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The Husband's Absolute Authority in Nikah Sirri: An Analysis of Maqāṣid al-Syarī'ah on Women's Rights

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ABSTRACT

The practice of nikah sirri in Indonesia often results in the husband's absolute authority, which is detrimental to women due to the lack of state legal protection. This study aims to analyze the impact of such authority on women's rights through the perspective of Maqāṣid al-Syarī'ah and to propose a reconstruction of family law. The method employed is normative legal research with an ecosentric approach, examining laws, legal concepts, and court rulings. The results of the study indicate that absolute authority in secret marriages disrupts the family justice ecosystem and violates the principles of Maqāṣid, particularly the protection of life (ḥifẓ al-nafs), lineage (ḥifẓ al-nasl), and property (ḥifẓ al-māl). Women face structural vulnerabilities in the form of the loss of maintenance rights, shared property, and the legal status of their children. In conclusion, this practice contradicts the spirit of substantive Islamic justice. A legal reconstruction is needed to strengthen the role of the state and judges as guardians of the balance of the justice ecosystem, as well as a reinterpretation of the concept of qiwamah based on consultation and gender justice. Marriage registration must be viewed as a Sharia instrument to guarantee human dignity, not merely an administrative formality.

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1. INTRODUCTION

The practice of sirri marriages or marriages not registered with the state remains a highly complex socio-religious phenomenon within the structure of Muslim society in Indonesia. The persistence of this practice cannot be separated from various supporting factors, ranging from the high level of religiosity among the population, the strength of patriarchal culture, limited access to legal administration, to the perception that religious validity holds a higher status than formal state legal legitimacy (Muslich, 2019). In this context, sirri marriages are often positioned as private relationships considered valid under sharia law because they have fulfilled the pillars and conditions of the contract, yet at the same time, they become highly problematic within the national legal system. The logical consequence of this lack of registration is the emergence of legal uncertainty that directly impacts the neglect of the

protection of the basic rights of women and children within the household. The state has actually mandated registration through the Marriage Law, but the reality on the ground shows that the public's legal awareness still lags behind religious norms that are interpreted narrowly.

A fundamental problem with secret marriages arises when the concept of family leadership (*qiwāmah*) is misunderstood as a form of absolute authority for the husband, without any oversight from state legal institutions. In the ecosystem of unregistered families, the husband holds power that tends to be subjective because the relationship falls outside the scope of the formal legal protection system. The concept *of qiwāmah*, which theologically signifies the husband's responsibility to lead, protect, and provide for the family, is often reduced to a dominant right to unilaterally control the wife (Shihab, 1992). Without state registration, there are no checks and balances to ensure that such leadership is exercised within the bounds of justice. This situation places women in the most vulnerable position and often traps them in what is known as *structural vulnerability* (Rahardjo, 2016). Women in nikah sirri lack equal bargaining power because they are entirely dependent on their husband's goodwill, with no legal guarantees compelling him to fulfill his obligations.

Without the state's legal recognition, women lose guarantees of their essential rights, such as spousal support, mut'ah, the division of joint property, and legal protection following divorce. In many cases, when a divorce occurs in a secret marriage, women are often left without assets and without a clear legal status, while the husband can easily remarry without complex legal procedures. (Nurhayati, 2021) This indicates that merely fulfilling the pillars and conditions of the marriage contract according to classical Islamic jurisprudence is insufficient to ensure the presence of relational justice within a family in the modern era. Justice in Islam is not only vertical—between humans and God—but also horizontal—between humans—and must be guaranteed through fair legal instruments. When the state's legal instruments are neglected, these instruments of horizontal justice become paralyzed, leaving women as the most disadvantaged party.

From the perspective of Maqāṣid al-Syarī'ah, every law and practice in Islam must be oriented toward the attainment of the public interest (maṣlaḥah), which encompasses five primary areas of protection: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), reason (*ḥifẓ al-ʿaql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) (Al-Ghazali, 1970). This principle serves as the primary benchmark for assessing whether a legal practice aligns with the spirit of Islam or, conversely, undermines its primary objectives. However, a normative analysis of the practice of the husband's absolute authority in a secret marriage reveals a disruption of these Sharia objectives. Unchecked authority in a secret marriage often disregards women's dignity (*ḥifẓ al-nafs*) due to the psychological and physical pressures that may occur without any legal recourse. Furthermore, this practice also threatens the legal certainty of children's status (*ḥifẓ al-nasl*), as children born from secret marriages often face difficulties in obtaining birth certificates and exercising inheritance rights (*Constitutional Court* , 2010).

Furthermore, the aspect of property protection (*ḥifẓ* al-māl) is also compromised because women lack legal proof of the joint property accumulated during the marriage. When a husband dies or a divorce occurs, women often receive no share at all due to the absence of a marriage certificate recognized by the state. Similarly, regarding the protection of religion (*ḥifẓ al-dīn*), the widespread practice of nikah sirri can actually diminish the prestige of Islamic law in the public eye because it is perceived as unable to provide substantive justice. Therefore, there is a wide gap between the normative validity of the contract in text and the reality of substantive justice expected by sharia. Islam does not desire formal validity that actually gives rise to substantive injustice.

A number of previous studies have examined nikah sirri from various perspectives. Normative studies tend to focus on the validity of the marriage contract and the status of children (Auda, 2008a) (Khoiruddin Nasution, 2004), while sociological research highlights women's economic vulnerability following divorce ((Mulia, 2019) ;(Tiwon, 2019)). Although both make important contributions, there has been no comprehensive study that positions nikah sirri as the primary variable disrupting the balance of family relations as a unified system of justice within the framework *of Maqāṣid al-Syarī'ah*. This research gap arises because the majority of the literature remains trapped in the formal dichotomy

of legality versus illegality, without analyzing the power dynamics (power relations) that emerge in the unrecorded private sphere. The novelty of this research lies in integrating a normative-ecocentric approach with *Maqāṣid* analysis to map how the absence of state intervention exacerbates distortions in qiwamah and creates structural vulnerability for women. The research questions are: (1) How does the construction of the husband's authority in nikah sirri affect the balance of family relations? (2) What are the impacts of this practice on the fulfillment of *Maqāṣid al-Syarī'ah*, and how can legal reconstruction restore it? This article posits the thesis that absolute authority in nikah sirri contradicts the spirit of Maqāṣid because it creates systemic injustice, thus requiring legal reconstruction that strengthens the role of the state and judges as guardians of the balance of the family justice ecosystem.

This article seeks to bridge that gap by proposing an ecosentric approach as a new paradigm in Islamic family law. Through this paradigm, the family is viewed as an ecosystem of justice where the validity of a marriage is not only measured by the fulfillment of the conditions and pillars of the contract but also by its impact on the sustainability of the protection of the rights and dignity of all family members, particularly women, who are often disadvantaged by the husband's absolute authority. This article proposes the thesis that the husband's absolute authority in a sirri marriage contradicts the spirit of *Maqāṣid al-Syarī'ah* because it creates systemic injustice, thus necessitating a legal reconstruction that strengthens the role of the state and judges as guardians of the balance within the family's ecosystem of justice. Through this analysis, it is hoped that a new understanding will emerge that marriage registration is not merely an administrative formality, but an integral part of the effort to realize the objectives of Sharia itself.

METHODS

This study is a normative legal research (*doctrinal legal research*) that focuses on the analysis of legal norms, principles, and concepts governing the protection of women's rights within the family institution. The primary approach used is the normative-ecocentric approach. The normative-ecocentric approach is operationally defined as a framework of analysis that views family law not as individualistic rules, but as a relational system requiring a dynamic balance between individual rights, reciprocal obligations, and the state's responsibility in upholding substantive justice.

This study focuses on the normative construction of the husband's leadership authority in Islamic law and the legal implications of the practice of secret marriages on women's rights in Indonesia. Operationally, this study employs a three-tiered normative approach, namely: *a statutory approach* to examine Law No. 1 of 1974 and the Compilation of Islamic Law; *a conceptual approach* to construct a framework for a family justice ecosystem based on *maqāṣid al-syarī'ah*; and *a case approach* through an analysis of Constitutional Court Decision No. 46/PUU-VIII/2010 and related judicial practices.

Data sources include: (1) Primary legal sources: Law No. 1 of 1974 as amended by Law No. 16 of 2019, the Compilation of Islamic Law, Constitutional Court Decision No. 46/PUU-VIII/2010, and Religious Court decisions regarding the validation of marriage; (2) Secondary legal sources: ushul fiqh textbooks, Sinta/Scopus-accredited journals, and MUI fatwas; (3) Tertiary legal sources: legal dictionaries and Islamic encyclopedias.

The analysis was conducted in three stages: (a) Content analysis to map the normative construction *of qiwamah* and spousal authority; (b) Systematic interpretation to examine the interrelationships among norms within the family law system; (c) Teleological interpretation to assess the extent to which the practice of nikah sirri aligns with or deviates from the ratio legis of sharia (public interest). The research flow is arranged sequentially: problem identification → collection of legal materials → classification and verification → eco-centric normative analysis → Maqāṣid synthesis → formulation of legal reconstruction. This method ensures that findings are traceable and verifiable by other researchers.

FINDINGS AND DISCUSSION

3.1. The Construction of the Husband's Authority in Family Leadership in the Practice of Nikah Sirri

The concept of a husband's leadership in Islam, known as *qiwāmah*, is often a double-edged sword in the practice of married life. Theologically, *qiwāmah* as stated in Surah An-Nisa verse 34 is not a mandate for absolute domination, but rather a function of responsibility inherent in the obligation of financial support (Shihab, 1992). However, in the practice of nikah sirri, this concept undergoes significant distortion. The husband's leadership is often misunderstood as a form of absolute authority or unlimited power, particularly within the private, unregistered context of nikah sirri. A rigid textual interpretation, devoid of contextual understanding regarding gender justice, leads husbands to believe they possess the prerogative to regulate every aspect of their wives' lives without needing to consider the wives' aspirations or rights. In the context of nikah sirri, the perceived religious legitimacy derived from a simple marriage contract reinforces the husband's belief that his authority is a direct representation of God's will, so that criticism from the wife is often viewed as defiance against religion.(Muslich, 2019) A study in Ahkam: Jurnal Ilmu Syariah shows that interpretations of qiwāmah not grounded in substantive justice often serve as a tool to legitimize domestic violence in unregistered marriages (Fitrah, 2018).

This distorted understanding is exacerbated by the absence of state oversight within the ecosystem of secret marriages. In the registered marriage system, the state intervenes through the Marriage Law and the Compilation of Islamic Law to establish legal boundaries for the exercise of qiwāmah. For example, a wife's right to file for divorce or claim shared assets is guaranteed by court procedures. However, within the secret marriage ecosystem, the lack of state legal recognition allows husbands to exercise leadership subjectively, as the relationship operates outside the formal legal oversight system (Rahardjo, 2016). The state appears absent from their domestic sphere, creating what is termed a legal vacuum. In this situation, the husband acts simultaneously as the rule-maker, enforcer, and judge within his own household. The absence of a system *of checks and balances* from religious judicial institutions makes the potential for abuse of power extremely high, as there are no formal legal consequences to hold the husband accountable if he violates his wife's rights (Nurhayati, 2021). As a concrete illustration, the Bandung Religious Court Decision No. 112/Pdt.G/2022/PA.Bdg, in which the judge noted that the wife had no legal standing to claim marital property because the marriage was unregistered, even though the wife's economic contribution to the household assets was factually proven. This case demonstrates how the lack of registration is not merely an administrative issue but directly strips women of their legal bargaining power. Research in Al-Ahwal: Journal of Islamic Family Law confirms that the absence of marriage registration eliminates a crucial state protection mechanism for the wife in the event of a dispute (Nurjanah, 2017).

The absence of state oversight directly leads to the creation of unequal power dynamics within the household. This unchecked authority tends to reinforce a patriarchal culture that places wives in a position of legal weakness. In nikah sirri, women often lose autonomy over their bodies and their economic rights due to total dependence on their husbands. In the event of a conflict, women do not have easy access to formal legal channels due to the absence of valid proof of marriage. This creates structural vulnerability where women are forced to endure harmful relationships for the sake of economic security or illusory social status (Rahardjo, 2016). A patriarchal culture, compounded by the absence of state law, transforms the household from a space of love and compassion (sakinah, mawaddah, rahmah) into a space of power exploitation. Husbands can easily practice polygamy without court approval, or abandon their wives without the risk of clear legal sanctions, because administratively they are "never married" in the eyes of the state. (Muslich, 2019) The Musawah Journal: Journal of Gender and Child Studies highlights that this vulnerability is exacerbated when women lack independent economic access (Sutriani, 2019).

The impact of this construction of absolute authority is very evident in the violation of the Maqāṣid al-Syarī'ah. When a husband holds absolute authority without any checks, the principle of protecting the wife's property (ḥifẓ al-māl) is threatened. Women in nikah sirri often lack proof of ownership over

the joint property accumulated together over the years. In the event of divorce or the husband's death, women are often cast out without any assets whatsoever because they lack a legal basis to claim a share of the joint property (Nurhayati, 2021). Similarly, regarding the protection of life (ḥifẓ al-nafs), the psychological pressure resulting from the uncertainty of their status and the fear of being abandoned at any time without legal compensation constitutes a form of subtle violence that frequently occurs. The husband's absolute authority in a nikah sirri has essentially reduced the meaning of marriage from an equal partnership to a master-servant relationship cloaked in religious pretext. (An analysis in Samarah: Journal of Family Law and Islamic Law indicates that violations of hifz al-nasl also occur due to children's difficulties in obtaining a clear legal identity (Rafiq, 2020).

Furthermore, this power imbalance also affects women's education and intellectual development (*ḥifẓ al-ʿaql*). In many cases of nikah sirri, women's access to self-development is often restricted by their husbands on the grounds of family leadership. Husbands feel entitled to decide whether their wives may work, study, or socialize. Without state protection, wives lack a legal basis to reject such unreasonable restrictions. This contradicts the spirit of Islam, which honors human beings based on their piety, not their gender or marital status. Therefore, the construction of the husband's authority in a nikah sirri is not merely a matter of violating positive law, but also a deviation from the primary purpose of Sharia itself. Sharia was established to free humanity from the enslavement of others, yet nikah sirri—which perpetuates absolute authority—actually returns women to a status of dependency that is detrimental.

In response to this situation, an integrative reinterpretation of qiwāmah is needed. A husband's leadership must be understood as accountable servant leadership, not absolute power. This accountability extends not only to God but also to state law, which represents the public interest (maslahah 'ammah). Marriage registration must be viewed as a Sharia instrument to ensure that qiwāmah is exercised within the bounds of justice. Without registration, claims of religious legitimacy in nikah sirri are substantively flawed because they disregard the principle of justice, which is the core of Maqāṣid al-Syarī'ah. Thus, strengthening the state's role in overseeing marriage is not a form of secularization of religious law, but a concrete effort to protect human dignity and ensure that the husband's authority does not become a tool of oppression within the family ecosystem. (Al-Farra', 1983) This aligns with the perspective in De Jure: Journal of Law and Sharia, which states that the integration of state law and Islamic law is key to protecting women's rights (Yusuf et al., 2025).

3.2. Disruption of the Family Justice Ecosystem and Vulnerabilities in Women's Rights

In this study, the family justice ecosystem is operationally defined as a relational network connecting husbands, wives, children, society, and the state, where the balance of rights and obligations is maintained through clarity of legal status, mechanisms of mutual accountability, and preventive and protective state interventions. This ecosystem emphasizes not only the validity of the marriage contract but also the continuity of substantive protection that ensures no party is wronged legally, economically, or socially.

In contemporary Islamic legal discourse, the institution of the family can no longer be viewed reductively as a private unit isolated from public intervention. The family must be understood as an ecosystem of justice that requires a dynamic balance between individual rights and collective responsibilities. Within this ecosystem, every family member has protected rights, and every party has obligations that must be upheld. However, the social reality in Indonesia reveals the existence of nikah sirri (unregistered marriages), which creates serious disruption to this ecosystem. This disruption occurs primarily through the mechanism of *structural vulnerability* experienced by women, which places them in a position of extreme legal and economic vulnerability (Hidayah, 2021).

A secret marriage creates a situation in which women lose the guarantee of protection for their essential rights—such as the right to spousal support, *mut'ah* (a post-divorce consolation payment), and the division of joint property—due to the lack of legal proof of the marriage. Under Indonesia's positive legal system, particularly Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI),

these rights can only be claimed through court proceedings that require a marriage certificate as primary evidence. Without this document, women automatically lose their legal standing to claim their economic rights, even though the relationship is considered valid under religious law by some groups. This places women's " " in an extremely subordinate position, where their economic survival depends entirely on their husband's goodwill, not on legally binding certainty (Mulia, 2019). This disruption is reinforced by empirical data indicating a significant scale of the problem. According to records from the Directorate General of Islamic Community Guidance at the Ministry of Religion (2023), there are over 15,000 applications for marriage validation filed with Religious Courts each year, with the majority of applicants being women involved in disputes over alimony, custody, or post-divorce property division. This data indicates that the absence of registration is no longer a marginal phenomenon, but rather a recurring systemic practice that has the potential to perpetuate injustice. The National Commission on Violence Against Women's Annual Report (2023) also notes that approximately 34% of domestic violence cases involving women stem from unregistered marriages, where victims are often reluctant to report incidents due to fear that their marital status will not be legally recognized.

From an ecosentric perspective, this practice is viewed as systemic harm because it severs the link between individual rights and the state's responsibility to provide legal protection. In a healthy family justice ecosystem, the state functions as a guardian of balance, ensuring that no party is wronged. The state, through its religious judicial apparatus, has a constitutional mandate to guarantee legal certainty for every citizen (Asshiddiqie, 2010). However, nikah sirri isolates families from the state's protection system, so that when injustice occurs, there is no external mechanism capable of intervening. This severing of ties violates the principle *of maslahah 'ammah* (public interest) because it creates a class of society that is not protected by the law. This systemic damage not only harms women individually but also undermines the broader social order by normalizing legal uncertainty within society's most fundamental institutions (Auda, 2008b).

In the context of *Maqāṣid al-Syarī'ah* (the objectives of Islamic law), the state's failure to protect citizens from this practice can be considered a dereliction of duty regarding the functions of hifz al-nafs (preserving life) and hifz al-māl (preserving property). Islamic Sharia not only regulates the ritual aspects of worship but also the muamalah aspects that ensure the well-being of the community. Allowing economic exploitation of women in unregistered marriages to occur amounts to neglecting the fundamental purpose of Sharia to protect human dignity and the continuity of life. Therefore, marriage registration is not merely a bureaucratic administrative process, but a Sharia instrument for realizing substantive justice.

The most tangible impact of this disruption is evident in the post-divorce phase, where women face extraordinary difficulties in asserting their economic rights through legal claims following a divorce from an unregistered marriage. The process of isbat nikah (marriage validation), which is often seen as a solution, is fraught with bureaucratic hurdles and significant costs, making it frequently unaffordable for women who are victims of unregistered marriages. Even if the marriage validation is successful, the process of proving joint assets often becomes complicated due to the lack of financial documentation during the marriage. A study in Al-Ahwal: Journal of Islamic Family Law indicates that the majority of women in unregistered marriages end up with nothing after divorce due to their inability to prove their contributions to family assets (Husein, 2022). Furthermore, the rights to mut'ah and past maintenance (nafkah madhiyah) are often forfeited by law because the court lacks a basis to rule against a husband who, administratively, has no valid marital bond.

This vulnerability is exacerbated when it comes to child custody and child support. Although the Marriage Law and Constitutional Court Decision No. 46/PUU- VIII/2010 have provided protection for children born out of unregistered marriages, the burden of proof regarding the civil relationship between father and child still falls on women. In many cases, husbands can easily evade child support obligations by citing the absence of a valid marriage certificate. This creates a cycle of feminized poverty, where women must bear the family's economic burden alone post-divorce due to a system that fails to protect them (Tiwon, 2019). The Musawah Journal: Journal of Gender and Child Studies

notes that this legal uncertainty also has long-term psychological impacts, creating a trauma of insecurity that hinders women's ability to achieve economic recovery (Munti, 2021). Children born from such marriages also often face difficulties in accessing their civil rights, such as obtaining birth certificates, which serve as the gateway to accessing education and health services.

This disruption of the justice ecosystem also results in the loss of the law's preventive function. In registered marriages, the act of registration serves as a preventive measure against a husband's abuse of power due to the existence of a legal record. Registration creates transparency regarding marital status that is accessible to interested parties, including the state. Conversely, unregistered marriages eliminate this preventive function, making potential rights violations easier and more frequent. The absence of formal state witnesses turns the household into a closed, dark space beyond public oversight, allowing practices of violence and neglect to occur unchecked (Lubis, 2020). In this closed space, social control mechanisms do not function, and victims often lack access to legal aid institutions out of fear that their relationships will not be recognized. Therefore, viewing nikah sirri merely as a matter of religious privacy is a fundamental mistake. It is a public issue concerning the integrity of the family justice system as a whole.

This phenomenon must also be viewed within the framework of legal pluralism in Indonesia. There is a tension between religious law, which emphasizes ritual validity (ijab kabul), and state law, which emphasizes administrative validity (registration). For some people, nikah sirri is considered more "sacred" because it avoids bureaucracy; however, this perception overlooks serious worldly consequences. Public legal education needs to be directed toward understanding that registration is part of obedience to uli al-amri (those in authority), which in the context of a nation-state is the government (Az-Zuhaili, 1985). This misunderstanding is exacerbated by the presence of certain marriage officiants or religious figures who still facilitate marriages without registration, which indirectly perpetuates a culture of legal uncertainty.

In conclusion, the vulnerability of women's rights in unregistered marriages is not merely the result of a lack of religious understanding, but rather the result of a systemic failure to integrate religious norms with state law. This disruption to the ecosystem of family justice must be addressed with firm policies regarding the obligation to register marriages. Registration is not intended to restrict religious freedom, but rather to ensure that the family ecosystem operates within the framework of substantive justice guaranteed by the state. (Without state intervention to close the legal loophole regarding secret marriages, the principle *of Maqāṣid al-Syarī'ah* in protecting women's property and lives will remain mere rhetoric without tangible implementation. Family law reform must be directed toward strengthening women's position as equal legal subjects, not as vulnerable objects within an unregistered family ecosystem (Natsir, 2018). Synergy between the Ministry of Religious Affairs, the Ministry of Women's Empowerment, and judicial institutions is necessary to create a comprehensive protection ecosystem . Only in this way can the family truly function as the first school that teaches justice, rather than a space that perpetuates uncertainty and harm for the vulnerable.

3.3. Analysis of Maqāṣid al-Syarī'ah: The Failure of Substantive Protection in the Practice of Nikah Sirri

In contemporary Islamic legal discourse, the understanding of Sharia can no longer be limited to formalistic aspects alone. Islamic law, which is derived from the Qur'an and Sunnah, possesses a spirit and fundamental objectives known as Maqāṣid al-Syarī'ah. These objectives are not merely to regulate the procedures of ritual worship, but to realize human welfare (*jalb al-maslahah*) and prevent harm (*dar' al-mafsadah*). However, there is a significant tension between the formal validity of marriage contracts in classical fiqh and the reality of substantive justice in the modern era, particularly regarding the practice of nikah sirri. Although in traditional fiqh nikah sirri is often considered valid as long as it fulfills the pillars and conditions, an in-depth analysis using the analytical framework *of Maqāṣid al-Syarī'ah* reveals that this practice often fails to meet the primary objectives of the Sharia, particularly in

the aspects of protection of lineage (*ḥifẓ al-nasl*), protection of life and dignity (*ḥifẓ al-nafs*), and the protection of property (*ḥifẓ al-māl*) (Auda, 2008a).

First, an examination of the principle of ***ḥifẓ al-nasl*** (protection of lineage) reveals a fundamental flaw in nikah sirri. In Islam, the clarity of lineage is a non-negotiable fundamental right of the child. The registration of marriages in the state registry serves as a public instrument to ensure the certainty of that lineage. When a marriage is not registered, children born from such a relationship face serious bureaucratic obstacles in obtaining a birth certificate. Although Constitutional Court Decision No. 46/PUU-VIII/2010 has recognized the civil relationship between a child from an unregistered marriage and their biological father, the burden of proof in Religious Courts remains complex and costly. Data from the Ministry of Religious Affairs (2023) indicates that the average process for marriage validation takes 6–12 months, with administrative and legal consultation fees that are often unaffordable for low-income women. Consequently, many children grow up without a clear birth certificate, which directly limits their access to education, healthcare, and inheritance rights. The failure to guarantee the legal identity of these children constitutes a violation of ḥifẓ al-nasl, as Islamic law requires that the dignity and civil rights of descendants be preserved, not that they be administratively marginalized (Amin, 1960).

Second, the principle of *ḥifẓ al-nafs* (protection of life and dignity) is also violated by this practice. The concept of nafs in *Maqāṣid* is not limited to physical safety, but also encompasses psychological well-being and human dignity (karamah insaniyah). Women in nikah sirri are in a highly vulnerable position due to the absence of state legal protection. When domestic violence (DV) or neglect occurs, women are often reluctant to report it to law enforcement because of their "unofficial" marital status. (Fear of social stigma and legal uncertainty creates severe psychological pressure, which directly threatens their mental health. Furthermore, the ease with which a husband can abandon his wife without a valid divorce procedure (talak in court) leaves deep trauma. Islamic Sharia prohibits all forms *of darar* (harm), and leaving women in a state of extreme legal uncertainty constitutes a tangible form of darar, thereby contradicting *the* principle *of "la darar wa la dirar"* (one must not cause harm nor allow harm to others). "

Third, the aspect of *ḥifẓ al-māl* (protection of property) is the most tangible victim of this disruption of the justice ecosystem. One of the purposes of marriage in Islam is to create a fair economic partnership ( ) between husband and wife. A wife's financial rights, such as maintenance, mut'ah, and joint property, are guaranteed by Islamic law. However, without documented evidence, these rights become difficult to enforce legally. In divorce disputes, courts are often hindered by the lack of administrative evidence to divide joint property, resulting in women losing the economic contributions they have made over the years (Mulia, 2019). This clearly contradicts the principle of *ḥifẓ al-māl*, whereby Islamic law seeks to protect individual wealth from unlawful seizure (*akl al-māl bi al-bāṭil*). When the system allows women to lose their economic rights simply due to the absence of administrative documents, the function of asset protection under Islamic law has failed to be implemented.

Furthermore, this analysis highlights the tension between narrow legalism and substantive justice. A formal legalistic approach tends to be satisfied merely with the fulfillment of the essential elements and conditions of the marriage contract (ijab-qabul, guardian, witnesses), without considering long-term social consequences. In fact, in ushul fiqh, the law can change with the times (*taghayyur al-ahkam bi taghayyur al-zaman*). In the era of the modern nation-state, marriage registration is a mechanism of the wali al-amri (government) to ensure public order. Ignoring the obligation to register on the grounds of religious freedom is a form of narrowing the meaning of sharia. The fundamental spirit of Islamic law is justice (*'adl*). If a contract that is formally valid results in systemic injustice for vulnerable parties (women and children), then that contract is substantively flawed. Imam Al-Ghazali, in Al-Mustasfa, emphasizes that the purpose of Sharia is to preserve religion, life, reason, lineage, and property. If a secret marriage threatens three of these five fundamental elements (life, lineage, property), then its validity must be questioned in the context of the public interest.

An evaluation of the public interest (maslahah) serves as a crucial instrument in assessing this practice. A principle of *Islamic* jurisprudence states that the ruler's authority *over* the *people* must be based *on* the public interest (*maslahah*). In the context of secret marriage, the balance of benefits and harms (mafsadah) indicates that this practice causes more harm. Individual, short-term public interest (e.g., avoiding registration fees or bureaucratic procedures) must not override the public interest and long-term protection.(Wahbah al-Zuhaili, n.d.) The harms caused are structural and systemic, creating a vulnerable generation and marginalized women. Therefore, mandating marriage registration is not a form of legal secularization, but rather an effort to actualize *the Maqāṣid al-Syarī'ah* within the context of a modern state. Registration is *a wasilah* (means) to achieve *the ghayah* (goal) of justice and protection.

In conclusion, an analysis *of Maqāṣid al-Syarī'ah* demonstrates that nikah sirri is not merely a matter of differences in fiqh opinions, but rather a matter of the failure to provide substantive protection for the fundamental human rights guaranteed by Islam. The conflict with the objectives of Sharia in the aspects of *ḥifẓ al-nasl*, *ḥifẓ al-nafs*, and *ḥifẓ al-māl* indicates that the formal validity of the contract cannot justify the resulting injustice. Islamic law must be understood holistically, where the fulfillment of the pillars and conditions must go hand in hand with the achievement of substantive justice. An evaluation of public interest confirms that secret marriages cause more harm than good to women and children. Therefore, family law reform must be directed toward strengthening the obligation of registration as a manifestation of the commitment of the state and the Muslim community to protecting human dignity in accordance with the spirit of Sharia as *a mercy to all creation*.

3.4. Legal Reconstruction: Judges and the State as Guardians of Balance

Family law in Indonesia, which largely overlaps with Islamic law for the majority of the population, is often caught in a dichotomy between normative texts and social reality. On the one hand, laws and the Compilation of Islamic Law (KHI) serve as ideal guidelines for building a household characterized by *sakinah*, *mawaddah*, *and rahmah*. However, on the other hand, practices on the ground often reveal power imbalances that disadvantage the more vulnerable parties, particularly women and children. It is within this context that the urgency of legal reconstruction becomes unavoidable. Law must no longer be viewed as a rigid series of articles, but rather as a dynamic instrument for achieving substantive justice. As discussed in Samarah: Journal of Family Law and Islamic Law, the dynamics of family law require a response that is not only textual but also contextual to social change. This article will outline three main pillars of this reconstruction: the transformation of judicial roles, progressive state intervention, and family leadership grounded in gender justice.

a. The Transformation of the Judicial Role: From Enforcer of the Law to Guardian of the Ecosystem

Until now, the prevailing paradigm in the judicial world has positioned judges as "law applicators" or mere enforcers of formal norms. Under this way of thinking, a judge's role is limited to matching legal facts with existing statutes (legal syllogism). If written rules do not address the matter, judges often feel their hands are tied when it comes to delivering justice. However, in family disputes, this kind of textualist approach often fails to capture the true essence of the conflict. A family is not merely a legal entity, but a complex social ecosystem full of emotional, economic, and cultural dynamics. Research in De Jure: Journal of Law and Sharia shows that the rigidity of the law often hinders the protection of the rights of the weaker party in family litigation (Hidayat, 2021).

Therefore, a paradigm shift is needed toward the role of judges as guardians of the family justice ecosystem. In this role, judges do not merely consider the formal legality of a marriage or divorce, but also the sociological impact of their decisions on the future of family members, particularly children and spouses. Judges are required to engage in progressive legal interpretation. An example of such progressive practice can be seen in the Surabaya Religious Court Decision No. 45/Pdt.G/2021/PA.Sby, where the judge recognized the wife's right to joint property even though the marriage was not officially registered, on the grounds that the wife's domestic contributions hold equivalent economic value. To reinforce this practice, the Supreme Court needs to issue a Circular Letter or PERMA that explicitly instructs judges to consider non-documentary evidence (such as neighborhood testimony,

transfer records, or family photos) in marriage validation disputes, as has been initiated in PERMA No. 3/2017 on Guidelines for Adjudicating Cases Involving Women in Legal Proceedings. This aligns with findings in *Ahkam: Journal of Sharia Studies*, which emphasizes the importance of gender-just judicial interpretation in disputes over joint property (Fauzi, 2022).

Being a guardian of balance means that judges must have the courage to break through procedural rigidity in the interest of substantive justice. When a legal rule actually perpetuates injustice, judges have the moral and legal legitimacy to interpret the law contextually. This aligns with progressive legal theory, which places humanity as the highest institution, where the law must return to its fundamental purpose: to honor humanity. Thus, the family courtroom is not a place to "win a case," but rather a space for the restoration of rights and the balance of damaged relationships.

b. Progressive State Intervention: Restoring Rights Through Judicial Mechanisms

State intervention must be strengthened through a concrete and legally binding regulatory framework. Marriage registration needs to be transformed from a mere administrative obligation into an absolute prerequisite for the enforcement of family civil rights, including property division, alimony, and child custody. Revisions to Article 7 of the Marriage Law should focus on imposing strict administrative sanctions on marriage officiants, religious leaders, or third parties who facilitate marriage ceremonies without official registration. On the other hand, the itsbat nikah procedure must be streamlined administratively and made free or fully subsidized for women from economically vulnerable groups so that access to justice is not hindered by costs. Institutional synergy between the Ministry of Religious Affairs, the Ministry of Women's Empowerment and Child Protection, and the Ministry of Law and Human Rights is crucial for building a nationally integrated digital marriage database. This system not only accelerates the verification of marital status and minimizes overlapping lawsuits in court but also ensures that the restoration of women's rights can be carried out swiftly, measurably, and accountably. Thus, the state is no longer passive but acts as an active instrument that guarantees substantive justice, prevents the normalization of legal uncertainty, and restores women's dignity within the modern family ecosystem. A study in Al-Ahwal: Journal of Islamic Family Law highlights that the absence of marriage registration is the root of legal vulnerability for women and children (A. Rahman, 2023).

This is where mechanisms such as itsbat nikah (marriage validation) become vital instruments. However, *itsbat* nikah should not be viewed merely as an administrative procedure. The state must intervene to restore the rights of women that have been neglected. This intervention is progressive because the state acknowledges past mistakes (the lack of registration) not to punish women, but to restore their bargaining position before the law. Through itsbat nikah rulings, the state legitimizes relationships that were previously "illegitimate" in the eyes of positive law, so that women can assert their rights in Religious Courts.

State intervention must be strengthened through a concrete regulatory framework. Marriage registration needs to be transformed from an administrative requirement into a prerequisite for the enforcement of family civil rights. The revision of Article 7 of the Marriage Law could focus on imposing administrative sanctions on marriage officiants or parties who facilitate marriage ceremonies without registration

State intervention is also necessary to challenge the narrative of the husband's absolute authority. In many classical fiqh interpretations, the husband is regarded as having full control over the household. If this interpretation is left uncorrected by the state, it will result in impunity for husbands who neglect their families. The state must affirm that authority within the household is not a value-neutral prerogative, but rather a trust bound by legal obligations. When a husband fails to fulfill his obligations, the state has the right to intervene through mechanisms such as divorce proceedings, maintenance *(nafkah madhiyah*), or *mut'ah* to ensure women do not become victims of an unchecked patriarchal structure. Thus, the judiciary serves as the gateway for the state to distribute justice

equitably, ensuring that no citizen loses their fundamental rights merely due to an unregistered marital status or an unequal power dynamic.

c. Gender-Just Leadership: A Reconstruction of the Concept of Qiwamah

The final and most fundamental pillar of this reconstruction is the dismantling and rebuilding of the concept of leadership within the family. For centuries, the concept of qiwamah (husbandly leadership) has often been interpreted in a patriarchal manner, positioning the husband as the sole authority and the wife as the party required to submit unconditionally (*nusyuz*). This one-sided interpretation has perpetuated domestic violence and silenced women's voices in household decision-making. Legal reconstruction demands a reinterpretation of this concept within an inclusive national legal framework. Discourse in Qanun: Journal of Islamic Legal Thought and Reform suggests reinterpreting qiwamah as a function of service rather than domination (Nuruddin, 2021).

The reinterpretation of the concept *of qiwāmah* must be carried out contextually and grounded in gender justice. This concept needs to be shifted from a paradigm of vertical domination to a horizontal partnership based on *shura*, *'adl*, and *rahmah*. As proposed by Nasaruddin Umar (2021) and Amina Wadud (1999), qiwāmah must be understood as an accountable service (khidmah), not a value-neutral prerogative. In practice, this can be operationalized through marriage counseling curricula at the KUA that emphasize relational equality, as well as Supreme Court jurisprudence that rejects claims of the husband's absolute authority when they conflict with the wife's fundamental rights. This reconstruction does not abolish Islamic teachings but rather purifies them from the distortions of patriarchal culture that have long obscured the spirit of substantive justice in sharia.

The value *of 'adl* (justice) serves as the primary parameter. Gender justice within the family means recognizing that the contributions of husbands and wives—both in the public sphere (earning a living) and the domestic sphere (managing the household)—are of equal value. National laws, such as the Marriage Law, must be interpreted to reinforce this equality. When the concept of leadership shifts from a vertical hierarchy to a horizontal partnership, the potential for conflict can be minimized. The value of raḥmah serves as the glue that ensures differences of opinion do not lead to violence, but are resolved with a cool head and a gentle heart.

This reconstruction also demands that positive law no longer blindly adopt gender-biased interpretations of Islamic jurisprudence. The Supreme Court, through its jurisprudence, can play a key role by establishing a new standard that household leadership which violates a wife's human rights is not protected by law. Thus, the national legal framework becomes inclusive, embracing substantive Islamic values without sacrificing the principle of gender equality guaranteed by the constitution. As emphasized in Al-Ikhwan: Journal of Islamic Family Law, the harmonization of national law and gender values is key to the sustainability of the modern family (Zahra, 2023).

4. CONCLUSION

This study concludes that the husband's absolute authority in nikah sirri contradicts the Maqāṣid al-Syarī'ah because it gives rise to systemic injustice that harms women and children. The lack of registration is not merely an administrative issue, but a failure of substantive Sharia protection. The novelty of this study lies in the integration of a normative-ecocentric approach with *Maqāṣid*, which shifts the focus from the formal validity of fiqh toward relational and structural justice within the modern family.

Theoretically, this research expands the Maqāṣid framework by positioning marriage registration as an instrument of the ḍarūriyyāt (ḥifẓ al-nafs, al-nasl, al-māl) and offers the "justice ecosystem" paradigm as a lens for analyzing contemporary family law. In practical terms, these findings urge collaboration between Religious Courts, the Ministry of Religious Affairs, and the Ministry of Women's Empowerment and Child Protection to streamline digital-based marriage validation procedures, issue judicial guidelines recognizing non-documentary evidence in alimony/property disputes, and revise KUA guidance materials to emphasize qiwāmah as accountable service, not unilateral domination.

As a recommendation, future research is advised to empirically examine the effectiveness of court rulings in restoring women's rights following marriage validation, as well as to conduct comparative studies on marriage registration regulations in other Muslim countries to strengthen public policy arguments.

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