

# **Clandestine Marriage in the Christian West**

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The registration of Muslim marriages has been a matter of concern in Indonesia since the early days of the Republic. One of the first pieces of legislation enacted by the Indonesian government following the declaration of independence was Law No. 46/1946 requiring that all Muslim marriages be registered and be performed under the supervision of the official marriage registrar or his designated representative. The 1946 Act also prescribed penalties for failure to comply with its requirements; individuals who married in violation of the statute were subject to payment of a fine, while marriage registrars or persons who performed marriages without proper authority could be jailed for up to three months. The National Marriage Act of 1974 also requires that all marriages be registered, and Government Regulation No. 9 of 1975 contains procedures for implementation of that requirement and sanctions for those who violate the rules regarding performance and registration of marriage.

The issue of marriage registration has returned to the public spotlight as a result of the draft Islamic Courts Marriage Law. Like the 1946 Act and the 1975 Government Regulation, the draft law imposes penalties both for individuals who fail to register and for marriage registrars who violate the registration rules and persons who act as marriage registrars without proper authority. It is not my intention here to discuss the merits of this proposal—the problem of marriage registration in Indonesia is a delicate and complex issue, and solving the problem will require both sensitivity to religious sensibilities and plenty of hard work. The aim of this short comment, rather, is simply to recount the history of secret or “clandestine” marriage in the Christian West. The controversy over secret marriage in Europe occurred hundreds of years ago and under very different circumstances. While the West’s experience with secret marriage probably does not have meaningful lessons for Indonesia, the story reveals connections between the two cases that may nevertheless be of interest to Badilag readers.

It has been pointed out that the term secret marriage or 'nikah sirih' is not an accurate description of the contemporary practice in Indonesia. So-called nikah sirih usually comply with the formalities of Islamic fiqh, and the importance of public recognition and acknowledgement of marriage is clearly recognized in the fiqh requirement that the creation of a marriage be attended by witnesses. This rule that in order for a marriage to be valid at least two responsible members of society must be present and observe its creation probably served in the pre-modern world much the same purpose as registration serves in our more complex society. Witnesses were not required for a valid marriage in medieval Europe, however, and the marriages that were the subject of concern at that time were indeed secret or clandestine. Under the canon law of the Catholic Church in the Middle Ages any two legally competent adults could contract a marriage by words expressing a mutual intent to marry. Neither solemnization by the Church nor any other form of public recognition was required.

Marriages contracted secretly without the knowledge of the families or the public were recognized as valid by the Catholic Church, but the practice of clandestine marriage was not approved by all members of society. The primary objection to the practice was that it enabled young people to marry without the consent of their parents or, indeed, in outright defiance of their parents' wishes. The best known example of a clandestine marriage in the English-speaking world is the marriage between Romeo and Juliet in William Shakespeare's famous play. The families of these "star-crossed" lovers were mortal enemies, and the couple's parents would never have approved their marriage. In addition, Juliet was just 13 years old at the time, and her father considered her too young to marry. But because the consent of the parties to marry was all that was required these facts did not prevent Romeo and Juliet from marrying without their parents' knowledge or consent.

Popular dissatisfaction with clandestine marriage eventually led the Catholic church to take action to restrict or eliminate the practice. At the Council of Trent in 1653 the Church established the requirement that before the celebration of any marriage the names of the contracting parties should be announced publicly during Mass by the parish priests of both parties on three consecutive Sundays. A version of this rule,

known in English as the “banns of marriage,” was incorporated into the national law of the European states when the law of marriage was codified in the nineteenth century. The rule that parties wishing to marry must report their intention to marry to the marriage registrar and that a public announcement of that fact be posted for a period of ten days prior to the marriage was applied to Indonesians subject to the Dutch Civil Code. This same procedure was later extended to Muslim marriages following the promulgation of Government Regulation No. 9 of 1975.

It should come as no surprise that religious and secular authorities alike would arrive at a common recognition of the importance of public acknowledgement of the existence of marriage. Marriage entails a change of status that carries with it certain rights and responsibilities. The proper enforcement of those rights and responsibilities requires that it be possible to establish the existence of a marriage with certainty. The challenge for Indonesia is how to implement that principle in the circumstances of today’s complex world.