

SYSTEMS OF MARRIAGE ITSBAT IMPLEMENTATION IN CONTENSIOUS CASE IN THE PANGARAIAAN RELIGIOUS COURT AREA (Case Analysis Number 876/Pdt.G/2020/PA.Ppg)

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Abstract

Itsbat nikah is a marriage stipulation that is not registered with the Office of Religious Affairs. Itsbat marriage is an effort to protect women and children from marriage. Islamic Law in the Compilation of Islamic Law opens the opportunity for them to apply for itsbat marriage to the Religious Courts so that in the future they have legal force in their marriages. There are two problems in this study, namely how is the process of determining the marriage certificate for the contentious case Number: 876/PDT.G/2020/PA.PPG. and what are the legal consequences of the decision of the Pasir Pengaraian Religious Court Number: 876/PDT.G/2020/PA.PPG. This study uses a normative juridical research method. The sources used to conduct this research are books, laws and regulations that apply and are related to the title of this research. After doing the research, it can be concluded that in this case the wife as the party who filed the application for itsbat marriage contentious to the Pasir Pengaraian Religious Court was used as the Petitioner and her two children as Respondent I and Respondent II. The importance of a marriage certificate is to protect the civil rights of the wife and the civil rights of children born from the marriage. The legal consequence of the determination of the marriage certificate of the Religious Court Number: 876/PDT.G/2020/PA.PPG is that the Panel of Judges declares the marriage valid according to the law and is declared a legal husband and wife according to Islamic law and Positive Law applicable in Indonesia, and children born from the marriage is a child who is legally valid in Indonesia and the marriage certificate can be used as a condition to apply for PT Taspen's disbursement of funds. Given the importance of a marriage certificate in a marriage relationship.

Keywords: Normative Jurisdiction, Itsbat Marriage, Consistent.

INTRODUCTION

Marriage is one aspect of human life that is very important both from a social and juridical point of view, marriage has a very meaningful meaning and position in the order of human life. Because by marriage, a bond of association can be formed between two persons of the opposite sex, officially in a husband and wife bond, to become one family. Marriage is also called "marriage", comes from the word marriage

which according to the language means to collect, include each other, and is used to mean intercourse (wathi).¹

Based on Article 7 paragraph (1) of Law Number 16 of 2019 amendments to Law Number 1 of 1974 The age for marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. Before being ratified to be the same as 19 years, this Law underwent several judicial reviews. The first was in 2014 however, when the first submission was rejected by the constitutional court. Then the second in April 2017, this application was then recorded as case Number 22/PUU-XV/2017, it was necessary to make changes to the provisions of Article 7 of Law Number 1 of 1974 concerning Marriage.

And finally on October 14, 2019 in Jakarta, President Joko Widodo officially ratified Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, after more than 45 years there has never been a change at all. Thus, it becomes evidence of the historical renewal of Islamic law in Indonesia regarding marriage which has a very large impact on the lives of Indonesian people.

The phenomenon of unregistered marriages or underhanded marriages still occurs in our society, both by ordinary people and by well-known figures. Issues surrounding sirri marriage are still the subject of discussion among the public. One of the PA's powers is to ratify marriages (istbat alnikah). The starting point for the emergence of this authority is due to the rise of illegal marriages or marriages in the community, such as unregistered marriages or unregistered marriages or underhanded marriages.²

In essence, unregistered marriage from a religious perspective is legal, if the pillars and conditions are met. However, in order to maintain order, the state has the right to regulate marital problems, so marriages should be registered with the Marriage Registrar (for Muslims). This is in accordance with the sound of Article 2 paragraph 2

¹Muhammad bin Ismail Al-Kahlaniy, *Subul al-Salam*, Dahlan, Bandung, hlm. 109

² Abdurrahman, *Kompilasi Hukum Islam Di Idonesia*, Akademika Pressindo, Jakarta, 2010, hlm.

of Law Number 16 of 2019 amendments to Law No. 1 of 1974 that "every marriage is recorded according to the applicable laws and regulations".³

The existence of regulations that require that a marriage be recorded according to the applicable laws and regulations, its usefulness is that a marriage institution has a very important and strategic place in Islamic society, it can be protected from negative efforts from irresponsible parties. For example, in anticipation of the denial of the marriage contract by a husband in the future, which although basically can be protected by the presence of witnesses, of course it will be more protected by having an official record in the authorized institution for that.

The need for registration of marriages is also emphasized in Article 9 paragraphs (1, 2 and 3) of Law Number 23 of 2006 concerning Population Administration which essentially states that the implementing agency has the authority to obtain data regarding population events, important events experienced by the population including: in it is the Office of Religious Affairs (KUA) especially for registration of marriage, divorce, divorce and reconciliation, especially for the Muslim population.⁴

The importance of marriage registration is not just a statement that the marriage is legal in the eyes of state law, but its existence will have implications for the status of children, wives and assets during marriage. For marriages that have not been registered or registered with the KUA, to avoid the negative impact, that is by taking a legal solution to their marriage, namely submitting an application for marriage ratification (*isbat al-nikah*) to the Religious Courts in the area where they live or the place where they hold the marriage. This is not only aimed at making the marriage recognized by the state, but also so that the marriage has legal certainty.

The application for *itsbat* marriage can be made by both husband and wife or one of the husband and wife, children, marriage guardians and other parties with an interest in the marriage to the Religious Court or *Syar'iyah* Court in the legal area of

³Abdul Ghani Abdullah, *Himpunan Perundang-Undangan Dan Peraturan Peradilan Agama*, Gunung Jati, Jakarta, 2002, hlm. 107.

⁴*Ibid.*, hlm. 108.

the application for residence, and the application for itsbat marriage must be completed with clear and concrete reasons and interests.

Article 64 of the Marriage Law explains that marriage and everything related to marriage that occurred before this law came into effect which was carried out according to the old regulations was legal. In this case, including the issue of marriage isbat. Then in Law Number 50 of 2009, concerning the second amendment to Law Number 7 of 1989, it is stated in Article 49 paragraph (2) that what is meant in Paragraph 1 letter a are matters that are regulated based on the applicable marriage law. . While the explanation of Article 49 Paragraph (2) says that one of the fields of marriage regulated in the Marriage Law which consists of 22 items, one of which is a statement about the validity of marriages that occurred before the law, concerning marriages carried out according to other regulations. .

However, the Religious Courts (judges) actually adhere to the provisions contained in Article 7 of the Compilation of Islamic Law (KHI) paragraph 2 which states that in the event that marriage cannot be proven by a Marriage Certificate, the marriage isbat can be submitted to the Religious Court, and Article 7 paragraph 3 states that the marriage isbat that can be submitted to the Religious Courts is limited to matters relating to the existence of marriages in the context of the settlement of divorce, loss of marriage certificates, doubts about the validity of one of the conditions of marriage, the existence of marriages that occurred before the enactment of Law No. 16 of 2019 amendments to Law No. 1 of 1974 and marriages carried out by those who have no marital barriers according to Law No. 16 of 2019 amendments to Law No. 1 of 1974, this is what opens the opportunity for judges/religious courts to accept and examine applications for itsbat marriage against marriages that occur.

One of the decisions of the Pasir Pangaraian Religious Court in Case Number 876/PDT.G/2020/PA.PPG is to request that the KUA be registered through a decision by the religious court which aims to provide legal certainty to marriages that were performed in betel nut first. religiously the marriage is religiously legal but is not recorded by the KUA as contained in Article 7 paragraph (1) of the Compilation of Islamic Law it says "marriage can only be proven by a marriage certificate made by a marriage registrar". Interestingly, the application for itsbat marriage postulates that the

marriage which was carried out in 1987 was carried out in a betel manner so that in order to provide legal certainty for the children and their marital status, the applicant requested the application for itsbat marriage at the Religious Court of Pasir Pangaraian.

The request was granted by the Panel of Judges of the Pasir Pangaraian Religious Court with the consideration that the case of ratification of marriage does not only refer to whether or not a marriage bond is carried out by the community, then after being ratified by the PA then it is recorded at the KUA where the applicant holds the marriage to receive the marriage certificate. furthermore that the Panel of Judges in their decision also provides legal certainty and benefits for the Petitioners.

In connection with the above description, the researchers are interested in conducting in-depth research by taking the title "The Process of Determining the Marriage Itsbat Against Contensious Cases Based on Article 49 Paragraph 2 of Law Number 50 Year 2009 concerning Religious Courts (Case Study Number 876/PDT.G/ 2020/PA.PPG)". From the background of the research, in general, the problems that need to be raised are as follows: How is the Process for Determining the Itsbat of Marriage in Consistent Cases Based on Article 49 Paragraph 2 of Law Number 50 Year 2009 concerning Religious Courts (Case Study Number 876/PDT. G/2020/PA.PPG)?, What Are the Legal Consequences for Determining Marriage Itsbat on Consistent Cases Based on Article 49 Paragraph 2 of Law Number 50 Year 2009 concerning Religious Courts (Case Study Number 876/PDT.G/2020/PA.PPG)?.

METHODS

The type of research used in this research, namely normative juridical, is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and

regulations and other documents related to this research⁵ This research is a Normative Juridical Research on the Decision of the Religious Court Number 876/PDT.G/2020/PA.PPG.

Meanwhile, in terms of its nature, this research is classified as descriptive research, which means the research is intended to provide a detailed, clear and systematic description of the main research problems. Thamrin S, argues that descriptive research is a research that intends to provide data as accurately as possible about humans, conditions or other symptoms, with the aim of confirming hypotheses, to strengthen a theory, or develop new theories.⁶

Because this research is library research, namely examining library materials which are commonly called secondary data. Secondary data is data obtained from library materials. And can be classified as follows: Primary Legal Materials, namely binding legal materials obtained in the form of laws and regulations such as: Book of Civil Law Law, Law Number 2 of 1986 concerning General Courts, Law Number 14 of 1970 Regarding the main provisions of Judicial power and the Decision of the Religious Courts Number 876/PDT, 6/2020/PA.PPG. Secondary Legal Materials, namely legal materials that provide an explanation of primary legal materials consisting of: books and literature diktats that are closely related to the main problems above. Tertiary Legal Materials, namely materials that provide instructions or explanations for Primary Legal Materials and Secondary Legal Materials such as: dictionaries and so on.

Interviews are primary data collection activities sourced directly from research respondents in the field (location). The interview used is a directed interview using a list of questions which is intended to obtain accurate data and do not deviate from the subject matter that the author examines. Interviews were conducted with the judges and clerks of the Pasir Pengaraian Religious Court.

Documentation is looking for data about variables in the form of notes, books, agendas and so on. This method is used to collect and obtain data related to the general description of the research location, namely the Pasir Pengaraian Religious Court.

⁵Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2010, hlm. 10.

⁶Thamrin S, *Metode Penelitian Hukum*, UI-Pres, Pekanbaru, 1996, hlm. 10.

The data analysis in this study was carried out in a normative qualitative manner, namely from the data obtained and then compiled systematically and then analyzed qualitatively to achieve clarity on the problems to be discussed. Qualitative data analysis is a research method that produces descriptive data analysis. The definition of analysis here is intended as an explanation and interpretation in a logical, systematic manner. Systematic logic shows a deductive-inductive way of thinking and follows the rules of writing scientific research reports. After the data analysis is complete, the results will be presented descriptively, namely by telling and describing what is in accordance with the problems studied.

DISCUSSION

The Process of Determining the Marriage Itsbat Against Contensious Cases at the Pasir Pangaraian Religious Court (Case Study Case Number 876/Pdt.G/2020/PA.Ppg)

As it is known that according to the applicable laws and regulations, as well as Article 7 of the Compilation of Islamic Law, the existence of a marriage can only be proven by a marriage certificate, meaning that in the case of a marriage not getting a marriage certificate, the solution that can be taken is to apply for a marriage itsbat, meaning that someone who applies for itsbat The purpose of marriage is so that the marriage that is carried out is authentically proven in the form of a marriage certificate quote and gets legalized both in formal juridical and in the wider community.⁷

In addition, to avoid slander that can occur at any time in daily interactions within the community, the direct impact of which is on women in general. Therefore, marriage isbat which is the authority of the Religious Courts is a wise solution to solve problems in society, in addition, as it is known that one of the legal functions is to regulate and provide protection for the rights of the community, therefore the registration and marriage isbat aims to realize marital order in society which has implications for efforts to protect the rights of those involved in the marriage.

³⁷ Satria Efendi M.Zein, *Problematisa Hukum Keluarga Islam Kontemporer*, Pranada Media, Jakarta, 2004, hlm. 86

Basically itsbat marriage is the determination of the marriage of a man with a woman as husband and wife which has been carried out in accordance with the provisions of Islam, namely the fulfillment of the conditions and pillars of marriage. But marriages that occurred in the past have not been or have not been registered with the authorized official, in this case the official of the Office of Religious Affairs (KUA), namely the Marriage Registrar (PPN).⁸

Proses penetapan itsbat nikah *contentious* dengan proses penetapan itsbat nikah di Pengadilan Agama Pasir Pangaraian tidak ada bedanya, prosedur keduanya tetap sama dan yang membedakan hanyalah proses dalam persidangan perkara itsbat nikah tersebut, dimana dalam perkara itsbat nikah *contentious*.

This is intended so that the marriage is legally valid and the marriage is true, it has never been registered with the authorities and without any party who feels aggrieved or there is a party who is suing the marriage. However, in the process of submitting the itsbat to the Religious Court, one of the parties, both husband and wife, has died, so that the submission of the itsbat becomes a contentious marriage itsbat case.

Isbat Marriage is a contentius case, which is a civil case containing a dispute between litigants whose settlement examination is submitted and submitted to the court, where the party submitting the application is called and acts as the Respondent. Article 7 paragraph (4) of the KHI explains, "Those who have the right to apply for an isbat marriage are husband or wife, their children, marriage guardians and parties with an interest in the marriage".⁹

The case of marriage ratification (itsbat) is a marriage which is held based on religion or is not recorded by an authorized Marriage Registrar (PPN) submitted by a husband and wife or one of the husband or wife, children, marriage guardians and parties with an interest in the proposed marriage. to the court where the Applicant resides by stating the reasons and interests clearly.

⁸ Linda Firdawaty, *Hukum Acara Peradilan Agama*, Permata Printing Solutions, Bandar Lampung 2009, hlm. 33.

⁹*Ibid.*, hlm. 34.

In case Number: 876/PDT.G/2020/PA.PPG, that the Petitioner as the wife of the late Buyung Bako Bin Saula filed a contentious marriage itsbat because her husband died on September 11, 2020. Therefore, in the process at the Pasir Religious Court The Pangaraian in this case made his wife as the Petitioner and his two children, namely Monika Sari Binti Buyung Bako and Fri Hamdani Bako Bin Buyung Bako as the parties of Respondent I and Respondent II.

In principle, the administrative procedure for an application case is the same as the procedure for administering a lawsuit. Article 55 of Law no. 7 of 1989 concerning the Religious Courts states, "Every examination of a case in the Court begins after an application or lawsuit has been submitted and the litigants have been summoned according to the applicable provisions". Briefly, the process is as follows:¹⁰

- a. An application is submitted to the Chief Justice of the Court, with a request that the Court:
 - 1) Determine the trial day;
 - 2) Summon the litigants;
 - 3) Checking the submitted case.
- b. Regarding how to submit an application as regulated in the Guidebook for the Implementation of Duties and Administration of Religious Courts, published by the Supreme Court of the Republic of Indonesia (2014:144), it is as follows:
 - 1) The application is submitted to the Registrar of the Religious Courts in the jurisdiction where the applicant resides, and the application must be accompanied by clear and concrete reasons and interests.
 - 2) The process of examining applications for Isbat Marriage submitted by husband and wife is voluntary, the product is in the form of determination. If the contents of the stipulation reject the application for Isbat Marriage, then the husband and wife together, or husband and wife can each file an appeal.
 - 3) The process of examining the application for Isbat Nikah submitted by one of the husbands or wives is contentious by placing the wife or husband who does

¹⁰Raihan A.Rasyid, *Hukum Acara*, hlm. 40.

not submit the application as a party to the Respondent, the product is in the form of a decision and against the decision an appeal and cassation can be filed.

- c. The applicant is required to pay court fees. (Article 89 of Law No. 7 of 1989)

The application for itsbat marriage Number 876/PDT.G/2020/PA.PPG is a contentious application, because the application is submitted by the husband or wife, is referred to as the Petitioner and makes the heirs of the Respondent, and the judge's product is in the form of a decision.

In its determination, the Panel of Judges charged the cost of the case to the Petitioners. This is in accordance with article 89 of Law no. 7 of 1989, which reads: "The costs of cases in the field of marriage are borne by the plaintiff or applicant."

The process for submitting, examining and completing applications for ratification of marriage or marriage itsbat must be guided by the following:¹¹

- 1) The application for itsbat marriage can be made by both husband and wife or one of the husband and wife, children, marriage guardians and other parties with an interest in the marriage to the Religious Court or Syar'iyah Court in the jurisdiction where the applicant resides, and the application for itsbat marriage must be equipped with clear and concrete reasons and interests.
- 2) The process of examining the application for itsbat marriage submitted by both husband and wife is voluntary, the product is a determination. If the contents of the stipulation reject the application for itsbat marriage, then the husband and wife together or husband and wife can each file an appeal.
- 3) The process of examining the application for itsbat marriage submitted by one of the husbands or wives is intensive by placing the wife or husband who does not submit the application as the respondent, the product is in the form of a decision and against the decision an appeal and cassation can be filed.
- 4) If in the process of examining the application for marriage istbat in numbers (2) and (3) above it is known that her husband is still bound in a legal marriage with another woman, then the previous wife must be made a party in the case. If the

¹¹*Ibid.*, hlm. 42.

- applicant does not want to change his application by including the previous wife as a party, the application must be declared inadmissible.
- 5) Applications for itsbat marriage made by children, marriage guardians and other interested parties must be contextual, by placing the husband and wife and/or other heirs as the respondent.
 - 6) A husband or wife who has been abandoned by his wife or husband, can apply for a marriage certificate in a contextual manner by placing the other heirs as the respondent.
 - 7) In the event that the husband or wife who is left dead does not know that there are other heirs besides himself, then the application for itsbat marriage is submitted voluntarily, the product is in the form of a determination. If the application is rejected, the applicant can file a cassation.
 - 8) Other people who have an interest and are not a party to the case for the application for itsbat marriage referred to in points (2) and (6), may take a fight to the Religious Court or the Syar'iyah Court which decides, after knowing there is a determination of itsbat marriage.
 - 9) Other people who have an interest and are not a party to the case for the application for itsbat marriage referred to in points (3), (4), and (5), may apply for intervention to the Religious Court or the Syar'iyah Court which examines the marriage itsbat case for as long as case has not been decided.
 - 10) Other parties who have legal interests and are not parties to the case of the application for itsbat marriage referred to in numbers (3), (4) and (5), while the application has been decided by the Religious Court or the Syar'iyah Court, may file a lawsuit for cancellation. marriage which has been ratified by the Religious Court or the Syar'iyah Court.
 - 11) The Chairperson of the Panel of Judges 3 days after PMH makes a PHS and at the same time orders a substitute bailiff to announce the application for ratification of the marriage 14 days from the date of announcement in printed or electronic mass media or at least announced it on the announcement board of the Religious Court or the Syar'iyah Court. 12. The Panel of Judges in determining the day of the trial no later than 3 days after the end of the announcement. After the announcement day ends, the Panel of Judges immediately sets a trial day.

The next stage in the process of determining the legality of marriage against a contentious case at the Pasir Pangaraian religious court is the trial process which includes:¹²

a. Determination of the Panel of Judges

After the case is registered with the Registrar of the Religious Court, the Registrar then submits the case file to the Head of the Religious Court. No later than 5 working days after the receipt of the file, the Head of the Religious Courts has appointed the Panel of Judges by submitting the case file for study.

The Chairperson of the Assembly makes the Determination of the Session Day (PHS), when the first session will be held. The day of the first trial shall not be more than 30 days from the registration of the case. In case Number: 876/PDT.G/2020/PA.PPG, the determination of the trial day by the Chair of the Assembly was appropriate because the case registration was dated December 23, 2020, and the first trial was held on January 10, 2021.

Based on article 15 of Law no. 14 of 1970, "The judge who hears the case is the assembly, at least three people, one as chairman and the other as members". Thus, the panel of judges adjudicating a case is allowed more than three people, as long as the number is odd. Odd provisions are made to anticipate if there is a balance of votes the case can still be decided, where the Chair of the Assembly will decide. Thus, the determination of the Panel of Judges by the Chairperson of the Pasir Pangaraian Religious Court to hear the case Number: 876/PDT.G/2020/PA.PPG is in accordance with the provisions of the law.

b. Summoning of the Parties

The summons of the parties within the Religious Courts is regulated in Law no. 7 of 1989, however, the law only regulates the summons of the parties in talak and litigation cases. However, several provisions in the law may apply in general, including:¹³

¹²Zainuddin Ali, *Hukum Perdata Islam di Indonesia*, Sinar Grafika, Jakarta, 2009, hlm. 20.

¹³*Ibid.*, hlm. 22.

- 1) Summons of the parties shall be made by a substitute bailiff based on an order from the Chairman of the Assembly, no later than 3 working days prior to the start of the first trial.
- 2) Delivered to the person concerned at his place of residence. If the person concerned is not found, it can be submitted to the Village Head concerned.
- 3) The distance between the day of summons and the day of the trial must meet the appropriate grace period.
- 4) The release submitted by the bailiff to the parties in case Number: 876/PDT.G/2020/PA.PPG, is in accordance with the provisions above.

c. Proof

After the Petitioner came before the court, the Petitioner's petition was read out, which turned out to be the Petitioner's continued petition. Thus, the trial proceeds to the evidentiary stage. Proof is the effort of the litigating parties to convince the judge of the truth of the events proposed by the parties with evidence stipulated by law.

The evidence regulated in article 164 HIR consists of; written evidence (letters), witnesses, allegations, confessions, and oaths. In case Number: 876/PDT.G/2020/PA.PPG, the Petitioner submits written evidence in the form of:

- 1) Photocopy of Certificate not registered at the Office of Religious Affairs, North Tambusai District, has been affixed with sufficient stamp duty as evidence P-1
- 2) Photocopy of Family Card in the name of the Applicant number 1406091509200002 dated 17 September 2020 has been affixed with sufficient stamp duty as proof of P-2.
- 3) Photocopy of Death Certificate in the name of Buyung Sako number 1406-KM-15092020 dated 16 September 2020 has been affixed with sufficient stamp duty as proof of P-3.

In addition to written evidence, the Petitioners also presented three witnesses, after the witnesses took an oath according to Islam, then gave their statements.

Based on the explanation above, the writer considers that the evidence submitted by the litigants is very sufficient and in accordance with the provisions of the law. In

addition to written evidence and witnesses, according to the author, confessions from litigants are also very strong evidence. In Article 174 of HIR as quoted by Rasyid, it is explained, "a confession before a court is a perfect and binding evidence".

The judge's consideration or what is often called *considerans* is the basis for the decision. A decision is the result of an examination of a case carried out by a judge as a state official authorized to end or decide a disputed case.¹⁴ After the judge examines the title of the case correctly, and it is declared complete, the judge's decision falls.

Decision making is needed by judges on disputes that are examined and tried. The judge must be able to process and process the data obtained during the trial process, both from letter evidence, witnesses, suspicions, confessions and oaths revealed in the trial. So that the decision to be handed down can be based on a sense of responsibility, justice, wisdom, professionalism and is objective, and contains legal certainty.

In deciding a case, the most important thing is the legal conclusion on the facts revealed at the trial. For this reason, judges must explore values, follow, and understand legal values (legal certainty) and a sense of justice that lives in society. Sources of law that can be applied by judges can be in the form of statutory regulations and their implementing regulations, unwritten law (customary law), village decisions, jurisprudence, science and doctrine/teachings of experts.¹⁵

The trial hearing must be based on an honest process from the beginning to the end (the verdict is handed down). Hearings and decisions pronounced in court sessions that are open to the public or in public are an integral part of the fair trial principle. Trial examinations that are open from start to finish are excluded for certain cases, such as divorce cases. In the case of divorce, it is carried out in a closed trial to the public, but the decision must be pronounced in a trial that is open to the public.

According to the Law on marriage, it is not explained in detail about the meaning of marriage registration. This understanding is explained in the general explanation of the Act, namely that every marriage is the same as in a person's life. For example, births and deaths are stated in certificates of an official deed which are also

¹⁴ SoediknoMertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta,1999, hlm. 175.

¹⁵ R. Soeparmono, *Hukum Acara Perdata dan Yurisprudensi*, Mandar Maju, Bandung, 2005, hlm. 146.

included in the register of records. However, linguistically recording means the process or act of writing something for a warning in a notebook. So marriage registration is a process or act of writing carried out by authorized officers or officials into the marriage register as evidenced by the existence of a marriage certificate as authentic evidence.

Basically itsbat marriage is the determination of the marriage of a man with a woman as husband and wife which has been carried out in accordance with the provisions of Islam, namely the fulfillment of the conditions and pillars of marriage. However, marriages that occurred in the past have not been or have not been registered with the authorized official, in this case the official of the Office of Religious Affairs (KUA), namely the Marriage Registrar (PPN).

In general, a husband and wife who marry according to their religious law without being recorded by the Marriage Registrar at the Office of Religious Affairs, then the husband and wife can submit an application for marriage isbat to the Religious Court. With the condition that the marriage isbat is only possible if it is in accordance with the provisions of Article 7 paragraph (3) letter a to letter e of the Compilation of Islamic Law. If there is one of the five reasons mentioned above, an application for marriage isbat can be submitted to the Religious Court, however, the Religious Court will only grant the marriage isbat application as long as the marriage fulfills the pillars and conditions of marriage according to Islamic law and ensures that there is no violation of the prohibition of marriage according to law. Islam (Compilation of Islamic Law) and Marriage Law.¹⁶

Rules for ratification of marriage or marriage itsbat are made on the basis of a marriage which was held based on religion or was not recorded by the authorized VAT. The ratification of marriage is regulated in Article 2 paragraph (5) of Law Number 22 of 1946 and Article 49 number (22) of the explanation of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009 and Article 7 paragraphs (2), (3), and (4) Compilation of Islamic Law.

¹⁶Khoirul Abror, *Hukum Perkawinan*, hlm. 37.

Article 49 number (22) explanation of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and Article 7 paragraph (3) letter d of the Compilation of Islamic Law, marriages that are legalized are only marriages that were held before the enactment of the Act Number 1 of 1974. However, Article 7 paragraph (3) letter a of the Compilation of Islamic Law provides an opportunity for ratification of marriages that are not recorded by the VAT which are carried out before or after the enactment of Law Number 1 of 1974 for the sake of divorce (Article 7 paragraph (3) letter a Compilation of Islamic Law).

The researcher analyzed that the process of determining itsbat marriage at the Pasir Pangaraian Religious Court was the same as the process of submitting itsbat marriage contentious and had met the requirements and did not deviate from the proper provisions set forth in Book II, which is a book that serves as a guide in carrying out tasks. and administration of the Religious Courts and also becomes one of the references for all apparatus of the Religious Courts, especially the judges, registrar/substitute clerks and bailiffs in carrying out their duties in the field of judicial administration and technical justice.

So judging by the importance of the contentious marriage itsbat, it is to protect the civil rights of the wife and the civil rights of the children born from the marriage. In this case, the purpose of the Petitioner is to file this application for itsbat marriage contentious. Other evidence that the importance of registering marriages and filing a marriage certificate for couples who do not have a marriage certificate is among others in making birth certificates, making passports, inheritance interests and other civil administration matters. However, if the marriage is not registered then the status of the marriage is not legal and the panel of judges will not be able to do anything about this kind of marriage case if unwanted things happen in the future.¹⁷

Marriage registration has an important role in a marriage. The existence of records in marriage law will affect whether or not marriage is recognized before the law. In the Indonesian legal system, the concept of registering a marriage is not a condition that determines the validity of a marriage, because all marriages in Indonesia in particular are considered valid if they are carried out according to religious

¹⁷*Ibid.*, hlm. 38.

provisions (i.e. the fulfillment of the conditions and pillars of marriage), and this is believed by Muslims as shari'a provisions that must be implemented. However, the recording is a condition for whether or not a marriage is recognized by the state and this has many consequences for those who carry out the marriage.¹⁸

Thus, based on the description of the legal basis, it can be seen that the legalization of the implementation of marriage isbat may be carried out because it has been recognized for people who carry out marriages without prior registration of marriages. The requirements for marriage isbat are not explained in classical or contemporary fiqh books. However, the requirements for isbat marriage (marriage determination) are basically the determination of a marriage that has been carried out in accordance with the provisions contained in Islamic law.

Legal Consequences for Determination of Marriage Itsbat on Consistent Cases at the Pasir Pangaraian Religious Court (Case Study Case Number 876/Pdt.G/2020/PA.Ppg)

The requirements for isbat marriage can only be seen in the provisions of the law. Isbat marriage (marriage determination) is basically the determination of a marriage that has been carried out in accordance with the provisions contained in Islamic law. that this marriage has been carried out legally, namely in accordance with the requirements and pillars of marriage, but this marriage has not been registered with the authorized official, namely the Marriage Registrar (PPN). So to get a stipulation (ratification of marriage) you must first submit an application for marriage isbat to the Religious Court.

In case Number 876/PDT.G/2020/PA.PPG the Pasir Pangaraian Religious Court which examined and tried certain cases at the first level in the trial the Panel of Judges had handed down the following determination in the case of the application for marriage determination filed by Sadaria Manulang as the Petitioner I against Monika Sari as Respondent I and Fri Hamdani as Respondent II. That the Petitioner is based on his application which has been registered with the Registrar of the Pasir Pangaraian Religious Court on December 23, 2020 under Number

¹⁸Mohd Ramulyo Idris, *Hukum Perkawinan*, hlm. 55.

876/PDT.G/2020/PA.PPG with additions and amendments made by himself. The Petitioners request that the Chairperson of the Pasir Pangaraian Religious Court, the Panel of Judges, to examine and hear this case, then renders a ruling which reads as follows:

Primary:

- 1) Granting the Petitioner's application;
- 2) Declaring that the marriage between the Petitioner (Sadaria Manulang Binti Humala Mnulang) is valid and the late Buyung Bako Bin Alm. The Saula which was held on September 22, 1987 in the presence of the Marriage Registrar of the KUA, North Tambusai District, Rokan Hulu Regency is legal according to Islam;
- 3) Determine court fees according to law.

Subsidiary:

If the Panel of Judges has a different opinion, please pass a fair decision. Based on the Petitioner's request, the Pasir Pengaraian Religious Court, which has the authority to examine and adjudicate this case in a meeting of the panel of judges at the Pasir Pangaraian Religious Court, has determined that:

- 1) Granting the Petitioner's Application
- 2) Declaring that the marriage between the Petitioner (Sadaria Manulang Binti Humala Mnulang) is valid and the late Buyung Bako Bin Alm. The Saula which was held on September 22, 1987 in the presence of the Marriage Registrar of the KUA, North Tambusai District, Rokan Hulu Regency is legal according to Islam;
- 3) Charge the Petitioner with court fees which until now have been calculated at Rp. 630.000,- (Six Hundred Thirty Thousand Rupiah).

Based on the analysis of the Pasir Pengaraian Religious Court Decision Number 876/PDT.G/2020/PA.PPG. then it can be seen some of the legal consequences arising from the decision of itsbat marriage, namely:

1. Marriage legitimacy

Associated with the existence of itsbat marriage organized by the government to clarify the validity of marriages that are not registered is a policy that brings benefit

to Muslims. Where with the marriage itsbat then it can be a legal basis such as filing for divorce to the Court, division of joint property, division of inheritance, status of children and so on.¹⁹

2. Rights and obligations of husband and wife

The presence of Law Number 1 of 1974 before the amendment Number 16 of 2019 concerning Marriage, then the position of husband and wife is more concerned, especially in balanced rights and obligations. If a woman and a woman have the obligations and rights of each party during and after living together, and regarding her position in society from her offspring.

3. Child status and position

Law Number 1 of 1974 before the amendment of Number 16 of 2019 did not provide detailed regulations regarding the position of children. The regulation on the position of the child is contained in articles 42-44. Legal terms distinguish between legitimate descendants (children) and illegitimate descendants (children).²⁰

While in the Compilation of Islamic Law the above problems are regulated in Article 99 and Article 100, the linkage of Article 7 number 3 letter (a), (b), (c), (d) and (e) with Article 42 of the Act and Article 99 Compilation of Islamic Law. If a marriage has been concluded, of course it already has the same legal force as a marriage that is registered and has a Marriage Certificate, therefore for children who are born with the category of legitimate children in accordance with Article 42 of the Law and Article 99 of the Compilation of Islamic Law can obtain civil rights, for example, the right to obtain a birth certificate by making the determination of the marriage certificate as proof of the marriage of his parents.

4. Marriage property

¹⁹Linda Firdawaty, *Hukum Acara*, hlm. 37.

²⁰ J. Satrio, *Hukum Keluarga Tentang Kedudukan Anak Dalam Undang-Undang*, Citra Aditya Bakti, Bandung, 2000, hlm. 5.

If it is related to the Itsbat of marriage, logically it can be said that as long as the marriage has not been registered/not yet registered in the Religious Courts, then legally, nothing becomes joint property. And when the marriage has been concluded, from that moment what is called joint property arises.²¹

. This is very rational, because basically the submission of itsbat marriage, except for the reasons of Article 7 number (3) letter (a) to the Religious Courts is a manifestation of the good faith of husband and wife to make their marriage a legal marriage according to religion and recognized by the state, so that it will get legal certainty and protection. By submitting a marriage itsbat, husband and wife certainly want that the assets obtained during marriage will become one of the glues for the integrity and harmony of their household.

Application for Marriage Itsbat Number 876/PDT.G/2020/PA.PPG. has complied with relative competence and absolute competence so that the application was granted by the Panel of Judges of the Pasir Pengaraian Religious Court. This is in accordance with articles 49 and 50 of Law Number 3 of 2006.

The decision provides a new law regarding the reasons for the application for marriage isbat outside those stipulated in Article 49 paragraph 1 of Law Number 7 of 1989 and Article 7 of the Compilation of Islamic Law. The Panel of Judges in this case has made a new law, but unfortunately it is not based on sufficient legal considerations. The existence of a legal hilah (strategy) should be based on strong considerations so that the reasons for the judge's decision are correctly illustrated.²²

Marriage isbat matters are voluntary matters. A voluntary case is a case that contains a claim for civil matters by one interested party on a matter that does not contain a dispute. The settlement of voluntary cases must be settled in a court that has the competence to judge. In a sense, marriage isbat cases which are voluntary cases can be resolved in courts that have the authority granted by law.

²¹ Zainal Abu Bakar, *Kumpulan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama*, Yayasan Al-Hikmah, Jakarta, 1995, hlm. 327.

²² Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, cet. X, Press Yogyakarta, Yogyakarta, 2004, hlm. 50.

This isbat marriage is a method that can be taken by married couples who have been legally married according to religious law but to obtain legal recognition from the state for the marriages that have been carried out by both of them and the children born during the marriage, so that this marriage that has been held has the power of law or legal umbrella to protect the rights of the people in it if something happens in the future.²³

With permission from the Court to settle this isbat marriage case, then from here the court can help married couples who have lost their proof/marriage certificate as proof of a valid marriage to be able to have their marriage certified and have a valid marriage certificate/evidence back so that have legal force against marriages that have taken place.

CONCLUSION

Based on the results of the research as well as the analysis and discussion that the author has done in the previous chapters, the following conclusions are presented which are the answers to the problems in this study as follows:

1. Basically the marriage itsbat is the determination of the marriage of a man with a woman as husband and wife which has been carried out in accordance with the provisions of the Islamic religion, namely the fulfillment of the conditions and pillars of marriage. There is no difference between the process of determining the itsbat for a contentious marriage and the process for determining the itsbat for a voluntary marriage at the Pasir Pangaraian Religious Court, the procedure for both remains the same and the only difference is the process in the trial of the itsbat nikah, where in the case for itsbat nikah, in contentious, the heirs are the opposing or the defendants. . In this case, the contentious marriage itsbat was proposed by the wife as the Petitioner because her husband had died and made her two children as Respondent I and Respondent II.
2. The legal consequence created by analyzing the Decision of the Pasir Pangaraian Religious Court Number: 876/PDT.G/2020/PA.PPG is that the Panel of

²³*Ibid.*, hlm. 51.

Judges of the Pasir Pangaraian Religious Court declared the marriage between the Petitioner (Sadaria Manulang Binti Humala Mnulang) and the late Buyung. Bako Bin Alm. Saula which was held on September 22, 1987 in the presence of the Marriage Registrar of KUA North Tambusai District, Rokan Hulu Regency is legal according to Islam and they have been declared valid as husband and wife, and the children born from the marriage are legally positive children who valid in Indonesia.

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