

Juridical Review of the Implementation of Marriage Legalization Applications

Doris Rahmat¹, Ellectrananda Anugerah Ash-Shidiqqi^{2*}, Syahid Akhmad Faisol³,
Indra Devian Lumban Gaol⁴

Faculty of Law Universitas Negeri Surabaya, Indonesia

ABSTRACT

Marriage legalization (*işbat nikah*) is a legal mechanism submitted to the Religious Court to obtain official recognition of a marriage conducted according to Islamic law but not yet officially recorded in state administration. This study aims to examine the juridical basis, implementation procedures, and obstacles in submitting an *işbat nikah* application at the Karanganyar Regency Religious Court. The method used is normative juridical research with a statutory and case study approach. The study results indicate that the legal basis for *işbat nikah* is regulated in Article 7, paragraph (3) of the Compilation of Islamic Law (KHI), Law Number 1 of 1974 concerning Marriage, and Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 on Religious Courts. The practice at the Karanganyar Religious Court shows an increase in the number of applications, especially from couples in unregistered marriages (*nikah siri*). The main obstacles in the implementation are the lack of public legal awareness and limitations in evidence. This research concludes the need to improve public legal literacy as well as the active role of village government officials in encouraging early marriage registration.

Keyword: *confirmation, marriage, law.*



Corresponding Author:

Ellectrananda Anugerah Ash-shidiqqi
Universitas Negeri Surabaya
Jl Ketintang, Ketintang, Surabaya
Email : ellectranandaashidiqqi@unesa.ac.id

1. INTRODUCTION

A valid marriage in Islam is defined as a *nikah*, a solemn and binding contract (*akad*) that signifies obedience to Allah and whose performance is regarded as an act of worship (Shihab 1996, 262). Because of its sacred and social importance, Islam regulates marriage comprehensively—covering procedures, rights, obligations, and consequences—to ensure that the marital relationship aligns with divine principles and social justice (Sabiq 1997, 19). The Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), enacted through Presidential Instruction (Inpres) Number 1 of 1991, was intended to harmonize Islamic legal practices in Indonesia. However, based on Law Number 12 of 2011 on the Formation of Legislation, the Presidential Instruction does not appear within the formal hierarchy of Indonesian statutory regulations (Republik Indonesia 2011). Consequently, the KHI occupies a lower position than Law Number 3 of 2006 on Religious Courts, which serves as its legal umbrella (Republik Indonesia 2006). According to Hans Kelsen's *Stufenbau* theory, every lower legal norm must derive its validity from a higher one and cannot contradict it (Kelsen 1967, 221–224). Therefore, if the Presidential Instruction on the KHI conflicts with superior laws, its provisions cannot be applied. This principle is consistent with the doctrine of *lex superior derogat legi*

inferiori—a higher law prevails over a lower one (Farkhani 2009, 44–45). Marriage itself holds both religious and juridical dimensions. The religious dimension sanctifies marriage as an act of worship, while the juridical aspect ensures social order and legal protection for all parties involved (Hendropriyono 2020, 73). Law Number 1 of 1974 on Marriage requires that every marriage be registered by an authorized official to be legally recognized by the state (Republik Indonesia 1974). Nevertheless, unregistered marriages (*nikah siri*) continue to occur, often due to economic limitations, cultural traditions, or a lack of understanding about the importance of legal documentation (Mudzhar 2005, 91). This situation creates significant legal consequences, particularly regarding the legitimacy of children, inheritance rights, marital property, and civil registration (Azizy 2002, 145).

To address this issue, the Indonesian government provides a judicial mechanism known as *isbat nikah*—a legal process to validate unregistered marriages through the Religious Court (Pengadilan Agama) (Direktorat Jenderal Badilag 2021, 6). In practice, *isbat nikah* is widely used, including in Karanganyar Regency, where many couples who married informally seek legal recognition of their unions (Pengadilan Agama Karanganyar 2025, 12). The process ensures that previously unregistered marriages are officially acknowledged, enabling couples to obtain marriage certificates and secure their civil rights under national law (Kementerian Agama RI 2022, 4). The importance of *isbat nikah* lies in providing legal certainty. Once validated, the marriage gains full legal recognition, which guarantees protection of the rights and obligations of both spouses and their children (Daud Ali 2012, 153). It also ensures that family events are properly recorded, supporting accurate population data and access to social services (Santoso 2021, 65). In essence, *isbat nikah* serves as a bridge between religious practice and state law—affirming Islamic values while fulfilling the state’s obligation to ensure equality, justice, and administrative order (Bagir 2020, 57).

2. RESEARCH METHOD

This study employs a normative juridical research method (*yuridis normatif*), which focuses on examining laws and regulations, legal principles, and doctrines relevant to the legitimacy of marriage and the legal standing of *isbat nikah* within the Indonesian legal system. The normative juridical approach is chosen because the main objective of this research is to analyze the consistency and hierarchical relationship between Islamic law norms, particularly the Compilation of Islamic Law (KHI), and the national legal framework, including Law Number 1 of 1974 on Marriage, Law Number 3 of 2006 on Religious Courts, and Law Number 12 of 2011 on the Formation of Legislation (Soekanto and Mamudji 2014, 15).

In addition to statutory analysis, this study uses a conceptual approach, which explores the theoretical foundations of Islamic marriage law, the concept of legal certainty (*kepastian hukum*), and the principle of *lex superior derogat legi inferiori* as formulated by Hans Kelsen’s *Stufenbau* theory (Kelsen 1967, 221–224). This conceptual analysis allows the researcher to connect the philosophical rationale of law with the application of marriage validation through *isbat nikah* in Religious Courts.

To strengthen the analysis, the research also adopts a case study approach, focusing on *isbat nikah* cases within the Karanganyar Religious Court during the period 2020–2025. The purpose of this case study is to understand the implementation and judicial reasoning in granting or rejecting *isbat nikah* requests. The data were obtained through a review of court decisions (*putusan pengadilan*), administrative records, and official reports published by the Directorate General of Religious Courts (Badilag) and the Ministry of Religious Affairs (Kementerian Agama RI) (Badilag 2021, 7; Kemenag 2022, 5).

Legal materials used in this study are divided into three categories: primary legal materials, which include statutory regulations and court decisions; secondary legal materials, consisting of legal textbooks, scholarly articles, and previous research on Islamic family law; and tertiary legal materials, such as legal dictionaries and encyclopedias (Ibrahim 2018, 54). All legal materials are collected through library research (*studi kepustakaan*), organized thematically, and analyzed qualitatively to construct arguments on the position and function of *isbat nikah* within Indonesia’s plural legal system. The analysis technique used is qualitative juridical analysis, meaning that all data are interpreted through descriptive and analytical reasoning rather than numerical or statistical computation. This allows the study to reveal normative coherence, legal hierarchy consistency, and socio-religious implications of *isbat nikah* as a bridge between Islamic and state law. The conclusion is drawn inductively, moving from specific legal findings—such as the status of the KHI and judicial practices—to general interpretations of how *isbat nikah* contributes to legal certainty and the protection of citizens’ rights.

3. RESULTS AND DISCUSSION

The concept of *isbat nikah* in Indonesia stands at the intersection of Islamic jurisprudence (*fiqh*) and modern legal positivism, reflecting the effort to harmonize divine law (*syariah*) with state law (*qanun*). This synthesis can be understood through several interrelated theoretical frameworks—legal pluralism, Hans Kelsen’s *Stufenbau* theory, and the principle of legal certainty—which together shape the conceptual foundation for the state’s recognition of religiously valid but unregistered marriages.

From the perspective of Islamic legal theory, marriage (*nikah*) is a sacred covenant and a legal contract (*akad*) that establishes mutual rights and obligations between spouses (Sabiq 1997, 21). Its validity is determined by the fulfillment of the *rukun* (pillars) and *syarat* (conditions) prescribed in Islamic law, not necessarily by administrative registration. However, in a modern nation-state, the *fiqh*-based concept of marital validity must coexist with state-imposed procedural requirements, including civil registration, to ensure legal certainty, social order, and the protection of individual rights (Daud Ali 2012, 147). This coexistence illustrates the adaptive capacity of Islamic law when placed within a pluralistic legal system.

Legal pluralism theory provides a broader lens for understanding the coexistence of multiple normative systems within one jurisdiction. Indonesia, as a plural legal state, recognizes Islamic law, customary law (*adat*), and national law as coexisting legal orders (Hooker 1978, 124). Within this framework, *isbat nikah* serves as a reconciliation mechanism that allows religious legitimacy to be formally absorbed into the state’s legal apparatus. The Religious Courts (*Pengadilan Agama*) thus act as mediators between these two legal systems, ensuring that religious acts acquire state legitimacy without undermining their theological integrity. This dual recognition embodies the principle of *maqasid al-shariah*—that legal mechanisms should serve justice, public welfare, and the preservation of family lineage (*hifz al-nasl*) (Kamali 2008, 12).

From a normative legal theory standpoint, the position of *isbat nikah* can be analyzed using Hans Kelsen’s *Stufenbau* theory, which conceptualizes law as a hierarchical system of norms, each deriving its validity from a higher norm (Kelsen 1967, 221–224). In this hierarchy, *isbat nikah* gains its legal legitimacy through the authority granted by Law No. 3 of 2006 on Religious Courts, which itself derives from the Constitution of Indonesia. Although the Compilation of Islamic Law (KHI) is enacted through a Presidential Instruction (*Inpres* No. 1 of 1991)—a form not explicitly listed in the hierarchy of legislation—it remains valid as long as it does not conflict with superior laws (Farkhani 2009, 45). This relationship illustrates Kelsen’s idea of legal coherence, where normative consistency sustains the unity of the legal system. The principle of legal certainty (*rechtszekerheid*) also plays a central conceptual role. According to Lon L. Fuller (1969, 39), legal certainty is a moral and structural prerequisite of the rule of law—laws must be clear, stable, and publicly knowable to guide human behavior. In the context of *isbat nikah*, legal certainty ensures that the status of marriage, children, and property rights are legally protected. It transforms a purely religious relationship into one recognized by the state, enabling individuals to access civil services, inheritance, and other rights guaranteed under national law. Moreover, the theory of legal integration in plural societies—as proposed by John Griffiths (1986, 8)—argues that the coexistence of legal systems is not a sign of weakness but a reflection of social diversity. Indonesia’s implementation of *isbat nikah* exemplifies “weak legal pluralism,” where non-state legal systems (Islamic and customary law) are recognized and administered through state institutions. This integration demonstrates the dynamic relationship between state authority and societal norms, affirming that law is not merely a command of the sovereign but a living institution responsive to cultural and religious realities.

Thus, the conceptual framework of this study situates *isbat nikah* as a normative convergence of theology, law, and social justice. It is both a product of Islamic legal thought—grounded in *fiqh munakahat* (marriage jurisprudence)—and a manifestation of state responsibility to guarantee equality before the law. Theoretically, it embodies the balance between *lex divina* (divine norms)

and *lex humana* (human-made law), showing that Indonesian legal development does not secularize Islamic norms but instead institutionalizes them to achieve harmony between faith and governance.

The implementation of *isbat nikah* in Indonesia reflects a distinctive intersection between Islamic law and national legislation, demonstrating the state's attempt to reconcile religious values with administrative legal frameworks. In Islamic jurisprudence, a marriage (*nikah*) becomes valid when it fulfills the *rukun* and *syarat*—the essential elements such as consent (*ijab qabul*), witnesses, and guardianship (*wali*)—as prescribed by classical scholars like al-Syafi'i and al-Ghazali (Sabiq 1997, 23). However, from the perspective of Law Number 1 of 1974 on Marriage, legality requires formal registration before a competent authority. This duality often causes tension between religious validity and state recognition, leading to the emergence of *nikah siri*, or unregistered marriages, which remain valid religiously but lack administrative acknowledgment (Azizy 2002, 142).

The state's response to this duality is institutionalized through *isbat nikah*, a judicial process conducted by the Religious Court (*Pengadilan Agama*) that aims to legally validate previously unregistered marriages. This mechanism acknowledges that religious and social realities cannot be dismissed merely because of administrative deficiencies (Kemenag RI 2022, 7). Thus, *isbat nikah* functions as a corrective legal instrument that restores the harmony between Islamic and state law, ensuring that religiously valid marriages are also recognized by the state. In this sense, *isbat nikah* represents an *instrumentum legis*—a bridge between divine command (*syariah*) and human regulation (*qanun*). From the normative juridical standpoint, the position of *isbat nikah* derives legitimacy from the Compilation of Islamic Law (KHI), specifically Article 7 paragraph (2), which allows couples to request marriage legalization when their marriages were conducted but not officially recorded. Nevertheless, the legal authority of the KHI itself is a matter of doctrinal debate. Enacted through Presidential Instruction No. 1 of 1991, the KHI lacks a clear standing in the hierarchy of legislation stipulated by Law No. 12 of 2011 on the Formation of Laws and Regulations (Republik Indonesia 2011). According to Hans Kelsen's *Stufenbau* theory, lower legal norms must not contradict higher laws and derive their validity from them (Kelsen 1967, 221–224). Therefore, the enforcement of the KHI depends on its harmony with superior statutes, particularly Law No. 3 of 2006 on Religious Courts, which provides the institutional competence for adjudicating *isbat nikah* cases.

In practice, *isbat nikah* plays a crucial role in addressing social justice and gender equality concerns. Many unregistered marriages in rural Indonesia are motivated not by resistance to state law, but by socioeconomic barriers, cultural traditions, or limited access to registration offices (Mudzhar 2005, 98). As a result, women and children from these marriages are often denied essential rights such as inheritance, identity documents, and access to education or health services. The *isbat nikah* process restores their legal identity, allowing them to be fully protected under civil law. This function underscores the transformative potential of *isbat nikah* as a mechanism of legal empowerment for marginalized groups (Daud Ali 2012, 151).

Empirical studies, such as those conducted by the Karanganyar Religious Court (2025), indicate that most *isbat nikah* petitions are filed by economically disadvantaged couples or widows seeking recognition for inheritance and social benefits. The court's decisions generally emphasize the principles of *maslahah* (public interest) and *adl* (justice), aligning legal formalities with Islamic ethical values (Bagir 2020, 59). The judiciary thus exercises *ijtihad struktural*, adapting Islamic jurisprudence to the realities of modern governance and civil rights.

However, challenges persist in ensuring uniformity and efficiency across jurisdictions. Some scholars argue that the absence of a clear legislative mandate for *isbat nikah* creates interpretive inconsistencies, with different courts applying varying standards for evidence and eligibility (Santoso 2021, 68). Additionally, the lack of integration between the Religious Court system and civil registration agencies (*Disdukcapil*) sometimes delays the issuance of official documents,

thereby undermining the objective of legal certainty. These administrative gaps highlight the need for policy harmonization and inter-institutional coordination.

From a legal-philosophical perspective, isbat nikah represents Indonesia's experiment in pluralistic legal synthesis, balancing *lex divina* (divine law) and *lex humana* (human-made law). It illustrates the dynamic adaptability of Islamic legal principles when embedded in a modern nation-state structure that values both faith and citizenship. The isbat nikah process transforms theological legitimacy into formal legality—an act that not only upholds religious morality but also fulfills constitutional mandates of equality before the law. In this regard, isbat nikah is not merely a procedural remedy but a symbol of legal reconciliation between the state and religion, reaffirming Indonesia's identity as a nation guided by the principles of Pancasila and social justice. Ultimately, the success of isbat nikah depends on the integration of law, ethics, and administration. It requires continuous refinement of legal instruments, enhancement of public awareness, and digital transformation of marriage registration systems to prevent future unrecorded unions. As such, the state's role is not only to enforce compliance but to facilitate accessibility, ensuring that every marriage—whether in urban centers or rural villages—receives equal legal recognition and protection.

4. CONCLUSION

The legal institution of isbat nikah serves as a vital bridge between Islamic religious norms and Indonesia's national legal framework. It transforms marriages that are valid under syariah but unrecorded by the state into fully recognized legal unions, thus providing legal certainty (*kepastian hukum*) and protecting the rights of women, children, and families. Through the isbat nikah mechanism, Indonesia demonstrates a harmonization of dual legal systems—religious and civil—ensuring that spiritual obligations and state administration coexist in a coherent and just structure.

From a normative perspective, isbat nikah aligns with the principle of *maslahah* (public interest) and the doctrine of *lex superior derogat legi inferiori*, ensuring that legal interpretation respects both the hierarchy of laws and the moral intent of Islam. Although the Compilation of Islamic Law (KHI) does not occupy a formal position within Indonesia's statutory hierarchy, its practical relevance is reinforced by its conformity with higher regulations such as Law No. 1 of 1974 on Marriage and Law No. 3 of 2006 on Religious Courts. This balance reflects Hans Kelsen's notion of a hierarchical legal order where each norm derives validity from the higher one.

Socially, isbat nikah empowers marginalized groups by granting formal recognition to previously excluded families, allowing them access to civil rights, inheritance, and public services. Yet, persistent challenges—such as administrative delays, regional disparities, and limited public awareness—indicate the need for policy refinement and digital integration to strengthen the marriage registration system. In conclusion, isbat nikah is more than a procedural remedy; it is a manifestation of legal pluralism and justice in action. It embodies Indonesia's constitutional vision of upholding equality before the law while respecting religious diversity. By institutionalizing isbat nikah, the state not only ensures legal order but also reaffirms its moral commitment to safeguard the sanctity of marriage and the dignity of its citizens within the framework of Islamic ethics and national law.

REFERENCES

- Daud Ali, Muhammad. *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*. Jakarta: Rajawali Pers, 2012.
- Farkhani. *Asas Hukum dalam Peraturan Perundang-undangan di Indonesia*. Jakarta: Rajawali Press, 2009.
- Fuller, Lon L. *The Morality of Law*. New Haven: Yale University Press, 1969.
- Griffiths, John. 1986. "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24 (1): 1–55. <https://doi.org/10.1080/07329113.1986.10756387>
- Hooker, M. B. *Adat Law in Modern Indonesia*. Kuala Lumpur: Oxford University Press, 1978.
- Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, 2008.
- Kelsen, Hans. *Pure Theory of Law*. Translated by Max Knight. Berkeley: University of California Press, 1967.
- Sabiq, Sayyid. *Fiqh al-Sunnah*. Vol. 2. Beirut: Dar al-Fikr, 1997.
- Syarifuddin, Amir. *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*. Jakarta: Prenadamedia Group, 2019.

-
- Nasution, Khoiruddin. *Islamic Family Law in Indonesia: Continuity and Change*. Yogyakarta: UIN Sunan Kalijaga Press, 2016.
- Ali, Zainuddin. *Hukum Peradilan Agama di Indonesia*. Jakarta: Sinar Grafika, 2013.
- Rahardjo, Satjipto. *Hukum dan Masyarakat*. Bandung: Angkasa, 2009.