

## Alternative Legal Strategies and *Ninik Mamak* Authority: Dual Administration of Malay Marriage in Koto Kampar Hulu, Riau

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Received: 08-21-2023 | Revised: 16-11-2023, 25-01-2024 | Accepted: 29-01-2024

### Abstract

The regulation of marriage registration in several Muslim countries tends to emphasize administrative aspects rather than substantive ones. For the Malay customary community in Koto Kampar Hulu, Riau, Indonesia, their obligations are not only limited to fulfilling marriage administration under state law but also involve obtaining permission from *ninik mamak* (traditional leader). Therefore, this article aims to analyze marriage administration in the context of customary law and state law within the Malay customary community, as well as to reveal alternative legal strategies they employ to circumvent traditional marriage administration. Field research was conducted through interviews with 16 key informants and direct observation of the completeness of marriage administration. The results show that the Malay customary community must navigate dual marriage administrations—customary law and state law—to obtain the legality of marriage before the state. Permission from *ninik mamak* serves as the basis for acquiring documents from the village head, fulfilling the administrative requirements for marriage registration at the local religious affairs office. The authority of *ninik mamak* in granting marriage permission aims to resolve conflicts and customary obligations before marriage while preserving the identity and traditions of the customary community. For those who disregard customary administration, they adopt alternative legal strategies such as unregistered marriages (*nikah sirri*) or relocating to another village. The alignment between customary law and state law is reflected in this study, particularly in the context of marriage registration.

[Regulasi pencatatan perkawinan di beberapa negara Muslim cenderung menekankan aspek administratif daripada substansial. Bagi komunitas Adat Melayu di Koto Kampar Hulu, Riau, Indonesia, kewajiban mereka tidak hanya terbatas pada pemenuhan administrasi perkawinan dalam hukum negara, tetapi juga melibatkan proses mendapatkan izin dari *ninik mamak* (tokoh adat). Oleh karena itu, artikel ini bertujuan untuk menganalisis administrasi perkawinan dalam konteks hukum adat dan hukum negara di kalangan komunitas Adat Melayu, serta mengungkap strategi hukum alternatif yang mereka terapkan untuk mengelabui administrasi perkawinan adat. Penelitian lapangan dilakukan melalui wawancara dengan 16 informan kunci dan observasi langsung terhadap kelengkapan administrasi perkawinan. Hasil penelitian menunjukkan bahwa komunitas Adat Melayu harus mengatasi administrasi perkawinan ganda, yaitu hukum adat dan hukum negara, guna mendapatkan legalitas perkawinan di hadapan negara. Izin dari *ninik mamak* menjadi dasar untuk memperoleh dokumen-dokumen dari kepala desa, persyaratan administratif untuk pencatatan

*perkawinan di kantor urusan agama setempat. Otoritas ninik mamak dalam pemberian izin perkawinan bertujuan untuk menyelesaikan konflik dan tanggungan adat sebelum perkawinan, sambil melestarikan identitas dan tradisi masyarakat adat. Bagi masyarakat yang mengabaikan administrasi adat, mereka mengadopsi strategi hukum alternatif seperti perkawinan siri atau pindah domisili ke desa lain. Keselarasan antara hukum adat dan hukum negara tercermin dalam studi ini, khususnya dalam konteks pencatatan perkawinan.]*

**Keywords:** Customary Law, Marriage Administration, Marriage Registration, *Ninik Mamak*, State Law.

## Introduction

The regulation of marriage registration in several Muslim countries often faces the complexity of administration.<sup>1</sup> In some Muslim countries, such as Iran, Algeria, Afghanistan, and Pakistan, marriage registration is established as an administrative requirement without affecting the validity of the marriage. However, in South Yemen, marriage registration becomes a necessity with negative impacts on the legitimacy of marriage.<sup>2</sup> Although not mandated by most personal laws in Bangladesh, marriage registration remains crucial to obtaining the legal status stipulated by the state.<sup>3</sup> In Tunisia, despite initially being able to transform social order through the introduction of civil marriage post-independence, the influence of Salafi ideology tends to diminish the adherence of Muslim society to marriage registration.<sup>4</sup> Essentially, marriage registration regulations aim to protect the rights of women and children from unrecorded marriage practices.<sup>5</sup> Rather than resolving issues surrounding Muslim marriages, the provisions on marriage registration in several Muslim countries turn marriage events into mere administrative facts requiring further regulation.<sup>6</sup>

In the Indonesian context, marriage registration provisions have dual legal status for citizens.<sup>7</sup> On one hand, marriage is considered valid if conducted under religious teachings and beliefs. On the other hand, state law requires citizens to register their marriages to obtain legality from the state.<sup>8</sup> For the Malay customary community in the Koto Kampar Hulu District, couples intending to marry must not only fulfill administrative requirements to register their marriage at the local marriage registration office but also adhere to customary

<sup>1</sup> Salma Salma, Hasanatul Wahida, and Muhammad Adib bin Samsudin, "Ignoring Family Law Administrative Procedure: Falsifying Death of Spouses for the Registration of New Marriage in Lengayang Muslim Community," *Al-Abwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (June 30, 2022): 1–20.

<sup>2</sup> Dian Mustika, "Pencatatan Perkawinan dalam Undang-Undang Hukum Keluarga di Dunia Islam," *INOVATIF: Jurnal Ilmu Hukum* 4, no. 5 (July 1, 2011): 52–64.

<sup>3</sup> N. Mian and S. Hossain, "Modernizing Marriage Registration Law in Bangladesh," *International Journal of Physical and Social Sciences* 3, no. 7 (2013): 127–46.

<sup>4</sup> Maaïke Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage," *Oxford Journal of Law and Religion* 7, no. 3 (October 1, 2018): 479–97.

<sup>5</sup> Maulidia Mulyani, "The Practice of Marriage of Sampang Shia Refugees in Puspa Agro, Sidoarjo: Barriers and Challenges to Obtaining Family Administration Rights," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 56, no. 1 (April 5, 2022): 55–74.

<sup>6</sup> Elizabeth Lhost, "From Documents to Data Points: Marriage Registration and the Politics of Record-Keeping in British India (1880-1950)," *Journal of the Economic and Social History of the Orient* 62, no. 5–6 (November 12, 2019): 998–1045.

<sup>7</sup> M Zamroni, "Legal Dualism Marriage Registration for Muslims in Indonesia," *Jurnal Reformasi Hukum: Cogito Ergo Sum* 1, no. 1 (2018): 19.

<sup>8</sup> "Marriage Law No. 1 of 1974," Article 2.

law administrative requirements. Their marriage must first obtain approval from *ninik mamak* (the title for Malay traditional leaders), a crucial initial step to fulfill one of the administrative requirements of marriage in state law issued by the local village head. In this context, *ninik mamak*'s approval becomes the most crucial requirement, as without it, the village head is unwilling to provide the documents to the prospective bride and groom.<sup>9</sup> The dual marriage administration undertaken by the Malay customary community is essential to be further analyzed in this article.

Normatively, marriage registration is the state's effort to organize marriage administration in Indonesia and protect the rights of women and children from the negative impacts of child marriages and secret marriages (Indonesian: *nikah sir*).<sup>10</sup> However, in practice, these provisions are often ignored by some communities due to various factors, such as a lack of legal understanding, conservative religious beliefs, preservation of traditions, economic constraints, and geographical locations.<sup>11</sup> In some cases, specific legal strategies are employed to circumvent these laws.<sup>12</sup> For couples of different religions, they marry abroad first.<sup>13</sup> After a year in marriage, they return to Indonesia and use their marriage certificate to register it with the local marriage registration office.<sup>14</sup> For couples who did not register their previous marriages, they falsify documents from their previous secret marriage to officially register their new marriage with the marriage registration office.<sup>15</sup> These informal practices are more effective and tend to succeed in organizing marriage administration to protect the rights of poor women.<sup>16</sup> Similar practices are also carried out in the Malay customary community, where their customary law requires prospective couples to obtain permission from traditional leaders as one of the administrative requirements for marriage in state law.

This article is field research with a socio-legal approach. Field research was conducted for three months, from February to April 2023, in the Koto Kampar Hulu District, Kampar

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<sup>9</sup> Datuok Ulak, Interview with *Ninik Mamak* (Traditional Leader), March 2, 2023.

<sup>10</sup> Agustin Hanapi and Edy Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (December 28, 2020): 528–44.

<sup>11</sup> See: Eva F. Nisa, "The Bureaucratization of Muslim Marriage in Indonesia," *Journal of Law and Religion* 33, no. 2 (August 2018): 291–309; Maulidia Mulyani, "The Practice of Marriage of Sampang Shia Refugees in Puspa Agro, Sidoarjo: Barriers and Challenges to Obtaining Family Administration Rights," *Ayy-Syir'ab: Jurnal Ilmu Syari'ah dan Hukum* 56, no. 2 (April 5, 2022): 55; Stijn Cornelis 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): 87–103.

<sup>12</sup> Ron Shaham, "Custom, Islamic Law, and Statutory Legislation: Marriage Registration and Minimum Age at Marriage in the Egyptian Shari'a Courts," *Islamic Law and Society* 2, no. 3 (January 1, 1995): 258–81.

<sup>13</sup> See: Sri Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen," *BESTUUR* 10, no. 1 (2022): 12–21; Zuriyati Zuriyati, Yaswirman Yaswirman, and Yasniwati Yasniwati, "Registration of Interfaith Marriages at the Civil Registry Office in Pekanbaru," *International Journal of Multicultural and Multireligious Understanding* 6, no. 5 (November 26, 2019): 895–900.

<sup>14</sup> Muhammad Romli et al., "Legal Status of Overseas Marriage Registration in the Perspective of Indonesian Marriage Law," *Technium Social Sciences Journal* 14, no. 1 (2020): 260–65.

<sup>15</sup> Salma, Wahida, and Samsudin, "Ignoring Family Law Administrative Procedure," 1–20.

<sup>16</sup> See: Adriaan Bedner and Stijn van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism," *Utrecht Law Review* 6, no. 2 (June 4, 2010): 175; Ahmad Tholabi Kharlie, Fathudin Fathudin, and Windy Triana, "Reforming Islamic Marriage Bureaucracy in Indonesia: Approaches and Impacts," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (November 11, 2021): 255–86.

Regency, Riau Province, Indonesia. Primary sources were obtained from interviews with 16 key informants consisting of ten *ninik mamak*, two village heads, a community leader, and three violators of customary marriage administration. The names of the last three key informants were anonymized. In addition to interviews, primary sources were also obtained through observations of the process of obtaining marriage permission from prospective couples to *ninik mamak*, village heads, and the local Office of Religious Affairs (KUA). Both data collection techniques were employed to understand the processes and stages that prospective couples must go through to register their marriage, as well as the motives behind the existence of dual marriage administration for the Malay customary community in Koto Kampar Hulu. The data obtained through both data collection techniques were then analyzed descriptively and qualitatively.

### Marriage Registration and Administration: A State Law Perspective

Marriage registration is akin to the recording of other legal events, such as births and deaths. In Indonesia, marriage registration is governed by Marriage Law No. 1 of 1974. Article 2 states that a marriage is recognized as valid if conducted under the religious and belief systems of the parties involved. Every marriage must be registered with the local marriage registration office.<sup>17</sup> The purpose of marriage registration is to provide legal certainty within society. Additionally, registration aims to streamline societal order, protect the dignity and sanctity of marriage, and specifically safeguard the rights of women and children within the household.<sup>18</sup> If either party, whether the husband or wife, is not responsible, the other party has the right to take legal action to ensure their respective rights.<sup>19</sup>

As a consequence of marriage registration, the bride and groom are required to fulfill administrative requirements set by the state. The administration of marriage is regulated under Marriage, Divorce, and Reconciliation Law No. 22 of 1946. For Muslims, their marriages are overseen by marriage registrars appointed by the Minister of Religious Affairs or those designated by them.<sup>20</sup> Marriage registration is conducted by the marriage registrar (*Pegawai Pencatat Nikah*, PPN), who is usually the Head of the local KUA. The bride and groom must complete several administrative requirements before their marriage can be recorded at the local KUA.<sup>21</sup>

Detailed administrative requirements include various letters that must be filled out and completed by the bride and groom. These letters are obtained from the village head or sub-district head and include the personal details of the bride (*surat keterangan untuk nikah* or Model N1), the bride's and the groom's origin (*keterangan asal usul calon pengantin* or Model N2), approval letter from both prospective brides and grooms (*surat persetujuan kedua calon*

<sup>17</sup> "Marriage Law No. 1 of 1974," Article 2.

<sup>18</sup> Imam Hanafi, "Administrasi Perkawinan dalam Mencegah Pernikahan Dini di Kecamatan Pakong Kabupaten Pamekasan Madura," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 1 (April 30, 2021): 6.

<sup>19</sup> Handika Purnama, "Hukum Islam, Adat dan Hukum Negara dalam Perkawinan Masyarakat Suku Melayu di Pekanbaru Riau: Keabsahan, Etika, dan Administrasi Perkawinan," *Al-Abwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (May 4, 2021): 8.

<sup>20</sup> Aden Rosadi, *Hukum dan Administrasi Perkawinan* (Bandung: Simbiosis Rekatama Media, 2021), 21.

<sup>21</sup> Salma, Wahida, and Samsudin, "Ignoring Family Law Administrative Procedure," 12.

*mempelai* or Model N3), the details of the parents (*surat keterangan orang tua* or Model N4), the letter of permission from the parents if the ages of the bride and groom are under 21 (Model N5), the death certificate of the previous spouse (*surat kematian suami/istri* or Model N6). The bride and groom must also complete the notification letter of marriage intention (*surat pemberitahuan kebendak nikah* or Model N7) obtained from the local KUA,<sup>22</sup> tetanus toxoid immunization card for the prospective bride obtained from the community health center, marriage dispensation for males and females under 19 years obtained from the religious court, permission letter from superiors for military or police personnel, approval from the Religious Court for polygamous husbands, divorce certificate from the religious court for widows or widowers, and marriage permission from the embassy for foreigners obtained from their respective embassies.<sup>23</sup>

In addition to these requirements, the bride and groom are also required to fulfill other administrative requirements such as the identity card (*Kartu Tanda Penduduk*, KTP) of both prospective spouses and the marriage guardian, the family card (*Kartu Keluarga*, KK) of both prospective spouses and the marriage guardian, the last diploma of both prospective spouses, and a pregnancy non-certificate from the village midwife (for prospective brides).<sup>24</sup> Once all these requirements are met, the local KUA checks the documents. If deemed complete, the local KUA declares that the two prospective spouses have met the requirements and can proceed with their marriage.

Institutionally, marriage administration and registration have at least four objectives. First, to ensure legal certainty. Second, to maintain the legal order necessary for proving or obtaining legal benefits. Third, to support the smooth operation of government in population administration. Fourth, to create harmony within the legal framework of society.<sup>25</sup> Furthermore, several marriage administrative requirements that the bride and groom must fulfill before marriage aim to obtain the legality of their marriage from the state. The state's recognition of their marriage is evidenced by the issuance of a marriage certificate (Indonesian: *buku nikah* or *akta nikah*) by the local KUA. This book serves as authentic proof of the marriage event recognized by the state.<sup>26</sup>

Unregistered or unofficially recorded marriages at the local KUA have adverse effects on the institution of marriage, particularly impacting women and children. For women, the non-recognition of their marriage by the state has negative implications for their post-divorce rights.<sup>27</sup> The difficulty arises in claiming maintenance rights (*nafkah*), child maintenance rights

<sup>22</sup> Muhammad Latif Fauzi, *Aligning Religious Law and State Law: Negotiating Legal Muslim Marriage in Pasuruan, East Java*, Leiden Studies in Islam and Society 18 (Boston: Brill, 2023), 176–77.

<sup>23</sup> BP4, *Tuntutan Praktis Rumah Tangga Babagis* (Jawa Timur: BP4, n.d), 36.

<sup>24</sup> Sarial, Interview with *Ninik Mamak* (Traditional Leader), April 13, 2023.

<sup>25</sup> Victor Situmorang, *Aspek Hukum Akta Catatan Sipil di Indonesia* (Bandung: Sinar Grafika, 1991), 13.

<sup>26</sup> Hanapi and Yuhermansyah, “Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District,” 541.

<sup>27</sup> See: Endri Yenti et al., “A Set of Prayer Outfits as a Mahar? Discrimination against Women in the ‘Urf Reality of the Archipelago’s Fiqh,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (May 28, 2020): 17; Anwar Hafidzi et al., “Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan,” *Al-Abkam* 32, no. 2 (October 30, 2022): 153–68.

(*ḥaḍānah*), and inheritance rights in the event of divorce or the husband's passing.<sup>28</sup> Unregistered marriages also detrimentally affect the legal status of children<sup>29</sup> who, when born out of wedlock, establish a family relationship solely with the mother and her family,<sup>30</sup> lacking legal recognition of their civil relationship with their biological father.<sup>31</sup> Consequently, such children are excluded from inheritance rights, and their fathers are not obliged to provide alimony due to the limited kinship relationship with the mother. These circumstances underscore the critical role of recognizing lineage in determining children's rights, particularly in matters of inheritance and alimony.<sup>32</sup>

### **Marriage Administration in Malay Customary Community: The Authority of *Ninik Mamak***

The Malay Customary Community is an indigenous society located in the Koto Kampar Hulu Subdistrict, consisting of eight villages: Tanjung, Tanjung Jaya, Tabing, Pongkai, Gunung Malelo, Kobuo Panjang, Sibiruang, and Bandur Picak. The majority of the population in this area practices Islam, with 22,756 out of a total of 23,393 inhabitants adhering to the Islamic faith.<sup>33</sup> The people of Kampar are often referred to as "*ocu*" (a specific term for Kampar residents), akin to "*mas*" or "*mbak*" in Java. While the Kampar community shares cultural similarities with the matrilineal Minangkabau, the broader Malay culture, particularly in Riau, distinguishes them. This uniqueness is particularly evident in the Malay Customary Community.<sup>34</sup>

In addition to state law, the Malay Customary Community also adheres to Islamic law and local customary law. In Koto Kampar Hulu, there is a concept known as "*tali bapilin tigo*," signifying three leaders that the Malay Customary Community must obey. Governed by village heads (the first strand), religious leaders or scholars (the second strand), and *ninik mamak* (the third strand), these leaders must collaborate to advance their respective villages.<sup>35</sup> The regulations set by the *tali bapilin tigo* guide the actions and behaviors of the community, making them crucial in establishing rules or sanctions for those who do not comply with inherited traditions. Among these leaders, *ninik mamak* holds the most dominant role and authority in resolving community issues, given their ownership of the territory, while the village head and religious leader serve as their partners.<sup>36</sup>

The role of the *tali bapilin tigo* is reflected in the customary marriage administration that the Malay Customary Community must adhere to. Prospective couples intending to marry are required to register their marriage with the KUA and fulfill a set of administrative

<sup>28</sup> Hanapi and Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," 541.

<sup>29</sup> "Marriage Law No. 1 of 1974," Articles 42 and 43.

<sup>30</sup> "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 100.

<sup>31</sup> J. Satrio, *Hukum Keluarga Kedudukan Anak dalam Perkawinan* (Jakarta: Sinar Grafika, 2008), 25.

<sup>32</sup> A. Hasyim Nawawie, "Perlindungan Hukum dan Akibat Hukum Anak dari Perkawinan Tidak Tercatat (Studi di Pengadilan Agama Tulungagung)," *Abkam: Jurnal Hukum Islam* 3, no. 1 (July 1, 2015): 111-36.

<sup>33</sup> "Profil Kecamatan Koto Kampar Hulu Tahun 2022" (Koto Kampar Hulu District, 2022).

<sup>34</sup> M. Taufik Mandailing, *Islam Kampar: Harmoni Islam dan Tradisi Lokal* (Yogyakarta: IDEA Press Yogyakarta, 2020), 49.

<sup>35</sup> Heriyon, Interview with *Ninik Mamak* (Traditional Leader), February 16, 2023.

<sup>36</sup> Irwan, Interview with *Ninik Mamak* (Traditional Leader), February 15, 2023.

requirements stipulated by the state. Additionally, they must complete various customary marriage administrative tasks dictated by *ninik mamak*. Interestingly, to fulfill state law marriage administrative requirements, ranging from Model N1 to N6 obtained by the prospective couple from the village head, they must first obtain permission from *ninik mamak*. If *ninik mamak* does not grant permission, the village head will not provide the necessary administrative requirements to the prospective couple. This negatively affects the completeness of the marriage administrative requirements they need to bring to register their marriage at the local KUA.<sup>37</sup> Therefore, the authority of *ninik mamak* plays a crucial role in the practice of marriage within the Malay Customary Community.

To obtain marriage permission from *ninik mamak* as a requirement for customary marriage administration, there are four stages that prospective couples must go through.<sup>38</sup> Firstly, the parents or guardians must inform mamak (uncle or aunt, either from the groom's or bride's side) about their nephew's or niece's interest in a potential life partner for marriage. Typically, during this notification stage, only the immediate family or guardians acting as mamak from the groom's or bride's side are involved. Subsequently, the respective mamak will inform *ninik mamak* about the mutual interest between the two candidates.

Secondly, *sigbio patanyo*. It is an activity or action by *ninik mamak* to visit the home of the prospective bride to inquire whether the woman already has a suitor. *Ninik mamak* will also investigate if any customary restrictions are preventing the marriage. For instance, if the woman is from a different village or belongs to the same ethnic group, the man might be placed in a different ethnic group, separated from the woman's village.<sup>39</sup> Additionally, *ninik mamak* will gather information about the prospective bride from nieces and nephews. If any unfavorable information is discovered, such as the woman being ill-mannered, neglecting prayers, or frequently defying parents, *ninik mamak* will engage in discussions with mamak, parents, guardians, and the prospective groom. *Ninik mamak* will convey that their niece is not a suitable woman, and *ninik mamak* refuses to marry her.<sup>40</sup>

If *ninik mamak* approves the relationship between the prospective couple, they grant permission for the couple to obtain Model N1 to N6 documents from the village head. Prospective couples who do not receive *ninik mamak*'s approval will not receive these documents from the village head. This provision is stated in the Tanjung Village Head Regulation, Koto Kampar Hulu Subdistrict, 2012. Chapter I on Population, Article 2 states that to request marriage certificates (Model N1 to N6), permission must be obtained from the respective *ninik mamak*. Additionally, prospective couples must pay administrative fees of Rp. 100,000 for the village, Rp. 25,000 for *ninik mamak*, and Rp. 25,000 for customary leaders to obtain the necessary marriage administrative documents.<sup>41</sup> *Ninik mamak* allowing prospective couples to obtain or request Model N1 to N6 documents from the village represents *ninik mamak*'s permission to the community intending to marry, without violating customary rules.<sup>42</sup>

<sup>37</sup> Antoni, Interview with *Ninik Mamak* (Traditional Leader), April 13, 2023.

<sup>38</sup> Heriyon, Interview with *Ninik Mamak* (Traditional Leader).

<sup>39</sup> Irwan, Interview with *Ninik Mamak* (Traditional Leader).

<sup>40</sup> Heriyon, Interview with *Ninik Mamak* (Traditional Leader).

<sup>41</sup> "Tanjung Village Regulations, Koto Kampar Hulu District, 2012," Article 2.

<sup>42</sup> Usman, Community Figures from Koto Kampar Hulu, February 18, 2023.

Thirdly, *antau cincin* (proposing a marriage, a betrothal). It is a customary practice where the male party presents a ring as a symbol that the woman is bound to him, and others are not allowed to propose to her. In Islam, this process is known as *khibbah*, where a man formally requests to marry a woman, either directly to the woman or her guardian.<sup>43</sup> In the Koto Kampar Hulu District, after the binding with the ring, symbolizing the engagement process, discussions ensue regarding auspicious days and months for the marriage, depending on the agreement between the parties involved. The purpose of this stage is to assess the character of the woman and determine her suitability. Similarly, the woman evaluates the man's qualities to ascertain his fitness as a household leader. During this stage, *ninik mamak* delves into and gathers information about the engaged individuals. If, for instance, a mistake occurs during this period, such as a woman walking with a non-*mahram* man (unrelated men who cannot serve as guardians), *ninik mamak* may cancel the engagement. If it is the man who initiates the cancellation, the ring given as a binding symbol becomes the woman's property. If it is the woman who initiates the cancellation, she returns the given ring and adds another similar ring as a customary sanction for canceling the engagement.<sup>44</sup>

Fourthly, the marriage ceremony (Indonesian: *akad nikah*) follows after obtaining permission from *ninik mamak*. Prospective couples bring various documents from the state administration, acquired from the village head, to the KUA in Koto Kampar Hulu. Upon reaching the agreed-upon time, the couple undergoes the marriage ceremony witnessed by their respective *ninik mamak*. Once this final stage is completed, the role of *ninik mamak* in guiding their descendants towards marriage concludes. Additionally, *ninik mamak* retains the responsibility of mediating disputes between the married couple or their families.<sup>45</sup> The role of these figures as mediators in marital disputes is also observed in the Banjar Customary Community and the Muslim community in the Kuta Alam District, Banda Aceh.<sup>46</sup> Thus, *ninik mamak* plays a significant role and authority in granting marriage consent and resolving disputes within the Malay Customary Community in Koto Kampar Hulu.

### Motives Behind Customary Marriage Administration: Preserving Identity and Cultural Heritage

As part of the Malay Customary Community in Koto Kampar Hulu, prospective couples must obtain permission from *ninik mamak* to proceed with their marriage and record it. This permission is crucial because, without it, they cannot acquire several marriage administrative documents stipulated by the state. Without this permission, the Village Head of Koto Kampar Hulu will not provide these documents, impacting the couple's ability to have their

<sup>43</sup> Analiensyah Analiensyah and Muhammad Iqbal, "Pengembalian Tanda Pertunangan Karena Gagal Pernikahan (Analisis Fatwa Majelis Permusyawaratan Ulama Aceh Nomor 5 Tahun 2016 tentang Mahar dalam Perspektif Fiqh, Undang-Undang dan Adat Aceh)," *El-USRAH: Jurnal Hukum Keluarga* 1, no. 2 (August 8, 2020): 247.

<sup>44</sup> Asra, Interview with *Ninik Mamak* (Traditional Leader), February 17, 2023.

<sup>45</sup> Mairizon, Interview with *Ninik Mamak* (Traditional Leader), February 20, 2023.

<sup>46</sup> See: Ridwan Nurdin et al., "The Role of Customary Leaders as Hakam in Resolving Divorce: A Case Study in Kuta Alam Subdistrict, Banda Aceh City," *El-USrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 430–43; Munisah Munisah et al., "Barambangan: Dynamics and Challenges in Resolving Husband and Wife Disputes in the Banjar Community," *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 1 (July 17, 2023): 50–60.

marriage recorded at the KUA. Recording the marriage at the KUA is a legal requirement for citizens, ensuring that their marriage is recognized as valid under religious and state laws.<sup>47</sup>

Based on interviews with several *ninik mamak*, the obligation for prospective couples to fulfill customary marriage administration has three motives. The first motive is conflict resolution within the customary community. Life in the Koto Kampar Hulu subdistrict is not always harmonious, and disputes frequently arise. *Ninik mamak* holds authority and plays a crucial role in resolving issues within the community, including mediating conflicts before granting marriage permission. For instance, a niece or nephew of *ninik mamak* who wished to marry was once involved in a brawl with another tribe in the village. *Ninik mamak* stipulated that before obtaining marriage permission, their niece or nephew had to apologize and reconcile with the disputing tribe.<sup>48</sup>

The second motive is resolving customary issues before marriage. Customary marriage administration serves as a platform for *ninik mamak* to counsel the people under their tribal influence. During the marriage process, there is interaction and advice provided by *ninik mamak* to the prospective couple. For example, if there are unresolved customary issues, such as unpaid fines, *ninik mamak* will postpone marriage permission until these issues are settled.<sup>49</sup> This reflects the role and authority of *ninik mamak* in preserving customs and upholding the continuity of local culture.

The case of the fight between RG and RM sheds light on the authority and role of *ninik mamak* in conflict resolution and its impact on the marriage process. RG and RM engaged in a quarrel where RM, who was intoxicated, was rebuked by RG for drinking excessively. RG's angry reaction resulted in a physical altercation, damaging family relations on both sides. After the resolution, RM was found guilty and imposed a sanction of paying Rp. 5,000,000. However, RM refused to pay this sanction. Two years after the fight, RM applied for marriage permission from his *ninik mamak* but was denied because the sanction had not been paid to RG's family. Finally, RM paid the sanction and reconciled with RG's family. Only then did *ninik mamak* grant marriage permission to RM with his prospective wife.<sup>50</sup>

The third motive is the preservation of lineage and cultural continuity. Prospective couples seeking to marry must obtain permission from *ninik mamak*. When seeking permission, *ninik mamak* examines the lineage of the prospective groom or bride. *Ninik mamak* plays a role in strict selection regarding the origin of the prospective couple to ensure that their nieces and nephews find partners with a good background and in accordance with customary norms. This is done to preserve cultural continuity, maintain ancestral traditions, and avoid intra-tribal marriages prohibited in Malay Customary practices.<sup>51</sup>

Based on these three motives, it can be concluded that the primary motive behind customary marriage administration is to preserve identity and uphold values within

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<sup>47</sup> Agung Basuki Prasetyo, "Akibat Hukum Perkawinan yang Tidak Dicatatkan secara Administratif pada Masyarakat Adat," *Administrative Law and Governance Journal* 3, no. 1 (March 3, 2020): 31.

<sup>48</sup> Antoni, Interview with *Ninik Mamak* (Traditional Leader).

<sup>49</sup> Datuok Ulak, Interview with *Ninik Mamak* (Traditional Leader).

<sup>50</sup> Sukri, Interview with *Ninik Mamak* (Traditional Leader), February 18, 2023.

<sup>51</sup> Sudirman, Interview with *Ninik Mamak* (Traditional Leader), February 17, 2023.

customary culture.<sup>52</sup> Similar practices are found in the Pekal Ketahun Tribe, which chooses to follow the customary marriage process through tribal figures (*kaum*) without involving state actors to maintain authentic ancestral traditions and contribute to national cultural richness.<sup>53</sup> Similarly, the Serawai Tribe community preserves marital harmony through the tradition of *cincin penyembah* (giving worship rings).<sup>54</sup> Meanwhile, some other customary communities distribute inheritance according to customary law to prevent family conflicts<sup>55</sup> while still maintaining kinship ties and prioritizing peace.<sup>56</sup> Preserving high-value ancestral property (e.g., *harta pusako tinggi*) is also done to uphold cultural heritage and the preservation of inherited wealth in customary societies.<sup>57</sup> Therefore, customary marriage administration is not just a legal formality but also plays a role in maintaining the continuity of identity and local cultural heritage.

### Dual Marriage Administration: Customary Sanctions and Alternative Legal Strategies

Marriage administration in both state law and customary law is a dual aspect that must be adhered to by the Malay Customary Community in Koto Kampar Hulu. As citizens, they are obligated to complete marriage administration set by the state to obtain the legality of their marriage.<sup>58</sup> As part of the customary community, they need to obtain permission from *ninik mamak* to fulfill marriage administration under state regulations. Thus, prospective couples from the Malay Customary Community seeking to marry must comply with dual marriage administration according to both customary and state law.

In contrast to the Malay Customary Community in Koto Kampar Hulu, the Muslim Dayak community in Sintang must follow dual validity of marriage, both in terms of

<sup>52</sup> See: Arif Sugitanata and Muhammad Lutfi Hakim, "The Domination of Customary Law in Muslim Matrimonial Procedures: Prohibiting *Khiṭbah* in the Sade Muslim Community," *Al-Abwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (December 30, 2023): 302–19.

<sup>53</sup> Sidiq Aulia, "Eksistensi Kaum (Penghulu Adat) dalam Perkawinan: Studi Kasus pada Masyarakat Pekal, Kecamatan Ketahun, Kabupaten Bengkulu Utara," *Journal of Islamic Law* 1, no. 2 (August 2, 2020): 220.

<sup>54</sup> Suwarjin Suwarjin et al., "Virginity and Cincin Penyembah: Sociological, Philosophical, and Maqāṣid al-Sharīḥ Study on Serawai Tribe Traditional Marriage," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 18, 2023): 49–70.

<sup>55</sup> See: Gusti Muzainah and Firqah Annajiyah Mansyuroh, "Integration of Islamic Law and Banjarese Customary Law of Inheritance System Tionghoa Muslim Community in Banjarmasin, South Kalimantan," *Samarab: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (December 31, 2022): 678–702; Sri Lumatus Sa'adah, Saifuddin Zuhri Qudsy, and Nur Quma Laila, "Sigar Semongko and Gilir Waris: The Controversy of Customary Law and Islamic Law in The Inheritance System," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (December 30, 2023): 403–22; Ali Abubakar et al., "The Postponement of the Implementation of Inheritance Distribution in the Seunuddon Community, North Aceh in the Lens of 'Urf Theory and Legal Pluralism," *El-Usrab: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 411–29.

<sup>56</sup> Syaikhu Syaikhu et al., "The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement," *El-Mashlahab* 13, no. 2 (December 31, 2023): 181–202.

<sup>57</sup> See: Ahmad Wira et al., "Legal Study of Dzurri Waqf and Its Implementation towards Strengthening High Heritage Assets in Minangkabau, West Sumatra, Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 18, 2023): 329–41; Salmudin Salmudin, Firman Muntaqo, and KN Sopyan Hasan, "Tunggu Tubang as a Method for Peaceful Inheritance Distribution of Semende Indigenous Peoples/Tunggu Tubang sebagai Metode Pembagian Harta Waris secara Damai Masyarakat Adat Semende," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (July 28, 2021): 53–66.

<sup>58</sup> Purnama, "Hukum Islam, Adat dan Hukum Negara dalam Perkawinan Masyarakat Suku Melayu di Pekanbaru Riau," 8.

customary and state law, to legalize their marriage due to pregnancy (*ngampang*).<sup>59</sup> Similar situations occur in indigenous communities in Kota Mataram, where they must pay a sum of money to validate their marriages based on religious law (*mahr* or dower), customary law (*pisuke* and *ajikrama*), and state law (marriage administrative fees).<sup>60</sup> This data indicates that the relationships between state law and customary law are complementary and not contradictory. These findings confirm previous research highlighting the harmonious relationship between customary law and state law,<sup>61</sup> as well as their relationship with Islamic law in the context of legal pluralism in Indonesia.<sup>62</sup>

For the Malay Customary Community members who are unwilling or unable to seek permission from *ninik mamak* to marry, they will face customary sanctions. Based on interviews with several *ninik mamak*, two forms of customary sanctions are applied. First, they lose the right to use *harta pusako* (ancestral property). This right is an inherited usufruct consisting of houses, land, and similar assets that can only be used as usufruct, not ownership. Those who violate these customary rules are not entitled to use *harta pusako* and lose the right to use houses, land, and the like. Second, they face social sanctions. In the event of internal or external problems within the family, *ninik mamak* does not provide protection or assistance to them. If they organize events, *ninik mamak* does not provide customary support and will not attend the event. All rights that should be given to them become the responsibility of *ninik mamak* to ensure.<sup>63</sup>

For prospective couples who do not obtain permission from *ninik mamak*, they will seek several alternative strategies to proceed with the marriage.<sup>64</sup> Based on interviews with some violators of customary law, two strategies are applied. First, they choose to have an unregistered marriage or *nikah sirri*. A *nikah sirri* is a marriage that complies with the pillars and requirements of marriage in Islam but is not recorded at the KUA. Couples who want to marry but do not get permission prefer to have an unregistered marriage rather than a

<sup>59</sup> Muhammad Adib Alfarisi, Muhammad Jihadul Hayat, and Adul Rahim Hakimi, "Solving Pregnancy Out-of-Wedlock: 'Dual Validity' of Ngampang Marriage among Dayak Muslim Community in Sintang, Indonesia," *Journal of Islamic Law* 4, no. 2 (August 1, 2023): 123–47.

<sup>60</sup> Atun Wardatun, "Legitimasi Berlapis dan Negosiasi Dinamis pada Pembayaran Perkawinan Perspektif Pluralisme Hukum," *Al-Abkam* 18, no. 2 (March 4, 2019): 147–66.

<sup>61</sup> See: Syaikhul Syaikhul et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (March 31, 2023): 195–215; Iman Fadhilah Iman et al., "Exploring the Monogamy Principle in the Samin Community's Customary Marriages in Kudus: Harmonisation of Tradition and State Law," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (2023): 281–304; Nofardi Nofardi, "Adat Rantau as a Solution for Multi-Ethnic Marriage in Pasaman, West Sumatera," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 2 (December 28, 2020): 243–56; Baiq Desy Anggraeny, "Keabsahan Perkawinan Hukum Adat Lombok (Merarik) Ditinjau dari Perspektif Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Hukum Islam (Studi di Kabupaten Lombok Tengah)," *De Jure: Jurnal Hukum dan Syaria'ah* 9, no. 1 (June 30, 2017): 43–52.

<sup>62</sup> See: Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (June 30, 2021): 426–49; Mursyid Djawas et al., "The Integration Between Syara' and Ade' in Marriage Tradition Bugis Bone, South Sulawesi," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (October 15, 2023): 342–63.

<sup>63</sup> Liston, Interview with *Ninik Mamak* (Traditional Leader), February 22, 2023.

<sup>64</sup> Muhammad Rais, Interview with Village Head of Bandur Picak, February 17, 2023.

legal one at the KUA.<sup>65</sup> The prohibition of intra-tribal marriages by customary leaders is the main reason for the implementation of *nikah sirri* in this situation,<sup>66</sup> known as *nikah sapovik*.<sup>67</sup>

Second, they choose to move to another area. Couples who want to marry and know that *ninik mamak* will not give permission decide to move from Koto Kampar Hulu to an area without customary rules. Their main goal is to be able to marry according to state law at the KUA and obtain legal recognition from the state for their marriage. An example is the case of A, who wanted to marry PH but did not get approval from *ninik mamak* because A had violated customary rules and had not paid the customary sanction.<sup>68</sup> Therefore, they both moved their domicile outside the Koto Kampar Hulu subdistrict. Through this strategy, PH did not have to pay the previous customary fine, and both could process their marriage administration legally under state law and record it at the KUA without the need for permission from *ninik mamak*.<sup>69</sup>

Regarding this last strategy, the Head of the Village of Koto Kampar Hulu and the *ninik mamak* have discussed this issue but have not been able to reach a satisfactory solution for the common interest.<sup>70</sup> As discussed earlier, the village head and *ninik mamak* receive income from this customary marriage administration. Customary figures also receive income from customary sanctions violated by the customary community, both from marriage administration and other customary law violations. The village head in the Koto Kampar Hulu subdistrict cannot even make alternative policies to solve this issue and can only follow existing customary regulations. It should be noted that customary law in Koto Kampar Hulu not only covers marriage aspects but also affects various aspects of life among the Malay Customary Community.

Alternative legal strategies employed by the customary community to avoid customary rules and sanctions are not only implemented by the Malay Customary Community in Koto Kampar Hulu but also in various regions in Indonesia. For example, in Nagari Lunto, West Sumatra, if someone engages in adultery and wants to marry, they will face customary sanctions in the form of compensation such as a goat or buffalo, agreed upon by *ninik mamak*. Usually, after customary sanctions are imposed, adulterers tend to refuse to pay, hoping for leniency. The head of the customary union of Nagari (*Kerapatan Adat Nagari*, KAN) will hold a discussion again with *ninik mamak* to reach an agreement. However, adulterers usually still refuse to pay customary sanctions. As a consequence, these sanctions may be imposed on villagers with the same tribal background as the adulterers. If sanctions are not paid, villagers with the same tribal background cannot marry.<sup>71</sup>

To avoid these customary sanctions, adulterers often apply alternative strategies by leaving their villages to avoid shame in the local community. The impact of their actions can

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<sup>65</sup> Hendra Surya, "Problematika Nikah Sirri di Indonesia (Kedudukan Nikah Sirri Menurut Hukum Positif Indonesia)," *Al-Ilmu: Jurnal Keagamaan dan Ilmu Sosial* 5, no. 1 (2020): 41.

<sup>66</sup> H, Interview with Violator of Customary Marriage Administration, February 16, 2023.

<sup>67</sup> Usman, Community Figures from Koto Kampar Hulu.

<sup>68</sup> A, Interview with Violator of Customary Marriage Administration, February 20, 2023.

<sup>69</sup> PH, Interview with Violator of Customary Marriage Administration, February 20, 2023.

<sup>70</sup> Dodi Candra, Interview with Village Head of Koto Kampar Hulu, February 18, 2023.

<sup>71</sup> Nailur Rahmi and Rinta Okta Henny, "Sanksi Adat tentang Larangan Perkawinan terhadap Orang Sesuku dengan Pelaku Zina," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (November 30, 2020): 337-338.

result in sanctions for the entire village with the same tribal background. The hope is that villagers with the same tribal background will not be affected by the sanctions. If the adulterers decide to return to the village, there is still an opportunity for them to pay the set sanctions. After paying the sanctions, the ban on marriage will be lifted according to the applicable customary rules.<sup>72</sup> This customary provision aims to uphold the values passed down through generations. Even when they are no longer in their hometown, they still maintain customs and culture, especially those related to marriage, both before and during marriage.<sup>73</sup> This shows that traditions can be preserved alongside Islamic law and state law without losing their traditional identity.<sup>74</sup>

## Conclusion

In the context of marriage in the Malay Customary Community in Koto Kampar Hulu, there exists a complex dynamic between state law, customary law, and the role of *ninik mamak*. The process of dual marriage administration, involving the approval of *ninik mamak* and state administrative requirements, reflects the harmony of the relationship between customary law and state law in the context of marriage registration. Nevertheless, customary sanctions for those who violate customary norms underscore the importance of the role of *ninik mamak* in maintaining social and moral balance in the community. Consequently, prospective couples who do not obtain *ninik mamak*'s permission strive to avoid customary sanctions through alternative legal strategies such as *nikah sirri* or relocating to another village. This discussion illustrates the complexity of interactions between customary rules, the need for state legality, and social dynamics in preserving identity and cultural values.

From the exploration of case studies, it is evident that the alignment between customary law and state law is not always absolute, and alternative strategies emerge in response to the challenges faced by the Malay Customary Community. This condition portrays the complexity of tensions between preserving traditional values and the demands of modern development. Nevertheless, indigenous communities continue to strive to maintain their identity and culture, despite facing challenges and dilemmas in dealing with polygamous marriages and customary sanctions. This discussion highlights the importance of understanding local dynamics and social changes in the context of customary law, as an integral part of the cultural diversity in Indonesia.

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<sup>72</sup> Rahmi and Henny, 338.

<sup>73</sup> Wardah Nuroniyah and Bani Syarif Maula, "Muslim Women Adhering to Minangkabau's Bajapuik Tradition in Cirebon, West Java: Compromizing a Gendered Culture in Islamic Law," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 2 (November 30, 2022): 142.

<sup>74</sup> Sadiani Sadiani et al., "Progressive Islamic Law and Misek Tradition of Dayak Ngaju in Central Kalimantan," *El-Mashlahab* 13, no. 2 (December 31, 2023): 225–44.

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