

INVOLVEMENT OF IMAM IN THE LEGALITY OF UNREGISTERED MARRIAGES IN THE BAJO TRIBE SOCIETY KEPULAUAN RIAU

Nuraida

State Islamic School Sultan Abdurrahman Kepulauan Riau, Indonesia
Nuraida@stainkepri.ac.id

Aris Bintania

State Islamic School Sultan Abdurrahman Kepulauan Riau, Indonesia
arisbintania@stainkepri.ac.id

Arbisora Angkat

State Islamic School Sultan Abdurrahman Kepulauan Riau, Indonesia
arbisoraangkat@stainkepri.ac.id

Asrizal Saiin

State Islamic School Sultan Abdurrahman Kepulauan Riau, Indonesia
asrizal@stainkepri.ac.id

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ABSTRACT

The practice of unregistered marriages is still common, one of which is performed by the Bajo tribe in Kepulauan Riau. However, there is something that attracts attention when the participation of an imam is used as a label to validate the marriage. This research uses qualitative descriptive research. The data obtained included primary and secondary data obtained by going directly to the field for interviews. The results of this research show that there is a unique way to perform the practice of unregistered marriage performed by the Bajo tribe in Kepulauan Riau so that it is considered legal, namely by visiting the house of one of the Imams who has been appointed outside the area as the person performing the marriage, although they do not know the name and its origin. For the Bajo society in Kepulauan Riau, a marriage cannot take place without an imam. Therefore, this marriage has no legal protection for children and wives. Although the traditions of a society must be maintained, in terms of the legality of marriage, it is non-negotiable, but every marriage must still be registered. In Islam, the concept of marriage registration is a form of renewal in the field of Islamic family law.

Keywords: Unregistered marriages, bajo tribe, and traditional society

ABSTRAK

Praktik nikah siri masih kerap terjadi, salah satunya sebagaimana dilakukan oleh masyarakat Suku Bajo Kepulauan Riau. Namun ada yang menarik perhatian ketika adanya keikutsertaan seorang imam dijadikan sebagai label pengesahan pernikahan tersebut. Penelitian ini menggunakan penelitian deskriptif kualitatif. Data yang diperoleh diantaranya data primer dan sekunder yang didapat melalui terjun langsung

ke lapangan untuk dilakukan wawancara. Hasil dari penelitian ini menunjukkan bahwa terdapat cara yang unik untuk melangsungkan praktik nikah siri yang dilakukan oleh masyarakat suku Bajo Kepulauan Riau agar dinilai legal, yakni dengan mengunjungi rumah salah satu imam yang telah ditetapkan yang berada di luar daerah sebagai orang yang menikahkan, walaupun mereka tidak mengetahui nama dan asal usulnya. Bagi masyarakat Suku Bajo Kepulauan Riau, tanpa seorang imam, pernikahan tidak dapat dilaksanakan. Dengan demikian, pernikahan ini tidak adanya perlindungan hukum bagi anak dan istri. Walaupun tradisi suatu masyarakat memang harus dipertahankan, namun dalam hal legalitas pernikahan, menjadi suatu yang tidak bisa ditawar, melainkan setiap pernikahan harus tetap dicatatkan. Dalam Islam, konsep pencatatan nikah merupakan suatu bentuk pembaruan yang dilakukan dalam bidang hukum keluarga Islam.

Kata Kunci: Perkawinan tidak dicatat, suku bajo, dan masyarakat adat.

1. Introduction

The Bajo tribe's practice of unregistered marriages in Indonesia began to develop in the 1970s in the Kalimantan area.¹ At that time, the Indonesian government provided opportunities for foreign companies to enter Indonesia to manage the natural resources in Kalimantan. This business requires a lot of workers, apart from domestic workers, it also needs foreign workers. They have to stay for a long time in Indonesia. This situation means that the biological needs of these foreign workers need to be channeled. However, considering that their wives were far away in their country, in the end they approached native Kalimantan women to fulfill their desires. Besides that, quite a few people want to marry these women. However, this was not easy to do because they had to go through procedures and several rules that had to be followed until finally they decided to marry privately (unregistered marriages).²

In fact, there are many factors that cause someone to have an unregistered marriage or not want to register marriage at the Religious Affairs Office for Muslims (KUA), as for the factors that background The existence of unregistered marriages includes economic factors, work ties, the assumption that unregistered marriages are

¹ Susi Susilawati et al., "Manifestations of Gender Injustice in Divorced Marriages: The Kabalutan Tradition," *Jambura Law Review* 5, no. 1 (2023), <https://doi.org/10.33756/jlr.v5i1.17722>.

² Nirwana and Irmayanti, "Etnoparenting in Bugis Tribe (Parental Practices and Beliefs in the Karampung Indigenous Community, Sinjai Regency, South Sulawesi)," *SEA-CECCEP* 3, no. 1 (2022), <http://seameo-ceccep.org/journal/index.php/ceccep/article/view/34>.

legal according to religion, pregnancy outside marry because promiscuity, lack of understanding and awareness society regarding marriage registration, social factors, the difficulty of polygamy regulations and because there is no firm action from the government against perpetrators of unregistered marriage. As for the Bajo tribe in Kepulauan Riau, there were cases of unregistered marriages involving underage couples. This is one of the reasons they had an unregistered marriage.³ The negligence of those who carry out unregistered marriages has had a negative impact on their children, this has been proven by existing facts, that many of their children do not go to school because they do not have complete documents as a requirement for administration school registration, of course this is something that is undesirable.⁴

Many studies related to unregistered marriage have been carried out before. There are many reasons and factors that cause them to enter into an unregistered marriage. There are also those who connect it with a tradition or custom. Each of them has traditions or customs perspective different regarding unregistered marriage. As research conducted by A. Zaenurrasyid, A. Kahfi, and A. Syafa;⁵ I. Jauhari, A. Yahya, Darmawan et al.;⁶ A. Husain & F. Abubakar.⁷ In these studies, it is stated that marriage in various traditional areas in Indonesia is problematic because it is prohibited in positive law, but is permitted in Islamic law. Based on this research, several cases of unregistered marriages were found in various traditional areas with

³ Muhammad Latif Fauzi, "Legalising Unregistered Marriage: Reasons and Strategies," in *Aligning Religious Law and State Law*, 8th ed. (Leiden: Leiden Studies in Islam and Society, 2023), 169–194, https://doi.org/10.1163/9789004516113_008.

⁴ Desmal Fajri and Felti Novira, "The Phenomenon of Unregistered Marriages: Problems and Solution," *Kosmik Hukum* 23, no. 2 (2023), <https://doi.org/10.30595/kosmikhukum.v23i2.18113>.

⁵ A. Zaenurrosyid, Abd Kahfi, and Ali Syafa', "The Problem of Unregistered Marriage (Siri) in Pati Coastal Java," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (2021): 81–105, <https://doi.org/10.19105/al-manhaj.v3i1.4212>.

⁶ Imam Jauhari et al., "A Legal Analysis of Unregistered Marriages from Ulamas' Perspectives in Aceh Province," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 2 (2023): 175, <https://doi.org/10.22373/petita.v8i2.196>.

⁷ Azmi Djama Husain and Fatum Abubakar, "Legal Impacts of Unrecorded Marriage in South Jailolo West Halmahera in Islamic Law and Marriage Law No.1 1974 Perspective," *Al-Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 3, no. 1 (2023): 78–95, <https://doi.org/doi.org/10.35896/alhakam.v3i1.500>.

various reasons why husband and wife married unregistered marriages. The dominant factors are economic problems, pregnancy out of wedlock, and study reasons.

Furthermore, research specifically discusses unregistered marriages, legality and policy, such as that conducted by I. Sujono;⁸ H. Basri, Z. Fakhulloh, E. Israhadi;⁹ D. Fajri, F. Novira;¹⁰ F. Jamil, Fakhruddin, A. Izzuddin;¹¹ These studies found that there are legal impacts of unregistered marriage, such as wives can be divorced at any time, the legal status of children is unclear, and the rights of wives and children to support and inheritance are not guaranteed. Apart from that, there are also legal consequences of unregistered marriages, namely the result of the marriage not being of any benefit to the family, even though it is legal according to Islamic law, it is not legal according to state law.

Based on the data obtained and previous research reasoning, it is true that the Bajo people hold their marriages in unregistered (secret) manner. There is something interesting about the practice of unregistered marriage that they carry out, namely that they appoint an Imam who is considered to be a person who is capable and worthy of legalizing the marriage, even though they do not know his name or origin, and it cannot be done by anyone other than ' the appointed Imam.¹² So, obedient towards the imam, so many couples choose not to marry (even secretly) if not married by the imam.¹³

⁸ Imam Sujono, "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage," *International Journal of Society Services* 2, no. 2 (2022): 1–17, <https://doi.org/10.26532/ijlss.v2i2.22410>.

⁹ Herlina Basri, Zudan Arief Fakhulloh, and Evita Isretno Israhadi, "Legal Status of Children Born as a Result of Unregistered Marriage (Siri) on the Position of Children According to Marriage Law," in *Proceedings of the 2nd Multidisciplinary International Conference, MIC 2022* (Europe: EUDL: European Union Digital Library, 2022), <https://doi.org/10.4108/eai.12-11-2022.2327364>.

¹⁰ Fajri and Novira, "The Phenomenon of Unregistered Marriages: Problems and Solution."

¹¹ Faishol Jamil, Fakhruddin, and Ahmad Izzuddin, "Registration of Unregistered Marriages on the Family Card from the Perspective of Soerjono Soekanto's Legal Effectiveness Theory," *Jurnal Independent* 11, no. 2 (2023): 473–490, <https://doi.org/10.30736/ji.v11i2.236>.

¹² Fadhliah Dai and Ramoend Manahung, "Kearifan Lokal Masyarakat Suku Bajo Studi Etnografi Nilai-Nilai Pendidikan Agama Islam Dan Budi Pekerti Pada Praktek Ritual Keagamaan Di Desa Bajo Kecamatan Tilamuta," *Pekerti: Jurnal Pendidikan Islam Dan Budi Pekerti* 2, no. 1 (2020): 41–57, <https://journal.iaingorontalo.ac.id/index.php/pekerti/article/view/1267>.

¹³ Syefriyeni and Tata Azzahra Salsabila Rosie, "Nilai-Nilai Leluhur Suku Bajo Dalam Membangun Sikap Bertoleransi," *Jurnal Intelektualita: Keislaman, Sosial, Dan Sains* 9, no. 1 (2020), <https://doi.org/10.19109/intelektualita.v9i1.5648>.

It is felt that this unique problem of unregistered marriage needs to be raised as research. Apart from this uniqueness, it is also most important because it is related to the problem of unregistered marriage which is still underestimated, however actually This is a big problem that needs special attention. The practice of unregistered marriage carried out by the Bajo people fulfills the pillars of Islamic law, so that the marriage is legal according to religion.¹⁴ However, this is not in accordance with the laws and regulations in force in Indonesia which require that a marriage be registered, both at the Religious Affairs Office for Muslims (KUA) and the Civil Registry Office (DISDUKCAPIL) for non-Muslims. With this research, it is hoped that it will be able to provide public knowledge about the impacts band which occurs as a result of unregistered marriages and is able to reduce the number of perpetrators of unregistered marriages, especially in the Bajo tribe.

2. Method

The type and nature of research that the author uses are field research in Kepulauan Riau. In this field research, researchers carry out a lot of social interactions to be able to understand social reality in more depth. This research is descriptive, where This research explains a description of research data specifically based on natural and social events that occurred in the Bajo tribe community in Kepulauan Riau. This research also uses qualitative research techniques, namely by seeking an in-depth understanding of a symptom, fact or reality and event which can only be understood if the researcher explores it in depth. In this case everything related to unregistered marriage based on what researchers researched.¹⁵

Data sources used in this research include: a) primary data, namely data obtained directly through interviews with the Bajo tribe community; b) secondary data, namely research data obtained from books, official documents, as well as from research results

¹⁴ Muhamad Subhi Aprianoro, Viki Saputra Rogi Makin, and Muhammad Nur Maarif, "Islamic Law Perspective on The Bajo Indigenous People's Marriage Tradition in Adonara Village," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 14, no. 1 (2023), <https://doi.org/10.21043/yudisia.v14i1.16666>.

¹⁵ Monique Hennink, Inge Hutter, and Ajay Bailey, *Qualitative Research Methods* (UK: SAGE Publications, 2020).

in the form of reports inside it discussing the issue of unregistered marriages.¹⁶ The data collection techniques are interviews, documentation and observation. Meanwhile, data analysis was taken from Miles and Huberman through several stages, namely data reduction, data presentation, and concluding (verification).¹⁷

3. Findings and Discussion

a. Legality of Marriage: Between Islamic Law and Positive Law

Marriage is a good foundation for building an ideal Muslim family so that it becomes an element that forms a good Muslim community. Marriage is like a union that is founded on love and affection. Through the union of two human beings who initially lived alone, but with marriage, two human beings were brought together by Allah SWT to become soul mates and become one husband and wife couple who complement each other's shortcomings.¹⁸ K. Wantjik Saleh as quoted by Salmah, believes that marriage is not just an inner or outer bond, but both. External ties reveal only formal things happening, while inner ties reveal things that are not formal or cannot be seen.¹⁹ So, these two things are the main foundation for forming a family. Wirjono P, as quoted by Pello etc., said that marriage is a rule of control, marriage is what causes the meaning of marriage itself to emerge.²⁰

Sadr explained that the purpose of marriage is to legalize sexual relations between two human sexes with the aim of producing offspring, preventing men from committing acts of immorality, maintaining chastity, realizing love between

¹⁶ Heting Chu, *Research Methods and Design Beyond a Single Discipline* (New York: Routledge, 2024).

¹⁷ Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis* (UK: Sage Publication, 1994).

¹⁸ Mhd. Rasidin et al., "New Marriage Agreement: Maqashid Sharia-Based Marriage Agreement Model as a Solution to Strengthen Family Resilience," *Al-Ulum* 23, no. 2 (2023): 330–51, <https://doi.org/10.30603/au.v23i2.3328>.

¹⁹ Salmah, "Juridical Aspects of Divorce Disputes and Marriage Cancellations on the Legal Status of Children," *LEGAL BRIEF* 11, no. 3 (2022): 1763–1771, <https://www.legal.isha.or.id/index.php/legal/article/view/385>.

²⁰ Helsina I Pello, Juliana S. Ndolu, and Yossie M. Jacob, "The Role of Judges in The Broken Marriage Promises Case to Answer The Victims' Need of Justice," *South East Asia Journal of Contemporary Business, Economics and Law* 23, no. 1 (2020): 307–12, <https://seajbel.com/previous-issues/december-2020/vol-23-december-2020-issue-1/>.

husband and wife, protecting each other and helping each other in earning a living for the family. Some marriages according to Islamic law are valid and some are invalid, the marriage contract will be said to be valid if it has been carried out in harmony and with complete conditions under the provisions.

Based on Article 1 of Law No. 1 of 1974, marriage is a spiritual and physical bond between a man and a woman as husband and wife by forming a happy and eternal family based on belief in the One and Only God. On this basis, marriage is expected to be able to form a happy and eternal family and is expected to run smoothly without obstacles and happily ever after by the principles and basics of a marriage. Based on the Compilation of Islamic Law in article 2, marriage is a marriage, namely a very strong contract or *mitsaqan ghalidhan* to obey God's commands and carry out is worship."

A very strong expression of contract is an explanation of the expression "inner and outer bond" contained in the formulation of the law which contains the meaning that a marriage contract is not merely a civil agreement. The position of The Compilation of Islamic Law (KHI) in the national legal system is formulated from an Islamic legal order that originates from the Al-Qur'an and the Sunnah. KHI is different from Law No. 1 of 1974, the discussion of KHI marriage law follows systematic Fiqh that links harmony and conditions of marriage. In article 14 of the KHI explains the five pillars of marriage as contained in *fiqh*. There are five conditions for a marriage to be valid according to the KHI is: a) the presence of a prospective groom; b) the presence of a guardian; c) the presence of witnesses; and d) the existence of *ijab* and *qabul*.²¹

Likewise with Islamic law, some *Shafi'iyah* scholars view that a marriage contract is a contract of worship, namely allowing the husband to have sexual

²¹ Linda Hanafiyah, "Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)," in *The 5th ICIS (2022): Exploring K.H. Abdurrahman Wahid's Thoughts: Integrative Islamic Studies for Humanity and Prosperity* (Pekalongan: Postgraduated UIN K.H. Abdurrahman Wahid, 2022), <https://proceeding.uingusdur.ac.id/index.php/icis/article/view/1160>.

intercourse with his wife. Likewise in the Qur'an and the hadiths where the word marriage is generally interpreted as an engagement agreement. Allah SWT said in the Qur'an:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“And marry those who are still single among you, as well as those who are worthy (of marriage) from among your male and female servants. If they are poor, God will give them the ability with His grace. And Allah is All-Wise (His provision), All-Knowing”. (Q.S An-Nur: 32).

According to ushul fiqh scholars, there are three (3) types of meaning of marriage; according to the *Mazhab Hanafiyah*, the original meaning of marriage is having sex, and according to *majazi* (metaphoric) it is a contract by which sexual relations between men and women become halal; according to the *Mazhab Shafi'iyah*, marriage according to meaning originally is a contract by which sexual relations between a man and a woman become halal, while according to the meaning of *majazi* (metaphoric) it is the same body. According to other scholars, such as Abul Qasim Azzajjad, Imam Yahya, Ibnu Hazm, and Some *Ushul Fiqh* scholars from Hanifa scholars define marriage as a partnership, meaning between contract and sexual intercourse.²²

Islamic law also values marriage as a strong bond and a comprehensive commitment to life public and humans to become someone honorable. Islam has established the great importance of marriage. The purpose of marriage in Islam cannot be separated from the statements of the Al-Qur'an which is the main source of teaching. The Qur'an emphasizes that among the signs of power of Allah is that he has created wives for men of their own kind so that they may

²² Khairuddin Soleh Harahap, Ahmad Qorib, and Imam Yazid, “Ittiḥād Al-Majlis on Marriage Contract According to Hanafiyah and Syafi'iyah (The Study of Online Marriage During Covid-19),” *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 7, no. 1 (2022): 31–42, <https://doi.org/10.25217/jm.v7i1.1871>.

feel at peace (*sakinah*), then God grows a sense of love and affection (*mawaddah and rahmah*) among them.²³

The occurrence of a marriage marked by *ijab* and *qabul* has several objectives based on the Qur'an and Hadith, including: *First*, to carry out God's commands. The main purpose of marriage in Islam is to carry out Allah's commands. By carrying out Allah's commands, Muslims will gain happiness and reward. Happiness involves several things, including sustenance. *Second*, to prevent adultery. By getting married, it is the same as maintaining one's own honor. Apart from that, marriage can make us more guarded in our views and avoid committing adultery so that we can carry out our worship better. *Third*, to build a happy family, so they can live together and grow old together until they breathe their last breath. A feeling of happiness and a calm heart makes a person's life more peaceful.²⁴

Marriage rules according to Islam are religious guidelines that need attention, so the purpose of entering into a marriage must be fulfilled to fulfill religious instructions. So, if you summarize it, there are two goals in getting married, namely fulfilling one's instincts and fulfilling religious instructions.

b. Contemporary Islamic Legal Responses Regarding Unregistered Marriage

The discussion of unregistered marriage in Islam is found in classic kitab of *fiqh* as it is in the *Al-Umm* by Abu Abdullah Muhammad bin Idris Al-Syafi'i. However, the meaning of unregistered marriage in Indonesian society is different from the meaning of unregistered marriage in classical kitab. In Indonesia, knowledge about unregistered marriage has two meanings, namely marriage under the hand and marriage secretly or secretly. A private marriage means a marriage that meets the requirements and pillars of marriage, but is not

²³ Ansari Yamamah, "Discourse on Universal Religious Values: A Contemporary Paradigm from an Islamic Transitive Perspective," *Journal of Al-Tamaddun* 17, no. 2 (2022): 99–112, <https://doi.org/10.22452/JAT.vol17no2.8>.

²⁴ Hanafiyah, "Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)."

registered with the Marriage Registrar at the Religious Affairs Office (KUA). A secret or surreptitious unregistered marriage is a marriage that many people, especially Marriage Registrar Employees, do not want to know about, because if many people find out it will prevent the marriage from being valid.²⁵

Unregistered marriage in classical kitab it can be seen from two meanings. *First*, is a marriage that is not told to everyone by hitting *duff*, or a marriage in which there are no witnesses or due to a lack of witnesses. *Second*, unregistered marriage is a marriage that is not notified in any way *duff* as a sign of marriage. In an unregistered marriage, it is necessary to clarify the status of a person's marriage, either through the presence of witnesses or an announcement, by beating a drum (*duff*).²⁶

In ancient times, to carry out a marriage, only two witnesses to the marriage were sufficient and they had to be fair and reasonable people so they could provide clear information regarding marriage matters and did not have to register the marriage. This condition is explained in classical kitab of *fiqh*, witness remains one of the conditions of marriage, but in the scope of the court at the moment the strongest evidence is (authentic) correspondence. Thus, even though a marriage has fulfilled its conditions and pillars, but according to normative law, it does not have any force.²⁷

Marriage registration has never been in the treasury, *fiqh* conventional and kitab that are based on the words of the Prophet Muhammad, but the aim and urgency at this time is very urgent, so there is nothing wrong if marriage registration becomes one of the basic components of marriage in a country's modern society. In line with the times, with ever-changing dynamics, many changes have occurred. Shift in oral culture to written culture as a characteristic

²⁵ Jauhari et al., "A Legal Analysis of Unregistered Marriages from Ulama's Perspectives in Aceh Province."

²⁶ Jauhari et al.

²⁷ Sujono, "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage."

of modern society, demanding that deeds and letters be made as authentic evidence. Living witnesses can no longer be relied on, not only because they can be lost due to death, people can also experience forgetfulness and mistakes.²⁸

On this basis, in Islamic law, eternal evidence is required, namely a deed. Thus, one form of reform in contemporary Islamic family law is the inclusion of marriage registration as one of the marriage provisions that must be fulfilled.²⁹ It is said to be a reform of Islamic law because this problem is not found in kitab of *fiqh* such as in the kitab *Al-Umm* by Imam Shafi'i.

If the classical kitab of *fiqh* are reopened, there will be no obligation for married couples to register their marriage with state officials. In previous Muslim traditions, marriage was considered valid if the conditions and pillars had been fulfilled. This is different from the *muamalah* case, which the Qur'an strictly orders to record.³⁰ Thus, the provisions regarding marriage registration can be said to have only been implemented in Islamic society when they occurred renewal marriage law.

Regarding the views of ulama's *fiqh* scholars about marriage registration, there are several things that can be stated as to why marriage registration is not given serious attention by scholars. *Fiqh* even though there is a verse in the Qur'an that advocates recording all forms of *muamalah* transactions. *First*, in the time of the Prophet there was a prohibition on writing anything other than the Qur'an. As a result, written culture is less developed than rote (oral) culture. *Second*, continuation of the first, then relies heavily on memorization (memory). It seems that remembering a wedding event is not a difficult thing to do. *Third*, tradition *walimah al-'ursy* even though a goat is a witness in addition

²⁸ Sujono.

²⁹ Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah Journal of Islamic Studies* 59, no. 2 (2021): 347–74, <https://doi.org/10.14421/ajis.2021.592.347-374>.

³⁰ Jauhari et al., "A Legal Analysis of Unregistered Marriages from Ulamas' Perspectives in Aceh Province."

to the Sharia witness regarding a marriage. *Fourth*, there is an impression that marriages that took place in the early days of Islam did not occur between different regions of the country.³¹ Usually, marriages at that time took place where the future husband and future wife were in the same area. So, evidence of marriage other than witnesses is not needed.

For these reasons, can it be said that marriage registration in Islam is not considered something very important and is not used as authentic evidence of a marriage. One form of reform of Islamic family law is the inclusion of marriage registration as one of the marriage provisions that must be fulfilled. It is said to be a reform of Islamic law because this problem is not found in the kitab of *fiqh* or the ulama's fatwas.

As mentioned previously, marriage registration is not found in classical kitab of *fiqh*, only marriage is a known secret. However, the concept is different from the current understanding. Unregistered marriage in the context of classical books can be seen from two meanings. *First*, is a marriage that is not announced in public, by beating *duff*, or a marriage that does not present witnesses or due to a lack of witnesses. Imam al-Shafi'i explained the position of two witnesses in a marriage. He explained that if someone gets married in the presence of a guardian and two witnesses, then they keep it a secret, or give a message that the marriage should be kept secret, then this is unlawful even though the marriage remains valid.³²

This opinion is followed by Imam Abu Hanifah, Shafi'i, and Ibnu Mundzir. Among the companions and the generation after them who hate secret marriages (secret) are: Umar bin Khathab, Urwah, Ubaidillah bin Abdullah bin Uthbah, Sya'bi and Nafi. *Second*, a marriage that is classified as an unregistered marriage is a marriage that is not announced with a duff or burning something

³¹ Jauhari et al.

³² Sujono, "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage."

(until smoke is visible) as a sign of the marriage. The first thing is that a marriage is considered *siri* because there are no witnesses, while in the second case a marriage is considered unregistered when there is no announcement of the contract that has been carried out.³³

In this case, it is necessary to clarify a person's marital status, either through witnesses or an announcement, either explicitly or implicitly by beating a drum (*duff*). The concept of unregistered marriage, based on contemporary scholars and by current realities, is a type of marriage without witnesses and guardians, a marriage that is not officially registered with an authorized body and the testimony of witnesses is kept unregistered (whether the marriage is officially registered or not).

Imam al-Qarafi stated that Imam Malik bin Anas did not require witnesses in the marriage contract, but they had to be announced after the contract when they wanted to have relations. If not, then this marriage is classified as invalid and the legal consequence is stoning for those who continue to have sexual relations like husband and wife. Even though it requires witnesses after the marriage ceremony, al-Qarafi considers a marriage that only has one witness to be *syubhat*, and punishment should not be immediately imposed. Meanwhile, for couples who marry with two witnesses, but still keep their marital status a secret, their marriage is considered annulled. According to him, witnesses are important to prevent damage to the status of a contract and the existence of *gharar* in the contract itself, apart from a judge (*Qadi*) will decide a case will really depend on the evidence. Therefore, seeing the urgency and purpose, Imam al-Qarafi requires witnesses at the wedding.³⁴

³³ Sujono.

³⁴ Belal Abu Qadoom, "The Guardian's Arbitrariness In The Right Of Marriage," *Journal of Namibian Studies : History Politics Culture* 34, no. Special Issue 1 (2023): 704–25, <https://doi.org/10.59670/jns.v34i.2228>.

Quotes from Imam al-Sarakhsi from the Hanafi school of thought in his *Al-Mabsuth*, states that the witness is included in the pillars of marriage, while the announcement (*I'lan*) only serves as a reinforcement of a marriage contract. The opinion is contrary to Ibn Qudamah in his kitab *Al-Mughni Syarah Al-Kabir*, one of the conditions for marriage is two witnesses, even according to the statement *al-Daruquthni*, Imam Ahmad ibn Hanbal does not require a witness as a condition of marriage, because the Messenger of Allah, peace and blessings be upon him, married Shafiyah without a witness.³⁵

The concept of marriage registration in Islam is a form renewal carried out in the field of Islamic family law. This is caused by the non-disclosure of the requirement for marriage registration in the Qur'an and the Hadith of the Prophet. On this basis, *fiqh* scholars also do not pay serious attention to marriage registration. In other statement, marriage registration in Islam is authentic evidence and is accepted before the law that a marriage has occurred between a man and a woman, so that one or both of them will not deny the marriage if problems arise in the future.³⁶

Regarding legal consequences, in the current context, it is the opposite of the conditions described in the classical jurisprudence books. Witnesses remain an element in a marriage, but in the current court scope, the strongest evidence is (authentic) correspondence. Thus, when a marriage is carried out, even though the conditions and harmony as stated in jurisprudence have been fulfilled, according to normative law it does not have any force.³⁷

As previously mentioned, much research on unregistered marriages has been carried out before. Most of them are connected with traditions or customs.

³⁵ Jauhari et al., "A Legal Analysis of Unregistered Marriages from Ulamas' Perspectives in Aceh Province."

³⁶ Husain and Abubakar, "Legal Impacts of Unrecorded Marriage in South Jailolo West Halmahera in Islamic Law and Marriage Law No.1 1974 Perspective."

³⁷ Zöhre Kaya, Oya Onat Kocabiyik, and Seda Donat Bacioğlu, "Marriage, and Marital Problems and Solutions from the Perspective of Couples in Arranged Marriage.," *OPUS International Journal of Society Researches* 18, no. 42 (2021): 5187–5207, <https://doi.org/10.26466/opus.898866>.

Each person has a different view of traditions or customs regarding unregistered marriage. As for the Bajo society, unregistered marriages are commonplace. In this research, it is stated that unregistered marriages are permitted in Islamic law. In the studies mentioned previously, it is known that marriage in various traditional areas in Indonesia is problematic because it is prohibited in positive law, but is permitted in Islamic law. Likewise what happened to the Bajo society. In this research, it was found that the dominant factor was economic problems, apart from that, this was not the case.

c. Unregistered Marriage of the Bajo Tribe in Kepulauan Riau and Its Legal Impact

Implementation of unregistered marriages among the Bajo tribe community in Kepulauan Riau still occurs today. Unregistered marriage or what is better known by the Bajo people as '*pernikahan tembak*' is still a phenomenon in this society that should receive more special attention from the government, and of course, this unregistered marriage has a bad impact on those who do it. The process of a serial marriage that they carry out is the same as what couples do generally, namely by fulfilling the requirements and pillars of marriage according to Islamic law, namely there are two candidates: the bride and groom, the presence of witnesses, the presence of a guardian for the prospective bride and groom *ijab* and *qabul*.³⁸

In practice, the Bajo people in Kepulauan Riau carry out unregistered marriage by bringing in an 'Imam' whom they already believe in, who comes from a different area. Then, it is the Imam who acts as the person who marries, the Imam in question is someone whose name and origin they do not know, because when they want to get married, they just follow the orders of someone they have paid to take care of their wedding without needing to know who they are. the Imam who will marry them. A person who acts as the party who takes care of the wedding needs will later inform when and where the unregistered

³⁸ Harahap, Qorib, and Yazid, "Ittiḥād Al-Majlis on Marriage Contract According to Hanafiyah and Syafi'iyah (The Study of Online Marriage During Covid-19)."

marriage will take place and the prospective bride and groom and their families will only follow the directions that have been given.³⁹

Marriage carried out by the Bajo people in Kepulauan Riau are secret, so that the general public cannot know, but the wedding will still involve several people who will later act as witnesses at their wedding so that the marriage can fulfill the pillars of marriage in Islamic law. After the witnesses are met, they also present the female candidate who will act as guardian, such as father, brother, or uncle and they are the people who own lineage relationship with the bride-to-be.⁴⁰

After presenting a guardian and witness, then the bride and groom visit the house of the 'imam' who is ready to marry them. The wedding process carried out is simple, but verbal *consent* and *acceptance* keep going with fluent. After finishing saying *consent* and *acceptance*, then there is no wedding celebration like a marriage generally. Both the bride and groom and their entourage will return to their respective homes with sheet paper as proof of marriage. The bride and groom will lead a life like husband and wife and to this day their unregistered marriage continues to run harmoniously, even though problems between husband and wife often occur in the household.⁴¹

Based on the results of observations and interviews conducted by researchers in Kepulauan Riau, several causes of unregistered marriages in the Bajo tribe were found, namely: *First*, factors of incomplete requirements for marriage administration. The Bajo Tribe community is a community that lives in remote villages. For the Bajo Tribe community, there are requirements that a person must have in order to get it register his marriage extremely difficult, so to make it easier for them to get married is to carry out serial marriages. Because by getting unregistered marriage they don't need to be bothered with matters

³⁹ Darmin, *Interview* (Kepulauan Riau, 2023)

⁴⁰ Abdullah, *Interview* (Kepulauan Riau, 2023)

⁴¹ Syarif, *Interview* (Kepulauan Riau, 2023)

relating to necessary correspondence administration marriage, but despite this their marriage is still considered valid by religion.⁴²

Second, insufficient age factor, in Indonesian law, a person who wants to get married must be of the specified age. However, based on existing facts, many couples want to get married but are not yet old enough to be legally married. Of course, this is contrary to applicable law. The desire to continue the marriage even though they are not yet old enough is the reason why the Bajo people carry out unregistered marriages. In practice, someone who wants to get married but is not old enough can still get married legally according to the law if they submit a marriage dispensation statement at the Religious Court Office (KUA). But this kind of knowledge is not fully known by the Bajo people. In interviews conducted by researchers, it was discovered that those who carried out unregistered marriages were because they were not old enough, the reason was because the prospective partners were both ready to get married.⁴³

Third, economic factors, which can harm the Bajo people. The work is uncertain and the results obtained are sometimes not fully able to meet their household needs. It cannot be denied, the fact is that many reports have been heard that there are women who are willing to be married off by men just to get a living from the man who marries them. Not wanting to continue living in poverty, they are willing to have an unregistered marriage. In fact, unregistered marriages actually have a bad impact on the future, especially for women. Lack of guidance from parents and lack of responsibility from parents ultimately lead their children to the practice of unregistered marriages.⁴⁴

The negative impact of an unregistered marriage felt by the woman is related to the assets shared in the event of a divorce. In the event of a divorce, the wife cannot claim her husband's property, and there is also no legal action

⁴² Ahmad Tholabi Kharlie, *Hukum Keluarga Indonesia* (Jakarta: Sinar Grafika, 2022), 209.

⁴³ Kharlie, *Hukum Keluarga Indonesia*.

⁴⁴ Kharlie.

that the wife can take, because the unregistered marriage is considered invalid in positive legal terms. The rights and obligations of husband and wife are regulated in the Marriage Law. Legally, a wife who is in an unregistered marriage is considered an illegitimate wife, so she is not entitled to her husband's maintenance. Likewise, with inheritance, the wife is not entitled to get it if the husband dies.⁴⁵

One thing that has a bad impact on couples in unregistered marriages is property problems where the wife has her income by working hard or as a career woman, while her husband is only a construction worker. When a divorce occurs, this will give rise to new problems related to marital assets. Efforts that can be made to resolve this problem will experience difficulties, because when dealing with the distribution of joint assets, there is no authorized party who can help in resolving the problem.⁴⁶

Apart from that, the bad impacts are also felt by their children. If there are children in a serial marriage, then those children are considered illegitimate according to the law. A child has his own rights, so a child born from an unregistered marriage certainly does not have the rights as a child. The rights of children are also explained in detail in the law. Every child has the right to protection, if a child experience violence, then he has the right to be protected. A child also needs to get a clear identity to make it easier for him to manage administration in later days. Nothing can hinder a child's rights; however, everything will return to the rules made by the government. A child can lose his rights if the child's parents do not want to register their marriage.⁴⁷

The legal consequences that also arise as a result of an unregistered marriage are related to the administration population, the government will of

⁴⁵ Zaenurrosyid, Kahfi, and Syafa', "The Problem of Unregistered Marriage (Siri) in Pati Coastal Java."

⁴⁶ Zaenurrosyid, Kahfi, and Syafa'.

⁴⁷ Basri, Fakrulloh, and Israhadi, "Legal Status of Children Born as a Result of Unregistered Marriage (Siri) on the Position of Children According to Marriage Law."

course have difficulty in recording the number of married and unmarried residents according to the actual number. Apart from that, the government will also have difficulty calculating the number of people who have birth certificates. Meanwhile, marriages that can be held in an unregistered manner are not possible if the date regularly concrete. Even though its orderly administration is an obligation of the State.⁴⁸ As for what is meant by population administration is a series of structuring activities in publishing population documents and data through population registration.⁴⁹ Because weak population data due to unregistered marriages will have an impact on public services.

A marriage has major legal consequences and marriage is not a simple matter that binds a man and a woman. Marriage has various legal consequences, such as the ability of a man and woman to have sexual relations between husband and wife, the obligation to build a harmonious household, legally obtain offspring, and give rise to the rights and obligations of husband and wife. To ensure that legal consequences can be maintained properly, a marriage must be held officially to avoid problems that might occur.⁵⁰

4. Conclusion

The practice of unregistered marriage is no longer a new phenomenon in society, especially for the Bajo tribe. In practice, the implementation of unregistered marriage is usually carried out by the Bajo people, namely by bringing in an 'Imam' who is outside the area where they live and the Imam is the one who acts as the person who marries them. The wedding is usually attended by the family in large numbers. Which isn't much. The Bajo people are forced to carry out the unregistered marriage because they have no other choice, they also love each other and the family

⁴⁸ Zaenurrosyid, Kahfi, and Syafa', "The Problem of Unregistered Marriage (Siri) in Pati Coastal Java."

⁴⁹ Kharlie, *Hukum Keluarga Indonesia*.

⁵⁰ Husain and Abubakar, "Legal Impacts of Unrecorded Marriage in South Jailolo West Halmahera in Islamic Law and Marriage Law No.1 1974 Perspective."

has also agreed to have an unregistered marriage so there is no reason for them not to marry even if it is unregistered.

Unregistered marriage is a marriage carried out without registration at the Religious Affairs Office (KUA). Unregistered marriage will have a negative impact on domestic life in later days, both in positive law and Islamic law. Legally, a marriage carried out without registering the marriage (unregistered marriage) will have an impact on the wife and children. The implementation of unregistered marriage should not be taken lightly; therefore, action needs to be taken as an effort to overcome the problem of unregistered marriage. In Islam, the concept of marriage registration is a form renewal carried out in the field of Islamic family law. Even though marriage registration had not been carried out in the early days of Islam, the spirit and substance of what was to be achieved from marriage registration had been manifested, albeit in a simpler form.

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