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## LEGAL CONSTRUCTION OF MARRIAGE REGISTRATION LAW AS AN ADDITIONAL PILLAR FROM THE PERSPECTIVE OF MAQASID ASY-SYARI'AH OF JAMALUDDIN ATHIYAH

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### ABSTRACT

Marriage is a bond of *misaqan galizan* between a man and a woman to build a happy and eternal family or household based on the Almighty God. Article 1 of Law No. 1 of 1974 concerning Marriage explains the validity of a marriage and the obligation to register a marriage. The law of marriage registration has never been discussed before in classical jurisprudence (Fiqh). The marriage registration law is a legal breakthrough to protect rights in the household. Considering the urgency of the marriage registration law, which is so great, then what is the legal position of marriage registration in a marriage. There are two questions in this study: 1.) What is the law on marriage registration according to the perspective of Jamaluddin Athiyah's *maqasid asy-syari'ah* and 2.) How is the reconstruction of the law on marriage registration in Indonesia into an additional pillar in marriage?. This study concludes that: First, the law of marriage registration has been in accordance with the concept of *maqasid asy-syari'ah* developed by Jamaluddin Athiyah as marriage registration has fulfilled seven objectives as stated in *maqasid asy-syari'ah* within the family scope. Second, the concept of marriage registration is a form of reactualization of the position of witnesses in marriage. Thus, the researcher places marriage registration as an additional pillar in the marriage procession that has an equal position as witnesses.

**Keywords :** Marriage Registration, Pillars of Marriage, *Maqasid asy-Syari'ah*.

### ABSTRAK

Pernikahan adalah ikatan misaqqan galizan antara seorang pria dan seorang wanita untuk membangun keluarga atau rumah tangga yang bahagia dan abadi berdasarkan Allah Yang Maha Kuasa. Pasal 1 Undang-Undang No. 1 Tahun 1974 tentang Pernikahan menjelaskan keabsahan pernikahan dan kewajiban untuk mendaftarkan pernikahan. Hukum pendaftaran pernikahan belum pernah dibahas sebelumnya dalam yurisprudensi klasik (Fiqh). Undang-undang pendaftaran pernikahan merupakan terobosan hukum untuk melindungi hak-hak dalam rumah tangga. Mengingat urgensi undang-undang pendaftaran pernikahan yang begitu besar, lalu bagaimana kedudukan hukum pendaftaran pernikahan dalam pernikahan? Ada dua pertanyaan dalam penelitian ini: 1.) Bagaimana hukum pendaftaran pernikahan menurut perspektif maqasid asy-syari'ah Jamaluddin Athiyah dan 2.) Bagaimana rekonstruksi hukum pendaftaran pernikahan di Indonesia menjadi pilar tambahan dalam pernikahan? Studi ini menyimpulkan bahwa: Pertama, hukum pendaftaran perkawinan telah sesuai dengan konsep maqasid asy-syari'ah yang dikembangkan oleh Jamaluddin Athiyah karena pendaftaran perkawinan telah memenuhi tujuh tujuan sebagaimana dinyatakan dalam maqasid asy-syari'ah dalam lingkup keluarga. Kedua, konsep pendaftaran perkawinan merupakan bentuk aktualisasi kedudukan saksi dalam perkawinan. Dengan demikian, peneliti menempatkan pendaftaran perkawinan sebagai pilar tambahan dalam prosesi perkawinan yang memiliki kedudukan setara dengan saksi.

**Kata kunci:** Pencatatan Perkawinan, Pilar Perkawinan, *Maqasid asy-syari'ah*.

## Introduction

Marriage is a sacred physical and spiritual bond pledged by a man on an eternal and happy ladder. Because this bond is so holy, this event must also begin with a marriage contract as regulated in Islamic law. By carrying out the marriage, the servant has fulfilled one of Allah's commands and is worthy of worship. Allah mentions that marriage is a *misaqan galilan*, namely a great agreement.

Legal regulations related to marriage can be found in many classic Islamic jurisprudence literatures and laws that have been legislated. The presence of Indonesia marriage law is a reform of Islamic law about marriage because it contains norms laws that live hand in hand with the conditions of Indonesian law and society.

One of the interesting rules to study is regarding the validity of marriages and the obligation to register marriages for people who enter into a marriage. This is stated in article 2, paragraph (1) and (2) of Law No.1 of 1974 concerning marriage as follows:

Paragraph (1): Marriage is valid, when performed according to the laws of each religion and belief.

Paragraph (2): Every marriage is registered according to the applicable laws and regulations.

Legal experts differ in their interpretation of article 2. This article contains two understandings and interpretations. The first understanding is understanding paragraph (1) separately from paragraph (2), which results in the understanding that the validity of marriage only needs to be carried out according to religious and belief law so that marriage registration is only seen as a mere administrative requirement. This perspective has resulted in quite a few Muslims getting married without registering the event with an authorized official or what we usually know as unregistered marriages or unregistered marriages. Meanwhile, the second understanding, namely, the understanding of paragraph (1) cannot be separated from paragraph (2), resulting in the understanding that the validity of a marriage, apart from being carried out according to religion, must also be registered before an authorized officer (Nasution, 2009).

The first impact of understanding article (2) is that paragraph (1) and paragraph (2) are not related to each other, namely the widespread phenomenon of unregistered marriages, where people get married without registering the marriage event at the Pegawai Pencatat Nikah (PPN) of Kantor Urusan Agama or Dinas Kependudukan dan Pencatatan Sipil (Warman et al., 2023). In the 2022 performance report of Direktorat Jenderal Kependudukan

dan Catatan Sipil reported that during 2022, 69,403,088 people reported their marriage but did not have a marriage certificate (Direktorat Jenderal Kependudukan dan Catatan Sipil, 2022). This data only covers people who have reported their marital status as not being registered and does not rule out the possibility that there are still many people who do not report their marital status for various underlying reasons.

With the widespread practice of unregistered marriages, there are many problems related to the non-registration of marriages, especially the issue of fulfilling the rights of wives and children. If a marriage is not registered, it is deemed to have never existed in the eyes of the law and the state, so women and children do not have legal protection for the rights they should have (Hanapi & Yuhermansyah, 2020).

Marriage registration is authentic evidence of the existence of a marriage event. If we look further, one of the pillars of marriage is two witnesses. A marriage witness not only has the task of seeing and declaring the validity of a marriage but more deeply, a witness can be proof that a marriage will take place (Koto & Aini, 2025). Thus, marriage registration and two witnesses have strong philosophical similarities.

Talking about the validity of a marriage, the author first explains the pillars and conditions for a valid marriage. As the primary sources of Islamic law, the Qur'an and Hadith do not explain in detail what constitutes harmony and the legal conditions for a marriage. According to Abdul Rahman al-Jaziri, only two things constitute harmony in a marriage, namely consent and consent, both of which are combined in a marriage contract. Apart from that, al-Jaziri also explained that there was no agreement among the four sects of imams (Imam Maliki, Imam Hanafi, Imam Syafi'i and Imam Hambali) in formulating the pillars and conditions of marriage (Al-Jaziri, 2003).

The existence of marriage registration is by *maqasid ash-shari'ah*. In this case, the author uses the *maqasid ash-shari'ah* theory from Jamaluddin Athiyah's perspective. In addition to using the theory of *maqasid ash-shari'ah* from the perspective of Jamaluddin Athiyah, the author also uses the political theory of Islamic law, called the term *siyasah syar'iyyah*. This theory is used to construct a new legal structure so that marriage registration can be added as a pillar in the marriage pillar.

## **Method**

This research is library research equipped with field data as supporting data. The field data used in this research are in the form of Religious Court decisions, scientific journals, performance reports of related agencies, theses, and dissertations that are still related to marriage registration.

The approach that researchers use in this research is philosophical and normative juridical. Researchers (Marzuki, 2016) dissect this problem using the maqasid ash-shari'ah theory from Jamaluddin Athiyah's perspective and legal political theory. These two theories is used to construct a new legal structure so that marriage registration can be added as a pillar in the marriage pillar.

The data analysis technique in this dissertation uses two methods: descriptive and the Miles and Huberman model. By employing the descriptive method, the author presents this dissertation by describing the concept of marriage registration and its implementation in society, including its historical, philosophical, political, and other related backgrounds relevant to the research object of this dissertation. This technique is also enhanced by the Miles and Huberman model method. This method consists of three stages carried out simultaneously: data reduction, data presentation, and drawing conclusions or verification (Miles & Huberman, 1992).

## **Marriage Registration in Indonesia**

Marriage registration is a legal breakthrough in Islamic family jurisprudence in Indonesia. This regulation aims to create order in marriage. With this regulation, a marriage can be easily proven with an authentic certificate issued by an authorized official. Marriage registration can also confirm a person's marital status so that the rights and obligations resulting from a marriage become clear.

The presence of this regulation in the constellation of Islamic law in Indonesia cannot be separated from its pros and cons. Marriage registration is considered an effort to secularize marriage law in Indonesia. The registration of the marriage determines the validity of a marriage. The People's Representative Council held a series of discussions at that time, along with experts in the field, so it was conceptualized as contained in Article 2 Law No.1 of 1974 concerning marriage. The legal basis for implementing this marriage registration law is as follows:

1. Law No.1 of 1974 concerning marriage.
2. Government Regulation no. 9 of 1974 concerning Implementation of Law no. 1 of 1974 concerning Marriage.

3. Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law.
4. Minister of Religious Affairs Regulation no. 22 of 2024 concerning Marriage Registration.
5. Decree of the Director General of Islamic Community Guidance No. 977 of 2018 concerning Guidelines for the Implementation of Assistant Marriage Registrar Employees.
6. Law Number 23 of 2006 concerning Population Administration Jo. Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration.

As explained above, Muslim people who wish to enter into an Islamic marriage must register their marriage at the District Religious Affairs Office (KUA), where the marriage contract is carried out. Technical instructions for implementing marriage registration are set out in Minister of Religious Affairs Regulation no. 30 of 2024 concerning Marriage Registration. In this regulation, the marriage registration process is divided into four stages, namely, registration marriage wishes, marriage examination, implementation of marriage contracts and marriage registration (Zahro, 2025).

### **Factors Causing Unregistered Marriages**

Indonesia has implemented family law reforms with the enactment of the Marriage Law in 1974. One of the norms contained therein stipulates the obligation to register marriages. Since the enactment of this regulation, the issue of marriage registration has remained unresolved.

In the 2022 performance report of Direktorat Jenderal Kependudukan dan Catatan Sipil reported that during 2022, 69,403,088 people reported their marriage but did not have a marriage certificate (Direktorat Jenderal Kependudukan dan Catatan Sipil, 2022). From the report, we know that the level of public awareness of the importance of marriage registration is still very low.

To address the legal uncertainty faced by couples whose marriages are unregistered, a legal instrument exists to validate these unregistered marriages: filing a marriage legalization (istbat nikah) case with the Religious Court. In its annual report from 2017 to 2022, the Supreme Court reported that many unregistered marriages remain in the community. Each year, Religious Courts validate tens of thousands of unregistered marriage cases. The data is as follows (Mahkamah Agung, n.d.):

Table 1. Marriage Legalization Case 2017 - 2022

No	Case	2017	2018	2019	2020	2021	2022
1.	Lawsuit	2.372	2.323	2.512	2.447	3.138	3.292
2.	Application	55.322	58.161	60.231	47.316	46.930	57.916
	Amount	57.694	60.484	62.746	49.763	50.068	61.208

From the data above, it can be concluded that marriage confirmation is not the right approach to reduce the number of marriages or increase public compliance with marriage registration regulations. Instead, it creates a legal loophole for couples in unregistered marriages to obtain legal certainty. This is what fuels the public's assumption that unregistered marriages continue, ultimately leading to the possibility of filing a marriage confirmation at the Religious Court (Tohet, 2025).

To determine the factors contributing to the continued neglect of marriage registration laws, the author sampled six studies related to marriage registration among 2020-2025, as follows:

1. Anisa Pratiwi, in her research in 2022, stated that there are at least nine factors that influence the practice of unregistered marriages in Majene Regency, as follows: limited funds, lack of understanding of the importance of marriage registration, failure to monitor Marriage Registrars, strong traditional traditions, the distance of the house from the KUA office, failure to fulfill administrative requirements, being a minor, still being married to another person and the iddah period not being completed. (Pratiwi, 2022).
2. Encep Taufik Rahman et al., in their research in 2024, stated that at least three factors influence the occurrence of unregistered marriages in Jayapura City: economic factors, difficulties in accessing administrative services, dan a lack of understanding of the importance of marriage registration. (Rahman et al., 2024).
3. Iman Jauhari et al., in their research in 2023, stated that there are at least seven factors that influence the occurrence of unregistered marriages in Aceh, as follows: Economic, pregnancy outside of marriage, a lack of understanding and public awareness about marriage registration, not obtaining permission for polygamy from the legal wife, marriages without a guardian, avoid administrative procedures and to avoid adultery (Jauhari et al., 2023).
4. Baihaqi et al., in their research in 2024, stated that there are at least four factors that influence the occurrence of unregistered marriages among the Madurese community in

Kubu Raya Regency, as follows: difficulty in completing marriage administration, pregnancy outside of marriage, still being bound by a legal marriage and the strong hegemony of religious figures (Baihaqi et al., 2024).

5. Hafiz Maulana, in his research in 2022, stated that there are at least three factors that influence the occurrence of unregistered marriages in Kuantan Mudik District, Kuantan Senggingi Regency, Riau Province, as follows: underage factors, factors still related to marriage with other people and lack of understanding of religion and the urgency of registering marriages (Maulana, 2022).
6. Qurrotul Ayuni, in her research in 2023, stated that there are at least five factors that influence the occurrence of unregistered marriages in Cibuntu Village, Cibitung District, Bekasi Regency, as follows: economic factors, the factor of the prospective bride and groom being underage, the factor of avoiding adultery, the factor of getting pregnant outside of marriage and the last factor is the lack of knowledge of the regulations regarding marriage registration (Ayuni et al., 2023).

The six studies above represent a sample of research taken from various regions in Indonesia. The phenomenon of unregistered marriages is not limited to a few regions; it has become a national issue that the government should address. These six studies found that economic factors, followed by a lack of public understanding of the urgency of marriage registration, are the most dominant factors in the occurrence of unregistered marriages in Indonesia

### **The Urgency and Problems of Marriage Registration**

The norm of marriage registration represents a breakthrough in Islamic law in the study of family jurisprudence. Classical fiqh texts never mention marriage registration. In light of changing times, the government has recognized the need for an instrument that provides a sense of security regarding the fulfillment of rights and obligations within the family. Marriage registration has several functions for its implementation, as follows (Hanapi & Yuhermansyah, 2020).

- a. To realize legal certainty
- b. To establish legal order in the form of evidence or legal benefits (justice utility)
- c. To facilitate government activities in the population sector
- d. To create a harmonious legal life in the society or to create legal justice.

In addition, marriage registration also aims to protect the rights of women and children. When it comes to neglecting household obligations, women and children are often

the victims. A husband easily abandons his family, even committing domestic violence due to a lack of authentic evidence. In terms of child protection, marriage registration can prevent child marriages, as late marriage registration requires a minimum marriage age. Furthermore, marriage registration can minimize coercion in marriage.

The widespread practice of unregistered marriages in society has given rise to legal issues that are difficult to resolve. In addition to impacting a person's legal status, these unregistered marriages also impact everyday social life. The public's continued ignorance of the impact of these marriage practices has compounded the complexity of the problems. According to Abdul Manan, the impacts of unrecorded marriages include (Sulfian, 2023):

- a. The husband and wife do not have a marriage certificate as proof that they are legally married according to religion and state.
- b. Children cannot obtain a birth certificate from an authorized wife because to obtain a birth certificate a marriage certificate from their parents is required.
- c. Children cannot inherit their parents' assets because there is no authentic evidence stating that they are the heirs of their parents.
- d. Do not obtain other rights in the implementation of state administration which must be fulfilled as proof of identity.

In this sub-chapter, the author will outline some of the ironies surrounding unregistered marriages that have registered in the courts.

- a. Legal Smuggling

Essentially, marriage registration aims to ensure the validity of a marriage. Failure to meet the requirements for marriage can lead individuals to resort to illegal means by entering into an unregistered marriage, which results in the marriage not being recognized by the Religious Court. The Panel of Judges at the Banjarbaru Religious Court, who examined case number 55/Pdt.P/2018/PA.Bjb decided to reject the application for marriage confirmation submitted by a married couple, because in the trial facts it was found that when the marriage was carried out, the prospective bride was still in the idah period.

Unregistered marriage is a solution when someone who wants to get married cannot fulfill the requirements of marriage. The case in the middleviral Currently, the marriage confirmation application filed by two well-known young artists, Rizky Febian and Mahalini, has been rejected. The panel of judges examining case number

821/Pdt.P/2024/PA.JS rejected the marriage validation application of the two public figures because their marriage contained an error in the validity of the bride's *wali*.

Legal smuggling also occurs in cases of legalization of underage marriages. The panel of judges examining cases 82/Pdt.P/2023/PA.Bjb and 139/Pdt.P/2023/PA.Mj rejected the marriage validation petition filed by a married couple whose marriage was not registered when they were minors. In this case, the husband and wife tried to commit legal smuggling when they were married. They registered at the KUA but were rejected because they were not old enough to marry, so they took a shortcut by getting married without registering first. Apart from that, legal smuggling is also often done because one or both of the bride and groom are still bound by a legal marriage. The Panel of Judges at the Sentani Religious Court, which examined case number 11/Pdt.P/2021/PA.Stn rejected the application for marriage validation made by the husband and wife because it was proven in legal facts that the bride was still married to another person.

Some of the cases above show people's tendency to circumvent the law in order to obtain legal status for their marriage without considering the consequences that may arise in the future

b. Legality and Rights

Marriage registration serves as a means of proving the status and rights that arise from marriage. Neglecting to register a marriage will result in the non-recognition of marital status and rights. The Panel of Judges examining case number 55/Pdt.P/2024/MS.Lgs stated that it rejected the application for marriage confirmation, so that the previously unregistered marriage was deemed never to have existed, and the applicant's marital status remained single. Apart from that, we can find the loss of rights in marriage in the fierce struggle of Machica Mochtar, a mother who fought for her child's civil rights against her father, Moerdiono, a high-ranking official during the Soeharto era. Her struggle began in 2008 and lasted until 2014. She filed numerous lawsuits to establish her child's lineage and rights. In 2010, she filed a lawsuit. Judicial Review at the Constitutional Court with case number 46/PUU-VIII/2010, the Panel of Judges granted part of the petition relating to Article 43 of the Marriage Law, namely A child born out of wedlock only has a civil relationship with his mother and his mother's family and any male who can be proven by science and technology and/or other legal evidence

to be a blood relationship, including a civil relationship with his father's family. However, he still cannot obtain full justice for his child.

c. Property

The illegality of marriage results in the loss of material rights that existed during the marriage. Unregistered marriages have implications for inheritance. The lack of legality in a marriage significantly undermines the protection of marital rights. This can be seen in the inheritance case at the Ujung Tanjung Religious Court, case number 547/Pdt.G/2023/PA.Utj. The panel of judges refused to validate a husband's illegal polygamous marriage, resulting in the unregistered wife being unable to inherit from her deceased husband. However, after lengthy deliberations regarding the facts of the trial, the panel of judges still granted the second unregistered wife a mandatory will, amounting to 30/240 of the inheritance. Selain itu ketiadaan status dalam perkawinan juga berimplikasi pada hilangnya hak marital assets. The panel of judges examining case number 0142/Pdt.G/2016/PA.Mgl declared that a secret marriage resulting from an illegal polygamist could not be validated, meaning the wife in question had no rights to any of the joint property with her husband.

From the cases above, we can observe that society is more inclined in engage in legal smuggling as an effort to circumvent the formal requirements for a valid marriage. Religious Courts consistently reject the validation of unregistered marriages due to proven legal facts that violate the pillars of marriage. This pattern reflects society's pragmatic tendency to ignore long-term consequences for temporary certainty, in which judges act as guardians of the integrity of Islamic civil law without compromising on substantial violations. Furthermore, another identified pattern is the loss of status, civil rights, and property due to the absence of registration, which results in the recognition of the marriage as never having existed. Overall, this pattern highlights the failure of legal protection for the vulnerable, prompting recommendations for strengthened education and preventive sanctions to reduce this illegal practice.

### **Marriage Registration from the Perspective of *Maqasid asy-syari'ah* of Jamaluddin Athiyah**

Prof. Dr. Jamaluddin Athiyah Muhammad, commonly known as Jamaluddin Athiyah, was born on 12 May 1928, which coincides with 21 Dzulqa'dah 1346 H, in the village of Kum Al-nur, Dkahlia Province, Egypt. Athiyah is a professor of general international law

and legal regulations at the Faculty of Sharia and Islamic Studies at Qatar University and served as head of the law department at the faculty from 1992 to 1998 (Atiyah, 2003).

Jamaluddin Athiyah is one of the most productive reformers in jurisprudence. During his life, he published many written works, one of which discusses the concept of *maqasid asy-syari'ah*, titled *Nahwa Taf'il Maqasid asy-Syari'ah*. *Maslahah* is the subject of study in *maqasid asy-syari'ah*. Mujtahid uses *maslahah* as the basis of consideration in establishing a law. Jamaluddin Athiyah divided the *maqasid asy-syari'ah* from the point of view of its benefits into five levels, namely: *ma duna daruriyyah*, *daruriyyah*, *hajjiyah*, *tahsiniyyah* and *ma duna tahsiniyyah* (Atiyah 2003).

The theory of *maqasid asy-syari'ah* developed by Jamaluddin Athiyah can adjust the scope of benefits, both those related to individuals and those related to the public interest. The theory will strongly support the role and function of the state in providing protection and justice. Jamaluddin Athiyah did concept reorientation *daruriyyah al-khamsah* become *majalat al-arba'ah*, from the five concepts of primary needs into twenty-four goals which are divided into four parts, namely *maqasid asy-syari'ah* in the individual scope, *maqasid asy-syari'ah* in the family scope, *maqasid asy-syari'ah* in the scope of the society and *maqasid asy-syari'ah* in the scope of humanity (Atiyah 2003).

Table.2

Jamaluddin Athiyah's Perspective of *Maqasid Asy-syari'ah*

No	<i>Majalat al-arba'ah</i>	<i>Maqasid asy-syari'ah</i>
1	<i>Maqasid asy-syari'ah</i> in the scope of individual	<ol style="list-style-type: none"> <li>1. Taking care of the soul (<i>bifaz al-nafs</i>)</li> <li>2. Keeping sense (<i>bifaz al-aql</i>)</li> <li>3. Maintaining religiousness (<i>bifaz al-tadayun</i>)</li> <li>4. Maintaining honor (<i>bifaz al-'ird</i>)</li> <li>5. Keeping property (<i>bifaz al-mal</i>)</li> </ol>
2	<i>Maqasid asy-syari'ah</i> in the scope of family	<ol style="list-style-type: none"> <li>1. Regulating the relationship between husband and wife (<i>tanzim al-'alaqah bayn al-jinsain</i>)</li> <li>2. Keeping the offspring (<i>bifaz al-nasl</i>)</li> <li>3. Creating a family that is sakinah mawaddah and rahmah (<i>tahqiq al-sakn wa al-mawaddah wa al-rahmah</i>)</li> <li>4. Keeping the lineage (<i>bifaz al-nasab</i>)</li> <li>5. Keeping religiousness in the family (<i>bifaz al-tadayun fi al-usrah</i>)</li> </ol>

		<ol style="list-style-type: none"> <li>6. Manage good relationships in the family (<i>tanzim al-janib al-muassasi lil-usrah</i>)</li> <li>7. Managing finances in the family (<i>tanzim al-janib al-mali lil-usrah</i>)</li> </ol>
3	<i>Maqasid asy-syari'ah</i> in the scope of society	<ol style="list-style-type: none"> <li>1. Manage the organization of the people (<i>al-tanzim al-muassasi lil-ummah</i>)</li> <li>2. Maintain security stability (<i>hifz al-amn</i>)</li> <li>3. Upholding justice (<i>iqamah al-adl</i>)</li> <li>4. Keeping religion and morals (<i>hifz al-din wa al-akhlaq</i>)</li> <li>5. Establishing cooperation, solidarity, and togetherness (<i>al-ta'awun wa al-tadomen wa al-takaful</i>)</li> <li>6. Spreading knowledge and taking care of the common sense (<i>nasyru al-'ilm wa hifz 'aql al-ummah</i>)</li> <li>7. Building the world and safeguarding the well-being of the people (<i>'imarat al-ard wa hifz sarwat al-ummah</i>)</li> </ol>
4	<i>Maqasid asy-syari'ah</i> in the scope of humanity	<ol style="list-style-type: none"> <li>1. Get to know each other, cooperate and integrate (<i>al-ta'araf wa al-ta'awun wa al-takamul</i>)</li> <li>2. Realizing the duty as a caliph for humanity on earth (<i>tabqiq al-khilafah al-'amah lil-insan fi al-ard</i>)</li> <li>3. Creating peace based on justice in the world (<i>tabqiq al-salam al-alami al-qaim 'ala al-'adl</i>)</li> <li>4. Protection of human rights as a whole (<i>al-himayah al-dauliyah lihuquqi al-insan</i>)</li> <li>5. Spreading Islamic preaching (<i>nasyru da'wa al-islam</i>)</li> </ol>

The law of marriage registration is never found in the discussion of classical jurisprudence books (Nasution, 2009). The sources of Islamic law, al-Qur'an dan Hadith, also never mention marriage registration. Registering law is only found in relation to debts receivables. Even though the Qur'an and Hadith never explicitly discuss marriage registration, this does not mean marriage registration does not exist in Islamic law. As we understand, *fiqh* is the product of the mujtahid's thoughts based on his struggle with the texts in the texts. With various methods of making laws, mujtahids can present laws that are in

harmony with human needs in their time. Thus, *ijtihad* in this modern era has become an inevitable necessity to bring benefits to human life.

Jamaluddin Athiyyah is one of the experts in Islamic law in the contemporary era. He is one of the figures who developed the theory of *maqasid asy-syari'ah*, which can be used to obtain law. In his work entitled *Nahwa Tafil Maqasid asy-Syari'ah*, he did a reorientation towards the concept of *maqasid asy-syari'ah* classical by expanding its reach, as explained above. The theory he developed will help the state's role and function in improving its people's welfare, starting with making regulations that breathe *maqasid asy-syari'ah*. *Maqasid asy-syari'ah* in the scope of the family, is divided into seven *maqasid*, and two *maqasid* of *maqasid asy-syari'ah* in the scope of community (Atiyah 2003):

1. Regulate the relationship between husband and wife (*tanzim al-'alaqah bayn al-jinsain*).

Islamic law and human-made legislation have set boundaries for the relationship between men and women, so they need a valid marriage contract to enter the specified boundaries. It is strictly prohibited to enter these boundaries without a valid marriage bond. Regarding the objectives of the *Shari'a* in regulating the relationship between two types of human beings, marriage registration is at the forefront of implementing its values. By registering the marriage, the husband and wife have the legality of the marriage that has been held.

2. Taking care of offspring (*hifz al-nash*).

Islamic law emphasizes that sexual relations between husband and wife are aimed at producing children who will continue their parents' struggle. With this aim, Islamic marriage law regulates several regulations that aim to maintain the continuity of human life, such as the necessity of marrying someone of the opposite sex, the prohibition of medical procedures that can make a person barren or infertile and other rules related to the continuation of human life.

Regarding marriage registration, the state has made these regulations to maintain the continuity of human life. With the existence of marriage registration along with all the regulatory instruments in it, it is no longer possible to legalize same-sex or homosexual marriages. Marriage may only be performed by a husband who is male and a wife who is female. Apart from that, marriage registration also aims to clarify a person's marital status so that clarity on marital status will have an impact on reducing abortion rates (Sunarto & Imani, 2025).

3. Create a family that is *Sakinah, mawaddah* and *rahmah* (*tabqiq al-sakn wa al-mawaddah wa al-rahmah*).

The main purpose of marriage is to create a calm, peaceful, and peaceful household atmosphere wrapped in love and affection between husband and wife. To realize such family conditions, Islamic marriage law regulates the ideal form of husband-and-wife relationship with the term *mu'ayyarah bi al-ma'ruf*, treating partners, both husband and wife, well.

Marriage registration is important in creating a family condition that is *sakinah, mawaddah*, and full of grace. By registering a marriage with an authorized official, the couple has received legality from the state for their marriage. Having a person's marriage recognized by the state will calm a person's soul and mind from feeling anxious about the legality of their marriage.

4. Keeping the lineage (*hifz al-nasab*).

Caring for the *nasab* or bloodline is similar to caring for the offspring. Taking care of offspring is only related to the purpose of marriage to give birth to children who will continue the struggle of their parents. In terms of keeping the bloodline, it is not only about giving birth but also having a clear bloodline. Marriage registration functions to clarify a person's marital status so that the couple is legal. By clarifying a person's marital status, the lineage of children born in that marriage is also clear.

5. Keeping religiousness in the family (*hifz al-tadayun fi al-usrah*).

In choosing an ideal life partner (husband or wife), the Prophet Muhammad SAW has given four criteria that can be considered: religion, physical appearance, family, and the economy. As the hadith of the prophet narrated from Abu Hurairah by Imam Muslim in his book Sahih Muslim (Al-Naisaburi, n.d.):

تُنْكِحُ الْمَرْأَةُ لِأَرْبَعٍ: لِمَالِهَا وَحِسْبَهَا وَجَمَالَهَا وَلِدِينِهَا، فَاظْفَرْ بِذَاتِ الدِّينِ، تَرَبَّتْ يَدَهُ

Its mean:

*“Women are married for four things, namely wealth, family glory, beauty and religion. Choose a woman who obeys her religion, then you will be happy (lucky).”*

Of the four criteria given, the criteria regarding the religion of the prospective partner is the most important thing to consider. The religious factor is very important in choosing a potential life partner because the family is the closest place to do good to each other and carry out all of God's commands.

Marriage registration ensures the fulfillment of religious goals in the family. In Law No.1 of 1974 concerning marriage prohibits the practice of interfaith marriages. This rule was then reaffirmed by the Supreme Court as the judicial authority that prohibited judges from validating marriages between different religions as regulated in the Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Applications for Registration of Marriages Between People of Different Religions Religion and Belief. With this regulation, marriages between different religions can never be registered through authorized officials and cannot be legalized through the courts.

6. Manage good relationships in the family (*tanzim al-janib al-muassasi lil-usrah*).

Islamic marriage law regulates how the relationship between husband and wife is built. The relationship between husband and wife, bound by a marriage contract, will give rise to rights and obligations that both must fulfill. Both husband and wife have equal positions in carrying out functions in the household. Allah has explained what a good relationship pattern between husband and wife looks like in surah an-Nisa' verse 34 (Tim Penerjemah Forum Pelayan Al-Qur'an, 2017). Building relationships in the household must be based on good faith between husband and wife. Marriage registration is a form of good faith between husband and wife when starting a married life. Not having a marriage registered indicates bad intentions in building a household.

7. Manage finances in the family (*tanzim al-janib al-mali lil-usrah*).

To create a happy family, the role of family financial management cannot be separated. Islamic marriage law regulates the husband's obligation to provide support for his wife and children, the husband's commitment to provide income for his divorced wife, the emergence of inheritance rights, testaments to relatives, guardianship regarding the management of assets and other arrangements related to finances in the family. The importance of managing family finances also impacts the assets left behind when someone dies. Good family financial management will result in a lot of assets being owned.

Marriage registration has an essential role in *syari'ah*'s objectives of managing family finances. By registering a marriage, a husband and wife have legal standing to request the fulfillment of rights and obligations in the household. A husband cannot escape his responsibility as head of the household in providing support for his family. A child can

also demand support from his father if, in fact, he has never been provided with support by his father.

In addition to encompassing the family sphere, the values of marriage registration in its function of regulating the order of social life in society are also reflected in the concept of *maqasid asy-syari'ah* within the scope of the society, developed by Jamaluddin Atiyah. In relation to the scope of the society, marriage registration fulfills two *maqasid asy-syari'ah* as follows:

1. Maintain security stability (*bifaz al-amn*)

The concept of maintaining security in Islam is not only about protecting oneself, but also about maintaining social and national security. To achieve shared security, Muslims are taught to respect one another, maintain harmony, avoid all forms of violence, and live side by side.

In relation to creating national security stability, marriage registration plays a crucial role in achieving this goal. Marriage registration serves as a safeguard for the honor of the husband and wife. A marriage certificate serves as proof of a marriage's legality, allowing the couple to live together peacefully under one roof. Indonesia strictly prohibits cohabitation. This practice not only violates religious teachings but also violates Eastern customs that remain deeply rooted in Indonesian society.

2. Upholding justice (*iqamah al-adl*)

Justice is a fundamental teaching of Islam. Marriage registration plays a crucial role in realizing the value of justice in society. Marriage registration is the only authentic evidence that a marriage has taken place. Therefore, a registered marriage has legal standing, and the state is obligated to guarantee the fulfillment of rights and obligations within the household. A legal marriage creates justice for the husband, the wife, and the children.

The concept of *maqasid asy-syari'ah*, specialized in the *maqasid usrah*, which Jamaluddin Atiyah developed, does not explicitly discuss the purpose and legal position of marriage registration in Islamic marriage law. However, the existence of marriage registration is reflected in the values contained in Jamaluddin Atiyah's concept of *maqasid usrah*. Marriage registration has fulfilled the seven objectives in *maqasid asy-syari'ah* in the scope of family and two *maqasid* of *maqasid asy-syari'ah* in the scope of society, as the author has explained above.

As many *maqasid asy-syari'ah* figures have explained, the main aim of the *maqasid asy-syari'ah* theory is to reject damage and attract benefits. In its application, marriage registration can prevent much of the damage caused by unregistered marriages and also provides many benefits to husband-and-wife couples.

Thus, we can conclude that the law on marriage registration is in accordance with the concept of *maqasid asy-syari'ah* developed by Jamaluddin Athiyyah. So, the author can confidently say that Islamic law requires regulations regarding marriage registration. Apart from not containing harm, marriage registration contains many benefits in it.

### **Marriage Registration is an Additional Pillar in Marriage**

Marriage registration laws are necessary in modern society. Marriage registration provides legal certainty not only for married couples but also for their descendants (Rosyadi, 2022). The legality of marriage allows couples to fulfill their legal rights and obligations, including as joint owners, inheritance rights, and access to social services or legal protection.

Another function of marriage registration is maintaining the orderliness of the social order and state administration. Data from these registers provides an overview of people's marriages, which is useful for the government to implement public policies in fields related to marriage, such as demography, health services, and education (Arifuddin, 2024).

Islamic law does not specifically regulate marriage registration. Neither the Quran nor the Hadith mentions the requirement to register a marriage. According to Islamic law, a valid marriage is one that meets the requirements and pillars, namely the presence of the prospective bride and groom, the marriage contract (*ijab qabul*), a guardian, and two witnesses (Amar et al., 2024). The validity of such a marriage is not dependent on registering it with the authorized institution (Sulfian, 2023).

Moving on from the validity of marriage only based on the fulfillment of the pillars and conditions of marriage, this is related to the conception made by imam mazhab. Among the priests of imam mazhab, there is no agreement regarding the terms and conditions of marriage. They agree that the pillars of marriage are consent and acceptance; apart from that, their position is still debated (Zuhaily, 1989).

According to mazhab Maliki, there are five types of marriage pillars, including: *wali*, dowry, husband, wife and *sighat* (Al-Jaziri 2003). According to Mazhab Syafi'i, there are five types of harmony in marriage, namely: husband, wife, *wali*, two witnesses and *s'igat* (Al-Jaziri 2003). According to mazhab Hambali does not specifically classify pillars and conditions.

They stated that in marriage, five things must be fulfilled: the presence of *wali*, two witnesses, the prospective husband and wife being clear and specific, and the last being *sighat*. According to mazhab Hanafi, of the many debates regarding the existing pillars of marriage, jurisprudence experts agree that the only pillars of marriage are the contract (*s}igat*), and the existence of the rest is still debated (Zuhaily, 1989). The conditions of marriage are related to three things, namely: related to the contract, related to the husband and wife, and testimony (Al-Jaziri 2003).

From the explanation of the pillars and conditions above, the four Imam Mazhab do not agree on what the pillars and conditions are in marriage. Thus, the concept of pillars and conditions is not a definite law (*qat'i*). The concept of pillars and conditions is a product of the thoughts of Imam Mazhab in taking the law from its source (*istibat al-hukmi*) based on a response to the social and cultural context of the time. Therefore, the concept of pillars and conditions of marriage has the potential to change along with the changes and needs of the times.

The position of witnesses in marriage has an important role in Islamic law because witnesses are an absolute requirement for a valid marriage process. Witnesses have the primary function of ensuring that the marriage is held openly and not secretly, thereby minimizing fraud and rights violations. This way, witnesses become the front guard in legality and justice so marriage can be socially and legally accepted. The majority of imam mazhab believe that witnesses are a pillar and condition for the validity of a marriage, so a marriage without two witnesses is considered invalid. Even though witnesses have a very important urgency in marriage, the position of witnesses in marriage is still a matter of debate among imam mazhab, whether it is a pillar or a legal requirement for marriage. This is based on the hadith of the Prophet Muhammad SAW narrated by Aisyah (Zuhaily, 1989):

لَا نَكَحُ إِلَّا بِوَلِيٍّ، وَشَاهِدَيْنِ عَدْلٍ

It means:

“A marriage is invalid without a guardian and two fair witnesses”

From the explanation above, the witness occupies a very important position in the marriage. The urgency of witnesses in Islamic marriages is reflected in their function as those who determine the marriage's validity and ensure the marriage contract's openness (Romadhona, 2024). In Islamic law, marriage are not just a matter of two people but also a social contract that involves the entire surrounding community. In this way, the presence of witnesses becomes a tool that can help spread the news regarding someone's marriage to

the surrounding community. The presence of witnesses can also minimize anything that could give rise to slander and doubt in the future. In other words, witnesses have a role in ensuring the truth and clarity of marriage (Koto & Aini, 2025).

In the contemporary era, the concept of marriage registration can be seen as a reactualization of the concept of marriage witnesses in Islamic law (Jauhari et al. 2023). The presence of witnesses at a marriage is an absolute requirement to ensure the marriage is conducted in accordance with Islamic law. Initially, witnesses were those who directly witnessed the marriage and disseminated information about the marriage contract to the surrounding community. However, given the complexity and rapid development of social dynamics in today's society, marriage registration serves as another way to ensure that these witness functions are fulfilled (Kori & Amran, 2021).

Today, marriage registration is not merely an administrative formality but also serves as legal proof of a marriage's validity under positive law (Arifuddin, 2024). Marriage registration plays a role in ensuring that a marriage is legally valid under state law. This is necessary to protect the legal security of married couples and their civil rights, including inheritance rights, children's rights, and state legal services.

Marriage registration has never been discussed before in Islamic law. Neither the Qur'an nor the Hadith ever mentions the need to register marriages. That matter was influenced by the fact that, at that time, the concept of administrative registers did not exist in society's legal and social systems (Rosyadi, 2022). From a historical perspective, during the time of the Prophet, verbal communication was more popular than written communication. The law of registering is only known in the discussion of debts and receivables in *muamalah*, as stated in the Al-Qur'an Surah Al-Baqarah verse 282 (Kori & Amran, 2021).

There are differences of opinion among interpretive scholars regarding the verse above. Some Islamic scholars think that the verse only discusses debts and receivables. Others think that this verse is not only understood regarding debts and receivables but can also be interpreted as other forms of *muamalah* transactions, such as renting, commerce, ordering, and so on (Kasir, 2000).

Apart from differing views regarding what the object is, interpretive scholars also differ in their opinions regarding the law on how to register the debt. According to Abi Sa'id al Khudari, al-Hasan and asy-Sya'bi stated that registering all forms of transactions is only recommended or facultative. Meanwhile, according to Mazhab al-Zahiri, the content of the verse is an obligation to present witnesses and register all *muamalah* transactions (Halim,

2017). Quraish Shihab in Tafsir Al-Misbah explains that writing down debts is a form of preserving assets and preventing misunderstandings. In the time of the Prophet's companions, the command to register debts was considered merely a recommendation because, at that time, it was felt to be very difficult to implement this command because at that time Arab society did not have a writing culture, and it was very rare to find people who were skilled in writing (Shihab, 2009).

When registering is seen as just a recommendation, there are concerns that it will cause more significant damage, especially if we look at the pattern of *muamalah* transactions in the contemporary era. A transaction that is not registered will result in the transaction being unable to be proven. When a dispute arises regarding a transaction that is not registered and cannot be proven, the person is not burdened with the burden of fulfilling the agreed performance, according to the rules of *fiqh* (Rohim, 2019) :

### الأصل برأة الدمة

It means:

*"The original law of something is that it is free from the burden of responsibility"*

This rule of jurisprudence explains that a person is not liable until someone else can prove that the person violated the agreed-upon agreement.

If we link registration in *muamalah* and marriage registration, both aim to ensure the legality and legal standing. The position of marriage registration is analogous to the position of registering *muamalah* transactions; this is commonly known as the *qiyyas* method (Ma'arif, 2019). There are four main elements that must be fulfilled in this *qiyyas* method: *al-ashu* (tree), *al-far'u* (branch), main law, and *al-'illah* (Syarifuddin, 2011).

If viewed from the perspective of the strength of the *'illah* of law contained in the *far'u* or its branches compared to that in its origin or principal, *qiyyas* is divided into three types, namely: *qiyyas al-anlawi* (*qiyyas* where the law of the *far'u* or its branches is stronger compared with the original or principal law), *qiyyas al-musawi* (*qiyyas* where both the *far'u* or branch law and the original or principal have the same quality.) and *qiyyas al-adna* (*qiyyas* where the legal *far'u* or its branches are weaker than the original or main law) (Sinaga, 2018).

As we know, marriage has two dimensions: the *muamalah* dimension and the worship dimension. The agreement in marriage is not an ordinary agreement like the agreement in a *muamalah* transaction, but a grand agreement known as *misaqan galizan*. When we compare the position between registering *muamalah* transactions and registering marriages, we can conclude that the position of registering marriages is higher than that of registering *muamalah*.

transactions. This analogy can be categorized into *qiyyas al-aulawi* where *far'u* law, in this matter regarding marriage registration, is stronger than the original or basic law, in this case the registering of *muamalah* transactions (Musfiroh & Surur, 2017). This method of taking the *qiyyas* law has implications for the application of the law, where the law originates from the registering *muamalah* transactions are at least considered merely sunnah or even recommended, so because the '*illah* of law contained in marriage registration is stronger, the law on marriage registration can become mandatory.

One of the scholars who supports *qiyyas* as a basis is Ibn Taymiyah. In using the *qiyyas* method in making laws, Ibn Taymiyah also used *illah* like other ushul scholars. Interestingly, in looking at the form of a legal god, Ibn Taymiyah stated that God does not always take the form of visible, precise, and relevant qualities, but often God can also take the form of wisdom, which is the background to the enactment of a law (Abidin, 2010; Yasin, 2010). Thus, Ibnu Taimiyah's perspective *qiyyas* method can also be used to analyze the wisdom behind the legalization of marriage registration rules in the marriage law.

As the author explained in the previous discussion, marriage registration based on the concept of *maqasid asy-syari'ah* developed by Jamaluddin Athiyyah, has fulfilled the seven objectives listed in *maqasid asy-syari'ah* in the family and two *maqasid* of *maqasid asy-syari'ah* the scope of society as the author has explained at length above.

From the political aspect of Islamic law or *siyasah syar'iyyah*, law and politics are two things that cannot be separated. The two of them work together to form the components that drive the wheels of statehood. Legal politics functions to monitor and evaluate the implementation of the law and carry out revisions to laws that need to be no longer relevant. This effort aims to always be able to answer the needs and demands of society.

Islamic legal politics is an expansion of the government's role in realizing human benefit as long as these efforts do not conflict with the basics of Islamic teachings. Complementing this definition, Kamsi in his work defines Islamic legal politics as efforts made by the government to enforce Islamic law as one of the laws that live in society, taking into account diversity and the implementation process is oriented towards the interests of the nation and state (Kamsi, 2017).

Regulations regarding the need to register marriages, as stated in Article 2 of Law No.1 of 1974 concerning marriage, have never been found in Islamic law. These regulations originate from Western law that was in effect before and after Indonesian independence (Syahuri, 2013). Even though Islamic law never discusses it, and this law also comes from

Western law, marriage registration has great urgency, which can guarantee the legality of marriage and the fulfillment of rights and obligations in the household. Apart from that, through understanding the *maqasid asy-syari'ah* theory developed by Jamaluddin Athiyyah, especially in the field of *maqasid usrah*, Islamic law requires regulations regarding marriage registration. Apart from not containing harm, marriage registration contains many benefits in it.

The marriage registration law is a manifestation of the government's efforts to use political Islamic law in Indonesia. The existence of these marriage registration regulations is also in accordance with the characteristics of legal products resulting from Islamic legal politics (Makmun, 2022), namely; marriage registration is oriented towards the benefit of the people; law on registration of marriages based on religion; the law on marriage registration has an aspect of responsibility in the afterlife; marriage registration. This is a legal breakthrough from the government to protect the rights and obligations of its people, even though the text never discusses marriage registration and marriage registration is based on religious law.

Thus, based on the analysis above, the government's efforts to protect the rights and obligations of the family through marriage registration laws are in accordance with the political concept of Islamic law.

When everything is clear about the marriage registration law, it is also necessary to explain the position of marriage registration in marriage. The difference between pillars and conditions, pillars is something that determines the action and is part of the essence of the action. Meanwhile, a condition is something that determines an action but is not included in the essence of the action. Thus, the pillars of marriage are something that determines the validity of the marriage which must be present in the series of acts. Meanwhile, marriage conditions are something that determines the validity of the marriage, but are not included in the series of acts (Zuhaily, 1989).

The position of registering a marriage is the same as that of a witness in a marriage. Both are tools used to disseminate news about marriage and can also be an explanation when there is conflict over the marriage (Rosyadi, 2022). Thus, the author places marriage registration as an additional pillar in the marriage procession. Thus, understanding Article 2, paragraphs (1) and (2) in the Marriage Law are interrelated and inseparable. The validity of a marriage is also influenced by the registration of the marriage.

With marriage registration added as a pillar of marriage, regulations are needed to encourage people to comply with the mandatory registration requirements. According to Imron Rosyadi, the prevalence of unregistered marriages stems not only from low public awareness of enacted laws, but also from the low penalties imposed on those involved in unregistered marriages and on those who perform them (Rosyadi, 2022). These sanctions are often never imposed on the perpetrator.

Criminal sanctions for marriage violations in Indonesia are regulated in Article 45 of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage, but the sanctions imposed are very low compared to the resulting impact. This differs from regulations enacted by Malaysia and Brunei Darussalam, which have stricter regulations regarding marriage registration and sanctions for violators (Warman et al., 2023).

## Conclusion

Based on the long explanation regarding marriage registration in Indonesia in the previous chapter, the author can conclude from the research results as follows:

*First*, The law on marriage registration is in accordance with the concept of *maqasid asy-syari'ah* developed by Jamaluddin Athiyyah because marriage registration has fulfilled the seven objectives stated in *maqasid asy-syari'ah* in the scope of family as the author has described at length above, namely: *First*, Regulating the relationship between husband and wife (*tanzim al-'alaqah bayn al-jinsain*), *second*, Keeping the offspring (*bifaz al-nasl*), *third*, Creating a family that is sakinah mawaddah and rahmah (*tabqiq al-sakn wa al-mawaddah wa al-rahmah*), *fourth*, Keeping the lineage (*bifaz al-nasab*), *fifth*, Keeping religiousness in the family (*bifaz al-tadayun fi al-usrah*), *sixth*, Manage good relationships in the family (*tanzim al-janib al-muassasi lil-usrah*) *seventh*, Managing finances in the family (*tanzim al-janib al-mali lil-usrah*) and two *maqasid asy-syari'ah* in the scope of society.

*Second*, the Marriage Registration Law is a reactualizing the position of witnesses in marriage. Like a witness in a marriage, marriage registration has a similar function to the position of a witness, namely as a tool that can prove that a marriage contract has occurred. Thus, because the position of the witness in a marriage occupies the position of a pillar, the author places marriage registration as an additional pillar to the wedding procession, which has the same position as the witness.

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