



Formalization of Marriage Registration from the Perspective of Maqāṣid al-Sharī‘ah: A Comparative Study of Classical Islamic Jurisprudence and Family Law Regulations in Indonesia

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The tension between the validity of theological marriage (classical *fiqh*) and its formal legality (state law) remains a crucial discourse in Indonesia, particularly in religious regions. Many people perceive marriage registration merely as an administrative burden with no implication for religious validity, leading to the prevalence of unregistered marriages. This normative legal research employs a statute approach and a conceptual approach. Data were gathered through a literature review of authoritative *fiqh* texts, Indonesian family law regulations, and the theory of *Maqāṣid al-Syari‘ah*. The study reveals that the absence of discussions of marriage registration in classical *fiqh* was due to the historical communal socio-political context, which differs from modern state structures. Through the lens of *Maqāṣid al-Syari‘ah*, the formalisation of marriage registration has risen from a *ḥājīyyat* (secondary need) to a *ḍarūrīyyat* (primary necessity). This is because registration serves as the sole instrument in protecting wives' civil rights (*ḥifẓ al-māl*) and ensuring children's legal identity and lineage (*ḥifẓ al-nasl*) before positive law. This research concludes that marriage formalisation is a manifestation of public interest (*maṣlaḥah mu'tabarab*) that must be fulfilled to uphold substantive justice within Muslim family institutions in Indonesia.



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INTRODUCTION

Marriage in Islamic legal discourse is not merely viewed as a civil contract; rather, it constitutes a sacred bond of a theological-transcendental nature, referred to in the Qur'an as *mitsaqan ghalizā*. This term places marriage on a level comparable to the covenant between Allah and His Prophets, indicating the existence of spiritual

and eschatological accountability behind a human contract.¹ In the classical *fiqh* tradition, particularly within the Shāfi‘ī school, which has long been the dominant legal tradition in the Indonesian archipelago, the validity of a marriage depends primarily upon the fulfillment of the essential pillars and conditions prescribed by Islamic law (*shar‘ī* requirements), namely the presence of the bride and groom, a legal guardian (*wali*), two trustworthy witnesses, and the marriage formula (*ṣiḡhat*) consisting of offer and acceptance (*ijab* and *qabul*).² This construction establishes the paradigm that as long as these requirements are fulfilled, the spiritual rights and obligations of the spouses are considered protected before God.

From a historical and epistemological perspective, classical Islamic legal literature did not regard administrative registration as a prerequisite for the validity of marriage. This can be understood through the lens of legal sociology, wherein social protection systems at that time were based on communal recognition and the preservation of lineage through oral and social mechanisms, particularly through the institution of *walimat al-‘urs*.³ During the era of the Prophet Muhammad and the classical Islamic civilization, the state's role in private affairs was primarily focused on moral supervision and public protection rather than rigid bureaucratic registration. The presence of witnesses and the public announcement of marriage through wedding ceremonies were considered sufficient to prevent social suspicion and provide social legitimacy for the newly established marital relationship.⁴

However, as social structures have transformed from traditional communal societies into modern bureaucratic states, Islamic law has faced significant challenges of contextualization. In Indonesia, this tension manifests as a dichotomy between “religious marriage” (*nikah agama*), which remains unregistered, and “state-recognized marriage” (*nikah negara*), which is officially registered.⁵ The phenomenon of unregistered marriage, commonly known as *nikah siri*, remains prevalent in many religious communities throughout Indonesia.⁶ It often represents a contestation between adherence to classical *fiqh* doctrines and the demands of modern state law. Preliminary studies indicate that this tendency is frequently driven by rigid religious interpretations, in which formal legality is perceived as merely an administrative

¹ Imam Syafī‘ī, Ruqoyatul Faiqoh, and Vasco Fronzoni, “Concept of Misaqan Ghalidzan in Contemporary Interpretation of Quraish Shihab Thoughts,” *MILRev: Metro Islamic Law Review* 2, no. 2 (2023): 115–33.

² Qurrotul Ainiyah, “Contribution of Mohammad NawawÄ «bin”~ Umar in Family Conflict Management,” *Justicia Islamica* 15, no. 2 (2018): 209–24.

³ Qadriani Arifuddin, “Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 24, no. 2 (2024): 317–28.

⁴ Muhammad Wahdini and Norcahyono Norcahyono, “Persepsi Ulama Muhammadiyah Kalimantan Tengah Terhadap Pengakuan Kawin Belum Tercatat: (Rekognisi Fatwa Majelis Tarjih Tentang Pencatatan Nikah),” *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* 14, no. 1 (2022): 93–108.

⁵ Ahmad Bunyan Wahib and Novin Raushan, “Promoting New Muslim Romance in the Digital World: State Law in Society in Advocating Early Marriage,” *Ulumuna* 29, no. 2 (2025): 701–30.

⁶ Nailur Rahmi, Arifki Budia Warman, and Amri Effendi, “Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia,” *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 416–37.

burden or even a bureaucratic innovation lacking religious significance. Consequently, state involvement in private family matters is sometimes viewed as an unnecessary intervention. Nevertheless, under Indonesian positive law, particularly Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (*Kompilasi Hukum Islam*), marriage registration constitutes an indispensable instrument for ensuring legal certainty for citizens.⁷ Without an authentic marriage certificate, a marriage lacks legal recognition before the state, thereby limiting access to the legal protections guaranteed by the Constitution.

The phenomenon of unregistered marriages in Indonesia is not merely a normative legal issue but also a social problem with far-reaching implications for the protection of family rights. Data from the Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia indicate that applications for *isbat nikah* (judicial marriage validation) remain among the most frequently submitted cases before the Religious Courts each year.⁸ The persistently high number of such applications demonstrates that marriages conducted without official state registration continue to occur. This condition reflects a significant gap between public awareness of religious validity and the importance of administrative legality in marriage.

Furthermore, numerous studies have shown that women and children are the parties most vulnerable to the adverse consequences of unregistered marriages. The absence of an official marriage certificate often creates difficulties in establishing legal relationships between husbands, wives, and children, particularly in cases involving divorce, disputes over marital property, claims for maintenance, and the administration of civil documentation. Within the framework of a modern rule-of-law state, such circumstances may generate legal uncertainty that undermines the objectives of family protection as envisioned by both Islamic law and national legislation.

From a methodological perspective, the failure to formalize marriage registration is not merely a matter of paperwork; rather, it frequently results in the neglect of fundamental human rights, particularly those of women and children. Women in unregistered marriages often occupy a legally subordinate position, lacking sufficient bargaining power in situations involving domestic conflict, divorce, or disputes over jointly acquired property (*syirkah* or marital assets). Moreover, children born from *nikah siri* frequently face social stigmatization and substantial administrative obstacles, ranging from difficulties in obtaining birth certificates that identify their fathers to the loss of inheritance rights that are recognized under Islamic law but remain difficult to establish under state law.⁹

It is within this context that the paradigm of *Maqāṣid al-Shari'ah* becomes a highly relevant and compelling analytical framework. Fundamentally aimed at

⁷ Akhmad Shodikin et al., "Governing Islamic Marriage: The Role of Tawkil Wali Bil Kitabah in Indonesia's Marriage Registration System," *Khazanah Hukum* 8, no. 2 (2026): 33–46.

⁸ Alfitri Alfitri, Rijal Imanullah, and Aulia Rahman, "Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts," *Ulumuna* 28, no. 1 (2024): 313–44.

⁹ Adriaan Bedner and Stijn Van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism," *Utrecht Law Review* 6, no. 2 (2010).

realizing public welfare (*tahqīq al-maṣlahah*) and preventing harm (*dar' al-mafāsīd*), *Maqāṣid al-Syari'ah* requires that law be understood not only through a textual-literal (*harfiyyah*) approach but also through a teleological and functional perspective. In the contemporary context, the formalization of marriage registration represents a concrete manifestation of the protection of lineage (*ḥifẓ al-nasl*), the protection of life (*ḥifẓ al-nafs*), and the protection of property (*ḥifẓ al-māl*), all of which constitute the core objectives of *al-kulliyāt al-khams* (the five essential objectives of Islamic law).¹⁰ Without registration, these fundamental objectives are exposed to systemic forms of harm (*mafsadah*) within the modern state framework.

Recent studies have increasingly linked marriage registration in Indonesian family law with *maqāṣid al-shari'ah* and classical Islamic jurisprudence, particularly in relation to unregistered (*sirri*) marriages, legal sanctions, and the transformation of registration from a mere administrative formality into a binding legal obligation. These studies generally argue that state marriage registration constitutes an *ijtihad*-based legal mechanism designed to realize the fundamental objectives of Islamic law, especially the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasl*), intellect (*ḥifẓ al-'aql*), and property (*ḥifẓ al-māl*). Scholars such as Tenggo (2023), contend that the Indonesian legal framework, particularly the Compilation of Islamic Law (*Kompilasi Hukum Islam*), reflects the practical application of classical *maqāṣid* theory in contemporary family law.¹¹ Although classical *fiqh* did not explicitly require administrative registration as a condition for marital validity, contemporary *maqāṣid*-based analyses suggest that registration serves a legitimate *shari'i* purpose by ensuring legal certainty, preserving family rights, and safeguarding marital assets. Consequently, the traditional validity framework of classical *fiqh* is not rejected but rather supplemented through state regulation in response to the realities of modern legal systems.

A significant body of literature has examined marriage registration through the lens of *maqāṣid al-shari'ah*, emphasizing its role in protecting family rights and preventing legal harm. Efendi (2026) argues that unregistered (*sirri*) marriages frequently generate legal uncertainty, inheritance disputes, and difficulties in establishing civil status, thereby justifying the classification of marriage registration as a *ḍarūriyyat* (essential necessity) rather than merely a *ḥajjiyyat* (secondary need).¹² Similarly, Munawaroh (2023) maintains that official registration functions as an instrument of *maṣlahah* by promoting legal order and administrative certainty within

¹⁰ Nasruddin Yusuf, Ridwan Jamal, and Misbahul Munir Makka, "The Significance of Ushul Al-Fiqh and Maqashid Syari'ah Approaches in Reforming Islamic Law in Indonesia: A Critical Study of the Penal Code or Another Topic," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 58, no. 2 (2024): 389–417.

¹¹ Tenggo Subangun Harahap, "Tinjauan Maqasid Syari'ah Terhadap Pencatatan Pekawinan," *AL-SYAKHSIYYAH: Jurnal Hukum Keluarga Islam Dan Kemannisiaan* 5 (2023): 38–56.

¹² Zulfan Efendi and Abdul Waid, "Nikah Siri In Maqāṣid Al-Shari'ah Review: A Critical Study of the Urgency of Marriage Registration in Islam," *El-Sirry: Jurnal Hukum Islam Dan Sosial* 3, no. 2 (2025): 243–54.

family relations.¹³ Meanwhile, Harisudin (2021), employing Jasser Auda's contemporary *maqāṣid* framework, contends that stronger registration requirements and sanctions are necessary to ensure more effective protection of family rights and social welfare.¹⁴

Although these studies successfully demonstrate the importance of marriage registration from the perspective of *maqāṣid al-shari'ah*, they primarily focus on legal certainty, harm prevention, and regulatory effectiveness. Limited attention has been given to the theoretical transformation of marriage registration from an administrative mechanism into a *darūriyyāt*-based legal obligation through a comparative analysis of classical *fiqh* and Indonesian family law. Therefore, this study seeks to fill that gap by examining how the changing socio-legal context of the modern state has elevated marriage registration from a supplementary administrative requirement to a fundamental instrument for safeguarding *ḥifẓ al-nasl*, *ḥifẓ al-nafs*, and *ḥifẓ al-māl*.

Based on the foregoing discussion, this article seeks to undertake a comparative and dialectical examination of the relationship between the rigidity of classical *fiqh* doctrines and the dynamic development of family law regulation in Indonesia. By engaging with contemporary scholarship and employing a systems approach, this study argues that marriage registration cannot be viewed merely as a bureaucratic or administrative requirement, categorised as *tahsīniyyāt* (complementary needs). Rather, within the context of the modern state, its status has evolved into a *darūriyyāt* (necessity) for protecting human dignity and fundamental family rights. Through an interdisciplinary framework that integrates principles of *uṣūl al-fiqh* with contemporary legal theory, this research aims to demonstrate how marriage registration functions as a vital instrument for realising the objectives of Islamic law in contemporary society.

Through a comprehensive literature-based inquiry, this article seeks to offer a new synthesis for academics, legal practitioners, and religious scholars on the necessity of harmonising Islamic values with the demands of legal certainty in a modern legal system. Rather than challenging the legitimacy of the classical legal tradition, this study endeavors to revive the spirit of *Maqāṣid al-Shari'ah* as a dynamic framework capable of responding to contemporary social realities. In this regard, the formalisation of marriage registration is understood as a manifestation of Islamic law's enduring commitment to justice, welfare, and the protection of human dignity, thereby ensuring its continued relevance as a source of solutions amid the complexities of modern civilisation.

¹³ Lathifah Munawaroh, Ahmad Munif, and Ahmad Rofiq, "Disharmony in Sirri Marriage Registration Regulations on Family Cards: A Study of Ministry of Home Affairs Regulation No. 9/2016," *Fiat Justitia: Jurnal Ilmu Hukum* 17, no. 1 (2023): 91–106.

¹⁴ M Noor Harisudin and Muhammad Choriri, "On the Legal Sanction against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 471–95.

METHOD

This study employs a normative legal research design to examine legal norms, legal principles, and the coherence between Islamic legal values and state regulations on marriage registration.¹⁵ Normative research is considered appropriate because the primary objects of analysis are authoritative legal texts derived from both Islamic and positive law sources, including the Qur'an, Hadith, classical *fiqh* literature, statutory regulations, and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). Rather than measuring the sociological effectiveness of legal norms, this study aims to assess the extent to which the formalisation of marriage registration aligns with the objectives of Islamic law (*Maqāṣid al-Shari'ah*) and the legal protection framework established by the Indonesian state.

To address the research problem, this study employs three complementary approaches: the statute approach, the conceptual approach, and the comparative approach. The statute approach is used to analyse relevant legal instruments, particularly Law Number 1 of 1974 on Marriage, Law Number 16 of 2019, and regulations issued by the Ministry of Religious Affairs concerning marriage registration. The conceptual approach draws upon the theory of *Maqāṣid al-Shari'ah* to evaluate whether marriage registration should be classified as a *ḍarūriyyāt* (necessity), *ḥajjiyyāt* (secondary necessity), or *tahsinīyyāt* (complementary need), while also considering the doctrine of *Sadd al-Dharā'i'* as a mechanism for preventing the harms associated with unregistered marriages.¹⁶ The comparative approach is applied to examine the relationship between classical *fiqh*, particularly the Shāfi'ī tradition, and contemporary Indonesian family law, with special attention to the transformation of witness functions from individual testimony in classical jurisprudence to institutional verification through state registration.

The study relies exclusively on library-based legal materials, including primary, secondary, and tertiary sources. Primary sources include the Qur'an, Hadith, marriage legislation, the Compilation of Islamic Law, and relevant Constitutional Court decisions. Secondary materials comprise classical *fiqh* works and contemporary scholarship on *Maqāṣid al-Shari'ah*, particularly the writings of Jasser Auda, Ibn 'Ashūr, and Allāl al-Fāsī, as well as peer-reviewed journal articles. Tertiary materials include legal dictionaries, encyclopedias, and digital databases used to verify classical references. Data were collected through documentary research and analysed qualitatively using descriptive-analytical and deductive methods.¹⁷ The analysis further employs systematic interpretation to examine legal provisions within the

¹⁵ Habib Ahmed, "Islamic Normative Legal Theory: Framework and Applications," *Journal of Law and Religion*, 2025, 1–31.

¹⁶ Muhammad Nazir Alias et al., "Scientific Approach as the Basis for the Formation of Maqāṣid Al-Shari'ah Concept and Principles: A Comparative Study," *Malaysian Journal of Syariah and Law* 12, no. 2 (2024): 350–63.

¹⁷ Weng Marc Lim, "What Is Qualitative Research? An Overview and Guidelines," *Australasian Marketing Journal* 33, no. 2 (2025): 199–229.

broader framework of Indonesian family law. Through this methodology, the study seeks to formulate a coherent legal synthesis demonstrating that marriage registration has evolved from a mere administrative requirement into an essential legal instrument for protecting lineage, property, and family rights within the contemporary Indonesian legal system.

RESULTS AND DISCUSSION

The Construction of Marriage in Classical *Fiqh*

From an epistemological perspective, marriage in classical *fiqh* is conceived as a contractual arrangement (*'aqd*) that emphasises the *shar'ī* legality of a private legal relationship.¹⁸ In the authoritative literature of the Shāfi'ī school, which has historically shaped the mainstream of Islamic legal thought in the Indonesian archipelago, the validity of marriage depends entirely upon the fulfilment of several essential pillars: the bride and groom, a legal guardian (*walī*), two competent and trustworthy witnesses, and the marriage formula (*ṣighat*) consisting of offer and acceptance (*ijab* and *qabul*). This paradigm places marriage within the domain of both *mu'āmalah* and *ta'abbudī* obligations, where compliance with religiously prescribed procedures serves as the primary determinant of legal validity.¹⁹ Within this framework, witnesses function not merely as supplementary elements but as the principal mechanism of public declaration (*i'lān*), distinguishing a legally and morally legitimate union from illicit sexual relations. Importantly, however, witnesses in medieval *fiqh* were individual and community-based actors whose authority derived from personal moral integrity rather than from institutional or bureaucratic structures of the state.

The absence of formal administrative marriage registration in classical Islamic legal texts (*al-kutub al-turāth*) can be understood through historical and socio-political analysis. Strong communal bonds and high levels of social cohesion characterised classical Muslim societies. Within such social structures, public recognition obtained through witnesses, religious leaders, and the performance of *walimat al-'urs* was regarded as sufficient legal and social evidence to protect the rights of the parties involved.²⁰ Political authorities generally granted broad autonomy to religious

¹⁸ Faisal Chaudhry, "Rethinking the Nineteenth-Century Domestication of the Sharī'a: Marriage and Family in the Imaginary of Classical Legal Thought and the Genealogy of (Muslim) Personal Law in Late Colonial India," *Law and History Review* 35, no. 4 (2017): 841–79.

¹⁹ Kazi Abdul Mannan and Khandaker Mursheda Farhana, "The Significance and Procedure of Marriage: A Content Analysis of the Holy Qur'an," 2025.

²⁰ Syufa'at Syufa'at and Muchimah Muchimah, "The Shifting Meaning of Walimatul 'Urs in the Era of Society 5.0 in Indonesia: Islamic Law Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1514–35.

institutions in regulating family matters, rendering centralised record-keeping and civil registration functionally unnecessary. Consequently, classical jurists did not classify marriage registration either as a condition of validity (*shart al-ṣiḥḥah*) or as a legal obligation (*shart al-wujūb*), but rather as a matter subject to *ijtihād* beyond the essential pillars of marriage.

However, the transformation of society from a traditional communal order (*Gemeinschaft*) to a modern bureaucratic state (*Gesellschaft*) has fundamentally altered the legal environment in which marriage operates. In contemporary legal systems, the absence of formal documentary evidence frequently creates opportunities for substantial *mafsadah* (harm), resulting in a growing disparity between the theological validity of marriage and its legal recognition by the state. Modern legal institutions no longer rely solely on oral testimony or communal acknowledgement; rather, civil rights relating to maintenance, inheritance, child custody, and family status require authentic documentary proof issued by authorised institutions. Without formal registration, marriage often loses its protective legal function, leaving women particularly vulnerable to abuses of power and the neglect of economic responsibilities by their spouses.²¹ Therefore, maintaining a purely textual interpretation of classical *fiqh* without contextualising it within the framework of *Maqāṣid al-Shari'ah* risks distancing Islamic law from its fundamental objectives: the realisation of justice, legal certainty, and public welfare in contemporary society.

The Formalization of Marriage Registration in Indonesian Regulations

The evolution of family law in Indonesia marks a highly significant new chapter in the transformation of Islamic law, namely the shift of its legal locus from the private-theological sphere to the public-administrative domain. This process of the positivization of Islamic law reached its culmination with the enactment of Law Number 1 of 1974 on Marriage, which was subsequently reinforced by Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI).²² It should be clearly understood that the formalization of marriage registration within these regulations does not constitute an attempt by the state to intervene in the essential shari'ah-based pillars (*arkān*) of marriage. Rather, it serves as a transformative mechanism designed to provide absolute legal certainty for every citizen. In the era of the modern rule-of-law state, the validity of a legal act can no longer rely solely on oral acknowledgment or communal moral consciousness; instead, it must be supported by authentic evidence issued by a competent authority.

²¹ Twila Perry, "The" Essentials of Marriage": Reconsidering the Duty of Support and Services," 2015.

²² M L Fauzi, "Aligning Religious Law and State Law: Street-Level Bureaucrats and Muslim Marriage," *Religion* 33, no. 2 (2018): 291–309.

Article 2 paragraph (2) of the Marriage Law explicitly stipulates that “every marriage shall be registered in accordance with the prevailing laws and regulations.” Philosophically, this provision reflects the state's intention to function as an “institutional witness.”²³ In this context, the state assumes and expands the role of individual witnesses, which in classical fiqh was limited to social verification, transforming it into a modern legal evidentiary function endowed with executory force. The existence of Marriage Registration Officers (Pegawai Pencatat Nikah/PPN) represents an extension of state authority to ensure that the marital contract (*mīthāqan ghalīzan*) receives comprehensive protection under the national legal system. Consequently, the rights and obligations arising from marriage can be legally enforced through state mechanisms whenever disputes arise.

Nevertheless, sociological realities demonstrate that the process of formalization continues to encounter unresolved cultural and theological resistance, particularly within communities characterized by strong religious adherence. Opposition to marriage registration is often framed through a false dichotomy between “God’s law” and “man-made law,” based on the assumption that as long as a marriage is religiously valid, state administrative involvement is redundant or nonessential. This paradigm reflects a limited understanding of the objectives of Islamic law (*maqāṣid al-sharī‘ah*) within the complexities of modern statehood. From a juridical perspective, the absence of marriage registration directly weakens the civil status of wives and children before the law. Without a valid marriage certificate, a marriage is effectively considered non-existent in the eyes of the state, depriving a wife of her constitutional rights to claim maintenance, seek child custody, or pursue the division of marital property through litigation before the Religious Courts.

The consequences are even more severe for children born from unregistered marriages.²⁴ They may lose access to formal legal recognition of paternity on their birth certificates, thereby systematically restricting their access to other civil rights, including inheritance rights, guardianship rights for female children, and access to certain public services. Such conditions are fundamentally inconsistent with the principles of justice (*‘adālah*) and the protection of vulnerable groups that constitute central objectives of Islamic law.

From the perspective of progressive positive law, marriage registration is not merely a matter of administrative order. Rather, it represents a concrete manifestation of the rule of law aimed at safeguarding public welfare from exploitation, neglect, and uncertainty regarding civil status that undermines human dignity. Therefore, the formalization of marriage registration should be viewed as the institutionalization of public benefit (*maṣlaḥah*), a legal obligation that must be

²³ Muhyidin Muhyidin and Budi Setyawan, “Legal Unification and Pluralism in Customary Marriage Registration: Lessons from the Baduy Indigenous Community,” *Masalah-Masalah Hukum* 54, no. 3 (2025): 462–85.

²⁴ Desmal Fajri and Felti Novira, “The Phenomenon of Unregistered Marriages: Problems and Solution,” *Kosmik Hukum* 23, no. 2 (2023): 180–88.

fulfilled to ensure the realization of substantive justice within Muslim family institutions in Indonesia.

Maqāṣid al-Sharī'ah Analysis on the Urgency of Marriage Registration

The application of the Maqāṣid al-Sharī'ah paradigm enables a deeper understanding of the urgency of marriage registration beyond its characterization as a merely technical-administrative bureaucratic procedure. Referring to the classical theory of *al-Kulliyāt al-Khams* (the five essential objectives of Islamic law) developed by Imam al-Shāṭibī and subsequently contextualized by Jasser Auda, the formalization of marriage in the contemporary era has undergone a fundamental transformation in its legal status, shifting from the category of *ḥājjiyyāt* (secondary needs) to that of *ḍarūriyyāt* (essential necessities).²⁵ Within a modern legal system that relies upon authentic documentary evidence, the absence of written proof of marriage no longer merely creates practical difficulties; rather, it poses a systemic threat to the realization of the five fundamental objectives of Islamic law.

First, with regard to *ḥifẓ al-nasl* (the protection of lineage), marriage registration functions as a juridical safeguard that guarantees a child's legal identity and ensures the formal recognition of lineage by the state. Without a marriage certificate, a child may be administratively deprived of a legally recognized civil relationship with the father in official population records. The long-term implications are substantial, encompassing uncertainty regarding inheritance rights, complications concerning matrimonial guardianship (*wilāyah al-nikāḥ*) for daughters in the future, and the potential loss of access to state-sponsored social protection programs.

Second, in relation to *ḥifẓ al-māl* (the protection of property), a marriage certificate serves as indispensable legal evidence in resolving disputes over marital property and in enforcing the rights of wives and children to maintenance following divorce. In the absence of formal registration, assets accumulated during the marriage become vulnerable to unilateral control by one party. From the perspective of maqāṣid al-sharī'ah, such circumstances constitute a form of financial injustice that Islamic law seeks to prevent.

Furthermore, the application of the principle of *Sadd al-Dharā'ī'* (blocking the means to harm) is particularly relevant in this discourse. The requirement of marriage registration through state regulatory mechanisms represents a preventive measure intended to avert the negative consequences associated with unregistered marriages (*nikah sirī*), which sociologically often become gateways to the exploitation of women and the neglect of children. By way of analogy (*qiyās*), this argument finds strong legitimacy in the Qur'anic injunction contained in Surah al-Baqarah (2:282), wherein Allah commands believers to record debt transactions as a precautionary measure (*iḥtiyāt*) and as a means of preventing future disputes. The verse emphasizes that

²⁵ Zainuddin Sunarto, "Bridging Tradition and Modernity: Al-Syāṭibī's Maqāṣid Al-Sharī'ah as a Framework for Contemporary Islamic Jurisprudence," *Al-Fiqh: Journal of Contemporary Islamic Law* 1, no. 1 (2025): 40–48.

documenting agreements (*faktubūhu*) serves to realize justice and provide the most reliable form of evidence before God.

If Islamic law prescribes such detailed documentation for debt transactions, which concern material and economic interests, then a marriage contract—described in the Qur’an as a *mithāqan ghalīẓan* (a solemn and weighty covenant) and directly connected to the protection of human dignity and honor (*ḥifẓ al-‘ird*)—deserves even greater priority (*awlā*) for formalization through official registration. Consequently, the legal requirement of marriage registration may be viewed as a logical extension of the maqāṣid-oriented commitment to legal certainty, justice, and social protection.

Accordingly, the formalization of marriage registration in Indonesia constitutes a manifestation of a recognized and legitimate public interest (*maṣlaḥah mu‘tabarah*) that is fully aligned with the higher objectives of Islamic law in promoting family tranquility (*sakīnah*) and substantive justice. Compliance with marriage registration regulations should therefore be understood not merely as adherence to administrative requirements, but as a form of social worship (*‘ibādah ijtimā‘iyah*) and obedience to legitimate authority (*ulī al-amr*) aimed at protecting vulnerable members of society. Conversely, resistance to marriage registration should no longer be regarded as an expression of traditional piety; rather, it should be critically evaluated as a neglect of social and legal responsibility that may generate tangible harm (*mafsadah*) for wives and children, who are the parties most vulnerable to legal uncertainty.

CONCLUSION

Based on the comparative analysis and philosophical examination presented in this study, several fundamental conclusions can be drawn regarding the formalization of marriage registration within the framework of Maqāṣid al-Sharī‘ah.

First, there has been a significant paradigm shift from classical fiqh to modern family law in Indonesia. In traditional fiqh discourse, the validity of marriage was primarily understood as a private contractual relationship grounded in personal testimony and religious fulfillment of the essential pillars and conditions of marriage. In contrast, within the contemporary national legal system, the state functions as an “Institutional Witness” that transforms religious validity into publicly recognized legal certainty through administrative mechanisms. The absence of marriage registration discussions in classical fiqh literature should not be interpreted as a theological rejection of registration. Rather, it reflects the socio-legal realities of pre-modern communal societies, which differed substantially from today’s bureaucratic and legally structured nation-state.

Second, through the analytical lens of Maqāṣid al-Sharī‘ah, the formalization of marriage registration has evolved from being merely a complementary necessity (*taḥsīniyyāt*) into an essential necessity (*ḍarūriyyāt*). This transformation is justified by the fact that, in the absence of authentic legal documentation, several fundamental objectives of Islamic law including the protection of lineage (*ḥifẓ al-nasl*), the

protection of property (*ḥifẓ al-māl*), and the protection of life and human welfare (*ḥifẓ al-nafs*) are exposed to systemic risks and potential harm (*mafsadah*). Marriage registration serves as the principal legal instrument for safeguarding a child's identity, inheritance rights, and the civil rights of spouses within the framework of state law.

Third, from a theological perspective, the obligation of marriage registration finds strong normative support through *qiyās* (analogical reasoning) based on Qur'an Surah al-Baqarah (2:282), which commands the documentation of debt transactions to ensure justice and prevent future disputes. If the recording of economic transactions is prescribed to protect material interests, then the marriage contract—described in the Qur'an as a *mīthāqan ghalīẓan* (a solemn and binding covenant) deserves even greater priority (*awlā*) for formal legal documentation. Accordingly, compliance with marriage registration requirements in Indonesia should not be viewed merely as bureaucratic obedience to state authority (*ulī al-amr*), but rather as a manifestation of social piety and collective responsibility aimed at realizing substantive justice and legal protection for all members of the family.

As a recommendation, this study emphasizes the need for the recontextualization and strengthening of legal-religious outreach (*da'wah hukum*) in communities characterized by strong religious traditions. Such efforts are necessary to eliminate the perceived dichotomy between religious validity and state legality. Religious leaders, legal scholars, and academics should actively promote the understanding that marriage registration is not contrary to Islamic teachings; instead, it constitutes an integral mechanism for preserving human dignity, protecting family rights, and realizing the broader objectives of Islamic law in contemporary society. Through this approach, marriage registration can be recognized not merely as an administrative requirement, but as a practical embodiment of justice, legal certainty, and public welfare (*maṣlaḥah*) for Muslim families in modern Indonesia.

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