

Analysis Of The Judge's Decision On The Marriage Legalization Case Number: 143/Pdt.P/2021/Pa Sak At The Religious Court Of Siak Sri Indrapura In The Perspective Of Islamic Law

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Abstract, *There are two types of marriage guardians: first, nasab guardians, namely guardians whose guardianship rights are based on blood relations. Such as, his biological parents, or also wali aqrab and ab'ad (closest or distant relatives). Second, the wali hakim is a guardian whose guardianship rights arise because the bride's parents refuse (adhal) or are absent, or for other reasons that physically exist but the guardianship rights do not exist. The emergence of the Itsbat Nikah provision is also related to the issue of the status of marriage registration. There are two views on the issue of the status of marriage registration, the first view states that marriage registration is only an administrative requirement, not a condition for the validity of a marriage, so marriage registration is only a process of obtaining evidence that a marriage has been carried out by someone, while the second view states that marriage registration is a valid condition for marriage. In this discussion, the author focuses on the consideration of judges who grant itsbat nikah cases where the previous marriage was held using an unofficial guardian or not the KUA head. This is not in accordance with article 23 of the Compilation of Islamic Law "(1) The new guardian judge can act as a marriage guardian if the nasab guardian is absent or impossible to present or his residence is unknown or absent or adlal or reluctant". The Applicant's marriage guardian in the marriage contract was another person (a local community leader named Selan) due to the Applicant's non-Muslim biological father. The judge considered it as follows: that a kiyai, cleric or community leader who acts as a marriage guardian in Islamic law is known as wali muhakkam, namely someone who is appointed by the prospective husband and wife to act as a guardian in their marriage.*

Keywords: marriage, itsbat and guardian muhakkam

1. INTRODUCTION

To achieve a valid marriage, both according to religion and according to applicable procedures and provisions, one of the requirements that must be met is a guardian, because a guardian is a requirement that must be present in a marriage. A guardian in a marriage is someone who acts on behalf of the bride in a marriage contract [1]

Scholars have different opinions on whether a guardian is a condition for a valid marriage or not. Malik is of the opinion that there is no marriage without a guardian, and a guardian is a condition for a valid marriage. This opinion was also put forward by Syafi'i. [2]

However, according to the majority of ulama, guardianship is a legal requirement for marriage other than hanafiah. The marriage contract is not valid unless a guardian is present. As Allah SWT says in Surah Al-Baqarah verse 232, Meaning: If you abandon your wives and their iddah period ends, then do not prevent them (the guardians) from remarrying their future husbands, if there is mutual agreement between them in an amicable way. That is what is advised to those among you who believe in Allah and the Last Day. it is better for you and holier. Allah knows, while you do not know.

Imam Syafi'i said, "This is the verse that most clearly explains the importance of guardians, otherwise there would be no point in the guardians preventing women." [3]

This is further strengthened by the majority of scholars, including Imam Malik, ats-Tsauri, Laits, and Syafi'I, of the opinion that the people who have the right to be guardians in marriage are those who have & are the recipients of ashabah in terms of inheritance. Shafi'i is of the opinion that a woman's marriage is not valid except with the words spoken by her closest guardian. If there are none, the terms of the contract are pronounced by the distant guardian. If there are none, then this sentence is pronounced by the judge who acts as guardian. [4]

There are two types of marriage guardians: first, lineage guardians, namely guardians whose guardianship rights are based on blood relations. Such as, biological parents, or also aqrab and ab'ad guardians (closest or distant relatives). Second, judge guardians, namely guardians whose guardianship rights arise because the bride's parents refuse (adhal) or are absent, or for other reasons who are physically present but whose guardianship rights are not there. [5]

In Article 21 of the KHI, four groups of guardians of lineage are discussed, such as: first, the group of male relatives in a straight line upwards. Second, the group of relatives of biological brothers, half-fathers and their male descendants. Third, the group of uncles' relatives, namely the father's biological brothers, half-fathers and their male descendants. Fourth, the group of grandfather's biological brothers, grandfather's half-father's brothers and their male descendants. Regarding the guardian judge, it is stated in Article 23 of the KHI which reads:

1. The new judge guardian can act as a marriage guardian if the lineal guardian is not present or is unable to attend or his residence is unknown or he is absent or is unwilling.
2. In the case of a legal guardian or a reluctant guardian, the new judicial guardian can act as marriage guardian after there is a decision from the Religious Court regarding the guardian. [6]
3. In addition, a person who has the right to be a guardian judge is the government, caliph (leader), ruler, or qadi nikah who is given authority by the Head of State to marry women who are guardian judges. [7] The same thing is also stated in the Regulation of the Minister of Religion of the Republic of Indonesia Number 30 of 2005 concerning guardian judges.

From the description above, it can be understood that a marriage for a bride, if her marriage guardian is not the guardian mentioned above, will result in her marriage not being registered, because marital status in Indonesia cannot be separated from marriage registration, as stated in Law Number 1 of 1974 and the Compilation of Islamic Law.

In the perspective of the laws and regulations or positive law in force in Indonesia, marriage registration is something that must be done, with the aim of issuing it in the marriage process and as authentic evidence in the form of a marriage certificate. Given the position of marriage registration is very important, in positive law the position of marriage registration is made an administrative requirement. [8]

The purpose of registering marriages is also to create order in society. This is an effort regulated by laws and regulations to protect the dignity and sanctity of marriage, especially for women in domestic life through registration of marriages as evidenced by a marriage certificate of which each husband and wife receive a copy, so that if there is a dispute between them due to the inconsistency of one party to create a harmonious family.

In relation to the phenomenon of there still being some people who do not register their marriages at the marriage registration office, either before the enactment of Law Number 1 of 1974 concerning marriage, or after, in order to be recognized by law (positive law) in relation to the absence of evidence of a marriage taking place, the government has provided a way through the process of re-establishing marriages that have previously taken place but not been recorded, or in other terms called *itsbat nikah*. [9]

Marriage validation is a marriage determination by the Religious Court through the request of a husband and wife who previously could not prove their marriage through a marriage certificate. In the same dimension, marriage validation also basically aims to overcome the problem of a valid marriage contract carried out by a husband and wife according to religion but not yet valid according to the state. Based on the KHI, cases of marriage validation can be submitted to the Religious Court regarding:

1. The existence of marriage in the context of divorce settlement
2. Loss of marriage certificate
3. There is doubt as to whether one of the conditions of marriage is valid or not.
4. There was a marriage that occurred before the enactment of Law Number 1 of 1974
5. Marriages conducted by those who do not have any obstacles to marriage according to Law Number 1 of 1974.

From the initial observations made by the author, the author found data related to the decision of the Judge at the Siak Religious Court in case Number 143/Pdt.P/2021/PA Sak, that there was a party who submitted a request for Marriage Validation between Suprianto bin Suparman, place/date of birth Kisaran, January 7, 1984/age 38 years, religion Islam, elementary school education, occupation Casual Daily Laborer, residence in RT 001, RW 001, Kampung Pancing Bekulo, Kandis District, Siak Regency, Riau Province, hereinafter referred to as Applicant I.

Nova Shinda Br Ginting binti Ngelar Ginting, place/date of birth Kaban Jahe, 01 August 1986/age 37 years, religion Islam, elementary school education, occupation Managing Household, residence in RT 001, RW 001, Kampung Pancing Bekulo, Kandis District, Siak Regency, Riau Province, hereinafter referred to as Applicant II.

That in their application letter registered in the Registry of the Siak Sri Indrapura Religious Court Number 143/Pdt.P/2021/PA Sak dated November 4, 2021, the Applicants put forward the following arguments:

1. That Applicant I has carried out a marriage contract with Applicant II on 22 October 2007 with Islamic legal procedures in Pencing Bekulo Village, Kandis District, Siak Regency, Riau Province, with a marriage guardian, a judge named Selan, two marriage witnesses named Ngelar Ginting and Ariandi, and a dowry in the form of a set of prayer equipment.
2. That at the time the marriage contract was carried out, Applicant I was a bachelor aged 25 years and Applicant II was a virgin aged 24 years.
3. That at the time the marriage contract was carried out, Petitioner 1 and Petitioner II had fulfilled the pillars and conditions of marriage and did not have a line-of-breed relationship, a sexual relationship, or a marital relationship, as regulated in the provisions of Islamic law.
4. That after the marriage contract was carried out, Applicant I and Applicant II lived together as a married couple and resided in RT 001 RW 001, Pencing Bekulo Village, Kandis District, Siak Regency, Riau Province.
5. That from the marriage bond, Applicant I and Applicant II have been blessed with 3 children, namely: a) Inda Aulia Syarifata binti Suprianto, born on 07-04-2009, b) Robi Alviansa binti Suprianto born on 27-02-2011, and c) Citra Ramadhan binti Suprianto born on 19-05-2018.

6. That during the marriage contract, no party questioned the validity of the marriage of Applicant I with Applicant II.
7. That the marriage between Applicant I and Applicant II was not registered at the Office of Religious Affairs which is in charge of the implementation of the marriage contract, so that there is no extract of the marriage certificate, while currently the Applicants are in great need of the legal validity of the marriage, especially for the administration of the birth certificates of the children of Applicant I and Applicant II, and other interests related to the legal consequences of the marriage.
8. That Applicant I and Applicant II are willing to pay the costs of this case in accordance with the provisions of applicable laws and regulations.

Based on the above arguments, the Siak Sri Indrapura Religious Court is pleased to issue a ruling whose ruling reads as follows:

1. Grant the applicant's request
2. Declare the marriage between Applicant I (Suprianto bin Suparman) and Applicant II (Nova Shinda Br Ginting binti Ngelar Ginting) which was carried out on October 22, 2007 in Pencing Bekulo Village, Kandis District, Siak Regency, Riau Province as valid.
3. Charge the Petitioners to pay the costs of this case in the amount of Rp. 730,000.00 (seven hundred and fifty thousand rupiah).

From the description of the copy of the decision above, what is interesting to study is the status of the Applicants' marriage guardian. The marriage guardian in the Marriage Confirmation above is the wakim guardian. However, the guardian judge is Selan or M. Shahlan who has the status of a mosque imam (Witness Khairunnisa's Statement in the Copy of the Decision Number 143/Pdt.P/2021/PA Sak, page 7) not from among the employees of the local Religious Affairs Office (KUA) as stated in the Regulation of the Minister of Religion of the Republic of Indonesia Number 30 of 2005 concerning the guardian judge

Based on the above description, the author is interested in studying in more depth the Marriage Confirmation determined by the judge in the copy of the decision Number 143/Pdt.P/2021/PA Sak with the title "Analysis of the Judge's Decision on Marriage Confirmation in Case Number 143/Pdt.P/2021/PA Sak at the Siak Sri Indrapura Religious Court from the Perspective of Islamic Law in Indonesia."

2. THEORETICAL CONCEPT

1. Confirmation of Marriage

is a process or action taken to ensure the validity of a person's marriage according to Islamic law. The term "itsbat" literally means "confirmation" or "validation." In the context of marriage, 'itsbat nikah refers to the verification or validation of a marriage so that it has legal validity in the eyes of Islam. [10]

The emergence of the provisions on Marriage Registration cannot be separated from the provisions on the obligation to register marriages, as mandated by law.

The legal basis for Marriage Validation, if we analyze it, can be divided into:

- a. Validation of Marriage for marriages that occurred before the enactment of Law Number 1 of 1974

The legal basis is Law Number & Year 1989, Explanation of Article 49 (2) number 22 in conjunction with Law No. 3 Year 2006 Explanation of Article 49 letter a number 22 which is then emphasized by Article 7 Paragraph (3) letter d of the Compilation of Islamic Law.

- b. Marriage Validation for unregistered marriages that occurred either before or after the enactment of Law No. 1 of 1974.

The legal basis for understanding Article 7 paragraph (2) and (3) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Indonesian Islamic Law

The emergence of the Itsbat Nikah provisions is also related to the problem of the status of marriage registration.

There are two views regarding the issue of marriage registration status.

- a. The view that states that marriage registration is only an administrative requirement, not a requirement for the validity of a marriage, so marriage registration is only a process to obtain proof that a marriage has taken place between a person.
- b. The view that marriage registration is a requirement for a valid marriage.

In practice, the confirmation of marriage is included as a voluntary case, namely a case which does not contain any elements of dispute (voluntary jurisdiction), where there is only one party who has an interest in the case (oneigenlyke rechtspraak).[11]

In Islamic law, a valid marriage must meet certain conditions. These conditions include the consent of both parties to the marriage, a guardian (representative of the woman) who gives consent, and an agreement on mahr (dowry) between the two parties. In addition, the marriage process must also be carried out with witnesses present. [12]

2. Marriage Guardians and Their Types

The marriage guardian is a person who has the right to marry because of a direct blood relationship with the bride. The composition of the bride's guardians is as follows:

- 1) His father
- 2) His grandfather (father of the bride's father)
- 3) A brother who is the same mother and father as him
- 4) A brother who is the same father as him
- 5) The son of a brother who has the same mother and father as him
- 6) The son of a brother who has the same father as him
- 7) Father's brother (paternal uncle)
- 8) His uncle's son from his father's side
- 9) Judge. [13]

In the Civil Code, this Guardianship has several principles. First, the principle of indivisibility. Second, the principle of approval from the family. Third, people who are called to be guardians or who are appointed as guardians. [14]

Article 19 of the Compilation of Islamic Law states that a marriage guardian in marriage is a pillar that must be fulfilled by the prospective bride who acts to marry her. Furthermore, Article 20 states,

- 1) The person who acts as a marriage guardian is a man who fulfills the requirements of Islamic law, namely being Muslim, sane and mature.
- 2) Marriage guardians consist of a. lineage guardians and b. judge guardians [15]

3. Procedures for Implementing Marriage Validation

The implementation of marriage validation is carried out because of a marriage event that was carried out based on the rules determined by religion, but did not meet the requirements set by the state, namely it was not recorded by an authorized marriage registrar. A marriage that does not meet the legal requirements is often also called a secret marriage. [16]40

The requirements for a person who is entitled/able to submit an application for marriage confirmation include: [17]41

This is in accordance with what is stated in Article 7 paragraph (4) of the KHI which states "those who have the right to submit an application for marriage validation are the husband or wife, their children, the marriage guardian and parties who have an interest in the marriage."

- a. Voluntary in nature (cases where the parties consist only of the applicant, there is no respondent).
 - 1) If the application is submitted by husband and wife jointly.
 - 2) If the application is submitted by a husband/wife who has been survived by his/her husband/wife, while the applicant is not aware of any other heirs apart from him/her.
- b. Contentious in nature (cases in which the parties consist of the applicant against the respondent or the plaintiff against the defendant).
 - 1) If the application is submitted by one of the husband or wife, by placing the husband or wife as the respondent.
 - 2) If the husband/wife's application is made while one of the husband and wife is still in a marital relationship with another party, the other party must also be made a party to the application.
 - 3) If the application is submitted by a husband or wife who has been left behind by his/her husband or wife, but he/she knows that there are other heirs besides him/her.
 - 4) If the application is submitted by the marriage guardian, heirs or other interested parties.

The procedure for carrying out the marriage confirmation is as follows:

- a. Registration at the Religious Court.

Lawsuits or applications can be submitted in the form of a letter or verbally or can also be submitted using a power of attorney that has been appointed to the Head of the Religious Court by bringing proof of identity (KTP).
- b. Make a letter of application.
- c. A letter of application or by requesting assistance from the Legal Aid Post (Pos Bakum) located at the court free of charge, followed by the following matters:
 - 1) Photocopy of the marriage confirmation application form.
 - 2) Attach the necessary documents, including a certificate from the KUA stating that the marriage is not registered.

- 3) Pay court costs.
 - 4) Registration of cases in the register book is carried out by the clerk.
 - 5) Forwarding the lawsuit/application after it has been registered by the Head of the Religious Court, giving a number, case date and determining the trial date,
 - 6) Determination of the panel of judges by the chairman of the Religious Court.
- d. Attending the Trial.
- Attending a trial means coming to court according to the date and time stated in the summons.
- e. Court Decision/Determination.
- In the examination of the marriage confirmation, the following decision/determination will be issued:
- 1) If the application is granted, the court will issue a decision/determination of the marriage validation.
 - 2) A copy of the decision/determination of the marriage validation will be ready to be collected within 14 days from the last hearing.
 - 3) A copy of the decision/determination of marriage validation can be collected in person at the court office or by representing another person with a power of attorney.
 - 4) After receiving a copy of the decision/ruling, you can ask the local KUA to register the marriage by showing proof of a copy of the court decision/ruling.

3. RESEARCH METHODS

Research is a basic tool in the development of science and technology that aims to reveal the truth systematically, methodologically, and consistently. Through the research process, analysis and construction of data that has been collected and processed are carried out. Because research is a tool for the development of science and technology, the research methodology applied must always be adjusted to the science that is its parent.

The approach method used in this study is the Normative Juridical approach. The data collection technique used by the author is through literature study. The research specification used is Descriptive Analysis.

4. RESULTS AND DISCUSSION

In this discussion, the author focuses on the considerations of judges who grant marriage confirmation cases where the previous marriage was carried out using an unofficial guardian or a non-KUA registrar. This is not in accordance with Article 23 of the Compilation of Islamic Law "(1) A guardian can only act as a guardian if the lineal guardian is absent or is impossible to present or his residence is unknown or is absent or is reluctant". Because the guardian referred to in Article 1 paragraph (2) of the Regulation of the Minister of Religion Number 30 of 2005 concerning Guardians of Judges states that what is meant by a guardian is "The Head of the Religious Affairs Office appointed by the Minister of Religion to act as a guardian for a prospective bride who does not have a guardian) However, marriage confirmation certainly takes into account previous marriages or secret marriages that have been carried out by the parties. Marriage confirmation as stated in Article 7 letter (e) that marriage is carried out by those who do not have obstacles to marriage according to Law Number I of 1974. So if there are obstacles to marriage or the pillars and requirements have not been met in its implementation, of course it needs to be reviewed to grant the application for marriage confirmation. When looking at the decision issued, the judge tried to emphasize that for the validity of a marriage in religion, the pillars (elements) of marriage are fulfilled. The pillars of marriage are as stated in Article 14 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia, and are also in accordance with the intent of the hadith of the Prophet SAW and the opinions of Expert Fah, including the following:

1. The following hadith of the Prophet Muhammad saw

Meaning. Received from 'Aisyah, she said that the Messenger of Allah SAW once said Any woman who marries without the permission of her guardian, then her marriage is void (HR al-Arba'ah except al-Nasa ly, and Abu Awanah, ibn Hibban, and al-Hakim said it was authentic)

2. Then the hadith narrated by (Al-Daruquthniy and al-Bayhaqiy)

Meaning: Received from Abdullah bin Mas'ud, he said that the Messenger of Allah SAW once said: "A marriage is not valid except with a marriage guardian and two witnesses."

Based on the above hadiths and other related Islamic texts, the Shafi'i school of thought has determined that there are five pillars (elements) of marriage, namely: the prospective husband, prospective wife, marriage guardian, two witnesses, and acceptance

of marriage, as stated by 'Abd al-Rahman al-Jaziny in the book *al-Fiqh al-Madzhib al-Arba'ah* as follows;

Meaning: According to the Islamic jurisprudence experts from the al-Syafii school of thought, there are five pillars (elements) of marriage, namely the prospective husband, prospective wife, marriage guardian, two witnesses, and *jab qabul*.

Besides that, each pillar of marriage has several requirements. The agreement of the prospective bride and groom as stated in Article 16 and 17 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia and not having any obstacles to marriage as stated in Article 8, 9, 10, and 11 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 unto Article 18 39, 40, 41, 42, 43, and 44 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia. The requirements for a guardian *nikush* as stated in Article 19 and 20 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia, prioritizes *wal aqrab trang* (whose kinship is closer) over *wal ab'ad* (whose kinship is further) as stated in Article 21 and 22 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia. Islamic law in Indonesia, the transfer of *wal nasab* to the guardian judge as stated in Article 23 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia. The requirements for witnesses to marriage as stated in Articles 24, 25, and 26 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia. While the requirements for the marriage contract (*jab* and *qabul*) as stated in Articles 27, 28, and 29 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia;

Meanwhile, regarding the guardian of Applicant II's marriage in the marriage contract, it is another person (a local community figure named *Selan*). because Applicant II's biological father is a non-Muslim, considering it as follows.

Meanwhile, to carry out a marriage, one of the pillars is that there must be a marriage guardian, because a marriage guardian in marriage is a pillar that must be fulfilled for the prospective bride who acts to marry her off (*Vide* Article 14 and Article 19 of the Compilation of Islamic Law);

Those who are entitled to be Marriage Guardians are Nasab Guardians and Hakim Guardians. Nasab Guardians consist of four groups in order of position, one group is prioritized over the other groups accordingly. As the author has explained above.

Based on the above opinion, the Judge considered it as follows: that a kiyai, ustadz or community figure who acts as a marriage guardian in Islamic law is known as a muhakkam guardian, namely someone who is appointed by the two prospective husband and wife to act as guardians in their marriage, that the Judge also considered it necessary to consider the opinions of scholars in the book *Fiqh al-Sunnah* Volume 3 page 138 and the book *Nihayah al-Muhtaj Li Syarhil Minhaj* Juz 20 page 308 as follows:

Meaning: Shafi'i is of the opinion that if in society there is a woman who does not have a guardian, and then hands her over to a man to marry her, then the law is permissible because this is an act of appointing a judge. And the person appointed as judge has the same position as the judge himself;

Meaning: "If a woman does not have a guardian (Nasab) then some scholars are of the opinion that it is permissible for a woman to be with her future husband because the mujtahid is a muhakkam (a person who is appointed as a guardian and the muhakkam's position is like a judge. Likewise, if the woman submits to a just man then according to the opinion of the mukhtar (elected) it is valid even though it has not reached the level of mujtahid because there is an urgent need (Asnawi) is of the opinion that the permissibility (wali muhakkam) is not only intended for conditions where there is a guardian judge, even though there is a guardian hakam, whether on the way or in a permanent place, it is permissible."

5. CONCLUSION

Based on the main opinion above, the Judge is of the opinion that a guardian is permitted under the following conditions:

1. That the prospective bride and groom are in a place where there is no guardian who fulfills the requirements for guardianship and/or there is no guardian judge,
2. The wali muhakkam must be a man who is a mujtahid and just, or a man who is just even though he has not reached the level of mutahid because of pressing interests.
3. That the prospective bride and groom are on a journey even though there is a guardian judge in the area they are passing through, however according to Asnawi (one of the Syafiiyah scholars) the permission of the guardian muhakkam is not only

intended for conditions where there is no guardian judge, even though there is a guardian judge whether on the journey or in a permanent place, it is permissible to appoint a guardian muhakkam.

Back to the case submitted, that the marriage guardian who granted the marriage is the guardian appointed by the applicant, namely a Mosque Imam. There is no lineage guardian because the woman is Christian. Based on the judge's considerations, it is apparent that the judge prioritizes the aspect of benefit in deciding the marriage itsbat case.

The authority of the judge in granting itsbat nikah as an effort to obtain his rights as an Indonesian citizen and is able to protect the interests and justice of other parties, such as protecting the rights of children from a secret marriage, protecting the legal status if the itsbat couple is still bound by marriage with their old partner so that the benefit will be received by the husband and wife who are in a secret marriage as long as the requirements are met. This is in line with the following fiqh rules: Meaning: The judge follows the stronger benefit.

The judge in deciding this case sees broader justice for the parties, so that based on the aspect of welfare, the guardian of the judge who is not the KUA registrar can be accepted but fulfills special reasons such as limited access to services and access to knowledge. The granting of itsbat nikah carried out by the judge of the Siak Sri Indrapura Religious Court through a determination or decision in the law is not only seen from the textual arguments, but also pays attention to the interests, because if it only relies on textual arguments, it will experience difficulties when faced with conditions that are different from the content of the argument. So that the law can side with goodness and benefits that are universal or comprehensive.

From the above fiqh rules, it is emphasized that a judge in granting a case must prioritize the welfare of the seeker of justice, especially in the application for itsbat nikah. Itsbat nikah is a middle way that can be taken by a married couple who have been legally married according to religious law to obtain recognition from the state for the marriage that has been carried out by both of them and the children born during the marriage, so that the marriage has permanent legal force. then the integrated Itsbat nikah is included in Maslahah Hajiyyat because if the marriage registration is not fulfilled, it will not interfere with the eligibility, substance and system of human life, but it can cause difficulties and misery for humans in living their lives.

From the explanation above, the author can confirm that a judge in granting a case must prioritize the welfare of the seeker of justice, especially in the application for itsbat nikah.

Itsbat nikah is a middle way that can be taken by a married couple who have been legally married according to religious law to obtain recognition from the state for the marriage that has been carried out by both of them and the children born during the marriage, so that the marriage has permanent legal force. Therefore, integrated Isbat nikah is included in Maslahah Hajiyat because if the registration of the marriage is not fulfilled, it will not interfere with the eligibility, substance and system of human life, but it can cause difficulties and misery for humans in living their lives.

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