



Building Legal Compliance: A Study on *Nikah Sirri* Practices in Tanjung Raya Subdistrict, Agam District, West Sumatra, Indonesia

Nailur Rahmi

Universitas Islam Negeri Mahmud Yunus Batusangkar

Arifki Budia Warman

Universitas Islam Negeri Mahmud Yunus Batusangkar

Amri Effendi

Universitas Islam Negeri Mahmud Yunus Batusangkar

Email: nailurrahmi@uinmybatusangkar.ac.id

Abstract: This article aims to discuss building legal compliance related to the practice of unregistered marriages (*nikah sirri*) that occur in Tanjung Raya District, Agam, West Sumatra. The method used in the study is empirical law, and the theory of legal compliance as an analytical tool. Data collection was carried out through in-depth interviews with key informants, document reviews, and Focus Group Discussions (FGD). The results of this study indicate that the practice of unregistered marriages in Tanjung Raya District is divided into two types, namely marriages that are not valid according to religion and the state and marriages that are only valid according to religion. The practice of unregistered marriages that are only valid according to religion is more dominant, mainly due to the inability of one party to show a divorce certificate, which is considered difficult, complicated, and time-consuming to process. The legal logic of the community practicing unregistered marriage is dominated by the understanding of Islamic law, where marriages that fulfill the pillars and requirements of religion are considered valid, while registration at the KUA is only seen as an administrative matter. In addition, the socio-cultural conditions of the community also influence this practice, with factors such as the strong influence of clerics, the characteristics of religious areas, instant culture, weak law enforcement, and community customs that support the practice. As a solution, to build legal compliance, collaboration between various parties is needed for adherents of unregistered marriage, including the preparation of special regulations at the village level, encouraging collective case submission to the court, innovation at the KUA level, and simplification of administrative processes at the Religious Court, especially related to administration costs. This finding highlights the need for a comprehensive approach in handling the phenomenon of unregistered marriage holistically.

Keywords: Unregistered marriage, legal compliance, legal awareness, Islamic law

Abstract: Artikel ini bertujuan untuk membahas tentang membangun kepatuhan hukum terkait dengan praktik nikah sirri yang terjadi di Kecamatan Tanjung Raya, Agam, Sumatera Barat. Metode yang digunakan dalam penelitian yaitu hukum empiris, dan teori kepatuhan hukum sebagai alat analisisnya. Pengumpulan data dilakukan melalui wawancara mendalam dengan informan kunci, telaah dokumen, dan Focus Group Discussion (FGD). Hasil penelitian ini menunjukkan bahwa praktik nikah siri di Kecamatan Tanjung Raya yang terbagi menjadi dua jenis, yaitu nikah yang tidak sah menurut agama dan negara serta nikah yang hanya sah menurut agama. Praktik nikah siri yang hanya sah secara agama lebih dominan terjadi, terutama disebabkan oleh ketidakmampuan salah satu pihak menunjukkan akta cerai, yang dianggap sulit, rumit, dan memakan waktu dalam pengurusannya. Logika hukum masyarakat pelaku nikah siri didominasi oleh pemahaman hukum Islam, di mana pernikahan yang memenuhi rukun dan syarat agama dianggap sah, sementara pencatatan di KUA hanya dipandang sebagai urusan administratif. Selain itu, kondisi sosio-kultural masyarakat turut memengaruhi praktik ini, dengan faktor-faktor seperti kuatnya pengaruh ulama, karakteristik wilayah yang agamis, budaya instan, lemahnya penegakan hukum, dan kebiasaan masyarakat yang mendukung praktik tersebut. Sebagai solusi, untuk membangun kepatuhan hukum diperlukan kolaborasi berbagai pihak untuk melarang nikah siri, termasuk penyusunan aturan khusus di tingkat nagari, mendorong pengajuan kasus secara kolektif ke pengadilan, inovasi di tingkat KUA, dan penyederhanaan proses administrasi di Pengadilan Agama, khususnya terkait biaya pengurusan. Temuan ini menyoroti perlunya pendekatan komprehensif dalam menangani fenomena nikah siri secara holistik.

Kata Kunci: Nikah sirri, kepatuhan hukum, kesadaran hukum, hukum Islam

Introduction

The practice of *nikah sirri* (*secret/unregistered marriage*) represents a persistent social reality in Indonesia, despite explicit legal mandates requiring marriage registration. This phenomenon extends beyond legal formality, generating significant social, economic, and psychological consequences, particularly for women and children. The ambiguous legal status of *nikah sirri* results in discriminatory impacts on family rights, including maintenance, inheritance, and child legitimacy. Furthermore, this practice is not confined to specific social groups, but has been observed across various sectors of society, from the general public to public figures and government officials.¹

¹ Zezen Zaenal Mutaqin and Yayan Sopyan, "Forced Marriage and Sex Trafficking under the Guise of Nikah Siri in Indonesia," *Studia Islamika* 31, No. 2 (2024). Agustin Hanapi and Edy Yuhermansyah, "Urgency of Marriage for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum Kelurga dan Hukum Islam* 4, No. 2 (2020).

Indonesia, adhering to the principles of a rule of law state, stipulates mandatory administrative registration of marriages, thereby fulfilling its duty to safeguard its citizens. This policy signifies a progressive development within Islamic family law, parallel to legal reforms in other Muslim-majority countries. Indonesian family law, a dynamic component of the national legal system, evolves in response to societal transformations. This evolution is shaped by historical legal precedents and contemporary social developments. Responding to the community's need for legal certainty in family relationships, Indonesian family law addresses various aspects, including marriage age limits, child status, prenuptial agreements, and the legal status of unregistered marriages, known as *nikah sirri*.²

The 1974 Marriage Law and the 1991 Compilation of Islamic Law explicitly prohibit unregistered marriages, stipulating that all marriages must be registered. Consequently, any marriage not duly registered is deemed legally invalid and constitutes a legal violation. Several factors contribute to the prevalence of *nikah sirri*, including: personal justifications based on community interpretations, low legal awareness regarding marriage registration requirements, and insufficient adherence to existing Indonesian marriage laws.³

Normatively, Islamic law validates marriage upon fulfillment of its pillars and conditions, without explicitly mandating formal registration. Classical *fiqh* (Islamic jurisprudence) literature, reflecting its historical context, does not address registration as an obligation, viewing it as an *ijtihad*i (independent legal reasoning) matter evolving with modern administrative necessities. However, positive law in Indonesia through Law Number 1 of 1974, the 1991 Compilation of Islamic Law, and Government Regulation Number 9 of 1975,⁴ has established the importance of marriage registration to protect the rights of women and children.⁵ Nevertheless, these regulations do not provide strict sanctions for violations of registration, thus creating loopholes for the community to continue

²Mursyid Djawas, et al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi," *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). Nurul Miqat, et.al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syari'ah* 15, No. 1 (2023).

³Andi Zainuri, et al., "Problems of Sirri Marriage and Prisoners: A Case Study in Sukadana, East Lampung, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023). Abu Yazid Adnan Quthny, et.al., "Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974," *Asy-Syari'ah: Jurnal Hukum Islam*, 8, No. 1 (2022).

⁴Law No. 1 of 1974 concerning Marriage. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 Concerning Marriage.

⁵Abu Rokhmad and Sulistiyono Susilo, "Conceptualizing Authority of The Legalization of Indonesian Women's Rights in Islamic Family Law," *Journal of Indonesian Islam* 11, No. 2 (2017).

practicing *nikah sirri*. The *isbat nikah* (marriage validation)⁶ mechanism, as outlined in the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), offers a legal pathway for unregistered couples to validate their marriage. However, its existence may inadvertently contribute to the persistence of unregistered marriages.⁷

Numerous cases illustrate the severe consequences of *nikah sirri*. The tragic incident in Jagakarsa, South Jakarta, where four children perished due to domestic conflict within an unregistered marriage, exemplifies the legal vulnerabilities inherent in this practice, particularly concerning domestic violence and family dynamics.⁸ Furthermore, the open acknowledgement of *nikah sirri* by various public figures indicates that this practice, despite its legal ambiguity, continues to be perceived as socially permissible by some societal groups.⁹ *Nikah sirri* is a prevalent social reality in Indonesia. In Sidoarjo, East Java, for instance, it is widely regarded as illegal due to its conflict with state law. In addition, it poses a risk of injustice, contradicting fundamental Islamic legal principles, and can damage family honor.¹⁰

In Aceh, *nikah sirri* marriages conducted by unauthorized *qadi* (Muslim judge) are prevalent. The secretive nature of these unions poses verification challenges regarding their adherence to Islamic marriage pillars and conditions. Unregistered marriages officiated by unauthorized *qadi* often require couples to provide specific documentation, including national identity cards (*Kartu Tanda Penduduk/KTP*), photographs, witnesses, dowry, and a *wali* (guardian) from the bride's family. The practice of marriages conducted by unauthorized *qadi* raises

⁶Alfitri Alfitri, et al., "Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts," *Ulumuna: Journal of Islamic Studies* 28, No. 1 (2024). Andi Muhammad Akmal, et al., "Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia: Integrating Maqāṣid al-sharī'ah," *El-Usrah: Jurnal Hukum Keluarga* 7, No. 2 (2024).

⁷Sudirman Sudirman and Iskandar Iskandar, "Isbat Marriage Resolution in Indonesia: A Masalah Approach," *Journal of Islamic Law* 1, No. 1 (2020). Ashadi L. Diab, "Legalisasi Nikah Sirri Melalui Isbat Nikah Perspektif Fikih (Telaah Terhadap Kompilasi Hukum Islam)," *Al-'Adl* 11, No. 2 (2018).

⁸Nurcahyo, D., & Sari, N. Ayah Terduga Pembunuh 4 Anak di Jagakarsa Mengaku Menikah Siri Sehingga Tak Punya KTP. *Megapolitan.Kompas.Com*. <https://megapolitan.kompas.com/read/2023/12/07/13022041>, (2023). Huda, L. (2023). Sebelum 4 Bocah Ditemukan Tewas di Jagakarsa, Wajah Ibu 4 Korban Sempat Terlihat Berlumuran Darah. *Megapolitan.kompas.com*. <https://megapolitan.kompas.com/read/2023/12/07/08402351>

⁹Encep. Kisah Nikah Siri Ahmad Dhani dan Mulan Jameela, Baru Resmi Tercatat Tahun 2020 di Soreang Bandung. *Garut.Suara.Com*. <https://garut.suara.com/read/2023/07/05/143100> (2023). MUI Jelaskan Keabsahan Nikah Siri. *CNN Indonesia*. <https://www.cnnindonesia.com/gaya-hidup/20211001103130-284-701922>, (2021).

¹⁰ Muflikhatul Khoiroh, et al., "Analisis Hukum Islam terhadap Perkawinan Sirri di Ketegan, Sepanjang, Sidoarjo," *al-Hukama* 12, No. 1 (2022), p. 61-93.

serious legal and ethical concerns, as it deviates from the Islamic legal principle of *maslahah* (benefit) and violates legally mandated government regulations.¹¹

In contrast, among the Banjar people of South Kalimantan, *nikah sirri* is often conducted publicly, with wedding ceremonies. While legally invalid in Indonesia due to the lack of registration at the Religious Affairs Office, *nikah sirri* ceremonies and associated wedding celebrations appear to hold social legitimacy within the community.¹² The prevalence of *nikah sirri* in Tanjung Raya, Agam District, as documented by first semester 2023 demographic data, creates a notable anomaly given its historical context. This region, celebrated for its role as a significant center of Islamic education and the origin of prominent Islamic scholars and national figures, exhibits a notable divergence between its profound religious heritage and observed social practices. The observed discrepancy necessitates scholarly exploration of the community's perceptions regarding *nikah sirri*, and the socio-economic and cultural factors influencing the selection of unregistered marriages.

This current research endeavors to conduct a comprehensive empirical analysis of the social dynamics among individuals engaging in *nikah sirri* within Tanjung Raya Subdistrict. This study aims to contribute to the existing body of literature on *nikah sirri*, which has predominantly focused on legal and normative dimensions, by providing a nuanced exploration of the social realities surrounding this phenomenon. By integrating analyses of Islamic jurisprudence, Indonesian positive law, and community social dynamics, this study seeks to generate actionable recommendations for policymakers and relevant institutions. The objective is to mitigate the incidence of unregistered marriages while simultaneously enhancing legal safeguards for vulnerable parties within marital relationships.

The methodology employed herein encompasses empirical legal research, analyzed through the lens of legal compliance theory.¹³ Data were collected through in-depth interviews with key informants, document studies, and Focus Group Discussions (FGDs). Interviews were conducted with key informants such as *nikah sirri* practitioners, traditional leaders, *ulama* (religious scholars), and related institutions, such as the Religious Affairs Office (*Kantor Urusan Agama/KUA*) and religious counselors. Documents analyzed included legal regulations, journal articles, books, and statistical reports or archives.

¹¹ Misran Ramli, et al., "Unveiling Illegal Marriages in Aceh: Examining the Role of Unofficial Qadi," *El-Mashlalah* 14, No. 2 (2024). Nahar Surur, "Pemidanaan Nikah Sirri Dalam RUU HMPA (Pasal 143) Perspektif Maṣlāḥah Mursalah," *El-Usrah: Jurnal Hukum Keluarga* 5, No. 2 (2022).

¹² Anwar Hafidzi, et al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Ahkam* 32, No. 2 (2022).

¹³ Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Konsep*, Jakarta: Rajawali Press, 2018.

Furthermore, FGDs were also conducted. Subsequently, these data were then analyzed using legal awareness theory.¹⁴

Nikah Sirri Practices in Tanjung Raya Subdistrict

The people of Tanjung Raya, Agam District, are part of the West Sumatra region, which is predominantly Minangkabau. The Minangkabau are distinguished by a socio-cultural order deeply informed by Islamic law, demonstrating a strong commitment to their Islamic faith. However, while adhering to a matrilineal kinship system, where husbands traditionally reside with their wives' families, divorce necessitates the husband's departure. Re-entry requires customary re-admission by the wife's family, pending a legally binding judicial decision. However, in matters of marriage, divorce, *talaq* (repudiation), *ruju'* (reconciliation), and child custody, this community, deeply rooted in Islamic law, consistently integrates religious principles with customary practices.¹⁵

Regarding marriage, legal regulations are primarily governed by Law Number 1 of 1974 and the Compilation of Islamic Law.¹⁶ Legal regulations mandate marriage registration for legal validity, including the issuance of a marriage certificate, which is essential for obtaining a family card. *Nikah sirri* results in the absence of these documents, denying spouses legal recognition and associated rights, such as birth certificates for children and legal recourse in marital disputes. Thus, official marriage registration is crucial for securing necessary legal documentation and establishing family status.¹⁷

Nikah sirri practices can be broadly categorized into two types: those lacking both state and religious recognition, and those recognized solely by religious authorities. *Nikah sirri* lacking both state and religious recognition deviates from established religious norms and lacks official state administrative validation. Notably, such practices may involve a non-paternal *wali*, such as a sibling. Consequently, according to Islamic legal principles, a *nikah sirri* performed with a sibling as a *wali* while the biological father is alive is considered invalid. As confirmed by the Head of the Religious Affairs Office (KUA), the biological father holds primary guardianship. Even in cases of paternal refusal, a

¹⁴Soerjono Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum*, (Jakarta: CV. Rajawali, 1982), p. 152.

¹⁵ Muhammad Fauzinudin Faiz, et al., "Underage Widows and Widowers Before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation," *Juris: Jurnal Ilmiah Syari'ah* 22, No. 2 (2023). Erwati Aziz, et al., "The Acculturation of Islam and Customary Law: An Experience of Minangkabau, Indonesia," *Qudus International Journal of Islamic Studies* 8, No. 1 (2020).

¹⁶ Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 Sampai KHI*, Jakarta: Kencana, 2004.

¹⁷ 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 (2024).

judicial guardian (*wali adhal*) must be appointed, a process circumvented by the individuals who opted for *nikah sirri*.¹⁸

Conversely, *nikah sirri* recognized by religious authorities fulfills the essential pillars and conditions of marriage but lacks official state registration at the KUA. The Head of the KUA explained that legal impediments, such as unresolved divorce proceedings due to the absence of a court-issued divorce certificate, often prevent registration. Couples may opt for *nikah sirri* to circumvent the perceived financial and procedural burdens associated with obtaining the necessary legal documentation.¹⁹

The KUA religious counselor reinforced this, stating that counseling consistently emphasizes *fiqh munakahat* (Islamic marriage jurisprudence), indicating thorough religious socialization of marriage provisions. However, a persistent perception remains that state registration is merely an administrative formality. Therefore, individuals frequently resort to unregistered marriage officials, citing the perceived complexity of Religious Court procedures. Cost, administrative delays, distance, and domestic obligations contribute to this reluctance.²⁰

An unregistered marriage official, who previously served as a P3NTR (Prospective Marriage Guidance and Counseling Officer) at the Maninjau KUA, has facilitated these *nikah sirri* ceremonies. He explained that the marriages are conducted based on the free will of the marrying parties, with strict adherence to Islamic marital requirements. He emphasized that the only deviation is the lack of official state recognition and subsequent documentation.²¹

The official further explained that the administrative procedures for the *nikah sirri* mirror those of the KUA. The marriage is conducted at the bride's residence, with the biological father serving as the guardian and local residents as witnesses. He asserted that the practice adheres to Islamic legal requirements, with the only deviation being non-compliance with state regulations, such as post-divorce waiting periods. He emphasized his intent to assist couples in avoiding adultery and immoral conduct.²²

The prevalence of *nikah sirri* marriages in Tanjung Raya Subdistrict is presented in the following table:

¹⁸Interview with the Head of the KUA in Tanjung Raya, July 25, 2024.

¹⁹Interview with the Head of the KUA in Tanjung Raya, July 25, 2024.

²⁰Interview with KUA Religious Counselor, Tanjung Raya, July 24, 2024.

²¹Interview with DE, Unregistered Marriage Official, July 10, 2024.

²²Interview with DE, Unregistered Marriage Official, July 10, 2024.

**Table 1: The Prevalence of *Nikah Sirri* Practitioners
in Tanjung Raya Subdistrict**

No.	Names of Couples/ Individuals Involved	Age	Occupation/ Education	Address
1	Dedi Candra Rika Chania	41 years 32 years	Driver Homemaker	Sungai Batang
2	Elfi Suryani Farizal	47 years 61 years	Farmer Farmer	Sungai Batang
3	Al Hamdi Dewi Sartika	37 years 26 years	Farmer Farmer	Sungai Batang
4	Amrizal Sofitra	62 years 54 years	Farmer Farmer	Sungai Batang
5	Yulkadedi Gusri Ramadhani	50 years 45 years	Farmer Farmer	Sungai Batang
6	Syafri Fadilla	50 years 40 years	Farmer Homemaker	Sungai Batang
7	Ancan Eni Salma	52 years 51 years	Farmer Farmer	Sungai Batang
8	Afriyandi Novira	41 years 27 years	Farmer Homemaker	Sungai Batang
9	Nasfi Putra Kurniati	30 years 30 years	Trader Bachelor's Degree/ PPPK	Sungai Batang
10	Syafri Ayu Oktaviasari	29 years 29 years	Senior High School Senior High School	Sungai Batang
11	Iqbal Kurniawan Yuli Arneti	36 years 29 years	Elementary School Elementary School	Bayua
12	Mardiansyah Aisyah Rahmadani	30 years 43 years	Senior High School Junior High School	Dalko
13	Afrika Candra Lusi Anggriyani	36 years 31 years	Senior High School Senior High School	Bayua
14	Rahmat Mulia Nila Oktavia	50 years 47 years	Senior High School Junior High School	Duo Koto
15	Santi	-	Senior High School	Maninjau

Data Source: Field Data, 2023

The data in Table 1 indicate that *nikah sirri* practitioners are primarily widows and widowers. These marriages were conducted in various locations, including Nagari Sungai Batang, Malaysia, Pekanbaru, and Lampung. *Wali* included biological fathers, uncles, and siblings. Instances of improper *nasab* (lineage) guardianship were also observed, where siblings acted as *wali* instead

of the biological father. The primary motivation for *nikah sirri* was administrative barriers, specifically the lack of divorce certificates for one or both parties. Furthermore, even those with divorce certificates faced obstacles due to regulations requiring the groom to observe the ex-wife's *iddah* (waiting) period. These marriages were conducted by an unregistered official at the HAMKA Museum in Nagari Sungai Batang. A marriage certificate was subsequently issued, containing the names of the spouses, *wali*, witnesses, and *niniak mamak* (traditional elders), but omitting the responsible official's name.

Some *nikah sirri* marriages receive familial and *niniak mamak* approval, even culminating in *walimatul 'ursy* (wedding receptions). However, others proceed without family consent, often seeking to circumvent this by conducting the ceremony outside Tanjung Raya Subdistrict. Kurniati, for example, performed *nikah sirri* with her biological father as *wali*, citing her husband's ongoing *iddah* period. Despite family approval and their agreement to marry, they opted for a private ceremony, obtaining a marriage certificate as proof.²³

Santi, on the other hand, cited the absence of her husband's divorce certificate from the Jakarta Religious Court as the reason for her *nikah sirri*. She attributed the delay to her ex-wife's possession of the marriage book, despite having a divorce decree. Given their close relationship and familial approval, they opted for *nikah sirri*.²⁴ Candra disclosed that he had previously contracted and dissolved a *nikah sirri* in Jakarta. Upon returning to his hometown, he entered into another *nikah sirri* with a woman who had obtained a legal divorce from the Religious Court. The ceremony was conducted with the bride's biological father as *wali* and acknowledged by both families' *niniak mamak*. A marriage book was provided as documentation.²⁵

Mardiansyah, from Nagari Dalko, reported performing *nikah sirri* with his wife, Aisyah, in Malaysia, where they were residing at the time. The bride's sibling acted as *wali*, as her biological father disapproved of the marriage in Malaysia.²⁶ Mila disclosed that her *nikah sirri* ceremony took place in Pekanbaru, with her father officiating as *wali*. She attributed the decision to her husband's incomplete divorce proceedings at the Religious Court, explaining that she opted for *nikah sirri* to prevent transgressing religious principles.²⁷

In a related context, DS, a *nikah sirri* officiant, explained that he formerly held the position of Marriage Implementation Officer (P3NTR). Upon retirement, he assumed the role of museum caretaker. Despite this, he remained a sought-after resource for marriage-related inquiries. Community members perceived him as a religious scholar knowledgeable in marital matters. Initially,

²³Interview with KN, *Nikah Sirri* Practitioner, June 26, 2024.

²⁴Interview with ST, *Nikah Sirri* Practitioner, July 10, 2024.

²⁵Interview with CN, *Nikah Sirri* Practitioner, July 24, 2024.

²⁶Interview with MD, *Nikah Sirri* Practitioner, July 10, 2024.

²⁷Interview with ML, *Nikah Sirri* Practitioner, July 24, 2024.

DS provided counsel on marriage procedures in accordance with applicable regulations. Subsequently, he began officiating marriages due to various obstacles faced by couples, including the non-issuance of divorce certificates from the Religious Court and concerns regarding premarital relationships violating religious norms. DS, therefore, assumed the role of *nikah sirri* officiant, stipulating approval from *niniak mamak* and the presence of a legitimate *wali*. Marriages adhering to these conditions were performed, with DS accepting variable compensation, ranging from monetary to in-kind contributions. He refused to officiate marriages that failed to meet his requirements.²⁸

Correspondingly, some *ulama*, including Hidayat in Nagari Maninjau, advocate for mandatory marriage registration within the Indonesian legal framework. Hidayat, in his capacity as a religious scholar, has actively guided community members towards official marriage registration at the KUA. Despite this guidance, because of challenging administrative problems that make it impossible to delay the marriage, the *nikah sirri* still occurs.²⁹

Data from the Civil Registry and Population Office (Dukcapil) revealed approximately 5,763 family cards (KK), or 64.69% of the population, associated with unregistered marriages, indicating that a majority of residents are involved in such unions. Interviews with the Head of the KUA in Tanjung Raya Subdistrict identified factors contributing to *nikah sirri*, including community reluctance to pursue divorce proceedings through the Religious Court. Moreover, the requirement for marriage dispensations in underage marriages contributes to the prevalence of *nikah sirri*, which is further sustained by the perception of its Islamic legal legitimacy.

The Legal Reasoning for *Nikah Sirri* Practices Within the Community

Law and society are intrinsically linked. Cultivating legal obedience and awareness within society is challenging, influenced by both internal and external factors. Soekanto identifies five key factors shaping an individual's legal awareness, namely:³⁰

1. Legal Provisions: The written legal framework, as codified in legislation.
2. Law Enforcement: The actors responsible for creating and implementing legal norms.
3. Supporting Facilities: The infrastructure and resources that facilitate law enforcement.
4. Community Engagement: Individuals within the legal environment.

²⁸Interview with DS, Former Marriage Implementation Officer (P3NTR), July 10, 2024.

²⁹Interview with HD, Ulama in Maninjau, July 10, 2024.

³⁰Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: UI Press, 1983, p. 35.

5. Cultural Norms: Socially ingrained habits and practices derived from collective work, creativity, and sentiment.

These factors significantly impact individual legal awareness, which varies due to differing perceptions, environments, and cultures. In Tanjung Raya, legal understanding strongly influences the development of a legal logic favoring *nikah sirri*, with religious law holding dominant influence. *Nikah sirri* practitioners perceive their marriages as religiously legitimate, which, in their view, negates the necessity for state validation. This perception was consistently reported throughout the interviews with *nikah sirri* practitioners.

Kurniati, who engaged in *nikah sirri*, stated that her marriage adhered to Islamic law, fulfilling all necessary conditions and pillars. She explained that KUA registration was impossible due to her husband's legal impediment to marry.³¹ In addition, Santi explained that the absence of a divorce certificate from the Religious Court led to their decision to perform *nikah sirri*. She prioritized adherence to Islamic law, asserting that the fulfillment of its conditions and pillars outweighed the importance of administrative documentation.³²

Candra, another *nikah sirri* practitioner, asserted that KUA registration provides state legal recognition, while Islamic law emphasizes the fulfillment of conditions and pillars, which he confirmed were met in his marriage.³³ Mila stated that she chose *nikah sirri* to avoid violating religious norms. She emphasized that fulfilling the pillars and conditions of marriage was paramount, viewing KUA registration as a mere administrative formality, not a religious validation.³⁴ KUA religious counselors confirm the persistent societal perception that marriage registration is merely a state administrative formality. Despite counseling efforts emphasizing *fiqh munakahat* and the dissemination of religious marriage provisions, this perception remains deeply ingrained.³⁵

The unofficial marriage officiant emphasized prioritizing religious validity to mitigate moral responsibility. They reasoned that refusing to officiate due to administrative barriers could lead to illicit sexual relations, resulting in shared moral transgression. State legal recognition could then be obtained through *isbat nikah*.³⁶ The Head of the KUA explained that some couples sought formal remarriage at the KUA. Upon confirming their prior union's compliance with Islamic marital requirements, remarriage was deemed redundant. The KUA then facilitated administrative registration, granting state recognition to their religiously valid marriage.³⁷ The Head of the KUA argued that *nikah sirri*

³¹Interview with KN, *Nikah Sirri* Practitioner, Tanjung Raya, June 26, 2024.

³²Interview with ST, *Nikah Sirri* Practitioner, Tanjung Raya, July 10, 2024.

³³Interview with CN, *Nikah Sirri* Practitioner, Tanjung Raya, July 24, 2024.

³⁴Interview with ML, *Nikah Sirri* Practitioner, Tanjung Raya, July 24, 2024.

³⁵Interview with KUA Religious Counselor, Tanjung Raya, July 24, 2024.

³⁶Interview with DE, Unofficial Marriage Officiant, Tanjung Raya, July 25, 2024.

³⁷Interview with the Head of the KUA in Tanjung Raya, July 25, 2024.

practitioners are not inherently lacking in legal awareness, noting that some hold tertiary degrees. However, a societal preference for immediate solutions and the religious validation of *nikah sirri* contribute to its prevalence. The perceived administrative burden of divorce certificates further motivates this practice.³⁸

Interview findings indicate that *nikah sirri* practitioners primarily base their legal reasoning on Islamic jurisprudence, often prioritizing it over state law. Perceived legal obstacles, such as the lengthy and expensive divorce decree process, coupled with religious beliefs, result in *nikah sirri* being rationalized as a better alternative to extramarital sexual activity.

Socio-Cultural Factors Facilitating the Prevalence of *Nikah Sirri*

Nikah sirri prevalence is significantly shaped by the socio-cultural environment. Data indicates key contextual factors, including the substantial influence of religious scholars and the region's strong religiosity. Religious authorities in Tanjung Raya Subdistrict hold considerable community influence. Former KUA religious counselors, particularly those with P3NTR designation, hold significant community trust, legitimizing their *nikah sirri* officiations. Data shows two individuals act as officiants, one a former P3NTR, enhancing his perceived authority. His reputation as a respected *ustadz* (religious teacher) further reinforces public confidence.³⁹

Secondly, a culture of immediacy drives a preference for expedited processes. *Nikah sirri* practitioners perceive KUA and Religious Court administrative procedures as overly complex, despite KUA's digital system implementation aimed at simplification. This preference for *nikah sirri* reflects a desire for procedural expediency and immediate results.⁴⁰

Thirdly, the absence of effective deterrents stems from the lack of state-imposed sanctions against *nikah sirri* practitioners, building a climate of societal acquiescence predicated on the perception of its conformity with Islamic doctrine. The state's failure to enact punitive measures against *nikah sirri* renders any legal prohibition effectively ineffectual. Concurrently, societal tolerance persists, rooted in the belief that the practice aligns with Islamic tenets.⁴¹

Fourthly, a lack of communal consensus impedes efforts to curtail *nikah sirri*. Indeed, traditional kinship authorities (*mamak*) and familial networks often endorse the practice. The absence of a unified agreement among stakeholders to halt *nikah sirri* is compounded by familial support for such unions. Interventions are rendered ineffective when justifications are grounded in perceived religious compliance.⁴²

³⁸Interview with the Head of the KUA, in Tanjung Raya, July 25, 2024.

³⁹Interview with the Head of the KUA, Tanjung Raya, July 25, 2024.

⁴⁰Interview with the Head of the KUA, Tanjung Raya, July 25, 2024.

⁴¹Interview with the Head of the KUA, Tanjung Raya, July 25, 2024.

⁴²Interview with the Head of the KUA, Tanjung Raya, July 25, 2024.

In corroboration, Hasrina, Bundo Kanduang of Nagari Bayua, notes that female family members often provide a protective shield for *nikah sirri*, rationalizing their support by invoking the imperative to prevent adultery and safeguard their female relatives.⁴³ Ade Wijaya, from Bamus Maninjau, reinforces this perspective, asserting that they will not obstruct *nikah sirri* among their relatives when it aligns with Islamic law and satisfies the necessary conditions and pillars. However, they explicitly prohibit any *nikah sirri* that fails to meet these religious requirements, deeming such unions invalid.⁴⁴

Strategies for Mitigating *Nikah Sirri*

Given the conflict between *nikah sirri* and both Islamic legal principles and national law, proactive measures are essential to minimize its prevalence. A focus group discussion involving religious, customary, and state authorities yielded several proposed solutions. Firstly, the implementation of *nagari*-level regulations, such as '*salingka nagari*' rules or *nagari* ordinances, is recommended to prohibit *nikah sirri* among kin. This recommendation aligns with the perspective of the Head of the KUA, who stated: "To effectively minimize or eradicate these practices, we must begin at the *nagari* level. *Nagari*-level regulations, potentially originating from the density of village customs (*Kerapatan Adat Nagari*/KAN, should explicitly prohibit *nikah sirri* among kin."⁴⁵

Despite these recommendations, the Wali Nagari of Sungai Batang acknowledged the absence of concrete *nagari*-level initiatives. The *nagari*'s lack of pre-emptive awareness necessitates proactive socialization efforts by the KUA. Currently, the *nagari* only becomes aware after *nikah sirri* has taken place. Consequently, the KUA should intensify community outreach to enhance awareness and facilitate the collaborative development of new regulations pertaining to *nikah sirri*. The absence of *nagari* action to date is attributed to the division of marital jurisdiction, with the KUA overseeing marriage and the Religious Court (PA) handling divorce.⁴⁶

Secondly, a multi-stakeholder collaborative approach, encompassing traditional, religious, and state entities, is imperative to address the prevalence of *nikah sirri*. Yasni Syukri, Bundo Kanduang of Nagari Maninjau, advocated for a coordinated effort involving the Religious Affairs Office (KUA), the Religious Court, the Nagari, and relevant religious scholars. This initiative would necessitate the convening and engagement of these scholars, coupled with the provision of guidance regarding the legal and religious proscriptions against *nikah*

⁴³Interview with HB, Bundo Kanduang of Nagari Bayua, July 26, 2024

⁴⁴Interview with AW, from Bamus Maninjau, July 26, 2024.

⁴⁵Focus Group Discussion, in Tanjung Raya, September 23, 2024.

⁴⁶Focus Group Discussion, in Tanjung Raya, September 23, 2024.

sirri.⁴⁷ Thirdly, the KUA must enhance its operational efficacy through innovative strategies. Hidayat contends that the KUA's current performance is suboptimal, citing limited counseling outreach that reaches only select communities. To broaden its impact, the KUA should adopt innovative socialization methods, including the deployment of visual aids such as banners, the dissemination of informational flyers via social media platforms, and the implementation of other strategies designed to engage all societal segments.⁴⁸

Fourthly, the elimination of fees for proceedings at the Religious Court is recommended. Fitri Yeni, Ibu Jorong Maninjau, posited that the prevalence of *nikah sirri* is largely attributable to the procedural complexities and financial burdens associated with the Religious Court, particularly given the predominantly lower to middle-income demographic of the community. Therefore, the removal of financial barriers would alleviate economic constraints and facilitate adherence to formal marriage registration through the KUA.⁴⁹

Addressing the financial aspects of proceedings at the Religious Court, the Head of the KUA clarified the availability of state-funded fee waivers for eligible cases. "The state annually allocates a budget for prodeo proceedings, enabling fee exemptions for qualified applicants. However, budget availability fluctuates throughout the year; while funds are typically accessible in early months, they are often depleted by year's end due to existing case applications. Therefore, applicants seeking prodeo assistance are advised to submit their requests at the beginning of the fiscal year."⁵⁰

Fifthly, the implementation of mobile court sessions is advocated. Addressing the community's challenges in obtaining divorce certificates, which contribute to the prevalence of *nikah sirri*, the Head of the KUA recommended the establishment of mobile court sessions. "A viable solution involves compiling data on *nikah sirri* practitioners and subsequently requesting mobile court sessions from the Religious Court. This would significantly enhance community access to judicial services." Regarding Santi's specific case, the Head of the KUA suggested, "Her husband should file a lost marriage certificate report at the police station. This police report can then be presented to the court as foundational documentation for divorce certificate processing."⁵¹

Building Legal Compliance with the Prohibition of *Nikah Sirri*

Legal compliance is contingent upon a community's legal consciousness, operating through both direct and indirect mechanisms. In advanced societies, legal consciousness directly correlates with societal legal adherence. Citizens

⁴⁷Focus Group Discussion, in Tanjung Raya, September 23, 2024.

⁴⁸Focus Group Discussion, in Tanjung Raya, September 23, 2024.

⁴⁹Focus Group Discussion, in Tanjung Raya, September 24, 2024.

⁵⁰Focus Group Discussion, in Tanjung Raya, September 24, 2024.

⁵¹Focus Group Discussion, in Tanjung Raya, September 24, 2024.

conform to legal norms due to a conscious recognition of the law's necessity, its benevolent intent, and its efficacy in establishing a just and equitable societal order. Conversely, in traditional societies, legal consciousness exerts an indirect influence on legal compliance. Compliance stems not from an intrinsic belief in the law's merits or necessity, but rather from deference to authoritative figures—formal or informal leaders—or adherence to religious or belief-based directives. Consequently, in such instances of indirect influence, legal consciousness manifests primarily as an inclination to obey leaders, religious doctrines, and belief systems.⁵²

There are several factors that cause people to obey the law, namely:

1. Compliance: Compliance based on the expectation of a reward and the effort to avoid punishment that may be imposed if someone violates legal provisions. Strict supervision of these legal rules.
2. Identification: Occurs when compliance with legal rules is not due to their intrinsic value, but rather to maintain group membership and have good relations with those authorized to apply these legal rules.
3. Internalization: A person complies with legal rules because intrinsically this compliance has a reward. Its content is in accordance with the values of the person concerned.
4. Interests of citizens that are guaranteed by the existing legal framework.⁵³

The practice of *nikah sirri* in Indonesia, including in Tanjung Raya Subdistrict, often raises controversy due to its unregistered nature and frequent performance in private. In the context of Islamic law, although *nikah sirri* is considered valid if it fulfills the pillars and conditions, such as the presence of a guardian, witnesses, and *ijab kabul*, its unregistered status at the KUA makes it problematic from a state legal perspective. Based on Article 23 paragraph (1) of the Compilation of Islamic Law (KHI), a judge guardian can only replace a *nasab* guardian if there is no valid *nasab* guardian, their whereabouts are unknown, or they are unable to attend. This shows that the existence of a *nasab* guardian has an irreplaceable urgency in marriage, according to the order stipulated by the KHI, starting from the father to male relatives in a direct line upwards.

In Tanjung Raya, *nikah sirri* practices are discernible in two distinct categories. The first encompasses marriages that adhere to the essential pillars and conditions of Islamic law namely, the presence of a *nasab* guardian, witnesses, and the performance of *ijab kabul* yet remain unregistered with the KUA. While deemed valid under Islamic jurisprudence, these marriages lack state

⁵²Ellya Rosana, "Kepatuhan Hukum Sebagai Wujud Kesadaran Hukum Masyarakat," *Jurnal Teropong Aspirasi Politik Islam* 10, No. 1 (2014).

⁵³Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) termasuk Interpretasi Undang-Undang (Legisprudence)*, (Jakarta: Kencana, 2010), p. 347-348.

administrative legality. Conversely, the second category involves violations of the pillars and conditions of Islamic law, such as a *wali nasab* who does not approve of the marriage, leading to the transfer of the guardian's role without a valid reason. In this case, *nikah sirri* is considered invalid according to the hadith of Prophet Muhammad PBUH, "Any woman who marries without the permission of her guardian, her marriage is invalid." (Narrated by Aisyah RA)

From the perspective of legal awareness among the community of Tanjung Raya Subdistrict, there is recognition of the importance of marriage registration as an effort to provide legal protection for couples and their children. However, administrative obstacles, such as processes that are considered complicated or impractical, often become the reason why people prefer the *nikah sirri* route. This choice is often reinforced by the views of local *ulama* (religious scholars) who provide justification that *nikah sirri* is in accordance with Islamic law. *Ulama*, as religious authorities, play a central role in shaping the legal perceptions of the community, so that compliance with religious rules tends to be stronger than compliance with formal law.

As a state governed by the rule of law, institutions such as the Religious Court and the Religious Affairs Office (KUA), alongside the *ulama*, have actively disseminated information regarding the detrimental effects of *nikah sirri* on the rights of women and children. Specifically, the absence of formal marriage documentation in *nikah sirri* arrangements leads to the potential abandonment of spousal and child support obligations in the event of divorce. This underscores the protective function of Islamic law towards women and children.⁵⁴

Drawing upon the theory of legal awareness, community awareness of the law can be evaluated through three key components: legal knowledge, legal attitudes, and legal behavior. In the case of the Tanjung Raya community, a demonstrable level of legal knowledge exists. They recognize the protective function of marriage registration for the rights of spouses and children within the marital institution. While exhibiting respect for formal legal statutes, their practical application reveals a prioritization of religious law, as interpreted and disseminated by the *ulama*. This dynamic underscore a tension between state legal frameworks and locally entrenched socio-religious values.

Moreover, the theory of legal awareness posits that societal recognition of legal norms does not invariably lead to complete adherence. In Tanjung Raya, the acknowledged significance of marriage registration frequently conflicts with prevailing socio-religious values. Socio-environmental determinants, particularly the profound trust vested in religious scholars, exert a dominant influence on community legal conduct. As spiritual authorities, these scholars are perceived as possessing the legitimacy to validate matrimonial practices, including *nikah sirri*,

⁵⁴ Fajri M Kasim, et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022).

thereby prompting community reliance on their directives over formal government regulations.

Furthermore, socio-cultural determinants significantly shape community legal awareness. The predominantly religious demographic of Tanjung Raya accords the *ulama* a position of profound respect. These *ulama* serve not only as exemplars of religious practice but also as primary arbiters in legal matters, including marital disputes. This aligns with the understanding that legal norms are influenced not only by formal legal codes but also by social legitimacy derived from community faith in religious authorities.

In detail, administrative obstacles are the biggest challenge in integrating community legal awareness with compliance with formal law. The marriage registration process involving bureaucracy is often considered burdensome, especially for rural communities with limited access to legal services. On the other hand, the belief that *nikah sirri* already meets the requirements of Islamic law makes people feel that there is no need to follow formal registration rules. This creates a gap between the recognition and implementation of law at the community level.

Conversely, the Indonesian government has pursued enhancements to Islamic family law through reforms in Islamic marriage administration, overseen by the Ministry of Religious Affairs and the Religious Affairs Offices (KUA). While top-down administrative reforms have demonstrated limited efficacy in bureaucratic transformation within Islamic law, a bottom-up approach, characterized by robust and innovative leadership at the individual KUA level, has proven more effective. Nevertheless, persistent challenges remain, including a lack of systemic consistency and the uneven success of reform initiatives across all KUAs nationwide.⁵⁵

It is further posited that legally solemnized marriages, formalized through administrative registration, constitute a crucial safeguard for the rights of women and children. This protection encompasses, for instance, the prevention of spousal sexual violence and domestic abuse (*Kekerasan Dalam Rumah Tangga/KDRT*). Furthermore, registered marriages ensure the future security of women and children by providing access to essential documentation, such as Family Cards and Birth Certificates, which are prerequisites for educational opportunities, scholarships, and various other necessities.⁵⁶

Consequently, enhancing legal awareness and compliance necessitates a collaborative strategy. Governmental agencies, in conjunction with religious and customary authorities, should implement educational programs that emphasize

⁵⁵Ahmad Tholabi Kharlie, et al., "Reforming Islamic Marriage Bureaucracy in Indonesia: Approaches and Impacts," *al-Jamiah* 59, No. 2 (2021).

⁵⁶Mulida Hayati and Nuraliah Ali, "Husband's Sexual Violence: Protection Rights for Wives in Terms of Islamic and Indonesian State Law," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, No. 1 (2021).

marriage registration as both an administrative requirement and a vital legal safeguard for all parties. These programs should emphasize that compliance with formal law does not contradict religious values, but rather aligns with the objectives of Islamic law to protect individual rights and strengthen the institution of marriage.

Conclusion

This study reveals several key findings concerning the practice of *nikah sirri* within Tanjung Raya Subdistrict. Primarily, *nikah sirri* in this area manifests in two distinct forms: marriages invalidated by both religious and state law, and those recognized solely under religious principles. Notably, the latter predominates. A primary driver for this preference is the perceived administrative burden associated with obtaining a divorce certificate, which is often considered arduous, complex, and protracted. Consequently, individuals opt for *nikah sirri* as a more expedient alternative. Further, the legal reasoning employed by those engaging in *nikah sirri* is fundamentally grounded in their understanding of Islamic jurisprudence. They posit that fulfillment of the requisite religious pillars and conditions renders the marriage valid, perceiving KUA registration as a mere administrative procedure lacking bearing on its religious validity. Finally, the socio-cultural fabric of the community plays a substantial role in sustaining the practice of *nikah sirri*. Several factors contribute to the persistence of *nikah sirri*, including the strong influence of *ulama* as Islamic legal authorities, the religious characteristics of the region, a culture of expediency that prioritizes immediate solutions over legal adherence, weak law enforcement, and community attitudes that exhibit tolerance or even active support for these practices. Therefore, legal compliance is only possible through a collective action, involving both policymakers and the community, to prohibit *nikah sirri* practices. This includes drafting specific regulations at the *nagari* level, encouraging collective case submissions to the court, innovation from the KUA, and simplifying administrative processes at the Religious Court, especially in terms of processing fees.

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