

ANALYSIS OF THE VALIDITY AND LEGAL IMPLICATIONS OF SIRI MARRIAGE ON THE RIGHTS OF WIVES AND CHILDREN

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Article Info:

Submitted: **Revised:** **Accepted:** **Published:**

Nov 21, 2025 Dec 16, 2025 Dec 28, 2025 Jan 2, 2026

Abstract

This study examines the legal dualism of *nikah siri* (unregistered Islamic marriages) in Indonesia, in which unions are considered valid under sharia by fulfilling pillars such as *ijab qabul*, *wali*, witnesses, and *mahr*, but lack state recognition due to non-registration as mandated by Law No. 1/1974 on Marriage and the *Kompilasi Hukum Islam* (KHI). Drawing from Qur'anic principles (e.g., *Al-Baqarah* 2:30; *Ar-Rum* 30:21) and the context of national pluralism, the study highlights the vulnerability of wives and children who are frequently denied inheritance, maintenance, birth certificates, and broader social protection, as reflected in 28,000 detected cases during 2020–2023 that resulted in approximately 1.5 million unregistered children. Employing a qualitative descriptive case study design, the research uses primary data obtained through in-depth semi-structured interviews with *ustaz* officiants and triangulates these findings with secondary sources, including *fiqh* texts, legislation, and prior empirical studies. The findings reveal recurrent sharia defects, such as the absence of a guardian of *nasab* and unqualified witnesses that render some unions religiously invalid and inclined toward adultery, while deficiencies in state regulation and implementation further entrench gender discrimination and child poverty. Constitutional Court Decision No. 46/PUU-VIII/2010 provides a legal

avenue to establish civil ties through evidentiary proceedings, yet marriage *isbat* (court validation) functions primarily as a remedial mechanism for unions formed before 2015. The analysis underscores persistent tensions between religious legitimacy and civil certainty and concludes that harmonizing *maqasid sharia* with national law through streamlined digital registration at the Office of Religious Affairs (KUA), retrospective *isbat* campaigns, and strengthened *fiqh* education is essential to safeguarding family stability and promoting *sakinah mawaddah warahmah*.

Keywords: *Nikah Siri*; Unregistered Marriage; Legal Dualism; Islamic Family Law; Child Rights

INTRODUCTION

Humans were created by Allah SWT as caliphs (leaders) on earth, as stated in the Qur'an, Surah Al-Baqarah verse 30: "And [mention, O Muhammad], when your Lord said to the angels, 'Indeed, I will make upon the earth a successive authority'" (QS. Al-Baqarah: 30). To sustain their existence as intelligent beings, humans require continuous reproduction to preserve offspring across generations. This right to survival is fundamental and inherent, as affirmed in Article 3 of the Universal Declaration of Human Rights, which guarantees the right to life and personal security (United Nations, 1948). Thus, marriage serves as a sacred institution regulating such reproductive bonds, governed by both religious and state laws.

In Indonesia, the validity of marriage is regulated under Article 2 paragraphs (1) of Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019), stating: "A marriage is valid if conducted according to the law of each respective religion and belief," and "Every marriage shall be registered in accordance with applicable legislation" (Republic of Indonesia, 1974/2019). This provision reflects the state's commitment to religious pluralism while ensuring administrative legal certainty. However, the practice of *nikah siri*—derived from "syir" meaning secret—fulfills Islamic *syariah* requirements (such as *ijab kabul*, witnesses, and *wali*) but neglects state registration, creating legal dualism (Nadriana et al., 2023).

Siri's marriage is often motivated by practical factors, such as avoiding administrative procedures (including the minimum marriage age of 19 years per Law No. 16 of 2019), premarital pregnancies, polygamy without the first wife's permission (violating Articles 4-5 of the Marriage Law), or divorce certificate hurdles from the Religious Court. A study found

that marriages in Indonesia are unregistered, particularly among rural and low-income urban communities (Kudrna et al., 2022). Although religiously valid, the lack of state documents leaves wives and children legally vulnerable, such as in inheritance or social protection (BPS, 2022).

From an Islamic legal perspective, marriage encompasses three inseparable aspects: legal (*syariah*), social (*muamalah*), and worship (*ibudiyah*). All must be fulfilled to achieve sharia objectives, namely a family that is *sakinah, mawaddah, wa rahmah* (QS. Ar-Rum: 21). Neglecting one leads to imbalance; for example, *nikah siri* satisfies worship but fails state legal aspects, hindering children's civil identity rights (Qardhawi, 2004).

Indonesian National Law integrates Islamic principles via the Compilation of Islamic Law (KHI) Articles 2-3, mandating marriage registration for state validity. Ministry of Religious Affairs data recorded 28,000 detected *siri* marriages from 2020-2023, resulting in 1.5 million unregistered children (Kemenag RI, 2023). This dualism triggers practical implications, such as gender discrimination where *siri* wives struggle to claim maintenance.

Socially, unregistered marriages increase child poverty, with Statistics Indonesia reporting that children from unregistered marriages are at risk of dropping out of school (Dommaraju & Tan, 2024). From a legal anthropology viewpoint, this practice reflects cultural resistance to state bureaucracy in traditional Muslim societies (Geertz, 1973).

This study dissects the legal dualism of unregistered marriage through field expert interviews, integrating sharia analysis with state perspectives. Findings aim to contribute policy recommendations, such as the Ministry of Religious Affairs' campaigns for retrospective registration. Ultimately, this dualism challenges the harmonization of Islamic and national law, as recommended by the Constitutional Court in Decision No. 46/PUU-VIII/2010, emphasizing child protection from unregistered marriages (Mahkamah Konstitusi, 2010). The research is relevant for policymakers in Islamic education and family management.

METHODS

This study employed a qualitative descriptive method with a case study approach (Kusumastuti & Khoiron, 2021). The aim was to gain an in-depth understanding of the social and religious phenomena surrounding serial marriages in Indonesia. This approach was

selected as it is most suitable for exploring the meanings, perspectives, and motivations driving individuals and religious figures to engage in this practice. Qualitative methods enabled the researchers to obtain a comprehensive understanding of the underlying social, cultural, and legal contexts of a series of marriages, encompassing both legal frameworks and lived experiences of communities (Satori & Komariah, 2017).

The study focuses on analyzing the discrepancies in legal status between Islamic jurisprudence (*fiqh*) and positive Indonesian law, as well as tracing the resulting legal and social impacts arising from the absence of official marriage registration. It sought to uncover how communities perceive the legality of marriage and their awareness of the legal consequences of such choices. Primary data were collected through in-depth, semi-structured interviews with an experienced *Ustaz* or *siri* marriage officiant directly involved in the practice.

The interviews utilized open-ended questions to allow informants to elaborate on their opinions, rationales, and personal experiences (Rosidah et al., 2023). To ensure data reliability, source triangulation was conducted by cross-verifying interview findings with secondary data, including legislation, *fiqh* texts, and prior research reports. Secondary data were gathered via literature review, encompassing the Marriage Law, Compilation of Islamic Law, and academic literature on Islamic family law, sociology of law, and a series of marriage practices across various regions. Additional sources included journal articles and previous studies. Data validity was verified through triangulation techniques, member checking, and peer debriefing to enhance the objectivity and scientific accountability of the analysis (Safrudin et al., 2023).

RESULTS

The Validity of *Sharia* and the Vulnerability of the Pillars of Marriage

Marriage from the perspective of Islamic law requires specific provisions and elements to ensure the validity of the marriage contract. These include the prospective bride and groom, a guardian, two upright witnesses, the *ijab qabul* (offer and acceptance), and other sharia-mandated conditions. These requirements involve key participants: the bride, groom, guardian, and two '*adil*' witnesses, as emphasized in classical *fiqh* texts (Anton et al., 2025). Without fulfilling these, the marriage is deemed invalid under Islamic law, potentially rendering the union as adultery.

In Indonesia, home to the world's largest Muslim population, Islamic law profoundly influences social and legal spheres, particularly marriage. Although not officially adopting full sharia, regulations for Muslim marriages are codified in national frameworks like Law No. 1 of 1974 on Marriage (amended by Law No. 16 of 2019) and the Compilation of Islamic Law (KHI) under Presidential Instruction No. 1 of 1991 (Anton et al., 2025). These laws harmonize religious principles with state oversight, mandating official registration to protect rights, yet tensions arise when religious practices diverge from civil requirements.

The *nikah* guardian, *wali*, is the authorized guardian who unites the bride with her groom, typically the father or closest male agnatic relative. Most scholars across madhabs (e.g., Shafi'i, dominant in Indonesia) consensus that a *wali* is a *rukun* (pillar) of a valid marriage; without a qualified one, the union is *invalid* (*null*) (Nurmayani et al., 2025). Indonesian law reinforces this via KHI Articles 11-15, prioritizing guardian *nasab* (lineage guardian) up to the 12th degree before resorting to a guardian judge. It underscores the guardian's protective role against coercion or hasty decisions.

Conflicts emerge when state legality clashes with religious provisions. *Sharia* demands *rukun* (pillars) like *wali* for the bride, two male '*adil*' witnesses, clear *ijab qabul*, and *mahr* (dowry); omission of any invalidates the contract religiously (Nurmayani et al., 2025). In practice, Indonesian courts may recognize unregistered unions if *Sharia* elements are met, but this creates vulnerabilities, especially for women and children lacking state protections such as inheritance or custody rights (Fatihaturrohman & Ichsan, 2019).

Nikah Siri refers to unregistered marriages conducted without documentation at the Office of Religious Affairs (KUA) or civil authorities. Often motivated by avoiding bureaucracy, social stigma, economic burdens, or cultural norms in rural areas, practitioners argue that it works if *sharia rukun* is fulfilled, granting religious legitimacy (Hasbiyalla, 2024). However, the absence of state registration exposes families to legal voids, such as denied spousal benefits or child legitimacy under civil law (Azhari, 2025). This duality fuels debates on whether *siri* marriages prioritize piety over pragmatism.

Field experts assert *siri* marriage's validity before Allah hinges on complete *rukun*, yet practical flaws abound. Common defects include "cacat wali," where officiants (*penghulu*) are deceived about the *wali nasab*'s absence or consent—KHI requires exhaustive search up to 12th-degree relatives; bypassing these voids, guardian judges (Khairuddin, 2025). Such lapses,

often in remote Indonesian villages, highlight enforcement gaps between ideal *fiqh* and reality (Marqomah & Ichsan, 2023).

Witness defects are prevalent, with cases using female or non-pubescent witnesses, contravening *fiqh* requirements for two adult Muslim males of sound mind and justice (Khairuddin, 2025). Shafi'i texts, influential in Indonesia, strictly mandate this to ensure impartiality. Additionally, ignoring *iddah* (waiting period, e.g., 4 months 10 days post-divorce) leads to void unions, as seen in hasty remarriages that perpetuate generational disputes.

Societally, *nikah siri* is viewed as preferable to adultery, offering a *halal* outlet amid economic pressures (Riyanto, 2018). Yet, incomplete *rukun* demotes it to adultery, with moral culpability heaviest on the *penghulu* facilitating flawed akads—deemed a major sin akin to enabling immorality. Research informants stress ethical accountability, urging community education to bridge knowledge gaps.

Fiqh ulama unanimously deem *wali*-less or witness-less marriages—even if a *wali* exists but is uninvolved—as equivalent to *zina*, *haram* due to unmet *rukun* (Riyanto, 2018). Indonesian fatwas, like those from MUI (Indonesian Ulema Council), echo this, advocating registration without negating religious validity. This consensus aims to reconcile faith with modernity. Ultimately, while unregistered marriage holds religious appeal, its legal limbo undermines family stability in Indonesia's pluralistic system. Policymakers could enhance KUA accessibility, digital registration, and *fiqh* education to minimize defects. Balancing sharia purity with state safeguards remains key to equitable marital rights (Mahira & Karjoko, 2023).

Lack of Legal Protection and Implications for Civil Rights

Marriage is a sacred and crucial institution in Indonesian society, regulated not only by state laws under Law No. 1 of 1974 on Marriage but also by Islamic religious values and local traditions. In Islam, marriage is viewed as a solemn covenant (*mithaqan ghalizah*) encompassing personal bonds, moral responsibilities (Fatul et al., 2024), and social duties for husbands, wives, and their offspring (Kiani & Sabreen, 2025). However, the practice of *nikah siri*—unregistered marriages without official recording at the Office of Religious Affairs (KUA) or civil registry—remains prevalent despite being valid under sharia. It creates misalignment between religion and state recognition, as the state rejects it for failing administrative requirements like registration within 10 days post-contract. As a result,

unregistered marriage leaves gaps in protections for women and children, even though Islam emphasizes justice (*adl*) and family welfare (Nasoha et al., 2024).

Factors driving unregistered marriages are multifaceted, ranging from economic constraints making registration fees burdensome, desires for polygamy without cumbersome legal procedures, to low public awareness of registration obligations. In rural or certain communities, *siri* marriage is favored for its simplicity and alignment with prophetic traditions, bypassing state bureaucracy. However, from a positive law perspective, such marriages lack binding legal force, denying wives official status. The impacts are profound: women risk losing rights to maintenance (*nafkah iddah* and *mut'ah*), division of joint assets, and safeguards in divorce or widowhood (Anggraini et al., 2025).

Children from unregistered marriages face acute legal challenges, including uncertain lineage (*nasab*), omission of the father's name on birth certificates, maintenance rights, inheritance, and guardianship. Without registration, children are often recorded solely under the mother's name, complicating access to public services such as education and healthcare. It contradicts Islamic principles mandating recognition of biological paternity (via *li'an* or voluntary acknowledgment) and children's right to clear identity as per Indonesia's ratification of the Convention on the Rights of the Child (Kruiniger, 2014).

Indonesia's family law regulations have evolved rapidly in response, particularly through constitutional judicial reviews. A landmark case arose when a mother from a married marriage with an official filed a material review, leading to the Constitutional Court (MK) Decision No. 46/PUU-VIII/2010. This ruling amended Article 43(1) of the Marriage Law, affirming that children born outside marriage have civil relations with their biological father if proven by scientific means (e.g., DNA tests), other evidence, or written/oral acknowledgment (Halim et al., 2023).

This MK decision marked a transformative shift in family law, safeguarding children's right to know their origins as a protected human right under Article 28D(1) of the 1945 Constitution. Today, children from unregistered marriages can seek lineage recognition in religious courts with scientific evidence, reducing stigma and discrimination (Rahbari, 2022). Implementation challenges persist, however, including DNA test costs and access to justice in remote areas.

Nevertheless, *nikah siri*'s primary flaw lies in the absence of formal justice enforcers like judges or prosecutors, fostering legal uncertainty. Without official documents, domestic

disputes are hard to resolve fairly, often relying on the husband's goodwill. Negative legal implications include women's vulnerability to maintenance neglect, where husbands evade responsibilities without state penalties (Coker, 2001). Joint assets cannot be legally divided, leaving wives impoverished post-divorce.

For children, implications involve automatic loss of inheritance rights, pursuable only through complex court evidence. It exacerbates social inequalities, potentially labeling married children as "illegal" administratively. From the state's viewpoint, *nikah siri* has almost accurate demographic data for development planning, such as family planning or social aid programs. The Ministry of Religious Affairs has campaigned for mandatory registration, but uptake remains low in traditional communities.

Overall, *nikah siri* reflects the tensions between sharia and secular law in Indonesia. Ideal solutions involve regulatory harmonization, such as streamlined KUA procedures and mass education, to protect all parties while respecting religious values (Anggraini et al., 2025).

Table 1. Explanation of Parties, Lost Rights, and Information

Party	Lost/Threatened Rights	Information
Wife	Rights to inheritance, joint property, right to file for divorce (if the husband violates his obligations).	Under state law, a wife's status is not recognized. If divorced, a wife cannot claim maintenance (iddah) through the Religious Court.
Children	Birth Certificate, Family Card (<i>Kartu Keluarga</i> /KK), Inheritance Rights from father, Guardianship Rights for marriage, Maintenance Rights (if husband runs away).	A child only has a civil relationship with their mother and her family. Without a birth certificate/family card, a child will have difficulty accessing education, health care, and other state administrative rights.
Partner	There is no legal guardian. When disputes arise, they are resolved solely by customary law or the husband's discretion.	Husbands can easily escape responsibility (maintenance) without legal sanctions from the state, even though they are still sinful in the eyes of God.

DISCUSSION

Legal Solution: Marriage Confirmation

Marriage constitutes a legally recognized bond, both outwardly and inwardly, according to Islamic principles, playing a profoundly significant role in human life as it forms the sturdy foundation of the family unit. In Indonesia, regulations on marriage, including the

Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), mandate that every marriage fulfill formal requirements, particularly official registration. Despite this, many couples opt for customary (*adat*) or purely religious ceremonies without government involvement, leaving their marital status unregistered. To address this gap, Indonesian law provides *isbat nikah* (marriage validation) as a mechanism to legitimize and document previously unregistered unions before the state (Wazzan et al., 2024).

Article 2(2) of the Marriage Law explicitly states: "Every marriage shall be registered in accordance with applicable legislation." This provision underscores that state registration is essential for a marriage to achieve a valid legal status. The primary objectives include ensuring legal certainty for spouses, protecting the rights of children born from the union, and safeguarding associated rights and obligations, such as inheritance, property division, and social welfare benefits (Simpson, 2018).

In practice, however, not all marriages are immediately registered. Factors contributing to unregistered marriages—often termed unregistered marriages (secret or unregistered religious marriages)—include limited access to civil registry services, especially in remote rural areas; lack of awareness about registration's legal importance; and a strong preference for traditional or religious rites without state interference. These unions, while valid under Islamic law (e.g., fulfilling *rukun nikah* like *ijab kabul*), lack civil recognition, exposing families to vulnerabilities.

The consequences of unregistered marriages are far-reaching. Without an official marriage certificate, spouses and children face legal limbo: children may be classified as "out of wedlock, denying them inheritance rights, citizenship clarity, and access to government programs. This situation not only undermines family stability but also contravenes fundamental human rights, such as the right to identity and non-discrimination, as enshrined in Indonesia's Constitution and international conventions such as the UN Convention on the Rights of the Child (Arts, 2014).

To mitigate these issues, the state offers *isbat nikah* through the Religious Courts, even though the Ministry of Religious Affairs discourages unregistered marriages. *Isbat nikah* involves filing a petition to obtain a court decree affirming the validity of a prior religious marriage. This decree serves as the basis for issuing a marriage certificate, thereby restoring civil rights for wives and children, including legal recognition of parentage and property claims (Bincar, 2022).

The regulatory background for *isbat nikah* stems directly from the prevalence of unregistered marriages, which bypass registration at the Office of Religious Affairs (*Kantor Urusan Agama*/KUA). Couples often only confront the issue when seeking birth certificates or family cards for school enrollment after having children. At this juncture, they recognize the necessity of registration to secure legal force and certainty for their union (Huda & Azmi, 2020).

From an Islamic perspective, marriage (*nikah*) is a sacred contract emphasizing mutual rights, family formation, and societal harmony, as outlined in the Qur'an (e.g., Surah An-Nisa 4:21) and Hadith. However, Islamic jurisprudence prioritizes civil documentation in modern states to prevent exploitation, aligning *isbat nikah* with *maqasid sharia* (objectives of *Sharia*), particularly the preservation of lineage (*hifz al-nasl*) and wealth (*hifz al-mal*) (Tanjung et al., 2025).

Procedurally, *isbat nikah* requires evidence like witness testimonies, religious leader affidavits, or cohabitation proof, adjudicated by the Religious Court under KHI Articles 61–66. Successful validation integrates the marriage into the national civil registry, promoting equity. Yet challenges persist, including court backlogs, evidentiary burdens in long-term unions, and cultural resistance, highlighting the need for streamlined KUA outreach and digital registration platforms. Ultimately, while *isbat nikah* bridges religion and state legalities, broader reforms are essential—such as community education campaigns, subsidized rural registries, and policy harmonization between the Marriage Law and KHI. These steps would reduce unregistered marriages, uphold human rights, and strengthen family institutions in Indonesia's diverse socio-cultural landscape (Setiawan et al., 2024).

CONCLUSION

This study demonstrates that *nikah siri* (unregistered religious marriages) remains valid under Islamic *sharia* as long as its essential pillars (*rukun*) and conditions are fulfilled in line with classical *fiqh madhhabs*. However, it simultaneously contravenes Indonesia's positive law, particularly the Compilation of Islamic Law (KHI) and Marriage Law No. 1 of 1974, thereby creating acute legal vulnerabilities for wives and children. These include the denial of civil rights related to inheritance, joint marital property, and access to key administrative documents such as birth certificates, family cards, identity cards, and passports. Children from such unions are legally categorized as born out of wedlock, which further entrenches

their socio-legal disenfranchisement. Case patterns at the Pandan Religious Court indicate that *nikah siri* is frequently driven by financial constraints, administrative barriers, and the absence of guardian consent, with *isbat nikah* petitions predominantly submitted to secure administrative recognition. In this context, *isbat nikah* functions as a mechanism that can be interpreted as consistent with the objectives of *maqasid sharia* in preserving public interest (*mashlahat*).

The study contributes to the field by elucidating the tension between the religious validity of *nikah siri* within classical *fiqh madhhabs* and its incompatibility with Indonesia's statutory framework, thereby clarifying the normative and practical gap between Islamic jurisprudence and state law. It further advances socio-legal understanding by documenting the concrete legal and administrative risks borne by women and children in unregistered marriages and by highlighting how *isbat nikah* operates as a corrective legal instrument oriented toward *mashlahat*. At the policy level, the study proposes a regulatory framework in which *isbat nikah* is strictly limited to unions contracted before 2015 that meet the substantive requirements of *sharia*, while post-2014 cases are generally rejected except in exceptional circumstances such as divorce proceedings. This framework seeks to reduce the incidence of *nikah siri* while balancing religious legitimacy with state-mandated legal certainty and the protection of family rights.

Given the legal, social, and administrative complexities identified, future research is encouraged to examine more systematically the long-term impacts of restrictive *isbat nikah* policies on wives and children from *nikah siri* unions, to explore in greater depth the socio-economic and cultural factors that sustain the practice despite its legal risks, and to conduct comparative analyses with other Muslim-majority jurisdictions that regulate unregistered marriages. Such studies would refine understanding of how different regulatory models mediate the relationship between religious norms, state law, and the protection of vulnerable family members.

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