

The Urgency of Isbat Nikah in the Dynamics of Living Law: A Sociology of Law Analysis of Unregistered Marriage in Indonesia

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Abstrak

Penelitian ini bertujuan menganalisis kesenjangan antara kewajiban pencatatan perkawinan dalam hukum negara dan praktik nikah siri yang hidup dalam masyarakat, dampak sosial hukum perkawinan tidak tercatat, serta urgensi dan batas isbat nikah sebagai jembatan di antara keduanya. Penelitian menggunakan metode hukum yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Data diperoleh dari bahan hukum primer, data resmi Kementerian Agama dan Dukcapil, serta temuan penelitian terdahulu, lalu dianalisis secara kualitatif dengan teori living law Eugen Ehrlich dan teori sistem hukum Lawrence M. Friedman. Hasil penelitian menunjukkan bahwa nikah siri bertahan karena keabsahan religius telah menjadi norma sosial yang dominan, sementara pencatatan dipersepsikan sebagai urusan administratif; kondisi ini diperkuat oleh hambatan ekonomi, geografis, dan rendahnya literasi hukum. Akibatnya, perempuan dan anak menanggung kerentanan paling besar dalam hal nafkah, harta bersama, waris, dan identitas hukum. Isbat nikah berfungsi sebagai mekanisme rekognisi yang mentransformasikan perkawinan sah menurut living law menjadi perkawinan yang diakui negara, tetapi pemanfaatannya cenderung reaktif dan berpotensi disalahgunakan untuk melegalkan poligami tanpa izin maupun perkawinan anak. Karena itu, isbat nikah perlu ditempatkan dalam kerangka kebijakan yang menyeimbangkan fungsi kuratif dan preventif melalui penguatan kesadaran hukum, layanan terpadu, dan kehati-hatian yudisial.

Kata Kunci: Isbat Nikah; Living Law; Kesadaran Hukum; Nikah Siri; Pencatatan Perkawinan.

Abstract

This study analyses the gap between the statutory duty to register marriages and the practice of unregistered (siri) marriage that persists as living law in Indonesian society, the social and legal consequences of unregistered marriages, and the urgency and limits of marriage validation (isbat nikah) as a bridge between the two. It employs juridical normative research combining statutory and conceptual approaches. Data were drawn from primary legal materials, official figures released by the Ministry of Religious Affairs and the civil registry, and findings of prior studies, and were analysed qualitatively through Eugen Ehrlich's theory of living law and Lawrence M. Friedman's legal system theory. The findings show that siri marriage persists because religious validity has become the dominant social norm while registration is perceived as a mere administrative formality, a perception reinforced by economic and geographical barriers and low legal literacy. Women and children bear the greatest vulnerability concerning

maintenance, marital property, inheritance, and legal identity. Isbat nikah functions as a recognition mechanism that transforms a marriage valid under living law into one acknowledged by the state; however, it is used largely reactively and may be misused to legitimise unauthorised polygamy or child marriage. Isbat nikah should therefore be situated within a policy framework that balances curative and preventive functions through strengthened legal awareness, integrated services, and judicial prudence.

Keywords: *Isbat Nikah; Living Law; Legal Awareness; Siri Marriage; Marriage Registration.*

INTRODUCTION

In the Indonesian legal system, marriage is understood not only as a physical and spiritual bond between a man and a woman aimed at forming a happy and lasting family, but also as a legal event that gives rise to rights and obligations for the husband, the wife, their children, and third parties. Accordingly, Law Number 1 of 1974 on Marriage places two provisions side by side: a marriage is valid if it is performed in accordance with the law of the respective religion and belief of the parties, and every marriage shall be registered in accordance with the prevailing laws and regulations.¹ For Muslims, the registration requirement is reinforced by the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), which provides that marriages must be registered to ensure order and that a marriage conducted outside the supervision of a Marriage Registrar has no legal force.² At the technical level, registration is now governed by Minister of Religious Affairs Regulation Number 30 of 2024 on Marriage Registration, which replaces earlier regulations and also contains provisions on the registration of isbat nikah.³

Nevertheless, the practice of marriage without registration (*kawin di bawah tangan* or *nikah siri*, hereafter siri marriage) persists in reality. The most recent officially published national figure comes from the Directorate General of Islamic Community Guidance of the Ministry of Religious Affairs, which, citing data from the Directorate General of Population and Civil Registration as of 30 June 2021, reported in June 2025 that 34.6 million married couples held the status of "married but unregistered" and attributed this to social and economic factors as well as low legal literacy.⁴ These data indicate that unregistered marriage is not a marginal phenomenon but a structural problem affecting millions of families. More recent regional data reveal a similar pattern: in the first semester of 2026, the Population and Civil Registration Office of Trenggalek Regency recorded 48,147 residents with the status of married but unregistered out of 413,472 married residents, or approximately 11.6 percent.⁵

¹ Article 2(1) and (2) of Law Number 1 of 1974 on Marriage.

² Article 5(1) and Article 6(2) of Presidential Instruction Number 1 of 1991 on the Dissemination of the Compilation of Islamic Law.

³ Minister of Religious Affairs Regulation Number 30 of 2024 on Marriage Registration.

⁴ Hanif Hawari, "34,6 Juta Pasangan Belum Punya Buku Nikah, Kemenag Ungkap Alasannya", 2025, <https://www.detik.com/hikmah/khazanah/d-7974254/34-6-juta-pasangan-belum-punya-buku-nikah-kemenag-ungkap-alasannya>.

⁵ Suara Trenggalek, "48.147 Warga Trenggalek Berstatus Kawin Belum Tercatat, Disdukcapil Dorong Proses Isbat Nikah," September 2026, <https://suaratrenggalek.com/warga-trenggalek-berstatus-kawin-belum-dicatat/>; Bioz TV, "Perkawinan 48.147 Warga Trenggalek Tak Diakui Negara, Disdukcapil Kejar Isbat Nikah," 19 September 2026,

Siri marriage is likewise not confined to particular social groups. The practice is found in rural and peri-urban areas alike, among economically disadvantaged groups as well as among middle- and upper-class groups with a relatively good understanding of the law.⁶ In some cases, siri marriage results from ignorance or limited access; in others, it is deliberately chosen to circumvent state procedures, such as court permission for polygamy, the minimum marriageable age, or family objections.⁷ This diversity of motives shows that siri marriage cannot be explained merely as individual non-compliance; rather, it must be read as the outcome of interaction among religious, social, and state norms.

From the state's perspective, marriage registration serves at least three functions. The first is an evidentiary function, since the marriage certificate is an authentic deed constituting conclusive proof that a marriage took place and serving as the basis for issuing other civil registration documents. The second is a protective function, since registration enables the rights and obligations of the husband, the wife, and the children, such as maintenance (*nafkah*), joint marital property, inheritance, and the civil status of children, to be claimed and defended before the courts. The third is an ordering function, since registration enables the state to supervise compliance with the requirements of marriage, including the minimum age, the consent of the prospective spouses, and permission for polygamy.⁸ Registration is thus not merely an administrative matter but an expression of the state's presence in protecting families, particularly those parties who are in a socially and economically weaker position.⁹

The consequences of unregistered marriage are borne primarily by women and children. Without a marriage certificate, a wife faces difficulties in claiming maintenance, joint marital property, or inheritance rights, and cannot file for divorce directly without first having her marriage validated.¹⁰ Children born of such marriages encounter obstacles in obtaining a birth certificate that bears the father's name, which in turn affects their access to education, social security, and certainty of lineage (*nasab*).¹¹ It is in this context that *isbat nikah*, namely a religious court determination affirming the validity of a marriage that cannot be proven by a marriage certificate, gains significance as a corrective avenue for restoring legal protection.¹²

<https://www.bioztv.id/news/2026/09/19/perkawinan-48147-warga-trenggalek-tak-diakui-negara-disdukcapil-kejar-isbat-nikah/>.

⁶ Kharisudin, "Nikah Siri dalam Perspektif Kompilasi Hukum Islam dan Undang-Undang Perkawinan Indonesia," *Perspektif: Kajian Masalah Hukum dan Pembangunan* 26, no. 1 (2021), 48–56.

⁷ M. Fahmi Al-Amruzi, "Pencatatan Perkawinan dan Problematika Kawin Siri," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum dan Syariah* 9, no. 2 (2021), 1–18, <https://doi.org/10.52051/ulumulsyari.v9i2.79>.

⁸ Tri Winarni, Akhmad Nadirin, and Ismail, "Pencatatan Perkawinan sebagai Upaya Perlindungan terhadap Perempuan dan Anak (Studi Kasus di Kantor Urusan Agama Kecamatan Weru)," *Mahkamah: Jurnal Kajian Hukum Islam* 8, no. 2 (2023), 245–55.

⁹ Al-Amruzi, "Pencatatan Perkawinan dan Problematika Kawin Siri".

¹⁰ Rihlatul Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak dalam Nikah Siri," *Sawwa: Jurnal Studi Gender* 12, no. 3 (2017), 397–408.

¹¹ Rinrin Warisni, Dini Dewi Heniarti, and Neneng Nurhasanah, "Perlindungan Hak Nafkah Anak dari Perkawinan Siri: Kajian Itsbat Nikah dalam Perspektif Hukum Islam dan Keadilan," *Tasyri': Journal of Islamic Law* 4, no. 2 (2025), 765–94.

¹² Article 7(2) of Presidential Instruction Number 1 of 1991 on the Dissemination of the Compilation of Islamic Law.

A number of previous studies have examined isbat nikah from various angles. Sanusi et al. describe the urgency of isbat nikah for unregistered marriages in a rural community in Purwakarta Regency.¹³ Faiz and Slamet examine the legal consequences of isbat nikah for the status of the husband, wife, and children through a study of a determination of the South Jakarta Religious Court.¹⁴ Bachtiar and Daim highlight isbat nikah determinations, including those issued through integrated hearings, as a means of securing the right to legal identity.¹⁵ Meanwhile, Zainuddin questions the legality of isbat nikah for post-1974 marriages, which rests on Article 7(3)(e) of the KHI,¹⁶ and Sururie maps the controversies surrounding isbat nikah within the Indonesian marriage law system.¹⁷ These studies generally proceed from a normative-juridical perspective and focus on the legal status and civil rights of the parties.

This article takes a different position. Its novelty lies in employing the dynamics of *living law*, that is, the gap between written law (*law in the books*) and the law that lives in society, as its principal analytical framework for explaining why siri marriage continues to be reproduced and why isbat nikah tends to be used reactively. Furthermore, this article does not stop at defending isbat nikah; it also identifies its limits, including its potential misuse to legalise unauthorised polygamy and child marriage, and proposes a direction for strengthening it that combines curative and preventive functions. Isbat nikah is thus read not as state interference in the private sphere of the family, but as a state instrument for guaranteeing the social rights of citizens, particularly women and children.¹⁸

Based on the foregoing, this article addresses three research questions. First, what is the nature of the gap between the formal provisions on marriage registration in state law and the reality of siri marriage as practised in society? Second, what are the social and legal consequences of unregistered marriage? Third, what are the urgency and the limits of isbat nikah in bridging *living law* and the legal certainty of the state?

RESEARCH METHOD

This study is normative juridical legal research employing a statute approach and a conceptual approach. Primary and secondary legal materials were collected

¹³ M. Sanusi, Azi Ahmad Tadjudin, and Sofia Gussevi, "Urgensi Isbat Nikah bagi Perkawinan di Bawah Tangan (Studi Kasus pada Warga di Desa Ciherang Kecamatan Pasawahan Kabupaten Purwakarta)," *Muttaqien: Indonesian Journal of Multidisciplinary Islamic Studies* 3, no. 2 (2022).

¹⁴ Ahmad Faiz and Sri Redjeki Slamet, "Penetapan Isbat Nikah terhadap Perkawinan yang Tidak Tercatat di Kantor Urusan Agama dan Implikasi Hukumnya terhadap Status Hukum Suami Istri dan Anak (Studi Kasus Penetapan Pengadilan Agama Jakarta Selatan Nomor 879/Pdt.P/2021/PAJS)," *Arus Jurnal Sosial dan Humaniora* 5, no. 2 (2025), 2525–33.

¹⁵ Moch. Yusuf Bachtiar and Nuryanto Ahmad Daim, "Urgensi Penetapan Hakim atas Permohonan Isbat Nikah sebagai Solusi Memperoleh Hak Identitas Hukum," *Law and Humanity* 1, no. 3 (2023), 233–56.

¹⁶ Asriadi Zainuddin, "Legalitas Pencatatan Perkawinan melalui Penetapan Isbat Nikah," *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 1 (2022), 60–72.

¹⁷ Ramdani Wahyu Sururie, "Polemik di Seputar Hukum Isbat Nikah dalam Sistem Hukum Perkawinan Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 2 (2017), 235, <https://doi.org/10.24090/mnh.v11i2.1299>.

¹⁸ Rinrin Warisni Pribadi, "Isbat Nikah sebagai Upaya Perlindungan Hukum terhadap Anak dan Harta Kekayaan dari Perkawinan yang Tidak Dicatatkan," *At-Tatbiq: Jurnal Ahwal al-Syakhsyiyah* 9, no. 1 (2024), 12.

through library research and analysed qualitatively using Eugen Ehrlich's theory of *living law* and Lawrence M. Friedman's legal system theory.

The research data derive from three groups of sources. The first comprises primary legal materials in the form of relevant laws and regulations and court decisions. The second comprises official data published by the Ministry of Religious Affairs and the Directorate General of Population and Civil Registration on the number of registered marriages and of couples with the status of married but unregistered. The third comprises empirical findings of previous studies conducted in various religious courts and Offices of Religious Affairs (*Kantor Urusan Agama*, KUA) and published in scholarly journals, which serve as secondary data depicting the social practice of siri marriage and the use of isbat nikah. All data were collected through library and documentary research.

The analysis was conducted qualitatively using a descriptive-analytical method. Eugen Ehrlich's theory of *living law* is used to explain the existence of marriage norms that live in and are obeyed by society independently of state recognition,¹⁹ while Lawrence M. Friedman's legal system theory, which distinguishes legal substance, legal structure, and legal culture, is used to assess why the registration requirement has not been effective and how isbat nikah operates within that system.²⁰ The results of the analysis are then synthesised to formulate the urgency and the limits of isbat nikah.

RESULTS AND DISCUSSION

The Normative Construction of Marriage Registration and Isbat Nikah

Etymologically, isbat nikah consists of two words: *isbāt*, meaning determination or proof, and *nikāḥ*, meaning the contract that makes marital relations lawful. In its juridical sense, isbat nikah is a religious court determination on the validity of a marriage that was conducted in accordance with Islamic law but cannot be proven by a marriage certificate, with the aim of providing the marriage with authentic proof so that it can be registered.²¹ In other words, isbat nikah does not create a new marriage; it legally declares a marriage that already exists in fact.

The legal basis of isbat nikah is spread across several layers of regulation. At the statutory level, Article 64 of the Marriage Law affirms that marriages, and all matters relating to marriages, that took place before the Law came into force and were conducted under the former regulations are valid.²² The absolute jurisdiction of the religious courts to adjudicate such matters derives from Article 49 of the Religious Courts Law, whose elucidation lists twenty-two types of cases in the field of marriage, one of which is a declaration on the validity of a marriage that took place before the Marriage Law came into force and was conducted under other regulations.²³ At the implementing level, Article 2(1) of Government Regulation Number 9 of 1975 provides that the registration of marriages of those who marry according to Islam is

¹⁹ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, trans. Walter L. Moll (Cambridge, MA: Harvard University Press, 1936), 493.

²⁰ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 14–16.

²¹ Zainuddin, "Legalitas Pencatatan Perkawinan", 62.

²² Article 64 of Law Number 1 of 1974 on Marriage.

²³ Article 49 point a and its Elucidation number 22 of Law Number 7 of 1989 on Religious Courts, as last amended by Law Number 50 of 2009.

carried out by the registrar referred to in Law Number 32 of 1954 on the Enactment of Law Number 22 of 1946 on the Registration of Marriage, Divorce and Reconciliation throughout the Regions outside Java and Madura.²⁴ It should be noted that the wording of the Law explicitly covers only marriages concluded before 1974. The extension to marriages concluded thereafter derives from the KHI, which is why some legal scholars regard post-1974 *isbat nikah* as a policy to fill a legal vacuum rather than a norm firmly rooted in the hierarchy of laws and regulations.²⁵

Article 7 of the KHI is the key provision. Paragraph (1) states that a marriage can only be proven by a marriage certificate issued by a Marriage Registrar, while paragraph (2) opens the possibility of applying for *isbat nikah* to the religious court where a marriage cannot be proven by a marriage certificate. Paragraph (3) limits *isbat nikah* to matters relating to: (a) the existence of a marriage in the context of divorce proceedings; (b) the loss of a marriage certificate; (c) doubt as to the validity of one of the conditions of marriage; (d) a marriage concluded before Law Number 1 of 1974 came into force; and (e) a marriage concluded by persons who have no impediment to marriage under Law Number 1 of 1974. Paragraph (4) further provides that those entitled to apply are the husband or wife, their children, the marriage guardian (*wali nikah*), and interested parties.²⁶ In judicial practice, point (e) has become the widest gateway because it allows the validation of post-1974 marriages provided that there is no impediment to marriage.²⁷

In terms of procedural law, *isbat nikah* may be submitted in *voluntair* form (an application) when filed jointly by the husband and wife without an opposing party, or in *contentious* form (a lawsuit) when filed by one party against the other, joined with a divorce suit, or filed by heirs after one of the spouses has died. The contentious form is important for the protection of wives, since through this mechanism a wife in an unregistered marriage can simultaneously seek a divorce and the rights that follow from it.²⁸ Both forms require proof that the pillars (*rukun*) and conditions of marriage have been fulfilled and that there is no impediment to marriage.

The state has also developed instruments to facilitate access to *isbat nikah*. Supreme Court Regulation Number 1 of 2014 provides for the waiver of court fees and for hearings outside the court building for people unable to afford them,²⁹ while Supreme Court Regulation Number 1 of 2015 governs integrated circuit court services that bring together the religious courts, the KUA, and the civil registration office in a single service chain to issue court determinations, marriage books, and birth

²⁴ Article 2(1) of Government Regulation Number 9 of 1975 on the Implementation of Law Number 1 of 1974 on Marriage.

²⁵ Zainuddin, "Legalitas Pencatatan Perkawinan", 60–61.

²⁶ Article 7(1)–(4) of Presidential Instruction Number 1 of 1991 on the Dissemination of the Compilation of Islamic Law.

²⁷ Zainuddin, "Legalitas Pencatatan Perkawinan", 60–72.

²⁸ Nandang Kusnadi and Hari Nur Arif, "Isbat Nikah sebagai Solusi Perceraian terhadap Perkawinan yang Tidak Dicatat pada Kantor Urusan Agama Ditinjau dari Undang-Undang Nomor 1 Tahun 1974 jo. Undang-Undang Nomor 16 Tahun 2019 dan Undang-Undang Nomor 50 Tahun 2009 tentang Peradilan Agama," *PALAR (Pakuan Law Review)* 7, no. 1 (2021), 218–27.

²⁹ Supreme Court Regulation Number 1 of 2014 on Guidelines for the Provision of Legal Services for the Poor in Courts.

certificates.³⁰ Research on circuit court hearings for isbat nikah shows that this mechanism is effective in bringing services closer to communities in areas far from the courts, although it still faces obstacles relating to public outreach and the completeness of evidence.³¹

The most fundamental issue in this normative construction is the relationship between Article 2(1) and Article 2(2) of the Marriage Law. The first view separates the two paragraphs: the validity of a marriage is determined by religious law alone, while registration is merely an administrative requirement. The second view reads the two paragraphs as a single unity, so that a marriage is legally complete only when it is both valid under religious law and registered.³² The Constitutional Court, in Decision Number 46/PUU-VIII/2010, leaned towards the first view, holding that registration is not a factor determining the validity of a marriage but an administrative obligation imposed by the state to guarantee the protection of the rights arising from the marriage.³³ Consequently, a siri marriage that fulfils the pillars and conditions of marriage remains religiously valid but does not receive full legal protection from the state until it is proven by a marriage certificate or an isbat nikah determination. It is precisely in this space that isbat nikah operates.

Once a marriage is recognised by the state, its full legal consequences arise, including the lawfulness of marital relations, the dower (*mahr*) becoming the property of the wife, the emergence of the rights and obligations of husband and wife, the status of children as legitimate, the duty to care for and educate the children, the father's right to act as marriage guardian for his daughter, mutual rights of inheritance, and guardianship over children and property if one of the spouses dies. Most of these consequences already attach religiously from the moment of the marriage contract, but they can only be effectively claimed before state institutions once the marriage has been authentically proven.³⁴

Siri Marriage as Living Law: The Gap between State Norms and Social Reality

Eugen Ehrlich distinguishes between *norms for decision* formulated by the state and *living law*, that is, the law that actually dominates social life even though it has not been formulated in the legal propositions of the state.³⁵ According to Ehrlich, the centre of gravity of legal development lies not in legislation, juristic science, or judicial decisions, but in society itself.³⁶ This framework is highly relevant for understanding unregistered marriage. For many Muslim communities, the validity of a marriage is determined by the fulfilment of its pillars and conditions, namely the prospective

³⁰ Supreme Court Regulation Number 1 of 2015 on Integrated Circuit Court Services of the District Courts and Religious Courts/Mahkamah Syar'iyah for the Issuance of Marriage Certificates, Marriage Books, and Birth Certificates.

³¹ Novita Sarwani, "Efektivitas Pelaksanaan Sidang Keliling dalam Perkara Isbat Nikah (Studi Kasus pada Mahkamah Syar'iyah Takengon Kelas IB)," *El-Hadhanah: Indonesian Journal of Family Law and Islamic Law* 2, no. 2 (2022), 164–91, <https://doi.org/10.22373/hadhanah.v2i2.1808>.

³² Zulham Wahyudani, "Keabsahan Nikah Siri dalam Perspektif Masalahah," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam* 12, no. 1 (2020), 63.

³³ Constitutional Court Decision Number 46/PUU-VIII/2010 on the Judicial Review of Law Number 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia, 17 February 2012.

³⁴ Faiz and Slamet, "Penetapan Isbat Nikah", 2525–33.

³⁵ Ehrlich, *Fundamental Principles*, 493.

³⁶ Ehrlich, *Fundamental Principles*, xv.

husband and wife, a guardian (*wali*), two witnesses, and the offer and acceptance (*ijab kabul*), in the presence of a respected religious figure. Such a marriage is acknowledged by the family, respected by neighbours, and lived as a valid marriage; it thus exhibits all the features of living law: it is obeyed, repeated, and carries its own social sanctions.

The state, on the other hand, constructs marriage through administrative procedures: notification of the intention to marry, verification of requirements, public announcement, solemnisation of the contract under the supervision of a registrar, and issuance of the marriage certificate.³⁷ These two constructions are not always in conflict, but they meet at a fragile point. When society regards religious validity as sufficient, registration is felt not as a necessity but as an additional burden. This understanding is reinforced by the authority of local religious figures who are willing to officiate marriages without involving a registrar, so that siri marriage acquires religious and social legitimacy at once.³⁸ Classic studies of the Islamic legal system in Indonesia also show that, from the outset, the registration requirement in the Marriage Law was a state project to bring marriage practices under bureaucratic supervision, while the prevailing understanding of *fiqh* in society continued to treat the marriage contract as the decisive point of validity.³⁹

This gap can be traced through the national trend in registered marriages based on official data from Statistics Indonesia (*Badan Pusat Statistik*, BPS), presented below.

Table 1. Number of Registered Marriages in Indonesia, 2020–2025

Year	Number of Registered Marriages	Change from Previous Year
2020	1,785,184	–
2021	1,742,049	–43,135 (–2.42%)
2022	1,705,348	–36,701 (–2.11%)
2023	1,577,255	–128,093 (–7.51%)
2024	1,478,302	–98,953 (–6.27%)
2025	1,480,048	+1,746 (+0.12%)

Source: Statistics Indonesia (BPS), table of Marriages and Divorces by Province (Events), 2020–2025, processed by the authors. BPS data are a compilation of administrative data from the KUA (marriages of Muslims) and the Population and Civil Registration Offices (marriages of non-Muslims and adherents of indigenous faiths).

Table 1 shows that the number of registered marriages declined almost every year, from 1,785,184 in 2020 to 1,480,048 in 2025, a decrease of approximately 305,000 marriages (around 17 percent). The steepest declines occurred in 2023 and 2024, while the increase in 2025 was only 0.12 percent and did not reverse the trend. This decline cannot, of course, be read automatically as a shift of marriages to the unregistered route, since it is also influenced by other factors such as the raising of the marriage age and the postponement of marriage. However, these statistics capture only registered marriages, leaving siri marriages outside their scope. The scale of marriages outside the statistics is evident from data of the Directorate General of

³⁷ Minister of Religious Affairs Regulation Number 30 of 2024.

³⁸ Kharisudin, “Nikah Siri dalam Perspektif Kompilasi Hukum Islam”, 48–56.

³⁹ Mark E. Cammack and R. Michael Feener, “The Islamic Legal System in Indonesia,” *Pacific Rim Law & Policy Journal* 21, no. 1 (2012), 13–42.

Population and Civil Registration conveyed by the Ministry of Religious Affairs: as of 30 June 2021, there were 34.6 million couples with the status of married but unregistered, a figure more than twenty times the annual number of registered marriages in the 2020–2025 period.⁴⁰ It should also be noted that the release of the Clean Population Data for the second semester of 2025 by the Directorate General of Population and Civil Registration (March 2026) presents only the aggregate number of married residents, approximately 137 million people, without distinguishing between registered and unregistered marital status; the figure of 34.6 million couples therefore remains the latest available national figure.⁴¹ This figure should be read with caution, since the status of "married but unregistered" in population data also includes couples who had in fact registered their marriages but had not yet updated their civil registration documents. Nevertheless, the magnitude of the figure is sufficient to show that the registration requirement has not yet become a uniformly internalised norm.

The factors that reproduce siri marriage can be grouped into four categories. The first is religious-cultural: the belief that the validity of a marriage is determined by religion alone and that registration is a mere formality.⁴² The second is economic and geographical, including the perception that official weddings are costly, the long distance to the KUA, and procedures considered cumbersome; this finding is consistent with an access-to-justice survey showing that cost and distance are the main barriers preventing the poor, especially female heads of household, from reaching the religious courts.⁴³ The third is strategic, or legal evasion: siri marriage is chosen to avoid the requirement of polygamy permission, the minimum marriageable age of 19 introduced by Law Number 16 of 2019, or the marriage dispensation procedure.⁴⁴ The fourth relates to legal awareness, namely the lack of knowledge about the legal consequences of unregistered marriage for wives and children.⁴⁵

These four factors reveal that siri marriage has two faces. In its first face, siri marriage is an expression of *living law* rooted in the piety and customs of society, so that a repressive approach towards it risks ignoring social reality. In its second face, siri marriage is exploited as a loophole to evade state norms that were designed precisely to protect vulnerable parties, such as the requirement of polygamy permission and the minimum marriage age. The two faces call for different legal responses. The first requires a bridge of recognition, whereas the second requires caution so that recognition does not turn into the legalisation of evasion of the law (*fraus legis*).

This gap also reflects the character of legal pluralism in Indonesian family law. The Compilation of Islamic Law itself emerged as a compromise between the *fiqh*

⁴⁰ Asep Firmansyah, "Kemenag Ungkap Sebanyak 34,6 Juta Pasangan Tidak Punya Buku Nikah," *Antara News*, 20 June 2025, <https://www.antaranews.com/berita/4913465/kemenag-ungkap-sebanyak-346-juta-pasangan-tidak-punya-buku-nikah>.

⁴¹ Liputan6, "Dirjen Dukcapil Kemendagri Ungkap Penduduk Indonesia Capai 288 Juta Jiwa per Akhir 2025," 13 March 2026, <https://www.liputan6.com/amp/6297267/dirjen-dukcapi-kemendagri-ungkap-penduduk-indonesia-capai-288-juta-jiwa-per-akhir-2025>.

⁴² Al-Amruzi, "Pencatatan Perkawinan dan Problematika Kawin Siri".

⁴³ Cate Sumner and Tim Lindsey, *Courting Reform: Indonesia's Islamic Courts and Justice for the Poor* (Sydney: Lowy Institute for International Policy, 2010).

⁴⁴ Article 7(1) of Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage; Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensation.

⁴⁵ Winarni, Nadin, and Ismail, "Pencatatan Perkawinan sebagai Upaya Perlindungan", 245–55.

practised in society and the state's need for unification and legal certainty. In religious court practice, judges frequently find themselves between two demands: fidelity to the text of regulations requiring registration, or responsiveness to the reality that the parties' marriage is religiously valid and socially accepted.⁴⁶ The judges' choice to grant *isbat nikah* in many cases shows that the state, through the courts, is gradually accommodating *living law* into the formal legal system. The Ministry of Religious Affairs itself frames the objective of its registration policy as an appeal for marriages to be not only "recorded in heaven" but also "recorded on earth", which implicitly acknowledges religious validity while affirming the importance of state recognition.⁴⁷

Within this framework, the state has in fact taken accommodative steps. The *isbat nikah* provisions in Article 7(2) and (3) of the KHI open the way for marriages that are religiously valid but not yet registered to obtain legal recognition. From a sociological standpoint, this arrangement constitutes the state's acknowledgement that the marriage administration system has not yet fully reached all levels of society, as well as an effort to achieve substantive justice for those left behind by that system.⁴⁸ Religious court judges, as representatives of the state, are required to balance legal certainty, utility, and justice proportionally when examining *isbat nikah* cases.⁴⁹

The Social and Legal Consequences of Unregistered Marriage

The first and most severe consequence falls on women. Because the marriage cannot be authentically proven, the wife is in a weak bargaining position when the husband fails to provide maintenance, commits violence, remarries, or abandons the household. The wife cannot file a claim for maintenance, joint marital property, or inheritance without first proving her marriage, and the religious court cannot process a divorce before the marriage has been validated.⁵⁰ In many cases, this burden falls unequally: the husband suffers almost no legal detriment, while the wife loses access to the protection provided by the state.⁵¹

Beyond its juridical consequences, unregistered marriage also produces social consequences in the form of stigma. The circumstances in which *siri* marriages take place, such as unauthorised polygamy, parental disapproval, or pregnancy before marriage, often give rise to the assumption that the couple is cohabiting without a formal bond. Stereotypes such as "second wife" or "kept woman" are generally directed at women, even though the marriage was entered into by two parties. In this context, *isbat nikah* also serves to restore women's social dignity and to prevent slander that may arise at any time in community life.⁵²

⁴⁶ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010).

⁴⁷ Kementerian Agama Republik Indonesia, "Ada Jutaan Pernikahan Tidak Tercatat, Kemenag Ingatkan Aspek Perlindungan Hukum," 30 September 2025, <https://sulbar.kemenag.go.id/wilayah/ada-jutaan-pernikahan-tidak-tercatat-kemenag-ingatkan-aspek-perlindungan-hukum-yQzWW>.

⁴⁸ Nurlaelawati, *Modernization, Tradition and Identity*.

⁴⁹ Sufiati and Yusup Hidayat, "Isbat Nikah sebagai Upaya Hukum untuk Mencatatkan Perkawinan Tidak Tercatat secara Legal: Analisis Putusan Pengadilan Agama Tigaraksa Nomor 192/Pdt.G/2022/PA.Tgrs," *CARONG: Jurnal Pendidikan, Sosial dan Humaniora* 3, no. 3 (2026), 383–400.

⁵⁰ Firmansyah, "Kemenag Ungkap Sebanyak 34,6 Juta Pasangan".

⁵¹ Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak", 397–408.

⁵² Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak", 397–408.

Women's vulnerability deepens further when a siri marriage is contracted with a man who is still bound by another marriage without court permission for polygamy. Through Circular Letter Number 3 of 2018, the Supreme Court affirmed that applications for isbat nikah of polygamous marriages based on siri marriage must be declared inadmissible, even when grounded in the interests of the child, and that an application for determination of the child's origin (*asal-usul anak*) may be filed in the child's interest.⁵³ This policy is intended to uphold the authority of the polygamy permission requirement and to protect the first wife, but it simultaneously leaves the wife in a siri polygamous marriage with almost no proprietary protection. Some authors read this lack of protection as a form of sanction for non-compliance with the law;⁵⁴ this reading, however, deserves critique, since the sanction is in fact borne far more by women than by the men who initiate siri polygamy.⁵⁵

The second consequence concerns children. Children do not choose their parents' marital status, and the legal consequences should therefore not be imposed on them. Constitutional Court Decision Number 46/PUU-VIII/2010 provided important protection by interpreting Article 43(1) of the Marriage Law such that a child born outside marriage also has a civil relationship with the man who is his or her father, provided this can be proven on the basis of science and technology and/or other evidence recognised by law.⁵⁶ In the field of population administration, Minister of Home Affairs Regulation Number 9 of 2016 allows the issuance of birth certificates for children of unregistered marriages on the basis of a statement of absolute responsibility for the truth of the parents' status as husband and wife, with an annotation that the parents' marriage has not been registered.⁵⁷ This policy facilitates access to identity, but the phrase "not yet registered" continues to mark the child administratively and does not provide full certainty as to lineage, guardianship, and inheritance rights.⁵⁸

It is therefore unsurprising that the most common reasons for filing isbat nikah relate to the needs of children, such as obtaining a birth certificate, enrolling in school, or meeting the requirements for civil service recruitment.⁵⁹ This is consistent with the constitutional guarantee that every child has the right to survival, growth, and development and to protection from discrimination, and with the state's obligation to provide every child with an identity from birth.⁶⁰ Once the parents' marriage has been validated through isbat nikah, the child acquires the status of a legitimate child with all its legal consequences.

⁵³ Supreme Court Circular Letter Number 3 of 2018 on the Implementation of the Formulations of the 2018 Supreme Court Chamber Plenary Meeting as Guidelines for the Performance of Duties of the Courts, Formulation of the Religious Chamber.

⁵⁴ Nur'ain Humolungo, Fence M. Wantu, and Moh. Taufik Zulfikar Sarson, "Dampak Pengesahan Isbat Nikah terhadap Pasangan yang Terikat Perkawinan Sah," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025), 863–77.

⁵⁵ Salman Abdul Muthalib, "Pengesahan Isbat Nikah Perkawinan Poligami: Kajian Putusan Nomor 130/Pdt.G/2020/Ms.Bna," *El-Usrah: Jurnal Hukum Keluarga* 5, no. 2 (2022), 224–38.

⁵⁶ Constitutional Court Decision Number 46/PUU-VIII/2010.

⁵⁷ Minister of Home Affairs Regulation Number 9 of 2016 on Accelerating the Increase in Birth Certificate Ownership Coverage.

⁵⁸ Warisni, Heniarti, and Nurhasanah, "Perlindungan Hak Nafkah Anak", 765–94.

⁵⁹ Bachtiar and Daim, "Urgensi Penetapan Hakim atas Permohonan Itsbat Nikah", 233–56.

⁶⁰ Article 28B(2) of the 1945 Constitution of the Republic of Indonesia; Articles 5 and 27 of Law Number 23 of 2002 on Child Protection, as amended by Law Number 35 of 2014.

The third consequence is restricted access to public services. Before an isbat nikah determination, spouses and children of unregistered marriages often face obstacles in obtaining a family card showing a registered marital status, a complete birth certificate, pilgrimage travel documents, widow's allowances or pensions, and other services that require proof of an official marriage.⁶¹ At the same time, the isbat nikah process itself requires rigorous proof, court fees, and time, so that legal uncertainty may persist for a long period. Post-isbat research also shows that legal protection does not end automatically with the issuance of the determination, since the parties must still follow it up with the KUA and the civil registration office, and at this stage the digitalisation of services becomes an important factor.⁶²

Table 2. Comparison of the Legal Position of the Parties Before and After Isbat Nikah

Aspect	Before isbat nikah	After isbat nikah
Marital status	Religiously valid, but without legal force under state law	Recognised by the state and provable by a marriage certificate
Wife's rights	Difficult to claim maintenance, joint marital property, and inheritance	Enforceable through the courts
Child's status	Birth certificate annotated with unregistered parental marriage; lineage and inheritance uncertain	Legitimate child with a full civil relationship with the father
Divorce	Cannot be processed without validation of the marriage	Can be processed, followed by post-divorce rights
Public services	Obstacles in civil registration and other services	Civil registration documents can be updated

Source: authors' analysis based on laws and regulations and previous studies.

The Urgency and Limits of Isbat Nikah from the Perspective of Living Law and Legal Awareness

The fact that unregistered marriage remains widespread indicates a collision between written law (*law in the books*) and *living law*. Herein lies the most fundamental urgency of isbat nikah. Isbat nikah is not merely an administrative procedure for replacing lost documents; it is an instrument that connects two normative systems that have long coexisted: religious norms already practised by society and state norms that demand certainty in written form. Through isbat nikah, the religious court examines whether a marriage recognised religiously and socially fulfils the pillars and conditions of marriage and is not barred by statutory provisions, and then issues a determination so that it can be registered. Isbat nikah can therefore be understood as a mechanism of recognition that transforms *living law* into state law, as well as a step towards narrowing the distance between the law as aspired to (*ius constituendum*) and the law as practised by society.

However, an analysis using Friedman's legal system theory shows that isbat nikah alone is insufficient to resolve the problem comprehensively. Friedman emphasises that the effectiveness of law depends on three interrelated components: legal substance, legal structure, and legal culture, the latter referring to the attitudes,

⁶¹ Sufiati and Hidayat, "Isbat Nikah sebagai Upaya Hukum", 383–400.

⁶² Nurul Isra Arsyad, Helmi Kamal, and Takdir, "Perlindungan Hukum Pascaisbat Nikah: Digitalisasi dan Tantangannya," *Intizar* 31, no. 1 (2025), <https://doi.org/10.19109/intizar.v31i1.27840>.

values, and expectations of society towards the law.⁶³ Legal culture determines when, why, and how people turn to the law or, conversely, avoid it; without a supportive legal culture, good rules and strong institutions will not function optimally. In the Indonesian literature, Soerjono Soekanto breaks down legal awareness into indicators of knowledge of the law, understanding of its content, attitudes towards the law, and patterns of legal behaviour.⁶⁴ Friedman's three components can be mapped as follows.

Table 3. Mapping the Problem of Unregistered Marriage Based on Friedman's Legal System Theory

Component	Conditions identified	Direction for strengthening
Legal substance	The registration requirement is explicit, but the basis for post-1974 isbat rests on the KHI; no effective sanctions for parties to and officiants of siri marriages	Strengthening the legal basis of isbat nikah at the statutory level and clarifying sanctions against those who facilitate siri marriage
Legal structure	KUA and religious courts are hard for some communities to reach; follow-up of determinations requires inter-agency coordination	Expansion of integrated circuit court hearings, waiver of court fees, and data integration among the KUA, courts, and civil registration offices
Legal culture	Religious validity is considered sufficient; registration is viewed as a formality; isbat is filed only when an urgent need arises	Legal education through religious leaders and communities, pre-marital guidance, and marriage registration campaigns

Source: authors' analysis using Friedman's theoretical framework.

This mapping explains why isbat nikah is more often used reactively. Couples in siri marriages generally apply for isbat nikah only when an urgent administrative need arises, such as obtaining a child's birth certificate, school enrolment, divorce, distribution of an estate, or preparations for the hajj pilgrimage.⁶⁵ This pattern shows that registration is not yet understood as a matter of protection but as an instrumental requirement to be dealt with when needed. In Soekanto's terms, people may already know of the registration requirement but lack the understanding and attitudes that would encourage compliance from the outset of marriage.

This reactive pattern gives rise to a paradox. On the one hand, the openness of isbat nikah is badly needed to protect women and children from the consequences of marriages that have already taken place. On the other hand, overly lenient availability of isbat nikah may be perceived by society as a shortcut: marry through siri first and validate it later. This phenomenon is evident in the debates over isbat nikah for child marriages conducted through siri to avoid marriage dispensation, and over isbat nikah for unauthorised polygamy, which was subsequently restricted through Supreme Court Circular (SEMA) Number 3 of 2018.⁶⁶ If the courts grant applications too readily, isbat nikah risks undermining the authority of the registration norm; conversely, if they are too strict, vulnerable parties are once again left without protection.⁶⁷

Judges play a central role in managing this paradox. In practice, judges may grant isbat nikah applications even where formal requirements are not entirely met if there

⁶³ Friedman, *The Legal System*, 14–16.

⁶⁴ Soerjono Soekanto, *Kesadaran Hukum dan Kepatuhan Hukum* (Jakarta: Rajawali, 1982).

⁶⁵ Bachtiar and Daim, "Urgensi Penetapan Hakim atas Permohonan Itsbat Nikah", 233–56.

⁶⁶ Supreme Court Circular (SEMA) Number 3 of 2018.

⁶⁷ Sururie, "Polemik di Seputar Hukum Isbat Nikah".

are strong considerations of public interest (*maṣlaḥah*), for instance to prevent harm to children in obtaining identity and civil rights.⁶⁸ Nevertheless, this space for judicial *ijtihād* must be bounded by the principle that isbat nikah must not become a vehicle for evading the law. Careful examination of whether any impediment to marriage exists, including the marital status of the parties and their age at the time of the contract, is therefore an absolute prerequisite for isbat nikah to remain true to its purpose as an instrument of protection rather than a legalisation of violations.

From the perspective of Islamic law, the urgency of isbat nikah can be read through the framework of *maqāṣid al-sharī'ah*. The registration and validation of marriage serve the protection of progeny (*ḥifẓ al-nasl*) by ensuring clarity of lineage and the status of children, the protection of property (*ḥifẓ al-māl*) by enabling the determination of joint marital property and inheritance, and the protection of life and honour by providing a legal basis for wives to claim their rights and to protect themselves from arbitrary treatment.⁶⁹ Within the framework of *maṣlaḥah*, the registration requirement imposed by the state is a legitimate policy (*siyāsah*) for realising the public good, so that compliance with it is in line with the objectives of the sharia. Isbat nikah is thus not a compromise that sacrifices Islamic law for the sake of state law, but a meeting point of the two in protecting the most vulnerable parties.⁷⁰

From this analysis, the urgency of isbat nikah can be formulated in terms of three functions. The first is a recognitive function, namely the legal recognition of marriages already valid under *living law*. The second is a protective function, namely the restoration of the neglected civil rights of wives and children. The third is an integrative function, namely the reintegration of families outside the administrative system into the state legal system. These three functions can only operate sustainably if they are balanced by a preventive function upstream, namely ensuring that every new marriage is registered from the outset. The Ministry of Religious Affairs' launch of a marriage registration awareness movement in 2025 is an example of an effort targeting this legal culture.⁷¹ Such a preventive approach will be more effective if it involves local religious leaders, who have long been the authorities officiating siri marriages, since they are the guardians of *living law* within their communities.

CONCLUSION

The practice of unregistered or siri marriage in Indonesia persists because religious validity has become a living norm obeyed by society, while state registration is perceived as an administrative formality. This gap between written law and *living law* is reinforced by economic and geographical factors, low legal literacy, and the use of siri marriage as a strategy to evade state norms such as the polygamy permission requirement and the minimum marriage age. As a result, women and children bear the greatest vulnerability with respect to maintenance, joint marital property, inheritance, divorce, legal identity, and access to public services.

Isbat nikah is of great urgency as a mechanism of recognition, protection, and integration that transforms a marriage valid under *living law* into one recognised by the state. However, analysis using Friedman's legal system theory shows that isbat nikah is curative in nature and tends to be used reactively, and therefore cannot

⁶⁸ Muthalib, "Pengesahan Isbat Nikah Perkawinan Poligami", 224–38.

⁶⁹ Wahyudani, "Keabsahan Nikah Siri", 63.

⁷⁰ Warisni, Heniarti, and Nurhasanah, "Perlindungan Hak Nafkah Anak", 765–94.

⁷¹ Firmansyah, "Kemenag Ungkap Sebanyak 34,6 Juta Pasangan".

resolve the root of the problem at the level of legal culture. Isbat nikah also has its limits, since overly lenient approval risks legalising unauthorised polygamy and child marriage. Strengthening isbat nikah must therefore go hand in hand with strengthening its legal basis at the statutory level, expanding integrated services and fee waivers for those unable to pay, careful judicial examination of impediments to marriage, and community- and religious leader-based legal education. Future research is recommended to use field data, such as interviews with judges, marriage officiants (*penghulu*), and couples applying for isbat nikah in particular regions, to test empirically the patterns of isbat nikah use formulated in this article.

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