

“Valid but Forbidden”: A Legal Interpretive Analysis of KH. Cholil Nafis’s Paradoxical Statement on Unregistered Marriage

Adinda Putri Kartika*

IAIN Pontianak, Pontianak, Indonesia

kartikadinda215@gmail.com

Souad Ezzeroual

Dhofar University, Salalah, Oman

sezzerouali@du.edu.om

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* Corresponding Author

Abstract

This article analyzes KH. Cholil Nafis's paradoxical statement that unregistered marriage (*nikah siri*) is “valid but forbidden” within contemporary Indonesian Islamic family law. The study addresses the tension between classical fiqh, which recognizes a marriage contract that fulfills its pillars and conditions, and state law, which requires registration to secure legal certainty and family protection. Using normative legal research and a qualitative-interpretive approach, the article applies Paul Ricoeur's hermeneutic stages of distanciation, explanation, and appropriation to read the statement as a legal text. The analysis shows that the phrase “valid but forbidden” is not a normative contradiction. “Valid” refers to the religious validity of the marriage contract, whereas “forbidden” refers to the harmful legal, administrative, and social consequences of bypassing state registration, especially for women and children. The article argues that the statement reflects a shift in Islamic legal reasoning from a purely legal-formal orientation toward a *maqāṣid*-based paradigm of social protection. Its contribution lies in demonstrating how paradoxical legal discourse can mediate between classical Islamic norms and the modern state legal system.

[Artikel ini menganalisis pernyataan paradoksal KH. Cholil Nafis bahwa *nikah siri* “sah tetapi haram” dalam konteks hukum keluarga Islam kontemporer di Indonesia. Kajian ini berangkat dari ketegangan antara fikih klasik, yang mengakui akad nikah apabila rukun dan syaratnya terpenuhi, dan hukum negara, yang mewajibkan pencatatan perkawinan untuk menjamin kepastian hukum dan perlindungan keluarga. Dengan menggunakan penelitian hukum normatif dan pendekatan kualitatif-interpretatif, artikel ini menerapkan tahapan hermeneutika Paul Ricoeur, yaitu distansiasi, eksplanasi, dan apropriasi, untuk membaca pernyataan tersebut sebagai teks hukum. Hasil

analisis menunjukkan bahwa frasa “sah tetapi haram” bukan kontradiksi normatif. “Sah” merujuk pada keabsahan agama atas akad nikah, sedangkan “haram” menunjuk pada dampak hukum, administratif, dan sosial yang merugikan akibat perkawinan tanpa pencatatan negara, terutama bagi perempuan dan anak. Artikel ini berargumen bahwa pernyataan tersebut mencerminkan pergeseran nalar hukum Islam dari orientasi legal-formal menuju paradigma perlindungan sosial berbasis maqāsid al-syarī’ah. Kontribusinya terletak pada penjelasan bahwa wacana hukum yang tampak paradoksal dapat menjadi mekanisme mediasi antara norma fikih klasik dan sistem hukum negara modern.]

Keywords: Unregistered Marriage, Legal Hermeneutics, Islamic Family Law, Paul Ricoeur, Marriage Registration.

Introduction

Marriage practices recognized as religiously valid yet unregistered by the state continue to exist in various countries today. Unregistered or religious-only marriages are described using different terms across Muslim legal contexts. In Tunisia, Voorhoeve discusses such practices as *‘urfi*, or unregistered, marriages; in English socio-legal discourse, Akhtar refers to comparable practices as unregistered Muslim marriages or religious-only marriages. A comparative study of fatwa discourse further notes that similar practices are discussed under the terminology of *siri marriage* in Indonesia and Saudi Arabia, and *‘urfi marriage* in Egypt, Jordan, Kuwait, and Libya.¹ The persistence of *nikah siri* reflects an enduring social phenomenon within Muslim societies, particularly in Indonesia, where it is often perceived as a pragmatic solution to economic limitations, social pressures, privacy concerns, interreligious relationships, or attempts to avoid state administrative procedures.² Nevertheless, the practice has generated significant legal and social problems, including uncertainty regarding the legal status of wives and children and the absence of adequate legal protection for women.³ From the perspective of Islamic jurisprudence, *nikah siri* is generally regarded as religiously valid because it

¹ See: Maaïke Voorhoeve, “Law and Social Change in Tunisia: The Case of Unregistered Marriage,” *Oxford Journal of Law and Religion* 7, no. 3 (2018): 479–97, <https://doi.org/10.1093/ojlr/rwy027>; Rajnaara C. Akhtar, “Modern Traditions in Muslim Marriage Practices, Exploring English Narratives,” *Oxford Journal of Law and Religion* 7, no. 3 (2018): 427–54, <https://doi.org/10.1093/ojlr/rwy030>; Faishal Agil Al Munawar, “Telaah Fatwa tentang Nikah Siri,” *Istidlal: Jurnal Ekonomi dan Hukum Islam* 4, no. 1 (2020): 55–63, <https://doi.org/10.35316/istidlal.v4i1.210>.

² Eva F. Nisa, “The Bureaucratization of Muslim Marriage in Indonesia,” *Journal of Law and Religion* 33, no. 2 (2018): 291–309, <https://doi.org/10.1017/jlr.2018.28>.

³ R. Sitompul et al., “Legal Protection for Children Born from Unregistered Marriage in Medan City and Its Socialization through Website,” *International Journal of Engineering and Technology (UAE)* (Faculty Law, Universitas Islam Sumatera Utara, Medan, Indonesia) 7, no. 2.14 Special Issue 14 (2018): 246–50, <https://doi.org/10.14419/ijet.v7i2.12.14685>.

fulfills the essential pillars and conditions of marriage, namely the presence of the bride and groom, a guardian (*wali*), two witnesses, and the pronouncement of offer and acceptance (*ijab* and *qabul*). However, despite its religious validity, such marriages lack formal legal recognition under Indonesian law because they are not officially registered in accordance with Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law. Consequently, unregistered marriages often undermine the national system of family protection and legal certainty.⁴

The practice of *nikah siri* continues to be found across various social groups in both rural and urban communities for numerous reasons, including economic constraints, cultural traditions, social circumstances, and religious understandings that prioritize the substantive validity of marriage according to *fiqh* alone.⁵ This reality reveals a persistent gap between social practices and the legal framework established by the state. On the one hand, many members of society continue to regard *nikah siri* as legitimate if the pillars and conditions prescribed by Islamic law are fulfilled.⁶ On the other hand, the state requires marriage registration as a mechanism to ensure legal certainty, administrative order, and the protection of women's and children's rights.⁷

This issue became increasingly significant following the statement made by KH. Cholil Nafis, who declared that "*nikah siri* is valid but forbidden".⁸ At first glance, the statement appears paradoxical because it combines two normative categories generally understood as contradictory: validity (*ṣaḥīḥ*) and prohibition (*ḥarām*). In classical legal reasoning, a valid contract ordinarily produces lawful legal

⁴ See: Ahmad Nawir et al., "Comparative Analysis of The Family Law Systems in Indonesia and Saudi Arabia in The Context of Unregistered Marriage: Maqashid Al-Syari'ah Perspective," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 6, no. 4 (2024): 1075–84, <https://doi.org/10.56338/ijhess.v6i4.5772>; Kafka Nafisa Firman et al., "Analysis of the Validity and Legal Implications of Siri Marriage on the Rights of Wives and Children," *ALSYS* 6, no. 1 (2026): 438–50, <https://doi.org/10.58578/alsys.v6i1.8647>.

⁵ Baihaqi Baihaqi et al., "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya," *Journal of Islamic Law* 5, no. 2 (2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>.

⁶ Holilur Rohman et al., "Between Law and Faith: Judicial Dilemmas of Unregistered Polygamy and Divorce in Indonesia," *Indonesian Journal of Islamic Law* 8, no. 2 (2025): 168–87, <https://doi.org/10.35719/5f0dpp36>.

⁷ Rifki Ismail and Agil Mustapa, "Juridical Analysis of Unregistered Marriages' Effects on Children's Legal Status and Civil Rights," *Estudiante Law Journal* 7, no. 3 (2025): 758–71, <https://doi.org/10.33756/eslaj.v7i3.32282>.

⁸ Cholil Nafis' statement, as reported by "MUI Tegaskan Nikah Siri Sah Secara Agama Namun Haram Karena Merugikan Perempuan," *MUI Digital*, November 25, 2025, <https://mui.or.id/baca/berita/mui-tegaskan-nikah-siri-sah-secara-agama-namun-haram-karena-merugikan-perempuan>.

consequences, whereas prohibition indicates that an act is forbidden.⁹ The formulation “valid but forbidden” therefore opens a broad interpretive space regarding how a marriage may remain religiously valid while simultaneously being considered impermissible due to its social and legal consequence. The statement functions not merely as a religious opinion but also as a contemporary legal discourse reflecting a shift in the public articulation of Islamic legal reasoning in response to modern demands for social protection.¹⁰

Within the discourse of Islamic family law, studies on *nikah siri* generally fall into three major tendencies. First, doctrinal-normative studies focus on whether unregistered marriages fulfill the pillars and conditions required under Islamic jurisprudence and state law.¹¹ Second, sociological studies emphasize the social consequences of unregistered marriage for women, children, and state administrative order.¹² Third, *maqāsid*-oriented studies attempt to justify marriage registration as an instrument for safeguarding public welfare (*maṣlahah*) within family life.¹³ Despite these significant contributions, relatively few studies have

⁹ Abdul Haq Syawqi, “Multiparadigma Sosiologi Hukum Keluarga Islam,” *Al-Manhaj: Journal of Indonesian Islamic Family Law* 4, no. 1 (2022): 66–89, <https://doi.org/10.19105/al-manhaj.v4i1.6200>.

¹⁰ Muhammad Yunus Hidayatullah et al., “Perkawinan Sirri Menurut Fatwa Majelis Ulama Indonesia,” *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 3, no. 1 (2022): 64–83, <https://doi.org/10.15642/mal.v3i1.117>.

¹¹ See: Kafka Nafisa Firman et al., “Analysis of the Validity and Legal Implications of Siri Marriage on the Rights of Wives and Children,” *ALSYS* 6, no. 1 (2026): 438–50, <https://doi.org/10.58578/alsys.v6i1.8647>; Erni Sulhati Roudho Siregar and Uswatun Hasanah, “Problematika Nikah Siri Di Indonesia (Tinjauan Hukum Islam Dan Hukum Nasional),” *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 3, no. 1 (2026): 40–51, <https://doi.org/10.62383/demokrasi.v3i1.1507>; Edi Gunawan, “Nikah Siri Dan Akibat Hukumnya Menurut UU Perkawinan,” *Jurnal Ilmiah Al-Syir'ah* 11, no. 1 (2013), <https://doi.org/10.30984/as.v1i1.163>.

¹² See: Moch Zulkarnain Muis et al., “Unregistered Marriage among University Students: Family Influence, Religious Legitimacy, and the Negotiation of Marriage Law,” *Al-Hukama': The Indonesian Journal of Islamic Family Law* 15, no. 2 (2025): 176–203, <https://doi.org/10.15642/alhukama.2025.15.2.176-203>; Fadli Fadli, “Implikasi Yuridis Terhadap Penerbitan Kartu Keluarga Bagi Pasangan Nikah Siri Di Indonesia,” *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyyah* 4, no. 1 (2021): 82, <https://doi.org/10.58824/mediasas.v4i1.275>; Alfiya Wicaksono, “Implications of Unregistered Marriage for Women: Profitable or Detrimental,” *NORMA* 18, no. 1 (2021): 26–32, <https://doi.org/10.30742/nlj.v18i1.1198>.

¹³ See: Iklil Hasbiyalla, “Unregistered Marriage in the Study of Indonesian Positive Law and Islamic Law,” *VRISPRAAK: International Journal of Law* 8, no. 1 (2024): 10–20, <https://doi.org/10.59689/vris.v8i1.1162>; Andi Muhammad Akmal et al., “Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia: Integrating Maqāsid al-Sharī'ah,” *El-USrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 768, <https://doi.org/10.22373/ujhk.v7i2.25971>; Muhammad Jazil Rifqi et al., “Children’s Legal Identity at Stake: Reconstructing Maqasid al-Syari’ah through Marriage Isbat Applications by the Second Generation in Pasuruan,” *El-Mashlahah* 15, no. 1 (2025): 125–48, <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.

examined the legal statement of a religious authority as an autonomous “text” open to hermeneutic interpretation. As a result, the deeper dimensions of meaning, social context, and legal reasoning underlying paradoxical formulations such as “valid but forbidden” remain insufficiently explored.

This article therefore positions KH. Cholil Nafis’s statement as an autonomous object of legal interpretation through the hermeneutic framework of Paul Ricoeur. Ricoeur’s hermeneutics is particularly relevant because it views a text as possessing meaning independent of the subjective intention of its author. Once a statement becomes a text, it acquires autonomy and opens itself to broader interpretive possibilities.¹⁴ Accordingly, this study employs Ricoeur’s three stages of interpretation—distanctiation, explanation, and appropriation—to analyze the structure of meaning and legal implications embedded within the statement.¹⁵ Through this approach, the analysis moves beyond the binary distinction between lawful and unlawful to examine how legal constructions emerge as responses to social realities, administrative structures, and the protection of public welfare. This article argues that the statement “*nikah siri* is valid but forbidden” represents a reconstruction of Islamic legal authority that seeks to integrate the validity of classical *fiqh* with contemporary concerns for social welfare. The term “valid” signifies recognition of the fulfillment of Islamic legal requirements, while “forbidden” reflects broader considerations of social harm, administrative disorder, and the vulnerability of women and children when marriages occur outside the state legal framework.

This article offers a distinct contribution by treating a public legal statement issued by a religious authority as an autonomous text for hermeneutic analysis. Whereas earlier studies largely examine *nikah siri* through doctrinal validity, sociological impact, or *maqāṣid*-based justification of marriage registration, this study focuses on how the phrase “valid but forbidden” itself produces legal meaning. By doing so, the article shows that paradoxical religious-legal language can function as an interpretive bridge between classical *fiqh* categories and contemporary demands for legal certainty, administrative order, and social protection.

Using Ricoeur’s hermeneutics, this study demonstrates that the apparent paradox is not a normative contradiction but rather an interpretive strategy aimed at reconciling classical Islamic legal tradition with contemporary social realities. Through this analysis, the article seeks to broaden the horizon of contemporary Islamic legal studies, particularly regarding the dynamic relationship between

¹⁴ Paul Ricoeur, *Hermeneutics and the Human Sciences: Essays on Language, Action and Interpretation*, 1st ed., ed. John B. Thompson (Cambridge University Press, 2016), <https://doi.org/10.1017/CBO9781316534984>.

¹⁵ Paul Ricoeur, “Phenomenology and Hermeneutics,” *Noûs* 9, no. 1 (1975): 85, <https://doi.org/10.2307/2214343>.

religious legality, state authority, and the construction of social welfare in modern Muslim societies.

Research Methodology

This study constitutes normative legal research employing a qualitative-interpretive approach focused on analyzing the meaning embedded in KH. Cholil Nafis's statement concerning *nikah siri* as "valid but forbidden." Conducted within the framework of contemporary Islamic legal studies, the research treats the statement as an autonomous legal text subject to hermeneutic interpretation. Paul Ricoeur's hermeneutic approach was selected because it is particularly suitable for examining legal formulations characterized by paradoxical and contextual dimensions. The focus of this study is therefore not limited to assessing the formal legality of unregistered marriage but rather directed toward understanding the interpretive structure, social context, and normative consequences underlying the formulation "valid but forbidden." Hermeneutics is consequently employed to bridge the relationship between text, context, and the social realities surrounding the emergence of the statement.

The study relies on both primary and secondary sources. The primary legal text analyzed in this article is KH. Cholil Nafis's statement on *nikah siri* as "valid but forbidden," as quoted in the official MUI Digital report entitled "MUI Tegaskan Nikah Siri Sah Secara Agama Namun Haram Karena Merugikan Perempuan," published on November 25, 2025. This media text is treated not merely as a news report but as the principal textual corpus through which the legal meaning of the statement is interpreted. Secondary data are derived from relevant literature, including works on hermeneutics, Paul Ricoeur's writings, scholarly publications on Islamic family law, studies concerning *nikah siri*, Indonesian marriage regulations, and classical as well as contemporary *fiqh* literature discussing the validity of marriage contracts and the importance of marriage registration. Data were collected through library research using documentation techniques and were classified according to their relevance to the construction of meaning, social context, and legal implications associated with the analyzed statement.

This article does not treat the statement as a formal institutional fatwa of MUI, but as a public legal-religious statement articulated by a recognized Islamic legal authority within the Indonesian Muslim public sphere. Accordingly, the analysis is limited to the meaning produced by this official media text and does not claim to represent the full institutional position of MUI or the views of all Indonesian Islamic scholars.

Data analysis was conducted descriptively and analytically through Ricoeur's three stages of hermeneutic interpretation: distanciation, explanation, and appropriation. The stage of distanciation was used to separate the text from the subjective intentions of its speaker, thereby positioning the statement as an

autonomous text possessing broader interpretive possibilities beyond the author's personal intention. The explanation stage focused on examining the linguistic structure, conceptual relationships, and legal constructions embedded in the terms "valid" and "forbidden," including how these concepts are integrated within a single legal formulation. Finally, the appropriation stage sought to contextualize the social and legal relevance of the statement within contemporary Indonesian Islamic family law, particularly concerning the protection of women's and children's rights, marriage administration, and the relationship between religious law and state law. Through this analytical framework, the study aims to produce an interpretation of Islamic law that is not merely textual but also contextual and reflective of the dynamics of contemporary Muslim society.

Ricoeur's framework is used not to replace *uṣūl al-fiqh* or *maqāṣid* analysis, but to explain how paradoxical legal language produces a new horizon of meaning when it moves from an oral statement into a public legal text. In this sense, hermeneutics allows the study to examine not only what the statement says, but also how it mediates between *fiqh* validity, state administration, and social protection.

Results and Discussion

The Legal Position of *Nikah Siri* in Indonesia

The term *nikah siri* is a legal and social terminology that developed within Indonesian Muslim society to refer to marriages conducted according to religious requirements but not officially registered with the state. Etymologically, the word *siri* derives from the Arabic term *sirrun*, meaning "secret" or "hidden."¹⁶ In contemporary Indonesian usage, however, the term no longer exclusively refers to marriages intentionally concealed from public knowledge; rather, it broadly denotes marriages conducted outside the state administrative framework prescribed by law.¹⁷ Consequently, *nikah siri* is more accurately understood as "unregistered marriage" than merely a "secret marriage." This distinction is significant because it reflects the divergence between religious validity and state administrative recognition within Indonesia's legal system governing marriage.

In classical Islamic jurisprudence, the concept of *nikah siri* was not understood in the same administrative sense recognized today. Classical jurists generally employed the term *nikāḥ al-sirr* to describe marriages concealed from public

¹⁶ Ratu Haika, "Unregistered Marriage (Nikah Sirri) in Tanjung Palas, Indonesia: A Normative-Empirical Analysis Through the Maxim Al-Dhararu Lā Yuzālu Bi Al-Dharari," *International Journal of Islamic Studies Issues* 1, no. 2 (2025): 24–28, <https://doi.org/10.59966/14scwm85>.

¹⁷ Halil Khusairi, "Kompleksitas Kawin Siri: Antara Hukum Islam Dan Undang-Undang Perkawinan Di Indonesia," *Istinbath* 21, no. 1 (2022): 165–88, <https://doi.org/10.20414/ijhi.v21i1.492>.

announcement or lacking proper publicity.¹⁸ Scholarly debates surrounding such marriages focused primarily on the presence or absence of public declaration (*i'lān*) and witnesses during the marriage contract.¹⁹ The majority of Sunni jurists maintained that a marriage remains legally valid as long as it fulfills the essential pillars and conditions of marriage, including the presence of the bride and groom, a guardian (*wali*), two witnesses, and the exchange of offer and acceptance (*ijab* and *qabul*), even if the marriage is not publicly announced.²⁰ Nevertheless, some jurists considered secret marriages to be reprehensible (*makrūh*) because they could generate social suspicion and undermine the social function of marriage as a public institution.²¹

These differing perspectives indicate that classical fiqh primarily emphasized the substantive validity of the marriage contract rather than administrative registration as understood within the framework of the modern state. In the Shāfi'i school, for instance, the existence of a guardian and two just witnesses constitutes a fundamental requirement determining the validity of a marriage.²² As long as these elements are fulfilled, the marriage is considered valid according to Islamic law and capable of producing legal consequences within the religious sphere. This understanding explains why many Indonesian Muslims continue to believe that *nikah siri* remains religiously valid despite the absence of official registration at the Office of Religious Affairs (KUA).²³ Such perceptions have contributed significantly to the continued persistence of unregistered marriage practices in Indonesian society.

However, the emergence of the modern nation-state has profoundly transformed the legal construction of marriage within Muslim societies. Marriage is no longer viewed solely as a private relationship between individuals but also as a social institution carrying legal implications concerning family status, inheritance,

¹⁸ Fatri Sagita and Dwi Utami Huda Nur, "Perbedaan Nikah Di Bawah Tangan Dan Nikah Siri Dalam Perspektif Hukum Islam," *QISTHOSIA: Jurnal Syariah Dan Hukum* 3, no. 1 (2022): 31–45, <https://doi.org/10.46870/jhki.v3i1.228>.

¹⁹ Susan A. Spector, "Some Ḥanbalī Views on Secret Marriage," in *Arabic Humanities, Islamic Thought*, ed. Joseph E. Lowry and Shawkat M. Toorawa (BRILL, 2017), https://doi.org/10.1163/9789004343290_004.

²⁰ Mariam Sheibani, "Deceptive Debauchery: Secret Marriage and the Challenge of Legalism in Muslim-Minority Communities," *Religions* 15, no. 1 (2023): 10, <https://doi.org/10.3390/rel15010010>.

²¹ Tuba Erkoc Baydar, "A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective," *Religions* 14, no. 4 (2023): 463, <https://doi.org/10.3390/rel14040463>.

²² Muhammad Fahrol and Mhd Haikal, "Rukun Nikah Menurut 4 Imam Mazhab: (Studi Pustaka)," *Akhlak: Jurnal Pendidikan Agama Islam Dan Filsafat* 2, no. 2 (2025): 19–29, <https://doi.org/10.61132/akhlak.v2i2.628>.

²³ Thriwaty Arsal, "Nikah Siri in Demographic Overview," *Sodality: Jurnal Sosiologi Pedesaan* 6, no. 2 (2012), <https://doi.org/10.22500/sodality.v6i2.6082>.

children's rights, civil administration, and state protection.²⁴ In Indonesia, this transformation is clearly reflected in Law Number 1 of 1974 on Marriage, which positions marriage registration as an essential component of the national legal system. Article 2 paragraph (1) of the Marriage Law states that a marriage is valid if conducted according to the laws of the parties' respective religions and beliefs, while Article 2 paragraph (2) stipulates that every marriage must be officially registered in accordance with applicable legislation.²⁵ These provisions demonstrate the existence of a dual structure of marital legality in Indonesia: religious validity and administrative validity.

Within this framework, registration does not merely serve a bureaucratic function; it provides evidentiary certainty for the existence of marriage and becomes the basis for protecting derivative rights, including maintenance, inheritance, civil identity, and legal remedies through mechanisms such as *isbat nikah*.

This dualism has generated extensive debate regarding the legal status of *nikah siri*. Some scholars and religious communities argue that registration is merely an administrative matter and therefore does not determine the religious validity of marriage, since Islamic law does not explicitly designate registration as a pillar or condition of a valid marriage contract.²⁶ Others contend that marriage registration constitutes a binding legal necessity intended to preserve public welfare (*maṣlahah*). From this perspective, the state possesses legitimate authority to establish administrative regulations designed to protect the rights of its citizens.²⁷ Consequently, although a marriage may be regarded as religiously valid, the absence of official registration remains legally problematic because it undermines legal certainty and social protection for the parties involved.

The issue becomes even more complex when viewed through the realities of social practice. Numerous cases demonstrate that women involved in unregistered marriages frequently encounter difficulties in obtaining legal rights related to maintenance, inheritance, and legal protection in cases of divorce or

²⁴ Hjh Norhartijah binti Haji Puteh and Cecep Soleh Kurniawan, "Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam," *Articles, ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 1 (2025): 1–25, <https://doi.org/10.62976/ajisc.v2i1.1367>.

²⁵ Mu'tashim Billah, "The Maslahah of State Policy in Responding to Unregistered Marriage: Inclusion of Unregistered Marriage on The Family Card," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (2024): 136, <https://doi.org/10.30659/jua.v6i2.31138>.

²⁶ Zulham Wahyudani, "Keabsahan Nikah Siri Dalam Perspektif Maslahah," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam* 12, no. 1 (2020): 44–63, <https://doi.org/10.32505/jurisprudensi.v12i1.1508>.

²⁷ Sheila Fakhria, "Menyoal Legalitas Nikah Sirri (Analisis Metode Istislahiyyah)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2017): 185–200, <https://doi.org/10.14421/ahwal.2016.09204>.

abandonment.²⁸ Likewise, children born from unregistered marriages often face administrative obstacles in obtaining birth certificates, accessing education, and securing formal legal recognition of their civil status.²⁹ In certain cases, *nikah siri* is also exploited as a mechanism for circumventing regulations concerning polygamy, concealing secondary marriages, or avoiding legal responsibilities.³⁰ Accordingly, *nikah siri* can no longer be understood merely as a matter of personal religious practice; it has evolved into a broader social and legal issue affecting human rights protection and public order.

Figure 1
KH. Cholil Nafis “Valid but Forbidden” Statement



Source: MUI Digital, “MUI Tegaskan Nikah Siri Sah Secara Agama Namun Haram Karena Merugikan Perempuan,” November 25, 2025, <https://mui.or.id/baca/berita/mui-tegaskan-nikah-siri-sah-secara-agama-namun-haram-karena-merugikan-perempuan>.

²⁸ Muhammad Budiono, “Dampak Sosial Nikah Sirri,” *Al-Hukama* 4, no. 1 (2024): 203–22, <https://doi.org/10.15642/al-hukama.2014.4.1.203-222>.

²⁹ Rifki Ismail and Agil Mustapa, “Juridical Analysis of Unregistered Marriages’ Effects on Children’s Legal Status and Civil Rights,” *Estudiante Law Journal* 7, no. 3 (2025): 758–71, <https://doi.org/10.33756/eslaj.v7i3.32282>.

³⁰ Nadhifa Salsabilla Syafa’ and Nur Lailatul Musyafaah, “Isbat Nikah Pernikahan Poligami Secara Siri Dalam Putusan Nomor 3401/Pdt.G/2022/PA.Sby,” *Ma’mal: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 50–72, <https://doi.org/10.15642/mal.v5i1.325>.

Within this broader context, KH. Cholil Nafis's statement that "*nikah siri* is valid but forbidden" emerges amid tensions between these two legal orientations. On the one hand, the statement acknowledges the framework of classical fiqh, which recognizes the validity of marriage based on the fulfillment of religious pillars and conditions. On the other hand, it reflects an awareness that marriages conducted outside the state registration system may produce harmful social consequences contrary to the objectives of legal protection. The statement therefore does not emerge in isolation but rather reflects an ongoing shift in the public articulation of Islamic legal reasoning within a modern legal order increasingly concerned with legal certainty and the protection of family rights.

Legal Interpretation of the Paradoxical Statement "Nikah Siri Is Valid but Forbidden"

KH. Cholil Nafis's statement that "*nikah siri* is valid but forbidden" presents a legal construction that appears paradoxical within contemporary Islamic legal discourse. Generally, the term "valid" (*ṣaḥīḥ*) in Islamic jurisprudence refers to the fulfillment of the pillars and conditions required for a legal act, while the term "forbidden" (*ḥarām*) denotes a normative prohibition against a particular action. Within formal legal logic, these two categories are often perceived as mutually contradictory. Consequently, their combination within a single legal formulation raises significant interpretive questions regarding how a marriage may simultaneously remain religiously valid while also being considered impermissible. To analyze this paradoxical construction, this study employs Paul Ricoeur's hermeneutic framework through the stages of distanciation, explanation, and appropriation. This approach enables the statement to be understood not merely as a literal expression but as a discursive product reflecting the adaptive articulation of Islamic law in response to modern social realities.

Table 1

The Hermeneutic Analysis Construction of "Nikah Siri Is Valid but Forbidden"

Hermeneutic Stage	Focus of Analysis	Interpretation Results	Implications
Distanciation	Separating the text from the subjectivity of KH. Cholil Nafis	The text is read as a critique of the legalistic paradigm that only emphasizes the validity of the contract (akad)	Religious legality is not automatically identical to social legitimacy
Explanation	Unpacking the relationship of meaning between "valid" and "forbidden"	"Valid" refers to Sharia (Fiqh) validity, while "forbidden" refers to social and administrative impacts	A duality of legality emerges: religious and administrative

Hermeneutic Stage	Focus of Analysis	Interpretation Results	Implications
Appropriation	Reading the relevance of the text within the context of modern law	The statement becomes a form of negotiation between fiqh and the state legal system	Moving toward a paradigm of social protection

Source: Author's elaboration based on Ricoeur's hermeneutic framework and KH. Cholil Nafis's statement as reported by MUI Digital (2025).

Distanciation: Detaching the Text from the Speaker's Personal Authority

The stage of distanciation begins by separating the statement “*nikah siri* is valid but forbidden” from the personal subjectivity of KH. Cholil Nafis as its speaker. According to Ricoeur, once discourse becomes text, it acquires autonomy and is no longer entirely determined by the speaker's original intention.³¹ Therefore, the focus of analysis shifts away from the personal motives of KH. Cholil Nafis toward the structure of meaning generated by the text itself within the broader context of contemporary Islamic legal discourse.

Through this process of distanciation, the statement can be interpreted as a critique of the formalistic understanding of marital legality that prevails in many Muslim communities. In practice, *nikah siri* is often justified solely on the basis that it fulfills the pillars and conditions required by classical fiqh. As a result, religious legality is commonly perceived as complete once the requirements of guardianship, witnesses, and contractual consent are fulfilled, without serious consideration of the broader social consequences arising after the marriage takes place. Within this context, the paradoxical formulation “valid but forbidden” functions as a discursive instrument intended to challenge the assumption that religious validity automatically guarantees social legitimacy.

The term “valid” maintains continuity with classical Islamic jurisprudence, which emphasizes the substantive validity of the marriage contract. Meanwhile, the term “forbidden” introduces social considerations into legal evaluation. In other words, the statement does not seek to invalidate the marriage contract from a fiqh perspective; rather, it deconstructs a purely legalistic paradigm that limits Islamic law to formal contractual requirements alone. Consequently, the process of distanciation reveals that the apparent paradox within the text actually operates as a strategy for shifting the orientation of Islamic law from ritual legality toward substantive social protection.

³¹ Paul Ricoeur and John B. Thompson, eds., “Studies in the Theory of Interpretation,” in *Hermeneutics and the Human Sciences: Essays on Language, Action and Interpretation*, Cambridge Philosophy Classics (Cambridge University Press, 2016), Cambridge Core, <https://www.cambridge.org/core/product/2BE702D9DACFACE3D0E051DD28DC52F7>, 91-92.

Moreover, the analysis demonstrates that the statement emerged within the context of a Muslim society already embedded in a modern administrative state system. In premodern social structures, marriage was generally regarded as a private relationship whose validity depended primarily upon religious norms and communal recognition. In contrast, within the modern nation-state, marriage has become a public institution linked to civil administration, family rights, inheritance, child status, and access to legal protection.³² As a result, marriage registration can no longer be viewed merely as an administrative formality; it has become an integral mechanism for protecting the legal rights of citizens.

Explanation: Unpacking the Paradoxical Structure “Valid” and “Forbidden”

The stage of explanation seeks to analyze the conceptual relationship between the terms “valid” and “forbidden” within the internal structure of the text. This analysis demonstrates that the two concepts actually operate within different legal domains. The designation “valid” concerns the ontological validity of the marriage contract itself, whereas “forbidden” pertains to the ethical and social evaluation of the practice surrounding the contract.

Within classical Islamic jurisprudence, a legal act may remain formally valid even when its implementation contains reprehensible elements or produces harmful consequences.³³ Accordingly, the term “forbidden” in KH. Cholil Nafis’s statement is not directed toward the existence of the marriage contract itself, but rather toward the social implications resulting from marriages conducted outside the state registration system. This interpretation reveals that the paradox “valid but forbidden” emerges from the coexistence of two simultaneous systems of legality: religious legality and state administrative legality.

This distinction also clarifies the category of prohibition involved in the statement. The term “forbidden” is better understood as *ḥarām li-ghayrihi*: the marriage contract is not treated as intrinsically defective when its religious pillars are fulfilled, but the practice becomes prohibited because external consequences may generate *mafsadah* for women, children, and public legal order.

The explanatory stage further demonstrates that the central concern underlying the statement is the issue of legal protection for the family. Numerous social realities indicate that women involved in unregistered marriages often lose strong legal standing in cases involving divorce, financial support, inheritance disputes, or abandonment. In this context, marriage registration functions as an instrument of *maṣlahah* intended to prevent harm and ensure legal protection for

³² Imron Rosyadi and Aisyah Kahar, “Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule,” *Jurnal Hukum dan Peradilan* 12, no. 3 (2023): 469, <https://doi.org/10.25216/jhp.12.3.2023.469-488>.

³³ Tuba Erkoc Baydar, “A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective,” *Religions* 14, no. 4 (2023): 463, <https://doi.org/10.3390/rel14040463>.

family members.³⁴ In addition, significant administrative problems frequently arise regarding the legal status of children born from unregistered marriages. Such children often encounter difficulties in obtaining civil identity documents and establishing legal relationships with their biological fathers.³⁵ These realities illustrate that the characterization of *nikah siri* as “forbidden” does not emerge from abstract doctrinal rigidity, but rather from broader considerations concerning social welfare and the prevention of harm.

The explanatory analysis therefore reveals that the paradoxical formulation does not constitute a logical contradiction. Instead, it reflects a layered legal construction in which different dimensions of law operate simultaneously. The validity of the marriage contract remains recognized within the domain of classical *fiqh*, while the prohibition concerns the social, legal, and administrative consequences generated by marriages conducted outside state regulation. In this sense, the statement represents an attempt to reconcile the continuity of Islamic legal tradition with the realities of modern legal governance

Appropriation: Reconstructing Meaning Within Contemporary Islamic Law

The stage of appropriation seeks to reintegrate the meaning of the text into the contemporary social and legal context of Indonesian Islamic law. At this stage, the statement “*nikah siri* is valid but forbidden” is interpreted as a reflection of the shifting public articulation of Islamic legal reasoning within the framework of the modern nation-state. Whereas in traditional societies the legitimacy of marriage was largely determined by religious norms and communal recognition, within modern legal systems marital legitimacy also depends upon state administrative recognition.

The transformation identified here should therefore be understood in a limited and precise sense: it is a shift in the public articulation of Islamic legal reasoning toward *maqāṣid*-based social protection, not a complete replacement of classical *fiqh* authority.

The process of appropriation demonstrates that KH. Cholil Nafis’s statement should not be understood merely as a moral fatwa. Rather, it represents a form of negotiation between the authority of classical *fiqh* and the authority of the modern state. Through the formulation “valid but forbidden,” the statement simultaneously preserves the legitimacy of classical Islamic jurisprudence—which recognizes the

³⁴ Muhammad Iran Simbolon and M. Sulaiman Ridwan, “Analisis Hukum Islam Terhadap Praktik Nikah Siri Di Indonesia: Studi Kritis Atas Aspek Legalitas, Perlindungan Hak Perempuan, dan Dampaknya Terhadap Tatahan Sosial,” *Journal of Legal Sustainability* 2, no. 1 (2025): 31–37, <https://doi.org/10.63477/jols.v2i1.239>.

³⁵ Lailiyatur Rohmah and Muhammad Hamdi, “Perlindungan Anak Hasil Nikah Siri Melalui Kemudahan Proses Itsbat Nikah Sidang Keliling (Studi PERMA No.1 Tahun 2015),” *Mabahits: Jurnal Hukum Keluarga Islam* 6, no. 01 (2025): 15–28, <https://doi.org/10.62097/mabahits.v6i01.2206>.

validity of the marriage contract—while affirming the importance of state regulation as a mechanism for protecting citizens' rights. From this perspective, the state is not positioned as a threat to Islamic law, but rather as an instrument through which the objectives of Islamic law may be realized in the form of social protection.

At this stage, the concept of “forbidden” also undergoes an important expansion of meaning within contemporary Islamic legal discourse. Prohibition is no longer understood solely as a violation of explicit religious texts; it is also interpreted as conduct that neglects social responsibility and creates legal vulnerability for others. This shift demonstrates a movement within Islamic law from an individualistic orientation toward a broader paradigm centered on social protection and public welfare.

Consequently, the process of appropriation reveals that the paradox “valid but forbidden” should not be interpreted as a normative inconsistency. Rather, it functions as a mechanism for the reinterpretation of Islamic law in response to the changing structures of modern society. The formulation reflects an effort to preserve continuity with classical fiqh traditions while simultaneously adapting to the demands of the modern administrative state, particularly those concerning legal certainty, family protection, and broader social responsibility.

Implications of Interpreting the Statement “Valid but Forbidden”

The interpretation of the statement “valid but forbidden” through Paul Ricoeur's hermeneutic framework generates significant implications within the theoretical, normative, and practical dimensions of contemporary Islamic law. In Ricoeur's hermeneutics, a text does not terminate at its literal meaning; rather, it opens up what Ricoeur refers to as the “world of the text,” which subsequently shapes the manner in which law is understood and implemented within social reality³⁶. Therefore, the implications of interpreting this statement must be understood not merely as linguistic clarification, but as part of a broader transformation in legal meaning.

From a theoretical perspective, the interpretation of “valid but forbidden” affirms the distinction between formal validity and normative legitimacy within Islamic law. This implication suggests that the legal-formal approach dominant in classical fiqh is no longer sufficient to address the complexities of contemporary social issues. Islamic law cannot be reduced solely to the fulfillment of legal pillars and conditions; it must also consider broader normative objectives such as justice, protection, and public welfare.³⁷ In this regard, the interpretation strengthens the

³⁶ Widia Fithri, “Kekhasan Heremeneutika Paul Ricoeur,” *Tajdid : Jurnal Ilmu Keislaman Dan Ushuluddin* 17, no. 2 (2019): 187–211, <https://doi.org/10.15548/tajdid.v17i2.125>.

³⁷ Baihaqi Baihaqi et al., “Karakteristik Hukum Islam: Fleksibilitas, Keadilan, Dan Kemaslahatan Dalam Perspektif Normatif,” *Nuris Journal of Education and Islamic Studies* 5, no. 2 (2025): 80–95, <https://doi.org/10.52620/jeis.v5i2.110>.

ongoing paradigm shift within Islamic legal studies from a textual-formal approach toward a contextual-substantive one. Such a shift is consistent with hermeneutic theory, which views interpretation as a dialectical process between text and context³⁸. The statement “valid but forbidden” therefore demonstrates how legal interpretation may evolve in response to changing social realities without abandoning its connection to classical legal tradition

At the normative level, the interpretation legitimizes the use of more flexible legal categories capable of responding to contemporary social conditions. The label “forbidden” in this context is not understood rigidly as an essential prohibition inherent in the marriage contract itself, but rather as a normative instrument intended to prevent harm (*mafsadah*). Accordingly, the prohibition may be categorized as *ḥarām li-ghayrihi*, meaning that the prohibition arises due to external harmful consequences rather than the intrinsic substance of the act itself. This interpretation opens broader space for contextual *ijtihād* integrating principles such as *maqāṣid al-sharī‘ah*, *sadd al-dharā‘i‘* (blocking harmful means), and *maṣlaḥah mursalah* in legal reasoning, without necessarily abandoning the framework of classical fiqh. It illustrates how contemporary Islamic law may maintain doctrinal continuity while simultaneously adapting to evolving social demands.

At the practical level, the interpretation of “valid but forbidden” carries direct implications for social practices and legal policy within Indonesian society. The statement may be understood as a form of normative intervention intended to encourage society to move beyond a narrow concern with formal religious validity toward a broader awareness of social responsibility and legal protection. In this context, opposition to *nikah siri* is not based solely on theological considerations, but also on social concerns related to the protection of women’s and children’s rights, legal certainty, and administrative order within the modern state system. The statement thus functions as an ethical and legal discourse aimed at reshaping public legal consciousness regarding the relationship between religious legality and social accountability.

Conclusion

This study demonstrates that KH. Cholil Nafis’s statement describing *nikah siri* as “valid but forbidden” should not be understood merely as a normative contradiction. Through the hermeneutic framework of Paul Ricoeur, the study reveals that the formulation constitutes an interpretive legal construction that connects the validity of classical Islamic jurisprudence with broader considerations of social welfare within the context of the modern nation-state. At the stage of distanciation, the statement is positioned as an autonomous text possessing interpretive possibilities

³⁸ Humar Sidik and Ika Putri Sulistyana, “Hermeneutika Sebuah Metode Interpretasi Dalam Kajian Filsafat Sejarah,” *Agastya: Jurnal Sejarah dan Pembelajarannya* 11, no. 1 (2021): 19–34, <https://doi.org/10.25273/ajsp.v11i1.6224>.

beyond the personal intention of its speaker. During the explanatory stage, the analysis demonstrates that the term “valid” represents recognition of the fulfillment of the pillars and conditions of marriage according to Islamic law, whereas the term “forbidden” refers to the social and administrative consequences capable of harming women, children, and broader legal order. Finally, through appropriation, the study shows that the paradox “valid but forbidden” functions as a reinterpretation of Islamic law intended to bridge the classical fiqh tradition with contemporary demands for social protection.

Academically, this study contributes to expanding the application of Ricoeurian hermeneutics within contemporary Islamic legal studies, particularly in interpreting legal statements issued by religious authorities as dynamic, contextual, and open-ended texts. The research further demonstrates that interpretive approaches are capable of producing more reflective legal readings than purely doctrinal-normative approaches, which often remain confined to literal distinctions between lawful and unlawful. Moreover, the study highlights that formal religious legality does not necessarily equate to complete social legitimacy, especially when a practice creates broader social vulnerabilities and legal harm. In this regard, the discourse of “valid but forbidden” may be understood as a manifestation of Islamic law’s adaptive capacity in responding to the transformations of modern society without severing continuity with classical legal tradition.

Nevertheless, this study remains limited to a hermeneutic analysis of a single statement made by one religious figure within the discourse of *nikah siri* in Indonesia. Future research may therefore expand this inquiry by comparing interpretive constructions developed by different Islamic scholars, religious institutions, or fatwa councils concerning contemporary issues in Islamic family law. Further studies may also combine hermeneutic approaches with empirical research in order to examine how Muslim communities interpret and respond to paradoxical legal formulations within everyday social practice. Through such developments, Islamic legal studies may continue to evolve not only at the normative and interpretive levels, but also in understanding the dynamics of public reception toward contemporary religious legal discourse.

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