

Legal Reform Perspectives on the Protection of Wives in Unregistered Marriages

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Abstract: Unregistered marriage remains a prevalent practice in Indonesia and poses serious legal vulnerabilities for wives. Although Indonesian marriage law emphasizes compulsory registration to ensure legal order, it fails to provide substantive legal protection for wives when registration is not fulfilled. This normative gap places wives in unregistered marriages in a legally precarious position, depriving them of legal recognition, civil rights, and effective protection. This study employs a normative juridical method with statute, conceptual, and case approaches to analyze the weaknesses of legal protection for wives in unregistered marriages and to formulate legal reform perspectives. The findings indicate that the current legal framework prioritizes administrative legality over substantive justice, resulting in gender-based legal inequality. The absence of alternative protection mechanisms reinforces structural vulnerability and limits access to justice for wives. Therefore, legal reform is required to shift from a purely legal-formal paradigm toward substantive protection by recognizing and safeguarding certain civil rights of wives regardless of registration status. Strengthening the role of religious courts and integrating human rights and gender equality perspectives are essential to ensure fair and effective legal protection. Such reforms are necessary to align marriage law with constitutional guarantees of legal certainty, protection, and justice.

Keywords : *access to justice, gender equality, legal reform, marriage law, unregistered marriage*

INTRODUCTION

The practice of unregistered marriage, commonly known as nikah siri, continues to occur widely within Indonesian society. This phenomenon is not limited to specific socio religious contexts but is also found across social classes and regions. Although Law Number 1 of 1974 on Marriage has established the obligation to register marriages, social reality shows that this norm has not been fully effective in preventing marriages conducted outside the state administrative system. As a result, unregistered marriages have become a structural and persistent legal problem, particularly for women who hold the status of wives.¹

In unregistered marriages, wives occupy a highly vulnerable position from legal, social, and economic perspectives. The absence of marriage registration results in a lack of state recognition of marital status, causing wives to lose access to formal legal protection. This vulnerability includes the loss of rights

¹ Nurhayatul Hasanah and Niskaromah, "The Phenomenon of Siri Marriage in Indonesia: A Review of Munakahat Fiqh," *Zabags International Journal of Islamic Studies* (2025), <https://doi.org/10.61233/zijis.v2i1.14>

to maintenance, protection from domestic violence, rights to joint marital property, and inheritance rights. Akmal et al. emphasize that in the context of unregistered marriages, women often lack legal bargaining power when domestic conflicts arise because their marital status cannot be proven administratively.²

Normatively, Article 2 paragraph (1) of the Marriage Law states that a marriage is valid if conducted according to the laws of the respective religions and beliefs, while paragraph (2) affirms the obligation of registration. However, this normative construction creates serious problems when registration is not carried out. Positive law places greater emphasis on the legal formal aspect of registration as an administrative requirement, but does not provide mechanisms for substantive protection for wives who have entered into marriages that are religiously valid. This normative vacuum results in ineffective legal protection for wives in unregistered marriages.³

The Compilation of Islamic Law as the primary reference for Islamic family law in Indonesia has also not fully resolved this issue. Although it regulates the rights and obligations of husbands and wives, such regulation implicitly presupposes the existence of an administratively recognized marriage. In practice, wives in unregistered marriages can only access legal protection through the mechanism of marriage legalization proceedings in religious courts, which are reactive, limited in scope, and dependent on the will and good faith of the husband. Alfitri, Imanullah, and Rahman demonstrate that marriage legalization functions more as a means of administrative validation than as an instrument of substantive protection for women.⁴

From a constitutional perspective, this condition contradicts the guarantees of human rights enshrined in the 1945 Constitution of the Republic of Indonesia. Article 28B paragraph (1) guarantees the right of every person to form a family and continue lineage through lawful marriage. Article 28D paragraph (1) guarantees fair legal certainty, while Article 28G paragraph (1) guarantees protection of personal security, honor, and dignity. When wives in unregistered marriages lose legal protection due to normative gaps, the state may be considered to have failed to fulfill its constitutional obligation to protect the rights of women as legal subjects.⁵

Academic studies on unregistered marriage to date tend to position marriage registration as the primary solution. Febriansah et al., in the article “*Advokasi Hukum Keluarga Islam Hukum Nikah Siri Tinjauan Yuridis dan Implikasi Sosial*” (2025), emphasize the importance of increasing public legal awareness regarding the obligation of registration, but do not examine in depth the normative consequences when registration is not carried out.⁶ Simbolon and Ridwan, through “*Analisis Hukum Islam terhadap*

² Andi Muhammad Akmal et al., “Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia,” *EI-Ursrah: Jurnal Hukum Keluarga* (2024), <https://doi.org/10.22373/ujhk.v7i2.25971>

³ Surya Oktarina, “The Impact of Siri Marriage Law Seen from Indonesian Criminal Law,” *ICLSSEE Proceedings* (2022), <https://doi.org/10.4108/eai.16-4-2022.2320118>

⁴ Alfitri Alfitri, Rijal Imanullah, and Aulia Rahman, “Unregistered Polygamy Validation,” *Ulumuna* (2024), <https://doi.org/10.20414/ujis.v28i1.639>

⁵ Muhammad Iran Simbolon and M. Ridwan, “Analisis Hukum Islam terhadap Praktik Nikah Siri di Indonesia,” *Journal of Legal Sustainability* (2025), <https://doi.org/10.63477/jols.v2i1.239>

⁶ Rido Febriansah et al., “Advokasi Hukum Keluarga Islam Hukum Nikah Siri,” *Cendekia* (2025), <https://doi.org/10.62335/cendekia.v2i7.1463>

Praktik Nikah Siri di Indonesia “ (2025), focus more on aspects of legality and social impact, but do not center their analysis on wives as legal subjects who suffer structural harm.⁷

Another study by Wati, Pagar, and Matsum in “*Legal Protection for Wives in Unregistered Polygamous Marriages*” (2025) discusses legal protection for wives in the context of unregistered polygamy, but its analysis is limited to aspects of Islamic law and does not comprehensively construct the need for national legal reform.⁸ Meanwhile, Meliala et al. in “*Perlindungan Hukum bagi Pasangan dalam Perkawinan Tidak Tercatat*” (2025) conduct a comparative study between registered and unregistered marriages, but their focus is more on property ownership than on a framework of substantive legal protection for wives.⁹

Based on this review, there is a clear academic gap, namely the lack of normative legal studies that explicitly analyze the absence of substantive legal protection norms for wives in unregistered marriages and formulate directions for equitable legal reform. Existing studies tend to emphasize administrative compliance or partial solutions through marriage legalization, without critically examining the limitations of the legal system in protecting wives as the most vulnerable parties.

Therefore, this study aims to analyze the weaknesses of legal protection for wives in unregistered marriages from the perspectives of positive law, Islamic law, and human rights, and to formulate directions for legal reform capable of guaranteeing substantive protection of wives’ rights without disregarding the principle of orderly marriage administration.

METODOLOGI

This study employs a normative juridical legal research method with a prescriptive and analytical character. This approach is selected because the issues examined relate to normative gaps and weaknesses in substantive legal protection for wives in unregistered marriages, which can only be adequately analyzed through the examination of positive legal norms, legal doctrines, and court decisions. Normative juridical research does not focus on empirical social behavior, but rather on how law ought to be formulated, interpreted, and developed to ensure the protection of the rights of legal subjects. With its prescriptive nature, this study does not merely map existing problems, but also formulates recommendations for equitable legal reform within the framework of national marriage law.¹⁰

The approaches used in this study include the statute approach, conceptual approach, and case approach. The statute approach is conducted by analyzing relevant legislation, particularly Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law, and constitutional provisions in the 1945 Constitution of the Republic of Indonesia, especially those related to the right to form a family, legal certainty, and the protection of women. The conceptual approach is used to examine concepts of legal protection for women, equality before the law, legal recognition, and access

⁷ Muhammad Iran Simbolon and M. Ridwan, “Analisis Hukum Islam terhadap Praktik Nikah Siri,” *Journal of Legal Sustainability* (2025).

⁸ Asrat Nita Wati, Pagar Pagar, and Hasan Matsum, “Legal Protection for Wives in Unregistered Polygamous Marriages,” *Pena Justisia* (2025), <https://doi.org/10.31941/pj.v24i2.6589>

⁹ Juni Kristiani Meliala et al., “Perlindungan Hukum bagi Pasangan dalam Perkawinan Tidak Tercatat,” *Journal of Indonesian Comparative of Syari’ah Law* (2025), <https://doi.org/10.21111/jics.v8i2.14789>

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).

to justice, which serve as the theoretical foundation for assessing the adequacy of existing legal norms. Furthermore, the case approach is applied through the analysis of religious court decisions concerning marriage legalization, disputes over wives' rights, and cases of unregistered marriages in order to understand how normative gaps are implemented in judicial practice.¹¹

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and court decisions relevant to unregistered marriages. Secondary legal materials comprise legal textbooks, scholarly journal articles, and research findings that discuss family law, women's protection, and unregistered marriages, including works that link these issues with human rights perspectives and Islamic law. Tertiary legal materials in the form of legal dictionaries and encyclopedias are used to clarify key terms and concepts. All legal materials are analyzed using normative prescriptive analysis techniques through systematic and teleological interpretation, particularly to assess the extent to which the objectives of marriage law have provided substantive protection for wives and how legal reform should be directed.¹²

RESULTS AND DISCUSSION

Normative Gaps in Legal Protection for Wives in Unregistered Marriages

Unregistered marriage constitutes a legal phenomenon that places wives in a highly vulnerable position due to the absence of formal recognition by the state. Within the Indonesian marriage law system, marriage registration is positioned as an administrative requirement that determines whether a marriage is recognized by state law. Article 2 paragraph (2) of Law Number 1 of 1974 on Marriage explicitly states that every marriage must be registered in accordance with the applicable laws and regulations. However, this norm is not accompanied by provisions governing the legal protection consequences for parties who suffer losses when registration is not carried out, particularly wives. As a result, positive law merely affirms an administrative obligation without providing alternative protection mechanisms for women who are in unregistered marriages.¹³

This normative gap is structural in nature because national marriage law is more oriented toward administrative order than substantive protection. The Marriage Law and its amendment through Law Number 16 of 2019 do not explicitly regulate the rights of wives in unregistered marriages, whether related to maintenance, joint marital property, or civil status. In practice, wives do not have a strong legal standing to claim their rights because the marital relationship is not recognized by the state. This condition creates a discrepancy between the objectives of marriage law to protect the family and the normative reality that instead leaves women in a state of legal uncertainty.¹⁴

¹¹ Alfitri Alfitri, Rijal Imanullah, and Aulia Rahman, "Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts," *Ulumuna* (2024), <https://doi.org/10.20414/ujis.v28i1.639>

¹² Muhammad Iran Simbolon and M. Ridwan, "Analisis Hukum Islam terhadap Praktik Nikah Siri di Indonesia," *Journal of Legal Sustainability* (2025), <https://doi.org/10.63477/jols.v2i1.239>

¹³ Andi Muhammad Akmal et al., "Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* (2024), <https://doi.org/10.22373/ujhk.v7i2.25971>

¹⁴ Rido Febriansah et al., "Advokasi Hukum Keluarga Islam Hukum Nikah Siri," *CENDEKIA* (2025), <https://doi.org/10.62335/cendekia.v2i7.1463>

The Compilation of Islamic Law has also not been able to adequately fill this normative gap. Although the Compilation recognizes the religious validity of marriage, the regulation of the legal consequences of marriage still presupposes the existence of registration. This situation creates a dualism between religious validity and state recognition, which ultimately disadvantages wives. In this context, Islamic law as a source of substantive justice values is not fully articulated in positive legal norms that protect women. Several studies indicate that reliance solely on registration has obscured the objective of legal protection for weaker parties in marital relations.¹⁵

This normative gap in legal protection also affects wives' access to justice. Without clear legal status, wives in unregistered marriages face difficulties in filing claims before the courts, whether related to maintenance, divorce, or division of property. The mechanism of marriage legalization provided by religious courts often becomes the only available remedy, yet it is reactive and not always effective. Marriage legalization requires complex evidentiary proof, involves costs, and often depends on the good faith of the husband. Thus, the state indirectly shifts the burden of legal protection onto the victims rather than addressing it within the legal system itself.¹⁶

From a constitutional perspective, this condition contradicts the principles of legal certainty and protection of citizens. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right to recognition, guarantees, protection, and fair legal certainty. In addition, Article 28G paragraph (1) affirms the right of every person to protection of self and family. The absence of norms protecting wives in unregistered marriages demonstrates a failure of the state to fulfill its constitutional obligation to protect women as legal subjects. Legal protection that relies entirely on administrative status contradicts the spirit of the rule of law, which places substantive justice as its primary objective.¹⁷

Accordingly, the absence of legal protection norms for wives in unregistered marriages is not merely a technical administrative issue, but a fundamental problem in the design of national marriage law. A legal system that fails to provide protection mechanisms for the most vulnerable parties risks perpetuating structural injustice. Therefore, legal reform must be directed toward recognizing the basic rights of wives as legal subjects, regardless of whether marriage registration exists, without eliminating administrative obligations as instruments of legal order.

The Impact of Unregistered Marriages on Wives' Civil Rights

Unregistered marriages generate serious legal consequences for the fulfillment of wives' civil rights. The absence of registration causes marital relationships to be unrecognized by the state, resulting in the loss of a legal basis for wives to formally claim their rights. Within the Indonesian civil and family law system, state recognition of a marriage is a primary prerequisite for the emergence of legal rights and

¹⁵ Muhammad Iran Simbolon and M. Ridwan, "Analisis Hukum Islam terhadap Praktik Nikah Siri di Indonesia," *Journal of Legal Sustainability* (2025), <https://doi.org/10.63477/jols.v2i1.239>

¹⁶ Alfitri, Op.Cit.

¹⁷ Ni Luh Putu Mike Wijayanti S., "Perlindungan Hukum Terhadap Hak Istri Dalam Perkawinan Poligami," *Acta Comitas* (2018), <https://doi.org/10.24843/ac.2018.v03.i02.p06>

obligations between husband and wife. When registration is not carried out, wives occupy a weak legal position because they are unable to prove their marital status juridically.¹⁸

The most immediate impact is the loss of access to maintenance protection and the husband's economic responsibility. In registered marriages, the husband's obligation to provide maintenance to the wife has a clear legal basis and can be enforced through judicial mechanisms. Conversely, in unregistered marriages, wives face difficulties in claiming maintenance due to the absence of legally recognized proof of marriage. This condition creates total dependence on the husband's good faith and increases the risk of neglect of women. Several studies indicate that women in unregistered marriages often lack bargaining power when domestic conflicts or economic abandonment occur.¹⁹

Another impact relates to rights over joint marital property. National marriage law recognizes the concept of joint property arising from the existence of marriage. However, without registration, assets acquired during the marital relationship cannot automatically be classified as joint property. As a result, wives lack a strong legal basis to claim property division in the event of separation or the death of the husband. In practice, such assets are often regarded as the husband's personal property, causing wives to lose economic rights that should be protected by law.²⁰

Furthermore, unregistered marriages also affect wives' inheritance rights. A wife's status as an heir depends on legal recognition of the marital relationship. Without registration, wives are frequently not recognized as legitimate heirs under positive law, whether within the context of civil inheritance law or codified Islamic inheritance law. This condition exacerbates injustice because wives not only lose economic rights during the marriage but also after the death of the husband. Several studies affirm that women in unregistered marriages are often marginalized in inheritance distribution processes.²¹

The legal remedies available to wives are generally limited to the mechanism of marriage legalization before religious courts. However, this mechanism is reactive and not always effective. Marriage legalization requires evidence and witnesses and often necessitates the consent or presence of the husband. In certain cases, marriage legalization cannot be pursued because the husband refuses or has passed away. This demonstrates that legal protection for wives is highly dependent on factual conditions that are not always within the control of the women themselves.²²

To clarify the differences in legal impacts between registered and unregistered marriages on wives' civil rights, a comparative table is presented below.

¹⁸ Nurhayatul Hasanah and Niskaromah, "The Phenomenon of Siri Marriage in Indonesia," *Zabags International Journal of Islamic Studies* (2025), <https://doi.org/10.61233/zijis.v2i1.14>

¹⁹ Wiranda Soraya, Bukhari Ali, and Muhammad Husnul, "Legal Protection of Women and Children in the Practice of Nikah Sirri," *al-Rasikh: Jurnal Hukum Islam* (2025), <https://doi.org/10.38073/rasikh.3323>

²⁰ Juni Kristiani Meliala et al., "Perlindungan Hukum Bagi Pasangan dalam Perkawinan Tidak Tercatat," *Journal of Indonesian Comparative of Syari'ah Law* (2025), <https://doi.org/10.21111/jics.v8i2.14789>

²¹ Juni Kristiani Meliala et al., "Perlindungan Hukum Bagi Pasangan dalam Perkawinan Tidak Tercatat," *Journal of Indonesian Comparative of Syari'ah Law* (2025), <https://doi.org/10.21111/jics.v8i2.14789>

²² Khairunnisa Khairunnisa and Hafini Bin Mahmud, "Polyandry in the Shadows," *Sakina: Journal of Family Studies* (2025), <https://doi.org/10.18860/jfs.v9i2.14648>

Table 1. Comparison of Civil Rights Protection between Registered and Unregistered Marriages

Aspect of Civil Rights	Registered Marriage	Unregistered Marriage
Legal recognition of wife	Fully recognized by state law	Not legally recognized
Right to maintenance (nafkah)	Enforceable through court	Difficult to enforce
Joint marital property	Clearly regulated and protected	Often unrecognized
Inheritance rights	Wife recognized as legal heir	Frequently excluded
Access to legal remedies	Direct access to court	Dependent on isbat nikah

The table shows that unregistered marriages systematically place wives in an unequal legal position. This disparity in protection is not merely an administrative consequence, but rather reflects the failure of the law to protect the fundamental rights of women. This inequality also contradicts the principles of equality before the law and access to justice as guaranteed by the constitution. Therefore, the civil law impacts of unregistered marriages underscore the urgency of legal reform oriented toward substantive protection for wives as vulnerable legal subjects.

Perspectives on Legal Reform in Strengthening the Protection of Wives in Unregistered Marriages

Legal reform in the context of protecting wives in unregistered marriages requires a paradigm shift from a legal formalistic approach toward a substantive legal protection approach. Thus far, national marriage law has positioned registration as the primary instrument for achieving legal order. However, excessive focus on administrative aspects has neglected the social reality that unregistered marriages continue to occur widely and generate serious vulnerabilities for women. Therefore, legal reform must begin with the recognition that the absence of registration should not automatically eliminate the basic rights of wives as legal subjects.²³

The paradigm of substantive protection positions wives as parties who must be protected from the negative impacts of normative gaps. From this perspective, the law does not function solely as an instrument of administrative order, but also as a means of protecting parties in unequal positions. Numerous studies indicate that wives in unregistered marriages often experience structural injustice, whether in terms of economic access, legal status, or protection from domestic violence.²⁴ Legal reform must treat this vulnerability as a normative foundation in formulating family law policies.

One crucial direction of reform is the reformulation of norms within the Marriage Law to accommodate mechanisms of legal protection for wives without abolishing the obligation of registration. This reformulation can be carried out by separating the administrative validity of marriage from the recognition of wives' civil rights. Accordingly, even when registration has not been completed, certain rights such as maintenance, protection from violence, and rights over jointly acquired property can still be

²³ Andi Muhammad Akmal et al., "Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* (2024), <https://doi.org/10.22373/ujhk.v7i2.25971>

²⁴ Muhammad Iran Simbolon and M. Ridwan, "Analisis Hukum Islam terhadap Praktik Nikah Siri di Indonesia," *Journal of Legal Sustainability* (2025), <https://doi.org/10.63477/jols.v2i1.239>

legally protected. This approach is consistent with the principles of access to justice and equality before the law.²⁵

In addition to statutory reformulation, strengthening the role of religious courts constitutes an important element of legal reform. To date, religious courts have tended to function reactively through the mechanism of marriage legalization. In fact, courts can be developed as more proactive institutions in providing temporary legal protection for wives, for example through determinations regarding maintenance rights or protection of joint property prior to the formalization of marriage. Strengthening this role requires adjustments to procedural law and judicial guidelines that are sensitive to gender perspectives.²⁶

Legal reform must also explicitly integrate human rights and gender equality perspectives. The Indonesian Constitution guarantees the right to legal certainty, personal protection, and the formation of a family. However, these constitutional guarantees have not been fully implemented in the context of unregistered marriages. Integrating a human rights perspective requires marriage law to protect not only the institution of marriage, but also the individuals within it, particularly women who are socially and structurally more vulnerable.²⁷

Furthermore, legal reform must consider the relationship between state law and Islamic law. In practice, unregistered marriages are often regarded as religiously valid but not recognized by the state. This tension necessitates a harmonization approach rather than a dichotomous one. State law must adopt values of protection and justice embedded in Islamic law, particularly the principle of protecting weaker parties. In this way, legal reform is not perceived as delegitimizing religious law, but rather as an effort to strengthen the protection of women within the framework of a rule of law state.²⁸

Prescriptively, legal reform should ideally result in a layered system of protection. The first layer consists of the obligation of registration as a preventive instrument. The second layer comprises mechanisms of substantive protection for wives when registration is not carried out. The third layer involves strengthening judicial institutions and legal services to ensure access to justice. This layered approach allows marriage law to function adaptively in response to social realities without sacrificing the principle of legal certainty.

Thus, perspectives on legal reform in protecting wives in unregistered marriages affirm that the primary focus of family law must shift from mere administrative legality toward substantive justice. Without comprehensive reform, marriage law will continue to reproduce injustice and fail to protect wives as legal subjects who should receive full protection from the state.

CONCLUSIONS

²⁵ Alfitri Alfitri, Rijal Imanullah, and Aulia Rahman, "Unregistered Polygamy Validation," *Ulumuna* (2024), <https://doi.org/10.20414/ujis.v28i1.639>

²⁶ Khairunnisa. Op, Cit.

²⁷ Wiranda Soraya, Bukhari Ali, and Muhammad Husnul, "Legal Protection of Women and Children in the Practice of Nikah Sirri," *al-Rasikh: Jurnal Hukum Islam* (2025), <https://doi.org/10.38073/rasikh.3323>

²⁸ N. Nurliana and Ibnu Radwan Siddiq T., "Inheritance Rights of Wives and Children in Siri Marriages," *Abrahamic Religions* (2025), <https://doi.org/10.22373/arj.v5i2.32089>

Unregistered marriage is a social phenomenon that remains widespread and generates serious legal vulnerability for wives. The current national marriage law system remains oriented toward administrative certainty through the obligation of registration, yet has not provided adequate substantive legal protection for wives when registration is not carried out. This normative gap results in the loss of recognition of wives' legal status, limited access to maintenance rights, joint property, and protection from violence, and weakens wives' positions in the resolution of legal disputes.

This condition indicates that marriage law has not fully performed its function as an instrument of protection for vulnerable legal subjects. The legal formalistic approach that positions registration as the sole gateway to legal recognition has proven unresponsive to social realities and risks reproducing gender based injustice. Therefore, legal reform must be directed toward strengthening substantive protection for wives in unregistered marriages, without disregarding the principle of orderly marriage administration as a preventive instrument.

Prescriptively, reformulation of norms within the Marriage Law is required to regulate mechanisms for protecting wives' civil rights even when registration has not been carried out, particularly with regard to maintenance, protection from violence, and property acquired during the marital relationship. In addition, strengthening the role of religious courts as institutions of access to justice must be pursued through the expansion of temporary protection authority and the simplification of marriage legalization mechanisms. Such reforms must be integrated with human rights and gender equality perspectives so that marriage law can ensure fair and effective protection for wives as legal subjects.

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