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## Cross-Border *Nikah Sirri* between Malaysia and Indonesia: Contemporary Legal and Social Dynamics in Borneo

**Abstract:** This article examines the phenomenon of cross-border *nikah sirri* (unregistered marriage) between Malaysia and Indonesia in the Borneo region, particularly involving Malaysian Sarawakians and migrant labourers. The study aims to analyse the contemporary legal frameworks governing *nikah sirri* in both countries, explore the socio-cultural and structural factors that motivate cross-border marriage practices, and assess their implications for the protection of women's and children's rights. Employing a socio-legal approach, this research integrates primary data derived from in-depth interviews and field observations with secondary sources from relevant legal and academic literature. The findings reveal that undocumented migrant workers in Sarawak frequently cross into Indonesian border areas to conduct *nikah sirri*, facilitated by transnational kinship networks, including Dayak communities who provide social and ritual support. From a legal perspective, Malaysia strictly prohibits unregistered marriages and imposes administrative sanctions for them. In contrast, Indonesian law adopts a more accommodating stance by allowing post-facto legalisation through *itsbat nikah* (marriage confirmation) in the Religious Courts, alongside limited legal recognition for children. However, such cross-border practices are often treated in Malaysia as legal evasion and a violation of public order, rendering the marriages invalid and leaving women and children without formal legal protection, including issues related to lineage and civil status. From the perspective of *maqāṣid al-sharī'ah*, these practices tend to generate greater harm (*maḍarat*) than benefit (*maṣlahah*), particularly in failing to safeguard lineage (*ḥifẓ al-nasl*) and legal certainty. This study contributes to the discourse on transnational Islamic family law by offering a comparative and empirically grounded analysis of regulatory gaps and their social consequences. It further argues for an integrative approach to legal reform to strengthen cross-border protection mechanisms and ensure substantive justice for vulnerable groups.

**Keywords:** Contemporary; Cross-border; Law; *Nikah Sirri*; Social Dynamic.

## INTRODUCTION

In the contemporary era, migration flows have become increasingly transnational. In Malaysia, for example, a substantial number of foreign workers are employed, both legally and in irregular or undocumented circumstances. Approximately 43,445 migrant labourers working in Sarawak, Malaysia, lack official documentation.<sup>1</sup> In the digital era, documents can be easily transferred online from their hometown, but the lack of documents means they do not have passports from their countries of origin and arrive in Malaysia as illegal labourers. Therefore, the single men or women who want to marry travel to the Indonesian border in Borneo to perform *nikah sirri* (unregistered marriage). They cannot legally marry under Malaysian law because they lack the required documentation. Meanwhile, *nikah sirri* are illegal<sup>2</sup> and prohibited under Malaysian law and are subject to fines.<sup>3</sup> They perform *nikah sirri* in Indonesia<sup>4</sup> because it is easy to perform there.<sup>5</sup> The couples can be either native Sarawakians or migrant labourers already living in Sarawak.

Some problems appear in the cases. The cross-border *nikah sirri* performed is unacceptable in Malaysia. Thus, Malaysian Sarawakians who have entered into a *nikah sirri* in Indonesia will still not be recognised by the Malaysian government as legally valid upon their return to Malaysia. If they have children from these *nikah sirris*, they are denied legal protection and are considered illegitimate, with no father's name. Research on *nikah sirri*, both normative and sociological, has been conducted in Indonesia. One such study is "Nikah Siri in the Perspective of the Marriage Law".<sup>6</sup> Normative studies on *nikah sirri*

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<sup>1</sup> Linda Alfarero Lumayag, 'Foreign Labour Migration in Sarawak, East Malaysia', *International Migration*, 2020, 1, <https://doi.org/10.1111/imig.12707>.

<sup>2</sup> Siti Aishah Borhanuddin, Mahamatayuding Samah, and Mohd Norhusairi Mat Hussin, 'Kesalahan Berkahwin Tanpa Kebenaran Bagi Orang Islam Di Malaysia: Tinjauan Berdasarkan Perspektif Syarak Dan Undang-Undang', *Jurnal Pengajian Islam* 16, no. 2 (2023): 1.

<sup>3</sup> Enakmen Wilayah Persekutuan, 'Akta Undang-Undang Keluarga Islam (Wilayah-wilayahPersekutuan) 1984 (Akta 303)', Abdul, Low & Partners, 2019, 1, <https://www.peguamsyarie.com.my/akta-undang-undang-keluarga-islam-wilayah-wilayahpersekutuan-1984-akta-303/>.

<sup>4</sup> Faizah Bafadhal, 'Nikah Siri Dalam Perspektif Undang-Undang Perkawinan', *Jurnal Ilmu Hukum*, n.d., 20-31.

<sup>5</sup> Addin Daniar Syamdan and Djumadi Purwoatmodjo, 'Aspek Hukum Perkawinan Siri dan Akibat Hukumnya', *NOTARIUS* 12, no. 1 (2019): 452-466.

<sup>6</sup> Bafadhal, 'Nikah Siri dalam Perspektif Undang-Undang Perkawinan'.

include those conducted by Syamdan and Purwoatmodjo (2019)<sup>7</sup>, Bafadhal<sup>8</sup>, Zakaria, and Saad (2021)<sup>9</sup>, Hadi (2018)<sup>10</sup>, Muhammad Ilham (2017)<sup>11</sup>, Firdaus and Maskur (2024)<sup>12</sup>, Dahlia (2016)<sup>13</sup>, who wrote about *nikah sirri* under Islamic Law and Indonesian positive Law. Munawar (2020)<sup>14</sup> also wrote an article about *nikah sirris*, which are linked to fatwas issued in Indonesia, Saudi Arabia, and several other countries. Fauzan (2017)<sup>15</sup> stated in his article that there is an aspect of the validity of *nikah sirri* within Islamic Law. Normatively, these articles do not address the legality of *nikah sirri* practised by Malaysians in Indonesia. Zainuddin and Zaki Ulya (2021) also conducted a study on the normative legal study of *Nikah Sirri* in Aceh, Indonesia. They showed how the regional Law of Aceh attempts to provide legal recognition for *Nikah Sirri*.<sup>16</sup>

Sociological research on *nikah sirri* includes the study by Mutaqin and Sopyan (2024)<sup>17</sup>, which examined *nikah sirris* in a community in West Java. The existence of *nikah sirris* is often reinforced by the community's desire to marry in accordance with religious law, ultimately leading to future registration through marriage confirmation (*istbat nikah*),

<sup>7</sup> Syamdan and Purwoatmodjo, 'Aspek Hukum Perkawinan Siri Dan Akibat Hukumnya'.

<sup>8</sup> Bafadhal, 'Nikah Siri Dalam Perspektif Undang-Undang Perkawinan'.

<sup>9</sup> Endang Zakaria and Muhammad Saad, 'Nikah Sirri Menurut Hukum Islam Dan Hukum Positif', *Kordinat* 20, no. 2 (2021).

<sup>10</sup> M. Faiz Kurnia Hadi, 'Konsepsi Hukum Nikah Siri di Indonesia: Upaya Sinkronisasi Antara Living Laws Dengan Positive Laws', *Indonesian Journal of Islamic Law* 1, no. 1 (2018): 18-40.

<sup>11</sup> Muhammad Ilham, 'Nikah Sirri Perspektif Hukum Positif dan Hukum Islam', *Sangaji Jurnal Pemikiran Syariah Dan Hukum* 1, no. 2 (2017): 179-189.

<sup>12</sup> Muhammad Rizal Firdaus and Ali Maskur, 'Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Pencatatan Perkawinan Menurut Ketentuan Yang Berlaku Di Indonesia (Hukum Positif)', *Istidlal: Jurnal Studi Hukum Islam* 11, no. 1 (2024): 52-72.

<sup>13</sup> Dahlia Haliah Ma'u, 'Nikah Sirri Dan Perlindungan Hak-Hak Wanita Dan Anak (Analisis Dan Solusi Dalam Bingkai Syari'ah)', *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 1, no. 1 (2016): 35-50.

<sup>14</sup> Faishal Agil Al Munawar, 'Telaah Fatwa Tentang Nikah Siri', *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 4, no. 1 (2020): 55-63, <https://doi.org/10.35316/istidlal.v4i1.210>.

<sup>15</sup> Fauzan Muhammadi, 'Legalitas Nikah Sirri Ditinjau Dari Kaidah Fikih', *De Jure: Jurnal Hukum Dan Syari'ah* 9, no. 1 (2017): 1-12.

<sup>16</sup> 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): 1-16, <https://doi.org/10.18592/sjhp.v1i1.3276>.

<sup>17</sup> Zezen Zaenal Mutaqin and Yayan Sopyan, 'Forced Marriage and Sex Trafficking under the Guise of Nikah Siri in Indonesia', *STUDIA ISLAMIKA Indonesian Journal for Islamic Studies* 31, no. 2 (2024): 221-249, <https://doi.org/10.36712/sdi.v31i2.39198>.

as demonstrated in the work of Mardiana (2024)<sup>18</sup> and Musfira (2021).<sup>19</sup> *Nikah sirri*, which remains valid according to religious sharia, still has sociological consequences, namely regarding the status of children from *nikah sirri*, as Rahmawati (2023) writes.<sup>20</sup> The article on the legal status and legal impact of *nikah sirri*, and the causes of its emergence, was written by Aini and Rofi'ah (2023). Among the sociological studies on *nikah sirri*, none has discussed cross-border *nikah sirri*. Hafidzi et al. (2022) also conducted a sociological-legal study of *Nikah Sirri* and its celebration in the Banjar community in South Borneo, Indonesia.<sup>21</sup>

Articles discussing legal marriages in Indonesia, for example, include Ahmad (2023)<sup>22</sup>, who states that marriage registration must be done with a government agency that stipulates the age requirements for men and women to marry. Baharuddin (2023)<sup>23</sup> also discusses the role of the Marriage Law in the existence of customary marriages not registered with state institutions. Meanwhile, articles related to marriage law in Malaysia include Supaat et al. (2024),<sup>24</sup> which discusses the role of the Islamic Family Law in Malaysia. Saleh

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<sup>18</sup> Juli Mardiana, Ibnu Radwan Siddik Turnip, and Fikri Haekal, 'Polygamy and Nikah Sirri Culture of Agen Thrifting Families in Teluk Nibung: An Islamic Family Law Perspective', *JURISPRUDENSI Jurnal Ilmu Syari'ah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (2024): 321-335, <https://doi.org/10.32505/jurisprudensi.v16i2.8981>.

<sup>19</sup> Musfira, Jamal Jamil, and Istiqamah, 'Analisis Pelaksanaan Itsbat Nikah Terhadap Pernikahan Sirri di Pengadilan Agama Bantaeng', *Iqtishaduna: Jurnal Ilmiah Mahasiswa Jurusan Hukum Ekonomi Syariah* 2, no. 2 (2021): 61-69.

<sup>20</sup> Yeni Rahmawati, 'Tinjauan Yuridis Status Dan Akibat Hukum Anak Yang Dilahirkan Dari Hasil Perkawinan di Bawah Tangan' (Universitas Islam Sultan Agung, 2023).

<sup>21</sup> Anwar Hafidzi et al., 'Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan', *Al-Ahkam Jurnal Pemikiran Hukum Islam* 32, no. 2 (2022): 153-168, <https://doi.org/10.21580/ahkam.2022.32.2.12789>.

<sup>22</sup> Ridho Sa'dillah Ahmad, 'Kebijakan Hukum Nasional Atas Perubahan Batas Minimal Umur Dalam Melakukan Pernikahan Secara Sah Terhadap Perspektif Hukum Islam di Indonesia', *Jurnal Penelitian Hukum Indonesia - JPcHI* 4, no. 2 (2023): 50-64.

<sup>23</sup> Wahdaniah Baharuddin, 'Akibat Hukum Sipalaiang (Kawin Lari) Pada Suku Mandar Menurut Undang-Undang Perkawinan', *BAMETI Customary Law Review* 1, no. 1 (2023): 1-5, <https://doi.org/10.47268/bameti.v1i1.9806>.

<sup>24</sup> Dina Imam Supaat, Abidah Abdul Ghafar, and Nurfadhilah Che Amani, 'Kerentanan dan Perlindungan Undang-Undang: Meneroka Undang-Undang Keluarga Islam di Malaysia (Vulnerabilities and Legal Protection: Exploring Islamic Family Law in Malaysia)', *Kanun: Jurnal Undang-Undang Malaysia* 36, no. 2 (2024): 181-212, [https://doi.org/10.37052/kanun.36\(2\)no2](https://doi.org/10.37052/kanun.36(2)no2).

et al. (2025)<sup>25</sup> examine the legal procedures for marriage applications in the State of Selangor, Malaysia. Ngesan and Rahman (2021)<sup>26</sup> discuss the role of Malaysian marriage law. Comparative research on Indonesian and Malaysian marriage law includes Azizah et al. (2024),<sup>27</sup> Siddik (2017)<sup>28</sup>, and Syahputera and Ferdiyan (2022).<sup>29</sup> Among these studies, none have discussed *nikah sirri* conducted by Malaysian citizens in Indonesia. Also, comparative legal study is generally discussed in the legal pluralism approach rather than cross-border between two countries. It studies the relationship between Islamic Law, State Law, and Social or Traditional Law alike Jannah's article about the existence of Law in Kyai marriage phenomenon in Indramayu.<sup>30</sup>

Research on evasion of law includes the writings of Romli (2024)<sup>31</sup>, Hanum (2023),<sup>32</sup> and Chu (2023), who discuss evasion of law in terms of theory, practice, and ways to avoid it. Few studies on law evasion, so this research on the *nikah sirri* of Malaysian people in Indonesia is an important contribution. This cross-border *nikah sirri* research is relatively rare, and therefore offers a novel contribution to the fields of family law, civil Law, Islamic civil Law, and International Private Law. This paper examines how

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<sup>25</sup> Nik Salida Suhaila Nik Saleh et al., 'Legal Procedure and Formalities of Marriage Application in the State of Selangor: A Way Forward', *An-Nisa: Journal of Islamic Family Law* 2, no. 1 (2025): 27–35, <https://doi.org/10.63142/an-nisa.v2i1.111>.

<sup>26</sup> Nor Hikmah Ngesana and Othman Ab. Rahman, 'The Effect of Early Marriage and Marital Stress Among University Students IN USIM', *Journal Al-'Abqari Journal of Islamic Social Sciences and Humanities* 25, no. 2 (2021): 61–88, <https://doi.org/10.33102/abqari.vol25no2.460>.

<sup>27</sup> Dwi Utami and Astika Nurul Hidayah, 'Perbandingan Kebijakan Hukum Terhadap Perkawinan Anak Dari Perspektif Hukum Perkawinan di Indonesia Dan Malaysia', *JURNAL HUKUM IN CONCRETO* 3, no. 1 (2024): 1–14.

<sup>28</sup> Ibnu Radwan Siddik, 'Studi Pebandingan Ketentuan Pencatatan Perkawinan Di Indonesia dan Malaysia', *Al-Muqaranah Jurnal Perbandingan Hukum Dan Mazhab* 1, no. 1 (2017): 118–36.

<sup>29</sup> Akhmad Fadly Syahputera and Ferdiyan, 'Konsep Wali Hakim Dalam Pembaruan Hukum Keluarga Islam di Malaysia Dan Indonesia', *Asy-Syari'ah* 24, no. 2 (2022): 179–192, <https://doi.org/10.15575/as.v24i2.17735>.

<sup>30</sup> Lulu Ul Jannah, Inna Fauziatal Ngazizah, and Abdurrohman Kasdi, 'Social Legitimacy versus State Legal Certainty: The Dialectics of Kiai Marriages as Living Law in Dusun Pondok Asem, Kertasemaya, Indramayu', *Al-Mazaahib Jurnal Perbandingan Hukum* 13, no. 2 (2025): 173–198, <https://doi.org/10.14421/al-mazaahib.v13i2.4392>.

<sup>31</sup> Muhammad Romli, 'Smuggling of Interfaith Marriage Law Under the International Civil Law Framework', *ISAR Journal of Arts, Humanities and Social Sciences* 2, no. 11 (2024): 127–133.

<sup>32</sup> Nur Latifah Hanum, Siah Khosyah, and Shania Anwar, 'Penyelundupan Hukum Perkawinan di Bawah Umur Melalui Permohonan Itsbat Nikah di Pengadilan Agama', *Asy-Syari'ah* 25, no. 1 (2023): 51–64, <https://doi.org/10.15575/as.v25i1.21142>.

Indonesian and Malaysian law on *nikah sirri* operates in the contemporary context; how and why Malaysian Sarawakians perform *nikah sirri* in the Indonesian border region of Borneo; and the implications of their cross-border *nikah sirri* for women and children.

This research aims to discuss cross-border *nikah sirri*, specifically those performed by Malaysians in Indonesia. This study is analysed in a comparative perspective due to differences between Indonesian and Malaysian law regarding *nikah sirri*. It is also analysed in International Private Law theories, the law that addresses civil relations across borders, as cited in Yulia,<sup>33</sup> specifically evasion of law and public order theories. The act of evasion of law involves running from one country to another to easily perform a desired legal act, because the act is prohibited or difficult to carry out officially under the law in the original country.<sup>34</sup> This act violates the public order of the country, that is, an act that, if carried out, would violate the philosophical and legal values of that country. An example of this is *nikah sirri* performed abroad because it is prohibited in the original country.<sup>35</sup> The methodology of Islamic law theory, such as *maqashid asy-syari'ah*,<sup>36</sup> may also be applied in the analysis, especially in the context of *nikah sirri* and its implications.

## METHOD

This study employs a socio-legal research design to examine the interaction between legal norms and social practices in the context of cross-border *nikah sirri* between Malaysia and Indonesia. Adopting a qualitative approach, the research focuses on the lived experiences and legal strategies of individuals involved in unregistered marriages across national boundaries. The fieldwork was conducted in Entikong, West Borneo, an Indonesian border area adjacent to Sarawak, Malaysia, which serves as a key site for cross-border mobility and marriage practices. Data were collected through in-depth interviews,

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<sup>33</sup> Yulia, *Hukum Perdata Internasional*, 1st edn (Lhokseumawe: Unimal Press, 2016).

<sup>34</sup> Dian Khoreanita Pratiwi, 'Tinjauan Yuridis Penyelundupan Hukum Perkawinan Beda Agama Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan', *Jurnal Hukum Media Bhakti* 2, no. 1 (2018): 1–11, <https://doi.org/10.32501/jhmb.v2i1.15>.

<sup>35</sup> Yulia, *Hukum Perdata Internasional*.

<sup>36</sup> Paryadi, 'Maqashid Syariah : Definisi Dan Pendapat Para Ulama', *Cross-Border* 4, no. 2 (2021): 201–16.

participant observation, and document analysis. The primary data were obtained from informants with direct experience of *nikah sirri*, particularly family members of Sarawak residents who had conducted such marriages in Indonesian territory. These interviews were designed to capture motivations, procedures, and post-marital legal challenges. Documentary sources include Indonesian and Malaysian marriage laws, court decisions, and administrative records relevant to marriage registration and validation.

The data analysis was conducted using a qualitative analytical framework<sup>37</sup> that involved data reduction, categorisation, and interpretation to identify recurring patterns and themes related to legal pluralism, migration, and family law practices. Secondary data—comprising books, journal articles, and legal commentaries on *nikah sirri*, comparative family law, and private international law—were used to contextualise and support the analysis of primary findings. To ensure data validity and reliability, this study employs triangulation by cross-verifying information from multiple informants, observations, and documentary evidence. This method enables the researcher to assess the consistency and credibility of the data, thereby strengthening the study's analytical rigour. Through this integrative methodological approach, the research provides a comprehensive understanding of how cross-border *nikah sirri* is practised, rationalised, and negotiated within differing legal systems.

## RESULTS AND DISCUSSION

### *Nikah Sirri* in Indonesian and Malaysian Legal Systems

The term “*nikah sirri*” comes from the Arabic word, meaning a secret marriage, one conducted in secret. Terminologically, *nikah sirri* can refer to a marriage that is not officially registered by the authorities.<sup>38</sup> Therefore, *nikah sirri* encompasses all types of marriages not registered under applicable national law. *Nikah Sirri* is usually considered an unregistered marriage, often contrasted with legal marriage. A legal marriage is one conducted in accordance with the laws of a country. In Indonesian Law, legal marriage is regulated by

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<sup>37</sup> Matthew B. Miles and A. Michael Huberman, *Analisis Data Kualitatif : Buku Sumber Tentang Metode Metode Baru* (Jakarta: Universitas Indonesia Press, 2014).

<sup>38</sup> Syamdan and Purwoatmodjo, ‘Aspek Hukum Perkawinan Siri dan Akibat Hukumnya’.

Law Number 1 of 1974 concerning Marriage, while in Malaysian law, legal marriage is regulated by the Islamic Family Law (Federal Territories) Act 1984 (Act 303),<sup>39</sup> and the Malaysian Law Act 164 of 2015 concerning the Amendment of the Law (Marriage and Divorce) Act 1976.<sup>40</sup>

In Indonesian Law, Article 2 of Law Number 1 of 1974 concerning Marriage states that<sup>41</sup>

- (1) A marriage is valid if it is conducted according to the laws of each religion and belief.
- (2) Every marriage is registered according to applicable laws and regulations.

Marriages in Indonesia must be registered. However, if the marriage is not registered at the time of its execution, *itsbat nikah*<sup>42</sup> can be conducted at a later date, as stipulated in Articles 15 and 16 of the Compilation of Islamic Law, which states:

“Religious Courts have the authority to adjudicate on applications for *itsbat nikah* (Article 15); and *itsbat nikah* can be granted if certain conditions are met, such as strong evidence of the marriage contract and the absence of any impediments to marriage according to Islam (Article 16).”

Based on the articles, a valid marriage in Indonesia is one conducted in accordance with the laws of each religion and registered in accordance with Indonesian laws and regulations. However, *nikah sirri* can be registered with a religious court for *itsbath nikah*. In other words, a *nikah sirri* that has not been registered under Indonesian law can later be legalised through a decree or *itsbath nikah* in a religious court. The implications of unregistered marriage (*nikah sirri*) under Indonesian marriage law mean that the marriage is considered invalid and any children born are illegitimate. However, if a marriage confirmation by *itsbat nikah* is later filed, the marriage becomes valid, and the child becomes legitimate. In Indonesian Law, children born outside of a valid marriage can still receive

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<sup>39</sup> Persekutuan, ‘Akta Undang-Undang Keluarga Islam (Wilayah-wilayahPersekutuan) 1984 (Akta 303)’.

<sup>40</sup> Undang-Undang Malaysia Akta 164 Akta Membaharui Undang- Undang (Perkahwinan dan Perceraian) 1976 Tahun 2015 (2015).

<sup>41</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, 1 (1974).

<sup>42</sup> instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam, 1 (1991).

legal protection, namely, obtaining a civil relationship with their biological father if it can be proven through technology. This is based on Constitutional Court Decision No.46/PUU-VIII/2010.

Malaysian marriage law is regulated by the Marriage Law Reform and Divorce Act 1976, the Islamic Family Law (Federal Territories) Act 1984 (Act 303)<sup>43</sup>, and the Malaysian Law Act 164 of 2015 concerning the Reform of the Law (Marriage and Divorce) Act 1976.<sup>44</sup> Every marriage conducted in Malaysia must be registered with the National Registration Department or an authorised registration authority. Requirements for marriage registration include: both parties must be at least 18 years of age (or 16 years of age with court permission); one party must be a Malaysian citizen or hold a valid residence permit in Malaysia; The couple must provide the necessary documents, such as passports, identification cards, and birth certificates. Muslim marriages are registered with the Islamic Religious Affairs Office (JAIN) under the following conditions: both partners are Muslim, a guardian is present for the female partner, the necessary documents are provided, and attendance at the marriage ceremony is ensured.

Under Malaysian law, a marriage must be registered; otherwise, it is invalid. This is as stipulated in Section 34. Legal effect of registration:<sup>45</sup>

Nothing in this act or the rules made under this act shall be construed as rendering a marriage recognised or not recognised merely by reason of its having been registered or not registered, which, on the contrary, is recognised or not recognised.

Marriages not registered under Malaysian law are subject to fines and penalties under Section 35. Failure to appear before the Registrar within the prescribed time:

If a person required by section 31 to appear before a Registrar fails to do so within the time specified, he shall be guilty of an offence and shall be liable to a fine not exceeding

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<sup>43</sup> Persekutuan, 'Akta Undang-Undang Keluarga Islam (Wilayah-wilayahPersekutuan) 1984 (Akta 303)'.

<sup>44</sup> Undang-Undang Malaysia Akta 164 AKTA Membaharui Undang- Undang (Perkahwinan dan Perceraian) 1976 Tahun 2015.

<sup>45</sup> Persekutuan, 'Akta Undang-Undang Keluarga Islam (Wilayah-wilayahPersekutuan) 1984 (Akta 303)'.

one thousand ringgit or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Section 36. Contravention of section 32.

A person who contravenes section 32 shall be guilty of an offence and shall be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both such fine and imprisonment; and for a second or subsequent offence shall be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Based on the above articles, it can be stated that under Malaysian Law, a marriage must be registered; failure to do so is considered invalid and may result in fines and/or criminal penalties. So an illegal *nikah sirri* also has legal consequences for the children, who will be illegitimate, only having a relationship with their mother and not having their father's name (so their last name is bin/binti Abdullah). Based on the explanation above, it can be seen that the comparison between Indonesian Law and Malaysian Law regarding *nikah sirri* is as follows:

Table 1: Comparison of Nikah Sirri in Indonesia and Malaysia

No	Similarities	Differences
1	A valid marriage is a marriage that is registered under state law	<i>Nikah Sirri</i> in Indonesia is not expressly prohibited and is not subject to criminal penalties, whereas in Malaysia, it is prohibited and subject to sanctions.
2	<i>Nikah Sirri</i> is an unregistered marriage, so it is not valid under state law.	In Indonesia, a <i>nikah sirri</i> , or a marriage not registered under state law, can later be submitted for its bath <i>nikah</i> in court to be made valid, whereas in Malaysia, there is no <i>itsbat</i> for <i>nikah sirri</i> .
3	Children born from unregistered marriages (which are not legally registered under state law) become illegitimate children.	In Indonesia, after <i>itsbat nikah</i> , the child's status becomes a legitimate child; also, children born out of a valid marriage can have a civil relationship with their biological father, proven through technology (based on the Constitutional Court's decision), while in Malaysia, it is just invalid.

Sources: researchers' documents

Based on the comparative explanation above, it can be seen that there are similarities and differences between Indonesian and Malaysian Law regarding *nikah sirri*. Indonesia and Malaysia are predominantly Muslim countries, so Islamic marriages are also recognised if the state officially registers them. However, Malaysia is a former British colony, and also employs a common law model,<sup>46</sup> such as criminal sanctions in civil matters,<sup>47</sup> including marriage. *Nikah sirri* is subject to criminal penalties, such as fines or imprisonment, while in Indonesia, it is not.

Malaysia's territory is not as large as Indonesia's, so the people can be easily organised in an orderly administrative form, such as marriage registration and the prohibition of *nikah sirri*. While in Indonesia, with its vast and pluralistic territories, the law still applies flexibly to *nikah sirri*. This means that *nikah sirri* are not expressly prohibited and are not subject to sanctions. This may be because some communities in remote areas still practice customary marriages that are not registered under state law, such as *nikah sirri* (marriages according to Islamic custom).<sup>48</sup> Therefore, the law is more accommodating to protect the rights and interests of these citizens, namely by regulating the *itsbat nikah* (marriage confirmation) process for those whose marriages have not been registered.<sup>49</sup> Thus, the negative consequences of *nikah sirri* can be minimised. After the *itsbat nikah* process, the marriage becomes valid, and the children become legitimate, thus receiving legal protection.

When analysed objectively in accordance with the principles of *maqasid asy-syari'ah*, or what is known as wisdom and *illat*, using benchmarks and legal procedures to achieve *maslahah* (i.e., rejecting evil to achieve good and rejecting harm to achieve benefit), then a

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<sup>46</sup> Sri Wahyuni, 'Legal Transplant: Influence of The Western Legal System in The Muslim Countries', *Justicia Islamica* 19, no. 1 (2022): 21-37, <https://doi.org/10.21154/justicia.v19i1.2756>.

<sup>47</sup> Saimi B. I. N. Bujang and Noranizah Yusuf, 'Impak Penjajahan Barat Terhadap Sistem Perundangan Dan Kehakiman Islam di Sarawak: The Impact of Western Colonization on the Islamic Legal and Judicial System in Sarawak', *Manu Jurnal Pusat Penataran Ilmu Dan Bahasa* 35, No. 2 (2024): 99-124.

<sup>48</sup> Akhmad Farid Mawardi Sufyan, 'Analisis Terhadap Tingginya Nikah Siri Di Kabupaten Pamekasan', *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (2019): 161-95, <https://doi.org/10.19105/al-manhaj.v1i2.3234>.

<sup>49</sup> Nopitasari, Kairuddin Karim, and Muhammad Akbar Fhad Syahril, 'Isbat Nikah Dalam Undang-Undang Perkawinan', *Julia: Jurnal Litigasi Amsir* 9, no. 2 (2022): 142-50.

legally registered marriage constitutes a benefit. In the modern era, written documents serve as the strongest and most authentic evidence. Therefore, an unregistered *nikah sirri* carries greater harm, such as the lack of legal protection for both the couple and their children.

*Maqashid asy-syari'ah* contains legal wisdom,<sup>50</sup> legal objectives, legal secrets, legal background, and legal meaning. According to Imam A. Gazali in Paryadi, *maqashid asy-syari'ah* means the law to protect religion, the soul, the intellect, descendants, and property. In the context of this research, the principle of *maqashid asy-syari'ah* is the legal principle that protects descendants.<sup>51</sup> Therefore, *nikah sirri* is less likely to meet this requirement, as its descendants lack legal protection, especially under Malaysian law. Meanwhile, Indonesian law, which stipulates *itsbat nikah* for *nikah sirri*, can better protect the descendants, in accordance with the *maqasyid asy-syari'ah*. Once *itsbat nikah* is performed, the marriage is valid, and the children become legitimate.

### ***Nikah Sirri* of Sarawak Malaysian People in Borneo Indonesia**

The large island of Borneo is divided among three countries: Indonesia, Brunei Darussalam, and Malaysia. Sarawak, a Malaysian territory located on the island of Borneo, has its capital in Kucing. Other important cities include Miri, Sibul, and Bintulu. The population of Sarawak, Malaysia, comprises various ethnicities, including indigenous groups such as the Dayak Iban, Bidayuh, Melanau, and Orang Ulu, as well as non-indigenous groups such as the Chinese, Indians, and Eurasians. In 2020, the population of Sarawak was recorded at approximately 2.453 million.

Malaysia has a large population of migrant labourers, both official and unofficial, as is the case in Sarawak. Approximately 43,445 migrant labourers work in Sarawak without citizenship or official documents. Those who come to Sarawak come from various countries in the region, including Indonesia, Brunei, the Philippines, and others. They aim to find

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<sup>50</sup> Mohamed Abouyounes, 'The Legal Underpinnings of Jordanian and Iraqi Law's Administrative Penalty Systems', *Al-Biruni Journal of Humanities and Social Sciences*, 2 September 2025, 1, <https://doi.org/10.64440/BIRUNI/BIR003>.

<sup>51</sup> Paryadi, 'Maqashid Syariah: Definisi Dan Pendapat Para Ulama'.

work and a better livelihood due to limited employment opportunities in their home countries.<sup>52</sup>

Many migrant labourers marry native Sarawakians and can integrate and adapt socially there. Some migrant workers in Sarawak face difficulties in obtaining documentation. This is because they live there without legal residency documents, preventing them from legally marrying in Malaysia under Malaysian law. Marriage registration requires several documents, such as an identity card, passport, and birth certificate. Therefore, migrant workers without these documents cannot register their marriage in Sarawak, Malaysia.

Migrant workers who wish to marry native Sarawakians but struggle to obtain these official residency documents often travel to Indonesia on Entikong, the Borneo border, to perform *nikin sirri* or customary marriage. If they are Muslim, Sarawakians from the non-Muslim Dayak tribe will convert to Islam and perform a *nikah sirri* according to Islamic Law.<sup>53</sup> Non-Muslims can perform customary marriages in Borneo. These Sarawakians are close to Indonesians in West Borneo and share kinship with the Dayak (also known as Iban Dayak) tribe. Their Indonesian relatives can help them conduct the *nikah sirri*.<sup>54</sup>

The Sarawak people in Malaysia are performing *nikah sirri* in Indonesia because they cannot legally perform marriages under Malaysian law. This is stipulated in Section 35 of the Islamic Family Law (Federal Territories) Act 1984 (Act 303), which states, “Failure to appear before the Registrar within the stipulated period.” These people are hampered by the incomplete documentation required to register their marriages in Malaysia. Among them are migrant labourers from outside Malaysia who work in Sarawak, Malaysia. Couples can be migrant labourers and Malaysian citizens. They choose to perform *nikah sirri* in

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<sup>52</sup> Imam Santosa et al., ‘Empowering Undocumented Indonesian Migrant Workers in Sarawak through Social Capital Enhancement’, *Pakistan Journal of Life and Social Sciences* 22, no. 2 (2024): 1, <https://doi.org/10.57239/PJLSS-2024-22.2.00905>.

<sup>53</sup> Imam Syafi’i et al., ‘Harmonization of Islamic Law and Local Wisdom: A Methodological Reconstruction of Ijtihad in Family Law Based on Yusuf al-Qaradawi’s *Istinbāt* Approach’, *Nusantara: Journal of Law Studies* 5, no. 1 (January 2026): 25–43, <https://doi.org/10.5281/zenodo.18359276>.

<sup>54</sup> Interview result from the Serawak Malaysian informan, 18-20 juli 2025.

Entikong, West Borneo, Indonesia, because of its proximity and kinship (especially with the Dayak Iban), so relatives in Indonesia assist them.<sup>55</sup>

They also choose to perform *nikah sirri* in Indonesia because Indonesian Law still accommodates *nikah sirri* (*nikah sirri* in Indonesia can later be validated through *itsbath nikah*).<sup>56</sup> Muslims can perform a *nikah sirri* in accordance with Islamic Law.<sup>57</sup> Non-Muslims can perform customary marriages. In indigenous and customary communities in Indonesia, a marriage can be performed unregistered, or underhand, and is not officially registered under Indonesian Law. Consequently, *nikah sirri* are still common in Indonesian society.<sup>58</sup> Meanwhile, Malaysian law completely prohibits *nikah sirri*. Those who perform *nikah sirri* in Malaysia are subject to fines. Therefore, the people of Sarawak, Malaysia, or migrant labourers there can easily perform a *nikah sirri* by crossing into the nearest Indonesian territory in Borneo.

### **The Implication of Cross-border *Nikah Sirri***

The cross-border *nikah sirris* constitute a violation of law in the context of International Private Law. According to Seto<sup>59</sup> and Purwadi<sup>60</sup>, evasion of the law violates the public order of the country.<sup>61</sup> So it cannot be accepted and recognised as legal in their country of origin. Malaysian citizens who want to carry out *nikah sirri* deliberately flee to Indonesia because their country's law does not allow it, and they seek a country that can accommodate *nikah sirri* easily. Likewise, the *nikah sirri* abroad violates Malaysia's public order, so it cannot be accepted or recognised as legal in Malaysia. A legal act that is invalid

<sup>55</sup> Interview result from the Serawak Malaysian informants, 18-20 juli 2025.

<sup>56</sup> Siti Zumrotun et al., 'Islamic Family Law in Diaspora: Negotiating Gender and Marital Authority among Indonesian Muslim Immigrants in Sydney', *Journal of Islamic Law (JIL)* (Pontianak) 7, no. 1 (221 193 AD), <https://doi.org/10.24260/jil.v7i1.5687>.

<sup>57</sup> Acendra Agusta, Mohammad Ali Sajjad, and Miftahudin Azmi, 'Legal Issues of Ganti Tikar Marriage in Bugis Wajo Custom in East Tanjung Jabung Regency', *Trunojoyo Law Review* (Madura) 6, no. 1 (February 2024): 142-158, <https://doi.org/10.21107/tlr.v6i1.23947>.

<sup>58</sup> Yeni Tri Nur Rahmawati, 'Tradisi Pernikahan Sirri: Sebuah Potret (Budaya) Islam Nusantara', *Islamic Akademika*, 2016, 76-92.

<sup>59</sup> Bayu Seto, *Dasar-Dasar Hukum Perdata Internasional Buku Kesatu*, Ketiga (Bandung: PT. Citra Aditya Bakti, 2001).

<sup>60</sup> Ari Purwadi, *Dasar-Dasar Hukum Perdata Internasional* (Surabaya: Pusat Pengkajian Hukum dan Pembangunan (PPHP) Fakultas Hukum Universitas Wijaya Kusuma Surabaya, 2016).

<sup>61</sup> Seto, *Dasar-Dasar Hukum Perdata Internasional Buku Kesatu*.

in one country, if performed abroad, remains unacceptable in the country of origin and lacks legal protection. *Nikah sirri* between the people of Sarawak, Malaysia, performed in Borneo, Indonesia, is also not recognised as valid in their country of origin. Therefore, upon returning to Sarawak, they must still obtain a formal marriage under Malaysian law.

If they have children from the cross-border *nikah sirri*, they lack the legal status of a marriage.<sup>62</sup> The child does not receive the father's name, and they do not receive a birth certificate bearing the father's name. This was recounted by a Sarawakian who served as an informant in this research. That is why my name is "Fulanah binti Abdulah, not binti my father's name. Once I was older, my parents officially married in Malaysia, with help in obtaining citizenship documents there.<sup>63</sup> This is a story from the informant. *Nikah sirri* cannot be legalised in Malaysia.<sup>64</sup> Only when the couple has the necessary documents can a valid marriage under Malaysian law be performed. According to the informants' spouses' relatives, the natives of Sarawak help them obtain Malaysian citizenship and the necessary documents, and then complete the required paperwork to register their marriage under Malaysian law.<sup>65</sup>

According to the informant—Fulanah Binti Abdullah—her parents married officially after she was older, so her younger brother, born later, only received her father's surname.<sup>66</sup> When her parents were officially married in Malaysia, her younger brother could obtain the status of a registered legitimate child and receive full parental rights, including the right to use the father's surname.<sup>67</sup> Children born in a cross-border *nikah sirri* do not receive legitimate status and are denied legal protection in the origin country, Malaysia. This is the

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<sup>62</sup> Muhammad Jazil Rifqi et al., 'Children's Legal Identity at Stake: Reconstructing Maqasid al-Syari'ah through Marriage Isbat Applications by the Second Generation in Pasuruan', *El-Mashlahah* 15, no. 1 (June 2025): 125-48, <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.

<sup>63</sup> Interview result from the Serawak Malaysian informants, 18-20 juli 2025.

<sup>64</sup> Siti Aishah binti Hazali, 'Bayan Linnas Siri Ke-280: Kedudukan Nikah Sirri (Secara Rahsia) Menurut Kacamata Perundangan Malaysia', Pejabat Mufti Wilayah Persekutuan, 2023, 1, <https://muftiwp.gov.my/ms/artikel/bayan-linnas/5777-bayan-linnas-siri-ke-280-kedudukan-nikah-sirri-secara-rahsia-menurut-kacamata-perundangan-malaysia>.

<sup>65</sup> Interview result from the Serawak Malaysian informants, 18-20 juli 2025.

<sup>66</sup> Hasil wawancara dengan informan—Fulanah Binti Abdullah—warga Serawak Malaysia.

<sup>67</sup> Meerah Deiwi Raja Gopal, 'Does Illegitimacy Status of Children Matter? A Review on Malaysian Perspectives', *International Journal of Applied Psychology* 5, no. 4 (2015): 109-114, <https://doi.org/10.5923/j.ijap.20150504.05>.

negative impact of unregistered marriages. Even if they are performed abroad, where they are permitted. The child's father's name is not listed on the official birth certificate, as, by law, the child has only a relationship with the mother. The child may also not officially receive the father's civil rights, such as the rights of alimentation and inheritance. If the husband is irresponsible, the woman, as the wife, lacks marriage documents and cannot sue. She also becomes a single parent, raising the child alone after her husband's death. Based on the negative implications of cross-border *nikah sirri*, according to *maqashid asy'syariah* theory, it makes more *madharat* than *mashlahat*. It may also not protect children, such as the idea of law as five protections (religion, soul, reason, descendants or children, and property). In the concept of *hifz al-nasl*, the child is uncertain of lineage and may not get the legal identity; in the concept of *hifz al-māl*, the child loses inheritance rights; in the concept of *hifz al-nafs*, that is a social vulnerability of mother and child, and in the concept of *hifz al-'ird/karāmah*, the social stigma is a burden for the mother and children from *nikah sirri*.

Based on the above explanation, Malaysian law must provide legal protection to children born from *nikah sirri*, as stipulated in Indonesian Constitutional Court Decision No. 46/PUU-VIII/2010, a judicial review of Indonesian Law. This will allow children born from *nikah sirri* to have civil rights with their biological father. Likewise, the term “*sirri nikah*” is not solely a terminology of Islamic Law; it can also encompass marriages not registered under legitimate state law, including customary marriages.

## CONCLUSION

This study concludes that the practice of cross-border *nikah sirri* between Malaysia and Indonesia in the Borneo region represents a strategic response by migrant workers—particularly those lacking legal citizenship documents—to overcome structural barriers to marriage registration under Malaysian law. This practice is facilitated by transnational kinship networks, especially among Dayak communities with familial ties across the Indonesia-Malaysia border, who can serve as witnesses in the marriage process. From a legal perspective, a significant disparity exists between the two countries: Malaysia strictly prohibits *nikah sirri* and imposes sanctions, whereas Indonesia adopts a more

accommodative approach, allowing post facto legalisation through *itsbat nikah* and providing limited legal recognition for children. Consequently, such cross-border marriages are not recognised in Malaysia, as they are considered a form of legal evasion and a violation of public order. This results in serious legal consequences, particularly the lack of protection for women and children, including issues related to civil status and lineage. From the perspective of *maqāṣid al-sharī'ah*, this practice generates more harm (*maḍarat*) than benefit (*maṣlahah*), as it fails to ensure the protection of lineage (*hifz al-nasl*) and legal certainty.

This research underscores the importance of an interdisciplinary approach integrating Islamic family law, civil law, and private international law to address the complexities of cross-border marriage practices. Compared with overly restrictive and overly permissive legal frameworks, the findings indicate that both create gaps in legal protection. Therefore, there is a pressing need to reconstruct marriage laws in both countries in a more integrative and responsive manner, taking into account the realities of contemporary migration while prioritising justice, legal certainty, and the protection of vulnerable groups. Future research is recommended to explore further models of cross-border legal harmonisation, including potential bilateral cooperation in the recognition of marital status and the protection of children's rights, as well as broader empirical studies that centre on women's experiences as primary subjects affected by these practices.

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## AUTHOR CONTRIBUTIONS STATEMENT

Sri Wahyuni led the conceptualization of the study, designed the research framework, conducted data collection and analysis, and prepared the original draft of the manuscript. Ahmad Abdulkareem Sarairah and Mohamed W. Abouyounes contributed primarily to the critical reviewing and editing of the manuscript, including refining the theoretical framework, strengthening the comparative legal analysis, and improving the overall academic quality and coherence of the paper. All authors contributed to the interpretation of the findings and approved the final version of the manuscript.

## CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest regarding the publication of this study. The research was conducted independently, without any financial, institutional, or personal relationships that could be construed as influencing the objectivity, integrity, or interpretation of the findings presented in this article.

## AI USAGE STATEMENT

The authors declare that they used only artificial intelligence (AI) tools, including ChatGPT, for language refinement and clarity. All substantive aspects of the research were conducted independently, and the authors take full responsibility for the article's content and integrity.

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