates. In his *istinbath* method, Imam Ahmad bin Hanbal gave greater space to the use of *mursal* hadith, companion *atsar*, as well as forms of *istidlal* such as *istishhab* and *maslahah mursalah*. In the context of serial marriage, the Hambali School also recognizes the validity of marriages that are carried out by fulfilling the requirements of sharia, including the presence of a guardian and two witnesses. (Wahyudani, 2017) However, because this school is more flexible in using the *maslahah* approach, in some conditions, the practice of *nikah siri* can be criticized and even prevented if it is considered to cause harm. In other words, the Hambali school is more open to a contextual approach in the determination of the law, so it is possible that in certain contexts this school will suggest that marriages be administratively recorded in order to avoid slander, covert adultery, or exploitation of women. (Yunizar, 2022)

One important difference between the two lies in the view of marriage publications. The Shafi'i school emphasizes that the marriage contract must be carried out openly or at least known by the surrounding community (*i'lan*), as an effort to avoid accusations of adultery. Therefore, even though the marriage is not officially recorded, as long as it is done openly and witnessed by the surrounding community, the marriage is considered valid. (Syahnur Aida Alifia, 2024) On the other hand, the Hambali School emphasizes more on the principles of openness and prevention of defamation, and has a harsher view of hidden marriage. In certain histories, it is even emphasized that unannounced *nikah* (*nikah sirri* that is completely secret) is prohibited because it contains elements of fraud and opens up opportunities for social

damage. Therefore, it can be said that the Hambali school in practice is more likely to reject *nikah siri* if there is no element of publication at all, because it is considered contrary to *maqashid al-shari'ah* in terms of maintaining honor and *nasab*. (Jawawi, 2019)

In the context of Indonesia, the thoughts of these two schools have high relevance. The national legal system in Indonesia that requires the registration of marriages through the Office of Religious Affairs (KUA) or the Population and Civil Registration Office (DUKCAPIL) is actually in line with the *maqashid shari'ah* that wants to protect the rights of women, children, and *nasab*. In this case, the more flexible approach of the Hambali School to the use of *maslahah* can be the basis for normative legitimacy for the rules of marriage registration in a positive legal manner. Meanwhile, the view of the Shafi'i School, which is the dominant school in Indonesia, still provides the basis that as long as the conditions for the legality of marriage according to the sharia are met, marriage is still recognized religiously, even though it is not recorded in the state. Therefore, there needs to be harmonization between Islamic law and state law to bridge the issue of marriage in this series, so that people are not trapped in harmful legal dualism. (Nursyafe'i, 2022)

From the above description, it can be concluded that although the Shafi'i and Hambali schools both recognize the validity of serial marriage as long as the legal requirements of marriage according to sharia are met, there are differences in the approach to legal *istinbath* that have implications for how each school responds to the practice in a social context. The Shafi'i school is more textual and careful in using

ra'yu, while the Hambali school is more open to the *maslahat* approach and the contextualization of the law. This comparison is important to consider in formulating Islamic family law policies in Indonesia in order to be able to provide maximum legal protection without ignoring sharia values.

Positive Legal Analysis, Gender Perspective, and Comparative Study of Madhhab on the Practice of Marriage Series

From Indonesia's positive legal perspective, the position of *nikah siri* becomes very problematic because it is not in accordance with the formal legal provisions regarding marriage. Law Number 1 of 1974 concerning Marriage, especially in Article 2 paragraph (2), emphasizes that every marriage must be recorded in accordance with the applicable laws and regulations. (Sirait, 2021) Furthermore, in Article 43 paragraph (1) before being revised by the Constitutional Court Decision No. 46/PUU-VIII/2010, children born from extramarital relationships only have a civil relationship with their mother and mother's family. However, after the verdict, the recognition of children outside of marriage became more open, including for children from serial marriage, as long as it could be proven that there was a blood relationship with their biological father. However, the legal protection obtained remains not equivalent to children from officially registered marriages. (Abdillah, 2019)

The Compilation of Islamic Law (KHI) as a form of formalization of *fiqh* in the realm of positive Indonesian law also emphasizes the importance of marriage registration as a form of administrative order and legal protection. In Article 5 of the

KHI, it is stated that every marriage must be performed in front of and recorded by the Marriage Registrar. Thus, marriages performed in series do not obtain legal recognition in the national legal system, although they may be religiously valid. The absence of this record causes women from serial marriages to be unable to claim their rights through legal channels in the event of a dispute, divorce, or domestic violence. This shows that there is an inequality between sharia recognition and formal legal recognition, which must be overcome through progressive legal approaches and affirmative policies that are more responsive to the needs of society. (Zainuddin, 2022)

From a gender perspective, the practice of serial marriage has the potential to cause injustice to women. In a society that is still patriarchal, women are often the more vulnerable parties in marital relationships, especially if the marriage is not officially recorded. In many cases, women are trapped in unequal marriage relationships, do not get the right to alimony, legal protection, and often experience violence without being able to sue legally because they do not have official documents as wives. (Satia, 2024) Serial marriages carried out for the reason of hidden polygamy are also often manipulated by men to avoid moral and legal responsibilities, while women are in a difficult position to fight for their rights, both legally and socially. Therefore, the gender approach emphasizes the importance of formal legality as a tool of empowerment and protection for women so that they do not become victims in an unequal relationship structure. (Kumala, 2020)

Comparative studies between schools in Islamic jurisprudence show that there is a wide spectrum of views on the legality and

ethics of serial marriage. As mentioned earlier, the Hanafi school allows marriages to be carried out secretly as long as they are witnessed by two fair witnesses, while the Shafi'i and Hambali schools emphasize the aspect of announcement as part of the perfection of the marriage contract. In fact, some contemporary scholars from the Shafi'i school consider that marriages that are kept secret without any announcement to the wider community have great potential to fall into the category of invalid marriage, because it is contrary to *maqashid al-shari'ah* in safeguarding offspring (*hifz al-nasl*) and maintaining honor (*hifz al-'ird*). In this context, the principles of *maqashid al-shari'ah* are an important basis for evaluating the practice of *nikah siri* more substantively, not just on the formalism aspect of religious law. (Muis, 2020) Therefore, in the Indonesian context, marriage registration should not only be understood as a mere administrative obligation, but also as a mechanism for the protection of civil rights in line with the principles of justice in Islam.

From all these discussions, it can be seen that *nikah siri* is not just an issue of religious law, but a meeting point of various dimensions: positive law, social, gender, and Islamic values. Therefore, a comprehensive approach is needed in responding to this phenomenon, namely through legal education that touches the cultural roots of the community, increasing the capacity of marriage registration institutions, and a deep understanding of *maqashid al-shari'ah* in the context of modern life. On the other hand, the establishment of stricter but solutive regulations on serial marriage also needs to be fought, such as strengthening mediation at the village level, providing marriage registration incentives for

underprivileged couples, and developing a community-based digital marriage registration system. All of these efforts are intended so that the practice of marriage in Indonesia is not only religiously legal, but also has certainty and legal protection that is fair and inclusive.

CONCLUSION

Based on the analysis of the method of legal *istinbath* in the Shafi'i and Hambali schools, it can be concluded that both schools emphasize the importance of fulfilling the pillars and conditions in marriage, especially the presence of a guardian and two witnesses. The Shafi'i school uses a systematic approach that prioritizes *qiyas* in exploring the law, and considers the practice of *nikah siri* valid if it fulfills the pillars of marriage, even though it is *makruh* because it has the potential to cause harm. Meanwhile, the Hambali *madhhab*, which is more textualist and holds strongly to *atsar*, considers that the announcement (*i'lan*) is an important part of marriage, so that marriages that are kept secret or not announced socially tend to be considered invalid. In the context of positive law in Indonesia, the practice of *nikah siri* is not legally recognized because it is not officially recorded, although in *fiqh* it can be considered valid in the view of some scholars. Therefore, it is important to combine the approach of classical *fiqh* and sharia *maqashid* in formulating family law policies that are not only based on text, but also consider the protection of the rights of women and children. Awareness of the importance of marriage registration is not only an administrative form, but also as an instrument of benefit, it needs to continue to

be instilled in the community as a form of sharia and social responsibility.

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