



THE URGENCY OF MARRIAGE REGISTRATION IN THE PERSPECTIVE OF INDONESIAN MARRIAGE LAW AND ISLAMIC LAW

A. Sultan Sulfian

Institut Agama Islam Negeri Bone, Indonesia

Email: sultansulfian22@gmail.com

Submitted	Accepted	Published
10 th of May 2023	4 th of June 2023	6 th of June 2023

ABSTRACT

This research aims to analyze and explain the urgency of registering marriages in the perspective of Indonesian marriage law and Islamic law, as well as the legal consequences of marriages that are not registered according to Indonesian marriage law and Islamic law. This research is a normative legal research or doctrinal legal research (doctrinal approach), namely legal research that uses secondary data sources which are carried out by approaching legal norms or substances, legal principles, legal theory, legal arguments and legal comparisons with data collection techniques, namely through careful observation and tracing of various legal materials, namely tracing primary legal materials, secondary legal materials, and tertiary legal materials.

The results of this research show that the urgency of registering the marriage can be seen from various perspectives. Even though there is still ambiguity regarding the provisions for registering marriages in the Marriage Law, the requirement for registration of marriages is intended within the framework of the state's function of providing guarantees of protection and legal certainty. Meanwhile, from the perspective of Islamic law, the registration of marriages has reached a "daruriyah" condition where marriages that are not recorded will cause a lot of loss and harm to the parties in the marriage. So substantially there is no conflict between Indonesian marriage law and Islamic law, both of them are the same in view of the urgency of registering marriages that

How to Cite: Sulfian, A. (2023). THE URGENCY OF MARRIAGE REGISTRATION IN THE PERSPECTIVE OF INDONESIAN MARRIAGE LAW AND ISLAMIC LAW. Jurnal Al-Dustur, 6(1). doi:<https://doi.org/10.30863/aldustur.v6i1.4224>

registration of marriages cannot be separated from the implementation of the marriage itself. Furthermore, marriages that are not registered will have very detrimental consequences for the husband, wife, children, and assets in the marriage which have a negative impact both from a juridical, sociological, and psychological aspect.

Keywords: Marriage Registration; Marriage Law; Islamic Law

INTRODUCTION

The Legal provisions regarding the registration of marriages since their inception have become a hot topic of discussion among the public, even in the discourse of legal experts there are pros and cons, giving rise to very diverse perspectives and views from philosophical, historical, sociological, to juridical aspect.

Rules regarding the registration of marriages in Indonesia are regulated in Article 2 of Law Number 1 of 1974 concerning Marriage which states:

1. Marriage is valid if it is carried out according to the laws of each religion and belief.
2. Every marriage is registered according to the applicable laws and regulations.¹

From the provisions of Article 2 of Law 1/1974 it is clear, every marriage must be recorded according to the applicable laws and regulations. This means that every marriage must be followed by registration of the marriage according to the applicable laws and regulations. If the two paragraphs in Article 2 of Law 1/1974 are linked to one another, it can be assumed that marriage registration is an integral part that also determines the validity of a marriage, in addition to following the terms and conditions of marriage according to the law of each religion and belief.²

However, what has become a polemic until now is that there is still a dichotomy regarding the necessity of registering marriages as

¹Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.

² Usman, Rachmadi. "Makna pencatatan perkawinan dalam peraturan perundang-undangan perkawinan di Indonesia." *Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia* (2017).



stated in Article 2 paragraph (2) of the Marriage Law. Lawyers have not yet reached an agreement regarding the status of marriage registration, on the one hand there is a view stating that marriage registration is only an administrative requirement so that it does not affect the validity of a marriage, but on the other hand there are views that differ diametrically which states that the paragraph (1) and (2) in article 2 of the marriage law must be understood cumulatively and not as an alternative requirement because this is an inseparable unit so that the registration of marriages is also a legal requirement in a marriage.

The polemic mentioned above indirectly affects the public's views and ultimately has implications for the legal behavior of the community in implementing the marriage registration rules. On the one hand, there are still those who think that marriage is considered valid if it fulfills the requirements and pillars, but on the other hand, many deliberately smuggle the law by not registering their marriages and marry secretly (siri marriage) because of negative intentions from the start, such as efforts to legalize affairs, polygamy without permission, and so on.

Likewise, when examined from the aspect of Islamic law, the concept of registering marriages is a form of legal renewal carried out in the field of family law. This is due to the absence of clear and specific texts in the Qur'an and As Sunnah regarding the obligation to register marriages, this is different from the muamalah case which textually provides confirmation regarding the recommendation for recording non-cash transactions (debts) in QS. Al Baqarah/2: 282 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

Translated:

O you who believe, if you don't do charity in cash for a specified time, you should write it down. (QS. Al Baqarah: 282).³

From this verse, the scholars carry out *ijtihad* by using the *qiyas* method/ analogy that if agreements related to property are recommended to be recorded in black and white, what about marriage as an inner and outer bond between a man and a woman mentioned in

³Kementerian Agama RI, *Al-Qur'an dan Terjemahannya*, Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019, p. 63.



the Qur'an as mitsaqan ghalidzan with the aim of fostering a sakinah, mawaddah wa rahmah family which actually has extensive harm when it is not recorded, especially regarding legal certainty and protection for the wife and children born from the marriage.

In other words, women and children are disadvantaged and do not receive legal protection. Such marriages are contrary to aspects of respecting human rights, especially to the detriment of women and are not in line with the principles of Maqāsid Al-syarāh, so that the famous interpretation scholar in Indonesia M. Quraish Shihab argues that unregistered marriages are a form of harassment against women because it will eliminate their rights.⁴

Therefore, this study aims to contribute to the literature by examining how the urgency of marriage registration in the perspective of Indonesian marriage law and Islamic law is normatively related to its sociological implementation in society, as well as the legal implications of marriages that are not registered according to Indonesian marriage law and Islamic law.

METHODS

This research is included in the type of normative legal research or doctrinal legal research (doctrinal approach), namely legal research that uses secondary data sources or is library research, namely research on secondary data. In this type of legal research, law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate.⁵ Normative legal research is carried out using an approach to legal norms or substance, legal principles, legal theory, legal arguments and comparative law.⁶

This normative legal research was conducted by reviewing and analyzing statutory regulations or other legal materials relating to the registration of marriages in the perspective of Indonesian marriage law

⁴M. Quraish Shihab, *Perempuan*, Jakarta: Lentera Hati, 2006, p. 216.

⁵Said Sampara and Laode Husain, *Metode Penelitian Hukum Edisi Revisi*, Makassar: Kretakupa Print, 2016, p. 39.

⁶Syahrudin Nawi, *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*, Makassar: PT.Umitoha Ukhuwah Grafika, 2017, p. 7.



and Islamic law, as well as the legal implications of marriages that are not registered according to Indonesian marriage law and Islamic law.

RESULTS AND DISCUSSION

The Urgency of Marriage Registration in Perspective of Indonesian Marriage Law

Marriage is a form of realizing the constitutional rights of citizens which must be respected and protected by everyone in the orderly life of society, nation and state as stated in the 1945 Constitution of the Republic of Indonesia. It is expressly stated in Article 28B paragraph (1) that "Every person has the right to form a family and continue offspring through a legal marriage", and Article 28J paragraph (1) "Everyone is obliged to respect the human rights of others in an orderly society, nation and state". Thus, it is necessary to realize that in these constitutional rights, there is an obligation to respect the constitutional rights of others. So that it is impossible for the constitutional rights granted by the state to be exercised as freely as possible by everyone, because it could be that the exercise of one person's constitutional rights will in fact violate the constitutional rights of others, therefore it is necessary to have regulations on the implementation of these rights.

So even though in the law there are norms or materials that are considered to limit a person's constitutional rights, in fact this is part of the efforts made by the state in order to protect the entire Indonesian nation, to create public order, educate the nation's life and so on. As with the provisions regarding the registration of marriages contained in Law Number 1 of 1974 concerning Marriage, this is a manifestation of the implementation of constitutional rights granted by the 1945 Constitution of the Republic of Indonesia, especially the right to form a family and continue offspring. However, these provisions also provide limitations on the exercise of constitutional rights which are solely aimed at protecting citizens in order to create a just, prosperous and prosperous society, as envisioned in our constitution.

Thus, one of the forms of legal understanding in Islamic society, especially the Republic of Indonesia, is the registration of marriages as one of the conditions for marriage that must be fulfilled. Without the



registration of marriages recorded by marriage registrar, the marriage is considered to have no power before the law.⁷

Marriage is an important thing in the life of every human being. Something important will usually be immortalized through writing or pictures as evidence for the holding of the event. One way to prove the existence of marriage is through registration.⁸ The Marriage Law is in line with the mandate of the constitution, because the Marriage Law does not contain content that reduces and hinders a person's right to marry, but the Marriage Law regulates how a marriage should be carried out so that a person's constitutional rights are fulfilled. without prejudice to the rights of others.

Article 1 of the Marriage Law states that marriage is:

*The inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God.*⁹

If the definition of marriage above is examined further, then according to Sudarsono there are five elements in marriage.¹⁰

- a. The use of the word "inner and outer bond" implies that in a marriage it is not only sufficient to have an outer bond or an inner bond, but both are synergized and closely integrated. The external bond is a bond that can be seen and expresses the legal relationship between a man and a woman to live together as husband and wife (formal relationship), while the inner bond is a non-formal relationship, an invisible bond, not real, that can only be felt by the parties to which he is bound. This inner bond is the basis of the birth bond, so it is used as the foundation in forming and fostering an eternal and happy family.
- b. The use of the word "marriage bond may only occur between a man and a woman". Thus, this law does not legalize marital

⁷Halim, Abdul. "Pencatatan Perkawinan Menurut Hukum Islam." *Jurnal Al Mabhats* 5.1 (2020): 1-18.

⁸Susanti, Dyah Ochtorina. "Urgensi Pencatatan Perkawinan (Perspektif Utilities)." *Rechtidee* 11.2 (2016): 166-181.

⁹Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.

¹⁰Sudarsono, *Hukum Perkawinan Nasional*, Jakarta: Rineka Cipta, 2005, p. 9-10.



The Urgency of Marriage Registration in the Perspective of Indonesian...

relations between men and men, women and women, or between transgender and transgender. In addition, this element contains the principle monogamous marriage (one man and one woman).

- c. The use of the expression "as husband and wife" implies that according to law, an alliance between a man and a woman is seen as husband and wife, if their bond is based on a legal marriage.
- d. The law also states that the purpose of marriage is to "form a happy and eternal family (household), meaning that it prohibits temporary or temporary marriages as is the case in mut'ah marriages.
- e. Based on "Belief in the One and Only God", it shows that marriage is a religious event and is carried out to fulfill religious orders.

Based on the description above, it can be understood that in fact marriage is not an ordinary contract/agreement like other contractual activities, but more than that marriage is a sacred bond (*mitsaqan galidzan*) which has sacred and religious values because it is a worship (devotion) of a servant to the creator.

Furthermore, in article 2 paragraphs (1) and (2) of the Marriage Law it states that:

- a. Marriage is legal if it is carried out according to the laws of each religion and belief;
- b. Every marriage is registered according to the applicable laws and regulations.¹¹

According to the Marriage Law, the validity of a marriage is based on the respective religious laws, however, a marriage cannot be recognized for its validity if it is not recorded in accordance with the provisions of laws and regulations.

Marriage registration is not intended to limit the basic rights of citizens but on the contrary, namely to protect citizens in building families and continuing offspring, as well as providing legal certainty for the rights of husbands, wives and children.

¹¹Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.



However, when we look at Article 2 paragraph (2) regarding the registration of marriages above, it is indeed very prone to giving rise to multiple interpretations, this is due to the absence of the words "must be recorded according to the applicable laws and regulations" in the paragraph. However, when we read carefully the other articles that marriage must be supervised by a Marriage Registrar, it is certain that his presence is not just to be present and just to supervise, but the person concerned as a public official whose position then records the marriage event.

Furthermore, the presence of the Marriage Registrar is aimed at checking both parties, whether there are obstacles or obstacles to marriage and whether the conditions determined by Islam have not been violated. (see explanation of article 1 of Law Number 22 of 1946).

In connection with the validity of the marriage, there are differences of opinion where one side states that marriage is valid if marriage is recorded, while the other party states that marriage does not need to be recorded as long as it fulfills religious requirements (fiqh oriented).

Those who state that marriages must be registered are of the opinion that marriages that are registered will be better than marriages that are not registered, because they will receive protection and legal certainty from all the consequences arising from the marriage. A valid marriage can only be proven by a valid marriage certificate, meaning that if a marriage cannot be proven by a marriage certificate, the marriage does not have legal force. Whereas those who stated that marriages did not need to be registered argued that unregistered marriages did not violate religious law as long as they were carried out in accordance with the provisions of the respective religious laws.

According to the writer's opinion, the understanding of the Marriage Law may not be partial. Article 2 paragraph (2) of the Marriage Law does not stand alone, because the phrase "recorded according to applicable laws and regulations" has the meaning that marriage registration cannot be carried out immediately, but that registration must follow the requirements and procedures stipulated in the law. invitation. This is intended so that the rights of husbands, wives and children can truly be guaranteed and protected by the state.



The Urgency of Marriage Registration in the Perspective of Indonesian...

The registration of marriages is to create legal order, it also has preventive benefits, such as preventing deviations from the pillars and conditions of marriage. Avoid falsifying the identities of the parties who are getting married, such as a man who claims to be a teenager but actually has a wife and children. This preventive action in laws and regulations is realized in the form of research on marriage requirements by Registrar Employees, as stipulated in Article 6 PP Number 9 of 1975.¹²

Thus, it is clear that all laws and regulations that are made must have a clear objective, namely the achievement of the objectives of the law itself, in this case the main purpose of registering marriages is to create order related to population administration which is expected to lead to the creation of social order, because with the creation of an orderly administration, it is hoped that marriages in Indonesia can be controlled properly so that there are no more disadvantaged parties. Therein lies the urgency of registering marriages in order to create justice, social order, and legal certainty in society by carrying out their marriage before a marriage registrar in accordance with applicable laws and regulations.

The Urgency of Marriage Registration in the Perspective of Islamic Law

The activity of recording marriages is a new way according to Islamic law. From the beginning, Islamic jurists only discussed the issue of the required presence of witnesses and the process (consent and acceptance), but did not discuss the need for registration of marriages on paper. Therefore, some Muslim communities still believe that marriage is valid if the provisions mentioned in the books of fiqh have been fulfilled, there is no need to register the marriage. The validity of a marriage in Islamic law is the implementation of a marriage contract that meets the conditions and pillars.

The pillars of marriage according to Islamic law are:

- a. Groom;
- b. Bride;

¹²Julir, Nenan. "Pencatatan Perkawinan di Indonesia Perspektif Ushul Fikih." *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan* 4.1 (2018): 53-62.



- c. Guardian;
- d. Two witnesses;
- e. Shigat consent and acceptance.¹³

In principle, Islam greatly glorifies marriage and maintains the continuity of marriage in the future. With the requirement of the presence of two witnesses, it certainly implies that if in the future there is a problem regarding a person's marital status, it is the testimony of the witness that will be used as evidence that a marriage has taken place, moreover, in Islam it is ordered to announce marriages through the walimatul ursy event (wedding party) which of course intended to be witnessed by many people so as not to cause negative responses (slander) and the party carrying out the marriage gains legitimacy from the community. So the substance to be achieved from these Islamic teachings is none other than to realize benefit, and provide protection for the community even though in a very simple way. This is what is then formulated today in a more modern way, namely by registering marriages.

So according to the author, substantially there is no conflict between religious law and state law, both seek to provide legal protection and certainty for the community even though technically there are changes. The changes that occur certainly cannot be separated from the development of the times with dynamics that are constantly changing so that many changes and updates occur. Islam does not prohibit reforms in the field of law including marriage law as long as these changes can bring benefits to husbands, wives and their offspring, and these changes do not conflict with the principles of Islamic teachings (Maqashid Al Sharia).

Therefore, according to Amiur Nuruddin and Azhari Akmal Tarigan¹⁴, one form of renewal of Islamic family law, including the registration of marriages contained in the marriage law, should be

¹³H. M. A. Tihami and Sohari Sahrani, *Fikih Munakahat: kajian fikih nikah lengkap*, Jakarta: Rajawali Pers, 2010, p. 12.

¹⁴Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No 1 tahun 1974, sampai KHI*, Cet. III, Jakarta: Kencana, 2006, p. 121.



obeyed. It is said that the renewal of Islamic family law is because this problem is not found in the books of fiqh or the fatwas of scholars.

Furthermore, if we refer to the Al-Quran, we will not find clear and specific texts regarding the obligation to register marriages. This is different from the muamalah case which emphasizes the recommendation for recording non-cash transactions (debt and credit) as stated in the Al Quran Q.S Al Baqarah/ 2: 282 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَعْتُمْ بَدَيْنَ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

Translated:

O you who believe, if you don't do charity in cash for a specified time, you should write it down. (QS. Al Baqarah: 282).¹⁵

From this verse, the scholars carry out legal istinbath with qiyas (analogy) that if agreements related to property are recommended to be recorded in black and white, what about marriage as a physical and spiritual bond between a man and a woman which is referred to in the Qur'an as mitsaqan ghalidzan with the aim of fostering a sakinah family, mawaddah wa rahmah.

Basically, the verse was revealed in the context of recording and bookkeeping of the trade economy, but there are no obstacles to implementing this administrative activity (recording) in various other transactions, including in the marriage contract which is one of the many types of contract law. Moreover, the rules of Islamic law state that "al ibratu bi generalillafzhi, laa bi khushushi sabab". That is, the understanding of an expression (text) is based on the generality of the text itself, not on the specific causes. After all, the contract that has the most similarities with the sale and purchase contract is the marriage contract.

The obligation to register marriages is approved by several Islamic law experts and is included in the dharuriyyah category. Registration of marriages is made within the framework of protecting children besides the wife (hifz al-nasl) because social facts show that many children are

¹⁵Kementerian Agama RI, *Al-Qur'an dan Terjemahannya*, Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019, p. 63.



neglected in various aspects because there is no clear legal relationship with parents, especially the father.¹⁶

Furthermore, in the compilation of Islamic law, regarding the urgency of registering marriages, it can be seen in Article 5 of the Compilation of Islamic Law, which reads:

- a. In order to guarantee the orderliness of marriage for the Islamic community, every marriage must be recorded.
- b. The registration of the marriage referred to in paragraph (1) is carried out by the Marriage Registrar as stipulated in Law No. 22 of 1946 in conjunction with Law no. 32 of 1954.

Furthermore, the technical implementation is explained in article 6 which reads as follows:

- a. To comply with the provisions in article 5, every marriage must take place before and under the supervision of a Marriage Registrar.
- b. Marriages performed outside the supervision of a Marriage Registrar do not have legal force.¹⁷

In the rules of Islamic law, registering marriages and proving it with a marriage certificate, very clearly brings benefits to the upholding of the household. In line with the rule of "jalbul mashalih wa dar'ul mafasid" which means that the law aims to bring benefit and avoid harm (damage).

The above is in line with the opinion of Ibn Qayyim al-Jauziyah¹⁸ stating that the purpose of shari'a is the benefit of the servant in this world and in the hereafter. Everything is fair, everything contains grace, and everything contains wisdom. Every problem that deviates from justice, mercy, benefit and wisdom is definitely not a shari'a provision.

Furthermore, from a methodological perspective, the registration of marriages is formulated using the istislah or maslahah mursalah method. This is because although formally there are no verses or sunnah provisions ordering the registration of marriages, the content of

¹⁶Zainuddin, Asriadi. "Legalitas Pencatatan Perkawinan melalui Penetapan Isbat Nikah." *Al-Mujtahid: Journal of Islamic Family Law* 2.1 (2022): 60-72.

¹⁷Kompilasi Hukum Islam (KHI), Pasal 5-6.

¹⁸Khairul Umam, *Ushul Fiqih*, Bandung: Pustaka Setia, 2001, p. 127.



The Urgency of Marriage Registration in the Perspective of Indonesian...

the benefits is in line with the provisions of the syara' which want to create benefits for humans. Or by paying attention to the verses quoted above, an analogy (qiyas) can be made, because there are similarities in *'illat*, namely to avoid the negative impacts of marriages that are not recorded.

With the above analysis, it can be emphasized that marriage registration is a provision that needs to be accepted and implemented by all parties, because marriage registration has a strong methodological basis, namely qiyas to bring benefits. Based on the provisions above, the marriage registration as evidenced by the marriage certificate as stipulated in QS. Al Baqarah verse 282 should be a common concern. Registering a marriage and reporting it to the authorized official (Marriage Registrar) means that obedience to the government has been implemented which is also a principal obligation in religious teachings.

The Legal Consequences of Not Registering a Marriage

In a marriage, marriage registration is a very important thing to do considering the legal consequences of the marriage. Because by registering a marriage, it will become authentic evidence if legal events occur in the future.¹⁹

Marriages that are not recorded or not registered with the competent authority certainly have legal consequences that are very detrimental to the parties in the marriage, be it the husband, wife, and children who are born, especially the losses suffered by the wife and children. From a juridical and sociological perspective, unrecorded marriages only place women and children in a low position.

Although these unrecorded marriages still raise pros and cons, until now there are still many cases in society. Even though the marriage will clearly have an impact not only on the couple concerned, it will also

¹⁹Mangku, Dewa Gede Sudika, and Ni Putu Rai Yuliantini. "Diseminasi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Peningkatan Kesadaran Hukum Masyarakat Di Desa Sidetapa Terkait Urgensi Pencatatan Perkawinan Untuk Memperoleh Akta Perkawinan." *Jurnal Pendidikan Kewarganegaraan Undiksha* 8.1 (2020): 138-155.



have an impact on their offspring. According to Abdul Manan²⁰, the impacts of unrecorded marriages include:

- a. The husband and wife do not have a marriage certificate as proof that they are legally married according to religion and state;
- b. Children cannot obtain a birth certificate from an authorized wife because to obtain a birth certificate a marriage certificate from their parents is required;
- c. Children cannot inherit their parents' assets because there is no authentic evidence stating that they are the heirs of their parents;
- d. Do not obtain other rights in the implementation of state administration which must be fulfilled as proof of identity.

From a juridical review, marriage is not recorded as having no legal force. Because legally, the marriage was deemed never to have happened. In the absence of legal force, the husband is not legally bound to fulfill his obligations as a husband and a father who must provide maintenance for his children and wife, as well as other obligations. The absence of attachment to this law is one of the factors that causes husbands to neglect their obligations to their wives and children so easily.

Marriages that are not performed in the presence of officials and/or are not recorded, do not meet legal aspects of State administration and do not have official documents from the State in the form of marriage certificates, which has implications for the absence of legal force over marriages that are performed. The power of law is the strength of proof of the marriage that is carried out. In other words, the power of law is the power of proof legally formal and binding power to the authorized parties. Marriages that do not have legal force have a juridical impact on the rights of public services, they do not receive

²⁰Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia* Cet.I, Jakarta: Kencana, 2006, p. 51.



protection and legal services by the competent authorities as they should.²¹

Furthermore, unregistered marriages will eliminate the wife's right to sue legally. In other words, women do not get legal protection. Therefore, unregistered marriages are a form of harassment against women because they can eliminate women's rights. Therefore, the registration of marriages is a form of respect for women's rights to protection.

Unregistered marriages have a very detrimental impact on wives and children. For the wife, the legal impact is that they are not considered a legal wife because they do not have authentic legal evidence. As a consequence, the wife is not entitled to the husband's maintenance and inheritance if he dies, the wife is not entitled to joint property in the event of a divorce because legally, the marriage is considered never to have happened. Furthermore, in social life, women will get negative legitimacy from society because they live in the same house with men without marriage ties or are considered mistresses because there is no strong evidence of their marriage.

The impact on children is that the status of children born is considered as illegitimate children. Of course, the status of a child out of wedlock will have a bad impact psychologically and sociologically for the child. The ambiguity of the child's status before the law results in the child not being entitled to maintenance, inheritance, living expenses and education from his father. In fact, the child born carries the rights inherent in him (the rights of the child) which in principle should not be treated differently or discrimination. Of course, this is very contrary to the spirit of protecting human rights and is not in line with one of the principles of Islamic teachings, namely the protection of offspring (children). The status of children naturally remains as legal subjects who have equal child rights (equality on the rights of the child).

So, if it is concluded that there are many social problems as a result of unregistered marriages. Among them is the rise of polygamy, because almost all polygamous marriages are not registered, the rise of

²¹Zainuddin, Asriadi. "Legalitas Pencatatan Perkawinan melalui Penetapan Isbat Nikah." *Al-Mujtahid: Journal of Islamic Family Law* 2.1 (2022): 60-72.



private marriages (sirri marriages), and contract marriages, the rise of covert prostitution, the absence of a marriage certificate causes neglect and neglect of the rights of wives as well as children's rights and eliminates their status legally.

Marriage does not only have legal consequences for those who enter into marriage and for children born as a result of the marriage, but also has legal consequences for the assets of the husband and wife, family law and wealth are very closely related to one another. The legal relationship in the family determines the legal relationship in marital assets, which is nothing but the law of family wealth.

In every marriage, assets owned by husband and wife, whether obtained before the marriage or after the marriage, are known as innate assets and joint assets, can be counted as rights that can be used for the benefit of the household with the consent of both parties, even if it is in each other's inherited assets. has the right to control as long as the parties do not specify. In Islamic law, each husband and wife have the right to own property individually within the limits under his control and cannot be disturbed by other parties.

Marriages that are not recorded have an impact on the loss of the right to claim over joint assets if the marriage breaks up either due to divorce or because of death, the right to claim maintenance or inheritance when one of the parties dies, joint assets obtained as a result of a marriage that is not recorded are only controlled by each person of which produces it because there are no joint assets that result from unrecorded marriages.

The latter is explicitly explained in Article 7 paragraph (1) of the Compilation of Islamic Law that marriage can only be proven by a marriage certificate made by a marriage registrar, the absence of a marriage certificate as a result of the marriage not being reported to the competent authority will have very broad implications as stated in have been described above, both to husband and wife, children, and assets in marriage which have a negative impact both from a juridical, sociological, and psychological perspective.



CONCLUSION

The urgency of registering the marriage can be seen from various perspectives. Even though there is still ambiguity in the provisions for registering marriages in the Marriage Law, the necessity for registration of marriages is intended within the framework of the state's function of providing guarantees of protection and legal certainty. Meanwhile, from the perspective of Islamic law, the registration of marriages has reached a '*daruriyah*' condition where marriages that are not recorded will cause a lot of loss and harm to the parties in the marriage. So substantially there is no conflict between Indonesian marriage law and Islamic law, both of them are the same in view of the urgency of registering marriages that registration of marriages cannot be separated from the implementation of the marriage itself. Furthermore, marriages that are not registered will have extensive and very detrimental consequences as described above, both to the husband, wife, children, and assets in the marriage which have a negative impact both from a juridical, sociological and psychological aspect.

REFERENCES**Book:**

Kementerian Agama RI, *Al-Qur'an dan Terjemahannya*, Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019.

Manan, Abdul, *Aneka Masalah Hukum Perdata Islam di Indonesia Cet.I*, Jakarta: Kencana, 2006.

Mertokusumo, Sudikno, *Hukum Acara Perdata di Indonesia*, Yogyakarta: Liberty, 2003.

Nawi, Syahrudin, *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*, Makassar: PT.Umitoha Ukhuwah Grafika, 2017.



Nuruddin, Amiur dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No 1 tahun 1974, sampai KHI*, Cet. III, Jakarta: Kencana, 2006.

Sampara, Said dan Laode Husain, *Metode Penelitian Hukum Edisi Revisi*, Makassar: Kretakupa Print, 2016.

Shihab, M. Quraish, *Perempuan*, Jakarta: Lentera Hati, 2006.

Sudarsono, *Hukum Perkawinan Nasional*, Jakarta: Rineka Cipta, 2005.

Tihami, H.M.A dan Sohari Sahrani, *Fikih Munakahat: kajian fikih nikah lengkap*, Jakarta: Rajawali Pers, 2010.

Umam, Khairul, *Ushul Fiqih*, Bandung: Pustaka Setia, 2001.

Journal:

Halim, Abdul, Pencatatan Perkawinan Menurut Hukum Islam, *Jurnal Al Mabhats* 5.1 (2020): 1-18.

Julir, Nenan. "Pencatatan Perkawinan di Indonesia Perspektif Ushul Fikih." *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan* 4.1 (2018): 53-62.

Mangku, Dewa Gede Sudika, and Ni Putu Rai Yuliartini. "Diseminasi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Peningkatan Kesadaran Hukum Masyarakat Di Desa Sidetapa Terkait Urgensi Pencatatan Perkawinan Untuk Memperoleh Akta Perkawinan." *Jurnal Pendidikan Kewarganegaraan Undiksha* 8.1 (2020): 138-155.

Susanti, Dyah Octorina. "Urgensi Pencatatan Perkawinan (Perspektif Utilities)." *Rechtidee* 11.2 (2016): 166-181.



The Urgency of Marriage Registration in the Perspective of Indonesian...

Usman, Rachmadi. "Makna pencatatan perkawinan dalam peraturan perundang-undangan perkawinan di Indonesia." Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia (2017).

Zainuddin, Asriadi. "Legalitas Pencatatan Perkawinan melalui Penetapan Isbat Nikah." Al-Mujtahid: Journal of Islamic Family Law 2.1 (2022): 60-72.

Regulation:

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Peraturan Pemerintah Nomor 9 Tahun 1975 tentang pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan.

Impres Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam.

