


Divorce for Sirri Marriage Carried Out by Kairatu West Seram Community

La Ode Angga^{1*}, Dyah Auliah Rachma Ruslan², Wahdaniah Baharuddin³,
La Ode Amir Amsyahrun⁴, Muhammad Haz Reza Ipaenin⁵

^{1,2,3,4,5} Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 : langga@yahoo.com

Corresponding Author*



Abstract

Introduction: Marriage is said to be valid according to law if it is carried out according to the laws of each religion and belief, otherwise the marriage must be recorded according to applicable laws and regulations.

Purposes of the Research: the specific purpose of this research are: 1. To find out and analyze the basis for allowing the implementation of Sirri Marriage in Kairatu Village community, and 2. To find out and analyze legal implication of Sirri Marriage implementation in Kairatu Village community.

Methods of the Research: This research was conducted using empirical juridical approach which is a study of descriptive qualitative analysis. This research tried to study the Implementation and legal consequences of Sirri marriage in Kairatu Village, West Seram, Maluku Province. How the empirical juridical or sociological juridical method works in this research proposal is; first, the results of collecting and discovering data and information obtained by literature study of the basic assumptions or assumptions are used to answer the problems in this research. Then, inductive-verification testing is carried out on current facts existed within the community. Hence, the truth in a research is declared reliable without having to go through rationalization process.

Results of the Research: Marriage can be said to be legally valid if it is carried out according to the trust of the bride and groom and registered with the marriage registration officer. For those who are Muslim, they are registered with the Office of Religious Affairs, while for those who are non-Muslim, they are registered with the civil registry office.

Keywords: Marriage Law; Siri Marriage; Divorce.

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INTRODUCTION

Marriage is one of human needs used to fulfill the demand of life instinct. Besides, the essence of marriage is believed to be more sacred because marriage creates a physical and spiritual bond between a man and a woman as husband and wife. As stated in the Article 1 of Act No. 1 of 1974 concerning marriage which has been amended to Act No. 16 of 2019 concerning Amendment on Act No. 1 of 1974 about marriage (hereinafter referred to as Marriage Law) which defines "Marriage is a bond of physical and spiritual between a man and a woman as husband and wife with the purpose of establishing a happy and lasting family founded on belief in God Almighty".¹

¹ D. Zalyunia, *Juridical Review of Constitutional Court Decision No. 46/PUU-VII/2010 Regarding Illegitimate Children Connected to the Compilation of Islamic Law and Law No. 1 of 1974 Concerning Marriage*, Thesis, Universitas Indonesia (Depok: Institut Manajemen Koperasi Indonesia, 2012).

The physical bond means that the party concerned because of marriage, formally, is a husband and wife, both for them in relation to each other and for them in relation to society at large. Meanwhile, the spiritual bond in marriage means that in the minds of the husband and wife concerned, there is a genuine intention to live together as husband and wife². The marriage as regulated in the Marriage law aims to establish a happy and lasting family based on God Almighty. Basically, marriage is a form of human worship to God. It is in line with the purpose of marriage according to The Islamic Law Compilation, in which in the Article 2 of The Islamic Law Compilation stated that “marriage according to Islamic Law is a firm contract or *mitsaqon gholiidhan* to obey Allah’s command and carry it out is worship.”³.

Marriage is said to be legally valid if it is carried out according to the laws of each religion and belief, and marriage must be registered according to applicable laws and regulations. In other words, marriage can be said to be legally valid if it is performed according to the religion and belief of the bride and groom and registered to the marriage registration officer. In addition, Muslim brides and grooms register their marriage at Religious Affairs Office (KUA) and non-Muslim brides and grooms register their marriage at Registry Office⁴. Indonesia is a country which has various islands and rural areas; one of them is Kairatu Village. Kairatu is a subdistrict in West Seram Regency, Maluku, Indonesia. Kairatu subdistrict area is located in Seram Island, where the northern part of Kairatu Subdistrict borders with the Inamosol Subdistrict, the south part borders with Seram Sea, east part borders with Amalatu Subdistrict, and the west part borders with West Kairatu Subdistrict. Kairatu Village has its own rule or regulation regulating its society’s dily life, included rule or regulation concerning marriage⁵. According to the researcher’s findings, there are many people in this village who carry their marriage out according to the religion only, which is commonly known as Sirri marriage. It is a marriage without registering it to the state. This case, of course, will have consequences, especially if children are born from this unregistered marriage. Based on the findings, the research team is interested and feels the need to research and study more deeply regarding “The Analysis of Laws for Sirri Marriage Implementation in the Kairatu Village Community.”⁶

LITERATURE REVIEW

Marriage Definition

Marriage is an important event for human life, because marriage not only concerns the individuals of the prospective husband and wife, but also concerns family and community affairs. Essentially, marriage is considered as something sacred, and due to its sacredness each religion always relates marriage rules to religion rules⁷. According to Islamic Law, the word marry is the same as the word “nikah” or *awaj*, while “nikah” according to sharia is a contract (*ijab qabul*) between guardian of the future wife and the future groom with certain utterances and it must fulfill applicable terms and conditions.⁸ Article 2 of Islamic Law

² Abdul Kadir Muhammad, *Indonesia’s Civil Law*, PT.Citra Aditya Bakti: Bandung, 1993.

³ H. Abdul Manan, *Principles of Civil Law, Authority of Religious Courts*, PT. Raja Grafindo Perkasa (Jakarta, 2001).

⁴ M. Adillah, S. U. dan Karmila, *Legal Analysis of the Factors Behind the Occurrence of Siri Marriages and Their Legal Impact on Husbands, Wives and Children*. Lecturer Research Report, Universitas Islam Sultan Agung (Semarang, 2012).

⁵ Salim HS, *Introduction to Written Civil Law*, Sinar Grafika (Jakarta, 2008).

⁶ R. S Prawirohaamidjojo, *Pluralism in Marriage Legislation in Indonesia*, Airlangga University Prees (Surabaya, 1988).

⁷ Boedi Abdullah, *Marriage and Divorce of Muslim Family*, Pustaka Setia: Bandung, 2013.

⁸ Zahri Hamid, *Principles of Islamic Marriage Law and Marriage Laws in Indonesia*, Binacipta (Jogjakarta, 1976).

Compilation (KHI) stated that “marriage according to Islamic Law is a firm contract or *mitsaqon gholiidhan* to obey Allah’s command and carry it out is worship.” According to Seomiyati:⁹ “Marriage, which is called as “Nikah” within the religion, is a contract or agreement to bind oneself, between a man and a woman to make legal sexual relations between the two parties, on a voluntary basis and with the consent of both parties to create a happy family filled with compassion and tranquility in ways that are approved by Allah SWT.”

Marriage is *sunnatullah* which means the command of Allah and His Rasul; it is not merely human desire or carnal desire, because a man who is married means that he has already carried out part of Islamic sharia (rules).¹⁰ Furthermore, marriage in Islam is functioned as basic foundation to build a household. Besides, marriage must be carried out by human to achieve the sharia, it is benefits in life.¹¹

Based on definition of Marriage in the Article 1 of Marriage Law, it can be concluded that the goal of marriage is to build a happy and lasting family (household) based on God Almighty. Meanwhile, the goal of marriage according to the article 2 of Islamic Law Compilation is to create a *sakinah, mawaddah, and rahmah* married life. Imam Ghazali divided purpose and avail of marriage into five, they are as follow:¹² 1) Obtaining legitimate descendants who will carry on the bloodline and develop human tribes; 2) Fulfilling the instinctive demands of human life; 3) Protecting human from evil and damage; 4) Forming and managing a household as the first basis of great society based on love and affection; 5) Developing serious effort to find halal livelihood, and increase the sense of responsibility.

Conditions and Principals of Marriage

The Marriage Law provided several conditions for getting married, they are: a) The marriage must be based on the agreement of the bride and groom;¹³ b) The marriage is only permitted if the groom has already 19 years old and the bride has already 16 years old;¹⁴ c) The bride and groom are not bound by marriage to anyone else.¹⁵ The principles of marriage which can be concluded from Marriage Law are: 1) Agreement principle. It means that there must be words of agreement between future husband and wife; 2) Marriage is carried on by parties who have already matured in body and soul; 3) Monogamy principle. It means that a man is only permitted to have one wife and a woman is also only permitted to have one husband. However, there is an exception for men in some conditions; 4) Marriage is not merely physical bond, but also spiritual bond; 5) The position of husband and wife in life is equal.

METHODS OF THE RESEARCH

This research was conducted using an empirical juridical approach which is a study of descriptive qualitative analysis.¹⁶ This research tried to study the Implementation and legal consequences of Sirri marriage in Kairatu Village, West Seram, Maluku Province. How the

⁹ Soemiyati, *Islamic Marriage Law and Marriage Law, Libertyz* (Jogjakarta, 2007).

¹⁰ Sidi Nazar Bakri, *The Key to Household Integrity (Sakinah Family), Knowledge Guide, Jayaz* (Jogjakarta, 1993).

¹¹ Djalil Basiq, *The Spread of Islamic Thought in Gayo Land, Qolbun Salim, Jakarta*, 2007.

¹² Abdullah, *Marriage and Divorce of Muslim Family*.

¹³ Article 6 paragraph (1) of Marriage Law.

¹⁴ Article 7 paragraph (1) of Marriage Law.

¹⁵ Article 9 of Marriage Law.

¹⁶ Maria S W Sumardjono, *Guidelines for Making Research Proposals A Basic Guide, Gramedia Pustaka Utama Publisher* (Jakarta, 1996).

empirical juridical or sociological juridical method works in this research proposal is; first, the results of collecting and discovering data and information obtained by literature study of the basic assumptions or assumptions are used to answer the problems in this research. Then, inductive-verification testing is carried out on current facts existed within the community. Hence, the truth in research has been declared reliable without having to go through rationalization process.

RESULTS AND DISCUSSION

Marriage is generally based on the mutual liking. However, there is a marriage which is carried out under the hand even the bride and groom love each other. It is usually called as Sirri marriage which means that a marriage carried out based on the religious rules or customs and it is not registered in marriage registration office (Religious Affairs Office for Muslims and Registry office for non-muslims). The term *sirri* comes from Arabic *sirran*, *israr* meaning secret. Sirri marriage, based on the meaning of the word, is a marriage carried out secretly.¹⁷ Moreover, sirri marriage is not witnessed by many people and it is not carried out in front of marriage registrar officer. Based on religious point of view, it is considered legal but it violates government regulations.¹⁸

As stated in the Article 2 paragraph (2) of Marriage Law “each marriage should be registered according to applicable regulations”. Marriage registration is an important and a main thing, because it will have an impact on the spouse and descendants if the marriage is not officially registered. By this time, the parties who feel the impact of sirri marriage are women as partners in sirri marriage and the children they give birth to. Hence, marriage registration is confirmed by the government in the legislations for the benefit of its citizens. It is because sirri marriage can easily make an irresponsible man neglect his obligations towards his wife and children, and he can also easily marry and divorce as he pleases. For example; short marriage (sirri marriage) between Aceng Fikri, Regent of Garut, and a minor, Fani Oktora. This marriage only lasted for four days and Fani Oktora is divorced through SMS (Short message Service) or the case of a man who abandon his wife and children, and other problems which were difficult to be legally sued because there is no evidence of marriage registration. Other legal consequences towards the children who were born from the marriage is that the child does not have civil relation with his biological father, he/she only has civil relation with his/her mother and his/her mother’s family. As stated in the Article 43 paragraph (1) of Marriage law “children who were born out of wedlock only have civil relation with their mother and their mother’s family.”

Government has not yet legalized Sirri marriage, thus, the children who born from this marriage are considered as children born out of wedlock. This case will be different if it is viewed from religious point of view. In relation to the Article 2 paragraph (2) and Article 43 paragraph (1) of Marriage Law, a request for review of the 1945 Constitution of the Republic of Indonesia which was submitted by Hj. Aisyah Mochtar or Machica bin H. Mochtar Ibrahim and Muhammad Iqbal Ramadhan has partially granted by The Constitutional Court with decision Number 46/PUU-VIII/2010. The Constitutional Court argued that the content of Article 43 paragraph (1) of Act No. 1 Year 1974 should be recited: “children born

¹⁷ M.Yunus, *Marriage Law in Islam, Hidakarya Agung*, 1st ed. (Jakarta: Administrative Law Department, Faculty of Law, Universitas Diponegoro, 1979).

¹⁸ Syahar S, *Marriage Law and Problems of Its Implementation Viewed from the Perspective of Islamic Law, Alumni* (Bandung, 1981).

out of wedlock not only have civil relationship with their mother and their mother's families, but also have civil relationship with their biological father and their biological father's families if it can be proven by science and technology and/or other evidences according to the law". The effect of granting this decision will certainly have legal consequences for the rights of children born out of wedlock.

Based on the Indonesian national marriage rules, marital relationship is not only limited to civil relations aimed at worldly pleasure, but the marital relationship is also interpreted as a sacred relationship. It is supported by Article 2 paragraph (1) of Marriage Law which stated that marriage within the national rules cannot be separated from religion and belief held by Indonesian people. Besides, it is said that "Marriage is valid if it is carried out by laws of each religion and belief."¹⁹ The implementation of marriage in Indonesia must fulfill the material and formal requirements as regulated in the Articles 6 – 12 of Marriage Law. R. Soetojo Prawirohamidjojo said that marriage requirements are divided into internal (material) requirement and external (formal) requirement.²⁰ Internal requirements are related to the parties who will get marriage. Meanwhile external requirements are related to formalities which must be fulfilled when carrying out marriage. Internal requirements consist of: a) Marriage must be based on the consent of both parties (Article 6 paragraph (1) of Marriage Law); b) It must obtain permission from both parents, if the bride and groom have not yet 21 years old (Article 6 paragraph (2) of Marriage Law); c) Men must be 19 years old and women 16 years old, unless there is dispensation given by the court or other official appointed by the parents of both parties (Article 7 paragraph (1) and (2) of Marriage Law); d) Both parties are not married, except for those whose religion permits polygamy (Article 9 Jo Article 3 paragraph (2) and Article 4 of Marriage Law). For a woman who is going to marry for the second time and so on, the law requires waiting until her waiting period has passed; the waiting period is at least 90 days for those whose marriage has ended due to divorce, and 130 days for those whose marriage has ended due to the death of their husband (Article 10 and 11 of Marriage Law); e) If there is a case that both parents have died or are unable to express their will, permission is obtained from the guardian, the caretaker or family member who is related by blood in a straight line of descent (Article 6 paragraph (4) of Marriage Law); f) If there is a case that one of parents has died or is unable to express the will, permission is sufficient to be obtained from the surviving parent or is able to express the will (Article 6 paragraph (3) of Marriage Law). Besides, if there is an event that there is a difference of opinion among people mentioned in the Article 6 paragraphs (2), (3), (4), the court can give permission after first hearing the reasons of those people.²¹

External requirements (formal) are requirement related to formalities in carrying out the marriage. The requirements consist of: a) Must submit a report to the Marriage, Divorce and Reconciliation Registrar; b) Notice signed by the registrar, including: 1) Name, age, religion, occupation, and address of the prospective bride and groom and the prospective parents. Apart from that, the name of the previous wife or husband is also mentioned; 2) Day, date, time, and the place where the marriage took place.²²

¹⁹ R.Satria, "Critical Analysis of the Constitutional Court Decision Regarding Material Review," *Badilag.Net*, 2022, \.

²⁰ Prawirohaamidjojo, *Pluralism in Marriage Legislation in Indonesia*.

²¹ T. T Tutik, *Civil Law in the National Legal System*, Kencana Publishing (Jakarta, 2008).

²² Salim HS, *Introduction to Written Civil Law*.

The momentum of a marriage is considered valid if: a) It has been carried out according to the laws of each religion and belief; b) It has been registered according to legislation (Article 2 of Marriage Law). Basen on the provision of the Article 2 paragraph (1) of Marriage Law, the purpose of marriage is being registered is to avoid legal conflicts between customary law, religious law, and inter-group law.

Meanwhile, the purposes of marriage registration are: a) Make the marriage event clear, both to the person concerned and to other parties; b) As evidence for their children if a dispute arises in the future, either between biological children or half-siblings; c) As a basis for payment of wife or husband allowances for civil servants.²³

The implementation of marriage in Indonesia is not only based on the principle of liking each other, but there are also material and formal requirements (as mentioned above) which must be fulfilled by the future bride and groom. If those requirements are not fulfilled, the marriage cannot legally be carried out. Generally, material requirements are obtained from religious rules existed in Indonesia. Islam, as the religion of the majority of Indonesian citizens, certainly plays a big role in influencing the determination of the material conditions for marriage in Indonesian national law, such as rules regarding prohibitions on marriage, waiting period for divorced women, imposition on family support, etc.²⁴ The consequence of material requirements, in line with Article 2 paragraph (1) of Marriage Law, is; if the marriage does not fulfill the marriage material requirement both material requirements which have been approved by law and those that still exist within the rules of the religion and beliefs of each adherent, the marriage can be prevented (if the marriage is about to be carried out) or canceled (if it has been carried out).

In addition to determine the material requirements of marriage, the Marriage Law also regulates formal requirements as requirement determined by the state with the aim of realizing orderly marriages in Indonesia. Article 2 paragraph (2) of Marriage Law explained that each marriage must be registered according to applicable law. By now, there is still ambiguity in interpreting material and formal requirements of marriage in Indonesia. In other words, whether the formal requirements are only related to the administration of the marriage or they affect the material requirements. Ideally, in realizing orderly administration of marriage, marriage registration should be confirmed not only at the administrative level but also integrated into the material requirements of marriage.

Therefore, a marriage is considered valid not only by fulfilling the pillars and requirements of marriage which is determined by each respective religion and belief, but also registered to the authorized agency. The idea develops among the societies. On the other hand, at the level of discourse among Islamic Law academics, there are at least two views which have developed: the first View, it is against Legal Implication of Sirri Marriage to Women and Children view, because in Islam marriage registration is not included into marriage pillar. The pillars of marriage in Islam (which determines whether a marriage is valid or not) are consisted of: *Ijab* (the bidding) and *qabul* (the acceptance), guardian, 2 (two) witnesses, and bride and groom, as stipulated in the Article 14 of Presidential Instruction No. 1 of 1991 concerning the Islamic Law Compilation. Hence, according to the first view,

²³ Salim HS.

²⁴ Adillah, S. U. dan Karmila, *Legal Analysis of the Factors Behind the Occurrence of Siri Marriages and Their Legal Impact on Husbands, Wives and Children*. Lecturer Research Report.

Indonesia, as a country that guarantees the freedom of its people to practice their religion and beliefs (Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia), is not permissible to force religious rules to comply the national legal regulations. The state must guarantee the holiness of a religion and does not interfere it with matters that are outside the rules of that religion. State intervention in maintaining the holiness of religion can be seen in the existence of Law No. 1/PNPS/1965 concerning the prevention and abuse and/or blasphemy of religion which its existence has been confirmed by the Constitutional Court decision No. 140/PUU VII/2009.

In addition, anyone who commits an act of religious blasphemy is threatened with a sentence of five years in prison. The second view, it argued that the idea of integrating formal/administrative requirements for marriage into material requirements does not conflict with religion. Islam teaches about obligation to the citizens to obey their leader, as long as the obedience is not an act to disobey Allah SWT. Marriage registration is confirmed by state in the legislation for the benefit of its citizens.

Regarding sirri marriages which occurred in Kairatu State, West Seram Regency carried out by non-Muslim people, which is the focus of this research, is of course not registered and contrary to the Article 2 paragraph (2) of Marriage Law which stated "every marriage must be registered".²⁵ Even though it is religiously considered valid, marriages carried out outside the knowledge and supervision of marriage registration do not have permanent legal force and are considered invalid in the eyes of the law. Thus, the legal consequences of the marriage have very negative impact, and very detrimental especially to the wife and women in general.

Legally, if a woman is not considered as legal wife, she will not be entitled to maintenance and inheritance her husband's property in the event of a divorce or death. Besides, a wife is not entitled to joint assets in the event of separation, because the marriage, legally, is considered to have never occurred. Moreover, according to the Law, the child born from this marriage is considered as illegitimate child, and the child only has civil relationship with the mother and the mother's families. In addition, the child is not entitled to the costs of living and education, maintenance and inheritance their father's property. Indeed, the unregistered marriages are very detrimental. According to the law, there are several negative impacts of unregistered marriage: 1) Even though the marriage is carried out by religion and belief, the marriage will not be recognized by the state if it is not registered by the Religious Affairs Office; 2) It will experience difficulties in administrative matter; 3) If do not have any official documentation or marriage certificate which can be used as evidence before the judicial panel, when there are²⁶ disputes related to marriage, or disputes arising from marriage, such as inheritance, child custody, divorce, livelihood, etc; 4) Custody of children born from an unregistered marriage means that the custody rights are handed over to the wife in the event of a divorce. Livelihood and inheritance of unregistered marriages are resolved amicably. However, when a divorce occurred, the husband usually does not provide livelihood to his wife.²⁷

²⁵ H. Abdul Manan, *Principles of Civil Law, Authority of Religious Courts*.

²⁶ Mardani, *Pendekatan Akuntabilitas Pelayanan Publik Dalam Mengikuti Perubahan Paradigma Baru Administrasi Publik, Graha Ilmu Publishing* (Jogjakarta, 2011).

²⁷ Mustofa Hasan, *Introduction to Family Law, CV. Pusataka Setia* (Bandung, 2011), <https://doi.org/10.31947/jakpp.v4i1.5902>.

CONCLUSION

Legal implication of carrying out sirri marriage in Kairatu Village is that the unregistered marriage is contrary to Marriage Law mentioned in the Article 2 paragraph (2) which stated "every marriage must be registered". Even though it is religiously considered valid, marriages carried out outside the knowledge and supervision of marriage registration do not have permanent legal force and are considered invalid in the eyes of the law. Thus, the legal consequences of the marriage have very negative impact, and very detrimental especially to the wife and women in general.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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