

**THE VALIDITY OF MARRIAGE THROUGH “ITSBAT NIKAH” ACCORDING  
TO THE PERSPECTIVE OF THE PEOPLE OF KUTOREJO VILLAGE,  
KEPAHIANG, BENGKULU REGENCY**

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**ABSTRACT**

*This Research is motivated by the phenomenon of massive sirri marriage in the village of Kutorejo Kepahiang, yet the legalization rate is still few. This is contrary to the Law. This research aims to contribute to the community to understand that marriage has been regulated in the Law so that the number of marriages can be suppressed and immediately strive for legalization. This thesis is a type of field research with descriptive qualitative writing methods and a normative sociological approach with legal theory. In collecting data, the author makes observations and interviews and then describes the data further analyzed according to the Law. The research concluded that the number of Itsbat Nikah is inversely proportional to the number of sirri marriages in Kutorejo village due to the public's lack understanding of government laws and programs. There is no absolute socialization of the village in bridging the recording of sirri marriages. The motives of the community in applying for marriage licenses vary, including ease of access to public services, legal status rights of marriage, property rights to inheritance rights so that people's views on the legalization of marriage are pursued.*

**Keywords:** *Legalization of Marriage, Marriage Itsbat , Sirri Marriage*

**INTRODUCTION**

In The Law of Marriage Law No. 01 of 1974, Article 2 paragraph (1) states that marriage is legal if carried out according to the law of



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each religion and belief. The article above explains that the State recognises that the validity of a marriage is determined by the law of each religion and belief. <sup>1</sup> Then every marriage that has complied with the provisions of Article 2 paragraph 1 above needs to be emphasised by Article 2 paragraph 2, which requires the registration of marriages to be in an orderly legal administration, to have a marriage that is legally binding and to carry out the benefits of social and State life. <sup>2</sup>

PERMA no. 01 of 2015 contains the Marriage *Itsbat* policy, which is a solution to the enactment of the Marriage Law no. 1 of 1974 article 2 paragraph (2), which requires registration of marriages because of the large number of underhand marriages that occurred before the enactment of the Marriage Law no. 1 of 1974. <sup>3</sup> This refers to Article 64 of the Law, which states, "For marriages and everything related to marriages that occurred before this Law came into effect, which was carried out according to the old regulations, were legal".<sup>4</sup> Furthermore, KHI article 7 paragraph 2 reads: "If a marriage certificate cannot prove marriage, a marriage certificate can be submitted to the Religious Court".

In essence, the benefit of having a sirri marriage registration is the control of the marriage. It follows the pillars, requirements, and

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<sup>1</sup>(Indonesia 1974) See *Pasal 2 ayat 1 UU No. 1 Tahun 1974 Tentang Perkawinan*

<sup>2</sup> (Dwiasta, Hasan, and Syarifudin 2019)Gema Mahardika Dwiasa,dkk, *Fungsi Itsbat Nikah Terhadap Istri Yang Dinikahi Secara Tidak Tercatat (Nikah Siri) Apabila Terjadi Perceraian*, Jurnal Repertorium (Jurnal Ilmiah Hukum Kenotariatan) Vol. 07 No. 1, Mei 2018, p. 16-17

<sup>3</sup> (Falah 2017), M. Fajrul Falah, A Thesis entitled "*Proses Penetapan Itsbat Nikah terhadap Perkara Contensious dalam Perspektif Hukum Islam*", IAIN Raden Intan Lampung, 2017, p. 68

<sup>4</sup> (Indonesia 1974) Undang Undang No. 1 Tahun 1974 tentang perkawinan, Pasal 64



religious rules applicable by the PPN (Marriage Registrar) and helps the community have a legally binding marriage and fulfils civil aspects.<sup>5</sup>

As in the phenomenon of Kutorejo village, Kepahiang Regency, with a high number of sirri marriages, there are many factors behind unusual marriages and not following applicable laws in Indonesia, including economic factors, education, environment, bureaucracy and also the rise of social media. All of these factors are continuous with each other so that if we trace the root of the problem, it will prove that each factor affects the other factors.<sup>6</sup> In the latest data from late 2020 to 2021 in Kutorejo village, Kepahiang Regency,<sup>7</sup> 12 sirri marriage couples have been recorded for various reasons, ranging from problems during the iddah period not having a divorce certificate, pregnancy out of wedlock to early marriage. Of the 12 couples who got married last year, no one has filed a marriage certificate against the local religious court.

Based on the interviews and data obtained from the KUA of Kepahiang Regency, in the last two years, 2020-2021, 31 couples have registered who have submitted their marriage certificates and were approved by the Religious Court of Kepahiang Regency. However, the village of Kutorejo, where the author conducted the research, only had two couples whose marriage certificates were legalised. This issues an assumption that the marriage *Itsbat* program is still not well socialised in the village of Kutorejo. Hence, it impacts the low application for *Itsbat* marriage and is inversely proportional to the high cases of underhand

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<sup>5</sup> (Nugroho and Martinelli 2018) Hafidz Nugroho, Imelda Martinelli, *Akibat Hukum Penolakan Permohonan Itsbat Nikah Oleh Pengadilan Agama Terhadap Para Pihak Yang Melakukan Nikah Sirri (Studi Putusan Nomor : 1478/Pdt.G/ 2016/PAJT)*, Jurnal Hukum Adigama, Universitas Tarumanegara, p. 19

<sup>6</sup> Irfandi, Imam of Kutorejo Village Kepahiang Regency, interviewed at March 30, 2021

<sup>7</sup> Based on Data of KUA Kepahiang Regency at August 2, 2021



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marriages. This shows the low understanding of the Kutorejo village community toward the rule of law in married life.<sup>8</sup>

From the explanation of the facts above, the author found a big marriage problem in Kutorejo village that sirri marriages are very massively carried out. However, very few have proposed marriage legalisation either by Marriage *Itsbat* or remarriage at the KUA. The number of underhanded marriages causes a low number of marriage registrations at the local KUA. This, of course, can cause harm to the parties concerned because they do not get legal legality in the marriage that is carried out. So the author feels it is essential to examine the unders

tanding of the Kutorejo village community on the legality of marriage through *Itsbat* marriage. It is hoped that this research will impact increasing public awareness of the importance of registering marriages to achieve self-preservation and offspring in society and the State.

**RESULT AND DISCUSSION*****Itsbat* Marriage Phenomenon in Kutorejo Village, Bangalore Regency**

Since March 2021, the author has conducted research, observations and interviews with village officials and several Kutorejo villagers, especially those involved in sirri marriages, for the last five years. From the last year, from mid-2020 to October 2021, there have been 13 couples who have been married in a sirri manner without the registration of the authorities, namely the KUA.<sup>9</sup>

The explanation of the village priest as the bearer of the religious mandate stated that the village of Kutorejo had the highest-ranking regarding cases of sirri marriages with early marriage status,

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<sup>8</sup> Muhammad Ridwan, M.Ag, Chief of KUA Kepahiang Regency Bengkulu, Interviewed on 2 Agustus 2021

<sup>9</sup> Irfandi, Imam of Kutorejo Village Kepahiang Regency, Interviewed at March 30 and July 16, 2021



pregnancies outside of marriage and divorce cases.<sup>10</sup> Article 6 of the Compilation of Islamic Law states that marriages that are held without the supervision of the KUA as the apparatus authorized to register marriages do not have legal force.<sup>11</sup>

The data states that the cause of the unregistered marriage is the following reasons:<sup>12</sup>

1. Marriages that occurred before Law no. 1 of 1974 concerning marriage are enacted. Article 64 in Law no. 1 of 1974 concerning marriage states that marriages that occur before the Law comes into force and are carried out according to existing laws are valid.<sup>13</sup>
2. Do not have a yellow card (divorce certificate). In applying for marriage registration to the KUA, a widower or widow is required to include a divorce certificate from the Religious Court.<sup>14</sup>

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<sup>10</sup> Irfandi, Imam of Kutorejo Village Kepahiang Regency, Interviewed on March 30, 2021

<sup>11</sup> See Compilation of Islamic Law, Article 6 paragraph 2 contains "Perkawinan yang dilangsungkan diluar pengawasan Pegawai Pencatat Nikah tidak mempunyai kekuatan hukum" which the meaning is Marriages that take place outside the supervision of the Marriage Registrar do not have legal force

<sup>12</sup> Based on data of Kutorejo Village Kepahiang Regency priod 2020-2021

<sup>13</sup> (Indonesia 1974) Article 64 of Law no. 1 of 1974 concerning marriage reads: "Untuk perkawinan dan segala sesuatu yang berhubungan dengan perkawinan yang terjadi sebelum Undang Undang ini berlaku yang dijalankan menurut peraturan peraturan lama adalah sah" which the meaning is "For marriages and everything related to marriages that occurred before this Law came into effect, which were carried out according to the old regulations, were valid"

<sup>14</sup> Article 84 paragraph (4) of Law no. 7 of 1989 concerning the Religious Courts, that "Panitera berkewajiban memberikan akta cerai sebagai surat bukti cerai kepada pihak selambat lambatnya 7 (tujuh) hari terhitung setelah putusan yang memperoleh kekuatan which the meaning is The Registrar is obliged to provide a



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3. The period of iddah for the prospective bride which has not been completed either religiously or counted since the yellow card (divorce certificate) has been issued, Q.S Albaqarah: 228 reads

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ (البقرة : 228)

Meaning: "And the divorced wives (required) restrain themselves (wait) three times quru' (Albaqarah: 228)

1. Pregnancy out of wedlock,
2. The age that has not met the requirements of the Marriage Law is 19 years.<sup>15</sup>

The classification of the number by category is as follows:<sup>16</sup>

- a. Sirri marriage due to the unfinished Iddah period, as many as two couples
- b. Sirri marriages because they do not have a yellow card (divorce certificate) as many as two couples
- c. Sirri marriage due to pregnancy outside of marriage and the age of the bride and groom has not reached the minimum allowed to marry (early marriage due to pregnancy before marriage) as many as six couples
- d. Early marriage of 2 couples
- e. Marriage was not registered before Law no. 1. Regarding marriage, one partner applies.

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divorce certificate as proof of divorce to the party no later than 7 (seven) days after the decision that has the power of attorney.

<sup>15</sup> Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage stipulates that marriage is only permitted if the male and female parties have reached the age of 19 years.

<sup>16</sup> Based on data of Kutorejo Village Kepahiang Regency priod 2020-2021



The village officials said that one of the causes of the sirri marriage phenomenon in Kutorejo village was the environment and community traditions that facilitated the sirri marriage process. Early age in marriage is not a taboo for some villagers. Reinforced by the high number of pregnancies out of wedlock, parents marry their children out of disgrace the reason that it is easy to legalize it later in life.<sup>17</sup>

However, based on KUA 2020-2021 data, in the past year, the marriage certificate number from Kutorejo village, Kepahiang Regency only recorded two pairs.<sup>18</sup> The head of the KUA said that the marriage *itsbat* program was still something foreign to the community, including the people of Kutorejo village. This is proven based on KUA's monitoring that all perpetrators of unregistered marriages who want to take care of the legality of marriages go to KUA first to apply for remarriage. However, the KUA stated that all unregistered marriages must submit a Marriage *Itsbat* to the Religious Courts by including an unregistered marriage certificate from the KUA.<sup>19</sup>

From the facts above, it can be concluded that the phenomenon of *Itsbat* Marriage in Kutorejo Village, Kepahiang Regency is still very minimal. It is proven by the low number of couples whose marriage certificates have been issued and are legal in the eyes of the Law. The following data for *itsbat* marriage for the last two years, 2020-2021, are as follows:<sup>20</sup>

Table 9  
Data on *Itsbat* Marriage 2020 – 2021 KUA Kepahiang Regency

| NO | VILLAGE NAME                 | NUMBER OF COUPLES |
|----|------------------------------|-------------------|
| 1  | Pensiunan Retirement Village | 2 couples         |

<sup>17</sup> Irfandi, Imam Desa Kutorejo Kepahiang Regency, Interviewed on March 30 2021 strengthened by the statement of the village secretary of Kutorejo Kepahiang Regency which was interviewed on September 6, 2021

<sup>18</sup> See tabel 9 Data of KUA Kepahiang Regency 2020-2021

<sup>19</sup> Based on the interview with the Head of KUA Kec. Kepahiang Bengkulu on August 2, 2021 at 11.15 WIB

<sup>20</sup> KUA Kepahiang Regency data for 2020-2021 was taken on August 2, 2021



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|   |                                |           |
|---|--------------------------------|-----------|
| 2 | Pasar Ujung Retirement Village | 2 couples |
| 3 | Kepahiang Market               | 2 couples |
| 4 | Kutorejo Retirement Village    | 2 couples |
| 5 | Westkus Village                | 1 couples |
| 6 | Sukamerindu Village            | 1 couples |
| 7 | Pagargunung Village            | 1 couples |
|   | Karang Indah Village           | 1 couples |
|   | Tebat Monok Village            | 2 couples |
|   |                                |           |

The lack of *Itsbat* marriage numbers is inversely proportional to the high number of marriages in Kutorejo village because the village does not facilitate and socialize the importance of marriage registration and the common understanding of its citizens of the negative impact on marriage under their hands.<sup>21</sup>

Different circumstances of the *Itsbat* marriage phenomenon in Kelilik village have the most data over the past two years in the submission of marriage *itsbat* because of the Kelilik Village Chairman program that encourages and facilitates sirri actors to legalize their marriage.<sup>22</sup>

### **Views of the Kutorejo Village Community on the Legality of Marriage through *Itsbat* Marriage**

Examining the results of interviews with village communities, both perpetrators of unregistered marriages and the general public are of the view that marriage registration is an absolute thing to be fulfilled in order to obtain legal certainty over marriages that have been carried out as regulated in the Law on Compilation of Islamic Law Article 7 paragraph 2 which explained that every marriage that a marriage certificate cannot prove could be submitted for its marriage certificate

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<sup>21</sup> Zainal Abidin, Head of Dusun II, Kutorejo Village, Kepahiang Regency, Interviewed on September 8, 2021

<sup>22</sup> Muhammad Ridwan M.Ag, Head of KUA Kepahiang Regency, Interviewed on August 2, 2021



to the Religious Court.<sup>23</sup> In this regard, the community also views *Itsbat* marriage as a solution to pursue their marriage rights.<sup>24</sup>

Based on interviews that have been carried out in the field, some people have submitted their marriage certificates, and some have problems submitting them. This is because several requirements and documents cannot be fulfilled, such as in the case of sister Mimi. She is constrained by the absence of her husband's divorce certificate and does not understand how to apply for a divorce certificate.<sup>25</sup> According to the law, sisters Mona, Anita and David have not yet tried to legalize it because they are constrained by the age that has not reached the minimum age for marriage.<sup>26</sup> This is different from the case of Irawan's brother, who has submitted his marriage certificate to the Religious Court because of the administrative completeness that Irawan's brother has. In what Irawan said, the marriage *itsbat* program helped make his marriage legally binding, making it easier for him to get administrative rights. He believes that he can get the right of marriage because his marriage which was carried out in 1980, did not violate the syara's rules or the rule of law.<sup>27</sup> Compilation of Islamic Law Article 7 paragraph 3, which strengthens the reason for the submission of *itsbat*

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<sup>23</sup> See the Compilation of Islamic Law Article 7 paragraph 1 which reads, "Marriage can only be proven by a marriage certificate made by the Marriage Registrar and Article 7 paragraph 2 which reads, "In this case the marriage cannot be proven by a marriage certificate, the marriage certificate can be submitted to the Court

<sup>24</sup> Irawan, Mimi, Mona, David, Anita, The perpetrator of Sirri Marriage (Unregistered marriage), Interviewed on 10 September 2021, 8 September 2021, 6 October 2021, 9 November 2021

<sup>25</sup> Mimi, the perpetrator of sirri marriage, Interviewed on September 8, 2021

<sup>26</sup> Mona, Anita, David, The perpetrator of Sirri Marriage, Interviewed on 6 October 2021, 9 November 2021

<sup>27</sup> Irawan, a resident of Kutorejo village, Interviewed on 10 September 2021 at 12.30 WIB



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marriage because the marriage of Irawan's brother does not have a marriage barrier according to Law no. 1 of 1974.<sup>28</sup>

Mimi's sister, in the interview, also said that it is essential to pursue *Itsbat marriage* because *Itsbat marriage* is a solution to get her marriage rights, such as inheritance rights and *gonogini* property rights.<sup>29</sup> However, he said that the administration in Indonesia is now rigorous. The lack of a marriage registration file that caused him to carry out a sirri marriage, namely the absence of a divorce certificate for the groom who is a divorced widower as is the procedure in the marriage registration procedure at KUA according to Law no. 1 of 1974 in the primary requirement that a widow or widower must include a divorce certificate or death certificate (N6).<sup>30</sup>

Suppose Mona's brother said that the legality of marriage by registering his sirri marriage is an important and urgent matter. He plans to file for marriage legalization when he reaches 19 years. However, he did not understand how to register his sirri marriage registration because he married at an early age. As the law stipulates, the minimum age to get married is 19 years old.<sup>31</sup> For him, the legalization of marriage is necessary to support their children's rights in the future. He hopes that his son can have a birth certificate with a legal marriage so that his rights as a citizen can be obtained. However, the

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<sup>28</sup> See the Compilation of Islamic Law Article 7 paragraph 3 point 5 regarding matters that are allowed to be submitted for *itsbat* marriage to the Religious Courts, namely marriages carried out by those who do not have marriage barriers according to Law no. 1 Year 1974

<sup>29</sup> Mimi, Kutorejo Villager, Interviewed on September 8, 2021

<sup>30</sup> See the marriage registration procedure of the Ministry of Religion of the Republic of Indonesia

<sup>31</sup> See Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage



age that has not reached the minimum age of marriage is an obstacle; so far, he has not applied for marriage legalization.<sup>32</sup>

The couple Anita Putri and David Longgi also stated that the legality of marriage was essential for the future. The couple intends to legalize their marriage at 19, which is the minimum age a person can marry under Indonesian law.<sup>33</sup> This relates to the right to a family card that they want to get and a birth certificate for their child. In a state of law that is administratively orderly, the existence of a family card and birth certificate can support the ease of bureaucracy in the future.

Other general public also has the same opinion that the legalization of marriage, either through *Itsbat marriage* or the decision to remarry, is very important. As brother Zainal Abidin the head of hamlet 2 Kutorejo village, stated that the impact of sirri marriage is vast for social life in a legal state like Indonesia. The perpetrators of sirri marriages will accept the inability to access public services to social sanctions.<sup>34</sup>

### **An Analysis of the Phenomenon of Sirri Marriage and the Views of the Kutorejo Village Community on the Legalization of Marriage through *Itsbat Marriage***

As explained in the previous chapter, data from the KUA of Kepahiang Regency have recorded two couples from Kutorejo village who legalized sirri marriage through the *Itsbat marriage* route. The minimal and low number of legalization of marriages is inversely proportional to the facts on the ground with the number of unregistered marriages in the past year.<sup>35</sup>

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<sup>32</sup> Mona, a resident of Kutorejo village, Interviewed on October 6, 2021

<sup>33</sup> See Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage

<sup>34</sup> Zainal Abidin, Head of Dusun 2 Kutorejo Village, Interviewed on September 8, 2021 at 17.00 WIB

<sup>35</sup> See KUA Kab. Kepahiang year 2020-2021



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The phenomenon of sirri marriage that occurred in Kutorejo village violated religious law and state law. Although the sirri marriage that occurs fulfils the pillars of marriage according to religion, it does not fulfil two elements of benefit, namely taking benefits and avoiding harm. Sirri marriage will only benefit, but the harm will be even more significant in a legal country like Indonesia.

The law of fiqh is changing according to changes in place and time according to the rules of fiqh.<sup>36</sup>

تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَمْكَانِ وَالْأَزْمَنَةِ

Meaning: The law changes according to changes in place and time

In the case of the validity of a marriage, a valid marriage today will be different from being legal in the days of classical fiqh scholars. If classical fiqh scholars have never discussed the importance of registering marriages, the four pillars of marriage, namely the prospective bride, marriage guardian, two witnesses and the ijab Kabul, have fulfilled the validity of a marriage. With these four pillars of marriage, public marriage in the salafu as-shalih era has benefited from taking the benefits of marriage and avoiding harm.

However, if the four pillars of marriage are applied to a legal state like Indonesia, it is not enough to achieve a valid marriage. It is necessary to have a marriage registration to prove the marriage is legally and religiously valid. The reason is that marriage registration will prevent society from harm and protect two from Adhoruriyyatu-l-Koms, namely Hifdzu-d-Din and Hifdzu-n-Nashl.

In a state of law, the wife's status from unregistered marriages is invalid as Article 6 paragraph 2 of the KHI also states that marriages carried out outside the supervision of the Marriage Registrar have no legal force; article 4 of the KHI states that marriage is legal if it is carried out according to Islamic law following Article 2 paragraph 1 of Law no. 1 of 1974 concerning marriage was then strengthened by Article 2 paragraph 2 which states that marriages must be recorded.

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<sup>36</sup><http://pm.unida.gontor.ac.id/fiqih-pondasi-ilmu-hukum-dan-etika>  
accessed on February 9, 2022 at 23:10 WIB



Likewise, children born from sirri marriages will be equated with the status of children born out of wedlock. They will only have a civil relationship with their mother as Law no. 1 of 1974 concerning marriage; article 43 paragraph 1 states that children born out of wedlock will only have a civil relationship with their mother and their mother's family.<sup>37</sup> Access to public service administration will also be hampered, such as ownership of family cards, birth certificates, and BPJS cards as in Law no. 23 of 2006 concerning population administration article 3, which states that every citizen is obliged to report population events and other significant events to support the requirements for population data at the civil registry office.<sup>38</sup> Ownership rights to inheritance rights will not be obtained by sirri's wife if there is a property dispute in the future because the marriage is not legally valid. The negative impact of not registering a marriage is more significant than the benefits when viewed from the reasons above. So as in the rules of fiqh.<sup>39</sup>

المَقَاسِدِ لِي لِبِ الْمَصَالِحِ

Meaning: avoiding harm takes precedence over taking advantage.

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<sup>37</sup> See Law no. 1 of 1974 concerning Marriage, article 42 paragraph 1 which reads: "anak anak yang sah adalah anak anak yang dilahirkan dalam atau sebagai akibat perkawinan yang sah" which the meaning is Legal children are children born in or as a result of a legal marriage. See also article 43 paragraph 1 which states that "anak yang dilahirkan di luar perkawinan hanya memiliki hubungan perdata dengan ibunya dan keluarga ibunya" which the meaning is Children born out of wedlock only have a civil relationship with their mother and their mother's family

<sup>38</sup> See Law no. 23 of 2006 concerning Population Administration article 3 which reads, "Setiap Penduduk wajib melaporkan peristiwa kependudukan dan peristiwa penting yang dialaminya kepada Instansi Pelaksana dengan memenuhi persyaratan yang diperlukan dalam pendaftaran penduduk dan pencatatan sipil". Which the meaning is Every resident is obliged to report population events and important events they experience to the Implementing Agency by fulfilling the requirements needed for population registration and civil registration.

<sup>39</sup> Abdul Hamid Hakim, *Mabaadi Awaliah Fii Ushulil Fiqhi wa Al-Qawaaid Al-Fiqhiyyah*, Jakarta : Maktabah Sa'adiyah Putra, 1927, p. 35



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Efforts to register marriages are also part of Saddu-dz-Dzari'ah, intermediaries to close the way for harm. Marriage registration will be an intermediary to avoid losses obtained by the child and wife in the future.<sup>40</sup> There needs to be an action to get legalization either through the marriage *itsbat* program or remarriage at the KUA. However, the interview facts illustrate that the marriage *itsbat* is very foreign to them. This is because there is no socialization among village officials about the marriage *itsbat* program, and it does not encourage the legalization of marriage. Hence, their knowledge of the terms, procedures and procedures for legalizing marriage is unknown. This is different from the situation in Kelilik village in the last two years with village programs in encouraging, supporting and facilitating the legalization of sirri marriages either through *itsbat* marriage or remarriage at the KUA.

In terms of public understanding of the legality of marriage through *itsbat* marriage, it can be specified that the professional informants who work as farmers and traders do not know at all about the *Itsbat* marriage program due to limited information in their environment. They only rely on the traditions and habits of the village community in legalizing marriage, namely remarriage at the KUA.<sup>41</sup> People with civil servant professions, employees and lecturers know about the *itsbat* marriage program at a glance without knowing more about the requirements, procedures and bureaucratic flows. They think that legalization can take the path of *itsbat* marriage and remarriage. If it is specified by level of education, most Kutorejo villagers have high school graduates. All said that they did not know about the *itsbat* marriage program except for those who played the role of village officials. Village officials only know superficially about the *itsbat* marriage program without in-depth knowledge of *itsbat* marriage. Suppose the educational community is at levels 1, 2 and 3. In that case, some of them are aware of the *itsbat* marriage program, and some do

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<sup>40</sup> Muhammad Abu Zahrah, *Ushul Fiqih*, Jakarta : Pustaka Firdaus, 2017, p. 467

<sup>41</sup> Fauzan, Burhan, Mimi, Mona, Irawan, David, Anita, interviews with related informants



not know it in-depth, depending on the profession they are currently pursuing.<sup>42</sup>

*Itsbat* Marriage is a solution to reduce the number of unregistered marriages in Indonesia because Article 7, paragraph 2 of the KHI explains that all marriages that a marriage certificate cannot prove can then file a marriage *itsbat* to the Religious Courts. *Itsbat* marriage provides a space and a way out to protect people's rights to Marriage and provide legal certainty of Marriage to all Indonesian people. In Article 7 of the KHI, the authority of *Itsbat* Marriage in the Religious Courts applies to the following: unregistered marriages that occurred before the enactment of Law no. 1 of 1974 concerning Marriage, missing marriage certificates, doubts about the validity of a marriage, the importance of divorce and marriages carried out by those who do not have marriage barriers according to Law no. 1 of 1974. PERMENAG No. 3 of 1975 Article 39 paragraph 4 also explains that the KUA cannot make duplicate marriage certificates due to damage, loss or other reasons. So to prove the existence of Marriage, it is necessary to have a marriage determination (*itsbat* marriage) from the Religious Courts as long as the Marriage is carried out before Law no. 1 of 1974 applies. The problem now is whether *itsbat* marriage can be used as a solution to unregistered marriages that occurred after Law no. 1 of 1974 in the village of Kutorejo? This refers to article 4 of the KHI, following article 2, paragraph 1 of Law no. 1 of 1974 concerning Marriage "Marriage is valid if it is carried out according to the laws of each religion and belief".

Sirri marriages that have occurred can be investigated whether each Marriage follows the pillars and legal requirements of the religion or not because this affects the results of the Religious Court judge's decision to accept the application for *itsbat* Marriage and the issuance of a marriage certificate.<sup>43</sup> Suppose the sirri marriage has fulfilled the

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<sup>42</sup> Zainal Abidin, Ramawansyah, interviews with informants from the Kutorejo village community.

<sup>43</sup> Interview with the Head of KUA on August 2, 2021 at 11.45 WIB. See also the Technical Administration and Technical Manual for Religious Courts 2008 published by the Supreme Court of the Republic of Indonesia which states "The Religious Courts can only grant the application for *Itsbat* Nikah as long as the marriage



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pillars and conditions for a valid marriage and does not violate the marriage prohibition in Articles 8-10 of Law no. 1 of 1974. In that case, the marriage certificate can be submitted to the Religious Court.<sup>44</sup> However, suppose the *sirri* marriage does not meet the pillars and legal requirements of a marriage. The marriage certificate cannot be submitted and must register the remarriageremarriage at the local KUA.

After interviewing several Kutorejo villagers, Irawan's brother, who had legalized Marriage, was not recorded. Brother Irawan personally went to the KUA and the Religious Courts offices with the NTR letter and witnesses from his previous Marriage. There is no contribution from any party in assisting the process.

Judging from the case of Mimi's brother, the solution to the problem is to request a certificate of divorce from the local Religious Court so that the *itsbat* marriage can be submitted. According to witnesses, their Marriage met the pillars and conditions for a valid Islamic marriage. If we examine the case of sister Mona, the pillars and conditions for a valid marriage according to religion and law are not fulfilled because the Marriage took place when she was 17 years old and pregnant with her first child, while the *iddah* of a pregnant woman is until she gives birth. It is very likely that if he submits a marriage certificate, it will be rejected by the Religious Court and transferred to a remarriageremarriage at the KUA. It is different from the case of brothers David and Anita Putri that their Marriage fulfils the legal requirements and the pillars of Marriage according to religion but does not meet the general minimum requirements for Marriage in Indonesian law. They did not apply for a marriage dispensation to the Religious Court, so the *sirri* marriage took place when they were 17 years old. His application for *itsbat* marriage will likely be rejected and

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is held fulfill the requirements and pillars of marriage according to Islamic law and the marriage does not violate the marriage prohibition regulated in Article 8 to Article 10 of Law no. 1 of 1974 concerning marriage”

<sup>44</sup> (Hakim 2017) Muhammad Lukman Hakim, A Thesis entitled “Kebijakan *Itsbat* Nikah Terhadap Pernikahan Yang Tidak Tercatat Dalam Buku Register Nikah (Studi Analisis di KUA Kecamatan Singorojo Kabupaten Kendal), UIN Walisongo, Semarang, 2017



transferred to a remarriageremarriage at the KUA. From the problems above, the authors think that reducing the number of unregistered or unregistered marriages is as follows:

1. There is the socialization of village officials and KUA to the community about the impacts and dangers of sirri Marriage
2. Village officials collect data on sirri marriages that have occurred and marriages that occurred before Law no. 1 of 1974 concerning valid marriages or marriages that still make NTR a marriage certificate
3. Encouraging the perpetrators of unregistered marriages to immediately apply for legalization and registration of marriages, either with the marriage *itsbat* program or remarriageremarriage at the KUA.
4. Closing the door of sirri Marriage among the village
5. The Office of Religious Affairs as the Marriage Registrar (PPN), the Religious Courts and village officials must work together in conducting the Mass Marriage *Itsbat* program or Mobile *itsbat* marriage.
6. The village apparatus can be a bridge to facilitate the bureaucracy in managing marriage registration documents through *itsbat* marriage or remarriageremarriage at the KUA.
7. The village facilitates the bureaucracy for submitting a marriage dispensation to the Religious Court for underage couples.

## CONCLUSION

1. The phenomenon of *itsbat* marriage in Kutorejo village is very minimal, as evidenced by the low rate of *itsbat* marriage in Kutorejo village in KUA data in the last 2 years. This is due to the low public understanding of government programs and there is no real socialization from the village in bridging marriage registration either through *Itsbat* Nikah or remarriage at the KUA.



**Marriage Legality through Marriage *Itsbat* According to the View of the People...**

2. The motives for submitting the legalization of sirri marriage through *itsbat* marriage are various, namely:
  - a. Obtain property rights if one spouse dies and inheritance rights for his wife/husband and children in the future if one of the spouses dies
  - b. Ease of administration and filing of Hajj and Umrah pilgrimages
  - c. Possession of a family card and access to public administration services for children such as birth certificates and education services
  - d. Get the right of marriage that is obtained by a legally valid marriage, both Family Cards, Birth Certificates and BPJS

The views of the Kutorejo village community on the legality of marriage are absolute to be pursued but are constrained by the limited understanding of the Marriage Law, the age that has not reached the minimum limit for submitting marriage legalization and the difficulty of the bureaucracy in managing legalization administration so that very few have attempted to submit their marriage certificates to the public. Religious courts. However, what has become a polemic is that *itsbat* marriage is a foreign program for the people of Kutorejo village. The absence of socialization and information on *itsbat* marriage as well as encouragement to register marriages obtained by some Kutorejo villagers.

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