

## Sharia-Based Customs in Unregistered Marriage Rules (Case Study in Rambatan Village, West Sumatra)

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### Abstract

This study focuses on the factors causing the birth of customary rules, then forms of customary sanctions, and the implementation of customary rules, as well as analyzes the dynamics of implementing customary rules against unregistered marriages in the view of Islamic law. The type of research conducted was field research. Primary data sources were Ninik Mamak, Wali Jorong, Religious Counselors, perpetrators of unregistered marriages, and their relatives. Secondary data sources were books and journals about marriage, customs, Islamic law and Positive law. The data were collected through semi-structured interviews and documentation techniques. Data analysis and interpretation techniques were data reduction, data presentation and conclusions. The technique of guaranteeing the validity of the data was by triangulation of sources. The results of the study indicate that the cause of the birth of customary rules was because they were not in accordance with Islamic teachings, positive law, and were considered a disgrace to the people. Forms of sanctions for the perpetrators of this unregistered marriage were expelled from the Nagari, if they were not pleased then paid a fine for slaughtering a goat, and if they did not want to do it, then they were set aside as long as the custom. Those who paid the fine had to do so in public and apologized to Ninik Mamak. Of the 11 pairs who performed unregistered marriages, 7 pairs were expelled from Nagari, 2 pairs paid a fine for slaughtering a goat, and 2 pairs were set aside from

the custom. This rule is in line with *sadd al-zari'ah* principles in Islamic law.

**Keywords:** Customs; unregistered marriage; sharia

### Abstrak

Kajian ini berfokus pada faktor penyebab lahirnya aturan adat, kemudian bentuk sanksi adat, dan pelaksanaan aturan adat, serta menganalisis dinamika penerapan aturan adat terhadap nikah sirri dalam pandangan hukum Islam. Jenis penelitian yang dilakukan adalah penelitian lapangan. Sumber data primer adalah Ninik Mamak, Wali Jorong, Penyuluh Agama, pelaku nikah sirri dan kerabatnya. Sumber data sekunder adalah buku dan jurnal tentang perkawinan, adat istiadat, hukum Islam, dan hukum positif. Teknik pengumpulan data melalui wawancara semi terstruktur dan dokumentasi. Teknik analisis dan interpretasi data adalah reduksi data, penyajian data, dan penarikan kesimpulan. Teknik penjaminan keabsahan data adalah dengan triangulasi sumber. Hasil penelitian menunjukkan bahwa penyebab lahirnya aturan adat adalah karena tidak sesuai dengan ajaran Islam, hukum positif, dan dianggap sebagai aib bagi masyarakat. Bentuk sanksi bagi pelaku nikah sirri ini adalah dikeluarkan dari nagari, jika tidak berkenan maka membayar denda untuk menyembelih kambing, dan jika tidak mau melakukannya, maka disisihkan selama adat. Mereka yang membayar denda harus melakukannya di depan umum dan meminta maaf kepada Ninik Mamak. Dari 11 pasangan yang melakukan nikah sirri, 7 pasangan diusir dari nagari, 2 pasangan membayar denda karena menyembelih kambing, dan 2 pasangan disisihkan selama adat. Aturan ini sejalan dengan prinsip *Sadd al-Zari'ah* dalam hukum Islam.

**Kata Kunci:** Adat; Nikah Sirri; Syariah.

### Introduction

This study examines the rules for unregistered marriage issued by the Customary Stakeholders in Nagari Rambatan, West Sumatra. Nagari Rambatan has special rules related to unregistered marriages and rejects the practice of unregistered marriages. This is in line with Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Law Number 1 of 1974 concerning Marriage, article 2 paragraph 2 explains that "Every marriage is recorded according to the applicable laws and regulations". Likewise in the Compilation of Islamic Law (KHI) in article 5 paragraph 1, it is explained that "to ensure order for the Islamic community, every marriage must be registered".

Even though it has been regulated in law and confirmed by the MUI Fatwa Number 10 of 2008 concerning Underhand Marriage and customary rules that apply, there are still people who do unregistered marriages. Unregistered marriages carried out by several of these couples certainly violated the customary rules that apply in Nagari Rambatan. This practice has a negative impact not only on the couple who do it but also the surrounding community. Administratively, the marriage is not recognized by the state because it is not registered, so it has an impact on the child later in taking care of other administration, such as obtaining birth certificates, schools, and so on. In addition, the practice of unregistered marriage in Rambatan also brings disgrace to extended families and the surrounding community because the practice tends to be considered negatively by the community.

So far, studies on unregistered marriages still revolved around the effectiveness of unregistered marriages rules, their practice in society, and their implications. In the study of the law of unregistered marriage, for example, the study was conducted by Voorhoeve on the extent to which the law was effective in bringing about social change in the field of marriage registration.<sup>1</sup> Fidiani in her study compared the sanctions for unregistered marriages from three countries, Indonesia, Pakistan and Tunisia.<sup>2</sup> Muttaqin also examined unregistered marriages of Indonesian citizens with foreign nationals in the perspective of marriage law in Indonesia.<sup>3</sup> Tahir et al reviewed the juridical review of the unregistered marriage case in the Religious Courts.<sup>4</sup> In addition, Suwarti also discussed the dualism of the unregistered marriage law in Indonesia.<sup>5</sup> In terms of the practice of unregistered marriages, several studies have also been carried out, such as Cherdymova et al which highlighted the main motives among young students to carry out unregistered marriages.<sup>6</sup> In line with that, Susilo et al also studied the phenomenon of unregistered marriage

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<sup>1</sup> Maaïke Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage," *Oxford Journal of Law and Religion* 7, no. 3 (2018): 479–97, doi:10.1093/ojlr/rwy027.

<sup>2</sup> Faïda Fidiani, "Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan, and Tunisia," *SAKINA: Journal of Family Studies* 5, no. 1 (2021): 1–14.

<sup>3</sup> Muhammad Ngizzul Muttaqin, "Unregistered Marriage Between Indonesian Citizens and Foreign Citizens With the Legal Perspective of Marriage in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 2 (2020): 149, doi:10.29300/mzn.v7i2.3396.

<sup>4</sup> M. Bahtiar Tahir, Sahabuddin Sahabuddin, and Marzuki Marzuki, "Juridical Review on Confirmation of Unregistered Marriage (A Case Study of Palu Religious Court)," *International Journal of Contemporary Islamic Law and Society* 1, no. 1 (2019): 1–21, doi:10.24239/ijcils.vol1.iss1.2.

<sup>5</sup> Suwarti et al., "Dualisme of Unregistered Marriage Law in Indonesia," *Journal of Law, Policy and Globalization* 67 (2017).

<sup>6</sup> Elena I Cherdymova, Elizaveta V Rozanova, and Yulia V Dementieva, "Unregistered Marriage as Modern Practice of Students' Youth Family Relations," *EurAsian Journal of BioSciences Eurasia J Biosci* 12, 511-517 (2018) 517, no. December (2018): 511–17.

among young people in Situbondo.<sup>7</sup> In another study, the implications of the practice of the unregistered marriage were examined specifically. Latifiani, for example, examined the consequences of unregistered marriages for wives and children based on the legal system in Indonesia.<sup>8</sup> In line with that, Wicaksono also studied the implications of unregistered marriages for women.<sup>9</sup> Sitompul et al also reviewed the legal protection for children born from unregistered marriages and their socialization through the website.<sup>10</sup> Based on a search of previous literature studies, there has been no study that specifically examines *sirri* marriage rules from an adat perspective.

This study attempted to fill the void in the study of unregistered marriages in terms of customary rules by taking the case in Nagari Rambatan. This study focused on the practice and dynamics of customary rules regarding unregistered marriages that occurred in Nagari Rambatan. The rules of unregistered marriage in Nagari Rambatan were certainly not born just like that, but there were reasons or factors that caused these rules to be formed. Thus, this study examined the factors that cause the emergence of customary rules regarding unregistered marriages, forms of sanctions, implementation of sanctions, and a review of Islamic law on these rules. This study was important considering that there were still few customary rules that specifically support Islamic and state regulations, especially in the case of unregistered marriages. So far, customary rules have only been limited to the prohibition of marriage, such as inter-ethnic marriage.<sup>11</sup> In addition, currently unregistered marriages are still rife in society despite the existence of laws that regulate them.<sup>12</sup> The customary rules in Nagari Rambatan are also important to study because they can be used as role models for other indigenous peoples in regulating marriage and household life for perpetrators of unregistered marriages.

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<sup>7</sup> Singgih Susilo et al., "Phenomenon of Unregistered Marriage in Teenagers in Indonesia: A Case Study of the Madurese Community in Situbondo" 2022 (2022): 405–17, doi:10.18502/kss.v7i16.12184.

<sup>8</sup> Dian Latifiani, "The Consequences of an Unregistered Marriage for the Wife and Born Children According To the Legal System in Indonesia," *South East Asia Journal of Contemporary Business, Economics and Law* 4, no. 3 (2014): 94–98, <https://seajbel.com/wp-content/uploads/2014/06/KLL4338-Dian-Latifiani-THE-CONSEQUENCES-OF-AN-UNREGISTERED.pdf>.

<sup>9</sup> Alfiya Wicaksono, "Implications of Unregistered Marriage for Women: Profitable or Detrimental," *Norma* 18, no. 1 (2021): 26, doi:10.30742/nlj.v18i1.1198.

<sup>10</sup> Roswita Sitompul et al., "Legal Protection for Children Born from Unregistered Marriage in Medan City and Its Socialization through Website," *International Journal of Engineering and Technology(UAE)* 7, no. 2.14 Special Issue (2018): 246–50, doi:10.14419/ijet.v7i1.1.9479.

<sup>11</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 (2020): 329, doi:10.29240/jhi.v5i2.1525.

<sup>12</sup> Ashabul Fadhli, "Pemahaman Masyarakat Di Kecamatan Lintau Buo Utara Tentang Hukum Perkawinan Sehubungan Dengan Terjadinya Perkawinan Anak," *HUMANISMA: Journal of Gender Studies* 2, no. 2 (2019): 84–100, doi:10.30983/jh.v2i2.811.

This study was a field study located in Nagari Rambatan, Rambatan District, Tanah Datar Regency; West Sumatra. The primary data sources in this study were Ninik Mamak, Wali Jorong, religious counselors, 11 couples/perpetrators of unregistered marriages and their relatives in Nagari Rambatan. Meanwhile, the secondary data sources were books and journals on marriage, customary law, Islamic law and positive law related to unregistered marriage. The data were collected through semi-structured interviews and documentation. Interviews were conducted with Ninik Mamak, Wali Jorong, Religious Counselors, perpetrators of unregistered marriage consisting of 11 couples living in Nagari Rambatan, and their relatives. Data analysis and interpretation techniques were data reduction, data presentation, and taking conclusions.<sup>13</sup> The data validity was guaranteed by using source triangulation technique. Based on this method, this study belongs to empirical legal studies with a sociological normative approach.

## Discussion

### The Phenomenon of Unregistered Marriage in Nagari Rambatan

Nagari Rambatan was a village located in the Minangkabau region, an area that still maintained its customs and matrilineal system. The practice of unregistered marriages from various villages in the Minangkabau region was considered a common and ordinary thing. This was evidenced that there were still many unregistered marriages for various reasons, especially in Tanah Datar Regency.<sup>14</sup> In this case, the custom took an important role in solving the unregistered marriage problem. As in Rambatan, the Customary Stakeholders made special rules for the practice of unregistered marriages. Nagari Rambatan rejected the practice of unregistered marriage and gave punishment to the perpetrators. Nagari Rambatan was the first and the only one in Tanah Datar Regency to issue special customary rules to minimize the occurrence of unregistered marriages.

Even though customary rules had been made for unregistered marriages in Nagari Rambatan, there were still people who did it. From the data found, there were 11 couples who did unregistered marriages in Nagari Rambatan. There were 5 married couples in Jorong Panti (Interview with Dt. Malin Marajo on April 10, 2021), 2 couples in Jorong Pabalutan (Interview with Wendri Noviko on April 06, 2021), and 4 couples in Jorong Rambatan (Interview with

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<sup>13</sup> Matthew B. Miles, A. Michael Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook* (California: SAGE Publications, Inc., 2014).

<sup>14</sup> Ashabul Fadhli and Arifki Budia Warman, “‘Alasan Khawatir’ Pada Penetapan Hukum Dispensasi Kawin Di Pengadilan Agama Batusangkar ‘Reasons for Concern’ on Marriage Dispensation Decisions in Batusangkar Religious Court,” *Al-Ahwal* 14, no. 2 (2021): 146–58, doi:10.14421/ahwal.2021.14203.

Dt. Khatib Mulia on 08 April 2021). The details can be seen in the following table:

**Table 1.** Unregistered Marriage Data in Nagari Rambatan

No	Name	Address
1	AR and DW	Jorong Panti
2	SM and ZL	Jorong Panti
3	ST and SI	Jorong Panti
4	IR and RD	Jorong Panti
5	FM and LL	Jorong Panti
6	ML and AD	Jorong Pabalutan
7	AI and SS	Jorong Pabalutan
8	YT and YL	Jorong Rambatan
9	YN and NS	Jorong Rambatan
10	EV and SF	Jorong Rambatan
11	YU and BJ	Jorong Rambatan

Fewer unregistered marriages occurred in Rambatan than in the other villages of Tanah Datar districts, as was the case in Lintau Buo and other areas.<sup>15</sup> This is one of the results of the implementation of customary rules for unregistered marriages in Nagari Rambatan. In other words, the customary rules for unregistered marriage in Nagari Rambatan had been able to minimize the occurrence of the practice of unregistered marriage. This of course strongly supports state and Islamic regulations as it is explained that marriage must be registered so that the welfare of household life is guaranteed.

### **The Factors in the Emergence of Traditional Rules regarding Unregistered Marriage in Nagari Rambatan**

The rules in social life are divided into two forms: rules in written form and rules in unwritten form. Every rule which presents in the community has a causal factor or reason of why the rule exists, as well as the customary rules in Nagari Rambatan, Rambatan District, Tanah Datar Regency. Even though the rules regarding the prohibition of unregistered marriages set by Ninik Mamak as a customary holder in Nagari Rambatan were in an unwritten form, of course, there were reasons of why these rules exist.

There are 3 reasons why the customary rules for unregistered marriage were born in Nagari Rambatan:

#### **1. It is not in accordance with Islamic law**

Islamic law prohibits the practice of unregistered marriage. In Islam, unregistered marriage means carrying out a marriage without a guardian, in

<sup>15</sup> Fadhi, "Pemahaman Masyarakat Di Kecamatan Lintau Buo Utara Tentang Hukum Perkawinan Sehubungan Dengan Terjadinya Perkawinan Anak."

other words, the marriage is not in accordance with the conditions and pillars that have been determined.<sup>16</sup> On one side, unregistered marriage is understood as a marriage which is not registered. In the Compilation of Islamic Law, it is explained that marriage must be registered in order to bring *mashlahab* to the family. Based on this, the practice of unregistered marriage was prohibited in Nagari Rambatan because it was not in accordance with the provisions of Islamic law. As the author's interview with Dt. Malin Marajo (10 April 2021), who was in line with Dt. Khatib Mulia (08 April 2021), Dt. Malin Ameh (25 April 2021), Wendri Noviko (06 April 2021) and Dodi Hendra (17 April 2021), that the customary rules in Nagari Rambatan basically followed Islamic rules. Islamic law prohibits unregistered marriages, so the Nagari Rambatan Customary Stakeholders also made rules forbidding unregistered marriages based on Islamic principles. Customary rules must rely on Islamic rules, such as the Minangkabau traditional philosophy, “*Adat basandi Syara’, Syara’ basandi Kitabullah*”.

The prohibition of unregistered marriage has been going on for generations in Nagari Rambatan. As explained by Dt. Khatib Mulia, that unregistered marriage sometimes did not meet the provisions of Islamic law, and also violated the provisions of the law. Thus, the traditional stakeholders decided to make customary rules for nregistered marriage, so that the practice of unregistered marriage that violates Islamic law could be minimized. Sanctions for perpetrators of unregistered marriage were also based on deliberation by the ninik mamak while still prioritizing the principles of Islamic teachings.

## 2. It is contrary to Positive law

Based on the author's interview with Dt. Malin Marajo (10 April 2021), who was in line with Dt. Khatib Mulia (08 April 2021), Dt. Malin Ameh (April 2021), Wendri Noviko (06 April 2021), Jefri Anton (09 April 2021), Irzon (07 April 2021) and Dodi Hendra (17 April 2021), *Ninik Mamak* in Nagari Rambatan were not leaders of the people who were separated from the government regulations. In other words, *Ninik Mamak* had a relationship to strengthen the running of the government. Legal considerations were born from the Ninik Mamak to their people. One of the legal considerations was to adapt government regulations to traditional teachings as long as they did not conflict with Islamic law.

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<sup>16</sup> M. Tahir Maloko, “Unregistered Marriage in Islamic Law Perspective a Critical Study of Islamic Law Compilation,” *Al-Manarid* 15, no. 2 (2015): 49–68, doi:10.20885/almawarid.vol15.iss2.art3.

When a regulation was issued from the government regarding marriage, it had to be recorded, as stated in Law Number 1 of 1974 concerning Marriage<sup>17</sup>, so *Ninik Mamak* consulted and determined that before their children or nieces/nephews got married, at least *Ninik Mamak* had to give permission first to the children or nieces/nephews to get married at the Office of Religious Affairs. Due to the correlation between *Ninik Mamak* and the government, children and nieces/nephews were also required to ask for a permit from the *Wali Nagari* Office to carry out a legal marriage at the Office of Religious Affairs.

The Rambatan Religious Affairs Office also stipulated that a person wishing to marry had to obtain permission from *Ninik Mamak* and *Wali Nagari*. This was based on the author's interview with Dodi Hendra (17 April 2021) and reinforced by Raudhatul Jannah (22 April 2021), basically the existence of a rule from *Ninik Mamak* made it easy for the Office of Religious Affairs to prevent the birth of unregistered marriages or marriages that are not officially registered. Therefore, this rule reinforced each other between government officials and the traditional *Ninik Mamak*.

### **3. It is a disgrace to the people**

Based on the author's interview with Dt. Malin Marajo (10 April 2021) who was in line with Dt. Khatib Mulia (08 April 2021), Dt. Malin Ameh (25 April 2021), and Dodi Hendra (17 April 2021), the birth of customary rules regarding sanctions for perpetrators of unregistered marriages was based on one thing, i.e. feeling ashamed of *Ninik Mamak* for the treatment of their children or nieces/nephews who did unregistered marriages. They considered that the act of unregistered marriage or marriage that had no legal force was an act that contained disgrace. This was because traditional stakeholders believed that the rules of marriage had to be in accordance with Islamic and state principles.

*Ninik Mamak* felt that the actions committed by their children or nieces/nephews were a great disgrace to her people, so a rule was born to expel children and nieces/nephews who practiced unregistered marriage from their hometown. The perpetrators of unregistered marriage were considered to have ignored *Ninik Mamak* as the leaders of the clan and did not respect the rules that had been made before. The embarrassment of the *Ninik Mamak* was very great, this was because of the *Kerapatan Adat Nagari* (the highest customary deliberation and consensus representative institution in a nagari/village) where each *Ninik Mamak* were obliged to tell what had happened to his people and later it would also be held at the *Kerapatan Adat Nagari*.

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<sup>17</sup> “Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan” (1974); Arifki Budia Warman, “Dinamika Perkembangan Hukum Keluarga Di Indonesia,” *Ijtihad* 35, no. 2 (2019): 11–28.

The shame and disgrace that arised in the heart of *Ninik Mamak* were not based on mere lust, but were based on legal considerations and to maintain customs so that they were always sustainable and valid in Nagari Rambatan. *Ninik Mamak* had a great responsibility for a people because it would affect future generations and had to be heard and obeyed by their children/nieces/nephews. Therefore, the birth of the regulation regarding unregistered marriages was basically because the *Ninik Mamak* felt that the actions of those who did the unregistered marriage were a disgrace and Ninik Mamak felt ashamed of their actions, but also took into account the views of the Shari'a law and the previous rules.

Based on the factors that created the customary rules for unregistered marriages in Nagari Rambatan, it can be understood that these rules were born as a form of prevention against the impacts arising from the unregistered marriage itself. There are several negative effects of positive legal unregistered marriages in Indonesia, especially for wives and children, including: 1) The wife cannot sue the husband if the husband abandons her. There are unable to claim a living that is not provided by her husband. 2) Settlement of unregistered marriage lawsuit cases can only be resolved through customary law, and has no legal force. 3) Unregistered marriage does not include a strong agreement (*mitsaqan ghalizhan*) legally accountable because it is not recorded and cannot be legally accounted for. 4) If you have children, then the child does not have a clear status. He/she does not obtain a birth certificate because to obtain a birth certificate, a marriage certificate or marriage book is required. 5) The wife does not get her rights materially, such as getting the wife's allowance for Civil Servants or private employees. If the husband dies, she does not receive death benefits such as insurance, compensation funds, and others. 6) In the event of a divorce or death of the husband, the wife cannot claim or obtain marital benefits from the husband's retirement benefits, joint assets and inheritance, as well as rights arising from death. 7) A woman who is abandoned by her husband cannot apply for and cannot marry in the future, because their status is unclear. It is said that they are married without any proof. It is said that they are still girls but are already widows, in fact many of them have already had children.<sup>18</sup>

To prevent the bad effects of unregistered marriage, customary regulations were made actually in line with the *Sadd al-Zari'ah* principle in Islamic law. Literally, *Sadd al-Zari'ah* consists of two words: *Sadd* which means a barrier or plug, and *al-Zari'ah* which means a way. In terms of *ushul fiqh*, *Sadd al-Zari'ah* is intended as an effort to hinder or block all roads that lead to damage, disobedience, or harm. According to Amir Syarifuddin, as an example, actually berating and insulting worshipers other than Allah is okay, even if necessary,

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<sup>18</sup> Elimartati, *Bunga Rampai Perkawinan Di Indonesia* (Batusangkar: STAIN Batusangkar Press, 2103).

you can fight against them. However, because the act of berating and insulting will cause the worshiper other than Allah to insult Allah, then the act of berating and insulting is prohibited.<sup>19</sup>

In this case, the legal rationale for scholars is that every action contains two sides, namely the side that encourages them to act and the objective or goal that becomes the *natijah* or conclusion of the act. By looking at the nature of the action, there are two forms: 1. the good nature, so everything that leads to it is good and therefore required to do it. 2. The bad nature, so anything that pushes against him is also bad, and therefore forbidden.

Based on this, the authors conclude that the birth of customary rules regarding the prohibition of unregistered marriage in Nagari Rambatan by *Ninik Mamak* was based on the shame of the *Ninik Mamak*, which shame was based on considerations of Islamic sharia law and following government rules. *Ninik Mamak* felt that the act of unregistered marriage was a disgrace that had to be kept away from the village. *Ninik Mamak* also had to be held accountable for what their people had done in front of other *Ninik Mamak*. Therefore, the birth of these customary rules was based on considerations of Islamic law and positive law in Indonesia. These customary rules were considered to be in accordance with the principles of *Sadd al-Zari'ah* in Islamic law and positive law in Indonesia, so these customary rules had to be considered by all Nagari Rambatan people.

### **Forms of Customary Sanctions and Implementation of Customary Rules for Unregistered Marriages**

When customary rules in Minangkabau were not implemented, they would be given sanctions or punishments. This aimed to comply with the rules that had been made by customary stakeholders by the community, so that the existing rules, even though they were not written, had authority and were considered by the community. So was the case with customary rules in Nagari Rambatan, Rambatan District, Tanah Datar Regency. Based on the interviews the writer conducted with the *Ninik Mamak*, it was confirmed by each Wali Jorong, also known by the Religion Counselor of the KUA Rambatan, along with confirmation by relatives who performed unregistered marriages, that there were several sanctions for those who performed unregistered marriages. Sanctions and their impact can be seen from the following table:

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<sup>19</sup> Amir Syarifuddin, *Ushul Fiqh, Jilid 2* (Jakarta: Kencana, 2011).

**Table 2.** Forms of Sanctions for Unregistered Marriage in Nagari Rambatan and Its Impact

No	The Sanction	The impact
1	Expelled from Nagari/Village	Not recognized as a resident of the nagari and cannot return to the nagari
2	Paying a fine by slaughtering 1 goat	Provided warning and deterrent effect as a form of apology
3	Set aside from the custom	Not recognized in adat and not included in custom of the nagari

**1. Expelled from Nagari/Village**

The main rule of this customary sanction was the expulsion of those who performed unregistered marriages from the village. This was done because *Ninik Mamak* felt that the people who did this unregistered marriage were a disgrace and did not respect *Ninik Mamak*. Based on the author's interview with Dt. Malin Ameh (25 April 2021) which was in line with Dt. Khatib Muhammad (13 April 2021), Dt. Khatib Mulia (08 April 2021), Dt. Tanbonsu (15 April 2021), Dt. Malin Marajo (10 April 2021), Dt. Dubalang Basa (28 April), Wendri Noviko (06 April 2021), Irzon (07 April 2021) and Jefri Anton (09 April 2021), the main sanction for customary violators was to be expelled from the village. Likewise with the perpetrators of unregistered marriages who violated the teachings of Islamic law, they would be expelled from the village because they had ignored the customary rules based on Islamic law. The rule of being expelled from the village was a very severe punishment. This was done as a form of prevention so that mistakes did not occur in future generations. Although the main rules were clear, there were still some parties who did not want to leave the village, this was due to two things, so the sanctions given ere also divided into two, namely paying a fine or being set aside for the duration of the custom.

**2. Paying a fine**

For those who did unregistered marriages who asked *Ninik Mamak* to stay in Nagari Rambatan and could participate in custom, they would be given a sanction in the form of a fine. The fine that had to be paid was by slaughtering 1 goat, as a form of notification to the public that there had been a marriage previously. Based on the author's interview with Dt. Malin Ameh (25 April 2021) who was in line with Dt. Khatib Muhammad (13 April 2021), Dt. Khatib Mulia (08 April 2021), Dt. Tanbonsu (15 April 2021), Dt. Malin Marajo (10 April 2021), Dt. Dubalang Basa (28 April 2021) Wendri Noviko (06 April 2021), Irzon (07 April 2021) and Jefri Anton (09 April 2021), if a person who was married unregistered requested to stay in Nagari Rambatan, then he had to pay a fine in the form of slaughtering 1 goat. After slaughtering 1 goat, the party

performing the unregistered marriage had to invite *Ninik Mamak* and members of the clan and relatives who were near his house to attend the banquet. During the banquet, the party who did the unregistered marriage apologized to *Ninik Mamak*, the members of the clan and the community in Nagari Rambatan who were present at the banquet and requested that the party who violated it could be accepted as part of the community.

### **3. Set aside from the custom**

For those who insisted and did not want to heed the customary rules, they would be set aside from the custom. In other words, if the custom held a meeting or various activities related to custom, then the party performing the unregistered marriage was not allowed to attend it. This sanction could be categorized as a moral warning for those who felt that they did not need custom and did not need *Ninik Mamak* in their lives. Based on the author's interview with Dt. Malin Ameh (25 April 2021) who was in line with Dt. Khatib Muhammad (13 April 2021), Dt. Khatib Mulia (08 April 2021), Dt. Tanbonsu (15 April 2021), Dt. Malin Marajo (10 April 2021), Wendri Noviko (06 April 2021), Irzon (07 April 2021) and Jefri Anton (09 April 2021), when someone did not want to carry out customary rules and opposed the custom itself, he would be set aside from the custom. He would not be brought in traditional events in general. However, this did not apply if the perpetrator of the unregistered marriage dies. The *Ninik Mamak* and their relatives would still visit the perpetrators of unregistered marriages who died in the status of being set aside from the custom. Thus, that only applied as long as the perpetrator of the sirri marriage was still alive.

The forms of customary sanctions in Nagari Rambatan aimed to prevent harm in Nagari Rambatan so as to create order and harmony in the community in Nagari. The forms of sanctions that had been practiced in Nagari Rambatan did not conflict with Islamic principles. This was because the punishment given was basically to educate future generations so that future generations did not commit the same wrongdoing or practice, thus creating benefit in the nagari.

When a child and a niece/nephew asked to stay in Nagari Rambatan, they were still allowed to stay but had to carry out other sanctions. When the perpetrator of unregistered marriage was not expelled from the village or asked to stay in the village, he had to receive a penalty in the form of a fine for slaughtering one goat. And if there were children or nieces/nephews who disobeyed or did not want to carry out this customary rule, then they would be set aside from the custom. So even though they were present in society, they were not considered as a part of that society. This was to foster shame from the community and to unite people's thoughts so that they obeyed the rules and so that mistakes that had arisen before would not be repeated in the future.

Based on this, the authors conclude that the initial sanction for the perpetrators of unregistered marriage was to be expelled from the village, but if the perpetrators of unregistered marriage requested to stay in Nagari Rambatan then the perpetrator had to pay a fine in the form of slaughtering one goat, and for those who did not want to be expelled and did not want to pay the fine that had been set, then he would be set aside from the custom. This sanction was in accordance with the Sadd al-Zari'ah principle in Islamic law and positive law to prevent marriages that had no legal force.

The implementation of customary sanctions in Nagari Rambatan can be seen in the following table:

**Table 3.** The implementation of the Unregistered Marriage Sanctions in Nagari Rambatan

No	Name	Address	Bentuk Sanksi
1	AR and DW	Jorong Panti	Expelled from Nagari/Village
2	SM and ZL	Jorong Panti	Paying a fine by slaughtering 1 goat
3	ST and SI	Jorong Panti	Set aside from the custom
4	IR and RD	Jorong Panti	Expelled from Nagari/Village
5	FM and LL	Jorong Panti	Expelled from Nagari/Village
6	ML and AD	Jorong Pabalutan	Expelled from Nagari/Village
7	AI and SS	Jorong Pabalutan	Expelled from Nagari/Village
8	YT and YL	Jorong Rambatan	Set aside from the custom
9	YN and NS	Jorong Rambatan	Expelled from Nagari/Village
10	EV and SF	Jorong Rambatan	Paying a fine by slaughtering 1 goat
11	YU and BJ	Jorong Rambatan	Expelled from Nagari/Village

Based on the author's interview with Dt. Malin Ameh (25 April 2021), the implementation of customary rules has been carried out since the regulation regarding marriage registration in 1974 until now. In the implementation of the sanctions, *Ninik Mamak* must know. In particular, the sanction of paying a fine by slaughtering 1 goat, the couple who performed sirri marriages had to invite the surrounding community, including *Ninik Mamak*. In the banquet, the couple who did the sirri marriage had to apologize to the people present and begged to stay in Nagari Rambatan.

Based on the author's interview with Dt. Malin Ameh (25 April 2021), who was in line with Dt. Khatib Muhammad (13 April 2021), Dt. Khatib Mulia (08 April 2021), Dt. Dubalang Basa (28 April 2021), Dt. Tanbonsu (15 April 2021), Dt. Malin Marajo (10 April 2021), in carrying out the customary sanction rules in Nagari Rambatan, it had to be known by *Ninik Mamak* and members of the clan. *Ninik Mamak* were the main condition for having to know that there was a penalty for a perpetrator of unregistered marriage. The implementation of

the punishment for the perpetrators of unregistered marriage was deliberately known by members of the clan as a form of lesson for the next generation.

The sanction known to the clan members was sanction in the form of being expelled from the village and paying a fine. The punishment was set aside from the custom because the perpetrator of unregistered marriage did not want to carry out the sanction of being expelled from the village and pay a fine, and then he was considered a rebel and did not want to follow customary rules. Consequences were still given by custom in the form of being set aside from the custom. Although not officially announced, it would still be a topic of discussion among members of the clan.

Based on the author's interview with Dt. Dubalang Basa (28 April 2021) who was a family of SM and ZL couples who performed unregistered marriages, he said that *Ninik Mamak* of the people was a trusted person of the people so that when a sentence was given, it was indirectly a punishment from that one people. Even though the customary sanction was not given in writing, it still exists today. Based on the author's interview with Dodi Hendra (17 April 2021) which was reinforced by Raudhatul Jannah (22 April 2021) as a Religious Extension Officer at the Rambatan Religious Affairs Office (KUA), the implementation of customary rules that had been carried out by *Ninik Mamak* was very influential for the running of the government system especially the implementation of a legal marriage system and in accordance with applicable regulations.

This customary rule regarding the sanction of unregistered marriage strongly supports the role of the Office of Religious Affairs (KUA) in Rambatan Sub-district to minimize the practice of unregistered marriages and to make public realize about the importance of registered and legal marriages according to Islam. This conformity resulted in the minimal number of perpetrators of sirri marriages in Nagari Rambatan, Rambatan District; Tanah Datar Regency.

Implementation of customary rules regarding sanctions for perpetrators of unregistered marriage at present in Minangkabau customary rules has become entrenched and has turned into a customary custom. The law of "*Adat nan teradat*" is a level of customary law that is above customs, where there has been an even distribution of sanctions from customary rules regarding the prohibition of unregistered marriages in Nagari Rambatan. In its implementation, it has been practiced since the regulations regarding the registration of marriages were made until now and witnessed by *Ninik Mamak* and also the indigenous people. The practices carried out are also in accordance with the principles of Islamic

law and positive law in Indonesia. Accordingly, these customary rules can also be categorized as *'urf shahih*.<sup>20</sup>

### **The Dynamics of the Practice of Customary Rules for Unregistered Marriages**

The definition of unregistered marriage in the *fiqh* literature is not definitively found. Even so, unregistered marriage is understood as a marriage that is kept secret after the contract is made. Thus, the unregistered marriage is not known by anyone. According to Imam Malik, this type of marriage is prohibited, while Imam Abu Hanifah and Imam Syafi'i tolerate it, arguing that the validity of the marriage is not related to the secrecy or dissemination of the marriage. Nonetheless, the scholars agree that it is important to notify the marriage so that there is no suspicion of adultery, although in this case some of them do not stipulate a mandatory law for this.<sup>21</sup>

The practice of customary rules for *sirri* marriage in Nagari Rambatan experiences dynamics in which there are parties who accept and there are those who reject. The party that receives, of course, carries out the stipulated sanctions, while the party that refuses also receives sanctions, but it is different from those who receive. Based on the data that the authors found in the field, 9 out of 11 couples who entered into unregistered marriages accepted these customary rules, so they carried out the punishment given by custom. Seven of the couples received sanctions and were expelled from the village and two couples paid a fine by slaughtering a goat.

Based on the author's interview with Dt. Dubalang Basa (28 April 2021), who was a family of the couple SM and ZL who performed unregistered marriage, he said that carrying out the sanction of being expelled according to custom or by paying a fine is a form of acceptance of the rules made by *Ninik Mamak*. *Ninik Mamak* was the belief of the people so that when the punishment was related to custom, the members of the group basically had to accept the existence of these rules. Even though they did not want the punishment for close relatives, customary rules had to still be carried out because *Ninik Mamak* were messengers or confidants of the people. Carrying out customary rules or customary sanctions that had been determined was a form of acceptance of customary rules carried out by unregistered marriage perpetrators. So that 9 out of 11 unregistered marriage perpetrators in Nagari Rambatan that the authors

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<sup>20</sup> Nofiardi, "The 'Urf Perspective of Maanta Barih Pasaran: Reinforcing the Kinship System through a Local Wisdom in Nagari Balingka," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 75–92, doi:10.29240/jhi.v7i1.4132.

<sup>21</sup> Aidil Alfin and Busyro, "Nikah Siri Dalam Tinjauan Hukum Teoritis Dan Sosiologi Hukum Islam Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 61–78, doi:10.24090/mnh.v11i1.1268.

found carried out sanctions of being expelled from the village or paying a fine as a form of following customary rules or accepting customary rules.

As for 2 of the 11 couples who did unregistered marriages were the parties who rejected the rules on unregistered marriages. The form of rejection of this unregistered marriage rule was not carrying out the sanction of being expelled from the village and not wanting to pay a fine by slaughtering 1 goat. Mahyudin (29 April 2021), one of the relatives of the couple who married unregistered, explained the reason why his relatives did the unregistered marriage and rejected the customary rules. It was because they objected to the regulation. In addition, the customary process that was passed was too long, so they did an unregistered marriage. The customary process that had to be passed before marriage was as follows: a. *Meninjau*/Reviewing or approaching in a family manner. b. Deliberation between the *ninik mamak* of each clan. c. *Timbang Tando*, weighing the sign, bringing a ring and a piece of cloth to be exchanged between couples as a sign that someone has proposed. d. *Manapiek Bandua*, determining the wedding day. e. Married, by completing documents such as the approval of *ninik mamak* and Wali Nagari, after that, they get married at the KUA Office. f. Delivering a living once a week before the *baralek*, and husband and wife are not allowed to "have sex" before the *baralek*. g. *Baralek*, after *baralek* then husband and wife live in one house. The marriage process like this takes a very long time and costs a lot, plus in terms of life at this time the YT and YL couples after being married in an unregistered way rarely stay at home, even though they were set aside throughout the custom as a consequence.

Based on the author's interview with Sirris (April 28, 2021) who is a close relative of the ST and SI couple in Jorong Panti, that his relatives refused to be expelled from the village or pay a fine because when expelled from the village, the party who was expelled from the village was not allowed to return to the village. Likewise, paying a fine, they had to apologize to *Ninik Mamak* and the family's relatives because after doing an unregistered marriage, ST and SI did not live in Nagari Rambatan and on certain days such as holidays or other big days, ST and SI couples visited relatives in Nagari Rambatan, so they were subject to sanctions in the form of being set aside from the custom.

## Conclusion

The birth of customary rules regarding the prohibition of unregistered marriage in Nagari Rambatan was based on considerations of Islamic sharia law and following government regulations, and based on the shame of *Ninik Mamak* because they considered the act of unregistered marriage as a disgrace that had to be kept away from the village. The initial sanction for the perpetrators of unregistered marriage was to be expelled from the village, but if the perpetrators asked to stay in Nagari Rambatan, then the perpetrators had to pay a fine by slaughtering 1 goat, and for perpetrators who did not want to carry it out, then

they would be set aside from the custom. In its implementation, 3 types of sanctions were imposed according to the case that occurred and for those who paid a fine, for those who pay the fine, slaughtering one goat must be done in public and apologize when paying the fine. The dynamics of customary implementation occurred in which out of 11 unregistered marriage perpetrators, there were 7 pairs receiving sanctions in the form of being expelled from the Nagari and 2 pairs receiving sanctions in the form of paying a fine by slaughtering 1 goat, and 2 pairs who refused the existence of customary rules so that sanctions were given in the form of setting aside those perpetrators from the custom. The impact of unregistered marriage perpetrators who were set aside from custom, affected the unregistered marriage perpetrators themselves and their offspring, because they could not deal with customs and all forms that required a marriage book as a condition, such as arranging birth certificates, making family cards, and so on. Customary rules must still exist in the midst of society because the birth of customary rules is based on considerations of benefit and eliminating harm. According to the author's analysis, these customary rules are in accordance with the principles of *Sadd al-Zari'ah* in Islamic law.

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## Interviews

Interview with Wendri Noviko, 06 April 2021

Interview with Irzon, 07 April 2021

Interview with Dt. Khatib Mulia, 08 April 2021

Interview with Jefri Anton, 09 April 2021

Interview with Dt. Malin Marajo, 10 April 2021

Interview with Khatib Muhammad, 13 April 2021

Interview with Dt. Tanbonsu, 15 April 2021

Interview with Dodi Hendra, 17 April 2021

Interview with Dt. Malin Ameh, 25 April 2021

Interview with Sirris, 28 April 2021

Interview with Mahyudin, 29 April 2021

Interview with Dt. Dubalang Basa, 28 April 2021

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