

The Rejection of Itsbat Nikah Based on Decision No. 47/Pdt.P/2021/TAIS of the Tais Religious Court, Bengkulu

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Abstract

Marriage under the hand or marriage under Islamic law still occurs in Indonesia which can cause problems related to legal certainty and the protection of the rights of husbands, wives, and children. Itsbat nikah is an effort to obtain legal recognition for marriages that are not registered. However, in Determination Number 47/Pdt.P/2021/PA. The judge rejected the Itsbat Nikah application because the judge considered that the applicants did not have good faith to register their marriage even though the marriage met the requirements and pillars of Islam and did not contradict positive law. This study used a normative juridical method with a legislative, conceptual, and case approach. The results of the study show that the rejection has the potential to cause losses to legal certainty and civil rights, especially for women and children. Therefore, the judge should not only consider the administrative aspect, but also legal certainty, and the benefits for the affected parties.

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INTRODUCTION

Indonesia is a country based on the Law (*Rule of Law*). This is in accordance with the provisions of Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that "The State of Indonesia is a country based on the law." The provisions of this Article mean that the administration of the state must always be held based on the applicable Law.¹ A law is a regulation issued by an authorized state institution and is binding on all citizens. This regulation is prepared to realize order, security, justice, and national welfare, both in fulfilling individual interests and public interests, as well as containing the values of Pancasila. As a country of law, Indonesia places the law as the basis for regulating various aspects of people's lives, including the field of marriage. According to the Great Dictionary of the Indonesian Language (KBBI), the term perkawinan Derived from the word "Marriage", which refers to the process of binding or agreement between a man and a woman. The agreement aims to establish and guarantee a legal marital relationship, carried out in the presence of a number of witnesses, and through the guidance of a guardian from the woman. According to Sayuti Talib, marriage can be interpreted as a sacred and solid bond between a man and a women.²

Marriage in Indonesia is regulated in Law No. 1 of 1974 concerning marriage, According to Article 2 paragraph (2) of the Marriage Law "Every marriage is recorded in accordance with the applicable laws and regulations." The article can be understood that every marriage must be registered with the authorities. This registration aims to obtain legal certainty, as well as for the purpose of population registration. Marriage registration is an important aspect that must be fulfilled by every couple who holds a marriage. The registration not only serves as valid proof that the marriage has been carried out, but also as a form of legal protection for husband and wife.³ Marriage registration is an administrative requirement in Indonesia,⁴ one of the purposes of which is to prove that the marriage has occurred so that it can be used as a valid basis for evidence in the future. In the context of the legal state, a marriage cannot be considered valid or recognized for its existence if it has not been recorded.⁵ This registration is important to maintain administrative order and provide legal certainty regarding the

¹ Siti Lalillah and Fakhurrahman Arif, 2021, "The Principle of Legal Certainty According to Experts", *Journal of Constitutional Law*, Volume 4, pp. 56-65.

² Kumedi Ja'far, 2020, *Islamic Family Law in Indonesia*, Cv Arjasa Pratama, Bandar Lampung, p. 5.

³ Virahmawaty Mahera and Arhjayati Rahim, 2022, "The Importance of Marriage Registration", *Journal of Islamic Law* Vol. 3, No. 2. pp. 92-101.

⁴ Wati Rahmi Ria, 2017, *Islamic Family Law*, Faculty of Law, University of Lampung, Lampung, p. 68.

⁵ Parjono, et al., 2024, "Legal Protection of Marriage Not Recorded Through Isbat Nikah in the Wamena Religious Court", *Journal Of Law Review*, Volume 3 Number 2, pp. 71-82.

status of their husbands, wives, and children. It also provides protection for rights that may arise, such as alimony rights, joint property rights, inheritance rights, and the right to obtain legal identities such as birth certificates and family cards.

Although the Marriage Law emphasizes that every marriage needs to be recorded to be proof of the legality of the event, as stated in Article 2 paragraph (2) of the Marriage Law, the reality is that there are still many people who get married without registering it. In the view of Islamic law, if a marriage has met the specified conditions and harmony, then the marriage is considered valid. However, without a Marriage Certificate, its status cannot be proven by state law. To overcome the problem of the legality of marriage according to positive law in Indonesia, the Compilation of Islamic Law provides an opportunity to apply for itsbat nikah in order to obtain a Marriage Certificate.

Etymologically, the term Itsbat Nikah consists of two words: itsbat, which comes from the word atsbat which means to determine, and nikah, which comes from the word nakaha which means to marry each other. Therefore, itsbat nikah can be interpreted as the determination of marriage.⁶

Regarding the requirements for Isbat nikah are listed in the Compilation of Islamic Law Article 7 paragraph (3), namely:

- a. The existence of marriage in the context of resolving divorce,
- b. Loss of Marriage Certificate.
- c. There are doubts about the validity or not of one of the conditions of marriage
- d. The existence of marriages that occurred before the enactment of Law Number I of 1974 and
- e. Marriages carried out are those who do not have marriage obstacles according to Law Number 1974.

Itsbat Nikah is a solution to the disharmony between Islamic Law and Positive Law in the validity of a marriage. Itsbat Nikah aims to obtain the rights of those who perform marriage under their hands, including personal documents from the authorized agencies. It also provides a guarantee of legal protection for married couples, as well as protecting the status of children born from the marriage, as well as legal consequences that may arise in the future. However, if it is proven that the marriage does not meet the requirements and harmony, or if there is a prohibition violated in religious law or law, then the application for isbat nikah will not be accepted or will be rejected.

⁶ Muhammad Yusuf Nasution, 2024, Analysis of the Determination of the Sibuhuan Religious Court Case Number 90/Pdt. P/2023/Pa. SBH and Number 217/Pdt. P/2022/PA. SBH Regarding Isbat Nikah Polygamy Reviewed from the Perspective of Justice. Diss. Uin Sheikh Ali Hasan Ahmad Addary Padangsidempuan.

In practice, the application for Isbat Nikah is not always granted by the Court, even though the marriage has fulfilled the reasons and provisions of the terms and harmony in Islam as well as the provisions of the Marriage Law. One example is Determination No. 47/Pdt.P/2021/PA. Tas, Bengkulu where the judge of the Tais Religious Court rejected the application for isbat nikah between Petitioner I and Petitioner II on the grounds that the petitioners did not show good faith to register their marriage.

The marriage between Petitioner I and Petitioner II was carried out based on Islamic law and both of them had no prohibition on carrying out marriages. The two held a wedding on Friday, June 26, 2020 in Talang Sali Village, East Seluma District, Seluma Regency, with the guardian of Petitioner II's biological father, Julian, but the marriage was not registered with the KUA of the district where the marriage was held. Therefore, based on that, the judge was of the opinion that there was no good faith of Petitioner I and Petitioner II to register their marriage. Then, based on the provisions in the Compilation of Islamic Law, the parties can submit an application for itsbat nikah as stipulated in Article 7 paragraph (3) letter e, which states that itsbat nikah can be submitted for marriages carried out by those who do not have marriage obstacles according to Law Number 1 of 1974 concerning Marriage. As long as the marriage does not conflict with the provisions of the applicable laws and regulations, the application for itsbat nikah can be submitted to the Religious Court to obtain state legal validity.

METHODS

This research uses a normative juridical legal research method, This method is an approach that focuses on library research, namely by examining various library materials or secondary data. The secondary data in question can be in the form of books, court determinations, journals, magazines, newspapers, articles from the internet, and other sources relevant to the subject of research.⁷ This research uses a descriptive **nature**. Descriptive research is a type of research that functions to explain or describe in detail the legal conditions that apply in a certain area, including about juridical phenomena that arise, or certain legal events that occur in society.⁸ Where this research will later describe the discussion of itsbat nikah. In this study, the approaches used are the statute approach, conceptual approach and case approach.

⁷ Nuruk Qamar and Farah Syah Reza, 2020, Doctrinal and Non-Doctrinal Legal Research Methods, Cv. Social Politic Genius (Sign), Makassar, p. 48.

⁸ Muhaimin, 2020, Legal Research Methods, Mataram University Press, Mataram , p. 26

RESULTS AND DISCUSSION

1. The Judge's Consideration In Rejecting The Marriage Istbats Based on Decision Number 47/Pdt. P/ 2021/ Religious Court of Tais Bengkulu

The Tais Religious Court was established based on Presidential Decree Number 15 of 2016. This decision was made to expand public access to justice and improve the quality of legal services, as well as to ensure that the settlement of cases takes place simply, quickly, and at an affordable cost. The Presidential Decree was enacted on April 26, 2016 and includes the establishment of 24 new Religious Courts, including the Tais Religious Court. This establishment follows the addition of 26 Religious Courts regulated in Presidential Decree Number 13 of 2016, and accompanied by the establishment of 3 Sharia Courts through Presidential Decree Number 16 of 2016. In total, the three Presidential Decrees (Numbers 13, 15, and 16 of 2016) resulted in the establishment of 53 new work units in the form of Religious Courts and Sharia Courts.⁹ The Tais Religious Court is located on Jalan RA Kartini, Regional Government Complex, Napal Village, Seluma District, Seluma Regency, Bengkulu Province. This institution handles jurisdiction in the Seluma Regency area and has the status of a court of first instance under the Bengkulu High Court of Religion.¹⁰

Determination Number 47/Pdt.P/2021/PA. The bag decided by Single Judge Umi Fatonah, S.H.I., M.H., and Substitute Registrar Revi Yanti, S.H. at the Tais Religious Court on May 10, 2021 (28 Ramadan 1442 H) adjudicated the application *for marriage rites* submitted by LK (Applicant I) and AY (Applicant II). The two applicants are Muslim, work as farmers, and reside in Talang Sali Village, East Seluma District, Seluma Regency. Before marriage, LK had widower status and AY had widowed status. The marriage was held according to Islamic law on Friday, June 26, 2020 in Talang Sali Village with the marriage guardian of AY's biological father (Julian), witnessed by Sapriadi and Sego Martuno, as well as a cash dowry of Rp50,000.00. This marriage does not violate sharia prohibitions such as blood relations, semenda, or radha'ah and has been blessed with a child named M. Ghio Fabelo. The main reason for submitting the marriage itsbat which was registered on April 14, 2021 is because their marriage has not been registered at the local KUA so they do not have a Marriage Book. The applicants need the determination of the validity of the marriage in order to obtain legal certainty, orderly population administration, and legal protection for their children. To support the application, the

⁹ The Tis Religious Court, <https://Pa-Tais.Go.Id/Seputar-Peradilan/193-Sejarah-Berdirinya-Pengadilan-Agama-Tais>, was visited on March 3, 2026, at 13:00.

¹⁰ The Tis Religious Court, <https://Pa-Tais.Go.Id/Seputar-Peradilan/193-Sejarah-Berdirinya-Pengadilan-Agama-Tais>, was visited on March 3, 2026, at 13:00.

applicants attached four proofs of letters in the form of photocopies of Applicant's ID Card I (P.1), Applicant's Domicile Certificate II (P.2), Applicant's Divorce Deed I (P.3), and Applicant's Divorce Deed II (P.4), all of which have been certified and matched. However, the applicants could not submit evidence of the KUA Circular Letter related to the prohibition of marriage during the pandemic which had been mentioned in the initial acknowledgement.¹¹

In its consideration, the Panel of Judges is of the opinion that an unregistered marriage can still be filed for marriage under Article 7 paragraph (2) and paragraph (3) of the KHI as long as there are justifiable reasons according to the law. PARAGRAPH (2) explains that in the event that the marriage cannot be proven by the Marriage Decree, the marriage issbat can be submitted to the Religious Court. then paragraph (3) The marriage issbat that can be submitted to the Religious Court is limited to matters related to:

- a. The existence of marriage in the divorce settlement process;
- b. Loss of Marriage Certificate;
- c. There is a dispute about whether or not one of the conditions of marriage is valid;
- d. Marriage that occurred before the enactment of Law No. 1 of 1974 and;
- e. Marriages performed by those who do not have a marriage barrier according to Law No.1 Thaun 1974;

In this application, the Petitioners postulated that the non-registration of the marriage was related to the conditions of the COVID-19 pandemic and the restrictions on marriage registration services. However, the Panel of Judges considered that the marriage was held on June 26, 2020, while the restrictions on marriage registration services had ended earlier. At the time the marriage took place, the KUA service had been reopened by implementing health protocols, so that the Applicants still had the opportunity to officially register their marriages. Based on these considerations, the Panel of Judges considered that there was no evidence to show that there were real obstacles that caused the Petitioners to be unable to register their marriages. Thus, the reasons submitted were not sufficient to be the basis for granting the marriage itsbat application. Therefore, the Panel of Judges rejected the application for marriage isbat of LK and YA and stated that if the Petitioners wanted to obtain a marriage certificate, they could hold the marriage officially in front of the Marriage Registrar.¹²

The granting of the application for itsbat nikah is not immediate, but must be based on the results of the examination at the trial. The judge is obliged to ensure that the

¹¹ Determination Number 47/Pdt.P/2021/PA. Bags,

¹² Determination Number 47/Pdt.P/2021/PA. Bags,

marriage has fulfilled the principles and legal requirements of marriage according to Islamic law, and there is no prohibition on marriage either according to religious provisions or applicable laws and regulations. If all of these elements are met and can be legally proven, then the judge has a legal basis to grant the application for itsbat nikah.

The practice of marriage under the hand (*siri*) still occurs often in Indonesia because some people consider marriage to be religiously valid if the principles and requirements of sharia are met, even without official registration. In fact, Article 2 paragraph (2) of Law Number 1 of 1974 mandates the registration of marriages in order to provide certainty and legal protection, especially related to the child's birth certificate, inheritance rights, and civil rights of the wife. As a positive legal solution, the Compilation of Islamic Law (KHI) facilitates the mechanism of *marriage isbat* through the Religious Court. Based on Article 7 paragraph (3) letter (e) of the KHI, unregistered marriages that take place after 1974 can be legalized as long as there are no legal obstacles according to the law and proven to meet the principles of marriage in court.

In the case of Determination Number 47/Pdt.P/2021/PA. The petitioners stated that their marriage was not immediately registered due to service restrictions at the Religious Affairs Office which did not accept new registrations for the implementation of the marriage contract. However, the judge considered the provisions in the Circular Letter of the Director General of Islamic Community Guidance Number P-003/DJ. III/Hk.00.7/03/2020 which was later updated with Circular Letter Number P-004/DJ. III/Hk.00.7/04/2020. In this provision, it is explained that the service restriction is only valid until May 29, 2020. Meanwhile, the facts show that the marriage of the applicants took place on June 26, 2020, which was after the restriction period ended. Based on this, the judge considered that the applicants did not show good faith in trying to register their marriage, even though the opportunity to do so was available. Given that marriage is an important legal event and ideally only occurs once in a lifetime, the recording should be done seriously. Therefore, the application for *Itsbat Nikah* submitted by the applicants was rejected on the grounds that there was no good faith. In the implementation of marriage according to Islamic law in Indonesia, the marriage registration process is carried out before the marriage contract is held. At this stage, the prospective bride and groom are required to meet all the administrative requirements that have been set so that the marriage can be officially recorded by the Office of Religious Affairs (KUA).

It is possible that the applicants have tried to register their marriage before the marriage contract is implemented, but have been rejected as a result of the enactment of a circular related to service restrictions during the pandemic. Considering that the marriage registration process was carried out long before the implementation of the

marriage contract and required the fulfillment of various administrative requirements, this situation should be one of the judges' considerations. The marriage carried out by the applicants is basically in accordance with the provisions and Islamic law, and there are no obstacles to marriage. Therefore, the marriage itsbat application submitted has actually fulfilled the reason for the granting of the marriage itsbat application which is regulated in the provisions of Article 7 paragraph (3) letter (e) of the Compilation of Islamic Law, namely that the marriage does not contradict Law No. 1 of 1974 concerning Marriage. The judge should also consider the aspects of benefits and harms that may arise from the determination. The legalization of marriage through Itsbat Nikah has great benefits, especially in providing legality for applicants. On the other hand, the rejection of the Itsbat Nikah application has the potential to cause legal uncertainty regarding the marital status and the status of the child born, as well as have an impact on the fulfillment of civil rights, especially for wives and children.

The purpose of submitting the application for Itsbat Nikah by the Petitioners is to obtain legal recognition of the marriage that has taken place and to obtain a marriage certificate as official proof of their marriage. This interest is a legitimate legal interest, moreover from the marriage a child has been born which also requires certainty of legal status and legal protection from the state. Based on these considerations, the Panel of Judges should prioritize aspects of utility, legal certainty, and protection of the family that has been formed. Guided by Article 2 paragraph (1), Article 6 and Article 8 of Law Number 1 of 1974 concerning Marriage and Article 7 paragraph (3) letter e of the Compilation of Islamic Law, the application for itsbat nikah submitted by Petitioner I and Applicant II basically has a sufficient legal basis to be granted, considering that there is no obstacle to marriage and the marriage has been carried out in accordance with the provisions of Islamic law.

If you look at the applicant's divorce certificate, the time of marriage with the iddah period is classified as very tight, only a few days apart. Photocopy Proof of Divorce Certificate in the name of Applicant II, Number: 0034/AC/2020/PA. The bag issued by the Registrar of the Tais Religious Court, dated March 24, 2020, while the marriage of the applicants is dated June 26, 2020. In Islamic marriage, marriage registration is carried out long before marriage, the registration requires several file requirements that must be met. For a woman who has been divorced, it is not allowed to remarry immediately. She must

undergo a waiting period called iddah. The iddah period aims to ascertain whether the woman is pregnant or not.¹³

2. Rejection of Itsbat Nikah Based on Positive Law And The Compilation of Islamic Law (Khi); Study On Determination Number 47/Pdt. P/2021 Religious Court of Tais Bengkulu Based On The Perspective Of Legal Certainty and Maslahah Musrsalah

Marriage in Indonesian society, especially for adherents of Islam, has a dimension of obedience both to religious teachings and to state regulations. This means that marriage is not only a religious issue but also concerns the state aspect. From the religious side, its implementation must meet the conditions and harmony set by religion in order to be valid as worship. Meanwhile, from the perspective of the state, marriage is an administrative matter that must be officially recorded by the competent authorities as part of the control of population data and the recording of marriage events in Indonesia.¹⁴ As a country based on the rule of law, Indonesia requires that marriage events be officially recorded in order to achieve administrative order and public interest.¹⁵ Provisions regarding the registration and arrangement of marriage are regulated in a number of laws and regulations, including Law Number 1 of 1974 concerning Marriage and its implementing regulations (Government Regulation Number 9 of 1975), as well as Law Number 23 of 2006 concerning Population Administration. In practice, the implementation of this registration is included in the main duties of related agencies, especially the Ministry of Religion for marriages related to Islamic religious affairs.

Marriage is a binding agreement between a man and a woman to form a relationship as husband and wife. In Islamic teachings, the institution of marriage has a strong foundation, which is sourced from the Qur'an, the Hadith of the Prophet Muhammad S.A.W., and the ijma' of the scholars.¹⁶ A marriage is declared invalid if it does not meet the pillars and conditions, including the presence of a guardian from the woman's side who plays the role of the bride, the presence of two witnesses, and the giving of dowry to the prospective wife.¹⁷ According to the Compilation of Islamic Law (KHI), a marriage

¹³ Ahmad Muslimin, 2020, "Iddah And Ihdad Of Modern Women", Islamic Religious Institute Ma'arif Nahdlatul Ulama (IAIMNU) Metro Lampung, Journal of the Court, Vol. 2, No. 2, P.218-234.

¹⁴ Rahmad Setyawan, 2024, "Measuring Marriage Registration in Indonesia from the Perspective of Fiqhiyyah Rules: Between State Legality and Sharia Validity." *Al-Hakim Journal: Student Scientific Journal, Sharia Studies, Law and Philanthropy*, p. 199-218.

¹⁵ Barzah Latupono, 2020, "Marriage Registration in Indonesia Is Associated with Good Governance." *Sasi Journal* Volume 24 Number 2, pp. 150-160.

¹⁶ Miftahul Huda, 2026 "The Concept of Marriage in the Perspective of the Fiqh School: A Comparative Study of the Classical Fuqaha View." *Al-Kindi Journal* Volume 2 Number 1, pp. 459-470.

¹⁷ Maimun, 2022, "Marriage in the Compilation of Islamic and Civil Law", *Urnal Al-Mizan: Journal of Islamic Law and Sharia Economics*, Islamic Religious Institute (IAI) Al-Aziziyah Samalanga Bireuen Aceh, pp. 12-22.

is declared valid if it meets the predetermined principles and conditions, namely the presence of a prospective husband, future wife, guardian of the marriage, two witnesses, as well as ijab and kabul. In addition, the marriage must be carried out on the basis of the consent of the two prospective brides without coercion and there are no obstacles to marriage according to Islamic law and laws and regulations. The marriage guardian is an important pillar in marriage for the bride-to-be. The guardian can be a guardian of the nasab or a guardian of the judge in certain circumstances. In addition, the marriage must be witnessed by two qualified witnesses, while ijab and kabul are the core of the marriage contract. Dowry is also an obligation of the prospective husband to the future wife and is the full right of the wife after the marriage is held. Based on these provisions, the marriage of Petitioner I and Petitioner II has fulfilled the principles and conditions of marriage according to the KHI. This is shown by the existence of a prospective husband and wife, a marriage guardian, two witnesses, ijab kabul, and dowry. In addition, no marriage obstacles were found. Thus, the marriage of Petitioner I and Petitioner II can be declared valid according to Islamic law.

According to Law Number 1 of 1974 concerning Marriage, the validity of marriage is determined based on the laws of religion and their respective beliefs as stipulated in Article 2 paragraph (1). Thus, the marriage of Petitioner I and Petitioner II can be declared valid according to these provisions because it has been carried out in accordance with Islamic law. In addition, both are Muslims and do not have religious differences that are obstacles to marriage. Article 2 paragraph (2) stipulates that every marriage must be registered in accordance with laws and regulations. The registration serves as administrative evidence and provides legal certainty for the marriage, so that the non-registration of the marriage does not necessarily eliminate the validity of the marriage according to religion. The marriage of the Petitioners has also fulfilled Article 6 and Article 8 of the Marriage Law. Both of them carry out the marriage on the basis of consent and their own will without coercion. At the time of marriage, Petitioner I was a widower and Petitioner II was a widow so that he was not bound by marriage with another party. In addition, no blood relations, semenda relations, dairy relations, or other relationships were found to be prohibited from carrying out marriage.

Based on this description, the marriage of Petitioner I and Petitioner II has fulfilled the provisions of Article 2 paragraph (1), Article 6, and Article 8 of Law Number 1 of 1974 as well as the principles and requirements of marriage according to Islamic law. Thus, in terms of the validity of the marriage, there are no legal obstacles that cause the marriage to be invalid. The condition of not recording the marriage is more related to

administrative and evidentiary aspects, which is the basis for the Petitioners to apply for a marriage certificate in order to obtain legal certainty and protection.

The Indonesian Ulema Council (MUI) in one of its fatwas emphasized that the practice of nikah siri under Islamic law is basically considered valid, as long as all the conditions and pillars of marriage have been met, such as the presence of guardians, witnesses, ijab kabul, and the absence of sharia obstacles.¹⁸ In other words, from the point of view of fiqh, the validity of marriage does not solely depend on administrative records, but on the fulfillment of the basic provisions that have been stipulated in Islamic law. However, the MUI also provides an important affirmation that the status of this ability can turn into haram if in its implementation it causes harm or negative impacts, both for the spouse, the child born, and the community at large. These negative impacts can be in the form of unclear legal status of wives and children, difficulties in obtaining civil rights, and the potential for injustice in domestic relationships. Furthermore, MUI encourages that every marriage is not only religiously valid, but also officially registered with the authorized institution, such as the Office of Religious Affairs (KUA). This registration is seen as a very important preventive step to protect the rights of the parties involved in the marriage. With official registration, legal certainty will be created, the potential for disputes in the future will be minimized, and it will provide stronger protection, especially for women and children.

From the perspective of Islamic law, a series marriage is in principle still considered valid as long as all the pillars and conditions of marriage have been met, such as the presence of a prospective bride, guardian, two witnesses, and ijab kabul which is carried out in accordance with the provisions of sharia.¹⁹ This validity rests on fiqh rules that do not require registration as an element that determines the validity of a marriage contract. However, when viewed from a positive legal perspective in Indonesia, the practice of serial marriage is considered to have not met the applicable provisions because it has not gone through an official registration process at the authorized agency. Unregistered marriages often cause various problems. The woman is often in a disadvantaged position, especially when there is a denial from one of the parties to the existence of the marital relationship. Therefore, although religiously siri marriage can be considered legal, in terms of legal protection, this practice holds many risks. In practice, some people still choose nikah siri for various reasons. Among them are the belief that religious validity is

¹⁸ Syafira Aulia Nurrahmah, 2025, " Marriage of Siri in the Perspective of Maslahah Mursalah" Al-Qolam University of Malang. *Journal of Studies, Social, and Economics* Vol. 6 No.1, pp.76-92.

¹⁹ Kharisudin, 2021, "Nikah Siri in the Perspective of a Compilation of Islamic Law and Indonesian Marriage Law." *Perspective: A Study of Legal Issues and Development* Volume 26 Number 1, pp. 48-56.

enough, as well as concerns or lack of understanding of the procedures and rules for registering marriage.²⁰ In fact, legally, a new marriage can be categorized as a complete legal act if it is not only valid according to religion, but also meets the applicable positive legal provisions.²¹ This means that in addition to being held according to religious teachings, the marriage must also be recorded by an official official in order to obtain state recognition and have legal force that can be accounted for.

Therefore, to establish the relationship between the validity of marriage according to Islamic law and the positive law that applies in Indonesia, the rules to harmonize it are regulated by the provisions as in Article 7 paragraph (2) of the KHI states that "in the event that the marriage cannot be proven by a marriage certificate, a marriage isbat can be submitted to the Religious Court". Furthermore, Article 7 paragraph (3) states that "the isbat referred to in paragraph (2) is limited and only regarding matters related to:

- a. Matters in the context of resolving the divorce;
- b. The loss of the marriage certificate owned;
- c. There is doubt in a marriage whether the marriage is valid or not;
- d. Marriages that were carried out before the enactment of the Marriage Law No. 1 of 1974;
- e. There is a marriage carried out by those who do not have a marriage barrier according to the Marriage Law No. 1 of 1974.

Then, *maslahah mursalah* is a form of benefit that is in line with the purpose of sharia in realizing good for humans while preventing harm.²² In its use as the basis for determining the law, *maslahah mursalah* should not be based on desires alone, but must be oriented towards the purpose of sharia'. This purpose is closely related to the concept of *maqashid shari'ah*, which includes five main elements, namely the protection of religion, soul, intellect, descent, and property.²³ In practice, the application of *maslahah mursalah* by judges is influenced by several factors. First, the judge's understanding of the concept of *maslahah mursalah* and the principles of *ushul fiqh*. Second, the judge's experience in handling family law cases which are often complex. Third, the availability of relevant evidence and information during the trial process. Fourth, there is consideration of social

²⁰ Riyan Hidayatulloh, 2025, Public Views on Siri Marriage and Its Influence on Family Maintenance (Case Study of Sungai Bakau Kecil Village, East Mempawah District). Diss. Unusia.

²¹ Firdaus, Muhammad Rizal, and Ali Maskur. "Sirri Marriage in the Perspective of Islamic Law and Marriage Registration According to the Provisions Applicable in Indonesia (Positive Law)." *Istidal: Journal of Islamic Law Studies*, Volume 11 Number 1, pp. 52-72.

²² Siti Maysyaroh, 2021, "The Implementation of Maslahah Mursalah on the Judge's Consideration In Deciding Cases in Religious Courts", Postgraduate University of Madura State Islam, pp. 1-16.

²³ Siti Maysyaroh, 2021, "The Implementation of Maslahah Mursalah on the Judge's Consideration In Deciding Cases in Religious Courts", Postgraduate University of Madura State Islam, pp. 1-16.

and cultural values that develop in the local community.²⁴ The existence of *maslahah mursalah* also provides space for judges to produce solutions that are more innovative and adaptive to the times. In many cases.²⁵ Family law issues have a high complexity and cannot always be solved with a normative approach alone. Therefore, through consideration of benefits, judges can explore the values of justice that live in society and accommodate the needs of the parties in a more proportionate manner.

Furthermore, according to Utrecht, legal certainty has two meanings. First, there are general norms that help individuals understand what actions are allowed or prohibited. Second, legal certainty provides protection for individuals from arbitrary government actions, because with these norms, individuals can know what the state can impose or do against them.²⁶ Although in the perspective of Islamic law, marriage is not recorded or considered valid, but because it is not officially recorded, the state does not recognize it.²⁷ As a result, various problems in the household, including in the event of divorce, cannot be resolved through formal legal channels. The impact of this absence of recording is quite detrimental, especially for the wife. One way that legal certainty in the context of marriage can be obtained by couples who want to get married is by registering their marriage legally through an institution that has been determined by law. Marriage registration is important for people to obtain legal certainty for marriage and the birth of their children. Through the official marriage registration process, as evidenced by a marriage certificate, each married couple will receive a copy of the document. Which later serves as legal evidence that validates their relationship as a married couple. ²⁸ If a marriage has been legally carried out according to Islamic law, but has not been officially registered by the state, then there are legal remedies that can be taken so that the marriage obtains legal recognition, namely through marriage *itsbat*. ²⁹ Through *itsbat nikah*,

²⁴ Encep Rifqi Abdul Aziz, 2024, Considerations of the Cianjur Religious Court Judges in Deciding the Case of a Marriage Dispensation Application Reviewed from The *Maslahah Mursalah*, Master of Law (M.H) in the Family Law Study Program, Sunan Gunung Djati State Islamic University, Bandung, pp. 1-155.

²⁵ Gofar, Abdul, Siti Amina, and Nisrina Fajrin. "Reconstruction of the Concept of *Maslahah Mursalah* as the Basis of Contemporary *Ijtihad* in Answering the Challenges of Modernity." *Tamaddun Journal* Volume 10 Number 1 (2025).pp. 10-28.

²⁶ Oksidelfa Yanto, 2020, The State of Law: Certainty, Justice and Legal Utility (In the System Criminal Justice in Indonesia), Pustaka Rekripta, Bandung, p. 27.

²⁷ Firdaus, Muhammad Rizal, and Ali Maskur, 2024, "Sirri Marriage in the Perspective of Islamic Law and Marriage Registration According to the Provisions Applicable in Indonesia (Positive Law)." *Istidal: Journal of Islamic Law Studies* Volume 11 Number 1, pp. 52-72.

²⁸ Syofiyullah, Et., Al., 2023, "Legal Certainty for Wives and Children in Marriage Is Not Recorded in Indonesia." *Hukmy: Jurnal Hukum*, Volume 3 Number 1, pp. 263-284.

²⁹ Faiz, Ahmad, and Sri Redjeki Slamet, 2025, "The Determination of *Isbat Nikah* for Marriages That Are Not Recorded at the Office of Religious Affairs and Its Legal Implications on the Legal Status of Husband

married couples can apply to the religious court in their area of residence so that their marriage gets legal certainty from the state.

CONCLUSION

Based on Determination Number 47/Pdt.P/2021/PA. Tais, the judge rejected the application for Itsbat Nikah because the Judge considered that the applicants did not show good faith to immediately register their marriage, the applicant's reason that they could not register their marriage because there were covid19 restrictions proved to be incorrect. Although, the marriage has fulfilled the principles and conditions of marriage according to Islamic law as well as the provisions of Article 7 paragraph (3) letter (e) of the Compilation of Islamic Law, and does not contradict Article 2 paragraph (1), Article 6, or Article 8 of the Marriage Law.

Marriage for Muslims in Indonesia must meet two aspects, namely legal according to Islamic law and recognized by the state through official registration. Marriages that meet the principles and conditions and are registered have complete legal force. On the other hand, an unregistered marriage (nikah siri) can still be considered valid according to Islamic law if the harmony and conditions are met, but do not have legal evidence in the form of a marriage certificate. This condition can cause various problems, such as difficulties in obtaining civil rights, recognition of family relationships, legal protection in case of problems and administrative services. To overcome this, Islamic law and positive law provide a mechanism for Itsbat Nikah through the Religious Court as an effort to provide legal certainty for marriages that are carried out only according to Islamic law, but this submission cannot necessarily be granted, there must be a legal justification that can convince the judge that the marriage can be legalized by state law.

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