



Digital Family Law Governance Centered on Children in Unregistered Islamic Marriages and Marriage Annulment after Death: A Legal Policy Review Based on International Law

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ARTICLE INFO

Kata Kunci: Digital Legal Governance, Unregistered Islamic Marriage, Marriage Annulment, Child Protection, Biological Father, Family Law, International Law

Received : 5 August 2026

Revised : 23 September 2026

Accepted: 24 October 2026

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ABSTRACT

Unregistered Islamic marriage (nikah siri) creates layered legal problems because religious validity differs from state registration, affecting marital status, child status, divorce, maintenance, population administration, and inheritance. The problem intensifies when one spouse dies and a claim for annulment of the marriage or of the isbat nikah is filed. This study (1) analyses the legal effect of death on marriage and on annulment claims, (2) examines the relationship between Supreme Court Circular (SEMA) No. 2 of 2019, SEMA No. 2 of 2024, and Supreme Court Decision No. 695 K/AG/2023, (3) assesses child status and biological-father responsibility after Constitutional Court Decision No. 46/PUU-VIII/2010, and (4) formulates a child-centred digital governance model. Using a normative juridical method with statutory, case, conceptual, and comparative-data approaches, the study finds that death terminates the marriage, so the operative object of an annulment claim generally disappears, subject to the good-faith exception in SEMA No. 2 of 2024; that inheritance disputes must not be disguised as annulment claims; and that the absence of marriage registration must not erase a child's civil protection. The study proposes the Digital Legal Family Status and Biological Father Responsibility System (DLF-BFRS), a five-layer model that separates marital status from the child's legal identity. The model is conceptual and requires policy testing and personal-data safeguards before implementation

INTRODUCTION

Legal identity is one of the foundations for child protection. UNICEF data shows that about 77% of children under the age of five worldwide have their births registered, meaning around 150 million children still don't have birth registration (UNICEF, 2026a). For Indonesia, UNICEF reports a figure of around 87% (UNICEF, 2026b), which is lower than the Philippines (about 94%) and the East and Southeast Asia regional average (around 94%). These numbers show that children's legal identity is still a global governance issue, and the problem is even more acute for children whose parents do not have complete marriage documentation.

In Indonesia, marriages that are legally recognized by religion but not registered with the state create a gap between religious legitimacy and administrative certainty. An analysis of the 2023 Susenas survey by UNFPA Indonesia, PUSKAPA, and Bappenas shows that the coverage of ID numbers (NIK) is already very broad, but gaps in marriage and birth documentation still exist, especially among vulnerable groups (UNFPA Indonesia, PUSKAPA, & Bappenas, 2025). A legal needs survey of vulnerable groups also found respondents with religious or unregistered marriages without state documents, linking this situation to the vulnerability of women and children (IJRS, 2022).

Another issue comes up when one of the partners passes away. Article 38 letter a of Law Number 1 of 1974 on Marriage states that a marriage ends because of death. In practice, annulment lawsuits or *isbat* marriage annulments are still filed after death, often with the aim of dealing with inheritance matters. The Supreme Court responded through the formulation of the religious chamber in SEMA Number 2 of 2019 and SEMA Number 2 of 2024, while Decision Number 695 K/AG/2023 serves as an example of a cassation case regarding *isbat* marriage annulment.

This study starts from one idea: the end of a marriage due to death should not mean the end of legal protection for children. The issues being addressed are: (1) what the legal consequences of one spouse's death are on the marriage and annulment claims; (2) what the positions are of SEMA Number 2 of 2019, SEMA Number 2 of 2024, and Decision Number 695 K/AG/2023; (3) what the status of children from unregistered marriages is and the responsibility of the biological father; and (4) how a digital system can be designed to protect children while also preventing a second marriage without verifying the previous marriage status.

IMPLEMENTATION AND METHODS

This study uses a normative juridical method (Marzuki, 2017) with four approaches. The legislative approach examines the 1945 Constitution, Law No. 1 of 1974 along with its amendments through Law No. 16 of 2019, Law No. 23 of 2006 and Law No. 24 of 2013 on Population Administration, Law No. 35 of 2014 on Child Protection, Law No. 27 of 2022 on Personal Data Protection, Minister of Home Affairs Regulations No. 108 and 109 of 2019, as well as the Compilation of Islamic Law. The case approach reviews SEMA No. 2 of 2019, SEMA No. 2 of 2024, Supreme Court Decision No. 695 K/AG/2023, and Constitutional Court Decision No. 46/PUU-VIII/2010. The conceptual approach uses *fiqh munakahat*, legal protection theory (Hadjon, 1987), and the principle of the best interest of the

child. The comparative approach uses UNICEF birth registration data and international instruments, namely the Convention on the Rights of the Child (CRC) and CEDAW. Legal materials are analyzed qualitatively-prescriptively to formulate policy recommendations.

RESULTS AND DISCUSSION

Death as a Reason for Ending a Marriage

According to Article 38 letter a of the Marriage Law, a marriage ends due to death. As a result, once one party passes away, there is no longer a marital bond that can be annulled. In unregistered marriages, the death of the husband or wife also ends the marriage. The remaining questions aren't just about "how to annul an unregistered marriage," but a series of other issues: whether the marriage can be documented, whether marriage legalization is needed, who the heirs are, who the biological children are, whether the children have civil relations with the father, how the property is divided, how the surviving child is supported, and the status of the surviving partner.

Thus, the focus of resolution shifts from marriage to a series of matters: inheritance, heirs, child status, alimony, custody, and proving biological relationships. The rule proposed in this study is: death ends a marriage, but it does not end the legal relationship between a child and their parents that can be legally proven.

Harmonization of SEMA Number 2 of 2019, SEMA Number 2 of 2024, and Supreme Court Decision Number 695 K/AG/2023

The formulation by the Religious Chamber in SEMA Number 2 of 2019 states that annulment of a marriage filed after the marriage to be annulled has ended must be declared inadmissible (Supreme Court, 2019). SEMA Number 2 of 2024 refines this formulation specifically for death: annulment of a marriage after the marriage ended due to death is declared inadmissible, except if the marriage is alleged to have been entered into in bad faith (Supreme Court, 2024). These two formulations should be read as developments, not contradictions: the first sets the general principle, while the second clarifies its application to death and also opens an exception.

Supreme Court Decision Number 695 K/AG/2023 dated June 22, 2023, should be cited as a Supreme Court ruling, not as a SEMA. The Supreme Court decision directory records it as a civil religious cassation case with the principle of "Annulment of Marriage Registration" that has permanent legal force (Supreme Court, 2023). The different statuses of these three instruments need to be maintained: SEMA serves as an internal guideline for judges, while a decision is the application of law to a concrete case.

Table 1. Harmonization of SEMA Number 2 of 2019, SEMA Number 2 of 2024, and Supreme Court Decision Number 695 K/AG/2023

Instruments	Type	Substance
SEMA No. 2/2019	MA Internal Guidelines (Room Formulation)	Annulment after the marriage has broken down must be declared unacceptable
Supreme Court Decision No. 695 K/AG/2023	Cassation decision	Case of annulment of isbat nikah; permanent legal force
SEMA No. 2/2024	MA Internal Guidelines (Room Formulation)	Cancellation after death is unacceptable, unless postulated is done without good faith

The exception for bad faith is important because it prevents death from being used as a shield for marriages carried out by hiding one's status, like getting married again without disclosing a previous marriage. However, the burden of proving bad faith still lies with the party claiming it, and this exception shouldn't be stretched into a general loophole for lawsuits that are really just aimed at taking control of someone's inheritance.

Distinguishing Marriage Confirmation, Marriage Cancellation, Divorce, and Inheritance

Some of the mess in cases comes from mixing four types of cases that have different purposes.

Table 2. Distinguishing Marriage Confirmation, Marriage Cancellation, Divorce, and Inheritance

Subject	Purpose
Marriage Isbat	Obtaining a determination of an unregistered marriage, under conditions justified by law
Annulment of marriage	Attacking the validity of marriage
Divorce	Ending an ongoing marriage
Heirs	Settling the estate after death

Inheritance claims cannot be disguised as annulment claims just to get certain effects on the inherited property. Also, not every post-death case can be considered "time-barred." There are three concepts that need to be distinguished: (1) legal standing, which is whether the plaintiff has a legal interest; (2) the subject of the claim, which is whether there is still a marriage that can legally be annulled; and (3) statute of limitations, which is whether the right to sue has expired. In post-death cases, the main issue usually lies in the subject of the claim. A more accurate formulation is: the death of one spouse ends the marriage, potentially eliminating

the subject of an annulment claim, subject to the bad faith exception in SEMA Number 2 of 2024.

Divorce in Unregistered Marriages: Islamic Law and State Law

Divorce in Islamic jurisprudence is regulated, among others, in QS. Al-Baqarah 2:229, *al-ṭalāqu marratāni fa-imsākun bima'rūfin aw tasrīhun bi-iḥsān* (الطَّلَاقُ مَرَّتَانٍ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ), which means that divorce happens twice, then either retain the marriage in a good way or release it with good treatment. QS. Al-Baqarah 2:230 explains that after the third divorce, the wife is not lawful for her husband until she marries another man. Based on these rules, Islamic jurisprudence distinguishes between *talak raj'i* (can still be reconciled during the *iddah* period), *talak ba'in sughra* (cannot be reconciled without a new contract), *talak ba'in kubra* (the third divorce), as well as *talak sunni* and *talak bid'i*, which is divorce pronounced in a forbidden manner (Al-Zuhayli, n.d.).

Divorce (*talak*) pronounced while the wife is menstruating or in the postnatal bleeding period is considered by the majority of scholars as an innovative (*bid'i*) divorce, meaning it is prohibited. Scholars differ in their views on the legal consequences. The majority opinion says the divorce still counts even though the person who gave it is sinful, while some scholars argue that it does not count. This difference is also seen in cross-school studies, including internal differences within the Hanbali school. Because of these differing opinions, legal guidance to the public shouldn't oversimplify it to 'divorce during postnatal bleeding is definitely invalid.' The safer summary: divorce during menstruation or postnatal bleeding is a divorce that is prohibited according to most scholars, but there are differences of opinion regarding whether the divorce is valid or effective. This discussion of *fiqh* is educational and doesn't replace the rulings of the Religious Court.

In unregistered marriages, it's important to distinguish between divorce according to religious law and divorce status according to state law. A husband can pronounce *talaq* based on religious understanding, but the state administration doesn't automatically change because of that. That's why you need a process of religious events → legal verification → judicial/administrative documentation, so that the status of the wife and children isn't left hanging.

Child Status and Biological Father's Responsibility

Constitutional Court Decision Number 46/PUU-VIII/2010 serves as the main foundation for this section. Essentially, the Court opens up civil law relations between children born out of wedlock and men who can be proven, based on science and technology and/or other legal evidence, to be their fathers (Constitutional Court, 2012). As a result, this study rejects the idea that children from unregistered marriages automatically lack rights. The absence of marriage registration should not automatically erase civil protections for children.

This view aligns with the Convention on the Rights of the Child. Article 3 puts the best interests of the child as the primary consideration, Articles 7 and 8 cover the right to registration immediately after birth, name, nationality, and identity, and Article 18 emphasizes the shared responsibility of parents (United Nations, 1989). From the *maqasid shariah* perspective, protection of lineage (*hifz*

al-nasl) also requires certainty of lineage and fulfillment of children's rights (Al-Shatibi, n.d.).

That said, the responsibility of a biological father shouldn't be defined in a way that anyone simply called a father automatically has to cover all the child's expenses. The proposed mechanism: claim → proof → biological verification → court decision if disputed → legal responsibility. If the biological relationship is proven through valid evidence, the father should reasonably be responsible for supporting the child, including fair living expenses, education, health, and development. The implications for inheritance also need to be looked at separately, because acknowledging a civil relationship doesn't automatically determine inheritance shares, which still depend on the applicable inheritance laws.

Birth Registration from an International Perspective

Table 3. UNICEF Data Places Indonesia Above the Global Average but below the Regional Average.

Region	Birth registration of children under 5 years old
Global	about 77%
Indonesia	About 87%
Philippines	About 94%
East and Southeast Asia	About 94%

Source: UNICEF Data (2026a, 2026b). Numbers are Rounded and May Change as Data is Updated.

The gap of about seven percentage points compared to the regional average shows that children's documentation remains a policy issue, even though progress has been significant. Birth registration is closely linked to the legal identity agenda for everyone, including birth registration, within the Sustainable Development Goals. In the context of informal marriages, the birth of a child to parents without a marriage certificate often makes it difficult to list the father's name, so birth registration needs to be clearly separated from the parents' marital status.

DLF-BFRS Model: Child-Centered Digital Family Law Governance

This study proposes the Digital Legal Family Status and Biological Father Responsibility System (DLF-BFRS) as a policy idea to connect the Office of Religious Affairs (KUA), Civil Registry (Dukcapil), Religious Courts, and the child identity system. This model consists of five layers.

Table 4. DLF-BFRS Model: Child-Centered Digital Family Law Governance

Coating	Function
1. Marriage Identity	Verify the identity of both potential partners
2. Existing Marriage Verification	Check if someone is still married

Coating	Function
3. Unregistered Marriage Declaration	Limited registration for religious marriages that have not been registered
4. Child Legal Identity	Record birth and <i>parentage relationships</i>
5. Biological Father Responsibility	Establishing responsibility when a biological relationship is proven according to the law

The flow before applying the model usually went like this: secret marriage → not registered → child born → incomplete documents → father dies → inheritance disputes → annulment lawsuit → family conflict. The flow after applying it: religious marriage → digital declaration → identity verification → marriage status verification → child registration → biological relation verification → parental responsibility → support → inheritance protection.

For cross-country marriages, this model proposes Cross-Border Marriage Status Verification, which isn't an automatic ban on getting married (no international blocking). The system gives three status colors: GREEN (no active marriage), YELLOW (there's data that needs verification), and RED (there's still an active marriage or problematic documents). Connection between countries can only happen through legitimate administrative cooperation, aiming to prevent hidden double marriages while respecting sovereignty, privacy, and applicable international law.

A system that stores marital status and biological relationships contains very sensitive data. Law Number 27 of 2022 classifies genetic data as specific personal data, so designing the DLF-BFRS must implement valid consent, purpose limitation, data minimization, and access control. Also, the RED status shouldn't be used as a legal decision; it's just a verification signal, while the actual determination of status remains with the authorized officials or courts. This model hasn't been empirically tested yet, so the discussion here is prescriptive and requires feasibility studies, limited trials, and impact evaluations.

Normative Tension and Policy Formulation

This study finds a normative tension, not an absolute contradiction. The registration system requires a registered marriage for certainty of status, while child protection should not erase the legal relationship of a child with a biologically proven father. The solution is to separate marital status from the child's civil identity, so the absence of a registered marriage doesn't mean the child lacks legal protection.

The existing paradigm says that marriage must be registered, and if not, legal problems arise. The proposed paradigm: marriage registration should be strengthened, and at the same time, children should not lose legal protection due to their parents' administrative negligence. The ultimate principle: no child should be legally invisible just because their parents' marriage isn't registered. This principle aligns with Article 16(2) of CEDAW on official marriage registration,

which reinforces registration as a protection tool, not as a requirement for children's rights (United Nations, 1979).

CONCLUSION AND RECOMENDATION

Concluison.

First, death ends a marriage, so the object of an annulment lawsuit basically disappears; SEMA Number 2 of 2024 improves on SEMA Number 2 of 2019 by adding an exception for claims of marriage without good faith. Second, Supreme Court Decision Number 695 K/AG/2023 should be treated as a cassation ruling, not a SEMA, and post-death marriage annulments shouldn't be used to resolve every family or inheritance dispute. Third, following Constitutional Court Decision Number 46/PUU-VIII/2010, children from unregistered marriages don't lose civil protection, and the biological father's responsibility is established through proper proof. Fourth, DLF-BFRS offers a five-layer architecture that separates marital status from a child's identity and verifies marital status, including across countries.

Recomendation.

- 1) The Supreme Court and religious courts need to set guidelines for proving bad faith so that the exceptions in SEMA Number 2 of 2024 are applied consistently.
- 2) The Ministry of Religious Affairs, Ministry of Home Affairs, and Supreme Court need to test the interoperability of KUA, Dukcapil, and Religious Court data through limited trials.
- 3) Policymakers need to ensure personal data protection from the design stage.
- 4) Further research is needed to test the model empirically, involving case decision data, interviews with judges and record officers, and comparative studies with other countries.

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