

## IGNORING FAMILY LAW ADMINISTRATIVE PROCEDURE Falsifying Death of Spouses for the Registration of New Marriage in Lengayang Muslim Community

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**Abstract:** The exercise of the right to register marriage and divorce frequently has to deal with the complexity of the administrative procedure. Consequently, many marriages and divorces are not registered in state institutions which lead to the next difficulty of registering new marriages for those who unregistered their divorce previously. However, a different fact happens in Lengayang, where local and state authorities collaborated to tackle administrative constraints. This paper sheds light on the shortcut taken by the Lengayang people who falsified the death of their spouses to legally register their new marriages. Data was collected through interviews and document analysis. It is then analyzed qualitatively. This article reveals that the falsification of death was utilized by Lengayang people to wittingly subdue the legal administration. This practice was backed up by the local authorities, such as *ninik mamak* as a customary institution, *wali jorong* or *wali nagari* as the head of the villages. The economy (the high cost), the geography (the distance of the religious court from people's domiciles), and the deadlock of social relationships between spouses foster this falsification.

[Abstrak: Pelaksanaan pendaftaran perkawinan dan perceraian seringkali harus berhadapan

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dengan kompleksitas administrasi. Akibatnya, banyak perkawinan dan perceraian yang tidak dicatatkan di lembaga negara yang mengakibatkan sulitnya pencatatan perkawinan baru bagi mereka yang tidak mendaftarkan perceraian sebelumnya. Namun tidak bagi masyarakat Lengayang, di mana otoritas adat (lokal) dan otoritas negara bekerja sama untuk mengatasi kendala administratif tersebut. Tulisan ini menyoroti tindakan administrasi yang dilakukan oleh masyarakat Lengayang yang memalsukan kematian mantan pasangannya untuk mendaftarkan pernikahan barunya secara resmi. Pengumpulan data dilakukan melalui wawancara dan analisis dokumen. Data kemudian dianalisis secara kualitatif. Artikel ini mengungkapkan bahwa pemalsuan kematian dimanfaatkan oleh sebagian masyarakat di Lengayang untuk (secara sadar) menerobos hambatan administrasi hukum perkawinan. Praktik ini didukung oleh penguasa setempat, seperti *ninik mamak* sebagai kepala suku dan *wali jorong* atau *wali nagari* sebagai kepala desa. Mahalnya biaya, jauhnya jarak geografis ke Pengadilan Agama, dan mandeknya relasi (komunikasi) antara suami istri mendorong praktik pemalsuan kematian ini.

**Keywords:** Falsifying death of spouses, marriage registration, *ninik mamak*, *wali jorong*, *wali nagari*, Lengayang Muslim community.



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## Introduction

Article 2 paragraphs (1) and (2) of Law No. 1 of 1974 concerning Marriage and Article 5 paragraphs (1) and (2) of The Compilation of Islamic Law (KHI) state that marriages must be registered at the Office of Religious Affairs (KUA).<sup>1</sup> Marriage registration aims to guarantee rights and obligations and provide a legal basis for married couples and their child/ren, in particular, to protect women's rights.<sup>2</sup> Marriage registration, in the context of *siyasah syar'iyah* (legal politics), is understood more explicitly as a form of state involvement in guaranteeing the rights of married people to achieve the goal of their marriage.<sup>3</sup>

Nonetheless, the obligation of citizens, particularly Muslims, to register their marriages raises a number of issues, including unregistered marriages and the consequences

<sup>1</sup> Hazar Kusmayanti and Nindya Tien Ramadhanty, 'Legitimacy of a Sirri Marriages (Second and So on) By the Pair of Civil Servants', *DiH: Jurnal Ilmu Hukum*, vol. 17, no. 1 (2021), pp. 84–93.

<sup>2</sup> M. Khoirul Hadi Al-Asy'ari, 'Qiya>S Dalam Pandangan Ibnu Rusyd Dan Relevansinya Dengan Khi Di Indonesia', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, vol. 8, no. 1 (2015), pp. 1–24.

<sup>3</sup> Sheila Fakhria, 'Menyoal Legalitas Nikah Sirri: Analisis Metode Istiṣlāḥiyyah', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, vol. 9, no. 2 (Departement of Islamic Family Law Faculty of Sharia and Law Sunan Kalijaga, 2016), pp. 185–200.

for the born children, sustenance, guardianship,<sup>4</sup> and inheritance.<sup>5</sup> In a particular community, such as the people of Petung Gresik Village, unregistered marriages are used as a solution for underage couples.<sup>6</sup> This occurs because some people believe that marriages that meet all of the requirements are valid even if they are not registered. However, when dealing with state affairs that require registered marriage documents, they must come to the Religious Courts to resolve the requirements through *isbat* (validating marriage by the Religious court). The problem is that not all *isbat* are granted by Religious Court judges, despite the fact that the couples already have children and have lived together for years.<sup>7</sup> Children of unregistered married couples whose *isbat* applications were rejected by the Religious Court are susceptible to administrative difficulties.

The subject of unregistered marriages, for example, has been studied by Zubir,<sup>8</sup> and Al Farabi.<sup>9</sup> They found that 59.35% of the 246 families in Sinarrancang Village, Cirebon, had unregistered marriages. They refer to it as *kawin kiyai*—a term used to denote a marriage carried out in the presence of a religious figure without state officials. According to Sodik<sup>10</sup> and Adillah,<sup>11</sup> the problems of registering marriages rest on the existence of legal dualism caused by the dominance of the *ulama* (Islamic scholar) doctrine in the legislation of the marriage law, which contributes to the diversity of interpretations of marriage validity. This legal dualism is exemplified in the Constitutional Court's decision 46/PUU VIII/2010 regarding civil cases involving children born in unregistered marriages. On the

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<sup>4</sup> Munir Subarman, 'Nikah di bawah tangan perspektif yuridis dan sosiologis', *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, vol. 13, no. 1 (2013), pp. 65–83.

<sup>5</sup> Martha Eri Safira, 'Kajian Hukum Progresif Terhadap Pasal 2 Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan', *Justicia Islamica*, vol. 9, no. 1 (2012), pp. 1–28.

<sup>6</sup> Ahmad Badrut Tamam, 'Nikah Sirri: Solusi Pernikahan Anak di bawah Umur di Desa Petung, Panceng, Gresik', *Al-Aḥwāl: Jurnal Hukum Keluarga Islam*, vol. 3, no. 1 (2010), pp. 41–70.

<sup>7</sup> Euis Nurlaelawati, 'Problematika Isbat Nikah: Dualisme Kepentingan dan Perlindungan Terhadap Perempuan dan Anak dalam Legalisasi Poligami Siri', in *Membela Hak-Hak Masyarakat Rentan: HAM, Keragaman Agama, dan Isu-Isu Keluarga*, ed. by Noorhaidi Hasan (Yogyakarta: Pascasarjana UIN Sunan Kalijaga Press, 2021), pp. 83–118; Euis Nurlaelawati, 'Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?', *Musāwa Jurnal Studi Gender Dan Islam*, vol. 12, no. 2 (2013), pp. 261–77.

<sup>8</sup> Ismail Zubir, 'Persepsi Terhadap Nikah Sirri Kasus Masyarakat Desa Sinarrancang, Kecamatan Mundu, Kabupaten Cirebon', *Analisa: Journal of Social Science and Religion*, vol. 18, no. 1 (2011), pp. 75–87.

<sup>9</sup> Al Farabi, 'Budaya "Kawin Kyai" Studi Terhadap Praktek Nikah Sirri Di Desa Sinarrancang, Kecamatan Mundu, Kabupaten Cirebon', *Al-Aḥwāl: Jurnal Hukum Keluarga Islam*, vol. 4, no. 1 (2011), pp. 21–56.

<sup>10</sup> Muhammad Sodik, 'Dualisme Hukum di Indonesia: Kajian Tentang Peraturan Pencatatan Nikah dalam Perundang-Undangan', *Al-Aḥwāl: Jurnal Hukum Keluarga Islam*, vol. 7, no. 2 (2014), pp. 109–20.

<sup>11</sup> Siti Ummu Adillah, 'Implikasi Hukum Dari Perkawinan siri Terhadap Perempuan Dan Anak', *PALASTREN: Jurnal Studi Gender*, vol. 7, no. 1 (2016), pp. 193–222.

one hand, the decision appears to provide legal protection for the child's rights, while on the other hand, it appears to have sparked a controversy over the civil rights of the child and his biological father.<sup>12</sup> Even for some people, the Constitutional Court's decision is viewed as legalizing adultery, as demonstrated by the research of Pusvita,<sup>13</sup> Huzaimah,<sup>14</sup> and Subroto.<sup>15</sup> This also provides convenience to perpetrators of unregistered marriages—increasing the number of *isbat* (validating) marriages recorded annually in many Indonesian Religious Courts.<sup>16</sup>

Numerous factors contribute to the occurrence of unregistered marriages. Adillah argued that the intricacy of polygamy procedures under Indonesian law contributed to the prevalence of unrecorded marriages.<sup>17</sup> Nurmila<sup>18</sup> expressed similar arguments. She added that the community's legal ignorance regarding the importance of registering marriages and the lack of action taken against the perpetrators, as well as the Religious Courts' easy acceptance of the *isbat* of polygyny marriage, flourish the number of unregistered marriages in society. According to Mujib, the occurrence of unregistered marriages is due to the nature of customary law, which familiarizes legal actions in custom without being

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<sup>12</sup> Muhamad Isna Wahyudi, 'Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage', *Al-Jami'ah: Journal of Islamic Studies*, vol. 55, no. 1 (2017), pp. 127–54.

<sup>13</sup> Sari Pusvita, 'Keperdataan Anak Diluar Nikah dalam Putusan Mahkamah Konstitusi dan Implikasinya terhadap Harta Warisan', *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam*, vol. 1, no. 2 (Sultang Agung Islamic University, 2018), pp. 31–51.

<sup>14</sup> Arne Huzaimah, 'Pandangan Hakim Pengadilan Agama Palembang terhadap Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Status Anak di Luar Nikah', *Intizar*, vol. 20, no. 1 (2014), pp. 63–82.

<sup>15</sup> Subroto Subroto, 'Hubungan Keberdataan Anak Dengan Bapakny: Kajian Kritis Penafsiran Pasal-Pasal Dalam Kompilasi Hukum Islam', *Kodifikasi: Jurnal Penelitian Islam*, vol. 6, no. 1 (2012), pp. 1–20.

<sup>16</sup> dwiyana Achmad Hartanto, 'National Legal Reforms About Unofficial Marriage', *Jurnal Cita Hukum-Indonesian Law Journal*, vol. 5, no. 1 (Univ Islam Negeri Syarif Hidayatullah Jakarta Jl Ir H Juanda No 95 Ciputat , 2017), pp. 41–58.

<sup>17</sup> Siti Ummu Adillah, 'Analisis Hukum Terhadap Faktor-Faktor Yang Melatarbelakangi Terjadinya Nikah Sirri Dan Dampaknya Terhadap Perempuan (Istri) Dan Anak-Anak', *Jurnal Dinamika Hukum*, vol. 11 (2011), pp. 104–12.

<sup>18</sup> Nina Nurmila, 'Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property', *Al-Jami'ah: Journal of Islamic Studies*, vol. 54, no. 2 (2016), pp. 427–46.

registered.<sup>19</sup> In Kurai Taji Pariaman, *ungku* (a local cleric, a traditional elder) can marry a couple without being registered with the KUA.<sup>20</sup>

The same issue exists in Lengayang sub-district of Pesisir Selatan Regency, West Sumatra. A high number of unregistered marriages (according to Painan Religious Court statistics) are found. More ironic, the divorce out of court and the falsification of the death of ex-spouse were found.<sup>21</sup> It was ratified or signed by the *Ninik mamak* (customary institution), *Wali jorong* (head of sub-village), and *Wali nagari* (head of village) to register new marriages. Data from the Painan Religious Court shows that Lengayang is one of the sub-districts that is used as the location for a *sidang keliling* (mobile court) to resolve the issue of *isbat* due to the high number of unregistered marriages.<sup>22</sup>

In 2018, 116 *isbat* cases were registered, and surprisingly, 81 *isbat* cases were already registered until July 2019. Although the related parties have attempted to raise public awareness about the importance of registering their marriages, many people continue to ignore it. Even more concerning is the fact that marriage occasions are registered with incorrect data. For example, in 2018, couples intending to register their second, third, or fourth marriages submitted Letter of Responsibility stating that their previous spouses had died or were unknown. In reality, their ex-spouses either remain alive or are widely unknown for their domiciles. Referring to the most recent 2018 data from the Lengayang sub-district KUA, 38 Letters of Responsibility for the deaths of living people were discovered. The Letter of Responsibility was officially signed by people from tribal and government structures such as *Ninik mamak* (village chief), *Wali jorong* (tribal chief), local clerics, *Wali nagari* (sub-village chief), and KUA chief.

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<sup>19</sup> M. Misbahul Mujib, 'Bisakah Lembaga Hukum Adat Meminimalisir Pernikahan Sirri?', *Al-Abwal: Jurnal Hukum Keluarga Islam*, vol. 7, no. 1 (2014), pp. 97–108.

<sup>20</sup> Ashabul Fadhli and Fathurrahmi Fathurrahmi, 'Intervensi Tuanku Terkait Praktek Nikah Sirri Di Nagari Kurai Taji Pariaman', *Kafaah: Journal of Gender Studies*, vol. 6, no. 2 (2016), pp. 155–78.

<sup>21</sup> Hengki Januardi, 'Perkawinan Janda Tanpa Akta Cerai (Studi Kasus pada Masyarakat Kecamatan Lengayang Kabupaten Pesisir Selatan)', *Jurnal Al-Abkam*, vol. 11, no. 1 (2020), pp. 83–97. Almizan Almizan and Mufti Ulil Amri, 'Ketimpangan Peran Domestik Rumah Tangga dalam Cerai Gugat Pada Masyarakat Minangkabau', *Indonesian Journal of Religion and Society*, vol. 3, no. 2 (2021), pp. 103–10.

<sup>22</sup> Muhammad Zaki Hidayatullah, 'Efektivitas Sidang Keliling Pengadilan Agama Sampit Dalam Penyelesaian Perkara Hukum Keluarga', *Jurnal Studi Agama dan Masyarakat*, vol. 12, no. 2 (2016), pp. 214–31; Hazar Kusmayanti, Sherly Ayuna Putri, and Linda Rahmainy, 'Praktik Penyelesaian Sengketa di Pengadilan Agama Melalui Sidang Keliling Dikaitkan dengan Prinsip dan Asas Hukum Acara Perdata', *ADHAPER: Jurnal Hukum Acara Perdata*, vol. 4, no. 2 (2019), pp. 145–61.

Based on the aforementioned background, this research seeks to reveal the reasons for death falsifications by men and women while still legally married to their spouses in Lengayang. This is field research that employed both primary and secondary data. Data were collected through interviews with women and men who falsified the death of their spouses, the family of each party, the *Ninik mamak*, *Wali jorong*, *Wali nagari*, the head of the KUA, and local clerics who legalize and authorize the falsification. The collected data were then qualitatively described and analyzed.

### Portrait of the Lengayang Community

The sub-district of Lengayang is located at 100° 40.38'-101° 50' east longitude and 1° 23.51'-1° 45'54' south latitude. The total area measured is approximately 590.6 Km<sup>2</sup> or 10.27% of the area of Pesisir Selatan Regency. In 2017, the population of this sub-district was estimated to be 52,592 people. All residents are adherent to Islam. As part of the Bukit Barisan stretch, the topography of the Lengayang sub-district is flat and hilly. The majority of the Lengayang sub-district is forest, with 53.69% of the land area. This sub-district comprises 9 *nagari*, namely Lakitan, Kambang, Lakitan Selatan, Lakitan Tengah, Lakitan Timur, Lakitan Utara, Kambang Barat, Kambang Utara, and Kambang Timur.<sup>23</sup> Each of these *nagari* also has 5-10 *jorong*. This sub-district has one Office of Religious Affairs (KUA), which is located at Padang Marapalam-Lakitan Street, 3 kilometers from the capital of the Lengayang sub-district. The Religious Court is located in Painan, the capital of Pesisir Selatan Regency, 67 kilometers from Lengayang subdistrict's most remote area. *Nagari* is the lowest government in the Lengayang sub-district, while the *jorong* is an extension of the *nagari* and is led by the *Wali jorong*, who is part of the *nagari* apparatus.<sup>24</sup> The number of ASN (State Civil Apparatus) in the Lengayang sub-district office was 20

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<sup>23</sup> Badan Pusat Statistik Kabupaten Pesisir Selatan, 'Kabupaten Pesisir Selatan Dalam Angka 2019'. <https://pesselkab.bps.go.id/publication/2019/08/16/8e99cecd2871d32a1c5a75be/kabupaten-pesisir-selatan-dalam-angka-2019.html>, accessed January 2020.

<sup>24</sup> Welhendri Azwar et al., 'The Models of Nagari Indigenous Governments in West Sumatra', *Jurnal Bina Praja: Journal of Home Affairs Governance*, vol. 12, no. 1 (2020), pp. 33–42; Hilaire Tegnan, 'Legal pluralism and land administration in west Sumatra: The implementation of the regulations of both local and Nagari governments on communal land tenure', *Journal of Legal Pluralism and Unofficial Law*, vol. 47, no. 2 (2015), pp. 312–23; Welhendri Azwar et al., 'Nagari minangkabau: the study of indigenous institutions in west sumatra, indonesia', *Jurnal Bina Praja: Journal of Home Affairs Governance*, vol. 10, no. 2 (2018), pp. 231–9. Franz von Benda-Beckmann and Keebet von Benda-Beckmann, *Political and legal transformations of an Indonesian polity: the Nagari from colonisation to decentralisation* (Cambridge University Press, 2013).

people, consisting of 7 high school graduates and 13 college graduates.<sup>25</sup> Each region has its own set of customs that are tailored to the region.

In fact, religious life in the Lengayang sub-district runs harmoniously. This is demonstrated by the community's attendance at recitations of Islamic scripture, both in mosques and at homes, such as *wirid* (praying ritual collectively), *yasinan* (reciting Yasin verses collectively), and *shalawat* (sending salutation upon Prophets). There are also those who hold monthly *wirid* attended by the officials of the Ministry of Religious Affair, *Nagari* officials, sub-district heads, the KUA, and others. In 2017, there were 75 mosques and 86 *mushallas* (praying chambers) recorded as places of worship. In addition to KUA, there are various religious institutions tasked with providing services and guidance to people in the Lengayang sub-district, such as the Indonesian Islamic Scholar Council (MUI), Zakat Institution (Islamic philanthropy), The Council of Advisory and Preservation of Marriage (BP4), Tilawatil Quran Development Institution (LPTQ), Diniyah Takmiliyah Working Group (KKDT), Didikan Subuh Institution (LDS) of Kambang area and Lakitan area, Nahdlatul Ulama (NU), Muhammadiyah, Tarbiyah, and recitation group Qira'atul Yasin.

In the Lengayang sub-district, several traditional leaders are tasked to enforce customary law, namely the *penghulu* (religious leader), *dubalang* (village security guard), *ninik mamak* (customary institution), *alim ulama* (Islamic cleric), and *cadiak pandai* (scholar). The clans in Lengayang District include the Sikumbang, Kampai, Melayu, Jambak, Caniago, and other clans. The majority of people in the Lengayang sub-district belong to the Sikumbang clan.

### **Death Decree Issuance: Divorce outside the Court and *Ninik Mamak* Authority**

The Lengayang community believes that divorce religiously is legal and can be proven by handwriting or a witness who witnesses the divorce. They believe that divorce in front of a local cleric is equivalent to divorce in a religious court. Divorce in Religious Courts is not the only option. It is not much significant.<sup>26</sup> Therefore, they assume that it is sufficient to simply utter the divorce word and have it witnessed by family or people considered to

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<sup>25</sup> *Ibid.*

<sup>26</sup> Ustadz B (initials), local cleric in Lengayang sub-district. Interview on December 2018

understand Islamic law due to divorces in Religious Courts being administratively complicated.

In general, the local government has issued regulations governing *sidang keliling* in other divorce proceedings. This is intended for areas far from the courts, as specified in the Supreme Court of the Republic of Indonesia Regulation No. 1 of 2015 concerning Integrated Services for Mobile Courts, District Courts, and Religious Courts/Syar'iyah Courts in the Context of Issuing Marriage Certificates, Marriage Books, and Birth Certificates. According to KUA and Painan Religious Court officials, there has been a mobile trial in the Lengayang sub-district, but this does not necessarily reduce the number of people who are divorced outside of the court. The Painan Religious Court has only once held a mobile trial in the Lengayang sub-district.<sup>27</sup> Based on the explanation above, the community believes that divorce is valid even if it is only said at home or anywhere as long as it is witnessed by parties who are aware of their divorce. People prefer to divorce outside of court because it is simple and inexpensive. Divorce in a religious court is thought to be difficult. It takes a long time, and it is also difficult for the community.<sup>28</sup>

People who are hesitant to go to court are those who consider themselves from the lower economic classes. In fact, if they divorce in court, they would not be charged if they submit a Certificate of Indigence (SKTM), but some of them believe that divorce under Islamic law before a cleric is much faster and easier than divorce in court.<sup>29</sup> On the other hand, the existence of a mobile court has had no impact on the Lengayang community. This is demonstrated by the fact that many community members are still divorced outside of court and submit a Letter of Responsibility containing a statement of the death of a living person to register their new marriage at KUA Lengayang.

The large numbers of Lengayang community members who divorce outside of court also result in their second and third marriages. On the one hand, they recognize that in order to carry out a marriage, they must meet the KUA's requirements and conditions. A divorcee, for example, must include a divorce certificate from the religious court, and a widow should provide a death decree from the *Nagari*. However, as previously stated,

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<sup>27</sup> Leo, Administrative Officer at Painan Religious Court. Interview on January 2019.

<sup>28</sup> M, H, K, U, S, and D (initials), nuclear family of couple B and L who divorced in front of family members and declared the couple had died for a new marriage. Interview on December 2018.

<sup>29</sup> G (initials), a married man who faked the death of his wife in favor of a new marriage with another woman. Interview on December 2018.



irregularities occur among those who do not divorce through the courts. As a condition for registering their new marriages at the KUA, they made a Letter of Responsibility stating that their spouses had died even though he or she is still alive. This falsification occurred because those who had not been divorced by the court are required to complete these requirements in order to remarry at the KUA officially. If the marriage requirements were not met, they would be unable to register their new marriage. As a result, they chose to create a death certificate for their husband or wife, signed by *Ninik mamak* and *Wali jorong*, sealed, and stamped.<sup>30</sup>

Death falsification occurred in AN and R for example. AN was previously married to SF. They divorced at home, in front of family members, rather than in Religious Courts. Then, SF made letter N6 (death decree) on behalf of AN, who was still his legally married wife. However, AN did not mind.<sup>31</sup> This means that, despite the fact that they are still legally bound by their marriage relationship, neither party is concerned about their respective affairs. The same situation was also experienced by R, the wife of MD. R claimed to have divorced MD amicably. MD intended to remarry and to have his new marriage registered at KUA Lengayang. MD prepared a death certificate for his wife R. In this case, R did not question his ex-husband's actions because she was married to another man already.<sup>32</sup>

*Ninik mamak*, as a custom institution, is the first to propose a Letter of Responsibility, which contained a statement of death. One of them explained that registering a death statement with the KUA is one of the simplest ways to enter into a new marriage. If the *Mamak* (tribal chief) provides a Letter of Responsibility, the *Wali nagari* will issue a death decree. Essentially, the Letter of Responsibility is written as an assurance that *Mamak* or any other party who has been declared dead will not sue in the future. If someone sues, *Mamak* is fully responsible for his nephew or niece who is about to marry. In this case, the *Wali nagari* is the first to absolve of any responsibility or risk of falsifying the death, blaming the tribal chief's *Ninik mamak* entirely. The letter is routed through *Ninik mamak*, *Wali jorong*, and finally to the *Wali nagari* office for N6 (husband/wife death

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<sup>30</sup> I (initials), a woman who falsified the death of her husband in favor of a new marriage with another man. Interview on December 2018.

<sup>31</sup> AN (initials), a woman declared dead by her husband. Interview on December 2018.

<sup>32</sup> MD (initials), R (initials), the couple divorced before the family and then each married someone else while claiming that the other partner had died. Interview on December 2018.

letter). After that, the N6 document is combined with a *Ninik mamak* accountability letter that includes a death statement. The *Wali jorong* explained similar information. As *Wali jorong*, he only signed a Letter of Responsibility in exchange for later submitting a death certificate to the *Wali nagari*, as this is the only way the state allows people to remarry (at KUA). *Wali jorong* emphasized that it was still stated in the Letter of Responsibility that one of the parties, both those who declared death and those who were declared dead, would not demand any responsibility from him after the letter was issued. If he is sued for the contents of the falsified letter, the *Wali jorong* refers the case back to the *Ninik mamak* and the bride and groom as the parties who filed the fake death certificate.

*Wali jorong* and *Wali nagari* are fully aware that issuing a fake letter containing a death statement puts them in legal jeopardy, but they also want to ensure the legality of second or third marriages for those who require it. If no accountability letter is provided by *Ninik mamak* and *Wali jorong*, *Wali nagari* will not issue N6. The Letter of Responsibility from *Ninik mamak*, with approval of the *Wali jorong*, is then taken to the *Wali nagari* office to obtain N6, which is required for the second marriage to be registered at the KUA.<sup>33</sup> The Letter of Responsibility essentially states that if one of the parties who declare death or is declared dead demands responsibility for the forgery, the *Wali nagari* will only abide by the Letter of Responsibility that has been signed with a stamp duty of 6000 seals on it. Similarly, if a demand for responsibility for falsifying death is made, the *Wali jorong* returns it to the *Ninik mamak* and the prospective bride or groom as the parties who submit the fake letter.

A Letter of Responsibility is a letter handled by the *Ninik mamak* of a prospective bride and groom as a condition for issuing letter N6 from the *Wali nagari* for people who are not divorced in the religious court and intend to remarry. The letter carries the responsibility of announcing someone's death or divorce. Each Letter of Responsibility, whether to declare death in divorce, will end up with the issuance of an N6 letter from *Wali nagari*. The person who makes the Letter of Responsibility to issue an N6 letter for himself, on the other hand, is not included in the death data in the *Nagari* document but is recorded on the data for submitting the NA letter (marriage referral letter) in the *Nagari* in Lengayang sub-district. It is also mentioned by the Secretary of *Wali nagari* Lakitan, Lakitan

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<sup>33</sup> F (initials), *Wali nagari* of Kambang Barat. Interview on December 2018.

Timur, Lakitan Utara, and Lakitan Selatan. They explained that the Letter of Responsibility is a letter used to arrange N6 as a requirement to manage NA for those who have not divorced through the religious court.<sup>34</sup>

KUA registers a person's marriage by reviewing the marriage requirements that the bride and groom have completed. The KUA cannot legally refuse a person's marriage registration if they have met all the requirements. The KUA examines every requirement submitted by the bride and groom, including letters issued by the *Wali nagari*. Regarding second, third, and so on marriages for people who have not divorced through the Religious Courts, the KUA still recommends that they be divorced through the Religious Courts in order to be legal under the state law. However, KUA observed and discovered facts that differed from those discovered by the researchers. Some people in Lengayang are hesitant to get a divorce through the Religious Courts because it is expensive. As a result, KUA implements a policy by receiving a statement letter in the form of an N6 letter, which is attached as a requirement for registering marriages. Furthermore, KUA considers it a *maslahah* (goodness) to allow people to falsify death in order to escape from administrative complexity. According to KUA, if they are not married, other problems in the community will arise due to their sexual behavior, which will later lead to child problems. Besides, there is demand from *Niniak mamak* and prospective brides and grooms to keep the marriage registered. Indeed, the KUA's policy is not following the applicable provisions, given how easy it is for people to attach a death certificate to a living person, but the KUA cannot refuse it if all requirements are met. It can be concluded that there are still people who are reluctant to divorce in Religious Courts. This is caused by a KUA policy receiving a marriage requirement letter through an accountability letter to issue N6 from *Wali nagari*.

We decided to make comparisons with KUA outside the Lengayang sub-district such as Ranah IV Hulu Tapan sub-district (the furthest from the capital of West Sumatra Province). A similar Letter of Responsibility is discovered in this sub-district KUA, which states that a person (spouse) has died even though he or she is still alive in order to register one's new marriage at the KUA. Another point of comparison is N6 at the Anduring Village Office in Padang City. This office did not have a Letter of Responsibility or any other similar letter. This was revealed by a village official. He stated that the bride or

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<sup>34</sup> H, A, J and P (initials), The Secretary of Nagari Lakitan, Lakitan Timur, Lakitan Utara, Lakitan Selatan. Interview on December 2018.

groom's family handled the processing of the death decree through the local RT (neighborhood association) or RW (citizens association). If something is not in accordance with the law, such as a living person being declared dead, the officials will contact the RT or RW to double-check the truth.

The obligation to register marriages creates numerous obstacles in the community. On the one hand, it appears that people's understanding of the importance of registering their marriage has not taken root. This is evidenced by an increase in applications for *isbat* in every religious court. Local religious authorities, on the other hand, create opportunities to ease the implementation of marriage regulations by allowing unregistered marriages and ratifying divorce outside the religious court. Among the legal consequences are difficulties in carrying out a second registered marriage. The couple's efforts to make a death statement of their ex-spouses are done on purpose so that their new marriages can be officially registered at KUA. The death decree is not without risk because death has particular consequences for the living in Islamic law. If the deceased is married, his partner will be divorced, and if he owns the property, it must be divided immediately by Islamic inheritance law (*faraidh*). If the deceased is in debt, the heirs must pay it. If the deceased is a man with a daughter, guardianship is transferred to another person in the guardianship lineage. However, if the death is staged on purpose, the legal consequences will be chaotic and unclear.

The bravery of the customary authority (*Ninik mamak*) in signing a statement of death raises questions. In this situation, their authority appears to be greater than that of the KUA, which acts as the state law's enforcer. This is evidenced by the KUA's acceptance of the requirements submitted by the couple. KUA appears to have no reason to reject their application for marriage registration because the conditions they presented are in accordance with the law, even though the KUA officials are aware substantially that the person declared dead in a letter legalized by the *Nagari* is still alive. Besides, this condition can also be seen differently. On the one hand, the KUA continues to carry out its function on behalf of the state to register marriages following the mandate of the law because there are no objections that prevent or impede the registration. On the other hand, customary authorities can confirm that the applicant for registration has indeed divorced the deceased spouse before local religious authorities and family members. Therefore, the KUA, as the

representative of the state, and the *Ninik mamak* who represents custom and religious authorities (Islamic law) reach compromises that benefit both parties.

### **Motives for Falsifying Death in Lengayang: Economy, Geography, and Sociology**

Law No. 1 of 1974 stipulates marriage procedures starting from the statement of the will of the bride and groom to the acceptance of the marriage contract. Similarly, The Compilation of Islamic Law (KHI) governs how marriages are performed. Article 2 of Law No. 1 of 1974 above does not reduce the provisions stipulated in Law Number 22 of 1946 *juncto* Law Number 32 of 1954 concerning Marriage Registration, Divorce, and Reconciliation. The implementation procedure is further stipulated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.

Marriage registration in Indonesia is carried out at the sub-district Office of Religious Affairs (KUA) following of Decision of the Religious Affair Minister (KMA) 298 of 2003, which is adjusted to Regulation of Ministry of Religious Affair (PMA) 477 of 2004 and refined by PMA Number 11 of 2007. The restriction of marriage is regulated according to Article 9 of Law No.1 of 1974. It is stated that "a person who is bound by marriage to another person cannot remarry, except in the cases referred to in Article 3 paragraph (2) and article 4 of this law". Article 15 states that "whoever because of his marriage is still bound by one of the two parties and on the basis of the existence of a marriage can prevent a new marriage without reducing the provisions of Article 3 Paragraph (2) and Article 4. As well as Article 21 paragraph (1) mentions: "if the marriage registrar argues that the marriage is prohibited according to this law, then he refuses to carry out the marriage".

The preceding explanation demonstrates that a man cannot marry a woman who is married to another man, and vice versa. To remarry, a divorced person must submit a divorce decree from the Religious Court, or a widow or widower must submit a death certificate for the deceased spouse. A valid divorce can only be granted by a Religious Court and is evidenced by a divorce decree. In the Lengayang community, however, those who have not been divorced by the Religious Court are permitted to remarry, and their marriages are registered at the KUA. This violates the administrative rule that a new marriage cannot be conducted and registered without a divorce decree.

In 2018, there were more marriages at the Lengayang sub-district KUA than in 2017. In 2017, out of 567 recorded marriages, only 3 couples submitted marriage requirements by attaching a divorce decree. In 2017, 6 marriage cases were also recorded by attaching a Letter of Responsibility containing a death statement from the *Wali nagari*, and 46 marriage documents were recorded with the attachment in the form of Letter N6 (death certificate of husband/wife). According to the 2018 data, there were 633 recorded marriage events. Seven couples attach a divorce decree as a condition of marriage.<sup>35</sup> There were 38 cases of prospective brides and grooms who attached a Letter of Responsibility containing a death statement to obtain an N6 from *Wali nagari*. The majority of the perpetrators were men who claimed the living wives had died.

We discovered several instances of the registration of second, third, and fourth marriages in the Lengayang sub-district without a Religious Courts divorce decree. In 2017, six Letters of Responsibility were discovered in the KUA Lengayang sub-district alleging the deaths of four women and two men who are still alive. In 2018, the maximum number of Letters of Responsibility containing these death statements was 38. The majority of them were husbands who claimed that their (live) wives had died. From 38 cases, we were able to interview 14 individuals, including both women and men whose wives had been declared dead. The inability to interview the remaining 24 individuals was due to a variety of factors, including the true death, relocation outside the Pesisir Selatan Regency, and refusal to provide information. We were able to conduct in-depth interviews with some members of the nuclear family, their closest friends, *Ninik mamak*, local clerics, and authorized officials of *Wali jorong*, *Wali nagari*, and the head of KUA of Lengayang sub-district. They are aware of this death statement phenomenon.

We discovered that those who fabricated their partner's death typically claimed to have divorced amicably in the presence of family and clerics. Consider the case of R (wife) and SF (husband) who were not divorced by the Painan Religious Court but remarried after declaring their former spouse deceased in a Letter of Responsibility.<sup>36</sup> The two of them, along with other couples, claimed that transportation to the Painan Religious Court was more expensive than the divorce itself. The longer it took the more money and energy it

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<sup>35</sup> Lengayang sub-district KUA Annual Report 2018.

<sup>36</sup> R (initials) a married woman who falsified her husband's death in favor of a new marriage with another man. Interview on December 2018.

consumed. Therefore, they chose to divorce at home based solely on Islamic Law (*fiqh*). The divorce was done at home in front of the family, witnessed by both *Ninik mamak* and local clerics.

Meanwhile, *Wali nagari* of Kambang Utara, Kambang Barat, and Kambang Timur stated that the reasons for people hesitant to divorce at the Painan Religious Court are: *first*, divorce cases take a long time (at least one month), and it is very difficult for the community to travel from where they live to the court.<sup>37</sup> Files that arrive at the court are not immediately processed but must wait until a summons for a hearing is issued to the court in accordance with the procedures outlined in the procedural law so that the divorce matter is not promptly decided only by the judge in court. *Second*, the distance from Lengayang to the Painan Religious Court is considered far. It is estimated that the distance between Lengayang sub-district and Painan Religious Court is approximately 67 kilometers and will take approximately 2-3 hours by motorcycle and longer by public transportation. *Third*, while getting a divorce in religious court is free for those who cannot afford it, most people are limited by other costs such as arranging the divorce and transportation to court. This is understandable given that most people work as farmers and fishermen. *Fourth*, most divorced couples are hesitant to go to the Painan Religious Court because there is an easier and cheaper solution provided by *Ninik mamak* and the *Nagari* apparatus through a death decree. *Fifth*, they understand that if the *iddah* (waiting) period has expired, they can remarry to someone else and apply for new marriage requirements at the KUA, even if the divorce is not carried out through the Religious Courts.

The five reasons stated above by the three *Wali nagari* were also stated by the Head of the KUA Lengayang sub-district. He went on to say that the women who claimed that their living husband had died because they had been abandoned for a long time without information. They also found out that their husband had remarried another woman.<sup>38</sup> Essentially, there were many cases of women who had been abandoned by their husbands for a long period of time with no news. Data on Painan Religious Court judges' decisions from 2016 to 2019 revealed that there were more than 220 decisions stating that these

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<sup>37</sup> T (initials), N (initials), K (initials), *Wali nagari* of Kambang Utara, Kambang Barat and Kambang Timur. Interview on December 2018.

<sup>38</sup> Z (initials), The Head of Office of Religious Affairs of Lengayang sub-district. Interview on December 2018.

women were left unnoticed by their husbands, then, returned home and divorced. When these women demanded a living (*madbiyah*), their demands were denied, though some were granted in a limited nominal capacity. Those who were not divorced and had been abandoned for a long time chose to remarry by making a Letter of Responsibility claiming that their husband had died even the fact that it was clear that their husband are still alive. By so doing, they could register their second marriage easily although they were not divorced at the Painan Religious Court.

In another case, three men, initials SF, M, and R, stated that they had signed a Letter of Responsibility stating that their wives had died. They claimed that their wives had previously married other men without first divorcing them. Their wives had also declared their death in order to register their second marriage. They did this because the requirement to register marriages at the KUA is to attach a divorce certificate from the Religious Courts for those who are divorced, and a certificate of death of their spouse for those who are widowed. They were clearly not divorced through the Religious Courts, so they lacked a divorce decree as a result the only option was to create a fake death statement signed by *Wali nagari*. The same action was also performed by ES and AM, men from Nagari Kambang Utara. There are numerous ways for the bride and groom to fulfill the requirements at KUA. We also discovered requirements (documents) that were not true or fake, such as ID cards, and family cards, as well as evidence of death certificate falsification.

Based on the description above, the divorce of the Lengayang people outside of court has a significant impact on the implementation of orderly marriage in the area. Referring to information from the perpetrators, nuclear family, *Ninik mamak*, local clerics, and authorized officials in the Lengayang sub-district, the simplest way to proceed is to issue a death certificate for one of the parties (wife or husband), which is unable to prove through SIMKAH Web (state marriage application), except by presenting relatives of the person who has been declared dead. They made a statement about their spouse's death as if it were true because it was made by an authorized person/official.

## **Conclusion**

The falsification of death starts with the divorce outside the court. This research shows that many factors contribute to unofficial divorce, including the community's poor



economy, distance from religious courts, and deadlock of social relations between spouses. This demonstrates the community's 'legal awareness,' which has resulted in the 'abuse' of authority (of *ninik mamak*) in managing new marriages for Lengayang people. Indeed, there are numerous cases in marital affairs that illustrate people's disobedience to the rule of law, such as illegal polygamy marriage, which is caused by the absence of strict sanctions. It can be concluded that the falsification of death for registering a new marriage is also due to structural support from local authorities who should be on the front lines, such as *Ninik mamak*, *Wali jorong*, and *Wali nagari*, as well as local state religious officials to enforce the state law. It seems resulted in the weakening of state laws and regulations enforcement, which deteriorates institutions such as the KUA and Religious Courts that administer marriage and divorce arrangements. On the other hand, local apparatus such as the *Wali jorong* and *Wali nagari* are the first to weaken the rule of law by allowing society to legalize the death of living spouses. To justify from the state law, this practice is an act of maladministration, but in the context of marriage, this falsification is the most efficient way to circumvent the complexities of administration. This is according to the Lengayang people. This phenomenon demonstrates that customary authorities play a major role in simplifying the administrative burden of marriage in Lengayang case.

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