



Maslahah-Based Judicial Reasoning in Isbat Nikah Cases: Reconciling Legal Certainty and Substantive Justice in the Makassar Religious Court

Siti Nur Fajriyati ^{a,1,*}, Asni ^{b,2}, Musyfikah Ilyas ^{b,3}

^a Universitas Islam Negeri Alauddin Makassar

^b Faculty of Sharia and Law, Universitas Islam Negeri Alauddin Makassar

^c Faculty of Sharia and Law, Universitas Islam Negeri Alauddin Makassar

¹ sitinurfajriyati.15@gmail.com; ² asni.azrai@uin-alauddin.ac.id; ³ musyfikah.ilyas@uin-alauddin.ac.id

* corresponding author

ARTICLE INFO

Article history

Received: 02 February

Revised: 27 April 2026

Accepted: 13 May 2026

Keywords

Isbat Nikah
Unregistered Marriage
Religious Courts
Maslahah
Islamic Law

ABSTRACT

*The tension between statutory marriage registration requirements and the socio-religious legitimacy of nikah siri (unregistered marriages) continues to create challenges in the implementation of family law in Indonesia. This article critically examines the judicial reasoning employed by judges of the Makassar Class IA Religious Court in adjudicating isbat nikah (judicial validation of unregistered marriage) cases from the perspective of maslahah. This study employs normative juridical research using case-based and conceptual approaches, with judicial decisions and statutory regulations analyzed as primary legal materials. The findings reveal that the adjudication of isbat nikah cases extends beyond procedural-administrative considerations through responsive judicial reasoning grounded in maslahah. Judges utilize isbat nikah mechanisms to protect children's legal identity and civil rights through the principle of *hifz al-nasl* (protection of lineage), while also reconciling tensions between state legal formalism and socially embedded Islamic marital practices. In certain cases, applications are rejected to prevent procedural abuse and legal circumvention based on the principle of *dar' al-mafasid* (prevention of harm). This study demonstrates that maslahah functions as a foundational framework of judicial reasoning aimed at realizing legal certainty and substantive justice within plural legal systems.*

This is an open access article under the [CC-BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) license.



1. Introduction

The issuance of a marriage certificate (akta nikah) by the Marriage Registrar constitutes formal legal evidence of a valid marriage, the copies of which are held by both husband and wife as legal proof for the exercise and protection of their rights.¹ This provision is stipulated in Article 7 paragraph (1) of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which states that “a marriage may only be proven by a Marriage Certificate issued by the Marriage Registrar.”² In principle, a nikah sirri (unregistered marriage) is considered valid under Islamic law insofar as it fulfills the required religious pillars and conditions. However, Law Number 1 of 1974 on Marriage stipulates that a marriage does not obtain formal legal recognition unless it is registered with the Office of Religious Affairs (Kantor Urusan Agama/KUA) in accordance with prevailing legal regulations.³ For married couples who, for certain reasons, do not possess a marriage certificate, Indonesian Islamic family law provides a legal mechanism through which they may apply for isbat nikah (judicial validation of unregistered marriage) before the Religious Court.⁴ This mechanism is regulated under Article 7 paragraph (2) of the Compilation of Islamic Law, which provides that “where a marriage cannot be proven by a Marriage Certificate, an application for marriage confirmation may be submitted to the Religious Court.”⁵

Nevertheless, unregistered marriages remain prevalent within Indonesian society.⁶ Such marriages, commonly referred to as *nikah siri*,⁷ are generally understood as marriages conducted without state registration or official recognition, thereby rendering them legally

¹ Iwan, “Akta Nikah sebagai Bukti Otentik Perkawinan di Indonesia; Analisis Maqashid Syariah terhadap Pencatatan Perkawinan,” *Al-Usrah : Jurnal Al-ahwal As-Syakhsiyah* 10, no. 01 (2022): 73–86.

² Republik Indonesia, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Kementerian Agama, 2018), 6.

³ Meilya Nur Prianjani, Sugeng Sugeng, dan Esther Masri, “Legal Analysis of Unregistered Marriage Service Providers According to the Compilation of Islamic Law and Act No. 1 of 1974 on Marriage,” *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum* 4, no. 2 (2022): 167–77, <https://doi.org/10.37631/widyapranata.v4i2.687>.

⁴ Q Arifuddin, “Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles,” *Nurani* 24, no. 2 (2024): 317–28, <https://doi.org/10.19109/nurani.v24i2.24529>.

⁵ Indonesia, *Kompilasi Hukum Islam di Indonesia*, 6.

⁶ Baihaqi et al., “Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya,” *Journal of Islamic Law* 5, no. 2 (2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>; L Ul Jannah, I F Ngazizah, dan A Kasdi, “Social Legitimacy versus State Legal Certainty: The Dialectics of Kiai Marriages as Living Law in Dusun Pondok Asem, Kertasemaya, Indramayu,” *Al-Mazaahib* 13, no. 2 (2025): 173–98, <https://doi.org/10.14421/al-mazaahib.v13i2.4392>; S Salam et al., “The Erosion of Customary Authority and The Riset of Local Ulama In The Normalization of Unregistered Marriages In Indonesian Muslim Communities,” *Mawaddah: Jurnal Hukum Keluarga Islam* 4, no. 1 (2026): 351–75, <https://doi.org/10.52496/mjhki.v4i1.72>; E T Rahman et al., “How Does the State Regulate the Administration of Unregistered Marriages in Muslim Minority Communities? The Practice of Mass Weddings in Jayapura City,” *Jurnal Ilmiah Al-Syir’ah* 22, no. 2 (2024): 207–20, <https://doi.org/10.30984/jis.v22i2.3210>.

⁷ Mochammad Arifin, “Tradition vs. Administration: Challenging the Cultural Barriers to Marriage Registration in Indonesia,” *Sakina: Journal of Family Studies* 9, no. 2 (2025): 213–25, <https://doi.org/10.18860/jfs.v9i2.15343>; Desmal Fajri dan Felti Novira, “The Phenomenon of Unregistered Marriages: Problems and Solution,” *Kosmik Hukum* 23, no. 2 (2023): 180–88, <https://doi.org/10.30595/kosmikhukum.v23i2.18113>.

unrecognized under Indonesian law.⁸ The persistence of *nikah sirri* indicates that some marital unions continue to be performed solely based on religious legitimacy without adequate regard for formal legal requirements.⁹ The legal obligation concerning marriage registration is expressly regulated under Article 2 paragraph (2) of the Marriage Law. The continuing existence of such practices is reflected in the growing number of marriage confirmation applications submitted before the Religious Courts.

The legal consequences arising from marriages that are not registered with the Office of Religious Affairs are significant, particularly because spouses do not possess an official marriage certificate from the outset of the marital relationship.¹⁰ This condition creates serious legal risks due to the absence of formal state recognition and legal protection for the parties involved. In practice, such circumstances frequently generate various domestic and legal problems that contribute to instability and legal uncertainty within the family sphere. These include the absence of legal certainty, the inability of spouses to obtain marriage or divorce certificates, restrictions on including the biological father's name on a child's birth certificate due to the absence of parental marriage documentation, the potential loss of inheritance rights for children in cases of family separation, the inability of wives to claim post-separation financial support from their husbands, and the possibility of fraud or denial by one of the parties.¹¹

To date, studies concerning *isbat nikah* in Religious Courts have been conducted from various perspectives. From a normative standpoint, Fauzi positioned the regulation of unregistered marriages as an effort to balance administrative violations with judicial discretion in safeguarding citizens' rights.¹² From the perspective of sociology of law, Rahmi et al. analyzed public legal compliance in relation to the practice of *nikah siri* in West Sumatra.¹³ Meanwhile, Andrizar et al.¹⁴ and Jabal Nur et al.¹⁵ focused their analyses

⁸ Umar Haris Sanjaya dan Aunur Rahim Faqih, *Hukum Perkawinan Islam* (Yogyakarta: Gama Media Yogyakarta, 2017); Emilda Sonu et al., "The Dynamics and Legal Implications of Unregistered Marriages in Indonesia," *Antmind Journal of Jurisprudence and Social Justice* 1, no. 1 (2025): 45–56.

⁹ Saleman Rumeon dan Suharmoko, "Isbat Nikah dalam Melegalisasi Nikah di Bawah Tangan di Kabupaten Raja Ampat," *PUBLIK: Publikasi Layanan Bimbingan dan Konseling Islam* 2, no. 1 (2022): 63–70.

¹⁰ Nanda Nabilah Islamiyah, "When Religious Leaders Become Marriage Brokers, Penghulus, and Marriage Consultants: The Authority of Kyai in the Process of Unregistered Marriage," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 21–40, <https://doi.org/10.14421/ahwal.2024.17102>; Mariadi Mariadi, "Marriage registration procedures and its legal impacts," *International Journal of Sharia Studies* 1, no. 1 (2023), <https://doi.org/10.61810/ijss.v1i1.4>.

¹¹ Moh. Ali Wafa, *Hukum Perkawinan di Indonesia: Sebuah Kajian dalam Hukum Islam dan Hukum Materil* (Tangerang Selatan: YASMI, 2018), 196.

¹² Muhammad Latif Fauzi, "Administrative Transgression and Judicial Discretion for the Sake of Citizens' rights: The Legalisation of Unregistered Marriages in Indonesia," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 211–31, <https://doi.org/10.14421/ahwal.2023.16202>.

¹³ Nailur Rahmi, Arifki Budia Warman, dan Amri Effendi, "Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 9, no. 1 (2025): 416–37.

¹⁴ Andrizar Andrizar, Imron Rosidi, dan Aslati Aslati, "Constitutional Rights of Children from Unregistered Marriages: A Juridical Analysis of Islamic Family Law and Residency Administration Law in

on the constitutional rights of children born from unregistered marriages. From a theoretical perspective, Rosyad et al. examined unregistered marriages through Friedman's Legal System Theory,¹⁶ whereas Jauhari et al. employed a legal analysis grounded in the perspectives of Acehese Islamic scholars.¹⁷ Nawir et al., in turn, conducted a comparative analysis between Indonesia and Saudi Arabia concerning unregistered marriages from the perspective of *maqāṣid al-sharī'ah*.¹⁸

Although *isbat nikah* remains a crucial issue, previous studies appear to remain largely confined to descriptive normative analyses. Most earlier works primarily explain the procedural dimensions of *isbat nikah* in Religious Courts or evaluate the implementation of statutory regulations. Existing scholarship has paid insufficient attention to the fundamental dynamics between formal state legality and complex social realities within judicial processes, particularly through the lens of judges' judicial reasoning. Consequently, a significant research gap persists due to the absence of critical studies positioning *maslahah* not merely as a supplementary fiqh doctrine, but as the primary analytical framework employed by judges in legitimizing judicial decisions within courtroom practice.

Departing from this gap, this study aims to comprehensively analyze judicial reasoning at the Makassar Religious Court in adjudicating cases concerning the confirmation of unregistered marriages through a *maslahah*-based perspective. Specifically, this research seeks to examine cases of *isbat nikah* involving unregistered marriages at the Class IA Makassar Religious Court and to contribute theoretically to broader scholarly discussions on judicial reasoning in Islamic law, legal pluralism, and access to justice. This study further elaborates the role of Religious Courts in responding to the tension between formal state legality and substantive justice through the articulation of the concept of *maslahah*, thereby contributing to the evolving discourse of contemporary Islamic family law.

Indonesia in Maqashid Sharia Perspective," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 2 (2024): 2576–98.

¹⁵ Jabal Nur, Irfan Lewa, dan M. Thahir Maloko, "Legal Protection of the Issuance of Birth Certificates of Children from Unregistered Marriages: An Analysis of Islamic Law and Indonesian Civil Law," *Parewa Saraq: Journal of Islamic Law and Fatwa Review* 2, no. 2 (2023): 69–82, <https://doi.org/10.64016/parewasaraq.v2i2.24>.

¹⁶ Imron Rosyad, Helmy Ziaul Fuad, dan 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, <https://doi.org/10.24042/adalah.v22i1.22779>.

¹⁷ Iman Jauhari et al., "A Legal Analysis of Unregistered Marriages from Ulamas' Perspectives in Aceh Province," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 8, no. 2 (2023), <https://doi.org/10.22373/petita.v8i2.196>.

¹⁸ Ahmad Nawir et al., "Comparative Analysis of The Family Law Systems in Indonesia and Saudi Arabia in The Context of Unregistered Marriage: Maqashid Al-Syari'ah Perspective," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 6, no. 4 (2024): 1075–84.

2. Legal Material and Methods

This study constitutes normative legal research employing both case and conceptual approaches. The primary focus of analysis concerns the judicial reasoning underlying judges' legal considerations in granting *isbat nikah* (judicial validation of unregistered marriage) applications at the Class IA Makassar Religious Court from the perspective of *maslahah*. The study specifically examines *isbat nikah* applications involving unregistered marriages adjudicated within the last three years. This focus on judicial reasoning seeks to analyze how judges formulate legal arguments when confronted with the tension between formal legal requirements and the social realities surrounding unregistered marriages.

Data collection in this study utilized both primary and secondary legal materials. Primary legal materials consisted of judicial decisions and determinations concerning *isbat nikah* cases adjudicated by the Class IA Makassar Religious Court during the last three years, as well as relevant statutory regulations, including Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). In addition, field interviews were conducted with judges to identify the legal considerations underlying judicial determinations in *isbat nikah* applications, while interviews with court clerical officials were used as supporting contextual data to clarify procedural and administrative aspects of the adjudication process. Secondary legal materials were derived from scholarly books, academic journal articles, and classical as well as contemporary fiqh doctrines relevant to the discourse on *maslahah*, Islamic judicial reasoning, and legal pluralism.

The collected legal materials were subsequently analyzed using a qualitative descriptive method by positioning *maslahah* as the principal analytical framework. To strengthen analytical rigor, this study employed two *maslahah*-based indicators in examining judicial decisions. First, *hifz al-nasl* (protection of lineage) was used to assess the extent to which judicial determinations affect children's legal status and access to civil registration rights. Second, the study examined the balance between formal legal certainty and substantive justice for justice seekers. Through these analytical indicators, the judicial decisions examined in this study demonstrate the use of *maslahah* by judges as an epistemological framework for realizing substantive and progressive justice within the context of contemporary Islamic Family Law.

3. Results and Discussion

3.1. Legal Pluralism and Judicial Trends in *Isbat Nikah* Cases at the Class IA Makassar Religious Court

The tension between formal state legality, which requires administrative marriage registration, and the social reality of marriages recognized under Islamic law has produced a complex pattern of legal pluralism in Indonesia. Within this context, the Religious Court functions as a judicial institution that mediates the dualism between state legal requirements and socially embedded religious practices through the mechanism of *isbat nikah*. Based on case registration data, the number of *isbat nikah* applications received by

the Class IA Makassar Religious Court during the last three years demonstrates a relatively high volume of cases, totaling 1,249 applications. This trend is presented in the following table.

Table 1. *Isbat Nikah* Case Data at the Class IA Makassar Religious Court (2022–2024)

Year	Type of case	Many things			Verdict this year				
		The rest of last year	Accepted this year	Amount	Revoked	Granted	Rejected	Not accepted	Aborted
2022	Marriage Confirmation	3	447	450	32	369	1	12	21
2023	Marriage Confirmation	15	419	434	27	370	8	11	8
2024	Marriage Confirmation	10	383	393	52	311	5	8	5
Total		28	1.249	1.277	111	1.050	14	31	34

Source: *Class IA Makassar Religious Court*

The table above demonstrates that out of a total of 1,277 cases adjudicated during the last three years, the majority of applications (1,050 cases or approximately 82 percent) were granted by the court. This high approval rate should not be interpreted as a form of judicial permissiveness toward administrative violations. Rather, it reflects a pattern of responsive judicial reasoning in which judges do not interpret Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law rigidly, but instead integrate statutory provisions with theological and sociological considerations. In this regard, the Religious Court functions not merely as an institution enforcing procedural legality, but also as a forum for resolving the legal consequences arising from the coexistence of state law and religiously recognized marital practices within society.

The socio-legal background underlying *isbat nikah* applications was further explained by one of the judges interviewed as the primary informant, who stated that:

*“The reason for applying for isbat nikah is that without proof of marriage, namely a marriage certificate, all matters relating to the husband, wife, and children cannot be properly administered because their legal status remains unclear and lacks a legal basis. For example, a child’s birth certificate cannot be issued due to the absence of a marriage certificate.”*¹⁹

This explanation demonstrates that the existence of *isbat nikah* mechanisms is closely associated with the practical difficulties experienced by spouses in managing administrative affairs and exercising civil rights due to the absence of valid proof of marriage. Consequently, the process of *isbat nikah* becomes essential for obtaining formal legal recognition and a clearer legal basis that may subsequently be used for various family-related interests, including birth certificates, inheritance matters, and other civil administrative rights. Accordingly, *isbat nikah* should not merely be understood as an

¹⁹ First Informant Judge, Judge at the Class IA Makassar Religious Court, interview by author, Makassar, July 28, 2025.

administrative procedure, but rather as a judicial mechanism for resolving tensions arising from legal pluralism in order to realize legal certainty for individuals who remain marginalized from the state administrative system.²⁰

Similar socio-legal dynamics have also been identified in the study conducted by Haryanto et.al concerning the practice of *he yokal himago* (*nikah siri*) within the Dani Muslim community in Jayawijaya, Papua.²¹ The study demonstrates that the persistence of unregistered marriages is influenced not merely by weak legal awareness, but also by complex socio-cultural, economic, religious, and administrative factors. In particular, unregistered marriage is frequently perceived as a socio-religiously legitimate mechanism capable of overcoming barriers arising from formal legal procedures.²² The study further highlights the significant role of religious figures and local cultural structures in sustaining the practice of *nikah siri*. These findings reinforce the argument that unregistered marriage in Indonesia should be understood within the broader framework of legal pluralism, in which state law continuously interacts with religious norms, customary practices, and socio-cultural realities within a plural normative order. These socio-legal realities ultimately influence the patterns of legal reasoning and adjudicative considerations applied by judges in examining *isbat nikah* applications before the Religious Courts.

Similar patterns of legal dualism were also identified in research examining unregistered marriages within the tradition of *perkawinan kiai* in Indramayu.²³ The study demonstrates that although such marriages are socially and religiously recognized within local customary structures, they remain formally unrecognized under state law due to the absence of official registration before the Office of Religious Affairs. Consequently, a dualism emerges between socio-religious legitimacy as a form of living law and formal legal certainty as a foundational principle of state marriage law. The findings further illustrate that legal pluralism in Indonesia reflects an ongoing dialectic between customary legitimacy, Islamic legal norms, and state administrative legality, thereby reinforcing the importance of judicial mechanisms such as *isbat nikah* in mediating these normative tensions.²⁴ Collectively, these studies indicate that the persistence of unregistered marriages in Indonesia cannot be explained solely through the lens of legal noncompliance, but must instead be understood as part of a broader interaction between state law, religious legitimacy, and socially embedded normative systems.

²⁰ I Yazid, "Menikah Untuk Dicerai: Menyorot Hak-Hak Perempuan pada Isbat Nikah untuk Cerai di Pengadilan Agama Medan Tahun 2015-2017," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 99–110, <https://doi.org/10.24090/mnh.v0i1.1900>.

²¹ Eko Haryanto et al., "He Yokal Himago: A Sociological Review of Law on *Nikah Siri* in The Dani Muslim Community, Papua," *Al-Adalah: Jurnal Hukum dan Politik Islam* 9, no. 1 (2024): 40–52, <https://doi.org/10.30863/ajmpi.v9i1.4814>.

²² Haryanto et al.

²³ UI Jannah, Ngazizah, dan Kasdi, "Social Legitimacy versus State Legal Certainty: The Dialectics of *Kiai Marriages* as Living Law in Dusun Pondok Asem, Kertasemaya, Indramayu."

²⁴ UI Jannah, Ngazizah, dan Kasdi.

Data on *isbat nikah* cases further indicate that court determinations may result in several forms of decisions, including withdrawal, approval, rejection, inadmissibility, and dismissal, each grounded in distinct legal considerations. The details are presented in the following table.

Table 2. Outcomes of *Isbat Nikah* Decisions and Judicial Considerations

Decision Status	Judicial Considerations
Withdrawn	The withdrawal of a marriage confirmation application is based on the applicant's request. This may occur due to the failure to satisfy formal procedural requirements, thereby requiring correction and subsequent resubmission. ²⁵
Granted	Marriage confirmation applications are generally granted where the marriage is considered valid and fulfills the pillars and conditions stipulated under Islamic marriage law. ²⁶
Rejected	Applications are rejected where the claims cannot be substantiated by sufficient evidence. For instance, although evidence may have been submitted, it fails to satisfy the legal elements required in the application. ²⁷
Inadmissible	A determination of inadmissibility is rendered where the application fails to satisfy formal procedural requirements, preventing the case from proceeding to substantive examination. ²⁸
Dismissed	A case is dismissed where the applicant, despite having been lawfully summoned to attend the hearing, fails to appear without valid justification and does not appoint a representative or authorize another party to attend on their behalf. ²⁹

Source: Interview Data with Judges of the Class IA Makassar Religious Court

Based on the data concerning *isbat nikah* cases, it can be observed that the Class IA Makassar Religious Court adjudicates a relatively high number of applications, the majority of which are granted. This trend demonstrates that the judicial process plays a significant role in providing legal certainty concerning marital status while simultaneously reflecting the court's commitment to ensuring that each application satisfies both Islamic legal principles and prevailing statutory requirements. Through this mechanism, applicants obtain formal legal recognition of their marital status as well as official documentary evidence that may subsequently be used for various legal purposes, including the protection of children's rights, inheritance claims, and other civil entitlements.³⁰ More broadly, the increasing number of *isbat nikah* applications illustrates the continuing negotiation between formal state legality and socio-religious legitimacy within Indonesia's plural legal system, positioning the Religious Court as an important institutional actor in mediating the relationship between Islamic legal norms and state administrative law.

²⁵ Second Informant Judge, Judge at the Class IA Makassar Religious Court, interview by author, Makassar, December 3, 2025.

²⁶ First Informant Judge, interview by author.

²⁷ Second Informant Judge, interview by author.

²⁸ Second Informant Judge, interview by author.

²⁹ First Informant Judge, interview by author.

³⁰ M J Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqāsid al-Syarī'ah through Marriage *Isbat* Applications by the Second Generation in Pasuruan," *El-Mashlahah* 15, no. 1 (2025): 125–48, <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.

3.2. *Maslahah*-Based Judicial Reasoning: Protecting the Rights of Children from Unregistered Marriages

Based on the interviews conducted, judges in adjudicating *isbat nikah* cases involving unregistered marriages consider several important aspects to ensure legal certainty and benefit for the parties involved. Judicial considerations in granting applications for *isbat nikah* generally include four principal elements. First, judges consider the benefit and legal protection of spouses and their children, particularly to ensure that they are able to exercise and claim their civil rights. Second, judges assess the validity of the marriage by determining whether the unregistered marriage fulfills the pillars and conditions of marriage under Islamic law and prevailing statutory regulations. Third, judges evaluate the evidentiary basis supporting the application, including marriage certificates issued by religious figures or imams who solemnized the marriage, as well as witness testimonies from individuals who attended the marriage ceremony. Fourth, in cases involving polygamous marriages, judges require the husband to obtain consent from his lawful wife and to include her as a party in the proceedings concerning the *isbat nikah* application.

The examination of *isbat nikah* applications by judges at the Class IA Makassar Religious Court strongly reflects the paradigm of *maslahah* as a foundational framework of judicial reasoning. This is illustrated in Judicial Determination Number 269/Pdt.P/2024/PA.Mks, which demonstrates several layers of judicial consideration, namely legal considerations, factual considerations, and considerations of public benefit. From the legal perspective, the application was considered consistent with Article 7 paragraph (2) of the Compilation of Islamic Law, which permits marriages lacking documentary proof to be submitted to the Religious Court for judicial validation. The court also considered the fulfillment of Islamic legal principles and the absence of legal impediments to the marriage. From the factual perspective, the judges relied upon supporting evidence submitted by the applicants, including identity documents, marriage documentation, and testimonies from two witnesses. Meanwhile, considerations of public benefit focused on the applicants' legitimate legal interest in obtaining formal legal recognition so that the marriage could acquire legal force and official documentation capable of being used for the issuance of marriage certificates, children's birth certificates, and other civil administrative purposes..

In this case, the judges did not merely verify the fulfillment of the pillars and legal requirements of marriage under Islamic law. Rather, they constructed a *maslahah*-based legal argument emphasizing the importance of formal legal recognition through state law. The absence of state recognition constitutes a direct threat to the principles of *hifz al-nasl* (protection of lineage) and *hifz al-nafs* (protection of identity and personal integrity). Through this judicial determination, the Religious Court effectively provided legal access to civil registration for children born from unregistered marriages. The protection of children's identity rights therefore represents a manifestation of substantive justice

prioritized by judges over the rigid imposition of sanctions for prior administrative non-compliance.

The process of adjudicating *isbat nikah* cases further demonstrates that judges consider a variety of legal and social factors to ensure that marriages lacking official registration may nonetheless obtain legal recognition and provide legal certainty for the parties involved. This issue was further explained by one of the judges interviewed as the primary informant, who stated that:

“The judges’ consideration in determining marriage confirmation cases related to nikah siri is the interest of the parties and their children so that they may claim their rights. If the marriage is not legally recognized, they cannot claim anything. Marriage confirmation cases are generally accepted if the marriage is valid and fulfills the pillars and requirements stipulated in marriage law, in which case the application will be granted. To determine the validity of a nikah siri, evidence is required, such as a marriage certificate issued by the imam or religious figure who solemnized the marriage, as well as witnesses who attended the ceremony. Furthermore, the husband must also consider whether the application concerns polygamy. If it involves polygamy, the husband must obtain permission from his lawful wife and include her as a party in the proceedings, thereby making the application contentious in nature. If permission from the lawful wife is not granted, the application will be rejected.”³¹

In addition to protecting lineage and children’s identity rights, judicial reasoning in *isbat nikah* cases is also constructed upon the principle of *hifz al-mal* (protection of property), particularly in relation to the protection of women’s financial rights. The status of unregistered marriages frequently places women in vulnerable legal positions because they lack formal legal standing to claim maintenance, marital property, or inheritance rights in cases of divorce or death. Through judicial determinations granting *isbat nikah* applications based on such considerations, judges effectively accommodate women’s legal rights and protect their civil entitlements. In this context, *maslahah* is operationalized pragmatically as a mechanism for protecting vulnerable groups and demonstrates the adaptive capacity of Islamic legal doctrine in responding to contemporary human rights concerns.

Similar concerns regarding the vulnerability of women in unregistered marriages have also been identified in research examining legal protection for victims of domestic violence (KDRT) within *nikah siri* relationships in Indonesia.³² The study demonstrates that the absence of formal state recognition frequently places women in highly vulnerable legal positions, particularly in accessing legal remedies, protection mechanisms, and judicial recognition as lawful spouses. As a consequence, victims of domestic violence within unregistered marriages often encounter substantial barriers in pursuing legal protection because their marital relationship lacks formal evidentiary status within the state

³¹ First Informant Judge, interview by author.

³² A M Akmal et al., “Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia: Integrating Maqāṣid al-Sharī’ah,” *El-Usrah* 7, no. 2 (2024): 768–88, <https://doi.org/10.22373/ujhk.v7i2.25971>.

legal system. From the perspective of *maqāsid al-sharī'ah*, the study emphasizes that the protection of life, dignity, and personal security (*hifz al-nafs*), as well as the protection of lineage (*hifz al-nasl*), should constitute central considerations in strengthening legal safeguards for women and children affected by unregistered marriages. In this regard, *isbat nikah* functions not merely as an administrative legalization mechanism, but also as a remedial judicial instrument capable of expanding access to justice, strengthening legal standing, and ensuring substantive protection for vulnerable groups marginalized from formal legal recognition. These findings reinforce the argument that *maslahah*-based judicial reasoning in *isbat nikah* adjudication substantively operates as a mechanism for preventing broader social harm and protecting fundamental civil rights arising from the absence of formal marital recognition..

The primary benefit derived from granting *isbat nikah* applications lies in the formal legal recognition of marriage, thereby providing official documentary proof that the parties are legally recognized as husband and wife.³³ Such recognition facilitates the resolution of various legal and administrative matters requiring valid evidence of marriage.³⁴ From the perspective of Islamic legal theory, this protection falls within the category of *daruriyyat* (essential necessities), namely interests that are fundamentally indispensable to human life, the absence of which would result in significant harm. These necessities encompass the protection of religion, life, lineage, intellect, and property. Accordingly, the granting of *isbat nikah* applications constitutes a realization of *maslahah* through the prevention of harm. Conversely, where a marriage remains unregistered and legally unrecognized, the parties may be unable to exercise the legal rights to which they are entitled under state law.

Similar *maqāsid*-oriented findings have also been identified in the study conducted by Ahmad Arif Masdar Hilmy (2020). The study demonstrates that the implementation of integrated *isbat nikah* (*isbat nikah terpadu*) involving the Religious Courts and the Office of Religious Affairs (KUA), as regulated under Supreme Court Regulation (Perma) No. 1 of 2015, reflects the state's effort to realize *maslahah* within the sphere of family law administration.³⁵ From the perspective of *maqāsid al-sharī'ah*, integrated *isbat nikah* functions not merely as an administrative mechanism, but also as an institutional

³³ Soraya Ulfa Latifani, Moh. Ali, dan Dominikus Rato, "Existence of Marriage Agreement Registration In Legal Protection Perspective," *Acten Journal Law Review* 1, no. 3 (2024): 188–202, <https://doi.org/10.71087/ajlr.v1i3.15>; Agung Pratama, "Konstruksi Hukum Pengabulan Isbat Nikah di Bawah Umur dalam Putusan Pengadilan Agama Tegal Nomor 614/Pdt.G/2022/Pa.Tg," *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 1 (2024): 109–27, <https://doi.org/10.51675/jaksya.v5i1.620>.

³⁴ Ahmad Faiz dan 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/PA.JS)," *Arus Jurnal Sosial dan Humaniora* 5, no. 2 (2025): 2525–33, <https://doi.org/10.57250/ajsh.v5i2.1524>.

³⁵ A A M Hilmy dan F Toriqirrama, "Isbat Nikah Terpadu Perspektif Maqāsid Al-Syarī'ah," *Al-Ahwal* 13, no. 1 (2020): 79–90, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85175818344&partnerID=40&md5=f82fa212b38c34dd0788c4fd177e3569>.

instrument aimed at protecting essential legal interests, including the protection of religion (*hifz al-din*), life and personal integrity (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property rights (*hifz al-mal*). These findings reinforce the argument that *isbat nikah* in contemporary Indonesian Islamic family law substantively functions as a mechanism for expanding access to legal protection, civil rights recognition, and administrative justice for vulnerable groups marginalized from the formal state legal system.

Furthermore, the *maslahah*-oriented justification underlying *isbat nikah* has also been examined in a study analyzing *isbat nikah* from the perspective of *maslahah*. The study demonstrates that the legalization of unregistered marriages through *isbat nikah* may be positioned within the category of *maslahah hajjiyyah*, namely complementary needs functioning to alleviate hardship and facilitate the fulfillment of essential human interests.³⁶ In this context, *isbat nikah* serves not merely as a procedural mechanism for administrative registration, but also as a legal instrument enabling spouses and children to obtain legal certainty concerning marital status, inheritance rights, and other civil entitlements. The study further emphasizes that the persistence of unregistered marriages after the enactment of Marriage Law No. 1 of 1974 reflects continuing weaknesses in marriage administration and the absence of sufficiently comprehensive regulatory mechanisms. These findings reinforce the argument that *maslahah*-based judicial reasoning in *isbat nikah* cases operates not only within the framework of substantive justice, but also as a pragmatic legal response aimed at overcoming administrative barriers experienced by vulnerable members of society.

Maslahah-based judicial reasoning has likewise been identified in several previous studies. Khomariyah and Syukur, for example, in their examination of Decision Numbers 614/Pdt.P/2022/PA.Tg and 58/Pdt.P/2023/PA.Rtg, found that judges employed the principle of *maslahah mursalah* within the family law context as the basis for granting *isbat nikah* applications.³⁷ Similarly, judicial reasoning grounded in *maslahah* may be implemented through the principle of the best interests of the child, particularly in relation to the protection of children born outside legally registered marriages.³⁸ The realization of justice, legal protection, and the fulfillment of spouses' rights within the family also constitute inseparable aspects of judicial reasoning in marriage cases.³⁹ Comparable

³⁶ Sudirman dan Iskandar, "Isbat Marriage Resolution in Indonesia: A *Maslahah* Approach," *Journal of Islamic Law* 1, no. 1 (2020): 100–114, <https://doi.org/10.24260/jil.v1i1.16>.

³⁷ Lailatul Khomariyah dan Musthafa Syukur, "Disparity In Judges' Determinations Regarding The Confirmation Of Marriage For Underage Sirri Marriages From The Perspective Of Legal Certainty," *International Journal of Science and Environment (IJSE)* 5, no. 3 (2025): 277–87, <https://doi.org/10.51601/ijse.v5i3.103>.

³⁸ Rohmawati Rohmawati dan Syahril Siddik, "Legal Protection for Children Born out of Wedlock: Ensuring the best Interests of Children through Judge Decisions," *Al-Adalah* 19, no. 2 (2022): 315–38, <https://doi.org/10.24042/adalah.v19i2.11761>.

³⁹ Murdan Murdan, "A Judge's Response to the Phenomenon of Indonesian Legal Pluralism: The Compartmentalization of Law on Divorce Case of Sasaknese Marriage," *Justicia Islamica* 22, no. 1 (2025): 49–70, <https://doi.org/10.21154/justicia.v22i1.9818>.

practices can also be identified in Bangladesh, where community-based courts have accepted alternative forms of evidence to establish marriages, thereby benefiting women who do not possess formal marriage certificates. Through such flexible legal reasoning, courts possess the capacity to recognize social realities and implement justice in a more equitable and substantive manner.⁴⁰ These developments demonstrate that *maslahah*-based judicial reasoning enables the dimensions of justice, utility, and legal certainty to be articulated substantively and proportionately within contemporary plural legal systems.

3.3. The Limits of *Maslahah* Tolerance and the Prevention of *Mafsadah* (Between Legal Certainty and Substantive Justice)

Although the Religious Court progressively accommodates *maslahah*, this principle is not applied without limitations in legitimizing all forms of unregistered marriages. One of the decisions of the Class IA Makassar Religious Court rejecting an *isbat nikah* application, namely Case Number 988/Pdt.G/2025/PA.Mks, demonstrates the existence of strict judicial limitations aimed at preventing harm (*mafsadah*). The case involved several layers of judicial consideration, namely legal considerations and factual considerations. From the legal perspective, the court referred to Article 7 paragraph (3) of the Compilation of Islamic Law, which stipulates that applications for *isbat nikah* may only be submitted to the Religious Court under limited circumstances, particularly in relation to marriages conducted prior to the enactment of Law Number 1 of 1974 on Marriage. In addition, the court emphasized compliance with the substantive requirements of Islamic marriage law, meaning that applications may be rejected where the marriage fails to satisfy the pillars and legal conditions prescribed under Islamic law. In this case, the court concluded that essential elements and conditions of marriage had not been fulfilled. From the factual perspective, the court examined supporting evidence submitted by the applicants, including identity cards, family registration documents, death certificates of the applicants' biological parents, and testimonies from two witnesses. However, the court found that the witnesses present during the marriage contract (*akad nikah*) did not satisfy the legal qualifications required under Islamic law. Consequently, the applicants failed to satisfy the burden of proof necessary to establish the validity of the marriage.

In Case Number 988/Pdt.G/2025/PA.Mks, the rejection of the *isbat nikah* application was therefore based on the applicants' inability to prove the fulfillment of the essential legal requirements of marriage. Specifically, the witnesses presented during the marriage ceremony were considered legally invalid. This judicial rejection reflects the application of the Islamic legal maxim *dar' al-mafasid muqaddam 'ala jalb al-masalih* (preventing harm takes precedence over obtaining benefit).⁴¹ Granting *isbat nikah* solely

⁴⁰ Salwa Tabassum Hoque, "Rethinking Marriage: Blurring the 'legal' and the Social," *Law and Social Inquiry*, 2025, 1–38, <https://doi.org/10.1017/lsi.2025.10068>.

⁴¹ Wawan Wahyuddin et al., *Kaidah Fiqih Ekonomi Syariah* (PT. Sonpedia Publishing Indonesia, 2023).

for administrative interests despite substantive defects in the validity of marriage would potentially create greater harm, including the legalization of unlawful relationships under the guise of marriage institutions and the disruption of legitimate lineage.

The process of rejecting applications for *isbat nikah* likewise demonstrates that judges carefully evaluate whether the substantive requirements of marriage under Islamic law have been fulfilled. This issue was explained by one of the judges interviewed as the primary informant, who stated that:

*“If the requirements are not fulfilled, for example where the guardian is invalid or does not possess the legal authority to act as a marriage guardian, then the marriage cannot be recognized, and the case will automatically be rejected or not granted.”*⁴²

This explanation demonstrates that applications for *isbat nikah* may be rejected where the prescribed legal conditions are not fulfilled, particularly where the marriage guardian lacks legal authority or fails to satisfy the qualifications required under Islamic law. Consequently, although the Religious Court remains open to granting *isbat nikah* for the purpose of protecting the rights of wives and children, the court firmly rejects applications that fail to satisfy the essential requirements of a valid marriage.

Indicators of strict *mafsadah* prevention are also evident in cases involving unregistered polygamous marriages. In such cases, the court expressly requires the consent of the first wife and positions her as a party in contentious proceedings. Where applicants are proven to have engaged in polygamy without prior judicial authorization, the *isbat nikah* application may be rejected to prevent legal circumvention detrimental to the lawful wife. This issue was further explained by a judge serving as the second informant, who stated that::

*“Judges’ considerations in rejecting marriage confirmation applications are based on evidence. For example, evidence may have been submitted, but it does not satisfy the elements required in the claim. Judges also consider whether the husband and wife applying for marriage confirmation remain bound by previous marriages. If the husband still has a lawful wife from a prior marriage recognized under state law, he must first divorce his first wife before remarrying the second wife. If they have children from the unregistered marriage, they must also file a petition concerning the legal status of the child’s parentage. However, if both husband and wife were unmarried at the time and later entered into an unregistered marriage resulting in children, the children’s status is already recognized under the law, and no separate parentage determination is required.”*⁴³

Based on this explanation, the rejection of *isbat nikah* applications may also be grounded in the insufficiency of evidence and the existence of prior legally recognized marriages. Previous lawful marital ties therefore constitute an important judicial consideration. Where spouses remain legally bound to prior valid marriages, they must first legally dissolve those marriages before seeking recognition of subsequent marriages. In addition, where both parties were previously unmarried and subsequently entered into an

⁴² Hakim Informan Pertama, Hakim Pengadilan Agama Makassar Kelas 1A, Wawancara, Makassar, 28 Juli 2025.

⁴³ Second Informant Judge, interview by author.

unregistered marriage resulting in children, the legal status of those children may already be recognized under the law without requiring separate judicial proceedings concerning parentage.

The rejection of isbat nikah applications in cases involving unregistered polygamous marriages is further grounded in Supreme Court Circular Letter (Surat Edaran Mahkamah Agung / SEMA) Number 3 of 2018, which prohibits Religious Courts from granting isbat nikah for such marriages. This is reflected in the consistency of judges in adhering to strict procedural standards in accordance with SEMA No. 3/2018 notwithstanding broader considerations of justice and *maslahah*.⁴⁴ Similar judicial reasoning has also been identified in the study conducted by Arifin et al. examining Decision Number 46/Pdt.P/2023/PA.Sgr, in which the Singaraja Religious Court rejected an isbat nikah application as a precautionary measure aimed at preventing legal circumvention.⁴⁵

This restrictive approach reflects broader scholarly concerns regarding the legalization of unregistered polygamous marriages through judicial mechanisms. M. Bahrum (2019), in his study concerning the problematics of isbat nikah for sirri polygamous marriages, demonstrates that although the legalization of unregistered polygamous marriages through isbat nikah may provide legal certainty, inheritance protection, civil status recognition, and administrative rights for women and children, it simultaneously risks legitimizing violations of statutory restrictions governing polygamy.⁴⁶ In this regard, the legalization of sirri polygamous marriages potentially weakens the regulatory objectives of marriage law designed to ensure procedural accountability and protect women's rights within polygamous marital relations. Bahrum further argues that the granting of isbat nikah for unregistered polygamous marriages may indirectly justify deviations from marriage law, thereby encouraging the Supreme Court through SEMA No. 3 of 2018 to impose limitations upon the legalization of such marriages.

Similar tensions between procedural legality and substantive justice have likewise been identified in the socio-legal study conducted by Alfitri (2024) concerning the validation of unregistered polygamous marriages before Indonesian Religious Courts.⁴⁷ The study reveals that judges frequently confront a difficult dilemma between enforcing

⁴⁴ Holilur Rohman et al., "Between Law and Faith: Judicial Dilemmas of Unregistered Polygamy and Divorce in Indonesia," *Indonesian Journal of Islamic Law* 8, no. 2 (2025): 168–87.

⁴⁵ Sinta Meidayanti Arifin, Dewa Bagus Sanjaya, dan Muhammad Jodi Setianto, "Legal Review Of Rejection Of Application For Marriage Confirmation By The Religious Court (Study Of Singaraja Religious Court Decision Number 46/Pdt. P/2023/Pa. Sgr)," *International Journal of Law, Tourism, and Culture* 2, no. 3 (2024): 167–78.

⁴⁶ Mukhtaruddin Bahrum, "Problematika Isbat Nikah Poligami Sirri," *Al-Adalah: Jurnal Hukum dan Politik Islam* 4, no. 2 (2019): 194–213, <https://doi.org/10.35673/ajmpi.v4i2.434>.

⁴⁷ R Imanullah dan A Rachman, "UNREGISTERED POLYGAMY VALIDATION: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts," *Ulumuna* 28, no. 1 (2024): 313–44, <https://doi.org/10.20414/ujis.v28i1.639>.

formal marriage regulations and safeguarding the substantive rights of women and children already living within de facto marital relationships. Although SEMA No. 3 of 2018 formally restricts the legalization of unregistered polygamous marriages, some judges continue to employ contentious *isbat nikah* as a pragmatic legal mechanism to ensure the protection of vulnerable parties.⁴⁸ These findings reinforce the argument that judicial reasoning in *isbat nikah* cases reflects a continuous negotiation between legal certainty, procedural legality, and *maslahah*-oriented substantive justice.

From the perspective of public interest, marriages that fail to satisfy the pillars and conditions prescribed under Islamic law potentially invalidate the marriage contract itself. Consequently, such marriages may generate serious legal and civil consequences, including uncertainty regarding the legal status of children, ambiguity in inheritance rights, and the inability of spouses to claim their legal entitlements. In cases where applications for an *isbat nikah* are rejected, the marriage is considered not to have fulfilled the legal requirements necessary for recognition under Islamic law. Accordingly, such circumstances cannot be categorized as realizing public benefit (*maslahah*), because public benefit fundamentally refers to actions capable of generating lawful benefit and preventing harm. In this context, the marriage lacks a sufficiently valid legal basis to obtain formal recognition due to the failure to satisfy the essential requirements prescribed under Islamic law.

Through judicial determinations rejecting certain *isbat nikah* applications, judges maintain a balance between substantive justice and legal certainty. The judicial reasoning developed at the Class IA Makassar Religious Court demonstrates that *maslahah* cannot be recognized where it conflicts with definitive legal texts (*nass*) or binding legal principles. In this regard, the Religious Court functions as a stringent filtering institution, ensuring that the legal pluralism accommodated by the state is not exploited to manipulate the sanctity and legality of the institution of marriage within contemporary Islamic Family Law.

Similar judicial dilemmas have also been identified in the study conducted by M. Faiz Nashrullah (2025) concerning underage *ithbāt nikāḥ* practices within Indonesian Religious Courts. The study demonstrates that judges often prioritize the protection of children's civil rights, including access to birth certificates and legal family status, despite recognizing the broader risks of legitimizing underage marriages through judicial confirmation mechanisms. Nashrullah further argues that the extensive use of *isbat nikah* in such cases potentially creates a legal loophole capable of circumventing statutory marriage-dispensation requirements.⁴⁹ As a compromise, several judges proposed alternative legal mechanisms, including child parentage determinations and civil

⁴⁸ Imanullah dan Rachman.

⁴⁹ M F Nashrullah et al., "Judicial Invalidation of *Ithbāt Nikāḥ* Underage in the View of Religious Court Judges in Madura," *Al-Ahkam* 35, no. 2 (2025): 235–60, <https://doi.org/10.21580/ahkam.2025.35.2.27358>.

registration procedures without requiring marriage confirmation. These findings further strengthen the argument that the application of *maslahah* in *isbat nikah* adjudication must operate within clear normative limitations so that judicial mechanisms are not transformed into instruments for legitimizing practices contrary to the broader objectives of family law protection.

4. Conclusion

This study concludes that the high rate of granted *isbat nikah* applications at the Class IA Makassar Religious Court should not be interpreted as a form of judicial permissiveness toward administrative violations. Rather, it reflects the implementation of responsive judicial reasoning grounded in the principle of *maslahah*. Within the tension between the formal legality of state marriage registration and the socio-religious legitimacy of marriage under Islamic law, judges position *maslahah* as the principal framework of legal reasoning capable of mediating the dualism between state administrative legality and religious legitimacy. Through this approach, the absence of formal administrative documentation does not automatically obstruct the fulfillment of citizens' fundamental civil rights. The findings demonstrate that *maslahah*-based judicial reasoning is applied systematically, particularly in protecting vulnerable groups, including women and children born from unregistered marriages. Judicial determinations granting *isbat nikah* applications are primarily grounded in the principle of *hifz al-nasl* (protection of lineage), especially in relation to safeguarding children's rights to legal identity and civil registration. At the same time, judges maintain strict limitations on the application of *maslahah* through the principle of *dar' al-mafasid* (prevention of harm). The Religious Court consistently rejects applications involving substantive defects in the pillars and legal requirements of marriage or indications of legal circumvention, particularly in cases involving unauthorized polygamous marriages. This demonstrates that *maslahah* is not applied permissively, but rather in a measured and principled manner aimed at preserving the sanctity of marriage while maintaining legal certainty.

This study contributes theoretically to the development of contemporary Islamic Family Law scholarship by demonstrating that *maqāsid al-sharī'ah* operates not merely as a moral doctrine, but also as a responsive framework for resolving judicial conflicts within plural legal systems. The findings further indicate the necessity of developing more standardized guidelines for judicial reasoning in *isbat nikah* cases. To strengthen consistency in future adjudication, clearer and more measurable indicators of *maslahah* and *mafsadah* should be formulated as guiding principles for judges in constructing legal considerations. Through such an approach, Religious Courts function not merely as extensions of the state administrative system, but as judicial institutions capable of providing dignified access to substantive justice within contemporary Islamic family law.

5. References

- Akmal, A M, C Mundzir, M J Asti, R Abbas, dan Z Mustafa. "Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia: Integrating Maqāsid al-Sharī'ah." *El-USrah* 7, no. 2 (2024): 768–88. <https://doi.org/10.22373/ujhk.v7i2.25971>.
- Andrizal, Andrizal, Imron Rosidi, dan Aslati Aslati. "Constitutional Rights of Children from Unregistered Marriages: A Juridical Analysis of Islamic Family Law and Residency Administration Law in Indonesia in Maqashid Sharia Perspective." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 2 (2024): 2576–98.
- Arifin, Mochammad. "Tradition vs. Administration: Challenging the Cultural Barriers to Marriage Registration in Indonesia." *Sakina: Journal of Family Studies* 9, no. 2 (2025): 213–25. <https://doi.org/10.18860/jfs.v9i2.15343>.
- Arifin, Sinta Meidayanti, Dewa Bagus Sanjaya, dan Muhammad Jodi Setianto. "Legal Review Of Rejection Of Application For Marriage Confirmation By The Religious Court (Study Of Singaraja Religious Court Decision Number 46/Pdt. P/2023/Pa. Sgr)." *International Journal of Law, Tourism, and Culture* 2, no. 3 (2024): 167–78.
- Arifuddin, Q. "Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles." *Nurani* 24, no. 2 (2024): 317–28. <https://doi.org/10.19109/nurani.v24i2.24529>.
- Bahrum, Mukhtaruddin. "Problematika Isbat Nikah Poligami Sirri." *Al-Adalah: Jurnal Hukum dan Politik Islam* 4, no. 2 (2019): 194–213. <https://doi.org/10.35673/ajmpi.v4i2.434>.
- Baihaqi, Titik Triwulan Tutik, Ahmad Musadad, A. Mufti Khazin, dan Mahtumridho Ghufon Bin Simun. "Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya." *Journal of Islamic Law* 5, no. 2 (2024): 242–68. <https://doi.org/10.24260/jil.v5i2.2819>.
- Faiz, Ahmad, dan 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/PA.JS)." *Arus Jurnal Sosial dan Humaniora* 5, no. 2 (2025): 2525–33. <https://doi.org/10.57250/ajsh.v5i2.1524>.
- Fajri, Desmal, dan Felti Novira. "The Phenomenon of Unregistered Marriages: Problems and Solution." *Kosmik Hukum* 23, no. 2 (2023): 180–88. <https://doi.org/10.30595/kosmikhukum.v23i2.18113>.
- Fauzi, Muhammad Latif. "Administrative Transgression and Judicial Discretion for the Sake of Citizens' rights: The Legalisation of Unregistered Marriages in Indonesia." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 211–31. <https://doi.org/10.14421/ahwal.2023.16202>.
- Haryanto, Eko, Moh Wahib, Faisal Faisal, dan Athoillah Islamy. "He Yokal Himago: A Sociological Review of Law on Nikah Siri in The Dani Muslim Community, Papua." *Al-Adalah: Jurnal Hukum dan Politik Islam* 9, no. 1 (2024): 40–52. <https://doi.org/10.30863/ajmpi.v9i1.4814>.
- Hilmy, A A M, dan F Toriqirrama. "Isbat Nikah Terpadu Perspektif Maqāsid Al-Syarī'ah." *Al-Ahwal* 13, no. 1 (2020): 79–90. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85175818344&partnerID=40&md5=f82fa212b38c34dd0788c4fd177e3569>.
- Hoque, Salwa Tabassum. "Rethinking Marriage: Blurring the 'legal' and the Social." *Law and Social Inquiry*, 2025, 1–38. <https://doi.org/10.1017/lsi.2025.10068>.

- Imanullah, R, dan A Rachman. "UNREGISTERED POLYGAMY VALIDATION: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts." *Ulumuna* 28, no. 1 (2024): 313–44. <https://doi.org/10.20414/ujs.v28i1.639>.
- Islamiyah, Nanda Nabilah. "When Religious Leaders Become Marriage Brokers, Penghulus, and Marriage Consultants: The Authority of Kyai in the Process of Unregistered Marriage." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 21–40. <https://doi.org/10.14421/ahwal.2024.17102>.
- Iwan. "Akta Nikah sebagai Bukti Otentik Perkawinan di Indonesia; Analisis Maqashid Syariah terhadap Pencatatan Perkawinan." *Al-Usrah: Jurnal Al-ahwal As-Syakhsyah* 10, no. 01 (2022): 73–86.
- Jauhari, Iman, Azhari Yahya, Darmawan Darmawan, Dahlan Dahlan, dan Muhammad Nasir. "A Legal Analysis of Unregistered Marriages from Ulamas' Perspectives in Aceh Province." *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 8, no. 2 (2023). <https://doi.org/10.22373/petita.v8i2.196>.
- Khomariyah, Lailatul, dan Musthafa Syukur. "Disparity In Judges' Determinations Regarding The Confirmation Of Marriage For Underage Sirri Marriages From The Perspective Of Legal Certainty." *International Journal of Science and Environment (IJSE)* 5, no. 3 (2025): 277–87. <https://doi.org/10.51601/ijse.v5i3.103>.
- Kompilasi Hukum Islam di Indonesia. Kementerian Agama RI Direktorat Jenderal Bimbingan Masyarakat Islam Direktorat Bina KUA dan Keluarga Sakinah*, 2018.
- Latifani, Soraya Ulfa, Moh. Ali, dan Dominikus Rato. "Existence of Marriage Agreement Registration In Legal Protection Perspective." *Acten Journal Law Review* 1, no. 3 (2024): 188–202. <https://doi.org/10.71087/ajlr.v1i3.15>.
- Mariadi, Mariadi. "Marriage registration procedures and its legal impacts." *International Journal of Sharia Studies* 1, no. 1 (2023). <https://doi.org/10.61810/ijss.v1i1.4>.
- Murdan, Murdan. "A Judge's Response to the Phenomenon of Indonesian Legal Pluralism: The Compartmentalization of Law on Divorce Case of Sasaknese Marriage." *Justicia Islamica* 22, no. 1 (2025): 49–70. <https://doi.org/10.21154/justicia.v22i1.9818>.
- Nashrullah, M F, A R Al Wafi, S Khosyiah, F Gunariah, dan A N Alghifary. "Judicial Invalidation of Ithbāt Nikāḥ Underage in the View of Religious Court Judges in Madura." *Al-Ahkam* 35, no. 2 (2025): 235–60. <https://doi.org/10.21580/ahkam.2025.35.2.27358>.
- Nawir, Ahmad, Suarning Suarning, Aris Aris, Sudirman L, dan Islamul Haq. "Comparative Analysis of The Family Law Systems in Indonesia and Saudi Arabia in The Context of Unregistered Marriage: Maqashid Al-Syari'ah Perspective." *International Journal of Health, Economics, and Social Sciences (IJHESS)* 6, no. 4 (2024): 1075–84.
- Nur, Jabal, Irfan Lewa, dan M. Thahir Maloko. "Legal Protection of the Issuance of Birth Certificates of Children from Unregistered Marriages: An Analysis of Islamic Law and Indonesian Civil Law." *Parewa Saraq: Journal of Islamic Law and Fatwa Review* 2, no. 2 (2023): 69–82. <https://doi.org/10.64016/parewasaraq.v2i2.24>.
- Pratama, Agung. "Konstruksi Hukum Pengabulan Isbat Nikah di Bawah Umur dalam Putusan Pengadilan Agama Tegal Nomor 614/Pdt.G/2022/Pa.Tg." *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 1 (2024): 109–27. <https://doi.org/10.51675/jaksya.v5i1.620>.
- Prianjani, Meilya Nur, Sugeng Sugeng, dan Esther Masri. "Legal Analysis of Unregistered Marriage Service Providers According to the Compilation of Islamic Law and Act

- No. 1 of 1974 on Marriage.” *Widya Pranata Hukum : Jurnal Kajian dan Penelitian Hukum* 4, no. 2 (2022): 167–77. <https://doi.org/10.37631/widyapranata.v4i2.687>.
- Rahman, E T, A Suganda, S A N Lousada, H A Khafidz, M Huda, Y Sopyan, N Mutmainah, A B Kirin, dan A P Shapiulayevna. “How Does the State Regulate the Administration of Unregistered Marriages in Muslim Minority Communities? The Practice of Mass Weddings in Jayapura City.” *Jurnal Ilmiah Al-Syir’ah* 22, no. 2 (2024): 207–20. <https://doi.org/10.30984/jis.v22i2.3210>.
- Rahmi, Nailur, Arifki Budia Warman, dan Amri Effendi. “Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia.” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 9, no. 1 (2025): 416–37.
- Rifqi, M J, N A Nadhifah, M N Hadi, A B Junaidy, dan A Solikin. “Children’s Legal Identity at Stake: Reconstructing Maqāṣid al-Syarī’ah through Marriage Isbat Applications by the Second Generation in Pasuruan.” *El-Mashlahah* 15, no. 1 (2025): 125–48. <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.
- Rohman, Holilur, Rishat Ameer Gafurof, Arif Jamaluddin, Wardah Toyyibah, dan Abdul Wahab Naf’an. “Between Law and Faith: Judicial Dilemmas of Unregistered Polygamy and Divorce in Indonesia.” *Indonesian Journal of Islamic Law* 8, no. 2 (2025): 168–87.
- Rohmawati, Rohmawati, dan Syahril Siddik. “Legal Protection for Children Born out of Wedlock: Ensuring the best Interests of Children through Judge Decisions.” *Al-’Adalah* 19, no. 2 (2022): 315–38. <https://doi.org/10.24042/adalah.v19i2.11761>.
- Rosyad, Imron, Helmy Ziaul Fuad, dan 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. <https://doi.org/10.24042/adalah.v22i1.22779>.
- Rumeon, Saleman, dan Suharmoko. “Isbat Nikah dalam Melegalisasi Nikah di Bawah Tangan di Kabupaten Raja Ampat.” *PUBLIK: Publikasi Layanan Bimbingan dan Konseling Islam* 2, no. 1 (2022): 63–70.
- Salam, S, N Miqat, R Yulestari, I K Muhammed, dan C Odeh. “The Erosion of Customary Authority and The Riset of Local Ulama In The Normalization of Unregistered Marriages In Indonesian Muslim Communities.” *Mawaddah: Jurnal Hukum Keluarga Islam* 4, no. 1 (2026): 351–75. <https://doi.org/10.52496/mjhki.v4i1.72>.
- Sanjaya, Umar Haris, dan Aunur Rahim Faqih. *Hukum Perkawinan Islam*. Yogyakarta: Gama Media Yogyakarta, 2017.
- Sonu, Emilda, Muhammad Iqbal, Mohamad Subli, dan Muhammad Sauki Alhabsyi. “The Dynamics and Legal Implications of Unregistered Marriages in Indonesia.” *Antmind Journal of Jurisprudence and Social Justice* 1, no. 1 (2025): 45–56.
- Sudirman, dan Iskandar. “Isbat Marriage Resolution in Indonesia: A Maslahah Approach.” *Journal of Islamic Law* 1, no. 1 (2020): 100–114. <https://doi.org/10.24260/jil.v1i1.16>.
- Ul Jannah, L, I F Ngazizah, dan A Kasdi. “Social Legitimacy versus State Legal Certainty: The Dialectics of Kiai Marriages as Living Law in Dusun Pondok Asem, Kertasemaya, Indramayu.” *Al-Mazaahib* 13, no. 2 (2025): 173–98. <https://doi.org/10.14421/al-mazaahib.v13i2.4392>.
- Wafa, Moh. Ali. *Hukum Perkawinan di Indonesia: Sebuah Kajian dalam Hukum Islam dan Hukum Materil*. Tangerang Selatan: YASMI, 2018.
- Wahyuddin, Wawan, Itang Itang, Jasri Jasri, Zainal Abidin, Achmad Napis Qurtubi, Ficha Melina Marina Zulfa, dan Mega Mustika. *Kaidah Fiqih Ekonomi Syariah*. PT.

Sonpedia Publishing Indonesia, 2023.

Yazid, I. “Menikah Untuk Dicerai: Menyorot Hak-Hak Perempuan pada Isbat Nikah untuk Cerai di Pengadilan Agama Medan Tahun 2015-2017.” *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 99–110. <https://doi.org/10.24090/mnh.v0i1.1900>.