

Nikah Gantung in Legal and Social Discourse: The Contestation of Legality between State, Religion, and Custom

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ABSTRACT

Nikah gantung, a marriage recognized under Islamic law where the couple postpones cohabitation and financial responsibilities, reflects complex intersections of religious norms, state law, and customary practices. While culturally practiced to preserve family honor and prevent premarital relations, its absence of official registration raises significant concerns over women's and children's legal protection. This study aims to critically analyze the contestation of legality in nikah gantung by examining how state, religion, and custom compete to define legitimacy. Employing a qualitative methodology through library research, the study draws upon classical and contemporary fiqh texts, Indonesian marriage laws, fatwas, and relevant ethnographic studies, analyzed through Michel Foucault's framework of governmentality, regime of truth, and symbolic discipline. The findings reveal that although Islamic law affirms the validity of nikah gantung under proper conditions, the state emphasizes legal certainty through marriage registration, while custom enforces symbolic surveillance through community norms such as delaying cohabitation until the walimah. These differing frameworks illustrate that legality is not a fixed entity but the outcome of competing power discourses, often subordinating women's autonomy and legal security. The study concludes that nikah gantung is less a neutral religious or cultural practice and more a site of power contestation where law, religion, and custom intertwine to regulate social life. Theoretically, it expands the application of Foucauldian discourse analysis within Islamic family law, and practically, it recommends integrative legal approaches that balance religious norms, state regulation, and cultural diversity while prioritizing the protection of women's and children's rights.

Keyword: Nikah Gantung, Marriage Legality, Power Relations, Islamic Law



INTRODUCTION

Nikah gantung is a marriage contract that is considered valid according to Islamic law; however, the couple does not live together, and the husband does not provide financial support to the wife for a certain period (Azahar, 2022;

Devana, 2023; Sitiris, 2020). This practice is commonly found in traditional communities with specific purposes, such as preserving family honor or avoiding scandal before the couple is ready to begin their married life (Alberty, 2023; Azahar, 2022).

Nikah gantung, also known as nikah khiṭbah in some regions, is a religiously valid marriage, but the couple does not immediately cohabit as husband and wife. This practice is often carried out to avoid free mixing and fornication, as well as to give the couple time to mature emotionally and financially before entering marital life (Shamsuddin, 2017). However, behind these normative justifications, the practice hides various complex social and legal tensions, particularly concerning legality, the protection of rights, and the construction of the meaning of marriage itself.

Several communities, such as in Desa Cipaeh Serdang and Negeri Pulau Pinang, continue to uphold this practice as part of their cultural heritage aimed at protecting young people from dating culture and premarital sex (Agza, 2018; Devana & Suswandari, 2023). In this context, nikah gantung is even viewed as a form of "legitimizing the relationship" according to Islamic law.

However, this practice is generally carried out without official registration at the Religious Affairs Office, which leads to serious implications regarding legal protection, the status of financial obligations, and legal certainty for children born from these unions (Ananda, 2025; Hazwan, 2017; Faiz, 2025). This raises a crucial question: although nikah gantung is religiously valid and socially accepted in customary practice, how are its legal status and the protection of rights guaranteed when it is not registered within the state legal system?.

From the perspective of Islamic law, the majority of scholars from various schools of thought acknowledge the validity of nikah gantung as long as the necessary conditions and requirements are fulfilled (Antony, 2024; Basith, 2016). The 32nd Muktamar of Nahdlatul Ulama in Makassar also permits this practice, provided it does not neglect the responsibilities of the husband and wife after the contract (Husaini, 2015).

However, some scholars and activists highlight the potential of this practice to become a tool of family control, which in many cases may restrict the freedom of young people in choosing their life partners (Alberty, 2023). Therefore, the validity according to Islamic law does not automatically resolve the social issues surrounding it. From the perspective of state law, Law No. 1 of 1974 on Marriage and its revision in Law No. 16 of 2019 emphasize the importance of marriage registration to ensure legal certainty and the protection of the rights of women and children (Datilah & Bastian, 2022; Usman & Ermaliza, 2017).

Table 1. provides a summary of the main findings of these studies

Author(s), Year	Focus of Study	Method / Approach	Key Findings	Limitations
Azahar (2022)	Legality of nikah gantung in Islamic law	Normative juridical	Nikah gantung is valid if it fulfills the pillars and conditions of marriage; however, it creates uncertainty regarding rights and obligations.	Limited to doctrinal analysis; does not explore social implications.

Author(s), Year	Focus of Study	Method / Approach	Key Findings	Limitations
Alberly (2023)	Social meaning and family control in nikah gantung	Qualitative, case studies	The practice is used to preserve honor and prevent premarital relations but may restrict individual freedom in partner choice.	Focuses on local cases; lacks broader theoretical framework.
Shamsuddin (2017)	Role of nikah gantung in avoiding zina	Comparative fiqh analysis	Recognized as valid in Shafi'i school; practiced as a way to delay cohabitation until couples are mature.	Examines religious law only, without considering state regulation.
Husaini (2015)	NU's perspective on nikah gantung	Textual analysis (Muktamar NU)	NU permits nikah gantung under specific conditions but warns against neglecting responsibilities after the contract.	Narrow institutional perspective; limited to religious rulings.
Usman & Ermaliza (2017)	Adat practice in South Kluet	Socio-legal analysis	Adat requires couples to delay cohabitation until walimah, even if Islamic law already allows it.	Does not address implications for legal certainty.
Mohamad Hazwan (2017)	Legal protection in unregistered marriages	Legal analysis	Absence of registration leads to vulnerability of women and children, particularly in nikah gantung.	Limited to state law; lacks cultural and religious dimensions.
Devana & Suswandari (2023)	Nikah gantung in Pulau Pinang community	Ethnographic approach	Practiced as cultural heritage to protect youth from dating culture and free sex.	Focused only on one local community; not linked to broader legal debates.
Datilah & Bastian (2022)	State law and marriage registration	Normative legal study	Emphasizes the role of marriage registration for legal certainty and protection of women and children.	Does not address religious and customary legitimacy.

Source: Author, 2025

Furthermore, regulations regarding the minimum marriage age and administrative registration highlight the state's role as the primary actor in defining the legality of marriage through bureaucratic mechanisms. The discrepancy between religious norms, state law, and custom creates a complex

space of conflict, touching on civil rights, morality, and social authority. Previous studies on *nikah gantung* demonstrate that scholars have approached the phenomenon from different angles Islamic law, state law, and local custom.

Previous studies have examined *nikah gantung* primarily through single lenses Islamic law, state law, or local custom (see Table 1). For example, Azahar (2022) focused on its doctrinal validity in Islamic law, while Mohamad Hazwan (2017) emphasized the vulnerabilities arising from unregistered unions. Alerty (2023) and Devana & Suswandari (2023) highlighted its social functions but did not situate these within broader legal or theoretical debates. Collectively, these studies demonstrate the fragmented nature of existing scholarship: each perspective provides valuable insights, but rarely do they interrogate the intersections where law, religion, and custom collide.

From various studies that have been identified, the phenomenon of *nikah gantung* cannot be understood merely as a religious or customary issue. It is a social practice situated at the intersection of religious norms, state regulations, and local traditions that are alive in the community. These three institutions often do not operate harmoniously and may even negate each other, particularly in determining the boundaries of what constitutes a valid relationship.

The state intervenes with bureaucratic logic to regulate its citizens through legal documentation. Religion produces normative truths based on sacred texts and the tradition of scholars. Custom, through symbolic and collective moral systems, creates an unwritten yet highly effective form of social surveillance. In this context, *nikah gantung* becomes more than just a religious or cultural practice; it transforms into a field of power relations where norms, law, and tradition work together to shape and subjugate the subject.

Therefore, understanding *nikah gantung* is not merely about seeking a point of legality but also about investigating how power works subtly through law, religious texts, and local culture to create an order that seems natural, yet is full of vested interests. This study seeks to unravel these dynamics through an analysis of the concept of legality as constructed and debated within the fields of *fiqh* and state law.

Furthermore, this study will uncover how the state, religion, and custom act as competing discursive producers in determining what is considered legitimate and socially accepted. Using a critical discourse analysis approach and the framework of Michel Foucault's theory, this study will demonstrate that marriage is not just a legal contract but also a social construct full of power relations.

RESEARCH METHOD

This research employs a qualitative approach using library research as its methodology. The main focus of the study is to critically examine the practice of *nikah gantung* through an in-depth reading of various Islamic legal texts, state regulations, and customary norms, in order to uncover the power relations involved in the process of defining the legality of marriage. This approach does not aim to collect empirical field data, but rather interprets the available texts and discourses using a social-critical theoretical framework.

The data sources in this research are categorized into two types. First, primary sources, which include classical and contemporary *fiqh* texts (such as Fath al-Mu'in, al-Mughni, Bidayat al-Mujtahid), legal regulations such as Law No. 1 of 1974 and Law No. 16 of 2019, as well as religious documents like fatwas from MUI and the resolutions from the NU Congress. Second, secondary sources, which include academic journals discussing *nikah gantung* from the perspectives of law,

sociology, and anthropology, as well as relevant social theory texts, particularly the works of Michel Foucault.

The inclusion criteria cover academic publications from 2014–2024 that have direct relevance to the theme of *nikah gantung*, Islamic family law, or critical discourse theory, and that can be academically verified. Meanwhile, the exclusion criteria consist of popular sources such as blogs or news articles that have not undergone academic review, references without clear citation, or works that are not relevant to the context of marriage and family law. Data were collected through literature searches in academic data as well as university repositories and online libraries. The analytical technique employed was critical discourse analysis influenced.



Figure 1. Diagram flow
 Source: Author, 2025

Discourse triangulation was carried out by comparing perspectives of Islamic law, state law, and custom across various geographical and social contexts. This process also involved examining the different emphases religion on *syari'ah*, the state on legal bureaucracy, and custom on collective morality as well as dialogical readings of theoretical perspectives to avoid reduction to a single viewpoint.

To provide clarity, the research process is visualized in the form of a flowchart, consisting of stages beginning with problem identification and research focus, literature tracing and source selection based on inclusion and exclusion criteria, the extraction of key concepts such as governmentality, regime of truth, and symbolic discipline, followed by comparative analysis of discourses (religion, state, custom), and the formulation of critical findings. Each stage in the flowchart is accompanied by narrative explanation to ensure the connection between methodological steps and the theoretical framework. With this methodology, the study seeks to present a deeper and more critical understanding of the practice of *nikah gantung* and to open new spaces for discussion in the discourse of Islamic family law and social transformation in Indonesia.

RESULTS AND DISCUSSION

1. The Tension of Legality in *Nikah Gantung*

Nikah gantung is a form of marriage where the couple only performs the marriage contract but does not live together or fulfill marital duties, such as

providing financial support, for a certain period (Asyrofulmuttaqin & Nasution, 2023). Islamic law considers this marriage valid as long as the essential marriage conditions are met, including the presence of a guardian, two witnesses, dowry, and the offer and acceptance (Khairani & Maya Sari, 2017).

According to the Shafi'i school, once the marriage contract is performed and the conditions are fulfilled, the couple is legally considered husband and wife, even if they do not live together (Shamsuddin, 2017). Scholars from the Hanafi and Hanbali schools also agree that *nikah gantung* is valid under Islamic law, but they add that the primary purpose of marriage to establish a household and fulfill marital responsibilities should be realized promptly.

If delayed without a valid religious reason, the marriage remains valid but is considered less ideal in Islamic law (Usman & Ermaliza, 2017). Thus, the construction of Islamic law emphasizes the formal-transcendental perfection of the contract, even though the social function of the household has not yet been implemented.

In reality, *nikah gantung* has sparked debate among scholars. In this context, *nikah gantung* is understood as an adaptation to certain circumstances, such as avoiding free mixing or preserving family honor (Bin Mat Saad, 2017). According to the 32nd Muktamar of Nahdlatul Ulama (NU) in Makassar, *nikah gantung* is permissible as long as it meets the conditions of Islamic law. This decision was made on the consideration that such a marriage could prevent fornication among young couples.

However, scholars also caution that this practice should not ignore the responsibilities of the husband and wife after the marriage contract (Husaini, 2015). In another perspective, the studies of Husaini (2015) and Agza (2018) show that in Ponorogo, the practice of *nikah gantung* can in fact deprive children especially girls of their freedom, as it is often imposed on the basis of tradition or family pressure. From a gender perspective, this illustrates how even religious authority is not free from patriarchal power relations that may constrain the autonomy of young women.

While from the perspective of Islamic law, *nikah gantung* is valid because the marriage contract fulfills the conditions, the implementation of marital obligations often becomes a challenge. For instance, in the tradition of Kluet Selatan, couples who engage in *nikah gantung* are not allowed to live together until the wedding reception (*walimah*) takes place. This is accepted in custom, but it remains inconsistent with Islamic principles, which permit the couple to live together after the contract (Shamsuddin, 2017). In fact, according to the majority of scholars, *walimah* is not a requirement for the validity of marriage, but rather a recommended *sunnah* intended to introduce the couple's new status to the community (Hulantu, 2022; Gusti, 2024; Tantri, 2020).

Contemporary scholars such as Wahbah al-Zuhaili and Yusuf al-Qaradawi affirm that the marriage contract (*akad nikah*) remains valid even if the couple postpones marital relations for *shar'i* reasons, such as avoiding fornication or waiting until circumstances allow. However, they also warn that *nikah gantung* can become undesirable if performed merely as a formality without the intention of establishing a harmonious household (Usman & Ermaliza, 2017). Therefore, even if the wedding reception has not been held, Islamic law considers that the couple is still allowed to live together and fulfill their marital rights and obligations (Shamsuddin, 2017).

A different view comes from the legal-formal approach within the state's legal system. Through Law No. 1 of 1974 on Marriage and its revision in Law No.

16 of 2019, the state asserts that the validity of a marriage must be accompanied by official registration. Supriyatni et al. (2021) show that without registration, the marriage does not have legal power to protect the rights of the couple, especially the rights of women and children.

This is reinforced by an approach based on substantive justice in studies by Masruchin & Nuraeni (2021) and Husaini (2015), which highlight issues concerning the representation of women and children in *nikah gantung*. They criticize that, in many cases, *nikah gantung* is conducted without the full awareness of the woman or under family and customary pressure.

This tension reveals a significant epistemological gap. If analyzed further, legality in this case is superficial, as it only benefits the dominant social structure, not vulnerable subjects. Although normatively each approach offers a framework of legality that is valid within its domain, the poststructuralist approach raises fundamental questions about the neutral meaning of "validity" in this case. According to Michel Foucault's framework, legality is not a fixed entity but the result of power discourse working through institutions, whether religious, state, or customary.

Legality becomes a form of language that appears normative, yet it is actually used to regulate citizens, control social relations, and limit the autonomy of subjects. Thus, when a practice is considered valid by the state but not by religion (or vice versa), we are not facing a misalignment of norms, but a contestation of meanings produced by power.

2. Contestation of the Legality of *Nikah Gantung*

The practice of *nikah gantung* cannot be fully understood without unpacking the power relations operating among three dominant institutions in society: the state, religion, and custom. These institutions are not merely sources of norms, but also producers of competing discourses that seek to define the meaning and legitimacy of marriage. In this context, the crucial question is no longer "which is correct?" but rather "who has the power to define what is legitimate?"

The state adopts an administrative approach through legislation, such as Law No. 1 of 1974 and its amendment, Law No. 16 of 2019, which mandate marriage registration as the basis for legal validity. From Michel Foucault's perspective, registration can be seen as a form of bureaucratic control an administrative power of the state to discipline its citizens through documentation. Law thus functions not only to establish formal rules but also to govern the intimate details of citizens' lives, including marriage.

As shown in a study by RSIS International in Malaysia (Abidin et al.), the state does not merely regulate marriage legality in a formal sense but also employs registration as a means of governing social life, similar to practices in Indonesia. Registration, in Foucault's terms of governmentality, functions not only as a legal instrument but also as a biopolitical tool regulating the social and sexual lives of the population through seemingly neutral administrative measures. In other words, law becomes an instrument to determine who is deemed eligible to marry, when marriage may take place, and under what conditions it is permitted.

Religion, on the other hand, legitimizes marriage through *fiqh* and *fatwas*. The validity of marriage is determined by conformity to *shari'a*, such as the presence of a guardian, two witnesses, a dowry, and a valid contract (*ijab qabul*). Within Foucault's framework, religion functions as a producer of a regime of truth a system that defines what is considered true or false, lawful or unlawful, based on interpretations of sacred texts and scholarly traditions.

By grounding its authority in the Qur'an, hadith, and juristic reasoning, religion establishes norms that govern not only the spiritual relationship between humans and God but also social life. Thus, religious legitimacy in marriage is both spiritual and social, shaping individual and communal conduct through moral and ethical norms such as chastity, the prohibition of adultery, and the preservation of family honor.

Meanwhile, custom (*adat*) operates as a mechanism of symbolic surveillance. In the case of *nikah gantung*, custom does not directly forbid early marriage but regulates behavior through unwritten community norms. Practices such as delaying cohabitation until the *walimah* (wedding feast), as observed in Kluet Selatan (Usman & Ermaliza, 2017), illustrate how local norms set symbolic boundaries for couples' conduct.

Although Islamic law permits cohabitation after the contract, custom postpones it until the community has acknowledged the union. Custom does not enforce compliance through formal sanctions but through social pressures such as shame, collective expectation, and family honor.

In Foucauldian terms, this mechanism exemplifies symbolic moral discipline a strategy whereby the community governs individuals' bodies and conduct through internalized social expectations. Similar practices are evident in Minangkabau's prohibition of intra-clan marriage (Amin et al., 2024) and Tenggulun's restrictions on *mangku dalam* and *temu pojok* as forms of 'urf shahih (Wahidah, 2023). These customs demonstrate how cultural legitimacy effectively sustains compliance even without written law.

Foucault describes these mechanisms as biopolitics: the ways in which states, religions, and communities regulate life, marriage, reproduction, and sexuality to maintain social order. In *nikah gantung*, marriage is no longer framed primarily as an emotional or familial bond but rather as a field of power that reproduces obedience and discipline. Thus, marriage transforms from a personal event into an instrument of social regulation enforced simultaneously by law, religion, and custom.

When these three institutions interact, what emerges is not harmonization but domination. The state disciplines custom through marriage courses (*Suscatin*) and registration requirements, religion preserves its spiritual authority, and custom continues to assert control over social reputation. These intersecting power relations reveal that the legality of *nikah gantung* is not merely a legal or religious issue but the outcome of contesting discourses struggling for authority over morality, legitimacy, and the future of the community.

From a literature perspective, previous studies have touched upon these dynamics but remain fragmented. Some emphasize the role of custom as social control (Amin et al., 2024; Wahidah, 2023), others focus on state law and registration (Abidin et al.; Gultom & Bawono, 2024), while others foreground the shari'a dimension (Asyrofulmuttaqin & Nasution, 2023; Wadud & Mir-Hosseini). Research on *pernikahan khalwat* in Aceh (Rizki, 2020) and on the economic factors of child marriage (Zamzami et al., 2023) highlights further socio-familial impacts. Comparative perspectives demonstrate how family law is influenced by psychology and social work (Casaleiro, 2016) or how women's bodies are positioned as biopolitical subjects (Biopolitics, 2022).

Yet what remains underexplored is how *nikah gantung* itself functions as a site of contestation among state, religion, and custom each competing to define legitimacy in marriage. This is the research gap that the present study seeks to address: reading *nikah gantung* as a discursive practice that is not only legal or

religious in dimension but also deeply embedded in power relations that govern bodies, families, and communities. By employing a Foucauldian lens, this study situates nikah gantung not merely as a social problem but as an epistemological one: a struggle over who holds the authority to define truth and legality in the domain of marriage.

CONCLUSION

The practice of nikah gantung illustrates the complexity of power relations between the state, religion, and custom, each of which attempts to define the legality of marriage from its own perspective. The state, through legislation and marriage registration, not only determines the legality of marriage administratively but also functions as a subtle social control tool. Using Foucault's concept of governmentality, marriage registration is seen as a form of biopolitics that regulates the social and sexual lives of individuals, making law a means to organize family life, determine who is eligible to marry, when marriage may take place, and under what conditions marriage is permitted.

Religion, through fiqh and fatwa, constructs a regime of truth that not only governs the relationship between humans and God but also influences the social life of its followers. Religious legitimacy in marriage is not only spiritual but also social, establishing moral norms that govern individual behavior, such as the sanctity of the marital relationship and the prohibition of adultery. On the other hand, custom plays a role as symbolic social surveillance, where local norms and community influences control the behavior of couples through shame, social pressure, and family honor. Although unwritten, customary systems possess great power in regulating social life, making them an effective form of moral discipline.

These three institutions, although each with its distinct role, often do not function harmoniously. In fact, the power relations they build tend to compete and dominate one another, demonstrating that the legality of nikah gantung is not merely about law or religion, but the result of a contestation between dominant discourses. This epistemological tension creates ambiguity in the legal and social status of the nikah gantung practice, which potentially undermines the rights of women and children. Therefore, it is crucial to develop a more integrative, just, and subject-rights-oriented approach to family law, while still considering the cultural diversity of society.

Theoretically, this study contributes to expanding the application of Foucault's concepts in Islamic family law and legal pluralism by revealing how governmentality, regime of truth, and symbolic discipline intertwine in the practice of nikah gantung. Practically, the study offers three key recommendations: first, the state should strengthen marriage regulations by ensuring administrative mechanisms that also respect local diversity; second, religious authorities and scholars should reinterpret fatwas and fiqh norms in ways that prioritize the protection of women's and children's rights; and third, customary institutions should develop mechanisms of social resolution that move beyond shame-based norms toward gender justice and legal certainty.

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