

Kyai, Secret Married and Social Legitimacy: Marriage Practices in Rembang, Pasuruan, East Java

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Received: 08/04/2025

Revised: 26/05/2025

Accepted: 29/06/2025

Abstract

This article examines the practice of secret marriage (*nikah siri*) in Pekoren Village, Rembang District, Pasuruan Regency, East Java, with a focus on the central role of the *kyai* (Islamic cleric) in legitimizing the practice. Using a qualitative approach and ethnographic methods, this study explores how local religious authority constructs, negotiates, and sustains social legitimacy for marriages that are not legally recognized by the state. The study finds that the authority of the *kyai* is neither singular nor absolute, but shaped through complex social, symbolic, and economic relationships. Secret marriage (*nikah siri*) occurs in various contexts, including late-life marriages, suspended marriages due to age restrictions, and polygamous marriages without official permission. The *kyai* serves as a mediator between religious norms and state legal pressures, offering religious legitimacy when the formal legal system is perceived as inadequate. This article shows that state law and local norms intersect through a space of compromise maintained by cultural-religious authority. Drawing on Khaled Abou El Fadl's theory of authority and Max Weber's theory of social action, the article underscores the importance of understanding legal pluralism and social authority in grassroots family law practices in Indonesia.

Keywords

Secret marriage, *Kyai's authority*, Social legitimacy, Legal Pluralism, Islamic Marriage Law.

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1. INTRODUCTION

The practice of marriage outside state registration or unregistered marriage is still an essential part of the social reality in various rural Muslim communities in Indonesia (Gavin W. Jones et al., 2009). This phenomenon occurs for various reasons, such as the age limit for marriage, economic limitations, complex social relations, or specific social statuses such as widows and widowers (Fajri & Novira, 2023; Horii & Wirastri, 2022; Rochman Firdian, 2022). In practice, unregistered marriage is carried out as a form of marriage that is considered valid according to religion and has social legitimacy, regardless of whether the marriage is registered or not (Oktarina, 2022). This situation shows that society is reorganizing norms, life needs, and moral authority outside the formal legal framework. One pattern that continues to recur in various regions is the involvement of religious figures—especially *kiai*—in mediating, guiding, and legitimizing this practice. Therefore, the relationship between religious authority, social practices, and the marriage registration system is an important theme to be understood further within the framework of family law pluralism in Indonesia.

The literature on unregistered marriage in Indonesia can at least be mapped into four major themes. *First* is the *kiai's* authority and his role in non-formal marriage, which shows how the *kiai* acts as an intermediary, leader of the contract, and source of moral legitimacy in the village community



(Alfarisi, 2018a, 2018b; Muzakki et al., 2024; Rozak & Akbar, 2023). This position makes people feel legitimate and able to conduct religious marriages (sirri) even though they are not registered with the state. *Second*, socio-legal negotiations and administrative consequences, such as marriage confirmation, child registration, and inheritance and citizenship rights, show how the kiai and the community adjust to their interests, which tend not to be accommodated and seem to clash between religious norms and state law (Fakhria et al., 2024; Fauzi, 2023; Sukiati et al., 2024). *Third*, contextual variations between regions, which emphasize that the role of the kiai is not uniform, where it is greatly influenced by the social and historical configuration in each village, such as in Pekoren, Kubu Raya, and Cirebon (Baihaqi et al., 2024; Farabi, 2020). *Fourth*, community perceptions of secret marriage, which include symbolic acceptance of "kiai marriages" but the minimal exploration of women's voices, first wives in polygamy, or the younger generation (Farabi, 2020).

Although these studies have shown that kyai play a decisive role in shaping community acceptance and resistance to state law, the dominance of the kiai is now weakening along with increasing legal and bureaucratic pressure. In addition, these studies focus more on the dominant role of the kyai in shaping social acceptance of unregistered marriage, most of which focus on the construction of authority from the perspective of the kyai or institutional structure. The dynamics of the legitimacy of informal marriage are also primarily determined by how community actors—especially women, young couples, and unregistered families—experience, negotiate and rationalize the practice in everyday life. This aspect of micro expertise has not been systematically touched upon in the existing literature. As a result, there is a gap between the authority narrative from above and the complex reality at the grassroots level, especially in the context of villages facing increasing formal/legal and bureaucratic pressures.

This paper aims to complement previous studies by examining in depth how the social legitimacy of unregistered marriage is formed, negotiated, and implemented through the role of the kyai at the community level. By taking an ethnographic study in Pekoren Village, Rembang District, Pasuruan Regency, this paper attempts to capture the micro-dynamics between religious authority, community response, and changes in legal norms in unregistered marriage. In line with that, several questions can be formulated: *first*, how is the role of the kiai in the practice of unregistered marriage represented and implemented in the community? *Second*, how are forms of social and religious legitimacy constructed in unregistered marriage? *Third*, how do the experiences of couples and families who undergo unregistered marriage reflect the relationship between religious norms, social pressure, and state law? This paper shows three main things: (1) the authority of the kyai is not singular but is formed through a complex relationship between symbols, needs, and social negotiations; (2) the legitimacy of unregistered marriage is implemented through a dynamic pattern of religious interpretation at the community level; and (3) the tension between state law and local norms creates a space for compromise that is maintained through cultural-religious authority.

This paper starts with three main assumptions. *First*, the practice of unregistered marriage cannot be understood solely as a violation of the law but rather as a complex interaction between religious norms, social needs, and the absence of state protection felt by the community. *Second*, the legitimacy of unregistered marriage is carried out through the authority of the kyai, which is not absolute but is formed through social, symbolic, and economic relations that change over time. *Third*, negotiations over the legal and moral status of this marriage occur at the official discourse level and take place concretely in everyday life—through the practices, language, and symbols carried out by the community. This paper presents a new understanding of how legal pluralism is lived out on a micro level in the context of relations between society, religion, and the state.

2. METHOD

This study employs a qualitative approach with ethnographic methods to deeply examine social interactions, cultural values, and the role of religious authority in the local context. Data was collected

through participant observation, in-depth interviews, and document analysis. The researcher directly engaged in the daily life of the Pekoren community for a specific period to observe the process of secret marriage or unregistered marriage, including *walimah* (wedding) rituals, interactions with *kyai* (Islamic clerics), and community responses—focusing on everyday practices and religious symbols that legitimize informal marriages.

Semi-structured interviews were conducted with some informants, including: Religious leaders (*kyai, ustadz, modin*) to understand their role in legitimizing secret marriage; Individuals involved in secret marriage (young couples, elderly couples, and cross-regional couples) explore their motivations and lived experiences; Community members to identify social perceptions. The data was analysed interactively through: Data reduction, categorizing findings based on themes: *kyai* authority, social legitimacy, and tensions between state and religious law. Triangulation, comparing results from observations, interviews, and documents to ensure validity. Contextual interpretation using Khaled Abou El Fadl's authority theory (*being in authority vs. being an authority*) and Max Weber's social action theory (*value-rational action*).

3. FINDINGS AND DISCUSSION

3.1. The Practice of Secret Married in The Pekoren Community

3.1.1. Early Marriage

In Islamic law, there is no explicit provision regarding the minimum age for a man or woman to marry. The classical Islamic jurisprudence texts (*kutub al-fiqh*), commonly referred to by Indonesian Muslims, emphasize that a person's maturity is marked by reaching *baligh* (puberty). The concept of *baligh* is used as a benchmark for legal competence and as a basis for imposing religious obligations (*taklif*) (Mafaid, 2020). Jurists (*fuqaha*) differ in their opinions concerning the exact age at which a person reaches puberty. However, it is generally agreed that a male reaches *baligh* upon experiencing nocturnal emission, and a female upon the onset of menstruation (Al-Sha>bu>ni, 1999:135). Thus, one who has reached *baligh* is deemed mature according to Islamic law and, therefore, eligible for marriage.

In contrast to Islamic law, Indonesia's Marriage Law explicitly sets the minimum age for prospective brides and grooms at 19 years, as stipulated in Article 7 of Law No. 16 of 2019, which amends Law No. 1 of 1974. This age limit is determined based on considerations of biological and psychological maturity (Ilma, 2020). Medically, the reproductive organs of females under 19 are considered unready for pregnancy and childbirth. A woman's reproductive system is considered ideal for childbearing only after the age of 20. Psychologically, girls under 19 are generally still in an unstable emotional state and are not yet mentally prepared for the responsibilities of marital life. Hence, the principle of maturity in the Marriage Law emphasizes the importance of the couple's physical and mental readiness to shoulder the responsibilities of family life (Anshori 2011: 29).

According to information gathered from the Modin (village religious affairs assistant) of Pekoren Village, unregistered (*siri*) marriages due to underage status were still occurring in 2024. One such case involved SY, an 18-year-old male from Dusun Krian, Pekoren, and YN, a 25-year-old woman from Bangil. Although YN met the legal age requirement, SY had not yet reached the minimum age prescribed by law. Consequently, their marriage could not be officially registered with the Office of Religious Affairs (KUA) without a dispensation letter from the Religious Court.

The close relationship between SY and YN caused unease in the community. YN often visited SY's house despite not yet being married. It raised concerns about possible violations of religious and social norms, particularly the risk of *zina* (illicit sexual relations). In a community like Pekoren that upholds religious values, such a relationship was considered inappropriate and urgently needed religious legitimization. As a result, a *siri* marriage ceremony was conducted to calm public anxiety.

The Modin of Pekoren, after obtaining permission from the village head, officiated the marriage informally (*siri*) while simultaneously preparing the administrative documents and the request for a marriage dispensation. Since all the religious prerequisites and conditions for marriage were fulfilled, the marriage contract (*akad nikah*) was performed on January 8, 2024. The Modin served as the marriage

officialant ('āqid), while the village head and Ustaz AN acted as witnesses. Following the ceremony, a wedding reception (walimah) was held, attended by approximately 50 guests. The event began at 07:30 AM with the recitation of the maulid (praise of the Prophet), followed by the marriage contract ceremony.

The marriage dispensation application was submitted to the Religious Court with assistance from the Modin. During a single hearing session, the judge requested information regarding SY's employment and income, including a salary slip, to verify his financial capability. The dispensation letter was issued a week later, allowing the couple to register their marriage at the KUA officially. The formal marriage registration and ceremony were conducted on March 3, 2024, rendering the marriage legally recognized by the state.

Similar cases have been reported in other villages in the Rembang District. According to several Modin, siri marriages are still practiced when one of the prospective spouses is within three months of reaching the legal age threshold. As long as the administrative process is ongoing, the religious marriage can be performed in advance. Once the legal age is reached, formal registration at the KUA follows.

In this context, the Modin plays a strategic mediator between community needs and state policy. As P3N (Assistant Marriage Registrar), the Modin knows administrative requirements and Islamic legal principles and maintains close relationships with KUA officials. The Modin mediates between two interests: (1) the desire of parents to marry off their child and (2) the KUA's legal obligation to enforce the minimum age requirement stipulated by law.

Fauzi Latif refers to the Modin as a "level-street bureaucrat" due to his strategic position in society (Fauzi, 2019). On the one hand, Modin is perceived as a representative of religious authority due to his expertise in Islamic law; on the other, he acts as an administrative liaison to the state apparatus. When the community faces marriage-related issues, the Modin becomes a key figure in harmonizing religious norms and state law.

The marriage between SY and YN, which could not be formally registered due to age restrictions, is classified as a *kawin gantung* (suspended marriage, a married couple whose time to live together is postponed until a specified age limit is called a hanging marriage) (Sudarsono 1999: 261). According to Kyai MD, such practices are standard in the Pekoren community (MD, personal communication, 2023). *Kawin gantung* refers to a situation where a couple marries according to religious law, but formal registration is postponed until legal age requirements are met. Similar practices are found in regions such as Tangerang, Tasikmalaya, and Cirebon and, according to Datilah, have even become part of local tradition (Datilah and Bastian, 2022). Research by Benedicta et al. in Sukabumi, West Lombok, and Rembang found that early marriage poses serious health, economic, and social risks, including an increased likelihood of divorce due to marital instability.

The community of Pekoren tends to accept *kawin gantung* as long as there is a commitment to official marriage registration once the age requirement is fulfilled. The practice is not considered socially deviant as long as it remains within the bounds of religious values. In several villages—Oro-Oro Ombo Kulon, Mojoparon, Kalisat, and Siar—the Modin even facilitates *kawin gantung* arrangements. One Modin in Rembang advised couples who marry siri due to age constraints to refrain from marital relations before marriage is legally registered at the KUA. It is crucial to prevent pregnancies from occurring before official registration. However, if the woman is already pregnant at registration, the couple must submit a marriage validation request (*isbat nikah*) to the Religious Court.

3.1.2. Late-Life Marriage

The loss of a spouse in old age often triggers emotional distress, leading to anxiety and a profound sense of loneliness. Elderly widowers and widows frequently face challenges both emotionally and practically, particularly if they live far from their children, who are expected to provide care and companionship. In such situations, remarriage becomes a rational alternative to forming a new family unit that offers mutual support and comfort (Septiningsih & Na'imah, 2012). However, in a society where older people are increasingly marginalized for being perceived as unproductive, their roles and

contributions are often diminished.

Within the paternalistic cultural context of Javanese society, older men who lose their wives commonly struggle to live independently. The absence of domestic services—such as meal preparation, laundry, and ironing—makes them highly dependent on having a new spouse. The presence of a new wife not only complements daily activities but also restores a sense of meaning in life, positively affecting psychological stability. Nonetheless, since the new spouse often comes from a different background and life experience, mutual adjustment remains a crucial aspect of late-life marriage (Yapianto, n.d.).

One such case of unregistered marriage in old age involved LS and RM, as recounted by Ustadz RS (U. RS, personal communication, June 17, 2023). Both had long lived as widowers and widows and eventually decided to marry in January 2021. LS had lost his wife in 2005, and his two daughters were living with their husbands—one in Rembang and the other in Lampung. LS had been living alone in his home in Pekoren for the past four years. Meanwhile, RM had been widowed for six years and alternated between living with her children. Their closeness began with light-hearted jokes from RM, such as, "*Kene tak dangne piye?*" ("Shall I cook some rice for you?"), which gradually developed into more intimate communication and a mutual desire to marry.

The marriage ceremony (*akad nikah*) was conducted in a modest manner, accompanied by a *walimah* (wedding feast) attended by approximately 25 neighbors. The event began after the Maghrib prayer with the recitation of *maulid zibā'* and was followed by the marriage contract. As RM did not have a legal guardian (*wali nikah*), the community requested Ustadz RD to act as her guardian. The guests present also served as witnesses. The village *modin* (religious affairs officer) did not attend the ceremony to avoid the impression that he endorsed the practice of *nikah siri* (unregistered marriage). Nevertheless, the marriage received support from the local neighborhood leaders (*RT* and *RW*) and the surrounding community.

This marriage was not intended for procreation, as both individuals were no longer biologically reproductive. The primary motivation was the need for companionship—a partner to talk to and share emotional experiences with. To this day, their household life remains harmonious and without significant issues.

A similar story occurred between DN and PN. Having lost his wife, DN's two daughters now lived with their respective husbands outside of Pekoren. His loneliness and sense of emptiness, especially when returning from work to an empty house with no food or drink prepared, motivated him to remarry. PN, a widow with a son in his third year of senior high school, also needed a life partner. She earned a living by selling snacks such as fried bananas, tofu, and 'peyek' (crackers) in local stalls. As a widow bearing sole responsibility for her child, she viewed remarriage as a way to ease the burden of life. She hoped her new husband would provide both material support and emotional companionship. Their marriage was officiated religiously by a local kyai, but it was not officially registered at the Office of Religious Affairs (KUA). As in the previous case, the ceremony was accompanied by a *walimah* attended by around 50 people. The event occurred after the 'Ishā' prayer, beginning with *shalawat* (praise of the Prophet), and was attended by community leaders and residents (Modin. Desa Pekoren, personal communication, July 24, 2023).

Loneliness among the elderly is a common psychological concern, exacerbated by the fact that many older individuals no longer have dependent children, and their engagement in external activities decreases significantly. Many simply stay at home, left behind by children pursuing education or already married. (Septiningsih & Na'imah, 2012, p. 9). Sudirman notes that the younger generation has displaced the social roles of the elderly, and that old age is often marked by deteriorating health and the emergence of various illnesses (Suardiman, 2016, pp. 6–15).

The marriages of LS–RM and DN–PN lack legal standing, as they were not registered with the KUA. According to the Indonesian Marriage Law, all Muslim or non-Muslim marriages must be registered with either the KUA or the Civil Registry Office to be legally valid. This registration is essential to ensure that the legal rights of the spouses, including property and inheritance rights, are

formally recognized and protected (Faishol, 2019).

The government's rationale for requiring marriage registration is to maintain order in marital affairs within society. Registration also provides legal certainty and protection for those who marry, ensuring that their union is supported by authentic evidence and can be defended in a court of law (Winarni et al., 2023). Furthermore, it helps guarantee the legitimacy of children's lineage and facilitates the fair distribution of marital assets. However, in practice, as the official body authorized to register marriages, the KUA tends to take a passive stance, recording marriages only when couples voluntarily report and submit the necessary documents in compliance with regulations.

3.1.3. Marriages Involving Couples from Outside the Region

Unregistered marriages are not limited to residents; they also involve couples from outside the area, as observed in the village of Pekoren. This phenomenon illustrates the enduring authority of the kyai (Islamic religious leader) as a primary reference point, especially when couples face obstacles within the state legal system. Such cases reflect a broader social practice in which religious law is an alternative when formal legal channels are inaccessible or overly burdensome (Nazarudin et al., n.d.).

A kyai in Pekoren recounted an experience when five people from outside Pasuruan City visited him. The group included a woman from Pandaan area, the prospective bride, and a man from Jombang, the prospective groom. They sought the assistance of Kyai AB to solemnize their secret marriage. They had learned about Kyai AB from a mutual acquaintance living in a neighbouring village, who accompanied them to Kyai's residence (K. AB, personal communication, June 14, 2023).

Upon arrival, one group member explained the purpose of their visit and introduced everyone. Kyai AB did not immediately agree to perform the marriage; instead, he first inquired about the marital status of both parties. It turned out that the bride-to-be was unmarried, while the groom-to-be was already married and had not obtained permission from his first wife for a second marriage. Nevertheless, the couple expressed a strong desire to marry to avoid engaging in a relationship prohibited by Islamic law.

They had brought with them two male witnesses and a wali (guardian), the bride's brother, as their father had passed away. Although the bride's mother was still alive, she could not attend the ceremony as she resided in Pandaan. During the process, the wali delegated the guardianship responsibility to Kyai AB to marry his sister to her chosen partner. The marriage contract (akad nikah) was conducted by Islamic law, with the presence of witnesses from the visiting group.

In another case, JZ, a Pekoren resident who lives near one of the village mosques, recalled a similar event. One day, a red car stopped in front of the mosque. A man stepped out, greeted JZ, and introduced himself as Anton (a pseudonym). Anton said he had come from Surabaya and wished to meet Kyai RS. He was accompanied by a woman named Nita (also a pseudonym), who joined him in walking to Kyai RS's house next to the mosque (M. JZ, personal communication, July 19, 2023).

Upon meeting the kyai, Anton explained that he and Nita had been in a relationship for quite some time but had not yet married. They wanted to formalize their bond through a religious marriage to avoid engaging in sinful behaviour. Kyai RS, acknowledging the sincerity of their intentions, agreed to their request. He asked JZ and another man to witness the siri marriage ceremony.

The arrival of couples from outside the region seeking kyai in Pekoren highlights the community's strong trust in local religious authority. Word-of-mouth information about kyai willing to perform religious marriages serves as a key reference for couples who struggle to access formal legal routes. According to Sharia, these couples regard the kyai as a spiritual figure with legitimate authority to resolve their issues. The kyai is the authority to ensure that the marriage contract complies with Islamic jurisprudence (fiqh), even if the marriage is not formally registered with the state. The kyai's consent is deemed sufficient for religious validity, regardless of the absence of administrative recognition (Baihaqi et al., 2024).

The primary motivation of these couples is not necessarily resistance to the state system but rather the inability to fulfill specific legal requirements, particularly the requirement for the first wife's consent

in polygamous marriages (Suryantoro, 2022). Under Indonesian law, a man wishing to take a second wife must obtain approval from his first wife and a court decision. When these legal conditions cannot be met, couples often feel they have no other choice but to pursue a religious marriage through informal channels facilitated by a kyai (Hasibuan, 2012).

In such situations, the role of the kyai as an enforcer of religious law becomes crucial. He does not merely act as a spiritual leader but also as a social mediator and a religious adjudicator, determining the legitimacy of a relationship from the perspective of Islamic law (Benisheikh et al., 2025). Couples voluntarily submit to the Kyai's authority, believing that a marriage conducted under his guidance carries moral and spiritual legitimacy, even if it lacks administrative recognition by the state.

The practice of secret marriage by couples from outside Pekoren illustrates how religious authority continues to serve as a fallback mechanism when the state's formal legal system is deemed inadequate or inaccessible. The kyai is seen as a figure capable of resolving the tension between social norms and religious obligations through a flexible, value-based approach grounded in Sharia. These events affirm that, in traditional Muslim communities, religious law retains high legitimacy, particularly in addressing private and moral matters.

3.2. Authority in the Context of Marriage Law

This study employs the theoretical framework of legal authority to analyse the structure of marriage law enforcement within Muslim communities, particularly at the grassroots level. In explaining how authority operates in marital practices, the author draws on Khaled M. Abou El Fadl's theory of authority, which distinguishes between two types: those who are in authority and those who are an authority (Fadl, 2001, p. 50). This distinction is used to understand who holds the power to administer marriage law and how legal legitimacy is accepted and practiced within society.

In general, within the context of marriage law in Muslim communities, two actors are perceived as authoritative figures: the *penghulu* (state marriage registrar) as a representative of the state and the *kiai* as a representative of religion. The state grants formal legal authority to the *penghulu* under the Office of Religious Affairs (Kantor Urusan Agama – KUA). At the same time, the community culturally and spiritually acknowledges the religious authority of Islamic scholars as legitimate adjudicators of marriage validity from a sharia perspective.

According to Harold Lasswell and Abraham Kaplan, authority is a form of social relationship in which an individual or group possesses the capacity to direct others' actions toward objectives determined by those in power (Lasswell & Kaplan, 2014, p. 77). Similarly, Van Doorn defines power as the ability to limit the range of possible actions of others to achieve the goals of authority (Gadjong, 2008, p. 70). Talcott Parsons adds that authority refers to a collective ability to ensure the fulfilment of social obligations through an organizational structure whereby sanctions may be imposed for non-compliance (Talcott, 1937, p. 17).

Legal authority is generally understood as the legitimate power to act, regulate, and make judgments within the legal sphere. This authority encompasses the power to command, compel compliance, and establish norms binding on its subjects. The obligation to obey the law can be explained through various theories, such as divine sovereignty, state sovereignty, the sovereignty of law, or social contract theory, which views law as the product of a collective societal consensus (Lili Rasjidi, 1990, p. 80). Thus, the law possesses the legitimacy to regulate and even coerce individuals to act by shared legal norms.

Marriage is a legal act that establishes mutual rights and obligations between two legal subjects. From a sociological perspective, marriage is a physical and emotional bond between a man and a woman as husband and wife, underpinned by social norms and positive law. Law No. 1 of 1974 on Marriage serves as the formal legal foundation in Indonesia, under which the implementation of Muslim marriages is delegated to the KUA. However, in Muslim communities, religious law, as derived from Islamic jurisprudence (*fiqh*), also plays a central role, where the authority to validate and officiate marriage lies with religious scholars, or ulama, regarded as the heirs of the Prophet (Hallaq, 2001).

Within Khaled M. Abou El Fadl's framework, a person in authority holds an official or structural position and possesses formal power to issue directives. Obedience to such figures stems from their legally and administratively recognized office. This type of authority is coercive, with the power to control or influence others' behaviour through rewards, threats, or penalties (Fadl, 2001, p. 51). In the Indonesian context, this corresponds to marriage registrars (*Pegawai Pencatat Nikah – PPN*) at the KUA, appointed by the state to handle all administrative and documentation aspects of marriage.

The PPN is responsible for registering marriages, from registration, verification, public announcement, and documentation to the issuance of the marriage certificate, as stipulated in Regulation of the Minister of Religious Affairs No. 19 of 2020. If a marriage is conducted without the presence of a PPN for registration, it is considered invalid under state law and lacks legal force. Couples who marry without formal registration will not receive a marriage certificate and are not legally protected in disputes such as divorce or inheritance claims.

Conversely, a person who is an authority refers to an individual who is obeyed due to their intellectual or spiritual credibility. Public compliance is not coerced but arises from trust in the individual's expertise and specialized religious knowledge. This type of authority is persuasive, as it influences and guides public behaviour or belief through credibility and normative trust. In religious law, such authority is embodied by *ulama* or *kiai*.

Religious leaders are regarded as having deep mastery of Islamic law and are looked to by the community for determining the spiritual validity of a marriage. The public recognition of their knowledge and competence forms the basis of their authority. In practice, communities entrust the performance of the marriage contract (*akad nikah*) to these figures, believing that they ensure the marriage's validity under Islamic law. In *Pekoren*, for instance, *kyai* or *ustadz* play a highly dominant role as authorities. Almost every hamlet in the village has a religious leader who is consulted for officiating marriage contracts.

Couples who marry without the presence of a *penghulu* from the KUA often rely solely on religious leaders to officiate the marriage. These figures act as guardians (*wali*) and witnesses during the marriage ceremony. Such marriages are called secret marriages because the state does not officially record them. According to Islamic jurisprudence, official documentation is not a prerequisite for the validity of a marriage. Therefore, despite the absence of administrative registration, these marriages are still regarded as religiously valid.

In the social context of *Pekoren*, cases have been observed where secret marriages are performed without involving the PPN and thus cannot be registered at the KUA. The marriage contract (*akad nikah*) is led by a local religious figure and witnessed by community members. From the standpoint of state law, however, a PPN and official registration are prerequisites for legal recognition of a marriage (Ali, 2012, p. 26). The state only acknowledges marriages documented with a marriage certificate issued by the KUA (Manan, 2006, p. 17). State law stipulates that marriages not registered at the KUA do not possess legal force (Nuruddin & Tarigan, 2004, p. 123). Consequently, in legal disputes, such couples are not entitled to protection under state law.

3.3. The Legitimacy of Marriage in the View of the *Pekoren* Community

Law No. 1 of 1974 on Marriage, Article 2 paragraph (1), states that a marriage is considered valid if it is conducted according to the religious laws of the respective parties. This clause affirms that the legality of a marriage depends on its conformity with the religious beliefs and teachings of the individuals involved. Furthermore, paragraph (2) of the same article stipulates that the prevailing legal regulations must register every marriage (Fauzan & Fata, 2018).

There is a divergence of opinion among legal scholars regarding the relationship between these two paragraphs. Some argue that a marriage deemed valid according to religious law is automatically valid under state law, with registration serving merely as an administrative matter related to civil records. Others contend that registration constitutes one of the essential requirements for a marriage to be legally recognized within the national legal system.

Amid these differing interpretations, Muslim communities, including those in Pekoren, practice two models of marriage: one that is formally registered according to state law and another conducted solely according to religious law without official registration—commonly referred to as secret marriage.

The ambiguity in Article 2 of the Marriage Law creates space for the social legitimization of secret marriage (Irfan, 2017). Those who engage in unregistered marriages are generally untroubled by their legal status, as the union is already considered valid under Islamic law. They may petition the Religious Court through a marriage legalization hearing (*isbat nikah*) to obtain state recognition (Diab, 2018). During the hearing, judges verify the validity of the marriage contract based on testimony from the couple and witnesses. If the marriage is proven valid under Islamic law, the court may affirm its legitimacy in the eyes of the state.

According to judges at the Bangil Religious Court, secret marriage is considered normatively valid from an Islamic legal perspective, as it fulfills the essential elements and conditions of marriage, such as the presence of the bride and groom, a guardian (*wali*), two witnesses, and the marriage contract (*ijab-qabul*) (H. F. PA Bangil, personal communication, June 7, 2023; H. R. PA Bangil, personal communication, June 15, 2023). However, because such marriages are not officially registered at the Office of Religious Affairs (*KUA*), they do not result in a marriage certificate recognized by the state. Consequently, couples in unregistered marriages lack complete legal protection, particularly regarding the proof of marital status, inheritance rights, guardianship over children, and other legal claims requiring official documentation. It creates legal vulnerability, especially for women and children, as the state cannot guarantee their civil rights in the absence of lawful proof. Therefore, although religiously valid, secret marriage carries juridical risks due to its lack of formal recognition by the state.

From an Islamic legal perspective, a valid marriage serves to transform a relationship between a man and a woman from being religiously forbidden (*haram*) to permissible (*halal*). This transformation is based on the principle that marriage is a sacred bond legitimizing intimate relations between spouses. To be deemed valid, a marriage must fulfill its essential elements (*rukun*), such as the presence of the bride and groom, a guardian, two witnesses, the offer and acceptance (*ijab-qabul*), and a dowry (*mahar*), and be free from prohibitions such as close kinship (*mahram*) or waiting periods (*iddah*). If any of these conditions are not met, the marriage is invalid, and any intimate relations occurring outside this bond are classified as *zina* (adultery) according to Islamic jurisprudence (*fiqh*).

The majority of Pekoren residents understand that a marriage meeting the requirements outlined in *fiqh* is religiously valid. Kyai AB asserted that the secret marriage remains valid as long as it fulfills the fundamental requirements of Islamic marriage, namely, the presence of the bride and groom, a *wali*, two male witnesses, and a correctly pronounced *ijab-qabul*. This view is also shared by Kyai SA and Kyai MD, who emphasize that the validity of a marriage in Islam is determined solely by fulfilling its conditions and pillars. Although state registration is not a condition of validity, these religious leaders still recommend registering the marriage at the *KUA* for administrative purposes and legal protection.

Most residents of Pekoren, including local figures such as Sutrisno and Satimin, believe that a marriage conducted by classical Islamic jurisprudence is valid. Their understanding aligns with the *kyai* who have acquired religious knowledge through traditional Islamic boarding schools (*pesantren*) and reference to classical *fiqh* texts.

However, among the *kyai* in Pekoren, there are differing views regarding the validity of *nikah siri* involving couples outside the Pasuruan region. These differences center on the presence and consent of a *wali*. The marriage is considered valid if a couple arrives in Pekoren with their *wali* or proper authorization. However, if the couple arrives without a *wali* or adequate consent, opinions diverge.

Some *kyais* maintain that such marriages are still valid, referring to the Hanafi school of thought. The Hanafi *madhhab* allows an adult, sane, and free woman to contract her marriage or authorize someone other than her *wali* to do so, as long as the marriage is consensual and the groom is compatible (*kufu'*) (Al-Syarkhasiy, 1989, p. 5). This opinion is based on the hadith "*Al-ayyim ahaqqu binafsiha min waliyyiha*" (a previously married woman has more right over herself than her guardian). Imam Abu Hanifah and Abu Yusuf, as cited in *Fath al-Qadīr*, hold that a woman, whether previously married or a

virgin, can validly enter into a marriage contract without a *wali* if she meets the criteria of maturity, reason, and independence (Al-Hammam, 1984, p. 245).

In contrast, others argue that a *nikah siri* without a *wali* is invalid, based on the Shafi'i school of thought, which requires a guardian as an essential element of the marriage contract (Syafi'i, 1990, p. 13). According to the Shafi'i *madhhab*, the *wali* must come from the woman's lineage and cannot be arbitrarily replaced except under legally permissible circumstances. Gus ZK criticized the *kyai* who acts as a substitute *wali* without proper authorization, suggesting that such actions reflect a misunderstanding of *fiqh*. He further criticized *nikah siri* involving outsiders, implying that some *kyai* may be financially motivated by gifts or fees from the groom (U. ZK, personal communication, July 5, 2023).

Nikah Siri, which involves elderly widows and widowers, is generally accepted by the Pekoren community. These marriages are conducted openly, attended by neighbors, and often accompanied by a modest wedding feast (*walimah*). In this context, the community does not object to the absence of KUA registration, as the marriage is deemed legitimate by both religious and social norms. The village *modin* (religious officer) in Pekoren knows these practices but refrains from officiating such marriages due to his official role as a KUA representative bound by formal regulations. Officiating a marriage without proper registration could result in disciplinary action from superiors at the Rembang KUA office (M. D. Pekoren, personal communication, July 24, 2023).

In contrast to elderly couples, the Pekoren community generally disapproves of *nikah siri* among individuals of productive age. Such marriages are viewed with suspicion, often perceived as concealing ulterior motives (K. K. D. Pekoren, personal communication, July 22, 2023). Young couples are seen as having long futures ahead and, therefore, need the legal protection the state provides, including official registration (Susanti, 2016). Unregistered marriages may cause significant harm, including the absence of legally recognized evidence of marriage. As a result, such unions are not acknowledged by the state and lack legal force. The law does not protect these marriages, which are effectively considered nonexistent. Consequently, the state cannot guarantee marital status, spousal or child rights, or shared property rights arising from the marriage.

3.4. The Role of the Kyai in the Practice of Secret Marriage

In the Pekoren community, the practice of secret marriage consistently involves the central role of the *kyai* as an authoritative figure in religious affairs. The *kyai* not only fulfills a spiritual function but also plays a significant social and cultural role. Through the lens of Max Weber's theory of social action, the role of the *kyai* in the practice of secret marriage can be understood as a form of social action imbued with subjective meaning and directed toward others within the framework of societal norms.

The *kyai* serves as a guardian of local values and traditions and a decision-maker in complex social circumstances. His presence in implementing secret marriage provides religious legitimacy and symbolizes social stability and trust. In Pekoren, the *kyai* typically leads the secret marriage ceremony, offers religious counsel to the prospective couple, and ensures the marriage conforms to Islamic legal requirements. He is also frequently called upon to resolve familial disputes after marriage (Saini, 2024). This role strengthens the position of the *kyai* as both a mediator and an executor of religious law.

The involvement of the *kyai* lends moral and social legitimacy to marriages that are not officially registered with the state. From Weber's perspective, this can be classified as *instrumentally rational social action*—an action undertaken with conscious deliberation to achieve specific objectives efficiently and effectively (Bryan S, 2012). Such actions emphasize the sensible calculation of means toward ends, prioritizing logic and utility.

In performing secret marriage, the *kyai* utilizes his expertise in *fiqh* (Islamic jurisprudence) to adapt the marriage process to the couple's particular circumstances. When confronted with a situation in which the bride lacks consent from her legal guardian, the *kyai* may shift from the Shāfi'ī to the Ḥanafi school of thought to validate the marriage contract, guided by legal reasoning and the goal of preventing the couple from committing acts deemed sinful in Islam. This flexible approach reflects rational, adaptive action rather than mere textual adherence. The *kyai* assesses the socio-religious context and

offers jurisprudential solutions that are contextually relevant.

The secret marriage ceremony in Pekoren is deeply rooted in local tradition. The *walimah* (wedding feast) is an integral social event accompanying the religious rites. In this setting, the *kyai* leads activities such as reciting *ṣalawāt*, the *khutbah nikah* (marriage sermon), the *ijab-qabul* (offer and acceptance), and the closing prayer. The *kyai's* role in these rituals parallels that of an older or cultural custodian in Indigenous communities (Oktaviani & Sugitanata, 2020). Thus, secret marriage in Pekoren is a religious event and a culturally embedded social ritual, demonstrating the synergy between Islamic norms and local values upheld by the *kyai*.

Kyai in Pekoren is also sought out by couples from outside the region who are unable to marry formally at the Office of Religious Affairs (KUA)—for example, due to the lack of permission for polygamy or guardian consent (Novikawati et al., 2022). In such cases, couples opt for secret marriage officiated by a *kyai* to obtain religious legitimacy. For these individuals, a marriage contract conducted by a *kyai* offers reassurance from a religious legal standpoint and absolves them from the stigma of engaging in extramarital sex (*zinā*). Nevertheless, *kyai* generally recommends that couples later register their marriage with the KUA to secure legal protection under state law.

This behaviour reflects *voluntaristic action* as described in Talcott Parsons' theory—actions based on individual agency in selecting means to achieve goals by internalized values. The *kyai* chooses morally and religiously appropriate options, considering the social realities at hand. As an informal leader, the *kyai* derives his charisma from personal traits, religious knowledge, and often noble lineage. He is regarded as a role model and consulted on various individual and communal issues. His open, wise, and nurturing demeanour enhances his social legitimacy.

The *kyai's* status as a bearer of religious authority shapes society's moral order. He not only guides religious practice but also influences broader social dynamics. The *kyai's* decisions in secret marriage practices represent *value-rational action* in Weberian terms—actions motivated by a commitment to values regarded as inherently right by the community.

3.5. Charisma of Kyai in The Practice of Secret Marriage

In traditional Muslim communities, particularly in rural areas such as Pekoren, the *kyai* occupies a central role as a spiritual leader and a social figure endowed with significant authority. In the context of *nikah sirri* (secret marriage, unregistered marriages not recorded by the state), the charisma and social legitimacy of the *kyai* play a critical role in conferring religious and social validation upon the practice. A *kyai's* charisma is not solely derived from formal religious status but is constructed through communal recognition of their moral, spiritual, and intellectual capacities.

Max Weber describes charisma as an extraordinary quality believed to reside in an individual, allowing them to influence their followers. According to Weber, charismatic authority stems from public trust in an individual's capacity to lead based on sanctity, devotion, or exceptional personal qualities (Weber, 1947). In the context of secret marriage, the people of Pekoren place strong trust in a *kyai's* decision to officiate marriages religiously, even when the state does not formally recognize such marriages.

The *kyai's* social legitimacy in this practice stems from three main factors: religious scholarship, personal integrity, and collective community recognition. A *kyai* with a strong reputation in Islamic jurisprudence—particularly one well-versed in the diversity of legal schools (*madhhab*)—is trusted to issue accurate legal opinions (*fatwa*) tailored to specific socio-religious conditions. For instance, in cases where a bride's guardian refuses to consent, the *kyai* may invoke the more permissive Hanafi position over the stricter Shafi'i view to facilitate a marriage that remains valid in Islamic law. This flexibility highlights that a *kyai's* actions are not merely formal-legal decisions but ones based on legal rationality that adapts to the community's lived realities (Dhofier, 1982).

In practice, the community perceives the *kyai's* involvement in secret marriage as a guarantee that the marriage conforms to Islamic legal standards. In Pekoren, people often do not question the validity of a marriage if a *kyai* has officiated it. It reflects the deep symbolic and social legitimacy the *kyai* holds—

not merely as a religious authority but also as a moral guardian and enforcer of social values. The *kyai*'s role frequently includes officiating the *walimah* and other religious rituals, imbuing the secret marriage ceremony with sacred and social dimensions (Fealy & White, 2008).

Moreover, the *kyai* is a mediator in legal circumstances where the state apparatus cannot provide solutions. Couples hindered by formal legal requirements—such as obtaining permission for polygamy or parental consent—can still marry religiously with the assistance of a *kyai*. It aligns with Weber's concept of value-rational action, where decisions are driven by deeply held values rather than merely instrumental objectives. The *kyai*'s willingness to officiate such marriages illustrates his commitment to religious values while addressing unmet social needs (Weber, 1947; Burhani, 2014).

A *kyai*'s charisma is further reinforced by his inclusive social conduct, modest lifestyle, and role as a confidant for community issues. These attributes foster emotional closeness with the community, strengthening his moral legitimacy. In this sense, a *kyai*'s charisma is not solely inherited or spiritually conferred but emerges from ongoing social processes rooted in continuous interaction and service (Dhofier, 1982; van Bruinessen, 1994).

Thus, the secret marriage in Pekoren is not merely an individual religious act but a manifestation of a broader social system upheld by the figure of the *kyai*. The *kyai*'s charisma and social legitimacy act as key mediators, bridging religious norms, local traditions, and the practical needs of the community. Amid tensions between state law and religious law, the *kyai* serves as a crucial intermediary, making secret marriage valid under Islamic jurisprudence and socially and culturally accepted.

4. CONCLUSION

This study reveals that the practice of secret marriage in Pekoren Village is deeply embedded within the cultural, religious, and social dynamics of the community. Rather than being a simple legal transgression, secret marriage reflects a pluralistic legal system where state law, Islamic jurisprudence, and local traditions interact. The *kyai* plays a central role not only as a religious authority but also as a social mediator who legitimizes marriages outside the state framework. His authority is constructed relationally through charisma, symbolic power, and community trust. The practice of secret marriage occurs across diverse contexts—elderly remarriage, early marriage, and interregional unions—each revealing how local actors navigate between religious norms and legal constraints. Ultimately, secret marriage represents a site of negotiation between moral obligations and bureaucratic limitations, facilitated by the enduring influence of cultural-religious authority.

This study contributes to the theoretical discourse on legal pluralism and authority by demonstrating how informal authority structures, such as the *kyai*, mediate the interface between state law and lived religious practice. Drawing on Khaled Abou El Fadl's concept of "being in authority" versus "being an authority," the research shows that legitimacy is not solely derived from formal legal status but is often grounded in social recognition, symbolic capital, and contextual responsiveness. Furthermore, Max Weber's framework of value-rational and instrumentally rational action helps explain how actors—including *kyai* and community members—rationalize their choices within complex socio-legal terrains. The findings underscore the need to reassess top-down conceptions of legal authority by incorporating bottom-up, lived experiences in the analysis of Islamic family law in Indonesia.

Future research should explore the voices and experiences of marginalized groups more deeply—particularly women, first wives in polygamous marriages, and children of unregistered unions—to understand the full implications of secret marriage. Comparative studies across different regions in Indonesia could reveal how variations in *kyai* authority and community perceptions shape the legitimacy of unregistered marriages. Additionally, longitudinal research tracking the legal, economic, and social trajectories of couples in secret marriage could offer valuable insights into how informal religious legitimacy interacts with evolving legal and bureaucratic demands over time.

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