

## Understanding the Contemporary Social Construction of Sirri Marriages in Indonesia: An Analysis of Islamic Family Law Perspectives

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### ABSTRACT

**Purpose** – The phenomenon of *sirri* marriage or unregistered marriage is still rampant in Indonesia and its legality is still debated. Whereas marriage registration is intended to provide a guarantee of legal certainty for each individual in the family. In practice in the community, *sirri* marriages are caused by complex factors that form an interesting contemporary social construction to be studied from the perspective of Islamic family law.

**Methods** - This study aims to socially examine the issue of *sirri* marriage in relation to state legal guarantees and benefits in contemporary Islamic family law. Using a qualitative research method with a normative-sociological approach, this study investigates the causal factors, social and legal implications of *sirri* marriages from the perspective of Emile Durkheim's Social Theory.

**Findings** - The result of the research is a complex interaction between legal norms and community values in *sirri* marriage. *Sirri* marriages in contemporary Islamic family law studies, although often positioned as deviations from formal legal provisions, persist as socially accepted practices within specific cultural and religious contexts. Durkheim's concept of collective consciousness helps explain how societal norms and shared beliefs influence the legitimization of *sirri* marriages, even in the absence of state recognition. This phenomenon highlights the tension between formal legal frameworks and traditional social practices, underscoring the importance of understanding local values and social structures when addressing issues of legal pluralism.

**Research implications** - This research underscores the need for public education on the importance of marriage registration as a bridge between religious principles and state regulations. The study's contribution lies in offering an integrative perspective that highlights the necessity of harmonizing religious norms with legal recognition to strengthen the protection of family rights within the legal framework of the state.

**Originality** - Ultimately, this analysis advocates for a more nuanced and culturally sensitive approach to harmonizing legal regulations with the socio-religious realities of Indonesia's diverse society.

**Keywords:** *Islamic Family Law, Marriage Registration, Siri Marriage, Social Construction.*

## Introduction

*Sirri* marriage (a marriage that is not registered by state law) is not a new phenomenon in Indonesia, but has existed for decades. Prior to the provision of marriage registration in the Marriage Law, *sirri* marriages were considered valid according to religion and community norms.<sup>1</sup> Over time, *sirri* marriages have caused various negative impacts that cannot be overcome through the legal umbrella by the government, such as conflicts over inheritance and child custody rights, domestic violence, and conflicts over joint property. Therefore, the government emphasized in Law No. 1 of 1974 concerning Marriage that marriage registration is one of the legalities of marriage in the context of state law.<sup>2</sup> With marriage registration, the state is able to provide legal certainty and protection to husband and wife and children born from a marriage.<sup>3</sup>

The guarantee of legal certainty through marriage in reality does not fully discourage the phenomenon of *sirri* marriage in Indonesia. Van Huis revealed that the legal history of marriage registration in Indonesia showed that since the colonial era, the problem did not lie in the legislation, but rather in the lack of legal knowledge among the general public and problematic marriage registration officials, both official and unofficial.<sup>4</sup> Aarsal also confirmed this argument through his findings of the phenomenon of commercialization of *nikah sirri* in East Java Province. Since the existence of commercialization, it has also begun to create new jobs for brokers and *kyai/modin* (as Islamic leaders in Java are called). The need for the economy causes the perpetrators to sometimes ignore the negative functions caused by *sirri* marriage, for example domestic violence, child custody, inheritance, and others.<sup>5</sup>

The rise of *sirri* marriages in society is influenced by several factors and social motives. Tahir in his research distinguishes the motives for *sirri* marriages between men and women. Among men, *sirri* marriages occur because of the assumption that marriage books are not important, the desire to commit polygamy easily, and efforts to avoid adultery. Meanwhile, among women, the reasons they perform *sirri* marriages include inner needs, not getting satisfaction from their husbands, and looking for men who are economically established so that they can finance their lives.<sup>6</sup> On the other hand, Harisman revealed the fundamental paradigm behind the occurrence of *sirri* marriages in society, namely the assumption that the validity of marriage is only determined if the pillars and conditions determined by religion

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<sup>1</sup> Fikri Nurul Ilham Pratama, "Historical Study: The Dialectic Between Islamic Law and Positive Law in the Model of Formal and Informal Marriage in Indonesia," *Rivayat: Educational Journal of History and Humanities* 6, no. 3 (2023): 1438, <https://doi.org/10.24815/jr.v6i3.33960>.

<sup>2</sup> Asriadi Zainuddin, Abdul Jamil, and Dedi Sumanto, "Marriage Registration Law Reformulation in Indonesia (Studi of Law and Regulations on Marriage)," *SASI* 28, no. 3 (2022): 492, <https://doi.org/10.47268/sasi.v28i3.1033>.

<sup>3</sup> Imron Rosyadi and Aisyah Kahar, "Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule," *Jurnal Hukum Dan Peradilan* 12, no. 3 (2023): 469, <https://doi.org/10.25216/jhp.12.3.2023.469-488>.

<sup>4</sup> Stijn Cornelis van Huis and Theresia Dyah Wirastri, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws," *Australian Journal of Asian Law* 13, no. 1 (2012): 1.

<sup>5</sup> Thriwaty Aarsal et al., "Nikah Siri Di Warurejo Dalam Perspektif Sejarah," *Paramita: Historical Studies Journal* 25, no. 2 (2015): 211, <https://doi.org/10.15294/paramita.v25i2.5132>.

<sup>6</sup> Juraeri Tahir et al., "Faktor-Faktor Penyebab Nikah Siri Di Sulawesi Barat," *Jurnal Diskursus Islam* 5, no. 2 (2017): 83, <https://doi.org/10.24252/jdi.v5i2.7083>.

have been fulfilled. Meanwhile, marriage registration does not affect anything and is only limited to administrative order.<sup>7</sup>

The relationship between fiqh and state law in the community's view regarding marriage registration is interesting to highlight. When referring to the Qur'an and Sunnah, explicitly there is no provision for marriage registration as a pillar or condition for the validity of marriage.<sup>8</sup> However, so far there have been many opinions stating that marriage registration contains maslahat objectives in the study of Islamic family law. In maqashid sharia analysis, marriage registration can be considered as an effort to protect property and protect offspring. In addition, it is also a principle of openness and comprehensiveness of Islamic law so that it can accommodate developments and changes in society in the legal field.<sup>9</sup> Through the *sadd al-dzari'ah* approach, Ma'arif reveals that marriage registration is mandatory, because it will lead to good deeds and cause mashlahah by protecting the parties to the marriage.<sup>10</sup> The obligation to carry out marriage registration is supported through the study of *maslahah mursalah* and *maqashid al-syari'ah* that the benefits of marriage registration are included in the category of dharuriyyah benefits.<sup>11</sup>

Seeing the fundamental difference between the normative perspective of fiqh and social motives in society in terms of marriage registration, researchers are interested in examining the social construction of *sirri* marriage in Indonesian society. The social motives behind *sirri* marriages in society have been carried out by Hidayah<sup>12</sup>, Muzaki<sup>13</sup>, Sari<sup>14</sup>, and Adillah.<sup>15</sup> This research reveals the subjective reasons individuals perform *sirri* marriages because they do not want to be complicated by the procedures that apply in orderly administration. Meanwhile, in terms of culture, *sirri* marriage has also been studied by

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<sup>7</sup> Harisman Dodoteng, Abidin, and Sitti Musyahidah, "Legal Consequences on Sirri Marriage Performers Without the Permission of the First Wife: Perspective of Islamic Law and Positive Law," *International Journal of Contemporary Islamic Education* 5, no. 1 (2023): 37, <https://doi.org/10.24239/ijcils.Vol5.Iss1.61>.

<sup>8</sup> Maulidia Mulyani, "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance," *Legitima: Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 1, <https://doi.org/10.33367/legitima.v6i2.5354>.

<sup>9</sup> Iwan, "Akta Nikah Sebagai Bukti Otentik Perkawinan Di Indonesia; Analisis Maqashid Syariah Terhadap Pencatatan Perkawinan," *Al-Ushrah: Jurnal Al-Ahwal As-Syakhsyah* 10, no. 1 (2022): 84, <http://dx.doi.org/10.30821/al-usrah.v10i2.14713>.

<sup>10</sup> Toha Ma'arif, "Pencatatan Pernikahan (Analisis Dengan Pendekatan Qiyas, Istihsan, Sadd al-Dzari'ah, Maslahah Mursalah Dan Hukum Positif Di Indonesia)," *Asas: Jurnal Hukum Ekonomi Syariah* 11, no. 1 (2019): 119, <https://dx.doi.org/10.24042/asas.v11i01.4647>.

<sup>11</sup> Arif Sugitanata, "Penalaran Istislah Dalam Pencatatan Perkawinan," *Jurnal Hukum Islam* 21, no. 2 (2021), <http://dx.doi.org/10.24014/jhi.v21i2.10934>.

<sup>12</sup> Iyan Hidayah et al., "Motif Pernikahan Siri Pada Masa Pandemi Tahun 2021 (Studi Kasus Di KUA Kecamatan Wonobojo)," *Amorti: Jurnal Studi Islam Interdisipliner* 1, no. 1 (2022), <http://journal.amorfati.id/index.php/amorti>.

<sup>13</sup> Ahmad Muzaki and Muhammad Arifin, "Motif Nikah Siri Dan Ketahanan Keluarga Pasangan Nikah Siri (Studi Kasus Di Desa Sumberkare Kecamatan Wonomerto Kabupaten Probolinggo)," *Ushrah: Jurnal Hukum Keluarga Islam* 4, no. 1 (2023).

<sup>14</sup> Ratna Sari, "Faktor Yang Mempengaruhi Pernikahan Sirri Keluarga Salaf Di DIY Dalam Perspektif Hukum Islam" (Skripsi, Yogyakarta, Universitas Islam Negeri Sunan Kalijaga, 2012).

<sup>15</sup> Siti Ummu Adillah, "Analisis Hukum Terhadap Faktor-Faktor Yang Melatarbelakangi Terjadinya Nikah Sirri Dan Dampaknya Terhadap Perempuan (Istri) Dan Anak-Anak," *Jurnal Dinamika Hukum* 11 (2011).

Hafidzi<sup>16</sup>, Faiz<sup>17</sup>, Syafrudin<sup>18</sup>, and Rahmawati<sup>19</sup>. So far, no research has examined the complex social construction behind the phenomenon of *sirri* marriage. Therefore, to continue existing studies, this research aims to examine the social construction of nikah sirri in Indonesia which includes aspects of social motives, responses to legal regulations, and cultural elements.

This research aims to explore the contemporary social construction of *sirri* marriage in Indonesia through the lens of Islamic family law. The questions to be answered are: 1) how is the social construction behind the phenomenon of *sirri* marriage in Indonesian society? 2) how does Islamic family law view the social construction of *sirri* marriage in Indonesia? The results of the research are expected to contribute to the development of insights into Islamic family law in the contemporary era. On the other hand, this research is also expected to be a practical reference for policy makers in overcoming the rampant phenomenon of *sirri* marriage in Indonesia.

## Methods

This study employs a qualitative research design with a normative juridical approach. The aim is to analyze the issue of *sirri* marriage in the contemporary era through the lens of positive law, religious norms, and social perspectives. The primary data sources include legal documents such as Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), supplemented by secondary data comprising academic literature and previous research findings. Data collection is conducted through document analysis, involving an in-depth examination of legal statutes, scholarly texts, and other relevant written materials addressing unregistered marriages. Data analysis is performed using a critical and descriptive approach, grounded in Emile Durkheim's social theory. This theoretical framework provides a lens to explore the interplay between social norms, religious values, and legal institutions in the context of *sirri* marriage. This approach enables the study to uncover fundamental principles and ethical dilemmas shaping perceptions of *sirri* marriage. The analysis focuses on how the interaction between state law and religious norms generates challenges and socio-legal implications, culminating in a comprehensive and theoretical understanding of the issue.

## Results and Discussion

### Understanding *Sirri* Marriages in Islamic and Indonesian Legal Contexts

This exploration of *sirri* marriage delves into the multifaceted dimensions of unregistered marriages, offering a critical analysis of their religious, legal, and social implications. The term "exploration" signifies a comprehensive inquiry into the underlying principles, motivations, and consequences of *sirri* marriage, rather than a mere descriptive

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<sup>16</sup> Anwar Hafidzi et al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam* 32, no. 2 (2022), <https://doi.org/10.21580/ahkam.2022.32.2.12789>.

<sup>17</sup> Abd. Aziz Faiz, "Pola Dan Logika Nikah Sirri Dalam Kultur Masyarakat Madura," *Musawa: Jurnal Studi Gender Dan Islam* 12, no. 1 (2013), <http://dx.doi.org/10.14421/musawa.2013.121.121-136>.

<sup>18</sup> Syafrudin, "Islam Dan Budaya: Tentang Fenomena Nikah Sirri," *Mahkamah: Jurnal Kajian Hukum Islam* 9, no. 1 (2015), <http://dx.doi.org/10.24235/mahkamah.v9i1.425>.

<sup>19</sup> Yeni Tri Nur Rahmawati, "Tradisi Pernikahan Sirri: Sebuah Potret (Budaya) Islam Nusantara," *Islamic Akademika* 3, no. 1 (2016).

account. It seeks to uncover the philosophical, ethical, and institutional dynamics that perpetuate this practice in Indonesia. By examining the tension between religious norms and state law, the study illuminates the complex interplay between individual agency, societal values, and legal frameworks. This in-depth approach not only dissects the cultural and doctrinal foundations of *sirri* marriage but also evaluates its impact on familial rights and legal protections. Ultimately, this exploration aims to bridge theoretical perspectives and practical realities, offering insights into how religious traditions and modern legal systems can coexist harmoniously in addressing the phenomenon of *sirri* marriages.

The term “*sirri*” originates from Arabic, signifying “secret” or “hidden”. When combined with “marriage”, it forms “*sirri* marriage”, which denotes a marriage conducted discreetly without recognition or registration by state authorities.<sup>20</sup> This type of marriage takes place outside the official supervision of the Office of Religious Affairs (*Kantor Urusan Agama/KUA*) and is akin to the expression “underhand marriage” which implies secrecy. Many individuals opt for *sirri* marriage to conceal their marital status from previous partners, believing that this legitimizes their relationship and protects them from illicit actions.<sup>21</sup>

On the other hand, marriage holds a crucial role in Islam, serving as the foundation for creating a harmonious family filled with love and compassion, as expressed in Surah Ar-Rum, verse 21. Its purpose is to establish a *sakinah*, *mawaddah*, and *rahmah* household, in line with the natural human need for peace and companionship.<sup>22</sup> Achieving this ideal life depends greatly on the couple’s adherence to Islamic teachings in managing their household.<sup>23</sup> According to Article 2, Paragraph 1 of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), a marriage is considered valid when it is performed in accordance with the religious beliefs of the partners and follows the prescribed conditions and procedures in Islamic law, such as the proper conduct of the *ijab qabul* ceremony.<sup>24</sup>

The concept of “*sirri* marriage” points to a phenomenon that deviates from the officially regulated norms of marriage. Given that *sirri* marriage lacks registration with state authorities, it raises significant questions regarding the legal validity and legitimacy of such unions.<sup>25</sup> While Islamic literature acknowledges the necessity of a guardian and witnesses for a marriage to be considered valid, the practice of *sirri* marriage undermines the essential

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<sup>20</sup> Suryani, “Sirri Marriage From the Perspective of Islamic Legal Philosophy,” *IBLAM Law Review* 2, no. 2 (2022): 181, <https://doi.org/10.52249/ilr.v2i2.197>.

<sup>21</sup> Maria Lailia Rahman, “Nikah Sirri: Keabsahan Dan Akibatnya,” *Al Hikmah: Jurnal Studi Keislaman* 8, no. 1 (2018), <https://doi.org/10.36835/hjsk.v8i1.3315>.

<sup>22</sup> Baiq Latifah Hasanah, “The Concept of Keluarga Sakinah (Tranquil Family) in the Perspective of the Qur’an (A Literature Review),” *Journal of Islamic Religious Studies* 1, no. 2 (2024): 67, <https://www.journal.formadenglishfoundation.org/index.php/Jirs/article/view/40>.

<sup>23</sup> Saidatul Chumayro, Nugraha Adi Saputra, and Ibnu Akbar Maliki, “Resiliensi Keluarga Sakinah Dalam Pasangan Long Distance Marriage Di Kalangan Buruh Bangunan,” *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 1 (2024): 32, <https://dx.doi.org/10.24042/el-izdiwaj.v5i1.21745>.

<sup>24</sup> Mohamad Sar’an et al., “Implementation of Harmonious Family in the Concept of Proportionality of Obligations and Rights of Husband and Wife Relations: A Perspective on the Compilation of Islamic Law,” *El-Ushrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 701, <http://dx.doi.org/10.22373/ujhk.v7i2.24662>.

<sup>25</sup> Hazar Kusmayanti and Nindya Tien Ramadhanty, “Legitimacy of a Sirri Marriages (Second and So On) by the Pair of Civil Servants,” *DiH: Jurnal Ilmu Hukum* 17, no. 1 (2021): 84, <https://doi.org/10.30996/dih.v17i1.4512>.

transparency needed to safeguard the rights of those involved, particularly women and children.<sup>26</sup>

In Islamic literature, *sirri* marriage is associated with the requirement for witnesses (*syahadat*) in marriage. The consensus among the four Sunni schools of thought -Hanafi, Maliki, Shafi'i, and Hanbali- is that two witnesses are crucial for a valid marriage.<sup>27</sup> However, ongoing debates among scholars regarding the status of this requirement, often centered around the authenticity of relevant hadiths, continue to provoke discussions.<sup>28</sup>

Among the pertinent hadiths is one narrated by Aisha and Ibn Abbas, indicating that a marriage is only valid when attended by a guardian and two witnesses:

حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ، قَالَ: حَدَّثَنَا هِشَامٌ، قَالَ: حَدَّثَنَا مَعْمَرٌ، قَالَ: حَدَّثَنَا الزُّهْرِيُّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبَّاسٍ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا نِكَاحَ إِلَّا بِوَلِيِّ.

This translates to: "A marriage is only valid in the presence of a guardian and two witnesses."

Although some scholars consider these hadiths weak, they are often viewed as mutually supportive. Other scholars argue that the Quran does not explicitly mandate the presence of witnesses, resulting in various interpretations regarding the necessity of witnesses in marriage contracts.<sup>29</sup> Several perspectives emerge from this discourse:

1. A marriage is invalid without two witnesses, a view upheld by several prominent scholars.
2. A marriage can be valid without witnesses, supported by certain interpretations, including those of some Shia scholars.
3. Witnesses are obligatory but not essential at the time of the contract, as they are more of a recommended practice than a stringent requirement.
4. A marriage is invalid unless there are two just witnesses or a public announcement, as posited by Ibn Hazm.<sup>30</sup>

The scholarly discussion regarding the status of witnesses in marriage reveals diverse interpretations, which can lead to confusion within society about what is deemed valid in the context of marriage.

*Sirri* marriage, in essence, encompasses marriages that fulfill the essential requirements of Islamic law—such as the presence of both parties, a guardian, and two witnesses—yet remain concealed from public knowledge and lack official registration. In contemporary Indonesia, *sirri* marriage typically involves a guardian or representative overseeing the ceremony with witnesses, but it is not documented by official authorities, leaving couples

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<sup>26</sup> Dahlia Haliah, "Nikah Sirri Dan Perlindungan Hak-Hak Wanita Dan Anak (Analisis Dan Solusi Dalam Bingkai Syariah)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 1, no. 1 (June 30, 2016), <https://doi.org/10.22515/alahkam.v1i1.81>.

<sup>27</sup> Wahbah az-Zuhaili, *Al-Fiqh al-Islami Wa Adillatub* (Damaskus: Dar al-Fikr, 1985). 70-72

<sup>28</sup> Adang Muhammad Nasrulloh, Mujiyo Nur Cholis, and Imam Sucipto, "Analysis of the Position of Marriage Witnesses in the Opinions of the Four Madzhabs Fiqh and Regulations in Indonesia," *Jurnal Al-Qadān: Peradilan Dan Hukum Keluarga Islam* 10, no. 1 (2023): 82, <https://doi.org/10.24252/al-qadau.v10i1.37880>.

<sup>29</sup> Idrus M. Said, "Thematic Hadits Studies: A Syar'i Study of Hadits on Marriage Witness," *Indonesian Journal of Multidisciplinary Science* 2, no. 6 (2023): 2688, <https://doi.org/10.55324/ijoms.v2i6.459>.

Muhammad Ra'fat Utsman, *'Aqd Az-Zawwaj: Arkanuhu Wa Syuruthu Shihatibi Fi al-Fiqh al-Islami*, n.d.

without a marriage certificate.<sup>31</sup> This practice is commonly referred to as “underhand marriage” and aligns with the concept of “*az-Zawaj al-'urfi*” in contemporary Islamic jurisprudence.<sup>32</sup>

*Sirri* marriage can be interpreted in several ways: a) a marriage without a guardian but witnessed by others; b) a marriage that meets the requirements yet is kept secret at the request of the husband; and c) a secret marriage not recorded at the KUA, often occurring in second marriages due to difficulties obtaining permission from the first spouse.<sup>33</sup> The prevalence of *sirri* marriage is influenced by various factors, such as economic constraints and the belief that adherence to Islamic law alone suffices for a marriage to be valid without bureaucratic formalities.<sup>34</sup>

Thus, the challenges surrounding *sirri* marriage practices present significant issues in contemporary Indonesian marriage dynamics, particularly concerning Islamic law and the protection of rights. Heightened awareness regarding the importance of announcing and publicizing marriages is crucial for ensuring justice and transparency while protecting the rights of all parties involved.<sup>35</sup> A balance between religious values and legal needs must be achieved so that marriage can provide optimal benefits and protection for individuals, especially for women.<sup>36</sup>

*Sirri marriage* or “secret marriage” emerged prominently in Indonesian society following the Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975, which provided its legal framework. These regulations dictate that every marriage must align not only with religious norms but also undergo official documentation and registration. According to Article 2 of the Marriage Law, a marriage is valid when conducted according to each individual's religion and belief and must subsequently be registered. The importance of registration is further detailed in the Government Regulation's Articles 10 through 13, which stipulate that marriage should be performed in the presence of a registrar and two witnesses, and the signing of a marriage certificate serves as formal legal recognition of the marriage.<sup>37</sup>

Historically, during the Prophet Muhammad's era, formal marriage administration, such as official registration, was absent, and the validity of marriage was primarily based on meeting essential requirements such as the presence of witnesses and a guardian (*wali*). Nonetheless, public announcement of marriage was highly recommended, as underscored in a hadith encouraging that marriages be publicly celebrated even with music and drums (HR.

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<sup>31</sup> Eva F. Nisa, “The Bureaucratization of Muslim Marriage in Indonesia,” *Journal of Law and Religion* 33, no. 2 (2018): 291, <https://doi.org/10.1017/jlr.2018.28>.

<sup>32</sup> M. Rozali, Ulya Hikmah, and Yuliatin, “Married 'Urfa in the View of Contemporary Scholars Sheikh Muhammad Ali Jum'ah,” *SMART: Journal of Sharia, Tradition, and Modernity* 3, no. 1 (2023): 80, <https://dx.doi.org/10.24042/smart.v3i1.16980>.

<sup>33</sup> Holilur Rohman et al., “The Phenomenon of Unregistered (Sirri) Marriages in Surabaya,” *Hikmatuna: Journal for Integrative Islamic Studies* 10, no. 2 (2024): 218, <https://doi.org/10.28918/hikmatuna.v10i2.9180>.

<sup>34</sup> Desmal Fajri and Felti Novira, “The Phenomenon of Unregistered Marriages: Problems and Solution,” *Kosmik Hukum* 23, no. 2 (2023): 180, <https://dx.doi.org/10.30595/kosmikhukum.v23i2.18113>.

<sup>35</sup> Rohman et al., “The Phenomenon of Unregistered (Sirri) Marriages in Surabaya,” 218.

<sup>36</sup> Alfiya Wicaksono, “Implications of Unregistered Marriage for Women: Profitable or Detrimental,” *Norma* 18, no. 1 (2021): 25, <http://dx.doi.org/10.30742/nlj.v18i1.1198>.

<sup>37</sup> A. Sultan Sulfian, “The Urgency of Marriage Registration in the Perspective of Indonesian Marriage Law and Islamic Law,” *Jurnal Al-Dustur* 6, no. 1 (2023): 72, <https://doi.org/10.30863/aldustur.v6i1.4224>.

Ibn Majah from Aisha).<sup>38</sup> This social acknowledgment aimed to foster communal support, trust, and validation of the union. By contrast, *sirri* marriage which is often conducted covertly, contradicts this foundational spirit of transparency, trust, and public acknowledgment emphasized in Islamic teachings.<sup>39</sup>

With changing times, technological advancements, and shifting social structures, many Muslim-majority countries, including Indonesia, have adopted formal regulations to govern marriage registration. According to Islamic scholar Nasaruddin Umar, marriage registration is among the most widely legislated aspects of family law across the Muslim world. In countries such as Iran, Jordan, Sri Lanka, and Indonesia, marriages that do not comply with registration requirements can incur penalties or sanctions. These measures are intended to create a legally binding framework that ensures clarity, legal protection, and justice for all parties involved.<sup>40</sup>

The Islamic legal tradition itself emphasizes the adaptability of law to evolving societal needs. The jurisprudential maxim “Laws change in response to the changing times”<sup>41</sup> supports this, echoing the views of Ibn al-Qayyim, who stated that legal opinions should adapt to changes in time, place, and custom to remain effective and just.<sup>42</sup>

*Sirri* marriage, although sometimes chosen to bypass formal obstacles such as the requirement for approval from the first wife, often contradicts the fundamental principles of Islamic law—justice, transparency, and the protection of rights. This secretive marriage practice places women in a vulnerable position, particularly when it comes to safeguarding their rights, which are often neglected, especially in cases of divorce.<sup>43</sup> Their unregistered status within the legal system leaves them inadequately protected, both personally and socially. Moreover, children born from unregistered marriages face numerous legal and social challenges, particularly in terms of inheritance rights and family recognition. Lacking a birth certificate has severe consequences, preventing children from accessing education, healthcare, and basic opportunities for a dignified future. Birth registration, seen as a fundamental children's right, is essential to ensure they can exercise their rights within society. Without this crucial documentation, these children may be subjected to abuse, exploitation, or even trafficking, while being denied important documents such as an ID card or marriage certificate. They are also unable to receive government social assistance. All these

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<sup>38</sup> Muhammad Abu Zahrah, *Al-Ahwal Asy-Saykhsiyyah* (Kuwait: Darul Qalam, n.d.). 52

<sup>39</sup> Qadriani Arifuddin, “Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 24, no. 2 (2024): 317, <https://doi.org/10.19109/nurani.v24i2.24529>.

<sup>40</sup> Nasaruddin Umar, “Hukum Keluarga Kontemporer Di Negara-Negara Muslim’ Makalah Seminar Nasional “Hukum Materil Peradilan Agama; Antara Cita, Realita Dan Harapan” (Jakarta, n.d.). 8

<sup>41</sup> Muhammad Utsman Syabir, *Qawa'id Kulliyah Wa Adb-Dhawabith Fiqhiyyah* (Yordania: Dar an-Nafais, 2007). 259

<sup>42</sup> Ibnu Qayyum al-Jauziyah, *I'lam al-Muwaqqi'in 'an Rabb al-Alamain, Juz IV* (al-Arabiyah as-Saudiyyah, n.d.). 337

<sup>43</sup> Sukron Ma'mun and Ibnu Akbar Maliki, “A Socio-Historical Study of Women’s Rights Advocacy in Islamic Legal Construction,” *Journal of Southeast Asian Human Rights* 7, no. 1 (2023): 10, <https://doi.org/10.19184/jseahr.v7i1.39156>.



adverse outcomes stem from their fragile legal status, often leading to social exclusion and marginalization, creating deep uncertainty in their lives.<sup>44</sup>

In essence, *sirri* marriage reflects a tension between preserving traditional practices and meeting the demands of modern legal standards, often overlooking vital formalities essential for legal certainty and protection. While some may view secret marriage as a convenient solution to sidestep bureaucratic hurdles, the reality is that this practice can create deeper social and legal issues that ultimately disrupt family unity and welfare. Educating the public on the critical importance of formal marriage registration is necessary to ensure that the legal, social, and ethical dimensions of marriage uphold the spirit of Islamic law, providing clear protections and promoting justice for all parties involved.

### **An Exploration of the Social Motives for Sirri Marriages in Indonesia**

Marriage is ideally a momentous occasion and a profound blessing in one's life, one that's openly celebrated and joyfully shared. Just as a father proudly announces the birth of his child to family, friends, and community, it's natural and human to spread news of life's happiest moments. This practice serves as a way to create a "public memory" of significant milestones. Much like announcing a birth, sharing news of a wedding reflects our instinct to embed joyous life events within the social fabric.

#### **1. Legal Constraints**

Legal constraints related to unregistered marriages, particularly in the context of polygamy, create significant challenges within Indonesia's legal framework. Although some couples choose this path to bypass complicated bureaucratic hurdles, such as the requirement to obtain approval from the Religious Court, it often leads to severe legal repercussions.<sup>45</sup> As outlined in Article 56 (3) of KHI, polygamous marriages that are not authorized by the Religious Court lack legal validity, resulting in uncertainty for the involved parties. This ambiguity is further compounded when one spouse passes away, raising legal issues regarding the status of the unregistered marriage and the procedures for its annulment or formal recognition. Moreover, the complexity of existing legal provisions, such as those in Law No. 1 of 1974 on Marriage and the KHI, often exacerbates confusion due to the absence of official documentation to serve as a legal basis. While some communities may be more tolerant of such unions, the social stigma associated with unregistered marriages (*sirri* marriage) remains a major obstacle. This stigma not only affects the second wife, who may face societal discrimination, but also the first wife, who may experience social prejudice due to the belief that unregistered polygamous marriages are illegal or even unethical.<sup>46</sup>

When one spouse passes away, this stigma can intensify, with the surviving partner often facing discrimination, rejection, and neglect. The impact of unregistered

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<sup>44</sup> Hoko Horii and Theresia Dyah Wirastri, "Living in a Legal Limbo: Mechanisms to 'Fix' The Legal and Social Positions of Unregistered Children in Indonesia," *The Indonesian Journal of Socio-Legal Studies* 2, no. 1 (October 2022), <https://doi.org/10.54828/ijsls.2022v2n1.1>. 3-4.

<sup>45</sup> Ibnu Akbar Maliki and Lisna Muallifah, "Persepsi Pelaku Perceraian Terhadap Cerai Di Luar Pengadilan Agama," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, no. 2 (2022): 2, <https://dx.doi.org/10.24042/el-izdiwaj.v3i2.14089>.

<sup>46</sup> Indah Sukmawati Nur Fitriyatun Nisa', "Kedudukan Anak Hasil Poligami Pernikahan Siri Terhadap Waris Dan Perwalian Ditinjau Kompilasi Hukum Islam Dan Burgerlijk Wetbook," *Celestial Law Journal* Vol. I, No (2023).

polygamous marriages extends to the second wife, who may find it difficult to integrate into society due to this discrimination.<sup>47</sup> Society continues to associate unregistered marriages with sirri marriage, viewing cohabitation without official legal recognition as invalid. Furthermore, the social consequences are also felt by the first wife, as society may stigmatize her for being unable to bear children, leading to the deceased's decision to enter into a secret polygamous marriage.<sup>48</sup> This situation severely hampers the social interactions of both the first and second wives within the community.

## 2. Psychological Reasons

This motivation occurs when individuals, despite meeting the age and financial requirements, are still completing their studies. To avoid premarital relationships, couples may opt for an informal marriage with specific agreements, such as postponing cohabitation or childbearing until a set time.<sup>49</sup>

Research indicates that cohabitation has become an increasingly common arrangement among young adults, serving as either a precursor to marriage or an alternative to it. A study by Musick (2007) found that cohabitation increases fertility rates compared to being single, particularly for intended births, suggesting that some couples view cohabitation as a suitable context for childbearing.<sup>50</sup>

However, the dynamics of cohabitation and informal unions can vary significantly across different social and economic groups. Research by the Office of Planning, Research and Evaluation (2010) highlights that, particularly among disadvantaged groups, informal living arrangements are more fluid and may be perceived differently by each partner. This fluidity can lead to varying expectations and commitments within the relationship.<sup>51</sup>

Delaying childbearing is a common consideration among individuals prioritizing educational and career goals.<sup>52</sup> A narrative review by Solanke et al. (2023) discusses factors influencing the delay in childbearing, noting that educational aspirations and career development are significant motivators for postponing parenthood. This delay can have implications for health, population dynamics, and societal structures.<sup>53</sup>

It's important to note that the stability of cohabiting relationships can differ from that of formal marriages. Research indicates that cohabiting relationships are generally

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<sup>47</sup> Amrina Rosyada, Lisna Mualifah, and Ibnu Akbar Maliki, "Gender Justice in Husband and Wife Relations According to Shaykh Nawawi Al-Bantani: A Study of the Kitab Syarah 'Uqūd al-Lujain," *Qanun: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 141, <https://dx.doi.org/10.62870/qanun.v2i2.27087>.

<sup>48</sup> Faiq Tobroni, "Hak Anak Sebagai Ahli Waris Dalam Perkawinan Siri," *Jurnal Yudisial* Vol 8 No. (2015), <https://doi.org/doi.org/10.29123/jy.v8i1.45>.

<sup>49</sup> Dosi Juliawati, "Studi Kasus Terhadap Mahasiswa Yang Menikah Saat Menempuh Masa Kuliah," *Jurnal Tarbawi* Vol.13, No (2017). 46-48

<sup>50</sup> Kelly Musick, "Cohabitation, Nonmarital Childbearing, and the Marriage Process," *DEMOGRAPHIC RESEARCH* VOLUME 16, (2007).

<sup>51</sup> David J. Fein et al., "The Determinants of Marriage and Cohabitation among Disadvantaged Americans: Research Findings and Needs" (Washington, DC, 2003).

<sup>52</sup> Sukron Ma'mun, Sheikh Adnan Ahmad Usmani, and Ibnu Akbar Maliki, "Childfree Phenomenon Among Urban Muslims: A Multidisciplinary Examination of Science and Morality," *Akademika: Jurnal Pemikiran Islam* 28, no. 1 (2023): 111, <https://doi.org/10.32332/akademika.v28i1.6773>.

<sup>53</sup> Faranak Safdari-Dehcheshmeh et al., "Factors Influencing the Delay in Childbearing," *Iranian Journal of Nursing and Midwifery Research* 28, no. 1 (January 2023): 10–19, [https://doi.org/10.4103/ijnmr.ijnmr\\_65\\_22](https://doi.org/10.4103/ijnmr.ijnmr_65_22).

less stable than marriages, which can have implications for childbearing decisions and outcomes.<sup>54</sup>

In summary, individuals who meet the traditional criteria for marriage but wish to complete their education may choose informal unions with agreements to delay cohabitation or childbearing. This approach allows them to adhere to personal or cultural values regarding premarital relationships while pursuing academic and professional goals. However, the nature and stability of such arrangements can vary based on socioeconomic factors and individual perceptions.

### 3. Economic Factors

Economic disparities also play a significant role, especially in regions where foreign workers earn substantially more than local residents. In these cases, local women may enter into informal marriages for financial stability. Additionally, some men may avoid the high costs associated with official marriage registration, choosing an unregistered option instead.<sup>55</sup>

Research conducted by Ramlah identified economic factors as one of the main reasons couples choose *siri* marriage. The costs associated with a legal marriage, such as the dowry, wedding feast and administrative fees, can be a significant financial burden for individuals on low incomes. By opting for *siri* marriage, they hope to reduce the burden of these costs.<sup>56</sup>

In addition, research conducted by Nisa highlighted that the cost of registering a legal marriage in Indonesia can reach between 6 and 6.5 million rupiah, while the cost for online *siri* marriage ranges from 2 to 2.5 million rupiah. This cost difference is a motivating factor for couples to choose unregistered marriage as a more affordable alternative.<sup>57</sup>

However, it is important to note that *siri* marriage has significant legal and social implications. Women involved in such marriages often do not have the same legal rights as in legally registered marriages, including the right to inheritance and other legal protections. Therefore, while economic factors may be the main driver, couples should consider the long-term consequences of choosing an unregistered marriage.

### 4. Traditional Norms

*Siri* marriage or marriages that are not officially registered with a state institution, are often practiced in various communities in Indonesia, both for traditional reasons and religious interpretations.

Some indigenous communities in Indonesia view official marriage registration as unnecessary, as they prioritize the customs that have been passed down through

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<sup>54</sup> Shelly Lundberg, Robert A. Pollak, and Jenna Stearns, "Family Inequality: Diverging Patterns in Marriage, Cohabitation, and Childbearing," *Journal of Economic Perspectives* 30, no. 2 (May 1, 2016): 79–102, <https://doi.org/10.1257/jep.30.2.79>.

<sup>55</sup> Ratna Dwi Wulandari and Agung Dwi Laksono, "Hubungan Status Ekonomi Terhadap Pernikahan Dini Pada Perempuan Di Pedesaan Indonesia," *Jurnal Kesehatan Reproduksi* 11, no. 2 (December 29, 2020): 115–24, <https://doi.org/10.22435/kespro.v11i2.3870.115-124>.

<sup>56</sup> Ramlah Ramlah Ramlah, "The Implementation Of Nikah Siri With The Purpose Of Maintaining Family Salary Benefits: The Perspective Of Islamic Law," *INNOVATTO: Journal for Religious Innovation Studies* 22, no. 2 (November 30, 2022): 126–40, <https://doi.org/10.30631/innovatio.v22i2.155>.

<sup>57</sup> Eva F. Nisa, "The Bureaucratization Of Muslim Marriage In Indonesia," *Journal of Law and Religion* 33, no. 2 (August 28, 2018): 291–309, <https://doi.org/10.1017/jlr.2018.28>.

generations. For example, the Baduy community in Banten conduct marriages based on their customary laws without registering them with the KUA or the Civil Registry Office. For them, a valid marriage is one that is in accordance with ancestral customs and traditions.<sup>58</sup>

In the context of Islam, some scholars argue that a marriage that fulfills the pillars and conditions of marriage - such as the presence of a guardian, two witnesses, and *ijab qabul* - is considered valid even if it is not officially registered.<sup>59</sup> This practice is often based on the understanding that during the Prophet Muhammad's time, marriages were recognized with minimal requirements without formal registration.<sup>60</sup> However, it is important to note that although religiously valid, unrecorded marriages can lead to a range of legal and social problems, such as non-recognition of marital status by the state, difficulties in securing inheritance rights, and other legal protections.

Although *sirri* marriage is considered religiously valid by some, unrecorded marriages have significant legal and social implications. Without an official registry, couples may find themselves

Altogether, the motivations behind unregistered marriages reveal a landscape where cultural heritage, economic pressures, and legal challenges intertwine. This diversity of motivations illustrates just how deeply personal marriage is and highlights the many paths people take to protect, celebrate, and formalize their unions -paths that often reflect the nuanced balance between societal.

### **Contemporary Social Construction Behind *Sirri* Marriage: A Socio-Legal Analysis of Islamic Family Law**

To analyze the contemporary construction of *sirri* marriage sociologically within the framework of Islamic family law, various theoretical frameworks can be employed, depending on the perspective taken. Emile Durkheim's Social Theory serves as an insightful lens through which to examine this phenomenon. Durkheim's focus on social structures and collective norms emphasizes the ways in which individual behaviors, such as engaging in *sirri* marriage, are shaped by the overarching social environment.

By adopting Durkheim's approach, we can delve into the motives and purposes behind this practice, recognizing that each action is not merely a personal choice but a reflection of shared societal values and beliefs. This perspective allows us to explore how *sirri* marriage is influenced by the collective consciousness of the community, highlighting the importance of social integration and the preservation of cultural traditions. In this way, Durkheim's theory provides a critical starting point for understanding the diverse motivations that drive individuals or groups to engage in *sirri* marriage ultimately revealing the complex interplay between personal actions and the broader social context in which they occur.

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<sup>58</sup> Muhammad Muslih, "Perkawinan Dalam Hukum Adat Baduy Dan Perkawinan Dalam Kompilasi Hukum Islam," *Journal of Islamic Law Studies* Vol. 3 : N (2021).

<sup>59</sup> Ibnu Akbar Maliki et al., "A Gender-Based Maqashid Sharia Study of Penghulu in Indonesia (A Study of Jasser Auda's Views)," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (2023): 55, <https://doi.org/10.19109/nurani.v23i1.16447>.

<sup>60</sup> Yanti Rosalina Naitboho, "Pencatatan Perkawinan Dalam Hukum Kekeluargaan Di Indonesia Dan Relevansinya Dengan Teori Masalah Syathii," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 4, no. 1 (March 23, 2020): 43–52, <https://doi.org/10.52266/sangaji.v4i1.444>.

Emile Durkheim's Social Action theory emphasizes the concept of “social facts” which play a crucial role in shaping individual behavior within a society. In the context of *sirri* marriage, this theory provides a compelling lens through which we can understand how unregistered marriages are influenced not only by personal choice but also by the prevailing norms, values, and social structures that govern behavior.

In the study of Islamic family law, *sirri* marriages often emerge as a response to certain social conditions that reflect collective beliefs and practices within a community. Durkheim would argue that individuals engaging in *sirri* marriage do so under the weight of societal expectations and pressures that dictate what is acceptable or desirable. For instance, in communities where formal marriage is laden with bureaucratic challenges or where traditional norms permit informal unions, individuals may feel compelled to opt for *sirri* marriage as a socially sanctioned alternative.

The interaction between individual actions and the broader social context emphasizes Durkheim's profound insight into how collective consciousness shapes personal decisions. By examining *sirri* marriage through this lens, we gain a deeper appreciation for how social facts influence marital choices, ultimately revealing the profound impact of social structures on individual lives and relationships. Key elements in Durkheim's action theory include:

1. **Social Facts:** Social facts are external forces that control or regulate individual behavior, such as religious norms, morals, laws, and customs. Durkheim argues these social facts exist outside the individual yet significantly shape their behavior, acting as the foundation for societal cohesion.
2. **Social Solidarity:** Durkheim distinguishes between two primary forms of social solidarity—mechanical and organic. In traditional societies, mechanical solidarity is seen when people share common values and beliefs. In contrast, in modern societies, organic solidarity arises as individuals become interdependent through more complex divisions of labor.
3. **Anomie:** In modern conditions, rapid social change can lead to *anomie*, a state where traditional norms and values weaken, leaving individuals feeling directionless and disconnected. This state of normlessness, Durkheim explains, can increase rates of suicide and other social issues, as individuals may experience isolation or a lack of attachment to their communities.
4. **Collective Action:** Durkheim views social action not merely as the result of individual decisions but as collective action emerging from the interplay between individuals and society. This highlights the role of society in shaping and directing individual behaviors.
5. Durkheim emphasizes that sociological actions are structural, meaning that social structures exert a powerful influence over individual actions. Through these concepts, Durkheim provides a framework for sociology to see individual actions as part of a wider social network, rather than as isolated personal decisions.<sup>61</sup>

The practice of *sirri* marriage as a phenomenon of Islamic family law, when linked to social facts, can be effectively analyzed using Emile Durkheim's social theory. This approach allows us to investigate the social forces that shape *sirri* marriages by examining how the norms, values and expectations of an external society influence individual decisions within the institution of marriage. Durkheim's perspective provides a structured framework to

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<sup>61</sup> Emile Durkheim, *The Elementary Forms of Religious Life* (Yogyakarta: Ircsod, 2003). 40

analyze *sirri* marriage beyond personal choice, situating it within the context of social solidarity, collective consciousness, and the regulation of individual behavior. Through this lens, *sirri* marriage can be seen not simply as an isolated practice but as a reflection of broader societal structures and dynamics.

Durkheim's sociological theories offer a powerful framework to understand *sirri* marriage, a practice often influenced by cultural and religious norms but lacking legal recognition in Indonesia. By examining *sirri* marriage as shaped by social facts, social solidarity, anomie, and collective action, we can appreciate how society's structures impact this practice and its implications.

1. **Social Facts and Religious Norms:** *Sirri* marriage often occurs due to strong religious or cultural values, even if it lacks legal recognition. In this context, religious and cultural norms act as "social facts" that govern individual behavior, much like Durkheim described. Those who engage in *sirri* marriage may feel more bound by religious obligations than by state laws, showing the strength of social facts that exist outside the individual yet shape actions.<sup>62</sup> In Indonesia, a dual norm system exists, where religious norms may support *sirri* marriage (if religious requirements are met), while legal norms require official registration for lawful recognition. In certain regions or communities, these religious norms may hold more influence, legitimizing *sirri* marriage despite its lack of legal status.
2. **Social Solidarity:** In communities with strong mechanical solidarity, where traditional values and shared beliefs prevail, *sirri* marriage is often normalized. This sense of unity reinforces acceptance of *sirri* marriage as it aligns with community norms.<sup>63</sup> However, in more modern societies with organic solidarity, where the law and state regulations are highly valued, *sirri* marriage may be considered deviant for not aligning with legal expectations.<sup>64</sup> For instance, in rural or deeply religious communities, *sirri* marriage aligns with both religious and social expectations, whereas in urban, modernized settings, legal marriage registration is prioritized, and unregistered marriages may be stigmatized.
3. **Anomie and Legal Uncertainty:** *Sirri* marriage participants may experience anomie—a state of normlessness or social ambiguity—caught between religious, cultural, and state expectations.<sup>65</sup> Durkheim suggests that rapid social changes or conflicting norms can create anomie, leaving individuals feeling directionless.<sup>66</sup> In Indonesia, those who practice *sirri* marriage may face a legal and social dilemma: while their marriage might be religiously valid, it lacks legal recognition. This can lead to social tensions and uncertainties, as they navigate conflicting expectations of religious adherence and legal protection.

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<sup>62</sup> Halil Khusairi, "Kompleksitas Kawin Siri: Antara Hukum Islam Dan Undang-Undang Perkawinan Di Indonesia," *Istinbath* 21, no. 1 (August 24, 2022): 165–88, <https://doi.org/10.20414/ijhi.v21i1.492>.

<sup>63</sup> Baihaqi Baihaqi et al., "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya," *Journal of Islamic Law* 5, no. 2 (August 29, 2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>.

<sup>64</sup> Kharisudin Kharisudin, "Nikah Siri Dalam Perspektif Kompilasi Hukum Islam Dan Undang-Undang Perkawinan Indonesia," *Perspektif* 26, no. 1 (January 30, 2021): 48–56, <https://doi.org/10.30742/perspektif.v26i1.791>.

<sup>65</sup> Thriwaty Aarsal, "Nikah Siri in Demographic Overview," *Jurnal Sosiologi Pedesaan* Vol. 6 No. (2012).

<sup>66</sup> Cecil L. Willis, "Durkheim's Concept of Anomie: Some Observations," *Sociological Inquiry* 52, no. 2 (March 9, 1982): 106–13, <https://doi.org/10.1111/j.1475-682X.1982.tb01242.x>.

4. **Collective Action in Society:** The choice to enter into *sirri* marriage is often a collective action, shaped by community values rather than individual decisions alone. For many, adhering to community norms or escaping social stigma justifies this choice, highlighting the societal pressures influencing personal choices. In communities that prioritize religious over state norms, *sirri* marriage becomes a socially supported practice, while in more legally oriented societies, it may be seen as deviant.

Durkheim's perspective on the social impact of *sirri* marriage, Durkheim's theories help reveal the social impact of *sirri* marriage, highlighting several key consequences:

- **Impact on Social Structure:** *Sirri* marriage introduces legal ambiguity, particularly concerning the rights of children, wives, and inheritance.<sup>67</sup> Since it lacks official recognition, families formed through *sirri* marriage lack legal protections, potentially destabilizing social structures designed to maintain order through formal laws. Durkheim would see this as a challenge to the state's social facts, which aim to protect family members' rights.
- **Divided Solidarity:** In communities accepting *sirri* marriage, it may strengthen mechanical solidarity rooted in shared religious or cultural beliefs. However, in more modern, law-oriented communities, *sirri* marriage is viewed as deviant, creating a divide between traditional groups prioritizing religious norms and modern groups favoring legal norms. This gap could lead to social polarization.
- **Anomie and Legal Uncertainty:** *Sirri marriage* practices can create anomie by generating norm conflicts between religion and state law. Participants may feel directionless, as their marriages are religiously valid yet lack legal recognition, leading to social and personal uncertainty.

Durkheimian-inspired solutions include increasing legal awareness through education, reconciling religious and legal norms to ease anomie, inclusive policy adaptation for greater accessibility, and using sanctions and incentives to promote legal compliance. These measures aim to bridge traditional and modern values, fostering a socially cohesive environment where legal and religious expectations align more closely.

## Conclusion

In conclusion, a study of the contemporary social construction of *sirri* marriage in Indonesia, based on Emile Durkheim's social theory, reveals the complex interplay between legal norms and societal values. *Sirri* marriages in contemporary Islamic family law studies, although often positioned as deviations from formal legal provisions, persist as socially accepted practices in certain cultural and religious contexts. Durkheim's concept of collective consciousness helps explain how community norms and shared beliefs influence the legitimacy of *sirri* marriage, even in the absence of state recognition. This phenomenon highlights the tension between formal legal frameworks and traditional social practices, underscoring the importance of understanding local values and social structures when addressing issues of legal pluralism. Ultimately, this analysis advocates for a more nuanced and culturally sensitive approach to harmonizing legal regulations with the diverse socio-religious realities of Indonesian society.

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<sup>67</sup> Ahyuni Yunus & Zainuddin Ilyas, "Pelaksanaan Nikah Siri & Akibat Hukumnya Terhadap Hak Waris Istri & Anak: Studi Kota Makassar," *Journal of Lex Generalis (JLG)* Vol. 1 No. (2020), <https://doi.org/10.52103/JLG.V1I1.62>.

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