

Islamic Family Law Literacy and Legal Moderation: Bridging *Fiqh Munākaḥāt* and State Regulation in Indonesian Marriage Law

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Abstract

This article examines the legal fragility of Indonesian Muslim families that arises from the persistent separation between religious validity and civil legality in marriage. It asks how Islamic family law literacy can function as a bridge between *fiqh munākaḥāt* and state regulation in strengthening the legal foundation of a *sakinah family*. Using normative juridical research with statutory and conceptual approaches, the article synchronizes Law No. 1 of 1974, Law No. 16 of 2019, the Compilation of Islamic Law, and selected Islamic legal doctrines. The analysis shows that marriage registration should not be understood merely as bureaucratic compliance, but as an administrative instrument that realizes *maqāṣid al-sharī`a* through the protection of lineage, property, women, and children. The article contributes a legal moderation framework, defined as the integration of religious norms and state procedures for public welfare, and develops the idea of hybrid legal consciousness, in which civic legality is internalized as part of religious responsibility. Practically, the article recommends strengthening the role of

the Office of Religious Affairs and the penghulu as proactive legal educators rather than mere marriage administrators.

[Artikel ini mengkaji fragilitas hukum keluarga Muslim Indonesia yang muncul dari pemisahan antara keabsahan keagamaan dan legalitas sipil dalam perkawinan. Pertanyaan utama artikel ini adalah bagaimana literasi hukum keluarga Islam dapat berfungsi sebagai jembatan antara fiqh munākahāt dan regulasi negara dalam memperkuat fondasi keluarga sakinah. Dengan menggunakan penelitian yuridis normatif melalui pendekatan perundang-undangan dan konseptual, artikel ini menyinkronkan Undang-Undang No. 1 Tahun 1974, Undang-Undang No. 16 Tahun 2019, Kompilasi Hukum Islam, dan doktrin hukum Islam yang relevan. Analisis menunjukkan bahwa pencatatan perkawinan tidak semestinya dipahami semata sebagai kepatuhan birokratis, melainkan sebagai instrumen administratif yang merealisasikan maqāsid al-sharī'a melalui perlindungan nasab, harta, perempuan, dan anak. Artikel ini menawarkan kerangka moderasi hukum, yaitu integrasi norma keagamaan dan prosedur negara demi kemaslahatan publik, serta mengembangkan gagasan kesadaran hukum hibrida, yakni ketika legalitas sipil diinternalisasi sebagai bagian dari tanggung jawab keagamaan. Secara praktis, artikel ini merekomendasikan penguatan peran KUA dan penghulu sebagai edukator hukum yang proaktif, bukan sekadar administrator perkawinan.]

Keywords: Islamic Family Law Literacy, Marriage Registration, Legal Moderation, Hybrid Legal Consciousness, Sakinah Family.

Introduction

The transformation of family law in contemporary Muslim societies is marked by a continuing negotiation between classical jurisprudence and modern state regulation.¹ Marriage, divorce, guardianship, marital property, and inheritance are no longer governed solely through private religious authority, but are increasingly mediated by statutory law, administrative institutions, and judicial procedures. In Indonesia, this negotiation is particularly visible in the relationship between *fiqh munākahāt*, Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, and the Compilation of Islamic Law (KHI). The central problem is not simply whether religious law and state law contradict each other, but how Muslim citizens understand the relationship between religious validity and civil legality in everyday family life.²

¹ See: U. Chamdan, "Marriage Law Reform in Indonesia: A Maqasid Al-Usrah Perspective on Legal Adaptation," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 631–49, <https://doi.org/10.29240/jhi.v10i2.12739>; R. Lukito and M. S. Az-Zahra, "Codification of Islamic Law in Comparative Perspective: Between Tradition and Modernity," *Samarah* 10, no. 1 (2026): 70–104, <https://doi.org/10.22373/sjkh.v10.i1.31676>.

² Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Washington International Law Journal* 19, no. 2 (2010): 280–301, <https://digitalcommons.law.uw.edu/wilj/vol19/iss2/3/>.

The urgency of this issue lies in the fact that a marriage that is regarded as religiously valid may still be legally fragile when it is not recognized through state administration. Unregistered marriage, unclear guardianship, informal distribution of marital property, and undocumented inheritance arrangements can weaken legal protection for wives, children, and other vulnerable family members.³ In this context, marriage registration is often misunderstood as a secondary formality, whereas in the Indonesian legal order it functions as a mechanism of legal publication, evidentiary certainty, and rights protection. The persistence of this misunderstanding demonstrates a gap not only in legal knowledge, but also in the public's ability to connect Islamic legal values with the protective function of state law.

Existing scholarship has examined Indonesian marriage law from several angles, including legal pluralism⁴, state codification of Islamic law,⁵ gender justice,⁶ and the role of religious courts.⁷ These studies have shown that Indonesian family

³ See: Nofialdi Nofialdi et al., "The Ambiguity of Using the Statement of Absolute Responsibility Based on Minister of Home Affairs Regulation Number 109 of 2019: Study in Dharmasraya Regency, West Sumatra Province, Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (June 2023): 108–20, <https://doi.org/10.30631/alrisalah.v23i1.1358>; Jenal Wahidin et al., "The Inheritance Rights of Children from Marriage are Not Recorded According to The Marriage Law and The Compilation of Islamic Law," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 1 (April 2024): 65–85, <https://doi.org/10.52496/mjhki.v1i2.15>.

⁴ See: Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (June 2023): 25, <https://doi.org/10.15408/ajis.v23i1.32549>; Mursyid Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (May 2024): 64, <https://doi.org/10.20956/halrev.v10i1.4824>; Dahlia Haliah Ma'u et al., "Interfaith Marriage Involving Muslims in Indonesia: Legal Pluralism and Maqāsid al-Sharī'ah Perspectives," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 10, no. 2 (December 2025): 155–69, <https://doi.org/10.22515/alahkam.v10i2.11069>.

⁵ See: Ahmad Imam Mawardi and A. Kemal Riza, "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *Journal of Indonesian Islam* 13, no. 2 (December 2019): 421, <https://doi.org/10.15642/JIIS.2019.13.2.421-453>.

⁶ See: Rohmadi Rohmadi, "Polygamy in Indonesia: A Critical Interpretation through the Lens of Mubadalah Theory," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 11, no. 2 (October 2024): 378, <https://doi.org/10.29300/mzn.v11i2.5068>; Bambang Eko Turisno et al., "Beyond Textual Reform: A Semiotic and Feminist Critique of Indonesian Civil Code," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 38, no. 7 (October 2025): 2261–63, <https://doi.org/10.1007/s11196-025-10314-8>.

⁷ See: Muhammad Isna Wahyudi, "Women Dealing with The Law in Religious Courts," *Ahkam: Jurnal Ilmu Syariah* 18, no. 2 (July 2018): 305–7, <https://doi.org/10.15408/ajis.v18i2.7491>; Asfa Widiyanto, Siti Zumrotun, and Heru Saputra, "The Prevention of Underage Marriage in Indonesia: State, Religious Authority

law cannot be reduced either to classical fiqh or to secular state regulation. However, much of the existing literature still treats compliance with state procedures as an external legal obligation or as a bureaucratic layer added to religious practice. Less attention has been given to the question of how legal literacy can transform public consciousness so that administrative compliance is understood as part of the maqashid-oriented protection of family rights.

This article addresses that gap by proposing Islamic family law literacy as an instrument of legal moderation. Legal moderation is understood here as a normative framework that places state administrative requirements not in opposition to fiqh, but as instruments for realizing *maṣlaḥa*, particularly the protection of lineage, property, and family welfare. This framework is developed through the concept of hybrid legal consciousness, namely a form of legal awareness in which Muslims internalize civic legality as a continuation of theological responsibility. Under this approach, compliance with marriage registration, guardianship procedures, and rules on marital property is not merely an act of obeying the state, but also a way of safeguarding the objectives of Sharia in a modern constitutional setting.

Accordingly, this article asks: how can Islamic family law literacy bridge *fiqh munākaḥāt* and state regulation in strengthening the legal foundation of a *sakinah family* in Indonesia? To answer this question, the discussion proceeds in three stages. First, it examines the relationship between the sacred character of marriage and the requirement of civil legality. Second, it analyzes selected legal issues—marriage pillars, guardianship, reciprocal rights, and marital property—as sites where fiqh and state regulation interact. Third, it formulates the role of legal literacy and the *penghulu* as a practical strategy for building legally protected and religiously grounded family life.

Research Methodology

This study uses normative juridical research to examine the synchronization of Islamic legal doctrines and Indonesian positive law in the field of Muslim family law.⁸ The research applies a statutory approach to Law No. 1 of 1974 on Marriage, Law No. 16 of 2019, and the Compilation of Islamic Law, and a conceptual approach to the doctrines of *maqāṣid al-sharīʿa*, *maṣlaḥa*, and *taṣarruf al-imām ʿalā al-raʿiyya manūt bi-l-maṣlaḥa*. This combination is appropriate because the article does not seek to measure social behavior empirically, but to clarify the normative relationship between religious validity, administrative legality, and the protection of family rights.

The legal materials consist of primary, secondary, and tertiary sources. Primary legal materials include statutory provisions, relevant constitutional and

and Human Rights,” *Justicia Islamica* 21, no. 2 (October 2024): 401–5, <https://doi.org/10.21154/justicia.v21i2.9771>.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 35–36.

regulatory instruments, and selected provisions of the KHI. Secondary materials include classical and contemporary works on *fiqh munākaḥāt*, legal pluralism, Indonesian family law, and Islamic legal reform. Tertiary materials are used only to clarify terminology. The article also refers to limited statistical information on unregistered marriage as contextual illustration. Such data are not treated as the object of empirical testing, but as supporting evidence that demonstrates the practical urgency of the normative problem under discussion.

The analysis is conducted through qualitative legal interpretation. First, the relevant statutory and doctrinal norms are identified and compared. Second, the norms are evaluated through *maqāṣid al-sharī'a*, particularly *ḥifẓ al-nasl* and *ḥifẓ al-māl*.⁹ Third, the findings are synthesized into a literacy-based framework that explains how state procedures may function as instruments of religiously meaningful legal protection. This method allows the article to remain within a normative legal framework while still responding to concrete social problems surrounding unregistered marriage and weak family-law awareness.

Conceptual Framework: Legal Moderation and Hybrid Legal Consciousness

The conceptual contribution of this article rests on two related ideas. First, legal moderation refers to the reconciliation of *fiqh* norms and state procedures through the objective of *maṣlaḥa*.¹⁰ It does not mean diluting religious doctrine or replacing *fiqh* with state law. Rather, it frames administrative legality as a means of securing the purposes already valued by Islamic law, including certainty of lineage, protection of property, prevention of harm, and justice for vulnerable family members.

Second, hybrid legal consciousness refers to a mode of awareness in which Muslims do not experience religious norms and state law as two competing orders.¹¹ Instead, they understand compliance with marriage registration, guardianship procedure, and documentation of marital property as part of a wider ethical and legal responsibility. In this sense, the state does not merely impose bureaucracy on religious practice; it provides institutional mechanisms through which the protective purposes of Sharia can be made effective in civil life.

Results and Discussion

The Ontological Essence of Marriage: Bridging Sacred Covenant and Legal Certainty

The conceptualization of marriage in Indonesia represents a unique synthesis between the theological mandate of *mīthāqan ghalīẓan* and the state's interest in

⁹ See: Jalāl al-Dīn al-Suyūṭī, *Al-Ashbāh wa-l-Nazā'ir* (Beirut: Dār al-Kutub al-'Ilmiyya, 1990), 121; Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 1–5.

¹⁰ Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law*, 21–24.

¹¹ Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998), 45–48.

administrative order. Islam views marriage as a sacred bond as stated in QS. An-Nisa [4]: 21,¹² which emphasizes the gravity of the marital contract.¹³ This religious sanctity is echoed in Article 1 of Law No. 1 of 1974, which defines marriage as a physical and spiritual bond between a man and a woman based on the Belief in One God.¹⁴ The comparison reveals that while fiqh focuses on the validity of the contract between parties, Indonesian law elevates this bond into a formal legal status recognized by the state.¹⁵ However, a significant gap remains in the public's perception of marriage as a mere religious ritual versus a legal act. In classical fiqh, the validity of marriage is often simplified to the fulfillment of pillars (*arkān*), regardless of administrative registration. Conversely, the Indonesian legal system, through Article 2 of the Marriage Law, mandates both religious compliance and state registration.¹⁶ This dual requirement is not intended to complicate the sunnah, but to provide *maṣlaḥa* (public interest) by ensuring the protection of rights for all parties involved. In the context of a modern constitutional state, marriage registration constitutes the most robust form of legal publication, thus aligning with the prophetic objective of the hadith to prevent disputes, the neglect of rights, and the denial of legal responsibilities.¹⁷

The ontological essence of marriage in Indonesia represents a dual commitment: a sacred religious covenant (*mīthāqan ghalīzan*) and a formal civil contract recognized by the state. However, empirical reality reveals a profound disconnect between these two dimensions, as illustrated in the report below:

¹² The reinforcement of the legal aspect of marriage is also emphasized through the concept of *mīthāqan ghalīza*: “And they have taken from you a solemn covenant”. The *fuqahā'* (jurists) explain that *mīthāqan ghalīza* is not merely a contract that is valid in terms of oral pronouncement, but a legal bond that necessitates guarantees and protection for the parties bound within it. In the context of a modern state, such protection cannot be separated from formal legality through marriage registration.

¹³ Wahbah al-Zuhailī, *Al-Fiqh al-Islamī wa Adillatuhu*, vol. 9 (Damsyik: Dār Al-Fikr, 1985), 12.

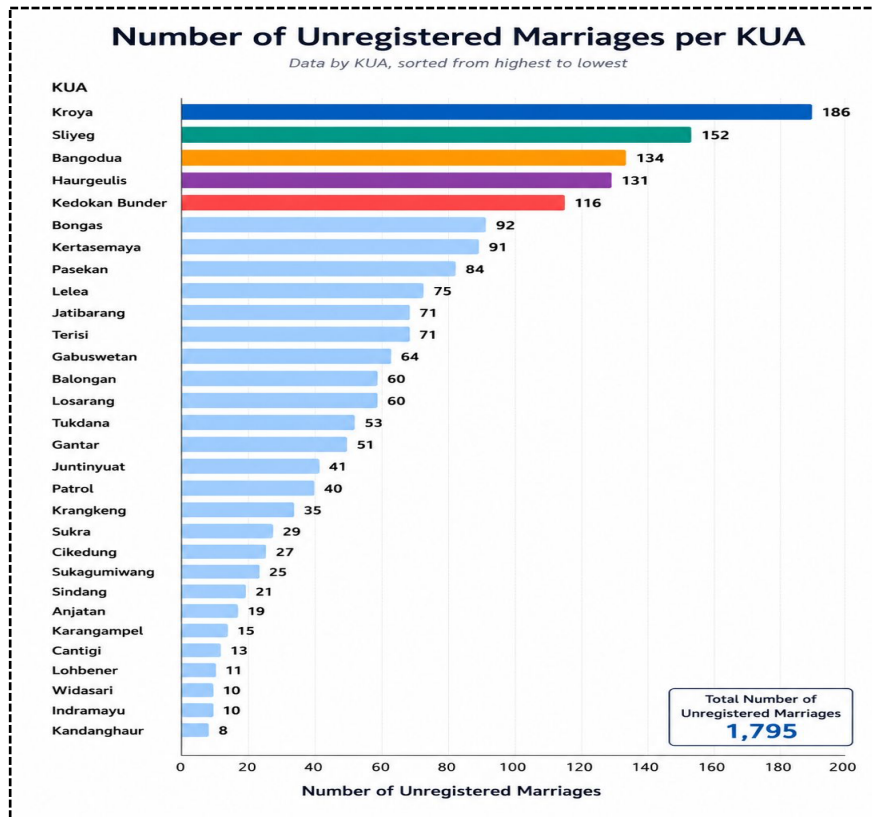
¹⁴ “Marriage Law No. 1 of 1974,” Article 1.

¹⁵ Adriaan Bedner and Stijn van Huis, “Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism,” *Utrecht Law Review* 6, no. 2 (2010): 175–191, <https://doi.org/10.18352/ulr.130>.

¹⁶ Marriage Law No. 1 of 1974, Article 2, paragraph 2.

¹⁷ Endang Zakaria & Muhammad Saad, “Nikah Sirri Menurut Hukum Islam dan Hukum Positif,” *Kordinat* 20, no. 2 (2021): 247–266, <https://doi.org/10.15408/kordinat.v20i2.21933>.

Figure 1
Unregistered marriage report by KUA in Indramayu Regency



Source: BIMAS Islam Indramayu, 2025 and illustrated by AI tools

The 1.795 documented cases of unregistered marriage in Indramayu should be read not merely as a statistical anomaly, but as an illustration of a broader legal-literacy gap. The data indicate that many citizens continue to treat religious ritual as the sole determinant of marital validity while regarding the administrative requirements of Law No. 1 of 1974 and the KHI as secondary. This perception weakens the protective function of marriage because, without official registration, claims relating to guardianship, marital property, maintenance, birth registration, and inheritance may become difficult to enforce. The Indramayu case therefore supports the central argument of this article: the *sakinah family* requires not only theological commitment, but also civil legality that secures rights before the state.

The alignment between religious law and state law is further solidified in the Compilation of Islamic Law (KHI). Article 2 of the KHI reiterates that marriage is a worship to carry out the commands of Allah.¹⁸ By situating marriage as an act of worship, the state provides a theological justification for administrative compliance. This integration suggests that a *sakinah family* cannot be fully realized if the marriage exists in a legal vacuum, as lack of registration often leads to the

¹⁸ “Compilation of Islamic Law (KHI),” Article 2.

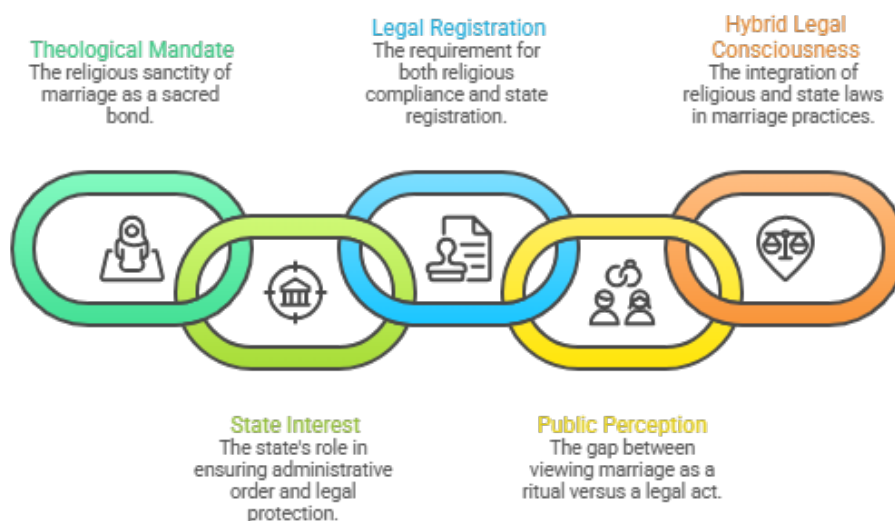
deprivation of civil rights. Contemporary scholars assert that although an unregistered marriage is religiously valid according to Sharia, the state possesses the authority to mandate registration as a regulatory policy (*siyāsah tanzīmīyah*) to safeguard the public interest (*maṣlaḥa ‘āmmah*).¹⁹ Academic debates often question whether state registration is a condition for the validity (*sharat sah*) or merely a condition for the enforcement (*sharat luzūm*) of marriage.²⁰ Classical scholars such as al-Zuḥaylī emphasize that the essential validity of marriage lies in the presence of *ijāb and qabūl*. However, this article argues that in the Indonesian legal context, state registration transcends this dichotomy and operates within a broader paradigm of “legal moderation.” Here, the state assumes a quasi-guardianship function (*wilāya ḥimāya*), positioning itself as an institutional protector to safeguard marital rights and prevent future disputes, particularly concerning guardianship and marital property. From a theoretical standpoint, this condition gives rise to what this study conceptualizes as a form of “hybrid legal consciousness” that is distinct within the global discourse on legal consciousness. Unlike dominant paradigms that frame law as an external system to be obeyed, negotiated, or resisted, the Indonesian model reflects a synthesis in which compliance with administrative state law is internalized as a manifestation of theological obligation (theological necessity). In this configuration, “legal moderation” is not merely a policy orientation but represents an epistemic bridge that integrates fiqh norms with positive law through the lens of *maqāṣid al-sharī‘a*.

The following figure summarizes this integrative model by showing how religious validity, civil legality, and legal literacy jointly form the foundation of Indonesian Muslim marriage:

¹⁹ Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, Juz VII, 29–35.

²⁰ The hadiths of the Prophet Muhammad SAW establish the pillars (*arkān*) and conditions (*shurūṭ*) for a valid marriage: “There is no marriage without a guardian (*walī*)” (HR. Abū Dāwūd and al-Tirmizī). “There is no marriage without a guardian and two just witnesses” (HR. al-Bayhaqī). These hadiths affirm that the validity of a marriage under Sharia is determined by its pillars and conditions rather than administrative registration. Nevertheless, scholars also emphasize the importance of *i lān al-nikāḥ* (the proclamation of marriage) to prevent disputes and harmful consequences (*mudarraḥ*).

Figure 2
Foundation of Indonesian Marriage



Source: Illustrated by Author with AI tools

Thus, Indonesian Muslims are not positioned between competing legal orders, but rather within a harmonized legal consciousness where adherence to the Marriage Law is perceived as a continuation—rather than a contradiction—of religious piety. This synthesis marks a novel contribution to legal scholarship by demonstrating that the Indonesian experience constitutes a unique form of legal hybridity, in which civic legality and theological morality are mutually reinforcing. Consequently, enhancing literacy across these domains becomes a strategic instrument for cultivating legally aware, religiously grounded, and socially resilient family structures.

The Dialectics of Pillars and Conditions: From Ritual Validity to Substantive Legality

The fulfillment of the pillars (*arkān*) of marriage is the second aspect where religious literacy meets state regulation. In fiqh, the rukun includes the bride, groom, guardian, two witnesses, and the *ṣīgha* (contract).²¹ This is mirrored in Article 14 of the KHI, which explicitly lists these five elements as the requirements for a valid marriage.²² However, the legal discourse in Indonesia adds a layer of substantive conditions, such as the minimum age of marriage. The amendment of the Marriage Law via Law No. 16 of 2019 changed the minimum age for both parties to 19 years.²³ This is a critical point of comparison with traditional fiqh, which often uses physical

²¹ Sayyid Sabiq, *Fikih Sunnah*, vol. 2 (Jakarta: Cakrawala, 2011), 34.

²² KHI, Article 14.

²³ “Law No. 16 of 2019 on the Amendment to Law No. 1 of 1974 regarding Marriage,” Article 7.

maturity (*bulūgh*) as the benchmark. In the perspective of *fiqh munākahāt*, the validity of a marriage is determined by the fulfillment of Sharia-mandated pillars (*arkān*) and conditions (*shurūṭ*), namely the presence of the groom and bride, a guardian (*walī*), the offer and acceptance (*ījāb and qabūl*), and two witnesses.²⁴ Consequently, in classical *fiqh*, a marriage that is not registered is still considered religiously valid as long as the aforementioned pillars and conditions are satisfied.²⁵ These provisions are based on *ayat ahkam* and *hadith ahkam*, which explicitly define the marriage contract as both a legal and spiritual bond (*mūthāqan ghalīzan*), without establishing administrative registration as a determining factor for the validity of the contract.²⁶ The state's intervention here is a manifestation of *ḥifẓ al-nasl* (protection of lineage), preventing the negative impacts of child marriage on health and education. This legal moderation ensures that the "condition" of marriage is not just a biological reality but a psychological and legal readiness.

Witnesses in marriage also present an interesting point of analysis. While *fiqh* emphasizes the justice (*‘adālah*) of the witnesses, the state ensures their presence through formal documentation in the marriage certificate. This prevents the practice of “secret marriages” (*nikāh sirrī*), which Rasulullah SAW discouraged by saying, “Publicize this marriage”.²⁷ The state, through the KUA, acts as the guarantor of this publicity, transforming a private ritual into a public legal fact. The *ṣīgha* (*ījāb-qabūl*) must also be understood within both contexts. Classical texts focus on the clarity of the wording and the continuity of the assembly (*ittihād al-majlis*).²⁸ Indonesian regulations provide a standardized procedure for this to avoid any ambiguity that could lead to legal disputes. By following the state-prescribed ceremony, the parties are not only fulfilling a religious *rukṅ* but are also creating a legal binding record that protects their future civil status.²⁹

²⁴ In practice, an unregistered marriage may indeed be considered valid under Sharia, yet it lacks formal legal standing within the national legal system. This condition has serious implications for the protection of the rights of wives and children, particularly concerning the proof of marital status, the right to maintenance (*nafaqah*), inheritance rights, and the registration of children's births. Consequently, the state provides the *isbat nikah* (marriage legalization) mechanism as a corrective measure, which essentially affirms that marriage registration is a legal necessity that cannot be neglected.

²⁵ Muḥammad ibn Idrīs al-Shāfi‘ī, *al-Umm*, Juz V (Beirut: Dār al-Ma‘rifah, t.t.), 7–9

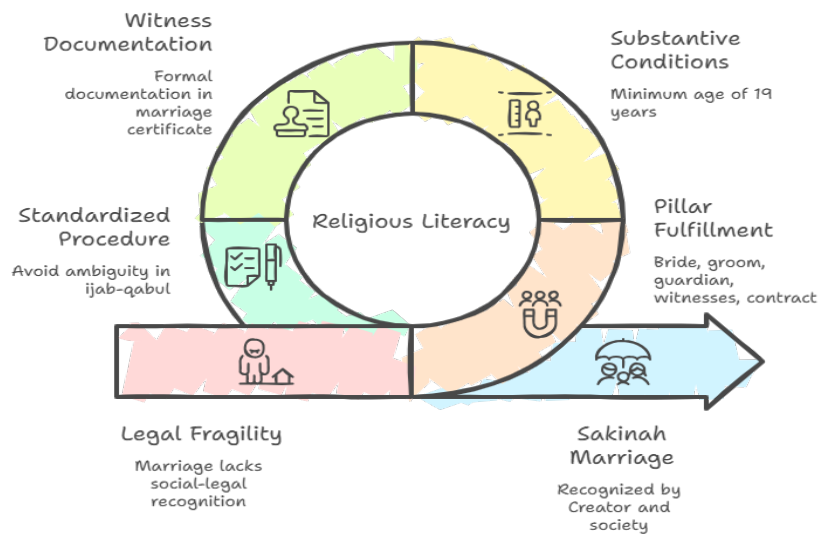
²⁶ Ibn Qudāmah, *al-Mughnī*, Juz VII (Beirut: Dār al-Fikr, t.t.), 5–7.

²⁷ Narrated by Ahmad, as cited in Muhammad Latif Fauzi, *Aligning Religious Law and State Law: Negotiating Legal Muslim Marriage in Pasuruan, East Java*, (Boston: Brill, 2023), 45, <https://doi.org/10.1080/27706869.2023.2255006>.

²⁸ Al-Zuhailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 9: 50.

²⁹ Muhammad Latif Fauzi, *Aligning Religious Law and State Law*, 45.

Figure 3
Harmonising Fiqh and Marriage Law



Source: Illustrated by Author with AI tools

Consequently, the contribution of this literacy is to harmonize the “minimum *rukun*” of fiqh with the “optimum conditions” of the state. It refines the understanding that a marriage is only truly *sakinah* when it is recognized by both the Creator and the social-legal order. This prevents the “legal fragility” often found in communities that prioritize one over the other.³⁰

Navigating Guardianship: Between Paternal Authority and State Protection

The role of the guardian is perhaps the most contested area in family law literacy. In fiqh, the presence of a *walī mujbir* (a father or grandfather with authority) is central to the validity of the marriage for a virgin bride.³¹ However, Article 19 of the KHI provides a nuanced hierarchy that balances paternal rights with the bride’s consent.³² The tension arises when a guardian refuses to give consent without a valid reason, known as *walī adhal*. The legal remedy for *walī adhal* in Indonesia is the appointment of a *walī hakim*³³ (a state official acting as a guardian). This is based on

³⁰ Contemporary scholars assert that although an unregistered marriage is religiously valid according to Sharia, the state possesses the authority to mandate registration as a regulatory policy (*siyāsah tanzīmiyah*) to safeguard the public interest. Marriage registration serves to: Preserve lineage (*hifz al-nasl*); Protect the rights of wives and children; Ensure legal certainty; Prevent the abuse of the institution of marriage

³¹ Sabiq, *Fikih Sunnah*, 2: 56.

³² KHI, Article 19.

³³ Muhammad Lutfi Hakim and Khoiruddin Nasution, “Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era,” *Oxford Journal of Law and Religion* 11, no. 2–3 (2023): 288–313, <https://doi.org/10.1093/ojlr/rwad004>.

the prophetic tradition: "The Sultan is the guardian of those who have no guardian."³⁴ The state, through the Ministry of Religious Affairs (PMA No. 20 of 2019), provides a clear technical procedure for this transition.³⁵ This demonstrates how the state moderates paternal authority to prevent the abuse of rights, ensuring that a woman's right to marry is not unjustly obstructed. In the context of a complex modern society, the function of such publicity is no longer sufficient through the mere presence of witnesses; rather, it requires legal instruments capable of providing certainty and sustained protection, specifically through official registration by the state.³⁶

Comparing fiqh and the KHI reveals that while fiqh provides the lineage-based framework, the KHI provides the administrative safety net. In traditional contexts, the appointment of a *walī hakim* is frequently stigmatized. However, literacy in the KHI helps society understand that the state's intervention is a legitimate religious solution provided by the law. This reflects the principle of *taṣarruf al-imām* which prioritizes the welfare of the citizen over the rigid authority of the guardian. Furthermore, the technical determination of who can be a *walī* is strictly governed to prevent "*wali loncat*". The KUA ensures that the hierarchy in Article 21 of the KHI is followed before resorting to *walī hakim*.³⁷ This procedural discipline is a scholarly advancement in protecting the sanctity of the lineage while upholding the rule of law. It ensures that the marriage is not only religiously valid but also administratively sound.³⁸

The implication of this discussion is the empowerment of the bride. Literacy regarding the *walī adhal* procedure allows women to seek legal protection without violating religious norms. It positions the Penghulu not just as a witness, but as a protector of the bride's constitutional and religious rights within the framework of Indonesian legal moderation. Scholars emphasize the significance of *i'lān al-nikāḥ* (the proclamation of marriage) to prevent disputes, the denial of responsibilities, and social harm.³⁹

³⁴ Narrated by Abu Dawud, as cited in Fauzi, *Aligning Religious Law and State Law*, 52.

³⁵ "Regulation of the Minister of Religious Affairs (PMA) No. 20 of 2019," Article 12.

³⁶ Surjasni dan Fadliansyah Akbar, "Nikah Sirri dalam Perspektif Hukum Islam," *JIS: Journal of Islamic Studies* 3, no. 1 (2022): 1–15, <https://yptb.org/index.php/jis/article/view/1150>.

³⁷ KHI, Article 21, paragraph 1.

³⁸ Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law*, 145–148.

³⁹ Annisa Rizqa Azhima P., et al., "A Socio-Juridical Analysis of Law Number 1 of 1974 on Unregistered Marriage," *El-Hadhanah* 5, no. 2 (2021): 109–125, <https://doi.org/10.22373/hadhanah.v5i2.9339>.

Reciprocal Rights and Obligations as the Pillar of Domestic Harmony

The realization of a *sakinah family* depends heavily on the practical application of mutual rights and obligations between spouses, a concept rooted in the principle of *mu'asyarah bil ma'ruf*. Islam provides a moral foundation for this reciprocity in QS. An-Nisa [4]: 19, which commands husbands to consort with their wives in kindness.⁴⁰ This theological mandate is systematically codified in Articles 30 to 34 of Law No. 1 of 1974, which stipulate that both husband and wife bear the responsibility of maintaining the household and providing a moral upbringing for their children.⁴¹ A critical comparison reveals that while classical fiqh often emphasizes the husband's role as the sole provider (*nafaqah*) and the wife's role in domestic obedience (*tamkīn*),⁴² the Compilation of Islamic Law (KHI) within the Indonesian legal framework promotes a more egalitarian partnership. Article 77 of the KHI explicitly states that the husband and wife are equal partners in both the domestic and public spheres, fostering a balanced relationship that is essential for legal and social stability.

Furthermore, the legal literacy concerning these rights extends to the protection of children, bridging the gap between parental authority and state-mandated care. Both the Quranic ethics and Article 45 of the Marriage Law dictate that parents are legally and religiously bound to educate and support their children until they reach maturity or independence.⁴³ This obligation persists regardless of the marital status of the parents, ensuring that divorce does not terminate the child's right to *hadhanah* (guardianship and maintenance). The scholarly contribution of this literacy is the shift from a patriarchal-hierarchical view to a partnership-reciprocity model, where the fulfillment of one party's right is seen as the other party's religious and civic duty. This synergy ensures that the family unit

⁴⁰ Al-Quran, Surah An-Nisa, 4: 19.

⁴¹ In line with this, Indonesian positive law, through Law Number 1 of 1974 concerning Marriage, asserts two layers of marital legality. Article 2, paragraph (1) states that a marriage is valid if it is conducted according to the laws of the respective religion, while Article 2, paragraph (2) mandates the registration of the marriage in accordance with the prevailing laws and regulations. This construction demonstrates that the state does not take over the determination of the religious validity of the contract (*aqd*) but rather adds an administrative obligation to ensure legal certainty and the protection of family rights.

⁴² Marriage Law No. 1 of 1974, Articles 30–34.

⁴³ In the perspective of *fiqh munakahat*, the validity of a marriage is determined by the fulfillment of Sharia-mandated pillars (*arkān*) and conditions (*shurūṭ*), namely the presence of the groom and bride, a guardian (*walī*), the offer and acceptance (*ījāb and qabūl*), and two witnesses. This provision is based on ayat ahkam and hadith ahkam, which explicitly define the marriage contract as both a legal and spiritual bond (*mīthāqan ghalīẓa*), without establishing administrative registration as a determining factor for the validity of the contract. Consequently, in classical fiqh, a marriage that is not registered is still considered religiously valid as long as the aforementioned pillars and conditions are satisfied.

remains a protected entity under both Sharia and the laws of the Republic of Indonesia.

The Economic Regime of Marital Property and Inheritance Protection

The economic dimension of marriage in Indonesia presents one of the most significant intersections between religious tradition and local wisdom, particularly regarding the regime of joint property.⁴⁴ While classical fiqh scholars generally advocate for the strict separation of assets (*infishāl al-amwāl*), where each spouse retains individual ownership of what they earn,⁴⁵ the Indonesian legal system adopts a communal approach. Article 35 of the Marriage Law and Article 85 of the KHI establish that any property acquired during the marriage, regardless of the individual name on the title, is considered joint property. This approach reflects the *'urf* (local custom) of *syirkah abdan*, also known locally as *gono-gini*, providing economic security for the spouse, whose contributions to the household may not be reflected in monetary income but are essential to the family's overall welfare.⁴⁶

The implications of this joint property regime are particularly profound in the event of death or divorce, where the settlement of assets precedes the distribution of inheritance. Literacy in this area is crucial because many communities incorrectly apply *faraid* (Islamic inheritance shares) directly to the total assets without first separating the surviving spouse's half-share of the joint property as mandated by Article 96 of the KHI.⁴⁷ Moreover, modern legal developments such as the Constitutional Court Decision No. 69/PUU-XIII/2015 have significantly strengthened the legal framework governing marital property by allowing couples to establish a marriage agreement even after the marriage has commenced. This doctrinal shift enhances legal literacy by expanding public understanding that asset regulation within marriage is not rigid, but can be adjusted in response to changing socio-economic conditions. In particular, this provision enables spouses to formally separate or manage joint assets through legally recognized instruments, thereby reducing ambiguity in ownership and control. From the perspective of Islamic legal objectives, this mechanism directly supports the realization of *maqāṣid al-sharī'ah*, specifically the protection of wealth (*hifz al-māl*).

The following figure illustrates how marital property law functions as a stabilizing mechanism by connecting asset certainty, inheritance protection, and family economic resilience:

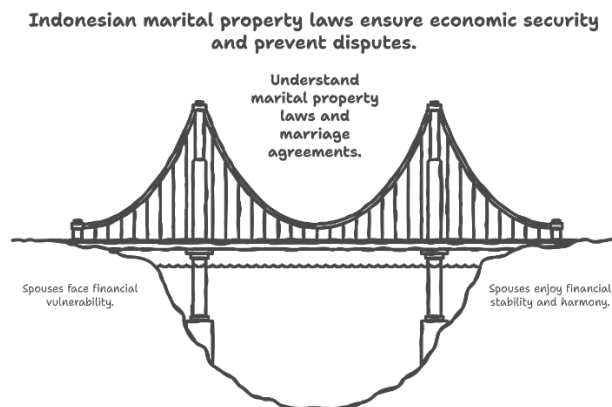
⁴⁴ M. Atho Mudzhar, "Islamic Family Law Reform in Indonesia: The Role of the State and Society," *Studia Islamika* 25, no. 3 (2018): 1–30, <https://doi.org/10.30659/jua.v6i2.29236>.

⁴⁵ Al-Zuhailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 9: 250.

⁴⁶ Bernard Adeney-Risakotta, "Traditional, Islamic and National Law in the Experience of Indonesian Muslim Women," in *Narratives of Muslim Womanhood and Women's Agency*, (London: Routledge, 2018), 82–97, <https://doi.org/10.1080/09596410.2016.1186422>.

⁴⁷ KHI, Article 77.

Figure 4
The Analogy of the Role of Property Law in Family Economic Stability



Source: Illustrated by Author with AI tools

By internalizing this legal option, Muslim couples are better equipped to anticipate and mitigate potential disputes, especially in the context of inheritance distribution, where unclear asset status often triggers prolonged familial conflict. Therefore, the decision not only functions as a procedural innovation, but also as a substantive tool of legal education, encouraging the community to view state law as an integral means of safeguarding economic rights and ensuring intergenerational justice within the family structure.⁴⁸

Conclusion

This article concludes that the legal fragility of Muslim family life in Indonesia arises not from an inherent contradiction between *fiqh munākahāt* and state regulation, but from weak public literacy regarding the relationship between religious validity and civil legality. The fulfillment of the pillars of marriage remains central to Islamic legal validity, yet in the modern Indonesian legal order such validity requires administrative recognition in order to produce legal certainty and enforceable civil protection. Marriage registration, guardianship procedures, rules on marital property, and inheritance documentation should therefore be understood as instruments that translate religious commitment into legally protected family status.

The main academic contribution of this article is the formulation of legal moderation and hybrid legal consciousness as a framework for reading Indonesian Islamic family law. Legal moderation shows that state procedures can operate as maqashid-oriented mechanisms for protecting lineage, property, women, and children. Hybrid legal consciousness explains how Muslim citizens may internalize civic legality not as a burden imposed from outside religion, but as part of their ethical and religious responsibility to prevent harm and secure *maṣlaḥa* within the

⁴⁸ Wahbah al-Zuhailī, *Al-Fiqh al-Islamī wa Adillatuhu*, vol. 9, 12.

family. Through this framework, the article moves beyond a binary opposition between fiqh and positive law and instead presents their interaction as mutually reinforcing.

Practically, the article recommends that the Ministry of Religious Affairs strengthen the role of the penghulu and the Office of Religious Affairs as legal-literacy institutions. Premarital guidance, SIMKAH-based information, and penghulu certification should include clearer modules on marriage registration, wali hakim, joint property, child rights, and inheritance consequences. Future research should complement this normative analysis with empirical studies on the social, economic, and psychological barriers that prevent communities from accessing formal marriage services. Strengthening legal literacy is thus essential for building sakinah families that are not only religiously meaningful, but also socially resilient and legally protected.

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