

Criminalizing Adultery in Unregistered Marriages: A Case Study of Sukabumi District Court Decision No. 51/Pid.B/PN.Skb from Islamic and Indonesian Legal Perspectives

***Yayan Mulyana^a, Munandi Shaleh^a, Juhdi Rifa'I^a, Diana Farid^b**

^a Inkhas Sukabumi, Indonesia

^b Universitas Muhammadiyah Bandung, Indonesia

*Email: yayanmulyana040571@gmail.com, munandisaleh66@gmail.com,
joehdirifai@gmail.com, dianafarid@umbandung.ac.id

Abstract

Unregistered marriage (nikah siri) remains a persistent legal phenomenon in Indonesia, generating ongoing debates regarding the relationship between religious validity and state legal recognition. The issue becomes more complex when an unregistered marriage is conducted by an individual who remains legally married under state law, as illustrated by Sukabumi District Court Decision No. 51/Pid.B/2023/PN.Skb, which imposed criminal sanctions for adultery. This study aims to examine the court's legal reasoning and evaluate its consistency with the principles of Islamic law and Indonesian positive law. The research employs a normative legal method using statutory, conceptual, and case approaches by analyzing legislation, legal doctrines, and judicial decisions. The findings reveal a fundamental divergence between Islamic law and Indonesian positive law regarding the legal validity of marriage. Under Islamic law, a marriage that fulfills the essential legal requirements remains valid despite the absence of state registration; therefore, the marital relationship cannot automatically be classified as adultery. In contrast, Indonesian positive law treats marriage registration as a crucial element for establishing legal status, allowing the absence of official registration to influence the assessment of criminal liability. The analyzed judgment demonstrates that the court prioritized formal legal evidence and administrative legality over the religious validity of the marriage. These findings highlight the need to harmonize criminal law, marriage law, and Islamic law to strengthen legal certainty while ensuring substantive justice in adjudicating cases involving unregistered marriages.

Keywords: *Unregistered Marriage; Adultery; Islamic Law; Indonesian Positive Law; Judicial Decision.*

Abstrak

Perkawinan tidak tercatat (nikah siri) masih menjadi fenomena hukum yang menimbulkan perdebatan mengenai hubungan antara keabsahan perkawinan menurut agama dan pengakuan hukum negara. Persoalan ini semakin kompleks ketika perkawinan tidak tercatat dilakukan oleh seseorang yang masih terikat perkawinan yang sah secara administratif, sebagaimana tercermin dalam Putusan Pengadilan Negeri Sukabumi Nomor 51/Pid.B/2023/PN.Skb yang menjatuhkan pidana zina terhadap pelaku. Penelitian ini bertujuan menganalisis pertimbangan hukum hakim dalam putusan tersebut serta mengkaji kesesuaiannya dengan prinsip-prinsip hukum Islam dan hukum positif Indonesia. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan pendekatan kasus melalui analisis terhadap peraturan perundang-undangan, doktrin hukum, serta putusan pengadilan. Hasil penelitian menunjukkan bahwa terdapat perbedaan mendasar antara konsep keabsahan perkawinan dalam hukum Islam dan hukum positif Indonesia. Dalam hukum Islam, perkawinan yang memenuhi rukun dan syarat tetap dipandang sah meskipun tidak dicatatkan, sehingga hubungan para pihak tidak dapat dikualifikasikan sebagai perzinaan. Sebaliknya, hukum positif menempatkan pencatatan perkawinan sebagai instrumen penting pembuktian status hukum, sehingga ketiadaan pencatatan dapat memengaruhi penilaian terhadap unsur tindak pidana. Putusan yang dianalisis menunjukkan

bahwa majelis hakim lebih menitikberatkan pada legalitas administratif dan alat bukti formal dibandingkan validitas perkawinan menurut hukum Islam. Temuan ini menegaskan perlunya harmonisasi antara hukum pidana, hukum perkawinan, dan hukum Islam untuk menjamin kepastian hukum sekaligus memberikan perlindungan terhadap nilai-nilai keadilan substantif.

Kata Kunci: Perkawinan Tidak Tercatat; Tindak Pidana Zina; Hukum Islam; Hukum Positif Indonesia; Putusan Pengadilan.

INTRODUCTION

Marriage is a bond that has an important position in people's lives because it is not only related to civil relations between men and women, but also concerns religious, social, and legal aspects. Marriage law in Indonesia is regulated both by the state through laws and regulations and by religion through religious norms embraced by each religious believer. This dualism of regulation reflects the characteristics of Indonesia's pluralistic legal system, which recognizes the existence of various legal systems that live in society, including religious law and customary law.

Indonesia as a democratic legal country recognizes the existence of legal pluralism that is a hallmark of its legal system (Mursyid Djawas. et al, 2024). This legal pluralism is manifested in the coexistence of a number of norm systems that run simultaneously, state law (positive), customary law, and religious law, which reflect the historical and cultural complexity of the nation (Rya Elita Br Sembiring. et all, 2024). This diversity of legal systems opens up opportunities for governance that is more inclusive and responsive to local values; but at the same time it poses significant challenges in the form of uncertainty of norms, conflict of rules, and potential inequalities in access to justice (Sugih Ayu Pratitis, et.all, 2026).

In the Indonesian legal system, marriage is comprehensively regulated through Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. Article 2 paragraph (1) of the Marriage Law emphasizes that marriage is valid if it is carried out according to the laws of each religion and its beliefs, while Article 2 paragraph (2) requires that every marriage be registered in accordance with the applicable laws and regulations (Law No. 16 of 2019).

However, in the practice of people's lives, there are still many marriages that are carried out without official registration by the state or known as *nikah siri*. The phenomenon of serial marriage develops due to various factors, including economic reasons, the desire to avoid administrative procedures that are considered complicated, the practice of polygamy without permission, and the belief that the validity of marriage is determined by the fulfillment of the marriage principles and conditions according to religion (Hilman Hadikusuma, 2019). This condition raises legal problems because unregistered marriages do not have perfect administrative proof power, which has the potential to cause disputes regarding marital status, children's rights, inheritance rights, and legal protection for women.

From the perspective of Islamic law, the majority of scholars argue that the validity or not of a marriage is determined by the fulfillment of the marriage principles and conditions, namely the presence of prospective groom and bride, guardians, two witnesses, as well as *ijab* and *kabul*. Therefore, marriages that are carried out religiously and fulfill all the pillars and conditions are basically considered valid even though they are not recorded by the state (Wahbah Az-Zuhaili, 2011). This view often causes a difference in understanding between the public and the national legal system which requires the registration of marriages as a form of recognition and legal protection by the state.

In reality, there are still many marriages that are carried out without being registered with the Office of Religious Affairs, for example, marriages that are carried out secretly or unrecorded as required by Law Number 1 of 1974 (Reza Pahlevi NurfaizFakhry Fadhil, 2023). Unregistered marriage is an act that is not in accordance with the laws and regulations enforced in Indonesia, namely Law No. 16 of 2019 amending Law No. 1 of 1974 concerning marriage and also the Compilation of Islamic Law (KHI). According to Law Number 1 of 2023 concerning the Criminal Code (KUHP), living together without a legal and recorded marriage bond can be categorized as an act of adultery (Pebrianto et al., 2025).

This problem is reflected in the Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb. Based on the facts revealed in the trial, the defendant who is still a legal husband based on the Marriage Certificate Citation Number 409/28/VIII/2018 had a serial marriage with another woman on February 2, 2022. The wedding was held religiously by presenting guardians, witnesses, families of both parties, and local community leaders, but it was not recorded at the Office of Religious Affairs. After the serial marriage took place, the defendant had a marital relationship with the woman he married in the series. The facts of the trial also show that the defendant has never obtained a divorce decree from the court against his first wife, so that legally the state of the first marital status is still valid (Directory of Decisions PN. 51/Pid.B/2023/PN.Skb).

The panel of judges in the case was of the opinion that the elements of the crime of adultery as stipulated in Article 284 paragraph (1) 1 letter a of the Criminal Code had been met. The judge considered that the defendant as a man who was still bound by a legal marriage under state law had had sexual relations with another woman, even though the relationship was based on a serial marriage that the defendant believed to be legitimate. Therefore, the panel of judges sentenced the defendant to a criminal offense on the basis of the act of adultery committed continuously.

The ruling has sparked an interesting academic debate because it shows a paradigm difference between Islamic law and positive law in assessing relationships born from unrecorded marriage. From a positive legal point of view, the serial marriage carried out by the defendant does not erase the status of his first marriage because the divorce has not been carried out through the judicial mechanism as required by the Marriage Law. On the other hand, from the perspective of Islamic law, if the series of marriages meets the principles and conditions of marriage, then the marital relationship that occurs after the marriage contract cannot in principle be categorized as adultery (Directory of Decisions PN. 51/Pid.B/2023/PN.Skb).

These differences in perspectives raise fundamental questions about how the law should view relationships born of unrecorded marriages, especially when one of the parties is still bound by a valid marriage under state law. In addition, the decision is also interesting to be analyzed from the perspective of legal certainty theory, justice theory, and *maqāṣid al-syarī'ah* theory to find out the extent to which the judge's decision has reflected the protection of legal values, utility, and justice for the parties.

Based on this description, research on "The Imposition of the Crime of Adultery on Unregistered Marriage Offenders: An Analysis of the Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb in the Perspective of Islamic Law and Positive Law" is important to be carried out. This research is expected to make an academic contribution to the development of the study of criminal law, Islamic family law, and harmonization between Islamic law and positive Indonesian law in responding to the phenomenon of unregistered marriage.

RESEARCH METHODS

This research uses normative legal research methods, which are research that places law as a norm or rule that applies in society. Normative legal research is carried out by examining laws and regulations, court decisions, expert doctrines, and various literature related to the imposition of the crime of adultery against unrecorded marriage offenders. According to Peter Mahmud Marzuki, normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced (Peter Mahmud Marzuki, 2021). This research approach with a case approach is carried out by analyzing in depth the Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb as the main object of the research. The analysis focused on the judge's legal considerations (*ratio decidendi*) in imposing the crime of adultery against the perpetrator of an unrecorded marriage, as well as its conformity with the provisions of positive law and the principles of Islamic law.

RESULTS AND DISCUSSION

Sitting Case of Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb

Based on the facts of the trial, the defendant was legally married to his first wife on August 20, 2018 based on the Extract of Marriage Certificate Number 409/28/VIII/2018 issued by the KUA of Sukaraja District, Sukabumi Regency. In 2019, the defendant became acquainted with a widowed woman. Then on February 2, 2022, the defendant held a serial marriage with the woman without obtaining permission from the first wife and without the court's permission. After the serial marriage took place, the defendant had marital relations with the woman repeatedly.

The Public Prosecutor charged the defendant with Article 284 paragraph (1) 1 letter a of the Criminal Code regarding adultery. The panel of judges declared all elements of the article fulfilled and sentenced him to imprisonment for 2 months and 15 days.

Legal Considerations of the Judge in the Decision of the Sukabumi District Court Number 51/Pid.B/2023/PN.Skb

The Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb is one of the interesting decisions to be reviewed because it is related to the application of the crime of adultery against the perpetrators of unregistered marriages (*nikah siri*). In the case, the panel of judges examined and decided the case based on the provisions of Article 284 paragraph (1) 1 letter a of the Criminal Code (KUHP) which regulates adultery committed by a man who has been bound in a valid marriage (Criminal Code Article 284).

Based on the facts revealed at the trial, the defendant still has the status of a legal husband based on the Citation of Marriage Certificate Number 409/28/VIII/2018 issued by the Sukaraja District Religious Affairs Office, Sukabumi Regency. On the other hand, the defendant carried out a serial marriage with another woman without obtaining permission from the first wife and without permission from the court as required in the Marriage Law (Directory of Decisions PN. 51/Pid.B/2023/PN.Skb).

The panel of judges considered that the serial marriage carried out by the defendant did not have the legal force to erase the first marital status because the defendant had never obtained a divorce decree from the Religious Court. In his consideration, the judge emphasized that *talaq* pronounced unilaterally does not cause the breakdown of the marital relationship according to state law. Therefore, the defendant is still considered a husband who is still legally married to his first wife (Ahmad Rofiq, 2021).

Furthermore, the judge considered that the sexual relationship between the defendant and the woman who was married in series met the element of "*gendak*" as referred to in Article 284 of the Criminal Code. According to the panel of judges, the

element of adultery is not only judged from the existence of sexual relations outside of legal marriage, but also from the legal status of the perpetrator who is still bound by a marriage recognized by the state. Based on these considerations, the defendant was declared legally and convincingly proven to have committed the crime of adultery (Directory of Decisions PN. 51/Pid.B/2023/PN.Skb).

In handling a criminal case, the judge's consideration is a very important element, because it is the main basis in making a decision against the defendant. Judges' considerations generally include two main aspects, namely juridical considerations (legal basis) and non-juridical considerations (sociological, moral, and psychological) (Uswatun Hasanah, et.all, 2025).

From the point of view of legal certainty theory, the judge's consideration shows an orientation towards compliance with applicable legal norms. Therefore, the substance of the law must prioritize a balance between legal certainty and social benefits (Sugih Ayu Pratitis, Pagar, Hasan Matsum, 2026). By creating a sense of legal certainty and legal similarity to the same case, the judge's decision will be predictable and open (M. Faizal Amirudin. Aston, 2022). In the context of this case, the judge placed the legality of marriage based on state recognition as the main basis in determining whether or not there is a criminal act of adultery.

Analysis of the Imposition of the Crime of Adultery According to Indonesian Positive Law

In positive Indonesian law, marriage is a legal event that must meet religious and administrative aspects. Article 2 paragraph (1) of Law Number 1 of 1974 states that marriage is valid if it is carried out according to the laws of their respective religions, while Article 2 paragraph (2) requires the registration of marriages in accordance with the provisions of laws and regulations.

These provisions show that the state gives an important position to marriage registration as an instrument of legal protection. According to Hilman Hadikusuma, marriage registration serves to provide legal certainty regarding marital status, child status, inheritance rights, and various other legal consequences arising from a marriage (Hilman Hadikusuma, 2019).

In the case analyzed, the defendant considered that the serial marriage he carried out was valid because it was carried out in accordance with Islamic law. However, from a positive legal perspective, the marriage does not change the legal status of the defendant who is still bound by a legal marriage with the first wife. In addition, the defendant also did not obtain a polygamy license as stipulated in Articles 4 and 5 of the Marriage Law (Law No. 16 of 2029 an amendment to Law No. 1 of 1974). Article 39 of the Marriage Law affirms that divorce can only be done in front of a court hearing. Thus, the confession of the defendant who has imposed talaq on the first wife has no legal consequences if it is not followed by a court decision with permanent legal force.

When associated with the elements of Article 284 of the Criminal Code, the defendant's status as a man who is still bound by a legal marriage is the main factor that causes sexual relations with other women to be categorized as adultery. Therefore, normatively the judge's decision can be considered in accordance with the construction of the criminal law that prevailed at the time the case was examined and decided.

From the perspective of legal justice theory, the ruling can also be understood as an effort by the state to protect the rights of legal wives who are still bound in marriage. If the relationship carried out based on serial marriage is left without legal consequences, it

will have the potential to cause injustice to the first wife who still has the right and legal status as a legal partner according to the state (John Rawls, 1999).

According to Article 284 of the Criminal Code, adultery is a sexual relationship between a couple of different sexes outside of marriage. The prosecution is only carried out by a complaint by the husband or wife who feels aggrieved and is an absolute complaint (Muhammad Ridho Muttaqien, 2023). However, the application of Article 284 of the Criminal Code to serial marriage perpetrators also raises debate. Some people argue that the use of criminal provisions in the case shows the dominance of the administrative aspect of the state over the substantive aspect of religion. As a result, relationships that are believed to be religiously valid can still be punished for not meeting the provisions of state administrative law.

The criminal law regulation in Indonesia, previously zina was referred to as *dellik gendak* (overspel) in Article 284 paragraph (1) of the Criminal Code. After the promulgation of the new Criminal Code, adultery consists of adultery perpetrators who are bound by marriage and not bound by marriage. Adultery is still included in the category of Moral Crimes regulated in Article 411 of Law No. 1 of 2023 concerning the Criminal Code (Nurrahman et al., 2026). The new Criminal Code expands the scope of adultery by including the concept of living together as husband and wife outside of a legal marriage in Article 411, which substantially changes the landscape of Indonesian criminal law and has the potential to affect millions of citizens who are in relationships outside of legal marriage (Sani, 2024).

In a broader perspective, the expansion of the meaning of adultery can also be seen as a step that is contrary to the principle of *ultima ratio* in criminal law, where criminal law should be the last means of solving social problems (Nurrahman et al., 2026). According to Article 5 of the Law on the Formation of Laws and Regulations, it is emphasized that in order to form a Laws and Regulations, it must be done based on the principle of the Formation of Good Laws and Regulations (Law Number 13 of 2022).

The basics of formally forming good laws and regulations include:

- a) clarity of purpose;
- b) appropriate institutions or forming officials;
- c) the conformity between the type, hierarchy, and material of the load;
- d) feasible;
- e) usability and profitability;
- f) clarity of formulation; and
- g) openness. Meaning (Alfatdi & Khusnannisa, 2022).

Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations. If one of the principles is not met, it will result in the legislation becoming formally defective.

Regarding marriage under hand or not registered, its position and recognition in the eyes of the law does not exist, so everyone who does it will get administrative sanctions, whether related to their common property, their children and others (Hasan, 2020). Marriage under the hand itself is divided into two groups, namely marriages that are in accordance with religion, and also marriages that are not in accordance with religion, so that the implications of punishment for both types of marriages under hands are not the same. Because for marriages that are not in accordance with religion, the legal sanction may be in the form of criminal penalties, because it has implications for the criminal act committed, namely adultery, as is to be studied in this study.

Adultery in the national legal order only regulates sexual relations between a man and a woman without a marriage contract, but between the two is in a legal marital bond (See Article 284 of the Criminal Code). So that sometimes the implications for the perpetrators of marriage under the hands of those who are not in accordance with religion and belief, cannot be subject to criminal sanctions, because it is considered that they have done it voluntarily. However, unrecorded marriages make the relationship difficult to prove legally because they do not have a Marriage Certificate as authentic evidence. As a result, in the event of a domestic dispute, divorce, domestic violence, or division of common property, the aggrieved party will have difficulty obtaining legal protection.

According to Law Number 1 of 2023, it expands the scope of the crime of adultery. Article 411 of the National Criminal Code states: "Any person who commits sexual intercourse with a person who is not his husband or wife shall be punished for adultery."

However, this provision is still a complaint that can only be filed by the husband, wife, parents, or children of the perpetrator. This provision shows the state's efforts to provide protection for the institution of marriage and moral values that live in Indonesian society.

The imposition of the crime of adultery in the Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb shows that the judge uses a positive legal approach that focuses on formally proving marital status. An unregistered marriage cannot be proven to exist according to state law, so the sexual relationship of the defendants is seen as a relationship outside of a valid marriage and meets the elements of the criminal act charged.

From a positive legal perspective, the decision reflects the application of the principles of legal certainty, legality, and legal protection through recognition of the importance of marriage registration. However, from the perspective of Islamic law, if the serial marriage has fulfilled the harmony and conditions of marriage, then the relationship between husband and wife cannot be categorized as adultery. Therefore, this ruling shows a paradigm difference between national criminal law oriented towards formal legality and Islamic law oriented towards the substantive validity of marriage.

Analysis of Unregistered Marriage and Adultery According to Islamic Law

In Islamic law, marriage is a contract that aims to form a family that is *sakinah*, *mawaddah*, and *rahmah*. The validity of marriage is determined by the fulfillment of the marriage principles and conditions that have been determined by the sharia. The majority of scholars agree that the pillars of marriage include a husband-to-be, a wife-to-be, a guardian, two witnesses, and *ijab kabul* (Sayyid Sabiq, 2013).

According to Wahbah Az-Zuhaili, marriage registration is not included in the pillars or legal requirements of marriage according to classical fiqh. Therefore, a marriage that has fulfilled all these elements is still considered valid according to sharia even though it is not recorded by the state (Wahbah Az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Volume IX, 2011).

Nikah sirri in Islam is a marriage that is carried out secretly but all the pillars and conditions are still met. This kind of marriage during the time of Caliph Umar bin Khattab (ra) strongly denounced and forbade it, even he also annulled such marriages and considered the perpetrator to be an adulterer and would be given hudud sanctions to him (Abdullah Wasian, 2010). Even scholars also discuss this nikah sirri, among which is the opinion in the Hanafi, Shafi'i and Maliki schools which states that nikah sirri is not permissible in Islam, the perpetrators are sentenced to hudud if the two have had sexual intercourse as evidenced by their confession or the testimony of four witnesses. Although

in the opinion of the Hanbali School, sirri marriage is still recognized considering that the harmony and conditions have been fulfilled (Irfan Islami, 2020).

The facts revealed in the Sukabumi District Court Decision show that the serial marriage carried out by the defendant was carried out by presenting guardians, witnesses, families of both parties, and was carried out through a valid kabul ijab according to religion. When viewed from the perspective of Islamic law, the marriage basically meets the legal requirements of marriage (Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb).

Consequently, sexual relations carried out after the marriage contract cannot be categorized as adultery. In Islamic law, adultery is defined as a sexual relationship between a man and a woman without a valid marital bond according to the sharia (Abdul Qadir Audah, 2008). Thus, if the serial marriage is valid according to religion, then the marital relationship carried out after the marriage contract does not meet the element of zina as referred to in Islamic criminal law.

However, the development of contemporary Islamic law shows a change in views on the importance of marriage registration. Yusuf al-Qaradawi stated that marriage registration is a form of *maslahah mursalah* that is necessary to protect the rights of women and children and avoid disputes in the future (Yusuf al-Qaradawi, 2001).

In the Indonesian context, the Compilation of Islamic Law also stipulates that every marriage must be registered to ensure marital order for Muslims. This provision shows that the registration of marriage has become a legal necessity that cannot be ignored even though it is not a valid condition for marriage according to classical fiqh (Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law).

The study of the Sukabumi District Court Decision can also be carried out through the *maqāṣid al-syarī'ah* approach. According to Al-Syatibi, the main purpose of sharia is to realize the benefits of human beings through the protection of religion (*hifz al-dīn*), soul (*hifz al-nafs*), intellect (*hifz al-'aql*), heredity (*hifz al-nasl*), and property (*hifz al-mal*) (Abu Ishaq Al-Syatibi, 2003). In this case, marriage registration has a close relationship with the protection of offspring (*hifz al-nasl*). Registration provides certainty regarding the legal status of children, inheritance rights, alimony, and parental responsibilities. From the point of view of *maqāṣid al-syarī'ah*, the state has the authority to regulate the administration of marriage in order to maintain the wider benefit.

However, the criminal application of adultery against the perpetrators of a series of marriages that are legally valid also raises problems from the perspective of substantive justice. In Islamic law, a person who has entered into a valid marriage contract cannot be equated with an adulterous because the relationship he has committed has the basis of sharia legality. Therefore, there is a difference between formal justice based on state law and substantive justice based on Islamic law.

Thus, the Sukabumi District Court Decision shows that there is a tension between the certainty of state law and the concept of the validity of marriage in Islamic law. From a positive legal perspective, the ruling reflects the protection of the orderly administration of marriage and legal certainty. However, from the perspective of Islamic law, there is an argument that a relationship carried out after a marriage contract cannot be categorized as zina as long as the marriage fulfills the principles and conditions determined by the sharia.

The Difference Between the Perspective of Islamic Law and Positive Law

The case decided by the Sukabumi District Court Number 51/Pid.B/2023/PN.Skb has caused legal debate because it is related to the status of the relationship between a

man and a woman who claim to be married religiously, but whose marriage is not officially recorded by the state. In this context, there is a fundamental difference between Islamic law and positive Indonesian law in assessing the relationship status of the perpetrators and the basis for imposing the penalty.

The fundamental difference between Islamic law and positive law lies in the measure of the validity of marriage. Islamic law emphasizes the fulfillment of the harmony and conditions of marriage, while positive law requires registration as a form of state recognition.

In positive law, the marital status of the defendant with the first wife remains valid because there has been no divorce decision. Therefore, relationships with other women are considered to meet the element of adultery. On the other hand, according to Islamic law, if the serial marriage has met the requirements of shari'i, then the relationship cannot be categorized as adultery. These differences show the existence of conceptual dualism between the legality of marriage according to religion and the legality of marriage according to the state.

The fundamental differences between Islamic law and positive Indonesian law can be seen in the following table:

Table 1. The Fundamental Difference Between Islamic Law and Positive Law.

Aspects	Islamic Law	Indonesia's Positive Law
Legal basis of marriage	The fulfillment of the pillars and conditions of marriage	Valid according to religion and proven through registration
Marriage registration position	Not a legal requirement for marriage	The main evidence of marital status
Status Married Series	Valid if it meets the requirements of sharia	Difficult to prove and lacks administrative power
Definition Other	Hubungan seksual tanpa akad nikah yang sah	Determined based on criminal elements and legal evidence
Ratings of married couples series	Bukan pelaku zina	Can be considered to have no legally proven marital relationship
Legal objectives	Menjaga syariat dan keturunan (<i>hifz al-nasl</i>)	Ensuring legal certainty and administrative order

Source: processed by researcher

The main difference between Islamic law and positive Indonesian law in the case of the Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb lies in the basis for determining whether or not a marital relationship is legal. Islamic law assesses the validity of marriage based on the fulfillment of the marriage principles and conditions, so that marriages that are not recorded are still considered valid and the husband-wife relationship that occurs cannot be categorized as adultery. On the contrary, Indonesia's positive law emphasizes the importance of formal proof through marriage registration as the basis for recognition of state law.

As a result, a relationship that is considered valid under Islamic law can be seen as having no evidentiary force according to positive law. These differences show that there is a tension between the substantive aspects of religion and the formal legal aspects in the

Indonesian legal system, which requires harmonization in order to create legal certainty as well as substantive justice.

CONCLUSION

This study concludes that the Sukabumi District Court Decision Number 51/Pid.B/2023/PN.Skb reflects the dominance of a positive legal paradigm that places marriage registration as the main basis for recognition of legal status and proof in criminal cases, so that sexual relations carried out in marriage are not recorded by someone who is still legally married is considered to meet the elements of adultery. On the other hand, from the perspective of Islamic law, marriages that have fulfilled the principles and conditions of marriage are still considered valid even though they are not recorded, so that the marital relationship born from the contract cannot be qualified as adultery. These differences show that there is a conceptual tension between the administrative legality that is the foundation of positive law and the substantive validity adopted by Islamic law in determining the validity of marriage and its legal consequences. These findings affirm the importance of harmonization between criminal law, marriage law, and Islamic law through strengthening the function of marriage registration as an instrument of protection of rights, legal certainty, and administrative order without neglecting the principles of substantive justice and the purpose of sharia (*maqāṣid al-syarī'ah*), especially the protection of the family and offspring (*ḥifẓ al-nasl*). Thus, this study contributes to the development of a discourse on the relationship between the validity of marriage, criminal liability, and marriage law policy reform in Indonesia.

BIBLIOGRAPHY

- Abdul Qadir Audah. (2008). *At-Tasyri' al-Jina'i al-Islami*, Jilid II . Beirut: Mu'assasah al-Risalah.
- Abdullah Wasian. (2010). *Akibat Perkawinan Sirri (tidak dicatatkan) terhadap Kedudukan Istri, Anak dan Harta Kekayaan Tinjauan Hukum Islam dan Undang-Undang Perkawinan*. Sem: Program Studi Magister Kenotariatan Universitas Diponegoro.
- Abu Ishaq Al-Syatibi. (2003). *Al-Muwafaqat fi Ushul al-Syari'ah*, Jilid II . Beirut: Dar al-Kutub al-Ilmiyyah.
- Ahmad Rofiq. (2021). *Hukum Perdata Islam di Indonesia*. Jakarta: RajaGrafindo Persada.
- Alfatdi, A. R., & Khusnannisa, I. A. R. C. S. (2022). Menelisik Lebih Dalam Pengaturan Tindak Pidana Perzinahan dalam RKUHP Melalui Berbagai Pandangan. *Jurnal Studia Legalia : Jurnal Ilmu Hukum*, 3(1), 13–26
- Direktori Putusan PN. 51/Pid.B/2023/PN.Skb.
- Hasan, A. (2020). HUKUMAN BAGI PELAKU ZINA MELALUI NIKAH SIRRI (Studi Kasus Putusan No. 8/JN/2020/MS.KSG. dan N0. 10/JN/2020/MS-KSG.). *Sekolah Tinggi Agama Islam Syekh Abdur Rauf Aceh Singkil*, 6(8), 144–162.
- Hilman Hadikusuma. (2019). *Hukum Perkawinan Indonesia* . Bandung: Mandar Maju.
- Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam.
- Irfan Islami. (2020). *Perkawinan di Bawah Tangan (Kawin Sirri) dan Akibat Hukumnya*. ADIL: Jurnal Hukum Vol. 8 No.1 , 76-77.
- John Rawls. (1999). *A Theory of Justice* . Cambridge: Harvard University Press.
- Kitab Undang-Undang Hukum Pidana Pasal 284. (n.d.).
- M. Faizal Amirudin. Punta Yoga Astoni. (2022). KAJIAN YURIDIS TERHADAP PUTUSAN PENGADILAN NEGERI NO. 531/PID.B/2017/PN.BIL JO

- PUTUSAN MAHKAMAH AGUNG NO. 854K/PID/1983 SEBAGAI YURISPRUDENSI HAKIM DALAM MEMUTUSKAN PERKARA TINDAK PIDANA PERZINAHAN. *Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik*, 11(4), 344–353.
- Muhammad Ridho Muttaqien, A. P. K. (2023). SANKSI PIDANA PERZINAHAN AKIBAT ADANYA DELIK ADUAN DARI PIHAK YANG DIRUGIKAN MENURUT PASAL 284 KUHP. *Syntax Literate: Jurnal Ilmiah Indonesia*, 8(9).
- Mursyid Djawas. et al. (2024). Harmonization of State, Custom and Islamic Law in Aceh: Perspective of Legal Pluralism. *Hasanuddin Law Review* 10, no. 1 , 64-82.
- Nurrahman, R., Andini, O. G., & Nugroho, S. (2026). Pengaturan Tindak Pidana Perzinaan Pada Undang-Undang No 1 Tahun 2023 Tentang KUHP Ditinjau Dari Perspektif HAM. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 04(02), 4327–4343.
- Pebrianto, R., Panji, M., Dharma, P., Kampus, A., Raya, J., & Pass, B. (2025). Integrasi Nilai-Nilai Hukum Islam dalam Pembaruan Hukum Pidana Nasional Terkait Tindak Pidana Zina dan Kohabitasi Universitas Samawa , Indonesia perkembangan sosial kemasyarakatan , termasuk integrasi nilai-nilai hukum adat dan hukum Indonesia ditempuh me. *Pemuliaan Keadilan*, 02(03), 162–175.
- Peter Mahmud Marzuki. (2021). *Penelitian Hukum, Edisi Revisi* . Jakarta: Kencana.
- Reza Pahlevi Nurfaiz Fakhry Fadhil. (2023). PERKAWINAN TIDAK TERCATAT DAN IMPLIKASINYA Fakhry Fadhil Pendahuluan Salah satu hal yang paling krusial bagi manusia adalah di dalam menjalani kehidupannya adalah “ perkawinan ” sebagai ikatan suci yang bagi kehidupan manusia dianggap sebagai suatu akad s. *JURNAL MIM: Jurnal Kajian Hukum Islam*, 01(01), 1–19.
- Rya Elita Br Sembiring. et all. (2024). Analisis Tindak Pidana Perzinaan Dalam Pembaharuan Hukum Pidana Dan Qanun Jinayat Di Aceh. *IBLAM LAW REVIEW* 4, no. 2 , 62–68.
- Sani, A. (2024). Tinjauan Yuridis terhadap Pasal Kontroversial tentang Perzinaan dalam KUHP Baru dan Dampaknya terhadap Penegakan Hukum Pidana. *Jurnal Fakta Hukum*, 2(2), 103–113.
- Sayyid Sabiq. (2013). *Fiqh al-Sunnah, Jilid II* . Beirut: Dar al-Fikr.
- Sugih Ayu Pratitis, Pagar, Hasan Matsum, F. L. (2026). EFEKTIVITAS PENEGAKAN HUKUM BAGI PELAKU PERBUATAN ZINA (ANALISIS DARI PERSPEKTIF HUKUM PIDANA, HUKUM PERDATA, DAN HUKUM ISLAM). *LAW_JURNAL*, VI(1), 62–68.
- Uswatun Hasanah, A. dan F. (2025). LEGAL ANALYSIS OF ADULTERY COMMITTED BY A SON-IN-LAW AGAINST HIS IN-LAW (CASE STUDY OF DECISION NUMBER 130/PID. B/2024 PN.SRG). *Rewang Rencang : Jurnal Hukum Lex Generalis*, 6(7), 1–11.
- Undang-Undang No. 16 Tahun 2019. (n.d.). Tentang Perkawinan.
- Undang-Undang Nomor 13 Tahun 2022. (n.d.).
- UU No. 16 Tahun 2029 perubahan atas UU No. 1 Tahun 1974..
- Wahbah Az-Zuhaili. (2011). *Al-Fiqh al-Islami wa Adillatuhu, Jilid IX* . Damaskus: Dar al-Fikr.
- Yusuf al-Qaradawi. (2001). *Fiqh al-Awlawiyyat* . Kairo: Maktabah Wahbah.