



# IMPLEMENTATION OF MARRIAGE ITSBAT ON UNRECORDED MARRIAGES STUDY OF DETERMINATION OF LUBUK PAKAM RELIGIOUS COURT (Number 17/Pdt.P/2024/PA.Lpk)

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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 Registration, Religious Courts, Legal Protection.</i>	<p>Confirmation of marriage is a legal mechanism used to validate a marriage that has taken place but is not officially registered with an authorized marriage registration institution. In the Indonesian legal system, marriage registration plays an important role in providing legal protection for the rights of husbands, wives, and children. However, in practice, there are still many people who marry without official registration due to various factors, such as economic limitations, lack of legal understanding, and administrative constraints.</p> <p>This study aims to analyze the implementation of marriage validation at the Lubuk Pakam Religious Court by reviewing the decision of case Number 17/Pdt.P/2024/PA.Lpk. This study uses normative and empirical legal methods, with a positive legal approach and interviews with judges as the main data sources. The results of the study show that judges consider various aspects in deciding marriage validation cases, such as the validity of marriage according to Islamic law, the legal interests of the applicant, and compliance with applicable laws and regulations.</p> <p>The granting of a marriage confirmation request has significant legal implications, such as providing legal certainty regarding marital status, protecting the rights of spouses and children, and facilitating the administration of population administration. Therefore, efforts are needed to increase public awareness of the importance of marriage registration in order to avoid legal problems in the future. In addition, simplifying the administrative procedures for marriage confirmation for underprivileged communities is also an important recommendation in this study.</p>

## I. INTRODUCTION

Islam as a universal religion regulates all aspects of human life, including marriage. Marriage in Islam is not just a bond between two individuals, but also an institution that aims to build a family that is *sakinah*, *mawaddah*, and *rahmah*. Marriage has an important role in maintaining human honor, avoiding reprehensible behavior, and ensuring the continuity of generations that have legitimate descendants. Therefore, Islam places marriage as a sacred institution and has a major impact on social life. (Tanjung and Tanjung 2022)

In Indonesia, marriage is not only regulated by religious law but also by state law. Law Number 1 of 1974 concerning Marriage stipulates that a marriage is valid if it is carried out in accordance with religious law and is registered by the state. This provision is emphasized in Article 2 paragraph (2) which states that every marriage must be registered based on applicable laws and regulations. Registration of marriage is very

important because it is directly related to legal protection of the rights of husband and wife and children born from the marriage.

However, in practice, there are still many people who marry without official registration, known as underhand marriages or unregistered marriages. This phenomenon occurs due to various factors, including people's ignorance about the importance of marriage registration, economic factors, cultural factors, and administrative unpreparedness. In fact, unregistered marriages can cause various legal problems, such as unclear legal status of wives and children, difficulties in managing birth certificates, and problems related to inheritance and guardianship rights. (Putri 2024)

As a solution, positive law in Indonesia provides a mechanism to legalize unregistered marriages through *itsbat nikah*. *Itsbat nikah* is a legal process submitted to the Religious Court to obtain validation of a marriage that has taken place but does not have official proof of

registration. Article 7 paragraph (2) of the Compilation of Islamic Law (KHI) states that in the event that a marriage cannot be proven by a marriage certificate, an application for *itsbat nikah* can be submitted to the Religious Court.

In the jurisdiction of the Lubuk Pakam Religious Court, the application for *itsbat nikah* is a fairly common phenomenon. Many couples have been married for years but do not yet have official documents as proof of their marriage registration. Most of the reasons behind the application for *itsbat nikah* include administrative purposes such as making a child's birth certificate, processing population documents, and other legal purposes.

The importance of marriage registration is not only related to administrative order, but also to the protection of the legal rights of the husband and wife and children born from the marriage. Without official registration, a wife may have difficulty in claiming the right to maintenance or inheritance rights, while children born from an unregistered marriage will face obstacles in managing their official identity. Therefore, marriage validation is an important solution to provide legal certainty for families who previously did not have official marriage documents.

From the perspective of Islamic law, marriage registration does not conflict with sharia, in fact it is recommended to avoid various problems in the future. Although Islamic law does not explicitly require marriage registration as part of the pillars or conditions for a valid marriage, in the context of positive law, registration becomes an important part of the legal administration system to ensure the validity and protection of individual rights in marriage.

Along with the increasing public awareness of the importance of marriage registration, the number of applications for marriage validation at the Lubuk Pakam Religious Court continues to increase. However, in some cases, applications for marriage validation were also submitted for marriages that took place after the enactment of Law Number 1 of 1974 concerning Marriage. This shows that even though the rules have been enforced, there are still many people who do not fully understand the importance of marriage registration from the start.

Based on this background, this study aims to analyze the implementation of marriage validation at the Lubuk Pakam Religious Court, by reviewing the decision of case Number 17/Pdt.P/2024/PA.Lpk. This study will examine the factors underlying the application for

marriage validation, how the judges consider in deciding the marriage validation case, and its impact on the legal status of married couples and children born from unregistered marriages.

Through this research, it is expected to provide a deeper understanding of the legal implications of unregistered marriages and how the marriage validation mechanism can be a solution for the community in obtaining better legal protection. In addition, this research is also expected to provide recommendations for the government and related authorities in increasing public awareness of the importance of marriage registration as part of orderly legal administration in Indonesia.(Wulandari 2023)

## **II. RESEARCH METHODS**

The research methods used in this study are normative legal and empirical legal methods. The normative legal approach is used to analyze the laws and regulations governing the implementation of marriage validation, including Law Number 1 of 1974 concerning Marriage and other related regulations, and to see the synchronization of legal norms in the national legal system. Meanwhile, the empirical legal approach is used to understand how the law is applied in practice, by looking at the phenomenon of unregistered marriages in society and how the marriage validation solution is applied at the Lubuk Pakam Religious Court. Data collection was carried out through literature studies by tracing legal documents and marriage validation case files, as well as interviews with judges at the Lubuk Pakam Religious Court to obtain a direct perspective on legal considerations in determining marriage validation.

## **III. RESULTS AND DISCUSSION**

### **A. Legal Regulations Regarding the Implementation of Marriage Validation (Itsbat Nikah)**

*Itsbat nikah* is the process of legalizing a marriage that has taken place but is not officially recorded in an authorized marriage registration institution. The word "*itsbat*" comes from Arabic which means to establish or legalize, while "*nikah*" refers to a valid contract between a man and a woman. In the context of Islamic law and positive law in Indonesia, *itsbat nikah* aims to provide legal certainty regarding the status of marriage and the rights arising from the marriage, such as inheritance rights, guardianship rights,

and the legality of children born.(Andhini<sup>1</sup> and Arifin 2019)

The legal basis for marriage validation in Indonesia is contained in various laws and regulations, such as Article 2 paragraph (1) and (2) of Law Number 1 of 1974 concerning Marriage, which states that marriages must be valid according to religion and registered in accordance with applicable regulations. In addition, Article 7 of the Compilation of Islamic Law (KHI) emphasizes that marriages that cannot be proven by a marriage certificate can be submitted for marriage validation to the Religious Court. This regulation is clarified in Article 49 number (22) of Law Number 7 of 1989 concerning Religious Courts, which regulates the authority of the Religious Court in handling marriage validation cases.

Marriage registration has a high urgency in the Indonesian legal system because it functions as authentic evidence of the existence of a marriage. With registration, a marriage has legal force recognized by the state, so that the rights of the husband, wife, and children born from the marriage can be guaranteed by law. In addition, marriage registration functions to avoid various legal problems that arise due to undocumented marriages, such as inheritance rights, child custody rights, and the validity of the child's status.

When a marriage is not registered, the legal consequences that arise can be detrimental to the parties involved, especially women and children. Wives who marry without official registration do not have clear legal protection, making it difficult to claim the right to support, inheritance rights, or other rights arising from the marriage. Children born from unregistered marriages also have difficulty in obtaining legal recognition, especially in processing birth certificates and citizenship status.(Aini and Sholehah 2024)

In the perspective of Islamic law, marriage registration does not change the validity of the marriage contract, but has great benefits. Islam teaches the importance of protecting the rights of individuals and society, so that marriage registration can be considered as part of the benefits (maslahah mursalah) which aims to protect the rights of husband and wife and their children.

The submission of itsbat nikah at the Religious Court is done by submitting an application by the interested party, such as husband, wife, child, marriage guardian, or other party who has a legal interest. In the process, the

submission of itsbat nikah must meet several administrative requirements, such as a letter of application, proof of a religious marriage, and witnesses who can provide information related to the marriage.

In practice, the Religious Court will consider various factors before issuing a marriage validation decision. The judge will examine the evidence submitted by the applicant, including the testimony of the parties and other supporting documents. If the judge considers that the marriage meets the requirements for validity according to religion and has strong reasons to be legally validated, then the marriage validation request can be granted. Conversely, if there are indications that the marriage is not valid according to religious law or there are other legal obstacles, the request can be rejected.

The determination of the marriage validation by the Religious Court brings various legal consequences for the husband and wife and their children. One of the main implications is the state's recognition of a previously unrecorded marital status, so that the couple concerned has valid legal evidence of their marriage. This has an impact on various other legal aspects, such as inheritance rights, guardianship rights, and legal protection of women's and children's rights.

In addition, itsbat nikah also serves as a legal solution for couples who experience administrative difficulties due to the absence of valid proof of marriage. In some cases, couples who have been married religiously but do not have a marriage certificate often face obstacles in processing population documents, such as family cards, child birth certificates, and other certificates. With itsbat nikah, they can obtain these documents legally and recognized by the state.

However, it should be noted that itsbat nikah cannot be used as a means to legalize a marriage that is contrary to the law, such as a marriage that violates the minimum age limit or a marriage that does not meet the requirements of Islamic law and positive Indonesian law. Therefore, in deciding a case of itsbat nikah, the judge must carefully consider the legal, social, and protection aspects of the rights of the individuals involved.

Marriage validation is an important legal mechanism in the religious court system in Indonesia to provide legal certainty for unregistered marriages. With the existence of marriage validation, couples who are married religiously but do not yet have a marriage

certificate can obtain legal validation of their marriage, so that their rights and those of children born from the marriage can be protected by the state.

Although marriage registration does not determine the validity of the marriage contract according to Islamic law, registration still has a very important role in providing legal protection for married couples and their children. Therefore, public awareness is needed to register their marriages in accordance with applicable legal provisions in order to avoid various legal problems in the future.(Shidqi 2021)

By understanding the urgency of marriage validation and marriage registration, it is hoped that the public will be more aware of the importance of legal certainty in marriage, so that orderly marriage administration and better legal protection for all citizens can be created.

#### **B. Determination of the Lubuk Pakam Religious Court Regarding the Implementation of Marriage Confirmation**

Every citizen is required to obey the regulations set by the government, because in essence all regulations are made for the benefit of society, including in terms of marriage. The state has regulated the implementation of marriage through various laws and regulations to ensure administrative order and the legality of marriage in society. This is part of the state's preventive legal policy in order to create order in social life, considering that marriage is an institution that has the potential to cause various kinds of conflicts.(Nastangin and Huda 2019)

However, in reality, there are still people who hold marriages without involving the Marriage Registrar (PPN). Some parents who have the status of religious leaders or kyai consider that the marriage is already valid according to religion, so that registration at the KUA is only considered as an administrative matter. As a result, there are many unregistered marriages, which in Indonesian society are known as *nikah sirri* or underhand marriages. This phenomenon does not only occur in rural areas but also in urban areas, for various reasons ranging from the cost of registration which is considered expensive to certain personal reasons that require the marriage to be kept secret.

Some of the main factors that cause marriages not to be registered are as follows:

For people with low economic levels, the cost of registering a marriage is considered expensive. In fact, officially, the registration fee

included in the Non-Tax State Revenue (PNBP) is only Rp30,000.00. However, in practice, this cost can be higher due to additional factors such as the transportation costs of KUA officers if the marriage is held outside the office. As a result, many couples prefer to get married without official registration.

Law Number 1 of 1974 concerning Marriage stipulates that the minimum age limit for marriage is 19 years for men and 16 years for women (before being revised to 19 years for both in Law No. 16 of 2019). If the prospective bride and groom do not meet the age requirements, then a dispensation from the court is required. However, many people choose to continue their marriage without going through this procedure, which results in their marriage not being registered.

The Marriage Law upholds the principle of monogamy, but still allows polygamy with strict conditions. Based on Article 3 Paragraph (2) of Law No. 1 of 1974, a husband who wants to practice polygamy must obtain permission from the Religious Court and meet certain conditions, including obtaining approval from his previous wife. However, many men do not want to bother with obtaining permission for polygamy, so they choose to have a secret marriage to avoid these regulations.(Ramadhani 2023)

Some people still think that the most important thing in a marriage is its validity according to religion. They feel that registration is only administrative and are not aware of the legal impacts of an unregistered marriage, such as difficulties in managing birth certificates for children, inheritance, and other civil rights.

In some cultures, there is a prohibition on marriage between certain tribes, such as in the Minangkabau community which prohibits inter-tribal marriage. This causes couples who want to get married but are hampered by customary rules to choose to elope or marry secretly without official registration.(Habiansyah et al. 2022)

In some cases, couples have fulfilled all the registration requirements, but due to the negligence of PPN or KUA officers, their marriage is not officially registered. This is often only realized when the couple needs marriage documents for administrative purposes.

For Civil Servants (PNS) who wish to remarry, they must obtain permission from their superiors and the Religious Court as stipulated in Government Regulation No. 10 of 1983 in conjunction with PP No. 45 of 1990. Many PNS who wish to practice polygamy but do not obtain



permission ultimately choose to marry in secret to avoid administrative sanctions.

The Religious Court has the authority to examine and decide on applications for marriage validation to validate marriages that have been carried out but are not registered. Based on an interview with Hj. Dian Ingrasanti Lubis, S.Ag., SH, MH, Chief Justice of the Lubuk Pakam Religious Court, not all applications for marriage validation can be granted. The judge has the discretion to consider the facts and evidence presented before determining the status of the marriage.(Hasanudin 2016)

According to Abdul Manan, a court decision consists of six main parts, namely:

1. Head of Decision/Determination Section – includes the case number and the sentence "For the Sake of Justice Based on the Almighty God" as regulated in Article 57 Paragraph (2) of Law No. 7 of 1989 in conjunction with Law No. 50 of 2009.
2. Identity of the Parties – includes name, age, religion, occupation and place of residence.
3. The State of the Case – describes the chronology of the case and the reasons for submitting the application for marriage validation.
4. Legal Considerations – contains the legal basis used by the judge in assessing the case.
5. Verdict/Determination – the final decision of the court regarding the submitted application.
6. Closing Section – includes the date of the decision, name of the judge, clerk, and details of court costs.

In case No. 17/Pdt.P/2024/PA.Lpk, the legal considerations used by the panel of judges include:

- In accordance with Article 2 Paragraph (1) of Law No. 1 of 1974, a marriage is valid if it is carried out according to the laws of each religion.
- Based on Article 7 Paragraph (3) of the KHI, marriage confirmation can be submitted for marriages that have not been registered if there is a strong reason.
- Referring to Article 3 in conjunction with Article 36 of Law No. 23 of 2006 concerning Population Administration, marriage confirmation is required for legal certainty in processing a child's birth certificate.

- Taking into account the welfare aspect, especially if there are real legal interests such as inheritance management or population administration.

#### 7. C. Legal Implications of Granting Marriage Confirmation

With the approval of the marriage confirmation, several legal implications arise, including:

1. Validity of Marriage – a married couple has legal certainty regarding their marital status.
2. Legal Protection – the rights of spouses in marriage are recognized, including inheritance rights and maintenance.
3. Certainty of Lineage – Children born from the marriage have clear legal status.
4. Administrative Ease – couples can take care of their children's birth certificates, family cards, and other official documents.
5. Prevent Legal Disputes – avoid future problems related to the legality of marriage.

Thus, marriage confirmation is a legal solution for couples whose marriages are not registered, in order to obtain legal certainty and protection from the state.

## IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the results of research on the implementation of marriage validation at the Lubuk Pakam Religious Court, it can be concluded that marriage validation is a legal mechanism that provides certainty and legal protection for married couples whose marriages are not registered. The marriage validation process is a solution for people who face various administrative obstacles due to marriages that are carried out without official registration.

In terms of legal regulation, marriage validation is based on Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), and the Religious Courts Law. Positive law in Indonesia requires marriage registration to provide legal protection for married couples and children born from the marriage. Without official registration, many legal rights such as inheritance rights, guardianship rights, and rights to support are not legally protected.

In practice, there are still many people who do not register their marriages for various reasons, including economic factors, ignorance of the law, cultural differences, and administrative obstacles such as the minimum age limit for

marriage and permission for polygamy. This causes many couples to have to apply for itsbat nikah to the Religious Court to obtain legal validity for their marriage.

From the results of the analysis of the decision of the Lubuk Pakam Religious Court, it was found that the judge in deciding the marriage validation case considered several main factors, including:

1. Validity of marriage according to Islamic law – whether the marriage has been carried out in accordance with the conditions and pillars of marriage in Islam.
2. The applicant's legal interests – including protection of the rights of his wife and children, and administrative certainty.
3. Compliance with laws and regulations – such as the Marriage Law, KHI, and Population Administration.

The granting of a marriage confirmation request has several legal implications, including:

1. Validity of Marriage – the couple obtains legal status.
2. Protection of the Rights of Husband, Wife, and Children – inheritance rights, guardianship rights, and maintenance rights can be legally guaranteed.
3. Certainty of Lineage Children born from the marriage receive clear legal status in population administration.
4. Ease of Population Administration – such as processing children's birth certificates and family cards.
5. Prevention of Future Legal Disputes – avoiding disputes regarding the validity of marriage and other civil rights.

From the perspective of Islamic law, marriage registration is not a requirement for a valid marriage, but it has great benefit value (masalah mursalah) in providing legal protection and avoiding social conflict. Therefore, public awareness of the importance of marriage registration needs to be increased in order to prevent legal problems in the future.

As a recommendation, it is necessary to conduct wider socialization regarding the obligation to register marriages, simplify the administrative procedures for marriage validation for the less fortunate, and increase the role of religious and government institutions in ensuring that every marriage is officially registered in accordance with applicable laws. This is expected to increase legal certainty in

marriage and protect individual rights in the institution of marriage in Indonesia.

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