

Between Informal Marriage and Legal Certainty: Determining Marital Status through *Isbat Nikah* at the South Jakarta Religious Court


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Abstract: The phenomenon of unofficial marriages, or "nikah sirri," remains a complex issue in society, particularly regarding the legal status of the marriage and its impact on the rights of the wife and children. This study aims to analyze the factors contributing to unofficial marriages and the efforts to establish the legal status of such marriages in the Pancoran District, South Jakarta. The research uses a descriptive qualitative method with a case study approach. Data were collected through observations, interviews with advocates, religious leaders, staff from the Pancoran Marriage Office (KUA), and relevant documentation. The findings of the study indicate that (1) unofficial marriages have consequences, including the invalidity of the marriage status under national law and the absence of the husband's financial responsibility and inheritance rights for the wife and children; (2) the main factors contributing to nikah sirri include love, pregnancy outside of marriage, and family pressure; (3) efforts to validate the marriage status are carried out by applying for marriage registration (*isbat nikah*) at the Religious Court, which can legalize the marriage under state law. These findings offer new insights into the importance of validating marriage status for safeguarding family rights.

Keywords: Nikah sirri, *isbat nikah*, marital status, legal certainty, family rights

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Abstrak: Fenomena perkawinan di bawah tangan atau nikah sirri masih menjadi isu kompleks di masyarakat, terutama terkait dengan status perkawinan yang tidak sah menurut hukum dan dampaknya terhadap hak-hak istri dan anak. Penelitian ini bertujuan untuk menganalisis faktor penyebab perkawinan di bawah tangan serta upaya penetapan status perkawinan tersebut di Kecamatan Pancoran, Jakarta Selatan. Metode yang digunakan adalah penelitian kualitatif deskriptif dengan pendekatan studi kasus. Data dikumpulkan melalui observasi, wawancara dengan advokat, penghulu, staf Kantor KUA Pancoran, serta dokumentasi terkait. Hasil penelitian menunjukkan bahwa (1) perkawinan di bawah tangan berdampak pada ketidakabsahan status perkawinan menurut hukum negara dan tidak adanya kewajiban nafkah serta hak waris dari suami kepada istri dan anak; (2) faktor penyebab utama nikah sirri meliputi faktor cinta, kehamilan di luar nikah, dan tekanan keluarga; (3) upaya penetapan status perkawinan dilakukan dengan mengajukan isbat nikah ke Pengadilan Agama, yang dapat mengesahkan perkawinan tersebut secara negara. Temuan ini memberikan pemahaman baru mengenai pentingnya penetapan status perkawinan yang sah bagi hak-hak keluarga.

Kata kunci: Nikah sirri, isbat nikah, status perkawinan, kepastian hukum, hak keluarga

Introduction

Marriage is a sunnatullah that applies to all living things on earth, including humans, animals, and plants.¹ Men and women have an interest in supporting and perfecting each other in various aspects of life.² According to the provisions contained in Law No. 1 of 1974,

"marriage is defined as a physical and mental bond between a man and a woman who are legally husband and wife, with the aim of forming a harmonious and eternal family (household), based on the principle of "the One Godhead."

Marriage contains a number of consequences that require clear regulation, therefore, it is necessary to establish rules and procedures to anticipate possible negative impacts that can be detrimental. In Indonesia, for the Muslim community, the applicable regulations require the official

¹ Mahfan, *Sosok Wanita Shalehah Dalam Keluarga Sakinah* (Jakarta: Sandro Jaya, 2006); Hayatullah Laluddin, Norhoneydayatie Abdul Manap, Ahmad Azam bin Mohd Shariff, Ahmad Bin Muhammad Husni, Zuliza Mohd Kusrin, Iknor Azli Ibrahim, and Nazura Abdul Manap. "The contract of marriage and its purposes from Islamic perspective." *Asian Social Science* 10, no. 2 (2014): 139.

² Hasbi Indra, *Potret Wanita Shalehah* (Jakarta: Penamadani, 2004).

registration of marriages and publication in an effort to ensure the validity and legitimacy of the marriage within the framework of the applicable law.³

Initially, the provisions regarding marriage registration were not explicitly regulated in the Qur'an or the Sunnah. This situation is different from the verses that govern mu'amalat (such as mudayanah), which under certain conditions command record-keeping. In line with the dynamics of the times and considerations for benefits, the application of Islam in Indonesia also regulates the registration of marriages through the provisions of the law. This arrangement aims to create order in the administration of marriage in society, as well as ensure the validity and legal certainty of the institution of marriage.⁴ By officially registering the marriage, the married couple will obtain a marriage certificate that serves as valid legal evidence of their marriage bond. This document is an important basis if a conflict arises in the future or if one of the parties neglects its responsibilities. In such a situation, each party has a legal basis to claim its rights through the applicable legal channels.⁵

In Islamic law norms, a marriage is declared valid if all the pillars and conditions determined by the sharia have been met. However, these provisions are not fully in line with the positive legal system in Indonesia, which requires the official registration of a marriage. In accordance with the provisions of the law, a marriage that is not registered with the authorized agency does not obtain legal legitimacy and is not recognized in the state administrative system.

Marriage obtains legal status if it is carried out based on the religious and belief provisions embraced by each individual involved. "Each marriage is recorded according to the applicable laws". Every marriage event is recorded as part of the legal legalization process through an official deed or certificate outlined in a registration list specifically intended for this purpose.⁶

³ Dadi Nurhaedi, *Nikah Di Bawah Tangan (Praktek Nikah Sirri Mahasiswa Jogja)* (Yogyakarta: Saujana, 2003).

⁴ Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 1998).

⁵ Maulidia Mulyani, "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance." *Legitima: Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 1-12.

⁶ Putri Amalia and Lilik Andaryuni, "Menguatkan Ikatan: Memahami Hubungan Suami Isteri Dalam Keluarga," *Jurnal Ilmu Hukum "THE JURIS"* VIII, no. 2 (2024): 404-13.

In practice, not all Muslim communities in Indonesia comply with the formal provisions regarding marriage registration as stipulated by laws and regulations. Some people still carry out marriages without official registration at the Office of Religious Affairs (KUA) and without going through a legal publication process. This phenomenon is known as *nikah siri*, which in the social context is also often referred to as *religious nikah* or *nikah under the hand*.⁷ Married couples who face the problem of unregistered marriage (*nikah siri*) in Pancoran District, South Jakarta, will be directed by the Office of Religious Affairs (KUA) to take legal procedures through the Religious Court. The KUA provides a letter of recommendation for couples to apply for *isbat nikah* to obtain a determination that declares the validity of marriage according to Islamic law and state law. If the application is granted, the previously legally valid marital status becomes legally positive, and the couple will obtain an official marriage certificate. This process not only provides formal legality, but also ensures civil rights, such as inheritance rights and legal protection for wives and children. Some of the cases found involved couples who married at a young age or were involved in serial marriages, both men marrying women outside the law or vice versa. There are also other cases related to marriage that are not recorded in the Marriage Law.

Marriages that take place without official registration, or what are known as marriages under the hands (*nikah siri*), although considered valid according to religious law, do not have the legal force recognized in the national legal system. In the absence of registration by the competent authorities, the marriage does not gain positive legal legitimacy and has juridical consequences as stipulated in laws and regulations. Generally, the perpetrators of this kind of marriage are of the view that the legality of a marriage bond is solely determined by religious norms, so that ratification by the state is considered non-essential.

This study aims to uncover the phenomenon of underhand marriage (*nikah siri*) in the South Jakarta Religious Court and its causative and impact factors, both from the perspective of Islamic civil law and civil law. By understanding the form, causative factors, and juridical and social

⁷ Nurhaedi, *Nikah Di Bawah Tangan (Praktek Nikah Sirri Mahasiswa Jogja)*.

consequences of the practice of serial marriage, it can be analyzed the urgency of reconstructing legal provisions on marriage registration. If empirical facts show a significant negative impact, a firm legal formulation is needed to make marriage registration mandatory as part of normative legality. On the other hand, if the negative impact is not significant, further study is needed on the causative factors. These findings are expected to be the basis for formulating more responsive legal solutions, both from the perspective of Islamic law and the national civil law system.

This study employs a qualitative research method by collecting data through field observations conducted at the South Jakarta Religious Court, particularly in the Pancoran District, to obtain empirical insights into the practice of underhand marriage and efforts to establish marital status. The field data are complemented by a literature review drawing on relevant books, statutory regulations, and scholarly works, which serve as analytical materials for comprehensively examining the legal issues arising from this phenomenon.

View of marriage under hands according to Islamic Civil Law and Civil Law

The results of a case study on the practice of marriage under the hand (nikah sirri) show that this phenomenon is influenced by various internal and external factors, and has a significant legal impact. Internally, one of the main factors is the incompatibility of the age of the prospective spouse with the applicable legal provisions, so they choose to get married religiously first without official registration. In addition, the factor of family or community disapproval of marriage is also the main driver, which causes couples to choose the Sirri marriage path as an alternative. From an external perspective, this practice is often triggered by social pressure, personal needs, or deep feelings of love, even if the couple already has a legal marital bond with the other party.⁸

⁸ Solihan Makruf, Rizal Agung Mufti, Lis Diana Ningsih, Beni Ahmad Saebani, and Andri Suprihatno. "Legal Sociological Perspective on Marriage Under the Hand (Case Study Understanding of the Cipadung Community, Bandung City)." *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 1536-1544; Fanani, Zainal. "Nikāh sirri and its impact: the perspective of maqashid ash-shari'ah of imam asy-syathiby." *At-Tahdzib: Jurnal Studi Islam dan Muamalah* 12, no. 2 (2024): 171-181

The legal impact of nikah sirri is very clear, namely the inability of the couple involved to obtain legal protection. Although the marriage is considered religiously valid, without official registration in the state, it is not legally recognized, resulting in the non-recognition of the status of the wife and children born of the marriage. This leads to uncertainty of civil rights, such as the right to alimony, inheritance, and population administration. In addition, the practice of marriage also causes difficulties in the management of legal documents such as marriage certificates and birth certificates, because the marriage is not officially recorded.⁹

The Office of Religious Affairs (KUA) expressly rejects the practice of nikah sirri and directs the couples involved to apply for isbat nikah at the Religious Court so that their marriage is recognized as valid according to state law. From a civil law perspective, according to legal practitioners, even if the marriage is religiously valid, the legal status of a marriage that is not officially recorded still does not have binding legal force, which in turn harms the rights of women and children. In this case, the legal system in Indonesia emphasizes the importance of marriage registration as a form of recognition and protection of individual rights, as stipulated in the Marriage Law Number 1 of 1974 and the Compilation of Islamic Law.

These findings also show that in addition to age factors and family disapproval, social or economic incompatibility also contributes to the emergence of the practice of nikah sirri. This practice is often chosen by individuals to avoid the social stigma or legal consequences that may arise from an illicit marriage. Therefore, this study recommends stricter law enforcement of marriage registration as well as more in-depth counseling to the public about the legal consequences of unregistered marriages. Thus, it is hoped that the practice of nikah sirri can be minimized and legal protection for the individuals involved can be more guaranteed.

⁹ Mariadi, Mariadi. "Marriage registration procedures and its legal impacts." *International Journal of Sharia Studies* 1, no. 1 (2023).

The term "Marriage Under the Hand" refers to a marriage that is not registered in an official institution regulated by the applicable laws and regulations, even though its implementation meets the requirements of the religious sharia adopted by the couple. In Islamic law, this marriage is considered valid as long as it does not contain the element of "sirri" and has fulfilled the provisions set forth in religious teachings.¹⁰ Thus, marriage under the hand can be understood as a marriage that is not registered by the competent agency, but is carried out in accordance with the religious teachings and beliefs of the couple.¹¹

In contrast to *nikah sirri*, which refers to a marriage that is carried out secretly without being known by others in the environment around the couple. *Nikah sirri* is clearly contrary to the teachings of Islam which prioritizes openness and announcement in every marriage. As taught in the hadith of the Prophet Muhammad PBUH, the importance of carrying out a celebration or *walimah*, even if it is simple, and announcing marriage to the community:

*Narrated to us Ahmad bin Mani', narrated to us Yazid bin Harun, narrated to us Isa bin Maimun Al Anshari from Al qasim bin Muhammad from Aisha (may Allah be pleased with him) said; The Messenger of Allah (peace and blessings of Allaah be upon him) said: "Announce the marriage, hold it in the mosque, and beat the tambourine to announce it." Abu Isa said; "This is the hadith of gharib hasan in this chapter. Isa bin Maimun Al Anshari is weakened in this narration. Isa bin Maimun narrated from Ibn Abu Najih At Tafsir is tsiqah."*¹²

In general, a valid marriage in an Islamic perspective must be carried out openly and announced to the public, in order to avoid hidden practices that can cause problems both from legal and social aspects, especially related to the rights and obligations between husbands, wives, and children born of the marriage.¹³

¹⁰ Makruf, Solihan, Rizal Agung Mufti, Lis Diana Ningsih, Beni Ahmad Saebani, and Andri Suprihatno. "Legal Sociological Perspective on Marriage Under the Hand (Case Study Understanding of the Cipadung Community, Bandung City)." *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 1536-1544

¹¹ Nur Anshari, "Inheritance rights of children from sirri marriages: An analysis based on fiqh and positive law in Indonesia." *International Journal of Sharia Studies* 1, no. 1 (2023).

¹² Kitab Sunan Tirmizi pada nomor 1009.

¹³ Irfan Islami, "Perkawinan Dibawah Tangan (Kawin Sirri) Dan Akibat Hukumnya" (Universitas YARSI, 2017).

Indeed, not all marriages that are carried out unrecorded (under hand) always have negative consequences. In practice, there are a number of couples who still feel happiness and well-being, comparable to officially recorded marriages. Such happiness is generally based on a strong religious understanding, in which the couple realizes that if they neglect their obligations to their wives or fail to provide for themselves, then they will receive punishment from Allah. On the other hand, if they act justly, then the reward and promise of heaven from Allah will await them.

As Mr. Abdul Aziz, a lawyer regarding unregistered marriages, once said:

*"Marriages that are not recorded, there must be several factors usually that cause the marriage to be not recorded. One of them is nikah sirri, there are still many people who do nikah sirri for various reasons. Either on the basis of love, or like getting pregnant out of wedlock, or it can be because of family demands that cause someone to get married."*¹⁴

However, this kind of understanding of religion is not always universally accepted. Various reasons are often used to maintain the continuity of a marriage between two individuals who have loved each other, even if it is contrary to the prevailing positive law. In this context, the marriage of sirri becomes more vulnerable and has the potential to have negative impacts. The practice of nikah sirri, which is carried out clandestinely without official recognition from the state, can give rise to a range of larger legal and social problems, both for the couple and for society as a whole.

Under-hand marriage (nikah sirri) according to Islamic Civil Law

Sirri marriage refers to a marriage that is carried out in secret. Etymologically, the word "sirri" comes from the Arabic word "sirrun" which means secret, hidden, or invisible, which is an antonym of the word "alaniyyah," which means overt or open. The term "sirri" was later combined with the word "nikah," so "nikah sirri" was used to refer to a marriage that took place secretly or was not announced to the public. This secret and hidden concept can be interpreted in

¹⁴ Results of an Interview with Mr. Abdul Aziz as a Legal Practitioner. 2025

two senses, namely marriages that are not announced to the public or marriages that are not recorded or known by state agencies.¹⁵

The view of marriage under the hand or nikah sirri from the perspective of fiqh scholars varies between sects. The Hanafi school states that a marriage contract is valid if it meets two main conditions, namely the existence of *ijab* and *kabul* and the presence of two fair male witnesses. Without witnesses, marriage is considered invalid, because witnesses have the function of social supervision and legal legitimacy. The Maliki school emphasizes the importance of the announcement of marriage (*i'lân*), and considers *nikah sirri* as a null or *fasid* marriage, as it can cause *fitnah* and violate sharia principles, especially in terms of individual *nasab* and honor. In this *madhhab*, guardians and witnesses are required to be present, and without announcement, the marriage contract is considered invalid. *Madhhab Shafi'i* states that although the announcement of marriage is not absolutely mandatory, it is highly recommended as a *sunnah muakkadah* to maintain social openness and avoid *fitnah*. As long as the marriage pillars such as *wali*, witness, and *ijab kabul* are fulfilled, the marriage of *sirri* is still considered valid. The Hanbali school affirms that a guardian and two fair witnesses are an absolute requirement for the validity of a marriage. *Sirri's* marriage with a fair witness is still valid, even though it is punished *makruh* because it is contrary to the principle of openness, while without witnesses at all, the contract is considered invalid. Overall, the Maliki school is the most strict in prohibiting *nikah sirri*, and can even cancel it if it is not announced, due to the potential violation of broader sharia principles.¹⁶

Hadits Evidence on Marriage Announcement

Hadits about marriage announcement From the Amir bin Abdullah bin Az-

¹⁵ Hafidzi, Anwar, Bahran Bahran, Fuad Luthfi, Rusdiyah Rusdiyah, Mohd Hatta Mohamed Ali, and Ali Banaeian Esfahani. "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan." *Al-Ahkam* 32, no. 2 (2022): 153-168.

¹⁶ Adam, Zainuddin, Nasaruddin Nasaruddin, and Hilal Malarangan. "Problematic of Sirri Marriage in Banggai Islands District: The Case of Aliyan Imamullah's Deviant Sect Marriage Central Peling District, Banggai Islands Regency." *International Journal Of Contemporary Islamic Law And Society* 4, no. 2 (2022): 50-62.

Zubair, from his father Radhiyallahu 'Anhu, the Prophet Muhammad said: "Announce his marriage" Narrated by Ahmad, and saheeh HR. Ahmad bin Hanbali.

Meaning: The Prophet Muhammad advocated that the marriage be announced, so that it would not be suspected of adultery or clandestine relations.

Prohibition of marriage without guardians and witnesses. Imam Ahmad narrated From Hasan and Imran bin Husayn whose chain can be traced back to the Prophet Muhammad SAW, "There is no marriage except with a wali and two witnesses."

Meaning: This is the basis for the importance of the presence of guardians and witnesses, as well as the need to ensure that the marriage is seen and known.

Hadits prohibits secret marriage. From Abi Burdah bin Abi Musa, from his father Radhiyallahu 'Anhu said: Rasulullah SAW said: "There is no marriage without a wali." It was narrated by Ahmad and four others and saheeh by Ibn Al-Madini At-Tirmidhi and Ibn Hibban who considered it weak because it was mursal.¹⁷

In some histories, it is also explained that marriages that are only performed secretly without publication are called "secret marriages" and are reprehensible. Based on the views of the Hanafi, Maliki, and Shafi'i madhhab, the practice of nikah sirri is considered invalid in Islamic teachings. This kind of marriage can be annulled, and the parties involved can be subject to a punishment of limitation (such as dera or rastone) if proven to have violated the provisions of the applicable Islamic law.

This refers to the words of Caliph Umar bin Khattab r.a. when he was told that there had been a marriage that was not attended by adequate witnesses, Umar said;

"This is a series of marriages and I don't allow it and if I come I will be stoned".¹⁸

The meaning of sirri marriage in Umar's perspective is rooted in the practice of marriage with witnesses who do not meet the provisions. However, according

¹⁷ Syekh Ibnu Idrus Al-Idrus Alawi bin Abi Bakar Al-Saqaf Kitab Bulughul Mahrom bab nikah, 183.

¹⁸ Abdullah Wasian, "Akibat Hukum Perkawinan Siri (Tidak Dicatatkan) Terhadap Kedudukan Istri, Anak, Dan Harta Kekayaan Tinjauan Hukum Islam Dan Undang-Undang Perkawinan" (Universitas Diponegoro, 2010).

to the Hanbali madhhab, marriages that are carried out according to Islamic law are still valid even though they are carried out in secret by the bride, guardians, and witnesses. The validity of marriage according to this madhhab depends on the fulfillment of the conditions and harmony, not on the official announcement or record.

As stated by Mr. Abdul Aziz, a lawyer, he stated that:

*"Actually, in the time of the Prophet there was a record in marriages but it was just not in the form of official religious documents, scholars stated that marriages must be recorded just like we are in debt, must be recorded so as not to forget."*¹⁹

The view of marriage under the hand according to the Compilation of Islamic Law (KHI)

Some people in society view that nikah siri is a form of marriage that is religiously valid, as long as its implementation fulfills all the conditions and harmony set by religious teachings. This view is still quite strongly held by some people, who tend to ignore the obligation to register marriages as stipulated in the provisions of the applicable laws. The belief that a marriage is considered valid according to religious law is one of the main factors that encourage the practice of marriage in general. In addition, there is a hesitation about the regulations on marriage that regulate the existence of marriage isbat. As in Article 7 paragraph (2) of the KHI states that *"in the event that the marriage cannot be proven by a marriage certificate, an isbat nikah can be submitted to the Religious Court"*.²⁰

Article 7 of the Compilation of Islamic Law expressly contains provisions regarding isbat nikah, which shows the recognition of the validity of marriage that has not been officially recorded, by providing an opportunity to record at a later time. The purpose of this isbat nikah mechanism is so that the serial marriage that has been carried out can obtain administrative legality and provide legal protection for the parties who carry it out. Religious Courts in Indonesia generally process this marriage isbat application based on the provisions stipulated in the Compilation of Islamic Law.

¹⁹ Results of an Interview with Mr. Abdul Aziz as a Legal Practitioner. 2025

²⁰ Kompilasi Hukum Islam. Pasal 7.

Underhand marriage (nikah sirri) according to Civil Law

The provisions regarding the importance of marriage registration have been explicitly regulated in Law Number 1 of 1974 concerning Marriage, especially Article 2 paragraph (2), which states that "every marriage must be recorded in accordance with the applicable laws and regulations". Thus, the validity of a marriage is not only determined by the fulfillment of religious principles and conditions, but also determined by administrative registration as a form of recognition and legal protection by the state.

The phenomenon of sirri marriage or underhand marriage in Indonesia is still quite significant, both in urban and rural areas, and involves various levels of society, ranging from the lower, middle, to upper economic classes, including the general public, officials, and celebrities. The term often used to refer to this practice is "mistress wife." There are a number of factors that encourage Indonesian people to carry out sirri marriages, both with fellow Indonesian citizens and with foreigners. Many individuals believe that a marriage is legal according to Islamic law, as long as it meets the principles and conditions of marriage, even if it is not officially recorded.²¹ A similar understanding applies to divorce, which is considered valid if it has met the principles and conditions that are determined, even if it is carried out outside of court proceedings.²²

As a result of this phenomenon, legal dualism has emerged in Indonesia, where a marriage that is legal according to religious law (Islam) is not recognized or does not have formal legal force from the state.

As stated by Mr. Abdul Aziz, a lawyer, he stated that:

*"In the example here, there are a lot of officials who do nikah sirri, and the case is not recorded by VAT even though he already has a wife in his hometown."*²³

Marriage under the hand is actually a worrying phenomenon, especially among the community, especially when the practice has become a habit in some groups

²¹ Andi Zainuri, Ahmad Muslimin, and Ahmad Mukhlisin. "Problems of Sirri Marriage and Prisoners: A Case Study in Sukadana, East Lampung, Indonesia." *El-Ushrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 335-347.

²² Burhanuddin, *Menjawab Semua Pertanyaan Tentang Nikah Siri* (Yogyakarta: MedPress Digital, 2012).

²³ Results of an Interview with Mr. Abdul Aziz as a Legal Practitioner. 2025

of people. For example, one of the individuals conveyed by Mr. Abdul Aziz, as a lawyer that:

"A member of the police force who loves a woman deeply faces rejection from her parents of their marriage, on the grounds that the woman is considered unsekufu or socially and economically unequal to their family. However, because the two love each other, they decide to carry out a sirri wedding, with the aim that the marriage will produce offspring that can be a link between the couple and the policeman's parents. In the end, the policeman's parents gave his blessing to the marriage after the couple was blessed with a grandson, which managed to melt the hearts of the policeman's parents."²⁴

In this case, the author concludes that the blessing of both parents is very important before the marriage is performed, with the aim that each part of the family can accept and support each other. This also contributes to the blessings in the domestic life that will be built. However, if the parents do not give their approval, actions such as marrying Sirri should not be taken. Sirri marriage, which is not recorded in the marriage book, will result in the invalidity of the marriage according to state law and is not recognized by the community legally or socially.

Solution or settlement of underhanded marriage cases in the South Jakarta religious court

Isbat nikah comes from two syllables in Arabic, namely isbat and nikah. The word isbat is isim masdar which comes from the Arabic asbata-yasbitu-isbatan which means determination or determination. This term was then absorbed into a word term in Indonesian. In the great Indonesian dictionary, the word isbat is interpreted as determining, which is in the form of determining the truth (validity) or determining the truth of something.²⁵ Isbat nikah, according to the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/032/SK/2006 concerning Guidelines for the Implementation of Duties and Court Administration, is a ratification of a marriage that has been held in accordance with Islamic religious law, but is not

²⁴ Results of an Interview with Mr. Abdul Aziz as a Legal Practitioner. 2025

²⁵ Abdul Aziz Dahlan et. al, (ed) "Encyclopedia of Islamic Law" (Volume: 1), Ikhtiar Baru Vanhove, Jakarta, 1996, p.221.

recorded by the Office of Religious Affairs (KUA) or the authorized State Marriage Registration Agency (PPN).

Isbat nikah can also be understood as a legal method or procedure used to determine the validity of a marriage that has not been registered in the local KUA, by referring to the applicable legal provisions. This process is carried out through the competent court, namely the Religious Court, to ensure that marriages that have been carried out in accordance with Islamic law, but not administratively recorded, are legally recognized according to state law.²⁶

As said by Mr. Adam as the Head of KUA Pancoran South Jakarta during an interview, he said:

"We advise the married couple to make a marriage application letter at the local religious court."²⁷

Here the author gets information related to the answers to the settlement of marriage cases under hand, and the author can summarize some information that every marriage must be recorded by the state, not only legally religiously but also in the state the marriage must be formalized.

As said by Mr. Abdul Aziz as a lawyer, that:

"A marriage that is not officially registered by the state, and a person wants to establish a marriage to be recognized by the state. So he must go to court, to be married by providing certainty of legal determination for someone who needs it. Because if it is not declared, this will affect the status of children, deeds, and even heirs. If there is a person whose marriage is not recorded, then the heirs cannot get it, unless the parents have been married in the religious court, then the heirs can be given."²⁸

The author can also summarize that recording is so important in marriage, because it will affect or impact the couple and heirs. As well as being a sign that a person is married, therefore the marriage must be registered by state or civil law.

According to the applicable laws and regulations, as well as Article 7 of the Compilation of Islamic Law, marriage can only be proven by a marriage

²⁶ Supreme Court, Technical Guidelines for Administrative and Technical Religious Courts, (Book II), Jakarta, 2010, p.147).

²⁷ Results of the interview with Mr. Adam as the Head of KUA Pancoran. 2025

²⁸ Results of an Interview with Mr. Abdul Aziz as a Legal Practitioner. 2025

certificate. Therefore, if the marriage is not recorded in the marriage certificate, the solution that can be taken is through an application for isbat nikah. This application aims to obtain authentic evidence in the form of a marriage certificate citation, which provides legality both juridically formally and among the public. In addition, isbat nikah also serves to avoid the potential for fitnah in social life that can have an impact on women. Thus, isbat nikah, which is the authority of the religious court, is the right solution to solve legal problems that arise in society, and is part of the legal function in regulating and protecting the rights of society, especially in creating marital order and protecting the rights of individuals involved in the marriage.²⁹

Marriage can only be proven through a marriage certificate issued by the Marriage Registrar. If the marriage cannot be proven by a marriage certificate, an application for isbat nikah can be submitted to the Religious Court. The requirements for isbat nikah as stipulated in Article 7 paragraph (3) of the Compilation of Islamic Law are as follows:

1. The existence of a marriage that aims to resolve the divorce,
2. Loss of marriage certificate,
3. There are doubts about the validity of one of the conditions of marriage,
4. The existence of marriages that occurred before the enactment of Law Number 1 of 1974,
5. Marriages carried out by parties who are not hindered by the provisions of Law Number 1 of 1974.

Based on the conditions of isbat nikah that have been described above, it can be concluded that not all marriage events can be submitted for isbat nikah at the Religious Court. This means that the application for isbat nikah submitted to the Religious Court will only be granted if the conditions determined by juridically have been met. On the other hand, if these conditions are not met, the judge will reject the application for isbat nikah because it is not in accordance with the applicable legal provisions. However, in some situations, the Panel of Judges may grant an application for isbat nikah even if it does not meet the juridical requirements, if there are logical considerations, such as

²⁹ Satria Efendi and M Zein, *Problematika Hukum Keluarga Islam Kontemporer* (Jakarta: Pranada Media, 2004).

psychological, sociological, or other reasons that show that the rejection of the application may cause harm to the parties concerned, including their families. For example, if the application for marriage legalization is denied, this can cause difficulties for the children of the marriage in obtaining birth certificates and other rights.

Thus, in accordance with the authority possessed by the judge, he can make *ijtihad* and grant the application for marriage legalization even though the juridical conditions have not been fully met. The authority of the judge to perform *ijtihad* is reflected in the hadith of the Prophet which reads: "From Amru bin al-'Ash: Indeed, he heard the Prophet PBUH say:

"When the judge decides a matter and he performs ijtihad, then it is true, then for him there are two rewards. However, if he decides the matter and does ijtihad then he is wrong, then for him there is a reward." (Muttafaq 'alaih).³⁰

Legal change and social change are two phenomena that affect each other. Changes in the legal system of a country can have an impact on social changes in society, as well as social changes that occur in society can encourage legal changes in a country. Based on this, the rules regarding marriage registration and marriage will experience dynamic interaction between the two.

The theory of change in the law put forward by Ibn Qayyim al-Jauziyah in the book *I'lām ul-Muwaqqīn* states that it means:

*"Fatwa changes and differ according to changes in time, place, conditions, intentions and customs."*³¹

Isbat Nikah Becomes an Effort to Resolve Marriage Cases Under Hand in Religious Courts

Marriage is a human right for every citizen can be found in Article 28 b paragraph (2) of the 1945 Constitution in the second amendment. In the article it is stated that

³⁰ Sayyid Muhammad bin Ismail alkahlani, 117

³¹ Muhammad ibn Abi Bakr Ayyub Zar'iy Abu Abdillah, 1973

"Everyone has the right to form and continue offspring through legal marriage. If you look closely at the reading of the article above, there is the word "Through a valid marriage", this indicates the existence of a provision and conditions that must be fulfilled before carrying out the marriage". (1945 Constitution as amended). Because marriage is an important legal event, like birth, death and others. To prove the existence of a valid marriage is not enough, it is only proven by the existence of the event itself without written evidence based on the registration in the appointed institution, thus the registration which is then followed up with the issuance of a deed in the form of a marriage certificate by an authorized official, the function of the deed is a perfect and binding (authentic) evidence. The Religious Court, like other courts, has the main or main task of receiving, examining, adjudicating and resolving every case and the Court is prohibited from rejecting a case because the law is unclear or does not exist. All cases must be processed according to the applicable rules, as well as the case of isbat nikah. The Religious Court is obliged to receive, examine and adjudicate the application for isbat nikah that has been registered in accordance with the applicable rules. It is at the trial stage that the judge will decide whether the application for isbat nikah is granted or rejected.³²

As discussed earlier, the legal basis for judges in granting the application for isbat nikah refers to the following legal provisions:

1. Article 2 paragraph (1) of Law Number 1 of 1974: "Marriage is legal, if it is carried out according to the law of each religion and belief".
2. Article 64 of Law Number 1 of 1974 states that "For marriage and everything related to marriage that occurred before this law came into force that is carried out according to the old regulations is valid". (Law Number 1 of 1974). Because isbat nikah is part of the field of marriage, it is clear that the article is part of the basis of the basis of the Isbat nikah which is the authority of the Religious Court."
3. Article 7 of the Compilation of Islamic Law (KHI):
 - 1) Marriage can only be proven by a Marriage Certificate made by the Marriage Registrar.

³² Roihan, A Rasyid., 53

- 2) In the event that the marriage cannot be proven by the Marriage Certificate, the marriage isbath can be submitted to the Religious Court.
- 3) Marriage isbath that can be submitted to the Religious Court is limited to matters relating to:
 - a. The existence of marriage in the context of resolving the divorce;
 - b. Loss of Marriage Certificate;
 - c. There is doubt 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 1 of 1974;
 - e. Marriage is carried out by those who do not have a marriage barrier according to Law Number 1 of 1974.

Those who have the right to apply for itsbat nikah are their husband or wife, their children, the marriage guardian, and parties interested in the marriage.³³ These articles include those that are normative laws as the basis for judges to decide on an application for isbat nikah.

Based on the articles mentioned, under-handed marriages that occurred before 1974, before the enactment of the Marriage Law, are understandable because there is no regulation that regulates it nationally. Referring to Article 64 and Article 2 paragraph 1 of Law Number 1 of 1974, the judge has a legal basis to grant the application for isbat nikah, provided that it is proven in the trial that the marriage is valid according to Islamic law, meets the principles and conditions, and does not violate religious prohibitions or laws.

Under-handed marriage after 1974 refers to Article 7 paragraph 3 letter (e) of the Compilation of Islamic Law.

"The judge can grant the application for isbat nikah if it is proven that the marriage is valid, meets the principles and conditions, and does not violate religious prohibitions or laws. On the other hand, if it is proven that they do not meet the requirements or violate the provisions, the application for isbat nikah will be rejected".

³³ Direktorat Pembinaan Badan Peradilan Agama Islam/ Direktorat Jenderal Pembinaan Kelembagaan Agama Islam Departemen Agama RI, 139.

The application for isbat nikah for the loss of the marriage book refers to Article 7 paragraph 3 letter b of the Compilation of Islamic Law. If it is proven in the trial that the marriage is valid, registered, meets the principles and conditions, and does not violate religious prohibitions or laws, the judge can grant the marriage isbat application.

The presence of the Compilation of Islamic Law as a law applied in the Religious Courts has accommodated Islamic law as an integral part of the National Legal system. The Compilation of Islamic Law is a living law among the Muslim community, where several aspects of Islamic civil law, such as marriage, inheritance, and waqf, have been applied and practiced by the majority of Indonesian Muslims who are Muslim. In practice, many people apply for marriage isbat at the Religious Court with the aim of obtaining a child's birth certificate, school registration, civil servant, TNI/Polri exam, and so on. Based on this reality, isbat nikah is considered a step to provide legal certainty, obtain a marriage certificate, and provide legal protection for children born from the marriage, considering the status of children who need to be protected, even though they are innocent.³⁴

Article 7 paragraph 3 letter (e) of the Compilation of Islamic Law provides an opportunity for the Panel of Judges to grant the application for isbat nikah even though the marriage is not recorded and carried out after the enactment of the Marriage Law, provided that its implementation is in accordance with the provisions of religious law. To convince the Panel of Judges that the marriage is in accordance with Islamic law, at the evidentiary stage, the Panel of Judges can order the Applicant to present witnesses who were present at the time of the marriage contract, and even present a modin (penghulu) in the trial, in order to ensure that the conditions and principles of marriage have been fulfilled and the marriage is valid according to religious law.³⁵

Applications for isbat nikah related to underarm marriages that contain elements of legal smuggling, such as polygamy without court permission, or to

³⁴ Ditbinbapera, "Berbagai Pandangan Terhadap Kompilasi Hukum Islam", Al-Hikmah, Jakarta, 1993, 55

³⁵ Ditbinbapera, "Berbagai Pandangan Terhadap Kompilasi Hukum Islam", Al-Hikmah, Jakarta, 1993, 55

take advantage of legal loopholes to maintain alimony for divorced women or the wives of civil servants who are left for dead, will certainly be rejected. To prevent the practice of legal smuggling related to isbat nikah, especially in the case of illegal polygamy, the process of submitting, examining, and settling the isbat nikah application refers to Book II, especially the provisions of numbers 3 and 4, which states that "The process of applying for isbat nikah submitted by one of the parties, both husband and wife, is contentious by sitting the party who does not submit the application as the Respondent. The legal product is in the form of decisions that can be appealed and appealed."³⁶

In the process of examining the marriage isbat application, if it is revealed that the husband is still bound by a legal marriage with another woman, then the previous wife must be made a party to the case. If the applicant refuses to include the previous wife as a party, the application must be rejected. The judge is obliged to carefully consider whether the marriage isbat will provide benefits or actually bring harm to the parties involved in the family. Therefore, the judge's decision must be based on adequate considerations and not stuck in a decision that is unreasonable or not supported by sufficient considerations (onvooldoende gemotiveerd).³⁷

Conclusion

The practice of marriage under the hand or nikah sirri does not get recognition in the national legal system if it is not officially recorded in the authorized agency. This refers to the provisions of Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, as well as Article 5 of the Compilation of Islamic Law (KHI), which expressly requires the recording of every marriage to ensure order and legal protection of the rights of husbands, wives, and children. The Maliki school explicitly rejects undeclared marriages and considers them invalid, as they are contrary to the principle of i'lan (publication) which is part of the sharia maqashid.

In practice, the head plays an important role in registering legal marriages both religiously and stately. As a religious official, the head is in charge of recording, verifying, and fostering marriages in the community. Based on the applicable

³⁶ Makamah, disampaikan dalam rangka Rakernas MARI, 142

³⁷ Makamah, disampaikan dalam rangka Rakernas MARI, 142

regulations, the penghulu is an employee of the Ministry of Religion who is not only responsible for recording, but also provides guidance and supervision over the implementation of marriage. In the case that occurred at the South Jakarta Religious Court, a number of legal and administrative problems were found related to marriage registration that were not in accordance with the applicable provisions at the Religious Affairs Office (KUA).

The solution to overcome problems related to marriage under hand is to increase socialization about the importance of registering legal marriages, both registered and illegal, through continuous efforts by the government, especially through KUA agencies. In addition, religious figures also have a crucial role in people's lives, because they influence and become role models for the individuals around them. What is conveyed by religious leaders is often considered absolute truth by society, especially in matters related to religious teachings, including marriage. *Isbat nikah* is a legal solution to legalize a marriage through a court mechanism, so that the marriage can be recognized and recorded by the state.

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