



ISLAMIC LEGAL PERSPECTIVE ON CONTENTIOUS MARRIAGE ISBAT IN GIRI MENANG RELIGIOUS COURT

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Abstract: Contentious marriage confirmation is a solution given to people whose husband/wife has died and whose marriage has not been registered at the Office of Religious Affairs. This study examines two important things, namely, how contentious marriage confirmation is applied at the Giri Menang Religious Court, West Lombok, and how Islamic law reviews the application. The method used in this study is qualitative, field research type, with a normative legal approach. The results of this study indicate that the application for contentious marriage confirmation at the Giri Menang Religious Court is for (1) Completeness of personal identity to take care of making the applicant's child's birth certificate; (2) Disbursement of the Applicant's Husband's Death Insurance Fund; (3) Completeness of Personal Identity and Transfer of the Deceased Hajj Pilgrim's Seat Number; (4) Completeness of Personal Identity and Management of BPJS Employment Funds. In making a decision/determination on the application for contentious marriage confirmation, the Panel of Judges at the Giri Menang Religious Court considers the following: (1) Consideration that the marriage is valid according to religion; (2) Consideration that the marriage can be proven and meets the material and formal elements and requirements of proof such as written evidence and witnesses; (3) Consideration that the marriage confirmation is made for administrative purposes; and (4) Consideration of public interest. The marriage confirmation of contentiousness in Islamic law can be accepted as long as there is sharia evidence that supports the existence of a valid marriage contract. Although the formal form of marriage confirmation is not known in classical fiqh, its substance is very much in line with the values of Islamic law. Therefore, the institution of marriage confirmation of contentiousness in Indonesian religious courts is an application of sharia principles in the context of modern state and society.

Keywords: *Isbat Nikah Contentious, Giri Religious Court Wins, Islamic Law*

A. Introduction

Marriage is an important aspect of society's social life that not only contains religious values but also has broad legal impacts, especially in terms of lineage, inheritance, and family legal status (Hanapi & Yuhermansyah, 2020). In Indonesia, marriage registration



has become an administrative obligation as regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) (Law No. 1 of 1974, Article 2 paragraph (2); KHI, Article 5). However, in practice, many marriages are carried out according to religion or custom without being officially registered or unregistered marriages (Daru Nugroho et al., 2021). When legal problems such as inheritance or divorce occur, this marital status is often questioned and eventually becomes the object of a request for marriage confirmation, both voluntary and contentious (Aziz, 2020: 114). At the Giri Menang Religious Court, West Lombok, the phenomenon of contentious marriage confirmation requests is quite prominent. Based on the monthly report of the Legal Aid Post (Posbakum) for the period January-June 2022 at the Giri Menang Religious Court, there were 638 marriage confirmation cases. Of the many marriage confirmation cases registered in the register, 14 cases were contentious marriage confirmations (PA Giri Menang, 2022), especially in the context of inheritance disputes and the determination of children's lineage. The Lombok community, who still intensely practice customary marriage or unregistered marriage, faces legal problems when the marriage is not recognized administratively, and certain parties deny that the marriage ever took place. In this condition, the marriage confirmation request becomes contentious because it involves a lawsuit or denial from another party, such as a former partner or heir. This shows the tension between socio-religious norms and the state's formal legal system (Yani, 2021: 87).

Previous studies have discussed marriage confirmation within a normative legal framework. For example, Lestari (2019) examines the marriage confirmation mechanism from the perspective of civil procedural law by emphasizing the procedural aspect, while Fahmi (2021) highlights marriage confirmation from the perspective of legal protection for women after unregistered marriages. However, this study is different because it focuses more on the legal perspective in the practice of contentious marriage confirmation at the Giri Menang Religious Court with an empirical and local approach. The focus of this study is the dynamics of the parties' legal arguments, the judge's considerations, and the social implications of the court's decision. Thus, this study fills the gap between normative studies and the need to read legal practices contextually (Sudarsono, 2015: 133). The main objective of this study is to analyze how the perspective of Islamic law in the process of examining contentious marriage confirmation cases at the Giri Menang Religious Court, West Lombok. This study also aims to identify the forms of disputes that arise, the types of evidence submitted by the parties, and the judge's legal considerations in granting or rejecting the request. In addition, this study is expected to formulate solutions to legal problems that often arise due to unregistered marriages, which have implications for children's lineage and inheritance rights status (Zuhri, 2022: 145).

The method used in this study is qualitative with a sociological, legal approach. Data were collected through document studies of contentious marriage confirmation decisions, in-depth interviews with judges, clerks, and parties to the case, and direct observation of the trial process. The analysis was carried out by examining the relevance between applicable legal norms, fiqh rules, and the socio-cultural dynamics of the Lombok community. This approach was chosen to understand the legal reality as a whole, not only from a doctrinal aspect but also from a practical and local dimension (Moleong, 2012: 6; Soekanto, 1986: 56).

This research is expected to find a pattern of legal interpretation that is not only based on formal legality but also considers the values of substantive justice, protection of women and children, and respect for Islamic law as a living source of law in society. By making the Giri Menang Religious Court the research locus, the results of this study are expected to contribute scientifically and practically to strengthening religious courts in handling contentious marriage confirmation cases in areas that have a strong culture of unregistered marriage or customary marriage (Hasbi Ash-Shiddieqy, 1990: 118). In addition, this study is urgent in contributing to the development of Islamic law and religious court policies. By examining how the Giri Menang Religious Court handles contentious marriage confirmation from an Islamic law perspective, this study can provide legal recommendations for judges, judicial institutions, and the community. This aims to ensure that the contentious marriage confirmation process is not only valid under state law but also in accordance with sharia values so that it can provide optimal legal protection for all parties involved.

B. Research Methods

This study uses a qualitative method with a field research type. The approach used is normative juridical, which analyzes the laws and regulations related to contentious marriage confirmation, and the *maslahah* approach, which focuses on the legal benefit aspect for the applicant. The research was conducted at the Giri Menang Religious Court, and the research subjects included judges, applicants, court administration staff, and other related parties. Data were collected through in-depth interviews with judges and applicants, observations of the trial process, and documentation of case files and related regulations.

Data analysis was carried out descriptively and qualitatively, with data reduction steps, data presentation in the form of descriptive narratives, and conclusions based on legal theory and the concept of *maslahah* in Islamic law. The validity of the data is guaranteed through source triangulation, peer review, and member checking to ensure the validity and reliability of the research results.

C. Result and Discussion

Reasons for Isbat's Marriage of Contentious in Religious Court Giri Menang

Administratively, marriage confirmation at the Religious Court is used by applicants as the basis and legal reason for registration at the KUA Sub-district Marriage Registrar. This then becomes the basis for the KUA to issue a Marriage Certificate Excerpt Book, which is authentic legal evidence of a marriage. The Marriage Certificate Excerpt Book is then used by interested parties for marriage validation documents that were previously unrecorded, taking care of population administration documents such as Child Birth Certificates, Family Cards, Child Identity Cards, BPJS Cards, and Family Cards (Bate et al., 2023). In line with this, according to one of the judges at the Giri Menang Religious Court, Ulfa Nurwindiasari, marriage confirmation is carried out because there is a marriage that is carried out based on religion or is not recorded by the authorized Marriage Registrar (PPN) which is submitted by the husband and wife or one of the husband or wife, the husband or wife who is still alive, children, other heirs, marriage guardians and parties interested in the marriage. Marriage confirmation is submitted to the court where the applicant resides by stating clear reasons (Ulfa Nurwindasari, 2022).

In general, the reasons that form the basis for submitting a contentious marriage confirmation application at the Giri Menang Religious Court, according to him, are, on average, difficulties in taking care of population administration such as child birth certificates, Hajj registration, replacement of Hajj seats, disbursement of pension funds, social assistance needs, determination of heirs and other administrative needs. (Muthalib, n.d.)

Based on 14 documents of contentious marriage confirmation cases at the Giri Menang Religious Court in 2022, overall, the applicant requested contentious marriage confirmation on the grounds that they did not have a marriage certificate extracted. This is because the marriage is not registered with the Religious Affairs Office. The researcher found that, overall, the contentious marriage confirmation application was submitted to the Giri Menang Religious Court in 2022 to fulfill administrative requirements for taking care of several things (Ulfa Nurwindasari, 2022).

Some administrative reasons that are the basis for a contentious marriage confirmation application include Completeness of personal identity to take care of making a birth certificate for the applicant's child, disbursement of funds for the applicant's husband's death insurance, Completeness of personal identity and transfer of seat numbers for deceased Hajj pilgrims, Completeness of personal identity and management of BPJS Employment funds for the applicant's deceased husband; (Muthalib, n.d.).

Mechanism for Implementing Contentious Marriage Confirmation at Giri Menang Religious Court

Before discussing the procedures and requirements that the applicant must prepare, it is a good idea for the researcher to convey the parties who can apply for contentious marriage confirmation at the Giri Menang Religious Court. (person standi in yudicio/legal standing) Applying for marriage confirmation according to Article 7 paragraph (4) of the KHI is the husband or wife, children, marriage guardian, and parties interested in the marriage (Bilalu et al., 2022).

From the provisions of Article 7, paragraph 4 of the KHI, it can be understood that the parties who have the right to submit a marriage confirmation are the parties directly involved in the marriage in question, namely the husband, wife, and marriage guardian. In addition, other parties may be involved and interested in the marriage, such as children and siblings who are blood relatives of those whose marriage is confirmed.

In applying for contentious marriage confirmation, several procedures and requirements must be met. The case service system at the Giri Menang Religious Court currently uses the One-Stop Integrated Service System (PTSP). Before the procedure is carried out, several document requirements must be met first by the applicant, namely: Photocopy of the Applicant's KTP and Family Card, 6000 stamp duty legalized at the Post Office, 1 (one) sheet, Marriage Certificate from the Village Head where the marriage took place, Death Certificate from the Village Head or hospital, Marriage Confirmation Application Letter made as many as 6 sheets. Those using Legal Counsel must include a Special Power of Attorney (Hanafi, 2022).

If these requirements have been prepared, the Applicants can file for contentious marriage confirmation with the following procedures (Giri Menang, 2006):

- a. The disputing parties come to the Giri Menang Religious Court with a lawsuit or application letter.

- b. The disputing parties meet the Desk I officer and submit a lawsuit or application letter, at least 2 (two) copies. For the lawsuit letter, the number of Defendants is added.
- c. The Desk I officer (can) provide an explanation that is considered necessary regarding the case filed and estimate the down payment for the court costs, which are then written in the SKUM (Power of Attorney to Pay).
- d. The Desk I officer returns the lawsuit or application letter to the disputing parties accompanied by the SKUM (Power of Attorney to Pay).
- e. The disputing parties come to the designated bank service counter, fill out a deposit slip for the down payment for the court costs, and deposit the amount stated in the bank slip.
- f. After the litigant receives the validated bank slip from the bank service officer, the litigant submits the bank slip to the cashier (Cashier).
- g. The cashier records the Advance Fee in the Case Finance Journal and signs the SKUM (Power of Attorney to Pay), affixing the case number in the application letter according to the number and date when recorded in the Case Finance Journal.
- h. The cashier then marks the payment in full in the SKUM (Power of Attorney to Pay) and returns to the litigant the original SKUM (Power of Attorney to Pay) and one copy of the lawsuit or application letter that has been given a case number and registration date.
- i. Registration Completed: The litigant party/parties will be summoned by the bailiff/replacement bailiff to appear in court after the Composition of the Panel of Judges (PMH) and the day of the case examination (PHS) have been determined.

Based on the results of interviews conducted with judges, including after studying several documents on contentious marriage confirmation decisions, The implementation of contentious marriage confirmation is the same as the process of implementing marriage confirmation in general. This means that the process of implementing contentious marriage confirmation with the process of determining voluntary marriage confirmation at the Giri Menang Religious Court is no different. In terms of procedure, both remain the same; the only difference is the process in the trial of the marriage confirmation case, where in the case of contentious marriage confirmation, the child is made the defendant.

The mechanism for the proceedings at the Giri Menang Religious Court is based on the guidelines in civil procedural law. As is known, the proceedings at the Religious Court are special Civil Procedural Laws intended for Muslims who are in dispute in matters that are the absolute competence of the Religious Court in accordance with the provisions of Law No. 3 of 2006 on Religious Courts.

In the trial process for contentious marriage confirmation cases, the Panel of Judges examines the parties' applications and asks for the truth of the contents of the application, accompanied by an examination of the documents that are evidence of the submission of the contentious marriage confirmation case. Furthermore, the Panel of Judges asked the parties to the case to submit witnesses who knew about the legal events of the marriage of the parties to the case. After examining the application, evidence, and witnesses of the parties to the case, the Panel of Judges then held a deliberation to determine whether the case was accepted or rejected (Ulfa Nurwindasari, 2022).

One of the interesting things that researchers found in conducting research related to the implementation of contentious marriage confirmation at the Giri Menang Religious Court was the short trial process. So, the trial was carried out in a short time, unlike usual. In the past, the practice of civil trials in Religious Courts, including the Giri Menang Religious Court, would take quite a long time in accordance with the provisions of SEMA (Supreme Court Circular), which states that the maximum time for examining a case is up to 6 months.

However, the development of the world of Special Civil Court Practices at the Giri Menang Religious Court requires a mechanism that is not complicated and a short trial process. The civil case examination process, which should take a long time of around six months, then in the process by the Panel of Judges of the Giri Menang Religious Court, can be carried out in just one or two days of trial (Helmi et al., 2024).

This is as conveyed by Judge Ulfa Nurwindiasari that in the trial of civil cases, especially cases of marriage confirmation and contentious marriage confirmation, the examination process is only carried out within one day of trial, and the verdict is immediately made. This is done, among other things, to implement the principle of short and low-cost examinations (Ulfa Nurwindasari, 2022).

In addition, cases of contentious marriage confirmation or voluntary marriage confirmation, in general, are requested by the parties for the purposes and interests of marriage registration as administrative documents in managing various population administration interests and other data relating to administrative needs. So, that is the requirement for registering a case. Documents that are usually used as evidence in court are one of the requirements for registering a case. So, evidence of a contentious marriage confirmation case has become part of the documents prepared by the parties during the case registration process.

So, the trial mechanism for contentious marriage confirmation cases is not like other contentious cases with a long question and answer process because, in each question and answer process, the panel of judges will postpone the trial for up to weeks according to the request submitted by the parties or through their attorneys (Fitri et al., 2024). Usually, the postponement of the trial in the question and answer process is carried out by the parties or their attorneys so that they have the opportunity to study the answer documents, objections, and legal arguments built by the opposing party (Fahmi et al., n.d.).

Judge's Considerations in the Decision on the Contentious Marriage Confirmation Case at the Giri Menang Religious Court.

In general, it is based on the rules of civil procedural law. The panel of judges in examining and trying the application for marriage confirmation, the panel of judges does (Fitriyani et al., 2023):

- a. Constating, namely proving the truth of the events/facts submitted with evidence through valid evidence, according to the law of evidence, which is described in the case and the Minutes of the Trial.
- b. Qualifying the events/facts that have been proven, namely assessing what or which legal relationship the event belongs to, finding the law for the event that has been constituted to be then stated in legal considerations.
- c. Constituting, namely determining the law, is then stated in the verdict (Mukti Arto, 2008).

There are several basic considerations the judge must consider when deciding the case of contentious marriage confirmation at the Giri Menang Religious Court. The judge's considerations for the 14 cases that are the object of the author's research are as follows:

- a. Legal marriage According to Religion, A marriage is legal because the marriage that has been carried out in all cases has fulfilled the pillars and requirements of marriage.
- b. The marriage can be proven and meets the elements, material, and formal requirements of proof, such as written evidence and witnesses.
- c. Marriage confirmation is made for administrative purposes.

The panel of judges considered that the applicant filed a contentious marriage confirmation application to obtain a marriage certificate for legal certainty regarding his marriage and other legal administrative purposes. The Respondents did not submit any evidence because they had acknowledged all the arguments of the applicant's application. The panel of judges examining the case also considered that the Applicants and Respondents had conveyed conclusions orally, each of which, in essence, remained on their application and response and requested a determination.

According to the panel of judges, based on the above considerations, the facts of the incident that the panel believed to be the basis for its decision on the case were proven, namely that regarding the applicant's marriage, these facts had fulfilled the pillars and requirements of marriage as regulated in Article 14 and Article 30 of the Compilation of Islamic Law. The pillars and requirements of marriage themselves were in accordance with the provisions of Articles 20, 24, 28, and 30 of the Compilation of Islamic Law.

After analyzing the process of determining the *isbat* of a contentious marriage at the Giri Menang Religious Court as explained above, the process of determining the *isbat* of a contentious marriage is the same as the process of determining the *isbat* of a voluntary marriage and has met the requirements and does not deviate from the provisions as appropriate that have been regulated in Book II, namely the book that serves as a guideline in the implementation of the duties and administration of the Religious Court and also becomes one of the references for all Religious Court officials, especially judges, clerks/replacement clerks and bailiffs in carrying out duties in the field of judicial administration and judicial techniques.

The process of determining the *isbat* of a contentious marriage with the process of determining the *itsbat* of a voluntary marriage at the Giri Menang Religious Court is no different; the procedures for both remain the same, and the only difference is the process in the trial of the *itsbat* of the marriage case, where in the case of *itsbat* of a contentious marriage the heirs are the opposing party or respondent. This aims to ensure that the marriage is legally valid and that the marriage actually took place, has never been registered with the authorities, and without any party feeling aggrieved or any party suing the marriage. However, in the process of submitting *itsbat* to the Religious Court, one of the parties, either the husband or the wife, has died so that the submission of *itsbat* becomes a contentious marriage *itsbat* case.

In addition to the considerations explained above, the panel of judges usually also uses *maslahah* considerations in determining the application for marriage confirmation, both contentious and voluntary (Jasri Hasan, 2022).

The *maslahah* consideration is taken because marriage confirmation is very beneficial for Muslims to take care of and obtain their rights in the form of letters or personal documents needed from authorized agencies. It provides a guarantee of legal certainty protection for each husband and wife, including protection of the status of

children born from the marriage and protection against legal consequences that will arise later.

According to Abd. Rahman Dahlan, every 'illat that is the basis of a law is based on the interests of human welfare (al-mashlahah) (Abd. Rahman Dahlan, 2014). There is also a value of maslahah that can be interpreted as something good and acceptable to common sense. Common sense means that reason can clearly understand the arguments for why a law must be established (Kaharuddin, 2015). From the aspect of welfare, the rules used by judges, according to the author, are more inclined towards al-maslahah al-daruriyah. Al-maslahah al-daruriyah is a welfare that is essential for human life and, therefore, must exist as an absolute requirement for the realization of life itself, both in the afterlife and the worldly; in other words, if this dharuriyyah is not realized, human life will surely become extinct. What is included in dharuriyyah includes maintaining religion, soul, mind, descendants, and property (Mardani, 2013). In the problem of contentious marriage confirmation, this is included in maintaining descendants (hifzh al-nasl) and property (hifzh al-māl), as in Mardani's opinion that maintaining descendants is like the law of marriage and the prohibition of adultery.

If this is ignored, then the existence of the descendants will be threatened (Alkandari & Alsuwailan, 2019); just like the parties who filed for contentious marriage confirmation, they married according to religion and avoided adultery, which is the same as their children have been saved from the perspective of religious law. However, from a positive legal perspective, their children whose marriages are not registered are still threatened because the State of Indonesia has not recognized their marriages. In the KHI, a valid marriage must be registered with the KUA District, which covers the jurisdiction of one of the parties who want to get married. Likewise, with the maintenance of property, when at one time the wife and children want to ask for maintenance, the husband does not give it and denies his marriage because his marriage is not registered. If one of the husbands/wives dies and leaves an inheritance in the form of savings in a bank or insurance, one of the requirements is a marriage book to claim the savings funds. Therefore, the existence of marriage confirmation is essential in the interest of protecting the rights of the wife and children so that they can obtain their rights (Rahman & Su'ud Ma'adi, n.d.).

D. Islamic Law Review of the Implementation of Contentious Marriage Confirmation

Contentious marriage confirmation is a unique legal issue in the modern Islamic justice system. It is present as a form of seeking legal legitimacy for a marriage that has been carried out. However, it is not officially recorded and, at the same time, becomes a means of proving the occurrence of a marriage contract in the midst of a dispute between the parties involved. In practice, contentious marriage confirmation is a middle way taken by the Muslim community when experiencing uncertainty in their marital status, especially when one party refuses or denies ever being married or when heirs sue the status of a wife or child in order to maintain or reject inheritance rights (Compilation of Islamic Law, Article 7 paragraph (3)).

In classical Islamic law, institutional marriage confirmation is not formally recognized. Islam, from the beginning, did not require administrative registration of marriages in order for the marriage to be valid. The main concern is the fulfillment of the pillars and requirements of marriage: the presence of a qualified prospective bride and groom, a guardian from the woman's side, two just witnesses, and a valid ijab qabul

(Sayyid Sabiq, *Fiqh as-Sunnah*, Juz 2, p. 17). If all these requirements have been fulfilled, then the marriage is considered valid according to sharia, even though it is not recorded in a marriage book or official state document.

However, Islam strongly emphasizes the importance of proving the marriage contract in certain situations, mainly when a dispute arises. In this context, the principle of *tautsiq al-nikāh* is known, namely an effort to strengthen and establish the existence of a marriage contract according to sharia. This proof can be done in various ways, including by presenting confessions from both parties, statements from witnesses who directly witnessed the marriage contract process, or through *qarinah*, which is a strong indication that the marriage has taken place (Ibn Qudamah, *al-Mughni*, Juz 9, p. 362).

When the disputed marriage is presented before the judge, the principles of proof in Islamic jurisprudence come into play. In *fiqh*, there is a rule "*al-bayyinah 'ala al-mudda'i wa al-yamīn 'ala man ankara*," which means that the burden of proof is on the claiming party (plaintiff), while the denying party is sufficient with an oath (Al-Suyuthi, *al-Asybah wa al-Nazha'ir*, p. 110). So, in the case of *isbat nikah* contentious, the party claiming that the marriage has occurred is required to present evidence, either in the form of witnesses or other evidence. Meanwhile, the denying party is sufficient to submit a denial accompanied by an oath. However, if the evidence presented is powerful, then the oath of the denying party will not be sufficient to deny the existence of the contract.

Islam pays great attention to this issue because it concerns the protection of three main aspects of *maqāsid al-syarī'ah*: safeguarding *nasab* (*hifzh al-nasab*), safeguarding honor (*hifzh al-'irdh*), and safeguarding property (*hifzh al-māl*) (al-Syatibi, *al-Muwafaqat fi Usul al-Shari'ah*, Juz 2, pp. 8-10). In the context of *hifzh al-nasab*, unclear marital status can lead to unclear status of a child, whether he or she is considered a legitimate child who is entitled to a *nasab* and inheritance or an unrecognized child who can only be assigned to his mother. In fact, Islam places great emphasis on the importance of clear lineage and strictly prohibits ascribing someone to a father who is not his biological father (QS. Al-Ahzab: 5).

In terms of honor, women who are denied marital status by men who used to be their husbands will experience psychological and social pressure and even moral stigma from society. Islam, a religion that upholds the honor of women, provides space for them to demand recognition through sharia proof so that they do not become victims of unrecognized marriages. Therefore, in many *fiqh* literature, if women can present witnesses or strong evidence of the existence of a marriage, then the judge can determine the validity of the marriage even though the man denies it (Imam Nawawi, *al-Majmu' Syarh al-Muhadzdzab*, Juz 16, p. 264). Likewise, with the protection of property, cases of contentious marriage confirmation often arise in inheritance disputes. For example, a woman who claims to be the legal wife of a deceased man applies for marriage confirmation so that she and her children are entitled to a share of the inheritance. However, her claim is rejected by the man's family on the grounds that there is no evidence of marriage registration. In situations like this, the role of the judge becomes very central in assessing the evidence submitted, such as recognition from the surrounding community, statements from religious figures, or unofficial documents showing that a marriage contract has indeed taken place. In *fiqh*, this can be justified through the principle of "*yuqḍā bi al-qarā'in*" which means that the judge may decide a case based on strong indications (Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, Juz 1, p. 98). Cases of contentious marriage confirmation can also be found in classical *fiqh* books. One

interesting example is if someone is legally married but no witnesses are present when questioned, but the wider community knows that they live as a married couple. In this case, the status of living together and the recognition of the community can be the basis for the judge to determine that the marriage contract actually took place. Even in some cases, scholars allow the determination of marriage based on the recognition of one party as long as there is no strong evidence to the contrary (al-Kasani, *Bada'i' al-Shana'i'*, Juz 2, p. 270).

The Islamic legal system, based on the values of justice, pays great attention to protecting vulnerable parties. In cases of contentious marriage confirmation, women and children are generally in a weaker position because they do not have control over documents or legal status. Therefore, the principle of substantive justice in fiqh provides a way out through the *maslahah* and *istihsān* approach, namely prioritizing the *maslahah* and resolutions that bring goodness rather than simply following the formal form of law (al-Tufi, *al-Ta'liqāt 'ala Mukhtashar al-Raudhah*, p. 135). In the Indonesian context, although Islamic law does not formally recognize marriage confirmation as an institution, its principles were later adopted and institutionalized in the form of regulations by the state. The Compilation of Islamic Law (KHI) provides legal space for marriage confirmation, including those that are contentious, especially in cases where the marriage is not registered, there is a dispute over the validity of the marriage, and the need for proof for inheritance and other purposes (KHI, Article 7 paragraph (3)). This shows that Islamic law has high flexibility in responding to developments in the era and the needs of society.

This entire process essentially shows that Islamic law is not merely focused on legal formalities but aims to realize the welfare, justice, and legal certainty for the people. The issue of contentious marriage is not only a matter of administrative approval but, more deeply, a matter of upholding honor, protecting family rights, and strengthening a just social structure. Within this framework, sharia judges are expected to be sensitive to the social context and substantive justice so as not to get caught up in formalism that could distance the law from its main purpose.

Isbat of contentious marriage in Islamic law can be accepted as long as there is sharia evidence that supports the existence of a valid marriage contract. Islamic law provides a place for proof through confession, witnesses, and *qarinah* in order to maintain the principles of *maqashid sharia*, especially in terms of maintaining descendants, honor, and property. Judges have the authority to determine the validity of a marriage in a dispute based on the evidence and principles of Islamic justice.

Although the formal form of marriage confirmation is unknown in classical fiqh, its substance is very much in line with the values of Islamic law. Therefore, the institution of contentious marriage confirmation in Indonesian religious courts is an application of sharia principles in the context of modern state and society.

E. Result and Conclusion

The reasons that are the basis for the application for contentious marriage confirmation at the Giri Menang Religious Court include: (1) Completeness of personal identity to process the issuance of the applicant's child's birth certificate; (2) Disbursement of the applicant's husband's death insurance funds; (3) Completeness of personal identity and transfer of the deceased Hajj pilgrim's seat number; (4) Completeness of personal identity and management of BPJS Employment Funds for the applicant's deceased husband; and (5) Management of the disbursement of BPJS Employment Funds for the applicant's deceased husband.

The mechanism or procedure for implementing contentious marriage confirmation is the same as the mechanism for other cases, including submitting an application, registration, summons, trial, and determination. In making a decision/determination on the application for contentious marriage confirmation, the Panel of Judges at the Giri Menang Religious Court considers the following: (1) Consideration that the marriage is valid according to religion; (2) Consideration that the marriage can be proven and meets the elements and material and formal requirements of proof such as written evidence and witnesses; (3) Consideration that the marriage confirmation is made for administrative purposes; and (4) Consideration of public interest.

Isbat nikah contentious in Islamic law is acceptable as long as there is sharia evidence supporting the existence of a valid marriage contract. Islamic law provides a place for proof through confession, witnesses, and qarinah in order to maintain the principles of maqashid sharia, especially in terms of maintaining descendants, honor, and property. Judges have the authority to determine the validity of a marriage in a dispute based on the evidence and principles of Islamic justice. Although the formal form of isbat nikah is not known in classical fiqh, its substance is very much in line with the values of Islamic law. Therefore, the institution of isbat nikah is contentious in Indonesian religious courts and is an application of Sharia principles in the context of the modern state and society.

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