

**LEGITIMACY OF ITSBAT MARRIAGE WITNESS
AT THE RELIGIOUS COURT OF BATANG**

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ABSTRAK

Tulisan ini menerangkan terkait keabsahan saksi *itsbat* nikah di Pengadilan Agama. Ketentuan kebolehan mengajukan *itsbat* nikah telah mengalami pergeseran seiring dengan kemajuan jaman. Pada awalnya *itsbat* nikah dapat diajukan permohonan ke Pengadilan Agama untuk pernikahan yang tidak tercatat di Kantor Urusan Agama sebelum berlakunya Undang-Undang Nomor 1 Tahun 1974, namun sudah mengalami perkembangan bahwa *itsbat* dapat diajukan permohonan sekalipun pernikahan itu dilakukan setelah berlakunya Undang-Undang Nomor 1 Tahun 1974. *Itsbat* nikah secara hukum perdata telah menyelesaikan masalah. Pernikahan telah dianggap absah dan berkekuatan hukum setelah terbitnya penetapan dari Pengadilan Agama. Namun keabsahan saksi *itsbat* nikah yang harus diteliti, apakah saksi memahami hukum pernikahan terkait syarat sahnya pernikahan. Dalam proses *itsbat* nikah “saksi” merupakan salah satu unsur yang harus ada dalam persidangan. Maka posisi saksi menjadi sangat penting dan menentukan. Tujuan penulisan ini untuk mengeksplorasi terkait urgensi saksi *itsbat* nikah. Sehingga *itsbat* nikah tidak hanya absah menurut hukum perdata namun juga sah menurut hukum agama. Untuk mendapatkan gambaran yang gamblang penulis mengadakan wawancara dengan pihak Pengadilan Agama Batang. Adapun kontribusi yang diharapkan dapat memberikan pemahaman pemohon *itsbat* nikah agar selektif dalam menentukan saksi *itsbat* nikah.

Kata kunci : saksi, absah, *itsbat* nikah

ABSTRACT

This paper explains the legitimacy of the witness itsbat marriage in the Religious Courts. The provisions on the permissibility of submitting a marriage itsbat have shifted along with the progress of the times. Initially, an application for itsbat marriage could be submitted to the Religious Courts for marriages that were not registered at the Office of Religious Affairs prior to the enactment of Law Number 1 of 1974, but it has been developed that an application for itsbat can be submitted even if the marriage is carried out after the enactment of Law Number 1 of 1974. 1974. Itsbat marriage according to civil law has resolved the problem. Marriage has been considered valid and legally binding after the

issuance of a decision from the Religious Court. However, the validity of the witness 's marriage certificate that must be examined is whether the witness understands the law of marriage regarding the conditions for a valid marriage. In the process of itsbat marriage, the "witness" is one of the elements that must be present in the trial. So the position of the witness becomes very important and decisive. The purpose of this paper is to explore the urgency of the witness itsbat marriage. So that itsbat marriage is not only valid according to civil law but also valid according to religious law. To get a clear picture the author conducted interviews with the Batang Religious Court. The contribution is expected to provide an understanding of the applicant for itsbat marriage to be selective in determining witnesses for itsbat marriage.

Keywords: witness, valid, marriage itsbat

Introduction

In doing muamalah, religion recommends to be recorded as an anticipation of disagreements in understanding. Especially transactions for a long time. So recording a transaction is the right step to avoid problems that can arise. So it is no exception, including the importance of registering marriage events with the competent authorities. Marriage is a sacred covenant that is strong, eternal and eternal. So the marriage bond must be strengthened with authentic evidence in the form of a marriage certificate quote made by the Marriage Registrar. Because, even though marriage is a strong agreement, if there is no authentic evidence then the agreement is fragile. As an effort, the marriage must be registered in order to get the power of civil law. Steps taken for married couples who are not registered at the Office of Religious Affairs, submit an application for itsbat marriage to the Religious Court to obtain the validity of the marriage. One of the requirements for submitting an application for itsbat

marriage is a witness who must be presented at the trial.

Discussion

A witness is a person who sees, hears, and experiences directly an event that occurs, so that witness testimony can be used as one of the considerations to resolve an ongoing legal case. In civil cases, witnesses are one of the evidence tools used by judges to decide a case. Evidence tools include; written evidence, witness evidence, allegations, confessions and oaths. In civil cases, witnesses determine that there are people who are prohibited or may not be heard as witnesses at the trial, namely; 1) blood family and marriage family from one of the parties according to straight lineage; 2) the wife or husband of one of the parties even though they are divorced; 3) children who are not certain that they are 15 (fifteen) years old; 4) a madman, although he sometimes has vivid memories. Witnesses in civil cases must be sworn in (HIR Pasal 145).

Itsbat marriage is the submission of a marriage ratification application addressed to the Religious Courts to determine the validity of the marriage and obtain legal protection. *Itsbat* of marriage is proposed by a couple whose marriage has been carried out according to Islamic law, but is not recorded by the Marriage Registrar. The practice of *itsbat* marriage at the Batang Religious Court has been carried out in accordance with applicable laws and regulations. However, it is necessary to be careful and selective in determining the witness for *itsbat* marriage. By looking at the means of proof in civil cases, the author wants to explore and analyze the means of proving "witnesses" in the *marriage* certificate. This is important because in civil cases the witness has a position which is one of the considerations of the judge in deciding the case. The author raises this issue because the *marriage* certificate submitted by the applicant to the Religious Courts is not based on the will of the perpetrators of unregistered marriages, but because of encouragement from other parties, including; because he will be the guardian of his child's marriage (otherwise the *marriage* certificate of the child is married to the guardian of the judge because there is no authentic evidence of parental marriage), so that the father's name is listed on the child's birth certificate, and so on. Thus, the perpetrators of unregistered marriages feel that there is no problem if they do not submit an application for *itsbat* marriage. In the process of *itsbat* marriage, the witness is one of the elements that must be present in the trial. So the position of the witness

becomes very important and decisive, for that the author highlights that the witness must actually witness the marriage event, not only to fulfill administrative requirements. Registration does not ratify, but marriages that have met the requirements and pillars of marriage are registered to obtain civil legality. This research was conducted from 2017 to 2021 at the Batang Religious Court.

Marriage is legal if it is carried out according to the laws of each religion and belief. Each marriage is recorded according to the applicable laws and regulations. Based on this provision, marriage must meet the requirements of religion and civil administration. According to the Compilation of Islamic Law article 7 paragraph (1) marriage for people who are married according to Islamic law can only be proven by a marriage book made by a Marriage Registrar (KHI Buku I). In another part the provisions of government regulations explain that the marriage book is a written witness that the marriage has taken place, and the government provides solutions for couples who are unable to show authentic evidence that the marriage has taken place, namely by applying for a *marriage* certificate in the Religious Courts. *Itsbat* marriage in the Religious Courts will provide legal protection to the couple, and the offspring resulting from a previous marriage, including the authority of the offspring and the wealth owned in the marriage.

On the basis of this regulation, it can be understood that recording a marriage event does not become a valid marriage, because a marriage is

declared valid if it is carried out according to one's beliefs and beliefs. In the event that the validity of a marriage is emphasized as stated in Article 4 of the Compilation of Islamic Law, a marriage is said to be valid if it is carried out according to Islamic law; Article 5, paragraph (1) in order to ensure the orderliness of marriage for the Islamic community, every marriage must be recorded, (2) the marriage registration as referred to in paragraph (1) is carried out by the Marriage Registrar. Marriage registration is the realization of administrative order and order, and to maintain family continuity (*mitsqan ghalidzan*). Marriage registration is realized by means of a marriage book, both of which get a copy, in the event of a dispute or leaving dependents, then those involved can act to obtain rights, with the marriage book, husband and wife have authentic evidence of the marriage that was carried out (Rofiq, 2000: 107).

Research that the author has compiled will examine from the point of view of the validity of the witness *itsbat* marriage in the Batang Religious Court. In this study using The method of analysis is qualitative in the process of deductive and inductive inference as well as in the analysis of the dynamics between observed phenomena using scientific logic. *Itsbat* nikah ensures the law on marriage for couples who have met the requirements of marriage and have nothing to do with marriage ties with other parties. If there is a marriage agreement with another party, it will not be passed in court. The agency that oversees the sub-district marriage registration (KUA) becomes the operational unit of the

Ministry of Religion when viewed institutionally as the front guard in carrying out the main tasks and functions of serving and assisting the people in spiritual activities in the field of religion, including recording marriages.

Marriage can only be proven by a marriage certificate made by the Marriage Registrar (KHI Pasal 7 ayat 1). The marriage registration book serves as a sign that the marriage is taking place and there is a guarantee for the couple useful as proof of the existence of the marriage providing protection of the rights of offspring born from the marriage. In connection with the problem in submitting *itsbat* marriage, it's written Article 7 paragraph (3) KHI of which are described, namely If the marriage cannot provide evidence with a marriage book, *it can submit an application for marriage* to the Religious Court in connection with the following matters, namely; a . There's a wedding for complete divorce ; b . Loss of marriage book; c. Doubt about the validity of marriage; d. Previous marriage before the enactment of the Marriage Law ; and n e. The wedding that took place the unstoppable couple wedding in accordance Marriage Law.

Thus , *it sbat* n marriage is the solution taken by the marriage actor who is not registered with the authorized agency in order to obtain a civil law decision on the marriage carried out and the offspring produced in the marriage have legal force. Parties who can apply for a marriage *itsbat* are from the couple, descendants, marriage guardians and parties related to the marriage. In its

implementation, as stated in the procedure for submitting an application for *itsbat* marriage, the provisions that must be fulfilled, that is; 1. Letter application *it sbat* n ikah addressed local Religious Courts ; 2. A statement from the local KUA explaining about marriage meant no registered ; 3. Introduction from the Village Head/Lurah explaining about who submitted already married; 4. Copies ID card applicant *itsbat* nikah ; 5. Paying cost litigation ; 6. Others determined by the judge in the trial.

Nikah siri when it takes place is sufficient and there is no obstacle to marriage according to *syara'*, the marriage contract is valid, and is protected by Article 4 KHI explained, Marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage. *Itsbat* n marriage is a solution that can be taken by husband and wife who marry according to *syara'* so that obtain protection from the government agency (KUA) for the marriage contract that has been carried out by the couple and the off spring born in the marriage, so that the marriage in question gets state recognition.

Perpetrators of unregistered marriages seem to receive moral protection from groups with a thin religious dimension. Knowledge of religion that is not accompanied by knowledge of applicable government laws and regulations. This group views that marriage events do not need to be recorded nor are they in the terms and conditions of marriage. Marriage is considered a personal right and does not need to involve many people. And

there is no set of sanctions for the perpetrators of unregistered marriages or marriages that are not recorded at the authorized agency. This is one of the factors that encourage the occurrence of unregistered or unregistered marriages. So to encourage the public to register marriage events at the authorized agency requires intensive communication between the authorities and the community to raise awareness regarding the importance of recording or registering an event, one of which is a wedding event. Marriage is a solid and strong agreement, it must be supported by authentic evidence that applies throughout time. Authentic evidence of a marriage event, namely a marriage certificate quote made by a Marriage Registrar. This is where it is important to apply for a *marriage* certificate for married couples who are not registered to get the legal force of the marriage event in question. In submitting the application for *itsbat* marriage, presenting the correct witnesses, so that the determination of the marriage *itsbat* is not only valid under civil law but also has the fulfillment of religious law.

The judge's consideration was to accept the *marriage* certificate under the age stipulated in the Religious Courts in accordance with Article 28 paragraph (1) of Law no. 4 of 2004 concerning judicial power which states; Judges are obliged to explore, follow and understand the legal values and sense of justice that live in society. Judges must innovate and be creative to consider the issue of *itsbat* marriage under the stipulated age. In this matter, the Religious Courts take a policy by using

provisions on several matters, namely; the benefits of society, *qath'i* law in civil law, namely legal provisions for children born from the marriage, legal provisions for the position of assets in marriage, then the judge considers in deciding the reasons for justice, reasons for the reality of regulations, reasons for damage to the couple husband and wife to marriage (Maskuni, *Kritik Pertimbangan Hakim Mengabulkan Isbat Nikah Bagi Pasangan Di Bawah Umum di Pengadilan Agama Marabahan*: 2018).

Recording is administrative in nature as a completeness of the agency's book keeping. With the aim that the marriage is clear and provides evidence that the marriage has taken place and the public can understand the events of the marriage and can show evidence in the form of an official letter, then in time it can be used, especially as authentic written evidence. The provisions of this KHI provide an opportunity for couples for marriage who do not have evidence that the marriage has taken place to submit an application for *itsbat* marriage to the Religious Courts, so that residents are no longer worried about the legal status of their marriage. After the application for *itsbat* marriage is granted by the Religious Courts, the marriage becomes official for state law and gets legal legality. The hope to be achieved in establishing the law (*maqasid ash-syariah*) is to realize benefits and avoid harm. The *itsbat* of this sirri marriage tends to be *hifzu naslu*, *hifzu mal*, and *hifzu nafs* (Khamidyah, *Isbat Nikah Pada Pernikahan Siri Dalam*

Kompilasi Hukum Islam Menurut Maqasid Asy-Syari'ah: 2019).

Marriage that is not registered with the competent authority but in its implementation uses the provisions of the syara' marriage law , then the state does not guarantee rights . as well as obligations to the party who binds himself in the unregistered marriage. *Itsbat* marriage is a business submission to obtain the legality of unregistered marriages which are referred to the Religious Courts. The implication of *itsbat* marriage is that marriages that were originally not registered at the agency (KUA) will become registered and have the power of civil law and the government will protect the pair (Hayati, *Penetapan Hukum Isbat Nikah Siri di Pengadilan Agama Palembang (Studi Kasus Perkara Nomor: 1929/PDT.G/2016/PA.PLG)*: 2019).

Siri marriage is a marriage that is carried out according to sharia but is not registered to the relevant agencies . Religious understanding siri marriage is considered valid , if it has been fulfilled the terms and conditions of marriage . In contrast to the civil law perspective , marriages that are not registered with the relevant agencies even though with religious provisions is permissible but not registered Becomes *illegal* and not legally enforceable due to the absence of written evidence complete wedding _ in accordance the applicable laws and regulations that result in the unregistered married couple not get related public services in the rights of the spouse and the child, namely list of family members (KK) , child's birth certificate (certificate) , widow's facilities , joint assets and others

(Hasyim, *Legalisasi Nikah Siri Pada Perkara Isbat Nikah Di Pengadilan Agama Palopo*: 2021).

Itsbat marriage is a solution step and gets legality under civil law. Matters related to authentic marriage data have been answered and even events that occurred long before the application for *itsbat* marriage was filed can be claimed to be recognized as a legal event in marriage.

The parties who are entitled to apply for *itsbat* marriage are husband or wife, their children, marriage guardians, and parties with an interest in the marriage. The method for *itsbat* marriage after the husband dies is that the surviving party can submit an application to the Religious Court. The status of the biological father of the child is clear, the inheritance in the family is clearly divided, the responsibility for education and the survival of the child is clear. The legal consequences of *itsbat* marriage are that the marriage is considered valid by the state.

Conclusion

Itsbat marriage is a solution that can be taken in order to obtain legal protection from the authorized agency for a marriage contract that has been carried out by an unregistered couple and their off spring born in marriage, so that the marriage in question gets state recognition. However, in practice, to determine the witness for *itsbat* marriage, one must be careful and follow the applicable procedures, because if there is a falsification of information or conditions that are not true then the marriage is not valid. *Itsbat* marriage is determined by the

judge if the specified requirements have been met. *Itsbat* nikah does not legitimize a marriage that is invalid, which is invalid even though it has been determined by the judge, if the conditions put forward before the judge are false. Based on the problems related to *itsbat* marriage, it can be understood that the *itsbat* of marriage raises the power and provisions of civil law on marriage engagements carried out secretly or secretly after obtaining a decision from the Religious Court. However, it is necessary to be extra careful in determining the witnesses for submitting the *marriage* certificate. Correct data and witnesses who actually witnessed the marriage contract in the past are very necessary in determining the *itsbat* of marriage . *The basis for the judge's consideration in the case of itsbat nikah is the Compilation of Islamic Law Article 5 paragraph (1) In order to ensure the orderliness of marriage for the Islamic community, every marriage must be recorded.* The legal consequences of resufing *itsbat* marriage will have an impact on their children, so that children born will be considered as children born out of wedlock and do not have a civil relationship with their father, only have civil rights with their mother and their mother's family.

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