

RECORDING SIRI'S MARRIAGES IN OBTAINING LEGAL CERTAINTY (Reflections on the rise of Siri marriages in Aceh)

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Abstract: Fenomena pernikahan sirri marak terjadi di Indonesia, termasuk di Aceh. Pernikahan sirri dilakukan secara tersembunyi dengan hanya diketahui oleh beberapa orang saksi, serta tidak dilakukan pencatatan nikah pada pejabat yang berwenang. Pelaksanaan pernikahan sirri dinilai sah menurut agama namun tidak sah menurut negara. Amanah Undang-Undang Nomor 1 Tahun 1974 menegaskan setiap pernikahan wajib dilakukan pencatatan. Guna menanggulangi maraknya pernikahan sirri di Aceh, Pemerintah Aceh telah melakukan pembahasan atas Rancangan Qanun Aceh Tahun 2019 tentang Hukum Keluarga, dimana setiap warga yang melakukan nikah sirri dapat dicatat pada pejabat yang berwenang. Dan, dalam rancangan qanun tersebut pula diberikan hak untuk nikah poligami. Tujuan penulisan artikel ini adalah untuk membahas pengaturan hukum pernikahan sirri dalam rancangan qanun hukum keluarga sehingga dapat bertujuan meminimalkan pernikahan sirri di Aceh. Dan, orientasi rancangan qanun keluarga dalam meningkatkan kesadaran masyarakat guna meminimalkan pernikahan sirri di Aceh. Hasil kajian menunjukkan bahwa pencatatan pernikahan sirri di Aceh dapat diselenggarakan pasca ditetapkan putusan peradilan dan berdasarkan Rancangan Qanun Aceh tentang Hukum Keluarga menyebutkan setiap pihak yang menikah diwajibkan melakukan pencatatan atas pernikahannya. Faktor terjadinya pernikahan sirri diakibatkan kurangnya pemahaman masyarakat tentang pentingnya pencatatan nikah dan terkait pengaturan poligami sebagai jalan keluar pernikahan sirri dapat dikaji ulang oleh pemerintah Aceh sebelum disahkan.

Kata Kunci: Pencatatan Nikah, Nikah Sirri, Kepastian Hukum

Abstract: The phenomenon of Sirri marriage is rife in Indonesia, including in Aceh. Sirri marriages are conducted in secret with only a few witnesses

known, and marriage records are not made to the authorized official. The implementation of Sirri marriage is considered legal according to religion but not legal according to the state. The mandate of Law Number 1 of 1974 emphasizes that every marriage must be registered. In order to cope with the rise of Sirri marriages in Aceh, the Government of Aceh has been discussing the 2019 Aceh Qanun Draft on Family Law, whereby every citizen who engages in Sirri marriage can be recorded with the authorized official. And, in the draft qanun also given the right to polygamy marriage. The purpose of writing this article is to discuss the Sirri marriage legal arrangements in the draft family law qanun so that it can aim to minimize Sirri marriages in Aceh. And, the orientation of the family qanun design in raising public awareness to minimize Sirri marriages in Aceh. The results of the study show that the registration of Sirri marriages in Aceh can be held after a judicial ruling is stipulated and based on the Aceh Qanun Draft on Family Law, it is stated that each married party is required to make a record of his marriage. The factor of sirri marriages is due to the lack of public understanding of the importance of marriage registration and related to the regulation of polygamy as a way out of sirri marriages can be reviewed by the Aceh government before being legalized.

Keywords: Marriage Registration, Sirri Marriage, Legal Certainty.

INTRODUCTION

Talking about marriage, which is a human right which is a common sunatullah and applies to all creatures, both humans, animals, and plants. It is a method chosen by Allah SWT as a way for his creatures to reproduce and preserve his life.¹

As part of human rights that must be fulfilled, the government fulfills it by regulating the provisions of these human rights in the 1945 Constitution of the Republic of Indonesia, especially Article 28B paragraph (1) which states: "Everyone has the right to form a family and continue

offspring through a legal marriage".

Indonesia has regulated the marriage relationship in Law Number 1 of 1974 concerning Marriage. This law is an implementation of the existence of human rights to marriage itself.

Then based on Article 1 of Law Number 1 the Year 1974 concerning Marriage, it 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 eternal family (household) based on the One Godhead". The context of article 1 is translated into a general explanation that as a country based on Pancasila, where the first precept is the one and only Godhead, then marriage has

¹ Slamet Abidin dan Aminudin, 1999, *Fiqh Munakahat I*, Bandung, Pustaka Setia, hlm. 9

a very close relationship with religion/spirituality so that marriage not only has an important role. Forming a happy family with a close relationship with offspring, which is also the goal of marriage, care and education are the rights and obligations of parents.²

Marriage is a religious commandment for those who can carry it out because marriage it can reduce immoral visions, protect oneself from adultery. And marriage aims to realize a *sakinah*, *mawaddah* and *rahmah* household life, it needs to be regulated with certain conditions and pillars so that the purpose of marriage can be achieved.³

Marriage in Islam is specialized as a form of very strong bonding or *mitsaqon ghalidhan* to obey Allah's commands and carry it out constitutes worship. Because of the importance of marriage or marriage, it must be carried out according to the provisions of Islamic law and therefore its existence needs to be protected by state law following the prevailing laws and regulations so that the marriage has legal force.

Marriages that are not carried out following the provisions of the prevailing laws and regulations have no legal force (vide Article 2 of Law No.1 of 1974 in

² Pasal 1 Undang-Undang Nomor 1 Tahun 1974

³ Dwi Putra Jaya, *Nikah Siri Dan Problematikanya Dalam Hukum Islam*, Jurnal Hukum Sehasen Vol.2 No.2 Tahun 2017, hlm. 2

conjunction with Article 2 paragraph (1) Government Regulation No.9 of 1975). However, in reality not all Indonesian Muslims comply with the provisions of these laws and regulations, so there are still many - even quite a few - among the Muslim community for various reasons of carrying out marriages underhand, or unregistered marriages in the sense that the marriage is not recorded by an official who authorized for that.

The word "sirri" is linguistically derived from the Ara language, which means "secret" (secret marriage). According to priest Maliki, a sirri marriage is a marriage which, based on the husband's wishes, the marriage witnesses must keep it secret from other people, even from their families. It is said to be a secret marriage because this kind of wedding procession is deliberately hidden from the public for various reasons, and is usually only attended by a limited circle of close relatives, not enlivened in the form of a *walimatul ursy* reception open to the public. As for the unregistered marriage that is meant in this paper is a marriage between a man and a woman who is old enough according to the law but they deliberately carry out this marriage under their hands, not registered at the KUA for various reasons.

This sirri marriage model has become a problem in itself in society so that it

"seems" to have become entrenched. The practice of sirri marriage tends to be due to reasons of wanting to avoid immoral acts, the absence of family support from both parties, and others. The absence of registration of marriage for sirri marriages is due to the low level of public understanding.

The phenomenon of sirri marriages that is rife also occurs in the Aceh area, where Aceh is a province that has implemented the provisions of Islamic law based on the provisions of Law Number 11 of 2006 concerning Aceh Governance. It is stated in Article 125 of Law Number 11 of 2006 that:

(1) Islamic syari'at implemented in Aceh includes aqidah, syar'iyah and morals.

(2) Islamic syari'ah as referred to in paragraph (1) includes worship, ahwal al-syakhshiyah (family law), muamalah (civil law), jinayah (criminal law), qadha '(judiciary), tarbiyah (education), preaching, syiar, and defense of Islam.

(3) Further provisions regarding the implementation of Islamic syari'at as referred to in paragraph (1) shall be regulated by Aceh Qanun.

Based on these provisions, giving authority to the Aceh Government to regulate the provisions of Islamic law, especially in the field of ahwal al-syakhshiyah (family law) and is further regulated in the Aceh Qanun. On this

basis also, the Aceh government has established a draft family law qanun which is currently under discussion at the Aceh People's Representative Council (DPRA) level.

As is well known, the Provincial Government and the Aceh People's Representative Council (DPRA) are currently working on a draft Family Law Qanun, one of which discusses polygamy. One of the reasons polygamy wants to be regulated in the qanun is the widespread practice of unregistered marriage which occurs when a man wishes to remarry. Before the adoption of the draft family law qanun, the Governor of Aceh has enacted Governor of Aceh Regulation Number 25 of 2017 concerning Implementation of Marriage Ratification (Itsbat Nikah) One Day Integrated Service.

The controversial design of the Aceh qanun by allowing polygamy to have the objective of minimizing sirri marriages that occur. And the arrangement of the Itsbat Nikah trial at the Syar'iyah Court which has been determined by the Aceh government is an effort for parties who have conducted sirri marriages to be able to record their marriages with the authorized official. This is following the mandate of Law No.1 of 1974, Article 2 paragraph (2): "Every marriage is recorded according to the applicable legislation."

Based on the description above as a whole, several formulations of the problem will be examined in this article, namely:

1. What is the legal arrangement for sirri marriage in the draft family law qanun so that it aims to minimize sirri marriages in Aceh?

2. How is the orientation of the family qanun design in increasing public awareness to minimize sirri marriages in Aceh?

RESEARCH METHOD

The approach method used is the normative juridical method, namely the approach by studying the applicable legal norms. The type of approach chosen is the statute approach (legislation study). Due to normative juridical research, the data used are secondary data by reviewing the bibliography.

RESULTS AND DISCUSSION

1. Regulation of Sirri Marriage Law in the Draft Family Law Qanun so that it can aim to minimize Sirri Marriage in Aceh

The Concept of Marriage Sirri

In the linguistic literature, Nikah Sirri comes from the Arabic word "nikah" which according to the language means to collect, insert each other, and are used to mean intercourse (wathi). The word

"nikah" is often used to mean copulation (coitus), as well as to mean a marriage contract. Meanwhile, the word Sirri comes from the Arabic "Sirr" which means secret.

Sirri marriage is also explicitly mentioned in the Qur'an Surah Al-Baqarah verse 235:

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطَابَةِ النِّسَاءِ أَوْ أَكْتَمْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا وَلَا تَعْرِمُوا عَهْدَةَ النِّكَاحِ حَتَّىٰ يَبْلُغَ الْكِتَابُ أَجْلَهُ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ وَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ

Meaning: And there is no sin for you to propose to these women with sarcasm or you hide (the desire to marry them) in your heart. Allah knows that you will mention them, in that you do not make a secret marriage promise with them, except just saying (to them) words that are ma'ruf. And do not do your actions (resolved) to do marriage, before the 'iddah' runs out. And know that Allah knows what is in your heart; then fear Him, and know that Allah is Forgiving, Most Forgiving.

Thus, moving from the etymological meaning, sirri marriage can be interpreted as a secret or secret marriage. This sirri marriage is legal according to religion, but not according to positive law (state law). Therefore, sirri marriages that are not registered at the Office of Religious Affairs have no legal force, so that if one day they both have problems relating to their

households such as divorce, domestic violence, inheritance, struggle for child custody, and others, the religious affairs office and the religious court cannot decide or even cannot accept complaints from the two of them who are having problems.⁴

According to the Ijtima 'Ulama Decree of the Fatwa Commission of the Indonesian Ulema Council, under-hand marriage referred to in this fatwa is "Marriage which is fulfilled by all the pillars and conditions stipulated in Islamic law jurisprudence) but without official registration in the competent authority as regulated in statutory regulations".

Wasit Aulawi, explaining what exactly is meant by nikah sirri, stated that "nikah sirri" is a marriage that has not been formalized, has not been publicly announced to the public or a marriage that has not been registered with the registrar. This can be both, it has not been publicly announced to the public, or maybe only one of them, which has been recorded but no wedding reception / walimatul urs.⁵

In Islamic literature, there are at least two hadiths that mention the term nikah sirri. One of them said: "Verily the Prophet. hating hidden marriages, to the

extent that they were beaten on drums and said: "We are coming to you, welcome us and we will welcome you". In this hadith, the Prophet. Once mentioned the term sirri marriage, but it still does not clarify and detail the description of sirri marriage. But certainly, he hates the sirri marriage.

In the terminology of Maliki fiqh, Sirri's marriage is a marriage which, according to the husband's message, the witnesses keep it a secret for his wife or congregation, even if it is a local family ". According to the Hanafi, Maliki, and Syafi'i school, sirri marriage is not permitted in Islam.⁶

Imam Shafi'i in the book Al Umm 5/23 states: "From Malik from Abi Zubair said that one day Umar was reported about a marriage that was not witnessed except for a man and a woman, so he said:" This is a sirri marriage, and I didn't allow it, if I found out, I would have stoned (the culprit)".

Sirri marriage which is defined according to fiqh terminology is prohibited according to Islamic law because there is an element of sirri (keeping the marriage secret from the crowd). This kind of marriage is against the teachings of Islam and can invite slander, and can bring serious harm/risk to the perpetrator and his family.

⁴ Nasiri, 2010, Praktik Prostitusi Gigolo ala Yusuf Al-Qardawi (Tinjauan Hukum Islam), Surabaya: Khalista, hlm. 45-46

⁵ Burhanuddin, 2012, *Nikah Siri : Menjawab Semua Pertanyaan tentang Nikah Siri*, Yogyakarta : MedPress Digital. hlm. 18

⁶ Irfan Islami, *Perkawinan Di Bawah Tangan (Kawin Sirri) Dan Akibat Hukumnya*, ADIL: Jurnal Hukum Vol. 8, No.1, Juli 2017, hlm. 76

According to Zuhdi Muhdlor, a sirri marriage is a marriage that takes place outside the knowledge of the Office of Religious Affairs officials so that the husband and wife who marry Sirri do not have a valid marriage certificate, usually the husband and wife are married off by scholars or kiai who are viewed as understanding and understanding Islamic law.⁷

The validity of a marriage is determined by the law in force in a country (positive law). Marriage laws in every country have required the registration of marriage after the marriage has taken place. The requirement to register a marriage is formal or administrative in many countries. Sirri marriage according to the law in Indonesia is illegal, because it does not implement the standard and correct provisions of the marriage law (munakahat) following the teachings of Islam.⁸

Sirri Marriage Law Arrangement

Sirri marriages are marriages that have met the requirements and are harmonious as stipulated by Islamic law and are strengthened by the opinion of classical scholars. The marriage sirri is no longer

able to achieve the function of the pillars and conditions of marriage, especially the witnesses whose aim is to announce marriage as a guarantee of rights for the bride, the bride's family, and the community.⁹

Some people think that the practice of sirri marriage is legal and can provide positive wisdom. Some assess the invalidity of the sirri marriage because it has negative implications for the spouse and related parties. Each sirri marriage case has several different styles and motives.

Such a sirri marriage creates many problems for the women who live it. Various problems that arise as a result of sirri marriages include the rampant practice of polygamy carried out by sirri marriages to avoid licensing at the Religious Courts, negligence in providing livelihoods, denial of the status of children from the result of marriage carried out in a sirri manner, as well as the absurd settlement of collective property during a divorce.¹⁰

Based on all the definitions and scope of sirri marriage above, according to the author, it can be concluded that if sirri marriage is only defined as a marriage that does not fulfill the harmonious conditions and conditions of marriage, then this is the definition of sirri marriage in a narrow

⁷ Zuhdi Muhdlor, 1994, *Memahami Hukum Perkawinan: Nikah, Talak, Cerai dan Rujuk Menurut Hukum Islam UU No 1/1974*, Bandung : Al-Bayan, hlm. 22

⁸ Irfan Islami, *Perkawinan Di Bawah Tangan (Kawin Sirri) Dan Akibat Hukumnya, ... Op., Cit.,* hlm. 79

⁹ Sheila Fakhria, *Menyoal Legalitas Nikah Sirri (ANALISIS METODE ISTIṢLAḤIYYAH)*, *Al-Abwal*, Vol. 9, No. 2, Desember 2016, hlm. 185

¹⁰ *Ibid.*, hlm. 187

sense. Likewise, if a sirri marriage is only defined as a marriage that meets the requirements and is harmonious but is not recorded, then this is also the definition of a sirri marriage in the narrow sense. According to the author, sirri marriage in a broad sense includes two forms of marriage: 1) a marriage that does not fulfill the harmonious conditions and conditions of marriage, or 2) a marriage that has met the rukun and conditions of marriage but has not / is not registered in the KUA Kecamatan for those who are Muslim. Thus sirri nikah has a broader meaning than the definition of unregistered marriage.

Speaking in the context of marriage registration, it has been regulated in the provisions of Article 2 Paragraph (2) of Law Number 1 the Year 1974, namely: "Every marriage is recorded according to the applicable laws". Kurnia Muhajarah in his writing states that: "Marriage is an important legal event such as birth, death and so on. As an important event, according to the author, marriage is not enough to be proven by the event itself. There must be written evidence based on the registration at the appointed institution. By recording it by an authorized official, who then issues a

marriage certificate, the function of the deed is perfect evidence (authentic)".¹¹

Article 2 Paragraph (2) Government Regulation Number 9 the Year 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage which states: "The registration of the marriage of those who carry out their marriage according to their religion and belief other than Islam, is carried out by the registration officer of marriage at the civil registry office as referred to in various laws regarding the registration of marriage".

This is made clear in the KHI (Compilation of Islamic Law) Article 5 paragraph (1) which states, "To ensure orderliness of marriage for the Muslim community, every marriage must be recorded." Likewise, Article 6 paragraph (2) states that "Marriages conducted outside the supervision of a marriage registrar have no legal force."

The previous provisions of Law Number 1 of 1974 and Government Regulation Number 9 of 1975 did not regulate unregistered marriages or unregistered marriages. The term underhand marriage or unregistered marriage is commonly used by the community for people who are married without the procedures regulated by Law Number 1 of

¹¹ Kurnia Muhajarah, *Secercah Pandang Mengungkap Kasus Nikah Sirri Di Indonesia*, SAWWA – Volume 10, Nomor 2, April 2015, hlm. 250

1974. Usually, underhand marriages are carried out based on the religion or customs of the prospective husband or wife. In terms of religion and custom, the marriage is valid but legally the marriage is not legally recognized by the state. By law, an underhand marriage is considered never to have existed so that the impact is very detrimental to the wife or child born from the marriage.¹²

Meanwhile, the provisions of the 2019 Draft Aceh Qanun regarding family law provide a different definition between sirri and underhand marriage. As mentioned in Article 1 point 11 and number 12 Draft Aceh Qanun on Family Law, namely:

11. Marriage Sirri is a marriage between a man and a woman secretly and registered at the Office of Religious Affairs at the place where the marriage is held.

12. Underhand marriage is a marriage between a man and a woman secretly and not registered at the Office of Religious Affairs at the place where the marriage is held..

The draft Qanun (Raqaan) on Family Law that is being drafted by the Aceh People's Representative Council (DPRA) immediately reaps pros and cons because it contains several articles that regulate the provisions of having more than one wife, aka polygamy. The definition of polygamy

is stated in Article 1 number 17 of the Aceh qanun, namely: "Polygamy is a marriage between a man and several women".

As a result, the regulation of polygamy in the draft qanun has resulted in a long debate in Aceh, even though the polygamy arrangement aims to eliminate the sirri marriage culture itself. Where in the draft qanun it is stated that every married wife must be recorded.¹³

In total five articles govern polygamy in Chapter VII of the Raqaan. The first article expressly allows a man in NAD at the same time to have more than 1 (one) wife and is prohibited from having more than 4 (four) wives.

Siri marriages in Aceh

In reality, the practice of marriage occurring in the community does not fully refer to the Act. Some marriage processes refer to their respective institutions. This fact must be acknowledged because the state's recognition of legal pluralism cannot be ignored. Consequently, legal choices in the family field tend to be handed over as personal authority. For example, the case of betel marriage is a legal choice based on a religious context whose emphasis on the essence is not just a legal relationship, but rather a factor in

¹²<https://business-law.binus.ac.id/2018/07/09/perkawinan-di-bawah-tangan-nikah-siri-dan-akibat-hukumnya/>

¹³ <https://www.tempo.co/abc/4390/rancangan-qanun-poligami-di-aceh-diklaim-justru-akan-persulit-pria-berpoligami>

the consequence of the practice of worship to God. From here then the case of siri marriage or marriage under the hands of the hand spreads into a phenomenon of its own. Marriage series is a marriage, even though it has qualified with the marriage pillars, but for some reason, is not recorded in the office of religious affairs.

The case of siri marriage in Aceh is due to several factors that affect the husband's behavior. The factors include:

a) The husband's behavior towards the wife of the marriage series as his second wife is beyond the knowledge of his first wife

b) a widow's marriage has one child with a widower who divorces a wife and has three children to marry the widow in series.

c) A civil servant married in series due to the difficulty of managing divorce papers from the court, the man forbade his wife from leaving the house.

d) And others.¹⁴

According to the description of the above research can be identified that polygamous marriage tends to affect the husband's behavior about his first wife as well as the family. In addition to the reason for the husband's status as a

government employee whose notable requires heavy polygamous marriage process until divorce makes marriage sirri as one of the solutions to maintain the integrity of the household.

In 2015-2018, it was discovered that siri marriage during the conflict was because the government administration process could not go as usual. Also, there are several other causes, such as insecurity at the time, poverty, remote access to kua office, convoluted processes, and community knowledge (especially women), in remote areas that are very limited about the importance of marriage recording.

Sirri marriage occurred in Aceh with the above-mentioned factors, it is concluded that the level of understanding of the society in the recording of marriage is still very lacking. So that society prioritizes the perception of legal marriage based on religion and there is no need to record the marriage. The recording of marriage is not only to protect the rights of the wife and child in terms of residency rights but also to protect the right of the child's heirs.

The Circular Letter of the Supreme Court No. 3 of 2018 states that: "The application of polygamous marriage based on marriage series even on the grounds for the benefit of the child must be declared unacceptable. To ensure the child's

¹⁴ Tina Laura Prasiska, 2018, Identifikasi Nikah Siri Terhadap Perilaku Keluarga (Studi Kasus di Gampong Baet Kec. Baitussalam Aceh Besar), Skripsi, Fakultas Syariah Universitas Islam Negeri Arraniry Banda Aceh, hlm. 5

interests can be applied to the child's origin".¹⁵

2. Orientasi Orientation of Qanun Family Plan in Raising Public Awareness to Minimize Sirri Marriage in Aceh

Legal Awareness

Legal awareness is an awareness of what we should do or do or what we shouldn't do or do especially towards others. Legal awareness contains an attitude of tolerance. It can be concluded that the awareness of the law is the way people view the law, what should be done, and not done to the law, as well as respect for the rights of others (tolerance). This means that the legal consciousness contains an attitude of tolerance.¹⁶

Legal awareness with the law has a very close relationship. Legal awareness is a factor in the discovery of the law. Even Krabbe states that the source of all laws is legal awareness. Thus, the so-called law is only that meets the legal consciousness of most people, so laws that do not conform to the legal consciousness of most people will lose the binding power.¹⁷

¹⁵ Rumusan Hukum Kamar Agama dalam SEMA Nomor 3 Tahun 2018 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2018 Sebagai Pedoman Pelaksanaan Tugas bagi Pengadilan, hal.16 angka 8

¹⁶ Sudan Arif Fakrulah, 2009, *Memahami Hukum dari Konstruksi sampai Implementasi.*, Jakarta. Rajawali Pers, hlm. 21

¹⁷ *Ibid.*

Soerjono Soekanto in his book mentions: "Van rechtsgevoel dient men te preken bij spontaan, onmiddelijk als waarheid vastgestelde rechtswaardering, terwijl bik het rechtsbewustzijn men met waarderingen te maken heeft, die eerst middelijk, door nadenken, redeneren en argumentatie aannemelijk gemaakt worden" (Feelings of justice should be preached in spontaneous cases, immediately established as correct judgments, while legal awareness related to judgment, which is only made sense in the middle through thought , reasoning and argument).¹⁸

Furthermore, Soerjono Soekanto quoted Schmid's opinion also formulating legal awareness namely: "Het onmiddelijk rechtsgevoel verhoudt zich tot het weloverwogen rechtsbewustzijn, als in het dagelijks leven het subjectieve gevoel van de waarheid van tal van meningen en beweringen zich verhoudt tot de weloverwogen wetwenschappelijke overtuiging". (A sense of justice is directly related to intentional legal awareness, when in daily life the subjective sense of truth of various opinions and claims is related to deliberate legal beliefs).¹⁹

Referring to the above opinion, it can be concluded that the scope of legal consciousness is that everyone adheres to

¹⁸ Soerjono Soekanto, 1982, *Sosiologi Suatu Pengantar*, Rajawali Pers, Jakarta, hlm. 151

¹⁹ *Ibid.*

the rules or norms of the law created by the government. In addition to the prevailing legal norms, there are also other norms, namely religious norms, norms of decency, and norms of decency. For us to be orderly and orderly, we should always abide by the norms or regulations that apply, both in people's, national, and state life.²⁰

Obedying the rules is very beneficial to create an orderly and orderly atmosphere in people's lives. Where there is a society, there is a law. It is the law that governs that inter-human relationships can run in an orderly and orderly manner so that no member of society commits misconduct against others.

Atang Hermawan Usman in his paper mentions that to realize the above, into the law in Indonesia today is far from what was expected. This is due in part to the relative lack of legal means and infrastructure, the limited integrity and professionalism of law enforcement officers, the quality of service and certainty and fairness of the law resulting in the enforcement of the principles of the law state has not been realized optimally.²¹

A person's awareness of the law does not necessarily make the person obey the

law because many other social indicators affect it. Many members of the public and youth, in particular, are aware of the need for respect for the law both "instinctively" and rationally, but they tend not to obey the law.

The first factor that influences legal awareness is knowledge of legal awareness. The rules of the law must be widely disseminated and have been lawful. So by itself, the rules will be spread and quickly known by the public. People who break the law are not necessarily breaking the law. This could be due to the public's lack of understanding and knowledge of the legal and regulatory awareness that prevails in the law itself.²²

Family Qanun, Sirri Marriage Recording and Public Awareness.

The marriage that is legal according to religion and state according to the laws and regulations is something that both must be fulfilled. Marriages that are not recorded are oriented towards the lack or impediment of the fulfillment of rights for the parties in the family. The benefits and benefits that are felt by not recording the marriage are more likely to cause harm than benefits.

In general, factors that influence public legal awareness of the implications of

²⁰ Atang Hermawan Usman, *Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum Di Indonesia*, Jurnal Wawasan Hukum, Vol. 30 No. 1 Februari 2014, hlm. 27

²¹ *Ibid.*

²²<http://www.jdih.tanahlautkab.go.id/berita/detail/kesadaran-hukum-sejak-dini-bagi-masyarakat>

undocumented marriage are the lack of socialization of the Marriage Act, the low factor of education, the lack of strict sanctions, economic factors.

Despite the existence of Law No. 1 of 1974 has long been in force and strengthened by the provisions of the Compilation of Islamic Law, society is still judged to lack understanding of the context of the importance of marriage recording. Especially in rural communities that have economies below the poverty line making the context of legal marriage religiously more precedent than legal marriage according to the state.

The existence of aceh qanun plan on Family Law which regulates polygamous and sirri marriage ban, precisely, on the one hand, allows the people who do not register their marriage to be registered immediately through the process of marriage itsbat trial in the Shar'iyah Court. As a part of the region with special autonomy, Aceh is given the authority to establish its regulations based on Islamic sharia.

The provincial government and the Aceh House of Representatives are discussing a family law that one of its contents regulates the practice of polygamy. The reason qanun was made is the rise of marriage series that occurs in polygamous couples. Related to the notion of marriage to the authorized

official, Article 7 paragraph (5) of the Aceh Qanun Draft on Family Law states: "Marriages performed outside the supervision of the Registrar of Marriage or authorized officials have no legal force". This prompted the parties to immediately carry out the marriage certificate, as stated Article 9 Paragraph (6) of the Aceh Qanun Draft on Family Law states that: "The application of marriage, against marriage outside the supervision of the Registrar of Marriage that occurs after qanun is in effect does not eliminate sanctions and/or fines."

Referring to the two articles, sirri marriages that are not recorded of their marriages will be subject to sanctions based on the qanun, even though the marriage has been carried out at the Syar'iyah Court.

Meanwhile, the provisions for polygamy as regulated in the Draft Aceh Qanun on Family Law are contained in Article 47 that:

(1) A husband who wishes to marry more than 1 (one) person must obtain permission from the Syar'iyah Court.

(2) Marriage that is carried out with the second, third and fourth wives without the permission of the Syar'iyah Court, has no legal force.

Polygamy is permitted in its legality in Aceh but is granted a condition by having a permission based on the ruling of the

Shar'iyah Court. There are at least two things that can be understood by the provision. First: polygamy as a way out so as not to the rise of marriage sirri, second: the provision of the qanun provides a great opportunity for the parties of the marriage sirri to immediately conduct a marriage equality session to legalize the recording of marriage for legal certainty.

Despite the many pros and cons that develop with this draft qanun, family law can provide legal certainty for the perpetrator of the marriage who does not record his marriage. About arrangements are still strongly opposed by some human rights activists and NGOs in Aceh, the Aceh government still has the opportunity to improve the context of the arrangements that are considered crucial to be acceptable to all walks of life.

Hard work from various parties is also needed to be able to make this qanun accepted by the community, one of which is by carrying out legal socialization. Apart from that Hearing Meetings with the public in adjusting the legal arrangement text is also required. This is so that there is no conflict between the provisions of the qanun and other laws and regulations.

Deputy Chairman of the Aceh Ulama Consultative Assembly (MPU Aceh), Faisal Ali explained that: "Polygamy is certainly allowed, but the conditions are not as easy as imagined. Justice must be

owned by the husband from all aspects, not only economically. Polygamy that is recommended by religion is very difficult to fulfill in the contemporary context. For now, it is very difficult to be fulfilled fairly for people who are allowed polygamy. Therefore, of course, the Family Law Qanun in Aceh can be implemented for the benefit of the community.²³

The draft Aceh Qanun on Family Law has generated a lot of controversies but is one of the goals of minimizing opportunities for the implementation of sirri marriages in Aceh. Therefore, before it is ratified, it is better if the Aceh government can review some of the articles which are considered controversial by juxtaposing the purpose of marriage itself and other statutory provisions. So that in the future this qanun can be the best solution for sirri marriages to immediately register their marriage with the authorized official.

CONCLUSION

A sirri marriage is a marriage that is kept secret, legal according to religion but not legally state because it is not recorded by the authorized official. Sirri marriages are actually contrary to Law Number 1 of 1974 concerning Marriage, Article 2 Paragraph (2) of Government Regulation

²³ <https://waspadaaceh.com/2019/07/06/ini-tanggapan-mpu-aceh-terkait-pro-kontra-legalisasi-poligami/>

Number 9 of 1975 concerning Implementation of Law No. 1 of 1974, Article 5 paragraph (1) Compilation of Islamic Law (KHI). In Aceh, the field of family law in Aceh has been strengthened by the provisions of Law Number 11 of 2006 concerning Aceh Governance, and is implemented according to the provisions of the Aceh Qanun. Legal arrangements in the Draft Aceh Qanun on Family Law that reap pros and cons, regulate matters of polygamy which are believed to be a solution for society to minimize sirri marriages. In the provisions of the draft qanun, every marriage or polygamous marriage is required to be recorded.

Sirri marriages that often occur in Aceh are caused by several factors, one of which is the lack of understanding of the community, especially those in rural areas, about the importance of marriage registration. Sirri marriages in Aceh occur not only for one wife but also for parties with multiple wives (polygamy). On this basis, the government's authority in disseminating the draft family law qanun is urgently needed. The government can ask for input from the public regarding the provisions on polygamy which are considered controversial, but the provisions of this qanun also deserve the support of all parties..

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