

DETERMINATION OF MARRIAGE CERTIFICATE (*IŚBAT NIKAH*) AT PONOROGO RELIGIOUS COURT ACCORDING TO *MAQĀŞID SYARI'AH* PERSPECTIVE

ACC diajukan utk mengikuti ujian munaqasah



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11 Agustus 2023



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THESIS

Submitted to Ahwal Al-Syakhsiyah Department International Program

Faculty of Islamic Studies Universitas Islam Indonesia

To fulfill one of the terms of obtaining

Islamic Law Degree

YOGYAKARTA

2023

STATEMENT LETTER PAGE

STATEMENT

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PERSPECTIVE**

Hereby declare that this thesis is the result of my work and true originality. Suppose in the future it turns out that the writing of this thesis is the result of plagiarism toward other people's work. In that case, I am willing to take responsibility and, at the same time be willing to accept the sanctions based on the rules of conduct that apply at Universitas Islam Indonesia.

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LEGISLATION PAGE



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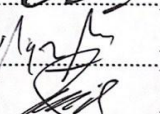
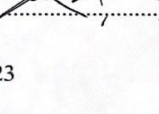

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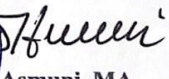
Skripsi ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

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Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Syariah pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

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Yogyakarta, 25 Agustus 2023


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OFFICIAL MEMO PAGE

Yogyakarta, 11 August 2023 H
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Subject : **Thesis**
Dear : **Honorable Dean of the Faculty of Islamic Studies**
Universitas Islam Indonesia
Di-Yogyakarta

Assalaamu'alaikum Wr. Wb.

Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia, with letter number: 348/Dek/60/DAATI/FIAI/III/2023, on 16th of March 2023/ 11th of Sya'ban 1444 H, for our duties as supervisor of the thesis:

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After researching and making necessary improvements, we finally decided that your thesis above fulfills the requirements to be submitted to the Munaqasa Trial of the Islamic Studies Faculty, Universitas Islam Indonesian.

Wassalaamu'alaikum Wr. Wb.

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SUPERVISOR'S APPROVAL PAGE

The undersigned is the thesis supervisor, certifying that:

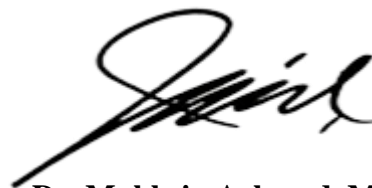
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ACCORDING TO *MAQĀSID SYARI'AH* PERSPECTIVE**

According to the process and the results of supervising over several months, and making necessary improvements, the concerned person can register herself to join the Munaqasah Trial of the Ahwal Syakhsyiyah International Program Department, Faculty of Islamic Studies, Universitas Islam Indonesian.

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PRESENTATION PAGE

This thesis is presented for my beloved father and beloved mother (*almh*) who always provide moral and material support and always pray for the success of the writer until the completion of the thesis and undergraduate studies and all parties who help, support, and give encouragement so that this thesis is completed. In the end, the writer realizes that the writing of this thesis has not reached perfection. However, the writer hopes this thesis will be useful, especially for the development of Islamic Law and the ease of education for every reader.

MOTTO PAGE

إِنْ أَحْسَنْتُمْ أَحْسَنْتُمْ لِأَنْفُسِكُمْ وَإِنْ أَسَأْتُمْ فَلَهَا

[And said], "If you do good, you do good for yourselves; and if you do evil, [you do it] to yourselves."¹

(QS. Al-Isra:7)

¹ Tim Penerjemah Al-Quran UII, Qur'an Karim dan Terjemahan Artinya (Yogyakarta: UII Press, 1999) 497-498.

PEDOMAN TRANSLITERASI ARAB LATIN

KEPUTUSAN BERSAMA

MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN KEBUDAYAAN

REPUBLIK INDONESIA

Nomor: 158 Tahun1987

Nomor: 0543b//U/1987

Transliterasi dimaksudkan sebagai pengalih-hurufan dari abjad yang satu ke abjad yang lain. Transliterasi Arab-Latin di sini ialah penyalinan huruf-huruf Arab dengan huruf-huruf Latin beserta perangkatnya.

A. Konsonan

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf. Dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dilambangkan dengan huruf dan tanda sekaligus.

Berikut ini daftar huruf Arab yang dimaksud dan transliterasinya dengan huruf latin:

Table 0.1: Tabel Transliterasi Konsonan

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba	B	Be
ت	Ta	T	Te

ث	Ṡa	ṣ	es (dengan titik di atas)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (dengan titik di bawah)
خ	Kha	Kh	ka dan ha
د	Dal	d	De
ذ	Ḍal	ḏ	Zet (dengan titik di atas)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (dengan titik di bawah)
ض	Ḍad	ḏ	de (dengan titik di bawah)
ط	Ṭa	ṭ	te (dengan titik di bawah)
ظ	Ẓa	ẓ	zet (dengan titik di bawah)

ع	`ain	`	koma terbalik (di atas)
غ	Gain	g	ge
ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en
و	Wau	w	we
ه	Ha	h	ha
ء	Hamzah	‘	apostrof
ي	Ya	y	ye

A. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokaltunggal atau *monoftong* dan vokal rangkap atau *diftong*.

1. Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harakat, transliterasinya sebagai berikut:

Table 0.2: Tabel Transliterasi Vokal Tunggal

Huruf Arab	Nama	Huruf Latin	Nama
َ	Fathah	a	a
ِ	Kasrah	i	i
ُ	Dammah	u	u

2. Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harakat dan huruf, transliterasinya berupa gabungan huruf sebagai berikut:

Table 0.3: Tabel Transliterasi Vokal Rangkap

Huruf Arab	Nama	Huruf Latin	Nama
َ...ي	Fathah dan ya	ai	a dan u
َ...و	Fathah dan wau	au	a dan u

Contoh:

- كَتَبَ kataba

- فَعَلَ fa`ala

- سُئِلَ suila

- كَيْفَ kaifa

- حَوْلَ haula

- **Maddah**

Maddah atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda sebagai berikut:

Tabel 0.4: Tabel Transliterasi *Maddah*

Huruf Arab	Nama	Huruf Latin	Nama
أ...إ...ى...	Fathah dan alif atau ya	ā	a dan garis di atas
ى...ِ	Kasrah dan ya	ī	i dan garis di atas
و...ُ	Dammah dan wau	ū	u dan garis di atas

Contoh:

- قَالَ qāla

- رَمَى ramā

- قِيلَ qīla

- يَقُولُ yaqūlu

A. Ta' Marbutah

Transliterasi untuk ta' marbutah ada dua, yaitu:

1. Ta' marbutah hidup

Ta' marbutah hidup atau yang mendapat harakat fathah, kasrah, dan dammah, transliterasinya adalah "t".

2. Ta' marbutah mati

Ta' marbutah mati atau yang mendapat harakat sukun, transliterasinya adalah "h".

3. Kalau pada kata terakhir dengan ta' marbutah diikuti oleh kata yang menggunakan kata sandang *al* serta bacaan kedua kata itu terpisah, maka ta' marbutah itu ditransliterasikan dengan "h".

Contoh:

- رَوْضَةُ الْأَطْفَالِ raudah al-atfāl/raudahtul atfāl

- الْمَدِينَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah

- طَلْحَةَ talhah

Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, ditransliterasikan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- نَزَلَ nazzala
- الْبِرُّ al-birr

Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ال, namun dalam transliterasi ini kata sandang itu dibedakan atas:

1. Kata sandang yang diikuti huruf syamsiyah

Kata sandang yang diikuti oleh huruf syamsiyah ditransliterasikan sesuai dengan bunyinya, yaitu huruf “l” diganti dengan huruf yang langsung mengikuti kata sandang itu.

2. Kata sandang yang diikuti huruf qamariyah

Kata sandang yang diikuti oleh huruf qamariyah ditransliterasikan dengan sesuai dengan aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti oleh huruf syamsiyah maupun qamariyah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanpa sempang.

Contoh:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu

- الجَلَالُ al-jalālu

G. Hamzah

Hamzah ditransliterasikan sebagai apostrof. Namun hal itu hanya berlaku bagi hamzah yang terletak di tengah dan di akhir kata. Sementara hamzah yang terletak di awal kata dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- تَأْخُذُ ta'khuẓu
- سَيِّئٌ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

H. Penulisan Kata

Pada dasarnya setiap kata, baik fail, isim maupun huruf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan, maka penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

- وَإِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ Wa innallāha lahuwa khair ar-rāziqīn/

Wa innallāha lahuwa khairurrāziqīn

- بِسْمِ اللّٰهِ مَجْرَاهَا وَ مُرْسَاهَا Bismillāhi majrehā wa mursāhā

I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

- الْحَمْدُ لِلّٰهِ رَبِّ الْعَالَمِينَ Alhamdu lillāhi rabbi al-`ālamīn/
Alhamdu lillāhi rabbil `ālamīn
- الرَّحْمٰنِ الرَّحِیْمِ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata lain sehingga ada huruf atau harakat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- اللّٰهُ غَفُوْرٌ رَّحِیْمٌ Allaāhu gafūrun rahīm
- لِلّٰهِ الْأَمْرُ جَمِیْعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

ABSTRAK

PENETAPAN ISBAT NIKAH DI PENGADILAN AGAMA PONOROGO DALAM PERSPEKTI *MAQĀṢID SYARI'AH*

QORIEN APRILIA SAPUTRI

NIM 19421154

Pencatatan perkawinan merupakan hal yang paling terpenting dan menjadi bukti tertulis yang sah dari adanya suatu perkawinan. Akan tetapi masyarakat Kota Ponorogo sebagian besar masih banyak yang melakukan perkawinan dibawah tangan. Untuk mendapatkan alat bukti yang sah terhadap suatu perkawinan yang belum dicatat secara resmi oleh Pegawai Pencatat Nikah di Kantor Urusan Agama, maka masyarakat setempat mengajukan permohonan Isbat nikah di Pengadilan Agama Ponorogo. Alasan pengajuan isbat nikah tersebut Dalam kajian fikih Islam, dengan adanya isbat nikah ini dapat memberikan mashlahat kepada masyarakat yang menikah secara sirri untuk mendapatkan akta nikah dan mempermudah untuk mengurus Akta Kelahiran anak dan persyaratan administrasi penting lainnya. Penelitian skripsi ini berfokus pada penetapan isbat nikah yang ada di Pengadilan Agama Ponorogo dengan pertanyaan penelitian bagaimana pertimbangan hakim dalam memberikan penetapan isbat nikah dan bagaimana isbat nikah dalam perspektif *Maqāṣid syari'ah* sebagai bentuk kemashlahatan. Penelitian ini merupakan penelitian kualitatif yang menggunakan metode penelitian lapangan (field research) dengan mengambil sampel penetapan isbat nikah yang ada di Pengadilan Agama Ponorogo. Dilakukan juga wawancara kepada Hakim dan Panitera Hukum untuk memperoleh informasi penelitian yang kemudian dideskripsikan dan dianalisa melalui pendekatan yuridis-normatif. Dari hasil penelitian ini dapat diketahui pertimbangan hakim dalam memberikan penetapan isbat nikah dan isbat nikah dalam perspektif *Maqāṣid syari'ah* sebagai kemashlahatan masyarakat setempat untuk mendapatkan akta nikah dan menghilangkan kemudharatan dari tidak adanya bukti perkawinan yang sah secara negara.

Keyword: Isbat Nikah, Pengadilan Agama Ponorogo, *Maqāṣid syari'ah*

ABSTRACT

DETERMINATION OF MARRIAGE CERTIFICATE (*ISBAT NIKAH*) AT PONOROGO RELIGIOUS COURT ACCORDING TO *MAQĀŠID SYARI'AH* PERSPECTIVE

QORIEN APRILIA SAPUTRI
NIM 19421154

Marriage registration is the most important thing and is legal written evidence of the existence of a marriage. However, most of the people of Ponorogo City still practice underhand marriage. In order to obtain legal evidence against a marriage that has not been officially recorded by the Marriage Registrar at the Office of Religious Affairs, the local community submits an application for marriage registration at the Ponorogo Religious Court. Reasons for filing the certificate of marriage In studies of Islamic jurisprudence, the existence of this marriage certificate can provide benefits to people who are married in an unregistered manner to obtain a marriage certificate and make it easier to process child birth certificates and other critical administrative requirements. This thesis research focuses on determining marriage certificates in the Ponorogo Religious Court with research questions on how the judge considers giving the determination of marriage certificates and how isbat marriage in the perspective of *Maqāšid syari'ah* is a form of benefit. This research is qualitative research that uses field research methods by taking a sample of marriage constituencies in the Ponorogo Religious Court. Interviews were also conducted with Judges and Legal Registrars to obtain research information which was then described and analyzed through a juridical-normative approach. From the results of this study it can be seen that the judge's considerations in giving the determination of marriage certificates and marriage certificates in the perspective of *Maqāšid shari'ah* as benefit of the local community to obtain a marriage certificate and eliminate the disadvantages of not having proof of a marriage that is legally valid by the state.

Keyword: Marriage Isbat, Ponorogo Religious Court, *Maqāšid syari'ah*

PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَبِهِ نَسْتَعِينُ عَلَى أُمُورِ الدُّنْيَا وَالْآخِرَةِ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْمُرْسَلِينَ
وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ، أَمَا بَعْدُ

All praise and deep gratitude to Allah, the One True Almighty God, for his blessing and guidance; thus, this thesis can be finished on its time, the time Allah has decreed. Ṣalawat and greetings are always devoted to the prophet Muhammad SAW, who brought the light out in the dark era and removed all the ignorance, hence existed the freedom of learning for all genders, and found many discoveries until created this civilization.

The process of arranging and finishing this thesis, titled "Determination of Marriage Certificate (*Isbat Nikah*) at Ponorogo Religious Court Amaccording to Maqāṣid syari'ah perspective," is not separated from the support, guidance, suggestion, and supervision of several involved parties till this thesis can be finished properly. Thus, incredible gratefulness is sincerely given to the honorable:

1. Prof. Fathul Wahid, S.T., M.Sc., Ph.D., as the Rector of Universitas Islam Indonesia
2. Dr. Drs. Asmuni, M.A, as the Dean of the Faculty of Islamic Studies Universitas Islam Indonesia
3. Dr. Anton Priyo Nugroho, S.E., M.M., as the Head of the Department Islamic Studies Faculty of Islamic Studies Universitas Islam Indonesia
4. Krismono, SHI., MSI., as the Head of Diploma Program in Family Law (Ahwal Syakhshiyah)

5. As the thesis supervisor, Dr. Mukhsin Achmad, M.Ag., has supervised me comprehensively and patiently during these several months.
6. As the academic supervisor, Fuat Hasanudin, Lc., MA., supervised and advised me in my educational journey in this Department.
7. All lectures of the Study Program in Family Law (Ahwal Syakhshiyah) Faculty of Islamic Studies Universitas Islam Indonesia and academic civitas of Faculty of Islamic who have been giving helpful knowledge until this thesis can be finished.
8. A big thanks to my parents and family who have supported me dear and financially with careful preparation for religion and knowledge, theoretically and practically
9. All my friends and friends who support me accompany me in joy, sadness, laughter, and tears. Those who are beside me at my worst and best friend AS IP 2019.

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CHAPTER I

INTRODUCTION

A. Background

Marriage is a very strong contract or *miṣaqan ghalīzan* to obey Allah's commands and doing so is worship. Marriage aims to form or realize a household life that is *sakinah, mawaddah, and rahmah*. Marriage is valid if it is carried out according to Islamic law and in accordance with the Marriage Law and in the Compilation of Islamic Law. Towards a marriage that is *sakinah, mawaddah, and warrahmah* in a household can be fostered from within an atmosphere that is peaceful, serene, and full of love between husband and wife. A legal marriage gives birth to generations or descendants who can decorate life in a household. Marriage is the sunnah of the Prophet Muhammad. Sunnah in the sense of exemplifying the behavior of the Prophet Muhammad. Marriage is hinted at so that humans have legal offspring and families to lead a happy life in this world and the hereafter, under the auspices of love and the pleasure of Allah SWT, and this has been hinted at since long ago and has been explained a great deal in the Qur'an:

وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَسِعَ عَلِيمٌ

Marry those among you who are single, or the virtuous ones among yourselves, male or female: if they are in poverty, Allah will give them means out of His grace: for Allah encompasseth all, and he knoweth all things. (QS. Al Nuur/24 : 32).²

Law No. 1 of 1974 concerning Marriage in Chapter 1 of the Basis of Marriage Article 1 states that “Marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the main objective of forming a household (family) that is eternally happy based on Belief in the One God.”³ The article above explains the meaning of marriage, namely the bond or promise of two people between a man and a woman without coercion to build a happy and loving household based on the beliefs they adhere to. As a couple who adheres to Islam, to achieve a family that is *sakinah*, *mawaddah*, and *warrahmah*, their marriage is strictly guided by Islamic law, one of which is sourced from the Al-Qur'an and Hadith as well as Islamic Marriage Law.

We understand that marriage is valid if it is carried out according to religious law and beliefs, meaning that if a marriage has fulfilled the conditions and pillars of marriage or has been carried out by its beliefs or consent granted for people who are Muslim, then the marriage is valid in the view of their religion and the local community. Even though marriage has been considered valid in the eyes of religion and society, marriage must also be legalized again in the State contained in article 2 paragraph 2 of Law no. 1 of 1974 concerning marriage, which has the goal of achieving legal certainty

² Tim Penerjemah Al-Quran UII, Qur'an Karim dan Terjemahan Artinya (Yogyakarta: UII Press, 1999) 626.

³ Undang-Undang No. 1 Tahun 1974

and legal protection for married couples.⁴ If there is a dispute between husband and wife, the couple should resolve it amicably and peacefully so that the integrity of the household can be maintained properly.⁵

Marriage registration is explained in article 2 paragraph 2 of Law no. 1 of 1974 concerning Marriage "Every marriage is recorded according to the applicable laws and regulations". Marriages that are not registered do not have legal force, which means that the marriage does not have legal consequences because there is no evidence of legal action. If there are rights and obligations between husband and wife that are not carried out, such as providing a living, providing shelter, and matters relating to the necessities of daily life, then both parties cannot sue each other because in principle they are not legally bound. . The absence of this attachment causes arbitrariness for the husband to his wife or vice versa in terms of fulfilling responsibilities.⁶

Registration of marriage and the certificate is something important in Islamic marriage law. This is based on the word of God in surah Al-Baqarah verse 282 as follows.⁷

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

“O ye who believe! When ye contract a debt for a fixed term, record it in writing.

Let a scribe record it in writing between you in (terms of) equity.” (QS. Al-Baqarah : 282).

⁴ Ni Ketut Desi Andreni et al. “Itsbat Nikah Terhadap Perkawinan yang Dilangsungkan Setelah Berlakunya Undang-Undang Nomor 1 Tahun 1974 (Studi Kasus Penetapan Pengadilan Agama Denpasar Nomor 0032/Pdt.P/2017/ Pa.Dps)”. *Journal of Legal Analogies*. Vol. 3 No. 1 2021, p. 43

⁵ Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 1999), 1.

⁶ Umar Haris Sanjaya dan Aunur Rahim Faqih, *Hukum Perkawinan Islam di Indonesia*, (Yogyakarta: Gama Media, 2017), 78.

⁷ Zainuddin Ali, *Hukum perdata islam*. edisi ke-1 (Jakarta: Sinar Grafika, 2006) hal 29-30

Based on the translation above, there were no Islamic legal thinkers (faqih) who made the basis for consideration in marriage regarding registration and the deed, so they considered that it was not important. However, if one pays attention to the current development of legal science, the registration of marriages and their certificates has benefits and is in line with fiqh principles which reveal *Darulmafasidu muqaddamun ala jalabil mashalih*.⁸ Thus, the implementation of government regulations governing the registration and proof of marriage with a marriage certificate is a demand from legal developments in realizing the general benefit (*maslahat mursalah*) in the Republic of Indonesia.

Marriage registration is considered important to avoid harm arising from the consequences of not registering a marriage. In the rules of Islamic law, namely:

درء المفسد مقدم علي جلب المصالح

“Menolak kemudharatan lebih utama daripada meraih manfaat.”

The efforts of the Ponorogo Regency government in providing services to the community, especially the people of the Ponorogo Regency area who do not have a marriage certificate because a marriage has not been registered, namely the existence of a legal product in the Religious Courts, namely Marriage Isbat, is a community solution in the process of validating marriages that have taken place but do not have a marriage certificate.

The cause of the occurrence of many marriages that have not been registered in Ponorogo Regency is because many married couples do not know the rules for registering marriages. The reason is that some are old and most of them are married in

⁸ The rule of fiqh which means rejecting harm takes precedence over gaining benefit.

unregistered marriage not only in Ponorogo. There are also married outside the island of Java, also abroad when migrating. This is because most of the population administration is already strict. They cannot register the marriage. Until choosing to marry in Islam⁹. (Hamdi, August, 5 2022).

The position of the Marriage Isbat has received legal regulations such as Article 7 paragraph (2) and paragraph (3) Compilation of Islamic Law, which states that in the case of a marriage that cannot be proven by a marriage certificate, a marriage certificate can be submitted to the local religious court for several reasons, namely because of the loss of a marriage certificate, because there are doubts about whether or not one of the pillars and conditions of marriage is valid, and the existence of marriages that occurred before the enactment of Law no. 1 of 1974, and marriages carried out by those who do not have marital obstacles.¹⁰ However, many residents of Ponorogo district apply for marriage certificates because many residents carry out private marriages and are not by the rules of the Compilation of Islamic Law.

B. Research Questions

The focus of this research is the number of marriage approval cases and their determination given by the Ponorogo Religious Court Judge in the perspective of *Maqāṣid syari'ah*. The questions in this study are as follows:

1. What are the basic considerations of the judges of the Religious Court of Ponorogo Regency in determining the case of Isbat Nikah?
2. What is the reason behind the application for Isbat marriage at the Religious Court of Ponorogo Regency?

⁹ Ali Hamdi, "Full Senyum! 39 Pasutri di Ponorogo Ikuti Isbat Nikah Massal", quoted from <https://jatimnow.com/baca-48347-full-senyum-39-pasutri-di-ponorogo-ikuti-isbat-nikah-massal> accessed on Thursday 23 February 2022 at 12:50

¹⁰ Penjelasan Pasal 7 ayat (2) dan (3) Kompilasi Hukum Islam

3. How is the determination of Isbat marriage from the perspective of *Maqāṣid syari'ah*?

C. Research Objectives

With the focus and questions mentioned above, the objectives of this study are as follows:

1. Knowing the basic considerations of the judges of the Ponorogo Religious Court in giving the determination of the Marriage Isbat.
2. Knowing what the background of the applicant applying for itsbat marriage at the Religious Court of Ponorogo Regency
3. Knowing the determination of marriage certificates in court from the perspective of *Maqāṣid Syari'ah*

D. Benefits Of Research

1. Theoretical Benefits

This research is expected to provide benefits in broadening knowledge, especially in the field of understanding underhanded marriage before the enactment of Law Number 1 of 1974 concerning Marriage, and the issue of underhanded marriages that often occur so that they do not have permanent legal protection and can cause legal consequences.

2. Practice Benefit

This research practically contributes to being a reference for agencies and is useful so that the Ponorogo Religious Court can provide input on decisions wisely so as to raise awareness in the local community to perform marriages in accordance with Islamic law regulations and the laws and regulations in force in Indonesia.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Literature Review

First, a journal written by Ni Ketut Desi Andreni, I Nyoman Sujana, and I Ketut Sukadana entitled *Itsbat Marriage Against Marriages That Continued After the Enactment of Law Number 1 of 1974 (Case Study of the Determination of the Denpasar Religious Court Number 0032/Pdt.P/2017 / Pa. Dps)*. The results of this study indicate that the dividend ratio of judges at the Denpasar Religious Court decided the *Itsbat* case against *cirri* marriages carried out after the enactment of Law No. 1 of 1974 can be *Itsbat* related to case number 0032/Pdt.P/2017/PA.Dps, namely to ensure order Marriage is for society, especially Islam, and to protect the legal interests of the children of the applicants, namely the panel of judges use the principle of expediency. Therefore, the discussion about the Determination of Marriage *Isbates* in the *Maqāṣid syari'ah* Perspective will be the novelty of this ongoing research.¹¹ Meanwhile, this thesis discusses not only the determination of marriage certificates due to unregistered marriages but other factors why the Ponorogo community applies for the determination of marriage certificates at the Ponorogo Religious Court

Second, in a journal written by Nur Khamidyah entitled *Itsbat Nikah in Sirri's Marriage in Compilation of Islamic Law According to Maqāṣid syari'ah*. In this journal, it is explained that some of the legal impacts that will arise from *cirri* marriages will be detrimental to the wife, children, and also the distribution of inheritance. A wife is considered not a legal wife according to law, and in social life, it will be difficult to

¹¹ Ni Ketut Desi Andreni et al. "Itsbat Nikah Terhadap Perkawinan yang Dilangsungkan Setelah Berlakunya Undang-Undang Nomor 1 Tahun 1974 (Studi Kasus Penetapan Pengadilan Agama Denpasar Nomor 0032/Pdt.P/2017/ Pa.Dps)". *Journal of Legal Analogies*. Vol. 3 No. 1 2021.

interact. The status of children born to *sirri* marriage partners is considered not a legitimate child. Wife and children are not entitled to inheritance from their father. The general conclusion of this journal is that with the existence of marriage certificates that originate from *sirri* marriages, they can have legal certainty as marriages that are valid according to Islamic law and applicable legislation so that the rights of the wife and children are not neglected.¹² as a legal basis for registration of marriages which gives birth to legal certainty regarding marital status, children's status and marital assets. Therefore, the discussion about the Determination of Marriage Isbat in the *Maqāsid syari'ah* Perspective will be the novelty of this ongoing research. Meanwhile, the difference with my thesis is that this journal discusses the legal purpose of prohibiting unregistered marriages. discusses non-specific and discusses the legal purpose of prohibiting unregistered marriages.

The three results of journal studies by Lilik Andaryuni entitled The Marriage Isbat Circulation Program as a Realization of Access to Justice in Indonesia. in this journal contain research analyzing how the unregistered marriage legalization program (isbat nikah) in Tenggarong PA has been implemented to assist justice seekers in ensuring legal certainty of marital status. These findings reveal that the marriage legalization process was carried out as a contractual marriage bond at different sub-district/village offices or appropriate locations in West Kutai and Kutai Kartanegara. The program is free for eligible parties and facilitates their needs and conditions, namely lack of legal documents, ignorance of litigation procedures, and more distant domiciles. This makes the Tenggarong Islamic Religious Court now more accessible to the public and the series of marriage consecrations is a manifestation of the principle

¹² Nur Khamidyah Isbat, (Marriage Determination) In *Sirri Marriage in The Form of Kompilasi Hukum Islam According to Maqasid As-Shari'ah. Ijtihad, Journal of Islamic and Human Law Discourse* Vol. 17, No. 1 (2017).

of access to justice in Indonesia. Therefore, the discussion about the Determination of Marriage Isbates in the *Maqāṣid syari'ah* Perspective will be the novelty of this ongoing research.¹³ The difference is that this journal only discusses the marriage certificate program while my thesis discusses the determination of marriage certificates according to *Maqāṣid syari'ah*.

Fourth, the results of Nurhalimah's thesis research entitled "Implementation of *Sirri* Marriage Isbat Applications at the Pekanbaru Religious Court Based on Law Number 1 of 1974". This thesis explains the *sirri* marriage certificate at the Pekanbaru Religious Court. It is the same as the implementation of other marriage certificates. It can be seen in 6 stages, namely: Case/table registration, case fee payment, clerk, chairman of the religious court, a panel of judges, and collection of court products. And Obstacles in the Application Process in the *Sirri* Marriage Isbat at the Pekanbaru Religious Court. Influenced by several factors originating from the party who submitted the *Sirri* Marriage, the Pekanbaru Religious Court Judge. The view of the Judges of the Pekanbaru Religious Court regarding the *sirri* marriage certificate is that the *sirri* marriage certificate can be granted as long as the *sirri* marriage is carried out following Islamic law and the applicant is not bound by marriage to another person. Therefore, the discussion about the Determination of Marriage Isbates in the *Asy-Syari'ah* Maqasiid Perspective will be the novelty of this ongoing research.¹⁴ Meanwhile, this thesis discusses the determination of marriage certificates according to the perspective of *Maqāṣid syari'ah* that occurred at the Ponorogo Religious Court.

Fifth, the results of Journal research by Muhammad Sabir et.al., entitled The Problems of the KHI on Article 7 about the Marriage Isbat in A Religious Court. in this

¹³ Lilik Andaryuni, "The Program of Circuit Isbat Nikah as the Embodiment of Access to Justice in Indonesia" *Jurnal Hukum Islam* Vol 17, No.1 (2018).

¹⁴ Nurhalimah, Skripsi: "Pelaksanaan Permohonan Isbat Nikah Sirri di Pengadilan Agama Pekanbaru berdasarkan Undang-Undang Nomor 1 Tahun 1974" (Riau: Universitas Islam Riau, 2021).

journal contains research analyzing the implementation of article 7 in the KHI in religious courts concerning marriage constituencies and looking at the causes that result in marriage constancy. The results of the factor analysis of the occurrence of marriage constituencies are: There was negligence on the part of the bride and groom in carrying out the marriage that was not in accordance with the applicable procedures, Was married before marriage registration rules in the Republic of Indonesia Law Number 1 of 1974, Polygamy is Haram, The concept is so embedded in society that guardianship is only eligible to be given to a teacher or scholar because it is considered sacred, Marriage does not meet the requirements of the law, Marriage has taken place abroad where they are looking for work. Therefore, the discussion about the Determination of Marriage Isbates in the Maqāsid syari'ah Perspective will be the novelty of this ongoing research.¹⁵ This journal only focuses on implementing article 7 in the KHI in the religious court concerning marriage constituencies. In contrast, my thesis focuses on determining the isbat according to the Maqāsid syari'ah in the Ponorogo Religious Court.

Sixth, the results of Mu'tashim Al Haq's thesis research entitled "Analysis of Maslahah Mursalah Against Integrated Marriage Isbat by the Sampang Religious Court". Explains the procedures for carrying out integrated isbat sessions carried out by the Sampang Religious Court and Analysis of Maslahah Mursalah Against Integrated Marriage Isbat by the Sampang Religious Court. The results of the research The procedure for carrying out an integrated isbat hearing held by the Sampang Religious Court is following the applicable regulations stipulated in Perma No. 1 of 2015 concerning integrated services and an integrated marriage Isbat session held by the

¹⁵ Muhammad Sabir et.al., "The Problems of the KHI on Article 7 about the Marriage Isbat in a Religious Court" *Jurnal Hukum dan Pemikiran* Vol 21, No.1, 2021.

Sampang Religious Court. included in Maslahah *Hājiyāt*.¹⁶ The difference in this thesis discusses the integrated marriage confirmation service, while my thesis focuses on determining the isbat according to the Sharia maqasid at the Ponorogo Religious Court.

Seventh, the journal written by Ramdani Wahyu Sururie entitled "Integrated Marriage Isbat as a Solution for Obtaining Legal Identity Rights", explains the purpose of implementing integrated marriage certificates as formulated in Perma Number 1 of 2015 article 2, namely to increase access to services in the field of law and assisting the community, especially those who are unable to obtain rights to marriage certificates, marriage books, and birth certificates, which are done simply, quickly and at low cost. With the implementation of an integrated marriage certificate, the right to obtain a legal identity in the form of a marriage certificate is easy to obtain/own so an integrated marriage certificate is a solution provided by the state to the public to obtain legal certainty. Therefore, the discussion about the Determination of Marriage Isbates in the Asy-Syari'ah Maqasiid Perspective will be the novelty of this ongoing research.¹⁷ The difference in my thesis lies in the focus on determining isbat according to Maqāsid syari'ah at the Ponorogo Religious Court.

Eighth, the journal written by Latifatul Fajriyyah and Alfitri entitled "Hearsay Evidence Admissibility: Due Process and Evidentiary Rules in Muslim Marriage Legalization (Isbat Nikah)", the results of the study explained that Samarinda PA and Samarinda PTA did not fulfill the proper legal process. due to legal considerations, the Judge was not clear in providing analysis and argumentation regarding the acceptance or rejection of "rumor witnesses". However, there is a decision that best reflects the value of justice and legal certainty, namely Decision Number

¹⁶ Mu'tashim Al Haq, Skripsi: "Analisis Maslahah Mursalah Terhadap Isbat Nikah Terpadu Oleh Pengadilan Agama Sampang". (Surabaya: Universitas Islam Negeri Sunan Ampel, 2019).

¹⁷Ramdani Wahyu Sururie, Isbat nikah terpadu sebagai solusi memperoleh hak identitas hukum, *Ijtihad, Journal of Islamic and Human Law Discourse*. Vol. 17, No. 1 (2017).

1003/Pdt.G/2017/PA.Smd. He considered the "rumor witness" evidence as a form of the PA Judge's caution in assessing the statement of the "rumor witness". Whether or not the testimony of de auditors' evidence is accepted by the Panel of Judges must be preceded by providing analysis and legal arguments that clearly outline the criteria for acceptance or rejection. Therefore, every decision formulated by the judge can realize the fulfillment of the values of justice and legal certainty for the parties to the case. Finally, to avoid discrepancies in hearing evidence, it is necessary to revamp the civil procedural law so that it can accommodate its application in appropriate cases. In addition, one way is to regulate the position and application of hearing evidence in Islamic civil cases by making a Court Circular Letter (SEMA) so that the resulting decision reflects justice and legal certainty. Therefore, the discussion about the Determination of Marriage Isbates in the Asy-Syari'ah Maqasiid Perspective will be the novelty of this ongoing research.¹⁸ This journal discusses proof and legal determination, of the judges of the Samarinda Religious Court regarding the acceptance or rejection of witnesses, while my thesis focuses on determining isbat according to the *Maqāsid syari'ah* at the Ponorogo Religious Court.

Ninth, the results of Journal research by Abdul Salam et.al., entitled Factors of Application for Marriage Isbat at the Religious Court of Sungguminasa Gowa. in this journal contains research anmaqaalyzing the factors for applying for a marriage certificate at the Gowa Sungguminasa Religious Court. The results of the analysis of the application for marriage approval at the Gowa Sungguminasa Religious Court revealed that the main factor causing the party applying for Isbat Marriage at the Sungguminasa Religious Court in Gowa was the party having urgent interests related

¹⁸Latifatul Fajriyyah and Alfitri Hearsay Evidence Admissibility: Due Process and Evidentiary Rules in Muslim Marriage Legalization(Isbat Nikah), *Journal of Law Science*, Volume 16 Number 3 (2022).

to legal administration, for example taking care of veterans' benefits, taking care of their child's birth certificate. Therefore, the discussion about the Determination of Marriage Isbates in the *Maqāṣid syari'ah* Perspective will be the novelty of this ongoing research.¹⁹ This journal analyzes the main factors of isbat marriage, while my thesis discusses the focus on determining isbat according to *Maqāṣid syari'ah* in the Ponorogo Religious Court.

Tenth, the results of the thesis research by M. Dewo Ramadhan entitled Analysis of the Impact of Refusing Marriage Itsbat on Marital Status and Children (Study of Metro Religious Court Decisions No: 0067/Pdt.P/2015/Pa.Mt). in this journal containing research, it can be concluded that the reasons for judges in rejecting applications for itsbat marriage are because there are obstacles according to statutory regulations to carry out a marriage. The judge rejected Budiono and Siti's application for itsbat nikah because Budiono and Siti's marriage was polygamous and did not fulfill the provisions of Law Number 1 of 1974 concerning marriage. This is in line with Article 3 paragraph of the Marriage Law which reads "in principle, a man can only have one wife. A woman may only have one husband», except in this case article 3 paragraph.²⁰ This thesis discusses the impact of refusing to enter into a marriage certificate, while the differences in my thesis focus on the determination of isbat according to *Maqāṣid syari'ah* at the Ponorogo Religious Court.

From the explanation above, The novelty discovered from this research with the title "Determination of Marriage Isbat in the Ponorogo Religious Court in the *Maqasid Syari'ah* Perspective" is research on the *Maqasid Syari'ah* perspective according to al-

¹⁹ Abdul Salam et.al., "Factors of Application for Marriage Isbat at the Religious Court of Sungguminasa Gowa" *Jurnal Diskursus Islam* Vol 9 Nomor 2, 2021.

²⁰ M. Dewo Ramadhan, Skripsi: "Analisis Dampak Penolakan Itsbat Nikah Terhadap Status Perkawinan Dan Anak". (Lampung: UIN Lampung, 2019).

Shatibi in the case of Isbat marriage in the Religious Courts which has not been available in previous studies.

B. Theoretical Framework

1. Definition of Marriage

In Indonesian, marriage comes from the word "kawin" which according to the language means forming a family with the opposite sex; have sex or intercourse. Marriage Also called "Marriage", comes from the word nikah (نكاح) which according to language means gathering, entering into each other, and is used to mean intercourse (wathi). The word "marriage" itself is often used to mean intercourse (coitus), as well as to mean marriage contract.²¹

Based on article 1 of Law Number 1 of 1974 concerning marriage; Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the one and only God.²²

The definition of marriage according to the Compilation of Islamic law is as one of muamalah worship. The provisions in articles 2 and 3 of the compilation of Islamic Law state: "Marriage is marriage, namely a very strong contract or *mitsaqan gholiidhan* to obey Allah's commands and carry them out is an act of worship that aims to create a household life that is *Sakinah*, mawadah, and rahmah".²³

The definition of marriage mentioned above means providing a provision that marriage is a sacred act that requires rules to regulate it, therefore it is in His place when Islam regulates marriage in a very thorough and detailed way to bring humans to live in honor by their very noble position among creatures. other creatures of Allah.

²¹ Abdul Rahman Ghozali, *Fiqh munakahat* Fiqh (Jakarta: Prenadamedia 2003) 7

²² Undang-undang Republik Indonesia Nomor 1 tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam (Bandung: Cintra umbara, 2007) 2.

²³ Ibid 9

2. Legal basis of marriage

The law of the origin of marriage is "mubah", according to Allah's firman:²⁴

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing”. (Q.S. an-Nuur: 32).²⁵

According to Imams Abu Hanifah, Ahmad bin Hanbal and Malik bin Anas, even though the marriage may at first be considered as permissibility/recommended, for certain individuals it can become an obligation, however, Imam Syafi'i considers that marriage is Mubah (allowed).²⁶

For people who already have the will and ability to marry and are worried that they will slip into the act of adultery if they are not married, the law of carrying out marriage for that person is mandatory. This is based on the legal idea that every Muslim is obliged to protect himself from doing what is forbidden. If self-protection must be carried out by marriage, while self-protection is obligatory, then the law of carrying out marriage must be by the rules:

وَأَجِبْ فَهُوَ بِهِ إِلَّا الْوَاجِبُ يَتِمُّ مَالًا

Something that is obligatory is imperfect except with it, then something is obligatory as well.

²⁴ Kamal mukhtar, *Asas-asas hukum Islam tentang perkawinan*. (Jakarta: Bulan Bintang 1974) 15

²⁵ Dahlan, Zaini., dkk., 1999, *Qur'an Karim dan Terjemahan Artinya*, Yogyakarta: UII Press. 626

²⁶ Abdur Rahman, *Perkawinan dalam syariat Islam*. (Jakarta : Rineka Cipta, 1992) 7

الْمَقَاصِدِ حُكْمِ سَائِلِ لِلْو

The legal means is the same as the intended law.

The law of carrying out marriage for that person is the law of the same means as the Basic Law, namely protecting oneself from immoral acts.²⁷

3. Pillars and terms of legal marriage

Before carrying out the marriage, it is important to pay attention to the pillars and conditions of marriage, including:

According to Jumhurul Ulama, there are five pillars of marriage and each pillar has certain conditions. To facilitate the discussion, the description of the pillars of marriage will be equated with the description of the terms of the pillars.²⁸

1) Prospective husband, the conditions are:

- a) Religion of Islam.
- b) Man
- c) Clear person
- d) Can give consent.
- e) There are no obstacles to marriage.

2) Prospective wife, the conditions are:

²⁷ Abdul Rahman Ghazali, *Fiqh munakahat* cet 1, (Jakarta:Kencana, 2003) 19

²⁸ Amirul nuruddin and Azhari Akmal Tarigan, *Hukum perdata Islam di Indonesia*. (Jakarta:Kencana, 2006) 62-63

a) Religious, even if Jewish or Christian.

b) Female.

c) Clear person.

d) Can be asked for approval.

e) There are no obstacles to marriage.

3) Marriage guardian, conditions.

a) Man.

b) Adult.

c) Have guardianship rights.

d) There are no guardianship obstacles.

4) Witness Marriage.

a) At least two men.

b) Present at the consent qabul.

c) Can understand the meaning of the contract.

d) Islam

e) Adult.

5) Ijab Qabul, conditions.

a) There is a question of marrying from the guardian.

b) There is a question of acceptance from the prospective bride and groom.

- c) Using the words marriage, tazwij, or the translation of the two words.
- d) Between consent and qabul continued.
- e) Between consent and qabul clear meaning.
- f) The person related to the ijab and qabul is not currently in ihram for Hajj or Umrah.
- g) The consent and qabul ceremony must be attended by a minimum of four people, namely the prospective bridegroom or his representative, the bride's guardian, and two witnesses.

4. Marriage Registration

Administratively, a marriage is said to be valid if it is carried out by following procedures by the law. As contained in the Government Regulation of the Republic of Indonesia Number 9 of 1974 concerning the Implementation of Law Number 1/1974 regarding marriage. In CHAPTER II REGISTRATION OF MARRIAGES Article 2 it says:²⁹

Registration of marriages for those who carry out their marriages according to the Islamic religion is carried out by Registrar Employees as referred to in Law Number 32 of 1954 concerning registration of Marriages, Divorces, and Reconciliation. Registration of marriages for those who enter into marriage according to their religion and belief other than Islam is carried out by employees of the marriage registrar at the civil registry office as referred to in various laws regarding marriage registration.

²⁹ Beni Ahmad Saebani and Syamsul Falah, *Hukum perdata Islam di Indonesia*. (Bandung: Pustaka Setia. 2011) Hal 107

The Qur'an and Al-Hadith do not regulate in detail the registration of marriages. However, it is felt by the community about the importance of this matter, so it is regulated through legislation, both Law Number 1 of 1974 and through the Compilation of Islamic Law. Registration of marriages is aimed at realizing orderly marriages in society, both marriages carried out based on Islamic law and marriages carried out by people who are not based on Islamic law. Registration of marriages is an effort to maintain the sanctity (*mitsaqan galidzan*) of the legal aspects arising from the marriage bond. The realization of that registration gave birth to a Marriage Certificate, each of which had a copy of the wife and husband. The deed can be used by each party if someone feels aggrieved from the existence of the marriage bond to obtain their rights.³⁰

5. Definition Isbat (Marriage Determination)

Marriage isbat comes from two syllables in Arabic, namely isbat and nikah. The word isbat is isim masdar which comes from the Arabic asbata-yasbitu-isbatan which means determination or determination. This term is then absorbed into words in Indonesian.³¹

Itsbat nikah is an attempt to determine a marriage that is not recorded or is not carried out in front of the Marriage Registrar at the Office of Religious Affairs (KUA). Based on the law, itsbat marriage is the authority of the Religious Courts. This provision is clearly stated in the Compilation of Islamic Law (KHI).³²

³⁰ Zainuddin Ali , *Hukum perdata Islam Indonesia*. (Jakarta: Sinar Grafika 2006) Hal. 26

³¹ Meita Djohan Oe, Isbat Nikah dalam Hukum Islam dan Perundang-Undangan Di Indonesia, *Pranata Hukum* Volume 8 No 2 Juli 2013 <https://media.neliti.com/media/publications/26718-ID-isbat-nikah-dalam-hukum-islam-dan-perundang-undangan-di-indonesia.pdf>

³² Euis Nurlaelawati, Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi? *Musâwa*, Vol. 12 No 2 Juli 2013 <https://ejournal.uin-suka.ac.id/pusat/MUSAWA/article/view/122-06>.

Marriage isbat according to the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/032/SK/2006 concerning Guidelines for the Implementation of Duties and Administration of Courts are validations of marriages that have been carried out according to Islamic religious law, but are not recorded by the KUA or the authorized PPN. Isbat nikah also means a method or way of determining the validity of a marriage that has not been registered at the local KUA, in accordance with applicable legal provisions relating to marriages carried out in court. The 2010 Religious Courts Administrative Technical Manual explains that marriage constituencies are statements regarding the validity of marriages held based on religion and not recorded by the authorized PPN.

6. Legal Basis for Marriage Isbat

Regarding the registration of marriages in Islam itself, there are no explicit rules in either the Al-Qur'an or Hadith. At the time of Rasulullah SAW and his companions, there was no known registration of marriages. At that time, marriage was declared valid if it fulfilled the conditions and pillars of marriage. Today, the registration of marriages is carried out based on two reasons, among others:

a. Qiyas

Attempts to analogize something with objects that have been determined in the Qur'an, hadith and the agreement of the friends. This is as stated in the recording of muamalah activities which are ordered to be recorded under certain conditions.

b. Maslahah Mursalah

Benefit that is present for the needs of the community which is not recommended and also not prohibited by the Shari'a. In this case, the isbat of marriage is seen as a benefit that is really needed by the community. In addition, it will also cause harm if marriage

registration is not carried out. Any harm must be avoided as the expression of the rule of fiqh which reads الضرر يزال which means harm must be eliminated.

In Indonesian positive law, marriage isbat is regulated in the Civil Code Articles 100-102, Law Number 1 of 1974 which came into effect on October 1, 1975, as well as Government Regulation Number 9 of 1975 dated April 1, 1975 and also the Compilation of Islamic Law (KHI). In the beginning, the authority to issue marriage certificates was reserved for those who entered into unregistered marriages before the enactment of Law Number 1 of 1974 jo. Government Regulation Number 9 of 1974. Furthermore, this authority was expanded with the existence of the Compilation of Islamic Law (KHI) Article 7 paragraph (2) and (3).³³

7. Problems regarding marriage registration after Permendagri 9/2019 policy

The policy of the Department of Population and Civil Registry to process birth certificates only with a Letter of Absolute Responsibility (SPTJM) without a photocopy of the marriage book is considered to have weakened the authority of the marriage registrar at the Office of Religious Affairs and the Office of Civil Registry itself. Their marriage is administratively 'legal' (recognized by the Government) as evidenced by the existence of a statement of marital status on the KTP or marriage not recorded on the KK, however, the legal status produced by the SPTJM has no legal force whatsoever and is not recognized by the government agencies themselves (other than the Ministry of Home Affairs).³⁴ Another problem is when a person whose family card and identity card write that they are married is not registered (*sirri*) and turns out to be divorced

³³ Ahmad Mukti Arto, Masalah Pencatatan Perkawinan dan Sahnya Perkawinan, (Mimbar Hukum No.26 Tahun IV mei-juni, 1996), h. 51-52

³⁴ Saubari, "Problem Pencatatan Nikah Pasca Kebijakan SPTJM Permendagri 9/2016" <https://kalsel.kemenag.go.id/opini/702/Problem-Pencatatan-Nikah-Pasca-Kebijakan-SPTJM-Permendagri-92016>, accessed on 8 February 2023.

from their husband, how to remove the status on their family card and identity card.

The SPTJM also creates new problems, namely:

- a. Children only have civil relations with the mother and the mother's family. Children born out of wedlock or unregistered marriage, apart from being considered illegitimate children, also only have civil relations with the mother or the mother's family (articles 42 and 43 of law marriage). while there is no civil relationship with his father.
- b. Children and their mothers are not entitled to maintenance and inheritance. A further consequence of an unregistered marriage is that neither the wife nor children born of the marriage have the right to demand maintenance or inheritance from their father.³⁵

From the explanation above, it can be seen that making an SPTJM (Declaration of Absolute Responsibility) in Permendagri Number: 109 of 2019 by unregistered married couples is not a solution for couples who are married and do not have a Marriage Certificate, because the implications of this rule are contrary to other rules.

8. Purpose Marriage Isbat

The requirements for marriage confirmation as explained in the Compilation of Islamic Law Article 7 paragraph (3) include (KHI Chapter II Article 7 paragraph (3):

- a. The existence of marriage in the context of divorce settlement.
- b. Loss of Marriage Certificate. Legal Analysis of Isbat.
- c. There is doubt about whether or not one of the conditions of marriage is valid.

³⁵Rofik Samsul Hidayat, Kontroversi SPTJM (Surat Pernyataan Tanggung Jawab Mutlak) dalam Permendagri Nomor: 109 Tahun 2019, Jurnal Pendidikan Tambusai Volume 6 Nomor 1 Tahun 2022

d. The existence of marriages that occurred before the enactment of Law Number 1 of 1974.

e. Marriages carried out by those who do not have marital obstacles according to Law Number 1 of 1974.³⁶

If the application for confirmation of marriage is filed after going through a trial process and the legal requirements have been met, the Panel of Judges will grant the request. Conversely, if the conditions are not met, the judge will reject the application. However, if the conditions are not met, the application may also be granted, unless the Panel of Judges has logical arguments in its considerations such as psychological, sociological, or other considerations which if not granted will cause harm to many parties. For example, if the request for a marriage certificate is not granted, it will be difficult for the child to obtain a birth certificate and others.

9. Definition of *Maqāṣid syari'ah*

Maqāṣid syari'ah consists of two words, *maqashid*, and *syari'ah*. The word *maqashid* is the plural form of *maqashid* which means intent and purpose, while *syari'ah* has the meaning of Allah's laws that have been determined for humans to be guided by them to achieve happiness in life in this world and the hereafter. So thus, *maqāṣid syari'ah* means the content of values that are the goal of law enforcement.³⁷

Maqāṣid syari'ah is a principle that provides answers to questions about Islamic law. *Maqāṣid* includes the wisdom behind rules such as increasing social welfare which is one of the wisdom behind charity and developing "awareness of God". *Maqāṣid* is also a good goal that the law seeks to achieve by blocking, or opening up, certain ways. *Maqāṣid* is also the divine intention and moral concepts that form the basis of Islamic

³⁶ Royan Bawono And Rita Khairani, Analisis...

³⁷ Ghofar Shidiq, "Teori Maqashid Al-Syari'ah Dalam Hukum Islam", *Jurnal Hukum Islam* Vol 44 No. 118 (2009).

law, such as justice, human dignity, free will, generosity, facilitation and social cooperation.³⁸

Thus, *Maqāṣid syari'ah* is the goal of Allah SWT and the Prophet in establishing Islamic law. This goal can be traced from the texts of the Qur'an and the Sunnah of the Prophet Muhammad as a logical reason for the formulation of a law that is oriented to the benefit of the people. If we examine all the books of Allah and the Sunnah of Rasulullah SAW which has been formulated in fiqh, it will be seen that all of these things have a purpose in their syariat.

10. Distribution of *Maqāṣid syari'ah*

Based on *Asy-syātibī* explained that all legal provisions consist of five main parts known as *al-dhuriyat al-khamaah* in order to form laws that emphasize being able to defend. Guarding religion or *hifzh al-din*, guarding the soul or *hifzh al-nafs*, guarding the mind or *hifzh al-'aql*, guarding derivatives or *hifzh al-nasl*, and guarding property or *hifzh al-mal* are all examples of *hifzh al-mal*. Various scholars have different perspectives regarding the series of *al-dharuriyah alkhams*, with some placing *hifzh al-nafs* first, followed by *hifzh al-din*. In addition to the five aspects of dharuri, some fiqh scholars include *hifzh al-'ird* (protection of honor). Then there are two more conditions, which are called *Hājiyāt* and *Tahsinīyāt*.³⁹

1. Maslahah Dauriyat

Dauriyat is a word that means "urgent, fundamental, and needs must be met".

Asy-syātibī thinks that things that fall under the category of duriyat are to obtain the

³⁸ Jasser Auda, *Maqasid al-shariah as philosophy of Islamic Law: A Systems Approach*, (London: International Institute Of Islamic Thought, 2008), 1

³⁹ M. Ziqhri Anhar dan Nurhayati, "Teori Maqashid Al-Syari'ah Dan Penerapannya Pada Perbankan Syariah" *Jurnal Ekonomi & Ekonomi Syariah* Vol 5 No 1, Januari 2022

interest of safeguarding, including: religion (*al-din*), soul (*al-nafs*), reason (*al-'aql*), property (*al-mal*), and offspring (*al-nasl*).

a. Maintaining Religion

Religion is an important and primary need for humans, so it is important to maintain its sustainability and benefit. The way to maintain religion is to fulfill the Shari'a in accordance with aqidah, worship sincerely, and behave in a noble manner. This must be implemented in order to achieve the benefit of life.

b. Maintain Intellect

The reason is a gift from Allah by having human reason to live life as a caliph on earth. Therefore it is important to protect and maintain reason to achieve benefits. not consuming alcohol and drugs is a way that can be done to maintain reason.

2. Maslahah *Hājiyāt*

hājiyāt is interpreted as a need. If the needs of *hājiyāt* are met, it can prevent difficulties in achieving the needs of *hājiyāt*, but if the needs of *hājiyāt* are not met then it will not damage the existence of these needs. *hājiyāt* is synonymous with secondary needs. As an example, if building a school is an effort to meet the needs of the needy, but there is no school construction, education will not be stopped, but having a school building can encourage growth to meet the needs of the need for a dauriyat.

3. Maslahah *Tahsiniyāt*

Tahsiniyāt means perfect things. In this case, *tahsiniyāt* is a refinement of the needs of *hājiyāt* and *hājiyāt* therefore this need is often interpreted as a tertiary need. For example, beautifying a mosque is permissible as long as there are no objections to its operations. although it has a tertiary nature, the aspect of benefits remains as the

main comparison, it does not contradict the text. The three *maṣlahah* above are related to each other.

11. The purpose of *Maqāṣid syari'ah*

Al-Syatibi explained in the book *al-Muwafaqat fi Ushul al-Syari'ah* that the purpose of is:

Shari'a laws were made to produce benefits or prevent damage, including the causes.⁴⁰ Punishments that exist in Islam such as *qisas* and others, everything is to produce benefit and prevent damage, even though it has to harm some of the others, it's just that the aim is none other than to remove the sides of the damage because the existence of damage is not the purpose of the existence of this Shari'a, so it must be cleaned even if it harms some other things because eradicating the damage is more important.⁴¹

The general objective of Shari'a law is to realize the benefit of human life by bringing benefits and avoiding harm. The benefit which is the aim of Islamic law is the essential benefit that is oriented towards the maintenance of these five things so that humans can live a noble life.

According to Imam Syatibi, the benefit that will be realized by Islamic law from the five cases above has three levels of needs consisting of *Al-Daruriyah*, *al-Hajiyah*, and *al-Tahsiniyyah* needs. Islamic law aims to maintain and preserve human needs at all levels, both in *Al-Daruriyah*, *al-Hajiyah*, and *al-Tahsiniyyah*.

⁴⁰ Abu Ishaq al-Syathibi, *al-Muwafaqat Fi Ushul al-Syari'ah*, (Kementerian Agama wakaf dan Dakwah - Kerjaan Saudi Arabia), 311

⁴¹ Ibid, *al-Muwafaqat Fi Ushul al-Syari'ah*, 60

CHAPTER III

RESEARCH METHOD

A. Types and Locations of Research

1. Type of Research

Research is a translation from English: research which means effort or work to seek again which is carried out with a certain method and in a careful, systematic, and perfect way to the problem so that it can be used to solve or answer the problem.⁴² The type of research in this research is descriptive qualitative or called field research. Field research is a type of research that aims to collect the required data and information, which is obtained from informants directly. By using qualitative methods. The qualitative method is a method that is carried out through interviews to obtain information from the sources specified in this study.

2. Research Locations

This research will be conducted at the Ponorogo Religious Court, which is located at Jl. Ir. H Juanda No. 25, Tonatan, Kec. Ponorogo, Ponorogo Regency, East Java, and it is known by the compiler that the Ponorogo Religious Court is the religious court institution with the highest number of cases of Isbat Nikah in the city of Ponorogo every year after divorce cases.

3. Research Informants

Research informants are reference subjects for researchers to obtain research data. This thesis research was conducted at the Ponorogo Religious Court, therefore the informants in this study consisted of:

a. In this study, the judges of the Ponorogo Religious Court will be interviewed as the giver of the determination of the Marriage Isbat case.

⁴² P. Joko Subagyo, *Research methods in theory and practice*. (Jakarta: Rineka Cipta, 1997) Page 2

b. Junior Registrar of Law as an employee who has authorized to archive data on cases of Isbat marriage every year and a copy of the decision or determination of the Isbat marriage.

c. Staff at the one-stop integrated service unit (PTSP) who are the first responders for all cases at the Ponorogo Religious Court.

4. Informant Determination Techniques

The technique for determining informants in this study used a purposive sampling technique, as stated by Sugiyono:

Purposive sampling is a sampling technique for data sources with certain considerations. These certain considerations, for example, the person who is considered to know best about what we expect, or maybe he is the ruler will make it easier for researchers to explore the object/social situation under study.⁴³ The researcher determines the subject of this study to the Ponorogo Religious Court Judge who gives the determination of the Marriage Certificate and also to the Young Legal Registrar as the person in charge of case data at the Religious Court. Determining the source of data on the people who will be interviewed by the compiler is purposive sampling, namely choosing certain informants with the intent and purpose so that the data obtained later can be more representative.

5. Data Collection Techniques

a. Observation

Observation is a data collection technique that has specific characteristics when compared to other techniques,⁴⁴ where the researcher seeks data from the results of direct observation of the object to be studied. The purpose of this observation is that

⁴³ Sugiyono, *Metode Penelitian Kualitatif dan Kuantitatif Dan R&D*, (Bandung: Alfabeta, 2015), 218.

⁴⁴ Sugiyono, *Metode Penelitian Kualitatif dan Kuantitatif Dan R&D*, (Bandung: Alfabeta, 2011), 145

researchers can obtain data and information on the focus of research, namely the number of cases and samples of constituting marriages that are widely submitted by the community at the Ponorogo Religious Court.

b. Documentation

Documentation is one of the data collection techniques that will be examined by tracing and studying documents in the form of case data at the Ponorogo Religious Court. The data on the determination of marriage certificates that will be examined will be divided into 2, namely the determination of marriage certificates that are granted and those that are rejected based on the judge's considerations in giving the determination to the applicant.

c. Interview

In addition to collecting data with documentation, researchers also collect data to be examined through interviews with judges and clerks at the Ponorogo Religious Court as those who examine, adjudicate, and provide Marriage Isbat determinations to married couples who apply for Marriage Isbat.

6. Data validity

Data validity or what is known as data validation in research is a step to find out real research results when collecting data in the field. In qualitative research, data can be said to be valid if the researcher writes his report in accordance with the object being studied and is true, but the truth depends on the background of the researcher. The procedures in the process of testing the validity of the data in qualitative research are:

a. Internal validity test

In the internal validity test, the researcher examines the data by extending observations, research persistence, triangulation, using several types of references, and case analysis obtained in order to obtain data certainty.

b. External validity test

In the external validity test, the researcher presents the results of research in the field with clear, detailed, and systematic descriptions. The data validation test in qualitative research is more inclined to test internal validity. Internal validity can be done in various ways, one of which is triangulation. Triangulation in this credibility test is defined as checking data from various sources in various ways, and at various times.⁴⁵

7. Technical data analysis

Data analysis techniques are the process of searching for and systematically compiling data obtained from interviews, field notes, and other materials so that they are easy to understand.⁴⁶ Data analysis in qualitative research is inductive, namely an analysis based on the data obtained, which is then developed into a hypothesis.⁴⁷

The data analysis technique used by the compiler has several stages, namely:

a. Data collection

The compiler collects data obtained from the research location using field observation methods and interviews with research informants so that the compiler gets data that is in accordance with the problems to be discussed in this thesis.

b. Data reduction

Data reduction is choosing from the data that has been obtained so that the data can be focused on the focus and research questions to be discussed.

c. Data Presentation

Presentation of data is done after reducing the data in order to facilitate and understand the focus of the research being discussed. In qualitative research, data

⁴⁵ *Ibid.*, 273

⁴⁶ *Ibid.*, 244

⁴⁷ *Ibid.*, 245

presentation can be in the form of narrative or text and data can also be presented in tables or graphs.

d. Conclusion

Conclusions in qualitative research can answer the main problem in the form of a temporary description or description of an object. Drawing conclusions can be described from the results of data collection, data reduction, and data presentation.

CHAPTER IV

RESULT AND DISCUSSION

A. Research Result

1. Overview of Ponorogo Regency

Ponorogo Regency is located in the west of the province of East Java and is directly adjacent to the province of Central Java, or more precisely 200 km southwest of the provincial capital of East Java, Surabaya. Ponorogo Regency is known as the City of Reog or Bumi Reog because this area is the origin of the Reog art. Ponorogo is also known as the City of Santri because it has many Islamic boarding schools. One of the famous ones is Darussalam Gontor Modern Pondok which is located in Gontor village, Mlarak sub-district.⁴⁸

Ponorogo Regency has an area of 1,371.78 km² which is located between 111° 17' – 111° 52' East Longitude and 7° 49' – 8° 20' South Latitude with an altitude between 92 to 2,563 meters above sea level. Administratively, the Ponorogo area is divided into 21 districts, 279 villages, and 26 urban villages.

The Ponorogo Regency map is presented in the following figure:

The boundaries of the administrative area of Ponorogo Regency are:

1. North: Magetan Regency, Madiun Regency and Nganjuk Regency
2. To the East: Tulungagung Regency and Trenggalek Regency
3. South: Pacitan Regency
4. West: Pacitan and Wonogiri Regencies (Central Java).⁴⁹

⁴⁸ “Ponorogo Regency,” <https://jatim.bpk.go.id/kabupaten-ponorogo/>, accessed on 1 June 2023. 11.30

⁴⁹ “Ponorogo District Government”, <https://ponorogo.go.id/profil/LAY-Geographic/> accessed on 31 May 2023.

2. History of the Establishment of the Ponorogo Religious Court

The Ponorogo Religious Court was established based on Stbd 1820 No 20 in conjunction with Stbd 1835 No 58. Changes in the name and jurisdiction, and location of the Ponorogo Religious Court are based on Stld 1828 No 55, Stbd 1854 No 128, and Stbl 1882 No 152.⁵⁰

The Islamic religion that developed in Ponorogo and Islamic teachings became part of community life which was adhered to by most Ponorogo people, including the fields of akhwalusy syaksiyah and muamalah which concerned the material sector. If a dispute arises between Muslims, they are judged by the Kyai, and in general, they obey the fatwa conveyed by the Kyai.

During the reign of Sultan Agung in Mataram, an institution was established to handle disputes and disputes among Muslims, then the position of this institution was strengthened by the Dutch East Indies government by implementing Islamic law for people who embraced Islam, as evidenced in the Laandraad decision in Jakarta on 15 February 1849, namely canceling the will of an heir because the contents contradicted Islamic Law, this was confirmed in the compendium in Stbl 1828 No 55 and Stbl 1854 No 129 jo Stbl 1855 No 2.

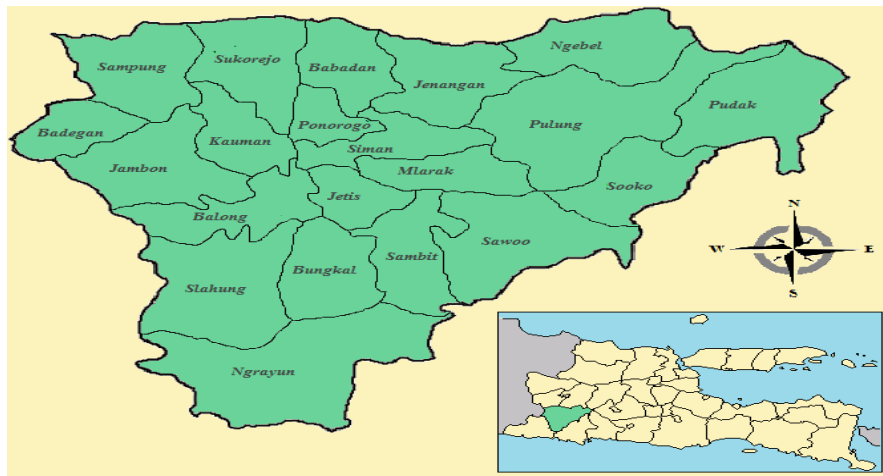
Then the court institution for Muslims during the Dutch colonial era was confirmed with the issuance of Stbl 1882 No 152 under the name Raad Religion or Western Raad. In 1937 the Dutch East Indies government applied the reception theory or "receptie theory" Gradually the authority of the Religious Council was reduced or limited except for matters of marriage, divorce, and divorce, reconciliation (NTPCR). Material matters, including charitable inheritance, are under the authority of the Land

⁵⁰ Super User, "The History of the Ponorogo Religious Court: The Legal Basis for the Establishment of the Ponorogo Religious Court", <https://www.pa-ponorogo.go.id/regarding-pregrinding/profile-pregrinding/history> accessed on 2 June 20123. 14.50

Raad/District Court, as stipulated in Stbl 1937 Nos. 116f and 610, therefore the Ponorogo Religious Court's decision only revolves around cases (NTCR).⁵¹

3. The jurisdiction area of the Ponorogo Religious Court

Picture 4.1 : Map of the Legal Territory of the Ponorogo Religious Court



Ponorogo Regency is an area in the province of East Java, which is about 200 km southwest of the provincial capital, and about 800 km east of the capital city of Indonesia. Ponorogo Regency is located at 111° 7' to 111° 52' East Longitude and 7° 49' to 8° 20' South Latitude.

The Ponorogo Regency area is directly bordered by Magetan Regency, Madiun Regency, and Nganjuk Regency in the north. In the east, it is bordered by Trenggalek Regency. In the south with Pacitan Regency. While in the west it is bordered by Pacitan Regency and Wonogiri Regency (Central Java Province).

The total area of Ponorogo Regency, which reaches 1,371.78 km², is divided into 21 sub-districts consisting of 21 sub-districts and 301 villages.

⁵¹ Super User, "The History of the Ponorogo Religious Court: The History of the establishment of the Ponorogo Religious Court", <https://www.pa-ponorogo.go.id/regarding-pregrinding/profile-pregrinding/History>, accessed on 2 June 2013. 14.50.

The topography of Ponorogo Regency varies from the lowlands to the mountains. Based on existing data, most of the area of Ponorogo Regency, namely 79% is located at an altitude of less than 500 m above sea level, 14.4% is between 500 to 700 m above sea level and the remaining 5.9% is at an altitude above 700m. Topographically and climatologically, Ponorogo Regency is a lowland with a tropical climate that experiences two dry seasons and a rainy season with temperatures ranging from 21 ° to 37 ° Celsius.

When viewed according to their area, the sub-districts that have the largest area (over 100 km²) are Ngrayun, Pulung, and Sawoo sub-districts, respectively.⁵²

4. Vision, Mission, Purpose of the Ponorogo Religious Court

a. VISION :

"The Realization of the Great Ponorogo Religious Court"

b. MISSION:

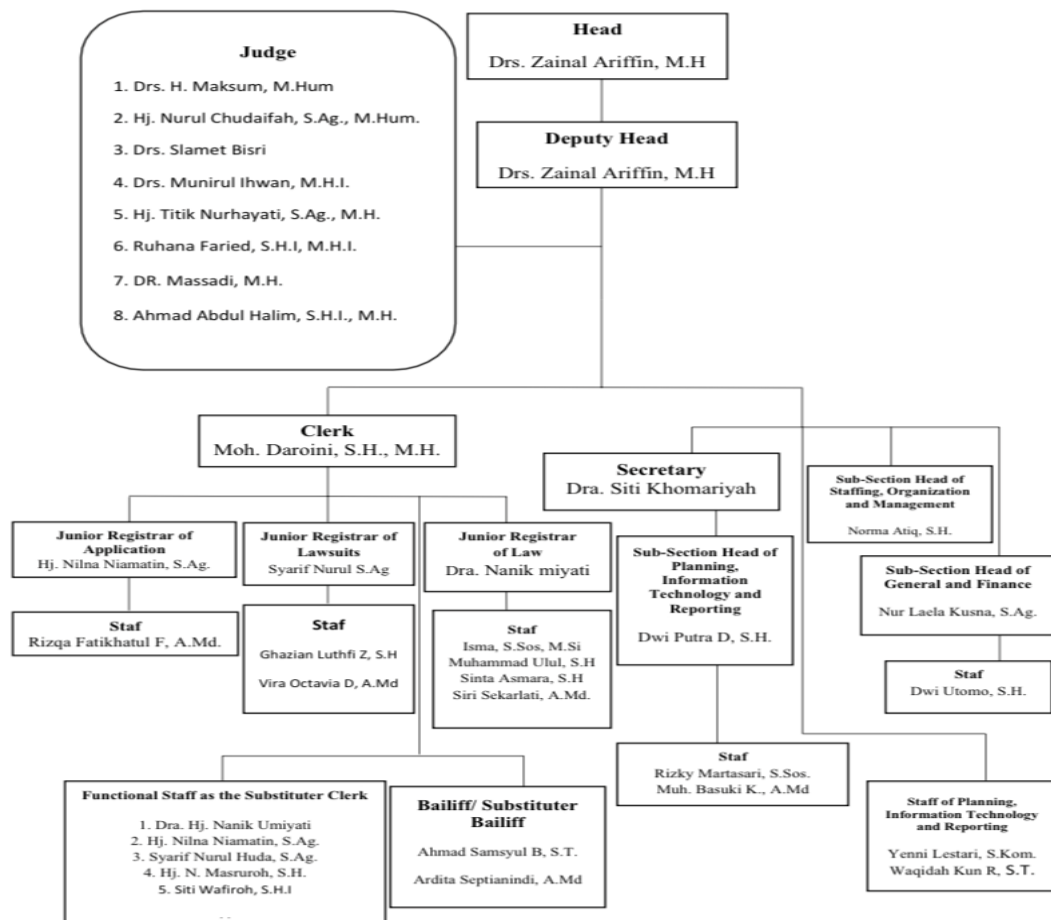
- a) Maintain the independence of the Ponorogo Religious Court.
- b) Providing fair legal services to justice seekers.
- c) Improving the quality of leadership and professionalism of human resources at the Ponorogo Religious Court.
- d) Increase the credibility and transparency of the Ponorogo Religious Court.⁵³

⁵² Super User, "Region of Jurisdiction of the Religious Courts of Ponorogo", <https://www.pa-ponorogo.go.id/about-pengdinding/profil-pengdinding/jurisdiksi> accessed on 2 June 2023. 15.33.

⁵³ Super User, "Vision and Mission Ponorogo Religious Court", <https://www.pa-ponorogo.go.id/about-pengdinding/profil-pengdinding/visi-misi> accessed on 2 June 2023. 15.33.

5. Ponorogo Religious Court Organization in 2022

Picture 4.2 : Structural Organization Data



B. Discussion

1. The judge's considerations in determining the marriage certificate

Indonesian Laws and Regulations state that marriage registration is the only means of proof that a marriage has occurred, but on the other hand, the legislation provides a way out for people who cannot prove the existence of said marriage using a Marriage Determination (Istbat Nikah) from the Religious Courts. , as stipulated in Article 7 paragraph (2) of the Compilation of Islamic Law which states "If a

marriage cannot be proven by a marriage certificate, the marriage itsbat can be submitted to the religious court."⁵⁴

In essence, as stated in Article 7 of the Compilation of Islamic Law, marriages that are not registered can submit marriage certificates to the Religious Courts regarding certain matters, namely marriage certificates in the context of processing divorces, loss of marriage certificates at the KUA, doubts about whether a marriage is valid or not., some marriages took place before the enactment of the Marriage Law, and marriages that were carried out did not have obstacles to marriage according to the Marriage Law. according to Law Number 1 of 1974.

In deciding a case a judge must consider it properly and correctly, the judge's consideration in a case must pay attention to the following matters:

- a. The facts revealed during the trial took place
- b. Juridical, Philosophical, and Sociological Aspects.

The judge's considerations greatly determine a judge's decision because the judge's decision is the product of the judge and these considerations will determine whether or not a decision is good.⁵⁵ The consideration of the judges of the Ponorogo Religious Court in determining whether marriage certificates are accepted or rejected is seen in the formal and material statutory requirements.

Some of the formal and material requirements that are required for the consideration of the judges of the Ponorogo Religious Court in deciding on the Marriage Isbat pay attention to the following matters:⁵⁶

⁵⁴ Faizah Bafadhal, *Itsbat Marriage and Its Implications for Marital Status According to Indonesian Laws and Regulations*

⁵⁵ Reno Juliando, *Judges' considerations in the Marriage Isbat at the Religious Courts are insufficient in terms of efforts to form a Sakinah Family.*

⁵⁶ Interview with Munirul Ihwan, as Judge of the Religious Court, Ponorogo on March 17, 2023

a. Formal procedural law

In formal procedural law, he must propose here that the relative competence power is domiciled in Ponorogo, the absolute competence of the court's power based on the law to try a case according to the object, material, or subject matter of the dispute. So relative

competence based on domicile is a consideration for whether or not relative competence is accepted, for example, a person from Jakarta but filing for divorce in Ponorogo is not his domicile, but if he is originally from Ponorogo then he must ask for a domicile letter.

b. Material procedural law

According to the material procedural law, the consideration is whether the conditions have met the law or not, for example, if he married *Sirri* before, his guardian was also legally harmonious and fulfilled, so there is no prohibition on marriage, but if he is married to his own sister or sister, it may not mean that he does not violate the law. marriage, among others, will be granted.

2. Determination of Marriage Isbat in the Perspective of *Maqāṣid Syari'ah*

Isbat Nikah is the legalization of a marriage in which the marriage has not been recorded by the Marriage Registrar at the Office of Religious Affairs. Not a few local people apply for marriage certificates due to the lack of public awareness of marriage registration.⁵⁷

Legally, unregistered marriages can have legal consequences for a marriage. *Sirri* marriages that occur in Indonesia are still considered valid from a religious perspective if the pillars and conditions have been fulfilled, but this marriage contract

⁵⁷ Interview with Munirul Ihwan, as Judge of the Religious Court, Ponorogo on March 17, 2023

can have legal impacts and consequences that are detrimental to the wife and his son.⁵⁸ The position of the wife in an unregistered marriage according to positive law or Law Number 1 of 1974 concerning Marriage and also in the Compilation of Islamic Law. Whereas because *Sirri* marriages are not recognized and not recognized in the state, such marriages do not have the right to protection law. The rights of both the wife and the husband can be protected by law after having authentic proof of their marriage⁵⁹

Unregistered marriages have a very detrimental impact on wives and women in general, both legally and socially.

1. The Legally:

- a. The wife is not considered a legal wife;
- b. The wife is not entitled to maintenance and inheritance from her husband if she dies;
- c. The wife is not entitled to the joint property in the event of a divorce because legally the marriage is considered to have never happened

2. The Socially

The wife will find it difficult to socialize because women who carry out unregistered or underhand marriages are often considered to have lived in the same house with men without marital ties or the wife is considered to be a mistress.

Not all children born outside of a legal marriage bond may be recognized. There are certain illegitimate children who cannot be recognized. In the Civil Code there are two types of children out of wedlock, namely:⁶⁰

1. A recognized illegitimate child
2. Unrecognized illegitimate child

⁵⁸ Interview with Munirul Ihwan, as Judge of the Religious Court, Ponorogo on March 17, 2023

⁵⁹ Addin Daniar Syamdan, Djumadi Purwoatmodjo, *Aspek Hukum Perkawinan Siri dan Akibat Hukumnya*, Volume 12 Nomor 1 (2019)

⁶⁰ *Ibid*, *Aspek Hukum Perkawinan Siri...*

Unrecognized illegitimate children will not cause legal consequences in inheritance, because illegitimate children who are not recognized by either their mother or father cannot inherit the property inherited from their parents. Whereas a child out of wedlock who is recognized as valid either by his mother or by his father or both will cause legal consequences by inheritance. This acknowledgment will result in the emergence of a civil relationship between a recognized illegitimate child and the parents who acknowledge him.

According to Daroini, the interests or reasons for the local community to apply for a marriage certificate, Ponorogo people who apply for a marriage certificate to the Ponorogo religious court to have a child's birth certificate where the child from the unregistered marriage does not yet have written proof of birth. The need for marital status and to be recorded after stipulation in court such as KK (Family Card) and KTP (Resident Identity Card) the needs of the community when applying for a Marriage Isbat to provide legal identity to legal spouses and recognized by the state through the provision of free marriage books and population documents after the marriage Isbat procession.⁶¹

From the explanation above, in the study of ushul fiqh it is known as *Maqāṣid syari'ah*, one of the important concepts in the study of Islamic law is *Maqāṣid syari'ah*, which is about the purpose of establishing law in Islam. Because of the importance of *Maqāṣid syari'ah*, legal theorists make *Maqāṣid syari'ah* one of the criteria for a mujtahid to carry out ijtihad. The essence of the *Maqāṣid syari'ah* concept is to realize good while at the same time averting evil or attracting benefits and rejecting harm.⁶² In terms of terminology, *Maqāṣid syari'ah* can be interpreted as the values and meanings

⁶¹ Interview with Munirul Ihwan, as Secretary of the court of the Religious Court, Ponorogo on March 17, 2023

⁶² Amir Mu'allim dan Yusdani, *Konfigurasi pemikiran Hukum Islam*, cet. I, (Yogyakarta: UII Press Indonesia, 1999), 52.

that are the goal and want to be realized by the makers of Sharia (Allah SWT) behind the making of Shari'a and laws, which are researched by mujtahid scholars from Sharia texts.⁶³

According to Imam Asy-Syātibī, the discussion of *Maqāṣid syari'ah* is very close to ushul fiqh because ushul fiqh is a legal guideline for doing ijtihad. Besides that, *Maqāṣid syari'ah* is also the right method for dealing with problems of Islamic law in modern times.

The principles of uṣūl al-fiqh are integrated with other scholarships or there is a synergy of principles contained in uṣūl al-fiqh. All of this is aimed at the development of Islamic law itself and these efforts must be carried out in every generation so that Islamic law can provide true peace, benefit, goodness, and justice as a whole.⁶⁴

Maslahah in the rules of fiqh is stated:

درء المفساد مقدم علي جلب المصالح

"Rejecting mafsadat takes precedence over achieving benefit"

The ushuliyyah rule, which means that leaving mafsadat is more important than taking benefit, explains that if in the same circumstances, you are faced with rejecting harm and getting benefit, then first reject the mafsadat.

The existence of rules regarding Isbat Nikah has objectives, namely to provide access for people who do not yet have marriage registration, of course, this provides benefits for the community and maintains the marriage so that it is legal in the eyes of the state, to administer and obtain their rights in the form of letters or personal

⁶³Moh. Toriquddin, Teori Maqāshid Syari'ah Perspektif Al-Syatibi, Jurnal Syariah dan Hukum, Volume 6 Nomor 1, Juni 2014, hlm. 33-47

⁶⁴ Abdul Helim. *Maqasid al-syariah versus usul al-fiqh (konsep dan metodologi Islam)*, cet. I, (Yogyakarta: Pustaka Pelajar, 2019), 144.

documents required from the competent authority and to provide guarantees of legal certainty protection for each husband and wife.

This can be seen as a benefit, namely:

- a. Providing legal certainty for a marriage with a marriage book that is authentic evidence so that it can facilitate the making of important documents.
- b. There is legal evidence of a child's kinship relationship with his parents so that the existence of the marriage certificate can be used to fulfill the requirements of the child's birth certificate.
- c. There is an inheritance relationship that can be proven by authentic evidence.

The compiler took several samples of Isbat marriage determinations, including applications that were granted and those that were rejected by the problems that often occur in the local community, while applications for marriage confirmations were often rejected due to guardianship issues, in which marriage the applicant's guardian who married is not a nasab guardian. The following is an analysis of marriage constancy cases that are often filed by Petitioners at the Ponorogo Religious Court.

The following is an analysis of marriage constancy cases that are often filed by Claimants at the Ponorogo Religious Court:

a. Case Number 175/Pdt.G/2019/PA.Po (Determination of Accepted Marriage Certificates)

a. Parties submitting:

Claimant I has the initials A, is 77 years old, Muslim, works as a farmer, residing in Jangan District, Ponorogo Regency

Against: Defendant I with the initials W, 49 years old, Muslim, works as a farmer, residing in Jangan District, Ponorogo Regency Respondent II with the initials S, 63 years old, is Muslim, Jangan District, Ponorogo Regency.

b. Case is as follows:

- 1) Whereas the Claimant married her husband with the initials T of Islam at the home of the Claimant's parents in Mrican Village, Jenangan District, Ponorogo Regency, with a dowry in the amount of Rp. 500,- (five hundred rupiahs) and the marriage guardian of the Claimant's biological father with the initials D, witnessed by two witnesses and attended by relatives and neighbors.
- 2) Whereas at the time of marriage, the Claimant was a widow at the age of 23, while the husband of the Claimant was divorced at the age of 26
- 3) Whereas between the Claimant and the Claimant's husband, there is no blood relationship and are not related by blood and fulfill the requirements and/or there is no prohibition to carry out a marriage, according to Islamic law and the applicable laws and regulations.
- 4) Whereas the Claimant's husband died on December 14, 2001, due to illness;
- 5) Whereas the Claimant and the Claimant's husband had never received a Marriage Certificate Book from the Marriage Registrar of the Religious Affairs Office of Jenangan District, Ponorogo Regency, and after the Claimant took care of it, it turned out that the marriage of the Claimant and the Claimant's husband did not exist/was not recorded in the register of the Office of Religious Affairs, Jangan District, Ponorogo Regency. Therefore, the Claimant requires a Marriage Certificate from the Ponorogo Religious Court, to serve as a legal basis for managing land administration;

c. Legal Action

- 1) Granted the Claimant's request;
- 2) Determined by law that the marriage between the Claimant and the Claimant's husband which took place before the Secretary of the court of the Office of the Religious Affairs Office of Jenangan District, Ponorogo Regency on 15 June 1965 was valid.
- 3) Determine the costs of cases according to law;
- 4) Or impose other jurisdiction that is as fair as possible;

d. Witnesses

- 1) The witness is the neighbor of the Claimant
- 2) Witness 2 is the neighbor of the Claimant

e. Claimant's Evidence

- 1) Photocopy of Identity Card (KTP) in the name of Pinggah (Applicant) issued by East Java Province, Ponorogo Regency on August 17, 2012, with a stamp duty of Rp. 6,000, - (six thousand rupiah), has been matched with the original and matches.
- 2) Photocopy of Rejection Letter, number: B-376/Kua.13.2.2/Pw.28/4/2019, dated 29 July 2019, issued by the head of the Office of Religious Affairs in Jenangan District, Ponorogo Regency, with a stamp of Rp.6,000,- (six thousand rupiah), has been matched with the original and matched.
- 3) Photocopy of Death Certificate, in the name of T with a stamp of Rp. 6,000, - (six thousand rupiah), has been matched with the original and matches.
- 4) Photocopy of Family Card (KK), number: 3502182710010148, dated May 3, 2019, on behalf of the P (Claimant) issued by the Head of the Population and

Civil Registration Office, Ponorogo Regency, with a stamp duty of Rp. 6,000, - (six thousand rupiah), has been matched with the original and matches.

f. Legal Considerations

- 1) Considering, whereas the Petitioner in his letter of application argued that the Petitioner had married his late husband whose initials were T at the home of the Claimant's parents in Mrican Village, Jenangan District, Ponorogo Regency, with a dowry in the amount of Rp. 500,- (five hundred rupiahs) and the marriage guardian of the Claimant's biological father with the initials D with witnesses with the initials S and attended by relatives and neighbors.
- 2) Considering, whereas the Respondents before the court have submitted their answers orally in which the Respondents acknowledged the truth of the contents of the Claimant's petition;
- 3) Based on the information above, the marriage of the Petitioners has been fulfilled according to the terms and conditions of marriage and the marriage has been carried out according to legal provisions or there is no obstacle to marriage.
- 4) Considering, that in order to confirm the arguments mentioned above, the Claimant submitted letters of evidence (P.1 to P.4) and witnesses.
- 5) Considering, that because the a quo marriage is carried out according to Islamic law, it is in accordance with the intent of Article 2 paragraph (1) of Law Number 1 Year 1974, concerning Marriage, and Article 4 of the Compilation of Islamic Law, thus the applicant's application is declared to have been legally proven, and also the a quo petition has clear and concrete interests as mentioned above so that the Petitioners' petition deserves to be granted.

g. voluntary jurisdiction

- 1) Granted the Claimant's Application;

- 2) Stating that Petitioner P's marriage to the late T was held at the Petitioner's house in Dukuh Klego, RT. 001RW. 002, Mrican Village, Jenangan District, Ponorogo Regency on June 15, 1965, is legal;
- 3) Instruct the Petitioner to register this marriage at the Religious Affairs Office of Jenangan District, Ponorogo Regency:
- 4) Charge the Petitioner to pay the costs of this case in the amount of R. 451,000 - (four hundred fifty-one thousand rupiahs).

b. Case Number 610/Pdt.G/2021/PA.Po (Determination of Accepted Marriage Certificates)

a. Parties submitting:

Petitioner A is 47 years old, Muslim, works as a housewife, and resides in Ponorogo Regency.

Against: Defendant B is 57 years old, Muslim, has no occupation, lives in Ponorogo Regency, and now his exact address is unknown throughout Indonesia.

b. Case is as follows:

- 1) Whereas on July 28, 1992, the Petitioner married a man named TERMOHON according to the Islamic religion before the Secretary of the court of the Office of Religious Affairs, chapteradan District, Ponorogo Regency, with a dowry in the form of money amounting to Rp. 20,000.00 (twenty thousand rupiahs), and the marriage guardian of the Petitioner whose name is the Marriage Guardian and the witnesses Witness I Marriage and Witness II Marriage in the presence of relatives and neighbors;
- 2) Whereas at the time of marriage the Petitioner was a virgin at the age of 18, while the husband of the Petitioner was a young man at the age of 26;

- 3) Whereas between the Petitioner and the Petitioner's husband there is no blood relationship and are not related by blood and fulfill the requirements and/or there is no prohibition to carry out a marriage, both according to the provisions of Islamic law and the applicable laws and regulations;
- 4) Whereas after the marriage the Petitioner and the Petitioner's husband lived in a house together in Ponorogo Regency from the beginning of their marriage until now and have lived in harmony as husband and wife (ba'da dukhul), and have been blessed with 2 children named:
 - First Child, 27 years old;
 - Second Child, 19 years old;
- 5) Whereas the current whereabouts of the Petitioner's husband have not been known since 2010, as stated in the Statement Letter from the Village Number: 47045/405.30.16.05/2021 dated 19 March 2021
- 6) Whereas the Petitioner and the Petitioner's husband had received a Marriage Certificate Excerpt Book from the Marriage Registrar of the Religious Affairs Office of the CHAPTERadan District, Ponorogo Regency, but after the Petitioner took care of it it turned out that the marriage of the Petitioner, and the Petitioner's husband did not exist/was not recorded in the register of the Office of Religious Affairs, CHAPTERadan District, Ponorogo Regency. Therefore, the Petitioner and the Petitioner's husband require a Marriage Certificate from the Ponorogo Religious Court, to be used as a legal basis for arranging the birth of the Petitioner's child;

c. Legal Action

- 1) Granted the Petitioner's request;
- 2) To determine that due to law, the marriage between the Petitioner (Applicant) and the Petitioner's husband (APPLY) which was held before the Marriage Registrar of the Office of Religious Affairs, CHAPTERadan District, Ponorogo Regency on 28 July 1992 is valid;
- 3) Determine the costs of cases according to law;
- 4) Or make another determination that is as fair as possible;

d. Witnesses

- 1) Witness I admit to being the Petitioner's sibling
- 2) Witness II is the neighbor of the Petitioner

e. Claimant's Evidence

- 1) Photocopy of Identity Card with NIK 3502164211740003 The proof of the letter has been examined by the Panel of Judges, matched with the original which turned out to be appropriate, then given the evidence code (P.1).
- 2) Photocopy of Family Card Number 3502162207140001 dated 16-03-2021 issued by the Population and Civil Registration Office of Ponorogo Regency.
- 3) Photocopy of Certificate Number 470/45/405.30.16.05/2021 dated March 19, 2021, issued by the Head of Bareng Village, CHAPTERadan District, Ponorogo Regency.

f. Legal Considerations

- 1) Considering, that in order to comply with the provisions of the 2013 Revised Edition of the Guidelines for the Implementation of the Duties and Administration of the Religious Courts, the application for Isbat Nikah has been announced for 14 days on the notice board of the Ponorogo Religious Court and

it turns out that since it was announced until the case examination process took place, no party has filed a legal remedy against the application.

- 2) Considering, that the Respondent had been legally summoned and the Respondent was never present and did not order another person to attend as his representative/proxy, therefore the Respondent's statement could not be heard.
- 3) Considering, that at the time of the consent qabul, the guardian, namely the Petitioner's biological father, had been represented by the village priest to marry off the Petitioner and the Respondent witnessed by 2 male witnesses who were aqil baligh, based on these facts it should be stated that the Petitioner's marriage had fulfilled the pillars of marriage as provisions of Article 14 Compilation of Islamic Law;
- 4) That the marriage that has been carried out by the Petitioner and the Respondent has been considered and can be proven to be a valid marriage, which is related to Article 7 paragraph (2) of the Compilation of Islamic Law, then the Petitioner's request should be granted;

g. voluntary jurisdiction

- 1) Declare that the Respondent who has been summoned officially and properly to appear before the court is not present;
- 2) Granted the Petitioner's request with *verstek*,⁶⁵
- 3) To determine the validity of the marriage between the Petitioner and the Respondent which was held on 28 July 1992 in Bareng Village, CHAPTERadan District, Ponorogo Regency;

⁶⁵ *Verstek* (decision canceled by the Panel of Judges without the presence of the Defendant and without valid reason even though it has been summoned officially and properly).

- 4) Establish a place for registration of marriages at the Office of Religious Affairs in CHAPTERadan District, Ponorogo Regency;

c. Case Number 975/Pdt.G/2020/PA.Po (Declined marriage certificate)

a. Parties submitting:

Petitioner: name A, 42 years old, Muslim, works as a farmer, residing in Ponorogo Regency.

Against: Defendant B is 39 years old, Muslim, and works as a farmer. Ada lives in Ponorogo Regency, and now the exact address is not known throughout Indonesia.

b. Case is as follows:

- 1) Whereas on June 26, 2006, the Petitioner married the respondent according to the Islamic religion at the Village Officials' (Modin) house in Ponorogo Regency with a dowry in the form of money of Rp. 20,000 (twenty thousand rupiahs), and Modin's marriage guardian with the initials K. has been surrendered by the father of the wife of the Petitioner, attended by relatives and neighbors;
- 2) Whereas at the time of the marriage, the Petitioner's status was a bachelor at the age of 26, while the Petitioner's wife was a virgin at the age of 25;
- 3) Whereas between the Petitioner and the Petitioner's wife, there is no blood relationship and are not related by breast milk and meet the requirements and there is no prohibition against holding a marriage.
- 4) Whereas after the marriage the Petitioner and the Petitioner's wife resided at the home of the Petitioner's parents in Ponorogo Regency and have lived in

harmony like a wife and husband (ba'da dukhul), and have been blessed with 2 children named:

- a. First Child, 13 years old;
- b. Second Child, 8 years old;

- 5) Whereas the whereabouts of the Applicant's wife is not clear and known throughout the territory of the Unitary State of the Republic of Indonesia as stated in the Ghoib Statement from Number: 472.2/22/405.30.15.01/2020 dated 23 June 2020;
- 6) Whereas even though the marriage of the Petitioner and the Petitioner's wife has been carried out according to Islamic law, until now it does not have a marriage certificate and is not recorded in the register of the Sukorejo District Religious Affairs Office, therefore the Petitioner requires a Marriage Certificate from the Ponorogo Religious Court, to serve as a legal basis for processing the certificate the birth of the Petitioner's two children;

c. Legal Action

- 1) Granted the Petitioner's request;
- 2) To stipulate the law, the marriage between the Petitioner and the Petitioner's wife which took place at the Village Officials' (Modin) house in Ponorogo Regency on June 26, 2006, is valid;
- 3) Determine the costs of cases according to law;
- 4) Or impose other decisions that are fairest;

d. witnesses

- 1) Witness I, 65 years old, Muslim religion, Modin job, residence in Ponorogo Regency
- 2) Witness II, 44 years old, Muslim, farmer, residence in Ponorogo Regency.

e. Claimant's Evidence

- 1) Photocopy of Resident Certificate (KTP) with a stamp and already by the original.
- 2) Photocopy of the Statement Letter regarding the non-marriage of the Petitioner at KUA Sukorejo District Number B-112/KUA.13.02.06/PW.01/06/2020 issued by the Head of the Office of Religious Affairs in Sukorejo District on 17 June 2020, sufficiently stamped, and matched the original.
- 3) Photocopy of Family Card in the name of the Head of Family T Number 3502150608100008 issued by the Population and Civil Registration Office of Ponorogo Regency, dated 03-07-2012, sufficiently stamped and in accordance with the original
- 4) Photocopy of Certificate of Unseen Number 472.2/22/405.30.15.01/2020 dated 23 June 2020 issued by the Head of Sukorejo District, Ponorogo Regency, sufficiently stamped and verified according to the original

f. Legal Considerations

- 1) Considering, that the Petitioner has been present at the trial and has provided sufficient information;
- 2) That because this case is an application for legalization of a marriage, in accordance with Article 4 paragraph (2) letter (d) of Supreme Court Regulation Number 1 of 2016, mediation is not carried out;
- 3) Whereas the arguments of the Petitioner's petition are in essence a sequence in which the Petitioner requests the legalization of his marriage on June 26 2006, which was held at the village apparatus (modin) house in Ponorogo Regency,

- 4) Whereas based on the testimony of the Petitioner's witnesses it is also proven that the guardian who married the Petitioner and the Respondent did not exist, because when the Petitioner and the Respondent were married the Respondent's biological father had passed away and at the time of the marriage none of the Respondent's family came
- 5) whereas therefore based on the above evidence and considerations the following facts can be found:
 - Whereas the marriage between the Petitioner and the Respondent was not held in the presence of a marriage registrar from the local KUA;
 - Whereas the marriage between the Petitioner and the Respondent was held without a guardian from the Respondent and none of the Respondent's family came;
 - Whereas when the Petitioner and the Respondent were married, the Respondent's biological father had passed away;
 - whereas based on these facts, it is evident that the marriage between the Petitioner and the Respondent did not meet the requirements and pillars of marriage as stipulated in Articles 14, 19, 20 and 21 as well as Articles 24 and 26 of the Compilation of Islamic Law, so that it cannot be legalized as a legal marriage;
 - Considering, that based on the considerations mentioned above, it is not proven that the Petitioner and the Respondent have entered into a marriage that meets the requirements and pillars of marriage, therefore the Petitioner's application must be rejected;

g. voluntary jurisdiction

- 1) Rejecting the Petitioner's application;
- 2) Charge the Petitioner to pay the costs of this case
- 3) 376,000.00 (three hundred seventy-six thousand rupiahs).

3. Factors behind the applicant submitting an application for Itsbat Marriage

To explore the factors behind the isbat of marriage in Ponorogo Regency, I explored these sources by determining several expert informants from judges and clerks of the Religious Court of Ponorogo Regency, where the judges were people who understood and had direct knowledge of the process of submitting isbat nikah at the Ponorogo Religious Court and determined expert informants, then I determined information according to data from the Ponorogo Religious Court.

After selecting the next informant, I determined the question material that I used as an interview with the predetermined informant. The interview directly leads to the topic of discussion, namely what are the factors behind the applicant submitting an application for Itsbat Nikah?

NO	INFORMANT	POSITION
1.	Drs. Munirul Ihwan, M.H.I	Judge of the Ponorogo Religious Court
2.	Moh. Daroini, S.H., M.H.	Secretary of the court of the Religious Court
3.	Pinggah	The party applying for the Marriage Itsbat
4.	NIK 3502164211740003	The party applying for the Marriage Itsbat

According to the first informant, the factors behind the itsbat marriage in Ponorogo Regency were because many of the applicants had been in unregistered marriages, but to change that, they filed a certificate at the religious court, so unregistered marriages are then remarried by the KUA so there are cases of changing or making birth certificates. there was also a case of unregistered marriage and then the child was taken by his grandfather then the child wanted to enter AKPOL (Police Academy), then his grandfather submitted an application for the grandson to apply for the police academy to be overseas then after returning to Ponorogo Regency they proposed marriage. Apart from that, because they do not have enough money to get married, they marry in a series and then register their marriage certificate at the Ponorogo Religious Court. As explained by Munirul Ihwan as follows:

“The factors behind the applicant submitting an application for isbat marriage at the Ponorogo Religious Court include taking care of the real KK (family card), arranging birth cards for children, because many of the applicants are unregistered marriages but their mother's daughter and to change that apply for a certificate at the religious court. , so unregistered marriages are then remarried by the KUA so there are cases of changing or making birth certificates. There was once a case of unregistered marriage and then the child was taken by his grandfather and the child wanted to enter the AKPOL (Police Academy), then his grandfather submitted an application for the police academy.”⁶⁶

After conducting an interview with the first informant, I then conducted an interview with the second informant. According to the informant, the two factors that

⁶⁶ Interview with Munirul Ihwan, Judge of the Ponorogo Religious Court

led to unregistered marriages in Ponorogo Regency were due to unregistered marriages, apart from that, marriages carried out before 1974 as explained by Moh dahroini:

“the background of the applicant applying for a marriage certificate is because of unregistered marriages and the existence of marriages that occurred before 1974 and the need for the community to provide legal identity to legal spouses and be recognized by the state through the provision of free marriage books and population documents after the marriage isbat procession. Ponorogo people who apply for marriage certificates to the Ponorogo religious court have marital status requirements such as KK (Family Cards) and KTP (Resident Identity Cards) for community needs when applying for Marriage Isbat.”⁶⁷

After conducting interviews with the two informants, I then processed the data taken from the applicant who had a case at the Ponorogo Religious Court. I took the parties who applied for isbat marriage in this third informant at the Ponorogo Religious Court. According to him, the data underlying the isbat of marriage that the applicant is doing is an unregistered marriage. The applicant submitted his marriage isbat to the Pacitan Religious Court to register the marriage that had been carried out. As the data I took from Case Number 1081/Pdt.G/2019/PA.Po as follows:

Whereas the Petitioner carried out an unregistered marriage at the home of the applicant's parents and the Petitioner had never received a Marriage Certificate Excerpt Book from a Marriage Registrar at the Office of Religious Affairs and after the Petitioner took care of it it turned out that the marriage of the Petitioner and the Petitioner's husband did not exist/was not

⁶⁷ Interview with Dahroini, Clerk of the Court of the Religious Court

recorded in the register of the Office of Religious Affairs, Jagan District, Ponorogo Regency. Therefore, the Petitioner requires a Marriage Certificate from the Ponorogo Religious Court, in order to serve as a legal basis for managing land administration.

Next, I processed the data taken from the applicant who had a case at the Ponorogo Religious Court. In this fourth informant, I took the parties who applied for itsbat marriage at the Ponorogo Religious Court. The Petitioner had received a copy of the Marriage Certificate book but in fact it had not been recorded at the KUA. As the data I took from Case Number xxxx/Pdt.G/2021/PA.Po as follows:

The applicant married the applicant's husband according to the Islamic religion before the Marriage Registrar of the Office of Religious Affairs. however, after the Petitioner took care of it, it turned out that the marriage between the Petitioner and the Petitioner's husband did not exist/was not recorded in the register of the Office of Religious Affairs, therefore the applicant and the applicant's husband needed a marriage certificate at the Agma Ponorogo Court.

After conducting interviews with informants as well as data from the people who applied for marriage certificates, I concluded that the factors behind isbat marriage at the Ponorogo Religious Court were caused by unregistered marriages, besides that they were also caused by unregistered marriages or marriages carried out before the 1974 law on marriage was enacted.

CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

From the results of this study, several conclusions can be drawn, namely:

1. The judge's considerations in granting a marriage certificate are accepted if the marriage certificate is supported by evidence on the facts at trial which convinces the judge that the applicants have entered into a marriage with administrative evidence and witness statements and also see the validity of the marriage that has been implemented namely fulfilling the requirements and harmony of marriage according to Islamic law. If the conditions and pillars of the marriage that have been carried out have been fulfilled and there are no marital obstacles, then the proposed marriage certificate application can be granted by the panel of judges. If the isbat case is hindered by administrative requirements and the marriage carried out has not met the requirements and harmony of marriage and there is a prohibition on marriage that is not by Law No. 1 of 1974 and the Compilation of Islamic Law, then the application for isbat marriage will be rejected by the Panel of Judges and the marriage must be repeated so that the marriage can be said to be valid by the provisions of Islamic law and applicable legislation.
2. Maqāṣid syari'ah analysis of the determination of marriage constancy cases at the Ponorogo Religious Court. Maqasid sharia in cases of

marriage confirmation in Islamic law is prescribed to realize and maintain the benefit of humanity, especially in marital life, regarding marital status, the status of wife towards husband, and the status of children in marriage. Determination of marriage certificates when viewed by Maqasid ash-Syari'ah has the aim of preserving offspring (ḥifdz -nasl), maintaining religion (ḥifdz-dīn), preserving the soul (ḥifdz-nafs), maintaining malls (ḥifdz-mal) for the people of Ponorogo and Marriage certificates provide benefits at the emergency level because if legally the state has not recorded the legality of marital status, legal settlement of the state will experience difficulties in cases and disputes such as inheritance, child custody, divorce, maintenance, and other marital problems. The existence of the determination of the case has its benefits and provides legal certainty on the legality of marriage both according to religious law and according to state law so that the legal objectives are achieved.

B. Suggestion

1. The community should carry out marriage according to the provisions of Islamic law and Law No. 1 of 1974 concerning marriage so that the marriage is legal both religiously and legally in the state. In addition, it is important for the community to ensure that all marriage requirements in Islamic law have been met before proceeding with the marriage confirmation process. These requirements include the guardian's permission, the agreement of both parties, qualified witnesses, and

others. Consult with an Islamic law expert. If the community has doubts or questions about the marriage confirmation process, don't hesitate to consult an Islamic law expert or a trusted cleric. They can provide clear guidelines and explanations about the marriage registration procedure.

2. For the Ponorogo Religious Court, it is best to cooperate with officials at the local district Office of Religious Affairs (KUA) so that they can provide counseling and outreach to the community regarding the importance of carrying out marriages at KUA in order to obtain an official marriage book as valid proof of the marriage. Besides that, from the existence of marriage registration at the KUA, the issuance of the marriage book can have legal certainty from marriage, and it can provide good household survival so that it is not difficult to arrange child birth certificates and other documents.

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APPENDIX

A. Transcript of the Interviews

Name : Moh. Daroini, S.H., M.H.

Position : Judge

Pertanyaan Apa pengertian mengenai Isbat Nikah?

Jawaban Isbat Nikah adalah menetapkan pernikahan yang belum sah di mata negara, dan yang bisa diisbatkan adalah pernikahan yang telah memenuhi unsur-unsur Syariah contoh adanya calon pengantin, wali, lanikaha ila bi wali, (KHI pasal 7) (pasal 3 mejudkan sakinah) pasal 2 ayat 1 uu no 1974) dan pasal 5 (wajib di catat) pasal 6 Uu 22 tahun 46 uu 32 tahun 54, Pada hakikatnya sebagaimana disebutkan dalam pasal 7 Kompilasi Hukum Islam, perkawinan yang tidak tercatat dapat mengajukan isbat nikah ke Pengadilan Agama berkenaan dengan hal-hal tertentu yaitu isbat nikah dalam rangka mengurus perceraian, hilangnya akta nikah di KUA, adanya keraguan mengenai sah atau tidaknya suatu perkawinan, adanya perkawinan yang terjadi sebelum berlakunya Undang-Undang Perkawinan, dan perkawinan yang dilakukan tidak

mempunyai halangan perkawinan menurut Undang-Undang Perkawinan. menurut Undang-Undang Nomor 1 Tahun 1974.

Pertanyaan Apakah Pengadilan Agama Ponorogo banyak menerima perkara isbat nikah?

Jawaban Karena banyak yang nikah sirri, maka banyak yang mengajukan permohonan isbat nikah. yang faktor-faktor utamanya kurangnya kesadaran masyarakat terhadap hukum keluarga.

Pertanyaan Bagaimana dasar pertimbangan bapak sebagai majelis hakim memberikan penetapan Isbat nikah kepada pemohon yang mengajukannya dan apa alasan Isbat nikah itu diterima maupun ditolak?

Jawaban Isbat nikah yang diterima apabila telah memenuhi syarat perundang-undangan formil dan materil, kalau secara hukum acara formil dia harus mengajukan disini kalau kekuasaan kompetensi relative berdomisili di Ponorogo, kalau kompetensi absolut itu kekuasaan pengadilan agama berdasarkan undang

undang untuk mengadili suatu perkara menurut obyek, materi atau pokok sengketa. Jadi kompetensi relative berdasarkan domisili yang menjadi pertimbangan diterima atau tidaknya dari kompetensi relative, contoh orang Jakarta tapi mengajukan cerainya di Ponorogo itu bukan domisinya, tapi jika dia aslinya ponorogo maka harus minta surat domisili. Secara hukum acara materil pertimbangannya syaratnya telah memenuhi undang-undang atau tidak, contohnya dia menikah siri sebelumnya walinya juga sah rukun juga terpenuhi maka tidak ada larangan nikah tapi jika dia sepersususan atau menikah dengan adik sendiri itu tidak boleh jadi artinya tidak melanggar peraturan undang-undang perkawinan antara lain yang akan di kabulkan. Seperti contoh saya pernah mengesahkan pernikahan secara online video call, walinya di Indonesia tapi ustadnya di Taiwan yang terpenting harus jelas, itu termasuk masalah masalah yang harus diselesaikan secara syariat.

Pertanyaan Apa alasan yang melatarbelakangi pemohon mengajukan permohonan itsbat nikah Pengadilan Agama Ponorogo?

Jawaban Alasan yang melatarbelakangi pemohon mengajukan permohonan itsbat nikah di Pengadilan Agama Ponorogo antara lain untuk mengurus KK (kartu keluarga) yang sesungguhnya, mengurus kartu kelahiran anak, karena banyak dari pemohon sudah menikah siri tapi binti ibunya dan untuk merubah itu mengajukan isbatnya di pengadilan agama, jadi menikah siri kemudian dinikahkan lagi oleh KUA jadi ada kasus-kasus merubah atau membuat akta kelahiran. Pernah ada kasus juga menikah siri kemudian anaknya diambil oleh kakeknya kemudian anak tersebut ingin masuk AKPOL (Akademi Kepolisian), kemudian kakeknya mengajukan isbat agar cucu tersebut untuk permohonan akpol tersebut. Jadi latar belakang masyarakat Ponorogo mengajukan Isbat Nikah antara lain mengurus KK (kartu keluarga), mengurus kartu kelahiran anak dan keperluan pendaftaran AKPOL (Akademi Kepolisian) jadi keperluan Isbat Nikah dalam rangka tidak punya surat nikah, Intinya Isbat

Nikah adalah yang tidak punya surat nikah. Jadi nanti yang bersangkutan setelah Isbat Nikah pergi ke KUA untuk dicatatkan setelah keputusan.

Pertanyaan Apa saja kasus atau permasalahan yang sering terjadi pada masyarakat Ponorogo yang mengajukan isbat nikah ini?

Jawaban Permasalahan yang sering terjadi pada masyarakat Ponorogo antara lain karena Nikah Siri mengurus KK (kartu keluarga), mengurus kartu kelahiran anak dan keperluan pendaftaran AKPOL (Akademi Kepolisian), dan masih ada beberapa yang menikah sebelum berlakunya undang-undang perkawinan 1974.

Pertanyaan Pihak siapa saja kah yang dapat mengajukan permohonan Isbat Nikah?

Jawaban Pihak yang dapat mengajukan permohonan Itsbat Nikah adalah:

- Suami.
- Istri.
- Anak-anak mereka
- Orang tua / Wali Nikah.
- Dan pihak-pihak yang berkepentingan dengan perkawinan itu.

Pertanyaan Apa harapan bapak agar bisa mengurangi perkara Isbat nikah?

Jawaban Isbat Nikah ada sesuai keperluan itu hukum alam kausalitas tidak bisa diperintah tidak bisa ditolak. Pengadilan itu ibarat laut, pengadilan tidak boleh menolak perkara kecuali hukumnya tidak jelas bahkan wajib mengadilinya. Jadi Isbat Nikah tidak dikurangi tidak bisa ditambah. Penyebab secara umum, biasanya para pihak tidak menyebutkan didalam permohonannya, biasanya mereka menikah secara sirri karena terhalang oleh syarat-syarat

administratifnya. Contoh ketika waktu menikah dulu KTP nya masih KTP luar, untuk megurustempat asalnya dia perlu biaya sehingga tidak bisa balik ke domisili aslinya dan menikah secara sirri. Atau mungkin lokasi kediamannya terlalu jauh dari KUA, dan tidak menutup kemungkinan menikah secara sirri karena sudah hamil duluan. Tetapi lebih banyak penduduk kota lain ingin menikah di samarinda dan terhalang oleh syarat administratifnya.

Name : Moh. Daroini, S.H., M.H.

Position : Judge

Pertanyaan : Bagaimana pengertian Isbat Nikah menurut bapak?

Jawaban : Isbat nikah pada dasarnya adalah orang yang menikah dan belum didaftarkan di KUA. Biasa itu dinamakan nikah secara agama atau di jawa disebut nikah siri atau nikah dibawah tangan itu belum dicatatkan di kua Itsbat Nikah adalah permohonan pengesahan nikah yang diajukan ke pengadilan untuk dinyatakan sah-nya pernikahan dan memiliki kekuatan hukum

dan yang berhak mengajukan permohonan isbat nikah ialah suami atau isteri, anak-anak mereka, wali nikah, dan pihak yang berkepentingan dengan perkawinan itu. Pada hakikatnya perkara isbat nikah itu, pernikahannya sudah dilakukan sesuai dengan ketentuan Hukum Islam.

- Pertanyaan Apa saja prosedur- prosedur pengajuan Isbat Nikah?
- Jawaban Orang yang mengajukan isbat nikah terlebih dahulu harus memberikan surat pengantar dari KUA bahwa pernikahannya memang tidak tercatat, kemudian datang ke Pengadilan Agama untuk melengkapi seluruh syarat-syaratnya dari permohonannya, didaftarkan perkaranya, kemudia masuk ke proses persidangannya. Pengajuan prosedur isbat nikah sebelumnya harus memberikan surat pengantar dari KUA bahwa pernikahannya memang tidak tercatat kemudian dibantu dengan posbakum dibuatkan permohonan Isbat Nikah langsung didaftarkan dengan biaya perkara yang tertera prosedur permohonan Itsbat Nikah.
- Pertanyaan Berapa lama proses penyelesaian perkara Isbat Nikah berlangsung?

Jawaban Kalau perkara isbat nikah cepat, atau tidak terhalang oleh syarat-syarat administratifnya. Contoh ketika waktu menikah dulu KTP nya masih KTP luar, untuk mengurus tempat asalnya dia perlu biaya sehingga tidak bisa balik ke domisili aslinya dan menikah secara sirri. Jika dari kedua belah pihak termohon dan pemoho tidak terhalang maka prosesnya juga insyaAllah bisa cepat.

Pertanyaan Apa latar belakang dan keperluan masyarakat saat mengajukan Isbat Nikah?

Jawaban yang melatar belakangi pemohon mengajukan isbat nikah karena pernikahan siri dan adanya pernikahan yang terjadi sebelum tahun 1974 dan keperluan masyarakat masyarakat untuk memberi legalitas identitas hukum kepada pasangan yang sah dan diakui oleh negara lewat pemberian buku nikah gratis dan dokumen kependudukan setelah prosesi isbat nikah. Masyarakat ponorogo yang mengajukan isbat nikah ke pengadilan agama Ponorogo memiliki Keperluan status pernikahan dan tercatat setelah penetapan di pengadilan seperti KK (Kartu Keluarga) dan KTP

(Kartu Tanda Penduduk) keperluan masyarakat pada saat mengajukan Isbat Nikah.

- Pertanyaan Penyebab isbat nikah yang ditolak itu apa saja?
- Jawaban Penyebab isbat nikah ditolak bisa terjadi karena wali nikah yang tidak jelas, saksi yang dihadirkan tidak dapat memberikan keterangan yang benar pada saat proses pembuktian, ada juga karena emohon tidak hadir pada saat proses persidangan jika ditolak permohonannya maka harus menikah ulang di KUA tempat pihak berdomisili dan jika sudah memiliki anak maka harus mengajukan perkara asal-usul anak untuk menetapkan bahwa anaknya adalah anak kandung dari pihak tersebut.
- Pertanyaan Harapan bapak kepada masyarakat ponorogo yang mengajukan perkara Isbat Nikah?
- Jawaban Harapannya semoga masyarakat bisa mematuhi peraturan dengan menikah secara sah dan tercatat di KUA

