

Unregistered Marriage (*Nikah Sirri*) in Tanjung Palas, Indonesia: a Normative-Empirical Analysis Through the Maxim *Al-Dhararu Lā Yuzālu bi Al-Dharari*

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Abstract

Purpose - This study examines the persistent phenomenon of *nikah sirri* (unregistered marriage) in Tanjung Palas District, Bulungan Regency, despite ongoing formal and religious guidance. It aims to explore the socio-legal dynamics underlying the continued practice of *nikah sirri* and analyze it through the lens of the Islamic legal maxim *al-dhararu lā yuzālu bi al-dharari* ("harm cannot be eliminated by another harm").

Design/Methodology/Approach - The study employs a normative-empirical design using a qualitative descriptive approach. Primary data were collected through in-depth interviews, observation, and documentation, while secondary data were obtained from books, scholarly articles, the Qur'an, and previous academic works. Data were analyzed through systematic stages of data collection, reduction, presentation, and conclusion drawing.

Findings - The findings reveal that *nikah sirri* is driven by recurring factors, including premarital pregnancy, underage marriage, arranged marriage, intentions to enter polygamous unions, and the absence of divorce certificates from previous marriages. From the perspective of *al-dhararu lā yuzālu bi al-dharari*, *nikah sirri* does not serve as a legitimate mechanism for mitigating harm; instead, it creates additional legal and administrative difficulties, particularly in obtaining essential civil documents such as national ID cards, birth certificates, family cards, and other state administrative services.

Originality/Value - This study provides a contemporary evaluation of *nikah sirri* using the Islamic legal maxim *al-dhararu lā yuzālu bi al-dharari*, offering a socio-legal perspective that highlights its incompatibility with legal certainty and the protection of family rights within Indonesian society. The research contributes by demonstrating how the practice perpetuates—not eliminates—harm, thus enriching discussions on Islamic legal norms and modern administrative realities. This study contributes to socio-legal discourse by demonstrating that unregistered marriage contradicts Islamic legal principles of harm elimination, thereby supporting state policy on mandatory marriage registration.

Keywords: Unregistered Marriage (Nikah Sirri), Islamic Legal Maxims, al-Dhararu lā Yuzālu bi al-Dharari, Family Law

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I. INTRODUCTION

The marriage, widely known in Indonesia as *nikah sirri*, remains a persistent socio-religious phenomenon despite continuous efforts by state and religious authorities to promote legally registered marriages. In many regions, including Tanjung Palas District of Bulungan Regency, *nikah sirri* continues to be practiced as a perceived alternative for couples who face legal, social, or administrative barriers to formal marriage registration. (Aribillah et al 2024) While such marriages may fulfill certain religious requirements, they do not provide legal recognition or protection under Indonesian family law. As a result, individuals—particularly women and children—often face considerable disadvantages, including difficulties accessing essential civil documentation and family rights. (Asman, A. 2023)

This persistent gap between religious practice and state regulation necessitates a deeper investigation into the motivations behind *nikah sirri* and its implications within contemporary socio-legal frameworks. (Rosyit, A. N. W. 2023) However, few have explored the issue through the lens of Islamic legal maxims, which serve as foundational principles for deriving rulings in exceptional or complex situations. One such maxim, *al-dhararu lā yuzālu bi al-dharari* (“harm cannot be eliminated by another harm”), holds particular relevance to the practice of *nikah sirri*. Classical Islamic legal literature describes this maxim as prohibiting any remedial action that creates equal or greater harm than the original condition. (Wizarat al-Awqaf, 2006) In many cases, individuals engage in *nikah sirri* to avoid social stigma, financial burden, bureaucratic challenges, or moral pressure arising from premarital relationships, yet these decisions often lead to new forms of legal and administrative harm—raising questions about the compatibility of *nikah sirri* with Islamic legal principles. (Azhari, A. 2024) In the context of Tanjung Palas District, several socio-cultural factors have been identified as contributing to the high prevalence of unregistered marriages. These factors include premarital pregnancy, underage marriage, arranged marriage practices that bypass state procedures, polygamous intentions that cannot legally be formalized, and the absence of divorce certificates from previous unions. (Dina, N. 2025)

While these circumstances vary across individuals, they collectively highlight a tension between lived realities and the demands of legal marriage registration. This tension becomes more complex when religious actors facilitate *nikah sirri*, believing they are offering solutions grounded in compassion and practicality. (Akmal, A. M. 2023) Nevertheless, despite these intentions, couples often face significant disadvantages after entering unregistered unions, including limited access to national identity cards, birth certificates for children, family registration cards, and state welfare programs—all requiring formalized marital status. (Harsya, D. 2024) The Indonesian government has implemented various legal frameworks to ensure marriage registration, particularly through Marriage Law No. 1 of 1974, the Population Administration Law, and subsequent administrative regulations. However, the persistence of *nikah sirri* suggests that legal enforcement alone is insufficient to address deeply rooted social practices. Islamic legal maxims offer an analytical bridge between religious values and modern legal standards. Using the principle *al-dhararu lā yuzālu bi al-dharari* as an analytical framework allows for a more nuanced understanding of how religious teachings reinforce the importance of formal marriage registration as a means to prevent long-term harm. (Al-Suyuti)

This study therefore seeks to explore the lived dynamics of *nikah sirri* in Tanjung Palas District and to analyze the phenomenon through the maxim *al-dhararu lā yuzālu bi al-dharari*. By integrating normative Islamic legal analysis with empirical field data, the study aims to provide a more holistic understanding of why *nikah sirri* persists, how it affects community members, and whether the practice aligns with or contradicts the principles of Islamic jurisprudence. The objective of this study is to analyze the phenomenon of *nikah sirri* in Tanjung Palas District from both normative Islamic jurisprudence and empirical socio-legal perspectives. Specifically, the research aims to identify the factors causing its persistence, examine its socio-legal consequences, and assess its conformity with the Islamic legal maxim *al-dhararu lā yuzālu bi al-dharari*.

II. METHOD

Explain In This research employs a normative–empirical (socio-legal) method, integrating doctrinal legal analysis with empirical field data. The approach is designed to examine the legal norms governing unregistered (*sirri*) marriage while simultaneously assessing how these norms operate within the lived experiences of the community. A qualitative descriptive framework was used to systematically describe, interpret, and contextualize the findings. Field research was conducted in Tanjung Palas District, Bulungan Regency, North Kalimantan. Interviews were conducted in several villages in the regency, including Tanjung Palas Hulu, Tanjung Palas Tengah, and Tanjung Palas Ilir. Each in-depth interview lasted between 45 and 90 minutes, depending on the availability of informants.

The study draws upon both primary and secondary sources of data. Primary data were obtained through in-depth, semi-structured interviews with key stakeholders, including individuals who entered into unregistered marriages in Tanjung Palas District, Bulungan Regency; local religious authorities who commonly officiate such marriages; and judicial officers, namely the Head and Registrar of the Religious Court of Bulungan Regency. Secondary data were collected through comprehensive library research involving statutory materials, the Compilation of Islamic Law, scholarly books, peer-reviewed journal articles, and relevant prior theses. These secondary materials served to substantiate, enrich, and triangulate the empirical findings.

Data collection methods included observation, interviews, and document analysis, all of which are standard techniques in socio-legal inquiry. The data were analyzed through a structured process

comprising data collection, data reduction and organization, doctrinal and empirical interpretation, and the formulation of reasoned legal conclusions.

III. RESULT AND DISCUSSION

1. Nikah Sirri: Definition, Factors, and Legal Consequences

a. Definition of Nikah Sirri.

The term nikah sirri derives from the Arabic word *sirr*, meaning “secret.” In the context of Islamic family law in Indonesia, nikah sirri refers to marriages conducted in accordance with religious requirements but not officially registered with the state. While the marriage fulfills Islamic criteria, it lacks legal recognition in state administration. (Amir Syarifuddin 2014) The Indonesian Marriage Law (Law No. 1 of 1974 as amended by Law No. 16 of 2019) mandates that marriages must be registered to ensure legal certainty. (Marriage Law 2009) Therefore, nikah sirri is legally unrecognized despite its perceived religious validity. In Tanjung Palas, this practice persists due to social, cultural, and administrative considerations.

b. Factors Contributing to Nikah Sirri in Tanjung Palas Several empirical findings indicate the following dominant factors:

1) Socio-cultural

Factors Local communities place high trust in religious leaders, perceiving their authority as sufficient to validate a marriage. Cultural pressures—especially surrounding premarital pregnancy—also push couples toward unregistered marriage. (Field 2025)

2) Economic Factors

The perceived cost of formal marriage registration is considered burdensome, whereas nikah sirri is viewed as affordable. (Nasaruddi 2019)

3) Limited Legal Literacy

Many individuals believe that religiously valid marriages automatically have legal standing, demonstrating insufficient awareness of legal consequences. (Mardani 2019)

4) Polygamy Without Legal Authorization

Some men use nikah sirri as a means to practice polygamy without following formal procedures. (Jamhari 2018)

5) Administrative and Geographic Barriers

Remote areas in Tanjung Palas face limited access to KUA, making formal registration appear complicated or impractical.

c. Legal and Social Consequences of Nikah Sirri

1) Lack of Legal Protection for Women
Women married under nikah sirri face challenges claiming maintenance, property rights, or protection from domestic violence, as they lack documentation proving legal marital status. (Field 2025)

2) Child Status and Administrative Barriers
Children from unregistered marriages face challenges obtaining birth certificates listing both parents, requiring a court determination. (jamhari 2018)

3) Vulnerability to Unilateral Divorce
Nikah sirri allows men to dissolve marriages informally without court procedures, leaving women unprotected. (Supreme 2012)

4) Restricted Access to Civil Rights
Rights to inheritance, marital property, and legal protections are often inaccessible

5) Psychosocial Impact
Social stigma affects both women and their children, influencing long-term well-being.

2. The Legal Maxim Al-Dhararu Lā Yuzālu bi al-Dharari: Definition, Concept, and Its Application to Nikah Sirri

a. Definition

of the Maxim The maxim al-dhararu lā yuzālu bi al-dharari means “harm cannot be removed by another harm. It is derived from the broader principle al-dhararu yuzāl (“harm must be eliminated”). It limits actions that may appear beneficial but actually create greater long-term harm

b. Core Concepts

1) Harm Must Be Eliminated
Islamic law prioritizes removing harm. An action that eliminates a minor harm but causes a major one is impermissible.

- 2) Preventing Harm Overrides Attaining Benefit
The principle dar'ū al-mafāsīd muqaddam 'alā jalb al-masālih establishes that harm prevention takes precedence.
- 3) Real Benefit Must Outweigh Harm
Any action should provide a net positive benefit.
3. Analysis of Nikah Sirri through the Maxim
- a. A sharper argument is needed: how does unregistered marriage create “new harm” according to empirical cases?
 - b. Nikah Sirri as a “False Solution” Though nikah sirri may appear to solve immediate problems such as avoiding social stigma or simplifying procedures—it creates greater harm:
 - 1) lack of legal protection
 - 2) uncertainty of child status
 - 3) vulnerability to abandonment
 - 4) loss of financial rights
 - 5) long-term social disadvantages
 - c. Conflict with Maqāṣid al-Syarī'ah Nikah sirri undermines key objectives:
 - 1) preservation of lineage
 - 2) preservation of dignity
 - 3) preservation of wealth
 - 4) preservation of life and family stability
 - d. Marriage Registration as a Means of Eliminating Harm Legal registration ensures civil protection and fulfills the principle al-dhararu yuzāl.
 - e. Nikah Sirri Cannot Be Justified Under “Necessity” A valid necessity must not generate greater harm. Since nikah sirri elevates harm, it cannot qualify as a legitimate dharurat.
4. Normative-Empirical Synthesis
Field data affirm that harms from nikah sirri emerge severely during disputes, childbirth, and inheritance conflicts. The maxim therefore rejects the practice as it perpetuates social and legal vulnerabilities.

Empirical cases gathered during field interviews demonstrate that nikah sirri creates “new harm” beyond the initial problems it attempts to resolve. For example, in premarital pregnancy cases, although couples choose nikah sirri to avoid social shame, the children born later face legal complications in obtaining birth certificates listing both parents. Similarly, women entering polygamous sirri marriages reported being abandoned without legal recourse since the state does not recognize their marital status. In cases where couples lacked divorce certificates, nikah sirri created additional harm by exposing them to charges of double marriage or legal uncertainty in inheritance claims. These findings confirm that the harms resulting from nikah sirri are not hypothetical but directly experienced by affected families.

Thus, nikah sirri becomes a “false solution” that fails the maxim al-dhararu lā yuzālu bi al-dharari because it produces secondary harms greater than the initial problems, as evidenced in administrative difficulties, legal vulnerabilities, and long-term social disadvantages.

IV. CONCLUSION

The findings of this study demonstrate that unregistered marriage (nikah sirri) in Tanjung Palas remains a persistent socio-religious practice shaped by a complex interplay of cultural norms, economic limitations, limited legal literacy, and the strong influence of local religious authorities. While the practice is often socially legitimized within the community, it generates significant legal, social, and administrative harms, particularly for women and children. These harms include legal uncertainty regarding marital status, difficulties in obtaining civil documentation, challenges in inheritance and custody disputes, and vulnerabilities to divorce without state protection.

The application of the Islamic legal maxim al-dhararu lā yuzālu bi al-dharari (harm must be eliminated and cannot be removed by causing further harm) provides a normative framework for evaluating the phenomenon. When assessed through this maxim, nikah sirri cannot be justified, because it produces substantial harm and fails to secure the maslahah (public benefit) intended by marriage in Islamic law. The maxim emphasizes the ethical and legal imperative to prevent or remove harm—including administrative and social harms inherent in unregistered marriage. Therefore, from both normative Islamic jurisprudence and empirical socio-legal perspectives, state-registered marriage becomes a necessity (ḍarūriyyah) to ensure the legal protection of spouses and children, uphold justice, and safeguard social order.

This study thus concludes that strengthening community legal awareness, enhancing the accessibility of marriage registration mechanisms, and reinforcing the role of religious and judicial institutions are essential steps to reduce the incidence of nikah sirri. By aligning community practices with the principle of harm elimination, the objectives of Islamic law (maqāsid al-sharī'ah)—particularly the protection of lineage, rights, and welfare—can be more effectively upheld.

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