

## Criminalization of Serial Marriage Perpetrators in Criminal Law in Indonesia

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### Article Info

#### Article history:

Accepted: 5 May 2026

Published: 11 May 2026

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### Keywords:

Married Siri;

Criminalization;

Indonesian Criminal Law;

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### Abstract

*This study aims to analyze the legal regulation of serial marriage in the Indonesian legal system and examine the urgency of criminalization of serial marriage perpetrators from the perspective of criminal law. The research method used is normative juridical with legislative, conceptual, and case approaches, through literature studies on primary, secondary, and tertiary legal materials. The results of the study show that the regulation of nikah siri in Indonesian law has not provided optimal legal certainty and protection, especially for women and children, even though it has been regulated in Law Number 1 of 1974 concerning Marriage jo. Law Number 16 of 2019 concerning Amendments to the Marriage Law, due to weak enforcement and the absence of strict sanctions for violations of marriage registration. On the other hand, the criminalization of serial marriage in criminal law has not been appropriately applied because it contradicts the basic principles of criminal law such as the principle of legality in the Criminal Code and has the potential to clash with religious freedom in the 1945 Constitution of the Republic of Indonesia. Therefore, a more effective approach is through strengthening the administrative system, increasing public legal awareness, and more optimal legal protection for women and children.*

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## 1. INTRODUCTION

Marriage is a social institution that has a very fundamental legal, religious, and cultural dimension in the life of Indonesian society. From the perspective of national law, marriage is not only understood as a private relationship between a man and a woman, but also as a legal event that has legal consequences for the parties, including for children born from the relationship. Therefore, the state through applicable regulations seeks to provide legal certainty and protection of the rights of every individual in marriage.

In the Indonesian legal system, the regulation of marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to the Marriage Law. In Article 2 paragraph (1) it is emphasized that marriage is valid if it is carried out according to the laws of each religion and its beliefs, while Article 2 paragraph (2) stipulates that every marriage must be registered in accordance with the applicable laws and regulations. This provision shows that Indonesian law adheres to the duality system of marriage validity, which is religiously valid and administratively legal for the state.

However, in social practice, there is still a phenomenon of marriage that is not officially recorded by the state, known as *nikah siri*. *Nikah siri* is a form of marriage that is carried out based on religious provisions, but is not registered with the authorized agency. From the perspective of Islamic law, *nikah siri* is often considered valid if it fulfills the principles and conditions of marriage, such as the presence of guardians, witnesses, *ijab kabul*, and dowry. However, from the perspective of state law, unregistered marriages do not have the force of administrative law.

The phenomenon of *nikah siri* shows that there is a disharmony between the living law and the positive law of the state. In this context, *nikah siri* is still considered normatively valid in certain societies, but it is contrary to the provisions of state law that require the registration of marriages. This shows that there is a dualism of legal understanding which has an impact on legal uncertainty and potential losses for certain parties.

The impact of the practice of serial marriage is not only administrative, but also concerns aspects of legal protection, especially for women and children. Women in serial marriages often do not have the legal power to claim their rights, such as the right to alimony, protection from domestic violence, or the right to joint property. Meanwhile, children born from serial marriages also have the potential to experience difficulties in obtaining legal recognition, especially related to civil status and inheritance rights.

The development of the times has also given rise to new variations of the practice of serial marriage, such as online serial marriage carried out through digital media. This phenomenon further complicates legal issues because it involves technological aspects that have not been fully regulated in the existing legal system. This shows that the practice of serial marriage is not only a classic problem, but also develops according to modern social dynamics.

Seeing these various implications, there is a discourse about the need to criminalize serial marriage perpetrators in Indonesian criminal law. Criminalization is seen as one of the efforts to enforce law and order and provide protection to the aggrieved party. In this context, the state seeks to expand the scope of criminal law into the realm of family law as a form of response to existing social developments.

In the Indonesian legal system, criminalization must consider the basic principles of criminal law, such as the principle of legality as regulated in the Criminal Code, the principle of *ultimum remedium*, and the principle of proportionality. Criminal law should not be used excessively in regulating people's lives, especially in the private sphere such as marriage. Therefore, making *nikah siri* a criminal act requires careful consideration so as not to cause overcriminalization.

The criminalization of *nikah siri* also has the potential to cause conflict with the principle of religious freedom guaranteed in the 1945 Constitution of the Republic of Indonesia, especially Article 28E which guarantees the freedom of everyone to embrace religion and practice their religious teachings. In this context, the state must be careful that criminalization policies do not conflict with citizens' constitutional rights.

On the other hand, the development of national law shows a tendency to strengthen the protection of women and children through various regulations, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 35 of 2014 concerning Child Protection. Within this framework, the criminalization of serial marriage can be seen as part of preventive efforts to prevent the violation of these rights.

Thus, the debate on the criminalization of serial marriage in Indonesian criminal law cannot be separated from the tension between the interests of law enforcement, the protection of human rights, and respect for religious and cultural values. Therefore, a

comprehensive and proportionate approach is needed in formulating legal policies related to this phenomenon.

This study aims to analyze the regulation of serial marriage law in the Indonesian legal system, examine the urgency of criminalization from a criminal law perspective, and evaluate the implications of these policies on the protection of women's and children's rights.

## **2. RESEARCH METHODS**

This study uses normative legal research methods (normative juridical). This method was chosen because the research focuses on the analysis of legal norms that govern marriage, criminal law, and criminalization policies in the Indonesian legal system. Conceptually, normative legal research is research conducted by examining literature materials or secondary data as the main material, which includes laws and regulations, court decisions, and doctrines or opinions of legal experts. In this study, a normative approach is used to examine whether the practice of serial marriage can be qualified as an act worthy of criminalization in the perspective of Indonesian criminal law.

## **3. RESULTS OF RESEARCH AND DISCUSSION**

### **a. Legal Arrangement of Marriage in the Indonesian Legal System**

In the Indonesian legal system, the term *nikah siri* is not explicitly known in laws and regulations. However, its existence can be analyzed through legal norms that regulate the validity of marriage and its registration obligations. This shows that although the term is sociological, its legal implications are very real in the practice of people's lives.

The obligation to register marriage is an important legal instrument in ensuring legal certainty. The state through the registration mechanism seeks to provide protection for the parties to the marriage, especially related to the rights and obligations that arise. Without recording, the legal relationship between husband and wife becomes difficult to prove juridically, so it has the potential to harm certain parties, especially women.

In practice, *nikah siri* only fulfills the aspect of religious validity, but does not fulfill the administrative aspect of the state. This has serious legal consequences, as the state has no basis to recognize the existence of such marriage. As a result, all rights and obligations that should arise from a marriage become legally unenforceable.

From a civil law perspective, the existence of written evidence is very important in proving a legal relationship. In the context of serial marriage, the absence of a marriage certificate as authentic evidence causes a weak legal position of the parties, especially when there are disputes such as divorce, division of joint property, and alimony claims.

The most obvious impact of *nikah siri* can be seen in the position of women as wives. In unregistered marriages, women often do not have the legal power to claim their rights. When there is a conflict or divorce, women are in a weak position because they cannot prove the existence of a legal marital relationship before the laws of the country.

In addition, children born from *nikah siri* also face legal problems that are not simple. Although there have been developments through the Constitutional Court Decision No. 46/PUU-VIII/2010 which provides recognition of the civil relationship between the child and his biological father, in practice there are still various administrative and social obstacles faced.

In the context of population administration, marriage registration has a very important role. This is regulated in Law Number 24 of 2013 concerning Population Administration which emphasizes that every important event, including marriage, must be recorded to obtain official documents. Without records, individuals will have difficulty accessing various public services.

The phenomenon of serial marriage is also inseparable from the pluralistic social conditions of Indonesian society. In some communities, *nikah siri* is still considered a legitimate and socially acceptable practice. This shows that there is a difference between the laws that live in society and the laws that apply formally.

In addition to cultural factors, economic factors are also one of the causes of the rise of serial marriage. The high cost of marriage and administrative procedures that are considered complicated are often reasons for people to choose the route of serial marriage. In this case, the state needs to evaluate the marriage registration system so that it is more accessible to the public.

Thus, it can be concluded that the legal regulation of marital in Indonesia still leaves various problems, especially related to legal protection and legal certainty. Therefore, legal reform efforts are needed that are able to bridge the gap between legal norms and social realities of society.

#### **b. Criminalization of Siri Marriage Perpetrators in the Perspective of Indonesian Criminal Law**

The discourse on criminalization of serial marriage perpetrators is a complex issue in the Indonesian legal system. This is because *nikah siri* is at the intersection between the realm of private law, religious norms, and public legal interests. Therefore, the approach used in assessing criminalization policies must be carried out carefully and comprehensively.

From a criminal law perspective, criminalization is the process of making an act a criminal act that is threatened with sanctions. However, not all acts that are considered detrimental can be used as criminal acts. Criminal law has basic principles that must be met, one of which is the principle of legality regulated in the Criminal Code.

In addition to the principle of legality, there is also the principle of *ultimum remedium* which places criminal law as the last resort in law enforcement. This means that the use of criminal sanctions must be carried out selectively and only used if other legal means are ineffective. In the context of serial marriage, it is necessary to consider whether the criminal approach *действительно* is the right solution.

The main purpose of the discourse on the criminalization of serial marriage is to provide protection for women and children who are often the aggrieved parties. In many cases, *nikah siri* is used as a means to avoid legal liability, such as in the practice of unlicensed polygamy or underage marriage.

However, the criminalization of serial marriage also has the potential to have negative impacts, such as the increase in the practice of clandestine marriage. This can actually worsen the condition of women because it is increasingly difficult to get legal protection.

In addition, the criminalization of *nikah siri* also has the potential to be contrary to the principle of religious freedom guaranteed in the 1945 Constitution of the Republic of Indonesia. In this context, the state must be able to balance legal interests and respect for the constitutional rights of citizens.

From the perspective of women's protection, the state has various regulations, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence which provides protection for victims of domestic violence. However, in the practice

of serial marriage, this protection is often difficult to apply because there is no legal recognition of the marital relationship. Similarly, in terms of child protection, Law Number 35 of 2014 concerning Child Protection has provided guarantees for children's rights. However, children from nikah series still face various obstacles in obtaining their full rights.

Therefore, it is necessary to consider alternative policies other than criminalization, such as strengthening the marriage registration system, increasing legal education to the public, and simplifying administrative procedures. This approach is considered more effective in the long term than the repressive approach through criminal law.

In addition, the state also needs to strengthen the legal protection mechanism for women and children who are victims of serial marriage, without having to criminalize the perpetrators directly. This can be done through affirmative policies that provide access to justice and legal services.

Thus, the criminalization of serial marriage is not the only solution in overcoming this problem. A more comprehensive and multidimensional approach is needed so that the legal policies taken are not only effective, but also fair and in accordance with the values of Indonesian society.

#### **c. Weaknesses of the Siri Marriage Arrangement in Indonesian Law**

The main weakness in the arrangement of serial marriage in Indonesia is the absence of strict sanctions for violations of the obligation to register marriage. Although Law Number 1 of 1974 concerning Marriage has required registration, the norm tends to be administrative and not accompanied by a strong enforcement mechanism.

This condition causes the law to lose enforceability. In legal theory, a norm will be effective if it is supported by clear sanctions. When marriage registration does not have strict legal consequences, people tend to ignore these obligations.

In addition, there are inconsistencies in the Indonesian legal system regarding the recognition of serial marriage. On the one hand, the state does not recognize administratively, but on the other hand it still provides limited recognition space through certain mechanisms, such as *isbat nikah* in religious courts. This shows that the state indirectly accommodates the existence of serial marriage.

This dualism creates legal uncertainty. On the one hand the state wants to enforce the rules, but on the other hand it provides room for legalization after the fact occurs. This condition actually has the potential to encourage people to continue to do *nikah siri* because they feel that it can still be legalized in the future.

## **4. CONCLUSION**

The regulation of serial marriage in Indonesian law still has fundamental weaknesses in the form of the absence of strict sanctions and weak enforcement of the registration obligation, so that it has not been able to provide optimal legal certainty and protection, especially for women and children, even though it has been regulated in Law Number 1 of 1974 concerning Marriage jo. Law Number 16 of 2019 concerning Amendments to the Marriage Law; On the other hand, the criminalization of *nikah siri* from the perspective of criminal law has not been appropriately applied because it is contrary to basic principles such as the principle of legality in the Criminal Code and has the potential to clash with religious freedom in the 1945 Constitution of the Republic of Indonesia, so that a more effective approach is through strengthening the administrative system, improving the mechanism for registering marriages, increasing public legal awareness, as well as providing more concrete and responsive protection for women and children.

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