



## Isbat Nikah Over Siri Marriage In Indonesia

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### Abstract

**Background.** Serial marriage is a socio-religious phenomenon that continues to take place in Indonesian society. Although it is legally recognized, this marriage has no legal force because it is not recorded with the state administration. This raises legal problems, especially regarding the protection of the rights of wives, children, and family members, as well as family legal status. Isbat nikah, as a legal instrument available in the Compilation of Islamic Law and Supreme Court Regulations, is a formal solution to provide legal certainty for serial marriage. However, the practice of its application in court still faces various obstacles, both from a juridical and a sociological perspective, as well as from a substantive justice perspective.

**Purpose.** This study aims to reconstruct the position of isbat nikah over serial marriage with a normative-juridical and sociological approach.

**Method.** This article uses normative legal research methods with the following approaches: Legislation, examining Law No. 1/1974, KHI, Law No. 7/1989 jo. Law No. 50/2009 on Religious Courts, with the study topic: Conceptual, discussing the views of fuqaha on marriage and registration. A legal comparison, reviewing the practice of legalizing marriage in several Muslim countries. Maqāṣid al-syarī'ah assesses the suitability of isbat nikah with the principles of protection of religion, soul, descent, property, and honor.

**Conclusion.** The results of the study show the need for legal reform through the reinterpretation of norms, harmonization of regulations, and the strengthening of the principles of justice and family protection, so that isbat nikah is not only a formal legalization but also an instrument for protecting family rights.

**Keywords:** Isbat Nikah, Marriage Siri, Legal Protection, Legal Reconstruction.



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### INTRODUCTION

The practice of serial marriage in Indonesia is still a polemic. On the one hand, it is considered religiously valid because it meets the requirements and pillars of marriage: the presence of a prospective bride, guardian, witness, ijab qabul, and dowry. However, on the other hand, serial marriages are not recorded in the Office of Religious Affairs (KUA) or in

civil records, thus causing juridical problems, such as difficulty obtaining a child's birth certificate, inheritance rights, and legal protection for the wife in the event of divorce.

According to Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), marriage registration is an administrative obligation to ensure legal certainty. However, the practice of serial marriage is often triggered by economic, cultural, or regulatory evasion factors (e.g., underage marriage or polygamy without permission).

The solution offered by the state is isbat nikah, which is the determination of a religious court recognizing the validity of serial marriage to gain legal force. However, the implementation of isbat nikah still raises problems, particularly regarding procedures, public access, and its relevance to maqāṣid al-syarī'ah. Therefore, it is necessary to reconstruct the position of isbat nikah in accordance with the principles of justice, family protection, and legal certainty.

Based on the overall development of the literature, the position of this article can be formulated as follows:

1. Shifting the paradigm from formal legalization to family protection instruments.
2. Fill the void of an analysis that integrates fiqh, positive law, and maqāṣid al-syarī'ah within the framework of legal reconstruction.
3. Providing a new conceptual basis for the reform of the marriage isbat policy to be more responsive to social needs and gender justice.
4. Enriching the discourse of Islamic family law in Indonesia with a normative-sociological approach that emphasizes the preventive and curative functions of marriage registration.

## LITERATURE REVIEW

### The Concept of Serial Marriage

In fiqh, marriage is considered valid if it fulfils the pillars of marriage as explained in the hadith of the Prophet

(لَا نِكَاحَ إِلَّا بِوَلِيِّ وَشَاهِدَيْنِ عَدْلٍ) (رواه أبو داود) : صلى الله عليه وسلم

Meaning: "It is not valid to marry without a guardian and two fair witnesses." (HR. Abu Dawud).

Based on this postulate, serial marriages that meet the requirements for marriage remain religiously valid.

### **Marriage Registration in Positive Law**

Article 2, paragraph (2) of Law No. 1 of 1974 states: "Every marriage is recorded in accordance with the applicable laws and regulations." This confirms the administrative obligation to record to achieve legal certainty.

### **Isbat Nikah in the Indonesian Legal System**

Based on Article 7 paragraph (2) of the KHI, an application for isbat nikah can be submitted to the Religious Court under certain conditions, such as the loss of the marriage certificate, doubts about the validity of the marriage, or for the sake of divorce.

### **Previous Studies**

Several studies highlight the problems of serial marriage and isbat nikah, including Nurhayati's (2019) research, which emphasizes the negative impact on women, and Ahmad's (2021) research, which assesses marriage isbat as a means of legal recognition but has not solved the root of the problem.

Many studies on serial marriage and isbat nikah have been conducted, but an analysis of previous studies reveals several research gaps that remain unanswered. This article aims to fill these gaps. The research gaps identified are as follows:

**Gaps in Analytical Approaches: The Dominance of Normative Analysis without the Integration of Sociological Perspectives and Maqāsid al-Syarī'ah.** Most previous research examined only the validity of serial marriage according to fiqh, or the normative provisions regarding marriage isbat in KHI and the law. There has not been much research that integrates normative-juridical analysis with the social reality of society and maqāsid al-syarī'ah as an evaluative framework. This article fills this gap through a more comprehensive multidisciplinary approach.

**Gap in the Study of Marriage Isbat as an Instrument for the Protection of Rights (Not Just Formal Legalization).** Previous research has generally viewed isbat nikah as an administrative mechanism for resolving recording problems, without evaluating its protective function for women and children victims of serial marriage. There are still a few studies that

place isbat nikah as an instrument of family protection and substantive justice, not just efforts to legalize marriage that have not been recorded. This article is here to fill that void.

Gap related to Critical Evaluation of Isbat Nikah Practice in the Field (Mass Isbat, Access, Gender Bias). Previous research has rarely discussed in depth field issues, such as: limited access of small communities to the isbat process, risk of manipulation in mass isbat, procedural injustice for women in serial marriage. This gap is critical because the success of isbat nikah depends not only on norms but also on its implementation. This article provides a critical analysis of social realities that have been underpaid to date.

Gap in the Perspective of Comparative Law Between Countries. Previous studies have only compared one specific aspect or one country, so they have not provided a strong comparative understanding of marriage sanctions, legal conditions for marriage, and ways other countries solve problems without isbat. This article fills this gap by presenting a broader comparative analysis (Malaysia, Egypt, and the practices of other Muslim countries) and then drawing lessons for the reconstruction of the Indonesian legal system.

Gap in Proposed Systematic and Targeted Regulatory Reconstruction. Previous studies have often been only descriptive (explaining the problem), without offering a comprehensive solution model. There is no regulatory reconstruction framework that includes: harmonization of Islamic law and national law, simplification of isbat nikah procedures, integration of the protection of women's and children's rights, and the *maqāṣid al-syarī'ah* approach as the basis for legal reform. This article provides a comprehensive and applicable model of reconstruction, filling gaps in the literature.

Gap in Preventive Analysis: Lack of Studies on Serial Marriage Prevention. Previous research tended to focus on *solving problems after they occurred*, namely through isbat nikah. In fact, the root of the issue of serial marriage also requires preventive strategies such as public legal education, an easy and cheap registration system, law enforcement against underage marriage, and illegal polygamy. This article fills this gap by positioning prevention as an integral part of regulatory reconstruction.

Previous research on serial marriage and isbat nikah remains dominated by normative approaches that have not integrated sociological perspectives and the *maqāṣid al-syarī'ah*. In addition, isbat nikah has been understood as limited to administrative legalization without looking at its protective function for women and children. There is a lack of critical studies on the practice of isbat nikah in the field, including the issue of access, mass isbat, and gender injustice. Previous research has also not provided a comprehensive comparative analysis of the

law nor offered a systematic regulatory reconstruction model. This article aims to fill the entire gap with a multidisciplinary approach and to provide a framework for legal reform that is more equitable and applicable.

### **Research Gaps and Contributions of This Article**

Based on the mapping of the literature, several research gaps have not been fully answered by previous research:

1. The gap in integrative analysis between fiqh—national law—maqāṣid al-syarī'ah  
Most studies only review from a single framework (fiqh or positive law). This article contributes by bringing the three together in one reconstructive analysis.
2. Lack of discussion on the reconstruction of the position of isbat nikah  
Previous research was more descriptive. This article proposes the reformulation and harmonization of regulations so that isbat nikah is not merely administrative but also functional in protecting women and children.
3. Limitations of sociological studies related to access and procedural justice  
This article highlights structural aspects: access to the poor, gender bias, and potential manipulation in the practice of mass isbat.
4. Lack of comparative studies used as a basis for strengthening national regulations  
This article uses a comparison of the legal systems of Muslim countries to strengthen the argument for regulatory reconstruction.

Thus, this article updates the study of isbat nikah through a multi-disciplinary, maqāṣid-based, and protection-oriented approach—an approach that has not been dominant in previous research.

### **METHODS**

This article uses normative legal research methods with the following approach: Legislation, examining Law No. 1/1974, KHI, Law No. 7/1989 jo. Law No. 50/2009 on Religious Justice, with the following study topics: Conceptually, discussing the views of the fuqaha on marriage and record-keeping. A legal comparison, reviewing the practice of legalizing marriage in several Muslim countries. Maqāṣid al-syarī'ah assesses the suitability of isbat nikah with the principles of protection of religion, soul, descent, property, and honor.

## **DISCUSSION**

### **The Legal Status of Marriage Siri.**

Religiously, serial marriages remain legal. However, it raises juridical problems because it is not recorded. This shows the dualism between fiqh and positive law.

The practice of serial marriage in Indonesia is still a polemic. On the one hand, it is considered religiously valid because it meets the requirements and pillars of marriage: the presence of a prospective bride, a guardian, a witness, *ijab qabul*, and a dowry. However, on the other hand, serial marriages are not recorded in the Office of Religious Affairs (KUA) or in civil records, thus causing juridical problems, such as difficulty obtaining a child's birth certificate, inheritance rights, and legal protection for the wife in the event of divorce.

According to Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), marriage registration is an administrative obligation to ensure legal certainty. However, the practice of serial marriage is often triggered by economic, cultural, or regulatory evasion factors (e.g., underage marriage or polygamy without permission).

The solution offered by the state is *isbat nikah*, which is the determination of a religious court recognizing the validity of serial marriage to gain legal force. However, the implementation of *isbat nikah* still raises problems, particularly regarding procedures, public access, and its relevance to *maqāṣid al-syarī'ah*. Therefore, it is necessary to reconstruct the position of *isbat nikah* in accordance with the principles of justice, family protection, and legal certainty.

### **Marriage as a Formal Solution**

*Isbat nikah* at the Religious Court is present as a mechanism for the legalization of serial marriage. However, access is limited by the cost of litigation, bureaucratic procedures, and a lack of socialization within the community.

### **Problems in the Implementation of Isbat Nikah**

Not all serial marriages can be filed for *isbat* (e.g., underage marriage).

There is still a practice of "mass *isbat*" that is prone to manipulation.

Weak protection for women victims of serial marriage.

### **Comparison with Other Countries**

Malaysia: Unregistered marriages are subject to fines, but can still be legalized by the Sharia Court.

Egypt: Registration is a condition of legality; without registration, it is not legally recognized.

Indonesia: Isbat nikah is still considered a middle ground.

### **System Comparison: Indonesia in the Context of Muslim Countries**

Comparative legal studies show that each Muslim country has a different regulatory model.

1. Egypt and Turkey make recording a condition of legality.
2. Malaysia applies sanctions for perpetrators of unregistered marriages but still provides room for legalization through the Sharia Court.
3. Indonesia is in the middle: marriage is considered religiously valid, but it has no legal force without registration, so the mechanism of isbat nikah emerged.

Previous comparative legal literature has not situated Indonesia within a regulatory reconstruction framework that considers aspects of *maqāṣid al-syarī'ah*. This article offers a new approach by combining normative analysis, *maqāṣid*, and sociological perspectives to reassess the effectiveness of isbat nikah in protecting family rights.

### **Reconstruction of the Position of Isbat Nikah**

Reconstruction is required in the following directions:

1. The integration of Islamic Law and National Law → isbat nikah is directed to protect women and children, not just administrative legalization.
2. Simplification of procedures → speed up and facilitate access to the poor.
3. Preventive → strengthen awareness of marriage registration from the beginning through legal education.
4. Based on *Maqāṣid al-syarī'ah* → emphasizes the protection of nasab, women's rights, and the certainty of family law.

### **The Evolution of Isbat Nikah Studies: From Administrative Legalization to Protection Instruments**

The study of isbat nikah initially highlighted the role of administrative legalization as a gateway for serial marriages to obtain official registration. Research such as Fauzi (2021) and Abdurrahman (2019) emphasizes that isbat nikah is a state solution to provide legal certainty. However, studies published after 2015 show that isbat nikah is not sufficient to be considered a legalization process in itself. Ahmad's (2021) research, for example, emphasizes that isbat

nikah must be studied as an instrument of legal protection, especially for women who are vulnerable to the exploitation of serial marriage.

Recent research trends are starting to highlight:

1. Limited access to isbat nikah services (cost, bureaucracy, lack of socialization).
2. The phenomenon of mass marriage is a practice that is often criticized for having the potential to normalize marriage practices, which is not recorded.
3. The contradiction between formal norms and social realities, especially in the case of underage marriage or polygamy without permission.

This article continues the development of the discourse by proposing a new approach through the reconstruction of the position of isbat nikah, asserting that legalization must be directed toward substantive functions: family protection, justice, and the fulfillment of *maqāṣid al-syarī'ah*.

### **The Development of Marriage Studies Series: From Fiqh to the Protection of Rights**

Initial research (1990s to 2010s) focused on the legitimacy of fiqh on serial marriage, namely the validity of a marriage contract when harmony and conditions are met. The focus of the research is still *on legal dualism*: legal according to religion but not recognized by the state. Contemporary studies have begun to shift attention to the socio-legal impacts, particularly women's vulnerability, children's status, access to administrative services, and civil law implications such as inheritance, joint property, and divorce. Research by Nurhayati (2019), for example, shows that serial marriage often causes structural injustice for women and weakens legal protection for children. This research trend confirms that the issue of serial marriage is not only a normative problem, but a structural problem in the family law system in Indonesia. This article continues these developments by mapping serial marriage as a multidimensional phenomenon—religious, legal, social, and administrative—and situates the issue within the framework of national legal reconstruction.

### **Reconstruction of the Position of Isbat Nikah Based on a Multi-Disciplinary Approach (Normative–Sociological–Maqāṣid)**

Previous studies have tended only to review:

1. aspects of fiqh and the validity of marriage, or
2. normative aspects related to recording and isbat procedures.

This article introduces a new analytical framework that integrates:

1. *normative-juridical approach* (Marriage Law, KHI, Religious Justice Law),
2. *sociological approaches* (cultural, economic, community access factors), and
3. *Maqāṣid al-Syarī'ah approach* (protection of nasab, soul, property, and honor).

The integration of these three approaches is a novelty of the concept, as it positions isbat nikah not solely as a formal legalization but also as an instrument of holistic family protection

### **Affirmation that Isbat Nikah must be repositioned from "Administrative Legalization" to "Instrument for the Protection of Women's and Children's Rights."**

Previous research emphasized the isbat nikah as only an administrative solution for obtaining marriage registration.

This article proposes a normative reposition:

1. Isbat nikah must not stop at legal formalities,
2. But it must be redesigned as a guarantee for family law protection, especially for women victims of serial marriages and children who have lost their legal standing.

This view is a new contribution because it directs that improvements to the legal system be in harmony with the principles of substantive justice.

### **New Criticism of the Practice of Isbat Nikah in Indonesia (Mass Isbat, Limited Access, Gender Bias)**

This article presents a critical analysis that:

1. Mass isbat has the potential to become a space for manipulation and does not answer the root of the problem.
2. Access to marriage isbat is still low due to costs and bureaucracy.
3. The isbat procedure is not entirely fair for women who are in vulnerable positions.

This critical dimension has rarely been comprehensively discussed in previous research that is more descriptive and normative.

### **Expanded Legal Comparison to Strengthen the Argument for Regulatory Reconstruction**

This article not only compares Indonesia's rules with those of one country, but also places Indonesia in the context of other Muslim countries that:

1. requires registration for legality (Egypt),
2. sanctioning unregistered marriages (Malaysia),
3. And how Indonesia took the "middle way" through isbat nikah.

This comparison became a new conceptual basis for recommending the renewal of marriage registration regulations.

### **New Ideas on Simplification of Procedures and Reform of the Marriage Isbat System**

This article offers reconstructive ideas:

1. Simplification of isbat nikah procedures, especially for poor families
2. Integration of legal education for the prevention of unrecorded marriages
3. Harmonization of Islamic law norms and national law
4. Strengthening of maqāsid al-syarī'ah as a principle of regulation

This proposal is innovative in that it not only highlights regulatory weaknesses but also offers a more systematic reform model.

### **A New Approach to Establishing Serial Marriage as a Structural Problem, Not Just an Administrative Violation**

This article shows that:

1. Serial marriage is a social phenomenon related to poverty, culture, lack of legal education, and non-adaptive legal structures.
2. So the solution must be structural, not just administrative.

This frame of thought presents conceptual novelty in understanding the root of the problem of serial marriage in Indonesia.

Overall, the novelty of this article can be summarized as follows:

1. Presenting an analytical approach that combines norms, sociology, and maqāsid—an integration that has not been comprehensively carried out in previous research.
2. Offering a reconstruction of the position of isbat nikah as an instrument for the protection of family rights, not just formal legalization.
3. Provide a sharp critique of the practice of isbat nikah and offer an innovative and applicable model of regulatory reform.
4. To strengthen the foundations of new theories through international comparisons and substantive justice perspectives.

Thus, this article makes a significant contribution to the literature on Islamic family law and the marriage registration system in Indonesia.

## CONCLUSION.

Isbat nikah is an important legal instrument in overcoming the problem of serial marriage in Indonesia. However, its implementation still leaves many obstacles. The reconstruction of the position of isbat nikah must be directed at the protection of family law, gender justice, and legal certainty in line with maqāsid al-syarī'ah. Thus, serial marriages legalized through isbat nikah are not only religiously valid, but also guaranteed protection in state law.

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