



NISTA MARRIAGE PRACTICES AT THE LOWEST MARRIAGE LEVEL URF PERSPECTIVE IN PEGAYAMAN SUKASADA VILLAGE, BULELENG, BALI

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Abstract: The research method used in this research is qualitative research, a descriptive study type. The researcher uses qualitative research methods to obtain, study, and understand the phenomenon through in-depth data regarding the community's perspective on the practice of *nista* marriages in Pegayaman Village, Sukasada, Buleleng, Bali. This type of research uses descriptive research to explain and examine the phenomenon of *nista* marriages in Pegayaman Village from an 'Urf perspective. The researcher's data collection techniques are observation, documentation and interviews with informants from three categories, including other key informants from local community leaders, primary informants who are residents, and complementary informants who are migrants who live in the village and work in the village office. People in Bali use levels as identities according to their position, especially the Hindu population, which starts from the highest *Brahmana*, *Ksatria*, *Waisya*, and *Sudra*, the lowest caste. In contrast to the community in Pegayaman, where the majority of the population is Muslim, the level is implemented within the scope of marriage. Local traditions, empowerment, and community perceptions regarding *nista* marriages are the benchmarks for researchers analysing ancestral heritage from an *Urf* perspective. Binary opposition is used to explore the relationship between Islamic teachings and ancestral cultural heritage. The existence of 'Urf about Islamic teachings is the basis for the empirical facts of *nista* marriages in Pegayaman village. In studying the data obtained by researchers regarding slanderous marriages from the perspective of 'urf, it is limited to 'urf *fasid*, namely in *nista* marriages as the lowest level of marriage, which is contrary to the law and enriches the elements of family formation.

Keywords: *pegayaman village, nista marriage, marriage level, 'Urf*

A. Introduction

According to the term, religion is laws or regulations that bind humans to an agreement with their God, human relationships with fellow humans, and human relationships with nature (Ridwan, 2021). Meanwhile, ancestral heritage, often called culture, is a system of human habits created by humans through feelings, creativity and initiative given by God. Religion has absolute value; it does not change due to changes in time and place. Meanwhile, culture, anything based on religion, can change from time to



time and from place to place (Khoiruddin, 2016). Islam is a factual religion that provides rules or norms humans can instil in their survival. Religion is the base of the existence of a culture in society. Islam is a religion that has existed for a long time and provides limits and conditions regarding the birth of certain things in life.

Through various existing creations of God, one of which is marriage. Marriage is part of the sunatullah created by Allah. Marriage is a contract between a man and a woman based on mutual consent, the consent of the two, carried out by the other party as guardian to justify the mixing and make them life partners who complement each other (Rahmawati, 2021). Marriage from a positive legal perspective is stated in Law number 1 of 1974 article 1, which reads: Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on God The Almighty (Database Peraturan, 1974). Marriage generally means making one creature or element meet another in a pair created by Allah subhanahu wata'ala in human life but can be known by His servants or unknown. As Allah says in Q.S Yasin verse 36 which reads:

سُبْحٰنَ الَّذِيْ خَلَقَ الْاَزْوَاجَ كُلَّهَا مِمَّا تُنْبِتُ الْاَرْضُ وَمِنْ اَنْفُسِهِمْ وَمِمَّا لَا يَعْلَمُوْنَ

Glory be to Allah, who has created everything in pairs, from what the earth grows and from themselves and what they do not know.

Marriage in Islamic law has a purpose, namely upholding and enforcing Islamic law, developing offspring, maintaining human values and nature, living peacefully, having a close and broad brotherhood, maintaining the position of library assets, and kaafah in Islamic marriage law (Yudowibow, 2012). Islam, known as the religion of most of the population in Indonesia, has various patterns of spread, including through the following routes: Trade, Marriage and Conquest, Education, Sufism, Politics, Arts and Culture (Baiti, 2014). Marriage is not just a union of two people with a bond; it has its purpose, including reproduction and continues from generation to generation (Hasan, 2021). It happened in one of the remote villages on the island of Bali, namely Pegayaman village. In this area, there was a regeneration of the life of the Muslim community due to marriage. (Drs. Muhammad Suharto, personal communication, January 3, 2023).

Pegayaman is one of the villages in North Bali that has unique characteristics. This village has been a place of interest to several previous researchers. I Nengah Punia and Wahyu Budi Nugroho (2022) with the title Patterns and Strategies of Acculturation of Islamic-Javanese and Hindu-Buddhist Communities in Pegayaman Village, North Bali, in their research they found that there are two patterns and strategies found in the Islamic-Javanese community in Pegayaman Village, Buleleng, Bali takes the form of a semi-assimilation strategy and an integration strategy. These patterns and strategies can be found in communities that maintain and preserve ancestral cultural values from Javanese-Islamic and Balinese-Hindu. Between the two patterns and strategies, there is acculturation in the Pegayaman Village Community, which can be recognised in three forms of culture: a system of ideas, patterned activities, and artefacts or objects of work. The system of ideas and ideals can be seen through a combination of the use of Hindu-Balinese names for Muslim children, the use of the Middle Balinese language in everyday life, the translation of Arabic books into Balinese, as well as the central role of the headman in the Pegayaman Village community, the tradition of *penapean*, *singing* and

penampahan jelang. Holiday: *Budrah* and *Hadrah* arts, wedding processions, *mapag toya*, and baby congratulations. Meanwhile, artefacts or handicrafts can be seen in the village layout, as well as traditional clothing and *gempol satay* culinary delights.

The wedding procession is an acculturation of ancestral heritage guarded and preserved today. At the wedding party in Pegayaman Village, several levels are involved: First, *Utama* Marriage comes from the word "*Utama*", which means the best thing or the thing that comes first. The people of Pegayaman Village interpret "*Utama*" in marriage as the best first-level marriage, as is generally by the Law and Islamic Sharia regarding marriage in Indonesia. Second, *Madya* Marriage comes from the word "*Madya*", interpreted as the middle part. The people of Pegayaman Village, when interpreting "*Madya*" in marriage as the second level of marriage after *Utama*, where its position is in the middle of several other levels. This level of marriage takes place with the agreement of the two prospective bride and groom parties to marry their children to their closest family by Islamic Sharia. This marriage is not based on the wishes of the bride and groom as stated in Law Number 1 of 1974 Article 6 (1), but rather, this marriage begins with the opinion of the parents who agree to marry their child to one of the families. *Madya* marriage is almost the same as *Utama*; only the marriage process at the *Madya* level uses traditional rules in Pegayaman Village (Drs. Muhammad Suharto, personal communication, January 3, 2023). The third is a *nista* marriage, which comes from the word "insult" which is something low. The people of Pegayaman Village define "*Nista*" as a marriage with the lowest level among other levels of marriage. This marriage took place through an elopement process.

Nista marriage is one of the stages of marriage in Pegayaman village, which is believed to have been inherited by ancestors. This marriage is the lowest level of marriage based on its continuity process. If you look at its continuity, it has a different procedure from marriage in general. The reason is that at the beginning of this marriage, the woman was taken away by the man and placed in a separate place by the woman's family. Elopements like this do not only exist in Pegayaman Village but also occur in Kelusa Village, Gianyar Regency, known as Ngerorod Marriages (Elopements) and Elopements between Balinese Tribes in Babakan Gerung Village, West Lombok, called *Merariq*. Of the three marriages involving the Balinese tribe, the process was different, and the goal was the same, namely taking the prospective bride from her family, who was previously unknown to the woman.

A *nista* marriage, also known as *merangkat*, was previously researched by Tri Bagindo Nusantara Thesis titled "The "*Merangkat*" Tradition in Marriage from an 'Urf Perspective". The author states that the cause of *meangkat* marriages is the Muslim community's lack of knowledge regarding 'Urf as a study of fiqh, secondly the Muslim community in Pegayaman Village does not understand the continuity of the existing *meangkat* tradition process, and thirdly it makes the *meangkat* tradition an alternative in anticipating the Muslim community's intention to marry or not. Marry in that way. The author says that *meangkat* tends towards '*Urf al-Fasid* because, in this process, it is not included in the tradition category by the Shari'a and is declared not part of '*Urf*. The ritual of cancelling the marriage caused this because the woman caught the prospective groom.

In Islam, *urf* is known as an action that is carried out continuously and becomes a part of the culture of society in a certain place. Based on the explanation above, the researcher will study the *urf* perspective of *nista* marriage. The founding scholars of the madzhab formulated several mukhtalaf propositions (the validity of which is still disputed), including *urf*.

Nista marriage is an ancestral heritage guarded and preserved by the people of Pegayaman Village, which is interesting to study. The people who live in Pegayaman village have Hindu and Muslim residents. So, in implementing the ancestral heritage of Muslim communities, they must pay attention to the conformity of the Sharia with the culture they live with. Therefore, the research focused on the current views of society and the existence of *nista* marriage as the lowest level in Pegayaman Village. Through previous research related to this research and the study of the 'urf perspective theory, this research can produce new insights in providing a broader understanding to society, especially Muslims, who to this day still maintain and preserve the same marriage practices as *nista* marriages. This is an essential concern for the Islamic community in Indonesia, which has a culture related to marriage, because marriage issues are regulated in Law No. 1 of 1978 concerning Marriage Article 2(1), and Islamic Sharia has regulated marriage matters that must be fulfilled by both parties to the bride and groom.

B. Method

The research method used in this research is a descriptive qualitative research method. The qualitative research method is used to obtain, study and understand the phenomenon through in-depth data regarding the researcher's point of view regarding the practice of *nista* marriages in Pegayaman Village, Sukasada, Buleleng, Bali. Qualitative research examines the conditions of natural objects, where the researcher is the crucial instrument (Sugiyono: 2005). This type of research uses descriptive research because it attempts to explain and examine the phenomena that occur in Pegayaman Village from an 'Urf perspective.

The data collection techniques used in this research are observation, documentation and interviews. Meanwhile, in determining informants, this research divides informants into critical informants, primary informants, and complementary informants. The key informants are community leaders in Pegayaman Village; the primary informants are local residents, while the complementary informants are immigrants who live in Pegayaman Village as workers in the Village office. The data analysis technique in this research consists of three stages: data reduction, data presentation and analysis, and conclusion. The theory used in this study is 'Urf.

C. Result and Discussion

Religious-Cultural Acculturation of the Oldest Muslim Village Community in Bali (Drs . Muhammad Suharto, personal communication, January 3, 2023).

Ki Barak Panji Sakti is an ancestor in Pegayaman village, Sukasada District, Buleleng Regency, Singaraja, Bali Province. There are two different perspectives on the history of the formation of this oldest Muslim village. First from Mr Wayan Hasyim (Pegayaman Community Leader) and Mr Gede Suwita. Mr Wayan Hasyim quoted from the Babad Buleleng that the existence of Pegayaman Village began with an elephant. The Buleleng Chronicle tells that in the mid-17th century, Ki Barak Panji Sakti succeeded in conquering kingdoms spread across Bali, the eastern part of Java, namely the kingdom of Blambangan and other kingdoms. At that time, the Mataram kingdom sent an elephant to Ki Barak Panji Sakti to symbolise peace. The elephant came along with eight Muslim Mataram envoy soldiers. Finally, the soldier continued his life, married a Balinese girl and gave birth to offspring mixed with Javanese and Balinese in the village of Pegayaman. Meanwhile, according to Mr. Gede Suwita, the ancestors of Pegayaman village were not from Java but

were originally from Bali. According to his research, if we observe Pegayaman village directly, what is seen is not a mixture of Javanese culture but rather a fusion of Balinese culture in the living environment of the Pegayaman village community.

History develops according to the findings of references, stories, historical evidence in the form of inscriptions, etc. It will support the conclusions at the end of the study. As is currently the case regarding the arrival of Islam in Pegayaman, the story is increasingly developing. Pegayaman is the oldest Muslim village in Belambangan. The Balinese word "Olih" with "nak", *olih* means from and *nak* means person, not *nak Blambangan* but *olih blambangan*. What Pak Hasyim said in his small writings that Pegayaman came from Mataram and Blambangan is true. In 1648, when King I Gusti Panji Sakti fulfilled his promise as a king made when he was 12 years old in 1611, he promised at the top with his Panji Landung oath that, according to legend, which lifted by a giant figure, then on a giant hand, he saw the whole of Buleleng and Java. He proved the contents of his oath in 1648 when he became king. In 1620, he created a kingdom in Panji, and then, in 1648, he moved his kingdom to Sukasada. While in Sukasada, he proved his oath to conquer Blambangan. He met the Mataram Islamic troops when they were about to conquer the plan to conquer Blambangan. Panji Pain conquered Blambangan in 1648; he was met by the Islamic Mataram troops led by Tumenggung Danusaha on the orders of Amangkurat I, who controlled Islamic Mataram after Sultan Agung. In 1648, the conquest incident occurred between I Gusti Panji Sakti and Amangkurat I's troops as king of Islamic Mataram, who at the same time wanted to conquer Blambangan as a colony. In Islamic Mataram, during the time of Amangkurat I, there was a rebellion from Amangkurat I's younger brother. Amangkurat I was less confident in conquering Blambangan, so Panji Sakti used this opportunity to invite Amangkurat I's cooperation to conquer Blambangan, and it was accepted. So it is said in two historical books by Doctor Sugianto about *Anglurah Panji Sakti* and *Sri Margana*, including his book on the conquest of Blambangan. In the book, it is said that the conquest of Blambangan was bloodless. At that time, there were 100 Muslim soldiers with elephants led by 3 people, including Nur Alam, Nur Awin and Nur Mubin. Of the three people, one is from Probolinggo, East Java. The story that developed turned out to be that these Muslims lived for 3 months in Padang Bulia. After three months there, he came to Pegayaman village. It is estimated that when they lived for three months in Padang Bulia village, they also saw the location of Pegayaman village, which was filled with gatep trees. After three months, a hundred troops were stationed in Gatep village (Pegayaman).

Mother tongue, a language passed down from generation to generation, impacts the perspective of people outside Pegayaman village who believe that the people of Pegayaman village are authentic Balinese. Our grandmothers (the Pegayaman community) were Balinese who had converted to Islam, and our grandfathers were warriors at that time. All of them were busy fighting politically and were invited to strategise war. Panji Sakti gave Pegayaman agricultural land, a living place, and a fortress for the Buleleng kingdom to defend against attacks from the king from the south. This can be seen from local traditions, which are closely related to Balinese customs as follows:

- a. Balinese language Balinese people use the Balinese language as a means of communication in their daily lives, such as referring to the Muslim community (*Nyama Selam*) and the Hindu community (*Nyama Bali*). In Balinese, "*Nyama*" is interpreted as family.

- b. Giving Names: Giving names to their offspring begins with elements of Balinese Hindu names such as *Wayan*, *Putu*, or *Gede* for the first child; *Made*, *Kadek*, or *Nengah* (second child); *Nyoman*, *Komang*, or *Koming* (third child), in their first name and followed by their Islamic name.
- c. *Ngejot*, *Ngejot* is a celebration of religious holidays in Pegayaman village. Ngejot is a form of activity passed down from generation to generation as a form of charity. It gives food to elders, neighbours, community leaders, and religious people around the Pegayaman village area. This continuity is a bond of brotherhood in Pegayaman village. When they celebrate holidays such as Eid al-Fitr, he gives food ready to be served, but when celebrating holidays of other religions, he only gives food that has yet to be prepared.
- d. *Ngunya* is a typical Balinese Hindu aesthetic. It is part of the annual ritual of the Hindu community in Bali to visit and pray by walking for one month to holy places in various regions. However, *Ngunya*, in the typical Muslim meaning of Pegayaman, is the impact of a *Merangkat/ Nista* marriage (elopement). *Ngunya* means the bride and groom must go house to house in Pegayaman village, Bali.
- e. *Burdah*: *Burdah* is a group of people who use large tambourines with a unique acculturative culture, wearing Balinese clothes, bersanji lyrics, and ballad rhythms. The song *Burdah* Pegayaman has similarities with *Burdah* in Blambangan at this time; this strengthens the fact that Pegayaman comes from Blambangan.
- f. Caste levels: Marriage in this village has a three-level system, starting from the highest level to the lowest, including *Utama*, *Madya*, and *Nista*. These three are used by the people of Pegayaman village today and are considered customs passed down from generation to generation from their ancestors.

Marriage Levels in Pegayaman Village

Pegayaman Village is one of the villages on the island of Bali that has ancestral heritage. Becoming a village with acculturation of Islamic-Javanese and Hindu-Balinese culture has resulted in a cultural heritage that is still maintained and preserved. One of them is the marriage process. Regarding the level of marriage in this village, among others (Wayan Imam Muhajirin, personal communication, January 3, 2023)

- a. *Utama*, *Utama* is the first level in the caste levels. This marriage is like any other. The primary level process is that the men come to the women's side with just one representative saying, "*I came here to convey greetings*". The man comes to the woman based on the message conveyed by the woman, in the sense that he already has or is in a communication relationship with the woman. When an agreement has been reached, the man will return to bring his family with typical Balinese snacks, namely *cerorot*, pillows and *pasung*. The men bring three or more people to represent them; on the other hand, some women represent them. There was deliberation between families, or *Nyangkrem*, which comes from the Arabic word *qaraba*, which means approach (*ta'aruf*). The discussion topics in *Nyangkrem* are related to dowry, wedding dates, and marriage needs. On the wedding day, the guests are the same as *walimatul 'urs*. The final stage of the process is "pilgrimage," which involves walking through different villages of the bride and groom and visiting their families. This aims to introduce or inform them that they are married.
- b. *Madya*, *Madya* is the second level in the caste system. This level is a marriage between relatives without considering the size of the dowry and the wedding requirements.

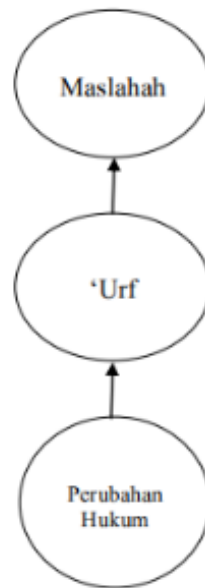
- c. *Nista*, *Nista* is a marriage with the lowest caste level. At this level, there are *nista* marriages; those prospective brides and grooms who have not received the blessing of the woman's parents are forced to carry out the marriage by elopement as a final way to get the blessing of the woman's family. Marriage by meangkat is a marriage that is legalised in Pegayaman village, the oldest Muslim village in Bali. The third level of the process (insult) is when the man runs away from the woman and takes her to the Religious Leader of the Pegayaman area (Penghulu). However, at the time of taking her, someone had already informed the woman's family, such as, "*Sir, the child has been taken by A.*" After several days, the man ran away from the woman; the man "did wrong", meaning he admitted that he was wrong. The wedding continued with discussions about how good it would be for the bride and groom, but there was no *nyangkrem* between the two parties. In the sense that the woman no longer has any rights over her child, but instead, it is the male candidate's right to manage all marriage matters. As for what is currently developing, the bride-to-be still has the right to her child (Drs. Muhammad Suharto, personal communication, January 3 2023). The process of a *nista* marriage is different from the process of a middle-aged marriage, in a *nista* marriage it is known as a pilgrimage, but in a *nista* marriage it is called *Ngunya*, namely the bride and groom who use this *nista* marriage process go around the village to announce that they are legally married.

The difference between the three levels of marriage is that the process is evident. According to the perspective of the religious community, the caste level itself is not caste but rather marriage level. Marriage is considered a custom that is no longer a problem because it has become a habit and continues to exist because it is one of the best.

***Nista* Marriage as a Level of Marriage Perspective 'Urf**

'*Urf* comes from the word 'arafa', a derivation of the word *alma'ruf*, which means something known or known (Rijal & Zionis, 2011). '*Urf*, according to language, means knowing, then it means something known, recognised, considered reasonable and accepted by a healthy mind (Bahrudin, 2019). Besides having an important position in law enforcement, *urf* also has an essential position in implementing law. As is known, Islamic law has two sides, namely the stipulation side (*istinbath*) and the application side (*tathbiq*). The two can run parallel, but also not. This means there are times when a legal product can be applied directly without considering the locus of benefit where the law is applied. There are times when it cannot be applied because it is not for the benefit of the community in the place where Islamic law will be applied. In this regard, *urf* is the basis for implementing a law (Suwarjin, 2012). The Syafi'iyah school of thought believes that '*Urf* can be a collateral argument that still relies on the principle of *nushus* and the *syar'i* proposition of *mu'tabaroh*. In other words, '*Urf* cannot stand alone as an argument in a new case (Arifandi, 2018).

Imam al-Syatibi and Ibnu Qayyim al-Jauziyah argue that '*urf* can be accepted as an argument for upholding Islamic law. However, the two Imams noted that no texts explained the law on this issue (Rosyadi, 2005). In another aspect, as stated by Islamic jurists, '*urf* is not necessarily used as a source of Islamic law but must go through a selection process with various considerations so that it can be affirmed as part of Islamic law as illustrated in the following scheme (Harisudin, 2016):



In assigning *'urf* to a habit that has become a culture within a region, it is not only seen in terms of how many times an action is carried out; a law established based on *'urf* can change due to possible changes in *'urf* itself or changes in place, era and so on (Rizal, 2019). However, many people already know and have acknowledged the action. With the knowledge explained above, the meaning of custom and *'urf* are synonymous. *'urf* and *'adat* can be united on one occasion and can be different on another occasion (generally specifically *mutlaq*), in the sense that the use of *'custom* is more general than the use of *'urf*. Namely, every matter that is said to be *'urf* is definitely *'custom*, but every matter that is said to be *'custom* is not necessarily *'urf* (Furqan, 2022). In other words, it has the same meaning, namely a condition, saying, action, or provision known to humans, and it has become a tradition to carry it out or abandon it. Illustratively, al-Jurjani describes it as follows: "*Tradition is an element that first appears and is carried out repeatedly; after it is embedded in the heart, it changes its identity to 'urf*" (Saputra, 2020). However, in Islamic studies, an *'urf* can be implemented within the scope of *muamalah* or worship, which has its conditions and is not just an act of continuous realisation. *'Urf* can be accepted as a postulate of Islamic law in resolving problems with customs (*'urf*) can be used as a legal basis and must meet the following requirements (Basri, 2019):

- a. Does not contradict the text of either the Koran or al-Hadith:
- b. Does not cause harm and does not lose benefits, including not causing hardship and difficulty.
- c. This applies to Muslims in general, in the sense that it is not just something that a few people usually do
- d. .
- e. Moreover, it does not apply in matters of *mahdah* worship.

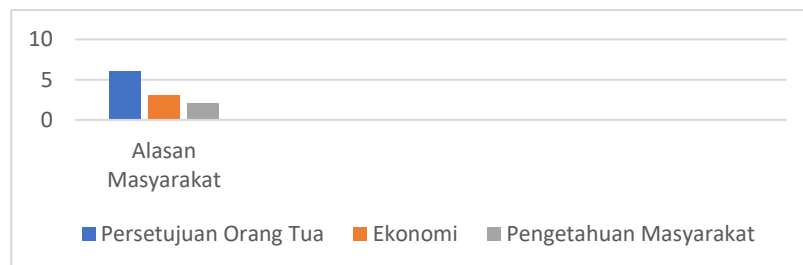
As for the *nista* marriage in Pegayaman village, as one of the ancestral legacies carried out to this day, there is a need for studies regarding *'urf*. The developments and knowledge that have been developed to date have resulted in several discoveries regarding *nista* marriages. Previous research stated that the existence of *nista* (*merangkat*) marriages was part of the category of *'urf fasid* (not permitted by *syara'*) (Nusantara, 2020). Before reviewing the found data, the researcher will explain the status and quality of *'urf*, which is divided into 2 categories (Mustofa, 2019) :

- a. *Shahih* customs are repeatedly carried out and accepted by many people and do not conflict with religion, good manners and noble culture. An example of giving prizes to the champion is holding a halal bi-halal event.
- b. *Fasid* customs are 'customs that apply in a place that conflicts with religious values, state laws, and manners even though they are implemented evenly. Examples include gambling to celebrate events, drinking alcohol, and cohabiting. Among the Arab Jahiliyah customs that are entirely rejected by Sharia law is the Tabanni custom (adoption of adopted children), where the adopted child is equal in position to the biological child in terms of descent, inheritance status and so on, as explained in the Qur'an. Surah al-Ahzab verse 4. that this method is wrong. As explained by al-Ustadz, Abdul Wahab Khallaf in the book *Mashadirut Tasyri' fimala Nashsha fih* that '*urf* sahih must be carried out while '*urf* fasid is abandoned.

In Islam, marriage is based on the creation of Allah Subhanahu Wata'ala. The purpose of this creation is regeneration, which is expected to benefit religion and the nation. Allah has established and determined several provisions regarding marriage, which must be the basis for prospective brides and grooms to get married. In this regard, in Islamic Law, there is '*Urf*.'

The perception of the people of Pegayaman Village regarding the sustainability of this marriage has different views. By collecting data, the researcher conveyed to the respondents he met in Pegayaman Village that they stated that *nista* marriages were an ancestral legacy that would not be lost. Will remain amid society. This is based on their belief in the heritage of their ancestors, which must be protected and preserved. However, most of them consider *nista* marriages to be a legacy of their ancestors who deviate from Islamic law.

This marriage was initiated without prior parental consent (Raudah, 2023). Various problems cause a child to choose a *nista* marriage. The data we have found is as follows:



Through the presentation of the diagram above, it can be concluded that the biggest reason for the people of Pegayaman village to hold *nista* marriages is based on parental approval. This marriage was chosen by the prospective bride and groom, who did not get the blessing of their parents. Moreover, several respondents we met said that they chose to leave Pegayaman village and hold their sirri wedding outside the village (Muhabarah, 2023). They did this before there was any acknowledgement of their departure from the women. However, nowadays, some people think that *nista* marriages can be rejected. Not a few also say that a *nista* marriage must still occur even without a parental blessing. This issue gives rise to differences of opinion in society. The problem is appointing a guardian for the prospective bride at a wedding. When there is no consent from the prospective bride's parents, and for those who think that this marriage can still take place without a guardian, this question must be studied in fulfilling the harmony and requirements of a

legal marriage. This has been determined by Allah subhanahu wata'ala through His word and explained by the hadith of the Prophet as follows:

1880- حَدَّثَنَا أَبُو كُرَيْبٍ ، حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ ، عَنْ حَجَّاجٍ ، عَنِ الزُّهْرِيِّ ، عَنْ عُرْوَةَ ، عَنْ عَائِشَةَ ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : لَا نِكَاحَ إِلَّا بِوَلِيِّ.

Has told us: *Abu Kuraib* told us '*Abdullah bin Mubarak*, from *Hajaz*, from *Zahri*, from *'Urwah*, from *'Aisyah*, from *Rasulullah Sallallahu 'alaihi wassalam* "There is no marriage except in the presence of a guardian." (HR. Ibnu Majah).

Then in the hadith of *'Aisyah* it continues that:

وَفِي حَدِيثِ عَائِشَةَ : وَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَ لَهُ.

In the Hadith of *Aisyah*, " the ruler is a guardian for anyone (woman) who does not have a guardian" (HR. Ibnu Majah).

The Hadith status above is a hadith in Sunan Ibnu Majah's book. This hadith is found in Maktabah Syamilah. In the process of searching for this hadith, I used keywords, namely (لَا نِكَاحَ، بِوَلِيِّ) then resulted from a search using the "Mutūn al-Ḥadīth" folder which contained 161 books, the search results for the hadith above totalled 309 chapters. The details of the hadith above in the book of Sunan Ibnu Majah are found in marriage book number 78. The connection between the sanad in this hadith is connected to the condition of the rutbah mukharrij tsiqoh to the Prophet (Ibnu Majah, 2023).

We can see from the hadith above that a marriage can occur if a guardian is at the wedding. However, Jumhur Ulama, such as Al-Malikiyah, Asy-Syafi'iyah, Hanabilah and Adz-Dzahiriyah, believe that the presence of a guardian in marriage is one of the pillars. If one of the pillars of marriage is not fulfilled, the marriage becomes invalid. The existence of a guardian, according to the jumhur ulama, is based on many arguments, both from the Al-Quran and from the Sunnah, including the words of Allah SWT:

وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا

Only marry polytheists once they believe. (QS. Al-Baqarah: 221)

This verse suggests that in a marriage, there is a guardian whose position is to marry a woman, not the woman who marries herself (Sarwat, 2021).

Seeing the phenomenon of perpetrators of *nista* marriages choosing to marry in a *nista* marriage without having a nasab guardian, judge guardian or muhakam present makes this marriage considered invalid. Marriage law in Indonesia is regulated in Law Number 1 of 1974 concerning marriage. Article 2 of Law Number 1 of 1974 regulates that the validity of marriage is based on conformity with the laws of each religion or belief. For Muslims, the validity of marriage refers to the provisions of Islamic law. As is known, most of the scholars in the four schools of thought have given the opinion, especially in the Maliki, Shafi'i and Hambali schools, that the presence of a marriage guardian in a marriage is mandatory. Good for couples who have not yet reached puberty, or who have reached puberty and are of sound mind, or who are widows. In the view of the majority of scholars, the presence of a guardian is even seen as essential. It determines the validity of a

marriage because the guardian is included in the terms and conditions of the marriage (Daud et al., 2021).

Nowadays, researchers have shown good progress in understanding the Pegayaman village community. The Pegayaman village community currently consults with the woman's family (Drs. Muhammad Suharto, personal communication, January 3, 2023). As for prospective bridesmaids, the legal basis for marriage is with a guardian judge. In Islamic law, the existence of a guardian judge is an effort to ensure that a planned marriage is carried out by the two prospective husbands and prospective wives because the prospective bride no longer has a nasab guardian. In contrast, marriage is a necessity, and the implementation of the marriage is natural because the woman wants to marry a suitable man who can pay the dowry.

In contrast, if the lineage guardian is unavailable or does not want to marry the person, the judge acts as the marriage guardian (Effendi, 2020). Because when there is no nasab guardian, the prospective bride and groom have the right to nominate a judge or muhakam guardian through a government (Minister of Religion) determination. The Supreme Court has determined five points in submitting an 'aḍal wali application. First, the application for the determination of 'aḍal guardian is submitted by the prospective bride whose marriage guardian does not want to carry out the marriage to the Religious Court/Shar'iyah Court in the jurisdiction where the prospective bride resides. Second, the application for 'aḍal guardian submitted by the prospective bride can be carried out cumulatively with a marriage permit to the Religious Court/Syar'iyah Court in the jurisdiction where the prospective bride resides. Third, the Religious Court/Shar'iyah Court can grant the request for the determination of a guardian after hearing the parents' statement. Fourth, the request for 'aḍal wali is voluntary; the product is in the form of a decree. If the applicant is unsatisfied with this determination, he can appeal. Fifth, the legal remedies that can be taken by the applicant's parents (father) are prevention of marriage if the marriage has not taken place and annulment of the marriage if the marriage has taken place (Zubaidi & Kamaruzzaman, 2018). Let us look at marriages based on unregistered marriages (Nikah sirri). It becomes a problem that the Minister of Religion's request for a guardian judge/ muhakam is not granted. Meanwhile, sirri marriages presented by nasab guardians are considered valid according to religion but are still not considered valid by the state (they are not registered).

Nista marriages have existed for a long time and are one of the ancestral legacies of Pegayaman Village. Through this marriage, prospective brides and grooms who want to get married will quickly get married without their parent's approval. This continues to this day in Pegayaman Village. Villages with various ancestral heritage must maintain and preserve culture whose existence is no longer by Sharia. Those who previously thought that *nista* marriages were not contrary to Islamic law now consider *nista* marriages to be contrary to Islamic law.

Nowadays, society's perception of *nista* marriages is experiencing good progress. The Pegayaman Village community thinks they can accept back the man who ran away with his children (*Mlaku Salah*) (Drs. Muhammad Suharto, personal communication, January 3, 2023). If further negotiations occur between the two parties and result in an agreement, then through the marriage, a nasab guardian/judicial guardian will be present who will be attended by the Head of the local Religious Affairs Office at the bride and groom's wedding ceremony. However, after that, the bride and groom continued to carry out the Pegayaman Ngunya village tradition, namely circling the Pegayaman village to inform

them that their marriage was valid (Wayan Imam Muhajirin, personal communication, January 3, 2023). The results of interviews with respondents who had held a *nista* marriage showed that they chose to have a *nista* marriage. To go and get married outside the village or island. This is due to the lack of parental consent.

The existence of *nista* marriages as the lowest level of marriage in this village has been going on since ancient times after Muslim Javanese soldiers and elephants arrived as gifts for the Balinese king. This wedding is assumed to be a sign that in the past, Muslim soldiers came not only to serve as royal guards but also to hold weddings with local people in the village of Pegayaman. Some of the people of Pegayaman village stated that in the past, many of their ancestors converted to Islam. This results from religious and cultural acculturation from the village's ancestral heritage, becoming a culture considered not to be lost and will remain eternal (Drs. Muhammad Suharto, personal communication, January 3, 2023). However, quite a few marriage perpetrators experience social sanctions by the local community. When some of them got married in a despicable marriage, some of the neighbours made it a topic of conversation. Therefore, this certainly impacts a child's psychology (Muhabarah, personal communication, January 3, 2023). The existence of marriage certainly provides consideration of the consequences of a marriage. There are 3 (three) elements of marriage, namely (Khusairi & Mandala, 2022):

- a. Religious Elements: These religious elements can be seen in the first principle of Pancasila, which states, "Belief in One Almighty God." Marriage has a very close relationship with religion or spirituality; the purpose of marriage is to form a family that is *sakinah*, *mawaddah*, and *warahmah*.
- b. Legal Elements: The legal elements in marriage can be seen from the registration of marriages for Muslims at the Religious Affairs Office (KUA) and for non-Muslims the registration at the Civil Registry Office. With a marriage between husband and wife, a legal relationship occurs so that whatever is done, such as divorce, inheritance, and so on, will be regulated according to applicable law.
- c. Social element What social element means is that by forming a family, you will later socialise in social life relationships. The life of husband and wife cannot be separated from the life and development of the community environment. The behaviour of family members must be based on the changes and developments that occur in community life.

Nista marriage as a culture is a religious and cultural acculturation pattern in Bali (Drs. Muhammad Suharto, personal communication, January 3, 2023). The existence of *nista* marriages, which currently exist, is considered an ancestral heritage that must be protected. However, through the development of knowledge of the figures and people of Pegayaman Village, they now think that a *nista* marriage is a marriage that is not by the Shari'a and the elements of marital values. However, quite a few still maintain and preserve their ancestral heritage. *Nista* marriage is a marriage where the prospective bride and groom choose to get married without the consent of their parents, through the study of 'urf which states that marriage is *nista* as 'urf *fasid*. This is caused by the impact before and after the *nista* marriage happened.

The *nista* marriage that took place in Pegayaman Village considered that it did not require a lineage guardian to ensure its continuity. A culture and habit is categorised as 'urf if it meets 4 criteria, one of which is contained in the Al-Qur'an and Hadith. Suppose we know that the absence of a guardian in a marriage is an invalid marriage. In

determining a guardian, the prospective bride must prioritise the existence of a lineage guardian. However, a woman must pay attention to the judge's decision when determining a guardian under certain conditions. So what happens when a woman marries without knowing her family and lineage guardians? This is what the prospective bride and groom must pay attention to because the blessing of Allah subhanahu wata'ala lies with the blessing of the parents. However, through a phenomenon that occurs which has an impact on a child's mental and mental stability through interviews with residents, researchers found that those who entered into a sham marriage chose to leave Pegayaman Village without their parent's knowledge.

In an ongoing interview, Muhabarah, a resident of Pegayaman Village, said that the impact of this *nista* marriage is on a child's mental health. When the continuation of *nista* marriages is considered a culture that must be maintained and preserved, they must have a social impact on society. "People view perpetrators of *nista* marriages as bad, and do not talk much about the matter," he said. This certainly will not impact family members who are good members of society. However, if we look at the continuation of the current *nista* marriages, the woman's family can take it back and hold good discussions with the man's family. If this is done, the *nista* marriage will not occur.

If the entire community of Pegayaman Village had carried out good deliberations between families, this *nista* marriage would not have happened (Drs. Muhammad Suharto, personal communication, January 3 2023). Regarding marriage, it is regulated in Law Number 1 of 1978 Article 2 (1) that marriage is valid if each person's beliefs carry it out. The people of Pegayaman Village who held this wedding are Muslim. This is undoubtedly an essential concern for the community in knowing the terms and conditions of a marriage that has been determined. The purpose of marriage itself is not only to fulfil biological needs but also to obey the commands of Allah and His Messenger, which is worth worship, namely building a prosperous family that brings benefits to the people involved in the marriage, their offspring and relatives (Aisyah Ayu Musyafah, 2022). However, the continuation of the *nista* marriage was seen as bad by the people of Pegayaman Village and became a lousy conversation among them. This certainly will not benefit the bride and groom and their families.

One of the acts of worship with a noble purpose for Allah is making marriage a *ghairu mahdhah* worship. *Ghairu mahdhah* is worship that does not only involve relationships with Allah SWT but also involves relationships with fellow creatures (*hablum minallah wa hablum min an-nas*), besides vertical relationships, there are also horizontal elements. *Nista* marriages are categorised as *ghairu mahdhah* marriages because, in reality, this culture is a marriage process differently.

Therefore, researchers can draw a common thread from the existence of *nista* marriages today. The Pegayaman Village residents' insight into *nista* marriages has changed through developments. Currently, the people of Pegayaman Village know that *nista* marriages are not by Islamic law and have other ways of finding solutions to marriage problems that their parents disapprove of. So, through the study, the conditions for '*Urf sahiih*' have yet to be fulfilled. Until now, *nista* marriages are still included in the '*Urf Fasid*' category, which can be identified from the continuity and aftermath of a *nista* marriage. So, from the results of previous research, it is said that a *nista* marriage is '*urf fasid*' with the findings of previous and current researchers, but '*urf*' is said to be accepted if at that time the benefits of the things that threaten the perpetrator of a *nista* marriage are more significant than the harm. Because when determining *masalah*, it cannot be

separated from time and space. Problems only become visible when placed in the context of a particular place and time. Therefore, a problem in a particular time and space may not necessarily be a problem in another time and space. This is where different *'urf* can establish different laws by considering the underlying masalah (Harisudin, 2016).

D. Conclusion

Based on the existing description of *Nista* marriages in Pegayaman Sukasada Village, Buleleng Bali, the number of marriages using the *Nista* marriage level has decreased. This is related to developing the Pegayaman Village Community's insight into *nista* marriages. The study of the theory of *'urf* with the continuation of *nista* marriages cannot currently be passed on as *'urf* authentic. *Nista's* marriage is still passed off as *'urf* *fasid*' because no benefit will be received from the prospective bride and groom and their families in its continuation. The problem is the determination of the remaining lineage guardians, the location of the parents' approval for *Nista's* marriage and the impact.

Therefore, the Pegayaman Village Community must pay attention to *nista* marriage as one of the three levels of marriage. The lowest level of marriage can be used as a last resort for the bride and groom if it does not harm anyone. The purpose of marriage is not only to fulfil biological needs but also to obey the commands of Allah and His Messenger, which is worth worshipping, namely building a prosperous family that benefits the people involved in the marriage, their offspring, and their relatives.

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