

Criminal Sanctions Against Perpetrators of *Sirri* Marriage Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage in the Concept of *Maslahat* of Sheikh Ramadhon Al-Buthy

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Abstrak

This study analyzes the criminal sanctions for sirri marriages (unregistered marriages) as regulated in Article 143 of the Draft Bill on Substantive Law for Religious Courts using Syekh Ramadhan al-Buthy's concept of maslahat. Employing a juridical-philosophical method, this research examines legal regulations normatively and links them to Islamic values in maqashid syariah. The findings reveal that criminal sanctions for sirri marriages aim to maintain social order through marriage registration, which aligns with the protection of lineage and property. Analysis based on al-Buthy's five criteria of maslahat demonstrates that the sanctions fall within the scope of maqashid syariah, without conflicting with the Qur'an, sunnah, qiyas, or higher maslahat. However, implementing these sanctions faces social resistance due to adherence to classical fiqh views. Educational approaches and administrative incentives are necessary to encourage marriage registration as a legal safeguard. In conclusion, the criminal sanctions against sirri marriages under Article 143 of Rancangan Undang-Undang Hukum Materil Peradilan Agama Bidang Perkawinan align with maslahat principles and can provide societal benefits if implemented wisely.

Keywords: Criminal sanctions, Sirri marriage, Maslahat, Maqashid syariah

INTRODUCTION

The phenomenon of *sirri* marriage has become a problem that often causes polemics in Indonesian society. This practice is often not officially recorded at the Office of Religious Affairs, thus giving rise to various legal, social, and economic implications, especially related to the rights of women and children. The Draft Law on Material Law of Religious Courts, especially Article 143, includes criminal sanctions against perpetrators of *sirri* marriages as an effort to provide better legal protection. However, this provision has raised pros and cons, both from the positive legal perspective and the sharia perspective.¹

This study offers a new approach by examining Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage within the framework of the *maslahat* concept proposed by Sheikh Ramadhon Al-Buthy. This approach focuses on assessing whether criminal sanctions against perpetrators of *sirri* marriages truly bring benefits to individuals and society. Thus, this study not only assesses the normative aspects of the regulation, but also explores the substance of the benefits contained therein based on the perspective of Islamic law.

This study presents a unique contribution by examining Article 143 of the Draft Law on Material Law of Religious Courts which regulates criminal sanctions for perpetrators of *sirri* marriages through the perspective of the concept of *maslahat* formulated by Sheikh Ramadhan al-Buthy. In the current context, *sirri* marriages are often a practice that gives rise to various legal, social,

¹ Mohammad Akbar Sudarso and Surahmad Surahmad, "Keabsahan dan Akibat Hukum Perkawinan yang Dilaksanakan dengan Pemalsuan Identitas," *Jurnal Usm Law Review* 7, no. 2 (June 16, 2024): 716–28, <https://doi.org/10.26623/julr.v7i2.8971>.

and religious problems. Although this practice can be declared valid according to sharia law, it often conflicts with the provisions of positive law in Indonesia which requires the registration of marriages as regulated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage.

The government's move to criminalize *sirri* marriage through Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage has raised controversy among scholars, the public, and legal practitioners. One crucial issue is the tension between state law which stipulates the obligation to register marriages and the sharia view which prioritizes the fulfillment of the pillars and requirements of marriage. This study offers a new approach by applying the *maslahat* al-Buthy framework to assess the extent to which the policy can be said to bring benefits and avoid damage to society.

Sheikh Ramadhan al-Buthy emphasized that the concept of *maslahat* must meet certain criteria so as not to deviate from the objectives of sharia, namely maintaining the five main principles (*al-kulliyat al-khams*): religion (*hifdz ad-din*), soul (*hifdz an-nafs*), reason (*hifdz al-aql*), descendants (*hifdz an-nasl*), and property (*hifdz al-mal*). In this context, the study examines whether the regulation of criminal sanctions for *sirri* marriages is in accordance with the objectives of sharia intended by al-Buthy.² Penelitian ini juga memperluas cakupan dengan menganalisis bagaimana hukum pidana ini mempengaruhi stabilitas sosial dan hukum, serta relevansinya dengan dinamika kehidupan masyarakat Muslim modern.³

This study provides a different approach from previous studies that generally only discuss positive legal aspects or traditional fiqh reviews. By systematically integrating *maslahat* theory, this study attempts to bridge the perspective of sharia law with the needs of modern regulations based on public interest. Therefore, this study is expected to provide a new perspective and comprehensive solution in implementing the Draft Law on Material Law of Religious Courts in the Field of Marriage Article 143 concerning *sirri* marriage. Research related to *sirri* marriage generally focuses more on the review of fiqh or the implications of positive law in Indonesia. However, not many have linked this issue to the theory of *maslahat* of Sheikh Ramadhon Al-Buthy in depth. In addition, discussions regarding the effectiveness of criminal sanctions against perpetrators of *sirri* marriage in the context of public and individual interests are also still minimal. Therefore, this study aims to fill this gap by placing the concept of *maslahat* as the main basis for analysis.⁴

This study has several important aspects, such as a theoretical perspective that applies *maslahat* theory in analyzing legal policies related to *sirri* marriages, practical implications in providing policy recommendations based on a balance between positive legal norms and sharia principles, and social relevance in examining the impact of criminal sanctions on society, especially the protection of women's and children's rights in marriage. This study also provides an academic contribution in the form of a comprehensive study that is relevant to the renewal of Islamic family law in Indonesia. By integrating the *maslahat* theory of Sheikh Ramadhon Al-Buthy in the analysis of Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage, this study is expected to provide a more holistic and relevant perspective in answering contemporary issues related to *sirri* marriages.

METHOD

This study uses a juridical-philosophical method to examine the criminal sanctions against perpetrators of *sirri* marriages in Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage through the perspective of the concept of *maslahat* of Sheikh Ramadhan al-Buthy. The juridical approach aims to understand the rule of law normatively, including an analysis of

² Muhammad Sa'id Ramadhân al-Buthy, *Muhadharat Fi Al-Fiqh al-Muqaran* (Bairut: Dar Al-Fikr, 1975), p.76.

³ Bustanul Arifin, "Kehujjahan Maslahah Mursalah Dalam Perspektif Imam Al-Ghazali Dan Najm Al-Din Al-Tufi," *Al-Mawaddah: Jurnal Studi Islam dan Hukum Keluarga (Ahwal Al-Syakhsyiyah)* 1, no. 1 (July 30, 2024): 12–22, <https://doi.org/10.61181/al-mawaddah.v1i1.426>.

⁴ Roy Suwarno Putro et al., "Perkawinan Siri Antara Legalitas Hukum Dan Implikasi Sosial," *Philosophiamundi* 2, no. 4 (July 7, 2024): 29–36.

the text of Article 143 and its relevance to other laws and regulations, such as the Marriage Law and the Compilation of Islamic Law.⁵ A philosophical approach is used to explore the values of justice, utility, and welfare that underlie the application of criminal sanctions. This study highlights the theory of *maqashid sharia*, especially the protection of religion, soul, descendants, and property.⁶

The research data was obtained through a literature study by reviewing primary legal materials such as the Draft Law on Material Law of Religious Courts in the Field of Marriage and secondary materials in the form of the works of Sheikh Ramadhan al-Buthy, including *Dawabit al-Maslahat fi al-Syari'ah al-Islamiyyah*. The analysis was conducted descriptively-qualitatively, linking the concept of *maslahat* with the regulation of criminal sanctions. This study evaluates whether the regulation of criminal sanctions for *sirri* marriages meets the five criteria of al-Buthy's *maslahat*, including its conformity with *maqashid sharia*.⁷ The results of this research are expected to provide insight into how positive legal policies can reflect Islamic values, as well as provide recommendations for implementing more beneficial laws.

RESULTS

Definition and Concept of *Sirri* Marriage

Sirri marriage etymologically comes from the Arabic word "*sirrun*," which means secret, silent, or hidden.⁸ This term refers to a marriage that is carried out secretly, without official registration at a state institution. This understanding includes two aspects: first, a marriage that is carried out without being announced to the public; second, a marriage that is not registered at an official institution such as the Office of Religious Affairs. In Maliki fiqh, *sirri* marriages is a marriage that is kept secret at the request of the husband, including from the family or local community. The madzhab of Hanafi, Maliki, and Syafi'i thought generally do not allow this practice in Islam.⁹ A. Zuhdi Muhdor defines *sirri* marriage as a marriage that does not involve an official officer (Marriage Registrar/Head of Religious Affairs Office) so that the couple does not have a valid marriage certificate. In the view of the Islamic community in Indonesia, *sirri* marriage only fulfills the pillars and requirements of marriage according to religion, namely the presence of a prospective husband and wife, a female guardian, two fair witnesses, and *ijab* and *kabul*. However, administrative aspects such as official registration are often ignored.

Over time, the understanding of *sirri* marriage has changed. In the past, *sirri* marriage was more often associated with marriages that did not meet the requirements and pillars of marriage perfectly. Umar bin Khattab, for example, once rejected a marriage that only involved one male witness and one female witness. Now, the term *sirri* marriage more often refers to a marriage that is valid according to religion, but is not registered with an official institution. In the Compilation of Islamic Law, *sirri* marriage is not valid according to state law because it violates the provisions for registering marriages.¹⁰

The fatwa of the Sheikh of al-Azhar, Sheikh Jaad al-Haq, distinguishes marriage regulations into two: sharia regulations (rules on the validity of a marriage according to sharia) and tawsiqy regulations (administrative regulations aimed at registering a marriage to avoid legal problems). This fatwa emphasizes that although a secret marriage is valid according to sharia, registration of the marriage is highly recommended to provide legal protection for the couple.¹¹

⁵ Suratman and Phillips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2015), p.76.

⁶ Catherine Marshall and Gretchen B. Rossman, *Designing Qualitative Research*, Sixth edition (Los Angeles, California: SAGE, 2016), p.76.

⁷ Donna M. Mertens, *Research and Evaluation in Education and Psychology: Integrating Diversity with Quantitative, Qualitative, and Mixed Methods*, 3rd ed (Los Angeles: Sage, 2010), p.98.

⁸ Mahmud Yunus, *Kamus Arab Indonesia* (Jakarta: Mahmud Yunus, 2018), p.43.

⁹ Mukhtaruddin Bahrum, "Legalisasi Nikah Sirri Melalui Isbat Nikah Menurut Kompilasi Hukum Islam," *Jurnal Diskursus Islam* 1, no. 2 (August 29, 2013): 210–30, <https://doi.org/10.24252/jdi.v1i2.6609>.

¹⁰ Ashadi L. Diab, "Legalisasi Nikah Sirri Melalui Isbat Nikah Perspektif Fikih (Telaah Terhadap Kompilasi Hukum Islam)," *Al-'Adl* 11, no. 2 (July 2, 2018): 36–61, <https://doi.org/10.31332/aladl.v1i2.1248>.

¹¹ Ali Akbar, "Nikah Sirri Menurut Perspektif Al-Quran," *Jurnal Ushuluddin* 22, no. 2 (December 1,

According to Islamic law, *sirri* marriage is considered valid if it fulfills the pillars and requirements of marriage, such as the presence of a guardian, witnesses, *ijab*, and *qabul*. However, according to Law Number 1 of 1974 concerning Marriage, registering a marriage is a legal obligation. The Compilation of Islamic Law (KHI) also emphasizes the importance of registering a marriage to provide legal certainty and avoid legal risks, such as the failure to fulfill the rights of the spouse or child.¹²

Sirri marriages pose various legal and social risks, such as the unclear legal status of the couple, children, or inheritance rights. From an Islamic perspective, *sirri* marriages are legally valid, but registration of the marriage is highly recommended to ensure legal protection. The Compilation of Islamic Law and the Indonesian Marriage Law stipulate that registration is an important administrative step to provide legality and legal protection to couples and families.

Ramadhan Al-Buthy's Concept of *Maslahat*

Sheikh Ramadhan al-Buthy was born in 1929 in the village of Jilika, on the border between Turkey, Iraq and Syria, to a religious and intelligent Sunni Kurdish family. Since childhood, he received religious education from his father, Sheikh Mula Ramadhan, a great scholar who later moved his family to Damascus after Kemal Ataturk's coup. There, al-Buthy continued his formal education at Ma'had al-Taujih al-Islami and then completed his sharia education at Al-Azhar University, Egypt, until he obtained a doctorate with a dissertation *Dawabit al-Maslahat fi al-Syari'ah al-Islamiyyah*.¹³ This dissertation became one of the foundations of his thinking about *maslahat* in Islamic law.

Al-Buthy is known as a multidisciplinary scholar. In addition to mastering sharia, he is an expert in philosophy, creed, Qur'anic scholars, and hadith. As an academic, he contributed greatly to the University of Damascus, becoming a Professor, Dean of the Faculty of Sharia, and Head of the Department of Aqidah and Religion.¹⁴ His international activities include participation in Islamic conferences in various countries, such as Algeria, Saudi Arabia, and Turkey. In addition, he is also known as a prolific writer with works covering various fields, including sharia, philosophy, and culture. He died a martyr in 2013 in a bomb attack while leading a routine study at the al-Iman mosque, Damascus.¹⁵

Al-Buthy's concept of *maslahat* emphasizes the benefits recognized by the Shari'a to maintain the five main objectives (*maqashid shari'a*): religion, life, reason, lineage, and property. In his work *Dawabit al-Maslahat*, he sets out five criteria for *maslahat* to be accepted as a legal basis, namely that it must be included in the *maqashid shari'a*, not contradict the Qur'an, not contradict the Sunnah, be in line with *qiyas*, and not violate higher *maslahat*.¹⁶ The benefits recognized by the Shari'a are grouped into several categories, such as the *mu'atsirah* benefits which are recognized by the text or *ijma'*, the *mula'imah* benefits which are relevant to the *maqashid* of the sharia, the *murlah* benefits which are not regulated by the text but are in accordance with the *maqashid*, and the *mulghah* benefits which are rejected by Sharia.¹⁷

Al-Buthy also emphasized that Islamic law, including that related to criminal law, remains relevant in the modern context. He rejected the view that Islamic law such as *qisas* or *rajm* is no longer in accordance with the times. According to him, Islamic law functions to maintain the five main

2014): 213–23, <https://doi.org/10.24014/jush.v22i2.737>.

¹² Nur Wahidah, "Nikah Sirri Dalam Perspektif Yuridis Dan Sosiologis," *Syariah: Jurnal Hukum Dan Pemikiran* 16, no. 1 (2016): 33–46, <https://doi.org/10.18592/sy.v16i1.1434>.

¹³ Moh Sofyan Jailani and Ach Zayyadi, "Rekonstruksi Makna Jihad Di Era Modern: Telaah Muhammad Ramadhan Al-Buthy Atas Ayat-Ayat Jihad," *Kaganga: Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 7, no. 2 (August 20, 2024): 712–23, <https://doi.org/10.31539/kaganga.v7i2.11680>.

¹⁴ Muhammad Sa'id Ramadhân al-Buthy, *Qadhaya Fiqhiyyah Mu'ashirah* (Bairut: Dar Al-Fikr, 1973), h. 98.

¹⁵ Arifin, "Kehujjahan Masalah Mursalah Dalam Perspektif Imam Al-Ghazali Dan Najm Al-Din Al-Tufi."

¹⁶ Muhammad Sa'id Ramadhân al-Buthy, *Dhawâbith Al-Maslahah Fî as-Syari'ah al-Islâmiyah* (Bairut: Mu'assasah ar-Risâlah, 1973), p.225.

¹⁷ Farichatul Fauziyah and Mukhammad Alfani, "Hadis-Hadis Misoginis: (Studi Komparasi Pemikiran Sa'id Ramadhan Al-Buthi Dan Abou El Fadl)," *Mushaf Journal: Jurnal Ilmu Al Quran Dan Hadis* 4, no. 2 (July 27, 2024): 327–40.

principles of *maqashid* sharia and must be applied to maintain the welfare of the people. This idea shows that the concept of *maslahat* that he initiated is not only relevant to the discussion of classical law but also in overcoming contemporary legal issues, such as the regulation of *sirri* marriages in the Draft Law on Material Law of Religious Courts in the Field of Marriage.

Draft Law on Religious Courts

The Religious Courts Bill regulates criminal sanctions related to *sirri* marriages in Chapter XXI, Criminal Provisions, Articles 143 to 151. These articles detail various violations related to marriage governance, including *sirri* marriages, mut'ah marriages, polygamy without permission, divorce outside the courts, and other actions that violate marriage administration regulations.

Article 143 stipulates that anyone who enters into a marriage without the presence of a Marriage Registrar can be subject to a fine of up to six million rupiah or imprisonment for six months. This article specifically targets the practice of *sirri* marriages or underhand marriages, which are not officially registered at the Office of Religious Affairs.

Article 144 states that mut'ah marriages, as explained in Article 39, are punishable by imprisonment for up to three years, with the provision that the marriage is null and void. Meanwhile, Article 145 stipulates sanctions for those who practice polygamy without first obtaining permission from the court. This violation can also be subject to a fine of up to six million rupiah or imprisonment for six months. The provisions in Article 146 target perpetrators of divorces carried out outside of court supervision, with the threat of fines and similar imprisonment. Meanwhile, Article 147 provides sanctions for men who commit adultery resulting in pregnancy but refuse to marry the woman, with the threat of imprisonment for three months.

Articles 148 to 151 focus on violations committed by Marriage Registrars or other parties who act as if they were guardians of judges or Marriage Registrars without authority. The penalties stipulated include imprisonment for up to three years or a maximum fine of twelve million rupiah. Article 151 emphasizes the classification of criminal acts in this provision. Some violations, such as *sirri* marriages and administrative violations, are classified as violations, while crimes such as *sirri* marriages and other illegal acts are categorized as criminal acts.

Overall, these articles demonstrate the government's efforts to provide legal certainty for marriage practices in Indonesia, including sanctions for *sirri* marriages and similar violations. However, there are still groups of people who tend to ignore this rule, adhering to classical fiqh which views the validity of a marriage only based on the pillars and requirements of religion, without considering the aspect of official registration. This creates tension between positive law and traditional understanding in society.

DISCUSSION

A secret marriage, although valid according to religion if it fulfills the pillars and requirements of marriage, often gives rise to legal problems in countries that require marriage registration to ensure legality.¹⁸ In the Indonesian context, Article 143 of the Draft Law on Material Law of Religious Courts regulates criminal sanctions for perpetrators of *sirri* marriages, namely a maximum fine of six million rupiah or imprisonment of up to six months. This policy aims to create administrative order, provide legal protection for women and children, and maintain social justice. However, this policy has drawn controversy, especially from people who still adhere to classical fiqh. In this case, the *maslahat* theory of Sheikh Ramadhan al-Buthy can be a philosophical basis for assessing whether the sanctions bring greater benefits or actually cause harm.

Sanctions for *Sirri* Marriage and the Purpose of *Maqashid* Syariah

Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage aims to ensure that every marriage in Indonesia is officially registered, providing legal certainty for all

¹⁸ Suhaeri Suhaeri, "Mengurai Benang Kusut Dualisme Nikah Sirri (Upaya Meratifikasi Rancangan Undang-Undang Nikah Sirri)," *Musāwa Jurnal Studi Gender Dan Islam* 12, no. 1 (January 29, 2013): 83–101, <https://doi.org/10.14421/musawa.2013.121.83-101>.

parties, especially women and children who are vulnerable to discriminatory treatment due to the status of *sirri* marriages. From the perspective of *maqashid* sharia, this regulation is directly related to the five basic principles (*al-kulliyat al-khams*) which include protection of religion (*hifdz ad-din*), soul (*hifdz an-nafs*), reason (*hifdz al-aql*), descendants (*hifdz an-nasl*), and property (*hifdz al-mal*).¹⁹ In this case, the main focus of Article 143 is the protection of descendants and property. When *sirri* marriages are not registered, the legal status of children born from the marriage becomes unclear, which has an impact on inheritance rights and other civil rights.

However, the application of criminal sanctions must also consider the balance between legal protection and religious values that are already inherent in society. Some people view *sirri* marriages as valid based on Islamic law, even though they are not registered at the Office of Religious Affairs. In this context, positive law needs to dialogue with religious values so as not to cause widespread social resistance.²⁰

According to Sheikh Ramadhan al-Buthy, *maslahat* is a benefit recognized by sharia to protect the five main objectives of *maqashid* sharia.²¹ Al-Buthy established five criteria so that *maslahat* can be used as a legal basis: it falls within the objectives of sharia, does not conflict with the Qur'an, does not conflict with the sunnah, does not conflict with *qiyas*, and does not violate higher *maslahat*.²²

From this perspective, the application of criminal sanctions for *sirri* marriages can be analyzed as follows:

Entering the scope of sharia objectives

The application of criminal sanctions for *sirri* marriages in Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage aims to maintain social order through the obligation to register marriages. In the context of *maqashid* sharia, registering marriages is very relevant to the protection of descendants (*hifdz an-nasl*) and property (*hifdz al-mal*). One important implication of registration is the clarity of the legal status of children born from the marriage. If the marriage is not registered, children have the potential to lose their rights, such as inheritance rights and other civil rights, because their status is not recognized by state law.²³

In addition, marriage registration provides legal protection for women. In cases of divorce, women are often disadvantaged when the marriage does not have administrative evidence. For example, women can lose their right to maintenance or joint property rights because there are no official documents proving the marriage. Therefore, the obligation to register in Article 143 not only protects descendants and property, but also creates a broader social order, which is one of the main objectives of Islamic law.

Does not conflict with the Holy Qur'an

The Qur'an establishes the pillars and conditions of marriage, such as the presence of a guardian, witnesses, and *ijab kabul*, but does not explicitly require marriage registration. The verses related to marriage focus more on protecting the rights of couples, justice in the household, and preventing prohibited acts such as adultery (QS. An-Nur: 32, QS. Al-Baqarah: 221). Marriage registration, although not directly mentioned in the Qur'an, is an administrative necessity that supports the goal of sharia to protect the rights of couples and descendants.²⁴

¹⁹ Bustanul Arifin, "Eksistensi Maqashid Al-Shari'ah Imam al-Syathiby Dalam Perkembangan Hukum Ekonomi Syari'ah," *At-Tahdzib: Jurnal Studi Islam Dan Muamalah* 3, no. 2 (2015): 75–99.

²⁰ Irwansyah, "Tinjauan Hukum Islam Terhadap Persetujuan Ninik Mamak Sebagai Syarat Administrasi Perkawinan Di Kantor Urusan Agama (KUA) (Studi Kasus Nagari Simalidu, Kec. Koto Salak, Kab. Dharmasraya)," <http://Repo.Iainbatusangkar.Ac.Id/Xmlui/Handle/123456789/21065>.

²¹ Muhammad Sa'id Ramadhân al-Buthy, *Al-Jihadu Fi al-Islam: Kaifa Nafhamuhu? Wa Kaifa Numarisuhu?* (Bairut: Dar Al-Fikr, 1975), h. 98.

²² al-Buthy, *Dhawâbith Al-Maslahah Fî as-Syarî'ah al-Islâmiyah*, h. 534.

²³ Akbar, "Nikah Sirri Menurut Perspektif Al-Quran."

²⁴ Uzlâh Wahidah, "Nikah Sirri â€œKajian Analisa Teori Sosiologiâ€•," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 14, no. 1 (April 9, 2018): 83–94.

In the context of public policy, marriage registration aims to avoid major losses that can arise from marriages that do not have legal evidence. Therefore, the obligation to register and criminal sanctions against perpetrators of *sirri* marriages do not contradict the Qur'an, as long as this registration does not prevent the validity of the marriage according to sharia. In other words, registration does not damage the pillars and requirements of marriage, but adds administrative elements for the sake of legal protection.

Does not conflict with the Sunnah

In the Sunnah, marriage registration is not explicitly discussed. However, the Sunnah teaches the importance of maintaining justice, protection, and order in society. The Prophet Muhammad SAW recommended the announcement of marriage to the community, as stated in the hadith: "Announce the marriage and beat the tambourine for it" (HR. Tirmidhi). This announcement aims to avoid slander, maintain clarity of the marital status, and protect the rights of the parties involved.²⁵

Marriage registration can be considered as one of the modern ways to realize the values of the sunnah. By registering a marriage, the status of the couple becomes clear before the law, thus preventing conflict or uncertainty in the future. Therefore, although it is not directly mentioned in the sunnah, the obligation to register a marriage is in line with the principles of justice and order recommended by the Prophet Muhammad SAW.²⁶

Does not conflict with Qiyas

The application of criminal sanctions against *sirri* marriages can be analogous to other policies aimed at preventing major losses (mafsadah) for society.²⁷ In qiyas, new laws that are not directly mentioned in the text can be applied if they have a relevant illat (legal reason) and are in line with the objectives of the sharia. In this case, marriage registration is an administrative means to prevent various mafsadah, such as the loss of children's and women's rights, as well as future legal conflicts.²⁸

In addition, marriage registration can be compared to the practice of managing inheritance. Although the Qur'an does not require written documents in the distribution of inheritance, modern administration that requires such documents is very helpful in preventing disputes. With a similar analogy, the obligation to register marriages and the application of criminal sanctions against *sirri* marriages are administrative measures to maintain order and prevent disputes in society. This shows that criminal sanctions against *sirri* marriages do not contradict the principle of qiyas in the Shari'a.

Does not violate the higher interest

The main benefit of criminal sanctions against *sirri* marriages is legal protection for women, children and society as a whole.²⁹ When compared to the benefits of individual protection in *sirri* marriages, the benefits of legal protection through registration have a broader and longer-term impact. For example, in cases of divorce or death of one of the partners, registration of marriage becomes an important basis for ensuring the rights of children and wives are protected.³⁰

In addition, the obligation to register marriages prevents abuse of the status of *sirri* marriages, such as avoidance of responsibility by one of the partners. In this case, the benefit of legal protection is higher than the personal benefit resulting from the practice of *sirri* marriages. Thus, the application of this criminal sanction supports broader social benefits without violating higher benefits.

²⁵ Arifin, "Kehujjahan Masalah Mursalah Dalam Perspektif Imam Al-Ghazali Dan Najm Al-Din Al-Tufi."

²⁶ Umar Haris Sanjaya and Dita Fadillah Putri, "Konstruksi Legitimasi Dan Akibat Perkawinan Dibawah Tangan: Mengulang Kawin Atau Itsbat Nikah?," *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 3 (September 30, 2024): 490–511, <https://doi.org/10.20885/iustum.vol31.iss3.art1>.

²⁷ al-Buthy, *Dhawâbith Al-Maslahah Fî as- Syarî'ah al-Islâmiyah*, h. 543.

²⁸ Anton Jamal, "Ijtihad Dan Qiyas Menurut Imam Syafi'i: Hubungan Qiyas Dengan Berbagai Metode Ijtihad Dalam Ushul Fiqh," *MAQASIDI: Jurnal Syariah Dan Hukum*, June 5, 2024, 1–10, <https://doi.org/10.47498/maqasidi.v4i1.3125>.

²⁹ al-Buthy, *Dhawâbith Al-Maslahah Fî as- Syarî'ah al-Islâmiyah*, h. 523.

³⁰ Jailani and Zayyadi, "Rekonstruksi Makna Jihad Di Era Modern."

Challenges and Implications

Although criminal sanctions against *sirri* marriages have a basis in benefit, their implementation faces a number of challenges. One of the biggest challenges is resistance from some people who still adhere to classical Islamic jurisprudence. In their view, a marriage is valid if it meets the pillars and requirements of religion, without the need for registration. This resistance can make the application of criminal sanctions difficult to accept, especially in areas with a strong understanding of religion.

Another challenge is the possibility of the emergence of secret *sirri* marriage practices to avoid sanctions. This can actually increase the risk of legal uncertainty and harm the parties involved. Therefore, the government needs to educate the public about the importance of registering marriages, not only as a legal obligation, but also as a form of protection for individual rights.

In addition, a restorative legal approach can be an alternative to reduce public resistance. For example, the government can provide incentives for couples who register their marriages, such as the elimination of fines or the provision of administrative assistance. This approach can create better awareness without creating direct confrontation with cultural and religious values.

Within the framework of Sheikh Ramadhan al-Buthy's *maslahat* concept, criminal sanctions against perpetrators of *sirri* marriages in Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage can be considered in line with the *maqashid* sharia, especially protection of descendants and property. This regulation seeks to create social order and provide legal certainty for all parties. However, the implementation of this regulation must be carried out with an approach that takes into account social and religious sensitivity. Thus, positive law can be accepted by society and the objectives of *maslahat* can be achieved without causing widespread resistance.

CONCLUSION

Criminal sanctions against perpetrators of *sirri* marriages in Article 143 of the Draft Law on Material Law of Religious Courts in the Field of Marriage are in line with the concept of *maslahat* of Sheikh Ramadhan al-Buthy and *maqashid* sharia, especially in terms of protecting descendants and property. Registration of marriage is an administrative step that supports justice, order, and legal protection in society. Although this sanction does not conflict with the Qur'an, sunnah, or qiyas, its implementation must take into account the social and cultural sensitivities of the community. With the right approach, positive law can be accepted by society and the broader goal of *maslahat* can be achieved. To overcome this challenge, the government needs to provide education to the community about the importance of registering marriages, not only as an administrative obligation, but also as part of protecting individual rights. In addition, a restorative legal approach can be considered as an alternative, such as providing incentives for couples to register their marriages.

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