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PERADILAN dan HUKUM KELUARGA ISLAM

SILARIANG (ELOPEMENT) ACCORDING TO THE VIEW OF TRADITIONAL LAW AND ISLAMIC LAW IN PATTALASSANG SUB-DISTRICT, GOWA

Silariang (Kawin Lari) Menurut Pandangan Hukum Adat Dan Hukum Islam Di Kec. Pattallassang Kab. Gowa

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Article Info	Abstract
<p>Accepted* October 15, 2022</p> <p>1st Revision* October 20, 2022</p> <p>2nd Revision* November 30, 2022</p> <p>Approved* December 25, 2022</p>	<p><i>Fostering and building a household, has been regulated by law both Islamic law and with the law that exists in the community. The outbreak of the existing rules is not infrequently violated by two people who want to unite in domestic life, but sometimes get some obstacles. The purpose of holding research is to find out the problems of community related to marriage that does not go through the blessing of parents which results in the occupation of the mate (silariang) in terms of the view of Islamic law and customary law in the Pattalassang District, Gowa Regency. This research uses the way of research, namely normative law through the framework of divinity or theological and sociological approaches. The results of the study provide information that the silariang in the Islamic legal view of the law is invalid, because the marriage that is carried out does not meet the legal elements, this also occurs without the existence of marriage guardians so that it cannot meet the legal requirements in a consent granted. Simply put it is concluded that elbows or with other names Silariang to the people of Gowa and around dikumi canceled. While Silariang in customary law in the Makassar Bugis community in Pattalassang District, Gowa Regency is seen as an act that brings siri (shame) if the act brings siri, the female family called Tumasiri has the right to take action against the Silariang perpetrators. For those who commit violations can be subject to sanctions, both in the form of minor sanctions such as exclusion and expulsion or severe sanctions, namely killed</i></p> <p><i>Keywords: Silariang, Cutomary Law, Islamic Law</i></p> <p><i>Membina dan membangun sebuah rumah tangga, telah diatur oleh hukum baik itu hukum islam maupun dengan hukum yang ada pada masyarakat. Pelanggaran terhadap aturan yang telah ada tersebut tidak jarang dilanggar oleh dua orang yang ingin menyatu dalam kehidupan rumah tangga, namun terkadang mendapatkan beberapa halangan. Tujuan dengan diadakannya penelitian adalah untuk mengetahui problem masyarakat yang berhubungan dengan pernikahan yang tidak melalui restu orngtua yang berakibat terjadinya kawin lari (silariang) dilihat dari sisi pandang hukum Islam maupun hukum adat yang ada Kecamatan Pattalassang Kabupaten Gowa. Penelitian ini menggunakan cara penelitian yakni hukum normatif dengan melalui kerangka ilmu ketuhanan atau teologis dan pendekatan yang bersifat sosiologis. Hasil</i></p>

	<p><i>dari penelitian tersebut memberikan informasi bahwa silariang dalam pandangan hukum Islam hukumnya tidak sah, karena pernikahan yang terlaksana tidak memenuhi unsur-unsur hukum, hal ini juga terjadi tanpa adanya wali nikah sehingga tidak dapat memenuhi syarat sah dalam sebuah ijab kabul. Secara sederhana di simpulkan bahwa kawin lari atau dengan nama lain silariang pada masyarakat Gowa dan sekitar dikumi batal. Sedangkan silariang dalam hukum adat pada masyarakat Bugis Makassar di Kecamatan Pattalassang Kabupaten Gowa dipandang sebagai perbuatan yang mendatangkan siri (rasa malu) bilamana perbuatan tersebut mendatangkan siri maka pihak keluarga perempuan yang disebut tumasiri punya hak untuk mengambil tindakan terhadap pelaku silariang. Bagi yang melakukan pelanggaran tersebut dapat dikenakan sanksi, baik berupa sanksi ringan seperti pengucilan dan pengusiran maupun sanksi beratnya yaitu dibunuh.</i></p> <p><i>Kata Kunci: Silariang, Hukum Adat, Hukum Islam</i></p>
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A. INTRODUCTION

Every human being wants the continuity of their offspring, this encourages every human being to undergo a marriage relationship. Everyone is born in pairs and it is by nature to continue the lineage and live together as a family through marriage. Marriage in Islam is the *sunnah* of the Prophet Muhammad SAW. As written for Muslims who are at the stage that meets the requirements, it is recommended to get married, apart from worship, it also aims to create a happy and prosperous family both physically and spiritually, alias the *sakinah mawaddah warahmah* family. Islam prescribes marriage as Allah Subhana Wata'ala says in Surah an-Nur 24: 32, "And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing".¹

Everyone has their own reasons that push them to get married. Islam as a perfecting religion provides a clear corridor for these reasons. Besides, Law Number 1 of 1974 as the constitution that regulates Indonesian citizens and Islamic law as well provides a perspective on marriage that is not only seen from a purely formal side but also from social and religious indicators.² Islam forbids marriage for bad reasons, for example a man only wants to control the property of the woman he wants to marry and so on. Islam even makes marriage obligatory for someone who is able and worried about falling into adultery. Marriage is a *sunnah* of the Prophet Muhammad³ and marriage is also the *Sunnah* of the other apostles before the prophet Muhammad saw.

One of the books, namely the book of Tafsir Ayat al-Ahkâm, provides an explanation that boys in Islam are categorized an adult phase if they have experienced wet dreams when they ejaculates and sperm comes out from the genitals, this is an

¹ Alqasbah, *Al-Qur'annulkarim Hafazan Perkata* (Cet. I; Bandung: alqasbah, 2020).

² Kartika Septiani Amiri, "PERKEMBANGAN DAN PROBLEMATIKA HUKUM PERKAWINAN DI INDONESIA," *Al-Mujtahid: Journal of Islamic Family Law* 1, No. 1 <https://doi.org/10.30605/al-mujtahid.v1i1.1> (2021).

³ Tim Ulin Nuha ma'had Aly An-Nur, *Fiiqih Munakahat* (Cet. 11; Solo: Kiswah Media, 2018).

agreement from the majority of scholars that when this dream occurs, the child is said to be *junub* (semen coming out), so the child is in the *bâligh* category, while a woman is said to be in the *bâligh* limit if she has menstruated and is pregnant.⁴ The book of *Tafsîr Al-Misbâh*, written by Qurais Shihab, provides an explanation of the meaning of the main words *rushdan*, namely the accuracy and right path. Therefore the word "rushd" was born which is explained by surah an-Nisa verse 6, for humans, namely the perfection of their minds and souls that enables them to do good and right things.⁵

Marriage is a virtue to be realized, and in realizing it requires procedures and stages that are in accordance with the sharia foundation. Fulfilling the pillars and conditions in the wedding procession is a necessity thus the marriage can be declared valid in accordance with Islamic guidance. However, it cannot be denied that some Indonesian people prioritize traditional processions in carrying out marriages or carrying out marriages with traditional processions based on Islamic guidance. Basically the form of marriage performed by the Makassar Bugis community is the same as the form of marriage carried out by Indonesian people, especially those who adhere to Islam, however, in terms of customary law for the Makassar Bugis tribe, marriages carried out can also be in the form of *silariang* marriages (elopement).⁶

If the prospective husband and wife run together without a formal proposal or engagement, then there is a *silariang* marriage or both run away. It seems that this method is a common way of carrying out marriages in areas of society that adhere to the patrilineal system, and are also found in areas of society that adhere to the kinship system. Marriage by way of *silariang* is done to avoid various obligations as a result of marriage by way of proposal or proposal, or also to avoid obstacles from parents and relatives. The last reason is presumably the prime reason why marriages were carried out in the *silariang* way.⁷ In the Makassar Bugis community, elopement or in the Bugis language is called *silariang*, is something that the community does not approve of. *Silariang* is usually done for various reasons. *Silariang* has been widely carried out by the people of Pattalassang District, Gowa Regency.

B. RESEARCH METHOD

The type of research used in this study is normative legal research⁸, namely research conducted to provide an interpretation of *silariang* from the perspective of Islamic law and customary law in Pattalassang District, Gowa Regency, using a theological and sociological approach, and described descriptively.⁹

C. RESULT AND DISCUSSION

⁴ Eko Zulfikar, "TINJAUAN TAFSIR AHKAM TENTANG HUKUM PERNIKAHAN DALAM AL-QUR'AN SURAT AL-NUR AYAT 32-33," *Mahkamah : Jurnal Kajian Hukum Islam* 5, no. 2 (2020), <https://doi.org/10.24235/mahkamah.v5i2.6857>.

⁵ Muhammad Fuad Zain and Ansori Ansori, "REKONTRUKSI BATAS USIA PERKAWINAN PASCA PUTUSAN MK NO. 22/PUU-XV/2017 SEBAGAI PENGUAT BANGSA DI ERA INDUSTRI," *Journal of Islamic Family Law* 1, 2019.

⁶ Ramdan Wagianto, "Tradisi Kawin Colong Pada Masyarakat Osing Perspektif Sosiologi Hukum Islam," *Www.Ejurnal.Uin-Suka.Ac.Id*, 2020.

⁷ Soerjono Soekanto, *Hukum Adat Indonesia* (Jakarta: CV. Rajawali-Jakarta, 1981).

⁸ Beni Ahmad Saebani, *Metode Penelitian Hukum* (Bandung: Pustaka Setia, 2009).

⁹ Burhan Ashofa, *Metode Penulisan Hukum* (Jakarta: Rineka Cipta, 1996).

1. Silariang marriage is reviewed in terms of Islamic law aspects in Pattalassang Subdistrict

One of the pillars in a marriage is there must be a guardian. Because a guardian in a marriage is a pillar, the marriage will not be valid without a guardian for the bride. This is what is presented by the opinion of the majority of scholars. A marriage is not considered valid, unless there is a guardian in the process of a marriage. Hadith from Aishah, the Prophet said: From 'Aishah Radliyallahu 'anhu that the Messenger of Allah, may God bless him and grant her peace, said: "A woman who marries without the permission of her guardian, her marriage is invalid. If the man has interfered with her, then he must pay the dowry for the honor that has been halal from her, and if they quarrel, then the ruler can be a guardian for a woman who does not have a guardian. Issued by the Four Imams except Nasa'i. Authentic hadith according to Ibn Uwanah, Ibn Hibban, and Hakim.

Silariang is not justified in both religion and positive law because we know that silariang marriage is clearly prohibited by religion and also positive law because the marriage is not registered and not recognized by the state. From the point of view of Islamic law it is also clear that it does not allow Silariang marriage which involves uncontrolled lust and has many negative impacts. It should be mandatory for someone who has the ability and readiness to get married to be able to prevent adultery. Because the Islamic law of adultery is stoning.¹⁰ The meaning of an invalid marriage is when the marriage is legally flawed because the conditions for marriage are not fulfilled, one of which is without the consent of a guardian.

Thus, if this happens, silariang is a prohibited act, in other words, marriages held in silariang marriages are considered null and void. The cancellation of a couple's marriage due to a silariang marriage can result in never being bound in terms of religious legality and positive law at any time in the relationship between husband and wife. If the silariang perpetrator has had sexual relations (coitus) in which the silariang actor does not fulfill the conditions of marriage, one of which is without the blessing/approval of the guardian and if the guardian does not approve of the marriage on the basis of sharia, then the silariang perpetrator has committed adultery.

Zina or adultery itself is a sexual relationship (intercourse) between a man and a woman outside of marriage, either willingly, forced or forced and the person who commits the act is a person who is included in the mukalaf category. As God says in QS an-Nur/24:2. "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment."¹¹

Tafsir Fi Zilalil provides an explanation regarding the verse that the law of adultery is punished by whipping. Caning is a punishment given to perpetrators of

¹⁰ Anni Nur Annisa, "Penerapan Pidana Adat Kasus Silariang Dalam Perspektif Hukum Nasional Dan Hukum Islam Di Desa Bululoe, Kecamatan Turatea, Kabupaten Jeneponto," : : *Fakultas Syariah Dan Hukum UIN Alauddin Makassar*, 2017.

¹¹ Sayyid Quthub, "Fi Zilalil-Qur'an, Terj. As'ad Yasin, Tafsir Fi Zilalil Qur'an Dibawah Naungan Al-Qur'an, Jilid 7," 2015.

immorality in the form of adultery, namely a Muslim or a Muslim woman who has matured or entered adulthood according to Islamic law, and is intelligent and independent. The implementation of this flogging law is carried out and shown to all Muslims in the area or those appointed by the leader in the area. From a customary point of view, giving punishment or sanctions in the form of customary sanctions or social sanctions to perpetrators of adultery or *silariang*, although these customary sanctions are starting to decrease in the Bugis Makassar indigenous people, *Silariang* remains an option for couples who are unmarried or without the blessing of their guardian.¹²

When choosing a partner, conflicts between children and parents are discouraged. If his goal is to please Allah, he cannot be accused of choosing a mate for his child, but if the child refuses, he must consider the reasons for the refusal. As long as the reason is clear and does not conflict with sharia, parents must be willing to accept their child's decision. In this case, there must be caution between children and parents so they don't regret it later. Parents have the right to choose a spouse for their children, provided it is in accordance with Allah's provisions.¹³

The Bugis community has an arrangement for matchmaking that has been carried out from generation to generation with the aim of strengthening family relationships, this is the best way, the matchmaking that is the choice of the Bugis indigenous people is a custom that is considered good and important by the community. The function of continuing the matchmaking system is as a structure within a community group. Because so far it is believed that only close relatives, that is, only family members are allowed to marry, it is often called an ideal marriage by bringing together men and women in the family environment. Both on the mother's and father's side the reason is because marriage in the family environment strengthens family ties, for the Bugis Makassar tribe it is usually the first marriage, they often consult a shaman when looking for a life partner. In Islam, all Muslims are brothers and everyone can be friends, but which partner has the right to be the next partner or life partner.¹⁴ Apart from what has been explained in Q.S An-Nisa verse 23: "Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever forgiving and Merciful."¹⁵

Father or brother is the most important thing in a marriage, because the father or if the father has died then being replaced by a male family is one of the pillars of the marriage contract, in sharia they are called marriage guardians. Marriage guardians in the compilation of Islamic law or in short with KHI are one of the requirements in the implementation of the marriage contract (ijab) as stated in Article 19 of law number 1 of

¹² Sayyid Quthub.

¹³ Andi Mattalata, *Meniti Siri' Dan Harga Diri*, 2020.

¹⁴ Hardianti, "Adat Pernikahan Bugis Bone Desa Tuju -Tuju Kecamatan KajuaraKabupaten Bone. Dalam Perspektif Budaya Islam," *Fakultas Adab Dan Humaniora UIN Alaudin Makassar*, 2015.

¹⁵ Alqasbah, *Al-Qur'annulkarim Hafazan Perkata*.

1974 which provides an explanation that marriage guardians in marriage are pillars that must be fulfilled for prospective bride to be married off. Islamic law provides a requirement in carrying out a marriage that the guardian is also the executor of the consent or marriage contract, therefore the law governing marriage in Indonesia regulates the requirements for a valid marriage if the process is carried out in accordance with the religious provisions adhered to by both the bride and groom or both candidates.¹⁶

The Shari'a regulates the guardian at the marriage ceremony, namely from the woman's side only, because in practice the guardian acts as an intermediary who will marry the woman to a man who is the groom's candidate. The position of a guardian in a marriage contract is central because the guardian is the determinant who will determine whether or not a marriage is valid. There are two rules for guardians of marriage:

a. Guardian by Nasab (lineage/by blood)

The agreement of the scholars provides a limitation regarding marriage guardians who are included in or have an asabah relationship. The opinions or agreements of Islamic scholars that can be followed regarding guardianship include Malik, Syafii and Ats-Tsauri, the book of *Kifayatul Akhyar*, is the book of fiqh which is the main reference or the most widely used by Muslims in matters of marriage and is a mecca for madzhab of the Syafiiyah school, explaining the order of the marriage guardians among them:

1. Biological father;
2. Father of the father (grandfather);
3. Siblings with one father and one mother;
4. Father's brother;
5. Brother of a male sibling;
6. Son of a paternal relative;
7. Father's brother (uncle);
8. Son of father's brother (cousin).¹⁷

From this order, there are rules that cannot be changed in order, this is the standard rule according to the reference book. Except when the party concerned gives permission to the next sequence.¹⁸

b. Islamic Jurists or Judge Guardian

Judge guardian is a marriage guardian who is appointed by the Minister of Religion or an official appointed by him and is given the authority and authority to act as marriage guardian. The head of the Regency Office of Religious Affairs (KUA), who is in charge of supervising the whereabouts of the bride and groom and is in charge of recording people who are about to marry, is also the head of private administration for unaccompanied women. In accordance with the Decree of the Minister of Religion of the Republic of Indonesia Number 2, regarding guardian judges.¹⁹

¹⁶ A. Zuhdi Mudhor, *Memahami Hukum Perkawinan* (Bandung: al-Bayan, 1994).

¹⁷ Tim Ulin Nuha ma'had Aly An-Nur, *Fiiqih Munakahat*, Cet. 11; S (Solo, 2018).

¹⁸ Al-Mughni Ibnu Qudamah, , *Juz VI, Mesir: Dar Al-Manar*, n.d.

¹⁹ A. Zuhdi Mudhor, *Memahami Hukum Perkawinan*.

2. Silariang from the perspective of customary law in Pattalassang Subdistrict, Gowa Regency

Basically customary law is Indonesian law, the word *adat* itself comes from Arabic which means *adat* in society. Traditions are ultimately observed/imitated and of value to the whole society. Customary law itself is not written, but can be followed by indigenous peoples. Customary law is a traditional form with legal consequences. Regarding the form of punishment for violators, customary law is very different from written law. The form of punishment in customary law places more emphasis on the moral aspect, because customary law recognizes prison as a social punishment, not as a place for the perpetrator himself to serve a predetermined sentence. Common law understanding is provided by experts and researchers in the field.

Bushar Muhammad stated that "Customary law is the law that regulates the behavior of Indonesians towards one another, regardless of the prevalence and customs that actually live and develop in Indonesia. Sanctions for violations and are determined by the decisions of customary rulers, namely those who have power and give decisions. Customary decision makers include religious leaders, traditional leaders, and village or *lurah* leaders."²⁰

Silariang in the Makassar Bugis tribe is a form of marriage that violates customary law, they take shortcuts because one of the families does not accept the love of both parties. In Gowa Regency, Pattalassang District, customary punishment is still valid, although only partially. This traditional criminal penalty applies to Silariang crimes.

The Makassar Bugis community is known as a society that adheres to regional traditions and adheres to customary law. There are various types of customary violations that still occur today, such as Silariang, especially in the Pattalassang District, Gowa Regency. Traditional sanctions for violations still apply to native speakers without discriminating between one and another. Silariang cases are not only found in the Pattalassang area but also in various parts of Indonesia. The difference is, the sanctions given in each area of *adat* are different. There are sanctions that are relatively light, but there are also sanctions that are classified as severe.

Light punishments can be exile, expulsion, heavy punishments can be murder. Especially for the Government of Gowa Pattalassang, Silariang is seen as something very shameful and the punishment can come from the women's families by killing them, hurting and humiliating the man who ran away his daughter. The influence of Silariang was not only on *adat* or custom, but also on the families of men and women, which caused a very heavy embarrassment for the families.

Sanctions for perpetrators who commit silariang include persecution and sometimes humiliation, expulsion from the land of birth, even to the stage of loss of life. The punishment is given if the perpetrator of silariang returns to his homeland before doing "maddeceng" in Bugis language while Makassar "akbaji" (going home in peace) by that in the customary ritual the perpetrator can be given customary sanctions.

²⁰ Bushar Muhammad, *Asas-Asas Hukum Adat* (Jakarta: PT. Pradnya Paramita, 2006).

Punishment in social forms is still related to customary and formal legal sanctions. Several cases of silariang that occurred in Patalassang were resolved according to custom, as was the case in the borong village area. The punishment handed down to the perpetrators in Borong Palala Village was quite harsh because the family would not accept the silariang perpetrator back to death, the reason being from the family because the perpetrator had brought disgrace or deep shame to his family, namely the neighborhood area in Sumbarrang and in Japing.

According to estimates, the Silariang case took place in 2010-2021 in Pattalassang district, involving not only young men and women who committed crimes but also many married people. The Silarang case that occurred in Pattalassang District can be resolved by agreement between the two parties involved, usually from the families of the man and woman who are in dispute. Complementing this tradition by ordering the Silariang perpetrator to come to the house of the religious leader in the village he visited, then the men who done Silariang was then married off by the witness of imam of the mosque or the local KUA, after receiving the blessing of his parents and also the traditional leaders.

The parents of both women have blessed or Maddeceng, so that men and women are still borne by the doi banja (spending money). There is a substitute for Doi Panai, it's just not the same size as when proposing a girl. The amount is adjusted according to the ability of men. Using Maddeceng or Akbaji is an important factor in keeping Siri in the family of the eloped perpetrator. The presence of the village head or lurah and traditional leaders also determines the end of the case which causes siriang in the silariang perpetrator's family.

In this way, peace is achieved. In this mappadeng event, two silariang perpetrators were brought to the woman's family's house to seek their consent. When women came, they often covered their heads so as not to be seen, because they were ashamed of what they had done. These two silariang actors shook hands with their families, who were present at the time, following the prayers and blessings of their parents. This mappadeng or motere baji event is a sign of the lifting of the usual sanctions because after completing the mappadeceng, two perpetrators of silarang visit their families and also pretend to come to maddeceng or akbaji. The family present know of his arrival and will forgive his actions.

The people of the city of Pattalassang, where the majority of the population adheres to Islamic teachings, are known as strong people, but are able to accept changes in the norms that apply in society, even when the authorities are in power. In the Pattalassang district community, there are two types of laws; Those rules come from God in the form of Al-Qur'an and Hadith and other rules come from customary law. Customary law also includes two elements. The first is fundamental and unchangeable, the second is what can be changed by consensus. If the silarang dispute cannot be resolved with the woman's parents or the man does not approve, the community will convey the problem to the customary head of the woman's family who performs silariang.

Aligning silariang with common law aspects is a solution to solving problems that is carried out when negotiations do not find a clear direction. The aspect of customary law in this case uses the results of the actions of indigenous people, village heads, mosque imams, as well as various representatives of the population, as well as representatives of

both parties. One of the family members objected if the two of them married, but these conditions required that the marriage take place, so a decision was made to let the two of them marry without the consent of their parents.

D. CLOSING

Conclusion

Silariang, according to the perspective of Islamic law, gave his fatwa that this act was not right and could not be justified for any reason, and the marriage was not considered valid because the perpetrator of the silariang was married with a sharia disability, one of which was violated was the absence of a guardian. As long as the silariang perpetrators do not come and do maddeceng, the behavior that the two perpetrators are doing is considered continuous adultery. Because marriages are not registered and are not recognized by the state, it is known in religious law and positive law that eloping is expressly prohibited. Silariang in terms of customary law in Pattalassang district, Gowa province. As for the consequences caused by the act of elopement is to make siri or shame. If the act is marked as a violation of siri, then according to customary law the woman's family, called tumasiri, has the right to file a lawsuit against the perpetrator of silariang. The settlement that is usually done by silariang perpetrators is that silariang perpetrators go to the village priest's house to ask for help solving it, then the village priest (imam desa) asks permission from the guardian, the guardian gets married in the village after receiving the blessing of his parents, the local village priest. government, traditional leaders and community leaders.

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