

The Problematization of Marriage Registration on Indonesia and Malaysia

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ABSTRACT

Registration of marriages has long been an issue of legal debate in Indonesia and Malaysia. Whether marriages are legally religious and still need to be registered or unregistered is a polemic that has not been resolved until now. Even though marriages that are not registered do not have legal protection from the State, which is detrimental to the wife and children, this study aims to reveal the problematic facts of marriage registration in Indonesia and Malaysia. The main problem in this research is the background of unregistered marriages and what negative impacts will occur in marriages not registered in Indonesia and Malaysia. This study is field research. Data was collected through interviews and documentation. The approach in this research is sociological juridical. Data analysis techniques are carried out in stages: data reduction, data presentation, and conclusion. The data validity technique used in this study is source triangulation. An important finding from this study is that eight factors cause marriages not to be registered; factors of dualism, rules, economy, education, pregnancy out of wedlock, polygamy, different religions, underage marriage, and social influences. Meanwhile, the impact of unregistered marriages can be seen from four sides; legal, social, psychological, and economical.



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1. Introduction

Marriage registration is very useful for family members; wife, children, and husband. However, this good intention is often misinterpreted by some parties who think marriage does not need to be registered with the authorities. (Danar Syamdan & Purwoatmodjo, 2019) In Indonesia and Malaysia, many marriages are still not registered for various underlying reasons. This unregistered marriage turned out to give birth to many problems in the future. (Gunawan, 2013) The various problems that arise from unrecorded marriages have caused many experts to try to dig deeper into the core of the problem in this matter. Registering marriages is always an actual issue because victims always fall from time to time. In various seminars and discussions, the issue of registering

marriages is often the issue discussed. On the one hand, some think that marriages do not need to be recorded because they are legal from a religious perspective, but on the other hand, many require the Registration of marriages because of the many negative impacts it causes.

One of the negative impacts that a wife receives if she marries unregistered is that the husband is free to remarry because a previous marriage that was not recorded is considered invalid in the eyes of the law. On the other hand, husbands can also circumvent and avoid the obligation to provide for their wives and children, and husbands are also not legally obligated to share *gono gini* assets, living expenses, and inheritance. As stated by the Minister of Social Affairs, Khofifah Indar Parawansa, unregistered marriages are the most significant contributor to the high number of cases of domestic violence and other cases where women and children are victims. In this case, women and children suffer the most because they do not receive administrative protection from the Government. (Noer Firdaus et al., 2021)

This negative impact can be prevented if the marriage is officially registered. The wife in a valid marriage has the right to file a lawsuit, demand accountability, or seek legal protection. The wife has proof of marriage, and she can sue justice with that proof of marriage. Husbands who are irresponsible and commit acts of violence can be jailed. (Arsyad, 2020) To avoid the negative impacts that unregistered marriages can cause, the Government has enacted a law regarding marriage registration, namely Marriage Law No. 01 of 1974 article 2, which reads, "Every marriage is recorded according to the applicable laws and regulations." Then this provision was clarified in Chapter II of Government Regulation (PP) Number 9 of 1975 concerning Marriage; In essence, a new marriage is deemed to have legal force before the law if it is carried out according to religious rules and has been registered by a marriage registrar determined by law. (Jlir, 2018) Meanwhile, in Malaysia, the rules for registering marriages are contained in the marriage law for state states, which are regulated in the Enactments found in each State. Meanwhile, the marriage law for the Federal Territory is regulated in Deed 303 of the 1984 Islamic Family Law (Federal Territories). (Mahmood, 1998) . The rules and intentions of the Government above are very good when implemented, but some people still carry out marriages that are not registered. (Fauzan, 2020)

Research related to marriage registration has been done before; research conducted by Hendri Kori and Husna Farianti Amran with the title "Registration as a condition for 'legal' marriage; (Nasution's Khoiruddin Thought Study)." This research focuses on Khoiruddin Nasution's thoughts on Registration as a legal condition for marriage and the methods he uses to establish Registration as a legal condition. Based on the source of data acquisition, this research is included in library research. This research is included in qualitative research based on how to process and analyze it. Data analysis techniques in this study used descriptive analytic methods and content analysis. This research shows that according to Khoiruddin, Registration is not only an administrative requirement but also a legal requirement for marriage; Recording functions as a condition and pillar of marriage. The reason is the similarity of *the divine* (legal cause/motive) between marriage registration, marriage witnesses, and *walimah*. *Ilah nikah* and witness *walimahan* which were in effect during the time of the Prophet Muhammad SAW, were a means of community recognition and guarantee of rights.

Meanwhile, the forms of recognition and guarantees of present rights are no longer sufficient with witnesses and guardianship; written evidence (deeds) is required. He uses a holistic thematic method to define Registration as a condition for 'legal' marriage. (Kori & Amran, 2021) Nasrudin, Nur Muhammad Kasim, and Lusi Margareth Tijow conducted a second study entitled " Marriage Registration Based on the Objectification of Islamic Marriage Law in Indonesia ." Marriages that are not registered have many negative impacts on the continuity of the household, even though regulations regarding Isbat marriages have been issued. The legal consequence for marriages that do not have a marriage certificate is that legally the husband/wife and the children born cannot perform civil law actions relating to their household. This study aims to identify and analyze marriage registration based on the objectification of Islamic marriage law in Indonesia. The research method used is normative juridical with a legal and case approach. Sources of legal materials are primary (primary) and complementary sources of (secondary) legal materials, as well as data obtained through qualitative research, which are then presented descriptively and explain issues closely related to this research. The results of this study indicate that unregistered marriages have implications for the legal status of marriage and the legal status of children, as well as the inheritance system, causing legal uncertainty. (Nasrudin et al., 2021) Based on previous studies,

researchers are interested in conducting an in-depth study of the problems of registering marriages in Indonesia and Malaysia. Issues that cause and impact marriages that are not recorded will be analyzed in-depth and thoroughly using a sociological juridical approach.

2. Research Method

This study is field research. Data was collected through interviews and documentation, namely the study of primary and secondary legal materials. This study's primary legal material is Indonesia and Malaysia's marriage law and lower regulations. Meanwhile, secondary legal material is in the form of all legal publications that are not official documents. Publications about law include textbooks, legal dictionaries, legal journals, and comments on court decisions. (Ishaq, 2017) The informants in this study were marriage registrars at the Civil Registry Office, husbands and wives whose marriages were not recorded, religious leaders, and community leaders in Indonesia and Malaysia. The choice of location for Indonesia and Malaysia is because these two countries have a very close relationship between customs and traditions, and these two countries are countries where the majority of the population is Muslim. In determining informants, researchers used a purposive sampling technique; the goal is that the data obtained is more accurate and on target. The approach used in this study is a sociological juridical approach (Huda, 2022) because this study is a legal study that looks at social reality. This sociological juridical approach is used to discover and describe facts related to the problem of unregistered marriages. Data analysis techniques are carried out in stages: data reduction, data presentation, and conclusion. The data validity technique used in this study is source triangulation. (Miles & Huberman, 2014)

3. Results and Discussion

3.1. Marriage Registration in Indonesia and Malaysia

Academics and interested parties have long debated the legal Registration of marriages in Indonesia and Malaysia. In Indonesia, this issue has been rolling since marriage was regulated through Law No. 1 of 1974, this law consists of 14 chapters and 67 articles, and for implementation, it is supplemented by Government Regulation No. 9 of 1975 concerning implementing regulations and was declared effective from October 1, 1975. (Harisudin & Choriri, 2021; Latupono, 2019) Like Indonesia, the Malaysian Government regulates marriages carried out by its people through laws. However, in Malaysia, the law is slightly different from that in Indonesia, which applies to all regions of Indonesia; in Malaysia, each state/province has its law. The marriage law for the states is regulated in the Enactment, which is found in each State. Meanwhile, the marriage law for the Federal Territory is regulated in Deed 303 of the 1984 Islamic Family Law (Federal Territories). (Mahmood, 1998) Regarding the occurrence of marriage registration, the parties can defend the marriage to anyone before the law. On the other hand, by not registering a marriage, the marriage carried out by the parties has no legal force and evidence as a marriage. (Usman, 2017) Unregistered marriages, even though they are legally religious, often give rise to problems later on, and these problems can be minimized through the Registration of marriages. Problems that will arise are better avoided. Avoiding problems/harm is more important, and every disadvantage must be eliminated. (Halim & Abdullah, 2008; Jafar, 2022) These two marriage laws, both in Indonesia and Malaysia, state explicitly that marriages must be registered. In Indonesia, Law No. 1 of 1974 article 2 states that every marriage must be registered according to the applicable laws and regulations. This means that every marriage must be followed by Registration of the marriage according to the applicable laws and regulations. (Sanger, 2015) While the procedures for the registration process itself are regulated in government regulation no. 9/1975 concerning the implementation of law no. 1 of 1974 concerning marriage from article 2 to article 9. (Mudar, 2018)

Marriage law in Malaysia also requires the Registration of marriages. This can be seen in the chapter on Marriage article 22 concerning Registration of marriages paragraphs (1,2, and 3), Deed of Law The Islamic Family (Federal Territories) 1984 (deed 303). Article 22 mentions: in paragraph (1) after the marriage contract is carried out, the registrant must record the points of the agreement stipulated in the contract. Paragraph (2) The record must be acknowledged by the guardian and two witnesses other than the registrar who were present at the time of the marriage

contract. Paragraph (3) The record must then be signed by the registrant. (Lembaga Penyelidikan Undang-Undang, 2013)

The registration process is principally carried out after the marriage contract. It's just that in practice, there are three types of the registration process (Muzadhar & Nasution, 2003): first, for native Malaysians, the Registration of marriages is carried out immediately after the completion of the marriage contract, except in Kelantan, which stipulates seven days after the marriage contract, and the Registration is witnessed by the guardian and two witnesses and the registrar. As in the Pulau Pinang Law article 22 paragraph (1), it is stated, "after the marriage ceremony is carried out, the registrant must record the points of marriage. Second, native Malaysians marry at Malaysian embassies overseas. In this case, the registration process is the same for Malaysians who marry in their country. The difference is only in the registrar, not by the original registrant appointed in Malaysia, but by the registrar appointed at the Malaysian embassy or consul in the country concerned. As in the Law on Penang Island article 24 paragraph (1). Third, Malaysians who live abroad do not marry at a Malaysian embassy or consul in the country concerned. The procedure is for men who marry within six months after the marriage ceremony to register with the nearest embassy and consulate. If the person concerned returns to Malaysia before the end of the six months, he might also register in Malaysia. This provision is based on Article 29, paragraph 1 of the Sarawak Law, the Kelantan Law, and the Negeri Sembilan Law. (Siddik, 2017)

For more details on laws and regulations regarding marriage registration, see table 1 below,

Table 1. Regulations concerning Marriage Registration

No	Regulations concerning Marriage Registration	
	Indonesia	Malaysia
1	Law Number 1 of 1974 concerning Marriage (article 2, paragraph 1)	Islamic Family (Federal Territories) Act 1984 (deed 303)
2	Government Regulation No. 9 of 1975	The Penang Law, the Sarawak Law, the Kelantan Law, and the Negeri Sembilan Law
3	Compilation of Islamic Law (Article 5, paragraphs 1 and 2)	
4	Regulation of the Minister of Religion Number 20 of 2019 concerning Marriage Registration	
5	Law Number 16 of 2019 about Marriage	

The difference between the two countries is that the marriage law in Indonesia applies universally throughout Indonesia without distinguishing it from certain areas. This makes matters easier for the marriage registration process in general. While in Malaysia, it is more complicated than in Indonesia. This is possible because Malaysia is a federal state, so each region in Malaysia has different laws. However, that is precisely the advantage of the marriage law in Malaysia; It's not easy for people who marry and divorce. However, concerning sanctions against marriages that are not recorded, the Malaysian State is firmer than Indonesia. A fine of around 1000 ringgit and imprisonment for six months will be threatened for those who do not register their marriage. While in Indonesia, only Rp. 7500,- no imprisonment sanction following article 45 government regulation number 9 of 1975 concerning regulations implementing Law no 1 of 1974. (Siddik, 2017)

3.2. The Factors Of Unregistered Marriage

Basically, the causes of unregistered marriages are almost the same in Indonesia and Malaysia. Several factors make a person choose to have an unregistered marriage. After conducting research, eight factors cause marriages not to be registered, including: first, the factor of regulations dualism; in Indonesia and Malaysia, there are two rules related to marriage, namely rules from the State and Islamic religious rules. This data is based on the results of interviews "the community often ignores the law regarding the Registration of marriages because they prefer the rules of Islamic law. Even though there are provisions for registering marriages in Islam, it is a shame that few people understand this rule of law. The dualism of the rule of law should have been merged into one." (Hakim, 2022) In fact, these two rules are not mutually exclusive; they even reinforce and complement each other. However, many people do not understand these two rules well, so they clash with the rules of religion with the rules of the State. (Zamroni, 2018) Many people do not

register their marriages because they reason that they are sufficiently married without having to be registered.(Sodiq, 2016)

Second is the economic factor. The cost of a wedding at this time is enough to spend much money, especially if the marriage is celebrated on a large scale. While on the other hand, some people still consider the cost of registering marriages quite high. This high cost is one of the causes of unrecorded marriages. This data is based on the results of interviews "not all people who are married are rich, sometimes they get married with minimal preparation. Even for weddings, they are already struggling and spending much money, especially for registering marriages" (Imron, 2022). This economic problem is why people do not register their marriages, so the marriages that have taken place are not legally recognized. (Sasnifa, 2018)

The third is the educational factor. The procession of marriage does not require having a higher education because marriage is a sacred and fundamental matter for every citizen. However, regarding social interaction, education influences the mindset of life and life. This data is based on the interview results: "My neighbor does not register his marriage because he thinks there is no benefit in having a marriage recorded. He thinks the marriage will be happy if everything is done voluntarily and there is no need to register. (Rahmat, 2022) In this case, subjects who marry without knowing the insights about rights and obligations and the consequences of marriage have an impact on their future life. An example of a case is a marriage that is not reported to a marriage registrar by a citizen with a low educational background, so he does not know the administrative and legal consequences of a marriage that is not registered at the marriage affairs office.(Zuhrah et al., 2020)

Fourth, the factor of pregnancy out of wedlock. Today's adolescents in association often do not recognize the boundaries of religious norms, so it is not uncommon for some to become pregnant before marriage. This data is based on interviews "the phenomenon of being pregnant before marriage among young women is often seen. When the marriage contract is held, sometimes the gestational age is already six months".(Zubaidah, 2022) This condition is exacerbated by the age of the bride and groom, and usually, when they want to apply for marriage at the religious affairs office, they are refused because they are not old enough.(Sanusi et al., 2022; Wahidullah & Umam, 2019) So that many parents are forced to order religious marriage first even though they cannot be registered with the authorities.(Rosdiana et al., 2020; Yuni, 2021)

Fifth is Polygamy Factor. One of the reasons marriages are not recorded is marriages in the framework of illegal polygamy to remove traces of being free from lawsuits. This data is based on interviews "the marriages of my two friends were not registered with the authorities because it was difficult to get permission from the first wife, especially since she works as a civil servant."(Mulyono, 2022) One of the causes of illegal polygamy is the fear of administrative punishment from the agency for civil servants; besides that, it is not known by existing wives and avoids permission for polygamy, which must be taken care of in court. (Endang Ali Ma'sum, 2013)

Sixth, the factor of different religions. Often there is a love relationship between two people of different religions; for example, Muslims and Christians, when they decide to continue their relationship to the level of marriage, they are hit by a rule that prohibits interfaith marriages, so to be able to marry people of different religions, they take marriage. which are not recorded by the authorities.(Fitrawati, 2021; Wahyuni et al., 2022)

Seventh is the factor of underage marriage. Another reason why marriages are not recorded is underage marriages. This data is based on interviews "some people think that their daughters should be married off immediately. The purpose of this early marriage is diverse, one of which is to avoid committing sins. (Farid, 2022) Early marriage has several negative impacts, one of which is the difficulty of obtaining a permit or marriage certificate because, in marriage, there is an age limit for the bride and groom that must be met. However, even though it is difficult to obtain a marriage certificate, the fact is that there are still many underage marriage practices in the community; this can be seen in the perpetrators of underage marriages who apply for dispensation of marriage to the local religious court.(Aditya & Waddington, 2021) The cause of underage marriages is that many underage children marry only to ease the burden on their parents. (Umanahu, 2022) To minimize

this negative impact, the Government is currently conducting marriage courses.(Anshor & Muttaqin, 2022; Hasyim et al., 2020)

Eighth, social influence factor. The condition of the surrounding environment greatly influences a person's mindset. Someone who lives in a community where they usually do not register their marriage will be lazy to register their marriage.(Hidayat et al., 2021) This data is based on the results of interviews "none of the residents in remote villages like this has registered their marriages. They married according to custom and religion. Everyday life is harmonious and peaceful, but sometimes some families are not harmonious and get divorced. (Kusnodiaji, 2022) Life in a rural village far from the development of information and technology causes their association and knowledge to be only around their area. So that when many residents do not register their marriages because they are already married according to custom and religion, the trend of not registering marriages will be followed by other residents as well.

The causes of unregistered marriages in Indonesia and Malaysia can be seen in the table below.

Table 2. The causes of unregistered marriages

No	The causes of unregistered marriages	Explanation
1	The factor of regulations dualism	The dualism of religious rules and state law makes some people reluctant to register their marriages because they think it is enough to marry religiously.
2	The factor of economic	Some people are reluctant to pay extra to register their marriage because their economy is unstable (poor).
3	The factor of educational	A person's level of education greatly influences his mindset. A person with a low level of education thinks that it is not important that marriage should be recorded
4	The factor of pregnancy out of wedlock	The condition of being pregnant out of wedlock causes parents to marry their children first, even though their marriage cannot be registered
5	The factor of polygamy	Polygamy has several requirements that must be met. Sometimes, some people do not register for their second marriage to avoid this requirement.
6	The factor of different religions	The prohibition on interfaith marriages is very strict so that couples of different religions cannot register their marriage
7	The factor of underage marriage	Marriage registration has a sufficient age requirement, so underage couples cannot register their marriage
8	The factor of social influence	Association with friends greatly affects one's mindset. Some people do not register for their marriages because they join in with their friends who do not register for their marriages

Source: Researcher's interpretation

3.3 The Problems of Marriage Unregistration

Marriages not registered with the authorities have many problems and negative impacts, both negative impacts on the perpetrators of the marriage itself and the wider community. The following are the negative impacts that researchers get after conducting in-depth research, including; first, the legal impact. Marriages that are not registered do not have legal standing (not recognized by the State) for their validity. Thus, marriages not registered with the authorities do not have legal protection for wives and children born from this marriage. In addition, children born out of wedlock only have civil relations with the mother and the mother's family. (Nawawi, 2020) This data is reinforced by social facts "divorce in marriages that are not recorded with the authorities cause many problems afterward; both matters of wealth going like this, living for children and so on. (Ghoni, 2022) Children born from this marriage cannot get proof or birth certificates that will be useful in the future for the administration of education, health, and others. Likewise, in terms of inheritance, wives and children from unregistered marriages cannot claim inheritance rights if the husband has died.(Jafar, 2019; Prasetyo, 2020; Supraptiningsih, 2021) The wife is also not entitled to joint property if there is a separation because your marriage is considered never to have

happened legally.(Hafas, 2021; Hamdi, 2018; Nasir, 2016) Marriages that are not recorded cause the rights that must be obtained by the wife and children to be neglected and even legally lost. Parents who are irresponsible and ignore the rights of their wives and children cannot be legally prosecuted because they have no administrative, or legal basis, even if, according to religious law, the marriage is valid.(Sukiati & Bancin, 2020)

Marriages that are not recorded cause the rights that must be obtained by the wife and children to be neglected and even legally lost. Parents who are irresponsible and ignore the rights of their wives and children cannot be legally prosecuted because they have no administrative, or legal basis, even if, according to religious law, the marriage is valid.(Al-Amruzi, 2021; Hanapi & Yuhermansyah, 2020) Second, social impact. Unregistered marriages have a social impact on the wife and the children born from the marriage. This data is based on social facts "a negative stigma attached to someone can make them shunned and even ostracized by society. There used to be a woman here whom residents expelled because she was accused of being the mistress of an official. The expulsion will never occur if he can prove his marriage is legal and registered with the authorities."(Raifa, 2022) Difficulties in socializing in the surrounding community because women whose marriages are not recorded will be considered to have lived under one roof with men without any valid marital ties; besides, the wife may be considered a woman mistress. Another impact that unrecorded marriages can cause is people not knowing the identity of the partner's status.(Rizky Amalia et al., 2022)

Third, the psychological impact. In the eyes of state law, marital status influences the psychology of the wife and children. Negative accusations are often made against women whose marriages are not registered, for example, accusations of being a usurper, a prostitute, etc. This accusation can be dropped if the woman has authentic proof of marriage. The psychological impact can also affect children born from unregistered marriages. For example, the child's birth certificate does not include the biological father's name so this child may feel differently. Without realizing it, this can affect the psychological condition of the child. (Negara, 2021) This data is based on social facts "women who are married without having their marriage recorded will bear a heavier psychological burden than women whose marriages are registered. When exposed to negative issues around his marriage, for example, he is accused of being a woman mistress, it will be difficult for him to dismiss these accusations. A friend of mine used to be accused of being a mistress, but because she had proof from a marriage book, it was easy to disprove the accusation. It's different if he does not have authentic proof of marriage registration; then he will be embarrassed and can't prove anything." (Erniwati, 2022)

Fourth, the economic impact. Unrecorded marriages affect the economic side of the family. This data is based on social facts "Assistance from the government currently requires a family card, so marriages that are not recorded cannot get assistance from the government, for example, Family Hope Assistance (PKH) from the Ministry of Social Affairs, which has quite a lot of funds."(Susilawati, 2022) The Government often assists families who are still classified as underprivileged, but these families must meet the administrative requirements. Meanwhile, marriages that are not registered can't complete these administrative requirements, so the family cannot get government assistance.(Imron, 2022; Munir, 2022) Likewise, if a marriage is not registered, one cannot apply for a loan from the bank because the bank only provides financial assistance to parties who can complete the administrative requirements. (Maimunah, 2022)

The problems of unregistered marriages in Indonesia and Malaysia can be seen in the table below,

Table 3. The problems of unregistered marriages

No	The impact of unregistered marriages	Explanation
1	Legal impact	Marriages that are not recorded are considered to have no legal standing (the State does not recognize its validity). Family members have no legal protection.
2	Impact socially	Difficulty in socializing in the surrounding community.
3	Psychological impact	The psychology of wives and children who come from marriage is not recorded more seriously because they often get

4	Economic impact	negative societal issues. Marriage is not recorded as difficult to get assistance from the Government or loans from banks because they cannot meet administrative requirements.
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Source: Researcher's interpretation

4. Conclusion

After conducting in-depth research related to the problems of marriage registration, the researchers obtained two important findings; first, eight factors cause community members to be reluctant to register their marriages; factors of rules dualism, economy, education, pregnancy out of wedlock, polygamy, different religions, underage marriage, and social influences. These eight factors arise due to the unpreparedness of the prospective couple who will marry mentally, physically, spiritually, and financially ready. Meanwhile, the impact of unregistered marriages can be seen from four sides; legal, social, psychological, and economic. The essence of the problem of marriages that are not recorded in the absence of legal protection for family members because the marriage is not considered valid by the State. When the State is not present to provide protection, family members who feel aggrieved cannot make demands or hold anyone accountable. The losses that befall family members can be material or non-material. Therefore, the Government must be able to minimize this negative impact by keeping the marriage registration program.

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