

## **Nikah Sirri (Unregistered Marriage) in Ternate City: Between Fiqh Validity and a Lack of Legal Protection: A Socio-Legal Analysis**

<sup>1</sup>Irham S. Ibrahim, <sup>2</sup>Jubair Situmorang, <sup>3</sup>Baharuddin Abdullah,  
<sup>4</sup>Ibrahim Malik, <sup>5</sup>Surya Ningsih

(<sup>1,2,3,5</sup>Institut Agama Islam Negeri (IAIN) Ternate, <sup>4</sup>King Abdulaziz University,  
Jeddah Saudi Arabia, email: [irhamsafaribrahim110996@gmail.com](mailto:irhamsafaribrahim110996@gmail.com),  
[jubair.iainternate@gmail.com](mailto:jubair.iainternate@gmail.com), [Baharuddin.abdullah@iainternate.ac.id](mailto:Baharuddin.abdullah@iainternate.ac.id),  
[imalik@stu.kau.edu.sa](mailto:imalik@stu.kau.edu.sa), [s.ningsurya@gmail.com](mailto:s.ningsurya@gmail.com))

### **Abstract:**

*(Nikah sirri (unregistered marriage) in Ternate City is a socio-legal phenomenon shaped by the complex interplay of Islamic legal norms (fiqh), socio-economic conditions, gender relations, local culture, and the state's role. Understanding nikah siri requires more than viewing it as a mere administrative violation; it results from these intersecting factors. While fiqh-based principles provide religious legitimacy for nikah siri within the community, state law has not been fully effective in providing legal protection from the outset of marriage. This study uses a socio-legal approach and qualitative methods to examine how socio-economic factors and gender relations sustain nikah siri and contribute to gaps in legal protection. Findings show that economic hardship, widespread informal employment, geographic isolation in the archipelago, and low legal literacy cause communities to view marriage registration as burdensome. Unequal gender relations make women and children especially vulnerable, as lacking a marriage certificate creates legal uncertainty in marital status, maintenance rights, inheritance, and access to public services. The socio-economic structure thus both sustains nikah siri and perpetuates protection gaps. The isbat nikah (marriage legalization) process remains reactive and corrective rather than preventive, as seen in the fluctuating numbers of such cases in Ternate City. This study concludes that nikah siri highlights the state's structural failure to bridge religious and positive law inclusively. A socio-legal approach is needed—one that treats law as part of social dynamics and promotes preventive, gender-sensitive, and justice-based state interventions.)*

### **Keywords:**

Nikah Sirri (Unregistered Marriage), Fiqh Validity, Legal Protection, Socio-Legal



## **Introduction**

*Nikah siri*, or unregistered marriage, is a marriage performed in accordance with Islamic religious principles but not registered with the state. This phenomenon remains widespread in many parts of Indonesia, including Ternate City.<sup>1</sup> While these marriages are considered valid under Islamic law when the essential requirements are met, the lack of state registration creates complex legal and social challenges.<sup>2</sup> People choose unregistered marriage for a variety of reasons: economic hardship, administrative barriers such as missing civil documents or unresolved marital status, and cultural or religious beliefs that emphasize religious validity over legal recognition.<sup>3</sup> Thus, motivations for unregistered marriage vary too, ranging from financial and bureaucratic obstacles to deeply rooted traditions that prioritize religious over state legitimacy.

Unregistered marriages remain a significant social reality in Ternate City, especially in the North Ternate City District, where local studies show that unregistered marriages are frequent and deeply embedded in community life. For example, according to interviews with the Head of the Office of Religious Affairs (KUA) for North Ternate, around 90% of marriages in this area are not officially registered. In comparison, only about 10% are registered with state institutions such as the KUA – even though all are conducted according to religious rites. This prevalence underscores the ongoing relevance of unregistered marriages and highlights the importance of examining the issue from a socio-legal perspective.

This phenomenon highlights how unregistered marriages significantly impact the legal status of families, especially in terms of legal protection for women and children. The significance of this local data is further supported by empirical studies showing that unregistered marriage is often driven by economic hardship, limited legal awareness, and restricted access to state institutions. This context

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<sup>1</sup>Badan Pusat Statistik, *Statistik Perkawinan Indonesia* (Jakarta: BPS, 2023), p. 15

<sup>2</sup> Abdul Manan, *Pembaharuan Hukum Islam di Indonesia* (Jakarta: Kencana, 2017), p. 98

<sup>3</sup> M. Quraish Shihab, *Wawasan Al-Qur'an tentang Keluarga* (Bandung: Mizan, 2019), p. 122

reveals that unregistered marriage is not simply a personal choice, but is deeply connected to broader social, cultural, and legal dynamics within society.

In previous academic studies, unregistered marriages have been extensively examined from various perspectives. Research conducted across various regions of Indonesia has analyzed unregistered marriages as a phenomenon that affects administrative obligations and legal protections for families, through legal, social, and religious analyses. Several studies have highlighted the marginalization of women resulting from unregistered marriages, in which women lose their rights due to the state's lack of administrative recognition of their marital status. These studies demonstrate that research on unregistered marriage is not limited to legal descriptions but also examines social relations and power imbalances within the family.

However, comprehensive socio-legal studies that connect unregistered marriages to local sociocultural structures, economic conditions, and gender relations—especially in Ternate—are still relatively scarce. Most earlier research has focused on normative or legal aspects, often neglecting detailed explanations of how community-level social structures sustain the practice of unregistered marriage. This gap highlights the need for further investigation into how these factors interact in the context of unregistered marriage at the local level.

This study primarily argues that unregistered marriage should not be viewed simply as a religious choice or an administrative issue, but as a social practice shaped by the complex interplay of fiqh legitimacy, socioeconomic factors, gender inequalities, and the state's limited/weak role in guaranteeing equal access to justice. A socio-legal approach offers deeper insight into these dynamics and places unregistered marriage within the broader context of national social and legal structures.

In a societal context, the decision to enter into an unregistered marriage is often driven by economic factors, administrative barriers such as issues with civil registration, unresolved prior marital status, and strong cultural and religious beliefs that place greater emphasis on the religious legitimacy of a marriage than on its legal validity under state law. However, this practice contradicts Indonesian positive law,

which underscores the essentiality of marriage registration for legal validity and protection.<sup>4</sup> Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI) both explicitly require that marriages be registered before an authorized official.<sup>5</sup> Registration is not just an administrative requirement; it is vital for securing the legal rights of spouses and children born of the marriage.<sup>6</sup>

The consequences of unregistered marriages are substantial and particularly detrimental to vulnerable groups like women and children.<sup>7</sup> Children born from these unregistered marriage practices often struggle to register their births, have their legal status as legitimate children recognized, claim inheritance rights, and access education and health care.<sup>8</sup> In addition, women in unregistered marriages also face severe legal vulnerability, lacking official recognition and protection under the law.<sup>9</sup>

In Ternate city, unregistered marriages present a distinct challenge for state institutions like the Office of Religious Affairs (KUA) and the Religious Court.<sup>10</sup> Marriage validation data suggest a growing public awareness of the need to legalize marriages through formal channels:<sup>11</sup> there were 24 validation rulings in 2022, increasing to 28 in 2023, and dropping to 8 in 2024.<sup>12</sup> These fluctuations reveal changing public attitudes and legal needs, while highlighting the ongoing gap between the widespread practice of unregistered marriages and the requirements of positive law. From a critical perspective, the phenomenon of unregistered marriage reveals the failure of the legal and social systems to bridge the gap between religious norms and state

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<sup>4</sup> Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

<sup>5</sup> Kompilasi Hukum Islam (Instruksi Presiden Nomor 1 Tahun 1991), Pasal. 5.

<sup>6</sup> Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT RajaGrafindo Persada, 2020).

<sup>7</sup> Badan Pusat Statistik Kota Ternate, *Profil Gender Kota Ternate 2023*, p. 34.

<sup>8</sup> Mahkamah Agung RI, *Pedoman Isbat Nikah* (Jakarta: Ditjen Badilag, 2022), p. 12

<sup>9</sup> Sri Wahyuni, "Perlindungan Hukum Terhadap Istri Siri di Indonesia," *Jurnal Hukum Keluarga Islam*, Vol. 4 No. 2 (2022): 56

<sup>10</sup> Kantor Urusan Agama Kota Ternate, *Laporan Tahunan 2023*, p. 7

<sup>11</sup> Pengadilan Agama Ternate, *Data Penetapan Isbat Nikah Tahun 2022–2024*

<sup>12</sup> Data Kantor Urusan Agama Kecamatan Ternate Pulau

norms.<sup>13</sup> The state's absence from the initial stages of marriage, the lack of legal education, and weak oversight of marriage practices in society are factors that contribute to the persistence of unregistered marriage.<sup>14</sup>

Several previous studies have analyzed unregistered marriages in Indonesia from both Islamic and positive law perspectives. Suryani's research shows that unregistered marriage is still widely practiced in West Java due to economic and cultural factors. At the same time, the contract is valid under *fiqh*, but these marriages lack legal weight under state law.<sup>15</sup> Another study by Maulana highlights the legal protection of children born of an unregistered marriage through the mechanism of *isbat nikah* (marriage validation) in religious courts.<sup>16</sup> A study by Rasyid compares the regulations on unregistered marriages in Law No. 1 of 1974 with those in the Compilation of Islamic Law and finds inconsistencies in the norms governing marriage registration.<sup>17</sup>

This article seeks to fill that research gap. First, it focuses on unregistered marriages in Ternate City, using a socio-legal approach to explore real-world practices and public perceptions. Second, it examines how gender relations contribute to inequalities in these marriages in Ternate City. Third, it investigates how socioeconomic structures are linked to the lack of legal protection for unregistered marriages. In doing so, this research provides a new contribution by mapping the realities of unregistered marriages in Ternate City and analyzing their socioeconomic impacts and gender inequalities through a socio-legal lens.

## Method

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<sup>13</sup> Siti Musdah Mulia, *Reformasi Hukum Keluarga Islam di Indonesia* (Jakarta: Gramedia, 2021), p. 101

<sup>14</sup> Andi Muhammad Sofyan, "Ketegangan Norma Agama dan Negara dalam Praktik Perkawinan," *Jurnal Ilmiah Hukum*, Vol. 8 No. 1 (2023): 45.

<sup>15</sup> Suryani, "Nikah Siri dan Perlindungan Hukum di Jawa Barat," *Jurnal Hukum Islam Indonesia*, Vol. 5, No. 2 (2018), pp. 201–215.

<sup>16</sup> Maulana, "Perlindungan Hukum Anak Hasil Nikah Siri melalui Isbat Nikah," *Jurnal Peradilan Agama*, Vol. 12, No. 1 (2020), pp. 55–72.

<sup>17</sup> Rasyid, "Analisis Perbedaan Norma Nikah Siri dalam UU Perkawinan dan KHI," *Jurnal Legislasi Indonesia*, Vol. 19, No. 3 (2022), pp. 99–114.

This study uses a qualitative, socio-legal approach to gain a deep understanding of unregistered marriage, assess its validity under Islamic law (fiqh), identify gaps in legal protection, and examine its impact on individuals in Ternate City.<sup>18</sup> Fieldwork was conducted in the Ternate Island and Central Ternate subdistricts, which report a significant number of unregistered marriage cases. Data collection took place from January to June 2025.<sup>19</sup> The study population consisted of couples who practiced unregistered marriages, officials from the subdistrict KUA, the Ternate City Religious Court, and religious and community leaders. Purposive sampling was used to select informants who were most relevant and had direct experience with unregistered marriages.<sup>20</sup>

The main research instruments in this study included in-depth interviews and document analysis (such as marriage certificates, court rulings, and relevant regulations). Field observations were also conducted to provide additional contextual data on unregistered marriage practices. Data were analyzed using qualitative descriptive and comparative methods: descriptive analysis to illustrate the phenomenon in the field, and socio-legal analysis to assess the impact and validity of unregistered marriages.<sup>21</sup> Data collection involved several methods: *First*, in-depth interviews with unregistered married couples, religious leaders, KUA officials, and religious court judges. *Second*, document review including marriage certificates, court rulings, and relevant laws and regulations; and *the last* is field observations to gather contextual information on unregistered marriage practices.<sup>22</sup> The data analysis followed three qualitative descriptive stages: data reduction (filtering, selecting, and focusing on relevant data), data presentation (summarizing findings in narratives, tables, or diagrams),

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<sup>18</sup> Moleong, Lexy J., *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2020), p. 6

<sup>19</sup> Sekretariat Daerah Kota Ternate, 2025

<sup>20</sup> Sugiyono, *Metode Penelitian Kualitatif, Kuantitatif, dan R&D* (Bandung: Alfabeta, 2019), p. 137.

<sup>21</sup> Miles, M.B., Huberman, A.M., & Saldaña, J., *Qualitative Data Analysis: A Methods Sourcebook* (USA: SAGE, 2019), p. 32–35

<sup>22</sup> Sugiyono, *Metode Penelitian Kualitatif, Kuantitatif, dan R&D* (Bandung: Alfabeta, 2019), p. 137

and inductive conclusion-drawing (identifying patterns and meanings to answer the research questions).<sup>23</sup>

## **Result and Discussion**

### **A Socio-Legal Analysis of Unregistered Marriages in Ternate City**

Unregistered marriages from a socio-legal perspective in Ternate City should not be viewed solely as an administrative violation of marriage registration requirements. Instead, they represent a socio-legal phenomenon shaped by the complex interplay of religious norms, social structures, economic conditions, gender relations, and the state's role.<sup>24</sup> While Islamic jurisprudence (*fiqh*) grants strong religious legitimacy to these kinds of marriages within the community, national positive law has not yet been fully or effectively enforced to ensure legal access and protection from the very beginning of the marriage.<sup>25</sup> Socioeconomic factors play a significant role in perpetuating the unregistered marriage practices. Economic hardship, informal employment, and the financial and administrative burdens associated with formal marriage often leads individuals to choose unregistered marriage as a practical solution.<sup>26</sup>

In Ternate City, which is characterized by its archipelagic nature, limited geographical and administrative access to state institutions further reinforces the perception that marriage registration is not an urgent necessity. This situation demonstrates that state law has not yet fully functioned as an instrument of justice and is still perceived by some community members as merely an administrative burden.<sup>27</sup>

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<sup>23</sup>Miles, M.B., Huberman, A.M., & Saldaña, J., *Qualitative Data Analysis: A Methods Sourcebook* (USA: SAGE, 2019), pp. 32–35

<sup>24</sup> Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: RajaGrafindo Persada, 2018), pp. 12–13

<sup>25</sup> M. Atho Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktik* (Yogyakarta: Pustaka Pelajar, 2016), pp. 145–146.

<sup>26</sup> Suryani, "Nikah Siri dalam Perspektif Sosial dan Hukum," *Jurnal Hukum Keluarga Islam*, Vol. 5 No. 2 (2020), pp. 112–114.

<sup>27</sup> Lawrence M. Friedman, *Sistem Hukum: Perspektif Ilmu Sosial* (terj.) (Bandung: Nusa Media, 2017), pp. 16–18.

From a cultural and religious perspective, there is a strong belief that the validity of a marriage is determined by fulfilling the pillars and requirements of marriage according to Islamic jurisprudence (*fiqh*), relegating state registration to a secondary concern. Within this social construct, religious law carries greater social legitimacy than state law.<sup>28</sup> This perspective aligns with the socio-legal view, which understands law as a product of social interaction rather than merely a set of normative rules.<sup>29</sup> Gender relations are a crucial aspect in the socio-legal analysis of unregistered marriages. This practice of unregistered marriages tends to place women in particularly more vulnerable positions, both legally and socially. Imbalances in family power dynamics, women's economic dependence on men, and limited legal literacy frequently prevent women from insisting on the official registration of their marriages.<sup>30</sup> In this context, unregistered marriage operates as a mechanism that perpetuates gender inequality, with women and children bearing the most significant legal consequences of the state's failure to recognize these marriages.<sup>31</sup>

The socio-legal impact of unregistered marriages is clearly evident in issues related to the legal status of children and the fulfillment of their civil rights. Children born from unregistered marriages encounter obstacles in birth registration, establishing their legal status, claiming inheritance rights, and accessing education and health services.<sup>32</sup> Although the *isbat nikah*, or marriage validation, mechanism exists as a legal solution, fluctuating data on its issuance in Ternate City suggests it serves as a corrective and reactive measure rather than a preventive one. The state tends to intervene only after legal problems emerge, rather than at the early stage of family formation.

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<sup>28</sup> Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia* (Jakarta: Kencana, 2014), pp. 61–63.

<sup>29</sup> Eugen Ehrlich, *Hukum yang Hidup dalam Masyarakat* (terj.) (Jakarta: HuMa, 2011), pp. 34–36.

<sup>30</sup> Mansour Fakih, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2013), pp. 72–74.

<sup>31</sup> Musdah Mulia, *Islam Menggugat Poligami* (Jakarta: Gramedia, 2018), pp. 89–91.

<sup>32</sup> Maulana, "Perlindungan Hukum Anak dari Nikah Siri melalui Isbat Nikah," *Jurnal Al-Ahwal*, Vol. 12 No. 1 (2019), pp. 55–57.

From an institutional perspective, the prevalence of unregistered marriages reflects the weak integration of religious law and positive law in social practice. The Office of Religious Affairs and the Religious Courts face a dilemma: between respecting the community's religious norms and enforcing national legal provisions.<sup>33</sup> A decline in the number of marriage validations in a given year does not necessarily signify a decrease in unregistered marriages; instead, it may reflect the public's limited access to formal legal mechanisms and the state's insufficient presence at the initial stages of the marriage process.<sup>34</sup>

In conclusion, a socio-legal analysis reveals that unregistered marriages in Ternate City result from the consequence of the state's structural failure to bridge religious law and positive law inclusively and contextually. Positive law, which emphasizes marriage registration, has not been accompanied by adequate social, economic, and cultural strategies to address societal realities. As such, addressing unregistered marriages cannot rely solely on a normative-repressive approach; rather, it requires a socio-legal strategy that situates law within society's social dynamics and power relations.<sup>35</sup>

### **Gender Relations and Inequality in the Unregistered Marriage Practice in Ternate City**

The unregistered marriage from a gender theory perspective practice in Ternate City reflects unequal power relations between men and women influenced by patriarchal structures, economic dependence, and cultural as well as religious legitimization. Patriarchal theory holds that social relations in society often position men as dominant actors while relegating women to subordinate roles, especially within family and marriage institutions.<sup>36</sup> In the context of unregistered marriage, this inequality is evident in men's authority to

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<sup>33</sup> Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2015), pp. 102–104.

<sup>34</sup> Data Penetapan Isbat Nikah Pengadilan Agama Ternate Tahun 2022–2024.

<sup>35</sup> Sally Engle Merry, *Human Rights and Gender Violence* (Chicago: University of Chicago Press, 2006), pp. 9–11.

<sup>36</sup> Sylvia Walby, *Theorizing Patriarchy* (Oxford: Basil Blackwell, 1990), pp. 20–23.

determine the form and status of the marriage, including the decision not to register it legally with the state.

Raewyn Connell, through the concepts of gender order and hegemonic masculinity, argues that social structures create patterns of gender relations that advantage men and normalize inequality as a natural case.<sup>37</sup> Unregistered marriages in Ternate City can be seen as part of a social practice that reinforces hegemonic masculinity, granting men greater control over the institution of marriage. At the same time, women are expected to accept these decisions for reasons of religious obedience, social norms, or economic necessity.

Gender inequality becomes even more apparent when unregistered marriage is associated with unregistered polygamy. Unregistered marriage enables men to bypass state regulations requiring the first wife's consent, proof of financial capacity, and a court decision. From a *feminist legal theory* perspective, this situation demonstrates how laws and social practices can serve as instruments that perpetuate male dominance in the absence of effective legal protections. Women in unregistered marriages lose their status as legal subjects recognized by the state, thereby lacking the leverage to seek justice in cases of abandonment, divorce, or domestic violence.

Pierre Bourdieu, through his concepts of *symbolic power* and *symbolic violence*, explains that domination frequently operates in subtle ways and is often unnoticed by those being dominated.<sup>38</sup> In unregistered marriage cases, women may accept the terms of such arrangements because they have internalized religious and cultural values that prioritize obedience as a woman's primary virtue. A woman's agreement to an unregistered marriage is often not the product of genuine free choice, but rather stems from structural pressures like economic dependence, social stigma against women who refuse marriage, and the symbolic authority of male religious figures.

From the perspective of feminist legal sociology, the absence of marriage registration produces *gendered legal vulnerability* – that is, legal disadvantage that is disproportionately experienced by women. Without a marriage certificate, women do not have formal evidence to

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<sup>37</sup> R.W. Connell, *Gender and Power: Society, the Person and Sexual Politics* (Stanford: Stanford University Press, 1987), pp. 98–100

<sup>38</sup> Pierre Bourdieu, *La Domination Masculine* (Paris: Seuil, 1998), pp. 34–38.

claim rights to spousal support, shared property, or legal protection in the judicial system. When the state requires formal evidence to access justice, women are left at the greatest disadvantage due to structural factors largely beyond their control.

The effects of unequal gender relations are also felt by children, largely because the burden of caregiving and social responsibilities falls mainly on mothers. In many cases of unregistered marriages in Ternate City, fathers' involvement is not accompanied by strong legal responsibility, which reinforces what is known as “feminization of vulnerability” – a condition where women and children bear the greatest social and legal consequences of unregistered marriage practices.

Unregistered marriages are relatively common in Ternate City, particularly in the Ternate Island District. Unregistered marriages are often conducted for economic reasons, administrative challenges, or the urgent need to marry without the delay of official registration. Data from the local KUA (Religious Affairs Office) indicates that some couples formalize their marriage only when official documents are required for administrative purposes, such as obtaining a child's birth certificate or registering inheritance rights.<sup>39</sup>

According to Islamic jurisprudence (fiqh), an unregistered marriage is considered valid as long as it fulfills the essential pillars and conditions: the presence of a legitimate prospective husband and wife, a guardian for the bride, witnesses, and the exchange of consent (*ijab-qabul*).<sup>40</sup> Most scholars agree that state registration is not a fundamental requirement for the validity of a marriage under Islamic law.<sup>41</sup> However, some scholars emphasize the importance of administrative documentation to ensure future legal certainty, especially regarding the rights of women and children.<sup>42</sup>

The majority of scholars maintain that state registration is not among the pillars or requirements of marriage; thus, an unregistered

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<sup>39</sup>Data lapangan KUA Kota Ternate, 25 January 2025.

<sup>40</sup>Sayyid Sabiq, *Fiqh Sunnah*, Jilid 2 (Beirut: Dar al-Fikr, 2018), p. 415.

<sup>41</sup>Rofiq, Ahmad, *Hukum Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2019), p. 125

<sup>42</sup>Musdah Mulia, *Islam dan Inspirasi Kesenjangan Gender* (Jakarta: Gramedia, 2020), p.88

marriage remains valid under Islamic law if the four essential elements are met. This perspective aligns with that of classical scholars, who discuss marriage practices during the time of the Prophet and the early generations of Islam, when no formal registration system existed.<sup>43</sup> In contrast to classical scholars, who maintained that registration is neither a requirement nor a pillar of marriage, contemporary scholars emphasize its importance (*tanshīm/tanzhīmī*) for legal and social protection, as well as for preventing harm. This perspective has arisen due to evolving social contexts and the increasing complexity of modern family issues. Figures such as Yusuf al-Qaradawi, Wahbah al-Zuhayli, and Ali Jum'ah, along with modern fatwa institutions like the Indonesian Ulema Council (MUI), consider registration a *tanzhimi* obligation—a state administrative regulation that Muslims are required to follow for the greater good. Wahbah al-Zuhayli argues that registration is part of *maslahah mursalah*, to be implemented when it brings greater public benefit than harm.<sup>44</sup>

Thus, while unregistered marriages are considered valid, contemporary scholars argue that failing to register a marriage can lead to harm, allowing the state to mandate registration in the interest of public welfare (*maslahah 'ammah*). Registration functions as a form of *sadd al-dzari'ah* to prevent the abuse of unregistered marriages, especially those that disadvantage women and children.<sup>45</sup> Unregistered marriages create a significant legal vacuum:

*First*, the legal status of children becomes uncertain; they face difficulties obtaining birth certificates, securing inheritance rights, and accessing education. Children born to unregistered marriages often struggle to obtain birth certificates because their parents lack a marriage certificate. Although Constitutional Court Decision No. 46/2010 offers some protection, a child's legal status remains limited to a civil relationship with the biological father rather than full recognition as part of a family unit.

*Second*, women lack valid legal proof of marriage, making them vulnerable to divorce or to claim alimony. Without a marriage

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<sup>43</sup> Al-Zuhayli, W. (1989). *Al-Fiqh al-Islami wa Adillatuh* (Vol. 9). Damascus: Dar al-Fikr.

<sup>44</sup> al-Zuhayli, *Ushul al-Fiqh al-Islami*, 1998.

<sup>45</sup> Al-Qaradawi, Y. (1998). *Fiqh al-Ushrah al-Muslimah*. Cairo: Dar al-Syuruq.

certificate, they are unable to claim joint property and face significant challenges in asserting their rights during divorce proceedings.

*Third*, resolving disputes in court becomes more complex when formal proof of marriage is unavailable.<sup>46</sup> Without a marriage certificate as formal evidence, the resolution process involves an extra step, namely marriage validation, which is both time-consuming and costly.

In summary, an analysis of gender relations demonstrates that unregistered marriages in Ternate City are not a neutral practice; rather, they function as a social mechanism that structurally perpetuates gender inequality. This inequality is further exacerbated by the state's limited role in providing preventive, gender-sensitive legal protection. Consequently, a gender-sensitive socio-legal approach is required to position the law not merely as a set of normative rules, but as an instrument of social justice capable of safeguarding women and children, who are the most vulnerable in the unregistered marriage practices. Research indicates that people in Ternate regard unregistered marriage as religiously valid because it fulfills the core elements of marriage. The KUA notes that many couples seek marriage validation only when administrative documents, such as a child's birth certificate, are needed. Local religious scholars recognize unregistered marriages as valid contracts but advise registering them to prevent future disputes.

### **Socio-Economic Structures and the Lack of Legal Protection for Unregistered Marriages**

The phenomenon of unregistered marriages in Ternate City reveals distinct patterns and underscores the gap between fiqh norms and positive law. Field data indicate that unregistered marriages are widespread, especially in the Ternate Island subdistrict, where access to the Religious Affairs Office (KUA) is more limited than on the mainland. People often choose an unregistered marriage because it is less costly, faster, and avoids complex administrative requirements, such as obtaining a National Identification Number (NIK), a Family Card (KK), or clarifying prior marital status. When administrative needs arise—such as for a child's birth certificate or inheritance

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<sup>46</sup> Basyir, M., "Perlindungan Hukum Terhadap Anak Lahir di Luar Perkawinan," *Jurnal Hukum & Pembangunan*, Vol. 49, No. 2 (2019), p.312

matters—couples then seek *isbat nikah* (marriage validation) from the religious court. This trend is reflected in marriage validation data: 24 cases in 2022, rising to 28 in 2023, then dropping to 8 in 2024, indicating that legalization of unregistered marriages is typically reactive rather than preventive.<sup>47</sup>

The first gap in legal protection stems from the fact that unregistered marriages do not generate a marriage certificate as authentic proof of the marriage. Without this certificate, women cannot prove their legal status as wives under state law. This issue occurs in Ternate City, particularly on its smaller islands, where many couples report marrying before a religious leader without official registration. When domestic conflicts, divorce, or abandonment occur, women encounter significant difficulties in filing lawsuits in Religious Court, since legal proceedings always require preliminary evidence of a marital relationship.<sup>48</sup>

Field data indicate that women are the most affected group. In Ternate City, some unregistered marriage cases are also associated with unreported polygamy, where husbands marry secretly on different islands to avoid obtaining permission from the religious court. The absence of registration denies women access to: the right to material and emotional support, protection from abandonment, recognition of joint property rights, and legal protection from domestic violence, which becomes more difficult to prove without official documents. The patriarchal social dynamics in island communities further discourage women from reporting their cases, thereby increasing their vulnerability.

Beyond the impacts already discussed, children born to unregistered marriages in Ternate City encounter administrative difficulties, especially when it comes to obtaining birth certificates. Many couples delay formalizing their marriage until after their child is born, as birth certificate applications require proof of parental marriage certificate or a court ruling. Although Constitutional Court Decision No. 46/2010 offers some protection by recognizing civil relationships with the biological father, these children continue to face social stigma

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<sup>47</sup> Pengadilan Agama Ternate, *Data Penetapan Isbat Nikah Tahun 2022–2024*.

<sup>48</sup> Observasi pada pelaku perkawinan siri di Kota Ternate (05 januari 2025).

as “children born out of wedlock” and lack full legal recognition as members of a family.<sup>49</sup>

The lack of legal protection for unregistered marriages in Ternate City is not only due to the absence of registration. However, it is also compounded by local sociocultural factors, limited geographic access, and low legal literacy. Marriage validation data from 2022–2024 reveals that people often recognize the importance of registration only after encountering administrative problems, indicating the state’s failure to provide preventive protection. Women and children remain the most vulnerable group, and dispute resolution becomes increasingly complex without formal evidence. This situation underscores the need for greater state intervention, particularly through legal education, simplified registration services, and the strengthening of the KUA's role in island areas.

From a socio-legal perspective, a society’s socioeconomic structure significantly influences the persistence of unregistered marriage practice while simultaneously creating a gap in legal protection. In Ternate City, unregistered marriage is not merely an individual choice, but often a rational community response to economic hardship, limited administrative access, and structural inequalities in the provision of state legal services. This situation highlights that positive law does not operate in isolation, but is deeply shaped by the social and economic realities of the communities it seeks to regulate.<sup>50</sup>

Economically, limited household incomes – particularly in the archipelagic regions and small islands of Ternate City – drive couples to choose unregistered marriages as a more affordable and practical alternative. The expenses for transportation to the KUA, civil registration processing, and the social costs of official marriage are often seen as burdens that outweigh the immediate benefits. In these circumstances, marriage registration becomes a secondary need, while religious legitimacy alone is considered sufficient for social acceptance

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<sup>49</sup> [https://media.neliti.com/media/publications/43313-ID-implikasi-putusan-mahkamah-konstitusi-no-46puu-viii2010-terhadap-anak-dari-perka.pdf?utm\\_source](https://media.neliti.com/media/publications/43313-ID-implikasi-putusan-mahkamah-konstitusi-no-46puu-viii2010-terhadap-anak-dari-perka.pdf?utm_source)

<sup>50</sup> Lawrence M. Friedman, *Sistem Hukum: Perspektif Ilmu Sosial* (terj.) (Bandung: Nusa Media, 2017), pp. 15–17.

and security. This demonstrates how economic structures influence community compliance with the law.

Furthermore, the dominance of informal-sector employment and high economic mobility, as seen among fishermen, dockworkers, and service-sector workers, creates instability in the civil registration system. Precarious job status often leads to incomplete or missing identity documents, which are essential for marriage registration. As a result, many people opt for unregistered marriages that do not require formal administrative documents. In this context, state law fails to function as an inclusive system because it cannot adequately adapt legal procedures to the community's socioeconomic realities.

The socioeconomic structure is also intertwined with unequal gender relations. In many cases of unregistered marriages, women's economic dependence on men puts them in a weak bargaining position when seeking official registration of their marriage.<sup>51</sup> Women frequently accept unregistered marriages because of limited economic opportunities and social pressures, even when they are aware of the legal risks that may arise later. When the state requires formal proof – such as a marriage certificate – to access legal protection, it is women who are the ones most adversely affected by structural decisions that are not entirely within their control.

From an institutional perspective, a weak economic structure contributes to the underutilization of corrective legal mechanisms, such as marriage validation. The marriage validation procedure requires court fees, witnesses, and time – resources that are not always accessible to low-income communities. Therefore, fluctuations in marriage validation data in Ternate City – including the drastic decline in 2024 – are best understood as reflections of economic and legal access barriers, rather than as indicators of a decline in the unregistered marriage practices. The state is approached only when administrative needs become urgent, rather than serving as a protective system from the beginning. Thus, the lack of legal protection regarding unregistered marriages in Ternate City is a direct consequence of an unbalanced socioeconomic structure and the state's failure to adapt its laws to the realities of society. Positive law, which emphasizes marriage

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<sup>51</sup> Mansour Fakhri, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2013), pp. 96–98.

registration, has not been accompanied by affirmative policies that account for the economic, geographic, and social limitations of island communities.<sup>52</sup> Within a socio-legal framework, this situation indicates that the failure of legal protection is not merely a matter of legal norms but a structural issue that demands preventive, inclusive, and socially just state intervention.

### **Conclusion**

The practice of unregistered marriages in Ternate City cannot be understood merely as an administrative violation of the obligation to register marriages, but rather as a socio-legal phenomenon arising from the complex interplay of religious norms, social structures, economic conditions, gender relations, and the state's role.<sup>53</sup> The validity of unregistered marriages under Islamic jurisprudence (fiqh) provides strong religious legitimacy at the community level, while the state's positive law has not yet been fully and effectively implemented to guarantee legal access and protection from the early stages of marriage. From a cultural and religious perspective, the strong belief that a marriage's validity is determined by fulfilling the pillars and conditions set out in Islamic fiqh has led to placing state registration in a secondary position. In this social construct, religious law holds greater social legitimacy than state law. This aligns with the socio-legal perspective, which views law as a product of social interaction rather than merely a self-contained normative text.

The practice of unregistered marriage from a gender theory perspective, in Ternate City reflects power imbalances between men and women shaped by patriarchal structures, economic dependence, and cultural and religious legitimization. Patriarchy theory explains that social relations in society tend to position men as dominant subjects, while women occupy subordinate positions, particularly within the institutions of family and marriage. In the unregistered marriage context, this imbalance is evident in men's dominance in determining the form and status of the marriage, including the decision

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<sup>52</sup> Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung: Angkasa, 2015), pp. 57–59

<sup>53</sup> Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: RajaGrafindo Persada, 2018), pp. 12–13

not to register the marriage under state law. The lack of legal protection for unregistered marriages in Ternate City is not only due to the absence of registration. However, it is also exacerbated by local sociocultural conditions, limited geographic barriers, and low legal literacy.

An analysis of gender relations shows that unregistered marriages in Ternate City are not a neutral practice, but rather a social mechanism that reproduces structural gender inequality. This inequality is exacerbated by the state's weak presence in providing preventive, gender-sensitive legal protection. Therefore, a gender-sensitive socio-legal approach is needed to position the law not merely as a set of normative rules, but as an instrument of social justice capable of protecting women and children – the most vulnerable groups in the unregistered marriage practice. Research indicates that the people of Ternate consider unregistered marriages to be valid under religious law because they meet the essential elements of marriage. The KUA reports that many couples apply for marriage validation only when they need administrative documents, such as a child's birth certificate. Local religious scholars view *nikah siri* as a valid contract, but recommend registration to avoid future disputes.

From a socio-legal perspective, a society's socioeconomic structure significantly influences the persistence of unregistered marriage while simultaneously creating a gap in legal protection. Unregistered marriage in Ternate City does not exist solely as an individual choice, but rather as a rational community response to economic constraints, limited administrative access, and structural inequalities in the distribution of state legal services. This situation underscores that positive law does not operate in a vacuum, but is deeply influenced by the social and economic realities of the communities it governs.

Recommendations for the government and the KUA (Religious Affairs Office) include strengthening the mechanism for registering unregistered marriages through the *isbat nikah* (marriage validation) process, so that couples and their children can obtain legal protection. Meanwhile, Religious Courts should also provide simpler and more accessible procedural guidelines for validating previously unregistered marriages. In addition, public education efforts should raise awareness of the importance of marriage registration for protecting women's and

children's rights, and educate the public on the legal consequences of unregistered marriages and the administrative rights available through official registration. Through these measures, the gap between fiqh legitimacy and positive legal protection can be narrowed, ensuring that unregistered marriages remain valid under religious law while also receiving legal protection.

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