



Legal Validity and Implications of Remarriage During Divorce Proceedings in Indonesia: An Islamic Family Law Perspective

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ABSTRACT

This study examines the phenomenon of unregistered marriages (sirri) conducted by women who are still undergoing divorce proceedings at the Religious Court of Teluk Nibung. The primary objective is to analyze the legal status of such marriages from the perspective of Islamic law and Indonesian positive law. Employing a qualitative method with a juridical-empirical approach, the research draws on interviews, observations, and document analysis. The findings indicate that remarriage during an unresolved divorce process is driven by socio-economic factors, spousal neglect, and limited legal awareness. From the standpoint of Islamic jurisprudence, particularly within the Shafi'i and Hanbali traditions, such marriages are invalid because the woman is not yet considered a widow in the shari'ah sense and has not completed the prescribed iddah period. Under Indonesian statutory law, these practices contravene the principle of monogamy as enshrined in Law No. 1 of 1974 and the Compilation of Islamic Law. This study highlights the incompatibility of the practice with both normative frameworks and underscores the urgent need for legal education and stronger institutional oversight to prevent deviations. The research contributes to the discourse on marriage law by offering a socio-legal perspective that integrates doctrinal analysis with community realities.

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1. Introduction

Marriage is a sacred institution that not only binds two individuals in a social relationship but also embodies spiritual and legal dimensions.¹ In Islam, marriage is regarded as both an act of worship and a solemn covenant (*mitsaqan ghalidzan*) that requires full responsibility from both parties.² In the Indonesian legal framework, marriage also acquires legitimacy through Law No. 1 of 1974 on Marriage and its subsequent regulations.³ Thus, the balance between religious norms and state law serves as a crucial foundation in determining the validity of marital unions.⁴

Despite the clarity of these normative frameworks, in social reality there are practices that deviate from the ideal provisions. One such phenomenon is the occurrence of a new marriage while divorce proceedings are still ongoing in the religious court. This condition creates a complex legal dilemma, as the woman is still legally recognized as a wife while simultaneously entering into a new marital contract. Such circumstances raise fundamental questions concerning the validity of the contract, the legal status of the spouses, and the broader implications for family rights and responsibilities.

From the perspective of Islamic law, marriage contracted during ongoing divorce proceedings may contravene fundamental principles of *sharia*, particularly the prohibition of entering into a new marital union during the *iddah* period,⁵ as explicitly regulated in Qur'an al-Baqarah (2:228) and reinforced by classical fiqh principles that safeguard lineage (*hifz al-nasl*).⁶ Normatively, such prohibition is intended to preserve the sanctity of marriage, ensure legal clarity of paternal lineage, and protect women's rights during the transitional period.⁷ From the perspective of Indonesian positive law, this practice is inconsistent with statutory provisions, particularly Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, which emphasize marriage registration, the principle of monogamy, and legal certainty in family relations.⁸ Consequently, marriages contracted

¹ A Rahmiani et al., "Analisis Yuridis Empiris Pencatatan Nikah Siri Pasangan di Bawah umur," *Constitutional Law Review* 1, no. 2 (2022): 78–91.

² Aidil Aulya dan Ahmad Irfan, "Koeksistensi Hukum Perkawinan Islam di Indonesia: Interpretasi Mahkamah Konstitusi Terhadap Pernikahan Beda Agama di Indonesia," *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 1 (2023): 109–27, <https://doi.org/10.30863/ajmpi.v8i1.4149>.

³ Mukhtaruddin Bahrum, "Problematisasi Isbat Nikah Poligami Sirri," *Al-Adalah: Jurnal Hukum dan Politik Islam* 4, no. 2 (2019): 194–213, <https://doi.org/10.35673/ajmpi.v4i2.434>.

⁴ Bahrum.

⁵ Abdullah et al., "The Impact of Theological Interpretations on Divorces within Muslim Families in Makassar City, Indonesia," *Samarah* 8, no. 1 (2024): 339–60, <https://doi.org/10.22373/sjkh.v8i1.20621>.

⁶ Ian Leigh, "Comparative Religious Law: Judaism, Christianity, Islam. By Norman Doe. Cambridge: Cambridge University Press, 2018. \$105.00 (cloth); \$36.99 (paper); \$30.00 (digital). ISBN 9781316617809.," *Journal of Law and Religion* 35, no. 3 (2020): 524–27, <https://doi.org/DOI:10.1017/jlr.2020.47>.

⁷ Tuba Erkoc Baydar, "A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective," *Religions* 14, no. 4 (2023), <https://doi.org/10.3390/rel14040463>.

⁸ Muhammad Latif Fauzi, "Registering Muslim marriages: Penghulu, Modin, and the struggles for influence," *Al-Jami'ah* 57, no. 2 (2019): 397–424, <https://doi.org/10.14421/ajis.2019.572.397-424>; Sapriadi, Hannani, dan Fikri, "The Controversy of Unregistered Marriage Trends from the Perspective of Maqa' sid

under these circumstances not only create uncertainty regarding marital status but may also undermine administrative legality, complicate inheritance rights, and jeopardize the legal status of children born from such unions, thereby contravening both normative Islamic injunctions and state legal order.

Several studies have examined the intersection of marriage and divorce within the frameworks of Islamic and Indonesian law, although their scope remains limited. For example, Nindy Lestari Fitri Guliling (2022), in her thesis "*Perkawinan Kedua Tanpa Putusan Cerai (Di Desa Tumbak Madani Kecamatan Pusomaen Kabupaten Minahasa Tenggara)*", analyzed cases of individuals contracting a second marriage without a formal divorce decree from the religious court, concluding that such practices not only violate legal norms but also perpetuate disputes within local communities.⁹ Similarly, Wardah Nuroniyah and Tiara Amanda Putri (2023), in their study "*Perkawinan Sirri Perempuan Sebelum Putusan Perceraian (Studi Pandangan Hakim Pengadilan Agama Jakarta Selatan)*", investigated instances where women entered unregistered (*sirri*) marriages before a divorce ruling was issued, raising normative debates over the validity and recognition of such unions.¹⁰ Earlier, Muslikah (2011), in her thesis "*Proses Perceraian Nikah Sirri di Pengadilan Agama Sumber (Studi Kasus di PA Sumber pada Tahun 2010 Perkara Nomor: 3186/Pdt.G/2010/PA.Sbr)*", emphasized the procedural and evidentiary difficulties faced by religious courts in adjudicating divorce cases arising from unregistered marriages.¹¹ While these works contribute valuable perspectives on irregular marital practices, none directly address the specific phenomenon of marriages contracted during pending divorce proceedings, particularly through an integrated analysis of Islamic jurisprudence and Indonesian positive law.

This research gap is significant because marriages performed while a divorce is still pending present a distinct legal dilemma. Unlike unregistered marriages or post-divorce disputes, these unions blur the boundary between an existing marital bond and the initiation of a new one. As a result, they trigger overlapping questions of validity, legal recognition, and moral legitimacy. Neither the *fiqh* discourse on *iddah* nor statutory law on marriage registration explicitly contemplates the legal standing of a marital contract concluded under such conditions. This lacuna necessitates a systematic examination that brings together the normative imperatives of Islamic jurisprudence and the binding force of Indonesian statutory provisions.

Mukhallaf : Preventing Underage Marriage in Wajo Regency," *Al adalah: Jurnal Hukum dan Politik Islam* 10, no. 2 (2025): 367–82.

⁹ Nindy Lestari Fitri Guliling, "Perkawinan Kedua Tanpa Putusan Cerai (Di Desa Tumbak Madani Kecamatan Pusomaen Kabupaten Minahasa Tenggara)" (Skripsi, Institut Agama Islam Negeri (Iain) Manado, 2022).

¹⁰ Wardah Nuroniyah Dan Tiara Amanda Putri, "Perkawinan Sirri Perempuan Sebelum Putusan Perceraian (Studi Pandangan Hakim Pengadilan Agama Jakarta Selatan)." (Skripsi, Uin Syarif Hidayatullah Jakarta, 2023).

¹¹ Muslikah, "Proses Perceraian Nikah Sirri Di Pengadilan Agama Sumber (Studi Kasus Di Pa Sumber Pada Tahun 2010 Perkara Nomor: 3186/Pdt.G/2010/Pa.Sbr)" (Skripsi, Institut Agama Islam Negeri (Iain) Syekh Nurjati Cirebon, 2011).

The significance of this study lies in its potential to contribute to both academic discourse and practical legal development. Normatively, it clarifies the extent to which marriage during divorce proceedings contravenes fundamental Islamic principles such as the protection of lineage (*hifz al-nasl*) and the preservation of marital sanctity. Legally, it provides insights into how such marriages conflict with statutory frameworks, thereby generating legal uncertainty in matters such as inheritance, marital rights, and the legitimacy of children. From a socio-legal perspective, the study also highlights the factors driving such practices—ranging from economic hardship and spousal neglect to limited legal awareness in society—thus offering a holistic understanding that bridges doctrinal analysis with social realities.

Accordingly, this research seeks to analyze the validity of marriages contracted during ongoing divorce proceedings in Indonesia from both Islamic and positive legal perspectives. Specifically, it aims to address two central questions: first, the legitimacy of such marriages from the standpoint of Islamic law, particularly with regard to the prohibition of remarriage during the *iddah* period; and second, their administrative and legal standing within the framework of Indonesian statutory law, including the Marriage Law and the Compilation of Islamic Law. By integrating these two perspectives, the study aspires to provide a comprehensive and systematic account of the legal implications of this phenomenon, while also formulating normative recommendations to minimize future conflicts between religious norms, legal order, and social practice.

2. Legal Material and Methods

This study uses a qualitative research design with a juridical-empirical approach, combining normative legal analysis and social reality. This approach allows for a thorough examination of the legal validity of marriages conducted during ongoing divorce proceedings and their effects on family rights, lineage, and legal certainty. Normative analysis highlights Islamic legal principles (*fiqh*) and Indonesian statutory law, especially Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Data were gathered through in-depth interviews, direct observation, and review of relevant literature, legal texts, and regulations. Participants included individuals involved in marriages, religious leaders, and community figures in Teluk Nibung Subdistrict, offering diverse perspectives on marital practices and legal perceptions. Data analysis followed a thematic qualitative framework, with transcribed data coded to identify patterns, conflicts, and interpretations regarding the validity and implications of marriages. Triangulation of sources and methods was used to ensure data accuracy and reliability. This methodology allows the study to achieve two main goals: (1) assess the legitimacy of marriages under Islamic law, especially concerning the *iddah* period, and (2) evaluate their legal status and administrative consequences under Indonesian law, resulting in a comprehensive, systematic, and academically rigorous analysis.

3. Results and Discussion

3.1. Socio-Economic and Cultural Factors Influencing Remarriage During Divorce Proceedings in Teluk Nibung Subdistrict

In Teluk Nibung Subdistrict, the phenomenon of remarriage “nikah siri” during ongoing divorce proceedings at the Religious Court illustrates the complex interaction of socio-economic, cultural, and legal factors in local Muslim communities. Women facing fragile marital conditions often encounter abandonment, loss of financial support, and limited social protection.¹² In such vulnerable situations, remarriage is frequently seen as a practical solution, even though it violates both state law and religious teachings. This choice shows how women’s vulnerability within families can lead them toward decisions that are legally contradictory but socially reasonable.¹³ Rational Choice Theory helps explain this: in urgent circumstances, people often prioritize immediate relief from hardship over strict adherence to rules.¹⁴

Economic hardship further emerges as the dominant factor driving remarriage during divorce proceedings. Data from the Religious Court in Teluk Nibung (**Table 1**) show that most women who remarried before the final divorce verdict had been abandoned for more than one year without financial support, and in several cases had also experienced domestic violence. Under such circumstances, women were compelled to shoulder the dual burden of earning an income while simultaneously caring for their children. The daily demands of survival - especially related to children’s education and health - made remarriage appear as a viable path to stability despite the ongoing legal process. Thus, remarriage in this context cannot be reduced to an emotional choice but rather represents a survival strategy amid systemic neglect. These findings are consistent with earlier studies (Platt, 2017; Van Huis & Wirastrri, 2020),¹⁵ which demonstrate that economic insecurity strongly shapes informal marriage practices among Muslim women.

¹² I N D Putra dan H Creese, “Negotiating cultural constraints: strategic decision-making by widows and divorcees (janda) in contemporary Bali,” *Indonesia and the Malay World* 44, no. 128 (2016): 104–22, <https://doi.org/10.1080/13639811.2015.1100869>.

¹³ Maria Platt, *Marriage, Gender and Islam in Indonesia, Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire* (1 Edition. | New York : Routledge, 2017. | Series: Women in Asia series ; 51: Routledge, 2017), <https://doi.org/10.4324/9781315178943>.

¹⁴ Johannes Jarke-Neuert dan Johannes Lohse, “I’m in a hurry, I don’t want to know! Strategic ignorance under time pressure.,” *Journal of Experimental Psychology: General* 151, no. 11 (November 2022): 2833–45, <https://doi.org/10.1037/xge0001222>.

¹⁵ Maria Platt, *Marriage, Gender and Islam in Indonesia, Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire* (1 Edition. | New York : Routledge, 2017. | Series: Women in Asia series ; 51: Routledge, 2017), <https://doi.org/10.4324/9781315178943>; Theresia Dyah Wirastrri dan Stijn Cornelis van Huis, “The second wife: Ambivalences towards state regulation of polygamy in Indonesia,” *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246–68, <https://doi.org/10.1080/07329113.2021.1912579>.

Low legal literacy also plays a significant role. Many women assume that long-term separation automatically ends their marriage, not knowing that Article 39 of Law No. 1/1974 states that divorce is only valid through a court ruling.¹⁶ Likewise, Qur'an Surah Al-Baqarah: 228 highlights the importance of "iddah" to protect lineage and ensure fairness in divorce.¹⁷ Yet, these legal and religious rules are rarely understood in daily life. Instead, communities depend on inherited social knowledge that often clashes with formal laws. This situation shows legal pluralism, where state law, religious law, and local customs coexist and compete,¹⁸ shaping marital practices in practical ways rather than strictly religious ones.

Cultural and social pressures also influence remarriage choices.¹⁹ In Teluk Nibung, social expectations and family advice often encourage women to remarry quickly, especially when their marital relationship has broken down and the divorce process is ongoing. Families sometimes view remarriage as a way to ensure women's social and economic protection, rather than focusing solely on legal procedures. These pressures reflect community norms that shape women's decisions and limit their autonomy, even when these norms conflict with state law or religious guidance. This aligns with feminist legal theory, which explains how social and patriarchal systems can pressure women to conform to local expectations despite their legal rights.²⁰

The situation in Teluk Nibung shows tensions among three systems: religious law, state law, and social practice. Religious law emphasizes iddah and marriage legitimacy; state law enforces divorce procedures; and community norms encourage practical solutions to social and economic insecurity. These overlapping authorities demonstrate legal pluralism, where women, being the most vulnerable, must navigate conflicting pressures. Therefore, remarriage before an official divorce should be seen not only as a legal violation but also as a response to systemic failures in protecting women's rights.

¹⁶ Irmayanti Sidang, Nurfaidah Said, dan Ratna Wati, "Perlindungan Hukum Terhadap Istri Dalam Pemenuhan Nafkah Pasca Perceraian Menurut Perspektif Hukum Islam," *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 2 (2023): 142–61, <https://doi.org/10.30863/ajmpi.v8i2.4220>.

¹⁷ Wahyu Abdul Jafar et al., "Gender Justice in the Concept of Iddah: A Contextual Reading of Al-Kasani's Thought for Working Women in Indonesia," *Jurnal Ilmiah Mizani* 12, no. 2 (2025): 15–28, <https://doi.org/10.29300/mzn.v12i2.7683>.

¹⁸ Amelia Fauzia, *Faith and the State*, 管理现代化, vol. 76 (BRILL, 2013), <https://doi.org/10.1163/9789004249202>.

¹⁹ Aris Ananta et al., "Marital status transition probabilities in Indonesia: based on the 2007 and 2014 Indonesia Family Life Survey (IFLS)," *China Population and Development Studies* 8, no. 4 (2024): 422–45, <https://doi.org/10.1007/s42379-024-00178-z>.

²⁰ Peter Hopkins dan Andreas Giazitzoglu, "Hegemonic masculinity: new spaces, practices, and relations," *Progress in Human Geography* 49, no. 1 (2025): 84–98, <https://doi.org/10.1177/03091325241307387>; Syawalia Aziza dan Taufiq Nugroho, "Patriarchy in the Family: A Study of the Causal Factors of Divorce in the Perspective of Legal Feminism," *Indonesia Law Reform Journal* 5, no. 1 (2025): 43–61, <https://doi.org/10.22219/ilrej.v5i1.39055>.

This situation also points to gaps in legal and social protections for women in remote areas of Indonesia. While courts emphasize procedural correctness, they often overlook economic realities faced by women in rural and coastal communities. Weak enforcement of family laws combined with limited social support keeps women relying on informal means to find stability. Interviews reveal that economic pressure, social expectations, and the perception of marriage as a safeguard are central concerns. These findings support the idea that remarriage during divorce is not just personal misconduct but also a socially negotiated response in specific local contexts. Including local voices is crucial because it helps connect theory with lived experience, ensuring scholarship stays grounded in reality.

Table 1. Cases of Remarriage (*Nikah Siri*) Conducted Before Divorce Verdict

No	Respondent	Abandonment Duration (months)	Divorce Grounds	Divorce Process Length (months)
1	R*	18	Husband left home without notice; no financial or emotional support	5
2	S*	12	Husband frequently committed domestic violence; no financial or emotional support	4
	H*	15	Husband left without notice; no financial or emotional support	5
4	Su*	18	Husband had no steady job, lived unsettled, involved in drug abuse	2

Note: *Respondent names are anonymized;

Source: Religious Court Data, Teluk Nibung, 2024

In conclusion, remarriage during divorce in Teluk Nibung illustrates how economic hardship, limited legal understanding, cultural and social pressures, and institutional gaps intersect. Addressing this issue requires more than just law enforcement; it calls for a comprehensive approach that raises legal awareness, enhances women's economic resilience, improves access to legal support, and involves religious and community leaders to promote legal literacy suited to local contexts. In this way, laws can serve not only as guiding principles but also as effective tools aligned with the socio-economic realities of vulnerable groups.

These findings also reveal a recurring pattern of legal misperception in Teluk Nibung. Many community members regard marriage registration as a mere administrative formality rather than a substantive legal requirement.²¹ Consequently, the absence of registration is perceived as socially acceptable so long as the union is religiously

²¹ Baihaqi et al., "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya," *Journal of Islamic Law* 5, no. 2 (2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>.

solemnized. This gap between social practice and legal mandate not only undermines the principle of legal certainty but also directly contributes to the prevalence of irregular marital practices, such as marriages during pending divorce proceedings. Thus, the issue of marriage registration becomes central to understanding the legal and shariah implications of this phenomenon, as will be further analyzed in the next section.

3.2. Legal and Shariah Analysis of Remarriage During Divorce Proceedings in Court

Based on interviews with four respondents in Teluk Nibung District, it was found that cases of unregistered remarriage “*nikah siri*” were performed by women who were still in the process of divorce proceedings at the Religious Court. This decision was driven by various socio-economic and psychological factors. The majority of respondents reported similar reasons, such as abandonment by their husbands, the absence of financial and emotional support, and domestic violence. Nevertheless, from the perspective of both Islamic law (Shariah) and Indonesian positive law, such practices raise serious legal and religious concerns that require in-depth analysis.

In Islamic jurisprudence (*fiqh*), the validity of marriage is strictly tied to the legal status of the woman. A wife is prohibited from entering into a new marriage contract until she is legally released from her existing marriage. This requires: (1) a divorce (*ṭalāq*) or an official dissolution of marriage by a judge, and (2) the completion of the mandatory waiting period (*‘iddah*).²² In the cases examined, remarriage occurred before the finalization of divorce, meaning that legally the women were still considered the wives of their first husbands. Such actions clearly contradict Shariah, as no marriage contract (*‘aqd al-nikāh*) is valid while the woman remains bound to an existing marriage.

Abandonment and failure to provide financial maintenance (*nafaqah*) constitute a significant harm (*ḍarar*) to the wife. Islam therefore grants women the right to seek dissolution of marriage (*fasakh*) under such circumstances. The Prophet Muhammad ﷺ stated:

لَا ضَرَرَ وَلَا ضِرَارَ.

“There should be neither harm nor reciprocating harm.”

This prophetic tradition forms the basis for the intervention of a judge (*ḥākim*) in cases where harm is evident. Within the Shāfi‘ī and Ḥanbalī schools of law, dissolution of marriage on the grounds of non-maintenance is not valid without a judicial ruling, similar to the case of marital annulment due to impotence. Hence, unilateral remarriage without the court’s decision is invalid in Islamic law.

This principle is reinforced in the Qur’an, Sūrah al-Baqarah [2]: 229

فَإِمْسَاكُ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

²² Muh. Sholihuddin, Saiful Jazil, dan Syamsun Ni’am, “Remarriage in the ‘Iddah Perspective of Maqāṣid Al-Ushrah: Study in Wedoro Waru, Sidoarjo, Indonesia,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 2 (2024): 263–68, <https://doi.org/10.22373/sjkh.v8i2.15061>.

“...Then (the choice is) either to retain (the wife) in a fair manner or to release (her) with kindness.”

The verse underlines that marital separation must be carried out in a legitimate and respectful way, not arbitrarily or without judicial authority. Consequently, the reasoning often employed by local officiants (*penghulu*)²³ - that abandonment automatically entitles the wife to remarry- is religiously unsustainable without an authoritative ruling.

From the perspective of Indonesian positive law, remarriage before a final divorce ruling is also unlawful. Law No. 1 of 1974 on Marriage stipulates in Article 2 that a marriage is valid only if conducted according to the religion of the parties and registered by the state. Article 3 establishes monogamy as the basic principle, while Article 9 prohibits entering into another marriage while an existing one is still legally binding, except with court permission. Additionally, the Compilation of Islamic Law (KHI) Article 116 specifies abandonment as a legitimate ground for divorce; however, divorce only becomes valid after a court decision. Thus, remarriage during ongoing proceedings constitutes a breach of both religious and civil law.

A particularly crucial issue is marriage registration.²⁴ While Islamic law does not explicitly require state registration for the validity of a marriage, modern legislation treats registration as a mandatory requirement to ensure legal protection. Article 2(2) of Law No. 1 of 1974 explicitly states: “Every marriage must be registered according to the legislation in force.” This is further reinforced by Government Regulation No. 9 of 1975 and the Compilation of Islamic Law, which emphasize that only registered marriages have legal consequences in Indonesia.²⁵ The absence of registration - as in the case of *nikah siri* - exposes women and children to vulnerability in matters of inheritance, lineage (*nasab*), child custody, and claims of marital rights.²⁶

From the perspective of *maqāṣid al-sharī‘ah*, marriage registration can be viewed as a state-sanctioned mechanism to uphold the objectives of Islamic law, particularly the protection of religion (*ḥifẓ al-dīn*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Without registration, women are deprived of their rights to maintenance, inheritance, and marital property, while children risk losing their legal identity and entitlement to paternal

²³ Baihaqi et al., “Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya.”

²⁴ Arifki Budia Warman et al., “Reforming Marriage Registration Policies in Malaysia and Indonesia,” *Bestuur* 11, no. 1 (2023): 61–74, <https://doi.org/10.20961/bestuur.v11i1.66320>.

²⁵ Warman et al.

²⁶ Eva F. Nisa, “THE BUREAUCRATIZATION of MUSLIM MARRIAGE in INDONESIA,” *Journal of Law and Religion* 33, no. 2 (2018): 291–309, <https://doi.org/10.1017/jlr.2018.28>.

lineage.²⁷ Therefore, registration is not merely an administrative formality, but a contemporary necessity to safeguard justice and prevent harm (*mafsadah*).²⁸

The findings in Teluk Nibung indicate that some community members believe that once a household is no longer functioning, women are free to remarry without waiting for a judicial ruling or proper registration. This perception is influenced by economic hardship, social vulnerability, and the availability of religious functionaries willing to solemnize unregistered marriages. Nevertheless, according to both Shariah and Indonesian law, such marriages remain invalid, as the women are still legally bound to their husbands, and the marriages are neither recognized nor registered.

It is therefore evident that financial neglect and the absence of spousal responsibility do not automatically dissolve a marriage. Divorce is only effective once granted by a court ruling, ensuring both religious and legal validity. Any remarriage prior to this constitutes an invalid marriage (*bāṭil*) in Shariah terms and a legal violation under Indonesian law. Moreover, when such marriages are unregistered, they add another layer of illegality, rendering women and children even more vulnerable in terms of legal rights and social protection.²⁹

In conclusion, the phenomenon of remarriage during divorce proceedings in Teluk Nibung reveals a complex intersection of weak legal literacy, socio-economic pressures, and gaps in legal supervision. To prevent its recurrence, comprehensive strategies are needed, including legal education, women's economic empowerment, stricter oversight of unregistered marriages, and the strengthening of marriage registration mechanisms. Enforcement of Law No. 1/1974 and KHI Article 40 (c) must be consistent with the fiqh principle of *لَا ضَرَرَ وَلَا ضِرَارَ* (no harm and no reciprocating harm), thereby ensuring justice, protection, and legal certainty for women and children.

4. Conclusion

This study demonstrates that unregistered marriages (*sirri*) conducted by women during ongoing divorce proceedings in the Religious Court of Teluk Nibung cannot be justified under either Islamic law or Indonesian positive law. Although socially perceived as valid due to the fulfillment of the essential elements of marriage, such unions remain legally impermissible because the marital bond has not yet been formally dissolved and the *iddah* period has not been completed. From the perspective of Islamic jurisprudence, particularly within the Shafi'i and Hanbali schools, divorce (*ṭalāq*) is not effective without a judicial decree. Likewise, Indonesian statutory law - specifically Law No. 1 of 1974 on

²⁷ Sheila Fakhria et al., "Securing Muslim Children's Civil Rights: Debate on State Legal Policy towards The Issuance of Family Cards for Unregistered Marriage Couples," *El-Mashlahah* 14, no. 2 (2024): 303–22, <https://doi.org/10.23971/el-mashlahah.v14i2.8008>.

²⁸ Fakhria et al.

²⁹ Suryadi et al., "A Critical Voice on the Hajj by a Sumatran Pilgrim from the Early Twentieth Century," *Studia Islamika* 31, no. 2 (2024): 185–220, <https://doi.org/10.36712/sdi.v31i2.40568>.

Marriage and the Compilation of Islamic Law - clearly prohibits remarriage during an existing marital bond, thereby safeguarding the principle of monogamy and legal certainty.

The findings further reveal that this practice largely stems from limited public awareness of legal procedures and the status of marriage, compounded by socio-economic pressures. Consequently, such marriages not only violate normative and statutory provisions but also generate broader implications for lineage, inheritance, and the protection of women's rights.

In light of these findings, this study contributes to both doctrinal and socio-legal discourse by clarifying the incompatibility of such marriages with Islamic and state law, while also emphasizing the need for legal education and stronger involvement of religious institutions in community guidance. Future research could extend this inquiry by examining policy measures to prevent similar practices and by exploring comparative perspectives from other Muslim-majority jurisdictions.

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