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Layered Liability Model for Facilitators of Illegal Marriages in Indonesia

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Abstract

Unregistered and unlawful marriages in Indonesia present varying levels of fault and harm, yet the legal response remains fragmented. This normative-prescriptive legal study examines why existing frameworks fail to adequately distinguish the responsibility of unauthorized marriage facilitators and proposes a proportionate accountability framework. Utilizing statutory, conceptual, philosophical, and limited comparative approaches, the research integrates Gustav Radbruch's legal values and al-Shāṭibī's *maqāṣid al-sharīʿah*. The study proposes a conduct-based assessment evaluating authority, knowledge, decisive contribution, and foreseeable consequences. Consequently, it introduces a five-layered accountability model comprising education, religious-organizational ethics, administrative measures, remedial duties, and narrowly defined criminal liability as an *ultimum remedium*. Crucially, criminal sanctions require prospective legislation and strict proof of statutory elements. Furthermore, the recovery of women's and children's civil rights must proceed independently of any proceedings against the facilitator. Ultimately, this model offers a comprehensive legislative blueprint to balance state authority and the substantive protection of vulnerable families.

Keywords: Marriage Facilitators, Layered Accountability, Maqāṣid Al-Sharīʿah

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INTRODUCTION

In Indonesia, the dichotomy between the religious validity of a marriage and its state registration creates profound evidentiary and rights-based vulnerabilities, particularly for women and children. While an unregistered marriage (*nikah siri*) may fulfill religious pillars, the absence of state documentation severely impedes the legal proof of marital relations, child legitimacy, and claims to joint property or alimony (Mahmudin & Bahamish, 2025; Sari et al., 2026). At the intersection of this legal void is the figure of the marriage facilitator, whose role ranges from merely assisting couples with administrative hurdles to deliberately orchestrating unlawful unions. However, treating all unregistered marriages and their facilitators as a monolith obscures the varying degrees of fault, intent, and harm involved in these practices, necessitating a more nuanced legal response.

Analytically, a "facilitator" in this context is not synonymous with a standard religious officiant (*wali*), witness, or family member present at the solemnization. Rather, it refers to unauthorized individuals who exercise decisive control or contribution to bypass mandatory state procedures, such as offering unregistered marriage packages, manipulating identities, or deliberately circumventing underage marriage dispensations. The current Indonesian legal framework—anchored in the Marriage Law (Albab et al., 2026; Kalalo et al., 2025; Muttaqin, 2020) and the Compilation of Islamic Law—mandates registration but remains fragmented regarding third-party liability. Provisions such as Article 45 of Government Regulation No. 9 of 1975 are insufficient to address systematic, unauthorized facilitation, leaving a normative gap where

organized exploitation often escapes appropriate accountability while well-meaning actors face unwarranted scrutiny (Firdaus & Maskur, 2024).

Existing legal scholarship and policy debates have predominantly focused on the validity of the marriage contract itself or advocated for blanket criminalization of unregistered marriages (Arrasyid et al., 2026; Mariani, 2021; Surur, 2022). While recent studies explore the social drivers of these practices in modern contexts (Rachmatulloh et al., 2024) or compare sanctions with neighboring jurisdictions (Gadapi, 2020), there is a distinct lack of a framework that evaluates the facilitator's specific conduct. Deciding merely between "criminalization" and "no sanctions" fails to account for critical variables such as the facilitator's knowledge, economic gain, repetition of offenses, and the foreseeability of harm to the family. Consequently, the unit of analysis must shift from the mere status of the unregistered marriage to the concrete actions, authority, and culpability of the facilitator.

To address this normative deficit, this study employs a dual theoretical framework integrating Gustav Radbruch's legal philosophy and Al-Shāṭibī's *maqāṣid al-sharīʿah*. Radbruch's triad of legal certainty, proportional justice, and preventive utility provides a metric to evaluate whether legal responses are clear, equitable, and effective in preventing harm, while contemporary interpretations of these theories ground them in modern Indonesian legal reform (Dewi, 2021). Concurrently, Al-Shāṭibī's objectives of Islamic law offer a substantive test to ensure that the protection of religion, life, intellect, lineage, and property is prioritized over procedural shortcuts (Munawir & Rizani, 2022). Guided by these theories, this article answers two primary questions: Why does the current legal framework fail to generate proportional accountability for unauthorized marriage facilitators, and how can a layered, conduct-based accountability model be systematically designed?

The primary contribution of this research is the proposition of a five-layered accountability model encompassing education, religious-organizational ethics, administrative measures, remedial duties, and narrowly defined criminal liability. Crucially, this model asserts that criminal sanctions must be prospective, strictly tied to statutory elements—such as those anticipated in the new Criminal Code (Mampetua et al., 2025; Mulyono et al., 2024)—and reserved as an *ultimum remedium*. Furthermore, it emphasizes the decoupling of family rights recovery from the penalization of the facilitator; as evidenced by recent mass marriage ratification (*isbat*) initiatives (Daulay & Ahwan, 2026), women and children must regain their legal standing independently of ongoing proceedings against facilitators. Ultimately, this study offers a comprehensive legislative and institutional blueprint aiming to balance state authority, religious sanctity, and the substantive protection of vulnerable families.

METHOD

This study employs a normative-prescriptive legal research design to examine the accountability of unauthorized marriage facilitators in Indonesia. The primary legal materials analyzed include the Indonesian Marriage Law and its amendments, Government Regulation No. 9 of 1975, the Compilation of Islamic Law, population administration regulations, and the recent Criminal Code (Law No. 1 of 2023 and its 2026 adjustments). To enrich the analysis, limited comparative legal materials from Malaysia's Islamic Family Law (Federal Territories) Act 1984 and Brunei Darussalam's Islamic Family Law Act are utilized alongside the conceptual frameworks of Gustav Radbruch's legal values and al-Shāṭibī's *maqāṣid al-sharīʿah*. Methodologically, the research integrates statutory, conceptual, philosophical, case-based, and comparative approaches. These approaches are systematically applied to map the intersections between marriage norms, registration authorities, and sanctions, while conceptually distinguishing the religious validity of a marriage contract from state registration and third-party liability.

The analytical procedure is conducted in five systematic steps: inventorying regulated subjects and acts, assessing regulatory linkages and sanctioning authority, evaluating actions against Radbruch's and al-Shāṭibī's theories, comparing drafting techniques with the selected jurisdictions, and constructing a layered response matrix with procedural guarantees. Rather than relying on empirical field data or new interviews, the study utilizes purposively selected case materials—such as the Surabaya Religious Court's mass *isbat* initiative, media reports on child marriage in Lombok, and metadata from a Gorontalo District Court decision—as analytical illustrations to test the model's applicability. Consequently, the research strictly adheres to normative legal argumentation, explicitly acknowledging that the proposed layered accountability

model is a prescriptive legislative blueprint rather than an empirically tested framework, ensuring that normative claims do not overstep into unverified empirical generalizations.

RESULT AND DISCUSSION

1. Normative Fragmentation and the Absence of a Facilitator Category

The current Indonesian legal framework exhibits significant normative fragmentation regarding the regulation of unauthorized marriage facilitators. Existing statutes clearly mandate the registration of marriages to ensure legal proof and protection for families. However, the network of rules governing marriage, population administration, and criminal law fails to form a precise mechanism for evaluating non-official third parties. This fragmentation creates a dangerous operational gap where organized exploitation often escapes appropriate accountability. Consequently, vulnerable families are left without the necessary legal instruments to enforce their basic civil rights.

General criminal provisions can address specific offenses like document forgery or concealment of facts. Nevertheless, these broad rules must not be used to assume that any assistance provided to an unregistered marriage constitutes a criminal act. The doctrine of complicity requires a relevant principal offense, which is currently lacking for systematic unauthorized facilitation. Applying analogical criminal expansion violates the principle of legal certainty and risks penalizing well-meaning community helpers. Therefore, a specific legal category is urgently needed to distinguish between legitimate religious assistance and unlawful orchestration.

This normative void exposes vulnerable families to severe evidentiary and rights-based vulnerabilities when domestic disputes arise. Wives struggle to claim alimony, children face barriers in obtaining civil documents, and joint property claims become nearly impossible to prove. The state must balance the protection of these families with the limitation of punitive power over unproven third parties. A robust legal framework must provide clear pathways for victims to recover their rights while strictly defining the boundaries of facilitator liability. Achieving this balance requires moving beyond blanket assumptions and establishing a precise, conduct-based regulatory approach.

2. Typology of Facilitators and the Assessment of Subjective Fault

Evaluating the responsibility of unauthorized facilitators requires a clear typology that distinguishes between varying levels of fault and harm. A ritual facilitator who merely leads a prayer differs fundamentally from an administrative broker who prepares false identities. Similarly, a community connector who directs couples to unofficial venues operates differently from a professional service provider who orchestrates commercial unregistered marriage packages. These functional descriptions do not automatically imply guilt but serve to map the specific nature of the intervention. Establishing this typology is the essential first step before determining the appropriate legal response.

Subjective fault must be extracted from concrete factual circumstances rather than social labels or religious titles. Investigators must determine whether the facilitator possessed documents revealing a prior marriage or explicitly promised a safe route bypassing state registration. The deliberate selection of specific witnesses and locations to hide the event from authorities strongly indicates conscious evasion. Furthermore, the refusal to provide official referrals when administrative hurdles could be legally resolved demonstrates a clear intent to circumvent the law. These factual indicators provide a much stronger basis for liability than mere assumptions based on community status.

The assessment of fault must also weigh the presence of financial gain, repetition of offenses, and the foreseeability of harm. A facilitator who repeatedly organizes commercial unregistered marriages while concealing a marital status exhibits a significantly higher degree of culpability. Conversely, a local figure who mistakenly conducts an unregistered ceremony but immediately helps the couple register it upon realizing the error shows minimal fault. The legal system must differentiate between these scenarios to ensure that sanctions are strictly proportional to the actual harm caused. This nuanced evaluation prevents the unjust criminalization of good-faith actors while targeting those who deliberately exploit the system.

Table 1. Classification of Proposed Responses Based on Facilitator Conduct

Severity Level	Primary Indicators of Conduct	Direction of Legal Response

Light	First-time offense; limited procedural knowledge; no financial profit; immediate assistance with registration; no serious harm caused.	Education, formal warnings, and referral to official services.
Moderate	Awareness of obligation but proceeds anyway; repeated offenses; misuse of social influence; causes recoverable evidentiary hurdles.	Ethical coaching and authorized administrative measures, accompanied by remedial duties.
Severe	Deliberate and organized; commercial motive; false identities or hidden status; exploitation; evasion of child protection; serious harm.	Immediate remedial recovery; investigation under existing or newly formed specific criminal offenses.

3. Theoretical Synthesis for Accountability Assessment

The development of a proportionate accountability model relies on a synthesis of legal philosophy and substantive protection theories. Legal certainty demands that lawmakers explicitly define the targeted subjects, prohibited acts, and the specific authorities empowered to impose sanctions. Proportional justice requires that sanctions be differentiated according to the degree of fault and the burden of loss suffered by the victims. Preventive utility ensures that the chosen legal responses effectively reduce recidivism and facilitate the recovery of family rights rather than merely increasing punishment rates. These three interconnected metrics provide a comprehensive framework for evaluating the quality and fairness of positive law.

Concurrently, the substantive protection of families is evaluated through the objectives of Islamic law, which prioritize the preservation of religion, life, intellect, lineage, and property. The use of religious symbols to conceal fraud or bypass mandatory procedures directly violates the protection of religion and intellect. Furthermore, the failure to register a marriage severely jeopardizes the protection of lineage and property by depriving children of legal identity and wives of financial security. Policy makers must assess the real risks and foreseeable consequences of unauthorized facilitation rather than assuming all unregistered marriages cause identical harms. This substantive test ensures that the ultimate goal of the law remains the genuine protection of vulnerable family members.

The integration of these theoretical approaches generates four complementary tests for evaluating facilitator conduct. Normative certainty establishes the boundaries of authority, while proportional justice assesses the degree of personal fault. Preventive utility selects the most effective intervention tools, and substantive protection identifies the specific family interests that must be restored. Together, these tests ensure that criminal norms are not created through retroactive interpretation but are instead designed prospectively to address genuine societal harms. This synthesized methodology guarantees that the resulting accountability model is both philosophically sound and practically effective.

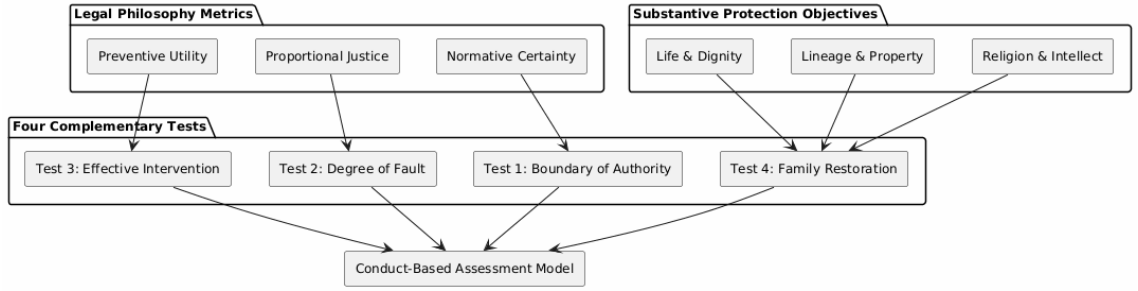


Figure 1. Theoretical Synthesis for Facilitator Accountability Assessment

4. The Five-Layered Accountability Model

The research proposes a comprehensive five-layered accountability model designed to address unauthorized marriage facilitation proportionately. The first layer consists of education, warnings, and official referrals to authorized marriage registrars for first-time offenders who cause no serious harm. The second layer involves religious and organizational ethics, where internal bodies can reprimand or restrict members who misuse their religious mandates to mislead the public. These initial layers focus on correction and behavioral modification without immediately

resorting to state coercion or severe penalties. They serve as the primary filter to separate genuine misunderstandings from deliberate malicious orchestration.

The third layer encompasses administrative measures, which require explicit statutory authorization for officials to impose fines or restrict specific functions. These administrative actions must be accompanied by clear procedures for citizens to file objections, ensuring that simple warnings do not transform into unjust social punishments. The fourth layer focuses on remedial duties, compelling facilitators who caused concrete harm to assist in document correction, participate in legal ratification processes, or bear specific costs. This remedial phase is strictly tied to proven causal links between the actions of the facilitator and the administrative losses of the family. It ensures that the primary focus remains on restoring the legal standing of the affected women and children.

The fifth and final layer is limited criminal liability, which functions strictly as a last resort for the most severe offenses. Criminal sanctions are reserved for deliberate, organized, commercial, or manipulative acts that cause serious harm, such as facilitating child marriages without dispensation or forging identities. Any new criminal offenses must be established through prospective legislation with clearly defined statutory elements, rather than through analogical expansion of existing regulations. This layered approach ensures that the most severe state power is only deployed when lighter interventions fail to address egregious violations. Consequently, the model balances the need for strict enforcement with the imperative to protect citizens from disproportionate state interference.

Table 2. Design of the Five-Layered Response and Authority Limits

Layer	Proposed Instrument	Crucial Limitations
1. Education	Explanation of registration, referral to authorized officials, formal warnings.	Must not stigmatize community figures or the marrying couple.
2. Religious Ethics	Reprimands, coaching, restriction of roles within the organization.	Limited to internal authority and strict right-to-reply procedures.
3. Administrative	Official warnings or restriction of functions formulated in valid rules.	Competent officials, legal basis, evidence, and objection rights must be clear.
4. Remedial	Assistance with data correction, ratification processes, and lawful compensation.	Rights of the couple and children are processed immediately, separate from enforcement.
5. Limited Criminal	Application of existing offenses or narrow, prospective specific offenses.	Elements and fault must be proven; criminal law acts strictly as a last resort.

5. Decoupling Rights Recovery from Facilitator Prosecution

A critical innovation of the proposed model is the strict separation between the recovery of family rights and the prosecution of the facilitator. Women and children must never be forced to wait for the conclusion of a criminal investigation against a facilitator before they can obtain their legal documents. The process of marriage ratification through religious courts must proceed independently, focusing solely on the validity of the marriage and the needs of the family. This decoupling ensures that the primary objective of family protection is not held hostage by the complexities of third-party criminal liability. It fundamentally shifts the policy focus from punitive satisfaction to the immediate restoration of civil rights.

Mass marriage ratification initiatives demonstrate the immense capacity for institutional cooperation in restoring family legal status. When hundreds of couples successfully obtain court decrees through coordinated efforts between courts and local communities, it proves that administrative recovery is highly achievable. However, these recovery metrics must not be conflated with criminality statistics or used as evidence of organized illegal facilitation. The number of ratified marriages indicates a need for better administrative access, not necessarily a direct measure of malicious facilitator intent. Maintaining this analytical distinction is crucial for designing accurate policy evaluations and effective institutional responses.

The recovery process must begin with an urgent assessment of document needs and immediate protection requirements for vulnerable parties. Courts will evaluate the legal basis for ratification applications according to their specific jurisdictional authority, without guaranteeing automatic approval for all unregistered unions. Crucially, the access of children to basic services and protection from violence must never be used as bargaining chips to extract confessions from

facilitators. Privacy protections must also be strictly enforced to encourage victims to report commercial exploitation and repeated fraudulent patterns without fear of secondary victimization. This independent recovery pathway guarantees that the state fulfills its constitutional duty to protect families regardless of the legal status of the facilitator.

6. Comparative Insights from Regional Frameworks

A limited comparative analysis of family laws in neighboring jurisdictions provides valuable lessons for drafting explicit regulations regarding unauthorized marriage solemnization. The legal frameworks in Malaysia and Brunei Darussalam explicitly link the act of solemnizing a marriage to specific official authorities, leaving no ambiguity about who is permitted to conduct the ceremony. Indonesia can adopt this drafting technique to clearly name the prohibited actors and define the boundaries of their unauthorized actions. This functional comparison helps clarify the regulatory target without necessitating the direct copying of foreign penal structures or territorial authorities. It offers a proven legislative model for addressing the exact operational gap identified in the domestic legal system.

Despite these useful drafting techniques, the institutional and theological contexts of those nations differ significantly from the pluralistic landscape of Indonesia. The relationship between Islamic family law and the state structure in those countries cannot be directly transplanted into the Indonesian regulatory environment. Therefore, the comparative exercise is strictly limited to understanding how to formulate authority boundaries, while the design of exceptions, institutional coordination, and proportionality metrics must be tailored locally. The goal is to borrow the clarity of legal definitions while independently engineering a system that respects diverse societal realities. This targeted comparative approach ensures that the resulting legislation is both globally informed and domestically applicable.

Addressing the concern that regulating facilitators constitutes state interference in the sanctity of religious ceremonies requires precise legal boundaries. The regulated object is not the prayer, the religious advice, or the theological validity of the marriage contract itself. Instead, the law targets the abuse of function, the manipulation of information, and the deliberate evasion of administrative duties that negatively impact third parties. By strictly distinguishing between religious authority and administrative authority, the state can protect the sanctity of the sacrament while firmly prosecuting those who exploit it for unlawful gain. This distinction is fundamental to maintaining public trust in both religious institutions and state legal frameworks.

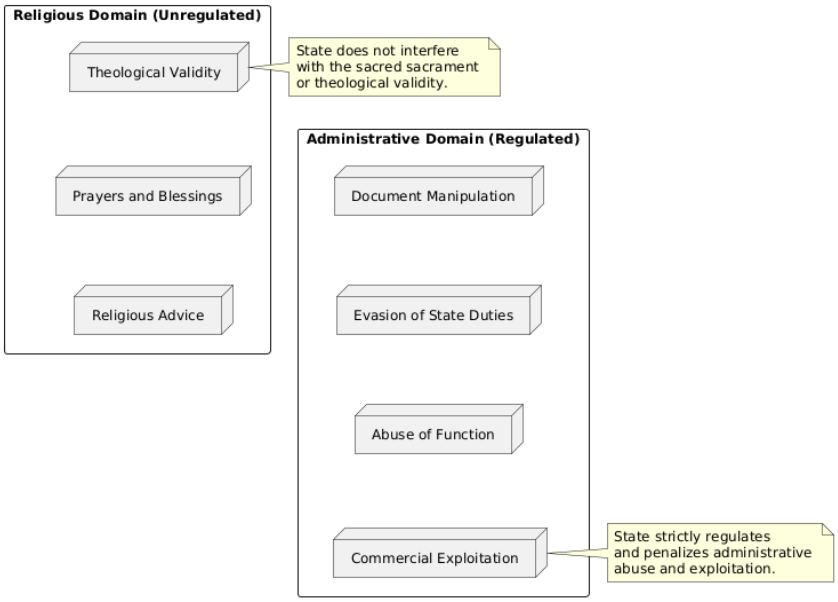


Figure 2. Comparative Regulatory Focus: Authority vs. Sanctity

7. Institutional Coordination and Implementation Strategy

The successful implementation of the layered accountability model requires a strict division of tasks among various state and non-state institutions. Religious affairs offices and civil registrars must provide accessible official pathways and clear information regarding marriage requirements. Population administration agencies will handle civil data corrections, while religious courts

adjudicate specific jurisdictional disputes and ratification requests. Concurrently, religious organizations must internally correct members who abuse their mandates, and law enforcement will evaluate criminal offenses based strictly on established statutory elements. This decentralized yet coordinated approach prevents any single institution from bearing an impossible burden of total oversight.

Local partnerships must be established through short, efficient referral protocols to guide couples toward official services when they approach community figures. If a local figure encounters a couple lacking documents, they must explain the requirements and direct them to the nearest authorized registrar. When indicators of child marriage, coercion, or false identities emerge, the community figure is obligated to refer the case to protection agencies or competent officials. This collaborative network ensures that social legitimacy is used to bridge the gap between citizens and official state services, rather than replacing them. It transforms community leaders into vital nodes of legal awareness rather than unintended enablers of unregistered marriages.

Implementation strategies must also account for geographical and economic barriers that make official pathways seem inaccessible to remote populations. Long travel distances, incomplete documents, and indirect costs can inadvertently push couples toward unauthorized facilitators, which does not erase the registration obligation but alters the assessment of fault. The state is therefore compelled to improve service access through integrated mobile courts and simplified administrative procedures in underserved areas. Providing clear information in locally understood languages is a fundamental preventive measure that must precede any punitive enforcement actions. By removing structural barriers, the state aligns practical utility with the substantive protection of all citizens.

8. Prospective Legislation and Procedural Guarantees

The formalization of the accountability model necessitates prospective legislation enacted at the statutory level to ensure absolute legal certainty. Amendments to the core marriage laws must contain precise definitions of facilitators, the limits of decisive contribution, and the explicit prohibition of specific manipulative acts. Implementing regulations will detail the procedures for complaints, verification, education, and administrative coordination within the boundaries of their delegated authority. Crucially, all new rules and criminal offenses must apply strictly prospectively, ensuring that no individual is penalized for assistance provided before the legislation takes effect. This forward-looking legislative strategy respects the fundamental principle of non-retroactivity in criminal law.

Procedural guarantees for the investigated parties are just as critical as the definitions of the prohibited acts themselves. Suspects must receive formal notification of the alleged acts, full access to the examination materials, and a fair opportunity to provide their testimony. All administrative or disciplinary decisions must be issued in writing and include a clear mechanism for appeal to an independent authority. These safeguards prevent administrative warnings from mutating into unjust social punishments and ensure that the punitive power of the state remains strictly controlled. Upholding these procedural rights is essential for maintaining the legitimacy and fairness of the entire accountability framework.

The evaluation of this new legal framework must extend beyond the mere counting of imposed sanctions or criminal convictions. A decrease in marriage ratification requests might indicate improved initial registration, or it might signal that illegal practices are simply becoming more hidden and dangerous. Therefore, policy success must be measured by document processing times, complaint patterns, recidivism rates, village-level access to services, and the lived experiences of women and children. Any policy that increases fear and drives families away from the legal system must be immediately revised, regardless of how high the enforcement statistics appear. This holistic evaluation metric ensures that the law ultimately serves its true purpose of protecting families and upholding justice.

DISCUSSION

The distinctive contribution of this study lies in developing a conduct-based, five-layered accountability framework for unauthorized marriage facilitators in Indonesia. Rather than treating the absence of marriage registration as sufficient grounds for attributing equal responsibility to all participants, the framework differentiates accountability according to authority, knowledge, decisive contribution, and foreseeable consequences. Its originality, relative to the literature examined, rests on connecting these assessments to educational, religious-organizational,

administrative, remedial, and narrowly defined criminal responses within a single analytical structure. A further distinguishing feature is the separation of family rights recovery from proceedings against the facilitator, so that protection is not made contingent on establishing another person's liability. These features position the proposed model as a normative framework for proportionate legal reform rather than an empirically validated enforcement mechanism.

The principal findings indicate that the legal materials examined do not provide an integrated framework for differentiating the responsibility of unauthorized facilitators. Although existing rules address marriage registration, civil documentation, and particular unlawful acts, their interaction leaves uncertainty concerning the assessment of third parties whose contributions vary substantially. The study therefore proposes that responsibility should attach to demonstrable conduct and legally relevant fault, rather than religious titles, community standing, or mere attendance at a marriage ceremony. Its theoretical synthesis combines Radbruch's legal certainty, justice, and utility with the substantive protective orientation of al-Shāṭibī's maqāṣid al-sharīʿah. Together, these findings support a differentiated response that protects affected families while maintaining clear limits on coercive state intervention.

The framework's preventive orientation is consistent with Mounchid et al. (2026) and Rachmatulloh et al. (2024), whose normative analysis identifies economic circumstances, age-related restrictions, employment or educational considerations, and perceptions of religious validity among the factors associated with unregistered marriage. Their discussion supports the view that non-registration cannot be adequately understood through a single explanation of deliberate legal avoidance. Suwarno & Hudallah (2025)likewise emphasize legal literacy and an understanding of marriage that encompasses legal certainty and social responsibility alongside religious requirements. These similarities arise from a shared recognition that formal registration serves family welfare and that legal understanding influences compliance. The present study extends this perspective by specifying how education, organizational guidance, and referral to authorized services can form distinct components of facilitator accountability, while recognizing that their effectiveness requires empirical evaluation.

A more contested comparison concerns the justification for sanctions. Munawir & Rizani (2022) employ istiḥsān and maṣlaḥah to support firm sanctions in response to the harmful consequences associated with unregistered marriage, particularly the vulnerability of wives and children. The present study shares their protective objective but qualifies the movement from identifying harm to selecting a sanction: the existence of adverse consequences does not establish the same degree of fault for every facilitator. Muttaqin (2024), Nelli (2022), Nurdin et al. (2026), and Surur (2022), in examining the proposed criminalization of unregistered marriage, instead questions whether punishment may produce additional harm and emphasizes administrative responses. The proposed model engages both positions by retaining non-penal measures for appropriate cases while allowing criminal accountability only where a legally defined offense and the required fault are established. Its departure from a general sanctions debate therefore concerns the grounds and limits of individual attribution rather than disagreement over the importance of protecting families.

These differences are partly explained by the studies' respective units of analysis and normative questions. Munawir & Rizani (2022) examine the justification for sanctions against unregistered marriage, whereas Surur (2022) evaluates the benefits and potential harms of a particular criminalization proposal. This study focuses more narrowly on third-party conduct and asks how different interventions should correspond to different forms of contribution and culpability. Consequently, a conclusion favoring sanctions at the level of general policy does not necessarily determine whether a particular religious adviser, administrative intermediary, or commercial organizer should incur liability. The comparison demonstrates why protective objectives must be supplemented by precise definitions, evidence requirements, and procedural safeguards. Because these are predominantly normative studies, their differences should be interpreted as differences in legal reasoning and analytical scope rather than conflicting measurements of enforcement outcomes.

The proposed separation between family protection and facilitator accountability also responds to the concerns identified by Daoui (2025), Irving (2024), Stambe & Meyer (2023), and Tarais & Hartini (2023). Their examination of religious court decisions concerning children from unregistered polygamous marriages found different judicial qualifications of child status, with corresponding differences in legal consequences. Their findings highlight the importance of

avoiding an assumption that one uniform legal pathway resolves every consequence of non-registration. While their research concentrates on judicial determinations affecting children, this study addresses the relationship between protective procedures and proceedings against facilitators. It accordingly proposes that access to legally available documentation, status determination, and other remedies should proceed without awaiting the outcome of facilitator enforcement. Such separation does not guarantee marriage validation or a particular determination of parentage; each application remains subject to the governing law, evidence, and competent authority.

Ilhami et al. (2023), Muttaqin (2020), Nuroniyah et al. (2025), and Y Sonafist et al. (2026) provides a complementary comparison through a normative examination of unregistered marriages between Indonesian and foreign citizens. His discussion identifies legal responses that vary according to residence and the relevant jurisdiction, reinforcing the importance of directing affected families toward appropriate institutional pathways. The present study adopts a similar emphasis on legally competent channels but extends it to the allocation of responsibility among facilitators and institutions. The difference in scope matters because cross-border marriages raise jurisdictional and nationality considerations that do not arise in every domestic case. Nevertheless, both analyses support the broader proposition that effective legal protection requires an identifiable route from an undocumented relationship to competent authorities, rather than reliance on a general declaration that registration is mandatory.

Taken together, these comparisons clarify the study's academic contribution. The model connects debates on religious validity, registration, sanctions, and family protection through an explicit framework for assessing facilitator conduct. Radbruch's values guide the clarity, proportionality, and purpose of the proposed response, while *maqāṣid al-sharīʿah* directs attention to the interests requiring protection, particularly lineage and property. Neither theoretical framework independently establishes a criminal offense or grants an institution sanctioning authority; those powers require a valid legal basis. Moreover, the five layers should not be understood as an obligatory chronological sequence in which every serious case must first pass through educational or disciplinary measures. Protective assistance may proceed immediately, and conduct meeting the elements of an existing offense may be investigated through the applicable procedures.

The practical and policy implications therefore concern both institutional design and access to protection. Legislators considering facilitator regulation should define prohibited conduct, relevant fault, competent authorities, and available remedies with sufficient precision, while ensuring that any newly created criminal liability operates prospectively. Implementing institutions should establish clear referral arrangements, accessible registration information, and complaint procedures that do not unnecessarily deter affected families from seeking assistance. Remedial obligations imposed on facilitators should require an appropriate legal basis and a demonstrated connection between their conduct and the harm concerned. Evaluation should examine access to documentation, the timeliness of remedies, recurrence of harmful practices, and procedural fairness rather than relying exclusively on sanction totals. Future research should investigate how facilitators, affected families, registrars, courts, and religious organizations understand these proposed distinctions and test whether the model improves protection without increasing concealment, stigma, or administrative exclusion.

CONCLUSION

Although the Indonesian legal framework mandates marriage registration and provides various recovery mechanisms, it currently lacks a specialized apparatus to differentiate the accountability of unauthorized marriage facilitators based on their specific actions, degree of fault, and foreseeable consequences. To address this normative gap, this study proposes a conduct-based assessment model grounded in four foundational principles: normative certainty, proportional justice, preventive utility, and substantive protection. By evaluating concrete contributions rather than relying on mere social labels or the mere absence of registration, the model strategically applies a five-layered response system comprising education, religious-organizational ethics, administrative measures, remedial duties, and narrowly defined criminal liability as a last resort.

The successful implementation of this layered accountability model necessitates the enactment of prospective legislation, a clear division of institutional authority, robust procedural guarantees for the investigated parties, and improved public access to official marriage services.

Crucially, the framework mandates that the recovery of women's and children's civil rights must proceed independently and immediately, without being delayed by the criminal prosecution of the facilitator. While this normative study provides a comprehensive legislative and institutional blueprint, empirically testing the model's practical effectiveness, compliance rates, and potential unforeseen impacts will require dedicated field research once the proposed policies are formally enacted and applied in society.

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