

Unregistered and Online Marriage in Indonesia: An Islamic Law and Legal Perspective Based on the Principle of Al-Masyaqqah Tajlibu al-Taysir

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Abstract

Marriage in Islam is a sacred contract that has a worship and social dimension, so its regulation is a concern in Islamic law and state law. Social and technological developments have given birth to contemporary marriage practices such as serial marriage and online marriage contracts that raise legal issues, especially related to the validity and legal protection for women and children. This study aims to analyze these two practices in the perspective of Islamic law and positive Indonesian law by using the rules of fiqh al-masyaqqah tajlibu al-taysir as a framework for analysis. The method used is normative juridical law research with a literature approach, through the analysis of primary and secondary sources in the form of the Qur'an, hadith, fiqh books, Compilation of Islamic Law, and laws and regulations. The results of the study show that nikah siri can be considered valid in fiqh if it meets the principles and conditions, but it does not have legal force in the country's legal system, so it has implications for weak legal protection, especially for women and children. Meanwhile, an online marriage contract can be considered valid according to some scholars as long as it fulfills the substantive elements of the contract, although it still faces challenges in the aspect of formal legality. The discussion shows that the application of the rules of al-masyaqqah tajlibu al-taysir reflects the flexibility of Islamic law in responding to social dynamics without neglecting maqāṣid al-syarī'ah and legal certainty. Therefore, it is necessary to harmonize adaptive regulations and strengthen marriage registration to ensure legal certainty and protection, while affirming that formal legality is an essential aspect in contemporary marriage practices.

Keywords: Marriage Series; Online Marriage; Fiqh Principles; Al-Masyaqqah Tajlibu Al-Taysir; Islamic Family Law.

Abstrak

Pernikahan dalam Islam merupakan akad sakral yang memiliki dimensi ibadah dan sosial, sehingga pengaturannya menjadi perhatian dalam hukum Islam dan hukum negara. Perkembangan sosial dan teknologi melahirkan praktik pernikahan

kontemporer seperti nikah siri dan akad nikah online yang menimbulkan persoalan hukum, terutama terkait keabsahan serta perlindungan hukum bagi perempuan dan anak. Penelitian ini bertujuan untuk menganalisis kedua praktik tersebut dalam perspektif hukum Islam dan hukum positif Indonesia dengan menggunakan kaidah fikih al-masyaqqah tajlibu al-taysir sebagai kerangka analisis. Metode yang digunakan adalah penelitian hukum yuridis normatif dengan pendekatan kepustakaan, melalui analisis sumber primer dan sekunder berupa Al-Qur'an, hadis, kitab fikih, Kompilasi Hukum Islam, serta peraturan perundang-undangan. Hasil penelitian menunjukkan bahwa nikah siri dapat dinilai sah secara fikih apabila memenuhi rukun dan syarat, namun tidak memiliki kekuatan hukum dalam sistem hukum negara sehingga berimplikasi pada lemahnya perlindungan hukum, khususnya bagi perempuan dan anak. Sementara itu, akad nikah online dapat dipandang sah menurut sebagian pendapat ulama selama memenuhi unsur substantif akad, meskipun masih menghadapi tantangan dalam aspek legalitas formal. Pembahasan menunjukkan bahwa penerapan kaidah al-masyaqqah tajlibu al-taysir mencerminkan fleksibilitas hukum Islam dalam merespons dinamika sosial tanpa mengabaikan maqāṣid al-syarī'ah dan kepastian hukum. Oleh karena itu, diperlukan harmonisasi regulasi yang adaptif serta penguatan pencatatan pernikahan untuk menjamin kepastian dan perlindungan hukum, sekaligus menegaskan bahwa legalitas formal merupakan aspek esensial dalam praktik pernikahan kontemporer.

Kata Kunci: Nikah Siri; Nikah Online; Kaidah Fikih; Al-Masyaqqah Tajlibu Al-Taysir; Hukum Keluarga Islam.

INTRODUCTION

Marriage is the process of making legal or permissible a previously prohibited sexual relationship. In Indonesia, marriage is a key concept before a married couple begins living together. It is governed not only by state law but also by the religion and beliefs of each partner who wishes to marry.¹

Indonesia is not an Islamic state, but it is a predominantly Muslim country. The laws applied are those inherited from the Dutch colonial era, namely the Criminal Code (KUHP), the Civil Code (KUHPER), the Regional Regulations (RBG), and the Islamic Religious Law (HIR). Furthermore, there are also regulations specifically designed for Muslims regarding civil law, including marriage, wills, inheritance, waqf (endowments), and the resolution of Islamic economic disputes. All of

¹ Taroman Pasyah, "Legal Smuggling in Interfaith Marriage Law in Indonesia; A Study from the Perspective of Islamic Fiqh and Marriage Law," *Simbur Cahaya* Vol 28, no. 1 (2021): 146–64, <https://doi.org/10.28946/sc.v28i2.867>; Yanis, Muhammad, Bukhari Ali, Yenny Sri Wahyuni, Nurul Ain Hazram, and Hisyam Maliki Akbar. 2025. "Negotiating Marital Communication in the Digital Era: Social Media Use Among Working Couples from a Family Law Perspective". *An-Nisa: Journal of Islamic Family Law* 2 (4): 283-98. <https://doi.org/10.63142/an-nisa.v2i4.401>.

these are regulated in the Compilation of Islamic Law and Law Number 1 of 1974 concerning marriage.²

Islam views marriage as a sacred covenant, a symbol of worship to God, following the Sunnah of the Prophet Muhammad, and carried out with sincerity, responsibility, and adherence to the required legal provisions.³ From an Islamic legal perspective, marriage is understood not only as a biological relationship between a man and a woman, but as a very strong contract (*mitsāqan ghalīẓan*) for building a household life that is peaceful, loving, and compassionate.⁴

Therefore, Islamic law pays great attention to the detailed regulation of marriage, starting from the pillars, conditions, to the legal consequences. Law No. 1 of 1974 in Article 2 paragraph (2) states firmly that every marriage must be registered in accordance with applicable law. If reviewed again, siri marriage is an Islamic teaching, however, in the provisions of Law 1 of 1974, this marriage is a form of marriage that is prohibited. Furthermore, a list of marriages that are prohibited and not recognized as valid by the state was created. When viewed from a human rights aspect, this marriage is legal.⁵

The requirements for marriage in this law have sparked debate and given rise to two contradictory groups/opinions. The first opinion states that a valid marriage is one that complies with religion and belief and must be registered before an authorized official. The pro opinion is generally held by the group of scholars and legal experts who have traditionally adhered to and carried out marriages based on civil law. They argue that the moment of validity of the marriage begins after the marriage registration. The second opinion states that a valid marriage is

² Abu Yazid Adnan Quthny And Ahmad Muzakki, "Marriage Registration from the Perspective of Islamic Law and Law Number 1 of 1974," *Asy-Syari'ah: Jurnal Hukum Islam* 8, No. 1 (2022): 25–40, <https://doi.org/10.55210/Assyariah.V8i1.765>.

³ Aisyah Ayu Musyafah, "Marriage in the Philosophical Perspective of Islamic Law," *Crepido* 2, No. 2 (2020): 111–22, <https://doi.org/10.14710/Crepido.2.2.111-122>.

⁴ Wabwah Al-Zuhaylī, *Al-Fiqh Al-Islāmī Wa Adillatuhu* (Damascus: Dār Al-Fikr, 2006), P.7; Somantri, Yayan, and Imam Sucipto. 2024. "Ijtihad Sebagai Pilar Kelangsungan Hukum Islam Di Tengah Perubahan Zaman". *An-Nisa: Journal of Islamic Family Law* 1 (3): 43-53. <https://doi.org/10.63142/an-nisa.v1i3.72>.

⁵ Enik Isnaini, "Siri Marriage in the Perspective of Islamic Law, Positive Law and Human Rights," *Jurnal Independent* 2, No. 1 (2014): 51–64, <https://doi.org/10.30736/Ji.V2i1.18>; Abdulah Pakarti, Muhammad Husni, Ending Solehudin, Maruf Maruf, Iqbal Saujan, and Saeideh Shakibiciu. 2025. "The Role and Application of 'Urf As a Source of Islamic Law: A Historical Review and Fiqhiyah Rules". *An-Nisa: Journal of Islamic Family Law* 2 (3): 175-92. <https://doi.org/10.63142/an-nisa.v2i3.300>.

one that complies with religion and belief, even if it is not registered before an authorized official. The opposing group is generally held by traditionalist Muslims and also many legal experts, according to them, the moment of validity of the marriage does not begin at the time of registration or registration; registration is merely an administrative function.⁶

The ever-evolving dynamics of human life often present conditions that are not entirely ideal as described in classical Islamic jurisprudence normative texts. Social change, technological advancement, geographic conditions, and emergencies such as the pandemic have given rise to new issues in marriage practices. The phenomenon of online marriage contracts, for example, has sparked serious debate among Islamic scholars and legal academics regarding its validity.⁷

In facing these issues, Islamic law cannot be understood textually and rigidly. A methodological approach is needed that can maintain a balance between adherence to the text and the need for legal flexibility. One important instrument in this regard is the rules of Islamic jurisprudence (*qawā'id fiqhiyyah*), which serve as general principles in establishing Islamic law.⁸ These rules were formulated by scholars as a result of *istinbath* from the Qur'an, *hadith*, *ijma'*, and *qiyas*, thus having strong legitimacy in the Islamic legal system. Among the most fundamental rules of Islamic jurisprudence is the principle of *al-masyaqqah tajlibu al-taysir*, which means "difficulty brings ease." This principle emphasizes that Islamic law is not intended to make things difficult for humans, but rather to provide ease and eliminate hardship. This principle is in line with the word of Allah SWT in QS. Al-Baqarah verse 185 emphasizes that Allah desires ease and does not desire hardship for His servants.⁹

⁶ Habib Shulton Asnawi, "History, Urgency and Typology of Marriage Registration in Islamic Family Law in Muslim Countries," *Bulletin of Community Engagement* 4, No. 2 (2024): 525–39, <https://doi.org/10.51278/Bce.V4i2.1468>.

⁷ Elang Darmawan, Ahmad Baihaki, and Oti Handayani, "Appointment of a Judge Guardian as a Replacement for an Adlal Guardian Who Does Not Approve of His Child's Marriage," *Krtha Bhayangkara* 15, No. 2 (2021): 77–196, <https://doi.org/10.31599/Krtha.V15i2.702>; Sopyan, Ichsan, and Imam Sucipto. 2024. "Menelusuri Perjalanan Ilmu Ushul Fiqih Dalam Sejarah". *An-Nisa: Journal of Islamic Family Law* 1 (4): 75-86. <https://doi.org/10.63142/an-nisa.v1i4.74>.

⁸Duski Ibrahim, *Al-Qawā'id Al-Fiqhiyyah* (Palembang: Noerfikri, 2019), P.3.

⁹Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and its Translation* (Bandung: Cordoba, 2020), Qs. Al-Baqarah; 185.

The principle of *al-masyaqqah tajlibu al-taysir* should not be understood merely as an ethical proposition; rather, it has evolved into an established legal maxim with substantial juridical consequences across various domains of Islamic law, including the law of marriage. In this respect, the principle provides a legitimate doctrinal foundation for the invocation of *rukhsah* (legal concession) in circumstances where the application of the original ruling (*'azimah*) generates serious and extraordinary hardship.¹⁰ Its application, however, is not without limitation. Islamic jurists have consistently emphasized that any form of legal leniency must remain firmly grounded within the normative framework of the sharia and must not give rise to greater harm or compromise the higher objectives of the law. The examination of the implementation of *al-masyaqqah tajlibu al-taysir* within the field of marriage law has therefore become increasingly significant in light of the growing complexity of familial issues in the contemporary period. Prior studies have addressed the operation of this principle in a range of contexts, including the use of contact lenses as visual aids, the delivery of healthcare services, and contemporary transactional practices.¹¹

In the context of Islamic family law, several studies have highlighted the application of Islamic jurisprudence (*fiqh*) principles to address marital issues. Linda Karmelia and Tri Wahyu Hidayati, for example, emphasize that Islamic jurisprudence (*fiqh*) principles serve as adaptive instruments in addressing modern family law issues.¹² Another study by Sururiyah Wasiatun Nisa' examines the validity of online marriage contracts using a *fiqh* approach and demonstrates that the concept of a single assembly can be interpreted temporally, not spatially.¹³ This demonstrates that the principle of convenience has long been an integral part of Islamic marriage law.

¹⁰Wahbah Al-Zuhayli, *Nazariyyat Al-Ḍarūrah Al-Shar'īyyah* (Damascus: Dār Al-Fikr, 1997), Pl. 213.

¹¹ Syamsiah Nur, Zulfiah Sam, and Wahyuni Syam Nur Hornai, "Implementation of the Rule of Al-Masyaqqah Tajlibu Al-Taisir in the Use of Softlens as a Visual Aid: Implementation of the Rule of Al-Masyaqqah Tajlibu Al-Taisir in the Use of Softlens as a Visual Aid," *Bustanul Fuqaha: Journal of Islamic Law* 5, No. 3 (2024): 445–64, <https://doi.org/10.36701/Muntaqa.V2i1.2524>.

¹² Linda Karmelia, "Implementation of Qawaid Fiqhiyyah in Resolving Islamic Family Law Problems," *Maqasid: Journal of Islamic Legal Studies* 12, No. 2 (2023): 98–107, <https://doi.org/10.30651/Mqsd.V12i2.19313>.

¹³ Sururiyah Wasiatun Nisa, "Online Marriage Contract from an Islamic Law Perspective," *Islamic Law* 21, No. 2 (2021): 302–19, <https://doi.org/10.24014/Jhi.V21i2.11734>.

Most of these studies have not explicitly systematically analyzed the principle of *al-masyaqqah tajlibu al-taysir* in the field of marriage. Therefore, this study offers a novelty by making this principle the main analytical framework in examining the flexibility and limitations of Islamic marriage law. This study seeks to fill this gap by examining in depth the concept and implementation of the principle of *al-masyaqqah tajlibu al-taysir* in Islamic marriage law. The main focus of this study is how this principle is applied in contemporary marriage cases, such as unregistered marriage contracts and online marriages, and what normative limitations must be considered so that its application remains in line with the *maqāṣid al-syarī'ah*.

RESEARCH METHODS

This study uses a normative juridical method with a library research approach to examine legal norms, doctrinal arguments, and Islamic legal principles related to the practice of serial marriage, online marriage contracts, and the dynamics of contemporary marriage law in Indonesia. This method was chosen because the focus of the research lies in the analysis of legal validity, state recognition, and the protection of rights within the framework of Islamic law and positive law. This study also examines the relationship between *fiqh*, laws and regulations, and *maqāṣid al-syarī'ah* in responding to the development of modern marriage practices.

The approach used includes three aspects. First, the statutory approach to analyze regulations related to marriage in Indonesia, especially Law Number 1 of 1974 as amended by Law Number 16 of 2019, Compilation of Islamic Law, as well as provisions on marriage registration. Second, a conceptual approach to study the main concepts such as the validity of marriage, unregistered marriage, online marriage contracts, legal certainty, and the rules of *fiqh al-masyaqqah tajlibu al-taysir*. Third, a limited comparative approach is used to compare classical *fiqh* views with contemporary legal thought related to the practice of marriage.

The source of research data consists of primary and secondary legal materials. Primary legal materials include the Qur'an, *hadith*, and relevant laws and regulations, while secondary legal materials include *fiqh* books, *fiqh* rules, academic literature, and scientific articles. The data collection technique is carried out through documentation studies by browsing and reviewing relevant literature. Furthermore, the data were analyzed qualitatively using descriptive-analytical and interpretive methods, in order to draw systematic conclusions about the flexibility of

Islamic law and its implications for legal certainty and protection in contemporary marriage practices.

RESULTS AND DISCUSSION

To make the discussion more systematic, this article evaluates marriage practices through three interconnected layers: religious validity in fiqh, legal recognition under state law, and substantive justice in the perspective of *maqāṣid al-shari‘ah*. Through this framework, sirri marriage, online marriage, and the commercialization of marriage are not assessed merely on the basis of doctrinal permissibility or formal legality, but also in terms of whether they ensure legal certainty, public accountability, and the protection of women's and children's rights.

The Concept of Valid Marriage According to Fiqh and the State

Indonesia, as a predominantly Muslim country, has laws governing marriage. Before 1975, marriage law in Indonesia was pluralistic, meaning that several marriage laws applied to different population groups. This was due to the implementation of positive law during the Dutch East Indies colonial period, where the Indonesian population was divided into several groups: Europeans, Natives, East Asian Chinese, and other Eastern foreign groups. In early 1937, the Dutch East Indies government proposed a preliminary draft of the Marriage Regulations, which contained key points regarding marriage, divorce, maintenance, *hadhanah* (child custody), division of joint property, and various other matters. Marriage law in Indonesia was first regulated in Law Number 1 of 1974 concerning Marriage. This law regulates the requirements for a valid marriage, the rights and obligations of husband and wife, and provisions regarding the minimum age for marriage.¹⁴

One of the main aspects that influences the validity and legality of marriage according to Indonesian positive law is the minimum age limit for prospective brides and grooms. The rules regarding the minimum age for marriage are explicitly regulated in Law Number 1 of 1974 concerning Marriage in the Chapter on Marriage Requirements. Article 7 paragraph (1) states, "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years."

This rule was then revised and amended by Law Number 16 of 2019, which states "Marriage is only permitted if the man and woman

¹⁴ Nabil Fikri Palasenda, "The Problem Of Marriage Dispensation Between Theory And Practice" 3, No. 2 (2025): 181–200, <https://doi.org/10.52496/Mjhki.V3i2.14>.

have reached the age of 19 (nineteen) years. According to positive law, one of the conditions for a valid marriage is that both prospective bride and groom have reached the age of 19 years. Conversely, if one or both have not reached the age of 19 years, then the marriage is considered invalid because it does not meet the requirements.

The consent of the bride and groom is also one of the essential elements in the implementation of a valid marriage. The related rules are also stated in Law Number 1 of 1974 in Chapter 6 paragraph (1) of Marriage Requirements, which states " Marriage must be based on the consent of both prospective bride and groom ." Then it is also strengthened and clarified in the KHI in Chapter 16 of Marriage Requirements and Marriage Requirements, which states "(1) Marriage is based on the consent of the prospective bride and groom. (2) The form of consent of the prospective bride and groom can be in the form of a firm and real statement in writing, verbally or in gestures but can also be in the form of silence in the sense that there is no firm rejection." The next valid requirement is not in a relationship that is prohibited from marriage as in Article 8, such as blood relations, in-law relations and breastfeeding relations, and the final requirement is not being bound by another marriage unless it meets the requirements for polygamy.¹⁵

In Islam, the majority of scholars agree that the pillars of marriage consist of: There is a prospective husband and wife, there is a guardian of the prospective bride, there are two witnesses who carry out the marriage contract and *Sighat Akad Nikah*, namely the *ijab qabul* pronounced by the guardian or his representative.¹⁶

Regarding the validity of a marriage, several requirements must be met for the validity of a marriage contract. Wahbah Az-Zuhaili, in his book *Fiqh Islam Wa Adillatuhu*, explains that according to the consensus of scholars, four conditions are required for the marriage contract (*ijab* and *qabul*):

First, the suitability and accuracy of *the ijab* and *qabul* sentences. This conformity manifests itself in the agreement between the *ijab* and *qabul* in terms of the venue and the dowry size. If the discrepancy is in the venue, the marriage contract is invalid. This is because the content of

¹⁵ Ahmad Supiannor And Anwar Hafidzi, "Marriage in the Perspective of Positive Law and Shafi'i Jurisprudence: Comparative Analysis of Four Basic Aspects," *Indonesian Journal Of Islamic Jurisprudence, Economic And Legal Theory* 3, No. 2 (2025): 1695–1716, <https://doi.org/10.62976/Ijijel.V3i2.1159>.

¹⁶ Abdul Rahman Ghazali, *Fiqih Munakahat* (Jakarta: Prenada Media, 2003) p. 46.

the qabul sentence differs from the ijab. If the discrepancy lies in the dowry, such as "I marry you to my daughter for a dowry of 1,000 dirhams," and the man replies, "I accept the marriage for a dowry of 800 dirhams," then the marriage is invalid.

Second, the person who utters the ijab may not retract their statement. It is prescribed during the marriage contract that the person who utters the ijab must not retract their statement until the other party has expressed their acceptance. If they retract their statement, the ijab is void. This is because the ijab and acceptance are one pillar.

Third, it must be completed at the time of the marriage contract. It is not permissible to make a marriage contract for a future marriage, such as "I will marry you tomorrow," "I will marry you when the sun rises," etc., because the marriage contract is a contract of ownership and replacement. The marriage contract between the guardian and the prospective groom must be made consecutively and without any gap in time.

Fourth, it is performed in a single assembly (*ittihad al-majlis*). The marriage contract is performed in a single assembly if both parties are present. When the woman's guardian pronounces the ijab (ijab), the other party becomes busy and then says "accepts." This invalidates the marriage, as merely being busy or even standing up can disrupt the assembly.¹⁷

Secret Marriage and its Implications The law

Basically wedding is unifying legitimacy between a a man and a woman Woman as partner husband true wife based on Indonesian state regulation. And the marriage model that is not in accordance as well as No fulfilled *legal procedure* namely siri marriage . Duraiwisay say if siri That originate from the word "sir " or " sirrun " which comes from from Arabic meaning lonely or secret. The legal basis for Sirri marriage in history Islamic law , secret marriage is not problem new . Because , the term sirri marriage This There is since the time of Umar Ibn Khattab. As for the basics related laws with a secret marriage among them as following:

وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا....

Meaning: "...However, do n't do it You promise secretly to (marry) them" (Al-Baqarah: 235)

¹⁷ Nisa, "Online Marriage Contracts from an Islamic Law Perspective."

The verse above shows that what is meant by a secret promise is a statement from a man to the woman in question, which says that men should not say to the woman, "I really love you. Promise me that you will not marry another man," and other expressions related to this matter, so it is not recommended to marry in secret.¹⁸

Furthermore, the legal basis for secret marriage can also be referred to in the following hadith:

إِنَّ النَّبِيَّ ﷺ كَانَ يَكْرَهُ نِكَاحَ السِّرِّ، حَتَّى يُضْرَبَ بِالْذُّفِّ، وَيُقَالَ:
فَحْيُونَا نُحْيِيكُمْ أَتَيْنَاكُمْ

Which means " Indeed, the Prophet SAW hated marriages that were hidden, to the point that a drum was beaten and it was said: "We are coming to you, welcome us and we will welcome you."

In the hadith said, the Prophet SAW once mention the term sirri marriage, but Still Not yet clarify and detail Sirri's wedding picture. But what is certain is that he hate secret marriage said . For To clarify the secret marriage that the Prophet SAW meant , it is necessary considered events that occurred during the time of Umar bin Khattab, namely when he faced with a case ongoing wedding mentioned . The following This quote from the book of Imam Malik:

عَنْ مَالِكٍ، عَنِ الزُّبَيْرِ، أَنَّ مَالِكًا قَالَ: رُفِعَ إِلَى عُمَرَ بْنِ الْخَطَّابِ رَضِيَ
اللَّهُ عَنْهُ نِكَاحٌ شَهِدَهُ رَجُلٌ وَامْرَأَةٌ، فَقَالَ عُمَرُ: هَذَا نِكَاحُ السِّرِّ، وَلَا
أُجِيزُهُ، وَلَوْ أُتِيَ بِهِ لَرَجَمْتُهُ

Meaning: "From Malik, from Zubair, Malik said: " Once confronted something the problem with Umar bin Khattab, namely something a marriage that only witnessed by a man and a woman women. In this case To this , Umar responded: "This is a secret marriage , I No allow it . When I found it surely I will stone him."

¹⁸ Yusriadi Yusriadi And Santi Mutiani, "Legal Status of Children from Unregistered Marriages and Its Implications for Civil Rights," *Jurnal Tahqiq: Jurnal Pikiran Hukum Islam* 19, No. 1 (2025): 76–96, <https://doi.org/10.61393/Tahqiq.V19i1.283>.

Umar's actions illustrate that a secret marriage is one without proper witnesses, as it involves only one man and one woman. Therefore, any marriage without proper witnesses (two men) is considered a secret marriage. Furthermore, if the marriage is not attended by witnesses, it is of course invalid.¹⁹

Wahbah Al Zuhaili provides a definition of a siri marriage, namely that there is an agreement, in the implementation of which there are two brides and grooms (male and female), the marriage guardian and two witnesses. The Shafi'i school of thought and the Maliki school of thought allow it provided that it must be in a situation or emergency, while the Hanafi school of thought condemns unregistered marriage as makruh.²⁰

According to Prof. Quraish Shihab, although unregistered marriages are not registered and are considered valid according to religious law, unregistered marriages can be a cause of sin for the perpetrators, because they do not carry out what is implemented by the state and the DPR (as Ulil Amri). The Qur'an commands all Muslims to obey the ulil amri (leaders) as long as the ulil amri does not conflict with the laws of Allah. In terms of registering the marriage, not only is it not contradictory, but it is actually in accordance with the Qur'an. Unregistered marriages, meaning marriages without registration, also occur in Egypt, known as al zawaj al 'urfiy.²¹

There are several types of unregistered marriages, including marriages without a guardian. Such marriages are sometimes performed secretly, or unregistered, because the bride's guardian may not approve, or because the marriage's validity has not been established. It's also possible that the marriage is based solely on lust and does not adhere to the true teachings of sharia. Such marriages are invalid, as the presence of a guardian is one of the essential requirements for a valid marriage.²²

In social terms, men and women who enter into unregistered marriages are often considered to be living together. This is because, in social terms, a woman and a man who enter into unregistered marriages

¹⁹ Ali Akbar, "Sirri Marriage According to the Perspective of the Quran," *Jurnal Ushuluddin* 22, No. 2 (2014): 213–23, <https://doi.org/10.24014/Jush.V22i2.737>.

²⁰ Kharisudin Kharisudin, "Siri Marriage in the Perspective of the Compilation of Islamic Law and the Indonesian Marriage Law," *Perspective: Study of Legal and Development Issues* 26, No. 1 (2021): 48–56, <https://doi.org/10.30742/Perspektif.V26i1.791>.

²¹ Quraish Shihab. (1997). *Insight into the Qur'an: Maudhu'i Interpretation of Various Problems of the Ummah*. Bandung: Mizan, P. 204.

²² Kharisudin, "Siri Marriage in the Perspective of the Compilation of Islamic Law and the Indonesian Marriage Law."

live under the same roof and there is no legal marriage bond because it cannot be proven by a marriage certificate as a form of marriage registration. As stipulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP), which officially came into effect on January 2, 2026, one of the provisions that has attracted public attention is the regulation regarding cohabitation, or living together without a legal marriage bond. This rule is contained in the new Criminal Code, specifically Article 412 in the Chapter on Adultery, which regulates the criminal penalties for the practice of "living together."

Article 412 regulates the act of living together as husband and wife outside of a legal marriage, also known as cohabitation. The provision states, "Any person living together as husband and wife outside of marriage shall be punished by a maximum of six months' imprisonment or a maximum fine of category II."

Category II fines as regulated in Article 79 of Law Number 1 of 2023 have a maximum value of IDR 10 million.²³ Unlawful marriages are also often associated with non-transparent polygamous practices. Husbands engage in unlawful marriages to avoid obtaining the consent of their first wife, which is a requirement under the legal system. Unlawful marriages are often conducted for a reason, such as preventing the legal or first wife from knowing about the marriage.²⁴

Although some are of the opinion that the term must be recorded in Article 5 paragraph (1) of the Compilation of Islamic Law (KHI) only intended to maintain order in marriage for the Muslim community, this regulation is strengthened by the following article which states that marriages carried out without the supervision of a marriage registrar (PPN) will not have legal force, either in the form of recognition or legal guarantees to protect the rights and fulfillment of the obligations of each party, namely husband, wife and children.²⁵

²³Vania Rosa, "The New Criminal Code Officially Takes Effect, Here Are 5 Important Facts About the Article on Cohabitation That You Must Know" https://Www.Suara.Com/News/2026/01/03/144416/KuHP-Baru-Resmi-Berlaku-Ini-5-Fakta-Penting-Pasal-Kumpul-Kebo-Yang-Wajib-Diketahui?Utm_Source.Com. Accessed on January 30, 2026 at 11:51 WIB.

²⁴ Azhari Azhari, "Sirri Marriage in Review of Munakahat Fiqh and Contemporary Social Context," *Al-Mizan Journal* 12, No. 1 (2025): 100–108, <https://Ejournal.Unisai.Ac.Id/Index.Php/Jiam/Article/Download/1060/810>.

²⁵ Rahmad Setyawan, "Assessing Marriage Registration in Indonesia from the Perspective of Fiqh Rules: Between State Legality and Sharia Validity," *Al-Hakim Journal: Student Scientific Journal, Sharia Studies, Law and Philanthropy* 6, No. 2 (2024): 199–218, <https://doi.org/10.22515/Jurnalalhakim.V6i2.10063>.

A siri marriage has several legal implications that need to be considered. Because a siri marriage is not officially recognized, couples who enter into a siri marriage do not have the same legal rights and obligations as couples who are legally married . not entitled to maintenance, inheritance, and division of joint assets (joint property). A further consequence of a secret marriage is that the wife has no right to demand maintenance if her husband is still alive and irresponsible, cannot claim inheritance from her husband if he dies, because the marriage was never considered to have existed under Indonesian law, and cannot demand division of joint assets in the event of a divorce.²⁶

This can impact their rights in inheritance, social protection, child custody, and legal validity. Furthermore, in situations of divorce or separation, couples in unregistered marriages may face challenges in resolving legal issues related to separation, property division, and children's rights. Because unregistered marriages are not legally recognized, the legal process to protect their rights can be more complicated and unclear.²⁷

In positive law that regulates civil rights, children from unregistered marriages do not receive the material and moral rights that a child should receive from their father, such as the right to maintenance, the right to alimony, the right to marital guardianship for daughters, and the right to inherit each other in the event of death. The position of children from unregistered marriages in terms of their rights is to receive full status because the child is a human being who has rights as a legal subject.²⁸

The social impact of a wife who is married secretly will be considered cohabiting by some members of society who are unaware of the religious marriage because they lack authentic proof in the form of a marriage certificate. A wife who is married secretly faces a social burden that impacts her mental health, as she becomes the subject of gossip in the community for not adhering to the law.²⁹

²⁶ Harpani Matnuh, "Underhand Marriage and Its Legal Consequences According to National Marriage Law," *Journal of Citizenship Education* 6, No. 11 (2016): 899–908, <http://dx.doi.org/10.20527/Kewarganegaraan.V6i11.727>.

²⁷ Nazarudin Nazarudin, Achmad Abubakar, and Halimah Basri, "Unlawful Marriage and Its Problems," *Innovative: Journal of Social Science Research* 3, No. 3 (2023): 4736–50, <https://doi.org/10.31004/Innovative.V3i3>.

²⁸ Nazarudin, Abubakar, and Basri.

²⁹ Tin Widayati, "Implications of Unregistered Marriage (Siri Marriage) on the Rights of Children and Wives in the Review of Positive Law and Maqashid Syariah

From a critical perspective, the validity of sirri marriage cannot be assessed only by reference to the fulfillment of formal religious pillars. In the contemporary Indonesian legal context, the absence of marriage registration creates a serious gap between private religious recognition and public legal protection. This gap places wives and children in a vulnerable position when disputes arise concerning maintenance, inheritance, marital status, guardianship, or proof of marriage. Therefore, marriage registration should not be understood merely as an administrative burden, but as a mechanism for legal certainty, accountability, and protection.

Viewed through *maqāsid al-sharī'ah*, the problem of sirri marriage is not only doctrinal but also protective. The objectives of Islamic family law include the protection of lineage (*ḥifẓ al-nasl*), dignity (*ḥifẓ al-‘ird*), and legal rights connected to maintenance, inheritance, and family status. If a marriage is considered religiously valid while leaving women and children legally unprotected, then the higher objectives of marriage are only partially fulfilled. For this reason, religious validity alone is insufficient when it results in legal invisibility.

Online Marriage and Legal Proof

Imagine a space that shares the same sacred dimension, yet manifests itself in two distinct contexts. On one side, a living room filled with the aroma of coffee and perfume is depicted, where two families sit face to face in a reverent atmosphere. The meeting is mediated by an elder or *preacher*, a man of moral and social authority, respected for his wisdom and knowledge of the lineage and character of the prospective bride and groom. He plays a role in carefully introducing the two parties and initiating a controlled dialogue, including managing visual interaction based on the principle of lowering the gaze (*ghadd al-basar*).

The atmosphere created reflects seriousness (*jiddiyyah*), considering that the meeting involves not just two individuals but also two family entities, each with its own historical background and future projections. This constellation represents the classic landscape of Islamic *khiṭbah practice*, a social mechanism institutionalized within the normative framework of Islamic law, aimed at maintaining honor, moral integrity, and sincerity in the process leading to marriage.³⁰

(Case Study at Kua Kretek, Bantul, Yogyakarta)” (Islamic University of Indonesia, 2024).

³⁰ Wahyudi Wahyudi, Oyo Sunaryo Mukhlas, and Beni Ahmad Saebani, “Islamic Family Law in the Midst of Globalization: The Impact of Social Media on

Advances in information technology have had a significant impact on various aspects of life, including marriage practices. One emerging transformation is the implementation of marriage vows (*ijab kabul*) through electronic media, such as telephone, video calls, teleconferencing, and instant messaging applications. Generally, these media can be classified into two categories: those that transmit voice and those that convey written messages.

In conventional practice, the marriage contract is carried out in one assembly, namely the *ijab* and *qabul* are pronounced at the same time and witnessed by two witnesses. The concept of "one assembly" is understood as a unity of space and time. In the context of national law, the validity of a marriage is based on Article 2 paragraph (1) of the Marriage Law which states that a marriage is valid if it is carried out according to the laws of each respective religion. This provision is reaffirmed in Article 4 of the Compilation of Islamic Law (KHI).

Indonesian laws and regulations do not explicitly regulate online marriage contracts. In comparison, Egyptian civil law equates a telephone marriage contract with an in-person contract, regarding time, but not location. The main issue with online contracts lies in ensuring the identity of the parties and ensuring the location of the contract. While the words may be clearly audible, identity verification is stronger when accompanied by a physical meeting.

Differences of opinion between Islamic jurisprudence schools primarily concern the interpretation of the concept of *ittihad al-majlis* (unity of assembly). The Shafi'i school requires the presence of the guardian, prospective husband, and witnesses in one place. Unity of assembly is defined as unity of time and space. The witnesses must hear and understand the exact words of the *ijab* and *qabul* (consent), so virtual marriage contracts are deemed to fail to meet this requirement and are likely to be rejected.

Meanwhile, the Maliki school emphasizes the continuity between the *ijab* and *qabul* (*consent*). The unity of time is considered more important than the unity of place. Therefore, the use of modern communication media is permitted as long as it occurs in real time, the identities of the parties are clear, and there is no element of fraud. Witnesses are still required, but they do not have to be in the same

Muslim Marriage Patterns and Family Relations," *Res Nullius Law Journal* 7, No. 2 (2025): 119–35, <https://doi.org/10.34010/Rnlj.V7i2>.

physical location, as long as they can confirm the completeness of the *ijab* and *qabul*.

The Hanafi school of thought holds a more flexible view. The marriage contract does not require a specific phrase and can be conducted in writing or through an intermediary. Written communication is considered equivalent to oral communication. In this school, the unity of the assembly is defined as a unity of time, not place. Therefore, an online marriage contract can be declared valid if the *ijab* (consent) and *qabul* (acceptance) occur simultaneously and all the pillars and requirements of marriage are met.

The Hambali school of thought understands a gathering as a unit of time and a series of ceremonies, not a single physical space. The acceptance of the marriage vows and the acceptance of the marriage vows must take place in a single sequence, uninterrupted by any irrelevant activities. The guardian and the prospective husband can be in different locations as long as they can hear each other clearly, and the witnesses can sufficiently hear and understand the words of the marriage contract.

Differences in views regarding virtual marriage contracts center on the interpretation of the concept of one assembly. The Shafi'i school of thought demands the unity of time and place, while the Maliki, Hanafi and Hanbali schools emphasize continuity of time, clarity of pronunciation and certainty of testimony. Thus, the opportunity for the validity of online marriage contracts in the view of the majority of schools of thought remains open as long as the basic conditions are met.³¹

The permissibility of online marriage cannot be justified merely by invoking technological convenience. The *fiqh* maxim *al-masyaqqah tajlibu al-taysir* indeed allows legal facilitation in situations of hardship, yet its application is not absolute. Legal ease is justified only when it does not undermine the essential structure and certainty of the law. Therefore, the use of digital media in marriage contracts must be assessed not only in terms of feasibility, but also in terms of procedural integrity and evidentiary reliability.

In this regard, several cumulative conditions become decisive. There must be real-time continuity between *ijab* and *qabul*, verifiable identity of the contracting parties, reliable witness testimony, absence of

³¹ Luthfiatul Zahra Et Al., "The Validity of Virtual Marriage Contracts in the View of Four Schools," *Hidayah: Scholars of Islamic Education and Sharia Law* 2, No. 4 (2025): 24–37, <https://doi.org/10.61132/Hidayah.V2i4.1450>.

coercion or fraud, and the possibility of legal registration before the competent authority. The central issue is not the use of technology itself, but whether digital mediation preserves or weakens the certainty of the marriage contract. If these safeguards are absent, online marriage risks becoming a source of legal uncertainty rather than lawful facilitation.

It is in this context that the principle of *al-masyaqqah tajlibu al-taysir* finds relevance as a basis for legal legitimacy. In classical Islamic jurisprudence, the validity of *ijab* and *qabul* is generally understood to be that they must be performed in a single assembly. However, scholars differ in their interpretation of the concept of *ittihād al-majlis*. Some scholars interpret one assembly as a physical location, while others interpret it as a single time without any gap that breaks the continuity of the marriage contract. This second opinion then becomes the basis for arguments regarding the validity of online marriage contracts.³²

The problem related to cases of marriage contracts by telephone and other things is the difficulty of carrying out the marriage contract directly in one assembly. Like countries far apart, or the previous Covid-19 era with various restrictions on social contact. Thus, the rules of *fiqh* which are the legal basis for *ulama* who allow marriage contracts by telephone or online are the rules of *Al Masyaqqah Tajlib At Taisir*. Meaning: "Difficulty brings ease". This can be explained that if a law causes difficulties or difficulties in its implementation and implementation, whether to the body, soul or property of *amukallaf*, then the law is relaxed so that it is no longer difficult. This is in accordance with the basic rules, the words of Allah SWT:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ الْعُسْرَ

It means "Allah want convenience for you, and not want difficulties for you" QS Al-Baqarah verse 185.

al-masyaqqah tajlibu al-taysir approach, an online marriage contract can be seen as a form of convenience that is permitted by the Shari'a as long as it fulfills the pillars and requirements of marriage substantially, namely the presence of a prospective husband and wife, a guardian, two witnesses, as well as a clear and continuous consent and *qabul*. Online media only functions as a means (*wasīlah*), not as an essential element of the contract. Several contemporary studies show that

³² Andi Muhammad Akmal and Mulham Jaki Asti, "Problems of Siri Marriage, Online Marriage and Siri Divorce and Their Legal Implications in Marriage Fiqh," *Al-Risalah Journal of Sharia and Legal Sciences* 21, No. 1 (2021): 45–59, <https://doi.org/10.24252/Al-Risalah.V1i1.22247>.

online marriage contracts are valid under Islamic law if they are carried out at one time, can be heard and understood by the parties, and do not raise doubts about the validity of the contract. Thus, the application of the rules of *al-masyaqqah tajlibu al-taysir* in online marriage contracts is a form of *ijtihad* which aims to eliminate difficulties without sacrificing the principles of prudence and legal certainty.³³

The MUI allows online marriage contracts to be carried out only if the parties concerned cannot attend and there is no one to represent them. The implementation must also be in accordance with the legal conditions for a marriage contract: *ittihād al-majlis* (being in one assembly), *lafadz* that is *sharih* (clear speech), and *ittishāl* (direct relationship between consent and acceptance). If one of the conditions is not met, the marriage contract will be invalid.

To be legally valid or recognized administratively under state law, a virtual marriage contract must be registered at the Office of Religious Affairs for verification and legal registration at the KUA. This is stipulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). Article 2 paragraph (1) of the Marriage Law states that "A marriage is valid if it is conducted according to the laws of each religion and belief." Meanwhile, paragraph (2) emphasizes that "Every marriage must be registered according to applicable laws and regulations."³⁴

Accordingly, online marriage should not be framed simply as a progressive adaptation of Islamic law to modern technology. It should instead be understood as a conditional legal accommodation whose permissibility depends on whether technology serves the objectives of marriage law without weakening verification, registration, and public accountability. In this sense, the principle of *taysir* cannot replace legal certainty; it can only operate legitimately when the digital form of marriage remains accountable to both *fiqh* requirements and state administrative norms.

Commercialization of Marriage Impact on Women and Children

The commercialization of marriage should be examined not merely as a social trend, but as a legal-ethical problem. Commercialization occurs when marriage is increasingly treated not as a sacred covenant

³³ Muhammad Shuhufi, "Online Marriage Contract Perspective of the Fiqh Rules of *Al-Masyaqqah Tajlib At-Taisir*," *Al-Qawānīn: Journal of Law, Sharia and Islamic Studies* 1, No. 2 (2024): 266–85, <https://doi.org/10.70193/Alqawanin.V1i2.12>.

³⁴ Akmal and Asti, "Problems of Siri Marriage, Online Marriage and Siri Divorce and Their Legal Implications in Marriage Fiqh."

and public legal institution, but as a service that can be packaged, offered, accelerated, or concealed according to market demand. In such a context, convenience may gradually replace responsibility, transparency, and legal accountability.

Unregistered marriages have serious consequences, especially for women and children. Various studies have identified these consequences as follows: First, the marriage is considered invalid. Although the marriage is conducted according to religion and belief, in the eyes of the state, the marriage is considered invalid if it has not been registered by the KUA (Regional Office of Religious Affairs) or the Civil Registry Office (KCS). Second, the child only has a civil relationship with the mother and her family (Articles 42 and 43 of the Marriage Law). Meanwhile, there is no civil relationship with the father. This means the child cannot claim his rights from the father. By being born in an unregistered marriage, the child's birth is also not legally registered, and this violates the child's human rights (the Convention on the Rights of the Child). These children have the status of children born out of wedlock. Third, a further consequence of an unregistered marriage is that neither the wife nor the children born from the marriage have the right to claim maintenance or inheritance from their father.

In general, an unregistered marriage is tantamount to allowing cohabitation outside of marriage, and this is very detrimental to the parties involved (especially women), especially if there are already children born. Those born to parents who live together without a registered marriage are illegitimate children who only have a legal relationship with their mother, meaning they have no legal relationship with their father.³⁵

Children born from unregistered marriages also face various legal challenges. Law Number 16 of 2019 stipulates that a legitimate child is a child born from a marriage that is valid according to state law. Article 42 states that a legitimate child is a child born in or as a result of a valid marriage. Meanwhile, Article 43 paragraph (1) states that a child born outside of marriage only has a civil relationship with his or her mother and her mother's family. However, the Constitutional Court, through Decision Number 46/PUU-VIII/2010, has expanded the rights of illegitimate children to have a civil relationship with their father if it can

³⁵ Edwin Edwin And Didin Haenudin, "Sirri Marriage and Its Implications for the Rights of Women and Children," *Mim: Journal of Islamic Legal Studies* 3, No. 1 (2025): 56–63, <https://ejournal.stai-mifda.ac.id/index.php/jmkhi/article/view/1429>.

be proven scientifically, for example through a DNA test or recognition from the biological father.³⁶ In fact, there is no compulsion for people to register marriages. In other words, if we do not register a marriage, it does not mean we are committing a crime. However, it is also clear that this has certain legal impacts or consequences that are particularly detrimental to women and children.

When discussing the importance of marriage registration, as with obtaining population documents, we are essentially discussing a public service that is the responsibility of the state. Therefore, it is appropriate to adhere to the principles of good governance, one of which is setting fees appropriate to people's standard of living and user-friendly procedures. With straightforward procedures and reasonable fees, the public is encouraged to register their marriages.³⁷

The next impact is the risk of domestic violence. Families formed from unregistered (*sirri*) marriages are vulnerable to domestic violence. The husband can act arbitrarily towards his wife and even their children because the wife lacks legal protection due to her marriage being void.

From the matters outlined above, it is clear that unregistered marriages can have many negative consequences, which are highly detrimental to women and children born from unregistered marriages. Compared with the legal consequences of registered marriages, as previously discussed, it is clear that unregistered marriages bring more harm than good.³⁸

This issue becomes more serious when commercialization intersects with *sirri* marriage and online marriage. Services that promote discreet arrangements, instant procedures, or privately facilitated unions may encourage the circumvention of legal safeguards such as guardian procedures, witness reliability, and formal registration. Marriage then risks becoming a private transaction detached from its moral and public dimensions. The legal problem here is not the existence of assistance in itself, but the possibility that commercial interest transforms marriage

³⁶ Fitria Wahyu Ningrum, "Siri Marriage and Its Impact on the Rights of Women and Children in Marriage Confirmation," *Tadhkirah: Journal of Applied Islamic Law and Sharia Philosophy Studies* 2, No. 1 (2025): 60–72, <https://doi.org/10.59841/tadhkirah.V2i1.85>.

³⁷ Edwin and Haenudin, "Sirri Marriage and Its Implications for the Rights of Women and Children."

³⁸ Faridy Faridy, Idrus Ali, and Wahyu Wulan Suci, "Dualism of Marriage Law and Its Impact on Women," *Hakam: Journal of Islamic Law Studies and Islamic Economic Law* 6, No. 1 (2022): 11–24, <https://doi.org/10.33650/Jhi.V6i1.3887>.

into a commodity rather than preserving it as an institution of law, ethics, and social order.

From the standpoint of *maqāṣid al-sharī'ah*, marriage is intended to preserve lineage, dignity, mutual rights, and family welfare. These objectives cannot be fully realized if the process of marriage is dominated by profit motives, secrecy, or legal evasion. Therefore, the commercialization of marriage should not be treated as a neutral modernization of social services, but as a phenomenon that requires ethical scrutiny and legal supervision in order to protect vulnerable parties, especially women and children.

Integrating Fiqh, State Law, and Maqāṣid al-Sharī'ah

The foregoing discussion demonstrates that *sirri* marriage, online marriage, and the commercialization of marriage cannot be properly assessed through a single legal lens. Fiqh remains indispensable because it provides the doctrinal basis of marital validity. State law remains indispensable because it ensures recognition, proof, and enforceability. *Maqāṣid al-sharī'ah* remains indispensable because it evaluates whether a practice that is formally valid also protects human welfare and justice in substantive terms.

For this reason, the legal assessment of marriage in contemporary Indonesia should proceed through three sequential questions. First, does the marriage fulfill the pillars and conditions required in Islamic jurisprudence? Second, does it satisfy the requirements of legal recognition and proof under state law? Third, does it realize the higher objectives of marriage, especially the protection of lineage, dignity, legal certainty, and the rights of women and children? Only through this integrated perspective can Islamic family law respond to technological change and social transformation without sacrificing either doctrinal legitimacy or protective function.

CONCLUSION

Based on the results of the study, it can be concluded that unregistered marriage according to Islamic jurisprudence can be considered valid if it fulfills the pillars and requirements of marriage, but does not have legal force in the Indonesian positive legal system so that it has serious implications for the protection of women's and children's rights, while online marriage contracts can in principle be justified according to some schools of thought as long as the elements of *ittihād al-majlis* are fulfilled in the sense of unity of time, clarity of *ijab-qabul*, presence of guardians and witnesses, and are still recorded according to statutory regulations; the application of the principle of *al-masyaqqah*

tajlibu al-taysīr shows that Islamic law has flexibility in responding to social dynamics and technological developments without ignoring maqāṣid al-syarī'ah and legal certainty. For further research, it is recommended to conduct empirical studies that examine the practice of unregistered marriage and online marriage in various regions, comparative analysis of regulations between Muslim countries regarding the legality of online contracts, and strengthening the integration model between Islamic jurisprudence norms and state policies to provide more comprehensive legal protection for women and children.

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