

Analysis of Islamic Law and Positive Law in Preventing Unregistered (Siri) Marriages at the Giri Menang Religious Court of West Lombok

Ahmad Muliadi

Universitas Islam Indonesia, Yogyakarta

Correspondence Email: maulidiana002@gmail.com

Abstract

Unregistered or siri marriages remain a widespread phenomenon across various regions in Indonesia, including West Lombok Regency. This practice is generally driven by cultural and economic factors, as well as the lack of legal awareness among the community. Although such marriages may be considered valid under Islamic law, they lack legal force under positive law due to the absence of official registration. This creates numerous legal issues, particularly concerning the rights of wives and children, and the legal protection of the involved parties. This study aims to analyze how siri marriages occur in West Lombok Regency and to examine the roles of Islamic law and positive law in preventing them, with a specific focus on the role of the Giri Menang Religious Court. The research employs a qualitative method with a descriptive approach, utilizing observation, interviews, and documentation as data collection techniques. The research subjects include judges, court officials, and community members who have experienced or are knowledgeable about siri marriages. The findings reveal that siri marriages are often carried out due to economic reasons and procedural simplicity, alongside the prevailing perception that religious solemnization alone is sufficient without the need for civil registration. The Giri Menang Religious Court plays a crucial role in providing legal education to the public and in handling isbat nikah (marriage validation) cases as a means of legalizing siri marriages. However, challenges persist, particularly in shifting societal paradigms and strengthening the integration between religious norms and state law. Therefore, an integrative approach between Islamic law and positive law is essential in preventing siri marriages, along with reinforcing the institutional roles of religious courts and marriage registration agencies to ensure legal certainty and justice for all citizens.

Keywords: Siri Marriage; Islamic Law; Positive Law; Religious Court; West Lombok

Introduction

Marriage in Islam is conceived as a sacred covenant (*mīthāqan ghalīẓan*) that transcends a mere contractual agreement and embodies profound moral, social, and spiritual responsibilities. The Qur'an portrays marriage as a divinely ordained institution through which spouses attain tranquility (*sakinah*), affection (*mawaddah*), and compassion (*rahmah*), underscoring its central role in fostering personal well-being and social stability (Qur'an 30:21). As such, marriage functions not only as a legitimate framework for intimate relations but also as a foundational institution for the preservation of moral order and social harmony (Kamali, 2008).

In the context of a modern nation-state, however, marriage is not solely a religious act but also a legal institution governed by statutory norms. Legal regulation

of marriage serves to ensure certainty, protection, and justice, particularly for vulnerable parties such as women and children. In Indonesia, marriage is regulated by Law No. 1 of 1974 on Marriage, which mandates official registration as a prerequisite for legal recognition. Marriage registration is intended to safeguard civil rights, including legal identity, inheritance, maintenance, joint property rights, and access to judicial protection (Nurlaelawati, 2010).

Despite this regulatory framework, unregistered marriages, commonly referred to as *siri* marriages, continue to persist across various regions in Indonesia, including West Lombok Regency. The persistence of *siri* marriage reflects a complex interaction between religious interpretation, socio-cultural traditions, economic constraints, and limited legal awareness. Many individuals perceive that the fulfillment of religious pillars and conditions of marriage is sufficient for legitimacy, regardless of state registration. This perception is often reinforced by cultural norms and the belief that administrative procedures are costly or burdensome (Bowen, 2013; Hooker, 2008).

From a legal perspective, *siri* marriage exposes women and children to significant risks, including the denial of marital rights, uncertainty of lineage, and limited access to legal remedies. Normatively, such outcomes contradict the objectives of Islamic law, which aim to protect essential human interests and prevent harm. Consequently, the phenomenon of *siri* marriage raises a critical question regarding the relationship between Islamic law and positive law within Indonesia's plural legal system.

This article addresses this issue by analyzing preventive strategies against *siri* marriage in West Lombok Regency through an integrative legal approach. By focusing on the role of the Giri Menang Religious Court, this study examines how Islamic law and positive law can be harmonized to achieve legal certainty and substantive justice in accordance with *maqāṣid al-sharī'ah*.

Existing studies on *siri* marriage generally fall into three major categories. First, normative legal studies focus on the validity of *siri* marriage under Islamic law and positive law. Classical *fiqh* literature generally considers a marriage valid if its essential pillars—consent (*ijab* and *qabul*), guardian (*wali*), witnesses, and dowry (*mahar*)—are fulfilled, without explicit reference to state registration. This doctrinal position has often been used to justify the religious legitimacy of *siri* marriage (Kamali, 2008).

Second, socio-legal studies emphasize the social and legal consequences of *siri* marriage, particularly for women and children. These studies document the absence of legal protection, difficulties in claiming maintenance and inheritance, and the marginalization of women in marital disputes. Empirical findings consistently demonstrate that *siri* marriage disproportionately disadvantages women and children and perpetuates structural gender inequality (Nurlaelawati, 2010; Bowen, 2013).

Third, institutional studies examine the role of religious courts in addressing *siri* marriage through remedial mechanisms such as *isbat nikah* (judicial marriage

validation). While these studies acknowledge the importance of *isbat nikah* in providing legal recognition, they also note that its remedial nature does not effectively prevent the recurrence of unregistered marriages and may even normalize legal non-compliance (Cammack et al., 2015).

Despite these scholarly contributions, a significant research gap remains regarding preventive strategies that integrate Islamic law and positive law at the local institutional level. Most studies focus on post-facto legalization rather than preventive legal approaches grounded in Islamic legal objectives. This article addresses this gap by emphasizing prevention through a *maqāṣid al-sharī'ah*-based analytical framework.

This study is grounded in the theory of legal pluralism, which recognizes the coexistence of multiple normative systems within a single social context. In Indonesia, Islamic law and positive law operate simultaneously, particularly in the domain of family law adjudicated by religious courts. Rather than viewing these systems as inherently contradictory, this study adopts an integrative perspective that seeks normative convergence between religious and state legal frameworks (Menski, 2006).

The primary analytical lens employed is *maqāṣid al-sharī'ah*, which conceptualizes Islamic law as a value-oriented system aimed at protecting essential human interests. The classical objectives of Islamic law – protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) – provide a comprehensive framework for evaluating legal norms and practices (Auda, 2008).

Within this framework, marriage registration is analyzed as a legal instrument that supports the protection of lineage and property, ensures legal certainty, and prevents harm (*dar' al-mafāsid*). Contemporary *maqāṣid* scholarship emphasizes that administrative and procedural regulations imposed by the state can serve as legitimate extensions of Islamic legal objectives when they promote justice and public welfare (*maṣlaḥah*) (Auda, 2008; Kamali, 2008). Accordingly, this study conceptualizes marriage registration not as a secular imposition but as a *maqāṣid*-oriented mechanism for realizing substantive justice within a plural legal system.

Research Method

This research employs a qualitative descriptive method with a socio-legal approach. The study was conducted in West Lombok Regency, with a particular focus on the Giri Menang Religious Court. Data were collected through in-depth interviews with judges, court officials, and community members who have experienced or observed siri marriage practices.

Additional data were obtained through observation and analysis of court documents, including decisions related to *isbat nikah* cases. Data analysis was conducted thematically, involving data reduction, categorization, and interpretation to identify patterns, causal factors, and institutional responses. This approach enables

a comprehensive understanding of both normative legal frameworks and empirical social realities.

Result and Discussion

Determinants of Siri Marriage Practices in West Lombok Regency

The findings of this study demonstrate that the persistence of *siri* (unregistered) marriage in West Lombok Regency is shaped by a convergence of economic hardship, socio-cultural norms, limited legal awareness, and the practice of concealed polygamy. These interrelated factors collectively foster community attitudes that prioritize religious formality over legal compliance, despite the long-term legal and social consequences associated with unregistered marriages.

Economic constraints emerge as a primary determinant. Empirical data from the Giri Menang Religious Court indicate that the majority of applicants for *isbat nikah* come from economically disadvantaged backgrounds, particularly those residing in rural, coastal, and peripheral areas. Many couples perceive marriage registration as financially burdensome, associating it with costly administrative procedures and customary wedding expenses. Although state regulations provide mechanisms for free marriage registration under specific conditions, limited public dissemination of this information sustains persistent misconceptions (Dwiasa et al., 2019). As a result, *siri* marriage is often regarded as a pragmatic response to economic limitations, albeit one that entails the forfeiture of legal protection.

Socio-cultural norms further reinforce the practice of *siri* marriage. In West Lombok, marriage is closely intertwined with family honor, religious legitimacy, and local customs, such as *merariq*. In circumstances involving premarital pregnancy or intense social pressure to preserve family dignity, marriages are frequently conducted hastily through religious figures without official registration. Once the religious requirements are fulfilled, such marriages are widely accepted within the community, regardless of their legal status. This pattern reflects the dominance of religious authority over state law in plural legal settings, where religious legitimacy is often perceived as sufficient for social recognition (Hooker, 2008; Bowen, 2013).

Low levels of legal literacy significantly exacerbate this situation. Many individuals lack adequate understanding of the legal implications of unregistered marriage, particularly with regard to women's rights to maintenance, inheritance, and legal remedies in cases of marital dispute. Interviews reveal that legal awareness typically arises only when practical administrative problems emerge, such as difficulties in obtaining birth certificates or accessing public services for children. This reactive pattern indicates that legal compliance is driven more by necessity than by preventive legal consciousness (Pranoto et al., 2025).

In addition, *siri* marriage is frequently utilized as a mechanism for concealing polygamous relationships. Some men deliberately avoid marriage registration in order to circumvent legal requirements, including court authorization and spousal consent.

This practice disproportionately disadvantages women and children from subsequent marriages, who remain legally unrecognized and vulnerable. Such intentional legal avoidance illustrates entrenched structural gender inequality within informal marital arrangements (Cammack et al., 2015).

The Preventive Role of the Giri Menang Religious Court

Beyond its formal adjudicative function in handling *isbat nikah* cases, the Giri Menang Religious Court has gradually developed a preventive and educative role aimed at reducing the prevalence of *siri* marriage. This preventive orientation reflects institutional awareness that judicial intervention should not be limited to post facto legalization but must also address the structural and normative factors that give rise to unregistered marriages.

One of the court's key preventive mechanisms is the provision of legal aid services (*POSBAKUM*), which offer free legal consultation to economically disadvantaged litigants. Through these services, prospective spouses and *isbat nikah* applicants receive essential information regarding the legal consequences of unregistered marriage, including its implications for women's rights, children's legal status, and access to civil documentation. This form of early legal intervention functions as a tool of legal literacy, enabling individuals to make informed decisions prior to entering marital relationships.

The court also actively implements mobile court programs (*sidang keliling*) in remote and rural areas. These initiatives significantly reduce geographic and financial barriers that often prevent communities from accessing formal legal institutions. Empirical findings suggest that residents of coastal and mountainous regions in West Lombok are more likely to rely on *siri* marriage due to limited institutional access. By delivering judicial services directly to these communities, the court not only facilitates legal recognition through *isbat nikah* but also disseminates legal norms concerning marriage registration and family law obligations.

Furthermore, the implementation of integrated *isbat nikah* services strengthens the court's preventive capacity. These services involve institutional collaboration between the Religious Court, the Office of Religious Affairs (*KUA*), and civil registration authorities, allowing applicants to obtain marriage legalization, marriage certificates, and civil documentation through a single, streamlined process. Such institutional integration reduces bureaucratic complexity and reinforces public perceptions that marriage registration is both accessible and essential for legal protection.

Judges interviewed in this study consistently emphasized that marriage registration should not be understood merely as an administrative formality but as a substantive legal safeguard, particularly for women and children. During court proceedings, judges frequently incorporate legal counseling that highlights the risks associated with *siri* marriage, including the absence of enforceable rights to

maintenance, inheritance, and marital property. By embedding legal education within judicial practice, the court actively promotes preventive compliance with marriage registration laws.

This preventive orientation aligns with the broader access-to-justice framework, which conceptualizes courts as agents of legal empowerment rather than institutions solely dedicated to dispute resolution. As Menski (2006) argues, effective legal systems in plural societies must bridge normative ideals and social realities through participatory and educative mechanisms. In this respect, the Giri Menang Religious Court functions as a mediating institution that translates state law into socially intelligible norms grounded in local religious values.

Integration of Islamic Law and Positive Law through *Maqāṣid al-Sharī'ah*

From the perspective of *maqāṣid al-sharī'ah*, marriage registration plays a crucial role in realizing the substantive objectives of Islamic law, particularly the protection of lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and human dignity (*ḥifẓ al-'ird*). While classical Islamic jurisprudence primarily emphasizes the fulfillment of contractual pillars and conditions (*arkān* and *shurūṭ*) to establish marital validity, it does not negate the necessity of procedural mechanisms that ensure rights protection and prevent harm.

In contemporary socio-legal contexts, the absence of marriage registration has demonstrably produced systematic harm (*mafsadah*), especially for women and children. Unregistered marriages undermine legal certainty, restrict access to justice, and perpetuate gender-based vulnerability. Within a *maqāṣid*-based framework, practices that consistently generate such harm cannot be normatively justified, even if they satisfy minimal formal requirements. Consequently, reinterpretation (*ijtihād*) becomes necessary to align legal practice with the overarching objectives of Islamic law.

Indonesian positive law, particularly Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (*KHI*), operationalizes these *maqāṣid* by mandating marriage registration as a legal requirement. Rather than contradicting Islamic principles, these regulations function as instruments for safeguarding essential human interests through enforceable legal mechanisms. As Auda (2008) emphasizes, *maqāṣid al-sharī'ah* should be understood as a dynamic and systemic framework capable of accommodating administrative and institutional developments that promote justice and public welfare (*maṣlaḥah*).

Kamali (2008) further argues that modern governance structures necessitate procedural regulations to ensure that substantive rights are effectively protected. In this context, marriage registration serves as a preventive legal mechanism that transforms ethical and moral obligations into enforceable rights. When interpreted

through a *maqāṣid* lens, positive law and Islamic law are not positioned in normative opposition but exist in a relationship of mutual reinforcement.

Accordingly, the integration of Islamic law and positive law in addressing *siri* marriage represents a form of normative convergence. By embedding state legal requirements within *maqāṣid*-oriented reasoning, religious courts can legitimize marriage registration as an Islamic responsibility rather than a secular imposition. This integrative approach strengthens legal compliance, advances gender justice, and affirms Islamic law as a living normative system responsive to contemporary social challenges.

Conclusion

This study concludes that the prevention of *siri* marriage in West Lombok Regency necessitates an integrative legal approach that harmonizes Islamic law and positive law within Indonesia's plural legal system. The persistence of *siri* marriage is not caused by a single factor but by the intersection of economic vulnerability, entrenched socio-cultural norms, limited legal literacy, and the strategic use of unregistered marriage to conceal polygamy. These factors collectively reinforce community practices that prioritize religious formality while overlooking the long-term legal consequences, particularly for women and children.

The findings demonstrate that the Giri Menang Religious Court plays a pivotal role not only in remedial efforts through *isbat nikah* but also in preventive legal intervention. Through legal aid services (POSBAKUM), mobile court programs (*sidang keliling*), integrated *isbat nikah* services, and judicial legal education, the court has expanded access to justice and strengthened legal awareness among marginalized communities. This preventive orientation signifies an important institutional shift from post-facto legalization toward proactive legal empowerment.

From a *maqāṣid al-sharī'ah* perspective, marriage registration should be understood as a substantive legal requirement rather than a mere administrative formality. Registration serves to protect essential objectives of Islamic law, particularly the protection of lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and human dignity (*ḥifẓ al-'ird*), while preventing systemic harm (*dar' al-mafāsīd*). When interpreted through a *maqāṣid*-based framework, Indonesian positive law on marriage does not contradict Islamic principles but functions as an instrument for realizing their substantive aims.

Accordingly, the integration of Islamic law and positive law provides both a normative and practical foundation for addressing *siri* marriage. Strengthening legal education, enhancing institutional collaboration between religious courts, religious leaders, and state agencies, and reinforcing preventive judicial strategies are essential steps toward ensuring legal certainty, gender justice, and social protection. This study affirms that a *maqāṣid*-oriented integrative approach offers a viable and context-sensitive model for regulating marriage in contemporary Muslim societies.

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