

Legal Protection for Women in Unregistered Polygamy: A Comparative Analysis of Polygamy Isbat

Muhammad Nasrulloh¹, Mohamad Zakky Ubaid Ermawan², Mohammad Fauzan Ni'ami³, Moh. Toriquddin⁴, Khoirul Anam⁵

^{1,4,5}Maulana Malik Ibrahim State Islamic University Malang, Indonesia

²Ministry of Religious Affairs Pasuruan Regency, Indonesia

³International Islamic University of Darullughah Wadda'wah, Indonesia

Correspondence: muhammadnasrulloh1028@gmail.com

Abstract

Women involved in unregistered polygamous marriages experience compounded vulnerability, as they not only bear the social and psychological burdens of polygamy but also lose access to legal protection due to the prohibition of polygamy isbat under Supreme Court Circular Letter (SEMA) No. 3 of 2018. This restriction results in the systematic neglect of their rights as wives and citizens, including difficulties in obtaining civil registration documents, maintenance and inheritance rights, social recognition, and equitable marital relations. This study employs a normative juridical approach with descriptive analysis, utilizing statutory review and a comparative examination of legal scholars' arguments both supporting and opposing polygamy isbat for unregistered marriages. The findings reveal a clear division among legal experts: one group advocates permitting polygamy isbat to ensure justice and legal protection for women, while the other rejects it on grounds of legal order, adherence to SEMA, and legal certainty. Based on this analysis, the study proposes two alternative solutions: first, fully opening access to polygamy isbat to promote women's welfare; and second, adopting a selective judicial approach by granting petitions that provide substantive benefit while issuing niet ontvankelijke verklaard decisions for non-substantive cases. This study underscores the urgent need to balance substantive justice for women with the principle of legal certainty within the Indonesian family law system.

Keywords: Legal Protection, Unregistered Polygamy, Polygamy Isbat.

INTRODUCTION

Women are often victims in polygamous marriages, particularly when such marriages are unregistered and conducted without legal recognition. The condition places woman in a position of double vulnerability, as they experience the burdens of polygamy while simultaneously facing legal consequences of an unregistered marital status. Fundamentally, women have the possibility of entering monogamous marriages with partners of their choice.

Article History

Submitted:

Sep 24, 2025

Reviewed:

Nov 29, 2025

Approved:

Jan 12, 2026

In practice, however, consent to polygamous marriages is frequently shaped by necessity and structural constraints, including economic and social factors (Nisa et al., 2025). If women were in a more empowered position with genuine freedom of choice, it is unlikely that they would willingly become second, third, or fourth wives. Consequently, women who enter polygamous unions must be mentally and socially prepared to confront the complexities inherent in such relationships, including public scrutiny and a heightened risk of internal domestic conflict (Hakim, 2022). In this context, unregistered polygamous marriages may be understood as a form of harmful conduct, not in the sense of criminalizing what is religiously permissible, but in terms of exposing women to significant social and legal vulnerability (Wati et al., 2025).

Unregistered polygamous marriages further exacerbate women's suffering, as the absence of legally recorded marriages deprives them of any effective legal framework to protect and guarantee their rights as wives (Budi & Miharja, 2022). The most serious concern arises when the husband abruptly abandons the marriage, leaving women without a clear legal avenue to claim maintenance rights or to formally dissolve their marital status (Mutarofik et al., 2024). Women cannot unilaterally terminate the marriage, as both Islamic jurisprudence and positive law vest the authority to pronounce divorce exclusively in the husband or the court. When the husband becomes unresponsive and judicial intervention is unavailable due to the lack of a valid marriage record, women are left in a prolonged state of legal and social uncertainty. This vulnerability is further intensified upon the death of the polygamous husband, as women in unregistered polygamous unions face a substantial risk of being excluded from inheritance claims due to their status as non-legally recognized wives (Masyithoh et al., 2021).

In practice, access to marriage *isbat* is limited to couples in non-polygamous unregistered marriages. By contrast, applications for *isbat* submitted by parties in unregistered polygamous marriages are inadmissible, as they are barred by Supreme Court Circular Letter (SEMA) No. 3 of 2018, which explicitly stipulates that any petition for polygamy *isbat*, even when submitted in the interest of children, must not be accepted (Muchlis et al., 2025). This provision implicitly obliges the religious courts to reject such applications by issuing a decision of *niet ontvankelijke verklaard* (NO), namely a ruling declaring the petition inadmissible due to a formal defect. The formal defect arises from the assumption that the religious courts

lack the authority to examine cases of polygamy *isbat*, thereby rendering such petitions beyond the scope of judicial jurisdiction or competence (Sudrajad et al., 2024). This jurisdictional limitation is grounded in the absence of absolute judicial authority vested in the courts to adjudicate matters of unregistered polygamous marriages (Harahap, 2016, p. 811).

Unfortunately, when the Supreme Court issued Circular Letter (SEMA) No. 3 of 2018 prohibiting marriage *isbat*, the policy was not accompanied by parallel considerations regarding its legal consequences for women who become victims of such marriages. The SEMA implicitly prioritizes the absolutism of formal legal certainty, leaving little room for compromise for parties seeking substantive justice. As a result, the function of legal institutions as mechanisms for providing legal protection to individuals fails to operate as intended. Legal protection, however, constitutes a fundamental obligation of the state to accommodate individual interests that have direct implications for the fulfillment of human rights, particularly women's rights as wives, including the rights to maintenance, inheritance, and other civil entitlements.

This study is grounded in a working hypothesis that seeks to present and examine the perspectives of legal scholars and women's rights advocates concerning polygamy and unregistered marriages in general, with particular emphasis on unregistered polygamous marriages. A comparative analysis of these viewpoints is warranted, given the diverse legal, religious, and normative considerations underpinning their respective arguments. For instance, the Indonesian Council of Ulama (*Majelis Ulama Indonesia*, MUI) maintains that unregistered marriages are legally valid under Islamic law, as marriage registration is not regarded as a constitutive requirement; nevertheless, couples who enter into unregistered marriages are encouraged to pursue marriage *isbat* (MUI, 2008). A similar position is articulated by several Islamic scholars who predominantly rely on classical *fiqh* reasoning to support their arguments (Jauhari et al., 2023).

This study foregrounds women as the principal subjects most adversely affected by unregistered polygamous marriages. The enforcement of Supreme Court Circular Letter (SEMA) No. 3 of 2018, which effectively restricts access to polygamy marriage *isbat*, raises critical concerns regarding its implications for women's access to justice. Accordingly, the analysis concentrates on the impact of unregistered polygamy on the fulfillment of wives' rights and offers a comparative assessment of legal scholars' positions on polygamy *isbat*,

encompassing both opposing and supporting perspectives. In addition, the study examines alternative legal mechanisms that may provide protection for women who experience legal and social vulnerability as a result of unregistered polygamous marriages.

Scholarly discussions on polygamy *isbat* have been extensively developed across various legal studies. Nadhifa examines judicial reasoning in decisions on applications for unregistered polygamous marriage *isbat* (Syafa' & Musyafaah, 2024), while Muthia similarly focuses on court rulings concerning polygamy *isbat* cases (Nasution & Akbar, 2023). Inda Brilliant analyzes the practice of polygamy *isbat* following the issuance of Supreme Court Circular Letter (SEMA) No. 3 of 2018, with particular attention to legal certainty (Brilliant et al., 2024). Salsabila explores the legal dimensions of unregistered polygamy *isbat* (Yusdika, 2024), whereas Murni and Mega Naurin address the broader legal aspects surrounding applications for polygamy *isbat* (Murni & Nisa, 2023). From a positive law perspective, Nihrul Bahi examines polygamy *isbat* within the framework of Indonesian statutory law (Alhaidar et al., 2023), while Makfiyati critically assesses the impact of SEMA No. 3 of 2018 on the enforcement of polygamy *isbat* (N. Makfiyati et al., 2024).

This study distinguishes itself from prior research through a comparative examination of legal opinions articulated by legal scholars and observers across a wide range of academic publications. Its originality lies in the systematic synthesis of existing scholarship on polygamy marriage *isbat*, situating these diverse viewpoints within a unified analytical framework and critically engaging them to assess their normative relevance and practical applicability. Through this approach, the study moves beyond fragmented or single-perspective analyses by integrating competing legal arguments into a coherent evaluation. This synthesis enables the formulation of alternative legal and policy responses aimed at strengthening legal protection for women, while also offering a strategic understanding of the evolving polemic surrounding polygamy *isbat* following the issuance of Supreme Court Circular Letter (SEMA) No. 3 of 2018.

This study adopts a normative juridical framework employing both statutory and comparative approaches. The statutory analysis centers on Supreme Court Circular Letter (SEMA) No. 3 of 2018, which effectively closes access to polygamy *isbat* for unregistered polygamous marriages, while the comparative approach is used to examine and contrast the views of legal scholars regarding the implications and legitimacy of this policy. The research

applies a descriptive–critical analysis to assess the correlation between the prohibition of polygamy *isbat* and the stated objective of legal protection for women. Primary legal materials consist of SEMA No. 3 of 2018 and authoritative legal opinions, whereas secondary legal materials are drawn from books, peer-reviewed journals, and other relevant scholarly sources. This study aims to provide a comprehensive assessment of whether the prohibition of polygamy *isbat* aligns with the principles of justice and public welfare (*maṣlahah*) or, conversely, undermines the legal protection afforded to women.

DISCUSSION

Regulation of Polygamy *Isbat* in Indonesia

The regulation of polygamy under Law No. 1 of 1974 on Marriage affirms that polygamy is not classified as a prohibited act; however, it is subject to strict limitations through a judicial authorization mechanism. Articles 3 paragraph (2), 4 paragraph (2), and 5 paragraph (1) of the Marriage Law require the existence of specific grounds, the consent of the wife, sufficient economic capacity, and a guarantee of justice as cumulative and alternative prerequisites that must be satisfied by the husband. These restrictions reflect the orientation of Indonesian marriage law, which prioritizes the protection and dignity of wives as a central objective, while simultaneously underscoring that polygamy does not constitute an absolute right of the husband but rather a legal act that is permissible only under particular circumstances and subject to state supervision (Aryani et al., 2024).

Within the framework of marriage registration, the Marriage Law and the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) affirm that the validity of a marriage is determined by religious law, while registration constitutes an administrative legal requirement that determines recognition by the state. Through Articles 5, 6, and 7, the KHI stipulates that an unregistered marriage lacks legal force; nevertheless, it may be submitted for *isbat* nikah before the Religious Court, provided that the essential pillars and conditions of marriage are fulfilled and no legal impediments exist. In this respect, *isbat* nikah fundamentally serves as a corrective legal instrument aimed at ensuring legal certainty and protection for the parties involved, particularly women and children, arising from unregistered marriages (Rosyadi & Kahar, 2023).

The regulation of *isbat nikah* (marriage *isbat*) under the Compilation of Islamic Law does not explicitly prohibit the legalization of unregistered polygamous marriages, thereby normatively leaving room for interpretation in the absence of an express statutory prohibition. However, the Supreme Court, through Supreme Court Circular Letter (SEMA) No. 3 of 2018 on the Implementation of the Formulations Adopted in the Plenary Meeting of the Supreme Court Chambers, stipulates in the Religious Chamber Legal Formulation that petitions for *isbat nikah* concerning polygamous marriages conducted without prior authorization from the Religious Court must be declared inadmissible, except when filed for the purpose of determining a child's legal lineage. In practice, this provision effectively closes access to the legalization of polygamy *isbat* for wives in unregistered polygamous marriages, thereby giving rise to a normative tension between the function of *isbat nikah* as an instrument of legal protection and a judicial policy oriented toward formal legal certainty (Nasrulloh, 2021).

The Problem of Unregistered Polygamy for Women

Unregistered polygamy constitutes a structural source of vulnerability for women who enter such marriages, generating legal, social, economic, and psychological consequences. Because the marital relationship is formed outside the system of state registration and without judicial authorization, women are excluded from formal recognition as lawful wives. This exclusion results in the systematic denial of state-backed protection of their marital rights (Rohman et al., 2025). The following section outlines several adverse consequences of unregistered polygamy that disproportionately affect women.

Under Indonesian positive law, all marriages are required to be registered with the Office of Religious Affairs (*Kantor Urusan Agama*, KUA) in accordance with Article 2 paragraph (2) of Law No. 1 of 1974 on Marriage. Unregistered marriages are not legally recognized, with the result that the state does not regard the parties as a lawful husband and wife. In the context of unregistered polygamy, the legal complexity is further intensified because the requirement to obtain prior judicial authorization for polygamy, as stipulated in Article 4 of the Marriage Law, is entirely bypassed. Following the issuance of Supreme Court Circular Letter (SEMA) No. 3 of 2018, petitions for *isbat nikah* in cases of unregistered polygamy have been prohibited, including those filed in the interest of children. This prohibition effectively deprives women of any legal avenue to obtain formal validation of

their marital status, leaving the state practically absent in addressing the conflicts and adverse consequences arising from unregistered polygamy (Nasrulloh et al., 2021).

Notably, although a wife is precluded from filing a petition for *isbat* nikah, a child born from an unregistered polygamous marriage may still obtain judicial recognition of lineage through the Religious Court. This situation reflects a form of partial state recognition, whereby the child receives legal protection while the woman remains in a condition of vulnerability without adequate legal safeguards (Herlina et al., 2024). This vulnerability arises because participation in an unregistered polygamous marriage places women in a position of bearing the legal, social, and economic consequences of the arrangement (Aziz et al., 2025). By contrast, children do not assume such risks, as they are not involved in the decision to enter into an unregistered marriage. As a result, the state provides more explicit legal protection to children than to mothers, who instead are deprived of administrative rights and comprehensive legal protection (Muhajir & Uyun, 2021).

Unregistered polygamy may also give rise to criminal implications. Article 280 of the Indonesian Criminal Code (KUHP) provides for a maximum sentence of five years' imprisonment for entering into a marriage without the knowledge of the first wife, while Law No. 23 of 2004 on the Elimination of Domestic Violence classifies polygamy conducted without the wife's consent as a criminal offense (Fidiani, 2021). In addition, women married through unregistered polygamous arrangements face the risk of being accused of adultery under Article 284 of the KUHP, as one of the parties is religiously married while legally considered the spouse of another person. This situation illustrates the tension between religious norms, which may regard polygamy as valid when substantive requirements are met, and positive law, which demands formal registration and prior judicial authorization. As a result, women are exposed to criminal liability and legal uncertainty, even where the marriage was entered into voluntarily (Wardani & Hidayah, 2022).

The status of women as unregistered wives has direct implications for their rights as citizens. In the absence of formal state recognition, women are unable to obtain essential civil registration documents, such as identity cards, family cards, or passports, which constitute mandatory prerequisites for access to public services, education, healthcare, and employment. Furthermore, spousal rights, including entitlement to maintenance, inheritance, and legal protection in the event of divorce, are not guaranteed. Within unregistered polygamous marriages, husbands may exercise authority in an arbitrary manner without legal

consequences, thereby exacerbating inequality and injustice within the marital relationship (Rohman et al., 2024).

Beyond administrative and economic rights, unregistered polygamy entangles women in a legal status that is difficult to exit. Divorce may only be initiated by the husband or resolved through the Religious Court, leaving unregistered wives without effective control over their marital status (Elimartati et al., 2025). This limitation restricts women's ability to remarry and heightens the risk of being accused of adultery. Socially, unregistered wives are subject to negative stigma and are often labeled as mistresses or as women who disrupt existing marriages, resulting in layered social and psychological pressures. Women who are unprepared for such conditions may experience emotional trauma, discrimination, and adverse public judgment that undermines their well-being. This situation closely parallels the practice of divorce pronounced outside the court system, which produces comparable legal and social consequences (Nasrulloh et al., 2025).

Unregistered polygamy also engenders internal marital conflict arising from competition among wives for the husband's attention and financial support. In practice, the management of polygamous relationships is difficult to conduct in an equitable manner, particularly when the legal status of an unregistered wife is not formally recognized. Newly married wives are especially vulnerable to marginalization and arbitrary treatment by both the husband and other wives. Such conflicts not only produce psychological distress but also erode marital harmony. Accordingly, unregistered polygamy has multidimensional consequences: it undermines women's legal, social, economic, and emotional rights while simultaneously threatening the stability of the family as a whole.

Scholarly Perspectives on Unregistered Polygamy

In light of the adverse consequences of unregistered polygamy for women, as outlined above, numerous legal scholars have called for renewed dialogue on the urgency of reopening access to polygamy *isbat* for women involved in unregistered polygamous marriages. To provide a comprehensive understanding of this debate, the following discussion presents a simplified overview of the principal scholarly arguments addressing whether access to polygamy *isbat* should be granted or restricted.

Legal Scholars Supporting Access to Polygamy *Isbat*.

Achmad Cholid Fauzi argues that women are entitled to submit petitions for the legalization of unregistered polygamous marriages as an integral component of their right to legal protection. This position is consistent with Article 7 paragraph (2) of the Compilation of Islamic Law, which permits marriages lacking an official marriage certificate to be submitted for *isbat* nikah before the Religious Court without explicitly excluding polygamous marriages. Decision of the Magetan Religious Court No. 445/Pdt.G/2012 further reinforces the recognition of unregistered polygamy as judicial precedent that may be invoked in comparable cases. In addition, Law No. 48 of 2009 emphasizes that judges are obligated to examine and adjudicate cases in accordance with principles of justice and the legal values that develop within society (Fauzi, 2018). Salman Abdul Muthalib similarly contends that polygamy *isbat* constitutes a judicial product open to multiple interpretations, as illustrated by Decision No. 130/Pdt.G/2020/MS.Bna, which granted a petition for the legalization of an unregistered polygamous marriage (Muthalib, 2022).

Arif Bijaksana maintains that petitions for polygamy *isbat* should be admissible, as registration is not the sole determinant of marital validity; unregistered marriages may still be submitted for judicial validation in order to fulfill the objective of registration itself (Bijaksana, 2019). Mohammad Roqib further argues that judges should prioritize the principle of *maṣlahah* by assessing each petition on a case-by-case basis and with due regard to the substantive welfare of the parties involved, rather than relying exclusively on formal juridical considerations, so that the law's commitment to justice is not compromised (Roqib, 2016). Nina Herlina likewise emphasizes that a Supreme Court Circular Letter functions merely as an internal judicial instruction, allowing for divergence in judicial practice, as evidenced by decisions such as No. 130/Pdt.G/2020/MS.Bna and No. 311/Pdr.P/2022/PA.Bjb, both of which granted petitions for the legalization of unregistered polygamous marriages (Herlina et al., 2024).

Nurul Hikmah argues that access to polygamy *isbat* should be opened in order to safeguard women's legal interests, given that unregistered marriages expose women to concrete legal and social disadvantages. From this perspective, the state bears an obligation to intervene by providing legal guarantees so that women's rights are not left unprotected (Hikmah & Subagya, 2020). Meanwhile, M. Yazid Fathoni emphasizes the religious validity of marriage, arguing that a marriage remains valid under religious law even in the absence of registration. Registration and judicial authorization are therefore administrative in nature, and

polygamy *isbat* functions as a mechanism for formal legal recognition (Fathoni, 2018). Muhammad Muchlis similarly asserts that the Marriage Law mandates that marital validity be determined in accordance with Islamic jurisprudence (*fiqh*). Consequently, the rejection of *isbat*, particularly in relation to divorce, stands in tension with this foundational principle (Muchlis et al., 2025). Muhammad Muhajir further highlights the importance of a humanistic approach to law enforcement that addresses legal problems comprehensively rather than focusing solely on formal legality (Muhajir & Akmalia Fitri Mafaza, 2024).

Alfitri asserts that, although permitting polygamy *isbat* may conflict with existing regulatory frameworks, judges should exercise careful case selection rather than apply a blanket prohibition. Where the marital relationship does not give rise to dispute or harm, the legalization of polygamy through *isbat* may be justified (Alfitri et al., 2024). Cik Basir, a judge of the Palembang Religious Court, similarly argues that SEMA No. 3 of 2018 should not be applied uniformly, as certain litigants require access to polygamy *isbat* through contentious proceedings. From this perspective, if the closure of polygamy *isbat* is justified as a means of preventing harm, then opening access to polygamy *isbat* for the purpose of protecting women is equally defensible. The granting of such petitions should not be automatic; judges must remain proportionate and assess the substantive welfare of all parties involved (Basir, 2019).

Legal Scholars Opposing Access to Polygamy Isbat.

Mukhtaruddin Bahrum acknowledges that polygamy *isbat* may offer certain advantages for women. However, full acceptance of such petitions would effectively legitimize practices that deviate from or violate existing legal norms, thereby eroding the values that the regulation of polygamy is intended to protect. From this perspective, the legislative effort to preserve juridical, sociological, and philosophical values through the imposition of strict polygamy requirements would be undermined by the legalization of polygamy conducted without prior judicial authorization. Given that statutory law and government regulations do not impose criminal sanctions on parties to unregistered polygamy, the closure of access to polygamy *isbat* is viewed as a firm regulatory signal aimed at deterring the practice (Bahrum, 2019).

Cucu Solihah emphasizes that the prohibition of polygamy *isbat* should be maintained, as permitting it would encourage the wider practice of unregistered polygamy within society (Solihah, 2019). The harm associated with unregistered polygamy is already substantial, and

its legalization through *isbat* nikah would only amplify negative social risks. Yusriyah similarly argues that legal access to polygamy *isbat* creates incentives for the expansion of unregistered marriages and enables forms of legal circumvention, whereby *isbat* nikah may be exploited as a shortcut to legitimize polygamy (Yusriyah, 2020). Muhammad Saleh further maintains that, although the rejection of polygamy *isbat* may disadvantage women on an individual level, its broader social benefits outweigh such individual harms (Saleh, 2024).

Helmi Abdul Halim views SEMA No. 3 of 2018 as a form of legal protection for the family structure and, within a particular framework of gender justice, as a regulatory measure intended to discourage women from entering unregistered polygamous marriages (Abdul Halim, 2024). Abdul Edo Munawwar similarly stresses that the effectiveness of marriage registration and judicial authorization for polygamy must be upheld, as tolerance toward unregistered polygamy ultimately undermines the authority of the law. From this perspective, closing access to *isbat* nikah does not signify the absence of legal protection for women, since legal safeguards may still be obtained through the husband's compliance with the formal polygamy authorization procedure (Munawar, 2019).

According to a judge of the Kayu Agung Religious Court, Indonesian marriage law prioritizes the principle of monogamy; therefore, the requirements for polygamy must be applied strictly, and procedural violations render polygamous marriages unrecognized by the state. Rozendana similarly argues that although unregistered polygamous marriages may be considered religiously valid, this does not render them freely permissible. Such marriages must still comply with formal legal mechanisms in order to safeguard the common good (Rozendana et al., 2024). Andriyeni further maintains that, from the perspective of *maqāṣid al-shari'ah*, the provisions contained in SEMA No. 3 of 2018 are consistent with the objectives of *maqāṣid* at the level of *darūriyyāt*, particularly in protecting religion, lineage, and property (Adriyeni et al., 2025).

Table. Summary of Scholarly Arguments on Polygamy *Isbat*.

No.	Arguments Supporting Polygamy <i>Isbat</i>	Arguments Supporting Polygamy <i>Isbat</i>
1	Polygamy <i>isbat</i> provides legal safeguards for women by ensuring the protection of their civil and marital rights	Processing polygamy <i>isbat</i> is equated with legitimizing violations of polygamy regulations, particularly the failure to comply with registration and prior judicial authorization requirements

No.	Arguments Supporting Polygamy <i>Isbat</i>	Arguments Supporting Polygamy <i>Isbat</i>
2	The legal provisions governing <i>isbat</i> nikah are formulated in general terms and therefore apply to both monogamous and polygamous marriages	Opening access to polygamy <i>isbat</i> is likely to encourage the proliferation of unregistered polygamy and to increase the risk of legal circumvention
3	Judicial decisions granting polygamy <i>isbat</i> have developed into jurisprudence that may be relied upon in similar cases	Supreme Court Circular Letter (SEMA) No. 3 of 2018 explicitly prohibits polygamy <i>isbat</i> ; accepting such petitions therefore entails disregarding binding judicial policy
4	The principle of marriage registration supports the opening of judicial avenues for <i>isbat</i> as a means of formalizing marital status	SEMA No. 3 of 2018 clarifies the legal incompatibility of unregistered polygamy with the statutory framework and deliberately closes existing legal loopholes
5	Broader conceptions of justice require that petitions for polygamy <i>isbat</i> be examined where substantive welfare considerations are at stake	Legal effectiveness must be upheld, requiring polygamy to proceed strictly through judicial authorization and marriage registration, without compromise
6	Women who suffer harm as a result of unregistered polygamy require access to polygamy <i>isbat</i> as a mechanism to mitigate legal and social vulnerability	Women's legal protection may still be secured through compliance with the formal polygamy authorization process, rendering polygamy <i>isbat</i> non-essential
7	Although unregistered marriages are considered religiously valid, polygamy <i>isbat</i> enables selective administrative legalization under judicial supervision	The Marriage Law adopts a monogamous system as its foundational principle, and polygamy <i>isbat</i> undermines this normative structure
8	Not all cases of unregistered polygamy are motivated by legal circumvention; accordingly, judges should adopt a selective and case-specific approach	Closing access to polygamy <i>isbat</i> serves as a regulatory reminder that polygamy is not a trivial legal matter and reinforces legal discipline

Argumentative Dialogue on the Prohibition of Polygamy *Isbat*

Drawing on the divergent positions advanced by legal scholars, polygamy *isbat* in cases of unregistered marriages entails both potential benefits and adverse consequences. The principal obstacle lies in Supreme Court Circular Letter (SEMA) No. 3 of 2018, which prohibits the Religious Courts from adjudicating petitions for polygamy *isbat*. This prohibition warrants critical examination, as *isbat* nikah may be understood as a corrective

legal mechanism aimed at addressing procedural deficiencies in polygamous marriages. Whether such petitions should be granted or rejected ought to depend on judicial assessment of the factual circumstances of each case. Bringing the parties before the court enables judges to evaluate the appropriate legal course of action and to provide guidance so that polygamy, where permitted, is conducted in compliance with religious norms and state administrative procedures, particularly for communities with limited legal awareness.

Concerns that permitting polygamy *isbat* would increase the prevalence of polygamy in society require reconsideration. The primary drivers of polygamy do not lie in the availability of *isbat* nikah but in individual motivations, such as personal desire, the wish to have children, or perceptions regarding a wife's inability to fulfill marital obligations. Whether access to *isbat* nikah is opened or closed is unlikely to have a significant influence on an individual's decision to engage in polygamy, as positive law is still perceived by segments of society as an administrative formality rather than a determinant of marital validity (Syamdan & Purwoatmodjo, 2019).

The effectiveness of polygamy regulation also presents a significant challenge. Legal provisions requiring prior judicial authorization are frequently disregarded, resulting in a gap between legal theory and practical implementation. However, this lack of enforcement does not constitute a sufficient reason to categorically prohibit polygamy *isbat*. The disparity arises from low legal awareness, limited adherence to religious teachings, inadequate public education, and other socio-cultural factors. In other words, a total prohibition does not ensure that polygamous practices are conducted in accordance with proper procedures or with legal effectiveness. Although polygamy constitutes a permissible alternative under Islamic law (Nasrulloh & Witro, 2021), in practice, many members of society continue to engage in unregistered polygamous marriages.

Women still have access to legal protection through petitions for formal polygamy authorization, although such petitions can only be submitted by the husband. This arrangement highlights the limited legal agency of women, who remain dependent on the husband's willingness to initiate the process, placing them in a vulnerable and potentially coercive position. Unregistered polygamy, in particular, expose women to heightened legal insecurity, as they are unlikely to receive adequate legal protection (Ridwan, 2025). Under these circumstances, women find it difficult to extricate themselves from their marital status,

generating structural injustice that must be addressed through gender-sensitive legal policies and practices.

The principle of marriage under Indonesian law is monogamy, which is why polygamy procedures are strictly regulated and framed as an exceptional measure. Monogamy serves as the default legal principle, while polygamy is permitted only when specific conditions are met. Where these conditions for polygamy are legitimately satisfied, polygamy *isbat* for unregistered marriages should still be permissible, as it aligns with the broader principles of marriage, while simultaneously prioritizing welfare and compliance with religious law and administrative procedures. Notably, the Ministry of Home Affairs and Directorate General of Population Administration Circular No. 472.2/15145/DUKCAPIL, which allows the status “married but not registered” on family cards, further complicates the legal landscape by creating a tension between laws. While the Ministry recognizes unregistered marriages, Religious Courts continue to prohibit polygamy *isbat*, generating a conflict in legal interpretation (Munib, 2023).

Concerns regarding potential legal circumvention must also be evaluated on a case-by-case basis. Petitions for polygamy *isbat* are not automatically granted, as the process requires careful judicial scrutiny and the exercise of due diligence. Judges must assess the substantive welfare of all parties involved. Where polygamy *isbat* does not produce harm, for example when the first wife’s consent has been obtained and the husband demonstrates sufficient financial and psychological capacity, the process may be deemed consistent with the principles of *maṣlahah*. This case-specific approach allows judges to balance the interests of the parties with the provisions of Supreme Court Circular Letter (SEMA) No. 3 of 2018 (Rohman et al., 2025).

Supreme Court Circular Letter (SEMA) No. 3 of 2018 establishes that polygamy *isbat* falls outside the jurisdiction of Religious Courts. However, according to Cik Basir, this prohibition applies generally and not to every individual case. Judges may handle polygamy *isbat* petitions if they are deemed to serve the principle of *maṣlahah*. This case-by-case approach enables women to access their rights, including divorce, maintenance, and inheritance. Consequently, a total closure of polygamy *isbat* does not constitute an absolute barrier, and judges retain the discretion to allow the *isbat* process selectively or to dismiss petitions as *niet ontvankelijke verklaard* when they lack substantive merit.

CONCLUSION

Women who become wives in unregistered polygamous marriages occupy a highly vulnerable position legally, socially, and psychologically. Under positive law, they lack formal legal protection, and the polygamous marriage cannot be officially registered, including the issuance of valid civil documents. This absence of legal recognition makes it difficult for women to claim their rights as wives, such as maintenance, inheritance, and equitable treatment within the household. Moreover, their marital status cannot be altered without the intervention of the husband or a judge, placing women in a constrained position and dependent on the decisions of others. Socially, women in unregistered polygamous marriages are often subjected to public scrutiny and negative stigma that undermines their dignity, while within the domestic sphere, their presence is frequently disregarded and treated as that of a “unrecognized wife.” Overall, polygamy, particularly when conducted in an unregistered manner, tends to disadvantage women, compelling them to bear harms that are not only material but also moral and psychological.

Legal scholars are divided into two main positions regarding polygamy *isbat*. The first group supports polygamy *isbat* as a mechanism for safeguarding women’s legal rights, arguing that restricting access exacerbates the burdens and vulnerabilities imposed by unregistered polygamous marriages. This perspective emphasizes substantive welfare, draws on jurisprudence from court decisions granting polygamy *isbat*, and invokes the principle of marriage registration as a means of enabling administrative protection. The second group opposes polygamy *isbat*, citing Supreme Court Circular Letter (SEMA) No. 3 of 2018, legal certainty, and the principle of regulatory order, which requires that polygamy proceed only with judicial authorization and formal registration. In light of the practical realities faced by women, this study proposes a pragmatic alternative: the avenue for polygamy *isbat* may be fully opened under a selective procedure, or judges may assess petitions based on their substantive benefit and welfare impact; petitions demonstrating tangible benefit may be processed, whereas those lacking substantive merit may be dismissed. This approach ensures that the principles of justice and legal protection for women remain prioritized without compromising the enforcement of legal discipline in unregistered polygamous marriages.

REFERENCES

- Abdul Halim, H. (2024). Review of Islamic Marriage Law and Gender Justice Towards SEMA Number 3 Of 2018 Concerning Rejection of Isbat Polygamy Cases in Religious Courts. *Journal of Family Law and Islamic Court*, 3(2). <https://doi.org/10.26618/jflic.v3i2.16524>
- Adriyeni, A. A., Wahyuni, Z., & Daipon, D. (2025). Philosophical Examination of the Itsbat Nikah (Marriage Legalization) in Sirri Polygamy Following the Issuance of Supreme Court Circular No. 3 of 2018. *HUMANISMA: Journal of Gender Studies*, 8(1), 80–89. <https://doi.org/10.30983/humanisma.v8i1.8266>
- Alfitri, A., Imanullah, R., & Rahman, A. (2024). Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts. *Ulumuna*, 28(1), 313–344. <https://doi.org/10.20414/ujis.v28i1.639>
- Alhaidar, N. B., Muhajir, M., & Dhuha, S. (2023). The Closure of Isbat For Polygamous Marriage on Legal Purpose Perspective. *AL-HUKAMA'*, 13(1), 1–26. <https://doi.org/10.15642/alhukama.2023.13.1.1-26>
- Aryani, W. I., Adly, M. A., & Yazid, I. (2024). Polygamy in Islam and Its Relevance to Law No. 1 of 1974 Concerning Marriage. *Indonesian Interdisciplinary Journal of Sharia Economics (IJSE)*, 7(3), 6981–7003. <https://doi.org/10.31538/ijse.v7i3.5657>
- Aziz, A., Iqbal Subhan Nugraha, & Lukman Hakim. (2025). Women's Rights in Choosing a Partner in Marriage Gender Justice Perspective in Grobogan Regency. *Muwazah*, 17(1), 47–68. <https://doi.org/10.28918/muwazah.v17i1.9178>
- Bahrum, M. (2019). Problematika Isbat Nikah Poligami Siri. *Jurnal Al-Adalah: Jurnal Hukum Dan Politik Islam*.
- Basir, C. (2019). *Penanganan Perkara Permohonan Isbat Nikah Poligami Secara Siri Dan Hubungannya Dengan Permohonan Asal Usul Anak Di Pengadilan Agama*. Menyikapi Rumusan Hasil Rapat Pleno Kamar Agama Mahkamah Agung Dalam SEMA Nomor 3 Tahun 2018, Pengadilan Tinggi Agama Palembang.
- Bijaksana, A. (2019). Problematika Itsbat Nikah Isteri Poligami Dalam Penyelesaian Di Pengadilan Agama. *Jurnal Ilmiah Hukum Dan Keadilan*, 7.
- Brilliant, I., Kurniawati, D. A., & Sa'adah, F. (2024). Kepastian Hukum Isbat Nikah Poligami Siri Dan Status Anak Dari Poligami Siri Pasca Berlakunya Sema Nomor 3 Tahun 2018. *Jurnal Hikmatina*, 6(1), 58–70.
- Budi, L. S., & Miharja, M. (2022). Akibat Hukum Poligami yang Dilakukan dengan Nikah Siri dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Sebagaimana Diubah dengan Undang-Undang Nomor 16 Tahun 2019 (Studi Kasus

- Putusan Nomor 1548/Pdt.G/2019/PA.JB). *Qiyas: Jurnal Hukum Islam Dan Peradilan*, 7(2). <https://doi.org/10.29300/qys.v7i2.2966>
- Elimartati, Warman, A. B., Firdaus, Hayati, R. F., Kasmidin, & Asmara, M. (2025). From Custodians to Bystanders: Tigo Tungku Sajarangan's Responses to Unregistered Marriages Practices in Minangkabau. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 18(1), 47–64. <https://doi.org/10.14421/ahwal.2025.18103>
- Fathoni, M. Y. (2018). Kedudukan Pernikahan Poligami Secara Sirri Ditinjau Dari Hukum Keluarga. *Jurnal IUS Kajian Hukum Dan Keadilan*, 6(1). <https://doi.org/10.29303/ius.v6i1.525>
- Fauzi, A. C. (2018). Kedudukan Hukum Itsbat Nikah Poligami Sirri. *JURNAL USM LAW REVIEW*, 1(1). <https://doi.org/10.26623/julr.v1i1.2234>
- Fidiani, F. (2021). Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan and Tunisia. *Sakina: Journal of Family Studies*, 5(1). <https://urj.uin-malang.ac.id/index.php/jfs/article/view/563>
- Hakim, A. (2022). Reasons for Polygamy and Its Impact on Muslim Family Life: Experiences of Polygamous Perpetrators in Babat, Lamongan, Indonesia. *JIL: Journal of Islamic Law*, 3(1), 34–53. <https://doi.org/10.24260/jil.v3i1.529>
- Harahap, M. Y. (2016). *Hukum Acara Perdata*. Sinar Grafika.
- Herlina, N., Falah, M. B., & Hermawati, K. A. (2024). Islamic Legal Traditionalism in the Consideration of Polygamous Validation (Analysis of Decisions on the Granting the Validation of Unregistered Marriage in Polygamy Cases After the Enactment of SEMA No. 3/2018). *Transformatif*, 8(1), 1–16. <https://doi.org/10.23971/tf.v8i1.7928>
- Hikmah, N., & Subagya, A. A. (2020). Perlindungan Hukum Bagi Perempuan Terkait Praktik Poligami Siri Dalam Perspektif Hukum Islam. *Lentera: Journal of Gender and Children Studies*, 2(1), 35–54. <https://doi.org/10.26740/lentera.v2i1.9039>
- Jauhari, I., Yahya, A., Darmawan, D., Dahlan, D., & Nasir, M. (2023). Legal Analysis of Unregistered Marriage Viewed from Ulama's Perspective in Aceh Province. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 8(2). <https://doi.org/10.22373/petita.v8i2.196>
- Masyithoh, N. D., Eki, S., Nto, Y., Ernawati, B., & Hidayati, N. (2021). Unregistered Polygamous Marriage of Civil Servants and its Implication for Wives' Financial Problem, Social Fate and Loss of Children's Welfare. *International Journal of Early Childhood Special Education*, 13(2), 312–318. <https://doi.org/10.9756/INT-JECSE/V13I2.211067>
- Muchlis, M., Purba, H., & Barus, U. M. (2025). Perlindungan Hukum melalui Itsbat Nikah pada Poligami Siri: Tinjauan atas Putusan PA No. 43/Pdt.G/2021/PA.Batg. *Indonesian Journal of Humanities and Social Sciences*, 6(3), 521–532.

- Muhajir, M. & Akmalia Fitri Mafaza. (2024). Rejection of Isbat for Polygamous Marriage: A Perspective from Critical Legal Studies. *Jurnal Ilmiah Mahasiswa Raushan Fiker*, 13(2), 354–364. <https://doi.org/10.24090/jimrf.v13i2.11230>
- Muhajir, M., & Uyun, Q. (2021). SEMA Waiver Number 3 of 2018 in the Case of Isbat for Polygamous Marriage: Study of Legal Considerations of Judges in Decision Number 634/Pdt.G/2018/PA.Mtr. *Asy-Syir'ah: Jurnal Ilmu Syaria'ah Dan Hukum*, 55(2), 263. <https://doi.org/10.14421/ajish.v55i2.1002>
- MUI. (2008). *Fatwa MUI Nomor 10 Tahun 2008 Tentang Nikah Di Bawah Tangan*.
- Munawar, A. E. (2019). Nikah Siri dan Poligami (Antara Kesadaran Sosial Keagamaan dan Benturan Perundang Undangan). *Jurnal Hukum Islam*, 17(1), 38–56.
- Munib, I. (2023). Isbat Nikah Poligami Dan Kawin Belum Tercatat Pada Kartu Keluarga Perspektif Tujuan Hukum Gustav Radbruch. *JURISY: Jurnal Ilmiah Syariah*, 3(2), 58–74.
- Murni, M., & Nisa, M. N. (2023). Permohonan Isbat Nikah Bagi Poligami yang Tidak Dicatatkan. *Rechtidee*, 18(2), 106–127. <https://doi.org/10.21107/ri.v18i2.23794>
- Mutarofik, M., Trigiyatno, A., Arifin, I., Achmad, M., & Azizah, A. (2024). Implications of Unregistered Polygamous Marriages For Children's Rights in Indonesia. *TAQNIN: Jurnal Syariah Dan Hukum*, 6(02), 185. <https://doi.org/10.30821/taqnin.v6i02.20571>
- Muthalib, S. A. (2022). Pengesahan Isbat Nikah Perkawinan Poligami: Kajian Putusan Nomor 130/Pdt.G/2020/Ms.Bna. *El-Ushrah: Jurnal Hukum Keluarga*, 5(2), 224–238. <https://doi.org/10.22373/ujhk.v5i2.16040>
- N. Makfiyati, Syafe'i, Z., & Hidayat, A. (2024). The Relationship Between Isbat Marriage Polygamy Sirri and Supreme Court Circular Letter (SEMA) Number 3 of. 2018. *Journal of Law, Politic and Humanities*, 4(6), 2044–2054. <https://doi.org/10.38035/jlph.v4i6.629>
- Nasrulloh, M. (2021). *Isbat Nikah Poligami Siri Perspektif Maslahat Mursalah Syatibil: Studi Sema Nomor 3 Tahun 2018* [Masters, Universitas Islam Negeri Maulana Malik Ibrahim]. <http://etheses.uin-malang.ac.id/31142/>
- Nasrulloh, M., Ermawan, M. Z. U., Thoriquddin, M., & Anam, K. (2025). Legal Dissonance and Social Consequences of Unregistered Ṭalāq in Indonesia. *Al-Syakhsiyah: Journal of Law and Family Studies*, 7(2), 33–52. <https://doi.org/10.21154/syakhsiyah.v7i2.11686>
- Nasrulloh, M., & Witro, D. (2021). Poligami sebagai Perkawinan Abnormal: Kajian terhadap Syariat Islam. *Musāwa Jurnal Studi Gender Dan Islam*, 20(1), 17–30. <https://doi.org/10.14421/musawa.2021.201.17-30>
- Nasrulloh, M., Zenrif, M. F., & Yasin, R. C. L. (2021). Isbat Nikah Poligami Ditinjau Dari Masalah Mursalah Al-Shatiby: Studi SEMA Nomor 3 Tahun 2018. *Al-Qanun: Jurnal*

- Pemikiran Dan Pembaharuan Hukum Islam*, 24(1), 122–144.
<https://doi.org/10.15642/alqanun.2021.24.1.122-144>
- Nasution, M. E., & Akbar, A. (2023). Analisis Putusan Pengadilan Agama No. 299/Pdt.G/2022/PA. PspK (Padang Sidempuan Kota) Tentang Isbat Nikah Poligami yang Masih Dalam Pernikahan yang Sah. *UNES Law Review*, 6(2), 6961–6969.
- Nisa, M., Jendrius, & Indraddin. (2025). Meaning of Being Siri Wife in a Poligamous Marriage. *Jurnal Sosiologi Nusantara*, 11(1), 38–60.
<https://doi.org/10.33369/jsn.11.1.38-60>
- Ridwan, S. (2025). Pernikahan tanpa Pencatatan: Kegagalan Negara dalam Melindungi Hak Sipil Perempuan dan Anak. *Jurnal Ilmiah Gema Perencana*, 4(1), 77–96.
<https://doi.org/10.61860/jigp.v4i1.196>
- Rohman, H., Gafurof, R. A., Jamaluddin, A., Toyyibah, W., & Nafan, A. W. (2025). Between Law and Faith: Judicial Dilemmas of Unregistered Polygamy and Divorce in Indonesia. *Indonesian Journal of Islamic Law*, 8(2), 168–187.
- Rohman, H., Rifqi, M. J., Rohman, Moh. F., Solikin, A., & Nafan, A. W. (2024). The Phenomenon of Unregistered (Sirri) Marriages in Surabaya. *Hikmatuna: Journal for Integrative Islamic Studies*, 10(2), 218–226.
<https://doi.org/10.28918/hikmatuna.v10i2.9180>
- Roqib, M. (2016). Penolakan Ithbat Nikah Siri Bagi Suami Yang Sudah Beristri. *Al-Hukama The Indonesian Journal of Islamic Family Law*, 6(2).
- Rosyadi, I., & Kahar, A. (2023). Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule. *Jurnal Hukum Dan Peradilan*, 12(3), 469.
<https://doi.org/10.25216/jhp.12.3.2023.469-488>
- Rozendana, F. Z., Saiban, K., & Yasin, N. (2024). Isbat Nikah Pada Perkawinan Siri Poligami Tinjauan Perbandingan Hukum Positif Dan Masalah Mursalah. *Al-Ahwal Al-Syakhsiyah: Jurnal Hukum Keluarga Dan Peradilan Islam*, 5(1), 67–76.
<https://doi.org/10.15575/as.v5i1.31908>
- Saleh, M. (2024). Penolakan Itsbat Nikah Poligami Ditinjau Dari Maqashid Syariah. *Ahlana: Jurnal Hukum dan Hukum Keluarga Islam*, 1(2), 91–100.
- Solihah, C. (2019). Dampak Kebijakan Isbat Nikah Terhadap Perkawinan Siri Dan Campuran Di Kabupaten Cianjur. *Masalah-Masalah Hukum*, 48(4).
- Sudrajad, A. S. A., Siregar, I., & Harahap, Z. A. A. (2024). Legal Conflict in Isbat Nikah of Polygamous: Perspective of SEMA Number 3 Year 2018 and its Implications for Biological Justice. *Tribakti: Jurnal Pemikiran Keislaman*, 35(2), 243–262.
<https://doi.org/10.33367/tribakti.v35i2.5533>

- Syafa', N. S., & Musyafaah, N. L. (2024). Isbat Nikah Pernikahan Poligami secara Siri dalam Putusan Nomor 3401/Pdt.G/2022/PA.Sby. *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, 5(1), 50–72. <https://doi.org/10.15642/mal.v5i1.325>
- Syamdan, A. D., & Purwoatmodjo, D. D. (2019). Aspek Hukum Perkawinan Siri Dan Akibat Hukumnya. *Notarius*, 12(1), 452–466.
- Wardani, G. R. S., & Hidayah, K. (2022). Sanksi Pidana Pelaku Poligami Siri Di Indonesia Perspektif Maqashid Syari'ah Jasser Auda. *Hukum Islam*, 22(1), 95. <https://doi.org/10.24014/jhi.v22i1.13798>
- Wati, A. N., Pagar, P., & Matsum, H. (2025). Legal Protection for Wives in Unregistered Polygamous Marriages: An Analysis of Islamic Law in Indonesia. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 24(1), 3701–3712. <https://doi.org/10.31941/pj.v24i2.6589>
- Yusdika, S. H. (2024). Analisis Prespektif Hukum Terhadap Permohonan Pengesahan Nikah Poligami Sirri. *Hakim: Jurnal Ilmu Hukum Dan Sosial*, 2(2), 24–34. <https://doi.org/10.51903/hakim.v2i2.1714>
- Yusriyah. (2020). Melegalkan Perkawinan Siri dan Perkawinan Campuran Melalui Isbat Nikah (Studi di Kabupaten Banyumas). *Al-Hamra Jurnal Studi Islam*, 1(1).