

LEGAL FORMALISM VS SOCIAL-RELIGIOUS REALITY: A PROGRESSIVE LEGAL ANALYSIS OF CRIMINAL PENALTIES FOR UNREGISTERED MARRIAGES UNDER THE 2023 NATIONAL CRIMINAL CODE

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Abstract : This research examines Article 412 of Law No. 1 of 2023 on the National Criminal Code from a progressive legal perspective concerning the practice of *nikah siri* in Indonesia. The persistence of *nikah siri* within Muslim communities reflects a tension between the state's legal formalism, which requires marriage registration, and the socio-religious reality that considers marriage valid once religious pillars and requirements are fulfilled. This research aims to analyze the normative construction of Article 412 of the National Criminal Code toward unregistered marriage couples and to examine the conflict between formal law and social reality. The research employs a normative juridical method using statutory and conceptual approaches based on Satjipto Rahardjo's progressive legal theory. The findings reveal that Article 412 has the potential to criminalize couples in *nikah siri* marriages because state law does not clearly distinguish between cohabitation and marriages that are religiously valid but administratively unregistered. Such criminalization reflects an overly formalistic legal approach that fails to address the root causes of the issue, including limited access to marriage registration, economic constraints, and the strong socio-religious legitimacy of *nikah siri*. Therefore, a more humane and substantively just legal policy reform is required through strengthening marriage validation mechanisms (*isbat nikah*), expanding access to marriage registration, and providing stronger legal protection for women and children.

Keywords : *Legal Formalism, Progressive Law, Nikah Siri, Article 412 of the National Criminal Code*

Abstrak : Penelitian ini mengkaji Pasal 412 Undang-Undang Nomor 1 Tahun 2023 tentang KUHP Nasional dalam perspektif hukum progresif yang memosisikan praktik nikah siri pada rentan hukum. Praktik *nikah siri* yang masih berkembang di masyarakat Muslim Indonesia menunjukkan adanya ketegangan antara formalisme hukum negara yang mewajibkan pencatatan perkawinan dengan realitas sosial-keagamaan masyarakat yang menganggap perkawinan sah apabila telah memenuhi rukun dan syarat agama. Penelitian ini bertujuan untuk menganalisis konstruksi normatif Pasal 412 KUHP Nasional terhadap pasangan *nikah siri* serta mengkaji benturan antara hukum formal dan realitas sosial masyarakat. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual menggunakan teori hukum progresif Satjipto Rahardjo. Hasil penelitian menunjukkan bahwa penerapan Pasal 412 KUHP Nasional berpotensi menimbulkan kriminalisasi terhadap pasangan *nikah siri* karena hukum negara tidak membedakan secara tegas antara kohabitasi dan perkawinan yang sah secara agama tetapi tidak tercatat secara administratif. Pendekatan kriminalisasi tersebut dinilai cenderung formalistik dan belum menyentuh akar persoalan, seperti keterbatasan akses pencatatan perkawinan, faktor ekonomi, dan kuatnya legitimasi sosial-keagamaan terhadap praktik *nikah siri*. Oleh karena itu, diperlukan reformulasi kebijakan hukum yang lebih humanis dan berkeadilan substantif melalui penguatan mekanisme *isbat nikah*, perluasan akses pencatatan perkawinan, dan perlindungan hukum yang lebih efektif bagi perempuan dan anak.

Kata Kunci: *Formalisme Hukum, Hukum Progresif, Nikah Siri, Pasal 412 KUHP*

INTRODUCTION

Marriage is the most fundamental social and legal institution in Indonesian society. However, not all marriage practices prevalent in society are fully in line with applicable formal legal provisions (Widodo & Fitria, 2010). One of the most prominent phenomena that has taken deep root in the socio-religious traditions of Indonesian Muslim society is the practice of *nikah siri*, a marriage conducted in accordance with the pillars and valid conditions of marriage under Islamic law, yet not officially registered before a Marriage Registrar (PPN) at the Office of Religious Affairs (KUA) (Mardani dkk., 2022). This phenomenon is not new; it has existed for centuries as part of the Islamic *fiqh* tradition practiced by Muslim communities long before the modern Indonesian state was formed. The prevalence of *nikah siri* in Indonesia is quite significant and cannot be ignored. According to data from the Ministry of Religious Affairs, there has been a surge of approximately 3.46 million couples who have married but not registered their marriages (Erick Tanjung & Lilis Varwati, t.t.). This figure reflects the vast gap between the socio-religious practices of the community and the formal registration system mandated by the state.

From a religious-normative perspective, a *nikah siri* is considered a valid and binding marriage by the majority of scholars of the dominant schools of thought in Indonesia, provided that the five pillars of marriage are fulfilled: the presence of the prospective husband, the prospective wife, the marriage guardian, two witnesses, and the exchange of consent (Mardani et al. 2022). The Indonesian Ulema Council (MUI), through Fatwa No. 10 of 2008, does indeed encourage the registration of marriages for the sake of the public good, but does not automatically categorize unregistered *nikah siri* as invalid or haram (Irfan 2011). From a sociological perspective, society generally does not view *nikah siri* couples as perpetrators of moral violations, but rather as husband and wife who are valid both religiously and socially, complete with rights and obligations recognized by the community.

On the other hand, Indonesian positive law establishes a registration regime as a prerequisite for the state's recognition of a marriage. Article 2(2) of Law No. 1 of 1974 on Marriage requires that every marriage be registered in accordance with applicable laws and regulations (Heri, 2023). Although the Constitutional Court, in Decision No. 46/PUU-VIII/2010, recognized the civil relationship between a child born out of wedlock and his biological father through technological evidence, it did not alter the state's position requiring registration as a form of official recognition (Lathifah, 2025). Consequently, wives and children born from unregistered marriages face various tangible legal disadvantages, including the wife's inability to seek alimony through formal legal channels, the child's lack of a birth certificate listing the father's name, and both parties' ineli-

gibility for inheritance and social security protection from the state.

Not only that, but the tension between legal formalism and socio-religious realities has become even more striking following the enactment of the National Criminal Code, namely Law No. 1 of 2023, which will take effect three years after its promulgation (Dunya, 2025). The 2023 National Criminal Code contains several articles that have the potential to criminalize the practice of *nikah siri*, either directly or indirectly. Article 412 of the 2023 National Criminal Code imposes a maximum prison sentence of 6 (six) months or a fine of up to Category II for anyone engaging in cohabitation that is, living together as husband and wife outside of a marriage recognized by the state. A fundamental issue arises when positive law does not distinguish between cohabiting couples living together without any marital bond and unregistered married couples who have entered into a valid marriage contract according to religious law.

Both have one thing in common under positive law: the absence of marriage registration. Since Article 2(2) of the 1974 Marriage Law establishes registration as the sole criterion for state recognition, both cohabitation and *nikah siri* can be classified as "*hidup bersama di luar perkawinan*" under the provisions of Article 412 of the 2023 National Criminal Code. This is what makes unregistered marriage couples vulnerable to criminal prosecution that is actually intended for cohabitation an issue that will be explored in greater depth in the discussion.

Various previous studies have highlighted unregistered marriage couples, including Asman in his article titled "*Legalitas Poligami dan Nikah Siri : Analisis Kritis Disharmoni Hukum Pidana dalam Dinamikan Hukum Keluarga Islam*" which explains the legitimacy of the new Criminal Code, which is seen as shifting toward the private sphere such as family law and assesses the criminalization of legitimate religious practices as excessive and violating the principle of justice from the perspective of *maqasid al-sharia* (Fuadiy, 2026).

Based on the background described above, this study seeks to address three main research questions. First, what is the normative construction of Article 412 of the 2023 National Criminal Code? Second, how can the tension between the legal formalism of marriage registration and the socio-religious reality of unregistered marriages in Indonesia be analyzed using progressive law? Third, how should the state reformulate its legal approach to provide fair legal protection for unregistered married couples without neglecting the intended objectives of population administration?

To address these three research questions, this study employs a normative legal research approach supported by sociological jurisprudence. Primary legal sources include the 1945 Constitution, Law No. 1 of 1974 on Marriage and its amendments, the Compilation of Islamic Law (KHI), and the National Criminal Code (Law No. 1 of 2023), while secondary legal materials consist of relevant Constitutional Court decisions, academic literature, and empirical research findings. Data analysis was conducted qualitatively using Satjipto Rahardjo's progressive legal theory. Thus, this study is expected to provide a comprehensive conceptual contribution regarding the normative and sociological tensions faced by millions of couples in unregistered marriages under the new criminal law regime.

RESEARCH METHOD

This research employs a normative legal research method using both a statutory approach and a conceptual approach (Muhaimin, 2020). The statutory approach is utilized to analyze the normative construction of Article 412 of Law Number 1 of 2023 concerning the National Criminal Code and its relationship with Law Number 1 of 1974 on Marriage and the 1945 Constitution of the Republic of Indonesia. Meanwhile, the conceptual approach is applied to construct and elaborate Satjipto Rahardjo's progressive legal theory as the primary analytical framework for examining the tension between legal formalism and the socio-religious reality of *nikah siri*. The analysis of legal materials is conducted qualitatively through a descriptive-analytical method by means of systematic interpretation of statutory regulations, legal doctrines, and relevant scholarly literature in order to develop comprehensive legal arguments concerning the criminalization of *nikah siri* under Article 412 of the National Criminal Code.

FINDINGS AND DISCUSSION

The Application of Article 412 of the 2023 Criminal Code to couples in an Unregistered Marriage

Article 412 Law of the Republic of Indonesia Number 1 Year 2023 on Penal Code prohibits cohabitation as husband and wife outside of a marriage recognized by the state, which reads as follows:

- (1) Any person who cohabits as husband and wife outside of marriage shall be punished by imprisonment for a maximum of 6 (six) months or a fine of up to Category II
- (2) Prosecution for the criminal offense referred to in paragraph (1) shall not be initiated except upon complaint by:
 - a. The husband or wife, in the case of a married person; or
 - b. The parents or children, in the case of an unmarried person
- (3) The provisions of Articles 25, 26, and 30 do not apply to the complaint referred to in paragraph (2)
- (4) A complaint may be withdrawn as long as the court proceedings have not yet begun.

This provision contains several key elements, namely "every person," "living together as husband and wife," and the phrase "outside of marriage." In the context of criminal law, living together as husband and wife is understood as a form of cohabitation, namely a relationship between a man and a woman who live as a married couple without legal recognition of their marriage under state law. Through this provision, the state seeks to emphasize the importance of the administrative legality of marriage as the basis for recognizing family relationships within the national legal system.

Issues then arise regarding the interpretation of the phrase "outside of

marriage,” particularly concerning the practice of *nikah siri*, which is valid according to religious law but not officially registered. From the perspective of Indonesia’s Muslim community, *nikah siri* is still considered valid if it fulfills the pillars and conditions of marriage according to Islamic law. However, because it lacks administrative registration, such a relationship risks being viewed as a relationship “outside of marriage” under state law (Fakhrurrozi dkk., 2024). This situation leads to multiple interpretations in the application of Article 412 of the 2023 Criminal Code, as the line between cohabitation and a religiously valid marriage becomes blurred when the state prioritizes registration as the primary measure of a marriage’s legality. Consequently, unregistered married couples face legal vulnerability, as they may potentially fall under the scope of this provision.

Article 412 of the National Criminal Code is defined as a complaint-based offense, meaning a criminal offense for which prosecution can only be initiated if a complaint is filed directly by a specific party who feels aggrieved (Dunya, 2025). In criminal law, complaint-based offenses are established to limit state intervention in matters of a private nature and those related to personal or family relationships (Abdullah & Waskito, 2026). Although this complaint-based offense clause appears to provide a protective barrier for unregistered married couples against arbitrary prosecution by authorities, it still poses a real threat that at any time an unregistered married family could face criminal charges if a dispute arises and one party files a complaint (Alamsyah & Somadiyono, 2022).

The provisions regarding complaint-based offenses in Article 412 indicate that the legislature sought to frame cohabitation cases as matters related to morality and family order, rather than merely as general crimes. Through this framework, the state aims to limit the potential for excessive criminalization of citizens’ private lives. However, in practice, this provision continues to pose problems, particularly for couples in unregistered marriages that are valid under religious law but not officially recorded (Nurozi, 2026). Complaint-based offenses can serve as a tool for exerting pressure in family or social conflicts, as domestic relationships previously accepted by society may potentially become criminal cases when a complaint is filed by a specific party.

The practice of unregistered marriages generally occurs because society believes that the validity of a marriage is determined solely by the fulfillment of the religious rites and requirements, without the need for state registration. Additionally, economic factors, out-of-wedlock pregnancies, the complexity of administrative procedures, a lack of legal understanding, and the desire to avoid adultery are the reasons why the practice of *nikah siri* remains widespread in Indonesia (Mardani dkk., 2022). On the other hand, society still views marriage registration as merely an administrative matter, while the primary legitimacy remains rooted in religious law. This situation creates a dualistic understanding between the validity of marriage according to religion and state legal recognition. The consequences of unregistered marriages not only create administrative issues but also impact the legal protection of women and children (Audya & Arifin, 2025).

Unregistered marriages make it difficult for wives to claim alimony,

shared assets, or inheritance rights because they lack valid legal proof of their marital status. Children born from unregistered marriages may also face obstacles in obtaining birth certificates, legal recognition of their civil status, and inheritance rights from their biological fathers (Ardani & Suhadi, 2024). Furthermore, the lack of official registration makes women more vulnerable to abandonment and domestic violence because their legal status is not formally recognized by the state (Dhifah dkk., 2025). The issue becomes even more complex when the practice of *nikah siri* is confronted with Article 412 of the 2023 National Criminal Code, which prohibits living together as husband and wife outside of marriage.

From an Islamic perspective, a *nikah siri* is still considered valid as long as it fulfills the pillars and requirements of marriage, such as the presence of a guardian, witnesses, the exchange of consent, and the bride and groom (Paijar, 2022). However, because such a marriage is not officially registered, the state may view the relationship as “outside of marriage.” The phrase “outside of marriage” in Article 412 is open to multiple interpretations because it does not explicitly distinguish between cohabitation without a marriage contract and a marriage that is valid under religious law but not administratively registered. This situation creates room for the criminalization of couples in unregistered marriages, as domestic relationships that have long been accepted socially and religiously can be treated as criminal acts if deemed not to meet the state’s legal requirements (Irfan, 2011)

Although Article 412 of the 2023 National Criminal Code is framed as a complaint-based offense, the provision still has the potential to serve as a repressive tool against couples in unregistered marriages. In practice, criminal proceedings may arise not merely due to moral violations, but rather be triggered by internal family conflicts. Domestic disputes, disharmony within family relationships, parental rejection, and even inheritance disputes can serve as grounds for complaints against couples in unregistered marriages. This situation indicates that the complaint-based offense under Article 412 does not fully protect the family’s private sphere but rather opens the possibility of using criminal law in domestic matters that should more appropriately be resolved through social or family-based approaches (Asman, 2024)

Furthermore, complaint-based offenses also have the potential to be used as a means of revenge or social pressure against couples in unregistered marriages. In situations of family conflict, criminal complaints can be used as a tool to discredit, humiliate, or coerce certain parties because their marital relationship lacks state administrative legality (Ardani & Suhadi, 2024). Consequently, the state, through criminal law instruments, intrudes too deeply into the private relationships of citizens. Such intervention reflects a tendency toward legal formalism that prioritizes administrative legality as the primary measure of the validity of family relationships, without considering the social and religious reality that unregistered marriages remain prevalent and accepted in parts of Indonesian society.

The Conflict Between Formal Law and the Social Reality of Unregistered Marriage in the Perspective of Progressive Law

To understand the tension between formal law and the practice of *nikah siri* within society, it is first necessary to examine the concept of progressive law as proposed by Satjipto Rahardjo. According to Rahardjo, law should not merely be understood as a rigid and procedural set of written rules, but rather as an instrument that serves humanity and reflects social realities. (Reumi dkk., 2025) In essence, law exists to achieve substantive justice; therefore, its implementation cannot be separated from the social conditions of the living and evolving society. In the context of *nikah siri*, the progressive law approach becomes particularly relevant because the practice is not solely related to issues of administrative legality, but also involves social, cultural, economic, and religious realities embedded within Indonesian Muslim society.

From the perspective of the sociology of law, the practice of *nikah siri* may be understood as part of the *living law* that continues to exist, develop, and function within society. (Rohmah & Hambali, 2025) Eugen Ehrlich, as the pioneer of the *living law* concept, argued that the true essence of law is not solely found in statutory regulations enacted by the state, but also in the social norms, values, and patterns of behavior that are genuinely observed and practiced by the community in everyday life. (Zarianto & Adityarani, 2025) In this regard, law is not merely a formal legal text, but also a social reality that reflects the legal consciousness and collective values embraced by society.

Within the context of Indonesian Muslim society, *nikah siri* has long been practiced and continues to obtain both social and religious legitimacy because it is considered to have fulfilled the pillars and requirements of marriage under Islamic law. For many communities, the religious validity of marriage remains the primary basis for recognizing the legitimacy of a marital relationship, regardless of whether the marriage has been formally registered with the state. This condition demonstrates that a significant portion of society still places greater emphasis on religious legitimacy and socio-cultural acceptance than on administrative registration as determined by formal state law. Consequently, the persistence of *nikah siri* reflects not only a legal issue, but also a complex interaction between religious beliefs, cultural traditions, social realities, and the formal legal system established by the state.

The practice of *nikah siri* within the social reality of Indonesian society also gives rise to various legal and administrative problems, (Ridwan, 2025) particularly for women and children who occupy the most vulnerable position in such marriages. The absence of official marriage registration often causes women in *nikah siri* marriages to encounter significant difficulties in obtaining legal protection when domestic conflicts arise, including cases of abandonment, unilateral divorce, domestic violence, or the refusal of financial support by the husband. In many instances, wives lack adequate legal standing to claim their rights because the marriage cannot be formally proven before the state due to the absence of official documentation. As a consequence, women frequently face obstacles in pursuing claims related to maintenance rights, inheritance rights, marital prop-

erty distribution, and other forms of legal protection provided under formal law.

On the other hand, children born from *nikah siri* marriages also commonly experience various administrative barriers that may affect their civil and social rights. These obstacles include difficulties in obtaining birth certificates containing the father's legal identity, limitations in acquiring family registration documents, and restricted access to education, healthcare services, social assistance programs, and other public services administered by the state. (Umilia & Alwi, 2026) In certain circumstances, the absence of legal recognition may place children in a vulnerable social and legal position due to the lack of adequate administrative protection. These conditions indicate that the primary issue surrounding *nikah siri* does not merely concern the formal legality of marriage under state law, but also reflects the limited accessibility of inclusive legal protection and administrative services for marginalized communities.

Therefore, the issue of *nikah siri* cannot be resolved solely through repressive measures or criminalization policies. Instead, it requires a more comprehensive legal approach capable of providing substantive protection for women and children while simultaneously taking into account the socio-religious realities, cultural values, and legal consciousness that continue to exist and develop within Indonesian Muslim society (Nugraha, 2025).

The tension between formal law and the social reality of *nikah siri* becomes increasingly evident within the regulation of marriage law in Indonesia, particularly through Article 2 of Law Number 1 of 1974 concerning Marriage. Paragraph (1) explicitly stipulates that a marriage is considered legally valid if it is conducted in accordance with the laws of the respective religion and belief of the parties involved, while paragraph (2) requires every marriage to be officially registered in accordance with prevailing statutory regulations. In practice, this dualism of norms creates legal ambiguity regarding the status of *nikah siri*. On the one hand, the state recognizes the validity of marriage based on religious law; yet on the other hand, the state simultaneously places marriage registration as an administrative legal instrument that determines formal legal recognition of the marriage.

As a consequence, a conflict emerges between the societal perception that *nikah siri* is religiously legitimate and the state legal system that emphasizes the necessity of administrative registration. For many members of Indonesian Muslim society, the fulfillment of religious pillars and requirements of marriage is considered sufficient to establish marital legitimacy, regardless of whether the marriage has been formally recorded by the state. Conversely, the state legal framework prioritizes administrative registration as a mechanism for ensuring legal certainty, civil protection, and legal order within society. This divergence ultimately illustrates the broader conflict between formal legal norms and the socio-religious realities that continue to exist and develop within the community.

From the perspective of the sociology of law, this condition reflects the existence of a gap between *das sollen* (the law as it ought to be) and *das sein* (the law as it exists in social reality). When formal legal rules fail to accommodate the social realities and legal consciousness living within society, the law risks losing its social legitimacy and effectiveness. In such circumstances, overly rigid legal

formalism may instead encourage avoidance behavior toward the law itself, as communities tend to adhere more strongly to social and religious norms that they perceive as more relevant and legitimate within their everyday lives. (Muliadi, 2025)

From the perspective of Satjipto Rahardjo's progressive law theory, the criminalization of *nikah siri* through Article 412 of the Indonesian Criminal Code may be viewed as a legal approach that places excessive emphasis on formal and administrative aspects rather than on substantive protection for society. Progressive law fundamentally positions law as an instrument that must serve humanity and social justice; therefore, the implementation of law cannot be detached from the social realities and living conditions of the community (Aji, 2026). In this framework, law should not merely pursue procedural certainty, but must also ensure the realization of substantive justice and social welfare for those affected by legal policies.

In the context of *nikah siri*, the application of criminal law does not necessarily address the root causes underlying the persistence of the practice. The phenomenon is closely related to various structural and social factors, including limited access to marriage registration services, economic constraints faced by lower-income communities, inadequate public legal awareness, and the strong socio-religious legitimacy attached to unregistered marriages within Indonesian Muslim society. For many communities, religious validity continues to be regarded as the primary basis for recognizing the legitimacy of marriage, while administrative registration is often viewed as secondary or difficult to access due to social and economic limitations.

Furthermore, the criminalization of *nikah siri* has the potential to produce counterproductive consequences because it may encourage the practice to become increasingly hidden from state supervision and legal mechanisms. Rather than resolving existing problems, punitive measures may instead deepen the vulnerability of women and children involved in unregistered marriages. Women may experience greater difficulty in obtaining legal protection in cases of abandonment, divorce, domestic violence, or denial of maintenance rights, while children may face increasing barriers in accessing birth certificates, family registration documents, education, healthcare, and other public services. As a result, criminalization risks further marginalizing vulnerable groups from formal legal protection and state administrative systems.

Therefore, from the perspective of progressive law, the resolution of issues related to *nikah siri* should not primarily focus on punishment and criminal sanctions. Instead, legal reform should prioritize the development of more humane, inclusive, and substantively just legal policies through strengthening access to marriage registration, simplifying *isbat nikah* procedures, expanding public legal services, and ensuring more effective legal protection for women and children. In this regard, law must function not merely as an instrument of legal control, but as a means of achieving social justice and responding to the realities and needs of society (Muliadi, 2025).

Reformulating a Fair Legal Approach to Siri Marriages within the Framework of the 2023 Criminal Code

Based on the previous analyses, it becomes clear that what is needed is not merely a reinterpretation of the articles of the 2023 Criminal Code in a textual sense, but rather a reformulation of the legal approach that is comprehensive and systemic. This reformulation must begin with an honest acknowledgment that the state has failed to provide a marriage registration system that is accessible, affordable, and responsive to Indonesia's socio-religious diversity. Administrative failure by the state should not be converted into a criminal burden for its citizens (Komisi Nasional Hak Asasi Manusia (Komnas HAM), 2022).

Reformulating the legal approach to siri marriages in Indonesia requires a paradigm shift from a legalistic orientation toward a more sociological approach focused on substantive justice. Siri marriages have often been positioned as a legal-formal issue because they do not fulfill the obligation of marriage registration as stipulated in Article 2 paragraph (2) of Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019 (Paijar, 2022). However, from the perspective of sociology of law, siri marriages cannot be understood merely as administrative violations, but as social phenomena arising from the interaction between religious norms, socio-economic conditions, and limited access to the state's legal system. In this context, law is not only understood as normative rules (*law in books*), but also as social practices that live within society (*law in action*) (Friedman, 1975).

The criminalization approach to siri marriages needs to be critically examined because it risks creating new problems in the family legal protection system. Using criminal instruments against siri couples may produce counterproductive effects, such as increasing hidden (underground) unregistered marriages, which ultimately makes it more difficult for the state to supervise and provide legal protection (Rachmawati dkk., 2021). In modern legal theory, criminal law is positioned as *ultimum remedium*, the last resort when other legal instruments fail to resolve social issues (Moeljatno, 2008). Therefore, a repressive approach to siri marriages must be considered proportionally, given that the root causes often relate to economic factors, administrative limitations, or religious understandings of marriage validity.

From the perspective of sociology of law, the effectiveness of a legal norm is strongly influenced by the level of social acceptance of that norm. Eugen Ehrlich emphasized that the success of state law cannot be separated from the existence of *living law*, norms that live and are practiced by society in daily life (Ehrlich, 2009). Among Indonesian Muslims, siri marriages often gain social legitimacy because they are considered to fulfill the pillars and conditions of marriage under Islamic law, even if they lack state administrative recognition. The tension between religious legitimacy and state legality creates problems of legal compliance. Therefore, reformulating policy on siri marriages requires a non-criminalization approach that is more persuasive, through family law education, simplified marriage registration bureaucracy, and increased legal awareness (Rinaldi, 2026).

Beyond non-criminalization, strengthening the *isbat nikah* mechanism is an important step to bridge the gap between social reality and formal state legality. In practice, many couples enter siri marriages due to financial constraints, limited access to marriage registration institutions, or other administrative factors (Setiawan, 2024). This situation leads to *legal exclusion*, where marriage is socially and religiously recognized but lacks state legal protection. As a result, civil rights such as child status, inheritance, alimony, and protection of joint property become difficult to fulfill (Rahardjo, 2009)

From the perspective of access to justice, the state must not only require marriage registration but also ensure that legalization procedures are easily accessible, affordable, and effective for all social groups (Development, 2019). Reforming the *isbat nikah* mechanism through simplified procedures, fee waivers for the poor, digitalization of legal services, and integrated court programs in remote areas are strategic steps to expand access to marriage legality. This approach reflects the function of law as a tool of social engineering (Pound, 1954) using law to create social order that is fair and responsive to societal needs.

On the other hand, resolving siri marriage issues should also be directed toward a restorative justice approach, which emphasizes recovery rather than punishment. Legal problems in siri marriages often arise during family conflicts such as neglect of women, denial of marital status, child custody disputes, or neglect of alimony (Fitria Wahyu Ningrum, 2025). In such cases, punitive approaches often fail to address the root social problems. Restorative justice, instead, offers mechanisms focused on restoring social relations, protecting victims, and ensuring accountability of those causing harm (Braithwaite, 2002).

In the context of siri marriages, restorative approaches can be implemented through strengthening family mediation, family law counseling services, facilitating recognition of women's and children's rights, and resolution through deliberation while ensuring state legal certainty (Fauzi, 2025). This approach is more relevant to Indonesian society, which values kinship as the foundation of social conflict resolution. Sociologically, the success of law is measured not only by normative compliance but also by its ability to create social integration and reduce conflict (Durkheim, 1984).

Legal reform on siri marriages must also prioritize the protection of women and children's rights. The main criticism of siri marriages lies in the weak protection for vulnerable parties, especially women and children. Women in siri marriages often face difficulties in obtaining economic rights, legal protection against domestic violence, and recognition of marital status in cases of divorce. Meanwhile, children born from siri marriages are vulnerable to administrative barriers concerning legal identity and civil rights.

From the perspective of progressive law, law must side with vulnerable groups and function as a means of social protection, not merely as a tool of formal rule enforcement (Rahardjo, 2009). Therefore, legal reform on siri marriages should focus on strengthening alimony guarantees, economic protection for women, simplifying mechanisms for proving children's civil relations, and expanding access to legal aid for women exploited in siri marriages. Thus, the orientation of law is not limited to formal marriage legality but also to the protection

of substantive individual rights.

Ultimately, the problem of siri marriages reflects the tension between state law, religious law, and social reality. Within the framework of legal pluralism, Indonesia is a country with plural legal systems coexisting, including state law, Islamic law, and customary law (Erni Sulhati Roudho Siregar & Uswatun Hasanah, 2026). Therefore, overly legalistic approaches risk creating social resistance by ignoring norms that live in society. Harmonizing regulations is urgently needed to avoid normative clashes between religious legitimacy and state legality. Legal reform on siri marriages should aim to build a legal system that is more integrative, adaptive, and responsive to societal needs without neglecting principles of legal protection and certainty.

CONCLUSION

Article 412 of Law Number 1 of 2023 concerning the National Criminal Code reflects an expansion of criminalization toward domestic relationships that are not administratively recognized by the state, including the practice of *nikah siri*. The provision categorizes couples living together outside a legally recognized marriage as subjects of a complaint-based offense without clearly distinguishing between cohabitation and marriages that are religiously valid but administratively unregistered. Consequently, couples in *nikah siri* marriages are placed in a vulnerable position toward criminalization, as the state prioritizes the formal aspect of marriage registration over the substantive social and religious validity of marriage.

From the perspective of progressive law, the overly formalistic legal approach toward *nikah siri* demonstrates a disconnect between state law and social reality. The practice of *nikah siri* is not merely an issue of legal administration, but is also influenced by economic factors, cultural values, limited access to state services, and the strong socio-religious legitimacy that persists within Indonesian Muslim society. Therefore, the use of criminal law instruments against such practices is considered ineffective in addressing the root causes of the issue and may instead increase the vulnerability of women and children due to inadequate legal protection of their civil rights.

Based on these findings, a more humane, inclusive, and substantively just legal policy reform is required in addressing the practice of *nikah siri*. The state should prioritize non-penal approaches through strengthening *isbat nikah* mechanisms, simplifying access to marriage registration, and expanding legal protection for women and children. In this regard, law should function not merely as a repressive instrument of social control, but also as a means of achieving social justice that is responsive to the realities and needs of society.

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