



# LEGAL REVIEW OF MARRIAGE LEGALIZATION (ISTBAT NIKAH) BASED ON INTEGRATED HEARING IN RELIGIOUS COURTS ACCORDING TO STUDY AT PANDAN RELIGIOUS COURT

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Article Info	Abstract
<b>Article History</b> Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15  <b>Keywords:</b> <i>Marriage Validation, Marriage Validation, Integrated Trial, Legal Certainty.</i>	<p>Marriage validation or itsbat nikah through an integrated trial at the Pandan Religious Court is a legal step that aims to provide legal certainty for couples whose marriages are not registered at the Office of Religious Affairs (KUA). Based on Law Number 1 of 1974 concerning Marriage, every marriage must be registered to obtain legal recognition. However, there are still many people who carry out underhand marriages (siri) without official registration, which causes various administrative problems, such as difficulties in processing children's birth certificates, family cards, and inheritance rights.</p> <p>This study aims to analyze the implementation of marriage confirmation through an integrated trial at the Pandan Religious Court and its compliance with applicable laws and regulations. The method used is a normative legal approach with an analysis of related legal regulations and court decisions in marriage confirmation cases. The results of the study indicate that integrated trials provide convenience for couples who do not yet have a marriage certificate, especially for the underprivileged. However, there are challenges in its implementation, such as limited resources and low public understanding of the importance of marriage registration. With an integrated trial, marriage confirmation can accelerate the process of marriage validation and provide legal protection for couples and their children. Therefore, efforts are needed to socialize and improve regulations so that marriage confirmation can be more effective in guaranteeing the legal rights of married couples and increasing legal certainty in marriage.</p>

## I. INTRODUCTION

Marriage is one of the legal events that has a deep social, cultural, and religious dimension in the life of Indonesian society. According to Mahmud Yunus, marriage is a contract between prospective husband and wife to fulfill their respective needs according to sharia. Sheikh Kamil Muhammad 'Uwaidah said that linguistically, marriage means union, also interpreted as a contract or sexual intercourse, and a mixture between men and women in a sacred bond.(Mighty and Pakpahan 2023)Meanwhile, Law Number 1 of 1974 concerning Marriage in Article 1 defines marriage as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God. This definition emphasizes that marriage is not only worldly but also has a religious dimension that is closely related to the first principle of Pancasila.

In the Compilation of Islamic Law (KHI) Article 2, marriage is referred to as a very strong contract (mitsaqan ghalizhan) which must be

obeyed as a command of Allah and its implementation is considered as worship. The main purpose of marriage is to create a household life that is sakinah, mawaddah, and rahmah, as emphasized in Article 3 of the KHI. Islam views marriage as a sacred institution that has an important role in maintaining social harmony and preserving human existence in the world. Therefore, marriage does not only concern the individual who carries it out but also has an impact on the extended family and society in general.(Lawalata, Titahelu, and Latupeirissa 2022)

As a legal event, marriage has binding legal consequences for the parties who carry it out. From the perspective of positive law in Indonesia, every marriage must meet material and formal requirements in order to be legally recognized by the state. Before the enactment of Law Number 1 of 1974, marriage in Indonesia was regulated based on various legal systems, including customary law, religious law, and Western Civil Law (Burgelijk Wetboek). However, after the enactment of the Marriage Law in 1974, all

marriages carried out in Indonesia must comply with these provisions.(Ramadan 2023)

Article 2 paragraph (1) of Law Number 1 of 1974 states that a marriage is valid if it is carried out according to the laws of each religion and belief. Meanwhile, paragraph (2) in the same article emphasizes that every marriage must be recorded in accordance with applicable laws and regulations. This aims to provide legal certainty and protection of the rights of husbands, wives, and children born from the marriage. With the registration of marriage, the husband and wife have an official document in the form of a marriage certificate which can be used as authentic evidence for various legal purposes, such as population registration, inheritance, and legal protection of marital rights.

However, in reality, there are still many people who do not register their marriages at the Office of Religious Affairs (KUA) or the Population and Civil Registration Service (Dukcapil). These unregistered marriages are known as underhanded marriages or unregistered marriages. Although legally valid, these marriages do not have legal force in the eyes of the state because they are not supported by official documents. As a result, couples who undergo underhanded marriages are vulnerable to various legal problems, such as difficulties in processing birth certificates for children, division of joint property, and legal protection for wives and children in cases of divorce or death of one of the partners.

To overcome this problem, the Compilation of Islamic Law in Article 7 paragraph (2) stipulates that in the event that a marriage cannot be proven by a marriage certificate, then a marriage confirmation can be submitted to the Religious Court. Marriage confirmation is a legal mechanism that allows a husband and wife to obtain legal recognition of their previously unregistered marriage. The validation of a marriage through marriage confirmation aims to provide legal certainty and protection of the rights of the husband, wife, and children born from the marriage.

In practice, marriage confirmation can be submitted to the Religious Court for various reasons, as regulated in Article 7 paragraph (3) of the KHI, namely: (1) the existence of a marriage in the context of a divorce settlement, (2) the loss of a marriage certificate, (3) the existence of doubts about the validity or otherwise of one of the conditions of marriage, (4) the existence of a marriage that occurred before the enactment of

Law Number 1 of 1974, and (5) marriages carried out by those who do not have an obstacle to marriage according to Law Number 1 of 1974.(Ramadan 2023)

In order to improve public access to marriage validation services, the Supreme Court issued a Supreme Court Circular (SEMA) Number 3 of 2014 concerning Procedures for Services and Examination of Voluntary Marriage Validation Cases (Itsbat Nikah) in Integrated Services. This SEMA provides convenience for underprivileged couples to obtain legal recognition of their marriage through an integrated trial mechanism involving the Religious Court, the Ministry of Religion, and the Population and Civil Registry Service.(Saladin 2017)

At the Pandan Religious Court, the implementation of integrated trials for marriage validation has been carried out since 2010 in collaboration with the Central Tapanuli Regency Government. This program aims to improve legal certainty for couples who do not yet have a marriage certificate. Based on case data at the Pandan Religious Court, the number of applications for marriage validation has increased from year to year. For example, in 2013 there were 18 marriage validation cases, then increased to 22 cases in 2014, 80 cases in 2015, 101 cases in 2016, and continued to increase to reach 125 cases in 2024.

Although marriage registration has been regulated in laws and regulations for a long time, there are still many people who do not have a marriage certificate. This is due to various factors, such as a lack of understanding of the importance of marriage registration, administrative constraints, and economic factors. Therefore, the integrated trial program implemented by the Pandan Religious Court is a solution for people who want to obtain legal recognition of their marriage without having to face complicated procedures.

However, although the integrated trial program has provided benefits for many couples, there are still challenges in its implementation. One of the main challenges is the limited resources and budget available to hold integrated trials on an ongoing basis. In addition, many people still do not understand the marriage validation procedure and the importance of marriage registration. Therefore, more massive socialization efforts are needed and increased coordination between related agencies to ensure that every married couple can obtain legal recognition for their marriage.(Ahmatnihar 2022)

Based on the description above, this study will examine the legal aspects of marriage validation through the marriage validation mechanism based on an integrated trial at the Pandan Religious Court. The main focus of this study is to analyze the effectiveness of the marriage validation policy in providing legal protection for couples who do not yet have a marriage certificate and to evaluate the implementation of an integrated trial in order to accelerate the marriage validation process at the religious court level. Thus, it is hoped that this study can contribute to efforts to increase legal certainty for the community and strengthen the marriage registration system in Indonesia.

## **II. RESEARCH METHODS**

This study uses a descriptive analysis approach with a library research method to describe and analyze data related to marriage validation (itsbat nikah) through an integrated trial at the Pandan Religious Court, Central Tapanuli Regency. (Yam 2022) Data were collected from literature, regulatory documents, and relevant decisions and jurisprudence, then normatively analyzed using qualitative methods to obtain a clear understanding of the implementation of the marriage validation law. This research was conducted at the Pandan Religious Court considering the large number of people who apply for marriage validation in the area. Data analysis was carried out using a deductive approach, namely drawing conclusions from general to specific matters in order to understand how the implementation of marriage validation is in accordance with applicable regulations. Systematically, this research includes a study of the legal basis for marriage validation, the implementation of integrated trials at the Pandan Religious Court, and the judge's considerations in granting marriage validation applications based on applicable regulations. The conclusions and recommendations generated from this research are expected to contribute to increasing the effectiveness of marriage registration in Indonesia and ensuring legal certainty for couples who do not yet have a marriage certificate.

## **III. RESULTS AND DISCUSSION**

### **A. Provisions for Validating Marriages in Association Law in Indonesia Based on Law No.1 of 1974**

Validation of marriage or itsbat nikah in Islamic law has an important position in providing legal certainty for married couples who have been married according to religion but have not been officially registered in the country. (Syarifah 2015) In the perspective of Islamic jurisprudence, marriage or nikah has the meaning as a contract that allows the occurrence of a husband and wife relationship legally according to Islamic law. Islamic jurisprudence scholars define marriage as a strong agreement (mitsaqan ghalizhan) which aims to maintain the welfare of the family and form a harmonious life within the framework of Islamic law. This definition of marriage is also recognized by various schools of thought in Islam, where each has a view on the elements and conditions that must be met for a marriage to be considered valid.

In Islamic law, marriage must meet the pillars and requirements that have been set. The pillars of marriage include the presence of a prospective bride and groom, a guardian, two witnesses, and the existence of ijab and qabul. Meanwhile, the requirements for marriage include the prospective bride and groom must meet the age requirements, be Muslim, and have no obstacles to marriage. In addition, marriage must also be accompanied by a dowry as a form of respect for the prospective wife. (Syarifah 2015) Islam emphasizes the importance of marriage as an act of worship and a form of fulfilling the natural needs of humans. This is emphasized in QS. An-Nur (24): 32, which states that Allah encourages Muslims to marry in order to live more peacefully and have legitimate offspring.

In the perspective of positive Indonesian law, marriage is regulated in Law No. 1 of 1974 concerning Marriage, which defines marriage as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God. In Article 2 paragraph (1) of Law No. 1 of 1974, it is emphasized that a valid marriage is one that is carried out according to the laws of each religion and belief. While in paragraph (2) it is stated that every marriage must be registered in accordance with applicable laws and regulations. Thus, registration of marriages in Indonesia has an important role in providing legal certainty to married couples. (Cape 2018)

Marriage registration aims to guarantee the legal rights of married couples and their children. Without registration, a marriage has no legal force

in the state administration aspect, which has implications for the difficulty of obtaining official documents such as child birth certificates, family cards, and inheritance rights. Therefore, marriage validation or *itsbat nikah* is a solution for couples who are married but do not yet have a marriage certificate. *Itsbat nikah* allows married couples to obtain legal recognition of their marriage through a religious court.

Etymologically, the term *itsbat nikah* comes from Arabic which means "determination" or "proof" of a legal event, in this case marriage. According to Islamic law, *itsbat nikah* aims to ensure that a marriage that has been carried out religiously has legality in the eyes of state law. In the Compilation of Islamic Law (KHI) Article 7 paragraph (2) it is stated that in the event that a marriage cannot be proven by a marriage certificate, the couple can submit *itsbat nikah* to a religious court. Article 7 paragraph (3) of the KHI also limits the scope of *itsbat nikah* to only certain conditions, such as marriage in the context of divorce settlement, loss of marriage certificate, doubts about the validity or otherwise of a marriage, marriages that occurred before the enactment of Law No. 1 of 1974, and marriages carried out by couples who do not have obstacles to marriage according to applicable law.

Historically, marriage confirmation emerged as a solution to the enactment of Law No. 1 of 1974 which requires the registration of every marriage. Before this law was enacted, many marriages in Indonesia were conducted religiously but were not officially registered. Therefore, marriage confirmation provides a mechanism for couples who want to legally recognize their marriage. Religious courts have the authority to determine whether or not a marriage submitted for confirmation is valid. If the court decides that the marriage is valid, the couple will receive a marriage confirmation, which can then be used to process the registration of the marriage at the Office of Religious Affairs (KUA). (Fitriani 2012)

The main purpose of marriage confirmation is to ensure that the husband and wife and their descendants have a clear legal status. In society, this legal status is very important because it is related to various rights, such as inheritance rights, guardianship rights, and the right to official documents such as birth certificates for their children. Marriage confirmation also prevents slander and legal uncertainty regarding a person's marital status. The Prophet Muhammad SAW even recommended that a marriage be announced

to the community so as not to cause slander, as conveyed in his hadith: "Announce a marriage and beat the tambourines at the party" (HR. Ibn Hajar Al-Asqalani). (Suadi 2018)

The marriage validation process in the religious court can be submitted by the husband or wife, their children, the marriage guardian, or other interested parties. The religious court will review whether the proposed marriage meets the requirements for a valid marriage in Islam and does not violate the laws in force in Indonesia. The application for marriage validation can be categorized as a voluntary case (a unilateral application without any dispute) or contentious (a case involving two parties, for example if there is a difference of opinion between the couple or there is a third party who feels aggrieved).

In voluntary cases, the marriage confirmation is submitted by the husband and wife together or by one party who does not have an opponent. Meanwhile, in contentious cases, there is a dispute between the applicant and another party, for example when a wife submits a marriage confirmation but her husband does not recognize the marriage. If the marriage confirmation is granted by the religious court, then the decision will have permanent legal force and can be used to process the marriage registration at the KUA. If the marriage confirmation application is rejected, the applicant can file an appeal or cassation in accordance with the applicable procedural law.

In its development, the government has also implemented an integrated trial program to facilitate the marriage validation process, especially for the less fortunate. This program involves religious courts, KUA, and the Population and Civil Registry Service to accelerate the marriage registration process for couples who do not yet have a marriage certificate. One of the legal bases supporting this program is the Supreme Court Circular (SEMA) No. 3 of 2014, which provides guidelines on the implementation of marriage validation in an integrated trial. (Ramadan 2023)

Overall, marriage confirmation plays a very important role in providing legal certainty to married couples and their children. Although religiously a marriage is considered valid if it has fulfilled the pillars and requirements, in the context of state law, marriage registration is still needed to ensure that the rights of married couples and their children are protected. Therefore, marriage confirmation is an important mechanism in the Indonesian legal system to



avoid legal problems related to marital and family status.

## **B. Validation of Marriage or Itsbat Nikah Through Integrated Session at Pandan Religious Court Reviewed for Compliance with Law No.1 of 1974**

Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar. In Law No. 1 of 1974, it has been explained in Article 2 paragraph (2) that each marriage is recorded according to the applicable laws and regulations. Then, the provisions in the explanation of Article 49 number 22 of Law No. 7 of 1989 limit the validation of marriages, namely marriages that occurred before Law No. 1 of 1974. (Tanjung and Tanjung 2022) Regarding the ratification of marriage or itsbat nikah, this is also regulated in Presidential Instruction No. 1 of 1991 Article 7 paragraph (1-4), namely:

1. Marriage can only be proven by a Marriage Certificate made by a Marriage Registrar.
2. In cases where the marriage cannot be proven by a Marriage Certificate, a marriage confirmation request can be submitted to the Religious Court.
3. Marriage validation that can be submitted to the Religious Court is limited to: a) Marriage in the context of divorce settlement; b) Loss of Marriage Certificate; c) Doubts about the validity or otherwise of one of the requirements of marriage; d) Marriages that occurred before the enactment of Law No. 1 of 1974; e) Marriages conducted by those who do not have obstacles to marriage according to Law No. 1 of 1974.
4. Those who have the right to submit an application for marriage validation are the husband or wife, their children, the marriage guardian, and parties interested in the marriage.

Based on the requirements for marriage validation as mentioned above, it can be concluded that not all marriages can be validated by the Religious Court. If the legal requirements have been met, the judge will grant the application for marriage validation. However, if these requirements are not met, the judge can reject the application for marriage validation. In some cases, the judge can make *ijtihad* by considering psychological, sociological, or welfare aspects for the parties concerned.

As the authority of the judge to carry out *ijtihad* is explained in the hadith of the Prophet:

*"From Amru bin al-'Ash: Indeed, he heard Rasulullah SAW say: If the judge decides a case and then he makes ijtihad and then he is right, then there are two rewards for him. Then if he decides a case and then he makes ijtihad and then he is wrong then there is one reward for him" (Muttafaq 'alailah).*

Marriage is a very important legal event, as important as other legal events such as birth, death, and divorce. Marriage is also a basic human need in forming a family and continuing offspring. To ensure legal certainty in marriage, the government has regulated marriage nationally in Law No. 1 of 1974 concerning Marriage and PP No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974.

Law No. 1 of 1974 Article 2 paragraph (1) stipulates that a marriage is valid if it is carried out according to the laws of each religion and belief. Every citizen is obliged to obey the regulations set by the government, including in matters of marriage. However, in practice there are still many marriages that are carried out without the knowledge of the Marriage Registrar, which causes the marriage not to be legally registered. (Tanjung and Tanjung 2022)

One of the cases that occurred was the Determination of the Pandan Religious Court in Case No. 0003/Pdt.P/2016/PA.Pdn. A married couple who married on June 11, 2011 did not receive a Marriage Certificate from the Tapanuli District Religious Affairs Office, Central Tapanuli Regency. After being investigated, their marriage was not recorded in the register of the local Religious Affairs Office. As a result, they had difficulty in taking care of their children's birth certificates. Based on this reason, they filed a marriage validation application to the Pandan Religious Court through an integrated trial. (Suprayogi 2023)

The Pandan Religious Court in its Decision No. 0003/Pdt.P/2016/PA.Pdn stipulates:

1. Grant the applicant's request;
2. Declaring the legality of the marriage between Petitioner I and Petitioner II which was held on June 11 2011;
3. Ordering Applicant I and Applicant II to register their marriage at the Religious Affairs Office, Tapanuli District, Central Tapanuli Regency;
4. Charged Petitioner I and Petitioner II to pay court fees of Rp. 191,000,-.

The judge considered that the marriage had fulfilled the pillars and requirements of marriage according to Islamic law and that no party objected to the marriage. The judge also considered that the unregistered marriage was not due to the intention of the couple, but rather due to the negligence of the marriage registrar.

Law No. 3 of 2006 concerning Religious Courts states that Religious Courts have the authority to examine and determine marriage cases, including marriage validation. However, based on Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991, marriage validation can only be submitted under certain conditions. In the case of Case No. 0003/Pdt.P/2016/PA.Pdn, the judge decided to grant the application for marriage validation even though the marriage occurred after 1974, by considering the aspect of the applicant's benefit.

Validation of marriage through *itsbat nikah* provides legal certainty for the couple and children born from the marriage. In the context of child protection, Law No. 23 of 2002 concerning Child Protection emphasizes that every child has the right to obtain a clear legal status. *Itsbat nikah* also allows couples to obtain administrative documents such as birth certificates and family cards.

Thus, marriage confirmation through an integrated trial at the Pandan Religious Court has an important role in providing legal certainty for the community. The Supreme Court of the Republic of Indonesia has also issued SEMA No. 3 of 2014 to facilitate the marriage confirmation process in integrated services. In the future, the legal aspects of marriage confirmation can be further clarified through more comprehensive regulations to ensure legal certainty for the entire community.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

Marriage validation or *itsbat nikah* through an integrated trial at the Pandan Religious Court is a legal mechanism that provides legal certainty for married couples whose marriages have not been officially registered. In the Indonesian legal system, marriage registration plays an important role in guaranteeing the legal rights of married couples and their children. Although Law Number 1 of 1974 stipulates that every marriage must be registered, there are still many people who carry out religious marriages without official registration, which causes various administrative and legal obstacles. Therefore, *itsbat nikah* is a

solution for couples who experience difficulties due to the absence of a marriage certificate, especially in managing population administration such as children's birth certificates, inheritance rights, and legal protection in cases of divorce or death of one of the partners.

The integrated trial held by the Pandan Religious Court in collaboration with related agencies has provided easy access for people who want to apply for marriage confirmation, especially for those who are less fortunate. The marriage confirmation decision issued by the court becomes the legal basis for registering marriages at the Religious Affairs Office, so that married couples can obtain legal legitimacy. However, the implementation of marriage confirmation still faces challenges, such as limited resources and a lack of public understanding of the importance of marriage registration. Therefore, further efforts are needed in the form of socialization and improvement of regulations so that every married couple can obtain legal certainty and protection of their marriage rights more optimally.

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