THE STATE PENGHULU VS THE NON-STATE PENGHULU?
The Validity and Implementing Authorities of Indonesian Marriage

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Abstract: This research gives rise to the following questions: What is a valid marriage? Who holds the authority to grant it? And how does the existing authority(s) manifest among societies? To answer these questions, this inquiry employs socio-legal method by relying on doctrinal and empirical (ethnographic) approaches. The doctrinal approach applies to the first question, and looks at how both the law and case law define a valid marriage. The ethnographic approach applies to the last two questions, and looks at the functioning of this law among society. As the result, this study reveals, *first*, that the Marriage Law utilised registration as a tool to force people to comply with the law otherwise a religious marriage would not have the force of law. An exemption applies only to marriages before the enactment of the Marriage Law which are liable for retroactive validation. Later, this procedure is extended through case laws that apply *isbath nikah* (marriage validation) retroactively even to marriages after 1974 so as to accommodate unregistered marriages that are pervasive among society. The extended use of *isbath nikah* has made registration a mere administrative matter which no longer stands as a restriction to a religious marriage. *Second*, in practice, the judges' lenient attitude toward *isbath nikah* has blurred the distinction between registered and unregistered marriages. The fluid distinction between these two provides a basis for Non-State Penghulus to exercise their authority alongside the State Penghulu. In this sense, the Non-State Penghulu appears as an alternative to the State Penghulu in validating marriage among Muslims.

Abstrak: Penelitian ini mendorong pertanyaan-pertanyaan berikut: apa yang dimaksud dengan perkawinan sah? Siapa yang berwenang menentukan keabsahan suatu perkawinan? Dan bagaimana otoritas (ragam otoritas) di bidang ini mengambil bentuk di tengah masyarakat. Untuk menjawab pertanyaan-pertanyaan ini, penelitian ini menggunakan metode *socio legal* dengan mengandalkan pendekatan doktriner dan empiris (etnografi). Pendekatan doktriner digunakan untuk menjawab pertanyaan pertama dengan melihat baik peraturan perundang-undangan yang berlaku maupun putusan-putusan pengadilan yang terkait. Pendekatan empiris digunakan untuk menjawab dua pertanyaan lainnya dengan melihat bagaimana aturan dogmatik tersebut berfungsi di tengah masyarakat. Sebagai hasilnya, *pertama*, penelitian ini menunjukkan bahwa hukum perkawinan memenfaatan pencatatan sebagai mendium untuk memaksa masyarakat agar patuh terhadap hukum karena jika tidak maka sebuah perkawinan menjadi tidak berkekuatan hukum. Pengecualian hanya berlaku terhadap perkawinan

yang diselenggarakan sebelum Undang-Undang Perkawinan yang masih bisa disahkan secara retroaktif. Belakangan prosedur ini diperluas dalam putusan-putusan pengadilan yang memberlakukan *isbath nikah* (pengesahan perkawinan) untuk mengesahkan perkawinan tidak tercatat, termasuk perkawinan setelah 1974 guna mengakomodir perkawinan tidak tercatat yang marak di tengah masyarakat. Perluasan *isbath nikah* ini selanjutnya menjadikan pencatatan ini perkara administrasi bukan sebagai pembatas terhadap perkawinan yang dilakukan secara agama semata. *Kedua*, dalam praktik, sikap lunak hakim dalam menggunakan *isbath nikah* telah mengaburkan perbedaan antara perkawinan tercatat dengan perkawinan tidak tercatat. Hal ini selanjutnya memberikan landasan bagi Penghulu Non-Negara untuk terus berperan di samping Penghulu Negara. Dalam hal ini, Penghulu Non-Negara muncul sebagai alternatif bagi Penghulu Negara dalam mengabsahkan perkawinan secara agama di kalangan muslim.

Keywords: *Marriage Registration; Isbath Nikah; the State Penghulu; and the Non-State Penghulu.*

INTRODUCTION

The relationship between religion and State has been the subject of debate since the dawn of the modern nation-state. The emerging modern nation-state was perceived to replace traditional authorities, which had been based on a monarchy, a religion, or a combination of these two sources of legitimacy. In this sense, the modernization process was perceived to have blurred the roles of religion within a nation-state that is increasingly ruled by law. However, the roles of religion have not been disappeared completely. Instead, a religion emerges creatively to play roles in the era of the modern nation-state. For instance, a religion pops up in American's discourses on national culture and politics; Judaism becomes the foundation of Israel state; and in Indonesia, the sate recognizes the existence of six religions, i.e., Islam, Catholic, Protestant, Hinduism, Buddhism, and Confucianism, with a privilege given to Islamic religion adhered by the majority of its population.[1] Such privilege manifests in: (1). The creation of the Ministry of Religious Affairs, which, since its first establishment, has been occupied by Islamic groups;[2] (2). An exclusive application of Islamic family law and Islamic court to Muslims;[3] (3). The application of sharia bylaws in Aceh province.[4] These features

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[1]   John Richard Bowen, *Religions in Practice: An Approach to the Anthropology of Religion*, Seventh edition (London New York, NY: Routledge, 2018), 271–92.

[2]   Deliar Noer, *Administrasi Islam Di Indonesia* (Jakarta: Rajawali, 1983). See also Heru Susetyo, "Pencatatan Perkawinan Bagi Golongan Penghayat," *Jurnal Hukum & Pembangunan* 28, no. 1–3 (2017): 149–168.

[3]   Stijn Cornelis van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba" (Doctoral Thesis, The Netherland, Van Vollenhoven Institute, Faculty of Law, Leiden University, 2015); Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, ICAS Publications Series 4 (Amsterdam: Amsterdam University Press, 2010); See also Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972).

[4]   Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaii Press, 2008).

demonstrate how the Indonesian State has played an active role in regulating religious affairs, especially Islam.

The state's active role, on the one hand, serves as a strategy to compromise with the demands from Muslims, and on the other hand, as a means to impose control over Islam. This strategy has shaped the state-religion relationship from time to time.[5] The institutionalization of the Ministry of Religious Affairs, aside from being an answer to Muslims' demands, serves as a means to administer religious affairs. The institutionalization of the Islamic court serves as a solution to the Muslim's need toward an institution of qadi, and at the same time, enables the state to interfere with the Islamic judiciary.[6] The 1991 Compilation of Islamic Law and the Judicature law 7/1989 equip judges from Islamic court with a standardized reference, and this enables the state to promote a state-sanctioned *fikih*.[7] The creation of MUI aims at gaining religious authority.[8] The implementation of sharia bylaws in Aceh province aims at preventing the disintegration of this republic.[9] These approaches show the state's creativity to deal with religion by accommodating the demands from Muslims while at the same time imposing its control upon religion deeper through all these means.

These approaches started to replace traditional authority and eventually established the state's influence over traditional authorities. Unlike traditional pluralistic authorities as preserved in several religious circles, the state's interpretation of Islam offers all Indonesian Muslims a single authority. In the field of Islamic family law, a marriage is subjected to registration. Nowadays, this requirement is increasingly accepted. Many religious groups started to obligate marriage registration. A divorce, either for men or women, is made judicial and based on sufficient ground(s). Many religious groups started to perceive judicial divorce as mandatory, although some groups maintain out-of-court divorce legal. Although, on the surface, the state appears to be making compromises and giving privileges to the majority group, namely Islam, the state has successfully incorporated religious legitimacy from traditional authorities' hands into its body.

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[5]   Noer, *Administrasi Islam Di Indonesia*. See also Zainal Abidin, "Peran Penghulu Dalam Pelayanan Pernikahan Poligami Bagi Warga Negara Asing," *Jurnal Studi Islam Al-'Ulum* 2, no. 15 (2019): 95–108.

[6]   Muhamad Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942* (Jakarta: INIS, 2001).

[7]   Mark Cammack, "Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam?," *Indonesia*, no. 63 (1997): 143–168; Euis Nurlaelawati, *Modernization, Tradition and Identity. Legal Practice in the Indonesian Religious Courts* (Amsterdam: ICAS/Amsterdam University Press, 2010).

[8]   Moch Nur Ichwan, "'Ulamā', State and Politics: Majelis Ulama Indonesia After Suharto," *Islamic Law and Society* 12, no. 1 (2005): 45–72.

[9]   Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. See also Rasmianto Rasmianto, "Interrelasi Kiai, Penghulu dan Pemangku Adat Dalam Tradisi Islam Wetu Telu di Lombok," *El-HARAKAH (TERAKREDITASI)* 11, no. 2 (August 30, 2009): 138–54, https://doi.org/10.18860/el.v0i0.429.

The state continues to penetrate religious authority, and in response, many traditional authorities resist such penetration. Their resistance aims at maintaining their traditional status-quo from the state intrusion. In Islamic family law, such reaction can be traced back to the emergence of the penghulu institution institutionalized by the colonial government. At that time, according to Muhammad Hisyam, the penghulu judge experienced a dilemma, in his words *'caught between three fires'*: having to play the duties imposed by the colonial regime, maintain trust from people, and be accountable for his actions to God.[10] The penghulu judges also faced challenges from religious authorities outside the regime, which maintained authority in their respective circles. Ibn Qayim Isma'il further divided the various authorities into two categories, official ulama (*ulama pejabat*) and non-official ulama (*ulama bebas*).[11] The official ulama or penghulu was the pioneer of today's known as two distinctive state officials: one is the office of religious affairs (KUA) deals with the administration of marriage, and the other one is Islamic court judges who are in charge of judicial matters (*qadi*). However, It is not uncommon for the KUA penghulu to encounter and intersect with local authorities who exercise the same practice roles.[12] Thus, apart from the KUA Penghulu who offers a religiously registered marriage, a local authority leads a religiously unregistered marriage.

This article questions: what is a valid marriage? Who determines the validity of marriage (an implementing authority)? Suppose there is more than one actor. In that case, how do they exercise their respective roles? To answer these questions, first, this article refers to both bibliographical sources and empirical data gathered from fieldwork in Sinarrancang Village, Mundu, Cirebon, West Java. The empirical data was obtained through observations, mini-surveys, and interviews carried out in two terms of period. The first term was conducted in 2010, and the second term was conducted in 2013. Therefore, the findings presented in this article are restricted to actual practice in that period. *First*, this research found that the criteria of marriage validity are still debatable, particularly regarding registration status to the validity of a marriage. Even the recent Islamic court trend that treats

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[10] Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942*. See also Muhammad Hasbi, "Dita Milenial Dalam Moderasi Peningkatan Pelayanan Penghulu (Studi Kasus Di KUA Parindu)," *Jurnal Bimas Islam* 12, no. 2 (December 27, 2019): 233–62, https://doi.org/10.37302/jbi.v12i2.117.

[11] Ibnu Qoyim Isma'il, *Kiai Penghulu Jawa : Peranannya Di Masa Kolonial* (Bandung: Gema Insani Press, 1997). See also Muhammad ishom El-Saha, "Penghulu and Marriage Problematics of Boundary Society in Entikong and Sekayam West Kalimantan," *AHKAM : Jurnal Ilmu Syariah* 19, no. 2 (December 30, 2019), https://doi.org/10.15408/ajis.v19i2.13178.

[12] Al Farabi, "Budaya 'Kawin Kyai' Studi Terhadap Praktek Nikah Sirri Di Desa Sinarrancang, Kecamatan Mundu, Kabupaten Cirebon," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 4, no. 1 (2016): 21–56. See also Imas Emalia, "Penghulu dan Kyai di Karesidenan Cirebon Semangat Keberagamaan dan Berpolitik pada Awal Abad ke-20," *Buletin Al-Turas* 12, no. 2 (2006): 143–53, https://doi.org/10.15408/bat.v12i2.4228.

isbath nikah (retroactive validation) leniently has established 'dual validity' to Indonesian marriage among Muslims, namely state legality and religious validity. *Second*, in practice, two actors perform religious authority in the field of marriage, i.e., the state penghulu and the non-state penghulu. The state penghulu refers to the office of religious affairs (Kantor Urusan Agama), henceforth referred to here as penghulu KUA. The non-state penghulu refers to all actors besides the state penghulu, who was projected as the sole actor in administering Muslims' marriage. *Third*, this category is not employed as an absolute binary because, in practice, the non-state penghulu may appear as a mere alternative to the state penghulu.

This article tries to capture the criteria and implementing actors from a continuum perspective to avoid a binary category.[13] This perspective puts all the existing authorities on an imaginative scale starting from the non-state penghulu at the zero points and the state penghulu at the infinite endpoint. Between the two, there may be semi-state or other hybrid authorities. This perspective is necessary considering: First, concerning the criteria of a valid marriage, it is possible that at certain moments, an unregistered marriage may be registered retroactively at an Islamic court. In this sense, the strict distinction between a registered and unregistered marriage has been blurred. Thus, a marriage led by a non-state penghulu may not be the final choice and vice versa, where an out-of-court divorcee of a registered marriage may likely remarry unregistered. Second, the non-state penghulu may be the same person who is concurrently a Village (government) apparatus and the state penghulu's assistance, such as P3N. Third, the existing actors, namely the state penghulu and non-state penghulu may not in a direct contestation.

The discussion below begins with a dogmatic review of the law of marriage registration in Indonesia. It looks particularly at the status of state penghulus promoted as the sole actor in administering Muslims' marriage. This discussion is followed by a critical review of how the law of registration is debatable, especially concerning the space given to non-state penghulu. Furthermore, the discussion demonstrates how the state penghulu and non-state penghulu function and intersect one another in determining the validity of a marriage.

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[13] Continuum approach is adapted from Maria Plaat in her account on unregistered marriage and divorce in Lombok. This approach helps to avoid binary perspective that reduced the status of unregistered marriage in Indonesia into a more an informal marriage. See Maria Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, Women in Asia Series 51 (London ; New York: Routledge, Taylor & Francis Group, 2017). See also Rasmianto, "Interrelasi Kiai, Penghulu dan Pemangku Adat Dalam Tradisi Islam Wetu Telu di Lombok."

THE MARRIAGE REGISTRATION AND THE SOLE AUTHORITY OF THE STATE PENGHULU

1. The Law of Marriage Registration

The institution of marriage registration is a legacy of the colonial era, which has been preserved until now. This legacy, among others, shows the positive aspect of the colonial heritage that introduced an orderly administrative system on marriage.[14] After proclaiming independence in 1945, this institution received early attention. The Law 22/1946 concerning marriage, divorce and rujuk registration in all regions of Java and Madura. The Law 32/1954 extends the application of the 1946 law throughout Indonesia. Long before 1954, The Law 22/1946 has been implemented in Sumatera by the Emergency Decree of the Emergency Government of the Republic of Indonesia dated 14 June 1949 No. I/pdri/ka. However, under this regulation, the registration of marriage was only an administrative matter and not linked to the validity of a marriage. The issue of validity and its relation to registration first appeared in Article 2 paragraph (1) and (2) of the Marriage Law 1/1974, which reads as follows.

(1) A marriage is valid when the two parties conclude the marriage according to their religion and conviction.

(2) The parties must register their marriage according to the existing law.

Article 2 paragraph (2) of the Marriage Law 1/1974 stipulates that every marriage shall be registered. Yet, it is unclear whether the recording helps determine the validity of a marriage and thus allows a variety of interpretations to emerge.

Generally speaking, there were two interpretations, namely, the 'alternative' and 'cumulative' perspective. The first interpretation separates the first paragraph from the second paragraph and holds the view that marriage is valid if it is carried out under the law of each religion and belief. At the same time, registration is only an administrative requirement that does not have implications for the validity of a marriage. The second interpretation sees paragraph (1) and (2) as being related to each other, so they have to be fulfilled accumulatively.[15] While conservative Muslims groups generally echo the first interpretation, nationalist and modernist

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[14] Husni Rahim, *Sistem Otoritas Dan Administrasi Islam: Studi Tentang Pejabat Agama Masa Kesultanan Dan Kolonial Di Palembang* (Jakarta: Logos Wacana Ilmu, 1998); See also Muhamad Hisyam, "Potret Penghulu dalam naskah Sebuah pengalaman penelitian," *Wacana* 7, no. 2 (October 1, 2005): 129–37, https://doi.org/10.17510/wjhi.v7i2.298.

[15] M. Idris Ramulyo, *Tinjauan Beberapa Pasal Undang-Undang Nomor 1 Tahun 1974 Dari Segi Hukum Perkawinan Islam* (Jakarta: Ind-Hillco, 1986); Zedi Muttaqien and Toni Albar, "Peran Penghulu Lingkungan Dalam Proses Perkawinan Sebelum Dan Sesudah Keluarnya PP No.48 Tahun 2014 Di Lingkungan Banjar Kelurahan Banjar Kecamatan Ampenan Kota Mataram," *CIVICUS : Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (April 30, 2016): 66–76, https://doi.org/10.31764/civicus.v4i1.327.

groups usually voice the second interpretation.[16] These different interpretations resonate to the attitude of judges who sometimes have different opinions on the effect of registration on the validity of a marriage.

At first, Islamic court judges did not develop a stable corpus of case law on the status of marriage registration to the validity of a marriage. Bowen demonstrated the judges' changing attitudes in this regard. In the 1991s, they tended to perceive a registration determinant to the validity of a marriage.[17] In the 1993s, they held the opposite view by considering registration as a mere administrative requirement. In the 1995s, the judges switched back and considered marriage registration as a determining factor to the validity of a marriage. In a latter study, the judge Edi Riadi, in his doctoral thesis, confirms Bowen's views by demonstrating case law from 1991 to 2007 in the Islamic Chamber of the Supreme Court.[18] The lack of consensus among Islamic court judges on the status of registration to the validity of marriage requires a more analytical reading on Article 2 of the Marriage Law 1/1974.

To understand the status of marriage registration to the validity of a marriage, it requires an analytical reading to Article 2 of the Marriage Law 1/1974. Article 2 in paragraph one stipulates that a marriage is valid when the marriage is conducted according to the religion or conviction (beliefs) of the couple. The provision in the first paragraph raises a question on how to perceive the state's recognition of religion in determining the validity of a marriage. Given this, Pompe suggested that the recognition of religion or conviction should be read following other provisions such as controls to judicial divorce, restriction on polygamous marriage, and stricter marriage procedures among civil servants.[19] In this sense, the state's recognition of religion or conviction is limited. In other words, the state acknowledges religious provisions on marriage as long as the provisions are not in oppositions to the restrictions set by the law.

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[16] Otto Jan Michiel, *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 465.

[17] The Supreme Court Judgement Number 1948/K/PID/1991 regarding an informal polygamy and unregistered marriage. The Supreme Court argued that a valid marriage is a marriage concluded according the the Marriage Law 1/1974 and its implementing regulation 9/1975. According, a marriage shall be based on the provisions in religion and registered to the state. See Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Prenada Media, 2017), 50. See also Entus Syamsurrizal and Yani Kurnia Sari, "Peran Penghulu Terhadap Pelaksanaan Pasal 39 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan:," *Jurnal Bimas Islam* 11, no. 3 (September 30, 2018): 601–31, https://doi.org/10.37302/jbi.v11i3.64.

[18] Edi Riadi, "Dinamika Putusan Mahkamah Agung Republik Indonesia Dalam Bidang Perdata Islam" (Doctoral Thesis, Jakarta, UIN Syarif Hidayatullah, 2011).

[19] Sebastiaan Pompe, "Mixed Marriages in Indonesia: Some Comments on the Law and the Literature," *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 144, no. 2 (1988): 259–275; See also Sebastian Pompe, "A Short Note on Some Recent Developments with Regard to Mixed Marriages in Indonesia," *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 147, no. 2 (1991): 261–272.

Furthermore, the provision in the second paragraph of Article 2 of the Marriage Law 1/1974 requires that a marriage shall be registered. Accordingly, does registration stand as a restriction to the state's recognition of religion or conviction? The Marriage Law 1/1974 appears to answer 'yes' considering that registration is set as a prerequisite for a marriage to be recognised by the state law. This interpretation corresponds to the explanation number 22 on Article 49 of the Judicature Law 7/1989 that enables Islamic court judges to validate an unregistered marriage retroactively only if the marriage was concluded before the enactment of the marriage law in 1974. Although it is debatable whether registration determines the validity of a marriage, both the marriage law and the judicature law are clear stipulate that registration determines whether a marriage is legally recognised or not to the state's law. Given this, an unregistered marriage would remain unrecognised unless the couple remarries and register their marriage to the marriage registrar, i.e. the state penghulu. While the validity of a religiously unregistered marriage is debatable, the existing statutory is evident on the legality of a registered marriage.

Nevertheless, the state legality on a registered marriage—meaning that the only way for a marriage to be legally recognised is by registering this marriage in the first place—does not correspond to the reality where unregistered marriages are widespread.[20] As a result, there are many vulnerable groups, notably women and children, who are at risk of being in an unregistered marriage. In response, Islamic court judges started to validate an unregistered marriage retroactively. They extended the application of retroactive validation to marriages concluded after the passage of the Marriage Law 1/1974. In other words, they bridge the statutory law that requires a strict application of marriage registration law and the reality of the high demands for validating an unregistered marriage retroactively. Later, after the passing of the 1991 Compilation of Islamic Law, Islamic court judges even managed to bridge this gap applying *isbath nikah*, a term used in the compilation to refer to a procedure for validating a Muslims' unregistered marriage retroactively. This compilation mentioned the criteria of *isbath nikah* in Article 4 (3) consisting of:

> (a*)* In order to make a formal divorce possible; (b) If the marriage certificate is lost; (c) If there is doubt on the validity of one of the marriage conditions; (d) If the marriage was concluded before the enactment of the marriage law (this condition derives from the Religious Judicature Law 7/1989); and (e) If there are no legal barriers to the marriage according to the Marriage Law 1/1974.

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[20] Stijn Van Huis and Theresia Dyah Wirastri, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws," *Australian Journal of Asian Law* 13, no. 1 (2012): 1–17.

Given these criteria, Islamic court judges tend to treat these criteria as non-cumulative meaning that they may employ one of the existing criteria to grant an *isbath* petition.[21] With regard to the attitude of Islamic court judges on this Article, points (a) and (e) have expanded the criteria of retroactive validation to an unregistered marriage either to obtain a formal divorce or to validate a religious marriage that is not against other existing legal provisions. This trend has eventually challenged the legality of a registered marriage.

Today, an unregistered marriage can be registered after validating such marriage retroactively through *isbath nikah* in an Islamic court. Accordingly, the Islamic court has extended the application of *isbath nikah*, which was limited only to unregistered marriages before 1974, as long as the marriage is religiously valid and not against other legal restrictions, such as informal polygamy. This attitude shows Islamic court judges' discretion in sensing justice in society even though they have to turn from a strict and formalistic interpretation of *isbath nikah*.[22] Furthermore, this attitude provides space for religious authorities, notably the non-state penghulu, to maintain their authority from the state intrusion. Religious authority manifests in the following scenario: the non-state penghulus continue to provide services for organizing marriage even though the state does not recognize them, but in the future, the services they provide can be recognized by the state through *isbath nikah* mechanism. In other words, the lenient application of *isbath nikah* has blurred the distinction between registered and unregistered marriages, and this has provided a space for the non-state penghulu to operate side by side with the state penghulu whose sole role is being challenged through the lenient use of *isbath nikah*.

2.   The State *Penghulu* and the Non-State *Penghulu*

Indonesian family law, notably the Marriage Law 1/1974, aims at protecting people's rights and duties in a marriage with particular attention to women and children. In doing so, the law promotes the state penghulu as the sole actor in administering marriage registration and supervising a Muslims' marriage. To strengthen the position of the state penghulu, the government issued a regulation—the MENPAN regulation Number: PER / 62 / M.PAN / 6/2005—

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[21]   Stijn Cornelis van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba" (Doctoral Thesis, The Netherland, Van Vollenhoven Institute, Faculty of Law, Leiden University, 2015); Euis Nurlaelawati, "Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?," *Musāwa Jurnal Studi Gender Dan Islam* 12, no. 2 (July 1, 2013): 261–77, https://doi.org/10.14421/musawa.2013.122; See also Euis Nurlaelawati, *Modernization, Tradition and Identity. Legal Practice in the Indonesian Religious Courts* (Amsterdam: ICAS/Amsterdam University Press, 2010).

[22]   Muhamad Isna Wahyudi, "Judge's Discretion In Islamic Family Law: Indonesian Religious Courts Experience," *Jurnal Hukum Dan Peradilan* 3, no. 3 (2014): 203–212. See also Nurul Huda Haem, *Awas! Illegal Wedding: Dari Penghulu Liar Hingga Perselingkuhan* (Jakarta: Hikmah, 2007).

that makes the state penghulu as a 'functional' position.[23] This regulation assigns the state penghulu with the function to administer a marriage registration and supervise the implementation of a Muslim marriage. Nevertheless, these are idealised functions, and in practice, there remain many problems, such as: (1). Article 2 of the Marriage Law 1/1974 still generate different interpretations. (2). The Islamic Chamber of the Supreme Court has not developed a stable interpretation on this matter. (3). Islamic court judges started to acknowledge dual validity to Indonesian marriage through a lenient use of *isbath nikah* in case law even though they also introduced several limits to the extended use of *isbath nikah*. All these problems provide a space for alternative authorities to operate beside the state penghulu. In this sense, there are two emerging authorities: the state penghulu and the non-state penghulu.

First, the state penghulu refers to the state apparatus, which is projected as the sole actor in administering, supervising, and counselling a marriage. Article 22 in paragraph one of the MENPAN Regulation Number: PER / 62 / M.PAN / 6/2005 sets several qualifications for a prospective state penghulu. To be a state penghulu, which applies only to men, someone has: (a). To have a higher education degree, at least a bachelor degree or diploma IV majoring in Islamic studies. (b). To be admitted as a civil servant (PNS) with a minimum rank of Penata Muda-Golongan III/c. (c). To pass training and certification designed for an available position of penghulu and. (d). To have a good performance record (DP-3 record) in the past year to the selection. Having passed the selection, a state penghulu, along with other functional apparatus such as a religious penyuluh and an Islamic education's supervisor, occupies an office of religious affairs (Kantor Urusan Agama [KUA]) at the sub-regency (kecamatan) level. Together, they represent the state's front line on religious matters. However, there often a vast distance separating them with the society under their administration. Besides, there already exist other influencing figures, such as traditional ulama, that have been embedded within the society. This situation has challenged the position of the state penghulu in exercising their roles.

The role of local ulama in conducting marriages, primarily unregistered marriages, is unique. Article 2 of the Marriage Law 1/1974, which stipulates in the first paragraph, showed that a marriage is valid when the two parties conclude the marriage according to their religion and conviction. In this sense, the marriage validity among Muslims is determined by the marriage provisions in Islam. In Islam, as stipulated in *fikih*, a marriage is valid when a marriage: (1).

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[23] A 'functional' positition is distinguished from a 'structural' position. The functional potition refers to a task, duty, right, competency of a civil servant within an organisational unit that is based on a particular expertise. Article 3 of the Government Regulation 16/1994.

Fulfilled all the pillars of Islamic marriage; (2). Fulfilled all the conditions fo Islamic marriage; (3). Not against the prohibitions in an Islamic marriage. The pillars of Islamic marriage consist of the presence of a valid groom, a valid bride, a valid guardian, two valid witnesses; and the pronouncement of *ijab kabul*.[24] The Islamic provisions do not require the involvement of ulama, either the state penghulu or the non-state penghulu, as necessary to the validity of a marriage. However, the involvement of ulama in the implementation of marriage is widespread and rooted in Indonesian society, considering the strong patron-client relationship between the religious elite and the people.[25] In the West Java, Horikoshi demonstrates that such patron-client relationship between ulama and the society is deeply rooted, and good cooperation between the State and local ulama is essential to the realisation of the state's goal.[26] The dependence of society on the ulama figure preserves the role of non-state penghulu among society.

Second, the term non-state penghulu here is not used to designate the existence of a rival institution to the state penghulu. The use of the negative attribute, an article 'non' before the word 'state', is to show the existence of other actors besides the state penghulu who was projected by law as the sole actor on this matter. This category corresponds to Ibn Qayim Isma'il's division of ulama into ulama pejabat (official scholars) and ulama bebas (non-official ulama).[27] In his view, these two types of ulama have existed for a long time in Java and manage to maintain their respective authority. The similar category can be found in the past's Palembangan sultanate, where both official and non-official ulama also existed in the sultanate era.[28] Given this background, if the official ulama got support from the state to penetrate their influence into society, the non-official ulama are free to live and be directly involved in daily life with their respective communities.

Furthermore, how these two categories, namely the state penghulu and the non-state penghulu, operate in societies, will be discussed in the following

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[24] Khoiruddin Nasution, *Hukum Perkawinan I* (Yogyakarta: ACAdeMIA & TAZZAFA, 2005). See also Syamsurrizal and Sari, "Peran Penghulu Terhadap Pelaksanaan Pasal 39 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

[25] Clifford Geertz, "The Javanese Kijaji: The Changing Role of a Cultural Broker," *Comparative Studies in Society and History* 2, no. 2 (1960): 228–249.

[26] Hiroko Horikoshi, *Kyai Dan Perubahan Sosial* (Jakarta: Perhimpunan Pengembangan Pesantren dan Masyarakat, 1987); Emalia, "Penghulu dan Kyai di Karesidenan Cirebon Semangat Keberagamaan dan Berpolitik pada Awal Abad ke-20."

[27] Ibnu Qoyim Isma'il, *Kiai Penghulu Jawa : Peranannya Di Masa Kolonial* (Bandung: Gema Insani Press, 1997); See also Muhamad Hisyam, "Potret Penghulu dalam naskah Sebuah pengalaman penelitian," *Wacana* 7, no. 2 (October 1, 2005): 129–37, https://doi.org/10.17510/wjhi.v7i2.298.

[28] Husni Rahim, *Sistem Otoritas Dan Administrasi Islam: Studi Tentang Pejabat Agama Masa Kesultanan Dan Kolonial Di Palembang* (Jakarta: Logos Wacana Ilmu, 1998); See also Zedi Muttaqien and Toni Albar, "Peran Penghulu Lingkungan Dalam Proses Perkawinan Sebelum Dan Sesudah Keluarnya PP No.48 Tahun 2014 Di Lingkungan Banjar Kelurahan Banjar Kecamatan Ampenan Kota Mataram," *CIVICUS : Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (April 30, 2016): 66–76, https://doi.org/10.31764/civicus.v4i1.327.

section. The following discussion will demonstrate the role of the non-state penghulu Sinarrancang Village Mundu, Cirebon, West Java. The roles of the non-state penghulu in this village are significant, considering the high number of unregistered marriages among them and the communities' dependence of a religious figure in arranging a marriage. In everyday language, this unregistered marriage is called the Kyai kawin - a marriage that is adequately supervised by the local Kyai. The following descriptions will present notes from two-term fieldworks starting from a brief description on kawin kyai culture and feature fo religious figures from this village.

'KAWIN KYAI' AND THE NON-STATE PENGHULU: A FIELDWORK NOTES

1.   Kawin Kyai Culture in Sinarrancang Mundu Cirebon

Kawin kyai is a term used to denote a marriage carried out in the presence of a religious figure—the religious figure is called Kyai in Sinarrancang Village—without involving the authorized party. In other words, it is not recorded according to the law of marriage registration.[29] Given this, kawin kyai refers to a religiously valid marriage, least following Syafi'i school, but unregistered to the state's official. The word 'culture' is used because kawin kyai has been practiced for a long time that almost became a tradition embedded with the local community of Sinarrancang. Meanwhile, the word 'Kyai' comes from the figure's popular nickname who leads such unregistered marriage. In essence, Kyai kawin here is equivalent to the term unregistered marriage, which is popular among the Indonesian people. However, in this article, the term kawin kyai will maintain their way of saying unregistered marriage.

Based on the information gathered through observation, mini-surveys, and open interviews with the research subjects, the couple of kawin kyai and the heads of Rukun Tentangga (RT) in 2010, this research revealed that 59, 35% of couples conducting kawin kyai from a total of 246 families and nine couples who remarried—around 3.65% of the total number. When combined, the couple who has ever conducted kawin kyai in the four RTs are 63% of 246 households.[30] This data is based on a mini-survey to RT II, V, VII, and X out of a total of 12 RT. This limitation was based on technical reasons and observations that show the same characteristics of each RT. Thus, the selection of four RTs purposively is considered sufficient to represent all RTs in Sinarrancang Village. In the second term research, in 2012, the number did not change significantly. However, it cannot be denied that today the data on unrecorded marriages (Kyai's marriage)

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[29]   Farabi, "Budaya 'Kawin Kyai' Studi Terhadap Praktek Nikah Sirri Di Desa Sinarrancang, Kecamatan Mundu, Kabupaten Cirebon," 25.

[30]   Farabi, 25–26.

has changed significantly considering that the period is quite far between 2010 and 2020; there is a gap of almost ten years.

Even though there is a wide gap in the period, we can still consider this data by keeping in mind its limitation on the possible updates. A more in-depth reading of the existing data, especially when linking this data to the brides' marital status before their marriage, found that unregistered marriages generally originated from out-of-court divorcees and those who were administratively constrained to conduct a registered marriage. By crosschecking the data with the records from Mundu KUA and Cirebon Islamic Courts in the following years, the data did not change significantly because of the low number of petitions on *isbath nikah*, the only mean to register an unregistered marriage retroactively. The annual reports (2011, 2012, and 2013) from KUA Mundu and Cirebon Islamic Court revealed the low number of *isbaht* petitions from Sinarrancang village. This data shows that the practice of kawin kyai in this village has not changed significantly. The lack of records and case registers in these institutions suggested that the data cited in this article an extant to which is still relevant at least to show that unregistered marriage is still available in this village. This claim corresponds to other studies suggesting that unregistered marriages are pervasive among Indonesian societies.[31]

As previously mentioned, kawin kyai was common among out-of-court divorcees or those constrained with administrative requirements to register their marriage. For example, the brides were willing to register their marriage, but they must obtain a divorce certificate from an Islamic court, which they failed to provide. In that case, access to a judicial divorce remains an issue for them. Abdullah, an assisting officer of marriage registration (Petugas Pembantu Pencatatan Perkawinan [P3N]) of Sinarrancang in 2010, confirmed that a bachelor-virgin women marriage had been increasingly registered since the 1990s. On the contrary, a marriage among out-of-court divorcees or widows and widowers is still carried out according to kawin kyai.[32] This trend shows a more positive tendency towards marriage registration in the younger generation, but the practice of kawin kyai does not disappear because this option always comes up as an alternative to a registered marriage.

2.   Penghulu non-Negara as an Alternative to the State Penghulu

This section features the profiles of religious figures from Sinrrancang. *First*, Abdullah, the local P3N official in 2010, was against kawin kyai. *Second*, the two

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[31] Platt, *Marriage, Gender and Islam in Indonesia*; Van Huis and Wirastri, "Muslim Marriage Registration in Indonesia."

[32] Abdullah, Interview, P3N of Sinarrancang Village, Mundu, Cirebon, July 6, 2013. At that time, P3N remained exist in Sinarrancang while in other regions the role of P3N had been abolisehed. While a state penghulu is a civil servant, P3N is a not a civil servant.

other religious figures who accommodate kawin kyai. Pseudonyms will be used to refer to two kyai who accommodate kawin kyai.

Abdullah, P3N Officer in Sinarran[33]

Abdullah served as the village apparatus for the P3N sector in 2010. He had been officiated this position since 2002. Initially, this position was based on a decree from the Ministry of Religion which was only valid for two years. Still, this decree was expandable by a further decree. Since 2005 the Ministry of Religion Decree for P3N is valid for five years. Based on this decree, Abdullah officiates the duties of P3N at the village level at Sinarrancang. By playing the role of P3N, Abdullah is an assistant of the KUA in carrying out the duties regarding marriage registration and supervision among local Muslims.

In practice, the relationship between the KUA and P3N officials is rigid, the coordination is limited to a working relationship where the KUA leader plays the function of the official PPN (the state penghulu) while the P3N acts as the village level administrator. Based on the narrative of the man who had received a boarding school education for three years, this relationship was limited to the interests that arose when he married. This statement was strengthened by the absence of other coordination initiated by the KUA to the P3N. This kind of relationship is in line with the ministry of religion's policies which lead to the elimination of the role of P3N.

In his capacity as an assistant of the KUA, Abdullah does not accept unqualified marriages including the wishes of several prospective brides who wish to marry in siri (the term siri is used to denote Kyai's marriage). In this context, Abdullah said that he had never attended a siri marriage among the local community. However, Abdullah said that the practice did exist but it was carried out outside his knowledge, "I did not know about the implementation of siri kawin - even if invited, I would not attend - but suddenly I knew that the couple was married in *siri*," said Abdullah when asked about Kyai's marriage practice.

In organizing an officially recorded marriage, Abdullah said that the couple must pay a fee of five hundred thousand rupiahs, with the following details: marriage fee according to the statutory regulations 30,000 rupiahs, KUA deposit (cost of inviting to the house) 200,000 rupiah, RT 50,000 rupiah, RW 50,000 rupiah, and P3N and Kuwu (Village Head) 170,000 rupiah. This fee is the cost of accommodation that must be submitted by each couple who want to register the marriage by inviting the headman to the house. The costs will be different if the marriage takes place in the office, but the community rarely chose this option.

The amount above with all its details is based on the fact that every marriage affair requires costs, especially transportation because P3N does not get a steady source of income from the State in order to carry out his duties. Separately, Kyai Saifuddin said that the village lebe 'which currently serves automatically as the Head of People's Welfare and the Village P3N gets a share of two hectares of village treasury land comparing to the village head, covering an area of five hectares.

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[33]   Abdullah, Interview, P3N of Sinarrancang Village, Mundu, Cirebon, July 6, 2013.

Saifuddin: The First *Kyai Kampung*[34]

Kyai Saifuddin is a public figure as well as a religious leader in Sinarrancang Village. His role was recorded both as a "lebe'" who was concurrently P3N as well as a "kuwu" or head of Sinarrancang Village from 1995 to 2003. Currently, his role as a "Kyai Kampung" is still deeply rooted in the eyes of the community. The attribute of "Kyai" is always attached by the community in front of his name — an attribute or title used by the local community to identify and honor someone with religious expertise. Similar titles are usually attached for individuals who have a role as the "lebe' kampung" or "Imam Kampung (religious village leader) who is in charge of leading religious activities, starting to lead the leadership and prayers, giving consultation, assisting the management of the funeral ceremony, and so on. A complete track record makes Saifuddin meet all the informal qualifications to become a "Kyai kampung", especially his involvement in religious matters and his experience as a "lebe'" as well as a "kuwu" in the local village.

Saifuddin's solid profile as a "Kyai Kampung" was built through traditional religious education, namely by attending non-formal teachings to previous religious leaders from this village, and being supported by an influential family background in the field of Religion. Of all previous "lebe'", namely: 1) Late Sajam, 2) Late Mibak, 3) Late Kasam, 4) Late Sajam, 5) Late Kasta, 6) Late Riman, 7) Late Sajam, 8) Late Sajam, 9) The late Sarfani, 10) Saifuddin (incognito), 11) Ansari (incognito), and 12) Abdullah, only Kasam who was not from this kinship line. Good mastery of religious duties and family background as well as his experience and involvement as a village official makes Saifuddin a "Kyai Kampung" even though he was no longer serving as a P3N, he remains as a place for people to ask questions and ask for help in organizing marriage, especially when it is constrained to legal marriage.

According to his narrative, Saifuddin served as "lebe'" of Sinarrancang for two years, 1992 and 1993, when the village was led by Murteki, the first village head in Sinarrancang. Due to disagreements, Saifuddin resigned from his role as "lebe' Kampung" which had double roles as Kaur Kesra, and P3N. Furthermore, in 1995 Saifuddin was elected as the head of Sinarrancang Village, which he carried out until 2003. In the era of his leadership, Saifuddin had double roles, as a village head and "lebe' Kampung". At that time, Sinarrancang Village was still the northernmost part of Beber sub-district. After his leadership, the role of "kuwu" (village head) was assumed by Cacah Effendi, while the role of "lebe'" was assumed by Abdullah. Since then, village government affairs had centered on Cacah Effendi, while marriage and other affairs had centered on Abdullah, both of which had official authority in their respective roles and functions.

However, practically, there are still special cases, especially those concerning marriage, which do not meet the statutory criteria and are ultimately rejected by the P3N. These constraints are generally procedural, both administrative and legal, including divorcee marriages that have not received a divorce certificate from the court; underage marriages that do not have court dispensation. Apart from that, there are also those related to limitations that are meant to meet costs and low awareness of the importance of a marriage certificate. At this level, the figure of Kyai Saifuddin, in an urgent situation, could not refuse if the community asked him to marry a partner with these constraints. For example, there was a couple

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[34]   Saifuddin, Kyai Kampung of Sinarrancang Village, Mundu, Cirebon, July 9, 2013.

who has a very close relationship but not yet able to get married directly (read on legal record) for various reasons - not yet old enough, not having divorce papers for widowers or widows, etc. - then they were married them religiously to avoid slander and living together without being married. " Said Saifuddin when he was asked why he married off a couple illegally.

This practice of unregistered marriage is usually initiated by the guardian at the request of the partner who then delegates his right in guardianship to a Kyai. Furthermore, the guardian undertakes to be responsible for the implementation of this marriage. The tendency to do tauliyah is based on (1) the lack of knowledge and feelings of inadequacy from the side of the guardian in general and (2) an urgent choice on the side of the Kyai where if left unchecked, the spouse can just do "kawin lari", look for another Kyai, and basically potentially violating religious norms. Saifuddin gave an example of one of the subjects of this study who finally decided to "kawin lari" in order to avoid slander because he was too close with his spouse and had problems getting married on a legal basis. That is the role of religion attached to the figure of Kyai Saifuddin in Sinarrancang. The dependence of the local community on his figure is the dependence of the community on the figure of the "ulama", especially the "lebe'". However, when their interest in the presence of "lebe'" is constrained, a non-formal "lebe'" figure, such as Kyai Saifuddin, will become the main goal.

Ansari: The Second *Kyai Kampung* [35]

Anshari is also a religious leader in the local community who served as an official "lebe'" in the 1993-1995 period right after Saifuddin's resignation. During this not so long span of time, Ansari had concurrently the positions of "lebe'" and "kuwu". Therefore, during this short official term, he was busy with leadership duties at the village level, as doing his role an "ulama" in the village area, and giving services in the field of Kaur Kesra. All of this was carried out by Ansari until the election of "Kuwu" and the new "lebe'" in 1995, namely the figure of Saifuddin.

This man who was born in the 1960s had received religious education and teaching at a traditional Islamic boarding school in Gemuluh village. In addition, this 53-year-old man also completed formal elementary school education through the package A exam. Similar to Kyai Saifudding, under certain conditions, Ansari is also often asked by the local community to carry out the task of organizing a marriage, especially not legally recorded. This role was confirmed by one of the couples who were the subject of this research.

Based on Ansari's statement, marriages between couples, as the subject of this research, were not a new marriage but a marriage-reconciliation. This statement is different from the confession of the couple who married as their first marriage. Even so, we can see that basically Ansari did not want to accept the marriage, but due to the urgent condition, he finally agreed to lead the illegally marriage procession.

This is a brief description of the figure of Pak Ansari who has a significant influence and role in the local community, especially the role and influence in the religious field. Both Ansari and Saifuddin are both figures of local "Kyai Kampung" who are considered by the community to have the ability and feasibility to hold sacred religious marriages.

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[35] Ansari, Interview, Kyai Kampung of Sinarrancang Village, Mundu, Cirebon, July 11, 2013.

An interesting note from kyai Saifuddin and Ansari is that they are the former P3N, the local assistant to the state penghulu, and have the same family background—a family known as ulama (religiously respected) and responsible for the religious affairs from year to year. Even though they no longer serve as P3N at the village level, the community continues to consult them, especially when the acting P3N officials refused to register their marriage for legal reasons. Their concern of the possible violation of religious teaching if they did not accommodate a couple's demand for kawin kyai resulted in preserving this marriage in Sinarrancang.

CONCLUSION

The first conclusion is an answer to the first question on the criteria of marriage validity among Indonesian Muslims. This question is answered in a discussion of the law of registration and its relation to the state penghulu position in KUA (an office of religious affairs) as the sole authority. This discussion shows that Article 2 of the Marriage Law 1/1974 generates different interpretations of marriage registration. It neither validates nor invalidates a marriage, but this article stipulates that registration determines a marriage's legality. While the law is clear pertaining to the marriage legality, Islamic court judges apply *Isbath nikah* (retroactive validation) leniently on the pretext of discretion. This attitude aims to protect vulnerable parties in unregistered marriages even though they must shift from the strict application of marriage's legality to a lenient use of *isbath nikah*. Given this discretion, an unregistered marriage may be legalized through the process of *isbath nikah* retroactively. This attitude has blurred the boundaries between legal and illegal marriages. In this sense, there is dual validity to Indonesian marriage, i.e., state legality and religious validity. While state legality refers to a marriage that is registered and religiously valid, religious validity refers to a marriage that is not registered but religiously valid.

The second conclusion answers what authority determines the validity of a marriage and how that authority takes shape in practice. This question has been answered in the previous conclusion. Accordingly, both the emerging interpretation of Article 2 of the Marriage Law and the Judges' lenient use of *isbath nikah* have provided room for religious authorities to exercise their roles in the field of marriage. In this sense, at least two authorities, namely the state penghulu and non-state penghulu, may determine the validity of a marriage. The state penghulu provides religious and legal validity, while the non-state penghulu only provides religious validity. Still, religious validity may be elevated to the state's validity (marriage legality) through an *isbath nikah*.

In Sinarrancang, these two authorities manifest in two actors with a distinctive source of authority or capital. The state penghulu's authority derives from laws and regulations, while the non-state penghulus' authority derives from their charisma embedded in the society. In practice, each actor exercise according to their respective authority and capital. The state penghulu, who has a legal basis but is economically and socially limited, often finds it difficult to carry out his duties. However, increasing public awareness on the importance of marriage registration has ameliorated the tendency to register a marriage. Meanwhile, the non-state penghulu, which has a better socio-cultural capital, is often an alternative destination for couples constrained from having a registered marriage. However, in Sinarrancang, the distinction between these two authorities is not clear cut. The majority of non-state penghulus had served as P3N, an assistant to the state penghulu.

The last conclusion provides an account on the functioning of the existing authorities among Sinarrancang society. With regard to this, the non-state *penghulu* operates as an alternative to the state penghulu, particularly when access to the latter is problematic for various reasons. Suppose a couple cannot postpone their marriage any longer, but the couple cannot fulfill the marriage requirement set by law. In that case, they will refer to the non-state penghulu. In another case, a couple prefers an unregistered marriage simply because it is more uncomplicated, as is common among older people's marriages. Besides, the non-state penghulu also feels pressured to accommodate a religious marriage when there are concerns that couples who cannot legally marry will fall into violating religious norms. In this sense, the non-state penghulu emerges as the guardian of religious norms. Nevertheless, in normal circumstances, the state penghulu and the non-state penghulu can be involved in implementing a marriage. The village Kyai (non-state penghulu) leads a marriage procession, and the KUA (state-penghulu) leaders are present to witness and supervise.

If we reflect on the existing relationship between the state *penghulu* and the non-state *penghulu*, it is increasingly evident that the two actors are not in a direct contesting position. Both actors streach out between two imaginative scales in a continuum scale. While the state *penghulu* is at the zero points, the non-state *penghulu* is at the endpoint of infinity. Between the two, other options are ranging from Islamic court judges who accept *isbath* cases, local governments that finance the mass *isbath* program, and P3N who accommodates unregistered marriages. In the end, it is the prospective bride and groom who determine which options to choose. However, the choice taken does not necessarily become the final choice because, as mentioned earlier, in a life moment, marriage is viable to be registered retroactively to an Islamic court. On the contrary, a registered marriage may be dissolved informally (unregistered) without involving an Islamic court.

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