

The Erosion of Customary Authority and The Riset of Local Ulama In The Normalization of Unregistered Marriages In Indonesian Muslim Communities

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Abstract

This study examines the erosion of customary authority and the repositioning of local clerics in legitimizing unrecorded marriage in the Indonesian Muslim community in the context of legal pluralism and modernization. The research is directed to understand how the relationship between customary institutions, religious authorities, and state law reshapes the legitimacy of marriage and legal awareness in contemporary Islamic family law. This study uses a qualitative socio-legal approach based on legal anthropology and sociology of religion, with a comparative case study design on several Muslim communities in Indonesia where the practice of marriage is not recorded as still persisting. Data were collected through in-depth interviews, document analysis, and limited participatory observation. The results show that customary authorities are weakened due to modernization, bureaucratization of marriage administration, migration, generational change, and declining effectiveness of collective sanctions. In this situation, local clerics increasingly occupy a central position as determinants of the legitimacy of marriage through mosque-based authority, religious education networks, and moral leadership. This configuration gives birth to a layered legal landscape, where state law, customary practices, and religious norms coexist unequally, so that social legitimacy by scholars can outweigh weakened customary sanctions and uneven enforcement of state law. This study concludes that the normalization of marriage is not just an administrative failure, but a manifestation of a shift in normative authority in Indonesia's plural legal order. In practice, the study recommends strengthening cooperation between state institutions, indigenous actors, and scholars to improve marriage registration, strengthen legal awareness, and protect the rights of women, children, and families.

Keywords: *Unregistered Marriage; Customary Authority; Local Ulama; Legal Pluralism; Muslim Family Law.*

Abstrak

Penelitian ini mengkaji erosi otoritas adat dan reposisi ulama lokal dalam melegitimasi perkawinan tidak tercatat di komunitas Muslim Indonesia dalam konteks pluralisme hukum dan modernisasi. Penelitian diarahkan untuk memahami bagaimana relasi antara institusi adat, otoritas keagamaan, dan hukum negara membentuk ulang legitimasi perkawinan serta kesadaran hukum dalam hukum keluarga Islam kontemporer. Penelitian ini menggunakan pendekatan socio-legal kualitatif yang berlandaskan antropologi hukum dan sosiologi agama, dengan desain

studi kasus komparatif pada beberapa komunitas Muslim di Indonesia di mana praktik perkawinan tidak tercatat masih bertahan. Data dikumpulkan melalui wawancara mendalam, analisis dokumen, dan observasi partisipatif terbatas. Hasil menunjukkan bahwa otoritas adat melemah akibat modernisasi, birokratisasi administrasi perkawinan, migrasi, perubahan generasi, dan menurunnya efektivitas sanksi kolektif. Dalam situasi ini, ulama lokal semakin menempati posisi sentral sebagai penentu legitimasi perkawinan melalui otoritas berbasis masjid, jaringan pendidikan keagamaan, dan kepemimpinan moral. Konfigurasi ini melahirkan lanskap hukum berlapis, di mana hukum negara, praktik adat, dan norma keagamaan hidup berdampingan secara tidak setara, sehingga legitimasi sosial oleh ulama dapat mengungguli sanksi adat yang melemah dan penegakan hukum negara yang tidak merata. Penelitian ini menyimpulkan bahwa normalisasi perkawinan tidak tercatat bukan sekadar kegagalan administratif, melainkan manifestasi pergeseran otoritas normatif dalam tatanan hukum plural Indonesia. Secara praktis, penelitian merekomendasikan penguatan kerja sama antara institusi negara, aktor adat, dan ulama untuk meningkatkan pencatatan perkawinan, memperkuat kesadaran hukum, dan melindungi hak-hak perempuan, anak, dan keluarga.

Kata Kunci: Perkawinan Tidak Tercatat; Otoritas Adat; Ulama Lokal; Pluralisme Hukum; Hukum Keluarga Islam.

INTRODUCTION

Unregistered marriage has emerged as a significant issue in Indonesian Muslim family law, as it resides at the confluence of legal plurality, social legitimacy, and religious authority. The phenomenon of unregistered marriages within traditional Muslim communities is frequently regarded as a violation of governmental regulations. This behavior cannot be comprehended without acknowledging the impact of kiai (local religious leader) in the public domain.¹ Structural issues such as these will contribute to sirri marriages (unregistered marriages). Poverty is the impetus for Sirri's marriage, as it provides immediate economic advantages for the woman's home.² Nonetheless, it does not enhance the household's long-term financial security, as married girls are unable to engage in employment. Women are more prone to unemployment and, when employed, receive lower wages than men.³

In Indonesian academia, the phenomenon is no longer regarded as a mere technical failure to adhere to administrative mandates. Instead, it

¹ Baihaqi Baihaqi dkk., "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya," *Journal of Islamic Law* 5, no. 2 (Agustus 2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>.

² Nurul Miqat dkk., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (Juli 2023): 54–66, <https://doi.org/10.18860/j-fsh.v15i1.17461>.

³ Anwar Hafidzi dkk., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam* 32, no. 2 (Oktober 2022): 153–68, <https://doi.org/10.21580/ahkam.2022.32.2.12789>.

is seen as a complex issue that involves legal status, social belonging, and different sources of normative order that are at odds with each other. The Islamic notion of family resilience can be validated within a *sakinah mawaddah warahmah* family. Families that love and care for each other so that everyone in the family feels safe, happy, and successful. The Islamic notion of familial resilience can be validated in a *sakinah mawaddah warahmah* household. Families that exhibit reciprocal love and affection, ensuring that each member feels secure, tranquil, content, and thriving.⁴ Marriage constitutes a union between families and is often caste endogamous.⁵

Scholars have examined the ongoing registration deficit within Indonesia's plural legal framework and have proposed various institutional solutions, including *itsbat nikah*, mass marriage initiatives, and digital registration systems like SIMKAH. The registration of marriages conducted by the religious affairs office (KUA) for the Muslim community will facilitate children's acquisition of their rights to administrative recognition from the state in a family card.⁶ In Islamic family law, a family card serves as a piece of evidence to ascertain the legal relationship between parents and their children, influencing decisions regarding marriage guardianship, inheritance, birth certificates, and other legal matters.⁷ These studies show that unregistered marriage has real effects on the civil rights and legal status of spouses and children, especially when it comes to identity documents, inheritance, family protection, and getting public services.⁸

From an Islamic viewpoint, the principle of equality in societal and governmental contexts is essential as it supports the foundation of

⁴ Juwaini Saleh dkk., "Marriage Guidance Towards Family Resilience in Aceh: A Study of Islamic Law Philosophy," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (Oktober 2022): 594, <https://doi.org/10.22373/sjkh.v6i2.12448>.

⁵ Miqat dkk., "The Development of Indonesian Marriage Law in Contemporary Era."; Ade Khoirunnisa, Retno Arimbi Dewi, Fatya Zahra Siahaan, Siti Samra, and Aulil Amri. 2025. "Comparison of Islamic Family Law in Malaysia and Indonesia". *An-Nisa: Journal of Islamic Family Law* 2 (2): 109-20. <https://doi.org/10.63142/an-nisa.v2i2.226>.

⁶ Sheila Fakhria dkk., "Securing Muslim Children's Civil Rights: Debate on State Legal Policy towards The Issuance of Family Cards for Unregistered Marriage Couples," *El-Mashlahah* 14, no. 2 (Desember 2024): 303-22, <https://doi.org/10.23971/el-mashlahah.v14i2.8008>.

⁷ Fakhria dkk.

⁸ E. Nisa, "The bureaucratization of Muslim marriage in Indonesia," *Journal of Law and Religion* 33, no. 2 (2018): 291-309, <https://doi.org/10.1017/jlr.2018.28>.

citizenship.⁹ The question is not just whether the state recognizes a marriage, but also how not being legally visible affects family life every day. Simultaneously, socio-legal research indicates that unregistered marriage cannot be comprehensively interpreted solely through the framework of state law. In numerous Indonesian Muslim communities, marriage has traditionally been regulated by a complex normative framework where Islamic law, customary law, and state law coexist and influence one another.

Islamic law, as a social institution, serves two primary functions: first, as a mechanism of social control, and second, as a conduit for the introduction of new values and the facilitation of social development. Consequently, within this framework, Islamic law must address the populace's issues while maintaining its fundamental ideals. In 1991, the Compilation of Islamic Law (KHI) was created via a Presidential Instruction to address emerging issues, particularly in family law, and to achieve legal uniformity. KHI governs the issue of mandatory bequests in Article 209, which pertains to adopted children and their adoptive parents.¹⁰

In this framework, customary authorities frequently assume a pivotal role in resolving disputes, sanctioning unions, enforcing communal norms, and adjudicating the social legitimacy of marriages.¹¹ Research from various regions demonstrates that customary institutions do not merely uphold tradition; they actively interpret and negotiate familial norms concerning religion and state governance.¹² In certain contexts, customary leaders have either tolerated or legitimized unregistered marriages, whereas in others, they have deemed them as

⁹ Masykuri Abdillah, "Equality from The Perspective of Islamic Constitutional Law al-Musāwah & Legal Equality in Islamic Constitutional Frameworks," *AHKAM: Jurnal Ilmu Syariah* 25, no. 2 (Desember 2025): 267–84, <https://doi.org/10.15408/ajis.v25i2.46563>.

¹⁰ Nisa, "The bureaucratization of Muslim marriage in Indonesia."

¹¹ Baihaqi dkk., "Legal Non-Compliance and Kiai Hegemony."

¹² Muhammad Khalilurrahman, Eficandra Eficandra, dan Dodon Alfiander, "Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra)," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (Desember 2022): 595, <https://doi.org/10.29240/jhi.v7i2.5543>; Abdulah Pakarti, Muhammad Husni, Ending Solehudin, Maruf Maruf, Iqbal Saujan, and Saeideh Shakibiciu. 2025. "The Role and Application of 'Urf As a Source of Islamic Law: A Historical Review and Fiqhiyah Rules". *An-Nisa: Journal of Islamic Family Law* 2 (3): 175-92. <https://doi.org/10.63142/an-nisa.v2i3.300>.

deviations from communal order.¹³ orderland research further demonstrates that these negotiations become increasingly intricate when cross-border mobility, inconsistent state services, and overlapping customary regimes generate ambiguity regarding the authority to recognize marriage and the conditions under which such marriages are recorded in formal legal documents.^{14,15} Religious authority is also very important to this issue. The literature consistently designates ulama and kyai as significant adjudicators of marital legitimacy within Indonesian Muslim communities. Their interpretations influence public perception of the correlation between the legitimacy of the Islamic marriage contract and the bureaucratic necessity of state registration.¹⁶ Some studies demonstrate that clerical actors reinforce registration by presenting it as essential for the protection of women, children, and familial order. In other instances, they are portrayed as upholding the adequacy of classical Islamic requirements, thereby preserving the social legitimacy of marriages that exist outside state registration. Recent research on living law indicates that local Muslim communities frequently adhere to the practical rulings of ulama and kyai rather than state legal standards, particularly when these religious authorities are integrated into daily social interactions.¹⁷ This dynamic is evident in the documented schism between formalist and realist Muslim elites¹⁸; one faction underscores

¹³ M. Mustafid dkk., “Alternative legal strategies and ninik mamak authority: Dual administration of Malay marriage in Koto Kampar Hulu, Riau,” *Journal of Islamic Law* 5, no. 1 (2024): 1–18, <https://doi.org/10.24260/jil.v5i1.1972>.

¹⁴ M. El-saha, “Pengaruh and marriage problematics of boundary society in Entikong and Sekayam West Kalimantan,” *Ahkam: Jurnal Ilmu Syariah* 19, no. 2 (2019), <https://doi.org/10.15408/ajis.v19i2.13178>.

¹⁵ Sesicha P. Setiawan, “Pertanggung Jawaban Pihak Dokter Kepada Pihak Keluarga Akibat Dari Pencurian Organ Tubuh Dalam Autopsi,” *Jurnal Locus Penelitian Dan Pengabdian* 3, no. 2 (2024): 194–202, <https://doi.org/10.58344/locus.v3i2.2459>.

¹⁶ A. Rozak dan H. Akbar, “The formalist vs realist constructs on marriage registration in Indonesia: A study of the perspectives of kyai from Nahdlatul Ulama in Rembang,” *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 2 (2023): 161, <https://doi.org/10.14421/al-mazaahib.v11i2.3187>.

¹⁷ L. Jannah, “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): 173–98, <https://doi.org/10.14421/al-mazaahib.v13i2.4392>.

¹⁸ Jauhari Jauhari, “Penerapan Prinsip Maqashid Syariah Dalam Perundang-Undangan Di Indonesia,” *Karimiyah Journal of Islamic Literature and Muslim Society* 4, no. 1 (2024): 1–14, <https://doi.org/10.59623/karimiyah.v4i1.49>.

the legitimacy of the contract irrespective of registration, while the other regards registration as essential to modern marital legality and justice.¹⁹

The literature as a whole shows that there is a dynamic pluralism in which no one institution has a monopoly on how marriage is understood. State agencies, customary leaders, and clerical actors work together to determine the legitimacy of marriages, often through negotiation instead of a strict hierarchy. This circumstance has led many academics to support harmonization and more comprehensive legal reform, especially since formal state law has been ineffective in eliminating unregistered marriage or mitigating the related social and normative conflicts.²⁰ This body of literature shows a big change: in the past, customary institutions were the main guardians of marriage norms. However, recent studies show that their authority is decreasing, and local ulama are becoming more important in defining what is a valid and acceptable marriage.

This change is important because it shows that unregistered marriage should be looked at not just as a legal or administrative problem, but as a sociological process that involves the redistribution of normative power. Existing scholarship has already pinpointed significant tensions in living-law negotiations orchestrated by ulama and customary authorities. For example, studies from Aceh, Rambatan, and Dusun Pondok Asem show that local communities do not all react the same way to state registration requirements. Instead, local actors shape the legitimacy of marriage by either challenging or accepting official law, leading to different results within the same national regulatory framework. Research on border regions like Entikong-Sekayam indicates that tensions among KUA procedures, court accessibility, and customary law result in continuous negotiations regarding legal inscription and recognition. State-sponsored mechanisms, including *itsbat nikah* and mass marriage programs, exacerbate this domain by merging bureaucratic incorporation with local social norms.²¹ So, the

¹⁹ N. Islamiyah, "When religious leaders become marriage brokers, penghulus, and marriage consultants: The authority of kyai in the process of unregistered marriage," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 21–40, <https://doi.org/10.14421/ahwal.2024.17102>.

²⁰ C. Schenk, "Legal and spatial ordering in Aceh, Indonesia: Inscribing the security of female bodies into law," *Environment and Planning A: Economy and Space* 51, no. 5 (2019): 1128–44, <https://doi.org/10.1177/0308518X19836119>.

²¹ Rahman dkk., "Socio-Eco-Religio-Cultural Approaches in Addressing Environmental Damage: An Interpretative Analysis Based on The Quran and Hadith,"

loss of traditional authority must be seen in the context of larger changes in society, the law, and people's understanding of the law. Digital registration programs, nationwide administrative reform, and the growth of pathways like *itsbat nikah* have changed how marriage is governed by centralizing the registry and limiting the freedom of people who only follow customs. Nonetheless, the literature indicates that this alteration does not equate to the mere eradication of customary authority. Instead, it creates a new structure in which traditional leaders, *ninik mamak*, *kyai*, and *ulama* work alongside state institutions. Sometimes they work together, sometimes they go around them, and sometimes they come up with new ways to stay relevant. In areas characterized by mobility, inconsistent state infrastructure, or transnational marriage customs, these pressures are intensified, hastening the transition from exclusive customary or clerical authority to hybrid forms of legitimacy.

Even with these significant contributions, the current literature still has a significant gap in analysis. Most studies are still limited to one province, village, or institution and don't look at the whole country. Consequently, the dynamic interplay between customary authorities and local *ulama* has yet to be analyzed comparatively across communities or between border and non-border contexts. Contemporary scholarship elucidates the decline of customary institutions and the varying perspectives of *ulama* on registration; however, it offers limited insights into the temporal interactions of these developments that culminate in the normalization of unregistered marriage.²² Longitudinal analysis is particularly constrained. There remains an inadequate comprehension of how *kyai*, *ulama*, and *ninik mamak* respond to digitization, administrative reform, and evolving public expectations, and how these adaptive processes transform living law in contemporary Muslim family life. Furthermore, deficiencies persist in the gendered and familial protection aspects of the issue, encompassing inheritance, domestic violence, and the overarching policy implications of *itsbat* programs or family-card systems in various contexts.²³ A separate study especially explored the ramifications of unregistered marriage practices. Latifiani,

Revista de Gestão Social e Ambiental 18, no. 1 (Mei 2024): e06524, <https://doi.org/10.24857/rgsa.v18n1-127>.

²² Rozak dan Akbar, "The formalist vs realist constructs on marriage registration in Indonesia: A study of the perspectives of *kyai* from Nahdlatul Ulama in Rembang."

²³ Baihaqi dkk., "Legal Non-Compliance and *Kiai* Hegemony."

for instance, investigated the ramifications of unregistered weddings for spouses and offspring within the Indonesian legal framework.²⁴

This article fills in those gaps by looking at how unregistered marriage has changed the way people in Indonesian Muslim communities see normative authority. It contends that the normalization of such marriages is intricately linked to the decline of traditional authority and the reestablishment of local ulama as the preeminent interpreters of marital legitimacy. The uniqueness of this study resides in delineating this transformation at the grassroots level. This article examines the interrelatedness of customary decline and clerical authority, investigating the conditions under which customary authority diminishes, the role of local ulama in its replacement or augmentation, and the subsequent impact on legal consciousness and familial practices. In this regard, the article enhances the broader discourse on living law by demonstrating that legal pluralism is not fixed; it is perpetually restructured through social power, moral leadership, and institutional transformation. The article is structured around three principal inquiries: how does customary authority diminish in modern Muslim communities; how do local ulama reorient themselves in adjudicating marital legitimacy; and how does this shift render unregistered marriage a socially accepted manifestation of living law in Indonesia?

RESEARCH METHOD

This study employs a qualitative socio-legal method to examine the interaction between legal norms, religious authority, and customary practices in the regulation of unregistered marriage in Indonesian Muslim communities. A qualitative design is appropriate because the study focuses not only on formal law, but also on how law is interpreted, negotiated, and practiced in everyday social life. The study is informed by legal anthropology and the sociology of religion to understand how normative authority shifts from customary leaders to local ulama in defining marital legitimacy. This research uses a comparative case-study design because the relationship among customary institutions, ulama, and state law varies across local settings. The study focuses on selected Muslim communities in Indonesia where unregistered marriage remains socially significant and where both customary and religious leaders influence marriage regulation.

²⁴ Khalilurrahman, Eficandra, dan Alfiander, “Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra).”

Primary data were obtained from in-depth interviews with customary leaders, local ulama or kyai, couples in unregistered marriages, affected women, Office of Religious Affairs officials, village administrators, and, where relevant, religious court personnel. Secondary data were collected from statutes and regulations on marriage registration, policy documents, fatwas, local customary rules, administrative records, village documents, and relevant court decisions. Data were collected through in-depth interviews, document analysis, and limited participant observation. Limited observation was conducted in communal settings such as village meetings, religious consultations, and family discussions related to marriage.

The data were analyzed thematically by focusing on authority, legitimacy, and legal pluralism. This analysis was used to identify how participants defined legitimate marriage, understood registration, and interpreted the roles of customary, religious, and state authorities. Triangulation of interviews, observations, and documents was applied to strengthen the reliability of the findings. Through this method, the study connects the normative framework of marriage regulation with its actual interpretation and practice, while also explaining changes in legal consciousness and family practices shaped by evolving local authority structures.

RESULT AND DISCUSSION

The Erosion of Customary Authority in the Governance of Marriage

Marriage is fundamentally the primary component in the formation of a family characterized by *sakinah*, *mawaddah*, and *rahmah*. Therefore, the establishment of set laws is essential to achieve the anticipated family structure.²⁵ Marriage is a legal contract that formalizes the connection between a man and a woman, aimed at establishing a harmonious family life sanctioned by Allah. This definition can foster a harmonious family life, legitimize the union between a man and a woman, and establish a tranquil household grounded in love and affection.²⁶ Numerous jurisprudential scholars believe that marriage constitutes a contract wherein the law regulates the acceptability of intimate relationships

²⁵ Sulastrri Caniogo, "Pencatatan Nikah Dalam Pendekatan Masalah," *JURIS (Jurnal Ilmiah Syariah)* 14, no. 2 (Oktober 2016): 207, <https://doi.org/10.31958/juris.v14i2.308>.

²⁶ Andi Zainuri, Ahmad Muslimin, dan Ahmad Mukhlisin, "Problems of Sirri Marriage and Prisoners: A Case Study in Sukadana, East Lampung, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (Desember 2023): 335, <https://doi.org/10.22373/ujhk.v6i2.17487>.

predicated on marital status. This understanding originated from a legal perspective that has permitted what was previously prohibited in the connection between men and women, transforming initial prohibitions into legitimate practices and even establishing a domain of reward.²⁷ Marriage registration in classical Islamic jurisprudence has not been a focal point for jurists. The absence of unambiguous texts undermines the support for marriage registration. The legitimacy of a marriage contract is contingent upon the satisfaction of specific pillars and conditions. Marriage registration, governed by Law Number 1 of 1974 about Marriage and Government Regulation Number 9 of 1975 on the Implementation of the Marriage Law, addresses the myriad transformations in human social life, with the objective of fostering general welfare.²⁸

Decline of traditional authority in marriage regulation is not a one-time event but a slow change brought about by modernization, bureaucratization, mobility, generational change, and the weakening of collective punishments in traditional communities. The literature consistently shows that the way marriage is governed in Indonesian Muslim societies has changed from being solely based on customary law to a plural legal order where state institutions, Islamic authorities, and local social practices all work together to define what is legal and legitimate. In Aceh, marriage governance is characterized as a co-production of customary, Sharia, and civil registration, illustrating the diminishing influence of solely customary regulation and the increasing significance of state administrative frameworks in shaping family law. Similar patterns can be observed in other regions where the legal framework of marriage is being progressively restructured through the interactions of local religious entities, village institutions, and state bureaucracies, thereby contesting the previous notion that customary institutions solely function as the primary custodians of marital order.²⁹ Mahfudh asserts that Indonesia is a polity founded on Pancasila (Five

²⁷ Dea Salma Sallom dan Kholil Syu'aib, "Matchmaking in Pesantren: The Role of Wali Mujbir in Matchmaking with Maqasid Sharia Perspectives," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no. 1 (Juni 2022): 78–91, <https://doi.org/10.30631/alrisalah.v22i1.1073>.

²⁸ Fauzan Muhammadi, "Legalitas Nikah Sirri Ditinjau Dari Kaidah Fikih," *De Jure: Jurnal Hukum dan Syar'iah* 9, no. 1 (Juni 2017), <https://doi.org/10.18860/j-fsh.v9i1.4063>.

²⁹ Schenk, "Legal and spatial ordering in Aceh, Indonesia: Inscribing the security of female bodies into law."

Pillars), neither Islamic nor secular in nature. It is therefore impossible to regulate civil society through Islam or any other religion. In actuality, the state governs matters pertaining to religious communities, including marriage. It controls the validity of marriage according to the norms of official religion in Indonesia, which is restricted to six religions.³⁰

One significant sign of this decline is that unregistered marriage is still common and accepted by society. If customary authority were still a single and powerful force for regulation, one would expect communities to have more control over how people get married. The literature indicates that unregistered marriage continues to persist in regions like Banjar and West Sumatra, implying that customary institutions can no longer dominate regulation or consistently implement their sanctions. State actions like mass wedding initiatives and isbat nikah programs show that formal institutions are getting more involved in fixing or formalizing marriages that have already been accepted by society outside of the civil registration system.³¹ The presence of dual administrations where ninik mamak, kyai, or other local authorities function alongside KUA officers, courts, and village bureaucracies indicates that the previously unified authority of customary law has been disintegrated into a landscape of competing and overlapping institutions.³²

The Repositioning of Local Ulama and the Normalization of Unregistered Marriage

In this changing field, local ulama are becoming more and more important as judges of whether a marriage is valid. The literature says that their power comes not only from their beliefs but also from their relationships and the institutions they work for. Ulama, kyai, and other local religious leaders gain power through religious education networks, guardianship roles, mosque-based authority, and their role as brokers who turn Islamic rules into judgments that can be acted on in society. People in many communities go to them not only for legal-religious advice but also to get their marriage decisions confirmed in real life, especially when registering with the government is hard, takes a long

³⁰ Anthin Lathifah, "State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (Juni 2020): 1–30, <https://doi.org/10.19105/al-lhkam.v15i1.2689>.

³¹ Hafidzi dkk., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan."

³² Mustafid dkk., "Alternative legal strategies and ninik mamak authority: Dual administration of Malay marriage in Koto Kampar Hulu, Riau."

time, or isn't a priority for the community. Their power can last even when people become more aware of state law. At the same time, bureaucratic processes and new stories that stress legal certainty, rights protection, and the benefits of registration are changing this authority. Some studies say that kyai authority is fading in some situations because more and more people are aware of the legal risks of not getting married. But other research shows that kyai still have a lot of power in everyday life, especially where marriage is seen as a religious covenant instead of a civil-administrative status.³³ The results also show that moving ulama around does not mean that religion has simply replaced custom. Instead, it changes the way the legal field works. In some places, ulama support marriage registration and push for isbat nikah as a way to protect women's, children's, and inheritance rights. In these situations, they act as middlemen, connecting Islamic teachings with state law and presenting registration as a moral duty and a benefit to society. Ulama in other communities, on the other hand, allow or even approve of unregistered marriages by putting classical fiqh requirements ahead of administrative duties. Some religious leaders see a marriage as valid and acceptable in society, even if it doesn't have state recognition, as long as it meets religious requirements like consent, witnesses, a guardian, and a dower. This difference is well-known in the literature and helps to explain why similar national laws get very different responses in different places. Even though unregistered marriage may be officially discouraged, it can still happen because of religious legitimacy and social acceptance.³⁴

This layered legality is very important for understanding normalization. People don't just ignore the law when they get married without registering; the law is also mediated by different authorities with different levels of social reach. Islamic norms can give a marriage real legitimacy even when the state won't or can't register it. This can happen through social rituals like walimah like marriage celebrations, public acknowledgment by families, and communal recognition. In a number of case studies, customary sanctions and religious brokerage work together to keep unregistered marriage as a viable social form, especially when

³³ Islamiyah, "When religious leaders become marriage brokers, penghulus, and marriage consultants: The authority of kyai in the process of unregistered marriage."

³⁴ J. Nelli, "The problems of siri marriage for women in Tambang District, Kampar Regency: A gender SWOT analysis study," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 569, <https://doi.org/10.29240/jhi.v7i2.4740>.

community members think that religious validity is more important than following the rules.³⁵

Scholars of Islamic jurisprudence have examined the protocols for executing a marriage, encompassing the prerequisites and foundational elements, along with the preliminary phases, which consist of the proposal (khitbah), the marriage contract, and concluding with the wedding reception (walimah al-'ursy). The final stage is to exhibit and inform others that a marriage has occurred. This method is frequently addressed in numerous Islamic jurisprudence texts, and if fully adhered to, the marriage is deemed genuine, along with the associated legal ramifications.³⁶

When ulama and community recognition give nikah siri social legitimacy that is stronger than the weakening of customary law and the uneven or distant enforcement of state law, it becomes normal. The relationship between religion, the state, and society shows that normalization doesn't happen outside the state, but rather through the state's own adaptive mechanisms. Programs like isbat nikah, integrated registration services, and mass weddings try to connect religious legitimacy and civil recognition by making marriages that already exist socially official. These policies are often practical responses to the fact that many couples live together as if they were married even though they don't have any paperwork to prove it. But the research shows that these kinds of policies can also make people feel unsure. They help fix problems with civil status and protect family rights on the one hand. On the other hand, if implementation isn't consistent or isn't socialized enough, they might unintentionally strengthen the idea that registration can always be put off and fixed later with help from the government.^{37,38}

In this way, the state doesn't just fight living law; it also works with it. These results are even more interesting when you look at gender, class, education, and the differences between rural and urban areas. It is

³⁵ Khalilurrahman, Eficandra, dan Alfianer, "Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra)."

³⁶ Aidil Alfin dan Busyro Busyro, "Nikah Siri dalam Tinjauan Hukum Teoritis dan Sosiologi Hukum Islam Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (Juni 2017): 61–78, <https://doi.org/10.24090/mnh.v11i1.1268>.

³⁷ D. Mustika dan S. Marlina, "Integrated marriage itsbat: Analyzing the polemics behind its implementation," *Mazahib*, 2019, 44–75, <https://doi.org/10.21093/mj.v18i1.1344>.

³⁸ P. Setiawan dkk., "Juridical implications of unregistered marriage against legal protection in the Domestic Violence Law," *Media Iuris* 6, no. 3 (2023): 457–78, <https://doi.org/10.20473/mi.v6i3.43219>.

not enough to say that people who want to get married without registering are just following social norms; they are also vulnerable and unequal. Couples often put immediate religious solemnization ahead of the costs or steps needed to register formally because they are financially unstable. Women, in particular, may want the moral security of being legally married even if it puts them at greater legal and social risk if the marriage isn't officially recognized. The literature links these kinds of situations to psychological distress, insecurity, and unequal bargaining power in the home, especially when the woman's legal status is unclear.³⁹ In rural and semi rural areas, where customary leaders, *ninik mamak*, and *kyai* still shape daily social interactions, non-state pathways of legitimacy tend to be stronger. Urbanization and more people knowing about the law may make people want *isbat nikah* and paperwork more, but these changes don't get rid of the social reasons why some communities still use unregistered forms.⁴⁰

The legal and social effects on women's, children's, and family rights are still some of the most important things that have been found in the literature and are the main topic of this discussion. If you get married without registering it, you may not be able to get birth certificates, family cards, inheritance claims, or legal help if you have a domestic conflict or separation. Not recognizing someone can lead to long-term civil rights problems that affect not just the couple but also future generations. Stigma, marginalization, and domestic violence can also make women more vulnerable when their legal status is unclear or when they can't easily prove their marital rights to administrative or judicial bodies.⁴¹ *Isbat nikah* is supposed to fix these problems, but how it is put into action varies a lot, and the ways that it is supposed to work may also show how unevenly state access and legal knowledge are spread out. So, the normalization of unregistered marriage shouldn't be seen as a culturally neutral practice; it's based on unequal distributions of risk and protection.⁴²

³⁹ Nelli, "The problems of siri marriage for women in Tambang District, Kampar Regency: A gender SWOT analysis study."

⁴⁰ M. Muzakki, E. Nurlaelawati, dan A. Wahib, "Transformation of *kyai* authority in marriage: A law-abiding society in Pekoren, Rembang, Pasuruan," *Justicia Islamica* 21, no. 2 (2024): 267–90, <https://doi.org/10.21154/justicia.v21i2.9492>.

⁴¹ D. Ma'u, W. Wagiyem, dan R. Rahayu, "The construction of *cerai manis* (preferred divorce) on the border of Indonesia and Malaysia communities," *Al-Adalah* 20, no. 1 (2023): 19, <https://doi.org/10.24042/adalah.v20i1.16518>.

⁴² Mustika dan Marlina, "Integrated marriage *itsbat*: Analyzing the polemics behind its implementation."

From a theoretical point of view, these results back up the idea that living law is the best way to understand how customary, Islamic, and state law can all exist and compete with each other in modern Muslim family law. The literature shows that living law is not just about the continuation of customs; it is also about how legal meaning is created through social interaction, religious authority, and practical negotiation. The co-production of customary and Sharia law in Aceh, which is part of the civil-registration system, shows that living law can include state forms without becoming the same as state law. The negotiation between social legitimacy and legal certainty in Indramayu and similar places shows that the legal field is made up of many different lexicons of validity, each based on different authorities and moral claims.⁴³ In different parts of the world, customary leaders and ulama have different roles, such as marriage brokers and guardians, negotiators of dual administrations, and others. However, in some cases, the power of kyai seems to be fading as people become more aware of the law.⁴⁴ Consequently, the primary contribution of this study is to demonstrate that normative authority in Muslim family law is dynamic rather than static. When customary authority breaks down, it doesn't just leave a hole; it causes legitimacy to be redistributed, with ulama, state institutions, and leftover customary structures competing and working together. The fact that unregistered marriage is still happening is best seen as a sign of this unfinished reordering. It stays alive because no one person or group has complete power over the law. When customary punishments don't work as well, ulama can give moral support. When state law makes formal rules, communities can use local religious logic to reinterpret them. And when the state later offers ways to fix things, these kinds of actions may make socially embedded unregistered practices more stable instead of getting rid of them. As a result, the results make any simple story about legal modernization more complicated. Indonesian Muslim communities don't seem to be moving from custom to state law. Instead, they seem to live in a layered normative environment where religious and customary actors are still necessary for making marriages legal. This adds to the larger point that living law in modern Indonesia is not a remnant of the past, but an

⁴³ Jannah, "Social legitimacy versus state legal certainty: The dialectics of kiai marriages as living law in Dusun Pondok Asem, Kertasemaya, Indramayu."

⁴⁴ Islamiyah, "When religious leaders become marriage brokers, penghulus, and marriage consultants: The authority of kyai in the process of unregistered marriage."

evolving field of authority shaped by changes in the law, society, and community negotiation.

Customary Laws and the Validity of Unregistered Marriages Across Cultures

Unregistered marriage is still a controversial issue that involves customary law, religious norms, and state rules. In numerous societies, marriage transcends a mere private contract between two individuals; it constitutes a social institution intricately linked to lineage, inheritance, communal legitimacy, and gender relations. When a marriage is not officially registered, different legal systems respond in different ways. In some cases, customary law recognizes these kinds of marriages if the necessary rituals, family consent, and community recognition are all met. In other situations, not registering the marriage makes it less socially and legally strong, especially when there are disagreements about inheritance, maintenance, divorce, and the status of children. In Muslim societies, the issue is even more complicated because scholars and ulama argue about whether meeting the requirements of classical Islamic law is enough for validity or whether state registration is now a necessary way to protect justice.

This conversation looks at two questions that are related to each other. First, how do customary laws in various cultural contexts deal with the legitimacy of unregistered marriages? Second, what part do Islamic scholars play in figuring out what these kinds of marriages mean for the law and society? Based on the Scopus-based references given, this discussion says that the way unregistered marriage is treated depends on the relationship between custom, religion, and the state. Scholars are not only legal interpreters but also moral mediators and agents of reform.

Customary law frequently ascertains marital validity via social recognition rather than bureaucratic registration. In numerous communities, marriage is deemed valid when it adheres to locally recognized practices, including familial negotiations, the payment of bridewealth, public ceremonies, and the integration of the spouse into the kinship framework. From this point of view, state registration does not always mean that a marriage exists; instead, it shows that a marriage has already been formed socially. This elucidates why unregistered marriages might still be regarded as legitimate in customary settings, despite their administrative invisibility.

The South African experience clearly shows this difference. Under the Recognition of Customary Marriages Act 120 of 1998, customary marriages are valid if they meet substantive customary requirements,

even when they are not registered. In practice, however, registration is very important because it helps prove marital status in cases of divorce, inheritance, and property claims.^{45,46} Courts have therefore had to interpret customary requirements flexibly, taking into account living customary law rather than rigid formalism. Discussions regarding the significance of lobolo, familial involvement, and the incorporation of the bride indicate that customary marriage is a dynamic institution rather than a fixed entity.⁴⁷ In this regard, unregistered marriages may be socially valid and legally recognized, yet their absence of formal documentation can render women vulnerable to exclusion and ambiguity.

In Minangkabau society, the issue of unregistered marriage is perceived not merely as a legal concern but also as a threat to communal order. Research in West Sumatra indicates that customary leaders perceive unregistered marriage as a divergence from the established relationship among customary, Islamic, and state law.⁴⁸ Marriage is anticipated to strengthen familial cohesion and deference to communal authority. When couples skip official and traditional channels, it may be seen as undermining the authority of local leaders and weakening the social fabric as a whole. In Minangkabau, responses include punishments meant to restore harmony rather than just punish the couple. Depending on the local situation, these measures could include fines, being held accountable in public, or being left out of social activities. Recent studies indicate that the significance of Tigo Tungku Sajarangan, a traditional triadic leadership framework, has diminished due to modernization, migration, and individualistic interpretations of religion. Consequently, traditional institutions are finding it progressively challenging to

⁴⁵ L. Mwambene dan H. Kruuse, “Unfulfilled promises? The implementation of the Recognition of Customary Marriages Act in South Africa,” *International Journal of Law, Policy and the Family* 29, no. 3 (2015): 237–59, <https://doi.org/10.1093/lawfam/ebv009>.

⁴⁶ T. Nhlapo, “Customary marriage: Missteps threaten the constitutional ideal of common citizenship,” *Journal of Southern African Studies* 47, no. 2 (2021): 273–89, <https://doi.org/10.1080/03057070.2021.1880750>.

⁴⁷ M. E. Nkuna-Mavutane dan J. Jamneck, “An appraisal of the requirements for the validity of a customary marriage in South Africa, before and after the Recognition of Customary Marriages Act 120 of 1998,” *Potchefstroom Electronic Law Journal* 26 (2023): 1–30, <https://doi.org/10.17159/1727-3781/2023/v26i0a15298>.

⁴⁸ Khalilurrahman, Eficandra, dan Alfiander, “Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra).”

effectively govern marital conduct.⁴⁹ Comparative evidence indicates that customary responses to unregistered marriage vary from pragmatic acknowledgment to legal harmonization. The shalish system in Bangladesh is a community-based way to settle disagreements and prove relationships that can accept different types of evidence. This flexibility is especially important for women whose marriages were never officially recorded but who still need access to social justice and recognition.⁵⁰ Instead of requiring strict documentary proof, community forums might use witness testimony, local reputation, and patterns of living together. Kenya offers a distinct paradigm. The Marriage Act 2014 aimed to unify various matrimonial regimes and elevate customary marriages to a comparable status with civil and religious marriages. Registration is required by law, but the reform also aims to strengthen legal protections for spouses, particularly women, by clarifying their status and rights.⁵¹ This method shows an effort to keep traditional legitimacy while making it a bigger part of state law.

There is a common tension that comes up in these areas. Customary law frequently recognizes marriage via social practice, while state law generally emphasizes documentary certainty. The difference between the two can make the law less safe, especially when there are problems with divorce, inheritance, or claims of domestic violence. A common idea in the literature is that the effects of not registering a marriage are not the same for everyone. When marriage is recognized socially but not legally, it has a bigger impact on women. In South Africa, the absence of registration has been linked to challenges in

⁴⁹ E. Elimartati dkk., "From custodians to bystanders: Tigo Tungku Sajarangan's responses to unregistered marriages practices in Minangkabau," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 18, no. 1 (2025), <https://doi.org/10.14421/ahwal.2025.18103>.

⁵⁰ S. T. Hoque, "Rethinking marriage: Blurring the legal and the social," *Law & Social Inquiry*, advance online publication, 2025, <https://doi.org/10.1017/lsi.2025.10068>.

⁵¹ Y. Febrianty dkk., "Legal Reform in Customary Marriage Law in Indonesia and ...," *Jurnal UNNES*, 2025.

demonstrating marital status, asserting property claims, and obtaining entitlements following divorce or death.^{52,53}

The Role of Ulama in Interpreting the Implications of Unregistered Marriage in Islamic Law

In Islamic legal discourse, scholars are pivotal in defining the interpretation of unregistered marriage. Their first job is to figure out if a marriage that meets the traditional requirements of offer and acceptance, guardian, witnesses, and dower is still valid in the eyes of the church even if it is not registered with the state. Some ulama in many Muslim communities say that this kind of marriage is valid from a fiqh point of view because registration is not traditionally seen as a requirement or pillar of marriage. This point of view helps explain why religious leaders may still support *nikah siri*, even though the marriage isn't legal in their country.⁵⁴

Many scholars also say that registration has become important in modern times because it helps achieve Islamic goals like justice, protecting lineage, and preventing harm. From this point of view, registration may not take the place of the traditional parts of marriage, but it is a necessary legal tool for getting maintenance, inheritance, child status, and access to dispute resolution.⁵⁵ So, scholars don't just repeat doctrine; they also change it to fit new institutional realities.

The academic discourse is frequently characterized by formalist and realist inclinations. Formalist scholars usually put doctrinal compliance with classical legal requirements at the top of their list. They think the marriage is valid in religious terms as long as the basic parts are there, even if there are problems with the paperwork. Realist scholars, on the other hand, focus on the social effects of not registering and say that legal validity should be seen in light of public welfare and how government works today. This difference is important because it affects

⁵² Mwambene dan Kruise, "Unfulfilled promises? The implementation of the Recognition of Customary Marriages Act in South Africa"; F. Osman dan A. T. Murambiwa, "The new era of discarded wives in South African customary law and the way forward," *International Journal of Law, Policy and the Family* 40, no. 1 (2026), <https://doi.org/10.1093/lawfam/ebag009>.

⁵³ Osman dan Murambiwa, "The new era of discarded wives in South African customary law and the way forward."

⁵⁴ Baihaqi dkk., "Legal Non-Compliance and Kiai Hegemony."

⁵⁵ Qadriani Arifuddin, "Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles," *Nurani: jurnal kajian syari'ah dan masyarakat* 24, no. 2 (Oktober 2024): 317–28, <https://doi.org/10.19109/nurani.v24i2.24529>.

how people act. Couples may not feel the need to register right away if important ulama say that unregistered marriages are religiously acceptable. But when scholars talk about the problems that come from being legally invisible, they help people understand Islamic law in a more holistic way.

Scholars also act as go between for different sets of rules. Ulama often help communities understand the conflicts between state law, customary law, and Islamic law when they all apply to the same situation. For example, research in Madurese Muslim settings shows how kiai use their moral authority to make unregistered marriages acceptable, even when these practices go against what the state wants. Ulama views affect how people in Aceh and other parts of Indonesia think about whether registration is just a matter of administration or something that is morally binding. Scholars are doing more than just interpreting the law; they are also helping to change it. Some people support procedural solutions like *itsbat nikah*, which lets judges look back at unregistered marriages and make them legal. Others use *maqasid al-shari'ah* to say that stronger legal recognition and registration systems are needed to stop domestic violence, protect vulnerable spouses, and protect children's rights.⁵⁶ In this role, scholars don't just keep traditions alive; they also help to rebuild them so that Islamic law can deal with modern problems.

CONCLUSION

The findings of this study imply that the normalization of unregistered marriage in Indonesian Muslim communities is not merely a legal anomaly, but a reflection of shifting authority within Indonesia's plural legal system. These findings recommend that legal reform should move beyond formal regulation and adopt integrative approaches that involve local ulama, customary actors, and state institutions in strengthening marriage governance. The study also recommends expanding accessible marriage registration services, improving digital systems such as SIMKAH, and strengthening legal awareness to better protect the rights of women and children.

This study demonstrates that the decline of customary institutions has not eliminated living law; instead, it has produced a layered legal order in which social legitimacy, religious validity, and formal legal certainty coexist and compete. In this changing legal landscape, local

⁵⁶ A. M. Akmal dkk., "Legal solutions for domestic violence in unregistered marriages in Indonesia: Integrating Maqāṣid al-Sharī'ah," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 768–88, <https://doi.org/10.22373/ujhk.v7i2.25971>.

ulama increasingly fill the normative gap left by weakening customary institutions. Their growing authority significantly shapes whether unregistered marriages are accepted, regularized, or socially normalized.

Accordingly, the study confirms that Indonesian Muslim family law is dynamic and legally pluralistic, shaped by changing moral leadership, bureaucratization, and evolving legal consciousness. The academic contribution of this study lies in showing that the persistence of unregistered marriage is best understood as the result of redistributed normative authority rather than simple legal non-compliance. Therefore, stronger collaborative governance, inclusive registration mechanisms, and context-sensitive policy implementation are necessary to ensure greater legal protection for women, children, and families.

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