

Solutions to Rejected Marriage Legalization Petitions (*Isbat Nikah*) by the Religious Court: A Case Study of Decision Number 0108/Pdt.P/2018/PAJT

Arianto¹

¹ Institut Agama Islam Hasanuddin Pare, Kediri, Indonesia; ariantotamanan12@gmail.com

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Abstract

Marriage Legalization (*Isbat Nikah*) is a legal remedy submitted by couples who have conducted a marriage outside of official procedures, in order to obtain legal recognition and validity from the state through a court decision. The problem arises when the petition for marriage legalization submitted by the applicant is rejected. This study aims to contribute ideas as a consideration for married couples who face a deadlock in continuing their household life and are seeking official legal recognition from the state. Based on the analysis, the petition for *isbat nikah* at the Religious Court is carried out through several stages, namely: Submission of the petition, Case registration, Court examination, and Reading of the conclusion and issuance of the judge's decision. This research is a literature study that uses Jurisprudence Decision Number 0108/Pdt.P/2018/PAJT as the primary source. The approach used is a case approach, supported by the views of an advocate as a source of secondary legal data. Data collection was conducted through a systematic review of Law Number 1 of 1974 on Marriage as the main legal foundation. Data analysis was conducted qualitatively by examining relevant legal norms, particularly the consistency of the judge's considerations in applying legal provisions in cases of *isbat nikah* rejection. Rejection of the *isbat nikah* petition by the judge is generally due to violations or prohibitions in the proposed marriage—for example, if the woman in question is still legally married to another man. Such a rejection results in the marriage not being legally recognized, thus rendering the legal status of any children unclear. The solution is to conduct a legitimate marriage and pursue the legalization of the child's status through legal channels.

Kata kunci:

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Abstrak

Isbat nikah merupakan upaya hukum yang diajukan oleh pasangan yang telah melangsungkan pernikahan di luar prosedur resmi guna memperoleh pengakuan dan keabsahan secara hukum dari negara melalui putusan pengadilan. Permasalahan muncul ketika permohonan *isbat nikah* yang diajukan oleh pihak pemohon ditolak. Penelitian ini bertujuan untuk memberikan kontribusi pemikiran sebagai bahan pertimbangan bagi pasangan suami istri yang menghadapi kebuntuan dalam melanjutkan kehidupan rumah tangga, guna memperoleh pengakuan hukum yang sah dari negara. Berdasarkan hasil analisis, permohonan *isbat nikah* di Pengadilan Agama dilaksanakan melalui beberapa tahapan, yakni: 1) Pengajuan permohonan; 2) Registrasi perkara; 3) Pemeriksaan dalam persidangan; dan 4) Pembacaan kesimpulan serta penetapan putusan oleh hakim. Penelitian ini merupakan studi kepustakaan yang menjadikan putusan yurisprudensi Nomor 0108/Pdt.P/2018/PAJT sebagai sumber utama. Pendekatan yang digunakan adalah pendekatan kasus (*case approach*), yang didukung oleh pandangan seorang advokat sebagai sumber data hukum sekunder. Metode pengumpulan data dalam penelitian ini dilakukan melalui telaah sistematis terhadap Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan sebagai landasan hukum utama. Analisis data dilakukan secara kualitatif dengan menelaah norma hukum yang relevan, khususnya konsistensi pertimbangan hakim dalam menerapkan ketentuan hukum pada perkara penolakan *isbat nikah*. Penolakan permohonan *isbat nikah* oleh hakim umumnya disebabkan oleh adanya pelanggaran atau larangan dalam pernikahan yang diajukan, misalnya apabila perempuan yang bersangkutan masih terikat dalam ikatan pernikahan dengan laki-laki lain. Penolakan tersebut menyebabkan pernikahan tidak diakui secara hukum,

sehingga status hukum anak menjadi tidak jelas. Solusinya adalah dengan melangsungkan pernikahan secara sah dan mengurus pengesahan status anak melalui jalur hukum.

Corresponding Author

Arianto

Institut Agama Islam Hasanuddin Pare, Kediri, Indonesia; ariantotamanan12@gmail.com

INTRODUCTION

Human beings are considered the most perfect of God's creations, endowed with intellect, desire, and emotion to enable them to interact and form relationships with others. Like other living beings, humans cannot live in isolation; they require the presence of others to interact and coexist. A deeper form of coexistence, such as a lifelong partnership, is usually initiated through marriage (Soekanto, 2012). Marriage is the first step in building a family. According to the Marriage Law, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and everlasting family based on belief in the Almighty God (Marriage Law, 1974).

Marriage is fundamentally a basic right of every individual. This is affirmed in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to form a family and to continue their lineage through lawful marriage (Constitution, 1945). Although marriage is a part of human rights, its implementation must comply with the legal provisions of a country. One such provision is the obligation to register marriages at the Office of Religious Affairs (KUA) and to obtain a marriage certificate as legal proof. In practice, however, many couples still marry without officially registering with the state, commonly referred to as unregistered or "siri" marriages. Such marriages are not legally recognized due to the absence of a marriage certificate issued by the KUA, which can lead to various legal issues later (Sudarsono, 2002).

Although a marriage may be considered valid according to religious or societal norms, it still requires legal recognition from the state. Under national marriage law, the obligation to register a marriage is outlined in Article 2 paragraph (2) of the Marriage Law, which states that every marriage must be recorded in accordance with the applicable laws and regulations. The essence of this provision is that a marriage deemed valid only by religious standards but not officially registered is, from a legal standpoint, considered as never having occurred. Therefore, registering a marriage through the KUA is crucial as it

serves as official legal evidence of the union. A legal act is deemed valid and has legal consequences only when it can be clearly proven.

Problems arise when a couple does not register their marriage and thus lacks a marriage certificate. The importance of marriage registration is significant, as failure to do so results in legal consequences for both the couple and their offspring. Potential consequences include: the marriage being considered invalid under state law; the wife being vulnerable to divorce without legal process; the legal status of the children being unclear; and the loss of the wife's and children's rights to alimony and inheritance. In such circumstances, one of the remedies available to obtain legal recognition of the marriage is by submitting a request for isbat nikah (marriage legalization) to the Religious Court. According to Law No. 50 of 2009, the Religious Court has absolute authority over such matters (Muhtaroom, 2015).

The law stipulates that the Religious Court is a special judicial institution for Muslims, while marriage registrars are officials who record marriages at the KUA. Isbat nikah is a procedure provided by the government for couples who do not yet possess an official marriage certificate. In other words, isbat nikah is the process of legalizing a marriage, submitted to the Religious Court by couples who have been married religiously but not yet officially registered with the authorities. Consequently, numerous requests for isbat nikah are submitted annually to Religious Courts, including the East Jakarta Religious Court, for various reasons and motives. This trend indicates that many people still do not comply with Article 2 paragraph (2) of the Marriage Law, which explicitly emphasizes the importance of marriage registration.

Although applications for isbat nikah are submitted each year to the East Jakarta Religious Court, the number is relatively modest. One such case is Decision No. 0108/Pdt.P/2018/PAJT, in which the applicants (whose identities remain confidential) filed for isbat nikah after having married on October 29, 2015, at the residence of the second applicant's parents. The marriage was officiated by the bride's biological father and witnessed by two individuals. However, at the time of marriage, they had not obtained an official marriage certificate. To secure legal certainty for administrative purposes and to process their child's birth certificate, they submitted a request for isbat nikah to the East Jakarta Religious Court. Nevertheless, not all applications for isbat nikah are granted by the court. Each year, several requests are denied for various legal reasons.

Previous studies relevant to this topic indicate various legal considerations underlying the rejection of isbat nikah requests by Religious Courts. The first article, titled "Legal Consequences of Isbat Nikah Rejection Due to Unregistered

Marriage by Wali Muhakkam—Decision of PA Singaraja No. 73/Pdt.P/2020/PA.SGR,” reveals that the court rejected the request because the marriage was officiated by a wali muhakkam who was not the head of the local KUA, rendering the marriage legally flawed, although the child was still considered legitimate. The novelty of this research compared to the present study lies in the reason for rejection—whereas the rejection in the previous study was due to the officiant, in the current study (Decision No. 0108/Pdt.P/2018/PAJT), the request was denied because the wife was still legally married to another man and lacked a divorce certificate. The second article, “Judicial Analysis of Isbat Nikah Rejection (No. 47/Pdt.P/2021/PA.Tas), shows that the request was denied because the applicant was deemed to lack good faith, having postponed marriage registration due to the COVID-19 pandemic. In that decision, children from unregistered marriages were still considered legitimate under Islamic law and held civil rights such as inheritance, alimony, guardianship, and recognition on the birth certificate. The key difference lies in the situational neglect in the previous study versus the legal status of the wife in this research. The third article, “Rejection of Isbat Nikah from the Perspective of Law No. 16 of 2019 and Maqasid al-Syari’ah (Case Study PA Purwakarta No. 516/Pdt.P/2022/PA.Pwk), concluded that the court's rejection caused harm to the applicants, especially in terms of administrative requirements for Hajj registration. The rejection was deemed inconsistent with the spirit of Law No. 16 of 2019 because it was based on the bride being underage (under 19 years) at the time of marriage. In contrast, the rejection in the current study is based on the bride’s legal status of still being married to another man. These three prior studies demonstrate that court rejections of isbat nikah can be due to a variety of legal grounds be it the officiant, administrative neglect, age, or marital status—as illustrated in Decision No. 0108/Pdt.P/2018/PAJT.

This study aims to examine several critical aspects of the case, namely: first, the reasons behind the judge’s rejection of the isbat nikah request; second, the legal considerations used in making the decision; third, the implications of the rejection on the child’s legal status; and fourth, the possible legal solutions for the couple’s marriage and the status of their child. Based on these objectives, the author has entitled this study “Legal Solutions for Isbat Nikah Rejected by the Religious Court: A Case Study of Decision No. 0108/Pdt.P/2018/PAJT.”

From the background above, the research problems in this study are formulated as follows: 1) What were the judge’s reasons for rejecting the isbat nikah request? 2) What legal considerations were used by the judge in rejecting the request? 3) What are the consequences of the isbat nikah rejection for the applicants and their child? The objectives of this research are: 1) To identify the

reasons behind the judge's rejection of the isbat nikah request; 2) To analyze the judge's legal reasoning in rejecting the request; and 3) To explore the consequences of the isbat nikah rejection for the applicants and their child.

RESEARCH METHODS

This research adopts a normative juridical approach, which is a legal research method that emphasizes the study of legal literature or secondary data. As stated by Soerjono Soekanto, this approach involves examining statutory regulations, court decisions, and relevant legal literature, which are then analyzed systematically to obtain answers to legal issues under investigation. In the context of this study, the normative juridical approach is employed to evaluate the conformity of a marriage and an isbat nikah (marriage legalization) petition with the prevailing positive legal provisions in Indonesia (Soekanto & Mahmuji, 2023). Normative legal research is generally conducted through document study, utilizing sources such as legislation, court decisions or decrees, contracts or agreements, as well as legal theories and the opinions of legal scholars (doctrines). This approach aims to examine legal norms conceptually and systematically in order to address the legal issues raised in the research.

The type of research used in this study is qualitative research with a descriptive-analytical method. The study seeks to describe and analyze Law No. 1 of 1974 and Book II of the Guidelines for the Duties and Administration of the Religious Courts, in relation to legal theories in positive law, particularly regarding Decision No. 0108/Pdt.P/2018/PAJT concerning the rejection of an isbat nikah petition. The focus of the study is directed at the legal implications of such rejection, which can lead to ambiguity in the legal status of the marriage and the child born from that marriage.

The data collection technique used in this study is library research, which involves the examination of written information related to law obtained from various widely published and relevant sources. The data collection process involves reading, reviewing, analyzing, and citing literature, legal documents, and other library materials that are substantially related to the legal issues being examined. Furthermore, this technique includes a comparative approach across sources to gain a deeper and more comprehensive understanding (Amirudin & Asikin, 2016).

As this study utilizes a normative juridical method, the data used are secondary data. Secondary data are those obtained indirectly from the research object and are generally sourced from published legal literature. These may include legal textbooks, scholarly journals discussing basic legal principles,

expert opinions (doctrines), legal research findings, legal dictionaries, and legal encyclopedias.

In the context of this research, secondary data were obtained through library research, which involves collecting information from various relevant legal sources. The collected data consist of:

1. Primary legal materials, which, according to Peter Mahmud Marzuki, are authoritative legal sources possessing binding legal force (Sunggono, 2016). These include Law No. 1 of 1974 on Marriage, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, and Law No. 7 of 1989 on the Religious Courts;
2. Secondary legal materials, which support and provide explanation to the primary legal materials, such as doctrines found in books, legal journals, academic literature, and other research findings;
3. Tertiary legal materials, which consist of dictionaries, handbooks, and other relevant resources that support the understanding of primary and secondary legal materials.

The data analysis in this study is conducted using qualitative descriptive analysis, a technique that presents data in a systematically arranged, coherent, logical, non-overlapping, and effective narrative form. This approach aims to facilitate the interpretation of data and the understanding of analysis results. The analysis involves examining and assessing data contained in court decisions, then linking them with relevant legal concepts, theories, statutory provisions, legal doctrines, legal principles, and expert opinions. The researcher's interpretation is also employed to provide a comprehensive understanding of the legal issues being studied.

RESULTS AND DISCUSSION

Guidelines for Submitting an Isbat Nikah Petition in the Religious Court

Marriage that is officially registered with the Office of Religious Affairs (KUA) provides stronger legal protection for married couples. However, in practice, there are conditions where couples have lived together as husband and wife without possessing a valid marriage certificate, due to various factors. In response, the Compilation of Islamic Law (KHI), through Article 7 paragraph (2), provides an opportunity for couples who were married without official registration to submit a petition for *isbat nikah* (legalization of marriage) to the authorized religious court. This step is intended to grant recognition and legal force to the marriage (Compilation of Islamic Law, 1991).

Article 7 paragraph (3) of the KHI specifies the conditions under which *isbat nikah* can be submitted, namely:

1. When the marriage is related to the settlement of a divorce;
2. When the marriage certificate is lost;
3. When there is doubt about the validity of one of the marriage requirements;
4. When the marriage took place before the enactment of Law No. 1 of 1974;
5. When the marriage was performed by individuals without any legal impediments under Law No. 1 of 1974.

The case analyzed in this study does not involve a divorce following an *isbat nikah* approval, nor was it due to a lost marriage certificate, since the couple had never possessed one in the first place. The most relevant basis for requesting *isbat nikah*, according to the researcher, is the fact that the marriage was conducted after the enactment of the Marriage Law. Additionally, the request can be made based on Article 7 paragraph (2), which states that if a marriage cannot be proven by a marriage certificate, then *isbat nikah* can be requested at the Religious Court.

As previously discussed, the failure to officially register a marriage can result in significant legal and administrative consequences. An unregistered marriage may hinder the parties involved—including their descendants—from obtaining legal rights that require authentic documentation of marital status. The possible consequences include: difficulty obtaining a child's birth certificate, obstacles in registering for Hajj, problems accessing pension benefits, uncertainty in inheritance status, and the inability to obtain a legally recognized marriage certificate. Therefore, official marriage registration is crucial to ensure legal certainty, protection of civil rights, and administrative order for all parties involved.

In Book II of the *Guidelines for the Implementation of Duties and Administration of the Religious Courts* published by the Supreme Court of the Republic of Indonesia – Directorate General of Religious Courts (2013), the process for submitting, examining, and resolving petitions for the legalization of marriage (*isbat nikah*) is outlined as follows:

1. A petition for *isbat nikah* may be submitted by either both spouses or by one of them, or by a child, marriage guardian, or other party with legal interest to the Religious Court within the legal jurisdiction of the petitioner's residence. The petition must clearly and concretely explain the reasons and legal interests involved.

According to the researcher, one of the legal consequences of a valid marriage is the establishment of rights and obligations between the husband and wife, including responsibilities towards children born of the marriage. Therefore, any legal interest arising from a marital relationship may form a legitimate basis for submitting an *isbat nikah* petition. Legal recognition of the marriage entitles

the couple to inheritance rights, access to administrative benefits such as pensions, and parental responsibilities, including obtaining birth certificates for their children. Legal marital status is essential to guarantee legal protection for all family members.

2. The examination of a petition submitted by both spouses is *voluntair* (non-contentious), and the result is a *penetapan* (determination). If the court denies the petition, the husband and wife (either jointly or individually) may file a *cassation appeal* to the Supreme Court.

Legally, the petitioners in Case Number 0108/Pdt.P/2018/PAJt have the right to file a *cassation appeal*. However, based on the researcher's analysis, the appeal would likely be rejected, as the lower court's decision was based on applicable legal provisions—specifically the legal defect in the unregistered marriage. Thus, the judge's reasoning adheres to the principle of legality and due diligence in civil procedure within the religious court system.

3. If the petition is submitted by only one spouse, the process is *contentious*, and the non-petitioning spouse is considered the Respondent. The outcome is a decision (*putusan*) which may be appealed or taken to cassation.

In this case, both parties husband and wife submitted the petition jointly, as reflected in the court's decision, indicating mutual awareness and agreement to seek legal recognition of their marriage.

4. If it is revealed during the trial that the husband is still legally married to another woman, then the previous wife must be included as a party in the case. If the petitioner refuses to amend the petition to include the previous wife, the petition must be declared inadmissible.

In Case Number 0108/Pdt.P/2018/PAJt, the petition was denied based on this guideline. However, the unusual factor in this case was that the *female petitioner* was still married to a previous husband. Therefore, the previous husband should have been made a party to the case, and this legal flaw contributed to the court's decision to reject the petition.

5. Petitions submitted by children, marriage guardians, or other interested parties must be contentious, with the husband, wife, and/or other heirs as Respondents.

In legal terms, *contentious* refers to disputes involving opposing legal interests requiring litigation (Harahap, 2010). In this case, there was no dispute; the petition was jointly filed voluntarily by the couple to obtain legal recognition of their marriage.

6. A surviving spouse may file a petition for *isbat nikah* in a contentious manner by including other heirs as Respondents, resulting in a *decision* that may be appealed.
7. If the surviving spouse is unaware of other heirs, the petition is filed *voluntair* and results in a *penetapan*. If denied, the petitioner may file a *cassation appeal*.
8. Other interested parties not involved in the petition process (as in points 2 and 6) may file an *objection* after learning that an *isbat nikah* has been granted.
9. Third parties with legal interest in petitions under points 3, 4, and 5 may intervene while the case is still in process.
10. After a decision is issued on a petition under points 3, 4, and 5, interested third parties may file a lawsuit to annul the court's marriage validation.
11. Within three days of receiving the PMH (order to schedule), the presiding judge must issue a PHS (hearing schedule letter) and order the substitute bailiff to announce the petition publicly for 14 days, through printed, electronic, or court notice boards.
12. The panel of judges must schedule the hearing within three days after the announcement period ends.
13. For consistency, the *isbat nikah* ruling should read: "Declares valid the marriage between ... and ... which was conducted on ... at ..."

The petition must be filed at the Religious Court where the petitioners reside. The procedures are generally the same as for any other lawsuit in a religious court. Before filing, the petitioners must fulfill the following administrative requirements (Ministry of Religious Affairs, 2018):

- a. Six (6) copies of the *isbat nikah* petition letter
- b. Photocopy of petitioners' Identity Cards (KTP)
- c. Photocopy of petitioners' Family Card (KK)
- d. Certificate from the village or subdistrict verifying the petitioners' identity and residence
- e. Certificate from the KUA stating the marriage was not officially registered
- f. Proof of payment of court fees

Once all requirements are met, the petition can be submitted to the Religious Court, following this procedure (Ministry of Religious Affairs, 2018):

- a. Meja I officer receives the petition

- b. Officer estimates court costs based on the petitioner's residence radius
- c. Petitioners pay court costs to the designated bank
- d. Treasurer records the payment in the financial journal as administrative proof

The next steps include numbering, signing, and stamping the SKUM (proof of payment), which involves

- a. Submitting the petition and SKUM to Meja II for registration and entry into the main register
- b. One copy of the registered petition and SKUM is returned to the petitioner
- c. Meja II stores the case file and required forms in a file folder
- d. Meja II submits the case file to the court clerk through the deputy clerk
- e. The chief judge reviews and signs the PMH
- f. The case is handed over to the judge panel, who signs the announcement and hearing schedule
- g. The clerk prepares a *report* on the *isbat nikah* process (Supreme Court, 2014)

Stages of *Isbat Nikah* Petition:

1. Registration Stage:

- a. File the petition orally or in writing to the registration division (Sub-Registrar of Petitions)
- b. Petition is registered and assigned a case number
- c. Court clerk examines the petition and informs the Chief Judge
- d. Chief Judge reviews and assigns a judicial panel
- e. Panel studies the petition and sets a hearing date
- f. Court clerk sends summons to the petitioner

2. Petition Contents:

- a. **Petitioner Identity:** name, age, religion (for jurisdiction), address (for relative competence)
- b. **Posita (Facts of the Case):** date of marriage, legality under marriage law, fulfillment of Islamic requirements, presence of children, and marital status (i.e., no divorce)
- c. **Legal Reasons:** grounds for the *isbat nikah* based on the facts and legal events

Trial Stage

- a. The appointed trial day, the applicant or his/her attorney is present;

- b. The first trial, after receiving a valid summons, there are possibilities that will occur at the first trial, namely: 1) The applicant or his/her attorney is not present, the trial is postponed, the applicant is summoned again legally and properly; 2) If after being summoned once more, the applicant is still not present at the trial, then the Judge can determine the application for marriage confirmation to be declared null and void; and 3) The applicant can submit another Application, by registering or submitting a new application.
- c. The panel of judges begins to examine the main issues regarding matters relating to marriage, such as examining the pillars and requirements of marriage and asking the reasons for requesting a determination of marriage confirmation, the applicant is given the opportunity to submit evidence in the form of witnesses (minimum 2 witnesses), documentary evidence, or act as witnesses to the applicant's marriage, as long as the witnesses can still be present, but if the witnesses cannot be present because they have died or their whereabouts are no longer known or for other reasons, then they can be replaced by someone else who knows the applicant's marital life well.

After the examination of the main problem has been completed, the panel of judges will deliberate, in which case if the marriage that has been carried out by the Applicants has fulfilled the pillars and requirements of marriage and is in accordance with and does not conflict with Article 7 paragraph (3) of the KHI, then the judge will grant the application for isbat nikah, by issuing a decision to isbat nikah, and the results of the decision are read out in an open session for the public, which means that the marriage of the Applicants is valid in the eyes of state law. Based on the discussion that has been presented above, regarding the procedure for applying for isbat nikah at the religious court related to the decision Number 0108/Pdt.P/2018/PAJT that overall the stages and procedures are in accordance with applicable laws and regulations.

Judges' Consideration in Rejecting the Petition for Marriage Legalization (Isbat Nikah)

Not all petitions for isbat nikah (marriage legalization) are granted by the judge. If a petition is deemed appropriate to be granted or otherwise rejected, the court will issue an official ruling or determination regarding the petition. If granted, the marriage will be legally recorded and recognized by the state. Consequently, the husband, wife, and children born from that marriage receive legal protection of their rights. However, if the petition is rejected, the marriage

is considered legally non-existent or lacking legal validity in the eyes of the state (Jahar, 2010).

There are several factors motivating individuals involved in unregistered marriages (nikah siri) to seek legal recognition through an isbat nikah petition to the Religious Court:

- a. Need for legal recognition – Couples want their marriage to be legally acknowledged by the state to gain legal certainty and protection.
- b. Civil administrative needs – Such as applying for Family Cards (KK), children's birth certificates, and other essential documents requiring proof of a valid marriage.
- c. Protection of wife and children's rights – To ensure the wife and children have legal rights to support, inheritance, and other protections.
- d. To prevent future disputes – Especially regarding divorce, division of property, or custody, which require proof of a valid marriage.
- e. Increasing legal awareness – Over time, couples become more aware of the importance of legally registering marriages.
- f. Encouragement from third parties – Such as social organizations, religious leaders, or government institutions recommending registration for mutual benefit.

In the isbat nikah case with Register No. 0108/Pdt.P/2018/PAJT, the East Jakarta Religious Court decided to reject the petition filed by the Applicants. The rejection was based on legal considerations that the Applicants had violated existing regulations, particularly Article 40(a) of the Compilation of Islamic Law (KHI), which states:

"It is prohibited to conduct a marriage between a man and a woman if the woman is still bound in a valid marriage with another man."

Therefore, based on the judges' consideration and the official court decision, the Applicants' marriage was declared legally invalid as it was conducted while one party was still in a legally recognized marriage that had not yet been lawfully dissolved. Hence, the marriage could not be legalized or registered by the state.

On October 29, 2015, the Applicants conducted a religious marriage ceremony at the home of the second Applicant's parents, with the father of Applicant II acting as guardian and witnessed by two individuals. From this marriage, two children were born. At the time of the marriage, Applicant I was a bachelor, and Applicant II was a divorced woman. However, the marriage was not officially registered at the Office of Religious Affairs (KUA), so no official marriage certificate exists. This prompted the Applicants to petition the Religious

Court to legalize their unregistered marriage to secure legal recognition and protect their children's civil rights.

However, the court ruled that the Applicants' marriage was legally invalid due to the lack of official registration with the KUA. This is in contradiction to Law No. 1 of 1974 on Marriage, particularly Article 2, which states:

- (1) A marriage is legal if it is conducted according to the laws of each religion and belief.
- (2) Every marriage must be registered in accordance with the prevailing laws and regulations.

While judges may grant an isbat nikah petition if all religious and legal requirements are fulfilled, in this case, despite no objections or interference from third parties, the judge rejected the petition based on strong evidence provided by the Applicants themselves.

The key evidence was a photocopy of a divorce certificate (marked P.6) issued by the East Jakarta Religious Court, showing that Applicant II had been legally divorced only as of March 20, 2017. This meant that at the time of the marriage on October 29, 2015, Applicant II was still legally married to her previous husband. Moreover, the previous husband was not made a party to the isbat petition. Therefore, the marriage violated Article 40(a) of the KHI, which prohibits marriage when one party is still legally bound to another spouse.

The author agrees with the judges' considerations that the Applicants' actions constituted a prohibited marriage. Thus, the court's rejection was in accordance with the applicable legal provisions.

Moreover, the author argues that the marriage also violated Article 9 of Law No. 1 of 1974, which explicitly states:

"Anyone still bound in marriage to another person cannot marry again."

This dual violation under both the KHI and Marriage Law strengthens the legal basis for the court's rejection of the isbat nikah petition.

The marriage is thus considered legally flawed, both because it was unregistered and because Applicant II was not legally divorced at the time of the marriage. The absence of a divorce certificate further invalidates the marriage. For these reasons, the court was right to reject the petition.

As a consequence of the rejection, the judges should ideally provide legal guidance or suggestions to the Applicants, such as what evidence needs to be fulfilled to meet the requirements for a valid Islamic and legal marriage. In this case, since it was established that Applicant II was still legally married to another man at the time of the marriage with Applicant I, the marriage could not be

legalized. Thus, Applicant I could be viewed as an unlawful second husband under Article 40(a) of the KHI.

As for the children born from the marriage, the court should recommend that the Applicants submit a petition for the determination of child origin to the Religious Court. This is crucial to secure the child's civil rights, including the right to identity and legal recognition of birth, as long as biological parentage can be proven.

Rejection of an isbat nikah petition has serious implications, especially for women and children. The wife lacks legal recognition of her marriage and associated rights (support, inheritance, protection), and children face difficulties in obtaining birth certificates and legal identity (Sudarsono, 2014).

From a human rights perspective, the rejection may result in violations of fundamental rights, particularly for women and children. It denies them legal personhood as guaranteed under Article 16(2) of the Universal Declaration of Human Rights (UDHR), which asserts equal rights in marriage and its dissolution.

Children without legal birth documentation are also denied identity rights, contrary to Article 7 of the Convention on the Rights of the Child (CRC), which mandates every child's right to be registered immediately after birth and to have a name and nationality.

Lack of legal status also hinders access to education, healthcare, and social security, which are essential rights under Article 10 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Thus, failure to recognize marriages can have widespread implications for vulnerable groups.

However, Indonesia's legal developments show progress in protecting the rights of children born outside legally recognized marriages. This is evident in Constitutional Court Decision No. 46/PUU-VIII/2010, which reinterpreted Article 43(1) of the Marriage Law:

“Children born out of wedlock have civil relations not only with their mother and her family but also with the biological father if proven by science and/or other legal means.”

This decision ensures that such children can still claim civil rights (support, inheritance, name) from their biological fathers based on DNA or valid evidence, despite their parents' marriage being unregistered.

The ruling reinforces the principle of non-discrimination as guaranteed in the CRC and Article 28B(2) of the 1945 Constitution, which affirms children's rights to life, development, and protection from violence and discrimination. Thus, even if an isbat nikah petition is rejected and the marriage is unrecognized,

children's civil rights can still be pursued through constitutional and evidentiary means as affirmed by the Constitutional Court.

Legal Implications for Women (as Wives) When a Petition for Marriage Legalization (Isbat Nikah) Is Rejected by the Court:

- a. Not Recognized as a Legal Wife by the State: Since the marriage is not officially recorded, the woman's status as a wife is not recognized by law. This means she has no legal status as a wife under state law, even though the marriage may be religiously valid.
- b. No Right to Inherit from the Husband: If the husband passes away, a woman who is not legally recognized as a wife has no standing as an heir. Thus, she cannot claim any portion of her deceased husband's estate.
- c. No Right to Joint Property (Marital Assets): In the event of divorce or separation, the woman does not have legal rights to marital property (gono-gini), since the marriage is not considered to have existed under the law. Therefore, any assets acquired during the relationship cannot be claimed as shared property (Sudarsono, 2014).

Unregistered (siri) marriages without official documentation allow the potential for abuse by the husband. For instance, the husband can easily marry another woman without undergoing legal procedures, as the previous marriage is not recognized by the state. Additionally, he can avoid legal responsibilities toward his wife and children, including financial support, distribution of shared property, and inheritance rights.

If the petition for isbat nikah is granted, several positive impacts may be experienced both personally by the parties involved and socially by the wider community. These positive impacts include (Rizka, 2020):

- a. Legal Certainty for the Marriage: Marriage legalization through isbat nikah grants legal status to previously unregistered marriages, thereby eliminating doubts about the legal standing of the couple in the eyes of the state.
- b. Legal Protection for Children: Children born from such marriages gain clear and recognized legal status, including rights to birth certificates, inheritance, and civil relationships with their fathers.
- c. Psychological Relief for the Petitioners: Approval of the isbat nikah petition provides a sense of relief and happiness for the petitioners because their marriage is officially recognized by the state.

- d. Harmony Between Religious and State Law: By legalizing the marriage through the court, the union is validated both religiously and by national law.
- e. Obtaining an Official Marriage Certificate: Petitioners receive an official marriage certificate, a legal document recognized by the state that is essential for various administrative and legal matters in the future.
- f. Protection of Women's Rights (as Wives): Women, as legally recognized wives, receive protection for their rights, including entitlement to financial support, inheritance, and marital property.

Despite the benefits, the approval of isbat nikah petitions also brings negative consequences that require attention from legal enforcers, policymakers, and the community. While legalizing unregistered marriages offers positive value, it also carries risks. It may encourage people to disregard the importance of officially recording marriages, based on the belief that it is not an urgent necessity. The ability to later legalize a marriage through isbat nikah may promote the practice of unregistered (siri) marriages, under the assumption that they can be easily legitimized in court afterward.

This misunderstanding leads people to believe that religious marriage alone is sufficient, without the need for state registration. However, in the national legal system, official registration is an essential component of legal marriage. Furthermore, there is potential for misuse of the isbat nikah mechanism by individuals acting in bad faith—for example, falsely claiming to have had an unregistered marriage solely to gain legal recognition, even when there is insufficient evidence of a marriage having taken place.

Overall, this situation could lead to a tendency to trivialize the importance of marriage registration, both from an administrative perspective and from the standpoint of Islamic legal values, which inherently promote legal order and dignity in family life. The practice of unregistered marriages that are later legalized without strict conditions risks undermining the spirit of Islamic law, which emphasizes transparency, clarity, and the protection of women's and children's rights. Ultimately, religious law itself could be misused to legitimize relationships that do not fulfill the legal criteria for marriage according to the state.

Research Findings

Couples who filed a petition for isbat nikah (marriage legalization) at the East Jakarta Religious Court reached a dead end when their petition was rejected because their siri (unregistered) marriage was found to be legally flawed. The legal flaw stemmed from the fact that one party was still legally married to

another person at the time the marriage ceremony took place. This violates the prevailing positive law in Indonesia, which prohibits an individual from remarrying before the previous marriage has been legally dissolved by a court decision.

Both parties must conduct a marriage that is legally recognized by the state. A marriage recognized by the state is one that is performed in accordance with the religion of both parties and officially registered at the Office of Religious Affairs (KUA) for Muslims or at the Civil Registry Office (Disdukcapil) for non-Muslims. Marriage registration is a mandatory administrative requirement to obtain legal recognition by the state (Law on Population Administration, 2013). Once the marriage is officially registered, the couple gains legal status, which ensures legal protection of their rights and obligations, including rights to inheritance, shared marital property (*gono-gini*), and legal protection for the children born from the marriage (Subekti, 2010).

The valid requirements and essential elements of marriage according to the state include compliance with religious and legal provisions. From a religious perspective, the core elements of marriage include: the prospective husband and wife, the marriage guardian (*wali*), two witnesses, and the exchange of marriage vows (*ijab kabul*) performed in accordance with Islamic law (Ibrahim, 2018). From the state's legal perspective, the marriage must meet administrative conditions through official registration at KUA for Muslims or Disdukcapil for non-Muslims. Fulfilling both religious and legal requirements ensures that the marriage holds legitimate legal power and provides legal certainty and protection of rights and duties for the spouses and their offspring.

The consequences of a marriage that is valid both religiously and legally include official recognition of husband-and-wife status, granting the couple mutual rights and responsibilities as regulated by both religious and civil law. A legally recognized marriage provides legal protection for the rights of the husband, wife, and children, including inheritance rights, maintenance (financial support), and joint property rights. Moreover, official registration guarantees legal certainty in administrative and social matters, avoiding a gray area or unrecognized legal status.

A copy of the divorce certificate issued by the East Jakarta Religious Court on March 20, 2017, serves as evidence that the couple legally married only after 2017. Prior to that, in 2015, they had entered into a *siri* marriage while the woman was still legally married to another man. Therefore, the post-2017 marriage is legally recognized by the state, unlike the previous unregistered marriage that lacked official documentation.

A child who was initially recorded as having lineage (sanad) to only the mother must undergo a formal status update so that after the parents' marriage is legally recognized, the child is also legally acknowledged as the offspring of both parents. This change is crucial to ensure the child's legal status, safeguard their rights, and validate the family relationship in the eyes of the law (Mulia, 2019).

To change the child's birth certificate from listing only the mother to including both parents, the following steps are generally taken:

1. Submit a request for birth certificate amendment to the local Civil Registry Office (Disdukcapil) or the civil registry office corresponding to the family's residence.
2. Attach supporting documents, as stipulated in the Law on Population Administration (2013), including:
 - a. The official marriage certificate of the parents (proof of a legally recognized marriage)
 - b. The original birth certificate of the child,
 - c. A written request for data amendment from the parents or legal guardian
 - d. ID cards (KTP) and family card (KK) of the parents,
 - e. A referral letter from the village or sub-district office.
3. Verification by Disdukcapil officers to confirm the authenticity and completeness of the documents and the legal validity of the parents' marriage.
4. Administrative processing of the data amendment is carried out by Disdukcapil, updating the child's birth certificate to include the names of both parents as legally recognized.
5. Issuance of the updated birth certificate, listing the child's lineage (sanad) to both mother and father.

CONCLUSION

In the effort to uphold the honor and dignity of Islamic law (sharia), not all isbat nikah (marriage legalization) petitions can be immediately granted by the court. This is due to the principle that the legal recognition of a marriage must comply with the prevailing regulations, in order to preserve the legal system and religious values. Therefore, the court exercises strict scrutiny over each isbat nikah petition to ensure that the marriage conforms to Islamic principles and the relevant laws and regulations.

To obtain legal recognition of a marriage by the state, couples must follow the proper marriage procedures established by the government. These

procedures include conducting a religiously valid marriage contract (akad nikah) and registering the marriage officially with the authorized institution, such as the Office of Religious Affairs (KUA) for Muslims. This registration process is not merely an administrative formality, but a form of state recognition of the marital status, which provides legal certainty and protection for the rights of the husband, wife, and children.

If a petition for isbat nikah is denied due to legal flaws or failure to meet the requirements, the best solution is for the couple to conduct a new marriage in accordance with the legal procedures recognized by the state. This is particularly important for legitimizing the status of children who were previously only recorded as having lineage through the mother, so that they can have both parents recognized officially under both religious and civil law. This ensures that such children receive equal rights and legal protection, like any other child, thereby establishing an ideal family status that is fully acknowledged by the legal system.

Even if the marital relationship is considered void due to the rejection of the isbat nikah, the rights of the children toward both parents remain protected by the state, based on the Constitutional Court Decision No. 46/PUU-VIII/2010. This decision reinterprets Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage. In that ruling, the Court stated:

"Children born out of wedlock have civil relations not only with their mother and her family, but also with their father if it can be proven based on science and technology and/or other legal evidence that there is a blood relationship, including civil relations with the father's family."

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