JURNAL ILMIAH AL MU'ASHIRAH:
Media Kajian Al-Qur'an dan Al-Hadits Multi Perspektif
Vol. 23, No. 2, July-December 2026

p-ISSN: 1693-7562
e-ISSN: 2599-2619

Mītsāqan Ghalīẓan and Unregistered Marriage: Reinterpreting Contemporary Islamic Jurisprudence through Takhrīj al-Ḥadīth

Ibnu Shaleh[1], Hayati[1], Anwar Daud[1], Nufiar[1], Rahimah Embong[2]
[1]Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia
[2]University Sultan Zainal Abidin (UniSZA), Terengganu, Malaysia
ibnushaleh53@gmail.com

Abstract

This research stems from the contradiction between the concept of *mitsāqan ghalīẓan* as a strong marital bond and the widespread practice of unregistered marriage (*nikah di bawah tangan*), which potentially neglects the protection of the civil rights of husbands, wives, and children. This study aims to analyze the authenticity of *munakahat* (marriage) hadiths through *takhrij al-hadis* and examine their implementation from the perspective of contemporary jurisprudence (*fiqh*) based on the empirical reality of unregistered marriage practices. This study employs a qualitative method with a normative-empirical approach, combining library research and field research through interviews and observations. Normative data were obtained from hadiths in the *Kutub al-Tis'ah*, classical and contemporary *fiqh* books, and legal regulations. Meanwhile, empirical data were gathered from the Head of the KUA (Religious Affairs Office), religious counselors, community leaders, religious figures, village imams, and perpetrators of unregistered marriage in Suro Makmur District, Aceh Singkil Regency. The results show that the hadiths regarding the guardian (*wali*), witnesses, and the public announcement (*i'lan*) of marriage are categorized as *ṣaḥīḥ li ghairihi* or *ḥasan li ghairihi*, thereby emphasizing the importance of openness in the marriage contract. Field findings indicate that unregistered marriages are generally influenced by underage marriage, administrative obstacles, economic factors, and family social issues. Furthermore, differing views between KUA officials and religious figures highlight a gap between the validity of classical jurisprudence and the need for modern legal protection. This study concludes that marriage registration is an implementation of *maṣlaḥah mursalah* and aligns with the objectives of *maqāṣid al-syarī'ah* in safeguarding religion, lineage, honor, and family civil rights; thus, the practice of unregistered marriage is no longer relevant to be maintained within the context of a modern constitutional state.

Keywords: *Mitsāqan Ghalīẓan*, Unregistered Marriage, *Takhrij al-Hadis*, Contemporary *Fiqh*, *Maṣlaḥah Mursalah*.

Abstrak

Penelitian ini berangkat dari adanya kontradiksi antara konsep mitsāqan ghalīẓan sebagai ikatan perkawinan yang kokoh dengan masih maraknya praktik nikah di bawah tangan yang berpotensi mengabaikan perlindungan hak-hak keperdataan suami, istri, dan anak. Penelitian ini bertujuan menganalisis otentisitas hadis-hadis munakahat melalui takhrij al-hadis serta mengkaji implementasinya dalam perspektif fikih kontemporer berdasarkan realitas empiris praktik nikah di bawah tangan. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif-empiris yang memadukan studi kepustakaan dan penelitian lapangan melalui wawancara serta observasi. Data normatif diperoleh dari hadis-hadis dalam Kutub al-Tis'ah, kitab fikih, serta peraturan perundang-undangan, sedangkan data empiris diperoleh dari Kepala KUA, penyuluh agama, tokoh masyarakat, tokoh agama, imam kampung, dan pelaku nikah di bawah tangan di Kecamatan Suro Makmur, Kabupaten Aceh Singkil. Hasil penelitian menunjukkan bahwa hadis mengenai wali, saksi, dan i'lan

perkawinan berstatus ṣaḥīḥ li ghairihi atau ḥasan li ghairihi, sehingga menegaskan pentingnya keterbukaan dalam akad nikah. Temuan lapangan menunjukkan bahwa praktik nikah di bawah tangan umumnya dipengaruhi oleh perkawinan di bawah umur, kendala administrasi, faktor ekonomi, serta persoalan sosial keluarga. Perbedaan pandangan antara aparat KUA dan tokoh agama juga menunjukkan adanya kesenjangan antara keabsahan fikih klasik dan kebutuhan perlindungan hukum modern. Penelitian ini menyimpulkan bahwa pencatatan perkawinan merupakan implementasi maṣlaḥah mursalah dan sejalan dengan tujuan maqāṣid al-syarī'ah dalam melindungi agama, keturunan, kehormatan, dan hak-hak keperdataan keluarga sehingga praktik nikah di bawah tangan tidak lagi relevan dipertahankan dalam konteks negara hukum modern.

Kata Kunci: *Mitsāqan Ghalīẓan, Nikah di Bawah Tangan, Takhrij al-Hadis, Fikih Kontemporer, Maṣlaḥah Mursalah.*

A. Introduction

Marriage in Islam is not merely an institution to legitimize the biological relationship between a man and a woman, rather, it is a sacred and solemn bond founded upon of built on a foundation of profound moral, social, and legal responsibilities The Quran places the marital relationship in a highly esteemed position and describes this civil relationship as a very solid and sacred covenant.[1] The characteristics of this sacred covenant are explicitly emphasized by Allah SWT in the Quran, Surah An-Nisa', Verse 21, through His statement:

وَكَيْفَ تَأْخُذُونَهُۥ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنكُم مِّيثَاقًا غَلِيظًا

Meaning: "And how will you take it back, when some of you have consorted with each other as husband and wife, and they (your wives) have taken from you a strong covenant." (QS. An-Nisā' [4]: 21).[2]

This verse provides theological-juridical affirmation that the marriage contract cannot be reduced to mere formal legality. Furthermore, it embodies a divinely mandated dimension that demands the protection of human rights, absolute honesty, and full and just responsibility for one's spouse.

Within the conceptual framework of Islam, marriage is deeply understood as a *mitsāqan ghalīẓan*, a spiritual and legal bond so strong that it is not worthy of being treated as a temporary private relationship, let alone as an ordinary civil transaction that can be hidden from the public sphere. From a *fiqh* perspective, the nobility of the institution of marriage is also clearly evident in the strict emphasis of *sharia* on the clarity of the identity of the contracting parties, the presence of a legal guardian, fair witnessing, and the transparency of the contract itself within the community.[3] Various Islamic legal literature emphasizes that the presence of guardians and witnesses is positioned by *sharia* as a protective instrument for women, not merely an optional administrative formality.[4] This normative affirmation is strengthened by the scientific fact that the hadiths which regulate the validity of guardians are

[1] Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362–80, https://doi.org/10.22373/ujhk.v6i2.20262.

[2] Ministry of Religion of the Republic of Indonesia, "Al-Qur'an and Its Translation, Sv Surat An-Nisā' Verse 21," n.d.

[3] Wardana Said et al., "Marriage Traditions and Family Resilience in Bugis Bone Society: A Study of Islamic Law and Islamic Education," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024), https://doi.org/https://doi.org/10.22373/sjhk.v8i3.23227.

[4] Mohamad Deny Irawan, "Guardianship and Witnessing in Marriage (A Comparative Study of the Fiqh of Four Schools of Thought and Law in Indonesia)," *Ijtihad* 8, no. 2 (2014): 12–15.

DOI: 10.22373/jim.v23i1.35229

considered authentic by leading hadith scholars and have absolute legal force (*qath'i*) to be used as evidence in determining the legality of a marriage.[5]

In stark contrast to this normative ideal, the widespread practice of underhand marriage in contemporary society actually points in the opposite direction. conceptually, underhand marriage is generally understood as a form of marriage carried out in accordance with the pillars and requirements of marriage according to classical Islamic *fiqh*, such as the presence of a prospective bride and groom, a guardian, two witnesses, and the *ijab kabul* (contract of marriage), but is intentionally or unintentionally omitted from official registration at a legitimate state marriage registration institution, such as the Office of Religious Affairs (KUA) for Muslims or the Civil Registry Office for non-Muslims.[6] At the sociological level, this neglect of registration has become a problematic social phenomenon. This is because unregistered marriages lack authentic written evidence. In many contemporary cases, this unregistered marriage loophole is often abused by certain individuals in society as a means of manipulating guardianship, a way to circumvent strict polygamy requirements, or a manipulative mechanism to challenge the minimum age for marriage established by state law.[7]

The practice of underhand marriage often appears in public discourse with an apologetic narrative, Concealed marriage refers to a form of marriage conducted outside the official supervision of the state by concealing its legal status, identity, or underlying purpose. Its common forms include online unregistered (*nikah siri*) marriages, temporary (*mut'ah*) marriages, *lavender marriages*, and *misyar* marriages.[8] This phenomenon is driven by economic hardship, the misuse of religious justifications, bureaucratic obstacles, and legal pluralism arising from the coexistence of religious and state legal systems. Its consequences include weak legal protection for wives and children, the loss of civil rights, increased exploitation of women, and difficulties for children in obtaining legal identity and access to education as well as essential public services. as if the act is sufficient and complete because the contract is deemed religiously valid by some textualist Islamic *fiqh* scholars. However, from a socio-legal perspective, it poses a time bomb of serious humanitarian problems. In Indonesia, this phenomenon is widespread due to an ambiguous legal understanding whereby "unofficially registered" marital status is considered unrelated to a Muslim's faith.[9] Paradoxically, the fundamental problem with these underhand marriages lies not in the recognition or legitimacy of religion, but rather in the absence of valid state legal documentation, which results in the paralysis of legal function in domestic disputes. Without an official marriage certificate, the parties, especially the woman, automatically lose their constitutional right to prove the existence of a marital relationship before the law in cases of

[5] Nor Salam, "Studi of the Hadith 'La Nikaha Illa Biwaliyyin': Analysis of the Science of Hadith" (Maulana Malik Ibrahim State Islamic University of Malang, 2010).

[6] Fatawi and Akhmad Dulfikar, "Status, Consequences and Legal Protection of Clandestine Marriage for the Civil Rights of Wives and Children from the Perspective of Islamic Jurisprudence," *QANUN: Journal of Islam Laws and Studies* 4, no. 2 (2021): 884–95, https://doi.org/10.58738/qanun.v4i2.1379.

[7] Darmawan Darmawan et al., "Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province," *AHKAM : Jurnal Ilmu Syariah* 22, no. 2 (2022), https://doi.org/10.15408/ajis.v22i2.28827.

[8] Gandi Liyorba Indra, M. Yasin Al Arif, and Abdul Qodir Zaelani, "The Ideal Age For Marriage in The Compilation of Islamic Law (KHI) and Psychology," *Al-'Adalah* 20, no. 1 (2023): 1, https://doi.org/10.24042/adalah.v20i1.11598.

[9] Syafira Aulia Nurrahmah and Ummu Sa'adah, "Siri Marriage from the Perspective of Maslahah Mursalah," *Al-Muttaqin: Journal of Social and Economic Studies* 6, no. 1 (2025): 76–92, https://doi.org/10.63230/almuttaqin.v6i1.253.

divorce, claims for maintenance, division of joint property, inheritance rights, or determination of the legal status of children.[10]

Tthis normative situation becomes even more complicated and destructive when the practice of underhand marriage is deliberately used as a legal shortcut to avoid the *sharia* obligations inherent in a husband to protect his wife and children. The existence of this marriage, isolated from the reach of formal law, creates a legal vulnerability for children born of underhand marriages, which directly and systematically undermines heir civil rights.[11] This vulnerability has been proven to have a very deep negative impact on the pattern of parenting, care, and the future of children, especially when a unilateral divorce occurs where the father very easily relinquishes economic responsibility and refuses to provide maintenance or cover the costs of the child's education.[12] Thus, what has been promoted by some community groups as a practical path or alternative religious solution has in reality transformed into a gateway for the loss of guaranteed protection for the most vulnerable parties within the family institution.

This phenomenon persists and produces harm because it is supported by a textual-literal religious perspective in society, which assumes that as long as the pillars of marriage according to medieval Islamic *fiqh* have been fulfilled, the administrative registration by the state is merely a secular matter that does not determine the validity or nullity of a marriage before God. This rigid perspective stops at mere ritualistic validity, but fatally closes its eyes to the real and detrimental consequences of contemporary law in the modern era. However, when examined from the philosophical perspective of Islamic law, the institution of marriage registration actually acts as an instrument of reinforcement for the existence of witnesses, which aims to realize the social goals and the essential benefits of marriage itself.[13] Refusing or ignoring marriage registration under the pretext that "it is already valid according to religion" is a dangerous reduction. It reduces that the noble meaning of marriage to a narrow private-biological contract, even though Islamic law fundamentally demands justice, openness of information, and legal protection for every soul.[14]

This legal paradox clearly demonstrates how unregistered marriages are often used to deny women access to formal legal protection systems, while simultaneously placing the entire social, psychological, and economic burden of post-marriage unfairly on wives and children. A review of the Academic literature hrough previous studies reveals that most research examining the phenomenon of unregistered marriages tends to focus on the empirical-sociological level, local legal sociology analysis, or purely practical legal aspects.[15] These studies predominantly focus on mapping the factors causing unregistered marriages in

---

[10] 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/10.19109/nurani.v24i2.24529.

[11] Noor Arini Haq, "The Position of Children from Unlawful Marriages According to Islamic Law and Positive Law in Indonesia," *Semantic Scholar*, 2018, 102.

[12] Soraya Devy and Ayu Maulina Rizqi, "Underhand Divorce and Its Impact on Child Rearing (Case Study in Peusangan Sub-District, Bireun District)," *Samarah: Journal of Family Law and Islamic Law* 2, no. 2 (2018): 287–306, https://doi.org/10.22373/sjhk.v2i2.4739.

[13] Sheila Fakhria, "Questioning the Legality of Sirri Marriage (Analysis of the Istiṣlāḥiyyah Method)," *Al-Ahwal: Journal of Islamic Family Law* 9, no. 2 (2016): 185–200, https://doi.org/10.14421/ahwal.2016.09204.

[14] Andi Muhammad Akmal, "The Principle of Benefit of Marriage Registration in Reformulating Marriage Jurisprudence (Analysis with the Ushul Fiqh Approach)" (Makassar: Universitas Islam Negeri Alauddin Makassar, 2013).

[15] Sunyoto Usman Nanik Prasetyoningsih, "Women's Inheritance Rights in Indonesia from the Perspective of the Triangular Concept of Legal Pluralism," *El-Mashlahah* 12, no. 2 (2024), https://doi.org/https://doi.org/10.23971/el-mashlahah.v%25vi%25i.7657.

 DOI: 10.22373/jim.v23i1.35229

certain areas (such as poverty or low legal awareness), the effectiveness of marriage confirmation applications in Religious Courts, or describing the psychological impact of unregistered divorces on children.[16] Although these empirical studies are very important in portraying social reality, the majority of this research still leaves a large empty space (research gap) because it has not touched on the normative-textual reconstruction aspect of the *munakahat* hadiths which are often claimed as the basis of legitimacy by those involved in underhand marriages.[17]

To address this gab, the novelty and scientific significance of this research lie. This research takes a different path by not stopping at a sociological description of the suffering of victims of unregistered marriages, but rather moving into the normative qualitative realm based on library research to conduct a critical and methodological investigation (*takhrij al-hadīth*) of the main narrations that regulate guardianship, witnessing, and the order to announce (*i'lān*) marriage, to then be reinterpreted using the paradigm of Modern *Fiqh*. Through the knife of *takhrij* analysis, this research tests the authenticity of the text of the hadith on guardianship to prove that *sharia* from the beginning strictly prohibits all forms of exclusive and manipulative marriage.[18]

Thus, through the articulation of modern *fiqh* and the contemporary *usul fiqh* approach, this study successfully refutes the claims of textualists by proving that marriage registration is not a secular product alien to Islam, but rather a methodological necessity based on *maslahah mursalah* to realize the universal goals of *sharia* (*maqāṣid ash-syarī'ah*). Based on this academic urgency, this study is very important to reaffirm that the value of the piety of a marriage in Islam should not be measured partially from the validity of the contract on classical *fiqh* paper alone, but must be assessed from the comprehensive ability of the contract to provide protection, legal certainty, and real benefits for the family unit. Through the integration of *takhrijul hadith* studies and modern *fiqh*, this article constructs an argument that the legality of marriage registration is not an additional component that can be ignored, but rather a logical consequence of the principles of *sharia* that aim to maintain human dignity (*hifzh al-'irdh*) and tightly close the door to harm (*sadd adz-dzarī'ah*) in family life.[19]

This study employs a qualitative research method with a normative-empirical approach, which combines litterature review with field research to analyze the practice of unregistered marriages from the perspective of contemporary fiqh based on *takhrij al-hadis*. The normative approach is used to examine the concepts of *mitsaqan ghalizhan*, unregistered marriages, the wali, witnesses, *i'lan al-nikah*, and the urgency of marriage registration based on Qur'an, hadith, classical and contemporary fiqh texts, and positive law provisions in Indonesia. Meanwhile, an empirical approach is used to obtain an overview of the practice of unregistered marriages that has developed within society through field research.

The Primary data sources for this study consist of two categories. First, normative sources in the form of hadith found in the *Kutub al-Tis'ah* traced using the *takhrij al-hadis method*, particularly hadiths related to marital guardian, witnesses, and the announcement (*i'lan*) of marriage. Second, empirical sources in the form of in-depth interviews with the

---

[16] Devy and Rizqi, "Underhand Divorce and Its Impact on Child Rearing (Case Study in Peusangan Sub-District, Bireun District)."

[17] Qodariyah Barkah and Andriyani Andriyani, "MAQASHID AL-SYARI'AH CONCEPT OF KAFA'AH IN MARRIAGE," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 1 (2020), https://doi.org/https://doi.org/10.19109/nurani.v20i1.5651.

[18] Salam, "Studi of the Hadith 'La Nikaha Illa Biwaliyyin': Analysis of the Science of Hadith."

[19] Wahyu Abdul Jafar et al., "Philosophical Foundations and Human Rights in the Bajapuik Tradition: Bridging Local Wisdom and Islamic Law in Minangkabau Marriage Practices," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 212–33, https://doi.org/10.18860/j-fsh.v16i1.27681.

Head of the Office of Religious Affairs (KUA), religious counselors, village heads, religious leaders, village imams, and couples who have entered into unregistered marriages in Suro Makmur Subdistrict, Aceh Singkil Regency. In addition of interviews, empirical data were also obtained through observations of the social conditions of the community related to the practice of unregistered marriages.

Secondary data sources were obtained from classical and contemporary fiqh texts, academic books, journal artcles, Law No. 1 of 1974 on marriage, as amended by Law No. 16 of 2019, the Compilation of Islamic Law (KHI), as well as various laws and regulations related to marriage registration. Data collection was conducted through documentary research, in-dept interviews, and field observations. Subsequently, all data were analyzed descriptively and analytically using content analysis for normative data, while empirical data were analyzed qualitatively through data reduction, data presentation, and drawing conclusions. To enhance the validity of the research findings, triangulation was performed between normative and empirical data to obtain a comprehensives understanding of the relationship between fiqh provisions, positive law, and the social reality of the community. Through this method, this study aims to explain that marriage registration serves not only as a function of state administration but also as an instrument of legal protection that aligns with the objectives of Sharia (*maqāṣid al-syarī'ah*) in safeguarding religion, lineage, honor, and the civil of husbands, wives, and children.

B. Results and Discussion

Research on religious texts in the *munakahat* chapter requires careful methodological proof through *takhrijul hadith* activities to ensure legal provisions are based on the *sunnah*. The issue of adding "two fair witnesses" (*syāhiday 'adlin*) in addition to the guardian's obligations is a crucial aspect that completes the validity of a marriage contract.[20] Based on tracing the transmission route, this hadith which contains the additional theme of two witnesses has been narrated from various companions, both in *marfū'* (continuing to the Prophet SAW) and *mauqūf* (stopping at the word of the companions). The main line of this narration was recorded by Imam al-Baihaqi in *as-Sunan al-Kubrā*, Imam ad-Daraqutni, and Imam Ibn Hibban through a chain of *sanads* that require in-depth *rijālul hadīth* criticism.

The first line comes from Umar ibn al-Khattab *radhiyallahu 'anhu* in a *mauqūf* manner with the following wording:

لَا نِكَاحَ إِلَّا بِوَلِيٍّ وَشَاهِدَيْ عَدْلٍ

Meaning: “There is no marriage except with a guardian and two just witnesses.”

This text was issued by Imam al-Baihaqi from the line of Abdul Wahab bin 'Atha' from Sa'id from Qatadah from al-Hasan and Sa'id ibnul Musayyib.[21] The position of this *sanad* is considered very strong because all the narrators are of the *tsiqah* (trustworthy) level, where Sa'id in the chain refers to Ibn Abi 'Arubah. Even Imam al-Baihaqi himself emphasized that the *sanad* of this narration is *sahih*. The second route comes from Ali ibn Abi Talib *radhiyallahu 'anhu* in a *mauqūf* manner through the narration of al-Bayhaqi from the path of Hajjaj from Khushain from al-Harith with a wording that states there is no marriage without a guardian and witnesses. However, this route is considered weak (*ḍa'īf*) due to the existence of al-Harith bin Abdullah al-A'war who is accused of being a *Rafidhah* group and having a weak memorization.

---

[20] Zulkarnain, Habib Iman Nurdin Sholeh, and Ahmad Zaenul Muttaqin, “Local Wisdom in Sebambangan Traditional Marriage Practices: A Maqāṣid Sharī’ah Perspective,” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 1 (2024): 119–37, https://doi.org/10.18326/ijtihad.v24i1.119-137.

[21] Abu Bakr al-Baihaqi, *As-Sunan Al-Kubrā, Kitab Al-Nikah, No. Hadith 13727.*, n.d.

 DOI: 10.22373/jim.v23i1.35229

The third path was narrated by Abdullah ibn Abbas, *radhiyallahu 'anhu*, in a *mauqūf* manner through the history of Imam al-Baihaqi from the path of Muslim bin Khalid from Ibn Khutsaim from Sa'id bin Jubair with the additional wording "*wali murshid*" (guardian who receives guidance). This chain of *mauqūf* is of *Hasan* level because Muslim bin Khalid and Ibn Khutsaim are *shadūq* (honest) narrators according to Ibn Hajar al-Asqalani. Even though there were efforts by the narrator 'Adiy bin Fadhl to convey (*marfū'*) this hadith from Ibn Abbas to the Prophet SAW, the *marfū'* route was considered very weak because 'Adiy bin Fadhl was a narrator who was *matrūk* (abandoned).

Furthermore, this argument is strengthened by the path of Aisha bint Abu Bakr *radhiyallahu 'anha* in *marfū'* recorded by Imam Ibn Hibban, Imam al-Baihaqi, and Imam ad-Daraqutni from the path of Ibn Juraij from Sulayman bin Musa from az-Zuhri from 'Urwah with complete redaction:

وَشَاهِدَيْ عَدْلٍ فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ، فَإِنِ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ

Meaning: "Any woman who marries without the permission of her guardian and two just witnesses, then her marriage is invalid. If she has had intercourse with him, then she has the right to receive a dowry, and if they disagree, then the *sultan* (government) is the guardian for anyone who does not have a guardian."

Even though Ibn Juraij was a *tsiqah* transmitter who disguised the path (*mudallis*) using the *lafaz 'an'anah*, this path was supported by another chain brought by Imam ad-Daraqutni from Muhammad bin Yazid bin Sinan from his father from Hisham bin 'Urwah. The combination of these chains mutually strengthens each other, thereby raising the level of Aisha bint Abu Bakr's hadith to *Hasan li Ghairihi*, in line with the assessment of Muhammad Nasiruddin al-Albani and Shu'ayb al-Arna'ut who endorsed it as a hadith worthy of being used as *hujah*.

Cross-Path *Sanad* Criticism: Abu Hurairah, Abdullah ibn Umar, Imran ibn Husayn, and Al-Hasan al-Basri

To complete the *i'tibar* study, research was continued on other transmission routes that were accused of containing similar *matan*. The existence of the path from Abu Hurairah *radhiyallahu 'anhu* in *marfū'* issued by Imam al-Baihaqi records additional words in the form of the existence of a *khāthib* (suitor) alongside a guardian and two witnesses. However, a critical assessment of this *sanad* finds that it is at the level of a tough *ḍa'īf* because its narrator, al-Mughirah bin Musa, has been labeled by Muhammad al-Bukhari as *munkarul hadīth* (a narrator whose hadith is denied).[22] The same tone of weakening also struck the path of Abdullah ibn Umar *radhiyallahu 'anhu* issued by Imam ad-Daraqutni from the path of Abdullah bin Abi Sa'ad from Ishaq bin Hisham from Thabit bin Zuhair from Nafi'. Experts in hadith criticism assert that Thabit bin Zuhair is the narrator of the *munkarul hadīth* as stated in the book *Lisān Al-Mīzān*, while simultaneously destroying the credibility of the *sanad*.

The search for the path of Imran ibn Husayn *radhiyallahu 'anhu* in *marfū'* which was shared by Imam al-Baihaqi, Imam ad-Daraqutni, and Al-Tabarani in *al-Mu'jam al-Kabīr* also reached a dead end. The path through the chain of Abdullah bin Muharrar from Qatadah from Al-Hasan al-Basri is agreed to be a hadith which should not be used as *hujah* because Abdullah bin Muharrar is a *matrūk* narrator. Finally, the path that is based on Al-Hasan al-Basri in *mursal* (*tabi'in* who directly relies on the Prophet SAW) through the history of Abdullah bin Wahb from ad-Dhohhak bin Uthman from Abdul Jabbar is considered weak by

[22] Abdul Wahid Arsyad, "STUDI TERHADAP ASPEK KEUNGGULAN KITAB SAHIH MUSLIM TERHADAP SHAHIH BUKHARI," *Jurnal Ilmiah Islam Futura* 17, no. 2 (2019): 312, https://doi.org/10.22373/jiif.v17i2.2454.

the standards of hadith scholars, even though all the narrators are *tsiqah*, due to the disconnection of *sanad* which is the basic characteristic of *mursal* hadith. However, most scholars consider that the accumulation of these multiple lines of narration, especially the narrations of Umar ibn al-Khattab, Abdullah ibn Abbas, and Aisha bint Abu Bakr, is more than enough to prove that the addition of the condition of two just witnesses is *tsābit* (constant and valid) in Islamic law through the methodology of mutual support (*syawahid*).

The Inter-School *Fiqh* Debate and the Conceptualization of the Issue of *Safiyyah* Marriage

The impact of the validity of the hadiths above has formed an absolute consensus among the majority of *ulama* (*jumhur*) regarding the position of witnesses in marriage.[23] Great figures from various schools of thought have expressed their understanding explicitly in the main books of jurisprudence. Abu Ja'far al-Tahawi as a scholar of the Hanafi school emphasized that marriage is not valid unless there are witnesses, a view agreed with by Sufyan al-Thawri and Al-Shafi'i. From the horizon of the Maliki school of thought, Ibn Abi Zayd al-Qayrawani in the book *ar-Risālah* stated that marriage would not be perfect without a guardian, dowry, and two fair witnesses. This firmness culminated in Al-Shafi'i's fatwa in the book *al-Umm*, which laid down four assential elements;, namely the guardian, two fair witnesses, and the willingness of the bride and groom as determining the validity of the contract. In fact, Ibn Qudamah from the Hanbali school in the book *al-Mughnī* and Ibn Hazm in *al-Muḥallā* list a long chain of companions and *tabi'in* who required the presence of witnesses in order to maintain the *nasab* rights of future children so that their fathers would not deny them in the future.[24]

However, a small number of scholars who hold that a marriage can be valid without the presence of witnesses if it is announced publicly, an opinion attributed to Muhammad ibn Shihab al-Zuhri and Malik ibn Anas in one narration. This group relies on the argument about the marriage of the Prophet SAW with Safiyyah bint Huyayy *radhiyallahu 'anha* after the Battle of Khaybar, where the companions at first did not know whether he married her or made her a servant, so he wore a hijab over her. They claim that this incident shows that the Prophet SAW got married without the presence of two witnesses.

The minority group's argument was strongly opposed by the majority of *ulama* through two comprehensive approaches to answering. Firstly, the marriage was actually most likely witnessed by closest friends such as Dihyah al-Kalbi and another man who advised the Prophet SAW about Safiyyah's position as the daughter of the leader of the Bani Quraizhah, but the other friends did not know about it. Second, if the claim is true that the marriage took place without a guardian and witnesses, the *ulama* emphasize that this matter is a form of *khushūṣiyyāt* (special privilege) which was bestowed by Allah SWT only on the Messenger of Allah SAW alone, and must in no way be imitated or used as a legal basis for other followers of His Majesty. Therefore, the affirmation of the above *takhrij* hadiths is eternally intact, and the act of ignoring the presence of two fair witnesses in a marriage is vanity in order to maintain the sanctity of the marriage bond itself.

The Effectiveness of Marriage Registration as an Actualization of the *Maslahah Mursalah* Instrument in Contemporary Islamic Family Law

[23] Salmah Mursyid and Nasruddin Yusuf, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi," *Samarah* 6, no. 2 (2022).

[24] Agusni Yahya, "Study of the Prophet's Prediction Hadith," *Jurnal Ilmiah Al-Mu'ashirah* 20, no. 2 (2023): 299, https://doi.org/10.22373/jim.v20i2.19456.

 DOI: 10.22373/jim.v23i1.35229

Marriage registration in contemporary Islamic family law is no longer viewed merely as a formal administrative procedure. as a neutral and mechanistic formal administrative rite. Instead, civil registration is a normative manifestation and a crucial legal instrument for actualizing the doctrine of the sacredness of marriage (*mītsāqan ghalīzhan*) into the socio-legal reality of modern discipline. Registration is not merely a matter of state administration, but rather a legal protection tool that transforms a private contract into a social relationship that can be monitored, verified, and accounted for publicly. In practice, the existence of unregistered marriages triggers a variety of complex systemic problems. The fundamental problem with these unregistered marriages lies not in their formal theological validity under classical Islamic *fiqh*, provided the pillars and conditions are met, but in the structural vulnerabilities they create. The absence of authentic evidence from the state causes legal evidence to be fragile, opens up loopholes for manipulation by guardians and witnesses, and places wives and children in a very subordinate position, where their constitutional rights are easily ignored without any legal protection with executive power. [25] Therefore, the reconstruction of contemporary legal thought demands that marriage registration no longer be positioned as an external bureaucratic appendix, but rather as a substantial instrument of benefit that serves to safeguard the noble goals of the marriage law itself. This discussion inherently rests on three primary functions: providing legal certainty, preventing harm, and protecting the civil rights of women and children within modern societal structures.[26]

The most authoritative juridical-theological argument to strengthen the position of this recording obligation can be constructed through a reconceptualization of the text of the Qur'an, Surah The Quran Al-Baqarah, verse 282. In the verse that specifically regulates civil transactions, Allah SWT emphasizes the obligation of written documentation:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُسَمًّى فَاكْتُبُوهُ

Meaning: "O you who believe, if you owe a debt for a specified time, you should write it down." (QS. Al-Baqarah: 282).

The contemporary Islamic legal reasoning method (*istinbāṭ al-ḥukm*) applies the *Qiyās Awlawī* technique (priority analogy) to this text by exploring *ma'qūl al-ma'nā* (legal ratio) in the form of preventing disputes (*tanāzu'*) and protecting the weak party. If for *muamalah* matters that are material-worldly, possess economic value, Allah SWT expressly orders written recording in order to minimize the potential for disputes, then the marriage contract which is a sacred institution that forms the lineage of the people (*mītsāqan ghalīzhan*) and gives rise to far broader, complex, and sacred legal implications including the validity of lineage, rights to maintenance, inheritance distribution, guardianship, and guarantees of child protection is ogically far more important (*awlā*) and must be formally recorded by state authorities. [27] Marriage registration here is not positioned as an administrative innovation that diminishes the sanctity of religion, but rather as modern legal evidence that strengthens the protection of the authenticity of this sacred bond, in line with the demands of modern legal systems in Indonesia. This construction aligns with the spirit of Article 1 of the Marriage Law, which defines marriage as a physical and spiritual bond to

[25] Toha Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)," *ASAS: Journal of Sharia Economic Law* 11, no. 1 (2019): 119–41, https://doi.org/10.24042/asas.v11i01.4647.

[26] Oyoh Bariah, "Reconstruction of Marriage Registration in Islamic Law," *Scientific Journal of SOLUSI* 1, no. 4 (2015): 20–29, https://doi.org/10.35706/solusi.v1i04.65.

[27] "Law of the Republic of Indonesia Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage," Pub. L. No. 16 (2019).

form a happy and eternal family; a noble goal that is impossible to maintain if the legal evidence is left fragile and vulnerable to unilateral denial.[28]

In the theological dimension of hadith, the normative foundation underlying the urgency of marriage registration stems from the contextualization of hadith publication within formal law. Several hadith texts consistently emphasize the role of guardians and the command to announce marriages (*i'lān al-nikāḥ*). The authentic hadith narrated by Imam Ibn Hibban and Al-Tirmidhi explicitly states:

لَا نِكَاحَ إِلَّا بِوَلِيٍّ وَشَاهِدَيْ عَدْلٍ

Meaning: "A marriage is not valid except with a guardian and two just witnesses."

Critical studies of contemporary *takhrīj al-ḥadīth* confirm that the existence of this hadith is authentic and has a strong position as evidence.[29] The presence of guardians and witnesses actually represented a form of social recognition and public legality at the time so that marriages were not conducted in secret (*sirrī*). In line with this, the Prophet Muhammad's command to perform *i'lān* (annunciation) was intended to ensure that marriages gained widespread social legitimacy to avoid slander and uncertainty of legal status. In the context of modern legal sociology and the formation of the nation-state, contemporary Islamic *fiqh* views that the essence of *i'lān* is no longer sufficient if actualized only through traditional mechanisms of ancient society such as calling neighbors, inviting relatives, or playing tambourines. The most valid, certain, and objectively verifiable form of publication and legal announcement today is official registration with the authorized state agency, namely the Office of Religious Affairs (KUA) for Muslims. This contextualization bridges the results of the *takhrij* of classical hadith with modern legal instruments, transforming the function of social control into a formal juridical legal protection function to minimize the practice of underhand marriages.[30]

The effectiveness of marriage registration increasingly finds a solid methodological foundation when analyzed using the principles of Islamic jurisprudence *(al-qawā'id al-fiqhiyyah)*. Four fundamental principles work integratively to shift the status of marriage registration from merely permissible to obligatory. First, the following principle:

الضَّرَرُ يُزَلُ

Meaning: "All forms of harm must be eliminated."

Unregistered marriages have been empirically proven to cause systemic harm in the form of the loss of legal rights for wives and children. Second, the rule:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Meaning: "Preventing harm must be preceded by achieving benefit."

Closing the door to unregistered marriage is a preventive measure *(sadd al-dzarī'ah)* to prevent the exploitation, manipulation, and neglect of women. Third, the principle:

الْوَسَائِلُ لَهَا أَحْكَامُ الْمَقَاصِدِ

[28] Muhammad Sulthan Akbar, Yufi Wiyos Rini Masykuroh, and Olivia Rizka Vinanda, "Mashlahah Mursalah for Marriage Registration in Islamic Family Law," *KNOWLEDGE: Journal of Innovation, Research and Development Results* 5, no. 1 (2025): 51–59, https://doi.org/10.51878/knowledge.v5i1.4590.

[29] N. Ikhlas, "Implementation of the Maslahah Murrasa Method in the Formulation of the Compilation of Islamic Law Regarding Marriage Articles" (IAIN, 2019).

[30] Paisal Ahmad Dalimunthe and Akbarizan, "The Urgency of Marriage Registration in Indonesia from a Public Interest Perspective," *Cerdika: Indonesian Scientific Journal* 5, no. 1 (2025): 187–95, https://doi.org/10.59141/cerdika.v5i1.2368.

 DOI: 10.22373/jim.v23i1.35229

Meaning: "Means or intermediaries have the same legal consequences as the goals they wish to achieve."

If justice and family protection are the obligatory goals of marriage, then the means to achieve them, namely registration, are also obligatory. Fourth, the rules.

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

This means: "If an obligation cannot be carried out perfectly except with the presence of something, then that something is obligatory."

Considering that the protection of family civil rights in the modern era is impossible to achieve without legal documents from the state, the existence of marriage registration automatically increases its legal status to become a *sharia* obligation.[31] Through this analytical tool, contemporary Islamic legal scholars emphasize that marriage registration is at the level of *maṣlaḥah ḍarūriyyah* (primary benefit) for the sake of preserving offspring (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*). This was confirmed by Oyoh Bariah who stated that marriage certificates clearly bring benefits to the establishment of a household and are consistently in line with the principle of structurally rejecting harm.[32]

From the perspective of religious authorities in Indonesia, contemporary ulama demonstrate a progressive paradigm shift. Historically, classical *fiqh* did not regard marriage registration as one of the pillars or conditions for the theological validity of marriage. However, the dynamics of positive law in the modern era demand contextual reinterpretation. Mainstream fatwa institutions in Indonesia, such as Muhammadiyah and Nahdlatul Ulama (NU), substantively move towards strengthening the registration function for public protection. The Majelis Tarjih dan Tajdid Muhammadiyah stipulates that marriage registration is an obligation for citizens based on a reinterpretation of Surah Al-Baqarah: 282 and the principle of *saddu al-dzarī'ah* (closing the path of corruption) to anticipate the negative impacts of unregistered marriages. Meanwhile, the Bahtsul Masail Nahdlatul Ulama highlights the aspect of civil protection, where registration is seen as legal administrative evidence that must be fulfilled to guarantee the rights of wives and facilitate the *iṡbāt nikāḥ* process in the Religious Courts in the event of omissions in registration or future legal disputes.[33] The affirmation from these national scholars shows that the space for *ijtihad* in contemporary Islamic law is very open to adopting administrative order for the benefit of the people (*maṣlaḥah 'ammah*).

The conceptual framework of *maṣlaḥah mursalah* provides a very strong theoretical legitimacy for the urgency of this legislation. Marriage registration is categorized as *maṣlaḥah mursalah* because it is a benefit that is not explicitly regulated or prohibited by the texts of The Quran and hadith, but is very much in line with the universal substance of *sharia* (*maqāṣid al-syarī'ah*). This policy is purely formulated for the real public benefit (*haqīqiyyah*), is general in nature (*'āmmah*), and does not conflict with religious evidence; instead, it strengthens the existential goal of the text regarding family protection. In the discourse of *Siyāsah Syar'iyyah*, the state, through government authorities (*ulil amri*) holds full legitimacy to transform matters that were previously permissible or merely administrative into a strictly binding public legal regulation. The state has the right to bind private actions because it is not changing the substance of the marriage ritual, but rather regulating social

---

[31] Ahlun Nazi Siregar, Abbas Arfan, and Noer Yasin, "Islamic Reasoning Regarding Marriage Registration," *Jurnal Al-Ijtimaiyyah* 7, no. 1 (2021): 15–38, https://doi.org/10.22373/al-ijtimaiyyah.v7i1.9337.

[32] Bariah, "Reconstruction of Marriage Registration in Islamic Law."

[33] A. Maskur, "Analysis of Maslahah Al-Mursalah on Marriage Registration Law in Indonesia: A Critical Study of Statutory Provisions on Marriage Registration Issues" (Surabaya: UIN Sunan Ampel Surabaya, 2014).

governance and the enforcement of rights. This is based on the principles of Islamic constitutional law:

تَصَرُّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مَنُوْطٌ بِالْمَصْلَحَةِ

Meaning: "A leader's policy towards his people must be based on considerations of public interest."

Therefore, when the phenomenon of unregistered marriages is empirically proven to give rise to many problems, the state is not only authorized, but also obliged to carry out legal intervention (*taqnīn*) in the form of requiring marriage registration in order to uphold social order and legal certainty.[34] As shown by Nurani Ikhlas, the formulation of marriage articles in the Compilation of Islamic Law (KHI) in Indonesia consciously adopted the implementation of the *maṣlaḥah mursalah* method in order to protect the rights of each party and create massive legal order for Islamic society.[35]

When examined in depth through the lens of the *maqāṣid al-syarī'ah* (Islamic principles), the effectiveness of marriage registration manifests itself at our levels of existential human protection. First, *ḥifẓ al-dīn* (protection of religion), registration prevents the Practice of marriage law fom becoming chaotic, illegal, and manipulated by irresponsible parties; it ensures that the teachings of marriage are not practiced anarchically without social control.[36] Second, *ḥifẓ al-nafs* (protection of the soul and psychology), recording provides a sense of security, mental peace, and certainty of relationships, so that the wife and children are not in an inferior position that is completely dependent on the husband's goodwill alone.[37] Third, *ḥifẓ al-nasl* (protection of offspring), where marriage registration is an absolute prerequisite for clarity of a child's status in the eyes of the state, guarantee of authenticity of lineage, and issuance of a formal birth certificate that gives children full access to the rights to education, health, and civil legal protection.[38] Fourth, *ḥifẓ al-māl* (protection of property), the official marriage document provides legal certainty regarding the wife's right to maintenance, civil inheritance rights, and the division of joint property (*gono-gini*), thus completely closing the gap for the occurrence of embezzlement or unilateral denial by one of the parties in the event of divorce or death.[39]

The alignment between the principles of *sharia* and Indonesian state policy is clearly reflected in the dynamics of positive legal legislation. Reading the legal system through contemporary theories such as those advocated by Jasser Auda emphasizes that Islamic law must be inclusive and responsive to contemporary developments for the sake of legal certainty and humanitarian protection. The reform of civil family law through the enactment of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning

---

[34] Ahmad Zayyadi et al., "Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 20, 2023, 249–62, https://doi.org/10.24090/mnh.v17i2.7584.

[35] Ikhlas, "Implementation of the Maslahah Murrasa Method in the Formulation of the Compilation of Islamic Law Regarding Marriage Articles."

[36] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[37] Siregar, Arfan, and Yasin, "Islamic Reasoning Regarding Marriage Registration."

[38] Elisa Rani, Musthato', and Anggra Prima, "Review of Maqashid Al-Syariah on Legal Certainty of Marriage Registration at the KUA of Bengalon District," *AL-AMIYAH: Multidisciplinary Scientific Journal* 2, no. 2 (2025): 217–26, https://doi.org/10.71382/aa.v2i02.266.

[39] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)"; Bariah, "Reconstruction of Marriage Registration in Islamic Law"; Rani, Musthato', and Prima, "Review of Maqashid Al-Syariah on Legal Certainty of Marriage Registration at the KUA of Bengalon District."

 DOI: 10.22373/jim.v23i1.35229

Marriage is clear evidence of state intervention based on public interest. In the considerations of this official state document, it is emphasized that a low minimum age for marriage has been empirically proven to have a massive negative impact on child development, triggering high divorce rates, and hindering the fulfillment of children's basic rights to health and education. Raising the minimum age for marriage to 19 for both men and women is positioned as a preventive measure by the state to protect the quality of the family institution. Substantively, this regulation moves in the same direction as the marriage registration instrument; both function as legal-formal screening gates to ensure that every marriage that occurs has thorough preparation and complete legal protection, where the confirmation of the intention to marry is no longer sufficient to be assessed from private claims but must be bound by an official state deed.[40]

In Indonesia's positive legal structure, the position of marriage registration has acquired a rigid and absolute foundation. Based on a normative analysis of Article 2 Paragraph 2 of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and Article 5 Paragraph 2 of the Compilation of Islamic In the Compilation of Islamic Law (KHI), marriage registration is institutionalized with the primary objective of ensuring administrative order, legal order, legal certainty, and the provision of authentic evidence that has perfect evidentiary power (*perfecte bewijskracht*) in court. [41] Although under conventional theological-jurisprudential law, unregistered marriages are considered to fulfill essential validity, Indonesian positive law explicitly states that unregistered marriages have no legal force (*nietig*) in the eyes of the state. The long-standing tension between classical jurisprudence and modern family law is bridged with a logical understanding: witnesses maintain the validity of the marriage contract during its execution, while the marriage certificate protects the rights of the parties after the marriage has begun. Without a certificate, *sharia* protection ceases at the time of the marriage contract; with a certificate, that protection continues into the realm of civil law enforcement. This empirical condition has encouraged the strengthening of contemporary academic discourse that recommends the implementation of stricter administrative criminal sanctions for perpetrators of unregistered marriages in order to provide a deterrent effect and force society to submit to the national legal order.[42]

In conclusion, the effectiveness of marriage registration as an actualization of the instrument of *maṣlaḥah mursalah* is at its culmination point where state law and the objectives of *sharia* merge harmoniously. Registration should no longer be viewed as a dichotomy between divine law and human law, but rather as a tool for the operationalization of contemporary *fiqh* in maintaining the integrity of *maqāṣid al-syarī'ah* in the public sphere. Through the integration of the analogy of *muamalah* verses (*Qiyās Awlawī*), the transformation of the essence of *i'lān al-nikāḥ* society into a modern legal system, strengthening through the instrument of *al-qawā'id al-fiqhiyyah*, and the institutionalization of *ulama* fatwas into national laws, marriage registration has succeeded in strengthening the sacred bond of *mītsāqan ghalīẓan*. This step is a very effective form of *taqnīn* (legislation) to ground Islamic justice, eliminate various forms of hidden harm inherent in the practice of

[40] Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

[41] Bariah, "Reconstruction of Marriage Registration in Islamic Law."

[42] Dalimunthe and Akbarizan, "The Urgency of Marriage Registration in Indonesia from a Public Interest Perspective."

unregistered marriage, and ensure that the family institution stands on the foundation of legal certainty and universal benefit.

Contemporary Reinterpretation: A Sociological Critique of Islamic Law on the Degradation of *Mītsāqan Ghalīẓan.*

Throughout the history of Islamic law, marriage has never been viewed simply as a civil transaction or the fulfillment of private biological needs. The Quran uses terminology with significant theological and moral weight to describe this bond: mitsaqan ghalizhan, a firm and sacred covenant.[43] This term demands a great deal of social responsibility, openness, and absolute guarantee of protection for the parties who bind themselves to it.[44]

However, in the social reality of contemporary society, the noble meaning of this solid agreement is often devalued in a deeply concerning way due to the widespread practice of underhand marriages, or *nikah siri* (unclear marriage). Most groups that perpetuate this practice are trapped in an outdated, textual-legalistic mindset. They isolate Islamic law merely as a means of fulfilling the pillars and formal requirements of medieval Islamic *fiqh*, while ignoring the sociological dynamics and legal protections provided by modern court institutions.[45]

This flawed thinking arises when religious texts are removed from their social context (*asbāb al-wurūd* or *asbāb al-nuzūl*) and applied blindly in the modern era which already has a regular state administration system.[46] In fact, if we carry out a thorough examination and analysis of the hadiths regarding guardianship and publication of marriage, the main essence desired by the *sharia* is the aspect of transparency (*i'lān*), legal certainty, and prevention against potential injustice.[47] A very famous hadith states:

″A marriage is not valid except with a guardian and two just witnesses." (HR. Al-Baihaqi and Ad-Daraqutni).[48]

Likewise, the command of the Prophet Muhammad SAW to announce marriage:

"Announce this marriage." (HR. Ahmad and At-Tirmidzi).[49]

The presence of a guardian, witnesses, and the suggestion to hold a *walīmatul 'urs* (wedding party) in classical times was the most advanced legal instrument at that time to publicize a marriage bond to the wider community.[50] This sociological step was taken so that there would be no room for manipulation, fraud, neglect, or slander in the future.[51]

---

[43] Aisyah Arsyad, "The Evolution of the Social Problem of Siri Marriage: Reconceptualization of Marriage Law in Islam," *Sipakalebbi Journal* 4, no. 1 (2020), https://doi.org/10.24252/jsipakallebbi.v4i1.14600.

[44] Imam Syafi'i, Ruqoyatul Faiqoh, and Vasco Fronzoni, "Concept of Misaqan Ghalidzan in Contemporary Interpretation of Quraish Shihab Thoughts," *MILRev : Metro Islamic Law Review* 2, no. 2 (2023): 115–33, https://doi.org/10.32332/milrev.v2i2.7807.

[45] Ghufron Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia," *Coordinate: Journal of Communication between Islamic Religious Universities* 16, no. 01 (2017): 63–86, https://doi.org/10.15408/kordinat.v16i1.6455; Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974," *Paradigma Journal* 2, no. 1 (2015).

[46] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[47] Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[48] Ad-Daraqutni, *Sunan Al-Daraqutni, No. Hadith 3584*, n.d.; Nasiruddin Al-Albani, *Irwa' Al-Ghalil Fi Takhrij Ahadith Manar Al-Sabil, No. 1839.*, n.d.; Abu Bakr al-Baihaqi, *As-Sunan Al-Kubrā, Kitab Al-Nikah, No. Hadith 13727.*

[49] HR. Ahmad in Musnad Ahmad, Volume 4, p. 5; At-Tirmidhi, Sunan at-Tirmidhi, Buku an-Nikah, Chapter Ma Ja'a fi I'lan an-Nikah, No. 1089.

[50] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[51] Abdul Wahid et al., "Sexual Violence Prevention Strategies Based on Hadith Guidance," *Ulumuna* 27, no. 2 (2023): 573–97, https://doi.org/10.20414/ujis.v27i2.678.

DOI: 10.22373/jim.v23i1.35229

In the context of modern Islamic *fiqh* sociology, the functions of social control and protection that were previously played by witnesses and guardians at the communal level have now been transformed and strengthened institutionally through official state civil registration institutions, such as the Office of Religious Affairs (KUA) for Muslims.[52] Modern Religious Courts act as an extension of the function of the *wilāyatul hākim* (judicial authority) which has coercive power to execute domestic rights and obligations.[53] Therefore, separating the validity of religious rituals from the legality of state administration is a fatal form of legal reductionism. This mindset, which ignores legal documentation, not only sacrifices the *maqāṣid al-syarī'ah* (the noble objectives of Islamic law) in favor of maintaining mere *fiqh* formalities, but also ignores the public interest (*al-maṣlaḥah al-mursalah*), which is the core of extending the prophetic message.[54]

The Impact of Normative Legal Damage on the Essence of *Mītsāqan Ghalīẓan*

The neglect of registration in underhand marriages has had a severely destructive impact on the normative legal order and social structure of Muslim families.[55] When a marriage is deliberately hidden from the radar of state law, the sacred bond that should be a protection for husband, wife, and children suddenly crumbles into a very fragile and unequal relationship.[56] Normatively, the absence of an official marriage certificate robs vulnerable groups in the household, especially women and children, of all legal protection instruments provided by the justice system.[57]

In many sociological cases in Indonesia, the practice of underhand marriage places the wife in a very detrimental inferior position.[58] If domestic violence (*KDRT*), neglect, or marital conflict occurs, a wife who is married under Islamic law loses her legal standing to demand her basic rights in the Religious Court.[59] She does not have the legal instruments to demand *madhiyah* (past) maintenance or *iddah* maintenance from her husband.[60] Furthermore, if the wife wants to end the toxic and abusive relationship through divorce proceedings (*khulu'* or *fasakh*), the case cannot be processed by the court because administratively, their marriage is considered to have never existed.[61] As a result, women are often trapped in a state of limbo; not supported but also not officially divorced, a condition that is strictly prohibited in the The Quran because it leaves women like objects in limbo (*al-mu'allaqah*)..[62]

---

[52] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[53] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[54] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[55] Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[56] Nur Aisyah, "Islamic Legal Perspective on Underhand Marriage, Al-Qadau: Islamic Family Law and Justice," *Al-Qadau: Islamic Family Law and Justice* 5, no. 2 (2018): 259–70, https://doi.org/10.24252/al-qadau.v5i2.7107.

[57] Akbar, Masykuroh, and Vinanda, "Mashlahah Mursalah for Marriage Registration in Islamic Family Law"; Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[58] Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[59] Aisyah, "Islamic Legal Perspective on Underhand Marriage, Al-Qadau: Islamic Family Law and Justice."

[60] Abdul Ghani Abud, *Fiqh Al-Mar'ah Al-Muslimah Fi Al-Tasyri' Al-Islami* (Cairo: Dar al-Fikr, n.d.).

[61] M. Quraish Shihab, *Perempuan* (Jakarta: Lentera Hati, 2010).

[62] Syafi'i, Faiqoh, and Fronzoni, "Concept of Misaqan Ghalidzan in Contemporary Interpretation of Quraish Shihab Thoughts."

The impact of this legal damage extends massively and structurally to children born from unregistered marriages.[63] These innocent children face the risk of losing their civil rights to their biological fathers. Administratively, they will face significant obstacles in obtaining birth certificates that include their father's full name, which in turn will complicate their access to social security, education, and other public services.[64]

In contemporary Islamic material law, children born from unregistered marriages are also in a very vulnerable position and lose their long-term rights to maintenance, guardianship rights when the daughter wants to marry, and legal inheritance rights.[65] Although the Constitutional Court of Indonesia through Decision Number 46/PUU-VIII/2010 has opened up space for scientific proof (such as DNA testing) to recognize civil relations between illegitimate or unregistered children and their biological fathers, the process of executing this law still requires a complicated, expensive, and tiring judicial bureaucracy for the mother.[66]

Based on an objective and just sociological analysis of Islamic *fiqh*, placing wives and children in a vulnerable condition without definite legal protection is a very real and systematic form of harm (*al-ḍarar*).[67] The practice of underhand marriage has essentially betrayed, injured, and reduced the sanctity of the strong covenant bond (*mītsāqan ghalīẓan*) mandated by Islamic law.[68] Marriage, which should be built on the pillars of *sakinah*, *mawaddah*, *wa raḥmah* and the principle of treating each other well (*mu'āsyarah bi al-ma'rūf*), has turned into a means of exploitation and obscuring socio-economic responsibilities by the more dominant party, in which context patriarchy often benefits.[69]

Reinterpretation of Normative Status in Modern *Fiqh* Based on *Maqāṣid al-Syarī'ah*

Facing this complex sociological problem, modern *fiqh* based on the *maqāṣid al-syarī'ah* evaluation framework no longer views marriage registration as merely an optional administrative-bureaucratic matter.[70] Contemporary Islamic law assesses an act not only from the outward form of the contract (*syarḥ al-ẓāhir*), but also by he impact of the benefits realized or the substantive harm it causes in society.[71] Based on this perspective, the normative status of underhand marriage has undergone a significant shift in orientation

---

[63] Akbar, Masykuroh, and Vinanda, "Mashlahah Mursalah for Marriage Registration in Islamic Family Law."

[64] "Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 Concerning Judicial Review of Article 43 Paragraph (1) of Law Number 1 of 1974 Concerning Marriage Regarding Civil Relations of Children" (n.d.).

[65] Farhana Balbeid, "A Legal Review of Underhand Marriage According to Islamic Law" (Surabaya: Airlangga Univercity, 2003).

[66] Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 concerning Judicial Review of Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage regarding civil relations of children.

[67] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974"; Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[68] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[69] Samuji; Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[70] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[71] Asra Nur Hasanah, "Mîtsâqan Ghalîzan and Contemporary Problems in Marriage: A Study of the Interpretation of the Verses of the Qur'an and Hadith," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 6, no. 1 (2024): 44–67, https://doi.org/10.19105/al-manhaj.v6i1.13839; Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

 DOI: 10.22373/jim.v23i1.35229

among modern jurists. While some classical Islamic *fiqh* literature considers such marriages partially valid as long as the main pillars are met, modern Islamic *fiqh* views them as normatively and ethically flawed and legally prohibited (*ḥarām* or *makrūh taḥrīm*).[72]

This conceptualization is built on a very solid foundation of core Islamic jurisprudence principles. The first principle that anchors the analysis is:

*"*All forms of harm must be eliminated.".[73]

Considering that underhand marriage has been empirically proven to produce long-term harm for women and children, eliminating the legality of this practice through the obligation of legal registration is a necessity of *sharia*..[74] The second rule that strengthens this preventive argument is:

"Preventing harm must take precedence over achieving benefit".[75]

Although those involved in underhand marriages often put forward pragmatic reasons or instant benefits such as avoiding adultery or providing solutions to limited funds, the legal damage (*mafsadah*) they cause is much greater and has long-term systemic impacts.[76] Therefore, preventing damage to the family's civil rights must take priority over accommodating individual pragmatic motives.[77]

Furthermore, the methodological instruments of *uṣūl al-fiqh* used to lock the obligation to register a marriage are the *sadd al-dzarī'ah* principle (closing the path to corruption) and the macro *uṣūliyyah* principle[78]:

"Something that is obligatory cannot be fulfilled without it, then that thing becomes obligatory.".[79]

In the life of a modern legal state, efforts to realize the basic goals of a just and legally protected (mandatory) marriage will never be perfectly achieved without the existence of an official marriage certificate instrument from the state.[80] The marriage certificate is the only authentic evidence recognized by the judicial institution to execute domestic justice.[81] Thus, the legal status of marriage registration has increased, from what was originally considered a mere administrative matter (*mubāḥ*), to becoming a *sharia* obligation (*wājib*) for every Muslim who wishes to marry in the contemporary era.[82]

---

[72] Yusuf Qardawi, *Fiqh Al-Zakah (Vol. 2)* (Muassasah al-Risalah, 2011); Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[73] Jalaluddin As-Suyuthi, *Al-Ashbah Wa an-Nazhair Fi Qawa'id Wa Furu' Fiqh Ash-Syafi'iyyah* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.).

[74] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[75] Ibn Nujaym, *Al-Ashbah Wa an-Nazhair 'ala Madzhab Abi Hanifah* (Cairo: Dar al-Hadith, n.d.); Al-Atsir ad-Din Al-Abhari, *Al-Qawa'id Al-Fiqhiyyah Al-Kubra*, n.d.

[76] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974"; Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[77] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[78] Yusuf Al-Qaradawi, *Fatawa Mu'ashirah, Volume 2* (Beirut: Dar al-Qalam, n.d.); Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[79] Saifuddin Al-Amidi, *Al-Ihkam Fi Ushul Al-Ahkam, Volume 1*, n.d.; Tajuddin Al-Subki, *Jam'u Al-Jawami' Fi Ushul Al-Fiqh, Bab Al-Wajib Al-Muqaddam.*, n.d.

[80] Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[81] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[82] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)"; Al-Qaradawi, *Fatawa Mu'ashirah, Volume 2*.

A very strong analogy or *istidlāl* to strengthen this argument refers to the word of Allah SWT in Surah The Quran Al-Baqarah verse 282 regarding the ethics of *muʿāmalah* transactions.[83]:

"O you who believe, when you owe a debt for a specified time, you should write it down.".[84]

From a legal perspective (*qiyās awlāwī*), if for matters of material debts that have the potential to trigger disputes, Allah has explicitly ordered His people to record them in writing, then the marriage contract which gives rise to consequences regarding lineage, human honor, the right to life of children, and the division of joint property, is certainly much more important, more appropriate, and more obligatory to be officially recorded.[85] This registration is not intended to add to the pillars of marriage that have been outlined by *sharia*, but rather as a means of protection (*wasīlah*) that secures the substantial objectives of the religious text itself.[86] Modern, inclusive and gender-responsive *fiqh* will not allow sacred legal texts to be exploited to legitimize the structural oppression of women's and children's rights under the guise of mere formal ritual validity.[87]

Perspektives of Religious Authorities and Officials

Based on interviews conducted on June 15 and 20, 2026, it was found that KUA officials and religious counselors share relatively uniform views regarding the factors contributing to the practice of informal marriages and the efforts that have been made to minimalize this phenomenon.

The Head of the Suro Makmur Subdistrict KUA, Dermawansyah (38 years old), explained that the practice of unregistered marriages is enerally driven by several factors, namely underage marriage without obtaining a dispensation from the Sharia Court, the desire to coceal a scandal, leading couples to choose to conduct the marriage ceremony quickly, and the public's still limited understanding of the importance of marriage registration. According to him, from the perspective of islamic law, such marriages remain valid as long as they fulfill the pillars and requirements of marriage as stipulated in Article 2, paragraph (1) of Law No. 1 odf 1974 on marriage, which states that a marriage is valid if conducted in accordance with the respective religious laws.

Furthermore, Dermawansyah explained that the KUA has taken various preventive measures to reduce the number of unregistered marriages. These efforts include guidance programs for school-age youth, educational sessions on the legal consequences of unregistered marriages such as the loss of inheritance rights, alimony rights, and legal protection for children as well as improving marriage administration services through streamlined bureaucracy and a free marriage program conducted at the KUA office.[88]

This view is reinforced by Kelek Limbong, S.Sy. (35), a religious counselor for the Suro Makmur subdistrict. According to him, the most tangible impact of unregistered marriages is the emergence of various civil registration issues, such as difficulties in obtaining a Familiy Card (KK), childrean's birth certificates, and other administrative

[83] Maksum, "A Critical Review of the Practice of Underhand Marriage in Indonesia."

[84] Ibn Kathir, *Tafsir Al-Qur'an Al-'Azhim, Volume 2*, n.d.

[85] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[86] Ma'arif, "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)."

[87] Samuji, "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974."

[88] Interview with Dermawansyah, S.Ag., Head of the Suro Makmur Subdistrict, at the Suro Makmur KUA office, June 15, 2026.

 DOI: 10.22373/jim.v23i1.35229

documents. Furthermore, if a couple wishes to obtain an official marriage certificate, they must undergo the marriage validation process at the Sharia Couth or even perform a new marriage ceremony at the KUA, making the process longer, more complicated, and incurring additional costs.[89]

Perspectives of Community Leaders and Religious Leaders

Interviews with community leaders reveal that the practice of informal marriages is influenced not only by legal factors but also by the sociocultural conditions of the local community.

Dedi Mizwar (29), the village head of Lae Bangun, explained that the dominant factors contributing to unregistered marriages in his area are underage marriage, the difficulty in obtaining consent from a marriage guardian, and the community's perception that the unregistered marriage process is easier because it does not require the administrative procedures required at the KUA. Nevertheless, as village head, he consistently advises the community to register their marriage with the KUA, and couples who add have not yet reached the legal marriage age are directed to apply for a dispensation from the Sharia Court.[90]

In contrast to the views of government officials, Rejeki (35), a village religious leader, is actually more accepting of informal marriage, particularly for couples who do not yet meet the administrative requirments. In his view, this option can serve as a way to prevent couples from engaging in acts prohibited by religion, given that the age dispensation procedures and administrative requirements at the KUA are considered quite complicated. He also expressed his disagreement with the policy requiring couples to repeat theit marriage ceremony when applying for a marriage certificate. In his view, if the first ceremony already met the requirements and pillars of marriage according to Islamic law, then the state need only register the marriage and issue the marriage certificate without requiring the ceremony to be repeated.[91]

A similar view was expressed by Ibnu Ihsan (24), a village *imam*. He believes that informal marriages are often chosen by the community as a way to avoid promiscuity or adultery due to the lengthy administrative marriage process. He also hopes the the government will simplify the process of legalizing marriages that have already taken place according to religious rites without requiring couples to perform a new marriage ceremony.[92]

Perspectives and Empirical Experiences of Couples in Unregistered Marriages

Interviews with seven couples in unregistered marriages revealed that their decision to marry without official registration was driven by various factors, though these were generally related to administrative and economic barriers, as well as social and family issues.

Faisal B (28 years old) and Elza Paraniza (19 years old) stated that they had a religious marriage on July 13, 2025, because the bride had not yet reached the minimum legal age for marriage, even though all wedding preparations and the schedule had already been finalized. After the KUA rejected their registration and directed them to apply for a

[89] Interview with Kelek Limbong, S.Sy., Religious Counselor for Suro Makmur Subdistrict, in Suro Makmur Subdistrict, June 15, 2026.

[90] Interview with Dedi Mizwar, The Village Head of Lae Bangun, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 15, 2026.

[91] Interview with Rejeki, a religious leader in Lae Bangun, Suro Makmur Subdistrict, Aceh Singkil Regency, June 15, 2026.

[92] Interview with Ibnu Ihsan, The village imam of Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 15, 2026.

dispensation from the Shiria Court or wait until she met the age requirement, they chose to marry according to religious rites. Some time laater, they applied to have their marriagee registered with the KUA, but were required to repeat the marriage ceremony by bringing the guardian and witnesses again and paying an administrative fee of Rp 500.000.[93]

A different situation was faced by the couple Syahrizal (28 years old) and Salina (27 years old). Syahrizal has previously been married in religious ceremony and had divorce without an official divorce certificate. When they attempted to register their new marriage at the KUA, their application was rejected because his ex-wife's name was still listed on his Family Card, while proof of divorce could not be provided. This situation ultimately led them to choose to get married in a private ceremony once again.[94]

Meanwhile, the couple Fuddin (45 years old) and Sukesih (43 years old) stated that the main reason they married in a private ceremony was that they did not obtain family consent from the wife's side as she was a widow, so the marriage registration process at the KUA could not be carried out.[95]

Unlike the other three couples, Chandra (23) and Mariamah (20) admitted to getting married in a private ceremony due to financial consraints. They wanted to start living together immidiately but did not yet have sufficient financial means to hold an official wedding ceremony.[96]

A similar reason was also given by the couple Alfa (18) and Nur (17). Te chose to marry informally due to financial constraints and their desire to start a family as soon as possible.[97]

The couple Candra (18) and Madan (17) explained that the decision to marry in a siri ceremony was the result of an agreement between both families. In addition to limited financial means, the fact that both brride and groom were under the minimum legal marriage age was the main reason they could not register their marriage at the KUA.[98]

Meanwhile, Zulfan (26 years old) and his 17 years old wife stated that they chose to marry informally because the KUA rejected their registration application due to the bride to be's age not meeting legal requirements, while all wedding preparations had alredy been completed, so they did not want to postpone the ceremony.[99]

The Author's Analysis of Interview Results and Research Findings

Based on the overall interview results, this study found that the practice of unregistered marriages in Suro Makmur subdistrict cannot be understood solely as a matter of law legal awareness among the community. Rather, this phenomenon is the result of the interaction between interrelated normativ, administrative, economic, and social factors.

---

[93] Interview with Faisal B. dan Elza Paraniza, participants in an unregistered marriage, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 15, 2026.

[94] Interview with Syahrizal dan Salina, participants in an unregistered marriage, Srimomungkur Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 15, 2026.

[95] Interview with Fuddin dan Sukesih, participants in an unregistered marriage, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 20, 2026.

[96] Interview with Candra dan Mariamah, participants in an unregistered marriage, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 20, 2026.

[97] Interview with Alfa dan Nur, participants in an unregistered marriage, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 20, 2026.

[98] Interview with Candra dan Madan, participants in an unregistered marriage, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 20, 2026.

[99] Interview with Zulfan, participants in an unregistered marriage, Lae Bangun Village, Suro Makmur Subdistrict, Aceh Singkil Regency, June 20, 2026.

 DOI: 10.22373/jim.v23i1.35229

First, this study shows that regulatory barriers regarding the minimum age for marriage are the most dominant factor driving people to enter into unregistered marriages. Most couples admitted to choosing this route because they did not meet the minimum marriage age as stipulated in Law No. 16 of 2019 and considered the procedure for obtaining a marriage dispensation through the Sharia Court to be time-consuming, costly, and quite lengthy. These conditions led people to prefer a religious marriage ceremony over waiting for the applicable legal process.

Second, this study also found that legal administrative issues contribute to the occurrence of unregistered marriages. Syahrizal's case demonstrates that a previously unregistered marriage creates legal complications for subsequent marriages. The absence of a divorce certificate prevents the updating of civil registration status, so the KUA cannot process the registration of a new marriage in accordance with applicable legal provisions. This finding illustrates that the practice of unregistered marriages can lead to recurring and protracted legal problems.

Third, economic and sociocultural factors also play a significant role. Some couples opt for unregistered marriages due to financial constraints, while others are influenced by a lack of consent from their families or marriage guardians. In such circumstances, unregistered marriages are viewed as an easier and faster solution compared to following the state's formal procedures.

Fourth, the research findings reveal difference in paradigms between KUA officials and village religious leaders. KUA officials place greater emphasis on the importance of marriage registration as a means of legal protection for husband, wives, and children, whereas some religious leaders place more emphasis on the fulfillment of the pillars and the requirements of marriage according to classical fiqh, such that state registration is not viewed as a determining factor in the validity of the marriage contract. This difference in perspective highlights a gap between the normative fiqh approach and the need for legal protection within themodern legal system.

Fifth, this study also identified issues regarding the practice of reperforming the marriage contract for couples who had previously married in a siri ceremony. Faisal dan Elza's experience shows that they were required to re-perform the marriage contract when processing their marriage registration. From a contemporary fiqh perspective, this practice still requires further evaluation because if the first marriage contract has fulfilled all the pillars and conditions of marriage according to Islamic law, then the mechanism of isbat nikah through the Sharia Court is, in principle, more appropriate than performing a new marriage contract, which has the potential to cause confusion regarding the legal status of the marriage that had previously taken place.

Overall, the findings of this study indicate that the practice of informal marriages in Suro Makmur subdistrict has undergone a shift in meaning from the concept of *mitsaqan ghalizhan* as a binding agreement toward a practice more oriented toward resolving short-term practical issues. Considerations such as age restrictions, administrative obstacles, economic factors, and social pressure are more dominant than efforts to secure legal protection for the family. Consequently, the civil right of wives and children such as legal status certainty, inheritance rights, alimony, and civil registration, may not receive optimal protection. This finding reinforces the importance of reinterpreting the concept of *mitsaqan ghalizhan* from a contemporary figh perspective, namely, that the sanctity of marriage contract is realized not only through the fulfillment of the pillars and conditions of marriage but also through the registration of marriage as an instrument of legal protection aligned with the primary objective of Sharia (*maqāṣid al-syarī'ah*).

C. Conclusion

Contemporary Islamic jurisprudence (*fiqh*), grounded in the re-evaluation of prophetic traditions, asserts that the normative status of underhand marriage represents a clear degradation of the principle of *mītsāqan ghalīẓan*. In the modern era, marriage can no longer be reduced to a mere private civil contract that is solely valid in ritual terms. The deliberate concealment of a marriage ignores extensive moral, social, and legal responsibilities, thereby triggering detrimental consequences such as the loss of maintenance rights, ambiguous lineage status, and a systemic lack of protection for women and children. This rejection is reinforced by rigorous cross-channel *takhrīj* research, which confirms that Hadiths requiring a legal guardian (*walī*) and public announcement (*i'lān al-nikāḥ*) are *tsābit* with *ṣaḥīḥ li ghayrihi* or *ḥasan li ghayrihi* status, emphasizing Islam's fundamental intent for transparent marriages that prevent manipulation and safeguard vulnerable parties.

In the context of contemporary Islamic family law, the prophetic mandate for publication (*i'lān*) achieves its primary efficacy through state marriage registration, functioning as an actualization of *maṣlaḥah mursalah*. Official registration provides tangible legal certainty and authentic evidence required to resolve disputes regarding divorce, maintenance, and inheritance. Within the framework of *maqāṣid al-syarī'ah*, this institutional mechanism effectively preserves religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), descendants (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Consequently, marriage registration transitions into a essential Sharia obligation within the modern constitutional state to prevent legal harm (*sadd al-dzarī'ah*) and establish a just public welfare.

References

Journals and Books

Abu Bakr al-Baihaqi. *As-Sunan Al-Kubrā, Kitab Al-Nikah, No. Hadith 13727.*, n.d.

Abud, Abdul Ghani. *Fiqh Al-Mar'ah Al-Muslimah Fi Al-Tasyri' Al-Islami*. Cairo: Dar al-Fikr, n.d.

Ad-Daraqutni. *Sunan Al-Daraqutni, No. Hadith 3584*, n.d.

Aisyah, Nur. "Islamic Legal Perspective on Underhand Marriage, Al-Qadau: Islamic Family Law and Justice." *Al-Qadau: Islamic Family Law and Justice* 5, no. 2 (2018): 259–70. https://doi.org/10.24252/al-qadau.v5i2.7107.

Akbar, Muhammad Sulthan, Yufi Wiyos Rini Masykuroh, and Olivia Rizka Vinanda. "Mashlahah Mursalah for Marriage Registration in Islamic Family Law." *KNOWLEDGE: Journal of Innovation, Research and Development Results* 5, no. 1 (2025): 51–59. https://doi.org/10.51878/knowledge.v5i1.4590.

Akmal, Andi Muhammad. "The Principle of Benefit of Marriage Registration in Reformulating Marriage Jurisprudence (Analysis with the Ushul Fiqh Approach)." Makassar: Universitas Islam Negeri Alauddin Makassar, 2013.

Al-Abhari, Al-Atsir ad-Din. *Al-Qawa'id Al-Fiqhiyyah Al-Kubra*, n.d.

Al-Albani, Nasiruddin. *Irwa' Al-Ghalil Fi Takhrij Ahadith Manar Al-Sabil, No. 1839.*, n.d.

Al-Amidi, Saifuddin. *Al-Ihkam Fi Ushul Al-Ahkam, Volume 1*, n.d.

Al-Qaradawi, Yusuf. *Fatawa Mu'ashirah, Volume 2*. Beirut: Dar al-Qalam, n.d.

Al-Subki, Tajuddin. *Jam'u Al-Jawami' Fi Ushul Al-Fiqh, Bab Al-Wajib Al-Muqaddam.*, n.d.

Arifuddin, Qadriani. "Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (October 10, 2024): 317–28. https://doi.org/10.19109/nurani.v24i2.24529.

Arsyad, Abdul Wahid. "STUDI TERHADAP ASPEK KEUNGGULAN KITAB SAHIH MUSLIM TERHADAP SHAHIH BUKHARI." *Jurnal Ilmiah Islam Futura* 17, no. 2 (2019): 312. https://doi.org/10.22373/jiif.v17i2.2454.

Arsyad, Aisyah. "The Evolution of the Social Problem of Siri Marriage: Reconceptualization

of Marriage Law in Islam." *Sipakalebbi Journal* 4, no. 1 (2020). https://doi.org/10.24252/jsipakallebbi.v4i1.14600.

As-Suyuthi, Jalaluddin. *Al-Ashbah Wa an-Nazhair Fi Qawa'id Wa Furu' Fiqh Ash-Syafi'iyyah*. Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.

Balbeid, Farhana. "A Legal Review of Underhand Marriage According to Islamic Law." Surabaya: Airlangga Univercity, 2003.

Bariah, Oyoh. "Reconstruction of Marriage Registration in Islamic Law." *Scientific Journal of SOLUSI* 1, no. 4 (2015): 20–29. https://doi.org/10.35706/solusi.v1i04.65.

Barkah, Qodariyah, and Andriyani Andriyani. "MAQASHID AL-SYARI'AH CONCEPT OF KAFA'AH IN MARRIAGE." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 1 (2020). https://doi.org/https://doi.org/10.19109/nurani.v20i1.5651.

Dalimunthe, Paisal Ahmad, and Akbarizan. "The Urgency of Marriage Registration in Indonesia from a Public Interest Perspective." *Cerdika: Indonesian Scientific Journal* 5, no. 1 (2025): 187–95. https://doi.org/10.59141/cerdika.v5i1.2368.

Darmawan, Darmawan, Asmaul Husna, Mirza Rahmatillah, and Helmi Imran. "Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province." *AHKAM : Jurnal Ilmu Syariah* 22, no. 2 (2022). https://doi.org/10.15408/ajis.v22i2.28827.

Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-VIII/2010 concerning Judicial Review of Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage regarding civil relations of children (n.d.).

Devy, Soraya, and Ayu Maulina Rizqi. "Underhand Divorce and Its Impact on Child Rearing (Case Study in Peusangan Sub-District, Bireun District)." *Samarah: Journal of Family Law and Islamic Law* 2, no. 2 (2018): 287–306. https://doi.org/10.22373/sjhk.v2i2.4739.

Fakhria, Sheila. "Questioning the Legality of Sirri Marriage (Analysis of the Istiṣlāḥiyyah Method)." *Al-Ahwal: Journal of Islamic Family Law* 9, no. 2 (2016): 185–200. https://doi.org/10.14421/ahwal.2016.09204.

Fatawi, and Akhmad Dulfikar. "Status, Consequences and Legal Protection of Clandestine Marriage for the Civil Rights of Wives and Children from the Perspective of Islamic Jurisprudence." *QANUN: Journal of Islam Laws and Studies* 4, no. 2 (2021): 884–95. https://doi.org/10.58738/qanun.v4i2.1379.

Gunawan, Shella Oetharry, and Syamsul Bahri. "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives." *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362–80. https://doi.org/10.22373/ujhk.v6i2.20262.

Hasanah, Asra Nur. "Mîtsâqan Ghalîzan and Contemporary Problems in Marriage: A Study of the Interpretation of the Verses of the Qur'an and Hadith." *Al-Manhaj: Journal of Indonesian Islamic Family Law* 6, no. 1 (2024): 44–67. https://doi.org/10.19105/al-manhaj.v6i1.13839.

Ikhlas, N. "Implementation of the Maslahah Murrasa Method in the Formulation of the Compilation of Islamic Law Regarding Marriage Articles." IAIN, 2019.

Indra, Gandi Liyorba, M. Yasin Al Arif, and Abdul Qodir Zaelani. "The Ideal Age For Marriage in The Compilation of Islamic Law (KHI) and Psychology." *Al-'Adalah* 20, no. 1 (June 20, 2023): 1. https://doi.org/10.24042/adalah.v20i1.11598.

Irawan, Mohamad Deny. "Guardianship and Witnessing in Marriage (A Comparative Study of the Fiqh of Four Schools of Thought and Law in Indonesia)." *Ijtihad* 8, no. 2 (2014): 12–15.

Jafar, Wahyu Abdul, Musda Asmara, Mu'adil Faizin, Helena Octavianne, and Budi Kisworo. "Philosophical Foundations and Human Rights in the Bajapuik Tradition: Bridging Local Wisdom and Islamic Law in Minangkabau Marriage Practices." *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 212–33. https://doi.org/10.18860/j-

fsh.v16i1.27681.

Kathir, Ibn. *Tafsir Al-Qur'an Al-'Azhim, Volume 2*, n.d.

Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Pub. L. No. 16 (2019).

Ma'arif, Toha. "Marriage Registration (Analysis Using the Qiyas, Istihsan, Sadd Al-Dzari'ah, Maslahah Murlah and Positive Law Approaches in Indonesia)." *ASAS: Journal of Sharia Economic Law* 11, no. 1 (2019): 119–41. https://doi.org/10.24042/asas.v11i01.4647.

Maksum, Ghufron. "A Critical Review of the Practice of Underhand Marriage in Indonesia." *Coordinate: Journal of Communication between Islamic Religious Universities* 16, no. 01 (2017): 63–86. https://doi.org/10.15408/kordinat.v16i1.6455.

Maskur, A. "Analysis of Maslahah Al-Mursalah on Marriage Registration Law in Indonesia: A Critical Study of Statutory Provisions on Marriage Registration Issues." Surabaya: UIN Sunan Ampel Surabaya, 2014.

Ministry of Religion of the Republic of Indonesia. "Al-Qur'an and Its Translation, Sv Surat An-Nisā' Verse 21," n.d.

Mursyid, Salmah, and Nasruddin Yusuf. "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi." *Samarah* 6, no. 2 (2022).

Nanik Prasetyoningsih, Sunyoto Usman. "Women's Inheritance Rights in Indonesia from the Perspective of the Triangular Concept of Legal Pluralism." *El-Mashlahah* 12, no. 2 (2024). https://doi.org/https://doi.org/10.23971/el-mashlahah.v%25vi%25i.7657.

Noor Arini Haq. "The Position of Children from Unlawful Marriages According to Islamic Law and Positive Law in Indonesia." *Semantic Scholar*, 2018, 102.

Nujaym, Ibn. *Al-Ashbah Wa an-Nazhair 'ala Madzhab Abi Hanifah*. Cairo: Dar al-Hadith, n.d.

Nurrahmah, Syafira Aulia, and Ummu Sa'adah. "Siri Marriage from the Perspective of Maslahah Mursalah." *Al-Muttaqin: Journal of Social and Economic Studies* 6, no. 1 (2025): 76–92. https://doi.org/10.63230/almuttaqin.v6i1.253.

Qardawi, Yusuf. *Fiqh Al-Zakah (Vol. 2)*. Muassasah al-Risalah, 2011.

Rani, Elisa, Musthato', and Anggra Prima. "Review of Maqashid Al-Syariah on Legal Certainty of Marriage Registration at the KUA of Bengalon District." *AL-AMIYAH: Multidisciplinary Scientific Journal* 2, no. 2 (2025): 217–26. https://doi.org/10.71382/aa.v2i02.266.

Said, Wardana, Hukmiah Hukmiah, Suriani Nur, Sri Wahyuni, and Rahmatul Akbar. "Marriage Traditions and Family Resilience in Bugis Bone Society: A Study of Islamic Law and Islamic Education." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024). https://doi.org/https://doi.org/10.22373/sjhk.v8i3.23227.

Salam, Nor. "Studi of the Hadith 'La Nikaha Illa Biwaliyyin': Analysis of the Science of Hadith." Maulana Malik Ibrahim State Islamic University of Malang, 2010.

Samuji. "Implications of Underhand Marriage in the Perspective of Islamic Law and Law No. 1 of 1974." *Paradigma Journal* 2, no. 1 (2015).

Shihab, M. Quraish. *Perempuan*. Jakarta: Lentera Hati, 2010.

Siregar, Ahlun Nazi, Abbas Arfan, and Noer Yasin. "Islamic Reasoning Regarding Marriage Registration." *Jurnal Al-Ijtimaiyyah* 7, no. 1 (2021): 15–38. https://doi.org/10.22373/al-ijtimaiyyah.v7i1.9337.

Syafi'i, Imam, Ruqoyatul Faiqoh, and Vasco Fronzoni. "Concept of Misaqan Ghalidzan in Contemporary Interpretation of Quraish Shihab Thoughts." *MILRev : Metro Islamic Law Review* 2, no. 2 (2023): 115–33. https://doi.org/10.32332/milrev.v2i2.7807.

Wahid, Abdul, Husna Amin, Jafar Assagaf, Agusni Yahya, and Nufiar Nufiar. "Sexual Violence Prevention Strategies Based on Hadith Guidance." *Ulumuna* 27, no. 2 (2023):

573–97. https://doi.org/10.20414/ujis.v27i2.678.
Yahya, Agusni. "Study of the Prophet's Prediction Hadith." *Jurnal Ilmiah Al-Mu'ashirah* 20, no. 2 (2023): 299. https://doi.org/10.22373/jim.v20i2.19456.
Zayyadi, Ahmad, Ridwan, Arif Hidayat, Ubaidillah, and Mowafg Abrahem Masuwd. "Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia." *Al-Manahij: Jurnal Kajian Hukum Islam*, November 20, 2023, 249–62. https://doi.org/10.24090/mnh.v17i2.7584.
Zulkarnain, Habib Iman Nurdin Sholeh, and Ahmad Zaenul Muttaqin. "Local Wisdom in Sebambangan Traditional Marriage Practices: A Maqāṣid Sharī'ah Perspective." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 1 (26, 2024): 119–37. https://doi.org/10.18326/ijtihad.v24i1.119-137.

Interviews

Interview with Alfa and Nur (participants in an unregistered marriage), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 20, 2026.
Interview with Candra and Madan (participants in an unregistered marriage), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 20, 2026.
Interview with Candra and Mariamah (participants in an unregistered marriage), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 20, 2026.
Interview with Dedi Mizwar (Village Head of Lae Bangun), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 15, 2026.
Interview with Dermawansyah, S.Ag. (Head of the Office of Religious Affairs [KUA] of Suro Makmur District), Office of Religious Affairs (KUA), Suro Makmur District, June 15, 2026.
Interview with Faisal B. and Elza Paraniza (participants in an unregistered marriage), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 15, 2026.
Interview with Fuddin and Sukesih (participants in an unregistered marriage), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 20, 2026.
Interview with Ibnu Ihsan (Village Imam of Lae Bangun), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 15, 2026.
Interview with Kelek Limbong, S.Sy. (Religious Counselor of Suro Makmur District), Suro Makmur District, Aceh Singkil Regency, June 15, 2026.
Interview with Rejeki (Religious Leader of Lae Bangun Village), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 15, 2026.
Interview with Syahrizal and Salina (participants in an unregistered marriage), Srimomungkur Village, Suro Makmur District, Aceh Singkil Regency, June 15, 2026.
Interview with Zulfan (participant in an unregistered marriage), Lae Bangun Village, Suro Makmur District, Aceh Singkil Regency, June 20, 2026.