E-ISSN : 2774 - 5783
Volume 7 No.1 2026

FOCUS Jurnal of Law

LEGAL PROTECTION FOR WIVES, CHILDREN, AND MARITAL PROPERTY IN UNREGISTERED MUSLIM MARRIAGES UNDER INDONESIAN LAW

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Received :
02 January 2026
Accepted :
20 February 2026
Published :
25 March 2026

Keyword:
Legal Protection, Unregistered Marriage, Islamic law, Constitutional Court Decision No. 46/PUU-VIII/2010.

ABSTRACT

This study discusses the position of wives, children, and property in unregistered marriages based on Islamic law, Law No. 1 of 1974, and Constitutional Court Decision No. 46/PUU-VIII/2010. The method used is a legal-normative approach with a comparative approach to Islamic legal literature and legislation. The results of the study show that according to Islamic law, unregistered marriages are valid religiously if they fulfill the pillars and requirements of marriage, but they do not have legal force because they are not registered. As a result, wives and children find it difficult to obtain legal protection for their status and civil rights, including inheritance rights and joint property. Constitutional Court Decision No. 46/PUU-VIII/2010 recognizes the civil relationship between children born out of wedlock and their biological fathers, thereby strengthening legal protection for children born from siri marriages. Therefore, marriage registration is important to ensure legal certainty for all parties.

INTRODUCTION

One form of sacred act is marriage, because marriage involves a relationship that is not only based on physical bonds, but also spiritual bonds. Marriage is an important part of human life. Marriage is one of God's laws that applies to all of God's creatures, including humans, animals, and plants (Wirastri & van Huis, 2024).

Marriage is a legal bond between a man and a woman to live together in a regular household. In Islamic law, a marriage is considered valid if it fulfills the pillars and requirements of marriage as stipulated in Islamic law (Fatin Hamamah et al., 2025; Kharlie et al., 2021; Wirastri & van Huis, 2024). According to Law Number 1 of 1974 concerning Marriage, marriage is encouraged so that humans may have legitimate offspring and families, leading to a happy life in this world and the hereafter, under the protection of love and divine blessing (Fatah et al., 2025; Wirastri & van Huis, 2024). As stated in Article 1 of Law Number 1 of 1974 concerning Marriage, which states that “Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God” (Norman et al., 2023; Wirastri & van Huis, 2024).

People who get married do so not merely to satisfy their sexual desires, but to achieve peace, tranquility, and mutual care between husband and wife based on deep love and affection. In addition, it is to establish brotherhood between the two families of the husband and wife based on ethics and aesthetics in the spirit of ukhuwah basyariyah and Islamiyah (Enterprises et al., 2026; Jones & Aftab, 2023; Rais, 2021; Ramadhita et al., 2023). However, sometimes this sacred institution is turned into a game by a handful of

people, thereby obscuring the meaning of marriage itself as something noble, beautiful, and sacred (Barkah et al., 2023; Fatin Hamamah, 2024; Shahrullah et al., 2023).

In Indonesia, a valid marriage is one that is conducted in accordance with applicable laws and regulations. For Muslims, a valid marriage is one that is conducted in accordance with Islamic law as stipulated in Article 2 paragraph 1 of Law Number 1 of 1974 and recorded in accordance with paragraph 2 of the same article. After that, in accordance with the sunnah of the Prophet Muhammad SAW, it is announced through a walimah so that it is known to the public. However, in reality, there are still many marriages that are not conducted in accordance with the provisions of the law, such as marriages conducted privately or what we know as siri marriages (Kharlie et al., 2021; Maiyori & Tsauro, 2025; Norman et al., 2023).

A secret marriage or marriage conducted privately means that the marriage is still carried out in accordance with the pillars and requirements specified by Islamic law. However, it is not registered or recorded at the Office of Religious Affairs (KUA) that has jurisdiction over their place of residence. The invalidity of unregistered marriages or marriages conducted privately according to state law also has a negative impact on the status of children born under the law, namely that the children are considered illegitimate. This means that the children only have a civil relationship with their mother and maternal family. In other words, the children have no legal relationship with their father. In their birth certificates, their status is also considered illegitimate, so only the name of the mother who gave birth to them is listed. The description as an illegitimate child and the absence of the father's name will have a profound social and psychological impact on the child (Horii & Wirastri, 2022; Karim et al., 2024).

In his research, he said that the position of children in unregistered marriages raises many problems within the country itself. However, under Article 42 of the Marriage Law, children born from unregistered marriages are not included in the criteria for legitimate children. Children born from unregistered marriages will find it difficult to obtain their rights because their legal status in the country is unclear. Meanwhile, in terms of mental development, children born from unregistered marriages will experience mental pressure. This is because children from unregistered marriages find it difficult to obtain legal recognition in the country regarding the status of their biological parents who are not legally married in the country, in other words, they are not registered in the civil registry. In addition (Horii & Wirastri, 2022; Nasution & Nasution, 2021). His research shows that since the Constitutional Court's decision No. 46/PUU-VIII/2010, children born out of wedlock can have a civil relationship with the man as their father if it can be proven by science and technology that the child has a blood relationship with that man. A child is the result of a relationship between a mother and father, whether due to sexual intercourse or other actions in accordance with technological developments that can cause pregnancy. Therefore, the Constitutional Court judges granted a judicial review of Article 43 paragraph (1) of the 1945 Constitution.

For husbands in unregistered marriages, this can also be detrimental to themselves, namely when their wives die first, they are not entitled to joint property and also do not receive inheritance. For Indonesian Muslims, Allah SWT's rules on inheritance have become positive law that is used in Religious Courts in deciding cases of distribution and disputes relating to such inheritance.

METHODS

In this study, the normative legal method is used to discuss doctrines and principles in legal science. The main purpose of this method is to identify and clarify non-legal findings relevant to the research topic. The normative legal method focuses on analyzing existing legal doctrines and applying legal principles in a broader context. Therefore, this study aims to provide a deeper understanding of the legal principles underlying the cases studied (Rosyadi & Kahar, 2023).

Enables researchers to describe the existing legal situation and analyze it critically, thereby providing more comprehensive insights into the application of law in specific cases (Rosyadi & Kahar, 2023).

The data collection techniques in this study involved primary and secondary data. Primary data was obtained directly from sources through interviews, observations, and unofficial documents (Rosyadi & Kahar, 2023).

Meanwhile, secondary data comes from official documents, books, and research reports. This secondary data is divided into primary, secondary, and tertiary legal materials, which include laws and regulations, literature, and additional sources of information such as dictionaries and encyclopedias. This division aims to ensure that all relevant legal aspects can be analyzed thoroughly.

Data analysis is conducted qualitatively, with the aim of ensuring the accuracy and validity of findings based on Law No. 1 of 1974 and Constitutional Court Decision No. 46/Puu-VIII/2010 on Siri Marriage Law. The qualitative approach allows researchers to explore and understand the legal context in greater depth, as well as identify patterns that may not be apparent in quantitative analysis. Therefore, this study is expected to make a significant contribution to understanding and implementing Law No. 1 of 1974 and Constitutional Court Decision No. 46/Puu-VIII/2010 on Siri Marriage Law.

RESULTS AND DISCUSSION

Siri Marriage in the Perspective of Islamic Law and Positive Law

In Islamic legal terminology, a siri marriage is defined as a marriage contract that fulfills the pillars and requirements of a sharia marriage, but is not recorded by a Marriage Registrar (PPN) (Kharlie et al., 2021).

In Islamic law, this type of marriage is valid as long as the five pillars of marriage are fulfilled, namely the presence of the prospective husband, prospective wife, guardian, two witnesses, and ijab qabul. The Prophet Muhammad SAW said, “There is no marriage except with a guardian and two fair witnesses” (HR. Abu Daud and Tirmidzi)(Wirastri & van Huis, 2024). Based on this principle, from a religious perspective, a siri marriage is still considered valid and binding morally and spiritually for the couple (Kharlie et al., 2021; Sukardi et al., 2024; Wirastri & van Huis, 2024).

However, in Indonesia's positive legal system, specifically according to Law Number 1 of 1974 concerning Marriage, the validity of a marriage is not sufficient by only fulfilling religious requirements, but it must also be officially registered before the state. This is emphasized in Article 2 paragraph (2) of Law No. 1 of 1974, which reads: “Every marriage shall be registered in accordance with the applicable laws and regulations.” This registration has administrative legal consequences so that the state can protect the civil rights arising from the marriage, such as inheritance rights, joint property, and the status of children (Rosyadi & Kahar, 2023).

The absence of registration means that unregistered marriages have no formal legal force, even though they are considered valid by religion (Maiyori & Tsauro, 2025). Thus, Islamic law recognizes the validity of unregistered marriages, while state law refuses to formally recognize them unless they have been registered (Horii & Wirastri, 2022). This dualism of views creates a rather complex socio-legal problem, especially for women and children who are the most vulnerable parties due to the absence of clear legal protection (Fatin Hamamah, 2024; Horii & Wirastri, 2022; Maiyori & Tsauro, 2025).

Several contemporary fiqh scholars, such as Yusuf al-Qaradawi and Wahbah Zuhaili, argue that marriage registration is part of tadbir al-maslahah (public interest management). This means that registration is not part of the pillars or requirements of marriage, but is an administrative obligation for the benefit of the community. Thus, in the context of a modern state, marriage registration is a form of ta'zir (punishment) by the state to prevent abuse of marriage law, including the neglect of wives and children (Kharlie et al., 2021; Wirastri & van Huis, 2024). Therefore, in Indonesian legal practice, although siri marriages are considered

valid in religious terms, they have no legal consequences in the state sphere. This is reaffirmed by the Compilation of Islamic Law (KHI) Article 5 paragraph (1), which states that "Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar" (Kharlie et al., 2021; Rosyadi & Kahar, 2023). Thus, in positive law, siri marriages have serious implications for the status of wives, children, and property.

The Position of Wives in Secret Marriages According to Islamic Law and Law No. 1 of 1974

In this verse, Allah commands humans to fear Him, who cares for humans and bestows His blessings upon them. He is the One who created humans from a single person, namely Adam. Thus, according to the majority of exegetes, Adam was the first human created by Allah. Then, from that one being, Allah also created his partner, commonly known as Eve. From Adam and Eve, humanity multiplied (Karim et al., 2024). From the above verse, it can be understood that humans must maintain their marital relationships fairly and responsibly. Thus, theologically, the status of a wife in a siri marriage cannot be considered despicable, because the contract is valid according to Islamic law.

However, from the perspective of Indonesian positive law, the position of wives in unregistered marriages is very weak because they are not recognized by state law (Jones & Aftab, 2023; Rais, 2021; Ramadita & Yunanto, 2023; Rosyad et al., 2025). As a result, wives do not have the legal right to sue their husbands in the event of divorce, violence, or neglect. She also cannot claim alimony or a share of joint property because her marriage is not registered (Darmawan et al., 2026; Pelu & Dakhoir, 2021; Suharsono et al., 2024). In court practice, siri wives' lawsuits are often rejected because they do not have proof of a valid marriage certificate (Kasim et al., 2022; Darmawan et al., 2023).

Article 7 paragraph (1) of the KHI stipulates that marriages must be registered to have legal force (Wirastri & van Huis, 2024). In this case, siri wives have no legal protection for their marital status, making them highly vulnerable to legal invisibility, i.e., not being recognized by the law. In this context, the state, through marriage registration, serves to protect women's rights as equal subjects of law (Maiyori & Tsauro, 2025).

As a compromise, the Religious Court provides a mechanism for marriage validation, namely the determination of the validity of marriages that have not been registered, as stipulated in Article 7 paragraph (2) of the KHI (Kharlie et al., 2021; Wirastri & van Huis, 2024). With marriage validation, unregistered wives can obtain legal recognition of their marriage, so that their legal rights can be protected (Wirastri & van Huis, 2024). However, not all unregistered marriages can be validated, especially if they were conducted after the enactment of Law No. 1 of 1974 without a valid reason.

Thus, in the context of Indonesian law, the status of a siri wife is highly dependent on the registration of the marriage. Without registration, she loses the civil rights guaranteed by the state (Jones & Aftab, 2023; Rais, 2021; Ramadhita et al., 2023). Therefore, synchronization between Islamic law and positive law is very important to ensure justice for women in marriages that are valid according to religion but not registered administratively.

The Position of Children and Wealth Based on Constitutional Court Decision No. 46/PUU-VIII/2010

Prior to Constitutional Court (MK) Decision No. 46/PUU-VIII/2010, children born from unregistered marriages only had legal ties to their mothers and their mothers' families. This was based on Article 43 paragraph (1) of Law No. 1 of 1974, which states: "Children born outside of marriage only have civil relations

with their mother and her family" (Horii & Wirastri, 2022). This provision was considered discriminatory against children, as they became victims of their parents' administrative irregularities.

Through Constitutional Court Decision No. 46/PUU-VIII/2010, the Constitutional Court made a progressive legal breakthrough by stating that children born out of wedlock have civil relations with their mother and also with the man who can be scientifically proven (through DNA) or other evidence to be their biological father (Horii & Wirastri, 2022; Nasution & Nasution, 2021; Putra & Hamamah, 2026). This ruling affirms that a child's status should not be discriminated against simply because their parents' marriage is not officially registered(Nasution & Nasution, 2021). This principle is in line with the Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990 (Harry et al., 2024; Mera et al., 2024).

The impact of this ruling is very significant. Children from unregistered marriages now have the right to recognition, financial support, inheritance, and legal protection from their biological fathers. Thus, Constitutional Court Decision No. 46/PUU-VIII/2010 provides legal protection for children who are victims of an irregular marriage administration system (Horii & Wirastri, 2022; Nasution & Nasution, 2021). It also demonstrates the application of substantive justice over formal justice.

As for property, in unregistered marriages, the concept of "joint property" (gono-gini) is not recognized because, according to state law, such marriages do not exist. Article 35 of Law No. 1 of 1974 states that "property acquired during marriage becomes joint property," but because siri marriages are not registered, this provision does not apply (Pelu & Dakhoir, 2021). Property acquired during a siri relationship is considered the personal property of each party, unless there is evidence of an agreement or proof of actual contribution (Darmawan et al., 2026; Dewi et al., 2024; Pelu & Dakhoir, 2021).

However, from an Islamic law perspective, property acquired during cohabitation can still be considered the result of a valid partnership, so a fair distribution is still recommended based on the principle of musyarakah (partnership) (Habi & Mudzhar, 2024; Suharsono et al., 2024). In this case, the settlement of property disputes in unregistered marriages can be done through general civil mechanisms, not through the Religious Court.

The Position of Wives, Children, and Property in Siri Marriages

A siri marriage is a marriage contract conducted in accordance with Islamic religious provisions but not officially registered before a state official (Kharlie et al., 2021; Maiyori & Tsauro, 2025). In Islamic law, the validity of a marriage is determined by the fulfillment of the pillars and requirements, not by registration (Kharlie et al., 2021; Wirastri & van Huis, 2024). Therefore, wives in siri marriages are still considered valid in religious terms and are entitled to the rights of wives, such as financial support, protection, and honor. However, Law No. 1 of 1974 Article 2 paragraph (2) stipulates that every marriage must be registered in order to have legal force. Thus, wives in siri marriages are not recognized by state law, so they lose their civil rights in the event of a dispute, divorce, or abandonment (Jones & Aftab, 2023; Kharlie et al., 2021).

The status of children born out of siri marriages underwent significant development after the issuance of Constitutional Court (MK) Decision No. 46/PUU-VIII/2010. Previously, according to Article 43 paragraph (1) of Law No. 1 of 1974, children born out of wedlock only had civil relations with their mother and her family (Kharlie et al., 2021; Wirastri & van Huis, 2024). However, after the Constitutional Court's decision, children also have civil relations with their biological fathers if this can

be scientifically proven, such as through DNA tests or other evidence. This decision is a progressive breakthrough that provides legal protection for children who are victims of unregistered marriages. This principle is in line with the principle of substantive justice and the Convention on the Rights of the Child (CRC), which Indonesia has ratified.

Meanwhile, the status of property in unregistered marriages also faces legal uncertainty. Under Article 35 of Law No. 1 of 1974, property acquired during marriage becomes joint property, but this provision only applies to valid and registered marriages (Darmawan et al., 2026; Pelu & Dakhoir, 2021). Because unregistered marriages are not recorded, property acquired during the relationship is considered the personal property of each party (Pelu & Dakhoir, 2021; Darmawan et al., 2026). However, from an Islamic legal perspective, property acquired during cohabitation can still be considered the result of cooperation, so a fair distribution based on each party's contribution is recommended.

The social and legal implications of unregistered marriages are the weak position of women and children in terms of state legal protection (Zainuddin et al., 2024). Wives have no legal basis to claim alimony or inheritance rights, while children potentially lose recognition of their biological father if it cannot be proven (Zainuddin et al., 2024). This situation creates injustice and has the potential to violate human rights, particularly the rights of women and children. Therefore, marriage registration is an important instrument in realizing social justice and legal protection in Indonesia.

Table 1. Classification of the Status of Wives, Children, and Property in Siri Marriages

Aspects	Islamic law	Positive Law (Law No. 1 of 1974 & KHI)	Constitutional Court Decision No. 46/PUU VIII/2010
The Position of the Wife	Legitimate according to religion; entitled to financial support and protection.	Not legally recognized by the state because it is not registered; does not have the right to alimony and inheritance.	Not directly regulated; still not legally recognized without registration.
The position of children	Valid if born from a marriage contract that is valid according to religion.	Considered an illegitimate child; only has a civil relationship with the mother.	Recognized as having a civil relationship with the biological father if it can be scientifically proven.
Assets	Can be considered as the result of cooperation (musyarakah); distribution based on fairness .	Not recognized as joint property because the marriage was not registered.	Not directly regulated, but can be the basis for civil claims if the biological father relationship is proven.
Legal Protection	Based on the morals and responsibilities of husband and wife according to Islamic law.	Weak because there is no marriage certificate; difficult to file a lawsuit in court.	Providing legal protection for children born out of unregistered marriages.
Legal Solutions	It is recommended to register marriages as part of maslahah.	Can file for marriage validation to legalize the marriage.	Guaranteeing children's rights without discrimination based on their parents' marital status.

As a solution, the state has provided a mechanism for marriage validation through Article 7 paragraph (2) of the Compilation of Islamic Law (KHI) to legalize unregistered marriages so that they have legal force (Faiz & Slamet, 2025). Additionally, the Constitutional Court's ruling has expanded protection for children born out of unregistered marriages so that they do not become victims of legal discrimination (Haikal & Efendi, 2024). Therefore, synergy between Islamic law and positive law is urgently needed to ensure justice and legal certainty for wives, children, and

property in every marriage, whether registered or unregistered.

CONCLUSION

Siri marriages are valid under Islamic law because they fulfill the pillars and requirements of marriage, but they have no legal force under Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) if they are not registered before an authorized official. As a result, the wife's position is legally weak, and she has no rights to alimony, inheritance, or state protection. Nevertheless, the mechanism of marriage validation can be a solution for unregistered marriages to obtain legal recognition and valid protection for the couple.

Constitutional Court Decision No. 46/PUU-VIII/2010 brought important progress in the protection of children born from unregistered marriages by recognizing the civil relationship between the child and their biological father. However, property acquired during a siri marriage is still not recognized as joint property under state law. Therefore, marriage registration is crucial to provide legal certainty, protect the rights of wives and children, and harmonize Islamic law with positive law to achieve justice and the welfare of the family.

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