

Marriage Registration Versus Religious Validity: Legal Dualism In The Muslim World

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ABSTRACT

Marriage in Islam is a *mithaqan ghalizan* that encompasses both religious and legal dimensions. In the modern era, however, a tension has emerged between religious validity under *fiqh* and state administrative formalities through civil registration. This study examines the legal status of unregistered marriages from the perspectives of classical *fiqh* and positive law and formulates adaptive policy strategies through a comparative study of five Muslim countries: Indonesia, Malaysia, Pakistan, Egypt, and Tunisia. Using normative legal research with comparative and statutory approaches, this article finds that classical *fiqh* does not make registration a condition for the validity of marriage, while many contemporary scholars regard registration as legally necessary on the basis of public interest, or *maslahah mursalah*. Positive-law policy ranges from a lenient model without sanctions, as found in Indonesia and Egypt, through a moderate model, as found in Malaysia and Pakistan, to a strict model with criminal sanctions, as found in Tunisia. The absence of marriage registration systematically weakens the civil rights of women and children. As an academic contribution, this article proposes a Gradual-Strict Policy Model as a practical strategy for bridging legal dualism in countries with conservative Muslim populations without neglecting the protection of civil rights.

Keywords : Islamic family law, marriage law, marriage registration, legal dualism, unregistered marriage.

INTRODUCTION

Marriage in Islam is not merely an ordinary civil contract, but a *mithaqan ghalizan*, or solemn covenant, as expressed in Qur'an, Surah al-Nisa' verse 21. In the classical *fiqh* tradition across the legal schools, the validity of marriage rests primarily on the fulfilment of ritual and contractual pillars, including the existence of the bride and groom, the guardian, two witnesses, and the *sighat al-'aqd*, namely offer and acceptance. Classical doctrine did not explicitly require administrative registration by state authorities as a condition of validity (Al-Jaziri, 2009). This theological and historical reality emerged because, between the seventh and twelfth centuries, the modern state with an integrated civil bureaucracy had not yet developed. Social control in relatively homogeneous communities was performed through the function of *al-i'lan*, or public announcement, which distinguished lawful marriage from *zina*.

The social landscape of the Muslim world in the twenty-first century has changed fundamentally. Contemporary societies are marked by high population mobility, urban anonymity, and increasingly complex legal relations. In this context, oral announcement is no longer sufficient to mitigate legal risk or protect individual civil rights. Consequently, modern Muslim states have adopted codified family laws that require marriage registration (Nasir, 2009). Tension arises when this registration requirement encounters cultural and religious resistance from segments of society that regard civil registration as a bureaucratic innovation without a direct basis in *Shariah*. This dualism appears in various forms of informal marriage, such as *nikah siri* in Indonesia, unregistered or under-the-hand marriage in Malaysia, 'urfi marriage in Egypt, and unregistered marriage in Pakistan ('Urfi Marriage in Egypt: A Silent Crisis, 2019).

This conflict of legal dualism is not merely a theoretical debate. It is also a concrete humanitarian problem. Legal uncertainty places women and children in the most vulnerable position. A wife in an unregistered marriage may lose effective access to maintenance, inheritance, mut'ah, social security, and other legal remedies because the state formally treats the marriage as if it never existed. Children born from such non-bureaucratic marriages may face difficulty obtaining birth certificates, which in turn obstructs access to education, health services, and, in extreme circumstances, may lead to statelessness (UNICEF, 2019).

Scholars have examined marriage registration through various approaches. The study by Nazar Fuadi Nur, Azhari Yahya, and Efendi Idris, titled *Maqashid Shariah Study on the Recording of Unregistered Marriage in the Family Card*, explains that an unregistered marriage remains religiously valid under Islamic law when the pillars and requirements of marriage are fulfilled. Nevertheless, marriage registration has an important position from the perspective of maqasid al-shariah because it functions as a legal-protection instrument for husbands, wives, and children. That study emphasizes the relationship between religious validity and state administrative recognition in the Indonesian legal context (Nur et al., 2022). The present study differs because it does not only discuss the urgency of registration based on maqasid al-shariah, but also analyzes the conflict between religious validity and state legality through a comparative study of marriage-law systems in Indonesia, Malaysia, Pakistan, Egypt, and Tunisia.

Another relevant study is Muhammad Latif Fauzi's *Administrative Transgression and Judicial Discretion for the Sake of Citizens' Rights: The Legalisation of Unregistered Marriages in Indonesia*. Fauzi examines the legalization of unregistered marriages through isbat nikah and judicial discretion in protecting citizens' rights. The study shows that state recognition of marriage through judicial mechanisms is an important part of guaranteeing citizens' legal identity, although social and religious norms continue to exert strong influence in society (Fauzi, 2023). The difference lies in scope. Fauzi's study is limited to the legalization of unregistered marriage within the Indonesian legal system, whereas this article develops a comparative analysis of different models of relationship between religious authority and state authority in regulating marriage registration across several Muslim countries.

A further study by Tenggo Subangun Harahap, titled *Tinjauan Maqashid Syari'ah terhadap Pencatatan Perkawinan*, discusses two views within society regarding the legal position of marriage registration. The first view regards registration as necessary to obtain legal force from the state, while the second continues to regard marriages that fulfil fiqh pillars and requirements as valid even when they are not registered. The study concludes that marriage registration contains public benefit and accords with the objectives of Shariah in protecting religion, life, lineage, and property (Tenggo Harahap, 2023). The difference from this article lies in the research approach. Harahap's work focuses on normative analysis through maqasid al-shariah in the Indonesian context, while the present study places marriage registration within the broader framework of conflict between religious legitimacy and state legitimacy in the Muslim world.

A. Sultan Sulfian's study, *The Urgency of Marriage Registration in the Perspective of Indonesian Marriage Law and Islamic Law*, affirms the great urgency of marriage registration because it is related to legal certainty and the protection of family members' rights, particularly those of women and children. The study examines the relationship between Indonesian marriage-law provisions and Islamic-law perspectives on marriage registration (Sulfian, 2023). However, that study remains focused on Indonesia and does not compare other Muslim countries with different regulatory models. This article therefore offers a comparative analysis of marriage-registration policies in several Muslim countries to identify a legal-policy model capable of reconciling religious validity and state administrative obligations.

Based on this literature, studies on marriage registration during the period 2021-2025 remain dominated by discussions of isbat nikah, the urgency of registration, legal certainty, and maqasid al-shariah analysis within Indonesian national law. Few studies specifically examine the conflict between religious validity and state recognition through a comparative approach to family law in Muslim countries. The novelty of this article lies in its comparison of Indonesia, Malaysia, Pakistan, Egypt, and Tunisia in assessing regulatory models of marriage registration, the degree of state intervention in

marriage validity, and the possibility of formulating a legal policy that bridges religious legitimacy and the protection of civil rights.

This article seeks to fill that research gap by presenting not only a conflict of norms, but also a reconstruction of alternative marriage-law policy. It focuses on two main questions. First, how is the legal status of unregistered marriage understood in comparison among classical fiqh, contemporary fatwas, and positive law in five Muslim countries? Second, how can a reconstructive policy model be formulated to bridge religious validity and civil compliance in an adaptive manner?

RESEARCH METHODS

This study is normative legal research that focuses on the analysis of statutory texts, legal documents, and relevant fiqh literature. The approaches used are the statutory approach and the comparative approach. The comparative approach is applied synchronically by placing side by side the legal systems of five selected Muslim countries, namely Indonesia, Malaysia, Pakistan, Egypt, and Tunisia. These countries represent diverse typologies of Islamic family-law policy.

The legal materials used in this study consist of primary legal materials in the form of marriage regulations in each country, including Law Number 1 of 1974 concerning Marriage in Indonesia, the Islamic Family Law Act 1984 in Malaysia, the Muslim Family Laws Ordinance 1961 in Pakistan, Law Number 77 of 1943 in conjunction with Law Number 11 of 2004 in Egypt, and the Majallah al-Ahwal al-Shakhsiyyah 1956 in Tunisia. Secondary legal materials are obtained from authoritative fiqh works, such as al-Majmu', al-Mughni, and Bidayah al-Mujtahid, contemporary fatwas, court decisions, and official reports issued by international and national civil-society organizations. All data collected through document study are analyzed qualitatively using deductive-comparative reasoning in order to produce precise conclusions.

RESULTS

Legal Status of Unregistered Marriage under Classical Fiqh, Contemporary Fatwas, and Positive Law

A review of classical fiqh literature across legal schools shows that no clause positions bureaucratic registration as either a pillar or a condition for the validity of marriage. The Shafi'i school limits the pillars of marriage to the existence of the bride and groom, the guardian, two witnesses, and the formula of the contract (Al-Nawawi, 2021). The same general pattern is accepted by the Hanbali, Maliki, and Hanafi schools, although the Hanafi school provides greater flexibility by not requiring the involvement of a guardian for an adult woman who possesses legal capacity (Ibn Qudamah, 1994). The absence of registration is rooted in the sociology of traditional societies, which relied heavily on public announcement, or al-i'lan, as reflected in the hadith concerning the public celebration of marriage (Repp, 1986).

A hadith narrated from 'Aishah states that the Prophet said: 'Announce this marriage, hold it in the mosque, and beat the duff in celebration' (al-Tirmidhi, no. 1112). In its historical context, this instruction illustrates that publicity functioned as social proof of marriage before the emergence of modern civil administration.

In the contemporary era, however, the methodology of *usul al-fiqh* has experienced a paradigmatic shift. Many modern jurists, including Yusuf al-Qaradawi and Wahbah al-Zuhayli, maintain that marriage registration in the modern period is obligatory (Al-Syatibi, 1997). The legal foundation often invoked is the maxim: 'That without which an obligation cannot be completed is itself obligatory.' Because the protection of the rights of wives and children, especially *hifz al-nasl* and *hifz al-mal*, is a fundamental objective of Shariah, and because such protection can be achieved effectively in the modern state only through official documentation, registration shifts from being merely permissible to becoming a religiously relevant obligation. Al-Qaradawi states that those who enter into unregistered marriages may be deemed sinful because their conduct creates harm, or *darar*, for the family (Qaradawi, 2010).

Although classical fiqh does not require registration as a condition of validity, modern Muslim states generally require registration through legislation. The form of the obligation and the legal consequences, however, vary considerably.

In Indonesia, Article 2 paragraph (2) of Law Number 1 of 1974 states that every marriage shall be registered in accordance with applicable laws and regulations. The explanation of the law emphasizes that registration does not determine religious validity, but has an administrative function. There is no criminal sanction for failure to register. Articles 5 and 6 of the Compilation of Islamic Law reaffirm that marriage must be registered, but they do not provide criminal sanctions.

In Malaysia, the Islamic Family Law (Federal Territory) Act 1984 requires registration under Section 29(1). Section 29(4) provides a sanction in the form of a fine not exceeding RM 1,000, imprisonment for a term not exceeding six months, or both. Despite the existence of sanctions, enforcement remains limited in practice.

In Pakistan, Section 5 of the Muslim Family Laws Ordinance 1961 requires a marriage to be reported to the Nikah Registrar within fifteen days. Violators may be fined up to 1,000 rupees. In tribal areas, however, this rule is often ignored. Later marriage legislation is described as strengthening the position that unregistered marriage is not legally valid under state law.

In Egypt, Law Number 77 of 1943 in conjunction with Law Number 11 of 2004 requires registration by an official marriage registrar, or ma'zun. Sanctions are directed at officials who violate the registration rules, not at couples. Consequently, couples who enter into 'urfi marriages are not criminally punished.

In Tunisia, the Majallah al-Ahwal al-Shakhsiyyah 1956 takes a stricter approach. Article 5 provides that there is no marriage without an official deed, while Article 14 threatens imprisonment for one year and/or a fine for violations. Unregistered marriage is automatically void under state law.

This comparison shows that the legal status of unregistered marriage moves along a spectrum, from religiously valid but not fully recognized in civil law, as in Indonesia and Egypt, to legally invalid with relatively light sanctions, as in Malaysia and Pakistan, and finally to automatically void with criminal sanctions, as in Tunisia. These variations reflect how far each state is willing to intervene in a domain traditionally regarded as private and religious.

Table 1. Comparative Legal Status of Unregistered Marriage in Five Muslim Countries

Country	Main Regulation	Status of Marriage Validity	Sanction for Violation
Indonesia	Law No. 1/1974 and the Compilation of Islamic Law	Religiously valid, but civil rights are not fully recognized by the state.	No criminal fine or imprisonment; consequences are mainly administrative.
Egypt	Law No. 77/1943 in conjunction with Law No. 11/2004	Religiously valid as 'urfi marriage, but civil recognition is restricted in court.	Sanctions are imposed on the ma'zun or official registrar who violates the rules, not on the couple.
Malaysia	Islamic Family Law Act 1984	Religiously valid, but regarded as unlawful under state law before registration.	A fine up to RM 1,000, imprisonment up to six months, or both.
Pakistan	Muslim Family Laws Ordinance 1961 and later marriage legislation	Unregistered marriage is treated as legally invalid under state law.	A fine up to 1,000 rupees for failure to report within fifteen days.
Tunisia	Majallah al-Ahwal al-Shakhsiyyah 1956	Automatically void under state law.	Imprisonment for one year and/or a substantial fine.

Forms of Legal Dualism and Its Sociological Impacts

The conflict between theological fulfilment and administrative compliance creates a destructive sociological deadlock in almost all the countries examined, except Tunisia. In Indonesia, the absence of sanctions in Law Number 1 of 1974 is widely used to facilitate nikah siri, including for secret polygamy. Sociological data cited in the source manuscript indicate that 22 percent of marriages in rural Java are unregistered because of cost and geographical barriers. The practical implication is illustrated by Decision of the South Jakarta Religious Court Number 1234/2015, in which a wife in a nikah siri relationship who had been abandoned for a decade lost access to maintenance during iddah and mut'ah because she lacked legal documentary proof. Although Constitutional Court Decision Number 46/2010 opened a path for children born from unregistered marriages to have a civil relationship with their biological fathers, implementation in practice may still be hindered by bureaucracy and the high cost of DNA testing.

Similar conditions occur in Malaysia, where the label anak tak sah taraf may be attached to children born from unregistered marriages, particularly in border areas and conservative states such as Kelantan. In Pakistan, conflict becomes more acute because of resistance from customary councils, or jirga, in tribal areas. In the landmark case *Mst. Zainab v. Federation of Pakistan* (2018), the source manuscript states that the Federal Shariat Court reduced a widow's inheritance rights to 25 percent because a marriage that was considered valid under custom was treated as procedurally defective under state administration. In Egypt, 'urfi marriage has spread among students as a theological justification for inexpensive informal sexual relations. The Egyptian Center for Women's Rights (2019) reported that 60 percent of women in 'urfi marriages were abandoned without an official right to divorce, contributing to the birth of children without clear civil status. In contrast, Tunisia has largely eliminated this humanitarian problem through consistent criminalization of non-deed marriages.

From the five countries, it may be concluded that legal dualism generally harms women and children. The most significant consequences include the loss of maintenance rights when a husband abandons or dies, the loss of inheritance rights because there is no proof of marriage, difficulty in claiming child custody, difficulty in obtaining birth certificates for children and the resulting risk of school exclusion, and reluctance among victims of domestic violence to report abuse because of fear of being stigmatized as having committed zina.

DISCUSSION

A deeper analysis of the comparative data divides marriage-registration policies in the Muslim world into three clusters. The first is the lax model, represented by Indonesia and Egypt. Its strength lies in flexibility and accommodation of traditional religious sensitivities, which reduces the risk of identity-based political conflict. Its weakness, however, is substantial. Tolerance without sanctions structurally perpetuates civil exploitation of women and children. The second is the moderate model, represented by Malaysia and Pakistan. This model seeks a middle path by introducing financial penalties, but often fails in implementation because minor fines may be perceived merely as additional administrative costs by those who engage in illegal polygamy or unregistered marriage. The third is the strict-punitive model, represented by Tunisia. This model is highly effective in protecting civil rights, but it limits part of the autonomy traditionally claimed by classical Islamic legal norms and may generate latent resistance from orthodox groups.

From a sociopolitical perspective, Tunisia's radical success cannot simply be transplanted into other Muslim countries such as Indonesia, Malaysia, or Pakistan. Tunisia benefits from the historical secularization of family law initiated by Habib Bourguiba in 1956, as well as from relatively small demographic scale and greater madhhab homogeneity. Indonesia, by contrast, faces the challenge of a vast archipelagic geography, a very large population, and strong attachment to customary and conservative religious authorities that possess significant political influence.

For this reason, this article constructs an alternative pathway known as the Gradual-Strict Policy Model. The model is designed for countries with large conservative Muslim populations, such as Indonesia, so that legal reform may proceed effectively without triggering destructive social resistance. Its implementation may be channelled through three measured phases.

In the short term, covering the administrative and educational phase from zero to three years, the main focus should be the removal of barriers to access. The state should make marriage registration fully free of charge and eradicate illegal levies through complete administrative digitalization. Geographical barriers should be addressed through mobile marriage-registration services and subsidized integrated isbat nikah programs in remote areas. Such programs should combine marriage legalization and the issuance of children's birth certificates within a maximum of seven days. Culturally, religious outreach should shift from a narrow debate over ritual permissibility to a rights-protection narrative grounded in maqasid al-shariah.

In the medium term, covering the incentive and administrative-sanction phase from three to seven years, the legal instrument should be tightened by imposing progressive fines for delayed reporting of

marriage registration. More importantly, marriage registration should be linked to public-service integration. A marriage certificate should become a required document for secondary administrative services such as passports, national health insurance, and children's family cards. Conversely, economic incentives may be provided through priority access to social-assistance programs for couples with official marriage certificates.

In the long term, covering the judicial and limited-criminalization phase from seven to fifteen years, after digital infrastructure has become more evenly distributed and legal awareness has matured, light criminal sanctions, such as detention for a maximum of three months, may be introduced for repeat offenders. The success of this phase should be supported by collective fatwas issued across religious organizations, such as the Indonesian Ulama Council, Nahdlatul Ulama, and Muhammadiyah, declaring unregistered marriage to be reprehensible or prohibited when it produces clear social harm, or mafsadah.

Table 2. Gradual-Strict Policy Model for Marriage Registration Reform

Phase	Time Frame	Main Objective	Operational Policy
Administrative and educational phase	0-3 years	Remove barriers to registration and build public awareness.	Free registration, digital administration, mobile KUA services, subsidized integrated isbat nikah, and maqasid-based legal literacy.
Incentive and administrative-sanction phase	3-7 years	Strengthen compliance through public-service linkage.	Progressive fines, marriage certificate as a requirement for selected public services, and social-assistance incentives for registered couples.
Judicial and limited-criminalization phase	7-15 years	Enforce compliance after access and awareness are established.	Light sanctions for repeat offenders and collective religious fatwas against harmful unregistered marriage.

CONCLUSION

The conflict of legal dualism between civil registration and religious validity in the Muslim world originates from a conceptual gap between classical fiqh, which is textual and rooted in pre-modern social structures, and the dynamic administrative needs of the modern state. The comparison of five Muslim countries demonstrates that tolerating unregistered marriage, as reflected in the Indonesian and Egyptian models, empirically perpetuates violations of the civil rights of women and children on a significant scale. Conversely, Tunisia's total criminalization model, although effective, requires specific sociopolitical conditions marked by stronger secularization and greater homogeneity.

As an adaptive solution, the Gradual-Strict Policy Model offers a rational middle path for large and conservative Muslim-majority countries such as Indonesia. Through the integration of digital administrative improvement in the short term, the linkage of public services in the medium term, and limited judicial enforcement in the long term, the state may strengthen civil administrative order while preserving respect for Shariah. The success of this agenda requires collective commitment and synergy among political authorities, fatwa-making institutions, judicial institutions, and grassroots legal-literacy initiatives.

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