



Article

**CRIMINAL SANCTIONS OF SIRRI MARRIAGE
BASED ON DRIVING FACTORS AND ITS FORMS
MASLAHAH MURSALAH PERSPECTIVE
(Case Study in Banaran Village)**

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Abstract

Marriage Law Number 1 of 1974 pasal two mention thatevery marriage must be registered. But in practice not a few Indonesian people who do marriages without being registered.This study wants to answer how the formulation of criminal sanctions for unregistered marriage based on the driving factors and forms of unregistered marriage from the perspective of maslahah mursalah, a case study in Banaran Village, Tembarak District, Temanggung Regency.The method used is field research.From this study, it was found that the crime of sirri marriage is a criminal offense. The criminal sanctions for unregistered marriages based on the driving factors and forms of unregistered marriages with the maslahah mursalah approach produce two legal sanctions, namely severe criminal sanctions and minor criminal sanctions. Sirri marriages that occurred in Banaran Village based on the driving factors and the form of sirri marriages that occurred received light criminal sanctions because the conditions and pillars of marriage were met and only administrative violations

Keywords: *Sirri Marriage, Criminal Sanctions, Maslahah Mursalah*

Introduction

DaIn the Marriage Law Number 1 of 1974 article one it is stated that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the one and only God.¹

This is in line with the Qur'an letter Ar-Rum verse 21, Allah SWT says:

Meaning: And among the signs of His power is that He created for you wives of your own kind, so that you tend to and feel at ease with Him and made love between you. Verily in that are signs for a people who think.
(Surat Ar-Rum: 21)²

Law Number 1 of 1974 article 2 reads "every marriage is recorded according to the applicable laws and regulations".³ This provision is further clarified in CHAPTER II of

¹Himpunan Peraturan Perundang-Undangan, Undang-Undang Perkawinan Indonesia, (Wacana Intelektual, 2009), cet. Ke-1. h.8.

²Departemen Agama RI, Qur'an dan Terjemahannya, (Bandung, 2009), h. 406

³Himpunan Peraturan Perundang-Undangan, Undang- Undang Perkawinan Indonesia, (Wacana Intelektual, 2009), cet. ke-1. h. 8.

Government Regulation (PP) Number 9 of 1975 which essentially means a new marriage is considered to have legal force before the law if it is carried out according to religious rules and has been registered by a marriage registrar as determined by law.⁴ However, in practice, many Indonesian people still carry out unregistered marriages (sirri marriages).

As happened in Banaran Village, Tembarak District, Temanggung Regency, there was a sirri marriage between a man and a woman named Zaenuddin and Siti Nur Chasanah on July 13, 2017.⁵

The thing that triggers the most controversy in the community is the existence of a criminal threat for the perpetrators of unregistered marriage as stated in Article 143 of the HMPA Bill, which reads: "Everyone who intentionally conducts a marriage without a marriage registrar is sentenced to a maximum fine of Rp. 6 million or a maximum imprisonment of 6 months".⁶

The existence of a criminal proposal for the perpetrators of unregistered marriage makes the Indonesian people divided into two groups. The first group argues that the crime of unregistered marriage needs to be applied to create a deterrent effect for the perpetrators. In their view, the absence of strict legal sanctions from the government has been the cause of the rise of sirri marriages. Meanwhile, the second group stated that unregistered marriages could not be subject to criminal sanctions, according to them, how would they want to be punished if religiously sirri marriages were legal.

Based on the explanation of the data above, the researcher is interested in conducting research on the criminal sanctions for unregistered marriage based on the driving factors and forms of unregistered marriage in the case study in Banaran Village, Tembarak District, Temanggung Regency. The purpose of this study is to find out how the actual formulation of the criminal sanction for unregistered marriage based on *masalah mursalah* so that it can be known whether all forms of unregistered marriage that occur in the community will be given sanctions that are equally severe or not the same but see the size of the negative impact that occurs.

Methods

The method used is field research. The purpose of this research is to reveal events or facts, circumstances, phenomena and events that occurred during the research by presenting what actually happened. This research also interprets and describes the views that occur in society. The contradiction between two or more conditions and their effect on a condition.

Results

The term sirri marriage comes from Arabic which has generally been absorbed in Indonesian. Sirri marriage which in the book of fiqh is called *Az-Zawaj As-Sirri* which means: could interpreted as a marriage carried out secretly or secretly.⁷

When viewed from a historical point of view, the term sirri marriage itself was known at the time of the Prophet SAW, this is known from his words which means: It was narrated from

⁴Himpunan Peraturan Perundang-Undangan, Peraturan Pemerintah Republik Indonesia Nomor 9 tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan, (Wacana Intelektual, 2009), cet. ke-1. h. 38.

⁵Interview with Siti Nur Chasanah. Banaran. Friday, November 3, 2022. 20.00 WIB

⁶Dwi Suka, RUU Peradilan Agama: Ancaman Pidana Nikah Siri, <http://ngobrolhukum.blogspot.com> 1 Oktober 2022

⁷Burhanudin, Nikah Siri. (Yogyakarta: Pustaka Yustisia, 2010), cet-ke-1. h.13

Abi Hurairah that the Prophet SAW forbade sirri marriage.⁸ In a further development, namely at the time of the Companions, the term sirri marriage was popular during the time of Syayidina Umar bin Khathob, this happened when he was informed that there had been a marriage that was not attended by witnesses, except for only a man and a woman. At that time Syayidina Umar did not allow it, even he threatened to stone the perpetrators. In a well-known narration, Syayidina Umar bin Khaththab ra stated that this is a sirri marriage, I do not allow it and if I had known beforehand, then I will definitely be stoned.⁹

The meaning of the term sirri marriage above when related to the context in Indonesia is very different. This happens because the sirri marriage, which is known by the Indonesian people today, is a marriage carried out by fulfilling the pillars and conditions set by religion, but the marriage is not carried out in the presence of a marriage registrar as an official government official or in other words, a sirri marriage is a marriage that not registered at the Office of Religious Affairs for those who are Muslim or at the Civil Registry office for those who are not Muslim, so they do not have a Marriage Certificate issued by the government. Such marriages among the public, apart from being known as sirri marriages, are also known as underhand marriages.¹⁰

The same thing happened in Temanggung Regency, Tembarak District, precisely in Banaran Village, on Thursday, July 13, 2017, there was a sirri marriage by a man named Zainuddin and a woman named Siti Nur Chasanah who took place at the women's domicile address, namely in the village of Banaran Kandangan District, Temanggung Regency. The marriage took place during the proposal. When Zaenuddin personally asked permission from Siti Nur Chasanah's father that he would marry his daughter, then Siti Nur Chasanah's father accepted the proposal but he submitted a request to Zainuddin to carry out a religious marriage first when he proposed with his extended family. Then Zainuddin and Siti Nur Chasanah accepted his father's request with his father getting married and witnessed by the two big families. According to Siti Nur Chasanah's confession, according to her father, it will be easier if her child has been religiously ratified, because in taking care of marriage registration and all matters related to marriage preparation, both are lawful and do not cause sin. Remembering two people who fell in love and then a few days or a few weeks always meet and together to take care of wedding preparations, it is undeniable that things are forbidden. Whether it's when riding together or when walking together and holding hands. So Siti Nur Chasanah's father saw that this religious marriage was his way to save his son from sin.

As for the background of Siti Nur Chasanah's father, he is a kyai who is prominent in the community. And from Siti Nur Chasanah's confession that it was not only her children who were married religiously during the application, but her father's nephews were also married religiously before the KUA contract. As explained earlier that the reason Siti Nur Chasanah's father asked for a religious marriage to be carried out first was to protect her child from sinning, because the distance from unregistered marriage to marriage at KUA was only a matter of days, namely July 13, 2017 Siti Nur Chasanah carried out a sirri marriage. then on 18 August 2017 they carried out a written marriage contract at the KUA of Tembarak District. As for Siti Nur Chasanah's confession that even though they are religiously legal and witnessed by a large family, they do not immediately live in one house, they continue to return to their respective homes and do not have a relationship like husband and wife. The sirri marriage was carried out really for safeguards

⁸Imam Ath-Thobaroni, Mu'jam Kabir, Maktabah Syamilah Versi 7 G & 14 G, Jilid 19, h. 273.

⁹Ibnu Rusyd, Bidayah al-Mujtahid wa Nihayah al-Muqtasid, (Lebanon: Darul Kitab 'Ilmiyah, 2007), cet ke-3. h. 448

¹⁰Burhanudin, Nikah Siri. (Yogyakarta: Pustaka Yustisia, 2010), cet-ke-1. h.13.

during the marriage preparation period so that there was no sin between the two. Considering his father is a cleric and is very careful in making decisions to avoid immoral acts.¹¹

Forms of Marriage Sirri

According to DR. M. Mushthafa Luthfi in his book entitled "Nikah Sirri", Broadly speaking, Sirri's marriage which is widely known in the community is divided into two. First, marriage without a guardian. This kind of marriage is carried out in a sirri manner because the female guardian does not agree or considers a marriage carried out without a guardian to be valid, or just because she wants to satisfy her lust without paying attention to the provisions of the Shari'ah. Second, marriages that are religiously legal, but are not widely announced, are not registered in the authorized state registration agency or sometimes are registered with the state registry but are not widely known. The case of the official registration, without being widely known by many,¹²

Furthermore, he explained in detail that sirri marriage has several forms, including:

1. A harmonious marriage and the conditions are met that are not officially recorded, but this marriage is witnessed by at least two fair witnesses and based on the approval and presence of a guardian, however the witnesses are asked to keep their testimony confidential.
2. A harmonious marriage and the conditions are fulfilled which is officially recorded at the competent body in a country along with witnesses and the consent of the guardian, but the witnesses are asked to keep their testimony secret.
3. Marriages that are not officially registered but are approved by the guardian without any witnesses.
4. Marriages that are not officially registered in the competent body and without the knowledge of the guardian and without any witnesses.¹³

He explained again that of the four forms of unregistered marriage mentioned above, the ones that have been the subject of prolonged debate, especially among contemporary scholars, are the first and second forms, although the second form is lighter than the first. The third form is a false marriage contract, so that the husband and wife relationship is considered to violate the Shari'ah. While the fourth form is a marriage contract that is false from all sides, so that it can be referred to as 'ainuz zina (the true form of adultery).¹⁴ Meanwhile, Taufiqurrahman al-Azizi added one more form, namely: Marriages carried out by fulfilling the conditions and pillars, and the guardians and witnesses were not asked to keep the marriage secret, but this marriage was not registered with the authorities.¹⁵ This kind of marriage is still called a sirri marriage even though in fact the marriage has been known by many people and has held a walimah.

Factors Driving the Occurrence of Sirri Marriage

We summarize several factors that encourage people to carry out unregistered marriages, including what Taufiqurrahman al-Azizy said, among others: others as follows:¹⁶

1. Polygamy Barriers

¹¹Interview with Siti Nur Chasanah. Banaran. Friday 3 November 2022. 20.00 WIB

¹²Mushthafa Luthfy dan Mulyadi Luthfy, *Nikah Sirri*, (Surakarta: Wacana Ilmu Press, 2010), cet. ke-1. h. 43.

¹³*Ibid.*, halaman. 49.

¹⁴*Ibid.*, halaman. 50.

¹⁵Taufiqurrahman Al-Azizy, *Jangan Sirrikan Nikahmu*, (Jakarta: Hikmah Media, 2010), cet. ke-1. h.40.

¹⁶Mushthafa Luthfy dan Mulyadi Luthfy, *Nikah Sirri*,(Surakarta: Wacana Ilmu Press, 2010), cet. ke-1. h.145-150.

2. Unwed pregnancy
3. Age factor¹⁷
4. Economic Factor
5. Factors of Different Religion
6. Uncommendable Intention
7. Parental Factor
8. Convenience Factor

The Negative Impact of Sirri's Marriage

Marriages that are not registered with the authorities have many negative impacts, both negative impacts on the perpetrators of the marriages themselves and on the wider community, including:

- 1) Negative Impact on Wife¹⁸
 - a) Not considered a legal wife.
 - b) Not entitled to a living from husband
 - c) Do not get an inheritance if the husband dies.
 - d) Not entitled to this gono property.
 - e) Can be divorced at any time.
- 2) Negative Impact on Children¹⁹
 - a) Children born are considered as illegitimate children, or children born out of wedlock.
 - b) No father's name on birth certificate

While the negative impact of unregistered marriage for the husband is almost non-existent, in fact there is even a positive impact, here are some positive impacts that are obtained for the husband when he marries the sirri way:²⁰

 - a) The husband is free to remarry because the previous marriage in the form of a sirri marriage or an underhand marriage is considered invalid in the eyes of the law.
 - b) An irresponsible husband can evade the obligation to provide for his wife and children.
 - c) Husbands who are married in a sirri way, when there is a divorce, they no longer think about the assets of this gono.
- 3) Legal Negative Impact²¹

The negative impact obtained from unregistered marriages or underhanded marriages in terms of the law is the lack of clarity on the status of wives and children, both in the eyes of Indonesian law and in the eyes of some people who think that unregistered marriages or underhanded marriages are illegal because they are not registered at the religious affairs office. (KUA.) for Muslims or the civil registry office for non-Muslims.

¹⁷In Article 6 paragraph 2 of the Marriage Law No. 1 of 1974 it is stated that "to enter into a marriage a person who has not reached the age of 21 years must obtain the permission of both parents. Then in the explanation of Law No. 1 Marriage 1974 it was stated that the age limit for marriage for both men was 19 years and 16 years for women. Association of Legislations, Indonesian Marriage Law, (Intellectual Discourse, 2009), cet. number 1. h. 30.

¹⁸Mushthafa Luthfy dan Mulyadi Luthfy, *Nikah Sirri*, (Surakarta: Wacana Ilmu Press, 2010), cet. ke-1. h. 152.

¹⁹*Ibid.*, halaman. 153

²⁰*Ibid.*, halaman. 155

²¹*Ibid.*, halaman. 155

4) Negative Social Impact²²

The following are some of the impacts that will be obtained if the marriage that is held is sirri, including:

- a) It is difficult to socialize, because women who live in the same house with a man with underhanded marriages are often considered 'gathering together' or considered as wives. savings. As a consequence, the surrounding community will look down on the husband and wife pair.
- b) Cheating is considered normal. Some people think that sirri marriages are legal, and are considered like ordinary marriages, as a result, many irresponsible people who are morally damaged take advantage of this loophole.

Criminal Sanctions and Types

A criminal act is a formulation of an act that is prohibited to be carried out (in laws and regulations) accompanied by criminal threats for those who violate the prohibition. The act (feit) here is the main element of a criminal act that is formulated.²³

In criminal law, there are divisions regarding criminal acts. Some of these divisions are indeed used by the Criminal Code and some are carried out by doctrine. The Criminal Code divides the types of criminal acts into 2, namely as follows:²⁴

1. Crime (misdrijven)

Crime is an act that is contrary to the interests of the law.

2. Offense (overtreding)

Violation is an act that does not comply with the prohibition or obligation determined by the state authorities.

Examples of the scope of crimes and violations.

No	Difference	Crime	Violation
1	Test	Sentenced	Not Sentenced
2	Help	Sentenced	Not Sentenced
3	Expired	Longer	Shorter
4	Complaints	There is	There isn't any

Criminal Sanctions for Sirri's Marriage in the HMPA Bill

As stated earlier, that unregistered marriage is a marriage that does not yet have legal recognition, because its existence has not been recognized by state law. The existence of a marriage bond according to marriage law in Indonesia is recognized if the marriage is carried out officially in the presence of an authorized official.

Related with unregistered marriage, apart from being seen from the legal side or not, it is also interesting to study the aspects of legal violations committed in the practice of unregistered marriage. According to Herbert L. Packer, it appears that an act is determined as a criminal act, if the act is deviant, disgraceful in society, and causes unrest or disorder in society.

Seeing the aspects of consideration of legal certainty, expediency, and legal justice associated with positive law in Indonesia, the act of unregistered marriage is a criminal act of violation, as

²²*Ibid.*, halaman. 155

²³P.A.F Laminating, *Dasar-Dasar Hukum Pidana Di Indonesia*, Cetakan I, PT Sinar Grafika, Jakarta, 2014, hlm 179.

²⁴Rasyid Ariman dan Fahmi Raghil, *Hukum Pidana*, Setara Press, Malang, 2015, hlm. 72

has been pointed out in the previous discussion in which the criminal offense is an act that does not comply with the prohibitions or requirements determined by the state authorities.

Criminal sanctions that threaten unregistered marriages vary depending on which regulations we look at. Actually sirri marriage not only violates the articles in the Criminal Code but also violates the Civil Code article 2 paragraph 1, article 3, article 4, and article 5 in the Marriage Law No. 1 of 1974.

Prior to the existence of the HMPA Bill, there were regulations related to sanctions for perpetrators of unregistered marriages, namely as follows:

1. From the point of view of Article 45 of Government Regulation Number 9 of 1975, we will see that the act of unregistered marriage is only a *wetsdeliktern* (administrative violation) which carries a penalty of a maximum fine of Rp. 7,500 (seven thousand five hundred rupiah) and for Registrar Employees Those who violate the provisions regarding the marriage registration procedure are punished with imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 7,500, - (seven thousand five hundred rupiah). This PP applies to people who are married for the first time or several times. This PP is very ineffective in today's era.
2. From the point of view of Article 284 of the Criminal Code provides a maximum penalty of nine months for a man or woman who overspels a man or woman who has a legal marriage bond. Because sirri marriages are not recorded in state records, they are not recognized in positive law in Indonesia. That's why the perpetrators of sirri marriages have the potential to be included in this article. In this case, it is a complaint offense from a legal husband/wife. This article applies to people who are married for the second time and still have a legal wife.
3. From the point of view of Article 143 of the Draft Draft Law on the Religious Courts Material Law or abbreviated as the HMPA Bill, Article 143 is indeed more specifically regarding unregistered marriage, the act of unregistered marriage in the Draft HMPA Bill is seen as an act with a criminal threat for the perpetrator of a fine at most IDR 6,000,000.00 (six million rupiahs) or imprisonment for a maximum of 6 (six) months and a maximum fine of IDR 12,000,000 (twelve million rupiahs) or imprisonment for a maximum of 1 (one) year. This article applies to people who marry sirri either for the first time or the umpteenth time.

The sirri marriage bill, which has recently surfaced in the mass and electronic media, reaps the pros and cons that are not simple. This bill did not just appear without any underlying reasons beforehand. The demand for the immediate issuance of a law regulating marriage, finally urged the executive and legislature to formulate it. Criminal penalties for the perpetrators of Sirri Marriage are ranging from fines to imprisonment.

Marriage registration is not the pillars and conditions of marriage according to marriage law in Islam, but seeing the urgency of the recording in order to realize the benefit for husband and wife and children, marriages need to be registered. So that violations of marriage registration may be subject to criminal sanctions in accordance with government policy. In Islamic crime, this kind of punishment is included in the category of *jarimah ta'zir*, namely a criminal act determined by the authorities.²⁵

As an embodiment of corrective justice for unregistered marriages, because on the civil side there is a solution to apply for marriage ratification (*itsbat nikah*) to the Religious Courts in order to obtain legal certainty over their marriages, then on the side of law violations, parties related to unregistered marriages, both perpetrators, implementers and those who help, are subject to basic criminal sanctions in the form of fines instead of imprisonment, with alternative sanctions in the form of social sanctions whose types of sanctions are left to the consideration of the panel of

²⁵Wahbah az-Zuhaily, Jilid Ke-7, halaman 197. Lihat juga Sayid Sabiq, *Fiqh Sunnah*, Kairo, al-Fathu li al-A'lami al-Arabi, n.p, n.d, halaman 375.

judges. This is in line with the direction of Indonesia's national legal policy as formulated in the Criminal Code Bill, which prioritizes fines rather than imprisonment.

Fine sanctions are imposed with the aim of providing a deterrent effect to the perpetrators and executors of unregistered marriages, as well as preventing others from committing the same criminal acts. In addition to this purpose, with the imposition of fines, these sanctions do not interfere with the continuity of domestic relations between the husband and wife.

In order for the criminal sanctions to be imposed to achieve the aspired justice, the number of fines that can be imposed for the perpetrators and the executor of unregistered marriages is not the same as that stipulated in Article 143 of the Draft HMPA Bill, with consideration that the sanctions for the executor are heavier than those for the siri marriage. , because usually for the executors of unregistered marriages, these activities have been used as commercial businesses that are oriented towards material profit.

Analysis Criminal Sanctions for Sirri's Marriage Maslahah Mursalah Perspective²⁶

When viewed in depth, marriage is not a simple matter that binds a man and a woman alone, but has far-reaching consequences, not only for married couples, but also for children, family relationships, for society and the state. Therefore, a marriage cannot be considered completed only with the marriage contract, but must take into account the broad legal consequences. Sirri marriage itself has a lot of negative impacts if it happens. To avoid the negative impacts that can be caused by unregistered marriages, the government has enacted a law on marriage registration, namely Marriage Law Number 1 of 1974. Unfortunately, in practice, many Indonesian people still perform unregistered marriages. This may be as a result of the lack of public awareness of the law. In further developments, the Indonesian government plans to impose criminal sanctions for perpetrators of unregistered marriages, this is then stated in the form of a draft law whose implementation is waiting for approval from the DPR. There are proposals for the application of criminal sanctions for people who do unregistered marriages, this is then stated in the form of a draft law whose implementation is waiting for approval from the DPR. However, the proposed application of the criminal sanction of sirri marriage turned out to be controversial in the community. This happens because people think that the government has committed abuse by imposing sanctions on marriages that have met the requirements and pillars. Therefore,

The first step, the author tries to verify whether the benefits contained in the criminal marriage sirri can be categorized as maslahah mursalah benefits. But before verifying the benefits, the author will first check whether the criminal sanction of sirri marriage is included in the object of maslahah mursalah.²⁷

²⁶Etymologically, maslahah mursalah consists of two words, namely the word maslahah and the word mursalah. The word maslahah itself is masdar (noun) from the word sholaha which has the meaning of benefit, importance, benefit and benefit. While mursalah means detached. Adib bisri and Munawir, Kamus al-Bishri, (Surabaya: Progressive Library, 1999), cet. number 1. h. 414. Meanwhile, in terminology, maslahah mursalah is a benefit in which Shari'a does not prescribe a law to realize this benefit, and there is no evidence showing its acknowledgment or cancellation. Abdul Wahab Kholaf, Ushl Fiqh, (Koiro: Darul 'Ilmi, 1978), p. 84. This definition is also reinforced by the opinion of Imam Gozali in the book Al-Mustashfa which states that Maslahah mursalah is "anything (maslahah) for which there is no evidence for it from syara' in the form of certain texts that cancel it and no one pays attention to it". Imam Gozali, al-Mustashfa, Maktabah Syamilah Version 7 G & 14 G, Volume 1, p.437.

²⁷The object of maslahah mursalah is an event or event that needs to be legalized, but there is no single text (al-Qur'an and hadith) that can be used as a basis. According to Imam Qorofi Ath-Thusi in his book Maslahah Al-Mursalah explaining that maslahah mursalah is the basis for establishing laws in the field of muamalah and the like, while in matters of worship it is Allah SWT who determines the punishment, because humans are not able to fully understand the wisdom of worship. that. Totok

In the case of the crime of unregistered marriage, the author does not find the arguments of the Qur'an, Hadith and Ijma'.²⁸ scholars who can be used as a foothold for istinbath²⁹ in the criminal case of sirri marriage.

The author only finds arguments about marriage both from the Qur'an and Hadith, such as Surat an-Nisa verse 3 which contains about the permissibility of marrying women up to four people, Surah an-Nûr verse 32 which contains suggestions for marriage even if you do not have wealth because later Allah SWT. who will enable (provide sustenance) with his gifts, Surah Ar-Rûm verse 21 which contains the purpose of marriage, namely to form a *sakinah*, *mawaddah* and *warohmah* family. Meanwhile, from the Hadith, the author only finds legal arguments for marriage, such as the Hadith narrated by Imam Abu Daud which contains suggestions for marriage because marriage will protect and fortify from adultery, the Hadith narrated by Abi Ayyub which contains four things which are the sunnah of the apostles, one of whom was married, The Hadith narrated by Imam Muslim which contains the prohibition of being single (not married), the Hadith narrated by Imam Anas bin Malik which contains the recommendation to marry a woman who is fertile (potential to have many children) because Prophet Muhammad is proud to have many followers. Hadith narrated by Imam Bukhari which contains the prohibition of sirri marriage (marriage performed without fulfilling the pillars). So, from the presentation of this data, it can be concluded that the criminal sanction of sirri marriage is included in the object of *maslahah mursalah* because there is not a single text from the Qur'an, Hadith or *ijma'* that can be used as evidence for this sirri marriage crime. The hadith narrated by Imam Anas bin Malik which contains the recommendation to marry a woman who is fertile (potential to have many children) because the Prophet Muhammad is proud to have many people. Hadith narrated by Imam Bukhari which contains the prohibition of sirri marriage (marriage performed without fulfilling the pillars). So, from the presentation of this data, it can be concluded that the criminal sanction of sirri marriage is included in the object of *maslahah mursalah* because there is not a single text from the Qur'an, Hadith or *ijma'* that can be used as evidence for this sirri marriage crime. The hadith narrated by Imam Anas bin Malik which contains the recommendation to marry a woman who is fertile (potential to have many children) because the Prophet Muhammad is proud to have many people. Hadith narrated by Imam Bukhari which contains the prohibition of sirri marriage (marriage performed without fulfilling the pillars). So, from the presentation of this data, it can be

Jumantoro and Samsul Munir Amin, *Dictionary Ushal Fiqh*. (Amzah Publisher, 2005), cet. number 1. h. 201

²⁸Ijma' is the agreement of the Mujtahids among Muslims at a time after the Prophet Muhammad died on the basis of *syara'* law regarding an incident. Imam Tajuddin As-Subki, *Matan Jam'ul Jawami'*, (Lebanon: Darul Fikr, 2003), Volume 2, p. 177.

²⁹What is meant by the istinbath *maslahah mursalah* framework here is the framework of thinking that will be used by the author to be used as a guide in resolving the issue of criminal sanctions for sirri marriage through the *maslahah mursalah* approach. The steps in compiling the istinbath *maslahah mursalah* framework associated with the criminal sanction of unregistered marriage are as follows: first, describe, collect and present data related to the crime of unregistered marriage. Second, ensuring that the criminal sanction of sirri marriage is included in the category of object of *maslahah mursalah*, this is done by checking whether there are any good arguments that come from the Qur'an, al-Hadith, *Ijma'* which can be used as the basis for solving the problem of criminal sanctions. sirri marriage. Third, Verifying the benefits contained in the criminal sanction of sirri marriage can be used as a basis for probate using *maslahah mursalah*. This is done by looking at the conditions for probate using *maslahah mursalah* and then applying it to the benefits of the criminal sanction of sirri marriage, which then the results of the verification will be used as the basis for probate using *maslahah mursalah* so that Later, the law will be known from the criminal sanction of sirri marriage.

concluded that the criminal sanction of sirri marriage is included in the object of *maslahah mursalah* because there is not a single text from the Qur'an, Hadith or *ijma'* that can be used as evidence for this sirri marriage crime.

After it is known that the criminal sanction of sirri marriage is included in the object of study of *maslahah mursalah*, then the author will verify the benefits contained in the criminal sanction of sirri marriage whether it can be used as a basis for arguing using *maslahah mursalah*. This is done by looking at the conditions for probate using *maslahah mursalah* and then applying them to the benefits of the criminal sanction of sirri marriage, which then the results of the verification will later be used as the basis for probate using *maslahah mursalah*.

There are three conditions for probate using *maslahah mursalah*, as follows: first, it must be in the form of factual benefits (*maslahah haqîqiyah qot'iyah*) not in the form of mere conjecture benefits (*maslahah wahmiyyah*). Second, it must be in the form of general benefits (*maslahah âmmah kulliyyah*) not in the form of personal or individual benefits (*maslahah fardiyah* or *khâshah*). Third, it must be in harmony with and not conflict with the general principles that have been established based on the texts or *ijma'*.³⁰

First, the criminal benefits of unregistered marriage are factual benefits that are actually realized, not just estimates, meaning that the law that is stipulated later will actually generate benefits and avoid or reject harm. The main purpose of the crime of unregistered marriage is to provide a deterrent effect to the perpetrators of unregistered marriage so that the practice of unregistered marriage no longer exists, which in the end will be maintained and the rights and obligations of each husband and wife will be maintained. This happens because there is legal certainty that provides guarantees to husband and wife so that if one of them feels aggrieved, he can sue the authorities. This is different if there are no criminal sanctions for the perpetrators of sirri marriages. The practice of sirri marriage will still be widely practiced in the community because they are not worried that they will be sanctioned if they do it. This of course will be fatal if it happens like that, because the marriage is not registered with the authorities, when one of the parties, both husband or wife neglects their responsibilities, the injured party cannot ask for their rights back because there is no evidence to show that the marriage carried out legally and legally. For this reason, it is necessary to have criminal sanctions that are binding on all citizens so that legal certainty is created. when one of the parties, both husband and wife, neglects their responsibilities, the injured party cannot ask for their rights back because there is no evidence to show that the marriage that was held is valid and has legal force. For this reason, it is necessary to have criminal sanctions that are binding on all citizens so that legal certainty is created. when one of the parties, both husband and wife, neglects their responsibilities, the injured party cannot ask for their rights back because there is no evidence to show that the marriage that was held is valid and has legal force. For this reason, it is necessary to have criminal sanctions that are binding on all citizens so that legal certainty is created.

Second, the criminal benefits of unregistered marriage are general in nature because the beneficiaries are all components of society, not just one or two people who get married. The benefits derived from the existence of the sirri marriage crime are benefits that concern the interests of many people, both from the husband, wife, children and even the wider community feel the benefits derived from this sirri marriage criminal sanction.

Third, the criminal benefits of sirri marriage are in accordance with and in line with the general principles of *tasyri'* and do not conflict with the texts in general. The purpose of marriage is to form a *sakinah, mawaddah* and *warohmah* family. With the criminal sanction of sirri marriage, it will provide the benefits of creating legal certainty that will protect and

³⁰Abdul Wahab Kholaf, *Ushl Fiqh*, (Koiro: Darul 'Ilmi, 1978), halaman 86

maintain the rights and obligations of husband and wife. With the existence of a sirri marriage, it does not mean that marriage is prohibited by syara', but what is sanctioned is not registering a marriage if the marriage itself is legal and lawful because it has fulfilled the requirements and pillars. With the existence of a criminal witness, everyone will register their marriage so that finally the ideals of forming a sakinah, mawaddah and warohmah family will be more easily realized.

Discussion

Based on the explanation above, it can be concluded that the determination of criminal law for perpetrators of sirri marriage is based on the existence of maslahah³¹ is justified, because the conditions have been met with the use of maslahah mursalah berhujjah on the criminal issue of sirri marriage. The existence of criminal sanctions is a necessity that cannot be denied, because without criminal sanctions it will make people freely not register their marriages, because there is nothing that makes them afraid not to register their marriages.

³¹Usul fiqh experts divide maslahah into several types, viewed from several aspects, as follows: in terms of the quality and importance of the benefit, it is divided into three, namely: and hereafter. That is, human life has no meaning if even one of the five principles does not exist. Maslahah Adl-dlaruriyah is divided into five, namely: (1) preserving religion, (2) preserving the soul, (3) preserving reason, (4) preserving offspring, and (5) preserving property. B. Maslahah al-Hajjiyah Is the benefit needed in perfecting the basic (fundamental) benefit in the form of relief to maintain and maintain basic human needs. For example, in the field of worship, it is permitted to summarize (qosr) prayers and break the fast for those who are traveling, in the field of mu'amalah it is permissible to hunt animals and eat good food, it is permissible to buy and sell orders (bay' usalam), cooperation in agriculture (muza'roah) and plantations (musaqoh). C. Maslahah at-Tahsiniyah It is a complementary benefit in the form of breadth that can complement the previous benefit. Or the benefit for which the human need for life does not reach dhoruri, also not to the level of hajjiyah, but these needs need to be met in order to give perfection and beauty to human life. For example, it is recommended to eat nutritious food, dress well, perform sunnah prayers in addition. In terms of the content of maslahah, it is divided into: A. Maslahah al-'Ammah Is a benefit that concerns the interests of many people. This benefit does not mean for the benefit of everyone, but can take the form of the interests of the majority of the people or most of the people. For example, the ulama' allowed to kill those who are heretics who can damage the creed of the ummah, because it involves the interests of the ummah. B. Maslahah al-Khashshah is a personal benefit and this is very rare, such as benefits related to the termination of a person's marital relationship who is declared lost (mauquf). In terms of whether or not maslahah changes, it is divided into: A. Maslahah At-Tsabitah Is a permanent benefit that does not change until the end of time, for example various worship obligations, such as prayer, fasting, zakat and hajj. B. Maslahah Al-Mutagayyiroh Is a benefit that changes according to changes in place, time and subject of law. Benefits like this are related to the problem of muamalah and customs. For example, the problem of food varies from one region to another. In terms of its existence, maslahah according to syara' is divided: A. Maslahah Mu'tabaroh Is a benefit that is supported by syara'. This means that there is a special argument that forms the basis for the form and type of benefit. For example, the punishment for people who drink alcohol, in the hadith of Rasulullah SAW, is understood differently by the scholars of fiqh, due to the difference in the bat used by Rasulullah SAW when punishing people who drink alcohol. B. Maslahah Al-Mulgo Is the benefit that is rejected by the syara', because it is contrary to the provisions and rules that have been outlined by the shari'ah. For example, the syara' stipulates that people who have sex during the day in the month of Ramadan are punished by freeing slaves. Or fasting two months in a row or giving sixty poor people. This obligation is taken from the hadith of the Prophet Muhammad narrated by Imam Bukhari and Imam Muslim. Then there are scholars who state that it is sufficient to fast for one month for reasons of benefit. This benefit, according to the scholars' agreement, is called maslahah al-mulgo and cannot be used as a legal basis. Totok Jumantoro and Samsul Munir Amin, Dictionary of Usul Fiqh, (Amzah Publishers, 2005), cet. number 1. h. 20

The formulation of criminal sanctions for unregistered marriage based on Masalah Mursalah is by considering the factors driving the occurrence of unregistered marriages and the forms of unregistered marriages that occur. Perpetrators of unregistered marriages on the grounds of age, pregnancy out of wedlock, economic factors, convenience factors, parental factors are given light sanctions because the impact is not too large for the continuation of the marriage in the future. Perpetrators of unregistered marriages on the grounds of dishonest intentions, religious differences and barriers to polygamy are given severe sanctions because the impact of the marriage has the potential to create disharmony in the continuity of their household.

Then, based on the forms of unregistered marriages that occur, if someone does a marriage and the marriage is not registered with the authorities and this marriage does not have a guardian and witness, it will be given severe sanctions, because the marriage is invalid and the conditions and pillars are not met. If the marriage is not registered and has a guardian but there is no witness, it is also given heavy sanctions, because the marriage is also invalid. Meanwhile, marriages whose conditions and pillars are met but are not registered and not announced will receive light sanctions because they are only administrative violations. Likewise, for marriages where the conditions and pillars are met, are not registered but announced, they are also subject to light sanctions because they are only administrative violations. For marriages where the conditions and pillars are fulfilled and registered,

Conclusion

Based on the data that has been described previously that the formulation of criminal sanctions for unregistered marriages based on masalah mursalah is based on the factors driving the occurrence of unregistered marriages and forms of unregistered marriages produce two kinds of criminal sanctions, namely severe criminal sanctions and minor criminal sanctions. if applied in the case of marriage in Banaran Village by Zainuddin and Siti Nur Chasanah based on the factors driving the occurrence of sirri marriage, if a criminal sanction is imposed based on masalah mursalah, it will get a light criminal sanction. Because the factors that pushed Zaenuddin and Siti Nur Chasanah's marriage were requests from parents who tried to protect their children from sin.

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