

# **Juridical Analysis Of The Legal Consequences Of A Marriage That Is Not Registered According To The Law No 1 Of 1974 And A Compilation Of Law Indonesian Islam**

Dr. Drs. Muzakkir,  
*Sh.,Mh.,M.Pd.,Cpm.,Cparb.,Cpcl.,Cpcle<sup>1</sup>*

Fouza Azwir Abdul Aziz,  
*S.Sos.,Sh.,Mh<sup>2</sup>*

Muamar Izazi,  
*Se., Sh.,Mh<sup>3</sup>*

---

## **ABSTRACT**

*Marriage is an inner and outer bond between people of the opposite sex to continue marriage and form a family with the aim of forming a sakinah mawaddah and warahmah family in the implementation of their own marriage, both based on Law No. The conditions for marriage include the age requirement, the approval of the two prospective brides, permission from the court for those who are not married yet and there are no reasons that can cancel the marriage. The terms of marriage as referred to above are material requirements for marriage that determine whether a marriage is legal based on religious law or belief, but there are formal requirements that can determine whether the marriage has legal force or not, namely the marriage requirement must be registered. Both the Marriage Law and the Compilation of Islamic Law each require marriages to be registered, but the current problem is that many people have not registered their marriages for various reasons which have resulted in the marriage not being recognized by the state as a legal act so that it can eliminate post-marital rights. the occurrence of marriages that can harm people who do not register their marriages.*

**Keywords:** *Marriage, Registration, Law, KHI*

---

Date of Submission: 21-01-2024

Date of Acceptance: 31-01-2024

---

## **I. INTRODUCTION**

Marriage is a bond between two human beings who make a promise to then live in the household as husband and wife. In the anthropology of life, marriage is a sacred thing in the life cycle which then becomes an important moment in human life. From a legal aspect, philosophically, marriage is a form of unification of all civil aspects of two legal subjects which results in the mixing of the civil interests of legal subjects. This is proven by the occurrence of marriage. resulting in the mixing of assets and the need for mutual agreement between husband and wife in forming agreements related to assets. The implementation of anthropological marriage is not limited by certain conditions, the prerequisites for marriage are determined by each individual, religion, tribe or customs adhered to by humans themselves. So that the implementation of marriage within the values that live in society can be based on the agreement of each subject or the readiness of each subject to carry out the marriage.

Based on the anthropological aspect of the people living in the archipelago, there are no rigid rules regarding the implementation of marriage in the archipelago. The implementation of marriage in Indonesia itself is determined by each belief held or the agreement made by the subject who wants to carry out the marriage themselves. If studied based on philosophy based on natural law, humans are actually created in pairs, where according to Thomas Aquinas, a man and a woman were created to live together, forming a family and

---

<sup>1</sup> Muzakir. Email. [muzakkir@iainlangsa.ac.id](mailto:muzakkir@iainlangsa.ac.id).

<sup>2</sup> Fouza Azwir Abdul Aziz, Email [pojaazwir@gmail.com](mailto:pojaazwir@gmail.com)

<sup>3</sup> Muammar Izazi, Email [muammarizazi6@gmail.com](mailto:muammarizazi6@gmail.com)

then becoming known as marriage, which is also known by society. Indonesia The practice of carrying out marriages in the archipelago, before there were regulations regarding marriage, there were no special requirements regarding the age of marriage or marriage administration, so that marriages could be carried out easily, and it was not uncommon for children who were not old enough to carry out marriages. This was then directly proportional to the end of the marriage, in the absence of regulations. specifically related to marriage, the ending of a marriage is also disorderly, a person can simply end a marital relationship easily without or with the consent of the marriage partner. This then makes the sacred purpose of marriage to form a family that is *sakinah, mawwadah, and warahmah* compromised.

With the diverse dynamics of marriage implementation in Indonesia caused by the pluralism of Indonesian society consisting of various tribes, nations and religions, special regulations regarding marriage are needed so that the implementation of marriage becomes rigid and orderly in administration so as to provide legal certainty for the Indonesian people regarding the community's marital status. A pluralistic Indonesia. The marriage regulations in Indonesia then become important because they are to prevent undesirable things where people easily carry out and end a marriage which will have a social impact on the status of the married couple themselves and legally for the children born from the marriage.

The impact of the disorderly administration and implementation of marriages in Indonesia was felt in 1973, where the progress of the Indonesian nation consisting of various religions and customs made it urgent to create a marriage law, so that the legislative body is currently forming a draft marriage law which regulates marriage laws. the marriage mechanism in Indonesia which accommodates the progress of the Indonesian nation in terms of implementing marriages, the context of the draft marriage law at that time was important because it was closely related to religion, especially Islam, giving rise to pros and cons for non-Muslims and indigenous peoples because even though the majority of Indonesia's population was Muslim, it The diversity of the Indonesian nation should have been accommodated in the draft marriage law at that time Legal political turmoil in the formation of marriage laws at that time was inevitable because on the one hand, marriage laws were needed to guarantee the legal status of citizens carrying out marriages, but on the other hand, marriage laws were required to be able to adapt to the diversity of the Indonesian nation. Tracing its history, post-Dutch colonial rule, legal regulations relating to marriage are only based on *Staatsblad* 1933 No. 74 or what we currently know as the Civil Code or also better known as *Burgelijk Wetboek* or BW after colonial rule or at the beginning of independence, only the BW regulated the legal rules for marriage in Indonesia and in the period from 1946 to 1973 the Indonesian government at that time always failed to form laws. material, especially related to marriage in accordance with national diversity Marriage regulations during the colonial and post-colonial periods regulated marriage laws for Muslim people in accordance with Islamic law and customary law and for non-Muslim people, they were subject to the BW as the marriage rules in force at that time. In the colonial and post-colonial periods, marriage legal rules for non-Muslim communities that were subject to BW made marriage problems for non-Muslim communities more answerable because BW itself was a codified legal rule that could be more easily used as a guide compared to Muslim communities that used Islamic law and customary law which have not yet been codified in the implementation of marriage. So that problems related to Islamic inheritance, polygamy and the end of marriage became more complicated because at that time marriage law in Indonesia was only limited to BW.

So based on this, the ratification and formation of marriage laws becomes important as the basis of marriage law in Indonesia and proof of Indonesia's sovereignty over the supremacy of law. The formation of the marriage law itself was full of dynamics where the majority of aspirations came from the community and Islamic-based legislative members who demanded that the marriage law be in accordance with Islamic teachings, although later these aspirations were answered with the Compilation of Islamic Law based on Presidential Instruction (Inpres) Number 1 of 1991 concerning dissemination of a compilation of Islamic law which is closely related to the implementation of marriage for Muslim communities, the Codification of Islamic Law then consists of three books, namely the first book on marriage, the second book on inheritance and the third book on endowments.

During the period of turmoil regarding the formation of the marriage law itself, the non-Muslim community provided input so that as far as possible the marriage law could also answer marriage regulations that had not been regulated in the BW and could accommodate differences in religious beliefs in Indonesia, which then led to discussions on the draft marriage law. It was tough and caused a lot of friction regarding the content of the draft marriage law. After the emergence of various pros and cons in the formation of the Marriage Law, on January 2 1974 the draft marriage law was passed by the legislative body into law, namely becoming Law No. 1 of 1974. With the passing of the Marriage Law, it was hoped that problems would arise. regarding marriage can be answered and is proof of the supremacy of law for the Indonesian people who are slowly abandoning colonial laws which are considered incompatible with the diversity of the Indonesian nation. Even though at the beginning of the enactment period the marriage law itself was widely rejected, especially by

representatives of the Islamic community because it was considered that its content was not in accordance with Islamic teachings, this could then be answered by codifying Islamic law as explained above.

The marriage law itself then provides the definition "Marriage is a physical and spiritual bond. between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty Godhead" whereas then the compilation of Islamic law defines marriage that "marriage is a very strong contract (mistaqan ghalidan) to obey Allah's commands and carry them out in worship." The reason for the formation of the Marriage Law is based on the explanation of the Marriage Law that "As a country based on Pancasila, where the first principle is belief in the Almighty God, then marriage has a very close relationship with religion/spirituality, so that marriage not only has a physical/physical element, but also a physical element. mind/spirituality also has an important role. Forming a happy family with close relationships with offspring, which is also the goal of marriage, care and education are the rights and obligations of parents." Meanwhile, in the compilation of Islamic law, "Marriage aims to create a household life that is sakinah, mawaddah and rahmah." The important aim of establishing the Marriage Law is actually to ensure that there is orderly administration regarding the implementation of marriages as well as the end of marriages and children resulting from marriages which are important because they are related to legal certainty of marriage acts carried out by legal subjects. With the presence of marriage law through the Marriage Law in Indonesia, it is hoped that the public will get legal certainty regarding the marriages they carry out and answer the ambiguities or problems that existed before the marriage law was formed.

With the presence of the marriage law, the implementation of the marriage must fulfill a number of conditions as determined by the marriage law. The conditions for marriage in general are that the marriage must be with the consent of both the bride and groom and in order to carry out a marriage, a person who has not yet reached the age of 21 (twenty one) years must receive Permission from both parents is a condition for the marriage to be carried out: at least the age of the bride and groom is 19 years for men and 16 years for women, or if they do not reach that age, they must obtain dispensation from the court. These two conditions for the implementation of marriage then became very important because before the advent of the marriage law these two conditions were often violated on the grounds that customary law permitted forced marriage and there were no age requirements in customary law. With the existence of strict requirements for the implementation of marriage, especially regarding age, it is hoped that the bride and groom who carry out the marriage are truly mature and mature enough to live in the household and minimize the risk of the marriage ending due to divorce, even though adult age does not guarantee that the marriage will last long and divorce does not occur, apart from that, adulthood is a condition for marriage so that the bride and groom are physically and mentally responsible enough during the marriage Apart from that, an important requirement for the implementation of a marriage is that the marriage must be registered as regulated in Article 2 paragraph (2) of the Marriage Law which states that "Every marriage is registered according to the applicable laws and regulations." Marriage registration is an important element in marriage administration because according to the legal objectives of the formation of marriage law through the Marriage Law, it is to create administrative order for the implementation of marriages in Indonesia. Marriage registration is a form of legal certainty provided by the Marriage Law to the community as a subject of marriage law. Without marriage registration, marriages carried out by the community do not have any meaningful legal standing as proof that a marriage has been carried out if in the future there are problems relating to or related to the marriage. Before the promulgation of the Marriage Law, marriages carried out based on customary law were often not registered, so problems often arose related to marital status, such as the status of children born in marriage, inheritance rights in marriage, and the position of wives for those who had more than one wife and were often found by civil servants. Countries that have more than one wife whose marriage is not registered then this becomes a problem. Registration of marriages is an urgency that is included in the draft material for strengthening the marriage law to guarantee legal certainty regarding the implementation of marriages in Indonesia.

The presence of the marriage law is then the answer to the weak legal certainty of the implementation of marriages in Indonesia before the marriage law was passed through marriage registration. However, this does not mean that with the passing of the law, the problem of legal certainty regarding the implementation of marriages, especially the registration of marriages, has become a problem in itself when the marriage law is passed, what is the status of people who have carried out marriages but have not registered them and/or have not registered their marriages because when people carry out marriages, the law of marriage It has not yet reached the level of marriage registration, this then becomes a problem in itself that exists in society. Apart from that, even though the Marriage Law as the current marriage legal regime mandates registration in practice, there are still many people, especially people who still uphold customs and live in a traditional environment, who are still reluctant to register their marriages because according to the understanding of traditional communities, marriage registration is not a which is important to implement in the implementation of marriage .

Another problem is that there are still people who do not understand marriage registration or are even reluctant to register marriages because they are reluctant to deal with the complicated bureaucracy which some

people think is that marriage is only important to fulfill the requirements of religious law while administering marriages is not the most important thing which then matters. This raises problems regarding the legal status of children and the status of inheritance rights if it is discovered that one of the partners is still married. Another problem in practice that arises is sometimes people deliberately do not register their marriages because they are still tied to previous marriages and this generally occurs in people or men who carry out polygamy secretly without permission from their previous wife or the court. This then creates its own problems because in fact the community These people actually know about the obligation to register marriages but pay attention to it to get around the mechanism of the marriage law requirements regarding a man having more than one wife. Apart from the marriage law, the compilation of Islamic law which applies to Indonesian people who adhere to the Islamic religion also requires marriages to be registered, so that marriage registration is not only ordered by the marriage law but also for people who are Muslim, registration of marriages is important.

The order for recording marriages in the compilation of Islamic law itself is regulated in Article 5 of the KHI which states that "In order to ensure orderly marriages for Islamic communities, every marriage must be recorded" meaning that marriage registration is not limited to only communities that comply with marriage laws but communities that use the compilation of Islamic law. As a matter of law, the marriage must also be registered. The existence of the obligation to register marriages, both according to marriage law and according to the compilation of Islamic law, actually means that people have no reason not to register their marriages, but sometimes people themselves deliberately ignore the necessity of registering marriages in order to avoid certain things or for certain interests which in the future can actually result in impact on civil rights that arise after marriage. This then contributes to the high level of marital disputes both in the Religious Courts and in the State Courts because people are not aware of registering their marriages. Even though the age of marriage law is no longer young, the issue relating to marriage registration is endless and is still interesting to discuss, so based on the background description above, the author is interested in raising the title about Juridical Analysis of the legal consequences of unregistered marriages according to Law No. 1 of 1974 and Compilation of Indonesian Islamic Law..

## **II. DISCUSSION**

### **Marriage Registration According to Law No. 1 of 1974**

Article 2 of the Marriage Law clearly states that every marriage must be registered according to the applicable laws, which means that every marriage must be registered, which is an obligation and necessity. Registration of a marriage is an integral part of the conditions for the marriage itself, meaning that apart from the marriage, it must be legally valid according to the religion and beliefs of the bride and groom as regulated in Article 2 paragraph (1) of the Marriage Law which states that "Marriage is valid, if it is carried out according to the respective laws. his religion and beliefs." This means that apart from being legal according to religion as a belief held by the bride and groom, the marriage must also be registered in state law in order to strengthen the legal validity of the marriage. In the obligation to register marriages as stated in Article 2 paragraph (2) of the Marriage Law, marriage registration does not stand alone, meaning that marriage registration must be in accordance with applicable legislation, which in this case is carried out by a civil registration officer to carry out marriage registration. Marriage registration as intended in Article 2 paragraph (2) aims to: orderly administration of marriages; provide certainty and protection for the legal status of husbands, wives and children and provide guarantees and protection for certain rights arising from marriage such as inheritance rights, the right to obtain a birth certificate, etc.;

The purpose of marriage registration as an orderly administration of marriage is that marriage registration is a form of administration that a marriage event has occurred between people, so that with this administration the state indirectly recognizes the change in the status of a subject from unmarried to married, which is then recognized by the state's administrative status. and can be used in the context of the legal interests of legal subjects. The purpose of marriage registration is to provide certainty and protection for the legal status of husbands, wives and children, that marriage registration is a process of state administration that the legal subject has entered into a marriage and is recognized by the state with the registration as mentioned above so that this has an impact on the legal status of civil law in the future. The day after the marriage civil rights arise, when the marriage is registered, these civil rights become clear.

The civil rights in question include, for example, gifts, inheritance rights, testamentary rights and the status rights of children from marriage. From the commercial law aspect, marriage registration is also important in relation to the right to insurance for a legal subject, where one of the claims to insurance rights can be proven by a registered marriage. done to the state. Apart from that, marriage registration can also be used as a form of legal protection if in the future a marriage dispute occurs, for example related to divorce. With the existence of marriage registration, it cannot be denied that a legal subject has changed its status, both in terms of religious marriage law and state marriage law. has changed his status from unmarried to married, which will then have an impact on the status of his civil rights. The purpose of marriage is to provide guarantees and protection for

certain rights arising from marriage such as inheritance rights, the right to obtain a birth certificate, etc. This means that by registering a marriage, rights such as inheritance will be guaranteed and marriage registration is a means of proof. of inheritance rights, apart from that, marriage registration is the basis for other civil registrations such as birth certificates, death certificates and divorce certificates. With marriage registration, the legal status of legal subjects, especially regarding state administration, becomes clearer. According to Moch Isnaeni, the purpose of marriage registration is as follows: for orderly administration of marriages; guarantee of obtaining certain rights (obtaining a birth certificate, making a National Identity Card, making a Family Card, etc.); provide protection for marital status; provide certainty regarding the legal status of husbands, wives and children; provide protection for civil rights resulting from marriage;

According to Moch Isnaeni "A marriage is valid if it is performed in the presence of a marriage registrar's officer and recorded in the marriage registrar's register by the relevant marriage registrar's officer and is carried out in accordance with the Marriage Law and/or the provisions of the marriage law of the parties to the marriage as long as it does not conflict with the Law. -Marriage Law" Furthermore, according to Zainuddin regarding marriage registration, "Therefore, the introduction of religions that carry out marriages between religious groups needs to be seen in the implementation of its function as a marriage registrar which is one aspect of civil registration." Civil registration, as is known, aims to state with relevant materials the status of a person. For this reason, important events in a person's life, such as birth, marriage, death, are stated in certificates, deeds contained in the civil registration register.

So if a religious introducer records a marriage between those who adhere to a religion, he functions as a state official and as a marriage registrar, who declares that the marriage is valid according to the law. Thus, marriage according to custom as mentioned above is recognized, but conditions need to be made for the validity of a marriage to be registered. Before there is a statutory regulation, what is needed is an existing regulation. Marriage registration carried out by civil registration can be declared an authentic deed because it is a deed or letter issued by a state official whose form and function are determined by law. Article 1874 defines an authentic deed as "a deed made in a form determined by law by or in the presence of public officials who have authority for that purpose, in the place where the deed is made" so that a civil registration deed as proof of marriage registration is an authentic deed that then it can be used as valid evidence and has the highest status as civil evidence.

Marriage registration itself according to the Marriage Law is a formal requirement for a marriage because with formal registration the marriage carried out is attended to and recognized by the state through marriage registration according to Isnaeni "Even though marriage is included in the scope of civil law, the state is obliged to guarantee legal certainty and provide legal protection to the parties involved in the marriage (husband, wife and children) especially in relation to population administration records related to civil rights and obligations. Therefore, recording each marriage becomes a formal requirement for the legality of an event which can result in juridical consequences in terms of civil rights and obligations such as the obligation to provide maintenance and inheritance rights. Marriage registration is stated in an official certificate (authentic certificate) and contained in the registration list issued by an authorized institution." According to Abdullah, "marriage registration is a formal requirement to determine the validity of a marriage. A marriage that has been performed according to the laws of each respective religion or religious belief cannot be recognized as a marriage as valid if it is not recorded in the marriage registration register according to the applicable laws and regulations. This means that marriage registration is something that determines the validity of a marriage according to or based on the Marriage Law." In contrast to the expert opinion and explanation of the legislators according to the Constitutional Court in Decision Number 46/PUU-VIII/2010, it states "that marriage registration is not a factor that determines the validity of a marriage and marriage registration is an administrative obligation that is required based on statutory regulations. The factors that determine the validity of a marriage are the conditions determined by the religion of each prospective bride and groom. "The mandatory registration of marriages by the state through statutory regulations is an administrative obligation."

Based on Article 2 of the Marriage Law and the explanation of the description as mentioned above, it can be stated that it is true that if a marriage is recognized as valid it must meet the requirements, namely: the procedure for the marriage to be carried out according to the laws of each respective religion and belief, and the marriage in question must be recorded in the marriage registration register with follow the requirements and procedures stipulated in the applicable laws and regulations. Registration of a marriage will only be carried out if the marriage in question has been carried out according to the religion or religious beliefs of the prospective bride and groom in question. This requirement is intended so that the marriage has valid legal consequences for the husband and wife and their children, so that the marriage can be guaranteed and protected by the state. These two requirements for marriage must be fulfilled in order for the marriage to be recognized as a legal act that has legal consequences that are guaranteed and protected by the state. Marriage registration is not only an orderly administrative effort by the state towards its citizens, but marriage registration is also a form of obligation for citizens to guarantee the rights of their own citizens. Citizens often blame the state, especially

state officials, because their rights are not recognized or even annulled. by the state, but sometimes a citizen actually has an obligation to register or complete his administration through state administrative institutions, especially in this case related to marriage.

A marriage that occurs with the fulfillment of the provisions of Article 2 paragraph (1) of the Marriage Law is recognized as a valid marriage according to religious teachings, but is not necessarily recognized as a legal act that has legal consequences by the state. Therefore, marriages based solely on religion have not received recognition and are not legally protected. In Article 2 of the Marriage Law, there are two elements that give validity to a marriage. The elements in the first paragraph provide the meaning that if they are fulfilled, the marriage is considered a valid marriage, while the conditions in the second paragraph provide the meaning that the marriage carried out is a legal act recognized by the state. From these two things, cumulatively the marriage can be recognized as a valid marriage, registration of the marriage as the second element provides certainty that the act carried out is a legal act that is recognized through authentic recording which can be used as valid evidence. In relation to the principles of marriage registration, number 4 letter b of the Explanation of the Marriage Law states as follows: "In this Law it is stated that a marriage is valid if it is carried out according to the laws of each respective religion and belief; and besides that, every marriage must be recorded according to the applicable laws and regulations. The registration of each marriage is the same as important events in a person's life, for example birth, death which are stated in certificates, an official certificate which is also included in the registration." Based on the explanation of the Marriage Law above, it can be stated that marriage registration is a series of marriage implementation processes which cannot be ruled out that recognition of a marriage is carried out through registration as per the provisions of the Marriage Law. Without registration, the marriage cannot be declared a legal act. It is not an exaggeration that there are legal experts who place marriage registration as an administrative requirement for marriage which then determines whether a marriage process is valid or not. According to Moch. Isnaeni, that "from the provisions of Article 2 of Marriage, religious ceremonies and the registration of a marriage are made into one integral condition for the validity of a marriage. This confirmation provides evidence that marriage registration is considered by the state to be a condition sine quanon. Even though a marriage has been held based on religious rules, if there has been no registration, then based on Article 2 of the Marriage Law, the marriage is invalid."

The consequence of the opinion above is that if a marriage is invalid it will have an impact on everything that arises from the marriage, such as children, so if the marriage is invalid then the child will become an illegitimate child which will have an impact on their civil rights. According to Zainuddin "The regulatory construction of Article 2 of the Marriage Law indicates that the matter of registering a marriage, even though it is administrative in nature, turns out to be very decisive regarding the validity of a marriage. Even with this arrangement model, the marriage between the bride and groom is one unit. "Because the government has also stipulated that religious leaders who marry according to the rules of the religion in question also have the status of marriage registrar employees. This method is very practical and doesn't take much time." From the binding aspect, according to Amir Syariffudin, "juridically, the function of registering marriages based on marriage is a requirement so that the marriage receives legal recognition and protection from the state and is binding on third parties (other people).

Meanwhile, viewed from a regulatory aspect, marriage registration reflects legal certainty, by determining that a marriage event occurred as proven by the existence of a marriage certificate. As a further consequence, from a legal perspective, there is no marriage or a marriage is invalid if the implementation of the marriage does not follow the procedures and registration of marriages." Thus, in the case of marriage, based on the Marriage Law, registration of marriage is a form of formal requirement that cannot be separated and is a necessity that must be carried out so that a marriage is recognized by the implementer as a form of legal act which is then guaranteed and protected by the state. The subsequent implementation of marriage registration can only be carried out if the marriage has taken place in accordance with and is carried out based on the religious laws or beliefs of the prospective bride and groom. Marriage registration is not just an acknowledgment to the state that a marriage has taken place by a citizen, but marriage registration is indirectly a refinement and renewal of the civil rights of citizens who have entered into a marriage by changing their status, this is something that citizens are rarely aware of. thus considering marriage registration as unimportant and just a bureaucratic process. People are aware of registering their marriages not only because of ignorance, but because people are reluctant to deal with complicated bureaucracy. They need to realize that encouraging people to register their marriages must be accompanied by improvements in bureaucracy, especially civil registration, which today is still complained about by the community, so on the other hand, the government wants to make it happen. good administrative regulations, but on the other hand, this cannot be implemented because there is still complicated bureaucracy in the government administration system.

### **Marriage Registration Based on the Compilation of Islamic Law**

The formation of a compilation of Islamic law itself is an urgency where with the majority of the Indonesian population being Muslim, in order to accommodate Islamic values which cannot be separated from the values that live in Indonesian society, a compilation of Islamic law is needed as a means of regulating the legal aspects of human actions, especially related to marriage and inheritance in accordance with Islamic teachings adhered to by the majority of the Indonesian people. The Compilation of Islamic Law itself is a response to the need for legal regulations that are in accordance with the religious norms adhered to by the Indonesian people so that in their implementation these religious norms are recognized as positive law and cannot be separated from state law. The principle of belief in the Almighty God describes that the values that live in Indonesian society cannot be separated from religious norms or belief in God, especially the majority of the Indonesian population is Muslim, so in actions that influence aspects of their lives, Indonesian society cannot be separated from Islamic teachings. According to Ichtianto, "Islamic law as a legal order that is adhered to/obedient to by the majority of the Indonesian population and people is a law that has lived in society, is part of Islamic teachings and beliefs and exists in the life of National Law and is a material in its guidance and development. "So when we have to talk about the current situation of Islamic law in Indonesia as the background for compiling a compilation of Islamic law, these two things cannot possibly be ignored," Ichtianto's statement illustrates that Islamic Law has an equal position with National Positive Law which cannot be separated as the journey progresses. proud life.

This is the aspiration that makes the Compilation of Islamic Law present among Indonesian society to regulate aspects of the life of Indonesian people who adhere to Islamic teachings. Satria Effendi stated "one thing that cannot be denied is that Islamic law, both in Indonesia and in the Islamic world in general, to this day is fiqh law resulting from interpretations in the second century and several subsequent centuries. Classical books in the field of fiqh still function in providing legal information, both in religious high schools and universities. Studies in general are focused on issues of worship and alahwal syakhsiyah. "The studies are not much directed at muamalah fiqh, for example regarding economics in Islam." According to Bustanul Arifin "regarding the meaning of marriage, which in this case is used in the context of the basics of marriage - it is formulated slightly differently from what was agreed upon in Law no. 1 of 1974, in article 2 of the Compilation it is stated that marriage according to Islamic law is a marriage, namely a very strong contract or mitsaaqan gholiidhan to obey Allah's commands and carrying them out is worship."

Still, according to Bustanul Arifin, "Then Article 3 states that marriage aims to create a household life that is *sakinah, mawaddah and rahmah*. "Meanwhile, Article 1 of the Marriage Law defines marriage as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God." According to Isnaeni, "Calling marriage as a contract without explaining its meaning, especially in the sense of a strong *aqad* or *mitsaaqan gholiidhan* actually requires an explanation of whether it is the same, broader or narrower than the inner and outer bond. "The mention of a man and a woman today has quite an important meaning in connection with the large number of people who undergo sex change operations so that they enter into marriage with their new status." That's how it is called "husband and wife." As for the form and purpose of the mention of "eternal" in Article 1 of the Marriage Law, it has its own meaning that if we are faced with a marriage which is carried out temporarily (as in Islam, for example a *mut'ah* marriage), it may raise questions later, for example, what if By not including the word eternal, the Compilation of Islamic Law can accept the existence of *mut'ah* marriage. According to Isnaeni, "What is stated in Article 4 is that marriage is valid, if it is carried out according to Islamic law, is a fairly precise and aspirational assertion.

Just an affirmation in the sentence in accordance with article 2 paragraph (1) of the Marriage Law, it doesn't seem very necessary. "This is considering the existence of this compilation of Islamic Law, whether it will also be a reference condition in determining the validity of a marriage according to Islamic law, namely Islamic Law which is in accordance with the provisions of this compilation." Still according to Isnaeni, "article 5 of the Compilation states that ensuring marriage order for Islamic communities must be recorded. Registration is carried out by a Marriage Registrar as regulated in the Marriage Law, Article 6 paragraph 1 repeats the meaning of registration in the sense that every marriage must take place in the presence and under the supervision of a Marriage Registrar. If we read further the contents of the compilation the word must here has the meaning of mandatory according to the meaning of Islamic law. Because the marriage was carried out outside the supervision of the Marriage Registrar has no legal force." Based on article 7 paragraph (1) KHI states that "marriage can only be proven by a Marriage Certificate made by a Marriage Registrar. Thus, registering a marriage is an obligation for those who wish to enter into a marriage." Bustanul Arifin stated "However, in article 7 paragraph 2 onwards it is possible for those who can prove their marriage with a Marriage Certificate and submit their marriage certificate to the Religious Court. "It would be necessary to create an Indonesian term for this marriage itsbat and how to understand it."

The confirmation of marriage registration in the KHI is closely related to civil law acts and is not related to Islamic law, meaning that a marriage under Islamic law is only considered a valid marriage or marriage even though marriage registration is excluded, but the position of the KHI as positive law cannot be separated from the context of state administration so that a marriage that is not registered can be declared as a marriage that does not have legal authority and does not constitute an invalid marriage. As with marriages which are registered based on the Marriage Law, the context of marriage in the KHI also implies that registration is a formal requirement in the series of marriage implementation processes, the KHI and the Marriage Law provide the meaning that marriage is not only a religious ritual or belief but also as a legal act that results law to legal subjects, so that marriage registration in the KHI also means that registration is a form of guarantee and legal protection from the state for the bride and groom as the subject of marriage. The difference between the registration of marriages based on the Marriage Law and the KHI itself lies in the registration officer and the form of registration of marriages based on the Marriage Law, the registration is carried out by employees of the civil registry office as an extension of the state, while the registration of marriages carried out based on the KHI is carried out by employees of the religious affairs office under the ministry. religion as an extension of the state. Meanwhile, the product resulting from a marriage that is registered based on the Marriage Law is a marriage certificate issued by the civil registry office, while marriages are based on the KHI. The product produced is a marriage book issued by the religious affairs office where the religious marriage was held. Both the marriage certificate and the marriage book are forms of authentic certificates because they are issued by authorized public officials whose form and contents are determined by applicable legislation.

The evidentiary power of marriage certificates and marriage books both have authentic evidentiary status and are the main evidence in the civil evidence process. Just then the dispute resolution process carried out in marriage disputes carried out based on the KHI is resolved by the religious court. Registration of marriages from the KHI's perspective is as important as from the perspective of the Marriage Law, marriage as a legal act requires legality from the state to be recognized and used as a suggestion for legal protection for legal subjects or civil rights born after marriage. Without registration from a legal study perspective, marriage can then be said to be a formal defect because even though the material requirements for marriage are met, basically formal requirements are needed as a form of recognition from the state regarding the existence of a marriage and a change in legal subject status from previously unmarried or married to already married or married. . With the presence of Article 5 of the KHI which regulates the necessity of registering marriages for marriages held based on the Islamic religion, marriage in the perspective of the KHI itself excludes the form of secret marriage or in society better known as Siri Marriage or in legal language marriage is known as marriage under the hand of Nikah. Siri itself is a marriage that is not registered with the state or in the case of KHI with the religious affairs office. Siri marriage is a marriage that meets religious requirements or marriage requirements in Islamic teachings or material marriage requirements but is not registered or respects formal marriage requirements by registering the marriage. Even though unregistered marriages are known and practiced in Indonesian society, legally positive marriages are considered to have never existed and are not recognized as a legal act of marriage. If studied based on Islamic teachings, siri marriage does not mean something that cancels the marriage or is an invalid marriage, siri marriage is a valid marriage according to religion as long as the material requirements of the marriage are fulfilled, such as the presence of a guardian, witnesses, bride, contract and dowry, then it is a siri marriage. It is still a valid marriage, but it is not a legal act because it is not registered with the state.

The practice of unregistered marriages in Indonesia is not something new, but this practice has been going on for quite a long time, but in practice, currently unregistered marriages are something that is often done to avoid publication of marriages because generally the perpetrators of unregistered marriages are the bride and groom, one of whom is still tied to the marriage. Siri marriage is currently a way out for Indonesian people who want to have polygamy but without needing permission from their previous wife or without needing permission or a court order.

Those who then carry out unregistered marriages at the expense of legal protection for rights that arise after the marriage, such as the rights and position of children born from the marriage. The legal consequences of unregistered marriages are the same as marriages that are not registered, namely that they do not have legal force because they do not fulfill the formal requirements for marriage, namely registration, which results in unprotected legal subjects carrying out the marriage and unprotected children's rights and other civil rights born from marriage. .

#### **Juridical Analysis of the Legal Consequences of Unregistered Marriages According to Law No. 1 of 1974 and the Compilation of Indonesian Islamic Law**

A marriage that is not registered or registered either based on the Marriage Law or the Compilation of Islamic Law has legal consequences in the non-recognition of the event or legal act of the marriage by the state. This then results in non-recognition of post-marital civil rights and children born as a result of marriage become



illegitimate children. The validity of a marriage is a legal act that is recognized by the state by registering or recording the marriage either at the civil registration office or at the religious affairs office. By not registering or registering a marriage, the marriage has a formal defect because it is not recognized or the marriage event is deemed to have never legally existed even though materially or according to religious law and belief the marriage is valid. In the context of KHI or Islamic law, marriages that are not registered or are not legally recognized. Recognition can be requested from the religious court by carrying out itsbat marriage after the marriage. By carrying out the marriage itsbat in a religious court, an unregistered marriage which does not have legal force becomes a legal act where the marriage becomes legally binding. The marriage itsbat itself is only known in the KHI or Islamic law, whereas in the Marriage Law there is no similar mechanism or with different terms. . Marriage registration then becomes important because it will guarantee the protection of rights arising after marriage. Apart from that, marriage registration is also proof of the recognition of the marriage by the state so that if in the future there is a marriage dispute, this can be proven, one way or another, by registering the marriage as authentic proof of the marriage recognized by the state.

### **III. Conclusion**

Marriage registration based on the Marriage Law itself means legal protection for everything that arises as a result of marriage. Apart from that, with marriage registration, the state recognizes that the marriage being carried out is a legal act. Marriage registration under the KHI is a form of obligation for the bride and groom so that the marriage carried out will receive legal recognition and protection from the state. Apart from that, with marriage registration based on the KHI, the marriage which is implemented not only in accordance with religious law but is also recognized by the State. Legal consequences of not registering a marriage, whether based on the Marriage Law or KHI, the marriage is deemed to have no legal force and the rights that arise after the marriage have no legal force

### **IV. Suggestion**

Marriage registration is very important as a form of state recognition and protection of marriages, however, public awareness is needed regarding the importance of marriage registration and simplifying the marriage registration bureaucracy.

### **Bibliography**

- [1]. Abdul Manan, Hukum Perkawinan, Jakarta,Rajawali Press, 2014
- [2]. Abdullah, Hukum Perkawinan Nasional Dan Hukum Perkawinan Islam Jakarta,Alumni, 2017
- [3]. Achmad Irwan Hamzani, Hukum Islam Dalam Sistem Hukum Di Indonesia (Jakarta;Kencana) 2018
- [4]. Ahmad Rofiq, Hukum Islam Di Indonesia, Jakarta,Rajawali Press,2002
- [5]. Amir Syariffudin, Hukum Perkawinan Islam Di Indonesia , Jakarta,Kencana, 2018
- [6]. Bustanul Arifin, Hukum Perkawinan Islam ,Jakarta,Alumni,2013
- [7]. Cindawati, Kapita Selektu Hukum Perdata, Jakarta,Rieneka Press, 2018
- [8]. Hilma Hadikusuma, Hukum Pekawinan Adat ,Jakarta;Alumni, 1999
- [9]. Jaih Mubarak, Pembaharuan Hukum Perkawinan Di Indonesia, Jakarta,Rekatama Indonesia, 2019
- [10]. Komariah, Hukum Perdata ,Malang,Umm Press,2021,
- [11]. Lili Rasedji, Hukum Perkawinan Dan Perceraian ,Jakarta,Rajawali Press,2018,
- [12]. Moch Isnaeni, Hukum Perkawinan Indonesia ,Jakarta,Refika Aditama,2017
- [13]. Muhammad Khambali, Hukum Perkawinan, Jakarta,Deepublish,2020,
- [14]. Renowulan Sutantio, Hukum Acara Perdata, Bandung,Mandar Maju,2019,
- [15]. Setowati, Hukum Perkawinan Di Indonesia, ,Jakarta; Transpublishing 2017,
- [16]. Soemiyati, Hukum Perkawinan Islam Dan Undang-Undang Perkawinan, ,Yogyakarta,Liberty 2000
- [17]. Sudarsono, Hukum Perkawinan Nasional ,Jakarta; Rieneka Cipta,1999
- [18]. Suparman Usman, Hukum Perkawinan Islam, Jakarta,Gaya Media,2016
- [19]. Zaenal Ishaq, Hukum Perkawinan Indonesia, Bandung,Rieneka Cipta 2016,
- [20]. Zainudin, Kepastian Hukum Perkawinan Siri Dan Permasalahannya,Jakarta,Deepublish 2018