

ANALYSIS OF EFFORTS TO FILE MARRIAGE ISBAT FOR UNREGISTERED MARRIAGES AT THE RELIGIOUS COURT OF PAMEKASAN

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Abstrak: Penelitian ini mengkaji upaya pengajuan isbat nikah pada perkawinan tidak tercatat di Pengadilan Agama Pamekasan. Penelitian ini bertujuan untuk menganalisis faktor-faktor yang melatarbelakangi pengajuan isbat nikah, mekanisme yang ditempuh, serta implikasi hukumnya dalam perspektif hukum keluarga Islam dan hukum positif Indonesia. Penelitian ini menggunakan metode kualitatif dengan pendekatan sosio-legal, yang menggabungkan analisis hukum normatif dengan data empiris yang diperoleh melalui wawancara, dokumentasi, dan studi literatur. Hasil penelitian menunjukkan bahwa tingginya permohonan isbat nikah mencerminkan adanya kesenjangan antara norma hukum dan praktik sosial masyarakat. Perkawinan tidak tercatat dipengaruhi oleh faktor ekonomi, rendahnya pemahaman hukum, praktik poligami tanpa izin, kendala administratif, serta kuatnya pengaruh adat dan budaya. Selain itu, perkawinan tidak tercatat menimbulkan implikasi hukum yang signifikan, terutama terkait status perkawinan, pengakuan hukum anak, hak waris, serta perlindungan hukum bagi perempuan dan anak. Penelitian ini menyimpulkan bahwa isbat nikah berfungsi sebagai mekanisme korektif yang memberikan kepastian dan perlindungan hukum bagi keluarga. Selain itu, diperlukan upaya preventif melalui peningkatan kesadaran hukum masyarakat dan pendekatan kultural dalam kebijakan hukum. Penelitian ini berkontribusi dalam pengembangan hukum keluarga Islam dengan menekankan pentingnya interaksi antara norma hukum dan realitas sosial. Isbat Nikah; Perkawinan Tidak Tercatat; Kesadaran Hukum; Hukum Keluarga Islam; Pendekatan Sosio-Legal Penelitian ini mengkaji upaya pengajuan isbat nikah pada perkawinan tidak tercatat di Pengadilan Agama Pamekasan. Penelitian ini bertujuan untuk menganalisis faktor-faktor yang melatarbelakangi pengajuan isbat nikah, mekanisme yang ditempuh, serta implikasi hukumnya dalam perspektif hukum keluarga Islam dan hukum positif Indonesia. Penelitian ini menggunakan metode kualitatif dengan pendekatan sosio-legal, yang menggabungkan analisis hukum normatif dengan data empiris yang diperoleh melalui wawancara, dokumentasi, dan studi literatur. Hasil penelitian menunjukkan bahwa tingginya permohonan isbat nikah mencerminkan adanya kesenjangan antara norma hukum dan praktik sosial masyarakat. Perkawinan tidak tercatat dipengaruhi oleh faktor ekonomi, rendahnya pemahaman hukum, praktik poligami tanpa izin, kendala administratif, serta kuatnya pengaruh adat dan budaya. Selain itu, perkawinan tidak tercatat menimbulkan implikasi hukum yang signifikan, terutama terkait status perkawinan, pengakuan hukum anak, hak waris, serta perlindungan hukum bagi perempuan dan anak. Penelitian ini menyimpulkan bahwa isbat nikah berfungsi sebagai mekanisme korektif yang memberikan kepastian dan perlindungan hukum bagi keluarga. Selain itu, diperlukan upaya preventif melalui peningkatan kesadaran hukum masyarakat dan pendekatan kultural dalam kebijakan hukum. Penelitian ini berkontribusi dalam pengembangan hukum keluarga Islam dengan menekankan pentingnya interaksi antara norma hukum dan realitas sosial.

Kata Kunci: Isbat Nikah, Perkawinan Tidak Tercatat, Kesadaran Hukum, Hukum Keluarga Islam, Pendekatan Sosio-Legal.

Abstract : *This study examines the efforts to file marriage isbat for unregistered marriages at the Religious Court of Pamekasan. The research aims to analyze the factors underlying the submission of marriage isbat, the mechanisms involved, and its legal implications from the perspective of Islamic family law and Indonesian positive law. This study employs a qualitative method with a socio-legal approach, combining normative legal analysis with empirical data obtained through interviews, documentation, and literature review. The findings reveal that the high number of*

marriage isbat applications reflects a significant gap between legal norms and social practices. Unregistered marriages are primarily driven by economic factors, lack of legal awareness, unauthorized polygamy, administrative constraints, and the strong influence of customary and cultural traditions. Furthermore, unregistered marriages have substantial legal consequences, particularly regarding marital status, children's legal recognition, inheritance rights, and legal protection for women and children. The study concludes that marriage isbat functions as a corrective legal mechanism that provides legal certainty and protection for families. It also highlights the need for preventive measures, including increasing public legal awareness and integrating cultural approaches into legal policies. This research contributes to the development of Islamic family law by emphasizing the interaction between legal norms and social realities.

Keywords: *Marriage Isbat, Unregistered Marriage Legal Awareness Islamic Family Law Socio-Legal Approach.*

INTRODUCTION

Marriage in the Indonesian legal system is an institution that encompasses both normative and administrative dimensions (Aziz and Iman 2024). (Krestianto and Trisakti 2016). However, in social practice, the phenomenon of unregistered marriages (nikah siri) remains prevalent in various regions, including Pamekasan Regency (Mustofa 2025). This phenomenon reflects a gap between positive legal norms and social realities, where communities still tolerate and even perpetuate such practices.

Theoretically, marriage registration aims to provide legal protection for husbands, wives, and children. Nevertheless, unregistered marriages are often still considered religiously valid by society, despite lacking formal legal recognition (Rosyad, Fuad, and Zaimuddin 2025). This condition is further reinforced by the persistence of customary traditions that prioritize religious legitimacy over state legality. As a result, many people tend to neglect the administrative obligation of marriage registration (ONYINYECHI 2020).

Furthermore, the increasing number of marriage isbat applications submitted to Religious Courts indicates a societal need to obtain legal recognition for previously unregistered marriages (Ahmad Muhasim, Abdullah 2025). The high number of such applications demonstrates a structural problem within the Islamic family law system in Indonesia, namely the inconsistency between legal norms, social practices, and public legal awareness (Wardi 2024). This situation highlights a clear gap between the ideal concept of law and its implementation in practice.

Studies on marriage isbat have been widely conducted by scholars. Research by Datupalinge et al. reveals that marriage isbat functions as a legal instrument to fulfill the rights of wives within marriage, particularly in terms of family legal protection (Rizqy and Faisol 2024). Other studies indicate that marriage isbat plays a significant role in ensuring legal certainty regarding children's status and inheritance rights within the family (Rhassely et al. n.d.).

In addition, previous research has examined judicial considerations in deciding isbat cases, including unregistered marriages occurring before and after the enactment of the Marriage Law (Siswomiharjo et al. 2023). These studies emphasize the strategic role of judges in interpreting the law to bridge the gap between legal norms and social realities (Pune 2025). Other findings also highlight the legal consequences of marriage isbat, particularly in relation to disputes over marital property and child status (Rizqy and Faisol 2024).

However, these studies tend to focus primarily on normative and juridical aspects and have not specifically examined the efforts to file marriage isbat within a particular local context, especially in the Religious Court of Pamekasan (Husni, Pakarti, and Kadir 2024). Moreover, there is still limited research that integrates social factors such as the influence of customary traditions and public legal awareness as key variables in the practice of marriage isbat (Muhsin and Huda 2024). Therefore, this study offers novelty by comprehensively analyzing the interaction between legal, social, and cultural aspects in the practice of filing marriage isbat (Husni, Pakarti, and Kadir 2024).

This study aims to analyze the efforts to file marriage isbat for unregistered marriages at the Religious Court of Pamekasan, by examining the underlying factors, the procedural mechanisms, and the legal implications from the perspective of Islamic family law and Indonesian positive law.

This study argues that the high number of marriage isbat applications is not solely caused by low public legal awareness but is also influenced by the strong legitimacy of customary practices and religious understanding that emphasize the validity of marriage

solely from a religious perspective. Thus, marriage isbat is not merely an administrative solution but also a reflection of the tension between state law, religious law, and social practices.

This research is important as it contributes to the development of Islamic family law studies, particularly in understanding the dynamics between normative law and social reality. Furthermore, the findings of this study are expected to serve as an evaluation for religious courts and policymakers in formulating more effective strategies to enhance public legal awareness and reduce the practice of unregistered marriages.

RESEARCH METHOD

This study employs a qualitative research method with a socio-legal approach (Budianto 2020). The qualitative method is used to explore and understand the phenomenon of marriage isbat applications for unregistered marriages, while the socio-legal approach allows the integration of normative legal analysis with empirical social realities (Muhsin and Huda 2024). This approach is considered appropriate because the issue of marriage isbat is not only related to legal norms but also involves social, cultural, and religious dimensions that influence community behavior (Razak, Deski, and Nashir 2023).

The research was conducted at the Religious Court of Pamekasan, Madura, Indonesia (Hannan, Abd 2024). The selection of this location is based on the significant number of marriage isbat applications and the persistence of unregistered marriage practices influenced by socio-cultural factors, including the strong role of customary traditions within the community (Nasrulloh et al. 2025). This setting provides a relevant context to analyze the interaction between law and social practices.

The types of data used in this study consist of primary and secondary data (Schneider et al. 2023). Primary data were obtained directly from the field through in-depth interviews with judges of the Religious Court of Pamekasan, applicants of marriage isbat, and community or religious leaders. These data aim to capture real experiences, perceptions, and practices related to the filing of marriage isbat. Meanwhile, secondary data were collected from legal documents such as Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, court decisions, as well as academic sources including books and reputable journal articles indexed in SINTA or international databases.

Data collection techniques in this study include interviews, documentation, and literature review (Chand 2025). Semi-structured interviews were conducted to obtain detailed information regarding the reasons behind the submission of marriage isbat, judicial considerations in deciding cases, and the influence of social and cultural factors, including the persistence of customary traditions (Leon 2025). Documentation techniques were used to collect court decisions, case statistics, and other relevant legal documents, while the literature review was conducted to analyze theoretical frameworks and previous research findings related to the topic (Kivunja 2018).

The data analysis technique in this study follows the interactive model proposed by Miles, Huberman, and Saldaña (2014), which consists of data reduction, data display, and conclusion drawing. Data reduction involves selecting and simplifying relevant data, data display refers to organizing information into a systematic and understandable form, and conclusion drawing involves interpreting the findings to produce meaningful insights (Mezmir 2020). The analysis is conducted using a descriptive-analytical method by combining legal analysis with social interpretation (Wulandari 2024).

To ensure the validity and reliability of the data, this study employs triangulation techniques, including source triangulation by comparing information from different informants, method triangulation by combining various data collection techniques, and member checking by confirming findings with informants (Donkoh 2023). These strategies are used to enhance the credibility and trustworthiness of the research results (Anney 2014).

Furthermore, this study is based on an analytical framework that integrates legal, social, and cultural aspects (Garcés-mascareñas n.d.). The legal aspect focuses on the regulatory framework governing marriage registration, the social aspect examines public legal awareness and behavior, while the cultural aspect highlights the influence of customary traditions that legitimize unregistered marriages (ONYINYECHI 2020). These aspects are analyzed comprehensively to provide a holistic understanding of the phenomenon.

In conducting this research, ethical principles are strictly observed by obtaining informed consent from all informants, ensuring confidentiality and anonymity, and using the data solely for academic purposes (Laryeafio and Ogbewe 2026). However, this study is limited to the jurisdiction of the Religious Court of Pamekasan; therefore, the findings may not be fully generalizable to other regions, although they provide valuable insights into similar socio-cultural contexts (Zaidah, Al-amruzi, and Sarmadi 2023).

RESULTS & DISCUSSION

Results

The results of this study indicate that the practice of filing marriage isbat applications at the Religious Court of Pamekasan has shown a significant trend over the period 2019–2025. Based on the case data received, the number of marriage isbat applications has fluctuated but generally increased from year to year. In 2019, there were 365 cases (16.00%), increasing to 474 cases (20.06%) in 2020, and slightly decreasing to 421 cases (17.85%) in 2021. A more significant increase occurred in the following years, namely 580 cases (21.60%) in 2022, 693 cases (27.50%) in 2023, 606 cases (23.75%) in 2024, and reaching 683 cases (25.25%) in 2025. These data demonstrate that marriage isbat cases constitute a substantial portion of the total cases handled by the Religious Court of Pamekasan.

High Number Of Marriage Isbat Applications In The Religious Court Of Pamekasan

The high number of marriage isbat applications indicates that unregistered marriages remain prevalent in society. The percentage of isbat cases, ranging from 16% to 27.5% of total cases annually, reflects a strong public demand for legal recognition of marriages. This condition highlights a gap between legal norms, which require marriage registration, and the social practices that persist within the community. Therefore, marriage isbat functions as a corrective legal mechanism to formalize previously unregistered marriages and provide them with legal recognition.

Table 1. Marriage Isbat Applications at the Religious Court of Pamekasan

No	Year	Number of Isbat Cases	Total Cases Received	Percentage (%)
1	2019	365	2,281	16.00%
2	2020	474	2,363	20.06%
3	2021	421	2,359	17.85%
4	2022	580	2,685	21.60%
5	2023	693	2,520	27.50%
6	2024	606	2,552	23.75%
7	2025	683	2,705	25.25%

Factors Driving Unregistered Marriages

The findings reveal several factors contributing to the occurrence of unregistered marriages in Pamekasan society. Economic factors are one of the primary causes, as some individuals seek to avoid the administrative costs associated with official marriage registration. In addition, the lack of legal awareness leads many people to underestimate the importance of registering their marriages. The practice of unauthorized polygamy also plays a significant role, as individuals may choose unregistered marriages to bypass strict legal requirements.

Furthermore, administrative constraints, such as incomplete documentation, contribute to the decision not to register marriages. Importantly, the persistence of customary traditions and local cultural values continues to legitimize unregistered marriages within society. In this context, many people perceive religious validity as sufficient, thereby neglecting the necessity of formal legal recognition by the state.

Legal Implications For Marital And Children’s Status

Unregistered marriages have significant legal implications for both marital status and the status of children. From a legal standpoint, marriages that are not officially registered lack formal legal recognition, resulting in limited legal protection for the parties involved. In terms of inheritance rights, children born from unregistered marriages may face difficulties in establishing legal lineage with their father.

Table 2. Summary of Findings Based on Evidence

Evidence	Description	Key Findings
Evidence 1	High Number of Marriage Isbat Applications	The number of cases shows an increasing trend, with percentages ranging from 16% to 27.5%, indicating high demand for legal recognition.
Evidence 2	Factors Driving Unregistered Marriages	Economic factors, lack of legal awareness, unauthorized polygamy, administrative constraints, and strong customary traditions.
Evidence 3	Legal Implications	Lack of legal status, inheritance issues, and weak legal protection for wives and children.

Moreover, the absence of marriage registration affects other civil rights, including rights to maintenance, joint property, and legal protection for wives and children. Therefore, filing for marriage isbat becomes essential as a means of obtaining formal legal recognition, ensuring legal certainty, and protecting the rights of family members.

Discussion

The High Number Of Marriage Isbat Applications As An Indicator Of The Gap Between Law And Social Reality

The high number of marriage isbat applications at the Religious Court of Pamekasan does not merely represent an administrative phenomenon, but also reflects a significant gap between legal norms and the social realities that develop within society(Haoxing and System n.d.). Normatively, Law Number 1 of 1974 explicitly requires the registration of marriages as a means of ensuring legal protection for all parties involved. However, in practice, many people still engage in unregistered marriages, which subsequently leads to the filing of marriage isbat applications(Email 2020). This condition indicates that the implementation of formal law has not been fully followed by social compliance, thereby creating a gap between “law in the books” and “law in action(Li and Rooij 2022).”

This phenomenon also shows that marriage isbat functions as a corrective mechanism within the Islamic family law system in Indonesia(Rizqy and Faisol 2024). In other words, the state, through the religious courts, provides an opportunity for individuals to “rectify” the legal status of previously unregistered marriages(Hamid et al. 2024). From a socio-legal perspective, this reflects the flexibility of law in responding to societal needs, while at the same time revealing a weakness in the preventive aspect of the legal system, namely its failure to encourage marriage registration from the outset(Aziz, Hasbi, and Abubakar 2025). Thus, marriage isbat operates more as a curative solution rather than a preventive one(Journal 2025).

Furthermore, the high number of marriage isbat applications can also be understood as a form of societal rationality in responding to legal consequences(Nasrulloh et al. 2025). Initially, people may neglect marriage registration due to various reasons; however, when faced with administrative needs such as obtaining a child’s birth certificate, managing inheritance, or fulfilling other legal requirements, they begin to recognize the

importance of formal legal recognition(Limbong 2025). This suggests that public legal awareness is often situational and pragmatic in nature(Ostermann 2025).

From the perspective of *maqāṣid al-syarī‘ah*, this phenomenon can be analyzed through the principles of *jalb al-maṣāliḥ* (promoting benefits) and *dar’ al-mafāsid* (preventing harm). Filing for marriage isbat serves as a means to obtain legal benefits, such as recognition and protection of family rights, while also preventing potential harm arising from the absence of legal certainty(Rizqy and Faisol 2024). Therefore, marriage isbat carries not only administrative significance but also broader social and moral dimensions(Ahmad Muhasim, Abdullah 2025).

Factors Driving Unregistered Marriages: The Interaction Of Economic, Legal, And Cultural Aspects

The practice of unregistered marriages in Pamekasan cannot be understood through a single factor, but rather as the result of the interaction of multiple interrelated elements(Muhsin and Huda 2024). Economic factors are among the primary causes, as some members of society perceive the costs associated with official marriage registration as burdensome, particularly for lower-income groups(Muhsin and Huda 2024). In such conditions, unregistered marriage (*nikah siri*) is viewed as a more accessible and affordable alternative, despite its legal consequences in the future. This indicates that economic conditions significantly influence the level of legal compliance within society(Tian et al. 2019).

In addition to economic factors, the low level of legal awareness also plays a significant role. Many individuals do not fully understand that marriage registration is not merely an administrative formality, but a crucial legal instrument to ensure protection and certainty(Shabunovich 2021). In this context, there is a gap between legal knowledge and social practice, where people tend to prioritize religious validity over state legality(Husain, Ayoub, and Hassmann 2024). This condition reflects the limited internalization of state legal norms within the community.

Another contributing factor is the practice of unauthorized polygamy. In many cases, individuals choose unregistered marriages as a way to bypass strict legal requirements, such as obtaining court permission and the consent of the first wife(Permana 2021). This phenomenon indicates that unregistered marriage is often used as a “shortcut” to avoid legal procedures, which in turn creates more complex legal issues in the future(Nurani, Apriyanita, and Baskoro 2026).

Moreover, administrative constraints, such as incomplete documentation, also serve as practical reasons for not registering marriages(Arifin 2025). In some cases, limited access to administrative services or a lack of understanding of procedural requirements further reinforces the decision to engage in unregistered marriages(Fauzi 2023). This demonstrates that structural factors within the administrative system also contribute to shaping legal behavior in society(Howlett 2004).

However, the most fundamental factor is the persistence of strong customary and cultural influences(Rotarangi and Stephenson 2014). In the Pamekasan community, the social legitimacy of marriage is often determined more by religious and customary norms than by state law(Muzakki, Khaidarulloh, and Hasan Wahid 2025). As long as a marriage is considered valid religiously and socially accepted, formal registration is not viewed as an urgent necessity(Windiani 2016). From a socio-legal perspective, this condition illustrates that state law must contend with deeply rooted local value systems. Therefore, efforts to enforce legal norms cannot rely solely on regulation, but must also incorporate cultural and educational approaches(Alam et al. 2010).

Legal Implications For Marital And Children’s Status

Unregistered marriages give rise to broad and complex legal consequences, particularly concerning marital status and the status of children(Latifiani 2014). From a legal standpoint, marriages that are not officially registered lack formal recognition by the state, resulting in legal uncertainty for the parties involved(Festy and Esty 2006). This condition leads to the absence of adequate legal protection, especially in cases of marital

disputes or divorce (Ibrahim et al. 2025). It highlights that marriage registration is a fundamental element in ensuring legal certainty (Kasim, Kamba, and Karim 2022).

The more serious impact is observed in the legal status of children born from unregistered marriages. In practice, children often face difficulties in obtaining legal recognition of their lineage with their father (Law, Ramadhani, and Sulistiyaningsih 2025). This has implications for various aspects, including inheritance rights, legal identity, and access to public services. Although there have been legal developments, such as Constitutional Court decisions that provide broader protection for children, implementation at the practical level still encounters numerous obstacles (Harper et al. n.d.).

In addition, the absence of marriage registration affects other civil rights, including rights to maintenance, division of marital property, and legal protection for wives. In many cases, women are the most disadvantaged party, as they lack a strong legal basis to claim their rights (Delzanty and Taupiqqurrahman 2025). This indicates that unregistered marriages have the potential to create inequality and injustice within family relations (Sahputra et al. 2025).

In this context, marriage isbat plays a highly strategic role as a legal instrument to address these issues. Through marriage isbat, previously unregistered marriages can obtain formal legal recognition, thereby ensuring legal certainty and protection for all family members. From the perspective of *maqāṣid al-syarī'ah*, marriage isbat represents the implementation of *dar' al-mafāsid* (preventing harm), as it aims to avoid greater harm resulting from the absence of legal recognition. Therefore, marriage isbat is not only administratively important but also substantively significant in promoting justice and welfare within family life.

CONCLUSION

This study concludes that the high number of marriage isbat applications at the Religious Court of Pamekasan reflects a significant gap between legal norms and social practices. Although Indonesian law mandates marriage registration to ensure legal certainty, many individuals still engage in unregistered marriages due to various socio-economic and cultural factors. Consequently, marriage isbat emerges as a corrective legal mechanism that enables individuals to obtain formal recognition of their marital status.

Furthermore, the persistence of unregistered marriages is driven by a complex interaction of factors, including economic constraints, lack of legal awareness, unauthorized polygamy, administrative barriers, and the strong influence of customary and cultural traditions. These findings indicate that legal compliance is not solely determined by formal regulations but is also shaped by social values and community perceptions. In this context, the dominance of religious and cultural legitimacy over state legality continues to influence people's behavior regarding marriage practices.

In terms of legal implications, unregistered marriages create significant vulnerabilities, particularly concerning marital status, children's legal recognition, inheritance rights, and legal protection for women and children. The absence of official registration weakens legal certainty and often places women and children in disadvantaged positions. Therefore, marriage isbat plays a crucial role in restoring legal rights and ensuring protection within the family structure.

This study highlights that marriage isbat should not merely be viewed as an administrative solution but as part of a broader socio-legal issue involving the interaction between law, religion, and culture. From the perspective of *maqāṣid al-syarī'ah*, marriage isbat represents both *jalb al-maṣāliḥ* (promoting welfare) and *dar' al-mafāsid* (preventing harm), as it ensures legal protection and minimizes the negative consequences of unregistered marriages.

Based on these findings, this study recommends that the government and religious institutions strengthen preventive measures by improving public legal awareness, simplifying administrative procedures, and incorporating cultural approaches in legal socialization. Future research is recommended to explore comparative studies across different regions, as well as to examine the effectiveness of policy interventions in reducing unregistered marriages and increasing legal compliance.

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