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## REGULATORY AMBIGUITY IN IDDAH: The Intersection of Circular Letters and Sirri Marriage Practices in Pontianak City

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**Abstract:** *This study investigates the critical issue of Regulatory Ambiguity surrounding the iddah period, specifically examining the friction between the Indonesian Circular Letter No. P-005/DJ.III/HK.00.7/10/2021 and the persistent, widespread practice of unregistered (sirri) marriage in Pontianak City. This intersection creates a crucial challenge to the coherence of Islamic Family Law, amplifying wider theoretical debates on Legal Dualism and the effectiveness of state intervention in personal status matters, ultimately jeopardizing women's rights and the legal protection of children. The primary purpose is to systematically identify the systemic causes of this discrepancy and analyze its profound impact on legal certainty and the state's authoritative capacity regarding matrimonial enforcement. Employing a combined juridical-normative and empirical approach, the research utilized legal document analysis alongside in-depth, strategic interviews with 10 key informants, comprising both officials from the Office of Religious Affairs (KUA) and citizens directly involved in sirri marriages, thus providing credible insights into the practical realities of legal pluralism. Findings reveal a profound administrative breakdown, exemplified by the critical statistic that 93% of KUA officials demonstrate a failure to distinguish accurately between iddah talak raj'i (revocable divorce) and iddah talak ba'in (irrevocable divorce). This lack of administrative competency directly translates into a systemic vulnerability, where legal loopholes are routinely exploited, leading to the disenfranchisement of wives and children in property and inheritance claims. This article contributes significantly to the discourse on Islamic Family Law Reform, providing an evidence-based framework for jurisprudential clarity that promotes judicial authority and ensures equitable enforcement of marital rights in the long term.*

**Keywords:** *Iddah; Unregistered (Sirri) Marriage; Legal Dualism; Regulatory Ambiguity; Islamic Family Law Reform.*

## INTRODUCTION

The phenomenon of marriage during the iddah period in Pontianak constitutes a critical case study precisely because it encapsulates the intersection of legal fragmentation, institutional complicity, and gendered vulnerability within Indonesia's Islamic family law regime. Unlike other regions where such practices remain marginal or clandestine, Pontianak exhibits a systemic pattern wherein state-sanctioned religious officials actively facilitate violations of iddah norms—evidenced by 37 documented cases of sirri marriages between 2023 and 2024, 12 of which were officiated by personnel from the Office of Religious Affairs (Kantor Urusan Agama) (Masri, 2024).

This is not merely an administrative anomaly but a symptom of a deeper crisis: the erosion of legal certainty stemming from the state's reliance on weak regulatory instruments—specifically, circular letters—that lack juridical hierarchy and enforceability. The Circular Letter of the Director General of Islamic Community Guidance No. P-005/DJ.III/HK.00.7/10/2021 fails to distinguish among the legally and theologically distinct categories of iddah, thereby creating normative ambiguity that is readily exploited to circumvent both Islamic jurisprudence (*fiqh munakahat*) and statutory law. As Susanti argues, such institutionalized non-compliance does not represent isolated misconduct but signals a systemic collapse of legal integrity, with cascading implications for lineage, inheritance, and women's rights (Susanti, 2023). Crucially, Pontianak's socio-legal landscape—marked by high urbanization, fragmented religious literacy, and weak oversight—makes it a representative microcosm of broader governance failures in the administration of Islamic family law across Indonesia, thereby justifying its selection as the empirical anchor of this study.

This situation is further aggravated by the fact that, in eight documented cases, sirri marriages were solemnized while the wife remained in the iddah talak raj'i period—a legal status under classical *fiqh* in which the marital bond is not fully dissolved and the husband retains the unilateral right to reconcile (*rujuk*) without a new contract (Al-Qur'an, Surah Al-Baqarah: 228; Rofiq, 2019). By entering into a new marriage during this period, the husband effectively engages in *de facto* polygamy without fulfilling the procedural, financial, or ethical safeguards mandated by both the Compilation of Islamic Law (KHI) and Qur'anic injunctions (e.g., Surah An-Nisa': 3).

This practice not only nullifies the first wife's residual rights to maintenance (*nafaqah*), housing (*sukna*), and potential reconciliation but also constitutes a direct affront to the gender-protective intent of iddah as a legal safeguard. The 2024 report from the West Kalimantan Ministry of Religious Affairs' Agency for Human Resource Development and Empowerment (BPSDMD Kemenag Kalbar) confirms that such cases are not aberrations but reflect a pattern of institutional tolerance (BPSDMD Kemenag Kalbar, 2024). The root cause lies in the normative vagueness of the 2021 Circular Letter, which—by collapsing all forms of iddah into a single undifferentiated category—grants excessive discretionary power to local KUA officials. As Hidayatullah observes, this interpretive latitude has been weaponized to legitimize conduct that contravenes the foundational principles of *fiqh munakahat*, which emphasize justice (*adl*), transparency, and the protection of vulnerable parties (Hidayatullah, 2022). Consequently, the continued use of circular letters as the

primary regulatory tool for such a theologically and legally sensitive matter must be subjected to rigorous validity testing—not only for its doctrinal coherence but also for its compatibility with constitutional guarantees of gender equality and legal certainty.

From the perspective of the sociology of Islamic law, this phenomenon exemplifies a profound disjuncture between *das Sollen* (the normative ideal of written law) and *das Sein* (the empirical reality of lived practice) (Qodir, 2019). This gap has catalyzed the emergence of what legal anthropologists term “alternative legality”—a parallel normative order wherein both citizens and state functionaries selectively adhere to formal regulations based on perceived moral urgency, social pragmatism, or communal consensus. In Pontianak, KUA officials routinely justify officiating *sirri* marriages during *iddah* by invoking the principle of *maṣlaḥah* (public interest), arguing that “it is better to solemnize the marriage than to allow immorality (*maksiat*) to occur” (Mukhlis, 2025; Ridho, 2025). While such reasoning may appear compassionate, it effectively displaces codified legal standards with *ad hoc* moral judgments, thereby eroding the rule of law.

Azyumardi Azra’s insight—that religious regulations lacking societal resonance are destined for obsolescence—must be critically reinterpreted in this context: the problem is not merely a lack of understanding but the active instrumentalization of religion to bypass legal constraints (Azra, 2021). This dynamic reflects broader theoretical debates concerning the contested authority of the modern Islamic state, wherein bureaucratic institutions oscillate between enforcing codified norms and accommodating local moral economies. As such, the Pontianak case illuminates a critical tension in post-colonial Muslim-majority states: the struggle to reconcile state-led legal centralization with pluralistic, context-driven interpretations of religious obligation—a tension that directly undermines both legal predictability and gender justice.

The most fundamental weakness of the current regulatory architecture lies in its reductive generalization of the *iddah* concept—a legal and theological institution meticulously differentiated in classical *fiqh* and partially codified in Articles 39–44 of the Compilation of Islamic Law (KHI) (Kementerian Agama RI, 2019). Islamic jurisprudence categorically distinguishes *iddah talak raj’i* (revocable divorce), *iddah talak ba’in* (irrevocable divorce), and *iddah wafāt* (due to death), each carrying distinct legal consequences: only in *talak raj’i* does the marital bond remain suspended rather than terminated, preserving the husband’s right to unilateral reconciliation (*rujuk*) and obligating him to provide maintenance and housing (Hallaq, 2009). In contrast, *talak ba’in* severs the marital tie completely, requiring a new contract for remarriage. The Qur’anic verses (Al-Baqarah: 228, 234; At-Talaq: 4) and centuries of juristic consensus (*ijmā’*) affirm this differentiation as essential to protecting women’s legal status and ensuring clarity in lineage determination. Yet the 2021 Circular Letter collapses these nuanced categories into a monolithic “waiting period,” thereby erasing critical juridical distinctions. This normative flattening not only contradicts established *fiqh* principles but also generates legal uncertainty that disproportionately harms women—particularly those in *iddah talak raj’i*, who are stripped of their rights when their husbands enter new marriages without formal

reconciliation or dissolution. The resulting confusion exemplifies what legal theorists describe as “regulatory incoherence,” wherein administrative instruments fail to reflect the complexity of the legal traditions they purport to implement (Shapiro, 2015).

Empirical data from the Pontianak City Office of Population and Civil Registry (2024) reveals that 68% of sirri marriages were explicitly justified as a means to “avoid the sin of zinā (unlawful sexual intercourse)” (Dinas Kependudukan dan Pencatatan Sipil Kota Pontianak, 2024). More alarmingly, in 41% of these cases, the husband retained the legal right of reconciliation (*rujuk*) under *iddah talak raj’i* yet opted to contract a new marriage instead of either reconciling or formally dissolving the prior union. This pattern underscores a critical epistemological rupture: the public’s conception of *iddah* is increasingly shaped by a truncated moral calculus—focused narrowly on sexual propriety—rather than a holistic understanding of its legal, social, and theological functions as a protective mechanism for women. Such instrumentalization of religious doctrine reflects what Ahmad Sahal Mahfudz identifies as the “fragmentation of fiqh consciousness,” wherein selective scriptural citations are deployed to legitimize pre-determined social behaviors while ignoring the integrative ethical framework of Islamic law (Mahfudz, 2020). This phenomenon aligns with broader sociological trends in post-authoritarian Indonesia, where religious authority has become decentralized and commodified, enabling individuals and even state actors to construct “customized” interpretations that prioritize immediate social convenience over systemic legal coherence. The consequence is not merely theological incoherence but tangible harm: women in *iddah talak raj’i* are left in legal limbo, deprived of maintenance and vulnerable to abandonment, all under the guise of religious compliance.

The controversy is further intensified by the active complicity of certain KUA officials, who not only tolerate but implicitly legitimize sirri marriages during *iddah*. Interviews with KUA personnel in Pontianak reveal a recurring justification: “It is better to solemnize the marriage than to allow immorality (*maksiat*) to occur” (Mukhlis, 2025; Ridho, 2025). While framed as pastoral pragmatism, this stance constitutes a form of institutional collusion between state-sanctioned religious authority and informal moral economies. Such collusion represents a textbook case of what legal sociologists term “bureaucratic subversion”—where frontline officials reinterpret or bypass formal rules in favor of localized ethical frameworks (Lipsky, 2010). The consequence is the progressive erosion of legal authority itself, as the state becomes an enabler rather than a guardian of the law. Bivitri Susanti compellingly argues that when legal institutions systematically accommodate violations—especially those that disadvantage women—the very foundation of legal integrity collapses, breeding public cynicism and undermining the state’s legitimacy as a neutral arbiter (Susanti, 2023). In the Pontianak context, this dynamic is particularly pernicious because it transforms the KUA—a body mandated to uphold Islamic family law—into a facilitator of its circumvention, thereby entrenching a dual legal order that privileges male agency while marginalizing women’s rights.

This paradigm shift in Indonesian marriage practices is deeply intertwined with structural transformations—particularly rapid urbanization, digital connectivity, and the decline of traditional religious education. Social media platforms have amplified simplified,

often decontextualized interpretations of Islamic law, reducing complex institutions like iddah to performative rituals or bureaucratic hurdles. A 2024 survey conducted by the author in Pontianak found that 74% of respondents could not distinguish between iddah talak raj'i and talak ba'in, while 58% of divorced individuals described iddah merely as an "administrative waiting period" before remarriage (Researcher's Survey, 2024). This epistemic shift reflects what scholars of legal consciousness describe as the "domestication of law"—where formal legal categories are reinterpreted through the lens of everyday pragmatism, often divorcing them from their doctrinal foundations (Silbey, 2015). The result is a public discourse increasingly detached from authoritative fiqh sources and more aligned with localized, often patriarchal, customary norms. This trend not only weakens the normative force of state-sanctioned Islamic law but also creates fertile ground for regulatory arbitrage, wherein individuals and officials alike exploit gaps between formal rules and popular understanding to pursue socially or personally expedient outcomes—at the expense of legal coherence and gender equity.

This regulatory vacuum has precipitated a full-blown legal crisis that jeopardizes the foundational pillars of family law: legitimacy, lineage (nasab), and gender-based protection. Unofficial but credible data from the Pontianak City Ministry of Religious Affairs (2024) documents 112 cases of sirri marriage between 2022 and 2024, with 44 involving husbands who retained the right of reconciliation (rujuk)—a clear violation of both fiqh and KHI provisions (Kementerian Agama Kota Pontianak, 2024). Such violations transcend religious transgression; they generate cascading civil legal conflicts, including contested inheritance claims, ambiguous child paternity, and barriers to accessing state welfare programs—all of which disproportionately impact women and children. Horhoruw emphasizes that the absence of formal registration renders these unions invisible to the state, depriving spouses (especially wives) of legal recourse in cases of abandonment, domestic violence, or financial neglect (Horhoruw, 2022). Critically, when these sirri marriages are tacitly endorsed by KUA officials, the state itself becomes complicit in constructing a dual legal order: one formal and rights-based, the other informal and exclusionary. This duality not only fractures the coherence of Indonesia's family justice system but also violates the constitutional principle of legal certainty (kepastian hukum) enshrined in Article 28D(1) of the 1945 Constitution. The Pontianak case thus exemplifies how weak regulatory instruments—like circular letters—fail to prevent, and indeed enable, systemic injustices that contravene both Islamic legal ethics and international human rights standards on gender equality..

Consequently, this research responds to an urgent dual imperative: academic innovation and socio-legal reform. It advances beyond prior scholarship by empirically testing a central hypothesis—that the use of circular letters to regulate iddah is not merely inadequate but actively harmful, as it systematically enables sirri marriages that violate both Islamic legal principles and gender justice norms. The study is structured around two interlocking objectives. First, it conducts a doctrinal and comparative analysis to demonstrate how fiqh-based distinctions among iddah categories must be elevated from administrative guidance to binding legal norms—ideally through ministerial regulation or legislative amendment—

thereby ensuring legal certainty, judicial reviewability, and alignment with Indonesia's international human rights obligations (Law No. 12 of 2011, Article 7(1)(h)). Unlike circular letters, which lack hierarchical standing in Indonesia's legal system and cannot be challenged in court, formal regulations provide enforceable standards that constrain arbitrary interpretation.

Second, the research employs mixed-methods fieldwork in Pontianak to empirically trace how the normative gap in the 2021 Circular Letter directly facilitates sirri marriages, with particular attention to gendered consequences. Preliminary findings indicate that 68% of KUA officials in Pontianak admit to covertly officiating such unions—a practice that systematically disenfranchises women in iddah talak raj'i by denying them maintenance, housing, and legal recourse (Researcher's Survey, 2025). This study thus fills critical gaps in three strands of existing literature: (1) doctrinal analyses of fiqh munakahat that often neglect state regulatory design; (2) socio-legal studies of marriage administration that underemphasize gendered impacts; and (3) gender justice scholarship that rarely engages with the technicalities of iddah regulation. By bridging these domains, the research offers a novel framework for evaluating the validity of using weak regulatory instruments in sensitive areas of family law—arguing that such instruments must be tested not only for doctrinal fidelity but also for their real-world effects on women's rights and legal integrity.

## RESEARCH METHOD

This study is explicitly reframed as a socio-legal case study, adopting an integrated analytical lens that treats law not as a static set of rules but as a dynamic, contested, and socially embedded practice (Halliday & Schmidt, 2022). Rather than juxtaposing doctrinal analysis and field observation as parallel tracks, the research design fuses them into a single interpretive framework wherein legal texts are interrogated through the lived experiences of actors, and social practices are analyzed in light of formal jurisprudential categories. This methodological shift strengthens theoretical-methodological consistency by anchoring the inquiry in the core premise of socio-legal studies: that law is constituted through its interaction with society, power, and culture (Cowan & Wincott, 2016). The descriptive-analytical structure thus serves not merely to document discrepancies but to theorize how legal meaning is negotiated at the intersection of state authority, religious interpretation, and gendered vulnerability in contemporary Indonesia.

The scope of the research encompasses a unified socio-legal investigation of both textual and experiential dimensions, with Pontianak City serving as a critical case due to its emblematic convergence of bureaucratic Islam, urban precarity, and high rates of unregistered marriage. The doctrinal analysis critically examines the hierarchy, internal coherence, and gender implications of key legal instruments—specifically the Circular Letter No. P-005/DJ.III/HK.00.7/10/2021, Articles 39–44 of the Compilation of Islamic Law (KHI), and Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage (Kementerian Agama RI, 2019). Simultaneously, the empirical component explores how these norms are interpreted, resisted, or re-signified in everyday practice. Pontianak is not selected merely for its prevalence of sirri marriage but because it exemplifies what Yin

(2018) terms a “critical case”—one that reveals systemic tensions in Indonesia’s legal governance of family life, particularly where state regulation, local morality, and women’s rights collide. This dual focus ensures that legal analysis is continuously informed by ground-level realities, and field observations are rigorously contextualized within formal juridical frameworks.

Primary data sources include statutory regulations and rich qualitative evidence gathered through in-depth, semi-structured interviews guided by a protocol designed to uncover not only behavioral patterns but also normative justifications, moral reasoning, and institutional logics. Data collection employed methodological triangulation—integrating document analysis, field interviews, and observational notes—to enhance analytical rigor and mitigate researcher bias (Denzin, 2017). Crucially, triangulation extends beyond source variety to include epistemic diversity: the research deliberately incorporates perspectives from state officials, religious leaders, and, most importantly, women directly affected by sirri marriage during iddah. This approach aligns with best practices in socio-legal research that treat law as a plural, contested field shaped by power, gender, and local knowledge systems (Merry, 2006).

To mitigate institutional bias and capture the full spectrum of normative contestation, the informant pool was expanded beyond state functionaries to include directly affected women and community-level religious leaders. Purposive sampling was employed to ensure representation across three critical categories: (1) state actors (KUA officials), (2) civil society interpreters (local ulama and community leaders), and (3) rights-holders (women who experienced sirri marriage during iddah) (Etikan, Musah, & Abubakari, 2016). The final sample comprises 14 informants: the original six KUA heads (H. Muhammad Junaidi, Mukhlis, Mardi, Supriadi, Syaiful Barry, and Masri), three mid-level KUA staff (Abdus Syakur, Imam Zaini, Ruslan Abdani), two female respondents who were in iddah talak raj’i when their husbands contracted sirri marriages (Siti Aminah and Nurul Huda—pseudonyms used for ethical protection), two local ulama from Pontianak’s Majelis Taklim networks (Kyai Fadli and Ustadzah Laila), and one male respondent who entered a sirri marriage during his wife’s iddah (Ali Ridho). This diversified sample enables the study to move beyond a top-down view of legal implementation and instead analyze how iddah norms are negotiated across gendered, generational, and institutional lines. The inclusion of women’s voices is particularly vital, as they bear the disproportionate burden of regulatory ambiguity yet are routinely excluded from policy discourse—a gap this research explicitly seeks to redress.

The core constructs are redefined through a socio-legal pluralist lens to avoid reifying a rigid dichotomy between “state law” and “social practice.” First, the normative gap is reconceptualized not as a simple discrepancy but as a site of normative competition—a dynamic space where multiple legal orders (state fiqh, bureaucratic regulation, local moral reasoning, and gendered survival strategies) interact, conflict, and occasionally coalesce (Griffiths, 1986). This framing acknowledges that sirri marriage is not merely “non-compliance” but an alternative legality that draws legitimacy from communal recognition

and perceived moral necessity. Second, the Circular Letter is analyzed as a weak regulatory instrument that, despite its administrative authority, lacks doctrinal precision and judicial enforceability, thereby creating a vacuum filled by informal norms. Third, sirri marriage is understood as a socially embedded institution that fulfills Islamic rukun nikah yet operates outside state registration—a practice that simultaneously asserts religious validity and exposes women to legal precarity (van Wichelen, 2020). This operationalization centers the relationality of legal norms rather than their binary presence or absence.

Data analysis followed the iterative model of Miles and Huberman (1994)—data reduction, data display, and conclusion drawing—but was explicitly guided by the socio-legal pluralist framework to ensure thematic coding captured not only descriptive patterns but also normative tensions and power asymmetries. The analytical process was structured around three interlinked questions: (1) How do state actors justify regulatory ambiguity? (2) How do community members interpret iddah in relation to moral and material survival? (3) How do women navigate the legal void created by sirri marriage during iddah? The Legal Pluralism framework, particularly Griffiths' (1986) distinction between “weak” (state-centric) and “strong” (socially grounded) legal pluralism, provides the theoretical backbone for this inquiry. However, the study advances beyond Griffiths by integrating gender as a constitutive axis of legal ordering—recognizing that plural legal systems do not operate neutrally but often reinforce patriarchal structures under the guise of cultural or religious authenticity (Nurhayati & Fauzi, 2024). Thus, the framework is not merely descriptive but critically interrogative: it asks not only why multiple legal orders coexist, but whose interests they serve and whose vulnerabilities they produce. This analytical sharpening ensures that the research contributes not only to doctrinal debates but to the broader project of gender-just legal reform in pluralistic societies.

## RESULTS AND DISCUSSION

### Results

This study reveals a critical disjuncture in Indonesia's Islamic family law administration: formal regulations—intended as protective safeguards—have been repurposed as systemic loopholes enabling sirri marriages, especially when husbands remarry while their wives remain in the iddah period. Crucially, the formal object of this research is the administrative interpretation and application of iddah regulations within the Indonesian legal-bureaucratic system, while the material object is the practices of KUA officials and sirri marriage actors in Pontianak City. Empirical findings demonstrate that the normative ambiguities in Circular Letter No. P-005/DJ.III/HK.00.7/10/2021 are not mere technical oversights but constitute a structural flaw that fuels a legitimacy crisis in state legal authority. Data from 2022–2024 document 37 cases of sirri marriage during iddah, with 12 directly facilitated by KUA officials (Syaiful Barry, 2025). Importantly, classical fiqh classifications (e.g., talak raj'i, talak ba'in) are invoked not as binding state law but as a normative benchmark against which bureaucratic practice is critically evaluated. The failure to operationalize these distinctions in policy reflects a systemic incapacity to translate Islamic legal ethics into enforceable administrative standards, thereby generating a regulatory vacuum filled by



informal, often gendered, arrangements that undermine lineage protection and family justice (van Wichelen, 2020).

The first major finding is the reductive generalization of iddah in the Circular Letter, which collapses doctrinally distinct categories into a monolithic prohibition on remarriage. While classical fiqh—as synthesized by authoritative scholars such as Zuhaili (2011) clearly differentiates iddah talak raj'i, ba'in, wafat, and nifas based on legal cause and consequence, the Circular Letter treats them uniformly. This conflation is analytically significant not because fiqh is state law per se, but because the KHI and Marriage Law implicitly draw upon these categories to define marital status and rights. In iddah talak raj'i, for instance, the marital bond remains legally suspended but not dissolved; thus, a new marriage constitutes de facto polygamy without state permission, violating Article 3(1) of Law No. 1/1974. Table 1 operationalizes these distinctions not as theological assertions but as juridical reference points that expose the regulatory incoherence of the Circular Letter. The normative gap arises precisely because state policy fails to reflect the legal logic embedded in its own hybrid legal framework.

**Table 1. Classification of Iddah in Fiqh**

Category		Legal Basis	Duration	Primary Legal Implications
Iddah	Talak Raj'i	QS. Al-Baqarah: 228	Three quru' (for menstruating women)	The husband retains the right to reconcile without a new marriage contract; the wife remains under a marital bond; a new marriage is prohibited.
Iddah	Talak Ba'in	QS. Al-Baqarah: 230	Three quru' or three months	The marital bond is completely dissolved; the former husband becomes a non-mahram (ajnabi); remarriage is permissible upon the completion of the iddah period.
Iddah	Wafat	QS. Al-Baqarah: 234	Four months and ten days	Remarriage is prohibited as a mark of respect for the deceased; inheritance and maintenance rights remain applicable.
Iddah	for Pregnancy (Nifas)	QS. At-Talaq: 4	Until childbirth	Ensures the protection of the child's lineage and guarantees that the pregnancy is not attributed to the former husband.

Source: Analysis based on Nasruddin (2019), Sabiq (2015), and Zuhaili (2011).

The second finding of this study reveals the structural incapacity of the implementing apparatus at the Office of Religious Affairs (KUA) to comprehend and apply this classification. In-depth interviews with 15 informants, including six heads of KUA and six implementing staff, indicated that 93% of the officials were unable to differentiate between iddah talak raj'i and iddah talak ba'in (Abdani, 2025). They were guided solely by administrative parameters, specifically the finality of the divorce decree, without considering the legal status of a marriage that remains active during the iddah raj'i period. The statement by the Head of the East Pontianak KUA, "We only check whether the divorce certificate has been issued. If it is not yet final, they cannot get married. But if it has been issued, even if the iddah period is still ongoing, we consider it permissible," (Junaidi, 2025; Mardi, 2025). serves as tangible evidence of the dichotomy between state administrative law and substantive Sharia law. This ultimately weakens the KUA's function as the gatekeeper of marital legality.

The second finding exposes the structural incapacity of KUA officials to operationalize even basic distinctions within the state's own legal framework. Of 15 interviewed officials (including six KUA heads and six staff), 93% could not differentiate iddah talak raj'i from talak ba'in (Abdani, 2025). Their decision-making relies exclusively on the issuance of a divorce certificate—a purely administrative marker—ignoring the juridical reality that talak raj'i preserves the marital bond during iddah. As the Head of East Pontianak KUA stated: "We only check whether the divorce certificate has been issued... even if the iddah period is still ongoing, we consider it permissible" (Junaidi & Mardi, 2025). This reveals not a failure of fiqh knowledge per se, but a bureaucratic reductionism that prioritizes procedural formalism over substantive legal reasoning. The KUA's role as gatekeeper of marital legality is thus compromised not by theological ignorance but by the institutionalization of a shallow, document-centric legal culture that divorces administrative action from the normative foundations of the laws it is meant to enforce (Lindquist, 2019).

The third finding uncovers collusive practices and the formation of a parallel legal system within the bureaucracy. Fifteen of the 37 identified sirri marriages were documented in an "internal KUA archive," a clandestine registration system intentionally separated from the official Marriage Management Information System (SIMKAH). This practice, as admitted by an official at the West Pontianak KUA, "We store them neatly; if they are ever needed for inheritance or child recognition, we can issue them," (Imam Zaini, 2025) is not merely a procedural violation but a form of structured resistance against the official legal order. This creates legal dualism: one formal system recognized by the state and another informal system acknowledged by society and even protected by state officials themselves, which in turn erodes public trust in legal institutions (Susanti, 2023).

The third finding reveals institutionalized collusion through the creation of a shadow registration system: 15 of the 37 sirri marriages were recorded in an "internal KUA archive," deliberately excluded from the official SIMKAH database. As a West Pontianak KUA official admitted: "We store them neatly; if they are ever needed for inheritance or child recognition, we can issue them" (Imam Zaini, 2025). This is not ad hoc misconduct but a systematized form of bureaucratic subversion—a parallel legality that selectively

acknowledges sirri unions for post-hoc legitimization while denying them formal status. Such practices instantiate what Susanti (2023) terms “institutionalized legal dualism,” wherein state agents simultaneously uphold and undermine the law. This duality erodes legal certainty and public trust, as citizens learn that legality is negotiable, contingent on informal networks rather than transparent rules.

The fourth finding highlights the moral justifications employed to legitimize these violations. A thematic analysis of interviews with both perpetrators and officials indicated that 68% of respondents justified sirri marriage on the grounds of “avoiding zina (illicit sexual relations)” (Abdus Syakur, 2025). However, further data revealed that 41% of these cases involved a husband who still retained the right of rujuk (reconciliation), meaning they were still legally bound by the previous marriage under Islamic law. This indicates a phenomenon of religious instrumentalism, where one religious norm (the prohibition of zina) is used to justify the violation of other religious norms (the prohibition of polygamy without permission and marrying a woman during iddah raj’i). This paradox demonstrates a fracture in the practical understanding and application of religious values (Mahfudz, 2020).

The fourth finding identifies a pattern of strategic moral justification, wherein 68% of respondents invoked “avoiding zina” to legitimize sirri marriage (Abdus Syakur, 2025). However, 41% of these cases involved husbands who retained the right of rujuk, meaning their prior marriage remained legally intact under both fiqh and KHI standards. This reflects not mere ignorance but religious instrumentalism—the selective deployment of one Islamic norm (zina prohibition) to override others (monogamy, iddah integrity). As Mahfudz (2020) argues, such fragmentation of religious ethics enables actors to construct morally defensible narratives that mask legal violations. This phenomenon underscores how religious discourse is mobilized not as a holistic ethical system but as a toolkit for justifying pre-determined social outcomes, thereby deepening the normative gap between state law and lived morality.

The fifth finding addresses the serious social and legal implications stemming from these practices. A case handled by the Pontianak Religious Court in January 2024, which involved a civil servant who entered into a sirri marriage while his first wife was still in her iddah raj’i period, serves as a concrete example. The child from the sirri marriage was denied legal recognition because the marriage was unregistered, while the first wife lost her right to maintenance despite her entitlement under fiqh (Gunawan, C., & Jannah, S., 2024). This is compelling evidence that legal dualism not only creates administrative chaos but also precipitates structural injustice, particularly harming the most vulnerable parties, namely women and children.

The fifth finding demonstrates the tangible human costs of legal dualism. In a January 2024 Pontianak Religious Court case, a civil servant contracted a sirri marriage during his wife’s iddah raj’i. The resulting child was denied legal recognition due to non-registration, while the first wife—still entitled to maintenance under KHI Article 40—was abandoned without recourse (Gunawan, C., & Jannah, S., 2024). This exemplifies how regulatory

ambiguity translates into structural gender injustice: women and children bear the legal and social burdens of bureaucratic failure. The state's inability to enforce its own hybrid legal standards—drawing from both fiqh and statutory law—creates a zone of legal invisibility where rights exist in theory but vanish in practice. This outcome validates feminist critiques that legal pluralism, when unregulated, often reinforces patriarchal power under the guise of cultural or religious accommodation (Hasyim, 2021).

**Table 2. Descriptive Statistics of Research Findings on Marriage Administration at KUA (2022–2024)**

No	Research Variable	Description	Frequency (n)	Percentage (%)
1	Level of KUA Official Ignorance	Inability to understand the difference between iddah raj'i vs. iddah ba'in	93	93%
2	Number of Sirri Marriage Cases	Involving a husband during his wife's iddah period	37	100%*
3	Level of KUA Official Collusion	Cases directly facilitated by corrupt KUA officials	12	32.4%
4	Parallel Document System	Cases recorded in the KUA's "internal archives"	15	40.5%
5	Respondents' Moral Justification	Using the reason of "avoiding zina" (adultery)	25	68.0%
6	Cases Involving Rujuk Rights	The husband still possesses the right of rujuk (reconciliation)	15	41.0%

These statistics are not isolated metrics but interconnected symptoms of systemic dysfunction. The 93% rate of official ignorance reflects a failure in institutional capacity-building, rooted in the absence of mandatory, standardized training on Islamic family law for KUA personnel. The 32.4% collusion rate signals a crisis of bureaucratic accountability, exacerbated by weak internal oversight and the absence of whistleblower protections. The 40.5% use of "internal archives" reveals an erosion of state legal monopoly, as officials create parallel systems that undermine the very institutions they serve. And the 68% reliance on moral justification illustrates how religious discourse is instrumentalized to mask legal non-compliance. To address these issues, policy recommendations must move beyond aspirational calls and engage political and institutional realities. For instance, upgrading the Circular Letter to a Ministerial Regulation requires coalition-building with key stakeholders: the Ministry of Religious Affairs' Directorate General of Islamic

Community Guidance, the Indonesian Ulema Council (MUI), and women's rights organizations such as Kalyanamitra and Rumah Kita+. Public education campaigns must be co-designed with local majelis taklim and use culturally resonant messaging—e.g., framing iddah not as a barrier but as a divine protection for women's dignity and children's lineage. Without such pragmatic, multi-stakeholder strategies, even well-intentioned reforms risk remaining symbolic rather than transformative (Feener, 2022).

## Discussion

The empirical findings presented above cannot be understood in isolation; instead, they constitute a logical and consequential sequence revealing a complex phenomenon designated as the normative gap. This discussion aims to meticulously integrate the primary field findings with John Griffiths' (1986) seminal theoretical framework of Legal Pluralism and a rigorous socio-legal perspective on Islamic law. This synthesis will not only address the core research questions and interpret the socio-legal reality but also substantiate the necessary theoretical modifications and formulate pragmatic, implementable policy recommendations that overcome bureaucratic and political hurdles.

First, the finding concerning the reductive generalization of the concept of iddah within the Circular Letter directly addresses the research question regarding the foundational root causes of the normative gap. Theoretically, this condition exemplifies a critical failure in the process of "legal transplant," whereby multi-layered and contextually sensitive shari'ah norms are forcefully condensed and integrated into a state administrative legal framework that is inherently characterized by rigidity and proceduralism (Watson, 2018). The Circular Letter, as an administrative legal product, is obligated to furnish clear, detailed, and operationally precise guidance. Instead, it systematically obscures essential fiqhiyyah nuances, thereby generating a profound normative "gray area." This ambiguity is then strategically exploited by the general public and, more concerningly, by implementing officials themselves. This empirical observation strongly aligns with Griffiths' (1986) theory, which contends that the official legal order suffers a critical loss of legitimacy when it proves unresponsive to social realities and the fundamental needs of the community. Consequently, the public's imperative for legal certainty and substantive justice is demonstrably unmet by the ambiguous regulation, compelling them to resort to an unofficial legal order perceived as more equitably just or, at the very least, substantially more practical.

Second, the critical finding that 93% of KUA officials were demonstrably unable to differentiate between the established categories of iddah comprehensively confirms the hypothesis that the normative gap is not merely a theoretical abstraction but has deeply permeated the institutional implementation level. This context underscores the profound relevance of the sociology of Islamic law. According to Wahyudi (2022), legal implementation in Indonesia frequently founders due to a pronounced "gap" between central-level policymakers and regional-level implementers, who are characterized by disparate educational backgrounds, comprehension levels, and intense local social pressures. Paradoxically, in this specific case, KUA officials—the majority of whom

possess a religious education background—exhibit a profound deficiency in the in-depth understanding of *fiqh munakahat* (Islamic family jurisprudence). This structural deficit signals an undeniable crisis within the specialized educational and continuous training system designed for religious officials (Hasyim, 2024). Consequently, they are ensnared in a fundamental structural dilemma: on one hand, their mandate requires them to be uncompromising enforcers of state law, while on the other, they feel a professional affinity and moral pressure from the local community. The statement, "It's better for us to solemnize a *sirri* marriage than for them to live together without a contract. That is a greater sin," (Supriadi, 2024) serves as a potent manifestation of this internal conflict. They utilize a logic of situational ethics rooted in a hierarchy of perceived sins to justify overt violations of formal regulations, a phenomenon recognized in socio-legal studies as a "bureaucratic subculture" that proactively develops its own localized norms to survive and manage systemic administrative pressures (Maulana & Siregar, 2023).

Third, the documented practice of collusion and the clandestine formation of the KUA's "internal archives" represent the most compelling empirical evidence of the deep-seated penetration of the unofficial legal order into the core institutional framework of the official legal order. This finding provides crucial evidence that not only confirms Griffiths' (1986) theory of Legal Pluralism but necessitates a significant extension of its scope. While Griffiths theorized that legal pluralism is predominantly situated within society, the research unequivocally demonstrates that this pluralism has systematically "infected" the state bureaucracy itself. KUA officials, who are structurally mandated components of the state apparatus, are functionally operating as *de facto* informal legal agents. This collusion engenders a sophisticated process termed "forum shopping" at the bureaucratic level, where the community and state officials collaboratively select an internal, parallel forum (the unofficial archive system) deemed more advantageous or better suited to circumvent formal legal requirements (Kurniawan, 2025). This systemic degradation of state authority is profoundly destabilizing as it fundamentally erodes public trust. When the populace perceives that formal legal rules are negotiable, easily manipulated, and can be illicitly recorded, compliance with official law is inevitably diminished, consequently transforming the law from a principle to be upheld into a mere negotiable administrative tool (Widodo & Pratama, 2023).

Fourth, the pervasive moral justification of "avoiding *zina*" (illicit sexual relations) employed to legitimize *sirri* marriage serves as a classic and compelling example of what Mahfudz (2020) accurately terms "religious instrumentalism." Within this phenomenon, religion—specifically Islamic teachings—is no longer conceived as a holistic, integrated value system but is instead fragmented and selectively applied to justify specific, desired actions. This selective application represents a highly dangerous form of religious distortion. From a socio-legal perspective on Islamic law, this practice clearly demonstrates the presence of "cognitive dissonance" within the society (Wirdayaningsih, 2024). where there is a palpable mismatch between people's stated religious knowledge and their actual marital practices. The public recognizes that *zina* is unequivocally forbidden, yet they fail to fully comprehend that entering into a marriage with a woman during her *iddah raj'i* is equally prohibited and fundamentally constitutes a profound form of injustice toward the

still-legally-bound wife. To effectively reduce this internal dissonance, a new social narrative is constructed and internalized: that sirri marriage represents a "middle way" which is morally superior to committing zina. This ethically convenient narrative is subsequently and regrettably reinforced by unscrupulous KUA officials who are institutionally designated as moral and legal guardians, thereby becoming a critical element of "collective legitimation" for the formal rule violation (Fathurrochman & Sari, 2023).

Fifth, the observed severe social implications, particularly the conflicts over nasab (lineage) and inheritance rights experienced by the subsequent wives and children, are a direct and logical consequence of the pervasive legal dualism. This finding robustly confirms the theoretical framework proposed by Hidayat (2021) regarding "bureaucratic rationality" in the context of modern Islamic law. Within a functional modern bureaucratic system, legal validity and authenticity are explicitly determined by the presence of written and officially registered documents. When a sirri marriage is intentionally not recorded within the official Marriage Management Information System (SIMKAH), from the perspective of state law, the marriage is legally null, and all its associated legal consequences—such as the recognition of children and inheritance claims—are systematically rendered invalid. This incongruence creates a profound social tragedy where an individual whose marriage is considered religiously valid (*sah*) because the contract has been performed, is simultaneously not recognized by the state (Nasruddin, 2019), and conversely, a wife who is religiously entitled to maintenance loses her right because her husband has been "administratively" discharged. This fundamental incongruence between the religious and state legal frameworks is hereby identified as the primary source of structural injustice.

These findings fundamentally necessitate a conceptual refinement of Griffiths' (1986) original theory of Legal Pluralism (Arif & Azis, 2020). While the original theory posits two distinct legal systems (official and unofficial) that primarily operate in parallel and sometimes compete, the empirical evidence from Pontianak demonstrates that what transpires is not merely competition but rather intensive collaboration and deep institutional hybridization. To precisely capture this distinct socio-legal reality, we formally propose the concept of a "Hybrid Legal Order." We fully acknowledge that related concepts exist in the broader socio-legal scholarship, such as interlegality (Fitriani, 2021), which describes the articulation and interpenetration of legal fields, and institutional hybridity (Putra & Wulandari, 2023), which focuses on the merging of legal traditions in post-colonial contexts. However, the phenomenon identified here—where the unofficial legal order has demonstrably penetrated and cooperated with core actors within the official state institution (unscrupulous KUA officials) to establish an internalized system of formal non-compliance (the "internal archives")—requires a distinct theoretical descriptor (Wignjodipoero, 2024). The Hybrid Legal Order specifically emphasizes the functional blurring and mutual dependence of the official and unofficial systems, a fusion that ultimately subverts the founding principles of both the state law (registration) and *fiqh* (protection of *iddah* and *nasab*), thereby justifying its delineation as a distinct theoretical advancement.

Based on the comprehensive socio-legal discussion, several pragmatic and institutionally informed policy recommendations must be systematically pursued to address the observed normative gap and crisis of authority. First, a fundamental revision of the low-level Circular Letter into a Regulation of the Minister of Religious Affairs (Peraturan Menteri Agama - PMA) is paramount to achieving binding legal force and overcoming localized bureaucratic resistance. Securing ministerial support for this pivotal regulatory reform requires strategic political will and calculated bureaucratic commitment, achievable by presenting the empirical data from Pontianak directly to the Ministry's Directorate General of Islamic Community Guidance, emphasizing the systemic costs of maintaining legal dualism (Hamid, 2024). The PMA must explicitly distinguish the categories of iddah and their precise legal implications, particularly codifying the absolute prohibition of marriage during iddah talak raj'i. Second, intensive, continuous, and case-based training for all KUA officials must be implemented, focusing not only on administrative procedures but also on in-depth fiqh munakahat and high-integrity bureaucratic ethics. Third, the establishment of an independent and transparent internal oversight system is non-negotiable to detect and eradicate collusion. This system must actively engage external oversight stakeholders, including civil society organizations, women's groups (Aisyiyah, Muslimat NU), religious scholars (MUI, DMI), and legal aid organizations (LBH Apik) as external peer reviewers to monitor KUA performance and prevent the formation of "internal archives" (KHI). (Hidayat, 2023). Fourth, the call for "massive public education campaigns" must be operationalized into targeted, locally sensitive communication strategies. Campaigns must utilize religious narratives that resonate with local cultural and religious values—for instance, framing iddah not merely as a restrictive administrative period but as an ibadah (act of worship) for lineage protection (hifz al-nasab), targeting prospective couples and village heads (kepala desa) via religious leaders and local social media channels (Ayu et al., 2024). Without these systematic and structurally informed efforts at all levels, the existing normative gap will inevitably persist as a vulnerable entry point for practices that severely damage family order, social justice, and state legal authority.

## CONCLUSION

This study posits the concept of a "Hybrid Legal Order" to describe this unique dynamic, distinguishing it from related concepts like interlegality or institutional hybridity. While those frameworks describe the articulation or merging of legal systems in society, the Hybrid Legal Order specifically characterizes the internalized subversion within the state apparatus, where frontline officials actively conspire with the informal legal order to circumvent regulations for localized pragmatic gain. The Pontianak case thus requires a fundamental modification of the legal pluralism framework, illustrating that the crisis of legal authority is not merely external but endogenous to the state bureaucracy itself. This theoretical insight necessitates a dual corrective: a structural regulatory overhaul and a cultural transformation. Thus, the required fundamental revision of the Circular Letter into a binding Ministerial Regulation of Religious Affairs (Peraturan Menteri Agama) is paramount. This must be complemented by pragmatic and institutionally informed policy



solutions, including intensive, in-depth training for KUA officials, establishing independent oversight involving civil society stakeholders, and launching a robust, religiously contextualized public education campaign, all aimed at restoring legal certainty and upholding the gender-protective ethics of Islamic family law.

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