Registration of Marriage Book Perspective of Needs Level Theory Abraham Maslow and Syatibi

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ARTICLE INFO	ABSTRACT
	This research aims to reveal the level of human need in the current era for the registration of marriage books. This research uses a document analysis approach and a literature study. Analysis of the Compilation of Islamic Law (KHI), the Marriage Law, and other related documents. This research explores the phenomenon of unregistered marriages in Indonesia, and the legal consequences caused by unregistered marriages and then analyzes the need level of the Indonesian people for the importance of registering marriage books using Abraham Maslow's and Syatibi's need level theory. This study concludes that the registration of marriage books in the analysis of Maslow's theory of needs level can include five levels of needs. Maslow's version of the five levels of needs is relevant to Syatibi's theory of needs at the level of primary needs (daruriyat). Unregistered marriages will result in a loss of civil rights, which can be life-threatening, especially for children born from unregistered marriages. Therefore, the current and future contexts have become a necessity for the obligation to fulfill the marriage book. Unregistered marriages will cause successive losses and crimes. Therefore, marriages without registration in a marriage book must be expressly annulled by the government with

strict laws accompanied by sanctions. This research is expected to be a stimulant for scholars, legislators, and the government to have the confidence and courage to prevent unregistered marriages by the state.

A. Introduction

Unregistered marriages are still being debated today because on the one hand, unregistered marriages can be a solution for certain cases where marriages cannot be officially registered.[1] Unregistered marriage, on the other hand, can be a problem that causes harm. The benefits and disadvantages of unregistered marriage are relative, depending on the triggering factors. Trigger factors vary. Starting from economic factors, the factor of not being old enough, the official bond factor, the factor of getting pregnant out of wedlock, difficulty of polygamy regulations, and the fact that there is still an opinion in society that the registration of a marriage book is only an administrative requirement and not a requirement for a valid marriage.[2] This means that one of the causes of unregistered marriages is due to centric *fiqh* factors and a lack of understanding of the importance of recording a marriage book.

An unregistered marriage is certain to harm the happiness and peace of the family. Unregistered marriages, will not be respected in a social environment.[3] The Indonesian Ministry of Religious Affairs framing of the criteria for the *sakīnah* family is considered a universal discriminatory action against community groups. The formulation of these criteria suggests that family happiness and peace will only be reached if they get a proper position in the social environment.[4]

The most suffered parties from unregistered marriages are women and offspring born from unregistered marriages. Unregistered marriage such as mixed marriage between immigrant workers, when viewed under civil law cannot be recognized, as

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[1] Zainuddin Zainuddin and Zaki Ulya, "Recording Siri's Marriages In Obtaining Legal Certainty (Reflections on the Rise of Siri Marriages in Aceh)," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021): 1, https://doi.org/10.18592/sjhp.v1i1.3276.

[2] Diana Yuni Lestari and Hinggil Permana, "Persepsi Masyarakat Karawang Timur Tentang Nikah Siri Dan Dampak Dari Nikah Siri," *Al-Ulum: Jurnal Penelitian Dan Pemikiran Keislaman* 9, no. 4 (2022): 348–59, https://doi.org/https://doi.org/10.31102/alulum.9.3.2022.219-230.

[3] Dri dan Muhamad Nasrudin Santoso, "POLYGAMY IN INDONESIA AND ITS RELEVANCE TO THE PROTECTION OF WOMEN AND CHILDREN IN THE PERSPECTIVE OF ISLAMIC LAW PHILOSOPHY," 2021, 6, https://doi.org/https://doi.org/10.32332/akademika.v26i1.2406.

[4] Andi Yaqub, Iswandi, and Jabal Nur, "Reconstruction of the Sakīnah Family Criteria During the Covid-19 Period The Community Experienced Several Obstacles in Realizing the Sakīnah," *Al-Ahkam* 31, no. 1 (2021): 1–24, https://doi.org/10.21580/ahkam.2021.31.1.7807.

well as their offspring and claims for their rights in the future.[5] Therefore, it is not an exaggeration to say that unregistered marriage is a form of harassment against women. Unregistered marriage violates many universal religious norms and principles.[6] Unregistered marriage violates state marriage regulations (UUP 1974), the Indonesian Islamic Law Compilation (KHI),[7] violates inheritance laws, child protection laws, and the general principles and objectives of universal *shari'ah*.

The Compilation of Islamic Law (KHI), which is the codification of family jurisprudence in Indonesia and has gone through the legislative process, seems not to be in addressing the issue of unregistered marriages. KHI only emphasizes the importance of registering marriages, but no article dares to make registration of a marriage book a formal requirement for a valid marriage. Official registration, according to the KHI, is only a rule to regulate administration and provide legal certainty, likewise has not been used as a determinant of the validity of marriage as stated in Article 5 paragraph (1). Likewise, the marriage law, article 2 paragraph (2), only states that each marriage is recorded according to the applicable laws and regulations.

If there is no change in the Compilation of Islamic Law and the Marriage Law, which position the registration of a marriage book as a condition for a valid marriage, what will become a challenge is the issue of marriage certificates? This problem exists for example, in Law No. 50 of 2009 and KHI article 7 paragraph (3) which regulates the court's authority to legalize marriages (*is bat* nikah) that occurred before the enactment of Law no. 1 of 1974, while there are many applications for marriage certificates to religious courts whose marriages were carried out after the enactment of the 1974 Law.[8]

Ironically, some local governments in Indonesia make it easier and facilitate marriage confirmations with various considerations. In several regions in Indonesia, there are even integrated marriage constituencies, such as the unified marriage certificate (*isbat*) which was held in the city of Cimahi on October 25 2022 for 20

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[5] Andi Novita et al., "The Impact of Mixed Marriage in Civil Law Review" 16 (2023): 1–11.

[6] M. Noor Harisudin and Muhammad Choriri, "On the Legal Sanction against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," *Samarah* 5, no. 1 (2021): 471–95, https://doi.org/10.22373/sjhk.v5i1.9159.

[7] Idris Idris, Raya Lestari, and Zetria Erma, "The Problems of Siri Marriage for Couples Who Have Not Married According to the Law in Marriage Legal Perspective," *Legal Brief* 11, no. 6 (2023): 3520–29, https://doi.org/10.35335/legal.v11i6.706.

[8] Irwan Masduqi, "Nikah Sirri Dan Istbat Nikah Dalam Pandangan Lembaga Bahtsul Masail Pwnu Yogyakarta," *Musãwa Jurnal Studi Gender Dan Islam* 12, no. 2 (2013): 187, https://doi.org/10.14421/musawa.2013.122.187-200.

couples.[9] Marriage certificate will be issued in Kuningan on November 11, 2022, for as many as 78 couples.[10] Marriage certificate in Gresik on September 21, 2022, for 13 couples.[11] Marriage certificate in Surabaya on August 30 2022 with a fantastic number of couples, namely 120 couples.[12]

In the context of Islamic family law in Indonesia, the importance of registering a marriage book is a subject of debate. Although the Compilation of Islamic Law (KHI) recognizes the importance of registering marriages as an administrative rule to regulate administration and provide legal certainty, there are no provisions that explicitly make the registration of a marriage book a formal requirement for a valid marriage. Therefore, this study aims to explore the role of registering a marriage book in meeting human needs based on Abraham Maslow's level of needs theory, and understanding Syatibi's views on this matter.

Abraham Maslow's theory of levels of needs presents a hierarchy of human needs consisting of five levels, namely physiological, safety, social, esteem, and self-actualization needs. The registration of a marriage book can be associated with several levels of this need. Physiologically, registration of a marriage book provides legal protection for married couples in terms of inheritance, economic rights, and social protection. At a security level, recording a marriage book provides legal certainty and protects couples from injustice and instability in the marital relationship. In the social aspect, recording a marriage book strengthens the social bond and family identity of husband and wife.

As far as searching the related literature and research, no research has been found that discusses specifically the urgency of recording marriage books from the perspective of the theory of levels of human needs according to Abraham Maslow and Syatibi. Existing research is carried out separately between the urgency of recording marriage books and research on comparisons between theories of the level of needs

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[9] Cimahi Kota, "Layanan Isbat Nikah Gratis Disambut Baik Masyarakat Cimahi," n.d., https://cimahikota.go.id/berita/detail/81925-layanan-sidang-isbat-nikah-gratis-disambut-baik-masyarakat-cimahi. Accessed on January 17, 2023, at 15.31 WIT.

[10] Kuningankab, "78 Pasangan Nikah Jalani Sidang Isbat Nikah Terpadu Di Kuningan," 2022, https://kuningankab.go.id/home/78-pasangan-nikah-jalani-sidang-isbat-nikah-terpadu-di-kuningan/. Accessed on January 17, 2023, at 15.35 WIT.

[11] Gresikkab, "Pelayanan Terpadu Sidang Isbat Nikah Pencatatan Peristiwa Perkawinan Dan Penerbitan Dokumen Administrasi Kependudukan," 2022, https://dispendukcapil.gresikkab.go.id/pelayanan-terpadu-sidang-isbat-nikah-pencatatan-peristiwa-perkawinan-dan-penerbitan-dokumen-administrasi-kependudukan/. Accessed on 17 January 2023, 15.41 WIT.

[12] Surabaya, "Pemkot Surabaya Gelar Isbat Nikah Massal Termewah Dengan Dekor 60 Meter," 2022, https://www.surabaya.go.id/id/berita/68990/pemkot-surabaya-gelar-isbat-nikah-massal-termewah-dengan-dekor-60-meter. Accessed on 17 January 2023, 15.41 WIT.

according to Abraham Maslow to Syatibi. Related research that was found about the urgency of recording marriage books was research on Sirri Marriage and Marriage Istbat in the View of the Yogyakarta PWNU Bahtsul Masail Institute conducted by Irwan Masduqi. This research concludes that the validity of a marriage that is not recorded in syar'iy is still being debated by scholars. Ali al-Harawi offers a new ijtihad that a marriage that is not legally registered is invalid and illegitimate. This is to harmonize the concept of fiqh nikah with the marriage law. Meanwhile, many NU figures have not dared to issue an opinion that is in line with Ali al-Harawi. The majority of NU clerics in Yogyakarta have only dared to state that marriage without legal registration is unlawful. It violates state regulations, even though, according to Scary it is legal because it fulfills the requirements for the presence of a guardian and witness. However, not a few of the Yogyakarta PWNU Bahtsul Masail activists consider that if there is a change in the socio-cultural context and ratio logic (*'illatulhukmi*) that urges the issuance of a new legal decision, the Bahtsul Masail Institute may manhaji make a new fiqh marriage breakthrough that will be contextual and relevant.[13]

The comparative research on the theory of the level of needs from the perspective of Abraham Maslow and Syatibi is conducted by Zulkarnain Abdurrahman on Syatibi's maqasid theory and its relation to the theory of basic human needs according to Abaraham Maslow. This study concludes that the theory of motivation, or The Hierarchy of Human Needs Theory, formulated by Maslow has been used by many groups in the fields of education, economics, politics, and so on. The fundamental weakness of this theory is that it does not include religious motives, spiritual motives, or transcendence needs. Even though the facts show that religious motives are very important, especially in encouraging to carry out activities and produce the best. Nevertheless, Maslow's theory of needs, especially those related to safety needs, which include the need for protection from danger and threats of disease, war, poverty, hunger, unfair treatment, and so on, can be used as a consideration for perfecting the maqasid al-Syatibi theory.[14] Meanwhile, this research will focus on the urgency of recording marriage books from the perspective of Abraham Maslow and Syatibi's need -level theory.

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[13] Masduqi, "Nikah Sirri Dan Istbat Nikah Dalam Pandangan Lembaga Bahtsul Masail Pwnu Yogyakarta."

[14] Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow," *Al-Fikr* 22, no. 1 (2020): 52–70, https://doi.org/org/10.24252/jumdpi.v22i1.15534.

B. Method

This research uses a document analysis approach and a literature study. Analysis of the Compilation of Islamic Law (KHI), the Marriage Law, and other related documents to understand the existing provisions regarding the registration of marriage books and marriage certificates, and the requirements for a valid marriage according to Islamic law in Indonesia. Literature research was carried out by studying on Abraham Maslow's theory of the level of needs and Syatibi's views regarding human needs, including needs in the context of marriage and family. This research explores the phenomenon of unregistered marriages in Indonesia, and the legal consequences caused by unregistered marriages, and then analyzes the need level of the Indonesian people for the importance of registering marriage books using Abraham Maslow's and Syatibi's need level theory.

C. Findings and Discussion

1. The Phenomenon of Unregistered Marriage in Indonesia

Unregistered marriages have firmly taken hold within Indonesian society, becoming somewhat normalized despite the prevailing belief that such unions are unlawful and should bring shame to those involved. These unregistered marriages are considered illegal due to their failure to fulfill the necessary administrative requirements for a valid marriage. Despite the state's efforts to safeguard the rights of its citizens within domestic partnerships, any deviations that arise from these unregistered marriages cannot be effectively addressed by governmental authorities. This inability to intervene stems from the initial wrongful actions taken by the spouses who entered into such marriages. Essentially, by engaging in these unregistered unions, the individuals themselves have forfeited their entitlement to state-backed protections.[15]

For the Indonesian people, especially Muslims residing on the island of Java, the issue of unregistered marriages is not synonymous with clandestine unions. For them, marriage is typically conducted customarily and sequentially, making no distinction, as any marriage is generally accompanied by a wali'mah al-'ursy. This serves as their primary benchmark for religious legitimacy. Consequently, discussions surrounding the wali'mah al-'ursy are not a matter of great concern, particularly when it pertains to the legitimacy of a marriage. Anyone who marries within a specific village or a particular region is widely recognized by all residents. Hence, no significant

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[15] Harry Pribadi Garfes, "Law Enforcement of Unregistered Marriage Practices in Indonesia Lawrence Meir Friedman's Legal Effective Perspective," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (2022): 515, https://doi.org/10.30641/kebijakan.2022.v16.515-538.

correlation observed regarding the occurrence of unregistered marriages, as they resort to wali'mah al-'ursy out of necessity.[16]

Ironically, some communities in Indonesia, such as Pekoren Village, Rembang Pasuruan District, East Java, have commercialized unregistered marriages. The process of commercializing these unregistered marriages in Pekoren Village was examined by Salman Alfarisi. He noted that the unregistered marriages that developed in Pekoren Village essentially followed a method that closely resembled conventional marriages. This involved selecting a spouse, proposing marriage, and obtaining acceptance. The distinguishing factor in the practice of unregistered marriages, however, lies solely in the transactional procedures carried out by the interested individuals and the role of the Kiai or broker. Those interested in marrying women from Pekoren Village are required to provide a financial budget. The higher the budget provided by the enthusiast, the higher the quality of the women they can choose from.[17]

What is even more unfortunate is that quite a few of those who have unregistered marriages are young people, as happened in Situbondo Regency, Madura, as researched by Singgih Susilo and friends. His research describes that based on the data that has been collected in the field on 15 research subjects spread across the District of Sumbermalang with the highest number of unregistered marriages, those who do unregistered marriages are on average young, and their level of education and even welfare is also low. This data has only been collected and is clearly known through information from local residents, and there are still some that have been collected/or are unknown or only vaguely known by residents. This means that the number of unregistered marriage actors in Situbondo Regency could be higher than data suggests. Previous research conducted in 2015 also showed data for as many as 200 people, only in one district of Sumbermalang. However, in 2020, the number of perpetrators in the region has not decreased and has actually increased to 210 people who are married to unregistered marriages.[18]

There are various causes of unrecorded marriages, as concluded by Zuhrah and friends in their research. Some are caused by low education, so they don't understand the consequences of unregistered marriages. Some are caused by the desire for

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[16] Aidil Alifin dan Busyro, "Nikah Sirri Dalam Tinjauan Hukum Teoritis Dan Sosiologi Hukum Islam Indonesia," *Alamanahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 61–78, https://doi.org/https://doi.org/10.24090/mnh.v11i1.1268.

[17] Salman Alfarisi, "Komersialisasi Nikah Siri Di Desa Pekoren Kecamatan Rembang Pasuruan Jawa Timur," *Al-Hukama'* 8, no. 1 (2018): 169–93, https://doi.org/10.15642/alhukama.2018.8.1.169-193.

[18] Singgih Susilo et al., "Phenomenon of Unregistered Marriage in Teenagers in Indonesia: A Case Study of the Madurese Community in Situbondo," *KnE Social Sciences* 2022 (2022): 405–17, https://doi.org/10.18502/kss.v7i16.12184.

polygamy without the permission of the first wife. Some are pregnant out of wedlock, and some are due to second marriages after being widowed.[19]

Singgih Susilo and friends conclude that unregistered marriages in Situbondo Regency, East Java, occur due to several factors, namely, first, residents who consider unregistered marriages permissible in Islam; marrying in unregistered ways does not violate religious law; and second, unregistered marriages are the fastest step in justifying relations between men and women, when compared to being legally married.[20]

The government in Indonesia has indeed made efforts to reduce the occurrence of unregistered marriages by imposing criminal sanctions on perpetrators of unregistered marriages. However, the impression is not yet firm, and there is an impression of uncertainty about the implementation of the sentence. If you look at Article 45 of Government Regulation Number 9 of 1975, it can be seen that an unregistered marriage is considered an administrative violation only, so the penalty for paying compensation is a maximum of IDR 7,500.00. For official government officials who deviate from the registration procedure, they are threatened with imprisonment for 3 months or compensation of a maximum of IDR 7,500. Judging from Article 465 of the Draft Criminal Code Law, there is a sanction in the form of paying compensation to perpetrators of unregistered marriages in the amount of IDR 1,500,000.00. In Article 143 of the Draft Law on the Material Law on Religious Courts, it is stated that those who carry out unregistered marriages receive a maximum prison sentence of 6 months or pay compensation of up to IDR. 6,000,000.00 for executors to pay compensation of Rp. 1 year. Uncertainty about the implementation of punishments for the perpetrators of unregistered marriages makes these marriages continue to go uncontrollably.[21]

Looking at the points about marriage that can be attributed, it seems that there is confusion between one point and another. Between points (d) and point (e), for example, point (d) emphasizes that marriages that may be involved are those that were carried out before Law No. 1 of 1974, while point (e) explains that marriages that may be considered are marriages that, when viewed by Law No. 1 of 1974, have no obstacles. That is, point (e) is a marriage that took place after Law No. 1 of 1974 was enacted.

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[19] Zuhrah Zuhrah, Husnatul Mahmudah, and Juhriati Juhriati, "Fenomena Perkawinan Tidak Tercatat Di Kota Bima," *Jurnal Ilmiah Mandala Education* 6, no. 2 (2020): 26–32, https://doi.org/10.58258/jime.v6i2.1430.

[20] Susilo et al., "Phenomenon of Unregistered Marriage in Teenagers in Indonesia: A Case Study of the Madurese Community in Situbondo."

[21] Mariani Mariani, "Fikrah Sanksi Pidana Atas Pelaku Pernikahan Di Bawah Tangan," *Journal of Islamic and Law Studies* 5, no. 3 (2022): 314–25, https://doi.org/10.18592/jils.v5i3.5843. p. 332.

In addition, point (c) states that marriages without doubt about whether the marriage is valid are canceled. This point, in addition to providing space to initiate marriage after the enactment of Law No. 1 of 1974, also opens up space to make it easier to submit marriage certificates. Therefore, KHI and the 1974 Marriage Law need to be reviewed in this aspect. It should only be noted that the revision of laws cannot be imposed solely on egocentricity. Law as social control solves a problem not based on changes (revisions) to legal products from a selfish perspective or existing minority cases.[22]

Supposedly, legally speaking, the filing of a marriage certificate is not easy. Marriages that took place after the enactment of Law No. 1 of 1974, but deviated from the provisions of the law, such as unregistered marriages, must be considered as never having existed. The juridical consequence is that the marriage registration application must be rejected for whatever reason; at least there is a statement that is unacceptable (*not on Vakenlijk*). If the application for *isbat* is accepted, it means that he has acknowledged and justified the act that violated the law.[23]

2. Maslow and Syatibi's Need Level Theory

According to Abraham Maslow,[24] in a hierarchy, humans have five needs, and each of these needs has a different character.[25] Maslow describes the hierarchy of human needs in the form of a pyramid, which shows the priority scale for meeting human needs as shown below:

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[22] K Kamaruddin, Andi Yaqub, and I Iswandi, "Paradoxical Implications of Article 7 Paragraph 1 of the Marriage Law in Indonesia," *Subtantif Justice: International Journal of Law* 4, no. 2 (2021): 182–94, https://doi.org/10.33096/substantivejustice.v4i2.167. p. 183.

[23] Mukhtaruddin Bahrum, "Problematika Isbat Nikah Poligami Sirri," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 4, no. 2 (2019): 194–213, https://doi.org/10.35673/ajmpi.v4i2.434. p. 206.

[24] Abraham Maslow (1 April 1908 – 8 June 1970) was a theorist who inspired much of personality theory. He is also a psychologist who came from America and became a pioneer of humanistic psychology. He is famous for his theory of the hierarchy of human needs. See: https://id.wikipedia.org/wiki/Abraham_Maslow.

[25] Abraham Harold Maslow, *Motivation and Personality* (Prabhat Prakashan, 1981). p. 1981.
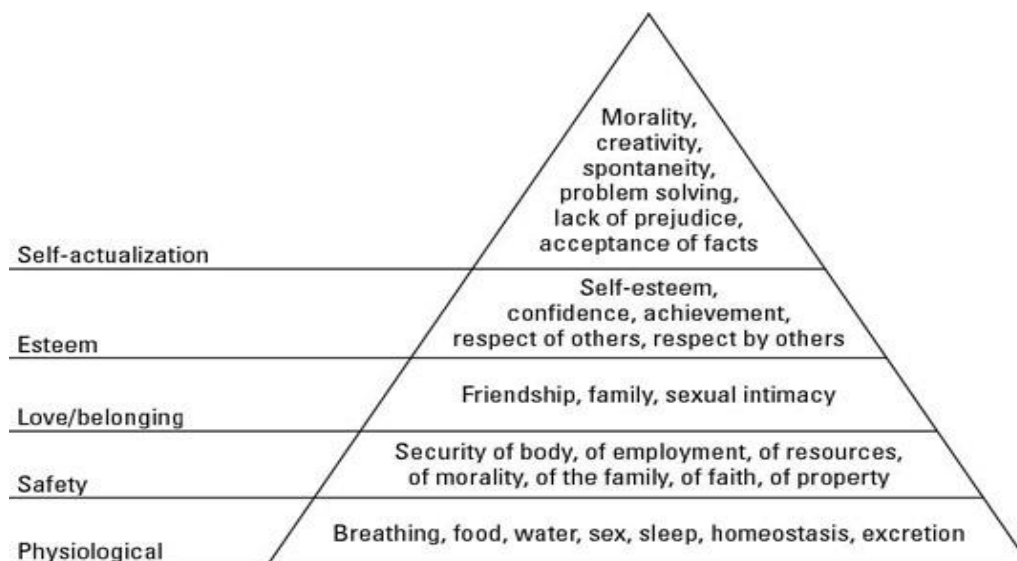
Maslow's Hierarchy of Needs

First, physiological needs, those needs are basic needs that are primary and vital and concern the basic biological functions of the human organism, such as the need for food, clothing and food, physical health, sex needs, and so on. *Second*, safety needs, are the need for protection from dangers and threats of disease, war, poverty, hunger, unfair treatment, and so on. *Third*, social needs, needs include the need for love, affection, and friendship. Not meeting these needs can interfere with mental health. *Fourth*, the esteem needs, this need includes the need for respect and self-recognition. Fulfillment of this need will affect one's self-confidence and prestige. *Fifth*, self-actualization need include the need to empower all of one's potential and abilities. This is the highest level of need.[26]

Meanwhile, according to Syatibi, human needs are divided into three:levels;namely *daruriyat* (primary), *hajiyat* (secondary) needs, and *tahsiniyat* (tertiary) needs.[27] *Daruriyat* needs are needs that must exist and be fulfilled to fulfill the benefit of religion and the world. If this level of need is not met, benefit is not achieved, and damage is threatened in life in the world, as well as loss in the hereafter. *Hajiyat* needs are needs which if not fulfilled, do not threaten the safety and cause damage but will cause difficulties. The need for *tahsiniyat* is a need that does not reach

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[26] Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow."

[27] Bekti Cikita Setiya Ningsih, "Comparison of Al-Syatibi and Thahir Ibn Asyria's Thoughts on Maqashid Shari'ah," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 8, no. 1 (2021): 11, https://doi.org/10.29300/mzn.v8i1.4685.

the primary and secondary levels, this level of need is only a complement.[28] Things that are appropriate according to customs, avoid things that are not pleasing to the eye, and decorate with beauty that is by the demands of norms and morals.

According to al-Syatibi, at the level of primary needs (*daruriyat*), 5 things must be taken care of, namely taking care of religion *(hifz al-din)*, taking care of life (*hifz al-nafs*), taking care of the intellect (*hifz al-'aql*), taking care of offspring (*hifz al-nasl*), and taking care of property *(hifz al-mal)*.[29]

Yusuf Yahya in his research, concluded that Syatibi's level of needs theory had an impact on the formation of *maslah}ah daruriyyah* (basic protected human needs) laws and regulations which regulate the maintenance of religion, soul, mind, lineage, and property, as Maslow's theory states that after being protected by the law, every human being has the potential to develop himself towards his five basic needs. When humans are protected by their religion, as meant by Syatibi, then at the same time they also need to fulfill their physiological needs, as meant by Maslow.[30]

Observing the theory of needs promoted by Abraham Maslow and Syatibi, it appears that both have advantages and disadvantages. Because Abraham Maslow's theory is based on anthropocentricity, it is based on human needs and does not include theological matters. Syatibi's theory, although it includes the maintenance of religion as a necessity, is still based on individual human needs and does not consider collective human interests. According to Alyasa' Abubakar, the development of an era that was far different from the *Fiqh* of the Imam School and the Taklid period (which was based on an agrarian paradigm), the Syatibi version of the theory of needs and five basic maintenances is no longer sufficient for the current context. This is because this theory does not consider the need for environmental protection and preservation.[31] Therefore, Maslow's need-level theory can be used as a complement to Syatibi's need-level theory.

Therefore, there is relevance between Syatibi's and Maslow's need-level theories. Maslow's physiological needs are relevant with *Hifz al-din* Syatibi, satety needs with *Hifz al-nafs*, social needs with *Hifz al-aql*, esteem needs with *hifz al-nasl*, self -actualization needs to *hifz al-mal*.

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[28] Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah*, Vol II (al-Qahirah: Dar al-Taufiqiyyah, 2003). p. 9.

[29] Al-Syatibi.

[30] Yusuf Yahya, "Kontribusi Pemikiran Imam Syathibi Dan Abraham H. Maslow Tentang Kebutuhan Dasar Manusia," *Al Mashaadir : Jurnal Ilmu Syariah* 1, no. 2 (2020), https://doi.org/10.52029/jis.v1i2.21.

[31]Alyasa' Abubakar, *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*, Cet. I (Jakarta: Prenada Media Group, 2016).

3. **The Obligation to Register Marriage in Indonesia According to Maslow and Syatibi's Theory of Needs**

In the context of marriage, Maslow's theory can be explained as follows. One of the goals of marriage is to fulfill biological needs (physiological needs), and to get justice in marriage must be proven by a valid proof of marriage (safety needs). The husband and wife relationship in marriage presents love and kinship (social needs). Status as a wife or as a husband make a person get recognition and appreciation (esteem needs). Recognition and appreciation from society with marital status make a person confident in actualizing his skills and abilities (self-actualization needs).

Using Syatibi's theory, the context of marriage can be explained as follows. The desire to get married by considering morals and religion is to fulfill the need for the maintenance of religion (*hifz al-din*). The obligation to provide for the family is to protect the soul (*hifz al-nafs*). Educating the family well is to keep the mind (*hifz al-'aql*). Evidence of marriage including the registration of the marriage book is to protect offspring (*hifz al-nasl*) as well as protect assets (*hifz al-mal*). Observing this, it can be ascertained that these five things that must be maintained cannot be fulfilled optimally in an unregistered marriage for the current context. Therefore, in the current context, the registration of a marriage book is included at the level of Syatibi's *daruriyat* which includes five things that must be maintained and can also be included at all levels of Maslow's needs.

In the classical period, the registration of the marriage book as proof of marriage was still at the level of secondary needs (*hajiyat*), maybe even just tertiary as a complement (*tahsiniyat*). In the current context, let alone in the future, the registration of marriage books is already at the *daruriyat* level, where if the marriage is not registered, then problems will not be achieved and it is threatened with damage to life in the world, as well as experiencing losses in the hereafter, as *daruriyat* has been defined by Syatibi.[32]   The reason is that when a marriage is not recorded, a husband and wife cannot claim their inheritance rights and their mutual rights. Likewise, children will not be able to claim ancestral rights, inheritance rights, and other rights as children.

Using both theories in measuring the level of human needs for registering a marriage book, registration marriage book in Abraham Maslow's theory is included in safety needs. It can even enter into the five levels of Maslow's needs, because the essence of recording a marriage book is the same as that of the witnesses in marriage, namely to prove that the marriage took place so that the rights and obligations of

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[32] Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah*. p. 6

husband and wife can be claimed. Therefore, with the registration of a marriage book, it becomes a written record that helps husbands wives and their partners obtain justice so that by recording it, all parties involved get a sense of security from injustice.

It should be noted that *fiqh* is dynamic and not stagnant. *Fiqh* can change with the changing times. Registration of marriage at the time of the prophet was not required. The validity of a marriage during the time of the Prophet was sufficient in the presence of a guardian and two witnesses. Some scholars, such as those from the Malikiyyah circle, add a wedding reception as a form of *i'la>n al-nikah* (announcement of marriage). However, with the times, there have been many marriage practices that violate the rights of women and children, marriage registration has become an urgent need to protect the rights and obligations of husband and wife and children born from a marriage.

It is on this basis that the majority of contemporary scholars who refer to the opinion of Malikiyyah forbid marriage that is not officially registered. They say: "The marriage that is not registered at present is a marriage that is not valid according to the *shari'ah* because today is a time of moral crisis and slander is widespread. Many testimonies are denied, many false testimonies are made, marital rights are neglected, and children from marriage are denied."[33]

Achieving benefits and preventing harm is the general principle of *shari'ah*. The level of benefit from one period to another can shift according to shifts in the level of needs. Socio-cultural and social structures in society can be the cause of shifts in the level of needs. For example, the need for work in primitive societies can still be met by entering the forest in search of food, but modern society has found it difficult to make a living in this way.[34] The need for electricity in the classical period was still at the *hajiyat*(secondary) level, or maybe only at the *tahsiniyat* (tertiary) level, but in the modern world, the need for electricity is proper at the level of *daruriyat* (primary). You can imagine when a doctor is performing an operation and suddenly the electricity goes out.

Likewise with the need for registration of marriage books at this time. Marriage witnesses are no longer sufficient as valid proof of marriage. Witnesses may not be included when traveling long distances, which can be proof that the partner brought is a legal partner, such as when staying in a hotel, for example. Not to mention, witnesses

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[33] Muhammad 'Abduh al-Nabi Yusuf, *Al-Zawaj Al-'Urfi Wa Masyu'iyyatuhu* (Misr: Jami'ah Bursa'id, n.d.). p. 116.

[34] Abubakar Al-Yasa', *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh* (Jakarta: Prenada Media Group, 2016). p. 127

may get sick or die which cannot be presented when there are problems that must prove the validity of the marriage.

Therefore, the existence of marriage book registration has become a necessity as a living law in today's society to cover the needs of society. The main function of law is to cover the needs of society so that conditions in society greatly affect changes in law. [35]

Furthermore, some contemporary scholars argue that marriages that are not officially registered by the state are illegitimate. Among those who banned him were Sheikh 'Umar Hasyim, former chancellor of Egypt's al-Azhar University, Sheikh Atiyya Shaqar, and Abdul Mu'ti Bayumi. According to them, getting married without official registration from the state is illegal even though it fulfills the requirements and pillars of marriage because unregistered marriages have the potential to cause violations of the rights and obligations of husband and wife and their offspring.[36]

According to Sheikh Muhammad Sayyid, the 47th Sheikh al-Azhar, as quoted by Muhammad 'Abdu al-Nabi Yusuf: "Muslim scholars whom expert in shari'a and positive law have agreed on the importance of forbidding marriage which is not registered by the state because this marriage can cause violations of the rights of the wife and the rights of children from this marriage".[37]

Furthermore, the government should issue strict rules prohibiting unregistered marriages, to maintain order, stability, and order in society. The logical consequence of the stipulation that the registration of a marriage book is a requirement for a valid marriage, which is part of the essence of the witness, is that renewing marriage (*tajwid nikah*) is mandatory for married couples without the registration of a marriage book and not enough marriage certificates. *Tajdid nikah* renews a marriage by re-contracting a marriage contract, while *isbat* nikah is only establishes an official marriage that is considered a valid marriage according to *fiqh*.

Another legal impact of unregistered marriage for children, if there is a father's denial of his child, the child cannot claim his rights as a child, such as maintenance rights and inheritance rights. In addition, this impact has further implications for child neglect, so that children born from unregistered marriages will be vulnerable to being exploited by irresponsible elements. An even sadder impact is that a child who only

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[35] M. Yusuf Yahya & Harwis Alimuddin, "Roscou Pound: Hukum Sebagai Alat Rekayasa Sosial (Keterhubungannya Dengan Kaidah La Yunkaru Tagayyur Al-Ahkam Bi Tagayyuri Azzaman)," *Indonesian Journal of Shariah and Justice* 33, no. 1 (2022): 141–62, https://doi.org/10.46339/ijsj.v2i2.22.

[36] Masduqi, "Nikah Sirri Dan Istbat Nikah Dalam Pandangan Lembaga Bahtsul Masail Pwnu Yogyakarta." p. 117.

[37] Yusuf, *Al-Zawaj Al-'Urfi Wa Masyu'iyyatuhu*.

has a civil relationship with his mother will interfere psychologically so that he does not have confidence in his future.[38]

Jamaluddin Muhammad bin Mahmud in his book, after citing the fatwas of contemporary scholars who forbid unrecorded marriages, that unregistered marriages are not only prohibited from the aspect of *shari'ah* law but also prohibited from the moral and social aspects (*al-janib al-ijtima'i al-akhlaqi*). This unrecorded marriage will result in a series of crimes. Crimes against women's rights, and children's rights, can disturb a child's psychology, which can lead to his future or, even his life being threatened.[39]

D. Conclusion

The most appropriate term for unregistered marriage known in Indonesia is *'urfi* marriage which exists in contemporary *fiqh* literature and fatwas. *'urfi* marriage is a marriage that fulfills the pillars and conditions of marriage according to classical *fiqh*, but is not officially registered by the state. The recording of the marriage book in Maslow's theory of the level of needs can include 5 levels of needs. Maslow's 5 levels of needs are relevant to Syatibi's theory of needs at the primary needs level (*daruriyat*). Unregistered marriages will result in a loss of civil rights, which can be life-threatening, especially for children born from unregistered marriages. Therefore, the current and future contexts have become a necessity for the obligation to record a marriage book. Unregistered marriages will have implications for successive losses and crimes. Therefore, marriages without registration in a marriage book must be strictly stopped by the government with strict laws accompanied by sanctions. It is time for the Compilation of Islamic Law to be revised with more contextual family *fiqh* rules. The implementation of the marriage certificate must be very selective with very strict conditions. Community leaders and academics must take part in educating the public about the urgency of registering a marriage book. The limitation of the study or recommendation for future research is compulsory.

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[38] Roswita Sitompul et al., "Legal Protection for Children Born from Unregistered Marriage in Medan City and Its Socialization through Website," *International Journal of Engineering and Technology(UAE)* 7, no. 2.14 Special Issue 14 (2018): 246–50, https://doi.org/10.14419/ijet.v7i1.1.9479.

[39] Jamaluddin Muhammad bin Mahmud, *Al-Zawaj Al-'Urfi Fi Mizan Al-Islami*, Cet. I (Bairut: Dar al-Kutub al-'Ilmiyyah, 2004). p. 124.

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