



Controversy over Religious Court Decisions Regarding Marriage Isbat Laws

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Abstract

Controversy in religious court decisions regarding marriage Isbat laws is a complex discussion in the context of Islamic law. Isbat nikah, the process of legalizing marriage in the religious realm, is often a source of disagreement between the parties involved. This research aims to find out the decision of the religious court regarding the law on Isbat nikah. This research uses library research, collecting books and writings that are directly or indirectly related to the issues above. After the data is collected, classification analysis is then carried out using deductive methods to reach conclusions. Isbat nikah is a request for validation submitted to the Religious Court to declare the marriage valid so that it has legal force. Reasons for submitting a marriage Isbat in KHI Article 7 paragraph 3: The existence of a marriage in the context of settlement, the loss of a marriage certificate, the existence of a marriage that occurred before the enactment of Marriage Law No. 1 of 1974, a marriage carried out by those who do not have obstacles to marriage according to Law No. 1 of 1974. People who have the right to apply for a marriage Isbat in KHI Article 7 paragraph 4, namely husband, wife, their children, and parties who have an interest in the marriage. The urgency of the marriage Isbat Provides a guarantee of legal certainty for every marriage and provides a guarantee of legal protection for the offspring of each couple. Marriage applications Isbat are made at the Religious Court at the place of domicile of the couple who will carry out their marriage Isbat.

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INTRODUCTION

Marriage is a legal act, the main purpose of legal arrangements in marriage is an effort to create a household that is *sakinah, mawaddah* and *rahmah* as well as avoiding the potential of tyranny between one party and the other (Sanawiah, 2015). The statement in the community is that there are still many marriages that were performed after the enactment of Law Number 1 of 1974 that were not recorded at the Marriage Registrar of the Office of Religious Affairs for various reasons and reasons so that they do not have a Marriage Book (Arif, 2015; Wodon, 2015).

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From these facts, it is clear that married couples who do not have a Marriage Book because their marriage is not registered or recorded, cannot obtain their rights to obtain the necessary personal documents, including their children will not obtain a Birth Certificate from the Civil Registry Office (Bhatia & Bhabha, 2017; Zainuddin, 2022). The solution that can be taken by them is to submit a request for marriage registration at the Religious Court. The marriage registration certificate issued by the religious court itself is then used as a basis for registering their marriage with the Marriage Registrar of the Religious Affairs Office, and then the Religious Affairs Office will issue a Marriage Book or Marriage Certificate Excerpt (Zaidah, 2014; Murphy, 2016; Kizi & Kakhramonovich, 2021).

In this journal, we will discuss the Marriage Isbath, the urgency of the marriage Isbath and the process of resolving it in the Religious Courts. It is felt that the resolution process is urgent to be discussed because many people, both intellectuals and ordinary people, do not understand the procedures for arranging marriage isbath in the Religious Courts.

METHODS

This research is a series and process of enriching knowledge. Research cannot be separated from the principles, concepts, truths and values that have been successfully collected to form a good form of science (Sigala & Chalkiti, 2015; Davidavičienė, 2018). However, humans are always trying continuously to develop the unity of knowledge through various methods by testing alleged truths (hypotheses) thinking logically, humans are trying to explore problems that will be answered through research data. The method used is the descriptive method. What is meant by descriptive method is research carried out to determine the existence of independent variables, either only one variable or more (standalone variables) without making comparisons and looking for relationships between that variable and other variables (Harto, 2018; Owoyemi, 2020; Hartati et al., 2021; Weir et al., 2022).

The specifics of this research include qualitative descriptive. The descriptive method is a research method whose analysis is only at the level of describing what it is, namely by presenting facts systematically so that they are easy to understand and conclude, without testing hypotheses. The research using descriptive methods aims to systematically describe certain facts (Suryantoro & Kusdyana, 2020). An empirical juridical approach is an approach that refers to written regulations or other legal materials of a secondary nature, to see their application or implementation through field research carried out sociologically so that clarity is obtained about the matter being studied. In this research, the author also takes an empirical juridical legal approach. The approach is taken by paying attention to the realities that occur in society and then connecting them with applicable legal provisions. Research through a sociological juridical approach.

RESULT AND DISCUSSION

Etymologically, the word *Isbat nikah* comes from Arabic and consists of two words, namely the words "*Isbat*" which is *masdar*, or the origin of the word "*atsbata*" which means "determination, confirmation, and approval" and the word "*marry*" derived from the word "*able*" which means *character or mascot* (getting along with a wife), some linguists also say that the basic meaning is *aqad* thus saying "*Isbat marriage*" means "determination of marriage" (Musfira et al., 2021). In the Big Indonesian Dictionary, *Isbat marriage* is the determination of the truth (validity) of the marriage.

In terms of terminology, *Isbat nikah* is a validation of a marriage that has been performed according to Islamic religious law but has not been recorded by the competent KUA or PPN (Yazid, 2019). In book I of the Guidelines for

Implementing Duties and Administration of Courts, it is stated that *Isbat nikah* is an application for the legalization of marriage submitted to the Religious Court to declare the marriage valid so that it has legal force. In book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts, it is also stated that marriage *Isbat* is the Ratification of a Marriage that has been solemnized based on religion or has not been recorded by the authorized PPN (Marriage Registrar).

The legal basis for implementing *Isbat nikah* is as follows; Law Number: 22 of 1964 concerning Marriage Registration, Divorce and Reconciliation, Law Number: 1 of 1974 concerning Marriage, Law Number: 7 of 1989 concerning Duties and Authorities of Religious Courts, Presidential Instruction Number: 1 of 1991 concerning Compilation of Islamic Law. In the Compilation of Islamic Law Article 7 paragraph 2, it is stated that; the marriage regulations that can be submitted to the Religious Court are limited to matters relating to (Sururie, 2017).

Existence of Marriage in the Context of Settlement of Divorce

In Law Number: 1 of 1974 Article 39 Paragraph (1) states that divorce can only be carried out in front of a Court hearing after the Court concerned has tried and failed to reconcile the two parties. According to Atho Muzhar, the rules above are different from classical *fiqh* books which state that divorce can occur with a unilateral statement from the husband, either verbally or in writing, in earnest or in jest. According to Atho Muzhar, the aim of Article 39 paragraph (1) is to make it difficult and reduce the occurrence of divorce (Fikri et al., 2019). Makmur Syarif also conveyed the same thing, that the aim of Article 39 paragraph (1) is not only to make it difficult for divorce to occur but also to preserve and preserve women's rights.

One of the requirements that must be completed by people who are going to apply for a divorce in the Religious Court is a marriage certificate, and therefore a marriage certificate is mandatory for people who are going to get a divorce in the Religious Court (Hanapi & Yuhermansyah, 2020; Muslih et al., 2020).

Loss of Marriage Certificate

A marriage certificate is authentic proof of a marriage, it has the benefit of being a "legal guarantee", besides that a marriage certificate is also useful for proving the legitimacy of children from that marriage (Pasamai & Baharuddin, 2020; Anggraini & Jannah, 2022). Of course, legal action cannot be taken to court if the marriage cannot be proven by the certificate (Yudhistira, 2013). In the Compilation of Islamic Law article 7 paragraph (1) it is stated that marriage can only be proven by a marriage certificate made by a Marriage Registrar. Article 2 paragraph (2) of Law 1/1974 expressly orders that every marriage must be recorded according to the applicable laws and regulations. Based on the two legal bases above, it is clear that every marriage that is legally conducted according to the laws of each respective religion and belief must be recorded according to the applicable laws and regulations so that the marriage has legal standing. This means that if the marriage is not registered, it does not automatically have legal standing as a marriage according to Law 1/1974.

Marriage registration as intended in Article 2 paragraph (2) above aims to: orderly administration of marriages; provide certainty and protection for the legal status of husbands, wives and children; and provide guarantees and protection for certain rights arising from marriage such as inheritance rights, the right to obtain a birth certificate, etc (Ismail, 2023). That Article 2 paragraph (2) of the quo Law does not stand alone because the phrase "recorded following applicable laws and regulations" means that marriage registration cannot be carried out immediately, but rather that registration must follow the requirements and procedures stipulated. In legislation. This is intended so that the rights of husbands, wives and children can truly be guaranteed and protected by the state. These requirements and procedures

include the provisions regulated in Article 3 paragraph (2), Article 4, Article 5, Article 9, and Article 12 of the Marriage Law, and Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, especially Articles 2 to Article 9.12.

Even though marriage is included in the scope of civil law, the state is obliged to guarantee legal certainty and provide legal protection to the parties involved in the marriage (husband, wife and children), especially with population administration records related to civil rights and obligations. Therefore, recording each marriage becomes a formal requirement for the legality of an event which can result in juridical consequences in terms of civil rights and obligations such as the obligation to provide maintenance and inheritance rights. Marriage registration is stated in an official certificate (authentic certificate) and contained in the registration list issued by an authorized institution (Nasir, 2020).

When a debt contract or other work relationship has to be recorded, it must be a marriage contract that is so noble, grand, and sacred that it is even more important to be recorded. A marriage contract is not an ordinary puzzle but a very strong agreement, as mentioned in the Qur'an, chapter an-Nisa', verse 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

"How will you take it back, even though some of you have mixed (mixed) with others as husband and wife and they (your wives) Have taken from you a strong covenant."

Maqashid sharia approach as explained above, in the Al-Quran and al-Hadith, which are the main sources of Islamic law, no explanation explicitly discusses marriage registration. Either ordering or prohibiting its implementation. So we can say that the provision of marriage registration is a form of legal reform in the field of family law through *ijtihad* (Awaliyah, 2022; Kusmardani et al., 2023).

In line with the development of the times and paying attention to the needs and conditions of Indonesian society today, where there are often violations of the rights and obligations in marriage between husband and wife, it is deemed important to carry out further legal exploration (legal reform in the field of Islamic family law), namely by realizing a new law in the form of promulgating provisions for marriage registration as authentic proof that a marriage has occurred in addition to having sharia witnesses so that the marriage between the two can be recognized before the law.

Renewing Islamic law is very important at this time. So that Islamic law can still accommodate all new problems that arise during this period. This statement is in line with what Abdul Manan said that reform of Islamic law in Indonesia needs to be carried out due to several factors (Manan, 2021; Ramadhan, 2020). First, to provide legal rules because there are several issues regarding which the book of fiqh does not regulate, while the community's need for these issues is urgent. Second, the influence of economic globalization and technological science means that there is a need for legal regulations to regulate them, especially problems for which there are no legal regulations. Third, the influence of reform in various fields provides opportunities for Islamic law as reference material in making national laws. Fourth, the influence of the renewal of Islamic legal thought carried out by mujtahids both at the international and national levels, especially matters relating to the development of science and technology (Millati, 2017).

About marriage registration, in the modern era marriage registration is an urgent need in the lives of Indonesian society even though the provisions for marriage registration are not explicitly explained in Islamic law (Azizah, 2019). This is because the rights and obligations between husband and wife and children born from the marriage of parents whose marriage is not registered cannot be recognized and protected by the law. After all, there is no authentic evidence. For example, a child cannot get a birth certificate. A birth certificate has important value as a child's legal

identity and legal state recognition of a child's existence, related to citizenship and his rights as a citizen (Setiawan, 2017).

From this, we can understand that the provisions for marriage registration are the result of exploring Islamic law through the *maqasyid al-syariah* approach with the considerations mentioned above. So we must understand that the provisions for marriage registration are part of Islamic law itself. There is no dichotomous line between Islamic law and law in terms of provisions for marriage registration as most people understand. In this way, "legal smuggling" cannot be justified at all, which simply because there are no provisions clearly stated in Islamic law is then used as an excuse for not carrying out marriage registration.

Reforming Islamic law to accommodate the needs of society according to time and conditions, such as the implementation of provisions for registering marriages, has gained legitimacy in the study of Islamic law. As stated in the rules of *fiqh*: It cannot be denied that legal changes occur with changes in time and circumstances (situations and conditions) (Rusfi, 2014).

There is doubt about the validity or invalidity of any of the conditions of marriage

The marriage contract involves pillars and conditions that play a crucial role in determining whether the marriage is valid or not. The main elements include the man, woman, marriage contract, guardian, witnesses, and dowry. The *ulama* determines the contract, the bride and groom, the guardian and the witnesses as pillars that must be fulfilled for the marriage to be valid (Rizal et al., 2023). The dowry, while not determining the validity of the contract, must still be fulfilled during the marriage. Doubts about the terms and conditions can affect the validity of the marriage, so submitting a marriage *Isbat* to the Religious Court can be a solution if there is uncertainty (Hidayat et al., 2019).

The existence of a marriage that occurred before the enactment of Law Number: 1 of 1974

Law No.1 of 1974, which is a codification of national marriage law, created a new era for Muslims and Indonesian society. Previously, the diversity of marriage laws created doubt and manipulation. The birth of this law, which was separate from Customary Law, is considered to be the end of the *devil reception theory* influenced by Snouck Hurgronje. However, marriage registration, as regulated in Article 2 paragraph (2), still experiences problems to this day, even though it has been socialized for more than 30 years. Before this law, Muslim communities followed *fiqh* books as guidelines, without the requirement for registration at the Office of Religious Affairs (Muchtar & Kasim, 2022). Therefore, Law No. 1 of 1974 and the Compilation of Islamic Law provide a solution by allowing people whose marriages have not been registered to submit a marriage *Isbat* to the Religious Court. This aims to ensure that not only the *fiqh* aspect but also the civil aspect is fulfilled while creating order and justice.

Marriages are carried out by those who do not have obstacles to marriage according to Law Number: 1 Year 1974

Law No. 1 of 1974 concerning Marriage has existed for more than 35 years, but there are still many Muslims in Indonesia who do not register their marriages at the Religious Affairs Office (KUA). Some of the contributing factors include the understanding that a marriage is considered valid without registration if the conditions and harmony are met (Pratama, 2023). There is also abuse by individuals seeking personal gain. To overcome this problem, the Law and the Compilation of Islamic Law provide a solution through *Isbat* marriage in the Religious Courts (Waskito, 2018). This process can be submitted by the husband, wife, children, marriage guardians, and interested parties. The marriage certificate is important to provide legal certainty regarding marital status, especially for those who have not

registered their marriage at the KUA. Marriage registration, issued by the Marriage Registrar, is legal and constitutive proof of marriage. The Compilation of Islamic Law emphasizes the importance of this registration to maintain marriage order in Islamic society. Article 7 of the Compilation of Islamic Law allows Isbat marriage in the Religious Courts in certain situations, and the husband, wife, children, guardian of the marriage, and parties interested in the marriage have the right to apply for Isbat marriage.

Provides legal protection guarantees for descendants of every pair

Marriage registration, even though it is administrative, guarantees legal protection for descendants and the parties entering into the marriage. Even though it does not determine whether a marriage is valid or not, administrative registration ensures clarity of marital status. Provisions on the legality of marriage are required by Article 2 paragraph 2 of the Marriage Law. This recording is important to provide legal certainty and protection. The consequences of not registering a marriage include unclear status of children, difficulties with divorce, and legal risks (Nisa, 2018). Marriage registration is a solution, but there are still many people who do not register their marriages for reasons of cost, distance, lack of understanding and complexity of the process. The marriage process involves steps such as coming to the Religious Court, making a request letter, attaching documents, paying court fees, attending the trial, and taking a copy of the decision. After that, a copy of the decision can be used to register the marriage at the local KUA.

CONCLUSION

Isbat nikah is an application for the legalization of marriage submitted to the Religious Court to declare the marriage valid so that it has legal force. The reasons for applying for a marriage bath are contained in the Compilation of Islamic Law, Article 7 paragraph (3), namely; The existence of marriages in the context of completion, the loss of marriage certificates, the existence of marriages that occurred before the enactment of Marriage Law Number 1 of 1974, marriages carried out by those who do not have obstacles to marriage according to Law Number 1 of 1974. Some people have the right to apply for a marriage certificate in Compilation.

Islamic Law Article 7 paragraph (4), namely; husband, wife, their children, and parties interested in the marriage. The urgency or purpose of Isbat nikah is, to provide legal certainty for every marriage, and to guarantee legal protection for the offspring of each couple. Applications for a marriage Isbat can be made at the Religious Court at the domicile of the couple who will perform the marriage Isbat.

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