

## Fuqaha's Views On Siri Marriage

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### Abstract

*Marriage is a sacred institution that is safeguarded by Sharia to ensure fairness, openness and sustainability of the relationship between husband and wife. One of these safeguards is the presence of guardians and witnesses in the marriage contract. Hikmah at-Tasyri' shows that the presence of guardians and witnesses serves as a deterrent to fraud and as a form of strengthening the marriage bond. In fact, the Prophet Muhammad SAW recommended announcing the marriage through a celebration or walimah. This research uses a qualitative approach with a library research method, which examines the opinions of classical and contemporary scholars regarding the importance of the presence of witnesses and publication in marriage. The results show that marriage that is not witnessed, not publicized, and not registered is not permissible. As for marriages that are witnessed by two witnesses but the witnesses have been "ordered" or are not independent, it is ruled makruh by several companions and tabi'in such as Umar RA, Urwah, Abdullah ibn Ubaidillah, Ibn Utbah, Sa'bi, Nafi' (servant of Ibn Umar), as well as imams such as Abu Hanifah, Shafi'i, and Ibn Munzir. Thus, it can be concluded that the presence of witnesses and publication in marriage is a sunnah muakkadah that is highly recommended to maintain the transparency and legality of marriage in the view of sharia.*

**Keywords:** Views, Siri Marriage, Fuqaha.

### Abstrak

Pernikahan merupakan institusi sakral yang dijaga oleh syariat untuk memastikan keadilan, keterbukaan, dan keberlanjutan hubungan antara pasangan suami istri. Salah satu bentuk penjagaan tersebut adalah melalui kehadiran wali dan saksi dalam akad nikah. Hikmah at-Tasyri' menunjukkan bahwa kehadiran wali dan saksi berfungsi sebagai pencegah kecurangan dan sebagai bentuk penguatan ikatan pernikahan. Bahkan, Nabi Muhammad SAW menganjurkan untuk mengumumkan pernikahan melalui perayaan atau walimah. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi kepustakaan (library research), yang mengkaji pendapat-pendapat ulama klasik dan kontemporer mengenai pentingnya kehadiran saksi dan publikasi dalam pernikahan. Hasil penelitian menunjukkan bahwa pernikahan yang tidak

disaksikan, tidak dipublikasikan, dan tidak dicatatkan hukumnya tidak boleh. Adapun pernikahan yang disaksikan oleh dua orang saksi namun saksi tersebut telah "dipesan" atau tidak independen, dihukumi makruh oleh beberapa sahabat dan tabi'in seperti Umar RA, Urwah, Abdullah ibn Ubaidillah, Ibnu Utbah, Sa'bi, Nafi' (sahaya Ibnu Umar), serta para imam seperti Abu Hanifah, Syafi'i, dan Ibnu Munzir. Dengan demikian, dapat disimpulkan bahwa kehadiran saksi dan publikasi dalam pernikahan merupakan sunnah muakkadah yang sangat dianjurkan untuk menjaga transparansi dan legalitas pernikahan dalam pandangan syariat.

**Kata Kunci:** Pandangan, Pernikahan Siri, Fuqaha.

## INTRODUCTION

Wisdom at tasri' (Ahmad al Jurjawi, tt, p. 150) which can be understood that in order to maintain the strength of the marriage bond from the act of fraud of one of the parties, the marriage must be attended by guardians and witnesses, even in order to strengthen the existence of two witnesses, the Prophet once encouraged the companions to announce the marriage that had been carried out by making a party (walimatul urusy or by beating the tambourine as a sign of a marriage that was last. As the Prophet said; *A'linu Hazan Nikah Wad Thousand 'Alaihi Bighairi Bali Aid Dufufi*.<sup>1</sup>

Of course, the prophet's command mentioned above is not a commandment without a purpose, but there must be a purpose that religion wants from the recommendation of the marriage publication. One of the purposes of the publication is the recognition of the public about the occurrence of a marriage between two people and with this publication it is hoped that the status of the marriage will be more guaranteed.<sup>2</sup>

Marriages that are not published in the view of scholars have three opinions, namely first, series marriages that are carried out without witnessing, without being published and without being recorded in official records, according to scholars of marriage law is invalid. Second, the marriage contract which was attended by witnesses but the

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<sup>1</sup> al Yami as Sunaini, Muhammad Ibn Ismail al Amir. (1991). Subul as Salam, Kitab Nikah, Cet I, Beirut; Dar alfikr III.

<sup>2</sup> Khoiriyah, R. (2017). ASPEK HUKUM PERLINDUNGAN PEREMPUAN DAN ANAK DALAM NIKAH SIRI. Sawwa: Jurnal Studi Gender, 12(3), 397-408. doi: <https://doi.org/10.21580/sa.v12i3.2094>

witnesses were ordered to keep the existence of the marriage secret.<sup>3</sup> In this matter, there was a debate among the scholars, namely about the existence of publications in marriage. Some scholars state that the existence of witnesses is the pillar of marriage and the existence of I'lan is not a condition that affects the shah's or not marriage.

Third, the opinion that states that the presence of witnesses and i'lan is not required in marriage, but both are only sunnah when there is a contract as evidence in the event of denial. This is seen and based on the existence of a marriage performed by Hasan Ibn Ali without the presence of witnesses but after that the marriage was made public. And once in a time Umar ibn Khattab aborted the had of qazaf adultery against a friend because the accused had performed a marriage that was not witnessed and not publicized.

A publicized marriage is not a mandatory commandment but only a sunnah which means that if it is done it will be rewarded and if it is left innocent. However, Abu Bakr as-Siddieq stated that nikah siri is a marriage that is not witnessed and not publicized and marriages like this are not allowed or prohibited.<sup>4</sup> However, the prohibition in this case is not so clear whether the prohibition is makruh as the Prophet did not like it or whether the prohibition is haram.

However, Umar ibn Khattab was once reported about a marriage that was carried out only in the presence of witnesses of a man and a woman, then he viewed siri marriage with the criteria of marriage which was only witnessed by a man and a woman as the same law as adultery. As for the law of I'lan marriage according to Malikiyah scholars is mandatory, as this was stated by Abu Bakr Abd al Azis a follower of Maliki who stated that a siri marriage by ordering the witnesses to keep the marriage a secret is canceled so that the marriage is i'lankan.<sup>5</sup>

The main issues are discussed in the form of the following questions: What is the opinion of the fuqoha on a marriage that is not publicized and not witnessed? And what is the opinion of the scholars of marriage where two witnesses are present but the witnesses are ordered

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<sup>3</sup> Wahyudani, Z. (2020). KEABSAHAN NIKAH SIRI DALAM PERSPEKTIF MASLAHAH. *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, 12(1), 44-63. Doi: <https://doi.org/10.32505/jurisprudensi.v12i1.1508>

<sup>4</sup> Sobari, A. (2018). Nikah Siri Dalam Perspektif Islam. *Mizan: Journal of Islamic Law*, 1(1). Doi: <https://doi.org/10.32507/mizan.v1i1.117>

<sup>5</sup> al Muqaddasi, Abu Muhammad Abd Allah ibn Ahmad ibn al Qudamah al Muqaddasi. (tt p. 538), al Mughni li ibn al Qudamah, al Maktabah al Jumhuriyah al Arabiyah, vi.

not to publicize the marriage? What is the ruling on witnessing and I'lan in the view of the fuqoha?

The research objectives to be achieved in this presentation are, to find out the views of fuqaha in siri marriage. And to find out the marriage in the validity of the marriage contract. The usefulness of this research to be achieved in this presentation is, as a medium and vehicle to add to the wealth of knowledge, especially Muslims related to siri marriage, so that it can be used as a reference in carrying out a marriage.

## **RESEARCH METHODS**

This research uses a normative descriptive method, which is research that aims to describe objectively and thoroughly about a particular phenomenon or symptom. In this case, the focus of the research is to describe the fuqoha's views on siri marriage. Based on its type, this research is included in library research, which is research conducted by collecting data from various literatures, such as classical books and contemporary books that are relevant to the topic under study.<sup>6</sup>

The data sources in this research consist of primary and secondary data. Primary data is obtained directly from the original sources, namely fiqh books and the opinions of fuqoha who discuss siri marriage. Meanwhile, secondary data is obtained from other supporting literature such as books, journals, and documents related to the research topic, in order to enrich and strengthen the analysis.<sup>7</sup>

After the data is collected, the next step is to conduct an editing process to ensure the completeness and accuracy of the information. The data that has been prepared is then analyzed using the comparative method, namely by comparing the opinions of the fuqoha regarding siri marriage to find similarities and differences in views. This approach aims to produce a deeper and more comprehensive understanding of the various perspectives of Islamic law on the practice of siri marriage.<sup>8</sup>

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<sup>6</sup> Koentjaraningrat, *Metode Metode Penelitian Masyarakat*, Gramedia, Jakarta, 1981, h. 29

<sup>7</sup> Louis Gootshalk, *Understanding History a Primer Of Historical Method*, Nugroho Noto Susanto, UI Press, Jakarta, 1985, h.32

<sup>8</sup> Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, Renika Cipta, Jakarta, 1998, h.197

## RESULTS AND DISCUSSION

### Siri Marriage Without Witnesses, Publication, and Official Registration

In the form of nikah siri, which is conducted without witnesses, without being publicized and without being recorded in official records.<sup>9</sup> According to the fuqaha, this form of nikah sirri is not valid, because one of the pillars is not fulfilled, namely the presence of two witnesses.<sup>10</sup> This opinion is the opinion of the Sunnah, Druz<sup>11</sup> and Jumrur Ulama', although Abu Saur, Abi Laila and Abi Bakr do not require the presence of witnesses in marriage.<sup>12</sup> The latter opinion is the same as that of Imam Malik, which also means that witnesses are not included in the pillars of marriage<sup>13</sup>

However, because the majority of the fuqaha have determined that the witness is included in the pillars of marriage, the opinion that states that nikah siri in this form is not valid is more acceptable. The argument they used was the hadith of the Prophet which reads *La nikaha illa biwaliyyin wasyahiday 'adlin*.<sup>14</sup> And the hadith of the Prophet reads: *Ainamam raatun nakahat bighairi izini waliyyiha wasyahidai 'adlin fanikahuha batilun faindakhala biha falaha al mahru istajarru fassulton waliyyu man la waliyalahu*.

From these two hadiths, we can see that the existence of two witnesses is a necessity that should not be ignored, so Ala'uddin stated that a marriage contract without witnesses is invalid. (Ala ad Din Abu al-Hasan Ali ibn Sulaiman al-Mardawi al Hambali, tt, p. 102) The testimony in this case is in order to prove that there has been a valid marriage between a man and a woman so that there is no way for both parties to deny the marriage.<sup>15</sup> Besides being a tool to anticipate the

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<sup>9</sup> Mahmud Syaltut. (tt, p. 268). al Fatawa, Dar al Qalam.

<sup>10</sup> al Bajuri, Syaikh Ibrahim al Bajuri, tt, p. 132. Hasyiyah Syaikh Ibrahim al Bajuri, Beirut: Dar al Fikri, tt, ii.

<sup>11</sup> Ummar Farrukh, tt, p.90. *al Usrah fi asy Syar'I al Islami*, Beirut: al Maktabah al Asriyyah.

<sup>12</sup> Badran, Badran abu al Ainaini. (tt, p. 61). *az Zawaj wa at Talaq fi al Islam, Fiqh Muqarran Baina al Madzhahib al Arbaah as Sunniyah wa al Madzhahib al Ja'fariyah wa al Qanun*, Askandariyah: Muassasah Syabab al Jam'iyah.

<sup>13</sup> Abu Zahrah, Muhammad. (tt, p. 92). *al Ahwal asy Syakhsiah*, Dar al Fikr al Arabi.

<sup>14</sup> al Baihaqi, Abu Bakr Ahmad bin Husain ibn Ali. (tt, p. 125) *as Sunan al Qubro*, Dar al Fikri, vii

<sup>15</sup> asy Syarif, Mahmud ibn. (TT, p. 31). *al-Islami wa al Usrah*, Muassasah al Matbuah al Hadisah.

occurrence of adultery, because if a witness is not a requirement, it is impossible for adultery to occur with testimony.<sup>16</sup>

Therefore, two fair witnesses are required, although it is also permissible to be wicked witnesses if wickedness has penetrated the lives of the people.<sup>17</sup> This is done in order to make a proof strong. And most scholars state that marriage is invalid without the presence (bayyinah), which is evidence by the presence of two witnesses during the contract.<sup>18</sup> In fact, Abu Zahrah stated that marriage is invalid except for two conditions, namely the presence of two witnesses and the presence of a woman or future wife who is indeed allowed to be married.<sup>19</sup>

In this case the Prophet Muhammad once stated: *Al baghaya allati yankihna anfusuhunna bighairi bayyinah*. Moreover, the marriage is not recorded in the official record, of course, a marriage like this is worse when compared to the first form of sirri marriage, which is a marriage whose harmonious conditions have been met, it's just that the marriage is not recorded. Even though the first form of marriage is still problematic (muhtalaf fihi), especially marriages whose harmony requirements have not been fulfilled and are also not recorded.

Of course, the "inevitability" of marriage is greater than the first form of marriage. That is *Mafhum Muwafaqah* that we can capture from the information above. The Prophet also hated such a series of marriages as narrated by Abu Hasan al Mazini which reads: *An nan nabi shalallahu alaihi wasallam kana yakrahu nikahas siri hatta yudhrabu bidufin wayuqalu atainakum atainakum fahayyuna nuhayyikum*.<sup>20</sup> Perhaps in the hadith it is not so clear whether the marriage was witnessed or not, but what is certain is that the marriage has not been made public because the beating of Rebbana at that time was in the context of publication, as the

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<sup>16</sup> al-Hanafi, Ala ad-Din Abi Bakr Mas'ud al-Kasani. (TT, p. 378). *The Book of Bada'I as Sana'I fi Tartib as Syar'I*, Dar al Fikr, ii

<sup>17</sup> asy Syafi'I, Muhammad Amin al Kurdi al Irbili. (tt, p. 345) *Tanwir al Qulub fi Muamalah Allam al Guyub*, Surabaya, al hidayah.

<sup>18</sup> al Musawwa, Imam Wali Allah ad Dahlawi. (tt, p. 101). *Syarh al Muwatta'*, Beirut, dar al kutub al ilmiah, ii.

<sup>19</sup> Abu Zahrah, Muhammad. (tt, 60). *al Ahwal asy Syakhsiah*, Dar al Fikrr al Arabi.

<sup>20</sup> al Haitami, Nur ad Din Ali ibn Abi Bakr. (1988). *Majma' az Zawaid wa Manba' al Fawaid bab I'lan an nikah wa al Lahwi wa an Nasr, Tahqiq al Iraqi dan ibn Hajr*, Beirut, Dar al Kutub al Scientific, iv.

Prophet said: *A'linu hazan nikah wajalahu fil masajid wadhribu alaihi biddufuf*.<sup>21</sup>

And in this regard, the Prophet also forbade serial marriage as in a hadith narrated: *An nan nabi sallahualaihi wasallam naha anin nikah siri*.<sup>22</sup> It is even clearer that the nikah siri understood by the Companions at that time was a marriage that was not witnessed and also not published, we can see this from the words of Abu Bakr as-Siddiq as follows: *La yajuza nikahas siri hatta yu'lane wayusy hada alaihi*. But the easiest understanding we get is that if there is a publication, the wedding must have been witnessed because the presence of a large crowd at the wedding party can also be considered as a testimony.

But from the statement of Abu Bakr as. Siddiq, we can draw one conclusion that what is meant by nikah siri is a marriage that is not witnessed and is not publicized and marriages like this are not allowed or forbidden by law. However, the prohibition in this case is not so clear whether the prohibition is makruh as the Prophet did not like it or whether the prohibition is haram. However, Umar ibn Khattab once reported that a marriage that was attended only by a male and female witness then he said: *Haza nikahus siri wala ujizuhu walaunkuntu taqaddamtu fihi larajamtu*.<sup>23</sup>

From this asar it can be seen that Umar ibn Khattab views nikah siri with the criteria of marriage which is only witnessed by a man and a woman as the law is the same as adultery which has the consequence of stoning,<sup>24</sup> although according to Abu Saur and Jama'ah the witness is not a condition of marriage. Furthermore, it is said that the marriage that is witnessed by a witness of a man and a woman is called nikah siri because the requirements for testimony in the marriage are incomplete, namely it must be two men or one man with two women.<sup>25</sup>

This kind of opinion is also used by the Kufa Ulama. Meanwhile, the Shafi'i and Hambali scholars require that the witness must be male,

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<sup>21</sup> ibn Surah, Abu Isa Muhammad ibn Isa. (TT, p. 398). *al Jami' as Sahih wa Huwa Sunan at Tirmizi bab Maja'a la Nikaha illa bi Bayyinah*, III.

<sup>22</sup> al Haitami, Nur ad Din Ali ibn Abi Bakr. (tt, p. 285). *Majma' az Zawaid wa Manba* iv.

<sup>23</sup> Yusuf az Zarqaini, Abu Abdillah Muhammad ibn Abd al Baqi ibn. (TT, p. 122). *Syarh Muwatta' al Imam Malik*, Egypt, Maktabah Mustafa al Babi al Halabi wa Auladihi, iv.

<sup>24</sup> al Qurtubi, Ibn ar Rusy *Bidayatul Mujtahid.*, ii (tt, p. 13).

<sup>25</sup> ibn Hazm, Abu Muhammad Ali ibn Ahmad ibn Said. (TT, 465). *al Muhalla'*, Ordinated by Ahmad Muhammad Syakir, Dar al Fikri, tt, ix

the marriage contract with a witness of a man and two women is invalid. As narrated by Abu Ubaid from Zuhri he said: there has been an example from the Prophet that women should not be witnesses in criminal matters, marriage and talaq.<sup>26</sup> In addition, according to az Zarqaini, nikah siri is a marriage that is not publicized or a marriage that is deliberately ordered not to be disseminated.

### **Marriage Contract with Witness Message**

The marriage contract was attended by witnesses but the witnesses were ordered to keep the marriage secret.<sup>27</sup> In this matter, there was a debate among the scholars, namely about the existence of publications in marriage. Some scholars state that the existence of witnesses is the pillar of marriage and the existence of I'lan is not a condition that affects the shah's or not marriage. And the presence of two witnesses in the marriage has removed the marriage status from the serial credibility.<sup>28</sup>

However, some scholars also state that witnesses are not a valid condition in marriage, therefore the existence of two witnesses does not affect the validity or not. However, marriage is only valid if it has been 'ilan, even if the marriage is not witnessed. In more detail, there are three opinions related to the discussion of nikah siri in this group, namely; First, the opinion of some fiqh experts who stated that the presence of witnesses is sufficient as a prerequisite for i'lan even though the witnesses present are ordered not to disseminate the marriage. The basic argument they used was the existence of two witnesses and two people who agreed to have erased the marriage from the secret creed.<sup>29</sup>

Because a secret cannot occur between four or more people. In addition, there is actually an agreement among the three madhhab scholars, namely Maliki, Hanafi and Shafi'i, that the existence of two witnesses in the marriage is a condition, but the difference is whether the witness is included in the condition of perfection carried out at the time

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<sup>26</sup> Syyid Syabiq. (1980). *Fiqh Sunnah 6 Translation of Language*; Drs Muhammad Talib, Cet 1, Bandung, Pt al Ma'arif.

<sup>27</sup> Madaniy, Ha Malik (2001), *Nikah Siri dalam Perspektif Hukum Islam, Makalah Disampaikan Dalam Seminar Tentang "Nikah Siri Dalam Tinjauan Syar'I, Hukum Positif Dan Psiko Social*, Di Auditorium UII Pusat.

<sup>28</sup> Farid, Diana, Muhammad Pakarti, Hendriana Hendriana, Iffah Fathiah, and Moh. Imron Taufik. 2023. "Praktik Pernikahan Dan Perceraian Di Bawah Tangan". *Mutawasith: Jurnal Hukum Islam* 6 (1), 53-69. Doi: <https://doi.org/10.47971/mjhi.v6i1.612>.

<sup>29</sup> Alfin, Aidil, and Busyro Busyro. 2017. "Nikah Siri Dalam Tinjauan Hukum Teoritis Dan Sosiologi Hukum Islam Indonesia". *Al-Manahij: Jurnal Kajian Hukum Islam* 11 (1):61-78. <https://doi.org/10.24090/mnh.v11i1.1268>.



of duhul or including the legal condition that is performed at the time of the contract. Regarding this opinion, although Hanafiah scholars include marriage with a message from the husband to the witnesses to keep the occurrence of the marriage secret to the audience into the classification of nikah seri, according to them such a marriage is still valid only it is punished by makruh.<sup>30</sup>

Even if it is done deliberately, in the sense that the secrecy is agreed upon by the husband, guardian's wife and witnesses, because there is i'lan in this opinion the law is sunnah.<sup>31</sup> Meanwhile, Ahmad Husari stated that the existence of testimony is a form of publication effort itself. Because shari'i always provides its own procedures in determining its sharia. Therefore, with the shari'a, the testimony in marriage is in the context of i'lan itself.

Based on this assumption, the researcher added that the wedding that the witness had attended had been referred to as an open-ended marriage, even though the witnesses were ordered to keep the marriage secret. Ahmad Husari reasoned that a secret thing could not happen between four people. And if there is something that has been known by four people, it means that it is not a secret but has become a common thing,<sup>32</sup> as a verse says: *wasiruka ma kana indam riin wasiru assalasah ghairul khafi*.

Even more emphatically is the opinion of Ibn Hazm, who stated that a series is anything that is known by less than two people and if something is known by more than two people then it means that it is no longer serial. Likewise, a wedding that has been attended by five people, namely the husband-to-be (an nakih), the wife-to-be (al mankuhah), the wali (al munkih) and two witnesses are no longer called siri. As a verse states: *Ala kullu sirun ja waza istnaini syaiun*.

Another verse states: *As sirru yuktumuhual isnani bainahuma wakullu sirrun adalishnaini muntasirun*. According to Ibn Qudamah the existence of publication is only sunnah, what is obligatory according to him is the existence of two witnesses who are present at the time of the contract, on the grounds that marriage is a mu'awwadah contract which

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<sup>30</sup> az Zuhaili, Wahbah. (tt, p. 71), *al Fiqh al Islami wa Adillatuhu*, Dar al Fikr, vii

<sup>31</sup> al Bahuti, Masrur ibn Yunus Idris. (tt, 66), *kasyf al Qina an Matan al Iqna*, Dar al Fikr, v.

<sup>32</sup> Ahmad Husari. (tt, 183), *an Nikah wa al Qadaya al Mutaalliqah Bihi*, Maktabah al Kuliyat al Azhariyah.

is not mandatory to be published as a contract of sale<sup>33</sup> and purchase even though according to Yazid ibn Harun Allah actually requires testimony in the matter of buying and selling not the matter of marriage, as Allah said:

.....وَأَسْتَشْهَدُوا شَهِيدَيْنِ مِنْ رَجَالِكُمْ..... ٢٨٢ (2); 282 al-Baqarah

Then the scholars require testimony in the matter of marriage and not the matter of buying and selling. However, according to Salam Madkur, indeed in marriage it must be witnessed by two just men,<sup>34</sup> as Allah says:

فَإِذَا بَلَغَ الْبَلَغُ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهَدُوا ذَوِي عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ..... ٢ (65); 2 at-Talaq

The second opinion states that the existence of two witnesses is not a condition for the occurrence of a contract, but a condition for the occurrence of a contract is sufficient with the existence of publication, (Murad Syukri, tt, p. 154) therefore the existence of two witnesses cannot replace the position of i'lan.

And if there is a marriage contract attended by witnesses but the witnesses are ordered to keep the marriage secret, then the contract cannot be accepted.<sup>35</sup> This opinion was expressed by Malikiyah scholars. In Malikiyah's opinion, marriages that are carried out by ordering witnesses to hide the marriage are punished as null and void, even marriages like this in Malikiyah's opinion are identical to the nature of adultery.<sup>36</sup>

Therefore, if such a marriage occurs, it must be fasakh with talaq bain if there has been intercourse, as fasakh of marriage is done to two people who have a marriage without the presence of two witnesses and

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<sup>33</sup> al Muqaddasi, Abu Muhammad Abd Allah ibn Ahmad ibn al Qudamah. (tt, p. 1451), *al Mughni li ibn al Qudamah*, al Maktabah al Jumhuriyah al Arabiyah, vi.

<sup>34</sup> Muhammad Salam Madkur. (1993), *Justice in Islam*, Translated by Drs Imran am cet. Iv, Surabaya, Pt. Ibna Ilma.

<sup>35</sup> Anggi Nur Nisa Tanjung, and Wahyu Ziaulhaq. 2022. "An Analysis of Positive Law and Fiqh on Siri Marriage and Its Influence on Property Ownership". *SOSMANIORA: Journal of Social Sciences and Humanities* 1 (1):62-66. <https://doi.org/10.55123/sosmaniora.v1i1.207>.

<sup>36</sup> al Baghdadi, Al Qadi Abd al Wahab. (tt, p. 746), *al Ma'unah ala Madzhab Alam al Madinah li al Imam Malik ibn Anas*, dar al fikr, ii.

have had intercourse. And the person who performs this series of marriage is subject to the penalty of volume limit if there has been intercourse that is acknowledged by himself or with the presence of four witnesses who witnessed the intercourse directly.

According to Maliki, if the marriage that is carried out without witnesses is announced by beating tambourine or walimah, it is not obligatory to be restricted. Likewise, if the marriage is attended by a witness other than the guardian, or the marriage is witnessed by two fasiq witnesses, then the person who performs the marriage is not obliged to be limited because such a marriage according to Maliki is categorized as a subhat marriage which does not have implications for the punishment of had, this is based on the rules of fiqhiyah which reads: *Al hudud tasqutu bis syubuhat*.<sup>37</sup>

From the above information, we can see that the law of marriage according to Malikiyah scholars is mandatory, as stated by Abu Bakr Abd al Azis, a follower of Maliki, who stated that a serial marriage by ordering witnesses to keep the marriage secret is punished as null and void so that the marriage is annulled. So according to Malikiyah, the existence of i'lan is a condition for the validity of the contract, because the existence of i'lan is a differentiator between adultery and marriage. As the Prophet said: *Faslu ma bainal halal walharami dhufuf wassauth*.<sup>38</sup>

Although Malikiyah stated that the existence of witnesses is not a pillar of contract, they stated that witnesses are a condition for halal dukhul. Similarly, the opinion of Ibn Rushd from Abu Saur and some scholars that witnesses are not included in the condition of marriage but the condition of marriage is the existence of i'lan after the existence of ijab and qabul and before dukhul. The difference between Ibn Rushd and Malikiyah is that Malikiyah requires the existence of i'lan during sighat, but according to Ibn Rushd it is permissible after the occurrence of sighat and before dukhul.

The main basis in the problem of serial marriage with the criteria as mentioned above that they use is the hadith of the Prophet which reads: *A'linu hazan nikah wajaluhu fil masjid wadribu alaihi bid dufuf*. The Prophet (peace and blessings of Allaah be upon him) said: *The Prophet (peace and blessings of Allaah be upon him) said: "The Prophet*

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<sup>37</sup> Abi Bakr as Suyuthi, Jalal ad Din Abd ar Rahman. (tt, p. 84), *ibn al Syaibah wa an Nazair fi al Furu'*, Indonesia, Maktabah Dar Ihya al Kutub al Arabiyah.

<sup>38</sup> al Akh Wazi, Ibn al Arabi al Maki Aridah. (tt, p. 307), *Syarh Sahih at Tirmizi*, Beirut, Dar al Kutub al Ilmiah, iv.

(peace and blessings of Allaah be upon him) said, 'O Prophet (peace and blessings of Allaah be upon him).' The Prophet (peace and blessings of Allaah be upon him) said: "The Prophet (peace and blessings of Allaah be upon him) said: Where the Prophet forbade the existence of nikah siri this also means that the Prophet advocated i'lan on the basis of an expression: *An nahyu annis syaiin amrun biddidhi*."<sup>39</sup>

Which is the opposite of the rule of ushul which states about Amr which reads: *Al amru bis saiin nahyun an didhidihi*. That is the perspective of Malikiyah which states that witnesses are not a condition for the occurrence of a marriage contract, the existence of witnesses in marriage is only a condition for the halalness of dukhul and the consequences of the existence of dukhul. However, what is an absolute requirement in marriage for the existence of i'lan and the existence of i'lan in marriage according to Malikiyah is as one thing that separates marriage and adultery.

Meanwhile, among the scholars who stated that the marriage of series with the criteria as above is punished by Makruh are Abu Hanifah, as-Shafi'i and Ibn Munzir and among the groups of companions who hate nikah siri are Umar RA, Urwah, Abd Allah Ibn Ubaid Allah ibn 'Utabah, Sa'id and Nafi' sahaya Ibn Umar.

### **Witnesses and I'lan in the Marriage Series**

The opinion states that there is no requirement for witnesses and i'lan in marriage, but both are only sunnah when there is a contract as evidence in the event of denial. The lightest opinion among the two previous opinions, because the opinion views that the existence of two witnesses and publication is not a requirement in marriage, but this opinion views that the existence of two witnesses and the publication of the law is sunnah only.<sup>40</sup>

This is seen and based on the existence of a marriage performed by Hasan Ibn Ali without the presence of witnesses but after that the marriage was made public.<sup>41</sup> This opinion is held by the Shi'a madhhab, they state that the existence of i'lan and two witnesses is not included in the pillars of marriage and they also say that wali is also not included in the pillars of marriage, with one condition that the married woman is a

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<sup>39</sup> Abd al Hamid Hakim. (tt, p. 9), *Mabadii Awwaliyyah*, Jakarta, Sa'diyyah Putra.

<sup>40</sup> Zuhri, Saifudin. 2014. "Sanksi Pidana Bagi Pelaku Nikah Siri Dalam Perspektif Hukum Islam". *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 48 (2):363-87. <https://doi.org/10.14421/ajish.v48i2.121>.

<sup>41</sup> Rusyd, Ibn. (tt, p.13), *Bidayatul Mujtahid Wanihayatul Muktasid*.

woman who has reached puberty. This opinion is based on the asar narrated by Zararah when he asked as-Siddeq about a person who performs a marriage contract without the presence of two witnesses and he replied with an expression: "*La baksa bittazawujil battati bighairi syuhudin faima bainahu wabainallahi taala wainnama ju'ila as syuhudu min tazwijissunnah min ajlil waladi laula zalik lam yakun fihi baksun*".

Abu Saur and Jama'ah stated that witnesses are not included in the valid conditions of marriage and are not included in the requirements for perfection, the existence of witnesses is only sunnah if it is done in marriage. In addition, this opinion is also held by the Ja'fariyah and Zahiriyah schools. Both of them reasoned with an argument that the Qur'an clearly never states that witnesses are a condition in marriage, but witnesses are only required in buying and selling, then scholars require witnesses in marriage because marriage contracts are considered more important than buying and selling transactions.

And the existence of a hadith that commands testimony in marriage is a command that is sunnah only.<sup>42</sup> Although the Shia madhhab does not stipulate the existence of witnesses in the marriage directly, but if the marriage is performed with a representative they require the presence of witnesses in the marriage, because according to them the contract of representation is a transaction of a separate contract. They also said that the existence of two witnesses only witnessed the validity of the contract and not the validity of the marriage, because the validity of the marriage contract was sufficient with the existence of *ijab* and *qabul*.<sup>43</sup>

The opinion that witnesses and publications are not important in marriage is contrary to the opinion of most scholars, because Abu Hanifah, Shafi'i and Maliki agreed that witnesses are a condition of marriage. However, the criteria for the requirements in this case among the three scholars are different. It's just that according to Imam Malik, witnesses are not included in the pillars of marriage but only as a condition by including dowry as one of the pillars of marriage.<sup>44</sup>

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<sup>42</sup> az Zahabi, Muhammad Husain. (1968), *asy Syari'ah al Islamiyah*, Cet II, Egypt, Dar at Ta'lif.

<sup>43</sup> Raihan, Azka Fauzia, Djanuardi Djanuardi, and Renny Supriyatni. 2023. "KEDUDUKAN WALI PERKAWINAN DISEDIAKAN PENYEDIA JASA PERKAWINAN SIRI ONLINE DALAM PERSPEKTIF HUKUM ISLAM". *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 6 (2), 193 - 205. <https://doi.org/10.23920/acta.v6i2.1396>.

<sup>44</sup> Ahmad as Sawi. (tt, 350), *Bulghoh as Salik li Aqrab al Masalik*, dar al Fikr, I.

And marriages without witnesses and publications are also marriages that are hated by the companions and punished by the law of makruh. Among the companions who hated such marriages were Umar RA, Urwah, Abdullah ibn Ubaidillah, Ibn Utbah, Sa'bi and Nafi' sahaya Ibn Umar. While among the tabi'in are Abu Hanifah, Shafi'i and Ibn Munzir. The existence of witnesses and publications is very important in a marriage contract, because both are evidence of the existence of a legitimate relationship between a man and a woman as well as a means to anticipate irresponsible actions from one of the parties.

Even if the Prophet had made a marriage contract without witnesses, it was one of the specificities of the Prophet in the matter of marriage that could not be equated with others. Once in a time Umar ibn Khattab annulled the had qazaf adultery against a companion because the person accused of having committed an unwitnessed and unpublicized marriage, as asar narrated by Ibn Umar: "*Tazawwaja rajulun imraatan fakana yakhtalifu ilaiha faraahu jarun lahu faqazafahu biha fasta'azahu ila umara radiyallahuanhu faqalalahu umar: bayyanituka ala tazwijuha faqala ya amiralmukminin kana amrun duna mqa ashadtu 'alaihi ahlaha Fadaraa al haddu 'an qazifihi waqala hassinnu furujannisa waa'linu hazabn nikah*".

## CONCLUSION

Based on the description above, it can be concluded First, marriages that are not witnessed, not published, and not administratively recorded are forms of marriage that cannot be justified by sharia or positive law, because they are contrary to the principles of transparency and legal protection in the institution of marriage. Second, a marriage that is carried out in the presence of two witnesses, but the witness has been booked in advance (not naturally present), is considered makruh by some of the companions and tabi'in such as Umar bin Khattab RA, Urwah, Abdullah ibn Ubaidillah, Ibn Utbah, Sa'bi, and Nafi' sahaya Ibn Umar. This view is also agreed by several fiqh scholars from the tabi'in circles such as Abu Hanifah, Ash-Shafi'i, and Ibn Munzir. This shows a serious concern for the independence and objectivity of witnesses in marriage. Third, the presence of witnesses and the publication of marriage (i'lan an-nikah) is basically part of the sunnah of mu'akkadah, which although it is not a legal requirement, is highly recommended for the sake of maintaining maqāṣid as-syarī'ah, especially in terms of maintaining nasab, family honor, and avoiding fitnah in society. Thus, it is important for the community and policy makers to continue to encourage the implementation of marriage that meets the aspects of

legality, publication, and religious ethics as part of efforts to strengthen family institutions and social order.

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