

The Legality and Legibility of Unregistered Marriages in Indonesia: Assessing the Complementarity of the Marriage Law and the Population Administration Law

Vita Fitria,¹ Ali Sodikin²

UIN Sunan Kalijaga Yogyakarta^{1,2}

Email: vita.fitria@uin-suka.ac.id, ali.sodikin@uin-suka.ac.id

Keywords:

Legality;
Legibility;
Unregistered marriage;
Indonesian marriage law;
Maqasid al-Shari'ah

Kata Kunci:

Legalitas;
Legibilitas;
Nikah siri;
Hukum perkawinan Indonesia;
Maqasid Syari'ah

Abstract:

The phenomenon of unregistered marriages in Indonesia persists as a social reality even though it is not legally recognized within the marriage registration system. On the one hand, the Marriage Law establishes registration as a means to ensure legal certainty and protection; on the other hand, the Population Administration Law provides an administrative avenue for those in unregistered marriages by allowing the inclusion of family relationship status on the Family Card. This situation has sparked a debate over whether such administrative policies undermine the principle of the legality of marriage or, conversely, constitute a form of protection for citizens' civil rights. This study aims to analyze the relationship between the Marriage Law and the Population Administration Law to examine whether the two are contradictory or complementary. This study is a normative legal study employing a legislative and conceptual approach. The data analyzed include the Marriage Law, the Population Administration Law, and Ministry of Home Affairs Regulation No. 108 of 2019. The theoretical framework used consists of legal pluralism, state legibility, and Jasser Auda's systemic maqasid syariah. The research findings indicate that the regulation of unregistered marriages is based on two orientations: formal legality under the Marriage Law and administrative legibility under the Population Administration Law. These two regulations are not contradictory; rather, they serve distinct yet complementary functions in providing legal and administrative protection. However, the lack of optimal integration between these two legal frameworks has led to the perception that unregistered marriages are legitimate. Therefore, regulatory synchronization is necessary to establish a unified legal system, provide legal certainty, and ensure fair and substantive protection.

Abstrak:

Fenomena nikah siri di Indonesia tetap bertahan sebagai realitas sosial meskipun tidak memperoleh pengakuan hukum dalam sistem pencatatan perkawinan. Di satu sisi, Undang-Undang Perkawinan menempatkan pencatatan sebagai instrumen untuk menjamin kepastian dan perlindungan hukum, akan tetapi di sisi lain Undang-Undang Administrasi Kependudukan membuka ruang administrasi bagi pelaku nikah siri melalui pencantuman status hubungan keluarga dalam Kartu Keluarga. Kondisi ini memunculkan perdebatan mengenai apakah kebijakan administrasi tersebut melemahkan prinsip legalitas perkawinan atau justru merupakan bentuk perlindungan hak-hak sipil warga negara. Penelitian ini bertujuan menganalisis hubungan antara Undang-Undang Perkawinan dan Undang-Undang Administrasi Kependudukan untuk menguji apakah keduanya bersifat kontradiktif atau komplementer. Penelitian ini merupakan penelitian hukum normatif dengan

pendekatan perundang-undangan dan konseptual. Data yang dianalisis adalah Undang-Undang Perkawinan, Undang-Undang Administrasi Kependudukan, dan Permendagri Nomor 108 Tahun 2019. Kerangka teori yang digunakan adalah legal pluralism, state legibility, dan maqasid syariah sistemik Jasser Auda. Hasil penelitian menunjukkan bahwa pengaturan nikah siri dibangun atas dua orientasi, yaitu legalitas formal dalam Undang-Undang Perkawinan dan legibilitas (keterbacaan) administratif dalam Undang-Undang Administrasi Kependudukan. Kedua regulasi tidak bersifat kontradiktif, melainkan menjalankan fungsi yang berbeda namun saling melengkapi dalam memberikan perlindungan hukum dan administratif. Namun, belum optimalnya integrasi kedua regulasi hukum tersebut menimbulkan persepsi adanya legitimasi terhadap nikah siri. Oleh karena itu, diperlukan sinkronisasi regulasi untuk mewujudkan sistem hukum yang terpadu, memberikan kepastian hukum, dan menjamin perlindungan substantif yang berkeadilan.

A. Introduction

Marriage in Indonesia exists at the intersection of religious norms, state law, and social practices.¹ Article 2 of the Marriage Law recognizes the validity of marriages conducted according to religious rites while also requiring state registration.² Legally, Article 2(1) of the Marriage Law stipulates that a marriage is valid if conducted in accordance with the laws of the respective religion or belief, while Article 2(2) requires that every marriage be registered in accordance with applicable laws and regulations.³ Article 2 of Law No. 16 of 2019 establishes two pillars of validity—religious validity and administrative validity—which often spark lengthy debates. This regulation affirms that every marriage must not only be valid under the respective religious laws but also must be registered to possess legal force and be recognized by the state. This principle underscores the importance of registration as an instrument of legality, protection, and evidence before the law. Marriage registration is essential to ensure legal certainty and prevent harm to vulnerable parties.⁴ This legal framework creates a loophole for the practice of “*nikah siri*” marriages that are considered valid under religious law but do not receive administrative recognition as marriages with full legal consequences. In practice, this situation places women and children in a vulnerable position, as it is difficult for them to

¹ Asep Saepudin Jahar, and Ulfah Fajarini, "Legal culture and the dynamics of religious interaction in ritual practices among interfaith marriage," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 333-348. <https://doi.org/10.24090/mnh.v18i2.11659>

² Law No. 1 of 1974, as well as Law No. 16 of 2019 on Marriage, Article 2, paragraphs (1) and (2).

³ Law No. 1 of 1974, as well as Law No. 16 of 2019 on Marriage.

⁴ Imron Rosyadi and Aisyah Kahar, "Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule," *Jurnal Hukum dan Peradilan* 12, No. 3 (2023). <https://doi.org/10.25216/jhp.12.3.2023.469-488>

obtain certainty regarding their rights to spousal support, inheritance, joint property, or other forms of legal protection.

Social reality often does not conform to formal legal ideals. In practice, many couples in Indonesia choose to marry in a *siri* ceremony for various reasons, ranging from economic factors, bureaucratic obstacles, and cultural considerations to religious interpretations that view official registration as merely an administrative formality.⁵ This phenomenon creates a gap between positive law and social practices that remain institutionalized in society. According to Bowen, Indonesian Muslims navigate between different authorities: *fiqh* (Islamic law) and state law. Adherence to one set of norms (religious) often implies non-compliance with another (state), creating what is referred to as a “quasi-legal sphere” for the practice of *nikah siri*.⁶

This complexity is further exacerbated when the state, through various legal instruments, enacts regulations that appear to legitimize unregistered marriages. Law No. 23 of 2006 as amended by Law No. 24 of 2013 on Population Administration (Population Administration Law) takes an approach that is considered flexible and accommodating. Through population administration regulations, the state allows couples who marry without official registration to remain included in the population database. This is evident in the practice of noting “marital status: not yet registered” on the Family Card (KK) as well as the issuance of children’s birth certificates containing specific phrases indicating the parental relationship. Article 3 of Law No. 24 of 2013 on Population Administration and Civil Registration states that “Every resident is required to report demographic events and significant events they experience to the implementing agency by fulfilling the necessary requirements for population registration and civil registration.” This is a general provision that serves as the basis for why events such as marriage must be recorded.⁷ What has happened is that a philosophical conflict has arisen between marriage law and civil registration law. In an effort to regulate the scope of birth certificates and population data collection, the Ministry of Home Affairs issued a policy through Minister of Home Affairs Regulation (Permendagri) No. 108 of 2019, which allows couples in unregistered marriages to be recorded in the Family Card

⁵ Lulu Ul Jannah, Inna Fauziatal Ngazizah, and Abdurrohman Kasdi. "Social legitimacy versus state legal certainty: The dialectics of *kiai* marriages as living law in Dusun Pondok Asem, Kertasemaya, Indramayu." *Al-Mazaahib: Jurnal Perbandingan Hukum* 13, no. 2 (2025): 173-198. <https://doi.org/10.14421/al-mazaahib.v13i2.4392>

⁶ John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. (Cambridge: Cambridge University Press, 2003).

⁷ Article 3 of Law No. 23 of 2006, as amended by Law No. 24 of 2013, on Population Administration.

(KK) with the status “married but not yet registered” using a Letter of Absolute Liability (SPTJM) instead of a marriage certificate.⁸

This situation highlights a legal ambivalence: normatively, the state rejects unregistered marriages in the interest of maintaining legal order in marriage matters; yet administratively, the state is “forced” to accommodate their existence to fulfill citizens’ civil rights. The Marriage Law emphasizes formal legality, whereas the Population Administration Law emphasizes practical services grounded in the protection of human rights. In global socio-legal scholarship, this situation reflects what Butt refers to as the tension between religious legitimacy and state bureaucracy.⁹ The government faces a dilemma: ignoring unregistered marriages means neglecting the civil rights of children and wives (which violates human rights), but fully accommodating them risks undermining the institution of marriage registration itself.

Several articles discussing unregistered marriages and legal inconsistencies focus on the aspect of public interest. The registration of unregistered marriages in the family card (as stipulated in Ministry of Home Affairs Regulation No. 108 of 2019) is viewed through the concepts of *maslahah mursalah*, *saddu dzariah*, and *qiyas*. This article focuses more on the aspect of public interest. These two legal provisions are equally important: official marriage registration is a requirement for the implementation of a protection system, while registration in the family card can serve as evidence should a request for *itsbath nikah* (marriage validation) be filed at a later date.¹⁰ Other articles still fall within the framework of *maslahah* and *mafsadah*, explaining that every policy always carries the potential for benefit (*maslahah*) and harm (*mafsadah*). In the policy regarding unregistered marriages, the government needs to block avenues that could lead to harm (*sadd al-dzari’ah*) so that the policy is not interpreted as legitimizing the practice of unregistered marriages.¹¹ Other articles on unregistered marriages focus more on sociocultural aspects; for example, a study on legal non-compliance in the Madurese community shows how the hegemony of religious leaders and local social norms

⁸ Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 108 of 2019 on the Implementing Regulations for Presidential Regulation No. 96 of 2018 on the Requirements and Procedures for Population Registration and Civil Registration. see Imron Rosyadi dan Aisyah Kahar, “Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule,”

⁹ Simon Butt. "Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts." . Crouch, M. (ed) *Islam, Law and the State in Southeast Asia*. Singapore: ISEAS, 2016.

¹⁰ Lathifah Munawaroh, et al, “Disharmony in Sirri Marriage Registration Regulations on Family Cards: A Study of Ministry of Home Affairs Regulation No. 9/2016,” *Fiat Justicia*, 17, No 1, (2023): 91-106. <https://doi.org/10.25041/fiatjustisia.v17no1.2851>

¹¹ Mu’tashim billah, “The Maslahah of State Policy in Responding to Unregistered Marriage: Inclusion of Unregistered Marriage on The Family Card,” *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam*, Vol 6 No 2 (2023): <https://doi.org/10.30659/jua.v6i2.31138>

perpetuate this practice even though it conflicts with state law.¹² A study on the implementation of family law in Indonesia and Malaysia, focusing particularly on marriage registration. This study compares how legal sanctions and compliance regarding marriage registration are enforced in Indonesia and Malaysia. This research examines positive law and administrative aspects, as well as the extent to which legal sanctions influence public compliance. From the perspective of *maqasid al-sharia*, this study emphasizes that marriage registration is not merely an administrative formality but rather part of the objectives of *sharia*, such as the protection of property, lineage, and social justice.¹³

Based on this map of the academic literature, it can be seen that previous studies have contributed to explaining *nikah siri* from the perspectives of *maslahah* and *mafsadah*, the protection of women and children, bureaucratic practices, judicial discretion, legal non-compliance, and legal compliance in marriage registration. However, most of these studies still tend to address *nikah siri* in a fragmented manner. *Maslahah*-based studies mostly weigh the benefits and harms of policies; sociocultural studies emphasize the role of local authorities and social norms; while civil registration studies highlight the function of registration as a means of accessing legal identity. There has been little research that takes an integrative approach to understanding *nikah siri* as a convergence point between the legality of marriage, the legibility of population administration, legal pluralism, and systemic *maqashid syariah*.

Thus, this study aims to analyze unregistered marriages from a philosophical perspective and draw a common thread between the Marriage Law and the Population Administration Law, which appear different on the surface but share interrelated objectives of legal protection. This study aims to explain the tension between formal legality and administrative legitimacy in the regulation of *nikah siri*, examine how legal pluralism influences the persistence of *nikah siri* practices in society, and analyze both legal regimes using Jaser Auda's systemic *maqashid sharia* theory to identify the legal protection objectives sought, particularly regarding women, children, lineage, and family justice. Through this approach, this study is expected to provide a conceptual contribution toward a more integrative

¹² Baihaqi; Tutik, Titik Triwulan; Musadad, Ahmad; Khazin, A. Mufti; bin Simun, Mahtumridho Ghufro. "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya." *J. Islamic L.* 5 (2024): 242.

¹³ Fitra, Tasnim Rahman, Noratinah Binti Yusof, and Anwar M. Radiamoda. "Sanctions and Legal Compliance in Marriage Registration: A Comparative Implementation of Islamic Family Law in Indonesia and Malaysia." *Islamic Law and Social Issues in Society* 1, no. 1 (2025): 48-63.

understanding of regulatory disharmony, as well as a practical contribution to efforts to harmonize legal policies regarding unregistered marriages in Indonesia.

B. Methods

This study is a normative legal study that focuses on analyzing the legal norms governing marriage registration and civil registration in Indonesia. The study aims to examine the relationship between Law No. 1 of 1974, as amended by Law No. 16 of 2019 on Marriage and Law No. 23 of 2006 as amended by Law No. 24 of 2013 on Population Administration, along with their implementing regulations, particularly Regulation of the Minister of Home Affairs No. 108 of 2019. The focus of this research is not only to identify differences in regulations but also to assess whether these two legal regimes are contradictory or, conversely, complementary in providing legal protection to those who enter into unregistered marriages.

This study employs three approaches: the statutory approach, the conceptual approach, and the philosophical approach. The statutory approach is used to analyze the alignment of regulations between the Marriage Law, the Population Administration Law, and Ministry of Home Affairs Regulation No. 108 of 2019 regarding population registration and civil registration. The conceptual approach is used to understand the phenomenon of *nikah siri* through legal concepts developed in socio-legal studies, particularly legal pluralism and state legibility. This approach helps explain how state law, religious law, and social norms interact in the practice of *nikah siri* and how the state responds to this reality through population administration policies. A philosophical approach is used to evaluate the objectives behind the establishment of these two legal regimes through Jasser Auda's systemic perspective on *maqāṣid al-syarī'ah*. This approach is used to assess whether the orientation of both regulations is equally directed toward protecting the public interest, even though they employ different legal instruments.

The secondary data for this study consists of primary legal sources, secondary legal sources, and tertiary legal sources. Primary legal sources include Law No. 1 of 1974, as amended by Law No. 16 of 2019 on Marriage, Law No. 23 of 2006 in conjunction with Law No. 24 of 2013 on Population Administration, as well as Regulation of the Minister of Home Affairs No. 108 of 2019. Secondary legal sources consist of books, articles from national and international journals, research findings, and scholarly works discussing unregistered marriages, legal pluralism, population administration, the protection of civil rights, and

maqāṣid al-syarī'ah. Meanwhile, tertiary legal sources include legal dictionaries, Arabic dictionaries, encyclopedias, and various other supporting references that help explain the legal concepts used in this research.

C. Result

An analysis of Law No. 1 of 1974 as amended by Law No. 16 of 2019, Law No. 23 of 2006 as amended by Law No. 24 of 2013 on Population Administration, as well as Regulation of the Minister of Home Affairs No. 108 of 2019, indicates that the regulations concerning unregistered marriages are not in conflict with one another but rather operate under two distinct legal regimes. The Marriage Law establishes registration as an administrative requirement that gives rise to civil legal consequences, thereby serving to ensure legal certainty for husbands, wives, and children. Conversely, the Population Administration Law regulates the registration of civil status events as an instrument of state administration to ensure that every resident remains registered in the public service system without altering the legal status of their marriage.

Research findings show that the mechanism for recording “unregistered marriage” status on the Family Card through a Letter of Absolute Liability (SPTJM) does not confer legal validity on unregistered marriages; rather, it merely results in administrative recognition of the existence of a family relationship within the civil registration system. Thus, such registration does not give rise to the legal consequences associated with a marriage that has been registered in accordance with the Marriage Law.

The uniqueness of this research lies in the synthesis of a philosophical framework that combines the concepts of legal pluralism (John Griffiths) and state legibility (James C. Scott) with the theory of systemic maqashid al-sharia (Jasser Auda). Through this analytical framework, the research findings demonstrate that *nikah siri* in Indonesia has been accommodated as a manifestation of strong legal pluralism, in which the state ultimately responds to societal legibility through administrative means. The implications of these findings suggest that public perceptions regarding the legalization of *nikah siri* are influenced more by overlapping understandings of the functions of these two regulatory systems than by the substance of the legal norms themselves. The blurred boundaries between the legal function of marriage and the administrative function of civil registration lead to administrative registration often being interpreted as a form of state validation of unregistered marriages.

Therefore, this study strongly implies an urgent need for hierarchical family law reform to dismantle the “comfort zone” for the practice of unregistered marriages. These efforts include tightening population policies by limiting the use of SPTJM, expanding access to the courts through the optimization of the integrated Itsbat Nikah process, and amending the Marriage Law to clarify the legal sanctions for violations of marriage registration requirements. The main issue lies not in conflicting norms, but in the lack of integration between the marriage law system and the civil registration system; therefore, policy synchronization is needed to clarify the functions of each regulatory framework while strengthening legal protections for women, children, and citizenship rights.

D. Analysis and Discussion

1. Siri Marriage as a Manifestation of Strong Legal Pluralism

Nikah siri, a form of marriage that is valid under Islamic religious norms but is not registered in the state’s administrative system, is a phenomenon that reflects the complexity of Indonesia’s legal system, in which religious and state norms coexist within the same social sphere. Etymologically, “siri” derives from the Arabic word “sirr,” meaning “secret.”¹⁴ In the history of classical Islamic law, this term refers to a secret marriage, which is often considered problematic if it is not announced (*i’lan*) to the public. However, in a sociological-legal context, the meaning of *nikah siri* has shifted to refer to a marriage that fulfills the religious pillars and requirements (is religiously valid) but is intentionally not registered with the Marriage Registrar (PPN) at the Office of Religious Affairs (KUA) or the Civil Registry Office.¹⁵ Empirically, this practice demonstrates that the reality of marriage is governed not only by Indonesia’s Marriage Law but also by religious rules and legitimacy recognized by the Muslim community. This phenomenon is not merely an administrative issue but a social reality with profound implications for the resilience of families and the protection of human rights, particularly for women and children.

At first glance, this policy creates a conflict of norms. On the one hand, Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage (as *lex specialis* and the higher-ranking norm regarding the substance of marriage) does not recognize the civil law effects of

¹⁴ Mahmud Yunus, *Kamus Arab–Indonesia*, (Yayasan Penyelenggara Penterjemah/Pentafsir al-Quran, 1973).

¹⁵ Arsyad, Aisyah. *Polemik Hukum Nikah Siri: Dualisme Hukum Memapankan Sistem Patriarki dalam Muslim Subjectivity Spektrum Islam Indonesia*, Cet. I, (Yogyakarta: Insan Madani 2017).

unregistered marriages. On the other hand, Law No. 23 of 2006 as amended by Law No. 24 of 2013 on Population Administration, through Ministry of Home Affairs Regulation No. 108 of 2019, provides administrative recognition. This creates the legal impression among the general public that the state has sanctioned the practice of *nikah siri*, even though the legal protection provided by the documentation is very weak—limited merely to registration without addressing the substantive issues of marriage.

According to the concept of legal pluralism developed by John Griffiths, this plurality of norms is not merely a diversity of rules, but rather the empirical reality that more than one legal order operates simultaneously within a single social sphere, beyond the sole dominance of state law.¹⁶ Griffiths states that there are two types of legal pluralism: weak legal pluralism and strong legal pluralism. In weak legal pluralism, the state recognizes non-official laws but still treats state law as the overarching legal framework. Any other recognized laws must not conflict with state law. In contrast, in strong legal pluralism, several legal systems operate autonomously and cannot be fully controlled by the state.¹⁷ In this context, *nikah siri* serves as an expression of strong legal pluralism, in which religious law has its own function and legitimacy that is not merely subordinate to state law, as it acts as a social foundation for many Muslim couples in fulfilling their religious norms. In social and cultural practice, strong legal pluralism means that religious (Islamic) rules and state rules possess normative authority that operates in parallel and is equally authentic in regulating married life, without one automatically invalidating or superseding the existence of the other. This concept aligns with analyses of legal pluralism that view religious norms not merely as symbolic rules but as real rules that influence the social behavior of the community.¹⁸ In a broader study on legal pluralism and marriage in Muslim-majority societies, researchers found that religious norms and interpretations of rituals often form the basis for personal and social decisions regarding marriage, including in cases of interfaith relationships and conflicts with state law.¹⁹

¹⁶ John Griffiths, "What Is Legal Pluralism?", *Journal of Legal Pluralism and Unofficial Law*, 18(24), Taylor & Francis. 1986.

¹⁷ John Griffiths

¹⁸ Merry, Sally Engle, *Legal Pluralism, Law & Society Review*, Vol 22, Issue 5, Chicago, IL: University of Chicago Press, 1988. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/legal-pluralism?>

¹⁹ Syarif, Syarif, Saifuddin Herlambang, Budiyo Budiyo, Gama Pratama, Fharkhan Luthfi, and Nur Paikah. "Negotiating Sacred Law: Qur'anic Hermeneutics, Legal Pluralism, and Interfaith Marriage in Muslim-Majority Countries." *Syariah: Jurnal Hukum dan Pemikiran* 25: 379-401. <https://doi.org/10.18592/sjhp.v25i2.18166>

To understand why *nikah siri* persists and is even administratively facilitated despite being implicitly prohibited by the Marriage Law, we must view it through the lens of legal pluralism. In Indonesia, “state law” (the Marriage Law), “religious law” (Fiqh Munakahat), and “customary law” compete with one another. Under the concept of strong legal pluralism, state law is not the sole source of authority governing societal behavior. Indonesian society, which is deeply religious, often prioritizes religious validity (God’s law) over administrative validity (state law). The prevailing narrative is “what matters is that it is valid in the eyes of God,” which views registration as merely a worldly administrative matter that does not affect the spiritual validity of the marital bond.²⁰ Article 2, Paragraph (1) of the Marriage Law inadvertently reinforces this view by leaving the standard for substantive validity to religious law. As a result, the state finds it difficult to monopolize the definition of “valid marriage.”²¹

In a broader study on legal pluralism and marriage in Muslim-majority societies, researchers found that religious norms and interpretations of rituals often form the basis for personal and social decisions regarding marriage, including in cases of interfaith relationships and conflicts with state law.²² This situation illustrates how certain social groups create and practice their own legal norms, which are recognized internally as legitimate and exist socially even though they are not formally integrated into the national legal system.

When examining the issue of marriage registration, it becomes evident that there is a plurality of legal systems, namely: a) religious law—a marriage is valid under religious law in accordance with Article 2, paragraph 1 of the Marriage Law; thus, in social practice, this religious validity is often considered sufficient; b) state law, as stipulated in Law No. 16 of 2019 on Marriage, Article 2, paragraph 2: “Every marriage shall be registered in accordance with applicable laws and regulations.” This provision remains ambiguous and lacks clarity, as many marriages still go unregistered in practice. c) State administrative law (Law No. 24 of 2013 on Population Administration) stipulates that registration is a prerequisite for citizens’ access to civil rights, including marriage certificates, which are based on the issuance of Family Cards (KK), Identity Cards (KTP), and birth certificates, d) Social law (“living law”): The practice of

²⁰ Fahadil Amin Al-Hasan, “Akibat Perkawinan Tidak Tercatat (Nikah Sirri/Nikah Urf)”, Pengadilan Agama Rangkasbitung, accessed November 7, 2025, <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/627-akibat-perkawinan-tidak-tercatat-nikah-sirri-nikah-urf>

²¹ Article 2 (1) of Law No. 16 of 2019 on Marriage: “A marriage is valid if it is conducted in accordance with the religious laws and beliefs of the respective parties.”

²² Syarif, Syarif, Saifuddin Herlambang, Budiyo Budiyo, Gama Pratama, Fharkhan Luthfi, and Nur Paikah. "Negotiating Sacred Law: Qur'anic Hermeneutics, Legal Pluralism, and Interfaith Marriage in Muslim-Majority Countries." *Syariah: Jurnal Hukum dan Pemikiran* 25: 379-401. <https://doi.org/10.18592/sjhp.v25i2.18166>

unregistered marriages is still accepted by some segments of society, thereby creating a social legitimacy that is often considered stronger than administrative legitimacy.

Through John Griffiths' theory of legal pluralism, "strong legal pluralism" is evident in the growing social and religious legitimacy of unregistered marriages. Society's recognition of unregistered marriage practices carries more weight than the legal legitimacy set forth in Article 2, Paragraph 2 of the Marriage Law. This provision does not entail sanctions for violations, appearing instead merely as a recommendation or a general statement. The state cannot regulate unregistered marriages because there are no legal sanctions imposed on violators. The emergence of regulations from the Civil Registry Office regarding the mandatory registration of family cards (KK) for those in unregistered marriages further strengthens the position of religious law, which is supported by certain community customs. Ultimately, Article 2, paragraph 1, becomes a formality that must be complied with, even if it is not fully enforced.

The phenomenon of *nikah siri* thus serves as a concrete illustration of Griffiths' theory that strong legal pluralism exists when non-state norms function as independent sources of legal legitimacy within the social sphere. In Indonesia's pluralistic society, state law provides administrative protection and social security, while religious law offers strong spiritual and social legitimacy within Muslim communal life. This combination creates an interrelated and often overlapping normative structure, in which an individual's decision to marry in a *nikah siri* reflects a normative choice that places religious law on an equal footing and is not entirely dictated by state law. This reality demonstrates that a monolithic or state-exclusive understanding of law is insufficient to explain how society actually interprets and practices the institution of marriage in daily life.

Nikah siri—a form of marriage that is valid under Islamic religious norms but is not registered in the state's administrative system—is a phenomenon that reflects the complexity of Indonesia's legal system, where religious and state norms coexist within the same social sphere. Etymologically, "siri" derives from the Arabic word "sirr," meaning "secret."²³ In the history of classical Islamic law, this term refers to a secret marriage, which is often considered problematic if it is not announced (*i'lan*) to the public. However, in a sociological-legal context, the meaning of *nikah siri* has shifted to refer to a marriage that fulfills the religious pillars and requirements (is religiously valid) but is intentionally not registered with the Marriage Registrar

²³ Mahmud Yunus.

(PPN) at the Office of Religious Affairs (KUA) or the Civil Registry Office.²⁴ Empirically, this practice demonstrates that the reality of marriage is governed not only by Indonesia's Marriage Law but also by religious rules and legitimacy recognized by the Muslim community. This phenomenon is not merely an administrative issue but a social reality with profound implications for the resilience of families and the protection of human rights, particularly for women and children.

This policy has sparked a rather serious debate. On the one hand, Law No. 1 of 1974, as amended by Law No. 16 of 2019 on Marriage (as *lex specialis* and the higher-ranking norm regarding the substance of marriage), does not recognize the civil law effects of unregistered marriages. On the other hand, Law No. 23 of 2006 as amended by Law No. 24 of 2013 on Population Administration, through Ministry of Home Affairs Regulation No. 108 of 2019, provides administrative recognition. This creates the legal impression among the general public that the state has sanctioned the practice of *nikah siri*, even though the legal protection provided by the documentation is very weak—limited merely to registration without addressing the substantive issues of marriage.

According to the concept of legal pluralism developed by John Griffiths, this plurality of norms is not merely a diversity of rules, but rather the empirical reality that more than one legal order operates simultaneously within a single social sphere, beyond the sole dominance of state law.²⁵ Griffiths states that there are two types of legal pluralism: weak legal pluralism and strong legal pluralism. In weak legal pluralism, the state recognizes non-official laws but still treats state law as the overarching legal framework. Any other recognized laws must not conflict with state law. In contrast, in strong legal pluralism, several legal systems operate autonomously and cannot be fully controlled by the state.²⁶ In this context, *nikah siri* serves as an expression of strong legal pluralism, in which religious law has its own function and legitimacy that is not merely subordinate to state law, as it acts as a social foundation for many Muslim couples in fulfilling their religious norms. In social and cultural practice, strong legal pluralism means that religious (Islamic) rules and state rules possess normative authority that operates in parallel and is equally authentic in regulating married life, without one automatically invalidating or superseding the existence of the other. This concept aligns with analyses of

²⁴ Arsyad, Aisyah. *Polemik Hukum Nikah Siri: Dualisme Hukum Memapankan Sistem Patriarki dalam Muslim Subjectivity Spektrum Islam Indonesia. Cet. I*, (Yogyakarta: Insan Madani, 2017).

²⁵ John Griffiths, J. "What Is Legal Pluralism?"

²⁶ John Griffiths, J.

legal pluralism that view religious norms not merely as symbolic rules but as real rules that influence the social behavior of the community.²⁷ In a broader study on legal pluralism and marriage in Muslim-majority societies, researchers found that religious norms and interpretations of rituals often form the basis for personal and social decisions regarding marriage, including in cases of interfaith relationships and conflicts with state law.²⁸

To understand why *nikah siri* persists and is even administratively facilitated despite being implicitly prohibited by the Marriage Law, we must view it through the lens of legal pluralism. In Indonesia, “state law” (the Marriage Law), “religious law” (Fiqh Munakahat), and “customary law” compete with one another. Under the concept of strong legal pluralism, state law is not the sole source of authority governing societal behavior. Indonesian society, which is deeply religious, often prioritizes religious validity (God’s law) over administrative validity (state law). The prevailing narrative is “what matters is that it is valid in the eyes of God,” which views registration as merely a worldly administrative matter that does not affect the spiritual validity of the marital bond.²⁹ Article 2, Paragraph (1) of the Marriage Law inadvertently reinforces this view by leaving the standard for substantive validity to religious law. As a result, the state finds it difficult to monopolize the definition of “valid marriage.”³⁰

When examining the issue of marriage registration, it becomes evident that there is a plurality of legal systems, namely: a) religious law—a marriage is valid under religious law in accordance with Article 2, paragraph 1 of the Marriage Law; thus, in social practice, this religious validity is often considered sufficient; b) state law, as stipulated in Law No. 16 of 2019 on Marriage, Article 2, paragraph 2: “Every marriage shall be registered in accordance with applicable laws and regulations.” This provision remains ambiguous and lacks clarity, as many marriages still go unregistered in practice. c) State administrative law (Law No. 24 of 2013 on Population Administration) stipulates that registration is a prerequisite for citizens’ access to civil rights, including marriage certificates, which are issued based on the Family Card (KK),

²⁷ Merry, Sally Engle, “Legal Pluralism,” *Law & Society Review* 22, Issue 5, Chicago, IL: University of Chicago Press, 1988. 880. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/legal-pluralism?>

²⁸ Syarif, Syarif, Saifuddin Herlambang, Budiyo Budiyo, Gama Pratama, Fharkhan Luthfi, and Nur Paikah. “Negotiating Sacred Law: Qur’anic Hermeneutics, Legal Pluralism, and Interfaith Marriage in Muslim-Majority Countries.” *Syariah: Jurnal Hukum dan Pemikiran* 25: 379-401. <https://doi.org/10.18592/sjhp.v25i2.18166>

²⁹ Fahadil Amin Al-Hasan, “Akibat Perkawinan Tidak Tercatat (Nikah Sirri/Nikah Urf)”, Pengadilan Agama Rangkasbitung, accessed November 7, 2025, <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/627-akibat-perkawinan-tidak-tercatat-nikah-sirri-nikah-urf>

³⁰ Article 2 (1) of Law No. 16 of 2019 on Marriage: “A marriage is valid if it is conducted in accordance with the religious laws and beliefs of the respective parties.”

Identity Card (KTP), and birth certificates, d) Social law (“living law”): The practice of unregistered marriages is still accepted by some segments of society, thereby creating a social legitimacy that is often considered stronger than administrative legitimacy.

Through John Griffiths’ theory of legal pluralism, “strong legal pluralism” is evident in the growing social and religious legitimacy of unregistered marriages. Society’s recognition of unregistered marriage practices carries more weight than the legal legitimacy set forth in Article 2, Paragraph 2 of the Marriage Law. This provision does not entail sanctions for violations, appearing instead merely as a recommendation or a general statement. The state cannot regulate unregistered marriages because there are no legal sanctions imposed on violators. The emergence of regulations from the Civil Registry Office regarding the mandatory registration of family cards (KK) for those in unregistered marriages further strengthens the position of religious law, which is supported by certain community customs. Ultimately, Article 2, paragraph 1, becomes a formality that must be complied with, even if it is not fully enforced.

The phenomenon of *nikah siri* thus serves as a concrete illustration of Griffiths’ theory that strong legal pluralism exists when non-state norms function as independent sources of legal legitimacy within the social sphere. In Indonesia’s pluralistic society, state law provides administrative protection and social security, while religious law offers strong spiritual and social legitimacy within Muslim communal life. This combination creates an interrelated and often overlapping normative structure, in which an individual’s decision to marry in a *nikah siri* reflects a normative choice that places religious law on an equal footing and is not entirely dictated by state law. This reality demonstrates that a monolithic or state-exclusive understanding of law is insufficient to explain how society actually interprets and practices the institution of marriage in daily life.

2. Disharmony or Complementarity of Legal Systems?

Public confusion began to emerge when the Civil Registration Law was implemented using the logic of “state legibility,” as explained by James Scott. According to Scott, social life is inherently complex. To make it easier to manage, the state needs to standardize data. As a result, some aspects of this complex social reality are often not fully captured by the state’s administrative system. From Scott’s perspective, state data serves several functions: 1) identification of citizens, 2) conferral of legal status, 3) administrative oversight, 4) distribution of public services, and 5) law enforcement. Modern states have an existential need to make their societies “legible” through the simplification of such data, including censuses, land maps,

standardized family names, and marital status. Without this data, the state is blind and unable to distribute services or collect taxes.³¹ For example, someone who is not officially registered (such as in the case of an unregistered religious marriage) becomes less “legible,” and thus faces obstacles in obtaining legal recognition and public services. This is why Scott’s theory is often used to examine population administration, marriage registration, legal identity, and even digital governance. The key concept in James C. Scott’s theory of legibility is that the modern state requires a “legible” society. Reading the complex realities within a state can be achieved through data, categories, documents, registrations, and so on. Legibility is a prerequisite for state control and intervention.³²

Regarding marriage registration, to achieve this clarity, the Ministry of Home Affairs, through Ministerial Regulation No. 9 of 2016 as amended by Ministerial Regulation No. 108 of 2019, has taken a pragmatic step: registering the social fact (couples living together) even if that fact is legally invalid under marriage law. The SPTJM (Letter of Absolute Responsibility) was created to streamline the formal requirements for marriage certificates, which are difficult for couples in unregistered marriages to meet.

Table 1: A Comparison of Legal Paradigms

1 Analysis Parameters	Marriage Law (Ministry of Religious Affairs/Supreme Court)	Population Administration Law (Ministry of Home Affairs/Population and Civil Registration Agency)
2 Main Focus	Legal Validity and the Sacred Nature of the Bond	Population data recording and unique identity
3 Views on Unregistered Marriages	Deemed invalid by the state (non-existent)	Considered a significant event whose data must be recorded
4 Primary Evidence	Marriage Certificate (Conclusive Evidence)	The SPTJM (Statement of Absolute Liability) can be considered a substitute for a marriage certificate for the issuance of a Family Card
5 Document Output	The marriage certificate as evidence of civil rights	The Family Card serves as proof of residence and family composition
6 Legal Implications	Gives rise to full civil law consequences (inheritance/waqf)	Provides only public administrative services, such as BPJS

Source: *Compiled based on the results of an analysis of the collected data*

³¹ James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, (New Haven& London: Yale University Press, 1998).

³² James C. Scott.

Until now, the difference in orientation between marriage regulations and civil registration regulations has often been interpreted as a conflict of norms. Both sets of regulations are considered to violate the principle of “Lex Superior Derogat Legi Inferiori.”³³ The meaning of this principle is “A higher-ranking regulation supersedes a lower-ranking regulation in the event of a conflict.” In a hierarchical legal system, legal norms are arranged in a hierarchy, ranging from the constitution, to laws, to government regulations, to ministerial regulations, to local regulations.³⁴ If a lower-level regulation conflicts with a higher-level regulation, the higher-level regulation takes precedence. If a local regulation conflicts with a law, that local regulation may be invalidated because it violates the principle of *lex superior derogat legi inferiori*. Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 108 of 2019 concerning Implementing Regulations for Presidential Regulation No. 96 of 2018 on Requirements and Procedures for Population Registration and Civil Registration.³⁵ Ministry of Home Affairs Regulation No. 108/2019 governs the procedures for population registration and civil registration, including provisions for recording individuals who have entered into a religious marriage in population records.³⁶ In practice, couples who are married under a *siri* marriage can be included in the Family Card as part of a single household with the status “unregistered marriage (not yet recorded by the state),” provided they meet administrative requirements such as a Letter of Absolute Responsibility (SPTJM) from the couple and witnesses who are aware that they are married.

The Minister of Home Affairs Regulation (Permendagri) effectively nullifies the “enforcement” function of Article 2, Paragraph (2) of the Marriage Law. If couples can obtain “married” status on their ID cards (KTP) and family cards (KK) with just a single stamped document (SPTJM), the requirement to register officially at the KUA is eliminated. Policies adopted by the Ministry of Home Affairs are often viewed as pro-people solutions aimed at granting identity rights. However, in-depth analysis reveals that these policies actually create new vulnerabilities and trap women and children in a position of legal weakness. Those in unregistered marriages may feel “relieved” by the registration at the Civil Registry Office, but

³³ Jimly Asshiddiqie dan M. Ali Safa’at, *Teori Hans Kelsen tentang Hukum*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI, 2006).

³⁴ Jimly Asshiddiqie dan M. Ali Safa’at

³⁵ Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 108 of 2019 on the Implementing Regulations for Presidential Regulation No. 96 of 2018 on the Requirements and Procedures for Population Registration and Civil Registration.

³⁶ Muhammad Isro Firdaus et al., “Masalah On Siri Marriage Family Cards In Peraturan Menteri Dalam Negeri Number 108 Of 2019,” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 1 (2023): 9–21, <https://doi.org/10.62976/ijjel.v1i1.28>.

in reality, this has no impact on the rights acquired through marriage—especially for women and children.

This dilemma has sparked a debate between the principles of legality and legitimacy. On the one hand, the state—through the Marriage Law and the civil registry system—prioritizes formal legality, which does not recognize unregistered marriages; on the other hand, the practice of *nikah siri* is still viewed by those who engage in it as valid from a religious and social standpoint and even enjoys strong social legitimacy within their communities. This conflict not only creates legal uncertainty regarding the status of the couple and their children but also reflects a shift between law as a formal rule (“law as written”) and law as a social reality (“law as lived”), where social and religious legitimacy precedes or transcends the state’s formal interpretation of marriage registration. Meanwhile, another aspect of formal legality—related to the state’s legibility—requires the recording of data on those in unregistered marriages as sufficient “readable” data for the state. This data is not only useful for official monitoring of the number of people in unregistered marriages but also serves to fulfill the rights of these individuals as citizens, such as the opportunity to exercise various civil rights intended for the public.

Based on these principles of legality and legibility, in the author’s view, the two regulations are, in fact, not in conflict with one another from a normative perspective. They operate in different spheres with distinct objectives, yet they complement one another. The Marriage Law is a set of rules designed to regulate marriage—that is, to establish its validity and its civil legal consequences. Meanwhile, the registration of individuals in unregistered marriages on family cards under the Population Administration Act is an effort to document on-the-ground realities. This registration actually holds strategic value: it can serve as a field database regarding the number of individuals in unregistered marriages. If the number of such individuals is systematically recorded, the state can monitor whether the practice is increasing or decreasing over time, and subsequently design appropriate interventions. Within this framework, administrative recognition does not undermine formal legality but rather serves as an informational prerequisite that enables the state to regulate marriages in a more measured manner. The problem arises when these registration regulations at the Civil Registry Office are interpreted as legal validation of the marriage, leading parties to claim rights as legal consequences of the marriage. It must be emphasized that Ministry of Home Affairs Regulation No. 108 of 2019 does not constitute validation of marital status or state recognition

of marital status; rather, it is merely an administrative data collection process to ensure the completeness of population data.

3. Shifting the Paradigm: From Formality to Systemic Substance

Within the body of Sharia maqasid, scholars have placed varying emphasis on the objectives of Islamic law. During the classical period, for example, *hifz al-nasl* (preservation of the lineage) was primarily understood as the protection of individuals through criminal sanctions, particularly in combating sexual offenses. Imam al-Shatibi formulated the maqasid within a hierarchical framework of human needs (*dharuriyyah*, *hajjiyyah*, *tahsiniyyah*) with an emphasis on the collective public interest. Although still within a normative framework, this marked a transformation from merely *maslahat mursalah* to legal principles. It is not merely the wisdom behind the rules but also the foundation of the rules themselves.³⁷ In the 20th century, Ibn Ashur significantly shifted the focus of preserving the lineage toward the protection of the family. This shift applies not only to criminal law but more so to the substance of the family system and its values. Ibn Ashur suggests that Islamic law incorporates the concept of **al-maqashid**, which is interpreted in universal terms such as equality, justice, order, and so on.³⁸ Ibn 'Asyur expanded the scope of *hifz nasl* by emphasizing family protection, relational values, and the social objectives of Islamic law, such that the maqashid are understood as the ethical foundation and framework for family life. This interpretation paves the way for a contemporary approach developed by Jasser Auda through his theory of systemic maqashid. Jasser Auda positions maqashid as an open, dynamic, and multidimensional system, not limited to criminal punishment or formal norms, but rather focused on the substance of values, relationships, and the purposes of law in responding to the complexities of modern society.³⁹ A reinterpretation of this theory has opened up opportunities for future generations to develop the concept of maqashid in a contemporary context. As Islamic legal thought has evolved, particularly in the 20th century, the focus of maqashid has shifted from being solely centered on sanctions to a more comprehensive protection of social structures, particularly the family as the foundation of society.⁴⁰

³⁷ Abu Ishaq Asy-Syatibi, *Al Mumafaqat fil Ushul al Syariah*, (Beirut: Dar el-Kutub, 2004).

³⁸ Ibnu Ashur, *Maqashid Syariah al-Islamiyyah*, ed. El-Tahir el-Mesawi, (Kuala Lumpur: al-Fajr, 1999).

³⁹ Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. (London & Washington, D.C.: International Institute of Islamic Thought (IIIT)), 2007.

⁴⁰ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: PT Mizan Pustaka, 2015).

In classical fiqh, the registration of marriage is not recognized as a rukun. However, contemporary scholars and systems theorists such as Jasser Auda offer a broader perspective based on maqashid. Islamic law must be viewed as an open system that interacts with social reality. The conceptual framework of maqashid al-sharia can be examined in this context:

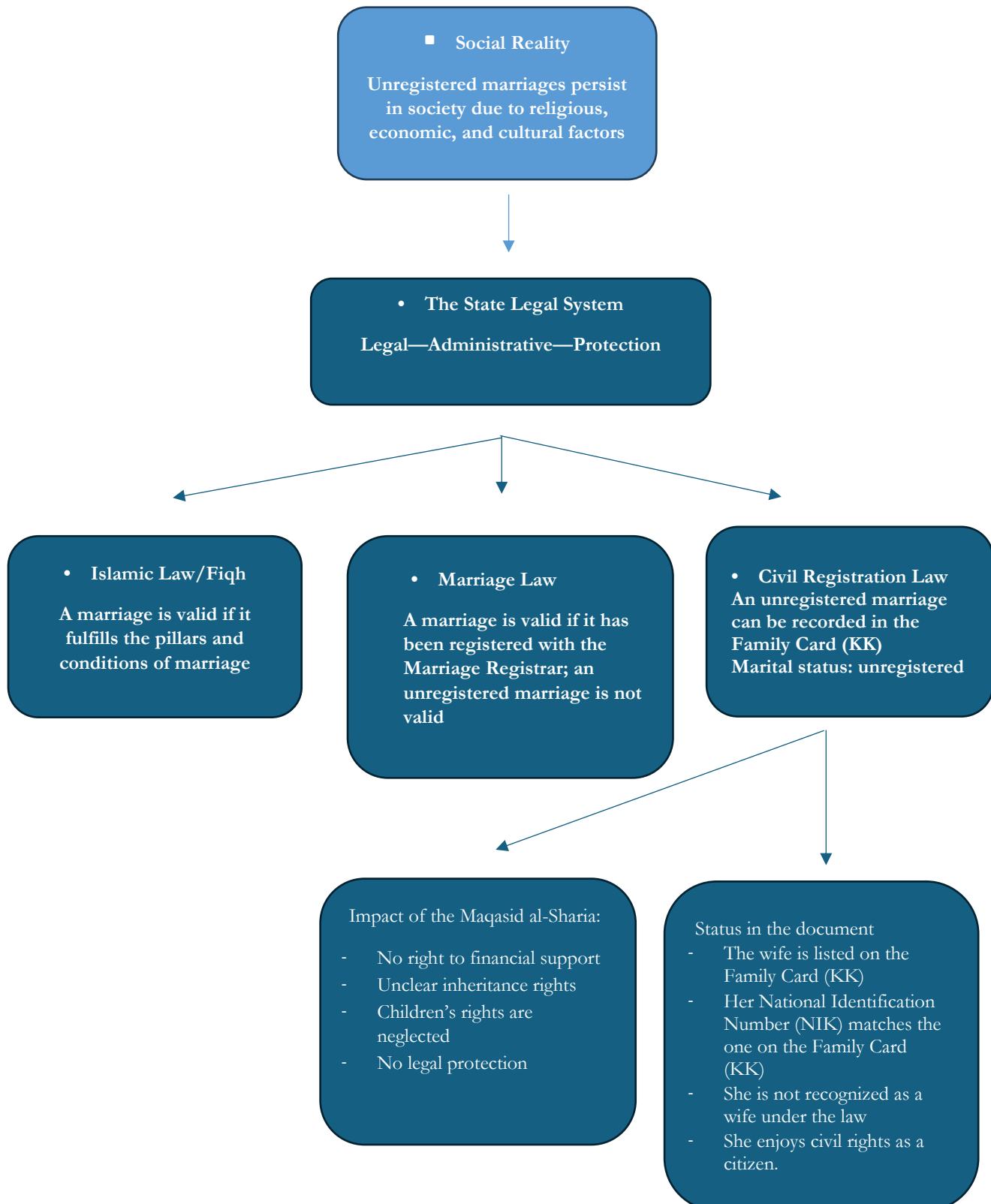
1. Hifz al-nasl (protection of lineage) has been expanded; traditionally, hifz al-nasl was interpreted as the prohibition of adultery. In the modern context, hifz al-nasl must be understood as the guarantee of children's civil rights. A child cannot be said to have a "protected" lineage if he or she cannot access inheritance or educational rights due to a lack of documentation. Therefore, marriage registration has transformed from merely a permissible (mubah) matter to an obligatory one, as it is an indispensable means (ma la yatimmu al-wajib illa bihi fahuwa wajib) for protecting lineage in a state governed by the rule of law.⁴¹
2. Hifz al-mal (protection of property) and gender justice; the maqashid of Sharia uphold justice ('adalah). Unregistered *nikah siri* undermines the wife's financial rights (joint property). Thus, allowing *nikah siri* to remain unregistered constitutes a form of dzulm (injustice) and contradicts the principle of property protection. Marriage registration serves as an instrument for ensuring the just distribution of assets within the family.

Understanding these two points regarding marriage registration clarifies the distinction from a formalistic approach, which tends to prioritize procedural documentation alone while neglecting protective measures. See the diagram below:

lihat juga dalam Jasser Auda. *Al-Maqasid Untuk Pemula*, terj. Ali Abdelmon'im, (Yogyakarta: SUKA Press, 2013). h. 52.

⁴¹ Ismail Firano, "Maqāṣid Az-Zuwāj Asy-Syar'iyah; Dirāsātun Li-Ahamm Maqāṣid Az-Zawāj Al-Aṣliyyah Wa At-Taba'iyah," *Jurnal Al-Dustur* 7, no. 2 (2024): 170-197. <https://doi.org/10.30863/aldustur.v7i2.7131>

Regulatory Framework for Unregistered Marriages



From the perspective of Jasser Auda's systemic maqāṣid, the difference in orientation between the Marriage Law and the Population Administration Law does not necessarily indicate a contradiction, but rather reflects two distinct legal functions. The Marriage Law is oriented toward formal legality through registration as an instrument of legal certainty, whereas the Population Administration Law is oriented toward administrative legibility to ensure that every citizen remains registered and has access to their citizenship rights. The issue does not lie in the existence of these two legal regimes, but rather in the lack of adequate integration between them. From the perspective of the principle of openness, the state has demonstrated openness in responding to social realities through population administration policies that accommodate families resulting from unregistered marriages. However, this openness has not been followed by strengthened normative coordination between the population administration system and marriage law. As a result, the public perceives two conflicting legal messages, leading to the perception that administrative recognition is synonymous with recognition of marital status. This situation also indicates that the principles of wholeness and interrelatedness have not yet been fully realized. The two laws essentially have complementary objectives: to provide protection through different instruments. However, the lack of policy synchronization has caused the functions of legality and legibility to operate in parallel without a clear mechanism for integration. As a result, protection for women and children has not been fully realized because administrative recognition is not always followed by legal certainty in the area of marriage. From the perspectives of cognitive nature and multidimensionality, the main challenge lies in how the state views unregistered marriages, which still tend to be separated into the administrative and family law spheres. In fact, this issue has broader dimensions, encompassing the protection of women, children's rights, access to justice, as well as social and religious dynamics. Therefore, state policy must not only ensure the population's recognition within the administrative system but also integrate these various dimensions into a single, comprehensive legal protection framework.

Ultimately, the principle of purposefulness asserts that the purpose of the law is to realize the public good in a substantive sense. In this context, both the Marriage Law and the Population Administration Law are in fact aimed at the same goal: protecting citizens through different functions. The main criticism is not directed at the individual regulations, but rather at the state, which has not yet succeeded in establishing a legal governance system capable of integrating these two functions into a single coherent system. Such integration is an essential prerequisite to ensure that formal legality and administrative legibility are not perceived as two

conflicting regimes, but rather as complementary instruments in realizing maqāṣid-oriented legal protection.

To address this gap, we recommend implementing concrete, integrated measures. The use of SPTJM forms for marital status should be more strictly enforced; if necessary, individuals should be urged to promptly complete the *itsbat* process. Data integration is essential; any request to change marital status on an ID card (KTP) or family card (KK) must include a data notification from the Ministry of Religious Affairs' SIMKAH (Marriage Management Information System).⁴² Couples who undergo *itsbat nikah* can immediately receive both their marriage certificate and family card. This integrated system can serve as a solution that combines legal validity with administrative order.

E. Conclusion

The ambivalence regarding the regulation of unregistered marriages in the Marriage Law and the Population Administration Law stems from differences in the paradigms, functions, and objectives underlying each legal regime. The Marriage Law treats registration as an instrument of formal legality aimed at establishing legal certainty while ensuring the protection of the civil rights of husbands, wives, and children. Conversely, the Population Administration Law views registration as an instrument of administrative legibility—that is, ensuring every resident remains traceable within the state's administrative system so they may obtain legal identity and access to public services. Thus, while the two regulations actually serve distinct functions, they are both directed toward the protection of citizens.

From John Griffiths' perspective on legal pluralism, this situation reflects the coexistence of various normative systems operating simultaneously: state law, religious law, and social norms. A community's decision to enter into an unregistered marriage is not merely a form of noncompliance with state law, but rather the result of a legal choice influenced by the coexistence of multiple normative systems that are all equally legitimate within society. The issue does not lie in the existence of legal pluralism itself, but rather in the state's insufficient capacity to manage the interactions between legal regimes, resulting in state legality, religious

⁴² SIMKAH (Marriage Management System) is a technology-based information system developed by the Indonesian Ministry of Religious Affairs to manage the entire process of registering marriages for Muslims, which is carried out by the Office of Religious Affairs (KUA). SIMKAH serves as a government administrative tool to ensure the orderly registration of marriages, the validity of marriage data, and the integration of marriage data with the national population registry. Its primary objectives are to improve data accuracy, service transparency, and legal protection for married couples through official marriage registration.

legitimacy, and social practices developing in parallel without adequate mechanisms for integration.

From the perspective of James C. Scott's theory of state legibility, the policy of including the status "unregistered marriage" on the Family Card through the SPTJM mechanism is an effort by the state to increase the legibility of social realities that were previously beyond the reach of state administration. This policy enables the state to identify family relationships and guarantee access to administrative rights. However, increased administrative legibility does not automatically result in substantive legal protection because administrative recognition does not change the legal status of the marriage under the Marriage Law. As a result, women and children born of unregistered marriages still face limitations in obtaining civil rights protections that depend on the legality of the marriage.

Within the framework of Jasser Auda's systemic maqāṣid, this issue indicates that the main challenge does not lie in the substance of each regulation, but rather in the failure to establish a legal system that fulfills the principles of interrelatedness, wholeness, multidimensionality, cognitive nature, and purposefulness. The state has demonstrated openness by accommodating social realities through population administration, but this openness has not yet been accompanied by interrelatedness and wholeness between the population administration system and the marriage law system. Furthermore, the state's response still tends to treat *nikah siri* as an administrative issue, thus failing to fully reflect a multidimensional approach that simultaneously considers legal, religious, social, gender, and child protection aspects. This perspective indicates that the cognitive dimension in policy formulation is still dominated by administrative rationality, while the goal-oriented focus—namely, substantive protection for women and children and family resilience—has not yet been optimally achieved.

Therefore, the reform of family law should not be directed toward a dichotomy between legality and legibility, but rather toward strengthening the integration of both within a coherent legal system. Formal legality remains necessary as the foundation of legal certainty, while administrative legibility serves to ensure that no citizen loses their identity or access to civil rights. The main criticism of this study is directed at the country's legal governance, which has not yet succeeded in synergizing these two functions within a single systemic framework of protection. Such integration is a prerequisite for realizing the objectives of maqāṣid al-syarī'ah—namely, the attainment of the public interest through legal certainty, the protection of rights, and substantive justice for all family members.

F. Conflict of Interest Statement

The author declares that there is no conflict of interest in the publication of this article.

G. Acknowledgement

Thank you to the supervisor for guiding the author and contributing to the refinement of this article.

H. References

- Auda, Jaser. *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*. London & Washington, D.C.: International Institute of Islamic Thought (IIIT). 2007
- Auda, Jaser. *Membumikan Hukum Islam Melalui Maqasid Syariah*. Bandung: PT Mizan Pustaka. 2015.
- Auda, Jaser. *Al-Maqasid Untuk Pemula*, terj. Ali Abdelmon'im, Yogyakarta: SUKA Press. 2013
- Al-Hasan, Fahadil Amin. "Akibat Perkawinan Tidak Tercatat (Nikah Sirri/Nikah Urf)", Pengadilan Agama Rangkasbitung, accessed November 7, 2025. <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/627-akibat-perkawinan-tidak-tercatat-nikah-sirri-nikah-urf>
- Arsyad, Aisyah. Polemik Hukum Nikah Siri: Dualisme Hukum Memapankan Sistem Patriarki dalam Muslim Subjectivity Spektrum Islam Indonesia. Cet. I, Yogyakarta: Insan Madani. 2017.
- Asshiddiqie, Jimly dan M. Ali Safa'at. *Teori Hans Kelsen tentang Hukum*, Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI. 2006.
- Asyur, Ibnu. *Maqashid Syariah al-Islamiyah*, ed. El-Tahir el-Mesawi, Kuala Lumpur: al-Fajr, 1999.
- Asy-Syatibi, Abu Ishak. *Al-Muwafaqat fil Ushul al Syariah*, Beirut: Dar el-Kutub, 2004.
- Baihaqi; Tutik, Titik Triwulan; Musadad, Ahmad; Khazin, A. Mufti; bin Simun, Mahtumridho Ghufon. "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya." *J. Islamic L.* 5 (2024): 242. <https://doi.org/10.24260/jil.v5i2.2819>

- Billah, Mu'tashim. "The Maslahah of State Policy in Responding to Unregistered Marriage: Inclusion of Unregistered Marriage on The Family Card." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (2024): 136. <https://doi.org/10.30659/jua.v6i2.31138>
- Bowen, John R. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press, 2003.
- Butt, Simon. "Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts." Crouch, M. (ed) *Islam, Law and the State in Southeast Asia*. Singapore: ISEAS, 2016.
- Fitra, Tasnim Rahman. "Sanctions and Legal Compliance in Marriage Registration: A Comparative Implementation of Islamic Family Law in Indonesia and Malaysia." *Islamic Law and Social Issues in Society* 1, no. 1 tahun 2025, <https://ejournal.tuah.or.id/index.php/ilsis/article/view/10/1>
- Firano, Ismail. "Maqāṣid Az-Zuwāj Asy-Syar'iyah; Dirāsatur Li-Ahamm Maqāṣid Az-Zawāj Al-Aṣliyyah Wa At-Taba'iyah." *Jurnal Al-Dustur* 7, no. 2 (2024): 170-197. <https://doi.org/10.30863/aldustur.v7i2.7131>
- Firdaus, Muhammad Isro, et al., "Maslahah On Siri Marriage Family Cards In Peraturan Menteri Dalam Negeri Number 108 Of 2019," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 1 (2023): 9–21, <https://doi.org/10.62976/ijjel.v1i1.28>.
- Griffiths, John. "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.
- Jahar, Asep Saepudin, and Ulfah Fajarini. "Legal culture and the dynamics of religious interaction in ritual practices among interfaith marriage." *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 333-348. <https://doi.org/10.24090/mnh.v18i2.11659>
- Jannah, Lulu Ul, Inna Fauziatal Ngazizah, and Abdurrohman Kasdi. "Social legitimacy versus state legal certainty: The dialectics of kiai marriages as living law in Dusun Pondok Asem, Kertasemaya, Indramayu." *Al-Mazaahib: Jurnal Perbandingan Hukum* 13, no. 2 (2025): 173-198. <https://doi.org/10.14421/al-mazaahib.v13i2.4392>
- Merry, Sally Engle, *Legal Pluralism, Law & Society Review*, Vol 22, Issue 5, Chicago, IL: University of Chicago Press, 1988. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/legal-pluralism?>
- Munawaroh, Lathifah, Ahmad Munif, and Ahmad Rofiq. "Disharmony in Sirri Marriage Registration Regulations on Family Cards: A Study of Ministry of Home Affairs

- Regulation No. 9/2016." *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (2023): 91-106.
<https://doi.org/10.25041/fiatjustisia.v17no1.2851>
- Rosyadi, Imron dan Kahar, Aisyah. *Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule*," vol 12, No. 3 tahun 2023.
<https://www.jurnalhukumdanperadilan.org/jurnalhukumperadilan/article/view/930>
- Scott, James C. *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Veritas paperback edition, Yale Agrarian Studies. Yale University Press. 2020.
- Syarif, Syarif, Saifuddin Herlambang, Budiyono Budiyono, Gama Pratama, Fharkhan Luthfi, and Nur Paikah. "Negotiating Sacred Law: Qur'anic Hermeneutics, Legal Pluralism, and Interfaith Marriage in Muslim-Majority Countries." *Syariah: Jurnal Hukum dan Pemikiran* 25: 379-401. <https://doi.org/10.18592/sjhp.v25i2.18166>
- Yunus, Mahmud. *Kamus Arab-Indonesia*, Yayasan Penyelenggara Penterjemah/Pentafsir al-Quran, 1973.

I. Authors' Biography

Vita Fitria

Vita Fitria, S.Ag., M.Ag., is a lecturer and scholar who currently teaches at Sunan Kalijaga State Islamic University (UIN) in Yogyakarta, in the Bachelor's Program in Comparative Islamic Schools of Thought, Faculty of Sharia and Law. Her research and scholarly writing, focusing on issues of family law, gender, religious tolerance, and Pancasila

Ali Sodiqin

Prof. Dr. Ali Sodiqin, M.Ag. is a professor currently teaching at Sunan Kalijaga State Islamic University (UIN) in Yogyakarta. He is a faculty member in the Faculty of Sharia and Law, specifically in the Doctoral Program in Sharia Studies. He is highly productive in producing scholarly works, particularly those published in reputable international journals. His research focuses on Maqasid al-Shari'ah and Contemporary Islamic Law

DOI, Copyright, and License	DOI: https://doi.org/10.14421/al-mazaahib.v14i1.4775 Copyright (c) 2026 Vita Fitria, Ali sodiqin This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License 
How to cite	Vitria, Vita, and Ali Sodiqin. " The Legality and Legibility of Unregistered Marriages in Indonesia: Assessing the Complementarity of the Marriage Law and the Population Administration Law." <i>Al-Mazaahib: Jurnal Perbandingan Hukum</i> 14, no. 1 (2026): 179-205. https://doi.org/10.14421/al-mazaahib.v14i1.4775