



Cumulation of Marriage *Itsbat* and *Talak* Divorce Lawsuits (Case Study Decision No. 5361/Pdt.G/2022/PA.Badg.)

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Abstract

The civil law that applies in Indonesia does not standardize provisions regarding cumulative lawsuits, especially cumulative lawsuits on marriage *itsbat* and *talak* divorce. In Decision No. 5361/Pdt.G/2022/PA.Badg., there is a marriage *itsbat* and *talak* application. This normative research that aims to analyze how the provisions in Indonesian legislation regulate the accumulation of *itsbat* of marriage and *talak* lawsuit and to analyze the judge's decision to grant the application for *itsbat* of marriage, especially unregistered marriages for pregnant women and *talak* for pregnant woman. This research concludes that the provisions in article 7, paragraph (3) letter (a) KHI can be used as a legal basis for cumulative lawsuits of marriage *itsbat* and divorce. According to Article 53 KHI, marriages for pregnant women can still held because they have fulfilled the legal requirements for marriage and no statutory provisions have been violated. Article 19 letter (f) Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning jo. Article 116 letter (f) KHI can be taken into consideration by the Panel of Judges when granting the petitioner's *talak* divorce application.

Keywords: cumulative lawsuit, marriage *itsbat*, *talak* divorce

Abstrak

Hukum perdata yang berlaku di Indonesia tidak mengatur secara baku ketentuan mengenai kumulasi gugatan, khususnya kumulasi gugatan *itsbat* nikah dan cerai talak. Dalam Putusan Nomor: 5361/Pdt.G/2022/PA.Badg., terdapat pengajuan perkara cerai talak sekaligus *itsbat* nikah. Penelitian ini adalah penelitian normatif yang bertujuan untuk menganalisis bagaimana ketentuan dalam perundang-undangan Indonesia mengatur tentang kumulasi gugatan cerai talak dan *itsbat* nikah serta menganalisis Putusan Nomor: 5361/Pdt.G/2022/PA.Badg. Kesimpulan dari penelitian ini adalah ketentuan dalam Pasal 7 ayat (3) huruf (a) KHI dapat dijadikan dasar hukum atas penggabungan perkara *itsbat* nikah dan perceraian. Menurut Pasal 53 KHI perkawinan wanita hamil tetap dapat dilangsungkan, karena telah memenuhi syarat sah perkawinan dan tidak ada ketentuan perundang-undangan yang dilanggar. Pasal 19 huruf (f) Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan jo. Pasal 116 huruf (f) KHI dapat dijadikan pertimbangan oleh Majelis Hakim dalam mengabulkan permohonan cerai talak dari Pemohon.

Kata kunci: Kumulasi Gugatan, *Itsbat* Nikah, Cerai Talak

I. Introduction

Article 2, paragraph (2) of Law No. 1 of 1974 concerning Marriage, regulates that every marriage must be registered according to the provisions of the applicable laws. The main objective of regulating the registration of marriages at the Office of Religious Affairs (KUA) and the implementation of divorces before the court is to create an orderly administration of marriages in society.¹ However, the reality shows that *siri* marriages or unregistered marriages are still widespread in society. Those who do unregistered marriages are usually based on the view of classical Islamic jurisprudence, which does not make marriage registration a pillar and a legal condition for marriage.²

To provide legitimacy to *siri* marriages or unregistered marriages, this can be done by submitting a request for a marriage *itsbat* to the Religious Court.³ When various cases arise, such as husband and wife couples who want to apply for divorce to the Religious Court, the path that must be taken is to apply for a marriage certificate for the unregistered marriage. When an unregistered marriage is registered, civil rights as a husband and wife couple automatically appear as a registered marriage.⁴

In fact, it is not uncommon for a marriage registration application to be submitted simultaneously with a divorce application. Trials involving marriage *itsbat* cases that are held at the same time as divorce cases can be referred to as a combination of cases or a cumulation of claims.⁵ The civil law in force in Indonesia does not standardly regulate provisions regarding the accumulation of claims. In both HIR, RBg, and Rv, there is no clear definition or provision that allows or prohibits the accumulation of claims.⁶

One of the decisions that decide the case of cumulative divorce lawsuits attached to the marriage certificate simultaneously can be found in Decision No. 5361/Pdt.G/2022/PA.Badg. The case is as follows: the Petitioner (male) is 27 (twenty-seven) years old, and the Respondent (female) is 28 (twenty-eight) years old. The Petitioner and Respondent agreed to hold an Islamic marriage as stated in a letter of mutual agreement between the guardian, the Petitioner, and the Respondent dated September 28, 2022. On Friday, September 30, 2022, the Islamic marriage took place at the Respondent's residence located at Jalan Abadi Jaya, Bandung, with a dowry in the form of cash worth three million rupiah. The marriage took place when the Respondent was eight months pregnant.

The marriage was proven by documents in the form of a religious marriage certificate without a number dated September 30, 2022, and a marriage statement dated September 30, 2022, signed by both parties, the celebrant and witnesses. The marriage was not registered with the KUA because it was only attended by the local village head, and there were no other officers from the sub-district KUA. Because the Petitioner and Respondent couple were often involved in quarrels, the Petitioner felt forced to marry the Respondent because she was already 8 months pregnant. The Petitioner filed a petition for divorce as well as a marriage decree at the Registrar's Office of the Bandung Religious Court Number 5361/Pdt.G/PA.Badg. on November 11, 2022.

The trial was only attended by the Petitioner and his attorney without the presence of the Respondent or her attorney, even though the Respondent had been officially and properly summoned. The Respondent's absence was without a valid reason according to law, so this case was processed and decided without the Respondent's presence (*verstek*). The Judge decided to

¹ Muchsin, *Problematika Perkawinan Tidak Tercatat dalam Pandangan Hukum Islam dan Hukum Positif, Materi rakernas Perdata Agama*, (Jakarta: Mahkamah Agung RI, 2008), 3.

² Siti Faizah, "Dualisme Hukum Islam di Indonesia tentang Nikah Siri", *Isti'dal; Jurnal Studi Hukum Islam* 1, No. 1 (2014): 22.

³ Edi Gunawan dan Budi Rahmat Hakim, "Pelaksanaan Itsbat Nikah Pasca Berlakunya UU No. 1 Tahun 1974 tentang Perkawinan di Pengadilan Agama", *Syariah: Jurnal Hukum dan Pemikiran* 18, No. 2 (2018): 261.

⁴ Muchsin, *op.cit.*, 21.

⁵ Sheila Kusuma Wardani Amnesti, "Tinjauan Yuridis Kumulasi Gugatan Cerai dan Itsbat Nikah di Pengadilan Agama Magelang", *Amnesti Jurnal Hukum* 1, No. 1 (2019): 2.

⁶ Kidung Sadewa dan Heri Hartanto, "Formulasi Kumulasi Gugatan yang Dibenarkan Tata Tertib Acara Indonesia (Studi Putusan MA Nomor. 2157 K/Pdt/2012 dan Putusan MA Nomor.571 PK/Pdt/2008)", *Verstek* 5, No. 3 (2017): 230.

grant the Petitioner's petition, which is to determine the legality of the marriage between the Petitioner and the Respondent, which was held on September 30, 2022, and to give permission to the Petitioner to impose one *raj'i talaq* on the Respondent in the Bandung Religious Court.

The legal consideration of the Panel of Judges in granting the application for a marriage registration is that it is in accordance with the intent and will of article 7, paragraphs (2) and (3) letter (a) KHI, that there is an interest in divorce. The legal considerations of the Panel of Judges in granting the Petitioner's request for divorce are as follows:

- a The judge has tried to advise the Petitioner to get back together with the Respondent but was unsuccessful. This is in line with the intent of Article 82, paragraphs (1) and (4) of Law Number 7 of 1989;
- b In accordance with the provisions of Article 22 paragraph (2) Government Regulation Number 9 of 1975 jo. Article 145 HIR, the Panel of Judges has heard statements from the two witnesses for the Petitioner who have been sworn in and examined separately and are considered to be aware of the problems of the Petitioner and Respondent. The Petitioner often quarreled with the Respondent and felt forced to marry the Respondent because she was already pregnant. Even since the marriage, the Petitioner and the Respondent have never lived together. This testimony is considered to be used as evidence that can be considered to strengthen the Petitioner's argument;
- c After knowing the facts at trial, the Panel of Judges is of the opinion that the purpose of marriage as intended in Article 1 of the UUP and Article 3 of the KHI, namely to create a happy, eternal, *sakinah, mawaddah warahmah* is very difficult to achieve;
- d The Panel of Judges assessed that the petition was in accordance with the intent of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage jo. Article 116 letter (f) KHI concluded that the Petitioner had succeeded in proving the arguments of his petition.

Based on the description above, the author wants to analyze how Indonesian legal provisions regulate divorce and marriage cumulative law, especially if the condition of the woman is pregnant.

II. Research Problems

1. How do the provisions in Indonesian laws and regulations regulate the marriage *itsbat* and *talak* cumulative lawsuits?
2. What is the analysis of Decision No. 5361/Pdt.G/2022/PA.Badg.?

III. Research Methods

This normative juridical research used a literature study focused on studying positive law using a conceptual approach, a statutory approach, and a case approach as techniques for collecting legal materials. The case approach of this research focuses on the case of divorce and itsbat of marriage at the Bandung Religious Court with Decision No. 5361/Pdt.G/2022/PA.Badg.

IV. Result and Discussion

1. Cumulation of Marriage Itsbat and Divorce Lawsuits for Divorce According to Indonesian Legislation

The State's recognition of the legal pluralism that applies to marriage law in Indonesia has caused several groups of people to refer to their respective religious laws and not fully comply with the provisions of the applicable legislation. *Siri* marriage or unregistered marriage is an example of a marriage that is carried out based on the context of religious law, especially Islam, but does not comply with the provisions of the applicable laws and regulations.⁷ *Siri* marriage is

⁷ Edi Gunawan, "Nikah Siri dan Akibat Hukumnya Menurut Undang-Undang Perkawinan", *Jurnal Ilmiah al-syir'ah* 11, No. 1 (2013): 5.

a marriage carried out in accordance with the provisions of the Islamic religion, but for various reasons, the marriage is not recorded by the authorized officer (Marriage Registrar Officer).⁸

The first step for a marriage to obtain legal guarantees is to register it with the authorized agency.⁹ As regulated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, it is stipulated that every marriage must be recorded in accordance with the provisions of the applicable laws and regulations. The Compilation of Islamic Law (KHI) also regulates the registration of marriages in Article 5, which states that in order to ensure orderly marriages for Muslim communities, every marriage must be registered. Marriage registration is carried out by Marriage Registrar Employees as regulated in Law Number 22 of 1946 concerning Marriage Registration, Divorce, and Reconciliation jo. Law Number 32 of 1954 concerning Determination of the Applicability of the Law of the Republic of Indonesia dated November 21, 1946, concerning the Registration of Marriages, Divorce, and Reconciliation in All Regions Outside Java and Madura.

Article 2 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage regulates that marriage registration for those who are Muslim is carried out by the KUA, while for those of religions other than Islam, it is carried out by the Civil Registry Office. Furthermore, Article 11 states that registration is carried out by signing a marriage certificate, which is executed immediately after the marriage takes place. A marriage certificate functions to prove that a marriage has occurred, as a guarantee for husband and wife, and to protect the rights of children born from the marriage, for example, in terms of inheritance, processing birth certificates, and so on. Therefore, a marriage that has not been or is not registered will be detrimental to the husband, wife, and children.¹⁰

Some of the reasons why people choose to carry out unregistered marriages are due to difficulties in fulfilling administrative requirements determined by applicable laws, conflicts with civil service regulations (PNS, TNI, POLRI, etc.), as an alternative to cover the shame of pregnancy in out of wedlock, an alternative to polygamy without the knowledge of the first wife and is a preventive measure chosen to avoid the sin of adultery for young couples who are in lovers' relationships.¹¹ For these reasons, many husband and wife couples carry out unregistered marriages and, therefore, do not have a marriage certificate, even though regulations in Indonesia require that marriages be registered with proof of the existence of a marriage certificate. This problem can be resolved, one of the ways, is by submitting a request for marriage registration to the Religious Court.¹²

Article 39 paragraph (4) Minister of Religion Regulation Number 3 of 1975 stipulates that if the KUA cannot issue a duplicate marriage certificate because the record has been lost or for other reasons, then to determine whether there is a marriage, *talak*, divorce or reconciliation, it must be determined by a decision of the Religious Court. This article can be understood to mean that its existence is recognized by law and is the absolute authority of the Religious Court.¹³ The Compilation of Islamic Law regulates the marriage law in Article 7, which states that a marriage can only be proven by a marriage certificate made by a Marriage Registrar. If you cannot prove it with a marriage certificate, you can apply for a marriage *itsbat* to the Religious Court. The marriage laws that can be submitted to the Religious Court are limited to matters relating to:

- a. There is a marriage in the context of resolving a divorce case;
- b. The marriage certificate is missing;
- c. There are doubts about whether one of the conditions of marriage is valid or not;
- d. The existence of a marriage that took place before the enactment of Law Number 1 of 1974;

⁸ Siti Aminah, "Hukum Nikah di Bawah Tangan (Nikah Siri)", *Jurnal Cendekia* 12, No. 1 (2014): 23.

⁹ Edi Gunawan, *op.cit.*, 2.

¹⁰ Edi Gunawan, *op.cit.*, 269.

¹¹ Rihlatul Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak Dalam Nikah Siri", *Sawwa* 12, No. 3 (2017): 405-406.

¹² M. Alfar Redha, "Isbat Nikah Pasangan Mualaf Dalam Hukum Islam dan Hukum Positif di Indonesia", *Al 'Adl Jurnal Hukum* 15, No.1 (2023): 108.

¹³ Mahmud Huda dan Noriyatul Azmi, "Legalisasi Nikah Siri Melalui Isbat Nikah", *Jurnal Hukum Keluarga Islam* 5, No. 2 (2020): 106.

- e. The parties who have the right to apply for a marriage *itsbat* are the husband or wife, their children, the marriage guardian, and parties who have an interest in the marriage.

The provisions for marriage *itsbat* are regulated in the explanation of Article 49 number (22) of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 and amended a second time by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts which explains that one of the areas of marriage in question is regarding the validity of marriages that occurred before the UUP.

Article 3 paragraph (5) of Law Number 22 of 1946 concerning Marriage Registration, Divorce, and Reconciliation as amended by Law Number 32 of 1954 concerning Determination of the Applicability of the Law of the Republic of Indonesia dated November 21, 1946, No. 22 of 1946 concerning Marriage Registration, Divorce, and Reconciliation in All Regions Outside Java and Madura, regulates that:

"If one of the things mentioned in the first, second, and third paragraphs happens and it turns out because of the Judge's decision, that someone married without meeting the supervision requirements or there was a divorce or reconciliation that was not notified to the authorities, then the Registrar of the State Court registering the marriage concerned and the employee includes the marriage, divorce, and reconciliation in the respective registration books by mentioning the judge's decision letter stating this"

Based on the two rules above, marriage *istbat* is also possible for unregistered marriages that were held either before or after the enactment of the UUP for the purposes of a divorce or other purposes.¹⁴

Trials involving marriage *itsbat* cases, which are held at the same time as divorce cases, can be referred to as combining cases or cumulating petitions/lawsuits.¹⁵ A cumulative lawsuit (*samenvoeging van vordering*) is a combination of more than one lawsuit into one lawsuit.¹⁶ A cumulative lawsuit can also be interpreted as the collection of several claims or a combination of several parties in one letter of claim.¹⁷ Article 127 HIR, Article 151 RBg, and several articles in the Rv and Civil Code contain provisions that allow plaintiffs to file lawsuits against several defendants. Merging lawsuits, which consist of several plaintiffs and several defendants, is also called subjective cumulation.¹⁸

Article 57 paragraph (3) Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 and amended a second time by Law Number 50 of 2009 concerning The Second Amendment to Law Number 7 of 1989 concerning Religious Courts recognizes the principles of simplicity, speed, and low costs. One way to apply this principle can be by merging lawsuits against cases that are related to each other (objective accumulation).¹⁹

Basically, each claim must stand alone. Each claim is submitted in a separate letter of claim, examined, and decided in a separate examination and decision process. However, in certain cases and limits, it is permissible to combine claims in one letter of claim if it is between one claim and other claims have connectivity or close relationship.²⁰ The lawsuit must also be subject to the same procedural law and subject to absolute competence in the same judicial body.²¹

Rules regarding the cumulative lawsuit can be found in Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number

¹⁴ M. Alfar Redha, *op.cit.*, 115.

¹⁵ Sheila Kusuma Wardani Amnesti, *op.cit.*, 2.

¹⁶ M. Yahya Harahap, *Hukum Acara Perdata*, (Jakarta: Sinar Grafika, 2008), 102.

¹⁷ Junaidi, "Penerapan Pasal 86 Ayat (1) Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama Dalam Penyelesaian Perkara di Peradilan Agama (Studi Kasus Putusan Pengadilan Agama Palangka Raya Nomor 80/Pdt.G/2012/PA.Plk.", *Lex Librum: Jurnal Ilmu Hukum V*, No. 1(2018): 785

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 783.

²⁰ Mahkamah Agung RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan Jilid II*, (Jakarta: Mahkamah Agung RI, 1994), 125.

²¹ Junaidi, *op.cit.*, 788.

7 of 1989 and amended a second time by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Article 66 paragraph (5) regulates that a "petition regarding control of children, child support, wife's support, and joint assets of husband and wife can be submitted together with a divorce petition or after the divorce vow has been pronounced." Furthermore, Article 86 paragraph (1) states that "lawsuits regarding control of children, child support, wife's support and joint assets of husband and wife can be filed together with a divorce lawsuit or after the divorce decision has obtained permanent legal force." Based on the two articles above, it can be interpreted that in Religious Courts, it is possible to file several lawsuits at the same time (cumulative lawsuits).

In the guidebook for the implementation of duties and administration of the Religious Courts, the guidelines for proceedings in the Religious Courts are explained if there is a cumulative lawsuit. The explanation is as follows:

- a Aggregation can be subjective cumulation or objective cumulation. Subjective cumulation is the combination of several plaintiffs or defendants in one lawsuit. Objective cumulation is the combination of several claims regarding several legal events in one lawsuit;²²
- b Combining several claims in one lawsuit is permitted if the merger is beneficial to the process, such as that there is connectivity between the combined claims and the merger will be easy to check and will be able to prevent the possibility of conflicting decisions;²³
- c Several claims can be accumulated in one lawsuit if the combined claims have a close relationship as proven by the facts;²⁴
- d In the event that a particular claim requires a special procedure (for example, a lawsuit for divorce) while another claim must be examined according to an ordinary procedure (a lawsuit to fulfill an agreement), then the two claims cannot be accumulated in one lawsuit;²⁵
- e If there is one claim that the Judge does not have the authority to examine while the other claims the Judge has the authority to examine, then the two claims may not be submitted together in one lawsuit.²⁶

The accumulation of marriage *itsbat* lawsuits with divorce is not specifically regulated in law. However, Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power stipulates that courts are prohibited from refusing to examine, try, or decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it. Then, Article 7 paragraph (3) letter (a) KHI explains that one of the reasons that a marriage can be filed is because of the resolution of a divorce case. It can also be interpreted that divorce and marriage registration cases can be filed simultaneously in one lawsuit. This article can be used as a legal basis for merging marriage and divorce matters.

In the case of cumulative *itsbat* marriage and divorce, before handing down a divorce decision, one must first determine the validity of the marriage between the Petitioner and the Respondent, which is not registered in the KUA, because for a divorce, proof is required that a valid marriage has occurred.²⁷ Marriages that are not registered are still legally valid because no article in the law states that marriages that are not registered are declared invalid.²⁸

2. Analysis of Decision No. 5361/Pdt.G/2022/PA.Badg.

A pregnancy marriage is a marriage between a man and a woman who is pregnant before the marriage takes place, whether she is married to a man who impregnates her or a man who

²² Mahkamah Agung RI dan Direktorat Jenderal Badan Peradilan Agama, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama Buku II Edisi Revisi 2010*, (Jakarta: Mahkamah Agung RI dan Direktorat Jenderal Badan Peradilan Agama, 2011), hlm. 76.

²³ *Ibid.*, 76-77.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Sheila Kusuma Wardani Amnesti, *op.cit.*, 9.

²⁸ Muhamad Ridho, "Itsbat Nikah Terhadap Pelaku Perceraian di Luar Pengadilan dan Implikasi Hukumnya (Studi Kasus di Pengadilan Agama Serang)", *Bil Dalil (Jurnal Hukum Keluarga Islam)* 1, No. 2 (2016): 90.

does not impregnate her.²⁹ The UUP regulates the conditions for the validity of a marriage. Article 2 of the UUP states that a marriage is valid if it is carried out according to the laws of each religion and belief. Apart from that, marriages must also be registered according to applicable laws. To answer the question of pregnant marriage itself, it is necessary to look at the provisions in the KHI which recognize the existence of pregnant marriage. Regulations regarding pregnant marriage can be found in Article 53 KHI, which states that:

- (1) A woman who is pregnant before the marriage takes place can be married to the man who impregnated her;
- (2) A marriage with a pregnant woman, referred to in paragraph (1), can take place without waiting for the birth of the child;
- (3) By holding a marriage while the woman is pregnant, there is no need for remarriage after the child is born.

Marriage is a form of realization of the constitutional rights of citizens, which must be respected and protected by everyone in the orderly life of the nation and State.³⁰ Article 28B, paragraph (1) of the 1945 Constitution states that "Every person has the right to form a family and continue their offspring through legal marriage." Article 1 of the UUP provides the definition of marriage as intended in this law as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy, eternal family, and based on the belief in the Almighty God.

Article 7, paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage regulates that marriage is only permitted if a man and woman have reached the age of 19 (nineteen) years. If this minimum age limit is not met, a dispensation can be requested from the court by the man's parents and/or the woman's parents for urgent reasons and sufficient evidence.

The prohibition on marriage is regulated in Article 8 of the UUP. Marriage is prohibited between two people:

- a. Having blood relations in a straight line up or down;
- b. Having a blood relationship in a sideways lineage between siblings, between one person and one parent's sibling, and between one person and one's grandmother's sibling;
- c. Having a marital relationship, such as in-laws, stepson, son-in-law, and mother/stepfather;
- d. Having foster relationships, foster children, siblings, and foster aunts/uncles;
- e. Having a sibling relationship with the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife;
- f. Those in a relationship whose religion or other applicable regulations are prohibited from marrying.

Case in Decision Number: 5361/Pdt.G/PA.Badg., the Petitioner is a man aged 27 (twenty-seven), and the Respondent is a woman aged 28 (twenty-eight), both of whom are old enough to carry out a marriage. Thus, Article 1 and Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage has been fulfilled. The marriage was solemnized in an Islamic manner in accordance with the religion of the bride and groom, as evidenced by documents in the form of a religious marriage certificate without number dated September 30, 2022, and a marriage statement dated September 30, 2022, signed by both parties, the celebrant and witnesses, thus Article 2 paragraph (1) UUP has been fulfilled.

Based on the description above, the marriage between the Petitioner and the Respondent fulfilled the requirements for a valid marriage and did not violate statutory provisions or prohibitions on marriage. Regarding the marriage, which was held when the Respondent was eight months pregnant, in accordance with Article 53 of the KHI, the marriage could still take place. The validity of the marriage will be perfect after the legality of the marriage is recognized through marriage *itsbat*.

²⁹ Riyan Erwin Hidayat, "Problematika Kawin Hamil Dalam Perspektif Hukum Keluarga", *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, No. 1 (2022): 58.

³⁰ Liky Faizal, "Akibat Hukum Pencatatan Perkawinan", *ASAS* 8 No. 2 (2016): 61.

A pregnant woman who marries a man who impregnated her before the child was born, according to Article 99 KHI, the child is a legitimate child because he/she was born within the framework of marriage. According to Article 99 KHI, there are two definitions of legitimate children: children born in or as a result of a legitimate marriage and children resulting from the legal conception of a husband and wife outside the womb and born by the wife. The child is not a child born before the marriage takes place as intended in Article 100 KHI and Article 186 KHI, and only has a lineage relationship and a mutual inheritance relationship with his/her mother and his/her mother's family. Children born from a legal marriage can inherit from each other both with the mother and the mother's family and with the father and the father's family.

It is the obligation of husband and wife to always maintain the integrity of the household. Apart from carrying out their respective obligations, husband and wife must also love each other, care for each other, and be patient and sincere. In this way, household life will achieve the goals they desire. However, it is also possible that a household unit that has been built with all its efforts ultimately fails and leads to separation. Separation was forced to be chosen as the last resort for both of them to find peace in life.³¹

Article 39 of Law Number 1 of 1974 concerning Marriage regulates that divorce can only be carried out before a Court hearing after the Court concerned has tried and failed to reconcile the two parties. The divorce must have sufficient reasons for the husband and wife not being reconciled. The reasons for divorce, as regulated in Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning marriage, are as follows:

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler, etc., which is difficult to solve;
- b. One party leaves the other party for two consecutive months without the other party's permission and without a valid reason or for other reasons beyond their ability;
- c. One of the parties receives a prison sentence of five years or a heavier sentence after the marriage takes place;
- d. One party commits cruelty or serious abuse that endangers the other party;
- e. One of the parties suffers from a physical disability or illness as a result of being unable to carry out their obligations as husband/wife;
- f. Between husband and wife, there are constant disputes and quarrels, and there is no hope of living in harmony in the household again.

Apart from the reasons mentioned above, in Article 114 of the Compilation of Islamic Law, there are also additional reasons for divorce in the form of the husband breaking the divorce agreement and changing religion or apostasy, which causes disharmony in the household. According to the Compilation of Islamic Law, divorce can occur due to *talak* or based on a divorce lawsuit. Divorce, according to Article 73 paragraph (1) of the Compilation of Islamic Law, is a divorce because the husband or his legal representative submits a petition for divorce to the court, while contested divorce is a divorce lawsuit filed by the wife or her legal representative to the court whose area includes the plaintiff's residence.

According to Article 14 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, a husband who has entered into a marriage according to the Islamic religion and wishes to divorce his wife can submit a letter to the court where he lives, the letter contains notification that he intends to divorce his wife accompanied by the reasons and ask the court to hold a hearing for this purpose. Article 115 of the Compilation of Islamic Law states that divorce can only be carried out in front of a Religious Court after the Religious Court has tried and failed to reconcile the two parties.

The issue of divorce for Muslims is regulated in Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 and amended a second time by Law Number 50 of 2009 concerning the Second

³¹ Nandang Kusnadi dan Eka Ardiyanto Iskandar, "Aspek Hukum Islam Proses Perceraian Istri Dalam Keadaan Hamil", *Palar (Pakuan Law Review)* 6, No. 2 (2020): 69.

Amendment to Law Number 7 of 1989 concerning Religious Courts and is also regulated in the KHI. The First Level Panel of Judges at the Religious Courts in deciding a lawsuit/petition for divorce from a pregnant wife is always guided by Article 116 of the KHI.³²

As in Decision Number: 5361/Pdt.G/PA.Badg. The Panel of Judges is guided by Article 19 letter (f) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jo. Article 116 letter (f) KHI in deciding the case concerned, because based on the facts at the trial between the Petitioner and the Respondent, there were continuous disputes and quarrels, and there was no hope of living in harmony in the household again. Therefore, the Panel of Judges can take this into consideration when granting the petition of divorce.

V. Conclusion

The provisions in Article 7 paragraph (3) letter a KHI can be used as a legal basis for combining marriage and divorce matters. According to Article 53 of the KHI, marriages between pregnant women can still take place because they have fulfilled the legal requirements for marriage and no statutory provisions have been violated. Article 19 letter (f) Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage jo. Article 116 letter (f) KHI in deciding case Number: 5361/Pdt.G/PA.Badg., because based on the facts at the trial between the Petitioner and the Respondent, there were continuous disputes and quarrels, and there was no hope of living in harmony in the household again. Therefore, the Panel of Judges can take this into consideration when granting the petition of divorce.

References

- Alfar Redha, "Isbat Nikah Pasangan Mualaf Dalam Hukum Islam dan Hukum Positif di Indonesia", *Al 'Adl Jurnal Hukum* 15, No. 1 (2023): 106-131. <http://dx.doi.org/10.31602/al-adl.v15i1.9568>
- Gunawan E. & Budi Rahmat Hakim, "Pelaksanaan Itsbat Nikah Pasca Berlakunya UU No. 1 Tahun 1974 tentang Perkawinan di Pengadilan Agama", *Syariah: Jurnal Hukum dan Pemikiran* 18, No. 2 (2018): 258-283. <https://doi.org/10.18592/sy.v18i2.2319>
- Gunawan, E. "Nikah Siri dan Akibat Hukumnya Menurut UU Perkawinan", *Jurnal Ilmiah al-syir'ah* 11, No. 1 (2013): 1-16. <http://dx.doi.org/10.30984/as.v11i1.163>
- Harahap, M. Yahya, *Hukum Acara Perdata*, Jakarta: Sinar Grafika, 2008.
- Junaidi, "Penerapan Pasal 86 Ayat (1) Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama Dalam Penyelesaian Perkara di Peradilan Agama (Studi Kasus Putusan Pengadilan Agama Palangka Raya Nomor 80/Pdt.G/2012/PA.Plk.)", *Jurnal Lex Librum V*, No. 1 (2018): 781-800. <http://doi.org/10.5281/zenodo.1684983>
- Kidung Sadewa & Heri Hartanto, "Formulasi Kumulasi Gugatan yang Dibenarkan Tata Tertib Acara Indonesia (Studi Putusan MA Nomor. 2157 K/Pdt/2012 dan Putusan MA Nomor.571 PK/Pdt/2008)", *Verstek* 5, No 3 (2017): 228-236. <https://doi.org/10.20961/jv.v5i3.33546>
- Liky Faizal, "Akibat Hukum Pencatatan Perkawinan", *ASAS* 8 No. 2 (2016): 58-67. <http://dx.doi.org/10.24042/asas.v8i2.1247>

³² Nandang Kusnadi dan Eka Ardianto Iskandar, *ibid.*, 77.

- M. Alfar Redha, "Isbat Nikah Pasangan Mualaf Dalam Hukum Islam dan Hukum Positif di Indonesia", *Al 'Adl Jurnal Hukum* 15, No.1 (2023): 106-131. <http://dx.doi.org/10.31602/al-adl.v15i1.9568>
- Mahkamah Agung RI & Direktorat Jenderal Badan Peradilan Agama, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama Buku II Edisi Revisi 2010*, Jakarta: Mahkamah Agung RI dan Direktorat Jenderal Badan Peradilan Agama, 2011.
- Mahkamah Agung RI, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan Jilid II*, Jakarta: Mahkamah Agung RI, 1994.
- Mahmud Huda & Noriyatul Azmi, "Legalisasi Nikah Siri Melalui Isbat Nikah", *Jurnal Hukum Keluarga Islam* 5 No. 2 (2020): 98-119. <https://journal.unipdu.ac.id/index.php/jhki/article/view/2367>
- Muchsin, *Problematika Perkawinan Tidak Tercatat dalam Pandangan Hukum Islam dan Hukum Positif, Materi rakernas Perdata Agama*, Jakarta: Mahkamah Agung RI, 2008.
- Muhamad Ridho, "Itsbat Nikah Terhadap Pelaku Perceraian di Luar Pengadilan dan Implikasi Hukumnya (Studi Kasus di Pengadilan Agama Serang)", *Bil Dalil (Jurnal Hukum Keluarga Islam)* 1, No. 2 (2016): 11-32.
- Nandang Kusnadi dan Eka Ardianto Iskandar, "Aspek Hukum Islam Proses Perceraian Istri Dalam Keadaan Hamil", *Palar (Pakuan Law Review)* 6, No. 2 (2020): 67-81. <https://jurnal.uinbanten.ac.id/index.php/bildalil/about>
- Rihlatul Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak Dalam Nikah Siri", *Sawwa* 12, No. 3 (2017): 397-408. <https://journal.unpak.ac.id/index.php/palar>
- Riyan Erwin Hidayat, "Problematika Kawin Hamil Dalam Perspektif Hukum Keluarga", *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, No. 1 (2022): 50-60. <https://ejournal.radenintan.ac.id/index.php/ElIzdiwaj/index>
- Sheila Kusuma Wardani, "Tinjauan Yuridis Kumulasi Gugatan Cerai dan Itsbat Nikah di Pengadilan Agama Magelang", *Amnesti Jurnal Hukum* 1, No. 1 (2019): 18-28.
- Siti Aminah, "Hukum Nikah di Bawah Tangan (Nikah Siri)", *Jurnal Cendekia* 12, No. 1 (2014): 21-29.
- Siti Faizah, "Dualisme Hukum Islam di Indonesia tentang Nikah Siri", *Isti'dal; Jurnal Studi Hukum Silam* 1, No. 1 (2014): 21-29. <https://doi.org/10.34001/istidal.v1i1.312>