

## A Socio-Juridical Analysis of Law No. 1 of 1974 Regarding the Phenomenon of Unregistered Marriage in Sianjo-Anjo Meriah Village, Gunung Meriah District, Aceh Singkil Regency

Annisa Rizqa Azhima. P<sup>1</sup>, Misran<sup>2</sup>, Muhammad Husnul<sup>3</sup>

Universitas Islam Negeri Ar-Raniry Banda Aceh<sup>1,2,3</sup>

Email: [annisarizqa.29@gmail.com](mailto:annisarizqa.29@gmail.com)<sup>1</sup>, [misran.ramli@ar-raniry.ac.id](mailto:misran.ramli@ar-raniry.ac.id)<sup>2</sup>,  
[muhammad.husnul@ar-raniry.ac.id](mailto:muhammad.husnul@ar-raniry.ac.id)<sup>3</sup>

**Abstract:** *This article discusses the analysis related to the implementation of Article 2 of Law Number 1 of 1974 concerning Marriage, which regulates the validity of marriages conducted according to the laws of each religion and the necessity of marriage registration. However, in some cases occurring in the village of Sianjo-Anjo Meriah, Gunung Meriah Subdistrict, Aceh Singkil Regency, cases of unregistered marriages (nikah siri) have been found, which were not registered at the Office of Religious Affairs (KUA). This study seeks to analyze the perspectives of the local community and village administration regarding nikah siri, and to further assess the legal certainty and effectiveness of protecting the rights of wives and children in the context of unregistered marriages at the Gunung Meriah KUA, as well as its implications for Article 2 of Law No. 1 of 1974 on Marriage and Islamic law. The research employs an empirical (socio-legal) method with a case and statute approach. Data were collected through in-depth interviews with village officials and community leaders, alongside analysis of judicial decisions. The findings of this study reveal that the practice of unregistered marriage (nikah siri) in Sianjo-Anjo Meriah Village stems from social and administrative factors. Although such marriages are religiously valid, they are not legally recognized by the state due to the absence of official registration at the Office of Religious Affairs (KUA). Consequently, wives and children are deprived of legal protections that should be guaranteed by the state. Therefore, intensive legal education, simplified access to marriage registration, and encouragement for couples who have entered into nikah siri to file for marriage validation (isbat nikah) at the Singkil Sharia Court are essential to ensure formal legal recognition.*

**Keywords:** Implementation, Law Number 1 of 1974, Unregistered Marriage.

**Abstrak:** *Artikel ini membahas tentang analisis terkait penerapan Pasal 2 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan yang mengatur tentang sahnya perkawinan dilakukan menurut hukum masing-masing agama dan perlunya pencatatan perkawinan. Hanya saja, pada beberapa kasus yang terjadi di Desa Sianjo-Anjo Meriah Kecamatan Gunung Meriah Kabupaten Aceh Singkil, ditemukan kasus pernikahan siri yang tidak dicatatkan di KUA. Penelitian ini hendak menganalisis pandangan masyarakat dan pemerintahan Desa Sianjo-Anjo Meriah terhadap pernikahan siri, kemudian menganalisis kepastian dan efektivitas hukum terhadap hak-hak istri dan anak di dalam konteks nikah siri yang tidak terdaftar di KUA Kecamatan Gunung Meriah, dan tinjauannya terhadap Pasal 2 UU No. 1 Tahun 1974 Tentang Perkawinan serta hukum Islam. Studi ini menggunakan metode penelitian hukum empiris (sosio-legal) dengan pendekatan kasus dan perundang-undangan. Data diperoleh melalui wawancara mendalam dengan perangkat desa dan tokoh masyarakat serta analisis dokumen putusan. Hasil penelitian ini menunjukkan bahwa praktik nikah siri di Desa Sianjo-Anjo Meriah terjadi karena faktor sosial dan administratif meskipun sah secara agama namun tidak*

*diakui oleh negara karena tidak tercatat di KUA. Akibatnya, istri serta anak kehilangan perlindungan hukum yang seharusnya dijamin oleh negara. Oleh karena itu, diperlukan edukasi hukum yang intensif, penyederhanaan akses pencatatan nikah, serta dorongan bagi pasangan yang telah menikah siri untuk mengajukan isbat nikah ke Mahkamah Syar'iyah Singkil untuk memperoleh pengakuan hukum yang sah.*

**Kata Kunci:** Penerapan, UU No. 1 Tahun 1974, Nikah Siri.

## Introduction

The marriage law system in Indonesia is constructed upon a unique philosophical foundation that attempts to harmonize transcendental religious values with the administrative necessities of a modern state. Law Number 1 of 1974 concerning Marriage (hereinafter referred to as UUP) defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the objective of forming a happy and eternal family (household) based on the One Almighty God. This definition positions marriage not merely as a civil contract, but as a sacred legal act (*mitsaqan ghalizan*).<sup>1</sup> However, at the implementation level, this legal ideal (*das sollen*) frequently clashes inevitably with the social reality (*das sein*) occurring at the grassroots level of society.

One of the legal issues prevalent in society requiring serious attention from policymakers and law enforcers concerns the widespread practice of *nikah siri* (unregistered marriage). An ideal marriage contract based on positive law in Indonesia is one that fulfills Article 2 of Law Number 1 of 1974 concerning Marriage: it must be valid according to religious provisions and must be registered. For Muslims, the validity of a marriage is contingent upon fulfilling the pillars (*rukun*) and conditions (*syarat*) of marriage, such as the presence of the prospective bride, the groom, a guardian (*wali*) for the bride, two just witnesses, a dowry (*mahar*), and the offer and acceptance (*ijab kabul*).

The construction of this article is often understood dichotomously by the public and even by some legal experts. Paragraph (1) is viewed as a condition of material validity (substantial validity of marriage), whereas Paragraph (2) is often reduced in meaning to merely a formal administrative requirement. An *a contrario* interpretation of this article gives rise to the understanding that as long as religious requirements are met, the marriage is valid, even if it is not registered.<sup>2</sup>

Marriage registration is a provision that must be fulfilled by a married couple. Consequently, for couples who have married according to religious law, the marriage must be registered in accordance with applicable regulations before a marriage registrar. Through registration, the husband and wife obtain a marriage certificate. In terms of positive law, this provides recognition, protection, and legal certainty for both parties in

<sup>1</sup> M. Fahmi Al Amruzi, Pencatatan Perkawinan Dan Problematika Kawin Siri, *Jurnal Ulumul Syar'i*, Vol. 9, No. 2, (2025), 1-18.

<sup>2</sup> Siti Ummu Adillah, Implikasi Hukum Dari Perkawinan Siri Terhadap Perempuan dan Anak, *Jurnal Palastren*, Vol. 7, No.1, (Juni 2014).

their efforts to fulfill rights and obligations within the household.<sup>3</sup> In Sianjo-Anjo Meriah Village, Gunung Meriah District, Aceh Singkil Regency, the practice of unregistered marriage is not merely a statistical anomaly, but a pattern of social behavior formed from a complex interaction between religious understanding, economic constraints, and administrative barriers.

However, if a marriage is unregistered, its status is that of a *siri* marriage,<sup>4</sup> which is not recognized by positive law, meaning there is no guarantee of legal protection by the state or government. According to the Compilation of Islamic Law (KHI), marriage registration acts not only as an effort to bring order to marriage but also as a guarantee of legal force over the marriage; indeed, a marriage can only be proven if a marriage certificate exists. This is understood from Article 5, Article 6, and the provisions of Article 7 of the KHI.<sup>5</sup>

Unregistered marriage, or *nikah siri*, has significant impacts within a marriage. Starting with the non-recognition of the marriage by the state, the couple subsequently cannot protect their rights within that marriage. The practice of *siri* or unregistered marriage is influenced by the socio-cultural environment, including the significant influence of clerical views that consider marriage valid without registration.<sup>6</sup> According to religious law, *siri* marriage (in the sense of being unregistered) is viewed as valid.<sup>7</sup> Therefore, to this day, unregistered marriage practices persist in society as a form of practice that violates statutory provisions in Indonesia. For example, in the case of the unregistered marriage between Machica Muchtar and Moerdiono; in 2010, Machica Muchtar filed for a judicial review against the provisions of Article 43 of the Marriage Law to the Constitutional Court, as she felt disadvantaged for herself and her child because her marriage to Moerdiono was unregistered (*nikah siri*). Consequently, the child produced was considered an extramarital child who had no civil relationship with the father and the father's family.

Cases of unregistered marriage in Aceh are also quite prevalent; for instance, in October 2022, 78 cases of unregistered marriage were recorded.<sup>8</sup> Furthermore, in Sianjo-Anjo Meriah Village, Gunung Meriah District, Aceh Singkil Regency, five cases were found where heads of families committed unregistered marriage, generally due to

<sup>3</sup> Ahmad Tholabi Kharlie, *Hukum Keluarga Indonesia*, (Jakarta: Sinar Grafika, 2022), p. 182-200.

<sup>4</sup> Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia*, Edisi Revisi (Jakarta: Kencana Prenada Media Group, 2017), p. 284.

<sup>5</sup> Mahkamah Agung, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam serta Pengertian dalam Pembahasannya* (Jakarta: Mahkamah Agung RI, 2011), p. 64.

<sup>6</sup> Nailur Rahmi, Arifki Budia Warman, dan Amri Effendi, "Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* Vol. 9, No. 1 (30 Maret 2025): 416–37, doi:10.22373/sjkh.v9i1.28306.

<sup>7</sup> Asep Saepudin Jahar, Euis Nurlaelawati, dan Jaenal Aripin, *Hukum Keluarga, Pidana dan Bisnis: Kajian Perundang-Undangan Indonesia, Fikih dan Hukum Internasional* (Jakarta: Kencana Prenada Media Group, 2013), p. 50-58.

<sup>8</sup> M. Haris Setiady Agus, "Nikah Siri Jadi Perkara Terbanyak di Mahkamah Syariah Sinabang Aceh," *Antara News*, 30 November 2022, <https://www.antaraneews.com/berita/3277581/nikah-siri-jadi-perkara-terbanyak-di-mahkamah-syariah-sinabang-aceh>.

infidelity leading to divorce from the first legitimate wife. There were also cases due to unofficial polygamy practices. This practice impacts not only the legal status of the husband and wife but also raises serious implications regarding children's rights, inheritance, and legal protection within the household. The non-registration of such marriages causes ambiguity in family legal status, which in turn complicates access to public services and social protection. This phenomenon demonstrates that although religious law has been fulfilled, the legal-formal aspect of marriage is still ignored by parts of the Sianjo-Anjo Meriah community.

The legal structure relates to institutions that enforce the law, such as the Office of Religious Affairs (KUA), the Population and Civil Registration Agency (Disdukcapil), and the *Mahkamah Syar'iyah* (Sharia Court). In rural areas like Sianjo-Anjo Meriah, the effectiveness of the legal structure is often hampered by geographical factors, costs, and bureaucracy perceived as complicated.<sup>9</sup> The legal structure in Aceh has actually provided a mechanism for *Isbat Nikah* (marriage ratification/legalization) through the *Mahkamah Syar'iyah* as a solution for unregistered marriages. However, this structure faces challenges in capacity and accessibility. Villagers are often reluctant to deal with courts due to perceptions of high costs and convoluted procedures, especially for those with low education and weak economic standing. Moreover, the role of the Marriage Registrar (PPN) at the sub-district level has not been fully optimal in reaching all layers of society to proactively facilitate registration.

Therefore, it is crucial to conduct a deeper study on how the community interprets the validity of marriage, to review the legal certainty and effectiveness of unregistered marriage practices in Sianjo-Anjo Meriah Village, and to examine it against Islamic law and positive law provisions, specifically Article 2 of the Marriage Law. This article aims to expand the analysis of public understanding regarding unregistered marriage practices, analyze legal certainty and effectiveness, and review it against Islamic law and positive law. The specific cases in Sianjo-Anjo Meriah Village serve as an entry point to examine how *fiqh* norms, customary values, and state regulations interact and conflict. This research will also examine community perceptions of marriage registration and its impact on married couples.

## Method

This research falls under the category of empirical legal research or juridical-empirical research, also known as socio-legal research, where the object of research is legal cases. Empirical legal research is a type of legal research that departs from the excavation and discovery of behavior or legal cases occurring in society.<sup>10</sup> In other words, empirical legal research is research related to community behavior/actions concerning the

<sup>9</sup> Muhammad Radhi Aulia, Et Al, Akibat Hukum Penetapan Itsbat Nikah Terhadap Perkawinan Tidak Tercatat (Studi Di Kabupaten Aceh Singkil), *Jurnal Hukum Lex Generalis*, Vol.6, No.6, (2025).

<sup>10</sup>I Made Pasek Diantha, *Metode Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2017), p. 2.

law.<sup>11</sup> Regarding the empirical aspect of this study, the legal cases intended are aspects of legal enforceability that result in legal impacts, specifically the issue of unregistered marriage occurring in Sianjo-Anjo Meriah Village, Gunung Meriah District, Aceh Singkil Regency.

This research employs three approaches. First, the conceptual approach, which is a legal approach referring to the reasoning of concepts and doctrines of experts; these doctrines or concepts are then used as legal material in assessing and analyzing legal cases in the field. Second, the case approach, which focuses on legal cases occurring in the community. Third, the statute approach, which is based on a study of statutory provisions.<sup>12</sup> In relation to this research, the conceptual approach relates to the researcher's effort to examine legal concepts regarding marriage principles, unregistered marriage, and its legal impacts. The case approach relates to the researcher's effort to describe legal cases regarding unregistered marriage in Sianjo-Anjo Meriah Village. Meanwhile, the statute approach relates to the researcher's effort to examine the provisions of Article 2 of Law No. 1 of 1974 concerning Marriage, which regulates the validity of marriage and the necessity of its registration. Regarding these three approaches, the data for this research was obtained from primary data derived from interviews with research informants, and secondary data obtained from library materials.<sup>13</sup> This library data is divided into three legal materials: primary legal materials in the form of Law Number 1 of 1974 concerning Marriage; secondary legal materials in the form of marriage law books; and tertiary legal materials in the form of legal articles, dictionaries, and legal encyclopedias.

The research data collected from various legal materials will be analyzed qualitatively. The data analysis consists of two stages: the descriptive stage and the prescriptive analysis stage.

1. Descriptive Analysis: Intends to describe the legal cases of unregistered marriage occurring in Sianjo-Anjo Meriah Village, as well as community perceptions of unregistered marriage. Descriptive means explaining and depicting the object of research objectively and as it is, in accordance with the actual data.<sup>14</sup> This means that at this stage, the researcher does not perform interpretation/analysis, but focuses on outlining the problem.
2. Prescriptive Analysis: Is an advanced analysis to respond to the legal issues found, which will then be reviewed for legal ideality to provide legal guidance on what ought to be enforced (prescriptive).<sup>15</sup> In this case, the legal cases of unregistered

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<sup>11</sup>Moh. Askin dan Masidin, *Penelitian Hukum Normatif: Analisis Putusan Hakim* (Jakarta: Kencana Prenada Media Group, 2023), p. 17.

<sup>12</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), p. 133.

<sup>13</sup>Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Jakarta: Kencana Prenada Media Group, 2018), p. 173.

<sup>14</sup>Suharsimi Arikunto, *Prosedur Penelitian; Suatu Pendekatan Praktik*, (Jakarta: Rineka Cipta, 2016), p. 94.

<sup>15</sup>Marzuki, *Penelitian Hukum...*, p. 41-42.

marriage in Sianjo-Anjo Meriah Village will be analyzed regarding their legal ideality according to Article 2 of Law No. 1 of 1974 concerning Marriage and analyzed according to concepts in expert doctrines. Here, the researcher performs the analysis process.

Thus, the descriptive analysis in this research article is an effort by the researcher to depict problems or legal issues related to unregistered marriage cases in Sianjo-Anjo Meriah Village, Gunung Meriah District, Aceh Singkil Regency. At this stage, descriptive analysis stops at the effort of objectively depicting legal problems.<sup>16</sup> Meanwhile, the next stage, prescriptive analysis, is carried out to respond to legal case findings with legal norms that ideally should be enforced. This will provide guidance regarding the legal ideality that ought to be applied (prescriptive) in the field. Since this research falls within the field of legal science, the prescriptive object in legal studies is the coherence of several variables, one of which is the coherence between legal norms and concepts with legal cases.<sup>17</sup> The descriptive analysis in this study intends to carefully review the coherence between legal norms regarding marriage and the legal cases of unregistered marriage in Sianjo-Anjo Meriah Village.

## Discussion

### A. The Concept of Islamic Law on Marriage

Marriage in Islam is a legal instrument for men and women to form a happy family *sakinah, mawaddah, and rahmah*. Islam views marriage as a sacred and strong bond; the Quran terms this bond *mišāqan ghalīẓan*, meaning a strong covenant, a thick/coarse knot that is not easily broken.<sup>18</sup> To achieve this bond, Islamic law establishes several pillars (*rukun*) and conditions (*syarat*) that must be met for a marriage to be considered legally valid.

*Nikah* or marriage means a contract (*akad*) that permits the relationship between a husband and wife and mutual enjoyment, burdened with rights and obligations for both.<sup>19</sup> Marriage can be referred to as a contract, and can also refer to sexual intercourse in both a literal and metaphorical sense.<sup>20</sup> Therefore, marriage in Islam is a contract that permits both parties to engage in intimate relations (intercourse), which was previously prohibited in Islam. As a contract and holy agreement ideally not easily broken, its continuity is determined by the presence or absence of determining elements in the contract. Generally, scholars establish that there are 6 pillars of marriage, namely:<sup>21</sup>

<sup>16</sup>Arikunto, *Prosedur Penelitian...*, p. 94.

<sup>17</sup>Marzuki, *Penelitian Hukum...*, p. 41-42.

<sup>18</sup>M. Quraish Shihab, *Pengantin Alquran: 8 Nasihat Perkawinan untuk Anak-anakku*, Cet. 2, Edisi 1, (Tangerang: Lentera Hati, 2015), hlm. 117; Zaitunah Subhan, *Alquran & Perempuan Menuju Kesetaraan Gender dalam Penafsiran*, Edisi 1, Cet. 1 (Jakarta: Kencana Prenada Media Group, 2015), p. 139.

<sup>19</sup>Abdul Rahman Ghazaly, *Fiqh Munakahat*, Edisi Pertama, Cet. 7 (Jakarta: Kencana Prenada Media Group, 2018), p. 5.

<sup>20</sup>Muhammad Mutawallī Al-Sya'rāwī, *Ṣifāt Al-Zauj Al-Ṣāliḥ wa Al-Zaujah Al-Ṣāliḥah*, Edisi 1, (Terj: Abu Barnawa), Cet. 8, (Jakarta: Pustaka Al-Kautsar, 2020), p. 10.

<sup>21</sup>Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Cet. 5 (Jakarta: Kencana Prenada Media Group, 2016), p. 13.

1. The prospective groom
2. The prospective bride
3. The guardian (*Wali*) of the bride
4. Two witnesses
5. Dowry (*Mahar*)
6. Offer and Acceptance (*Ijab Kabul*)<sup>22</sup>

Specifically, scholars of the Hanafi school of thought only recognize one pillar of marriage: the offer and acceptance or *ṣighah al-aqd*.<sup>23</sup> According to the Hanafi school, the most important aspect of the marriage contract is the *ṣighah al-aqd* in the form of *ijab* and *qabul*; the existence of *ijab* and *qabul* will bring about other elements such as the parties pronouncing it (the *ijab* from the bride's guardian and *qabul* from the groom), and the event takes place with the condition of witnesses being present. This is because, according to the Hanafi School, a pillar is something that determines the existence of something and becomes part of its essence. Meanwhile, a condition (*syarat*) according to them is something that determines the existence of something but is not part of its essence.<sup>24</sup> A pillar according to the majority of scholars (*jumhur ulama*) is something that causes the establishment and existence of something; that thing will not manifest except with it, or in other words, it is something that must exist. Based on this, the pillar of marriage according to Hanafiyah scholars is only *ijab* and *qabul*. Whereas according to the majority of scholars, there are four: the form (*ijab* and *qabul*), the wife, the husband, and the guardian. The husband and guardian are the two people pronouncing the contract.<sup>25</sup>

According to Islamic law, when all these elements are fulfilled, the marriage contract can be conducted. However, to know whether the marriage contract is truly legally valid or not, the conditions for the validity of marriage must also be met, which are the criteria for each of the previous pillars. The marriage conditions regarding the groom and bride are that there are no impediments to marriage, either from lineage or religion; furthermore, the marriage guardian should ideally not be *fasik* (disobedient/impious), and the witnesses in the marriage contract must be deemed just.<sup>26</sup>

The fulfillment of these pillars and conditions signifies that a marriage according to Islam can be conducted and is viewed as valid. This means there are no other conditions established in Islamic jurisprudence (*fiqh*), such as the requirement that marriage must be registered or must be conducted before the Office of Religious Affairs, or the necessity of marriage ratification (*isbat nikah*) for unregistered marriages prior to the enactment of the Marriage Law. This implies that classical *fiqh* does not require marriage registration;

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<sup>22</sup>Imanuddin, "Nilai Toleransi Sebagai Instrumen Legalisasi Perkawinan Beda Agama: Studi Kritis Legalisasi Kawin Beda Agama Di Indonesia," *Hukum Dan Pranata Sosial: Journal Waqfeya*, Vol. 11, no. 1 (1 Januari 2024): 1–8, doi:<https://uin-arranry.academia.edu/imanuddinab>.

<sup>23</sup>Abdurrahmān Al-Jazīrī, *Fiqh 'Alā Al-Mazāhib Al-Arba'ah*, (Terj: Faisal Saleh), Cet. 2 (Jakarta: Pustaka Al-Kautsar, 2017), p. 98.

<sup>24</sup>Syarifuddin, *Hukum Perkawinan...*, p. 39.

<sup>25</sup>Wahbah Al-Zuhāilī, *Al-Fiqh Al-Islāmī wa Adillatuh*, Jilid 9, (Terj: Abdul Hayyie al-Kattani, dkk), (Jakarta: Gema Insani Press, 2012), p. 45.

<sup>26</sup>Kharlie, *Hukum Keluarga Indonesia*, hlm. 34; Mardani, *Hukum Keluarga Islam di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2016), hlm. 15; Rizem Aizid, *Fiqh Keluarga Terlengkap: Pedoman Praktis Ibadah Sehari-Hari bagi Keluarga Muslim*, (Yogyakarta: Laksana, 2018), p. 33.

indeed, the product of marriage registration is relatively new and enforced in positive statutory regulations.

In the context of *nikah siri*, which is widely known as unregistered marriage, there is a difference with the meaning of *nikah siri* in Islam. In Islam, what is called *nikah siri* is a marriage conducted in secret. As the name implies, the word *siri* or *sirr* is a term indicating secrecy. *Nikah siri* in the Islamic perspective is not a marriage that is unregistered, but a marriage where the pillars and conditions are incomplete, for example, a marriage without a guardian or witnesses. This type of *siri* marriage occurred during the time of Companion Umar bin Khattab. The term *nikah siri* originates from the statement of Umar bin Khattab when he was informed that a marriage had occurred without being attended by witnesses, except for only one man and one woman. He said, "This is *nikah sirri* (a marriage kept secret without the community knowing), I do not allow it, and had I known beforehand, I would certainly have stoned them."<sup>27</sup>

*Nikah siri* in Islam is a marriage not attended by witnesses. The majority of scholars argue that *nikah siri* is a void marriage because it is not witnessed. As for a marriage contract attended by two witnesses, it is included as an open marriage (*nikah 'alāniyah*), not *nikah siri*. This is because something known by more than two people is no longer called a secret. The evidence is the saying of the Prophet SAW: "There is no marriage except with a guardian and two just witnesses." The meaning is that marriage is considered valid with the presence of a guardian and two witnesses, even if it is not announced publicly. Because marriage is a contract of exchange (*mu'āwadah*), it is not required to be announced like a sale and purchase.<sup>28</sup>

There is a divergence between the meaning of *nikah siri* understood by legal experts of Islam (ulama/jurists) of the past and the term *nikah siri* developing in Indonesian society today. If what is meant is *nikah siri* because of incomplete testimony in the marriage contract, then clearly the law is invalid and void. However, if *nikah siri* is understood as an unregistered marriage, the law remains valid as long as every pillar and condition of a valid marriage remains fulfilled. This means marriage registration in Islam is not an indicator in determining whether a marriage is valid or not. In fact, statutory regulations themselves (as will be discussed separately in the next sub-chapter) state that the validity of marriage is according to religious provisions, while marriage registration falls under administrative requirements, and state intervention for legal protection only applies if there is marriage registration that produces a document or marriage book/certificate.

## **B. Marriage Registration in Law Number 1 of 1974 Concerning Marriage**

The Marriage Law establishes a necessity for couples intending to marry to register their marriage. This is explicitly regulated in Article 2 of the Marriage Law. This Article 2 consists of two paragraphs. The first paragraph regulates the validity of marriage, and the second paragraph concerns the necessity of registering said valid marriage in accordance with applicable statutory regulations. Article 2 of the Marriage Law reads as follows: (1) A marriage is valid if performed according to the laws of the

<sup>27</sup>M. Ali Hasan, *Pedoman Hidup Berumah Tangga dalam Islam*, Cet. 2, (Jakarta: Siraja, 2006), p. 295-296.

<sup>28</sup>Wizārah Al-Auqāf, *Mawsū'ah Fiqhiyyah* (Kuwait: Wizārah Al-Auqāf, 1995), p. 352-354.

respective religions and beliefs of the parties. (2) Every marriage shall be registered according to the prevailing statutory regulations.

This article demonstrates two distinct variables. First, regarding the provision of whether a marriage is valid or not, which must be measured through the laws of each religion. In this context, marriages conducted by Muslims must follow the provisions of Islamic law, specifically fulfilling the pillars and conditions of marriage. Thus, a marriage is valid when the marriage pillars such as the two spouses, guardian, witnesses, and offer and acceptance are met along with their conditions perfectly.<sup>29</sup> Meanwhile, the second variable is the necessity for both partners to register their marriage according to applicable statutory regulations.<sup>30</sup> This means Article 2 of the Marriage Law directly creates a separation between the validity of marriage and the administrative requirement in the form of recording the marriage contract.

In addition to the provisions of Article 2 of the Marriage Law, it is further regulated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Article 2 Paragraph (1) of this Regulation states that the registration of marriage for those conducting their marriage according to the Islamic religion is performed by the Registration Officer as intended in Law Number 32 of 1954 concerning the Registration of Marriage, Divorce, and Reconciliation. This Regulation also formulates specific provisions regarding marriage registration. Furthermore, specifically for Muslims in Indonesia, the regulation regarding the necessity of marriage registration is also governed in the Compilation of Islamic Law (KHI). Article 5 Paragraph (1) of the KHI stipulates that to guarantee the orderliness of marriage for the Islamic community, every marriage must be registered. Article 5 Paragraph (2) of the KHI stipulates that such marriage registration is carried out by the Marriage Registration Officer. Then, Article 6 Paragraph (1) of the KHI regulates that to fulfill the provisions in Article 5, every marriage must be conducted in the presence of and under the supervision of the Marriage Registration Officer. Article 2 Paragraph (2) of the KHI states that marriages carried out outside the supervision of the Marriage Registration Officer have no legal force. Furthermore, Article 7 of the KHI states that marriage can only be proven by a Marriage Certificate created by the Marriage Registration Officer, and in the event that a marriage cannot be proven by a Marriage Certificate, its ratification (*isbat*) can be submitted to the Religious Court.<sup>31</sup>

Unregistered marriage or *nikah siri* has diverse impacts ranging from the wife to the children born. The implications of unregistered marriage are numerous, including: a.

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<sup>29</sup>Agustin Hanapidan Sudjah Mauliana, "Application of Sanctions for Performers of Siri Marriage in the Fatwa MPU Aceh Number 1 of 2010 Concerning Siri Marriage: Penerapan Sanksi Bagi Pelaku Nikah Siri Dalam Fatwa MPU Aceh Nomor 1 Tahun 2010 Tentang Nikah Siri," *El-Hadhanah : Indonesian Journal Of Family Law And Islamic Law* Vol. 2, no. 1 (25 Mei 2022): 1–16, doi:10.22373/hadhanah.v2i1.1567.

<sup>30</sup>Iman Jauhari dkk., "Legal Analysis Of Unregistered Marriage Viewed From Ulama's Perspective In Aceh Province," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol. 8, no. 2 (1 November 2023): 175–88, doi:10.22373/petita.v8i2.196.

<sup>31</sup>Mahkamah Agung, *Himpunan Peraturan...*, p. 67.

Not possessing a marriage book. b. Experiencing difficulty in managing population administration such as ID Cards (KTP), Family Cards (KK), and others. c. In the eyes of state law, they are not recognized as husband and wife who are valid regarding state administration. d. Difficulty in creating birth certificates for children. e. Children only possess civil rights from the mother's side. f. The wife cannot sue for *iddah* maintenance rights, as well as other rights when divorce occurs, and many other negative impacts.<sup>32</sup>

Besides these impacts, there are many others felt by the married couple, distinct from the social impact of their residential environment. Therefore, marriage currently requires recognition from the state, and the government has the authority to establish specific rules regarding marriage among Muslims in Indonesia. The necessity to marry using an official officiant (*penghulu*) at the KUA, and registering the marriage with the marriage registration officer at the KUA, is part of the government's effort to create public benefit (*maslahat*).<sup>33</sup>

Unregistered marriage impacts the continuity of a husband's responsibility to his family and children because the state's legal power is weak regarding the legitimacy status of a husband's offspring, and children's rights regarding inheritance can be lost. The impact of unregistered marriage is very detrimental to the family regarding the husband's responsibility to the wife and children.<sup>34</sup> The negative influence received by the wife and children from the absence of marriage registration includes the inability to attend school, the inability to sue for divorce when suffering, and the inability to receive inheritance shares from the husband.<sup>35</sup> It can be concluded that unregistered marriage has a bad impact on wives and children, and threatens the existence of the institution of marriage because certainty of protection for the rights of family members cannot be implemented.

### C. Community and Government Views in Sianjo-Anjo Meriah Village on Unregistered Marriage

*Nikah siri*, as previously stated, in the Indonesian context is understood as a marriage that is not registered or not recorded by the Marriage Registration Officer (PPN) at the Office of Religious Affairs for Muslims or by the PPN at the Civil Registry Office for non-Muslims. The emergence of unregistered marriage practices is a legal phenomenon that has causes and negative impacts on the married couple. The prevalence of unregistered marriage practices in society reflects the tension between religious norms, social needs, and state regulations. On one hand, some couples choose the path of unregistered marriage due to economic reasons, privacy, or inability to meet administrative requirements; however, on the other hand, the absence of official registration poses legal and social risks, as well as risks to the protection of rights,

<sup>32</sup>Imanuddin, "Nikah Menggunakan Jasa Kadi Liar Perspektif Hukum Keluarga Islam," *Jurnal Hukum: Waqfeya* Vol. 3, no. 3 (2019): hlm. 12, <https://uin-arranry.academia.edu/imanuddinab>.

<sup>33</sup>*Ibid.*

<sup>34</sup>M. Yusuf M. Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga," *At-Taujih: Bimbingan Dan Konseling Islam* Vol. 2, no. 2 (2019): 96–108, doi:10.22373/taujih.v2i2.6530.

<sup>35</sup>Sauqi Noer Firdaus, Fadil. Sj, dan Moh Thoriquddin, "Dampak Nikah Siri Terhadap Istri Dan Anak Perspektif Maqāṣid Al-Syarī'ah Al-Syāṭibī (Studi Desa Bangsalsari Kecamatan Bangsalsari Kabupaten Jember)," *Jurnal Al-Ijtima'iyah* Vol. 7, no. 2 (30 Desember 2021): 165–94, doi:10.22373/al-ijtima'iyah.v7i2.9726.

especially for women and children. This phenomenon of unregistered marriage indicates the need for a legal approach that is both educative and solution-oriented from the government, starting from the central level to the regional level, and even at the lowest level, at the village level by village apparatus who are socially in direct contact with the community.

The practice of unregistered marriage occurs frequently; one of the focal points of this discussion is in Sianjo-Anjo Meriah Village, Gunung Meriah District, Aceh Singkil Regency. Data obtained from interview findings with the Village Secretary records that 7 (seven) heads of families have conducted unregistered marriages in the last five years. The economic condition of the families of each couple is generally at the lower-middle economic level, while education levels are also relatively low.<sup>36</sup> According to Manik, a resident of Sianjo-Anjo Village, cases of unregistered marriage, especially within the district scope, are quite numerous, but specifically in that village, 7 (seven) couples are known to have performed *siri* marriage/unregistered marriage.<sup>37</sup>

The practice of marriage in Sianjo-Anjo regarding communities that do not meet the positive legal provisions applicable in Indonesia yet still proceed with marriage is done merely to fulfill existing Islamic legal provisions, including the mandatory fulfillment of the pillars and conditions of Marriage.<sup>38</sup> This practice of unregistered marriage occurs because the community, especially couples performing unregistered marriage, tends to prioritize the fulfillment of marriage pillars and conditions according to Islamic law, despite not meeting state administrative provisions as regulated in positive law, which requires marriage registration by authorized officials. According to the Secretary of Sianjo-Anjo Meriah Village, the factors driving and causing the choice of unregistered marriage are:<sup>39</sup>

1. Divorce outside the Sharia Court (1 case): One of the main causes of unregistered marriage is the practice of divorce taking place outside the *Mahkamah Syar'iyah*, where the husband and wife separate only based on Islamic law without state legal procedures. Such divorce is not officially recorded, so the legal status of the former husband or wife remains valid administratively by the state. Consequently, when a man who has divorced religiously (*talak* outside court) wishes to remarry, legally he cannot conduct a marriage officially because his previous marriage status is still recorded as active in the state system. To avoid administrative conflict and to fulfill sharia demands, the man chooses to marry unregistered. This phenomenon shows a lack of synchronization between religious law and state law, as well as the community's weak understanding of or access to divorce procedures valid under positive law, making *siri* marriage a shortcut considered valid religiously but unrecognized by the state, rendering legal protection unenforceable.

<sup>36</sup>Hasil Wawancara dengan Sekretaris Desa, Tanggal 17 September 2025 di Kantor Desa Sianjo-Anjo Meriah, Kecamatan Gunung Meriah, Kabupaten Aceh Singkil.

<sup>37</sup>Hasil Wawancara dengan Manik, Warga Desa Sianjo-Anjo Meriah, Tanggal 17 September 2025 di Desa Sianjo-Anjo Meriah, Kecamatan Gunung Meriah, Kabupaten Aceh Singkil.

<sup>38</sup>Hasil Wawancara dengan Sekretaris Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025

<sup>39</sup>Hasil Wawancara dengan Sekretaris Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025.

2. Polygamy without permission from wives (3 cases): Polygamy is also a cause of unregistered marriage in Sianjo-Anjo Meriah Village. This polygamy practice is carried out without obtaining permission from previous wives, as required by positive law in Indonesia. In the national legal system, specifically based on the Compilation of Islamic Law (KHI) and Law No. 1 of 1974, a husband wishing to practice polygamy is obliged to obtain approval from previous wives and permission from the religious court. However, in the social context, or more precisely the behavior and legal awareness of the community, several men (in this instance, three cases) chose to remarry secretly through the unregistered marriage path to avoid household conflict and legal processes considered complicated or embarrassing. Unauthorized polygamy cannot be officially registered at the Office of Religious Affairs (KUA), so the marriage is conducted informally by fulfilling the pillars and conditions of marriage according to Islam, but it is not recognized by the state. Consequently, the legal status of the second wife and children from the marriage becomes unclear, and they lose access to civil rights such as birth certificates, family cards, and legal protection regarding divorce or inheritance.
3. Underage marriage not meeting statutory provisions (2 cases): Underage marriage practices also cause unregistered marriages in Sianjo-Anjo. Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage sets the minimum age for prospective brides and grooms at 19 years. In the two cases identified in the village, the couples marrying were under that age, thus failing to meet administrative requirements for official registration at the KUA. Since marriage registration can only be done if the age of the prospective bride and groom complies with statutory provisions, the community chooses the unregistered marriage path as an alternative valid under Islamic law, though unrecognized by the state. To the best of the Village Secretary's knowledge, the two couples performing early marriage did not pursue legal efforts in the form of a marriage dispensation application. One of the two identified cases of early marriage had applied for a marriage dispensation but was not granted permission by the Singkil Sharia Court; thus, to avoid adultery (*zina*), they were married without registration at the KUA. Meanwhile, the other early marriage case did not pursue a marriage dispensation application to the Singkil Sharia Court at all, but directly proceeded with unregistered marriage.<sup>40</sup>
4. Pregnancy out of wedlock (1 case): Relations outside of marriage leading to pregnancy are also a cause of unregistered marriage. Men and women engaging in extramarital relations resulted in pregnancy in one recorded case. In such a situation, social pressure and shame from the family drove the couple to marry immediately to cover the disgrace and avoid social stigma. However, because the pregnancy occurred before marriage and age or administrative documents did not meet official registration requirements, the marriage was conducted via unregistered by fulfilling the pillars and conditions of marriage according to Islamic law. Although religiously considered

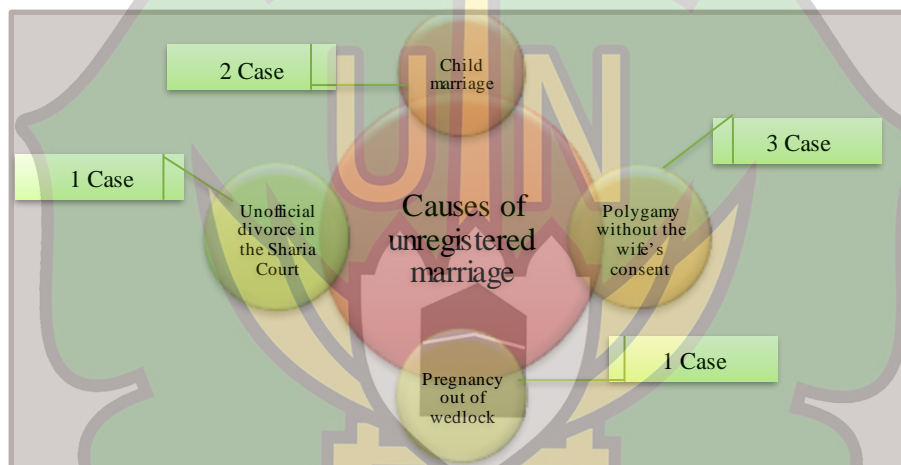
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<sup>40</sup>Hasil Wawancara dengan Sekretaris Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025.

valid, this marriage is not recorded in official state institutions, so the child born from this relationship faces legal obstacles, especially in birth registration, acknowledgment of father status, and other civil rights.

Based on this description, it is evident that the practice of unregistered marriage in Sianjo-Anjo Meriah Village is triggered by four main causes: divorce outside the Sharia Court, polygamy without wife's permission, underage marriage violating the minimum age limit of 19 years according to Law No. 16 of 2019,<sup>41</sup> and pregnancy out of wedlock. These four causes reflect a discrepancy between Islamic legal norms used as a foundation by the community and state positive legal provisions regulating marriage registration. It is said to be mismatched because there is a legal dichotomy between the recognition of validity and the ability to provide legal protection. In the social context of Sianjo-Anjo Meriah Village, unregistered marriage becomes a practical solution to avoid stigma, administrative conflict, or legal obstacles, despite the consequence being the non-recognition of the legal status of the couple and children by the state.

**Picture 1.** Factors Causing Unregistered Marriage in Sianjo-Anjo Meriah Village



*Source: Data Processed from Interview Results, September 2025*

These four factors indicate limitations in access to or understanding of formal legal procedures (as in cases of polygamy and early marriage), as well as social and cultural pressures driving informal resolution (such as pregnancy out of wedlock which is urgent; if not married, there will be social pressure. Also, because unofficial divorce in the Sharia Court makes unregistered marriage contracts seem easier to perform). The village community generally understands the legal consequences of unregistered marriage, including the non-recognition of husband-wife and child status and the difficulty in obtaining official documents such as birth certificates and family cards. However, for social and religious reasons, they continue to view unregistered marriage as an option, fully aware of the legal risks borne.

<sup>41</sup>Amri, A., A. Abdullah, and M. Khalidi. "Implementing Child Protection in Marriage Dispensation Rulings: A Case Study at the Mahkamah Syar'iyah Takengon". *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, Vol. 17, no. 1, (June 2025): 409-26, doi:10.32505/jurisprudensi.v17i1.9280.

These four factors indicate limitations in access to or understanding of formal legal procedures (as in cases of polygamy and early marriage), as well as social and cultural pressures driving informal resolution (such as pregnancy out of wedlock which is urgent; if not married, there will be social pressure. Also, because unofficial divorce in the Sharia Court makes unregistered marriage contracts seem easier to perform). The village community generally understands the legal consequences of unregistered marriage, including the non-recognition of husband-wife and child status and the difficulty in obtaining official documents such as birth certificates and family cards. However, for social and religious reasons, they continue to view unregistered marriage as an option, fully aware of the legal risks borne.<sup>42</sup>

The village government and religious leaders play an active role in providing education and advice to the community. For example, in *walimatul 'urs* (wedding reception) events, religious lectures are often used as a means to socialize the importance of marriage registration. Religious and customary leaders also emphasize the losses suffered by couples if the marriage is not officially registered, especially regarding legal protection for women and children. The impact of unregistered marriage is very real, especially in aspects of administration and legal protection. Children from unregistered marriages have difficulty obtaining birth certificates listing the father's name, wives lose legal rights in household conflicts, and families have no legal basis to claim inheritance rights.

The practice of unregistered marriage occurring in Sianjo-Anjo Village happens for four main reasons: preceded by divorce not through the Court followed by the man performing unregistered marriage; early marriage not yet reaching the ideal marriage age as established in statutory regulations (Marriage Law and KHI); the desire for polygamy without the wife's permission; and pregnancy out of wedlock creating psychological and social pressure to marry quickly.

For the community and government of Sianjo-Anjo Village, marriages conducted via *siri*, if they have met the pillars and conditions of marriage, are considered valid. Unregistered marriage is seen as only practiced by a few. Identified unregistered marriage data amounts to only 7 (seven) cases, while the number of registered marriages is very high, so the issue of unregistered marriage in the village has not yet been considered a serious problem. This is understood from Manik's statement that unregistered marriages that occur remain valid if the pillars and conditions of marriage according to Islam are complete and fulfilled.<sup>43</sup> *Siri* or unregistered marriage is considered valid under Islamic law but problematic in state administration. Therefore, the Sianjo-Anjo Village community assesses that unregistered marriage harms the parties conducting the marriage, including the extended family. This indicates that the community still values the importance of marriage registration. The effort undertaken so far is through socialization processes to the community.

Based on the data of unregistered marriage cases in Sianjo-Anjo Village, it shows that community legal awareness in understanding the importance of marriage registration

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<sup>42</sup>Hasil Wawancara dengan Sekretaris Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025.

<sup>43</sup>Hasil Wawancara dengan Manik, Warga Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025.

remains low. Community legal awareness is an essential element for a marriage registration regulation to run effectively in society. This legal awareness is one of the important factors determining legal effectiveness, alongside four other indicators: legal material, law enforcers, facilities and infrastructure, and legal culture.<sup>44</sup> This means that the existence of 7 unregistered marriage cases found in the community actually indicates minimal community legal awareness. The legal material regarding registration regulations can be said to be sufficiently good, as it is detailed in Article 2 of the Marriage Law, and for Muslims, it is emphasized in Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI). Similarly, law enforcers, such as marriage registration officers and others, are present. Legal implementation facilities, such as the existence of the Office of Religious Affairs (KUA), can also be said to be good and structured up to the sub-district level. However, cultural factors and the legal awareness of some community members remain low.

In several studies conducted by previous researchers, such as the findings of Rizqy Amaliyah, the occurrence of *siri* or unregistered marriage is due to culture and very low community legal awareness.<sup>45</sup> Mulyadi also states that the level of legal compliance in marriage registration in the community is still small and low. The community only carries out marriages according to customary traditions without following the marriage registration process at the Population and Civil Registration Agency. A lack of understanding of marriage law, particularly the importance of marriage registration, is also a major factor.<sup>46</sup> Similar studies also mention that community legal awareness is the main factor for the persistence of unregistered marriage.

The four factors for the occurrence of unregistered marriage in Sianjo-Anjo Village as stated in the previous discussion whether due to unauthorized polygamy, early marriage, unregistered divorce, or pregnancy out of wedlock are all rooted in legal awareness. If community legal awareness were high, then the 7 cases previously explained could essentially have had their marriages registered at the beginning, or at the very least, if they had already committed to unregistered marriage, legal efforts in the form of marriage registration applications or marriage ratification (*isbat nikah*) could be made.

Furthermore, issues of social, cultural, and religious norms also influence and contribute to the occurrence of unregistered marriage in Sianjo-Anjo. The practice of unregistered marriage in Sianjo-Anjo Meriah Village can be described as a complex

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<sup>44</sup>Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Cet. 16, (Depok: Raja wali Pers, 2019), p. 8; Syahrizal Abbas dan Munawar A. Djalil, *Paradigma Baru Hukum Syariah di Aceh* (Banda Aceh: Dinas Syariah Islam Aceh, 2018), p. 61; Munir Fuady, *Teori-Teori Besar dalam Hukum* (Jakarta: Kencana Prenada Media Group, 2014), p. 117.

<sup>45</sup>Rizqy Amaliyah, “Kesadaran Hukum Masyarakat Terhadap Pencatatan Nikah (Studi Pada Masyarakat Kelurahan Sepaku Kecamatan Sepaku Kabupaten Penajam Paser Utara),” *UINSI Samarinda* Vol. 1, no. 1 (31 Oktober 2022), doi:<http://repository.uin-si.ac.id/handle/123456789/2507>.

<sup>46</sup>Dudi Mulyadi, “Kepatuhan Hukum dalam Melakukan Pendaftaran Perkawinan Masyarakat Aceh Kecil,” *Jurnal Hukum Ius Publicum* Vol. 5, no. 1 (22 April 2024): 215–33, doi:10.55551/jip.v5i1.99.

social phenomenon that cannot be separated from the influence of intertwined social, cultural, and religious norms. This can be analyzed as follows:

#### 1. Religious Doctrine Factor

Specifically in Islamic legal doctrine, marriage is considered valid if it fulfills the pillars and conditions of marriage such as the presence of a guardian, two witnesses, offer and acceptance, and dowry. Indeed, the most important element of the marriage contract is the existence of offer and acceptance, and with this offer and acceptance, other elements are automatically formed.<sup>47</sup> This means that in the classical Islamic *fiqh* version, there is no provision establishing state registration as a requirement. This becomes the basis of legitimacy for some of the community, including in Sianjo-Anjo, to conduct unregistered marriage, even though it is not recorded in state law in the form of a marriage certificate product.

In contemporary *fiqh* literature, including in *fatwas* explained by scholars and official state institutions, marriage registration is not a condition for legitimizing the validity of marriage. However, marriage registration is currently viewed as mandatory to protect the rights of the couple. A *Fatwa* issued by *Al-Lajnah Ad-Dā'imah li Al-Buḥūs Al-'Ilmiyyah wa Al-Ifṭā'* in Saudi Arabia responded to the emergence of practices in some countries requiring couples to register marriages at an official state institution. The *fatwa* stated that if the offer and acceptance have been carried out along with all conditions for a valid marriage, and there are no invalidating factors, then the marriage is valid. However, if legal registration becomes a condition for fulfilling *shar'i* benefits (*maslahat*) for both parties, both in terms of current and future interests, then such registration becomes mandatory.<sup>48</sup>

Wahbah Al-Zuhailī states that in cases of polygamy and rights of the wife against the husband, the marriage is mandatory to be registered with the state to guard women's rights, and it is highly disliked if hidden (polygamy conducted secretly). Although the marriage is outwardly valid and permissible according to *sharia*, it does not realize the main objectives of marriage that have been established, such as living in tranquility, a sense of security, household management, and similar matters.<sup>49</sup>

'Umar Sulaimān Al-Asyqar asserts that in Islamic law, marriage registration by the state is not a condition for the validity of the marriage contract. This means that as long as the pillars and conditions of marriage are met such as offer and acceptance, guardian, witnesses, and dowry the marriage remains valid according to *sharia* even if not administratively recorded. However, he also emphasizes that marriage registration has great value of benefit (*maslahat*), especially in protecting the rights of husbands, wives, and children, and preventing disputes in the future. Therefore, scholars view this registration as an important administrative obligation, even though it is not part of the validity conditions of the contract. Not registering a marriage indeed does not invalidate the legitimacy of the marriage religiously, but the state has the right to

<sup>47</sup>Maḥmūd 'Alī Al-Sartāwī, *Syarḥ Qānūn Al-Aḥwāl Al-Syakhṣiyyah*, (Yordania: Dar Al-Fikr, 2020), p. 29; Muḥammad Abū Zahrah, *Muḥāḍarāt fī 'Aqd Al-Zawāj wa Āsāruh* (Beirut: Dar Fikr Al-'Arabi, 1971), p. 77-78.

<sup>48</sup> Aḥmad bin Abd Al-Razzāq Al-Darwīsy, *Fatāwā Al-Lajnah Al-Dā'imah li Al-Buḥūs Al-'Ilmiyyah wa Al-Ifṭā'*, Jilid 18 (Arab Saudi: Dar Al-Mu'ayyad, 1999), p. 87.

<sup>49</sup>Wahbah Al-Zuhailī, *Fatāwā Mu'āṣirah* (Damaskus: Dār Al-Fikr, 2003), p. 229.

sanction parties who ignore the registration obligation to maintain legal order and social protection. This approach shows a balance between *shar'i* principles and modern legal needs.<sup>50</sup>

From several views above, it is clear that the theory of marriage law in Islam establishes separate pillars and conditions of marriage as a form of legitimacy for the validity of the marriage contract. Marriage registration is not a condition for a valid marriage. However, because the existence of certificates and marriage registration is crucial, its legal standing is mandatory, and the government can establish sanctions for married couples. Considering this Islamic legal doctrine, the community assesses that fulfilling the pillars and conditions of marriage can be viewed as sufficient to conduct a marriage, and this religious doctrine has been used as the legitimacy for unregistered marriage.

## 2. Social and Cultural Value Factors

Viewed from the side of social and cultural norms, the community often evaluates marriage as a form of fulfilling norms of decency and family honor, so unregistered marriage is frequently used as a solution to avoid social stigma against extramarital relationships, especially in cases of second marriages or unapproved relationships, or also applicable in early marriages. Meanwhile, cultural norms help shape perceptions of women's status and family honor, where marriage, even if unregistered, is still considered better than a relationship without formal ties. However, on the other hand, this practice also creates legal and social dilemmas, especially regarding women's and children's rights which are not legally guaranteed due to the lack of official registration. Thus, aspects of social, cultural, and religious norms influence the existence of unregistered marriage practices in the community, including in Sianjo-Anjo Meriah Village.

Another issue from several previous statements is that parts of the community are still divided in understanding and reacting to the law of unregistered marriage. Some state it remains valid because the marriage was conducted according to the pillars and conditions established in Islam. However, others assess unregistered marriage, even if the pillars and conditions are met, as invalid. This creates a dichotomous view among the community and a dualism in legal assessment aspects regarding unregistered marriage status. Nevertheless, despite this dualism in community legal views, all interviewed informants agreed in stating that unregistered marriage or *siri* marriage contains negative impacts for the married couple. This indicates that although the practice of unregistered marriage actually exists, at the very least, the community acknowledges the negative impacts of unregistered marriage.

## D. Analysis of Legal Protection for the Rights of Wives and Children in the Context of Unregistered Marriage in Gunung Meriah District

In the context of *siri* marriage not registered at the Office of Religious Affairs (KUA) in Gunung Meriah District, legal protection for the rights of wives and children becomes very weak and vulnerable. Because the marriage is not officially registered

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<sup>50</sup>Umar Sulaimān Al-Asyqar, *Aḥkām Al-Zawāj fī Ḍau' Al-Qur'ān wa Al-Sunnah*, (Terj: Iman Firdausi), (Solo: Tinta Medina, 2015), p. 303.

according to Article 2 of Law No. 1 of 1974, the state does not recognize the legal status of the couple as husband and wife; thus, civil rights that should attach to the marital relationship become void, unrecognized by law, and legal efforts in the form of lawsuits or legal applications in court cannot be made. The wife has no legal basis to demand maintenance, protection from domestic violence, or rights to joint property. Children born from unregistered marriages also face difficulties in birth registration, especially in listing the father's name legally on the birth certificate, which impacts access to education, health services, and inheritance rights. In practice, children from unregistered marriages are often only legally recognized as children of the mother's side, not as legitimate children of both parents. This condition shows that without official registration, women and children are in an unprotected legal position, demanding state intervention through legal education, ease of access to registration, and a more inclusive social approach to village communities.

According to the Secretary of Sianjo-Anjo Meriah Village, unregistered marriage impacts legal protection for the rights of the wife and child. His statement is as follows: "The impact of this unregistered marriage is quite large, yes, and legal protection for the wife, child, or even for the man is very weak. The impact, for example, is the difficulty in obtaining a birth certificate and family card. If there is discord in the household, rights the wife should possess become lost because she is not recognized as a wife, such as in cases of Domestic Violence (KDRT). Another impact is the difficulty for children to obtain their rights such as inheritance rights and others."<sup>51</sup>

In another statement, considering the impact is very large, the Village Secretary stated that *siri* marriage is invalid because it is unregistered.<sup>52</sup> In the statement of Salahuddin, a resident of Sianjo-Anjo Village, he also suggested that the impact of unregistered marriage practices overall complicates the married couple in fulfilling all their rights legally. The state cannot intervene in protecting the rights of the wife and the child born. However, Salahuddin holds the view that unregistered marriage remains valid; this differs from the Village Secretary's statement. Although it is generally known that unregistered marriage is considered valid if it meets the pillars and conditions of marriage, legal protection for the rights of the wife and child cannot be provided.<sup>53</sup> Below, an analysis of legal protection for the rights of the wife and child is presented.

#### 1. Formal legal protection does not apply to unregistered marriage couples

*Siri* marriages unregistered at the KUA do not have formal legal force according to Article 2 paragraph (2) of Law No. 1 of 1974 concerning Marriage. In this article, it is stated that "Every marriage shall be registered according to the prevailing statutory regulations." This means that although the marriage is valid religiously, the state does not recognize the legal existence of the relationship. Consequently, the rights of the wife and child born from unregistered marriage do

<sup>51</sup>Hasil Wawancara dengan Sekretaris Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025.

<sup>52</sup>Hasil Wawancara dengan Sekretaris Desa Sianjo-Anjo Meriah..., Tanggal 17 September 2025.

<sup>53</sup>Hasil Wawancara dengan Salahuddin, Warga Desa Sianjo-Anjo Meriah, tanggal 17 September 2025 di Desa Sianjo-Anjo Meriah, Kecamatan Gunung Meriah, Kabupaten Aceh Singkil.

not receive the legal protection that should be given to a family that is valid administratively.

## 2. Impact on the wife's rights

In an unregistered marriage, the wife loses access related to legal rights guaranteed by the state, such as rights to maintenance, rights to joint property, rights to file for divorce in court, and other rights generally obtained for a wife performing a registered marriage. In cases of domestic violence (KDRT), a wife from an unregistered marriage does not have strong legal standing to report or demand protection, because the marital status is not officially recognized. This contradicts the spirit of women's protection in Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

## 3. Impact on the child's rights

Children born from unregistered marriages face difficulties in birth registration, specifically in including the father's name on the birth certificate. Based on the provisions of Article 42 and 43 of Law No. 1 of 1974 concerning Marriage, a legitimate child is a child born from a valid marriage. Because *siri* marriage is unregistered, the child is legally recognized only as the child of the mother's side. This condition will impact the child's right to receive inheritance, legal identity, and access to public services such as education and health.

**Table 1.** Impact of Unregistered Marriage in Sianjo-Anjo Meriah Village

No.	Party Aspect	Impact Aspect
1	Wife's Rights	<ul style="list-style-type: none"> <li>- Loss of rights to maintenance, joint property, and divorce lawsuits in court.</li> <li>- Lacks legal standing in Domestic Violence (KDRT) cases.</li> <li>- Not listed in official population documents (KK, NIK).</li> </ul>
2	Child's Rights	<ul style="list-style-type: none"> <li>- Difficulty listing the father's name on the birth certificate.</li> <li>- Not recognized as a legitimate child of both parents legally.</li> <li>- Loss of inheritance rights from the father, and access to education and health services based on NIK.</li> </ul>

*Source: Processed Data from Interview Results, 2025.*

Alongside the Marriage Law, the Compilation of Islamic Law (KHI), in its position as a material legal source in Religious Courts and *Mahkamah Syar'iyah*, also serves as a guideline for the implementation of Islamic law in Indonesia, the basis of which emphasizes the importance of marriage registration. Article 5 of the KHI states that "To guarantee the orderliness of marriage for the Islamic community, every marriage must be registered." In this article, although the KHI recognizes the validity of marriage religiously, the KHI still requires registration as a form of formal legality so that civil rights can be guaranteed by the state. Therefore, the KHI and the Marriage Law both establish the importance of the legal process of marriage registration so that the legal rights of a marriage can be protected. This contrasts with unregistered *siri* marriage, where the state has no authority and cannot intervene because the legal instrument, in the form of a marriage record, does not exist.

The practice of unregistered marriage occurring in Sianjo-Anjo Meriah Village happens due to social reasons, such as divorce outside of court, unauthorized polygamy, early age, and premarital pregnancy. These choices create administrative inequality. Wives and children from unregistered marriages are not recorded in the population system, thus are not listed in the Family Card. This weakens their position in the legal and social system. Therefore, legal protection for the rights of wives and children in the context of unregistered marriage remains very weak and requires serious attention from policymakers. The state must be present through more adaptive regulations and legal services, especially in rural areas. Marriage registration is part of a form of formality, as well as an entry point for the protection of citizens' basic rights. Without marriage registration, women and children will continue to be in legal uncertainty and social injustice.

The effort that can be made for couples who have already committed to unregistered marriage is *isbat nikah*. *Isbat nikah* is a legal effort submitted to the Religious Court to ratify a marriage that has been conducted religiously but has not been recorded by the state. *Isbat* becomes an important solution to provide legal protection for couples and children born from unregistered marriages.<sup>54</sup> However, *siri* or unregistered marriage has exited the administrative effort of state protection for the people on one hand, and does not execute rules that are beneficial and bring *maslahat* on the other. Muhammad Daud Ali, in his interview with Imron Rosyadi, stated that people who marry without fulfilling applicable marriage law provisions (*siri* marriage) essentially consciously exit the marriage law system applicable to themselves (and their children). Similarly, according to Masjfuk Zuhdi, from the perspective of Islamic law and positive law, the validity of a marriage should ideally be juridical (positive law) if it has been conducted according to Islamic sharia, carried out before a Marriage Registration Officer, and registered according to applicable provisions.<sup>55</sup> This means that the possibility of opportunities to protect rights for unregistered marriage couples is slim if given by the state if the couple remains silent without concrete efforts to register their marriage. The marriage certificate becomes important for couples in obtaining and protecting their legal rights in marriage. Based on that, the effort of *isbat nikah* becomes the only path for unregistered marriage couples (regarding the rights of the child born, rights of the wife or husband) to be protected by the state through the judicial path.

#### **E. Review of Article 2 of Law Number 1 of 1974 Concerning Marriage on Unregistered Marriage in Sianjo-Anjo Meriah Village**

Article 2 of Law Number 1 of 1974 Concerning Marriage states that marriage according to state law is considered valid if conducted according to the laws of each religion and belief. This means that for Muslims in Indonesia, the validity of marriage refers to Islamic legal provisions, namely the fulfillment of the pillars and conditions of

<sup>54</sup>Munawir, *Hukum Perkawinan dan Waris Dalam Sistem Hukum Nasional dan Syariah Di Indonesia* (Pajakumbuh: SerasiMedia Teknologi, 2025), p. 42.

<sup>55</sup>Imron Rosyadi, *Rekonstruksi Epistemologi Hukum Keluarga Islam* (Jakarta: Kencana Prenada Media Group, 2022), p. 54.

marriage. Specifically, there are two spouses with no impediments to marriage according to religious law (not blood relatives, milk relatives, relations by marriage, or of different religions and beliefs, and other impediments), the presence of two just witnesses, a marriage guardian for the woman who is not *fasik* (whether a close lineage guardian, distant guardian, or judge guardian), and the existence of offer and acceptance complete with its provisions and conditions. Furthermore, Article 2 paragraph (2) mentions that every marriage is registered according to applicable statutory regulations. This provision indicates that the validity of marriage according to religion is sufficient legally, but there must be an addition in the form of the necessity to register the marriage. The addition in the form of registration is not an indicator to validate and legalize the marriage, but is limited to obtaining state legal recognition, because registration is an administrative requirement determining the enforceability of marriage law in the state system. Thus, for couples who do not register their marriage, in principle, both the state and religion have recognized the validity of the marriage if pillars and conditions are met; however, such couples are considered not to have legal force from the state and cannot protect their legal rights, one of which is in the case of unregistered marriage.

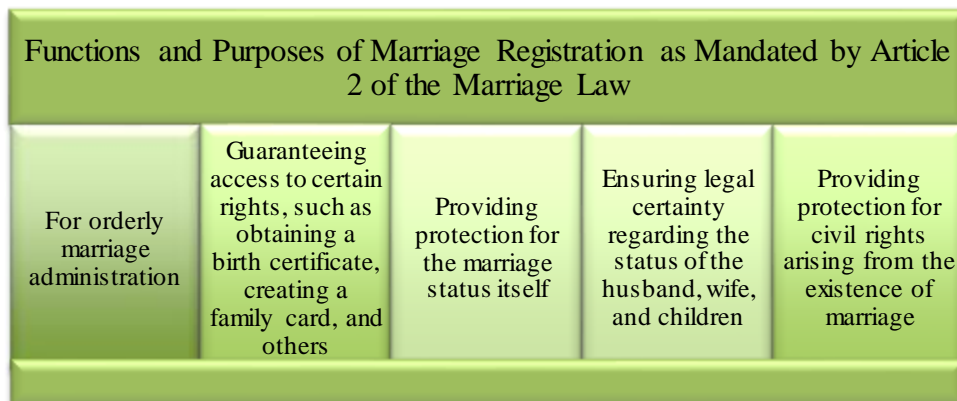
In the context of Sianjo-Anjo Meriah Village, the practice of unregistered marriage indeed meets the pillars and conditions of marriage according to Islamic law, but is not registered at the Office of Religious Affairs (KUA), so it has no formal legal force. Consequently, although the marriage is religiously considered valid, in state law, the marriage is not recognized, and the couple does not obtain civil rights attached to official marital status. This phenomenon indicates a disharmony between religious norms and state norms in village community practice. The seven couples choosing unregistered marriage in Sianjo-Anjo are caused by social reasons, for example, divorce outside the Sharia Court, unauthorized polygamy, early age, or premarital pregnancy. However, this choice raises serious legal consequences, especially for the rights of women and children born from such marriages. They lose access to legal rights such as birth certificates, family cards, inheritance rights, and others related to legal protection in household conflicts.

Article 2 of the Marriage Law becomes a critical point limiting state recognition of marriages that are only valid religiously. Normatively, Article 2 Paragraph (1) and Paragraph (2) of the Marriage Law aim to guarantee administrative order and legal protection for all citizens.<sup>56</sup> In practice, this provision is not yet fully effective in Sianjo-Anjo Meriah Village. There are various forms of objectives for marriage registration, as mandated by Article 2 of the Marriage Law, as can be depicted below:

**Picture 2.** Functions and Objectives of Marriage Registration

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<sup>56</sup>*Ibid.*, p. 58.



Source: *Processed from the Opinion of Imron Rosyadi (2022), 2025.*

Based on these objectives, the Marriage Law (UUP) obliges every marriage to be registered according to applicable statutory regulations. Administrative order and legal protection by the state are the main objectives of the existence of marriage registration law. Administrative order is a condition where the entire process of recording, reporting, and data management is carried out systematically, legitimately, and in accordance with applicable legal provisions. In the context of marriage law, administrative order means that every marriage valid according to religion must also be officially recorded by the state through authorized institutions, such as the Office of Religious Affairs (KUA) for Muslims. This registration is not merely a formality but is a legal instrument ensuring that the legal status of the husband-wife couple and their children is recognized by the state, allowing them to access civil rights such as inheritance, birth certificates, family cards, and legal protection in household conflicts.<sup>57</sup>

Normative Administrative Compliance in marriage is regulated in the material of Article 2 of Law No. 1 of 1974 concerning Marriage as previously mentioned. This provision asserts that registration is a condition of administrative legality distinguishing between marriages only valid religiously and marriages valid under state law. Without registration, the state has no basis to provide legal protection to couples and children born from unregistered marriages. This is also emphasized in the Compilation of Islamic Law (KHI) Article 5, stating that marriage registration aims to guarantee orderliness within the Islamic community.<sup>58</sup>

Administrative order functions as a control and validation mechanism for the legal status of citizens. It allows the state to compile and regulate many things, ranging from accurate population data, avoiding legal conflicts, to guaranteeing justice in the distribution of civil rights. When administrative order is not executed, as in the case of unregistered marriage, legal vacuums prone to harming socially weak parties, especially women and children, occur. They have no legal proof to claim rights, and the state cannot provide maximum protection.

<sup>57</sup>Sabilal Rosyad, *Implementasi Hukum Islam tentang Status Hukum Anak di Luar Perkawinan* (Pekalongan: Nasya Expanding Management, 2018), p. 117.

<sup>58</sup>Mahkamah Agung, *Himpunan Peraturan...*, p. 34.

administrative order also reflects the integration between religious law and state law. In a society upholding religious values like in Sianjo-Anjo Meriah Village, at least for the families of the 7 (seven) unregistered marriage couples found in the field, marriage registration is considered less important than the fulfillment of pillars and conditions of marriage according to Islam. However, without registration, the marriage possesses no formal legal force, and this creates disharmony between religious norms and state norms. Therefore, administrative order is not just about technical registration, but also about justice, legitimacy, and sustainable legal protection.

Viewed from the side of Islamic law, this marriage registration is indeed not regulated in classical *fiqh*; indeed, the legal product can be said to be new and the result of the *ijtihad* of later scholars. Although there are no text verses or hadiths regarding this registration, from the side of legal value, marriage registration possesses values of benefit and *maslahat* in a marriage, or in *fiqh* terms called *maṣlaḥah*. Many Islamic legal experts in Indonesia, and even researchers of Islamic law, suggest that marriage registration provides benefit (*maslahat*) and utility for a family. The reasoning of this legal value of marriage registration is categorized into *maṣlaḥah mursalah*.<sup>59</sup> *Maṣlaḥah mursalah* is a type of benefit derived alongside existing legal problems, or benefits grasped by logical human reason, where there is no guidance prohibiting its execution.<sup>60</sup>

Still within the angle of Islamic law, the government in principle has authority in making legal policies that provide benefit to the community, among the general *fiqh* maxims which mean: "The policy of the imam, leader, or judge towards his people must be based on the fulfillment and attraction of benefit (*maslahat*)".<sup>61</sup> In the context of marriage registration established through Article 2 of the Marriage Law, aspects of benefit and *maslahat* appear therein. With the registration of marriage, the couple will obtain a marriage book or certificate/marriage document. With this marriage book, the married couple can be protected by the state against deviations, and the state can intervene through judicial bodies, or in Aceh Singkil, performed by the Aceh Singkil Sharia Court.

## Conclusion

Based on the analysis of the discussion above, it can be concluded that: First, the community of Sianjo-Anjo Meriah Village views unregistered marriage as a religiously valid solution in facing social and administrative obstacles such as divorce outside of court, unauthorized polygamy, early age, and premarital pregnancy. Nevertheless, the community and village government are aware of the legal consequences. The village government and community continue to perform educative, preventive, and active

<sup>59</sup> Abdul Manan, *Pembaruan Hukum Islam di Indonesia* (Jakarta: Kencana Prenada Media Group, 2017), p. 121; Bandingkan juga dalam, M. Zamroni, *Prinsip-Prinsip Hukum Pencatatan Perkawinan di Indonesia* (Surabaya: Media Sahabat Cendekia, 2019), p. 143.

<sup>60</sup> Al Yasa' Abubakar, *Metode Istiṣlāḥiah: Pemanfaatan Ilmu Pengetahuan dalam Ushul Fiqh* (Jakarta: Kencana Prenada Media Group, 2016), p. 114.

<sup>61</sup> Yūsuf Al-Qaraḍāwī, *Siyāsah Al-Syar'iyyah fī Dau' Nuṣūṣ Al-Syarī'ah wa Maqāṣiduhā*, (Terj: Fuad Syaifudin Nur), (Jakarta: Pustaka Al-Kautsar, 2019), hlm. 109; Kaidah tersebut juga disebutkan Muhammad Iqbal, *Fiqh Siyāsah: Kontekstualisasi Doktrin Politik Islam* (Jakarta: Kencana Prenada Media Group, 2016), p. 8.

socialization regarding the importance of marriage registration through lectures and customary activities. Second, *siri* marriage unregistered at the KUA causes the wife and child to lose legal protection guaranteed by the state. The wife has no legal basis to demand maintenance, protection from domestic violence (KDRT), or rights to joint property. Children from unregistered marriages have difficulty obtaining valid birth certificates, cannot list the father's name legally, and lose inheritance rights. In the seven cases of families performing unregistered marriage, this places them in a vulnerable and unprotected legal position. Third, Article 2 of Law Number 1 of 1974 Concerning Marriage asserts that registration is a condition of administrative legality of marriage. Marriage registration functions to create administrative order and legal protection for married couples. The unregistered marriages performed by the seven couples in Sianjo-Anjo Meriah Village are valid according to Islamic dogma because they have met the pillars and conditions of marriage, but are not registered and thus not recognized by the state.

It is necessary to increase legal education and integrated socialization by the KUA, *Mahkamah Syar'iyah*, and village government regarding the importance of marriage registration. The state also needs to simplify access to marriage registration so that the community no longer chooses informal paths that harm the rights of women and children. For couples who have already committed to unregistered marriage, the legal effort that can be executed is to apply for *isbat nikah* to the Singkil Sharia Court. Furthermore, there needs to be a legal education program policy tailored to local community needs, as well as incentives for unregistered marriage couples to perform *isbat nikah* facilitated by the regional government.

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