

## The phenomenon of inner marriage from the perspective of national marriage law and protection of women

Muh. Akbar Fhad Syahril<sup>1\*</sup>, Nurhaedah Hasan<sup>2</sup>

<sup>1</sup>Faculty of Law, Andi Sapada Institute of Social Sciences and Business, Jl. Andi Sapada No.11, Sumpang Minangae, Kec. Bacukiki Bar, Parepare 91121, Indonesia

<sup>2</sup>Faculty of Law, Muhammadiyah University of Parepare, Jl. Jend. Ahmad Yani No.Km. 6, Bukit Harapan, Kec. Soreang, Parepare 91112, Indonesia

*e-mail: akbar9.a9@gmail.com*

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### ABSTRACT

This article analyzes unregistered marriage in Indonesia from a national legal perspective, focusing on its impact on the rights of women and children. Applying a normative legal approach, the study reviews statutory law, religious fatwas, and court decisions to clarify that unregistered marriages, while sometimes valid religiously, however lack formal legal recognition under Undang-Undang Perkawinan. This legal gap exposes women to loss of civil rights and leaves children vulnerable to administrative discrimination and social stigma. The discussion also highlights legal developments following Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010, as well as the influence of local traditions and limited legal literacy. The article concludes by recommending legal reform, community legal education, and integration of customary practices to strengthen protection for affected groups.

**Keywords:** Marry Inner, Law Marriage, Protection Woman, Right Child, Recording Marriage

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## 1. INTRODUCTION

The phenomenon of unregistered marriage in Indonesia has been spotlighted in recent years because this is often followed by various polemics in society. In this paper, the term “unregistered marriage” will be used consistently referring to marriage that is not officially registered by the state. In contrast, “spiritually invalid marriage” will be used referring to marriages that do not meet religious requirements. Consistency in terms is essential to avoid the confusion in assessing the legal and social aspects of the practice. Unregistered marriages generally refer to marriages considered valid from a religious perspective. Still, they are not registered at the Office of Religious Affairs (KUA) or the civil registration agency, causing the state to not legally recognize them. (Fardi, 2025). Meanwhile, a spiritually invalid marriage is a marriage that does not fulfill the pillars and requirements of religion, for example, without a guardian, witnesses, or a valid *ijab kabul* according to Islamic law. (Salim, 2025). The fundamental difference between an unregistered marriage and a spiritually invalid marriage lies in legality and religious validity. The unregistered marriage can be valid according to religion but is not recognized by the state, while religion or the state does not recognize a spiritually invalid marriage. It is important to emphasize that there is no chaos in determining the legal status of the couple or children born from the relationship.

The practice of unregistered marriages raises various legal issues, especially in the context of protecting the rights of women and children. Couples who marry without state registration lose access to legal rights such as inheritance, child custody, and child support (Karim et al., 2024). Children from these marriages are also at risk of administrative discrimination, for example, suffering from difficulties obtaining a birth certificate that will have further implications. In addition, the practice of unregistered marriages is often misused for personal gain, such as legitimizing polygamy without the first wife's permission, hiding extramarital relationships, or even covering up acts of sexual violence (Salim, 2025). Majelis Ulama Indonesia (MUI) emphasizes that marriages that do not fulfill the pillars and requirements of religion, including the absence of a guardian and witnesses, cannot be considered valid according to Islam (Irfan, 2017). In various fatwas and explanations, the MUI states that all scholars have agreed on the necessity of a guardian for the bride and at least two witnesses in every marriage contract, as this is also stressed in the hadith of the Prophet Muhammad SAW which states, "a marriage is invalid without a guardian and two witnesses." (Vizki, 2024).

Local cultural and traditional factors also influence the widespread practice of unregistered marriages. In some areas, such as Padang Pariaman, this type of marriage is considered to be the part of teaching certain tarekat and a complement to sharia marriage (Amir & Hidayat, 2018). However, this view is not aligned with the opinion of most scholars and religious institutions, who have emphasized the importance of official registration as a valid requirement for marriage according to national law (RB, 2025). Unregistered marriages have complex social and psychological impacts, particularly for women who often experience exploitation, violence, and loss of fundamental rights due to unclear legal status, making them more vulnerable to discrimination and marginalization in their social environment (Alkaf, 2022). In addition, women in this position often suffer from mental pressure such as anxiety, stress, and even depression due to limited access to legal protection and social security. They are frequently isolated from inadequate social support (Triadhari et al., 2023). Children born from unregistered marriages are also affected in a similar way, where they not only have difficulty accessing education and health services, but also face social stigma, obstacles to self-development, and the risk of psychological disorders due to the uncertainty of their family status.

This research is urgently needed to examine unregistered marriages from the perspective of national law and women's protection in Indonesia. This practice creates legal loopholes that endanger women and children, especially in terms of access to fundamental rights and protection from exploitation. This research is expected to provide concrete recommendations for policy reform, strengthening legal protection, and harmonizing cultural values as well as national legal norms. Thus, protecting women and children can be improved without ignoring the local values that exist in society.

## 2. METHODOLOGY

This research method uses an integrated normative legal approach that combines doctrinal analysis with a socio-legal perspective, especially through the lens of feminist jurisprudence and legal realism. The primary sources used include laws and regulations, national-level MUI fatwas, and relevant court decisions, which are often cited as references regarding unregistered marriages. Secondary sources comprise accredited journal articles and verified media reports that contain empirical data on unregistered marriage practices in Indonesia (Juliardi et al., 2023). The selection of sources is made based on the relevance of the material, the level of authority, and the contribution to the analysis of legal protection for women and children. Report media is used as contextual data to see the gap between legal norms and social reality, in accordance with the tradition of socio-legal legal studies that view law as a social practice, not just a normative text.

The analysis stages begin with an inventory and systematisation of regulations, followed by a grammatical, systemic and teleological legal interpretation of Pasal 2 and 7 Undang-Undang Perkawinan and related regulations. Data from court decisions, fatwas, and media reports were triangulated to ensure the coherence and validity of the findings. Comparative techniques were used to a limited extent, only to compare variations in legal practices and interpretations in several regions of Indonesia, not across countries (Syarif, M., et al, 2024). With chronological process mapping and clear source selection criteria, this methodology ensures a comprehensive, systematic analysis that can address the issue of legal protection for women and children in the practice of unregistered marriage in Indonesia (Irwansyah, 2020).

## 3. RESULT AND DISCUSSION

### 3.1. Legal Position of Spiritual Marriage in the National Marriage System

As a socio-religious phenomenon in Indonesia, inner marriage has no basis for legitimacy in the national marriage law system. Undang-Undang Perkawinan concerning marriage explicitly states that a valid marriage must meet two cumulative requirements: 1) it must be carried out according to the laws of each religion and belief, and 2) it must be administratively registered (Indonesia., 2024). The concept of "inner and outer bond" in Article 1 of the law refers to physical and spiritual unity in the official marriage bond, not to the practice of inner marriage as a separate ritual. This is reinforced by Article 2, the Compilation of Islamic Law, which requires the presence of a guardian, two witnesses, *ijab-qabul*, and registration as prerequisites for a valid marriage (Lisyanto et al., 2024).

In practice, inner marriage in the Padang Pariaman Regency, West Sumatra, shows a paradox between claims of complementing Islamic marriage and positive legal provisions. Although local people believe that inner marriage is a complement to official marriage through a spiritual union (Amir & Hidayat, 2018), the local Religious Affairs Office (KUA) emphasizes that the marriage contract that has been carried out at the KUA automatically includes physical and spiritual dimensions based on Pasal 1 of the Undang-Undang Perkawinan. This argument is legitimated by the MUI fatwa, which states that an inner marriage is not recognized in Islamic law because it does not fulfil the pillars of marriage (Indonesia, 2024); (Lubis, 2025). Legally, the practice of inner marriage creates dualism that has the potential to damage the civil registration system. Registration of marriage in Undang-Undang Perkawinan has the function as authentic evidence that protects couples' and children's civil rights (Indonesia, 2024). Unregistered inner marriages result in a lack of legal certainty regarding marital status, inheritance rights, and parental responsibility. The case in Padang Pariaman shows that even though inner marriages are carried out after official marriages, this practice still risks causing legal ambiguity if it is not followed by adequate socialization from religious authorities.

From the perspective of Islamic family law, inner marriage is contrary to the principle of *sighah* (the statement of *ijab-qabul*), which is a pillar of marriage. The MUI fatwa firmly states that the practice of this marriage which ignores the requirements for a valid marriage, such as the presence of a guardian and witnesses, is forbidden (Lubis, 2025). Although some Sufism communities claim that inner marriage is

part of a spiritual tradition, this interpretation is not in line with the consensus of scholars (*ijma*), which emphasizes legal formalities in the marriage contract. The most crucial legal implications are in terms of protecting women. Inner marriages carried out without a clear legal basis have the potential to become the tools for legitimizing sexual violence and illegal polygamy. The Bakabar.com report (2022) revealed cases of exploitation of women in the name of an inner marriage in South Kalimantan, where victims did not receive legal protection because of the absence of proof of a valid marriage (Amir & Hidayat, 2018). This shows how legal loopholes are exploited to weaken women's positions in marital relations. Sociologically, the persistence of inner marriage practice in society shows a mismatch between positive laws and cultural reality. A study in Padang Pariaman revealed that 72% of married couples still practice inner marriage even though they understand their legal status- because they believe in the spiritual value of tradition (Amir & Hidayat, 2018). This phenomenon indicates the need for a responsive legal approach that accommodates local wisdom without sacrificing legal certainty.

In the context of law enforcement, authorities face a dilemma between respecting local traditions and implementing the mandate of the Marriage Law. Lubuk Alung Religious Court Decision No. 123/Pdt. G/2022/PA.LB confirms that inner marriage cannot be used as a basis for civil rights claims, because it does not meet administrative requirements (Amir & Hidayat, 2018). However, the lack of legal sanctions for perpetrators of incestuous marriages makes this practice widespread. A comprehensive and concrete solution to the challenges posed by inner marriage practices in Indonesia requires the harmonization of three key pillars. First, there is an urgent need to reform the Marriage Law by explicitly incorporating administrative sanctions for marriage practices conducted outside the official legal system. This means that individuals who perform or facilitate unregistered marriages would face clear legal consequences, such as fines, the invalidation of marital rights, or restrictions on accessing certain public services. Such sanctions would serve as a deterrent and encourage compliance with national marriage registration procedures, thereby strengthening legal protection for women and children.

Second, the role of the Office of Religious Affairs (KUA) and the Indonesian Ulama Council (MUI) must be enhanced, not only being established as administrative authorities but also as proactive educators within the community. This could be realized through regular outreach programs, workshops, and the dissemination of accessible educational materials that inform and enlighten the public about the legal, social, and religious consequences of unregistered marriages. By empowering these institutions, the government can bridge the gap between formal legal norms and everyday community practices, fostering greater legal awareness and reducing the prevalence of unlawful marriage arrangements.

Third, revitalizing the function of local customs (*adat*) is essential, particularly through structured collaboration with respected local religious figures and traditional leaders. This approach involves integrating customary dispute resolution mechanisms with state law, addressing issues arising from inner marriages in a manner that respects both spiritual values and legal certainty. For example, establishing customary mediation panels that work alongside the KUA can ensure that spiritual and cultural dimensions are considered without compromising the legal rights and civil protections of all parties involved.

To further strengthen this approach, this study recommends a judicial review of the Marriage Law to reinforce sanctions against perpetrators of incestuous marriages and to formally regulate integrated customary mediation mechanisms. Through this appeal, Indonesia can accommodate the spiritual values inherent in inner marriages while safeguarding legal certainty and the civil rights of its citizens. This holistic strategy is crucial in preventing a persistent dichotomy between state law and community practice, ultimately promoting a more just and cohesive society.

### **3.2. Implications of Inner Marriage for the Protection of Women's and Children's Rights**

The practice of unregistered marriage in Indonesia has long been a source of systemic vulnerability for women and children, mainly due to the lack of adequate legal recognition. Undang-Undang Perkawinan, specifically Pasal 2, states that marriage registration is an absolute requirement for obtaining civil rights. Without being registered, women can lose their rights to livelihood, inheritance, and legal protection from domestic violence, as revealed in the case in Batola, South Kalimantan, where the victim

had difficulty accessing reproductive health services due to the lack of marriage documents (Hasanah, 2025).

The legal status of children from unregistered marriages has undergone significant developments since the Putusan Mahkamah Konstitusi (MK) No. 46/PUU-VIII/2010. Previously, based on Pasal 43 ayat (1) of Undang-Undang Perkawinan, children from these marriages were legally only recognized as having a civil relationship with their mother and their mother's family, however their rights to their biological father, such as inheritance rights, maintenance, and recognition of identity, were not legally acknowledged. Nevertheless, with the Constitutional Court's decision, there has been a significant change in which the civil relationship between a child and a biological father can be recognized as long as it can be proven scientifically, for example, through a DNA test or other valid evidence. This change not only strengthens the protection of children's rights but also emphasizes the importance of the principle of substantive justice and recognition of children's identities in the national legal system. However, administrative challenges and social stigmas must still be faced in practice.

Such a difficulty can be exemplified on how many children from unregistered marriages have difficulty obtaining birth certificates that include the father's name, thus hampering access to education, social security, and health services. Data from the Banda Aceh Sharia Court (2023) shows that 65% of children from unregistered marriages do not have their father's name on their birth certificates, which impacts access to the Smart Indonesia Card and BPJS Kesehatan (Zulkifli, 2024). To the extent of economic perspective, women in unregistered marriages are particularly vulnerable to structural impoverishment. The legal invalidity of the marriage prevents them from filing a claim for joint property upon divorce, as reflected in Putusan Pengadilan Agama Jakarta Selatan No. 345/Pdt.G/2023 which rejected the lawsuit for division of joint property due to the absence of evidence of marriage registration (Ningrum, 2025). In the context of gender-based violence, unregistered marriages are often used as a pretext to legitimize sexual exploitation. The LBH Apik report (2024) recorded 112 cases of sexual violence in West Java that were hidden behind the practice of unregistered marriages, where victims had difficulty reporting to the police due to the lack of valid proof of marriage (Fardi, 2025)

Likewise, being concerned with inheritance law, unregistered marriages also have a real impact. Pasal 171 huruf c Kompilasi Hukum Islam requires proof of a valid marriage for heir status, so children and wives from unregistered marriages often lose their inheritance rights. Putusan Pengadilan Negeri Surabaya No. 12/Pdt.G/2024 rejected the inheritance lawsuit of a child from an unregistered marriage because it could not prove a civil relationship with the biological father, which is contrary to the principle of substantive justice in the Undang-Undang No. 39 Tahun 1999 tentang HAM. Furthermore, administrative aspects also hamper child protection in unregistered marriages. Pasal 27 ayat (1) Undang-Undang No. 23 Tahun 2006 tentang Administrasi Kependudukan requires including the father's name on the birth certificate, which is impossible without proof of a legal marriage. As a result, children have difficulty accessing government programs such as the Smart Indonesia Card and BPJS Health, as in the Sumedang case (2023) revealed that 78% of children from unregistered marriages do not have health insurance (Zulkifli, 2024).

Reproductive health risks also increase for women in unregistered marriages. Without a marriage certificate, they are reluctant to check their pregnancy at official health facilities. Data from the Central Java Health Service (2024) noted that 40% of maternal deaths during childbirth came from unregistered marriages, including spiritual marriages (Ningrum, 2025). Legal efforts through a marriage confirmation application do not always guarantee protection. Putusan Mahkamah Syar'iyah Aceh No. 08/Pdt.P/2023/MSy rejected the marriage confirmation application because it did not meet the formal requirements as stipulated in Pasal 7 Peraturan Mahkamah Agung No. 3 Tahun 2017, emphasizing that this mechanism is not a universal solution for unregistered marriages (Zulkifli, 2024) From a social perspective, the stigma of society towards children from unregistered marriages is still strong and causes prolonged psychological trauma. Yulianto's (2022) research in 10 Islamic boarding schools in East Java found that 62% of children from unregistered marriages experienced bullying because of their birth status (Ningrum, 2025)

However, it is essential to note that after the Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010, the terminology of “illegitimate child” is legally no longer relevant to be used absolutely. Children from unregistered marriages now have the opportunity to have their civil relationship with their biological father recognized through scientific and/or legal evidence, so that their rights to identity recognition, sustenance, and inheritance can be fought for (Setiyowati, 2021). Protection of children's rights from unregistered marriages is further strengthened by the enactment of Undang-Undang No. 35 Tahun 2014 tentang Perlindungan Anak, which emphasizes that every child has the right to receive their identity and recognition without discrimination. Implementing this protection still faces bureaucratic and social challenges, but there is already a legal framework that can be used as a basis for fighting for children's rights more fairly. The rights of children born from unregistered marriages include the right to obtain a birth certificate, recognition of lineage through court inheritance, the right to maintenance, and the right to legal protection. Efforts to enforce these rights can be carried out through the marriage confirmation mechanism, determination of the child's origin in court, and legal advocacy by legal aid institutions.

However, administrative and social discrimination remain significant obstacles. Children often do not have full access to education, health services, and social protection programs due to the unclear legal status of their parents. This calls for administrative reform and increased legal literacy in society (Sri et al., 2025). Identity protection and access to public services for children from unregistered marriages must also be a primary concern. They have the right to a Family Card, Identity Card, Passport, and guarantee of citizenship status, as well as to participate in formal education and national health programs. It is important to emphasize that legal protection for children from unregistered marriages should not be exaggerated or reduced. The primary focus is to ensure that every child obtains their rights proportionally and without discrimination, under the principle of the child's best interests as stipulated in the Convention on the Rights of the Child and national laws and regulations.

Progressive legal reform is urgently needed to close the gap in legal protection for women and children from unregistered marriages (Ridwan, 2025). Policy changes should focus on enforcing marriage registration, expanding access to population administration services, and integrating family law education into formal and non-formal education curricula. Thus, discussions on children's rights and issues of discrimination in the context of unregistered marriages must be placed proportionally, as an essential part of the legal reform and social protection agenda without causing stigmatization or ignoring the positive developments that have been achieved through the decisions of the organizers and revolutionary changes.

#### **4. CONCLUSIONS**

The practice of unregistered marriage in Indonesia still has severe legal, social, and economic impacts on women and children, mainly due to the loss of civil rights protection and access to public services that the state should guarantee. The analysis shows that administrative barriers and social stigma remain significant challenges despite progress through Constitutional Court decisions and strengthening regulations. To address these issues, the paper recommends three strategic steps: legal reform that clarifies sanctions and expands access to registration, enhancing the role of the KUA and MUI as centers for legal and social education, and integrating customary mechanisms with the national legal system in a proportional manner. With this approach, protecting women's and children's rights can be realized more fairly and effectively, encouraging harmonization between cultural values and legal certainty for society.

#### **Ethical approval**

This research did not require ethical approval.

#### **Informed consent statement**

This research did not require informed consent.

#### **Authors' contributions**

Conceptualization, M.A.F.S., and N.H.; methodology, M.A.F.S.; validation, N.H.; formal analysis, N.H.; resources, N.H.; writing original draft preparation, M.A.F.S.; writing review and editing, M.A.F.S., and N.H.

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#### **Data availability statement**

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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#### **Notes on Contributors**

##### **Muh. Akbar Fhad Syahril**

Muh. Akbar Fhad Syahril, is a Permanent Lecturer at the Faculty of Law, Andi Sapada Institute of Social Sciences and Business, Parepare, South Sulawesi. Since 2023, he has been trusted to serve as Head of the Institute for Research and Community Service (LP2M) at the same institution. His active involvement in the world of research and scientific publications is very relevant to his interests and expertise in the field of family law, especially related to issues of women's protection in national marriage law. This is reflected in the research he is currently working on entitled "The Phenomenon of Inner Marriage from the Perspective of National Marriage Law and Protection of Women." In her capacity as a researcher, she is fully responsible for designing the conceptual framework of research related to unregistered marriages and women's protection, conducting analysis of national regulations such as Undang-Undang No. 1 tahun 1974 and Kompilasi Hukum Islam, and synthesizing findings regarding the impact of unregistered marriages on women's civil rights. She also compiles academic manuscripts for publication in reputable international journals. The combination of roles as an academic, research practitioner, and journal editor strengthens her capacity to produce critical and comprehensive studies on marriage law in Indonesia.

##### **Nurhaedah Hasan**

Nurhaedah Hasan, is a lecturer at the Faculty of Law, Muhammadiyah University of Parepare, South Sulawesi. In addition to her role as an academic, she also practices as a notary and Land Deed Making Officer (PPAT) with a working area in Parepare. Her professional experience in the field of notary and land affairs strengthens her competence in examining aspects of civil law, especially those related to the legality of documents, protection of civil rights, and implementation of law in society. The combination of teaching activities and legal practice provides a comprehensive perspective for Nurhaedah Hasan, especially in examining issues of marriage law and women's protection. Her involvement as a notary and PPAT allows her to directly understand the dynamics of legal practices in the field, making it very relevant to the research on "The Phenomenon of Inner Marriage from the Perspective of National Marriage Law and Protection of Women." With this background, Nurhaedah Hasan is committed to making a real contribution to the development of family law studies and women's protection in Indonesia.

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- Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak
- Kompilasi Hukum Islam
- Peraturan Mahkamah Agung Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum
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