

Marriage Registration as a Legal-Political Arena in Islamic Family Law: Reinterpreting *Maṣlaḥah Mursalah* within Modern Legal Systems

Mukhamad Suharto¹, Nur Kholis, Ahmad Rezy Meidina, Muhammad Hasan Mahmud

Sekolah Tinggi Agama Islam Al-Hikmah 2, Brebes, Indonesia

Universitas Islam Tribakti, Kediri, Indonesia

Sekolah Tinggi Agama Islam Al-Hikmah 2, Brebes, Indonesia

Al-Azhar University, Cairo, Egypt

Correspondence authors:

¹E-mail: hmsuhartomh@gmail.com

ABSTRACT

Purpose – This article examines marriage registration in Islamic family law by positioning it as a legal-political arena, rather than merely an administrative requirement. Employing a qualitative socio-legal approach, this study investigates how the modern state constructs compulsory marriage registration as a mechanism for integrating Islamic norms, public interest, and legal pluralism. The analysis combines normative Islamic legal inquiry, historical examination of regulatory developments, and legal-political theories—particularly John Hart Ely’s representation-reinforcing theory, Savigny’s historical jurisprudence, and Mahfud MD’s contextual legal-political framework.

Methods– This study employs a socio-legal method to examine marriage registration as a legal, social, and political construct within the framework of Islamic family law.

Findings – The findings demonstrate that marriage registration signifies the transformation of Islamic family law from a community-based legal order into a state-centered legal system oriented toward rights protection, legal certainty, and social justice. From the perspective of *maṣlaḥah mursalah* and *maqāṣid al-shari‘ah*, marriage registration functions as a legal mechanism to safeguard vulnerable groups, especially women and children, while simultaneously serving as a state instrument for shaping a legally recognized and administratively ordered family structure.

Research implications – The main contribution of this article lies in proposing an analytical framework that conceptualizes marriage registration as a site of legal-political negotiation between the state, religion and society. By foregrounding power relations, legal policy, and normative integration, this study advances contemporary scholarship on Islamic family law and highlights the political dimensions of the regulation of family institutions in Muslim societies.

Keywords: *Marriage Registration, Islamic Family Law, Legal Politics, Maṣlaḥah Mursalah, Socio-Legal Approach.*

Introduction

In contemporary Muslim societies, marriage is no longer understood solely as a religious bond but also as a legal institution subject to state regulation. In Indonesia, marital validity requires dual legitimacy, religious and state recognition, through official registration with state-authorized institutions. This requirement marks a significant departure from classical Islamic jurisprudence, which emphasizes the fulfillment of essential marital pillars and conditions without mandating formal administrative documentation.¹ In practice, marriage registration has substantial legal implications,² particularly regarding the protection of women's and children's rights.³

Unregistered marriages frequently result in legal uncertainty regarding marital status, limited access to civil services, and weak legal protection in matters of maintenance, inheritance, and family law disputes.⁴ Empirical studies further reveal that deficiencies in the registration system may facilitate document forgery, leading to the annulment of marriages and exacerbating structural vulnerabilities within family relations.⁵ Several studies have examined the role of *maṣlaḥah mursalah* in marriage registration in Indonesia. For instance, Rahman highlights the benefits of ensuring children's legal status and inheritance rights.⁶ Yusmita emphasizes its function in safeguarding women's rights within civil law,⁷ while Gunawan argues that registration reduces the risks associated with unregistered religious

¹ Yossef Yuda and Yufrizal Yufrizal, "Marriage Registration and Its Legal Implications: A Case Study in South Coast Regency," *Jurnal Kajian Dan Pengembangan Umat* 8, no. 2 (2025): 160–71, <https://doi.org/10.31869/jkpu.v8i2.7388>.

² Ridwan Jamal et al., "Pencatatan Nikah di Kantor Urusan Agama sebagai Fakta Hukum Perkawinan Masyarakat Muslim," *Al-Mujtabid: Journal of Islamic Family Law* 2, no. 2 (2022): 111, <https://doi.org/10.30984/ajifl.v2i2.2132>.

³ Tri Winarni et al., "Pencatatan Perkawinan Sebagai Upaya Perlindungan Terhadap Perempuan dan Anak (Studi Kasus di Kantor Urusan Agama Kecamatan Weru)," *Mahkamah : Jurnal Kajian Hukum Islam* 8, no. 2 (2023): 245, <https://doi.org/10.24235/mahkamah.v8i2.15786>.

⁴ Afralia Zalza, "Penyidikan Terhadap Tindak Pidana Pemalsuan Dokumen Akta Nikah" (Skripsi, Universitas Bosowa, 2022), <https://repository.unibos.ac.id/xmlui/bitstream/handle/123456789/2143/2022%20AFRALIA%20ZALZA%204518060060.pdf>.

⁵ Nadya Alvina Azzahra, "Pembatalan Status Perkawinan Karena Pemalsuan Berkas Ditinjau Dari Perspektif Hukum Islam Dan Hukum Positif (Analisis Putusan Pengadilan Agama Makassar Nomor 558/Pdt.G/2021/PA.Mks)" (Skripsi, UIN Syarif Hidayatullah Jakarta, 2022), <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/65699/1/NADYA%20ALVINA%20AZZAHRA%20-%20FSH.pdf>.

⁶ Fadhly Kharisma Rahman, "Marriage Registration As a Form Of Maṣlaḥah Mursalah," *MAQASID: Jurnal Studi Hukum Islam* 12, no. 2 (2023): 33–45.

⁷ Yusmita Yusmita, "Dinamika Pencatatan Pernikahan Di Indonesia dalam Kajian Masalah Mursalah," *Berasan: Journal of Islamic Civil Law* 2, no. 1 (2023): 33, <https://doi.org/10.29240/berasan.v2i1.7218>.

marriages that undermine legal protections.⁸ However, these approaches tend to be descriptive and justificatory, paying limited attention to the broader legal-political processes through which marriage registration is constructed, enforced, and contested.

Consequently, the legal-political dimension of marriage registration remains underexplored. Mandatory registration is not merely a technical legal requirement but an outcome of legislative processes, ideological negotiations, and power configurations within plural legal systems. This reflects how the state defines legitimate family structures, mediates between religious norms and public interests, and deploys law as a mechanism of social governance. Addressing this gap, this article argues that marriage registration should be conceptualized as a legal-political arena, a site where the state, religion, and society interact and negotiate the contours of Islamic family law in contemporary contexts. This perspective enables a critical examination of how classical Islamic norms are transformed within state-centered legal frameworks and how power, ideology, and policy shape the regulation of family institutions.

This study aims to analyze marriage registration in Islamic family law through socio-legal and legal-political lenses. It examines the evolution of marriage registration from a religious practice to a binding legal obligation and interprets its significance through the frameworks of *maṣlaḥah mursalah* and legal-political theories. By positioning marriage registration as a site of legal and political negotiation, this article contributes a novel analytical perspective to Islamic family law scholarship, foregrounding not only normative legitimacy but also the dynamics of power, policy, and legal authority in contemporary Muslim societies.

Methods

This study adopts a qualitative socio-legal approach, conceptualizing law not merely as a set of formal rules, but as a social and political construct shaped by power relations, ideology, and state policy. This approach is employed to examine marriage registration in Islamic family law as a legal institution at the intersection of religious norms, public interest, and state authority.⁹ The analysis was structured around three interrelated layers. First, a normative legal analysis is conducted on classical and contemporary Islamic jurisprudential texts to examine the doctrinal foundations of marital validity in Islamic law, particularly the emphasis on the essential pillars and conditions of marriage and the absence of administrative

⁸ Edi Gunawan, "NIKAH SIRI DAN AKIBAT HUKUMNYA MENURUT UU PERKAWINAN," *Jurnal Ilmiah Al-Syir'ab* 11, no. 1 (2013), <https://doi.org/10.30984/as.v11i1.163>.

⁹ Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research*, eds. (Hart Publishing, 2005).
Legitima : Jurnal Hukum Keluarga Islam
Volume 08, Number 01, December 2025

registration requirements in classical *fiqh*. This layer provides a normative baseline for assessing subsequent legal transformations.¹⁰ Second, a historical analysis¹¹ traces the evolution of marriage registration from a community-based religious practice to a binding legal obligation imposed by the modern state. This analysis focuses on the development of marriage registration regulations in Indonesia, including the Marriage Law and the Compilation of Islamic Law, as part of broader Islamic family law reforms in Muslim-majority countries. Third, a legal-political analysis examines how marriage registration is formulated, legitimized, and enforced as a state policy. Drawing on John Hart Ely's representation-reinforcing theory, Savigny's historical jurisprudence, and Mahfud MD's contextual legal politics framework, this study conceptualizes marriage registration as a site of negotiation between Islamic norms, legal pluralism, and state interests in shaping legally recognized family structures.

Research data were collected through systematic library research of primary and secondary legal sources. The primary sources include Indonesian marriage legislation, the Compilation of Islamic Law, and authoritative classical *Sunni Fiqh* texts. The legal texts were selected based on their normative relevance, scholarly authority, and significance in the development of Islamic family law in Indonesia. Secondary sources include peer-reviewed international journal articles, socio-legal monographs, and comparative studies on Islamic family law. Socio-political dynamics are analyzed through interpretive readings of the legislative history, policy rationales, and academic discourses surrounding marriage registration. This procedure enables the identification of the underlying interests, ideological positions, and power relations embedded in marriage registration policies.

Accordingly, the socio-legal method is not merely descriptive-normative but also analytical-critical, aiming to uncover the dynamics of power, ideology, and interest that shape legal practice in society. This approach aligns with the study's objective of positioning marriage registration as a legal instrument that is not only administrative but also rich in social and political functions within the framework of contextual and progressive Islamic family law.¹²

¹⁰ Parid Sidik, "Pendekatan Normatif Sebagai Metodologi Penelitian Hukum Islam," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (2023): 1010–22, <https://doi.org/10.47467/as.v5i3.3843>.

¹¹ Ajub Ishak, "Ciri-Ciri Pendekatan Sosiologis Dan Sejarah Dalam Mengkaji Hukum Islam," *Al-Mizān (e-Journal)* 9, no. 1 (2013): 62–76.

¹² Soelistyowati Irianto, *Hukum Yang Membela: Konsep Dan Praktik Hukum Progresif* (Epistema Institute, 2012).

Result and Discussion

The Evolution of Marriage Registration: From Religious Practice to State Administrative Requirement

In classical Islamic jurisprudence (*fiqh*), the validity of a marriage is determined by the fulfillment of its essential elements and conditions, such as offer and acceptance (*ijāb qabūl*), the presence of a legal guardian (*wali*), and two just male witnesses. There are no explicit provisions regarding the obligation of registration or written documentation. In *Fath al-Qarib al-Mujib*, authored by Abu Shuja' al-Asfahani and annotated by Muhammad bin Qasim al-Ghazi, it is stated:

“A marriage contract is not valid except with a just guardian and two just male witnesses, along with the offer and acceptance occurring in a single session.”¹³

This text does not mention any requirement for registration or written documentation as a condition for the validity of a marriage. This indicates that, from the perspective of classical *fiqh*, a marriage is considered valid as long as its essential elements and conditions are fulfilled, without the need for administrative registration. Such an understanding is contextually appropriate, given that societies at the time were organized around small communities and social systems that relied heavily on trust and informal social control.

However, with the evolution of modern society and its increasing complexity, the need for written evidence has become more pressing, particularly in the context of legal protection for women and children. This shift reflects the transformation from a community-based legal system to a state-based legal framework. In modern states, formal legality is required in nearly every aspect of citizens' lives, including family law. Within this framework, marriage registration serves as a crucial instrument to ensure the legal validity of a marriage and safeguard the civil rights arising from it, such as inheritance rights, financial support, and the legal status of children.

Khitam (2022) emphasizes that marriage registration represents a contextualization of Islamic law in response to contemporary demands. He asserts that registration can be

¹³ Muhammad bin Qasim Al-Ghazi, *Fath Al-Qarib al-Mujib Fi Sharh Alfāz al-Taqrīb*, kesatu (Dar ibn Hazm, 2005), <https://www.pecintaulama.id/2016/09/download-fathul-qarib-al-mujib.html>.

equated with the function of witnesses in *maqāṣid al-shari'ah*, as it serves to protect lineage and the civil rights of the family. In modern society, verbal testimony is no longer sufficient to guarantee legal validity and protection; thus, registration has become a new form of “witnessing” that carries stronger legal weight.

“Marriage registration is a form of contextualization of Islamic law in response to contemporary demands, which require written evidence as a guarantee of legal validity and protection.”¹⁴

Marriage registration is an essential tool for social control and population administration. The state requires accurate data on citizens’ marital status for purposes such as development planning, distribution of social assistance and legal protection. In this context, registration is not merely an individual obligation but also a matter of public interest and safety.

Family law reforms in various Muslim-majority countries demonstrate a paradigm shift from classical *fiqh* approaches to more modern and structured legal systems. A key aspect of these reforms is the emphasis on mandatory marriage registration to ensure legal certainty, social order, and the protection of women’s and children’s rights. Countries such as Turkey, Egypt, Jordan, and Indonesia have adopted regulations mandating marriage registration, despite its absence as a requirement for marriage validity in classical Fiqh. This development reflects a response to the demands of modern times, which necessitate written legal evidence in family and civil matters. As explained by Afrilian, Khairul, and Rizal, marriage registration in various Muslim countries constitutes a form of social engineering aimed at aligning Islamic legal norms with the demands of modernity and the structure of national legal systems that prioritize order and measurability.¹⁵

In Indonesia, the obligation to register marriages is regulated under Law No. 1 of 1974 on Marriage and is reinforced by the Compilation of Islamic Law (KHI). Article 2 paragraph (2) of the Marriage Law states: “Every marriage shall be registered in accordance

¹⁴ Husnul Khitam, “PENCATATAN PERKAWINAN: SUATU ANALISIS SEJARAH SOSIAL,” *ISLAMITSCH FAMILIERECHT JOURNAL* 3, no. 02 (2022): 170–78, <https://doi.org/10.32923/ifj.v3i02.2757>.

¹⁵ Andre Afrilian et al., “Eksistensi Hukum Pencatatan Perkawinan Dalam Reformasi Hukum Keluarga Di Dunia Islam,” *Al-Syakhsyiyah: Journal of Law & Family Studies* 6, no. 1 (2024), <https://doi.org/10.21154/syakhsyiyah.v6i1.6337>.

with the prevailing laws and regulations.” This provision affirms that registration is not merely an administrative formality but a legal requirement for the validity of marriage in the national legal system.

The Political Significance of Law: Integrating Islamic Values and National Legal Frameworks

This study conceptualizes marriage registration as a legal-political phenomenon, situating its codification and regulation within the broader dynamics of state power, Islamic norms and societal demands. Rather than merely describing legal provisions, this analysis examines how state authority constructs, legitimizes, and enforces marriage registration to achieve legal certainty, rights protection, and social order within plural legal systems. From John Hart Ely’s perspective, legal politics is understood through a representation-reinforcing approach, as elaborated in his seminal work, *Democracy and Distrust* (1980). Ely rejected a substantive approach to constitutional interpretation and instead emphasized the importance of fair democratic procedures. He argues that the primary role of law is to strengthen the political process by ensuring that channels of political participation remain open and inclusive, particularly for marginalized minority groups. In this context, the law is not merely a tool to achieve specific substantive goals but a mechanism to guarantee that democratic processes function equitably and representatively.¹⁶ This theory is relevant for examining how marriage registration can serve as an instrument to ensure equal legal access for all citizens, including vulnerable groups, in a pluralistic society such as Indonesia.

Carl von Savigny, a leading figure in the historical school of legal philosophy, viewed law as an expression of the *Volksgeist*, or the spirit of the people. According to Savigny, law is not arbitrarily created by rulers but evolves organically from the collective consciousness of society through customs and tradition.¹⁷ Therefore, legal reforms must consider historical continuity and the community’s cultural values. In the context of marriage registration, Savigny’s approach serves as a reminder that administrative legal policies must remain aligned with local and religious values embedded in society. A lack of harmony between state law and customary or religious law may lead to social resistance and hinder effective legal enforcement.

¹⁶ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Harvard University Press, 1980).

¹⁷ Friedrich Carl von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence* (A. Hayward, Trans.) (Littlewood & Co. (Original work published 1814), 1865).

In Indonesia, Mahfud MD has developed a theory of legal politics that emphasizes the law as a product of prevailing political configurations. In his book *Politics of Law in Indonesia*, Mahfud asserts that the law is never neutral but is always influenced by the dominant political forces.¹⁸ Consequently, the formation of laws, including regulations on marriage registration, reflects the interplay between state interests, religious values, and societal norms. Within Indonesia's plural legal system, Mahfud underscores the importance of an integrative approach that accommodates Islamic values, customary law, and the principles of a modern rule of law state. Thus, marriage registration is not merely an administrative issue but also a reflection of the political-legal dynamics involved in shaping the national legal identity.

Marriage registration cannot be separated from the broader dynamics of legal politics in Indonesia. As a country with a Muslim-majority population and a plural legal system, Indonesia faces the challenge of integrating religious norms into its national legal framework. In this context, marriage registration is a critical arena for such integration. Applying these three theoretical perspectives reveals several critical insights. First, marriage registration serves as a site for negotiating legitimacy, mediating between religious authority and state control. Second, it operates as a rights-protective mechanism, reinforcing access to legal recognition and remedies for vulnerable family members to protect their rights. Third, it illustrates the historical assimilation of Islamic legal norms into modern state law, without negating their normative foundations. Finally, this reflects the politics of legal policy, where the law is strategically deployed to shape family structures and social order.

Taken together, these findings demonstrate that marriage registration should not be understood merely as an administrative requirement but as a legal-political arena in which representation, historical development, and state policy converge. This analytical framework advances contemporary scholarship on Islamic family law by foregrounding power relations, policy rationality, and normative integration within the regulation of family institutions in Muslim societies. Kamila (2022) highlights that the formulation of Indonesia's Marriage Law was the result of a compromise among various ideological interests, including Islamic, nationalist, and modernist groups. Marriage registration represents a convergence point between modernity and Islamic values. On the one hand, registration is necessary to ensure

¹⁸ Moh Mahfud MD, *Politik Hukum Di Indonesia* (Rajawali Pers, 2014).

legal certainty and the protection of civil rights; on the other hand, it must remain consistent with the principles of Islamic law.

“The Marriage Law is a product of legal-political compromise that seeks to unify religious, customary, and state norms within a single system that guarantees justice and legal certainty.”¹⁹

From a legal-political perspective, marriage registration reflects the role of the state in shaping and directing social norms through the law. The state acts not only as a regulator but also as an ideological actor that determines which values are deemed to be legitimate and lawful. Marriage registration symbolizes the state’s legal recognition of the family institution. Moreover, registration serves as a state instrument for regulating gender relations and power dynamics within families. Through registration, women gain strong legal evidence to claim their rights, such as financial support, inheritance, and protection against domestic violence. In this context, marriage registration functions as an emancipatory tool that strengthens women’s position within the family structure.

A New Conceptual Framework: Marriage Registration as a Legal-Political Arena

This subsection advances the previous discussion by adopting a critical socio-legal perspective on the issue of marriage registration. Rather than viewing state regulation as a neutral or purely protective mechanism, this analysis interrogates how compulsory registration operates within relations of power, produces social exclusion, and generates unintended legal and administrative consequences, particularly for marginalized groups. This approach responds directly to concerns that affirmative readings of state regulation risk obscuring the structural inequalities embedded in the governance of Islamic family law.

Despite the normative objective of marriage registration to ensure legal certainty and rights protection, empirical studies have demonstrated that access to registration services remains structurally unequal. Geographic remoteness, administrative complexity, economic constraints, and limited legal literacy continue to impede compliance, particularly among rural and economically vulnerable populations. Consequently, unregistered marriages persist

¹⁹ Maulida Zahra Kamila, “Dinamika Politik dalam Penyusunan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Al-Ahwal Al-Syakhsyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, no. 2 (2022): 207–20, <https://doi.org/10.15575/as.v3i2.13542>.

not only as acts of legal non-compliance but also as adaptive social practices in contexts where state services are either inaccessible or perceived as burdensome.²⁰

From a socio-legal standpoint, this condition reveals a paradox: a legal instrument designed to promote inclusion may, in practice, reproduce exclusion when institutional capacity and accessibility are unevenly distributed. Marriage registration thus becomes a marker of differential citizenship, where legal recognition is contingent on one's proximity to bureaucratic infrastructure rather than substantive marital legitimacy.²¹ Critical scholarship consistently shows that the consequences of non-registration are disproportionately borne by women and children in the global South. In unregistered marriages, women frequently lack enforceable rights to maintenance, marital property, and legal remedies in the event of dissolution. Children born from such unions often encounter difficulties in obtaining legal identity documents, inheritance rights, and public services.²²

While state regulation frames compulsory registration as a protective mechanism, the persistence of unregistered marriages suggests that formal legal requirements alone are insufficient to safeguard substantive rights of women. Without inclusive implementation and responsive institutional support, registration regimes risk reinforcing gendered vulnerabilities, rather than alleviating them. This gap between normative intent and lived legal reality underscores the need for a more reflexive legal-political analysis of family law.²³

Empirical evidence from the Gayo Lues District demonstrates that unregistered marriages, particularly elopement among adolescents, directly undermine the legal protections of women and children, who are often the most vulnerable participants in family structures. Hanapi and Yuhermansyah's study reveals that marriages conducted outside formal administrative procedures at the Office of Religious Affairs not only sever marital recognition from the formal legal system but also produce substantial social consequences, such as disrupted education for young spouses due to shame and stigma, which

²⁰ Syawal Ridwan, "Pernikahan tanpa Pencatatan: Kegagalan Negara dalam Melindungi Hak Sipil Perempuan dan Anak," *JURNAL ILMIAH GEMA PERENCANA* 4, no. 1 (2025): 77–96, <https://doi.org/10.61860/jigp.v4i1.196>.

²¹ Isdiana Syafitri et al., "DAMPAK NIKAH SIRI DAN AKIBAT HUKUMNYA DI MASYARAKAT MENURUT UU PERKAWINAN," *Jurnal Pengabdian Kontribusi Unhamzah* 1, no. 2 (2022): 37–44.

²² Wiranda Soraya et al., "Legal Protection of Women and Children in the Practice of Nikah Sirri (Unregistered Marriage)," *Al-Rasikh: Jurnal Hukum Islam* 14, no. 2 (2025): 271–86, <https://doi.org/10.38073/rasikh.3323>.

²³ Asman Asman, "MARGINALISASI PEREMPUAN DALAM PROBLEMATIKA LEGALITAS NIKAH SIRI DI INDONESIA," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 12, no. 02 (2024), <https://doi.org/10.30868/am.v12i02.7457>.

disproportionately impede women's educational opportunities and social mobility. In the absence of official registration, women and children are placed in legally precarious positions regarding civil rights, such as identity documentation, inheritance, maintenance, and access to social protection, which should be guaranteed by state law. This finding underscores the urgency of marriage registration as an instrument for safeguarding the fundamental rights of women and children, while simultaneously highlighting how inadequate administrative implementation exacerbates the marginalization of those most in need of legal protection.²⁴

The endurance of unregistered marriage practices also reflects social resistance to state-centric legal ordering. In many Muslim communities, religious and customary norms retain strong legitimacy, often outweighing administrative legality in determining marriage validity. Compliance with state registration is therefore not always perceived as a moral or religious obligation but as an external bureaucratic demand. This resistance should not be attributed to legal ignorance or defiance. Instead, it reveals the operation of legal pluralism, where multiple normative systems coexist and compete with each other. The insistence on a singular state-defined legality may thus generate friction, delegitimization, and selective compliance, particularly when regulatory frameworks fail to resonate with local religious and social understandings.²⁵

A central tension in marriage regulation lies in the divergence between religious normativity and state legal authority. Classical Islamic jurisprudence recognizes marital validity based on substantive conditions—consent, witnesses, and guardianship—without the need for written documentation. In contrast, state-mandated registration introduces an additional layer of legal recognition grounded in administrative rationality. This divergence produces a dual legal status: marriages may be religiously valid but legally invisible. This duality complicates the legal status of spouses and children and challenges the coherence of Islamic family law within modern state systems. This issue is not merely doctrinal but deeply political, as it concerns whose authority ultimately defines legal legitimacy in family relations.²⁶

²⁴ Agustin Hanapi and Edy Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 528–44, <https://doi.org/10.22373/sjhk.v4i2.7942>.

²⁵ Novita Dewi Masyithoh et al., "Sacralism of Customary Law in Marriage: Local and National Legal Contestation in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 1 (2024): 42–55, <https://doi.org/10.21580/walrev.2024.6.1.22670>.

²⁶ Andi Darna, "Perkembangan Hukum Islam Di Indonesia: Konsep Fiqih Sosial Dan Implementasinya Dalam Hukum Keluarga," *EL-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021): 90–107, <https://doi.org/10.22373/ujhk.v4i1.8780>.

Comparative studies on marriage registration reforms in various Muslim-majority states indicate that the function of registration is often framed primarily as an administrative requirement rather than a substantive element in establishing marital validity. In the context of family law reform across several Islamic jurisdictions, registration is conceptualized as a procedural condition that confers formal legal recognition, yet without concomitant institutional transformation to address the social and cultural practices that underlie unregistered unions. Moreover, the reform discourse that elevates registration to a requirement for marital legality does not consistently engage with broader normative concerns such as the protection of rights, recognition of legal pluralism, and responsive governance of local social norms. These observations highlight that, although registration reforms are promulgated within the global Islamic legal landscape, they frequently emphasize formal compliance over substantive justice and socially grounded protections for vulnerable groups, underscoring a persistent gap between regulatory ideals and social realities.²⁷

From a human rights perspective, ineffective or exclusionary registration regimes undermine the state's obligation to ensure equal access to civil rights for all citizens. Children without birth certificates due to unregistered marriages face systemic barriers in education, healthcare, and social protection. These outcomes reveal that administrative failure, rather than individual noncompliance alone, plays a significant role in rights deprivation.²⁸ Excessive bureaucratization, inconsistent enforcement, and limited outreach exacerbate these issues. When legal remedies such as judicial marriage validation (*itsbat nikah*) become the primary pathway to recognition, the system shifts from preventive governance to reactive adjudication, further disadvantaging those with limited resources.²⁹

The increasing reliance on courts to legalize unregistered marriages illustrates a broader inconsistency within the legal system. Judicial accommodation of unregistered marriages may offer pragmatic solutions; however, it simultaneously exposes the limits of regulatory effectiveness. Courts effectively compensate for administrative shortcomings, blurring the boundaries between exceptions and norms. This pattern raises critical questions regarding legal coherence and policy design. If judicial validation becomes routine, the

²⁷ Jumain Azizi and Muzawir Muzawir, "REFORMASI HUKUM PERKAWINAN: "PENCATATAN PERKAWINAN DI BERBAGAI NEGARA MUSLIM," *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 3, no. 1 (2023): 97–116, <https://doi.org/10.59259/jd.v3i1.51>.

²⁸ Umi Enggarsasi et al., "Legal Protection for Children Born Out of Wedlock: An Islamic Justice Perspective," *Lex Publica* 11, no. 1 (2024): 139–60, <https://doi.org/10.58829/lp.11.1.2024.260>.

²⁹ Ridwan, "Pernikahan tanpa Pencatatan."

deterrent rationale for compulsory registration is weakened, and legal uncertainty persists. Such dynamics underscore the need to reassess the balance between regulatory enforcement and the social realities.³⁰

This critical analysis demonstrates that marriage registration cannot be understood as a purely administrative requirement. It is a legal-political arena where state authority, religious norms, social practices and institutional capacity intersect. Overly affirmative narratives of regulation risk masking exclusion, reinforcing inequality, and neglecting unintended consequences. For Islamic family law reform to be normatively defensible and socially effective, registration policies must move beyond formal legality toward substantive justice. This entails improving accessibility, recognizing plural normative contexts, addressing gendered vulnerabilities, and strengthening the administrative capacity. Only through such an inclusive and reflexive approach can marriage registration fulfill its stated objectives of protection, certainty, and social justice for all couples.³¹

This study proposes a new conceptual framework that positions marriage registration as a legal-political arena in which the state, religion, and society interact and negotiate to determine the ideal family institution. Within this framework, registration is not merely an administrative procedure but a representation of the values that the state seeks to uphold, such as justice, legal certainty, and the protection of human rights. Faizal (2021) asserts that within a Pancasila-based legal state, marriage registration must be understood as part of a legal protection system that guarantees citizens' rights. He argues that registration constitutes a concrete manifestation of the rule of law principle, ensuring the legality and legitimacy of every legal act, including those within the private sphere, such as marriage.

“The Pancasila legal state positions marriage registration as a legal instrument that guarantees citizens' rights within family life.”³²

This framework also enables a more critical analysis of the role of the state in shaping family norms. The state not only regulates but also constructs marriage's social meaning as

³⁰ Muhammad Latif Fauzi, “ADMINISTRATIVE TRANSGRESSION AND JUDICIAL DISCRETION FOR THE SAKE OF CITIZENS' RIGHTS: The Legalisation of Unregistered Marriages in Indonesia,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 211–31, <https://doi.org/10.14421/ahwal.2023.16202>.

³¹ Tasnim Rahman Fitra et al., “Sanctions and Legal Compliance in Marriage Registration: A Comparative Implementation of Islamic Family Law in Indonesia and Malaysia,” *Islamic Law and Social Issues in Society* 1, no. 1 (2025): 47–61, <https://doi.org/10.64929/ilsis.v1i1.10>.

³² Liky Faisal, “PENCATATAN PERKAWINAN DALAM KONSEP NEGARA HUKUM PANCASILA,” *ASAS* 11, no. 01 (2019): 94–100, <https://doi.org/10.24042/asas.v11i01.4645>.

an institution. In this context, registration becomes a tool through which the state defines its ideal version of the family, one that is legally valid, administratively orderly and aligned with national values. In the historical trajectory of Islamic family law, the practice of marriage registration is rooted in Qur'anic values, particularly those emphasizing the importance of documentation and evidence in social transactions with legal consequences. For instance, Surah Al-Baqarah, verse 282, encourages the recording of debt transactions to ensure clarity of rights and obligations. Although this verse does not explicitly address marriage registration, the underlying principle—namely, transparency and the protection of individual rights in social relations—reflects a spirit that is highly relevant to the modern marriage registration context.³³

The application of this normative religious principle is especially significant within a national legal structure that guarantees legal certainty, protection for women and children, and the validity of family legal status in society. In the Indonesian context, where Islamic law is recognized as part of the national legal system, marriage registration is not merely an administrative mechanism but also an actualization of Sharia values that uphold justice and order. Accordingly, the theological roots of documentation in the Qur'an remain relevant and provide ethical justification for state regulation in the modern governance of family institutions. Thus, marriage registration can be understood as a point of convergence between Islamic law, state law, and the dynamics of society. This reflects the state's efforts to harmonize religious values with the principles of modern law while simultaneously serving as an arena of contestation among various ideological interests within society.

Conclusion

This article concludes that marriage registration in contemporary Islamic family law should not be understood merely as an administrative requirement but rather as a legal-political arena in which state authority, religious norms, and social realities intersect. Through a socio-legal and legal-political approach, this study demonstrates that compulsory registration represents a form of state intervention aimed at ensuring legal certainty, rights protection, and social order, while simultaneously generating dynamics of power, exclusion, and social resistance.

³³ Maulidia Mulyani, "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance," *Legitima: Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 1–12, <https://doi.org/10.33367/legitima.v6i2.5354>.

By integrating representation-reinforcing theory, historical sociological jurisprudence, and the contextual conception of legal politics, this study makes a theoretical contribution to Islamic family law scholarship. This shows that marriage registration serves a dual function: legitimizing state authority in family regulation and enhancing the representation of public interests, particularly those of women and children. However, the analysis also reveals that the realization of these objectives is contingent upon administrative capacity, equitable access to legal services, and regulatory sensitivity to religious and social pluralism in Indonesia.

The findings further indicate that overly affirmative regulatory approaches risk obscuring structural problems, including unequal access to registration, the marginalization of vulnerable groups, and excessive reliance on ex post judicial mechanisms such as marriage validation (*itsbat nikah*) to remedy administrative shortcomings. In this regard, marriage registration should be evaluated not only in terms of formal legality but also as a measure of substantive justice within Islamic family law governance.

From a policy perspective, this study recommends that the legal politics of marriage registration move toward a more inclusive and reflexive model by strengthening administrative services, enhancing public legal literacy, and consistently incorporating gender justice and child rights considerations. Future reforms of Islamic family law must strike a balance between formal legal certainty and meaningful social protection for women. This study is limited by its conceptual and analytical nature and the lack of extensive empirical field data. Future research should integrate legal-political analysis with empirical investigations into registration practices, social resistance, and the lived experiences of marginalized communities to deepen the understanding of the social impact and effectiveness of marriage registration regimes in contemporary Muslim societies.

Declarations

Author contribution statement

M. S. was responsible for conceptualizing the research idea, developing the theoretical and analytical framework, and drafting the main manuscript. N. K. contributed to the collection and analysis of primary and secondary legal materials, particularly in the field of Islamic family law and legal politics. A.RM and M.HM contributed to strengthening the socio-legal analysis, reviewing international literature, and refining the results and discussion sections. All authors participated in the critical review, substantive revisions, and approved the final version of the manuscript for publication.

Funding statement

This research did not receive any specific grants from any funding agencies in the public, commercial, or not-for-profit sectors.

Data availability statement

The data supporting the findings of this study consist of primary legal materials, scholarly literature, and publicly available documents from the Internet. All data were qualitatively analyzed and are accessible through the sources cited. No specific datasets were generated or deposited in public repositories for this study.

Declaration of interests statement

The authors declare that they have no known competing financial interests or personal relationships that could have influenced or be perceived to have influenced the work reported in this paper.

Additional information

This article is derived from an independent conceptual and socio-legal study of Islamic family law. All views and analyses expressed in this manuscript are solely those of the authors and do not necessarily reflect the official positions of the affiliated institutions.

References

- Afrilian, Andre, Khairul Khairul Akmal, and Muhammad Akmalul Rizal. "Eksistensi Hukum Pencatatan Perkawinan Dalam Reformasi Hukum Keluarga Di Dunia Islam." *Al-Syakhsyiyah: Journal of Law & Family Studies* 6, no. 1 (2024). <https://doi.org/10.21154/syakhsyiyah.v6i1.6337>.
- Al-Ghazi, Muhammad bin Qasim. *Fath Al-Qarib al-Mujib Fi Sharh Alfāz al-Taqrīb*. Kesatu. Dar ibn Hazm, 2005. <https://www.pecintaulama.id/2016/09/download-fathul-qarib-al-mujib.html>.
- Asman, Asman. "MARGINALISASI PEREMPUAN DALAM PROBLEMATIKA LEGALITAS NIKAH SIRI DI INDONESIA." *Al-Masblabah Jurnal Hukum Islam dan Pranata Sosial* 12, no. 02 (2024). <https://doi.org/10.30868/am.v12i02.7457>.
- Azizi, Jumain, and Muzawir Muzawir. "REFORMASI HUKUM PERKAWINAN: "PENCATATAN PERKAWINAN DI BERBAGAI NEGARA MUSLIM." *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 3, no. 1 (2023): 97–116. <https://doi.org/10.59259/jd.v3i1.51>.
- Azzahra, Nadya Alvina. "Pembatalan Status Perkawinan Karena Pemalsuan Berkas Ditinjau Dari Perspektif Hukum Islam Dan Hukum Positif (Analisis Putusan Pengadilan Agama Makassar Nomor 558/Pdt.G/2021/PA.Mks)." Skripsi, UIN Syarif Hidayatullah Jakarta, 2022.

<https://repository.uinjkt.ac.id/dspace/bitstream/123456789/65699/1/NADYA%20ALVINA%20AZZAHRA%20-%20FSH.pdf>.

- Banakar, Reza, and Max Travers. *Theory and Method in Socio-Legal Research*. Eds. Hart Publishing, 2005.
- Darna, Andi. “Perkembangan Hukum Islam Di Indonesia: Konsep Fiqih Sosial Dan Implementasinya Dalam Hukum Keluarga.” *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021): 90–107. <https://doi.org/10.22373/ujhk.v4i1.8780>.
- Ely, John Hart. *Democracy and Distrust: A Theory of Judicial Review*. Harvard University Press, 1980.
- Enggarsasi, Umi, Nur Khalimatus Sa’diyah, and Muhammad Dhany Reformasi. “Legal Protection for Children Born Out of Wedlock: An Islamic Justice Perspective.” *Lex Publica* 11, no. 1 (2024): 139–60. <https://doi.org/10.58829/lp.11.1.2024.260>.
- Faisal, Liky. “PENCATATAN PERKAWINAN DALAM KONSEP NEGARA HUKUM PANCASILA.” *ASAS* 11, no. 01 (2019): 94–100. <https://doi.org/10.24042/asas.v11i01.4645>.
- Fauzi, Muhammad Latif. “ADMINISTRATIVE TRANSGRESSION AND JUDICIAL DISCRETION FOR THE SAKE OF CITIZENS’ RIGHTS: The Legalisation of Unregistered Marriages in Indonesia.” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 211–31. <https://doi.org/10.14421/ahwal.2023.16202>.
- Fitra, Tasnim Rahman, Noratinah Binti Yusof, and Anwar M. Radiamoda. “Sanctions and Legal Compliance in Marriage Registration: A Comparative Implementation of Islamic Family Law in Indonesia and Malaysia.” *Islamic Law and Social Issues in Society* 1, no. 1 (2025): 47–61. <https://doi.org/10.64929/ilsis.v1i1.10>.
- Gunawan, Edi. “NIKAH SIRI DAN AKIBAT HUKUMNYA MENURUT UU PERKAWINAN.” *Jurnal Ilmiah Al-Syir’ah* 11, no. 1 (2013). <https://doi.org/10.30984/as.v11i1.163>.
- Hanapi, Agustin, and Edy Yuhermansyah. “Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 528–44. <https://doi.org/10.22373/sjhg.v4i2.7942>.
- Irianto, Soelistyowati. *Hukum Yang Membela: Konsep Dan Praktik Hukum Progresif*. Epistema Institute, 2012.
- Ishak, Ajub. “Ciri-Ciri Pendekatan Sosiologis Dan Sejarah Dalam Mengkaji Hukum Islam.” *Al-Mizan (e-Journal)* 9, no. 1 (2013): 62–76.

- Jamal, Ridwan, Misbahul Munir Makka, and Nor Annisa Rahmatillah. "Pencatatan Nikah di Kantor Urusan Agama sebagai Fakta Hukum Perkawinan Masyarakat Muslim." *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 2 (2022): 111. <https://doi.org/10.30984/ajifl.v2i2.2132>.
- Kamila, Maulida Zahra. "Dinamika Politik dalam Penyusunan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Al-Ahwal Al-Syakhsyiah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, no. 2 (2022): 207–20. <https://doi.org/10.15575/as.v3i2.13542>.
- Khitam, Husnul. "PENCATATAN PERKAWINAN: SUATU ANALISIS SEJARAH SOSIAL." *ISLAMITSCH FAMILIERECHT JOURNAL* 3, no. 02 (2022): 170–78. <https://doi.org/10.32923/ifj.v3i02.2757>.
- Mahfud MD, Moh. *Politik Hukum Di Indonesia*. Rajawali Pers, 2014.
- Masyithoh, Novita Dewi, Maksun, Suteki, and Muhammad Akmal Habib. "Sacralism of Customary Law in Marriage: Local and National Legal Contestation in Indonesia." *Walisongo Law Review (Walrev)* 6, no. 1 (2024): 42–55. <https://doi.org/10.21580/walrev.2024.6.1.22670>.
- Maulidia Mulyani. "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance." *Legitima: Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 1–12. <https://doi.org/10.33367/legitima.v6i2.5354>.
- Rahman, Fadhly Kharisma. "Marriage Registration As a Form Of Maṣlaḥah Mursalah." *MAQASID: Jurnal Studi Hukum Islam* 12, no. 2 (2023): 33–45.
- Ridwan, Syawal. "Pernikahan tanpa Pencatatan: Kegagalan Negara dalam Melindungi Hak Sipil Perempuan dan Anak." *JURNAL ILMIAH GEMA PERENCANA* 4, no. 1 (2025): 77–96. <https://doi.org/10.61860/jigp.v4i1.196>.
- Savigny, Friedrich Carl von. *Of the Vocation of Our Age for Legislation and Jurisprudence* (A. Hayward, Trans.). Littlewood & Co. (Original work published 1814), 1865.
- Sidik, Parid. "Pendekatan Normatif Sebagai Metodologi Penelitian Hukum Islam." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (2023): 1010–22. <https://doi.org/10.47467/as.v5i3.3843>.
- Soraya, Wiranda, Bukhari Ali, and Muhammad Husnul. "Legal Protection of Women and Children in the Practice of Nikah Sirri (Unregistered Marriage)." *Al-Rasikh: Jurnal Hukum Islam* 14, no. 2 (2025): 271–86. <https://doi.org/10.38073/rasikh.3323>.

- Syafitri, Isdiana, Deliani Deliani, and Yusriana Yusriana. "DAMPAK NIKAH SIRI DAN AKIBAT HUKUMNYA DI MASYARAKAT MENURUT UU PERKAWINAN." *Jurnal Pengabdian Kontribusi Unhamzah* 1, no. 2 (2022): 37–44.
- Winarni, Tri, Akhmad Nadirin, and Ismail Ismail. "Pencatatan Perkawinan Sebagai Upaya Perlindungan Terhadap Perempuan dan Anak (Studi Kasus di Kantor Urusan Agama Kecamatan Weru)." *Mahkamah: Jurnal Kajian Hukum Islam* 8, no. 2 (2023): 245. <https://doi.org/10.24235/mahkamah.v8i2.15786>.
- Yuda, Yossef, and Yufrizal Yufrizal. "Marriage Registration and Its Legal Implications: A Case Study in South Coast Regency." *Jurnal Kajian Dan Pengembangan Umat* 8, no. 2 (2025): 160–71. <https://doi.org/10.31869/jkpu.v8i2.7388>.
- Yusmita, Yusmita. "Dinamika Pencatatan Pernikahan Di Indonesia dalam Kajian Masalah Mursalah." *Berasan: Journal of Islamic Civil Law* 2, no. 1 (2023): 33. <https://doi.org/10.29240/berasan.v2i1.7218>.
- Zalza, Afralia. "Penyidikan Terhadap Tindak Pidana Pemalsuan Dokumen Akta Nikah." Skripsi, Universitas Bosowa, 2022. <https://repository.unibos.ac.id/xmlui/bitstream/handle/123456789/2143/2022%20AFRALIA%20ZALZA%204518060060.pdf>.