RECONCILING MARRIAGE LAW AND POPULATION ADMINISTRATION LAW IN INDONESIA: THE LEGAL STATUS OF *NIKAH SIRI* AND THEIR FAMILIES

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Abstract
This article examines the normative misalignment between two Indonesian legal regimes that intersect over unregistered marriages (nikah siri): the marriage law regime, principally Law No. 1 of 1974 as amended by Law No. 16 of 2019, and the population administration regime under Law No. 24 of 2013 together with its implementing instruments, namely Minister of Home Affairs Regulation No. 9 of 2016 and Minister of Home Affairs Regulation No. 109 of 2019. The study asks two questions. First, how do these two regimes currently treat marriages that are religiously valid but not officially registered, and at which specific normative points do they diverge? Second, what targeted statutory and sub-statutory adjustments are required in order to align the marriage law regime with the documentary inclusivity already achieved within the population administration regime? The study employs a doctrinal legal method, supplemented by two key-informant interviews conducted with the Head of the Pasar Minggu Office of Religious Affairs and the Deputy for Coordination of Quality Improvement for Children, Women, and Youth at the Coordinating Ministry for Human Development and Culture. The interviews are used to illustrate institutional understandings of the two regimes rather than as a basis for empirical generalisation. The study finds that the two regimes operate on distinct regulatory objects: marriage law governs the formal validity and documentary proof of marriage, while population administration law governs the documentation of population events. The relationship between them is therefore best characterised as a partial normative misalignment rather than as a direct doctrinal conflict. On that basis, the article proposes a limited and operational adjustment, focused on three points: the textual separation of religious validity and administrative registration within Article 2 of Law No. 1/1974; the revision of Article 43 of Law No. 1/1974 and Article 100 of the Compilation of Islamic Law in line with Constitutional Court Decision No. 46/PUU-VIII/2010; and the inter-ministerial coordination of the SPTJM mechanism with the implementing regulations of the Marriage Law.
Keywords: Unregistered Marriage, Nikah Siri, Marriage Registration, Population Administration, Legal Protection of the Family.

Abstrak
Artikel ini mengkaji ketidakselarasan normatif antara dua rezim hukum di Indonesia yang berpotongan dalam isu perkawinan tidak tercatat (nikah siri), yaitu rezim hukum perkawinan berdasarkan Undang-Undang Nomor 1 Tahun 1974 sebagaimana telah diubah dengan Undang-Undang Nomor 16 Tahun 2019,

dan rezim hukum administrasi kependudukan berdasarkan Undang-Undang Nomor 24 Tahun 2013 beserta instrumen pelaksananya, khususnya Peraturan Menteri Dalam Negeri Nomor 9 Tahun 2016 dan Peraturan Menteri Dalam Negeri Nomor 109 Tahun 2019. Penelitian ini mengajukan dua pertanyaan. Pertama, bagaimana kedua rezim hukum tersebut memperlakukan perkawinan yang sah secara agama namun tidak tercatat, dan pada titik normatif mana keduanya berbeda? Kedua, penyesuaian terbatas apa yang diperlukan pada tataran undang-undang dan peraturan pelaksana agar rezim hukum perkawinan selaras dengan inklusivitas dokumentasi yang telah dicapai oleh rezim administrasi kependudukan? Penelitian menggunakan metode penelitian hukum doktrinal yang ditopang oleh dua wawancara key informant. Penelitian menemukan bahwa kedua rezim bekerja atas objek pengaturan yang berbeda, sehingga hubungan keduanya lebih tepat dipahami sebagai ketidakselarasan normatif yang bersifat parsial, bukan sebagai konflik doktrinal langsung. Atas dasar tersebut, artikel ini mengusulkan penyesuaian terbatas yang difokuskan pada tiga titik: pemisahan tekstual antara keabsahan religius dan pencatatan administratif dalam Pasal 2 Undang-Undang Nomor 1 Tahun 1974; perubahan Pasal 43 Undang-Undang Nomor 1 Tahun 1974 dan Pasal 100 Kompilasi Hukum Islam sejalan dengan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010; serta koordinasi lintas kementerian antara mekanisme SPTJM dan peraturan pelaksana Undang-Undang Perkawinan.
Kata Kunci: *Perkawinan Tidak Tercatat, Nikah Siri, Pencatatan Perkawinan, Administrasi Kependudukan, Perlindungan Hukum Keluarga.*

A. INTRODUCTION

In Indonesia, a substantial number of marriages are concluded in accordance with the requirements of Islamic law but are never registered with the Office of Religious Affairs (*Kantor Urusan Agama*). These marriages, conventionally referred to as *nikah siri*, fall outside the registration regime established by Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019 (Marriage Law). The legal difficulty they produce is specific rather than diffuse. Although the marriage itself satisfies the religious requirements recognised under Article 2(1) of the Marriage Law, the absence of registration under Article 2(2) prevents the couple from obtaining the marriage certificate that subsequent state services treat as the principal evidence of marital status. As a result, the couple — and, more acutely, any children born from such a union — must navigate a population administration regime that has gradually moved toward documenting their existence, while the Marriage Law itself has not been adjusted to accommodate them.

Legal materials engaged by this problem are identifiable with precision. At the constitutional level, Article 28D(1) of the 1945 Constitution guarantees every person the right to recognition, security, protection, and certainty before a just law, while Article 28B(2) guarantees every child the right to survival, growth, development, and protection from violence and discrimination. At the level of ordinary legislation, Article 2 of Marriage Law governs both the religious validity and the registration of marriage, and Article 43 of the same law governs the civil relationship of children born outside a registered marriage to their parents. Constitutional Court Decision No. 46/PUU-VIII/2010 has read Article 43 in conjunction with Article 28B(2) and recognised the civil relationship between a child and his or her biological father where that relationship is established by scientific evidence. At the level of population administration, Article 56 of Law No. 24 of 2013 amending Law No. 23 of 2006 obliges the state to record population events, and this obligation has been operationalised through Minister of Home Affairs Regulation No. 9 of 2016 — which introduces the Statement of Absolute Responsibility (SPTJM) — and Minister of Home Affairs Regulation No. 109 of 2019, which formally recognises the category of "married but not yet registered" (kawin belum tercatat) on the Family Card.

Constitutional obligation has been progressively operationalised through three specific instruments. First, Minister of Home Affairs Regulation No. 9 of 2016 concerning the Acceleration of Birth Certificate Coverage permits the use of a Statement of Absolute Responsibility (*Surat Pernyataan Tanggung Jawab Mutlak, SPTJM*) in place of a marriage certificate when a child's birth is registered. Second, Minister of Home Affairs Regulation No. 109 of 2019 concerning Forms and Books Used in Population Administration permits the recording of marital status as "married but not yet registered" (kawin belum tercatat) on the Family Card. Third, Presidential Regulation No. 96 of 2018 consolidates these arrangements within the population administration framework. Taken together, these instruments document the existence of the family unit without yet

conferring the full civil consequences that attach to a formally registered marriage.

What persists between the two regimes is more accurately described as a partial normative misalignment than as a direct doctrinal conflict. The Marriage Law regulates the formal validity of marriage and the documentary proof required for it to produce full civil effects, while the Population Administration Law regulates the documentation of population events and the protection of the civil identity of every resident. The two regimes therefore pursue overlapping but distinct regulatory objects. The misalignment arises because the population administration regime has, since 2016, accommodated the administrative reality of unregistered marriages, while the Marriage Law has retained an unmodified registration requirement under Article 2(2) of Marriage LAw. The result is not that one regime invalidates what the other recognises, but that the two regimes recognise different aspects of the same family unit to different degrees.

Order of magnitude of the problem is significant. According to figures publicly disclosed in 2025 by the Coordinating Ministry for Human Development and Culture, approximately 34.6 million married couples in Indonesia do not hold a marriage certificate issued through the formal registration regime.[1] The figure should be read with care, as it does not yet distinguish between couples whose marriages are not registered at all, couples whose marriages were solemnised at an Office of Religious Affairs but whose documents have not been linked to the population administration system, and couples whose original documents have been lost. Even on the narrowest reading, however, the magnitude is sufficient to make the alignment between the two regimes a question of practical as well as doctrinal significance, particularly for the children of these unions whose access to public services is mediated by the documents that the state issues on their behalf.

[1] Dede Leni Mardianti, "Hampir 35 Juta Pasangan Suami-Istri Belum Punya Akta Nikah," Tempo.com, 2025, http://tempo.co/politik/hampir-35-juta-pasangan-suami-istri-belum-punya-akta-nikah-1755634.

tudies in this stream locate the Indonesian experience within wider regional patterns of Islamic family law codification. Fajar, Karmawan and Yunus (2025) demonstrate that legal politics dominates the formation of Islamic-based marriage law and trace contrasting trajectories between the Middle East — where classical fiqh concepts remain influential — and Southeast Asia, where codification and harmonisation with national systems have advanced further. Aminah and Sugitanata (2022) complement this comparative perspective through their study of Malaysian Islamic marriage law. Hanafi (2024) and Aziz (2024) extend the discussion to the legal-political background of Indonesian marriage law and the Compilation of Islamic Law. The strength of this stream lies in its account of the political conditions of codification; its limitation, for present purposes, is that it does not closely engage with the domestic administrative architecture through which codified norms are operationalised at the level of population administration.

Studies in this stream examine the validity of nikah siri within Islamic legal reasoning and its consequences for spouses, children, and inheritance. Erkoc Baydar (2023) offers a critique of secret marriage from within Islamic law itself, focusing on the denied rights of women. Andri (2020) analyses the implications of isbat nikah for the status of wives, children, and matrimonial property in unregistered marriages. Susilo (2021) compares the position of legitimate children and children of nikah siri under inheritance law. Firdaus and Maskur (2024) examine nikah siri from the perspective of Islamic law and Indonesian positive law. This stream has developed the internal doctrinal critique of nikah siri with considerable depth, but its engagement with the population administration regime remains limited.

Studies in this stream examine how registration operates, fails, or is circumvented in practice. Wirastri and Van Huis (2024) provide an extensive doctrinal-empirical assessment of fifty years of statutory and judicial reforms of the Marriage Law. Farihi (2023) examines nikah siri specifically through the dual lens of Islamic law and population administration. Wahib, Hayat and Awang

(2025) examine unregistered marriages among Indonesian migrant workers in Sabah, where state involvement is structurally absent. Miqat et al. (2023) discuss the contemporary development of Indonesian marriage law within the population administration framework. This stream supplies rich empirical material on the operation of registration, but its engagement with the constitutional protection of civil identity remains uneven across the literature.

The present article positions itself at the intersection of the second and third streams. It accepts the doctrinal proposition, drawn from the second stream, that registration is not, in classical Islamic legal reasoning, a pillar (*rukn*) of marriage validity. It also accepts the socio-legal proposition, drawn from the third stream, that registration nevertheless performs an indispensable protective function in the modern administrative state. The contribution of this article is to show how those two propositions can be reconciled within Indonesian positive law, through a calibrated alignment of Article 2 and Article 43 of Law No. 1/1974 with the population administration regime, without overstating the doctrinal conflict between the two regimes.

The study is primarily doctrinal in character. It analyses the relevant Indonesian legal materials identified above, read together with the leading jurisprudence of the Constitutional Court. The doctrinal analysis is supplemented by two key-informant interviews with officials whose institutional positions are directly relevant to the operation of these regimes: the Head of the Pasar Minggu Office of Religious Affairs in South Jakarta, who applies the marriage registration regime on a daily basis, and the Deputy for Coordination of Quality Improvement for Children, Women, and Youth at the Coordinating Ministry for Human Development and Culture, who supervises the policy coordination of the protection regime. The two informants were selected purposively for their distinct institutional positions, and the interviews are used in a strictly limited capacity: to illustrate how each regime is institutionally understood by the officials who apply it, and to surface points of tension that are not visible in the

regulatory text alone. The interviews are not relied upon to generalise empirically across the national population.

On the basis of the problem so framed, the article addresses two research questions. First, how do the Indonesian marriage law regime and the population administration regime currently treat the marital and parental status of couples and children in unregistered marriages, and at which specific normative points do these two regimes diverge? Second, what targeted statutory and sub-statutory adjustments are required within the Marriage Law and the Compilation of Islamic Law in order to align them with the documentary inclusivity already achieved within the population administration regime, while preserving the religious character of marriage validity recognised under Article 2(1) of Law No. 1/1974? The article proceeds in two substantive sections that respond to these questions in turn, followed by a conclusion that states the findings and identifies the limits of the argument advanced here.

B. RESULTS AND DISCUSSIONS

1. The Position of Unregistered Marriages under the Marriage Law and the Population Administration Regimes

Indonesian marriage law to date remains firmly committed to the principle of monogamy, with very difficult and strict provisions for polygamous marriages.[2] Unregistered marriages in Indonesia arise from heterogeneous causes. While some are concluded in order to circumvent the strict procedural requirements for polygamy under Article 4 and Article 5 of Law No. 1 of 1974, the wider literature identifies several other recurring drivers: limited geographical or financial access to an Office of Religious Affairs, particularly in rural and remote areas; pre-marital pregnancy and the desire for a rapid religious solemnisation; limited information about the registration regime; and, in some

[2] Muhammad Rizal Firdaus and Ali Maskur, "Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Pencatatan Perkawinan Menurut Ketentuan Yang Berlaku Di Indonesia (Hukum Positif)," *Isti`dal: Jurnal Studi Hukum Islam* 2, no. 1 (2024): 52–72, https://doi.org/10.34001/ijshi.v11i1.6418.

communities, a deliberate religious choice to treat registration as superfluous to a valid Islamic marriage. The reform proposed in this article does not depend on any single causal account. It responds to the common downstream consequence shared across all of these pathways, namely the absence of a documentary bridge between a religiously valid marriage and the population administration system.[3]

Article 2 of Law No. 1 of 1974 is the doctrinal core of any analysis of unregistered marriage in Indonesia. Paragraph (1) provides that a marriage is valid if it is performed in accordance with the laws of the parties' respective religion and belief. Paragraph (2) provides that every marriage must be registered according to the prevailing regulations. The relationship between these two paragraphs has been the subject of sustained doctrinal debate, which the present article must engage in a balanced manner before advancing its own preferred reading.

Three readings can be identified in the literature. The first, the cumulative reading, treats registration under paragraph (2) as a constitutive condition of validity on a par with the religious requirements of paragraph (1); on this reading, an unregistered marriage is, for the purposes of state law, no marriage at all. The second, the additive or administrative reading, treats paragraph (1) as governing the substantive validity of the marriage and paragraph (2) as governing the administrative documentation of an already-valid marriage; on this reading, an unregistered marriage is religiously and substantively valid but lacks the documentary form required for many of its civil consequences. The third reading, developed in part through the practice of isbat nikah in the Religious Courts and reinforced by Constitutional Court Decision No. 46/PUU-VIII/2010, treats registration as a strong evidentiary requirement whose absence does not nullify the marriage but does affect the civil consequences that attach to it.

Each of these readings has doctrinal support in the Indonesian literature, and each carries different implications for the civil status of the families this

[3] Hazar Kusmayanti et al., "Contradiction Implications of the Receptie a Contrario Theory in Minangkabau Inheritance," *Justicia Islamica* 21, no. 2 (2024): 247–66, https://doi.org/10.21154/justicia.v21i2.8859.

article studies. The present article is informed by the third reading. It does so not because the first two readings are without merit, but because the third reading is the one most consistent with the constitutional jurisprudence on the position of the child and with the operational logic already accepted by the population administration regime. The argument that follows therefore proceeds on the basis of the third reading, while acknowledging that the first and second remain doctrinally available.

When Islamic marriages are not officially registered, they are often referred to by various names, such as unregistered marriages, secret marriages, or Sharia marriages.[4] In Islamic law, the most common term is *nikah sirri*. The concept of *nikah sirri* has existed among Islamic scholars since at least the time of Imam Malik bin Anas. However, its meaning has evolved over time. Historically, nikah sirri was a marriage that fulfilled all religious requirements but was not accompanied by a public celebration or official announcement. Today, the term is generally used to describe marriages that are not officially registered in the country.[5]

Before modern Islamic law, unregistered marriages were recognized because a marriage certificate was not a traditional requirement for a valid marriage. However, since the enactment of Law No. 1/1974 and the Compilation of Islamic Law in 1991, Indonesia has required the registration of marriages. The Compilation of Islamic Law stipulates in Article 5 that all Muslim marriages must be registered to ensure order. In addition, Article 6 of the Compilation of Islamic Law states that marriages that are not supervised by a Marriage Registrar (PPN) are not legally recognized.[6]

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[4] Wawan Susilo, "Kedudukan Anak Kandung Dan Anak Hasil Perkawinan Sirri Ditinjau Dari Pembagian Harta Waris Menurut Undang--Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam," *IUS: Jurnal Ilmiah Fakultas Hukum* 9, no. 01 (2021): 28–49, http://repository.upm.ac.id/id/eprint/4688.

[5] Erwinsyah Nasution and Abrar M Dawud Faza, "Penentuan Hari Baik Pernikahan Masyarakat Desa Bandar Khalifah Menurut Pandangan Islam," *Ta'wiluna: Jurnal Ilmu Al-Qur'an, Tafsir Dan Pemikiran Islam* 6, no. 1 (2025): 221–29, https://doi.org/10.58401/takwiluna.v6i1.2010.

[6] Abdul Gani Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Gema Insani, 1994).

Today, when Indonesian Muslims refer to *nikah sirri*, they are referring to marriages that follow Islamic law but are not officially registered with the government. This means that the couple does not obtain a marriage certificate from the Office of Religious Affairs (KUA), which is the only legal proof of their marriage. In legal terms, this type of marriage is often referred to as a "secret marriage" or "fraudulent marriage." During the time of the Prophet Muhammad, all marriages and divorces were brought before him, as he held the role of judge and ruler. This practice ensured that every marriage was known and managed officially, which was very important for the welfare of society.

This shows that the requirement to register a marriage is not a fundamental principle in determining the validity of a marriage. This is because if registration were indeed a measure of validity, it would have been implemented since the time of the Prophet Muhammad and his companions. This can be analogized with the obligation to record debts, which is even mentioned *in Surah al-Baqarah* verse 282: "O you who believe, if you owe a debt for a specified period, write down the debt." Scholars use this verse as the legal basis for the obligation to register/record marriages in accordance with the views of scholars who use the *Qiyas* and *Istishlah* or *Maslahat Mursalah* methods. The obligation to register marriages and make marriage certificates, in Islamic law, is a *furu'* (branch/new issue) law that is analogous to recording in mudayanah (debt) matters, which in certain situations must be recorded. This view shows that marriage registration, as regulated in Indonesian marriage law, is not a basic principle that transcends the implications of other legal actions. However, Article 6 of the Compilation of Islamic Law (KHI) emphasizes that marriages conducted outside the supervision of the Marriage Registration Officer (PPN) have no legal force.[7]

The operational understanding of registration as an administrative obligation rather than a constitutive element of marriage is reflected in the institutional practice of front-line officials. The Head of the Pasar Minggu Office of Religious Affairs, interviewed for this study, described the requirements for a

[7] M Quraish Shihab, *Tafsir Al-Misbah* (Jakarta: Lentera Hati, 2004).

valid marriage as religious and ceremonial in character, with registration entering as an additional state-imposed obligation rather than as part of the religious solemnisation itself. This account is offered here as institutional evidence of how the registration requirement is understood at the point of application within one Office of Religious Affairs in South Jakarta. It is not put forward as a basis for a national doctrinal conclusion, and it does not by itself resolve the doctrinal debate canvassed above. Its function is to demonstrate that the third reading of Article 2 — under which registration is administrative and evidential rather than constitutive — is not merely an academic position but is also reflected in the operational understanding of officials who apply the regime daily.[8]

In addition, the need for this supervision is increasingly vital. Without official registration, it is impossible to control marriage events, which can lead to chaos. For example, people can falsely claim that they have never been married or divorced. This would be very dangerous for children, as it could become difficult to prove a child's blood relationship. Official marriage registration helps prevent this by providing clear records of a person's marital status and the identity of their children's parents.[9] Changes in legal policy in population administration have developed significantly, as all aspects of state services in the social, educational, health, and economic sectors use population documents as a legal basis.

From an Islamic perspective, the concept of *Maslahah Mursalah*, which focuses on public welfare as the main principle in Islamic law, has encouraged many Muslim-majority countries, including Indonesia, to create laws that require and regulate marriage registration. Marriage registration ensures legal certainty and helps protect all parties involved, including couples and their children. A marriage certificate serves as official legal proof of the marriage bond. This is

[8] Research Team, *Interview with Head of the Pasar Minggu Subdistrict Religious Affairs Office* (Jakarta, 2026).

[9] Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia: Studi Kritis Perkembangan Hukum Islam Dari Fikih, Undang-Undang Nomor 1 Tahun 1974 Sampai Kompilasi Hukum Islam* (Jakarta: Kencana, 2019).

important for resolving disputes, enforcing spousal responsibilities, or seeking legal protection from the state. Registration also protects women's rights to care, clarifies the relationship between parents and children, and simplifies inheritance matters. However, Islamic legal objectives should not be applied discriminatorily only to registered marriages, as unregistered marriages also require the same benefits as families in registered marriages. Therefore, in traditional Islamic law, the concept of marriage registration does not exist. Classical texts on Islamic jurisprudence do not mention it as a condition for the validity of marriage. Instead, a marriage is considered valid based on whether it fulfills the essential requirements and pillars of Islamic law. Therefore, unregistered marriages are a modern legal issue, as the practice of issuing marriage certificates is not included in classical Islamic jurisprudence.[10]

Indonesia requires the registration of marriages through Marriage Law No. 1 of 1974. Similarly, the Compilation of Islamic Law requires every Muslim marriage to be registered to ensure order.[11] Chapter 6 of the Compilation of Islamic Law further states that marriages not supervised by a Marriage Registration Officer (PPN) are not legally recognized.[12] This makes marriage registration a basic principle of Indonesian marriage law.[13] However, the dynamics of changing family law issues have not been matched by the changes expected by the community. Since its enactment, more than half a century of changes have only covered one aspect of marriage law. The enactment of Law No. 16 of 2019 only regulates the adjustment of the minimum age for marriage to 19 years for both men and women, replacing the previous provision that set

[10] Aisyah Arsyad, "Menuju Fikih Gender: Analisis Hadis Tentang Perintah Mengumumkan Pernikahan," *Tahdis* 8, no. 1 (2017): 133–53, https://doi.org/10.24252/tahdis.v8i2.7223.

[11] Abdul Aziz, "Characteristics of The Compilation of Islamic Law In Indonesia: A Study of Marriage Law From The Perspective of Political Law," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 4 (2024): 1882–1903, https://doi.org/10.62976/ijijel.v2i4.731.

[12] Nur Saniah, Nawir Yuslem, and Hasan Matsum, "Analysis of Maqashid Shar'ia on Substitute Heir in Compilation of Islamic Law (KHI)," *Al-'Adalah* 20, no. 1 (2023): 35–60, https://doi.org/10.24042/adalah.v20i1.16062.

[13] Syawaluddin Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 68–85, https://doi.org/10.32505/qadha.v11i1.8867.

different age limits for men and women. This change only responds to the legal basis for parents requesting marriage dispensation for urgent reasons and emphasizes efforts to prevent early marriage.[14]

This is also reinforced by the statement made by the Head of the Pasar Minggu Subdistrict Religious Affairs Office (KUA Pasar Minggu, South Jakarta), H. Daud Damsyik, S.Ag., M.A., during an interview. He said that marriage registration is important to protect the rights and dignity of couples. In addition, marriage registration provides legal protection for women and children born after the marriage is registered. He added that unregistered marriages become a problem for children in relation to inheritance and custody rights in the event of a divorce. The guarantee of rights from a registered marriage is legal certainty regarding the settlement of child custody rights. If the marriage is not registered, the rights of the child become vulnerable and there is a fear that undesirable things will happen, such as neglect and child abandonment.[15]

These two propositions can be held together coherently, and indeed the present article depends on holding them together. The first proposition — that registration is not, in classical Islamic legal reasoning, a pillar (rukn) of marriage validity — is a statement about the internal architecture of Islamic family law. The second proposition — that registration performs an indispensable protective function for women, for children, and for the orderly determination of civil consequences such as inheritance and custody — is a statement about the modern administrative state. The two propositions belong to different normative registers, and a sound legal reconstruction must respect both. The argument advanced here is therefore not that registration should be displaced, but that its function should be correctly classified. Registration is administrative in its constitutive status and protective in its practical effect. Treating it as administrative does not weaken its protective force; it merely identifies the

[14] Asrul Hamid and Defel Fakhyadi, "Legal Consequences of Children Outside of Marriage After Constitutional Court Decision Number 46/PUU-VIII/2010," *JCH (Jurnal Cendekia Hukum)* 7, no. 2 (2022): 181–92, https://doi.org/10.3376/jch.v7i2.465.

[15] Research Team, *Interview with Head of the Pasar Minggu Subdistrict Religious Affairs Office*.

correct doctrinal place from which that protective force operates. The reform proposed in Section III follows from precisely this distinction.

The main legal question surrounding marriage registration is what the registration actually means. In Indonesia, Law No. 1/1974 explains this by considering marriage registration to be an important administrative act, similar to birth or death registration. This is where the crucial factor in the reconstruction of Islamic family law becomes very important. To the extent that the present analysis suggests an orientation toward the protection of the family unit as well as toward the formal validity of the marriage event, that orientation has three operational implications within the existing legal framework, each of which is developed in Section III below. First, Article 2 of Law No. 1 of 1974 should be textually clarified so that paragraph (1) is identified as the provision governing the religious validity of marriage and a separate provision is introduced to govern the administrative obligation of registration; this removes the cumulative reading that currently produces uncertainty. Second, Article 43 of Law No. 1 of 1974, as informed by Constitutional Court Decision No. 46/PUU-VIII/2010, should be amended to confirm the civil relationship between a child and his or her biological father where that relationship is scientifically established, regardless of whether the parents' marriage was registered; Article 100 of the Compilation of Islamic Law should be aligned accordingly. Third, the SPTJM mechanism under Permendagri No. 9 of 2016 should be retained as an administrative pathway and explicitly cross-referenced within the implementing regulations of the Marriage Law. These three adjustments together constitute what this article means when it refers to a family-oriented reconstruction. The expression is therefore not a slogan but a label for a specific set of textual interventions. Placing marriage registration as a fundamental aspect would conflict with the basic interest of realizing a family that enjoys legal protection

from the state for all matters regulated by other laws, including population administration.[16]

Based on this law, registration does not make a marriage valid. The validity of a marriage is determined by the religious requirements of the couple.[17] However, the law makes marriage registration a clear administrative obligation. In short, although registration does not validate the marriage itself, it is a legal obligation that must be fulfilled. Therefore, the basic principle of marriage validity as stipulated in Article 2 paragraph 1 of the Law No. 1/1974 must be able to accommodate the interests of both registered and unregistered marriages. Therefore, the norm in paragraph 2 must be separated into another article that does not conflict with the norm in Article 2 of the Law No. 1/1974.

Although the validity of a marriage is determined by religious principles, the state's requirement to register it is an administrative obligation.[18] This obligation is rooted in the government's duty to protect the human rights of its citizens by ensuring their safety and welfare. When the norm in paragraph 1 becomes the main basis for determining the validity of a marriage, marriage registration becomes a complement that does not negate the validity of Article 2 paragraph 1, as is currently the case. When this basic principle changes, the norm in paragraph 1 disappears and appears to be a legal norm that has been separated from the substance of marriage law.[19]

In addition to internal conflicts between legal norms and regulations, placing marriage registration as a basic principle will lead marriage law.[20] Where

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[16] Siti Aminah and Arif Sugitanata, "Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia," *J. Islamic L.* 3 (2022): 94–110, https://doi.org/10.24260/jil.v3i1.556.

[17] Tuba Erkoc Baydar, "A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective," *Religions* 14, no. 4 (2023): 1–15, https://doi.org/10.3390/rel14040463.

[18] Ade Ulfa Amin, Syafruddin Syam, and Imam Yazid, "Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia," *Journal of World Science* 2, no. 8 (2023): 1268–79, https://doi.org/10.58344/jws.v2i8.410.

[19] Aziz, "Characteristics of The Compilation of Islamic Law In Indonesia: A Study of Marriage Law From The Perspective of Political Law."

[20] Fathol Hedi, Abdul Ghofur Anshori, and Harun Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (2025): 263–76, https://doi.org/10.20956/halrev.v3i3.1297.

the absence of marriage registration is treated as a ground for denying a child the civil relationship with his or her biological father, the resulting position can be examined against three constitutional standards. First, against Article 28B paragraph (2) of the 1945 Constitution, which guarantees the right of every child to protection from discrimination. Second, against Article 28D paragraph (1), which guarantees recognition, security, protection, and certainty before a just law. Third, against the reasoning of the Constitutional Court in Decision No. 46/PUU-VIII/2010, which read Article 43 of Law No. 1 of 1974 in conjunction with Article 28B paragraph (2) and concluded that a child has a civil relationship with his or her biological father where that relationship is established by scientific evidence. On any of these three standards, the question is not whether the Marriage Law itself is unconstitutional, but whether a particular reading of it — one that denies civil effects to the child of an unregistered marriage — would survive constitutional review. The argument of this article is that the more defensible reading, on each of the three standards above, is the reading that aligns with the Constitutional Court's reasoning in Decision No. 46/PUU-VIII/2010. The norm of marriage registration will conflict with the 1945 Constitution, which serves to protect the rights and freedoms of all parties involved. This ensures that important events in life, which have significant legal consequences, are officially documented with valid deeds. This enables the state to provide essential services and protections, such as inheritance, child custody, and others, effectively and efficiently.[21]

Having an official marriage certificate is very important because it provides irrefutable evidence of the marriage bond. This eliminates the need for lengthy, costly, and stressful verification processes, such as legally proving the relationship between parents and children in court, as stipulated in Article 55 of the Law No. 1/1974. Although unregistered marriages can be legally recognized

[21] Muhammad Yusman and Soffyan Angga Fahlani, "Problematika Pencatatan Perkawinan Di Indonesia: Telaah Perbandingan Pencatatan Perkawinan Di Beberapa Negara Asia Tenggara," *Banua Law Review* 4, no. 1 (2022): 184–95, https://balrev.ulm.ac.id/index.php/balrev.

through a court decision if sufficient evidence is provided, this method is far less efficient than having legal documents from the outset.[22]

According to Woro Srihastuti, Deputy for Coordination of Quality Improvement for Children, Women, and Youth at the Coordinating Ministry for Human Development and Culture, in an interview conducted by a team of researchers, she reinforced the condition regarding the inefficiency of marriage recognition that must go through a religious court. According to her, the recognition of unregistered marriages often causes inefficiency and a backlog of cases in the court. However, she strongly encourages the registration of all marriages, but the validity of marriages based on unregistered marriages can also be a solution to the inefficiency that has so far been troublesome for all parties. In addition, marriages based on *nikah sirri* also indirectly harm women if they are not made valid under the law. Thus, if the path of marriage dispensation through the courts is simplified into another path, that is more efficient and easier for women and children from such marriages.[23]

In Indonesian law, both the Law No. 1/1974 and the Compilation of Islamic Law must consider marriage registration as an administrative requirement, not a condition for the validity of the marriage. The marriage itself is considered valid if it meets the religious requirements of the couple. Therefore, even though unregistered marriages are not legally recognized by the state, the courts can validate them based on evidence. Therefore, marriage laws that deny the legal status of children born from unregistered marriages are not in line with the spirit and direction of population administration policy. Therefore, the reconstruction of Islamic marriage law should no longer be compromised in

[22] Theresia Dyah Wirastri and Stijn Cornelis Van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, https://doi.org/10.15408/ajis.v24i2.38424.

[23] Research Team, *Interview with Woro Srihastuti, Deputy for Coordination of Quality Improvement for Children, Women, and Youth at the Coordinating Ministry for Human Development and Culture* (Jakarta, 2026).

order to achieve harmonization of legal regulations and protection of the family as a constitutional right from a legal policy perspective.[24]

2. A Limited Reconstruction of the Marriage Law Regime in Alignment with the Population Administration Regime

Fundamentally, the state has a legal obligation to provide legal protection and recognition for every Indonesian citizen. State administrative services, in the form of managing the official identity that every Indonesian citizen must have, are one of the services provided by the government to the community, including the right to citizenship status. Population registration or recording is very important in efforts to regulate population administration. The development of population administration as a system is part of state governance and administration in providing legal certainty and protection for the rights of fully registered residents.[25] This is because the protection of the right to reside is part of the constitutional mandate for all children born in Indonesia, whether in registered or unregistered marriages. Even children who do not have guardians or parents are part of the community protected by the 1945 Constitution. This can be seen in the norm of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which specifically states the rights of children as part of human rights, including the phrase: "every child has the right to live, grow, and develop, as well as receive protection from violence and discrimination."[26]

The problems that arise in this technological era are increasingly complex in society, such as the unwillingness and lack of awareness of citizens to report every population event, as well as many citizens who consider that they have obtained their rights and obligations in accordance with Islamic law, which does not make registration a reference. In traditional Islamic law, the position of

[24] Muhammad Andri, "Implikasi Isbath Nikah Terhadap Status Istri, Anak Dan Harta Perkawianan Dalam Perkawinan Dibawah Tangan," *Jurnal Penegakan Hukum Indonesia (JPHI)* 1, no. 1 (2020): 59–70, https://doi.org/10.51749/JPHI.V1I1.11.

[25] M Nasir Djamil, *Anak Bukan Untuk Dihukum* (Jakarta: Sinar Grafika, 2015).

[26] Nasruddin Yusuf, Nur Azizah, and Faradila Hasan, "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts," *Al-'Adalah* 20, no. 2 (2023): 283–308, https://doi.org/10.24042/adalah.v20i2.16177.

citizens is viewed from a territorial perspective, meaning that the area where they live has a binding agreement with the Islamic government.[27]

On the other hand, in Islamic politics, population issues are not regulated as intended in current legal and political policies. The condition of Islamic government in the classical period, which was characterized by expansion and power politics, meant that the rights of the population were not the focus of state administration.[28] According to classical Islamic law (*Fiqh*), the term "protected inhabitants" refers to people, both Muslim and non-Muslim, who are given security by the local Islamic government. Conversely, "*Harbiyun*" are non-Muslims who are not under a protection agreement with Muslims. This shows a fundamental difference in population administration from an Islamic perspective and positive law in Indonesia.[29]

Classical Islamic political-legal thought organised the position of populations through categories such as dar al-Islam, dar al-harb, and the status of protected inhabitants (*ahl al-dhimmah*). These categories are not coextensive with the modern category of the citizen as it operates within Article 26 of the 1945 Constitution and within the population administration regime. The classical categories are therefore unable to do the doctrinal work that the present problem requires: the protection of the civil identity of every resident is a matter for the modern citizenship framework, not for classical *fiqh siyasah*. The classical material is registered here only to explain why a modern Indonesian solution must be sought within modern Indonesian instruments.

Within Indonesian positive law, the protection of civil identity is anchored at the level of residency rather than at the level of marital status. Article 26 of the 1945 Constitution defines residents as Indonesian citizens and foreigners

[27] Khalid Jindan and Masrohin, *Teori Politik Islam: Telaah Kritis Ibnu Taimiyah Tentang Pemerintahan Islam* (Surabaya: Risalah Gusti, 1995).

[28] Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia."

[29] Ahmad Muhtadi Anshor, "Dar Al-Islam, Dar Al-Harb, Dar Al-Shulh Kajian Fikih Siyasah," *Episteme* 8, no. 1 (2013): 53–68, https://doi.org/10.21274/epis.2013.8.1.53-68.

lawfully present in Indonesia.[30] The catalogue of fundamental rights and obligations that attaches to that status, in Articles 27 through 34, includes the right to recognition before the law. The population administration regime, in giving operational effect to these provisions, registers individuals as bearers of these rights independently of the registration status of their parents' marriage. This is the structural reason that the SPTJM mechanism is able to deliver a birth certificate even where a marriage certificate is unavailable: the constitutional protection attaches to the individual, not to the formal status of the marital union from which the individual emerged. The reform proposed in this article aligns the Marriage Law with that already-operative constitutional logic; it does not invent it.[31]

Furthermore, in order to be recognized and protected by the state as a citizen, a person needs official documents. Population administration is the process that handles this by organizing population data and issuing official records. This system, which includes population registration and civil registration, ensures that the government can utilize this data for public services and national development. Therefore, in this case, population administration is more a form of government management in realizing the principle of legality for citizens who have basic rights as residents of Indonesia.

Population administration in Indonesia includes the registration of personal data, information about vulnerable populations, and important life events.[32] These events must be reported to government agencies authorized to issue official documents such as Family Cards (KK) and Identity Cards (KTP).

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[30] Endang Sumiarni, "Historical Study of Marriage Law Between the Norms and the Problematics," *Revista de Gestão Social e Ambiental* 18, no. 5 (2024): 1–19, https://doi.org/10.24857/rgsa.v18n5-012.

[31] Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (2023): 152–72, https://doi.org/10.37035/ajh.v19i2.9551.

[32] Ahmad Fauzi, Anis Mashdurohatun Gunarto, and Anis Mashdurohatun, "Legal Reconstruction of Reasons for Divorce in Islamic Marriage Law in Indonesia Based on Justice Values," *Sch Int J Law Crime Justice* 7, no. 5 (2024): 173–78, https://doi.org/10.36348/sijlcj.2024.v07i05.002.

Population documents are a state obligation issued to guarantee protection for citizens in relation to all rights regulated in the constitution.[33]

To fulfill legal aspects, various procedures for this are regulated in Law No. 23/2006. This law requires every resident to report important life events that affect their official records. These life events include major changes such as birth, death, marriage and divorce, adoption or recognition of children, change of name or citizenship status, and change of residence or address.[34] By reporting these events, citizens ensure that their official documents are accurate and up to date. Various population events and data changes apply equally to residents with or without registered marital status. Therefore, in principle, there should be no discrimination of any kind against any resident, as all residents are essentially equal before the government and the law.

The first component is a textual clarification of Article 2 of Law No. 1 of 1974. The cumulative reading of paragraph (1) and paragraph (2) is the principal source of the doctrinal uncertainty surrounding unregistered marriages. The proposed clarification is to leave paragraph (1) intact as the provision governing the religious validity of marriage, and to relocate the registration requirement to a new free-standing provision, here referred to as Article 2A, dedicated to the administrative obligation. The new provision should state that every marriage must be registered with the competent authority, and that the legal consequences of non-registration are limited to evidential and administrative effects on the civil consequences of the marriage. The structural effect of this clarification is to remove the cumulative reading from the text itself, without altering the substantive religious validity of marriage and without removing the duty to register.

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[33] Anthin Lathifah, Briliyan Ernawati, and Anwar Masduki, "Problems with the Islamic Legal System Regarding Child Marriages in Indonesia during the Covid-19 Pandemic Period," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 155–76, https://doi.org/10.18326/ijtihad.v22i2.155-176.

[34] Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (2023): 54–66, https://doi.org/10.18860/j-fsh.v15i1.17461.

The second component is the revision of Article 43 of Law No. 1 of 1974 and Article 100 of the Compilation of Islamic Law in line with Constitutional Court Decision No. 46/PUU-VIII/2010. Article 43 should be redrafted to provide that a child has a civil relationship with his or her mother and with any man who can be proven, on the basis of scientific evidence or other admissible evidence, to be the child's biological father, regardless of whether the parents' marriage was registered. Article 100 of the Compilation of Islamic Law should be aligned with the revised Article 43, so that the substantive position of the child within the Muslim civil framework matches the constitutional position. This component does not require any new institutional design: it requires only the textual updating of two existing provisions to reflect jurisprudence that has already been settled by the Constitutional Court

The third component is the inter-ministerial coordination of the documentary pathway already opened by the population administration regime. Minister of Home Affairs Regulation No. 9 of 2016 permits the use of the SPTJM in place of a marriage certificate when registering a child's birth, and Minister of Home Affairs Regulation No. 109 of 2019 recognises the "married but not yet registered" category on the Family Card. These instruments operate within the population administration regime but are not formally cross-referenced within the implementing regulations of the Marriage Law. The proposed coordination, preferably effected through a Presidential Regulation issued under the powers conferred by Law No. 24 of 2013, would expressly link the SPTJM pathway and the Family Card categorisation to the implementing regulations of the Marriage Law, so that the existence of the family unit is treated consistently across the two ministries that currently govern it.[35]

The model proposed here is deliberately narrow. It does not propose to replace the marriage event with a family event as the foundational unit of family law, nor does it propose to dispense with the registration requirement. It

[35] Andri, "Implikasi Isbath Nikah Terhadap Status Istri, Anak Dan Harta Perkawianan Dalam Perkawinan Dibawah Tangan."

proposes, instead, that the registration requirement be correctly classified within the legal hierarchy, that the constitutional position of the child be aligned with the relevant statutory provisions, and that the documentary pathway already available within the population administration regime be formally connected to the implementing regulations of the Marriage Law. A broader reconstruction may in due course be warranted; the present article makes only the more limited claim that the three components identified above are doctrinally available, constitutionally desirable, and operationally implementable within the existing legal framework.

C. CONCLUSION

The two regimes treat unregistered marriages differently because they regulate different objects. The marriage law regime regulates the formal validity of marriage and the documentary proof of that validity, and it has not yet adjusted its core provisions in Articles 2 and 43 of Law No. 1 of 1974 to reflect either the constitutional jurisprudence on the position of the child or the inclusive direction of the population administration regime. The population administration regime regulates the documentation of population events and has progressively accommodated unregistered marriages through the SPTJM mechanism under Minister of Home Affairs Regulation No. 9 of 2016 and the "married but not yet registered" category under Minister of Home Affairs Regulation No. 109 of 2019. The relationship between the two regimes is therefore best described as a partial normative misalignment, not as a direct doctrinal conflict, and the divergence between them can be specified at three identifiable points: the function of registration under Article 2 paragraph (2) of Law No. 1 of 1974; the civil relationship of the child to the biological father under Article 43 of the same Law and Article 100 of the Compilation of Islamic Law; and the operational unit of analysis adopted by each regime.

The misalignment can be addressed through three targeted adjustments rather than through a wholesale reconstruction of Islamic family law. First,

Article 2 of Law No. 1 of 1974 should be textually clarified so that the religious validity of marriage and the administrative obligation of registration are located in separate provisions. Second, Article 43 of Law No. 1 of 1974 and Article 100 of the Compilation of Islamic Law should be amended in line with the reasoning of Constitutional Court Decision No. 46/PUU-VIII/2010, so that the civil relationship of a child to his or her biological father is recognised where that relationship is established by scientific evidence, regardless of the registration status of the parents' marriage. Third, a coordinating instrument, preferably issued at the level of a Presidential Regulation, should formally connect the SPTJM mechanism and the marital status categories used in the Family Card with the implementing regulations of the Marriage Law. The argument advanced here has clear limits. It rests on doctrinal analysis supplemented by two key-informant interviews, and it does not claim to capture the full sociological complexity of nikah siri practice across the Indonesian archipelago. Further empirical work, particularly on the regional administration of the SPTJM mechanism and on the practice of *isbat nikah* in the Religious Courts, would strengthen the policy case for the three adjustments proposed above. Within those limits, the article concludes that a measured alignment of the two regimes is both doctrinally available and constitutionally desirable, and that it can be achieved without disturbing the religious character of marriage validity recognised under Article 2 paragraph (1) of Law No. 1 of 1974.

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