



## Indonesian Islamic Law and Unregistered Marriage: A Contemporary 'Atiyyah's *Maqāṣid al-Shari'ah* Approach

Article	Abstract
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### Introduction

A siri marriage is a marriage that meets the requirements of the pillars of marriage, but for some reason is not registered with the Office of Religious Affairs.<sup>1</sup> Under Islamic law, this marriage

<sup>1</sup> Munir Subarman, "Nikah Di Bawah Tangan Perspektif Yuridis Dan Sosiologis," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 13, no. 1 (2013): 65–83, <https://doi.org/10.18326/ijtihad.v13i1.65-83>.

is considered valid by some groups because it meets the criteria for validity, namely the acceptance of the marriage contract (*ijab*), the acceptance of the marriage contract (*kabul*), the presence of two partners, a guardian, and two witnesses.<sup>2</sup> A siri marriage is still often used as an alternative to prevent promiscuity between unmarried men and women who are not psychologically, morally, or materially ready for formal marriage. Many consider it valid, giving the impression that marriage is easy to enter into. As a result, the journey of marriage is undertaken without regard for the applicable legal formalities.<sup>3</sup>

In reality, a siri marriage actually gives rise to various problems and domestic conflicts, resulting in legal issues that are highly detrimental to women. Marriage is a legal process, so matters or actions arising from it are legally protected. If a marriage is not legally registered, matters related to its consequences cannot be legally resolved.<sup>4</sup> For example, the wife's right to receive physical and spiritual support, the inability to obtain a child's birth certificate, the right to child custody, the right to education, the wife's inheritance rights, the right to guardianship for daughters who are about to marry, and many other problems arise.<sup>5</sup>

These problems only negatively impact women as the parties to the marriage, while men are not burdened with formal responsibilities. Even if the man denies the marriage, he will not face any legal sanctions because there is no authentic proof that the marriage took place. This certainly opens up wide opportunities for psychological violence against wives. This phenomenon subsequently gave rise to a fatwa from the Indonesian Ulama Council (MUI), which firmly declared unregistered marriages religiously forbidden. The Deputy Chairman of the Indonesian Ulama Council (MUI), KH Cholil Nafis, reiterated the MUI's position regarding the widespread practice of unregistered marriages. He explained that there are several types of unregistered marriages, often understood differently by the public. The term "unregistered marriage" refers to two forms. First, marriages that meet religious requirements and are legally valid but not registered with the Office of Religious Affairs (KUA), abbreviated as "*nikah siri*" (Islamic marriage), are marriages that meet the legal requirements but not registered with the KUA. Second, marriages that do not meet the proper requirements and are conducted secretly. However, Kiai Cholil emphasized that the most common type of marriage in society is unregistered marriages at the KUA, even though they legally valid.<sup>6</sup>

In Islam, what's important is that the conditions and pillars are met, and this is valid. Registration is not required under Islamic law. However, he emphasized that marriage registration is part of *istihsan*, a good deed that protects the rights of the husband, wife, and children. Kiai Cholil explained that the Indonesian Ulama Council (MUI) views unregistered marriages as religiously valid, but in practice, they actually cause many harms, especially to women and children<sup>7</sup>. Because unregistered marriages are more detrimental to women. So, while unregistered marriages are legal according

<sup>2</sup> Abd al-Rahman Al-Jaziri, *Fiqh Al-Mazahib Al-Arba'ah* (Beirut: Dar al-Fikr, n.d.). Wahbah Al-Zuhayli, *Al-Fiqh Al-Islāmi Wa Adillatuhu* (Beirut: Dar al-Fikr, 1997) Abu Yahya Zakariya Al-Anshari, *Fath Al-Wahhāb* (Beirut: Dar al-Fikr, n.d.).

<sup>3</sup> Syukri Fathudin Ahmad Widodo, "Problematika Nikah Siri Dan Akibat Hukumnya Bagi Perempuan," *Jurnal Penelitian Humaniora* 15, no. 1 (2015): 1-22, <https://doi.org/10.21831/hum.v15i1.5030>.

<sup>4</sup> Solihan Makruf et al., "Legal Sociological Perspective on Marriage Under the Hand (Case Study Understanding of the Cipadung Community, Bandung City)," *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 1536-44.

<sup>5</sup> Widodo.

<sup>6</sup> Majelis Ulama Indonesia, "MUI Tegaskan Nikah Siri Sah Secara Agama Namun Haram Karena Merugikan Perempuan," MUI Digital, 2025.

<sup>7</sup> Moch. Nurcholis, Iffatin Nur, Abd. Holik, dan Ahmad Muhtadi Anshor, "Best Interest of the Child (Hifz al-Awlād) Principle in Adjudicating Marriage Dispensation for Under-Age Couples," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025): 531-558, <https://doi.org/10.19105/al-ihkam.v20i2.15927>

to the MUI, they are also forbidden. Why? They harm others. They make women less able to fully exercise their rights. Therefore, the MUI recommends that people avoid unregistered marriages and choose officially registered marriages. Kiai Cholil emphasized that marriage registration is part of completing the marriage contract because it carries legal implications, including inheritance, child support, and child custody. Kiai Cholil Nafis also issued a firm warning to parents not to accept proposals in secret, as this could lead to unregistered marriages.<sup>8</sup>

This article will explain the Indonesian School of Islamic Jurisprudence based on the *Maqāṣid al-shari‘ah* of Jama‘l al-Din ‘Atiyyah in analyzing the phenomenon of unregistered marriages in Indonesia. However, several articles that have distinctions from this article will be described first. First, the article titled “A Legal Analysis of Unregistered Marriages from Ulamas’ Perspectives in Aceh Province,” by Iman Jauhari, Azhari Yahya, Darmawan, Dahlān, and Muhammad Nasir. This article explains scholars’ views on unregistered marriages in Aceh. Marriage registration is regulated by the Marriage Law, the Compilation of Islamic Law, and other implementing regulations. Factors that cause unregistered marriages in Aceh include economic factors, illegitimate pregnancies, lack of understanding and awareness of marriage law, prolonged infidelity, not having a guardian, avoiding administrative procedures, and avoiding adultery. Acehnese scholars support marriage registration because it benefits families, such as registering children’s birth certificates and family cards as administrative requirements for other legal acts. However, they reject marriage registration if it is linked to other provisions such as the age of marriage, permission for polygamy, and disputes involving the family.<sup>9</sup>

Second, an article entitled When Religious Leaders Become Marriage Brokers, *Pengulus*, and Marriage Consultants: The Authority of *Kyai* in the Process of Unregistered Marriage, by Nanda Nabilah Islamiyah, explains the role of *Kyai* in the practice of unregistered marriage in Rembang District, Pasuruan Regency. This article explains several factors that enable the *Kyai*’s profession to continue in three stages of the practice of unregistered marriage: the pre-marital stage, the marriage stage itself, and the post-marital stage. This article explains the implications of the interactions between *Kyai*’s and clients through the agreements they make. This article finds that *Kyai*’s involvement in unregistered marriages stems from their authority as marriage brokers, marriage clerks, and consultants. In addition, *Kyai*’s can also be relied upon as a party capable of minimizing the possibility of marital obstacles, one of which is found in the case of buying a guardian or the practice of a muhakam guardian.<sup>10</sup> The *Kyai*’s soft power can attract public sympathy through his moral and spiritual superiority, demonstrated by his consistent application of religious practices and his ability to preach. In this way, the public will consciously demonstrate obedience to the *Kyai*, thereby narrowing the possibility of rejection by the *Kyai*’s invitation to engage in unregistered marriages.<sup>11</sup>

<sup>8</sup> Majelis Ulama Indonesia, “MUI Tegaskan Nikah Siri Sah Secara Agama Namun Haram Karena Merugikan Perempuan,” MUI Digital, 2025, <https://mui.or.id/baca/berita/mui-tegaskan-nikah-siri-sah-secara-agama-namun-haram-karena-merugikan-perempuan>.

<sup>9</sup> Iman Jauhari et al., “A Legal Analysis of Unregistered Marriages from Ulamas’ Perspectives in Aceh Province,” *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (2023): 175–88, <https://doi.org/https://doi.org/10.22373/petita.v8i2.196>.

<sup>10</sup> Muhammad Latif Fauzi, “Administrative Transgression and Judicial Discretion for the Sake of Citizens’ Rights: The Legalisation of Unregistered Marriages in Indonesia,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 211–31, <https://doi.org/https://doi.org/10.14421/ahwal.2023.16202>.

<sup>11</sup> Nanda Nabilah Islamiyah, “When Religious Leaders Become Marriage Brokers, *Pengulus*, and Marriage Consultants: The Authority of *Kyai* in the Process of Unregistered Marriage,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 21–40, <https://doi.org/https://doi.org/10.14421/ahwal.2024.17102>.

Third, an article titled “The Phenomenon of Unregistered (Siri) Marriages in Surabaya” by Holilur Rohman, Muhammad Jazil Rifqi, Moh. Faizur Rohman, Agus Solikin, and Abdul Wahab Naf'an explain that unregistered marriages are religiously valid but not registered at the Office of Religious Affairs (KUA); as a result, their legal validity remains problematic. This article addresses two questions: first, the phenomenon of unregistered marriages in Surabaya; and second, an analysis of the *Maqāṣid al-sharia* (the principles of sharia) regarding this phenomenon. This research uses a descriptive qualitative methodology. Data collection techniques include documentation and interviews. The results indicate that unregistered marriages are widely practiced in Surabaya. Many factors contribute to the choice of unregistered marriages, including a lack of legal awareness regarding the obligation to register marriages in Indonesia, premarital pregnancies, and polygamy. In response to the phenomenon of unregistered marriages in Surabaya, the Office of Religious Affairs (KUA) has implemented various preventive and mitigating measures, including public awareness campaigns on the importance of marriage registration, the impact of unregistered marriages, and guidance for those involved in unregistered marriages. Based on the study of *Maqāṣid al-shari‘ah* (observance of Islamic law), unregistered marriages are not ideal for Indonesian society because they fail to realize the objectives of sharia.<sup>12</sup>

The three articles mentioned above share a common object of study: unregistered marriages. The difference between these articles and this article lies in the more specific analysis of unregistered marriages, namely the *Maqāṣid al-shari‘ah* of Jamal al-Din ‘Atiyyah, a contemporary method of ijtihad that explains unregistered marriages and their impacts, as well as the perspectives of Islamic law and Indonesian positive law. Then analyze the siri marriage with *Maqāṣid al-shari‘ah* Jamal al-Din ‘Atiyyah so as to form the building of the Indonesian school of jurisprudence with reference to era and locus. Indonesian school of jurisprudence is a contemporary *siyasah* jurisprudence that harmonizes Islamic law and positive law to prevent harm, in this case by registering marriages according to state law, taking priority over taking advantage of the benefits, namely legally marrying according to Islamic religious rules. So we can be sure that refusing damage is actually a higher level of benefit. This is in line with the rules of *Maqāṣid al-shari‘ah*, namely, *tartīb al-maṣālih wa al-mafāsid*, which means the urgency of arranging a hierarchy of benefits and welfare.<sup>13</sup> As for the discussion about marriage, Jamal al-Din ‘Atiyyah explains it in *Maqāṣid al-shari‘ah*, which is devoted to discussing *usrah* (family). Although marriage registration is not mentioned, it is important to provide legal certainty and protect the community, especially women and children.

## Methods

This research is library research,<sup>14</sup> which seeks to gather data and sources relevant to the topic. This research also seeks to fully understand the phenomenon of unregistered marriages in Indonesia within the framework of the Indonesian school of jurisprudence (fiqh). Therefore, the author attempts to explore data on unregistered marriages in Indonesia within the framework of

<sup>12</sup> Holilur Rohman et al., “The Phenomenon of Unregistered (Siri) Marriages in Surabaya,” *Hikmatuna: Journal for Integrative Islamic Studies* 10, no. 2 (2024): 218–226, <https://doi.org/10.28918/hikmatuna.v10i2.9180>.

<sup>13</sup> Jamal al-Din ‘Atiyyah, *Towards Realization of the Higher Intents of Islamic Law, Maqasid Al-Shari‘ah: A Functional Approach* (Washington: IIIT, 2007).

<sup>14</sup> Burhan Ashofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 1998), 143.

the Indonesian school of jurisprudence (mazhab),<sup>15</sup> based on the *Maqāṣid al-shari‘ah* (principles of sharia) of Jamal al-Din ‘Atiyyah. This research is qualitative, revealing a specific phenomenon by understanding the true reality as expressed through words,<sup>16</sup> using relevant data collection and analysis techniques rather than numbers and statistics.<sup>17</sup> This type of research was deliberately used to provide a complete picture of the object under study. This research uses a conceptual approach and case studies.

The conceptual approach,<sup>18</sup> based on arguments and doctrines developed within legal science.<sup>19</sup> This approach is important because knowledge of the arguments/doctrines developed within legal science can serve as a reference in constructing legal arguments when resolving legal issues. The argument/doctrine will elaborate ideas by providing legal definitions and legal principles relevant to the problem. In this case, the phenomenon of unregistered marriage in Indonesia is examined within the framework of the Indonesian school of jurisprudence (fikih) based on the *Maqāṣid al-shari‘ah* of Jamal al-Din ‘Atiyyah.

In addition to the conceptual framework, the case approach also utilizes a case study, which involves examining related cases, in this case, the phenomenon of unregistered marriage within the framework of the Indonesian school of jurisprudence (fiqh) based on the *Maqāṣid al-shari‘ah* of Jamal al-Din ‘Atiyyah. The case approach aims to study the application of legal norms or rules in legal practice.<sup>20</sup> This type of approach is typically used for existing cases.<sup>21</sup> In this case study, the case approach examines the phenomenon of unregistered marriage within the framework of the Indonesian school of jurisprudence (fiqh) based on the *Maqāṣid al-shari‘ah* of Jamal al-Din ‘Atiyyah.

The focus of the case approach is the specifics of a specific incident, whether involving an individual, a cultural group, or a snapshot of life.<sup>22</sup> In this case, we highlight the phenomenon of unregistered marriage in Indonesia within the framework of Indonesian Islamic jurisprudence. This article also employs a Statute Approach in this research, a childmodel that involves examining all laws and regulations related to the problem (legal issue) being addressed.<sup>23</sup> This statutory approach, for example,<sup>24</sup> involves examining the regulations on marriage registration in Marriage Law No. 1 of 1974, the Compilation of Islamic Law, and the Indonesian Ulama Council’s fatwa.<sup>25</sup>

<sup>15</sup> Muhammad Nasir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 1998), 54.

<sup>16</sup> Nazar Naamy, *Metodologi Penelitian Kualitatif: Dasar-Dasar dan Aplikasinya* (Mataram: Pusat Penelitian dan Publikasi Ilmiah LP2M UIN Mataram, 2019), 57-63.

<sup>17</sup> Djam'an Satori and Aan Komariyah, *Metodologi Penelitian Kualitatif* (Bandung: Alfabeta, 2009), 25.

<sup>18</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2005), 136.

<sup>19</sup> Abu Yasid, *Aspek-Aspek Penelitian Hukum: Hukum Islam Dan Hukum Barat* (Yogyakarta: Pustaka Pelajar, 2010), 85.

<sup>20</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 134-136.

<sup>21</sup> Nurul Qamar and Farah Syahreza, *Metode Penelitian Hukum: Doktrinal Dan Non-Doktrinal* (Makassar: Social Politic Genius, 2020), 50.

<sup>22</sup> Nazar Naamy, *Metodologi Penelitian Kualitatif: Dasar-Dasar dan Aplikasinya* (Mataram: Pusat Penelitian dan Publikasi Ilmiah LP2M UIN Mataram, 2019), 72.

<sup>23</sup> Yasid, *Aspek-Aspek Penelitian Hukum: Hukum Islam Dan Hukum Barat*.

<sup>24</sup> Abdul Mun'im Saleh, *Madhab Syafi'i: Kajian Konsep Al-Maslahah* (Yogyakarta: Ittaqa Press, 2001).

<sup>25</sup> Irzak Yuliardi Nugroho and Achmad Safiudin, “Nasab Anak di Luar Perkawinan Perspektif Hukum Progresif dan *Maqāṣid Sharī‘ah*,” *Al-Hukama’*: The Indonesian Journal of Islamic Family Law 11, no. 2 (Desember 2021): 1-28, <https://doi.org/10.15642/alhukama.2021.11.2.1-28>

## Result and Discussion

### Siri Marriage and Its Impact

A siri marriage, or an unofficial marriage, is a marriage conducted without fulfilling the requirements and procedures stipulated in law.<sup>26</sup> According to Islamic law, a siri marriage is valid as long as the pillars of marriage are met. However, from a legal perspective, this type of marriage is incomplete because it is not registered<sup>27</sup>. A siri marriage, in terms of legality and requirements, is conducted secretly and generally without registration with the relevant government agencies.<sup>28</sup> Generally, an unregistered marriage refers to a marriage not registered by the Marriage Registrar (PPN) or to a marriage conducted by Muslims in Indonesia, that fulfills both the pillars and the requirements. Conversely, a registered marriage is a one registered by the PPN.<sup>29</sup>

A marriage not under the supervision of the PPN is considered valid from a religious perspective but has no legal force because it lacks evidence of a valid marriage according to applicable laws.<sup>30</sup> A siri marriage will have negative impacts due to the lack of legality.<sup>31</sup> This tends to have a negative impact on women, as in siri marriages, the woman is always the one who suffers from legal disadvantage.<sup>32</sup> The impacts of unregistered marriages are as follows; First, the marital status has no legality, there is no legal recognition of marriage from the state regarding the status of husband and wife for the parties who carry out unregistered marriages.<sup>33</sup> This is due to the lack of registration of their marriages at the KUA or an institution authorized to register marriages, of course this occurs because the legality of their marriages does not exist. The legality of a marriage can be proven by the existence of a marriage book or marriage certificate issued by the Office of Religious Affairs.<sup>34</sup>

Although their marriage is recognized by the state, it is considered invalid because it is not registered.<sup>35</sup> The wife and children are not entitled to maintenance, inheritance from the husband upon his death, or joint property in the event of separation, as the marriage never legally took place. This is undoubtedly very detrimental to the woman.<sup>36</sup> Second, the rights and obligations are not fulfilled or neglected. A husband who enters into an unregistered marriage easily neglects his rights

<sup>26</sup> Encep Taufik Rahman et al., "How Does the State Regulate the Administration of Unregistered Marriages in Muslim Minority Communities? The Practice of Mass Weddings in Jayapura City," *Junral Ilmiah Al-Syir'ah* 22, no. 2 (2024): 207–20, <https://doi.org/http://dx.doi.org/10.30984/jis.v22i2.3210>.

<sup>27</sup> Peter Jeremiah Setiawan et al., "Juridical Implications of Unregistered Marriage Against Legal Protection in the Domestic Violence Law," *Media Juris* 6, no. 3 (2023): 457–478.

<sup>28</sup> A. Zaenurrosyid, Abd Kahfi, and Ali Syafa', "The Problem of Unregistered Marriage (Siri) in Pati Coastal Java," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 81–105, <https://doi.org/https://doi.org/10.19105/al-manhaj.v3i1.4212>.

<sup>29</sup> Qadriani Arifuddin, "Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (2024): 317–28, <https://doi.org/https://doi.org/10.19109/nurani.v24i2.24529>.

<sup>30</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234–49.

<sup>31</sup> Arifki Budia Warman et al., "Reforming Marriage Registration Policies in Malaysia and Indonesia," *Bestuur* 11, no. 1 (2023), <https://doi.org/https://doi.org/10.20961/bestuur.v11i1.66320>.

<sup>32</sup> Rifaatun Miladina, "Harmonization Of Religious and State Law In The Context Of Siri's Marriage: A Case Study In Bogor Regency," *Al-Madinah: Journal of Islamic Civilization* 2, no. 1 (2025): 9–20. <https://doi.org/https://doi.org/10.70901/5pzzwk41>.

<sup>33</sup> Asman, "Mariarginalization of Women in the Legal Problems of Siri Marriage in Indonesia," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 12, no. 205–216 (2024), <https://doi.org/https://doi.org/10.30868/am.v12i02.7457>.

<sup>34</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234–49.

<sup>35</sup> Ilham Kauli, Oman Sukmana, and Rachmad K. Dwi Susilo, "The Social Construction of Unregistered Marriage Through Legal Policy and Societal Experience: A Bibliometric Approach," *International Journal of Education, Vocational and Social Science* 4, no. 2 (2025), <https://doi.org/https://doi.org/10.63922/ijevss.v4i02.1737>.

<sup>36</sup> Emilda Sonu et al., "The Dynamics and Legal Implications of Unregistered Marriages in Indonesia," *Antmind Journal of Jurisprudence and Social Justice* 1, no. 1 (2025): 45–56, <https://doi.org/https://journal.aye.or.id/index.php/AJJSJ/>.

and obligations, both physical and spiritual, and is irresponsible as a husband to his unregistered wife because there is no legal force behind the marriage, such as a marriage certificate as authentic proof.<sup>37</sup> Third, the child will only have a civil relationship with his mother. This is because the marriage is not legally valid, so children born from unregistered marriages are considered out of wedlock.<sup>38</sup>

Fourth, Impact on Population Administration: The disadvantages of unregistered marriages also impact Population Administration, including the child's birth certificate listing only the mother's name. Furthermore, regarding education, the child will have difficulty enrolling in school due to the unclear marital status of his parents.<sup>39</sup> Furthermore, obtaining a passport (for example, for the Umrah or Hajj pilgrimage) will be hampered by an unclear marital status. While unregistered marriages in Indonesia are still considered valid from a religious perspective if the necessary pillars and requirements are met, these contracts can have detrimental legal consequences for the husband, especially the wife, and their children.<sup>40</sup> The legal consequences of unregistered marriages include:

First, there is no permanent legal force behind the validity of the marriage, so if the husband violates the wife's rights, the wife cannot legally pursue those rights. Second, the marriage contract is often legally inaccessible, and the husband and wife who enter into an unregistered marriage cannot prove that they are a legal couple under Islamic law or the state. Third, the interests of the husband and wife in their married life cannot be protected. Fourth, because there is no proof of marriage, interests such as the issuance of Resident Identity Cards (KTP), Family Cards (KK), Passports, birth certificates, or political matters such as the right to vote or be elected in general elections cannot be served. All of this is because the absence of proof of marriage, such as a Marriage Certificate/ Marriage Book, ultimately makes it impossible to issue KTPs and Family Cards. To issue a child's birth certificate or passport, KTPs, KKs, and marriage books are required.<sup>41</sup>

Fifth, unregistered marriage contracts tend to give one partner, particularly the husband, greater freedom to neglect his obligations, even to abuse his wife. Sixth, unregistered marriage contracts disrupt religious interests, and religious teachings tend to be practiced chaotically. This chaos can be illustrated by the fact that if a marriage contract is not officially registered with an authorized official, namely a Marriage Registrar, it tends to be unenforceable. Ultimately, this can open the door for a husband to remarry another woman without first obtaining his first wife's formal approval through a legal process. This type of behavior tends to recur, potentially leading the husband to take more wives than is permitted by religious law. Ultimately, such behavior also disrupts religious interests.<sup>42</sup>

Seventh, unregistered marriage contracts can impact the psychological well-being of the wife and children, causing them to feel uncomfortable and uneasy. This is especially true when children reach school age and, upon registration, every educational institution always requires applicants

<sup>37</sup> M. Tahir Maloko, "Unregistered Marriage in Islamic Law Perspective A Critical Study of Islamic Law Compilation," *Al-Mawarid Journal of Islamic Law* 17, no. 1 (2015): 49–68.

<sup>38</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234–49.

<sup>39</sup> Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (2023): 54–66, <https://doi.org/http://dx.doi.org/10.18860/j-fsh.v15i1.17461>.

<sup>40</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234–49.

<sup>41</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234–49.

<sup>42</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234–49.

(parents) to provide, among other things, a birth certificate. A marriage certificate is required for a child's birth certificate, and the person who holds the marriage certificate must be the person who registered the marriage at the time of the marriage ceremony. Without a marriage certificate, a birth certificate cannot be issued, as it constitutes legal proof that the child is the legitimate child of the couple seeking the certificate. An unregistered marriage can negatively impact the child's intellectual well-being. This is because the discomfort and even loss of self-confidence caused by the parents' lack of a marriage certificate can hinder the child's ability to think clearly. This means that, with this psychological discomfort, the child feels a sense of disgrace in human life, which can lead to a loss of self-confidence. The child may eventually begin to avoid socializing and prefer to isolate themselves at home.<sup>43</sup>

Eighth, an unregistered marriage can negatively impact the well-being of descendants. This is because without a registered marriage, the child lacks a clear, legally verifiable identity, leading to the child being considered illegitimate. Ninth, an unregistered marriage can negatively impact the well-being of property. It is called that because the identity of the marriage is unclear and the marriage cannot be proven through a marriage book, so the identity of the child born is also unclear, so that when the parents die, the child has difficulty in obtaining inheritance from his parents, including the wife due to this siri marriage contract, he also has difficulty in declaring himself as a legitimate heir, either as the first wife or as the second wife and so on.<sup>44</sup>

### **Unregistered Marriage in Positive Law and the Compilation of Islamic Law**

Indonesia's positive law, in the form of Marriage Law No. 1 of 1974, explicitly regulates marriage, and society is obligated to comply with it.<sup>45</sup> This law is the result of ijtihad (religious ijtihad) by prominent figures and scholars to accommodate Islamic values within Indonesian legislation. Article 2, paragraph (1) of the Marriage Law states, "A marriage is valid if conducted according to the law of each religion and belief." The explanation of Article 2, paragraph (1) states that there is no marriage outside the law of each religion and belief, in accordance with the 1945 Constitution. The law of each religion and belief includes the statutory provisions applicable to that religion and belief group, as long as they do not conflict with or are not otherwise stipulated in this law.<sup>46</sup>

Then Article 2 paragraph (2) states, "Every marriage is recorded according to the applicable laws and regulations."<sup>47</sup> PP No. 9/1975 Article 2 paragraph (1) explains "Registration of marriages of those who carry out their marriage according to the Islamic religion, is carried out by marriage registrars as referred to in Law No. 32 of 1954 concerning the registration of marriages, divorces, and reconciliation. Furthermore, Article 2 paragraph (2) explains, "The registration of marriages of those who conduct their marriage according to their religion and beliefs other than Islam, is carried out by the Marriage Registrar (PPN) at the civil registry office as referred to in various laws

<sup>43</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234-49.

<sup>44</sup> Siska Ikhtiarina, Ardiah Anggreni, and Ashar, "Fenomena Pernikahan Siri Di Kabupaten Penajam Paser Utara Dalam Tinjauan Sosiologi Hukum," *Jurnal Lex Suprema* 2, no. 2 (2020): 234-49.

<sup>45</sup> Desmal Fajri and Felti Novira, "The Phenomenon of Unregistered Marriages: Problems and Solution," *Kosmik Hukum* 23, no. 2 (2023): 180-88, <https://doi.org/10.30595/kosmikhukum.v23i2.18113>.

<sup>46</sup> Muhammad Ilham, "Nikah Siri Perspektif Hukum Positif Dan Hukum Islam," *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

<sup>47</sup> Edi Gunawan, "Nikah Siri Dan Akibat Hukumnya Menurut UU Perkawinan," *Jurnal Ilmiah Al-Syir'ah* 11, no. 1 (2013), <https://doi.org/http://dx.doi.org/10.30984/as.v11i1.163>.

regarding marriage registration. In connection with Article 2, paragraph (1) and paragraph (2), along with PP No. 9/1975 regarding the implementation of the law, it can be understood that a marriage contract must fulfill the provisions of the Marriage Law, Article 2, paragraph (1) regarding religious procedures and paragraph (2) regarding the simultaneous registration of the marriage by the PPN. The provisions of paragraphs (1) and (2) are cumulative requirements, not alternatives. A marriage performed under Islamic law, without registration with the PPN, is not yet considered valid.<sup>48</sup>

Therefore, unregistered marriages after the enactment of the 1974 Marriage Law are known as “illegal marriages.” Given its status within the national legal system, the Compilation of Islamic Law (KHI) can serve as a guideline when discussing marriage from a national legal perspective.<sup>49</sup> Article 4 states that “a marriage is valid if it is conducted according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage.” This article clearly demonstrates the KHI’s support for the Marriage Law’s provisions on marriage. The KHI states that marriage registration is essential to ensure orderly marriages, specifically in Article 5, paragraph (1): “To ensure orderly marriages for the Islamic community, every marriage must be registered.”<sup>50</sup>

The KHI’s affirmation can serve as a guideline that unregistered marriages, in addition to failing to comply with the formal legal regulations in force in this country, are also inconsistent with the requirements for legal marriages. Regulating marriage registration is intended to ensure that these marriages have legal force. Under Article 5, paragraph (2), the registration of marriages for Muslims is carried out by the marriage, divorce, and reconciliation registrar. Regarding the registration procedures in question, Article 6, paragraph (1), provides: “To fulfill the provisions in Article 5, every marriage must be conducted in the presence and under the supervision of the marriage registrar.” This registration procedure is important so that it will have legal force, because, as stated in Article 6 paragraph (2), “Marriages conducted outside the supervision of the marriage registrar have no legal force.” In principle, the KHI prohibits unregistered marriages. Although the term “unregistered marriage” is not mentioned in the KHI, its provisions clearly establish that unregistered marriages are impermissible.<sup>51</sup>

### Indonesian Islamic Jurisprudence Based on the *Maqāṣid al-shari‘ah* Jamal al-Dīn ‘Atiyyah in Analyzing the Phenomenon of Siri Marriage

The Marriage Law should be obeyed by all citizens as a religious and state obligation because it aims to benefit the Indonesian people. M. Hasbi Umar argues that the Marriage Law is considered a fiqh (jurisprudence) for the Indonesian people. This statement is based on the fact that classical fiqh texts were appropriate and relevant at the time, whereas a reexamination of their legal material is necessary to reform Islamic law, especially in anticipation of the modern era. In fiqh texts, marriage registration is not included in the pillars and requirements for a valid marriage. However, according to Islamic law, registration is required for a valid transaction. This process is crucial as authentic

<sup>48</sup> Muhammad Ilham, “Nikah Sirri Perspektif Hukum Positif Dan Hukum Islam,” *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

<sup>49</sup> Paisal Ahmad Dalimunthe, “Factors That Cause the Occurrence of Siri Marriage in Tualang District,” *Legitima: Jurnal Hukum Keluarga* 6, no. 1 (2023): 84-100, <https://doi.org/10.33367/legitima.v6i1.4337>.

<sup>50</sup> Muhammad Ilham, “Nikah Sirri Perspektif Hukum Positif Dan Hukum Islam,” *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

<sup>51</sup> Muhammad Ilham, “Nikah Sirri Perspektif Hukum Positif Dan Hukum Islam,” *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

evidence that can strengthen a married couple's commitment to prevent harm to either party, including their children. To eliminate the dichotomy between religion and state, it is necessary to reconcile the requirements for a valid marriage under religion with those under law. To achieve this, the most effective step is to reconstruct the requirements for a valid marriage by adding marriage registration as a pillar of marriage, thereby reducing the incidence of underage marriages, as marriage registration regulations do not conflict with Islamic law.<sup>52</sup>

According to Imam Syaukani, there are three approaches to proving that marriage registration does not conflict with Islamic law. First, the historical approach. Fiqh books do not mention marriage registration, perhaps because they were written with a relatively high level of trust among Muslims. Therefore, the likelihood of misusing the institution of marriage in ways that deviate from its ideal goals and harm others is relatively low. Second, the Islamic jurisprudence approach (*qaidah al-fiqhiyah*, "no obligation is fulfilled except with something, therefore the existence of that something becomes obligatory"). Regarding the application of this principle to marriage registration, Imam Syaukani assumes that marriage registration is a regulation deliberately created to improve the quality of a marriage. Therefore, the provisions of this principle apply: no marriage is complete unless it is registered, and registration becomes obligatory. Third, the benefit approach. This approach emerged in response to the view of some who assert that unregistered marriages, or marriages without PPN registration, are valid according to religion.<sup>53</sup>

Imam Syaukani even dared to state that unregistered marriages are only valid according to Islamic jurisprudence, not yet valid according to religion. According to him, the message conveyed by religion is universal. This means that all human actions can be justified only to the extent that they benefit the public interest. Furthermore, for a marriage contract to be valid, it must be conducted in accordance with Islamic law and recorded by the PPN. This is based on Sharia law, which states that obeying religious and government commands is obligatory. Therefore, the government-established provisions regarding marriage registration must be obeyed by citizens who claim to be devout. This is because these regulations are made with the public interest in mind. Meanwhile, religion prioritizes public interest, which is the primary goal of Islamic law. Based on the proposed approach or method, along with the developments and needs in the Indonesian context, not apart from the impact of unregistered marriages, it is very reasonable and urgent to make the pillars of marriage that are the requirements for a valid marriage in Indonesia not only five, but the number can be six, namely in addition to the provisions for marriage registration carried out by authorized officials according to applicable laws. In this case, VAT is collected from the Office of Religious Affairs for Muslims and the Civil Registry Office for non-Muslim citizens.<sup>54</sup>

Therefore, by not including marriage registration in classical fiqh, this article attempts to rebuild a more dynamic fiqh by proposing the idea of the state school of fiqh, as it is known in Indonesia as the Indonesian school of fiqh. The idea of "Indonesian school of fiqh" refers to two main arguments, namely the authority of the government as "Ulil Amri" as contained in the letter an-Nisa' [4]: 59 and the following fiqhiyah rule "Government decisions are binding and eliminate differences of opinion".

<sup>52</sup> Muhammad Ilham, "Nikah Sirri Perspektif Hukum Positif Dan Hukum Islam," *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

<sup>53</sup> Muhammad Ilham, "Nikah Sirri Perspektif Hukum Positif Dan Hukum Islam," *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

<sup>54</sup> Muhammad Ilham, "Nikah Sirri Perspektif Hukum Positif Dan Hukum Islam," *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 1 (2017): 179-189.

<sup>55</sup> The first argument refers to “Ulil Amri” contained in the letter an-Nisa’ [4]: 59, which is interpreted as “Government”. Whereas in the books of interpretation, it is explained that “Ulil Amri” in the verse is not only interpreted as “Government,” the embodiment of a leader in worldly affairs called Umara, but also as the ulama, the embodiment of a leader in religious affairs. So it is understandable that the Indonesian Ulama Council’s fatwa prohibits unregistered marriages with the argument that it has more harm in line with the Indonesian Marriage Law No. 1 of 1974 and the Compilation of Islamic Law, which emphasizes the importance of fulfilling the requirements and pillars of marriage as outlined in classical jurisprudence and is complemented by marriage registration.

Fundamental changes in the jurisprudence paradigm are enough to appreciate the meaning of empowerment for the existence of traditional jurisprudence. According to M.A. Sahal Mahfuzh, the salient characteristics of the new “paradigm in fiqh” are; First, seeking reinterpretation of fiqh texts to find new contexts. Second, the meaning of a school of thought changes from a textual school of thought (qauli school of thought) to a methodological school of thought (manhaji school of thought). Third, basic verification between the main teachings (ulus) and the branches (furu’). Fourth, fiqh is presented as social ethics rather than as positive state law. Fifth, an introduction to the methodology of philosophical thinking, especially in cultural and social issues. Therefore, the presence of fiqh here also poses a hermeneutical trap that influences methodological issues<sup>56</sup>. Regulations for marriage registration are already stipulated in both positive law and Islamic law, aiming to provide legal certainty and protect society, especially women and children. Thus, fiqh, in addition to social ethics, also serves as positive law to affirm Islamic values in society, as explained in the *Maqāṣid al-shari‘ah* by Jamal al-Din ‘Atiyyah.

Social fiqh, referred to in this article as the Indonesian school of jurisprudence, is the primary study of practical legal issues derived from sharia principles, with a focus on social issues. Social fiqh was conceived as an alternative solution to bridge the gap between religious texts and social reality. This alternative is crucial to efforts to apply religious norms to social reality through dynamic refinement within the *tajdid* (renewal) movement, toward the creation of a new paradigm for understanding and applying Islamic law (fiqh in the narrow sense). Resolving the issue of unregistered marriages in Indonesia requires a robust analysis utilizing the *Maqāṣid al-shari‘ah* (principal principles) of Jamal al-Din ‘Atiyyah. Therefore, the Indonesian school of jurisprudence’s approach to addressing unregistered marriages emphasizes three aspects: the interpretation of religious texts in relation to social reality, a shift from the *qauli* (contextual) to the *manhaji* (*manhaji*) perspective, and a focus on preventing harm and achieving benefits in accordance with the principles of fiqh. The construction of Indonesian Islamic jurisprudence in highlighting the issue of unregistered marriage, with the analysis of *Maqāṣid al-shari‘ah*, Jamal al-Din ‘Atiyyah begins with the understanding that marriage or family is one of the means of maintaining human dignity and honor. Marriage is a firm promise (*mitsaqan ghalizhan*),<sup>57</sup> a commandment of proper social interaction (*mu’asharah bil-ma’ruf*) between husband and wife, and the association of piety and faith with behavior in the family. In marriage, an understanding of *mubadalah* or mutuality is needed; marriage must also be legally valid as determined by the state. In this case, it must be registered to ensure legal certainty and protect the community.<sup>58</sup> Marriage aims

<sup>55</sup> Sopa AR, “Fiqih Mazhab Negara: Sebuah Gagasan Yang Tidak Realistik,” *Jurnal Tarjih* 11, no. 1 (2013): 43-50.

<sup>56</sup> Moh. Mukri, “Dinamika Pemikiran Fikih Mazhab Indonesia (Perspektif Sejarah Sosial),” *Analisis* 11, no. 2 (2011): 189–218.

<sup>57</sup> Mashudi Umar, “Membangun Keluarga Maslahah,” Nahdlatul Ulama Online, 2024.

<sup>58</sup> Endang Zakaria and Muhammad Saad, “Nikah Sirri Menurut Hukum Islam Dan Hukum Positif,” *Kordinat* 20, no. 2 (2021): 249–64.

to form a family of *sakinah, mawaddah, and rahmah*.<sup>59</sup> Key points to a harmonious family, or key points that should be emphasized, include clarifying the marriage intention, the consent of both partners, marrying an equal, marrying at a mature age, starting with a marriage proposal (*khitbah*), providing a dowry as a symbol of the husband's honesty, sincerity, and financial responsibility, establishing a marriage contract, and holding a wedding reception (*walimah*) or announcing the marriage.

Several factors that can serve as guidelines for building a family include: first, emotional closeness, commitment, and passion within the marital relationship. Second, cultivating and developing love between partners. Third, avoiding family breakdown and strengthening the household's foundation. Fourth, good and ongoing communication. In the author's understanding, marriage registration in Indonesia aligns with the *Maqāṣid al-shari‘ah* (Islamic principles) of Jamal al-Din ‘Atiyyah, discussed in the *Maqāṣid al-Usrah*.<sup>60</sup> The concept of *Maqāṣid al-Usrah* was pioneered by Jamaluddin Atiyah in the subtitle “*Maqāṣid al-shari‘ah fima yakhussu al-Usrah (al-ahl)*” in his book *Nahw Taf‘il Maqāṣid al-shari‘ah*. According to him, there are seven objectives of the shari‘ah of marriage. The explanation is as follows below.<sup>61</sup>

First, it regulates the relationship between men and women.<sup>62</sup> To achieve this, Islamic teachings establish several detailed rules. These include the recommendation that marriages within the Indonesian context must be registered; polygamy, with its requirements within the Indonesian context, must be reported to the Religious Court and obtain permission from the first wife; divorce (divorce), the prohibition of adultery (*zina*),<sup>63</sup> preventing conflict, maintaining the honor of spouses, prohibiting being alone in private with other women or men, and so on.<sup>64</sup> Second, it safeguards the continuity of human life.<sup>65</sup> The purpose of marriage is that all living creatures, including humans, maintain their species through reproduction, albeit in different ways and with different models. To ensure a dignified and noble process of reproduction, Sharia has established the institution of marriage.<sup>66</sup>

Third, it fosters a sense of *sakinah, mawaddah wa rahmah*, reflecting the importance of registering marriages to achieve *sakinah* (peace of mind).<sup>67</sup> Peace within the human heart is an instinct and a need that must be fulfilled.<sup>68</sup> Expressions of this realization may vary from person to person; sometimes positive, but often negative<sup>69</sup>. Likewise, in an effort to find a sense of peace, it can sometimes take the form of good deeds, but also of disgraceful deeds. Rasulullah SAW, as a holy man who brought

<sup>59</sup> Mashudi Umar, “Keluarga Berkualitas Ciptakan Bangsa Bermartabat,” Nahdlatul Ulama Online, 2024.

<sup>60</sup> Jamal al-Din ‘Atiyyah and Wahbah Zuhaily, *Tajdid Al-Fiqh Al-Islami* (Beirut: Dar al-Fikr al-Mu’asir, 2000). Jamal ‘Atiyyah, *Towards Realization of the Higher Intents of Islamic Law, Maqasid Al-Shari‘ah: A Functional Approach* (Washington: IIIT, 2007), 153-160.

<sup>61</sup> Moch. Nurcholis, “Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017),” *Mahakim* 2, no. 1 (2018): 10.

<sup>62</sup> Muhammad Solikhudin, *Indonesia, Nahdlatul Ulama, Dan Fiqh Peradaban* (Surabaya: Pena Cendekia, 2023).

<sup>63</sup> Yazid bin Abdul Qadir Jawas, “Kiat-Kiat Menuju Keluarga Sakinah,” almanhaj, 2024.

<sup>64</sup> Jamal al-Din ‘Atiyyah, *Nahw Taf‘il Maqasid Al-Shari‘ah* (Damaskus: Dar al-Fikr, 2003).

<sup>65</sup> Fadil, “Religious Moderation and Family Resilience in the City of Malang, Indonesia: The Historical Perspectives of the Islamic Law,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 238.

<sup>66</sup> Moch. Nurcholis, “Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017)” *Mahakim* 2 no. 1 (2018): 10.

<sup>67</sup> Sidik, “Keluarga ‘Ideal’ Dalam UU Nomor 52 Tahun 2009: Kompatibelitasnya Dengan Konsepsi Fikih Dan Pandangan Muslim Indonesia,” in *Keluarga Dan Modernitas: Idealitas Hukum Dan Realitas Sosial* (Yogyakarta: Gerbang Media Aksara, 2022), 35.

<sup>68</sup> Nasaruddin Umar, “Pengantar: Direktur Jenderal Bimbingan Masyarakat Islam Departemen Agama RI,” in *Fikih Keluarga Menuju Keluarga Sakinah, Mawaddah, Wa Rahmah Keluarga Sehat, Sejahtera, Dan Berkualitas* (Jakarta: Mitra Abadi Press, 2014), ix.

<sup>69</sup> Nasaruddin Umar, *Pengantar: Direktur Jenderal Bimbingan Masyarakat Islam Departemen Agama RI dalam Buku Fikih Keluarga Menuju Keluarga Sakinah, Mawaddah, Wa Rahmah Keluarga Sehat, Sejahtera, dan Berkualitas* (Jakarta: Mitra Abadi Press, 2014), ix.

the message of Islam, found peace of mind while praying. Fourth, maintain clarity of *nasab* (lineage).

<sup>70</sup> Shari'ah efforts to make this happen can be seen from the prohibition of committing adultery, special laws regarding iddah, it is forbidden to keep secret what is in the womb, rules regarding denying and establishing *nasab*, and so on.<sup>71</sup>

Fifth, maintain religion in family life.<sup>72</sup> The basic concept of the purpose of marriage is based on the words of Allah SWT. in surah al-Tahrim verse 6:

“O you who believe, protect yourselves and your families from the fire of hell whose fuel is people and stones; the guardians are angels who are rough, tough, and do not disobey Allah in what He commands them and always do what they are commanded. Sixth, regulate the basic aspects of the family.”<sup>73</sup>

There are several aspects of the family according to Jamal al-Din 'Atiyyah. First, the longevity of the marriage bond. Second, deliberation. Third, submission to the following Sharia rules. Fourth, relationships between family members and relationships between families. In making this happen, the shari'ah has established the law of social interaction, including the rights and obligations of husbands, wives, parents, children, kinship rights, *silat al-rahim*, and others.<sup>74</sup>

Seventh, regulate the family's economic affairs.<sup>75</sup> Jamal al-Din 'Atiyyah revealed that the shari'ah's efforts to realize the goal of marriage are by establishing laws regarding dowries, laws regarding maintenance and various kinds, including maintenance for wives and children, maintenance for divorced women, maintenance in terms of *hadanah* (child care), maintenance for women who breastfeed their children, maintenance for relatives, inheritance law, law on wills for relatives, *ahl waqf* (waqf intended for family members), law on guardianship of property. (control and management of property), laws regarding enthusiasm for work and obtaining halal sustenance, and others like that.<sup>76</sup>

## Conclusion

A siri marriage or an underhanded marriage is a marriage that is carried out without fulfilling the requirements and procedures of legal regulations. According to Islamic law, a Sharia marriage is valid as long as the requirements of the pillars of marriage are met. However, from a legal perspective, this type of marriage is incomplete because it has not been registered. A same-sex marriage will have a negative impact because there is no legality for the marriage. This tends to have a bad impact on women. In a siri marriage, the party who is always legally disadvantaged is the woman. Positive Indonesian law in the form of Marriage Law No. The 1974 law expressly regulates marriage in

<sup>70</sup> Ahmad Masrur Firosad, “Mengokohkan Kerangka Keluarga Dalam Bingkai Bimbingan Ajaran Islam,” *Jurnal Al-Taujih* 1, no. 2 (2015): 68-69.

<sup>71</sup> Moch.Nurcholis, “Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017)” *Mahakim* 2, no. 1 (2018): 11.

<sup>72</sup> Cholil Nafis, *Fikih Keluarga Menuju Keluarga Sakinah, Mawaddah, Wa Rahmah Keluarga Sehat, Sejahtera, Dan Berkualitas* (Jakarta: Mitra Abadi Press, 2014).

<sup>73</sup> Haryanti, “Pemeliharaan Keluarga Dalam Al-Qur'an (Studi Penafsiran Ibnu Kasir Dalam Tafsir Al-Qur'an Al-Azim)” (Universitas Islam Negeri Palopo, 2019).

<sup>74</sup> Moch.Nurcholis, “Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017)” *Mahakim* 2, no. 1 (2018): 11-12.

<sup>75</sup> Fatkul Chodir and Aspandi, “Praktik Dan Implikasi Perkawinan Bawah Tangan Terhadap Tujuan Keluarga Perspektif Maqasid Al-Usrah,” *Indonesian Journal of Humanities and Social Sciences* 4, no. 3 (2023): 639-54, <https://doi.org/https://doi.org/10.33367/ijhass.v4i3.4507>.

<sup>76</sup> Moch.Nurcholis “Penyamaan Batas Usia Perkawinan Pria Dan Wanita Perspektif Maqasid Al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017)” *Mahakim* 2, no. 1 (2018): 11-12.

Indonesia, and society is obligated to comply with it. Article 2, paragraph (2) states, "Every marriage is registered according to applicable laws and regulations. In the KHI, it is explained in Article 4 that 'a marriage is valid, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning marriage."

This paper attempts to rebuild a more dynamic Islamic jurisprudence by presenting the idea of state-based Islamic jurisprudence, as it is known in Indonesia as Indonesian Islamic jurisprudence. Therefore, the fatwa of the Indonesian Ulama Council (MUI) prohibiting unregistered marriages, arguing that they are more harmful, aligns with Indonesian Marriage Law No. 1 of 1974 and the Compilation of Islamic Law, which emphasizes the importance of fulfilling the requirements and pillars of marriage as outlined in classical Islamic jurisprudence, complemented by marriage registration. The *Maqāṣid al-shari‘ah* (objectives of Islamic law) of Jamal al-Din ‘Atiyyah, which specifically discusses marriage, emphasizes several aspects: regulating the relationship between men and women, maintaining the continuity of human life, realizing a sense of Sakinah, mawaddah, and rahmah (peace and blessings of Allah be upon them), maintaining clarity of lineage, upholding religion in family life, maintaining the fundamental aspects of the family, and regulating the family's economic aspects. Therefore, although marriage registration is not explicitly stated in the concept of *Maqāṣid al-shari‘ah*, Jamal al-Din ‘Atiyyah emphasizes several aspects: al-Din ‘Atiyyah, but precisely by registering a marriage, it strengthens family ties and supports the realization of a Sakinah, Mawaddah, and Rahmah family.

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