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Reconstructing the Protection of Civil Rights for Partners in Unregistered Marriages: A Perspective of Legal Certainty and Justice

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ABSTRACT

Unregistered marriage is a legal and social phenomenon that raises serious issues related to the protection of the civil rights of spouses, in particular in the case of domestic disputes, divorce, division of marital property, fulfillment of maintenance obligations, inheritance, and determination of the legal status of spouses. Formally, the absence of registration negates the existence of a conjugal legal relationship, which implies the loss of protection of civil rights such as the right to maintenance, joint property and inheritance rights. This study aims to analyze the existing framework for protecting the civil rights of spouses in unregistered marriages and formulate a legal reconstruction capable of combining legal certainty with substantive justice. It is a normative legal study that uses legal, conceptual, case-based, and philosophical approaches. These findings suggest that Indonesia's positive legal framework still treats registration as an important instrument for proving marital relations; as a result, couples in unregistered marriages face protection gaps regarding their civil rights. While the Constitutional Court ruling No. 46/PUU-VIII / 2010 extends the protection of children's civil rights based on legally demonstrable biological ties, it does not provide a comprehensive framework regarding the civil rights of the spouses themselves in an unregistered marriage. Therefore, a legal reconstruction is needed that positions the registration of marriage as an instrument of protection rather than a mechanism that automatically negates all the civil consequences of a marital relationship that can be substantively proven. The reconstruction of this model of evidence-based certainty and protection-based justice is carried out by strengthening the mechanisms for proving marriage, optimizing the judicial legalization of marriage, providing limited recognition of the civil rights of spouses based on evidence of marriage and factual donations, as well as the establishment of administrative and judicial protection mechanisms oriented towards substantive justice-all without prejudice to the obligation of marriage registration.

Keywords: Civil Rights; Legal Certainty; Substantive Justice; Unregistered Marriage.

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INTRODUCTION

Marriage is a social and legal institution with multidimensional consequences for an individual's life. It not only creates a personal relationship between a man and a woman but also establishes legal relationships concerning the couple's status, assets, maintenance, family ties, inheritance, the status of children, and various other civil rights and obligations (Subekti, 2003). Given these extensive legal consequences, the state has an interest in ensuring that every marriage possesses certainty of status and is legally provable (Hadjon, 1987).

In the Indonesian context, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 serves as the primary foundation for the regulation of marriage. Article 2, paragraph (1) stipulates that a marriage is valid if performed in accordance with the laws of the respective religions and beliefs, while Article 2, paragraph (2) mandates that every marriage be registered in accordance with prevailing laws and regulations (Law No. 1 of 1974, Article 2). Thus, Indonesian marriage law links the validity of a marriage to an administrative obligation: registration.

Marriage registration serves a crucial function in establishing certainty regarding the existence of a marital relationship, the identities of the parties involved, the date of the marriage, and the legal consequences arising from that relationship. From the perspective of legal protection, registration acts as a state instrument to provide certainty and protection for the husband, wife, and children (Constitutional Court Decision No. 46/PUU-VIII/2010).

Issues arise when a marriage solemnized in accordance with religious tenets is not registered with the competent authority. In social practice, such unions are often referred to as siri marriages or unregistered marriages. These marriages create a disparity between the social reality of the union and its administrative reality; while the husband-wife relationship exists in fact, there are no official documents readily available to serve as evidence (Djubaedah, 2010).

The Compilation of Islamic Law (KHI) places special emphasis on marriage registration. Article 5 of the KHI stipulates that every marriage must be registered to ensure marital order, while Article 6 mandates that the marriage ceremony take place in the presence and under the supervision of a Marriage Registrar. Article 7 further establishes that a marriage can only be proven by a Marriage Certificate, while also providing a mechanism to petition for the judicial confirmation of marriage (itsbat nikah) in cases where such a certificate is unavailable (KHI, Articles 5–7).

These provisions demonstrate that registration serves a crucial evidentiary function. However, issues of justice arise when the absence of registration results in couples who are de facto living as a married unit being deprived of access to civil rights that could otherwise be asserted through legal channels. Thus, the issue of unregistered marriage is not merely an administrative matter; it is also inextricably linked to access to justice and legal protection (Rahardjo, 2009).

These issues become increasingly complex when a marital relationship ends due to divorce or death. Couples lacking proof of marriage may face difficulties in asserting economic rights such as claims to assets acquired during the union, rights to maintenance, and other entitlements arising from the legal consequences of marriage (Djubaedah, 2010). Such circumstances demonstrate that marriage registration embodies a significant protective dimension.

Constitutional legal developments, specifically Constitutional Court Decision Number 46/PUU-VIII/2010, offer a crucial perspective on the relationship between marriage registration and the protection of rights. The Court affirmed that marriage registration constitutes an administrative obligation that serves to provide protection and legal certainty for the parties involved in the marriage. Concurrently, the Court expanded the scope of civil relationships between a child and a man establishing paternity based on scientific and technological evidence and/or other legally recognized forms of proof confirming a biological (blood) tie (Constitutional Court Decision No. 46/PUU-VIII/2010).

The ruling demonstrates an evolution in legal paradigms shifting from an approach that focuses exclusively on formal status toward one that allows greater scope for proving the existence of a legal relationship. However, it must be emphasized that Constitutional Court Ruling No. 46/PUU-VIII/2010 specifically addresses the civil relationship concerning the child; it does not grant automatic recognition of all civil rights to partners in an unregistered marriage.

Consequently, a legal gap remains regarding the framework for protecting the partners' civil rights. On one hand, registration is necessary to ensure legal certainty. On the other, the absence of registration is not synonymous with the absence of a social and factual relationship as husband and wife. Relying solely on a

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formalistic legal approach risks creating injustice for parties who have, in fact, fulfilled roles and contributed to the household (Rahardjo, 2009).

It is within this context that the concept of legal reconstruction becomes relevant. Such reconstruction is not intended to abolish the requirement for marriage registration; on the contrary, registration must be maintained as a primary instrument for ensuring legal certainty. However, the legal system needs to provide a corrective mechanism that allows couples in unregistered marriages to secure protection for their civil rights, provided that the existence of the marital relationship and relevant legal facts can be substantiated through legitimate means.

This perspective aligns with the concept of progressive law, which views law as a vehicle for achieving justice and social utility rather than merely a system of norms operating mechanically (Rahardjo, 2009). From the perspective of responsive law, the legal system is also expected to address social needs and the interests of parties in vulnerable positions (Nonet & Selznick, 1978).

Therefore, this study proposes that legal protection for partners in unregistered marriages must be established by balancing legal certainty with substantive justice. While registration remains the primary standard, evidentiary rules and corrective mechanisms must be strengthened so that the absence of administrative documentation does not automatically strip a party who can prove the existence of the legal relationship and their contribution to it of all their civil rights.

METHODS

This study uses the type of normative legal research (legal research or doctrinal research), which is research that lays down the law as a system of norms consisting of principles, rules, legislation, and Court jurisprudence. Normative legal research was chosen to analyze the legal vacuum (rechtsvacuum) as well as the weakness of regulatory synchronization related to the protection of civil rights for couples in unregistered marriages in Indonesia.

This study uses a combination of approaches: statute approach, case approach, conceptual approach, and philosophical approach. The statute approach is used to analyze the Marriage Law, Government Regulation No. 9 of 1975, the drafting of Islamic law (KHI), and other related regulations. The case approach is used to analyze the decision of the Constitutional Court Number 46 / PUU-VIII/2010, while the conceptual approach is applied to assess the concept of legal certainty, Justice, Legal Protection, and legal reconstruction (Marzuki, 2017).

The main legal material in this study consists of the Constitution of the Republic of Indonesia in 1945, Law No. 1 of 1974 on Marriage, Law No. 16 of 2019, Government Regulation No. 9 of 1975, drafting of Islamic law, and Constitutional Court Decision No. 46/PUU - VIII/2010. Secondary legal materials include relevant legal textbooks, journal articles, research findings, and legal doctrine (Soekanto & Mamudji, 2015). Tertiary legal material serves as a supporting resource to help explain legal terms and concepts.

Analysis of legal material is carried out by a qualitative-prescriptive approach, which involves the identification, classification, interpretation and evaluation of applicable legal norms. Furthermore, the results of the analysis are used to formulate new legal constructs that are able to reconcile legal certainty with substantive justice (Marzuki, 2017).

Design and research sample

This study is a normative legal research examines authoritative legal material and relevant legal science to identify gaps, inconsistencies, and limitations in the existing regulatory framework using four approaches. The statutory approach is used to examine the legal provisions governing the registration of marriage and its consequences, especially those contained in Law No. 1 of 1974 on marriage, as amended by Law No. 16 of 2019, Government Regulation No. 9 of 1975, and the drafting of Islamic law. The case approach mainly focuses on the Constitutional Court Decision No. 46 / PUU-VIII/2010 to assess the development of judicial reasoning on marriage, registration, and civil rights protection. The conceptual approach is used to clarify the meaning and relationship of legal certainty, Justice, Legal Protection, and legal reconstruction. The philosophical approach provides a normative basis for evaluating whether the existing legal framework adequately reflects substantive justice and social utility.

Legal materials are selected deliberately based on their relevance to the research problem. The main legal material consists of the Constitution of the Republic of Indonesia in 1945, Law No. 1 of 1974 on Marriage, Law No. 16 of 2019, Government Regulation No. 9 of 1975, drafting of Islamic law, and Constitutional Court Decision No. 46/PUU-VIII/2010. Secondary legal material includes authoritative legal textbooks, peer-reviewed journal

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articles, scholarly research, and relevant legal doctrine. Tertiary materials are used selectively to clarify legal terminology and concepts.

The selection of these materials is not intended to produce a statistically representative sample, as is commonly done in empirical research. Rather, the materials constitute a corpus of normative laws selected according to their authority, relevance, and capacity to explain the legal standing of unregistered marriages and the civil rights of the parties involvedThe selection of these materials is not intended to produce a statistically representative sample, as is commonly done in empirical research. Rather, the materials constitute a corpus of normative laws selected according to their authority, relevance, and capacity to explain the legal standings.

Measures and Data Analysis

Because this research is normative rather than empirical, the study does not employ statistical measures, questionnaires, interviews, or respondent-based instruments. The principal analytical unit is the legal norm and its normative relationship with the protection of civil rights in unregistered marriages. The analysis is directed toward several substantive dimensions: legal certainty, legal protection, evidentiary requirements, substantive justice, and the availability of corrective mechanisms for parties whose marital relationship has not been formally registered.

The assessment of these dimensions is conducted through a structured examination of the selected legal materials. First, the relevant provisions are identified and classified according to their regulatory function, particularly provisions concerning the validity and registration of marriage, proof of marital status, legal consequences of marriage, and mechanisms for judicial recognition. Second, the provisions are interpreted systematically by examining their wording, legal context, interrelationship, and underlying principles. Third, the relevant judicial reasoning, particularly Constitutional Court Decision Number 46/PUU-VIII/2010, is examined to determine how constitutional principles of legal protection and civil rights have developed in relation to formal marriage requirements. Fourth, the applicable norms are evaluated critically to identify normative gaps between formal legal certainty and the substantive protection of parties who can demonstrate the existence of a marital relationship and their contribution to the household.

The data analysis uses a qualitative-prescriptive legal analysis. The qualitative dimension involves interpreting and comparing legal norms, doctrines, and judicial reasoning, while the prescriptive dimension is directed toward formulating an improved legal construction. The analysis proceeds through four interconnected stages: identification, classification, interpretation, and evaluation of legal materials. The findings from each stage are subsequently synthesized to determine whether the existing framework adequately balances formal legal certainty with substantive justice.

The final stage of the analysis develops a legal reconstruction model for protecting the civil rights of couples in unregistered marriages. The proposed reconstruction does not seek to eliminate the statutory requirement of marriage registration. Instead, it is intended to establish a limited corrective mechanism through which civil rights may be protected when the existence of the marital relationship, the relevant legal facts, and the parties' contributions can be established through legally acceptable evidence. In this respect, the analysis is informed by the principles of progressive law and responsive law, which emphasize that the application of law should remain oriented toward justice, social utility, and the protection of persons whose rights may otherwise be inadequately protected by a purely formalistic approach.

RESULTS

The Existing Legal Framework for Civil Rights Protection

The normative analysis demonstrates that Indonesian marriage law establishes marriage registration as an essential mechanism for creating legal certainty and facilitating the exercise of rights arising from the marital relationship. Article 2 of Law Number 1 of 1974, as amended by Law Number 16 of 2019, establishes two interconnected dimensions: the religious validity of marriage and the obligation to register the marriage in accordance with applicable regulations. These provisions indicate that registration performs an important evidentiary and administrative function within the Indonesian legal system.

The same orientation is reinforced by the Compilation of Islamic Law (KHI), particularly Articles 5–7. The KHI requires marriage registration to ensure orderly administration and provides a judicial mechanism through itsbat nikah when a marriage cannot be demonstrated by an official Marriage Certificate. Accordingly, the existing legal system does not entirely leave couples in unregistered marriages without a legal avenue for recognition. The availability of itsbat nikah represents an existing corrective mechanism through which the legal status of a marriage may be judicially established.

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However, the analysis also reveals a normative limitation. The existence of a judicial confirmation mechanism does not necessarily guarantee effective access to legal protection for all affected parties. Barriers may remain because of limited legal knowledge, procedural difficulties, financial constraints, and unequal access to judicial institutions. Consequently, a distinction emerges between the formal availability of a legal remedy and its substantive accessibility to individuals whose civil rights are affected.

The analysis therefore identifies that marriage registration performs two principal functions: first, establishing legal certainty concerning marital status; and second, facilitating the exercise and enforcement of civil rights arising from marriage. The absence of registration primarily creates an evidentiary problem, which may subsequently develop into a broader problem of access to justice.

Decision of the Constitutional Court No. 46 / PUU-VIII/2010: the biggest legal breakthrough that extends a child's civil relationship outside marriage (including unregistered marriage) with his biological father through scientific / science and technology (DNA test).

Normative reconstruction offered in this study is based on argumentum per analogiam to the logical ratio of the Constitutional Court Decision No. 46/PUU-VIII/2010. If the Constitutional Court has undermined formal rigidity by stating that the factual biological relationship (science) between the child and the father is capable of bearing the consequences of civil law, then logically-analogically, the relationship of living fellowship (cohabitation) in good faith between spouses siri is also a sociological fact that should not be negated by positive law. The difference lies in the sphere of evidence: if in the child-father relationship the evidence is biological (DNA test), then in the couple's relationship, socio-economic evidence is not recorded. Through forensic audits of domestic finances and recognition of the validity of private contracts, the court can prove the existence of economic mixing and mutual contributions of the parties. Thus, this analogical extension becomes a solid dogmatic bridge for restoring the civil rights of spouses from the shackles of the legal vacuum.

If the existence of a biological child that originates from a factual relationship is recognized as a civil right, then mutatis mutandis (equivalent inverse logic), the living communion relationship that gave birth to the child must also be recognized for its economic civil impact (Andi Hartawati, 2026)

Civil Rights Affected by the Absence of Registration

The analysis further indicates that the absence of formal evidence of marriage may have consequences for the recognition and enforcement of various civil rights. These consequences may include difficulties relating to jointly acquired property, maintenance, rights arising upon divorce, inheritance-related interests, and other civil consequences associated with marital status (Subekti, 2003).

The principal normative problem identified is therefore not necessarily the complete absence of a social or factual marital relationship, but the difficulty of translating such a relationship into a legally recognizable status. The absence of a Marriage Certificate may create a chain of legal difficulties: the lack of documentary evidence complicates the establishment of marital status, which may in turn impede the exercise of civil rights and ultimately increase the possibility of substantive injustice (Djubaedah, 2010).

The findings further indicate that this problem is particularly relevant when the relationship terminates through divorce or death. At such points, the absence of formal recognition becomes more consequential because claims concerning assets, maintenance, inheritance, and other legal interests require an adequate evidentiary foundation. Legal protection therefore depends not only on the existence of substantive rights but also on the ability of the parties to establish the legal relationship from which those rights arise.

The Evidentiary Significance of Constitutional Court Decision Number 46/PUU-VIII/2010

Constitutional Court Decision Number 46/PUU-VIII/2010 provides an important normative reference concerning the relationship between formal legal status and evidentiary recognition. The decision concerned Article 43 paragraph (1) of the Marriage Law and addressed the civil relationship between a child born outside a formally recognized marriage and a biological father.

The Constitutional Court established that a civil relationship with a man who can be scientifically or otherwise legally proven to have a biological relationship with the child cannot be excluded solely on the basis of the former interpretation of Article 43 paragraph (1) (Constitutional Court Decision No. 46/PUU-VIII/2010). The decision therefore demonstrates that legally relevant relationships may, under particular circumstances, be established through evidence beyond formal administrative documentation.

Nevertheless, the analysis establishes an important limitation. The ruling cannot be interpreted as automatically recognizing all civil rights of spouses in unregistered marriages. Its immediate constitutional

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concern relates to the civil relationship between a child and a biological father, rather than the comprehensive recognition of the marital relationship between the adult parties (Hamzani, 2015).

Accordingly, the significance of the ruling for this study lies primarily in its evidentiary reasoning. It demonstrates a judicial willingness to recognize legally relevant relationships on the basis of legally admissible evidence when formal status alone would otherwise produce an unjust result. This evidentiary principle provides a conceptual basis for considering a more balanced mechanism for the protection of civil rights in unregistered marital relationships.

Identification of the Legal Gap

The normative analysis identifies a gap between formal legal certainty and substantive protection of civil rights. On the one hand, registration is necessary to establish an administratively verifiable marital status. On the other hand, the absence of registration does not necessarily mean that no factual relationship existed between the parties or that no contributions were made during the relationship.

This produces a central legal tension. If the absence of registration is treated as an absolute barrier to all civil claims, the legal system may protect formal certainty at the expense of substantive justice. Conversely, if factual cohabitation is automatically treated as equivalent to a legally recognized marriage, the function of registration and the principle of legal certainty would be substantially weakened.

The research therefore identifies the need for an intermediate legal mechanism that distinguishes failure to fulfill an administrative obligation from automatic extinguishment of civil rights. Such a distinction is essential for developing a legal framework capable of preserving the registration requirement while providing protection to parties who can establish the relevant legal facts through legitimate evidence.

Proposed Model of Legal Reconstruction

Based on the normative findings, this study proposes a model of "Evidence-Based Certainty and Protection-Based Justice." The model consists of four sequential stages.

First, registration. Marriage registration remains the principal mechanism for establishing legal certainty and must continue to constitute the general legal standard under Article 2 paragraph (2) of the Marriage Law.

Second, proof. Where registration is absent, the parties should have access to legally recognized evidentiary mechanisms, including itsbat nikah where the statutory requirements are satisfied. Evidence may include witness testimony, administrative records, documents concerning children, evidence demonstrating the parties' acknowledgment of the relationship, and other legally admissible evidence.

Third, legal recognition. Where sufficient evidence establishes the existence of the legally relevant relationship, the competent court may issue a determination or judgment within its jurisdiction.

Fourth, protection of civil rights. Once the relevant legal relationship has been judicially established, civil rights arising from that relationship may receive protection in accordance with applicable law.

The model consequently establishes a sequence in which registration provides ordinary legal certainty, evidence provides a corrective mechanism, judicial recognition establishes legal status, and legal protection addresses the resulting civil consequences.

Proposed Reconstruction of the Legal Norm

The principal reconstruction proposed is that the non-registration of a marriage should not automatically be equated with the complete extinction of civil rights where the existence of the legally relevant relationship can be established through lawful evidence.

The proposed normative formulation is: "The non-registration of a marriage does not automatically extinguish the civil rights of a party who is able to legally establish the existence of the marital relationship and the relevant legal relationship between the parties. Protection of such civil rights shall be based on a court determination or judgment, while continuing to observe the legal requirements concerning marriage validity, marriage registration, child protection, and population administration."

This formulation maintains registration as a legal requirement while creating a corrective mechanism for cases in which the absence of administrative documentation produces disproportionate deprivation of civil rights.

DISCUSSION

Balancing Legal Certainty and Substantive Justice

The findings indicate that legal certainty and substantive justice should not be treated as mutually exclusive objectives. Legal certainty requires identifiable standards, formal documentation, and predictable legal

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consequences. In the context of marriage, registration fulfills these functions by establishing the identity and status of the spouses and providing documentary evidence of the marital relationship (Mertokusumo, 2007).
However, the mechanical application of formal requirements may produce unjust consequences when an individual has actually participated in a marital relationship and contributed to the establishment and maintenance of the household. Justice requires the legal system to consider the concrete circumstances of the parties and the consequences produced by the application of legal rules (Rawls, 1971).
The appropriate legal response is therefore not to replace certainty with flexibility, but to create a corrective relationship between the two principles. Registration remains the primary mechanism of certainty, whereas evidence and judicial determination function as safeguards against disproportionate deprivation of rights.
This approach also corresponds with the protective function of law. Legal protection should provide individuals with meaningful access to mechanisms through which their legitimate interests can be recognized and defended (Hadjon, 1987). Consequently, the absence of registration should be treated primarily as a legal and evidentiary deficiency requiring correction rather than, in every circumstance, as an absolute basis for eliminating all civil consequences of a demonstrable relationship.

Reconstructing Proof as a Mechanism of Legal Protection

The evidentiary dimension is central to the proposed reconstruction. A legal system that recognizes only documentary proof may encounter difficulties where the formal document is absent but substantial evidence concerning the relationship exists. The alternative, however, cannot be unrestricted recognition of every form of cohabitation as marriage.
A balanced evidentiary framework must therefore impose rigorous standards of proof. Witness testimony, administrative records, evidence concerning children, acknowledgment of the marital relationship, evidence of joint household life, and other relevant materials may be considered where legally permissible. The purpose of such evidence is not to substitute informal cohabitation for marriage registration, but to establish whether a legally relevant marital relationship actually existed.
This approach is consistent with the broader reasoning reflected in Constitutional Court Decision Number 46/PUU-VIII/2010. Although the ruling does not directly regulate the civil rights of spouses in unregistered marriages, its reasoning demonstrates that legally relevant relationships may be established through evidence capable of demonstrating the underlying factual relationship (Constitutional Court Decision No. 46/PUU-VIII/2010).
Accordingly, evidence should function as a bridge between factual reality and legal recognition. This does not weaken the registration requirement. Rather, it prevents the evidentiary consequences of non-registration from becoming disproportionately severe for parties who can demonstrate the relevant legal facts.

Reconstructing Itsbat Nikah as an Access-to-Justice Mechanism

The analysis also suggests that itsbat nikah should be understood not merely as a procedural facility but as an instrument of access to justice. Article 7 of the KHI provides a legal avenue for judicial confirmation where a Marriage Certificate is unavailable. The mechanism is therefore particularly important in addressing the evidentiary consequences of unregistered marriages.
Nevertheless, the effectiveness of this mechanism depends on its accessibility. A legal remedy that exists formally but remains difficult for vulnerable parties to use may not fully satisfy the objective of legal protection. Therefore, strengthening itsbat nikah should involve procedural simplification within the limits of law, accessible legal assistance, improved coordination between relevant institutions such as the Religious Courts and the Office of Religious Affairs (KUA), and increased public legal literacy.
This perspective is consistent with the idea that access to justice encompasses more than the existence of legal rules. It requires practical opportunities for individuals to invoke those rules and obtain an effective legal remedy. The reconstruction proposed by this study therefore places itsbat nikah within a broader protective framework rather than treating it merely as an administrative correction.

Protection of Economic Rights and Recognition of Contributions

Another important implication concerns the economic consequences of unregistered marital relationships. The absence of formal recognition may create difficulties in determining rights over assets acquired during the relationship, particularly where property is registered in the name of only one party (Hartawati et all, 2022).
Substantive justice requires consideration of the actual contributions made by each party. Such contributions should not be reduced exclusively to direct financial payments. Domestic work, childcare, household

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management, and other forms of support may constitute meaningful contributions to the development and preservation of family assets and welfare (Rawls, 1971).

This does not mean that every claim to jointly acquired property should automatically be accepted. Rather, the proposed reconstruction requires courts to examine the factual and evidentiary basis of the claim. Where a legally relevant relationship and the contribution of a party can be adequately established, the legal system should provide an appropriate mechanism for protecting the corresponding civil interests.

Thus, economic protection should be understood as part of the broader principle of protection-based justice, particularly where formal documentation disproportionately disadvantages a party who participated in and contributed to the household.

Reconstruction from the Perspective of Progressive Law

The proposed reconstruction is closely connected to Satjipto Rahardjo's concept of progressive law. Progressive law rejects the view that legal interpretation should be confined to mechanical application of textual rules when such application produces outcomes inconsistent with justice and human welfare (Rahardjo, 2009).

Applied to unregistered marriages, a progressive approach does not ask solely whether the parties possess a Marriage Certificate. It also asks whether the existing legal mechanism is capable of protecting individuals whose legally relevant relationship and contributions can be demonstrated through legitimate evidence.

The progressive dimension of the proposed model therefore lies in its effort to place human protection at the center of legal application without abandoning legal norms. Registration remains mandatory, judicial authority remains essential, and evidentiary requirements remain necessary. What changes is the legal response to the consequences of non-registration: instead of automatically excluding civil protection, the system provides a structured mechanism for determining whether protection is legally justified.

In this sense, legal reconstruction is not intended to weaken the authority of marriage law but to make its protective function more responsive to concrete social realities (Rahardjo, 2009).

Reconstruction from the Perspective of Responsive Law

The proposed model is also consistent with the theory of responsive law developed by Nonet and Selznick. Responsive law requires legal institutions to remain sensitive to social needs while preserving the normative character and integrity of the legal system (Nonet & Selznick, 1978).

In the context examined in this study, responsiveness does not mean granting legal recognition to every unregistered relationship. Such an approach would undermine the regulatory purpose of marriage registration. Instead, responsiveness requires the legal system to create an avenue through which relevant social facts can be considered when determining the legal consequences of a relationship.

The distinction between recognizing a marriage automatically and providing a mechanism to prove and judicially determine a legally relevant relationship is therefore fundamental. The first would undermine formal legal certainty; the second strengthens access to justice while preserving the authority of legal institutions.

The responsive-law perspective consequently supports a selective and evidence-based model. The law retains its normative standards but becomes more capable of responding to situations in which strict formalism would otherwise produce disproportionate hardship.

Theoretical Synthesis: "Evidence-Based Certainty and Protection-Based Justice"

The principal theoretical contribution of this study is the integration of legal certainty and substantive justice into a sequential model of legal protection. The proposed "Evidence-Based Certainty and Protection-Based Justice" framework seeks to overcome the binary choice between formalism and unrestricted recognition.

The model can be conceptualized as follows: Registration → Evidence → Judicial Recognition → Protection of Civil Rights

Registration establishes the ordinary legal status. Evidence provides a corrective pathway where formal documentation is absent. Judicial recognition transforms established facts into an authoritative legal determination. Finally, legal protection ensures that the civil consequences of the recognized relationship can be addressed in accordance with the applicable law.

The model therefore establishes a controlled corrective mechanism rather than an exception without boundaries. Its principal safeguard is the requirement that the relevant relationship and legal facts must be established through lawful and sufficiently persuasive evidence.

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Its theoretical significance lies in its ability to reconcile the three dimensions of Indonesian family law: formal legal certainty, evidentiary justice, and substantive protection. It maintains registration as the primary legal standard while preventing the absence of administrative documentation from serving as an automatic and disproportionate barrier to any form of civil protection.

Implications for Ius Constituendum

From the perspective of ius constituendum, the findings support the development of a clearer normative distinction between administrative non-compliance and substantive deprivation of civil rights. The failure to register a marriage should remain legally relevant and should not be encouraged or normalized. Nevertheless, its consequences should be proportionate to the nature of the violation and should not automatically eliminate rights that can be established through lawful evidence.

Future legal development should therefore focus on three interconnected elements: strengthening marriage registration as the primary preventive mechanism; improving evidentiary and judicial mechanisms for marriages that remain unregistered; and establishing clearer legal consequences concerning civil rights after the marital relationship has been judicially established.

Such reconstruction would provide a more balanced legal framework in which legal certainty is maintained through registration and judicial determination, while substantive justice is promoted through evidence-based recognition and effective protection of legitimate civil interests. This approach is consistent with the protective orientation of progressive law and the institutional responsiveness demanded by responsive law (Rahardjo, 2009; Nonet & Selznick, 1978).

Overall, the study finds that the appropriate legal policy is not to eliminate the registration requirement, but to prevent non-registration from becoming an absolute legal barrier to every civil right. The more proportionate approach is to establish a rigorous, judicially supervised evidentiary mechanism through which legally relevant relationships may be verified and the resulting civil rights protected according to law.

CONCLUSION

This study concludes that marriage registration remains a fundamental legal instrument for establishing legal certainty, administrative order, and the evidentiary basis of marital status within the Indonesian legal system. The Marriage Law and the Compilation of Islamic Law place registration as an essential requirement while simultaneously providing itsbat nikah as a judicial mechanism for establishing the legal status of marriages that lack formal documentation.

The study further finds that the principal legal problem arising from unregistered marriages is not merely the absence of administrative documentation, but the resulting difficulty in establishing and enforcing civil rights. The lack of formal proof may create barriers to claims concerning marital property, maintenance, post-divorce rights, inheritance-related interests, and other civil consequences. Consequently, a rigid application of registration requirements may create a gap between formal legal certainty and substantive justice, particularly where a party can demonstrate the existence of the marital relationship and their contribution to the household.

Constitutional Court Decision Number 46/PUU-VIII/2010 provides an important conceptual reference for addressing this gap. Although the decision specifically concerns the civil relationship between a child and a biological father and does not automatically recognize all civil rights of spouses in unregistered marriages, its evidentiary reasoning demonstrates that legally relevant relationships may be established through legitimate evidence beyond formal administrative documentation (Constitutional Court Decision No. 46/PUU-VIII/2010). This reasoning provides a relevant foundation for developing a more evidence-sensitive approach to civil rights protection.

On this basis, the study proposes the model of "Evidence-Based Certainty and Protection-Based Justice." The model consists of four interconnected stages: registration, evidentiary proof, judicial recognition, and protection of civil rights. Registration remains the primary mechanism for establishing legal certainty, while evidentiary mechanisms and itsbat nikah function as corrective instruments where formal documentation is absent. Judicial recognition then provides the legal foundation for determining the civil consequences of the relationship.

The proposed reconstruction therefore does not seek to weaken or eliminate the obligation to register marriage. Rather, it seeks to establish a proportionate legal response to non-registration by distinguishing between non-compliance with an administrative obligation and the automatic extinguishment of civil rights. A party who can legally establish the existence of the relevant marital relationship and the associated legal facts

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should not be deprived of every form of civil protection solely because the relationship was not formally registered.

From the perspectives of progressive law and responsive law, this reconstruction places human protection and substantive justice within the application of legal norms without abandoning legal certainty. The resulting legal framework is therefore expected to maintain registration as the general rule while providing a controlled, evidence-based, and judicially supervised mechanism for protecting legitimate civil rights.

IMPLICATIONS

Normative Implications

The findings have important implications for the development of Indonesian family law. First, the legal framework should maintain marriage registration as the principal mechanism for establishing legal certainty. However, the legal consequences of non-registration should be more clearly distinguished from the question of whether substantive civil rights exist. The absence of registration should constitute a significant evidentiary and administrative problem, but should not automatically operate as an absolute barrier to every civil claim that can be legally substantiated.

Second, the findings support the strengthening of evidentiary mechanisms in cases involving unregistered marriages. Courts should be able, within their statutory jurisdiction and evidentiary rules, to consider relevant and legally admissible evidence capable of establishing the existence of the marital relationship and the legal facts giving rise to civil rights. Such an approach must remain subject to rigorous evidentiary standards to prevent the automatic legal recognition of relationships that do not satisfy the applicable requirements of marriage law.

Institutional and Judicial Implications

The proposed model also has implications for the implementation of itsbat nikah. The mechanism should be strengthened as an effective access-to-justice instrument rather than being viewed solely as an administrative correction. Institutional coordination between the Religious Courts and the Office of Religious Affairs (KUA), accessible legal assistance, simplified procedures within the limits permitted by law, and increased public legal literacy can contribute to making judicial confirmation more accessible to affected parties.

For the judiciary, the model implies the importance of maintaining a careful distinction between establishing the existence of a legally recognized marital relationship and determining the civil consequences arising from that relationship. Judicial recognition should remain evidence-based and must be exercised within the limits of judicial authority and applicable legislation.

Implications for the Protection of Vulnerable Parties

The findings also have implications for the protection of parties who may be disproportionately affected by the absence of marriage registration. Where a party has demonstrably contributed to the household through financial or non-financial means, the legal system should not disregard such contributions merely because formal documentation is unavailable. Domestic work, childcare, household management, and other forms of contribution may be relevant when legally determining the consequences of a proven marital relationship.

This approach is particularly significant in situations involving divorce or death, where the absence of formal marital documentation may intensify economic and legal vulnerability. Accordingly, substantive justice requires an assessment of the actual legal and factual circumstances of the parties rather than an exclusively formalistic assessment of documentation.

Policy and Legislative Implications

From a legislative perspective, the study suggests the need for clearer regulation concerning the relationship between marriage registration, evidentiary mechanisms, judicial recognition, and the protection of civil rights. Future legal reform should consider establishing an explicit normative distinction between the administrative obligation to register a marriage and the civil consequences of a legally proven marital relationship.

Such regulation could provide greater certainty regarding the evidentiary standards, judicial procedures, and scope of civil rights that may be protected following judicial confirmation. This would reduce interpretative uncertainty while simultaneously preventing excessive deprivation of rights resulting solely from the absence of administrative documentation.

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Theoretical Implications

The study contributes theoretically by integrating the principles of legal certainty, substantive justice, progressive law, and responsive law into a single conceptual framework. The proposed "Evidence-Based Certainty and Protection-Based Justice" model demonstrates that legal certainty and justice do not necessarily require competing legal solutions.

Legal certainty is preserved through registration and judicial determination, while substantive justice is promoted through evidence-based recognition and protection of legitimate civil interests. This synthesis extends the application of progressive and responsive legal thought to the specific problem of civil rights protection in unregistered marriages.

Implications for Future Research

Future research may further examine the implementation of the proposed model through empirical studies of itsbat nikah proceedings, judicial decisions, and the experiences of parties seeking recognition of civil rights arising from unregistered marriages. Comparative research with other legal systems may also provide insight into alternative mechanisms for reconciling formal marriage registration with the protection of substantive civil rights.

Accordingly, the present study provides a normative foundation for further legal and empirical inquiry into the development of a marriage law framework that preserves administrative certainty while ensuring that formal requirements do not produce disproportionate injustice for parties whose legally relevant relationships and contributions can be established through legitimate evidence.

Limitations and Future Research

This study has several limitations. First, it adopts a normative legal research approach and relies primarily on legislation, judicial decisions, legal doctrines, and scholarly literature. Therefore, it does not examine the experiences of spouses in unregistered marriages or the practical implementation of the proposed legal framework through empirical data.

Second, the analysis focuses primarily on the Indonesian legal context, particularly the Marriage Law, the Compilation of Islamic Law, and Constitutional Court Decision Number 46/PUU-VIII/2010. Consequently, the findings may not fully reflect variations in judicial practice or comparative approaches in other jurisdictions.

Third, the proposed "Evidence-Based Certainty and Protection-Based Justice" model remains a normative construction. Its effectiveness in resolving disputes concerning property, maintenance, inheritance, and other civil rights requires further assessment through judicial practice and empirical evidence.

Future studies should complement normative analysis with empirical research, particularly through examining Religious Court decisions, itsbat nikah proceedings, and the experiences of parties seeking legal protection after unregistered marriages. Such research could assess whether existing procedures provide effective and equitable access to justice.

Comparative studies involving other legal systems may also identify alternative mechanisms for reconciling marriage registration with the protection of civil rights. In addition, future research could develop more specific evidentiary standards and procedural models for determining civil rights arising from legally proven unregistered marriages.

Further research is therefore needed to test the practical applicability of the proposed model and to support the development of a clearer, more responsive, and justice-oriented framework for protecting civil rights while maintaining the importance of marriage registration.

DECLARATIONS

Ethics approval: This study does not involve human participants, personal data, interviews, surveys, or experimental procedures. Therefore, ethical approval was not required. The research is based exclusively on publicly accessible legal materials, including legislation, legal doctrines, scholarly publications, and judicial decisions.

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