

# Validation of Pasu-Pasu Raja Marriage through Itsbat Nikah in the Perspective of Positive Law and Islamic Law: An Analysis of the Tarutung Religious Court Ruling

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**Abstract:** This study investigates the legal validation of *pasu-pasu raja* marriages, a traditional Batak Toba ritual, at the Tarutung Religious Court, particularly in cases involving converts to Islam. The research explores three primary issues: the legal status of *pasu-pasu raja* under Indonesian law and Islamic law, the requirements for validating such marriages for converts, and the judicial responses at the Tarutung Religious Court. Employing a normative juridical approach with case study analysis, the findings indicate that while *pasu-pasu raja* is not part of the formal Islamic marriage process, it can serve as a cultural complement to a legally valid Islamic marriage. Under Indonesian positive law, *itsbat nikah* (marriage validation) is permissible for convert couples, provided the marriage complies with Islamic principles and is free from legal barriers. Most Islamic scholars affirm the validity of non-Muslim marriages post-conversion, without the necessity of a new marriage contract. The Tarutung Religious Court aligns with this perspective, offering legal certainty to converts without mandating a new contract. This legal recognition is consistent with the principles of *maqashid asy-syar'iyah*, which emphasize the welfare and legal legitimacy of marriages.

**Keywords:** *Marriage Validation; Pasu-Pasu Raja; Religious Court; Islamic Law; Positive Law*

**Abstrak:** Penelitian ini mengkaji validasi pernikahan *pasu-pasu raja*, sebuah ritual tradisional Batak Toba, di Pengadilan Agama Tarutung, khususnya dalam kasus yang melibatkan mualaf. Penelitian ini mengeksplorasi tiga isu utama: status hukum *pasu-pasu raja* dalam hukum Indonesia dan hukum Islam, persyaratan untuk memvalidasi pernikahan tersebut bagi mualaf, serta respons hakim di Pengadilan Agama Tarutung. Dengan menggunakan pendekatan yuridis normatif dan analisis studi kasus, temuan menunjukkan bahwa meskipun *pasu-pasu raja* bukan bagian dari proses pernikahan Islam formal, ia dapat berfungsi sebagai pelengkap budaya dalam pernikahan Islam yang sah secara hukum. Dalam hukum positif Indonesia, *itsbat nikah* (validasi pernikahan) diperbolehkan bagi pasangan mualaf selama pernikahan tersebut sesuai dengan prinsip-prinsip Islam dan tidak memiliki hambatan hukum. Sebagian besar ulama Islam menegaskan keabsahan pernikahan non-Muslim setelah mualaf tanpa memerlukan akad nikah baru. Pengadilan Agama Tarutung sejalan dengan pandangan ini, memberikan kepastian hukum kepada mualaf tanpa mewajibkan akad baru. Pengakuan hukum ini konsisten dengan prinsip *maqashid asy-syar'iyah*, yang menekankan kesejahteraan dan legitimasi hukum pernikahan.

**Keywords:** *Pengesahan Perkawinan; Pasu-Pasu Raja; Pengadilan Agama; Hukum Islam; Hukum Positif*

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## Introduction

Marriage, as a social and legal institution, is deeply rooted in cultural practices, religious beliefs, and state laws. In Indonesia, traditional marriages, particularly the Batak Toba custom known as pasu-pasu raja, exemplify the intersection of these elements.<sup>1</sup> The pasu-pasu raja ceremony, conducted before tribal elders, serves to legitimize the marital bond through cultural and spiritual blessings, yet it often faces challenges in legal recognition under both national and Islamic law.<sup>2</sup>

The case of the Tarutung Religious Court (case number 5/Pdt.P/2020/PA.Trt) illustrates the complexities surrounding the validation of marriages performed through customary practices. The court ruled in favor of the petitioners, validating their pasu-pasu raja marriage based on evidence that it met the legal and religious requirements of an Islamic marriage.<sup>3</sup> This decision highlights the court's role in reconciling customary practices with formal legal frameworks, particularly in a context where traditional marriages are frequently deemed illegitimate due to the lack of formal registration.<sup>4</sup>

The Batak Toba community, predominantly Protestant Christians,

traditionally views marriage as valid only when it is blessed by the church, creating a dichotomy between customary and religious practices.<sup>5</sup> This cultural norm often leads to civil issues, as marriages performed solely through pasu-pasu raja may not be recognized under national law, which mandates registration for legal validity.<sup>6</sup> The decline in marriage validation cases from 2019 to 2021 further underscores the challenges faced by couples navigating these legal landscapes, as evidenced by the significant drop in cases from 21 in 2019 to only 3 in 2021.<sup>7</sup>

In the realm of Islamic law, the pasu-pasu raja custom can be compared to nikah sirri, or unregistered marriages. While nikah sirri is often understood as a secret marriage, applying this term to pasu-pasu raja can be misleading. Islamic law stipulates specific requirements for a valid marriage, which may not always align with the practices observed in pasu-pasu raja ceremonies.<sup>8</sup> This misalignment can lead to legal ambiguities, particularly for couples who may lack the necessary documentation or guardianship required by Islamic law.<sup>9</sup>

For couples who convert to Islam, the validation of a pasu-pasu raja marriage can be

<sup>1</sup> Ade Ulfa Amin, 'Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia', *Journal of World Science*, 2023, doi:10.58344/jws.v2i8.410.

<sup>2</sup> Mariana Sole Agusta Nope, 'Collaborative Governance in Determining Legal Status for Traditional Marriages of the Dawan Ethnicity', 2021, doi:10.2991/aebmr.k.210928.094.

<sup>3</sup> Helzi Ramanta and Samsuri Samsuri, 'The Values of Local Wisdom of Minangkabau Culture in a Baralek Gadang Traditional Wedding', *Humaniora*, 2020, doi:10.21512/humaniora.v11i3.6625.

<sup>4</sup> Herni Widanarti, Benny Riyanto, and Yunanto Yunanto, 'Political Reconstruction of Law Towards the Rights of Non-Marital Child Through the State Recognition of Unregistered Marriage in Indonesia', 2019, doi:10.4108/eai.10-9-2019.2289417.

<sup>5</sup> Aldi Subhan Lubis, 'The Dynamics of Interreligious Marriage in Indonesian Religious and Legal Perspectives', *Arrus Journal of Social Sciences and Humanities*, 2023, doi:10.35877/soshum1658.

<sup>6</sup> Zalma Afika Nandaprawati, Anjar Sri Ciptorukmi Nugraheni, and Andina Elok Puri Maharani, 'A Juridical Analysis of Abroad Interfaith Marriage's Position in Indonesia's Law', *Interdisciplinary Social Studies*, 2022, doi:10.55324/iss.v1i10.230.

<sup>7</sup> Prahasti Suyaman and Temmy Fitriah Alfiany, 'Polemics of Interfaith Marriage Reviewed From the Perspectives of Marriage Law and the Compilations of Islamic Law', *Kne Social Sciences*, 2022, doi:10.18502/kss.v7i15.12129.

<sup>8</sup> Sardjana Orba Manullang, 'Understanding the Sociology of Customary Law in the Reformation Era: Complexity and Diversity of Society in Indonesia', *Linguistics and Culture Review*, 2021, doi:10.21744/lingcure.v5ns3.1352.

<sup>9</sup> Gusti Made Mahendra, 'Legal Validity of Land Tenure by Foreigners Through Mixed Marriages Obtained From Inheritance From the Uupa Perspective', *Policy Law Notary and Regulatory Issues (Polri)*, 2023, doi:10.55047/polri.v2i2.619.

particularly contentious. Divergent opinions among judges regarding the acceptance of such marriages reflect the need for a unified approach to ensure legal clarity and justice. This is crucial for upholding maqashid syariah, which emphasizes the protection of welfare and justice in marriage and divorce contexts.<sup>10</sup>

The significance of pasu-pasu raja extends beyond its cultural and spiritual dimensions; it also carries substantial legal implications.<sup>11</sup> The Marriage Law in Indonesia recognizes various forms of marriage but often fails to accommodate customary practices, leading to potential conflicts between local traditions and national legal standards.<sup>12</sup> Moreover, the challenges posed by pasu-pasu raja in the context of Islamic law further complicate the legal landscape, as the requirements for a valid marriage may not be fully satisfied through customary rituals alone.<sup>13</sup>

The validation of pasu-pasu raja marriages within the framework of positive and Islamic law reveals the intricate interplay between customary practices and formal legal systems in Indonesia. This study underscores the necessity for legal reforms that recognize and integrate customary marriage practices, thereby promoting substantive justice in a pluralistic society.<sup>14</sup>

The findings contribute to a broader understanding of how legal institutions can adapt to diverse marriage practices, ensuring that cultural values are respected while also adhering to legal standards.<sup>15</sup>

## Literature Review

*Itsbat nikah* is a significant judicial process within Indonesia's Religious Courts, aimed at affirming the legality of marriages that lack formal documentation, such as marriage certificates. The term "itsbat," derived from Arabic, signifies verification or affirmation, while "nikah" pertains to the marriage contract. This process falls under the category of *jurisdictio voluntaria*, which is a legal procedure that does not involve disputes but seeks to provide legal certainty for unregistered marriages. The necessity of *itsbat nikah* stems from Indonesian law, which mandates official marriage registration for the recognition of legal marital status, thereby ensuring that unregistered marriages can gain formal acknowledgment and protection under the law.<sup>16</sup>

In the context of customary practices, such as Pasu-Pasu Raja among the Batak Toba community, the cultural significance of these traditions often clashes with the requirements of positive law. Pasu-Pasu Raja involves the participation of family elders and

<sup>10</sup> Sriono Sriono and others, 'Reconstruction of Marriage Dispensation Regulations in the Perspective of Human Rights Based on the Value of Justice', *Scholars International Journal of Law, Crime and Justice*, 6.04 (2023), doi:10.36348/sijl.2023.v06i04.005.

<sup>11</sup> Muslimah Muslimah, 'Marriage Aqd Validity Through Electronic Media Based on Positive Law and Islamic Law', *Fundamental Jurnal Ilmiah Hukum*, 2023, doi:10.34304/jf.v12i2.130.

<sup>12</sup> Nur Mohamad Kasim, 'Customary Law Aspect on the Role of Religious Judge in the Case of Divorce', 2020, doi:10.4108/eai.22-10-2019.2291462.

<sup>13</sup> Phinawati Tjajindra and Benny Djaja, 'Notary's Role and Authority on the Issue of Interreligious Marriage in Surabaya City', *Interdisciplinary Social Studies*, 2023, doi:10.55324/iss.v2i7.442.

<sup>14</sup> Ephraim Kevin Sibanyoni, Mosa Precious Likoti, and Shandré Kim Jansen Rensburg, 'Legislative Responses to Child Victims of Abduction Into Forced Marriages in Lesotho', *International Journal of Research in Business and Social Science* (2147-4478), 2022, doi:10.20525/ijrbs.v11i5.1892.

<sup>15</sup> Munawir Saragih, Mustafa M Amin, and Elmeida Effendy, 'Association of Polymorphism -174g/C Interleukin-6 (IL-6) and Schizophrenia in Bataknese Population', *Open Access Macedonian Journal of Medical Sciences*, 2021, doi:10.3889/oamjms.2021.6320.

<sup>16</sup> Yance Arizona, Muki Wicaksono, and Jacqueline A C Vel, 'The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia', *The Asia Pacific Journal of Anthropology*, 2019, doi:10.1080/14442213.2019.1670241.

traditional leaders in the marriage ceremony, which, while culturally valid, does not automatically confer legal recognition under Indonesian law.<sup>17</sup> Article 7 of the Islamic Law Compilation (Kompilasi Hukum Islam or KHI) stipulates that marriages conducted under local customs must undergo the *itsbat nikah* process to achieve official recognition.<sup>18</sup> This highlights the gap between customary practices and formal legal requirements, as many indigenous marriages, despite their cultural legitimacy, fail to meet the procedural standards set by national law.<sup>19</sup>

The Religious Courts of Indonesia, established under Law No. 7 of 1989, play a crucial role in adjudicating cases related to Islamic family law, including marriage legality. These courts are tasked with ensuring that marriages comply with both Islamic law and the country's registration requirements.<sup>20</sup> In cases of *itsbat nikah*, the courts evaluate whether the marriage aligns with Islamic principles as outlined in the KHI and whether it meets the legal criteria for registration.<sup>21</sup> This dual examination underscores the courts' function as arbiters in the intersection of customary practices and formal law, addressing the complexities

that arise when local traditions do not conform to established legal frameworks.<sup>22</sup>

Indonesian positive law, particularly Law No. 1 of 1974 on Marriage, mandates that all marriages be officially registered to secure legal rights and protections.<sup>23</sup> The absence of a marriage certificate can result in significant challenges for couples, including difficulties in accessing legal protections. Conversely, Islamic law, as codified in the KHI, emphasizes the fulfillment of religious obligations, which may not always align with the documentation requirements of positive law.<sup>24</sup> This divergence creates a complex legal landscape where the interplay between religious and state laws complicates the recognition of marriages, particularly those that are customary in nature.<sup>25</sup>

The discrepancies between customary and formal law are further highlighted in the literature, which indicates that while many indigenous practices hold substantial cultural significance, they often do not align with the procedural rigor of positive law.<sup>26</sup> Research by Yulianto and Primandani (2021) emphasizes the challenges faced by couples in reconciling customary marriages with state law, while Nasution (2020) notes the tensions

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<sup>17</sup> Achmad Hariri, Satria Unggul Wicaksana, and Samsul Arifin, 'A Critical Study of Legal Positivism as a Legal System in a Pluralist Country', *Kne Social Sciences*, 2022, doi:10.18502/kss.v7i15.12131.

<sup>18</sup> Ernawati Ernawati, 'Child Participation in Marriage Dispensation in Southeast Asian Muslim Countries From the Perspective of the Convention on the Rights of the Child', *Journal of World Science*, 2023, doi:10.58344/jws.v2i8.393.

<sup>19</sup> Sardjana Orba Manullang, 'Understanding the Sociology of Customary Law in the Reformation Era: Complexity and Diversity of Society in Indonesia', *Linguistics and Culture Review*, 2021, doi:10.21744/lingcure.v5ns3.1352.

<sup>20</sup> Ganjar Kurnia and others, 'Local Wisdom for Ensuring Agriculture Sustainability: A Case From Indonesia', *Sustainability*, 2022, doi:10.3390/su14148823.

<sup>21</sup> Nur Rochaeti and Nurul Muthia, 'Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict With the Law in Indonesia', *International Journal of Criminology and Sociology*, 2021, doi:10.6000/1929-4409.2021.10.35.

<sup>22</sup> Ayu Asmara, 'Legal Protection Perspective of Underage Marriage', *Damhil Law Journal*, 2023, doi:10.56591/dlj.v2i2.1743.

<sup>23</sup> Abdul Syatar, 'Interfaith Marriage Phenomenon in Indonesia From the Perspective of Sadd Al-Zari'ah and Fath Al-Zari'ah', *Fitrah Jurnal Kajian Ilmu-Ilmu Keislaman*, 2023, doi:10.24952/fitrah.v9i1.6800.

<sup>24</sup> Anak Agung Istri Trisnawijayanti, 'The Legality of Interfaith Marriage Conducted Abroad in the Perspective of Indonesian Law', *Policy Law Notary and Regulatory Issues (Polri)*, 2023, doi:10.55047/polri.v2i2.572.

<sup>25</sup> Amrin Nurfieni, 'The Impact of Law Number 16 of 2019 Marriage Dispensation and Child Marriage Gap', *Indonesian Journal of Law and Islamic Law (Ijlil)*, 2023, doi:10.35719/ijlil.v5i2.330.

<sup>26</sup> Nur Ahmad Ridwan, 'Controversy Over the Rejection of Interfaith Marriage Approval: Between the Circular of the Supreme Court and the Population Administration Law in Indonesia', *International Journal of Educational Research & Social Sciences*, 2023, doi:10.51601/ijersc.v4i6.753.

between Islamic legal principles and local traditions,<sup>27</sup> particularly in communities like the Batak Toba, where customary rites may not fully comply with either Islamic or national legal standards.<sup>28</sup>

This study contributes to the ongoing discourse regarding the legal recognition of customary marriages within the frameworks of Islamic and positive law. By analyzing how the Religious Courts handle *itsbat nikah* requests for marriages performed according to traditional customs, this research offers insights into the challenges of reconciling cultural, religious, and legal frameworks.<sup>29</sup> It highlights the need for more inclusive legal approaches that respect both cultural traditions and legal imperatives, particularly in Indonesia's pluralistic society.<sup>30</sup>

## Methods

This research employs a qualitative approach, utilizing normative juridical methods and case study analysis to investigate the interaction between customary law (*Pasu-Pasu Raja*) and Islamic law within Indonesia's legal framework. The normative juridical approach focuses on analyzing legal rules, statutes, and norms, while the case study method examines specific legal rulings, particularly the *itsbat nikah* cases from the Tarutung Religious Court. Data collection was conducted through a combination of document analysis, interviews, and field observations. The primary data sources include legal documents such as court decisions, the Compilation of Islamic Law (KHI), and Law

No. 1 of 1974 on Marriage. Secondary data consists of relevant scholarly literature, including books, articles, and theses, while tertiary data, such as legal dictionaries, were used to clarify legal concepts.

Document analysis served as the core method, providing detailed insights into how the legal system addresses customary marriages like *Pasu-Pasu Raja*. Additionally, semi-structured interviews were conducted with key informants, including judges, legal practitioners, and community leaders, to gain practical perspectives on the application of *itsbat nikah*. Field observations were also utilized to capture the social and cultural context in which these customary marriages are performed, providing a real-world understanding of how they intersect with formal legal procedures.

Data analysis involved systematic steps of data reduction, legal interpretation, and synthesis. The collected data was organized into key themes, focusing on the legal recognition of customary marriages and the procedural aspects of *itsbat nikah*. The analysis included a comparative evaluation of the legal treatment of customary law versus formal marriage registration requirements. Triangulation was applied by cross-verifying data from multiple sources, ensuring the reliability of findings. This comprehensive methodology provides a detailed understanding of the legal and cultural dynamics surrounding the validation of unregistered customary marriages through the *itsbat nikah* process.

<sup>27</sup> Kholifatun Nur Mustofa, 'Local Values and Judges' Legal Discretion in Islamic Court of Makassar: The Case of "Dispensasi Nikah"', *Asy-Syir Ah Jurnal Ilmu Syari Ah Dan Hukum*, 2022, doi:10.14421/ajish.v56i1.811.

<sup>28</sup> Muhammad Faisal Hamdani, 'The Legal and Human Rights Challenges of Interfaith Marriage in Indonesia', *Journal of Law and Sustainable Development*, 2023, doi:10.55908/sdgs.v11i12.1020.

<sup>29</sup> Aldy Darmawan, 'Legalization of Nikah Sirri: A Solution to Obtain Marital Status Recognition Among

Diverse Cultural Groups in Indonesia', *Kawanua International Journal of Multicultural Studies*, 2023, doi:10.30984/kijms.v4i2.728.

<sup>30</sup> Supriyadi Supriyadi and Siti Suriyati, 'Judges' Legal Culture in Dealing With High Number of Applications for Child Marriage Dispensation During Covid-19 Pandemic at the Kudus Religious Court', *Al-Ihkam Jurnal Hukum & Pranata Sosial*, 2022, doi:10.19105/al-Ihkam.v17i1.6060.

## Results and Discussion

### Pasu-Pasu Raja Marriage in Batak Custom

In the Batak Toba culture, marriage is not merely a personal commitment but a significant social event steeped in tradition and ritual. The customary marriage process, known as Adat na Gok, involves a series of well-defined rituals that symbolize the integration of the couple into their community. The initial step, Mangaririt, involves the groom's selection of a bride, followed by Marhusip, where negotiations regarding the dowry (*sinamot*) occur.<sup>31</sup> The ceremony culminates in blessings and celebrations that reinforce familial and community ties, adhering to cultural norms that prohibit marriages within the same clan (*Namarpadan*) or close relatives (*Pariban*).<sup>32</sup>

However, the Pasu-Pasu Raja marriage represents a more informal alternative, characterized by its simplicity and lack of formal church involvement. This type of marriage is conducted with only close family and local leaders present, relying on blessings from community elders rather than a pastor, which creates a divergence from Christian doctrines that emphasize divine blessing through formal ceremonies.<sup>33</sup> The absence of a church-sanctioned ceremony often leads to negative perceptions from the bride's family and a lack of recognition from both civil authorities and religious institutions, highlighting the tensions between traditional practices and modern legal frameworks.<sup>34</sup>

### The Status of Pasu-Pasu Raja in Positive Law and Islamic Law

From a legal perspective, the status of Pasu-Pasu Raja marriages is complex. According to Law No. 1 of 1974 on Marriage in Indonesia, a marriage must comply with the religious beliefs of the parties involved to be considered legally valid. While Pasu-Pasu Raja holds cultural significance, it does not fulfill the legal requirements for recognition under state law, thereby creating a gap between customary practices and legal acknowledgment.<sup>35</sup> In Islamic law, marriage is viewed as a binding contract that fosters family harmony. Although Pasu-Pasu Raja may be accepted if it aligns with fundamental Islamic marriage requirements, the lack of formal religious blessings complicates its recognition within both legal and religious frameworks.<sup>36</sup>

The Batak Toba people's customs are deeply rooted in the values of *Dalihan Na Tolu*, which emphasizes respect for the bride's family and harmonious kinship relations. The blessings given during the marriage ceremony, particularly from the bride's maternal uncle (*Tulang*), carry significant cultural weight.<sup>37</sup> However, the informal nature of Pasu-Pasu Raja marriages often leads to conflicts with established legal and religious norms, raising questions about the future of such practices in a rapidly modernizing society.<sup>38</sup>

In conclusion, while the Pasu-Pasu Raja

<sup>31</sup> Monica Belinda Oksavina, 'Keabsahan Perkawinan Semarga Masyarakat Adat Batak Ditinjau Dengan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan', *Hukum Dan Dinamika Masyarakat*, 2023, doi:10.56444/hdm.v21i1.4034.

<sup>32</sup> Aktor Pimadona and Mulati Mulati, 'Keabsahan Perkawinan Sedarah Masyarakat Adat Batak Toba Menurut Hukum Adat', *Jurnal Hukum Adigama*, 2019, doi:10.24912/adigama.v2i1.5238.

<sup>33</sup> Naomi Lumbantoruan, 'Perkawinan Kristen Tanpa Eksistensi Adat Batak Toba Di Gereja HKBP Kota Denpasar', *SHKR*, 2024, doi:10.61292/shkr.158.

<sup>34</sup> Oksavina.

<sup>35</sup> Oksavina.

<sup>36</sup> Ramadhan Syahmedi Siregar, Muhammad Syakban, and Muhammad Ikhlas bin Rosele, 'The Role of Marriage Guardian of the Same Clan in the Traditional Marriage of Batak Toba Muslims in Samosir Regency in the Perspective of Islamic Law', *Al-Manahij Jurnal Kajian Hukum Islam*, 2023, doi:10.24090/mnh.v17i1.6750.

<sup>37</sup> Oksavina.

<sup>38</sup> Pimadona and Mulati.

marriage reflects the adaptability of Batak Toba culture, it also underscores the challenges faced in reconciling traditional customs with contemporary legal and religious standards. The ongoing dialogue between these frameworks will be crucial in shaping the future of marriage practices within the Batak Toba community.

### **Legalization of Pasu-Pasu Raja Marriages for Converts (Mualaf) in Positive and Islamic Law**

The legalization of Pasu-Pasu Raja marriages for converts (Mualaf) in Indonesia presents a complex interplay between Islamic law, customary practices, and state regulations. In this context, the legal status of such marriages is contingent upon their alignment with both Islamic principles and the Indonesian legal framework. According to Islamic jurisprudence, marriages that occurred prior to conversion to Islam do not necessitate re-licensing, provided they adhere to Islamic tenets. This is supported by historical precedents, such as the case of Ghailan ibn Salamah, who embraced Islam while already married, indicating that prior marriages can be recognized under certain conditions.<sup>39</sup>

In Indonesia, the formal recognition of Pasu-Pasu Raja marriages can be achieved through itsbat nikah, a process of marriage validation conducted by religious courts. This mechanism serves as a bridge between customary practices and formal legal

systems, ensuring that marriages are acknowledged within both Islamic and state law.<sup>40</sup> The Compilation of Islamic Law (KHI) stipulates that marriages must be registered to be legally recognized,<sup>41</sup> thus emphasizing the importance of legal documentation in affirming marital status.<sup>42</sup>

Furthermore, the Indonesian Marriage Law (Law No. 1 of 1974, amended by Law No. 16 of 2019) underscores that marriage is not merely a legal act but also a religious one, necessitating compliance with the laws of the respective religions.<sup>43</sup> This duality highlights the necessity for converts to navigate both Islamic and state legal frameworks to ensure their marriages are recognized and protected under the law. The legal implications of unregistered marriages, such as those conducted through Pasu-Pasu Raja, can lead to significant challenges, including issues related to inheritance and the legitimacy of offspring.<sup>44</sup>

The recognition of Pasu-Pasu Raja marriages also reflects broader societal dynamics in Indonesia, where customary practices often intersect with formal legal structures. The need for itsbat nikah illustrates the ongoing negotiation between traditional customs and contemporary legal requirements, emphasizing the importance of legal mechanisms in accommodating cultural practices within the framework of Islamic law.<sup>45</sup> This synthesis of legal and cultural considerations is crucial for ensuring that the rights and responsibilities of all

<sup>39</sup> Abu Rokhmad, 'Institutions and Contributions to Islamic Law in Indonesia's Legal System', *Walisongo Law Review (Walrev)*, 2021, doi:10.21580/walrev.2021.3.1.7282.

<sup>40</sup> Diana Pujiningsih, 'Legal Protection of Children From the Results of Sirri's Marriage in the Perspective of Marriage Law in Ineonesia', *Journal Transnational Universal Studies*, 2023, doi:10.58631/jtus.v1i5.33.

<sup>41</sup> Taufik, 'The Urgency of Registering Marriages in Jambi Province Based on the KHI of Maqāṣid Al-Syariah Perspective', *Jimi*, 2023, doi:10.61404/jimi.v1i2.67.

<sup>42</sup> Endang Prasetyawati, 'The Meaning of "Un-Recorded Marriage" in the Perspective of the Marriage Law', *Technium Social Sciences Journal*, 2023, doi:10.47577/tssj.v39i1.8212.

<sup>43</sup> Prasetyawati.

<sup>44</sup> Suryani Suryani, 'Sirri Marriage From the Perspective of Islamic Legal Philosophy', *Iblam Law Review*, 2022, doi:10.52249/ilr.v2i2.197.

<sup>45</sup> Karman Karman, 'Understanding Civil Law in the Context of Contemporary Islam in Indonesia', *Al-Mada Jurnal Agama Sosial Dan Budaya*, 2021, doi:10.31538/almada.v4i2.1700.

parties involved in such marriages are upheld.

In conclusion, the legalization of Pasu-Pasu Raja marriages for converts in Indonesia necessitates a comprehensive understanding of the interplay between Islamic law, customary practices, and state regulations. The itsbat nikah process serves as a vital tool for validating these marriages, ensuring their recognition within both legal systems. As such, it is imperative for converts to be informed about their rights and the legal processes available to them, thereby fostering a more inclusive and equitable legal landscape for all individuals seeking to formalize their marital relationships.

### **The Response of Judges at the Tarutung Religious Court to the Petition for the Legalization of Pasu-Pasu Raja Marriages**

The response of judges at the Tarutung Religious Court to petitions for the legalization of Pasu-Pasu Raja marriages illustrates the intricate interplay between customary law (adat), Islamic law, and Indonesia's formal legal framework, particularly as outlined in the Marriage Law No. 1 of 1974. In Batak Toba society, marriage is not merely a personal commitment but a vital cultural and religious institution, which complicates the legal landscape when traditional practices, such as Pasu-Pasu Raja, come into conflict with statutory requirements.

Judges like Ishak Lubis, S.Ag, and H. M. Jazuli, S.Ag, argue that as long as a marriage is registered and does not contravene national laws, it should be recognized legally, even in the absence of formal religious

ceremonies. This perspective aligns with Gustav Radbruch's theory of legal certainty, which emphasizes the importance of clear and consistent legal frameworks to maintain social order.<sup>46</sup> Their stance reflects a pragmatic approach, prioritizing legal registration over religious formalities, thereby suggesting that the essence of legal recognition lies in compliance with state laws rather than adherence to religious rituals.

Conversely, judges such as M. Taufik, S.H, and Ahmad Nazif Husainy, S.H, express concerns regarding the lack of religious components in Pasu-Pasu Raja marriages. Husainy specifically points to the stipulations in the Marriage Law No. 1 of 1974, which necessitate that marriages adhere to recognized religious or customary practices to be deemed valid.<sup>47</sup> This highlights a significant tension within Indonesia's legal pluralism, where the coexistence of adat practices and formal legal requirements can lead to conflicting interpretations, particularly in cases involving religious transitions, such as conversions to Islam after marriage.<sup>48</sup>

The divergence in judicial opinions reflects broader challenges within Indonesia's legal pluralism, where judges must navigate the complexities of Islamic law, adat law, and national law. Scholars like Safitri (2022) and Pragata (2023) note that the constitutional recognition of adat law under Article 18B(2) of the 1945 Constitution coexists with the strong influence of Islamic law, leading to varied interpretations and applications in marriage cases.<sup>49</sup> This legal pluralism necessitates a careful balancing act

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<sup>46</sup> Ade Ulfa Amin, 'Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia', *Journal of World Science*, 2023, doi:10.58344/jws.v2i8.410.

<sup>47</sup> Amin, 'Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia'.

<sup>48</sup> Resia Monika, 'Granting Dispensation to Children Who Marry Underage After the Enactment of Law Number 16 of 2019 (Decision Number 157/Pst.P/2020/Pa.Sbr)', *Edunity Kajian Ilmu Sosial Dan Pendidikan*, 2023, doi:10.57096/edunity.v2i9.110.

<sup>49</sup> Dewa Gede Sudika Mangku and I Wayan Agus Yudana, 'Implementation of Article 7 Law 16 Year 2019 Concerning Amendments to Law 1 Year 1974

for judges, who must consider both the legal frameworks and the socio-cultural contexts of the marriages they adjudicate.

Moreover, the judicial deliberation process in Indonesia often involves extensive discussions on legal and social factors before reaching a decision. This complexity is underscored by the subjective nature of legal interpretation, particularly regarding how adat and Islamic law should be integrated.<sup>50</sup> Some judges view traditional ceremonies as sufficient for legal validation, while others advocate for strict adherence to religious formalities, reflecting the ongoing debate about the legitimacy of various marriage practices within the legal system.

The integration of Islamic and customary laws can be approached through an eclectic model that seeks to harmonize these legal traditions, allowing for more flexible solutions in a pluralistic society like Indonesia.<sup>51</sup> This approach is essential for addressing the unique challenges posed by mixed legal traditions, ensuring that judicial decisions are not only legally sound but also culturally sensitive and reflective of societal values.

In conclusion, the responses of judges at the Tarutung Religious Court to Pasu-Pasu Raja marriage legalization petitions reveal the intricate legal and cultural complexities surrounding marriage law in Indonesia. The interplay of adat law, Islamic law, and the legal framework established by the Marriage Law No. 1 of 1974 significantly influences judicial outcomes. Emphasizing legal pluralism and adopting a more inclusive

judicial approach may provide a pathway for reconciling conflicts between customary practices and formal legal requirements, ultimately enhancing legal certainty and fairness for those involved.

From an administrative perspective, marriage registration is crucial as it not only ensures legal certainty but also protects the rights of spouses and their offspring by formalizing their legal status. In many Muslim-majority countries, including Indonesia, marriage registration is vital for safeguarding the rights of children born within marriage and for legitimizing marital unions in the eyes of both society and the state.<sup>52</sup>

## Conclusion

The Pasu-Pasu Raja marriage, as a significant aspect of Batak Toba tradition, represents a form of marriage recognition by customary elders, which lacks legal consequences within the framework of Indonesia's marriage law. Despite being an integral element of Batak customary marriage, its legal status can be accommodated and protected through relevant legislative provisions. Although this traditional marriage process differs from Islamic marriage practices, Muslim couples must fulfill the necessary requirements and conditions stipulated by Islamic law when engaging in Pasu-Pasu Raja.

In the context of Indonesian positive law, the validation of Pasu-Pasu Raja marriages for Muslim converts can rely on the provisions for **itsbat nikah** found in the

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Concerning Marriage With the Age Limit of Marriage in Sidatape Village', 2021, doi:10.4108/eai.10-11-2020.2303368.

<sup>50</sup> Ayu Asmara, 'Legal Protection Perspective of Underage Marriage', *Damhil Law Journal*, 2023, doi:10.56591/dlj.v2i2.1743.

<sup>51</sup> Rizky Irfano Aditya and Lisa Waddington, 'The Legal Protection Against Child Marriage in Indonesia', *Bestuur*, 2021, doi:10.20961/bestuur.v9i2.55144.

<sup>52</sup> Maureen Vinalia I Plaikoi, Mary Grace Megumi Maran, and Endang Sumiarni, 'Women as Victims of Sexual Violence in the Practice of Capture Marriages in Central Sumba', *International Journal of Social Science and Human Research*, 2023, doi:10.47191/ijsshr/v6-i4-48.

Compilation of Islamic Law (KHI) and Law No. 1 of 1974 on Marriage. Such **itsbat nikah** is granted if the marriage complies with Islamic law and poses no legal impediments. The prevailing view among scholars recognizes the validity of marriages for converts without necessitating a new marriage contract, supported by historical practices during the time of the Prophet Muhammad (SAW).

Judges at the Tarutung Religious Court generally agree to grant requests for the legalization of Pasu-Pasu Raja marriages for Muslim applicants, provided no legal barriers exist. However, differing opinions arise for converts, with some judges advocating for the approval of requests without a new contract, while others call for one. This reflects a commitment to ensuring legal certainty for applicants through official documentation, which aligns with the principles of **maqashid asy-syar'iyah** aimed at promoting public welfare, protecting rights, and ensuring societal well-being.

The validation of Pasu-Pasu Raja marriages at the Tarutung Religious Court warrants further in-depth study. It is recommended that judges conduct detailed observations of the implementation of Pasu-Pasu Raja marriages within the Batak Toba Muslim community to assess their conformity with Islamic marriage law.

Furthermore, scholars engaged in Islamic Family Law are encouraged to contribute constructive ideas to address issues within the framework of Islamic family law in Indonesia. Future research could enhance and harmonize Islamic family law with existing traditional practices.

Lastly, the author acknowledges potential shortcomings in this thesis, both in terms of writing and substance. Constructive feedback and critiques from readers are welcomed to improve and refine future research endeavors.

### Credit Authorship Contribution

Reza Kresna Adipraya: Methodology, Investigation, Writing - Original Draft, and Supervision. Mhd Yadi Harahap: Methodology, Resources, and Writing - Review & Editing. Fatimah: Methodology, Formal analysis, and Writing - Review & Editing.

### Declaration of Competing Interest

The authors declare no competing interests related to this study. No financial or personal conflicts of interest are present.

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