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**Analysis of the Basis of Legal Considerations in Marriage Confirmation Cases
(Comparative Study of Decision Number 0368/Pdt.G/2023/PA.Bgi and Decision
Number 1525/Pdt.G/2023/PA.Bgi)**

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Abstract

The phenomenon of unregistered marriages that are religiously valid but not registered by the state results in the loss of legal protection and obstacles in fulfilling civil rights for wives and children, so that the marriage confirmation procedure in the Religious Court becomes a crucial instrument to provide legal certainty and restore family civil rights. This article is motivated by the phenomenon of unregistered marriages that, although religiously valid, are not registered by the state, resulting in the loss of legal protection and obstacles in fulfilling civil rights such as birth certificates for children, joint property, and inheritance. The method used is a normative legal research method with a case approach, a statutory approach, and a comparative approach to analyze Decision Number

0368/Pdt.G/2023/PA.Bgi and Number 1525/Pdt.G/2023/PA.Bgi. The results revealed that the judge's consideration in granting marriage confirmation is based on the fulfillment of the pillars and requirements of marriage according to Islamic law and the absence of legal obstacles to provide legal certainty for the family. Conversely, the application will be rejected or canceled if it is found that there is a hidden practice of polygamy without court permission in violation of the Marriage Law, as well as procedural flaws such as a lack of interested parties (a consortium of several litigants) in the case. Thus, the judge's decision serves as an instrument to balance the administrative aspects of legal certainty with the achievement of substantive justice for the parties.

Keywords: Judge Decision, Law, Marriage Confirmation, Religious Court

Introduction

Marriage confirmation is a legal procedure in the Religious Court, which functions to prove and determine the validity of a marriage for couples who previously had a religious marriage, but it was not registered at the KUA ^[1]. This process is crucial for couples seeking state recognition of their marriage, which directly impacts their ability to obtain important civil registration documents such as marriage certificates and birth certificates. According to the Compilation of Islamic Law, a marriage confirmation request can be submitted for specific reasons, such as the loss of a marriage certificate, doubts about the validity of the marriage requirements, or a marriage that occurred before the enactment of the 1974 Marriage Law ^[2]. This procedure is crucial because unregistered marriages give rise to various serious legal issues that can be detrimental to the husband, wife, and children, such as the lack of legal protection if the husband fails to fulfill his obligations and the uncertainty of the child's lineage and civil rights. Through marriage confirmation, the government seeks to provide legal certainty for couples who marry religiously but violate registration requirements, including those who married before the enactment of Law Number 1 of 1974 concerning Marriage ^[3].

Nikah siri, or often referred to as marriage under the hand, is a marriage that is carried out without being registered with an official government institution such as the Religious Affairs Office. According to Islamic law, this marriage is considered religiously valid if it has fulfilled the pillars and conditions of marriage, which include guardianship, testimony, dowry, and consent ^[4].

The impact of this large number of unregistered marriages is very serious for the protection of the legal rights of family members. Without a marriage certificate as authentic proof, the marriage relationship is considered never to have existed before the law, so the wife has no rights to joint property, maintenance, or inheritance in the event of separation or death.

Furthermore, children born from these unregistered marriages are legally considered illegitimate children, initially having only a civil relationship with their mother and her mother's family only, which can hinder the fulfillment of their rights from their biological father [5].

In 2022, hundreds to thousands of couples filed applications, such as in Surabaya (hundreds) and Jember (reaching 7,112 couples through online mass trials). At the Malang City Religious Court, there were 62 applications for child origin cases (related to *itsbat*) in the first quarter of 2025, up from 32 in the same period last year. Throughout 2024, the Malang Regency Religious Court recorded 233 couples applying for *isbat* to validate unregistered marriages, with the highest spike in June (52 applications). Eighty percent of applicants were elderly couples, while the remaining 20% were couples of productive age, generally driven by customary factors and administrative needs.

For example, the first case concerns a legal conflict between the practice of marriage validation (*isbat nikah*) for unregistered polygamy and the formal legal regulations in force in Indonesia. Specifically, the Surabaya Religious Court, in Decision Number 3401/Pdt.G/2022/PA.Sby granted the application for unregistered polygamy, even though this action was deemed to be in conflict with SEMA Number 3 of 2018, which expressly states that applications for *isbat nikah* for unregistered polygamy must be declared unacceptable (*Niet Ontvankelijke Verklaard* (the claim cannot be accepted)). This inconsistency sparked problems because the court was deemed to have indirectly condoned actions that deviated from the polygamy licensing procedures, which should have been through court permission under the Marriage Law. In addition to the issue of conflicting norms, this article highlights the negative impact of unregistered polygamy carried out without official registration, which results in complicated family matters and the lack of legal protection and civil status for wives and children. Another crucial issue lies in the *contra legem* action taken by the Panel of Judges, where they chose to override written regulations in favor of prioritizing philosophical justice and the public interest (*maqashid sharia*), especially to protect the child's lineage [6].

This analysis shows the very serious legal consequences of a marriage still being considered invalid by the state, husband and wife having no legal rights and obligations towards each other, and children born out of wedlock being considered illegitimate children who only have a civil relationship with their mother [7]. This writing aims to examine the solutions or legal efforts that can be taken by couples whose marriages have not been registered, namely by submitting a Marriage Registration Application [8]. Based on the background description above, the problem formulation in this study is how the legal considerations in the marriage confirmation case in decision number 0368/Pdt.G/2023/PA.Bgi and decision number 1525/Pdt.G/2023/PA.Bgi.

Method

This article uses a normative legal research method that focuses on researching court decisions [9]. This normative method is used to analyze the legal considerations in the marriage validation case in decisions numbered 0368/Pdt.G/2023/PA.Bgi and 1525/Pdt.G/2023/PA.Bgi. The approaches used are the case approach, the statutory approach, and the comparative approach.

Results and Discussion

A. Analysis of Legal Considerations in Determining Marriage Validation in Decision Number 0368/Pdt.G/2023/PA.Bgi

A marriage confirmation application is a legal procedure submitted to the Religious Court to determine and validate a marriage that was previously legally performed according to religious law (a *siri* marriage), but was not registered or not performed before a marriage registrar at the Office of Religious Affairs. Based on Article 7, paragraph (2) of the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991 about compilation of Islamic law), this application is a solution for couples who do not have a marriage certificate to obtain legal recognition and protection for their marital status. The main factors behind the application for marriage confirmation are usually related to administrative interests, such as making a marriage book, processing a child's birth certificate for school purposes, inheritance distribution, and requirements for performing the Hajj pilgrimage or managing pension funds. In the process, the judge will examine evidence such as the Family Card and present at least two witnesses to ensure that the marriage has fulfilled the pillars and requirements of marriage in Islam, including the presence of a marriage guardian, dowry, and (*solemnization of a marriage* acceptance) and does not violate marriage prohibitions regulated by law [10].

Legal Considerations in Decision Number 0368/Pdt.G/2023/PA.Bgl, the Bangil Religious Court granted the application for (marriage) submitted by Endang Nuriyanti binti Kamun to validate her marriage with the late Iwan Taufani bin M. Jakob. The court determined that the marriage was valid according to Islamic law because it had fulfilled the pillars and requirements of marriage, including the presence of a marriage guardian (Kamun), two witnesses (Taslim and Slamet Budiono), and a dowry of Rp. 500,000 in the contract held on November 17, 1994, in Prigen District. The judge's legal considerations were based on the fact that during the marriage, the two had never divorced, remained Muslim, and had been blessed with four children, namely Maya Dita A'afani, Firman, Cantik, and Jelita. This determination is given with the aim of ensuring that applicants have valid legal evidence (marriage certificate) for population administration purposes and for managing inheritance rights for their children.

The judge's considerations in granting a marriage validation request are based on the fulfillment of the pillars and requirements of marriage according to Islamic law, which include the presence of a marriage guardian, at least two just witnesses, a dowry, and the *ijab* and *qabul* (consent) uttered firmly and consecutively. The judge also ensures that at the time of the marriage contract, there are no legal obstacles for the two parties to marry, such as *mahram* relations, and confirms the status of the parties at that time (e.g., virgin and single). Procedurally, the applicant is required to prove his arguments through authentic written evidence and witness statements that meet formal and material requirements, where witness statements must be relevant and mutually consistent regarding the fact of the marriage. In addition, the existence of urgent legal interests, such as processing population documents, correcting a child's birth certificate, or managing inheritance, are important considerations for the judge in granting legality to the unregistered marriage to ensure legal certainty for the family.

The wife has the right to receive joint property and the child has the right to receive inheritance after the husband or father dies according to the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991 about compilation of Islamic law), when a husband or father dies, the first step that must be taken is to separate the joint property (*gono-gini*), where the wife has the right to a portion of the assets acquired during the marriage as regulated in Article 94 and Article 190 of the (Presidential Instruction No. 1 of 1991 about compilation of Islamic law). After the joint property is separated, the wife, as a widow, has the right to receive one-quarter (1/4) of the portion if the heir does not leave children, or one-eighth (1/8) share if there are children, which is in line with *Qur'an book* 12. Meanwhile, children are the first group of heirs according to Article 174 of the (Presidential Instruction No. 1 of 1991 about compilation of Islamic law) who are entitled to inherit automatically. Based on Article 176 of the (Presidential Instruction No. 1 of 1991 about compilation of Islamic law), a daughter gets half of the inheritance if she is single or two-thirds of the inheritance if there is more than one person (without a son), but if there is a son, then the son's share is double the daughter's share. This inheritance right is also guaranteed for children born from polygamous marriages, even if the marriage is carried out without court permission, as long as their relationship with the biological father can be legally proven^[11].

B. Analysis of Legal Considerations in the Annulment of Marriage Confirmation in Decision Number 1525/Pdt.G/2023/PA.Bangil

A marriage confirmation application may be rejected by the Religious Court if the marriage is conducted in a polygamous manner without fulfilling the strict provisions in Articles 4 and 5 of Law Number 1 of 1974 concerning Marriage. Based on this regulation, a husband who wishes to have more than one wife is required to submit a request for permission to the court, with the absolute conditions being the consent of the first wife, a guarantee of financial support, and a guarantee that the husband will treat his wives and children fairly. In practice, applications for marriage confirmation for unregistered marriages are often rejected due to the lack of permission for polygamy from the first wife and the court at the time the marriage took place. This rejection results in the non-recognition of the marital status by the state, so that the marriage is considered to have no positive legal force even though it is considered valid from a religious perspective^[12].

The legal considerations in the annulment of marriage validation in Decision Number 1525/Pdt.G/2023/PA. were based on the factual findings that the unregistered marriage between Iwan Taufani and Endang Nuriyanti (Defendant I) was conducted while Iwan Taufani was still legally married to another woman named Sri Wahyuni, so that the marriage was a form of underhand polygamy which violated the provisions of Articles 4 and 5 of Law Number 1 of 1974. The Panel of Judges considered that because the procedures for polygamy and marriage registration were not fulfilled according to state law, the application for marriage validation should be rejected. In addition, the previous marriage validation decision (Number 0368/Pdt.G/2023/PA.) was declared legally flawed because the application was partial (a consortium of several litigants), where the applicant only listed one child and

ignored the other heirs from Iwan Taufani's first and third wives. Based on these considerations, the court declared that the previous marriage validation decision and the subsequent marriage certificate extract were not legally binding.

Legal consideration is a crucial process in which a judge uses his or her capacity to render a decision or determination through an in-depth analysis of the case presented by the parties in the context of marriage confirmation. This consideration involves evaluating marriages that have been conducted according to Islamic law but are not officially registered with the authorities. The purpose of legal consideration is to produce a logical and legally binding decision and ensure that justice is upheld for the applicants. Legal consideration is based on the principle of *ius curia novit*, whereby judges are presumed to know the law and are therefore obligated to determine the law in every case submitted to them^[13]. In the Annulment of Marriage Confirmation in Decision Number 1525/Pdt.G/2023/PA. The judge did not consider the value of justice, because Endang Nuriyanti binti Kamun, as the wife of Iwan Taufani bin M. Jakub and her four children, named Maya Dita A'afani, Firman, Cantik and Jelita, did not receive any inheritance for their children.

In the Islamic perspective, as regulated in the Compilation of Islamic Law Presidential Instruction No. 1 of 1991 about compilation of Islamic law, when a husband dies, the wife has the right to receive a share of the joint property (*gono-gini*) and inheritance, while the children receive their share of the inheritance as legal heirs. Based on Article 97 of the Presidential Instruction No. 1 of 1991 about the compilation of Islamic law, the widow who is left behind has the right to receive half of the joint property as long as it is not stipulated otherwise in the marriage agreement, the distribution of which must be separated first from the inheritance to ensure justice. After the wife's share of the joint property is separated, the remaining property becomes inheritance where the wife receives a share of 1/8 if the testator has children or 1/4 if she does not have children, as regulated in Article 180 of the Presidential Instruction No. 1 of 1991 about compilation of Islamic law, and refers to *Surah An-Nisa* verse 12. The share for children is regulated in Article 176 of the Presidential Instruction No. 1 of 1991 about compilation of Islamic law, where sons receive two shares and daughters receive one share, and in the case of polygamy, the children of each wife have equal rights to the inheritance of their late father^[14].

C. Legal Implications and Juridical and Sociological Impacts of the Annulment of Marriage Confirmation in Decision Number 1525/Pdt.G/2023/PA

The main legal implication of this annulment is that Decision Number 0368/Pdt.G/2023/PA is declared to have no permanent legal force. This automatically results in the Marriage Certificate Citation Number 3514101042023005 issued by the Prigen District Office of Religious Affairs, based on the said decision to also be declared to have no legal force. Thus, the marriage status between Endang Nuriyanti and Iwan Taufani has returned to being a *siri* (underhand) marriage that is not administratively recognized by the state because it is proven to be a practice of polygamy without court permission that violates the provisions of the law. This annulment also has a major impact on inheritance rights and population administration

for the parties involved. All derivative legal products born from the previous decision, including the status of heirs and population documents such as Family Cards and Birth Certificates that state legal relationships based on the decision, lose their authentic legal basis. Legally, this restores the legal standing of the plaintiffs (children from other legal wives) as the legal heirs of the late Iwan Taufani, whose interests were harmed due to errors in data and essential facts in the previous marriage process. The legal implication of the annulment of marriage is that the marriage is deemed to have no clear constitutional basis and is not officially recognized by state legal channels. Without a valid marriage determination, the couple was unable to obtain a copy of the marriage certificate from the Office of Religious Affairs, and they lost the authentic evidence needed to protect their rights and obligations as husband and wife ^[15].

The main legal impact of this decision is the legal cancellation of the previous marriage confirmation decree (Number 0368/Pdt.G/2023/PA), so that the Marriage Certificate Excerpt Number 3514101042023005 issued based on the decree is declared to have no legal force. Legally, the marriage between Iwan Taufani and Endang Nuriyanti is again an unregistered marriage, which is not recognized by the state because it is considered an underhand polygamy that violates the provisions of Articles 4 and 5 of Law Number 1 of 1974.

The sociological impact of this ruling includes the legal and social status of Endang Nuriyanti and her four children in the civil registration process. This annulment has a direct impact on the children's civil documents, such as birth certificates, which had previously been attempted to be amended to include their legal relationship with their father. Furthermore, this ruling confirms the existence of a sharp internal family conflict between the heirs of the late Iwan Taufani's wives, sparked by demands for inheritance and recognition of the child's status ^[16].

D. Synthesis of Substantive Justice and Legal Certainty in Marriage Confirmation Decisions

Judges in Religious Courts strive to balance the obligation to comply with positive law, such as Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991 about compilation of Islamic law), which regulates marriage registration, with the social reality where many marriages are conducted only through religious or unregistered marriages. In the context of legal discovery (*rechtsvinding*), judges rely heavily on the role of witnesses as the primary oral evidence to verify the validity of a marriage when written evidence is unavailable. Witnesses serve to convince the judge that the marriage contract was conducted in accordance with Islamic law, thus becoming a formal requirement for the marriage to be approved and registered by the state. Judges conduct in-depth assessments of the consistency, credibility, and quality of the testimony to ensure that the marriage confirmation decision is well-founded and legally accountable. This demonstrates that quality evidence is a determining factor in bridging the gap between rigid administrative regulations and the need for practical legal protection in society. This process aims to obtain legal validation so that the marriage has legal force, thereby preventing future difficulties related to the legal relationship between parents and children. Overall, the role of the judge here is not only as an enforcer

of the law, but also as a provider of effective legal solutions to ensure legal certainty and justice for families ^[17].

A state governed by the rule of law must not stop at formal, normative-positivistic legal certainty, but must also move toward substantive justice. Legal certainty without justice will only result in order without happiness for the people. Therefore, the relationship between the two must be maintained so that they complement each other, with legal certainty providing a stable written framework, while justice provides a moral spirit that guarantees the public interest and welfare. So the wife has the right to receive joint property and the children have the right to receive property inheritance after the husband or father dies according to the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991 about compilation of Islamic law), when a husband or father dies, the first step that must be taken is to separate joint assets (*gono-gini*), where the wife is entitled to a portion of the assets acquired during the marriage as regulated in Article 94 and Article 190 of the (Presidential Instruction No. 1 of 1991 about compilation of Islamic law). After the joint assets are separated, the wife, as a widow, is entitled to receive an inheritance of one-quarter (1/4) if the testator does not leave children, or one-eighth (1/8) if there are children, the provisions of which are in accordance with Qur'an verse 12. Meanwhile, children are the first group of heirs according to Article 174 of the (Presidential Instruction No. 1 of 1991 about compilation of Islamic law) who are entitled to receive inheritance automatically through the principle *automatic*. Based on Article 176 of the (Presidential Instruction No. 1 of 1991 about compilation of Islamic law), a daughter gets half the share if she is alone or two-thirds of the share if there is more than one person (without a son), but if there is a son, then the son's share is double the daughter's share.

Conclusion

Marriage validation serves as a crucial legal solution to provide legal recognition and protection of civil rights (such as birth certificates, joint property, and inheritance) for couples whose marriages are only valid according to religion but not registered by the state. The judge's consideration in granting the application is based on the fulfillment of the pillars and requirements of marriage according to Islamic law and the absence of legal obstacles according to the Marriage Law. Conversely, the application will be rejected or canceled if serious violations are found, such as the practice of hidden polygamy without court permission or procedural flaws such as a lack of interested parties (a consortium of several litigants) in the case. Thus, the judge's decision in the marriage confirmation case is an effort to balance administrative legal certainty with the fulfillment of substantive justice for the family.

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