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INTEGRATED MARRIAGE ITSBAT IN JAMBI CITY: Analyzing the Problems behind Its Implementation*

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Abstract

The existence of the Integrated Marriage Itsbat in Jambi City has begun since 2015 but in 2018, it was no longer implemented. One of the reasons is because the number of participants was decreasing. However, the trial of Marriage Itsbat in the Religious Court was still held. This study tries to examine its implementation in Jambi City and the problems surround it. This is an empirical legal research which employs the qualitative data collection through interviews and documentation. The study finds that the implementation of this program was loaded with a number of problems. Even in the reality, the final goal of this program, which is to help disadvantaged people to obtain rights to marriage certificates, marriage books, and birth certificates in one service unit, was not fully achieved. The results of this study indicate that there were a number of problems that had arisen, including: the existence of this program creating chances for increasing unregistered marriages; registration of participants without going through KUA leading to missed checks related to the clarity of previous marital status; a constraint in the publishing process of a Marriage Certificate;

and lack of socialization. Hence, future programs of integrated marriage itsbat should be able to address the unintended consequences.

Keywords: *Integrated Marriage Itsbat, marriage registration, Religious Court, Compilation of Islamic Law*

Abstrak

Keberadaan Program Itsbat Nikah Terpadu di Kota Jambi baru dimulai pada tahun 2015. Namun, pada tahun 2018 tidak lagi dilaksanakan. Salah satu penyebabnya adalah jumlah peserta yang semakin menurun. Meskipun demikian, Sidang Itsbat Nikah di Pengadilan Agama tetap dilaksanakan. Oleh karena itu, penelitian ini mencoba menilik implementasi Itsbat Nikah Terpadu di Kota Jambi serta problematika yang terjadi di seputarnya. Penelitian ini merupakan penelitian lapangan dengan menggunakan pendekatan yuridis empiris, sedangkan metode pengumpulan data dilakukan melalui wawancara dan dokumentasi. Penelitian ini menemukan bahwa implementasi program ini sarat dengan sejumlah permasalahan, bahkan realitanya, tujuan akhir program ini, yaitu membantu masyarakat kurang mampu untuk memperoleh hak atas akta perkawinan, buku nikah, dan akte kelahiran dalam bentuk pelayanan terpadu tidak sepenuhnya tercapai. Hasil penelitian menunjukkan bahwa ada sejumlah masalah yang muncul, diantaranya: keberadaan Itsbat Nikah Terpadu dapat menimbulkan peluang semakin meningkatnya angka pernikahan tidak tercatat; pendaftaran peserta tanpa melalui KUA seringkali menyebabkan luputnya pemeriksaan terkait kejelasan status pernikahan sebelumnya; terkendalanya proses penerbitan Buku Nikah; hingga sosialisasi yang minim. Karenanya, program itsbat nikah terpadu ke depannya harus mampu mengatasi konsekuensi yang tidak diinginkan tersebut.

Kata kunci: *Itsbat nikah terpadu, pencatatan perkawinan, Pengadilan Agama, Kompilasi Hukum Islam*

A. Introduction

Marriage is one of the important aspects of human life both in terms of social and juridical aspects. In the social aspect, marriage occupies a very significant position in life because, through marriage, it can form a bond of social relations between two different genders officially as a husband and wife into one family and later can be developed into a community group. If marriage is viewed from the juridical aspect, it will lead to a legal relationship in the form of rights and obligations between husband and wife reciprocally. Besides, it is also a religious act that is closely related to one's spirituality. As one of the religious issues, marriage has its own rules which in principle must comply with the provisions of the religious teachings adopted.¹

Basically, the principles of marriage are an awareness of the laws of religion and the beliefs of each Indonesian citizen where marriage must be based on the laws of religion and their respective beliefs. This is a crucial point of marriage. In addition, marriage must also fulfill the administrative requirements of the government in the form of marriage registration.²

Provisions regarding the marriage registration in Indonesia are stipulated in Law Number 1 Year 1974 concerning Marriage, Government Regulation Number 9 Year 1975, and Compilation of Islamic Law. Law Number 1 Year 1974 in Article 2 paragraph (2) confirms "Each marriage is registered according to the applicable statutory regulation. Furthermore, in Article 2 of Government

¹ Abdurrahman and Riduan Syahrani, *Masalah-Masalah Hukum Perkawinan Di Indonesia*, 4th ed. (Bandung: Alumni, 2001), 17.

² Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia* (Jakarta: Prenada Media, 2004), 51.

Regulation Number 9 Year 1975 stated that the registration of those who married according to the Islamic religion is organized by the Marriage Registrar as referred in Law Number 32 of 1946 concerning the registration of marriage, divorce and reconciliation, namely the local Office of Religious Affairs (the area where the marriage is carried out) and for those who are other than Islam by the Marriage registrar in the Agency of Population and Civil Registration.³ Moreover, the Compilation of Islamic Law in Article 5 emphasizes: "In order to guarantee marital order for the Islamic community, marriage must be registered."

This provision is reaffirmed in Law No. 24 Year 2013 concerning changes to Law No. 23 Year 2006 concerning Population Administration which regulates the procedures for registering important events or civil registration experienced by every resident of the Republic of Indonesia, including birth, death, marriage, divorce, child recognition, child ratification, adoption of children, renaming, and changes citizenship status.⁴

However, the reality shows that many married couples are not listed, either at the Office of Religious Affairs or the Agency of Population and Civil Registration. This unregistered marriage has many negative impacts, both for the wife and the child as the injured party. It is because unregistered marriages will make the wife difficult to claim her rights when there is a divorce, starting from the sharing of the property to inheritance rights, and the most important thing is to have an impact on the child,

³ K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, 5th ed. (Jakarta: Ghalia Indonesia, 1976), 75.

⁴ Neng Djubaedah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat Menurut Hukum Tertulis Di Indonesia Dan Hukum Islam* (Jakarta: Sinar Grafika, 2010), 225.

where the absence of marriage certificate will cause difficulties in making a birth certificate.⁵

To overcome the problems, it can be attempted through *itsbat nikah* (marriage *itsbat*). The marriage *itsbat* is the stipulation of the marriage of a man with a woman as a husband and wife that has been carried out in accordance with the provisions of the Islamic religion when fulfilled the pillars and conditions but has not yet been registered to the authorized official, in this case, the Marriage Registrar. Thus, the Compilation of Islamic Law article 7 paragraph (2) states: "the marriage in which it cannot be proven by marriage certificate can be submitted its marriage *itsbat* to the Religious Court".

Since the end of 2013, an integrated trial or integrated service has begun in the religious court in which an integrated service is carried out jointly between the Religious Courts/Shari'a Court, the Ministry of Religion-the Office of Religious Affairs, and the Ministry of Internal Affairs-the Agency of Population and Civil Registration. This integrated service is driven by the fact that tens of millions of Indonesian children do not have legal identity documents such as birth certificates. To obtain the legal identity, legal evidence of the marriage of their parents is required. Therefore, their marriage must be ratified by the court.⁶

From the collected data, in 2014, there were 196 integrated service implementations held in 161 locations while the number of marriage *itsbat* cases examined was 7,398 cases. The number of Marriage Certificates issued by

⁵ Yayan Sopyan, "Isbat Nikah Bagi Perkawinan yang Tidak Tercatat Setelah Diberlakukannya UU No. 1 Tahun 1974 di Pengadilan Agama Jakarta Selatan," *Jurnal Ahkam* IV, no. 8 (2002): 69.

⁶ Achmad Cholil et.al, "Jejak Access to Justice," *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI*, May 2015, 13, <https://drive.google.com/file/d/0B5UQVcJ8Df8WM1JTU3M2LWR3QnM/view>.

the Office of Religious Affairs was 8,610 for each married couple while the birth certificate issued by the Agency of Population and Civil Registration was 3,889.⁷ Especially for the Religious Court in Jambi, in 2016, there were 102 cases of marital itsbat being examined. However, in 2017, it decreased to 61 cases from 100 couples who submitted an application because of not fulfilled the pillars and conditions of marriage. Even in 2018, the Integrated Marriage Itsbat was no longer held in Jambi City.⁸

Research on the marriage itsbat has been done quite a lot, including the research of Yayan Sopyan and Burhanatut Dyana entitled “*Marriage Legalization for Indonesian Migrant Workers*” (*Implementation of "Justice for All" for Migrant Workers at Tawau, Sabah, Malaysia*)” which found that the government still had to work hard to protect the civil rights of migrant workers related to the rise of illegal marriages (*sirri*) because the marriage itsbat program offered by the government is only curative and this program will fail if the illegal entry of migrant workers to Malaysia is not prevented.⁹

Next, a research by Lilik Andaryuni, “*The Program of Circuit Marriage Itsbat as the Embodiment of Access to Justice in Indonesia*”, which stated that the program of circuit marriage itsbat in the Tenggara Religious Court is the access embodiment to justice to the community because this program facilitates the needs of the

⁷ Cholil et.all, 13.

⁸ “Video Puluhan Pasangan Di Jambi Sidang Isbat Nikah,” accessed October 17, 2017, <https://jambi.antaranews.com/berita/32117/video-puluhan-pasangan-di-jambi-sidang-isbat-nikah>.

⁹ Yayan Sopyan and Burhanatut Dyana, “Marriage Legalization for Indonesian Migrant Workers” (Implementation of ‘Justice for All’ for Migrant Workers at Tawau, Sabah, Malaysia),” in *1st International Conference of Law and Justice (ICLJ) 2017-Good Governance and Human Rights in Muslim Countries: Experiences and Challenges*, 18-22, <https://dx.doi.org/10.2991/iclj-17.2018.5>.

community due to the lack of legal documents, ignorance of litigation procedures, and remote domicile factors.¹⁰

Furthermore, Ramdani Wahyu Sururie's research, "*Isbat Nikah Terpadu Sebagai Solusi Memperoleh Hak Identitas Hukum*" (Integrated Marriage Itsbat as a Solution to Obtaining Legal Identity Rights) found that integrated marriage itsbat is the solution provided by the state as an effort to fulfill the right in obtaining a legal identity in the form of a marriage certificate for the poor.¹¹

The research of Euis Nurlaelawati, "*Itsbat Nikah Sebuah Solusi?*" (Is Marriage Itsbat a Solution?) criticized the rules regarding unregistered marriage and some views from relevant authorities. It argues that there have been abuses in the application of the relevant rules on both registration marriage and marriage itsbat.¹²

The research of Maman Badruzzaman entitled "*Efektifitas Itsbat Nikah Massal dalam Meminimalisir Terjadinya Pernikahan tanpa Akta Nikah-Studi Kasus di KUA Kecamatan Karangampel Kabupaten Indramayu Tahun 2008-2012*" (The Effectiveness of Mass Marriage Itsbat in Minimizing the Occurrence of Marriage without Marriage Certificate - Case Study in the Office of Religious Affairs at Karangampel District, Indramayu Regency in 2008-2012). This research revealed that the existence of mass Marriage Itsbat is considered very effective because it can help married couples who do not have a Marriage Certificate,

¹⁰ Lilik Andaryuni, "The Program of Circuit Isbat Nikah as the Embodiment of Access to Justice in Indonesia," *Mazahib* 17, no. 1 (June 30, 2018): 69–95, <https://doi.org/10.21093/mj.v17i1.1054>.

¹¹ Ramdani Wahyu Sururie, "Isbat Nikah Terpadu Sebagai Solusi Memperoleh Hak Identitas Hukum," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 1 (2017): 113–133, <https://doi.org/10.18326/ijtihad.v17i1.113-133>.

¹² Euis Nurlaelawati, "Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?," *Musāwa Jurnal Studi Gender dan Islam*, vol. 12, no. 2 (July 2013): 261–77, <https://doi.org/10.14421/musawa.2013.122.261-277>.

while the underlying factors for the married couple to participate in mass marriage itsbat are (1) not having a Marriage Certificate due to the negligence of the Marriage Registrar, (2) economic problems, (3) sirri marriage (unregistered marriage), and (4) loss of Marriage Certificate.¹³

Based on several existing studies, there has not been found yet the research discusses, specifically, the polemic behind the implementation of Integrated Marriage Itsbat, even though in its implementation, the Integrated Marriage Itsbat has caused a number of unresolved problems, either in terms of law legality, lack of socialization, or weak coordination between institutions involved in it. Therefore, this study tries to reveal this.

This article is the result of research conducted in Jambi City in 2018. The study employs an empirical juridical approach with data methods conducted through observation, interviews, and documentation, while the informants are the Young Registrar of the Field of Application for Jambi Religious Court, Head of the Office of Religious Affairs, Headman, and the people who participated in the Integrated Marriage Itsbat Trial in 2017.

B. The Marriage Registration: A Regulation

Marriage registration is one of the family law reformation carried out by *muslim* countries in the world. The aim is to achieve legal certainty, rule of law, and legal protections of a marriage. Hence, various countries in the Islamic world made the registration of marriage as an obligation which legalized in any regulatory. However, in its implementation, there is a difference perspectives on

¹³ Badruzzaman, Maman, "Efektifitas Isbat Nikah Massal Dalam Meminimalisir Terjadinya Pernikahan Tanpa Akta Nikah (Studi Kasus Di KUA Kecamatan Karangampel Kabupaten Indramayu Tahun 2008-2012)" (UIN Sunan Kalijaga, 2013), <http://digilib.uin-suka.ac.id/8048/>.

existence of the registration. In reality, various *muslim* countries only enforce as administrative requirements and not related to the validity of the marriage because in this case the validity of the marriage remained propped against the provisions of Islamic law.

Marriage registration in Iran is a form of regulatory (administrative) renewal. Violations of this provision do not result in illegitimate marriages, but violators are subject to sanctions in the form of one to six months imprisonment (Marriage Law 1931, Article 1).¹⁴ This regulations are not found in classical *fiqh* consideration either in the *Sy'i* or *Sunni Mazhab*. Similar things also apply in Iran. Men who are married unregistered face a prison sentence of one to six months. Meanwhile in Jordan, the bride and groom, witnesses, and the party who are involved in unregistered marriages can be subject to prison sentences based on provisions of Jordanian Penal Code (Jordan Criminal Law) and a maximum fine of 1000 dinars.¹⁵

On the contrary, the marriage regulations applied in South Yemen have differences with other Muslim countries. According to family law of this country, marriage registration is not only an administrative requirement but further determines the validity of a marriage.¹⁶

Regarding it, A. Mukti Arto explained that a marriage is considered valid if it fulfills two requirements, *First*, fulfilling the provisions of the material law, carried out by fulfilling the requirements and the pillars of Islamic law. *Second*, complying the formal legal provisions which have been registered to the authorized Marriage Registrar. The forms of marriage that only fulfills material requirements

¹⁴ Tahir Mahmood, *Personal Law in Islamic Countries* (New Delhi: Academy Law and Religion, 1987), 155.

¹⁵ The Code of Personal Status 1976 and the amendments (Law Number 25 Year 1977) Article 17 paragraph (3).

¹⁶ Mahmood, *Personal Law in Islamic Countries*, 155.

are considered never existent or not recognized. Besides, marriages that only fulfill formal requirements can be canceled.¹⁷ Thus, marriage is considered perfect if it meets the requirements and pillars of Islamic law, and has been registered by an authorized Marriage Registrar.

Even though ideally, a marriage is considered perfect if it has met the material and formal requirements that have been determined, the reality that occurs in the society still places the marriage record as something less important. It is marked by many practices of *sirri* marriage. Basically, this kind of marriage is a crime of administrative violations that can be sentenced to criminal sanctions either the doers or officers who carry out the marriage. This provision was based on Article 3 Law Number 22 Year 1946.

In practice, the provisions of marriage registration as regulated in Law Number 1 Year 1974¹⁸ and the Compilation of Islamic Law¹⁹ are judged by some people to apply the concept of double validity. On the one hand, the Compilation of Islamic Law stipulates that marriage is considered valid if it meets the provisions of requirements and the conditions set by religion, but on the other hand, the Compilation of Islamic Law also confirms that marriage must be registered. Therefore, marriage registration cannot be a determining factor for the validity of religious marriage

¹⁷ Iskandar Ritonga, *Hak-Hak Wanita Dalam Undang-Undang Perkawinan Dan Kompilasi Hukum Islam* (Jakarta: Nuansa Madani, 1999), 64–65.

¹⁸ Article 2 paragraph (2) Law Number 1 Year 1974: “Each marriage is recorded according to the applicable laws and regulations, but Article 2 paragraph (1) affirms that marriage is legal if it is carried out according to the laws of each religion and that belief.”

¹⁹Article 5 paragraph (1-2) Compilation of Islamic Law: “In order for marital order to occur for the Islamic community every marriage must be recorded”, while Article 6 paragraph (1-2) Compilation of Islamic Law: “marriages conducted outside the marriage registrar do not have legal force”.

but only an administrative requirement. According to Bowen, the term double validity is used in terms of divorce and can also be associated with registration regulatory problems. Furthermore, Bowen interpreted the Law as a consideration "... the legality of the state and the legality of religion are entirely separate issues", a position complicated by Compilation of 1991.²⁰

C. Integrated Marriage Itsbat and Its Legality

The term *itsbat nikah* (marriage itsbat) is derived from Arabic and consists of two words, namely *itsbat* and *nikah* (marriage). *Itsbat* means determination or proof²¹, while *nikah* is a sacred and noble contract between men and women which is the reason for the legitimate status of a husband and wife and the sexual relationship is legalized with the aim of reaching a family with full of love, virtue, and mutual support.²² Thus, *itsbat nikah* is defined as a determination, stipulation, verification, or validation of the Religious Courts on marriages that have been conducted for certain reasons.²³ In another definition, the marriage itsbat is interpreted as legalization of marriage which is submitted to the Religious Court to declare the validity of the marriage which is held according to the Islamic Shari'a to obtain legal force.²⁴

²⁰ Nurlaelawati, "Pernikahan Tanpa Pencatatan," 265.

²¹ Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia* (Surabaya: Pustaka Progressif, 1997), 145.

²² Sudarsono, *Hukum Kekeluargaan Nasional* (Jakarta: Rineka Cipta, 1991), 62.

²³ Sopyan, "Isbat Nikah Bagi Perkawinan yang Tidak Tercatat Setelah Diberlakukannya UU No. 1 Tahun 1974 di Pengadilan Agama Jakarta Selatan," 67.

²⁴ Pemberdayaan Perempuan Kepala Keluarga (PEKKA), "Panduan Pengajuan Itsbat Nikah," Research Report (Australia-Indonesia Partnership, 2012), 2, <https://dokumen.tips/documents/di-pengadilan-agama.html>.

Itsbat (determination) is a product of the Religious Court, in the sense that it is not a real court and is termed a *jurisdiction voluntair*.²⁵ It is said that it is not the real court because, in this case, there are only applicants who request to be stipulated about something, namely the stipulation of marriage. *Voluntair* cases are the cases which belong to petition and have no dispute, thus, there is no opponent. Basically, the case for a plea is not acceptable, except for the interests of the law that requires it. Integrated Marriage Itsbat is a program of legal identity mobile service that combines marriage itsbat, Marriage Certificate issuance, and issuance of birth certificates in a single service unit.²⁶

Judging from the legality of marriage itsbat, normatively it can be seen in Article 3 paragraph (5) of Law Number 22 Year 1946 and in Article 49 number (22) Explanation of Law Number 7 Year 1989 as revised by Law Number 3 Year 2006 and the second revision with Law Number 50 Year 2009. These two laws only emphasize that the Religious Courts have the authority to carry out marriage itsbat, however, regarding the rules about the person entitled to propose a marriage itsbat and the procedure, it is not regulated in detail. Clearer provisions can be found in Article 7 paragraph (2), (3), and (4) Compilation of Islamic Law, and Decree of Chair of the Supreme Court of the Republic of Indonesia Number: KMA / 032 / SK / IV / 2006 concerning Enforcement of Book II Task Implementation Guidelines and Court Administration, Chapter II, letter b number 2 sub 6.²⁷

²⁵ *Kamus Hukum* (Bandung: Citra Umbara, 2008), 271.

²⁶ Dokumen Layanan Terpadu Identitas Hukum (Itsbat Nikah Terpadu), arranged by Pusat Kajian Perlindungan Anak (PUSKAPA) UI, one of the institutions involved in implementing the Integrated Legal Service Program(Integrated Marriage Itsbat)

²⁷ Ramdani Wahyu Sururie, "Polemik Di Seputar Hukum Isbat Nikah Dalam Sistem Hukum Perkawinan Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* XI, no. 2 (December 2017): 233-46,

The existence of marriage itsbat was originally a solution to the enactment of Marriage Law Number 1 Year 1974, Article 2 paragraph (2) which required marriage registration because before that many marriages were not registered, but the marriage itsbat could be requested to the Religious Court. The authority of the Religious Courts on the case of marriage itsbat is intended for those who perform marriage under the law before the enactment of Law Number 1 Year 1974 which refers to Article 64 of the Transitional Rules as follows: *“For marriage and all matters relating to marriage that occur before this law applies which is carried out according to the old regulations is valid.”*²⁸ Based on this provision, the marriage existing before this law applied is valid. Likewise related to marriage itsbat because, basically, the marriage itsbat already exists and institutionalizes in the set of determinations and decisions of the Religious Courts in the fifties.

Since the stipulation of Law Number 7 Year 1989 concerning the Religious Courts which later replaced the legal foundation of the previous Religious Courts, the institution of the marriage itsbat was not developed, but its existence was also not eliminated. The marriage itsbat stipulated in Law Number 1 Year 1974 and Law Number 7 Year 1989 is limited to the marriage rules that occurred before Law Number 1 Year 1974. This provision is contained in Article 49 paragraph (2), namely the scope of marriage as referred to in paragraph 1 letter a is things that are regulated in or based on the applicable law on marriage. Meanwhile, in the explanation of Article 49 paragraph (2), it is affirmed that one of the scopes of

<http://ejournal.iainpurwokerto.ac.id/index.php/almanahij/article/view/1299/983>.

²⁸ Abdul Ghani Abdullah, *Himpunan Peraturan Perundang-Undangan Dan Peraturan Peradilan Agama* (Jakarta: Intermedia, 1991), 99.

marriage stipulated in Law Number 1 Year 1974 is a statement about the legality of marriage that occurred before Law Number 1 Year 1974 carried out according to other regulations.

The provisions regarding the marriage itsbat are also regulated in Minister of Religion Regulation Number 3 Year 1975. Article 39 paragraph (4) confirms that if the Office of Religious Affairs cannot make a copy of the marriage certificate because it has been damaged or lost, then to determine marriage, divorce or referral, it must be proven by the stipulation from the Religious Courts. However, this rule only relates to the marriage held before the Law Number 1 Year 1974, not a marriage that occurred afterward. Meanwhile, the marriage itsbat/marriage ratification for other reasons was not published and there was also no explanation of its rejection. However, on the contrary, the Compilation of Islamic Law gives absolute competence that is very broad in terms of marriage itsbat to the Religious Courts.

In Article 7 of the Compilation of Islamic Law, it is affirmed that:

- (1) Marriage can only be proven by a marriage certificate issued by a Marriage Registrar.
- (2) If the marriage cannot be proven by a marriage certificate, its marriage itsbat can be submitted to the Religious Court.
- (3) The marriage itsbat submitted to the Religious Court is limited to the matters relating to:
 - a. Marriage in order to divorce;
 - b. Loss of marriage certificate;

- c. The marriage that performed before the enactment of Law Number 1 Year 1974;
- d. Marriage performed by those who do not have marital barriers under Law Number 1 Year 1974;
- e. Those who have the right to propose for the marriage itsbat are husband or wife, their children, and the parties concerned with this marriage.²⁹

Based on the description of Article 7 paragraph (2) and (3) Compilation of Islamic Law, it is seen that the Compilation of Islamic Law has given more authority than that provided by law, either by Law Number 1 Year 1974 about Marriage, or Law Number 7 Year 1989 about the Religious Courts. Besides, according to Article 2 of the MPR Decree No. III/MPR/2000 Regarding the Source of Law and the Order of Legislation, while Presidential Instruction is not included in the order of legislation of the Republic of Indonesia.³⁰ The existence of Marriage Itsbat as regulated by the Compilation of Islamic Law is basically intended to fill the legal vacuum related to marriage itsbat which are not regulated in the law on marriage.³¹

The existence of Integrated Marriage Itsbat (Integrated Legal Services) basically is the initiative of Directorate General of Religious Courts (Supreme Court), Directorate General of Community Guidance (Ministry of Religion), and Directorate General of Population and Civil Registration (Ministry of Internal Affairs) to bring legal

²⁹ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Akademika Pressindo, 2007), 115.

³⁰ Nasruddin Salim, "Isbat Nikah Dalam Kompilasi Hukum Islam, Tinjauan Yuridis, Filosofis, Dan Sosiologis," *Mimbar Hukum Aktualisasi Hukum Islam* Year XIV, no. 2 (2003): 70.

³¹ H. Endang Ali Ma'sum, "Pernikahan yang Tidak Dicatatkan dan Problematikanya," *Musawa Jurnal Studi Gender dan Islam* 12, no. 2, (July 1, 2013): 201-213, <https://doi.org/10.14421/musawa.2013.122.201-213>.

identity services closer, especially for the poor and marginalized people.³²

The law legality of the implementation of the Integrated Marriage Itsbat Trial refers to PERMA (Supreme Court Regulation) Number 1 Year 2015 concerning the Integrated Services of the Circuit Court, District Court and Religious Courts/Shari`a Court toward the Issuance of Marriage Certificate, Marriage Certificate, and Birth Certificate. Article 1 of this PERMA (Supreme Court Regulation) emphasizes that what is meant by the Integrated Services of the Mobile Trial is a series of activities conducted jointly and coordinated at a certain time and place between the District Court or the Religious Court/Shari`a Court, the Regency/City Agency of Population and Civil Registration, the District Office of Religious Affairs, in mobile services for marital ratification services and other cases in accordance with the authority of the District Court, and marriage itsbat in accordance with the authority of the Religious Court/Shari`a Court and to fulfill marriage registration and birth registration.³³

Furthermore, according to Article 3 paragraph (2), Integrated Services as referred to in paragraph (1) include;

- a. Court proceedings on marriage ratification and other related cases by the District Court or marriage itsbat by the Religious Court/Shari`a Court relating to the interests of marriage registration and birth registration;
- b. Marriage registration by the Regency/City Agency of Population and Civil Registration or the District Office of Religious Affairs; and

³² Salim, "Isbat Nikah Dalam Kompilasi Hukum Islam," 70.

³³ See Supreme Court Regulation of the Republic of Indonesia Number 1 Year 2015 Concerning Mobile Assembly Integrated Services of District Courts and Religious Courts/Shari`a Courts for Issuance of Marriage Deeds, Marriage Certificates, and Birth Certificates.

- c. Birth registration by the Regency/City Agency of Population and Civil Registration.

D. The Implementation of the Integrated Marriage Itsbat at Class I A Religious Court of Jambi

Integrated services is principally a one-stop service but not one-day service of document publishing. It is said that the program is not only serving and solving the marriage affirmation but also other matters related to it, that is the marriage registration by the Office of Religious Affairs and the birth registration by the Agency of Population and Civil Registration that can be done by the people with only one management.

Basically, the purpose of the Integrated Service is to:

- a. Actualize the fulfillment of the rights to legal identity (marriage certificate, divorce certificate, and birth certificate) which is carried out easily, quickly, and at a low cost.
- b. Help people, especially those who are economically disadvantaged and marginalized, in obtaining rights to legal identity.
- c. Increase access to justice.
- d. Increase public awareness about the importance of marriage registration in the District Office of Religious Affairs and birth registration in the Agency of Population and Civil Registration.
- e. Increase public awareness and knowledge of law through the ownership of official certificates as a condition for recognition of legal identity.

Referring to Article 4 PERMA (Supreme Court Regulation) Number 1 Year 2015, the participants of the Integrated Marriage Itsbat Program include:

- a. Persons whose marriages or births have not been registered;

- b. Persons who are unable and difficult to access services in a court office, the District/City Agency of Population and Civil Registration, and the District Office of Religious Affairs, either economically or geographically;
- c. Persons from vulnerable groups including women, children, and people with disabilities; and/or
- d. Persons who do not have access to legal information and consultations that can be accessed by the Post of Legal Aid (POSBAKUM) based on applicable regulations.

The process of examining the Integrated Marriage Itsbat in principle is not much different from the usual Marriage Itsbat. However, in some cases, there are differences in: 1) The Trial of Integrated Marriage Itsbat is held collectively while the Marriage Itsbat is carried out individually; 2) The place for the Trial of the Integrated Itsbat is usually held outside the court in the form of a mobile court while the Marriage Itsbat is usually conducted in the Religious Court; 3) The Integrated Marriage Itsbat involves three agencies, namely the Religious Court, Ministry of Religion or the Office of Religious Affairs, and the Regional Government or the Agency of Population and Civil Registration; and 4) The cases submitted in the Trial of Integrated Marriage Itsbat are *voluntair* (in the form of requests, where those who submit them are husband and wife) may be carried out by a single judge, and the summons are made collectively to the parties, while Marriage Itsbat is not only *voluntair* but also *contensius* (the application is submitted by one party, the husband or wife and the other party is positioned as the respondent), the trial is carried out by the panel of judges, and the summoning of the parties is not collectively.³⁴

Considering the implementation of the Integrated Marriage Itsbat Service Program involving several agencies

³⁴ Sururie, "Isbat Nikah Terpadu Sebagai Solusi," 120.

in Jambi City, it began from 2015 until 2017. In 2015, the trial of Integrated Marriage Itsbat was initiated by the District Prosecutor's Office of Jambi City in cooperation with the Religious Court, Ministry of Religion, and the Agency of Population and Civil Registration of Jambi City. The Trial of Integrated Marriage Itsbat was attended by 55 underprivileged couples who did not have a Marriage Certificate and other residence identities. This integrated trial was divided into three stages, namely stage I on June 12, 2015 as many as 5 couples at the District Prosecutor's Office of Jambi, stage II on June 18, 2015 as many as 24 couples, and 26 couples at the Telanaipura Sub-District Office which was held on June 22, 2015.³⁵

In 2016, the participants in the Trial of Integrated Marriage Itsbat increased to 102 people. In its implementation, the trial was held in five places, namely Kotabaru Sub-District which was held on October 19, 2016, then in Telanaipura Sub-District on October 27, 2016, East Jambi Sub-District on October 28, 2016, South Jambi Sub-District on November 1, 2016, and the last in Pelayangan Sub-District on November 4, 2016. According to Pitir Ramli, a Deputy Registrar of the Jambi Religious Court, it was intentionally done so that the trial could proceed orderly and expeditious with the distribution of cases for each judge.³⁶

In 2017, the Trial of Integrated Marriage Itsbat was attended by 61 participants divided into 2 stages. Stage I

³⁵ "PA Jambi Laksanakan Itsbat Nikah 55 Pasangan Di Kecamatan Telanaipura," accessed June 12, 2018, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/pa-jambi-laksanakan-itsbat-nikah-55-pasangan-di-kecamatan-telanaipura-22-7>.

³⁶ "PA Jambi Gelar Sidang Isbat Nikah Terpadu," accessed June 16, 2018, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/pa-jambi-gelar-sidang-isbat-nikah-terpadu-28-10>.

was held on October 17, 2017, at Griya Mayang, the hall of Jambi Mayor's Office Residence. This first stage trial was attended by 33 participants. Furthermore, the second stage trial was held on October 24, 2017, at Aini Jambi Hotel attended by 28 participants. The determination of this location is done by considering the ease of participants in reaching the location of the Integrated Marriage Itsbat Trial.

Moreover, referring to PERMA (Supreme Court Regulation) No. 1 year 2015 chapters 8-13, the procedure for the Integrated Marriage of Itsbat carried out by the Class I A Jambi Religious Court was divided into three stages as the followings:³⁷

a. Stage of Preparation

1) Coordination of Preparations for the Implementation of Integrated Marriage Itsbat

At this stage, the Class I A Religious Court of Jambi coordinated with the Ministry of Religion of Jambi City, the Agency of Population and the Civil Registration of Jambi City, the Mayor and other relevant agencies regarding to the planned implementation of Integrated Marriage Itsbat. In this coordination meeting, it was also discussed about determining the time, place, and cost of its implementation.

2) Socialization

In the next stage, the Religious Court then notified the District and the Ministry of Religion of Jambi City to proceed from the urban village until the neighborhood and the District Office of Religious Affairs, in order that they could socialize to the society about the implementation of the Integrated Marriage Itsbat program.

³⁷ Raudhah Rahman, The Young Registrar of Jambi Religious Court, June 29, 2018.

3) Registration of Applicant

The registration of applicants was done directly to Class I A Religious Court of Jambi or it could also be through the urban village where the applicant was domiciled. To request registration permission, the applicant was required to pay a registration fee about Rp. 100,000 (one hundred thousand rupiah).

4) File Check

Class I A Religious Court of Jambi then determined and selected documents that had to be completed to be able to attend the Trial of Integrated Marriage Itsbat, as well as conducting interviews and verification toward the contents of the forms and the completeness of the applicant's files.

5) The Announcement of the Schedule of Integrated Service

The notification of the trial schedule and summons of the applicant was carried out through a bulletin board placed in Class I A Religious Court of Jambi. In addition, its notification was also conveyed through the urban village and the District Office of Religious Affairs.

b. Stage of Implementation

At this stage, the participants first re-registered with the relevant forms and documents. Furthermore, the participants were directed to attend the opening ceremony attended by the Mayor of Jambi and the Chairperson of Class I A Religious Court of Jambi, the Agency of Population and Civil Registration of Jambi City, the Ministry of Religion of Jambi City, and the District Office of Religious Affairs. After the opening of ceremony, the participants one by one attended the Trial of Marriage Itsbat. The process and stages of the Integrated Marriage Itsbat Trial were not much different

from regular Marriage Itsbat Trial which were by checking the identity, giving counseling, questions by the judge, reading the request, proof, and then if legal facts had been found, the judge would provide a stipulation. After the confirmation of Marriage Itsbat, the participants could go directly to the District Office of Religious Affairs to issue a Marriage Certificate. Furthermore, for couples who already had children, they could go to the Agency of Population and Civil Registration to arrange the child's Birth Certificate.

c. Stage of Evaluation and Follow-Up

In the final stage, the Religious Court and other relevant agencies submitted the reports on the implementation of Integrated Services, which included: the number of stipulations on the marriage itsbat, the use of the budget, time and place of service, as well as problems in implementation. Furthermore, the Religious Court evaluated and coordinated with the Agency of Population and Civil Registration, and the Ministry of Religion Office to discuss issues related to the implementation of the Integrated Marriage Itsbat. In addition, the Religious Court also received complaints from the community and periodically conducted evaluations to formulate improvements in the quality of the Integrated Services.

E. The Problems behind the Implementation of the Integrated Marriage Itsbat in Jambi City

The implementation of the Integrated Marriage Itsbat reaps a number of problems as the following:

First, the existence of an Integrated Marriage Itsbat can increase unregistered marriages. It is based on the provisions of Article 7 paragraph (3) Compilation of Islamic Law in letter (e) that the marriage done by those who do not

have marital barriers under Law Number 1 Year 1974 can be submitted for legalization. Thus, as long as the terms of the marriage do not have *sharia* barriers, the marriage can be legalized by state law without taking into account the year of the marriage. Even though Law Number 1 Year 1974 in Article 2 paragraph (2) has confirmed: "*Each marriage is registered according to the applicable legislation.*"

When referring to the statutory provisions above, the marriage that can be legalized is only a marriage that happened before this law was set. Thus, the existence of the marriage itsbat in legal construction is very limited. However, the provisions of the Compilation of Islamic Law open the opportunity for unregistered married people to be able to submit their marriage itsbat as long as the pillars and requirements for religious marriage have been fulfilled. This reality is seen in the implementation of the Integrated Marriage Itsbat Trial at Jambi Religious Court where the participants who took part in the program were above the age of around 40 years on average. It shows that the unregistered marriages proposed by the participants to be legalized were the marriages happened after 1974.

Likewise, if viewed from the latest developments, the reasons for the people submitting a request for Integrated Marriage Itsbat to the Religious Courts are: 1) to propose official divorce in the Religious Court, 2) to complete the requirements for obtaining a Child Birth Certificate, and 3) to take care of a retired widow.

Regarding the filing of the Integrated Marriage Itsbat for marriage conducted after the Law Number 1 Year 1974 set, the Religious Court can accept and decide on the case based on two reasons, namely: a) referring to the principle of *ius curia novit* in which the judge is considered to know the marriage itsbat law and the principle of freedom of the

judge to find the law related to problems that do not have legal provisions (*rechtsvacuum*).³⁸ b) to avoid legal stagnation, the judge is encouraged to analyze a case by using a legal sociology approach and conducting teleological interpretations toward other regulations that are related to the case being faced, so the law can live and develop (*living law*) according to the dynamics of community development.³⁹ Thus, rejecting the request for marriage itsbat without conducting a prior examination for the reasons of the absence of law is not the main choice.

According to Erni Zurnilah, based on data obtained from the Agency of Population and Civil Registration of Jambi City, the number of unregistered marriages in Jambi City in 2016 was 400 couples, while those participating in Integrated Marriage Itsbat were only 102 people. This number keeps increasing considering that there are still villages that have not provided data.⁴⁰

³⁸ There are a number of rules becoming the legal reasons, among others: a) Article 56 paragraph (1) Law Number 3 Year 2006 concerning Amendments Number 7 on Law Number 7 Year 1989 about the Religious Courts which states: "Courts may not refuse to examine and decide on a case that is filed under the pretext that the law does not exist or is unclear, but is obliged to examine and decide it". b) Article 10 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power which affirms: "Courts are prohibited from refusing to examine, hear, and decide on a case filed under the pretext that the law does not exist or is unclear, but is obliged to examine and try it". 3) Article 5 paragraph (1) of Law Number 48 Year 2009, namely: "Judges and Constitutional Judges must explore, follow, and understand the legal values and the sense of justice that live in society".

³⁹ H. Endang Ali Ma'sum, "Kepastian Hukum (Rechtszekerheid) Itsbat Nikah," in *Forum Diskusi Penelitian Kepastian Hukum Itsbat Nikah, Balitbang Diklat Kumdil MA RI, Di Hotel Le Dian Serang, Tanggal (Marriage Itsbat Legal Certainty Research Discussion Forum, Jakarta, May 15th, 2012), 7*, <http://www.pta-banten.go.id/portal/makalah/kepastian-hukum-itsbat-nikah.pdf>.

⁴⁰ "Pelaksanaan Sidang Itsbat Nikah Tahap II Di Kecamatan Telanaipura," accessed June 18, 2018, <http://www.pta-jambi.go.id/format-bas-dan-putusan/24-seputar-pa/2590-pelaksanaan-sidang-itsbat-nikah-tahap-ii-di-kecamatan-telanaipura-26-06>.

Second, in the practice, the registration of the Integrated Marriage Itsbat Program either directly in the Religious Court or through the Urban Communities, often escapes to examine/investigate the requirements relating to the clarity of the previous marital status for *Sirri* married couples who are about to propose the marriage itsbat. Based on a statement from Muhammad Hapiz K., the wedding officiant in Danau Teluk District who currently serves as Head of the Office of Religious Affairs in Telanaipura District, it was known that there was one case in Danau Teluk District in which widows and widowers who did *sirri* marriage for the reason that they did not get permission from the Office of Religious Affairs to get married was because the divorce status of the previous marriage had not been officially terminated. The couple then submitted a request of an Integrated Marriage Itsbat to the Religious Court in 2016, and the request was accepted for trial.⁴¹ In relation to this case, Ilfa Susianti, a judge of Class I A Religious Court of Jambi, mentioned that in conducting the trial, the case was later rejected legally since one of the Petitioners could not legalize his marriage because he was still bound to his previous marriage.⁴²

This case is definitely full of legal deviations because it refers to Article 34 paragraph (2) of Government Regulation Number 9 Year 1975 concerning the Implementation of Law Number 1 Year 1974 about Marriage where stating that for those who are Muslim, a divorce is deemed to occur along with all consequences as from the decisions of the Religious Courts have been set that have permanent legal force. Furthermore, Article 9 of the Marriage Law also confirms that a person who is still

⁴¹ Muhammad Hapiz K., Head of Telanaipura District Office of Religious Affairs, July 11, 2018.

⁴² "Pelaksanaan Sidang Itsbat Nikah Tahap II Di Kecamatan Telanaipura."

bound by a marriage status with another person cannot remarry, except in the case as stated in Article 3 paragraph (2) and Article 4 of the Marriage Law. Marriage by one of the parties who are still married can be prevented (see Article 13-21 of the Marriage Law). Referring to the legal rules above, in this case, the woman is legally in a prohibited position to marry.⁴³

Regarding it, the most frequently asked question is why the Office of Religious Affairs is not involved in the process of submitting a request and registration of the Integrated Marriage Itsbat. Meanwhile, if the registration of the Integrated Marriage Itsbat is done through the District Office of Religious Affairs, it can first check the proposed requirements including the clarity of the status of the spouse proposing the Marriage Itsbat.⁴⁴

Third, after the Religious Court issued its Marriage Itsbat verdict, other problems arose related to the issuance of Marriage Certificates by the District Office of Religious Affairs because procedurally, the process of issuing Marriage Certificates must be through online data entry (The Marriage of Management Information System) which requires the Integrated Marriage Itsbat participants to attend and show personal identity, or trustee. In reality, there were participants in Marriage Itsbat who did not come to the District Office of Religious Affairs, so the process of publishing the Marriage Certificate became constrained.⁴⁵

Fourth, Integrated Marriage Itsbat is basically a legal identity mobile service program that combines marriage itsbat, Marriage Certificate issuance, and the issuance of

⁴³ Makmur Syarif, "Poliandri Pada Masyarakat Kabupaten Padang Pariaman: Studi Kasus di Pengadilan Agama Pariaman," *Kafa'ah: Jurnal Ilmiah Kajian Gender* vol.VI, no. 2 (2016): 179–200, <http://dx.doi.org/10.15548/jk.v6i2.149>.

⁴⁴ Hapiz K., interview.

⁴⁵ Hapiz K.

birth certificates in one service unit. However, in reality, there are still people who complain about the length of the procedure for the issuance of Marriage Certificates after the implementation of the Marriage Itsbat Trial approximately one year ago. In addition, they also complained that there was no clear information about the delay in publishing their Marriage Certificate. Therefore, they are reluctant to administer the issuance of the Marriage Certificate and other legal identities.⁴⁶ It shows that the implementation of the Integrated Marriage Itsbat service program is still procedurally unclear so that the achievement of the objectives of this program is not optimal.

Fifth, the lack of coordination between agencies involved in the implementation of the Integrated Marriage Itsbat Service Program which is between the Religious Courts, the District Office of Religious Affairs, and Urban Communities, so the problems that arise in the field cannot be resolved quickly and tend to be overlooked.

Sixth, information dissemination or socialization about the Integrated Marriage Itsbat Program is still minimal. During this time, socialization was carried out by the Urban Communities, Neighbourhood/Hamlet, or the District Office of Religious Affairs, while the Religious Courts only accepted and examined those cases, and did not participate in socialization to the society.⁴⁷ However, in practice, socialization was only carried out by word of mouth through bulletin boards in the Religious Court as well as through mass media in the form of newspapers. It is felt to be not optimal so there are still many people who are not aware of the Integrated Marriage Itsbat Program.

⁴⁶ Adi Kurniawan, Urban Chief of Teluk Kenali, Telanaipura District, Jambi, July 19, 2018.

⁴⁷ Rahman, interview.

F. Conclusions

The implementation of the Integrated Marriage Itsbat Program in Jambi City started from 2015 until 2017. Although the initial goal was to facilitate the public in obtaining a legal identity that combined marriage itsbat, Marriage Certificate issuance, and the issuance of birth certificates in one service unit, the reality in the field shows that this program is full of various problems starting from the existence of marriage itsbat that can cause the chance of increasing the rates of *sirri* marriage, obscure registration and implementation procedures, so often missed to examine/investigate requirements related to the clarity of previous marital status to the lack of coordination between the organizing agencies of the Integrated Marriage Itsbat, namely the Religious Court, the District Office of Religious Affairs, and the Urban Community, and information dissemination or socialization of the Integrated Marriage Itsbat Program is still minimal. For this reason, it is necessary to carry out integrated coordination and evaluation efforts involving relevant agencies.

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