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Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam

- Hak Kekayaan Intelektual (HKI) sebagai Objek Jaminan Pembiayaan dalam Perspektif Hukum Ekonomi Syariah
- Peran Istri sebagai Pencari Nafkah dan Dampaknya terhadap Keutuhan Rumah Tangga Perspektif Islam
- Konsep Nabawi dalam Membangun Keharmonisan Rumah Tangga
- Implementation of The Wakalah Bil Ujroh Contract in Financing Products at Islamic Financial Institutions
- Deconstructing Mu'asyarah Bi Al-Ma'ruf: Toward A Gender-Just Framework of Islamic Family Law
- Eksistensi dan Perkembangan Kelembagaan Hukum Islam di Indonesia
- From Formal Validity to Ethical Accountability: Good Faith in Sharia Electronic Contracts Under Indonesian Law
- Legal Protection for Parties When MPD Fails to Collect Notarial Protocols
- Review of Islamic Law and Law no. 1 of 1974 and Constitutional Court Decision no. 46/PUU-VII/2019 Concerning Siri Marriage Law: The Position of Wives, Children And Property
- Sharia Economic Law on The Growth of Micro, Small, And Medium Enterprises (UMKM) In The Digital Era
- Konsep Kafa'ah dalam Prespektif Imam Malik dan Imam Syafi'i: Analisis Metodologi Ushul Fikih
- Implikasi Normatif dan Sosial Perjanjian Pra-Nikah Perspektif Hukum Keluarga Islam di Indonesia
- The Boycott of Israeli Products From The Perspective Of Sadz Al-Dzarai': A Normative Analysis Within Islamic Law
- Analysis of Legal Policy Implementation Against Perpetrators of Child Bullying
- Kafa'ah dalam Perkawinan Perspektif Maqasid Al-Syari'ah (Studi Kasus pada Pesantren Darul Ma'sum dan Yayasan Darussalam Kabupaten Probolinggo)
- Perlindungan Hukum terhadap Fenomena Perkawinan Siri Dibawah Umur tanpa Wali di Kabupaten Lumajang
- The Genealogy of Taqin Al-Ahkam And Its Initial Implementation In The Ottoman Empire
- Raising the Marriage Age, Raising Dispensations? Evidence From the Malang Religious Court After Constitutional Court Decision no. 22/PUU-XV/2017
- Juridical Review of Marriage Contracts For Pregnant Women In Islamic Law And National Law

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Table of Content

1	HAK KEKAYAAN INTELEKTUAL (HKI) SEBAGAI OBJEK JAMINAN PEMBIAYAAN DALAM PERSPEKTIF HUKUM EKONOMI SYARIAH	181 – 194
	Diding Jalaludin, Piqi Rizki Padhilah, Umar Rojikin, Muhamad Kholi, Tatang Astarudin Universitas Islam Negeri Sunan Gunung Djati Bandung	
2	PERAN ISTRI SEBAGAI PENCARI nafkah DAN DAMPAKNYA TERHADAP KEUTUHAN RUMAH TANGGA PERSPEKTIF ISLAM	195 – 211
	Muhammad Shidqi Pribadi, Teguh dwi cahyadi Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember	
3	KONSEP NABAWI DALAM MEMBANGUN KEHARMONISAN RUMAH TANGGA	212 – 227
	Muhammad Fathur Rachman Imanda, Winning Son Ashari Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember	
4	IMPLEMENTATION OF THE WAKALAH BIL UJROH CONTRACT IN FINANCING PRODUCTS AT ISLAMIC FINANCIAL INSTITUTIONS	228 – 242
	Muhammad Fikri Auliaurrahman Universitas Islam Negeri Sunan Gunung Djati Bandung	
5	DECONSTRUCTING MU'ASYARAH BI AL-MA'RUF: TOWARD A GENDER-JUST FRAMEWORK OF ISLAMIC FAMILY LAW	243 – 266
	Lina Nur Anisa Institut Agama Islam Ngawi	
6	EKSISTENSI DAN PERKEMBANGAN KELEMBAGAAN HUKUM ISLAM DI INDONESIA	267 – 278
	Hasbi Umar, Husin Bafadhal, Reza Rahmatullah Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi	
7	FROM FORMAL VALIDITY TO ETHICAL ACCOUNTABILITY: GOOD FAITH IN SHARIA ELECTRONIC CONTRACTS UNDER INDONESIAN LAW	279 – 303
	Sigit Nurhadi Nugraha, Abdul Rachmad Budiono, Budi Santoso, Rachmi Sulistyarini Fakultas Hukum Universitas Brawijaya, Malang, Indonesia	
8	LEGAL PROTECTION FOR PARTIES WHEN MPD FAILS TO COLLECT NOTARIAL PROTOCOLS	304 – 326
	Adinda Mellinia Aurel, Herlindah, Imam Rahmat Sjafi'i Universitas Brawijaya Malang, Indonesia	
9	REVIEW OF ISLAMIC LAW AND LAW NO. 1 OF 1974 AND CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010 CONCERNING SIRI MARRIAGE LAW: THE POSITION OF WIVES, CHILDREN AND PROPERTY	327 – 341
	Syaiful Bakri, Muhammad Abrori Sekolah Tinggi Ilmu Syari'ah Darul Falah Bondowoso	

- 10 **SHARIA ECONOMIC LAW ON THE GROWTH OF MICRO, SMALL, AND MEDIUM ENTERPRISES (UMKM) IN THE DIGITAL ERA** 342 – 355
Meisa Nur Safitri, Nabila Nurkhafiah, Siti Nurzihan, Afifaturrohmaniyah
Universitas Islam Negeri Sultan Maulana Hasanudin Banten, Indonesia
- 11 **KONSEP KAFI'AH DALAM PRESPEKTIF IMAM MALIK DAN IMAM SYAFI'I: ANALISIS METODOLOGI USHUL FIKIH** 356 – 375
Nailil Maziyati, Luthfiyah
Universitas Islam Negeri Walisongo Semarang, Indonesia
- 12 **IMPLIKASI NORMATIF DAN SOSIAL PERJANJIAN PRA-NIKAH PERSPEKTIF HUKUM KELUARGA ISLAM DI INDONESIA** 376 – 394
Suwito, Didit Darmawan, Saidah Fiddaroini Harun, Risma A'limathus Zuriyah
Universitas Sunan Giri Surabaya, Indonesia
- 13 **THE BOYCOTT OF ISRAELI PRODUCTS FROM THE PERSPECTIVE OF SADZ AL-DZARAI': A NORMATIVE ANALYSIS WITHIN ISLAMIC LAW** 395 – 407
Ai Samrotul Fauziah
UIN Sunan Gunung Djati Bandung
- 14 **ANALYSIS OF LEGAL POLICY IMPLEMENTATION AGAINST PERPETRATORS OF CHILD BULLYING** 408 – 424
Sulistina, Amilia Putri Kartika Sari, Efrilia Yusri, Arindy Sri Musdalifah
Universitas Nurul Jadid Paiton Probolinggo, Indonesia
- 15 **KAFI'AH DALAM PERKAWINAN PERSPEKTIF MAQASID AL-SYARI'AH (Studi Kasus pada Pesantren Darul Ma'sum dan Yayasan Darussalam Kabupaten Probolinggo)** 425 – 439
Muhamad Agus Salim, Fauziah Putri Meilinda
Institut Ahmad Dahlan Probolinggo, Indonesia
- 16 **PERLINDUNGAN HUKUM TERHADAP FENOMENA PERKAWINAN SIRI DIBAWAH UMUR TANPA WALI DI KABUPATEN LUMAJANG** 440 – 453
Uswatun Hasanah, Fauziah Putri Meilinda
Institut Ahmad Dahlan Probolinggo
- 17 **THE GENEALOGY OF TAQNĪN AL-AHKĀM AND ITS INITIAL IMPLEMENTATION IN THE OTTOMAN EMPIRE** 454 – 468
Alby Labib Halbana Bunyamin, Abdul Mufti Albasyari
UIN Sunan Gunung Djati Bandung, Indonesia; Institut Nahdlatul Ulama Ciamis, Indonesia
- 18 **RAISING THE MARRIAGE AGE, RAISING DISPENSATIONS? EVIDENCE FROM THE MALANG RELIGIOUS COURT AFTER CONSTITUTIONAL COURT DECISION NO. 22/PUU-XV/2017** 469 – 483
Risma Nur Arifah, Mohd Nurhusairi Bin Mat Hussin, Erik Sabti Rahmawati, Anggreani Kharimatuz Zahro
Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia; Universiti Malaya, Malaysia
- 19 **JURIDICAL REVIEW OF MARRIAGE CONTRACTS FOR PREGNANT WOMEN IN ISLAMIC LAW AND NATIONAL LAW** 484 – 501
Yurizka Syahdani Nst, Uswatun Hasanah
Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidempuan, Indonesia



REVIEW OF ISLAMIC LAW AND LAW NO. 1 OF 1974 AND CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010 CONCERNING SIRI MARRIAGE LAW: THE POSITION OF WIVES, CHILDREN AND PROPERTY

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ABSTRACT

This study discusses the position of wives, children, and property in unregistered marriages based on Islamic law, Law No. 1 of 1974, and Constitutional Court Decision No. 46/PUU-VIII/2010. The method used is a legal-normative approach with a comparative approach to Islamic legal literature and legislation. The results of the study show that according to Islamic law, unregistered marriages are valid religiously if they fulfill the pillars and requirements of marriage, but they do not have legal force because they are not registered. As a result, wives and children find it difficult to obtain legal protection for their status and civil rights, including inheritance rights and joint property. Constitutional Court Decision No. 46/PUU-VIII/2010 recognizes the civil relationship between children born out of wedlock and their biological fathers, thereby strengthening legal protection for children born from siri marriages. Therefore, marriage registration is important to ensure legal certainty for all parties.

Keywords : *Unregistered Marriage, Islamic law, Law No. 1/1974, Constitutional Court Decision No. 46/PUU-VIII/2010*

ABSTRAK

Penelitian ini membahas posisi istri, anak, dan harta benda dalam pernikahan yang tidak terdaftar berdasarkan hukum Islam, Undang-Undang Nomor 1 Tahun 1974, dan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Metode yang digunakan adalah pendekatan hukum-normatif dengan pendekatan komparatif terhadap literatur hukum Islam dan peraturan perundang-undangan. Hasil penelitian menunjukkan bahwa menurut hukum Islam, perkawinan yang tidak terdaftar sah secara agama jika memenuhi syarat dan ketentuan perkawinan, tetapi tidak memiliki kekuatan hukum karena tidak terdaftar. Akibatnya, istri dan anak-anak kesulitan memperoleh perlindungan hukum atas status dan hak-hak sipil mereka, termasuk hak waris dan harta bersama. Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 mengakui hubungan sipil antara anak-anak yang lahir di luar nikah dan ayah biologis mereka, sehingga memperkuat perlindungan hukum bagi anak-anak yang lahir dari pernikahan siri. Oleh karena itu, pendaftaran pernikahan penting untuk memastikan kepastian hukum bagi semua pihak.

Kata Kunci: *Perkawinan Tanpa Akta, Hukum Islam, Undang-Undang Nomor 1 Tahun 1974, Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*

INTRODUCTION

One form of sacred act is marriage, because marriage involves a relationship that is not only based on physical bonds, but also spiritual bonds ¹. Marriage is an important part of human life. Marriage is one of God's laws that applies to all of God's creatures, including humans, animals, and plants ².

Marriage is a legal bond between a man and a woman to live together in a regular household. In Islamic law, a marriage is considered valid if it fulfills the pillars and requirements of marriage as stipulated in Islamic law ³. According to Law Number 1 of 1974 concerning Marriage, marriage is encouraged so that humans may have legitimate offspring and families, leading to a happy life in this world and the hereafter, under the protection of love and divine blessing ⁴. As stated in Article 1 of Law Number 1 of 1974 concerning Marriage, which states that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God" ⁵.

People who get married do so not merely to satisfy their sexual desires, but to achieve peace, tranquility, and mutual care between husband and wife based on deep love and affection. In addition, it is to establish brotherhood between the two families of the husband and wife based on ethics and aesthetics in the spirit of *ukhuvah basyariyah and Islamiyah* ⁶. However, sometimes this sacred institution is turned into a game by a handful of people, thereby obscuring the meaning of marriage itself as something noble, beautiful, and sacred ⁷

In Indonesia, a valid marriage is one that is conducted in accordance with applicable laws and regulations. For Muslims, a valid marriage is one that is conducted in accordance with Islamic law as stipulated in Article 2 paragraph 1 of Law Number 1 of 1974 and recorded in accordance with paragraph 2 of the same article. After that, in accordance with the sunnah

¹ Siti Nur Has Winda and Muhammad Zainuddin Sunarto, "Integration of the Roles of Men and Women in Forming a Harmonious Family," *International Journal of Science and Environment (IJSE)* 5, no. 3 (2025): 193–202, <https://doi.org/10.51601/ijse.v5i3.176>.

² (Sutriyono, 2025)

³ Syaiful Bakri, "Polarisasi Kesadaran Hukum Dalam Keluarga," *Samawa: Jurnal Hukum Keluarga Islam* 02, no. 2 (2022): 74–83.

⁴ Syaiful Bakri, "Pandangan Hukum Islam Terhadap Epistemologi Zihar Dalam Keluarga Syaiful," *Bulletin of Community Engagement* 4, no. 1 (2024): 225–31.

⁵ Barurotul Amaliyah Sutriyono, Muhammad Abrori, Adela Idris, "Operasi Pemulihan Selaput Dara Bagi Calon Istri Dalam Perspektif Hukum Islam," *SAMAWA: Jurnal Hukum Keluarga Islam* 4, no. 2 (2024): 1–13.

⁶ Syaiful Bakri and Muhammad Abrori, "Problematika Penerapan Diversi Bagi Anak Yang Melakukantindak Pidana Oleh Penegak Hukum Di Era Generasi Beta 12" 5, no. 1 (2025): 1–12.

⁷ Muhammad Abrori Iklil Hasbiyalla, Ummul Muktaze, Norhalimah Achmad Sugiarjo, "Dampak Pernikahan Dini Terhadap Tingkat Perceraian," *SAMAWA: Jurnal Hukum Keluarga ...* 4, no. 1 (2024): 94–104.

of the Prophet Muhammad SAW, it is announced through a walimah so that it is known to the public. However, in reality, there are still many marriages that are not conducted in accordance with the provisions of the law, such as marriages conducted privately or what we know as siri marriages ⁸.

A secret marriage or marriage conducted privately means that the marriage is still carried out in accordance with the pillars and requirements specified by Islamic law. However, it is not registered or recorded at the Office of Religious Affairs (KUA) that has jurisdiction over their place of residence. The invalidity of unregistered marriages or marriages conducted privately according to state law also has a negative impact on the status of children born under the law, namely that the children are considered illegitimate. This means that the children only have a civil relationship with their mother and maternal family. In other words, the children have no legal relationship with their father. In their birth certificates, their status is also considered illegitimate, so only the name of the mother who gave birth to them is listed. The description as an illegitimate child and the absence of the father's name will have a profound social and psychological impact on the child ⁹.

¹⁰ In his research, he said that the position of children in unregistered marriages raises many problems within the country itself. However, under Article 42 of the Marriage Law, children born from unregistered marriages are not included in the criteria for legitimate children. Children born from unregistered marriages will find it difficult to obtain their rights because their legal status in the country is unclear. Meanwhile, in terms of mental development, children born from unregistered marriages will experience mental pressure. This is because children from unregistered marriages find it difficult to obtain legal recognition in the country regarding the status of their biological parents who are not legally married in the country, in other words, they are not registered in the civil registry. In addition

¹¹ His research shows that since the Constitutional Court's decision No. 46/PUU-VIII/2010, children born out of wedlock can have a civil relationship with the man as their father if it can be proven by science and technology that the child has a blood relationship with that

⁸ Sutriyono, "Kritikan Nalar Nikah Misyar Dalam Perspektif Hukum Perkawinan Di Indonesia, Etika Dan Moral," *SAMAWA: Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 52–69.

⁹ Sutriyono, *Perempuan Dimata Fazlur Rahman*, ed. Taufik Hidayat, 1st, Mei 202 ed. (Bondowoso, Indonesia: CV. LICENSI, 2020).

¹⁰ Hutapea, Veronika, & Akbaryanto, (2022)

¹¹ Luh Putu Putri Indah Pratiwi, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliarti, "Pengaturan Terhadap Kedudukan Anak Di Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 3, no. 1 (2020): 67–69.

man. A child is the result of a relationship between a mother and father, whether due to sexual intercourse or other actions in accordance with technological developments that can cause pregnancy. Therefore, the Constitutional Court judges granted a judicial review of Article 43 paragraph (1) of the 1945 Constitution.

For husbands in unregistered marriages, this can also be detrimental to themselves, namely when their wives die first, they are not entitled to joint property and also do not receive inheritance. For Indonesian Muslims, Allah SWT's rules on inheritance have become positive law that is used in Religious Courts in deciding cases of distribution and disputes relating to such inheritance.

RESEARCH METHOD

In this study, the normative legal method is used to discuss doctrines and principles in legal science. The main purpose of this method is to identify and clarify non-legal findings relevant to the research topic. The normative legal method focuses on analyzing existing legal doctrines and applying legal principles in a broader context. Therefore, this study aims to provide a deeper understanding of the legal principles underlying the cases studied ¹².

Enables researchers to describe the existing legal situation and analyze it critically, thereby providing more comprehensive insights into the application of law in specific cases ¹³. The data collection techniques in this study involved primary and secondary data. Primary data was obtained directly from sources through interviews, observations, and unofficial documents ¹⁴.

Meanwhile, secondary data comes from official documents, books, and research reports. This secondary data is divided into primary, secondary, and tertiary legal materials, which include laws and regulations, literature, and additional sources of information such as dictionaries and encyclopedias. This division aims to ensure that all relevant legal aspects can be analyzed thoroughly.

Data analysis is conducted qualitatively, with the aim of ensuring the accuracy and validity of findings based on Law No. 1 of 1974 and Constitutional Court Decision No. 46/Puu-VIII/2010 on Siri Marriage Law. The qualitative approach allows researchers to explore and understand the legal context in greater depth, as well as identify patterns that may not be apparent in quantitative analysis. Therefore, this study is expected to make a

¹² Rifka Agustianti et al., *Metode Penelitian Kuantitatif Dan Kualitatif* (Tohar Media, 2022).

¹³ Agustianti et al.

¹⁴ Agustianti et al.

significant contribution to understanding and implementing Law No. 1 of 1974 and Constitutional Court Decision No. 46/Puu-VIII/2010 on Siri Marriage Law.

FINDINGS AND DISCUSSION

Siri Marriage in the Perspective of Islamic Law and Positive Law

In Islamic legal terminology, a siri marriage is defined as a marriage contract that fulfills the pillars and requirements of a sharia marriage, but is not recorded by a Marriage Registrar (PPN)¹⁵.

In Islamic law, this type of marriage is valid as long as the five pillars of marriage are fulfilled, namely the presence of the prospective husband, prospective wife, guardian, two witnesses, and *ijab qabul*. The Prophet Muhammad SAW said, “There is no marriage except with a guardian and two fair witnesses” (HR. Abu Daud and Tirmidzi)¹⁶. Based on this principle, from a religious perspective, a siri marriage is still considered valid and binding morally and spiritually for the couple¹⁷.

However, in Indonesia’s positive legal system, specifically according to Law Number 1 of 1974 concerning Marriage, the validity of a marriage is not sufficient by only fulfilling religious requirements, but it must also be officially registered before the state. This is emphasized in Article 2 paragraph (2) of Law No. 1 of 1974, which reads: “Every marriage shall be registered in accordance with the applicable laws and regulations.” This registration has administrative legal consequences so that the state can protect the civil rights arising from the marriage, such as inheritance rights, joint property, and the status of children¹⁸.

The absence of registration means that unregistered marriages have no formal legal force, even though they are considered valid by religion¹⁹. Thus, Islamic law recognizes the validity of unregistered marriages, while state law refuses to formally recognize them unless they have been registered²⁰. This dualism of views creates a rather complex socio-legal

¹⁵ Abu Yazid Adnan Quthny and Ahmad Muzakki, “Pencatatan Pernikahan Perspektif Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974,” *Ayy-Syari’ah: Jurnal Hukum Islam* 8, no. 1 (2022): 25–40.

¹⁶ Wisnu Wardana and Faisar Ananda, “Hukum Pernikahan Dalam Perspektif Di Dunia Islam,” *Innovative: Journal of Social Science Research* 4, no. 1 (2024): 4472–87.

¹⁷ Zahroul Firdausi Alfaiza, Muhammad Kurniawan Budi Wibowo, and B Baehaqi, “PERLINDUNGAN HAK WARIS ANAK HASIL PERKAWINAN SIRI MENURUT KOMPILASI HUKUM ISLAM DAN HUKUM POSITIF INDONESIA,” *AL HUKMU: Journal of Islamic Law and Economics*, 2024, 24–33.

¹⁸ Rizki Amar et al., “Kedudukan Pencatatan Terhadap Keabsahan Perkawinan: Telaah Pencatatan Perkawinan,” *Jurnal Tana Mana* 5, no. 2 (2024): 217–26.

¹⁹ Agus Pranoto, Lilik Andaryuni, and Mukhtar Salam, “Problematika Pernikahan Siri Bawah Umur Di Kabupaten Kutai Barat,” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1099–1115.

²⁰ Samsul Arifin and Aly Maschan Moesa, “Tinjauan Yuridis Terhadap Status Anak Dari Nikah Siri Dalam Perspektif Hukum Islam Dan Hukum Positif,” *Jurnal Hukum Lex Generalis* 6, no. 6 (2025).

problem, especially for women and children who are the most vulnerable parties due to the absence of clear legal protection ²¹.

Several contemporary fiqh scholars, such as Yusuf al-Qaradawi and Wahbah Zuhaili, argue that marriage registration is part of *tadbir al-maslahah* (public interest management). This means that registration is not part of the pillars or requirements of marriage, but is an administrative obligation for the benefit of the community. Thus, in the context of a modern state, marriage registration is a form of *ta'zir* (punishment) by the state to prevent abuse of marriage law, including the neglect of wives and children ²².

Therefore, in Indonesian legal practice, although *siri* marriages are considered valid in religious terms, they have no legal consequences in the state sphere. This is reaffirmed by the Compilation of Islamic Law (KHI) Article 5 paragraph (1), which states that “Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar” ²³. Thus, in positive law, *siri* marriages have serious implications for the status of wives, children, and property.

The Position of Wives in Secret Marriages According to Islamic Law and Law No. 1 of 1974

In Islamic law, a wife in a *siri* marriage has a legitimate position as a lawful spouse, because the marriage contract has fulfilled its pillars and requirements. The wife is entitled to civil rights from her husband, such as physical and emotional support, protection, and a place to live. The Qur'an explicitly states in Surah An-Nisa: 1

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۗ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۗ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا (النساء: ١)

“O mankind, fear your Lord, who created you from a single soul (Adam) and created from it its mate (Eve). From the two of them, Allah spread forth many men and women. Fear Allah, in whose name you ask one another, and (preserve) the ties of kinship. Indeed, Allah is ever watching over you.” ²⁴.

In this verse, Allah commands humans to fear Him, who cares for humans and bestows His blessings upon them. He is the One who created humans from a single person,

²¹ Arifin and Moesa.

²² Alfajar Nugraha, “Sanksi Kerja Sosial Sebagai Syarat Pengesahan Kawin Bagi Pelaku Kawin Tidak Tercatat Perspektif Siyasa Syar’iyah” (Universitas Islam Indonesia, 2025).

²³ Muhammad Rizal Firdaus and Ali Maskur, “Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Pencatatan Perkawinan Menurut Ketentuan Yang Berlaku Di Indonesia (Hukum Positif),” *Istidal: Jurnal Studi Hukum Islam* 11, no. 1 (2024): 52–72.

²⁴ Nu Online, “Nu Online Super App,” NU Online Super App, 2025.

namely Adam. Thus, according to the majority of exegetes, Adam was the first human created by Allah. Then, from that one being, Allah also created his partner, commonly known as Eve. From Adam and Eve, humanity multiplied²⁵. From the above verse, it can be understood that humans must maintain their marital relationships fairly and responsibly. Thus, theologically, the status of a wife in a siri marriage cannot be considered despicable, because the contract is valid according to Islamic law.

However, from the perspective of Indonesian positive law, the position of wives in unregistered marriages is very weak because they are not recognized by state law²⁶. As a result, wives do not have the legal right to sue their husbands in the event of divorce, violence, or neglect. She also cannot claim alimony or a share of joint property because her marriage is not registered²⁷. In court practice, siri wives' lawsuits are often rejected because they do not have proof of a valid marriage certificate²⁸.

Article 7 paragraph (1) of the KHI stipulates that marriages must be registered to have legal force²⁹. In this case, siri wives have no legal protection for their marital status, making them highly vulnerable to legal invisibility, i.e., not being recognized by the law. In this context, the state, through marriage registration, serves to protect women's rights as equal subjects of law³⁰.

As a compromise, the Religious Court provides a mechanism for marriage validation, namely the determination of the validity of marriages that have not been registered, as stipulated in Article 7 paragraph (2) of the KHI³¹. With marriage validation, unregistered wives can obtain legal recognition of their marriage, so that their legal rights can be protected³². However, not all unregistered marriages can be validated, especially if they were conducted after the enactment of Law No. 1 of 1974 without a valid reason.

²⁵ M Quraish Shihab, "Wawasan Al-Qur'an: Kajian Tematik Atas Berbagai Persoalan Umat," *Bandung: Mizan*, 2013.

²⁶ Nur Faizah, M Zamroni, and Dhofirul Yahya, "Kedudukan Hukum Anak Dari Hubungan Nikah Siri Berdasarkan Kompilasi Hukum Islam," *Indonesian Journal of Law and Justice* 2, no. 4 (2025): 12.

²⁷ Ali Hadi, "HAK HAK PERDATA AKIBAT PERCERAIAN PASANGAN KAWIN SIRRI TERHADAP HARTA BENDA BERSAMA (GONO GINI)," *IJTIHAD: Jurnal Studi Hukum Islam* 1, no. 1 (2023): 54–68.

²⁸ Siti Rahmah Rahmah et al., "TTSBAT NIKAH DALAM RANGKA MEMBERIKAN PERLINDUNGAN HUKUM TERHADAP PERNIKAHAN SIRI," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 8, no. 1 (2024): 86–103.

²⁹ Erni Widya. Ningrum, "Pemahaman Konsep Gharar Dimasyarakat Dalam Jual Beli Online.," *Sabmiyya: Jurnal Ekonomi Dan Bisnis*, 2023, 472–80.

³⁰ Syawal Ridwan, "Pernikahan Tanpa Pencatatan: Kegagalan Negara Dalam Melindungi Hak Sipil Perempuan Dan Anak," *JURNAL ILMIAH GEMA PERENCANA* 4, no. 1 (2025): 77–96.

³¹ Bakri, "Polarisasi Kesadaran Hukum Dalam Keluarga."

³² Ahmad Trisno and Syaiful Bakri, "Model Penalaran Epistemologi Irfani; Filsafat Al-Hikmah Al-Muta'aliyah Mulla Shadra," *Journal of Islamic Thought and Philosophy* 01, no. 02 (2022): 291–307.

Thus, in the context of Indonesian law, the status of a siri wife is highly dependent on the registration of the marriage. Without registration, she loses the civil rights guaranteed by the state³³. Therefore, synchronization between Islamic law and positive law is very important to ensure justice for women in marriages that are valid according to religion but not registered administratively.

The Position of Children and Wealth Based on Constitutional Court Decision No. 46/PUU-VIII/2010

Prior to Constitutional Court (MK) Decision No. 46/PUU-VIII/2010, children born from unregistered marriages only had legal ties to their mothers and their mothers' families. This was based on Article 43 paragraph (1) of Law No. 1 of 1974, which states: "Children born outside of marriage only have civil relations with their mother and her family"³⁴. This provision was considered discriminatory against children, as they became victims of their parents' administrative irregularities.

Through Constitutional Court Decision No. 46/PUU-VIII/2010, the Constitutional Court made a progressive legal breakthrough by stating that children born out of wedlock have civil relations with their mother and also with the man who can be scientifically proven (through DNA) or other evidence to be their biological father³⁵. This ruling affirms that a child's status should not be discriminated against simply because their parents' marriage is not officially registered³⁶. This principle is in line with the Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990³⁷.

The impact of this ruling is very significant. Children from unregistered marriages now have the right to recognition, financial support, inheritance, and legal protection from their biological fathers. Thus, Constitutional Court Decision No. 46/PUU-VIII/2010

³³ Syaiful Bakri, "Hak Konstitusi Warga Negara Indonesia Yang Menjadi Tenaga Kerja Di Luar Negeri," *Attractive: Innovative Education Journa* 6, no. 2 (2024): 633–44.

³⁴ Georgina Agatha, "Pembuktian Dan Pengesahan Anak Luar Kawin Serta Akibat Hukumnya Setelah Berlaku Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Dalam Pandangan Hukum Islam," *Indonesian Notary* 3, no. 1 (2021): 23.

³⁵ Dwi Arini Zubaidah, "Status Anak Di Luar Nikah Dalam Perspektif Hukum Positif Dan Hukum Islam (Telaah Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010)," *Familia: Jurnal Hukum Keluarga* 4, no. 2 (2023): 91–106.

³⁶ Kristin Collins, "When Fathers' Rights Are Mothers' Duties: The Failure of Equal Protection in *Miller v. Albright*," *Yale Lj* 109 (1999): 1669.

³⁷ Ricardo Juanito Kalangi, Caecilia J J Waha, and Lusy K F R Gerungan, "Perlindungan Hak-Hak Anak Dalam Status Pengungsi Menurut Konvensi Hak-Hak Anak Tahun 1989 Dan Implementasinya Di Indonesia," *Lex Privatum* 12, no. 4 (2023).

provides legal protection for children who are victims of an irregular marriage administration system³⁸. It also demonstrates the application of substantive justice over formal justice.

As for property, in unregistered marriages, the concept of “joint property” (*gono-gini*) is not recognized because, according to state law, such marriages do not exist. Article 35 of Law No. 1 of 1974 states that “property acquired during marriage becomes joint property,” but because *siri* marriages are not registered, this provision does not apply.³⁹ Property acquired during a *siri* relationship is considered the personal property of each party, unless there is evidence of an agreement or proof of actual contribution⁴⁰.

However, from an Islamic law perspective, property acquired during cohabitation can still be considered the result of a valid partnership, so a fair distribution is still recommended based on the principle of *musyarakah* (partnership)⁴¹. In this case, the settlement of property disputes in unregistered marriages can be done through general civil mechanisms, not through the Religious Court.

The Position of Wives, Children, and Property in Siri Marriages

A *siri* marriage is a marriage contract conducted in accordance with Islamic religious provisions but not officially registered before a state official⁴². In Islamic law, the validity of a marriage is determined by the fulfillment of the pillars and requirements, not by registration⁴³. Therefore, wives in *siri* marriages are still considered valid in religious terms and are entitled to the rights of wives, such as financial support, protection, and honor. However, Law No. 1 of 1974 Article 2 paragraph (2) stipulates that every marriage must be registered in order to have legal force. Thus, wives in *siri* marriages are not recognized by state law, so they lose their civil rights in the event of a dispute, divorce, or abandonment⁴⁴.

The status of children born out of *siri* marriages underwent significant development after the issuance of Constitutional Court (MK) Decision No. 46/PUU-VIII/2010.

³⁸ Dea Rusianda Naibaho, Ni Luh Wayan Yasmiati, and Ratna Artha Windari, “Analisis Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Pembagian Hak Waris Anak Yang Lahir Dari Perkawinan Siri,” *JOURNAL OF LAW AND NATION* 4, no. 1 (2025): 177–86.

³⁹ Mushafi Mushafi and Faridy Faridy, “Tinjauan Hukum Atas Pembagian Harta Gono Gini Pasangan Suami Istri Yang Bercerai,” *Batulis Civil Law Review* 2, no. 1 (2021): 43–55.

⁴⁰ Hadi, “HAK HAK PERDATA AKIBAT PERCERAIAN PASANGAN KAWIN SIRRI TERHADAP HARTA BENDA BERSAMA (GONO GINI).”

⁴¹ Elvina Jahwa et al., “Konsep Perkawinan Dalam Hukum Islam Dan Hukum Nasional Di Indonesia,” *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 1692–1705.

⁴² Awaliah Awaliah et al., “Akibat Hukum Pernikahan Siri,” *Maleo Law Journal* 6, no. 1 (2022): 30–40.

⁴³ Bakri, “Polarisasi Kesadaran Hukum Dalam Keluarga.”

⁴⁴ M Fahmi Al-Amruzi, “Pencatatan Perkawinan Dan Problematika Kawin Siri,” *Ulumul Syar’i: Jurnal Ilmu-Ilmu Hukum Dan Syariah* 9, no. 2 (2020): 1–18.

Previously, according to Article 43 paragraph (1) of Law No. 1 of 1974, children born out of wedlock only had civil relations with their mother and her family (Bakri, 2022). However, after the Constitutional Court's decision, children also have civil relations with their biological fathers if this can be scientifically proven, such as through DNA tests or other evidence. This decision is a progressive breakthrough that provides legal protection for children who are victims of unregistered marriages. This principle is in line with the principle of substantive justice and the Convention on the Rights of the Child (CRC), which Indonesia has ratified.

Meanwhile, the status of property in unregistered marriages also faces legal uncertainty. Under Article 35 of Law No. 1 of 1974, property acquired during marriage becomes joint property, but this provision only applies to valid and registered marriages. Because unregistered marriages are not recorded, property acquired during the relationship is considered the personal property of each party. However, from an Islamic legal perspective, property acquired during cohabitation can still be considered the result of cooperation (*musyarakah*), so a fair distribution based on each party's contribution is recommended.

The social and legal implications of unregistered marriages are the weak position of women and children in terms of state legal protection. Wives have no legal basis to claim alimony or inheritance rights, while children potentially lose recognition of their biological father if it cannot be proven. This situation creates injustice and has the potential to violate human rights, particularly the rights of women and children. Therefore, marriage registration is an important instrument in realizing social justice and legal protection in Indonesia.

Table 1. Classification of the Status of Wives, Children, and Property in Siri Marriages

Aspects	Islamic law	Positive Law (Law No. 1 of 1974 & KHI)	Constitutional Court Decision No. 46/PUU VIII/2010
The Position of the Wife	Legitimate according to religion; entitled to financial support and protection.	Not legally recognized by the state because it is not registered; does not have the right to alimony and inheritance.	Not directly regulated; still not legally recognized without registration.
The position of children	Valid if born from a marriage contract that	Considered an illegitimate child; only	Recognized as having a civil relationship with the biological

	is valid according to religion.	has a civil relationship with the mother.	father if it can be scientifically proven.
Assets	Can be considered as the result of cooperation (musyarakah); distribution based on fairness	Not recognized as joint property because the marriage was not registered.	Not directly regulated, but can be the basis for civil claims if the biological father relationship is proven.
Legal Protection	Based on the morals and responsibilities of husband and wife according to Islamic law.	Weak because there is no marriage certificate; difficult to file a lawsuit in court.	Providing legal protection for children born out of unregistered marriages.
Legal Solutions	It is recommended to register marriages as part of masalah.	Can file for marriage validation to legalize the marriage.	Guaranteeing children's rights without discrimination based on their parents' marital status.

As a solution, the state has provided a mechanism for marriage validation through Article 7 paragraph (2) of the Compilation of Islamic Law (KHI) to legalize unregistered marriages so that they have legal force ⁴⁵. Additionally, the Constitutional Court's ruling has expanded protection for children born out of unregistered marriages so that they do not become victims of legal discrimination ⁴⁶. Therefore, synergy between Islamic law and positive law is urgently needed to ensure justice and legal certainty for wives, children, and property in every marriage, whether registered or unregistered.

CONCLUSION

Siri marriages are valid under Islamic law because they fulfill the pillars and requirements of marriage, but they have no legal force under Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) if they are not registered before an authorized official. As a result, the wife's position is legally weak, and she has no rights to alimony, inheritance,

⁴⁵ Ahmad Faiz and Sri Redjeki Slamet, "Penetapan Isbat Nikah Terhadap Perkawinan Yang Tidak Tercatat Di Kantor Urusan Agama Dan Implikasi Hukumnya Terhadap Status Hukum Suami Istri Dan Anak (Studi Kasus Penetapan Pengadilan Agama Jakarta Selatan Nomor 879/PDT. P/2021/PA. JS)," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): 2525–33.

⁴⁶ Mohammad Haikal and Sumardi Efendi, "Prinsip-Prinsip Hukum Ekonomi Syariah Dalam Undang-Undang Perbankan Syariah," *MAQASIDI: Jurnal Syariah Dan Hukum*, no. 13 (2024): 26–39, <https://doi.org/10.47498/maqasidi.v4i1.2988>.

or state protection. Nevertheless, the mechanism of marriage validation can be a solution for unregistered marriages to obtain legal recognition and valid protection for the couple.

Constitutional Court Decision No. 46/PUU-VIII/2010 brought important progress in the protection of children born from unregistered marriages by recognizing the civil relationship between the child and their biological father. However, property acquired during a siri marriage is still not recognized as joint property under state law. Therefore, marriage registration is crucial to provide legal certainty, protect the rights of wives and children, and harmonize Islamic law with positive law to achieve justice and the welfare of the family.

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