

Sociological and Islamic Legal Analysis of Sirri Marriage and Marriage Registration among *Santri* in Indonesia

Vina Tarsyihul Ulfah *, Dzulfikar Rodafi, Shofiatul Jannah

Universitas Islam Malang, Indonesia

*Correspondence: vinaulfah1002@gmail.com

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ABSTRACT

This study highlights the practice of unregistered marriage (sirri marriage) and marriage registration among students of the Salafiyah ad-Damanhuri Islamic Boarding School, viewed from a sociological and Islamic legal perspective. This research is an empirical legal study at the Salafiyah ad-Damanhuri Islamic Boarding School, using unstructured observation and field interviews with respondents, informants, and sources as data collection techniques, data collection through observation and interviews, then analyzed using the interactive analysis model of Miles, Huberman, and Sadanana. The results of this study indicate that in practice, marriages at the Salafiyah ad-Damanhuri Islamic Boarding School are carried out with the female guardian authorizing the kiai to marry his daughter, accompanied by the presence of the guardian and witnesses so that it is religiously valid, but it is still classified as unregistered marriage in the perspective of positive law. The main motivation for carrying out the unregistered marriage is the desire to obtain blessings (tabarrukan). The students register their marriages after the unregistered marriage by performing tajdid nikah at the KUA. Tabarrukan in the marriage contract is permitted, but marriage registration remains essential. The most appropriate method to restore legal recognition of a sirri 'secret' marriage is through the marriage confirmation mechanism, ensuring that the marriage is recognized from the outset.

ABSTRAK

Studi ini menyoroti praktik nikah sirri dan pencatatan pernikahan di kalangan santri Pondok Pesantren Salafiyah ad-Damanhuri, ditinjau dari perspektif sosiologis dan hukum Islam. Penelitian ini merupakan studi hukum empiris di Pondok Pesantren Salafiyah ad-Damanhuri, menggunakan observasi tak terstruktur dan wawancara lapangan dengan responden, informan, serta narasumber sebagai teknik pengumpulan data, pengumpulan data melalui observasi dan wawancara, kemudian dianalisis menggunakan model analisis interaktif Miles, Huberman, dan Sadanana. Hasil penelitian ini menunjukkan bahwa dalam praktiknya, perkawinan di Pondok Pesantren Salafiyah ad-Damanhuri dilaksanakan dengan wali perempuan memberi kuasa kepada kiai untuk menikahkan putrinya, disertai kehadiran wali dan saksi sehingga sah secara agama, namun tetap tergolong nikah sirri dalam perspektif hukum positif. Motivasi utama pelaksanaan nikah sirri tersebut adalah keinginan memperoleh keberkahan (tabarrukan). Para santri mencatatkan perkawinannya setelah nikah sirri dengan melakukan *tajdid nikah* di KUA. *Tabarrukan* dalam akad nikah diperbolehkan, namun pencatatan perkawinan tetap penting dilakukan, dan metode yang paling tepat untuk memulihkan pengakuan hukum atas nikah sirri adalah melalui mekanisme itsbat nikah, sehingga perkawinan tersebut diakui sejak awal pelaksanaannya.

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A. INTRODUCTION

In every part of the world, marriage is a vital aspect of human existence. Because of its significance, it is not surprising that matters related to marriage are regulated by global religions. According to Muslims, marriage is a holy and sacred form of worship because it ensures social stability, the survival of men and women, and the continuation of humankind. Marriage has a commendable purpose because it provides a forum for love, affection, and mutual intimate interaction between husband and wife.¹

To achieve the purpose and essence of marriage, couples intending to marry are required to comply with established legal provisions and norms, both within religious rules and within the national legal system. If all the basic elements and supporting provisions have been fulfilled, the marriage is considered legally valid. Conversely, if there are violations or deficiencies in fulfilling these elements, the marriage can be declared invalid or nullified. Therefore, it is important for every prospective bride and groom to fully understand and comply with applicable legal provisions before entering into married life.²

The two basic elements of marriage are the *ijab* (consent) and *qabul* (acceptance), both of which are interdependent and interrelated. The bride's guardian uses the term "*ijab*" (consent) in the marriage contract. The *qabul*, on the other hand, is pronounced by the spouse or their proxy. The bride's guardian, dowry, husband, wife, and shighat (consent) are the five pillars of marriage according to the Malikiyah. According to the Shafi'iyah, the five pillars of marriage are the husband, wife, guardian, two witnesses, and shighat.³

Based on Law Number 1 of 1974 concerning Marriage which has been amended through Law Number 16 of 2019, and referring to the explanation provided by, there are a number of provisions that must be fulfilled so that a marriage is considered valid according to law. These provisions are as follows: 1) A marriage is declared valid if it is carried out in accordance with the teachings of each religion and belief; 2) The marriage event must be registered in accordance with the regulations in force in the national legal system; 3) A marriage can only be carried out if both prospective bride and groom have reached the minimum age of nineteen years; 4) In accordance with the revised laws and regulations, the minimum age limit for both prospective husband and wife to marry is nineteen years; and 5) Marriage is not permitted if there is a kinship relationship through blood, milk and infidelity, such as in the relationship between in-laws, stepchildren of parents, parents of the wife or siblings of the wife for a husband who has more than one wife.

Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage emphasizes that the validity of a marriage depends on its implementation in accordance with the religious teachings and beliefs of the parties to the marriage. Therefore, Muslims in Indonesia are required to conduct marriages based on the principles of Islamic law. Furthermore, in paragraph (2) of the same article, it is stated that all marriages must be registered according to applicable legal provisions. This means that, in order to have legal force, a marriage conducted by a Muslim couple must be officially registered through a Marriage Registrar

¹ Santoso, "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat," *Jurnal Yudisia* 7, no. 2 (2016).

² Nabiela Naili et al., *Hukum Perkawinan Islam Indonesia*, Prenadamedia Group (Jakarta, 2019).

³ Syaikh Abdurrahman Al-Juzairi, *Fikih Empat Madzhab Jilid 5*, trans. Shofa'u Qolbi Djabir, Dudi Rosyadi, and Rasyid Satari (Jakarta: Pustaka Al-Kautsar, 2015).

(PPN) who works at the Religious Affairs Office (KUA) in the area where the bride and groom live.

Providing legal clarity and protection to both bride and groom against the consequences of marriage, especially regarding their respective rights and responsibilities, their future rights as heirs of their parents, and the rights of their descendants is one of the main objectives of implementing regulations on marriage registration. Theo Hujibers, quoted by Zamroni, emphasized that legal policy aims to create peace in society by upholding legal certainty and responding to real problems in a concrete manner, as well as to guarantee justice.⁴

Islamic law does not require marriage registration, although it views it as a positive thing. This freedom allows people to marry secretly. Long before laws regarding marriage registration were enacted, marriages that fulfilled the necessary pillars and requirements were considered valid. In essence, a household is formed through the implementation of rights and responsibilities, the foundation of which is complete love and affection. However, as with life, marriages do not always go according to plan, so the government has developed regulatory policies governing marriage registration to anticipate such scenarios. Marriage registration is crucial for achieving shared prosperity, even though it is not one of the requirements and pillars of marriage.⁵

In the realm of marriage administration, official registration is a crucial aspect that cannot be ignored. However, in practice, this process often faces various challenges that hinder accuracy and smooth administration. One major obstacle stems from the low level of public understanding of the importance of marriage registration. Many individuals and groups are not yet fully aware of the legal value and administrative benefits of legally registering a marriage. As a result, many couples enter into marriages without going through the proper registration procedures, which ultimately has the potential to give rise to complex legal issues later on.⁶

Islamic boarding schools (*pesantren*) are educational institutions that emphasize religious education. Students attending a *pesantren* are called "*santri*," or those who study Islam. In addition to observing other norms, residents base their behavior primarily on Islamic law, as they have been extensively taught about it.

The term *pesantren* is rooted in the word *santri*. According to Clifford Geertz's research, as cited by Muhammadiyah Yunus, the word *santri* can be understood in both narrow and broad senses. In the narrow sense, *santri* refers to students studying at religious educational institutions, namely Islamic boarding schools (*pondok pesantren*). Therefore, a *pesantren* is defined as a place for the pursuit of religious knowledge. Meanwhile, in a broader sense, *santri* refers to members of Javanese society who adhere to Islamic teachings, diligently worship at the mosque, and are active in various religious activities.⁷

⁴ M Zamroni, *Sisi Hukum Pencatatan Perkawinan Penghayat Kepercayaan* (Surabaya: Scopindo Media Pustaka, 2023).

⁵ Siti Nurjanah and Agus Hermanto, *Hukum Perkawinan Islam Progresif Di Indonesia* (Malang: Literasi Nusantara Abadi, 2022).

⁶ Alex Chandra et al., *Hukum Pencatatan Perkawinan; Telaah Yuridis Pembatalan Keputusan Tata Usaha Negara Oleh Mahkamah Agung* (Purwokerto: Penerbit Amerta Media, 2020).

⁷ Muhammadiyah Yunus, "Manajemen Pesantren Dan Pembentukan Perilaku Santri," *Al-Riwayah Jurnal Pendidikan* 7, no. 1 (2015).

Islamic boarding schools utilize the yellow book literature created by earlier Salaf scholars to access religious teachings and instill a value system. Islamic boarding schools can learn religious lessons from this classical intellectual treasure, which serves as a reference for developing a value system in religious and social life.⁸

The practice of unregistered marriages remains widespread in society. This is due to numerous factors, including social, economic, and religious factors. Each individual who chooses to undergo an unregistered marriage has their own reasons, often related to specific circumstances. One group that frequently engages in unregistered marriages is the Islamic boarding school (*santri*) community. They use religious considerations as the primary basis for their decision-making.

For Islamic boarding school students (*santri*), religious teachings serve as the primary guideline for making choices and carrying out daily activities, as their daily lives are closely linked to their deepening study of Islamic knowledge. Normatively, marriages conducted by Islamic boarding school students are still considered valid under Islamic law as long as they fulfill the pillars and requirements stipulated in sharia, even if they are not officially registered. However, because they are not registered through an official authority such as the Marriage Registrar (PPN), the state does not grant legal recognition to these marriages. This lack of registration results in the marriage not being recognized in the state administrative system, potentially eliminating legal protection for the civil rights of the husband and wife and any children born from the marriage.

One of the main reasons they decided to marry under Islamic law is the students' belief in the blessings of the marriage process. According to Islamic boarding school tradition, the bride's guardian provides a religious leader (*taukil wali*) to the *kiai* (Islamic religious leader) so that the person they believe will be blessed can perform the marriage. This belief stems from the idea that marriage can improve the couple's household life and bring blessings if it involves the *kiai*. Although unregistered marriages have a strong religious basis, they still raise a number of issues, particularly regarding the legality and protection of the rights of the husband and wife and any children born from the marriage.

The progress of a nation can be measured by the level of legal awareness and compliance with the law among its citizens. When citizens have a high level of legal awareness and comply with applicable regulations, a more orderly social order and government system are created. Awareness and compliance with the law are crucial elements in establishing an effective legal system. If a society has low legal awareness, the tendency to violate the law also increases. Conversely, the higher the level of legal awareness, the greater the level of compliance with applicable laws.⁹

Public legal awareness plays a crucial role in ensuring compliance; it helps the law achieve its intended purpose. The behavioral patterns desired by legal norms and the behavioral patterns prevailing in society are not always the same. This can sometimes lead to social disparities, which can lead to conflict and social tension. This situation can hinder the process of societal change toward the desired state. Because the public lacks legal awareness, compliance is lacking even when the laws and regulations created are appropriate guidelines

⁸ Abu Yasid et al., *Paradigma Baru Pesantren* (Yogyakarta: IRCiSoD, 2018).

⁹ Zulkifli Ismail, *Buku Ajar Sosiologi Hukum* (Malang: PT. Literasi Nusantara Abadi Grup, 2023), 119.

for action. To ensure greater compliance with the law, both written and developed and recognized by the community, it is crucial to instill and build public legal awareness.¹⁰

In the context of culture and tradition, unregistered marriages performed among Islamic boarding school students (*santri*) are considered legitimate and accepted by the local community, as they are essentially in accordance with Islamic law and fulfill the pillars and requirements of marriage. However, there are several implications that should be considered regarding the lack of registration of unregistered marriages performed by Islamic boarding school students. One of these is the lack of legal protection and the non-recognition of rights related to marriage.¹¹

In such circumstances, applying for marriage confirmation through the Religious Court is one option to obtain legal legitimacy for a sirri marriage that has not yet been registered with the Office of Religious Affairs (KUA). Through this mechanism, a previously unregistered marriage can receive official recognition from the state, thus granting the couple the legal protections and rights they deserve.¹² However, in practice, quite a few couples prefer to re-conduct their marriage contract officially at the KUA rather than going through the marriage confirmation process in court to obtain legal status for their marriage.¹³

Tajdidun Nikah, also widely known as "*mbangun nikah*," does not have an explicit legal basis in either the Qur'an or the Prophet's Sunnah. This lack of clear evidence has given rise to differing views among Islamic scholars; some legitimize this practice, while others reject it or impose certain limitations to maintain the honor and sanctity of the marriage bond. In practice, the Office of Religious Affairs (KUA) often considers the re-contracting of a marriage contract after a sirri marriage to be complex and full of uncertainty. Therefore, the *isbat nikah* mechanism is a strategic step that can be taken through the judiciary to ensure legal certainty, fulfill a sense of justice, and provide legal protection to the community.¹⁴

Several previous studies have examined unregistered marriages. First, Mahmud Huda and Siti Louis Layalif's study examined the motives for unregistered marriages among students at the Bahjatul Ulum Islamic Boarding School, including mutual consent, parental recommendation, age, economic situation, occupation, and engagement. These studies are relevant for comparison because they both discuss the practice of unregistered marriages among students, but their focuses differ. Huda and Siti's study highlight the driving factors, while the researcher's study analyzes the students' compliance with the law from a sociological and Islamic legal perspective.

Second, Meiriza Utami Nur's study examines unregistered marriages in Curup City from the perspective of the Customary Consultative Body (BMA) and religious scholars. The BMA rejects this practice as inconsistent with Rejang customs, while religious scholars oppose it because it has the potential to cause harm. These studies are relevant for comparison because they both address the phenomenon of unregistered marriages and the views of religious

¹⁰ Yati Nurhayati, *Pengantar Ilmu Hukum* (Bandung: Penerbit Nusa Media, 2020), 18.

¹¹ Dudi Mulyadi, "Kepatuhan Hukum Dalam Melakukan Pendaftaran Perkawinan Masyarakat Asei Kecil," *Jurnal Hukum Ius Publicum* 5, no. 1 (2024): 217, <https://doi.org/10.55551/jip.v5i1.99>.

¹² Sarana and Tarmudi, "Kedudukan Dan Rekonstruksi Isbat Nikah Dari Perkawinan Siri," *Jurnal Ilmiah Rechtzekerheid* 1, no. 2 (2024): 109.

¹³ Yeni Mafiah and Siti Zumrotun, "Pro Kontra Nikah Ulang Pasca Nikah Siri Dalam Pandangan Kepala KUA Di Kabupaten Temanggung," *An-Nawa: Jurnal Studi Islam* 5, no. 1 (2023): 26, <https://doi.org/10.37758/annawa.v4i1.612>.

¹⁴ Mafiah and Zumrotun, "Pro Kontra Nikah Ulang Pasca Nikah Siri Dalam Pandangan Kepala KUA Di Kabupaten Temanggung."

scholars, but their focuses differ. That study emphasizes the traditional and religious perspectives, while the researcher's study utilizes Islamic law and sociological approaches. Third, research by Dusi Mulyadi highlighted the low level of legal compliance among the Asei Kecil community regarding marriage registration, which is often conducted according to customary law without official registration. The main factors include a lack of legal understanding, geographic distance, strong traditions, and the absence of sanctions. This research aligns with the researcher's study of unregistered marriages, which was analyzed through legal compliance theory. However, the research differs in that it focuses on Islamic boarding school students (*santri*) who marry according to Islamic law without state registration.¹⁵

Therefore, a more in-depth study is needed to understand the social and legal impacts of unregistered marriages, particularly within the context of the Islamic boarding school (*santri*) community. This will allow for a more comprehensive approach to finding solutions that align with current legal provisions and religious norms in Indonesia. Based on this, the researcher is interested in examining this phenomenon through a study entitled "Sociological and Islamic Law Analysis of the Phenomenon of Unregistered Marriages and Marriage Registration Among Islamic Boarding School Students: A Case Study at the Salafiyah ad-Damanhuri Islamic Boarding School." By combining sociological and Islamic law perspectives, this study is expected to provide a broader and more in-depth understanding of unregistered marriages and marriage registration.

This study presents a novel perspective by employing an interdisciplinary approach that integrates sociological analysis with Islamic legal principles to investigate unregistered marriages among students in Islamic boarding schools. It specifically examines practices related to these institutions and the disparity between established legal frameworks and the prevailing social realities. The research underscores the necessity of legal protections for women and children and proposes moderate policies grounded in Islamic values and literary *da'wah*. These recommendations aim to enhance legal awareness and facilitate educational reforms within Islamic boarding schools.

B. METHODS

This research falls into the category of empirical legal research. It employs a sociological approach to law, focusing on analyzing societal responses and interaction patterns when legal norms are implemented in everyday life. Primary data were obtained through interviews with five students (F, S, F, I, and M) who had previously married without registration and subsequently legalized their marriages. Additional information was gathered from informants who shared their knowledge independently, as well as legal experts who provided perspectives as observers of the phenomenon of unregistered marriages. In empirical legal research, experts play a role in explaining phenomena through direct observation. Furthermore, to complement the primary data, secondary data in this study refers to writings or notes on the practice of unregistered marriages that are still relevant to the issues discussed.

Data collection techniques used observation and interviews. Data analysis employed the Miles, Huberman, and Sadana model: data condensation, data display, and the process of

¹⁵ Mulyadi, "Kepatuhan Hukum Dalam Melakukan Pendaftaran Perkawinan Masyarakat Asei Kecil."

drawing conclusions or verifying data validity using four main indicators. First, credibility was maintained through in-depth observation, triangulation, and member checking to ensure that data on the practice of *nikah siri* (unclear marriage) truly reflected the social and legal realities within the *santri* community. Second, transferability was achieved through rich, systematic, and contextual descriptions, allowing the research findings to be considered for their relevance to other *pesantren* communities. Third, dependability was ensured through a transparent audit of the research process, from problem formulation to data analysis, ensuring that the methodology could be scientifically justified. Fourth, confirmability was maintained by ensuring that all findings regarding the social and legal impacts of *nikah siri* were derived from field data and objective analysis, not researcher bias. This research data analysis utilized legal sociology theory to understand *nikah siri* as a social practice, structural functionalism theory to examine its social function within the *santri* community, legal pluralism theory to highlight the tensions between state law, Islamic law, and *pesantren* norms, and legal awareness theory to assess the *santri's* understanding of the importance of marriage registration. This combination of theories provides a comprehensive framework for discussing the phenomenon of *sirri* marriage among *santri*.

C. RESULTS AND DISCUSSION

1. The Practice of Sirri Marriage among Islamic Boarding School Students

The Salafiyah ad-Damanhuri Islamic Boarding School (PPD) is a Salafiyah-oriented Islamic boarding school with an emphasis on in-depth study of the yellow texts (*kitab kuning*). This boarding school has a formal and non-formal education system integrated with the religious and cultural life typical of Islamic boarding schools. The *Kiai* (Islamic cleric) plays a central role as a teacher, mentor, and moral role model. In this Islamic boarding school tradition, students highly respect and rely on the *Kiai* for many things, including matters of marriage.

The practice of unregistered marriage (*sirri* marriage) within this Islamic boarding school environment is not a marriage in the sense of being secret, without a guardian or witnesses. In the context of this research, unregistered marriage is understood as a marriage that is religiously valid, fulfills the requirements and is harmonious, including the presence of a guardian and witnesses, but is not officially registered with the Office of Religious Affairs (KUA) at the time of the ceremony.

The primary motive for Islamic boarding school students choosing to marry under Islamic law is to obtain blessings (*tabarrukan*) from the *kiai* (Islamic religious leader) who officiates their marriage. This was explicitly expressed by respondents, who stated that marriages performed directly by the *kiai* are believed to facilitate the smooth running of a household. The students believe the *kiai's* presence can channel blessings through his prayers and involvement in the sacred event. This tradition has become deeply rooted and has become a custom that is not viewed as a violation, but rather as a form of cultural and spiritual obedience by the students to their teacher.

The Islamic boarding school itself denies the practice of under Islamic law. They state that all marriages taking place within the Islamic boarding school environment involve a guardian and witnesses, making them valid according to religion. Regarding registration, the Islamic boarding school does not interfere and leaves the process entirely to the students and their families.

According to the Religious Affairs Office (KUA), marriages that are not registered directly with the KUA are still considered under Indonesian law. Although religiously valid, because the marriage is not performed before a registrar and is not registered, it is considered to have no legal force. However, KUA officials also acknowledged that in the context of Islamic boarding school culture, this phenomenon is quite understandable because the motive is spiritual.

Interviews with Islamic students (*santri*) who had married in secret revealed that they were aware that registration at the Office of Religious Affairs (KUA) is a state-required procedure. However, this knowledge was not accompanied by a deep understanding of legal regulations such as Law Number 1 of 1974 concerning Marriage or the Compilation of Islamic Law. Their knowledge tended to be practical, such as stating that without a marriage certificate, they would face difficulties obtaining birth certificates or other administrative matters.

The legal attitudes expressed by the students also varied. Some considered registration essential and ultimately proceeded after marriage, while many others considered registration merely a formality that did not determine the validity of the marriage. Their legal behavior was evident in the act of registering their marriage through the process of *tajdid nikah* (marriage remarriage), which involves re-certifying the marriage contract at the KUA to obtain a marriage certificate. This was not done out of a full awareness of the legal function, but rather driven by future administrative needs.

Students comply with the registration regulations due to external pressures, such as the need for administrative legality, rather than an internal awareness of the importance of complying with state law. In some cases, registration is carried out simply to gain access to public services that require legal documentation.

Students who have married in secret then register their marriages at the Office of Religious Affairs (KUA) through a marriage registration process (*tajdid nikah*). This process allows them to obtain a marriage certificate without the need for a court hearing. However, the legal consequence of this method is that the marriage is only recognized by the state from the date of the registration, not from the date of the initial marriage contract. The KUA acknowledges that this practice of marriage registration is quite common, primarily because the marriage confirmation procedure is considered more complicated and expensive.

Table 2. Research Findings

No.	Aspect	Research Findings
1	The practice of unregistered marriage among students at the Salafiyah ad-Damanhuri Islamic Boarding School	Marriages involving a <i>kiai</i> are conducted in accordance with the pillars and requirements of marriage according to Islamic law, but registration is carried out at a later date. The main reason is to obtain blessings.
2	A sociological review of the practice of unregistered marriage among students at the Salafiyah ad-Damanhuri Islamic Boarding School	Students understand that registration at the Office of Religious Affairs (KUA) is a mandatory procedure under state law, but they lack a thorough understanding of the registration regulations stipulated in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). Some students view registration as merely a

		formality, while others consider it essential and undertake it after marriage.
3	A review of Islamic law on the practice of sirri marriage among students at the Salafiyah ad-Damanhuri Islamic Boarding School	Respondents who had unregistered marriages still registered their marriages, but not at the same time as their marriage contract. Students who had unregistered marriages registered their marriages by repeating their marriage contract at the Office of Religious Affairs (KUA) to obtain a marriage certificate, without applying for itsbat nikah (marriage validation) at the religious court.

2. The Practice of Sirri Marriages among Students and the Procedures for Registering Marriages after Sirri Marriages

Marriage is a fundamental aspect of human life, encompassing not only personal but also social and legal dimensions. In a religious context, marriage is viewed as a sacred bond that regulates the relationship between a man and a woman in building a harmonious, loving, and compassionate household. However, in a state context, marriage is not only considered a private relationship but also a legal event with administrative and legal implications. Therefore, the organization of a marriage is not only subject to provisions derived from religious teachings but must also comply with the rules established by the state through applicable laws and regulations.¹⁶

Thus, the existence of a marriage registration system is crucial as a form of legal recognition and protection for marital status. This registration not only serves to guarantee legal certainty for married couples, but also provides legal protection for children born of the marriage and facilitates access to other civil rights.¹⁷ Therefore, understanding the importance of the position of state administration in registering marriages is a very crucial thing to be paid attention to by all levels of society, including Islamic boarding school communities and students who carry out religious practices in their daily lives.¹⁸

The practice of unregistered marriage is often referred to as "underhand marriage" in some literature and legal discourse. This term refers to a form of marriage that takes place without official state registration, thus lacking formal legal force within the civil registration system. The unregistered marriage impacts the legal status of the husband and wife and any children born from the marriage within the legal realm. Thus, the term "underhand marriage" is often used in legal contexts to highlight the absence of state legality regarding marriage events.¹⁹

However, in social practice, the term "unclear marriage" is not very common and tends to be less popular than the term "sirri marriage." In classical Islamic jurisprudence, it is also referred to as "urfi marriage." This shows that the meaning of this type of marriage is strongly

¹⁶ Muflikhatul Khoiroh, Imron Mustofa, and Mila Rosyidah, "Analisis Hukum Islam Terhadap Perkawinan Sirri Di Ketegan, Sepanjang, Sidoarjo," *Al-Hukuma: The Indonesian Journal of Islamic Family Law* 12, no. 1 (2022).

¹⁷ Kharisudin, "Nikah Siri Dalam Perspektif Kompilasi Hukum Islam Dan Undang-Undang Perkawinan Indonesia," *Perspektif* 26, no. 1 (2021), <https://doi.org/10.30742/perspektif.v26i1.791>.

¹⁸ Chandra et al., *Hukum Pencatatan Perkawinan; Telaah Yuridis Pembatalan Keputusan Tata Usaha Negara Oleh Mahkamah Agung*.

¹⁹ Dwi Atmoko and Ahmad Baihaki, *Hukum Perkawinan Dan Keluarga* (Malang: CV Literasi Nusantara Abadi, 2022).

influenced by cultural context, social environment, and local customs, so that the terminology used can vary depending on the background of the community concerned. In the context of this research, the term "sirri marriage" was chosen because it is considered more relevant and representative to describe the phenomenon of marriages that are religiously valid but have not been administratively registered according to state law.

Based on interviews with one informant, it was revealed that some students did not identify their marriages as unregistered marriages. They believed that as long as the marriage contract was conducted in accordance with Islamic law, the marriage was valid from a religious perspective. Therefore, they did not feel that their marriages violated Islamic norms or provisions, even though they had not been administratively registered at the time of the contract.

The students further explained that while marriage registration was not carried out immediately after the contract, this did not mean they refused to register. They stated that registration would still be carried out at a later date when the situation permitted. In this view, delaying registration does not constitute a disregard for state law. This understanding demonstrates the persistent difference in perception between the definition of unregistered marriage in the context of positive law and the understanding of the Islamic boarding school community, which places greater emphasis on sharia validity.

In the marriage tradition at the Salafiyah ad-Damanhuri Islamic Boarding School, the woman's guardian grants authority, or *taukil wali*, to the *kiai* (Islamic cleric) to marry off his daughter. The marriage ceremony is led by the *kiai*, while the guardian and witnesses are present to witness the ceremony. The *kiai*'s involvement in the ceremony has become a common practice in Islamic boarding schools, making the ceremony not only formal but also deeply religious.

The marriages conducted by the students at this Islamic boarding school have fulfilled the pillars and requirements for a valid marriage according to Islamic law. This is evident in the shighat of the marriage contract, which includes the acceptance of the marriage vows (*ijab qabul*), the involvement of a guardian, and the presence of two witnesses who meet the requirements stipulated in sharia law. Therefore, even though the marriage is conducted through a guardian representing the *kiai* (Islamic cleric), the marriage contract remains valid according to religious law because all the required elements are met.

The involvement of the *kiai* as the party conducting the marriage is considered valid according to sharia law, given the *kiai*'s position as a figure with scholarly authority and a deep understanding of religious law. Therefore, the validity of the marriage in this practice is not questioned by the participants or the surrounding social community. However, despite being valid according to religion, the marriage is still categorized as a sirri marriage from a positive legal perspective because it was not performed before a marriage registrar and was not officially registered at the time of the marriage contract.

There are varying understandings among the public regarding the definition and concept of unregistered marriage, reflecting differing perspectives based on social, cultural, and religious backgrounds. However, as explained in the previous section, in the context of this research, unregistered marriage is specifically understood as a marriage conducted in accordance with Islamic law but not administratively registered with an authorized marriage registrar. This understanding is further reinforced by interviews with informants, who stated

that marriages that do not undergo official registration at the Office of Religious Affairs are still considered unregistered marriages, even if they are legally valid.

One of the primary reasons students (*santri*) engage in unregistered marriages is the desire for blessings, or *tabarrukan*. They believe that a marriage contract performed by or in the presence of a *kiai* (Islamic cleric) will bring blessings to their marriage. For them, the presence of a *kiai* in the wedding ceremony has its own spiritual value, as the *kiai* is considered a religious figure closely associated with the values of piety. This belief is deeply rooted and has become part of the customs that have developed within Islamic boarding schools and the surrounding community, so its implementation is more based on religious values and traditions.

However, the practice of unregistered marriages by Islamic boarding school students does not constitute a disregard for state law, particularly regarding the obligation to register marriages. Most of them still recognize the importance of legal registration, but rather that the process takes place after the marriage contract has taken place. This means that the delay in registration is not due to an intention to defy state regulations, but rather due to an understanding and custom that prioritizes religious aspects. In their view, registration is considered an administrative process that can come later, while religious validity is the primary priority in the marriage.

Islamic boarding school students (Islamic boarding school) who marry in secret often choose to register their marriages at the Religious Affairs Office (KUA) through the "*tajdid nikah*" (re-marriage ceremony). This method allows them to obtain an official marriage certificate without having to undergo a marriage confirmation hearing at a religious court. This procedure is considered more practical, faster, and less expensive and time-consuming, making it a popular choice among those engaged in unregistered marriages. However, registration through *tajdid nikah* essentially only validates the re-marriage ceremony performed on the day of registration, without legally recognizing the existence and consequences of the previous marriage ceremony. This can raise legal issues related to rights that should have been in place from the beginning of the marriage, such as the status of children, the division of joint property, and other legally protected rights.

In conducting marriages, Islamic boarding schools (*pesantren*) do not specifically provide guidance or prohibitions regarding marriage registration. They maintain a neutral stance and leave the decision entirely to the individual or family concerned. In other words, marriage registration is not formally regulated within the Islamic boarding school environment; rather, it is the personal responsibility of the students or their guardians. This indicates that Islamic boarding schools are not actively involved in state administrative matters, such as registration at the Office of Religious Affairs (KUA).

Furthermore, Islamic boarding schools do not have specific procedures for conducting marriage contracts. Generally, the prospective bride and groom simply visit or seek permission from the *kiai* (Islamic cleric) first, then return on the agreed-upon day to perform the marriage contract. There are no internal administrative steps or data verification mechanisms as in formal institutions. The contract is carried out simply, based on agreement and trust, upholding the *kiai*'s role as a central figure in the ceremony.

3. A Sociological Review of the Practice of Sirri Marriage among Students and the Procedure for Registering Marriages after Sirri Marriage

Essentially, law encompasses abstract ideas and concepts. These ideas represent ideals or ideal states that are to be realized through law. In the context of marriage registration, the law regulates the marriages of citizens who also hold religious status. From this perspective, the obligation to register marriages serves as a means to establish a social order that guarantees legal protection and certainty in an orderly life. However, the protection mandated by law will only become a reality if the law extends beyond written regulations.

From a legal binding perspective, marriage registration, as stipulated in Law Number 1 of 1974 in conjunction with Government Regulation Number 9 of 1975, is a primary requirement for obtaining legal recognition and protection from the state for a marriage, while also ensuring that the marriage is legally binding on third parties, including other individuals. From a regulatory perspective, marriage registration provides legal certainty by establishing that a marriage is recognized through the existence of a marriage certificate as authentic evidence. Legally, this implication means that a marriage can be deemed invalid if it is not conducted in accordance with applicable registration procedures and provisions.²⁰

Indonesia's regional and cultural diversity contributes to shaping the mindset and legal behavior of its people. For some groups, adherence to regulations is highly valued, while for others, awareness of applicable regulations, particularly regarding the obligation to register marriages, remains low. This low level of legal awareness is reflected in the community's lack of initiative to register their marriages with official institutions, leading to various problems in the administrative system and legal protection. This problem is common, particularly among Islamic boarding school students (*santri*), where the Islamic boarding school community and the students refer to religious practices in their daily lives.²¹

From a legal sociology perspective, this phenomenon reflects a legal awareness that differs from formal legal awareness. Legal awareness, at a certain point, is expected to motivate individuals to comply with and implement or not implement what is prohibited or mandated by law. Legal awareness is a crucial element in the effectiveness of law enforcement in society. He explains that public legal awareness can be measured through four indicators: legal knowledge, legal understanding, attitudes toward the law, and patterns of legal behavior.²²

Legal knowledge relates to the extent to which an individual is aware of applicable legal regulations. Legal understanding encompasses society's understanding or interpretation of the content and intent of those regulations. Furthermore, attitudes toward the law reflect a person's acceptance or rejection of the law, whether it is considered important, just, or beneficial. Finally, patterns of legal behavior refer to the concrete actions of society in complying with or violating applicable laws. These four indicators serve as benchmarks for assessing the level of legal awareness within a community, including phenomena such as the practice of unregistered marriage, which is still heavily influenced by local social and religious values.²³

²⁰ Mulyadi, "Kepatuhan Hukum Dalam Melakukan Pendaftaran Perkawinan Masyarakat Asei Kecil."

²¹ Mulyadi.

²² Soerjono Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum* (Jakarta: CV Rajawali, 1982).

²³ Azmiaty Zuliah, Adi Putra, and Dian Hardian Silalahi, "Kesadaran Hukum Masyarakat Terhadap Hukum Di Area Publik Kota Medan Dalam Kehidupan Sehari-Hari," *Jurnal Ilmiah Penegakan Hukum* 8, no. 1 (2021).

Judging from the two initial indicators in Soerjono Soekanto's theory of legal awareness—legal knowledge and legal understanding—the four respondents in this study demonstrated a limited level of legal awareness. In terms of legal knowledge, the respondents acknowledged that marriages should be registered at the Office of Religious Affairs (KUA) to obtain a marriage certificate. However, this knowledge was general and not yet in-depth. They lacked a clear understanding of the legal basis governing marriage registration, the correct procedures, and the legal consequences of not officially registering a marriage.

Furthermore, in terms of legal understanding, it appears that the respondents lacked a comprehensive understanding of the meaning and purpose of marriage registration under state law. They tended to view registration merely as an administrative requirement to obtain a marriage certificate, without recognizing its important legal functions, such as protecting the rights of wives and children, validating the legal status of the family, and facilitating the processing of other legal documents. This lack of understanding led them to choose to continue with unregistered marriages, despite realizing that their marriages were not officially registered. This indicates that, despite having basic legal knowledge, their legal understanding remained low, insufficient to encourage compliance with marriage registration regulations. When examined from the third indicator in Soerjono Soekanto's theory of legal awareness, namely attitudes toward the law, the four respondents showed a tendency toward neutrality or ambiguity. They did not explicitly reject the obligation to register marriages, but also did not strongly accept the importance of the process. Their attitudes reflect the belief that marriage registration is merely an administrative matter, not an essential part of the legal protection system for married couples and their children. This view indicates that state law has not yet been fully positioned as a primary requirement in marriage practice, but is only considered relevant when necessary for specific purposes, such as managing documents or administrative matters later on. This attitude contributes to low compliance with registration regulations, even though it is not accompanied by explicit rejection.

Judging from the fourth indicator in Soerjono Soekanto's theory of legal awareness, namely patterns of legal behavior, the *santri* respondents showed a tendency not to comply with legal regulations immediately during the marriage ceremony. They did not officially register their marriages with the Office of Religious Affairs (KUA) at the time of the marriage ceremony, but instead postponed the registration process indefinitely, or only processed it later when necessary. This behavioral pattern indicates that despite having knowledge and a neutral attitude toward the law, awareness of acting in accordance with the law has not been firmly embedded in their actual actions. This reflects a form of passive legal disobedience, where the legal regulations are known but not immediately followed in practice, because registration is considered unurgent or less relevant at the time of the marriage ceremony.

Based on an analysis of the four indicators of legal awareness according to Soerjono Soekanto's theory—legal knowledge, legal understanding, attitudes toward the law, and patterns of legal behavior—it can be concluded that the respondents' level of legal awareness regarding marriage registration is low. Although respondents demonstrated basic knowledge of the obligation to register marriages and did not explicitly reject the law's validity, their understanding remained limited, their attitudes tended to be neutral, and their behavior did not reflect the direct implementation of the law. The absence of registration during the marriage ceremony and the delay in the legalization process indicate that their legal awareness had not been fully internalized in practice. Thus, respondents cannot be

categorized as individuals with complete legal awareness, but rather as individuals in the early stages of partial awareness.

In the context of legal compliance, a frequently used classification includes three levels: compliance, identification, and internalization. First, compliance is a superficial form of obedience, where an individual obeys the law solely out of fear of sanctions or external pressure, rather than out of belief in its values. Second, identification is compliance that arises from a desire to conform or maintain good relations with parties or groups considered important, even though the legal values are not yet fully accepted. Third, internalization is the highest form of obedience, when the law is obeyed because it is believed to be right, just, and part of the individual's personal values.²⁴

When analyzed based on the theory of legal compliance, which divides compliance into three forms: compliance, identification, and internalization, the students in this case demonstrate a pattern of compliance at the most basic level: compliance. Their compliance with the marriage registration regulations is not based on a deep understanding or belief in legal values, but rather solely for practical reasons, such as administrative necessity or external pressure. Registration is not carried out as part of a normative awareness of the law, but rather as a response to specific circumstances that require legal documentation, such as for population administration or children's education.

Thus, the legal behavior demonstrated by the students is reactive and does not yet reflect the internalization of legal values in their lives. Therefore, in this context, the students' level of legal compliance is still limited to compliance, which is temporary and unstable, as it depends on external circumstances, rather than on legal awareness stemming from internal conviction.

4. A Review of Islamic Law on the Practice of Sirri Marriages among Students and the Procedures for Registering Marriages after Sirri Marriages

From an Islamic legal perspective, the validity of a marriage is determined by fulfilling the pillars and requirements established by sharia. These pillars include the presence of the prospective groom, prospective bride, a marriage guardian, two witnesses, and the implementation of the *ijab qabul* (contract of marriage). These requirements include the absence of any obstacles that would prohibit the couple from marrying according to sharia law, and the presence of the guardian and witnesses possessing Islamic legal legitimacy. If all these elements are met, the marriage is considered valid according to religion, even if it has not yet been officially registered by the state. This view is often used as a basis for some communities, particularly those in Islamic boarding schools, to prioritize the implementation of the religious contract before processing the administrative registration process with state institutions.²⁵

The practice of unregistered marriages among students at the Salafiyah ad-Damanhuri Islamic Boarding School is fundamentally based on Islamic law, particularly regarding the pillars and requirements for a valid marriage. The marriage contract is carried out with the acceptance of the marriage vows (*ijab* and *qabul*), accompanied by the presence of a guardian and two qualified witnesses. This demonstrates that although the marriage is not

²⁴ Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum*.

²⁵ Aris Prio Santoso, Muhammad Habib, and Augusta Pinta Kurnia, *Pengantar Hukum Perkawinan* (Yogyakarta: Pustaka Baru Press, 2024).

administratively registered by the state, its implementation still adheres to the basic provisions of Islamic law and is therefore considered valid from a religious perspective.

Furthermore, in Islamic boarding school tradition, the presence of a *kiai* (Islamic cleric) in the wedding ceremony holds strong spiritual significance. The woman's guardian directly authorizes the *kiai* to marry his daughter, believing that the prayers and blessings of the *kiai* can positively influence the couple's marriage. This view explains why many students prefer to have their marriage contract performed with a *kiai* as the registrar, even though such marriages do not yet have formal legal force under state law.

The primary motivation for students to engage in unregistered marriages is also inextricably linked to the religious values inherent in Islamic boarding schools. They believe that a marriage contract led or attended by a *kiai* (Islamic scholar) is not only valid according to Islamic law but also brings blessings (*tabarrukan*) to married life. This belief stems from the Islamic boarding school culture, which places the *kiai* as a central figure in guiding the lives of students, both in academic and spiritual aspects. Therefore, the practice of unregistered marriage within the Islamic boarding school environment is understood as a means of obtaining blessings through the involvement of a religious figure.

In the Salafiyah *santri* tradition, the *kiai* is viewed as holding a special position because it is believed to be a channel for blessings. This belief stems from a tradition that mentions al-'ulama waratsatul anbiya, meaning that the ulama are the inheritors of the prophets. The students' respect for the *kiai* is not a form of worship or excessive glorification, but rather a manifestation of the collective belief that the knowledge and guidance provided by the *kiai* are a means for the students to receive blessings from God. This spiritual relationship demonstrates the unique pattern of social interaction in Islamic boarding schools, where obedience and respect for the *kiai* are integral to the internalization of religious values.²⁶

Apart from aiming to deepen and practice religious teachings, the presence of students at Islamic boarding schools is also interpreted as an effort to *tabarrukan*, namely seeking and absorbing blessings through closeness to the *kiai* and the Islamic boarding school environment.²⁷ The practice of *tabarruk* in Islamic boarding schools (*pesantren*) manifests itself in various forms. At the Salafiyah ad-Damanhuri Islamic Boarding School, for example, one form of *tabarruk* practiced is appointing a *kiai* (Islamic cleric) as a guardian in marriage contracts through the *taukil wali* (guardian) mechanism. The students believe that the *kiai*'s blessing and prayers will bring blessings to their marriages.

The practice of *tabarruk* for pious individuals has sparked differing views among scholars. Some reject the practice, while others grant it legitimacy. In his work, al-I'tisham, al-Syatibi asserts that after the death of the Prophet Muhammad (peace be upon him), the Companions never practiced similar *tabarruk* for his caliphs or future generations, even though they were the best figures of the community. The Companions only emulated the words, actions, and behavior that were in accordance with the Prophet's sunnah (traditional tradition). Thus, it is understandable that there was a consensus among the Companions that *tabarruk* should not be continued. Therefore, it is not justified for people after the Prophet to perform *tabarruk* on friends or other figures, because the act of equalizing someone's position

²⁶ Yoki Yusanto and Idoh Hafidoh, "Fenomenologi Santri Salafi Memahami Budaya Ngalap Berkah Kepada Kyai Di Pondok Pesantren Da'watun Nuroniyah," *Goverma* 7, no. 2 (2018).

²⁷ Ronald Lukens-bull, *A Peaceful Jihad: Negotiating Identity and Modernity in Muslim Java* (New York: Palgrave Macmillan, 2005).

with the Prophet is considered an act of heresy.²⁸ The following are several hadiths that permit *tabarruk*, including:

From al-Ja'ad bin Abdurrahman, he said: I heard as-Saib bin Yazid say, "My aunt once took me to the Messenger of Allah, then she said, "O Messenger of Allah, indeed my sister's child is sick." So he rubbed his head and prayed for blessings for me. After that he performed ablution, then I drank from his ablution water. Then I stood behind his back, then I saw his prophetic seal between his shoulders like a bird's egg.²⁹

Has told us Mujahid bin Musa and Abu Bakr bin An Nadhr and Harun bin 'Abdullah all from Abu An Nadhr he said: Abu Bakr Has told us Abu AnNadhr namely Hasyim bin Al Qasim: Has told us Sulaiman bin Al Mughirah from Thabit from Anas bin Malik he said: When the Messenger of Allah sallallaahu 'alaihi wa sallam finished performing the Fajr prayer, the servants of Medina served him by carrying vessels filled with water. He dipped his fingers into each vessel offered to him. Sometimes the servants came to him on very cold mornings, but he was still willing to dip his hand into the vessel containing the water.

The hadith shows that the Prophet Muhammad (peace be upon him) was willing to fulfill the requests of his companions, both in terms of their needs and when they sought blessings through the touch of his hand, for example by putting it in a vessel. The companions' form of *tabarruk* is also seen when they took the Prophet's hair after it was shaved. According to the majority of scholars from the four schools of thought, the practice of *tabarruk* for pious people and their remains is part of the permissible sharia, and in the early days of Islam there was no objection to it. However, a different view only emerged in the seventh century AH, when Ibn Taymiyyah was known as the scholar who first differed from the majority opinion on this matter.³⁰

Sulaiman al-Jamal argues that tawassul and *tabarruk* are closely related, with *tabarruk* being understood as a form of tawassul to Allah. This connection is reflected in his interpretation of Allah's words in Surah al-Ma'idah verse 35 and Surah al-Baqarah verse 248, "O you who believe, fear Allah, look for wasilah (a way to get closer) to Him, and strive (struggle) in His path so that you will be successful." "Their Prophet said to them, "Indeed, the sign of his kingdom is the coming to you of the Ark in which there is peace from your Lord and the remains of what was left by the family of Moses and the family of Aaron which were brought by the angels"

In his tafsir al-Futuh al-Ilahiyyah, Sulaiman al-Jamal interprets the word "wasilah" in surah al-Ma'idah verse 35 as all forms of pious deeds that can bring a servant closer to Allah to obtain the desired goal. In this way, good deeds become a path that leads a person to what he wants. Furthermore, in his interpretation of surah al-Baqarah verse 248, al-Jamal explained that the "thabut" owned by the Bani Isra'il functioned as a means of requesting help from Allah. Through the blessing of the thabut, they obtained calm (sakinah) and peace of mind when facing war. This interpretation contains the legitimacy of the practice of tawassul and *tabarruk*, because the Bani Isra'il used thabut as an intermediary to get closer to Allah.

²⁸ Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lakhmi Asy-Syatibi Al-Gharnathi, *Al-I'tisham*, trans. Shalahuddin Sabki, Bangun Sarwo Aji Wibowo, and Masrur Huda (Jakarta: Pustaka Azzam, 2006).

²⁹ Abu Abdullah bin Muhammad Ismail Al-Bukhari, *Shahih Bukhari* (Beirut: Dar Ibn Katsir, 2002).

³⁰ Muhammad Rijal Zaelani, "Konsep Berkah Dalam Pandangan Ahlussunnah: Analisis Syarah Hadits Tentang Tabarruk," *Jurnal Penelitian Ilmu Ushuluddin* 2, no. 2 (2022).

From this description, it can be understood that the essence of tawassul and *tabarruk* is not in the object or figure that is used as an intermediary, but in the belief that Allah alone provides benefits and answers prayers. Intermediaries are only media to get closer to Him and a means of obtaining peace through something that God has blessed. Thus, the practice of tawassul and *tabarruk* is still permitted as long as it does not displace the belief in monotheism, namely believing that all goodness and help comes from Allah.³¹

In the Ahlus Sunnah community, particularly in the Salafi tradition of Islamic boarding schools, the practice of seeking blessings, or *tabarruk*, is a common occurrence. From the Ahlus Sunnah perspective, the belief in gaining additional good deeds through pious people or certain objects has historical legitimacy, as it was practiced by the Prophet Muhammad (peace be upon him) and continued by his companions, his followers, and subsequent generations. As long as it does not violate the principles of monotheism, the practice of *tabarruk* is considered valid and is believed to bring spiritual benefits to those who practice it.³²

This historical basis differs from the practices of pre-Islamic societies, which sought blessings by worshipping idols, believing them to possess beneficial powers. Muslims practice this differently, as did the Companions, who believed the Prophet Muhammad (peace be upon him) to be a bringer of blessings, so that everything associated with him, including the houses he entered, was considered to possess blessed value.³³

The practice of *tabarruk* is believed to contain goodness and blessings, as blessings are understood as the increase in the quality of a good deed as long as it is directed to Allah as its source. Therefore, its implementation is permissible as long as the belief remains that pious people only serve as intermediaries, not as providers of true benefits. Every form of *tabarruk* must also be accompanied by the belief that nothing can bring benefits or ward off harm except Allah. Furthermore, scholars who permit the practice of *tabarruk* impose an additional condition, namely that the practice must avoid the potential for slander or misunderstanding that could damage the purity of faith.³⁴

Based on the description of the concept of *tabarrukan* (religious reconciliation) in the Islamic boarding school tradition, it can be concluded that the practice of *tabarrukan* (religious reconciliation) through a marriage contract involving a *kiai* (Islamic cleric) is permissible, as long as it is understood that the true source of blessings comes solely from Allah. In this case, the *kiai* is positioned solely as an intermediary for prayers and blessings, not as a party with independent power to bring benefits or ward off harm. As long as the belief in monotheism (*tabarruk*) is maintained and the practice is free from misunderstandings and slander, *tabarrukan*, involving a *kiai* in a marriage contract, can be considered valid and has spiritual value for the participants.

Although the practice of *tabarrukan* through a marriage contract involving a *kiai* is permissible as long as it upholds the principle of monotheism, if the marriage is not officially registered, it has the potential to cause harm, particularly regarding the protection of the civil rights of the husband, wife, and children. Therefore, to ensure the objectives of sharia

³¹ Ramadhani et al.

³² Zaelani, "Konsep Berkah Dalam Pandangan Ahlussunnah: Analisis Syarah Hadits Tentang Tabarruk."

³³ Zaelani.

³⁴ Nisa Syakirah Binti Hisamudin, Nor Firzana Binti Mohamad Sirat, and Mesbahul Hoque, "Kajian Tentang Amalan Tabarruk Dengan Orang Soleh," *Proceedings of The International Conference on Quran as Foundation of Civilization*, 2023.

(*maqāṣid al-sharī'ah*), namely the protection of offspring (*hifz al-nasl*) and the protection of property (*hifz al-mal*), marriage registration remains mandatory. Therefore, the *tabarrukan* (property registration) through the involvement of the *kiai* (Islamic cleric) in the marriage contract is valid, but the aspect of registration before an authorized official should not be neglected, as that is precisely where its legal and social benefits lie.

Marriage registration occupies a crucial position in the modern legal system because it serves to guarantee the protection of the legal rights of husband, wife, and children born of the marriage. Within the framework of a state governed by the rule of law like Indonesia, marriage registration is an administrative procedure with important legal consequences, including inheritance distribution, child custody, maintenance rights, and determining the legal status of the family as a whole. However, from an Islamic legal perspective, provisions regarding marriage registration are not expressly stated in the Quran or Hadith, and therefore are not included among the pillars or requirements for a valid marriage.

The absence of explicit provisions regarding marriage registration in the earliest sources of Islamic law does not mean that marriage registration is unimportant or can be ignored. Although the Prophet Muhammad (peace be upon him) recommended recording debts and other transactions as evidence in the event of disputes, marriage registration was not a pressing requirement throughout the prophetic period. Nevertheless, marriage registration has become an urgent necessity today, as it serves to protect the rights and obligations of married couples and their children. This is increasingly important amidst the dynamics of the times and the increasing moral issues in society, which often give rise to abuses of marriage practices and result in the neglect of the rights of women and children.³⁵

The importance of record-keeping can be analyzed through a contemporary Islamic legal approach, namely the *qiyas* and *maṣlaḥah* method. Through the *qiyas* approach, record-keeping can be compared to other forms of documentation and proof in *muamalah* transactions, which aim to avoid disputes. This is as stated in Surah al-Baqarah, verse 282, which reads, "*O believers, if you owe a debt for a specified period of time, you should write it down. Let a note taker among you write it down correctly*"

This verse equates the law of marriage registration with the law of *muamalah* transactions because they share the same *illat* (intention), and their principles share similarities, such as the presence of witnesses, parties to the marriage contract, the acceptance of the marriage contract (*ijab qabul*), and so on.

Thus, although registration is not a prerequisite for a valid marriage according to classical Islamic jurisprudence, its presence in the context of a modern state is highly relevant and even urgent. Registration serves as authentic evidence that can protect a wife from possible neglect of her rights and guarantee legal recognition for any children born. Furthermore, registration also serves as a form of social and legal responsibility for every citizen living in a system that emphasizes orderly administration and guaranteed justice.³⁶

Therefore, neglecting registration not only impacts the legal status of marriage but can also harm the parties, particularly women and children. Therefore, although Islamic law does not explicitly require registration, its implementation within a modern state like Indonesia

³⁵ Irwan Masduqi, "Nikah Sirri Dan Istbat Nikah Dalam Pandangan Lembaga Bahtsul Masail Pwnu Yogyakarta," *Musāwa Jurnal Studi Gender Dan Islam* 12, no. 2 (2013), <https://doi.org/10.14421/musawa.2013.122.187-200>.

³⁶ Zamroni, *Sisi Hukum Pencatatan Perkawinan Penghayat Kepercayaan*.

should be viewed as part of contemporary *ijtihad* in line with the principles of the *maqāṣid al-sharī'ah*.

When analyzed using the *maqāṣid al-sharī'ah*, the practice of unregistered marriages has the potential to conflict with the primary objectives of Sharia. The *maqāṣid al-sharī'ah* outlines five main objectives of Islamic law: safeguarding religion (*ḥifẓ ad-din*), the soul (*ḥifẓ al-nafs*), the intellect (*ḥifẓ al-aql*), descendants (*ḥifẓ al-nasl*), and property (*ḥifẓ al-mal*). In the context of a sirri marriage, even though the contract is considered valid religiously because it fulfills all the conditions and pillars, the lack of registration can jeopardize the protection of descendants, property, and even the life of the wife and children in the event of conflict or divorce. When the legal status of the wife and children is not recognized administratively, the potential for neglect of maintenance, inheritance, or other legal protections increases.³⁷

Thus, from the perspective of the *maqashid sharia* (Islamic principles), the practice of unregistered marriages (*sirri*) should be abandoned, as they contradict the objectives of sharia, which emphasize the protection of public interest and the prevention of harm (*mafsadah*). *Sirri* marriages should not be viewed solely from the perspective of religious validity; their social consequences and legal implications must also be considered. The government's obligation to register marriages is essentially an effort to safeguard the rights and obligations of spouses and their descendants. Therefore, if marriage registration proves to bring broader benefits than unregistered marriages, it can be viewed as a form of obedience to the leader, in line with the principle of public interest in Islam.³⁸

Therefore, although in some communities, such as Islamic boarding schools (*pesantren*), unregistered marriages are conducted with the intention of *tabarrukan* (a religious practice) or specific religious traditions, if registration is delayed or ignored, the sharia, which should bring benefits, can actually give rise to harm and injustice. Therefore, the *maqashid sharia* (the principle of sharia) is an important foundation in encouraging all marriages, including those conducted religiously by Islamic boarding school students (*santri*), to be legally registered to protect the rights and interests of all parties involved.

To legalize unregistered marriages within the state legal system, a mechanism called *itsbat nikah* (marriage validation) is available. *Itsbat nikah* is a request for marriage validation submitted to the Religious Court by parties who have already entered into a religious marriage but have not yet been officially registered with the authorized institution. This procedure aims to ensure that marriages that previously lacked formal legal force can be legally recognized by the state, thereby providing the husband and wife with legal protection, particularly in matters of child registration, inheritance, civil rights, and other matters.

The rules regarding marriage validation are contained in Article 7 paragraph (3) of the Compilation of Islamic Law (KHI), which in principle provides an opportunity for couples to request the validation of a marriage that has been conducted according to religious law but has not yet been registered with the state administration. Therefore, couples who have married in a *sirri* marriage are basically directed to take the marriage validation route if they wish to obtain legal recognition. However, under certain conditions, the Religious Court may determine the need for a remarriage contract. This situation generally arises when there are

³⁷ Rizki Amar et al., "Kedudukan Pencatatan Terhadap Keabsahan Perkawinan: Telaah Pencatatan Perkawinan," *Jurnal Tana Mana* 4, no. 2 (2024), <https://doi.org/10.33648/jtm.v5i2.486>.

³⁸ Khoiroh, Mustofa, and Rosyidah, "Analisis Hukum Islam Terhadap Perkawinan Sirri Di Ketegan, Sepanjang, Sidoarjo."

fundamental deficiencies in the first contract, for example, the failure to fulfill one of the pillars or requirements of marriage, so that the previous marriage is not considered perfect from both Islamic and state law perspectives.³⁹

In reality, Islamic boarding school students who engage in unregistered marriages generally do not follow the marriage confirmation procedure as stipulated in the state's legal system. This is because most of them lack a sufficient understanding of the marriage confirmation procedure, which legalizes a marriage that has been conducted religiously but has not yet been officially registered. This lack of understanding leads them to disregard the marriage confirmation procedure as a necessary or necessary step to legalize the marriage.

Furthermore, among Islamic boarding school students, it has become customary and commonplace to register their marriage with the Religious Affairs Office (KUA) by performing a new marriage contract. They view this as an administrative formality to register their marriage, bypassing the more complex legal process of undergoing its confirmation at the Religious Court. This practice is not motivated by an intention to circumvent state law, but rather by limited knowledge and the strength of established local culture.

In Islamic law, the implementation of a new marriage contract by a couple who previously had a religious marriage but had not yet been officially registered with the state is known as *tajdid nikah*, or renewal of the marriage contract. *Tajdid nikah* is a compromise often taken by couples, including Islamic students (*santri*), to legally register their marriage at the Office of Religious Affairs (KUA), especially if the previous marriage was conducted in secret. This practice is not intended to invalidate the previous marriage contract, but rather to reaffirm the validity of the marriage to meet the administrative requirements for registration required by the state. This is explained in the hadith, "*From Salamah, he said 'We pledged allegiance to the Prophet under a tree. He then said to me 'O Salamah, would you like me to pledge allegiance'. I said 'O Messenger of Allah, I have pledged allegiance to you the first time'. He said 'And the second time'.*"

Ibn Manayyar argued that performing a remarriage contract or renewing a marriage does not invalidate the validity of a previously performed marriage contract, as explained in the related hadith. Similarly, Ibn Hajar al-Asqalani emphasized that the majority of scholars agree that marriage renewal does not nullify or nullify the validity of the first marriage contract.⁴⁰

In the context of fiqhiyah rules, accepting a request for remarriage after an unregistered marriage, this is in accordance with what is stated in the fiqhiyah rules, which essentially states that "Avoiding harm is more important than bringing benefit". Then another rule of fiqhiyyah is "Enjoy the people who come to you, don't be afraid of them. Make things easier for the people who come to you, don't make things difficult."⁴¹

In general, contemporary Islamic scholars believe that marriage renewal is not a legal obligation if the original marriage contract has fulfilled all the pillars and requirements for validity according to Islamic law. However, some scholars permit and even recommend marriage renewal under certain circumstances as a precautionary measure. This is usually

³⁹ Alvir Mulya and Elimartati, "Fenomena Pelaksanaan Akad Nikah Baru Pada Pelaku Nikah Sirri Perspektif Hukum Keluarga Islam," *Jurnal Integrasi Ilmu Syariah* 2, no. 2 (2022).

⁴⁰ (Al-Asqalani 2008)

⁴¹ Fachrul An'am and Nofaldi, "Pengesahan Nikah Pasangan Di Bawah Umur Yang Didahului Dengan Pernikahan Sirri Perpektif Hukum Islam (Studi Kasus Di KUA Kecamatan Sungayang)," *Jurnal Integrasi Ilmu Syariah* 2, no. 1 (2021), <https://doi.org/10.31857/s013116462104007x>.

done when there are administrative deficiencies or doubts arise regarding the validity of the previous contract. In such situations, marriage renewal is seen as an effort to strengthen the legal standing of marriage, both from a sharia perspective and from the aspect of fulfilling administrative requirements.⁴²

While the practice of *tajdid* marriage, or renewal of the marriage contract, can be a practical solution to legalize a *sirri* marriage so that it is officially registered with the Office of Religious Affairs (KUA), this cannot be viewed solely as an administrative formality. This action does allow couples to obtain official documents such as a marriage certificate and legal status in the civil registration system. However, legalization through *tajdid* marriage without going through legal mechanisms such as *itsbat nikah* also raises a number of important legal issues that require attention. *Tajdid* marriage does not have a definite provision as a legal umbrella, either sharia or positive law.⁴³

On the other hand, the approach of legalizing unregistered marriages through *tajdid* marriages without going through *itsbat nikah* also reflects the limited understanding of the community, particularly Islamic boarding school students (*pesantren*), regarding the legal procedures in force in the country. Many of them assume that by repeating the formal marriage contract before a registrar and registering it at the Office of Religious Affairs (KUA), all legal aspects are fulfilled. However, without the *itsbat nikah* process, the initial unregistered marriage contract is never officially recognized by the state. This creates legal loopholes, particularly in tracing the validity of the previous marriage, which can impact proving legal rights in the event of a future dispute. Therefore, legal education and counseling for Islamic boarding school communities is crucial so that the marriage legalization process is not only valid from a religious perspective but also legally binding under state law.

The difference in legal consequences between *itsbat nikah* and *tajdid nikah* lies in the legal recognition of the marriage that has already taken place. Marriage validation is a legal mechanism used to validate and register a marriage that has been conducted religiously but not yet registered with the state. Through a religious court decision, the marriage gains legal force and is recognized in the state administration system. Thus, all legal consequences of the marriage, such as marital status, inheritance rights, child legitimacy, and others, can be traced back to the date of the first unregistered marriage.⁴⁴

On the other hand, the practice of remarriage, or the repetition of the marriage contract, which is then registered at the Office of Religious Affairs (KUA), is treated by the state as a new marriage. As a legal consequence, state recognition is only valid from the date of re-registration. Thus, the pre-existing marriage has no legal force within the realm of state administration. This means that the marriage is treated as if it never existed. Consequently, assets acquired during the marriage before registration cannot be categorized as joint property but remain under the control of each party. Likewise, children born of the marriage

⁴² Nur Isti Fadiah et al., "Tajdid Nikah: Legal Analysis, Ulama Perspectives, and Maslahah Mursalah (A Case Study in East Lampung Regency)," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 10, no. 1 (2025), <https://doi.org/10.25217/jm.v10i1.5855>.

⁴³ Wahyu Fitrianoor and Nor Fadillah, "Fenomena Tajdid Nikah Perspektif Hukum Positif Di Indonesia," *Tashwir: Jurnal Penelitian Agama Dan Sosial Budaya* 11, no. 2 (2023), <https://doi.org/10.18592/jt.v11.i02>.

⁴⁴ Siska Dwi Novitasari, "Akibat Hukum *Itsbat Nikah* Dalam Prespektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Hukum Islam," *Jurnal Ilmiah Ilmu Hukum* 26, no. 4 (2020).

are not legally registered as legitimate children and only have a civil relationship with their mother.⁴⁵

When reviewed from the perspective of the *maqāṣid al-sharī'ah* (Islamic principles), marriage registration through a new marriage contract (*tajdid nikah*) does not fully uphold the fundamental principles that constitute the objectives of sharia. *Maqāṣid al-sharī'ah* requires the protection of religion (*hifz ad-din*), life (*hifz an-nafs*), intellect (*hifz al-'aql*), descendants (*hifz an-nasl*), and property (*hifz al-mal*). In the context of marriage, particularly *hifz an-nasl* and *hifz al-mal*, registration through *tajdid nikah* has a fundamental weakness because the state only recognizes the marital relationship from the date of the new contract, not from the first secret contract. As a result, the status of children born before registration can be administratively threatened, and rights to joint property acquired before registration can also be legally complicated.

Furthermore, *tajdid nikah* has the potential to undermine efforts to protect women's rights. In many cases, women in sirri marriages lose legal evidence to claim maintenance, marital rights, or inheritance rights in the event of a divorce or the husband's death before official registration. This contradicts the principles of *hifz al-mal* and *hifz an-nasl*, which require optimal protection of material and hereditary rights. In other words, although formal marriage renewal produces a registered document, it fails to address the loss of rights that should have been guaranteed from the outset of the sirri marriage.

If using the *maqāṣid al-sharī'ah* approach, the more appropriate method is *itsbat nikah*, as it restores legal recognition of the marriage from its inception. This aligns with the overall goal of safeguarding descendants, property, and family honor, while preventing future disputes. Therefore, from the perspective of sharia objectives, *itsbat nikah* has significant advantages over *tajdid nikah* in guaranteeing the protection of the rights and interests of the parties.

From the previous description, it is clear that the main problem that arises stems from a lack of legal awareness in society, particularly among Islamic students (*santri*). This low awareness is evident not only in a disregard for the obligation to register a marriage, but also in a limited perspective regarding the requirements for a valid marriage. For some students, a marriage is considered valid if the basic elements of Islamic teachings are met, such as the presence of a guardian, the presence of two witnesses, and the acceptance of the marriage contract (*ijab qabul*). This perspective then leads them to pay less attention to the formal legal aspects required by the state, namely marriage registration, as stipulated in Law Number 1 of 1974 and its implementing regulations.

This lack of understanding has led to the emergence of alternative practices such as *tajdid* marriages to facilitate future registration, which are considered a practical solution without having to go through the marriage confirmation procedure in a religious court. However, this measure is essentially incapable of providing comprehensive legal protection, as it does not legally recognize previous marriages and does not accommodate the legal rights that may arise from them. Thus, the low level of legal awareness among Islamic boarding school students (*santri*) not only hinders the proper implementation of marriage registration but also has the potential to create legal and social problems in the future.

⁴⁵ Murhaeningsih, Muhammad Ikhwan, and Gisha Dilova, "Akibat Hukum Penetapan Pengesahan Perkawinan (Itsbat Nikah) Terhadap Perkawinan Tidak Tercatat Di Pengadilan Agama Pulau Punjung," *Pagaruyuang Law Journal* 8, no. 1 (2024).

The findings of this study indicate that the practice of unregistered marriage at the Salafiyah ad-Damanhuri Islamic Boarding School (*pesantren*) is carried out with the involvement of a religious teacher (*kiai*) and fulfills the pillars and requirements of marriage according to Islamic law. However, civil registration is delayed due to the desire to obtain blessings. Students understand that registration at the Office of Religious Affairs (KUA) is a state procedure, but have a partial understanding of the provisions of the Marriage Law and the Compilation of Islamic Law (KHI). Therefore, some view registration as a formality, while others process it after the marriage contract.

In Islamic law practice, students who engage in unregistered marriages tend to repeat the marriage contract at the KUA to obtain a marriage certificate without undergoing itsbat (certification) in a religious court. The theoretical implications of these findings are confirmation and enrichment of the framework of legal pluralism, which emphasizes the coexistence of state, religious, and *pesantren* norms, as well as the development of the concept of legal awareness within the symbolic, procedural, and protective spectrum. Furthermore, a gradual legal trajectory model emerges, shifting the order of legitimacy from religious to legal. Practical implications include the need for contextual legal literacy programs in Islamic boarding schools involving *kiai* (Islamic religious leaders) and KUA (Religious Affairs Office) counselors, the establishment of collaborative SOPs between Islamic boarding schools and KUA for post-aqad registration, pre-aqad verification services to prevent unnecessary re-procedures, and strengthening the protection of family rights through administrative guarantees such as marriage certificates and birth certificates.

The research's contributions lie in the development of an interdisciplinary framework that maps unregistered marriages as a gradual legalization phenomenon within the *pesantren* ecology, the provision of analytical tools for the spectrum of legal attitudes among Islamic boarding school students that can be replicated in comparative studies, and operational policy recommendations that link religious practices with state registration mechanisms to minimize socio-legal risks for couples and children.

D. CONCLUSION

Marriages at the Salafiyah ad-Damanhuri Islamic Boarding School are generally conducted by the female guardian granting a religious leader (*taukil*) to the *kiai* (Islamic scholar) to marry off his daughter. The marriage ceremony is led directly by the *kiai*, with the guardian and witnesses present, making it valid under Islamic law. However, because it is not registered before an authorized official, the marriage is considered a sirri marriage under positive law. Students choose this practice primarily because they believe that the *kiai*'s involvement in the marriage contract brings blessings (*tabarrukan*) to their household. Respondents' level of legal awareness regarding marriage registration is low. Although respondents demonstrated basic knowledge of the obligation to register marriages and did not explicitly reject the law's validity, their understanding was limited, their attitudes tended to be neutral, and their behavior did not reflect direct implementation of the law. The absence of registration during the marriage contract and the delay in the legalization process indicate that their legal awareness has not been fully internalized in practice. *Tabarrukan* through the involvement of the *kiai* (Islamic cleric) in the marriage contract is valid, but the aspect of registration before an authorized official should not be ignored, as that is precisely where its legal and social benefits lie. *Tajdid nikah* does not conflict with sharia principles, as long as the

pillars and requirements of marriage are still met. When reviewed from the perspective of *maqāṣid al-sharī'ah*, registering a marriage through a new marriage contract (*tajdid nikah*) does not fully uphold the basic principles that are the goal of sharia. Using the *maqāṣid al-sharī'ah* approach, the more appropriate method is *itsbat nikah*, because it restores legal recognition of the marriage from its inception.

This study has several limitations that need to be acknowledged: first, the study's scope, which is limited to one Islamic boarding school, limits the generalizability of the findings to other Islamic boarding school communities; second, the reliance on qualitative data from interviews and participant observation places the results in an interpretive context influenced by the access and openness of informants, thus potentially introducing social reporting bias; third, the limited field time reduces the opportunity for longitudinal observation that could capture the dynamics of changes in attitudes and practices of marriage registration over time; fourth, the research's focus on the perspectives of students and *kiai* reduces the representation of the perspectives of state institutions (KUA, religious courts) and women who are legally and economically impacted. Based on these limitations, further research is recommended to conduct multi-site comparative studies across Islamic boarding schools with varying schools of thought and regions to test the applicability of the "religious-first, legal-later" model; apply a longitudinal design to map the transformation of practices and the internalization of legal awareness; incorporate the perspectives of institutional actors (KUA, religious courts, policymakers) as well as the perspectives of women and children to capture the substantive impact of law; and testing legal literacy interventions based on the authority of the *kiai* through policy experiments or participatory action studies to evaluate the effectiveness of collaborative SOPs between Islamic boarding schools and the Islamic Religious Affairs Agency (KUA) and the *itsbat* model as an alternative to restoring legal status in the context of *maqāṣid al-sharī'ah*.

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