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Unregistered Islamic Marriages (Nikah Siri) And Their Legal Consequences For The Protection Of Children's And Wives' Rights

(A Case Study in Boro-Boro Village, South Konawe Regency)

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Abstract:

This study aims to analyze the concept of nikah siri (an Islamic marriage that is not officially registered) under Islamic law and Indonesia's Marriage Law, and to identify its legal consequences for the fulfillment of children's and wives' rights. The study employs a descriptive qualitative approach and was conducted in Boro-Boro Village, Ranomeeto Subdistrict, South Konawe Regency. Data were collected through observation, interviews, documentation, and a literature review, and analyzed through data reduction, data presentation, interpretation, and conclusion drawing. The findings indicate that nikah siri is influenced by economic constraints, the desire to avoid illicit sexual relations, and polygamy. Although such marriages may be considered valid under certain interpretations of Islamic law when all essential elements and conditions are met, an unregistered marriage creates legal consequences for the protection of wives' and children's rights, particularly with regard to maintenance, guardianship, children's legal status, and inheritance. One available legal remedy is to submit an application for itsbat nikah (judicial confirmation of a marriage) to the Religious Court. If granted, the decision can provide a basis for official registration, thereby protecting the civil rights of the husband, wife, and children in accordance with applicable legislation.

Keywords: nikah siri; legal protection; children's rights; wives' rights; itsbat nikah.

Introduction

Marriage is a fundamental institution in both Islamic law and national law. In Islam, marriage is regarded as a mitsaqan ghalizhan, or solemn covenant, undertaken in obedience to God. It is an act of worship intended to establish a family characterized by sakinah (tranquility), mawaddah (love), and rahmah (compassion). This philosophical foundation integrates faith, worship, and social transactions.[1] Meanwhile, Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, defines marriage as a physical and spiritual bond between a man and a woman for the purpose of establishing a happy and lasting family based on belief in the One Almighty God.[2] Accordingly, marriage must comply not only with religious requirements but also with state administrative requirements, including registration.

Marriage practices in Indonesia take various forms, including marriages registered through the Office of Religious Affairs (Kantor Urusan Agama, KUA), elopements, and the practice commonly known as nikah siri. An unregistered marriage—also referred to as an under-the-table marriage or a secret marriage—is performed in accordance with religious rules or customary practices but is not recorded by the marriage registrar at the KUA for Muslims or by the Civil Registry Office for non-Muslims. The term siri derives from the Arabic sirr or israr, meaning secret. In its literal sense, nikah siri is a marriage conducted privately or secretly, without a public ceremony or the presence of an authorized marriage registrar. It may be considered religiously valid while remaining non-compliant with state requirements.[3]

Unregistered marriages continue to occur in Indonesia. From a fiqh perspective, nikah siri may be considered valid when the essential pillars and conditions of marriage are fulfilled.[4] From the perspective of positive law, however, failure to register a marriage creates legal problems, especially in proving marital status and protecting family members' civil rights.[5] This

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[1] Abdullah Kelib, *Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991* (Semarang: Fakultas Hukum Universitas Diponegoro, 1993), 166.

[2] Wati, Asrat Nita, Pagar Pagar, and Hasan Matsum. "Legal Protection for Wives in Unregistered Polygamous Marriages: An Analysis of Islamic Law in Indonesia." *Pena Justisia: Media Komunikasi dan Kajian Hukum* (2025). https://doi.org/10.31941/pj.v24i2.6589.

[3] Mahmud Yunus, *Hukum Perkawinan dalam Islam*, Cet. VIII (Jakarta: Hidakarya Agung, 1979), 176.

[4] Lahaji, L., & Sulaiman Ibrahim. Fiqh Perempuan Keindonesiaan. *Al-Bayyinah, 3* (1) 2019, 1-14. doi: https://doi.org/10.35673/al-bayyinah.v3i1.127

[5] Saidus Syahar, *Undang-Undang Perkawinan dan Masalah Pelaksanaannya Ditinjau dari Segi Hukum Islam* (Bandung: Alumni, 1981), 22.

situation illustrates a gap between religious validity under Islamic law and administrative recognition by the state.[6]

Marriage registration is an important means of guaranteeing legal certainty for husbands, wives, and children. Without registration, obtaining legal protection may become difficult, particularly in relation to maintenance, guardianship, children's legal status, inheritance, and access to civil-administration services. Family disputes arising from nikah siri are often addressed through an application for itsbat nikah, a procedure intended to obtain legal recognition of a marriage that has already taken place.

The Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), through its 2006 Ulama Conference, stated that nikah siri may be considered valid when its essential elements and conditions are fulfilled, but marriage registration remains obligatory to prevent harm to wives and children. Registration is therefore not merely an administrative obligation; it is also an instrument for protecting family members' civil rights.

Previous studies have largely adopted a normative approach and have not examined in sufficient depth the actual impact of nikah siri on the protection of children's and wives' rights at the village level. Empirical studies of the causes of unregistered marriages and the role of village government in providing legal protection remain limited, particularly in Boro-Boro Village, Ranomeeto Subdistrict, South Konawe Regency. This research gap calls for an empirical study linking Islamic law, positive law, and social realities. The novelty of this study lies in its integrated analysis of the legal consequences of nikah siri for the protection of children's and wives' rights through a village-level empirical approach.

Marriage under Islamic Law and the Marriage Law

In its general sense, marriage may refer to sexual relations; in its juridical or figurative sense, it is a contract that renders sexual relations between a man and a woman lawful as husband and wife.[7] Marriage can therefore be examined from two perspectives: Islamic law and Indonesia's Marriage Law, namely Law No. 1 of 1974 and the Compilation of Islamic Law.

Linguistically, *az-zawaj* is an Arabic term indicating the joining of two things. The Qur'an uses related language in describing the joining of souls (Qur'an 81:7) and the pairing of believers with beautiful-eyed companions in Paradise (Qur'an 52:20). The term is also associated with *al-'aqd*, a bond or

[6] Lahaji, L., & Sulaiman Ibrahim. Fiqh Perempuan Keindonesiaan. *Al-Bayyinah, 3* (1) 2019, 1-14. doi: https://doi.org/10.35673/al-bayyinah.v3i1.127. Lihat Kelib, Abdullah. Kompilasi Hukum Islam Berdasar Instruksi Presiden Nomor 1 Tahun 1991 dalam Tata Hukum Nasional: Pidato Pengukuhan Diucapkan pada Upacara Peresmian Penerimaan Jabatan Guru Besar Tetap pada Fakultas Hukum Universitas Diponegoro Semarang, 16 Januari 1993.

[7] Moh. Idris Ramulyo, *Hukum Perkawinan Islam, Suatu Analisis Dari Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam* (Jakarta : Bumi Aksara, 2002). 148

contract joining a man and a woman.[8] In Islamic jurisprudence, marriage is a bond that makes sexual relations between a man and a woman lawful, subject to the prohibitions established by Islamic law.[9] The term *an-nikah* is closely related, although scholars have differed over whether its primary meaning is marriage or sexual intercourse. Marriage is considered a particularly significant bond because it connects two people through love and affection, enables the continuation of human lineage, and protects them from illicit conduct.[10]

Although scholars formulate the definition of marriage in different ways, they share the view that it is a contract between a man and a woman intended to establish a family characterized by sakinah, mawaddah, and rahmah, and that it constitutes a solemn covenant (*mitsaqan ghalizhan*). Sulaiman Rasjid describes marriage as a voluntary and mutually accepted agreement that makes sexual relations lawful and aims to create a happy family life filled with affection and tranquility in a manner pleasing to God.[11]

Article 1 of Law No. 1 of 1974, as amended by Law No. 16 of 2019, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, intended to establish a happy and lasting family based on belief in the One Almighty God. Articles 2 and 3 of the Compilation of Islamic Law characterize marriage as a strong covenant to obey God, an act of worship, and a means of realizing a household marked by sakinah, mawaddah, and rahmah. In principle, these definitions are consistent.

The Civil Code, by contrast, approaches marriage primarily as a civil relationship. Article 81 also provides that a religious ceremony may not be conducted before the parties demonstrate that their marriage before the civil registrar has taken place. This formulation is not entirely aligned with the marriage framework described above. Marriage has far-reaching legal consequences: it creates rights and obligations, including the duty to live together, remain faithful, provide household support, and recognize inheritance rights.[12]

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[8] Al-Qodhi Asy-Syaikh Muhammad Ahmad Kanan*, Ushulul Muasyarotil Zaujiyah - Tata Pergaulan Suami Isteri,* (Jogjakarta : Maktab al-Jihad, 2007), 2.

[9] Firman, Kafka Nafisa, Adyan Dhio Akhdany, and Rizky Ramadhan. "Analysis of the Validity and Legal Implications of Siri Marriage on the Rights of Wives and Children." *ALSYS* (2026). https://doi.org/10.58578/alsys.v6i1.8647.

[10] Ibrohim Hosen, *Fiqh Perbandingan dalam Masalah Nikah dan Rujuk* (Jakarta : Ihya Ulumuddin, 1971), 65.

[11] Sulaiman Rasjid, *Fiqh Islam* (Bandung : Sinar Baru Algensindo, 2000), 374

[12] Soemiati*, Hukum Perkawinan Islam dan Undang-Undang Perkawinan* (Yogyakarta : Liberty 1999), 8.

Findings and Discussion

Factors Contributing to Nikah Siri

1. Economic Factors

One of the main factors encouraging residents of Boro-Boro Rambu-Rambu, Ranomeeto Subdistrict, South Konawe Regency, to enter unregistered marriages is economic hardship. Limited financial resources lead some couples to choose a marriage that fulfills Islamic requirements without registering it at the KUA. They regard nikah siri as simpler, less expensive, and free from administrative procedures they consider complicated.[13]

This view indicates that economic circumstances influence compliance with marriage-registration requirements. Although registration is required by legislation, some community members believe that a marriage's validity depends solely on fulfillment of the pillars and conditions prescribed by Islamic law. State administration is consequently viewed as supplementary rather than as a legal requirement that must be met. Respondents also stated that registration involves numerous documents and a relatively lengthy process.[14] Some therefore choose what they consider an easier route: a ceremony conducted by a religious leader or kyai in the presence of the couple, the bride's guardian, and two witnesses. They believe that these elements satisfy Islamic law and make the marriage valid despite the absence of official registration.

2. Preventing Zina

Another factor is the desire to prevent zina, or illicit sexual relations. Some community members view marriage as an effective way to protect personal and family honor, particularly when a relationship has continued for a long time or is feared to be moving toward conduct prohibited by religious or social norms. Nikah siri is selected as a way to avoid premarital relations even though the marriage is not registered under state law.[15]

This perception is influenced by parents' concerns about what they regard as increasingly permissive social interactions among young people. Respondents believe that frequent interaction between unmarried men and women may lead to behavior contrary to religious values. Some parents therefore arrange a nikah siri as a preventive measure to preserve family honor

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[13] Soraya, Wiranda, Bukhari Ali, and Muhammad Husnul. "Legal Protection of Women and Children in the Practice of Nikah Sirri (Unregistered Marriage)." *al-Rasīkh: Jurnal Hukum Islam* (2025). https://doi.org/10.38073/rasikh.3323.

[14] Noer, Chafidzul Hakim, Dahlan Thamrin, and Budi Parmono. "Approval Of Sirri Marriage From The Perspective Of Islamic Law And State Law And Its Influence On The Position Of Wife, Children, And Property." *Urwatul Wutsqo: Jurnal Studi Kependidikan dan Keislaman* (2026). https://doi.org/10.54437/urwatulwutsqo.v15i01.2871.

[15] Ali, Afandi. *Hukum Waris, Hukum Keluarga, Hukum Pembuktian menurut Kitab Undang-Undang Hukum Perdata (BW)*. (Jakarta: Bina Aksara, 2000). 76.

and avoid pregnancy outside marriage. Several parents reported feeling more at ease after their children had entered a religious marriage, believing that the risk of zina had been reduced, even though the marriage had not received administrative recognition from the state.

These accounts indicate that preventing zina is a significant motivation for nikah siri in Boro-Boro Rambu-Rambu. Community members tend to prioritize religious validity over the state's registration requirement, which they often regard as an administrative matter that can be addressed later.

3. The Desire to Practice Polygamy

The findings also identify the husband's desire to practice polygamy as a factor behind nikah siri. Some respondents chose an unregistered marriage because they faced difficulties meeting the legal requirements for polygamy, particularly because the first wife did not consent. They consequently treated nikah siri as an alternative way to marry another woman without following the state's licensing procedures.

Indonesia's marriage system is based on the principle of monogamy, as stated in Article 3(1) of Law No. 1 of 1974, as amended by Law No. 16 of 2019: in principle, a man may have only one wife and a woman only one husband. The law nevertheless permits polygamy under certain conditions, including obtaining court authorization and satisfying statutory requirements.[16] Polygamy is therefore not absolutely prohibited, but it is regulated through legal mechanisms intended to protect wives' and children's rights.[17]

The findings show that some respondents considered these procedures complicated and chose nikah siri instead. Because the second marriage was not registered, the relationship between the husband and second wife lacked administrative recognition by the state, potentially creating legal problems concerning the rights of the wife and any children born from the marriage. Some respondents also said that they chose nikah siri to preserve harmony with the first wife or avoid family conflict.

The Legal Status of Nikah Siri

Every legal act gives rise to legal consequences, and nikah siri is no exception. Although an unregistered marriage may fulfill the pillars and conditions of marriage under Islamic law, failure to register it with the authorized institution creates various juridical consequences. Its status must therefore be examined under both Islamic law and Indonesia's positive law before considering its effects on spouses, children, and property.

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[16] Ahmad Dimas Putra Deva, and Rahayu Hartini. "Perlindungan Hukum Mengenai Hak Istri dan Anak Hasil Perkawinan Siri." Satya Dharma: Jurnal Ilmu Hukum 8, no. 1 (2025). https://doi.org/10.33363/sd.v8i2.1566.

[17] Ahmad Kanan, Al-Qodhi Asy-Syaikh Muhammad. Ushulul Muasyarotil Zaujiyah: Tata Pergaulan Suami Isteri. Jogjakarta: Maktab al-Jihad, 2007.

Under Indonesia's marriage system, validity is not considered solely in terms of religious requirements; marriage registration is also an important administrative requirement. Registration protects the parties and provides legal certainty, with the marriage certificate serving as authentic evidence of the marital relationship. In Boro-Boro Rambu-Rambu, nikah siri is generally conducted without a Marriage Registrar (Pegawai Pencatat Nikah, PPN). The marriage is consequently not officially recorded at the KUA and has no marriage certificate recognized by the state.[18]

Article 2 of Government Regulation No. 9 of 1975, implementing Law No. 1 of 1974, provides that marriages performed under Islam are registered by the Marriage Registrar in accordance with the relevant regulations, while marriages performed according to other religions and beliefs are registered by the Civil Registry Office.[19] Registration is thus an integral part of the national marriage-law system. Although registration is not itself a pillar or condition of validity under Islamic jurisprudence, it is essential for proving marital status, the relationship between spouses, a child's status, and other civil rights.[20]

The marriages observed in Boro-Boro Rambu-Rambu generally fulfilled the Islamic requirements, including the presence of a prospective husband and wife, a marriage guardian, two witnesses, and the offer and acceptance (*ijab* and *kabul*). They were therefore regarded by the parties as valid under Islamic law.[21] However, because they were not registered with the competent authority, they lacked formal administrative recognition and could be difficult to prove in subsequent legal disputes. This demonstrates the distinction between religious validity and recognition under positive law.

Indonesian law provides a possible remedy through an application for itsbat nikah to the Religious Court. If granted, the court's determination may form the basis for registering the marriage at the KUA and obtaining a marriage certificate. In this way, a marriage previously recognized only on religious grounds may also receive state recognition, strengthening the protection of the civil rights of the husband, wife, and children.

Legal Consequences for Husbands and Wives

Marriage creates a physical and spiritual bond between spouses and gives rise to reciprocal rights and obligations. From the moment the marriage

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[18] Republik Indonesia. *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.*

[19] Lahaji dan Sulaiman Ibrahim, Wawasan Fikih Indonesia: Studi tentang Periwayatan dan Penalaran Hukum Wali Nikah, *Al-Ulum*, Vol. 19 No 1, June 2019. h 1-26. https://doi.org/10.30603/au.v19i1.701

[20] Muqhniyah, Muhammad. *Pernikahan Menurut Hukum Perdata dari Lima Mazhab Ja'fari, Hanafi, Maliki, Syafi'i, dan Hambali.* (Yogyakarta: Kota Kembang, 1978). 53.

[21] Ramulyo, Moh. Idris. *Hukum Perkawinan Islam: Suatu Analisis dari Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam.* (Jakarta: Bumi Aksara, 2002). 34.

contract is concluded, the parties' legal positions are connected in domestic life and in their dealings with others. Marriage therefore has not only a religious dimension but also legal consequences that require state protection.

In Boro-Boro, the relationship between spouses in nikah siri is generally based on the parties' agreement and advice given by religious leaders at the ceremony. In practice, the fulfillment of marital rights and obligations depends heavily on each party's willingness to accept responsibility. Because the marriage is not officially registered, however, state protection of the spouses' rights is limited.[22]

Without an authentic marriage certificate, either spouse may face difficulty asserting rights through legal procedures. In cases involving disputes, abandonment, divorce, division of marital property, or inheritance, a couple may need to obtain legal recognition through itsbat nikah before pursuing certain claims in the Religious Court. Non-registration therefore weakens the legal protection available for the parties' civil rights.[23]

Under Law No. 1 of 1974, as amended by Law No. 16 of 2019, the rights and obligations of spouses receive more effective legal protection when the marriage can be legally established. A couple that has entered nikah siri may therefore first apply for itsbat nikah and, following a court determination, register the marriage at the KUA to obtain a certificate. Articles 30–34 of the Marriage Law establish the spouses' rights and obligations and affirm their balanced position in the household and society. The husband is obliged to protect his wife and provide for the household according to his means, while the wife is responsible for managing household affairs appropriately. Both must love, respect, remain faithful to, and support one another physically and emotionally.[24]

Nevertheless, the findings indicate that not all husbands in unregistered marriages fulfill their obligations under law or Islamic teachings. Some women respondents reported being abandoned after the marriage. Such abandonment included failure to provide material support, lack of attention to the family, and husbands leaving wives and children without taking responsibility.

Under Islamic law, a husband remains obliged to provide maintenance, protection, and good treatment to his wife, regardless of whether the marriage has been registered. Under positive law, however, these obligations are

[22] Lahaji, L., & Sulaiman Ibrahim. Fiqh Perempuan Keindonesiaan. *Al-Bayyinah, 3* (1) 2019, 1-14. doi: https://doi.org/10.35673/al-bayyinah.v3i1.127

[23] Prasetia, Yoga, and Muhamad Hasan Sebyar. "Legal Aspects of the Rights of Children from Siri Marriages." *Jurnal Hukum Keluarga* (2024). https://doi.org/10.63731/jhk.v1i01.1.

[24] Rofiq, Nur, Yasmin Nurzahrah, Irawan Solahudin, Annisa Nur Hikmah, D. Aziz, and Muhammad Yusuf Arda Bily. "Perkawinan Siri Dan Pengaruhnya Terhadap Hak Asuh Anak Ditinjau Dari Perspektif Peradilan Agama." *Wahana Islamika Jurnal Studi Keislaman* (2024). https://doi.org/10.61136/syceyc22.

generally easier to enforce when the marriage has been officially recorded. Registration is therefore important for legal certainty and for protecting spouses' rights when domestic disputes arise.

Legal Consequences for Children Born of Nikah Siri

One of the most significant consequences of nikah siri concerns the legal status of children born from the marriage. Children are legal subjects entitled to protection under both Islamic law and Indonesian positive law. Marriage registration is important to establish certainty regarding a child's parentage and civil rights.[25]

Article 42 of Law No. 1 of 1974, as amended by Law No. 16 of 2019, defines a legitimate child as one born in or as a result of a lawful marriage. Article 55(1) provides that a child's origin may be proven by an authentic birth certificate issued by an authorized official.[26] In the research location, some couples had children even though their marriages had not been registered and had not been confirmed through itsbat nikah. This situation created administrative obstacles that directly affected the fulfillment of children's rights.[27]

Under Islamic law, a child born from nikah siri is regarded as legitimate where the marriage fulfills the required pillars and conditions. Under positive law, however, marriage registration provides an important administrative basis for establishing the legal relationship between a child and the parents. Failure to register the marriage can therefore complicate proof of the child's legal status even when the marriage is considered religiously valid.

Some community members believe that religious validity alone is sufficient to establish a child's status. In practice,[28] however, civil rights—including the issuance of a birth certificate, the recording of parental identities in civil-registration documents, and access to public services—may depend on marriage documents recognized by the state.

Article 45 of the Marriage Law requires parents to care for and educate their children to the best of their ability until the children reach adulthood or become capable of supporting themselves. Article 47(1) states that children under 18 or those who have never married remain under parental authority

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[25] Lenny Nadriana, dan Elti Yunani. "Implementasi Perlindungan Hukum terhadap Hilangnya Hak Istri dan Anak Akibat Pernikahan Siri." *Audi Et AP* 2, no. 2 (2023). https://doi.org/10.24967/jaeap.v2i01.2065.

[26] Mahmud Yunus. *Hukum Perkawinan Dalam Islam.* Jakarta: Hidakarya Agung, 1979.

[27] Lenny Guspidawati, dan Akbarizan. "Perlindungan Hukum Istri dan Anak dalam Pernikahan Siri: Tantangan Era Digital di Indonesia." *Nusantara: Journal for Southeast Asian Islamic Studies* 22, no. 1 (2026). https://doi.org/10.24014/nusantara.v22i1.39426.

[28] Lahaji dan Sulaiman Ibrahim, Wawasan Fikih Indonesia: Studi tentang Periwayatan dan Penalaran Hukum Wali Nikah, *Al-Ulum*, Vol. 19 No 1, June 2019. h 1-26. https://doi.org/10.30603/au.v19i1.701

unless that authority is revoked by a court decision.[29] These provisions demonstrate the state's commitment to protecting children in matters of care and legal status.[30]

Non-registration may also create inheritance problems if the marriage has not been confirmed through itsbat nikah. Registration is therefore important for establishing legal certainty in the civil relationship between children and both parents, including rights arising from family relationships.[31] The consequences for children extend beyond formal status to identity documents, access to public services, civil rights, and certainty in family relationships. Registration through the legally prescribed mechanisms is consequently an important step toward protecting children born from nikah siri.

Consequences for Marital Property and Inheritance

In addition to affecting the legal status of spouses and children, nikah siri can have consequences for marital property and inheritance. These issues are important because joint property and inheritance rights require legal certainty in the event of divorce or the death of one spouse.[32]

Property arrangements in nikah siri are generally based on Islamic law because the marriage follows religious requirements but is not registered as required by legislation. If a dispute arises over joint property, the parties may rely more heavily on private agreement or family-based settlement than on formal legal procedures.

In Islamic law, property may be distinguished between individually owned property (*al-mal al-khas*) and property acquired during marriage, commonly known in Indonesia as joint property or harta gono-gini. Property owned before marriage remains the property of the respective husband or wife, while property acquired during marriage is, in principle, used for the common benefit and managed through consultation and mutual agreement.[33]

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[29] Yahya, Taufik. "Akibat Hukum Nikah Siri Terhadap Hak Anak Dan Isteri Ditinjau Dari Kompilasi Hukum Islam." *Zaaken: Journal of Civil and Business Law* (2022). https://doi.org/10.22437/zaaken.v3i2.14767.

[30] Lahaji, L., & Sulaiman Ibrahim. Fiqh Perempuan Keindonesiaan. *Al-Bayyinah, 3* (1) 2019, 1-14. doi: https://doi.org/10.35673/al-bayyinah.v3i1.127

[31] Wati, Asrat Nita, Pagar Pagar, and Hasan Matsum. "Legal Protection for Wives in Unregistered Polygamous Marriages: An Analysis of Islamic Law in Indonesia." *Pena Justisia: Media Komunikasi dan Kajian Hukum* (2025). https://doi.org/10.31941/pj.v24i2.6589.

[32] Rahayu, Amara Mukti, L. Arofah, L. Astuti, U. Hibar, and Enjum Jumhana. "Analisis Yuridis Akibat Perkawinan Sirri Dan Perlindungan Hukum Bagi Kaum Perempuan (Studi Lapangan Pengadilan Agama Pandeglang Banten)." *CARONG: Jurnal Pendidikan, Sosial dan Humaniora* (2026). https://doi.org/10.62710/63vrv296.

[33] Soemiati. *Hukum Perkawinan Islam dan Undang-Undang Perkawinan.* Yogyakarta: Liberty, 1999.

Because nikah siri has no authentic marriage certificate, the existence of joint property may be difficult to prove in a dispute. Wives may be particularly vulnerable because they can face difficulties proving the marriage as a basis for claiming a share of joint property in court. Non-registration can thus reduce legal certainty regarding the parties' civil rights, particularly a wife's economic rights after the marriage ends.

A similar problem can arise in inheritance. Under Islamic law, a valid marriage is one of the grounds for mutual inheritance between husband and wife.[34] Where nikah siri fulfills the pillars and conditions of marriage under Islamic law, the spouses and children may, in principle, have inheritance relationships under that law. Under positive law, however, inheritance claims often require proof of the legal relationship between the deceased and the heirs.[35] The absence of a marriage certificate may make it difficult to establish the status of a surviving spouse or to process administrative documents, potentially leading to disputes among heirs.

These disputes often emerge only after divorce or the death of a spouse, when the absence of marriage registration becomes a major obstacle to legal certainty. An application for itsbat nikah to the Religious Court is therefore an important legal step [36] A court determination can provide the basis for registration at the KUA and the issuance of a marriage certificate, allowing claims concerning joint property, inheritance, and other civil rights to receive more effective legal protection.[37]

The legal consequences of nikah siri thus extend beyond the relationship between spouses to joint property and inheritance. Although Islamic law recognizes a marriage that fulfills the required pillars and conditions, registration remains essential to legal certainty, protection of the parties' rights, and prevention of future disputes. It is not merely an administrative formality but an instrument for protecting the civil rights of all family members.

Analysis under Islamic Law and Positive Law

The findings indicate that nikah siri in Boro-Boro Rambu-Rambu is influenced by economic constraints, the desire to prevent zina, and the

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[34] Syahar, Saidus. *Undang-Undang Perkawinan dan Masalah Pelaksanaannya Ditinjau dari Segi Hukum Islam.* Bandung: Alumni, 1981.

[35] Soimin, Soedaryo. *Hukum Orang dan Keluarga Perspektif Hukum Perdata Barat/BW, Hukum Islam dan Hukum Adat.* Jakarta: Sinar Grafika, 1992.

[36]Yahya, Taufik. "Akibat Hukum Nikah Siri Terhadap Hak Anak Dan Isteri Ditinjau Dari Kompilasi Hukum Islam." *Zaaken: Journal of Civil and Business Law* (2022). https://doi.org/10.22437/zaaken.v3i2.14767.

[37] Lahaji dan Sulaiman Ibrahim, Wawasan Fikih Indonesia: Studi tentang Periwayatan dan Penalaran Hukum Wali Nikah, *Al-Ulum*, Vol. 19 No 1, June 2019. h 1-26. https://doi.org/10.30603/au.v19i1.701

intention to practice polygamy without completing the required legal procedures. These factors reveal a difference in emphasis: community members tend to prioritize religious validity, whereas the national legal system requires registration as an administrative safeguard for legal protection and certainty.[38]

According to Philipus M. Hadjon, legal protection safeguards citizens' rights through legal instruments, whether preventive or repressive. Preventive protection seeks to prevent disputes, while repressive protection resolves disputes after they occur.[39] The findings show that many women respondents encountered difficulties obtaining maintenance and legal protection and even faced obstacles in securing birth certificates for their children because they had no marriage book. This suggests that nikah siri has not provided the legal protection envisioned by the Marriage Law.[40]

In this study, nikah siri offers certainty within the community's religious understanding when the pillars and conditions of marriage under Islamic law are fulfilled. From the perspective of positive law, however, it does not provide full legal certainty because it lacks formal administrative proof. The absence of registration makes it difficult to realize several civil rights, including a wife's right to legal protection, a child's right to a birth certificate, rights to joint property and inheritance, and the ability to bring claims before the Religious Court. In Radbruch's terms, legal certainty has not been fully achieved: the parties may perceive religious certainty but lack equivalent certainty within the national legal system.[41]

The practice has two dimensions when analyzed through the theory of maqasid al-sharia.[42] From the perspective of *hifz al-din* (protection of religion), nikah siri may be understood as an effort to avoid zina and preserve religious observance. This is reflected in respondents who chose to marry so that their relationship would be lawful under Islamic rules. In terms of *hifz al-nasl* (protection of lineage), the objective may be regarded as partly achieved

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[38] Yuliarti dkk. "Pernikahan Siri dan Perlindungan Hukum terhadap Anak Hasil Pernikahan Siri Ditinjau dari Fiqih dan Hukum Positif." *Court Review* 4, no. 2 (2024). https://doi.org/10.69957/cr.v4i06.1689.

[39] Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat di Indonesia.* (Surabaya: PT Bina Ilmu, 1987), 325.

[40] Febriansah, Rido, Royan Jasson, R. Pratama, Irsadanus Noveri, and S. Syamsiah. "Advokasi Hukum Keluarga Islam Hukum Nikah Siri Tinjauan Yuridis dan Implikasi Sosial." *CENDEKIA : Jurnal Penelitian dan Pengkajian Ilmiah* (2025). https://doi.org/10.62335/cendekia.v2i7.1463.

[41] Mustopa, A. "Tinjauan Yuridis Kompilasi Hukum Islam terhadap Nikah Siri dan Implikasinya pada Pemenuhan Hak Keperdataan Perempuan." *Eksekusi : Jurnal Ilmu Hukum dan Administrasi Negara* (2026). https://doi.org/10.55606/eksekusi.v3i1.2637.

[42] Al-Syathibi, Abu Ishaq Ibrahim ibn Musa. Al-Muwafaqat fi Ushul al-Syari'ah. Juz II. Beirut: Dar al-Kutub al-'Ilmiyyah, 1997.

because children are born from a relationship considered religiously valid. Yet this objective is not fully realized when children encounter barriers to obtaining legal identity because the marriage was not registered. With regard to *hifz al-mal* (protection of property), nikah siri may create harm because rights to joint property and inheritance remain uncertain in the event of divorce or death. From the perspective of *hifz al-nafs* (protection of life and personal well-being), women's protection may also be inadequate, as some respondents were abandoned by their husbands without sufficient legal recourse.[43]

Contemporary Islamic jurisprudence also treats marriage registration as an aspect of maslahah mursalah that may be required by the authorities to protect the public interest. A legal maxim states: "The ruler's decisions concerning the people must be based on public benefit." In Indonesian positive law, marriage must satisfy religious requirements under Article 2(1) of Law No. 1 of 1974, as amended by Law No. 16 of 2019, and must also be registered under Article 2(2).[44]

Registration establishes legal certainty concerning the marital relationship, children's status, joint property, inheritance, and other civil rights. An unregistered nikah siri may therefore be regarded as religiously valid, but it does not provide complete legal consequences under the national legal system. The state provides a legal route through itsbat nikah at the Religious Court, after which the court's determination can serve as the basis for registration at the KUA and official recognition of the marriage's legal consequences.[45]

Viewed through legal-protection theory, legal-certainty theory, *maqasid al-sharia*, Islamic law, and positive law, nikah siri in Boro-Boro Rambu-Rambu arises from economic considerations,[46] efforts to avoid zina, and the desire to practice polygamy. It is valid under Islamic law when the required pillars and conditions are met. Nevertheless, non-registration undermines legal protection and certainty for husbands, wives, and children. From the perspective of *maqasid al-sharia*, the practice may serve the protection of religion *(hifz al-din*), but it does not fully protect lineage (*hifz al-nasl*), property (*hifz al-mal*), or the overall welfare of the family. Marriage registration is therefore a legal necessity consistent with the principles of

[43] Windani, Sri, Indri Meiliawati, and Rizky Ayu. "Legal Protection for Children in Unregistered Marriages (Nikah Siri) in Indonesia." *International Journal of Research and Review* (2025). https://doi.org/10.52403/ijrr.20250426.

[44] Hadikusuma, Hilman. Hukum Perkawinan Indonesia. Bandung: Mandar Maju, 1990.

[45] Hazairin. *Tinjauan Mengenai UU Perkawinan Nomor 1 Tahun 1974.* Jakarta: Tintamas, 1986.

[46] Sari, Novita Wulan, Ernu Widodo, and Sri Damayanti. "Legal Protection for Children Born from Unregistered Marriage (Nikah Siri) in Indonesia." *International Journal of Social Welfare and Family Law* (2026). https://doi.org/10.62951/ijsw.v3i1.557.

Islamic law and an instrument through which the state can protect all family members.

Conclusion

This study finds that nikah siri is a marriage that fulfills the pillars and conditions prescribed by Islamic law but is not registered with the competent authority as required by Indonesian legislation. In Boro-Boro Village, Ranomeeto Subdistrict, South Konawe Regency, the practice is influenced by economic constraints, the desire to avoid zina, and polygamy. Of these factors, economic circumstances were identified as the most dominant. From the perspective of positive law, an unregistered marriage does not provide sufficient legal certainty and may give rise to various legal problems.

The legal consequences are particularly serious for wives and children, who are among the most vulnerable parties. Without registration, wives may struggle to obtain maintenance, claim joint property, and resolve marital disputes in court. Children born from nikah siri may also encounter administrative and civil-law problems. Although Constitutional Court Decision No. 46/PUU-VIII/2010 expanded the civil relationship between a child and the biological father where that relationship can be scientifically and legally proven, marriage registration remains an important instrument for ensuring legal certainty and protection for all family members.

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