



## **Nikah Siri In *Maqāṣid al-Shari‘ah* Review: A Critical Study of the Urgency of Marriage Registration in Islam**

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### **Abstract**

This study examines the status of serial marriage and the urgency of marriage registration in Islam using the *Maqāṣid al-Syari‘ah* approach. This research is a normative legal research with a qualitative approach, which uses conceptual and legislative approaches. Data was obtained through literature studies on Islamic legal sources, *ushul fiqh* rules, and laws and regulations in Indonesia, especially Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. The results of the study show that the practice of serial marriage that still occurs in society has the potential to cause various negative impacts, especially for wives and children, such as the absence of legal certainty, difficulties in fulfilling inheritance rights, and weak protection of family rights. In the perspective of *Maqāṣid al-Syari‘ah* which is oriented towards the benefit and prevention of harm, nikah siri is seen as a practice that causes harm. Based on the rules of *dar‘u al-mafāṣid muqaddam ‘alā jalb al-maṣāliḥ*, marriage registration is positioned as an urgent need (*darūriyyāt*) to protect offspring (*hifż al-nasl*) and property (*hifż al-māl*). This study concludes that marriage registration in KUA or Civil Registry is an obligation in every marriage. State policies that require marriage registration are considered to be in line with the purpose of Islamic law in realizing the benefits and protection of citizens' rights. Thus, in the current context, nikah siri can be considered invalid because it is contrary to the principle of prevention of damage.

**Keywords:** *Married Siri; Marriage Registration; Maqashid al-Shari‘ah*

### **Abstrak**

Penelitian ini mengkaji status nikah siri dan urgensi pencatatan nikah dalam Islam dengan pendekatan *Maqāṣid al-Syari‘ah*. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kualitatif, yang menggunakan pendekatan konseptual dan perundang-undangan. Data diperoleh melalui studi kepustakaan terhadap sumber-sumber hukum Islam, kaidah *ushul fiqh*, serta peraturan perundang-undangan di Indonesia, khususnya Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam. Hasil penelitian menunjukkan bahwa praktik nikah siri yang masih terjadi di masyarakat berpotensi menimbulkan berbagai dampak negatif, terutama bagi istri dan anak, seperti tidak adanya kepastian hukum, kesulitan pemenuhan hak waris, serta lemahnya perlindungan hak-hak keluarga. Dalam perspektif *Maqāṣid al-Syari‘ah* yang berorientasi pada kemaslahatan dan pencegahan kerusakan, nikah siri dipandang sebagai praktik yang menimbulkan mudarat. Berdasarkan kaidah *dar‘u al-mafāṣid muqaddam ‘alā jalb al-maṣāliḥ*, pencatatan nikah diposisikan sebagai kebutuhan mendesak (*darūriyyāt*) untuk menjaga keturunan (*hifż al-nasl*) dan harta (*hifż al-māl*). Penelitian ini menyimpulkan bahwa pencatatan nikah di KUA atau Catatan Sipil merupakan kewajiban dalam setiap perkawinan. Kebijakan negara yang mewajibkan pencatatan nikah dinilai sejalan dengan tujuan hukum Islam dalam mewujudkan

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kemaslahatan dan perlindungan hak-hak warga negara. Dengan demikian, dalam konteks saat ini, nikah siri dapat dinilai tidak sah karena bertentangan dengan prinsip pencegahan kerusakan.

**Kata Kunci:** *Nikah Siri*; *Pencatatan Nikah*; *Maqashid al-Syari‘ah*

## Introduction

The basic function contained in a marriage is to obtain offspring who will become the next generation of families, nations, and religions in the future.<sup>1</sup> This function is in harmony with the purpose of marriage itself.<sup>2</sup> That is, orientedly, the purpose of marriage is to obtain legitimate offspring, both for the sake of creating a family and household that is sakinah, mawaddah, and rahmah.<sup>3</sup> In addition, marriage also has the purpose of "legalizing" (read: legalizing) the biological relationship between a man and a woman as the fulfillment of human desires. Marriage, likewise, also serves as a medium to bring a servant closer to Allah SWT. It is only fitting that al-Gazali mentions marriage as a way to obtain offspring as a way to strengthen a Muslim's relationship with Allah.<sup>4</sup> This kind of relationship is known as the term (*taqarrub*). There is a fundamental reason why al-Gazali states this. That is, *taqarrub* is related to the goal of obtaining offspring (children) covering four aspects. First, seeking the Divine pleasure of the Rabbi by having children in order to maintain the preservation of mankind as servants of Allah. Second, seeking the pleasure of the Prophet PBUH by multiplying his people who will be a pride in the Prophet PBUH on the Day of Resurrection through the means of marriage. Third, by getting children through marriage, it is hoped that they can become righteous children so that they can pray for their parents, both before and after death. Fourth, expect intercession from his child if he dies before, that is, when he has not reached adulthood with his prayers.

With regard to all these views, the purpose of obtaining legitimate and good offspring through marriage is also closely related to the validity of a marriage which determines the status of marriage itself.<sup>5</sup> This is in accordance with the provisions of Article 2 of Law Number 1 of 1974 concerning marriage which states that marriage is legal, if it is carried

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<sup>1</sup> Hoda Rashad dkk., *Marriage in the Arab world* (Population Reference Bureau Washington, DC, 2005), [https://www.academia.edu/download/3241390/MarriageInArabWorld\\_Eng.pdf](https://www.academia.edu/download/3241390/MarriageInArabWorld_Eng.pdf).

<sup>2</sup> Muhammad Irfan, "CONSTRUCTION OF A HARMONIOUS FAMILY AND ITS IMPLICATIONS IN THE DIGITALIZATION ERA," *Nawa Islamia: Islamic Studies, Sharia and law, Social Science* 1, no. 2 (2025): 95–110, <https://ejournal.tarqi.or.id/index.php/nawaislamia/article/view/18>.

<sup>3</sup> Asman M. Ag, "Interpretation of Marriage Law Determination: An Analysis Study of the Adult Age of Marriage in Indonesia," *Law & World* 34 (2025): 112, [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/lwwrld34&section=13](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/lwwrld34&section=13).

<sup>4</sup> Irvan Zidny Arifin dkk., "Comparative Analysis of Al Gazālī'S Opinions and Jamāluddīn 'aṭīyyah on the Phenomenon of Sexual Recession, an Efforts to Realize Family Strengthening," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 2025, 229–46, <https://journal.iaimnumetrolampung.ac.id/index>

<sup>5</sup> Kaiponanea T. Matsumura, "Choosing Marriage," *UCDL Rev.* 50 (2016): 1999, [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/davlr50&section=49](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/davlr50&section=49).

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out according to the law of each religion and belief.<sup>6</sup> Each marriage is recorded according to the applicable laws and regulations. In relation to the aforementioned Article, two groups have emerged that view the validity of a marriage.<sup>7</sup> First, the group that argues that marriage is considered valid if it is carried out in accordance with Islamic guidance and meets all the conditions and principles that have been set. The validity of the marriage cannot be annulled just because a marriage is not recorded in the KUA (Office of Religious Affairs) or in the civil registry.

For the first group, marriage registration is only an administrative requirement, not a requirement for the validity of a marriage.<sup>8</sup> Groups that argue that recording is only an administrative requirement are generally embraced by "traditionalist Islam". They argue that the time when marriage is valid is after the pronunciation of ijab and qobul, not at the time of registration or registration of marriage. Marriage registration or registration only functions as a mere administration. Second, the group that argues that marriage is not considered valid if it is not registered or recorded in the KUA even though it has met the requirements and harmony as determined in the fiqh of marriage. In other words, the conditions for the validity of the marriage must be supplemented by a marriage certificate or marriage registration. Unrecorded marriages or often referred to as nikah siri are considered invalid by this group.

The group that argues that marriage registration as a legal requirement for marriage in general is a group of scholars and legal experts who have been subject to and carry out marriage based on civil law and the ordinance of Indonesian Christian Marriage.<sup>9</sup> This group is of the opinion that proof of the validity of marriage is only by the existence of a marriage certificate as affirmed in Article 100 of the Civil Code which reads: "The existence of a marriage cannot be proven in any other way, but by the certificate of the continuation of the marriage, which has been recorded in civil registries, except in the ordinary cases in the following articles".

What is meant by the phrase "except in matters of regularity in the following articles" in article 100 of the Civil Code above is explained in the following articles, namely articles 101 and 102. That is, if the register-registers never existed or have disappeared and the

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<sup>6</sup> Muh Akbar Fhad Syahril dan Nurhaedah Hasan, "The phenomenon of inner marriage from the perspective of national marriage law and protection of women," *Priviet Social Sciences Journal* 5, no. 7 (2025): 11–19, <http://jurnal.privietlab.org/index.php/PSSJ/article/view/403>.

<sup>7</sup> A. K. M. Ahsan Ullah dan Diotima Chattoraj, "International Marriage Migration: The Predicament of Culture and Its Negotiations," *International Migration* 61, no. 6 (2023): 262–78, <https://doi.org/10.1111/imig.13172>.

<sup>8</sup> Putri Adrian Salsabillah dan Sri Redjeki Slamet, "LEGAL CONSEQUENCES ON THE STATUS OF CHILDREN BORN OUTSIDE AN UNREGISTERED MARRIAGE (Case Study of Tangerang Religious Court Decision Number 2496/Pdt. G/2024/PA. Tng)," *International Journal of New Approaches to Law and Rationality in Nationhood, Governance, and Rights Advocacy* 1, no. 1 (2025): 586–97, <https://jurnal.unsaka.ac.id/index.php>.

<sup>9</sup> June S. Katz dan Rondald S. Katz, "The new Indonesian marriage law: a mirror of Indonesia's political, cultural, and legal systems," *Am. J. Comp. L.* 23 (1975): 653, [https://heinonline.org/hol-cgi-bin/get\\_pdf](https://heinonline.org/hol-cgi-bin/get_pdf).

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validity of a child cannot be denied because the marriage certificate of both parents cannot be shown. The two groups above have not reached a common point until now. In the Indonesian context, the phenomenon of serial marriage among the people is currently increasingly prevalent. In fact, serial marriages in Indonesia do not only occur among people with low social strata, namely those who cannot afford to pay the administrative costs of registering marriage certificates at KUA, but also penetrate widely among the upper middle and upper strata people, including among officials.

The problem that then arises from serial marriage is its impact on the position of the wife, children and their property, including other rights that cannot be done because the marital status cannot be proven in writing. The serial marriages that are rampant carried out by the middle and upper strata and the educated in this country are usually in accordance with the meaning of seri, namely secretly and secretly. The marriage procedure is carried out orally without written evidence or deed or other proof of registration. All the identities of the parties, the place of the marriage, the day, date and time, are not recorded and undocumented. The path of serial mating is taken in addition to being in accordance with the meaning of seri, which is hidden and secret, as well as the process of completing it which is considered easy. At any time 'divorce' can be carried out by the perpetrator of serial marriage, without the need for a legal settlement. In this case, the legal wife or first wife does not know at all about the existence of a serial marriage carried out by her husband, moreover the husband does not ask for permission for a second marriage from the legal wife.

The question is, how exactly does Islam view the status of an ideal marriage? If indeed serial marriages cause a lot of negative consequences and losses, both for the wife and the husband, then how does Islam actually respond to it? In relation to these questions, this research was compiled to examine serial marriages and the urgency of marriage registration in Islam reviewed from the perspective of maqashid al-shari'ah.

### Method

This study uses a type of normative legal research (juridical-normative) with a qualitative approach.<sup>10</sup> The research is focused on the study of Islamic legal norms and positive laws related to the practice of marriage siri and the urgency of marriage registration in the perspective of *Maqāṣid al-Syari'ah*. The approaches used in this study include a conceptual approach and a statute approach. A conceptual approach is used to analyze the concept of nikah siri, marriage registration, and the principles of *Maqāṣid al-Syari'ah* as stated by scholars, especially Al-Syāṭibī. Meanwhile, a legislative approach is used to examine positive legal provisions in Indonesia, such as Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), which regulates the

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<sup>10</sup> Faisal Ananda Arfa dan Watni Marpaung, *Metodologi Penelitian Hukum Islam: Edisi Revisi* (Prenada Media, 2018), <https://books.google.com/books>.

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obligation to register marriages. The data sources in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials.<sup>11</sup> Primary legal materials include the Qur'an, Hadith, the rules of ushul fiqh, and laws and regulations related to marriage. Secondary legal materials include books of jurisprudence, scientific works on *Maqāṣid al-Syari‘ah*, scientific journals, books, and the results of relevant previous research. The tertiary legal materials are in the form of legal dictionaries, Islamic encyclopedias, and other supporting sources.

The data collection technique is carried out through library research by systematically examining and reviewing relevant legal and literature sources.<sup>12</sup> The data obtained were then analyzed using a descriptive-analytical analysis method, namely by describing the existing legal provisions, then analyzing them using the framework of *Maqāṣid al-Syari‘ah* to assess the benefits and harms of the practice of marriage siri.

## Results and Discussion

### Marriage Overview

Before this paper talks a lot about serial marriage and the urgency of marriage registration in Islam, it will first be explained about the meaning of marriage. The term nikah comes from Arabic, namely النكاح which means according to Indonesian terms marriage or marriage.<sup>13</sup> Thus, the word marriage or marriage actually has the same meaning. In fiqh terms, marriage means the following,

عبارة عن العقد المشهور المشتمل على الأركان والشروط

An expression of the contract that is very clear and summarized on the pillars and conditions".<sup>14</sup>

Meanwhile, the fiqh scholars who follow the Shafi'i, Hanafi, Maliki, and Hanbali schools define marriage as follows,

عقد يتضمن ملك وطء بلفظ انكاح أو تزويج أو معناهما

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<sup>11</sup> Qadriani Arifuddin dkk., *Metodologi Penelitian Hukum* (PT. Sonpedia Publishing Indonesia, 2025), <https://books.google.com>.

<sup>12</sup> I. Made Pasek Diantha dan M. S. Sh, *Metodologi penelitian hukum normatif dalam justifikasi teori hukum* (Prenada Media, 2016), <https://books.google.com>.

<sup>13</sup> Ruli Ardiansah, "IMPLEMENTATION OF PRONUNCIATION OF IJAB AND QABUL IN THE APPLICATION OF THE MARRIAGE CONTRACT" (B.S. thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, t.t.), diakses 20 Januari 2026, <https://repository.uinjkt.ac.id/dspace/handle/123456789/62168>.

<sup>14</sup> 4، أ. د. محمد محمد حسين صادقي، "صورية التصرفات العقارية في القانون العراقي والمصري 4، no. 10 (2023): 301–24, <https://www.hnjournal.net/ar/4-10-18/>.

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"A contract that brings the ability (for a man to have sexual intercourse with a woman) with (beginning in the contract) the word nikah or kawin, or a similar meaning to both words".<sup>15</sup>

In addition, in the view of fiqh referring to the Qur'an and the hadith of the Prophet, marriage will be said to be valid or valid if it meets the conditions that have been set.

Siri marriage literally "seri" comes from the Arabic سِرِّ which means "secret". In other words, nikah sirri is a marriage that is kept secret from the knowledge of the public. In general, nikah sirri is an act in carrying out marriage according to religious rules, in this case Islamic teachings, but due to various things that prevent it, there is no legal or legal recording by the authorities. Nikah series in the context of society is often meant in several senses. First, the marriage is carried out secretly, without inviting outsiders other than the bride's family. Then they did not register their marriage with the Office of Religious Affairs (KUA) so that their marriage did not have formal legality in positive law in Indonesia as stipulated in Law Number 1 of 1974 concerning Marriage. There are many factors that cause a person not to register his marriage at the state civil registry institution. Some are due to the cost factor, aka not being able to pay for the registration administration, some are caused by fear of being caught violating the rules that prohibit civil servants from marrying more than one, some are afraid of being caught by the first wife, and so on.

Second, the marriage was carried out secretly by a couple of women without the knowledge of both parties of their families. It is even completely kept secret until it is not known who is the guardian and witness. Third, marriages that are kept secret because of certain considerations, for example because of fear of getting negative stigma from society that already considers serial marriage taboo, or because of complicated considerations that force a person to keep his marriage secret.

Fiqh scholars disagree about the meaning and purpose of nikah sirri. According to Imam al-Shafi'i, nikah sirri is any marriage that is only attended or witnessed by two men who are just and trustworthy. According to Imam Abu Hanifah, nikah sirri is any marriage witnessed by two men and two women, even though after that they advise each other to keep it a secret. According to Imam Malik's followers, nikah sirri is,

هو الذي يو صي فيه الزوج الشهود مكتمه عن امراته او عن جماعة ولو اهل منزل

"The marriage was on the husband's behest, the witnesses kept it a secret from his wife or his worshippers, even the local family".<sup>16</sup>

### Marriage Series and the Urgency of Marriage Recording From the Perspective of *Maqashid al-Syari‘ah*

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<sup>15</sup> Souad Saghbini, *Lisān al-ḥukkām fi ma‘rifat al-ahkām und Ġāyat al-marām fi tatimmat lisān al-ḥukkām*, vol. 14 (V&R Unipress, 2017), <https://books.google.com>.

<sup>16</sup> د. جمال محمد باجلان, دار المعرفة للطباعة والنشر-لبنان, 2017, <https://books.google.com/books>.

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To discuss serial marriage from an Islamic perspective is not enough just to see the fulfillment of the conditions and pillars of marriage.<sup>17</sup> The most basic essence of marriage is mitsaqon ghaliza or a very strong (sacred) covenant/bond. This means that marriage is not a game that can be done and decided (divorced) at any time. However, marriage is a bond that must be done seriously and perfectly. The words mitsaqon ghaliza in marriage are mentioned in the Qur'an which reads:

وَإِنْ أَرْدَدْنَاهُنَّ رَوْجَ مَكَانَ رَوْجَ وَأَيْتُمْ إِحْدَاهُنَّ قَنْطَارًا فَلَا تَأْخُذُوهُ مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِنَّمَا مُبِينًا . ٢١  
وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْصَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخْدَنَ مِنْتُمْ مِيَانًا غَلِيلًا

"And if you want to replace your wife with another wife and you have given them a lot of wealth, then do not take any of it back. Will you take it with lies and real sins? (20) And how will you take it back, when you have been associated with one another and they have taken a strong promise from you? (21) (QS An-Nisa': 20-21)

In addition, the main purpose of marriage taught in Islam is to build a family that is sakinah mawaddah wa rahmah, which is a family that is decorated with peace, love, and affection as affirmed in the Qur'an surah al-ahzab verse 21. Based on the guidance of this verse, the Compilation of Islamic Law (KHI) article 3 also affirms the same thing that "marriage aims to realize a domestic life that is sakinah mawaddah and rahmah. In addition, marriage also has the purpose of the Shari'a, which is in the form of peace of mind, attention to the family, (wife) and children, and guiding the family as best as possible and educating them in the wisest way.

Based on the above purposes and the meaning of the essence of marriage, the Prophet ordered that every marriage that takes place should be announced to the wider community. In other words, marriage should not be kept secret from the public. In fact, more than that, Rasaulullah also emphasized on every party that organizes the wedding to invite relatives and close friends to attend the marriage contract, hold a marriage contract in the mosque, hold entertainment in the form of rebbana (*al-duff*), singing, dancing, and also a wedding party at night. This means that for the public to know, the marriage that has been carried out should be announced to the wider public, among others through walimatul-'ursy as the Prophet's hadith reads,

أَعْلَمُوا هَذَا النِّكَاحَ وَأَصْرِنُوا عَلَيْهِ بِالْغُرْبَالِ رواه ابن ماجة عن عائشة

"Announce the marriage and beat the tambourine" (HR. Ibn Majah from 'Aisha).<sup>18</sup>

In addition to the above hadith, there is another hadith that explains that the Prophet emphasized that marriage should be announced to the wider community by holding a

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<sup>17</sup> Shabnam Banoo dan Tanveer Ahmed, "Rules of marriage in Islam: A comprehensive analysis," *Journal of Emerging Technologies and Innovation Research (JETIR)*, 2024, [https://www.researchgate.net/profile/Dr-Ahmed-32/publication/384428949\\_Issue\\_4\\_wwwjetirorg\\_ISSN-2349-5162/links/66f81205869f1104c6bae118/Issue-4-wwwjetirorg-ISSN-2349-5162.pdf](https://www.researchgate.net/profile/Dr-Ahmed-32/publication/384428949_Issue_4_wwwjetirorg_ISSN-2349-5162/links/66f81205869f1104c6bae118/Issue-4-wwwjetirorg-ISSN-2349-5162.pdf).

<sup>18</sup> Abdul Mutakkib, *Reinterpretasi Poligami Menyingkap Makna, Syarat Hingga Hikmah Poligami Dalam Al-Qu'an* (Deepublish, 2020), <https://books.google.com>.

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party. According to Imam as-Suyuthi, the two hadiths indirectly show the prohibition of nikah siri in Islam. The reason is, the marriage should not be kept secret and must be announced. When viewed from the perspective of ushul fiqh and Islamic legal philosophy, there is a theory that reads maslahah mursalah which emphasizes the aspects of goodness and usefulness in every attitude and action, especially related to religion. In that context, an announced marriage (not a series marriage) will give birth to benefits, that is, by announcing the marriage and it is known to many people, if there is a dispute between husband and wife, or one of the parties is not responsible, then the other can take legal measures to maintain or obtain their respective rights. Protecting the marriage bond is called "mistaqon ghalidzho" which is a very strong agreement or bond. Protect the interests of both parties (husband and wife). Preventing the rejection of marriage by either party by both husband and wife.

When viewed from the perspective of maqashid al-Sharia'ah as stated by Imam al-Syatibi (d. 790 H) in his famous book, *al-Muwafaqat*, especially in juz II, which he named the book *al-Maqashid*, it is said that basically the sharia is stipulated to realize the benefits of servants (*mashalih al-‘ibad*), both in this world and in the hereafter. This benefit, in his view, is maqashid al-Shari'ah. In other words, the determination of the sharia, both in its entirety (summation) and in detail (*tafshilan*), is based on an *'Illat* (motive for determining the law), which is to realize the benefits of the servant.<sup>19</sup> In the context of nikah siri, *'Illat* (the motive for determining the law) the need to record nikah (the prohibition of nikah siri) because nikah siri gives birth to various negative impacts that must be avoided, namely, will experience failure to obtain legal certainty. A wife who is left dead by her husband does not have any evidence to show that she is really the widow of the deceased husband. Difficulty in obtaining inheritance rights. It's easy to lie to others that they are not married for a certain purpose. Both men and wives can be victims. Unregistered marriages are tantamount to allowing cohabitation with an irregular legal status, and this is very detrimental to the parties involved (especially women), especially if children have been born. The ease of polygamy and divorce (divorce).

To realize this fame, al-Syatibi divided Maqashid into three levels, namely: Maqashid dharuriyat, Maqashid hajiyat, and Maqashid tahsinat. Dharuriyat means that it must exist for the benefit of mankind, which if it does not exist, will cause damage, for example the pillars of Islam. Hajiyat means something that is needed to eliminate narrowness, such as rukhsah (relief) of not fasting for the sick. Tahsinat means something that is taken for the good of life and avoids evil, such as noble morals, removing impurities, and covering the aurat. Dharuriyat he explained in more detail includes five goals, namely: (1) maintaining religion (hifzh ad-din); (2) Safeguarding the soul (hifzh an-nafs); (3) Maintaining the

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<sup>19</sup> Ovamir Anjum, *Politics, law, and community in Islamic thought: The Taymiyyan moment* (Cambridge University Press, 2012), <https://books.google.com/books>.

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intellect (hifzh al-'aql); (4) Taking care of offspring (hifzh an-nasl); (5) To take care of the property (hifzh al-mal). The distribution of benefits that is the purpose of the sharia as mentioned above is not based on the nas or ijma' of the scholars, but is based on the investigation of the parts of sharia law in the books of fiqh such as the muamalah, ibadah, al-ahwal syahsiyyah, jinayah, and so on. The division of dharuriyat into five main aspects is based on things that must be maintained through the obligations of worldly law.

Of the three levels of Maqashid above, marriage registration belongs to the first category, namely Dharuriyyah. This means that marriage registration must exist for the benefit of mankind, which if there is no or in other words marriage is carried out in series, then this condition will cause damage to humanity. In the above context, marriage registration includes upholding the third goal, which is to maintain the goodness of life. Therefore, the interests of mankind behind the marriage registration must be protected, because if (marriage) is allowed to run on its own terms, it will cause damage to humans in living their lives. In other words, a series of marriages that cause damage must be prioritized to prevent over consideration of other aspects. This is in accordance with the method of ushul fiqh which reads,

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"Resisting (preventing) damage takes precedence over taking benefits".<sup>20</sup>

On that basis, marriage registration is something that must be done in a marriage today. In fact, marriages that are not registered at the KUA or the civil registry office can be said to have not met the requirements for the validity of marriage. The reason is, in the current context, the damage caused by the existence of a series marriage cannot be avoided without the existence of marriage registration. Thus, marriage registration is a must in every marriage. Marriage registration is an unavoidable necessity and not something wrong according to Islamic law.

### Formulation of Islamic Marriage Law into Positive Law

Based on the analysis that has been described earlier, that serial marriage causes a considerable negative impact (mudharat), this is where state intervention is needed to regulate the marriage law in order to provide benefits and order in society. The presence of the state is very necessary to prevent everything that is mudharat. The reason is, marriage causes laws for husband and wife, including the status of the husband-wife relationship, the formation of marital property, the position and status of children, and inheritance relationships. The occurrence of the legal consequences is only obtained if the marriage is carried out legally, which is carried out according to the laws of each religion and belief, and recorded in accordance with the applicable laws and regulations.

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<sup>20</sup> سميرة الحفظي، "قواعد درء المفاسد مقدم على جلب المصالح وأثرها في النازل الطبية المعاصرة" 3، (2023)، <https://www.benkjournal.com/article/view/406>.

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The presence of Law No. 1 of 1974 concerning Marriage which was promulgated on January 2, 1974 and enacted at the same time as the issuance of implementing regulations, namely Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage shows that there are strict provisions by the state that must be obeyed by a man and a woman who are married. So that the marriage will be recognized as having legal force. In addition, there are also legal provisions in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) in Article 4 which states that marriage is valid if it is carried out according to Islamic law, in accordance with Article 2 paragraph (1) of the Marriage Law, which then Article 5 paragraph (1) states that in order to ensure the order of marriage, for the Islamic community every marriage must be recorded. Regarding the necessity of registering marriages, Article 6 paragraph (1) of the KHI states that every marriage must be held in front of and under the supervision of a marriage registrar. In paragraph (2) it is also emphasized that marriages that are solemnized outside the supervision of the Marriage Registrar do not have legal force.

Thus, the state through law No. 1 of 1974 does not recognize marriages that are not registered in the marriage registry or civil registry office, as per the provisions of the applicable laws. In this case, marriages that are not officially registered by the government have no legal force in Indonesia, even the marriage is considered a criminal offense that is threatened with fines, including the officer who married it. The presence of the state is needed not only in terms of administrative problems, but also in the realm of marriage prevention. The state can enact the prevention of marriage with the aim of avoiding a marriage that is prohibited by Islamic law and laws and regulations. This is also solely for the benefit of the wider community. Islam also provides space for each country to issue policies for the benefit of its people. In the context of marriage prevention, Law No. 1 of 1974 concerning Marriage has regulated when marriage can be prevented, that is, marriage can be prevented if there are parties who do not meet the requirements to carry out the marriage. Not meeting the requirements as referred to above refers to two conditions; administrative requirements and material requirements. Administrative requirements are related to the administration of marriage. The material requirements concern basic things such as the prohibition of marriage. According to KHI, the prevention of marriage by the state can be carried out if the prospective husband or wife-to-be who will carry out the marriage does not meet the requirements to carry out the marriage according to Islamic law and laws and regulations.

For those who marry according to Islam, registration is carried out at the KUA to obtain a Marriage Certificate as proof of the existence of the marriage. (article 7 paragraph 1 of the KHI "marriage can only be proven by a Marriage Certificate made by the Marriage Registrar"). Meanwhile, for those who are non-Muslim, registration is carried out at the Civil Registry office, to obtain a Marriage Certificate. In terms of marriage arrangements, especially regarding serial marriages, the role of the state as described above is in

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accordance with Islam. Islam itself does prohibit a marriage that is carried out in series and marriages that can cause chaos or loss in society. The presence of the state is not intended to prohibit every citizen from getting married, but intends to arrange a marriage so that it can lead to the ultimate goal. In other words, Law No. 1 of 1974 concerning Marriage and other regulations that require the registration of marriage for every marriage carried out are in accordance with the spirit of Islamic law.

### **Conclusion**

From the lengthy review of nikah siri in the review of maqashid al-shari'ah and the urgency of recording nikah in Islam as described earlier, it can be concluded that in the current context—there are even some scholars in classical times—that nikah siri is prohibited in Islam. This means that the nikah siri has not met the requirements for the validity of the marriage so it can be said that nikah siri is invalid. The reason is, series marriage has a lot of negative impacts or even mudharat in the community. Everything that causes mudharat must be prevented in Islam. In the view of maqashid al-shari'ah, the things that arise in marriage are among the top priorities, namely Dharuriyyah. In this case, marriage registration is a must that must be done to avoid various kinds of damage that can be caused by an unregistered marriage (nikah siri). This means that marriage registration must exist for the benefit of all mankind as regulated in Law No. 1 of 1974 and other regulations. Serial marriages that cause damage must be prioritized to prevent over consideration of other aspects. This is in accordance with the method of ushul fiqh which reads: "Rejecting (preventing) damage comes first rather than taking benefits". On the other hand, the role of the state is needed to regulate marriage in Indonesia in order to create order in the community. Islam provides space for the state to prevent a marriage, prohibit serial marriage, and require marriage registration for the sake of creating benefits in the community—for all Indonesian people.

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