

When Religious Leaders Become Marriage Brokers, Penghulus, and Marriage Consultants: The Authority of Kyai in the Process of Unregistered Marriage

Nanda Nabilah Islamiyah
Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia
Email: nandanabilai28@gmail.com

ABSTRACT

This article attempts to narrate the role played by *kyai* in the practice of unregistered marriage in Rembang Sub-district, Pasuruan Regency. The *kyai's* existence was initially built upon the *kyai's* establishment in carrying doctrines that indicate adherence to religious terms in all actions, including marriage. This article also examines several factors that sustain the *kyai* profession at three stages of *siri* marriage practice: pre-marriage stage, the marriage stage, and the post-marriage stage. This article also discusses the implications of the interaction between the *kyai* and the clients through the agreement made. The data is generated from interviews with relevant parties who are directly involved in the practice of unregistered marriages. This article finds that the *kyai's* involvement in the practice of unregistered marriages is shaped by the *kyai's* power or authority as a marriage broker, marriage official, and *siri* marriage consultant. Moreover, the *kyai* are often relied upon to minimize potential obstacles to marriage, as seen in the case of buying a *wali* or the practice of *wali muhakam*. Through the analysis of Weber's theory of authority, the *kyais'* power softly attracts public sympathy due to their moral and spiritual superiority, which is implemented through their consistency in religious practice and ability to preach. In this way, the community consciously shows obedience to the *kyai*, thereby narrowing the space for rejection of the *kyai's* invitation to engage in unregistered marriage practices.

[Artikel ini menarasikan bagian peran kyai yang dimainkan dalam praktik perkawinan siri di Kecamatan Rembang, Kabupaten Pasuruan. Eksistensi kyai awalnya dibangun berdasarkan atas kemapanan kyai dalam membawa doktrin yang mengindikasikan kepatuhan terhadap terma agama dalam segala tindakan, termasuk perkawinan. Artikel ini juga mengkaji beberapa faktor yang membuat profesi kyai dapat berlangsung secara kontinu pada tiga tahapan dalam praktik perkawinan siri, yakni tahap pra nikah, tahap perkawinan itu sendiri, dan tahap pasca perkawinan. Artikel ini juga tidak lepas dari pembahasan mengenai implikasi dari adanya interaksi antara kyai dengan para klien melalui kesepakatan yang dilakukan. Data dalam tulisan ini dihasilkan dari proses wawancara dengan pihak yang terlibat secara langsung dalam praktik perkawinan siri. Artikel ini menghasilkan temuan bahwa keterlibatan kyai dalam praktik perkawinan siri terbentuk dari adanya kekuasaan atau otoritas kyai sebagai makelar perkawinan, penghulu perkawinan, dan konsultan perkawinan siri. Selain itu kyai juga dapat diandalkan sebagai pihak yang mampu meminimalisir kemungkinan terjadinya kendala perkawinan, salah satunya ditemukan dalam kasus beli wali atau praktik wali muhakam. Melalui analisis teori otoritas Weber, kekuasaan kyai secara lunak mampu menarik simpati masyarakat sebab keunggulan dalam aspek moral dan spiritual, yang diimplementasikan melalui konsistensi kyai dalam mengaplikasikan amaliyah keagamaan serta kemampuan dalam berdakwah. Dengan cara demikian, secara sadar masyarakat akan menunjukkan kepatuhan kepada kyai sehingga mempersempit ruang penolakan ajakan kyai untuk terlibat dalam praktik perkawinan siri.]

KEYWORDS

Marriage broker, *penghulu*, marriage consultant, *sirri* marriage, *kyai*

ARTICLE HISTORY

Received: 4 April 2024

Approved for Publication: 5 June 2024

TO CITE THIS ARTICLE

Nanda Nabilah 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>.



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Introduction

This article discusses the role of *kyai* in the practice of unregistered marriages in Rembang Sub-district, Pasuruan Regency. This article focuses on the role of *kyai* in unregistered marriages that are practiced in the midst of strict state administrative regulations. In several studies, it was found that the *kyai's* involvement was not the only factor underlying the practice of unregistered marriages in Rembang Subdistrict.¹

The issue of *kyai* involvement is the main focus of this research based on the community's recognition that the role of *kyai* in the context of *sirri* marriage in Rembang cannot be replaced by other parties. The article also shows the complex role of *kyai*, starting from the role in the pre-marriage stage,² the marriage contract stage,³ and the post-marriage stage.⁴ The three roles are able to be carried out by the *kyai* at the same time. This role also has a significant impact on the smooth marriage of the perpetrators and the material benefits generated from the *kyai's* business. The alternative of unregistered marriages with the help of *kyai* in

¹ Muhammad Roy Purwanto, "Nikah Mut'ah dan Implikasinya dalam Kehidupan Sosial: Studi Kasus Nikah Mut'ah di Desa Kalisat Kabupaten Rembang Pasuruan Jawa Timur," *Jurnal An-Nur* 6, no. 2 (2014): 151-75; Khoirul Hidayah, "Persoalan Hukum Perempuan Rembang Akibat Praktek Nikah Sirri," *De Jure: Jurnal Hukum dan Syar'iah* 3, no. 1 (2011): 86-100, <https://doi.org/10.18860/j-fsh.v3i1.1322>; Aulia Fitriany, "Sejarah Budaya Kawin Sirri di Desa Kalisat Kecamatan Rembang Kabupaten Pasuruan," *Jurnal Edukasi* 1, no. 2 (2015): 1-22.

² *Kyai* as a marriage broker who has the authority to determine the agreement on marriage costs with the perpetrators.

³ *Kyai* as the head of the *sirri* marriage and *wali muhakam* when the bride's guardian is reluctant to attend to give the marriage blessing.

⁴ *Kyai* as a marriage consultant when there are problems in the household of the perpetrators of *sirri* marriage.

Rembang also shows indications of the purely administrative function of marriage registration.⁵ This argument can be seen in people's efforts to avoid administrative processes rather than prioritizing their rights.⁶ Perhaps the alleged material benefits to the perpetrators can strengthen this opinion.⁷ However, this article shows the hesitation of the perpetrators when not registering their marriages, at least this explanation can show an awareness of the importance of marriage administration, even though in the end the *kyai's* power shows more dominance.

In several studies, the discussion of the role of *kyai* in the practice of *sirri* marriage has long been a concern of scholars. Most researchers, such as Wahab, Apriliani, Handoyo, Ramadhan and Faroh, find that the *sirri* marriages that occur in Jepara and Bogor cannot be separated from the intervention of *kyai* as marriage officials.⁸ Meanwhile, Fadhli calls the practice of customary marriage that is not carried out in front of *Ninik Mamak* as a practice of *sirri* marriage, where the involvement of religious figures is also the cause of the realization of the marriage.⁹ Other works on *sirri* marriages in Rembang have generally discussed the legal practice, starting from the search for men to find prospective wives in the Rembang area to the realization of marriage as described in the research of Khodafi, Kinasih, and Nawawi,¹⁰ Hidayah and Jamilah highlight the issue of *sirri*

⁵ Muhammad Latif Fauzi, "Administrative Transgression and Judicial Discretion for the Sake of Citizens' Right: The Legalisation of Unregistered Marriages in Indonesia," *Al-Ahwal* 16, no. 2 (2023): 211–31, <https://doi.org/10.14421/ahwal.2023.16202>.

⁶ Nazarudin, Achmad Abubakar, dan Halimah Basri, "Nikah Sirri dan Problematikanya," *Innovative: Journal Of Social Science Research* 3, no. 3 (2023), <https://doi.org/10.31004/innovative.v3i3.2215>.

⁷ Purwanto mentioned in relation to marriage dowries in the form of sewing machines, land and shops that the women use to earn a living. See Purwanto, "Nikah Mut'ah dan Implikasinya dalam Kehidupan Sosial: Studi Kasus Nikah Mut'ah di Desa Kalisat Kabupaten Rembang Pasuruan Jawa Timur."

⁸ Muchtar Ali Abdul Jamil Wahab, Kustini, "Fenomena Kawin Kontrak Dan Prostitusi 'Dawar' Di Kawasan Puncak Bogor," *Alqalam* 35, no. 1 (2018): 127–52, <https://doi.org/10.32678/alqalam.v35i1>; Lia Apriliani, "Kajian Sadd Al-Dzari'ah Atas Praktik Nikah Siri di Bumiharjo Kab. Jepara," *Isti'dal: Jurnal Studi Hukum Islam* 9, no. 1 (2022): 38–56, <https://doi.org/10.34001/ijshi.v9i1.3225>; Heri Rohayuningsih Eko handoyo, "Kawin Kontrak: Latar Belakang, Keabsahan Hukum dan Dampaknya (Studi Kasus di Kabupaten Jepara)," *Forum Ilmu Sosial* 40, no. 2 (2013): 230–43, <https://doi.org/10.15294/fis.v40i2.5357>; Nuriyati Nailil Faroh, "Tinjauan Hukum Islam Terhadap Praktik Nikah Mut'ah (Studi Kasus Di Kecamatan Tahunan Kabupaten Jepara)" (Universitas Islam Negeri Sunan Kalijaga, 2008). ; Muhammad Ilham Ramadhan, "Peran Ajengan Sebagai Wali Dalam Praktik Nikah Siri: (Studi Di Kecamatan Cisarua kabupaten Bogor)" (Universitas Islam Negeri Syarif Hidayatullah, 2018).

⁹ Fathur Rahmi Ashabul Fadhli, "Intervensi Tuanku Terkait Praktek Nikah Siri di Nagari Kurai Taji Pariaman," *Kafa'ah: Jurnal Ilmiah Kajian Gender* 6, no. 2 (2016): 155–78, <https://doi.org/10.15548/jk.v6i2.147>.

¹⁰ Muhammad Khodafi dan Hotimah Novitasari, "Upaya Membranding Stigma Negatif Tradisi Nikah Sirri di Desa Kalisat, Rembang, Pasuruan Melalui Pelestarian Tradisi Gebluk," *Suluk: Jurnal Bahasa, Sastra, dan Budaya* 1, no. 2 (2019): 87–93, <https://doi.org/10.15642/suluk.2019.1.2.87-93>; Sri Endah Kinasih, "Budaya Hukum dan Hubungan Kekuasaan antara Laki-laki dengan Wanita dalam Perkawinan Kontrak di Masyarakat Kalisat," 2003; Ali Usman Nawawi dan Agus Satmoko Adi, "Praktik Kawin Kontrak

marriage in terms of legal rules and norms, ranging from issues related to inheritance, child recognition, maintenance to issues of domestic violence.¹¹ In terms of legal views, Afiyah and Makruf examine the legal views of *sirri* marriage from the perspective of the community to religious leaders.¹² Regarding the factors causing the occurrence of *sirri* marriage, the article by Dimastiwi, Muharromah, Ati, Purwanto, and Suheris shows that the occurrence of *sirri* marriages in Rembang were motivated by aspects of socio-economic conditions, education, and the issue of gender inequality.¹³ The studies that significantly highlight the role of religious authorities in the practice of *sirri* marriage in Rembang focus more on the role of *kyai* in the pre-marital stage, as in the research of Alfarisi, Hariyanto, and Solikin. Three research above show that *kyais* are able to exert influence to lead men to enter into *sirri* marriages and find wives for them.¹⁴

Based on previous research, this article shows the complexity of the *kyai's* role, which is not limited to the issue of marriage commodification involving the *kyai* as a broker or as a party to the marriage contract. However, this article further portrays the role of *kyai* in three stages at once: the pre-marriage stage, the marriage stage, and the post-marriage stage. Using Weber's theory of authority, this paper argues that the *kyai's* authority in the practice of *sirri* marriage in

di Desa Kalisat Kecamatan Rembang Kabupaten Pasuruan," *Kajian Moral dan Kewarganegaraan* 05, no. 02 (2017): 176–92, <https://doi.org/10.26740/kmkn.v5n02.p%25p>.

¹¹ Hidayah, "Persoalan Hukum Perempuan Rembang Akibat Praktek Nikah Sirri"; Fitrotin Jamilah, "Hak Waris Anak Hasil Pernikahan Siri di Desa Kalisat Kecamatan Rembang Kabupaten Pasuruan," *Al Hikmah: Jurnal Studi Keislaman* 7, no. 1 (2017): 1–9, <https://doi.org/10.36835/hjsk.v7i1.2873>.

¹² Thoyyibatul Afiyah, "Pandangan Tokoh Masyarakat terhadap Pelaksanaan Perkawinan Sirri karena Perselingkuhan (Studi di Desa Kalisat Kecamatan Rembang Kabupaten Pasuruan)," *Skripsi* (Universitas Islam Negeri Maulana Malik Ibrahim, 2022); Muchlis Makruf, "Fenomena Nikah Sirri di Desa Kalisat Perspektif Teori Fenomenologi Sosial Alfred Schutz," *Tesis* (Universitas Islam Negeri Maulana Malik Ibrahim, 2021).

¹³ Alifa Ashadiyah Dimastiwi, "The Harmony of Siri Marriage Couple," *Etnoreflika: Jurnal Sosial dan Budaya* 10, no. 1 (2021): 46–55, <https://doi.org/10.33772/etnoreflika.v10i1.1064>; Siti Nur Muharromah, "Dampak Nikah Sirri terhadap Pendidikan Anak dalam Keluarga di Desa Genengwaru Kecamatan Rembang Pasuruan," *Skripsi* (Universitas Yudharta, 2019); Nurul Utami Ati, "Mengikis Budaya Nikah Siri Dengan Soft Skill dan Life Skill," *Wacana Publik* 14, no. 01 (2020): 27–34, <https://doi.org/10.37295/wp.v14i01.44>; Purwanto, "Nikah Mut'ah dan Implikasinya dalam Kehidupan Sosial: Studi Kasus Nikah Mut'ah di Desa Kalisat Kabupaten Rembang Pasuruan Jawa Timur"; Akhmad Afdin Suheris, "Nikah Sirri dan Bentuk Kesadaran Agen (Perempuan) di Desa Pajaran Kecamatan Rembang Kabupaten Pasuruan," *Skripsi* (Universitas Brawijaya, 2014).

¹⁴ Salman Alfarisi, "Komersialisasi Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Hukum Positif (Studi Kasus Praktik Perkawinan Sirri Di Desa Pekoren Kecamatan Rembang Kabupaten Pasuruan Provinsi Jawa Timur)," *Skripsi Universitas Islam Negeri Sunan Ampel*, 2018, 1–76; Didik Hariyanto dan Maulia Figo Arian Difa, "Communication of Opinion Leader in Commodifying Contract Marriage in Siri Marriage Village in Pasuruan," *Kanal: Jurnal Ilmu Komunikasi* 10, no. 1 (2021): 28–33; Nur Solikin, "Praktik Poligami Masyarakat Kalisar Rembang Pasuruan Tinjauan Dalam Perspektif Teori Behavior," *Islamika Inside: Jurnal Keislaman Dan Humaniora* 7, no. 1 (2021): 148, <https://doi.org/10.35719/islamikainside.v7i1.149>.

Rembang is produced as a form of traditional authority that covers the *kyai's* authority involved in all marriage processes.

This paper is based on the results of field research conducted during April to October 2023. I interviewed two *kyai* who involved in *sirri* marriages, namely Q and AZ. To complete the necessary data, I also interviewed three perpetrators of *sirri* marriages consisting of R, N, and S. The discussion in this article will first explain the position of *kyai* in the midst of the socio-religious life of the Rembang community. The second section discusses the role of *kyai* in the three stages of *sirri* marriage. The third section discusses the form of traditional *kyai* authority in leading the marriage. The fourth and fifth sections discuss the analysis of the relationship between the *kyai's* authority, and the material benefits obtained and its relationship to the problem of orderly marriage administration. And the last section is ended with conclusions.

Kyai and the Socio-Religious Life of Rembang Society

The people of Rembang, especially those in rural areas, are known as people with high religiosity. The pattern of relationships built by the community with religious people is interpreted as an effort to deepen Islamic studies intensely, so that in principle religion is not only interpreted as a spiritual teaching but is required as a religious behavior. In the life of the Rembang community, religious leaders or *kyai* are often the main reference in dealing with the dynamics of problems that occur in the community. The communication patterns that are built between *kyai* and the community intensely and the superiority of knowledge in the field of religion are part of the way *kyai* maintain the nobility of Islamic law among the community. That way, the form of realization of conscious religious behavior, also cannot be separated from the contribution of religious leaders.

As a manifestation of the *kyai* in reviving the value of community spirituality, it is usually allocated through religious routine study (*majelis ta'lim*) led by the *kyai*. For instance, the religious routine study has been conducted by Mr. Q in one of the Rembang mosques every Wednesday night which has been running for five years. The routine study begins after the *maghrib* prayer until before the *isya* prayer. Technically the event is opened by the *kyai* directly with the recitation of *tawasul* and Surah Al-Fatihah and continued with the provision of *tausiah* (Islamic guidance) material. The main topic of study is taken from simple examples in everyday life found in several Islamic book (*kitab kuning*) references, such as discussions about *gibah* (gossiping), almsgiving, and even household life issues. In the middle of the program there are usually residents who serve drinks to the congregation. Every regular study is attended by 60 to 70 local people consisting of both men and women.

The Rembang community, which is generally dominated by the *Ahlusunnah wal jamaah an-nahdhiyah* community group, also has a routine of gathering with residents filled with several social-religious activities, such as *tahlil*, *istigasah* and reading Surah *Yasin* which are held once a week in rotation at residents' homes. These activities are attended by men in Rembang Village. Usually the reading of *tahlil*, *istigasah* and *yasinan* is led by a religious figure. If the religious figure is unable to attend, he will be replaced by someone who is pious and considered

qualified to lead the activity. At the end of the activity the host serves food and drinks to the attendees. Each congregation then gives some money to the treasurer of the activity (*bendahara*) which will then distribute it to the host.

The routine of the Rembang community has been around for a long time. Apart from being an effort to build harmony in the community, routine community activities are also realized as a form of consistency with the traditions of *Nahdliyin* citizens.¹⁵ In addition, channeling religious messages and leading religious activities with residents certainly requires a figure who has a noble level of knowledge related to religious knowledge and good behavior and morality to be a role model. The existence of *kyai* in the middle of Rembang community life is not technically chosen, either formally or informally, but in his personality, there are elements that can be charismatically assessed by the community.

Kyai and the Practice of Unregistered Marriages in Rembang

In relation to unregistered marriages, the involvement of third parties who intervene in the running of a marriage is an integral part of ensuring the smooth running of the marriage itself. In the case of unregistered marriages that occurred in Rembang, the *kyai* made the greatest contribution with their authority as executors of *sirri* marriages. Based on the information that I obtained from several sources consisting of two *kyai*, namely Mr. Q (70) and Mr. AZ (45) and three perpetrators in *sirri* marriage consisting of R (36), N (33) and S (40), *kyai* plays some roles in the field, such as marriage broker, *penghulu*, *wali muhakam*, and marriage consultant.

Kyai as Marriage Broker

What is meant by a broker in this discussion is someone who mediates the *sirri* marriage of a man with a woman in Rembang Village. From the matchmaking, the *kyai* gets an agreed fee. The *kyai's* role as a marriage broker can be seen from the arrival of men from outside of Rembang area who aim to find women who are willing to marry them. When entering Rembang Village, a man looking for a mate usually asks and conveys his intentions to the residents he meets along the way into the village. The residents who met him inform the men to go to the *kyai* or religious leaders to be given recommendations for women who are willing to be married (*sirri*). Most of the women who are willing to be used as *sirri* wives are women who are willing to be used as mistresses. The *ta'aruf* (introduction) process takes place in a short time, when both parties, both women and men, feel mutually compatible and are willing to be married, then immediately on that day the marriage can be carried out. Q and R illustrate this occasion by the following words.

People who marry sirri are usually the ones who want to be their second wife.¹⁶ Sometimes, if they are on the street and brought here, they will ask for this much, for this price, and if they are already familiar, they will only deliver them.

¹⁵ Member of *Nahdlatul Ulama* Organization.

¹⁶ Interview with Q, *Penghulu* of *sirri* marriage, Rembang, Pasuruan, April 28, 2023.

The grooms are usually from far away (outside Pasuruan), some are from Sidoarjo, Banyuwangi, Malang, and so on.¹⁷

There are still many sirri brokers, (the description) is like a motorcycle broker, the part of finding a woman. The woman must be agree. When the bride and groom meet and both like it, the kyai is picked up by the broker and given the news that someone wants to get married, then the kyai will hold a meeting. Rembang is indeed a sirri village.¹⁸

Since there is no engagement ceremony, usually when the bride and groom meet, they are married immediately, if they already know each other, they are also married immediately.¹⁹

Based on the role of the *kyai* as marriage broker, the practice of *sirri* marriage in Rembang can be classified into two: first, *sirri* marriage through the intermediary or matchmaking of the *kyai* or broker, and second, *sirri* marriage without the intermediary of the *kyai*. A *sirri* marriage that is carried out based on the *kyai*'s matchmaking procedure will usually be charged a fee consisting of the services cost of the citizen who brings the man to the *kyai*, the cost of the marriage contract held in the presence of the *kyai*, and the cost of witnesses and the *masawin* (dowery) that will be given to the bride. The amount of the *masawin* is usually agreed upon by the woman and the man, while the fee for the marriage contract is determined by agreement with the *kyai*. Mr. AZ states that the costs of the marriage contract, guardian and witness fees are different. The average fee is Rp100,000 to Rp300,000. It is not expensive compared to the minimum wage of Rembang Regions (Rp2,000,000) in a month.

The second type of *sirri* marriage usually occurs when the male and female parties already know each other, such as the *sirri* marriage between R and N. Both are village widows. R did her second marriage after her husband died, while N married after divorcing her first husband. Both R and N had previously known each other with their husbands. Therefore, their *sirri* marriages, although carried out in the presence of the *kyai*, were not based on the *kyai*'s matchmaking. In this position the *kyai* only acted as the head of the *sirri* marriage. This is told by R during the interview.

I have known my second husband for a long time. He used to be my ex-boyfriend, and then went back again, but my husband already had a wife before. At first, his wife could not accept it but over time it became normal. She accepted it. My marriage was assisted by a kyai. I was married by a kyai, my guardian was my brother because I no longer had a father. Some of the witnesses were from my family, three people. From my husband's family, there were two people. My neighbors were also present but not many.²⁰

¹⁷ Interview with Q, Penghulu of sirri marriage, Rembang, Pasuruan, April 28, 2023.

¹⁸ Interview with R, Perpetrator of sirri marriage, Rembang, Pasuruan, April 28, 2023.

¹⁹ Interview with Q, Penghulu of sirri marriage, Rembang, Pasuruan, April 28, 2023.

²⁰ Interview with R, Perpetrator of sirri marriage, Rembang, Pasuruan, April 28, 2023.

Kyai as Penghulu

The role of the *kyai* as a *penghulu* is the sole authority possessed during the *sirri* marriage process. In the culture of *sirri* marriage in Pasuruan, the intervention of *kyai* or religious leaders to facilitate the process of *sirri* marriage has a great influence. In a *sirri* marriage process, *kyai* have several roles such as the role as marriage broker, *penghulu*, *wali muhakam*, and marriage consultant. However, the authority inherent in the *kyai* to determine the validity of the marriage contract is when he acts as a *penghulu*. This role is used both when the marriage between the bride and groom is brought together through *kyai* matchmaking or not. The reason used as a basic argument for perpetuating the *sirri* marriage process is to avoid promiscuity and prevent adultery.

*If a man brings a woman and they ask for marriage, the marriage contract should be done immediately because of the fear of causing corruption, adultery, or sexual immorality. If there is no guardian and only two witnesses, I do tahkim. Usually the guardian does not approve; however, according to Islamic law, it is valid.*²¹

This *sirri* marriage through the help of *kyai* was experienced by R and N. Describing her marriage, R practiced *sirri* marriage with her second husband when she was 35 years old. Before the marriage, R and her husband knew each other. The marriage process between the two was carried out in a simple manner, without a reception and proposal as a common marriage in general. The parties involved included Q as the headman, R's older brother as the guardian, two witnesses from the bride and three witnesses from the groom. The agreed dowry was in the form of cash with a value of Rp500,000. She explained her experience in the word below.

*I was married to my first husband at the age of 16, sirri (unrecorded). Then my husband passed away and I married my second husband at the age of 35. I have known my second husband for a long time. He used to be my ex-boyfriend and then went back again, but my husband already had a wife before. At first his wife could not accept it but over time it became normal. She accepted it. My marriage was assisted by a *kyai*. I was married by a *kyai*, my guardian was my brother because I no longer had a father. Some of the witnesses were from my family, three people, and from my husband's family there were two people. My neighbors were also present but not many. Actually, I realized that registering a marriage at the KUA was important, because the first wife had not given permission. So, it was not registered. Actually, I wanted to take my husband for Umrah, but because there were obstacles, it was postponed. One of the terms for Umrah that you have to be legally married (registered). If you are married sirri, you cannot.*

In the practice of *sirri* marriage performed by R, the *kyai* as the marriage official also has the power to make a marriage certificate as proof of the validity of

²¹ Interview with Q, Penghulu of *sirri* marriage, Rembang, Pasuruan, April 28, 2023.

the implementation of the marriage of the two parties, where the certificate can one day be used as evidence when the two are outside the Rembang Village area. According to Mr Q, married couples who rent houses outside the Rembang area will usually be asked for proof of marriage, to protect the two couples from prejudice of the community. Both of them are made a marriage certificate. The marriage certificate can only be made by a *kyai* as proof of marriage. It is likely a marriage official certificate made by a marriage registration officer. The marriage certificate also contains the signatures of the head, witnesses, guardians and the bride and groom. After the marriage contract, both of them sign a marriage certificate made by the *kyai* or the head of the guardian, the witnesses, and the head of the marriage contract. R conveyed his illustration in the words below.

Obviously, there is a statement letter, the signatures of the bride and groom, the kyai and the witnesses. Later, the statement letter is given to the bride and groom as evidence. For example, when they leave the village, the letter is used as proof of marriage. Proof of marriage is only from handwriting. Sometimes also when the bride and groom want to rent a house, the proof of marriage is used as proof that they are a married couple. The marriage certificate contains the signatures of the witnesses, son-in-law, guardian and kyai.

The existence of a marriage certificate is included in one of the indicators of the smooth practice of *sirri* marriage, because when viewed from the aspect of positive law contained in the Marriage Law, a record is part of marriage. Thus, in order to protect the perpetrators of *sirri* marriage, the certificate of marriage made by the *kyai* is part of the proof of the validity of the marriage which is manifested as the smooth practice of *sirri* marriage.

N's *sirri* marriage with her second husband occurred after she divorced her first husband. Because the cause of the breakup of the marriage between N and her first husband was not due to death (*cerai mati*) but divorce (*cerai talak*), to carry out the second marriage, N requested a certificate of divorce from the village as well as proof of the breakup of the marriage in front of the *kyai* so that she could remarry. The marriage procession was carried out simply and was only attended by a few relatives, the *kyai* as the head, N's parents as guardians, and several witnesses from their family. N said in the following words.

I do not know my husband from a broker. I was divorced from my first husband. My husband just said please remarry. That is what divorce means here. I was only divorced through the village line. I only asked for a divorce letter from the village (kelurahan), which was a requirement for remarriage. My marriage was held in a simple ceremony attended by relatives, Pak Q, and my parents. My dowry was Rp100,000 (one hundred thousand Rupiah) to buy clothes. Actually, I want to be legalized my marriage at the KUA to protect my rights, so if I have children, I get an inheritance, but if I do not then I do not get an inheritance. If I get an inheritance, then it is only as a form of mercy, so I am given a small share of the property. Since I still do not have any children from my second husband, I do not expect anything.

In contrast to the marriages conducted by R and N, S has been practicing *sirri* marriage since her first marriage. Until now, S has undergone her third marriage with her third husband in a *sirri* without being registered at the Office of Religious Affairs. The marriages between S and her three husbands were carried out on the basis of parental arranged marriage. The practice of marriage also took place simply by presenting relatives and the implementation of the marriage contract was carried out by her parents as guardians and witnessed by the closest relatives. S described her marriages life in this way.

Yes, my destiny is like this. How could I want to be like this. Starting from my first marriage, my parents arranged everything for me. I just obeyed when I was matched. I just felt sorry for my parents because I did not have the money. My husband sometimes came home for a month, then worked again. From the first to the third marriage the dowry was one hundred thousand. My father did not allow me to ask for too much dowry, only one hundred thousand without other goods. Starting from the first marriage, it was the same. My first marriage was a simple one, and I felt sorry for my parents because they had four daughters. From the first marriage I was married off by my own father. There were relatives present, I was not a demanding person, so I just obeyed. I do not have any children from my first husband, but the second one does, and the third one does not. After I had the child, I made a birth certificate. I was taught by the Pak RT (When applying for the certificate). I was told to say that I did not have a husband. I did not register at the KUA because I did not want to be complicated because I took care of it myself, so I did not want it to be legalized.

Kyai as Wali Muhakam

Wali muhakam in the practice of *sirri* marriage occurs when parents (*nasab* guardians) do not approve the marriage performed by their daughter. The rejection is mostly influenced by the economic condition of the male party which does not match the expectations of the parents of the female. Although sometimes the life of the Rembang community in general also does not have a high enough standard, the result of these demands is the cause of the obstruction of the implementation of the expected marriage. Thus, couples from the male and female parties who wish to marry choose an alternative to *sirri* marriage by practicing *wali muhakam* (buying a guardian). Based on the perspective of the *kyai* as the head of the *sirri* marriage related to the practice of buying a guardian, they are more likely to opt the opinion of the *ulama* who allow it even though there are still confusing differences of opinions. The consideration that is used as the basis is the acceptance of *taukil wali* (delegated guardian) or the practice of buying the guardian is so that both parties avoid immorality. My interview with one of *kyai* is recorded in these words.

There was a case of tahkim wali adhal, we as scholars here, as NU people who follow the four madhhabs, some of which allow it and some of which do not. We here take the opinion that allows it, such as Imam Abu Hanifah, who is among those who allow the practice of tahkim. The factors (buying a guardian) are

various, such as problems in terms of descent or nasab, worldly or financial aspects that are inadequate, the economy is not suitable, but because both parties, namely the man and the woman, both want to get married. They are given a way to provide a guardian because the nasab guardian does not approve. This is solely to avoid adultery.

If a man brings a woman and they both ask for marriage, I do the marriage contract immediately because I fear corruption and adultery. If there is no guardian and only two witnesses, then I do tahkim because the guardian of the family does not approve. According to Islamic law, this is valid.

The procedure for the practice of *wali muhakam* or buying a *wali* begins with the pronunciation of the *sighat taukil wali* from the bride's side followed by the acceptance of the *taukil* from the *kyai* as a representative of the *nasab* guardian. After the *sighat taukil wali* is pronounced, the *kyai* as a substitute guardian will say the *ijab kabul* sentence with the bridegroom witnessed by several witnesses. Direct illustration is written directly as follows.

There is a wali taukil from the bride's side because the nasab guardian does not approve; so, she chooses to buy a wali. The process of buying a wali or tahkim wali begins with the utterance of the ijab qabul sentence between the bride and the kyai, the way the woman says 'I fulanah, I taukil and surrender to you (judge), you are my wali to marry me to a man named fulan with such a dowry', then the kyai says, 'I accept your submission as your wakil'. Then the wali muhakam and the groom say ijab qabul for the marriage contract. According to the ulama', this is valid because the ijab qabul has been adjusted to the pillars of marriage. We as modin are ready to marry according to the provisions of Sharia by saying the words of God according to the evidence in the Qur'an, the words of the covenant, istighfar, and ijab qabul.

In relation to *sirri* marriages with the services of a substitute guardian, the *kyai* as the main agent in executing the practice of *sirri* marriage has the right to determine the value of the commodity based on the handover agreement as a guardian, the head of the marriage ceremony, and the cost of the witnesses. During this process every agent accept some economic benefit from the transaction. The bride and groom pay amount of money to the *kyai*, to the witness, and all process. However, it is not expensive. The illustration of this procedure is written like the following quotes.

At the beginning, because there is an agreement to buy a guardian, the kyai must get a fee, especially since there is a contract to buy a guardian. Because the wali is bought, the bride and groom must pay, usually the kyai is paid Rp100,000 to Rp300,000. The cost of the guardian and the cost of the marriage contract and the cost of the guardian and witness are different. As for the dowry, it is according to the ability of the bride and groom. For example if the wife asks for five hundred thousand but the husband refuses and gives one hundred thousand, then this is not permissible if the husband is able to afford it.

Kyai as Marriage Consultant

The role of the *kyai* as a marriage consultant is a further role that is carried out when he becomes a substitute for the *nasab* guardian or when the practice of *wali muhakam* occurs. If there is a married couple in a *sirri* marriage, where at the time of the marriage contract the guardian is the *kyai*, the *kyai* has the responsibility to ensure that the marriage is carried out as expected; consequently, when problems occur in the couple's household, usually they will not hesitate to ask the *kyai* for advice. The *kyai* in this case will provide advice in the form of advice to reconcile the two. If the two are difficult to reconcile, the *kyai* will offer to both of them whether they want to divorce. If both agree then the *kyai* will break their marriage.

Regarding the wages or fees for marriage consultation, the *kyai* does not require a fee from the parties, but the principle that is built is to provide solutions to household problems faced by the Rembang community. This is seen as the *kyai* cultural and religious responsibility to provide consultation to everyone who come for advice. This is acknowledged by the *kyai* I interviewed.

It is my responsibility as someone who marries. If there are obstacles such as there are parties who do not believe in the marriage of the bride and groom, then I will definitely straighten out. As well as if there are problems in the household of the bride and groom or there is no compatibility between the two then I as the party who mediate their marriage will reconcile and ask each party. If they do not want to reconcile then I as the kyai will give a verdict in the form of divorce. Their divorce also cannot be done in court because it is not a legal (registered) marriage. If it is just a consultation on household problems, it is up to the two parties, some pay a fee and some do not.

From several descriptions that show the *kyai's* involvement to ensure the implementation of the practice of *sirri* marriage, it is sufficient to prove that the perpetrators cannot be separated from the shadow of the *kyai's* authority as a party who helped bridge the bride and groom towards the goals to be achieved. In other words, in addition to the support of the marriage broker and the perpetrators of *sirri* marriage, but without the role of the *kyai*, the *sirri* marriage process cannot run optimally. When the marriage suffers an impasse, the *kyai* also serves as the unofficial judge in order to end the marriage. *Kyai* as marriage consultant plays pivotal roles in the life of the marriage of their clients.

Traditional *Kyai* Authority and Its Influence on the Perpetuation of Unregistered Marriages

To see the extent to which the *kyai's* authority in the practice of *sirri* marriage in Rembang District runs, I take the type of authority offered by Weber. Based on Weber's theory, the authority possessed by the *kyai* goes hand in hand with the influence brought in building patterns of action and patterns of thought of the community.²² In addition, based on the classification of authority offered by

²² Rumadi Rumadi, "Islam Dan Otoritas Keagamaan," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 20, no. 1 (2012): 25, <https://doi.org/10.21580/ws.20.1.183>.

Weber, namely traditional, charismatic, and legal rational authority,²³ at least the power possessed by the *kyai* has compatibility with traditional and charismatic types of authority. This is because the *kyai's* power can be possessed without a formal election process as stipulated by statutory law in legal rational authority.²⁴

In relation to the practice of *sirri* marriage in Rembang Village, the *kyai's* authority is shown in the acceptance of the practice of *sirri* marriage by the community which comes from old habits where the *kyai* continuously becomes the main figure in leading the execution of the marriage. Solikin also mentioned in his writing that the *kyai* became the main figure who succeeded in convincing the community that *sirri* polygamy was a form of effort in multiplying offspring as recommended in the Prophet's hadith. Besides that, the involvement of the *kyai* as the perpetrator of the practice of *sirri* marriage also opened the community's view that the habits carried out by the *kyai* could be used as an example and became a common thing to do.²⁵

Meanwhile, in this study, the author outlines the things that underlie the practice of *sirri* marriage which manifests from the *kyai's* authority as referred to by Weber, that the continuity of the practice of *sirri* marriage in Rembang Village is closely related to the power of the *kyai* as a person who is morally and spiritually superior to the general public. This assessment is often seen from several aspects, such as educational background, the *kyai's* consistency in carrying out several religious practices, and the ability to preach. Because of these advantages, *kyai* often become role models for the community, or become muftis, and are often relied upon as leaders in social activities, especially those related to the procession of *sirri* marriages.

The traditional form of *kyai* authority in Weber's view of the practice of *sirri* marriage is also shown from the attitude of loyalty and compliance of the community to cooperate and accompany and encourage the smooth running of the marriage process with the *kyai*. A form of cooperation here can be seen in several moments including in the process of *wali muhakam* where there is a community contribution to witness the marriage so that the marriage contract becomes valid according to sharia provisions. Forms of community loyalty to the *kyai* are also seen in several other aspects of life such as volunteering to help the *kyai* in other daily life encounter such as the process of farming, and several other activities. This form of obedience, loyalty and devotion is referred to by Weber as patrimonialism in traditional authority where the leader and his followers work together which is realized as a form of devotion to the leader.²⁶

²³ Muhamad Chairul Basrun Umanailo, "Rasional dan Irasional dalam Tindakan Sosial Max Weber," *Sosiologis: Kajian Sosiologi Klasik, Modern dan Kontemporer* 1, no. 5 (2023).

²⁴ Satrio Dwi Haryono, "Wacana Rasialisme Dalam Sosiologi Max Weber," *Jurnal Pendidikan Sosiologi dan Humaniora* 13, no. 2 (2022): 400–410, <https://dx.doi.org/10.26418/j-psh.v13i2.55007>.

²⁵ Solikin, "Praktik Poligami Masyarakat Kalisar Rembang Pasuruan Tinjauan Dalam Perspektif Teori Behavior."

²⁶ Fahrijal Nurrohman, "Aksara Jawa Pegon sebagai Pengantar di Pesantren Jawa (Analisis Otoritas Kharismatik Menurut Max Weber)," *Jurnal Kajian Keislaman* 1, no. 2 (2023), <https://doi.org/10.26533/prophetik.v1i2.2947>.

Based on the data I collected, at least the basic argument that was compactly conveyed by Mr. AZ and Mr. Q to give the view that *sirri* marriage is still relevant as an 'alternative' for the people of Rembang. *Sirri* marriage is better than between men and women falling into promiscuity, so that *kyai* tend to approve of the implementation of marriage without fulfilling administrative procedures for registration.

Implications of the *Kyai's* Profession for Material Benefits in the Practice of Unregistered Marriages

The *kyai's* profession as a marriage broker in Rembang, apart from functioning as an effort to support the realization of *sirri* marriages, is also often referred to as the *kyai's* side job. Based on information from Mr. AZ and Mr. Q, it is undeniable that parties who use marriage contract services with *kyai* will be charged amount of fee. Based on this information, it shows that on the one hand the *kyai* also intends to maintain the nobility of the rules of Islamic law by anticipating the people of Rembang to not fall into promiscuity by providing *sirri* marriage service facilities, but on the other hand the *kyai* also benefits based on the position and role they accept. According to Mr. AZ's explanation, for example, he distinguishes between the tariff of the *penghulu* fee, the witnesses, and the tariff of the *wali muhakam*. For more details, the author will make a grouping based on several roles of the *kyai* to correlate with the manifestation of the material benefits in question, namely starting at the pre-marriage stage, marriage, and after the marriage.

At the premarital stage, it can be seen when the male party intends to come to the *kyai* to find a prospective wife. At this stage, the *kyai* has the authority as a broker who has the right to determine the fee based on the agreement made with the male party. The marriage broker profession here can function only when the man who comes to the *kyai* does not know the woman he wants to marry. In this case, it is appropriate that a *kyai*-broker will immediately find a woman who is willing to be married. The material benefits obtained by *kyai* when they become marriage brokers are different from the wages paid as *penghulu* or *wali muhakam*, because the authority exercised by *kyai* also seems to be differentiated based on the type of role played.

Furthermore, in the marriage stage, material benefits can be seen from the role of the *kyai* as a *penghulu* and at the time of the practice of buying a guardian. The two roles are actually both carried out during the marriage contract procession, but according to Mr. AZ, because at the beginning of the agreement there was a handover of buying a guardian, the service fee for buying a guardian is automatically different from the service fee for the marriage contract *penghulu*. The cost of the practice of buying a guardian also includes the cost of the witnesses, because the witnesses are not presented from the families of the bride and groom but from the *kyai*. Thus, it can be seen that the more the *kyai* is involved in the marriage stage, the more material benefits the *kyai* gets.

In addition to the two stages that have been described, the material benefits obtained by the *kyai* are also seen after the implementation of the marriage contract, namely when the husband and wife using the services of a *sirri* marriage

service with the *kyai* consult on the household problems they face. Although the results of interviews with Mr. AZ, shows that the *kyai* does not take advantage of the consultation practice, but purely to help the parties, it cannot be denied that a few of them also give wages to the *kyai* as a sign of gratitude. This practice is acknowledged by Mr. AZ.²⁷

Based on some of the examples above, the practice of unregistered marriages carried out by the community in Rembang can have an impact on the fulfillment of the economic sector of the community, especially the *kyai*. If calculated based on the minimum wage given by the perpetrators of *sirri* marriages who use the services of *kyai* starting from the premarital stage, marriage contract, buying a guardian, to the stage of marriage consultation services with the minimum standard wage as mentioned by Mr. AZ, namely Rp100,000 for example. Then in one practice the *kyai* can get material wages of Rp400,000. This is obtained because the *kyai's* authority in bringing doctrine to the principle of the permissibility of the practice of *sirri* marriage based on indications of religious terms can function as an opportunity to get material benefits as mentioned above.

Implications of *Kyai's* Authority in the Practice of Unregistered Marriages on the Orderliness of Marriage Administration

The diversity of legal systems that coexist will inevitably give birth to authority for each of its rulers.²⁸ The authorities will then compete with each other to show their existence in the community. However, it cannot be denied that the dominance of the state legal system makes other legal systems, such as customary law and religious law, very limited, in the sense that the legality of a legal act is only recognized if it has fulfilled the legal procedures as determined by the law.²⁹

In the matter of marriage administration, the state has specifically provided legitimacy in Law Number 22 of 1946 which substantively regulates the procedures for implementing the Registration of Nikah, Talak, and Rujuk. Meanwhile, from a material point of view, issues surrounding registration are comprehensively regulated in Law No. 1 of 1974 concerning Marriage.³⁰ To declare the validity of the recording event, as contained in the Regulation of the Minister of Religion of the Republic of Indonesia (PMA) Number 11 of 2007, accommodating the uniformity of the recording rules is mandated to the marriage registrar or state penghulu, which includes the task of examining the requirements, supervising and recording the events of marriage/referral, registering divorce *talaq*, divorce, and conducting marriage guidance.

²⁷ Interview with AZ, Penghulu of *sirri* marriage, Rembang, Pasuruan, October 30, 2023.

²⁸ Fais Yonas Bo'a, "Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional (Pancasila as the Source of Law in the National Legal System)," *Jurnal Konstitusi* 15, no. 1 (2018): 28–49, <https://doi.org/10.31078/jk1512>.

²⁹ Merdi Hajiji, "Relasi Hukum dan Politik dalam Sistem Hukum Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 3 (2013): 361, <https://doi.org/10.33331/rechtsvinding.v2i3.65>.

³⁰ Khoiruddin Nasution, *Hukum Perdata (Keluarga) Islam Indonesia Dan Perbandingan Hukum Perkawinan Di Dunia Muslim*, cetakan 1 (Yogyakarta, 2009).

The authority of marriage registration officer as the state *penghulu* cannot be denied being the sole authority in determining the validity and legality of marriage. However, it becomes different when there are several groups who consider that the passivity of the marriage registrar indicates that marriage registration is only placed as an effort of administrative order, not as part of the necessity in marriage.³¹ This is different from the conditions of marriage regulated in the Islamic legal system and customary law, where both are more frontal in giving assertiveness to the obligation of the parties to carry out the pillars, conditions, and stages of the marriage procession according to the stipulated provisions. From this explanation, it cannot be denied that neglect of the administrative order of marriage registration still occurs in a plural society.

The involvement of *kyai* in the practice of *sirri* marriages in Rembang seems to have proven the deliberateness of the perpetrators to avoid the registration procedure regardless of the administrative function itself which has implications for the protection of the parties' civil rights. This is also shown in the writings of Fitriany and Fajriyah that *sirri* marriages are carried out not on the basis of hiding the marriage from the public but from the legal wife or the first wife of the perpetrator.³² As in the information from the interview with Mr. Q, it also shows that most of the women who practice *sirri* marriage are those who want to be used as second wives.

Issues related to the orderliness of recording were not much conveyed by the *kyai* considering that the *kyai's* capacity was limited to facilitating the perpetrators of unregistered marriages. Response to orderliness of marriage administration, two of the three informants consisting of the perpetrators of *sirri* marriages had mentioned the desire to register their marriages at the Office of Religious Affairs to protect their rights as wives like other wives, such as inheritance rights, child maintenance, and joint property, even though they realized that according to state legal regulations this was impossible to obtain because there was no evidence of marriage registration. However, sometimes if they have a child from a *sirri* marriage then the child can possibly get inheritance from his father and even if the *sirri* wife gets a share of the property only because of the mercy of the husband's family. This is stated by N.

If they have children, they usually get an inheritance, If they do not have children they do not and if they get an inheritance it is only out of compassion. But it also depends, if his wife claims property for her children then it is likely that her children will receive an inheritance.

Thus, at least the perpetrators of *sirri* marriages themselves seem to understand the legal consequences of ignoring marriage registration, although these concerns can be dismissed by the embedded culture of *sirri* marriage that

³¹ Neng Djubaidah, *Pencatatan Perkawinan Dan Perkawinan Tidak Tercatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam*, 1 ed. (Jakarta: Sinar Grafika, 2010).

³² Fitriany, "Sejarah Budaya Kawin Sirri di Desa Kalisat Kecamatan Rembang Kabupaten Pasuruan."

has been going on for decades in Rembang along with the facility of *sirri* marriage contract services monitored by *kyai*.

From the *kyai's* perspective, based on the information that I obtained, at least mentioning the issue of orderly registration does not seem to be seen, but Mr. AZ had said that divorce conducted at the judicial institution only applies to registered marriages. As result, in the case of a *sirri* marriage, the two parties who want to divorce can divorce their wives directly or conduct mediation or consultation with the *kyai* first. If the two cannot be reconciled, then the *kyai* has the right to decide on divorce for both of them.

If the husband says no, then I as a cleric will give a verdict in the form of divorce, if the two parties do not want to reconcile. The divorce cannot be done in court because the marriage is not legal (registered)..

In addition, because the authority to determine the legality of marriage according to the state is not the authority of the *kyai*, it seems that the making of a marriage certificate for the perpetrators of *sirri* marriages is also realized only as an effort to protect the parties from the negative stigma of the community. The statement given by N when she requested a certificate of divorce from the village shows that there was support from the village officials to facilitate the perpetrators so that they could marry without first taking care of the divorce procedure at the judicial institution. Although it appears that many parties are involved in ensuring the continuity of the practice of *sirri* marriage, both through the production of marriage certificates and divorce certificates, it still appears that the limited authority possessed by the *kyai* is still unable to guarantee the fulfillment of the rights of the perpetrators, such as when carrying out administrative procedures for registration through the marriage registrar.

Based on the explanation that has been presented, with regard to the order of registration, at least it can be seen that the marriage registration officer is the sole authority in carrying out the legality of marriage. This shows that the authority of the marriage registrar in carrying out the task of registration is indisputable as the only authority manifested in the Marriage Law. This means that the orderliness of the marriage administration, including the data of the incoming or registered bride and groom, can be reviewed based on the marriage registration made by the male and female parties to the marriage registration officer at the KUA. Conversely, if the bride and groom do not register their marriage with the marriage registrar, it is certain that the marriage carried out does not heed the rules of orderly administration. However, on the other hand, the continued practice of *sirri* marriages in Rembang shows that the impact of the *kyai's* authority as a facilitator of *sirri* marriages is able to dominate the actions of the community to ignore the order of registration. The community in fact avoids administrative procedures that tend to be complicated rather than thinking about the rights of the parties as promised by the law.

Conclusion

It can be seen that the cooperation carried out by the parties involved in the practice of *sirri* marriage is very mature. *Kyai* as an agent who facilitates and leads

sirri marriages is continuously involved in four roles at once which are summarized in three stages of *sirri* marriage. In the pre-marriage stage *kyai* involved as a marriage broker. In the marriage stage, the *kyai* managed to be *penghulu*, and when there are obstacles in the form of the absence of a marriage guardian, the *kyai* will be involved in the practice of buying a guardian or becoming a *wali muhakam*. Meanwhile, in the post-marriage, the *kyai* is used to be a reference by the perpetrators as a mediator who is asked for advice on household problems. The *kyai's* involvement in leading the *sirri* marriage process was chosen by the community because of the *kyai's* superior capacity in the religious field. This superiority is recognized by the community based on the *kyai's* knowledge of Islamic Law and ability to deliver religious lectures to the community. Thus, the community will sympathize to continue to establish a pattern of relationship with the *kyai* by involving themselves in the practice of *sirri* marriage.

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