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# Reforming Marriage Registration Policies in Malaysia and Indonesia

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#### **ABSTRACT**

This study aims to explain the reform of marriage registration policies in Indonesia and Malaysia. Marriage registration policies in Indonesia and Malaysia have yet to be appropriately implemented. This is proven by the fact that many unregistered marriage practices exist. This study is a literature and field research. Data was collected through documentation and interviews. This study found that the States of Indonesia and Malaysia have issued policies regarding the mandatory registration of marriages. Even so, there are still many unregistered marriages. There are many factors behind the occurrence of unregistered marriages, besides also causing problems. The government needs to reform the marriage registration policy, one of which is through digitalization. The State of Indonesia has innovated marriage registration, namely, online registration of marriages. However, this policy was implemented less effectively below. Meanwhile, the Malaysian state still needs to renew its marriage registration policy. Therefore, in this digital era, it is necessary to have a policy for registering marriages in the direction of complete digitization so that problems can be appropriately resolved.



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#### 1. Introduction

The rules for registering marriages are still a polemic in Muslim society. Some Muslims consider the registration of marriages unnecessary because marriages are still valid even if they are not registered. This understanding causes the practice of unregistered marriages to occur. Nonetheless, the State seeks to bureaucratize Muslim marriage by emphasizing that marriages must be registered with the State.<sup>2</sup> The State of Indonesia, for example, regulates

<sup>&</sup>lt;sup>2</sup> Eva F Nisa, 'The Bureaucratization of Muslim Marriage in Indonesia', *Journal of Law and Religion*, 33.2 (2018), 291–309 https://doi.org/10.1017/jlr.2018.28



<sup>&</sup>lt;sup>1</sup> Eva F Nisa, 'Unregistered Marriages of Indonesian Migrant Workers in Malaysia', Sociology of Islam, 6.3 (2018), 338–58 https://doi.org/10.1163/22131418-00603005

it in Law Number 1 of 1974 concerning Marriage article 2.3 Likewise, in Malaysia, the rules for registering marriages are contained in the state marriage law, which is regulated in the Statutory Regulations found in each State. Meanwhile, the marriage law for the Federal Territory is regulated in Deed 303 of the 1984 Islamic Family Law (Federal Territory). The rules for registering marriages between the two countries are basically for the benefit of family members. Unregistered marriages tend to cause harm to family members, especially wives, and children. This fact requires state policies to renew and strengthen marriage registration regulations, both in Indonesia and Malaysia.

Many studies on marriage registration have been carried out. The study can be categorized into three. First, the study of marriage registration emphasizes the legal aspect. This study is like that of Linda Hanafiyah regarding the policy of registering marriages from *fiqh munakahat* provisions to marriage law.<sup>6</sup> In addition, Asriadi Zainuddin et al. also reviewed the legal reformulation of marriage registration in Indonesia.<sup>7</sup> Second, the study of unregistered marriage practices in Indonesia<sup>8</sup> and Malaysia<sup>9</sup> and registering marriages that do not comply with legal requirements. For example, the research conducted by Salma et al., for example, concerns the practice of falsifying documents to register marriages.<sup>10</sup> In addition, there is also research related to legal sanctions for married couples who do not register their marriage.<sup>11</sup> Third, the study of online marriage registration. However, this study only examines the effectiveness<sup>12</sup> or ineffectiveness of online marriage registration in

<sup>3</sup> Stijn Cornelis van Huis and Theresia Dyah Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', *Australian Journal of Asian Law*, 13.1 (2012), 1–17 https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2159574

<sup>&</sup>lt;sup>4</sup> Nur Taskin Binti Omar and others, 'The Legal Study on Unregistered Marriages in Malaysia' (Universiti Teknologi MARA, 2011) https://ir.uitm.edu.my/id/eprint/32065/

<sup>&</sup>lt;sup>5</sup> Agustin Hanapi and Edi Yuhermansyah, 'Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 4.2 (2020), 528–44 https://doi.org/10.22373/SJHK.V4I2.7942

<sup>&</sup>lt;sup>6</sup> Linda Hanafiyah, 'Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)', in *The 5th International Conference on Islamic Studies* (2022), 2022, II, 704–12 https://proceeding.iainpekalongan.ac.id/index.php/icis/article/view/1160

<sup>&</sup>lt;sup>7</sup> Asriadi Zainuddin, Abdul Jamil, and Dedi Sumanto, 'Marriage Registration Law Reformulation in Indonesia (Studi of Law and Regulations on Marriage)', *Sasi*, 28.3 (2022), 492–505 https://doi.org/10.47268/sasi.v28i3.1033

<sup>&</sup>lt;sup>8</sup> Anwar Hafidzi and others, 'Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan', *Al-Ahkam: Jurnal Pemikiran Hukum Islam*, 32.2 (2022), 153–68 https://doi.org/10.21580/ahkam.2022.32.2.12789

<sup>&</sup>lt;sup>9</sup> Miftahul Janah, 'The Practice of Sirri Marriage in Malaysia (Case Study of Indonesian Migrant Workers (TKI) in Selangor State of Malaysia' (State Islamic University Maulana Malik Ibrahim of Malang, 2014) http://etheses.uin-malang.ac.id/529/1/10210055 Pendahuluan.pdf

<sup>&</sup>lt;sup>10</sup> Salma Salma, Hasanatul Wahida, and Muhammad Adib bin Samsudin, 'IGNORING FAMILY LAW ADMINISTRATIVE PROCEDURE: Falsifying Death of Spouses for the Registration of New Marriage in Lengayang Muslim Community', Al-Ahwal: Jurnal Hukum Keluarga Islam, 15.1 (2022), 1–20 <a href="https://doi.org/10.14421/ahwal.2022.15101">https://doi.org/10.14421/ahwal.2022.15101</a>

<sup>&</sup>lt;sup>11</sup> M. Noor Harisudin and Muhammad Choriri, 'On The Legal Sanction Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5.1 (2021), 471–95 https://doi.org/10.22373/SJHK.V5I1.9159

<sup>&</sup>lt;sup>12</sup> Imam Muslih, Nurdin Nurdin, and Marzuki Marzuki, 'Effectiveness of Marriage Services Through Information System Management (SIMKAH) at Palu City Religious Court', *International Journal of Contemporary Islamic Law and Society*, 2.1 (2020), 20–35 https://doi.org/10.24239/ijcils.vol2.iss1.12

several Offices of Religious Affairs.<sup>13</sup> From some of these previous studies, there has yet to be a single study explicitly addressing the renewal of marriage registration policies.

This study aims to complement these studies, which specifically want to know about marriage registration policies in Indonesia and Malaysia, the factors and problems that cause the policies not to work correctly, so that unregistered marriages are rife, as well as investigate the renewal of marriage registration policies that the two countries must carry out. This study is essential considering two things. First, there are still many unregistered marriage practices in Indonesia and Malaysia. It indicates the weakness of state law in society and the strengthening role of religious leaders in allowing unregistered marriages. Second, the rapid advancement of information technology requires reforms from all fronts. Likewise, state policies, these policies are following the demands of the times.

#### 2. Research Method

This study is field and literature 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. 14 The informants in this study were marriage registrars at the Civil Registry Office, husbands and wives whose marriages were not registered, 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.<sup>15</sup> 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 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.

## 3. Results and Discussion

### 3.1. Marriage Registration in Indonesia and Malaysia: Legal and Administrative Framework

Academics and interested parties have long debated the registration of marriages in Indonesia and Malaysia. In Indonesia, this problem has been rolling since marriage was regulated through Law Number 1 of 1974 concerning Marriage. This law consists of 14 chapters and 67 articles, and for its implementation, it is supplemented by Government Regulation Number 9 of 1975 concerning implementing regulations. This law was declared effective as of October 1, 1975. Like Indonesia, the Malaysian government regulates

<sup>&</sup>lt;sup>13</sup> Muksalmina Muksalmina and others, 'Online Marriage Registration Service Policy Through Simkah Web for Prospective Bride and Groom in The Office of Religious Affairs, Banda Sakti District, Lhokseumawe City', *Malikussaleh Social and Political Reviews*, 2.2 (2021), 56 https://doi.org/10.29103/mspr.v2i2.6341

<sup>&</sup>lt;sup>14</sup> Sri Wahyuni and others, 'The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen', *Bestuur*, 10.1 (2022), 12–21 https://doi.org/10.20961/bestuur.v10i1.64330

<sup>&</sup>lt;sup>15</sup> Suharnomo Suharnomo and Fathyah Hashim, 'Differences in Organization Citizenship Behavior between "Serumpun" Countries (Indonesia – Malaysia)', *Journal of Asia Business Studies*, 13.3 (2019), 349–61 https://doi.org/10.1108/JABS-12-2016-0178

<sup>&</sup>lt;sup>16</sup> Arifki Budia Warman, 'Dinamika Perkembangan Hukum Keluarga Islam Di Indonesia', *Ijtihad*, 35.2 (2019), 11–28 https://journals.fasya.uinib.org/index.php/ijtihad/article/view/14

marriages carried out by its people through law. However, in Malaysia, the law is slightly different from that in Indonesia, which applies throughout Indonesia. Each state/province in Malaysia has its own laws. 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 Islamic Family (Federal Territories) Act 1984.<sup>17</sup>

Regarding the registration of marriages, the parties can defend their marriage to anyone before the law. Conversely, by not registering a marriage, the marriage carried out by the parties does not have legal force and cannot be proven as a marriage. Marriages that are not registered, even though they are legal according to religious law, often cause problems in the future. These problems can be minimized through Marriage Registration. Problems that will arise should be avoided. Avoiding trouble/danger is more important, and any losses must be eliminated. Avoiding trouble danger is more important, and any

Both of these marriage laws, both in Indonesia and in Malaysia, state explicitly that marriages must be registered. In Indonesia, Article 2 of Law Number 1 of 1974 concerning Marriage states that every marriage must be registered according to the applicable laws and regulations. This means that every marriage must be registered according to the applicable laws and regulations. At the same time, the procedures for the registration process itself are regulated in Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning marriage from article 2 to article 9.<sup>21</sup> Marriage law in Malaysia also requires marriage registration. This can be seen in the chapter on marriage, article 22 on Marriage Registration paragraphs (1, 2, and 3), Deed of Islamic Family Law (Federal Territory) 1984 (deed 303). Article 22 states: in paragraph (1) after the marriage contract is held, the registrant must record the points of the agreement stipulated in the contract. Paragraph (2) The note must be acknowledged by the guardian and two witnesses other than the clerk who were present at the time of the marriage contract. Paragraph (3) The record must then be signed by the registrant.<sup>22</sup>

The registration process is principally carried out after the marriage contract. It is just that in practice, there are three types of the registration process: 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. The Pulau Pinang Law article 22 paragraph (1) states, "After the marriage

<sup>&</sup>lt;sup>17</sup> Kholis Bidayati Kholis, Muhammad Alwi Al Maliki Alwi, and Suci Ramadhan Suci, 'Dinamika Pembaharuan Hukum Keluarga Islam Di Negara Muslim (Studi Atas Negara Malaysia Dan Brunei Darussalam)', *ADHKI: Journal of Islamic Family Law*, 3.1 (2021), 51–68 <a href="https://doi.org/10.37876/adhki.v3i1.45">https://doi.org/10.37876/adhki.v3i1.45</a>

<sup>&</sup>lt;sup>18</sup> Muhammad Romli and others, 'Legal Status of Overseas Marriage Registration in the Perspective of Indonesian Marriage Law', *Technium Social Sciences Journal*, 14 (2020), 260–65 https://heinonline.org/HOL/LandingPage?handle=hein.journals/techssj14&div=23&id=&page=

<sup>&</sup>lt;sup>19</sup> Akmal Hidayah Halim and Mohamad Asmadi Abdullah, 'Women's Rights to Succession in Unregistered Marriages: A Reference to the Instrument of Waṣiyyah', *IIUM Law Journal*, 16.1 (2008), 16 https://doi.org/10.31436/IIUMLJ.V16I1.47

<sup>&</sup>lt;sup>20</sup> Wahyu Abdul Jafar, 'Political Buzzer in Islamic Law and Its Impact on Muslim Society', *Hamdard Islamicus*, 45.3 (2022), 53–78 https://doi.org/10.57144/HI.V45I3.491

<sup>&</sup>lt;sup>21</sup> Ansori Ansori, 'Qawā'id Fiqhiyyah as Islamic Epistemology and Its Application at Marriage Law in Indonesia', *JURIS (Jurnal Ilmiah Syariah)*, 21.1 (2022), 67–76 https://doi.org/10.31958/juris.v21i1.5529

<sup>&</sup>lt;sup>22</sup> Lembaga Penyelidikan Undang-Undang, *Akta Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan)* 1984 (Akta 303) (Petaling Jaya: International Law Book Services, 2013) http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen/

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.<sup>23</sup>

Islamic Family Law (Federal Territories) Act Section 25 "Marriage after the stipulated date of any person residing in the Federal Territory and the marriage of any person residing abroad but residing in the Federal Territory shall be registered in accordance with this Act." The Terengganu Law also stipulates that the maturity for registering a marriage is the seventh day after the implementation of the marriage contract.<sup>24</sup> Even so, the registration of this marriage has nothing to do with legality or cancellation; it is just that if it is unregistered, it will cause negative consequences, including property, wife's rights, and children's status.<sup>25</sup> 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 specific areas. It makes matters easier for the marriage registration process in general. While in Malaysia, it is more complicated than in Indonesia. It 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 takes work for people who marry and divorce. However,

<sup>&</sup>lt;sup>23</sup> Ibnu Radwan Siddik, 'Studi Pebandingan Ketentuan Pencatatan Perkawinan Di Indonesia Dan Malaysia', *Al Muqoronah: Jurnal Perbandingan Hukum Dan Madzhab*, 1.1 (2017), 118–36 https://doi.org/10.35382/ALMQRN.V4I2.1054

<sup>&</sup>lt;sup>24</sup> Siti Aminah and Arif Sugitanata, 'Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia', *JIL: Journal of Islamic Law*, 3.1 (2022), 94–110 https://doi.org/10.24260/jil.v3i1.556

<sup>&</sup>lt;sup>25</sup> Asiah Bidin and others, 'Procedures Noncompliance in Muslim Marriage Application: A Case Study in Syariah Courts in Terengganu, Malaysia', 203.Iclick 2018 (2019), 425–29 https://doi.org/10.2991/iclick-18.2019.90

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 number 1 of 1974.<sup>26</sup>

# 3.2. Marriage Registration Policies: Challenges to its implementation in Indonesia and Malaysia

The application of the marriage registration policy is still not optimal in Indonesia, as well as in Malaysia. Unregistered marriages are still common. The causes of unregistered marriages in Indonesia and Malaysia are almost the same. There are at least eight factors that cause marriages not to be registered. First, there is a dualism of regulations, namely state and Islamic religious rules.<sup>27</sup> Society often ignores the law regarding marriage registration because it prefers the rules of Islamic law. Many people do not register their marriages because they reason that they are married enough without having to be registered. Second is the economic factor. Even though marriage registration is free at the Office of Religious Affairs, some people think that registration of marriages requires money, so they are reluctant to go to the Office of Religious Affairs to arrange their marriage. This economic problem is why people do not register their marriages, so the marriages that have taken place are not legally recognized.<sup>28</sup>

Third is the educational factor. Education influences mindset and life. Lack of knowledge and education about marriage results in not understanding the rights, obligations, and consequences of an unregistered marriage. Fourth, the factor of pregnancy out of wedlock. It happens a lot among teenagers, so they are forced to get married. Meanwhile, the age is insufficient to marry, so it does not meet the requirements for marriage at the Office of Religious Affairs.<sup>29</sup> Applications for marriage dispensation are sometimes not carried out<sup>30</sup>, so many parents marry their children religiously first.<sup>31</sup>

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." One of the causes of illegal polygamy is the fear of

<sup>&</sup>lt;sup>26</sup> Muhammad Ngizzul Muttaqin, 'Unregistered Marriage Between Indonesian Citizens and Foreign Citizens With the Legal Perspective of Marriage in Indonesia', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 7.2 (2020), 149 https://doi.org/10.29300/mzn.v7i2.3396

<sup>&</sup>lt;sup>27</sup> M. Zamroni, 'Legal Dualism Marriage Registration for Muslims in Indonesia', *Jurnal Reformasi Hukum : Cogito Ergo Sum*, 1.1 (2018), 19–22 https://doi.org/10.51532/COGITO.V476.1022

<sup>&</sup>lt;sup>28</sup> Pidayan Sasnifa, 'Implementasi Dari Perkawinan Yang Tidak Dicatatkan Terhadap Perlindungan Hukum Anak Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Dan Undang-Undang Nomor 23 Tahun 2002 Pelaksanaanya Di Kecamatan Tanah Kampung Kota Sungai Penuh.', *Islamika: Jurnal Ilmu-Ilmu Keislaman*, 18.01 (2018), 39–53 https://doi.org/10.32939/ISLAMIKA.V18I01.263

<sup>&</sup>lt;sup>29</sup> Ahmad Sanusi and others, 'Cancellation of Marriage Due to Negligence and Legal Consequences (Case Study on the Decision of the Pandeglang Religious Court, Banten No. 84/Pdt.G/2013/PA.Pdlg)', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 6.1 (2022), 493–513 https://doi.org/10.22373/SJHK.V6I1.10230 <sup>30</sup> Ashabul Fadhli and Arifki Budia Warman, "Alasan Khawatir" Pada Penetapan Hukum Dispensasi Kawin Di Pengadilan Agama Batusangkar "Reasons for Concern" on Marriage Dispensation Decisions in Batusangkar Religious Court', *Al-Ahwal*, 14.2 (2021), 146–58 https://doi.org/10.14421/ahwal.2021.14203

<sup>&</sup>lt;sup>31</sup> Lilik Andar Yuni, 'Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggarong Religious Court', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5.2 (2021), 976–1002 https://doi.org/10.22373/SJHK.V512.9135

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.<sup>32</sup> 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 is not recorded by the authorities.<sup>33</sup>

Seventh is the factor of underage marriage. 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. The cause of underage marriages is that many underage children marry only to ease the burden on their parents. To minimize this negative impact, the Government is currently conducting marriage courses. Eighth, social influence factor. The condition of the surrounding environment dramatically 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. 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	Explanation
	marriages	
1	The factor of regulations	The dualism of religious rules and state law makes some
	dualism	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 dramatically influences his
		mindset. A person with a low level of education thinks that it
		is not essential that marriage should be registered
4	The factor of pregnancy out	The condition of being pregnant out of wedlock causes
	of wedlock	parents to marry their children first, even though their
		marriage cannot be registered

<sup>&</sup>lt;sup>32</sup> Endang Ali Ma'sum, 'Pernikahan Yang Tidak Dicatatkan Dan Problematikanya', *Musawa Jurnal Studi Gender Dan Islam*, 12.2 (2013), 201–13 https://doi.org/10.14421/MUSAWA.2013.122.201-213

<sup>&</sup>lt;sup>33</sup> Fitrawati, 'Diskursus Perkawinan Beda Agama Di Indonesia Dalam Tinjauan Universalisme HAM Dan Relativisme Budaya', *JURIS (Jurnal Ilmiah Syariah)*, 20.1 (2021), 131–45 https://doi.org/10.31958/JURIS.V20I1.2825

<sup>&</sup>lt;sup>34</sup> Rizky Irfano Aditya and Lisa Waddington, 'The Legal Protection Against Child Marriage in Indonesia', *BESTUUR*, 9.2 (2021), 126–34 https://doi.org/10.20961/BESTUUR.V9I2.55144

<sup>&</sup>lt;sup>35</sup> Ahmad Muhtadi Anshor and Muhammad Ngizzul Muttaqin, 'Pre-Marriage Course Based on Religious Moderation in Sadd Al- Żarī'ah Perspective', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 6.1 (2022), 74–97 https://doi.org/10.22373/sjhk.v6i1.9111

<sup>&</sup>lt;sup>36</sup> Jamaluddin Faisal Hasyim, Ahmad Tholabi Kharlie, and Achmad Cholil, 'Pre-Marriage Course in Indonesia and Malaysia in The Perspective of Maslahah and Human Right Theory', *Ahkam: Jurnal Ilmu Syariah*, 20.1 (2020), 97–114 https://doi.org/10.15408/AJIS.V20I1.16188

Mufti Hidayat, Ali Muhtarom, and Mubarok, 'Kesadaran Hukum Pelaku Pernikahan Dini Dalam Pencatatan Pernikahan Di Kandangserang', *Al-Hukkam: Journal of Islamic Family Law*, 1.2 (2021), 99–112 https://doi.org/10.28918/AL-HUKKAM.V1I2.4820

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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.
	FF1 0 0 1100	2
6	The factor of different	The prohibition on interfaith marriages is stringent, so
	religions	couples of different religions cannot register their marriage
_	2	
7	The factor of underage	Marriage registration has a sufficient age requirement, so
	marriage	underage couples cannot register their marriage
8	The factor of social influence	Association with friends dramatically 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
		marrages

Source: Researcher's interpretation

Unregistered marriages have many problems and negative impacts, both negative impacts on the perpetrators of the marriage itself and the wider community. Following are the negative impacts that researchers get after conducting in-depth research, including legal impact. Unregistered marriages 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 the wife and children born from the marriage.<sup>38</sup> Unregistered marriages cause the rights that abandoned wives and children must obtain and even disappear legally. 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 were 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." 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 unregistered marriages can cause is people not knowing the identity of the partner's status.<sup>39</sup>

Third, the psychological impact. Marital status affects the psychology of wives and children. Damaging accusations were often leveled against women whose marriages were not registered, for example, accusations of being a usurper, a prostitute, and so on. The psychological impact can also befall children born out of wedlock. Without realizing it, this can affect the psychological condition of children. Fourth, the economic impact. Unregistered marriages have an impact on the economic side of the family. The government often helps families who are still classified as underprivileged, but these families must meet administrative requirements. Meanwhile, unregistered marriages cannot complete the administrative requirements, so families cannot obtain government assistance. Likewise, suppose the marriage is not registered. In that case, a person cannot

<sup>&</sup>lt;sup>38</sup> Nur Mohamad Kasim and others, 'Optimization of Marriage Registration as Legal Certainty of Children's Rights in the Perspective of Maqasid Shariah', *KnE Social Sciences*, 2022 (2022), 1–9 https://doi.org/10.18502/kss.v7i15.12070

<sup>&</sup>lt;sup>39</sup> Cholidatul Rizky Amalia and others, 'Legality Issuance of Family Card in Siri Marriage', *JCH (Jurnal Cendekia Hukum)*, 7.2 (2022), 163–80 https://doi.org/10.33760/JCH.V7I2.458

<sup>&</sup>lt;sup>40</sup> Muhammad Munir, 'Financial Rights of Woman on the Dissolution of Her Marital Relationship and Death of Her Husband in Islamic Law and Pakistani Legal System', *Hamdard Islamicus*, 45.2 (2022), 27–57 https://doi.org/HI.V4513.382

apply for a loan from the bank because the bank only provides financial assistance to parties who can complete the administrative requirements. 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	Unregistered Marriages are considered to have no legal standing (the State does not recognize their validity). Family members have no legal protection.
2	Social Impact	Difficulty in socializing in the surrounding community.
3	Psychological impact	The psychology of wives and children who come from marriage is not registered more seriously because they often get negative societal issues.
4	Economic impact	Marriage is not registered as challenging to get assistance from the Government or loans from banks because they cannot meet administrative requirements.

Source: Researcher's interpretation

# 3.3. Reforming Marrige Registration Policy: Innovation through Digitalization?

The marriage registration policy has not been appropriately implemented. It is evidenced by the fact that many unregistered marriages exist in Indonesia and Malaysia. On the one hand, the rapid progress of information technology requires reforms from all lines. Likewise, state policies, these policies are following the demands of the times. Therefore, this reality requires state policy to renew and strengthen marriage registration regulations in Indonesia and Malaysia. Malaysia has so far not made policy reforms related to marriage registration. Meanwhile, Indonesia has made innovations in marriage registration services, namely online.

The Indonesian Ministry of Religion has developed an internet-based marriage information system (SIMKAH). This policy is regulated in Minister of Religion Regulation Number 20 of 2019 concerning Marriage Registration and the Decree of the Minister of Religion concerning Website-Based Marriage Information Systems. The provisions in Article 24 state: 1) marriage registration is carried out using a Website-Based Marriage Information System, and 2) manual registration is carried out at the KUA where internet access is unavailable. The existence of the SIMKAH provides service convenience for the community. These services, among others, first, people can register their marriages online through simkah.kemenag.go.id. Second, the public can provide input and suggestions for KUA services through the website. Third, people who are married will get a Marriage Card.

The application of this system provides benefits; First, the Web is integrated with other relevant ministries, such as the Ministry of Home Affairs' Population Information System, the Ministry of Finance's Online PNBP Information System, and the Supreme Court Case Tracking Information System. Second, printing a marriage certificate will automatically generate a QR code connected to the application. Third, PNBP reports from marriage and reconciliation services are visible in real time. Fourth, marriage registration can be completed online. Fifth, this application provides more data variables with specific categories, such as age, education, occupation, and the like. Sixth, all KUA are connected in real-time. SIMKAH application is very effective in the effort to prevent manipulation of

marriage data because the SIMKAH application has been linked to the data of DUKCAPIL.<sup>41</sup> The SIMKAH application is also easy to use and easy to understand. In addition, administrative records are more systemic and computerized.<sup>42</sup>

The Indonesian government has renewed its policy of registering marriages through online registration, making it easier for people to get services. Several studies have stated that online services are an extraordinary innovation in facilitating services, even though their implementation in the Office of Religious Affairs has not been effective. It is due to a lack of resources, outreach, and the absence of clear operational standards in its implementation.<sup>43</sup> In other words, reforms to the marriage registration policy have not been successful. It is in line with the study of Ahmad Tholabi Kharlie et al. that reforming policies from top to bottom by the state through digitization has not been successful enough. However, policies from the bottom up through solid and innovative leadership tend to dominate the success of reforms.<sup>44</sup>

Facts related to marriage registration policies in Indonesia and Malaysia explain that Indonesia and Malaysia have not fully reformed marriage registration. In this digital era, one form of reform of the marriage registration policy is fully digitizing it. Although this has been done in Indonesia, this process has not been effective. The government's target has not been achieved from these reforms. It requires improvements to the policy, especially by issuing clear operational standards in its implementation. In addition, the entire marriage registration process must be carried out online (digitally), like android-based information system.<sup>45</sup> For this reason, it is necessary to socialize all lines of society while campaigning for the obligation to register marriages at the Office of Religious Affairs.

#### 4. Conclusion

The countries of Indonesia and Malaysia have issued policies regarding the mandatory registration of marriages. Even so, there are still many unregistered marriages. There are many factors behind the occurrence of unregistered marriages, besides also causing problems. This fact requires reform of state policies to overcome the problem of unregistered marriages. One way is through digitization. The State of Indonesia has innovated marriage registration, namely, online registration of marriages. However, this policy did not work effectively at the bottom. Meanwhile, the Malaysian state has not renewed its marriage registration policy. Therefore, in this digital era, it is necessary to have

<sup>&</sup>lt;sup>41</sup> Bambang Hardiyanto Laga, Aplonia Pala, and Anita Lassa, 'The Effectiveness of The Marriage Management Information System (SIMKAH) Program as an Effort to Prevent Data Manipulation', *Jurnal Teknologi Dan Open Source*, 5.1 (2022), 8–23 https://doi.org/10.36378/jtos.v5i1.2239

<sup>&</sup>lt;sup>42</sup> Ahmad Tholabi Kharlie, Fathudin, and Windy Triana, 'REFORMING ISLAMIC MARRIAGE BUREAUCRACY IN INDONESIA Approaches and Impacts', *Al-Jami'ah*, 59.2 (2021), 255–86 https://doi.org/10.14421/ajis.2021.592.255-286

<sup>&</sup>lt;sup>43</sup> Sri Yulianty Mozin, Yacob Noho Nani, and Saiful Annam, 'Evaluation of Marriage Management Information System (SIMKAH) Policy in the Office of Religious Affairs (KUA) Sub-District Marisa, Pohuwato Regency', in *Proceedings of International Interdiscilinary Conference on Sustainable Development Goals* (*IICSDGs*), 2022, V, 11–19 <a href="https://journals.ubmg.ac.id/index.php/IICSDGs/article/view/625">https://journals.ubmg.ac.id/index.php/IICSDGs/article/view/625</a>

<sup>&</sup>lt;sup>44</sup> Kharlie, Fathudin, and Triana.

<sup>&</sup>lt;sup>45</sup> Grace U Nneji and others, 'Android-Based Information System for Marriage Counseling', in *2018 IEEE* 9th Annual Information Technology, Electronics and Mobile Communication Conference (IEMCON) (IEEE, 2018), pp. 978–84 https://doi.org/10.1109/IEMCON.2018.8615019

a policy for registering marriages in the direction of complete digitization so that problems can be appropriately resolved.

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