



Itsbat Marriage (The Urgency and Process of Settlement in Religious Courts)

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Abstract

Our country is a country governed by law. From a legal perspective, in order to maintain order in Islamic society, marriages must be registered at the Office of Religious Affairs as stipulated in Article 2 paragraph (1) of Law No. 1 of 1974 and Article 4 of the Compilation of Islamic Law. The government provides a solution for unregistered marriages through the process of *itsbat* marriage. The provisions of the law that serve as the legal basis for the Religious Court to perform *itsbat* marriage are the explanation of Article 49 paragraph (2) point 22 of Law No. 7 of 1989 concerning Religious Courts and Article 7 paragraphs (2) and (3) letter d of the Compilation of Islamic Law. The results of the study show that *isbat* marriage is a request for marriage validation submitted to the Religious Court to declare the marriage valid so that it has legal force. The reasons for submitting *itsbat* marriage are contained in the Compilation of Islamic Law Article 7 paragraph (3), namely; the existence of a marriage in the context of settlement, the loss of a marriage certificate, a marriage that took place before the enactment of the Marriage Law No. 1 of 1974, or a marriage conducted by individuals who do not have any legal impediments to marriage under Law No. 1 of 1974. The persons entitled to apply for *itsbat* marriage are specified in Article 7(4) of the Compilation of Islamic Law, namely: the husband, wife, their children, and parties with an interest in the marriage. The urgency or purpose of *itsbat* marriage is to provide legal certainty for every marriage and to provide legal protection for the offspring of each couple. An application for *itsbat* marriage may be filed at the Religious Court in the place of residence of the couple seeking *itsbat* marriage.

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INTRODUCTION

Marriage is a strong bond or agreement between a man and a woman. Awareness of this bond has a significant impact on efforts to achieve a happy and lasting marital relationship based on Islamic law.

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Therefore, when conducting a marriage, both prospective spouses need to have a good understanding of the marriage contract procedures according to both Islamic law and the applicable state laws in Indonesia, as outlined in Law Number 1 of 1974 on Marriage (Oktavia, 2025; Suryaningsih & Hayati, 2023). Marriage is a legal act, and the main purpose of legal regulations in marriage is to create a harmonious, loving, and compassionate household and to avoid potential injustice between the two parties (Hudafi, 2020; Marwa, 2021). In reality, many marriages conducted after the enactment of Law No. 1 of 1974 have not been registered with the Marriage Registrar at the Religious Affairs Office for various reasons, resulting in the absence of a Marriage Certificate.

From this fact, it is clear that married couples who do not have a Marriage Certificate because their marriage is not registered or recorded cannot obtain their rights to the necessary personal documents, including their children not receiving Birth Certificates from the Civil Registry Office (Engkizar et al., 2024). The solution available to them is to file a request for marriage validation at the Religious Court. The marriage validation decision issued by the Religious Court is then used as the basis for registering their marriage with the Marriage Registrar at the Religious Affairs Office, which will subsequently issue a Marriage Certificate or Marriage Certificate Extract. This journal will discuss marriage validation, the urgency of marriage validation, and the process of its completion at the Religious Court. The completion process is considered urgent to discuss because many people, both intellectuals and the general public, do not understand the procedures for processing marriage validation at the Religious Court.

METHOD

The type of research used is library research, which involves collecting books and writings that are directly or indirectly related to the above issues (Fatha Pringgar & Sujatmiko, 2020). The approach used is a normative legal approach, which is an approach based on primary legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research.

RESULTS AND DISCUSSION

Definition of *Itsbat* Marriage

Etymologically, the term *itsbat* marriage originates from Arabic and consists of two words: *itsbat*, which derives from *atsbata* and means determination, confirmation, and approval, and *marriage*, which comes from *nakaha* and means *wathak* or *jimak* (sexual intercourse with one's wife). Some linguists also note that its basic meaning is *aqad*. Thus, the term "*itsbat* marriage" means the establishment of marriage. In the Indonesian Dictionary, *itsbat* marriage is defined as the establishment of the validity (legitimacy) of marriage (Engkizar et al., 2022).

In terms of terminology, *itsbat* marriage is the legalization of a marriage that has been conducted according to Islamic law but has not been registered by the Office of Religious Affairs or the authorized Marriage Registrar (Ningrum, 2023; Rofiqi et al., 2020). In Book I of the Guidelines for the Performance of Duties and Administration of Religious Courts, it is stated that *Itsbat* Marriage is a request for the validation of a marriage submitted to the Religious Court to declare the marriage valid and legally binding. In Book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts, it is also stated that marriage validation is the validation of a marriage that has been conducted according to religious law or has not been recorded by the authorized Marriage Registrar.

Reasons for Filing for *Itsbat* Marriage

Under Article 7(2) of the Compilation of Islamic Law, the recognition of marriage that may be submitted to the Religious Court is limited to matters related to, first, the existence of a marriage in the context of divorce proceedings. It cannot be denied that to this day, there remains a segment of the Muslim community that understands marriage regulations to prioritize a fiqh-centric perspective (Engkizar et al., 2021). According to this understanding, a marriage is considered valid if its conditions and pillars are fulfilled according to fiqh provisions, without being followed by registration evidenced by a marriage certificate. Such conditions are practiced by some communities by reviving the practice of secret marriages without involving Marriage Registration Officers. Moreover, if there are individuals who take advantage of this opportunity to seek personal gain without considering the aspects and values of justice that are the primary mission of marriage, such realities become a major obstacle to the successful implementation of the Marriage Law. This situation also hinders divorce proceedings due to the absence of a marriage certificate as authentic proof of marriage.

In Law Number 1 of 1974 Article 39 Paragraph (1), it is stated that divorce can only be carried out before a court hearing after the court concerned has attempted and failed to reconcile the two parties. According to Atho' Muzhar, the above rule differs from classical fiqh texts, which state that divorce can occur through a unilateral statement by the husband, whether verbal or written, whether serious or joking. The purpose of Article 39(1), according to Atho' Muzhar, is to make divorce more difficult and reduce its occurrence. A similar view was expressed by Makmur Syarif, who stated that the purpose of Article 39(1) is not only to make divorce more difficult but also to protect and uphold women's rights.

Second, the loss of the marriage certificate. The marriage certificate is authentic proof of a marriage, and it serves as legal collateral. In addition, the marriage certificate is also useful for proving the legitimacy of children from that marriage (Mangku & Yuliantini, 2020; Zainuddin, 2022). Legal action in court cannot be taken if the marriage cannot be proven with the certificate. Article 7(1) of the Compilation of Islamic Law states that a marriage can only be proven with a marriage certificate issued by a Marriage Registrar. Article 2(2) of Law No. 1 of 1974 explicitly mandates that every marriage must be registered in accordance with applicable laws and regulations. Based on the two legal bases above, it is clear that every marriage conducted in accordance with the laws of each religion and belief must be registered in accordance with applicable laws and regulations in order for the marriage to have legal standing. This means that if the marriage is not registered, it does not have legal standing as a marriage under Law No. 1 of 1974 (Bahri & Khumaini, 2020; Putri, 2021).

Although marriage falls under civil law, the state is obligated to provide legal certainty and legal protection to the parties involved in marriage (husband, wife, and children), particularly in relation to administrative population registration concerning their civil rights and obligations (Addinur & Djajaputra, 2024; Ayu Mihardi, 2022). Therefore, the registration of each marriage is a formal requirement for the legality of an event that can result in legal consequences in terms of civil rights and obligations, such as the obligation to provide financial support and inheritance rights. Marriage registration is stated in an official document (authentic deed) and recorded in a registry issued by an authorized institution (Devi Azwar et al., 2022).

The development of thinking about the basis for the command to record marriages has at least two reasons, namely qiyas and maslahah mursalah. Qiyas; it is likened to the recording of mudayanah activities, which in certain situations are commanded to be recorded. If debt agreements or other employment relationships must be recorded, then the marriage contract, which is so noble, grand, and sacred,

should be even more important to record. A marriage contract is not a ordinary transaction but a very strong agreement (Luthfia & Hanif, 2022; Widhy et al., 2024). The *maslahah mursalah* approach, in line with the development of the times and considering the needs and conditions of Indonesian society today, where violations of rights and obligations in marriage between husband and wife often occur, it is deemed important to conduct further legal research (legal reform in the field of Islamic family law) by establishing a new law in the form of a regulation on marriage registration as authentic evidence that a marriage has taken place, alongside the presence of sharia witnesses, so that the marriage between the two parties can be recognized under the law (Sugeng, 2021).

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 (Sugitanata, 2022). So, we should understand that these provisions for marriage registration are part of Islamic law itself. There is no clear-cut distinction between Islamic law and legislation regarding marriage registration regulations, as is commonly understood by the public (Quthny et al., 2022; Adrianto, 2024). Therefore, the circumvention of the law is entirely unjustifiable, as the absence of explicit provisions in Islamic law cannot be used as a justification for failing to conduct marriage registration.

Third, there is doubt about the validity or invalidity of one of the requirements for marriage. The implementation of a marriage contract cannot be separated from the pillars and requirements of marriage. The pillars and conditions are crucial in determining the legality of a marriage, particularly regarding its validity. Therefore, the pillars and conditions of marriage must be fulfilled in a marriage, both in terms of internal and external elements (Ardiansyah Ardiansyah et al., 2025; Lelah, 2021). The essential elements of a marriage are the man and woman who are to be married, the marriage contract itself, the guardian who will conduct the contract with the husband, two witnesses who witness the marriage contract, and the dowry. The majority of scholars have established the marriage contract, the bride and groom, the guardian of the woman, and the witnesses as the pillars of marriage, such that if any one of these is missing, the marriage is invalid.

The dowry, on the other hand, is considered a condition in the sense that it does not determine the validity of the marriage contract but must be fulfilled during the marriage. Each of these pillars or conditions is also subject to certain requirements. A person's doubts regarding the pillars and requirements of marriage will affect the validity of the marriage. Therefore, if someone feels uncertain or confused about matters related to the pillars and conditions of marriage, it is advisable to resolve the issue by submitting a request for marriage validation to the Religious Court (Kori & Amran, 2021; Rahman, 2025).

Fifth, marriages that took place before the enactment of Law No. 1 of 1974. Since the enactment of Law No. 1 of 1974, it has been a new era for the interests of Muslims in particular and Indonesian society in general. This law is a national codification and unification of marriage law that establishes Islamic law as having its own existence without being subsumed by customary law. Therefore, it is understandable that some argue that the enactment of this Marriage Law marks the end of the "receptie theory" promoted by Snouck Hurgronje. Marriage registration, as stipulated in Article 2(2), despite having been socialized for over 30 years, still faces prolonged challenges to this day.

Sixth, marriages conducted by those who do not have any impediments to marriage according to Law Number 1 of 1974. Although Law No. 1 of 1974 on Marriage has been in effect and widely disseminated for over 35 years, the reality today is that many Muslims still conduct marriages without adhering to the provisions of the law, including those related to marriage registration (Hidayat, 2022;

Ajo et al., 2022). There are many factors why many Indonesian Muslims still do not register their marriages at the Religious Affairs Office, one of which is the belief that a marriage is considered valid if the requirements and conditions are met, without the need for marriage registration by a Marriage Registrar. Moreover, there are individuals who exploit opportunities for personal gain, disregarding the principles of justice that are the primary mission of a marriage. As explained earlier, for such marriages, Law No. 1 of 1974 and the Compilation of Islamic Law provide a solution for the parties involved to seek marriage validation at the Religious Court (Pratama, 2024; Umar Haris Sanjaya & Putri, 2024). Those who are entitled to file for *Itsbat* Marriage (marriage validation) at the Religious Court based on Article 7 paragraph (4) of the Compilation of Islamic Law are the husband, wife, children, marriage guardian, and parties concerned with the marriage.

The Urgency and Purpose of Submitting *Itsbat* Marriage

Marital status in this case is defined as the state and position of a marriage that has been conducted (Engkizar et al., 2025). In this regard, the law has actually provided a definition of a valid marriage. Article 2 Paragraph 1 of Law Number 1 of 1974 on Marriage states that a marriage is valid if it is conducted in accordance with the laws of each party's religion and belief. Based on the provisions of Article 2 Paragraph 1 of the Marriage Law and its explanation, it can be understood that the benchmark for determining the validity of a marriage is the laws of each party's religion and belief.

Marriage registration does not determine the validity of a marriage but is more of an administrative matter that confirms that the marriage did indeed take place (Hanifah, 2023). With the marriage registered, it becomes clear to both the parties involved and other related parties. A marriage that is not recorded in a marriage certificate is considered non-existent by the state and does not receive legal certainty. The purpose of marriage registration is to provide certainty and protection for the parties entering into the marriage, thereby providing authentic evidence of the marriage's occurrence, enabling the parties to uphold their marriage before the law (Engkizar et al., 2025). Conversely, a marriage that is not registered does not have legal validity or serve as evidence of a marriage.

Submitting an *Itsbat* Marriage Application to the Religious Court

The procedure is as follows: i) visit and register at the Religious Court, ii) visit the Religious Court in the area where you live, iii) prepare an *itsbat* marriage application letter, which can be prepared by yourself or with the help of the Legal Aid Office at the local Religious Court free of charge, or seeking assistance from a Legal Advisor or Attorney, iv) paying the Case Filing Fee, v) waiting for the court summons, vi) the court will send a summons letter stating the date and location of the hearing directly to the applicant and respondent at the address listed in the application letter, vii) attending the hearing, viii) hearing the court's decision.

CONCLUSION

Isbat Marriage is a request for marriage validation submitted to the Religious Court to declare the marriage valid so that it has legal force. The grounds for filing an *Itsbat* Marriage are outlined in Article 7, Paragraph 3 of the Compilation of Islamic Law. Those entitled to file an *Itsbat* Marriage are specified in Article 7, Paragraph (4) of the Compilation of Islamic Law, namely: the husband, wife, their children, and parties with an interest in the marriage. The urgency or purpose of *Itsbat* Marriage is to provide legal certainty for every marriage and to provide legal protection for the offspring of each couple. The *Itsbat* Marriage application can be submitted to the Religious Court in the place of residence of the couple who will perform *Itsbat* Marriage.

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