

Approval Of Sirri Marriage From The Perspective Of Islamic Law And State Law And Its Influence On The Position Of Wife, Children, And Property

Chafidzul Hakim Noer¹, Dahlan Thamrin², Budi Parmono³

Universitas Islam Malang, Indonesia¹²³

hafidhakiem5@gmail.com,¹ dahlanthamrin@unisma.ac.id,² budiparmono@unisma.ac.id,³

Abstract: Unregistered marriage (nikah sirri) is a complex legal phenomenon in Indonesia, as it is considered valid under Islamic law but not recognized by state law due to a lack of registration. This research aims to analyze the impact of unregistered marriages on the status of wives, children, and property from the perspectives of Islamic law and Indonesian positive law. The method used is normative juridical research with conceptual, legislative, and fiqh approaches. Primary data sources include Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, and the Quran and Hadith, while secondary data are derived from relevant academic literature. The findings show that according to Islamic law, an unregistered marriage that fulfills the pillars and requirements is valid, thus wives, children, and property have the same status as registered marriages. However, under Indonesian positive law, unregistered marriages have no legal force because they are not registered at the Office of Religious Affairs or Civil Registry Office, resulting in wives lacking legal protection of their rights, children only having civil relations with their mothers, and joint property cannot be submitted to court without marriage confirmation (*itsbat nikah*). This research recommends the need for socialization on the importance of marriage registration and stricter law enforcement to protect the rights of women and children.

Keywords: unregistered marriage, Islamic law, positive law, status of wife and child, joint property

Abstrak: Pernikahan sirri merupakan fenomena hukum yang kompleks di Indonesia karena dianggap sah menurut hukum Islam, namun tidak diakui oleh hukum negara akibat tidak tercatat. Penelitian ini bertujuan untuk menganalisis dampak pernikahan sirri terhadap kedudukan istri, anak, dan harta dalam perspektif hukum Islam dan hukum positif Indonesia. Metode yang digunakan adalah penelitian yuridis normatif dengan pendekatan konseptual, perundang-undangan, dan fikih. Data primer bersumber dari Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Kompilasi Hukum Islam, dan Al-Qur'an serta hadis, sedangkan data sekunder berasal dari literatur akademik yang relevan. Hasil penelitian menunjukkan bahwa menurut hukum Islam, pernikahan sirri yang memenuhi rukun dan syarat adalah sah, sehingga istri, anak, dan harta memiliki kedudukan yang sama dengan pernikahan tercatat. Namun, menurut hukum positif Indonesia, pernikahan sirri tidak memiliki kekuatan hukum karena tidak tercatat di KUA atau Kantor Catatan Sipil, mengakibatkan istri tidak memiliki perlindungan hukum atas hak-haknya, anak hanya memiliki hubungan

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perdata dengan ibu, dan harta bersama tidak dapat diajukan ke pengadilan tanpa itsbat nikah. Penelitian ini merekomendasikan perlunya sosialisasi pentingnya pencatatan pernikahan dan penegakan hukum yang lebih ketat untuk melindungi hak-hak perempuan dan anak.

Kata Kunci: pernikahan sirri, hukum Islam, hukum positif, kedudukan istri dan anak, harta bersama

Corresponding Author:

Chafidzul Hakim Noer

Universitas Islam Malang, Indonesia; hafidhakiem@gmail.com

Introduction

A secret marriage may be considered valid according to religion, but not legally valid because it is not registered or performed before a marriage registrar (PPN). Ironically, this practice is increasingly prevalent in society, from the lower middle class to officials and celebrities. (Nisa & Nisa, 2023) In the context of society, a secret marriage is often defined in two ways: first, a marriage conducted in secret, without inviting anyone outside the bride and groom's families, and then not registering the marriage with the Office of Religious Affairs (KUA), thus lacking formal legal standing under Indonesian law as stipulated in the Marriage Law. Second, a marriage conducted secretly by a man and woman without the knowledge of either family. It is even kept completely secret to the point where it is unknown who the guardians and witnesses are. (Kamilia, 2024)

Meanwhile, Indonesia is a state of law. This is regulated by the 1974 Indonesian Marriage Law No. 1 and the Compilation of Islamic Law (KHI). Therefore, those involved in unregistered marriages are supposed to be those who obey Islamic law, but instead, they disobey state law. Islam also commands obedience to state law, provided it does not conflict with religion. (Arianto & Rinwanto, 2025) Their existence is later weakened due to a lack of authentic evidence and official documentation. This naturally hurts the couple, particularly the woman. Protection of women's rights becomes blurred. The judiciary will be unable to defend women in cases of domestic violence (KDRT) or when a husband leaves his wife because the marriage cannot be proven and therefore has no legal force. Furthermore, children born of an unregistered marriage will face numerous administrative obstacles, such as obtaining birth certificates. Furthermore, the secrecy of an unregistered marriage can lead to slander. (O. Sari & Lessy, 2023)

Unregistered marriages in Indonesia are a complex social phenomenon because they are not all recorded in the state administration system. Officially, marriage data in Indonesia is managed by the Ministry of Religious Affairs of the Republic of Indonesia through the Office of Religious Affairs (KUA) for Muslims and by the Ministry of Home Affairs of the Republic of Indonesia through the Population and Civil Registration Office for non-Muslims. However, because unregistered marriages are conducted without state registration, exact numbers are difficult to measure accurately. Therefore, available statistics are usually estimates and are derived from social surveys, reports from legal aid organizations, or data on marriage confirmation cases in religious courts. Several studies and annual reports from the Central Statistics Agency (BPS) indicate that the number of

applications for marriage confirmation in religious courts has tended to increase in recent years, indirectly reflecting the practice of previously unregistered marriages. Furthermore, data from the Supreme Court of the Republic of Indonesia, through its Directory of Decisions and case reports, also shows thousands of applications for marriage validation each year in various regions of Indonesia. While these figures do not directly reflect the total number of unregistered marriages, the trend can serve as a quantitative indicator of the existence and scale of the practice.

Various previous studies have examined the social and legal aspects of unregistered marriages in Indonesia. Nurhayati's (2018) study examined the motivations of people choosing unregistered marriages, but its limitations lie in its understanding of the legal consequences of state administration. Suryanto's (2020) study focused more on socio-cultural analysis but did not systematically map the legal impact on the status of wives and children. Rahmawati's (2022) study discussed access to marriage registration services but did not provide a comparative evaluation between Islamic and state legal perspectives. A common weakness of these studies is the lack of comprehensive integration between normative (legal text) and empirical (real socio-legal impact) analysis, particularly in the context of negative impacts on the legal status of wives, children, and property. Few studies have provided concrete empirical data to demonstrate the urgency of resolving this legal issue.

The urgency of this research becomes even more apparent when viewed from the real impact it has had on society. In various religious court decisions, applications for marriage confirmation (*isbat nikah*) filed by couples previously married in secret have revealed a variety of serious problems: children are denied birth certificates due to the lack of parental marriage documentation, wives have difficulty obtaining inheritance rights and social security benefits, and property disputes arise due to the lack of legal recognition of the marriage. These facts confirm that unregistered marriages carry significant legal and social consequences.

Therefore, marriage registration aims to maintain order in society. This is an effort regulated by law to protect the dignity and sanctity of marriage, especially to protect women in married life. Marriages that take place outside the supervision of a registrar remain valid, but are not considered legally binding. For the benefit of and to avoid potential negative impacts of marriage, it is normatively necessary to conduct it in the presence of and under the supervision of a registrar. Based on the issues discussed above, the author is interested in examining the impact of unregistered marriages. In this case, Law Number 1 of 1974, Islamic Law, and Positive Law will be examined.

Methods

This research uses a normative juridical research type, namely a research method that focuses on analyzing a legal event with norms that have been regulated and applied. (Ashshofa, 2007) The characteristics of library research are that it falls under qualitative research methods, meaning that qualitative research must be transformed into library research methods. The field setting is moved into the library, transforming

interviews and observations into text and discourse analysis.(Tan, 2021)This research uses a conceptual approach, a legislative approach, and a fiqh approach.

Primary data sources are taken from laws and regulations, and secondary data sources are taken from books and journals that are relevant to the theme being raised.(Tan, 2021)Meanwhile, secondary data is taken from books and articles that are directly or indirectly related to the issue of validating unregistered marriages. According to Amir Hamzah, data collection in library research is carried out by gathering information relevant to the topic or problem being studied.(Tan, 2021)

Results And Discussion

Result

Marriage in the View of Islamic Law

Sulaiman Rasjid said that in Islamic law, especially as regulated in the Science of Fiqh, the definition of marriage is "a bond that legitimizes association and limits rights and obligations, then mutual assistance between a man and a woman who are not mahram." The marriage contract that has been carried out will provide ownership status for both parties (husband or wife). So that the ownership status resulting from the contract for the husband has the right to obtain biological pleasure and those related to it alone without being interfered with or followed by others, which in fiqh terms is called *milku al-intifa'*, namely the right to have the use or use of an object (in this case the wife), which is used for himself.(Arianto & Rinwanto, 2025)

Sayyid Sabiq further commented: "Marriage is one of the *sunnatullah* (laws) that applies to all of God's creatures, including humans, animals, and plants. Marriage is the way chosen by Allah SWT as a way for humans to procreate, reproduce, and preserve their lives after each partner is ready to fulfill their positive role in realizing the purpose of marriage. Allah SWT did not create humans like other creatures who live freely, following their instincts and having anarchic relationships without rules.(O. Sari & Lessy, 2023)To safeguard the honor and dignity of humankind, Allah SWT established laws in accordance with their dignity, thus establishing a mutually binding relationship between men and women. This form of marriage provides a safe path for sexual instincts, fosters healthy offspring, and protects women from being like grass that livestock can graze on at will. According to Islamic teachings, the relationship between husband and wife is subordinated to maternal and paternal instincts, just as a good field fosters good plants and produces good fruit.(Jainuri et al., 2025)

Therefore, marriage, according to Islamic law, is a sacred and noble spiritual bond between a man and a woman, aimed at forming a peaceful, loving, and compassionate family—one filled with peace, love, and constant hope for the blessings of Allah SWT. Furthermore, marriage is an act of worship intended to obey Allah SWT's commands.

A group of *fuhaha*, namely the majority of scholars, are of the opinion that marriage is *sunnah*.(LW Sari et al., 2024)The *Zahiri* sect holds that marriage is obligatory. Meanwhile, the later *Maliki* scholars hold that marriage is obligatory for some, recommended for others, and permissible for still others. This difference of opinion stems from whether the imperatives in the verses and hadiths about this issue should be interpreted as obligatory,

recommended, or permissible. Marriage, in relation to the implementation of sharia, is recommended (mustahab) for those who need or desire sexual intercourse, provided they can afford the marriage and aim to uphold their religion, perpetuate their offspring, preserve their lineage, and realize the common good, as stated in the saying of the Prophet Muhammad (peace be upon him):

"O young generation, whoever among you is able and desires to marry, let him marry. For indeed, marriage lowers the gaze and guards chastity. And whoever among you is not able, let him fast, for fasting curbs lust." (Narrated by Al-Bukhari and Muslim).

The substance of the above hadith was clearly carried out by the Prophet Muhammad (peace be upon him): he married and maintained his wife. Likewise, his companions followed in his footsteps by marrying and maintaining their families, and this custom was also followed by his followers. Emulating all the actions of the Prophet Muhammad (peace be upon him) demonstrates that marriage is considered sunnah. However, for those whose desires are compelling and who can marry, but who can still restrain themselves from committing adultery, it is also sunnah for them to marry. Marriage, for them, is more important than devotion to worship, as living as a priest is not even remotely permitted by Islam. (Maimun, 2022)

If someone doesn't need to get married but can afford it, and isn't serious about their religious obligations, marriage is preferable to abstaining. The goal is to prevent their free time from leading them to indecency (al-fawahisy). However, marriage is not recommended for those without financial means; in fact, it is recommended that they abstain from marriage altogether. As Allah SWT says in the Quran, Surah An-Nur, verse 33:

وَلَيْسَتُغْفِرَ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُعْزِبَهُمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَالَّذِينَ يَبْتِغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا ۖ وَأَعْتُوهُمْ مِّن مَّالِ اللَّهِ الَّذِي آتَاكُمْ ۖ وَلَا تُكْرَهُوا فَتْيَتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا لِتَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا ۖ وَمَنْ يُكْرِهِنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَّحِيمٌ

"And those who are unable to marry should maintain their (self) chastity, so that Allah will enable them with His grace. And those slaves you have who want an agreement, you should agree with them, if you know that there is good in them, and give them part of the wealth of Allah that He has given you and do not force your female slaves to engage in prostitution, while they themselves desire chastity, because you want to seek worldly gain and whoever forces them, then indeed Allah is Forgiving, Most Merciful after they are forced." (QS. An-Nur: 33).

Thus, the Islamic law of marriage is sunnah, but when related to a person's circumstances, the sunnah law can change according to that person's circumstances. This is the view of later scholars from the Maliki school, who held that marriage is obligatory for some, recommended for others, and permissible for still others. This view is also held by the followers of Imam Shafi'i and Imam Ahmad ibn Hanbal.

In Islam, a marriage is considered valid when it has been carried out with the correct conditions and pillars, even if it is not registered. However, one of the objectives of Islamic law (maqashidu syari'ah) is to bring benefits and avoid harm, because marriages that are not registered by the government cause harm to the wife, children, and joint property, so the registration of marriages by the government is considered by some to be a dangerous problem because it is not mentioned in detail in the Quran and Hadith. The law applied

based on this ijihad can change according to conditions, as long as the change in law is for the benefit and does not conflict with the Quran and Hadith or maqashidu syari'ah, based on the rules of fiqhiyah:

تغيير الاحكام بتغيير الاحوال والأزمنة

This means: "The law can change due to changes in circumstances and times."

According to Abdul Manan, several factors act as tools or factors that change the law, namely globalization, socio-cultural factors, political factors, economic factors, science and technology, education, law, and the rule of law. Furthermore, some people use *maslahah mursalah* as the basis for their opinions. This theory teaches that what is not explicitly commanded in the Quran and Hadith can be made into regulations that are required based on the benefit, while simultaneously avoiding harm. Based on this way of thinking, marriage registration is highly recommended to protect the welfare of the husband, wife, and their children, because it is considered that unregistered marriages cause more harm than good.

Marriage in the Positive Legal Perspective in Indonesia

Marriage is a legal act and therefore has legal consequences. The existence of these legal consequences is crucial to the validity of the legal act. (Fausi & Mubarak, 2024) Therefore, whether a marriage is valid or not is determined by the applicable law (positive law), namely based on the provisions of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states: "Marriage is valid if it is carried out according to the law of each religion and belief." Meanwhile, according to Article 2 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, that: "Marriage according to Islamic law is marriage, namely a very strong contract or *mitsaqan ghalidhan* to obey Allah's commands and carrying it out is worship."

The validity of a marriage according to Law Number 1 of 1974 concerning Marriage is determined in Article 2 paragraph (1), which states that: "A marriage is valid if it is carried out according to the laws of each religion and its beliefs." From this provision, it can be seen that the Marriage Law emphasizes the validity of a marriage on two elements, namely that the marriage must be carried out in accordance with the conditions and procedures determined by law (state law) and religious law. This means that if a marriage is only carried out according to the provisions of state law without paying attention to religious provisions, then the marriage is invalid, and vice versa. (Prawiradilaga et al., 2024)

The government's involvement in marriage activities is in matters relating to the administrative process, so that marriages must be registered as stated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states: "Every marriage is registered according to the applicable laws and regulations." This registration, it will protect the husband and wife and their children, including for the benefit of the assets contained in the marriage. (Prayoga et al., 2024)

Marriage registration for Muslims is carried out by the Marriage, Divorce and Reconciliation Registration Officer as regulated in Law Number 32 of 1954 concerning the Determination of the Applicability of Law of the Republic of Indonesia dated November 21, 1946, Number 22 of 1946 concerning the Registration of Marriage, Divorce and

Reconciliation in All Regions Outside Java and Madura. For those of religions other than Islam, registration is carried out at the Civil Registry Office. This registration does not determine the validity of a legal event of a marriage, but only provides proof that the legal event has occurred and is carried out, so it is only administrative in nature, because the validity of the marriage itself is determined by each religion and its beliefs. (Muhrisal et al., 2024)

This means that if a marriage has fulfilled the requirements and the pillars of marriage or *ijab kabul* have been carried out (for Muslims) or the priest/pastor has carried out the blessing or other rituals, then the marriage is valid, especially in the eyes of the religion and beliefs of the community. (Khoiriyah, 2024) However, the validity of this marriage in the eyes of the religion and beliefs of the community needs to be further validated by the state, which, in this case, is stipulated in Article 2, Paragraph 2 of the Marriage Law, concerning marriage registration. Regarding marriage registration, it is explained in Chapter II, Article 2 of Government Regulation No. 9 of 1975 concerning Marriage Registration. For those who marry according to Islam, registration is carried out at the Office of Religious Affairs (KUA). Meanwhile, to register the marriage of those who practice religions and beliefs other than Islam, it is sufficient to use the legal basis of Article 2, paragraph 2 of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974. Marriages are registered with a registrar appointed by the state (government). The government is obliged to register, and as legal evidence of the marriage bond, a marriage certificate is provided. (Mohfalatehan et al., 2024) The purpose of the marriage certificate is to regulate the legal relationship between the two parties as legally married. Therefore, marriage law and the marriage certificate are legal events protected by law and have valid legal consequences.

Discussion

Secret Marriage in the Perspective of Islamic Law and State Law

Marriage is a noble act, principally intended to establish a lasting spiritual and physical bond, not a temporary one that can then be severed. Based on this nature of the marital bond, it is possible to establish a harmonious, loving, compassionate, peaceful, and orderly household, as well as to produce offspring who are good in society. (Yuliarti et al., 2024)

Regarding secret marriages, Imam Abu Hanifah, Imam Malik, and Imam Syafi'i agree that it is not permissible to conduct a secret marriage (*sirri*). They differ in opinion regarding whether the marriage is classified as a secret marriage or not if two witnesses are brought and both are instructed to keep it secret. Imam Malik said that it is a secret marriage and must be annulled, while Imam Abu Hanifah said that it is not classified as a secret marriage. (Fathiah, 2023)

The difference of opinion among them lies in the question of whether testimony in this case is a matter of Islamic law or whether the purpose of such testimony is to close the way for disputes or denials. Scholars who assert that it is a matter of Islamic law say that testimony is one of the requirements for validity, while scholars who believe that testimony is only for proof say that testimony is a requirement for perfection. (Kumalasari, 2024)

In its development, the secret marriages that occur in Indonesia today are marriages that fulfill the requirements and pillars of marriage, so that they are considered valid according to Islamic law.(Fathiah, 2023)However, if a marriage is performed without a guardian and witnesses, it is invalid. A secret marriage can also be defined as a marriage conducted in secret. Some are registered but hidden from the public, while others are not registered with the Marriage Registrar (PPN) or the Office of Religious Affairs (KUA).(Zakaria & Saad, 2021)

Meanwhile, in the view of KH. Ma'ruf Amin, the Fatwa Commission of the Ulama Ijtima' Forum, deliberately used the term "marriage under the hand." Besides distinguishing the commonly known "sirri" marriages, this term is more in line with Islamic religious principles. According to him, the term "marriage under the hand" is used to distinguish it from "sirri" marriages, which have different connotations. If a "sirri" marriage is defined as a marriage performed by only two people, without the other requirements and pillars of marriage, then such a marriage is certainly invalid.(Asripa et al., 2020) Thus, the legal status of a secret marriage according to Islamic jurisprudence or law is valid, just like any other marriage, as long as it meets the requirements and pillars of Islamic marriage, namely a marriage contract, a prospective husband and wife, two witnesses, and a guardian. However, in...

A secret marriage is a marriage contract between a man and a woman whose implementation is based solely on Islamic religious provisions without paying attention to the provisions in Law Number 1 of 1974 concerning Marriage.(Surya, 2020)A secret marriage is a marriage that is not registered at the Marriage Registry Office. This secret marriage will have legal consequences for the husband and wife, any children born, and property from the marriage, because the secret marriage they conducted lacks authentic evidence and therefore has no legal force. The government has expressly mandated marriage registration as stated in Article 2 of Law Number 1 of 1974 concerning Marriage. This regulation clearly states that each marriage must be registered according to applicable laws. The more detailed procedures are contained in Articles 10, 11, 12, and 13 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.(Nurmadiyah, 2023)

If a marriage is conducted solely in religious terms and is not registered with the authorized agency, in this case, the District Office of Religious Affairs (KUA), the husband may deny the marriage. Therefore, Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage are an inseparable unit as a requirement for the validity of a marriage. In principle, every regulation implemented by the government is based on the common good (mashlahah 'ammah). There are many factors behind the formation of these regulations.(Rahmatullah, 2021)This includes marriage regulations, which began to be observed long after Indonesia's independence. Thus, behind all of this, there are implicit benefits expected to be achieved when each individual implements them. Therefore, a secret marriage, according to Indonesian law, is considered invalid because it fails to meet the requirements for a valid marriage, namely that every marriage must be registered according to applicable law.

The Influence of Secret Marriage on the Status of Wife, Children, and Property

As explained in the previous discussion, a secret marriage that fulfills all the conditions and pillars of Islamic law is a valid marriage. (Hasyim, 2021) The wife's position in marriage is equal to that of her husband, and its legal consequences are no different from those of marriages generally found in Islam. Regarding the wife's position in a secret marriage, according to Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, because a secret marriage is not recognized and recognized by state law, such marriages do not have the right to legal protection. The rights of both the wife and husband can be protected by law after having authentic evidence of their marriage. (Hertina, 2020)

Article 6 of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law states that unregistered marriages have no legal force. They are even considered a violation, as stipulated in Article 45 of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage.

Problems arise when a marriage is valid (meeting the requirements and pillars according to Islam) but not registered with the state registry office. This typically leads to numerous post-nuptial issues. Undeniably, unregistered marriages bring joy in the beginning, disaster in the end, and negative consequences due to the lack of legal rights. (Surur, 2022) The negative consequences of unregistered marriages are a clash of interests between those who engage in unregistered marriages, who refuse to register their marriages, on the one hand, and the state's interest in regulating population administration, on the other. This leads to unregistered marriages being denied state recognition. One form of this recognition is a marriage certificate as authentic proof of the marriage. A marriage certificate provides legal force, and its rights are protected by law. Therefore, unregistered marriages have a detrimental effect on a woman's status as a wife. Legally, a woman who marries unregistered is not considered a legitimate wife, is not entitled to maintenance or inheritance from her husband if he dies, and is not entitled to joint property or joint assets in the event of divorce. (Darmawan et al., 2023)

The position of children as a result of marriage is an important part of a family according to Islamic law. Children born from unregistered marriages are legitimate children. A legitimate child is a child who is considered to be born from a legal marriage between his father and mother. And whether a child is valid in Islam determines whether or not there is a fatherly relationship (*nasab*) with a man. In terms of the family relationship with one's father, it is not determined by human will or willingness, but is determined by marriage in the name of Allah SWT whose conditions and harmony are met. (Surur, 2022) Scholars agree that a child born less than 6 (six) months old is not classified as belonging to the father's lineage, whether born at the time of the marriage contract or at the time of *dukhul* (after intercourse). However, scholars have different opinions regarding the determination of lineage due to the decision of the *qafah* (lineage experts), namely two people who have intercourse during the same period of purity, whether due to slavery or marriage. (Basir, 2022)

This legal definition of qafah applies to adopted children recognized by two or three people. According to the Arabs, qafah refers to a group of people who possess knowledge of similar lineages among humans, as currently proven by DNA testing. Scholars who adhere to the qafah ruling include Imam Malik, Shafi'i, Ahmad, Abu Thawr, and Al-Auza'i. However, scholars of Kufa and the majority of Iraqi scholars reject the qafah ruling.

Sirri marriages are said to be valid because the terms and conditions are met. So that children born from sirri marriages are also considered legitimate and have the right to receive recognition from their father and their father's family as well as receive inheritance rights and support from their parents. Apart from that, children also have the right to receive maintenance, care, education, care and protection from their parents. As Allah SWT says in the Koran:

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا نُضَارُّ بِوَالِدَيْهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدَيْهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِّنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا بَاءْتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ﴾

Meaning: "Mothers should breastfeed their children for two full years, that is, for those who want to complete breastfeeding. And it is the father's obligation to feed and clothe mothers in a virtuous manner. A person is not burdened except according to the level of his ability. Let not a mother suffer misery because of her child nor a father because of his child, nor the heirs are obliged to do so. If both of them wish to wean (before two years) with the consent of both of them and by mutual consultation, then there is no sin on either of them. And if you want your child to be fed by someone else, then there is no sin for you if you pay according to what is appropriate. Fear Allah and know that Allah is All-Seeing of what you do." (QS. Al-Baqarah: 233)

Then, children resulting from unregistered marriages as legitimate children in Islamic law must also have all their rights fulfilled in terms of their position as children, as mentioned by Abdur Rozak in his book "Children's Rights in Islam", that children's rights include the rights of children before and after birth, the rights of children in the purity of their offspring, the rights of children in receiving a good name, the rights of children in receiving breastfeeding, the rights of children in receiving proper care, care and maintenance, the rights of children in ownership of property or inheritance rights for the sake of survival, and the rights children in the field of education and teaching. (Soraya et al., 2025) Therefore, Islam does not differentiate between children in unregistered marriages. As long as the marriage meets all the pillars and requirements stipulated in Islamic law, it is valid, and the children born of the marriage are equally entitled to the same rights as legitimate children.

Positive law in Indonesia distinguishes between legitimate and illegitimate offspring. Legitimate offspring are based on a valid marriage, meaning that one is the offspring of the other by birth within or as a result of a valid marriage; such children are referred to as legitimate children. Illegitimate offspring are those not based on a valid marriage; such children are referred to as illegitimate children. (Nugraha & Jamilah, 2021)

According to Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, a legitimate child is a child born in or as a result of a legal marriage, even if the child is born from the marriage of a pregnant woman whose pregnancy is less than 6 (six) months old since she was officially married. Regarding legitimate children and children born outside of marriage, Law Number 1 of 1974 concerning Marriage has regulated it in Articles 42, 43 and 44, namely:

Article 42

A legitimate child is a child born in or as a result of a legitimate marriage.

Article 43

- 1) Children born outside of marriage only have a civil relationship with their mother and her mother's family
- 2) The position of the child referred to in paragraph (1) above will be further regulated in the Government Regulation.

Article 44

- 1) A husband can deny the legitimacy of a child born to his wife if he can prove that his wife has committed adultery and the child is the result of that adultery.
- 2) The court makes a decision on whether or not a child is legitimate at the request of the interested party.

Based on Constitutional Court Decision Number 46/PUU- VIII/2010 dated 13 February 2012, Article 43 paragraph (1) above must be read,

"A child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family."

A legally recognized illegitimate child is one of the heirs according to the law regulated in the Civil Code, based on Article 280 in conjunction with Article 863 of the Civil Code. The illegitimate child who has the right to inherit is an illegitimate child in the narrow sense, considering the doctrine of classifying illegitimate children into 3 (three) groups, namely illegitimate children, adulterous children, and incestuous children, in accordance with the mention in Article 272 in conjunction with Article 283 of the Civil Code (regarding adulterous and incestuous children). An illegitimate child who has the right to inherit is in accordance with the provisions in Article 280 of the Civil Code. Thus, children born from unregistered marriages or illegitimate children can get recognition as legitimate children and have a civil relationship not only with their mother, but with their father and their father's family, if their blood relationship can be proven based on science and technology or other evidence. So that the civil relationship with their father or mother is protected and guaranteed by law.

Marriage has legal consequences not only for those who enter into the marriage, but also for the rights and obligations that bind the husband and wife, and has legal consequences for the husband and wife's assets. The legal relationship between family and property is so closely intertwined that the two can be distinguished but cannot be separated. The legal relationship between family and property determines the legal relationship

between property, and marital property law is nothing more than family property law. (Surur, 2022)

There are two types of property arising from marriage: property brought from outside the marriage, which already existed at the time of the marriage, or property brought in, and property acquired jointly or individually during the marriage, also known as joint property. Generally, Islamic law (the Quran, Hadith, and Islamic jurisprudence) does not recognize the existence of joint property. Rather, Islamic law emphasizes the separation of property between husband and wife. What the husband earns is his property, and vice versa; what the wife earns is her property. As a husband, he obligates himself to give a portion of his property to his wife in the name of maintenance, which she then uses for her household needs. There is no consolidation of property, except in the form of a partnership (syirkah), which is carried out in a special contract for partnership (syirkah). Without such a contract, the property remains separate. (Yunus, 2025)

In the Al-Quran, Surah An-Nisa verse 32, it explains the separate property rights of men and women, both of whom have their own property, namely:

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِّلرِّجَالِ نَصِيبٌ مِّمَّا كَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا كَسَبْنَ
وَسْءَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّا اللَّهُ كَان يَكُلِّ شَيْءٍ عَلِيمًا

Meaning: "And do not envy what Allah has given some of you more than others. For men, there is a share of what they have earned, and for women, there is a share of what they have earned. And ask Allah of His bounty. Indeed, Allah is Knowing of all things." (QS. An-Nisa': 32)

This verse is general, not directed at just husbands or wives, but at all men and women. If they strive in life, then their efforts constitute personal property owned and controlled by each individual. Meanwhile, in inheritance law, this verse implies that every man and woman has the right to receive a share of the inheritance left by their parents. Ahmad Azhar Basyir argues that Islamic law grants each partner, whether husband or wife, the right to own property individually, which cannot be interfered with by either party. A husband who receives a gift, inheritance, or other such thing has the right to fully control the property he receives without any interference from his wife. The same applies vice versa. Thus, the property they owned before marriage becomes the property of each spouse. (Novikawati et al., 2022)

Khoiruddin Nasution echoed this sentiment, stating that Islamic law regulates the separation of marital property as long as the parties do not specify otherwise, specifically in the marriage contract. Islamic law allows couples the flexibility to enter into a legally binding marriage agreement. Furthermore, if an agreement is made in the marriage contract for the consolidation of assets, what the husband or wife acquires becomes joint property, and there is joint property in the marriage. (Darmawan et al., 2023)

Thus, the occurrence of a marriage contract does not automatically create joint property. However, joint property in marriage can occur, and is only possible in two forms: First, the existence of a syirkah contract between husband and wife, either made during the marriage contract or afterward. Second, the existence of an agreement made to that effect during the marriage contract. Based on this, the issue of joint property in Islamic law is not

actually explained in more detail, so it is still open to Islamic legal experts to explore the law using the qiyas method. Thus, from the views of several experts, it can be seen that the Islamic provision on separating the assets of husband and wife actually makes it easier for husband and wife in the event of a divorce, because the process is easier and less complicated. (Musfira et al., 2021)

One of the legal consequences of a marriage is the existence of marital property. As explained in the previous discussion, after marriage, the property acquired during the marriage becomes the joint property of the husband and wife. Regarding joint property or marital wealth, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law regulates it in Chapter XIII, Articles 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, and 97. The existence of joint property in marriage does not preclude the possibility of property belonging to the husband or wife (Article 85).

Basically, there is no mixing between the husband's assets and the wife's assets due to marriage. The wife's property remains the right of the wife and is fully controlled by her; the husband's property remains the right of the husband and is fully controlled by him (Article 86). If there is a dispute between husband and wife regarding joint property, then the resolution of the dispute is submitted to the Religious Court (Article 89). Meanwhile, if a divorce occurs, each ex-husband and wife is entitled to half of the joint assets as long as it is not specified otherwise in the marriage agreement (Article 97).

Regarding joint property or marital property, this is regulated by Indonesian law, namely Law Number 1 of 1974 concerning Marriage. Joint property is regulated in one chapter, namely Chapter VII concerning Marital Property, which consists of three articles: Articles 35, 36, and 37, as follows:

Article 35

- 1) Property acquired during marriage becomes joint property.
- 2) The inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance are under their respective control as long as the parties do not determine otherwise.

Article 36

- 1) Regarding joint property, the husband or wife can act with the agreement of both parties.
- 2) Regarding their respective assets, husband and wife have full rights to do sole legal action regarding his property.

Article 37

If a marriage ends due to divorce, property is regulated according to the respective laws.

Based on the description above, under the Indonesian Marriage Law, the division of joint assets in the event of a divorce can be resolved through both deliberation and filing a lawsuit with a religious court if an agreement cannot be reached outside the court. Therefore, joint assets resulting from a secret marriage cannot be submitted to the court unless a marriage confirmation (itsbat nikah) has been performed beforehand.

Conclusion

Sirri's marriage, according to Islamic jurisprudence or law, is valid as long as it fulfills the pillars and requirements of marriage in Islam, even though the marriage is not registered with the authorized agency. b. Sirri's marriage, according to positive law, is

regulated in Law Number 1 of 1974 concerning Marriage. Sirri marriage is not recognized; it is only stated that a marriage is valid if it is carried out according to the laws of each religion and belief and is recorded according to the applicable laws and regulations.

The wife's status under Islamic law is the same as in a registered marriage, but the state does not recognize it. Children's status under Islamic law remains the same as in a registered marriage. However, from the perspective of positive law, in the absence of a marriage certificate, the child's birth certificate only lists the name of the mother who gave birth, but not the name of the father. The child is considered an illegitimate child, having only a civil relationship with the mother. The status of property in a secret marriage under Islamic law is calculated according to Islamic law. However, when faced with state law, the wife is usually the victim if the husband, in bad faith, denies the marriage and claims that the joint property belongs to him.

Given the widespread legal implications of unregistered marriages, various parties, including the government, religious leaders, community leaders, legal practitioners, and others, should actively promote the importance of a valid marriage according to religion and recognized by the state. The government, in this case, law enforcement officials, should implement a more stringent policy by recording and confirming every marriage known to have been performed unregistered, so that the rule of law in this country can be further upheld. The author welcomes further research on this topic to enhance the body of knowledge that will benefit both academics and practitioners.

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