



The Rejection of *Itsbat Nikah* for an Unauthorized Polygamous Marriage: A Study of Religious Court Decision of Jombang Number 2522/Pdt.G/2023/PA.Jbg

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Abstract: This study aims to analyze the legal considerations of the panel of judges in the Jombang Religious Court Decision No. 2522/Pdt.G/2023/PA.Jbg, examine the status of permission for polygamy in a petition for *itsbat nikah* following the dissolution of the first marriage, and explore the implications of the rejection of *itsbat nikah* for the second wife and children. The study employs an empirical-juridical approach using descriptive-analytical methods. Data were obtained through literature review, judgment analysis, and interviews with judges at the Jombang Religious Court. The results indicate that the application for *itsbat nikah* was rejected because, at the time the second marriage took place, Petitioner I was still legally married to his first wife and had not obtained permission for polygamy. Permission for polygamy is positioned as a substantive requirement determining the legality of a polygamous marriage under state law. This study found that the first marriage had been dissolved before the application for *itsbat nikah* was filed, meaning the polygamous condition which forms the basis for the requirement of permission for polygamy had ceased to exist. The rejection of the marriage validation affects the legal certainty of the second wife's and children's status, particularly in administrative and civil law matters. This ruling highlights the tension between legal certainty, justice, and legal protection in resolving marriage validation cases arising from polygamy without permission.

Keywords: Marriage validation, unregistered polygamy, permission for polygamy.

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Introduction

Marriage is an important part of the social and legal order in Indonesian society. Law No. 1 of 1974 as amended by Law No. 16 of 2019 defines marriage as “a spiritual bond between husband and wife with the aim of forming a happy and lasting family (household) based on belief in the One Supreme God.” Based on this definition, the bond created



between husband and wife is not merely an emotional one; rather, it is a legal bond that affects personal status, civil relationships, and the legal standing of children born from that marriage (Andriaman et al. 2025, 46).

Law No. 1 of 1974 further stipulates in Article 2, paragraphs (1) and (2), that a marriage must fulfill two main elements: it must be conducted in accordance with the teachings of the respective religion, and it must be registered by an authorized official in accordance with the provisions of applicable laws and regulations. Article 5 of the Compilation of Islamic Law (KHI), in Chapter 2 on the fundamentals of marriage, further clarifies that in order to ensure administrative order regarding marriages, every member of the Islamic community is required to register their marriage with the competent authority. The purpose of marriage registration is to serve as proof of the marriage and to provide legal certainty to the husband and wife who are bound by the marriage bond; if there is concern that a dispute or breach of obligations may arise in the future, the aggrieved party may take legal action to defend and secure their rights (Faizah Bafadhal 2014, 68).

In practice, there are still many people who enter into marriages without having them registered by the appropriate authorities. The law provides a solution for the legal consequences arising from marriages that are not registered. Article 7 (2) of the Compilation of Islamic Law (KHI) states that for the validation of a marriage, if a marriage certificate cannot be provided, an application for *itsbat nikah* may be filed with the Religious Court. *Itsbat nikah*, which is the process of legal validation for unregistered marriages, is regulated under Article 64 of Law No. 1 of 1974 (Nazah and Husnia 2018, 252).

Although Indonesian law offers *itsbat nikah* as a solution for unregistered marriages, in some situations a more complex issue arises, when an application for *itsbat nikah* is filed for a polygamous marriage conducted without the first wife's consent, and the application is filed after the first marriage has already been dissolved, making it difficult for the husband to file for *itsbat nikah* with the Religious Court. Law No. 1 of 1974 regulates the conditions under which a husband is permitted to practice polygamy in Article 3, paragraph (2): "The court may grant permission to a husband to have more than one wife if so desired by the parties concerned." Article 4, paragraph (2), further specifies the conditions under which the court may grant a husband permission to practice polygamy, including: (a) the wife is unable to fulfill her obligations as a wife; (b) the wife has a physical disability or an incurable illness; (c) the wife is unable to bear children.

The legal terms and conditions imposed on individuals who practice polygamy constitute restrictions imposed by the state on the practice of polygamy. In reality, the practice of polygamy is prone to causing injustice and the neglect of a husband's obligations toward his wife, whether in terms of financial support, care, or legal

protection (Devi 2025, 436). These restrictions are in line with Surah An-Nisa, verse 3:

وَأِنْ خِفْتُمْ أَلَّا تَقْسِطُوا فِي الْيَتَامَى فَاتَّكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَّةَ وَرَبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَى أَلَّا تَعُولُوا

Meaning: "If you fear you cannot act fairly towards the orphans then marry the women you like two, or three, or four. But if you fear you will not be fair, then one, or what you already have. way you are less likely to commit injustice" (Kemenag RI 2016, 77)

This verse explains that polygamy is permitted only for husbands who are capable of treating their wives fairly, and if there is concern that such fairness cannot be achieved, it is recommended to be content with one wife. This is further emphasized in a hadith from the Prophet Muhammad SAW (At-Tirmidzi 2009, 611):

عن أبي هريرة، عن النبي صلى الله عليه وسلم، قال: "إذا كانت عند الرجل امرأتان، فلم يعدل بينهما، جاء يوم القيامة وشقه ساقطاً."

Meaning: From Abu Hurairah RA, the Messenger of Allah ﷺ said, "If a man has two wives but does not treat them fairly, on the Day of Resurrection he will come with one side of his body slumped." HR. Tirmidzi.

The provisions regarding permission for polygamy are reinforced in Article 56 of the Compilation of Islamic Law (KHI), which states that a husband who wishes to have more than one wife must obtain permission from the Religious Court, subject to certain conditions that must be met as set forth in Articles 57 and 58. These requirements include the consent of the first wife as well as other relevant parties; assurance that the husband is capable of providing for the needs of his wives and their children; and a guarantee that the husband is capable of treating his wives and children fairly.

These restrictions on polygamy are in accordance with the usuliyah principle :

الأصل في الأمر للوجوب إلا ما دلّ الدليل

Meaning: The default ruling regarding a command (amr) is that it is obligatory (wujub), unless there is another piece of evidence indicating otherwise such as a recommendation, permissibility, or prohibition (Nurul Aulia, Khuri 'Aini, dan Lailatul Mahabah 2026, 261).

This principle states that the default ruling regarding a command is that it is obligatory unless there is evidence to the contrary. The command to act justly in polygamy, as stated in Surah An-Nisā', verse 3, is a binding obligation that must be fulfilled by every husband who wishes to practice polygamy. Consequently, fairness cannot be understood as merely an option or a recommendation, but rather as a religious obligation that is a prerequisite for the validity and permissibility of polygamy. If this command cannot be fulfilled or if there is concern that it will be violated, then polygamy can no longer be legally justified.

In practice, Religious Courts have taken varying approaches in handling such



cases. Some courts hold that permission for polygamy is a substantive requirement that must be fulfilled at the time of the marriage; thus, the absence of such permission constitutes grounds for rejecting a petition for *itsbat nikah* even if the first marriage has been dissolved (Manan 2008, 87–92). On the other hand, given that the first marriage has ended, there is no longer any urgency to uphold the requirement for a polygamy permit because the polygamous relationship itself has ended.

Given the discrepancy between the court’s opinion and the circumstances of this case, the following fiqh principle applies:

الْحُكْمُ يَدُورُ مَعَ عِلَّتِهِ وَجُودًا وَعَدَمًا

Meaning: “The ruling depends on the presence or absence of the cause (*‘illat*).” This principle affirms that the applicability of a ruling depends on the underlying cause (Hermanto dan Yuhani’ah 2024, 45).

The legal rationale for requiring permission for polygamy is to prevent any injustice that might occur. However, in this case, the application for *itsbat nikah* was filed after the first marriage had already been dissolved. It is concluded that the polygamous marriage no longer exists. Consequently, the legal rationale underlying the requirement for polygamy permission in an *itsbat nikah* application has also changed. Therefore, the application of the polygamy permission requirement as a basis for rejecting an *itsbat nikah* application needs to be reevaluated.

The Jombang Religious Court’s Decision No. 2522/Pdt. G/2023/Pa.Jbg serves as a concrete example of this legal issue. In this decision, the panel of judges rejected a petition for *itsbat nikah* regarding a second marriage entered into without permission for polygamy, even though the first marriage had been dissolved. The legal reasoning used by the panel of judges in rejecting the petition is worth examining in greater depth, particularly from the perspective of legal certainty and the protection of the interests of the second wife and the children born of that marriage. The rejection of such a marriage validation petition has significant legal implications (Maria, Irawan, dan Wati 2023, 4).

Methods

This study employs an empirical-juridical approach using descriptive analysis. Research using an empirical-juridical approach aims to provide a legal analysis of positive law and applicable norms (Zainuddin and Karina 2023, 119). In this study, the empirical-juridical approach is used to examine the legal considerations of the panel of judges in the Jombang Religious Court Decision No. 2522/Pdt.G/2023/PA.Jbg regarding the rejection of the validation of a marriage in a case of polygamy without permission. This study not only analyzes the court decision as a legal document but is also supported by interviews to gain an understanding of the judges’ considerations in adjudicating the case based on the law without disregarding justice.



The method used in this study is descriptive analysis. The descriptive method aims to provide a systematic, factual, and accurate description of the subject under study specifically regarding the structure of court decisions and to analyze the judges' legal reasoning through the interpretation of applicable legal norms (Nur Aksa, Mona Widia, and Hanani 2025, 2231).

The data used consists of qualitative data sourced from primary and secondary data. Primary data includes the Jombang Religious Court Decision No. 2522/Pdt.G/2023/PA.Jbg, relevant laws and regulations, and interview results. Secondary data was obtained from books, scientific journals, and previous studies relevant to marriage validation, polygamy, and judicial reasoning. Data collection was conducted through literature review and interviews. The data obtained were then analyzed descriptively and analytically through the stages of data grouping, interpretation of legal norms, analysis of judges' reasoning, and drawing conclusions regarding the consistency of the ruling with the principles of justice, utility, and legal certainty.

Result and Discussion

Legal Rationale of the Panel of Judges in Judgment No. 2522/Pdt. G/2023/PA.Jbg

In the process of adjudicating and rendering a decision, judges are required to balance legal interests with the justice that will result from the decision to be issued. In other words, the decision must remain consistent with applicable norms without disregarding justice as the guiding principle and ultimate purpose of the law (Nurhakim, Rosadi, and Naisabur 2025, 53). In adjudicating a case, judges must consider the legal facts revealed during the trial. Once the legal facts have been established in court, the judge's ability to discern legal principles is crucial to ultimately rendering a fair decision (Nasrudin and Nursari 2025, 11).

In civil law, a distinction must be made between "facts" (matters of fact) and "law" (matters of law). The presentation of evidence in judicial proceedings must focus on the facts that serve as the foundation for applying the applicable law in the case currently being tried at The importance of facts as the foundation for applying the law in adjudicating a case demonstrates that judges, in deciding a case, must properly consider the available evidence, ensuring that the evidence in the case is admissible and relevant. This ensures that the case is resolved as fairly as possible (Irfan, Damanik, and Lubis 2024, 77).

A judge's reasoning forms the basis of the arguments used to adjudicate a case. Before formulating the legal reasoning, the judge first gathers the legal facts presented during the trial. The legal facts obtained are the result of statements made by witnesses and relevant parties, accompanied by evidence to support the testimony presented in court (Bahtra Holle, Adam, and Lawerissa 2025, 4194–4195).



Based on the case regarding the petition for *itsbat nikah* in Decision No. 2522/Pdt.G/2023/PA.Jbg of the Jombang Religious Court. In deciding this case, the panel of judges considered that the marriage of the two petitioners took place while the husband still had a lawful wife and had not obtained permission for polygamy from the religious court. This was corroborated by the facts revealed during the trial, including:

1. The petitioners entered into a siri marriage on April 2, 1996, at the residence of Petitioner II in Jombang Regency;
2. The marriage was conducted in accordance with Islamic law, with Petitioner II's biological sibling acting as the marriage guardian because Petitioner II's biological father had passed away.
3. At the time the marriage took place, Petitioner I was still legally married to the Respondent and had two children from that marriage.
4. Petitioner II was aware that Petitioner I was still the Respondent's husband when the marriage ceremony took place.
5. The marriage between Petitioner I and Petitioner II took place without the permission of the Religious Court and without the consent of the Respondent as the lawful wife.
6. Two children were born from that marriage: Child 1 and Child 2.
7. The Petitioners' marriage was not registered at the Sumobito Subdistrict Office of Religious Affairs.
8. Petitioner I and the Respondent were ultimately officially divorced based on a Divorce Certificate dated September 18, 2023.
9. The purpose of filing for *itsbat nikah* is to obtain a legal basis for registering the marriage at the KUA and processing the children's birth certificates

The panel of judges in Decision No. 2522/Pdt.G/2023/PA.Jbg based its reasoning on the legal fact that the petitioners' marriage took place while the husband was still legally married to his first wife. Although the application for *itsbat nikah* was filed after the first marriage had ended due to divorce, the judge still assessed the validity of the marriage based on the time the marriage contract was concluded—that is, while the husband was still married to his first wife.

Based on the results of the researcher's interview with Judge Drs. Moh. Muchsin, M.Sy., of the Jombang Religious Court regarding Decision No. 2522/Pdt.G/2023/PA.Jbg, it was explained that "What we consider is the time of the marriage. At that time, he still had a wife; it was a case of polygamy." This reasoning indicates that the judge adopted a normative approach that focused on the initial legal facts surrounding the marriage; thus, the divorce from the first wife did not negate the fact that there had been a violation of legal procedures in the practice of polygamy that occurred previously.

In addition to considering the legal facts revealed during the trial, the panel of judges also based its decision on statutory provisions. The legal basis used by the panel



of judges in rejecting this decision was Law No. 1 of 1974 on Marriage in conjunction with Law No. 16 of 2019, as well as the Compilation of Islamic Law. Articles 4 and 5 of the Marriage Law stipulate that polygamy is permitted only with the authorization of a religious court and upon fulfillment of certain requirements. The legal basis cited by the judges indicates that the marriage entered into by the two petitioners did not meet the formal requirements under Indonesian positive law.

In reinforcing its reasoning, the panel of judges referred to SEMA No. 3 of 2018, which essentially affirms that the legal recognition of a secret polygamous marriage without court permission must be declared inadmissible. The use of the Supreme Court Circular (SEMA) as the basis for the panel of judges' deliberations is intended to serve as a guideline issued to standardize interpretations among judges so that disparities in rulings do not occur. This objective is an effort to maintain consistency in the application of law within the religious court system (Rihdo et al. 2023, 239).

When compared to the theory of legal certainty, the judge's reasoning in this case reflects the application of the principle of legal certainty as articulated by Gustav Radbruch. Legal certainty requires that the law be applied consistently, clearly, and in a manner that is predictable to the public (Azzahra et al. 2025, 594). In this case, the judge established the rule regarding permission for polygamy as a mandatory requirement that must be fulfilled before a second marriage can take place.

The judge ruled that if a polygamous marriage without permission were to be validated through the *itsbat nikah* mechanism, this could open the door to legal circumvention of the provisions on polygamy that have been explicitly stipulated in legislation. This reasoning is evident in the judge's statement noting that following the issuance of SEMA No. 3 of 2018, the majority of *itsbat nikah* cases involving polygamous marriages without permission have tended to be rejected in order to maintain the administrative order of marriage. The judge's reasoning indicates that the panel of judges adopted an approach oriented toward legal certainty by assessing the legality of the marriage based on the circumstances at the time the marriage contract was entered into.

The Legal Status of a Polygamy Permit in an Application for the Validation of a Second Marriage Following the Dissolution of the First Marriage

Provisions regarding permission for polygamy are set forth in Articles 4 and 5 of the Marriage Law and Articles 56 through 58 of the Compilation of Islamic Law (KHI). These articles stipulate that a husband who wishes to practice polygamy must obtain a polygamy permit from the Religious Court and meet certain requirements, including the consent of his wife, the ability to provide financial support, and a guarantee of fair treatment toward his wives and children. These provisions indicate that permission for polygamy serves as a state oversight mechanism to prevent the abuse of polygamous practices that could harm women and children. Permission for polygamy is also intended



to provide a basis and foundation for limiting the negative consequences that may arise from polygamous practices (Rafianti 2019, 3).

The existence of a polygamy permit is not merely an administrative formality, but also a form of legal protection for the rights of wives and children. Judicial oversight is necessary to ensure that the practice of polygamy is not carried out arbitrarily and remains within the bounds of justice and the welfare of the family. A polygamy permit plays a crucial role in determining the legality of a polygamous marriage under national law. Under Indonesian marriage law, a polygamy permit serves a dual purpose: it is both an administrative requirement and a substantive requirement.

A polygamy permit, as an administrative requirement, is necessary to obtain state recognition of a polygamous marriage to be entered into. Without a permit from the Religious Court, the marriage will not be officially registered by a marriage registrar and therefore will not have administrative legal force. In addition to being an administrative requirement, a polygamy permit also serves as a substantive requirement because it is directly related to the fulfillment of the principle of justice within the household. The court will not grant a polygamy permit if the husband is unable to meet the requirements stipulated by law, such as the ability to treat his wives fairly and to meet the family's economic needs. Permission for polygamy is not merely a formal procedure but also serves as an instrument to assess the husband's suitability and responsibility in practicing polygamy (Helmi Sekoh, R. Palendeng, and E. Londa 2021, 138).

Compliance with marriage laws is an important part of a society's legal culture. The requirement for a polygamy permit serves as an instrument of state oversight over the practice of polygamy and a means of protection for wives and children. Violations of the obligation to obtain a polygamy permit cannot be viewed merely as an administrative issue, but rather as a form of noncompliance with established legal mechanisms. This view is consistent with the reasoning of the panel of judges, who continue to regard polygamy permits as an essential requirement in assessing the legality of marriages for which *itsbat nikah* is sought (Mukhlas and Nasrudin 2016, 38).

In Case No. 2522/Pdt.G/2023/PA.Jbg, the panel of judges ruled that the polygamy permit is a mandatory requirement that must be fulfilled at the time the second marriage takes place. Failure to meet this requirement is considered a legal defect inherent from the very beginning of the marriage contract. Although the first marriage had ended by the time the application for *itsbat nikah* was filed, the panel of judges still ruled that the violation of the polygamy permission requirement could not be ignored. When analyzed using theories of justice, the judges' reasoning in this case reflects procedural justice rather than substantive justice.

Procedural justice is evident in the judge's consistency in applying the rules on polygamy and following the guidelines set forth in SEMA No. 3 of 2018. However, from



the perspective of substantive justice, the rejection of the marriage validation actually has legal implications for the second wife and the child born of that marriage. From the perspective of legal utility, the rejection of the marriage validation is an effort to maintain legal order and prevent the public from using the marriage validation mechanism as a way to legalize polygamy without court permission. This case highlights a conflict between legal certainty and legal utility, in which the panel of judges prioritized formal enforcement over practical legal protection for the petitioner's family.

The legal issue arising from this case is that, at the time the petition for *itsbat nikah* was filed, the marriage between Petitioner I and the Respondent had already ended due to divorce, meaning that the polygamous relationship which served as the basis for requiring a polygamy permit had in fact ceased to exist. Nevertheless, the panel of judges still applied the provisions regarding polygamy permits, basing its assessment on the legal circumstances at the time the marriage contract was entered into.

The judge's reasoning in indicates that the judge applied an *ex tunc* assessment that is, evaluating the validity of a legal event based on the circumstances at the time the event occurred. The legal event in this case was the petitioner's marriage, which took place under conditions of polygamy. When viewed from the perspective of utility and the current state of legal developments among the parties, an "*ex nunc*" approach which considers the parties' current circumstances or the situation at the time the petition was filed may also be a factor for consideration. This is because the first marriage has ended, so the polygamous situation that previously served as the basis for the requirement to obtain court permission no longer exists (Hari Susanto 2020, 440).

The differences in the approaches taken by the judges in rendering this decision indicate that the main issue in this case concerns not only a violation of the requirements for a polygamy permit, but also the basis for the judges' assessment of the legal facts revealed during the trial, which were used to determine the relevance of the polygamy permit requirements even after the polygamous relationship between the parties had ended.

The role of the polygamy permit in the present case cannot be separated from its purpose as an instrument for regulating the practice of polygamy. From a normative perspective, the panel of judges correctly applied the provisions regarding the polygamy permit because, at the time the marriage contract was concluded, Petitioner I was still bound by a valid marriage to his first wife. The legal facts revealed during the trial indicate that the first marriage had ended before the petition for *itsbat nikah* was filed. This circumstance indicates that the polygamous situation which served as the basis for the requirement to obtain a polygamy permit no longer existed.

This case highlights the need to balance legal certainty with substantive legal protection, particularly for the second wife and the children born of the marriage. The



issues that arise are not only related to whether the requirements for a polygamy permit have been met, but also concern a fair resolution of the legal consequences that persist even after the polygamous relationship has ended. In this context, the strict application of polygamy authorization provisions does indeed maintain the consistency of marriage law, but at the same time raises questions about the extent to which the law is capable of providing protection against legal consequences that persist even after the polygamous relationship has ended.

The Implications of the Rejection of the Marriage Validation in Decision No. 2522/Pdt.G/2023/PA.Jbg on the Principles of Justice and Legal Protection for the Second Wife and Children

The rejection of the application for *itsbat nikah* in Decision No. 2522/Pdt.G/2023/PA.Jbg resulted in the marriage between the petitioner and his second wife not being legally recognized by the state. Consequently, the second wife does not have legal standing as a lawful wife from the perspective of state administration, even though the marriage is considered valid under religious law because it fulfills the pillars and requirements of an Islamic marriage. The administrative non-recognition of the marriage's status creates legal vulnerabilities for the second wife in various aspects, particularly in civil matters. The second wife faces difficulties in obtaining legal protection in the event of domestic disputes, divorce, or disputes regarding joint property. Furthermore, the lack of authentic evidence in the form of a marriage certificate also weakens the second wife's legal position when it comes to proving her marital relationship before the law (Ningrum 2025, 67).

The rejection of the marriage registration also affects the legal status of children born from such a marriage. The child retains a biological relationship with his or her father, but may face administrative difficulties in proving this civil relationship if the parents' marriage is not recognized by the state. In civil registration practices, children born of a siri marriage often face obstacles in having their father's identity recorded on their birth certificate if there is no evidence of a marriage that is legally valid under state law.

When interviewed about the protection of the rights of children born of unregistered marriages, a judge at the Jombang Religious Court explained that SEMA No. 3 of 2018 still provides a legal solution through the filing of a petition regarding the child's parentage to establish legal certainty regarding the child's status. This indicates that even if a petition for *itsbat nikah* is rejected, the law still provides certain protections for the child so that the child does not lose their civil rights (Srinurmayanti 2021, 266).

The protection of children must fundamentally be the primary consideration in every resolution of family law cases. The principle "the best interests of the child" places the child's best interests as the primary guiding principle in legal decision-making



regarding the child's status and rights. In the practice of religious courts, an overly formalistic approach has the potential to create a disconnect between the goal of child protection and the procedural application of legal rules (Rasyad, Maula Hadi, and Ramdani 2026, 440).

The failure of a marriage to be legally recognized by the state has a direct impact on the fulfillment of maintenance and inheritance rights for both the second wife and her children. Under Indonesian positive law, civil rights within marriage are generally established through the existence of a valid and registered marital relationship. In terms of inheritance, the legal standing of a second wife is not as strong as that of a wife whose marriage is officially registered. The potential for inheritance disputes also increases because the family from the first marriage may question the validity of the legal relationship between the husband and his second wife. As stated by the judge in an interview, the granting of *itsbat nikah* can have implications for the distribution of inheritance and the rights of children from the first marriage.

From the perspective of inheritance law in Indonesia, a child born of a secret polygamous marriage essentially retains a civil relationship with his or her biological father, particularly following Constitutional Court Decision No. 46/PUU-VIII/2010, which expanded the civil relationship of a child born out of wedlock with his or her biological father, provided that such a relationship can be proven scientifically and legally. However, in certain circumstances if the unregistered marriage has not been officially recognized by the state through *itsbat nikah* the child's legal standing in proving inheritance rights often becomes more complicated due to the absence of authentic evidence in the form of the parents' marriage certificate.

In practice, the child may still claim inheritance rights from their biological father by proving a blood relationship, establishing the child's lineage, or presenting other legally admissible evidence in court. Nevertheless, the legal position of children from unregistered marriages remains more vulnerable than that of children from registered marriages, as it often leads to disputes with other heirs particularly those from the first marriage regarding the validity of family relationships and the distribution of the estate. (Nisa and Sukmawati 2023, 25–26).

According to the theory of legal protection, the law should be able to safeguard the rights of the public, particularly those in vulnerable positions (Yunus 2020, 125). In this case, legal protection for women and children should be a key consideration, as they are the parties most affected by the state's failure to legally recognize the marriage. The panel of judges in this case placed greater emphasis on protecting the rule of law and ensuring administrative certainty regarding marriage. In this case, the judges viewed the rejection of the marriage validation as an effort to prevent the public from using the marriage validation mechanism to legalize polygamy without court permission.



From the perspective of legal protection theory, this ruling has not yet fully provided optimal protection for the second wife and the child. This is because the resulting legal consequences are felt more acutely by those who are socially vulnerable, while the primary fault lies with the husband's actions in entering into a marriage without complying with legal procedures. In an interview, a judge at the Jombang Religious Court explained that couples whose applications for *itsbat nikah* (marriage validation) were rejected due to a polygamous marriage without court permission may renew their marriage contract after the first marriage has been officially dissolved.

The judge explained that once the husband has divorced his first wife, his polygamous status is considered to have ended, allowing the couple to officially enter into a new marriage recognized by the state. According to the judge, this step is taken so that the couple can obtain legal recognition from the state administration and receive an official marriage certificate without having to validate the previous marriage, which initially contained administrative defects.

Renewing the marriage contract as a way for the parties to validate their marriage does not, in essence, resolve all the legal consequences that have arisen over the decades of their previous marriage. The renewed marriage contract is only valid from the time the new contract is entered into and does not automatically grant state legal recognition to the marital relationship that existed previously. Consequently, questions arise regarding legal protection for rights that arose before the renewal of the marriage contract, including certainty regarding family status, the status of the second wife, and various civil relationships that have existed during the period of the unregistered marriage.

The panel of judges in Decision No. 2522/Pdt.G/2023/PA.Jbg indicated that, in reaching its decision in this case, it prioritized legal certainty and administrative order in accordance with applicable regulations. On the other hand, the ruling still leaves unresolved issues regarding legal protection for the second wife and children, as the legal consequences of a marriage not recognized by the state persist even though the polygamous relationship underlying the violation has ended. This highlights the need to balance legal certainty, justice, and legal protection in resolving marriage validation cases involving unauthorized polygamy.

Conclusion and Suggestion

The panel of judges in Decision No. 2522/Pdt.G/2023/PA.Jbg rejected the petition for *itsbat nikah* because, at the time the second marriage took place, Petitioner I was still legally married to his first wife and had not obtained permission for polygamy from the court. This ruling was based on the Marriage Law, the Compilation of Islamic Law, and SEMA No. 3 of 2018. The judges assessed the validity of the marriage based on the



circumstances at the time the marriage contract was concluded; thus, the absence of permission for polygamy was deemed a legal defect inherent from the very beginning of the marriage.

The polygamy permit in *the present* case serves as a substantive requirement determining the legality of a polygamous marriage under state law. The application of this provision is consistent with positive law because, at the time the marriage contract was entered into, Petitioner I was still legally married to his first wife. The facts of the trial indicate that the first marriage had ended before the petition for *itsbat nikah* was filed. This circumstance raises questions regarding the relevance of applying the requirement for permission to practice polygamy to the petition for *itsbat nikah* when the polygamous relationship that gave rise to the obligation to obtain permission had already ended.

The rejection of the *itsbat nikah* has implications for the legal status of the second wife and children, particularly in terms of civil registration and civil law relationships. The solution renewing the marriage contract provides legal recognition of the marriage going forward. However, this solution does not fully resolve the legal consequences that have arisen during the course of the previous marriage. This case highlights the importance of balancing legal certainty, justice, and legal protection in resolving *itsbat nikah* cases related to unauthorized polygamy.

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