

***THE URGENCY OF ITSBAT NIKAH IN REGISTERING
MARRIAGE TO CHILDREN'S IDENTITY RIGHTS IN
NORTH ACEH***

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ABSTRACT

Marriage registration provides legal protection for married couples and their children. It serves as authentic proof of the validity of the marriage. According to Article 2, paragraphs (1) and (2) of Law Number 1 of 1974 on Marriage, a marriage is considered valid if it is conducted in accordance with the couple's religious beliefs and laws and is officially recorded. However, in practice, some marriages are performed solely according to religious customs and are not officially recorded, leaving the couple without legal proof of their union. This study aims to analyze the importance of marriage registration through Itsbat Nikah (marriage legalization) by the state, particularly in relation to ensuring the identity rights of children born from such marriages, with a focus on North Aceh Regency. The research employs an empirical juridical approach, using field data as primary sources and literature as secondary sources to assess the legal protection of children born from unregistered marriages in North Aceh Regency.

Keywords: *Itsbat Nikah, Marriage Registration, Identity Rights.*

1. INTRODUCTION

Marriage registration is a public administrative interest that aims to provide guarantees of legal protection and human rights, as evidenced by authentic deed evidence providing legal certainty to the status of the parties. According to Sedarmayanti, the registration of marriage in the administrative part and the implementation of Good *Corporate Governance* (GCG), it describes the quality of the relationship between the government and its people. Therefore, the implementation of good governance requires accountability, transparency, openness, and the rule of law (Sedarmayanti, 2012).

The validity of marriage is something very crucial that is closely related to the consequences of marriage. Marriage is said to be valid both from the point of view of religion and the state, so the legal position regarding the consequences of this marriage, especially regarding offspring (children) and property, will be firm and clear. Authentic evidence is evidence that must be possessed by married couples by completing formal state administrative requirements. So that the marriage that is carried out gets recognition of its validity from the state through recording at the Office of Religious Affairs and the Civil Registration Office. (Yasniwati, 2023)¹

According to Dyah Ochterina Susanti, Siti Nur Shoimah, marriage registration is carried out to provide the greatest benefit for the sake of creating happiness for many people (Susanti & Shoimah, 2016). Therefore, marriage registration will give birth to authentic evidence as a tool for them to be able to prove the legitimate offspring resulting from their marriage and the rights born from these legal acts such as the right as an heir the right of children to obtain a birth certificate and others.² However, the weak public understanding of the importance of marriage registration is a trigger for ignoring the legal obligation to register marriage carried out by married couples. This is as expressed by Stijn Cornelis Van Huis and Theresia Dyah Wirastri, that the lack of legal knowledge of the community regarding the importance of marriage registration is the main factor causing people to ignore marriage registration (VAN HUIS & Wirastri, 2012).

According to Soerjono³, before the enactment of Law Number 1 of 1974, commonly known as the Marriage Law, marriage provisions, procedures, and validity for Indonesians were largely governed by religious and customary laws. In customary law, marriage was viewed as a union between a man and a woman to establish a household, performed according to their respective customs and religions, and involving both families and relatives. However, these provisions are now considered outdated and irrelevant to the current needs and development of society. Marriages based solely on religious and customary laws are not automatically recognized by the state, as they lack official registration, which in turn affects the legal protection of children born from such unions. Without registration, there is no authentic evidence that can serve as a basis for securing children's rights as part of legal protection provided by the state.

Article 2, paragraph (1) of the Marriage Law emphasizes that the validity of a marriage must adhere to religious rules, while paragraph (2) states that every marriage must be registered in accordance with applicable regulations. The requirement for marriage registration serves state administrative purposes, enabling the issuance of a Marriage Book as official proof of the legal bond between a man and a woman as husband and wife. This documentation ensures legal certainty regarding the status of the couple and the children born from their marriage.

However, in practice, these legal expectations are not always met, which negatively impacts children's rights. For example, the lack of marriage registration can hinder a child's right to legal protection concerning their identity. This, in turn, may adversely affect the child's future growth and development. This study aims to analyze the urgency of *Itsbat Nikah* (marriage legalization) as an

¹ Wahjono Darmabrata, *Civil Law: Legal Principles of People and the Family*, Jakarta, Gitamajaya, 2004, p. 101

² Ahmad Rofiq, *Islamic Law in Indonesia*, Jakarta, PT Raja Grafindo Persada, 1995, p. 107

³ Soerjono Wignodipoero. 1988. *Principles of Customary Law*, Jakarta: Gunung Agung, p. 55.

alternative for marriage registration to secure children's identity rights, with a particular focus on North Aceh.

2. Research methods

This research uses an empirical juridical approach that aims to look more deeply at legal norms. This research is supported by primary data and secondary data obtained through literature review. Data analysis and critical analysis are needed so that the data can be interpreted, and find problems that need to be solved. If necessary, it will revise the relevant legislation. According to Chatterjee, this is done to open up space for researchers to criticize, improve and provide suggestions for revision or cancellation and changes to weak and ineffective laws. In this context, related to the legal rules, this (Moleong, 2019)(Chatterjee, 1997) study will analyze the urgency of Itsbat Nikah as one of the alternatives in registering marriage to the identity rights of children in North Aceh.

3. Discussion

Itsbat Nikah consists of two Arabic terms: "itsbat" and "nikah." Etymologically, "itsbat" is derived from the word *asbata-yasbitu-isbatan*, meaning "determination" or "confirmation." "Nikah" comes from the word *nakaha*, meaning "to marry." Therefore, Itsbat Nikah can be understood as the formal confirmation or validation of a marriage.⁴ Peter Salim explained that the word *itsbat nikah* has the meaning of determining the truth of marriage.⁵

According to the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia (Number KMA/032/SK/2006) on Guidelines for the Implementation of Court Duties and Administration, Itsbat Nikah refers to the formal ratification of marriages conducted in accordance with Islamic law but not officially recorded by the KUA (Office of Religious Affairs) or relevant authorities. Itsbat Nikah also serves as a legal means to confirm the validity of a marriage that has not been registered with the local KUA, in line with the legal provisions governing marriage.

Once an application for Itsbat Nikah is submitted to the Religious Court, the court's decision provides the legal basis to register the marriage with the District KUA's Marriage Registrar. Following this, the KUA issues the Marriage Certificate Citation Book, which serves as authentic proof that the marriage has been officially recorded. This book is then used to process the Child's Birth Certificate at the local Civil Registry Office, along with the court's ruling on the Itsbat Nikah. Article 7 paragraphs (1), (2), (3), and (4), the Compilation of Islamic Law which states:

1. Marriage can only be proven by a Marriage Certificate made by the Marriage Registrar
2. In the event that the marriage cannot be proven by a Marriage Certificate, the marriage certificate can be submitted to the Religious Court
3. Itsbat nikah that can be submitted to the Religious Court is limited to matters related to:
 - a) The existence of marriage in the context of settling the divorce;
 - b) Loss of marriage certificate;
 - c) There is doubt about the validity of one of the conditions of marriage;
 - d) The existence of marriage that occurred before the enactment of Law No. 1 of 1974 concerning Marriage; and
 - e) Marriage carried out by those who do not have marriage obstacles according to Law No. 1 of 1974.⁶

⁴ Ahmad Warsono Munawir. *Al-Munawir Indonesian Arabic Dictionary*. Yogyakarta: Munawir Islamic Boarding School, 1984. p.57

⁵ Ministry of Education and Culture. *Great Indonesian Dictionary*. Jakarta: Ministry of Education and Culture of the Republic of Indonesia. T.th p. 339.

⁶ Elidar Sari, Tri Widya Kurniasari, Nuribadah, Shira Tani, 2024, Population Administration Module (Marriage Registration), Faculty of Law, Malikussaleh University, p.26

The above KHI article is the legal basis for the implementation of *Itsbat Nikah* for marriages that have not been registered so that the married couple can have a Marriage Certificate. In the North Aceh Regency area which is in Aceh Province, this can be done at the *Syar'iyah* Court.

Many people still believe that a marriage's validity according to religious law is the most important factor. While this view is not entirely wrong, it is quite short-sighted. Legal events always carry legal consequences, and in the context of marriage, failing to properly document the union can disadvantage the wife and children. Without a clear legal basis in administrative records under positive law, they lack the protection of their rights. The state cannot provide any legal protection if the marriage is not properly documented according to the applicable regulations.

In reality, not just in theory, many children born from unregistered marriages still face discrimination when it comes to the fulfillment and protection of their rights. This includes their rights in family law, such as access to social services, education, and official birth registration. This situation is clearly at odds with the principle of the best interests of the child.⁷

Although the state has preventively accommodated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law), the fulfillment of a child's identity rights cannot and cannot be obtained without a Marriage Certificate of both parents to be able to have a Marriage Certificate.

According to Article 3 of Law Number 23 of 2006 on Population Administration, every citizen is required to have complete population documents. This requirement is reinforced by the Aceh Government through Article 7, paragraph (1), letter (a) of Qanun Aceh Number 6 of 2008 on the Implementation of Population Administration, which guarantees the right of every resident to receive services to obtain such documents. Every child in Aceh is entitled to a birth certificate, regardless of their parents' circumstances. This ensures that children in Aceh can more easily access their rights, particularly the right to education. Whether the parents are only married according to religious law, there is only a mother, or the whereabouts of both parents are unknown, a child is still entitled to a birth certificate. In such cases, the certificate may state "Child of a Mother" without including the father's name. This highlights the significance of *Itsbat Nikah* in ensuring the legal recognition of a child's identity and rights.

In practice, there are two types of *Itsbat Nikah* processes. The first is the standard process, which is submitted to the Sharia Court. There are two ways to do this:

1. Application for marriage legalization (voluntary): This is a non-contentious process where the legal outcome is a court ruling, as there is only one party involved—the applicant. The applicant can be both the husband and wife or one spouse if the other has passed away, and there are no known heirs at that time.
2. Filing a lawsuit for marriage legalization (contentious): In this case, the legal outcome is a court decision because the process involves other interested parties. This method is used when there are other legal stakeholders, such as children, marriage guardians, or other heirs in unregistered marriages. If a spouse has died and there are additional heirs, the surviving spouse may act as the applicant or respondent if the claim is submitted by the child or the marriage guardian.⁸

Generally, *Itsbat Nikah* is applied for when one of the parents is still alive and has remarried. The process follows an integrated pattern initiated by the Ministry of Religion through the KUA (Religious Affairs Office) and the Population and Civil Registration Office. In this process, the KUA in

⁷ <https://www.kpai.go.id/publikasi/tinjauan/perkawinan-tidak-dicatatkan-dampaknya-bagi-anak> Accessed 5 May 2024

⁸ Elidar Sari, Tri Widya Kurniasari, Nuribadah, Shira Tani, 2024, Population Administration Module (Marriage Registration), Faculty of Law, Malikussaleh University, p.34

each sub-district and the clerk of the Shari'iyah Court verify both the religious validity of the marriage and the completeness of the couple's personal documents.

The decision of *Itsbat Nikah* results in the marriage being recognized both religiously and legally. To finalize this process, you must provide authentic legal evidence by requesting the local KUA to officially register your marriage, using the court decision or decree as proof.⁹ This means that after receiving a Decision or Determination of *Itsbat Nikah*, the applicant must still report to the local KUA so that the marriage can be documented in the Marriage Certificate.

Children born in a marriage that was not originally recorded, then after the issuance of the Decision or Determination of *Itsbat Nikah*, they are immediately legal children of a husband and wife whose marriage has been legalized since the date of marriage in accordance with *the Itsbat Nikah*.¹⁰ The relationship between the children and their parents also gives rise to rights and obligations between parents and children. Those born from the marriage receive State recognition, are entitled to inheritance from their fathers and are entitled to property obtained since the marriage which is the joint property of their parents.

Marriage registration is a formal requirement for the legal recognition of a marriage, serving procedural and administrative purposes. *Itsbat Nikah* has significant implications, as it provides a stronger legal guarantee for the rights of children and wives within the marriage, and in the event of divorce. In other words, *Itsbat Nikah* serves as the legal basis for marriage registration, offering legal certainty regarding marital status, child legitimacy, and property rights within the marriage.

The authority of the Religious Court over *Itsbat Nikah* cases primarily applies to those who were married unofficially before the enactment of the Marriage Law. Presidential Instruction No. 1 of 1991 (dated June 10, 1991) on the Compilation of Islamic Law (KHI), along with Decree of the Minister of Religion No. 154 of 1991 regarding its implementation, granted broader authority to the Religious Court (as outlined in Article 7, paragraphs 1-4 of the KHI). However, considering the weaker legal standing of the KHI within Indonesia's legal hierarchy, which specifically governs *Itsbat Nikah*, it could unintentionally encourage unofficial marriages on a larger scale. Since the KHI is not considered formal law, there are no sanctions for violations related to *Itsbat Nikah* applications (for example, applications for polygamous marriages that are not officially recorded, marriages performed by unauthorized officiants, or underage marriages), which poses a legal challenge for society.

In Aceh, several factors contribute to the occurrence of unregistered marriages, including child marriage and polygamy, which account for many cases of marriages not recorded by the KUA. According to the Aceh Women's Empowerment and Child Protection Office (DP3A), while child marriage cases in Aceh are below the national average, the number is increasing annually, necessitating the immediate creation of a Regional Strategy (Strada) to prevent child marriage. Supporting this, data from the Regional Office of the Ministry of Religious Affairs of Aceh Province in 2023 shows that 1,310 children applied for marriage dispensation, with 1,263 being female. A study by Flower Aceh, conducted from October to December 2023 in Aceh Besar, Aceh Tamiang, and North Aceh Regencies, found that child marriages frequently occur in rural areas and among low-income families.¹¹

Economically disadvantaged families often view child marriage as a solution to reduce their financial burden. However, it often leads to domestic violence, reproductive health issues, and school dropouts. This is a result of the "poverty cycle" passed down from the parents' generation. What is

⁹ <https://pa-tigaraksa.go.id/permohonan-itsbat-pengesahan-nikah/>

¹⁰ <https://www.pa-cilegon.go.id/artikel/639-kepastian-hukum-itsbat-nikah-dan-status-anak-setelah-undang-undang-nomor-1-tahun-1974>

¹¹ <https://www.kompas.id/baca/nusantara/2024/05/17/tinggi-kasus-perkawinan-anak-di-aceh>

even more concerning is that many of these marriages, performed solely on a religious basis because the minors do not meet the legal age requirement for marriage under the Marriage Law, result in children being born into poverty, thereby increasing the number of people living below the poverty line.

Similarly, many polygamous marriages are conducted only religiously. One of the legal requirements for polygamous couples to marry at the KUA is to provide a stamped Certificate of No Objection from both the first wife and the second wife-to-be. This certificate, available at the Religious Court/Syar'iyah Court, must be completed in the presence of a judge. This means that for a man to enter into a polygamous marriage, he must present his first wife before the judge, which is often difficult, especially when polygamy is sought for reasons other than health (e.g., the wife can no longer fulfill her marital duties or cannot bear children).

Moreover, Article 3, paragraph (1) of the Marriage Law emphasizes the principle of monogamy, stating that marriage should ideally involve only one husband and one wife. Men are allowed only one wife, and vice versa. Additionally, the husband must provide proof that he can treat all his wives fairly, as fairness is a crucial condition for polygamy. The judge will evaluate whether the applicant can meet this responsibility before approving the request. Polygamy is not prohibited but is strictly regulated to prevent illegal polygamy. (Nuroniyah et al., 2018) (Rohmah & Budihardjo, 2021)

Other contributing factors, though not the main ones, include cultural norms, religious beliefs, and promiscuity. In some communities, there is still a cultural expectation to celebrate marriages with large, expensive parties, leading many parents to marry off their children only through religious ceremonies. This aligns with certain religious interpretations that prioritize the validity of marriage under religious law while neglecting the importance of civil registration and legal recognition. People often justify unregistered (*sirri*) marriages by arguing that during the time of the Prophet Muhammad (PBUH), marriages were not officially recorded. However, in reality, marriages during that time were publicly announced through *walimah* (wedding feasts), which served as a form of collective memory, as formal documentation systems did not exist as they do today.

Additionally, promiscuity among adolescents has led to an increase in underage marriages, particularly when pregnancies occur out of wedlock (through *zina*), with these marriages often being conducted solely on a religious basis (Sehabudin, 2014).

Itsbat Nikah is a key solution for safeguarding the rights of wives and children in unregistered marriages. Registering a marriage through a court decision or *Itsbat Nikah* at the KUA provides legal protection for both the wife and the children. However, *Itsbat Nikah* requests are not always granted. Two main reasons for rejection include the invalidity of the marriage guardian and cases where the husband (Applicant I) is still married to his previous wife, constituting illegal polygamy. Such rejections are intended to protect the dignity and rights of women and to uphold proper marriage administration.

The Marriage Law not only functions as a tool to enforce state regulations but also as a means of social engineering to create order in marriage. Children whose biological father's name is listed on their birth certificate grow up with greater confidence and ease in social interactions. A clear, legally recognized identity enhances a child's ability to navigate their future. Conversely, children born from unregistered marriages often struggle to access their legal rights due to a lack of formal recognition, which can lead to emotional stress, shame, and low self-esteem, hindering their development.

Therefore, *Itsbat Nikah* is crucial for unregistered marriages, especially to secure children's rights to education and employment opportunities in the future

D. CONCLUSION

Article 2, paragraph (1) of the Marriage Law states that a marriage is valid if conducted according to religious rules. Paragraph (2) further requires that every marriage be officially recorded

in accordance with the law. Authentic legal evidence is essential for married couples to meet the formal administrative requirements of the state. Thus, marriage registration is a formal necessity for the procedural and administrative validity of a marriage. Itsbat Nikah provides stronger legal protection for the rights of children and wives, including in cases of divorce. In essence, Itsbat Nikah serves as the legal foundation for marriage registration, ensuring legal certainty regarding marital status, child legitimacy, and property rights. Children born in unregistered marriages are legally recognized after an Itsbat Nikah decision, with their legitimacy retroactively established based on the marriage date indicated in the decision. Having the biological father's name on the birth certificate allows children to grow up with greater confidence and without concerns in their social interactions during their development. A clear, state-recognized identity plays a vital role in shaping the child's future. Therefore, Itsbat Nikah is crucial for unregistered marriages, particularly because it secures the rights of children, especially in terms of education and future employment opportunities

Bibliography

Ahmad Rofiq, *Islamic Law in Indonesia*, Jakarta, PT Raja Grafindo Persada, 1995.

Ahmad Warsono Munawir. *Al-Munawir Indonesian Arabic Dictionary*. Yogyakarta: Munawir Islamic Boarding School, 1984.

Ministry of Education and Culture. *Great Indonesian Dictionary*. Jakarta: Ministry of Education and Culture of the Republic of Indonesia. No years.

Elidar Sari, Tri Widya Kurniasari, Nuribadah, Shira Tani, 2024, Population Administration Module (Marriage Registration), Faculty of Law, Malikussaleh University.

Soerjono Wignjodipoero. *Principles of Customary Law*, Jakarta: Gunung Agung, 1988.

Wahjono Darmabrata, *Civil Law: Principles of People and Family Law*, Jakarta, Gitamajaya, 2004.

<https://www.kpai.go.id/publikasi/tinjauan/perkawinan-tidak-dicatatkan-dampaknya-bagi-anak>
Accessed 5 May 2024

<https://pa-tigaraksa.go.id/permohonan-itsbat-pengesahan-nikah/> Retrieved May 5, 2024.

<https://www.pa-cilegon.go.id/artikel/639-kepastian-hukum-itsbat-nikah-dan-status-anak-setelah-undang-undang-nomor-1-tahun-1974> Retrieved May 5, 2024.

<https://www.kompas.id/baca/nusantara/2024/05/17/tinggi-kasus-perkawinan-anak-di-aceh>
Retrieved May 6, 2024.

Chatterjee, C. (1997). *Methods of Research in Law*. Old Bailey Press.
<https://books.google.co.id/books?id=DRNcAAAACAAJ>

Moleong, L. J. (2019). *Metodologi Penelitian Kualitatif Edisi Revisi*. Bandung: Remaja Rosdakarya. *PT. Remaja Rosda Karya*.

Nuroniyah, W., Sukardi, D., & Faqih, H. (2018). PERSEPSI HAKIM MENGENAI ADIL SEBAGAI SYARAT PERMOHONAN IZIN POLIGAMI DI PENGADILAN AGAMA KOTA CIREBON. *Mahkamah : Jurnal Kajian Hukum Islam*, 3(2). <https://doi.org/10.24235/mahkamah.v3i2.3420>

- Rohmah, N. F., & Budihardjo, B. (2021). PRAKTIK PERNIKAHAN POLIGAMI DALAM PANDANGAN HUKUM ISLAM DAN HUKUM NEGARA. *Profetika: Jurnal Studi Islam*, 22(2). <https://doi.org/10.23917/profetika.v22i2.16669>
- Sedarmayanti. (2012). Good governance & Good Corporate Governance. In *CV. Mandar Maju*.
- Sehabudin, S. (2014). PENCATATAN PERKAWINAN DALAM KITAB FIKIH DAN UNDANG UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN (PERSPEKTIF MAQA<S{ID SYARI<'AH). *Al-Mazaahib: Jurnal Perbandingan Hukum*, 2(1). <https://doi.org/10.14421/al-mazaahib.v2i1.1366>
- Susanti, D. O., & Shoimah, S. N. (2016). Urgensi Pencatatan Perkawinan (Perspektif Utilities). *Rechtidee*, 11(2).
- VAN HUIS, S. C., & Wirastri, T. D. (2012). Muslim marriage registration in Indonesia: revised marriage registration laws cannot overcome compliance flaws. *Australian Journal of Asian Law*, 13(1), 17. <https://search.informit.org/doi/10.3316/agispt.20152466>
- Yasniwati, Y. (2023). Urgensi Pencatatan Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan dan Anak dalam Mewujudkan Keluarga Bahagia. *UNES Law Review*, 6(1). <https://doi.org/10.31933/unesrev.v6i1.1021>