

## The Contestation of Authority in Islamic Marriage Law in Aceh, Indonesia

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DOI: <https://dx.doi.org/10.29240/jhi.v8i2.7896>

Received: 22-06-2023

Revised: 30-07-2023

Accepted: 02-10-2023

Cite this article:

Nasir, M., Aniza, A., Muzakkir, M., & Roni, M. (2023). The Contestation of Authority in Islamic Marriage Law in Aceh, Indonesia. *Al-Istinbath: Jurnal Hukum Islam*, 8(2), 369-388.  
doi:<http://dx.doi.org/10.29240/jhi.v8i2.7896>

### Abstract

This article describes the contestation between government authorities and religious scholars (ulemas) in the creation of marriage laws in Aceh. The research data were derived from observations, interviews, and documentation, constituting a qualitative study with a theoretical framework based on the relationship between the state and religion, as well as the Theory of Legal Certainty, employing a socio-legal approach. The findings of this study illustrated that the authority of the ulemas was manifested through the issuance of fatwas by Acehnese ulemas, which also operated in society illegally. On the other hand, government authority was realized through the enactment of marriage laws and the Islamic Criminal Code (KHI) implemented by government institutions. The fragmentation and contestation of these authorities occurred following the enactment of the Special Autonomy Law, which granted authority to the ulemas to issue fatwas. As a result, dualism in marriage laws emerged in Aceh, leading to various issues such as legal uncertainty, a lack of trust in state institutions, and the proliferation of illegal marriages in Aceh. Additionally, Acehnese ulemas sought to establish their own local laws for Aceh, independent of national marriage laws. Therefore, it is imperative to establish Aceh's marriage laws through regional regulations (*qanun*) while accommodating the fatwas issued by Acehnese ulemas.

**Keywords:** Contestation, Authority, and Marriage Law

## Introduction

In contemporary times, the implementation of Islamic law through religious scholars' (ulama) fatwas has, for the most part, been abandoned. This phenomenon can be attributed to the intertwined relationship between Muslim-majority nations and Islam, resulting in the proliferation of state legislation grounded in Islamic law. In Indonesia, the legal framework for Islamic marriage is established under Law No. 1 of 1974 on Marriage, while within the Islamic community, ulemas, academics, and Islamic organizations formulated the Compilation of Islamic Laws (CIL) as a guideline for regulating matters related to marriage, inheritance, and endowments in 1991. Notably, CIL has been adopted nationally and has garnered relative acceptance among the populace.<sup>1</sup>

However, a contrasting situation exists in Aceh, where numerous cases related to marriage laws diverge from the national legal framework. Sociologically, it is undeniable that Aceh has seen a proliferation of unofficial marriages, commonly referred to as "*nikah siri*," and the emergence of various self-proclaimed *Qadhi Liar* (unofficial religious judges) who conduct marriages and record them illegally. This situation has arisen due to the emergence of new authorities alongside the state's jurisdiction in administering marriage laws following the enactment of special autonomy laws in Aceh. Consequently, apart from the prevailing national positive law, the fatwas issued by ulemas also hold sway within Acehnese society.<sup>2</sup>

The contestation between two legal products, i.e., positive law and regional law in the form of ulemas' fatwas, within the legal system has given rise to legal dualism, and sociologically, it has led to increasing uncertainty regarding marriage matters, adversely impacting the future of marriages themselves.<sup>3</sup>

The facts demonstrate that in Aceh, fatwas issued by ulemas through the Council of ulemas (hereinafter as abbreviated in Indonesian, MPU) conflict with the positive law enforced by the government, with each authority operating independently. This research is imperative in seeking a solution to reconcile these two authorities into a unified framework applicable to the entire Acehnese

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<sup>1</sup> Elimartati dan Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *Juris: Jurnal Ilmiah Syariah* 19, no. 2 (2020): 231–43, <https://doi.org/10.31958/juris.v19i2.2283>.

<sup>2</sup> Tri Wahyu Hidayati, Ulfah Susilawati, dan Endang Sriani, "Dynamics of family fiqh: the multiple roles of women in realizing family resilience," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 2 (2022): 219–38, <https://doi.org/10.18326/IJTihad.V22i2.219-238>.

<sup>3</sup> Anwar Hafidzi, Rusdiyah Rusdiyah, dan Nurdin Nurdin, "Arranged Marriage: Adjusting Kafa'ah Can Reduce Trafficking of Women," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 (2020): 177, <https://doi.org/10.29240/jhi.v5i2.1991>.

population, thereby achieving legal certainty in marriage matters by leveraging the special autonomy granted to the region.<sup>4</sup>

This study is characterized as field research and qualitative research. Primary sources in this study were obtained through in-depth interviews with ulemas and the examination of fatwa documents, CIL, and marriage laws. Furthermore, secondary sources, such as academic journals, research findings, books, and fiqh texts, were utilized, employing a socio-legal theoretical framework.<sup>5</sup>

In relation to previous studies, prior research has generally focused on the issue of implementing Islamic jurisprudential (fiqh) law and its legislation into positive law. This is exemplified by the research conducted by Khairuddin Nasution concerning marriage laws in Indonesia and Malaysia, which gave rise to theories of Islamic jurisprudence (*fiqh of mazhab*) and state jurisprudence.

Afina Amna's study in 2018, titled "Charismatic Authority in Marriage: A Study of Arranged Marriages in Al-Ma'sum Islamic Boarding School, Tempuran, Magelang," published in *Al-Ahwal: Journal of Islamic Family Law*, focused on arranged marriages within the Al Ma'sum Islamic boarding school. Through interviews with religious leaders (hereafter as *Kiyay*) and several students, Amna illustrated the significant role of *Kiyay* in the process of arranged marriages. The choice of a prospective spouse was entirely at the discretion of the *Kiyay*, and in most cases, the guardians of the students entrusted this authority to the *Kiyay* to determine suitable spouses for their children. The research concluded that *Kiyay* possessed charismatic traits, and there was a sense of blessing associated with their roles in selecting life partners, making the students reluctant or unwilling to reject the *Kiyays'* choices.<sup>6</sup>

A similar study on the authority of marriage was conducted by Agung Tri Nugroho in 2019, titled "Reconceptualization of Marriage Guardianship Authority in Indonesia," published in *Mahkamah: Journal of Legal and Islamic Studies*. Agung's research delved into the context of women assuming more significant roles in governance. It emphasized that not only men could hold strategic positions, but women could also do so based on their intellectual backgrounds and the level of need, enabling them to assume leadership or policymaking roles. Agung employed a qualitative research method, specifically a

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<sup>4</sup> KM. Al Fathur Ikhsan Fathur, "Implications of Marriage by Accident," *Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan dan Ekonomi Islam* 15, no. 1 (2023): 1–14, <https://doi.org/10.32505/jurisprudensi.v15i1.5388>.

<sup>5</sup> Tata Wijayanta, *Asas Kepastian Hukum Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga*, *Jurnal Dinamika Hukum*, Vol. 14 No. 2, Mei 2014 (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada), 217

<sup>6</sup> Afina Amna, "Otoritas Kharismatik Dalam Perkawinan: Studi atas Perjudohan di Pondok Pesantren Al-Ma'sum Tempuran, Magelang," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2020): 91, <https://doi.org/10.14421/ahwal.2018.11108>.

literature review, with primary sources being journals and similar studies. The research concluded that, in the contemporary world, there is a need for female marriage guardians because, fundamentally, we are all equal.<sup>7</sup>

Another related study on the authority of marriage guardianship was carried out by Fathonah K. Daud and Ramdani Wahyu Sururuie in 2021, titled "Marriage Guardian Authority in Islam: Analysis of Marriage without a Guardian in Indonesia from the Perspective of Fiqh and Positive Law," published in *Akademika: Journal of Islamic Studies*. This research attempted to analyze the legality of marriages conducted without a marriage guardian in Islamic jurisprudence (fiqh) and the positive law of Indonesia today. The researchers utilized a literature review approach, and their findings indicated that marriage without a guardian is not permissible or valid in the context of positive law. Although there are Hanafi and Shia opinions that allow such marriages (based on *sekufu*), Indonesian law follows the Shafi'i school of thought, and thus, marriages without a guardian are considered invalid or void.<sup>8</sup>

Based on the explanations and previous studies, it can be concluded that there is currently no similar research on the Contestation of Authority in Islamic Marriage Law in Aceh, Indonesia. This article aims to describe how the contestation of authority between the government and ulemas in Aceh impacts the implementation of marriage laws, the resulting consequences of this fragmentation, and the efforts made to unify these authorities in order to create effective marriage regulations and eliminate resistance.

## Discussion

### Fatwa of Aceh Ulemas versus Positive Law

In the context of Islamic studies, the concept of fatwa has evolved since the advent of Islam through the Quran and the Sunnah. The application of Islamic law through the issuance of fatwas by ulemas or Muftis has been continuously developing from the time of the Prophet Muhammad (peace be upon him) until the present day. However, this development has undergone constant changes, not only in terms of its prerequisites and status but also in the transition from individual fatwas to collective fatwas.

According to Asy-Syatiby's perspective, a fatwa is not limited to being the result of ordinary *Ijtihad* (independent legal reasoning), as understood by some Muslims, which may or may not be binding and can be followed or ignored at will. He posits that obedience to the Mufti who issues a fatwa is

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<sup>7</sup> Agung Tri Nugroho, "No Title," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 4, no. 1 (2019), <https://doi.org/https://doi.org/10.25217/jm.v4i1.455>.

<sup>8</sup> Ramdani Wahyu Sururuie Fathonah K. Daud, "Otoritas Wali Nikah Dalam Islam: Analisis Perkawinan Tanpa Wali di Indonesia Perspektif Fiqh dan Hukum Positif 15, no. 2 (2021), <https://doi.org/https://doi.org/10.30736/adk.v15i2.544>.

equivalent to obedience to Allah and His Messenger. In this regard, a Mufti holds a position of authority similar to that of a Prophet for the community.<sup>9</sup> He provides at least three reasons to support this view: first, the Mufti is the inheritor of the Prophet, as emphasized in many authentic hadiths. Second, the Mufti represents the Prophet in conveying the law. Third, the Mufti actively contributes to the development of Islamic law.<sup>10</sup> However, in practice, fatwas issued, whether individually or by fatwa institutions, may sometimes not align with societal norms, leading to controversies. It is not uncommon for fatwas to contradict the decisions of the state government, such as the fatwas issued by Aceh ulemas specifically challenging the state's legislation on marriage, which has been in effect nationally.<sup>11</sup>

Several fatwas issued by Aceh ulemas are at odds with the Marriage Law and the CIL, particularly in matters concerning the validity of decisions made by the Sharia Court based on these laws, the presence of Marriage Registration Officials (in Indonesian abbreviation as PPN) responsible for recording marriages, and the role of the Head of the Religious Affairs Office as the marriage guardian appointed by the government.<sup>12</sup>

The rejection of the Marriage Law and CIL is observed within two major schools of thoughts or legal traditions in Islamic law in Indonesia. First, the traditionalist group tends to adhere to the traditional jurisprudential schools (*fikih mazhab*) because they believe that these schools already provide an ideal framework for addressing gender-related issues within the context of marriage. According to them, the jurisprudential teachings are sufficient. Second, the feminist group argues that CIL and the Marriage Law seem to discriminate against women's rights and excessively prioritize male dominance, which is why many people support these laws. Recent criticisms of male dominance in various discussions on Islamic law are directed towards both traditionalist ulemas and classical jurisprudence.<sup>13</sup>

In the context of the Muslim community in Aceh, the fatwas issued by ulemas directly impact the existence of the Sharia Court as a judicial institution and the Office of Religious Affairs as a marriage registration institution. The "negative" response arises because CIL and the Marriage Law are perceived to

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<sup>9</sup> Studi Analisis et al., "Konsep Pemikiran Sayyid Qutb tentang Bai'ah." 6 (2022): 61–82, <https://doi.org/10.29240/alquds.v6i1.3182>.

<sup>10</sup> Ismail, "ALHURRIYAH: Jurnal Hukum Islam," *Alburriyah* 02, no. 02 (2017): 1–16.

<sup>11</sup> Muhammad Syarif Hidayatullah, "Eksistensi dan Standarisasi Pemeriksaan Perkara Dispensasi Kawin Berbasis Kepastian Hukum" 3 (2023): 81–102, <https://doi.org/10.32332/syakhshiyah.v3i1.6485>.

<sup>12</sup> Nur Hadi, "Maqashid Syari'ah Hukum Perkawinan Dalam Kompilasi Hukum Islam (KHI)," *Al-Fikra: Jurnal Ilmiah Keislaman* 16, no. 2 (2017): 203, <https://doi.org/10.24014/af.v16i2.3831>.

<sup>13</sup> Jurnal Hukum Islam, "Al-Istinbath" 8, no. 1 (2023): 1–20.

contradict the strong adherence to the Shafi'i school of thought within the community. The expression of this rejection can be seen in the statement of one Dayah ulema who asserted that CIL and the Marriage Law were created by the state, and if they contradict the opinions of Aceh ulemas, they are not obligatory to follow. A review indicates that 21 legal provisions have been questioned for not aligning with the views of Aceh ulemas. Furthermore, he mentioned that, leveraging Aceh's special status, it would be permissible for Aceh to formulate its own legal provisions rooted in the Shafi'i school of thought in the future.<sup>14</sup>

### **Fatwas of Aceh Ulemas Regarding Marriage Registration**

The registration of marriages according to Aceh ulemas will be presented in this section based on the Fatwa of Aceh ulemas through Interview Number 1 of 2010. It states that a secret marriage (in the Indonesian term called *nikah sirri*) is a marriage conducted without the presence of marriage officers or marriage registrars. Such marriages are not registered with the Religious Affairs Office or any relevant institution. According to this fatwa, a secret marriage may be valid or invalid. A valid marriage fulfills all the necessary conditions and requirements, while an invalid one fails to meet these conditions.<sup>15</sup>

This fatwa emphasizes that the validity and requirements of a marriage are not determined by the marriage registration.<sup>16</sup> Instead, both parties must report the marriage, and the registrars must record and document it. The registration of a valid secret marriage can be done at any time after the marriage contract, with no specific time limit, and the registrars must facilitate this process. Unregistered secret marriages that are invalid should be subject to sanctions.<sup>17</sup>

Based on the provisions in the MPU fatwa, it can be understood that Aceh ulemas seek government recognition of secret marriages. This recognition is achieved by recording the marriage if it complies with the essential conditions and requirements outlined in Islamic jurisprudence (Fiqh). These provisions differ significantly from the government's intentions expressed in existing regulations, where secret marriages are not recognized by the government, and even if performed, they lack legal validity.<sup>18</sup>

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<sup>14</sup> An interview result with Tgk. Yahya Husen, one of the prominent leaders of Dayah (Islamic boarding school) in Aceh, on November 20, 2021.

<sup>15</sup> MPU Aceh Fatwa Number: 01 of 2010.

<sup>16</sup> Unlike the provisions of the fatwa, even though classical fiqh (Islamic jurisprudence) does not require marriage registration, it does not mean that marriage registration is unimportant. Especially in the contemporary context, where the need for marriage registration documents has become a requirement for various administrative purposes such as population registration, immigration, education, and so on. The importance of marriage registration is based on the command to record debts and obligations, as stated in Surah Al-Baqarah, verse 282.

<sup>17</sup> MPU Aceh Fatwa Number: 01 of 2010.

<sup>18</sup> Jurnal Hukum Islam et al., "Al-Istinbath" 7, no. 1 (2022): 223–40.

In addition to the term *nikah siri*<sup>19</sup>, there is also the concept of "clandestine marriage" (in the Indonesian term called *nikah liar*), as mentioned in the MPU Aceh Fatwa Number 02 of 2009. It is defined as a marriage that is not registered through the designated authorities, in accordance with marriage laws and regulations. *Nikah liar* also includes marriages where a woman marries someone through a *Tabkim* process, involving a non-appointed judge.<sup>20</sup>

The viewpoint of Aceh ulemas asserts that many people engage in secret marriages. From an Islamic legal perspective, if all the essential conditions and requirements are met, the marriage is considered valid, with the presence of the prospective groom, prospective bride, guardian, two witnesses, and the exchange of vows (in the common Indonesian term known as *ijab qabul*). Thus, the marriage is legally valid. However, if individuals do not register it with the Religious Affairs Office, from a legal standpoint, the marriage remains unrecorded by the state. Nonetheless, it is still valid under Islamic law if the essential conditions are met.<sup>21</sup> However, some Aceh ulemas argue that marriage registration is unnecessary, as it is accommodated within the framework of Islamic jurisprudence (the *fiqh* of marriage).<sup>22</sup>

Another perspective from Dayah ulemas who believe that marriage registration is unnecessary essentially rejects the existence of the Marriage Law (CIL) and the Marriage Act, which are government products. This rejection is due to the view that registration is primarily intended to ensure compliance with legal regulations and the CIL, such as those related to marriage age, permission from prospective wives, permission for polygamy, and other matters. (This perspective of Dayah ulemas aligns with the MPU fatwa.) According to the ulemas who argue that marriage registration contradicts Islamic jurisprudence (*fiqh*), it should not be allowed because Islamic jurisprudence is formulated to provide legal certainty. Therefore, the presence of a guardian and witnesses, as well as the announcement during *the walimatul 'urusy* ceremony, is mandatory. These provisions are made to protect women and children, and they have been in place since the time of the Prophet without controversy. There is no reason to change these practices.<sup>23</sup>

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<sup>19</sup> The term "*Nikah siri*" in this research refers to the definition formulated in the MPU Aceh Fatwa Number 01 of 2010, which states that "*Nikah Siri*" is a marriage conducted without the presence of a marriage registrar officer and is not registered at the Office of Religious Affairs at the district level or any other authorized institution.

<sup>20</sup> MPU Aceh Fatwa Number: 02 of 2009

<sup>21</sup> II.

<sup>22</sup> An interview result with Tgk. YH, a Member of DKU (Consultative Council of Ulama) and Leader of Dayah, on November 20, 2021.

<sup>23</sup> An interview result with Tgk. YH as a Member of DKU and the Leader of Dayah, on October 10, 2021.

Regarding *Nikah liar* in the sense of using the *Tabkim* process with a Qadhi liar, even though it is allowed by the MPU fatwa, interviews with ulemas in Aceh revealed that most of them believe that a Qadhi liar is not permitted to solemnize marriages. In fact, they advocate closing this avenue because it is challenging to find ulemas with the rank of *Mujtahid*, as required by the MPU fatwa. There are concerns that it may be abused, leading to individuals falsely claiming the status of *Mujtahid*.

"If we look at it from a jurisprudential standpoint, it is indeed necessary for the government to appoint the *tabkim* guardian. If we simply allow anyone to be appointed, it can result in anyone assuming the role of a judge. This is because different regions have different terms for them. In Aceh, they are referred to as '*Tengku*,' in Java, '*Kiai*'. Even within Aceh, there are various social statuses associated with the title '*Tengku*.' For example, even Quranic teachers may be addressed as '*Tengku*,' even if they may not have a comprehensive understanding of Islamic law and only focus on Quranic recitation. If individuals at this level are permitted to officiate marriages, it could lead to chaos. Therefore, based on my knowledge, the *tabkim* guardian should indeed be appointed by the legitimate government."<sup>24</sup>

In contrast to the above viewpoint, Tgk SM and Tgk Ihs argued that marriages conducted through the *Tahkim* process, even for women without a *nasab* guardian, remain valid as long as the essential conditions and requirements of the marriage are met in accordance with the provisions of Islamic jurisprudence (*fiqh*) or the opinions of ulemas. Referring to the fatwa of Aceh ulemas, it is indeed stated that marriages conducted by a *qadhi liar* can be valid, but they must meet specific criteria and conditions, and if the implementation does not meet these requirements, ulemas do not allow it.<sup>25</sup>

Tgk. SRZ states that the phenomenon of marrying a *qadhi liar* or unofficially is still found in Aceh *Tamiang*, and many people, especially from outside the region, engage in marriages with unofficial *qadhis*. This issue was even discussed in the Regional MPU when it was discovered that a Tgk. Ar from the Banyak Payed sub-district was involved in such marriages. Additionally, there is the well-known location called *Sarah Teube* where unofficial *qadhi* marriages have taken place (an interview with Tgk SRZ). According to the interviewed ulemas, this phenomenon still exists, but it is highly secretive and concealed. It is even practiced by some members of the MPU itself when officiating marriages for couples from Aceh *Tamiang*.<sup>26</sup>

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<sup>24</sup> An interview result with Tgk Hsb, one of the dayah ulemas, on October 20, 2021.

<sup>25</sup> An interview result with Tgk SM MPU Beureun, one of the dayah ulemas, on December 2, 2021.

<sup>26</sup> II.



This situation has led some people to refrain from registering their marriages with the Religious Affairs Office, and there are still instances of marriage registration carried out by certain individuals who claim to be judges/*qadhis* outside of the KUA.<sup>27</sup> Furthermore, the continued practice of marrying through the *Qadi Liar* is also influenced by the fatwa issued by the Aceh Ulemas Consultative Assembly (in the Indonesian term known as MPU Aceh), where *Nikah liar* conducted via *tabkim*, which meets the criteria, is considered valid. It is then required to request the competent authority to issue a marriage certificate.<sup>28</sup>

Regarding the discovery of unregistered marriages at the Office of Religious Affairs and the presence of marriages conducted by *Qadhi Liar*, data reveals that this is due to several factors, namely; the high cost of registration, while many in the community still have limited financial means, the prevalence of divorces not processed through the court system, resulting in a lack of documentation for marriage registration, polygamous marriages conducted without court permission, making them ineligible for KUA services, and marriages without parental consent.<sup>29</sup>

The first model of marriage registration aligns with the provisions of the Marriage Law (CIL) and the prevailing regulations in Indonesia. However, the second model of registration aims to ensure that secret marriages conducted by the community are reported to the *Syar'iyah* Court or Religious Court for the confirmation of marriage (in the Indonesian term commonly known as *isbat nikah*).<sup>30</sup> In essence, this second model does not conflict with legal regulations and the CIL. However, if a secret marriage violates the provisions of the CIL or legal regulations, *isbat nikah* cannot be performed. Aceh ulemas desire that secret marriages conducted by the community be recognized by the state as long as they meet the essential conditions and requirements of marriage established based on the opinions of the school of jurisprudence (*mazhab*).<sup>31</sup>

While public interest in submitting applications for marital confirmation (*itsbat nikah*) to the Religious Court continues to increase in response to the administrative requirements imposed by schools mandating that every child

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<sup>27</sup> Dan Mohd. Din Rusmiati, Syahrizal, "Fakultas Hukum Universitas Syiah Kuala," *Konsep pencurian dalam kitab undang-undang hukum pidana dan hukum pidana islam* 1 (1), no. 2 (2017): 14.

<sup>28</sup> MPU Aceh Fatwa Number 02 of 2009 on the Legal Status of the Lia Marriage.

<sup>29</sup> Rusmiati, Syahrizal, "Fakultas Hukum Universitas Syiah Kuala."

<sup>30</sup> Laras Shesa, "Keterjaminan Kedudukan Dzaul Arham Dalam Kewarisan Islam Melalui Wasiat Wajibah," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 (2018): 145, <https://doi.org/10.29240/jhi.v3i2.615>.

<sup>31</sup> Yusna Zaidah, "Isbat Nikah Dalam Perspektif Kompilasi Hukum Islam Hubungannya Dengan Kewenangan Peradilan Agama," *Syariah Jurnal Hukum dan Pemikiran* 13, no. 1 (2014), <https://doi.org/10.18592/syariah.v13i1.170>.

entering school must attach a photocopy of their Birth Certificate, and one of the administrative requirements for obtaining a Marriage Certificate is the Marriage Book of the relevant parents. However, due to the high demand for *itsbat nikah* by the community, the judges of the Religious Court exercise "*ijtihad*" by deviating from these provisions, subsequently granting *itsbat nikah* applications based on Article 7 Paragraph (3) letter e of the Compilation of Islamic Law.<sup>32</sup>

Based on the data presented above, it can be understood that the concept of *nikah liar* (unregistered marriage) as understood by Acehese ulemas is fundamentally similar to what is generally understood by experts and prevailing legal regulations, namely marriages conducted without adhering to registration and other regulations as per the law. Regarding such unregistered marriages, ulemas state that they are legally valid, but if carried out, they may have adverse effects, especially in cases of disputes and administrative matters.<sup>33</sup>

Considering the benefits of marriage registration and the disadvantages of unregistered marriages, almost all Acehese ulemas generally accept or agree to the registration of marriages, even though it is not a requirement in the Islamic jurisprudence. They argue that recording marriages is essential for future family administrative matters. While it is not obligatory in religious law, where marriage remains valid without registration, it is advisable to do so to avoid undesirable consequences. The same applies if marriage registration is linked to ensuring that the marriage complies with applicable laws and to protect the husband, wife, and children from the negative consequences of unregistered marriages. In this regard, the ulemas of Aceh *Tamiang* state that registration is necessary, even though it is not discussed in classical Islamic jurisprudence.<sup>34</sup>

One of the consequences of unregistered marriages is that they are not recognized by the state, so if problems arise, they cannot be resolved through state institutions. Furthermore, due to the lack of a marriage certificate, it also adversely affects their ability to meet their daily administrative needs, such as enrolling children in school, foreign travel documentation, *haji* and *umrah* pilgrimage, and other activities. Based on this, ulemas argue that all marriages conducted unofficially according to the aforementioned rules should be registered promptly to address the administrative obstacles faced by the community. This is also the basis for the issuance of the fatwa by MPU Aceh, which is a guideline for ulemas.

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<sup>32</sup> Meita Djohan Oe, "Isbat Nikah dalam Hukum Islam dan Perundang-undangan di Indonesia," *Pranata Hukum* 5, no. 3 (2013): 248–53.

<sup>33</sup> Rusmiati, Syahrizal, "Fakultas Hukum Universitas Syiah Kuala."

<sup>34</sup> An interview result with Tgk. Fakh, one of the Da'is (Islamic preachers) in Aceh Tamiang, on November 25, 2021.

## Divorce in the View of Acehese Ulemas

The fatwas of Acehese ulemas are in stark contrast to the regulations established by the government through marriage legislation, as elucidated in the previous theoretical study. In fact, based on these fatwas, Acehese ulemas request Religious Judges to set aside the legal provisions regarding divorce and instead, adhere to the fatwas issued by the MPU (Aceh Ulemas Consultative Assembly) when determining the validity of divorce.<sup>35</sup>

Responding to the researcher's question regarding the opinion of Acehese ulemas on the requirement that divorce must be pronounced in a court session, Tgk. YH commented that the Indonesian Marriage Law (CIL) not only does not align but contradicts the Shafi'i school of thought. In his view, there are 21 cases in the CIL that contradict the views of ulemas, including the issue of threefold divorce in one sitting and the possibility of reconciliation, which he believes contradicts the literal interpretation of Quranic verses. Requiring divorce to be pronounced in front of a Religious Court implies that we allow people to engage in adultery, as divorces performed outside the court are considered invalid. Such a perspective is held by the Zaidi Shia and Khomeini followers and linking it to administrative matters is not a problem, but it contradicts the verses of Allah.

In general, the ulemas in Aceh are aware of the legal provisions issued by the government that serve as the legal basis for marriage, both in the Office of Religious Affairs and the Sharia Courts. However, the reality is that the fatwas of Acehese ulemas regarding marriage laws are often issued, even when their content contradicts a significant portion of the government-issued legal framework. The issuance of these fatwas is not without reason, as stated by Tgk. Abd, an official of the MPU in North Aceh, who explained that:

“Actually, the ulemas do not agree because the rules explicitly state so, but in terms of substance, when we study it, the substance of these rules is only related to administration, such as divorce must be done in front of the court, and marriages must be registered. However, in Islamic jurisprudence (fiqh), it appears that there is a concern here; it seems to complicate divorce itself and make marriage more complicated. However, this is a government policy, related to politics. Islam also acknowledges the existence of political aspects referred to as '*siyasah syar'iyah*,' which regulates practical matters and family law. This is how the government manages it for the greater good. However, opposing this does not mean opposing it entirely, but it's because it transparently states that marriages must be registered, and divorces must happen in front of the court. This is also beneficial to prevent making it too easy for people to divorce or

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<sup>35</sup> MPU Aceh Fatwa No: 02 of 2015.

have unregistered marriages, which in the end would have consequences for the spouses themselves, such as the legal status of their children within the family, obtaining their documents, and so on, which would become difficult.”

According to Tgk Abd, as mentioned above, divorce taking place in front of a court session is a government policy. Even though it is not regulated in Islamic law, it is considered beneficial because there are adverse consequences for both husbands and wives, as well as for children, if this practice is not followed. Furthermore, Tgk IA stated:

"In my view, this has not had any influence at all. You see, the individuals working in the Sharia Court, the Department of Religion, they all follow the guidance from Jakarta. They are not under regional autonomy. Just like the Prosecutor's Office, the Police, and the Judiciary, they do not adhere to this regulation; rather, they are subject to the central authority. There is no special autonomy involved in this. We are discussing fatwas here, and if they do not adhere to these fatwas, it means they are in contradiction with Islamic law. Because here in Aceh, the MPU (Aceh Ulemas Consultative Assembly) does not dare to deviate from these fatwas. The MPU has its autonomy; it is not the same as the MUI (Indonesian Ulemas Council). The MUI is still an organization, but the MPU is an institution, an equivalent institution. Even at the district/city level, the MPU is considered part of the regional leadership (*Muspida*), and the same goes for the provincial level. So, when we hear from people in Java, the funding for the MPU is quite substantial, unlike the MUI, which does not have any funding anywhere. Therefore, even for individuals in the Department of Religion, like me, as a judge in the Sharia Court, I am not bound by this regulation because I must continue to adhere to the regulations from the central government there. If we pronounce a third *talaq* (divorce) here, it is still punished as one. As for matters of *faraidh* (inheritance), there are no deviations or incidents here; there is no deviation whatsoever."

According to Tgk IA, the Acehnese community is obligated to adhere to the fatwas issued by Acehnese ulemas because the ulemas in Aceh, who are part of the MPU (Aceh Ulemas Consultative Assembly), are distinct from the MUI (Indonesian Ulemas Council), which operates at the national level. If national legal provisions are in conflict with MPU fatwas, then the community must unquestionably adhere to the fatwas. Furthermore, given that Aceh has been granted special autonomy, it is undoubtedly different from other regions. On the other hand, government institutions such as the judiciary, prosecutors, and the police must adhere to government laws. Meanwhile, Tgk FA stated:

“The first aspect regarding legal provisions is that some of them can be accepted by our society, while others cannot. For example, what cannot be accepted is the provision that considers a divorce valid only when it is pronounced in front of a court; this is not accurate. In reality, the court merely acknowledges a divorce that took place some time ago. But considering the divorce as having occurred at the time it is declared in court is not suitable for those who divorced their spouses a few days earlier. However, if it is pronounced in court, it is permissible, so the period of divorce is counted from the time it is declared, but this is not the case in the legal compilation. The second aspect is related to the definition of a "*nikah siri*" or unregistered marriage. If the definition of "*nikah siri*" refers to a marriage that is not officially registered, it is somewhat inaccurate. However, if "*nikah siri*" refers to a marriage not conducted at the Ministry of Religious Affairs office and is divided into two categories: a valid "*nikah siri*" and an invalid one. A valid "*nikah siri*" is a marriage conducted by a guardian, even if it is not recorded at the Religious Affairs Office, as long as the essential elements and requirements are met, the marriage is considered valid. An invalid "*nikah siri*" is a marriage conducted by individuals who do not have the authority to perform marriages; this is an invalid "*nikah siri*." Therefore, the government needs to accommodate and recognize marriages performed by guardians that are not officially recorded. The responsibility of the Ministry of Religious Affairs is to record these marriages after they have been conducted by guardians, and the Ministry of Religious Affairs should not neglect this task. What is crucial is that the religious aspect is valid, and we should facilitate these marriages to have legal status in our country.”

Therefore, according to Acehese ulemas, the issuance of these fatwas is a reaction to the legal provisions issued by the government, both in the form of laws and the Indonesian Marriage Law (CIL), which they perceive as not aligning with the evolving legal norms within Acehese society.

Additionally, there is another factor that led Acehese ulemas to establish their own legal norms through fatwas, which is related to the process of their formulation. A significant portion of ulemas was not involved in this process. When Acehese ulemas were asked about their participation in formulating the CIL, it can be concluded that, in reality, they feel that they were never included in the formulation of the provisions found in the CIL. This sentiment is clear in the interview response provided by Tgk. YH, as follows:

"I once asked about this to Abu Alue Angeng and Abu Kruet Lintang. Both stated that in the past, officials from the Supreme Court came for a courtesy visit, engaged in casual conversation, and inquired about matters related to endowments, grants, and the like. At that time, they also

requested signatures and then left. However, when they visited, they never discussed or held formal discussions about formulating the CIL, and they also never officially invited us to discuss the content of the CIL."

From the statements provided, it can be understood that the government-appointed team responsible for formulating the Compilation of Islamic Law (CIL) did indeed conduct interviews with two charismatic ulemas in the region concerning matters that would later be incorporated into the CIL. The demeanor of the informants suggests that both ulemas were unaware that these discussions were part of the process of formulating the CIL. Moreover, their opinions were not sought in great detail, which led them to feel uninvolved in contributing their thoughts to the formulation of the CIL.

Similar sentiments were expressed by Tgk.Zi, who stated that he had received information from Abu Daud Zamzami that Acehese ulemas were indeed included in discussions about the CIL. However, they were not actively engaged in making decisions regarding the CIL. Abu Daud Zamzami mentioned that they were resting in a hotel while others were making decisions about the CIL.

Based on the interviews conducted, it is evident that there were charismatic Acehese ulemas, one of which is Abu Daud Zamzami, who, as the leader of a *Dayah* (Islamic boarding school) and the deputy chairman of the Aceh Ulemas Consultative Assembly (MPU Aceh) at the time, participated in workshops and discussions regarding the planned content of the CIL held in Jakarta as a representative of the province of Aceh. Nevertheless, he felt that his input was not sought when it came to establishing the CIL as a product of Islamic law. This data implies that Acehese ulemas may have felt deceived during the CIL formation process, which could be a contributing factor to the perception that Islamic legal aspirations in Aceh were not accommodated within the CIL.

As a result, according to the ulemas, the desire for CIL improvement has been voiced by Acehese ulemas through the Aceh Ulemas Consultative Assembly (MPU Aceh). Tgk.YH recounted that the official institution in Aceh is the MPU, and any points conflicting with established Islamic texts should be rectified and aligned. This proposal has been submitted to the Aceh Sharia Court, and they are waiting for a response. Unfortunately, he did not recall the precise points that were presented.

From the above explanation, it can be understood that the rejection of certain provisions of CIL, including marriage laws, by Acehese ulemas is attributed to two main factors. First, the CIL contradicts the principles of Islamic jurisprudence (*fiqh*) found in the canonical texts they adhere to. Second, Acehese ulemas feel that they were not included in the process of formulating the regulations, including the CIL.

Similarly, like other Acehese ulemas, Tgk. Fakh concluded that aside from the fact that many aspects of the CIL contradict the fiqh principles found in canonical texts that they follow, Acehese ulemas were not involved in the formulation of the CIL. Consequently, many Acehese ulemas were not aware of the process and the detailed contents of the CIL.

When the CIL was introduced in Acehese society, many ulemas opposed it. Their rejection of government provisions stemmed not only from the fact that many aspects of the CIL conflicted with the opinions of ulemas from various schools of Islamic jurisprudence, especially the Shafi'i school, but also from the belief that it was not obligatory to obey the government through these regulations. They argued that the current government was corrupt and unjust, but they had to live in Indonesia. Meanwhile, the legal products of the state should be followed only if the state was based on the laws of Allah (swt), whereas the existing laws were based on worldly considerations.

Therefore, there are at least two reasons why Acehese ulemas rejected the existence of government-made laws, especially those related to marriage registration, the validity of divorce (*talak*), and wild qadhi. First, there were numerous legal provisions that contradicted the established opinions among ulemas of different schools of jurisprudence, particularly the Shafi'i school. Second, the obligation to obey regulations established by the new government would only arise if those provisions did not conflict with the evidence from the Quran, the Sunnah, and the opinions of ulemas from the various jurisprudential schools.

Regarding the expectations of Acehese ulemas for the CIL and the future family law, it is noteworthy to highlight Tgk. Zi's explanation. He stated that "Aceh already has its own government, so it is hoped that there will be a comprehensive agreement among Acehese ulemas through a grand assembly in Aceh, gathering all ulemas from Islamic boarding schools (*dayah*) and intellectuals to formulate the laws that will be applied in Aceh. This is to ensure that Wahhabi, Salafi, and Shia ideologies do not spread in Aceh. Based on the UUPA (Aceh Governance Law), Aceh may formulate its own family law derived from ulemas who adhere to the *Ablus Sunnah wal Jama'ah* belief."

From Tgk. Zi's statement above, several key points should be emphasized. Firstly, there is an awareness of Aceh's legal authority, legitimized to apply Islamic Sharia as the law in Aceh. Secondly, there is a spirit of legal reform, especially in the field of family law, to address all existing issues, including marriage registration, joint property, the validity of divorce outside the court, and others. With Aceh's autonomy in implementing Islamic Sharia, Aceh is highly likely to create its own family law in the form of regional regulations (*qanun*) by involving all Islamic boarding school ulemas (ulemas of *Dayah*) and intellectuals in a collective deliberation to formulate Aceh's specific family law.

## Contestation of Islamic Legal Authority in Aceh and Its Implications

Based on the theory of the relationship between religion and the state, it can be concluded that throughout the history of Indonesia, the discourse on family law has always involved three main and dynamic elements: religion, the state, and women. In its application, family law falls under the category of Islamic law that requires the assistance of state power. This means that, for the implementation and enforcement of this law, the state must provide its juridical foundation first, as it is the institution with the legality and authority to do so. The state ensures the compatibility of women within the family and society. The state also guarantees the equality of men and women in the domains of political, social, cultural, and economic life, without violating Islamic law.<sup>36</sup>

Debates and theorizations regarding the relationship between the state and religion in responding to and shaping family law have occurred for quite some time. The polarization of this issue leads to at least three extreme viewpoints: First, religion-state relations. Second, religion-state relations and religiosity. Third, confessional/denominational type. In conclusion, based on this theory, marriage law cannot be implemented without the involvement of the state, which in this case is the government.<sup>37</sup>

However, in the context of Aceh, it is apparent that the authority of religion (ulemas) and the authority of the state (the government) are divided and mutually influential in the legal life of the community. This is evident as both authorities coexist in society. If the government's authority operates through state institutions such as the Religious Affairs Office (KUA) and the Sharia Court (*Mahkamah Syar'iyah*), then the authority of the ulemas exists within the scholarly institutions. As evidence, there are still cases of unofficial/secret marriages within the community, and the MPU (Aceh Ulemas Council) continues to issue fatwas that contradict the government's decisions in marriage law. This phenomenon occurs because the authority of the ulemas can manifest in individual ulemas and existing ulemas institutions. Therefore, efforts are needed to reconcile these two authorities by utilizing the authority of the Aceh government based on its Special Autonomy Law and Special Autonomy Law.

Aceh, with its unique approach to implementing Islamic law, has the opportunity to develop its own legal system where the local government's authority in enacting Qanun (local regulations) as a legal framework for

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<sup>36</sup> Supriyadi dan Siti Suriyati, "Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 1 (2022): 136–61, <https://doi.org/10.19105/AL-LHKAM.V17I1.6060>.

<sup>37</sup> Farahdiba Thahura, "Emotional maturity of early age marriage's woman," *INSPIRA: Indonesian Journal of Psychological Research* 1, no. 1 (2020): 19–24, <https://doi.org/10.32505/inspira.v1i1.1720>.



implementing Islamic law can accommodate the fatwas of the ulemas and involve them in the drafting of Qanun to prevent resistance from the community against legal products.

When analyzed from the perspective of legal certainty theory, the contestation of authority in Aceh has rendered the family law ineffective, and as a result, the public does not receive legal certainty because both legal systems coexist. To ensure the effective implementation of family law in Aceh, based on the theory of legal certainty, family law in Aceh should be consolidated under a single authority, namely the government's authority through positive legal products applicable to the public, while the authority of the ulemas can be accommodated in the process of formulating family law through Aceh's Qanun.

## Conclusion

This research can be described as illustrating that in Aceh, the authority of Islamic marriage law is fragmented or dispersed into two conflicting authorities: the government authority, manifested through legislation implemented by government institutions, and the Ulemas authority, manifested in the form of fatwas and carried out illegally by certain individual ulemas. This phenomenon emerged following the enactment of the Aceh Special Autonomy Law and Special Autonomy Law, which provided opportunities for the Ulemas to issue fatwas through the function of the Aceh Ulemas Council (MPU). The contestation of authority will continue to occur unless the government promptly accommodates the ulemas' fatwas in the creation of local legal products. Therefore, the government must involve the ulemas in the formulation and implementation of marriage laws to achieve the unification of authority through Aceh's regional regulations (Qanun). The situation necessitates efforts to harmonize the marriage legal system in Aceh by leveraging the Special Autonomy Law and Aceh's Special Autonomy, based on the regional government's authority through Aceh's Qanun, with the participation of Aceh's ulemas.

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