



INTERPRETIVE DYNAMICS OF MARRIAGE RATIFICATION IN INDONESIAN RELIGIOUS COURT PRACTICE

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Abstract

This study analyzes the legal status of marriage confirmation (itsbat nikah) within the national legal system, its regulation through the Compilation of Islamic Law (KHI), and its relationship with applicable laws and regulations. A normative juridical approach is utilized through literature study of primary, secondary, and tertiary legal materials. The results of the study indicate that itsbat nikah is regulated in the Religious Courts Act, which limits its scope to marriages occurring before 1974, whereas the KHI expands its scope through Article 7 paragraph (3) for marriages in the context of divorce, loss of marriage certificates, doubts regarding validity requirements, and marriages without impediments. The KHI, enacted via a Presidential Instruction, holds a dilemmatic legal status as it is not part of the hierarchy of laws and regulations yet continues to be used as a guideline by judges. Judicial practice demonstrates an expansion of itsbat nikah that potentially opens loopholes for legal circumvention. Regulatory harmonization and judicial prudence in applying itsbat nikah provisions are necessary.

Keywords: marriage confirmation, compilation of Islamic law, legal status, religious court, legal certainty.

Introduction

Marriage is a fundamental legal event in human life because it concerns legal status, rights and obligations, and legal protection for the parties bound within it. In legal systems across various countries, a valid marriage must not only satisfy the provisions of religion or belief, but must also be registered administratively by the authorized institution. Marriage registration serves as authentic proof that provides legal certainty regarding a person's marital status, which then becomes the basis for the recognition of other civil rights. In social reality, however, many marriages are validly performed according to religion and belief yet remain unregistered due to various factors, such as limited geographic access, social conflict, humanitarian crises, or a lack of awareness of the importance of registration (Krestianto, 2025). Households facing such structural barriers often depend on their own capacity to endure hardship, as research on family resilience and the role families play in supporting their members through difficult circumstances suggests (Evendi et al., 2024). This phenomenon gives rise to serious legal problems, particularly for the couples concerned, the children born of such marriages, and other civil rights arising from the marriage.

Legal uncertainty caused by unregistered marriage has a broad impact on various aspects of life, ranging from population administration to the protection of every individual's basic rights. Couples married without registration lack the valid documents needed as a basis for obtaining a Family Card, a child's Birth Certificate, and other population documents required for access to public services (Sunmirat et al., 2024). A child born of such a marriage risks having a civil relationship only with the mother, not the father, thereby losing the right to receive maintenance, inheritance, and other legal protections that should be provided by the father. This exposes children to legal vulnerability from the outset, which is why the legal guarantee of children's rights to education and health has been identified as a matter requiring firmer protection (Hariani et al., 2021). Women in unregistered marriages are also prone to loss, as they have no legal guarantee over their civil rights, either while the marriage is ongoing or in the event of divorce, including rights to joint property and to iddah maintenance. Such vulnerability points to the need for greater social recognition of women's protection needs, as reflected in studies on

how public perceptions of domestic violence shape the mental health and recovery process of at-risk women (Issalillah & Khayru, 2021). The accumulation of these problems shows that marriage registration is not merely an administrative matter, but is closely tied to the protection of citizens' fundamental rights guaranteed by the constitution.

Data and facts in the field show that the number of unregistered marriages in Indonesia remains significant, particularly in remote areas, conflict zones, and indigenous communities with their own marriage traditions (Firdaus & Firdaus, 2025). Various studies and reports from civil society organizations and religious courts indicate a year-on-year increase in applications for marriage validation (*itsbat nikah*), reflecting society's need for legal recognition of marriages that have long taken place but were never registered (Jamilah et al., 2019). Applications for *itsbat nikah* are filed not only for marriages that occurred before 1974, but also for marriages that occurred afterward, for reasons that are not solely attributable to the negligence of the parties. This tension between formal requirements and lived practice is not confined to older or traditional unions; it also appears in newer forms of marriage, as shown by legal analysis of marriage contracts conducted through video calls under Indonesian marriage law and Islamic law (Aliyah et al., 2023). This condition reveals a gap between the legal norm governing the obligation to register marriage and the social reality in which the community still faces obstacles in accessing formal marriage registration services.

To address this problem, the Indonesian legal system provides the mechanism of *itsbat nikah* as an effort to grant legal recognition to marriages validly performed according to religion but not administratively registered. *Itsbat nikah* is a court determination declaring the validity of a marriage not yet evidenced by a marriage certificate, so that the husband and wife may obtain a marriage certificate as authentic proof of their marriage. Through this mechanism, civil rights that have long been neglected can be restored and protected by the state, including the rights of women and children who have thus far existed in legal uncertainty. This restorative function is not unlike other legal instruments aimed at returning marginalized individuals to a recognized social and legal standing, as illustrated by research on how reintegration processes can open pathways to social mobility (Suwito et al., 2022). *Itsbat nikah* serves as a bridge between religious norms that legitimize

marriage spiritually and state legal provisions that require registration as a form of legal certainty and citizen protection. Thus, this mechanism functions as an instrument of legal protection for people who have already married without formal registration.

Although *itsbat nikah* has been recognized as a mechanism of legal protection, its implementation in practice is not without problems. Debate arises over the scope of marriages eligible for an *itsbat nikah* application, particularly whether the mechanism is intended only for marriages that occurred before the registration obligation existed, or whether it may also be applied to marriages that occurred after that obligation took effect. Limiting the scope is necessary to preserve legal certainty and prevent legal circumvention, such as polygamous marriages conducted without permission or marriages that violate the minimum age requirement. Concerns over marriages involving parties below the minimum age echo broader child-protection principles, as seen in studies emphasizing restorative and protective approaches for minors within the justice system (Al Haibah et al., 2024). An overly strict limitation, however, can leave many people unable to obtain legal protection for their marriage, so that their civil rights remain in a state of uncertainty (Nasrulloh et al., 2026). This dilemma demands clarity and consistency in the application of *itsbat nikah* law in the courts.

Another problem that arises in the practice of *itsbat nikah* concerns differing interpretations among Religious Court judges regarding the requirements a marriage must meet to be validated. Some judges apply a strict interpretation, granting only applications that fulfill the formal requirements set out in the law, while other judges take a more lenient approach, prioritizing the principle of benefit and protection for the weaker party. This difference in interpretation risks producing disparities in rulings between courts handling cases with similar legal facts, which ultimately weakens legal certainty and public trust in the judicial system. In addition, many people remain unaware that the *itsbat nikah* mechanism exists or how to apply for it, leaving them in legal uncertainty without attempting to correct their marital status. This gap in public awareness is consistent with findings on how information spreads through the media and shapes public understanding and opinion on a given issue (Arifin & Rojak, 2022). This condition shows that the effectiveness of *itsbat nikah*

as an instrument of legal protection depends heavily on public understanding and on judges applying the law consistently.

The practice of *itsbat nikah* in the courts also faces challenges in proving a case, particularly when an application concerns a marriage that has lasted a long time and the parties lack sufficient documents or witnesses to prove its validity (Krestianto, 2025). Courts are often confronted with limited evidence, such as the absence of surviving witnesses, the loss of supporting documents, or doubt over whether the requirements for marriage were fulfilled at the time it took place. The weight placed on witness testimony in these cases raises the question of how reliably an individual can recall and consistently recount events from long ago, a concern that parallels findings on how personal characteristics shape the consistency of a person's performance in fulfilling a given role (Darmawan, 2017). This becomes a serious obstacle because, in the process of proving an *itsbat nikah* case, the judge must ensure that the marriage truly fulfilled the pillars and requirements of marriage under religious and applicable legal provisions. Without sufficient evidence, an *itsbat nikah* application risks being rejected, so that the couple still fails to obtain legal certainty over their marital status and the civil rights attached to it.

Beyond the matter of proof, the practice of *itsbat nikah* in Indonesia also confronts the issue of the legal consequences that arise once an *itsbat nikah* application is granted, particularly regarding whether the determination has retroactive effect (Azis & Mutakin, 2024). A frequently raised question is whether *itsbat nikah* takes effect from the date the marriage was performed or from the date of the court's determination, since this affects the status of a child born before the *itsbat nikah* was granted. If *itsbat nikah* applies retroactively, a child born before the determination can acquire a legal relationship with the father and the civil rights attached to it. If *itsbat nikah* applies only prospectively, a child born earlier still has no legal relationship with the father, which affects inheritance and maintenance rights. Whichever position is taken, resolving this question ultimately requires giving priority to the child's best interest, a principle already emphasized in the context of custody and post-divorce care arrangements (Fajar et al., 2021). This lack of clarity regarding the retroactive effect of *itsbat nikah* frequently creates further problems,

particularly in cases where a child was born before the *itsbat nikah* application was filed.

This study aims to analyze the legal status of marriage confirmation marriage ratification within the national legal system and to examine the dynamics of its interpretation and implementation in religious court practices in Indonesia. This research also aims to identify the obstacles faced in the implementation of *itsbat nikah*, including evidentiary issues, decision disparities, and the unclear retroactive effect of court determinations, as well as to formulate recommendations to enhance the effectiveness of *itsbat nikah* as an instrument of legal protection for the community. Thus, this research is expected to contribute to the development of Islamic family law in Indonesia, particularly in efforts to realize certainty, justice, and legal protection for individuals who have entered into unrecorded marriages.

Method

This research is a normative legal study examining written legal norms regulating marriage confirmation (*itsbat nikah*) within the national legal system. The data source used is secondary data obtained through literature research, including laws and regulations, court decisions, legal literature, and other legal documents relevant to the subject matter. The primary legal materials used as the main reference include Law Number 22 of 1946 concerning the Registration of Marriage, Divorce, and Reconciliation, Law Number 1 of 1974 concerning Marriage, Law Number 7 of 1989 concerning Religious Courts along with its amendments, the Compilation of Islamic Law, Presidential Instruction Number 1 of 1991, and Decisions of the Chief Justice of the Supreme Court regarding guidelines for the implementation of court duties. Secondary legal materials in the form of scientific writings, scholars' opinions, and previous research results are utilized to enrich the analysis and provide a theoretical perspective. Tertiary legal materials such as legal dictionaries are used to help interpret technical terms in the field of Islamic family law.

Data collection was carried out by searching, inventorying, and cataloging various relevant legal documents, sourced from both physical libraries and electronic legal databases. Religious court decisions related to *itsbat nikah* were collected as material to analyze the practice of law

application by judges. After all data was collected, qualitative analysis was conducted using legal interpretation methods, namely grammatical interpretation and systematic interpretation (Akbar, 2025). Grammatical interpretation is used to understand the meaning of words or phrases in laws and regulations based on grammar, while systematic interpretation is carried out by connecting a regulation with other regulations within the overall legal system. Analysis of court decisions was also conducted to understand the practice of law application in *itsbat nikah* cases. The results of the analysis are structured in the form of a narrative description that completely and comprehensively describes the legal status of *itsbat nikah*, its regulation through the KHI, and the interpretation of related articles in religious court practices.

Result and Discussion

Normative Basis and Development of Marriage Ratification Regulation in Legislation

The normative basis for the authority and implementation of marriage ratification within the national legal system is regulated through a series of interrelated laws and regulations. The legal standing of marriage ratification is found in Article 3 paragraph (5) of Law Number 22 of 1946 in conjunction with Article 49 point (22) of the elucidation of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and further amended by Law Number 50 of 2009, as well as Article 7 paragraphs (2), (3), and (4) of the Compilation of Islamic Law, and the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/032/SK/IV/2006 concerning the Enactment of Book II Guidelines for the Implementation of Court Duties and Administration, Chapter II letter b point 2 sub 6. With this legal basis, the implementation of *marriage ratification* in the Religious Courts carries strong legitimacy as part of the effort to provide legal certainty and protection for the marital status of Muslims. This layered normative foundation shows that the state pays serious attention to legal protection for people who have already entered into marriage without official registration (Nugraha & Aziz, 2025). This protection matters in particular because unclear marital status tends to weaken the legal position of wives and children within the family structure (Aliyah & Mardikaningsih, 2023).

Regulation of the authority over *marriage ratification* in legislation has developed alongside the community's need for legal certainty in marriage registration. Two laws Law Number 22 of 1946 concerning the Registration of Marriage, Divorce and Reconciliation, and Law Number 7 of 1989 concerning Religious Courts only outline that the courts, in this case the Religious Courts for those of the Islamic faith, have the authority to carry out *isbat* or ratification of marriage. Neither law regulates in detail who is entitled to file for *marriage ratification* or how the procedure should be carried out. More detailed rules are found in the implementing regulations, namely Article 7 paragraphs (2), (3), and (4) of the Compilation of Islamic Law and the Decision of the Chief Justice of the Supreme Court Number KMA/032/SK/IV/2006 concerning the Enactment of Book II Guidelines for the Implementation of Court Duties and Administration, Chapter II letter b point 2 sub 6. These implementing provisions therefore serve as important guidelines for courts in handling *marriage ratification* applications in a more structured manner, in line with applicable legal procedures. Guidelines of this kind also strengthen the effectiveness of judicial institutions, since clearly defined standards make case handling more consistent and accountable (Darmawan, 2024).

Historically, regulation of the *marriage ratification* institution has been limited in scope according to the social and legal conditions prevailing at the time each regulation was enacted. The *marriage ratification* institution accommodated in Law Number 1 of 1974 and Law Number 7 of 1989 was limited to marriages that occurred before Law Number 1 of 1974, as reflected in Article 49 paragraph (2), which states that the marriage matters referred to in paragraph 1 letter a are those regulated in or based on the applicable marriage law. The elucidation of Article 49 paragraph (2) states that one area regulated by Law Number 1 of 1974 is the declaration of validity for marriages that occurred before Law Number 1 of 1974 concerning Marriage came into force, when carried out under prior regulations. The original purpose of the *marriage ratification* institution was thus to grant legality to marriages that occurred before Law Number 1 of 1974, so that they would hold valid legal force before the state. This limited scope reflects how family law adjusts to changing social conditions, allowing legal instruments to remain relevant to the needs of society at a given time (Halizah & Mardikaningsih, 2022).

Marriage ratification plays an important role in providing legal certainty for marital status that has not been officially registered with the marriage registration authority. Historically, the authority of the Religious Courts to hear *marriage ratification* cases was intended for those who married before the enactment of Law Number 1 of 1974 concerning Marriage. The Marriage Law treats every marriage occurring before its enactment as valid, as affirmed in Article 64 of Law Number 1 of 1974 concerning Marriage, which states that marriages and all matters related to marriages occurring before the law took effect, carried out under the old regulations, are valid (Sujono, 2022). This "whitewashing" policy was applied because Law Number 1 of 1974, since 1974, set validity criteria for marriage that were not necessarily met in practice by marriages occurring before 1974. On this basis, every marriage conducted before 1974 but not yet registered is granted a dispensation by the state to obtain marriage registration through the *marriage ratification* procedure at the Religious Courts. Without such dispensation, unregistered marital status can carry real economic consequences for the household particularly in cases of underage marriage, where family welfare tends to be adversely affected (Aliyah et al., 2023).

The authority of the Religious Courts then expanded to meet the community's need for legal recognition of marriages that had not been administratively registered: where a marriage cannot be proven by a marriage certificate predating Law Number 1 of 1974, *marriage ratification* may be filed. Article 7 of the Compilation of Islamic Law states that a marriage can only be proven by a marriage certificate issued by the Marriage Registrar, and where a marriage cannot be proven this way, its *marriage ratification* may be filed with the Religious Courts. *Marriage ratification* petitions accepted by the Religious Courts are limited to matters concerning proof of marriage for the purpose of settling a divorce, loss of a marriage certificate, doubt over the validity of one of the marriage requirements, a marriage occurring before Law Number 1 of 1974, and marriages conducted by parties with no legal impediment to marriage under Law Number 1 of 1974. Those entitled to file a petition for *marriage ratification* are the husband or wife, their children, the marriage guardian, and other interested parties. Including children among those eligible to petition is essential, since a child's legal status and access to education are closely tied to the recognized legality of their parents' marriage (Fajar et al.,

2022). Recognition of the marriage also helps preserve parenting quality where a divorce settlement follows, as clarity in family structure shapes a child's development (Fajar et al., 2025).

The filing of *marriage ratification* for marriages conducted before the enactment of Law Number 1 of 1974 represents a form of state recognition of the social reality of people who married validly according to religion but were never administratively registered. The Religious Courts are granted authority to ratify such marriages, providing legal certainty and protecting the civil rights of the parties. The *marriage ratification* mechanism serves as an instrument bridging religious norms and state legal provisions to ensure justice and legal certainty for society (Wazzan et al., 2024). In the practice of Islamic family law in Indonesia, marriage ratification through *marriage ratification* has a very specific and limited scope. Cases of *marriage ratification* arising after the enactment of the Marriage Law rely on the limited opportunity provided under Article 7 paragraph (3e) of the Compilation of Islamic Law, so long as the marriage in question involves no impediment under Law Number 1 of 1974. Legal certainty of this kind ultimately opens wider access for wives to family welfare and education, positioning *marriage ratification* as one path toward social empowerment within the family (Aisyah, 2026).

The regulations in the Compilation of Islamic Law recognize the validity of a marriage if the pillars and conditions of marriage according to religion have been fulfilled, as stipulated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage. Marriage confirmation (*itsbat nikah*) functions as a legal-formal means that is strictly limited to guarantee legal certainty without ignoring sharia principles. The implementation of *itsbat nikah* within the national legal framework is not universal, but rather subject to normative boundaries established by laws and regulations. The opportunity for *itsbat nikah* opened by the Compilation of Islamic Law remains closed for marriages that do not meet the requirements according to the Marriage Law. Indonesian citizens who contract an interfaith marriage where one party is a Muslim cannot utilize this opportunity. Second and subsequent marriages conducted without the wife's permission are not marriages that meet the requirements of the Marriage Law and therefore cannot make use of such *itsbat nikah* opportunities.

The Position of the Compilation of Islamic Law within the National Legislative System

Synchronization between statutory regulations and administrative legal instruments often triggers debate within the national legal system, including in the regulation of *marriage ratification*. Detailed regulation of *marriage ratification* is set out through Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. The Marriage Law itself only states that *marriage ratification* applies to marriages occurring before Law Number 1 of 1974. These two regulations appear to stand in tension, particularly when viewed from the position of the Compilation of Islamic Law relative to statutory law within the hierarchy of legislation. The meaning attached to the Compilation of Islamic Law as a complementary source of law needs to be clarified so that it does not create normative conflict in religious court practice conflict that could disrupt legal certainty for justice-seeking members of the public. Clarity on this point matters in practice, since uncertain legal standing can widen gaps in access to justice between groups, much as unclear social norms tend to produce unequal opportunities within society (Sajjapong et al., 2022).

Within the framework of national legal development rooted in local and religious values, the Compilation of Islamic Law stands as a reflection of the ideal legal aspirations of Indonesia's Muslim community. Its presence forms part of a historical chain in national law that reveals the many layers of meaning in the life of Indonesian Muslim society particularly the existence of living legal norms that help govern social interaction, the actualization of normative dimensions arising from the functional explanation of Islamic teaching that drives the fulfillment of legal needs, structural responses that gave rise to the impetus for compiling the Compilation of Islamic Law, and the agreement among Indonesian ulama anticipating these three matters by settling on the Compilation of Islamic Law as a written formulation (Is et al., 2024). This rootedness in local values also explains why the Compilation continues to be treated as relevant, since legal policy tends to hold up best when it stays connected to the cultural values already lived by the community (Mardikaningsih & Darmawan, 2023). The Compilation of Islamic Law functions not only as a technical guideline for religious courts but also as a manifestation of ideal law growing out of the social and spiritual experience of Indonesian Muslims. This

spiritual dimension is significant, since religious and spiritual approaches have been shown to shape the way values and understanding are passed down within a community (Masfufah & Darmawan, 2023), and such an approach naturally extends to how legal norms rooted in Islamic teaching are lived out socially (Oluwatoyin & Mardikaningsih, 2022).

The Compilation of Islamic Law, enacted through a Presidential Instruction, does not carry legal force equal to statutory law, yet in practice it remains a reference for Religious Court judges because it is regarded as living substantive law needed by the community. The debate over the position of the Compilation of Islamic Law within the Indonesian legal order has persisted for some time among legal scholars. Some object to the use of a Presidential Instruction as the basis for enacting the Compilation of Islamic Law, arguing that it does not conform to the hierarchy of legislation, while others hold that a Presidential Instruction can still form part of the Indonesian legal order because it carries regulatory and binding force in legal practice (Ronaldi et al., 2025). Judges' willingness to keep applying the Compilation despite this formal ambiguity reflects an adaptive quality in legal practice itself the same capacity to adjust to new demands that shapes how learning and understanding develop over time (Kurniawan & Darmawan, 2021). Although the Compilation of Islamic Law formally lacks a legal standing equal to statutory law, it remains functionally recognized as a relevant and operational legal guideline in the practice of religious courts in Indonesia.

The existence of a Presidential Instruction as the legal basis for the Compilation of Islamic Law raises a normative dilemma worth analyzing within the study of legislative hierarchy. The choice of a Presidential Instruction as the instrument for enacting the Compilation of Islamic Law reflects a dilemmatic legal phenomenon: Indonesia's legislative experience has placed the Presidential Instruction as a legal instrument capable of standing independently and operating effectively alongside other legal instruments, giving it regulatory and binding force within positive law. At the same time, however, the Presidential Instruction as a tool of legal legitimation is not recognized within the sequence of Indonesian law set out in the legislation governing the formation of laws and regulations. Although formally absent from the hierarchy of legislation, it remains functionally recognized in legal practice as an instrument carrying coercive

force and social relevance that cannot simply be disregarded. This gap between formal status and lived legal practice is not unusual legal instruments, like other social arrangements, often need to adjust in order to remain functional for households and communities that depend on them for certainty, including in matters as basic as managing family responsibilities (Evendor et al., 2023).

Based on Law Number 12 of 2011 concerning the Formation of Legislation, a Presidential Instruction is not part of the formally recognized sequence of legislation. If the legal subjects affected by a decision are concrete and individual, the legal norm contained within that decision is classified as an individual, concrete legal norm. However, if the legal subjects concerned are general and abstract, or not yet concretely determined, the legal norm contained within the decision is classified as a general, abstract legal norm. Thus, although a Presidential Instruction lacks formal standing within the hierarchy of legislation, it can still contain general and abstract legal norms, allowing it to function as a reference in administrative and sectoral legal practice that requires operational guidance.

Legal decisions can be classified based on their nature and legal subjects, which reflect the differences in normative functions within the legal system. Decisions that are general and abstract are usually regulatory in nature, whereas those that are individual and concrete may take the form of administrative determinations or judge's verdicts referred to as decisions (Ichsanullah & Santiago, 2022). These three forms of decision-making activities can be distinguished by the terms regulation, which produces rules; determination, which produces decrees or decisions; and adjudication, which produces verdicts. This classification is important for understanding the position and binding force of a decision within the legal system, including in assessing the validity and effectiveness of legal norms as contained in Presidential Instructions or the Compilation of Islamic Law as legal instruments used in judicial practice. In government administrative practice, a Presidential Instruction constitutes a policy rule that cannot be categorized as a standard form of legislation because it does not formally take the shape of an official regulation.

Interpretation and the Expanding Scope of Marriage ratification in Religious Court Practice

The expanding practice of *marriage ratification* reflects an evolving pattern of legal interpretation within Indonesia's religious court system. Under Law Number 1 of 1974, *marriage ratification* was intended for marriages occurring before 1974, yet in current practice petitions are increasingly filed for marriages that took place after the law came into force. This raises the question of how the two provisions should be interpreted so that they do not contradict one another while still providing legal certainty for the public. The opportunity to file for *marriage ratification* could be misused by irresponsible parties seeking to circumvent marriage law, yet in practice judges frequently declare such petitions legally valid in their rulings. Interpreting the scope of *marriage ratification* therefore requires caution, so that justice is upheld without opening loopholes that undermine established marriage law. This caution matters because how a religious court exercises its authority whether through formal adjudication or mediation directly shapes the fairness of the outcome for the families involved (Zahid et al., 2021).

The concept of marriage ratification has long been recognized and discussed across various works of fiqh as part of the evidentiary mechanism for establishing the validity of a marriage in classical Islamic legal tradition. Islamic courts have long been familiar with marriage ratification cases, and the matter is addressed in several fiqh texts regarded as primary references in Islamic law (Alfirdaus et al., 2025). The book Fathul Mu'in states that a petitioner seeking marriage ratification must be able to demonstrate the conditions that make the marriage valid. The book I'anah ath-Thalibin explains that the conditions for a valid marriage are the presence of a guardian and two just witnesses. The fiqh foundation of marriage ratification thus shows that the process of proving a marriage's validity already carried a strong normative basis within the treasury of Islamic law, long before the concept was accommodated in the modern judicial system now in effect in Indonesia. Norms of this kind endure because they are shaped as much by social and cultural understanding as by formal doctrine, in the same way that norms within any organization or community tend to

take form through shared social practice rather than through rules alone (Eddine & Darmawan, 2022).

The development of religious court regulation reflects a legal response to the public's need to ratify marriages that were never administratively registered. Following the enactment of Law Number 7 of 1989 concerning Religious Courts, petitions for *marriage ratification* were based on the elucidation of Article 49 paragraph (2), which states that the marriage matters regulated under Law Number 1 of 1974 concerning Marriage include the declaration of validity for marriages that occurred before that law came into force and were carried out under other regulations. To address unregistered marriages, the government issued regulations concerning the determination of marriage validity, or *marriage ratification*, in response to the legal difficulties faced by couples married under *sirri* (unregistered) arrangements. This is significant because couples in unregistered marriages do not obtain civil rights such as the legal status of children, inheritance, and population administration to which they are entitled as citizens. The absence of these rights can be especially consequential for wives, since without registered status a wife's position in claiming her share of joint marital property after divorce becomes far weaker (Suwito, 2025).

The consistency of the legal norms governing *marriage ratification* within religious court regulation reflects a stable pattern of legal enforcement since Law Number 7 of 1989 first took effect. The same elucidation is given in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, showing that the legal norm on *marriage ratification* remained unchanged between 1989 and 2006 that *marriage ratification* applies to marriages conducted before Law Number 1 of 1974 and carried out under other regulations. With the enactment of Law Number 49 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, Article 49 was left unchanged, so the legal norm governing *marriage ratification* remains, to this day, as originally set out in Law Number 7 of 1989 concerning Religious Courts. The continued applicability of Article 49 forms a legal basis that remains relevant in regulating the scope of *marriage ratification* petitions before the Religious Courts to this day. This kind of sustained legal protection is important for families, since the

private-law shield it provides also extends to sensitive matters within the household that might otherwise go unaddressed (Zahid et al., 2022).

Interpretation of the scope of *marriage ratification* has developed further with the presence of the Compilation of Islamic Law, which regulates *marriage ratification* in greater detail. Article 7 paragraph (3) of the Compilation of Islamic Law explains that *marriage ratification* may be filed with the Religious Courts in connection with proof of marriage for the purpose of settling a divorce, loss of a marriage certificate, doubt over the validity of one of the marriage requirements, a marriage occurring before the enactment of Law Number 1 of 1974, and marriages conducted by parties with no legal impediment to marriage under Law Number 1 of 1974. The Compilation of Islamic Law thus provides a more operational legal basis for the Religious Courts in handling *marriage ratification* cases, while also broadening the scope of legal protection for people seeking certainty over their marital status. This provision reflects an effort to expand access to justice for the public through the *marriage ratification* mechanism. Broader access of this kind carries weight particularly for families in vulnerable circumstances, since legal certainty over marital status can itself become part of what sustains a family's resilience, alongside the other resources a household draws on to get by (Evendi et al., 2024).

The difference in scope between the Religious Courts Act and the Compilation of Islamic Law demonstrates the dynamics in the legal construction of marriage confirmation (*itsbat nikah*) developing in Indonesia. Article 7 paragraph (3) of the Compilation of Islamic Law opens a wider door for *itsbat nikah* compared to the door provided by Law Number 7 of 1989 in conjunction with Law Number 3 of 2006. When drafting the Compilation of Islamic Law, the drafters may not have anticipated that Law Number 7 of 1989 would provide only a single door for *itsbat nikah*. This assumption is reinforced by the fact that the Elucidation of Article 7 of the Compilation of Islamic Law states that this article was enacted after the enactment of the Religious Courts Act, whereas in reality, the Religious Courts Act was passed earlier while the Compilation of Islamic Law was enacted only in 1991, two years after the birth of the Religious Courts Act. The expansion of norms in the Compilation of Islamic Law serves as evidence that Islamic law in

Indonesia develops through a process of adaptation to community needs and changing national regulatory dynamics.

The flexibility of norms in the Compilation of Islamic Law has proven to be more responsive to social realities because the avenues provided by the Compilation of Islamic Law offer greater benefits to the Islamic community. This is evidenced by the large number of marriages conducted after Law Number 1 of 1974 that could not be registered, not due to the negligence of the prospective brides and grooms, but due to conditions and situations that did not permit it, either for security reasons such as the people of Aceh during the GAM era, or for other rational reasons. The existence of the Compilation of Islamic Law as a legal basis for *itsbat nikah* serves as an adaptive solution to community needs, while simultaneously guaranteeing legal protection for couples affected by extraordinary conditions that prevented them from registering their marriages administratively. This flexibility demonstrates that positive law in Indonesia possesses the space to respond to complex and diverse social realities.

Legal Loopholes and Prevention Efforts against Violations in Marriage Confirmation Practice

Behind the flexibility of norms in the Compilation of Islamic Law, there are loopholes that have the potential to cause legal violations in religious court practices. The most significant weakness lies in Article 7 paragraph (3) letter a of the Compilation of Islamic Law, because marriage confirmation conducted for the purpose of resolving a divorce can become a gateway for legal circumvention. The rationale underlying this provision namely, desiring a simple resolution for individuals seeking a divorce who do not possess a marriage certificate cannot be legally accepted because granting a marriage confirmation petition can serve as a legal basis to file other claims such as joint property, maintenance, and child status (Hamid & Salikin, 2025). This occurs even if the confirmed marriage is an unauthorized polygamous marriage or wild polygamy prohibited by laws and regulations. Therefore, caution is required in applying Article 7 paragraph (3) letter a of the Compilation of Islamic Law so as not to open space for the legalizing of marriage practices that contravene the principles of national law.

In order to maintain the integrity of marriage law, the application of norms in the Compilation of Islamic Law needs to be carried out selectively and integrally by paying attention to all applicable provisions. To avoid legal circumvention, judges of the Religious Courts should couple Article 7 paragraph (3) letter a with letter e, meaning that such a marriage can be confirmed if it is conducted by those who have no impediments according to Law Number 1 of 1974. With this approach, the marriage confirmation process not only fulfills the aspect of benefit for parties requiring legal certainty, but also remains within the corridor of valid and responsible national law. This approach is important to ensure that marriage confirmation is not misused as a means to legalize marriages that actually violate the provisions of prevailing laws and regulations.

Caution in applying marriage confirmation is highly necessary considering the broad legal implications of court determinations granting marriage confirmation petitions. A marriage confirmation determination impacts not only the marital status of the couple concerned, but also the status of children born from that marriage, inheritance rights, maintenance rights, and various other civil rights. If marriage confirmation is granted for a marriage that actually does not meet the requirements under national marriage regulations, it can create a dangerous legal precedent and weaken the enforcement of marriage law as a whole. Judges must conduct in-depth and thorough examinations of every marriage confirmation petition, including ensuring that the proposed marriage does not contain impediments contrary to laws and regulations.

Marriage confirmation petitions submitted by irresponsible parties frequently exploit existing legal loopholes to legalize marriages that violate the provisions of regulations. This practice harms many parties, especially wives and children from previous marriages whose rights are neglected due to the existence of a new marriage that is legally invalid (Abdullah & Maharani, 2025). Stricter supervision from the courts is required in examining every marriage confirmation petition, alongside strict sanctions for parties proven to abuse the marriage confirmation mechanism for unlawful purposes. In addition, more intensive socialization to the public regarding the provisions of marriage law and the legal consequences of unrecorded marriages is necessary, so that the public can avoid marriage practices that have the potential to cause legal problems in the future.

The refinement of regulations regarding marriage confirmation is necessary to close legal loopholes that can be utilized to commit violations. Clearer and more comprehensive regulations concerning the requirements of marriage confirmation, application procedures, and the legal consequences of marriage confirmation determinations will provide better legal certainty for the public and reduce the potential for misuse. Harmonization among various laws and regulations governing marriage confirmation whether originating from national marriage regulations, religious court regulations, or the Compilation of Islamic Law needs to be carried out to create a unity of norms that do not contradict one another. With regulatory harmonization, judges will have clearer guidelines in adjudicating marriage confirmation cases, and the public will obtain better legal certainty over their marital status. This effort is part of the reform of Islamic family law in Indonesia which continues to develop in tandem with the dynamics of community needs.

Conclusion

This research concludes that the legal status of marriage confirmation (*itsbat nikah*) within the national legal system is regulated through various interrelated laws and regulations; however, there is a difference in scope between the Religious Courts Act, which limits *itsbat nikah* to marriages before 1974, and the Compilation of Islamic Law, which expands its scope through Article 7 paragraph (3). The KHI, enacted via a Presidential Instruction, holds a dilemmatic legal status because it is formally not included in the hierarchy of laws and regulations, yet functionally it continues to be used as a guideline by Religious Court judges. Judicial practice demonstrates an expansion of *itsbat nikah* toward marriages after 1974, which potentially creates loopholes for legal circumvention, such as unauthorized polygamy.

The implications of this research are the need for harmonization between the Religious Courts Act and the Compilation of Islamic Law regarding the scope of *itsbat nikah* to create clearer legal certainty. Religious Court judges need to apply Article 7 paragraph (3) letter a of the KHI selectively by coupling it with letter e, so that the confirmed marriage does not contain impediments according to the Marriage Law. The government and judicial institutions need to conduct more intensive

socialization regarding the importance of marriage registration and the marriage confirmation mechanism to the public, especially in remote and conflict-affected areas, in order to prevent legal problems from arising in the future. The strengthening of the marriage registration system also needs to be carried out to reduce the number of unrecorded marriages that lead to petitions for marriage confirmation.

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