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The Political-Legal Configuration of Marriage Registration: A Cross-Madhhab Comparison, Maqashid-Based Integration, and the Discourse on Secularization in Indonesia

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Abstract

Marriage registration is often portrayed as a clash between classical fiqh and the administrative rationality of the modern state. This article proposes a different reading: within the Islamic legal tradition, regulation by the ruler rests on *siyāsah syar'iyyah*, together with *maṣlaḥah mursalah* and *sadd al-żarī'ah*. Using normative legal research with comparative, statutory, and conceptual approaches, it examines the istinbath constructions of the four Sunni schools on marriage without a registration instrument, traces the legal-political history of registration in Indonesia against Turkey and Tunisia, and assesses civil-rights protection after Constitutional Court Decision No. 46/PUU-VIII/2010, in dialogue with MUI Fatwa No. 11 of 2012 and the Compilation of Islamic Law. Five findings emerge. First, the classical schools did not make registration a condition of validity, but the *'illat of isyhad* and *i'lān* (proof, prevention of denial, and protection of lineage) is today best realized through registration, so registration continues classical fiqh rather than breaking with it. Second, Indonesia rejected radical secularization and chose a compromise that this article reads as maqashid-based integration (a convergence model): religious law determines validity, and the state regulates administration. Third, this framework provides legal certainty, though its implementation still leaves gaps. Fourth, unregistered marriage harms wives and children, which in Islamic terms is *ẓulm* and neglect of *ḥifẓ al-nasl* and *ḥifz al-'irḍ*. Fifth, decision no. 46/PUU-VIII/2010 extends civil protection to children born outside a registered marriage, but it must be distinguished from nasab and inheritance under fiqh, and its integration with fiqh remains debated.

Keywords: Marriage Registration, Siyāsah Syar'iyyah, Maqāṣid al-Syarī'ah, Convergence (Maqashid-Based Integration), Civil Rights.

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1. INTRODUCTION

Marriage, from an Islamic ontological perspective, is not merely a civil bond or an ordinary social contract, but a transcendental institution bound by divine values. The Qur'an explicitly legitimizes this bond as a firm and noble covenant (*miśāqan galīẓan*; Q.S. al-Nisā' [4]: 21), equating it with the covenant between God and His prophets. Within the framework of Islamic family jurisprudence (*al-ahwal al-syakhshiyyah*) passed down through generations by the jurists of the four major schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), the validity of a marital bond is purely theocentric.[1] The validity of the transition to a lawful marital status between a man and a woman is based exclusively on the fulfillment of essential pillars and conditions, which generally include the prospective husband, the prospective wife, the authority of the marriage guardian, the presence of two witnesses, and the formulation of the marriage contract in the form of ijab qabul.[2] This classical framework took shape in a social setting in which the proof of a marriage relied on public announcement (*i'lān*), communal celebration (*walimatul ursy*), and the testimony of witnesses (*isyhad*). The classical jurists did not treat administrative registration in official state records as a condition for the validity of a marriage. The question this article asks is therefore not whether registration was required in classical fiqh, but whether the purposes (*'illat* and *ḥikmah*) that ishhad and *i'lān* were meant to serve, namely proof (*iśbāt*), the prevention of denial (*juhūd*), and the protection of lineage (*ḥifẓ al-nasl*), can today be realized through other instruments. The sociological context of premodern communities is treated here only as the interpretive background of the classical rulings and not as their legal ground; the ushul analysis is developed in Section 2.1.[3]

However, a civilizational disruption occurred when humanity entered the modern era, marked by the formation of the nation-state. The complexity of social life, economic escalation, and high demographic mobility demanded a far more precise civil administrative order. Legal authority, which had previously been decentralized among local communities, religious scholars, and traditional leaders, began to undergo extensive codification, unification, and centralization within state institutions. In Indonesia, this shift in governance triggered a sharp and prolonged clash of paradigms between Islamic law, which is alive and believed in by grassroots communities (living law), and positive legal instruments constructed by the state (state law). The lack of synchronization between the community's textualist understanding and the state's administrative demands has given rise to a sociological pathology known as "unregistered marriages" or "secret marriages" (*nikah sirri*). This latent phenomenon is deeply rooted in the justification held by some segments of society who still firmly adhere to the classical

[1] Muhammad Husni Abdulah Pakarti et al., "The Construction of Islamic Law on Marriage: A Normative Study of Rights, Harmony, and Its Limits," *Al-Battar: Jurnal Pamungkas Hukum* 2, no. 2 (July 15, 2025): 99–111, https://doi.org/10.63142/al-battar.v2i2.172.

[2] Muhammad Qoyyum Kridho Utomo, Moh Nafik, and Mochammad Agus Rachmatulloh, "The Establishment of Marriage Through a Judicial Guardian Due to the Absence of a Legal Guardian at the Nganjuk Religious Court," *Al-Syakhsiyyah Journal of Law and Family Studies* 4, no. 2 (February 24, 2022): 170–86.

[3] Rahmad Setyawan, "Assessing Marriage Registration in Indonesia from a Fiqh Perspective: Between State Legality and Sharia Validity," *Al-Hakim Journal: Student Scientific Journal, Sharia Studies, Law, and Philanthropy* 6, no. 2 (November 20, 2024): 199–217, https://doi.org/10.22515/jurnalalhakim.v6i2.10063.

dictum: that a marriage is considered absolutely valid as long as its religious requirements are fulfilled, regardless of the state's registration requirements.[4]).

In reality, under modern civil law, the absence of a marriage registration document has far-reaching consequences, creating a legal vacuum. The most vulnerable parties within the family hierarchy—particularly wives and children—bear the greatest burden from this administrative gap. Without an official marriage certificate issued by the state, a woman completely loses her legal standing to seek enforcement of her civil rights in religious courts. Fundamental rights such as the right to spousal support, the division of joint property (*syirkah*), inheritance rights, and protection from domestic violence become legally unenforceable. Similarly, inherent disadvantages befall children born of unregistered marriages; the existence of their basic civil rights, access to education, and certainty of their lineage become degraded and obscured in the eyes of state bureaucracy—a condition that clearly violates the universal principle of humanity.[5]

In response to this sociological and legal crisis, the state positions itself not only as a facilitator but also as an active regulator through policy interventions embodied in Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019) and the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) in Indonesia. This positive legal framework imperatively mandates that every marriage be registered. Nevertheless, in the realm of implementation and public discourse, this legal-political maneuver often faces resistance and is conceptually misunderstood. Many conservative groups pit this administrative obligation against the narrative of the secularization of family law—an accusation that the state is attempting, in a hegemonic manner, to separate purely religious matters from Islamic law and replace them with a secular civil bureaucratic regime.[6]

This is where the urgency of employing the theoretical frameworks of *siyāsah syar'iyyah* (Islamic legal politics) and maqashid al-shari'ah as analytical tools lies. Through the lens of this theory, state intervention is in fact not intended to overhaul, let alone reduce, the pillars of religion, but rather to embody the fundamental fiqh principle of *taṣarruf al-imām 'alā al-ra'iyyah manuṭun bi al-maslaḥah* (the ruler's policy toward his people must be grounded in the principle of the public interest). The obligation to register serves as a protective instrument for fundamental human rights, particularly the continuity of the lineage (*ḥifẓ al-nasl*) the honor and dignity of persons (*ḥifz al-'irḍ*), and the soul (*ḥifẓ al-nafs*). This configuration is analyzed in this article as a maqashid-based integration. The term "convergence," which the legal-sociological literature uses for the Indonesian model, is retained only as a descriptive label: it does not refer to the meeting of two rival authorities, but to the operation of a single normative framework in which the substantive requirements of fiqh determine the validity of the contract, while registration is a regulatory measure whose basis lies in *siyāsah syar'iyyah*, *maṣlaḥah mursalah*, and *sadd al-żarī'ah*.[7]).

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[4] Wedi Afri, Hamda Sulfanida, and Efrinaldi Efrinaldi, "Dualism of Understanding of the Nagari Pasir Talang Timur Solok Selatan Community Towards Marriage Registration," *Jurnal Ilmiah Ahwal Syakhshiyyah (JAS)* 6, no. 1 (April 1, 2024): 49–68, https://doi.org/10.33474/jas.v6i1.21466.

[5] Rifki Ismail and Agil Mustapa, "Juridical Analysis of the Effects of Unregistered Marriages on Children's Legal Status and Civil Rights," *Estudiante Law Journal* 7, no. 3 (October 1, 2025): 758–71, https://doi.org/10.33756/eslaj.v7i3.32282.

[6] Mukhamad Suharto et al., "Marriage Registration as a Legal-Political Arena in Islamic Family Law: Reinterpreting Maṣlaḥah Mursalah within Modern Legal Systems," *Legitima: Journal of Islamic Family Law* 08, no. 01 (December 31, 2025): 28–46, https://doi.org/10.33367/legitima.v8i1.7891.

[7] Iqbal Subhan Nugraha and Abdul Aziz, "The Reorientation of Marriage Registration in the Compilation of Islamic Law: Shifting from Administrative Formality to Legal Obligation," *AJIS Academic*

A systematic review of the existing literature (state of the art) indicates that the discourse on nikah sirri and marriage registration has indeed captured significant attention among Islamic legal scholars. The majority of previous studies exhibit a methodological tendency to focus their analysis separately on two extreme poles: (1) purely empirical studies focused on the sociological, victimological, and psychological harms of unregistered marriage for women.[8] , or (2) dogmatic studies that merely dwell on rigid normative debates regarding the binary opposition of "religiously valid but state-illegal".[9] The most fundamental limitation of the current literature is the lack of academic initiatives to conduct a comprehensive and comparative analysis of the istinbath methods and *uṣūl al-fiqh* foundations of Islamic law across schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali) and the constitutional realities of contemporary Indonesia.[10] There is a wide gap in the analysis, where the discourse of rejection of secularization inherent in Indonesia's marriage registration model is rarely dissected to its philosophical roots. The novelty of this research specifically lies in its boldness to deconstruct the understanding of the requirements for a valid marriage by deeply integrating a comparative analysis of the fiqh paradigms of the four schools of thought into a convergence model framework, while exploring its legal-political dialectics following the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, which marks a new milestone in the protection of civil rights in Indonesia.

Building on these two strands, this article makes three adjustments to the existing approaches. First, it complements the normative method with empirical indicators, namely national statistics on marriage validation (*iśbāt* nikah) cases from the Directorate General of Religious Courts (Badilag) of the Supreme Court, discussed in Section 2.3, so that the normative analysis is anchored in the practical problem it addresses. Second, it grounds the protection of rights in *maqāṣid al-syarī'ah*, namely the preservation of lineage (*ḥifẓ al-nasl*), honor (*ḥifz al-'irḍ*), and property (*ḥifẓ al-māl*), together with the concept of fitrah, rather than in human rights discourse alone. Third, it reaffirms that marriage is a firm covenant (*miśāqan galīẓan*, Q.S. al-Nisa' [4]: 21), so that registration is understood as part of upholding the trust of that covenant and not merely as a civil-administrative matter.

Building on the background analysis, the elaboration of the theoretical framework, and the identified research gaps, this article formulates five main objectives of the study. First, to analyze the istinbath constructions (*uṣūl* frameworks) of the four classical schools regarding the validity of marriage in the absence of civil registration instruments. Second, to compare, descriptively, Indonesia's family law model with those of Turkey and Tunisia as reference points and identify its unique characteristics within the discourse of secularization. Third, to trace the historical dynamics of marriage legislation in Indonesia to demonstrate a manifest rejection of hegemonic secularization maneuvers. Fourth, to

Journal of Islamic Studies 10, no. 2 (November 5, 2025): 339–426, https://doi.org/10.29240/ajis.v10i2.12623.

[8] Fitria Wahyu Ningrum, "Nikah Siri and Its Impact on the Rights of Women and Children in Itsbat Nikah," *Tadhkirah: Journal of Applied Islamic Law and Sharia Philosophy Studies* 2, no. 1 (March 22, 2025): 60–72, https://doi.org/10.59841/tadhkirah.v2i1.85.

[9] Ahmad Sadzali, "The Relationship Between Religion and the State in Indonesia: Polemics and Implications in the Formation and Amendment of the Constitution," *Undang: Law Journal* 3, no. 2 (December 1, 2020): 341–75, https://doi.org/10.22437/ujh.3.2.341-375.

[10] Alysa Abu Bakar and Sahman Sahman, "The Renewal of Usul al-Fiqh: Challenges, Limitations, and Future Directions," *Indonesian Journal of Islamic Economic Law* 1, no. 02 (July 6, 2024): 105–22, https://doi.org/10.23917/ijoel.v1i2.5334.

dissect the urgency of registration through a victimological lens to break the chain of structural violence affecting women and children. Fifth, to critically evaluate the implications of this convergence on the resolution of legal dualism, specifically through the lens of Constitutional Court Decision No. 46/PUU-VIII/2010 and its dialogue with MUI Fatwa No. 11 of 2012 and the KHI.

Because several key terms originate in Western legal and social theory, this article defines each one operationally and maps it onto its counterpart in Islamic legal thought. Western terms are retained only where they describe the modern legal-administrative setting for which classical fiqh has no direct equivalent, and their limits are stated below. The phrase "*istinbāṭ* construction" refers to the way each school derives rulings from the sources through its *uṣūl al-fiqh*.

Marriage registration is the recording of a marriage by an authorized state official (the marriage registrar) in an official register, resulting in a marriage certificate. In fiqh terms it is an instrument of proof (*itsbāt*) and publication (*i'lān*) and an expression of the care taken to uphold the marriage covenant (mitsaqan ghalizhan). In the classical schools it is not a pillar or a condition of the contract.

Legal policy refers to the choices made by the state in regulating marriage. Its Islamic counterpart is *siyāsah syar'iyyah*: the authority of the ruler to regulate permissible matters for the sake of the public interest, governed by the maxim tasharruf al-imam 'ala al-ra'iyyah manuthun bi al-maslahah. Its limit is that it may not contradict an explicit text or a definitive ruling.

Legal certainty means that the existence, validity, and consequences of a marriage can be proven before a court. Its counterparts in Islamic procedure are *itsbāt* and *bayyinah* (evidence). The term is not a substitute for validity under fiqh: a marriage may be valid under fiqh and yet lack administrative proof.

Civil rights denotes the entitlements that arise from marriage and from the parent-child relationship before state institutions, such as maintenance (nafkah), joint property, child support, a birth certificate, and standing to bring claims in court. Islamic law protects these interests through the objectives of *ḥifẓ al-nasl*, *ḥifz al-'irḍ*, and *ḥifẓ al-māl*. This article distinguishes civil rights from nasab and inheritance, which fiqh determines by its own rules (see Section 2.4).

Structural violence, a concept from Johan Galtung, refers to harm produced by institutions and arrangements that prevent people from meeting their basic needs, without a single direct perpetrator. It is read here as a form of *ẓulm* (injustice) and as neglect of *ḥifẓ al-nasl* and *ḥifz al-'irḍ*. Its limit is that Galtung's concept is sociological and descriptive, whereas *ẓulm* is a normative category that carries specific obligations and remedies; the article therefore uses the concept to identify patterns of harm and the Islamic categories to evaluate them (see Section 2.7).

Convergence and maqashid-based integration. "Convergence" is the label used in the legal-sociological literature for the Indonesian model in which religious law and state law meet. Its limit is that it suggests two separate systems approaching each other, whereas Islamic legal reasoning treats the ruler's regulation of permissible matters as part of the same sharia-based system. This article therefore prefers "maqashid-based integration," meaning the placement of a rule of administration inside a single normative framework whose criteria of legitimacy are the *maqāṣid al-syarī'ah*, and uses "convergence" when referring to the literature.

The Constitutional Court (*Mahkamah Konstitusi*) is the Indonesian institution of constitutional review. Its decisions are positive law and differ in authority from the

rulings of ulama bodies such as the Indonesian Ulama Council (MUI). Islamic legal thought has no exact equivalent of constitutional review, so this article analyzes the relation between the Court's decisions and fiqh instead of assuming that the two are equivalent.

To systematically achieve these operational objectives, this study is structured as pure doctrinal legal research and formatted as a literature review (library research). Primary data sources are drawn from highly authoritative legal materials, including cross-madhhab mu'tabarah fiqh texts (*Bada'i' al-Ṣana'i'* for the Hanafi school, *al-Mudawwanah* for the Maliki school, *al-Umm* for the Shafi'i school, and *al-Mugnī* for the Hanbali school), supplemented by *syurūṭ* (documentary formulary) literature, primary legislative instruments (the Marriage Law and the Compilation of Islamic Law), and authentic copies of Constitutional Court decisions. Meanwhile, secondary legal materials were gathered from textbooks, accredited scholarly journals, and various academic documents relevant to the discourse on contemporary Islamic family law. Supporting empirical data, namely national statistics on marriage validation (*iśbāt* nikah) cases reported by the Directorate General of Religious Courts (Badilag), are used as indicators of the practical problem and do not turn this study into an empirical one; their limits are noted where they are used. The research approach is multifaceted, encompassing a comparative approach to dissect variations in legal reasoning across schools of thought, a statutory approach to examine the legislative rationale of national regulations, and a conceptual approach to unravel the anatomy of legal-political discourse. The entire corpus of collected legal materials was then classified, systematized, and analyzed using a descriptive-analytical method within a prescriptive reasoning framework to generate coherent proposals for harmonizing the family law system in Indonesia.

2. DISCUSSION

2.1 The Istinbath Construction of the Four Madhhabs: Theological Authority and Sociological Correlations within a Non-Administrative Ecosystem

Studying Islamic family law (*al-ahwal al-syakhshiyyah*) requires a comprehensive understanding of the dialectical relationship between the constant revelatory texts (*śawābit*) and the ever-changing social reality (*mutaghayyirāt*). In the classical fiqh discourse inherited from the four mainstream schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), the legal framework governing the validity of marital bonds is constructed purely on a theocentric basis.[11] The classical jurists of the four schools did not include the state's administrative registration instrument (*al-kitābah* or *tasjīl al-munākaḥāt*) in the nomenclature of the pillars or conditions for a valid marriage; this omission is consistently attested across the schools, although it should not be described as an ijma' that registration is forbidden or irrelevant. The validity of the transition to a lawful marital status between a man and a woman is assessed exclusively based on the fulfillment of essential elements: the formulation of the *ijab qabūl*, and the presence of figures who directly legitimize the contract—namely, the wali and the witnesses. The absence of a requirement for official documentation in classical legal literature is not a legal simplification, much less a form of defiance against civil administrative order. This omission is best understood on two levels. Sociologically, it can be read against the

[11] Sahril Sidik, Imam Sucipto, and Zaelani Zaelani, "Methods of Developing Islamic Law in the Classical Islamic Schools," *Jurnal Media Akademik (JMA)* 4, no. 5 (May 24, 2026): 1–23, https://doi.org/10.62281/k041s485.

background of early Muslim societies, in which the proof of a marriage rested on oral testimony and communal knowledge; this is an interpretive background and not, in itself, the legal ground of the rulings. In ushul terms, the schools framed validity through ishhad and *i'lān*, whose *'illat* and hikmah are analyzed in the final part of this subsection. Although they reach identical conclusions regarding the absence of an obligation to register administratively, the four schools of jurisprudence exhibit highly distinctive methodological approaches to legal reasoning (*uṣūl fiqh*), strongly influenced by the sociological and geographical landscapes in which these schools emerged and developed.[12]

The Shafi'i and Hanbali schools represent a highly precise, textualist (*ahl al-hadīś*) approach to upholding the formal procedures of a marriage contract. Both schools of thought absolutely and non-negotiably require the presence of a blood-related guardian for the bride, as well as the physical presence of two male witnesses who possess the qualifications of *'adalah* (moral integrity, freedom, and not being immoral) precisely at the time the marriage ceremony takes place.[13] The fundamental arguments of both schools are firmly grounded in the textual evidence of the Prophet Muhammad's hadith, which explicitly states that a marriage is invalid unless a guardian and two just witnesses are present.[14] For Imam al-Shafi'i and Imam Ahmad ibn Hanbal, the legal principle binding the guardian and witnesses is of a ta'abbudi nature—a ritual domain of absolute submission to the text of revelation, whose logical rationale cannot always be measured by empirical reason. The presence of witnesses and a guardian is far more than merely a ceremonial function aimed at eliciting social recognition from the community. Both are positioned as instruments of theological verification as well as metaphysical gatekeepers. The absence of either of these two instruments would shatter the essence of the contract from within and directly result in the Marriage's status becoming *fasid* (defective) or *bāṭil* (void). In this line of istinbath, the certainty of lineage and the protection of women's rights are guaranteed spiritually through a multi-layered vetting of integrity, not through state-issued documents.

The Maliki School offers a starkly contrasting approach, constructing its legal methodology through a sociological-historical lens, drawing on the authentic traditions of the people of Medina (*'amal ahl al-madīnah*). Having grown up in the cradle of Islamic civilization, a society characterized by strong social cohesion, Imam Malik formulated views that were quite radical for his time. He held the view that the presence of two witnesses during a private marriage ceremony is merely a sunnah, and its status only escalates to obligatory when the husband and wife intend to consummate the marriage (*dukhūl*). The Maliki School places primary emphasis on the legal validity of marriage on the concept of *isytihar al-nikāḥ*(publication of the marriage), or *i'lān* (announcement),

[12] Achmad Kholiq et al., "The School of Moderation in Fiqh Thought and Its Implications for the Development of Islamic Law in the Modern World," *Journal of Islamic Law* 23, no. 1 (June 15, 2025): 143–74, https://doi.org/10.28918/jhi.v23i1.05.

[13] Muhammad Tang and Nilfatri Nilfatri, "The Law of Guardianship in Marriage According to Madhhab Scholars," *ZIJIS: Zabags International Journal of Islamic Studies* 2, no. 1 (May 30, 2025): 1–8, https://doi.org/10.61233/zijis.v2i1.12.

[14] Adang Muhamad Nasrulloh, Mujiyo Nur Cholis, and Imam Sucipto, "Analysis of the Position of Marriage Witnesses in the Opinions of the Four Madhhabs of Fiqh and Indonesian Regulations," Graduate School of UIN Sunan Gunung Djati, *Al-Qaḍāu: Islamic Judiciary and Family Law* 10, no. 1 (June 30, 2023): 82–96, https://doi.org/10.24252/al-qadau.v10i1.37880.

made widely and openly within the heart of the community.[15]). For the Maliki School, the legal norms of marriage encompass a ta'aqquli dimension (one that can be logically reasoned). The *'illat* (legal rationale) for prescribing witnesses is purely to *daf'u al-tuhmah* (ward off accusations or rumors) of the commission of the criminal act of adultery within the social order. In light of this rationale, the instrument deemed most effective in preventing slander is not silent testimony in a closed room by two individuals, but rather massive communal knowledge. In an extreme case, if a marriage is conducted by fulfilling the requirement of two witnesses and a guardian, yet all parties involved conspire to keep it hidden from the public's ears (*tawasyi bi al-kitmān*). Imam Malik rules that such a marriage is defective and must be annulled (*fasakh*).[16] This paradigm strikingly demonstrates that the Maliki School has utilized collective social control as a mechanism of "natural registration," replacing the role of civil registration, which was not yet institutionalized in the Middle Ages.

On the other hand, the Hanafi School positions itself with a dominant rationalist character (*ahl al-ra'y*), a methodological trait born from the sociological pulse of the city of Kufa (Iraq)—a cosmopolitan, pluralistic region and a crossroads of civilizations demanding flexibility in legal reasoning.[17] In response to this demographic complexity, Imam Abu Hanifah granted legal subjects a degree of autonomy that transcended the communal orthodoxy of the Hijaz. Regarding the authority to enter into a sacred union, the Hanafi School issues a fatwa stating that a woman who has reached the threshold of physical, intellectual, and rational maturity (*baligah, 'aqilah,* and *rasyidah*) possesses complete civil legal capacity (*ahliyyat al-ada' al-kāmilah*). Referring to this postulate, the woman has full legitimacy to enter into a marriage contract on her own behalf, without being constrained by the permission or presence of a blood-related guardian. This progressive line of reasoning is supported by the legal instrument of *qiyās* (legal analogy). A woman's dignity and control over her future are symmetrically analogized with her prerogative to manage her personal property (*taṣarruf fī al-māl*). The legal logic asserts: if Islamic law honors adult women by granting them absolute freedom to execute commercial contracts and allocate financial assets independently, then it is inevitable that they also hold authoritative control over their own choice of marital union. To balance this freedom so it does not slip into exploitation, the Hanafi School employs the concept of kifa'ah (social status equivalence) as a safeguard. Within the Hanafi paradigm, legal certainty does not rest on a patriarchal figure (guardian) but rather is grounded in legal consciousness, the free will of a rational individual, and is validated by the objective presence of witnesses.[18]

From this comparative dialectical constellation spanning from the Hijaz to Iraq, a comprehensive concluding synthesis can be formulated. The absence of administrative record-keeping requirements within the literary landscape of the four schools of thought

[15] Adrianto Adrianto and Chalid Sitorus, "The Views of the Fuqaha on Unannounced Marriages," *At-Thariq: Journal of Islamic Studies and Culture* 04, no. 01 (February 29, 2024): 42–51, https://doi.org/10.57210/trq.v4i01.287.

[16] Sahnun bin Sa'id Al-Tanukhi, *Al-Mudawwanah Al-Kubra*, Vol. 2 (Beirut: Dar al-Kutub al-Ilmiyyah, 1994), p. 194.

[17] Arif Al Anang and Anwar Saleh Hasibuan, "Systematization of the Epistemology of Legal Deduction in the Hanafi School: Between Text and Reality," *Al Ashriyyah Journal* 11, no. 01 (May 25, 2025): 167–78, https://doi.org/10.53038/alashriyyah.v11i1.253.

[18] Elsa Jeni Isma Sari, Yusuf Baihaqi, and Agus Hermanto, "Marriage Contract in the Presence of a Corpse: Legal Perspectives in Islamic and State Law," *Kyadiren Law Journal* 7, no. 1 (July 2, 2025): 517–37, https://doi.org/10.46924/jihk.v7i1.312.

is not a static theological decree that excludes registration; it reflects the way proof was organized in the classical judicial system. The Islamic judicial ecosystem (qadha) during its formative era prioritized the system of material evidence—namely, the legal subject's admission (*iqrār*) and oral testimony before the court (*syahādah*)—over the weight of authentic written evidence (*al-kitābah*). Imposing a retroactive state record-keeping obligation to judge these classical texts constitutes a flawed historical leap in reasoning. However, dissecting the sociological rationality, the methodology of *istinbāṭ*, and the *maqāṣid* (protective objectives) offered by each school of thought is an academic imperative. The substantive values regarding the urgency of public recognition in the Maliki school, civil autonomy in the Hanafi school, and the caution in moral procedures in the Shafi'i and Hanbali schools ultimately became a vital philosophical foundation. It is this foundation that was later adapted, synthesized, and transformed by lawmakers into the architecture of modern family law in Indonesia, aiming to provide legal certainty without severing ties to the roots of Islamic sharia values.

The preceding discussion shows what the classical schools required, but not yet why they required it. *Uṣūul al-fiqh* asks for the *'illat* (effective cause) and the hikmah (underlying wisdom) of a ruling, and a ruling attached to an *'illat* moves with it: where the purpose of a ruling is realized by other means, the ruling's wisdom is served by those means. The *'illat* of ishhad in the Hanafi, Shafi'i, and Hanbali discussions is commonly explained as proof (itsbt) and the prevention of denial (*juhūd*): a marriage concluded before witnesses can be established if one party later denies it.[19][20][21]The *'illat* of *i'lān* in the Maliki discussion is the prevention of suspicion (*daf' al-tuhmah*) and the publicity that distinguishes marriage from adultery, which also protects lineage (*ḥifẓ al-nasl*).[22] Both lines of reasoning therefore point to the same purposes: proof, prevention of denial, and the protection of lineage and honor.

That the classical jurists knew and valued written documentation is also evident. The Qur'an instructs the believers to record transactions in writing in order to preserve evidence and avoid dispute (Q.S. al-Baqarah [2]: 282), and later jurists developed a literature of shurut, model deeds for contracts such as sales, which shows that written documentation was already an established instrument of legal practice.[23] Registration of marriage in an official register is a development of the same logic: it is the contemporary form of written proof, issued by an authority that the ruler designates.

On this basis, registration can be treated as a continuation of classical fiqh and not as a break from it, provided that two limits are respected. First, registration does not replace the classical conditions of validity (the wali, the witnesses, and ijab qabul); it is a means of proof and publication (*iśbāt* and *i'lān*) that secures the purposes of those conditions under modern conditions. Second, because registration is justified by maslahah and not by an explicit text, it belongs to the domain of *siyāsah syar'iyyah*, where obedience to the ruler's regulation of permissible matters is required so long as it

[19] 'Ala' al-Din Al-Kasani, *Bada'i' Al-Sana'i' Fi Tartib Al-Syara'i'*, Vol. 2 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), pp. 252–255.

[20] Abu Muhammad Muwaffaq al-Din Ibn Qudamah, *Al-Mughni*, Vol. 7 (Riyadh: Dar 'Alam al-Kutub, 1997), pp. 5–9.

[21] Muhammad bin Idris Al-Syafi'i, *Al-Umm*, Vol. 5 (Beirut: Dar al-Ma'rifah, 1990), pp. 21–23.

[22] Sahnun bin Sa'id Al-Tanukhi, "Kitab Al-Nikah: Fi an-Nikah Yustasirru Bihi (Chapter on Concealed Marriages)," in *Al-Mudawwanah Al-Kubra*, Vol. 2 (Beirut: Dar al-Kutub al-Ilmiyyah, 1994), pp. 98–101.

[23] Abu Ja'far Ahmad bin Muhammad Al-Tahawi, *The Function of Documents in Islamic Law: The Chapters on Sales from Tahawi's Kitab al-Shurut al-Kabir*, ed. and trans. Jeanette A. Wakin (Albany: State University of New York Press, 1972), pp. 3–7.

serves the public interest and does not contradict a definitive text.[24] The next section examines how Indonesian law has given this regulation its form.

2.2Rejecting Secularization: Convergence as Maqashid-Based Integration in the Political Configuration of Marriage Law in Indonesia

The fundamental transformation from the communal nature of classical fiqh to an organized national legal administration system presents an extraordinarily sharp paradigmatic tension. This sociological and juridical tension reached its peak when the nation-state massively introduced instruments of administrative registration authority. Examining the geopolitical map of the Islamic world from the early to mid-20th century, the trend of family law modernization was often viewed with suspicion, even pejoratively equated with a radical secularization agenda. In global discourse, the secularization of family law is interpreted as a systematic hegemonic maneuver by rulers to strip sacred religious texts of their authority over the private lives of citizens. The historical experience of several Muslim-majority countries that aggressively transplanted Western European secular civil law—such as the adoption of the Swiss Civil Code, which completely sidelined family fiqh—served as a precedent that deepened resistance among traditionalists. The meaning of administrative modernization has been reduced to an effort to separate purely religious matters from Sharia intervention, thereby replacing them with the rationality of a civil bureaucracy devoid of transcendental values.

However, an in-depth analysis of the political configuration of family law in the Archipelago actually reveals a highly distinctive landscape. Indonesia has firmly and systematically rejected the secularization of family law, yet simultaneously demands strict adherence to a highly rigorous civil administrative order. This manifest rejection of the secularization trend did not emerge from a vacuum but crystallized from intense discursive debates during the 1970s. Examining the history of the enactment of Law No. 1 of 1974 on Marriage, the initial draft of the regulation sparked massive protests from the Muslim community because it contained provisions heavily tinged with secular overtones, in which the validity of marriage was based solely on civil registration without reference to religious rites. This escalation of opposition ultimately forced the state to formulate a significant legal-political compromise, which, in the sociology of law, is referred to as the convergence model.

This convergence formulation was constructed by combining living law (Islamic law that is alive and deeply rooted in the sociology of society) with state law (the positive law of the state). The core defense of this convergence model rests on the harmonious dualism firmly embedded in Article 2's wording. Referring to Article 2(1), the state grants absolute recognition that a marriage is valid if conducted in accordance with the laws of each religion or belief system.[25] This crucial provision serves as the most absolute bulwark against secularization. Through this regulation, the state implicitly adopts the pillars and conditions of marriage codified by the classical schools of Islamic jurisprudence as fundamental to validity. The philosophical meaning is very clear: the state relinquishes its hegemonic ambitions and does not, in any way, assume the theological authority of the ulama. The state does not interfere in matters regarding the establishment of valid procedures for the ijab qabul, the criteria for figures eligible to

[24] Jalal al-Din Al-Suyuti, *Al-Asybah Wa Al-Nazha'ir Fi Qawa'id Wa Furu' Fiqh Al-Syafi'iyyah*, Vol. 1 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1990), pp. 121–122.

[25] Indonesia, "Law No. 1 of 1974 on Marriage, Article 2, Paragraph (1)" (Official Gazette of the Republic of Indonesia, 1974).

hold the position of wali nasab, or the qualifications of witnesses meeting the ’adalah requirement. Religious authority is left pure and sovereign within the private sphere.

Nevertheless, this theological recognition is immediately refined and bound by the legal-political intervention in paragraph (2), which mandates that every marriage must be registered in accordance with applicable laws and regulations. This sequential configuration of articles in no way diminishes the status of religious requirements; rather, it designs the registration instrument as a sociological-legal requirement to ensure that this sacred institution possesses enforceable legal standing within the modern judicial ecosystem. Furthermore, this convergence in legal policy is accelerated by the policy of codifying Islamic law (*taqnin al-ahkam al-syar’iyyah*), as evidenced by the issuance of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI). In examining the structure of Articles 5 and 6 of the KHI, the drafting committee took a far more progressive step by providing a philosophical justification: the registration of marriage is intended to ensure absolute order while securing legal protection for the parties entering into that union.[26]

It is at this point of convergence that the rationality of the principle of *siyāsah syar’iyyah* (Islamic legal politics) offers a principled answer to the accusation of secularization raised by some conservative groups.[27] State institutions exercise their authority (*taṣarruf al-imām*) to mandate an administrative instrument that, historically and textually, was never prescribed by the salafus shalih, purely for the sake of achieving the public interest (*al-maslaḥah al-āmmah*). The obligation to register is no longer interpreted as an intrusion by a secular civil bureaucracy but is instead understood as a form of sociological obedience to the ulil amri (legitimate government), which, in essence, embodies the value of social worship (*ta’abbudi al-ijtimā’i*). The central focus that must be emphasized in the anatomy of Indonesian family law is the way two kinds of rules are placed within one framework. Theological truth in the form of the pillars of fiqh and administrative truth in the form of a marriage certificate are not left to clash and negate one another in a vacuum, but are united into a single, complete, and comprehensive set of requirements. Its ultimate goal is to implement the principle of *sadd al-żarī’ah* (closing the door to corruption) to prevent social pathologies and civil disasters that would inevitably arise from the excesses of unregistered marriages.

This reading explains why this article prefers the term maqashid-based integration to convergence. “Convergence” suggests two separate authorities, the sharia and the state, that approach each other and meet halfway. In the Islamic legal tradition, however, the ruler’s regulation of permissible matters for the sake of the public interest is itself a part of sharia-based governance (*siyāsah syar’iyyah*), and the maqashid supply the criteria by which that regulation is judged: it is legitimate to the extent that it protects lineage, honor, life, and property. What happened in Indonesia, on this reading, is not that fiqh yielded part of its authority to the state, but that a rule of administration was placed inside a single normative framework whose rules of validity remain those of fiqh. This normative reading does not replace the historical account in Section 2.6, which shows that the formulation was reached through political bargaining; the two accounts operate at

[26] Indonesia, “Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law” (1991).

[27] Sahril Sidik, Ridwan Eko Prasetyo, and Budi Tresnayadi, “Implementation of Article 4(f) of Government Regulation No. 94 of 2021 on Civil Service Discipline (PNS) in the City of Tasikmalaya Government from a Constitutional Political Perspective,” *JIHHP: Journal of Law, Humanities, and Politics* 5, no. 2 (January 15, 2024): 1600–1615, https://doi.org/10.38035/jihhp.v5i2.3913.

different levels, the one describing how the rule came about and the other how it can be justified.

2.3 Implications of the Convergence Model for Resolving Dualism and Protecting Civil Rights

The application of the convergence model in the legal policy of marriage registration in Indonesia carries profound paradigmatic and practical implications for restructuring the legal architecture of family law. For decades, the sociological landscape of Muslims in the Archipelago has often been trapped in a latent dichotomy that triggers legal bifurcation (the splitting of the legal system); on the one hand, society submits to the validity of the theological " " of classical fiqh (living law), while on the other hand, the state demands compliance with the formal legality of bureaucracy (state law). This bifurcation has given rise to a shadow legal system in which the practice of informal marriages has flourished, seemingly challenging the state's sovereignty. However, through a convergence model manifested in the unification scheme (Marriage Law) and the codification of Islamic law or taqnin al-ahkam (Compilation of Islamic Law), this diametrical conflict has been substantially mitigated. The most evident normative implication of this unification is the realization of a coherent synthesis of norms: the marriage pillars of the four schools of thought are positioned as "material requirements," while registration with state agencies is established as "formal-evidential requirements." These two elements are no longer allowed to conflict within a mutually exclusive hierarchical structure, but rather intertwine to form a single holistic unity of validity. Through this conceptual framework, the narrative of Sharia's subjugation to the civil administrative system has been successfully refuted. Conversely, the state administrative system has transformed into a protective instrument for Sharia itself (*ri'ayāt al-aḥkām al-syar'iyyah*).

Examining this in practice, the most essential implication of applying the convergence model lies in optimizing the protection of citizens' civil rights, particularly for female entities (wives) who, both historically and through social construction, are often trapped in a subordinate position within patriarchal culture. Examining the workings of the modern civil judicial landscape, the absence of authentic documents automatically blocks all avenues of access to formal justice. For a wife, the absence of a marriage certificate effectively renders her invisible within the state's legal apparatus, making her highly vulnerable to becoming a victim of economic and psychological violence without any means of self-defense. The integration of the registration requirement, as explicitly stated in Article 6(2) of the KHI[28] It transforms a marriage certificate into a legal instrument of standing with full executory and binding power. Possession of this authentic document guarantees a wife her domestic rights before the gavel of the religious court judge, ranging from claims for the fulfillment of material and emotional support, protection from domestic violence, the enforcement of the division of joint property (*syirkah*), to the guarantee of equal bargaining power in divorce proceedings (*khulu'*) and child custody disputes (hadhanah). If the husband commits acts of tyranny (*nusyūz*) or neglects the family, the marriage certificate ensures that the Religious Court has absolute legitimacy to issue and enforce legal rulings (dwangmiddel). The absence of legal convergence will only cause Islamic

[28] Indonesia, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law.

jurisprudence—which inherently embodies a noble spirit of liberation and gender justice—to fade into mere blunt moral exhortations in the state's public sphere.

More broadly and deeply, this administrative convergence serves as a state intervention mechanism to safeguard the existence, dignity, and future of a child's civil rights from the threat of structural victimization. Referring to the philosophical framework of maqashid al-sharia, the protection of a child's ontological status is the highest manifestation of the axiom of preserving the lineage (*ḥifẓ al-nasl*).[29] The event of marriage (*nikah*) officially recorded in the state registry will directly result in the legal recognition of the child's lineage from both parents within the administrative framework of civil registration. This legal recognition by the state is an indispensable prerequisite for the issuance of a birth certificate, the most fundamental form of citizenship identity.[30] This birth certificate is essential to unlocking the fulfillment of all the child's constitutional rights in the future, including equitable access to formal education, guaranteed national health protection, and, where lineage is established, greater certainty regarding inheritance rights through the father's lineage. In light of this reality, a marital union left unregistered effectively strips the child of legal standing from the very first moment of birth. This situation reduces the child's status to merely an entity recognized as having only civil ties to the mother and her family. This systemic deprivation of rights not only violates universal human rights principles but also stands in direct opposition to the philosophy of justice within Islamic law. On this basis, state intervention in the form of mandatory registration is no longer merely a bureaucratic recommendation. However, it has escalated into an ethical and legal obligation subject to the principle of ushul fiqh: "ma la yatimmu al-wajib illa bihi fahuwa wajib" (a duty that cannot be fully fulfilled without the presence of something else, thereby becomes legally obligatory as well).

Although the architecture of the convergence model in Indonesia is designed to be so strict as to ensure legal certainty, the national legal-political constellation refuses to adopt a tyrannical stance in addressing disparities in legal literacy and awareness that afflict segments of the grassroots population. To accommodate the complexity of this sociological reality, the legal system provides a "safety valve" mechanism through the *Iśbāt Nikāḥ* (marriage validation) jurisdiction, which is regulated with great precision and strict limitations under Article 7 of the KHI.[31] This judicial mechanism is specifically and carefully designed to address past anomalies, including marriages conducted long before the Marriage Law came into effect, the loss of marriage certificates due to natural disasters, and efforts to resolve various cases where purely administrative negligence occurred without the slightest element of malicious intent to circumvent the law. The existence of the *Iśbāt Nikāḥ* provision within the regulations of the Religious Courts simultaneously sends a very strong legal message; the model of family law convergence in Indonesia is not designed as a bureaucratic machine that stifles humanity, but rather constructed to blend firm legal certainty with the spirit of equitable justice grounded in sociological appropriateness.

[29] Sahril Sidik, Imam Sucipto, and Elin Herlina, "The Application of the Principle of 'Al-Masyaqqatu Tajlibu At-Taysir' in Resolving Custody Disputes for Children with Special Needs Following Divorce," *Al-Maqashidi Journal of Nusantara Islamic Law* 8, no. 2 (December 25, 2025): 92–107, https://doi.org/10.32665/almaqashidi.v8i2.5716.

[30] Indra Krestianto, "Optimization of Marriage Registration to Realize Legal Certainty and Civil Rights Protection," *Jurnal Impresi Indonesia (JII)* 4, no. 5 (June 5, 2025): 1707–16, https://doi.org/10.58344/jii.v4i5.6534.

[31] Indonesia, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law.

The scale of the problem that the *Iśbāt Nikāḥ* mechanism addresses can be seen in national statistics. According to the annual reports of the Directorate General of Religious Courts (Badilag) of the Supreme Court, the religious courts handled about 47,344 marriage validation (*Iśbāt Nikāḥ*) cases in 2020, 46,942 in 2021, 58,017 in 2022, 55,553 in 2023, and 50,999 in 2024.[32] Two cautions apply. These figures count only the cases that reach a court, and so show the demand for retroactive validation and not the total number of unregistered marriages, which is unknown. They also do not show how many of these cases involve children whose lineage or civil status is at issue; answering that requires case-level studies of particular religious courts, which lie beyond the scope of this doctrinal study but are an important direction for future research. Even with these limits, the figures support the normative argument of this section: unregistered marriages are not a marginal phenomenon, and the *Iśbāt Nikāḥ* procedure remains a major channel through which the integration of fiqh validity and administrative proof is realized in practice, as a remedy after the fact and not as a substitute for registration at the time of marriage.

2.4 The Constitutional Dialectic and Children's Civil Rights: Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010

The culmination of the dynamics and evolution of the legal politics surrounding marriage registration in Indonesia is clearly manifested through the intervention of judicial power, namely through the issuance of the Constitutional Court (MK) Decision No. 46/PUU- VIII/2010.[33] The birth of this landmark decision stemmed from a judicial review petition filed by Hj. Aisyah Mochtar (Machica Mochtar) and her son, who challenged Article 2(2) of the Marriage Law (the registration requirement) and Article 43(1) (the status of a child born outside marriage), arguing that the two provisions created legal uncertainty and discrimination against the child's constitutional rights. The Court rejected the challenge to Article 2(2), thereby leaving registration in place as an administrative obligation, but partially granted the challenge to Article 43(1). Examining the sociological landscape of law prior to this ruling, Indonesia's legal paradigm was shackled by an extremely rigid legal positivism. Regulations stipulated that a child born outside a marriage legally recognized by the state—including children from a religious marriage (*nikāḥ sirri*) that was valid under religious law but not registered—had only a civil relationship with the mother and her family. This old configuration was essentially a raw adoption of the textual interpretation found in some classical fiqh literature regarding the status of children born out of wedlock (*walad zina*), which was then applied as a blanket rule (generalization) to children born of unregistered marriages. Tolerating this regulation is tantamount to legalizing the phenomenon of "civil death" for the children of unregistered marriages.

Before analyzing the decision, four issues that are often merged in the debate must be separated, because the answer to each differs. (a) The validity of the contract under Islamic law depends on the pillars and conditions set by the schools (ijab qabul, the wali, two witnesses, and the capacity of the parties); registration is not among them. (b) Administrative legality concerns whether the marriage is recorded and thereby

[32] Indonesia, Directorate General of Religious Courts, "Annual Report of the Directorate General of Religious Courts, Supreme Court of the Republic of Indonesia, 2020–2024" (Jakarta, 2025), https://badilag.mahkamahagung.go.id/laptah.

[33] Constitutional Court of the Republic of Indonesia, "Constitutional Court Decision No. 46/PUU-VIII/2010 on the Review of Law No. 1 of 1974 on Marriage." (2012).

recognized by the state. Article 2(2) of the Marriage Law requires registration, and the Court treated that requirement as administrative in nature.[34] Article 6(2) of the KHI, by contrast, states that a marriage conducted outside the supervision of the marriage registrar has no legal force, a formulation that sits uneasily with validity under fiqh and shows why the two levels must be kept apart. (c) Lineage (*naṣab*) in fiqh is established through a valid marriage, through a marriage of doubt (*syubhāt*), or through a valid acknowledgment (*iqrār*), and by the principle al-waladu li al-firasy; it is created neither by registration nor by biology alone. (d) Civil rights, such as maintenance and support for the child, a birth certificate, and access to education and health services, are obligations that the father and the state can be required to fulfill whatever the status of nasab. Much of the confusion surrounding Decision No. 46/PUU-VIII/2010 comes from treating a position on (d) as if it were a position on (c).

In response to this civilizational impasse and systemic injustice, the Constitutional Court took a bold step by creating a progressive legal breakthrough. The panel of constitutional judges, through a teleological interpretation, ruled that the child also has a civil relationship with the man who, as proven through the use of science and technology (such as DNA testing) and/or other evidence admissible under the law, is found to have a blood relationship as the child's biological father. From a philosophical and ushul perspective, this Constitutional Court ruling is by no means a manifestation of a legal secularization trend that clashes with the Islamic sharia order. On the contrary, the decision constitutes a constitutional correction deeply rooted in the spirit of the maqashid al-sharia, specifically regarding the protection of the child's dignity and honor (*ḥifz al-'irḍ*), life (*ḥifẓ al-nafs*), and means of livelihood (*ḥifẓ al-māl*); whether it also touches the preservation of lineage (*ḥifẓ al-nasl*) depends on the distinction between a civil relationship and nasab, which is analyzed below.[35]

The Court's reasoning (ratio decidendi) rested on the child's constitutional rights, equal treatment before the law, and the injustice of leaving responsibility for the child on the mother alone. The Islamic legal reading developed in this article adds the concept of fitrah (innate human purity) as a normative foundation for that reasoning. Sacrificing the rights of a child born into the world without original sin, allowing the child to bear the burden of social stigmatization throughout life, and stripping the child of civil rights purely due to administrative negligence committed by the parents constitutes an act that violates universal justice. Punishing a legal subject for an act that contains absolutely no element of fault (mens rea) clearly stands in direct opposition to the fundamental Islamic principle of *walā taziru wāziratun wizra ukhrā* (no one shall bear the burden of another's sin). With this ruling, the model of family law convergence in Indonesia has taken a significant step forward. The state firmly upholds the normative principle that an ideal marriage fulfills theological requirements and is registered by the competent civil authority; however, the state explicitly refuses to disregard biological realities in order to uphold restorative justice for children at risk of becoming victims of the rigidity of the administrative machinery.

[34] Rendy Dwi Hermanto, "Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010 on the Status of Children Born of Unregistered Marriage from the Perspective of Imam al-Shatibi's Maqasid al-Shari'ah," *Mahakim: Journal of Islamic Family Law* 6, no. 1 (2022): 48–71, https://doi.org/10.30762/mahakim.v6i1.142.

[35] Zumiyati Sanu Ibrahim Ibrahim et al., "Integration of Maqasid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity," *Journal of Islamic Law* 23, no. 1 (June 17, 2025): 105–144, https://doi.org/10.28918/jhi.v23i1.04.

Of course, this highly progressive constitutional leap is not immune to the vortex of dialectics and has triggered strong objections , particularly among contemporary jurists and orthodox religious institutions. Central to the concerns emerging in the public sphere is the potential for this ruling to be misused as a legal loophole to legitimize the practice of adultery under the guise of the accuracy of DNA testing. Critics envision a destructive scenario in which the lineage framework within the Islamic inheritance system—which for centuries has been protected by the doctrine of al-waladu li al-firash (a child is attributed to the bed of a valid marriage)—will collapse due to the equating of the civil status of a child born of pure adultery with that of a child born of a valid marriage. This concern is well-founded, given that Islamic law makes a clear distinction between biological truth and sharia truth in determining lineage.

The most direct institutional response was Fatwa No. 11 of 2012 of the Indonesian Ulama Council (MUI) on the status of children born of adultery and their treatment, which responded to the public debate that followed the Constitutional Court's decision. The fatwa affirms that a child born of adultery has a relationship of nasab, inheritance, maintenance (nafkah), and guardianship in marriage (wali nikah) only with the mother and her family, and not with the man who caused the birth. At the same time, it authorizes the government to impose a discretionary penalty (ta'zir) on that man, requiring him to meet the child's needs and to provide for the child after his death through an obligatory bequest (wasiat wajibah).[36] Read together with the decision, the fatwa shows where the two instruments meet and where they part. They meet in the outcome that the man cannot escape responsibility: the Court speaks of a civil relationship, the fatwa of ta'zir obligations of livelihood and wasiat wajibah. They part on nasab and inheritance: the fatwa keeps the classical rule that adultery does not establish lineage, whereas the Court's wording, which refers to a civil relationship with the biological father, can be read more broadly.

The Compilation of Islamic Law (KHI), which predates both, adds a second point of comparison. Article 99 defines a legitimate child as one born in, or as a result of, a valid marriage, and Article 100 provides that a child born outside marriage has a relationship of nasab only with the mother and her family. Under the Court's decision, Article 43(1) of the Marriage Law has been reread to add a civil relationship with the biological father, and scholars differ on whether Article 100 of the KHI can still be applied as written.[37] This disagreement is why the integration of the Court's decision with fiqh is described in this article as an ongoing and debated process and not as a settled one.

These materials allow the question raised by the Court's recognition of a civil relationship with the biological father to be answered more carefully. Under fiqh, three situations must be distinguished. First, where the parents were validly married under the schools' conditions but did not register (an unregistered but valid marriage), the child is a legitimate child under fiqh and has *naṣab* to the father by the rule of *al-waladu li al-firasy*; the problem in such cases is proof, and the Court's decision, together with *Iśbāt Nikāḥ* under Article 7 of the KHI, brings state law into line with an outcome that fiqh

[36] Majelis Ulama Indonesia, Fatwa of the Indonesian Ulama Council Number 11 of 2012 on the Status of Children Born of Adultery and Their Treatment (Jakarta: MUI, 2012); Haniah Ilhami, "The Contribution of the Indonesian Ulama Council Fatwa Number 11 of 2012 on the Status of Children Born of Adultery and Their Treatment in Islamic Family Law in Indonesia," *Mimbar Hukum* 30, no. 1 (2018): 1–16, https://doi.org/10.22146/jmh.29048.

[37] Achmad Irwan Hamzani, "The Lineage of Children Born Out of Wedlock after Constitutional Court Decision Number 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (2015): 57–74, https://doi.org/10.31078/jk1214.

already recognizes. Second, where the child was born of adultery (*zina*), fiqh does not establish nasab to the biological father, and the MUI fatwa says so explicitly; the civil relationship recognized by the Court can be accepted in fiqh terms only as a basis for obligations (livelihood, protection, and wasiat wajibah), and not as a basis for nasab, wali nikah, or fixed shares of inheritance. Third, in cases of doubt, such as a marriage later found defective, a marriage mistaken for valid (wath' syubhah), or a dispute over whether a valid marriage existed, nasab may be established by the fiqh rules of proof, and scientific evidence such as DNA testing functions as qarinah that supports bayyinah and does not substitute for it. Accordingly, this article does not claim that the Court's decision establishes nasab or inheritance rights under fiqh. It claims that the decision protects the child's civil standing and that, depending on which of the three situations applies, fiqh supplies the corresponding basis for nasab, for obligations of livelihood, or for inheritance through wasiat wajibah.

Ultimately, the discursive dynamics emerging from Constitutional Court Decision No. 46/PUU-VIII/2010 underscore the distinctive face of Islamic family law in the Archipelago. The configuration of the national legal system absolutely rejects the model of extreme secularism that seeks to strip religious values from citizens' private sphere. However, it also steers clear of dogmatic, theocratic tendencies that disregard advances in modern science and the global discourse on human rights. Indonesia has taken a path of maqashid-based integration. [38] Marriage registration is consistently maintained as an imperative sociological-legal requirement to ensure legal certainty. At the same time, the constitutional court serves as a systemic safety valve to guarantee that the implementation of such bureaucratic administration does not metamorphose into a tyranny that breeds structural injustice. This dialectic of civil law shows an effort of the Indonesian legal system to protect the future of succeeding generations without sacrificing the sanctity of the institution of marriage, inherited from the golden treasury of Islamic jurisprudence. Its implementation, however, still leaves gaps, as the points of disagreement discussed above show.

2.5 International Comparison of Family Law Policy: Indonesia's Unique Position Between Turkey's Secularization Model and Tunisia's Reform Model

To fully grasp the philosophical depth and uniqueness of Indonesia's convergence model, a comparative review of the family law policy landscape across countries with an absolute Muslim majority is necessary. From the early to mid-20th century, waves of modernization and the consolidation of nation-state power compelled nearly the entire Islamic world to reconstruct its civil administrative systems. In response to the demands of modernity, governing regimes pursued a wide spectrum of policies, ranging from the rigid pole of traditionalism to the radical pole of secularization. In global discourse, Turkey and Tunisia are often cited as key reference points in discussions of the transformation of Islamic family law. Comparing the legal and political approaches of these two countries helps to locate the distinctive features of Indonesia's approach. The comparison is descriptive: it does not rank the three models, because a ranking would require explicit indicators and outcome data that this doctrinal study does not have.

Representing the most extreme pole of secularization, the Republic of Turkey, under the leadership of Mustafa Kemal Atatürk, carried out a massive and

[38] Rizal Al Hamid et al., "Political Conflict between Islamic Law and National Law in Indonesia," *Insani: Journal of Islamic Legal Social Institutions* 1, no. 1 (July 17, 2025): 48–62, https://doi.org/10.65586/insani.v1i1.4.

uncompromising overhaul of the legal system. Traumatized by the collapse of the Ottoman Empire—which was accused of being slow to respond to Western scientific progress—the Kemalist regime formulated a policy of purifying the law of all theological elements. In 1926, Turkey revolutionarily abolished the application of the Majallah al-Ahkam al-'Adliyyah (the world's first codification of Islamic civil law) along with its entire religious judicial apparatus.[39] As a substitute, the state carried out a complete legal transplant (copy-paste) by adopting the Swiss Civil Code.[40] The implications of this transplant maneuver were drastic; family law was completely severed from its Islamic Sharia roots. The validity of a marital bond was measured solely by civil registration before municipal authorities. Furthermore, the Turkish Penal Code long imposed criminal penalties on those who arranged or conducted a religious marriage ceremony without a prior civil marriage; the Constitutional Court annulled these provisions (Article 230(5) and (6)) on 27 May 2015, although civil marriage remains the only form of marriage recognized by the Civil Code.[41] Turkey's legal-political model represents a state supremacy that stifles living law; it forces its people to shed their theological identities in the public sphere to meet European standards of rationality.

Shifting to the North African region, Tunisia offers a different reform model, yet one that remains highly interventionist. Following independence in 1956, under the leadership of President Habib Bourguiba, Tunisia enacted the Majallah al-Ahwal al-Shakhsiyyah (Personal Status Code). Unlike Turkey, which discarded Islamic law into the dustbin of history, Tunisia chose to retain the framework of Islamic Sharia but carried out a highly progressive and elitist reinterpretation (state ijtihad).[42] The state took the tools of interpretation out of the hands of traditional scholars. The most groundbreaking policy was the absolute ban on the practice of polygamy. State authorities interpreted the requirement to "treat wives justly" in the Quran as a conditio sine qua non (absolute condition) that is impossible for ordinary humans to fulfill, thus polygamy must be prohibited through legislative means. Regarding marriage requirements, Tunisia mandates civil registration as the primary pillar of validity, while abolishing the right of ijbar (coercion) by a blood-related guardian. The Tunisian model reveals a state that positions itself as the "sole mufti," imposing a modernist interpretation from the top down to achieve an emancipatory agenda, even if it clashes sharply with the orthodox understandings of grassroots society.[43]

By juxtaposing these two geopolitical landscapes, the configuration of family law in Indonesia reveals its distinctive approach. Facing the dilemma of legal unification amid a highly pluralistic and religious society, Indonesia refuses to follow Turkey's radical secularization, yet also refrains from pursuing overly aggressive state ijtihad, as in Tunisia. Indonesian lawmakers have chosen a middle path that harmonizes theological paradigms with modern sociological demands. As elaborated in the previous subsection,

[39] Hasan Hasan et al., "History of the Birth of the Islamic State in Secular Turkey," in *International Conference on Education, Islamic Studies, and Local Wisdom (ICEIL), (February* 2, 2022), 155–59, https://doi.org/10.46870/iceil.v1i1.479.

[40] J.N.D. Anderson, *Islamic Law in the Modern World* (Westport, Conn.: Greenwood Press, 1975).

[41] Constitutional Court of Turkey, Judgment E.2014/36, K.2015/51, 27 May 2015 (annulling Article 230(5) and (6) of the Turkish Penal Code).

[42] Tahir Mahmood, *Personal Law in Islamic Countries (History, Text, and Comparative Analysis)* (New Delhi: Academy of Law and Religion, 1987).

[43] Mala Hayati et al., "Islamic Family Law in Tunisia: Reforms, Characteristics, and Challenges," *An-Nisa: Journal of Islamic Family Law* 2, no. 3 (October 1, 2025): 219–31, https://doi.org/10.63142/an-nisa.v2i3.244.

the convergence established in the Marriage Law and the Compilation of Islamic Law allows the orthodox fiqh of the madhhabs to operate autonomously in determining the material pillars (religious validity). At the same time, the state assumes only the role of a facilitator of social order through formal registration.

Unlike Turkey, which long penalized religious marriage ceremonies held without civil registration and still recognizes only civil marriage, and unlike Tunisia, which reinterprets revelatory texts through state logic, Indonesia integrates both within a complementary framework. The state need not dismantle the lineage system nor intervene in internal Islamic usul al-fiqh debates. This approach seeks to accommodate the need for modern legal certainty (through marriage certificates and DNA evidence in court) while keeping the validity rules of the schools in place for a society whose religious practice remains oriented to the authority of classical scholars. Whether it does so more successfully than the Turkish or Tunisian approaches cannot be concluded from this study. A claim of that kind would require explicit indicators, for example the rate of registered marriages, the proportion of children with birth certificates naming both parents, the number of disputes over unregistered marriages, and the degree to which each system is accepted as consistent with fiqh, together with comparable data from each country. This article therefore limits its conclusion to a descriptive point: the three models differ in the source of validity (civil registration in Turkey, state ijtihad combined with civil registration in Tunisia, and religious law combined with administrative registration in Indonesia), in the role given to the rules of the schools, and in the treatment of religious marriage without registration. Whether the Indonesian arrangement can serve as a reference for other Muslim countries is a question left to further comparative and empirical research.

2.6 The Historical Dynamics of Marriage Law Legislation: The Tug-of-War Between Hegemonic Secularization and Islamic Parliamentary Resistance

An analysis of the political configuration of family law in Indonesia would be incomplete without tracing the historical trajectory back to the early New Order era, specifically during the drafting of the Marriage Bill in 1973. This period marked the most critical phase of the ideological struggle between the secular-nationalist and Islamist camps, which reached its peak within the parliamentary arena. The government regime at the time championed an ambitious agenda of modernization and unification of national law, inspired by the spirit of Western positivism. The initial draft of the Marriage Bill submitted to the People's Representative Council (DPR) contained provisions that were highly controversial and smacked of radical secularization. Referring to the original text, one of the proposed articles explicitly stated that the validity of a marriage bond is determined solely by the registration procedure before a state civil registrar.[44]

This initial draft formulation sparked massive resistance and a wave of protests from religious scholars, Islamic organizations, and the United Development Faction (F-PP) in parliament. This rejection culminated in massive demonstrations that occupied the legislative building. For Islamic groups, the draft was viewed as a highly repressive form of state hegemonic intervention, as it sought to nullify the role of religious law within the family institution. Making civil registration the sole determinant of a marriage's validity is tantamount to declaring legal-formal secularization. This maneuver precisely mimics

[44] Fredy Alpin Gunawan, Indah Dwi Qurbani, and Tunggul Anshari, "A Legal Review of the Ratio Legis Regarding the Minimum Age for Marriage Following Constitutional Court Decision No. 22/PUU-XV/2017," *Media Iuris* 6, no. 1 (February 28, 2023): 85–114, https://doi.org/10.20473/mi.v6i1.40285.

the steps taken by the Kemalist regime in Turkey. From a sociological-legal perspective, forcing the implementation of a secular draft law within Indonesia's deeply religious societal structure will not only give rise to civil disobedience but also create sociological alienation, in which state law becomes completely estranged from the values held by its people.

Recognizing the immense potential for national disintegration, the government regime eventually softened its stance and opened the door to political lobbying. Through a series of high-level negotiations among the military elite, the government, and prominent Islamic figures such as K.H. Bisri Syansuri, a monumental agreement was reached. The wording of the secular clause was completely overhauled and replaced with the formulation of Article 2, paragraphs (1) and (2), as we know it today, wherein religion determines material validity. At the same time, the state serves as the instrument of formal registration.[45] The intense dynamics of this legislative process yield a historically significant conclusion for the study of political law. The convergent formulation in the Marriage Law was not a mere gift (given) from the authorities, but rather a product of dialectics, negotiation, and fierce political compromise. The failure of the initial draft of the 1973 Marriage Bill empirically proved that the project of secularizing family law lacked a cultural foundation in Indonesia. The state was forced to acknowledge the limits of its authority, realizing that within the realm of Islamic family law, it must not position itself as a tyrannical lawmaker but rather as a servant and protector of the law in accordance with the theological beliefs of its citizens.

2.7 A Victimological and Structural Violence Review: The Urgency of Registration in Breaking the Chain of Deprivation

Strengthening the urgency of marriage registration within a convergence model demands that we move beyond dogmatic analysis and into sociological evaluation that dissects the real-world impacts of the absence of marriage certificates amid societal stratification. Examining the massive phenomenon of unregistered marriages through the lens of victimology (the study of victims) reveals a troubling reality. Marriages left unregulated without state administrative oversight are, in essence, a mechanism for producing social vulnerability that operates silently. The lack of legal standing does not merely affect the accuracy of the national population database; it triggers what Johan Galtung conceptualized as structural violence.[46] This violence does not manifest as visible physical blows, but rather through institutional systems and structures that systematically prevent women and children from fulfilling their basic rights and realizing their full potential.

Galtung's concept is used in this section as an analytical lens for describing harm, and it must be related to categories that Islamic legal thought itself provides. The harm described here, in which a wife cannot prove her marriage and a child cannot prove his or her parentage, can be read in Islamic terms as *ẓulm*, the withholding of what is due to a person, and as neglect of the objectives of preserving lineage (*ḥifẓ al-nasl*) and honor (*ḥifẓ al-ʿirḍ*), as well as property (*ḥifẓ al-māl*) where maintenance and inheritance are lost. The concept of structural violence has two limits in this context. It is sociological and descriptive, and does not itself say who bears which obligation, whereas the Islamic

[45] Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972).

[46] Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (September 1, 1969): 167–191, https://doi.org/10.1177/002234336900600301.

categories do: the husband's duty of nafkah, the father's responsibility for the child, and the ruler's duty to prevent harm and secure proof (itsbt). It also frames harm as produced by structures without an identifiable perpetrator, while fiqh also holds individuals accountable, in this case husbands and fathers who avoid responsibility behind the absence of a certificate. The article therefore uses "structural violence" to identify the pattern of harm, and the Islamic categories to evaluate it and to assign responsibility.

Within the context of power dynamics in a patriarchal household, the absence of state-issued documents places a wife in a highly disadvantageous asymmetrical position. When domestic disputes, economic neglect, or even acts of violence occur, the wife loses access to state protection mechanisms. Institutions such as the police, the prosecutor's office, and the civil courts lack the jurisdictional basis to intervene, purely because the civil relationship between the couple is deemed "non-existent" under the state's legal fiction. Even more alarming, this structural violence is passed down across generations to children born from such unregistered marriages. Under modern civil-bureaucratic governance, possession of a birth certificate listing both parents' names serves as the sole gateway to accessing public services. Without this document, a child will face systemic exclusion from the right to attend public schools, be hindered from accessing health insurance facilities, be cut off from the inheritance chain of their biological father, and face difficulties obtaining immigration documents in the future.[47]

This structural condition of "deprivation of rights" clearly stands in direct opposition to the values of universal justice and, more specifically, conflicts with the fundamental doctrine of maqashid al-sharia. Allowing the institution of marriage to operate without administrative safeguards is tantamount to opening the door to institutionalized injustice. Therefore, state intervention through the registration requirement should no longer be viewed with suspicion as part of a secularization agenda; rather, its meaning must be reconstructed as an instrument of liberation. A marriage certificate issued by the Office of Religious Affairs (KUA) is not merely a stack of bureaucratic paperwork that shackles, but a manifestation of the "shield of justice" that ensures no woman or child remains a casualty of the rigidity of past textual interpretations. It is this administrative convergence that ensures that the highest goal of Islamic law—namely, to humanize humanity—can be realized in practice within the public sphere of a modern legal state.

3. CONCLUSION

The legal-political configuration of marriage registration in Indonesia can be understood as an effort to integrate the validity rules of classical fiqh with the administrative requirements of the modern state within a single normative framework. Examined through the istinbath constructions of the four schools, the classical jurists did not make administrative registration a condition for the validity of a marriage. Their reasoning on ishhad and *i'lān*, however, rests on an *'illat* and hikmah, namely proof, prevention of denial, and the protection of lineage, which are today served most effectively by official registration; registration is therefore a continuation of classical fiqh and not a break from it, and its authority rests on *siyāsah syar'iyyah*, *maṣlaḥah mursalah*, and *sadd al-żarī'ah*. A comparative review and a historical examination of the 1973 legislation show that Indonesia rejected radical secularization and chose a compromise

[47] Putri Hafidati, "The Role of Birth Certificates in the Population Administration System for Children in Indonesia," *International Journal of Business, Law, and Education* 6, no. 2 (August 9, 2025): 1322–29, https://doi.org/10.56442/ijble.v6i2.1192.

in which religion determines validity and the state regulates registration, a model this article reads as maqashid-based integration and compares descriptively with Turkey and Tunisia without ranking them. Through the lens of victimology and *siyāsah syar'iyyah*, registration protects wives and children from harms that in Islamic terms amount to *ẓulm* and neglect of *ḥifẓ al-nasl* and *ḥifz al-'irḍ*, and it provides a framework of legal certainty whose implementation still leaves gaps. Constitutional Court Decision No. 46/PUU-VIII/2010 extends civil protection to children born outside a registered marriage and, by treating scientific evidence as qarinah, offers a means of holding biological fathers responsible. It must be distinguished from nasab and inheritance under fiqh and read in dialogue with MUI Fatwa No. 11 of 2012 and the KHI, so that its integration with fiqh is best described as a debated process that is still under way.

In light of these fundamental findings, strategic recommendations urgently need to be implemented. State authorities must reconstruct the paradigm of public outreach at the grassroots level, transforming the narrative of marriage registration from merely fulfilling bureaucratic obligations into an essential instrument for fulfilling the maqashid of Sharia. Additionally, expanding access to *Iśbāt Nikāḥ* jurisdictional services for vulnerable communities must be accelerated as a transitional measure to address the remnants of legal dualism. To expand the scope of future research, this study recommends the urgent exploration of the prospects for the digitization of marriage administration (e-marriage) and the integration of centralized population data to mitigate legal loopholes. This continuous renewal is imperative to ensure that the framework of Islamic family law governance in Indonesia remains responsive to shifts in civilization. Further research should also supply what this doctrinal study could not: case-level empirical studies of religious courts on lineage and maintenance outcomes, a closer comparison of judicial practice on wasiat wajibah for children born outside marriage, and explicit indicators for comparing Indonesia with other Muslim countries.

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