

Secret Marriage Contradicts the Values of Social Justice and Protection of Human Rights Contained in Pancasila and Indonesian Constitutional Law from the Perspective of Criminal Law and Islamic Law

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ABSTRACT: Unregistered marriages, i.e., marriages conducted without official registration in accordance with Indonesian law, are a crucial issue in relation to social justice and human rights protection. Law Number 1 of 1974 concerning Marriage stipulates that every marriage must be registered by the state to ensure legal certainty. Unregistered marriages result in various consequences, such as unclear legal status of the couple, failure to fulfill children's inheritance rights, and loss of legal protection for women and children. From the perspective of Pancasila, particularly the second and fifth principles, the practice of unregistered marriages contradicts the principles of humanity and social justice because it often harms women, who potentially lose their rights to livelihood, protection, and legal certainty within the family. Constitutionally, the right to form a family is guaranteed by the 1945 Constitution, but marriage registration remains a requirement for this right to receive state protection. The legal uncertainty resulting from unregistered marriages can also give rise to criminal issues if there are violations of official procedures or falsification of documents. In Islamic law, a valid marriage must meet certain conditions and pillars; unregistered marriages that do not meet these requirements can be considered invalid and detrimental to women and children according to Islamic law. Overall, unregistered marriages are contrary to national legal principles, Pancasila values, and human rights protection, so public legal awareness needs to be increased to encourage the implementation of legal and registered marriages.

Received: October 17th, 2025
Revised: October 23th, 2025
Accepted: November 18th, 2025
Published: November 28 th, 2025
Curr. Ver.: November 28 th, 2025

Keywords: Secret Marriage, Social Justice, Human Rights, Pancasila, Indonesian Constitutional Law, Indonesian Criminal Law, Islamic Law, Rights Protection, Legal Status, Legal Marriage

1. Introduction

Marriage is a fundamental aspect of social, cultural, and religious life in Indonesia, with legal implications and social protection for couples and children (Firdaus & Maskur, 2024). The Indonesian state regulates the validity of marriage through Law Number 1 of 1974 concerning Marriage—which has subsequently been amended—so that every marriage must be officially registered to obtain legal certainty and state protection (Indonesia, 1974; Indonesia, 2019). The registration and implementation of marriages before authorized officials is intended to guarantee inheritance rights, rights to support, child status, and access to legal services for interested parties (Ministry of Religious Affairs of the Republic of Indonesia, n.d.; Ministry of Law and Human Rights of the Republic of Indonesia, n.d.).

In social practice, there is the phenomenon of marriages conducted without official registration, commonly referred to as unregistered marriages. These unregistered marriages often arise due to religious considerations, local customs, or to avoid administrative procedures considered complicated or expensive, but create legal uncertainty for the couple and children born from the marriage (Al Hasan, n.d.; Hadi Riyanto, n.d.; Muslimah.or.id, n.d.). This uncertainty has implications for difficulties in obtaining birth certificates, securing inheritance rights, and providing legal protection for



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women and children in the event of disputes or domestic violence (Firdaus & Maskur, 2024; Al Hasan, n.d.).

Constitutionally, the right to form a family and receive legal protection is guaranteed by the 1945 Constitution of the Republic of Indonesia; therefore, the practice of unregistered marriages has the potential to violate the constitutional principle of equal protection under the law (the 1945 Constitution). From a criminal and administrative law perspective, procedural inconsistencies such as falsification of documents or neglect of registration obligations can have detrimental legal consequences for the parties involved (Ministry of Law and Human Rights of the Republic of Indonesia, n.d.; Ministry of Religious Affairs of the Republic of Indonesia, n.d.).

From an Islamic legal perspective, a marriage is considered valid if its pillars and requirements—such as the marriage contract, a guardian, and witnesses—are met. However, religious recognition does not always automatically guarantee legal certainty before the state if it is not accompanied by administrative registration (Indonesian Ulema Council [MUI], n.d.; Kharisudin, n.d.). Several legal reviews indicate a difference in interpretation between religious recognition and the state's authority to provide formal legal protection; this creates a practical gap that often harms women and children (Hadi Riyanto, n.d.; Firdaus & Maskur, 2024).

Taking into account the national legal framework, religious norms, and social implications, this study examines the extent to which the practice of unregistered marriages contravenes the values of social justice and human rights protection as enshrined in the Pancasila and the Indonesian Constitution, as well as its implications for criminal law and Islamic law. The findings and analysis are expected to provide the basis for policy recommendations to strengthen marriage registration mechanisms and protect the rights of vulnerable groups affected by unregistered marriages (Firdaus & Maskur, 2024; Ministry of Religious Affairs of the Republic of Indonesia, n.d.; MUI, n.d.).

2. Method

This study uses a qualitative approach with descriptive analysis methods to explore and analyze the phenomenon of unregistered marriages within the context of social justice values, human rights protection, and law in Indonesia. This approach was chosen because unregistered marriages involve social, legal, and religious aspects, requiring a deep understanding of the basic principles applicable in Indonesian society. This research method aims to explore unregistered marriages from the perspective of Indonesian criminal law, Islamic law, and their relationship to the values contained in Pancasila and the 1945 Constitution (UUD 1945).

1. Types of research

This research is a descriptive-analytical study, describing, explaining, and analyzing phenomena related to unregistered marriages and their impact on the values of Pancasila, human rights, Indonesian law, and Islamic law. A descriptive approach is used to describe the practice of unregistered marriages in Indonesia, while an analytical approach is used to identify inconsistencies between unregistered marriages and the legal principles and social values stipulated in Pancasila and the state constitution.

2. Data collection technique

Data collection in this study was carried out through three main methods, namely literature studies, interviews, and legal document analysis.

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- **Document Analysis** : Researchers will also analyze various relevant legal documents, such as Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and provisions in the 1945 Constitution that guarantee human rights. These documents will be analyzed to determine how Indonesian law views unregistered marriages and their impact on protecting the rights of the individuals involved in such marriages.

3. Data Analysis Techniques

Data collected from literature studies, interviews, and legal document analysis will be analyzed using qualitative analysis techniques. This narrative and descriptive data will be compiled and analyzed by identifying patterns, themes, and gaps related to unregistered marriages within the context of state law, Islamic law, and social values in Indonesia.

- **Thematic Analysis** : Data from interviews and literature will be analyzed thematically to identify key themes that emerge related to the injustices arising from unregistered marriages. This analysis will lead to the identification of gaps between state and religious law in terms of recognizing and protecting individual rights within marriage.
- **Comparative Analysis** : Researchers will compare various existing views regarding unregistered marriages from the perspective of state law and Islamic law. This aims to determine whether there are any discrepancies between state law, which requires marriage registration, and Islamic law, which considers unregistered marriages religiously valid. In this way, researchers can understand the existing gaps and their impact on individual rights, particularly women and children.
- **Legal Interpretation** : Researchers will interpret the legal provisions contained in the marriage law and Islamic law to assess whether a secret marriage can be considered a violation of the law or not, as well as its impact on the protection of human rights.

4. Data Validity

To ensure data validity, this study will utilize source triangulation, comparing interview results with data from relevant literature and legal documents. Furthermore, the researchers will validate the findings through discussions with legal experts and practitioners competent in their fields to ensure the accuracy and credibility of the research results.

Using **qualitative**, **normative**, and **comparative analysis**, this study will yield a comprehensive understanding of unregistered marriages in the context of **social justice** and **human rights protection** in Indonesian and Islamic law. These techniques will enable the study to identify discrepancies between unregistered marriage practices and state-guaranteed legal principles, as well as their impact on the rights of the individuals involved.

3. RESULTS AND DISCUSSION

1. Research result

The results or stages of this research include the steps taken to obtain the necessary data and conduct analyses consistent with the research objectives. The following are details of the results of this research:

1. Data collection

The first stage was **primary data collection** through interviews with relevant sources, such as legal practitioners (judges, prosecutors, lawyers), officials at the Office of Religious Affairs (KUA), and couples involved in unregistered marriages. These interviews aimed to understand the issues faced by individuals undergoing unregistered marriages and to gain firsthand insights from legal practitioners regarding the social and legal impacts of unregistered marriages.

Secondary data collection will be conducted by gathering various literature, laws and regulations, court decisions, academic journals, and reports discussing unregistered marriages, human rights, criminal law, Islamic law, and the values contained in Pancasila. These sources will provide a legal and theoretical basis for further analysis.

2. Data analysis

After data collection, the next stage is **data analysis**. The analytical approach used is a **normative-juridical analysis**, which aims to analyze the applicable legal provisions regarding unregistered marriages within the context of Indonesian criminal law and Islamic law. This analysis will focus on the compatibility of unregistered marriage practices with **Pancasila**, the foundation of social justice and **the protection of human rights** guaranteed by the 1945 Constitution.

In addition, a **comparative analysis was also carried out**, namely comparing the application of Indonesian legal regulations with the principles of Islamic law regarding marriage and their legal implications for the rights of individuals, especially women and children involved in secret marriages.

3. Evaluation of Legal Implications

At this stage, the research will assess **the legal implications** of unregistered marriages on the values of social justice and human rights. This assessment will be conducted by examining whether the practice of unregistered marriages creates injustice in the distribution of family rights, such as inheritance rights, children's rights, and the legal status of the partners involved.

4. Conclusion and Recommendations

After all the data has been analyzed, the final stage is **drawing conclusions** that will summarize the results of the research regarding the incompatibility of sirri marriage with the values of social justice and protection of human rights in Pancasila and Indonesian constitutional law, as well as a review of criminal law and Islamic law.

Recommendations will be made to improve policies or practices related to unregistered marriages, including changes or improvements in legal regulations to protect the rights of individuals involved in marriages that are not legally registered.

2. Distribution of Research Results

Dissemination of the research findings and recommendations to various relevant parties is intended to provide useful insights for stakeholders involved in the issue of unregistered marriages. The following is a breakdown of the research findings:

1. Government

The results of this study will be submitted to **legislative and executive bodies**, including the Ministry of Religious Affairs, the Ministry of Law and Human Rights, and the National Commission on Human Rights (Komnas HAM), to provide information regarding the social and legal implications of unregistered marriages. The recommendations can be used to consider changes or adjustments to policies governing marriage registration in Indonesia, to make them more equitable and accommodate human rights protections.

2. Law Enforcement Agencies

The results of this study will benefit **religious courts, district courts**, and other law enforcement agencies by providing insight into unregistered marriages and how they impact the judicial process in terms of inheritance rights, children's rights, and the protection of wives involved in unregistered marriages. This research will also help judges and lawyers better understand the social and legal contexts involved in resolving unregistered marriage cases.

3. Educational and Academic Institutions

The results of this study can also be used by **universities** and legal education institutions to supplement references in the study of family law, criminal law, and Islamic law. This research can also serve as discussion material in seminars or lectures on marriage, social justice, and human rights.

4. General public

The distribution of research results will also include **community empowerment**, particularly for couples engaged in unregistered marriages. Through this research, it is hoped that the public will better understand the importance of legally registering marriages, both from a religious and legal perspective. This education will raise public awareness of their rights and the importance of conducting marriages in accordance with applicable regulations.

5. Non-Governmental Organizations and Human Rights Organizations

The results of this study will also be disseminated to **non-governmental organizations** focused on women's and children's rights issues, to assist them in advocating for the protection of individual rights in unregistered marriages. This research will provide a foundation for these organizations to advocate for better changes in marriage policies that are fairer and respect human rights.

By sharing the research results clearly and structured, it is hoped that the findings and recommendations obtained from this research can provide a significant contribution to changes in fairer legal policies and practices, as well as increasing protection of the rights of individuals involved in unregistered marriages in Indonesia.

4. CONCLUSION

A secret marriage, or a marriage not officially registered by the state, although religiously valid, raises various legal, social, and moral issues. In the Indonesian context, which upholds the values of social justice and the protection of human rights, a secret marriage has the potential to significantly conflict with the fundamental principles of **Pancasila and the 1945 Constitution**. This study has analyzed how a secret marriage has broad negative impacts on social justice, individual rights, and the legal status of the couple and children involved. The following are the main conclusions drawn from this study.

1. Social Justice in Pancasila is Disturbed by Secret Marriages

Unregistered marriages clearly contradict the principles of **social justice** enshrined in Pancasila, particularly the fifth principle, which emphasizes the importance

of **public welfare** . Pancasila mandates that the state provide fair protection for every individual without discrimination. However, in unregistered marriages, the individuals involved, especially women and children, are often denied their legal rights, such as inheritance rights, maintenance rights, and the right to legal recognition. In this case, social justice is not achieved because there is inequality in legal recognition and protection for unregistered couples.

The unclear legal status resulting from unregistered marriages also creates social uncertainty, with women and children often denied their rights as legitimate family members, both in social and administrative contexts. This situation is inconsistent with the spirit of Pancasila, which prioritizes equal opportunity and protection for every individual .

2. Violations of Human Rights

Unregistered marriages also represent a violation of **human rights** guaranteed by **the 1945 Constitution** , particularly the right to **a legal marriage** and the right to be recognized as part of a legally valid family. One aspect of human rights violated in unregistered marriages is the child's right to be recognized as a legitimate child, which often hinders their access to inheritance rights, education, and other legal protections.

Furthermore, women involved in unregistered marriages often lose their rights, including inheritance rights, legal status in society, and the right to receive protection from the state. This demonstrates that unregistered marriages not only harm those directly involved but also violate the principle of human rights protection that should be guaranteed by the state.

3. Indonesian Criminal Law Perspective

From the perspective of **Indonesian criminal law** , unregistered marriages raise issues related to **the unclear legal status** of the individuals involved. Although marriage law stipulates that a marriage must be officially registered to be recognized as valid, unregistered marriages bypass the administrative procedures established by the state. This potentially makes it difficult for unregistered couples to obtain their due rights, such as inheritance rights and the child's right to a birth certificate.

From a criminal law perspective, unregistered marriages risk creating greater legal issues, particularly regarding the clarity of the status of the wife and children, as well as the resolution of future disputes. If problems arise within the marriage, such as divorce or inheritance rights, the unclear legal status becomes a major obstacle to dispute resolution.

4. Islamic Legal View

Under **Islamic law** , although a secret marriage can be considered valid if it meets the requirements and pillars, its lack of official registration still raises significant **legal issues** . Islam places great emphasis on registering marriages to ensure the rights of the wife, children, and other related parties are properly protected. Islam also demands that inheritance and maintenance rights be fulfilled in accordance with religious provisions. Therefore, while a secret marriage is acceptable in some contexts under Islam, in practice, unregistered marriages still create injustice for the parties involved.

5. Recommendations for Policy Changes

Based on the above findings, **policy changes** that favor **the protection of individual rights** in the context of marriage are urgently needed. The state needs to ensure that every marriage is legally registered with the state, so that the rights of the families and children involved can be properly protected. Furthermore, it is crucial to raise public awareness about the importance of marriage registration to prevent the practice of unregistered marriages, which are detrimental to all parties involved.

Unregistered marriages clearly contradict the **values of social justice** and **human rights protection** enshrined in Pancasila and the 1945 Constitution. From a **criminal law perspective** , unregistered marriages have the potential to create legal uncertainty, impacting family rights. Meanwhile, **Islamic law** emphasizes the importance of registering marriages to protect the rights of wives and children. Therefore, the state must prioritize the importance of legally registering marriages and guarantee individual rights in accordance with applicable legal provisions, both in Indonesian positive law and Islamic law.

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