

## ANALYSIS OF THE JUDGE'S DECISION IN THE CASE OF ISBAT NIKKAH FOR HUSBANDS WHO HAVE PASSED AWAY (STUDY OF DECISION NUMBER: 409/PDT.G/2023/PA.PLK)

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### ABSTRACT

*This study discusses the analysis of the judge's decision regarding isbat nikah for husbands who have passed away, especially in Case Number: 409/Pdt.G/2023/PA.Plk. Isbat nikah is an important legal process to provide certainty of legal status, especially for couples who do not have a marriage certificate. This study aims to understand the judge's considerations in deciding the case and its implications for inheritance rights and civil administration. The method used is normative juridical research, which examines laws and regulations and court practice. The results of the study show that judges consider legal certainty and the interests of the parties in their decisions, which aims to protect the rights of the families left behind. In addition, the analysis shows the importance of marriage registration to avoid legal disputes in the future. These findings are expected to contribute to the development of marriage law and the protection of women's rights in the context of Islamic law in Indonesia.*

**KEYWORDS** *Isbat nikah, judge's decision, marriage law, legal certainty, inheritance rights.*



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### INTRODUCTION

It is generally known that humans were created by gods in pairs, different ethnicities, races and beliefs so that humans can get to know each other. Basically, humans are "Zoon Politicon" creatures, that is, they always live in groups that live in a community. It can be interpreted that humans are creatures who are always together with other humans in life and then society.

In daily life, humans cannot be separated from the rule of law, be it state law, religious law, and customary law. All have been arranged with their respective measures and in such a way as possible. In the course of human life, there must be events both at birth, when married, and those who have died. The property will have legal consequences in the form of rights and obligations. Legal events in the form of the birth of a human being will certainly have an impact on legal consequences in the form of rights and obligations such as obtaining legal similarity, where one

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of the obligations is to make a birth certificate that aims to find out the identity of human beings and is also useful as evidence to obtain inheritance. The next event is the marriage that will be experienced by humans.

Marriage is one of the first steps to establish a household and family that will socialize in society. In socializing in society, marriage is the right step to legalize the relationship between two types of human beings, namely men and women to live a legitimate married life to live together. It is also well known that marriage is the longest relationship in human life. This is because if a human being has a marriage, then this relationship will continue until death separates.

Marriage is also a form of legal act. In Indonesia, marriage carried out by humans is considered to be legal if the marriage is legal in religion and state. A marriage is declared valid if the procedure is in accordance with religion and the administration of marriage registration is carried out in accordance with the provisions of article 2 paragraph (1) and paragraph (2) of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

For those who are Muslims but cannot prove the occurrence of marriage with a marriage certificate, it is very necessary to have a marriage certification or what is often called *isbat nikah* which is the authority of the Religious Court, which is included in the voluntary case. A voluntary case is an application case that consists only of the applicant. Therefore, a voluntary case is not called a case because there is no opposing party or no object of law in dispute.

Problems in marriage are often encountered, especially in Islam, one of which is *nikah sirri* or *nikah under the hand*. Although the laws and regulations have been established for a long time, the implementation of marriage in society still has several cases of irregularities that are not in accordance with what has been determined. If there is a marriage that is not recorded, the parties can apply for *isbat nikah* to the Religious Court. In the Great Indonesian Dictionary, the word *isbat* is interpreted by determining, which is in the form of determining the truth (validity) or determining the truth of something.

The legal instruments that apply in Indonesia provide space for the public to legalize *nikah sirri* through *isbat nikah*, but not all *isbat nikah* applications can be granted by judges. The judge has the authority to grant or reject an *isbat* application by paying attention to the facts revealed at the trial. An *isbat* application will be granted if the applicant can meet all the provisions of the applicable laws and regulations. On the other hand, the application will be rejected if there is a legal defect from the marriage carried out by the applicant. For example, if the marriage is not performed by the guardian who has the right to marry him, then the marriage becomes invalid because the form of marriage carried out is not in accordance with Islamic law which requires that each marriage must be carried out by the legal guardian in accordance with the order. Another example, for example, an *isbat* application made by a husband who is actually married to one woman with the aim of obtaining a marriage certificate with his second wife.

Marriage registration is a very important thing related to legal certainty for husbands and wives so that they do not easily impose *talaq* in a legal marital relationship, besides that it is also to avoid legal consequences arising from unregistered marriages, and can also be used as evidence for future generations both about offspring and proof of the validity of inheritance. As in article 7 paragraph

(2) of the Compilation of Islamic Law of Presidential Instruction Number 1 of 1991 which reads "In the event that the marriage cannot be proven by the Akata Nikah, the marriage ceremony can be submitted to the Religious Court". This means that if a marriage is declared invalid by the applicable law, then the married couple can apply for a marriage isbat to the Religious Court.

The main purpose of marriage registration is to create order in society. This provision is an effort by the Government to protect the dignity, purity and sacredness of a marriage bond, more specifically in terms of protecting women's rights in domestic relationships. With the legality of marriage recorded and proven by the citation of the marriage certificate for each spouse, if one of the parties commits a default or in other words neglects his obligations and ignores the rights of his partner, then the other party has strong reasons and evidence to file legal remedies to claim their rights. With the existence of the deed, the married couple has authentic evidence of the legal acts they have done.

Another purpose of marriage registration efforts is to provide certainty and clarity regarding the occurrence of the marriage event, not only for the couple concerned, but also for other people and the community. This is because the authentic evidence can be read in an official letter which is also written in a special list that is deliberately provided for it, so that at any time it can be used as authentic written evidence.

The existence of written evidence is expected to be used as a decisive action to avoid the possibility of misappropriation as well as narrow the gap for violations against other parties, especially in the clarity of the origin of the child and the distribution of inheritance. Based on the above explanation, it can be seen that marriage registration has an important function in an effort to maintain order in the context of carrying out obligations and prosecuting rights to achieve order in society.

The case submitted by the parties or the applicant must be in accordance with the applicable laws and regulations. Judges in this case are only passive. In general, the submission of isbat nikah to the Religious Court is carried out by both husband and wife. Meanwhile, the case that the author analyzes is a marriage isbat case that was settled at the Palangka Raya Class I A Religious Court, which is a marriage isbat case in the form of a lawsuit because one of the applicants has died. Usually, the isbat nikah case is categorized as an application or volunteer case, where the decision is only a determination and not a decision.

Case Number: 409/Pdt.G/2023/PA. Plk is a marriage isbat case in the form of a lawsuit filed by the wife against her deceased husband. This isbat nikah is submitted with the intention of facilitating affairs in the field of inheritance and to obtain clarity of legal status for the family left behind. In this case, the researcher is interested in conducting further research that aims to contribute science to the scope of the Faculty of Law, University of Palangka Raya and to the general public. In this case, the author will conduct research and the results of this research are poured into a writing in the form of a Scientific Article.

The purpose of this study is to find out and understand how the judge's consideration in deciding the isbat nikah case for the deceased husband in Case Number: 409/Pdt.G/2023/PA.Plk. To find out and understand the provisions of the isbat nikah for the husband who has passed away.

The benefits of this research are as follows: Theoretically, the writing of this thesis is expected to be useful for the advancement of legal education, namely as a contribution of thought in the context of fostering Legal Science, especially in Civil Law regarding how the Judge considers in deciding the case of isbat nikah for the deceased husband and how the provisions of the isbat nikah for the deceased husband. In practical terms, this writing can basically provide inputs and evaluations that are useful for various parties, especially related agencies in this research and is expected to be a consideration and reference guideline for various parties to improve the next research and develop further, especially regarding how the Judge considers in deciding the case of isbat marriage for the deceased husband and what are the provisions of the isbat marriage for the deceased husband.

## **RESEARCH METHOD**

Legal research is a research that has a legal object, both law as a science or rules that are dogmatic in nature and law related to people's behavior and life as well as the work of law in society.

Legal research is basically a scientific activity based on certain methods, systematics and thoughts, which aims to study one or several specific legal phenomena by analyzing them, except that, an in-depth examination of the legal facts is also carried out to then try to solve the problems that arise in the symptoms concerned.

The type of research used in this study is Normative Juridical research, namely normative law research can also be called doctrinal law research where this research is a process to find legal rules, legal principles, and legal doctrines to answer the legal problems that are being faced. Normative law research uses law as the basis of norms. In this study, law is often conceived as what is written in laws and regulations (law in book) or law is conceived as a rule or norm that is a benchmark for people's behavior towards what is considered appropriate. But actually law can also be conceptualized as what is in action (law in action). Law in book is a law that should run according to expectations, the two are different, meaning that books in law are often different from laws in people's lives. This research method examines normative law, where this research is focused on the case of isbat nikah for husbands who have passed away Decision Number: 409/Pdt.G/2023/PA. Plk and what are the provisions of isbat nikah for husbands who have passed away according to the provisions of Islamic Law.

## **RESULT AND DISCUSSION**

### **Judge's Consideration in the Case of Isbat Nikah for a Husband Who Has Passed Away**

The isbat nikah case filed by a married couple who is still alive is called an application for determination, while if one of the parties to the lawsuit dies, this case is included in the case of consius (having an opponent). In this study, the formulation of the first problem is "How do judges consider in deciding isbat nikah cases Number: 409/Pdt.G/2023/PA. Plk for the husband who has passed away" and based on the researcher's interview with the resource person who is a Judge in the Religious Court class I A and at the same time the Chairman of the panel in the case that the author researched is as follows:

### 1. Legal Certainty

Regarding the judge's opinion in case Number: 409/Pdt.G/2023/PA. Plk that basically the law must be enforced and implemented as it should. Legal certainty is that a person must get something expected under certain circumstances. The public must expect legal certainty, therefore in the judicial process, especially in this case, of course, there must be legal certainty received by the interested parties by the judge where the legal certainty is in the form of a judge's decision.

### 2. Interests of the Parties

Regarding the interests of the parties in the case of an isbat nikah application or a lawsuit for isbat nikah, the judge explained that the purpose of isbat nikah in general is to obtain the validity of marital status by state law, the preparation of marriage certificates and books, the birth certificate of children, the interests of insurance and inheritance management. In the case of isbat nikah Number: 409/Pdt.G/2023/PA. Plk the parties apply for a marriage isbat for the sake of the common interest, namely for the benefit of the management of BPJS (Jamsostek) of the deceased party and to obtain a valid Marriage Certificate Citation Book. This is one of the judge's considerations in deciding this case and to strengthen the postulates of the lawsuit in this case.

Isbat nikah case Number: 409/Pdt.G/2023/PA. Plk, if studied from the point of view of legislation, refers to Article 7 of the Compilation of Islamic Law paragraph 3 point e, namely this case is filed regarding the existence of marriage carried out by those who do not have obstacles to marriage according to Law No. 1 of 1974.

### 3. Judge's Decision

In realizing the existence of justice, benefits, and legal certainty for the litigants, the judge's decision is one of the manifestations of what is expected by the justice-seeking community. Judges' decisions or often also called court decisions, are taken through a long mechanism, as a form of implementing and enforcing the law. A judge's decision is a judge's statement made by the judge as a state official authorized to do so, pronounced in a trial that is open to the public and aims to end or resolve a case or dispute between the parties. Not only is the so-called verdict pronounced, but also the statement is written and then spoken by the judge at the trial.

## **Provisions of Islamic Law on Marriage Isbat for Husbands Who Have Passed Away**

### 1. Qisas

Isbat nikah for a deceased husband is not specifically and explicitly regulated in *kaijan* in Islamic Law. However, its application still refers to the rules and norms in Islamic *qagama*.

*Qiyas* is an attempt to analogize something with an object that has been determined in the Qur'an, *hadith* and the agreement of the companions. This is as stated in the recording of *muamalah* activities which are ordered to be recorded under certain conditions. *Muamalah* here has a meaning, namely an activity that regulates human relations in Islamic law. Although the case of *Isbat nikah* for a deceased husband is not specifically and explicitly regulated in the *kaijan* in Islamic Law, this is *qiyyat* in the recording of *muamalah* activities which are ordered to



be recorded under certain conditions. Allah SWT said: "O believers, if you pray not in cash for the specified time, you should write it down". (Q.S. AlBaqarah: 282).

If associated with the concept of marriage registration, the verse contains two meanings, namely:

- 1) If the contract is a debt or other contract, it must be recorded. If it is analogous to marriage, a marriage contract that is so sacred should be even more important to be recorded.
- 2) The marriage contract is not an ordinary munamah, but a very strong agreement as explained in the Word of Allah SWT: "How will you take it back, even though some of you have mixed with others as husband and wife. and they (your wives) have taken from you a strong covenant." (Q.S. An-Nisa': 21).

## **CONCLUSION**

In this study, the case Number: 409/Pdt.G/2023/PA. Plk there are corroborating evidences which are also material for the judge's consideration to grant this case. One of them is for the benefit of the management of BPJS (Jamsostek) of the deceased party and to obtain a valid Marriage Certificate Citation Book. This factor is a reinforcement for the judge to rule this case. In this case, the parties must obtain legal certainty where the goal is for the common good.

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