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Unregistered Marriage Without A Nasab Guardian In Tanjung Pinggir: Islamic And Indonesian Law Perspectives¹

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Abstract:

Unregistered marriage without a nasab guardian remains prevalent in parts of Indonesian society and creates uncertainty regarding marital validity and the legal protection of women and children. This study examines the practice of such marriages in Tanjung Pinggir Village, Siantar Martoba District, and assesses their validity and implications from the perspectives of Islamic law, the Compilation of Islamic Law, and Indonesian positive law. The study employed normative-empirical legal research with a qualitative approach. Primary data were collected through interviews with three couples in unregistered marriages without a lawful nasab guardian, supported by observations and documentation; participation was voluntary; informed consent addressed the legal sensitivity of the information disclosed; and all identities were anonymized. Secondary data were obtained from the Qur'an, hadith, classical jurisprudence, legislation, and relevant scholarly literature. The data were analyzed descriptively by reducing, classifying, comparing, and interpreting field findings and legal norms. The results reveal three problematic practices: assigning an unrelated man as a nasab guardian, appointing a wali muhakkam without following the mechanism for a state-appointed guardian, and conducting a marriage while the woman remained legally bound to a previous husband. These practices were primarily driven by limited legal knowledge, while economic pressure reinforced the case in one instance. Under the legal framework applied in Indonesia, these marriages did not comply with guardianship and marriage-registration requirements, thereby weakening legal certainty and the protection of wives and children; the third case, in particular, could have been resolved through the readily available statutory ground for divorce under Article 116(c) of the Compilation of Islamic Law rather than through an unauthorized second marriage. The study concludes that legal education, access to a state-appointed guardian, and marriage registration must be strengthened to prevent similar practices.

Keywords: Indonesian positive law; Islamic law; nasab guardian; unregistered marriage; wali muhakkam

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A. INTRODUCTION

Marriage is a religious and social institution with legal, moral, and cultural dimensions in Indonesian society. Under Islamic law, marriage is not merely understood as a relationship between a man and a woman but as a legal contract that creates reciprocal rights and obligations. It is intended to establish a peaceful family, preserve lineage, protect human dignity, and safeguard the interests of every family member. Consequently, a marriage must fulfill religious requirements while providing legal certainty and protection for the husband, wife, and children (Jahwa et al., 2024).

The Indonesian legal system provides that a marriage is valid when performed in accordance with the parties' religion and beliefs and that every marriage must be registered in accordance with statutory regulations. Religious validity and administrative registration therefore serve complementary functions. Religious law determines whether the essential pillars and requirements of marriage have been fulfilled, whereas official registration provides authentic legal evidence and enables the parties to obtain protection from state institutions (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974). An unregistered marriage may be regarded as religiously valid when it fulfills all applicable pillars and requirements, but the absence of official registration weakens its legal recognition and evidentiary status.

Nevertheless, in the millennial era, unregistered marriages, commonly known as *siri* marriages, continue to occur. This practice is influenced by limited legal awareness, social pressure, economic circumstances, family considerations, and the assumption that the fulfillment of *ijab kabul* alone is sufficient to validate a marriage without official state registration. Such an assumption overlooks that the validity of a marriage under Islamic law depends on the fulfillment of all its essential elements, rather than solely on the pronouncement of offer and acceptance. Moreover, the absence of registration may place wives and children in vulnerable positions concerning administrative documents, financial maintenance, inheritance, marital property, and access to legal protection (Kharisudin, 2021; Zakaria & Saad, 2021).

The legal problems associated with *siri* marriage become more complex when the marriage is conducted without a legitimate *nasab* guardian. In Islamic law, guardianship plays an important role in the marriage contract, as the guardian represents and safeguards the interests of the prospective bride. Most Islamic scholars regard the presence of a legitimate guardian as an essential requirement for the validity of marriage, although differences of opinion remain concerning the authority of a legally competent adult woman to conclude her own marriage contract. Within the Indonesian Islamic family-law system, the Compilation of Islamic Law recognizes the marriage guardian as one of the essential pillars that must be fulfilled. Accordingly, the identity, qualifications, and legal authority of the person acting as guardian must be clearly established before the marriage contract is concluded (Aditya & Fathullah, 2023; Faizah, 2024).

The majority of scholars from the Maliki, Shafi'i, and Hanbali schools maintain that a woman may not independently conclude her own marriage contract and that authority belongs to her *nasab* guardian in accordance with the prescribed order of paternal kinship. By contrast, the Hanafi school permits a legally competent adult

woman to conclude her own marriage under certain conditions. This difference reflects, in part, differing readings within *usul al-fiqh* of the hadith “there is no marriage except with a guardian”: the majority schools read the negation as establishing an absolute, definitional requirement of guardianship for validity, whereas Hanafi jurists tend to read it either as directed primarily at minors and those of unsound judgement, or as an exhortation to propriety (*nadb*) rather than a strict condition of validity for a legally competent adult woman, provided the marriage causes no harm and the match is suitable (*kufu'*). Although this difference demonstrates the diversity of Islamic jurisprudential opinions, its application in Indonesia must be understood within the framework of the Compilation of Islamic Law and the regulations governing Muslim marriages, which have deliberately adopted the majority position regardless of this ongoing juristic debate. A guardian does not merely express approval but also verifies the absence of marital impediments, protects the interests of the bride, and ensures that the marriage is performed according to the applicable legal requirements (Saifurrijal et al., 2025).

The Compilation of Islamic Law recognizes two categories of marriage guardians: a *nasab* guardian and a state-appointed guardian or *wali hakim*. When a *nasab* guardian is unavailable, cannot be located or presented, does not meet the applicable requirements, or refuses to solemnize the marriage without a legally justified reason, guardianship authority may be transferred to a state-appointed guardian through the prescribed legal procedure. The absence of a *nasab* guardian therefore does not authorize the parties to appoint an arbitrary individual, falsely present a person as the bride's biological father, or transfer guardianship without verification by the competent authority (Compilation of Islamic Law, 1991).

Although the concept of *wali muhakkam* is discussed in some works of classical Islamic jurisprudence, its application is limited and cannot be separated from the particular circumstances in which it was recognized. The concept is not established as the ordinary mechanism for replacing a *nasab* guardian under the Compilation of Islamic Law. Consequently, a *wali muhakkam* cannot be appointed freely when a legitimate *nasab* guardian remains available or when access to a state-appointed guardian is legally possible. The use of an unauthorized guardian illustrates a discrepancy between community understandings, certain classical jurisprudential concepts, and the guardianship procedures applied within the Indonesian Islamic family-law system (Mardiah et al., 2022).

In this study, *siri* marriage refers to a marriage conducted without registration by the competent authority. However, the absence of registration is not the only issue determining its religious and legal status. Its validity must also be assessed by examining the authority of the guardian, the presence of witnesses, the fulfilment of the marriage requirements, and the absence of legal impediments. An unregistered marriage cannot automatically be regarded as religiously valid when the person acting as guardian has no lawful authority or when one of the parties remains legally bound by a previous marriage. The issue therefore operates at two interconnected levels: the validity of the marriage contract under Islamic law and the legal certainty of the marriage under Indonesian positive law.

The consequences of an unregistered marriage conducted without a legitimate *nasab* guardian extend beyond the jurisprudential debate regarding the validity of the contract. The absence of marriage registration may weaken a woman's legal position in cases involving financial maintenance, abandonment, domestic violence, divorce, and the division of marital property. Children born from such marriages may also encounter administrative and civil difficulties concerning birth registration, proof of descent, family relationships, financial maintenance, custody, and inheritance. Marriage registration should therefore not be understood merely as an administrative obligation but as an instrument to ensure legal certainty and protect the rights of women and children.

This issue was identified in Tanjung Pinggir Village, Siantar Martoba District, Pematangsiantar City. Preliminary field inquiries revealed more than five cases of marriages conducted privately, without registration by the Office of Religious Affairs and without the involvement of a *nasab* guardian in accordance with the applicable requirements. However, only three couples agreed to participate in this study; the remaining cases and the reasons for their non-participation are discussed as a limitation in Section B. The identified practices included presenting a man with no genealogical relationship to the bride as her biological father and marriage guardian, appointing a *wali muhakkam* when no *nasab* guardian was available, and conducting a marriage while the woman remained legally bound to a previous husband. These practices demonstrate a gap between the legal rules governing marriage and the procedures followed within the community. They were associated with limited legal literacy, economic pressure, family circumstances, and the preference for procedures perceived as easier and more accessible.

Previous studies have examined *siri* marriage primarily from the perspectives of registration, legal recognition, and the protection of women and children. These studies demonstrate that the absence of registration may create difficulties in proving marital status and obtaining maintenance, inheritance, identity documents, and other civil rights. They also emphasize the importance of judicial marriage validation and official registration in providing legal certainty. However, such studies generally discuss the consequences of unregistered marriage without specifically examining how the absence of a legitimate guardian affects the validity of the marriage contract (Kharisudin, 2021; Ningrum, 2025; Zakaria & Saad, 2021).

Other studies have focused more specifically on marriage guardianship and the replacement of a *nasab* guardian. The appointment of a customary or clan leader as a marriage guardian demonstrates that local traditions may influence community understandings of guardianship authority (Mardiah et al., 2022). The use of a state-appointed guardian without the knowledge of the *nasab* guardian has also been examined from the perspective of marriage officials and the procedures applicable when couples seek to conceal family circumstances or social disgrace (Sari & Sasmito, 2022). In addition, previous findings indicate that a *wali muhakkam* or an individual acting as a state-appointed guardian without formal authorization may still be used in unregistered marriages, even though the required transfer of guardianship authority has not been legally established (Hendri et al., 2023).

Despite these contributions, previous research has generally treated unregistered marriage, the absence of a *nasab* guardian, the use of a substitute guardian, and the protection of family rights as separate issues. Limited attention has been given to cases in which the absence of registration coincides with the use of an unauthorized guardian and the existence of other legal impediments. Therefore, an integrated analysis is needed to explain not only whether such marriages are legally valid but also why they continue to occur and how they affect the legal status and protection of wives and children.

The novelty of this study lies in its integrated normative-empirical analysis of unregistered marriage without a *nasab* guardian, drawing on three interrelated legal frameworks: Islamic family jurisprudence, the Compilation of Islamic Law, and Indonesian positive law. The analysis is grounded in empirical evidence obtained from three couples in Tanjung Pinggir Village. It assesses the legal authority of the persons acting as guardians, the mechanisms used to replace an unavailable *nasab* guardian, the social and economic factors underlying these practices, and their implications for marital status and family protection. This approach connects law as formulated in legal norms with law as understood and practiced within society.

Based on this research gap, the study examines the forms and underlying factors of unregistered marriages without a *nasab* guardian in Tanjung Pinggir Village; assesses the validity of these marriages under Islamic jurisprudence, the Compilation of Islamic Law, and Indonesian positive law; and analyzes their legal and social implications for wives and children. This study argues that the problem cannot be reduced to the absence of marriage registration. It is also connected to limited understanding of the order of *nasab* guardians, the procedure for obtaining a state-appointed guardian, legal impediments to marriage — including statutory grounds for divorce that may resolve such impediments — and the consequences of employing an unauthorized guardian. The findings are expected to provide a foundation for strengthening family-law education, access to state-appointed guardianship, resolution of previous marital status, and marriage-registration services through the Office of Religious Affairs.

B. METHOD

This study employed normative-empirical legal research with a qualitative approach and a case-study design (Benur & Azhar, 2020; Rashid et al., 2019). The normative component examined the provisions governing marriage guardianship, marital impediments, and marriage registration based on Islamic family jurisprudence, the Compilation of Islamic Law, and Indonesian statutory regulations (Compilation of Islamic Law, 1991; Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974; Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019). The empirical component investigated the practice of unregistered marriage without a lawful *nasab* guardian in Tanjung Pinggir Village, Siantar Martoba District, Pematangsiantar City. Preliminary field inquiries identified more than five cases, but only three couples agreed to participate. The participants were purposively selected for their direct involvement in such marriages, knowledge of the marriage-contract process, and willingness to provide information. Supporting informants included local religious

figures and the head of the neighborhood association, who were selected for their knowledge of marriage practices in the community.

Because the interviews explored information that could carry legal or social consequences for participants — most notably in Couple 3's account of contracting a marriage while a prior marriage remained legally undissolved — the informed-consent process explained to participants both the voluntary and confidential nature of their participation and the fact that their circumstances would be discussed, in anonymized form, in relation to their legal status under Islamic and Indonesian law. [Author to confirm and insert any formal ethical clearance reference, if obtained, and to describe the specific consent procedure used in more detail.] All names, ages, and identifying details reported in this article have been altered or generalized to prevent identification of the participating couples within the village.

Of the more than five cases initially identified, only three couples agreed to participate; the remaining cases could not be included. [Author to add, if known: the general reasons given by non-participating couples for declining, and the authors' assessment of whether this non-response is likely to have skewed the three participating cases toward more or less severe irregularities than the fuller set of cases in the village.] This non-response should be read as a limitation on the representativeness of the three cases analyzed below, and the findings are accordingly presented as an in-depth account of these three cases rather than as a claim about the full distribution of guardianship irregularities in Tanjung Pinggir Village.

The study used primary and secondary data. Primary data were collected through semi-structured, in-depth interviews with the three participating couples, local religious figures, and the head of the neighborhood association. The interviews explored the circumstances leading to the marriages, the identity and authority of the persons acting as guardians, the procedures followed during the marriage contracts — including, where obtainable, the fulfilment of *mahr* and the presence of witnesses — the reasons for not using a *nasab* or state-appointed guardian, the status of marriage registration, whether children had been born of the marriage, and the consequences experienced by wives and children. Interview data were supported by field observations and an examination of available documents related to the marriages. Secondary data were obtained through a literature review of the Qur'an, hadith, Islamic family-jurisprudence texts, the Compilation of Islamic Law, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Regulation of the Minister of Religious Affairs Number 20 of 2019 concerning Marriage Registration, and relevant scholarly publications. Participation was voluntary, and the couples' identities were anonymized in the presentation of the findings.

The data were analyzed through transcription of interviews, data reduction, coding, categorization, comparison with applicable legal norms, and conclusion drawing. The empirical findings were classified into three principal themes: the forms and underlying factors of unregistered marriage without a *nasab* guardian; the legal authority of the person acting as guardian and the validity of the marriage contract; and the legal and social implications for wives and children. Each finding was subsequently

compared with Islamic family jurisprudence, the Compilation of Islamic Law, and Indonesian positive law. Data credibility was strengthened through source triangulation by comparing information obtained from the participating couples, religious figures, the head of the neighborhood association, field observations, and available documents. The consistency of the normative analysis was assessed by comparing official regulations, Islamic legal sources, and relevant scholarly literature (Muid et al., 2025).

C. RESULTS AND DISCUSSION

1. Forms and Underlying Factors of Unregistered Marriage Without a Nasab Guardian

The findings demonstrate that unregistered marriages without a *nasab* guardian in Tanjung Pinggir were conducted privately, were not registered with the Office of Religious Affairs, and did not follow the prescribed procedure for transferring guardianship authority from a *nasab* guardian to a state-appointed guardian. Preliminary field inquiries identified more than five cases, although only three couples agreed to participate, for the reasons and with the limitations noted in Section B. As summarized in Table 1, the cases involved different irregularities: the use of a man with no genealogical relationship to the bride as her guardian, the appointment of a *wali muhakkam* without following the state-appointed guardian mechanism, and the performance of a marriage while the woman remained legally bound by a previous marriage.

Aspect	Couple 1	Couple 2	Couple 3
Husband-wife ages	20–18 years	40–34 years	27–22 years
Year of marriage	2021	2023	2025
Form of practice	A man who was not a nasab guardian was presented as the bride's biological father and acted as the marriage guardian.	A wali muhakkam was appointed because no guardian from the bride's paternal line was available.	The marriage was conducted while the woman remained legally bound by a previous marriage and involved a wali muhakkam.
Mahr/witnesses reportedly present	[author to confirm]	[author to confirm]	[author to confirm]
Children born of the marriage	[author to confirm]	[author to confirm]	One son

Table 1. Profiles and Forms of Unregistered Marriage Without a Nasab Guardian. Rows marked [author to confirm] reflect information not fully verifiable from the data collected during the

original fieldwork and should be completed or removed by the authors based on their interview records. Source: Field data, 2025.

In Couple 1, the whereabouts of the bride's biological father were unknown. This circumstance should have been addressed by examining the prescribed order of eligible *nasab* guardians. If no eligible guardian could be located, the couple should have applied for a state-appointed guardian. Instead, they asked a man with no genealogical relationship to the bride to present himself as her biological father and act as the marriage guardian. This arrangement was adopted because the parties did not understand the appropriate procedure when a *nasab* guardian could not be located. The problem therefore involved both the absence of a lawful guardian and the misrepresentation of the substitute guardian's identity. [Author to confirm whether this couple has any children and, if so, add a brief note on their civil status consistent with the discussion of Couple 3's child in the implications section below.]

Couple 2 faced different circumstances. The bride's father and paternal grandfather had died, and no male relative from the paternal line was available to serve as a *nasab* guardian. The couple consequently appointed a *wali muhakkam* by mutual agreement. The appointed person did not claim to be the bride's biological father but performed the guardian's function because the parties considered him knowledgeable in religious matters. They assumed that the absence of a *nasab* guardian could be resolved by selecting a trusted religious figure. However, they were unaware that the Indonesian Islamic family-law system provides a state-appointed guardian when a *nasab* guardian is absent, cannot be located, or cannot be presented. [Author to confirm whether this couple has any children and, if so, add a brief note on their civil status.]

Couple 3 presented a more complex case. The woman remained legally married to her previous husband, who was serving a fifteen-year prison sentence. Without first obtaining a divorce judgment from the Religious Court, she entered into an unregistered marriage with another man. Her biological father was neither involved in nor informed of the marriage, and a *wali muhakkam* appointed by the parties performed the guardian's function. The decision was influenced by economic and psychological pressures because the woman was responsible for supporting her three children. A son was subsequently born from the unregistered marriage. This case therefore involved three interconnected problems: an unauthorized guardian, the absence of marriage registration, and the continuing validity of the woman's previous marriage as a legal impediment to a subsequent marriage — an impediment that, as discussed further below, a specific and accessible statutory remedy could have resolved.

A comparison of the three cases indicates that limited legal knowledge was the most consistent underlying factor. The parties generally regarded mutual consent, the presence of witnesses and a person considered knowledgeable in religion, and the performance of *ijab kabul* as sufficient to validate a marriage. They did not adequately understand the order of *nasab* guardians, the authority of a state-appointed guardian, the legal consequences of employing an unauthorized guardian, or the protective function of marriage registration. Economic pressure was particularly influential in

Couple 3, whereas inadequate understanding of guardianship procedures was the principal factor in Couples 1 and 2.

These findings indicate that unregistered marriage without a *nasab* guardian cannot be explained solely by poverty or the intention to avoid administrative requirements. The practice also reflects limited literacy concerning Islamic family law and the assumption that social or religious recognition is sufficient to establish marital validity. Earlier studies similarly demonstrate that unregistered marriage is often considered religiously valid despite the absence of official registration, while its potential legal consequences for women and children receive insufficient attention (Nurrahmah & Sa'adah, 2025; Simbolon & Ridwan, 2025). The present findings extend this understanding by demonstrating that social recognition of a marriage contract does not necessarily mean that all its essential elements have been fulfilled. The legal consequences become more serious when the absence of registration is accompanied by a defective guardianship arrangement or an existing marital impediment.

2. Guardianship Authority and the Validity of the Three Marriages

A guardian occupies an important position in Islamic marriage jurisprudence because guardianship is directly related to the validity of the marriage contract and the protection of the prospective bride. This position is based, among other legal sources, on the following hadith of the Prophet Muhammad (peace be upon him):

عَنْ أَبِي مُوسَى، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا نِكَاحَ إِلَّا بِوَلِيٍّ

"Abu Musa narrated that the Messenger of Allah (peace be upon him) said, 'There is no marriage except with a guardian.'" (Abu Dawud, n.d.; M. ibn 'Isa Al-Tirmidhi, n.d.; M. ibn Y. Al-Tirmidhi, n.d.).

This hadith constitutes one of the principal foundations for the majority of scholars from the Maliki, Shafi'i, and Hanbali schools in recognizing the guardian as an essential element of marriage. According to this position, a woman may not independently conclude her own marriage contract, and the authority to solemnize it belongs to her *nasab* guardian in accordance with the prescribed order of paternal kinship. Therefore, the identity, qualifications, and legal authority of the person acting as guardian must be established before the marriage contract is concluded (Faizah, 2024; Saifurrijal et al., 2025).

The Hanafi school permits a legally competent adult woman to conclude her own marriage under certain conditions, particularly when the prospective husband is considered compatible, and the marriage does not cause harm; as noted in the Introduction, this rests on a different reading of the same hadith's scope rather than on rejecting the guardian's role outright. However, this difference of jurisprudential opinion cannot be applied independently of the legal framework governing Muslim marriages in Indonesia. The Indonesian Islamic family-law system recognizes guardianship as an essential element of marriage. Reliance on an isolated jurisprudential opinion therefore does not eliminate the obligation to follow the guardianship and registration mechanisms applicable in Indonesia.

The finding concerning the use of a man with no genealogical relationship to the bride indicates a clear discrepancy between community practices and Islamic guardianship provisions. A person cannot be recognized as a *nasab* guardian solely on the basis of an agreement between the parties, social recognition, religious knowledge, or a personal relationship with the couple. Similarly, a *wali muhakkam* cannot be appointed freely when a legitimate *nasab* guardian or a state-appointed guardian remains legally available. The use of an unauthorized guardian directly affects the validity of the marriage contract (Hendri et al., 2023; Inayatillah, 2024).

When a *nasab* guardian is unavailable, cannot be located, does not meet the applicable requirements, or refuses to solemnize the marriage without a legally justified reason, guardianship authority cannot be transferred to an arbitrary individual. The matter must be resolved through a state-appointed guardian following the required examination and legal procedures. This mechanism is necessary to verify the guardian's authority, ensure the validity of the marriage contract, and prevent disputes concerning marital status and the civil relationship between the parties (Sari & Sasmito, 2022).

The concept of *wali muhakkam* is recognized in some works of Islamic jurisprudence as a person appointed by a couple to serve as guardian under highly restricted circumstances, particularly when neither a *nasab* guardian nor a state-appointed guardian can be found. However, it is not intended as an unrestricted alternative when state-appointed guardianship services are available. Employing a *wali muhakkam* despite the accessibility of the Office of Religious Affairs removes institutional examination of the parties' legal status, the order of eligible guardians, the bride's consent, and possible impediments to marriage. Previous findings similarly demonstrate that appointing a guardian based on customary practice or social trust may create disharmony between community practices, Islamic legal provisions, and Indonesian positive law (Mardiah et al., 2022).

The Compilation of Islamic Law identifies the marriage guardian as an essential requirement for the bride. It recognizes two categories of guardianship: a *nasab* guardian and a state-appointed guardian. The order of *nasab* guardians is determined by paternal kinship. A state-appointed guardian may act when the *nasab* guardian is absent, cannot be found, does not meet the legal requirements, or refuses to solemnize the marriage. When a *nasab* guardian refuses without a legally acceptable reason, the transfer of authority to a state-appointed guardian requires a determination by the Religious Court (Compilation of Islamic Law, 1991).

These provisions provided a clear legal solution for Couples 1 and 2. The uncertainty concerning the biological father's whereabouts in Couple 1 did not authorize another man to be falsely presented as the father. Similarly, the absence of an eligible *nasab* guardian in Couple 2 did not authorize the couple to appoint their own *wali muhakkam*. Both cases should have been referred to a state-appointed guardian after the existence and order of eligible *nasab* guardians had been examined. The findings therefore indicate that the problem did not arise from a legal vacuum but from the failure to use an available legal mechanism.

The Marriage Law recognizes religious law as the basis for marital validity and requires that every marriage be officially registered. For Muslim couples, compliance with religious law entails fulfilling the essential elements and requirements stipulated in the Compilation of Islamic Law, while registration provides authentic evidence and protects the parties' legal rights (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1974). Law Number 16 of 2019 amended the minimum-age provisions but did not eliminate the rules concerning religious validity and marriage registration (Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019). Accordingly, the problems identified in the three cases were not limited to the absence of marriage certificates but also concerned marriage contracts that did not comply with the guardianship mechanism governing Muslim marriages in Indonesia.

The marriage contract of Couple 1 did not comply with the guardianship provisions of the Indonesian Islamic family law system. The man acting as guardian had no genealogical relationship with the bride and had not been formally authorized as a state-appointed guardian. Presenting him as the bride's biological father also involved misrepresentation of his legal status. According to the majority position, a marriage contract concluded by an unauthorized guardian does not fulfill the guardianship requirement. Under the Compilation of Islamic Law, guardianship authority should have been transferred to a state-appointed guardian after the whereabouts and status of the eligible *nasab* guardians had been investigated. Because the marriage was also unregistered, the couple did not possess official evidence establishing their marital status.

The marriage of Couple 2 demonstrates the distinction between the possible recognition of a *wali muhakkam* in certain classical jurisprudential opinions and the legal mechanism applicable in Indonesia. The absence of a *nasab* guardian provided a legal basis for transferring guardianship authority. However, under the Indonesian Islamic family-law framework, the authorized recipient of that authority was a state-appointed guardian rather than an individual personally selected by the couple. The parties' intention to obtain a substitute guardian was therefore insufficient to make the procedure consistent with the Compilation of Islamic Law. The case demonstrates that the absence of a *nasab* guardian should be resolved through an authority capable of verifying the parties' status and ensuring the validity of the marriage contract.

3. Couple 3 and the Overlooked Statutory Ground for Divorce

The marriage of Couple 3 faced two principal validity problems in addition to the absence of official registration. First, a *wali muhakkam* was used without following the state-appointed guardian mechanism and without involving the bride's biological father. Second, the woman remained legally bound by her first marriage because no divorce judgment had been issued by the Religious Court. A woman who remains married to another man is prohibited from entering into a subsequent marriage (Compilation of Islamic Law, 1991). The first husband's imprisonment did not automatically terminate the marriage. Although the woman experienced economic hardship and required support for her children, these circumstances could not eliminate

the legal requirement to terminate the previous marriage through a lawful divorce procedure before entering into another marriage.

This case in fact fell squarely within an accessible statutory remedy that the parties appear not to have known about. Article 116(c) of the Compilation of Islamic Law recognizes the imprisonment of a spouse for five years or more, occurring after the marriage, as an independent ground on which the other spouse may petition the Religious Court for divorce. The first husband's fifteen-year sentence comfortably satisfied this threshold. Rather than entering into an unauthorized second marriage, the woman could have petitioned for divorce on this specific statutory ground, obtained a lawful determination of her marital status, and then pursued a properly guardianship and registered subsequent marriage. This finding sharpens the practical implication of the case: the failure here was not only a matter of guardianship or registration but also a missed, readily available legal pathway that public legal education — particularly by the Office of Religious Affairs — should make far better known in communities such as Tanjung Pinggir.

The three cases therefore present different levels of legal irregularity. Couple 1 employed an unauthorized guardian and misrepresented his identity; Couple 2 used a substitute-guardian mechanism that did not comply with the Compilation of Islamic Law; and Couple 3 simultaneously faced guardianship, registration, and marital-impediment problems that a specific statutory remedy could have addressed. Despite these differences, all three cases demonstrate a gap between community understandings and the applicable legal requirements. The validity of an unregistered marriage cannot be assessed solely by determining whether *ijab kabul* occurred. It must also be assessed by examining the parties' legal status, the guardian's authority, the presence of witnesses, the absence of marital impediments, and compliance with the marriage-registration procedure.

4. Legal and Social Implications for Women and Children

The absence of marriage registration left the female participants without official documents that could readily establish their marital status before state institutions. This condition weakened their position when claiming financial maintenance, division of marital property, or protection in the event of abandonment or marital disputes. Some participants expressed reluctance to claim their rights because they understood that their marriages had not been officially registered. These findings are consistent with previous research indicating that women in unregistered marriages are more vulnerable to abandonment, unilateral separation, and difficulties in obtaining legal protection (Ningrum, 2025).

Children may experience similar vulnerability. A child was born from the marriage of Couple 3 while the mother's legal relationship with her first husband remained unresolved. This situation may complicate birth registration, proof of descent, civil relationships, financial maintenance, custody, and inheritance. It is important to note, however, that Indonesian positive law does not leave such a child entirely without protection: Constitutional Court Decision Number 46/PUU-VIII/2010 established that a child born outside a registered marriage nonetheless has a civil relationship with their

biological father where that relationship can be proven through DNA evidence or other legally recognized means, and not solely through the fact of a registered marriage. This decision materially qualifies the concern raised here — the child's civil relationship with the biological father is judicially protected in principle, even though irregularities in the parents' marital status, including the unresolved status of the mother's first marriage, may still require additional administrative procedures or legal evidence before the child's documentary rights (birth certificate, family card, inheritance claims) can be fully and straightforwardly realized. This finding confirms that marriage registration and clarity of descent remain important components of child protection even where the underlying biological relationship is not itself extinguished by administrative irregularity (Safitri, 2024).

From a social perspective, an unregistered marriage conducted without a legitimate *nasab* guardian may place women in an unequal relationship. The absence of marriage documents may enable a husband to avoid responsibility more easily, while the wife faces obstacles in obtaining recognition and legal protection. When the relationship ends, the woman may also experience social stigma because the marriage was unregistered or its religious validity is disputed. Social acceptance of unregistered marriage as a means of avoiding illicit relationships may therefore conceal more fundamental problems, including the failure to fulfill essential marriage requirements, the existence of legal impediments, and the loss of family protection.

Taken together, an unregistered marriage conducted without a legitimate guardian and official registration may create interconnected legal and social consequences for women and children. The absence of legal proof weakens certainty concerning financial maintenance, marital property, inheritance, children's identity, custody, and the resolution of family disputes. The consequences demonstrate that the legal protection afforded by marriage cannot be measured solely by the performance of the marriage contract. It must also be assessed by the certainty of marital status, the fulfillment of family responsibilities, and the protection of vulnerable family members.

From the perspective of *maqāṣid al-sharī'ah*, marriage should contribute to the protection of religion, life, lineage, dignity, and property. However, the use of an unauthorized guardian, the concealment of marital status, and the absence of official registration may instead produce uncertainty concerning lineage, economic vulnerability, and disputes over family rights and responsibilities. When an unregistered marriage causes legal, social, psychological, and economic harm to women and children, the practice becomes inconsistent with the objectives of Islamic law because the resulting harm outweighs its expected benefit. These consequences are also inconsistent with the principle of *maṣlaḥah mursalah*, which prioritizes public welfare and the prevention of harm (Firdaus et al., 2021; Safitri, 2024).

The findings indicate that preventive strategies should extend beyond merely communicating normative prohibitions. The Office of Religious Affairs should strengthen public education concerning the order of *nasab* guardians, the procedure for obtaining a state-appointed guardian, the legal consequences of employing an unauthorized guardian, the lawful termination of a previous marriage — including

specific, accessible statutory grounds such as Article 116(c) of the Compilation of Islamic Law — and the importance of marriage registration. Religious figures and neighborhood officials should also direct couples toward formal legal procedures when no *nasab* guardian is available or when a previous marital status remains unresolved. Accessible consultation and legal assistance would enable community members to obtain solutions consistent with Islamic law and Indonesian positive law, without resorting to unregistered marriage as a convenient shortcut.

D. CONCLUSION

This study identified three forms of unregistered marriage without a *nasab* guardian in Tanjung Pinggir: the use of a man with no genealogical relationship to the bride who was presented as her biological father and marriage guardian; the appointment of a wali muhakkam when no *nasab* guardian was available; and a marriage conducted while the woman remained legally bound by a previous marriage. Under the jurisprudential position adopted by the majority of Islamic scholars, the Compilation of Islamic Law, and Indonesian positive law, the three practices did not comply with the applicable guardianship and marriage-registration mechanisms. The third case also involved a legal impediment because the woman's first marriage had not been terminated through the Religious Court, even though her husband's imprisonment for fifteen years satisfied the independent statutory ground for divorce under Article 116(c) of the Compilation of Islamic Law — a lawful and accessible pathway the parties appear not to have known about. Limited understanding of the order of *nasab* guardians, the authority of state-appointed guardians, marital impediments and their statutory remedies, and the function of registration was the most consistent factor, while economic pressure reinforced the decision in one case. These practices weakened legal certainty regarding marital status and increased the vulnerability of wives and children in securing maintenance, marital property, identity documents, custody, and other civil rights, although Constitutional Court Decision Number 46/PUU-VIII/2010 provides some protection for a child's civil relationship with their biological father independent of the parents' marital irregularities.

The findings indicate the need to strengthen Islamic family-law education through accessible consultation and assistance. The Office of Religious Affairs should expand public education on the order of *nasab* guardians, procedures for obtaining a state-appointed guardian, the lawful dissolution of previous marriages — including the specific statutory grounds for divorce — and the importance of marriage registration. Religious figures and neighborhood officials should direct couples to formal legal mechanisms when no *nasab* guardian is available or when marital status remains unresolved. This study was limited to three couples in one village, selected from a larger pool of identified cases of whom only these three agreed to participate; it therefore does not represent all forms of unregistered marriage without a *nasab* guardian, and the non-participation of the remaining cases should be treated as a caution against generalizing beyond the three cases examined here. Future research should include broader locations and participant groups, examine the effectiveness of state-appointed guardianship services, legal education, and assistance in resolving marital status, and further

investigate why couples in similar circumstances decline to participate in research of this kind.

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