

Legalization of *Nikah Sirri*: A Solution to Obtain Marital Status Recognition Among Diverse Cultural Groups in Indonesia

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ABSTRACT

This article examines the background behind couples from various ethnic groups in Indonesia opting for unregistered marriages and their efforts to obtain legal recognition of their marital status from the state. The research aims to understand the motivations of couples from different cultural backgrounds when deciding to marry in secrecy and how they then seek to legalize their unions through court decisions on marital status confirmation. The method used in this study is field research with a descriptive qualitative approach. Primary data was obtained through in-depth interviews with 14 interethnic couples such as Minang, Batak and Javanese in Padang City who filed petitions for marital status confirmation to the local Class 1A Religious Court. The findings reveal that preferences over unregistered marriages are influenced by the social, cultural and religious backgrounds of each ethnic group. This condition necessitates contextual adjustments in providing legal solutions to the issue of unregistered marriages so that they can be accepted by all parties from the existing cultural diversity. In conclusion, marital status confirmation in Religious Courts can be an effective legal solution for interethnic couples with unregistered marriages in Indonesia to obtain formal recognition of their marital status. However, a profound understanding of the prevailing socio-cultural values in each community is needed so that decisions on marital status confirmation do not contradict and can be well accepted by all parties.

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1. INTRODUCTION

Unregistered marriage (*nikah sirri*) has become a prevalent phenomenon in Indonesia. Available data estimates that the number of unregistered marriages reaches the thousands annually (Siregar et al., 2022). This situation is undoubtedly distressing considering the adverse impacts on women and children from such marital arrangements (Nisa, 2018). Hence, the issue of unregistered marriage warrants attention from researchers across various scientific domains.

From a sociological standpoint, the proliferation of unregistered marriages can be construed as a form of resistance among certain communities against state efforts to govern the private lives of its citizens (Nisa, 2018; Hafidzi et al., 2022). Additionally, these marriages reflect the cleavage between formal regulations and prevailing societal values. For instance, the Gorontalo tribe regards unregistered marriage as a normative option since it has evolved into an ancestral tradition.

Various theological analyses have determined that in principle, unregistered marriages fulfill the pillars and requirements of legitimate marital unions under Islamic law. However, they still contravene civil regulations which mandate the registration of all marriages. According to Rahman (2018), such legal uncertainty threatens to undermine the rights of women and children in particular.

Previous literature has already reviewed regulatory frameworks and policies to deter the practice of unregistered marriages. These include Zainuddin & Ulya's (2021) study on Aceh's proposed Family Law and Nisa's (2018) macro-level analysis of marriage registration policies. However, research specifically focusing on efforts by couples in unregistered marriages to legalize their unions remains scarce.

Prudent handling of issues stemming from unregistered marriages is vital given the complex interplay of sociocultural values in Indonesia's diverse communities. Preventive initiatives need to consider prevailing traditions and drivers of unregistered marriages among various ethnic groups (Hafidzi, 2022). It is hoped that this research can provide contextual understanding so that any policies formulated can accurately address concerns and achieve acceptance among all parties.

The increase of unregistered marriages may be seen as a form of opposition within particular social circles against state interference into private affairs of its people (Nisa, 2018). They also underline the incongruity between formal legislation and accepted norms across Indonesia's multicultural landscape.

For instance, the predominantly Muslim Gorontalo tribe accepts unregistered marriage as a routine practice inherited through generations. Meanwhile, the largely Christian Batak ethnicity attributes it to religious differences and family objections, hence the choice of discreet marriage arrangements. In essence, distinct historical influences, convictions and indigenous values shape each ethnic community's policy on unregistered unions. Therefore, in-depth evaluation is necessary to develop appropriate and mutually acceptable solutions among Indonesia's diverse populace to mitigate this phenomenon. This study aims to uncover couples' rationale for unregistered marriages and the lengths they go to secure formal legal recognition. It focuses on prevailing social and legal perspectives of individuals in unregistered marriages. Accordingly, the results can complement existing literature concentrated on formal policy aspects of such unions.

2. METHODS

This is a field research study employing a qualitative approach and descriptive analysis. Primary data was gathered through in-depth interviews with 14 interethnic and

interfaith couples in Padang City who filed marriage confirmation petitions to the class 1A Religious Court. The selection of informants comprised varied ethnic groups including Minang, Batak, Javanese, and others in order to obtain a comprehensive understanding of unregistered marriage practices within the city's multicultural landscape. Interviews were conducted at a legal firm office, utilizing semi-structured technique to uncover the motivations and efforts of each couple from different cultural backgrounds in legitimizing their unregistered unions. Data analysis adhered to the Miles and Huberman model encompassing data reduction, display and conclusion drawing stages. Data reduction summarizes, encodes and traces themes relevant to the research focus. The subsequent process involves presenting integrated information to facilitate comprehension. Finally, conclusions are formulated by situating the findings within the broader sociocultural context regarding unregistered marriage conduct.

3. RESULTS AND DISCUSSION

3.1 Legalization of Unregistered Marriages (*Isbath Nikah*)

Isbath nikah consists of two words, namely *isbath* and *nikah*. *Isbath* comes from the Arabic word *asbata* which means to establish/determination. Meanwhile, marriage comes from the word *nakaha* which means to marry one another. Thus the term *isbath nikah* means confirmation of marriage. The combined term *isbath nikah* creates a new definition, namely confirmation of marriage which is a product of the Religious Court based on a request from interested parties. *Isbath nikah* is a petition filed by the Petitioner to the Religious Court with the aim that a marriage that was not registered with the religious affairs office and does not have a marriage certificate can be declared legal based on the Religious Court's decision (Sururie, 2017).

Isbath nikah is a solution for the enactment of Article 2 Paragraph (2) of Law no. 1 of 1974 concerning Marriage which requires marriage registration. This is because there are many marriages that are not registered, but can request their *isbath nikah* to the Religious Court. The authority regarding the case of *isbath nikah* for the Religious Court is for those who carry out marriages privately before the enactment of Law no. 1 of 1974 concerning Marriage which refers to Article 64 stating that for marriages and everything related to marriages that occurred before this Law comes into force which is carried out according to old regulations is legal. *Isbath* is a product of the Religious Court which is termed *jurisdictio voluntair*. *Voluntair* cases are cases which are applications in nature and do not contain disputes so there are no opponents.

Isbath nikah is a determination of the marriage of a husband and wife which has been carried out in accordance with the provisions of Islamic law by fulfilling the terms and pillars of marriage, but the marriage has not been or is not registered with the competent authority, namely the religious affairs office official in this case the registrar (Fauzi, 2021). The *isbath nikah* stipulated by the Religious Court has a very large share and contribution in an effort to provide a sense of justice and legal certainty for couples who do not have a marriage book as authentic evidence or couples who carry out unregistered marriages (Fauzi, 2021). Every marriage must be registered with the competent authority in accordance with applicable regulations. The regulation concerning marriage registration is an administrative regulation reform (Muar, 2021).

Based on the description above, it can be concluded that *isbath nikah* is a determination of the marriage of a man and a woman as husband and wife which has been carried out in accordance with the provisions of Islamic law and has fulfilled the pillars

and terms of marriage. However, this past marriage has not or has not been registered with the competent authority, in this case the religious affairs office official, namely the registrar. Article 7 paragraph (4) of the Compilation of Islamic Law (KHI) explains that those entitled to submit an application for *isbath nikah* are the husband or wife, their children, the marriage guardian and those interested in the marriage. Based on this article, the requirements for a person entitled to submit an application for *isbath nikah* are the husband or wife, their children, the marriage guardian and interested parties.

3.2 Reasons for Covert Marriages

Marriage is one of several historic moments in a human's life journey (Yuhermansyah & Akhir, 2019). By getting married, humans hope to continue their lineage by passing on their lives to the next generation (Supriyadi, 2018). Marriage is a sacred agreement between a man and a woman that aims to create a relationship full of tranquility (*sakinah*), love (*mawaddah*), and compassion (*rahmah*) (Munir & Shafiq, 2019). The benefits of marriages are felt not only by the family but also by society as a whole. Marriage has a strategic role in the formation and sustainability of society. Therefore, the government plays an important role in regulating marriages in order to create a safe, peaceful and prosperous society (Harisudin & Choriri, 2021).

Marriage in Indonesia is regulated in Article 1 of Law Number 1 of 1974 concerning Marriage, which explains that marriage is a relationship involving physical and spiritual dimensions between a man and a woman, who become husband and wife, with the aim of creating a happy and eternal family or household based on the principle of Belief in the One Supreme God (Herlina et al., 2019).

Marriage is a very strong bond (Nazarudin et al., 2023) which makes lawful the relationship between a man and a woman who are not mahram, while regulating their rights and obligations within specified limits (Umar & Purnama, 2018). From a legal perspective, marriage is a legal bond that binds the rights and responsibilities between husband and wife. Meanwhile, if we view marriage from a religious perspective, marriage is an agreement that makes lawful a relationship that was previously considered forbidden by religious teachings (Khairuddin & Julianda, 2017).

Basically there are already rules that govern marriages, both in religious aspects and at the legal level of a country. Every individual is expected to obey the established rules. In Indonesia, marriage regulations are stipulated in Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law. A marriage in Islam is considered valid if it fulfills the pillars and requirements of marriage (Khairuddin & Julianda, 2017). A legal marriage is a marriage that fulfills all the requirements in the covenant or *mitsaqan ghalidzan* (Mubarak et al., 2021), all the legal requirements of the agreement and all the requirements for its implementation, namely both parties carrying out the agreement are legally competent to carry out the agreement, the offer indicates permanent ownership of enjoyment, the *ijab* and *qabul* are united in one assembly, there is no difference between the two, each hears the voice of the other, the wife as the recipient of the agreement, there are two witnesses who meet all the requirements for testimony and each of the two parties carrying out the agreement is of sound mind and adult (Khairani & Sari, 2017).

The practice of covert marriages has become a fairly common phenomenon in various regions of Indonesia, both urban and rural areas. Based on research, it is known that covert marriages are carried out by various ethnic groups such as Javanese, Sundanese, Batak, Bugis, Banjar, Gorontalo and other tribes.

Although nationally there are already rules regarding the obligation to register every marriage, the level of compliance with these rules varies for each community group. These differences in perspective and cultural background also influence the decision to carry out covert marriages or not.

For example, for the Gorontalo tribe which is predominantly Muslim, covert marriages tend to be seen as a natural choice because it has become a long-standing tradition. Meanwhile, for the Batak ethnicity, covert marriages are more motivated by religious differences and lack of family approval.

Therefore, efforts to prevent or deal with covert marriages need to be tailored to the socio-cultural context of each tribe, so that policies made can accurately target and be accepted by Indonesia's various multicultural community groups.

The explanations stated above can be concluded that in Islamic law there are no specific requirements that require registering marriages at religious affair offices. However, in the context of legislation in Indonesia, marriage registration is mandatory for regulatory purposes and as official evidence in the form of a marriage certificate. This aims to maintain order in the marriage process and provide authentic evidence that is legally accessible (Azizah, 2020).

The facts found in the field show that there are still couples who covertly marry due to several factors, including the ignorance of covertly married couples about the importance of registering marriages as a legal requirement for marriages that are recognized by the people of Indonesia (Juraida et al., 2022). According to Wahbah Az-Zuhaily as quoted by Agustin Hanapi, et al. it is a marriage where the husband asks the witnesses to hide the marriage from the general public even if it is his own family (Hanapi et al., 2021). Then there are several reasons why couples covertly marry, namely, couples who will get married are busy working so they do not have time to take care of marriage requirements at the religious affair office. Then couples who will marry do not have the cost of managing the marriage, couples who will marry are still underage and lack of approval from the husband's family.

Table 1. Couples in Unregistered Marriages

No	Couple Names	Year of Marriage	Year of Isbath Nikah Submission
1	H and N	2010	2023
2	J and R	2015	2023
3	R and K	2017	2023
4	R and J	2020	2023
5	C and E	2014	2023
6	N and N	2011	2023
7	H and T	2007	2023
8	E and R	2006	2023
9	W and H	2004	2023
10	E and R	2020	2023
11	R and D	2021	2023
12	A and M	2021	2023
13	S and S	2021	2023
14	D and C	2022	2023

Source: Couples in Unregistered Marriages

Table 1 explains the number of couples who covertly marry, which is 14 couples. The number who married in 2004 was 1 (one) couple, in 2006 there was 1 (one) couple, in 2007 there was 1 (one) couple, in 2010 there was 1 (one) couple, in 2011 there was 1 (one) couple, in 2014 there was 1 (one couple), in 2015 there was 1 (one) couple, in 2017

there was 1 (one) couple, in 2020 there were 2 (two) couples, in 2021 there were 3 (three) couples and in 2022 there was 1 (one) couple. Table 1 explains that the total of 14 couples filed a marriage determination application in 2023 at the Padang Class IA Religious Court.

The following are the results of interviews that the authors have conducted with couples who covertly marry regarding the reasons couples covertly marry or marry with no legal issues,

“The author interviewed couples H and N, couples J and R, couples R and K, couples R and J, couples C and E. These couples covertly married because they were busy working so they did not have time to take care of administrative requirements at the religious affairs office. Then couples N and N, couples H and T, couples E and R, couples W and H. These couples covertly married because they did not have the funds to go to the religious affairs office. Then couples E and R, couples R and D, couples A and M. These couples covertly married because one of the couples was underage. The couple did not fulfill the requirements stipulated by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The latest rules regarding the age of marriage for both the prospective bride and groom are at least 19 years old. While the prospective bride is 17 years old. Furthermore, couples S and S, couples D and C, these couples covertly married because the family from the man's side did not approve of their relationship.” (interview, 2023)

Based on the results of the above interviews, it can be explained that the above couples married according to the pillars and requirements of marriage, but were not registered at the religious affairs office. These couples filed a marriage determination application because they wanted to take care of important documents, such as family cards, birth certificates for children.

3.3. Efforts of Covertly Married Couples to Obtain Legal Recognition

Marriage registration has become very essential in this context (Fadhliya, 2021). Marriage registration is the registration made by state officials of the marriage event at the time the marriage contract is to be carried out between the prospective husband and wife. Through marriage registration and evidenced by a marriage certificate, a person can prove that he/she is bound in a marriage bond so that the parties can claim their rights and be required to fulfill their obligations (Wardhana et al., 2023).

Marriage registration is an obligation that must be carried out by someone who has entered into marriage. This is based on Article 3 of Law Number 23 of 2006 concerning Population Administration, which explains that every resident is required to report population events and important events experienced to the implementing agency by fulfilling the requirements needed in population registration and civil registration. Furthermore, based on Article 2 of Presidential Decree Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration, it is explained that population registration and civil registration aims to provide legality of identity and legal certainty for population documents, protection of population civil status rights, and obtaining valid, correct and complete data (Rahmi & Sakdul, 2016).

Based on the results of interviews conducted by the author with 14 couples who covertly marry, it can be explained that these couples filed marriage determination applications to the Padang Class IA Religious Court to manage family cards, birth certificates for children and other important documents. Then there are also couples who filed marriage determination applications for divorce at the Padang Class IA Religious

Court. Efforts that can be made by couples who covertly marry to obtain legal validity for their marriage are by submitting an application for marriage determination to the Padang Religious Court, in this case 14 couples submitted marriage determinations to the Padang Class IA Religious Court.

3.3. Legal Solutions for Covertly Married Couples from Various Ethnic Groups

The rise of covert marriages among various ethnic groups and religions in Indonesia calls for appropriate legal solutions that are accepted by all parties. One solution that can be taken is the stipulation of marriage (*isbath* marriage) in the Religious Court.

Although fundamentally aimed at the same goal, namely to obtain legal status for the marriage, this marriage stipulation needs to pay attention to the socio-cultural backgrounds of each couple who carried out the covert marriage. For example, for the Gorontalo ethnic group who are Muslims, the marriage stipulation can be based on the provisions of fiqh according to the prevailing traditions.

Meanwhile, for couples from different ethnicities and religions, for example Batak Christians with Javanese Muslims, marriage stipulations need to accommodate the religious values of both parties so that they can be well received. Thus, the solutions provided can be right on target according to each cultural context.

In-depth studies are needed to formulate a gender-responsive and multicultural marriage stipulation model. It is hoped that this effort can become a legal breakthrough that understands cultural diversity while protecting the rights of women and children resulting from covert marriages in Indonesia. In addition to the majority Muslim and Christian groups in Indonesia, the existence of isolated indigenous communities that still adhere to local traditions in marriage practices also needs to be considered. Such as the Baduy community in Banten and the Dayaks in Kalimantan who generally do not register their marriages.

For these communities, marriage determination also faces challenges because it needs to understand the very strong indigenous values and beliefs. For example, whether marriage determination can be done collectively or individually, how to ensure the legality of marriage according to their beliefs, etc.

Therefore, persuasive and accommodative steps are needed by involving traditional leaders and emphasizing the precautionary principle. For example, by providing special outreach and services at their locations so as not to disturb the prevailing order. Thus, law enforcement can take place without causing conflict because it is contrary to custom.

4. CONCLUSION

Based on the explanation above, it can be concluded that the reason for the 14 couples covertly marrying is that the couple who will marry is busy working so that the couple does not have time to take care of the marriage requirements at the religious affairs office. Then couples who will marry do not have the cost of managing the marriage, couples who will marry are still underage and lack of approval from the husband's family. Then the effort that can be made by couples who covertly marry to obtain legal validity for their marriage is by submitting an application for marriage determination to the Padang Religious Court, in this case 14 couples submitted marriage determinations to the Padang Class IA Religious Court.

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