

## **Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court**

(A Study of Religious Court Decision Number 16/Pdt.P/2025/PA.Skh)

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**Abstract:** This study aims to (1) analyze the judicial considerations used by judges in deciding marriage confirmation (isbat nikah) in Decision Number 16/Pdt.P/2025/PA.Skh, (2) examine the procedures for marriage confirmation under statutory regulations and Islamic law, and (3) identify the legal implications of granting marriage confirmation for the parties involved. This research uses a normative juridical method with a descriptive-analytical approach focusing on court documents and statutory provisions. The findings show that the judge's considerations in granting the petition are based on the fulfillment of the pillars and conditions of marriage under Islamic law, the absence of legal impediments to the marriage, the existence of supporting evidence and witness testimony confirming the marriage event, and the legal interest of the applicants in obtaining legal certainty of their marital status. The data used are secondary data obtained through literature studies, including laws and regulations and court decision documents. Data collection was carried out by reviewing legal materials relevant to the research problem. Data analysis techniques were carried out qualitatively by interpreting legal provisions and facts in the decision. This study aims to analyze the judge's considerations, procedures, and legal implications of marriage confirmation (isbat nikah). The results

**Keywords:**  
Marriage  
Confirmation (*Isbat Nikah*), Judges' Considerations, Legal Certainty, Islamic Law, Religious Court.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

of the study indicate that (1) judges' considerations are based on both Islamic law and Indonesian positive law, including the fulfillment of the pillars and requirements of marriage, the absence of legal impediments, as well as considerations of legal certainty and protection of the parties' rights. (2) The marriage confirmation procedure begins with the submission of an application to the Religious Court, followed by examination through court hearings and evidence assessment until a judicial decision is issued. From the perspective of Islamic law, marriage confirmation serves as proof of a valid religious marriage, while in positive law it provides a basis for state recognition through registration. (3) The legal implications of marriage confirmation include providing legal validity, ensuring legal certainty, and protecting the civil rights of spouses and children.

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**Abstrak:** Penelitian ini bertujuan untuk (1) menganalisis pertimbangan hakim yang digunakan dalam memutus perkara pengesahan perkawinan (isbat nikah) dalam Putusan Nomor 16/Pdt.P/2025/PA.Skh, (2) mengkaji prosedur pengesahan perkawinan berdasarkan peraturan perundang-undangan dan hukum Islam, serta (3) mengidentifikasi implikasi hukum dari dikabulkannya permohonan pengesahan perkawinan bagi para pihak yang bersangkutan. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan deskriptif-analitis yang berfokus pada dokumen pengadilan dan peraturan perundang-undangan. Data yang digunakan merupakan data sekunder yang diperoleh melalui studi kepustakaan, termasuk peraturan perundang-undangan dan dokumen putusan pengadilan. Pengumpulan data dilakukan dengan menelaah bahan-bahan hukum yang relevan dengan permasalahan penelitian. Teknik analisis data dilakukan secara kualitatif dengan cara menginterpretasikan ketentuan hukum dan fakta-fakta dalam putusan. Hasil penelitian menunjukkan bahwa pertimbangan hakim dalam mengabulkan permohonan didasarkan pada terpenuhinya rukun dan syarat perkawinan menurut hukum Islam, tidak adanya halangan perkawinan, adanya alat bukti dan keterangan saksi yang mendukung terjadinya perkawinan, serta

**Kata kunci:**  
Pengesahan Nikah  
(Isbat Nikah),  
Pertimbangan  
Hakim, Kepastian  
Hukum, Hukum  
Islam, Pengadilan  
Agama

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

adanya kepentingan hukum para pemohon untuk memperoleh kepastian hukum atas status perkawinannya. Pertimbangan hakim juga didasarkan pada hukum Islam dan hukum positif Indonesia, termasuk aspek kepastian hukum dan perlindungan hak para pihak. Prosedur pengesahan perkawinan dimulai dari pengajuan permohonan ke Pengadilan Agama, dilanjutkan dengan pemeriksaan melalui persidangan dan pembuktian, hingga dijatuhkannya putusan oleh hakim apabila seluruh syarat terpenuhi. Dalam perspektif hukum Islam, isbat nikah berfungsi sebagai pembuktian atas perkawinan yang sah secara agama, sedangkan dalam hukum positif menjadi dasar pengakuan negara melalui pencatatan perkawinan. Implikasi hukum dari pengesahan perkawinan adalah memberikan legalitas formal terhadap perkawinan, menjamin kepastian hukum, serta melindungi hak-hak perdata suami, istri, dan anak.

## INTRODUCTION

Unregistered marriage (nikah siri) refers to a marriage that is valid under Islamic law but is not officially registered at the Office of Religious Affairs (KUA)<sup>1</sup>. Although religiously recognized, this practice is not legally acknowledged by the state in Indonesia, creating a persistent gap between religious legitimacy and administrative legality<sup>2</sup>. This phenomenon continues to occur in various regions, including Sukoharjo, Central Java, and remains a significant legal issue concerning marital status and civil rights.

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<sup>1</sup> Ipanang Ipanang and Syamsul Darlis, "Passampo Siri' in the Bugis Marriage Practices in East Kolaka, Indonesia: A Sociological Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 2022): 873, <https://doi.org/10.22373/sjhc.v6i2.12874>.

<sup>2</sup> Desmal Fajri and Felti Novira, "The Phenomenon of Unregistered Marriages: Problems and Solution," *Kosmik Hukum* 23, no. 2 (2023): 180–88.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

The absence of marriage registration has serious legal implications, particularly for wives and children<sup>3</sup>. A wife in an unregistered marriage does not obtain legal recognition as a lawful spouse under state law, which limits her access to marital property rights, maintenance, inheritance, and legal protection in cases of divorce or domestic violence<sup>4</sup>. Similarly, children born from such marriages are often legally affiliated only with their mother, affecting their civil identity, inheritance rights, and access to essential public services such as education, healthcare, and social assistance<sup>5</sup>. These conditions also contribute to social stigma and structural vulnerability within society.

Empirical data from the Decisions Directory of the Supreme Court of the Republic of Indonesia (Mahkamah Agung Republik Indonesia) indicates that the Sukoharjo Religious Court handled 14 cases of marriage validation (isbat nikah) between 2022 and 2025. This reflects a continuing societal need for judicial legalization of unregistered marriages to obtain legal certainty in civil matters, particularly regarding marital status, inheritance rights, and child legitimacy. Although these cases vary in outcome, they collectively demonstrate the importance of isbat nikah as a legal mechanism in resolving the consequences of unregistered marriages<sup>6</sup>.

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<sup>3</sup> Nurhayatul Hasanah, "The Phenomenon of Siri Marriage in Indonesia: A Review of Munakahat Fiqh," *Zabags International Journal of Islamic Studies* 2, no. 1 (2025): 9–16.

<sup>4</sup> Dian Latifiani, "The Consequences of an Unregistered Marriage for the Wife and Born Children According to the Legal System in Indonesia," *South East Asia Journal of Contemporary Business, Economics and Law* 4, no. 3 (2014): 94–98.

<sup>5</sup> Abdul Hakam Sholahuddin, Ridho Tiar Prawira, and Erifendi Churniawan, "Penolakan Permohonan Asal-Usul Anak Dari Pasangan Nikah Siri," *Jurnal Supremasi*, February 2023, 89–100, <https://doi.org/10.35457/supremasi.v13i1.2529>.

<sup>6</sup> Rifqi Kurnia Wazzan et al., "Itsbat Nikah: Legalizing Marriage Outside the Record in Indonesia," *International Review of Social Sciences Research* 4, no. 2 (May 2024): 29–45, <https://doi.org/10.53378/353057>.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*  
*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

In Indonesia, marriage registration is regulated under Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), which require that every marriage be recorded to obtain legal recognition from the state. In judicial practice, the implementation of isbat nikah is also guided by Supreme Court policy, particularly SEMA No. 3 Tahun 2018, which provides direction for judges in handling marriage-related cases to ensure legal certainty, consistency, and protection of vulnerable parties. Within this framework, isbat nikah serves as a judicial mechanism to bridge religious validity and state administrative recognition.

Isbat nikah is submitted to the Religious Court by interested parties to obtain legal recognition of a marriage conducted according to Islamic principles but not recorded by the state<sup>7</sup>. Once granted, the court decision becomes the legal basis for marriage registration at the KUA, enabling the issuance of an official marriage certificate<sup>8</sup>. The judge examines whether the marriage fulfills the pillars and conditions of Islamic law, whether there are legal impediments, and whether sufficient evidence supports the existence of the marriage, including witness testimony and relevant documents<sup>9</sup>. Judicial reasoning in these cases is not only formalistic but also considers substantive justice, legal certainty, and

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<sup>7</sup> Wazzan et al.

<sup>8</sup> Achmad Walif Rizqy, Ishaq Ishaq, and Muhammad Faisol, "Legal Protection of Women and Children in Isbat Marriage Accompanied by Divorce," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 446–52.

<sup>9</sup> Sigit Siswomiharjo, Abu Yazid Adnan Qutni, and Imam Syafi'i, "Analysis of Judges' Decisions in Marriage Isbat Cases According to the Perspective of Positive Law and Islamic Law (Case Study No. 076/Pdt. P/2022/Pa. Prob)," *Al Mashaadir: Jurnal Ilmu Syariah* 4, no. 1 (2023): 30–41.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

public benefit (*maslahah*), often supported by the principles of *maqashid al-sharia* and judicial discretion (*ijtihad*)<sup>10</sup>.

Despite the importance of *isbat nikah*, previous studies have generally focused on normative legal analysis or the social implications of unregistered marriages<sup>11</sup>. Limited research has specifically examined judicial reasoning in local court decisions, particularly in Sukoharjo Religious Court during the period of 2022–2025, and how judges integrate statutory law, SEMA No. 3/2018, and *maqashid al-sharia* principles in their considerations. This gap indicates the need for an empirical legal study that focuses on actual judicial practice rather than general doctrinal analysis.

The novelty of this study lies in its empirical examination of Decision Number 16/Pdt.P/2025/PA.Skh at the Sukoharjo Religious Court, focusing on how judges construct legal reasoning in *isbat nikah* cases by integrating Islamic law, positive law, and Supreme Court guidelines. Unlike previous studies that emphasize general legal theory, this research highlights the practical application of judicial discretion in balancing legal certainty and substantive justice in a specific court decision.

Based on this background, this study formulates the following research questions: (1) How do judges consider and construct legal reasoning in deciding *isbat nikah* cases in Decision Number 16/Pdt.P/2025/PA.Skh? (2) How is the procedure of *isbat nikah* implemented under Indonesian positive law and Islamic

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<sup>10</sup> Ismatul Maula et al., “Istishab Analysis of the Decision on *Isbat Nikah* as an Integrated Service of Mobile Session in Wanemana Religious Courts,” *Interdisciplinary Journal of Social Science and Education (IJSSE)*, April 2024, 43–58, <https://doi.org/10.53639/ijssse.v2i1.19>.

<sup>11</sup> Imron Rosyadi, Helmy Ziaul Fuad, and Ashlaha Baladina Zaimuddin, “Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman’s Theory,” *Al-’Adalah* 22, no. 1 (2025): 147–80.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*  
*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

law? and (3) What are the legal implications of granting isbat nikah for the parties involved?

## **METHODS**

This study employs a normative juridical approach using a case study method (*case approach*), which involves examining normative legal materials and relevant legal documents<sup>12</sup>. The primary approaches applied in this research are the statute approach and the case approach<sup>13</sup>. The statute approach is conducted by analyzing various legal regulations related to marriage and *isbat nikah*, including Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), and Supreme Court Regulation of the Republic of Indonesia Number 1 of 2015 concerning Guidelines for the Implementation of Duties and Court Administration within the Religious Courts.

The research setting focuses on the Religious Court of Sukoharjo, located at Jalan Dr. Muwardi No. 54, Jetis, Sukoharjo, Central Java. This location was selected based on the consideration that the Sukoharjo Religious Court is one of the religious judicial institutions that has been relatively active in handling *isbat nikah* cases arising from unregistered marriages, as reflected in the increasing number of such cases during the period 2022–2025.

This study takes Decision Number 16/Pdt.P/2025/PA.Skh as the primary object of analysis. The decision was selected because it represents judicial reasoning in adjudicating *isbat nikah* cases arising from unregistered marriages. The focus of this study is the judges' considerations in resolving *isbat nikah*

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<sup>12</sup> Flora Di Donato, *The Analysis of Legal Cases: A Narrative Approach* (Routledge, 2019).

<sup>13</sup> Giacomo A M Ponzetto and Patricio A Fernandez, "Case Law versus Statute Law: An Evolutionary Comparison," *The Journal of Legal Studies* 37, no. 2 (2008): 379–430.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*  
*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

cases at the Sukoharjo Religious Court, as reflected in Decision Number 16/Pdt.P/2025/PA.Skh.

Data collection techniques include library research and documentary study, supported by interviews to strengthen empirical data from the field<sup>14</sup>. To ensure data validity, this study employs several techniques, including source triangulation, data consistency checks, and verification of the authenticity of legal documents<sup>15</sup>. Data analysis is conducted using a descriptive qualitative method with a normative juridical approach, involving the interpretation, correlation, and evaluation of legal materials in order to systematically address the research problems<sup>16</sup>.

## **RESULTS AND DISCUSSION**

### **1. Judges' Considerations and Ratio Decidendi in Decision Number 16/Pdt.P/2025/PA.Skh**

In Decision Number 16/Pdt.P/2025/PA.Skh, the Sukoharjo Religious Court granted the petition for isbat nikah submitted by the applicants on the basis that the existence of the marriage was sufficiently proven both legally and factually. During the court proceedings, the panel of judges examined the identity of the applicants, heard witness testimonies, and evaluated documentary evidence presented in court. The witnesses consistently confirmed that the

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<sup>14</sup> Bui Thanh Khoa, Bui Phu Hung, and Mohsen Hejsalem-Brahmi, "Qualitative Research in Social Sciences: Data Collection, Data Analysis and Report Writing," *International Journal of Public Sector Performance Management* 12, no. 1–2 (2023): 187–209.

<sup>15</sup> Amjad Almusaed, Asaad Almssad, and Ibrahim Yitmen, "Qualitative Data Collection and Management," in *Practice of Research Methodology in Civil Engineering and Architecture: A Comprehensive Guide* (Springer, 2025), 417–54.

<sup>16</sup> Achmad Irwan Hamzani et al., "Legal Research Method: Theoretical and Implementative Review," *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3610–19.

*Judicial Considerations in Isbat Nikāh for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

marriage ceremony (ijab kabul) had taken place in accordance with Islamic law and that the couple had lived together as husband and wife in society.

The court found that the essential pillars and conditions of marriage under Islamic law were fulfilled, namely the existence of the bride and groom, a lawful guardian (wali), two witnesses, and a valid ijab kabul<sup>17</sup>. The judges also considered that there was no evidence of legal impediments such as prohibited kinship (mahram relationship), forced marriage, or violations of minimum marriage age as regulated under Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI).

The ratio decidendi of the decision lies in the judges' reasoning that although the marriage was not formally registered at the Office of Religious Affairs (KUA), the marriage was valid according to Islamic law and did not contradict Indonesian positive law. Therefore, denying legal recognition would create legal uncertainty and harm the parties, particularly the wife and children. Based on the principle of legal certainty and protection of rights, the court prioritized substantive justice over formal administrative defects<sup>18</sup>.

Furthermore, the judges applied a progressive interpretation by integrating Supreme Court policy guidance, particularly SEMA No. 3 of 2018, which emphasizes consistency in handling family law cases and the importance of protecting vulnerable parties. The decision reflects judicial discretion (*ijtihad*) in balancing strict procedural requirements with the broader objectives of

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<sup>17</sup> Bilal Hussain, Hafiz Ghulam Abbas, and Khalid Hussain, "Legal Competency for Marriage: In an Islamic and Pakistan Law Perspective," *Al-Aijaz Research Journal of Islamic Studies & Humanities* 6, no. 1 (2022): 12–24.

<sup>18</sup> Muhammad Irwan, Ali Rahman, and Amaliyah Amaliyah, "Judicial Law-Finding in the Criminal Justice System: Harmonizing Legal Certainty and Substantive Justice," *SIGN Jurnal Hukum* 7, no. 2 (2025): 647–63.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

Islamic law (*maqashid al-sharia*), particularly the protection of lineage (*hifz al-nasl*) and property (*hifz al-mal*)<sup>19</sup>.

## **2. Legal Facts and Judicial Reasoning in Isbat Nikah Procedure**

The legal facts established during the trial indicate that the applicants had entered into a religious marriage without state registration due to administrative and social circumstances. The court accepted witness testimonies as primary evidence, especially testimonies from individuals who directly attended or knew about the marriage ceremony. These testimonies were considered credible because they were consistent, mutually reinforcing, and aligned with the applicants' statements.

In addition to witness evidence, the court also considered supporting documents such as family records and community acknowledgment that the couple had lived together as husband and wife. Although Indonesian civil procedural law generally distinguishes between direct evidence and hearsay, the court in this case adopted a flexible evidentiary approach based on fairness and the principle of benefit (*maslahah*).

The judges emphasized that the purpose of isbat nikah is not merely administrative validation but also legal protection of family status<sup>20</sup>. Therefore, the evidentiary assessment was not strictly formalistic but oriented toward substantive truth, ensuring that justice is achieved for the parties involved.

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<sup>19</sup> Resti Septiani, Nuruf Ma'rifah, and Buang Yusuf, "State Intervention in Islamic Family Law: A Comparative Analysis of Pakistan and Indonesia within the Framework of Maqāshid Al-Sharīah," *Jurnal Al-Hakim: Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum Dan Filantropi*, 2016, 101–20.

<sup>20</sup> Siti Nur Fajriyati and Musyfikah Ilyas, "Maslahah-Based Judicial Reasoning in Isbat Nikah Cases: Reconciling Legal Certainty and Substantive Justice in the Makassar Religious Court," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 11, no. 2 (2026): 306–26.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*  
*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

### **3. Procedural Analysis of Isbat Nikah in Positive Law and Islamic Law**

The procedural mechanism of isbat nikah begins with the submission of an application to the Religious Court by parties who have a legal interest, such as husband, wife, or children. The court then registers the case and conducts hearings to examine identity, evidence, and witness testimonies<sup>21</sup>.

Under Article 7 paragraph (2) of the Compilation of Islamic Law (KHI), isbat nikah may be requested when a marriage cannot be proven by an official marriage certificate. The court's examination focuses on whether the marriage complies with Islamic legal requirements and whether there are any legal obstacles under national law.

In Decision Number 16/Pdt.P/2025/PA.Skh, the court followed standard procedural stages, including preliminary examination, evidentiary hearing, and judicial deliberation. After all requirements were satisfied, the panel of judges issued a determination granting legal recognition of the marriage.

This procedure demonstrates that Indonesian marriage law operates within a dual system, combining religious validity and state administrative legality<sup>22</sup>. The decision also confirms that isbat nikah functions as a corrective legal mechanism for unregistered marriages, ensuring that religious marriages receive formal legal recognition<sup>23</sup>.

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<sup>21</sup> Rona Ayu Edithya Margareth and Muhammad Ismail Alfaruqy, "Application for the Rights of Children from Siri Marriages at the Religious Court of Lampung Province and Its Implications for Legal Certainty," *SMART: Journal of Sharia, Traditon, and Modernity*, 2025, 25–41.

<sup>22</sup> M Rafli Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 32–47.

<sup>23</sup> Wazzan et al., "Itsbat Nikah: Legalizing Marriage Outside the Record in Indonesia."

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*  
*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

#### 4. Legal Implications of the Court Decision

The granting of isbat nikah in Decision Number 16/Pdt.P/2025/PA.Skh produces significant legal consequences. First, the decision provides legal recognition of the marriage, which allows the couple to obtain an official marriage certificate issued by the Office of Religious Affairs (KUA). This document serves as authentic legal evidence of marital status under Indonesian law.

Second, the decision ensures legal certainty regarding the civil status of the wife and children. Children born from the marriage obtain full legal recognition, including rights to identity, inheritance, and civil registration. This eliminates the legal ambiguity often associated with unregistered marriages.

Third, the decision strengthens the protection of family rights, including property rights, maintenance obligations, and inheritance rights. It also prevents future disputes related to marital status and child legitimacy.

However, despite these legal benefits, the case also reflects a broader structural issue, namely the persistence of unregistered marriages in society. This indicates that while isbat nikah functions as a remedial legal instrument, preventive measures through legal awareness and administrative compliance remain necessary<sup>24</sup>.

#### CONCLUSION

Based on the results of the research and discussion concerning judicial considerations in granting *isbat nikah* in Decision Number 16/Pdt.P/2025/PA.Skh at the Sukoharjo Religious Court, the following conclusions can be drawn:

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<sup>24</sup> Fajriyati and Ilyas, "Maslahah-Based Judicial Reasoning in Isbat Nikah Cases: Reconciling Legal Certainty and Substantive Justice in the Makassar Religious Court."

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

1. Judges' Considerations in Granting *Isbat Nikah*

Judicial considerations in *isbat nikah* cases are carried out comprehensively by referring to both Islamic law and positive law in Indonesia. Judges first assess whether the pillars and conditions for a valid marriage under Islamic law have been fulfilled, including the presence of the bride and groom, a lawful guardian (*wali*), two witnesses, and a valid *ijab kabul* (offer and acceptance). In addition, judges ensure that there are no legal impediments to the marriage under applicable statutory regulations. In Decision Number 16/Pdt.P/2025/PA.Skh, the panel of judges also considered aspects of public benefit (*maslahah*), legal certainty, and the protection of the rights of the parties, particularly the wife and children. Thus, judicial reasoning is not merely normative but also reflects substantive justice.

2. Procedure of *Isbat Nikah* under Positive Law and Islamic Law

The *isbat nikah* procedure begins with the submission of an application by interested parties to the Religious Court, accompanied by the reasons and objectives for the request. This is followed by case examination through court hearings, during which evidence is presented, particularly witness testimony from those who directly observed the marriage contract. In this process, judges assess the validity of the marriage based on the provisions of the Compilation of Islamic Law and Law Number 1 of 1974 on Marriage. Once all requirements are fulfilled and no legal impediments are found, the judge grants the application through a court determination. From the perspective of Islamic law, *isbat nikah* serves as proof of a marriage that is already religiously valid, while under positive law, it functions as a mechanism to obtain state recognition through official registration at the Office of Religious Affairs.

*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

### 3. Legal Implications of *Isbat Nikah* Determination

The determination of *isbat nikah* has significant legal implications, as it provides official state recognition of a previously unregistered marriage. Following such determination, the couple obtains a marriage certificate as authentic proof of their legal relationship, thereby facilitating administrative processes such as obtaining a family card and children's birth certificates. Furthermore, this determination ensures legal protection of civil rights, including rights to maintenance, inheritance, and the legal status of children. Thus, *isbat nikah* functions as an important instrument in bridging the gap between the religious validity of marriage and its formal legality under state law, while ensuring legal certainty and protection for all parties involved.

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*Judicial Considerations in Isbat Nikah for Unregistered Marriages at Sukoharjo Religious Court*

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*Mustajabah Khoirun Nisa' Muna Afifah, et. al*

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