

ISBAT NIKAH AS A SOLUTION TO THE LEGALITY OF SIRI MARRIAGE: A CASE STUDY AT THE BINJAI RELIGIOUS COURT

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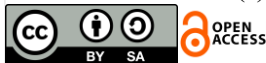
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Abstract : Unregistered marriages (nikah siri)—which are religiously valid but not recorded by the state—give rise to legal, social, and administrative problems, particularly for women and children. This study seeks to identify the factors driving the prevalence of nikah siri in Binjai City and to analyze the effectiveness of isbat nikah as a mechanism for legal validation from the perspective of Islamic law and national law. A qualitative approach was employed using a juridical-sociological method through interviews with judges of the Religious Court and examination of case documents. The findings indicate that local cultural norms, social pressures, economic limitations, and low legal literacy are the primary factors contributing to the occurrence of nikah siri. Isbat nikah proves essential as a mechanism for legalization, yet it faces obstacles related to evidentiary requirements and administrative procedures; in certain circumstances, saksi istifadah is used as an alternative form of proof. This study underscores the importance of an active judicial role in ensuring access to justice and broadening the understanding of Islamic law by reassessing the application of isbat nikah as a means of protecting the rights of women and children within the framework of maqāṣid al-sharī‘ah and Indonesian Islamic family law.

Abstrak : Pernikahan siri yang sah secara agama namun tidak tercatat di negara menimbulkan persoalan hukum, sosial, dan administratif, terutama bagi perempuan dan anak. Penelitian ini bertujuan mengidentifikasi faktor penyebab

maraknya nikah siri di Kota Binjai serta menganalisis efektivitas isbat nikah sebagai solusi legalitas dalam perspektif hukum Islam dan hukum nasional. Pendekatan yang digunakan adalah kualitatif dengan metode yuridis-sosiologis melalui wawancara dengan hakim Pengadilan Agama dan telaah dokumen perkara. Hasil penelitian menunjukkan bahwa budaya lokal, tekanan sosial, keterbatasan ekonomi, dan rendahnya literasi hukum menjadi faktor utama penyebab nikah siri. Isbat nikah terbukti penting sebagai mekanisme legalisasi, namun menghadapi kendala pembuktian dan administrasi; dalam kondisi tertentu digunakan saksi istifadah sebagai alternatif bukti. Penelitian ini menegaskan pentingnya peran aktif hakim dalam menjamin akses keadilan serta memperluas pemahaman hukum Islam dengan meninjau penerapan isbat nikah sebagai perlindungan hak perempuan dan anak dalam kerangka maqashid syariah dan hukum keluarga Islam Indonesia.

INTRODUCTION

Unregistered marriages (nikah siri)—religiously valid unions that are not recorded by the state—constitute a complex phenomenon that involves not only legal dimensions but also deep-rooted social, cultural, and economic factors. According to Yanuel Albert Faisan (2020), one of the primary causes of the prevalence of nikah siri is the community's limited understanding of the importance of formal marriage registration. This situation is compounded by the perception among some segments of society that a religious marriage contract (akad nikah) alone is sufficient to establish marital validity, without recognizing its legal implications. Such misconceptions frequently result in ambiguous legal status for both spouses and any children born from the marriage. (Yanuel Albert Faisan et al., 2020)

Cultural factors remain a dominant force sustaining the practice of nikah siri. Nurjanah (2023) highlight that early marriage—often carried out through nikah siri—is heavily influenced by cultural norms and social pressure. (Nurjanah et al., 2023) Marrying young is perceived as an expression of obedience to tradition, even when it contradicts prevailing statutory regulations. The tension between customary norms and state law further complicates the situation, causing communities to demonstrate greater loyalty to local traditions than to positive law. In the context of Binjai City, early marriages are frequently conducted clandestinely due to age restrictions mandated by law. In several cases, nikah siri occurs because couples are unaware that they may petition the Religious Court for a marriage dispensation.

Beyond cultural dimensions, economic conditions also play a significant role in perpetuating unregistered marriages. As explained by Nurjanah (2023), financial constraints often discourage couples from registering their marriage due to administrative costs and fears of bureaucratic complexity. Alongside this, limited access to information regarding the legal rights and obligations of marriage reinforces the tendency to choose informal alternatives. (Nurjanah et al., 2023)

Psychological factors equally shape the decision to enter into a *nikah siri*. Maulana Sari (2024) notes that young couples who engage in unregistered marriages are often pressured by family or the surrounding community, particularly in cases involving premarital pregnancy (Maulana sari, 2024). In such circumstances, *nikah siri* is perceived as the quickest means of avoiding social stigma, despite the long-term legal and social consequences. This observation aligns with statements from judges at the Binjai Religious Court, who indicate that most *isbat nikah* petitions are submitted by couples who previously married informally as a response to unplanned premarital pregnancy.

Based on these findings, it may be concluded that *nikah siri* in Binjai City is driven by an interplay of cultural, economic, and psychological factors. Customary norms, financial limitations, and social pressure—especially in situations involving premarital pregnancy—push couples toward unregistered marriage. Limited legal awareness and restricted access to judicial services further reinforce this choice, making *isbat nikah* a widely pursued legal remedy following *nikah siri*.

The negative impacts of *nikah siri* become especially apparent when examined through the lens of human rights, particularly the rights of women. Maulana Sari (2024) emphasizes that women in unregistered marriages are highly vulnerable to domestic violence, as the absence of formal legal status undermines their ability to seek legal protection. In cases of abuse, women often lack a strong legal basis to claim justice, given that their marriage is not officially recognized by the state. (Maulana sari, 2024)

Children born from *nikah siri* also constitute a vulnerable group directly affected by their parents' legal status. Natasya (2023) assert that these children

commonly encounter difficulties obtaining essential civil documents such as birth certificates, which subsequently restricts their access to education, healthcare, and other social protection services (Natasya et al., 2023). This situation creates a cycle of poverty that is difficult to break without appropriate policy intervention. Judges at the Binjai Religious Court further explain that when *isbat nikah* cannot be granted—particularly in cases involving unlawful polygamy—the available legal solution is to issue a determination of the child’s lineage (*penetapan asal usul anak*) to ensure the child’s legal recognition.

Efforts to mitigate the negative consequences of *nikah siri* have been undertaken through the *isbat nikah* mechanism at the Religious Court. Yanuel Albert Faisan (2020) note that *isbat nikah* functions as a legal instrument that enables couples to obtain formal recognition of their marriage (Yanuel Albert Faisan et al., 2020). However, its implementation is not without challenges. Many couples lack understanding of the procedure and face administrative and financial obstacles that deter them from filing a petition. Judges at the Binjai Religious Court also reveal that the most significant challenge in *isbat nikah* proceedings is establishing proof of marriage—particularly when witnesses are deceased. In such cases, judges may rely on *istifadah* testimony as an alternative form of evidence, pursuant to Supreme Court Circular No. 10 of 2020.

According to publicly accessible annual reports from the Binjai Religious Court, *isbat nikah* cases have fluctuated over the past five years (2020–2024). The year 2020 saw the highest number of cases, with 90 petitions, while 2023 recorded the fewest, with only 13 cases. These data demonstrate that no stable or upward trend exists; rather, variations appear to be influenced by multiple administrative, social, and legal factors.

From the perspective of Islamic law, the practice of *nikah siri* must also be examined through the principles of *maqāṣid al-sharī‘ah* and *maslahah mursalah*, particularly the objectives of protecting lineage (*ḥifẓ al-nasl*) and preserving dignity (*ḥifẓ al-‘irdh*). In line with Auda (2008), the *maqāṣid* approach is not merely textual but contextual and oriented toward the realization of actual human welfare (Auda, 2008). Thus, *isbat nikah* is not solely an administrative matter but part of broader efforts to uphold justice and public interest, especially concerning

the rights of women and children. This principle echoes Qur’anic commands in Surah al-Nisā’ (4):3 and (4):11–12, which emphasize the importance of clarity in marital rights and inheritance.

Academically, this study seeks to fill an existing research gap. While numerous studies examine isbat nikah from procedural and administrative perspectives, few analyze its effectiveness from the standpoint of substantive Islamic law that holistically integrates juridical, sociological, and maqāṣid considerations.

Accordingly, this study explicitly aims to analyze the effectiveness of isbat nikah as a form of legal protection within the framework of Islamic law and national law, while highlighting the social factors underlying the practice of nikah siri and the role of judges in ensuring access to justice. The findings are expected to contribute to the development of Islamic family law scholarship by presenting an interdisciplinary analysis that integrates normative and empirical approaches, and by offering policy recommendations to strengthen legal protections for vulnerable groups.

RESEARCH METHODS

This study employs a qualitative approach using a juridical–sociological method to analyze the practice, constraints, and effectiveness of isbat nikah as a mechanism for legalizing unregistered marriages (nikah siri), particularly within the Religious Court of Binjai. This approach was selected because it enables an in-depth exploration of the interaction between legal norms and social realities in the isbat nikah application process.

The research was conducted from January to June 2025, with the primary subjects being judges of the Binjai Religious Court. Data collection techniques consisted of interviews, while data validity was tested through source triangulation and member checking to ensure the accuracy of the information obtained. Data were analyzed using the interactive model of Miles and Huberman, which includes data reduction, data display, and the qualitative drawing of conclusions. Through this process, the study produces a comprehensive and nuanced understanding of the phenomenon under investigation.

DISCUSSION/RESULTS AND DISCUSSION

A. Field Findings

1. The Social Reality of Unregistered Marriages in Binjai City

The social reality of unregistered marriages, particularly *nikah siri*, demonstrates a noticeably increasing trend both in urban areas and in peripheral regions. In major cities, although access to legal services and information is relatively more adequate, *nikah siri* continues to occur due to various factors that lead couples to avoid official marriage registration. Conversely, in peripheral areas, *nikah siri* is often driven by strong local cultural traditions and social norms, where customary practices remain highly respected (Maulana sari, 2024). In such contexts, social pressure compels couples to marry according to local customs without undergoing state legalization, in order to preserve family honor and avoid violating community norms, even though this often creates legal complications in the future.

One of the primary factors sustaining the practice of *nikah siri* is the sense of shame experienced by individuals and their families. In many cases, *nikah siri* is chosen as a solution to conceal shame associated with extramarital relationships or to maintain the family's social image (Surjasni & Akbar, 2025). In social environments that continue to uphold traditional values, the status of widowhood or divorce is often perceived as a social burden, making *nikah siri* an alternative deemed more acceptable for avoiding negative stigma (Winarsih, 2020). This illustrates that the decision to marry without state registration is shaped not only by legal considerations but also by strong cultural dynamics within the community.

In addition, family pressure plays a substantial role in influencing couples to engage in *nikah siri*. Families—particularly parents—frequently encourage their children to marry promptly to avoid social gossip, often disregarding the importance of legal marriage documentation (Angkasa et al., 2024). This situation places couples in a dilemma, compelling them to choose between complying with family expectations or following the legally prescribed procedures, even when

they are aware of the risks associated with such decisions (Raafilia Khairunnisa & Ramdan Fawzi, 2022).

Another factor reinforcing the persistence of nikah siri is the lack of public understanding regarding its legal consequences. Many individuals remain unaware that unregistered marriages may generate serious future legal issues for both the couple and the children born from such unions (Angkasa et al., 2024). Children born from nikah siri may face unclear legal status, hindering their access to inheritance rights and valid birth certificates (Winarsih, 2020). Therefore, enhancing public awareness of the importance of marriage registration is a strategic measure for preventing more severe legal impacts in the future.

2. The Urgency of Isbat Nikah in Indonesian Positive Law

Isbat nikah occupies a strategic position within the Indonesian legal system as a lawful mechanism for validating marriages that were previously unregistered in the state's administrative system. Article 2 paragraph (2) of Law No. 1 of 1974 on Marriage stipulates that every marriage must be recorded in accordance with prevailing legislation. This provision positions registration as an inherent requirement for the formal legality of a marriage (Eri Sandi et al., 2022). In this context, isbat nikah functions as a corrective mechanism enabling couples married through nikah siri to obtain legal recognition from the state through the religious court.

The national legal framework provides a solid normative basis for the implementation of isbat nikah. The Compilation of Islamic Law (KHI), Law No. 3 of 2006 on Religious Courts, and various technical instruments such as Supreme Court Regulation No. 1 of 2015, Supreme Court Circular No. 3 of 2018, and Supreme Court Circular No. 10 of 2020 demonstrate the state's commitment to providing legal protection for couples married outside formal registration procedures (Sururie, 2017). These instruments reinforce the authority of the religious courts to validate marriages and outline the technical standards required in isbat proceedings.

From the perspective of Islamic law, isbat nikah also has a strong normative foundation. According to scholars of the Shāfi'ī school, marriage registration constitutes *taḥqīq al-maṣlahah*—a means of securing public interest—by ensuring

clarity of lineage and civil rights. Meanwhile, the Ḥanafī school does not regard registration as a condition for the validity of a marriage but recognizes it as an administrative obligation aimed at preventing conflict and allegations of impropriety. Thus, isbat nikah may be viewed as an application of the principle of *sad al-dharī‘ah* (preventing potential harm) (Hilmy & Toriqirrama, 2020).

Legal uncertainty is a tangible consequence of unregistered marriages. In practice, couples married through nikah siri lack legal standing to claim rights to marital property, inheritance, or guardianship over children in situations of divorce or death (Zainuddin & Jaya, 2018). Children born from such marriages also frequently encounter obstacles in obtaining birth certificates, which in turn affect their access to education, healthcare, and other civil administrative services (Nazah & Husnia, 2018). Isbat nikah serves as a legal remedy for these issues, offering lawful status and legal certainty to all family members.

From the perspective of *maqāṣid al-sharī‘ah*, isbat nikah constitutes an effort to uphold *ḥifẓ al-nasl* (protection of lineage) and *ḥifẓ al-‘ird* (protection of honor). The formal legal validation of marriage affirms the legitimacy of the family, safeguards the dignity of women, and ensures the protection of children (Hilmy & Toriqirrama, 2020). Within this framework, isbat nikah should not be viewed merely as an administrative procedure but as part of a broader endeavor to realize the higher objectives of Islamic law—namely justice, public welfare, and social order. This principle aligns with the divine guidance articulated in Qur’an Surah al-Nisā’: 3 and al-Nisā’: 11–12, which emphasize the importance of clarity in marital rights and obligations as well as inheritance distribution.

3. Procedure for Filing an Isbat Nikah Petition in the Religious Court

The procedure for filing an isbat nikah petition in the Religious Court consists of several key stages, encompassing formal requirements, substantive requirements, and the judicial process. The formal requirements include the administrative documents that must be submitted by the petitioner, such as the written petition, identity documents, evidence of a religious marriage, and a statement from the Office of Religious Affairs (KUA) or the village head/subdistrict chief confirming that the marriage has not been officially registered. Meanwhile, the substantive requirements relate to the fulfillment of the

essential elements (rukun) and legal conditions of a valid marriage under Islamic law—namely, the presence of a competent bride and groom, a lawful guardian (wali), two upright witnesses, and a valid ijab kabul (offer and acceptance).

Once all requirements are fulfilled, the petition is submitted to the Religious Court and proceeds through several stages, beginning with case registration, followed by mediation (if required), evidentiary hearings through the examination of witnesses and documents, and concluding with the reading of the verdict by the panel of judges. If the petition is granted, the decision may then be used as the legal basis for registering the marriage at the KUA to obtain formal legal recognition of the marriage.

B. Legal Analysis and Interpretation

1. Formal and Substantive Obstacles in Isbat Nikah

In the process of filing an isbat nikah petition, various formal obstacles often arise, posing significant challenges to efforts to obtain legal recognition for unregistered marriages. One of the primary obstacles is when a petition is submitted by a party lacking proper legal standing. Only specific individuals—namely the husband, the wife, or the wife’s lawful wali—possess the legal authority to submit an isbat nikah petition to the Religious Court (Nazah & Husnia, 2018). A judge at the Religious Court emphasized:

“Those who have the right to file for isbat nikah are the husband, the wife, or the wife’s guardian. Others cannot. If, for example, a sibling of the wife files the petition, it cannot be accepted. It is rejected outright because they are not the legally authorized party.”

If a petition is filed by someone who does not meet this requirement, the court may dismiss it immediately without examining the substantive aspects of the case. Based on this judicial perspective, the researcher concludes that such cases highlight the urgent need for broad and comprehensive legal education so that the public fully understands the boundaries of who is legally eligible to act as a petitioner.

In addition to issues of legal standing, the absence of supporting documents constitutes a crucial factor that impedes the isbat nikah process. Documentary evidence—such as a written statement of the marriage contract or declarations

from individuals who witnessed the marriage—is essential to substantiate the petitioner’s legal position (Fajrin et al., 2023). Without authentic documentary support, the court faces significant difficulty in verifying the validity of the marriage being petitioned. This is affirmed by the judge’s statement: “Isbat nikah requires evidence. At minimum there must be a written statement of the marriage, or witnesses. Without these, we cannot issue a decision. If the evidence is insufficient, we must reject the petition.” This issue, according to the researcher, reflects the low level of public awareness regarding the importance of documentation as an integral component of a lawful evidentiary system (Nofriadi, 2019).

This reality illustrates that although, normatively, isbat nikah serves as an ideal legal remedy, in practice numerous formal obstacles render the process difficult to access. Many couples ultimately abandon their efforts because the procedure is perceived as overly complex and uncertain (Yusmi et al., 2022). In this regard, the judge remarked: “We often see people traveling long distances to the court, but because they do not understand the requirements, they leave with no result. This is unfortunate.” In such circumstances, the researcher reiterates that the lack of accessible legal information and limited public legal literacy create significant barriers for individuals seeking to navigate judicial procedures.

Material obstacles related to proving the essential elements (*rukun*) of marriage also frequently emerge as major impediments in isbat nikah applications. One of the most critical challenges is the unavailability of witnesses, particularly when the witnesses have passed away. Under Islamic law, the presence of at least two witnesses is an absolute requirement for the validity of the marriage contract. These witnesses serve to confirm that the *ijab qabul* was lawfully concluded (Hidayah & Fahmi, 2022). The judge explained: “The problem arises when all the marriage witnesses have passed away. If there are no witnesses or any other form of evidence, we cannot validate the marriage.” Thus, when witnesses cannot be produced, or no longer exist, the evidentiary process becomes exceedingly difficult, potentially preventing the petition from being further processed or resulting in its rejection.

Another equally significant obstacle concerns the invalidity or improper status of the wali who officiated the marriage. In Islamic law, the presence of a lawful wali—specifically a wali nasab—is a fundamental requirement for the marriage contract. If the wali who solemnized the marriage is not the rightful guardian or if his whereabouts are unknown, the marriage may be deemed legally defective (Hidayah & Fahmi, 2022). In many cases, the use of a wali hakim without compelling shar‘i justification can also serve as grounds for the court to reject an isbat nikah petition. As one judge explained: “A lawful wali is the wali nasab. Only if there is no wali nasab may a wali hakim be used. But there must be evidence that the wali nasab is unavailable or refuses to act. If a wali hakim is used without valid grounds, we may reject the petition.” This situation creates a dilemma between formal legal requirements and social realities that are often complex.

The inability to prove the occurrence of ijab qabul also constitutes a key material obstacle. The ijab qabul represents the core of the marriage contract and must be established clearly and validly according to shar‘i principles. In the absence of reliable evidence—whether through witnesses, documents, or other forms of record—confirming that ijab qabul was ever performed, the court cannot validate the marriage through the isbat mechanism (Hilya Zulva et al., 2024). The judge emphasized: “The essence of the marriage contract is the ijab and qabul. If this cannot be proven, we cannot validate the marriage. Even if the couple already has children, without proof of ijab qabul, we must reject the petition.” This demonstrates that without this essential element, the legal legitimacy of a marriage cannot be upheld, even when the couple has lived together for many years.

The cumulative effect of these obstacles is an increased vulnerability of couples in unregistered marriages (nikah siri) to legal uncertainty. The absence of legal recognition can have serious consequences, particularly regarding civil rights such as inheritance and the legal status of children. The informality of the marriage not only disadvantages the spouses but also the children born from the union, who may be deprived of adequate legal protection (Sallom & Salamon, 2024). In such circumstances, couples often feel legally constrained in asserting

their status before the state. As a judge stated: “Without isbat, it is difficult for the child to be legally recognized. They cannot be included in the family registry, cannot enroll in school, and cannot receive inheritance. The impact is extremely serious.”

Beyond the difficulty of presenting witnesses, the absence of supporting documents constitutes another significant material challenge. Couples who enter into unregistered marriages (*nikah siri*) generally lack any documentation proving that the marriage occurred. In fact, evidence such as written witness statements or unofficial records could help substantiate the validity of the marriage contract before the court (Ginsu et al., 2022). This concern was emphasized by the judge: “Many who come to the court have no documents at all—only verbal accounts. In such cases, we cannot grant the petition. There must be at least a written document or witnesses.” The researcher concludes that without adequate documentary support, an *isbat nikah* petition lacks sufficient evidentiary foundation, thereby increasing the likelihood of rejection and weakening the petitioner’s legal standing.

2. Istifādah Witnesses as an Alternative Means of Evidence

In *isbat nikah* cases, evidentiary proof constitutes a crucial component because the process concerns the legal recognition of a marriage previously unrecorded by the state. One alternative evidentiary mechanism accommodated within Indonesia’s religious court system is the *istifādah* witness. This mechanism is formally recognized through Supreme Court Circular Letter (SEMA) No. 10 of 2020, which provides guidelines for judges in receiving indirect forms of evidence. An *istifādah* witness testifies based on information obtained from others, rather than from direct observation of the marriage ceremony itself (Siti et al., 2019). This type of testimony becomes particularly relevant when direct eyewitnesses cannot be presented—for example, when they have passed away or their whereabouts are unknown.

A judge of the Binjai Religious Court affirmed this relevance, stating: “If no direct witness is available, we may use an *istifādah* witness. But the source of the information must be clear and credible.” This statement underscores that although

an *istifādah* witness does not provide factual eyewitness testimony, such testimony nonetheless carries legal weight as long as it meets the prescribed requirements.

The principal distinction between an *istifādah* witness and a direct witness lies in the degree of involvement and the mode of acquiring information. A direct witness is physically present at the time of the marriage ceremony and observes the *ijab qabul* firsthand, whereas an *istifādah* witness receives information through the narration of others (Idzhar & Sabnah, 2024). In practice, the presence of *istifādah* witnesses expands the scope of permissible proof, especially when objective circumstances prevent the attendance of direct witnesses. This aligns with the principle of *maṣlaḥah mursalah*, namely the consideration of public benefit in responding to complex social realities. The judge emphasized the necessity of this flexibility, explaining: “*Istifādah* witnesses are very helpful when the original witnesses have died or cannot be found. But we still must verify the validity and credibility of the testimony.”

From the perspective of Islamic procedural law, the use of indirect testimony remains a matter of scholarly debate. Nevertheless, in emergency circumstances, most Sunni and Shi‘a scholars permit the use of *istifādah* testimony provided that the witness possesses a sound reputation and can logically explain the source of the information conveyed (Fatori & Mahyuni, 2025). This reflects the elastic and adaptive nature of Islamic law in addressing societal dynamics. The principle *al-darūrah tubīḥu al-maḥẓūrāt*—that necessity can permit what is ordinarily prohibited—further reinforces this flexibility.

Despite its permissibility, *istifādah* testimony cannot be applied arbitrarily. Several legal standards must be satisfied, including logical coherence, consistency, relevance, and corroboration with other available evidence. Courts also evaluate the witness’s personal integrity, particularly their credibility in presenting information (Idzhar & Sabnah, 2024). In this regard, the judge plays an active role in assessing the quality of testimony to ensure that neither party is disadvantaged. As the judge firmly stated: “Witness credibility is essential. If the source of an *istifādah* witness is unclear, we cannot accept it outright. There must be cross-checking with other evidence.”

Strategically, *istifadah* witnesses play a significant role in expanding the scope of evidentiary mechanisms, particularly in *isbat nikah* cases that frequently face limitations in formal proof. Their presence creates opportunities for couples who married informally (*nikah siri*) but subsequently encounter administrative barriers in obtaining legal recognition of their marriage. Thus, *istifadah* witnesses function not only as an alternative evidentiary tool, but also as a means to strengthen access to substantive justice within Indonesia's Islamic family law system (Wicaksana & Setyorini, 2024). As one judge explained, "Istifadah witnesses represent a legal compromise with social realities on the ground, allowing couples who married in an unregistered manner to still obtain justice."

Nevertheless, *istifadah* testimony cannot stand as the sole basis for determining a legal ruling. Without support from other valid supplementary evidence, acceptance of such testimony may create legal uncertainty. Accordingly, judicial caution becomes a fundamental principle for judges when evaluating the admissibility of *istifadah* testimony. This caution is essential to safeguard the integrity of the judicial process and uphold fair and objective evidentiary principles (Syafirawati et al., 2024). As another judge emphasized, "If there is only *istifadah* testimony without additional evidence, we must be extremely careful. It cannot simply be accepted."

The recognition of *istifadah* witnesses demonstrates that the Islamic legal system is not solely grounded in formalistic norms, but also accommodates rational and empathetic considerations toward social realities. In communities where unregistered marriage remains common—due to economic constraints, cultural practices, or limited legal awareness—indirect forms of evidence offer a pragmatic and contextually appropriate solution (Lestari & Effendi, 2018). Through this approach, courts maintain both legal and moral legitimacy in providing legal protection to individuals vulnerable to administrative exclusion.

Within Islamic jurisprudence, the concept of *testimonium de auditu* (*syahādah al-istifāḍah*) is a subject of scholarly debate. The Shāfi'ī school generally rejects indirect testimony in marriage cases due to concerns about uncertainty (*gharar*). In contrast, Ḥanafī scholars and some Mālikī authorities permit it in circumstances of *'umūm al-balwā* (widespread hardship), such as

when original witnesses have passed away. This divergence reflects the flexibility of Islamic law in responding to empirical social conditions (Yustitia Ismail & Hartini, 2025).

Therefore, a synergistic effort is required among the judiciary, local government, and community leaders to disseminate information regarding the use of *istifadah* witnesses as a valid alternative method of proof. Structured public legal education regarding this evidentiary mechanism will enable communities to better understand their rights and obligations in the marriage legalization process. Further research and legal advocacy are also needed to reinforce an inclusive policy framework governing *isbat nikah* procedures (Huda & Nurhidayattulloh, 2024). Collectively, these efforts aim to strengthen a national Islamic family law system that is more inclusive, progressive, and responsive to societal realities.

3. The Role of Judges in Safeguarding Access to Justice

Judges hold a strategic role in ensuring that justice remains accessible to all segments of society, particularly vulnerable groups such as women and children. Within the religious court system, the judicial role extends beyond the adjudicative function of resolving disputes; it also encompasses a protective mandate to safeguard individual rights that may otherwise be overlooked within the legal system. Women and children frequently face structural injustices arising from unequal social, economic, and cultural relations. For this reason, active judicial engagement is essential to guarantee that legal proceedings are conducted fairly and without discrimination (Prisko Djawaria & Ferdinanda Gole Malo, 2024).

The concept of judicial activism constitutes one of the approaches that strengthens the adaptive capacity of judges in responding to socio-legal challenges not explicitly regulated in statutory provisions. Through this approach, judges are afforded space to develop progressive legal interpretations, particularly in extending additional protection to vulnerable groups. In practice, judicial activism enables judges to adjudicate cases based on moral, ethical, and humanitarian considerations, thereby ensuring that the law functions not merely as a written rule but as a living instrument of justice (Helmi, 2020).

Beyond their formal legal functions, judges are also expected to cultivate an inclusive courtroom environment that is responsive to the needs of marginalized groups, especially women. In its implementation, judges must respect women's participation in legal processes and provide them with a fair opportunity to present their arguments. Some judges even facilitate legal education programs aimed at enhancing women's understanding of their rights in family law, thereby strengthening their capacity to pursue justice (Yaneri & Deswanti, 2021). This situates judges as agents of social transformation rather than mere interpreters of statutory texts.

C. Comparison Between Positive Law Procedures and *Fiqh al-Munākaḥāt*

A comparison between the positive legal system and *fiqh al-munākaḥāt* is essential to illustrate how the two frameworks complement one another in adjudicating *isbat nikah* cases. Conceptually, positive law emphasizes administrative requirements and legal certainty, whereas *fiqh al-munākaḥāt* emphasizes the substantive validity of the marriage contract in accordance with Islamic legal principles.

Aspect	Indonesian Positive Law	<i>Fiqh al-Munākaḥāt</i> (Shāfiʿī & Ḥanafī Schools)
Legal Basis	Law No. 1 of 1974, the Compilation of Islamic Law (KHI), Supreme Court Regulation No. 1/2015, and Supreme Court Circular No. 10/2020	The Qur'an (e.g., Q.S. al-Nisā' 3, 11–12); Prophetic Hadith: "A marriage is not valid without a guardian and two upright witnesses." (Narrated by Abu Dawud)
Primary Objective	To provide administrative legality so that the marriage is formally recognized by the state	To ensure the validity of the marriage contract and clarify the associated sharʿī rights (lineage, mahr, inheritance)
Eligible Applicants	Husband, wife, or lawful guardian	Parties possessing sharʿī legal standing in the contract, such as the guardian (wali) or husband
Primary	Official certificates, direct	Two upright witnesses

Aspect	Indonesian Positive Law	Fiqh al-Munākahāt (Shāfi‘ī & Ḥanafī Schools)
Evidence	witnesses, and marriage-related documents	(shāhidan ‘adl), which may be substituted with istifadah testimony in emergency situations
Istifadah Witness Testimony	Recognized under Supreme Court Circular No. 10/2020 as a form of indirect evidence (testimonium de auditu)	Permitted by some Ḥanafī and Mālikī jurists in cases of ‘umūm al-balwā (widespread hardship); the Shāfi‘ī school generally rejects it except for social matters such as lineage and death
Judicial Considerations	Based on written evidence and the credibility of relevant witnesses	Determined through ijtihād al-qāḍī (judicial reasoning), guided by istiḥsān and maṣlaḥah mursalah
Ultimate Purpose	To ensure legal certainty and formal registration with the Office of Religious Affairs (KUA)	To uphold the public interest (maṣlaḥah) and safeguard ḥifẓ al-nasl (protection of lineage) and ḥifẓ al-‘ird (protection of honor)
Legal Consequences	Issuance of an official marriage certificate; children obtain legal status under state law	Marriage is recognized shar‘ī; family rights are protected according to fiqh principles

The table above demonstrates that positive law and fiqh al-munakahat do not stand in contradiction to one another; rather, they operate in a mutually reinforcing manner. Positive law fills administrative gaps that are not explicitly regulated in the scriptural texts (nash), while fiqh provides the moral and shar‘ī foundations for the implementation of isbat nikah. Accordingly, the practice of

isbat nikah in the Religious Court of Binjai reflects a form of harmonization between national law and substantive Islamic law, in which both systems work toward the same objectives: justice and family welfare.

CONCLUSIONS

Based on the findings and analysis, it can be concluded that isbat nikah constitutes an effective legal remedy for couples married in an unregistered (*siri*) manner to obtain legal recognition and protection of their civil rights. In the Religious Court of Binjai, this mechanism functions not only as an administrative procedure but also as a means of substantive justice that safeguards women and children from the social and legal consequences of unregistered marriages.

Several factors underpin the prevalence of nikah *siri* in Binjai, including cultural practices, economic pressures, and low levels of legal literacy. Under such circumstances, the role of judges becomes crucial—not merely as enforcers of textual law but as agents of justice who also take into account humanitarian values, equity, and public welfare (*maslahah*). Judicial approaches such as flexible evidentiary considerations, including the acceptance of *istifādah* testimony, reflect the application of substantive justice within Islamic family law practice.

Normatively, isbat nikah aligns with the objectives of *maqāṣid al-sharī'ah*, particularly in realizing *ḥifẓ al-nasl* (protection of lineage) and *ḥifẓ al-‘ird* (protection of dignity), as well as the principle of *maslahah mursalah* as an effort to safeguard societal welfare. Thus, isbat nikah serves not merely as a formal legalization instrument but also as a manifestation of Islamic legal values that are just, contextual, and protective of vulnerable groups.

This study contributes to the body of knowledge on Islamic family law by reaffirming that the isbat nikah mechanism is consistent with the principles of *maslahah* and the protection of civil rights. Therefore, enhancing public legal literacy and optimizing the role of judges in ensuring access to justice constitute strategic steps toward realizing a more inclusive and equitable family law system in Indonesia.

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