

Normative Inconsistency of Itsbat Nikah: Judicial Reasoning and the Monogamy Principle in Indonesian Religious Courts

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Abstract

This study aims to analyze the legal position of itsbat nikah on marriages that take place when one of the parties is still bound by a valid marriage and examine how religious courts balance the principle of monogamy with the usefulness of law in judicial practice. This study fills in the gap of previous research that focused more on judges' considerations and the legal consequences of marriage itsbat, while the analysis of normative inconsistencies between marriage legalization and marriage prohibition is still limited. The research uses normative legal methods with legislative, case, and conceptual approaches. Primary legal materials are in the form of laws and regulations and the Decision of the Gorontalo Religious Court Number 311/Pdt.P/2019/PA. Gtlo, supported by secondary legal material that is analyzed qualitatively through systematic and grammatical interpretation. The results of the study show that the granting of the application for itsbat nikah in the decision is normatively contrary to the principle of monogamy and the provisions of the prohibition of marriage in Indonesian marriage law. However, judges use judicial reasoning that is oriented towards the usefulness of the law by prioritizing the protection of family legal status, the certainty of civil relations, and the interests of the parties. These findings show a conflict between legal certainty and legal expediency in the implementation of itsbat nikah. The study concluded that the practice of granting itsbat nikah to marriage carried out while still bound by a previous marriage reflects normative inconsistencies in the application of marriage law. Therefore, clearer and more consistent judicial guidelines are needed to ensure harmony between the protection of civil rights and the enforcement of the principle of monogamy in religious judicial practice.

Keywords: *Itsbat Nikah; Monogamy Principle; Religious Courts; Judicial Reasoning; Legal Certainty; Legal Expediency.*

Abstrak

Penelitian ini bertujuan menganalisis kedudukan hukum itsbat nikah terhadap perkawinan yang dilangsungkan ketika salah satu pihak masih terikat perkawinan yang sah serta mengkaji bagaimana pengadilan agama menyeimbangkan asas monogami dengan kemanfaatan hukum dalam praktik peradilan. Kajian ini mengisi kesenjangan penelitian terdahulu yang lebih berfokus pada pertimbangan hakim dan akibat hukum itsbat nikah, sementara analisis mengenai inkonsistensi normatif antara pengesahan perkawinan dan larangan perkawinan masih terbatas. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, kasus, dan konseptual. Bahan hukum primer berupa peraturan perundang-undangan dan Putusan Pengadilan Agama Gorontalo Nomor 311/Pdt.P/2019/PA.Gtlo, didukung bahan hukum sekunder yang dianalisis secara kualitatif melalui interpretasi sistematis dan gramatikal. Hasil penelitian menunjukkan bahwa pengabulan permohonan itsbat nikah dalam putusan tersebut secara normatif bertentangan dengan asas monogami dan ketentuan larangan perkawinan dalam hukum



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perkawinan Indonesia. Meskipun demikian, hakim menggunakan judicial reasoning yang berorientasi pada kemanfaatan hukum dengan mengutamakan perlindungan status hukum keluarga, kepastian hubungan keperdataan, serta kepentingan para pihak. Temuan ini memperlihatkan adanya konflik antara kepastian hukum (*legal certainty*) dan kemanfaatan hukum (*legal expediency*) dalam penerapan itsbat nikah. Penelitian menyimpulkan bahwa praktik pengabulan itsbat nikah terhadap perkawinan yang dilakukan ketika masih terikat perkawinan sebelumnya mencerminkan inkonsistensi normatif dalam penerapan hukum perkawinan. Oleh karena itu, diperlukan pedoman yudisial yang lebih jelas dan konsisten untuk menjamin keselarasan antara perlindungan hak keperdataan dan penegakan asas monogami dalam praktik peradilan agama.

Kata Kunci: Itsbat Nikah; Prinsip Monogami; Pengadilan Agama; penalaran yudisial; Kepastian Hukum; Kemanfaatan Hukum.

INTRODUCTION

Marriage is a legal institution that plays a crucial role in social life, because it is not limited to involving personal ties between men and women, but also concerns social order and legal certainty. Through marriage, physical and mental relationships are created which are intended in order to form an eternal family of sakinah, mawaddah, warahmah based on the One Godhead.¹ This provision is strengthened in Article 1 of the Law on Marriage, which defines marriage as a born-mind relationship between a man and a woman as a husband and wife, aiming to create an eternal family of sakinah mawaddah warahmah based on the One Godhead. Therefore, marriage is not just a social relationship, but also a legal bond that gives birth to rights and obligations for both parties.

In the Indonesian marriage legal system, the validity of marriage is not limited to religious requirements alone, but must be proven through official registration as Article 2 of the Law on Marriage. This regulation guarantees that a marriage is considered valid when it is carried out following religious procedures and related beliefs as well as being registered in accordance with the provisions of the applicable law. Marriage registration has a vital role because it is related to legal protection of marital status, the status of children, inheritance rights, and legal certainty in the civil relations of the parties. However, in reality, there are still often marriages that are limited to religious activities without an official registration process, thus giving rise to various legal problems in the future.²

To provide legal certainty for marriages that have not been officially registered, Indonesian law provides a mechanism for marriage that's submitted to the Religious Court. Itsbat nikah is a court decision that legalizes a marriage that has been carried out according to religious law, but has not been officially registered by the state. Through itsbat nikah, married couples get legal recognition of their marriage, thus obtaining legal protection related to civil rights and obligations. In essence, the existence of itsbat nikah serves as a legal solution to overcome unregistered marriages, especially to create orderly marriage administration and ensure legal certainty for the community.³

¹ Siska Ayu Anggraini and Rachmat Panca Putera, "The Concept of Marriage Legality in the Compilation of Islamic Law: Legal and Social Studies," *Al Fuadiy Journal of Islamic Family Law* 5, no. 2 (December 2023): 71–83, <https://doi.org/10.55606/af.v5i2.1208>.

² Kuni Qoneta, "MARRIAGE REGISTRATION AS LEGAL PROTECTION FOR WOMEN AND CHILDREN FROM THE PERSPECTIVE OF MAQASHID SHARI'AH AL-SYATIBI," *El-Iqthisady : Journal of Sharia Economic Law* 7, no. 1 (May 2025): 160–71, <https://doi.org/10.24252/el-iqthisady.v1i1>.

³ Ahmad Faiz and Sri Redjeki Slamet, "The Determination of Isbat Nikah for Marriages Not Recorded at the Office of Religious Affairs and Its Legal Implications on the Legal Status of Husband and Wife and Children (Case Study of the Determination of the South Jakarta Religious Court Number

However, in its implementation, the application for marriage *issbat* does not always concern marriages that are substantially free of problems. There are a number of cases of *itsbat nikah* that even raise juridical issues because one of the parties is still bound by the previous marriage.⁴ This situation is contrary to the principle of monogamy adopted by Indonesian marriage law. Article 3 paragraph (1) of the Law on Marriage which emphasizes that in principle, a man is only allowed to have one wife, and a woman only has one husband. In addition, Article 9 also states that a person who is still bound by marriage may not enter into a new marriage except in the provisions regulated by law.

The prohibition of marriage while still tied to a previous marriage confirms that Indonesian marriage law makes the principle of monogamy the main principle to maintain order and legal certainty.⁵ This provision is further strengthened in Article 402 of Law No. 1 of 2023 concerning the Criminal Code, which regulates criminal sanctions for a person who enters into marriage even though he or another party knows that he or another party is still bound by a legal marriage.⁶ Therefore, normatively, Indonesian law prohibits new marriages if the previous marriage has not been legally terminated through a court decision.

Legal problems arise when an application for marriage is filed against a marriage that took place when one party was still bound by the previous marriage. This condition raises questions about the legal position of *itsbat nikah* if it is associated with the prohibition of marriage as long as it is still bound by a valid marriage. On the one hand, *itsbat nikah* aims to provide recognition and legal certainty for marriages that have not been registered. But on the other hand, marriage law expressly prohibits a person from entering into a new marriage before the previous marriage is dissolved through the courts. This contradiction raises the question of whether *itsbat nikah* can still be legitimized if the marriage that is sought to be ratified from the beginning is contrary to the provisions of the marriage law.⁷

This problem can be seen in case Number 311/Pdt.P/2019/PA. Gtlo at the Gorontalo Religious Court. In the case, it is known that the wife is still legally bound by the previous marriage when she holds the marriage that her marriage is requested. Previous marriages have never been decided through divorce in court, so juridically they are still considered valid according to applicable law. This situation raises legal problems because the application for *itsbat nikah* is filed against marriage which is basically contrary to the principle of monogamy and the prohibition of marriage as long as it is still bound by a valid marriage.

Several previous studies have discussed *itsbat nikah* from various perspectives. Research conducted by Siti Nur Magfirah A. Hudodo discussed the legalization of

879/PDT. P/2021/PA.JS)," *Journal of Social and Humanities Flow* 5, no. 2 (August 2025): 2525–33, <https://doi.org/10.57250/ajsh.v5i2.1524>.

⁴ PUTRI AYU AULIA, "JURIDICAL ANALYSIS OF THE BARRU RELIGIOUS COURT DECISION ON THE CASE OF MARRIAGE ISBAT FOR COUPLES MARRIED ABROAD WITHOUT OFFICIAL REGISTRATION" (other, IAIN Parepare, 2025), <https://repository.iainpare.ac.id/id/eprint/11456/>.

⁵ Chairil Irawan Rangkuti, Ramadhan Syahmedi, and Akmaluddin Syahputra, "Criminal Aspects in the Practice of Polygamy Without Permission: A Critical Study of Article 279 of the Criminal Code and the Marriage Law," *QOSIM : Journal of Social Education & Humanities* 4, no. 1 (February 2026): 26–37, <https://doi.org/10.61104/jq.v4i1.4421>.

⁶ Criminal Code Article 402 of Law Number 1 of 2023

⁷ Ibrahim Munib, "Isbat Nikah Polygamy and Marriage Have Not Been Recorded on the Family Card from the Perspective of the Legal Purpose of Gustav Radbruch," *JURISY: Sharia Scientific Journal* 3, no. 2 (November 2023): 58–74, <https://doi.org/10.37348/jurisys.v3i2.341>.

polyandry marriage at the Gorontalo Religious Court and found that the judge still granted the application with consideration of the protection of the legal status of children and marriage.⁸ Another research by Siti Mardiyana Antuli emphasized the consideration of the panel of judges when approving marriage rites for wives who are still bound by the old marriage bond.⁹ Dyah Eka Lestari's research focuses more on the analysis of the itsbat nikah series decision that was carried out before the first marriage breakup.¹⁰ Based on this research, based on the study, the study of marriage isbat generally focuses more on the judge's consideration and the legal consequences of the decision. Meanwhile, the study of the normative legitimacy of itsbat nikah for marriage carried out when one of the parties is still bound by a valid marriage has not been analyzed in depth, especially in the perspective of the conflict between the principle of legal certainty, the principle of monogamy, and the usefulness of law in the practice of religious justice.

These problems show that there is a conflict between legal certainty, legal utility, and legal protection in the practice of religious justice. Normatively, marriages that are performed when one of the parties are still bound by a previous marriage is contrary to the principle of monogamy and the prohibition of marriage in the Marriage Law. However, in practice, judges in some cases still grant marriage petitions by considering the benefits of the law, especially to provide protection for the status of children, civil rights of the parties, and certainty of legal administration.¹¹ In Gustav Radbruch's theory of legal certainty, the law must provide certainty through the consistent application of rules against the prohibition of marriage for parties who are still bound by a legal marriage.¹² In the theory of utility put forward by Jeremy Bentham, law basically aims to provide the greatest benefit to society.¹³ In addition, Philipus M. Hadjon's legal protection theory is relevant to analyze legal protection for affected parties in the practice of itsbat nikah. Therefore, the three theories are used as the basis for analysis in this study.

Based on these conditions, there are juridical issues regarding the position of itsbat nikah in the practice of marriage that is carried out when one of the parties is still bound by the previous marriage. This problem is important to study because it has the potential to cause legal uncertainty in the practice of marriage registration, open up the possibility of legitimacy for marriages that are normatively legally defective, and give rise to

⁸ Mohamad Irvan Fahrizal Ginintu, Nur Mohamad Kasim, and Julius T. Madjo, "The Role of KUA in Overcoming Unregistered Marriages (Nikah Siri) in Kota Tengah District, Gorontalo City," *Deposition: Journal of Legal Science Publications* 2, no. 1 (January 2024): 302–16, <https://doi.org/10.59581/deposisi.v2i1.2445>.

⁹ Siti Mardiyana Antuli, "Juridical Analysis of Judges' Considerations in Granting Marriage Isbat to A Wife Who Is Still Bound by a Previous Marriage (Case Study at the Gorontalo Religious Court)" (Gorontalo State University, 2023), <https://repository.ung.ac.id/>.

¹⁰ Dyah Eka Lestari, "Analysis of Decision No. 0417/Pdt.P/2018/Pa.Sby on Siri Marriage Isbat Carried Out Before the First Marriage Breakup" (undergraduate, UIN Sunan Ampel Surabaya, 2022), <http://digilib.uinsa.ac.id/56482/>.

¹¹ Syarifah Maryam Putri Husain et al., "The Authority of the Judge to Grant Isbat Nikah for Polyandry Series Marriage in Marriage Law," *Amsir Litigation Journal* 13, no. 1 (November 2025): 17–28.

¹² Syifa Nadya Azzahra et al., "Juridical Analysis of Bribery Corruption Crimes Based on the Theory of Legal Certainty," *Dehasen Multidisciplinary Journal (MUDE)* 4, no. 3 (July 2025): 593–98, <https://doi.org/10.37676/mude.v4i3.8533>.

¹³ Ernawati Huroiroh and Vera Rimbawani Sushanty, "AN ANALYSIS OF THE PERSPECTIVE OF LEGAL PHILOSOPHY IN REALIZING CERTAINTY, JUSTICE, AND THE USEFULNESS OF LAW IN INDONESIA," *JURNAL LEGISIA* 14, no. 2 (July 2022): 191–203, <https://doi.org/10.58350/leg.v14i2.198>.

inconsistencies in religious court decisions in examining and granting marriage itsbat applications against marriages that are contrary to the provisions of the Marriage Law.

RESEARCH METHODS

This study uses a type of normative legal research with a prescriptive-analytical research nature, which is research that aims to provide legal arguments regarding the position of itsbat nikah against marriage carried out when one of the parties is still bound by a legal marriage. This research uses several approaches, namely the statute approach, the case approach, and the conceptual approach. The legislative approach is used to examine the regulation of marriage, the principle of monogamy, and marriage in the Indonesian legal system. The case approach was used to analyze the Gorontalo Religious Court Decision Number 311/Pdt.P/2019/PA. Gtlo related to the application for marriage that's held when one of the parties still has a legal marital bond. Meanwhile, a conceptual approach is used to examine the concepts of legal certainty, legal utility, and legal protection in the practice of religious justice.

The legal materials used in this study consist of primary legal materials and secondary legal materials. Primary legal materials include Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law (KHI), and the Decision of the Gorontalo Religious Court Number 311/Pdt.P/2019/PA. Gtlo. The secondary legal material consists of law books, scientific journals, results of previous research, and other literature related to marriage and marriage issues. In addition, this research also uses tertiary legal materials in the form of legal dictionaries and other supporting materials that are relevant to the research object.

The collection of legal materials is carried out through literature study by inventorying and reviewing various laws and regulations, court decisions, and literature related to the object of research. Furthermore, the legal materials that have been obtained are analyzed qualitatively through systematic and grammatical legal interpretation methods to understand the relationship between legal norms, doctrines, and judges' considerations in court decisions. The analysis was used to examine the legal position of itsbat nikah against marriages carried out before the legal breakdown of the previous marriage.

RESULTS AND DISCUSSION

Juridical Considerations of Judges in the Granting of Itsbat Nikah in Marriages That Are Still Bound by Legal Marriage

Itsbat nikah is essentially a legal procedure that aims to provide legal recognition and certainty for marriages that have been carried out in accordance with religious law, but have not been officially recorded. The existence of itsbat nikah is intended to protect the civil rights of the parties and realize an orderly marriage administration¹⁴ However, in practice, the application for itsbat nikah is not always submitted for marriages that are normatively not problematic. One of the cases that raises legal problems is the Gorontalo Religious Court Decision Number 311/Pdt.P/2019/PA. Gtlo.

In this case, the applicants submitted an application for itsbat nikah for a marriage that had been held religiously but had not been officially recorded. The problem arises because in the facts of the trial it is known that Petitioner II is still bound in a previous marriage that has not been legally decided through a court decision. Thus, juridically, the

¹⁴ Putri Mayang Sari et al., "JUDGE'S CONSIDERATION IN GRANTING THE APPLICATION FOR ISBAT NIKAH (STUDY OF THE DECISION IN THE JAMBI RELIGIOUS COURT)," *Journal of Legal and Policy Innovation* 7, no. 1 (February 2026), <https://ejournals.com/ojs/index.php/jihk/article/view/4540>.

previous marital status is still considered valid according to the applicable law. Nevertheless, the panel of judges still granted the application for itsbat nikah submitted by the applicants.

The panel of judges in its consideration considered that the marital relationship between Petitioner II and the previous husband had de facto ended a long time ago and the parties no longer carried out the relationship as husband and wife. In addition, the judge also considered that the marriage of the applicants had lasted for a long time and had caused legal consequences in the form of family relations and civil interests that needed to obtain legal protection. These considerations are the basis for the judge to continue to grant the application for marriage even though there is still a formal relationship of a previous marriage that has not been decided by the court.

The determination shows that judges use an approach that is not solely oriented towards the application of legal norms textually, but also considers social aspects and legal benefits. In this case, the judge considered that the rejection of the marriage itsbat application had the potential to cause greater losses for the parties, especially related to the legal status of the family, protection of children, and certainty of population administration. Therefore, the judge placed the usefulness of the law as one of the important bases in providing the determination of itsbat nikah.

This approach shows the tendency of judges to use legal interpretation in a caustic manner in resolving marriage itsbat cases. Judges are not limited to looking at the formal applicability of legal norms, but also consider the reality of the social impact that arises among the community.¹⁵ In this context, the judge appears to make legal discoveries (*rechtsvinding*) through more flexible interpretations to provide legal protection to the parties. Law is not only seen as a formal rule that is textual, but also as a means to realize the benefits and protection of the law for society. This consideration is in line with Jeremy Bentham's theory of usefulness which states that law must basically provide the greatest benefit and prevent greater harm to society. However, this approach still raises juridical problems because it has the potential to override the principle of legal certainty and the principle of monogamy in Indonesian marriage law.¹⁶

Even so, the granting of itsbat nikah in this case still raises juridical issues. Normatively, marriage that is carried out while one of the parties is still bound by a previous marriage is contrary to the principle of monogamy as adopted by Indonesian marriage law. Article 3 paragraph 1 of the Marriage Law explains that fundamentally, men can only have one wife, and women only have one husband. In addition, Article 9 also states that a person who is bound by marriage may not enter into a new marriage except under certain conditions regulated by law.¹⁷ This provision is in line with the Compilation of Islamic Law which basically also prohibits marriages that are carried out when there is still a previous marriage bond. Thus, both the Marriage Law and the Compilation of Islamic Law place the principle of monogamy and the certainty of marital status as important principles in Indonesian marriage law. However, the practice of

¹⁵ H. Y. Sonafist, *Judge's Estimation in the Determination of Marriage Istbat* (NEM Publishers, 2023).

¹⁶ Mancur Sinaga, Ahmad Ahmad, and Indah Nur Shanty Saleh, *Philosophy of Law: Theory, Principles and Law in Indonesia: Theory, Principles and Law in Indonesia* (PT. Sonpedia Publishing Indonesia, 2025).

¹⁷ Law No. 16 of 2019 on Marriage

religious justice in some cases shows a shift in the application of norms from a legal-formal approach to a more sociological and law-based approach.¹⁸

With these provisions, the marriage carried out by Petitioner II is basically contrary to the provisions of the marriage law because it was carried out when the previous marriage had not been legally terminated. In a positive legal perspective, marital status cannot be considered to be terminated simply because the parties have been separated for a long time or no longer live together.¹⁹ The dissolution of marriage must still be carried out through legal mechanisms as stipulated in laws and regulations. That is why, the granting of itsbat nikah in the case shows that there is a conflict between the formal application of legal norms and the consideration of the usefulness of the law used by the judge.

On the other hand, the verdict also shows the judge's efforts to fill the gaps and legal limitations in solving problems that develop in society. In practice, there are still people who carry out marriages without legally completing the previous marital status. This condition then raises administrative and civil problems that require legal resolution. In such circumstances, the judge through his authority tries to present a legal solution that is considered to be able to provide protection to the parties even though they have to deal with the applicable normative provisions.

Based on this description, it can be understood that the position of the marriage itsbat decision in case Number 311/Pdt.P/2019/PA. Gtlo shows a shift in orientation in religious justice practice from a legalistic approach to an approach that emphasizes the benefits and social justice aspects. However, the decision still raises juridical issues because it is normatively contrary to the principle of monogamy and the prohibition of marriage while still bound in a valid marriage.

The Conflict between the Principle of Monogamy and the Usefulness of Law in the Practice of Itsbat Nikah

Indonesian marriage law essentially makes the principle of monogamy a fundamental principle in the implementation of marriage, which limits men and women to having only one partner in a legal marriage bond. This provision reflects Indonesia's efforts to build order and legal certainty in marital relations, while preventing marriage practices that have the potential to cause legal and social conflicts.²⁰

In addition, marriage law also does not allow a person to enter into a new marriage if he still has a valid marital bond with the previous spouse, except in conditions that are considered legally valid. Therefore, as long as there is no divorce decree with permanent legal force, the previous marital relationship still has legal force.²¹

If it is associated with the Gorontalo case, then the granting of the marriage itsbat application raises questions about the legal legitimacy of the marriage which was carried out from the beginning in the state of the previous marriage bond. Normatively, itsbat nikah is basically aimed at legalizing marriages that are legal according to religion but

¹⁸ Prof. Dr. Jamaluddin M.Hum S. H., Dr. Faisal M.Hum S. Ag, S. H., and Sela Azkia M.H S. H., *Marriage Law (Approach to Marriage Law and Compilation of Islamic Law)* (Deepublish, t.t.).

¹⁹ Ahmad Muhammad Mustain Nasoha et al., "The Breakup of Marriage and Its Consequences in Islamic Law and Positive Law in Indonesia," *El-Faqih : Journal of Islamic Thought and Law* 10, no. 1 (April 2024): 38–52, <https://doi.org/10.58401/faqih.v10i1.1134>.

²⁰ M. ZAMRONI, *LEGAL PRINCIPLES OF MARRIAGE REGISTRATION IN INDONESIA* (Media Sahabat Cendekia, 2019).

²¹ Law No. 16 of 2019 Article 9 concerning Marriage

have not been administratively recorded. In other words, itsbat nikah is not intended to legitimize marriage that is contrary to the provisions of marriage law.²²

In the Compilation of Islamic Law, itsbat nikah can only be submitted for marriages that are in accordance with the requirements and pillars of marriage and do not contain a prohibition on marriage according to Islamic law and laws and regulations.²³ Therefore, when a marriage is performed while one of the parties is still bound in the previous marriage, then juridically the marriage contains a legal defect because it is contrary to the provisions regarding the prohibition of marriage.

However, in the practice of religious justice, judges in some cases still grant the application for itsbat nikah by considering the aspect of legal utility. These considerations are generally related to the protection of the status of children, legal certainty of family relationships, and the civil rights of the parties. In case Number 311/Pdt.P/2019/PA. Gtlo, the judge seemed to emphasize more on the social and administrative consequences that would arise if the marriage itsbat application was rejected.

This approach can be understood through the theory of utility put forward by Jeremy Bentham. According to the theory of utility, the law basically aims to provide the greatest benefit to the community²⁴ In the context of the marriage case of itsbat nikah, the judge considered that the granting of the application provides more benefits and legal protection than the rejection. With the determination of itsbat nikah, the parties can obtain legal certainty regarding marital status and civil relationships.

Nevertheless, the use of the theory of usefulness in the case of itsbat nikah cannot be separated from the principle of legal certainty. If the granting of marriage itsbat is carried out against marriages that are clearly contrary to the provisions of the Marriage Law, then it has the potential to cause inconsistencies in the application of the law. In addition, the granting of marriage itsbat application under such conditions can also open up opportunities for deviations from the principle of monogamy which is the basic principle of marriage law in Indonesia.

From the perspective of legal certainty, the legalization of a marriage carried out while still bound by a previous marriage can create ambiguity about the limits of the legality of marriage. This is because the law basically stipulates that the dissolution of marriage can only be done through a court decision. Thus, as long as there is no divorce decision, the previous marital status remains valid and legally binding.²⁵ Therefore, the granting of itsbat nikah in these conditions is basically contrary to the normative provisions in Indonesian marriage law. In addition to causing legal uncertainty, the granting of marriage itsbat in these conditions also has the potential to give the impression

²² Najwa Nadia and Nurhayani, "Legal Protection of Children's Rights Due to Unacceptable Marriage Itsbat Application in Sirri Polygamy Practice (Case Study of Decision Number 638/PDT. G/2020/PA. GSG)," *Journal of Social and Humanities Flow* 5, no. 2 (August 2025): 3027–35, <https://doi.org/10.57250/ajsh.v5i2.1591>.

²³ Rita Khairani - and Royan Bawono, "Legal Analysis of Marriage Isbat According to the Indonesian Civil Code and KHI: -," *lantera* 4, no. 2 (September 2022): 67–82, <https://doi.org/10.32505/lantera.v4i2.3960>.

²⁴ Inggal Ayu Noorsanti and Ristina Yudhanti, "Governance Unveiled: Jeremy Bentham's Legal Philosophy in Government Policies through the Bantuan Directly Cash (BLT) Program for Village Funds," *Sultan Jurisprudence: Journal of Legal Research* 3, no. 2 (December 2023): 183–93, <https://doi.org/10.51825/sjp.v3i2.22435>.

²⁵ Ardhian Azhar Perdana, "The Validity of Written Agreements Made During the Marriage Period (Study of Decision Number 334/Pdt.G/2017/PN. Jkt.Sel Juncto. Decision Number 391/Pdt/2018/PT. DKI Juncto. Decision Number 2582 K/Pdt/2019)" (Thesis, Islamic University of Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/50619>.

of a justification for the practice of marriage that is contrary to the principle of monogamy. If such a practice continues to be justified through court determination, it is feared that there will be an assumption that marriages that are carried out without the settlement of the previous marital status can still obtain legal ratification through the marriage itsbat mechanism.

On the other hand, when viewed from the aspect of justice and utility, the granting of itsbat nikah can be seen as a form of legal protection for parties who are in vulnerable positions, especially children and women. The rejection of itsbat nikah has the potential to cause greater social and administrative impacts, such as the absence of certainty of family legal status, difficulties in managing population administration, and unclear civil relations between the parties.

From the perspective of sharia maqashid, the granting of itsbat nikah can be seen as an effort to protect offspring (hifz al-nasl) and provide protection for the sustainability of the family. However, this protection must still consider legal certainty so as not to cause justification for marriage that is contrary to the provisions of the marriage law.²⁶

So, the case of itsbat nikah in Decision Number 311/Pdt.P/2019/PA. Gtlo reflects the conflict between legal certainty and the usefulness of law in the practice of religious courts. Normatively, the granting of marriage itsbat nikah for marriages carried out while still bound by a previous marriage is contrary to the principle of monogamy and the prohibition of marriage according to the Marriage Law. However, in its implementation, the judge still pays attention to the value of legal benefits and protection for the parties involved. Thus, the position of itsbat nikah in the case illustrates that it shows that the practice of religious justice in itsbat nikah cases tends to place social benefits and protection as the main considerations, although on the other hand it has the potential to cause tension with the principle of legal certainty and the principle of monogamy in Indonesian marriage law

CONCLUSION

This study confirms that the granting of marriage rites to marriages that take place when one of the parties is still bound by a valid marriage, as reflected in the Gorontalo Religious Court Decision Number 311/Pdt.P/2019/PA. Gtlo, presents fundamental problems in the Indonesian marriage legal system. Based on normative analysis, the decision is not fully in line with the principle of monogamy as stipulated in Article 3 paragraph (1) and Article 9 of Law Number 1 of 1974 concerning Marriage because the previous marriage has not ended through a court decision with permanent legal force. The main findings of this study show that there is a normative inconsistency in the practice of itsbat nikah, namely the ratification of marriage that is legally materially carried out when there is still a valid marriage bond. This condition shows that there is a gap between the normative construction of marriage law and its implementation in the practice of religious justice.

On the other hand, this study also found that judges' considerations are not solely oriented to legal certainty, but rather focus on legal expediency and protection of the civil rights of the parties. The granting of marriage marriage applications is positioned as an instrument to provide certainty of family legal status, guarantee the rights of children and spouses, and avoid wider administrative losses. These findings show that judicial reasoning in marriage cases tends to prioritize a benefit-based legal protection approach rather than strict adherence to positive legal norms. Thus, this study identifies a

²⁶ H. Y. Sonafist, *Judge's Estimation in the Determination of Marriage Istbat* (NEM Publishers, 2023).

conceptual conflict between the principle of legal certainty and the principle of legal usefulness which is an important characteristic in the practice of resolving marriage cases in religious courts.

Based on these findings, this study recommends that the Supreme Court develop more comprehensive judicial guidelines regarding the limits on the granting of itsbat nikah, especially for marriages that take place when there is still a valid marriage bond, so as to create consistency of decisions and legal certainty in the religious court environment. In addition, it is necessary to harmonize regulations through the improvement of provisions regarding marriage in Indonesian marriage law so as not to cause multiple interpretations between marriage norms and judicial practice. The next study is recommended to develop a comparative study of marriage itsbat rulings in various religious courts and evaluate the limits of the use of the legal utility approach in relation to the protection of human rights, legal certainty, and consistency in the application of the principle of monogamy.

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