

## Conference Paper

# Optimization of Marriage Registration as Legal Certainty of Children's Rights in the Perspective of Maqasid Shariah

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Problems in the household are always related to children. Children are the most significant mandate from Allah SWT. They must be cared for and protected even if they get into legal problems. Marriage registration is a form of legal certainty for children's rights. Often children do not get the fulfillment of their rights due to the actions of their parents. The rise of unregistered marriages is one of the reasons why the legal certainty of children's rights is questioned. The legal consequences of unregistered marriages create new problems for children, incredibly fulfilling their rights. Therefore, it is necessary to optimize the registration of this marriage for the future of the family, especially the children. Of course, optimizing marriage registration is inseparable from the participation of related parties. It requires synergy between the government, the Office of Religious Affairs (KUA), the Population and Civil Registration Service (*DISDUKCAPIL*), and the community. Marriage registration is essential, especially from the legal aspect, both in positive and Islamic law. Because basically, Islamic law does not oblige every marriage contract, but marriage registration is essential from the point of view of its benefits. This research belongs to empirical juridical research, using primary, secondary, and tertiary data collection techniques. This study uses a case approach and data analysis techniques used descriptively. The results of the discussion in this study found that marriage registration is beneficial for couples in terms of Islamic law and positive law; not just administration but providing legal certainty to wives, especially children born in terms of child status, education, and inheritance rights. Gorontalo Province marriage registration by the KUA and *Disdukcapil* has been running optimally even though the data found in unregistered marriages are pretty high, and this is because people do not understand the importance of marriage registration.

**Keywords:** optimization, marriage registration, legal certainty, Maqasid Shariah

## 1. INTRODUCTION

Humans want to meet various needs, and fundamental biological needs must also be met. As a religion that is *Rahmatan Lil 'Alamin*, Islam has determined that the only way to meet a person's physical needs is only utilizing marriage. Marriage is fascinating if we

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look more closely at the meaning of this marriage issue. The Qur'an has explained that one of the goals of marriage is so that the male and female partners can find peace in one's life (*litaskunu ilaiha*). Life for humans where every human being can build heaven on earth in it. This is the wisdom of the law of marriage in Islam. In addition to obtaining tranquility and peace, it can also maintain offspring (*hifdzul al-nasli*).[1]

Law No. 16 of 2019 concerning Marriage Article 1 formulates that marriage is an inner and outer bond of a man and a woman to form a happy and eternal family (household) based on the one and only God.[2] Based on the goal to develop a happy family, the process of marriage should indeed have been prepared, both from the mentality of the two partners, the marriage registration process at the State Institution, the continuation of the wedding ceremony to the post-qabul household journey which is carried out according to the rules. Islamic law and positive law. In this case, to provide legal certainty in providing comprehensive social security to all Indonesian people.[3]

Marriage registration is regulated in positive Indonesian law, namely in the Marriage Law, Government Regulation No. 9 of 1975 concerning the Implementation of Marriage Law, and Law No. 32 of 1954 concerning Registration of Marriage, Divorce, and Reconciliation. The regulation states that the state must register all marriages performed by every Muslim or non-Muslim community. This is intended to provide legal certainty to husband and wife regarding their legal rights and obligations, especially the legal certainty of children's rights, which will be born later.

The provisions regulated regarding marriage registration are still a hot topic of discussion at all levels. There are still many people who have married but do not register. In Indonesia, there is an authorized body in terms of the occurrence of marriage, namely an institution formed by the state, namely the Office of Religious Affairs (*KUA*). In this case, it is the Marriage Registrar (PPN) under the structure of the Ministry of Religion.[4] As for non-Muslims, marriages are registered at the Office of Occupation and Civil Registry (*Disdukcapil*), where the couple is getting married.

Marriage registration is at least intended so that marriages can be carried out in an orderly manner and the unions carried out have legal force. These two things are very much needed both by the parties that carry out the wedding and those interested in the wedding and for the government to maintain the stability of society to realize the welfare of the community.[5] Marriage registration is essential for husband and wife because the State recognizes their marital status.

The phenomenon in Indonesian society is that there are still some Muslims who still question why marriage must be recorded, even though in the terms and pillars of

marriage in the fight books of munakahat, marriage registration is not stated in the terms and posts of marriage.[6]

Gorontalo Province itself, some people choose not to register marriages, one of which is because they carry out marriages in a sirri way. They do not think about the negative impacts of unregistered marriages, among others, namely, the wife is considered not a legal wife because she does not have a marriage book, the wife has no right to demand a living or *gono-gini* if divorced later, and the fatal negative impact is regarding the legal certainty of the rights of the child to be born, born later. The impact on children's rights is the most crucial and prolonged impact that can be completed if this couple registers their marriage. Therefore, marriage registration should not be underestimated by the community because it has benefits both from the spouse, property owned, and children who will be born later.

As explained above, one of the benefits of Islam is known as maqashid sharia in recording marriages, namely to maintain off spring. Islam has regulated marriage and forbids adultery, stipulates people who should not be married, as in the way the union is carried out and what conditions must be met. From this, it can be understood that the status of children born must be clear and recognized in maintaining offspring, both by state law and religious law. According to state law, a child's situation is considered valid if the child has a birth certificate. The submission of a birth certificate application must attach a marriage book from both parents.[7]

This article examines further the optimization of marriage registration as legal certainty for children's rights. This study is based on the perspective of Maqashid Syariah.

## 2. METHODOLOGY/ MATERIALS

The type of research used is empirical juridical. Namely, researchers directly study social phenomena in a society whose legal aspects appear. The kind of approach used is the case approach. The types of data used are primary, secondary, and tertiary data. To get maximum results, the data collection in this study was carried out in 4 (four) parts, namely Observation, distribution of questionnaires, documentation, and interviews with related sources, namely *Disdukcapil* employees and the Office of Religious Affairs (*KUA*) of Boalemo Regency, Bone Bolango Regency and Gorontalo City which is following the research location. The data analysis used in this research is descriptive.

### 3. RESULTS AND DISCUSSIONS

Marriage is one of the dimensions of life that is very important in human life. With the importance of marriage, it is not surprising that religions regulate marriage issues. Even the traditions or customs of the community and state institutions do not lag in regulating unions that apply among their people.[8] Marriage arrangements are not only seen from religious law but also a role for the government that is interested in protecting its citizens. One of them is by carrying out the obligation to register marriages for those who carry out marriages, namely by issuing a Marriage Certificate that states that a marriage between husband and wife is legal according to religion and is recognized as permitted by the government. Article 99 of the KHI mentions a legitimate child, namely "a child born in or as a result of a legal marriage, the result of a husband and wife's legal actions outside the womb and born by the wife.[9]

The provisions of Article 28 B paragraph (2) of the 1945 Constitution affirmed that: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." Grow and develop and have the right to obtain protection from violence, exploitation, and discrimination. The Indonesian nation, as part of the world community, commits to ensuring the fulfillment of children's rights and child protection, which is part of human rights, including the right to life, survival, growth, and development, optimal participation following human dignity and protection from violence and discrimination to create prosperous, qualified and protected Indonesian children.[10]

As a member of the United Nations, Indonesia clarified the Convention on the Rights of the Child in 1999 and issued Presidential Decree number 36 of 1990. The government's policy of ratifying the convention means that Indonesia is obliged to spread and enforce children's rights in child law and activities programs for children.[11]

Protecting the child's survival does not start when the child is born or when the child has started school. But the child's human rights have existed since he was still in his mother's womb, which must be protected because it is a natural right. The Indonesian state has regulated and covered children's rights by making it easier for parents to manage their child's identity, whether a marriage certificate or a Child Identity Card, at the local *Disdukcapil* office. Of course, the administration of the child will be asked for marriage certificates from both parents, of which marriage certificates exist if the state registers the marriage of the parents.

Marriage registration at the Office of Religious Affairs is not a matter of ordinary administrative recording as with other population administration records because the

administration of marriage registration involves many people and takes a long time.[12] Gorontalo Province as the research location, researchers took three samples, namely Gorontalo City, Boalemo Regency, and Bone Bolango Regency, which are presented in the table:

TABLE 1

No	District	2019	2020	2021
1	Gorontalo City	47.467	38.597	30.076
2	Boalemo District	21.271	17.392	15.933
3	Bone Bolango District			17.188

From the table above, it can be seen that quite a lot of people have not registered their marriages with state institutions, namely KUA and *Disdukcapil*. This is due to the factor of the practice of sirri marriages that are rife today. The husband-wife view marriage as only limited to the implementation of the marriage contract, as long as it is legal according to religion, and the marriage registration process is only limited to the administrative process. This couple does not think about the impact that will occur after the marriage is not recorded, especially regarding the status of the children.

Children born from unregistered marriages will not receive proof of birth in the form of a certificate and other certificates because their parents' wedding is not registered with the authorized employee, so they do not get a marriage certificate. While a child's birth certificate is obtained if there are a marriage certificate from both parents, other civil claims, inheritance rights, child custody rights, and other rights claims cannot be resolved through legal channels if the husband and wife do not have official proof of their marriage.[13] One form of child protection is the realization of legal certainty for children.[14]

Viewed from the side of Islamic law, namely in the perspective of benefit, in this case, known as Maqashid Syariah, marriage registration is essential in marriage to survive a happy household. It is not just a matter of administration, but marriage registration provides legal certainty for married couples and their children.

Maqashid al-shariah consists of two words: maqashid, which means intentional or purpose, and sharia, which means the road to water sources. This can also be said to be the primary source of life. The goal of maqasyid shari'ah is that the benefit can be.[15] In terminology, Al- Ghazali, in *AlMustashfa* only mentions five maqashid sharia, namely maintaining religion, soul, mind, lineage, and property. However, it does not note the definition, but does not cover the whole thing.[16]

Maqashid al-Sharia, a search for Allah SWT in establishing the law, must receive significant attention. From a logical point of view, when these goals are known by the mujtahid, on that basis, an understanding of Islamic law is carried out and then used in the development of Islamic law to answer the problems of new Islamic law. This is considering the limited legal arguments contained in the Qur'an and the Sunnah of the Prophet SAW, while the issues faced by the people are never-ending. Without knowing the maqashid al-Syariah, Islamic law will stagnate, and it is feared that the determination of the law will not achieve the goals desired by Allah SWT. Furthermore, it will not have the values outlined in Islamic law principles themselves.

Based on interviews conducted by researchers with the Head of the Office of Religious Affairs (KUA) of Kabila District, Mr. Hi. Awis Husain Lahmutu, S.H.I., M.H.I. According to him, the government has made registering marriages easier at KUA, one of which is by launching a breakthrough in the form of an application called SIMKAH web. Couples who want to get married do not need to bother to take care of files to the KUA. They only upload files or marriage requirements in the SIMKAH application, and after that, the proof of registration is printed and submitted to the local KUA. The SIMKAH web application is synchronized with the Office of Religious Affairs so that all data entered by the couple is checked carefully. If there are couples who do not understand the SIMKAH web application, the KUA also makes it easy to help the couple.[17]

The management of the SIMKAH application is increasingly playing a role in realizing a modern office system at the Office of Religious Affairs and the community. In the development of the application of the SIMKAH application, there are many responses from various parties. However, the ease of access with SIMKAH at this time may not necessarily be implemented in the community. There are multiple advantages and disadvantages perceived by the community. People were not confused before the SIMKAH application because they were still doing a manual recording. However, KUA employees have to work twice because they have to input the bride and groom's data with the existing data.

Meanwhile, after the SIMKAH application, the public is still confused about registering. All data must be in sync. Otherwise, registration will fail, and must re-register. Still, the SIMKAH application makes it easy for KUA employees because it does not re-enter data, enter the participant's NIK, and immediately validate it. Some of them are responses from SIMKAH operators to KUA and the community. The answer and appreciation of the people who built this are also very much needed by Simkah managers because they can be used as evaluation material for the implementation of the development of

a marriage information system. Appropriately realized if the five main elements can be recognized and maintained, namely religion, soul, lineage, reason, and property.[18]

The SIMKAH program is designed to be easy to use for all groups, both beginners and even those familiar with computers. The functions and benefits of Simkah include building a Marriage Management Information System recorded at the KUA-KUA, building a database infrastructure by utilizing technology that can accommodate management and executive needs, creating an integrated network infrastructure between KUA at the regional level to the Head Office, fast data presentation and accurate and facilitate services, control and supervision, and services for the public to obtain complete, fast and precise information.[19]

The Marriage Management Information System (SIMKAH). Web is an application launched in 2020. Although it is a new application, KUA employees are trying to introduce it slowly to the public. As is known, the SIMKAH application aims to make it easier for people to register marriages at KUA and minimize unregistered marriages among the masses. So that people no longer have a reason not to register their marriage or choose only to marry sirri.

Marriage registration protects women and children. Legally, the wife is considered invalid in marriage, although it is deemed to be valid in religion if she does not have marriage certificates. Likewise, children are considered illegitimate under the law in terms of child status. The birth certificate is only an acknowledgment certificate because it is listed as having a civil relationship with the mother. In the eyes of the law, the unclear group of children impacts their rights to earn a living, inheritance, living expenses, and education from their fathers. In addition to children, marriage is not recorded to affect women. It won't be easy to socialize in society.[20]

Without a birth certificate, of course, this will have implications for the child not getting "inheritance rights" this is detrimental to the child's rights. In the case of an 'illegitimate' marriage, a child is not worthy of a guilty status, both under state law and religious norms, because he was born against his will.[21]

A recording helps maintain the quality and origin of the child. It considers the benefits of a birth certificate as authentic evidence when there is an inheritance dispute, will, or grant dispute. So the certificate is essential because it will benefit everyone who registers it, and there is no obstacle whatsoever from Islam to registering births.[22]

## 4. CONCLUSION AND RECOMMENDATION

This study concludes that marriage is not just an implementation of a contract but must be registered in a State Institution, be it the Office of Religious Affairs (KUA) or the Department of Population and Civil Registration (Disdukcapil). In terms of benefit or Maqashid Sharia theory, marriage registration is beneficial, namely providing legal certainty to the wife and child born. The status of children's rights is the most crucial issue starting from the administration of children's certificates, livelihood, education, and inheritance rights. This problem can be solved if the parents register the marriage. Gorontalo Province has a high number of unregistered marriages. Data obtained every year showed that the number of marriages is not recorded to have decreased. It can be said that State Institutions, both KUA and Disdukcapil employees, are trying optimally to register marriages. The high number is caused by people who do not understand the benefits of marriage registration and consider file management unnecessary.

Suggestions from this research are that it is hoped that State institutions, both KUA and Disdukcapil, provide understanding and socialization to the public about the benefits of the importance of registering marriages because they can provide protection and legal certainty to wives and children's status. It is also hoped that the public will make efforts to write for weddings. The Government has also made it more accessible through the launch of the SIMKAH Web application so that people do not consider marriage registration a routine administrative process anymore.

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