

Legal Non-Compliance and *Kiai* Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya

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Abstract

The practice of unregistered marriages (*nikah siri*) in traditional Muslim communities is often seen as non-compliance with state regulations. However, this behaviour cannot be understood without considering the influence of *kiai* (local religious leader) in the public sphere. This article explores the dynamics of unregistered marriage practices within the Madurese Muslim community of Kubu Raya, West Kalimantan, Indonesia. Employing a socio-legal research framework, the study collects data through in-depth interviews with 25 key informants, including widowed couples engaged in unregistered marriages, *kiai*, village officials, and community leaders. Drawing on Peter L. Berger's theory of the social construction of reality, this article analyses the relationship between those involved in unregistered marriages and the hegemony of *kiai*. The study finds that unregistered marriages in the Madurese Muslim community are influenced by the *kiai*'s view that a marriage contract meeting the conditions of Islamic jurisprudence (*fiqh*) is valid without registration at the local Religious Affairs Office. This practice represents a social reality legitimised by religious authority. For the Madurese Muslim community, the religious legitimacy conferred by the *kiai* serves as a basis of faith, prompting them to engage in unregistered marriages despite this practice conflicting with state law. The article highlights the dominant role of *kiai* in shaping social realities that may diverge from compliance with state law in traditional Muslim communities.

[Praktik perkawinan yang tidak dicatatkan (*nikah siri*) pada komunitas muslim tradisional sering kali dinilai sebagai ketidakpatuhan mereka terhadap regulasi administratif yang diatur oleh negara. Namun, perilaku tersebut tidak dapat dipisahkan dari pengaruh hegemoni para *kiai* di ruang publik. Artikel ini mengkaji dinamika praktik *nikah siri* yang dilakukan oleh komunitas muslim Madura di Kubu Raya, Kalimantan Barat, Indonesia. Artikel ini merupakan penelitian sosio-legal dengan menggunakan teknik pengumpulan data melalui wawancara mendalam terhadap 25 informan kunci yang terdiri dari para pasangan *nikah siri* yang berstatus sebagai duda dan janda, *kiai*, perangkat desa, dan tokoh masyarakat. Dengan menggunakan teori konstruksi sosial atas kenyataan dari Peter L. Berger untuk mengeksplorasi hubungan dialektis antara pelaku *nikah siri* dan hegemoni *kiai*, artikel ini menemukan bahwa *nikah siri* yang dipraktikkan oleh komunitas muslim Madura dipengaruhi oleh pandangan *kiai* bahwa akad *nikah* yang telah memenuhi syarat

dan rukun perkawinan dalam fikih adalah sab, tanpa perlu mencatatkannya di kantor urusan agama setempat. Praktik ini merupakan bentuk kenyataan sosial yang telah mendapatkan legitimasi keagamaan dari kiai. Bagi masyarakat muslim Madura, legitimasi keagamaan yang diberikan oleh kiai menjadi modal keyakinan bagi mereka untuk melakukan nikah siri, meskipun perilaku tersebut bertentangan dengan hukum administrasi negara. Temuan ini menunjukkan bahwa hegemoni kiai yang dominan dalam kehidupan sehari-hari masyarakat muslim tradisional dapat mengonstruksi kenyataan sosial yang tidak taat terhadap hukum negara.]

Keywords: *Kiai Hegemony, Legal Non-Compliance, Madurese Muslim Community, Marriage Registration, Unregistered Marriages.*

Introduction

Marriage registration is not recognised in classical *fiqh* (Islamic jurisprudence),¹ as it is not considered a fundamental requirement affecting the validity of a marriage contract, which includes *ijāb-qabūl* (offer and acceptance), marriage guardian, dowry, and witnesses. However, with the emergence of the nation-state in the modern era, countries worldwide, including those with Muslim-majority populations, have begun implementing administrative regulations governing marriage practices, including the obligation to register marriages.² Within this modern legal framework, marriage is viewed not only as a private agreement between two individuals but also as an event with complex legal and civil implications.³ Registration is essential for each country to manage population data effectively.⁴ Through marriage registration, the state can regulate married couples' legal rights and obligations, including matters of inheritance, child custody, and social security, while also working to prevent undesirable practices, such as unregistered marriages.⁵

The phenomenon of unregistered Muslim marriages (Indonesian: *nikah siri*) has garnered increasing scholarly attention. Vishal Vora's research on Muslim diaspora marriages in the UK reveals that marriages sanctioned solely by religious authorities, without official registration, are regarded as 'non-marriages', posing challenges for couples in accessing social, economic, and administrative rights.⁶ Susan Leahy and Kathryn O'Sullivan highlight the '*nikāh*-only' phenomenon in Ireland, arguing that a lack of legal awareness within the growing Muslim community contributes to the rise of *nikāh*-only marriages that remain unregistered with the courts.⁷ Sanna Mustasaari and Mulki al-Sharmani investigate unregistered marriage practices among Finnish Muslims, concluding that these marriages

¹ See: Russell Sandberg, *Religion and Marriage Law: The Need for Reform* (Bristol, England: Bristol University Press, 2021); Kathryn O'Sullivan and Leyla Jackson, "Muslim Marriage (Non) Recognition: Implications and Possible Solutions," *Journal of Social Welfare and Family Law* 39, no. 1 (2 January 2017): 22–41.

² Janet Afary and Roger Friedland, "The Practice of Informal Marriages in the Muslim World: A Comparative Portrait," *British Journal of Middle Eastern Studies*, 25 May 2023, 1–23.

³ Elizabeth S. Scott and Robert E. Scott, "Marriage as Relational Contract," *Va. L. Rev.* 84 (1998): 1225.

⁴ Rajnaara C Akhtar, Rebecca Probert, and Annelies Moors, "Informal Muslim Marriages: Regulations and Contestations," *Oxford Journal of Law and Religion* 7, no. 3 (1 October 2018): 367–75.

⁵ Lenore J. Weitzman, "Legal Regulation of Marriage: Tradition and Change: A Proposal for Individual Contracts and Contracts in Lieu of Marriage," *California Law Review* 62, no. 4 (1974): 1169–1228.

⁶ Vishal Vora, "Unregistered Muslim Marriages in the United Kingdom," in *Legal Pluralism in Muslim Contexts*, ed. Norbert Oberauer, Yvonne Prief, and Ulrike Qubaja (BRILL, 2019), 43–62.

⁷ Susan Leahy and Kathryn O'Sullivan, "Unrecognised Muslim Marriage in Ireland: Incidence and Implications," *Journal of Muslim Minority Affairs* 39, no. 4 (2 October 2019): 534–50.

often involve transnational family ties.⁸ Maaïke Voorhoeve's examination of *nikāḥ 'urfī* (unregistered marriages) practices in Tunisia finds that such marriages are influenced by the Salafi movement, which gained prominence following the fall of the authoritarian regime in 2011.⁹ Miyase Yavuz Altintas analyses the new Moroccan law on unregistered customary marriages and notes that, while state laws prioritise registered monogamous marriages, legislators still recognise *fātiḥa* marriages as part of religious tradition for couples who do not register.¹⁰ Finally, Ikran Eum's study of *nikāḥ 'urfī* in Egypt shows that while these marriages were originally practised between widows and married men, they are now often entered into secretly by young couples. These 'secret' marriages are not registered with the courts, and both partners typically continue to reside in their parents' homes.¹¹

Studies on the practice of unregistered marriages can generally be categorised into three analytical approaches. The first is a juridical analysis, which highlights challenges in enforcing marriage registration regulations. These studies suggest that the incorporation of customary law into state law creates gaps, facilitating the prevalence of unregistered marriages in Indonesia.¹² The second approach is socio-legal analysis, focusing on the behaviours of individuals who engage in secret marriages. Research in this category shows that both traditional and modern communities engage in unregistered marriages for various reasons, such as being underage, concealing the marriage from a first wife, bypassing employer permissions for civil servants, or dealing with pregnancy outside of marriage.¹³ The third is a normative analysis, which addresses the religious legitimacy of unregistered marriages. These studies reveal that Muslim communities often believe that marriage registration is not a requirement for the validity of a marriage contract.¹⁴

This research differentiates itself from previous studies in three significant ways. First, it concentrates on the practice of unregistered marriages among the Madurese Muslim communities in Kubu Raya Regency, West Kalimantan Province. This location was selected

⁸ Sanna Mustasaari and Mulki al-Sharmani, "Between 'Official' and 'Unofficial': Discourses and Practices of Muslim Marriage Conclusion in Finland," *Oxford Journal of Law and Religion* 7, no. 3 (1 October 2018): 455–78.

⁹ Maaïke Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage," *Oxford Journal of Law and Religion* 7, no. 3 (1 October 2018): 479–97.

¹⁰ Miyase Yavuz Altintas, "Fātiḥa Marriage in Morocco: Between Legislation and Judicial Practice," *Hanna* 20, no. 1–2 (16 December 2020): 10–33.

¹¹ Ikran Eum, "'Urfi Marriage, an Egyptian Version of Cohabitation?," *Al-Raida* 22, no. 107 (2005): 64–69.

¹² See: Ahmad Muslimin et al., "The Customary Marriage of Samin Penghayat in Tulang Bawang Regency, Lampung, Indonesia," *Analisa: Journal of Social Science and Religion* 9, no. 1 (30 July 2024): 75–91; Anwar Hafidzi et al., "Siri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Abkam* 32, no. 2 (30 October 2022): 153–68.

¹³ See: Paisal Ahmad Dalimunthe, "Factors That Cause the Occurrence of Siri Marriage in Tualang District," *Legitima: Jurnal Hukum Keluarga Islam* 6, no. 1 (23 February 2024): 84–100; Desmal Fajri and Felti Novira, "The Phenomenon of Unregistered Marriages: Problems and Solution," *Kosmik Hukum* 23, no. 2 (10 May 2023): 180.

¹⁴ See: Muhammad Khalilurrahman, Eficandra Eficandra, and Dodon Alfiander, "Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra)," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (1 December 2022): 595; Iman Jauhari et al., "Legal Analysis of Unregistered Marriage Viewed from Ulama's Perspective in Aceh Province," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 8, no. 2 (15 October 2023): 175–88.

due to the ongoing prevalence of unregistered marriage practices in the area.¹⁵ Notably, there has been a documented case involving a *kiai* (local religious leader) who allegedly exploited his position by engaging in inappropriate conduct with a 16-year-old *santri* (student of a traditional Islamic boarding school) under the pretext of unregistered marriages.¹⁶ Second, this study specifically investigates the practices of unregistered marriages among widowers and widows within the Madurese Muslim community in Kubu Raya. Third, from the perspective of the formal object, this research explores the role of the *kiai* in shaping the social reality of the Madurese Muslim community in Kubu Raya. This influence contributes to the persistence of unregistered marriages, despite the community's awareness of their contradiction to Indonesia's marriage registration regulations.

This article employs an empirical research design with a socio-legal approach. The empirical study was conducted between March 2022 and July 2024. During this period, the authors observed three sub-districts in Kubu Raya: Sungai Ambawang, Sungai Kakap, and Teluk Pakedai. In addition to observations, the research included in-depth interviews with 25 key informants, comprising couples engaged in unregistered marriages—all of whom were widowers or widows—as well as several *kiai*, village officials, and community leaders. The names of all key informants were anonymized. The collected data were then analysed using Peter L. Berger's theory of the social construction of reality¹⁷ to critically examine the relationship between *kiai* hegemony and the phenomenon of unregistered marriage practices among the Madurese Muslim communities in Kubu Raya.

Cultural Identity and Social Role of Madurese Muslim Community

Kubu Raya is a regency formed through the expansion of Pontianak Regency, established under Law No. 35 of 2007. The primary objectives of its formation were to enhance community welfare, ensure equitable development, improve access to public services, and streamline government administration.¹⁸ Located in West Kalimantan Province, Indonesia, Kubu Raya covers an area of 8,558.37 km². Its administrative jurisdiction comprises nine sub-districts: Batu Ampar, Terentang, Kubu, Teluk Pakedai, Sungai Kakap, Rasau Jaya, Kuala Mandor B, Sungai Raya, and Sungai Ambawang. The regency has a population of 610,639, with a population density of 71 people per km².¹⁹ Historically, the region has been

¹⁵ See: Ya Rakha Muyassar et al., "Itsbat Marriage: Urgency, Problems, and Practices, To Reach Law-Aware Villages in Kubu Raya, West Kalimantan," *Jurnal Analisis Hukum* 5, no. 2 (25 September 2022): 253–63; Misbahul Munir S, "Nikah Bawah Tangan Masih Banyak Dilakukan, Muda Janji Optimalkan Isbat Nikah - Pontianak Post," accessed 6 July 2024, <https://pontianakpost.jawapos.com/kubu-raya/1462738862/nikah-bawah-tangan-masih-banyak-dilakukan-muda-janji-optimalkan-isbat-nikah>.

¹⁶ Kompas Cyber Media, "Cabuli Santriwati Usia 16 Tahun dengan Modus Nikah Siri, Pengasuh Ponpes Ditangkap," *KOMPAS.com*, 2 July 2021, <https://regional.kompas.com/read/2021/07/02/103712978/cabuli-santriwati-usia-16-tahun-dengan-modus-nikah-siri-pengasuh-ponpes>.

¹⁷ Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*, Repr. in Penguin Books, Penguin Social Sciences (London: Penguin Books, 1991).

¹⁸ "Sejarah Kabupaten Kubu Raya," accessed 6 July 2024, <https://kuburayakab.go.id/tentang/sejarah>.

¹⁹ "Demografis Kubu Raya," accessed 6 July 2024, <https://kuburayakab.go.id/tentang/demografis>.

characterised by peaceful coexistence with a multi-ethnic and multi-religious population that fosters natural intercultural acculturation and a high degree of tolerance.²⁰

The migration of the Madurese community to Kubu Raya began around 1900. Between 1902 and 1930, they first migrated from Madura Island to West Kalimantan by sailboat, initially arriving in Ketapang Regency. From there, they expanded into Pontianak around 1910 and Sambas by 1930, marking the first phase of their migration. The second phase occurred after Indonesia's independence, driven by a food crisis in Madura that led many Madurese to migrate to West Kalimantan.²¹ Upon arrival, the early settlers established communities by clearing forested areas and creating villages where they began farming, such as in Kampung Parit Tengah Baru in Sungai Malaya. Another significant wave of migration occurred during the economic crisis in Madura between 1942 and 1950, further increasing Madurese migration to the region. From the 1980s to 1998, a large-scale migration of Madurese took place. Over time, the Madurese Muslim community in Kubu Raya became prominent in various sectors, including education, the economy, and governance.²²

The economic success of the Madurese Muslim community in Kubu Raya encouraged them to invite their relatives from Madura Island to relocate. This resulted in successive generations migrating to Kubu Raya, eventually leading to the establishment of Madurese villages in West Kalimantan.²³ Notably, despite the considerable distance from Madura Island, the Madurese language has been preserved as the primary communication medium from the early settlers to the present generation. In the four villages that served as research sites—Sungai Malaya, Mega Timur, Kalimas, and Madura—the Madurese language remains prevalent in daily interactions.²⁴ As a result, visitors to these villages will find that the local language closely mirrors that spoken on Madura Island.

In addition to their language, the Madurese community in Kubu Raya has also preserved various traditions from their homeland, particularly those associated with celebrations during the Islamic months of *Muḥarram*, *Ṣafar*, *Rabi' al-Awwal*, *Rabi' al-Ākhir*, *Jumādā al-Ūlā*, *Jumādā al-Ākhirah*, *Rajab*, *Sha'bān*, *Ramaḍān*, *Shawwāl*, *Dhū al-Qa'dah*, and *Dhū al-Ḥijjah*. Uniquely, similar to the practice on Madura Island, the Madurese Muslim community in Kubu Raya uses special names for these months: *Sora*, *Sappar*, *Mulod*, *Rasol*, *Mandilawal*, *Mandilaber*, *Rejeb*, *Rebba*, *Pasa*, *Sabal (Tongare)*, *Tekepek*, and *Reajha*. Furthermore, each month is associated with specific traditions that carry distinct local names. For instance, *tajin peddis* (sharing food with relatives and neighbours to strengthen social ties) is practised in the month of *Sora*,²⁵ *tajin mera pote* (distributing red and white porridge to neighbours) is observed in

²⁰ Pemkab Kubu Raya, "FKUB Kubu Raya Konsisten Ciptakan Toleransi Agama," accessed 6 July 2024, <https://kuburayakab.go.id/seputar-kuburaya/berita/fkub-kubu-raya-konsisten-ciptakan-toleransi-agama>.

²¹ Haris Firmansyah et al., "Historisitas dan Perkembangan Budaya Masyarakat Etnis Madura di Kalimantan Barat," *Jurnal Ilmiah Ilmu Sosial* 8, no. 2 (4 December 2022): 141–51.

²² Arkanudin Arkanudin, "Menelusuri Akar Konflik Antaretnik di Kalimantan Barat," *Mediator: Jurnal Komunikasi* 7, no. 2 (20 December 2006): 185–94.

²³ Iwan Ramadhan, "Keberagaman Etnis Madura di Kalimantan Barat," *Proyeksi: Jurnal Ilmu Sosial dan Humaniora* 26, no. 2 (2021): 100–107.

²⁴ Field Notes from Observation, March 2022–July 2024.

²⁵ Emi Tipuk Lestari and Saiful Bahri, "The Madurese Tajhin Pheddis Tradition in Developing Social Integration in Kuala Mandor Kubu Raya," *Jurnal Ilmu Sosial Mamangan* 11, no. 1 (31 May 2022): 40–52.

Sappar,²⁶ *cocoghen* (sharing food in commemoration of the Prophet Muhammad's birth) takes place in *Mulod*,²⁷ and *pegghengan* (a dish of poultry and various side dishes shared in preparation for Ramadan) is a tradition in the month of *Pasa*.²⁸

The religious identity of the Madurese Muslim community in Kubu Raya is notably strong and can be observed through several key aspects.²⁹ First, numerous *surau* (small mosques) and mosques have been established by the Madurese in various villages, serving as places of worship and centres for Quranic learning. Second, many madrasas have been built to address the educational needs of Madurese Muslim children. Third, the presence of several Islamic boarding schools (*pesantren*) managed by the Madurese community underscores the importance of religious education in their lives.³⁰ Kubu Raya holds the distinction of having the highest number of *pesantren* in West Kalimantan Province, with 88 institutions.³¹ Observations indicate that most of these *pesantren* are led by Madurese *keiai* or alumni (*santri*) who have received their education at *pesantren* on Madura Island.³²

The Phenomenon of Unregistered Marriages Among Widowers and Widows

According to Law No. 1/1974, marriage registration is essential to ensure the legal validity of a marriage.³³ Registration is also a prerequisite for a marriage to be officially recognised by state law.³⁴ Consequently, the issuance of a marriage certificate is a legal obligation that must be fulfilled under Indonesian law.³⁵ The Compilation of Islamic Law (Kompilasi Hukum Islam [KHI]), Article 5, further emphasises that to maintain the orderliness of marriages within the Islamic community, every marriage must be registered, and this registration must be conducted by a Marriage Registration Officer (Pegawai Pencatat Nikah [PPN]).³⁶

²⁶ Khairun Niam, "Tajin Mera-Pote: Tradisi Kuliner Muslim Madura di Pontianak pada Bulan Safar," *arrahim.id* (blog), 14 July 2024, <https://arrahim.id/niam/tajin-mera-pote-tradisi-kuliner-muslim-madura-di-pontianak-pada-bulan-safar/>.

²⁷ Khairun Niam, "Cocoghen: Tradisi Muslim Madura di Pontianak dalam Menyambut Bulan Maulid," *arrahim.id* (blog), 5 July 2024, <https://arrahim.id/niam/cocoghen-tradisi-muslim-madura-di-pontianak-dalam-menyambut-bulan-maulid/>.

²⁸ RH M, "Ragam Tradisi Masyarakat Kalimantan, Madura, dan Lombok Jelang Puasa," accessed 7 July 2024, <https://nusantaranews.co/ragam-tradisi-masyarakat-kalimantan-madura-dan-lombok-jelang-puasa/>.

²⁹ SKR, Interview with a Chairman of the Madurese Big Family Association (Ketua Ikatan Keluarga Besar Madura, IKBM), 13 August 2023.

³⁰ See: Mukhlis Mukhlis et al., "The Legal Culture to Prevent Radical Islamism by a Pesantren in Madura," *De Jure: Jurnal Hukum dan Syar'iah* 16, no. 1 (24 June 2024): 58–87; Basri Basri et al., "Dating Practices: A Moral Negotiation in Pesantren," *Jurnal Ilmiah Peuradeun* 12, no. 2 (30 May 2024): 671–94.

³¹ "Pemkab Kubu Raya Tingkatkan Kualitas Kesehatan Santri dengan Program Poskestren," Protokol dan Komunikasi Pimpinan Kab. Kubu Raya, accessed 7 July 2024, <http://prokopim.kuburayakab.go.id/berita/pemkab-kubu-raya-tingkatkan-kualitas-kesehatan-santri-dengan-program-poskestren>.

³² Field Notes from Observation, March 2022–July 2024.

³³ Imron Rosyadi and Aisyah Kahar, "Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule," *Jurnal Hukum dan Peradilan* 12, no. 3 (30 November 2023): 469–88.

³⁴ Nur Mohamad Kasim, Sri Nanang Meiske Kamba, and Fibriyanti Karim, "Comparative Study of Unregistered Marriage Practices and Marriage Registration to Indonesian Marriage Law and Malaysian Family Law," *Karachi Islamicus* 3, no. 1 (30 June 2023): 30–43.

³⁵ M. Zamroni, Dwi Miarsa, and Fajar Rachmad, "Legal Aspect of Marriage Registration in Indonesia," *Jurnal Reformasi Hukum: Cogito Ergo Sum* 1, no. 2 (2018): 83–88.

³⁶ Eva F. Nisa, "The Bureaucratization of Muslim Marriage in Indonesia," *Journal of Law and Religion* 33, no. 2 (August 2018): 291–309.

Moreover, Article 6 details the marriage registration procedure, stipulating that every marriage must be conducted in the presence and under the supervision of a PPN. The following article confirms that marriages performed without PPN supervision have no legal standing.³⁷ These provisions on the mandatory registration of marriages indicate that unregistered marriages are not legally recognised by the state.³⁸

Despite the legal requirement for marriage registration, unregistered marriages between widowers and widows remain common among the Madurese Muslim communities in Kubu Raya. This is largely due to their lack of understanding of the administrative requirements and procedures for marriage registration. Many believe that their marriages are religiously valid as they fulfil the conditions and pillars of marriage according to *fiqh*. Additionally, some are hesitant to pursue marriage and divorce registration through the Religious Court, mainly due to the associated costs and the distance to the Religious Affairs Office (Kantor Urusan Agama [KUA]).³⁹ For them, the most important aspect is the religious validity of the marriage contract and the fulfilment of the rights and obligations between husband and wife, rather than the formal marriage registration. As a result, they often disregard the legal obligation to register their marriages with the KUA under state law.

The authors categorise several types of unregistered marriage practices based on field observations and interviews. The first typology involves unregistered marriages between widowers and widows due to the death of a previous spouse. In this case, MS is a widower whose wife passed away, and he decided to marry AM, a widow who had also lost her husband. Both MS and AM stated that they consciously chose unregistered marriages due to the difficulties in obtaining a death certificate for their previous spouses and the approval of their families. AM further explained that her status as a widow was distressing, stating: “*Engkok i co kocob melolob bik reng-orang. Mun la deddib janda pas orang macem tak ngargeih dek ke abek* (I am often teased by people. When we become widows, it seems like people no longer respect us).”⁴⁰ Given their age, MS expressed a dismissive attitude towards the requirement of marriage registration with the KUA, saying: “*Jek la padeh toah pas entarah ke KUA? Seb penting kan padeh sab, cokop syarat ben rukunah* (We are already old, why bother registering at the KUA? The important thing is that the marriage is valid, with all the conditions and pillars fulfilled).”⁴¹

For MS, the marriage to AM was religiously valid as it fulfilled the conditions and pillars of marriage according to *fiqh*. This understanding was based on the explanation of *Kiai* SM, who officiated the unregistered marriages. *Kiai* SM, an alumnus of the Pesantren Salafiyah Syafi’iyah and a member of Nahdlatul Ulama in Kubu Raya, assured them of its validity. Despite their marriage not being registered, MS and AM were unconcerned about

³⁷ Adriaan Bedner and Stijn van Huis, “Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism,” *Utrecht Law Review* 6, no. 2 (4 June 2010): 175.

³⁸ Zainuddin Zainuddin and Zaki Ulya, “Recording Siri’s Marriages in Obtaining Legal Certainty (Reflections on the Rise of Siri Marriages in Aceh),” *Syariah: Jurnal Hukum dan Pemikiran* 21, no. 1 (22 March 2021): 1–16.

³⁹ Muhammad Lutfi Hakim et al., “Implementasi, Kendala dan Efektifitas Kursus Pranikah di KUA Kecamatan Pontianak Tenggara,” *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (30 November 2020): 311–28.

⁴⁰ AM, Interview with One of the Unregistered Marriages Couples, 13 February 2023.

⁴¹ MS, Interview with One of the Unregistered Marriages Couples, 13 February 2023.

future consequences. They believed that if both parties understood their rights and obligations, their marital life would proceed smoothly and harmoniously.⁴²

Another example of unregistered marriages between a widower and widow following the death of their previous spouses involves the couple SD and MY, who married in the 1990s. SD explained that at the time of their unregistered marriages, no one had informed him of the requirement to complete the administrative process at the KUA prior to marriage. SD said no one in his village was aware of this legal obligation. As a result, neither SD nor MY considered registering their marriage. When asked about the marriage certificate as proof of registration, SD responded, “*Reng teah gu ngerteh ngak jayaan, seb penting cang reng toah seb bedeh i kampung, nikanah la essa cokoplah* (We do not understand that. The important thing is that if our parents and the local *kiai* say the marriage is valid, that is enough for us).”⁴³

According to SD and MY, no one has ever inquired about their marriage certificate. For them, the most important aspect of marriage is that the contract is religiously valid and that they fulfil their respective rights and obligations. As farmers, they question the necessity of registering their marriage and obtaining a marriage certificate. To SD and MY, the validity of their unregistered marriages is sufficient. Regarding administrative matters, MY confirmed that they already possess identity cards (Kartu Tanda Penduduk [KTP]) and a family card (Kartu Keluarga [KK]), which they consider adequate for any administrative needs, such as when travelling to Pontianak for business.⁴⁴

Secondly, there is the case of unregistered marriages between a widower and a widow due to pregnancy outside of marriage. Unlike the previous example, MD was a widower who had divorced his first wife before marrying NJ, a widow. However, prior to this marriage, MD was still legally married to ST. Without ST’s knowledge, MD entered a relationship with NJ, which resulted in NJ’s pregnancy. Following this, NJ’s family pressured MD to take responsibility for his actions. In response, MD and NJ were married in a *siri* ceremony officiated by *Kiai* MR in the early 2000s. MD recounted:⁴⁵

“My marriage to NJ has never been registered. Similarly, my previous marriage to ST was also not registered, and NJ’s previous marriage was likewise unregistered. To date, no issues have been raised regarding the registration of our marriage by family members, village officials, or neighbours. There was an opportunity for mass marriage registration in Sungai Malaya Village, but it required a fee of around Rp. 300,000, which I could not afford at the time. Therefore, I did not participate. To this day, I have not felt the need for a marriage certificate. My children are listed on the family card (KK), and the local community is aware that NJ and I are husband and wife. For us, the most important aspect is that the marriage contract is considered valid in religious terms, with all essential conditions and pillars fulfilled.”

NJ’s perspective on her marriage to MD, which remains unregistered and conducted *siri*, was expressed as follows, “*Mun ngak engkok reng binik, ku la taoh ngak jiyah, kan soal rat sorat seb taoh reng lakek, mun engkok apah cang seb lakek* (As a woman who does not understand

⁴² MS & AM, Interview with Couples in Unregistered Marriages, 13 February 2023.

⁴³ SD, Interview with One of the Unregistered Marriages Couples, 15 May 2023.

⁴⁴ MY, Interview with One of the Unregistered Marriages Couples, 15 May 2023.

⁴⁵ MD, Interview with One of the Unregistered Marriages Couples, 4 April 2023.

administrative matters, particularly those related to the marriage certificate, I leave such concerns to my husband).”⁴⁶

Although MD and NJ had unregistered marriages, they have not encountered significant administrative challenges. This is primarily because they possess the KK, which enables them to manage various administrative tasks, such as accessing social assistance and enrolling their children in school. The KK has become a crucial document, allowing MD and NJ to navigate daily life without legal recognition of their marital status. Recently, the state has introduced a policy accommodating the issuance of KK for couples in unregistered marriages without requiring a marriage certificate, as outlined in the Minister of Home Affairs Regulation No. 108/2019. This policy has created ambiguity within the community⁴⁷ as the state attempts to limit unregistered marriages while simultaneously providing an alternative that acknowledges their marital status through the KK.⁴⁸

Thirdly, unregistered marriages between widowers and widows can also arise from mutual betrayal by their previous partners, as in the case of SN and HM. In the 2000s, SN decided to divorce his wife after discovering that she was involved in an extramarital affair with a male co-worker, who was also their neighbour. Similarly, HM, a widow, requested a divorce from her husband after learning that he was in a relationship with another woman. According to SN, the process of marrying HM was swift, and the two were eventually married in a *siri* ceremony by *Kiai* JN. Unlike marriages between unmarried individuals, which are often celebrated with various festivities,⁴⁹ the unregistered marriage of SN and HM was a modest affair, attended only by immediate family and close relatives. Reflecting on the shared experiences of betrayal that led to his marriage with HM, SN recounted:⁵⁰

“*Abinib riyah cong seh paleng penting nyareh rang binik seh setia ke abek, bennni seh reddin, mun seh reddin paleng bertahan 10 tahun keriddinnah, marenah la toah, padeh cubek, tapeh mun setia, nyaman ben tenang atenah abek reb.* (If you are seeking a wife, prioritise finding one who is loyal rather than one who is merely beautiful. Beauty may last only a decade, after which age will inevitably diminish it. However, if you choose loyalty, your heart will remain at peace).

Furthermore, SN stated that no couple gets married with the intention of divorcing. However, he emphasised that if one partner engages in behaviour that violates the marital bond, such as infidelity, the marriage is unlikely to endure. HM responded to SN’s explanation by stating, “*nyereh binih jiyah seh penting jujur* (When choosing a wife, honesty is the most important quality).”⁵¹

⁴⁶ NJ, Interview with One of the Unregistered Marriages Couples, 4 April 2023.

⁴⁷ Nofaldi Nofaldi et al., “The Ambiguity of Using the Statement of Absolute Responsibility Based on Minister of Home Affairs Regulation Number 109 of 2019: Study in Dharmasraya Regency, West Sumatra Province, Indonesia,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (29 June 2023): 108–20.

⁴⁸ Nadya Pratiwi Daniela et al., “The Granting of Family Card for *Siri* Marriage in Banda City: Perspective of Islamic Family Law,” *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (30 June 2024): 150–64.

⁴⁹ Anwar Hafidzi et al., “*Siri* Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan,” *Al-Abkam* 32, no. 2 (30 October 2022): 153–68.

⁵⁰ SN, Interview with One of the Unregistered Marriages Couples, 4 September 2023.

⁵¹ HM, Interview with One of the Unregistered Marriages Couples, 4 September 2023.

Regarding marriage registration, SN stated that neither he nor HM were familiar with the registration process or the required documents. In the past, SN had given money to village officials but never received any information about the registration process, and they did not enquire further. For SN and HM, although their marriage was conducted *siri*, they believed it was religiously valid since it was officiated by a *kiai*. The marriage certificate was not a priority for them; what mattered more was fulfilling their rights and obligations as husband and wife and upholding loyalty and honesty within their household.

Similar to the case of SN and HM, this third type of unregistered marriage was also experienced by MT and HY. MT, a widower, divorced his wife after discovering her involvement in a relationship with another man. HY faced a similar situation; she became a widow after consciously requesting a divorce from her husband due to his infidelity with another woman. MT explained that, as a migrant, he adhered to the local traditions in addressing such situations.

“As someone from outside the area, I simply followed the local customs. The community here believes that marrying a widow does not require the same level of celebration as marrying a maiden. For the people in this region, the key aspect is that there is a marriage partner and that all the required conditions and pillars of the marriage are fulfilled, which they deem sufficient. HY and I were married in a siri ceremony by Kiai SK, attended by approximately 15 people, most of whom were close family members.”⁵²

MT and HY disclosed that when they got married, they did not consider applying for a marriage certificate. This was partly due to the absence of any reminder or guidance on the process and partly because they were unaware of how to apply. Their lack of information was the primary reason they did not register their marriage with the KUA. They also acknowledged that their previous marriages had been conducted in *siri* ceremonies without official marriage certificates. MT mentioned that although there had been a mass marriage programme in their village, during which they submitted their KTP and KK, there had been no follow-up to date.⁵³

Fourth, unregistered marriages between widowers and widows may also result from the absence of children in their previous marriages, as exemplified by the couple AH and JM. Although both had been previously married, their childlessness led to a relatively festive wedding in 2005, resembling the wedding of a virgin and a maiden, despite not being officially registered. AH recounted:⁵⁴

“Honestly, I did not fully understand the process. JM and I were married in a siri ceremony by Kiai SY, a respected figure who frequently officiated marriages in our village. No one informed us or provided guidance on how to register our marriage or obtain a marriage certificate. For the villagers here, the most important aspect is that the marriage is religiously valid by fulfilling the necessary conditions and pillars. That was sufficient for us to proceed with a nikah siri contract”.

As a result of their unregistered marriages, AH and JM now have two children. The presence of these children is a key reason why AH and JM have no regrets about their decision to get an unregistered marriage, as one of the main purposes of marriage is to have

⁵² MT, Interview with One of the Unregistered Marriages Couples, 26 July 2023.

⁵³ MT & HY, Interview with Couples in Unregistered Marriages, 26 July 2023.

⁵⁴ AH, Interview with One of the Unregistered Marriages Couples, 24 July 2023.

offspring.⁵⁵ Both AH and JM are committed to preserving the stability of their household and are determined not to go through a second divorce. According to JM, a mutual understanding of rights and obligations, along with the ability to avoid dwelling on past issues, are two essential elements in fostering and maintaining family unity. These elements require commitment, mutual understanding, and sincere love from both partners, ensuring that the household remains a place of peace, affection, and happiness.⁵⁶

Fifth, an unregistered marriage between a widower and a widow may occur based on the best interests of the children. The marriage of AS, a widower whose wife had passed away, to SM, a widow who had been divorced by her husband, was not primarily motivated by personal or sexual desire but rather by the practical need for a partner who could help care for their children. Both AS and SM had children from their previous marriages. AS, reflecting on the death of his wife, stated:⁵⁷

“Pas anak kik kenik, mun ngalamih ngak engkok tretan, benni ken keccaklah, macem ken odik riyah tadek artenab, ajelling anak engak ke binih, anak minta susu engak ke binih, anak tedung, engak ke binih, nangis alen bulen tretan. Cang engkok rowab duda atampar anak riyah sossa kawan nyareh binih, seh i ketakok, praten ke abek, ke anak’eh abek belum tentu. Kan ajiab seh mesti i pertimbangan aki.” (When my children were still young, it was difficult to put into words. Life felt meaningless. Every time I looked at my children, I was reminded of my late wife. When they asked for milk, I thought of her. When they slept, I thought of her. I cried for months. I wondered who would want to be with me, a widower with two young children. Perhaps someone might accept me, but would they also accept my children? That was one of my main concerns at the time).⁵⁸

In this situation, CY, SM’s sibling, approached AS and inquired whether he would be willing to marry SM. In response, AS asked whether SM would be agreeable to the marriage. CY replied, *“SM gellem deddih bininah kakeh, siap arabet anak kakeh, seh penting anak’eh SM padeh bik kakeh pratenih* (SM is willing to be your wife, provided that you give her children the same care and attention as you give to your own).⁵⁸

Regarding their unregistered marriages, AS explained that he and SM were married by *Kiai* JD. SM expressed that she did not want to deal with the complexities of marriage registration and was unaware of the legal consequences of an unrecorded divorce.⁵⁹ For SM, formalising a divorce in court is burdensome, both in terms of administrative requirements and the travel costs associated with visiting the religious court and KUA, which are quite far from their home. Additionally, the differing perspectives of these two state institutions

⁵⁵ Arbanur Rasyid et al., “Dynamics of Childless Marriage Through the Lens of Maqasid al-Shari’a,” *Jurnal Ilmiah Peuradeun* 12, no. 2 (30 May 2024): 763–86.

⁵⁶ JM, Interview with One of the Unregistered Marriages Couples, 24 July 2023.

⁵⁷ AS, Interview with One of the Unregistered Marriages Couples, 12 June 2024.

⁵⁸ CY, Interview with the Sibling of One of the Unregistered Marriages Couples, 12 June 2024.

⁵⁹ See: Asrul Hamid et al., “Legal Ramifications of Unregistered Divorce in the Religious Court within the Mandailing Natal Community,” *El-Ushab: Jurnal Hukum Keluarga* 7, no. 1 (30 June 2024): 427–43; Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, “The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts,” *Al-Manabij: Jurnal Kajian Hukum Islam* 16, no. 2 (25 November 2022): 165–80; Firman Wahyudi, “Ithbāt Ṭalāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia,” *Al-Ahkam* 32, no. 2 (30 October 2022): 211–32; Dedi Kusnandar and Fitriani Rahma, “Optimizing Legal Protection for Divorce Outside of Court: Study of the Need for Divorce Isbat in the Indonesian Legal System,” *Indonesian Journal of Islamic Law* 6, no. 2 (30 December 2023): 73–88.

regarding the legality of marriage dispensations for widows and widowers create further administrative complications for couples in unregistered marriages.⁶⁰ According to SM, the key issue is whether the husband is responsible for the family and children.⁶¹ In her view, obtaining a marriage certificate is unnecessary if the husband fails to take responsibility, as it would ultimately lead to divorce anyway. Now, because of their unregistered marriages, AS and SM have a seven-year-old child. Their children have begun to grow into remarkable individuals, and AS confirmed that both SM's children from her previous marriage and his children share a close bond, caring for each other as though they were biological siblings.

***Kiai's* Hegemony on Unregistered Marriage Practices**

Similar to the views held by the Madurese on Madura Island, Madurese Muslim communities in Kubu Raya regard the *kiai* as a central figure in their socio-religious life. As a religious leader, the *kiai* not only serves as a spiritual guide but also as a guardian of Islamic traditions and values that form the foundation of their daily social interactions.⁶² In various regions of Indonesia, similar roles are fulfilled by figures such as *lebe*, *modin*, and *tuan guru*.⁶³ In the Madurese Muslim community, *kiai* typically lead *pesantren*, institutions where young people are taught not only religious knowledge but also ethical conduct and essential life skills.⁶⁴ The presence of *pesantren* as centres of religious education elevates the *kiai* to a position of great respect and trust within the broader Madurese Muslim community.⁶⁵ Moreover, *kiais* play a crucial role in mediating inter-ethnic conflicts in Kubu Raya, further underscoring their significance in both religious and social contexts.⁶⁶

Social facts indicate that *kiais* play an advisory role in various aspects of community life, including unregistered marriage contracts.⁶⁷ Berger's social construction theory offers a framework for understanding how social reality is shaped through processes of interaction and socialisation, which consist of externalisation, objectivation, and internalization. In the Madurese Muslim community of Kubu Raya, the dominant role of the *kiai* as a religious

⁶⁰ Muhammad Fauzinudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, "Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (15 December 2023): 223.

⁶¹ SM, Interview with One of the Unregistered Marriages Couples, 12 June 2024.

⁶² Totok Agus Suryanto Aini, Huldiya Syamsiar, and Muhammad Usamah Rasyidi, "The Central Role of the Village Kiai as Significant Other in Rural Madura," *Penamas* 36, no. 1 (26 June 2023): 104–21.

⁶³ See: Sainun Sainun, Hery Zarkasih, and Arif Sugitanata, "Tuan Guru and the Efforts to Prevent Early Marriage Among Sasak Tribe," *De Jure: Jurnal Hukum dan Syariah* 16, no. 1 (21 June 2024): 37–57; Zainal Muttaqin Dahli et al., "Delegitimization of Religious Motives in Polygamy in Banjar Society," *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (27 May 2024): 119–35; Dwi Aprilianto et al., "The Controversy of Child Marriage Culture in the Perspective of Maqāṣid al-Urah: A Case Study of the Authority of Lebe' in Brebes," *Al-Manabij: Jurnal Kajian Hukum Islam* 18, no. 2 (7 August 2024): 199–218.

⁶⁴ Ihsan Ihsan and A. Umar, "Kiai as al-Qudwah al-Khasanah: The Role of Kiai in Shaping Religious Culture in Islamic Education Institution," *Al-A'raf: Jurnal Pemikiran Islam dan Filsafat* 17, no. 2 (23 December 2020): 329–46.

⁶⁵ Yanwar Pribadi, "Kiai in Madura: Their Roles in Local Politics in Indonesia," *American Journal of Islam and Society* 29, no. 3 (1 June 2012): 1–22.

⁶⁶ Yohanes Bahari, "Model Komunikasi Lintas Budaya dalam Resolusi Konflik Berbasis Pranata Adat Melayu dan Madura di Kalimantan Barat," *Jurnal Ilmu Komunikasi* 6, no. 1 (5 February 2014): 1–12.

⁶⁷ Akhmad Jalaludin and Triana Sofiani, "Gender Relation Pattern in the Siri Marriage Family," *Muwazab* 12, no. 2 (31 December 2020): 181–96.

authority significantly influences the social construction of reality, particularly as it pertains to the practice of unregistered marriages.

The Role of Kiai in Disseminating Knowledge on Unregistered Marriages

Externalisation refers to how individuals or groups construct social reality through their actions and interactions.⁶⁸ As religious leaders, *kiai* hold authority that is widely recognised within the Muslim community in Indonesia, particularly in matters related to *fiqh*.⁶⁹ Externalisation helps explain how certain values and norms are preserved and propagated within society, especially concerning the practice of unregistered marriages among Madurese Muslim communities.⁷⁰ The *kiais* play a critical role in conveying their views on unregistered marriages to the local community through sermons, fatwas, and private consultations.⁷¹

The religious practices of the Madurese Muslim community in Kubu Raya demonstrate how social constructions, predominantly shaped by *kiai*, influence religious understanding and practices within the community.⁷² In the case of unregistered marriages, *kiai* serve as key agents in promoting the view that *fiqh* should take precedence over state law regarding marriage registration. This perspective is grounded in traditional interpretations of *fiqh*, which stress that a valid marriage is one that meets specific pillars and conditions, such as the presence of a guardian, witnesses, and a dowry.⁷³ Marriage registration, a legal requirement in modern states, is viewed as secondary and not affecting the religious validity of the marriage. MN, one of the *kiai* actively involved in conducting unregistered marriages for widowers and widows, emphasised that:⁷⁴

“In the execution of the marriage contract, it is crucial that all conditions and pillars are met. The conditions include being Muslim, of sound mind, having reached puberty, not being a mabram (unmarriageable relative), and the absence of coercion. The essential pillars involve the bride and groom, a guardian, two witnesses, a dowry, and the ijāb-qabūl. If these requirements are fulfilled, a marriage contract, even if conducted nikah siri, can still be considered religiously valid, despite not being

⁶⁸ Berger and Luckmann, *The Social Construction of Reality*, 122.

⁶⁹ See: Safi’ Safi’ et al., “Bhag-Rembhag Sabhala’an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition,” *El-Mashlahab* 14, no. 1 (30 June 2024): 107–15; Muhammad Taufiq et al., “Tengka, Identity Politics, and the Fiqh of Civilization: The Authority of Madura’s Kiai in the Post-Truth Era,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 1 (26 July 2024): 139–65; Ummiyatul Labibah, Imam Taufiq, and Moh Yasir Alimi, “Living Qur’an of Pesantren Women: A Manifestation of QS. An-Nisa 34 in a Woman Leadership Role of Nyai Munjidah Wahab,” *Jurnal Studi Ilmu-Ilmu Al-Qur’an dan Hadis* 23, no. 1 (31 January 2022): 89–110.

⁷⁰ Muhammad Latif Fauzi, “Actors and Norms in an Islamic Marriage: A Study of Madura Community in Rural Eastern East Java,” *Journal of Indonesian Islam* 13, no. 2 (1 December 2019): 297.

⁷¹ See: Susilo et al., “Phenomenon of Unregistered Marriage in Teenagers in Indonesia,” 405–417; Sumarkan Sumarkan and Ifa Mutitul Choirh, “Political Culture of Madurese Community in Marriage Law: From the Perspective of Utilitarianism and Structuration Theories and Maqasidi Interpretation,” *Al-Daulab Jurnal Hukum dan Perundangan Islam* 12, no. 1 (1 April 2022): 26–50.

⁷² Hazar Kusmayanti and Nindya Tien Ramadhanty, “Legitimacy of a Siri Marriages (Second and So On) by the Pair of Civil Servants,” *DiH: Jurnal Ilmu Hukum* 17, no. 1 (30 January 2021): 84–93.

⁷³ See: Nur Avita, Ahmad Rusyaid Idris, and Frina Oktalita, “Integration of Tradition and Sharia: Dowry and Dui Menre in the Marriage of the Bugis Community in Bone Regency,” *El-Mashlahab* 12, no. 2 (24 November 2022): 124–38; Toha Andiko, Zurifah Nurdin, and Ahmed Abdul Malik, “Reactualization of Wali Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi’i’s Concept Regarding Wali’s Ijbar Right,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 2 (31 December 2023): 274–91.

⁷⁴ MN, Interview with a Local Religious Leader, 4 July 2022.

registered with the KUA. Furthermore, although a nikah siri is not legally recognised by the state, it is often witnessed by people. This is considered of greater importance, as these witnesses can provide direct verbal testimony of the marriage to future generations of children and grandchildren. Thus, even though the marriage is conducted siri, which implies secrecy, it is known by the community.”

The externalisation of the *kiai*'s views is further reinforced using strong religious language and symbols. *Kiai* frequently references various Quranic verses and hadith to support their arguments concerning the validity of unregistered marriages. As explained by *Kiai* SH:⁷⁵

“In marriage, the primary concern is the fulfilment of its conditions and pillars. These include the presence of the bride and groom, a guardian, two witnesses, the *ijāb-qabūl*, and the dowry, which are deemed sufficient to establish the validity of the marriage according to religious principles. This aligns with the teachings of the Quran, such as the directive to provide a dowry to the woman one marries (wa ātū al-nisā’ ṣaduqātihinna niḥlah). Likewise, the requirement of guardians and witnesses corresponds to the Prophet’s statement: There is no marriage except with a guardian and two just witnesses (la nikāḥa illā bi walliyin wa shāhiday ‘adlin). Once the marriage contract is valid, the key focus shifts to fulfilling the rights and obligations of the married couple, where the husband must provide for his wife, and the wife is expected to show obedience to her husband.”

Through the process of externalisation, *kiai* effectively shaped the community’s understanding of unregistered marriages as a legitimate and acceptable practice. This perspective became widespread among the Madurese Muslim communities in Kubu Raya, largely due to the high recognition and obedience to *kiai* authority. In the context of unregistered marriages, *kiai* function as externalising agents who advocate that religious law holds greater significance than state law. This externalisation occurs when *kiai* communicate the importance of adhering to *fiqh* in marriage matters, asserting that unregistered marriages are valid under religious law even without state registration, as registration is not deemed a requirement for a valid Islamic marriage. Consequently, this view is accepted by the community as an objective reality, allowing them to practice unregistered marriages without concern for its legal implications at the state level. In this social context, the *kiai* acts as a non-formal *penghulu*, lacking official authority or state mandate to officiate marriages.⁷⁶

Unregistered Marriages as a Religious Legal Marriage Practice

Following the externalisation of *kiai* views on unregistered marriages, the next phase is objectivation, wherein the results of this externalisation become a widely accepted reality within the community.⁷⁷ The religious legitimacy conferred by *kiai* in the practice of unregistered marriages encompasses various elements, including the recitation of marriage sermons, prayers, and marital guidance, all of which affirm the legitimacy and blessings of this practice.⁷⁸ In addition to articulating their views, *kiai* actively perform unregistered

⁷⁵ SH, Interview with a Local Religious Leader, 10 September 2023.

⁷⁶ Al Farabi, “The State Penghulu vs the Non-State Penghulu: The Validity and Implementing Authorities of Indonesian Marriage,” *Justicia Islamica* 17, no. 2 (17 December 2020): 343–64.

⁷⁷ Berger and Luckmann, *The Social Construction of Reality*, 78.

⁷⁸ JT, Interview with a Village Officials, 28 May 2023.

marriages, including polygamous unions, thereby symbolising religious legitimacy.⁷⁹ This participation reinforces community acceptance of unregistered marriages, despite its lack of recognition as an official marriage under state law.⁸⁰

The perception of unregistered marriages as both a religiously valid and socially acceptable practice has become part of the social reality embraced by the Madurese Muslim community in Kubu Raya. At this stage, unregistered marriage is increasingly regarded as a societal norm.⁸¹ This implies that the community no longer questions the legitimacy of unregistered marriages solely from a religious perspective, as it has become integrated into the established social structure. Objectification occurs when these views and practices are embedded in daily life, accepted as natural, and recognised as part of the community's collective identity. SM and HT stated:⁸²

“The practice of nikah siri has become a longstanding tradition within our community. People here believe that once a man is employed, he should marry, even if the marriage is conducted siri. Nikah siri is considered commonplace and has been practised for a long time. Therefore, it is unsurprising that many individuals continue to engage in nikah siri today. After all, as the kiai who officiated these marriages often emphasised, what truly matters is the sincerity of the intention and the fulfilment of all the conditions and pillars of marriage.”

Kiai plays a significant role in the objectification of unregistered marriages by employing various social mechanisms to reinforce their views. In every unregistered marriage, religious elements such as the marriage contract, prayers, and *kiai's* marriage advice are integral, giving the impression that these marriages are not only religiously valid but also blessed and protected by Islamic teachings. The use of religious symbols adds legitimacy to unregistered marriages, reinforcing their perception as valid within the framework of Islam.⁸³ This objectification is further supported by the existing social and cultural structures, particularly among Madurese Muslims, where respect for *kiai* authority is deeply ingrained.⁸⁴ Seen as guardians of Islamic morals and law, *kiai* have the power to shape and influence social perceptions. When they declare unregistered marriages religiously valid, the

⁷⁹ See: Bianca J. Smith, “Sexual Desire, Piety, and Law in a Javanese Pesantren: Interpreting Varieties of Secret Divorce and Polygamy,” *Anthropological Forum* 24, no. 3 (3 July 2014): 227–44; Said Amirulkamar et al., “Administration Reagent of Aceh Family Law Qanun: Siri Marriage Motives Towards the Legality of Polygyny,” *De Jure: Jurnal Hukum dan Syar’iah* 15, no. 1 (23 July 2023): 129–43; Dea Salma Sallom and Kholil Syu’aib, “Matchmaking in Pesantren: The Role of Wali Mujbir in Matchmaking with Maqasid Sharia Perspectives,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no. 1 (30 June 2022): 78–91.

⁸⁰ See: Suwarti Suwarti et al., “Dualism of Unregistered Marriage Law in Indonesia,” *Journal of Law, Policy and Globalization* 67 (2017): 110–25; Dian Latifiani, “The Consequences of an Unregistered Marriage to the Wife and Born Children According to the Legal System in Indonesia,” *South East Asia Journal of Contemporary Business, Economics and Law* 4, no. 3 (2014): 94–98.

⁸¹ HA, Interview with a Local Religious Leader, 8 October 2023.

⁸² SM & HT, Interview with Couples in Unregistered Marriages, 4 September 2023.

⁸³ Mutoib Mutoib, “Religious Justice Judges in Determining the Written Law of the Origin of Children in Siri Marriages in al-Maqasid Syari’ah Perspective,” *Proceeding of International Conference on the Law Development for Public Welfare* 1, no. 1 (2021): 206–14.

⁸⁴ Ridha Fadillah and Hani’ah, “Honorifics for Ulama as a Form of Respect Madurese and Banjarese Societies: Comparative Sociolinguistics Study,” *International Journal of Scientific Research and Management (IJSRM)* 12, no. 03 (28 March 2024): 3288–95.

community tends to accept this without question, trusting *kiai* as the highest authority in religious matters. As the couple MT and HY stated:⁸⁵

“Most residents here have received education at pesantren in the Kubu Raya area. During key events, such as the imtiḥān (examination ceremony), when the kiai, as the head of the pesantren, delivers a lecture, there is always a moral message emphasising the importance of obedience to one’s parents. Failure to do so, it is taught, would result in being labelled as disobedient children. This moral teaching has left a lasting impression on us. Therefore, when our parents instruct us to get a nikah siri, we comply without hesitation, as we do not wish to be seen as disobedient children”.

In the objectivation process, state laws requiring marriage registration for legal recognition are often disregarded or seen as less significant. Communities tend to follow the views of the *kiai*, which are perceived as more aligned with their religious values and traditions. This influence extends beyond Islamic family law and impacts various other aspects of Muslim practice.⁸⁶ The objectivation of *kiai* views on unregistered marriages thus contributes to the emergence of legal dualism within society, where religious law takes precedence over state law.⁸⁷ This dynamic has practical implications, particularly in creating contestation between the *penghulu* (the government’s official representative in marriage matters) and the *modin* (figures with religious authority in traditional Muslim communities) regarding marriage registration and the practice of unregistered marriages itself.⁸⁸

Unregistered Marriages *in the Context of Religious Identity and Cultural Practices*

The final stage in Berger’s social construction theory is internalisation, where individuals incorporate objectified social reality into their social identity.⁸⁹ Internalisation occurs when individuals begin to perceive objectified views and practices as meaningful social structures and believe that participating in them is essential to being an integral part of society.⁹⁰ In the context of the Madurese Muslim community in Kubu Raya, the internalisation of unregistered marriages as a religiously valid practice, rather than adhering to state law, becomes embedded in their daily beliefs and practices, forming part of their religious identity.⁹¹ This phenomenon is not limited to the Madurese Muslims in Kubu Raya; in general, Muslim communities that practice unregistered marriages hold that following

⁸⁵ MT & HY, Interview with Couples in Unregistered Marriages, 26 July 2023.

⁸⁶ Liza Diniarizky Putri et al., “Developing Ecological Piety in Pesantren: The Kyai’s Cognition and the Practice of Living Fiqh al-Bī’ah in Banten,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023): 235–59.

⁸⁷ Abi Hasan, Achmad Musyahid, and Asman Asman, “Dualism and Unworthy Legal Practice: The Marginalization of Women’s Rights in Siri and Early Marriages,” *Ary-Syir’ab: Jurnal Ilmu Syari’ab dan Hukum* 55, no. 2 (15 June 2022): 149.

⁸⁸ Muhammad Latif Fauzi, “Registering Muslim Marriages: Penghulu, Modin, and the Struggles for Influence,” *Al-Jami’ab: Journal of Islamic Studies* 57, no. 2 (24 December 2019): 397–424.

⁸⁹ Berger and Luckmann, *The Social Construction of Reality*, 83.

⁹⁰ Berger and Luckmann, *The Social Construction of Reality*, 149.

⁹¹ See: MN, Interview with a Local Religious Leader; SH, Interview with a Local Religious Leader; JN, Interview with a Local Religious Leader, 10 May 2023.

religious law, as interpreted by *kiai*, represents the highest form of religious obedience, while marriage registration with state institutions is seen as secondary.⁹² MR and MP recounted:⁹³

“Waktu rumah, engkok akabinan ben alek riyah, maklumlah le padeh toah cang oreng, la duda ben janda, yeh cokop akabinan kampongan, seb penting cang keanah wakto rowah seb mekabin engkok Kiai JN. La nyamanah engkok riyah atorok oreng, seb penting cokop syarat ben rukunnah.” (At the time of my marriage, both my wife and I were no longer young; we were a widower and a widow, respectively. We married in the village, and what mattered most was that, according to the *kiai*, the marriage was legitimate. *Kiai* JN officiated the ceremony. Living in a village, we must adhere to the community’s norms, and as long as the conditions and pillars of the marriage were fulfilled, that was considered sufficient).

Kiai plays a crucial role in the internalisation process by instilling values that support their views on unregistered marriages.⁹⁴ They emphasise the importance of upholding the sanctity of marriage according to Islamic teachings, often placing less emphasis on state legality.⁹⁵ In their lectures and guidance, *kiai* connect unregistered marriages to concepts such as piety in fulfilling God’s commands and emulating the Prophet’s sunnah, thus integrating this practice into the community’s religious identity.⁹⁶ This internalisation is further reinforced through socialisation within families, where children learn religious values from their parents, who are themselves influenced by *kiai* perspectives.⁹⁷ As a result, when the view of unregistered marriages as a religiously legitimate practice is instilled from an early age, subsequent generations are likely to accept and perpetuate the practice without questioning its relevance to state law. SD and MY confirmed that:⁹⁸

“Villagers have long been accustomed to marriage procedures that are not officially recorded with the KUA. Our parents, who lived simple lives grounded in religious values, believed that if a kiai conducted the marriage, it was valid according to sharia, and there was no need to register it with the KUA. As farmers, we did not require a marriage certificate for our livelihoods. Although we are married in a siri arrangement, we possess official identification in the form of KTP and KK. These two documents are sufficient proof of our existence within the state administration system.”

⁹² Devi Rovika, Muhammad Hasan, and Nur Hakimah, “Faktor Pernikahan di Bawah Tangan Masyarakat yang Beragama Islam di Desa Bukmakong, Kecamatan Singkawang Selatan,” *Al-Ushob* 4, no. 1 (17 July 2024): 19–28.

⁹³ MR & MP, Interview with Couples in Unregistered Marriages, 10 May 2023.

⁹⁴ Nanda Nabilah Islamiyah, “Otoritas Kyai terhadap Kontinuitas Praktik Perkawinan Siri di Kecamatan Rembang Kabupaten Pasuruan” (Yogyakarta, UIN Sunan Kalijaga, 2024).

⁹⁵ Amelia Sari, “Peran Kiai sebagai Wali Muhakkam dalam Pernikahan Siri (Studi Kasus Desa Leuwikaret Kecamatan Kelapanunggal Kabupaten Bogor)” (Jakarta, UIN Syarif Hidayatullah, 2024).

⁹⁶ Ahmad Ulil Afwa and Ghofar Shidiq, “Nikah Siri Ditinjau dari Segi Kemaslahatannya Menurut Kyai Pondok Pesantren di Bugen,” *Prosiding Konstelasi Ilmiah Mahasiswa Unissula (KIMU) Klaster Humaniora*, 17 December 2021, 501–9.

⁹⁷ See: Mies Grijns et al., eds., *Marrying Young in Indonesia: Voices, Laws and Practices* (Jakarta/Singapura: Yayasan Pustaka Obor Indonesia/ISEAS – Yusof Ishak Institute, 2019); Qodariah Barkah et al., “The Manipulation of Religion and the Legalization of Underage Marriages in Indonesia,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (31 March 2023): 1.

⁹⁸ SD & MY, Interview with Couples in Unregistered Marriages.

The hegemony of *kiai* demonstrates how religious authority influences legal preferences within society.⁹⁹ Among Madurese Muslims in Kubu Raya, *fiqh* serves not only as a source of doctrinal law but also as the primary basis for socio-religious decision-making, including the practice of unregistered marriages. For this community, a marriage that meets the requirements outlined in *fiqh* is regarded as valid under Islamic law. All unregistered married couples in this study were married by *kiai*. In the socio-legal context, the hegemony of *kiai* reinforces legal dualism, whereby state law concerning marriage registration is perceived as secondary to the religious law as interpreted by *kiai*.

The internalisation of *kiai* views within Muslim communities has significant implications for social dynamics and legal sustainability. A notable negative impact of the internalisation of unregistered marriages is the emergence of legal issues related to women's rights.¹⁰⁰ Furthermore, the unofficial nature of unregistered marriages adversely affects the status of children born from these unions, often leading to inadequate legal protection regarding inheritance rights, maintenance, and recognition of legal status by the state.¹⁰¹ Thus, while the practice of unregistered marriages is embedded in the religious identity and legal culture of Madurese Muslim communities in Kubu Raya, *kiai* hegemony in shaping community understanding perpetuates a practice deemed socially acceptable yet detrimental to legal rights and social welfare. This hegemony is also evident in the tradition of infant engagement within the lineage of traditional Madurese clerics.¹⁰²

Conclusion

The Madurese Muslim community in Kubu Raya is a religious group that firmly upholds the teachings of *fiqh* (Islamic jurisprudence) in their daily lives, particularly in the context of marriage. Despite not being officially recorded by the state, they maintain that the practice of unregistered marriages constitutes a valid marriage contract in religious terms. This belief is bolstered by the significant role of *kiai* (local religious leader), who possess religious authority and are highly respected within the community's socio-religious framework. In practice, each unregistered marriage is solemnised by a *kiai*, who ensures that all pillars and conditions of marriage are fulfilled under Islamic law. The *kiai*'s presence during the marriage contract process lends religious legitimacy to the practice of unregistered marriages, despite its lack of recognition under state law. This phenomenon illustrates their steadfast adherence to classical *fiqh*, even when it conflicts with modern state regulations.

This research analyses the phenomenon of secret marriages between widows and widowers in the Madurese society of Kubu Raya Regency, focusing on villages in the rural

⁹⁹ Muhammad Sirojudin Sidiq, "Legalitas Kiai sebagai Wali dalam Perkawinan Tanpa Wali Nasab," *As-Salam: Jurnal Studi Hukum Islam dan Pendidikan* 4, no. 1 (16 April 2015): 43–56.

¹⁰⁰ See: Alfitri Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika* 27, no. 2 (3 August 2020): 273–307; Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (14 December 2016): 427.

¹⁰¹ Zainal Azwar et al., "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey," *Journal of Islamic Law* 5, no. 1 (29 February 2024): 62–85.

¹⁰² Ali Imron et al., "Baby Engagement within the Traditional Ulama of the Madurese Ethnicity: A Maşlahā Analysis," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023): 261–80.

of Madura. It does not address the practice of unregistered marriages among young individuals who have never married, presenting opportunities for further investigation into this aspect, particularly among students. Additionally, this study is limited to the Kubu Raya area; future researchers could expand the scope to include other regions in Indonesia for a more comprehensive understanding. Methodologically, this research relies solely on Peter L. Berger's social construction theory to analyse the phenomenon of unregistered marriages. Therefore, additional studies exploring other social theories are warranted to provide a richer and more diverse perspective on this practice.

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