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## The Relationship Between Isbat Marriage Polygamy Sirri and Supreme Court Circular Letter (SEMA) Number 3 of. 2018

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**Abstract:** Following the issuance of SEMA Number 3 of 2018, polygamy has become a subject of considerable debate. This is due to the fact that the SEMA contains a sentence that allows for the application of isbat nikah for sirr polygamy marriages, despite the From the perspective of children's best interests, this is regarded as unacceptable by some legal practitioners and academics, who view it as contrary to the provisions of Marriage Law No. 1 of 1974 regarding marriage, as well as the prevailing Compilation of Islamic Law in Indonesia. This study aims to ascertain the position of isbat polygamy sirr in relation to the Marriage Law and the Compilation of Islamic Law, taking into account the provisions of SEMA Number 03 of 2018. Adopting a qualitative research approach with a normative legal perspective, the study draws primarily on library research, employing both a legal approach and a conceptual approach to data collection. Following an exhaustive investigation and deliberation, it can be concluded that the SEMA has effectively barred the possibility of obtaining an isbat nikah for polygamy sirr. The 3/2018 decree must be re-examined, particularly with regard to the relevance and suitability of the principles of benefit pertaining to women who are adversely affected by this action. The prohibition of this SEMA does not imply that the polygamous marriage in question is considered invalid. This is because the context of this SEMA solely pertains to the authority of judges. It can be interpreted that this SEMA acknowledges the religious validity of the marriage, thereby recognizing the legitimacy of the children produced from this union. The issuance of this SEMA, however, is a misstep as it has a detrimental impact on women in polygamous relationships.

**Keyword:** Isbat Marriage, Polygamy Sirri, Marriage Law.

### INTRODUCTION

Humans are social creatures, defined by their inherent capacity for interaction with other individuals, groups, and communities. This inherent quality is a defining characteristic of the human experience. In a pluralistic society, humans require a set of rules to ensure mutual respect and a safe, peaceful, and happy life for all. In a democratic country, humans will coexist and tolerate each other. Various rules that exist in society can be in the form of sharia, laws, and customs. The various rules referred to in terms of religious matters are

called shari'at. Regulations that are binding and have formal legality in a country are called laws. Regulations that are binding but not written are called customs.

It is evident that the aforementioned three regulations are inextricably linked with the institution of marriage. Marriage is a noble path based on sharia, laws, and customs to regulate married life. The primary objective of marriage is to complement and live in harmony, which is referred to as *sakinah, mawaddah, and rahmah*. The institution of marriage is a sacred event experienced by male and female couples. It is a fundamental aspect of life that provides a foundation for achieving peace and harmony, both physically and mentally. (2022). Another objective of marriage is to maintain purity and human dignity in terms of fulfilling legal and halal sexual desires and instincts. The term "marriage" refers to a sacred event experienced by male and female couples. It is believed that the marriage event will result in physical and mental tranquility for both parties. (Ridwan Angga, 2022)

The 1974 Marriage Law (No. 1 of 1974) is a legislative instrument that regulates a range of matters pertaining to marriage cases in Indonesia. One such example is Article 2, paragraph (2), concerning marriage registration, and the implementing regulation is Government Regulation No. 9 of 1975, Article 45, concerning criminal requirements for violators. Furthermore, the regulation of marriage is also supported by the Compilation of Islamic Law. However, it is still observed that marriages are performed without being recorded or under the hand. Some residents who perform these marriages believe that marriage registration is not a valid condition for marriage. Additionally, some of the perpetrators of underhand marriages are polygamous marriages.

From the author's observation, the various kinds of marriages that are not recorded by the authorized officials have many negative consequences. Primarily, these consequences affect the woman who is married, but they also impact the children of the marriage. This is particularly true in cases of lasting marriages, especially if the marriage ends in divorce. In such cases, the children may lose their lineage, inheritance rights, and maintenance rights if they are brought before a court of law.

Marriages that are not conducted in accordance with the applicable laws and regulations are considered to be clandestine marriages, with some also referred to as "secret marriages." Such a marriage is devoid of legal consequences, certainty, and protection. In accordance with the applicable Marriage Law, each marriage must be recorded by a marriage registration officer from the local religious affairs office (KUA). This is the only marriage that is considered to be in accordance with the applicable laws and regulations in Indonesia. Furthermore, this recording process pertains to other significant events, including births, deaths, and other certificates, as well as formal deeds that must still be documented on the registration certificate. (Meldayati, 2015) Furthermore, marriage is not merely a religious sacrament that concludes with the signing of a contract; it is a lifelong commitment that extends beyond the couple's union and encompasses the creation of children and grandchildren. This act of procreation serves not only as a means of preserving human life on earth but also as an act of worship and service to God. (Hanafi., 2017). In the Qur'an (QS. 16: 72), Allah Swt states:

“And Allah has made for you spouses of your own kind, and given you through your spouses children and grandchildren.1 And He has granted you good, lawful provisions. Are they then faithful to falsehood and ungrateful for Allah’s favours?”

Consequently, in the event that a *sirri* marriage is documented by officials from the Office of Religious Affairs (KUA), the subsequent *isbat nikah* is obligatory. *Isbat nikah* is defined as a determination of the marriage of a man (husband) and a woman (wife) that has been carried out in accordance with Islamic law or has fulfilled the terms and conditions of marriage according to Islamic law. However, the marriage may not have been or may not be currently recorded by the authorized official or official marriage registration officer from the Office of Religious Affairs (KUA), namely the marriage registration officer (PPN).

Isbat nikah is a product of the religious court and is a jurisdictional matter. This is because if only one party requests formalization of a marriage determination, the court will issue a decision (Huda, 2017). In the absence of a marriage certificate, the processing of civil registration administration, such as the issuance of birth certificates and electronic ID cards, is impeded.

However, the issuance of SEMA No. 3/2018 effectively precludes the possibility of conducting isbat nikah polygami sirri. The author asserts that this SEMA is beneficial from the perspective of state administration regulations. The logical consequence of this regulation is that polygamous couples are unable to legalize their marriages. This will jeopardize the rights of polygamous women, as there is no assurance of protection for them as a result of this regulation. The study employs normative legislation and diverse conceptual approaches. In this SEMA, it has been determined that the application for Isbat nikah polygami sirri, despite being for the benefit of children, must be rejected. However, the closure of isbat nikah has ramifications and challenges, particularly for women who are polygamous.

The term "polygamy," is derived from the Greek words "poly," meaning "many," and "gamen," meaning "marriage." When these two terms are combined, they signify a state of being in a marital union with multiple partners simultaneously. In terms of terminology, polygamy refers to a marital union with multiple partners simultaneously. As cited by Musdah Muliasiman (Khotim, 2018), polygamy is defined as a marital bond in which one party (the husband) marries multiple wives simultaneously. Men who engage in this form of marriage are considered to be polygamous. In contrast, the broader community often interprets polygamy as a man who marries or is married to multiple women. However, according to Islamic Shari'ah, a man can only engage in polygamy with four women.

In response to this ongoing debate surrounding polygamy, it can be classified into two distinct perspectives. Firstly, from a feminist standpoint, polygamy is perceived as a practice that primarily benefits men while simultaneously disadvantaging women. This is despite the fact that polygamy is permitted according to Islamic law; however, they maintain that polygamy in practice will continue to harm women. (Mulia, 2014) defines polygamy as a form of abuse where only the man has the option of marrying more than one woman, thereby excluding women. The potential risks and substance of the provisions in the article can occur without first addressing the status of the man. The essence of social life thus forces women to accept this option. Consequently, men may marry for the purpose of satisfying their intimate desires, seeking a more varied experience. Conversely, women are compelled to accept polygamy due to the lack of economic support available to them. (Sumardi, 2015)

Secondly, those who advocate for the practice of polygamy contend that it is a Shari'a-sanctioned alternative that is obligatory in specific circumstances and situations. For example, if there is a demographic bonus, whereby the female population is significantly larger than the male population. Or the inability to fulfill a woman's intimate desires for her husband, and other causes that require polygamy. In the aforementioned scenarios, the second group of opinions posits that prohibiting men from engaging in polygamy would infringe upon their rights and override the benefits and marital objectives that should be attained and sought in a marriage. Consequently, they argue that polygamy represents the optimal solution, serving as a compromise between the interests of men and women. (As-Shabuni, n.d.)

Another case in point is that of Muhammad Amin as-Syiqiti, who attempts to present a rational argument that men are subject to greater obligations than women as heads of households and husbands. It is incumbent upon men to be financially and mentally prepared before marriage. This indicates that, on average, women are more adequately prepared for marriage than men. This is due to the fact that women are not required to consider these issues in as great a depth and detail as men. Thus, at the economic level, only a minority of older men are prepared to marry, in contrast to the majority of older women who are inclined

to do so. It would seem, then, that the decision-making process for women is fraught with difficulty. A woman may be willing to enter into a polygamous marriage with a man who is financially and mentally established, or she may prefer to marry a man who must build from the bottom and forge his mentality. Such options are considered if polygamy is recognized. However, if polygamy is banned, women have no options. They are obliged to compete for men who are ready to marry, which unfortunately means that there must be women who are eliminated and who lose. (As-Syintiqi, n.d.)

With regard to the phenomenon of sirri polygamy and the question of its legalisation, the jurists are divided into two groups. Those who permit polygamy believe that women who are secretly married to multiple partners are entitled to legal protection for their rights. They therefore argue that isbat, or formal recognition of the marriage, should be conducted. Furthermore, the rights of protection will be guaranteed if the household experiences problems, allowing the state to intervene and address the issues that arise. This is also supported by Addin Daniar, who asserts that the primary concern regarding women's rights pertains to the domains of financial provision, inheritance, and the dispensation of justice by the husband. Women engaged in sirri polygamy are susceptible to marginalization and exploitation by their male counterparts, given the tenuous legal framework that safeguards their rights, thereby increasing the likelihood of gender-based violations. (Syahdan, 2019)

The debate surrounding the legality of polygamous marriages in Indonesia has been a subject of contention for some time, with a multitude of opinions and arguments emerging from various quarters. The issuance of Supreme Court Circular Letter (SEMA) Number 3/2018 in Article 8 of the Supreme Court's Legal Formulation of the Plenary Meeting of the Religious Court has further intensified the discourse. This document unequivocally states that the application for polygamous marriage itsbat on the basis of siri marriage is not permitted. "An application for the legalization of polygamous marriage on the basis of siri marriage, even if it is for the benefit of the child, must be rejected. To guarantee the best interests of the child, an application for the child's origin may be submitted. However, in practice, not all of the provisions in the SEMA are fully implemented by the Panel of Judges in the first instance court. This is due to various considerations and convincing facts of the legal assembly (M. I. Fauzi, 2021)

## **METHOD**

The author's research methodology is based on library research and a normative research approach that is aligned with the principles of statutory analysis. The data collection method entails a comprehensive review of pertinent documentation, encompassing legal and regulatory materials, judicial records, academic texts, and other relevant literature. This is in accordance with Arikunto's opinion, which states that a documentation review is a method of data collection that seeks information related to variables. This information can be in the form of notes, transcripts, books, letters, magazines, meeting minutes, agendas, and so on. (Arikunto, 2018). In accordance with this viewpoint, the data obtained is exclusively derived from a literature review. The analytical technique employed is descriptive analysis, which is research that aims to describe and analyze the subject under study. (Nazir., 2018).

## **RESULTS AND DISCUSSION**

### **Istbat Poligami Sirri in the Perspective of the Marriage Law**

In accordance with Article 2, Paragraph (2) of Law No. 1 of 1974, it is a fundamental tenet that all marriages must be duly recorded. This responsibility is entrusted to the local Religious Affairs Office. However, if the marriage is conducted in a sirri manner or if the marriage is conducted under the hand, the result is that the marriage is not legally binding. Consequently, in the rules and orders of state administration, the marriage is considered invalid because it is not recognized by the state. Therefore, the husband and wife are

considered invalid, and the state is unable to intervene in matters pertaining to the law. This implies that the state is unable to intervene and assume a further role in the couple's household until the marriage is either legalized or determined by the Religious Court. This is a reasonable assumption, given that sirri marriages are not recognized by the state (Islami, 2017). However, this is not the case for non-polygamous sirri marriages, where the state can be present and can assist by first legalizing it through the submission of isbath nikah at the Religious Court (Bahrum, 2019).

The inability of the judge to handle cases of sirri polygamy will have a logical consequence in the form of the absence of opportunities for women to obtain legalization of their sirri polygamy. The most significant risk is that polygamous women are without legal protection and guarantees, meaning that if problems arise, the state is unable to provide assistance and support. This is due to the lack of evidence that a marriage has occurred within the state administration. Furthermore, the state does not recognize her marriage through the process of isbat nikah, as this is not within the absolute authority of the Religious Court (A. C. Fauzi, 2018)

The explanations provided by the attaché illustrate the predicament faced by women in polygamous marriages who seek to legalize their unions. Despite the husband and his first wife filing a voluntary nikah isbath petition, which demonstrates their willingness to challenge the practice of polygamy and their previous wife's readiness to be divorced, the Supreme Court initially rejected it due to procedural deficiencies. The case was deemed formally defective due to the Religious Court's lack of authority to handle such matters. In legal terms, this is referred to as an "obscure libel," indicating that the case is flawed due to a violation of jurisdiction, either in terms of absolute or relative competence. This ultimately results in the court having to render a "NO" verdict (Harahab, 2019)

What is more intriguing about the matter of sirri polygamy is that despite the inability to legalize a sirri marriage, it does not necessarily follow that the state does not regard it as a valid union. This is also based on the legal fact that the state is able to provide a means of resolving the status of children born of siri marriages by applying to the Religious Court for a determination of the child's origin. This indicates that the state maintains a dualistic stance with regard to the recognition of Siri marriages as marriages according to the state administration. This is because, if this were not the case, the child resulting from a polygamous marriage would be unable to file for the origin of his or her lineage. Similarly, the origin of a child born from an extramarital relationship would also be unable to file with the biological father. This is also considering that the origin of a legitimate child can be determined from a legal marriage. (Olifa, 2019)

The stipulation that children may submit an application for nasab while wives are prohibited from filing an isbat nikah appears anomalous. This is suspected because a wife is involved in the act of polygamy, where she determines and is willing to be polygamized, while the child resulting from this sirii polygamous marriage does not participate and is involved in the decision-making of his parents to commit polygamy. As previously stated, the practice of sirii polygamy can also affect women. This is based on the findings of legal cases that have violated Article 280 K U H P, which states that "a person who has entered into a marriage without the knowledge of the first or previous wife can be sentenced to at least five years imprisonment." Furthermore, Article 45 and Article 49 of Law Number 23 of 2004, concerning the elimination of domestic violence, reiterate the same legal facts. Specifically, polygamy without the permission of the first or previous wife is classified as a criminal act. This indicates that those engaged in sirri polygamy may be subject to legal proceedings for "illegal marriage," potentially resulting in incarceration. Nevertheless, this remains a topic of ongoing debate and study among legal scholars and practitioners. However, the legal precedents that impose criminal penalties on those engaging in sirri polygamy are irrefutable and have become a part of Indonesia's legal landscape. (Siregar, 2017)

### *Istbat Poligami Sirri in the Perspective of the Compilation of Islamic Law*

The Compilation of Islamic Law addresses the issue of isbat nikah in Articles 7, paragraphs 2 and 3. Paragraph 2 outlines the circumstances under which a marriage may be established through an isbat nikah, stating that in the absence of a marriage certificate, this may be submitted to a Religious Court. Paragraph 3 specifies the types of cases in which an isbat nikah may be sought, including instances where:

- 1) The establishment of a marital union in the context of a marital settlement.
- 2) The marriage certificate record book is missing.
- 3) There is uncertainty regarding the legitimacy of the marriage requirements.
- 4) The marriage in question was not conducted in accordance with the stipulations set forth in the Marriage Law, specifically with regard to the absence of a marriage halalgan.

In essence, the aforementioned formulation in the Compilation of Islamic Law can potentially facilitate the practice of clandestine marriages. This is because, despite the absence of a marriage certificate, it is still possible to apply for an isbat nikah at the Religious Court. It is necessary to limit the formulation in article 7, paragraph (3), letter a, in order to prevent confusion and misinterpretation in its application. The term "marriage" in this formulation refers to a marriage that was conducted after October 1, 1975, in accordance with the provisions of Law No. 1 of 1974 and Government Regulation (PP) No. 9 of 1975, and was subsequently registered in the Religious Court. The act of marriage on 9 December 1975 is not tantamount to a nikah carried out by the couple themselves, nor is it tantamount to polygamy. However, there are other potential causes for the failure to record the marriage, such as the negligence or forgetfulness of the Pegawai Pembantu Pencatatan Nikah (P3N), which may result in the marriage not being recorded and therefore not being able to be proven with a nikah akta. The third clause of Article 7 presents a potential issue when the plaintiff seeks to revoke the divorce proceedings or the applicant declines to perform the ikrare talake, given that a final judgment has been rendered on the legitimacy of their marriage. In such a scenario, it is pertinent to ascertain whether the imposition of legal status in the final judgment can be regarded as an error, particularly when it is deemed to be inconsistent with the primary lawsuit.

Article 7, paragraph (3). In the case of letter b, the issue concerns the loss of the marriage certificate quotation book. This issue can be resolved by requesting a copy from the Religious Affairs Office (KUA) where the marriage took place. In the event that the document is lost, it can also be resolved by requesting a copy from the Religious Court. This is in accordance with Article 13, Paragraph (1) of PP No. 19 of 1975, which states that "the marriage certificate is made in duplicate; the first copy is kept by the registrar, and the second copy is kept by the Clerk of the Court in the area where the Marriage Registration Office is located." Consequently, in the event of a marriage certificate being misplaced, there is no requirement to perform an ibat nikah.

In the Compilation of Islamic Law, article 7, paragraph (3), letter c, which addresses situations where doubts exist regarding the validity of a marriage, this will clearly indicate the invalidity of the marriage or the annulment of the marriage. This is distinct from the case of isbat nikah. It can be reasonably assumed that any individual who enters into an "underhand" marriage has done so with the guidance of a Ustadz or Kyai, who is well-versed in the intricacies of marriage. Therefore, the provisions outlined in paragraph (3), letter c. are not applicable in the context of an isbat nikah. In the event that a marriage does not fulfill the conditions necessary for its validity, it can be annulled, as the marriage that was conducted was not legitimate.

The conditions for the permissibility of polygamy are set forth in the Compilation of Islamic Law, Article 56, which states:

- 1) A husband who wishes to take on more than one wife must obtain written permission from the religious court.
- 2) The submission of the aforementioned application shall be carried out in accordance with the procedures set forth in PP. Number 9 of 1975, Chapter VIII.
- 3) Marriages conducted with second, third, and fourth wives without prior authorization from the Religious Court are considered null and void.

As stated by Amir Nurudin and Akmal Tarigan (2015, p. 164), all of these requirements are cumulative, indicating that all conditions must be fulfilled by those engaging in polygamy. (Tarigan., 2015). This implies that husbands who engage in polygamy are obliged to ensure that they do not exhibit any form of partiality towards one wife over another, but rather to treat all wives impartially. It is incumbent upon husbands who practice polygamy to be able to divide the obligations of their wives and provide a decent and fair livelihood. This is in accordance with the teachings of Ali Al-Hamdani, who asserted that justice in polygamy is proportional in all attitudes and actions, both materially and spiritually, outwardly and inwardly. In this context, the wife plays a meaningful role for the polygamous husband. Conversely, the husband is expected to demonstrate a rational and balanced approach to expressing affection towards his wives. Therefore, it can be argued that a man who engages in polygamy must possess the requisite physical, mental, and financial preparedness to assume the responsibilities associated with managing and developing a household.

### **Istbat Poligami Sirri in the Perspective of Maslahah Mursalah**

It is of great importance to map the kinds of maslahah into darury, hajiyah, and tahsiniyyah categories in order to prioritize one of the maslahah in case of conflict. The darury maslahah is the primary consideration, followed by the maslahah hājiyah and the maslahah tahsiniyyah, which is the least important. In the event that an individual is experiencing extreme hunger and there is no alternative food source available, such as pork, it is imperative that they consume it. This is because the degree of protecting the soul (hifdh al-nafs) encompasses maslahah darury, which is of a higher priority than avoiding unclean objects that fall under the category of tahsiniyyah maslahah. (Al-Syatibi., 2012)

The interests of women who are in polygamous marriages with regard to maslahah mursalah are situated between the categories of darurya and hajiya. In other words, when women are displaced due to a lack of support from their husbands, resulting from a lack of clarity regarding their legal status, this has a significant impact on their ability to survive. This situation can be classified as a major threat, or mudarat, at the highest level. It is therefore imperative that these women be afforded the space and solutions they require to overcome the significant challenges they face. The stance of SEMA Number 3 of 2018, which prohibits polygamous marriage isbat on the grounds of apprehension regarding legal engineering, necessitates reevaluation. The avoidance of legal engineering remains a concern that falls into the category of maslahah. This is an assumptive category because it does not necessarily follow that the opening of the polygamous marriage isbat door automatically legalizes the married couple before the court. There are still subsequent processes and stages of examination through the judge's desk. The opportunity to pass an isbat nikah must be based on careful consideration by the judges handling the case.

As previously stated, it is evident that women are subjected to harm in the context of siri polygamy. This is particularly the case if the husband is neglecting his rights. The benefits of closing the isbat nikah polygamy by SEMA Number 3 of 2018 are only presumptive. Consequently, based on a comprehensive review of the coherence of maslahah mursalah, researchers tend to prefer that the closure of the polygamous marriage certificate by SEMA Number 3 of 2018 must be reviewed regarding the relevance and suitability of the principle of legal protection.

### *Legal Status of Isbath Nikah Polligami Siri After the Issuance of SEMA Regulation Number 03/2018*

Article 3, paragraph (2) of Law Number 1 of the Year 1974 concerning Marriage has established the following regulation regarding polygamy: "The Religious Court may grant permission to a husband to have more than one wife if desired by the parties concerned." This regulation affords husbands the option of practicing polygamy or entering into a marriage with more than one wife. This is contingent upon obtaining permission from the Religious Court. The practice of polygamy can be implemented if all relevant parties consent. This is because, in principle, polygamous marriages are not prohibited, but can be implemented in accordance with the various requirements that follow, so that both men and women are not harmed and avoid legal bondage. The marriage law is sufficiently clear to restrict the actions of those engaging in polygamous marriages.

In light of the aforementioned discussion, it can be argued that the practice of sirri polygamy may potentially contravene two procedural articles of the applicable marriage law, and may even be subject to criminal articles. The two procedural articles in question are article 2 and article 4 of the Marriage Law. Article two requires marriage registration, while article 4 requires polygamists to obtain a polygamous license from the local Religious court.

Consequently, the criminal articles that may ensnare polygamous couples are Article 298 or Article 230 of the Criminal Code, which threatens polygamists with imprisonment for five years. Therefore, the closure of the Isbat door by this SEMA will have a detrimental impact on the polygamous woman. She will be deprived of the right to protection from the state in the event of domestic disputes and quarrels, as well as the right to manage the rights of citizens.

A woman who is polygamous is unable to escape her status as a wife, except in the event of her husband's termination. This also signifies that a woman who is polygamous from a legal standpoint is unable to terminate the bond or status of a wife or to seek the legalization of her status as a wife, given the absence of a record of the previously conducted marriage. Conversely, if the husband is irresponsible and leaves her, the termination of the marriage can only be carried out by a judge. Therefore, in the situation and conditions subsequent to the issuance of SEMA No. 3/2018, women are severely discredited, because despite their status as wives, there is no party to protect or nurture them due to their husband's irresponsibility.

Another adverse consequence of the closure of isbat nikah polygami sirri is the loss of the wife's rights, including her right to maintenance and her right to inheritance. This is because, in the event of the husband's death, the wife is still not recognized by the state in an administrative capacity. Consequently, a woman in a polygamous marriage is not entitled to receive an inheritance from her husband and is similarly unable to claim the rights to her inheritance. In such cases, the children born from polygamous marriages conducted by both parties may still be entitled to inheritance rights, provided that a decision on the child's origin is made by a religious court. This also signifies the existence of a legal gap between the wife and children. This is underscored by Jaya (2017, p. 12), who asserts that "in the absence of a legal umbrella for siri polygamous women, their right to nafkah may be underestimated, thereby becoming a mudlarat for their lives." (Jaya, 2017)

It is imperative that the position of isbat nikah in sirri polygamous marriages be established as a legal umbrella, thereby providing legal certainty for unregistered marriages such as this. This also signifies that polygamous sirri marriages can become valid subsequent to the enactment of Marriage Law Number 1 of 1974. This is from a legal standpoint, with the stipulation that the examination of the isbat case has been conducted with meticulous care and without any element of legal error in the filed isbat case. (Sururie, 2017)

The issuance of SEMA Number 03 of 2018 represents a disappointing anticlimax, as it effectively removes the authority of the Religious Courts Institution with regard to the examination of polygamy sirri marriages. Consequently, it is necessary for all parties to



familiarise themselves with the implications of this SEMA decision. This indicates that the prohibition is valid when viewed globally. Therefore, there is a possibility of addressing cases related to isbat nikah siri, provided that it is deemed important and will produce maslahat after examining the historical aspects presented. In the event that the submitted reasons are deemed to be insufficiently substantial, the presiding judge may refer to the published regulations, specifically SEMA Number 03 of 2018, and issue a decision.

This can also be justified on the grounds that the motivation behind isbat nikah is multifaceted. However, the SEMA in question does not consider the background of closing the door to isbat nikah. It would therefore be beneficial for the judge to examine the aspects behind the submission of isbat nikah, determine the appropriate steps, and ascertain whether an opportunity for isbat nikah can be granted. In light of the aforementioned discussion, it is this author's opinion that the closure of the door to isbat nikah by SEMA No. 3/2018 requires review. This is due to the fact that it is related to the relevance and suitability of the principles of benefit, especially in regard to the harm to women who are polygamous. The author's position is that this prohibition does not render sirri polygamy an invalid marriage. This is because the context of this SEMA recognizes that polygamous marriages are religiously valid because the conditions and pillars have been fulfilled, thus enabling children born from these marriages to be registered as such.

Furthermore, the reassessment is warranted due to the fact that the SEMA is merely a circular and is thus incapable of superseding the Marriage Law and Government Regulations, as set forth in the Compilation of Islamic Law (KHI) issued by a Presidential Instruction of the Republic of Indonesia. Moreover, the Marriage Law that is currently in force and has been established must be taken into account. The 1974 Law, as amended. The amendment to Law No. 1 of 1974 is set forth in Law No. 16 of 2019. Accordingly, the SEMA should be rewritten to read, "Application for Isbat Nikah Polygamy on the basis of Nikah Sirri," even though it is for the benefit of children, it must be declared valid. This would ensure that the previous wife's consent is not a prerequisite for the Isbat Nikah, thereby providing a fair and beneficial solution for women in polygamous marriages.

## CONCLUSION

In light of the aforementioned study, the author posits that the closure of the isbat door, as stipulated in the regulations set forth in the Supreme Court Circular Letter (SEMA) Number 03 of 2018, merits reconsideration. This is because it is related to the relevance and principles of benefit, especially regarding the loss of rights of polygamous women. Women in siri polygamy do not have the opportunity to claim their rights because their siri marriage does not have permanent legal force. Furthermore, as a result of the prohibition of isbat nikah, these women cannot obtain a definitive legal umbrella. The maslahah of polygamy isbat that applies is only presumptive.

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