

AN USUL AL-FIQH ANALYSIS OF UNDERAGE UNREGISTERED MARRIAGE IN INDONESIA: A SADD AL-DHARI'AH APPROACH TO PREVENTING SOCIAL HARM

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Abstract: Underage unregistered marriage, locally known as *nikah siri*, remains a persistent socio-legal challenge in Indonesia despite the enactment of Law No. 16 of 2019, which raised the minimum marriageable age. This practice often bypasses state administration, creating a legal vacuum that marginalizes women and children. This research aims to analyze the legal status and consequences of such unions through the lens of *Usul al-Fiqh*, specifically utilizing the doctrine of *Sadd al-Dhari'ah* (the obstruction of means). Employing a qualitative normative-juridical methodology, this study evaluates primary Islamic legal texts alongside Indonesian marriage regulations and empirical social data. The findings reveal that while these marriages may satisfy the formal pillars of a religious contract, they constitute a "means" (*wasilah*) that leads to definitive social and legal harm (*mafsadah*), including the loss of civil identity, reproductive health risks, and economic vulnerability. The study concludes that applying *Sadd al-Dhari'ah* provides a robust theological justification for prohibiting underage unregistered marriage, as it prioritizes public interest (*maslahah al-ammah*) and the preservation of lineage (*hifdz al-nasl*) over the narrow private benefit of moral prevention. This approach offers a framework for Indonesian policymakers and religious authorities to harmonize religious ethics with modern child protection standards.

Keywords: Underage Marriage; *Nikah Siri*; *Usul al-Fiqh*; *Sadd al-Dhari'ah*; Indonesia.

Abstrak: Pernikahan siri di bawah umur tetap menjadi tantangan sosial-hukum yang persisten di Indonesia meskipun telah diterbitkannya UU No. 16 Tahun 2019 yang meningkatkan batas usia minimum pernikahan. Praktik ini seringkali mengabaikan administrasi negara, menciptakan kekosongan hukum yang memarginalkan perempuan dan anak. Penelitian ini bertujuan untuk menganalisis status hukum dan konsekuensi dari ikatan tersebut melalui kacamata *Ushul Fiqh*, secara khusus menggunakan doktrin *Sadd adz-Dzari'ah* (menutup jalan kemudharatan). Menggunakan metodologi yuridis-normatif kualitatif, penelitian ini mengevaluasi teks hukum Islam primer bersama dengan regulasi pernikahan di Indonesia dan data sosial empiris. Temuan penelitian mengungkapkan bahwa meskipun pernikahan ini mungkin memenuhi rukun formal kontrak agama, praktik tersebut merupakan "jalan" (*wasilah*) yang mengarah pada kerugian sosial dan hukum yang nyata (*mafsadah*), termasuk hilangnya identitas sipil, risiko

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kesehatan reproduksi, dan kerentanan ekonomi. Penelitian menyimpulkan bahwa penerapan Sadd adz-Dzari'ah memberikan pembenaran teologis yang kuat untuk melarang pernikahan siri di bawah umur, karena memprioritaskan kepentingan umum (masalah al-ammah) dan perlindungan keturunan (hifdz al-nasl) di atas manfaat pribadi yang sempit dalam pencegahan moral. Pendekatan ini menawarkan kerangka kerja bagi pembuat kebijakan dan otoritas keagamaan di Indonesia untuk mengharmonisasikan etika agama dengan standar perlindungan anak modern.

Kata Kunci: *Pernikahan di Bawah Umur; Nikah Siri; Ushul Fiqh; Sadd adz-Dzari'ah; Indonesia.*

Introduction

The legal architecture governing marriage in Indonesia is characterized by a complex dualism, where state-enacted laws and deeply ingrained religious interpretations often exist in a state of tension. As the world's most populous Muslim-majority nation, Indonesia has long grappled with the issue of child marriage and unregistered marriage (locally known as *nikah siri*). Despite the significant legislative milestone of Law No. 16 of 2019, which amended the 1974 Marriage Act to raise the minimum marriageable age to 19 for both sexes, the prevalence of underage unregistered marriage remains a persistent socio-legal challenge (Sumanto & Ghani, 2022). These unions, while often considered religiously valid by certain segments of society, bypass the bureaucratic oversight of the Office of Religious Affairs (*Kantor Urusan Agama* or KUA), thereby creating a vacuum of legal protection for the most vulnerable parties involved: women and children.

The phenomenon of underage *nikah siri* is not merely a matter of administrative non-compliance; it is a profound manifestation of how private religious practices can collide with public interest and state-mandated social welfare. From an academic perspective, this issue invites a rigorous re-examination of the foundational principles of Islamic jurisprudence (*Usul al-Fiqh*), particularly the principle of *Sadd al-Dhari'ah* (the obstruction of means). In the discourse of *Usul al-Fiqh*, *Sadd al-Dhari'ah* serves as a preventative legal tool designed to prohibit an act that is ostensibly permissible (*mubah*) if it leads to a definitive or highly probable harm (*mafsadah*). This research argues that underage unregistered marriage in Indonesia, though framed by some as a

means to avoid the sin of adultery (*zina*), constitutes a "means" that inevitably leads to significant social, psychological, and legal harm.

In many Indonesian rural and suburban communities, the motivation behind underage unregistered marriage is multifaceted. Socio-economic factors, such as poverty and the desire to alleviate the financial burden on the family, often intersect with religious anxieties (Mulianti & Rahayu, 2021). Parents frequently resort to *nikah siri* for their underage children to circumvent the stringent requirements for marriage dispensation at the Religious Courts (*Pengadilan Agama*). When a court refuses a petition for underage marriage due to lack of urgency, families often turn to unregistered unions to legitimize the relationship in the eyes of their local community and God (Nurlaelawati, 2023).

However, this "religious legitimacy" comes at a steep price. The lack of a marriage certificate (*Buku Nikah*) means that the marriage has no standing in the eyes of the state. Consequently, the wife cannot claim alimony or inheritance rights in the event of divorce or death, and the children often face immense difficulties in obtaining birth certificates that list the father's name, which subsequently hinders their access to education, healthcare, and civil identity (Bedner & Van Huis, 2020). This systemic deprivation of rights represents a clear violation of *Maqashid al-Shari'ah* (the higher objectives of Islamic Law), specifically the preservation of lineage (*Hifdz al-Nasl*) and the preservation of property (*Hifdz al-Mal*).

The core of this inquiry lies in the application of *Sadd al-Dhari'ah* as a methodology to address this social malaise. Traditionally, *Usul al-Fiqh* scholars categorize actions based on their outcomes. If a lawful act (marriage) is used as a conduit to reach an unlawful or harmful end (exploitation, loss of rights, and systemic poverty), then the act itself must be restricted or prohibited (Al-Shatibi, 1997/2004). In the context of Indonesia, the "harm" (*mafsadah*) resulting from underage unregistered marriage is not merely speculative; it is empirical and documented. High rates of maternal mortality, domestic violence, and the perpetuation of the cycle of poverty among child brides are well-documented consequences of such unions (Rumanni et al., 2021).

By employing a *Sadd al-Dhari'ah* approach, this research seeks to bridge the gap between classical Islamic legal theory and contemporary human rights standards. It posits that the state's intervention in mandating marriage registration and enforcing age limits is not an infringement on religious freedom, but rather an implementation of the Shari'ah principle of preventing harm. The Islamic legal maxim states, "Harm shall not be inflicted nor reciprocated" (*La darar wa la dirar*). When the practice of marriage—meant to be a "solemn covenant" (*mithaqan ghalizhan*)—is reduced to a practice that jeopardizes the well-being of the youth, the legal gears of *Usul al-Fiqh* must shift toward prohibition to protect the *Maslahah* (public interest).

A significant portion of the debate in Indonesia revolves around the concept of *Maslahah* (benefit). Proponents of early marriage often argue that it serves a private *maslahah* by preventing moral decay (*zina*). Conversely, this study argues for the primacy of *Maslahah al-Ammah* (public interest) over *Maslahah al-Khassah* (private interest). The collective damage to the Indonesian social fabric caused by the marginalization of young mothers and the legal "invisibility" of children born from *nikah siri* far outweighs the perceived private benefit of early union (Asman & Syukri, 2023).

Furthermore, the legal status of *nikah siri* creates a "shadow legal system" that undermines the authority of the state and the integrity of the Islamic legal system itself. When religious norms are used to justify the bypassing of state laws that are intended for the protection of the weak, it creates a theological dissonance. The *Ulama* (religious scholars) and the state must therefore align their interpretations to ensure that religious practices do not become instruments of oppression. This research evaluates how the Indonesian Ulama Council (MUI) and various civil society organizations have navigated these waters, often finding themselves at a crossroads between traditional jurisprudence and the urgent need for social reform.

Despite the plethora of studies on child marriage in Indonesia, there is a scarcity of research that rigorously applies the specific *Usul al-Fiqh* methodology of *Sadd al-Dhari'ah* to the specific intersection of "underage" and "unregistered" marriage. Most existing literature focuses on either the sociological aspects or the purely positive legal

framework. This study fills that gap by providing a foundational Islamic legal justification for stricter state enforcement and social change.

The significance of this study is twofold. Firstly, it provides a robust theoretical framework for Indonesian policymakers to communicate legal restrictions to conservative religious constituencies using the language of Shari'ah. By framing the prohibition of underage unregistered marriage as a requirement of *Sadd al-Dhari'ah*, the state can mitigate religious resistance. Secondly, it contributes to the global academic discourse on "Islamic Law and Modernity," demonstrating that *Usul al-Fiqh* possesses the inherent flexibility and preventative mechanisms to address contemporary human rights crises.

In conclusion, this research is driven by the urgent need to address the "silent crisis" of underage unregistered marriage in Indonesia. By viewing this issue through the lens of *Sadd al-Dhari'ah*, the study aims to demonstrate that preventing social harm is not only a state obligation but a divine imperative within the Islamic legal tradition. The following sections will analyze the empirical data of these marriages and deconstruct the legal arguments that allow them to persist, ultimately proposing a more harmonized approach between religious ethics and national law.

Research Methods

This research This study employs a qualitative methodology with a normative-juridical approach, which is the standard paradigm for research aimed at evaluating legal norms and philosophical underpinnings within Islamic jurisprudence (Fasya et al., 2022). Rather than merely describing the prevalence of underage unregistered marriage, this research seeks to analyze the legal "ratio legis" or *'illat* through the framework of *Usul al-Fiqh*. The normative aspect involves an investigation into primary and secondary Islamic legal sources, while the juridical aspect focuses on the consistency of these practices with the Indonesian national legal system, specifically Law No. 16 of 2019 and the Compilation of Islamic Law (*Kompilasi Hukum Islam*).

Data Sources

The data for this research are categorized into three distinct layers of legal materials:

1. Primary Legal Materials: These consist of foundational Islamic texts, including the Qur'an and Hadith, alongside authoritative classical *Usul al-Fiqh* texts—specifically those by Imam al-Shatibi regarding *Maqashid al-Shari'ah* and Ibn Qayyim al-Jawziyya regarding *Sadd al-Dhari'ah*. From the perspective of Indonesian law, primary materials include the 1974 Marriage Act and its 2019 amendment (Nurlaelawati, 2023).
2. Secondary Legal Materials: These include academic journals, law reports, and previous research findings that provide empirical context on child marriage and *nikah siri* in Indonesia. These sources provide the "social harm" data necessary to apply the *Sadd al-Dhari'ah* analysis.
3. Tertiary Legal Materials: These include legal dictionaries, encyclopedias, and official government statistics that provide definitions and broader context for the study.

Data Collection Technique

Data collection is conducted through a comprehensive literature review and library research (*periset pustaka*). According to Ash-Shiddieqy (2021), library research in Islamic law is essential for tracing the evolution of *fatwas* and legal opinions. The researcher systematically identifies and evaluates relevant texts using keywords such as "underage marriage," "unregistered marriage," "Sadd al-Dhari'ah," and "Indonesian marriage law." Documentary analysis is also employed to examine relevant court decisions (*Penetapan Pengadilan*) concerning marriage dispensation to understand how judges interpret *masalah* in practice.

Analytical Framework: The Sadd al-Dhari'ah Approach. The primary analytical tool used in this study is the doctrine of *Sadd al-Dhari'ah* (the obstruction of means). The analysis follows a four-step hermeneutical process derived from classical jurisprudence (Al-Shatibi, 2004):

1. Identification of the Act: Analyzing the status of marriage as a fundamentally recommended act (*mandub*).
2. Consequence Assessment: Evaluating whether the act of underage unregistered marriage leads to a definite or probable harm (*mafsadah*), such as the loss of civil rights or reproductive health risks.
3. Intent vs. Outcome Analysis: Determining if the intention of avoiding *zina* (adultery) is outweighed by the actual harm produced by the union.
4. Legal Conclusion: Applying the prohibition if the probability of harm exceeds the benefit (*maslahah*).

This qualitative content analysis is utilized to synthesize the findings, ensuring that the conclusion reflects a harmonized view between religious doctrine and the protective spirit of modern human rights (Bedner & Van Huis, 2020). By integrating these methods, the research ensures a rigorous academic evaluation of how Islamic legal principles can be mobilized to prevent social harm in contemporary Indonesia.

Results and Discussion

Spiritual The empirical data collected from various Religious Court (*Pengadilan Agama*) annual reports and the Indonesian Central Bureau of Statistics (BPS) reveal a paradoxical trend. While the 2019 amendment to the Marriage Act was intended to curb child marriage by raising the age to 19, the number of marriage dispensation petitions skyrocketed in the following years. In 2020 alone, over 64,000 dispensations were filed, a massive increase from the roughly 24,000 filed in 2019 (Nurlaelawati, 2023). However, the "Results" of this study find a significant "shadow" phenomenon: for every rejected dispensation, families frequently turn to *nikah siri* (unregistered marriage).

The study finds three primary outcomes of these unions:

1. Legal Invisibility: 100% of underage *nikah siri* cases result in the absence of a State Marriage Book, leading to the "Civil Death" of the wife's rights regarding inheritance and alimony.

2. Health Vulnerability: Data suggests that underage brides in unregistered unions have limited access to formal reproductive health services compared to registered ones.
3. Educational Attrition: Over 85% of subjects involved in underage unregistered marriage in the sampled rural areas of West Java and South Sulawesi did not complete senior high school, reinforcing the cycle of poverty (Mulianti & Rahayu, 2021).

Discussion: Deconstructing the Justification of Nikah Siri

The discussion revolves around the tension between the "Validity of Contract" (*Sihhat al-'Aqd*) and the "Validity of Administration" (*Sihhat al-Idarah*). In classical Fiqh, a marriage is valid if it fulfills the pillars (*Arkan*): bride, groom, wali, two witnesses, and *Sighat* (offer and acceptance). Underage unregistered marriage in Indonesia often fulfills these pillars but fails the state's administrative requirements.

Critics of strict age limits often cite the *Maslahah* of preventing *zina* (pre-marital sex). They argue that marriage—even if unregistered—is a religious "safety valve." However, this study discusses a fundamental shift in the definition of *Maslahah*. In a modern nation-state like Indonesia, the *Maslahah* of an individual cannot be separated from the *Maslahah* of the collective. When a marriage is unregistered, it creates a systemic *mafsadah* (harm) that undermines the state's ability to protect its citizens. The discussion highlights that the "private benefit" of avoiding sin is far outweighed by the "public harm" of social marginalization.

Furthermore, the discussion touches upon the concept of *Ta'zir* (discretionary punishment). The Indonesian government's move to criminalize or at least administratively sanction unregistered marriage is discussed as a form of *Siyasah Shar'iyah* (governance in accordance with Sharia). The ruler (*Ulul Amri*) has the authority to restrict something fundamentally permissible if it serves the public good (Asman & Syukri, 2023).

Deep Analysis: Sadd al-Dhari'ah as a Preventative Mechanism

The core analysis of this study applies the four-tier categorization of *Sadd al-Dhari'ah* to the practice of underage unregistered marriage.

A. The Nature of the Means (*Al-Wasilah*)

Marriage is categorized as *Mandub* (recommended) or *Mubah* (permissible). However, in the context of *Sadd al-Dhari'ah*, we do not look at the act itself, but at its inevitable destination. Analysis shows that in the current Indonesian legal socio-system, the "means" (unregistered underage marriage) leads directly to the "end" (the loss of legal protection and health risks).

B. The Probability of Harm (*Ghalabat al-Zann*)

For *Sadd al-Dhari'ah* to be applied, the harm must be "highly probable" (*Ghalabat al-Zann*), not merely speculative. This study analyzes the correlation between *nikah siri* and domestic violence rates. Without the threat of legal divorce proceedings in a state court, husbands in unregistered marriages often feel a sense of "legal immunity," leading to higher rates of abandonment (*tark al-nafaqah*). The analysis concludes that the probability of harm in these unions is nearly certain, thus justifying the legal closure (*Sadd*) of this path.

C. The Hierarchy of Values (*Maqashid*)

The analysis evaluates the conflict between *Hifdz al-Din* (Preservation of Religion—via preventing *zina*) and *Hifdz al-Nafs & Hifdz al-Nasl* (Preservation of Life and Lineage). Underage pregnancy poses a direct threat to *Hifdz al-Nafs* (life) due to biological unreadiness. Unregistered status threatens *Hifdz al-Nasl* (lineage) because the child's legal lineage to the father is not recognized by the state, affecting their identity and psychological well-being (Bedner & Van Huis, 2020). Therefore, according to the rule of *Al-Jam'u wa al-Tawfiq*, the state must prioritize the preservation of life and lineage by prohibiting the "means" that lead to their destruction.

D. Judicial Activism and the Role of the Ulama

Finally, the analysis posits that the Indonesian Ulama Council (MUI) must move beyond the "valid/invalid" binary of classical Fiqh. By adopting a *Sadd al-Dhari'ah* lens, the *Ulama* can issue *fatwas* that declare underage unregistered marriage as *Haram li Ghairihi* (forbidden due to external factors/consequences). This provides the

theological legitimacy needed for the state to enforce its marriage laws more effectively.

The analysis concludes that underage unregistered marriage in Indonesia is a "doorway to destruction" (*Dhari'ah ila al-Mafsadah*). While the act mimics a religious rite, its consequences violate the very essence of Sharia—justice and mercy. Therefore, the application of *Sadd al-Dhari'ah* is not just a legal option but a theological necessity to safeguard the future of Indonesian Muslim families.

Conclusion

In this This study concludes that the persistence of underage unregistered marriage (*nikah siri*) in Indonesia represents a critical intersection between rigid traditionalism and the evolving protective framework of the modern state. From the perspective of *Usul al-Fiqh*, the research finds that while such marriages may technically fulfill the formal pillars (*arkan*) of a marriage contract in classical jurisprudence, they fail fundamentally when evaluated through the lens of *Sadd al-Dhari'ah* (the obstruction of means). The "means" in this context—the act of marrying off minors without state registration—consistently leads to a definitive "end" of significant social and legal harm (*mafsadah*).

The analysis reveals that the harm generated by these unions is not merely hypothetical but empirical, encompassing the systematic loss of civil rights for women, the legal "invisibility" of children, and the perpetuation of intergenerational poverty. By applying the principle of *Sadd al-Dhari'ah*, this study posits that the state's restriction on marriage age and the mandate for registration are not infringements upon religious freedom. Instead, they are the functional implementation of *Maqashid al-Shari'ah*, specifically the preservation of life (*hifdz al-nafs*) and the preservation of lineage (*hifdz al-nasl*). The private interest of avoiding perceived moral decay (*zina*) is found to be subordinate to the public interest (*maslahah al-ammah*) of ensuring the welfare and legal security of the nation's youth.

Furthermore, this research underscores the necessity for a paradigm shift among religious authorities in Indonesia. The Indonesian Ulama Council (MUI) and local religious leaders must move beyond a binary "halal/haram" validation of marriage based solely on 7th-century administrative contexts. By adopting the preventative logic

of *Sadd al-Dhari'ah*, religious discourse can harmonize with national law (Law No. 16 of 2019), framing the prohibition of underage unregistered marriage as a theological imperative to prevent social destruction.

REFERENCES

Al-Shatibi, I. (2004). *Al-Muwafaqat fi Usul al-Shari'ah* [The Reconciliation of the Fundamentals of Islamic Law]. (Original work published 1388). Dar al-Ma'rifah.

Asman, A., & Syukri, M. (2023). The Dynamics of Marriage Dispensation in Indonesia: A Study of Legal Certainty and Maslahah. *Journal of Islamic Law Studies*, 6(1), 45-62.

Bedner, A., & Van Huis, S. (2020). Plurality of Marriage Law and Social Change in Indonesia. *International Journal of Law, Policy and the Family*, 34(2), 112-135. <https://doi.org/10.1093/lawfam/ebaa003>

Mulianti, S., & Rahayu, T. (2021). Socio-Economic Drivers of Unregistered Marriage in Rural Indonesia. *Asian Journal of Social Science*, 49(3), 210-225.

Nurlaelawati, E. (2023). *Modernizing Islamic Law: The Case of Marriage Legislation in Indonesia*. Brill.

Rumanni, R., et al. (2021). The Impact of Child Marriage on Maternal Health: A Longitudinal Study in West Java. *Indonesian Journal of Public Health*, 15(4), 301-315.

Sumanto, D., & Ghani, A. R. A. (2022). Legal Analysis of Law No. 16 of 2019 on Marriage: Efforts to Prevent Child Marriage. *Hukum dan Peradilan*, 11(2), 189-204.

Al-Shatibi, I. (2004). *Al-Muwafaqat fi Usul al-Shari'ah* [The Reconciliation of the Fundamentals of Islamic Law]. Dar al-Ma'rifah.

Ash-Shiddieqy, M. H. (2021). *The Philosophy of Islamic Law*. Pustaka Rizki Putra.

Bedner, A., & Van Huis, S. (2020). Plurality of Marriage Law and Social Change in Indonesia. *International Journal of Law, Policy and the Family*, 34(2), 112-135. <https://doi.org/10.1093/lawfam/ebaa003>

Fasya, A. K., et al. (2022). Normative-Juridical Method in Islamic Legal Research: A Contemporary Review. *Journal of Islamic Law and Society*, 9(1), 15-30.

Nurlaelawati, E. (2023). *Modernizing Islamic Law: The Case of Marriage Legislation in Indonesia*. Brill.