

MARRIAGE IN SECRET ACCORDING TO ISLAM AND CATHOLIC: A Comparative Study on Religious Laws

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Abstract: This article discusses secret marriage from another perspective, namely in the form of a comparative study of religious law between Islam and Catholicism. This research aims to find similarities and differences between the two religions in assessing and regulating secret marriages. This study found that both religions recognize secret marriage as an uncommon and not ideal marriage. Both religions see the disadvantages and harms of secret marriage. This study found some key differences. In Islam, *sirri* marriage is not created by religious doctrine, but are practices carried out by several people which is subsequently judged and regulated by religious law. Whereas in Catholicism, secret marriage are officially created by the highest legislator of the Church. In Islam, unregistered marriage often colludes with polygamy, while in the Catholic Church secret marriage is carried out while upholding the essential nature of marriage: monogamous and indissoluble. In Islam, *sirri* marriage is not recorded anywhere, while secret marriage in the Catholic Church is recorded internally in the diocesan secret archives. This study raises mutual respect among adherents of both religions regarding secret marriages. This study also encourages further studies on the problem of the two religions facing civil lawsuits regarding marriage registration.

Keywords: Marriages in secret; comparative study; Islamic religious law; canonical law; registration of marriages.

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Introduction

Marriage in secret or *sirri* actually has been widely talked about. Nonetheless, it is still relevant to be discussed, because it still happens in the society. There have been many scientific studies on that phenomenon, but almost all of the studies have very limited scope. Those studies are purely based on the point of view of the doctrine and Islamic religious law or in the correlation with UU RI, No. 1, year 1974 on Marriage. Unlike any current studies, this article is intended to present a distinct perspective, where *sirri* marriage is studied in parallel with the Catholic Church's views.

The problems raised on this study are as follow: whether the two religions have the same or similar concept about marriage in secret, how the marriage in secret is regulated in each religion, the moral values contained in their regulations, the possibility of sharing the values regarding the outlook and tenet on the marriage in secret, problems that both religions face regarding the requirement of marriage registration.

This conceptual research uses a comparative method. The comparative method presumes that the objects of comparison have same or at least similar areas and elements, but at the same time have different or even opposite elements. According to Zainuddin Ali, comparison study on laws is a form of law science research. The objects of law comparison may cover the substance of the constitution or the court decisions. The aim of this law comparative method is to seek for the law philosophy which is found in each constitution or the philosophy behind the court decisions on the same case and issue.¹ Accordingly, this comparative study will be about the doctrines and law norms, also the basic values behind every norm and the regulations on the marriage in secret from the perspective of Islamic and Catholic law.

Considering the writers' limited competence, the Islamic law references will not be taken from Al Qur'an and Mohammed SAW's Hadiths as the main and first sources, but rather from the second and third sources, namely the scientific studies written based on the first and main sources. The Catholic references will be taken directly from the Catholic laws which are universally applied these days. The range of this comparative study will be in the comprehension and

¹ H. Zainuddin Ali, *Metode Penelitian Hukum*, ed. 1, cet. 4 (Jakarta: Sinar Grafika, 2013), 43.

motivations people do the marriage in secret, the juridical validity, and moral judgments. In this comparative study, we use the same term, “marriage in secret”, when it concerns with the two religions. On the other hand, if it is about Islam, we use “*sirri* marriage”, and “marriage in secret” when refers to Catholic only.

The motivation and aim of the comparative study is to bridge and juxtapose the legislation systems from both religions concerning the marriage in secret. In the mid of exclusivism, self-claims as the truth holders and the tendency to blame others which vigorously happen in Indonesia lately, we see there is a need to promote an attempt to see the similarities in the value systems and goodness in every religion and religious faith, to build a peaceful and harmonious community life. This comparative and inter-religious study is also to enrich reciprocal understanding between the two religions. By admitting the similarities without ignoring the differences, we hope the faithful of the two religions could respect each other more, especially to strengthen each other in the truth of each faith they live, and strengthen each other in the value system and goodness in the society.

Marriage in Secret from the Islamic Law Perspective

1. The Meaning of *Sirri* Marriage

Actually, the Islamic Law Compilation (KHI - Kompilasi Hukum Islam) does not recognize *sirri* marriage, neither does the Encyclopedia of Islamic Law explain about that matter.² The Islam world or Islamic law, however, recognize the *sirri* marriage or privately arranged marriage. At the *al-Munawwir Arabic-Indonesian Big Dictionary*, the word *sirri* derived from the word *assirru* which means “doing things secretly”.³ In Arabic, they usually use the *lafẓ al-nikāh* (wedding) *al-sirri* (secret). Thus, *sirri* marriage means a secret, hidden, kept, or stealth marriage.⁴

According to Mohammad Idris Ramulyo *sirri* marriage or privately arranged marriage cannot be associated to a man-woman relationship out of legal marriage, like living together, trial marriage,

² See the explanation of the word “nikah” in Abdul Azis Dahlan (ed.), *Ensiklopedi Hukum Islam*, Vol. 4 (Jakarta: PT Ichtiar Baru van Hoeve, 2003), 1329-1349.

³ Ahmad Warson Munawwir, *Al-Munawwir* (Surabaya: Pustaka Progressif, 1997), 626.

⁴ Muhammad Abduh, “Pemikiran Muhammad Quraish Shihab Tentang Nikah *Sirri*”, Skripsi (Falkultas Syariah dan Hukum UIN Sunan Kalijaga, 2012), 25-26.

or stealth marriage to evade the regulation that forbids polygamy. According to Ramulyo, *sirri* marriage is legitimately understood as a marriage that meets the principles and requirements of Islamic marriage, but it is not legally registered to the Marriage registrar official as has been regulated in UU RI No. 1 Tahun 1974 on Marriage.⁵

Ramulyo points that *sirri* marriage is a nowadays trend which tacitly emerges and develops among some of Indonesia Muslims. Further, Ramulyo states that *sirri* marriage is a “law smuggling”, that is, a strategy used to avoid the applied requirements, so much so to avoid all the law consequences, or else, to be able to actualize an intended law consequence.⁶

Neng Djubaidah has the same opinion. According to her, *sirri* marriage nowadays is understood as a marriage that has fulfilled the principles and requirements of Islamic marriage, but has not been registered at the district Religious Affair Office (KUA – Kantor Urusan Agama) for Muslims.⁷ Djubaidah is also against the idea which regarding *sirri* marriage is equal with living together without marriage, because *sirri* marriage is a marriage which has not been or is not registered at KUA, but it might be a successful marriage, does not bring misery, suffering, or disgracing towards the wife and children.⁸

According to Masturiyah, *sirri* marriage is done in accordance to the principles and requirements of Islamic marriage, but not registered at KUA or the Marriage Registrar Officer (Petugas Pencatat Nikah - PPN). This kind of marriage is done stealthily, secretly, and closed from publicity. Referring to Zuhdi Muhdhar’s opinion, Masturiyah says that the *sirri* couple is married by a *kyai*—a religious leader who is regarded knowing and mastering Islamic law, but without PPN or KUA consent, so that the couple does not have a legitimate marriage certificate.⁹

⁵ See Mohammad Idris Ramulyo, *Hukum Perkawinan Islam: Suatu Analisis dari UU No. 1 Tahun 1974 dan Kompilasi Hukum Islam*, ed. 2 (Jakarta: Bumi Aksara, 1996), 237-39.

⁶ *Ibid.*, 240.

⁷ Neng Djubaidah, *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam* (Jakarta: Sinar Grafika, 2010), 345.

⁸ *Ibid.*, 345-46.

⁹ Masturiyah, “Nikah *Sirri*: Perspektif Hukum Islam dan Hukum Perkawinan Nasional,” dalam *Musâwa*, Vol. 12, No. 1 (January, 2013): 45-48.

2. Reasons of Performing *Sirri* Marriage

Sirri marriage is often done because of some reasons, aims, and motivations as follows.

First, the couple does a *sirri* marriage because they are not economically capable.¹⁰ The high cost of registered marriage, economical and practical reasons caused them to choose *sirri* marriage. *Sirri* marriage is a way to avoid complicated and expensive administrative procedures.

Second, some couples choose *sirri* marriage to avoid adultery and scandals in their society. Rather than falling into adultery sin, they prefer to do *sirri* marriage as the best solution for both sides.

Third, the absence of parents or family approval is also the reason of a couple to do a *sirri* marriage. When the couple is physically and psychically ready to get married, but one or both of the family does not agree with the marriage, *sirri* marriage is the best way to solve the problem. It is because *sirri* marriage is way easier as it does not require any papers and filling the approval of parents' form.¹¹

Forth, *sirri* marriage is an option when someone wants to polygamy but is not able to fulfill the strict polygamy regulation as stated by UU RI No. 1 Tahun 1974 on Marriage, chapter 3, 4, dan 5, juncto Islamic Law Compilation - Kompilasi Hukum Islam (KHI), chapter 55-59.¹² The motivation of doing polygamy itself could be because he is not happy or harmonious with his legitimate former spouse.

Fifth, Djubaidah also notes that the stealth legitimate marriage is done not merely because the couple is doing polygamy, but rather because they are bound to certain agreements at their job which demands them to not, or postpone to, get married in certain span of time.¹³

¹⁰ <https://www.idntimes.com/life/relationship/iip-afifullah/alasan-orang-nikah-sirri-c1c2/7>, taken 9 Oktober 2021; <https://tirto.id/mengapa-orang-menikah-sirri-cxpu>, taken 9 Oktober 2021; <https://wolipop.detik.com/wedding-news/d-5256079/5-alasan-pasangan-memilih-nikah-sirri-menghindari-zina-hingga-mau-poligami>, taken October 9, 2021.

¹¹ Siti Ratna Sari, et al., "Perkawinan Sirri Perspektif Mahasiswa Fakultas Syariah dan Hukum UIN Sunan Ampel Surabaya," in *Ma'mal: Jurnal Laboratorium Syariah dan Hukum*, Vol. 1, No. 5 (Oktober 2020): 460.

¹² Djubaidah, *Pencatatan Perkawinan*, 347.

¹³ *Ibid.*, 347.

3. The Juridical Legitimacy of *Sirri* Marriage

The juridical legitimacy of *sirri* marriage can be observed from two different point of views: from the Islamic law and the state positive law. Generally, from the Islamic law, *sirri* marriage is legitimate as far as it meets the rukun and requirements of Islamic marriage. According to Djubaidah, *rukun* is tightly attached on the marriage as a juridical act, so that if *rukun* is not fulfilled, the marriage will not be legitimate, and it is invalidated for the sake of the law. Requirements are also attached on each element as the part of a marriage. However, if the requirements are not fulfilled, it is not automatically invalidating the marriage, but its validity can be sued in front of court.¹⁴ The requirements are often formulated in the form of prohibitions, which are determined by both the Islamic sharia and law regulations. A *sirri* marriage is generally accepted as fulfilling the rukun elements of Islamic marriage, if there are (a) the presence of a groom, (b) the presence of a bride, (c) two Muslim male witnesses who are already puberty and equitable, (d) the presence of the bride's guardian, (e) the presence of the bride's consent (*ijab*) and *qabul* by the groom. The juridical validity of these elements is purely seen from fiqh perspectives.¹⁵ Hence, if seen from the fiqh point of view, the *sirri* marriage is valid.

Besides fulfilling the rukun and the requirements of Islamic sharia, Ramulyo convinces that Islamic marriage should fulfill other requirements as the complementariness. The first thing is *walimah*, where *ijab-qabul* is performed before family members and guests at a family gathering, or at least in a simpler way to meet both bride and groom families' economic capability. The second one is *i'lan al-nikah* – an announcement to the nearby neighbors that there is a wedding, so that the nearby society acknowledges the couple as a legitimate married ones to avoid any bad rumors about them. The third is registering the marriage at KUA. These three requirements are important for the accuracy and validity of the couple's social and marriage status. According to Ramulyo, the three requirements are not accomplished in the *sirri* marriage because the couple wants their marriage be hidden from the society around, and they do not register their marriage legally. Announcement and registering the marriage are

¹⁴ Ibid., 90, 92-93.

¹⁵ Cfr. Sulaiman Rasyid, *Fiqh Islam*, cet. ke-25 (Jakarta: Attahitayah Jatinegara, 1992), 354; A. Zuhdi Mudlor, *Memahami Hukum Perkawinan* (Bandung: Al Bayan, 1994), 53.

very important to protect the couple in dealing with the third party, that are about the legitimacy of their children, wali nikah, and heritage. Further, Ramulyo concludes that marriage in secret is materially valid according to Islamic law, but juridico-formally is not valid, or at least can be aborted.¹⁶

Masturiyah says that announcing the marriage to the neighborhood society is necessary that the couple's marriage is known and acknowledged for its validity, so others cannot proposed one of them.¹⁷ In *sirri* marriage, the marriage status is doubtful, its legitimacy is not certain and clear that others can propose one of the couples and take him/her to a legitimate wedding. About *walimah*, Djubaidah thinks that a wedding party or *walimah* is sunnah and not required, but it is necessary to avoid *sirri* marriage. In other words, *walimah* is the lawful base of registering the marriage.¹⁸

Concerning registration, Siti Aminah writes that it was not known at the beginning of Islam. According to religious norms, registration is sunnah and is not a part of obligatory of a marriage validation. But this requirement is compulsory if it concerns with the state positive law norms. In other words, what in the course of time demands the registration of marriage is the development of society, the welfare and public order, as well as civil demands.¹⁹ Although marriage registration is not a part of the compulsory marriage principles, registration is important as a legal standing to avoid problems in the future. Similar to Ramulyo's opinion, Siti is also convincing that a marriage should be registered for the sake of orderly society.²⁰ Whereas, Djubaidah makes a further distinction, stating that there is a marriage performed with *walimah* but not or has not been registered at KUA with a specific *reason*, at a small village for example, which according to her cannot be equated with *sirri* marriage.²¹

The Islamic Law Compilation chapter 5 (1) assigns that every marriage should be registered to guarantee an orderly marriage for Islamic society. Verse (2) from the same chapter says that registration should be done by a Marriage Registrar Officer. This norm is in

¹⁶ Ramulyo, *Hukum Perkawinan Islam*, 247-49.

¹⁷ Masturiyah, "Nikah *Sirri*," 46.

¹⁸ Djubaidah, *Pencatatan Perkawinan*, 146, 150.

¹⁹ Siti Aminah, "Hukum Nikah Di Bawah Tangan," in *Jurnal Cendekia*, vol. 12, No. 1 (Januari 2014): 23-25.

²⁰ *Ibid.*, 22-23.

²¹ Djubaidah, *Pencatatan Perkawinan*, 146-47.

accordance to the UU RI, No. 1 year 1974 on Marriage, chapter 2 verse (2), that every marriage should be registered in accordance to the law. Djubaidah, however, says that marriage registration according to the law is only an administrative obligation. Agreeing to Bagir Manan, Djubaidah convinces that marriage registration according to Indonesia Republic law is not a legal events and not necessarily having a juridical impact, if the validity of a marriage according to each religion's requirements of the married couple is ruled out.²² This opinion is in accordance to the chapter 2 verse (1) of the Marriage Law, that a marriage can be legally recognized if it is performed according to the religion or faith of the two parties.

On the other hand, there are many who think that civil registration under the Civil Law is obligatory. Idris Ramulyo says that Civil Law is regarded as a new *ijtihad* and is *Ijma'* of the *fugahā'* (Islam leaders) who sit at Indonesia Republic Parliament - DPR RI. *Ijma'* is the fourth of Islamic Law sources, that should be obeyed by all Indonesian Muslims.²³ Referring to Muhammad Quraish Shihab's opinion, Masturiyah says that the law which has been regulated by the government and DPR as the *ulil amri* based on the principle of *maslahah*, in the case of marriage registration, should be obeyed by all Indonesian citizens, including Muslims.²⁴

Hence, there are two contradictory opinions and judgments concerning the validity of a *sirri* marriage viewed by civil law. Masturiyah sees there is a law dualism in Indonesia. On one hand marriage should be registered at KUA, on the other hand a marriage is still valid and acknowledged by Indonesian people even though without being registered.²⁵ Nafi' Mubarak sees there is even a disparity of stance and judgment about *sirri* marriage which is seen in some judge's verdicts. There are three different judge's verdicts: (a) acknowledge the validity of *sirri* marriage, (b) does not acknowledge the validity of *sirri* marriage, (c) acknowledge and does not acknowledge at the same time the validity of *sirri* marriage based on two different law norms.²⁶ The disparity of law substance and

²² Ibid., 214, 215, 217.

²³ Ramulyo, *Hukum Perkawinan Islam*, 252.

²⁴ Masturiyah, "Nikah *Sirri*," 56.

²⁵ Masturiyah, "Nikah *Sirri*," 47.

²⁶ Read Nafi' Mubarak, "Disparitas Putusan Hakim dalam Kasus Nikah Siri," dalam *Al-Daulah: Jurnal Hukum dan Perundangan Islam*, Vol. 6, No. 2 (October 2016): 511-515.

enforcement in concrete cases provokes more people practicing *sirri* marriage, and negative impacts which attached to *sirri* marriage still cannot be avoided and resolved.²⁷

4. Moral Judgment to *Sirri* Marriage

Moral judgment is different to law judgment, even though the two cannot be separated. Moral judgment is about good and bad of an act discerned on moral principles. Moral judgment on *sirri* marriage can be found on some writings, one of them is Djubaidah's. Not every marriage in secret can be classified at one group. Djubaidah distinguished between an unregistered marriage which is not hidden and an unregistered marriage which is hidden. The difference is about the motivation. The unregistered marriage is a marriage performed with *walimah*, but is not or has not been registered with good motivation, in other words, there is no bad intention to hide the marriage. While a stealth marriage does not fulfill the *walimah* element and not registered because it is intended by the couple to hide the marriage with bad intention. Djubaidah suggests that the unregistered is not judged as inappropriate or even punished, because the motivation is to avoid adultery. The unregistered marriage should be helped by the state or society to be registered at the local KUA immediately. Differently, the hidden unregistered marriage with bad intention should be severely punished under the positive law.²⁸

To give moral consideration on a *sirri* marriage we need to see someone's motive, reason, and aim in doing such marriage. The motive and reasons which have been listed above are still neutral to assess its good or bad moral. An unregistered marriage with good intention can be solved by finalizing the problems that hinder the registration, such as the parents' approval, the approval from the wali nikah of the bride, permit from the former legal wife, and all other requirements in case the husband wants to polygamy legally, as well as financial ability for administration expense. Mass wedding with shared financing or sponsored by donors is a way to validate and register these marriages.

Contrarily, *sirri* marriage should be valued as morally bad if the motive is purely because the man is not harmonious with his former wife and secretly wants to take a new spouse without any intention to have legal polygamy according to Islam and state law. The same

²⁷ Ibid., 528.

²⁸ Djubaidah, *Pencatatan Perkawinan*, 147-48.

assessment can also be applied on the motive of merely legalizing adultery, legalizing two teenagers' lust, or testing a love relation. Masturiyah conveys that *sirri* marriage is often done just to legalize love between young couples, where being together in a secluded place, dating, even making love will be halal if they perform it in the form of *sirri* marriage.²⁹ Many college students prefer to take *sirri* marriage with an excuse "it is better to religiously marry rather than commit adultery".³⁰ If the motivation and aim of *sirri* marriage just to hide an affair or adultery, so that the marriage is intentionally unregistered, according to Djubaidah it can be considered as a living together out of legal marriage and should be seen as morally bad.³¹ The similar opinion is expressed by Masturiyah, there are many polygamies which are done with sexual motivation, not following the Prophet Nabi Muhammad's example which did polygamy with missionary motivation.³²

To sum up, we can take some notes on the assessment given by Islamic Institution which has authority to judge issues concerning faith doctrines and morality. On September 17, 2008 the Fatwa Commission of Indonesian Council of Ulama (MUI – Majelis Ulama Indonesia) reputed that a marriage in secret is legitimate because it has fulfilled all the principles and requirements of a marriage according to Islam law. Yet, the marriage can be haram if it is harmful or giving negative impact (*madharrah*). At the part of consideration, it is stated that the negative impact is often endured by the wife or/and the children born in that marriage. For that reason, MUI gives law enforcement that a marriage in secret should be legally registered to the authorized institution as a preventive way to avoid those impacts.³³ The negative impacts of unregistered marriage are publicly known: there is no law recognition for a *sirri* wife and the children's status, there is no inheritance rights for the *sirri* wife and the children, difficulties in other civil registrations (birth certificate, family

²⁹ Masturiyah, "Nikah *Sirri*," 49.

³⁰ Mubarok, "Disparitas Putusan," 505; Ratna Sari, et al., "Perkawinan *Sirri* Perspektif Mahasiswa," 452.

³¹ Djubaidah, *Pencatatan Perkawinan*, 147-48.

³² Masturiyah, "Nikah *Sirri*," 44.

³³ Komisi Fatwa MUI, No. 10 year 2008 about Nikah Di Bawah Tangan, in *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975* (Sekretariat MUI: Jakarta, 2011), 531-34.

certificate, identity card).³⁴ Besides, *sirri* marriage has potential risks of exploitation, power abuse, and violence against women.³⁵

Marriage in Secret in Catholic Church Law Perspective

Marriage celebrated or contracted in secret is regulated by the Catholic Church in the Code of Canon Law, promulgated in 1983 (later it is written as CCL), specifically in canons (cann.) 1130-1133.³⁶ Let us see what a marriage in secret is and how the Church law regulates it.

1. Short History

Before Tametsi Decree was released on November 11, 1563, there were many marriages among Catholics were celebrated privately. But this practice was not regarded as a violation, because previously there was no regulation that stated that a marriage should be performed with juridical formality and publicity. Through the decree released during the Trento (Italy) Council, Catholic Church wanted to stop the practice of clandestine marriage which brought many moral and social problems at that time: scandals, bigamy, no legitimacy for children, negligence on children education, trickery in seizing other's property, etc.³⁷ Tametsi decree then assigns that a legitimate marriage is a marriage that is celebrated before a priest and two witnesses. Since then, a marriage is considered as a public, consensual and formal juridical act: it has to be performed before the local Ordinary or parish pastor, or a priest or deacon delegated by either of the couple, who assist, and before two witnesses (can. 1108, §1).

On one hand, Tametsi decree was proven be effective in upholding the Church discipline, but on the other hand it caused big problems which was not thought before. There were many couples who still practicing the old tradition got dilemma. They wanted to build a good and legitimate marriage, and wanted their marriage be recognised by the Church. However, they were afraid of the negative

³⁴ Masturiyah, "Nikah *Sirri*," 48; Siti Ratna Sari, et al., "Perkawinan Sirri Perspektif Mahasiswa," 459-60.

³⁵ Mubarak, "Disparitas Putusan," 524.

³⁶ Canon Law was released by Pope John Paul II on January 1983, and has been valid since November 27, 1983. This Canon Law is applied in Catholic Church universally. The complete explanation on the Canon Law can be read in Alphonsus Tjatur Raharso, *Sistem Legislasi Gereja Katolik* (Malang: Dioma, 2012).

³⁷ Luigi Chiappetta, *Il Matrimonio nella Nuova Legislazione Canonica e Concordataria* (Roma: Edizioni Dehoniane, 1990), 338.

excess and implication when the celebration was known publicly. For example, a couple who had been publicly known as a normal and legally married couple was actually not legitimate from Church marriage law. If they kept going their *quo status*, living together as husband and wife without juridical formality, they would “live in adultery”, and their children would be “illegitimate”. But, if they validated their marriage according to the juridical formality as demanded by the decree, the society would know that their present marriage was irregular, it would ruin their reputation.³⁸

To solve the problem, Pope Benedict XIV on November 17, 1741 released an encyclical *Satis vobis*. It was not to revoke Tametsi decree, but rather to create a balance between privacy of the clandestine marriage which implied harming the public good on one side, and the requirement of formality and publicity of marriage celebration which then harmed the private good on the other side.³⁹

This Pope Benedict XIV’s encyclical creates a new juridical institution in the Catholic Church’s marriage legislation; that is about marriages which are celebrated secretly (marriage of conscience). This institution was legalized firstly in the CCL published in 1917, cann. 1104-1107, then perpetuated in CCL published in 1983, cann. 1130-1133 which are in force to the present days. The present Code does not use the term marriage of conscience, but marriage in secret.

2. The Meaning of Marriage in Secret

Marriage in secret is a marriage which is celebrated without fulfilling the ordinary public juridical formality and is not registered on the ordinary and common registry. Consequently, the marriage cannot be proven at external forum through ordinary and common documents. Principally, Catholic Church forbids this kind of marriage in secret and wants to terminate the praxis through Tametsi decree. According to norm can. 1130, however, the Church may permit a marriage celebrated in secret based on a serious and urgent reason.

Although it is celebrated in secret, the marriage is not a fully closed and without publicity or stealth. Marriage in secret must fulfill the canonical norms so that can be valid and lawfull, and should be celebrated in the required canonical celebration procedure. Marriage

³⁸ John P. Beal, dalam John P. Beal, James A. Coriden, dan Thomas J. Green, eds., *New Commentary on the Code of Canon Law* (New York - Mahwah: Paulist Press, 2000), 1352.

³⁹ *Ibid.*, 1352.

in secret is not similar to a dispensation marriage according to canonical procedure (cf. can. 1127, §2). Marriage in secret is only an exception against a normal and common marriage. In a normal marriage, all the wedding preparation, celebration and the registration are done in normal, common way and by fulfilling juridical publicity requirement (see cann. 1067; 1108; 1118; 1121-1122).⁴⁰ In the marriage in secret, on the other hand, the juridical publicity is reduced or removed. Precisely, de facto publicity is removed, but de iure publicity is fulfilled.⁴¹ Hence, marriage in secret is not an ‘unregistered marriage’ to hide an adultery or affair. Marriage in secret is not to hide violations against the true characteristic of a marriage: one and inseparable. A man who previously is or has been bound in a legitimate marriage cannot ask a permission to celebrate a marriage in secret to another woman, and vice versa. Marriage in secret is not intended to confirm polygamy, simultaneously or successively. Marriage in secret is a normal and valid one, but has some aspects which are kept secret.

3. The Reasons of Marriage in Secret

The abrogated Code (1917) required “very grave and urgent” reasons (*gravissima et urgentissima causa*) to celebrate a marriage in secret; whereas, the present Church law is more moderate by deleting the word “very” from the two reasons. The judgment upon the graveness and urgency of the reasons is on the local Ordinary, who has the right to give the permission. The couple’s wish just to hide their marriage is not adequate to ask permission. They have to have grave and urgent reasons to ask their marriage be held in secret. For example, their marriage cannot be postponed, but if it is publicly known, it will give grave moral or economic disadvantages for the couple. Here are some situations known and approved by Church legislation system as grave reasons to appeal a marriage in secret.⁴²

First, the couple has already been known as legal husband and wife, while de iure they are living together without a legitimate wedlock. The publicly marriage blessing will arise questions and confusion among the faithful about their present status.

⁴⁰ Antoni Stankiewicz, in Pio Vito Pinto (ed.), *Commento al Codice di Diritto Canonico* (Roma: Urbaniana University Press, 1985), 663.

⁴¹ Chiappetta, *Il Matrimonio*, 663.

⁴² Beal, *New Commentary*, 1353-54; Stankiewicz, *Commento al Codice*, 663; John M. Huels, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry* (Chicago: The Fransiscan Herald Press, 1986), 233.

Second, one party of the couple is from a very lower social status compared to the other one, so that a public marriage celebration will cause the couple be permanently expelled by the family or by the indigenous society, or will be erased from the family inheritance.

Third, there is a civil law which prohibits a marriage, which according to the Catholic Church is opposed to the natural law or Catholic Church law, irrational, unjust, or discriminating, like a law that forbids an interracial marriage (anti-miscegenation law).

Fourth, the Church undergoes a religious persecution by the nation, where the Church is prohibited to celebrate a Catholic marriage.

Fifth, there is a death divorce widow or widower who wants to re-marry, but a public marriage will risk losing his/her right on the children, inheritance right, or losing both, or a risk of losing his/her occupation that is the only source to earn his/her and the children's living.

The common reason that is now often applied to celebrate a marriage in secret is one party of the couple (usually the woman) will lose the government social welfare which she needs. However, those reasons should be supported by other compelling or urgent reason: why they should marry "now" and do not wait or postpone until the situation or condition is convenient for them to celebrate a normal and ordinary marriage.

4. Granting the Permission

Marriage in secret needs a special permission from the Church authority. According to the old law, the authority is the local Ordinary. Local Ordinary in a diocese is the diocesan Bishop, General Vicar, and Episcopal Vicar (cf. can. 134, §1). About General Vicar, according to the old law, in giving the permission of marriage in secret, special mandate from diocesan bishop is needed (can. 1104). According to the present law, the authority is the local Ordinary, without any special delimitation or condition added (can. 1130). Hence, a General Vicar does not have to ask a mandate from diocesan Bishop. But there is a suggestion that a General Vicar or Episcopal Vicar should consult the diocesan Bishop before releasing the permission, especially if the marriage in secret potentially has conflicts between the canonical law and the local civil law.⁴³

⁴³ Beal, *New Commentary*, 1353.

Among the reasons stated above, a local Ordinary may sympathize to some couples who will confront a severe financial problem if their marriage is publicly known. Therefore, he should consider all the consequences of his permission. The local Ordinary could be charged by the civil law on the allegation of a conspiracy with the couple of defrauding the state finances. Therefore, a local Ordinary should thoroughly observe whether losing financial right truly causes the spouse be poor, or just facing income downgrading. If they just face income downgrading, the permission should not be granted, especially if it will violate the civil law. Thus, the spirit behind the norms regarding marriage in secret is not to confront the civil law. The permission is exceptional that rarely happens. It can be granted in the context of saving the faithful souls (*salus animarum*).⁴⁴

5. The Nature of the Secrecy

As has been stated before, a marriage in secret is not meant to conceal the marriage, especially if the marriage is against the Church law. Accordingly, the secrecy of a marriage does not exempt a priest who will assist the marriage from the obligation to investigate the impediments of marriage for the couple who beseeches their marriage be held in secret. Can. 1073 enacts that the inhibiting obstacles unable a couple to celebrate a legitimate marriage. Further, can. 1066 confirms that before a wedding held, it should be affirmed that there is no single cause that inhibiting a valid and lawfull marriage. The requirement of those canons should be accomplished in the marriage in secret. The main marriage impediment is a previous legitimate marriage (*status non-liber*). If one or both party is still bound to his/her previous marriage, the Church will never grant the marriage and it cannot be celebrated, not even in secret. In other words, secrecy is not valid for any violations against the intrinsic marriage's dignity and standards—one and inseparable. If there is any other impediment, the Church may grant a dispensation on the basis of just and reasonable (cf. can. 90, §1). In the case of marriage in secret, the procedure of granting dispensation is done in secret.

Cann. 1131-1333 regulate things that should be handled in secret and how to keep it in secret. Firstly, the secrecy is applied to the process of marriage preparation, i.e. the canonical investigation to affirm there is no impediment for a valid and lawful marriage (can.

⁴⁴ Rafael Navarro Valls, in E. Caparros, M. Thériault, J. Thorn (eds.), *Code of Canon Law Annotated* (Montréal: Wilson & Lafleur Limitée, 1993), 716.

1331, 1⁰; cf. can. 1066). The canonical investigation should be done in secret, and its document is not kept in the parish archive, but is sent to the diocesan curia to be kept in the secret archive. It is obvious that the announcement at the parish church is by itself canceled.⁴⁵ Secondly, the secrecy is also applied for the celebration of marriage. The local Ordinary who grants the permission, the minister who assists the marriage based on the authority given by the local Ordinary, the witnesses, and the couple, all are entitled to keep the secrecy of the marriage (can. 1331, 2⁰). The marriage in secret, therefore, still complies the juridical formality and publicity requirements, i.e. celebrated before the local Ordinary or a priest who has a special permission (can. 1108, §1; cf. can. 124, §1). The secrecy of the marriage would entitle more people if the authority and/or the special permission to assist the marriage in secret are delegated to other priest or deacon. So, in order to not involve many people to be entitled to the secrecy, it is better if the authority to assist the marriage is not delegated to the other.

A marriage in secret is beyond doubt a registered marriage. Its public nature is still preserved (can. 1108), but its publicity is canceled (cann. 1130-1133).⁴⁶ The public nature of the marriage in secret consist in its celebration before the Church minister and two witnesses. The Church minister acts as qualified witness who is present to ask the couple's consensus and accept it on behalf of the Church. So are the two witnesses (common witnesses), they are the representatives of the faithful community who are present to witness the marriage (can. 1108, §§1-2). So, the public nature of a marriage is still preserved and fully done. Then, there is an extraordinary registration, i.e. inscribed in a "special register" (can. 1133). This special register is not archived in the ordinary and general marriage book (*liber matrimoniorum*) at the parish, but in the secret archive at diocesan Curia. In other words, a marriage in secret is not registered on the parish marriage book⁴⁷ where the marriage is celebrated,

⁴⁵ Jan Hendriks, *Diritto Matrimoniale. Commento ai Canoni 1055-1165 del Codice di Diritto Canonico* (Milano: Ancora, 1999), 278.

⁴⁶ Juan Fornés, dalam A. Marzoa, J. Miras, R. Rodríguez-Ocaña (eds.), *Exegetical Commentary on the Code of Canon Law*, Vol. III/2 (Canada-Chicago: Wilson&Lafleur-Midwest Theological Forum, 2004), 1515.

⁴⁷ A parish is a Christian faithful community which is founded permanently in a diocese, which its pastoral practice is under the authority of the diocese bishop, entrusted to the parish priest to lead (can. 515, §1). A parish can be territorial which

neither is the marriage reported to the parishes where they are baptized to be registered on the baptism book (*liber baptizatorum*). Moreover, after being registered on the special register, all documents of the marriage preparation and celebration should be destroyed.⁴⁸ The diocesan secret archive is a special chamber, at least an unmovable iron chest or box at a closed and locked archive room. All secret documents should be kept at that room (can. 489, §1). The key of the secret archive should only be kept by the diocesan Bishop. In case there is a vacant at the bishop see, the archive cannot be opened unless by the diocese administrator for a very important case. Besides, there is no one is allowed to bring documents out of the archive secret room (can. 490, §§1-3).

However, the secrecy of the marriage is conditional—it is not absolute. Among those people involved, the ones who highly concern with the secrecy of the marriage are only the couple and the local Ordinary who grants the permission. In other words, the secrecy is applied just for the benefit of the couple. The couple, however, is free to publish their marriage, anytime on their own agreement. If their marriage has already been public because of the couple's own deed, automatically the others are freed from the obligation to keep the secrecy. The local Ordinary, too, is only bound to the conditional secrecy. If the secrecy potentially brings a grave scandal or an injustice towards the sacred marriage, he will be freed from the secrecy of the marriage. He, then, will publish the marriage of the couple. This term should be informed to the couple before they are married in secret (can. 1132). What is meant by “potentially brings a grave scandal or an injustice towards the sacred marriage” is one party or both couple misuses the secrecy of the marriage to re-marry publicly with other one. “A grave scandal” is when the couple regarded by the faithful community as “living together out of wedlock/adultery”, because they do not know that the couple has already been married in secret. In this case, the silence of the Church gives an impression that she agrees their “adultery”.⁴⁹ By freeing the secrecy of the marriage, or publishing the marriage which was held in secret, those scandals can

encompasses the faithful at an area which boundaries are already determined; or personal which includes a certain group of the faithful based on rite, language, race, or others (cann. 518).

⁴⁸ Beal, *New Commentary*, 1355.

⁴⁹ *Ibid.*, 1354-55.

be avoided. By freeing the local Ordinary from keeping the secret, the minister, the witnesses, and all who involve in the preparation of the marriage in secret are freed, too. If the secrecy is opened and the marriage becomes public, the marriage which was registered at diocesan Curia secret archive now should be registered at the parish marriage book and parish baptism book, as any other normal marriages.⁵⁰ The marriage, then, can be registered at the local civil registry office.⁵¹

The Comparative Study Findings

1. The similarities

From the above explanations, we find some similarities between Islam and Catholic about marriage in secret.

First, both Islam and Catholic acknowledge marriage in secret, give judgments and generate regulations accordingly based on the moral principles and the juridical norms of each religion. In Islam, the term generally used is *sirri* marriage, whereas Catholic uses marriage in secret. In both religions marriage in secret is understood as a stealth marriage or a marriage that is kept from publicity. According to both religions, marriage in secret is not an ordinary nor common marriage. According to them, to attain a *sakinah, mawaddah wa rahmah* marriage, it should have “one and inseparable” character and have a definite and obvious status—socially and legally.

Second, although it is not an ideal marriage, according to both religions, marriage in secret is legitimate. In Islam, *sirri* marriage is legitimate as far it meets the rukun and requirements of Islamic marriage. A *sirri* marriage is understood as a marriage held in religious rite only, there should be at least a marriage guardian, two witnesses, and the present of *penghulu*—the chief to do the solemnization of the marriage (*ijab-kabul*). In Catholic, marriage in secret is celebrated within the Church only, precisely according to canonical law. A marriage in secret is legitimate as long as the couple has no impediments to marry, and they are free, serious, and sincere in manifesting their matrimonial consensus before the Church authority and two witnesses.

⁵⁰ Antonio Mostaza, in J. Manzanares, A. Mostaza, and Jose Luis Santos, *Nuevo Derecho Parroquial* (Madrid: Biblioteca de Autores Cristianos, 1990), 466.

⁵¹ Chiappetta, *Il Matrimonio*, 340.

Third, both religions agree that marriage in secret is not an idealistic one, because it brings some serious effects. The basic grave consequence is concerning the legal status of the wife and the children born in the marriage and the legal assurance for them, including their citizen administrative status. The secrecy of a marriage also brings an obvious impact of law abuses on the secret status itself, women exploitation, power abuse, and manipulation.

Fourth, from the discussion above, Islam and Catholic are both facing the same problem concerning the function and position of marriage registry which is required by the state positive law. There has not been an agreement among the Islamic law experts upon this problem; that's why we only discuss similarities of both religions. According to Bagir Manan and Neng Djubaidah, marriage registry of the state positive law is not a legal event and not necessarily has special legal consequences, all the more if it should overrule the legitimacy of the marriage which has already fulfilled the requirements of the couple's religion. Catholic, too, has regulated that a marriage of Catholics, either both or even only one party is a Catholic, is governed by God law and also canonical law. Civil authority, then, only has the power concerning civil effects of the marriage (can. 1059). A marriage between two Catholics is a sacrament, that is a natural and sacred reality which is founded by Jesus Christ, that it is not under the civil authority, but rather fully under the authority of the Catholic Church. It submits to the Catholic law which has already been complete concerning the validity and lawfulness of a marriage. According to Catholic Church, the civil authority is not competent to regulate the validity and lawfulness of a Catholic marriage that has been celebrated according to the religion law. The civil authority is fully admitted and respected by the Catholic Church, because a marriage is also a cell of community life which defines general goodness (*bonum commune*). Therefore, Catholic Church requires her faithful to submit to the civil law for the sake of civil effects of the marriage. Civil effects of a marriage which are regulated by civil authority are: husband-wife status, legal domicile, right and obligations of the husband and wife as parents, regulation of naming the children, children education, family financial, taxpayer status, woman and children protection in the family, etc. For those marriage effects, the state has the right to regulate as well as to give the assurance, protection, promotion, and revitalization through the law,

so that a marriage has more roles as a primordial society which effectively contribute to the goodness of the society. In order to implement its special jurisdiction the civil authority demands a marriage should be registered in the civil registry. This civil authority is fully admitted by the Catholic Church, but not lest nor more than that.⁵²

2. The Differences

Besides the similarities, we also find some significant differences between both religious laws in regulating marriage in secret.

First, in Muslim society view and according to scientific studies, a *sirri* marriage has a broad and complex meaning, because it includes marriage in secret, unregistered marriage, suspended marriage, and privately made deed marriage. Accordingly, in giving a judgment and regulating a *sirri* marriage, every scientific study needs to formulate and categorize the *sirri* marriage itself. In Catholic Church, on the other hands, a marriage in secret has a single meaning, as has been regulated in the canonical law which universally valid.

Second, according to some studies we have observed, in Islam law, a *sirri* marriage is actually not a juridical institution which is created and regulated by the religion from the very beginning, but rather a practice that has been done by some Muslims, which is subsequently given moral judgments and decisions by religious institution, and having some law studies and judgments from Islamic law experts. The moral judgments are about the good and bad of a *sirri* marriage from the Islam moral doctrines, whereas the law judgments on the legitimate status comes from the Islamic law. The absence of the discussion on the *sirri* marriage in the Islamic Law Compilation and Islamic Law Encyclopedia is a sufficient evidence of the premises. Moreover, Islamic law does not acknowledge permission to celebrate a *sirri* marriage.

In Catholic Church, on the other hand, marriage in secret is a juridical institution which is founded and made known officially by the Church highest legislative authority, and universally applied. The establishment, of course, was not at the beginning of the birth of Catholic Church, but in the middle of sixteenth century. Because it is an exception, the couple who wants to marry in secret is assigned to

⁵² See Alphonsus Tjatur Raharso, *Paham Perkawinan Dalam Hukum Gereja Katolik*, ed. revised (Malang: Dioma, 2014), 185-189.

ask the permission to the local Church authority on a grave reason. The permission of marriage in secret was issued by Trente Council in 1563, and reconfirmed by Pope Benedict XIV in 1741. At present, the regulation on marriage in secret is established in the Code of Canon Law (1983), cann. 1130-1133. They regulate the causes and reasons of a marriage in secret, the consent and its implications, the nature of secrecy, and the registration. The reasons and motivation of granting the permission for a marriage in secret are to balance the couple's private good (reputation, economic and social assurance) and public good of the society (the formality and publicity of the marriage celebration).

Third, a marriage is *sirri* because it is not registered at the local KUA. KUA is an institution founded by the government under the Religion Affair Department, which tasks are to minister, supervise, register, and report the marriage and remarriage. There is no other institution and registry which is allowed to register Islamic marriage. This arises unending debates concerning the validity of a marriage which is not registered at KUA. In Catholic Church, on the other hand, a marriage is usually registered twice: the registration on the Parish Marriage Book, and the registration at the local Civil Registry Office (Dispendukcapil) to gain the civil effects of a marriage. In the case of marriage in secret, the marriage is not registered on the Parish Marriage Book, but registered in an extraordinary manner on the diocesan secret archive. Although the marriage is not registered at the local Civil Registry Office, the marriage in secret is a marriage which is internally registered by the Church. Hence, a marriage in secret in Catholic Church is not an unregistered marriage, but it is registered on a special book.

Fourth, *sirri* marriage is held by presenting guardian, witnesses, and the officer who weds the couple as part of marriage principles (*rukun*) and this is obligatory. Although there are an officer and two witnesses, the marriage is still regarded as *sirri* as long as it does not meet other important requirements, i.e., a reception among family, relatives, and some invited guests, at least a simple one, publication or announcement, and finally registration at the local KUA. The three elements are very essential to make the marriage is known, recognized, and respected by the surrounding society, and to avoid any scandals or accusation. Marriage in secret in the Catholic Church, however, wedding reception and announcement are not intentionally

performed. Although it is celebrated hidden from the other faithful, a marriage in secret still meets the formality requirements and minimal publicity. The priest and two witnesses are regarded as the representative of the community of the faithful, that represent the formality and publicity dimension of a marriage. As an additional information, in the Church's concept the priest who minister the wedding is called *testis qualificatus*, namely the official witness who asks and accepts the wedding vow in the name of the Church. This term is used to distinguish from the other two witnesses who represent the faithful, called *testes communes*. They, together with the couple, are bound to the secrecy of the marriage. Like *sirri* marriage, a marriage in secret is not registered at the local Civil Registry Office, but is registered internally at the Church as a special registry. As has been stated before, for the Catholic Church civil registry does not have to do with the validity of a marriage, but rather just to have the acknowledgment for civil effects.

Fifth, in Catholic Church, a marriage in secret is a valid and official one. Its secrecy gets legal protections and has an obligatory character to be protected and guarded, as long as the couple needs and wants to keep the secrecy of their marriage. If the couple wants to reveal their marriage status, the secrecy automatically has no legal protection anymore. The secrecy is over and the marriage should be announced publicly by transferring the registry from the diocesan secret archive to normal registry on the Parish Marriage Book, as well as if the couple wants to register the marriage at the Civil Registry Office. On the contrary, in Islamic law the secrecy of a marriage is unknown and even forbidden. Therefore, there are many who is against the secrecy of a *sirri* marriage and demanding the marriage to be registered promptly at the local KUA to have a definitive social status and legal standing on the marriage.

Sixth, by not registering the marriage at the local KUA, the *sirri* marriage has no legal stability when confronting some issues against the third party. One of the issues is when a third party wants to take one of the *sirri* couple to wed him/her legally. A legal marriage according to the positive law will overrule a *sirri* one. The same risk and danger can also happen in the Catholic marriage in secret. The secrecy of the marriage requires the couple to not reveal their marriage status. It would on risk if there is someone who does not know the real status of the marriage wants to marry one of the

couple. As has been discussed above, the secrecy of a marriage does not reduce the marriage status. Even though it is secret, a valid marriage is an absolute obstacle for the couple to remarry with others, so much so it is an absolute impediment for the third party to marry one of the married couples. Consequently, if there is a man does not know that a woman he likes is already married in secret and proposes her, someone who knows the intention should directly report to the Church authority. Especially the ones who have been involved in the marriage in secret celebration, is obligated to confidentially report to the local Ordinary. Then, the Church authority will open and terminate “the secret seal” of the first marriage, in order to prevent the married in secret one to remarry for the second time.

Seventh, it is common a *sirri* marriage is an option to avoid adultery and scandal in the society. Also, this kind of marriage is performed when someone wants to polygamy but is not able to meet the requirements of polygamy, one of it is having the permission from his legitimate wife. Often, the motive and reason behind a *sirri* marriage are doing polygamy which according to Islamic law it is permitted as far as the one who wants to do polygamy meets all the strict and bold requirements. The Catholic Church, on the other hand, forbids her faithful to perform polygamy, both polygyny as well as polyandry. The Catholic Church firmly holds the marriage intrinsic characters: one and inseparable. Therefore, if one or two party violates the secrecy of his/her marriage to try to remarry, or let the third party to marry him/ her, the Church will terminate the secrecy of the marriage and announce publicly. The registry at the diocesan secret archive will be opened and announced, and the marriage used to be in secret will be registered at the ordinary marriage book at the parish where the marriage in secret was held. Everyone who used to be entitled to keep the secret is now freed from the obligation.

Conclusion

This comparative study is able to show the distinctive similarities and differences between the Islamic and Catholic Church marriage laws. Both religions have many shared common moral values which are incorporated in the marriage and family primordial institution. This comparative study on laws opens a broader insight about marriage in secret. This study also enables the two religions to respect and value the differences more and mutually strengthen the

values they live and believe. This comparative study hopefully can be of contribution for the government in dealing with marriage in secret which is known by both Islam and Catholic. This comparative study finds out that a marriage in secret in both religions implicates to the registry function and role of the government institutions, namely KUA and Civil Registry Office. What is regarded as valid according to religious law, is *sirri* from the state positive law if the marriage is not registered at the local KUA or the Civil Registry Office. The state obviously has its own understanding about *sirri* marriage or marriage in secret. Further studies and discussions on this issue is still opened.

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