
Unregistered Marriage in Modern Society: Causes and Its Impact on the Rights of Women and Children on Bawean Island

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Abstract

Objective: This study examines the practice of unregistered marriage in modern society on Bawean Island and analyzes the causes and impacts on the fulfillment of women's and children's rights from the perspective of Islamic law and national law. The study aims to identify the social, economic, and religious determinants behind unregistered marriage and explain its legal consequences for the protection of women's and children's rights.

Theoretical Framework: This study is based on the concept of marriage as a mitsaqan ghalidan, the theory of family legal protection, and the maqashid al-syari'ah approach that positions marriage registration as an instrument of public welfare.

Literature Review: Classical fiqh literature and modern Islamic family law indicate a dualism between sharia validity and administrative legality, where the practice of unregistered marriage has implications for the weak protection of civil rights.

Methods: The study used a qualitative socio-juridical and phenomenological approach through in-depth interviews, field observations, and studies of legal documents and population administration.

Results: The findings indicate that unregistered marriages on Bawean Island are influenced by economic, cultural, labor migration, and low legal literacy factors, and have a direct impact on women's vulnerability in accessing livelihoods, inheritance, and legal protection, as well as the uncertainty of children's civil status.

Implications: This study emphasizes the urgency of marriage registration and the optimization of the marriage validation mechanism as a means of restoring family rights.

Novelty: The novelty of the study lies in the integrated analysis of Islamic legal norms, positive law, and the local social realities of the Bawean Island community in explaining the causal relationship between unregistered marriage practices and the protection of women's and children's rights.

Keywords: unregistered marriage, women's rights, children, secret marriage, legal protection.

INTRODUCTION

Marriage from the perspective of Islamic Law is understood as mitsaqan ghalidan, which is a strong bond that has a spiritual as well as juridical dimension. As the institution most widely practiced by Muslims compared to other aspects of muama, marriage not only regulates personal relationships, but also becomes the foundation for the formation of social order [1]. Its validity is determined by the fulfillment of the principles and conditions, including the prospective husband, future wife, guardian of the marriage, two witnesses, as

well as *ijab* and *qabul*. The necessity of witnesses as part of the marriage pillar is a view affirmed by classical jurists such as Imam Shafi'i, Imam Hanafi, and Imam Hanbali [2]. Thus, marriage is not just a social contract, but also a legal event that contains moral responsibility and protection of rights for the parties.

Within the framework of national law in Indonesia, marriage is positioned as a legal act that aims to build a family that is *sakinah*, *mawaddah*, and *rahmah*, while preventing injustice between spouses. The state requires marriage registration as a legal instrument to ensure legal certainty and protection of rights. But social realities show that the practice of unregistered marriages still takes place, despite regulations regulating such obligations. This phenomenon indicates a tension between formal legal norms and social practices that exist in society [3].

Marriages that are not registered with the Office of Religious Affairs juridically do not have the power of proof as a legal marital relationship according to the state. As a consequence, the legal relationship between husband, wife, and child becomes weak from an administrative perspective and legal protection [4]. In practice, this condition puts women and children in a vulnerable position due to limited access to civil rights, including the protection of alimony, inheritance, and administrative recognition of family status [5].

The urgency of registering marriage is not only related to the legality of the relationship between husband and wife, but also to determining access to various civil documents that are the basis for fulfilling the rights of citizens [6]. When marriages are not registered, women often experience obstacles in demanding legal rights from their spouses, while children face limitations in the recognition of legal status in population administration [7]. This impact shows that the practice of marriage is not just a private issue, but a social issue that has implications for the protection of human rights and family justice.

This phenomenon is also found in the social dynamics of the people on Bawean Island, which have distinctive cultural characteristics, religiosity, and social structures. The practice of *sirri* marriage in this region cannot be separated from economic, cultural, and religious understanding factors that develop in the community [8]. Although research on undocumented marriage has been extensive, studies that specifically link local causal factors to structural impacts on women's and children's rights in Bawean are limited. This gap is an important space for this research to make an academic contribution.

This research offers novelty through an integrated analysis of Islamic legal norms, positive law, and local social realities in explaining the practice of *Sirri* marriage. With this approach, the research not only examines the normative aspects of the validity of marriage but also explores the socio-legal implications for the protection of women and children in the context of island communities [9]. The formulation of the research problem is focused on two main aspects, namely the factors that cause the occurrence of serial marriage and its legal consequences on the fulfillment of the rights of women and children, with the aim of producing a comprehensive understanding of the relationship between social practices and legal protection.

Academically and practically, this research is expected to contribute to the development of Islamic family law studies that are responsive to the dynamics of modern society. Research findings can be the basis for policy recommendations in strengthening legal awareness, optimizing the protection of women and children, and formulating contextual family law education strategies. Thus, this research not only enriches the scientific discourse but also has the potential to be a foothold for family law reform efforts that are more equitable and oriented towards the protection of vulnerable groups.

LITERATURE REVIEW

The study of *sirri* marriage in modern Muslim society departs from the basic concept of marriage in Islamic law as a sacred contract that legalizes the relationship between a man and a woman and regulates social and moral responsibilities in the family [10]. Etymologically,

nikah means unity, while terminologically, scholars define it as an agreement that gives legitimacy to the relationship between husband and wife with certain words and fulfills the established harmony. Classical fiqh literature explains that the purpose of marriage is not only related to the fulfillment of biological needs, but also the formation of offspring, the strengthening of social responsibility, and the development of relationships between families. The view of the fiqh school shows conceptual variations on the substance of the marriage contract, but in general, it emphasizes that marriage is a legal and religious institution that contains a dimension of social protection [11].

In the study of Islamic law, the term *sirri* refers to something secret or hidden. Therefore, *nikah sirri* is understood as a marriage that takes place without publication or without formal recognition from certain social authorities. Classical literature shows that there are differences of opinion among scholars regarding the status of the practice [12]. Some scholars consider a secret marriage as a form of violation of the principle of openness in marriage, while other scholars consider the validity of the contract to be determined by the fulfillment of the harmony and conditions of marriage [13]. This difference of view shows that the discourse of *nikah sirri* is not only normative, but also influenced by the social context and the purpose of legal protection in society.

In the modern context in Indonesia, the concept of *nikah sirri* has expanded its meaning, namely, a marriage that is legal according to religion but is not recorded in the state administrative system. Islamic family law literature in Indonesia emphasizes that marriage registration has an important function as legal evidence that guarantees the protection of the rights of husbands, wives, and children [14]. Without official registration at the Office of Religious Affairs, marital relations do not have formal legal force in the state administrative system, so it has the potential to cause legal uncertainty, especially in the aspect of protecting the rights of women and children [15].

The normative study also emphasizes that the practice of marriage that is not recorded gives rise to the dualism of validity between religious law and state law. From the perspective of fiqh, some scholars consider that contracts that meet the pillars are still valid according to *shari'i* even though they are not recorded, while national law views recording as an instrument of legal protection that cannot be ignored [16]. Positive legal literature emphasizes that marriage is a legal act that aims to form a stable family and protect the interests of the parties. Therefore, the absence of marriage registration has implications for weak legal protection in family relationships.

A number of empirical studies show that the practice of marriage is influenced by various structural and cultural factors, including economic limitations, low legal literacy, social pressure, and efforts to avoid state administrative procedures. Psychological studies also highlight that family background and community social norms play a role in shaping couples' decisions to marry unrecordedly [17]. In the context of traditional societies or island regions, cultural and religious factors are often the main justifications for such practices, although they have the potential to pose legal vulnerabilities for women and children.

The literature on the impact of *nikah sirri* consistently highlights the structural disadvantages experienced by women and children due to the absence of formal legal recognition. The unclear legal status of marriage causes limitations in claiming alimony, inheritance, legal protection, and access to civil documents. Children born from unregistered marriages also face administrative obstacles in the recognition of family legal status [18]. These findings show that the practice of *nikah sirri* is not only a private issue, but also an issue of legal protection and social justice in the family law system.

Although various studies have discussed *nikah sirri* from a normative and sociological perspective, studies that specifically link local factors to the impact of legal protection in the archipelago are still limited. Therefore, research on the practice of *sirri* marriage on Bawean Island is important to fill the empirical study gap on the relationship between social factors, religious practices, and the protection of the rights of women and children in the context of

modern society [19]. The existing literature is a theoretical basis for analyzing how the practice of intermarriage is formed, maintained, and impacts the structure of family law protection in local communities.

METHODOLOGY

This study uses a type of qualitative research with a socio-juridical and phenomenological approach to interpret the practice of civil marriage as a social phenomenon as well as a legal event that has an impact on the protection of women's and children's rights [20]. Researchers act as the main instruments that interact directly with subjects in the natural environment to gain a deep understanding of the motives, processes, and legal consequences of unrecorded marriages [21].

Primary data was obtained through in-depth interviews and observations of married couples, religious leaders, village officials, and officers of the Office of Religious Affairs, while secondary data was sourced from fiqh literature, national marriage regulations, population administration documents, and previous research results. The selection of this method is based on the need to capture the quality of the subject's experience and explain the tension between the validity of shari'i (the fulfillment of the principles and conditions of the contract) and the administrative legality of the state, thus allowing a comprehensive analysis of the causes of *nikah sirri* and its implications for access to alimony, inheritance, and recognition of the status of children [22].

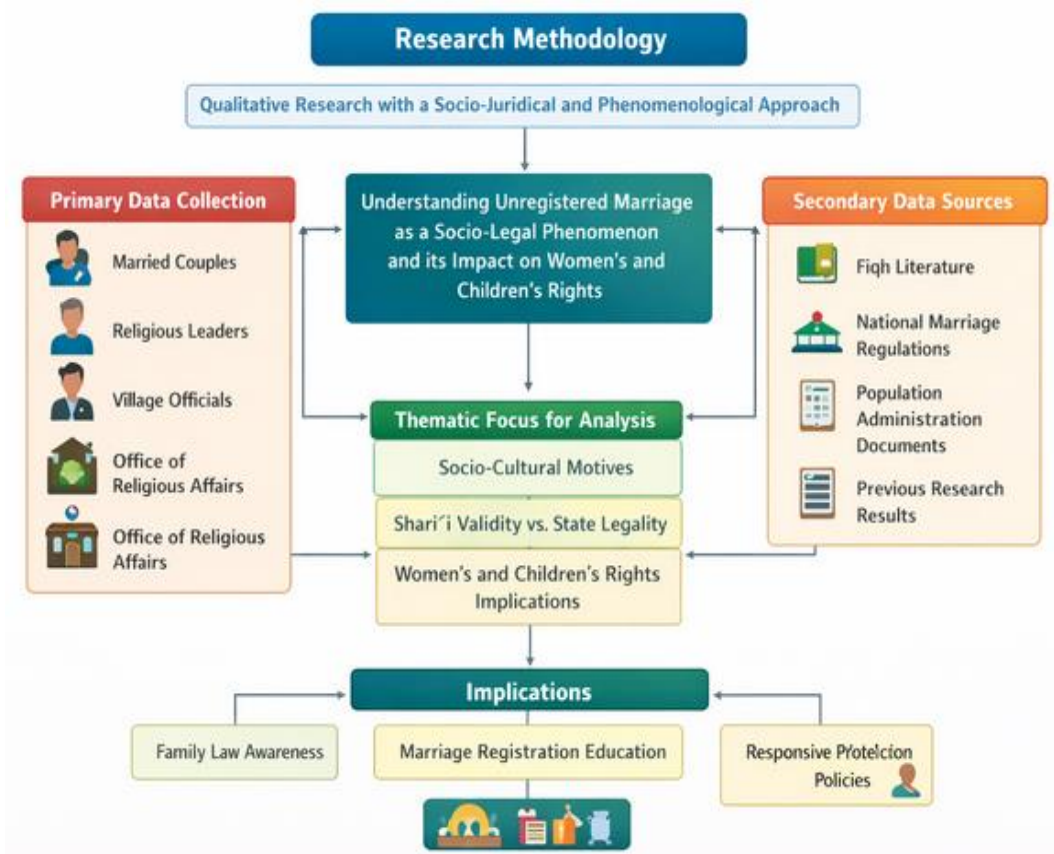


Figure 1. Research Method Flow Chart

The urgency of the research lies in the lack of contextual studies of the archipelago that link cultural, economic, and legal literacy factors with the structural vulnerability of women and children; Therefore, the findings are expected to have practical implications for strengthening family law awareness, marriage registration education strategies, and the formulation of more responsive protection policies on Bawean Island.

RESULTS AND DISCUSSION

Ambivalence of Religiosity and Legality in the Practice of Sirri Marriage

The phenomenon of sirri marriage in modern society on Bawean Island shows that there is a tension between religious motivation and the formal legal demands of the state. In many cases, unregistered marriages are chosen as a quick fix to avoid acts that are considered to violate religious norms [23]. But in social practice, such moral legitimacy often shifts to pragmatic instruments to circumvent state regulations, including administrative obligations and restrictions on polygamy. This condition shows that religious practices do not always go hand in hand with the national legal system, thus presenting problems of civil rights protection, especially for women and children.

Data on the submission of marriage cases at the Bawean Religious Court, which reached 100 cases in the 2021-2024 period, shows that the practice of marriage is not recorded as a sporadic phenomenon, but a systemic social pattern. This phenomenon indicates the need for legal legitimacy after couples experience the administrative and social impact of a serial marriage [24]. This post-marital legalization shows that legal needs are actually realized, but are often postponed until concrete problems arise in the family.

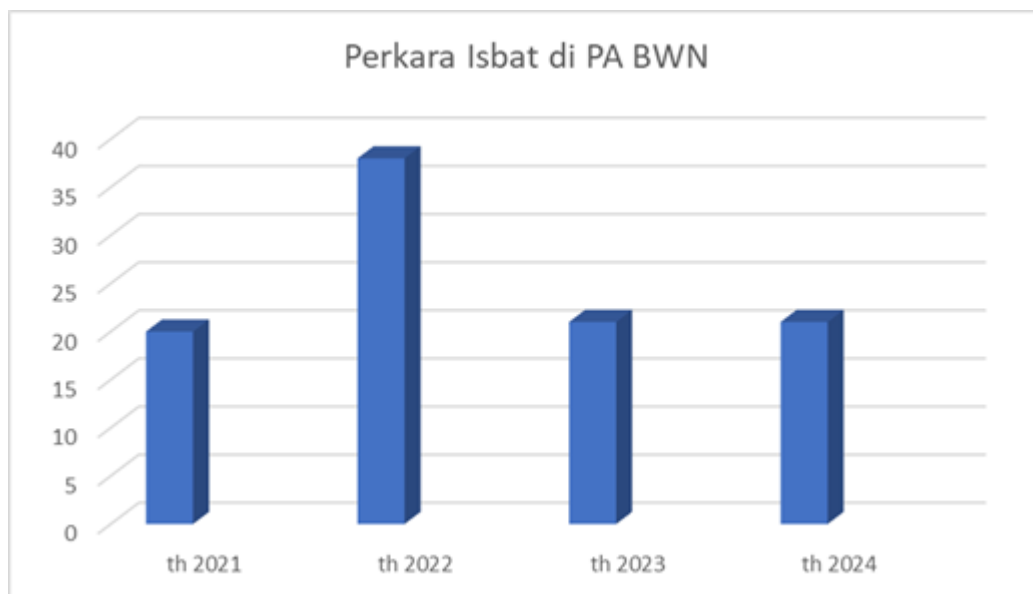


Figure 2. Isbat Matters in the Bawean Religious Court

The factors that cause sirri mating in this region are not single, but multidimensional. The economic aspect is an important trigger because formal marriage is perceived as a burden of costs. Structural factors such as the minimum age limit for marriage also encourage couples to choose the informal route [25]. In addition, the dynamics of labor migration to Malaysia and population administration issues also strengthen this practice. In the sociological context, the change in the mindset of the younger generation that is more individualistic also plays a role in weakening the authority of the formal institution of marriage.

The impact of the practice of unrecorded marriage is mainly felt by women. Without legal evidence, the wife does not have a legal position as a legal spouse, cannot claim alimony, does not have access to legal protection, and faces difficulties in managing inheritance and joint property. Children born from Sirri marriages also experience legal vulnerabilities because their civil relationship is formally only recognized with the mother [26]. This situation confirms that the absence of marriage registration is not just an administrative issue, but concerns the sustainability of basic civil rights.

From the perspective of Islamic law and maqashid al-shari'ah, marriage registration has a preventive function to protect rights, prevent disputes, and avoid social harm. Therefore, the legalization of marriage through registration at the Office of Religious Affairs is not only an administrative obligation of the state, but part of efforts to maintain the welfare of the family [27]. Thus, the practice of sirri marriage on Bawean Island can be understood as a social phenomenon born from the intersection between religious values, economic pressure, and limited administrative access, but it has serious implications for the legal protection of women and children.

Table 1. Analysis of Factors and Impacts of Sirri Marriage

Analysis Aspect	Key Findings	Socio-Legal Implications
Religious Motives	Avoiding adultery and maintaining moral norms	Religious legitimacy is often abused to circumvent state regulation
Structural Factors	Marriage age, population administration, and labor migration	Formal marriage is considered inaccessible
Economic Factors	The cost of an official marriage is considered heavy	Short-term rational choices, long-term risks
Impact on Wives	No legal status, no claim of rights	Economic and legal vulnerabilities
Impact on Children	Limited legal status, inheritance, and civil barriers	Reproduction of injustice between generations
Legal Response	Marriage itsbat submission increases	The need for legal legitimacy arises after conflict

The practice of marrying sirri on Bawean Island is triggered by a combination of religious motives, economic pressure, and administrative obstacles, but it leads to real legal vulnerabilities for women and children, ranging from weak maintenance claims, uncertainty of civil status, to limited access to public services [28]. These findings confirm that the validity of religion without state registration is not enough to guarantee the protection of civil rights. Therefore, marriage registration through the Office of Religious Affairs serves as a key instrument for legal certainty, family stability, and sustainable protection for women and children.

The Impact of Sirri's Marriage on the Legal Protection of Women and Children on Bawean Island

The practice of arranged marriage in modern society is not only a private choice based on religious considerations, but has evolved into a social phenomenon that produces structural vulnerabilities for women and children [29]. When a marriage is not officially registered, the marital relationship loses recognition of state law, so the protection of the basic rights of the family becomes weak. In the context of Bawean Island, this condition shows the inequality of impact: the husband relatively does not experience direct legal consequences, while women and children bear the multi-layered social, administrative, and economic burden.

The absence of legality of marriage results in women not having legal status as legal wives. Without a marriage certificate, women cannot claim alimony, do not have access to divorce mechanisms through the courts, and face obstacles in the management of joint property and inheritance [30]. This fact confirms that marriage registration is not just an administrative procedure, but an instrument of legal protection that determines the position of the subject in family relations. This perspective is in line with practical findings in the Bawean Religious Court, which showed an increase in marriage legalization applications in response to legal problems that arise after domestic conflicts occur.

More complex impacts are experienced by children born from a sirri marriage. In the national legal system, children from unregistered marriages only have a civil relationship with their mothers, thus losing the administrative certainty of the fate of the father. Further implications of this condition include barriers to the management of inheritance rights, limited legal guardianship, and potential social marginalization [31]. Thus, a sirri marriage not only affects the couple but also reproduces legal uncertainty across generations.

Sociologically, the practice of unregistered marriage triggers broader social consequences, including an increase in unstable family relationships, low economic responsibility of husbands, and the formation of cultural patterns that normalize the uncertainty of women's status. When the marital relationship is easily denied because it does not have legal evidence, the family institution loses its normative binding [32]. Therefore, state regulations through the obligation to record at the Office of Religious Affairs are understood as a social protection mechanism, not just administrative control.

From a legal policy perspective, the increasing negative impact of arranged marriage encourages the formulation of normative sanctions in the draft marriage regulations. This approach shows that the state views the practice of sirri marriage as a matter of protecting the rights of citizens, especially vulnerable groups in the family [33]. Thus, the phenomenon of sirri marriage on Bawean Island shows a causal relationship between the absence of marriage legality and the weakening of the protection of the rights of women and children, both in the legal, economic, and social realms.

Table 2. Analysis of the Impact of Sirri Marriage on Women and Children

Impact Dimension	Forms of Vulnerability	Social-Legal Consequences
Legality of Marriage	No recognition of state law	The wife does not have legal status
Women's Rights	Unable to claim alimony, divorce, and joint property	Economic dependency and legal uncertainty
Child Status	Civil relationship only with the mother	Barriers to inheritance, guardianship, and legal identity
Family Stability	Relationships are easy to deny	High risk of conflict and neglect
Social Impact	Normalization of the uncertainty of women's status	Reproduction of gender inequality
State Response	Encouragement of legalization through marriage registration	Protection of family civil rights

Sirri marriage on Bawean Island produces multidimensional vulnerabilities that mainly afflict women and children due to the lack of legal recognition of marital relationships. These impacts include loss of legal status, limited access to economic and civil rights protection, and the formation of social uncertainty in family structures. Therefore, marriage registration through official mechanisms is an essential instrument in ensuring the justice of family law and preventing the reproduction of vulnerability across generations.

Reconstruction of Family Law Protection through Itsbat Nikah

Legal solutions for couples who have already married, Sirri emphasizes that marriage registration is not just an administrative formality, but a mechanism for reconstructing family legal status [34]. Through the application for itsbat nikah at the Religious Court, the state provides legal space to legalize marriages that were not previously recorded. The determination of itsbat is the juridical basis for the registration of marriages at the Office of Religious Affairs, so that the couple obtains a marriage certificate as authentic proof of a legal relationship [35]. In this framework, itsbat nikah functions as a corrective instrument that restores legal certainty, protects women's dignity, and secures the civil status of children.

The restoration of family legal status through itsbat nikah has direct implications for the protection of women's rights. With the existence of a marriage certificate, women obtain legal status as legal wives who are entitled to alimony, legal protection in divorce, and access to the distribution of joint property and inheritance rights. Without official documents, marital relationships are vulnerable to being denied and placing women in subordinate positions in the family structure [36]. Therefore, the mechanism of itsbat nikah is not only legal-formal, but also functions as a social protection effort for vulnerable groups in family institutions.

In the context of children, the legalization of marriage through itsbat nikah paves the way for a clearer recognition of civil status. After the marriage is legalized and recorded, the parents can take care of the child's birth certificate so that the child's legal identity gains full legitimacy. The process of child recognition, with the mother's consent, strengthens the legal relationship between father and child, including in the aspects of guardianship, alimony, and inheritance [37]. Thus, itsbat nikah acts as a mechanism to restore the rights of the next generation, which was previously hampered by the absence of proof of marriage.

The urgency of marriage registration also gains normative legitimacy from the perspective of Islamic law. The principle of administrative recording to avoid disputes, analogous to recording debt-receivable transactions, shows that legal documentation is part of efforts to maintain benefits [38]. The rules of dar'ul mafasid muqaddamun 'ala jalbil mashalih emphasize that the prevention of damage must be prioritized, so that marriage registration becomes a preventive instrument against family conflicts, denial of responsibility, and uncertainty of legal status.

In addition to the curative function through itsbat nikah, the solution to the phenomenon of sirri marriage also requires a preventive approach based on social collaboration. Synergy between marriage registration institutions, government officials, and religious leaders is an important strategy in building public legal awareness [39]. Socialization about the benefits of marriage registration and the legal consequences of marriage sirri forms a legal culture that places legality as a necessity, not administrative coercion [40]. Thus, the reconstruction of family law is not only carried out through the legalization of marriage, but also through the transformation of social awareness of the importance of family law protection.

Table 3. Mechanism for Restoration of Rights through Marriage Registration

Solution Mechanism	Legal Process	Protection Impact
Application for Itsbat Nikah	Legalization of marriage by the Religious Court	Certainty of the legal status of husband and wife
Marriage Registration	Issuance of a marriage certificate by the KUA	Protection of women's rights in family law
Child Recognition	Determination of the legal relationship between father and son	Certainty of the child's inheritance and inheritance rights
Issuance of Birth Certificate	Official registration of the child's identity	Strengthening civil and administrative status
Legal Socialization	Public education by related institutions	Prevention of the practice of marriage sirri
Institutional Collaboration	Synergy of officials, religious leaders, and the community	Strengthening the family law culture

Itsbat nikah and marriage registration are strategic mechanisms in reconstructing family legal protection after marriage sirri. Through the legalization of marital relations, women gain certainty of legal status and access to the protection of economic and civil rights, while children gain a clear identity, legitimacy, and civil relationships [41]. From the perspective of Islamic law and state law, marriage registration serves as a preventive and curative

instrument to prevent disputes, protect family dignity, and ensure justice between family members. Therefore, strengthening public legal awareness and institutional synergy are the main prerequisites for building a fair and sustainable family protection system.

Analysis

The findings of this study demonstrate that the practice of unregistered marriage (nikah sirri) on Bawean Island reflects a complex socio-legal phenomenon shaped by the interaction between religious norms, socio-economic realities, and the administrative structure of state law. Although marriage in Islamic law is understood as a *mitsaqan ghalidan*—a sacred and binding covenant that carries moral and legal responsibilities—the absence of formal registration creates a structural gap between religious legitimacy and state legality. This gap becomes the central problem that generates legal vulnerability, particularly for women and children.

From a socio-religious perspective, the decision to engage in unregistered marriage is often motivated by the desire to comply with religious norms that prohibit illicit relationships. In communities with strong religious values such as Bawean Island, marriage is frequently perceived primarily as a religious obligation rather than a legal-administrative act. Consequently, as long as the pillars and conditions of marriage are fulfilled according to Islamic jurisprudence, the marriage is considered legitimate within the community. However, this perception overlooks the protective function of marriage registration within the modern legal system. Registration serves not merely as a bureaucratic requirement but as a mechanism that provides legal certainty and safeguards the rights of family members. Economic and structural factors further reinforce the persistence of this practice. Many respondents perceive formal marriage procedures as financially burdensome or administratively complicated. In addition, the phenomenon of labor migration—particularly to Malaysia—creates social conditions in which couples prioritize practical and immediate marital arrangements over formal legal processes. These circumstances illustrate how socio-economic pressures can influence individual decisions and contribute to the normalization of unregistered marriages within local communities.

The impact of this practice is most significantly experienced by women. Without official marriage documentation, wives lack legal recognition as legitimate spouses in the eyes of the state. This condition severely restricts their ability to claim essential rights such as financial support, legal protection in cases of divorce, and access to joint marital property. The absence of formal legal status often places women in economically dependent and socially vulnerable positions. From a gender justice perspective, this situation reproduces structural inequalities within family relations and weakens the institutional protection intended by family law. Children born from unregistered marriages also face substantial legal and administrative challenges. In the absence of official marriage records, the legal relationship between father and child may not be fully recognized within the national legal system. This limitation can affect access to birth certificates, inheritance rights, guardianship arrangements, and broader civil recognition. As a result, the consequences of unregistered marriage extend beyond the couple and potentially create intergenerational legal uncertainty.

The study further highlights the importance of *itsbat nikah* (marriage legalization through the Religious Court) as a corrective legal mechanism. Through this process, previously unregistered marriages can obtain formal recognition, enabling couples to register their marriages officially and secure legal documentation. This mechanism restores legal certainty, protects women's dignity, and ensures the civil rights of children. However, the increasing number of *itsbat nikah* applications also indicates that many couples only seek legalization after experiencing legal or administrative difficulties. Overall, the research emphasizes that marriage registration should be understood as an essential instrument of legal protection rather than merely an administrative obligation. Strengthening legal awareness, improving access to marriage registration services, and fostering collaboration between religious leaders and government institutions are therefore crucial strategies for preventing the continuation of

unregistered marriage practices and ensuring the protection of women's and children's rights in contemporary society.

CONCLUSION

Based on the results of the study, it can be concluded that the practice of sirri marriage on Bawean Island is proven to be a social phenomenon that arises from the intersection of religious motives, economic limitations, and administrative and structural obstacles, but in its implementation, it actually gives birth to systemic legal vulnerabilities for women and children. When marriages are not officially registered, family relations lose state legal recognition, so that women do not have legal status as legal wives, have difficulty claiming alimony, protection, and rights to joint property and inheritance, while children face uncertainty of civil status, barriers to legal identity, and limited access to social and administrative rights. The increasing data on marriage legalization applications shows that the need for legal legitimacy is actually realized by the public, but it is often only sought after family conflicts or administrative problems arise. This finding confirms that religious validity without registration is not enough to guarantee the protection of family civil rights, so legalization through marriage and official registration at the Office of Religious Affairs is a strategic instrument to restore legal certainty, maintain women's dignity, ensure children's rights are protected, and strengthen family stability. Thus, marriage registration is not just an administrative procedure, but an essential social and legal protection mechanism to prevent the reproduction of injustice and realize the benefits of the family in modern society.

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Author's Contributions

Faiqatul Insiyah conceived the research design, conducted field interviews, and prepared the initial manuscript draft. Mustaen contributed to the sociojuridical analysis, interpretation of Islamic legal perspectives, and data validation. Abdul Halim supervised the project, refined the theoretical framework, edited the manuscript, and coordinated revisions. All authors reviewed, approved, and agreed on the final version submitted.

Conflicts of Interest

The authors declare that this research was conducted without any financial, commercial, or personal relationships that could be interpreted as potential conflicts of interest. The study was carried out independently and objectively, and all analyses, interpretations, and conclusions presented in this article reflect the authors' academic responsibility and commitment to ethical scholarly research practices throughout.

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