

## The Legal Position Of Marriage Through a Unified Marriage Isbat Trial At The Gorontalo Religious Court

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ARTICLE INFO	ABSTRACT
<p><b>Keywords :</b></p> <p><i>Marriage Isbat; Ratification; Court.</i></p> <p><b>How To Cite :</b></p> <p>Lamara, A.T (2020). Assessing The Effectiveness The Legal Position Of Marriage Through a Unified Marriage Isbat Trial At The Gorontalo Religious Court. <i>Estudiante Law Journal</i>. Vol. 2 (1): 36-52</p> <p><b>DOI :</b></p>	<p>The purpose of writing to be achieved is to know and analyze about what is the legal status of the wife who is still bound by a legal marriage in applying for marriage confirmation through a unified marriage isbat trial? and What are the legal implications for the legal status of the wife due to the establishment of the confirmation of marriage through a unified marriage isbat trial? This study uses a type of Normative research with two approaches, namely the legislative approach and the case approach. the results showed that: <i>First</i>, the position of the legal status of the wife who is still bound by a legal marriage in filing a marriage confirmation through a juridically integrated marriage isbat trial has violated the provisions contained in the marriage law that expressly does not allow for the wife to marry twice before there is a divorce ruling that has permanent legal force from the Court. <i>Second</i>, the legal implications arising from the legal status of the wife due to the establishment of the legalization of marriage through a unified marriage isbat trial, namely the emergence of legality for legally valid wives due to not getting a divorce ruling from the Court on the previous marriage which is essentially contrary to the provisions of the marriage law on the prohibition of polyandry for the wife and opens the space for violations of the law. from the legal side of state administration through legal smuggling at the time of issuance of marriage books.</p>

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## 1. Introduction

Article 1 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 as amended by the Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage states that marriage is a bond of birth between a man and a woman as a husband and wife with the aim of forming a family (a happy and eternal household based on the Supreme Divinity).<sup>1</sup> Marriage is a very important aspect of human life. Marriage even becomes a *basic demand* for every normal human being. Without marriage, a person's life would be imperfect and more than that, it violates his nature. Because Allah S.W.T. has created his creatures in pairs and the Prophet Muhammad (peace be upon him) has also reminded that marriage is his sunnah.<sup>2</sup>

According to Islamic law, marriage is a command of Allah as contained in the Qur'an and Sunnah of the Messenger, and is the will of humanity, physical and spiritual needs or as the fulfillment and arrangement of human biological interests. In addition, marriage is an act that contains sacred values and one of the important events in the history of human life. It is often thought that marriage is part of worship.<sup>3</sup>

According to Islamic law, a marriage is considered legal if the marriage has qualified and is in harmony with marriage. This means that in terms of Islamic law the process of recording marriage is not an absolute requirement of the validity of a marriage, so that in terms of its implementation it opens the space for the practice of marriage under the hands (marriage that is not recorded) which results in the marriage is not legal from the legal side of the State (laws and regulations).

As mentioned earlier, one of the problems that often arises in the field of marriage is the existence of marriages that are carried out by not being recorded with the competent institution or officials. As a result, the legal status of the State (the laws and regulations) does not have legal legality as evidenced by a marriage certificate or marriage book. This proves that the problems in the field of marriage are increasingly complex along with the development of society as social creatures. So that the solution to this problem requires concrete steps as a solution.

One of the efforts in responding to the resolution of problems that occur in the field of marriage, especially related to marriages that are not recorded (marriage under the hands), then this has been accommodated through the activities of integrated marriage isbat sessions as regulated through the Supreme Court regulation of the Republic of

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<sup>1</sup>Pasal 1 Ayat 1 Pasal 1 ayat 1 Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 sebagaimana yang telah diubah dengan Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perkawinan

<sup>2</sup>Syamsuhadi Irsyad, 2005, *Usia Ideal Memasuki Dunia Perkawinan (Sebuah Ikhtiar Mewujudkan Keluarga Sakinah)*, Jakarta, Kencana Mas Publishing House, hlm. 3

<sup>3</sup>Sirman Dahwal, 2017, *Perbandingan Hukum Perkawinan*, Bandung, Mandar Maju, hlm. 16

Indonesia Number 1 of 2015 concerning integrated services of the Roving Session of the District Court and the Religious Court / Shari'ah Court in the Framework of the Issuance of Marriage Certificates, Marriage Book and Birth Certificate.

An integrated marriage isbat session is an activity organized in an integrated manner by the District Court or Religious Court / Shari'ah Court together with the Office of Religious Affairs, office of population and civil registration and local government or provincial government in order to provide legality to the legal status of marriage for people whose marriage is not recorded (marriage under the hands) with an integrated service system.

Fundamentally, it has become an obligation of the State to provide solutions to a problem that occurs in society organized through institutions implementing state power as well as the judiciary as an institution that performs its duties in the field of Judicial Power.

Resolving problems in the field of marriage is one of the duties and authorities that are in the Institution of Religious Courts, where the issue of marriage that is not recorded (marriage under the hand) is one of the problems that must be resolved through the trial process in the Religious Court through the application of marriage isbat. In resolving the problem of unregistered marriage (marriage under the hand) that occurs in the community, one of the solutions taken in solving the problem is through the program of integrated marriage isbat session activities as stipulated in the Supreme Court regulation of the Republic of Indonesia Number 1 of 2015 concerning Integrated Services of The Court of Appeal and Religious Court / Shari'ah Court in the Framework of Issuing Marriage Certificate, Marriage Book and Birth Certificate.

In terms of marriage isbat is determined through recording for marriage or marriage that has not been recorded or for other reasons that have been determined in the related relationship according to Ahmad Warson Munawir<sup>45</sup> In his book *Dictionary Al-Munawir, Indonesian Arabic* says that itsbat nikah comes from arabic which consists of *isbat* and *nikah*. According to the language itsbat means "Determination, Confirmation and Confirmation", in Indonesian known as *isbat nikah* which means the confirmation and determination of marriage through recording in an effort to obtain the confirmation of a marriage according to applicable law.

In terms of implementation, especially in the implementation of a program of integrated marriage isbat session activities in order to fulfill the legality of the legal status of public marriage that has not been proven by marriage certificate or marriage book resulting from marriage that is not recorded (marriage under the hand), in the process of

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<sup>4</sup>Siska Lis Sulistiani, (2018), "*Islamic Civil Law Application of Family Law and Islamic Business Law in Indonesia*", Jakarta: Sinar Grafika, p.

<sup>5</sup> Loc. Cit, Hal. 349

examining cases in special trials for judges who examine, adjudicate and decide cases in some cases where there is a judge must be faced with a problem. A law that places the judge in a dilemmaal position or circumstance, where the judge must consider carefully in placing two important aspects that are the determining elements in the settlement of the marriage isbat case that is being heard. Two aspects that are intended are aspects of legal certainty oriented to textual sound in an article on the laws and regulations and aspects of security oriented to the principle of community benefit. So that in giving a verdict, the judge sometimes has to get out of the context of an existing law.

One of the concrete problems that often arise in the settlement of marriage isbat cases through a unified marriage isbat trial is related to the status of the applicants who are still bound by a valid marriage with a previous spouse. Among them is the status of a wife or husband who is still bound by a legal marriage with a previous partner. While from the juridical side it is expressly mentioned in article 3 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 as amended by the Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage which states that "basically in a marriage a man may only have a wife. A woman can only have a husband.<sup>6</sup> So this forces the judge to be more progressive by digging deeper into the material of the marriage that occurred in the previous marriage in order to achieve the process of resolving the marriage isbat case.

Reviewing the provisions mentioned in article 3 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 as amended by the Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage which states that "basically in a marriage a man may only have a wife. A woman can only have a husband, so it contextually shows that from the historical side of the establishment of the Marriage Act, basically the Marriage Act adheres to the principle of polygamy and does not recognize the principle of polyandry. The principle of polygamy in the Marriage Act can be seen in the provisions of article 3 paragraph 2 which reads "The Court may give permission to a husband to marry more than one if desired by the parties concerned.<sup>7</sup>

Guided by the provisions of article 3 paragraph 1 of the Law of the Republic of Indonesia No. 1 of 1974 as amended by the Law of the Republic of Indonesia No. 16 of 2019 concerning Marriage that from the juridical side shows an affirmation of the prohibition for a woman who is still bound by a legal marriage with her previous husband to hold a marriage with another man before filing for divorce in court. But in reality in the community as the problems that arise in the activities of integrated marriage isbat trials in order to fulfill the legality of marital legal status for the community is the status of the wife who is still bound by a legal marriage with the previous husband but the marriage

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<sup>6</sup>Pasla 3 ayat 1 Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 sebagaimana yang telah diubah dengan Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perkawin

<sup>7</sup>Pasla 3 ayat 2 Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 sebagaimana yang telah diubah dengan Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perkawin

is requested isbat through an integrated marriage isbat trial program as per the Supreme Court regulation of the Republic of Indonesia No. 1 of 2015 concerning Integrated Services of The Court of Appeal and Religious Court / Shari'ah Court in the Framework of The Issuance of Marriage Certificates, Marriage Books and Birth Certificates. So that in fulfilling the legality of the legal status of marriage for the petitioners, the judge who examines and adjudicates the case in dropping its determination must be out of the context of the laws and regulations.

The problem of marriage that is not recorded until now is still one of the trending cases that occur in the community, such as those in the Gorontalo City area. This can be seen from the case data on the application for marriage isbat received by the Gorontalo Religious Court from 2018 to 2020, each of which was recorded in 2018 as many as 230 cases, 2019 as many as 228 cases and in 2020 as many as 12 cases.<sup>8</sup>

Based on the data of cases on marriage isbat filed from 2018 to 2020, especially in 2019 there are 15 marriage isbat cases filed through the integrated marriage isbat trial program that identified that the status of the wife is still bound by a legal marriage with the previous husband because the wife has not filed a formal divorce lawsuit in the Court so in this case ideally the determination of the judge against the marriage isbat application. They rejected the petitioners' requests. Where this is in accordance with the provisions of article 3 paragraph 1 of the Marriage Act which in principle does not adhere to the principle of polyandry.

An important thing that needs to be known and understood in the provisions of article 3 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 as amended by the Law of the Republic of Indonesia No. 16 of 2019 concerning Marriage is an affirmation of the prohibition for a woman to have a husband of more than one person if the woman is still bound by a legal marriage with another man which can legally be proven by the publication of the book. marriage or better known as the prohibition of polyandry For a wife who is still bound by a valid marriage with another man. But in reality there is a second marriage for a woman who is legally still bound by a valid marriage with her previous husband as requested for the endorsement of her marital legal status through a unified marriage isbat trial program. Where this when viewed from the juridical side has deviated from the provisions of article 3 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 as amended by the Law of the Republic of Indonesia Number 16 of 2019, namely against the prohibition of polyandry for a wife who is still bound by a legal marriage with another man. Thus the application for marriage isbat should ideally be declared rejected by the judge, because the wife is still bound by a legal marriage with the previous husband because it has not filed for divorce officially in court.

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<sup>8</sup>Data perkara permohonan isbat nikah di Pengadilan Agama Gorontalo Tahun 2018 s/d Tahun 2020

## 2. Problem Statement

As for the formulation of the problem that the author can formulate is What is the position of the legal status of the wife who is still bound by a legal marriage in filing a marriage confirmation through a unified marriage isbat trial? and What are the legal implications for the legal status of the wife due to the establishment of the confirmation of marriage through a unified marriage isbat trial?

## 3. Research Methods

This type of research is sociological or empirical legal research, which includes, research into legal identification (unwritten) and research into legal effectiveness.<sup>9</sup> The approaches used by researchers in compiling this study are, among others, the Approach of Legislation (*Statue Approach*) and Case Approach (*Case Approach*). After bahan primary law, secondary dan tertiary telah collected, selanjutnya diidentifikasi, dikualifikasikan, disederhakan dan difokuskan pada materi researcheran.<sup>10</sup>

## 4. Analysis And Discussion

### A. The Position of Legal Status of Wives Who Are Still Bound by Legal Marriage In Filing Marriage Confirmation Through Integrated Marriage Isbat Trial

The basis of the implementation of integrated marriage isbat is the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2015 concerning integrated services of the roving session of the District Court and the Religious Court / Syar'iyah Court in the Framework of the Issuance of Marriage Certificates, Marriage Books and Birth Certificates. Before this Perma was born, various policies of the Supreme Court related to integrated marriage isbat is the Circular Letter of the Chief Justice of the Supreme Court No. 10 of 2010, appendix B on Guidelines for Providing Legal Assistance in the Religious Justice environment that has been amended by the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014 on Guidelines for the Provision of Legal Services for The Unable, Joint Decision of the Young Chairperson of Religious Justice Environmental Affairs and Secretary of the Supreme Court of the Republic of Indonesia Number 04/TUADA-AG/II/2011 and number 020/SEK/SK/II/ 2011 on Instructions for the Implementation of the Circular Letter of the Supreme Court of Indonesia Number 10 of 2010 on Guidelines for Legal Assistance annex B and DECREE KMA No. 26 of 2012 on Standards of Judicial Services and Sema Number 3 of 2014 on The Procedure of Service

<sup>9</sup> Mukti Fajar dan Yulianto Ahmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta : Pustaka Pelajar, 2010). Hal 47.

<sup>10</sup> Mohamad Rivaldi Moha, Sukarmi, Afifah Kusumadara, *Urgensi Pendaftaran Penyelenggaraan Sistem Elektronik Bagi Pelaku Usaha E-Commerce*, *Jambura Law Review*, Vol. 2 No. 2, 2020. Hal 106

and Examination of Voluntair Isbat Nikah case in Integrated Services.<sup>11</sup>

Consideration of the birth of Perma No. 1 of 2015 is that everyone is entitled to legal recognition without discrimination including the right to form a family and offspring through legal marriage (as evidenced by a marriage certificate) and the right of the child to self-identity as outlined in the birth certificate. However, for some poor people, in order to obtain the right of legal identity faces cost, distance and time barriers in completing the process of recording marriage and recording birth. In order to improve service to the poor in obtaining marriage certificates, marriage books and birth certificates, the Supreme Court considers it necessary to coordinate with the Ministry of Home Affairs and the Ministry of Religious Affairs to establish the Supreme Court Regulation on Integrated Service Guidelines for The Roving Session of the District Court, Religious Court / Sharia Court in the framework of issuing marriage certificates, marriage books and birth certificates.<sup>12</sup>

The process of examination of integrated marriage Isbat is basically the same as the process of examination of Isbat nikah in general. What distinguishes the integrated marriage Isbat trial with other Isbat cases is that it lies in (1) the implementation of an integrated marriage Isbat session held collectively while isbat regular marriage in person, (2) The institution involved consists of Religious Trial, Ministry of Religious Affairs / KUA, Local Government / Disdukcapil, while Isbat nikah regularly only involves the Religious Court, (3) The place of holding an integrated marriage Isbat trial can use the courtroom of the Religious Court, but generally carried out outside the court in the form of a traveling hearing whose place can be in the Local Government, Multipurpose Building, Subdistrict and other places that are representative for the trial, while for isbat hearings are usually held in court and (4) there are other special matters such as cases filed in integrated marriage isbat only Isbat nikah in the form of voluntair, the judge can be single, and the call to the parties can be done collectively, while isbat marriage is usually done by means of voluntair and contenttius, the judges of the assembly and the call are not made collectively.<sup>13</sup>

The implementation of Isbat nikah is carried out in an out-of-court hearing (roving hearing) in accordance with KMA Decree No. 26 of 2012 on Standards of Religious Justice Services in point G stated "All cases can basically be filed through a mobile hearing, but due to limitations on the roving hearing service, then the case that can be filed through a mobile hearing, including isbat nikah (endorsement / mutilation of marriage) for

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<sup>11</sup>Ramdani Wahyu Sururie, *Isbat nikah terpadu sebagai solusi memperoleh hak identitas hukum*, Ijtihad, Jurnal Wacana Hukum Islam dan Kemanusiaan, Vol. 17, No. 1 (2017). Hlm. 4

<sup>12</sup> Ibid., Hlm. 4

<sup>13</sup> Ibid., Hlm. 8

marriages that are not registered with the KUA.<sup>14</sup>

Referring to the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2015 concerning Integrated Services of The Roving Session of the District Court and The Religious Court / Syar'iyah Court in the Framework of The Issuance of Marriage Certificate, Marriage Book and Birth Certificate which becomes the legal *standing* umbrella in the implementation and implementation of the integrated marriage isbat trial process then in its existence the examination of marriage isbat cases conducted based on the provisions of Perma Number 1 of 2015 has a special nature that cannot be generalized into the examination of marriage isbat cases filed purely in the Court Office. This is inseparable from the legal basis used as a guideline by the Court in accepting, examining and deciding marriage cases filed by the applicants.

Different things that can be seen from the process of examining marriage isbat cases filed purely in the Religious Court Office based on the Law of the Republic of Indonesia No. 1 of 1974 as amended by the Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law with the marriage isbat case filed through an integrated marriage isbat trial program based on the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2015 concerning integrated services of the Roving Session of the District Court and the Religious Court / Syar'iyah Court in the Framework of Issuing Marriage Certificates, Marriage Books and Birth Certificates basically lies in the role, initiative and creativity of judges in giving legal considerations at the time of handing down a ruling or determination. on the matter of marriage that is being heard.

Looking at the contents of the determinations in some of the above cases, it is clearly seen that in this case the single judge at the time of handing down the verdict or determination has made a legal breakthrough through the process of legal discovery (*rechtsvinding*). This refers to some of the above-mentioned determinations granted by a single judge clearly seen in the petition that the wife who is domiciled as one of the petitioners is still bound by a legally positive legal marriage, because in this case the wife has not received a permanent legal divorce ruling from the Court.

In particular, Perma No. 1 of 2015 regulates the provisions of the integrated marriage Isbat trial in article 12, namely: First, the case of isbat nikah served by the Religious Court / Syar'iyah Court in integrated service is a case of marriage isbat that is a plea (*volluntair*); Second, the marriage petition hearing is attended by a married couple who are still living in person (*in person*) unless there is another reason; Third, in the event that one or both spouses have died, the application for marriage isbat cannot be carried out in a unified service; Fourth, the examination of marriage isbat application in integrated service can be carried out by a single judge; Fifth, the procedure of the hearing outside the courthouse

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<sup>14</sup> Ibid., Hlm. 9



is carried out based on the applicable provisions; Sixth, in carrying out his duties, the judge is assisted by 1 (one) substitute clerk, 1 (one) substitute bailiff and at least 1 (one) administrative officer; The summoning of more than one applicant may be made by being announced by the local government and the notice board of the local court or other media owned by the court; Eighth, the implementation of the trial in integrated service is carried out in accordance with the applicable provisions; Ninth, integrated services can be carried out simultaneously with: a. Legal aid postal service and or b. Regular hearings.<sup>15</sup>

It is clearly seen that in the Perma it regulates a policy regarding the implementation of a unified marriage Isbat trial that is not regulated in the law. In particular, the Perma stipulates that the integrated marriage Isbat trial is only carried out in the form of application (voluntair) in which the one who proposes Isbat nikah is a husband and wife. If the proposed only husband or wife, then the wife or husband must be placed as the respondent. This includes contentius. In such cases, it will not be served in a unified marriage Isbat trial. Including in this case if one party or both parties have died can not be done in integrated service.<sup>16</sup>

Related to the position of the legal status of the wife who is still bound by a valid marriage in filing a marriage confirmation hearing through a unified marriage isbat trial can be seen from one of the isbat cases that have permanent legal force based on the determination handed down by a single judge through the process of marriage isbat trial. More details will be outlined in case of case position Number 310/Pdt.P/2019/PA. Gtlo as follows.

In the description of the case as described in the application posita states that, applicant I and applicant II in their petition letter dated November 5, 2019 which has been registered in the Registrar of Gorontalo Religious Court on November 7, 2019 under case register Number: 310 / Pdt.P / 2019 / PA. Gtlo has applied for isbat nikah for the following reasons:<sup>17</sup>

1. That on July 27, 2014 Applicant I married Applicant II which was carried out before, the Imam of North Tatura District of the region with the guardian of the marriage of the biological father of Applicant II. Adapun who becomes a witness of marriage is witness I and witness II, with dowry in the form of a set of prayer tools;
2. That at the time of the marriage Applicant I is a Divorced Widower aged 36 years, while Applicant II is a Living Widow aged 30 years;
3. That between Applicant I and Applicant II there is no blood relation and is not as concerned and qualified and there is no prohibition on the marriage, either in

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<sup>15</sup> Ibid., Hlm. 9

<sup>16</sup> Ibid., Hlm. 9

<sup>17</sup> Penetapan Nomor 310/Pdt.P/2019/ PA.Gtlo Hal.

- accordance with the provisions of Islamic law or applicable laws and regulations;
4. That in the marriage of Applicant I with Applicant II has lived in harmony as well as a husband and wife and has been blessed with 2 children named;
    - Child I, age 2 years 8 months
    - Child II aged 2 weeks
  5. That during the marriage there is no third party that interferes with the marriage of Applicant I and Applicant II, and during that time Petitioner I and Applicant II remain Muslim;
  6. That Applicant I and Applicant II never received a Marriage Certificate Citation from the Clerk of the Marriage Registrar of the North Tatura District Religious Affairs Office after the Petitioners took care of it it turned out that the marriage of Applicant I and Applicant II was not recorded on the register of the North Tatura District Religious Affairs Office;
  7. That the Applicant urgently needs the Determination of The Marriage Certificate of the Gorontalo Religious Court, for the purposes of legal certainty on the marriage of Applicant I and Applicant II and to take care of marriage certificates and birth certificates and letters about population;
  8. That the Applicant is an unable person based on The Certificate of Inadequacy Number 474 / Kesra / 83 / XI / 2019 dated November 1, 2019 issued by Lurah Tanggikiki Sipatana District of Gorontalo City.

Based on the above, the Petitioners requested the Chairman of the Gorontalo Religious Court cq. The Panel of Judges to immediately examine and adjudicate this case, then impose the following determination:

Primary:

1. Granting the application of Applicant I and Applicant II;
2. Valid according to the marriage law of Applicant I with Applicant II which took place on July 27, 2014, to be recorded in kua Sipatana District of Gorontalo City
3. Mrelease the Applicant from the cost of the case;

Subsidiary:

Or drop other fairest determinations;

The rule of law that has been determined by the state against marriage that is not recorded, held integrated services of marriage by the Religious Court together with the Office of the Ministry of Religious Affairs (KUA) and the Office of Population and Civil Registration (Disdukcapil) in various regions in Indonesia as stated in Perma No. 1 of 2015. Abdul Manaf argued that the integrated services provided by court courts in the religious justice environment are increasing and provide benefits to the community. The rise of integrated services in the religious justice environment is strong evidence that society urgently needs fast, simple and light-cost judicial services to gain legal identity and certainty. In addition, integrated services are basically services whose time and place are coordinated in such a way between the Religious Court, the Office of Religious Affairs

and the Office of Population and Civil Records, so that the public can obtain legal identity documents as soon as possible.<sup>18</sup>

The habit of not recording marriage events by them is clear evidence that the legal culture has not been fully awakened. This will have an impact on legal powerlessness, the rules contained in the marriage law will become barren and have no legal power and certainty, so that people's trust in it fades and they will act according to the wishes of lust.<sup>19</sup>

The above statement is not to generalize that now the level of community trust has faded, but the state within certain limits authorizes the government to prepare laws and regulations to anticipate the occurrence of actions that harm one of the parties. The occurrence of aqad in the procession of nikan is a form of an *ijab* and *qabul* transaction between the groom and the woman in a legal event. Therefore, states are obliged to maintain, control and protect the rights and obligations of legal subjects which can give birth to many other legal consequences, especially on the part of women and children sometimes being victims of unre recorded marriage or marriage under the hands of even the marriage of the *sirri*.<sup>20</sup>

Thus the wife and child due to marriage are not recorded, juridically formally will not be a core part in the husband's family, so the two are not recorded as a group of heirs who are entitled to obtain the parts of heirs that have been determined in number (*furudh Al Muqaddarah syar'an*) in Islamic law, because al *tirkah* (heritage) is only intended for those who have good *kinship relations. nasabiyah* or *sababiyah*.<sup>21</sup>

### **B. Legal Implications For The Legal Status of The Wife Due to The Establishment of Marriage Confirmation Through a Unified Marriage Isbat Trial**

In its existence the legal implications that arise on the position of the legal status of the wife due to the determination of the confirmation of marriage through a unified marriage isbat trial that is related to the legality of the marriage law of the wife so that in her position the wife has the legality of double marriage law. In this case what is meant by the legality of double marriage law for the wife is related to the position of the wife who is legally still bound by a legal marriage with the previous husband's marriage but in this case asks for marriage so that the marriage can be recorded and obtain legal legality. This can be seen in some cases of marriage isbat whose application is granted in a unified

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<sup>18</sup>Agus Muchsin, Rukiah, & Muhammad Sabir, *Legalisasi Perkawinan Yang Tidak Tercatat Pada Masyarakat Pinrang (Analisis Perma Nomor 1 Tahun 2015 Tentang Pelayanan Terpadu Pencatatan Nikah)*, Diktum Jurnal Syariah Dan Hukum, Volume 17 Nomor 1 Juli 2019, Hal. 4

<sup>19</sup> Ibid., Hal. 8

<sup>20</sup> Ibid., Hal. 8-9

<sup>21</sup> Ibid., Hal. 9

marriage isbat trial, resulting in the position of the wife to be legally legal to have more than one husband who is clearly contrary to the provisions of the marriage law that do not justify the principle of polyandry for the wife as stated in Article 3 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 as amended by The Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage which affirms that "basically in a marriage a man can only have a wife. A woman can only have a husband."

The legal implications referred to in the context of this case are related to the legal status of the wife who is legally still bound by a legal marriage with a previous marriage, so that the administrative position of the legal wife has two legally positive husbands. Thus the position of the wife who has two husbands is essentially contrary to the provisions of Islamic law and the provisions of marriage law that do not justify the principle of polyandry for the wife without the process of divorce first.

Another condition, due to the law arising from the establishment of the legalization of marriage through a unified marriage isbat trial, has an impact on legal certainty on the status and position of the previous husband who administarsi is still the legal husband of the wife who performs marriage isbat with her second husband in a unified marriage isbat trial program. Thus in its position this condition from the legal side of state administration is a form of deviation from the procedures specified in the administrative law of the State. Where in the context of the endorsement of marriage isbat both submitted purely in the Court and submitted through the integrated marriage isbat trial program, one of the conditions that must be met is the release of the applicants both male and female from the previous marriage bond.

The term integrated isbat is identified with an integrated service carried out by the Religious Court. According to Perma No. 1 of 2015 on Integrated Services of The Roving Session of The District Court and The Religious Court / Syar'iyah Court in the Framework of The Issuance of Marriage Certificates, Marriage Books and Birth Certificates, integrated services are a series of activities carried out jointly and coordinated in a certain time and place between the District Court or the Religious Court / Syar'iyah Court, Population Office and District / City Civil Registry, Kua in the mobile service to provide services for the confirmation of marriage and other cases in accordance with the authority of civil servants and marriage isbat in accordance with the authority of the Religious Court / Syar'iyah Court and to fulfill the recording of marriage and birth registration.<sup>22</sup>

Based on the study of integrated services in Perma No. 1 of 2015, the term integrated marriage isbat is a marriage determination session that is held jointly (integrated) with several related agencies, namely the Religious Court, KUA and Disdukcapil. This

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<sup>22</sup>Ramdani Wahyu Sururie, *Isbat Nikah Terpadu Sebagai Solusi Memperoleh Hak Identitas Hukum*, Ijtihad, Jurnal Wacana Hukum Islam dan Kemanusiaan, Vol. 17, No. 1 (2017), Hal. 2

integrated isbat trial is often also called a one-stop isbat trial. Integrated marriage isbat is closely related to the legal identity rights of every citizen. By obtaining a marriage certificate in an integrated marriage certificate, a person who did not have a legal identity, will obtain a legal identity in the form of a marriage certificate so that integrated marriage isbat is a state policy for the community to obtain a legal identity.<sup>23</sup>

The ratification of marriage through an integrated marriage isbat trial program that is supported by the Supreme Court of the Republic of Indonesia Regulation No. 1 of 2015 on Integrated Services of The Roving Session of the District Court and the Religious Court / Syar'iyah Court in the Framework of The Issuance of Marriage Certificates, Marriage Books and Birth Certificates, integrated services, in the implementation level still raises several legal problems including the application for marriage approval for the applicants. His wife is still bound by marriage to her previous husband legally. Thus juridically this has deviated from the provisions contained in the marriage law on the prohibition of polyandry for a woman, so that in this context it is necessary to review the concepts related to polyandry of various scientific scopes.

Basically there is no difference of view in understanding the nature of polyandry, both polyandry in sociological, anthropological, jurisprudent or positive law. Because all three are marriages performed by a woman with two/more men at the same time. However, if a deeper study of what happens to the perpetrator, there are three types of polyandry: First, polyandry is done by women where the first marriage is legal and recorded, but when going to divorce is not recorded. The second marriage was not recorded either. In this condition, the court can legalize the second marriage, if the second marriage is carried out by completing the pillars and conditions of marriage in the religious court.<sup>24</sup>

Second, polyandry is carried out by women where the first marriage is divorced and the second marriage is carried out by completing the pillars and conditions of marriage that are legally religious, but are not recorded. In this condition the religious court can grant the application for marriage isbat by taking care of / arranging the first marriage first, then obtaining a divorce deed with the first husband and then obtaining a marriage isbat with the second husband. In this condition, polyandry occurs in women who in the lens of Islamic law are still married to the first husband, but have remarried to the second husband.<sup>25</sup>

Third, polyandry performed by women in which the first marriage is divorced and the second marriage is carried out without completing the pillars and conditions of marriage that are legally religious, and also not recorded. In this condition the religious court does

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<sup>23</sup> Ibid.,Hal. 2-3

<sup>24</sup> Makmur Syarif, *Poliandri Pada Masyarakat Kabupaten Padang Pariaman: Studi Kasus Di Pengadilan Agama Pariaman*, Jurnal Ilmiah Kajian Gender Vol.VI No.2 Tahun 2016 Hal. 18

<sup>25</sup> Ibid.,Hal. 18

not grant the application for marriage isbat because of the incompleteness of the pillars and conditions of marriage. In this condition women also have husbands at the same time.<sup>26</sup>

In general, polyandry that occurs today is an unre recorded marriage / divorce. So when they married the second was also not recorded, as a result they were legally polyandry, having two husbands at the same time because they did not have a divorce certificate from the court with the first husband. Senanda thus polyandry is a system in which a woman has a man as her husband at the same time. Meanwhile, another study found that polyandry is a strategy for increasing reproductive vitality.<sup>27</sup>

The appearance of polyandry is inseparable from norms or rules. Norms or rules start from views about what is considered good and bad, commonly called values. Norms or rules arise from patterns of human behavior as an abcurt from real repetitive behavior. According to Kansil in the association of life distinguished 4 kinds of norms or rules, namely: First, religious norms, namely the rules of life that are accepted as commandments, prohibitions and recommendations derived from God; Second, the norm of decency, which is the rule of life that is considered as the inner voice of human beings. The rule is in the form of a whisper of the heart or inner voice that is recognized and infited by everyone as a guideline in his attitude and actions. Third, the norm of decency, namely the rules of life arising from the association of human beings. The regulation is followed and adhered to as a guideline that regulates human behavior around it; Fourth, the legal norm, namely the rules of life made by the official body in power that must be obeyed by members of the public who have sanctions and are coercive.<sup>28</sup>

The occurrence of polyandry for women, in essence, is inseparable from the factors that perpetuate the occurrence of polyandry practices. These factors include *first*, the awareness and indifference of some people to the deviant behavior of the community. In the science of law this condition is closely related to the awareness of public law that determines the implementation / absence of legal provisions. *Second*, the low education of polyandry actors and less serious in paying attention to marital issues, both legally jurisprudend and positive law. *Third*, the lack of awareness of polyandry actors about the recording of marriage and divorce in court and the lack of public understanding about the consequences of unsancy marriage law and out-of-court divorce. *Fourth*, the lack of understanding of polyandry actors about the validity of divorce outside the court and the low understanding of polyandry offenders about the prohibition of marriage for women,

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<sup>26</sup> Ibid.,Hal. 19

<sup>27</sup> Ibid.,Hal. 19

<sup>28</sup> Ibid.,Hal. 19-20

especially in the status of marriage (not yet officially divorced).<sup>29</sup>

The consequences resulting from unrecorded marriage and divorce carried out outside the court are difficulties in the management of marriage isbat, the management of child birth certificates, difficulties in obtaining rights before the law, obtaining employment, the right to attend school, health, joint property and inheritance after other rights. Some children born in marriage are not recorded by their parents and the marriage cannot be proven, so the child born in the bond is entrusted to the mother and the mother's family. As a result, children will experience anxiety, feelings of shame and lack of confidence arising from the legally established relationship.<sup>30</sup>

Referring to the reviews of concepts and factors that cause the lasting occurrence of polyandry practices, then in the context of the legalization of marriage through a unified marriage isbat trial program in its existence a single judge in dropping the determination must be thorough and careful in giving consideration to the forewarning of the marriage isbat application submitted by the petitioner in the integrated marriage isbat trial program. In the sense that the judge at the time of giving consideration to the settlement of marital problems that are not painted through the instrument of integrated marriage isbat remains on the path of being justified and legally permissible. So in this case the judge who handed down the determination / verdict does not exceed the limits of his authority that is legally permissible.

The goal to be achieved by trying to give birth to a new Supreme Court Regulation (PERMA) in the context of the settlement of marriage isbat in an integrated manner basically aims to provide a legal umbrella for the settlement of marriage isbat cases in an integrated manner that legally has the impact of legal smuggling in the field of state administrative law, especially with regard to the legal status of applicants, especially for women at the time of the issuance of marriage books based on marriage books. the decision that has been handed down by the judge. So that in this case between the principle of legal certainty and the legal expediency that is the purpose of the law there will be inequality due to legal breakthroughs made by judges who are solely based on sociological appeals.

Theoretically mentioned that a woman who is bound by the ropes of marriage is forbidden to be married by anyone even the woman is forbidden to be married either in frank speech or with innuendo even with the promise to be married after divorce and the end of her iddah. The ban applies as long as the husband is alive or has not been divorced by her husband. After her husband dies or she is divorced by her husband and has expired his iddah then he can be served or married by anyone. Polyandry has no legality, either in Islamic law or in existing positive law. The scholars have agreed on the

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<sup>29</sup> Ibid.,Hal. 20

<sup>30</sup> Ibid.,Hal. 20-21

prohibition of polyandry. A woman who is still married is forbidden to remarry another man before the previous marriage broke up and she has completed her iddah period.<sup>31</sup>

## 5. Conclusion

Based on the results of the discussion, it can be concluded that: *First*, the position of the legal status of the wife who is still bound by a legal marriage in filing a marriage confirmation through a juridically integrated marriage isbat trial has violated the provisions contained in the marriage law that expressly does not allow for the wife to marry twice before there is a divorce ruling that has permanent legal force from the Court. *Second*, that the legal implications arising from the legal status of the wife due to the establishment of the legalization of marriage through a unified marriage isbat trial, namely the emergence of legality for legally valid wives due to not getting a divorce ruling from the Court on the previous marriage which is essentially contrary to the provisions of the marriage law on the prohibition of polyandry for the wife and opens the space for violations of the law. from the legal side of state administration through legal smuggling at the time of issuance of marriage books.

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<sup>31</sup> Mardani, *Islamic Marriage Law in the Modern World*, (Yogyakarta: Graha Ilmu, 2011), p. 14



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