

## **Social Legitimacy versus State Legal Certainty: The Dialectics of Kiai Marriages as Living Law in Dusun Pondok Asem, Kertasemaya, Indramayu**

Lulu Ul Jannah,<sup>1</sup> Inna Fauziatal Ngazizah,<sup>2</sup> Abdurrohman Kasdi<sup>3</sup>

<sup>1,2,3</sup> Universitas Islam Negeri Sunan Kudus

Email: [lulujuannah@ms.uinsuku.ac.id](mailto:lulujuannah@ms.uinsuku.ac.id),<sup>1</sup> [innafauzi@uinsuku.ac.id](mailto:innafauzi@uinsuku.ac.id),<sup>2</sup>  
[abdurrohmankasdi@uinsuku.ac.id](mailto:abdurrohmankasdi@uinsuku.ac.id)<sup>3</sup>

### **Keywords:**

Unregistered Marriage, Kiai Marriage, Customary Law, State Law, Legal Pluralism.

### **Kata Kunci:**

Nikah Siri, Kawin Kiai, Hukum Adat, Hukum Negara, Pluralisme Hukum.

### **Abstract:**

The practice of unregistered marriages in the tradition of kiai marriages in Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency, is still rampant even though marriage regulations have been strictly regulated through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). This phenomenon shows the gap between state law and local traditions that continue to be practiced by the local community. This study aims to describe the legal status of Kiai marriage according to customary law and state law, compare the recognition of both, and show the implications of legal pluralism in marriage practices in Indonesia. This research uses a juridical-empirical approach with a theoretical framework for legal pluralism. Primary data was obtained through interviews with lebe, traditional leaders, village officials, and kiai marriage practitioners, while secondary data was obtained from legislation, KHI, and related academic literature. The analysis was conducted qualitatively using a comparative model between customary and state law. The results of the study show the existence of dualism in recognition. Customary law recognizes Kiai marriages as valid because they fulfill the requirements of Islamic marriage and obtain social legitimacy, so that children born from these marriages receive full recognition. Conversely, state law does not recognize marriages not officially registered at the Office of Religious Affairs, so these marriages do not have strong legal force. The novelty of this research lies in its attempt to reveal the dialectic between social legitimacy as living law and formal legal certainty as the main principle of state law. This dialectic shows the reality of legal pluralism in Indonesia, emphasizing the need for harmonization so that customary law and state law can work more synergistically.

### **Abstrak:**

Praktik nikah siri dalam tradisi kawin kiai di Dusun Pondok Asem, Kecamatan Kertasemaya, Kabupaten Indramayu masih marak dilakukan meskipun regulasi perkawinan telah diatur secara tegas melalui Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam (KHI). Fenomena ini menunjukkan adanya jarak antara ketentuan hukum negara dan tradisi lokal yang tetap dijalankan masyarakat setempat. Penelitian ini bertujuan untuk mendeskripsikan status hukum kawin kiai menurut hukum adat dan hukum negara, membandingkan pengakuan keduanya, serta menunjukkan implikasi pluralisme hukum dalam praktik perkawinan di Indonesia. Metode penelitian menggunakan pendekatan yuridis-empiris dengan kerangka teori pluralisme hukum. Data primer diperoleh melalui wawancara dengan lebe, tokoh adat, aparat desa, dan pelaku kawin kiai,

sedangkan data sekunder berasal dari peraturan perundang-undangan, KHI, serta literatur akademik terkait. Analisis dilakukan secara kualitatif dengan model komparasi antara hukum adat dan hukum negara. Hasil penelitian menunjukkan adanya dualisme pengakuan. Hukum adat mengakui kawin kiai sebagai sah karena memenuhi rukun nikah Islam dan memperoleh legitimasi sosial, sehingga anak hasil perkawinan mendapatkan pengakuan penuh. Sebaliknya, hukum negara tidak mengakui perkawinan yang tidak tercatat resmi di Kantor Urusan Agama, sehingga perkawinan tersebut tidak memiliki kekuatan hukum yang kuat. Kebaruan penelitian ini terletak pada upaya menyingkap dialektika antara legitimasi sosial sebagai living law dan kepastian hukum formal yang menjadi prinsip utama hukum negara. Dialektika ini memperlihatkan realitas pluralisme hukum di Indonesia, sekaligus menegaskan perlunya harmonisasi agar hukum adat dan hukum negara dapat berjalan lebih sinergis.

## A. Introduction

Formal regulations regarding marriage in Indonesia are strictly governed by Law No. 1 of 1974 on Marriage and reinforced by the Compilation of Islamic Law (KHI) for Muslims.<sup>1</sup> Article 2, paragraph (1) of the Marriage Law states that a marriage is valid if it is conducted per the laws of each religion and belief, while paragraph (2) requires the registration of marriages in accordance with applicable laws and regulations. This provision aims to ensure legal certainty, protect the rights of women and children, and create harmonious and responsible families.<sup>2</sup> In reality, many couples continue to marry outside the state's formal regulations through *nikah siri*, a union recognized as valid under religious law but not registered in the government's civil records.

One significant example of the phenomenon of unregistered marriage can be found in Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency, where the community widely recognizes this practice as “*kawin kiai*” (marriage by a religious leader). This practice refers to marriages conducted religiously by local religious leaders called lebe, without official registration at the Office of Religious Affairs (KUA). Nevertheless, these marriages are still celebrated festively and openly, just like official marriages, because they are considered part of a tradition deeply rooted in the community.

This region is a strategic research location for studying the phenomenon of unregistered marriages because it has unique characteristics that distinguish it from other areas in Indonesia. This uniqueness can be seen from three main interrelated aspects. In terms of

<sup>1</sup> Rizki Amar et al., “Kedudukan Pencatatan Terhadap Keabsahan Perkawinan: Telaah Pencatatan Perkawinan,” *Jurnal Tana Mana* 5, no. 2 (2024): 217–26, <https://doi.org/10.33648/jtm.v5i2.486>.

<sup>2</sup> Undang-Undang Nomor 1 Tahun 1974.

quantity, the practice of kiai marriages in Dusun Pondok Asem shows a relatively high intensity compared to other villages in Indramayu and West Java. This high intensity is inseparable from the socio-economic context of the community, particularly the high number of Indonesian migrant workers (TKI) in the area. The high mobility of TKI creates a special dynamic in the marriage structure of the local community, which gives rise to various vulnerable household dynamics. These vulnerable conditions include long-term physical separation, communication difficulties, and problems of infidelity and pregnancy outside of marriage. These multiple problems ultimately encourage the community to choose the kiai marriage as a quick and pragmatic solution.

Regarding quality, Kiai marriage in Dusun Pondok Asem is not carried out secretly, as is commonly the case in other areas. Instead, these marriages are held openly, festively, and attended by the wider community, just like official marriages. This phenomenon demonstrates the strong social and cultural legitimacy of kiai marriages. What distinguishes this location from other areas is the exceptionally high level of social acceptance, where the community tolerates and fully recognizes these marriages as legitimate, regardless of their administrative status.

As a result, unregistered marriages are not considered a problem or a disgrace, in stark contrast to other villages that still consider formal legality and tend to conduct unregistered marriages in secret. The third aspect that is no less important is the role of religious leaders or *lebe* in practicing kiai marriages in Pondok Asem. *Lebes* not only function as the technical performers of marriage contracts, but also occupy the position of moral legitimacy figures for the community. This shows the close relationship between local religious authorities and the village's social structure. The strong position of the *lebe* makes the tradition of kiai marriage an integral part of the deep-rooted social system, rather than just a temporary or emergency alternative legal practice. The unique conditions in Dusun Pondok Asem show how kiai marriage has become a pragmatic solution to various social problems, especially those related to the complexities of the domestic lives of migrant workers abroad. This problem-solving pattern creates a dynamic that differs from similar practices in other areas, which still greatly emphasize formal legality.

This situation indicates a more extreme imbalance between state law and social reality in Dusun Pondok Asem. Therefore, this region is an ideal representation for understanding

the dynamics of legal pluralism in Indonesian marriage, where customary and religious laws interact with state law in complex ways.<sup>3</sup>

Various studies have examined the phenomenon of unregistered marriage from legal and social perspectives. A survey conducted by Baihaqi et al. in Madura and Kubu Raya shows that this practice is a socio-religious construct influenced by the role of religious leaders, religious authority, and local culture, thereby creating tension between religious legitimacy and formal state law.<sup>4</sup> Similar findings were also seen in Nanda Nabila Islamiyah's research in Pasuruan, which highlighted the strong authority of kiai in maintaining the practice of nikah siri, so the practice continues to exist.<sup>5</sup> Conflicts between customs, religion, and the state are also evident in the Minangkabau context, as revealed by Arifki Budia Warman et al., particularly in relation to the role of Tungku Tigo Sajarangan in responding to these practices.<sup>6</sup> In addition, Sheila Fakhria et al. highlight the debate over the issuance of family cards for unregistered married couples, where the government's policy to guarantee the civil rights of children conflicts with the views of some Islamic legal officials who demand that the marriage be legally validated first.<sup>7</sup> Meanwhile, Muhammad Latif Fauzi emphasized that the legalization of unregistered marriages is carried out through various community adaptation strategies, administrative transgressions by the government, and the practice of marriage validation in religious courts, which creates a space for negotiation between the formal legal system and socio-religious practices.<sup>8</sup>

In the context of legal reform, Ahmad Suryana, Khoirul Hidayah, and Muhammad highlight the ambiguity of the rules regarding marriage guardians for widows in the Compilation of Islamic Law, which has the potential to encourage the practice of unregistered

---

<sup>3</sup> Mr. S, "interview," Aparat Dusun Pondok Asem, Kertasemaya, Indramayu, on 05<sup>th</sup> April 2025.

<sup>4</sup> Baihaqi Baihaqi et al., "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 (August 29, 2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>.

<sup>5</sup> 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 (June 7, 2024): 21–40, <https://doi.org/10.14421/ahwal.2024.17102>.

<sup>6</sup> Arifki Budia Warman, Riska Fauziah Hayati, and Musda Asmara, "From Custodians to Bystanders : Tigo Tungku Sajarangan ' s Responses to Unregistered Marriages Practices in Minangkabau" 18, no. 1 (2025): 61–77, <https://doi.org/10.14421/ahwal.2025.18203>.

<sup>7</sup> Sheila Fakhria et al., "Securing Muslim Children ' s Civil Rights : Debate on State Legal Policy towards The Issuance of Family Cards for Unregistered Marriage Couples" 14, no. 2 (2024): 303–22, <https://doi.org/10.23971/el-mashlahah.v14i2.8008>.

<sup>8</sup> Muhammad Latif Fauzi, "Administrative Transgression And Judicial Discretion For The Sake Of Citizens' Rights The Legalisation of Unregistered Marriages in Indonesia," *Al-Ahwal* 16, no. 2 (2023): 211–31, <https://doi.org/10.14421/ahwal.2023.16202>.

marriages, thus requiring a reformulation of more explicit rules.<sup>9</sup> In line with this, Defel Fakhyadi et al. emphasize the importance of contextual interpretation of Islamic teachings to not cause discrimination against women, particularly regarding inheritance rights, education, and social participation.<sup>10</sup> The perspective of social change also appears in the research conducted by Fatum Abubakar et al. in Ternate and Tidore, which highlights the shifting role of the penghulu due to modernization, legal reform, and digitization, as well as encouraging the integration of customary law with national law.<sup>11</sup>

In the context of criticizing discriminatory practices, Deva Yulinda, Suci Ramadhani Putri, and Hüseyin Elmhemit argue that Indonesia's polygamy laws are still gender biased, particularly regarding the reason that a wife is unable to bear children, and therefore propose alternatives such as adoption or reproductive technology.<sup>12</sup> Finally, Muhamad Jazil Rifqi et al. emphasized that the practice of unregistered marriages in Pasuruan causes serious problems for women and children, particularly in relation to legal status, inheritance rights, family protection, and access to public services.<sup>13</sup>

A research gap exists due to the lack of studies specifically examining the legal status of unregistered marriages in the tradition of kiai marriages as a representation of living customary law that interacts directly with positive law.<sup>14</sup> Previous studies have also not focused on comparative studies that critically juxtapose two dialectical legal systems, namely state law and customary law, in a single marriage tradition such as kawin kiai, which embodies religious values, social practicality, and resistance to formal bureaucracy.<sup>15</sup> Based on the previous

---

<sup>9</sup> Ahmad Suryana, Khoirul Hidayah, and Muhammad, "Rethinking Marriage Guardians for Widows in Indonesia: Perspective of Legal Certainty and Maslahat Theory," *Justicia Islamica* 22, no. 1 (2025): 71–92, <https://doi.org/10.21154/justicia.v22i1.9990>.

<sup>10</sup> Defel Fakhyadi et al., "Reconstructing Gender Relations for Family Resilience in Minangkabau: Integrating Islamic Law and Customary Law," *Al-Ahkam* 35, no. 1 (2025): 1–30, <https://doi.org/10.21580/ahkam.2025.35.1.22906>.

<sup>11</sup> Fatum Abubakar et al., "Qadhi Legitimization: Shifting Roles of the Penghulu in Ternate and Tidore Sultanates, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 1 (2025): 139–63, <https://doi.org/10.18326/ijtihad.v25i1.139-163>.

<sup>12</sup> Deva Yulinda, Suci Ramadhani Putri, and Hüseyin Elmhemit, "Injustice Legal System Ibuism in Indonesian Marriage Law: A Study on Polygamy for Childlessness Reasons," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 7, no. 1 (2025): 1–23, <https://doi.org/10.19105/al-manhaj.v7i1.19515>.

<sup>13</sup> Muhamad Jazil Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqāṣid Al-Syarī'ah through Marriage Isbat Applications by the Second Generation in Pasuruan," *El-Mashlahah* 15, no. 1 (2025): 125–48, <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.

<sup>14</sup> Sartika Intaning Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124, <https://doi.org/10.22437/ujh.4.1.81-124>.

<sup>15</sup> Gumelar Firmansyah et al., "Implementasi Hukum Adat Dalam Prosesi Perkawinan Adat Minangkabau," *Uniku Law Review* 1, no. 1 (June 20, 2023): 2085–2997, <https://doi.org/10.25134/ulr.v1i1.13>.

literature review, this study attempts to fill this gap through a legal-empirical approach that combines legal analysis with the socio-cultural dynamics of the Dusun Pondok Asem community. With a legal pluralism approach, this study is expected to contribute theoretically and practically to developing family law that is inclusive, contextual, and responsive to local cultural diversity in Indonesia.

## **B. Method**

This research uses a legal-empirical approach, which examines law from normative and social reality by analyzing the gap between written rules and their implementation in society. In addition, this study also applies a legal pluralism approach that recognizes the existence of various systems within a society by analyzing the interaction and competition between these legal systems. These two approaches were chosen because unregistered marriage involves intertwining state law, Islamic law, and social practices within society. This case study of unregistered marriage focuses on Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency, where this practice is still widely found in the local community. This qualitative research was conducted over five months from January to May 2025 in Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency. The sampling technique used was purposive sampling, which was done by selecting informants based on the criteria of direct involvement in the practice of kiai marriage and in-depth knowledge of the phenomenon. The research subjects consisted of four informants, including Mr. B, a local kiai/lebe who was selected because he acted as the leader of siri marriage ceremonies and had information about the estimated number of kiai marriage practices in Dusun Pondok Asem in the last three years (2022-2024) based on his experience and observations. Mrs. A as a perpetrator of kiai marriage, chosen because she has direct experience as a victim of the negative impacts of kiai marriage, particularly related to the issue of her husband practicing siri polygamy, Mr. S, a village official, was selected because he understands the administrative aspects and can explain the factors causing the persistence of kiai marriage practices from the perspective of village administration. Mr. G, an indigenous community member, was selected because he can provide a perspective on social acceptance and the status of children from siri marriages in indigenous communities. The data collection techniques consisted of in-depth interviews and participatory observation for primary data, as well as legal documents such as Law No. 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and other legal documents, as well as literature related to nikah siri and the tradition of kiai marriage for secondary data.

The techniques used were qualitative analysis to interpret the interview and document data, as well as legal comparison to compare regulations in customary law and state law. The scope of the study was limited to focus on the practice of unregistered marriages in Dusun Pondok Asem without discussing the phenomenon in other areas.

### **C. Result**

This study found that there is dualism in the recognition of unregistered marriages in Dusun Pondok Asem, where kiai marriages are conducted in a procession led by local religious leaders (lebe) in accordance with Islamic marriage requirements and carried out openly by inviting the community, just like official marriages. While from the perspective of local customary law, kiai marriage is fully recognized as a valid marriage with equal social legitimacy, where children born from siri marriages are recognized as legitimate children and have inheritance rights as they should, However, state law through Article 2 paragraph (2) of Law No. 1 of 1974 and Article 6 paragraph (2) of the Compilation of Islamic Law stipulates that marriages without official registration do not have formal legal force even though they are still considered valid religiously. The novelty of this research lies in identifying normative conflicts between customary law and state law in the context of unregistered marriages in local communities, which shows that communities choose customary law because it is considered more practical and accessible than complex state legal procedures. It also reveals the existence of a dualism of recognition that creates legal tension, whereby customary law provides full recognition. Still, the state does not offer formal recognition, thus giving rise to a dialectical dynamic between the two legal systems within the framework of legal pluralism. In practical terms, the findings of this study imply the need for harmonization between customary law and state law in regulating unregistered marriages to protect the rights of women and children, the most vulnerable groups due to the absence of formal legal protection and limited access to state administrative services. While theoretically, this research provides a new contribution to understanding how various legal systems can coexist in Indonesian society and demonstrates the importance of considering local values and cultures when implementing national legal policies in the context of legal pluralism.



## **D. Analysis and Discussion**

### **1. Socio-Cultural Dynamics and Kiai Marriage Practices in Dusun Pondok Asem**

Kiai marriage is a marriage practice conducted by a religious leader, usually a kiai or local religious leader who is not a state official, to lead and validate the religious marriage process without making an official record with the relevant government authorities, such as the Office of Religious Affairs (KUA) or the civil registry office. This practice has been going on for a long time and has become a tradition passed down from generation to generation in the Dusun Pondok Asem community. In fact, this practice has been part of local socio-cultural life for many years. Fundamentally, the tradition of kiai marriage refers to marriages that are conducted entirely in accordance with Islamic law, including the fulfillment of marriage requirements and conditions, such as the presence of the bride and groom, guardians, dowry, *ijab kabul* (marriage vows), and two witnesses.<sup>16</sup> However, this practice is deliberately not registered or recorded at the official marriage registry office as stipulated and required in Article 5 paragraph (1) of the KHI, which reads, "To ensure orderly marriages for Muslims, every marriage must be recorded." This creates a contradictory situation, in which the marriage is valid according to religion and custom, but has no formal legal force in the eyes of the state.<sup>17</sup>

One of the distinctive features of the Kiai marriage tradition in the Dusun Pondok Asem community is that even though the marriage is not officially registered, it is still held openly and announced to the surrounding community. The marriage process involves family members, neighbors, and the local community as social witnesses, thereby gaining legitimacy and recognition from the community, even though the marriage does not have formal legal legitimacy from the state.<sup>18</sup>

Unregistered marriages in the context of Kiai marriage traditions demonstrate the complex relationship between customary and state law. In this context, people conduct marriages based on local customary traditions, even though the state does not officially register them. This reflects the tension between two normative systems, where customary law governs long-standing local practices and traditions integral to community identity. In contrast, state law establishes official procedures and registration requirements that citizens must comply with. This practice shows that communities tend to prioritize customary legitimacy over

---

<sup>16</sup> Mr. S, "interview," Aparat Dusun Pondok Asem, Kertasemaya, Indramayu, on 05<sup>th</sup> April 2025.

<sup>17</sup> Kompilasi Hukum Islam.

<sup>18</sup> Mr. S, "interview," Aparat Dusun Pondok Asem, Kertasemaya, Indramayu, on 05<sup>th</sup> April 2025.



formal state legal legitimacy, creating a situation where marriages are recognized socially and religiously but have no legal force in the eyes of the state.

On April 5, 2025, the author interviewed Mr. S, an official from the Dusun Pondok Asem, to find out the actual position of the Dusun Pondok Asem community in dealing with the differences between customary law and state law. Why does the community prefer to follow tradition even though they know different state regulations? Mr. S explained:

“Yes, that's how it is. The people of Dusun Pondok Asem face a dilemma between two different normative systems in their daily lives. We value our deep-rooted traditions and customs, but on the other hand, we are faced with state regulations that often conflict with these traditions. Our socioeconomic conditions as farmers and Indonesian migrant workers, as well as limited access to higher education, make us inclined to choose customary norms as our main guideline. In a community with limited formal education, such as ours, the flexibility and practicality of customary traditions are the main considerations. At the same time, our understanding of the complexities of modern state law is still limited. As a result, the community prefers to follow customary law in marriage practices, including kiai marriages, even though they realize that this is not in accordance with state law. For us, what is important is that the marriage is valid according to religion and accepted by the local community.”<sup>19</sup>

This tradition also reflects the high level of trust and authority given to religious leaders or figures in the social structure of local communities. The presence and participation of kiai or spiritual leaders in the marriage process is considered sufficient to provide religious and social legitimacy, even without formal recognition from the state. This highlights the influence and role of kiai or religious leaders as moral and spiritual leaders in community life.<sup>20</sup>

Interestingly, in the last three years, child marriages in Dusun Pondok Asem have increased, reflecting a concerning reality caused not only by a lack of education about marriage laws among the community but also by several other factors, such as the large number of residents who have become migrant workers, the economic conditions of the community, and other social factors. The data is rough and contextual estimates, not official statistics, but it shows a consistent increase from 45 cases in 2022, rising to 53 cases in 2023, and reaching 60 cases in 2024. On March 25, 2025, the author interviewed with Mr. B, a kiai or lebe who usually serves as an unofficial marriage officiant in Dusun Pondok Asem, to find out whether kiai marriages still occur frequently and to confirm the number of people who have undergone kiai marriages in the last three years (2022, 2023, and 2024). Mr. B explained that:

---

<sup>19</sup> Mr. S, "interview," Aparat Dusun Pondok Asem, Kertasemaya, Indramayu, on 05<sup>th</sup> April 2025.

<sup>20</sup> Islamiyah, “When Religious Leaders Become Marriage Brokers, *Penghulus*, and Marriage Consultants: The Authority of *Kyai* in the Process of Unregistered Marriage.” <https://doi.org/10.14421/ahwal.2024.17102>.

“Kiai marriages are still common today, and the number of cases in the last three years is around (45 cases in 2022, 53 cases in 2023, and 60 cases in 2024), for a total of around 150 cases, but that is only an estimate because I did not keep track.”<sup>21</sup>

He emphasized that to date, Kiai marriages still exist in the Dusun Pondok Asem community, although the number is only a rough estimate and not an official statistic. Therefore, Kiai marriage still exists, but this figure is not definitive and requires interpretation in the community context.

As an area with a rural community dominated by farmers and migrant workers, Dusun Pondok Asem faces various socio-economic challenges that encourage unregistered marriages. Pregnancy outside of marriage is one of the leading causes of unregistered marriages in Dusun Pondok Asem. Uncontrolled sexual freedom among adolescents, coupled with a lack of parental supervision, is a significant factor in out-of-wedlock pregnancies. This is mainly because most parents in Dusun Pondok Asem work outside the village and leave their children to live with older siblings. This situation causes young children to lose control and direct guidance from their parents during a crucial development period. Older siblings are often unable to provide adequate supervision and understanding of modern teenage behavior, making it easier for teenagers to engage in promiscuous behavior. On April 5, 2025, the author interviewed with Mr. S, an official in Dusun Pondok Asem, to find out the main factors influencing the condition of kiai marriages in Dusun Pondok Asem. Mr. S explained that:

"Well, the situation in our village is different. Most residents here are farmers and laborers, and many also work abroad. The main problem is that there are often girls who get pregnant before marriage. This makes their parents panic and immediately look for a quick way to marry off their children. Why do they get pregnant first? Teenagers nowadays have very free social lives, but there is little supervision. Because their parents work abroad, the children live with their grandparents. Well, grandparents are old, so it's hard for them to control their teenage grandchildren. They also don't understand how to deal with teenagers nowadays. So, the children lack supervision, their social lives become more liberal, and when something happens, they are forced to get married quickly by a cleric so they won't be further embarrassed."<sup>22</sup>

When a teenage girl becomes pregnant before marriage, families are faced with the dilemma of maintaining honor and legalizing the marriage, which takes time. The social stigma still attached to pregnancy outside of marriage makes families feel the need to “cover up the shame” through marriage, even if it is only a religious ceremony. Secret marriages have become a way for families to give pregnant girls “respectable” status and save the family's reputation in the eyes of the community. This process is considered more practical because it only requires

---

<sup>21</sup> Mr. B, "interview," Kiai/*lebe* Pondok Asem, Kertasemaya, Indramayu, on 25<sup>th</sup> March 2025.

<sup>22</sup> S, "interview," Aparat Dusun Pondok Asem, Kertasemaya, Indramayu, on 05<sup>th</sup> April 2025.

the presence of a cleric or religious leader without going through a lengthy administrative process.<sup>23</sup>

Dusun Pondok Asem has a high rate of labor migration, with many of its residents working as migrant workers in countries such as Taiwan, Hong Kong, Korea, Singapore, Saudi Arabia, and other Middle Eastern countries. The prolonged separation between husbands and wives, which can last for years, causes various problems in family life. Husbands or wives left behind in the village often face severe economic, psychological, and social pressures. Unmet emotional and biological needs, coupled with temptations from the surrounding environment, usually push them into extramarital relationships. When these relationships become serious, unregistered marriages become a way to “legalize” the relationship in the eyes of religion and society.

An example is Mrs A, a mother of two children in Dusun Pondok Asem, who once worked as a domestic helper in Saudi Arabia due to her family's unstable economic conditions. She was willing to leave her family to improve their situation. However, in reality, she experienced serious domestic problems. On March 28, 2025, the author interviewed the wife of a cleric who is now a widow to learn about her experience with an unregistered marriage. Mrs. A explained that:

"In 2010, I went to work in Saudi Arabia because of my family's unstable economic situation. I left with the hope of improving our lives. However, while I was working hard there, my sister-in-law sold my belongings and secretly married another man without my knowledge. When I found out about this, I felt devastated, because my intention in leaving was to make my family happier, but it ended up having the opposite effect." <sup>24</sup>

This study shows that unregistered marriages in the context of labor migration are not only a legal issue, but also reflect the limited choices available to people facing economic and social pressures. Long-term separation, which is not well anticipated by migrant workers' families, has created a vicious cycle that leads to marital breakdown and the emergence of unregistered marriages as a temporary solution.<sup>25</sup>

---

<sup>23</sup> Abdurrauf Law and Issn Sharia, “The Role of the Office of Religious Affairs in Overcoming the Practice of Marriage Series: A Study at KUA Gunung Meriah, Aceh Singkil” 1, no. 1 (2024): 51–78, <https://doi.org/10.70742/arlash.v1i1.20>

<sup>24</sup> Mrs A, "interview," Practitioner of kawin kiai Dusun Pondok Asem, Kertasemaya, Indramayu, on 28<sup>th</sup> March 2025.

<sup>25</sup> Afwan Faizin, Alfitra Alfitra, and Ali Mansur, “Legalizing Unofficial (Sirri) Marriage For Indonesian Migrant Workers In Malaysia,” *Jurnal Cita Hukum* 7, no. 1 (2019), <https://doi.org/10.15408/jch.v7i1.10341>.

Economic factors also play a role in encouraging the people of Dusun Pondok Asem to choose unregistered marriages. The costs of obtaining official documents, ranging from marriage licenses to legalization of various papers, to administrative fees at the Office of Religious Affairs, are considered too burdensome for families with low to middle incomes. In addition to administrative costs, social pressure to hold a “proper” wedding reception also becomes a significant financial burden. The community generally expects marriages to be celebrated by inviting neighbors and relatives, providing food, and providing wedding equipment. For families experiencing economic difficulties, this is a significant obstacle to holding an official wedding.

On April 5, 2025, the author interviewed Mr. S, an official in Dusun Pondok Asem, to learn more about the motives behind unregistered marriages in Dusun Pondok Asem. Mr. S explained that:

“In situations where finances are limited, many families in Dusun Pondok Asem prioritize daily necessities over the costs of a formal wedding. They believe the most important thing is a marriage valid according to religion and custom, while official registration can be postponed until economic conditions improve. Siri marriages, which only require a dowry and fees for the local religious leader who conducts the ceremony, are considered a more realistic alternative given their economic circumstances.”<sup>26</sup>

This reflects how structural poverty affects people's life choices in very fundamental ways. Furthermore, Mr. S continued his explanation by saying that:

“The residents of Dusun Pondok Asem also have limited access to government information and policies. They rely on information from family members or local leaders with limited knowledge about marriage. Their limited access to mass media, the internet, or other information sources means they are unaware of developments in government regulations and policies related to marriage.”<sup>27</sup>

The lack of understanding among the people of Dusun Pondok Asem regarding the importance of marriage registration is a significant factor driving the practice of unregistered marriages. Many residents are unaware that marriages that are not officially registered can lead to various legal problems in the future, particularly those related to the status of children, inheritance rights, and legal protection for wives. Government efforts to raise awareness about the importance of marriage registration are still minimal and have not reached grassroots communities such as those in Dusun Pondok Asem. As a result, many residents believe that a

---

<sup>26</sup> Mr. S, "interview," Aparat Dusun Pondok Asem, Kertasemaya, Indramayu, on 05<sup>th</sup> April 2025.

<sup>27</sup> Mr. S.

valid marriage according to religious law is sufficient and does not require legalization by the state.

The public's limited understanding of religion also contributes to this phenomenon. Many believe that a marriage that is valid according to religion is sufficient to live a married life, without considering the formal aspects that regulate the rights and obligations of husband and wife. Religious leaders who are often asked to marry couples secretly also do not always provide a comprehensive understanding of the legal consequences of unregistered marriages. They focus more on religious aspects and consider state administrative matters to be a separate issue.<sup>28</sup> Therefore, various socioeconomic factors and a lack of understanding of the legal aspects of marriage in Dusun Pondok Asem are the leading causes of the high number of unregistered marriages in this community.

## **2. Legal Certainty of the State and Social Legitimacy of Customary Law**

From the perspective of Indonesian law, marriages that are not officially registered violate Law No. 1 of 1974 on Marriage, which was amended by Law No. 16 of 2019. Article 2, paragraph 2 of the Marriage Law explicitly states that “every marriage must be registered in accordance with applicable laws and regulations”.<sup>29</sup> This provision was later reinforced by Government Regulation No. 9 of 1975, which regulates the technical aspects of marriage registration in Indonesia. This is, for example, stated in Article 2 paragraph (1), which states that “marriage registration for those who perform marriages in accordance with Islam is carried out by the Registration Officer as referred to in Law Number 32 of 1954 concerning Marriage Registration, Divorce, and Reconciliation,” and paragraph (2) states that “marriage registration for those who marry in accordance with religions and beliefs other than Islam shall be carried out by the Marriage Registration Officer at the Civil Registry Office as referred to in various laws and regulations concerning marriage registration”.<sup>30</sup> Thus, marriage registration under state law is not merely an administrative formality, but an absolute requirement for obtaining legal recognition and legitimacy from the state.

---

<sup>28</sup> Agnes Noviany Simarmata and Nicka Tri Mulyasari, “Peningkatan Kesadaran Masyarakat Tentang Akibat Dan Implikasi Hukum Dari Perkawinan Anak,” *Jurnal Dedikasi Hukum* 2, no. 1 (2022): 95–106, <https://doi.org/10.22219/jdh.v2i1.19047>.

<sup>29</sup> Asri Suleman Mansoba, “Akibat Hukum Perkawinan Siri Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Consequences of Siri Marriage Law Based on Law Number 1 of 1974 Concerning Marriage,” *Jurnal Media Hukum* 9, no. 2 (2021): 78–83, <https://ojs.untika.ac.id/index.php/jmh78>.

<sup>30</sup> Peraturan Pemerintah Nomor 09 Tahun 1975.

The legal status of unregistered marriages is paradoxical because the Marriage Law is the central legal umbrella governing marriage, with introductory provisions in Law Number 1 of 1974. Article 2 paragraph (1) states that “A marriage is valid if it is carried out in accordance with the laws of religion and belief of each party,” while Article 2 paragraph (2) states that “Every marriage must be registered in accordance with applicable laws and regulations”.<sup>31</sup> Both provisions are reinforced in Government Regulation No. 9 of 1975, which regulates the technical aspects of marriage registration in Indonesia. Article 2 of the regulation states that in paragraph (1) “marriage registration for those who conduct marriages according to Islam is carried out by the Registrar as referred to in Law Number 32 of 1954 concerning Marriage, Divorce, and Reconciliation Registration” and paragraph (2) “marriage registration for those who conduct their marriage according to religions and beliefs other than Islam shall be carried out by Marriage Registration Officers at the Civil Registry Office as referred to in various laws and regulations concerning marriage registration”.<sup>32</sup> Thus, the validity of a marriage applies cumulatively, meaning that it must fulfill two conditions at once, namely that it is valid according to religious law and registered according to state law.<sup>33</sup> This provision was later reaffirmed by the Compilation of Islamic Law (KHI) in Presidential Instruction No. 1 of 1991. Article 4 of the KHI states that “Marriage is valid if it is conducted in accordance with Islamic law as stipulated in Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage.” This article provides an understanding that marriage remains valid even if it is not registered, as long as it is conducted according to Islamic law. However, Article 6 paragraph (2) of the KHI explicitly states that “marriages conducted outside the supervision of a marriage registrar have no legal force.” Even though unregistered marriages fulfill the pillars and requirements of marriage according to Islamic law, the absence of official registration means that these marriages have no legal force in the eyes of the state. This legal construction shows that the state recognizes the religious validity of marriage but does not provide legal protection for marriages that do not fulfill the administrative aspects stipulated in positive law, thus creating a dual requirement system that is imperative and inseparable from one another.

The Compilation of Islamic Law (KHI), as a legal instrument that transforms Islamic legal principles into the national legal system, explicitly rejects the legality of unregistered

---

<sup>31</sup> Undang-Undang Nomor 01 Tahun 1974 Tentang Perkawinan.

<sup>32</sup> Peraturan Pemerintah Nomor 09 Tahun 1975.

<sup>33</sup> Ridwan Jamal, Misbahul Munir Makka, and Nor Annisa Rahmatillah, “Pencatatan Nikah Di Kantor Urusan Agama Sebagai Fakta Hukum Perkawinan Masyarakat Muslim,” *Al-Mujtabid: Journal of Islamic Family Law* 2, no. 2 (December 25, 2022): 111, <https://doi.org/10.30984/ajifl.v2i2.2132>.

marriages through various provisions that emphasize the obligation of registration as an absolute requirement. Article 5, paragraph (1) of the Compilation of Islamic Law (KHI) states, “To ensure orderly marriages for Muslims, every marriage must be registered.” This is a manifestation of the state's rejection of unregistered marriages, which is further reinforced by Article 6 paragraph (1) of the KHI, which states that “to fulfill the requirements in Article 5, every marriage must be conducted in the presence and under the supervision of a Marriage Registration Officer”.<sup>34</sup>

Supreme Court Regulations (PERMA) and various implementing regulations strengthen the state's position in rejecting unregistered marriages through a consistent judicial mechanism that rejects cases that do not have a valid legal basis for marriage documents. PERMA Number 1 of 2008 concerning Mediation Procedures in Court stipulates that mediation in marriage cases can only be carried out in cases with a clear legal basis, which implicitly rejects mediation in unregistered marriage cases because they do not have legally recognized marriage documents.<sup>35</sup> Furthermore, PERMA Number 1 of 2016 concerning Mediation Procedures in Court states that the court can only process cases that have a formal legal basis, so that couples in unregistered marriages cannot access the dispute resolution mechanism through the court system due to the absence of evidence of a legal marriage under state law.<sup>36</sup>

Marriages not conducted before an authorized official are challenging to prove because they are not officially recorded by the relevant authorities as stipulated in Article 2, Paragraph (2) of Law Number 1 of 1974. When a dispute arises between a couple married in a religious ceremony, they cannot use state legal instruments to resolve their problems. The court will reject the case because there is no valid legal proof of the existence of a marriage recognized by the state.<sup>37</sup> This rejection is based on the principle that courts can only handle cases with a clear legal basis, which can be proven through official documents. As a result, couples who are married unofficially cannot file for divorce through the religious court, claim alimony, or divide joint property through formal legal channels, because Article 35 of the Marriage Law, which regulates joint property, cannot be applied without proof of a valid marriage recognized by the

---

<sup>34</sup> Kompilasi Hukum Islam.

<sup>35</sup> Perma Nomor 01 Tahun 2008.

<sup>36</sup> Perma Nomor 01 Tahun 2016.

<sup>37</sup> Asriadi Zainuddin, “Legalitas Pencatatan Perkawinan Melalui Penetapan Isbat Nikah,” *Al-Mujtabid: Journal of Islamic Family Law* 2, no. 1 (2022): 60, <https://doi.org/10.30984/ajifl.v2i1.1942>.



country's legal system.<sup>38</sup> Based on this legal framework, unregistered marriages conducted without going through the Office of Religious Affairs are not recognized by the state because they do not meet the legal requirements. Positive law in Indonesia does not recognize the term unregistered marriage, so marriages that are not registered have no legal force.

However, according to customary law, unregistered marriages are considered valid and recognized. The diverse customary laws in Indonesia generally recognize marriages that have fulfilled traditional and religious requirements, even if the state does not officially register them. This recognition is based on the basic principles of customary law, which emphasize the essence and religious ceremonies rather than administrative formalities. The main feature of the customary law perspective is its emphasis on the true meaning of marriage, namely, the spiritual and social bond formed through customary and religious ceremonies, rather than simply an official document from the government. This perspective reflects the philosophy of customary law, which prioritizes essential values over formal administrative procedures.<sup>39</sup>

In many indigenous communities in Indonesia, especially in Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency, marriages conducted with witnesses from the extended family, traditional leaders, and religious leaders are considered valid according to local traditions. The presence of these essential figures creates strong recognition from the community. Social recognition under customary law is achieved through acceptance by the community, whereby the community considers couples who marry in a siri ceremony to be legally married in everyday life and to have the same rights and obligations as couples who are officially married. Recognition from traditional and religious leaders provides spiritual and social recognition that the entire community acknowledges. At the same time, the involvement of witnesses from the extended family strengthens social bonds and ensures that the marriage has the support of more influential relatives.

The acceptance provided by the indigenous community is critical in strengthening the identity and social stability of couples and their children. Mutual acceptance from the surrounding community creates a sense of security and belonging, which allows couples and their children to develop emotionally and socially within the community. Traditional views

---

<sup>38</sup> Sean P Collins et al., "Upaya Perlindungan Hukum Terhadap Wanita Yang Ditinggal Oleh Suami Siri: Perspektif Hakim Pengadilan Agama Serdang Begadai" 8 (2021): 131–41, <https://jayapanguspress.penerbit.org/index.php/JPAH>.

<sup>39</sup> Jimi Anugerah Gea et al., "Analisis Konsep Yuridis Pernikahan Siri Dalam Perspektif Hukum Perdata, Islam, Adat," *Jurnal Pengembangan Ilmu Hukum Terapan* 6, no. 3 (2025): 25–34. <https://ijurnal.com/1/index.php/jpiht/article/view/1054/1007>

cannot be separated from spiritual and religious aspects, where religious ceremonies performed in conventional marriages are considered to provide sanctity and spiritual recognition of the marriage bond.<sup>40</sup> This reflects the worldview of indigenous communities, which combine worldly and spiritual aspects in every social activity. In indigenous communities, marriage is considered a social contract and a spiritual bond witnessed by God and the community, reflecting the harmony between traditional values and religious teachings embedded in society for centuries.<sup>41</sup>

On April 7, 2025, the author interviewed Mr. G, a kiai practitioner, to determine whether the local community accepts children from unregistered marriages. Mr. G explained that:

"Children born from unregistered marriages are also recognized as legitimate children and have the same social rights as children from legal marriages. Their parents' marriage is considered valid according to custom and religion. Therefore, these children are entitled to protection, recognition from the community, and the opportunity to participate in social life. They can be involved in various cultural and social activities."<sup>42</sup>

Through this involvement, they strengthen social relationships and learn the values and rules that exist in society. The acceptance given by the indigenous community is critical in shaping their identity, where these children can grow up with high self-confidence because they are accepted and appreciated in the community. Mutual acceptance from the surrounding community creates a sense of security and belonging, which allows them to develop emotionally and socially.<sup>43</sup>

### 3. Dialectic of Comparative State and Customary Law in Legal Pluralism

Indonesia faces a complex problem because it has two legal systems: customary law and state law. This situation has led to conflicting regulations in Indonesia, especially regarding marriage registration. To date, there has been no adequate solution to this problem, especially

---

<sup>40</sup> Novita Dewi Masyithoh et al., "Sacralism of Customary Law in Marriage: Local and National Legal Contestation in Indonesia," *Walisongo Law Review* 6, no. 1 (2024): 42–55, <https://doi.org/10.21580/walrev.2024.6.1.22670>.

<sup>41</sup> Handika Purnama, "Hukum Islam, Adat Dan Hukum Negara Dalam Perkawinan Masyarakat Suku Melayu Di Pekanbaru Riau: Keabsahan, Etika, Dan Administrasi Perkawinan," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 1–10, <https://doi.org/10.14421/ahwal.2021.14101>.

<sup>42</sup> Mr. G, "interview," Practitioner Kawin Kiai Dusun Pondok Asem, Kertasemaya, Indramayu, on 07<sup>th</sup> April 2025.

<sup>43</sup> Siti Salamah, Vina Adriany, and Mubiar Agustine, "Partisipasi Anak Menurut Pandangan Orangtua Adat," *Jurnal Basicedu* 8, no. 4 (August 23, 2024): 3479–90, <https://doi.org/10.31004/basicedu.v8i4.8564>.

regarding unregistered marriages, which have caused a fundamental conflict between the two legal systems. This conflict is evident when customary law considers marriages without official records valid and recognized, but state law does not recognize such marriages.<sup>44</sup> This situation has confused the people and caused uncertainty because it is caught between two different legal systems with different perspectives. These two legal systems have fundamentally different ways of working. Traditional justice places greater emphasis on harmony within the community, is flexible in nature, and resolves issues through deliberation in accordance with local traditions. In contrast, state law emphasizes the certainty of the same law for all people and resolves issues through official procedures based on rules that apply throughout Indonesia.<sup>45</sup>

This difference in perspective is not only a legal issue, but also affects how society views the institution of marriage and the role of government in their personal lives. On the one hand, the community feels they have entered into a valid marriage based on their customs and beliefs, which the 1945 Constitution protects. Article 18B paragraph (2) of the 1945 Constitution explicitly states that “The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.” This means that the state has an obligation to protect indigenous peoples from various things that could interfere with their rights and livelihoods.<sup>46</sup>

However, the community faces obstacles when interacting with government institutions and the formal legal system. Nevertheless, the community must also comply with the laws that apply in Indonesia, as explained in Article 27 paragraph (1) of the 1945 Constitution, which stipulates that “All citizens shall be equal before the law and government and shall be required to uphold the law and government without exception”.<sup>47</sup> From the formulation of these provisions, it can be concluded that all citizens, both civilians and government officials, without exception, are obliged to uphold the laws that apply in the life

---

<sup>44</sup> Ines Aulia Dina, “Pengaruh Budaya Dan Tradisi Terhadap Nikah Sirri Di Indonesia,” *Jurnal Landraad* 4, no. 1 (2025): 87–96. Retrieved from <https://jurnal.insan.ac.id/index.php/jl/article/view/767>

<sup>45</sup> Dina Rahmita et al., “Analisis Komparatif Sistem Hukum Adat Dan Hukum Positif Dalam Harmonisasi Kebijakan Publik Di Indonesia,” *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 2, no. 1 (2025): 107–20, <https://doi.org/10.62383/presidensial.v2i1.456>.

<sup>46</sup> Muhammad Fadli, “Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia,” *Majalah Hukum Nasional* 54, no. 2 (2024): 283–314, <https://doi.org/10.33331/mhn.v54i2.896>.

<sup>47</sup> Undang-Undang Dasar 1945.

and legal culture of Indonesian society, including criminal law, civil law, and customary law. This dilemma ultimately forces society to choose between preserving customary traditions guaranteed by the constitution or complying with formal state regulations to obtain legal protection.<sup>48</sup> This situation shows that constitutional guarantees for indigenous peoples have not yet provided justice for them. There is still a significant gap between what the constitution promises and reality. This gap highlights the complexity of the dual legal system in Indonesia, which requires a comprehensive solution.

In the context of the practice of kiai marriage in Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency, this phenomenon demonstrates the reality of legal pluralism that cannot be ignored. This practice has gained strong legitimacy from the community based on deeply rooted traditional values, but faces challenges when confronted with the formal legal system of the state. This reflects how social legitimacy can function effectively without requiring recognition from the formal legal system, while state law cannot always penetrate social practices deeply rooted in community traditions.

The dialectic between state and customary law creates gray areas in Indonesian legal life, where communities often face a dilemma. This tension raises fundamental questions about the effectiveness of law, because state law, despite its strong formal legality, is not always effective in regulating community life. Conversely, customary law, which does not have the backing of state power, has proven to be highly effective in controlling the behavior of community members through social sanctions that are often more feared than formal sanctions from the state.<sup>49</sup>

This legal dualism affirms Indonesia's unique character as a nation, where this complexity is not a weakness that must be eliminated but a reality that needs to be understood and managed wisely. Despite their noble goal of creating legal certainty, efforts to unify the law cannot ignore the power and legitimacy of customary law, which is deeply rooted in society. The dynamic interaction between state law and customary law creates unique and

---

<sup>48</sup> Made Dwiko Dentista Putra and I Ketut Sudantra, "Eksistensi Hukum Adat Dalam Politik Hukum Nasional Pada Era Modernisasi Dewasa Ini," *Pemuliaan Keadilan* 1, no. 4 (2024): 01–14, <https://doi.org/10.62383/pk.v1i4.93>.

<sup>49</sup> Fadli, "Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia."

contextual patterns of relationship, in which the two systems are not always in confrontation but often fill in the gaps left by the other system.<sup>50</sup>

This dialectic teaches that Indonesia needs a more flexible approach to managing its legal pluralism, where, instead of imposing total uniformity, a strategy that recognizes the legitimacy of customary law while maintaining national cohesion may be more realistic and practical. This phenomenon reminds us that the effectiveness of law is not only determined by the formal power of the state but also by the level of acceptance and internalization of legal values within society, so that effective law is law that is not only formally legal but also socially legitimate.<sup>51</sup>

Ultimately, the practice of kiai marriage in Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency, clearly reflects the complexity of legal pluralism in Indonesia, which requires comprehensive and sustainable solutions. The challenge ahead does not lie in eliminating one of the legal systems, but rather in creating harmony and synergy between the two systems to achieve true justice for all Indonesians, without sacrificing the local wisdom that has proven effective in regulating the community's social life.

## E. Conclusion

Based on an analysis of various aspects discussed in this journal, it can be concluded that multiple complex social, economic, and cultural factors influence the phenomenon of unregistered marriages in Dusun Pondok Asem. Economic factors are one of the main drivers, with low-income families preferring to conduct unregistered marriages because the administrative and social costs of formal marriage are considered too high. In addition, the social stigma attached to pregnancy outside of marriage, as well as beliefs regarding the legitimacy and validity of traditional and religious marriages, reinforce the practice of unregistered marriages. Although Indonesian positive law stipulates that marriages must be formally registered and follow national legal provisions, the practice of unregistered marriages continues and is socially legitimized in the community, demonstrating legal pluralism and tension between formal law and custom. Therefore, effective solutions must be

---

<sup>50</sup> Ikhsan Lubis et al., "Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat," *Tunas Agraria* 8, no. 2 (2025): 143–58, <https://doi.org/10.31292/jta.v8i2.401>.

<sup>51</sup> Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional." <https://doi.org/10.22437/ujh.4.1.81-124>

comprehensive and sustainable, given the importance of preserving local wisdom while ensuring justice and legal protection for all Indonesians.

## **F. Conflict of Interest Statement**

The authors declare no conflicts of interest in this study and publication.

## **G. Acknowledgment**

We want to express our gratitude to all parties who have contributed to the completion of this journal, especially to the faculty of Sharia at the State Islamic University of Sunan Kudus, who have provided valuable guidance and input. We also express our appreciation to the narrators, friends, and all parties who have taken the time to share their experiences and knowledge, which have enriched the analysis in this journal. We hope this work can positively contribute to the understanding and development of studies related to the issue of unregistered marriages and the harmonization of the law system in Indonesia.

The informants in this study agreed to be interviewed and published, but on condition that their identities remain confidential. Therefore, all informant names listed in this article are pseudonyms to protect the privacy and confidentiality of the informants' identities. Thank you for all your support and prayers.

## **H. References**

- Abubakar, Fatum, Syahrul Mubarak Subeitan, Abdul Rahim Hakimi, Muhammad Faisol, and Siti Barora Sinay. "Qadhi Legitimization: Shifting Roles of the Penghulu in Ternate and Tidore Sultanates, Indonesia." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 1 (2025): 139–63. <https://doi.org/10.18326/ijtihad.v25i1.139-163>.
- Amar, Rizki, Agung Pratama Dharma, M. Aulia Urrahman, and M. Rafli Kurniawan. "Kedudukan Pencatatan Terhadap Keabsahan Perkawinan: Telaah Pencatatan Perkawinan." *Jurnal Tana Mana* 5, no. 2 (2024): 217–26. <https://doi.org/10.33648/jtm.v5i2.486>.
- Baihaqi, Baihaqi, Titik Triwulan Tutik, Ahmad Musadad, A Mufti Khazin, and Mahtumridho Ghufron bin Simun. "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 (August 29, 2024): 242–68.  
<https://doi.org/10.24260/jil.v5i2.2819>.
- Collins, Sean P, Alan Storror, Dandan Liu, Cathy A Jenkins, Karen F Miller, Christy Kampe, and Javed Butler. “Upaya Perlindungan Hukum Terhadap Wanita Yang Ditinggal Oleh Suami Siri: Perpektif Hakim Pengadilan Agama Serdang Begadai” 8 (2021): 131–41.  
<https://jayapanguspress.penerbit.org/index.php/JPAH>.
- Dewi Masyithoh, Novita, Maksun, Suteki, and Muhammad Akmal Habib. “Sacralism of Customary Law in Marriage: Local and National Legal Contestation in Indonesia.” *Walisongo Law Review* 6, no. 1 (2024): 42–55.  
<https://doi.org/10.21580/walrev.2024.6.1.22670>.
- Dina, Ines Aulia. “Pengaruh Budaya Dan Tradisi Terhadap Nikah Sirri Di Indonesia.” *Jurnal Landraad* 4, no. 1 (2025): 87–96.
- Dina Rahmita, Muthi’ah Muthi’ah, Iqbal Hardiansyah, Wahyu Setiawan Rambe, and Muhammad Alfarizi Lubis. “Analisis Komparatif Sistem Hukum Adat Dan Hukum Positif Dalam Harmonisasi Kebijakan Publik Di Indonesia.” *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 2, no. 1 (2025): 107–20.  
<https://doi.org/10.62383/presidensial.v2i1.456>.
- Fadli, Muhammad. “Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia.” *Majalah Hukum Nasional* 54, no. 2 (2024): 283–314.  
<https://doi.org/10.33331/mhn.v54i2.896>.
- Faizin, Afwan, Alfitra Alfitra, and Ali Mansur. “Legalizing Unofficial (Sirri) Marriage For Indonesian Migrant Workers In Malaysia.” *Jurnal Cita Hukum* 7, no. 1 (2019).  
<https://doi.org/10.15408/jch.v7i1.10341>.
- Fakhria, Sheila, Kholifatun Nur Mustofa, Mohamad Ma, Ahmad Wahidi, Mochammad Agus Rachmatulloh, Iain Kediri, Iain Kediri, and Iain Kediri. “Securing Muslim Children’s Civil Rights : Debate on State Legal Policy towards The Issuance of Family Cards for Unregistered Marriage Couples” 14, no. 2 (2024): 303–22.  
<https://doi.org/10.23971/el-mashlahah.v14i2.8008>.
- Fakhyadi, Defel, Muhammad Adib Samsudin, Vito Dasrianto, Muhammad Danil, and Ade Arga Wahyudi. “Reconstructing Gender Relations for Family Resilience in Minangkabau: Integrating Islamic Law and Customary Law.” *Al-Ahkam* 35, no. 1



- (2025): 1–30. <https://doi.org/10.21580/ahkam.2025.35.1.22906>.
- Fauzi, Muhammad Latif. “Administrative Transgression And Judicial Discretion For The Sake Of Citizens’ Rights: The Legalisation of Unregistered Marriages in Indonesia.” *Al-Ahwal* 16, no. 2 (2023): 211–31. <https://doi.org/10.14421/ahwal.2023.16202>.
- Gea, Jimi Anugerah, Ariston Halawa, Berkat Kasih Gulo, San Putra Harapan Gulo, and Silvi Aulia Putri. "Analisis Konsep Yuridis Pernikahan Siri Dalam Perspektif Hukum Perdata, Islam, Adat." *Jurnal Pengembangan Ilmu Hukum Terapan* 6, no. 3 (2025). <https://ijurnal.com/1/index.php/jpiht/article/view/1054/1007>
- Gumelar Firmansyah, Mina Rabiatal Asiyah, Putri Nadila, and Putry Delsa Hasanah. “Implementasi Hukum Adat Dalam Prosesi Perkawinan Adat Minangkabau.” *Uniku Law Review* 1, no. 1 (June 20, 2023): 2085–2997. <https://doi.org/10.25134/ulr.v1i1.13>.
- Islamiyah, Nanda Nabilah. “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 (June 7, 2024): 21–40. <https://doi.org/10.14421/ahwal.2024.17102>.
- Jamal, Ridwan, Misbahul Munir Makka, and Nor Annisa Rahmatillah. “Pencatatan Nikah Di Kantor Urusan Agama Sebagai Fakta Hukum Perkawinan Masyarakat Muslim.” *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 2 (December 25, 2022): 111. <https://doi.org/10.30984/ajifl.v2i2.2132>.
- Kompilasi Hukum Islam*, [http://etheses.uin-malang.ac.id/1595/11/07210048\\_Lampiran.pdf](http://etheses.uin-malang.ac.id/1595/11/07210048_Lampiran.pdf).
- Law, Abdurrauf, and Issn Sharia. “The Role of the Office of Religious Affairs in Overcoming the Practice of Marriage Series: A Study at KUA Gunung Meriah, Aceh Singkil” 1, no. 1 (2024): 51–78. <https://journal.abdurraufinstitute.org/index.php/arlash>.
- Lubis, Ikhsan, Taufik Siregar, Duma Indah Sari Lubis, Rodiatun Adawiyah, and Andi Hakim Lubis. “Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat.” *Tunas Agraria* 8, no. 2 (2025): 143–58. <https://doi.org/10.31292/jta.v8i2.401>.
- Made Dwiko Dentista Putra, and I Ketut Sudantra. “Eksistensi Hukum Adat Dalam Politik Hukum Nasional Pada Era Modernisasi Dewasa Ini.” *Pemuliaan Keadilan* 1, no. 4 (2024): 01–14. <https://doi.org/10.62383/pk.v1i4.93>.
- “Peraturan Pemerintah Nomor 9 Tahun 1975.” *PP Republik Indonesia*, 2014, 3.
- Perma RI Nomor 01 Tahun 2008*, n.d.

- Pradhani, Sartika Intaning. "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional." *Undang: Jurnal Hukum* 4, no. 1 (June 5, 2021): 81–124. <https://doi.org/10.22437/ujh.4.1.81-124>.
- Purnama, Handika. "Hukum Islam, Adat Dan Hukum Negara Dalam Perkawinan Masyarakat Suku Melayu Di Pekanbaru Riau: Keabsahan, Etika, Dan Administrasi Perkawinan." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 1–10. <https://doi.org/10.14421/ahwal.2021.14101>.
- Rifqi, Muhamad Jazil, Nurul Asiya Nadhifah, Mukhammad Nur Hadi, Abdul Basith Junaidy, and Agus Solikin. "Children's Legal Identity at Stake: Reconstructing Maqāṣid Al-Syarī'ah through Marriage Isbat Applications by the Second Generation in Pasuruan." *El-Mashlahah* 15, no. 1 (2025): 125–48. <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.
- Perma Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan <https://doi.org/10.1093/aristotelian/84.1.31>.
- Salamah, Siti, Vina Adriany, and Mubiar Agustine. "Partisipasi Anak Menurut Pandangan Orangtua Adat." *Jurnal Basicedu* 8, no. 4 (August 23, 2024): 3479–90. <https://doi.org/10.31004/basicedu.v8i4.8564>.
- Simarmata, Agnes Noviany, and Nicka Tri Mulyasari. "Peningkatan Kesadaran Masyarakat Tentang Akibat Dan Implikasi Hukum Dari Perkawinan Anak." *Jurnal Dedikasi Hukum* 2, no. 1 (2022): 95–106. <https://doi.org/10.22219/jdh.v2i1.19047>.
- Suleman Mansoba, Asri. "Akibat Hukum Perkawinan Siri Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Consequences of Siri Marriage Law Based on Law Number 1 of 1974 Concerning Marriage." *Jurnal Media Hukum* 9, no. 2 (2021): 78–83. <https://ojs.untika.ac.id/index.php/jmh78>.
- Suryana, Ahmad, Khoirul Hidayah, and Muhammad. "Rethinking Marriage Guardians for Widows in Indonesia: Perspective of Legal Certainty and Maslahat Theory." *Justicia Islamica* 22, no. 1 (2025): 71–92. <https://doi.org/10.21154/justicia.v22i1.9990>.
- Undang-Undang Nomor 1 Tahun 1974.
- Undang-Undang Dasar 1945.
- Warman, Arifki Budia, Riska Fauziah Hayati, and Musda Asmara. "From Custodians to Bystanders: Tigo Tungku Sajarangan 's Responses to Unregistered Marriages Practices in Minangkabau" 18, no. 1 (2025): 61–77.

<https://doi.org/10.14421/ahwal.2025.18203>.

Yulinda, Deva, Suci Ramadhani Putri, and Hüseyin Elmhemit. "Injustice Legal System Ibuism in Indonesian Marriage Law: A Study on Polygamy for Childlessness Reasons." *Al-Manhaj: Journal of Indonesian Islamic Family Law* 7, no. 1 (2025): 1–23. <https://doi.org/10.19105/al-manhaj.v7i1.19515>.


Zainuddin, Asriadi. "Legalitas Pencatatan Perkawinan Melalui Penetapan Isbat Nikah." *Mujtahid: Journal of Islamic Family Law* 2, no. 1 (2022): 60. <https://doi.org/10.30984/ajifl.v2i1.1942>.

## I. Author's Biography

**Lulu Ul Jannah** is a student at the Islamic University of Negeri Sunan Kudus. Her research focuses on Islamic law.

**Inna Fauziatal Ngazizah** is a lecturer at Sunan Kudus State Islamic University. Most of her research focuses on Islamic law.

**Abdurrohman Kasdi** is a lecturer at Sunan Kudus State Islamic University. Most of his research focuses on Islamic Law, Philosophy of Islamic Law, Contemporary Islamic Law, Islamic Economic Law, and Islamic Studies

DOI, Copyright, and License	<p>DOI: <a href="https://doi.org/10.14421/al-mazaahib.v13i2.4392">https://doi.org/10.14421/al-mazaahib.v13i2.4392</a></p> <p>Copyright (c) 2025 Lulu Ul Jannah, Inna Fauziatal Ngazizah</p> <p>This work is licensed under a Creative Commons Attribution ShareAlike 4.0 International License</p> 
How to cite	<p>Jannah, Lulu Ul, Ngazizah, Inna Fauziatal, and Kasdi, Abdurrohman. "The Dialectic of Unregistered Marriage in the Kiai Marriage Tradition at Dusun Pondok Asem, Kertasemaya Subdistrict, Indramayu Regency." <i>Al-Mazaahib: Jurnal Perbandingan Hukum</i> 13, no. 2 (2025): 173-198. <a href="https://doi.org/10.14421/al-mazaahib.v13i2.4392">https://doi.org/10.14421/al-mazaahib.v13i2.4392</a></p>

## J. Research Instruments

List of interview questions:

1. With Mr. B (local cleric/Lebe)

Question: "Is it still common for the people of Dusun Pondok Asem to marry clerics? If so, approximately how many cases have there been in the last three years?"

2. With Mrs. A (Kiai Marriage Practitioner)

Question: "Ma'am, from your personal experience, how did your family end up having problems with this unregistered marriage? Can you tell us the chronology?"

3. With Mr. S (Village Official)

Question 1: "Mr. S, I would like to understand more about the marriage tradition here. What exactly is a Kiai marriage? And how is the process carried out in Dusun Pondok Asem?"

Question 2: "Okay, sir, in your opinion, what causes many people here to prefer kiai marriages over official marriages? Are there any specific factors that influence this condition in Dusun Pondok Asem?"

Question 3: "Are there any other factors that encourage Kiai marriage to still be common today?"

Question 4: "Mr. S, what is the position of the Dusun Pondok Asem community in dealing with the differences between customary law and state law? Why does the community prefer to follow tradition even though they know there are different state regulations?"

4. With Mr. G (Customary Community)

Question 1: "Mr. G, how does the community here view children born from siri marriages/marriages between religious leaders? Are they accepted and recognized in the same way as children from official marriages?"

Question 2: "Mr. G, what about inheritance rights for children born from unregistered marriages? Can they still receive an inheritance from their parents?"