

## ANALYSIS OF LEGAL CERTAINTY IN INDONESIA: AN EVALUATION OF MARRIAGE REGISTRATION IN THE CONTEXT OF CONTEMPORARY ISLAMIC FAMILY LAW

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### **Abstract**

Marriage registration is a fundamental aspect in ensuring legal certainty and protection of civil rights in the family law system in Indonesia. The purpose of this paper is to analyze the urgency of marriage registration in order to strengthen legal protection for individuals and family institutions. The method used is a literature study with a juridical, sociological, and theological approach to laws and regulations and relevant family law literature. The results of the study show that unrecorded records have an impact on the unclear legal status of spouses and children, complicate the legal divorce process, and weaken civil rights such as inheritance and division of joint property. In addition, low legal awareness, cultural factors, and complex bureaucracy are the main obstacles in the implementation of recording. This study concludes that marriage registration is not only an administrative obligation, but also a strategic instrument in ensuring social justice and legal protection within the framework of a civilized state of law.

**Keywords:** Legal Certainty; Marriage Registration; Islamic Family

### **Abstrak**

Pencatatan perkawinan merupakan aspek fundamental dalam menjamin kepastian hukum dan perlindungan hak-hak keperdataan dalam sistem hukum keluarga di Indonesia. Adapun Penulisan ini bertujuan untuk menganalisis urgensi pencatatan perkawinan dalam rangka memperkuat perlindungan hukum terhadap individu dan institusi keluarga. Metode yang digunakan adalah studi pustaka dengan pendekatan yuridis, sosiologis, dan teologis terhadap peraturan perundang-undangan serta literatur hukum keluarga yang relevan. Hasil penelitian menunjukkan bahwa pencatatan yang tidak dilakukan berdampak pada ketidakjelasan status hukum pasangan dan anak, menyulitkan proses perceraian secara legal, serta melemahkan hak-hak keperdataan seperti waris dan pembagian harta bersama. Selain itu, rendahnya kesadaran hukum, faktor budaya, dan birokrasi yang kompleks menjadi kendala utama dalam pelaksanaan pencatatan. Penelitian ini menyimpulkan bahwa pencatatan perkawinan tidak hanya merupakan kewajiban administratif, melainkan juga instrumen strategis dalam menjamin keadilan sosial dan perlindungan hukum dalam kerangka negara hukum yang berkeadaban.

## Kata Kunci: Kepastian Hukum; Pencatatan Perkawinan; Keluarga Islam

### Introduction

Marriage is a very sacred event in forming a family and establishing the rights and obligations of husband and wife, as well as being a legal path to continue offspring.<sup>1</sup> In addition to being recognized religiously, marriage must have clear legal legitimacy, as stipulated in Government Regulation of the Republic of Indonesia No. 9 of 1975 precisely in article 2 paragraph 1 contains: Marriage registration of those who carry out their marriage according to their religion and beliefs other than Islam is carried out by marriage registration officers at the civil registration office as referred to in various laws regarding marriage registration. Marriage registration is presented by the state to provide legal protection to citizens and ensure the certainty of civil rights in the family.<sup>2</sup>

However, the practice of marriage registration in Indonesia still faces various obstacles, both internal and external. Internally, low public legal awareness is the main factor.<sup>3</sup> Many individuals still consider the legality of marriage to be based on custom or religion without the need for state registration. This view, which is common in areas with low levels of education, is exacerbated by a lack of understanding of the legal implications of unregistered marriages, such as losses in inheritance rights, difficulties in proving divorce, and the legal status of children. In addition, the registration procedure, which is considered complicated, time-consuming, and costly, leads to the reluctance of the public to register the marriage officially.<sup>4</sup> The phenomenon of serial marriage or marriage without state registration is one of the manifestations of this problem. Therefore, systematic efforts are needed from the government to improve registration services and carry out a cultural approach to increase public awareness of the importance of marriage registration in the context of legal protection.<sup>5</sup>

As a result, the marriage that took place did not have clear legal evidence. This will cause problems for the lives of married couples and even children who are not legally clear so that it will trigger difficulties in matters of inheritance rights, divorce problems, hajj, maintenance rights, distribution of joint property and even there will

<sup>1</sup> Rohmahtus Sholihah dan Muhammad Al Faruq, Konsep Keluarga Sakinah Menurut Muhammad Quraish Shihahab, *Jurnal Studi Ilmu Keagamaan Islam*. 2020.

<sup>2</sup> Pemerintah Pusat Indonesia, "Peraturan pemerintah (PP no. 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," 1975.

<sup>3</sup> Moh Zaenal Abidin Eko Putro dan Kustini Kosasih, "Ketimpangan Antara Pemenuhan Hak Sipil dan Hak-Hak lainnya pada Anak Sunda Wiwitan, Cireundeuy, Cimahi," *Jurnal HAM* 12, no. 3 (31 Desember 2021): 485, <https://doi.org/10.30641/ham.2021.12.485-502>.

<sup>4</sup> M. Fahmi Al-Amruzi, "Pencatatan Perkawinan Dan Problematika Kawin Siri," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum dan Syariah* 9, no. 2 (9 Januari 2021): 1–18, <https://doi.org/10.52051/ulumulsyari.v9i2.79>.

<sup>5</sup> Agustin Hanapi dan Manshur, "Perlindungan Anak Dari Nikah Siri Menurut Hukum Positif Indonesia," *Kalam: Jurnal Agama dan Sosial Humaniora* 12, no. 1 (28 Juni 2024): 11–22, <https://doi.org/10.47574/kalam.v12i1.250>.

be uncertainty of legal protection for the family.<sup>6</sup> Socially, the practice of marriage like this will cause a force against gender injustice where women and children are the main victims who are greatly disadvantaged because they do not have the power of legal clarity. In addition, unregistered marriages will make it very difficult for the state to supervise the population administration system and the protection of the rights of every Indonesian citizen.<sup>7</sup> The consequences of this behavior do not only have an impact on the individual, the family, but also have an impact on the system as a whole. Legal uncertainty resulting from the unregistered marriage will cause problems in the settlement of cases in religious courts and district courts.<sup>8</sup> In addition, there is a lack of synchronization in population data that will hinder several policy efforts towards comprehensive family protection. This study on marriage registration is very important to be carried out in ensuring that existing legal regulations can be practiced effectively for the sake of legal certainty for Indonesian citizens.

Various previous studies have discussed the issue of marriage registration. Sri Hartini et al.<sup>9</sup> researching legal counseling related to the non-registration of marriages in North Bogor District based on the Regulation of the Minister of Religion No. 19 of 2018. This study found that legal marriage according to Article 14 of the Compilation of Islamic Law (KHI) 1991 for Muslims includes prospective husband and wife, guardians, witnesses, ijab kabul, and registration at the KUA, while for non-Muslims it is carried out at the Civil Registration Office in accordance with Law No. 1 of 1974. Not recording marriages raises various legal problems, such as difficulties in divorce, birth certificate management, pensions, and inheritance. Alifah and Puti Sabrina's Research<sup>10</sup> stated the judge's *Ratio Decidendi* in Determination No. 141/Pdt.P/2023/PN. Yyk revealed that the granting of interfaith marriage registration is based on Law No. 23 of 2006, the constitutional guarantees of the 1945 Constitution, and related legal vacancies, but it has not fully met the standards of legal certainty according to Jan M. Otto. As for the research of Dadan Herdiana and Dian

<sup>6</sup> Fitria Wahyu Ningrum, "Nikah Siri dan Dampaknya Terhadap Hak Perempuan dan Anak dalam Itsbat Nikah," t.t.

<sup>7</sup> Bunga Azalia Ramadhani dan Dwi Aryanti Ramadhani, "Hukum Pencatatan Perkawinan dan Akibat Hukumnya (Perbandingan Hukum Pencatatan Perkawinan di Indonesia dan Brunei Darussalam)," *Jurnal Interpretasi Hukum* 5, no. 1 (4 Januari 2024): 846–55, <https://doi.org/10.22225/juinhum.5.1.8449.846-855>.

<sup>8</sup> Muhammad Ridlo Rizki Tsanian, Idaul Hasanah, dan Ratri Novita Erdianti, "Penggunaan Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Pada Kekerasan Dalam Pernikahan di Bawah Tangan (Studi di Pengadilan Negeri Malang)," *Indonesia Law Reform Journal* 1, no. 3 (30 November 2021): 354–67, <https://doi.org/10.22219/ilrej.v1i3.18554>.

<sup>9</sup> Sri Hartini dkk., "Penyuluhan Hukum Tentang Korban Tidak Melakukan Pencatatan Perkawinan Pada Waktu Pernikahan Menurut Peraturan Menteri Agama No. 19 Tahun 2018 Di Kecamatan Bogor Utara," *SINKRON: Jurnal Pengabdian Masyarakat UIKA Jaya* 3, no. 1 (2025): 70–79.

<sup>10</sup> Puti Sabrina Alifah, "Ratio Decidendi Hakim terhadap permohonan pencatatan perkawinan beda agama perspektif Asas Kepastian Hukum: Studi penetapan nomor 141/Pdt. P/2023/PN. Yyk," 2025.

Ekawati.<sup>11</sup> (2024) highlighting the changes after the issuance of the Supreme Court Circular Letter (SEMA) No. 2 of 2023, which affirms the prohibition of interfaith marriage in accordance with Law No. 1 of 1974 and encourages uniformity of rulings to reduce legal uncertainty. Furthermore, the research of Muhammad Sultan Akbar et al. <sup>12</sup> (2025) concluded that the registration of marriage in Islamic family law, as stipulated in Law No. 1 of 1974, is the obligation of every citizen. The application of Maṣlahah Mursalah in this recording serves to prevent marriage and inheritance disputes and avoid the practice of unofficial marriage, thus maintaining the benefit of the community. Then the research of Khusnul Khotimah and Dani Amran Hakim<sup>13</sup> (2024) shows that the registration of marriages, as well as the relevance of the Qur'an surah Al-Baqarah verse 282, is important as a pillar of administrative legal certainty. At KUA Seputih Agung, recording is carried out in accordance with Article 4 of PMA No. 20/2019 by applying the principle of objectivity in the implementation of duties.

Although it contributed to the understanding of marriage registration, various previous researchers still had limitations. Sri Hartini et al.'s research is descriptive, normative, and limited to regional aspects without in-depth social analysis. Alifah and Puti Sabrina's studies focus too much on formal juridical aspects without considering social impacts. Dadan Herdiana and Dian Ekawati are less critical of the Supreme Court's Circular Letter from the perspective of human rights and legal pluralism. Meanwhile, the research of Muhammad Sultan Akbar et al. is still conceptual without an implementive application, and the research of Khusnul Khotimah and Dani Amran Hakim overemphasizes administrative success without addressing the challenges of practice in the field.

The *novelty* in this study lies in a comprehensive approach through the study of legal, sociological, and theological literature related to marriage registration in Indonesia. This article not only synthesizes various views critically, but also affirms that marriage registration is a strategic instrument of family law protection in the context of religious and cultural pluralism. In addition, the article emphasizes the importance of legal certainty based on formal legality, social legitimacy, and substantive justice.

This research aims to analyze the importance of marriage registration in the Indonesian legal system, both from the perspective of positive law and Islamic law, as well as to increase public awareness of the legal consequences due to irregularities. This study aims to explore the juridical implications arising from the absence of

<sup>11</sup> Dadan Herdiana dan Dian Ekawati, "Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 57–69.

<sup>12</sup> Muhammad Sulthan Akbar, Yufi Wiyos Rini Masykuroh, dan Olivia Rizka Vinanda, "Mashlahah Mursalah Pencatatan Perkawinan Dalam Hukum Keluarga Islam," *Knowledge: Jurnal Inovasi Hasil Penelitian dan Pengembangan* 5, no. 1 (2025): 51–59.

<sup>13</sup> Khusnul Khotimah dan Dani Amran Hakim, "Pencatatan Pernikahan sebagai Pilar Kepastian Hukum Administrasi dalam Keluarga: Studi di KUA Seputih Agung Lampung Tengah," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 2 (2024): 202–21.

marriage registration, both for husband and wife, children, and society in general. In addition, this study will provide recommendations on strategies that can be applied to address the gap between legal norms and social practices related to marriage registration, with the aim of creating a more inclusive and fair legal system. This research also highlights the urgency of marriage registration as a legal instrument that is more than just an administrative obligation, but also as a pillar in guaranteeing civil rights, social protection, and legal order. With an adaptive approach to social norms and simplification of administrative processes, this research aims to strengthen the principle of the state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

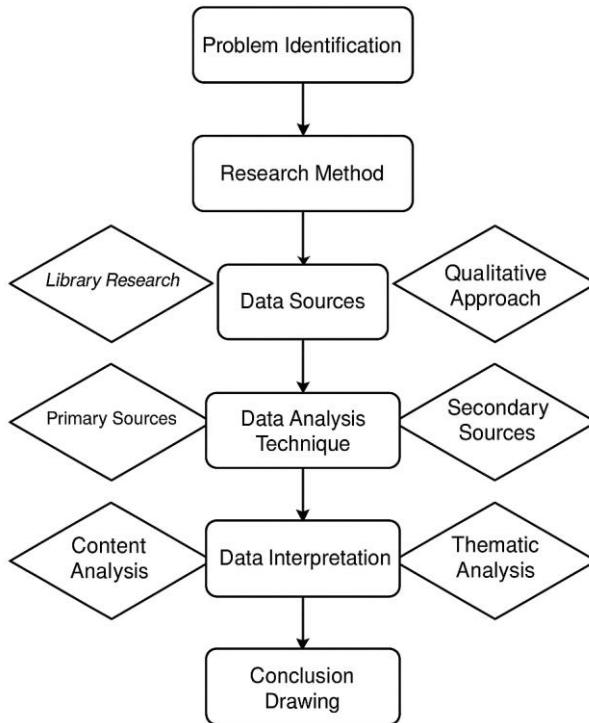
## Research Methods

This research uses *the Library Research* method using a qualitative approach. This method is carried out by examining various data sources related to the Urgency of Marriage Registration in Ensuring Legal Certainty: A Study of Indonesian Family Law Literature. This research does not involve the collection of field data, but focuses on the review of existing legal documents and theories. The goal is to explore a deep understanding of the role of marriage registration in creating legal certainty, as well as identify gaps or legal problems that may arise due to non-registration. This approach also allows the author to analyze legal developments as well as the views of experts in forming a strong argument basis regarding the importance of marriage registration.

The data sources used in this study are primary and secondary data sources. Primary data sources include laws and regulations such as Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI) which is the basis for analysis of marriage registration arrangements in ensuring legal certainty and protection of civil rights. Meanwhile, secondary data sources are obtained from academic literature such as books, scientific journals, research articles, and legal expert opinions, which enrich the study with theoretical and practical perspectives on the challenges and implementation of marriage registration.

Then the data analysis techniques used in this study are content *analysis techniques* and thematic analysis techniques (*Thematic Analysis*) by examining in depth various primary legal sources, such as Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and Compilation of Islamic Law, as well as secondary literature in the form of books, journals, and scientific articles. The analysis process is carried out through the stages of identification, categorization, and interpretation of the main themes, such as the concept of legal certainty and the urgency of marriage registration. Each data obtained is critically evaluated to assess the effectiveness of regulations in protecting civil rights, so that it is expected to produce a systematic, objective, and enriching analysis of the discourse on strengthening the marriage registration system in Indonesia. For more details, you

can see the following Picture 1.



**Picture 1. Research Flow**

### The Urgency and Juridical Basis of Marriage Registration in Indonesia

Marriage registration is a fundamental aspect of Indonesia's national legal system which aims to provide legal certainty, protection of rights, and maintain social order in society.<sup>14</sup> The recording obtained a solid juridical foundation, which is not only derived from the principles of modern state administration, but also in line with the social need to regulate family relations in a legal and orderly manner. The provisions regarding the obligation to register marriages are explicitly regulated in Law Number 1 of 1974 concerning Marriage. Article 2 paragraph (2) of the law emphasizes that each marriage is recorded in accordance with the applicable laws and regulations.<sup>15</sup> This provision provides legal reinforcement for every form of marriage, so that it is not only valid according to the religion or beliefs of each party, but also valid according to state law. Registration is not only considered an administrative requirement, but also a legal mechanism that is the basis for obtaining legal recognition of the relationship between husband and wife and the resulting offspring.

Regulations regarding marriage registration procedures can be found in Government Regulation Number 9 of 1975 concerning the Implementation of Law

<sup>14</sup> Paisal Ahmad Dalimunthe, "Urgensi Pencatatan Perkawinan Di Indonesia Perspektif Maslahah," *Cerdika: Jurnal Ilmiah Indonesia* 5, no. 1 (2025).

<sup>15</sup> Muhamad Musta'in, "Analisis Keabsahan Nikah Sirri Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Legal Advice Journal Of Law* 2, no. 1 (2025): 30–44.

Number 1 of 1974 concerning Marriage.<sup>16</sup> This regulation provides procedural details on how registration is carried out, both by the Civil Registration Office for non-Muslims and by the Religious Affairs Office (KUA) for Muslims. Therefore, marriage registration is carried out in accordance with the religious background of each couple, without ruling out the principle of equality before the law. In the context of Muslims in Indonesia, the existence of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) further clarifies the importance of marriage registration.<sup>17</sup> KHI emphasized that every Muslim marriage must be registered with the KUA to obtain legal force. This provision places recording not only as an administrative action, but as an integral part of the implementation of Islamic law in Indonesia which is oriented towards the benefit of the ummah. The following is the function of marriage registration along with an explanation that can be seen in the table below.

**Table 1. Marriage Registration Function**

<b>No.</b>	<b>Function</b>	<b>Explanation</b>
1	Providing Legal Certainty	Ensure the legal status of the husband, wife, and children born from the marriage so that it is legally recognized in the eyes of the law.
2	Protecting Civil Rights	Provide protection for inheritance rights, guardianship rights, joint property rights, alimony rights, and the right to legal protection against potential violations in the future.
3	Maintaining Orderly Population Administration	Ensure accurate population data, which is essential to support national development planning in the areas of education, health, and other public services <sup>18</sup> .

<sup>16</sup> Maylyndha Marlina Lestari, "Pernikahan Dibawah Tangan dan Implikasi Undang-undang Nomor 1 Tahun 1974," *Jurnal Tana Mana* 6, no. 1 (2025): 1–12.

<sup>17</sup> nur Khamidyah, "Itsbat Nikah Pada Pernikahan Sirri Dalam Kompilasi Hukum Islam Menurut Maqaṣid Asy-Syārī'ah.," 2020.

<sup>18</sup> Abdul Halim, "Pencatatan Perkawinan Menurut Hukum Islam," *Al Mabhat: Jurnal Penelitian Sosial Agama* 5, no. 1 (2020): 1–18.

Marriage registration from the perspective of Islamic law has value in maintaining clarity of *the nasab* (lineage), regulating the distribution of inheritance, and ensuring justice in social relations.<sup>19</sup> With official registration, the married couple and their descendants get legal recognition that will be able to protect them from possible adverse legal disputes. However, in practice, it is undeniable that some people still consider marriage registration as just an administrative obligation. Negligence in recording can lead to serious legal consequences, including unclear status of children, obstacles in the management of inheritance rights, and vulnerability to violations of the rights of women and children in the household.<sup>20</sup>

In an effort to increase public awareness about the importance of marriage registration, continuous education and socialization efforts are needed. This recording is an essential instrument in creating social order, legal certainty, and the protection of civil rights in Indonesian society. The relevant legal provisions are not only intended to fulfill the aspects of administrative formalities, but rather aim to build a just, orderly, and sustainable social structure.<sup>21</sup> By understanding and implementing the obligation to register marriages, the community plays an active role in strengthening the principle of the state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

### **Marriage Registration as an Instrument of Legal Certainty**

Marriage registration is a form of state recognition of the legal relationship between a man and a woman who are bound in a marriage bond.<sup>22</sup> This recording practice is not merely an administrative action, but a legal process that contains important meaning in order to realize legal certainty, protection of rights, and social order. Marriage registration provides formal legitimacy to the status of husband and wife before state law, so that all legal consequences attached to the relationship can be carried out effectively and fairly.

#### **1. Marriage Certificate as a Protection of Rights and Prevention of Disputes**

Normatively, the existence of a marriage certificate as authentic evidence has a very strategic function.<sup>23</sup> *First*, it ensures that the rights and obligations of

<sup>19</sup> Ahmad Junaidi, "Problematika Waris Bagi Anak Hasil Nikah Siri Perspektif Hukum Keluarga Islam (Studi Putusan MK No. 46/PUU-VIII/2010)," *SAKINAH: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 9–21.

<sup>20</sup> Susi Rahmah, "Prosedur Pencatatan Perkawinan Di Kantor Urusan Agama (KUA) Kecamatan Kluit Utara Di Tinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," 2020.

<sup>21</sup> Rijal Amri Siregar, "Pencatatan perkawinan ditinjau menurut Peraturan Menteri Agama Nomor 20 Tahun 2019 tentang pencatatan perkawinan (studi kasus KUA Kecamatan di lingkungan Kabupaten Tapanuli Selatan)," 2023.

<sup>22</sup> Dewa Putu Tagel, "Pelaksanaan Pencatatan Perkawinan Pada Dinas Kependudukan Dan Pencatatan Sipil," *Vyavahara Duta* 14, no. 2 (2020): 84.

<sup>23</sup> Alifa Yessi Meilinda, "Perlindungan Hukum Terhadap Kedudukan Anak yang Lahir dari Perkawinan Tidak Tercatat (Studi Kasus Penetapan Pengadilan Agama Nomor 0208/Pdt.P/2018/PAJT)," 2021.

each spouse are recognized and protected by the legal system. The right to inheritance, child custody, the right to alimony, and the right to share common property are concrete examples of the legal consequences arising from a legal and recorded marital relationship. Without registration, the legal position of one party, especially women and children, can be marginalized, potentially causing injustice and human rights violations. *Second*, marriage registration functions as a preventive effort against future legal disputes. Unclear marital status is often a source of prolonged conflict, especially in cases of divorce, custody of children, and the division of common property. With proof of registration, the state can provide legal protection for the parties, as well as ensure dispute resolution based on the applicable legal provisions.<sup>24</sup> This is in line with the principle of substantive justice which requires equal treatment and protection for those who are more socially vulnerable.

## 2. Marriage Registration in the Development and Protection of Rights

In the social and administrative perspective of the state, marriage registration contributes greatly to the development of accurate population data. The data is the basis for the formulation of various public policies, especially those related to family development, maternal and child health, education, and social protection.<sup>25</sup> Without good records, the state will experience difficulties in planning and supervising various family welfare programs, which can ultimately hinder the achievement of national development goals. From a human rights perspective, marriage registration is also a form of respect for the right of every individual to be recognized before the law.<sup>26</sup> This is especially important in the context of the protection of women and children, a group that is often victimized in situations of unclear marital status. Official registration guarantees that their rights, both in family relationships and in community life, receive proper legal protection.

By paying attention to these various dimensions, marriage registration cannot actually be seen as just an administrative obligation, but as a fundamental pillar in building a fair, orderly, and civilized family law order.<sup>27</sup> Therefore, systematic efforts are needed to increase public legal awareness of the importance of marriage registration, both in the form of socialization and improvements in regulations that facilitate the registration process without reducing the legality and

<sup>24</sup> Rudy Catur Rohman Kusmayadi dan Muhammad Madarik, "PSIKOLOGIS KEPRIBADIAN DAN SOSIAL ANAK DALAM KELUARGA DENGAN STATUS PERKAWINAN SIRI," t.t.

<sup>25</sup> Lathifah Munawaroh dan Ahmad Munif, *Pencatatan Perkawinan Sirri dalam Hukum Administrasi Negara (Kajian Yuridis dan Maqasid Syari'ah)*, Eureka Media Aksara (Eureka Media Aksara, 2023).

<sup>26</sup> Fauzan Ghafur, Fazari Zul Hasmi Kanggas, dan Setiawan Bin Lahuri, "Kedudukan Pencatatan Perkawinan Dalam Hukum Islam Dan Hukum Positif Di Indonesia," *Journal of Indonesian Comparative of Law* 3, no. 2 (31 Desember 2020): 219, <https://doi.org/10.21111/jicl.v3i2.5389>.

<sup>27</sup> Laksana Arum Nugraheni, "Kajian Filosofis Pencatatan Perkawinan Penghayat Kepercayaan Berdasarkan Nilai-Nilai Pancasila Dan Peraturan Perundang-Undangan Di Indonesia," 2021.

accountability aspects. Therefore, marriage registration is an important instrument in realizing legal certainty, protection of rights, and social justice in family life. The state is present through its legal system, has the responsibility to ensure that every marriage is officially registered, thus providing legal certainty to all parties involved and strengthening the foundation of justice in society.<sup>28</sup>

### Critical Analysis of Marriage Registration Practices in the Community

Although the obligation to register marriage has been regulated in Law Number 1 of 1974 and its derivative regulations, the practice of marriage without official registration is still widely found. The rarity between positive legal norms and public awareness is one of the main causes, where many couples only rely on traditional or religious ceremonies without state registration. As a result, legal protection of the rights of spouses and children becomes weak, and hinders the accuracy of national population data. Therefore, efforts to socialize the law, empower the community, and simplify administration are needed to encourage awareness of the importance of marriage registration in realizing legal order and protection of official human rights.<sup>29</sup>

**Table 2. Critical Analysis**

Aspects	Explanation
Norm and Practice Gap	There is a difference between state law and social practices in society, especially in areas with strong customary traditions.
Cultural Factors	Customs that consider the validity of marriage to be sufficient with customary ceremonies or religious requirements, without the need for official state registration.
Indigenous Peoples' Views	Marriage registration is considered a secondary matter, not determining whether a marriage is valid or not.
Economic Factors	Many couples are reluctant to register the marriage because they consider the administrative costs to be a heavy additional burden.

For community groups with low levels of welfare, legal administration such as marriage registration is not a priority compared to daily living needs. No less important, the lack of public understanding of the importance of marriage registration exacerbates this situation. The uneven socialization of the law from the authorities has caused most people to not understand the juridical consequences of unregistered

<sup>28</sup> Siska Ayu Anggraini dan Rachmat Panca Putera, "Konsep Legalitas Perkawinan dalam Kompilasi Hukum Islam : Kajian Hukum dan Sosial," *Al Fuadij Jurnal Hukum Keluarga Islam* 5, no. 2 (31 Desember 2023): 71–83, <https://doi.org/10.55606/af.v5i2.1208>.

<sup>29</sup> A Ade Chandra, "Pencatatan Perkawinan Di Indonesia Perspektif Konsep Mashlahah Imam 'Izzu Al-Din Bin 'Abd Al-Salam," 2023.

marriages. As a result, many view recording as a mere formal procedure without realizing the legal protection that is lost if the recording is ignored.

The impact of not registering marriage is very broad and serious. In many cases, especially in rural areas, married couples who are married only customarily face difficulties when it comes to taking care of birth certificates, applying for inheritance, or suing for divorce in court.<sup>30</sup> The lack of marriage records causes their legal status to be weakened, thus hindering efforts to obtain recognition of civil rights. This phenomenon emphasizes the importance of more strategic efforts by the government, religious institutions, and community organizations in increasing awareness of the importance of marriage registration. The educational approach carried out should pay attention to local values so that they are more easily accepted by the community. In addition, the provision of incentives in the form of waivers for marriage registration fees for weak economic groups can be a concrete step to overcome financial barriers.

In the process of developing the national legal system, the existence of marriage registration can no longer be understood simply as a procedural administrative obligation.<sup>31</sup> Marriage registration has a function in ensuring legal certainty for individuals, strengthening the protection of civil rights, and being the foundation in realizing the principle of justice for all citizens. With written evidence in the form of a marriage certificate issued by the state, each individual obtains official recognition of his or her marital legal status, which further has an impact on the clarity of legal relations, both in the fields of family, inheritance, and the right to social protection.<sup>32</sup> Marriage registration plays an active role as a state instrument in protecting the human rights of its citizens and creating an orderly social order. In the face of the very diverse social dynamics of Indonesian society, marriage registration must be placed as a strategic instrument in strengthening a fair and inclusive national legal system. The presence of registration is not only to meet formal legal requirements, but also to become a symbol of the state in recognizing and protecting the civil rights of its people. The importance of this recording is increasingly felt in the context of the complexity of modern society, where social mobility is high and the need for legal protection is increasing.<sup>33</sup> The state must ensure that all levels of society understand the importance of marriage registration through a persuasive, educational, and adaptive approach to the evolving social realities, in order to create synergy

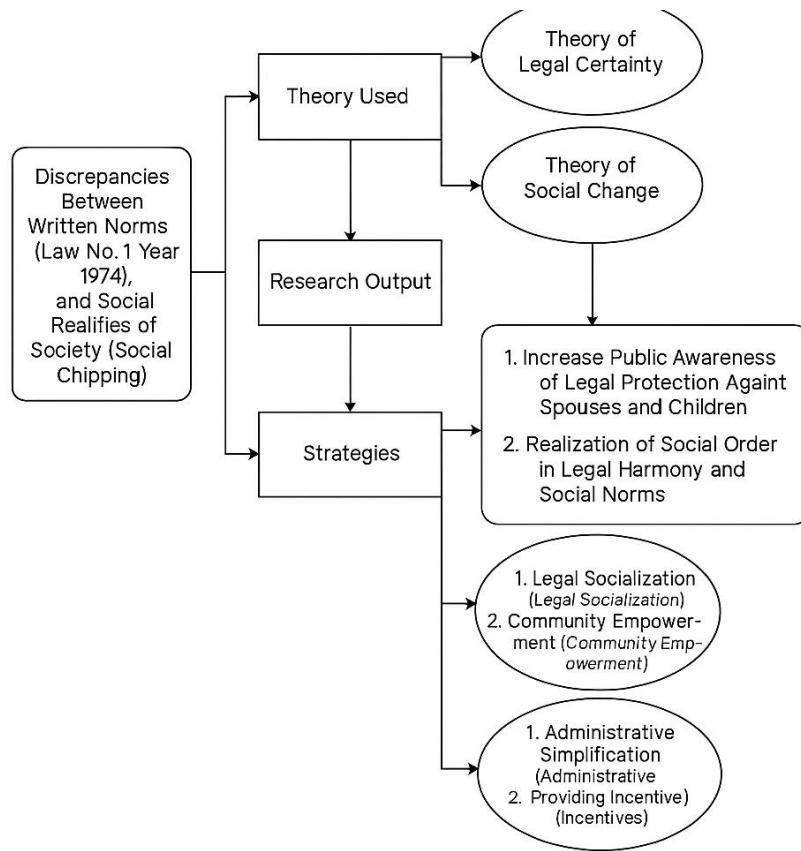
<sup>30</sup> Tin Widayati, "Implikasi Pernikahan Tidak Tercatat (Pernikahan Siri) Terhadap Hak Anak dan Istri dalam Tinjauan Hukum Positif dan Maqashid Syariah (Study Kasus di KUA Kretek, Bantul, Yogyakarta)," 2024.

<sup>31</sup> Habib Sulthon Asnawi dkk., *Dinamika hukum perkawinan di Indonesia: tinjauan hukum keluarga Islam terhadap legalitas perkawinan kepercayaan penghayat* (Bildung, 2022).

<sup>32</sup> Afriana Gili Saputri, "Analisis Yuridis Tentang Penolakan Permohonan Status Anak Luar Nikah Dalam Perkara Nomor: 42/Pdt. G/2023/Pa. Kab. Mn," 2024.

<sup>33</sup> Septiayu Restu Wulandari dan RP Sifa Mulya Nurani, "Paradigma Keluarga Sakinah Mawaddah Warahmah dan Relasinya Dengan Tingkat Perceraian Serta Pertumbuhan Penduduk di Indonesia," *Jurnal Hukum Pelita 3* (2022): 16–31.

between state legal norms and social norms of society. For more details, you can see the image below.



**Picture 2. Flow Diagram Critical analysis of problems, theories, strategies and research outputs of marriage registration practices in the community**

Based on the diagram above, it can be seen that marriage registration does not only function as an administrative obligation, but is an instrument in ensuring legal certainty, protection of civil rights, and social order in the life of society and the state. Through an understanding of the theory of legal certainty and the theory of social change, appropriate strategies can be prepared, such as legal education, community empowerment, simplification of administration, and the provision of economic incentives to increase awareness of the importance of marriage registration. It is hoped that the synergy between the country's legal norms and the social reality of society can be realized, so that every individual obtains fair, equitable, and sustainable legal protection in a dynamic and inclusive national legal system.

### Legal Implications of Not Registering Marriage

In the Indonesian legal system, marriage registration plays a central role in ensuring clarity of an individual's legal status. If a marriage is not officially registered, there will be serious legal consequences. One of the main impacts is the unclear legal

status between husbands, wives, and children born of such marriages in the eyes of the state.<sup>34</sup> Children born to marriages that are not officially registered have the potential to gain out-of-wedlock child status, which can ultimately affect their various civil rights, including inheritance rights, maintenance rights, and legal identity rights. This of course puts the child in a situation that is vulnerable to legal injustice, which is contrary to the principle of protection of children's rights as regulated in national and international law.

### 1) The Impact of Marriage Registration on Divorce

The absence of marriage registration poses serious challenges in the divorce process. One of the important aspects of divorce is proving the existence of a legal relationship between husband and wife. Without formal evidence such as a marriage certificate, the evidentiary process becomes vulnerable to prolonged disputes. Thus, the parties to the conflict, especially women, face difficulties in obtaining the legal protection they should receive. This condition shows that marriage registration is not just an administrative formality, but an important foundation for resolving legal problems in the family.

### 2) Legal Implications for Child Custody and Joint Property

The absence of a marriage certificate also has a direct impact on the determination of child custody and the distribution of joint property. In Indonesian law, the existence of official documents is the main evidence to claim civil rights over children and assets acquired during marriage. When no recording is done, the legal status of the child becomes blurred, and the joint property is difficult to identify and divide fairly. This situation exacerbates legal uncertainty, opens up space for injustice, and has the potential to weaken legal protections for the more vulnerable parties in the household.

### 3) Legal Uncertainty and Social Inequality

The inability to prove the existence of marriage legally in the eyes of the law also increases the risk of social inequality. Women and children, as the most frequently affected parties, face the possibility of losing their livelihoods, housing rights, and inheritance rights. This legal uncertainty not only impacts individuals, but also impacts broader social structures, creating instability in society. Official marriage registration is an instrument to prevent systemic injustice and to strengthen the guarantee of protection of basic rights in a just society.

Given the magnitude of the impact of unregistered marriages, national law provides a corrective mechanism in the form of *isbat nikah*. However, in addition to that, it can also be through "Recognition" regulated in the Population Administration and Civil Registration Law through an application to the court. Although it aims to provide solutions, the *isbat* process is often constrained by lengthy procedures, high costs, and proof, thus burdening the community,

<sup>34</sup> Roy Suwarno Putro dkk., "Perkawinan Siri Antara Legalitas Hukum Dan Implikasi Sosial," *Philosophiamundi* 2, no. 4 (2024): 29–36.

especially the lower middle economic group. Preventive steps in the form of marriage registration from the beginning are much more effective. Registration not only reflects compliance with the law, but also ensures the protection of civil rights. The state needs to strengthen legal education and provide easy, affordable, and responsive recording services to the needs of the community. Marriage registration can function optimally in creating fair legal certainty and strengthening the protection of family institutions within the framework of a democratic legal state.

## Conclusion

Marriage registration in Indonesia has an important role in ensuring legal certainty, protection of civil rights, and social order. The juridical basis for this registration is expressly stated in Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI) for Muslims. Marriage registration is not just an administrative procedure, but a legal instrument to provide official recognition of the relationship between husband and wife and their descendants, as well as prevent future legal disputes. Marriage certificates as authentic evidence of marriage registration function to protect the rights of spouses, children, and support national development through the accuracy of population data. However, in practice, there is still a gap between legal norms and public awareness, caused by cultural, economic, and lack of legal socialization. This phenomenon causes many marriages that are not officially recorded, thus having serious implications for the clarity of legal status, child custody, distribution of common property, and the protection of the rights of women and children. The legal implications of not registering marriages are complex, including uncertainty about the legal status of the family, the difficulty of resolving divorce, and the inhibition of civil rights. Although there is a mechanism for isbat nikah as a corrective solution, preventive measures in the form of marriage registration from the beginning are much more effective to protect people's legal rights. Therefore, strategic efforts are needed through legal education, community empowerment, simplification of administrative procedures, and economic incentives to encourage awareness of marriage registration. Marriage registration can function optimally as an important pillar in building a fair, inclusive, and sustainable national legal system, in accordance with the principles of the state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

## References

ADE CHANDRA, A. "PENCATATAN PERKAWINAN DI INDONESIA PERSPEKTIF KONSEP MASHLAHAH IMAM 'IZZU AL-DIN BIN 'ABD AL-SALAM," 2023.

Akbar, Muhammad Sulthan, Yufi Wiyos Rini Masykuroh, dan Olivia Rizka Vinanda. "MASHLAHAH MURSALAH PENCATATAN PERKAWINAN DALAM HUKUM

**KELUARGA ISLAM." KNOWLEDGE: Jurnal Inovasi Hasil Penelitian dan Pengembangan** 5, no. 1 (2025): 51–59.

Al-Amruzi, M. Fahmi. "Pencatatan Perkawinan Dan Problematika Kawin Siri." *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum dan Syariah* 9, no. 2 (9 Januari 2021): 1–18. <https://doi.org/10.52051/ulumulsyari.v9i2.79>.

Alifah, Puti Sabrina. "Ratio Decidendi Hakim terhadap permohonan pencatatan perkawinan beda agama perspektif Asas Kepastian Hukum: Studi penetapan nomor 141/Pdt. P/2023/PN. Yyk," 2025.

Asnawi, Habib Sulthon, SH Shi, M Anwar Nawawi, dan M Ag Shi. *Dinamika hukum perkawinan di Indonesia: tinjauan hukum keluarga Islam terhadap legalitas perkawinan kepercayaan penghayat*. Bildung, 2022.

Dalimunthe, Paisal Ahmad. "URGENSI PENCATATAN PERKAWINAN DI INDONESIA PERSPEKTIF MASLAHAH." *Cerdika: Jurnal Ilmiah Indonesia* 5, no. 1 (2025).

Eko Putro, Moh Zaenal Abidin, dan Kustini Kosasih. "Ketimpangan Antara Pemenuhan Hak Sipil dan Hak-Hak lainnya pada Anak Sunda Wiwitan, Cireundeu, Cimahi." *Jurnal HAM* 12, no. 3 (31 Desember 2021): 485. <https://doi.org/10.30641/ham.2021.12.485-502>.

Ghafur, Fauzan, Fazari Zul Hasmi Kanggas, dan Setiawan Bin Lahuri. "KEDUDUKAN PENCATATAN PERKAWINAN DALAM HUKUM ISLAM DAN HUKUM POSITIF DI INDONESIA." *Journal of Indonesian Comparative of Law* 3, no. 2 (31 Desember 2020): 219. <https://doi.org/10.21111/jicl.v3i2.5389>.

Halim, Abdul. "Pencatatan Perkawinan Menurut Hukum Islam." *Al Mabhats: Jurnal Penelitian Sosial Agama* 5, no. 1 (2020): 1–18.

Hanapi, Agustin dan Manshur. "PERLINDUNGAN ANAK DARI NIKAH SIRI MENURUT HUKUM POSITIF INDONESIA." *Kalam: Jurnal Agama dan Sosial Humaniora* 12, no. 1 (28 Juni 2024): 11–22. <https://doi.org/10.47574/kalam.v12i1.250>.

Hartini, Sri, Latifah Ratnawati, Ande Aditya Iman Ferry, dan Ady Iman Purwoto. "PENYULUHAN HUKUM TENTANG KORBAN TIDAK MELAKUKAN PENCATATAN PERKAWINAN PADA WAKTU PERNIKAHAN MENURUT PERATURAN MENTERI AGAMA NO. 19 TAHUN 2018 DI KECAMATAN BOGOR UTARA." *SINKRON: Jurnal Pengabdian Masyarakat UIKA Jaya* 3, no. 1 (2025): 70–79.

Herdiana, Dadan, dan Dian Ekawati. "Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan." *Jurnal Kewarganegaraan* 8, no. 1 (2024): 57–69.

Indonesia, Pemerintah Pusat. "Peraturan pemerintah (PP no. 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," 1975.

Junaidi, Ahmad. "Problematika Waris Bagi Anak Hasil Nikah Siri Perspektif Hukum Keluarga Islam (Studi Putusan MK No. 46/PUU-VIII/2010)." *SAKINAH: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 9–21.

KHAMIDYAH, NUR. "ITSBAT NIKAH PADA PERNIKAHAN SIRRI DALAM KOMPILASI HUKUM ISLAM MENURUT MAQAṢID ASY-SYARĪ'AH.," 2020.

Khotimah, Khusnul, dan Dani Amran Hakim. "Pencatatan Pernikahan sebagai Pilar Kepastian Hukum Administrasi dalam Keluarga: Studi di KUA Seputih Agung Lampung Tengah." *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 2 (2024): 202–21.

Kusmayadi, Rudy Catur Rohman, dan Muhammad Madarik. "PSIKOLOGIS KEPERIBADIAN DAN SOSIAL ANAK DALAM KELUARGA DENGAN STATUS PERKAWINAN SIRI," t.t.

Lathifah Munawaroh dan Ahmad Munif. *Pencatatan Perkawinan Sirri dalam Hukum Administrasi Negara (Kajian Yuridis dan Maqasid Syari'ah)*. Eureka Media Aksara. Eureka Media Aksara, 2023.

Lestari, Maylyndha Marlina. "Pernikahan Dibawah Tangan dan Implikasi Undang-undang Nomor 1 Tahun 1974." *Jurnal Tana Mana* 6, no. 1 (2025): 1–12.

Meilinda, Alifa Yessi. "Perlindungan Hukum Terhadap Kedudukan Anak yang Lahir dari Perkawinan Tidak Tercatat (Studi Kasus Penetapan Pengadilan Agama Nomor 0208/Pdt.P/2018/PAJT)," t.t.

Musta'in, Muhamad. "Analisis Keabsahan Nikah Sirri Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Legal Advice Journal Of Law* 2, no. 1 (2025): 30–44.

Ningrum, Fitria Wahyu. "Nikah Siri dan Dampaknya Terhadap Hak Perempuan dan Anak dalam Itsbat Nikah," t.t.

Nugraheni, Laksana Arum. "KAJIAN FILOSOFIS PENCATATAN PERKAWINAN PENGHAYAT KEPERCAYAAN BERDASARKAN NILAI-NILAI PANCASILA DAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," t.t.

Putro, Roy Suwarno, D Bayu Anaba, Renal AJi Nugroho, dan Eti Mul Erowati. "Perkawinan Siri Antara Legalitas Hukum Dan Implikasi Sosial." *Philosophiamundi* 2, no. 4 (2024): 29–36.

Rahmah, Susi. "Prosedur Pencatatan Perkawinan Di Kantor Urusan Agama (KUA) Kecamatan Kluet Utara Di Tinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," 2020.

Ramadhani, Bunga Azalia dan Dwi Aryanti Ramadhani. "Hukum Pencatatan Perkawinan dan Akibat Hukumnya (Perbandingan Hukum Pencatatan Perkawinan di Indonesia dan Brunei Darussalam)." *Jurnal Interpretasi Hukum* 5, no. 1 (4 Januari 2024): 846–55.  
<https://doi.org/10.22225/juinhum.5.1.8449.846-855>.

Saputri, Afriana Gili. "Analisis Yuridis Tentang Penolakan Permohonan Status Anak Luar Nikah Dalam Perkara Nomor: 42/Pdt. G/2023/Pa. Kab. Mn," 2024.

Siregar, Rijal Amri. "Pencatatan perkawinan ditinjau menurut Peraturan Menteri Agama Nomor 20 Tahun 2019 tentang pencatatan perkawinan (studi kasus KUA Kecamatan di lingkungan Kabupaten Tapanuli Selatan)," 2023.

Siska Ayu Anggraini dan Rachmat Panca Putera. "Konsep Legalitas Perkawinan dalam Kompilasi Hukum Islam : Kajian Hukum dan Sosial." *Al Fuadiy Jurnal Hukum Keluarga Islam* 5, no. 2 (31 Desember 2023): 71–83.  
<https://doi.org/10.55606/af.v5i2.1208>.

Tagel, Dewa Putu. "Pelaksanaan Pencatatan Perkawinan Pada Dinas Kependudukan Dan Pencatatan Sipil." *Vyavahara Duta* 14, no. 2 (2020): 84.

Tsanian, Muhammad Ridlo Rizki, Idaul Hasanah, dan Ratri Novita Erdianti. "Penggunaan Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Pada Kekerasan Dalam Pernikahan di Bawah Tangan (Studi di Pengadilan Negeri Malang)." *Indonesia Law Reform Journal* 1, no. 3 (30 November 2021): 354–67.  
<https://doi.org/10.22219/ilrej.v1i3.18554>.

Widayati, Tin. "Implikasi Pernikahan Tidak Tercatat (Pernikahan Siri) Terhadap Hak Anak dan Istri dalam Tinjauan Hukum Positif dan Maqashid Syariah (Study Kasus di KUA Kretek, Bantul, Yogyakarta)," 2024.

Wulandari, Septiayu Restu, dan RP Sifa Mulya Nurani. "Paradigma Keluarga Sakinah Mawaddah Warahmah dan Relasinya Dengan Tingkat Perceraian Serta Pertumbuhan Penduduk di Indonesia." *Jurnal Hukum Pelita* 3 (2022): 16–31.

Rohmahtus Sholihah dan Muhammad Al Faruq, Konsep Keluarga Sakinah Menurut Muhammad Quraish Shihab, *Jurnal Studi Ilmu Keagamaan Islam*. 2020.