

Solving Pregnancy Out-of-Wedlock: ‘Dual Validity’ of *Ngampang* Marriage among Dayak Muslim Community in Sintang, Indonesia

Mengatasi Kehamilan Di Luar Nikah: Keabsahan Ganda Perkawinan *Ngampang* di Masyarakat Muslim Dayak Sintang, Indonesia

Muhammad Adib Alfarisi*

Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia
adibalfarisi19@gmail.com

Muhammad Jihadul Hayat

Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia
muhammad.hayat@uin.suka.ac.id

Abdul Rahim Hakimi

Herat University, Afghanistan
hakimiabdulrahim@yahoo.com

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* *Corresponding Author*

Abstract: According to most scholars of Islamic jurisprudence (*jumhūr ‘ulamā*), marriage due to pregnancy (*ngampang*) is permissible as long as it is conducted under *fiqh* (Islamic jurisprudence) rules. Its validity is not contingent upon the situation/locus ‘in front of the state official’. It means that there is no significance in remarriage before the state official if an Islamic marriage has previously been performed beyond the walls of the state building. In reality, however, the community—in this context, the Muslim community of Sintang—often remarries before a marriage registrar to achieve state recognition in the case of marriage due to pregnancy. This article portrays how the Sintang Muslim community legalizes marriage status due to pregnancy. Data were collected through interviews. This article argues that in order to obtain state recognition of their marriage due to pregnancy, the Muslim community of Sintang often performs twofold marriage ceremonies. The first is according to customary standards (in line with the Statute of the Sintang Kingdom) and following Islamic rules. The second is according to national procedure (in front of a state official), which applies the same Islamic terms. It indicates that, in terms of resolving the issue of pregnancy out-of-wedlock, the Sintang Muslim community has to go through two standards that are not substantively contradictory to each other. Both standards actually rest on the same principles in Islamic law.

Keywords: Pregnancy Out-of-Wedlock, Marriage by Pregnancy, Dual Validity, *Ngampang* Marriage, Customary Law.

Abstrak: Menurut jumbuh ulama, pernikahan karena hamil (*ngampang*) sebenarnya boleh selama dilakukan menurut aturan fikih. Keabsahannya tidak ditentukan oleh situasi/lokus 'di hadapan penghulu negara'. Sehingga tidak ada signifikansi untuk menikah kembali di hadapan pegawai negara tersebut jika sebelumnya sudah dilakukan pernikahan secara Islam di luar dinding Kantor Urusan Agama. Akan tetapi dalam kenyataannya, di sebagian masyarakat—dalam konteks ini Komunitas Muslim Sintang—kerap melakukan pernikahan kembali di hadapan pegawai pencatat nikah guna meraih pengakuan negara. Berangkat dari hal ini, artikel ini memotret bagaimana komunitas muslim Sintang melakukan legalisasi status pernikahan hamil. Data dikumpulkan melalui wawancara. Artikel ini berargumen bahwa untuk menjadikan kawin hamil memiliki status setara dengan pernikahan pada umumnya, komunitas muslim Sintang kerap melakukan pernikahan dua kali, yakni pernikahan menurut standar adat (dengan membayar denda-denda menurut Undang-Undang Kerajaan Sintang) dan pernikahan menurut standar prosedur nasional (di hadapan penghulu negara). Hal ini mengindikasikan bahwa, dalam hal menyelesaikan persoalan kehamilan di luar nikah, komunitas Muslim Sintang harus melewati dua standar yang sebenarnya tidak bertentangan secara substantif. Kedua standar sebenarnya didasarkan pada prinsip-prinsip sama yang terdapat dalam hukum Islam.

Kata Kunci: Hamil di luar Nikah, Kawin Hamil, Dualitas Keabsahan, Perkawinan *Ngampang*, Hukum Adat.

A. Introduction

The increasing incidence of marriages due to pregnancy in Indonesia appears to be an undeniable phenomenon.¹ Thus far, the country has not found a solution to prevent such marriages from occurring or to address pregnancies before marriage.² It is a matter of concern for the Indonesian Muslim community, as premarital pregnancy is considered a shameful disgrace for both the individuals

¹ This is evident in the case of child marriage. See: Eva F Nisa, "Battling Marriage Laws : Early Marriage and Online Youth Piety in Indonesia," *Hawwa* 18, no. 2-3 (2020): 76-102; Singgih Susilo et al., "Investigation of Early Marriage: A Phenomenology Study in the Society of Bawean Island, Indonesia," *Journal of Population and Social Studies [JPSS]* 29, January-December (2021): 544-62; Bagya Agung Prabowo, "Pertimbangan Hakim dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil di Luar Nikah pada Pengadilan Agama Bantul," *Jurnal Hukum Ius Quia Iustum* 20, no. 2 (2013): 300-317.

² Ahmad Muqaffi, Rusdiyah Rusdiyah, and Diana Rahmi, "Menilik Problematika Dispensasi Nikah dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan," *Journal of Islamic and Law Studies* 5, no. 2 (2022): 361-77.

involved and their families.³ That practice is unwanted within Muslim society. In Islamic law, adultery is prohibited, while the legal status of marriage due to pregnancy (of adultery) remains a subject of debate among scholars.⁴

When pregnancies out-of-wedlock occur, society often seeks solutions to mitigate the shame upon the family. One such solution may involve entering into a sham marriage⁵ when a woman is married to another man who did not impregnate her for the purpose of concealing her family's shame.⁶ This type of marriage is referred to *kawi' pura* marriage.⁷ This phenomenon of marriages conducted to conceal family shame occurs in the East Kolaka community. A similar phenomenon of marriages for the same purpose is also observed in the Muslim community of Sintang. However, in the context of the Sintang community, the pregnant woman is married to the man who impregnated her. This type of marriage is referred to as *ngampang* marriage. Both *kawi' pura* and *ngampang* marriage are marriages compelled by the need to conceal the family's shame.

Ngampang marriage is not conducted as a pretense; it is carried out seriously as if in regular marriages. The marriage is established by adhering to customary law requirements (particularly fines) and Islamic law, but it does not involve the state's marriage registrar. If the parties of *ngampang* marriages will state recognition, they often choose to perform the second marriage at the local Office of Religious Affairs (KUA). This means that two Islamic marriage contracts

³ Agung D. Laksono et al., "Unmarried Women and Unintended Pregnancy: An Indonesian Cross-Sectional Study," *Indian Journal of Community Medicine* 48, no. 2 (2023): 361–63.

⁴ See: Abdel Salam Sidahmed, "Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women," *British Journal of Middle Eastern Studies* 28, no. 2 (November 2001): 187–204; Abdulmajeed Hassan Bello, "The Punishment for Adultery in Islamic Law and Its Application in Nigeria," *Journal of Islamic Law and Culture* 13, no. 2–3 (October 2011): 166–82.

⁵ Syamsul Darlis, "Marriage for Covering Disgrace: The Practice of Kawi' Pura Tradition in the East Kolaka Muslim Society," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 21–38.

⁶ If marriage by pregnancy will be carried out by a couple who is under the minimum age of marriage (and they wish state recognition), they must apply for a marriage dispensation at the Religious Court. See: Dede Kania et al., "Marriage Dispensation Since the Decision of the Constitutional Court Number 22/Puu-Xv/2017," *Jurnal Hukum Islam* 19, no. 1 (2021): 43–64; Nurul Inayah, "Penetapan Dispensasi Nikah Akibat Hamil di Luar Nikah di Pengadilan Agama Yogyakarta Tahun 2010-2015 (Analisis Hukum Acara Peradilan Agama)," *Al-Ahwal: Jurnal Hukum Keluarga* 10, no. 2 (2017): 178–93; Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "Dispensasi Kawin dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86–98.

⁷ Syamsul Darlis, "Marriage for Covering Disgrace," 21–38.

are executed in two different forums, customary and state. The first marriage involves only traditional and non-state Islamic officials (*penghulu swasta*).⁸ In this first marriage, customary provisions are combined with Islamic rules. The second marriage is conducted following the state's procedures in the presence of a government marriage registrar who also applies Islamic law. Therefore, it can be said that the first marriage ceremony represents a combination of customary and Islamic principles, whereas the second marriage represents a combination of state regulations and Islamic principles. This demonstrates that, in addressing cases of pregnancy out-of-wedlock, the Muslim community in Sintang appears to apply what can be termed as 'dual validity'.⁹ This practice appears peculiar because both processes are, in fact, rooted in Islamic law; however, due to administrative matters, the marriage must be conducted twice. The occurrence of a second marriage indicates that the state formally applies a concept of 'dual validity'.¹⁰

Based on the above, this article discusses how the Muslim community in Sintang practices 'dual validity' to address instances of social deviation, pregnancy out of marriage. This research is inspired by the concept of the relationship between Islamic law/customary law and State Law, which scholars have extensively studied.¹¹ This article comes from fieldwork conducted from May to September 2021 in Sintang Subdistrict, West Kalimantan (Borneo), Indonesia. We interviewed 13 informants: six individuals engaged in the practice of *ngampang* marriage, a Malay customary leader, the Head of the KUA for the Sintang Subdistrict, and six local religious figures, including members of the Indonesian *Ulema* Council (MUI, Majelis Ulama Indonesia) in the Sintang Regency. We also

⁸ It can be said that in this context, the existence of non-state marriage officiants is utilized. See: Al Farabi, "The State Penghulu vs the Non-State Penghulu: The Validity and Implementing Authorities of Indonesian Marriage," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 17, no. 2 (2020): 343–64.

⁹ Euis Nurlaelawati, "Managing Familial Issues. Unique Features of Legal Reform in Indonesia," in *Islam in Indonesia*, ed. Jajat Burhanudin and Kees van Dijk (Amsterdam: Amsterdam University Press, 2018), 123–38.

¹⁰ John Richard Bowen, "Shari'a, State and Social Norms in France and Indonesia," *ISIM Paper*, 2001, 1–36.

¹¹ See: Ratno Lukito, *Hukum Sakral dan Hukum Sekuler: Studi tentang Konflik dan Resolusi dalam Sistem Hukum Indonesia* (Yogyakarta: Pustaka Alvabet, 2008), 1-15; John R Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), 1-268; Muhammad Latif Fauzi, *Aligning Religious Law and State Law: Street-Level Bureaucracy and Muslim Marriage Practices in Indonesia* (Leiden: Leiden University, 2021), 1-24.

analyzed the Sintang Kingdom Statue of 1948, obtained from the Malay customary leader, while taking into consideration various marriage regulations applicable in Indonesia.

B. The Upturn Trend of ‘Marriage by Pregnancy’ in Indonesia: Law and Practices

Within the realm of *fiqh* (Islamic jurisprudence), the issue of marriage involving pregnant women has been a classical subject of debate. Islamic classical scholars predominantly permit such marriages. For instance, scholars like Imām al-Shāfi’ī and others regard such unions as acceptable and valid. It comes to sense that if such a marriage occurs, the marriage itself can be solemnized with the condition that it is conducted with the man who impregnated the woman. Because it is no longer a new discussion, Indonesian researchers tend to examine the legal consequences that arise when such marriages take place, such as the status and rights of the child born from it. For example, Nurlaelawati explains the cases of extramarital children’s rights articulated to the concept of the biological father within the framework of human rights.¹² She discovered that Indonesian law, as recognized through Constitutional Court rulings, acknowledges the civil relationships between children born out-of-wedlock and their biological fathers. In addition to examining children’s rights, many other researchers delve into the concept of filiation. Among examples are Engelcke and Yassari,¹³ Ridlo et al.,¹⁴ and Yakin.¹⁵

¹² Euis Nurlaelawati and Stijn Cornelis van Huis, “The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms,” *Journal of Law and Religion* 34, no. 3 (2019): 356–82.

¹³ See: Dörthe Engelcke and Nadjma Yassari, “Child Law in Muslim Jurisdictions: The Role of the State in Establishing Filiation (Nasab) and Protecting Parentless Children,” *Journal of Law and Religion* 34, no. 3 (2019): 332–35; Dörthe Engelcke, “Establishing Filiation (Nasab) and the Placement of Destitute Children into New Families: What Role Does the State Play?,” *Journal of Law and Religion* 34, no. 3 (2019): 408–32

¹⁴ Muhammad Rosyid Ridlo, Imron Rosyadi, and Muthoifin Muthoifin, “The Law of Nasab for Children Born Outside of Legal Marriage According to Imam Ibn Qayyim al-Jauziyyah,” *Profetika: Jurnal Studi Islam* 23, no. 2 (2022): 321–30.

¹⁵ Ayang Utriza Yakin, “Establishing Filiation Relationships (Nasab) of Children Born of Unlawful Sex (Zina): Legal Change, Positivation, and Standardization in Indonesian Islamic Courts,” in *Canon or Code? Standardising and Transmitting Islamic Law* (UCL-SSH/RSCS-Institut de Recherche Religions, Spiritualités, Cultures, Sociétés, 2022), 1–22.

The positive law in Indonesia regarding pregnancies out-of-wedlock is governed by the Compilation of Islamic Law (KHI) and Marriage Law No. 1 of 1974. Article 52 of KHI stipulates that if an individual becomes pregnant out-of-wedlock, marriage must promptly occur with the person responsible for the pregnancy without waiting for the child's birth. Meanwhile, Article 53 asserts that a marriage resulting from a pregnancy out-of-wedlock is considered valid under Islamic religious law.¹⁶ Furthermore, Marriage Law No. 1 of 1974 establishes marriage requirements and provisions, including those during pregnancy. In this regard, positive law allows for marriages resulting from pregnancies out-of-wedlock by regulating the responsibilities that must be fulfilled by the parties involved. With these provisions in place, the state recognizes marriages that take place during pregnancy as long as the requirements and procedures prescribed by the law have been followed.¹⁷

There are at least two ways couples who marry out-of-wedlock can obtain state recognition during pregnancy. First, they can register their marriage at the local KUA.¹⁸ In this process, couples who have married according to certain customary or religious practices register their marriage at the KUA to obtain legal validity in the eyes of the state. Alternatively, they can submit a marriage validation proposal (*isbāt nikāḥ*) to the religious court.¹⁹ After obtaining a decision from the Religious Court, the decision serves as the basis for registering their marriage at the KUA. Through these two methods, marriages that occur during pregnancy can have the same legal validity as conventional marriages. Normatively, in Indonesian marriage law, no provisions prohibit marrying during pregnancy. On the contrary, if a pregnancy occurs, the law suggests that marriage should be conducted as soon as possible. There is no legal differentiation (rights and obligations) between couples from pregnancies leading to marriage and conventional marriages.

In contrast to positive law, scholars have at least two views regarding marriage during pregnancy within *fiqh*. Firstly, scholars such as Imām al-Shāfi'ī,

¹⁶ "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law."

¹⁷ "Marriage Law No. 1 of 1974," Articles 6-7.

¹⁸ "Marriage Law No. 1 of 1974," Article 2.

¹⁹ "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 7.

Imām Ḥanafī, al-Zuhailī, and Ibn Ḥazm argue that marriage is permissible for couples who marry during pregnancy out-of-wedlock. In the Shāfi'ī school, the marriage of a pregnant woman, whether to the man responsible for the pregnancy or another man, is considered valid without waiting for the woman to give birth.²⁰ The Ḥanafī school considers the marriage of a pregnant woman, whether to the man responsible for the pregnancy or another man, as valid. However, there is a condition that if the man marrying her is not responsible for the pregnancy, then that man should refrain from having sexual intercourse until the child is born. This condition is in place to avoid confusion about the child's parentage.²¹

Al-Zuhailī explains that a man who has committed adultery is allowed to marry the woman with whom he has had an adulterous relationship. If the woman becomes pregnant and gives birth six months after the marriage contract, the child is considered the man's offspring. However, suppose the child is born in under six months. In that case, the child is considered the mother's offspring unless the father makes a statement acknowledging the child as his own without admitting to the adultery. This statement serves as the basis for attributing the child to him. In contrast to the scholars mentioned above, Ibn Hazm states that men and women who commit adultery can be married and have sexual relations, provided they have repented and undergone the prescribed punishment, which often includes flogging (whipping).²²

On the other hand, opposing views are found in the Mālikī and Ḥanbalī schools of thought. The Mālikī school tends to prohibit marriage during pregnancy entirely. Whether it is with the man responsible for the pregnancy or not, marriage should be postponed until after the child's birth. Like the Maliki school, the Hanbali school also generally discourages marriage during pregnancy. While it is not as absolute as the Mālikī stance, Ḥanbalī scholars typically recommend waiting until the child is born, especially if there is doubt about the child's parentage.

These different perspectives within Islamic jurisprudence reflect the diversity of opinions and interpretations within the Islamic legal tradition

²⁰ 'Abd al-Raḥmān al-Jazīrī, *Kitāb al-Fiqh* (Miṣr: Maktabat al-Tijāriyyah al-Kubrā, 1969), 523.

²¹ Al-Sayyid Ṣabīq, *Fiqh al-Sunnah* (Jakarta: PT Pena Pundi Aksara, 1983), 282-3.

²² Abdur Rahman Ghazaly, *Fikih Munakahat* (Bogor: Kencana, 2003), 250.

regarding the issue of marriage during pregnancy out-of-wedlock. It is important to note that the application of these views may vary in different cultural and regional contexts.²³ Indeed, the Hanbali school of thought also holds a similar position. According to the Hanbali school, a man can only marry a woman who has been through her waiting period (*'iddah*) and has repented from her sinful behavior. The view of Abu Yusuf goes even further. He states that they should not be married because if they are, the marriage would automatically become void (*faṣīd*). This opinion is based on the Sūrah al-Nūr verse 3, which states that believers should not marry those who commit adultery (*zina*). Ibn Qudāmah concurs with the view of Imām Abū Yūsuf and adds that a man should not marry a woman if he knows she has committed *zina* with someone else. These differences in interpretation within the Hanbali school further illustrate the diversity of opinions within Islamic jurisprudence regarding the issue of marriage during pregnancy. Recognizing that these perspectives can vary among scholars and may be applied differently in various cultural and regional contexts is essential.²⁴

From the discussion above, it is evident that there is not necessarily a complete contradiction between positive law and Islamic law concerning the context of marriage during pregnancy. It can be said that the practice of *ngampang* marriage under national law is not explicitly prohibited. In reality, pregnancies leading to marriage do occur within societies. It demonstrates that while there may be variations in interpretations and approaches within both legal systems, there are ways in which they can coexist or accommodate certain practices within the bounds of their respective norms and regulations. The coexistence of legal norms and customary practices often reflects the complex interplay between legal systems and societal realities.

C. Sanction of *Ngampang* Practice according to Statute of (the Past) Sintang Kingdom: Customary Guidance

The Muslim Dayak community in Sintang is a part of the broader Dayak ethnic group. The Dayak people are indigenous to Borneo and are traditionally

²³ Wahbah al-Zuhāilī, *Al-Fiqh al-Islāmī* (Bayrūt: Dār al-Fikr, 1991), 150.

²⁴ Zainuddin Ali, *Hukum Perdata Islam di Indonesia*, (Jakarta: Sinar Grafika, 2006), 45.

associated with inhabitants of remote, secluded areas who adhere to their traditional religion, Kaharingan.²⁵ The Dayak community members who embrace Islam often relinquish their identity as Dayak tribespeople.²⁶ These converts (*mu'allaf*) identify themselves as Malays, which connotes adherence to Islam. Both Malays and Dayaks share close ties due to intermarriage, as some have familial connections through mixed marriages. This article specifically focuses on the minority group of Muslim Dayaks residing within a predominantly Malay community.

Consequently, customary law and Islamic law merge to some extent, seemingly becoming one. What is considered customary law is, in fact, Islamic law itself. It means that traditional authorities practice Islamic law in their daily affairs. Both coexist in the sense that customary institutions and Islamic law are two elements of the legal system within the local Muslim community where the research is conducted.²⁷ Systemically, it can be viewed that Islamic law serves as the substantive law, while customary institutions function as the structural framework of the legal system. Both elements complement each other, creating a legal culture. In this context, *ngampang* marriage is a product of the legal culture that has emerged through the interaction between Islamic law and customary institutions.

Initially, the practice of *ngampang* was a term used by the Sintang community to refer to cases where a man and a woman engaged in intimate relations without marriage. Women in *ngampang* marriage typically became pregnant, and the responsible man was expected to take responsibility. If community members were discovered to have engaged in *ngampang*, the customary leader would officiate a marriage for them according to Islamic law. This religiously sanctioned marriage served as a sanction for the individuals involved and a lesson to the local community not to engage in such practices.

²⁵ Ahmad Muthohar AR, *Islam Dayak: Dialektika Identitas Dayak Tidung di Kalimantan* (Semarang: Fatawa Publishing, 2015), 1.

²⁶ Michael Hitchcock, Victor T. King, and Mike Parnwell, eds., *Tourism in South-East Asia* (Abingdon, Oxon: Routledge, 2019), 29.

²⁷ Ismail Ismail, Novi Hendri, and Putri Rahmah Nurhakim, "Minangkabau's Doro Tradition: Coexistence of Customary Law and Islamic Law in Caning Punishment," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (March 31, 2023): 579-601.

According to Syahrel, one of the customary leaders in Sintang, the practice of *ngampang* can deter the perpetrators because they cannot escape their legal and social responsibilities.²⁸

The phenomenon of marrying while pregnant outside of a valid marriage according to religious norms constitutes a violation of Malay customary law. The practice of marrying pregnant women out-of-wedlock contravenes Article 45 of the statute of Sintang Kingdom No. 1948. Article 46 stipulates:²⁹

Menjatakan adat orang berfendak, sampai boenting perempoean itu. Maka laki-laki tiada maoe laloe kawin, maka itoe laki-laki membajar adat 64 (enam poeloeah empat) real, ringgit pakai 7 (toedjoeh) soekoe. Djika laloe kawin, dia membajar adat rambai pemalinja, dinding pandoeng tempajan kapat, tjintjin penjewak, pemali dirinja dan adat kampoeng 64 (enam poeloeah empat) real dan kesopanan mak bapaknja itoe perempoean. Djika tiada laloe kawin, adat kampoeng 64 (enam poeloeah empat) real, itoepoen laki-laki bajar dijoega, dan kesopanan mak bapaknja perempoean itu laki-laki banjar djoega.

According to Article 45, the sanctions for men who impregnate women outside of a valid marriage, both religiously and legally, involve marrying the woman in question and paying a specified fine. The man is required to pay 64 reals and seven ringgits to the Malay Customary Leader. When the marriage is conducted, the man must also provide a bride price (*adat pamil* or *pantang*), customary exchange money (*uang adat tempayan*), and a spirit ring (*cincin roh*), as well as respect money (*uang kesopanan*), to the parents of the woman. Additionally, he must pay a customary village fee of 64 reals to the Malay Customary Leader. Suppose the man chooses not to marry the pregnant woman. In that case, he is only required to pay the customary village fee and customary respect money to the mother and father of the woman.

The customary law mentioned above can only be applied by the customary leader after receiving a prior report from the community. The customary leader first calls in the couples engaged in pregnancy out-of-marriage, along with their parents and relatives. Once both parties in the dispute are present, the customary leader informs them that their actions have violated customary law. They are then

²⁸ Oeti Syahrel, Sintang Regency Malay Traditional Figure, May 8, 2021.

²⁹ "The 1948 Sintang Kingdom Law," Article 46.

required to perform the *ngampang* marriage and pay the fine. At this point, the customary leader acts as a 'judge' to resolve the case. Simultaneously, the customary leader also serves as a mediator to address the family-related issues arising from each party involved.

The customary leader acknowledges that the practice of *ngampang* marriage to solve pregnancy out-of-wedlock has been passed down through generations and has become a common custom within the community. Typically, the individuals engaged in this practice do not receive approval from their parents. It is often because the male parties involved do not have stable employment, and the female parties are still pursuing their education.³⁰ The Muslim Dayak community voluntarily carries out this practice, and is a negative consequence of unrestricted social interactions and a lack of awareness about religious law. They engage in intimate relationships akin to those of a married couple, often after a long courtship, until the woman becomes pregnant.³¹ The illicit relationship eventually becomes known to both parents and their families. Concerned about the religious and social consequences of this misconduct, the parents and families rectify the situation by reporting the *ngampang* practice to the customary leader with the intention of arranging a marriage for the couple.

In cases where the individuals involved in the *ngampang* practice come from different religious beliefs and ethnic backgrounds, the customary leader typically requires the male partner to convert to Islam first. After the conversion, the customary leader proceeds to marry them under Islamic law. The customary leader may also require them to pay a fine or compensation known as *ulun*. In one such case you encountered, they were asked to pay a single *ulun*, equivalent to one gram of gold.³² The Malay Customary Leader determines the amount of this fine based on the financial capability of the individuals involved in the *ngampang* practice, and it is then submitted to the Malay Customary Leader. After they have paid the customary sanction, the customary leader officiates the marriage under

³⁰ Oeti Syahrel, Sintang Regency Malay Traditional Figure, May 8, 2021.

³¹ Arie Rizky Maulana, Actor of *Sampang* Practice, June 21, 2021; Fitri Putri Yanti, Actor of *Sampang* Practice, June 21, 2021.

³² Nur Eka, Actor of *Sampang* Practice, August 28, 2021.

religious and state laws.³³ The practice of imposing a customary fine as a sanction for individuals engaged in pregnancy out-of-wedlock is not limited to Sintang but also occurs in several other regions.³⁴

Although the *ngampang* practice has been resolved through customary means, marriages within the Muslim Dayak community are not officially recognized by the state because the state only acknowledges marriages conducted according to religious rituals and registered with the KUA. Therefore, those involved in the *ngampang* marriage take the initiative to legitimize their marriages in the eyes of the state. At this point, formal actors, in this case, the Head of the KUA, play a role in accommodating the marriage by facilitating its registration with the KUA. However, since most of those involved in the *ngampang* marriage are underage (below 19 years old), the Head of the KUA cannot directly register their marriages. Instead, the Head of the KUA advises them to submit an *isbāt nikāḥ* application to the Religious Court.³⁵ Unfortunately, not all legal alternatives recommended by state actors are followed due to the limited legal knowledge of the individuals involved regarding state law. Up to this point, it has been found that Malay customary law provides an alternative legal solution to address the phenomenon of pregnancy out-of-wedlock as a temporary measure.

D. The (In)Validity of *Ngampang* Marriage according to Local Clerics: Religious Consent

The legal sanction of Malay customary law involves marrying those involved in the *ngampang* marriage, which has received a response from religious authorities, specifically the MUI in Sintang Regency. We identified legal reasoning typologies based on interviews with several MUI Sintang members. The main difference between these typologies lies in whether or not pregnant women can be married, both under Islamic law and state law.

³³ Nijo, Head of the Office of Religious Affairs in Sintang District, May 8, 2021.

³⁴ Iuliia N. Sushkova, "Marriage and Family Customs of the Finno-Ugric Peoples of the Volga Region: Legal and Anthropological Analysis (Late XIX – Early XX Century)," *Finno-Ugric World* 14, no. 1 (April 22, 2022): 87–99.

³⁵ Nijo, Head of the Office of Religious Affairs in Sintang District, May 8, 2021.

The first opinion is the permissibility of marrying a pregnant woman out-of-wedlock. This viewpoint is based on legal arguments and interpretations of Islamic religious teachings. Religious leaders who support this view often cite verse Al-Nisā' verse 23 as well as the opinions of Shāfi'ī and Ḥanafī, which allow marriage in such situations.³⁶ They believe that Islamic teachings provide flexibility in certain cases, even though the *ngampang* marriage is not recommended in Islamic teachings and is considered reprehensible. Their argument is supported by the provisions in Article 53 of KHI and Marriage Law No. 1 of 1974, which legitimizes such marriages under specific conditions that the involved parties take full responsibility for their actions. They also refer to the MUI Fatwa No. 11 of 2012 to support their stance.³⁷ This fatwa recommends the importance of taking responsibility for the victims of the *ngampang* practice, especially women.³⁸

Furthermore, the religious leaders who support this view highlight the fact that the *ngampang* marriage has become a custom or part of the culture of the Muslim Dayak community in Sintang. They acknowledge the complexity of social dynamics and the influence of changing social environments and technology on the community, making it increasingly challenging to avoid this practice. This viewpoint reflects an effort to find a balance between religious values and the social realities of the local community. Nevertheless, they emphasize that full responsibility for these actions must still be adhered to to maintain religious values and morality amidst social and cultural changes. Saiful Anam states:³⁹

Marriages of pregnant women out-of-wedlock that occur in Sintang Regency have become a local custom among young people. Recognizing that pregnancy resulting from illicit relations without a valid marriage can lead to mental and psychological distress and often a reluctance to acknowledge the situation to determine the family lineage from the father's side, marriages are allowed to take place in such circumstances.

³⁶ Khalidul Mufied, The Officials of the Indonesian Ulama Council (MUI) in Sintang Regency, August 27, 2021.

³⁷ "Majelis Ulama Indonesia Fatwa No. 11 of 2012 on the Status of Children Resulting from Zina and Treatment towards Them."

³⁸ Edy Sunariyo, The Officials of the Indonesian Ulama Council (MUI) in Sintang Regency, August 23, 2021.

³⁹ Saiful Anam, The Officials of the Indonesian Ulama Council (MUI) in Sintang Regency, August 30, 2021.

The second viewpoint is that marrying a pregnant woman out-of-wedlock is not permissible. Their argument is based on the strictness of Islamic teachings and the standpoint of state law. Religious leaders who support this view often cite the opinions of Imām Mālikī and Imām Ḥanbalī. They emphasize that the *ngampang* marriage is a reprehensible act that should be avoided under the Quranic prohibition of adultery, as stated in Sūrah al-Isrā' verse 32.⁴⁰ This viewpoint is rooted in the belief that religious rules should take precedence over state legal regulations. Despite the flexibility provided by state law in some cases, this perspective emphasizes that religious law should be the primary guide when dealing with social issues like this. Edy Sunariyo states:⁴¹

The issue of *ngampang* marriage or marrying while pregnant out-of-wedlock is not a cultural practice but rather a habit that has developed within the community. Islam prohibits such vile deeds, and their legal status is considered forbidden (*ḥarām*). Since engaging in reprehensible acts, including becoming pregnant out-of-marriage, goes against Islamic teachings and, as we can see in Sūrah al-Isrā' verse 32, clearly states not to approach adultery, this kind of behavior is not reasonable or permissible.

Furthermore, the religious leaders who fall into the second typology also highlight the importance of preserving the purity of religious teachings and moral values within the community. They believe that the presence of the *ngampang* marriage threatens the integrity of religious and social values, which need to be upheld. This perspective reflects an effort to prioritize religious values as a moral and ethical foundation in the community's life, even in the face of social and cultural challenges. Because the majority of those involved in the *ngampang* marriage are underage, social networks, neighbors, relatives, and peers play a significant role in facilitating these marriages for children.⁴²

With these differing arguments, it becomes evident how the dominance of Islamic law as customary law can influence the perspectives of religious leaders

⁴⁰ Slamet Turmidzi, The Officials of the Indonesian Ulama Council (MUI) in Sintang Regency, August 28, 2021.

⁴¹ Edy Sunariyo, The Officials of the Indonesian Ulama Council (MUI) in Sintang Regency, August 23, 2021.

⁴² Bahman Baraie et al., "What Socio-Cultural Factors Encourage Child Marriage in Sanandaj, Iran? A Qualitative Study," *Child & Youth Services*, January 20, 2023, 1–22.

and scholars. While there are efforts to seek balance and flexibility in Islamic law and state regulations, others still emphasize the importance of prioritizing religious teachings when addressing social issues like this. These findings reveal the strong influence of Islamic religious teachings in the context of marriage.⁴³

E. Remarriage in Religious Office: State Formality

In the practice of *ngampang* in Sintang, Malay customary law plays a significant role in handling cases of pregnancy out-of-wedlock. According to Malay customary law, those involved in *ngampang* are required to marry and pay fines as stipulated in the statute of the Sintang Kingdom.⁴⁴ However, to officially register their marriage, state law establishes requirements that must be met, including provisions in Marriage Law No. 1 of 1974 and Law No. 16 of 2019.⁴⁵

In reality, not all marriage practices among Muslim communities in the Sintang are conducted in the presence of marriage registration officials. In cases where this occurs, and the marriage is not registered with marriage registration officials, the couple must propose for *isbāt nikāḥ* in the religious court. The process and outcome of this marriage validation are not instant and mostly take a relatively long period. Therefore, this option is often considered impractical for couples when the woman is pregnant. However, this is not a dead-end situation. Many married couples needing a marriage certificate without going through the marriage validation process opt to have a second marriage ceremony in front of marriage registration officials at the Office of Religious Affairs. It suggests that the first marriage, which was conducted according to customary practices, 'is not' considered valid by the marriage registration officials. Consequently, the first unregistered marriage does not result in the issuance of an authentic marriage certificate.

Couples engaging in *ngampang* practice in Sintang conduct two marriages to circumvent the administrative process. First, the prospective couple goes

⁴³ Islam Uddin, "Reformulation of Islamic Matrimonial Law: British Muslims, Contemporary Understandings and Normative Practices," *Journal of Muslim Minority Affairs* 40, no. 1 (January 2, 2020): 6–25.

⁴⁴ "The 1948 Sintang Kingdom Law," Article 46.

⁴⁵ Nijo, Head of the Office of Religious Affairs in Sintang District, May 8, 2021.

through the customary process, where the marriage contract is executed under Islamic principles. However, this first marriage is often not registered with the KUA. After completing the first marriage process, the parties then go to the KUA to register their marriage. The KUA typically does not immediately accept this marriage. Officials from the KUA explain the procedures to the parties involved. Essentially, they are advised to pursue an *isbāt nikāh*. If not, the last option is to have a second marriage ceremony. If they choose the latter, there is no need for further validation from the religious court. The marriage date recorded in the marriage certificate is the second marriage date. In this context, there is an inefficient marriage practice where marriage is conducted twice with the same contract: the first marriage for social or cultural recognition and the second marriage for legal recognition by the state.

The second marriage does not need to happen if the first marriage directly involves a state marriage registrar. In some circles where there is a better understanding of the law, the first marriage may involve a marriage registrar. However, for prospective couples who have not met the minimum legal age for marriage, it is almost certain that the marriage will be conducted through customary practices. This is because the KUA will reject registration if there is no dispensation for marriage from the local religious court.

F. Practice in between Customary Law and State Law

In an effort to resolve cases of the *ngampang* practice, the Muslim Dayak community in Sintang first follows the Malay customary law, which they have long recognized. After going through the customary legal process, the marriage that occurs is then submitted to the local KUA under the rules of state law. Referring to the general procedures in Indonesia, any registration done by the KUA for a marriage that was not conducted in front of a marriage registrar must go through the *isbāt nikāh* procedure. However, certain aspects of the *isbāt nikāh* process can be circumvented in specific contexts. It occurs, for example, in the Lengayang

community.⁴⁶ It should not necessarily be viewed in the context of a legal violation but can also be seen as the strength of customary authority (private) over state authority. Rather than being seen as a deviation from state law, this phenomenon is a form of (non)compromise between two legal structures. The interaction between customary law and state law in this context demonstrates interdependence. They mutually rely on addressing the social issues the local community faces. The roles played by Malay customary leaders and the Head of KUA affirm Fauzi's findings that the relationship between customary law and state law reinforces each other.⁴⁷ It shows that the Muslim Dayak community in Sintang can synergistically combine customary law's values with the state's legal system when facing unwanted social issues.

Undoubtedly, the *ngampang* marriage has received responses from local religious figures, particularly the MUI in Sintang. Religious leaders have different opinions regarding the legality of marrying couples who are already pregnant out-of-wedlock. However, the majority of them believe that such marriages can be recognized as valid under Islamic and state law. This viewpoint is based on references to several verses of the Quran, the opinions of Islamic jurists, and the *fatwa* issued by MUI, which allows *ngampang* marriage with the condition that those involved take responsibility for their actions. Most adopt a more lenient religious interpretation and perspective on social and cultural issues, considering the social impact and sustainability of the *ngampang* marriage in the local community. They also refer to KHI and Marriage Law No. 1 of 1974, which allows marriages between pregnant women out-of-wedlock and the men responsible for the pregnancy. This viewpoint reflects the efforts of religious leaders to reconcile religious values with the provisions of state law in the context of the *ngampang* marriage.

The differing viewpoints of religious leaders highlight the complexity and dynamics of the relationship between customary law and state law in addressing

⁴⁶ Salma Salma, Hasanatul Wahida, and Muhammad Adib bin Samsudin, "Ignoring Family Law Administrative Procedure: Falsifying Death of Spouses for the Registration of New Marriage in Lengayang Muslim Community," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 1–20.

⁴⁷ Muhammad Latif Fauzi, *Aligning Religious Law and State Law: Negotiating Legal Muslim Marriage in Pasuruan, East Java*, *Leiden Studies in Islam and Society* 18, (Boston: Brill, 2023), 195–210.

the *ngampang* practice among Muslim Dayak communities in Sintang. The responses from religious leaders can reflect their roles and reactions to sensitive social issues, where they attempt to reconcile religious values with state legal regulations in an effort to find appropriate solutions to complex social problems that often involve conflicts between customary and state laws. It aligns with the findings of Grijns and Horii regarding the compromise between state law and local norms in cases of child marriages in West Java.

The presence of Melayu customary law in the *ngampang* marriage practice reflects the significant role of customary leaders in resolving issues within their community. A similar role is played by local marriage officiants (*lebe*) in the practice of child marriages in Brebes, Indonesia.⁴⁸ Customary law is applied based on generations-old traditions and involves a process of deliberation between customary leaders and the community. The principle of justice is a consideration in its implementation.⁴⁹ After customary law is followed, the parties involved record their marriage at the local Office of Religious Affairs, recognizing the marriage both in terms of religious and state law. The relationship between state law and customary law is interconnected and coexists without conflict within the community.⁵⁰ Customary law provides space and solutions for local issues, but over time, state law or Islamic law becomes the solution for the community's well-being without conflicting with each other.⁵¹

This indicates that a conflict approach typically studies the interplay between customary, religious, and state law.⁵² In Indonesia's case of interfaith marriages, the contestation between these three legal systems may not lead to a solution. This issue can only be resolved through a compromise between

⁴⁸ Arifah Millati Agustina, "Between Culture and The Sacredness of Fiqh: The Role of Lebe in Child Marriage Practices in Brebes, Indonesia," *Journal of Islamic Law (JIL)* 3, no. 2 (August 31, 2022): 212-31.

⁴⁹ Lorretta Favour Chizomam Ntoimo and Favour Chukwunonyerem Ntoimo, "Who Owns a Child? Conflict of Culture and Human Right in the Dissolution of Customary Law Marriage in Nigeria," *Journal of Divorce & Remarriage* 62, no. 5 (July 4, 2021): 398-409.

⁵⁰ Robert Wai, "The Interlegality of Transnational Private Law," *Law and Contemporary Problems* 71, no. 3 (2008): 107-27.

⁵¹ Samuel E. Ojogbo and Omerionwan K. Edu, "Comparing Maintenance and Property Rights in Marriage under Customary Law and Statutory Law in Africa," *Oxford University Commonwealth Law Journal* 22, no. 2 (July 3, 2022): 229-52.

⁵² Ratno Lukito, "Islamic Law and Adat Encounter: The Experience of Indonesia" (McGill University, 1997), 1-38.

institutional authority and personal autonomy.⁵³ In cases of marriage and inheritance, there is tension between customary law and Islamic law in Malaysia.⁵⁴ There is a conflict between religious and state law in Canada, Australia, and South Africa.⁵⁵ Although there is tension between these three legal systems, the struggle between customary law, religious law, and state law as discursive traditions can be negotiated depending on local conditions and how well the first two legal systems align with the legal ideology used by the state.⁵⁶

In the context of Sintang, customary law is applied inseparably from Islamic law, and there is almost no clear boundary between the two. In the case of pregnancies out-of-wedlock, the local community practices *ngampang* marriage, which essentially means conducting a marriage due to the woman's pregnancy. However, this marriage is not a simple affair as in mainstream society. Instead, it involves a series of customary rituals, where the Head of the Malay Customary Institution imposes a fine on the offenders, followed by the requirement to enter into marriage.⁵⁷ On one hand, the state law does not recognize these customary marriage practices. On the other hand, state law provides a way for them to legalize their marriages through official state recognition.⁵⁸ At this point, no conflict is found between customary law and state law. Instead, the two legal systems complement each other.

F. Conclusion

The way pregnancy out-of-marriage issues are resolved in the Muslim Sintang community illustrates the complexity of the legal system in the midst of Indonesian Muslim society. It emphasizes that the prevailing law in society is not only Islamic law but also local customary laws combined with state law. Islamic

⁵³ Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian-Muslim Relations* 31, no. 2 (April 2, 2020): 131-50.

⁵⁴ M.B. Hooker, "Adat and Islam in Malaya," *Bijdragen Tot de Taal-, Land- En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 130, no. 1 (1974): 69-90.

⁵⁵ Peter Radan, Denise Meyerson, and Rosalind F. Atherton, eds., *Law and Religion* (London: Routledge, 2004), 75-154.

⁵⁶ Ratno Lukito, *Legal Pluralism in Indonesia*, (London: Routledge, 2012), 198-207.

⁵⁷ Oeti Syahrel, Sintang Regency Malay Traditional Figure, May 8, 2021.

⁵⁸ Nijo, Head of the Office of Religious Affairs in Sintang District, May 8, 2021.

law and state law apply simultaneously, particularly in cases of pregnancy out-of-marriage. They do not necessarily conflict with each other. In the *ngampang* tradition, it is evident that the Muslim community in Sintang seeks a middle ground, a way that both facilitates them and is considered appropriate according to the laws that bind them. In practice, they involve various authorities, including traditional leaders, Islamic scholars, and state officials.

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