



PERCEPTIONS OF THE ACADEMIC COMMUNITY AT STDI IMAM SYAFI'I JEMBER TOWARD THE CRIMINALIZATION OF UNREGISTERED MARRIAGE

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Abstract

The Criminalization of unregistered marriage (nikah siri) through Law Number 1 of 2023 concerning the Criminal Code raises concerns because it brings together the validity of marriage under Islamic law with the demands for legal recognition and legal protection by the state. This study aims to analyze the perceptions of the academic community at STDI Imam Syafi'i Jember regarding the criminalization of siri marriage and to assess these perceptions from the perspective of *maṣlaḥah mursalah*. This study employs a descriptive qualitative method with a socio-legal approach. Data were obtained through semi-structured interviews with six informants consisting of two lecturers, three students, and one educational staff member selected through purposive sampling, as well as documentary studies, and were analyzed using the interactive model of Miles, Huberman, and Saldaña. The findings reveal two tendencies in perception. The first group supports the imposition of criminal sanctions as an instrument to regulate marriage and protect the rights of women and children. The second group rejects or limits criminal sanctions, particularly imprisonment, because siri marriage that fulfills the pillars and conditions of marriage is still considered valid under Islamic law, while criminalization may potentially cause harm to families. Both groups recognize the importance of marriage registration but differ in assessing the proportionality of criminal sanctions and the limits of state intervention. The *maṣlaḥah mursalah* analysis indicates that limiting criminal sanctions and prioritizing administrative mechanisms are more consistent with the principle of public benefit, particularly in protecting the life and property of families. This study contributes to the development of Islamic Family Law scholarship by demonstrating that the protection of women and children does not necessarily have to be pursued through criminalization but can also be achieved through administrative and remedial approaches while maintaining the validity of marriage under Islamic law.

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1. INTRODUCTION

The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (the National Criminal Code) marks a new era of legal formalism in Indonesia by extending state intervention into the private sphere through the imposition of criminal sanctions on unregistered marriages, commonly referred to as *nikah siri* (Ismail, 2025). This policy has generated considerable controversy due to the apparent tension between Islamic legal norms, which recognize the validity of a marriage when its essential requirements are fulfilled, and positive law, which subjects such marriages to formal legal regulation and potential criminal consequences. The urgency of this issue is reinforced by the social reality that *nikah siri* continues to be practiced within Indonesian society, particularly due to financial constraints, bureaucratic obstacles, and certain religious convictions (Aprilia et al., 2026). This phenomenon places the state in a difficult position between enforcing administrative order and avoiding the criminalization of conduct that is regarded as religiously valid and permissible.



Conceptually, *nikah siri* in Islamic law refers to a marriage that fulfills the essential requirements of Islamic jurisprudence, including the presence of a guardian, witnesses, and the *ijab qabul* (offer and acceptance), but is not officially registered with the relevant state authority (Aprilia et al., 2026). In criminal law, criminalization refers to the process by which conduct that was previously not categorized as a criminal offense is legally designated as punishable behavior (Efendi, 2019). The relationship between state law and Islamic law in Indonesia reflects a dual-dimensional framework in which religious validity is grounded in compliance with Islamic legal requirements, whereas administrative legality is subject to state regulation (Rahmah et al., 2026). To bridge this normative divide, the concepts of *maslahah mursalah* and *maqashid al-shariah* are employed as analytical perspectives to assess whether legal policies generate public benefit, protect vulnerable groups, and prevent the emergence of new forms of harm (Romziana et al., 2025).

Previous studies have extensively examined the problems surrounding marriage registration and the criminalization of *nikah siri*. Studies by Ismail (2025), Ramdhan et al. (2025), Alhamdani et al. (2026), and Aprilia et al. (2026) have focused on the criminalization of unregistered marriage and polygamy under the National Criminal Code. Meanwhile, Akbar et al. (2025), Zubaidah (2019), and Yoandini and Khasyi'in (2026) have discussed marriage registration, *mashlahah mursalah*, and the protection of women's and children's rights. Fatawi and Dulfikar (2026), Aprinelita and Nelli (2026), and Umam (2022) have examined the legal status, consequences, legal protection, and family dynamics associated with *nikah siri*, whereas Ahyani et al. (2021) explored the transformation of Islamic legal values into positive law. Although these studies provide important foundations from legal, policy, registration, and public-benefit perspectives, they have not specifically examined the perceptions of academic communities within Islamic educational institutions as an empirical focus in relation to the criminalization of *nikah siri*.

This study offers novelty through an empirical qualitative approach that specifically explores the perceptions of the academic community at Sekolah Tinggi Dirasat Islamiyah (STDI) Imam Syafi'i Jember regarding the policy of criminalizing *nikah siri*. As an educational institution grounded in Islamic studies, STDI Imam Syafi'i Jember provides a particularly relevant setting for examining how the tension between the validity of marriage under Islamic jurisprudence and the state's demand for legal and administrative order is understood from an academic perspective. The novelty of this study lies in its direct exploration of the considerations underlying acceptance, objection, and broader patterns of perception among members of the academic community regarding the criminalization of *nikah siri*. Furthermore, the study integrates empirical findings with the perspective of *mashlahah mursalah* to assess both the potential benefits and harms arising from such a policy. Accordingly, this research contributes empirical insights to the development of Islamic Family Law scholarship, particularly in understanding the relationship among Islamic jurisprudential norms, state authority, and the protection of societal welfare.

Building on this research gap, the central research question of this study is: how does the academic community of STDI Imam Syafi'i Jember perceive the relationship between the formal legality imposed by the state and religious legitimacy in the policy of criminalizing *nikah siri*? The analysis focuses on academics' assessments of whether the imposition of criminal sanctions on individuals involved in *nikah siri* provides meaningful social protection or instead constitutes a form of state intervention that exceeds the boundaries established by Islamic law. Based on this research question, the study aims to provide an in-depth analysis of the perceptions of the academic community at STDI Imam Syafi'i Jember regarding the policy of criminalizing *nikah siri* within Indonesia's positive legal framework.

2. RESEARCH METHOD

This study employed a descriptive qualitative research design to analyze the perceptions of the academic community regarding the criminalization of *nikah siri* within Indonesia's positive legal framework. The research was conducted at Sekolah Tinggi Dirasat Islamiyah (STDI) Imam Syafi'i Jember, which was purposively selected because it is a higher education institution specializing in Islamic studies and offers an Islamic Family Law (*Hukum Keluarga Islam* or HKI) Study Program, making it particularly relevant to the focus of this research (Erlan, 2026). A sociology of law approach was used to examine the perceptions and responses of the academic community toward the policy, while the theory of *mashlahah mursalah* served as the analytical framework for assessing its potential benefits and harms. Through this perspective, the study explored the views of the academic community in order to identify a point of

convergence between the validity of nikah siri under Islamic jurisprudence and the state's interest in maintaining legal order.

The primary data were obtained through in-depth interviews with six informants from the STDI Imam Syafi'i Jember academic community. The informants were selected using purposive sampling and consisted of lecturers, students, and educational staff who were considered to possess relevant knowledge, experience, or perspectives concerning the criminalization of nikah siri. This selection was intended to obtain an in-depth understanding of the legal views and considerations surrounding the criminalization of nikah siri, while also supporting data triangulation. Data collection continued until data saturation was reached, namely the point at which subsequent interviews no longer produced substantively different categories or themes of perception. By the sixth interview, the information obtained continued to reinforce the categories that had already emerged, particularly those concerning considerations of public benefit, protection of the rights of wives and children, the effectiveness of criminal sanctions, and the potential harms arising from criminal punishment, without generating any new category of perception. Accordingly, six informants were considered sufficient to address the research focus. Secondary data were obtained through documentary analysis of statutory regulations and literature on Islamic family law. Data were collected through semi-structured interviews and document analysis. The researcher served as the primary research instrument (human instrument) in determining the research focus, selecting informants, collecting, analyzing, and interpreting the data, supported by an interview guide and field notes.

Data analysis employed the interactive model developed by Miles, Huberman, and Saldaña, comprising data condensation, data display, and conclusion drawing and verification. During the data condensation stage, interview transcripts were reviewed repeatedly, and relevant statements from informants were coded according to the substance of their views, including the validity of nikah siri under Islamic jurisprudence, protection of the rights of wives and children, the effectiveness of criminal sanctions, the potential harm caused by criminal punishment, and alternative administrative remedies. Codes with similar meanings were grouped into categories and compared across informants to identify patterns of perception. The analysis revealed two major groups of perceptions: (1) those who tended to support the criminalization of nikah siri on the grounds of rights protection and public benefit, and (2) those who tended to reject or favor limiting criminalization, primarily because of considerations relating to the validity of marriage under Islamic jurisprudence and the potential harms of criminal sanctions.

The data display stage was conducted by systematically organizing the categorized findings according to themes and comparing the arguments expressed by the informants. These themes were subsequently analyzed from the perspective of *mashlahah mursalah* by considering both the potential benefits and harms of the policy of criminalizing nikah siri. The analysis focused on whether the policy provides greater protection and benefit for women, children, and families, as well as whether criminal sanctions may generate new forms of harm affecting financial support and family stability. Conclusions were drawn and verified continuously by comparing the categorization results, patterns across informants, and the *mashlahah mursalah* analysis until conclusions consistent with the empirical data were established.

3. RESULT AND ANALYSIS

Academic Community Perceptions of the Criminalization of Nikah Siri

The informants in this study consisted of six members of the STDI Imam Syafi'i Jember academic community who were purposively selected based on the relevance of their knowledge and perspectives concerning the criminalization of nikah siri. The interview findings revealed variations in their understanding and assessment of criminal law provisions relating to marriage. Some informants regarded these provisions as an instrument for protecting the rights of women and children, whereas others placed greater emphasis on the validity of marriage under Islamic law and the potential harms arising from the imposition of criminal sanctions. These differences were also reflected in the informants' respective categories. Both lecturers tended to support criminalization, although one expressed conditional support. Two of the three students also supported the policy, whereas one student and one educational staff member adopted a more critical position, particularly regarding imprisonment as a sanction. Nevertheless, all informants shared a common view regarding the importance of administrative compliance and the protection of rights within marriage.

It should be emphasized that, in this study, the term "criminalization of nikah siri" is not intended to equate all forms of unregistered marriage with criminal conduct. The informants'

perceptions of criminalization were understood in the context of criminal provisions concerning marriages entered into despite the existence of a legally recognized impediment to marriage, as constructed under Article 402 of Law Number 1 of 2023 concerning the new Indonesian Criminal Code. Accordingly, the object of perception was directed toward unregistered marriages associated with circumstances or legal impediments to marriage as contemplated in that provision, rather than toward all forms of *nikah siri*. This distinction is important in order to avoid conflating failure to register a marriage with criminal liability arising from a marriage-related offense.

Support for state intervention through criminal law was expressed by Lecturer 2 as well as the majority of student informants, particularly Student 1 and Student 2. They considered the policy important as an instrument for protecting women and children from the risks of abandonment and the denial of legal rights. Their support was based on the observation that, in unlawful forms of *nikah siri*, women are often placed in a vulnerable position without sufficient legal standing to claim maintenance, inheritance rights, or protection from domestic violence. Student 1 emphasized that criminal sanctions would only be reasonable when applied to forms of *nikah siri* that violate statutory provisions, rather than to all unregistered marriages. From this perspective, state intervention through criminal sanctions is considered necessary to minimize arbitrary conduct by husbands who may exploit the absence of authentic legal proof of marriage.

Theoretically, the protection-oriented arguments expressed by the lecturers and students are consistent with the objectives of Islamic law (*maqāṣid al-sharīʿah*), particularly *ḥifẓ al-nafs* and *ḥifẓ al-māl*. Marriage registration is regarded as a legal protection instrument for ensuring the fulfillment of the fundamental rights of wives and children, which is consistent with the principle of justice in Islam (Aprinelita & Nelli, 2026). Although classical *fiqh al-munākaḥāt* does not recognize marriage registration as a requirement for the validity of marriage, the state methodologically possesses the authority to apply *taqyīd al-mubāḥ*—the restriction of otherwise permissible conduct—in the interest of the public good (*maṣlaḥah ʿāmmah*) and the prevention of harm (*darʾ al-mafāṣid*). Lecturer 2 further emphasized that imprisonment falls within the domain of *taʿzīr*, namely discretionary punishment imposed by the state, rather than *ḥudūd*. Therefore, such a sanction may be imposed in pursuit of *mashlahah mursalah*, particularly to protect the rights of the first wife.

On the other hand, critical views regarding the formulation of criminal sanctions were expressed by Student 3 and the educational staff member. They rejected the substantive basis of criminalization on the grounds that a marriage remains valid under Islamic law as long as its essential pillars and requirements are fulfilled. Student 3 argued that marriage constitutes a recommended religious act, as reflected in the *ḥadīth al-bāʿah*, and therefore considered imprisonment an inappropriate sanction because it may generate additional harm, particularly by disrupting the family's source of financial support when the husband is incarcerated. Meanwhile, the educational staff member viewed the issue primarily as a matter of administrative compliance under the authority of the Office of Religious Affairs (Kantor Urusan Agama or KUA), rather than as an issue that should be addressed through criminal law.

The arguments advanced by these two informants were rooted in classical Islamic jurisprudence, particularly the Shafi'i school, which holds that the validity of marriage depends on the fulfillment of its essential elements, including the bride and groom, guardian, witnesses, and the *ijab qabul* (offer and acceptance) (Al-Ashfahani, 2021). From this perspective, *nikah siri* is not inherently regarded as deviant conduct warranting criminalization, provided that it does not involve fraud, deception, or other legally or religiously recognized impediments to marriage.

Although they were critical of imprisonment, the second group of informants nevertheless acknowledged the importance of marriage registration as part of administrative order. They proposed alternative measures, such as granting a specified period for *itsbat nikah* (judicial confirmation of marriage) or imposing administrative fines, rather than custodial punishment. In their view, the function of law should be oriented more toward guidance, correction, and compliance than toward punitive intervention.

This perspective reflects an effort to reconcile the state's interest in legal and administrative order with the religious sanctity of the marriage contract. Through a restorative justice approach, law enforcement may be directed toward restoring the rights of wives and children through the legalization and formal recognition of marriage, rather than merely punishing the individuals involved (Alam, 2026). The policy implication is the need for legal harmonization, in which marriage registration operates as a mandatory procedure for transforming theological claims of marital validity into enforceable legal protection, without disregarding the pre-existing religious validity of the marriage.

Overall, the perceptions across different categories of the academic community reveal two major tendencies. The informants generally acknowledged the importance of protecting women and children,

but differed in their assessment of the proportionality of criminal sanctions imposed in relation to *nikah siri*. Marriage registration was viewed as essential for ensuring legal certainty, whereas the imposition of sanctions was considered to require careful attention to humanitarian considerations and the continuity of family maintenance. To summarize the position, arguments, and legal and religious foundations underlying each informant's perspective, the findings are presented in the following matrix.

Table 1. Matrix of Academic Community Perceptions of the Criminalization of *Nikah Siri*

Informant	Position	Core Argument	Legal/Religious Basis Referred to
Lecturer 1	Conditional support (depending on the perpetrator's motive)	A <i>nikah siri</i> that is valid under Islamic law is not inherently problematic; sanctions are appropriate only when the underlying motive involves a legal violation, rather than an attempt to avoid <i>zina</i> due to age-related restrictions.	<i>Lā nikāḥa illā bi-waliyyin wa syāhiday 'adl</i> ; obedience to <i>ulil amri</i>
Lecturer 2	Supportive	Imprisonment constitutes a form of <i>ta'zīr</i> rather than <i>ḥudūd</i> and may legitimately be imposed to create a deterrent effect; state intervention may promote public benefit, particularly by protecting the rights of the first wife.	Concept of <i>ta'zīr</i> versus <i>ḥudūd</i> ; <i>mashlahah mursalah</i>
Student 1	Supportive	Criminal sanctions protect women's rights from arbitrary conduct by husbands; however, they should apply only to forms of <i>nikah siri</i> that violate statutory provisions, rather than to all unregistered marriages.	<i>Maqāṣid al-sharī'ah</i> ; <i>mashlahah mursalah</i>
Student 2	Supportive	Unregistered marriage weakens the legal basis for obtaining state-recognized documents and rights, including family registration, children's birth certificates, and inheritance rights, while also creating opportunities for the misuse of polygamy.	<i>Mu'āmalāt</i> versus <i>'ibādah tawqīfiyyah</i> ; <i>maṣlaḥah-mafṣadah</i>
Student 3	Critical/opposed	Marriage is a recommended religious act; criminal punishment is considered inconsistent with the Prophet's Sunnah. A preferable solution would be to provide a grace period for <i>itsbat nikah</i> (judicial confirmation of marriage).	<i>Hadīth al-bā'ah</i> ; <i>yusr al-dīn</i> ; <i>ḥifẓ al-dīn</i> within <i>al-ḍarūriyyāt al-khams</i>
Educational Staff Member	Critical/opposed to imprisonment	<i>Nikah siri</i> remains valid when the essential pillars and requirements of marriage are fulfilled; the main issue is administrative rather than one of marital validity, and should therefore be addressed through the Office of Religious Affairs (KUA).	Essential pillars and requirements of marriage in classical Islamic jurisprudence

Analysis of Academic Community Perceptions of the Criminalization of *Nikah Siri* from the Perspective of *Maṣlaḥah Mursalah*

To assess these two groups of perceptions, this study employs the criteria of *maṣlaḥah mursalah* as the principal analytical framework. *Maṣlaḥah mursalah* refers to a method of legal reasoning based on considerations of public benefit that are consistent with the objectives of Islamic law (*maqāṣid al-sharī'ah*), despite the absence of a specific textual injunction directly governing the issue (Yoandini & Khasyi'in, 2026). In accordance with the operational requirements formulated by Islamic jurists, a perceived benefit may serve as a legal basis when it satisfies three conditions: it must be genuine (*ḥaqīqiyah*) rather than merely speculative (*wahmiyyah*); it must not contradict the Qur'an, the Sunnah, or scholarly consensus (*ijmā'*); and it must serve the public interest (*'ammah*) rather than merely individual interests (*khāṣṣah*) (Umam, 2022). Using these parameters, the utility of criminal sanctions in regulating *nikah siri* is examined to determine whether such sanctions genuinely generate broader social benefits or instead produce greater forms of social harm.

The first group, which supports criminalization, bases its arguments on the urgency of protecting the rights of women and children from the adverse consequences of *nikah siri*. The absence of formal legal registration weakens the legal position of wives because they may lack authentic documentary evidence necessary to claim maintenance, inheritance rights, and rights over marital property in the event of divorce (Fatawi & Dulfikar, 2026). Children born from unregistered marriages may likewise face structural disadvantages, including difficulties in obtaining birth certificates and accessing education, healthcare, and social protection (Yoandini & Khasyi'in, 2026). From this perspective, the threat of criminal sanctions is considered necessary to encourage husbands to assume legal responsibility and to prevent the misuse of *nikah siri*, including irresponsible forms of polygamy.

The perceptions of the first group may be analyzed through the principles of *ḥifẓ al-nafs* (protection of life and personal well-being), *ḥifẓ al-māl* (protection of property), and *sadd al-dharā'i'* (blocking the means that may lead to harm). The principle of *ḥifẓ al-nafs* is reflected in efforts to protect wives from domestic violence and psychological distress arising from marriages that are not formally recognized by the state (Aprilia et al., 2026). Meanwhile, *ḥifẓ al-māl* is manifested through efforts to ensure family economic security, fulfillment of maintenance obligations, and protection of the civil and property rights of wives and children over marital assets (Akbar et al., 2025). The first group's view of criminal sanctions as a preventive instrument is also closely related to the concept of *sadd al-dharā'i'*, namely preventing practices that may become pathways to greater harm.

By contrast, the second group rejects or seeks to limit criminal punishment on the grounds that *nikah siri* remains valid under Islamic law as long as the essential requirements and pillars of marriage are fulfilled. Under classical Islamic jurisprudence, the validity of marriage is determined by the presence of the prospective spouses, a marriage guardian, two witnesses, and the *ijab qabul*, without requiring formal registration by the state (Al-Ashfahani, 2021). From this perspective, criminalizing an act that is religiously permissible and regarded as an act of worship may be considered inconsistent with religious freedom and may be perceived as effectively prohibiting what God has made lawful. This group also regards imprisonment as potentially counterproductive because it may generate *mafsadah*, including disruption of family continuity and increased economic hardship when the principal breadwinner loses employment or income as a consequence of incarceration.

The objections expressed by the second group are also relevant to the principles of *ḥifẓ al-nafs*, *ḥifẓ al-māl*, and the comparative assessment of benefit and harm. From the perspective of *ḥifẓ al-nafs*, the imprisonment of a husband may create psychological trauma within the family and expose family members to social stigma (Aprilia et al., 2026). The principle of *ḥifẓ al-māl* may likewise be undermined because the wife's and children's entitlement to continuous financial support may be disrupted when the husband loses his economic freedom during incarceration. Based on the Islamic legal maxim *dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*—preventing harm takes precedence over securing benefit—criminal punishment may therefore be regarded as disproportionate when it risks producing greater harm than the administrative benefit it seeks to achieve.

The common ground between the two groups lies in their recognition that marriage registration is an important instrument for ensuring legal certainty and civil protection for women and children. Their principal disagreement concerns the nature of the sanction and the permissible extent of state intervention. The first group supports imprisonment as a coercive instrument of state authority, whereas the second group favors limiting sanctions to administrative measures, such as fines, accompanied by facilitation of *itsbat nikah*. The latter group also considers the criminal punishment of marriages that remain valid under Islamic law to exceed the acceptable boundaries of state intervention.

These differing perspectives on the limits of state authority may be reconciled through the concepts of *siyāsah shar'īyyah*, obedience to *ulil amri*, and *taqyīd al-mubāḥ*. From the perspective of *siyāsah shar'īyyah*, the state, as the institutional representation of legitimate authority (*ulil amri*), is responsible for safeguarding religion (*ḥirāsah al-dīn*) and administering worldly affairs (*siyāsah al-dunyā*) in pursuit of the common good (Zubaidah, 2019). This authority gives rise to the concept of *taqyīd al-mubāḥ*, whereby the state may impose administrative restrictions on conduct that is originally permissible when such restrictions are necessary to realize public benefit (Alhamdani et al., 2026).

The synthesis of the findings indicates that criminal law should not be applied without distinguishing among the motives underlying *nikah siri*. The enforcement of Article 402 of the new Indonesian Criminal Code should therefore be restrictive and should take into account the existence of bad faith, such as deliberate misrepresentation of marital status or polygamous marriage conducted while knowingly concealing a legally recognized impediment to marriage (Alhamdani et al., 2026). Treating all individuals involved in *nikah siri* as criminals without considering economic circumstances,

limited access to administrative services, or motives such as avoiding zina may result in unjust legal intervention and overcriminalization.

Based on the analysis of *maṣlaḥah mursalah*, the perspective of the second group, which favors limiting criminal sanctions and rejects imprisonment, demonstrates stronger conformity with the principles of public benefit and prevailing social realities. The general criminalization of *nikah siri* does not fully satisfy the criteria of *maṣlaḥah mursalah* because the anticipated benefits tend to remain *wahmiyyah* (speculative), while the policy may generate tangible harms that undermine family economic security (*ḥifẓ al-māl*) and psychological well-being (*ḥifẓ al-nafs*).

4. CONCLUSION

This study demonstrates that the perceptions of the academic community at STDI Imam Syafi'i Jember regarding the criminalization of *nikah siri* can be categorized into two major tendencies. The first group supports the imposition of criminal sanctions as an instrument for protecting the rights of women and children and for promoting legal order in marriage, whereas the second group rejects or seeks to limit criminal sanctions, particularly imprisonment, on the grounds of the religious validity of the marriage and the potential harms imposed on the family. Both groups acknowledge the importance of marriage registration in ensuring legal certainty and legal protection, but they differ in their assessment of the proportionality of sanctions and the permissible limits of state intervention.

From the perspective of *maṣlaḥah mursalah*, the view favoring restrictions on criminal sanctions and prioritizing administrative mechanisms appears more consistent with the principle of public benefit, as imprisonment may generate significant socioeconomic harms for families. Therefore, within the context of the informants examined in this study, the protection of women and children is considered more proportionate when criminal law is applied restrictively to conduct that causes demonstrable harm, while simultaneously strengthening administrative compliance, premarital legal education, and accessible mechanisms for *itsbat nikah*.

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