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Islamic Law Thoughts: *Itsbāt Nikāh* According to A Compilation of Islamic Law and Fiqh Syafi`Iyah

T. Wildan
IAIN Langsa, Aceh, Indonesia
wildan@iainlangsa.ac.id

Syawaluddin Ismail
Ezzitouna University, Tunis, Tunisia
syawaluddin.ezzitouna@gmail.com

Abstract

The provisions of Isbāt nikāh have differences in the views of the Compilation of Islamic Law (KHI) and the Shafi'i school of jurisprudence (Fiqh Syafi'iyah). These differences have attracted the attention of the author to study them. The method used in this research is descriptive comparative analysis, which involves examining and comparing a problem through explanation, interpretation, recording, and data analysis. The research results indicate that isbat nikah is found in the Compilation of Islamic Law and the Shafi'i school of jurisprudence. However, the term Isbāt nikāh is not mentioned in the Shafi'i school of jurisprudence. In contrast, the KHI specifically regulates this issue in Article 7, paragraphs 1, 2, 3, and 4. The provisions of isbat nikah, according to the KHI and the Shafi'i school of jurisprudence, differ significantly. Almost all the provisions of isbat nikah in the KHI are not found in the Shafi'i school of jurisprudence.

Keyword: *Isbāt nikāh, Fiqh Syafi'iyyah, Islamic Law thoughts*

Abstrak

Ketentuan isbat nikah mempunyai sisi perbedaan dalam pandangan Kompilasi Hukum Islam (KHI) dan Fiqh Syafi'iyah. Perbedaan ini yang menarik penulis untuk mengkajinya. Metode yang digunakan dalam penelitian ini adalah deskriptif analisis komperatif yaitu penelitian terhadap suatu masalah mengikuti penguraian, penafsiran, pencatatan, analisa terhadap data dan yang ditemukan serta membandingkan. Hasil penelitian menunjukkan bahwa isbat nikah didapati dalam masing-masing Kompilasi Hukum Islam dan Fiqh Syafi'iyah, namun dalam Fiqh Syafi'iyah istilah Isbāt nikāh tidak jelas disebutkan. Berbeda dengan KHI yang secara khusus dan jelas mengatur masalah ini dalam Pasal 7 ayat 1, 2, 3 dan 4. Ketentuan isbat nikah menurut KHI dan Fiqh Syafi'iyah berbeda cukup tajam. Hampir semua ketentuan isbat nikah dalam KHI tidak ditemukan dalam Fiqh Syafi'iyah.

Kata Kunci: Isbāt nikāh, Fiqh Syafi'iyyah, Pemikiran Hukum Islam

Introduction

To provide services to people who do not have a marriage book or marriage certificate, the government has opened a service called *isbāt nikāh* (Yusriyah, 2020), this is done so that they can record and determine their marriage. Marriage is a firm contract or mitsaqan ghalizhan to obey Allah's commands; doing so is worship. Marriage aims to form or realize a household life: sakinah, mawaddah, and rahmah. Marriage is valid if it is carried out according to Islamic law, the Marriage Law, and the Compilation of Islamic Law. Marriage is essential to obtain offspring in human life, both individuals and groups, through legal marriage (Karim et al., 2022).

Interaction between men and women occurs respectfully by the position of humans as perfect creatures, namely having reason and feelings. Married life is fostered in an atmosphere of peace, tranquility, and affection between husband and wife. Descendants from legitimate marriages adorn family life and, simultaneously, are the continuation of human life in a clean and honorable manner. The longevity of a marriage is the goal desired by Islamic teachings. The marriage contract is entered into to maintain its integrity and be kept forever because Islam sees the contract as a sacred bond that should not be taken lightly. So, the holy marriage contract should not be damaged or violated. Every attempt to abuse marital relations and terminate them without any reason that can be used as a basis for breaking up a marriage or divorce is hated by Islam because it destroys order and prosperity between husband and wife. A marriage can only be considered a legal act if the favorable provisions of applicable law carry it out (Iskandar & Sudirman, 2019).

The legal provisions governing marriage procedures justified by the law are as regulated in Law No. 1 of 1974 and PP No. 9 of 1975, so this marriage will have legal consequences. These, namely, consequences, have the right to legal recognition and protection. Article 2 paragraph (1) Law no. 1 of 1974 determines that a marriage can only be said to be a valid marriage according to law if the marriage is carried out according to each religion and belief, and paragraph (2) determines that each marriage is recorded according to the applicable laws and regulations (Diab Dosen et al., 2018). Marriage registration aims to create marriage order in society as evidenced by a Marriage Certificate, and each husband and wife receive a copy. If there is a dispute between them or one is irresponsible, the other can take legal action to defend or obtain their respective rights (Rita Khairani & Bawono, 2022).

The marriage certificate is authentic proof of the validity of a person's marriage, which is beneficial for himself and his family (wife and children) to reject and avoid the possibility in the future of denying his marriage and the legal consequences of that marriage (joint assets in marriage and rights marriage) and also to protect against slander and *qadzaf zina* (allegations of adultery). So, it is clear that registering the marriage to obtain the Marriage Certificate is very important (Shamad, 2017).

This is different from the understanding of marriage provisions by some Muslim communities, which emphasizes a fiqh-centric perspective. According to this version of understanding, marriage is sufficient if the terms and conditions

according to the provisions of fiqh are fulfilled without being followed by marriage registration. Some people practice this kind of condition by practicing private marriages. Initially, the secret marriages that were carried out were based on a conscious legal choice of the perpetrators, that they accepted not registering or registering their marriage with the KUA. They felt it was enough to fulfill the provisions of Article 2 Paragraph (1) but did not want to fulfill the provisions of Article 2 Paragraph (2) Law No.1 of 1974 concerning marriage. The reasons include that it needs to be known to the public first, and there is no demand to hold a *walimah* (reception). *Second*, this marriage was kept secret, and the husband and wife did not come together as husband and wife (*qibla dhukul*) while they were still studying or studying. *Third*, to avoid married status because it involves continued employment. Fourth, the bride still needs to be old enough according to the provisions of the law; the marriage is just to connect the family ties quickly (Iwan, 2022).

This is different from the understanding of marriage provisions by some Muslim communities, which emphasizes a fiqh-centric perspective. According to this version of understanding, marriage is sufficient if the terms and conditions according to the provisions of fiqh are fulfilled without being followed by marriage registration. Some people practice this kind of condition by practicing private marriages. Initially, the secret marriages that were carried out were based on a conscious legal choice of the perpetrators, that they accepted not registering or registering their marriage with the KUA. They felt it was enough to fulfill the provisions of Article 2 Paragraph (1) but did not want to fulfill the provisions of Article 2 Paragraph (2) Law No.1 of 1974 concerning marriage. The reasons include that it needs to be known to the public first, and there is no demand to hold a *walimah* (reception). *Second*, this marriage was kept secret, and the husband and wife did not come together as husband and wife (*qibla dhukul*) while they were still studying or studying. *Third*, to avoid married status because it involves continued employment. Fourth, the bride still needs to be old enough according to the provisions of the law; the marriage is just to connect the family ties quickly.

For the reasons above, private marriages carried out by some people violate the provisions of Article 2 paragraph (2) of Law no. 1 of 1974 concerning marriage. Married couples who have implemented the provisions of Article 2 paragraph (1) only implement the provisions of Article 2 paragraph (2) of Law no. 1 of 1974. For example, he immediately registers with the KUA when he finds out that his wife has started to become pregnant, and this situation shows that it is not relevant if the marriage is submitted for the reason that it is for the sake of a child's birth certificate. There is an article in the Compilation of Islamic Law that states that "If a marriage certificate cannot prove the marriage, the marriage certificate can be submitted to the Religious Court (article 7 paragraph 2) (Zuhrah, 2017).

The principles of marriage registration are regulated in Law No. 1 of 1974 Jo. PP No. 9 of 1975 protects the rights of husband and wife if irregularities occur in marriage. The involvement of Marriage Registrar Employees in marriage in their capacity as employees or officials appointed by the government with the task of supervising marriages and recording them. By referring to Law No. 1 of 1974, which came into effect on October 1, 1975, every marriage must be registered to realize

the legal objectives, namely the realization of order, certainty, and legal protection for society in the field of marriage (Azhary, 2017).

In the case of a marriage that is not recorded or other factors that affect the validity of the marriage, according to Law no. 1 of 1974 and the Compilation of Islamic Law (KHI), are required to carry out *isbat nikah* in a religious court. Such provisions for marriage are not found in classical legal formulations of *Syafi'iyah Fiqh*. Therefore, the Compilation of Islamic Law and *Syafi'iyah Fiqh* have different views on this issue and must be studied more deeply. Based on this background, the author is interested in learning the provisions for marriage *isbat nikah* according to the Compilation of Islamic Law and *Syafi'iyah Fiqh*.

Literature Review

The study of Islamic legal thought, Itsbāt Nikāh, and Shafi'i fiqh is not a new discourse. There have been various authors and researchers who have studied it in various versions. Yasin Jetta, in his publication entitled; *"Pemikiran Hukum Islam Ibnu Taimiyah,"* has described very well how the thinking of Ibn Taymiyyah is adopted and implemented in several fatwas according to the needs of the local community (Jetta, 2010). This work has similarities with what the author studies, especially in the context of Islamic legal thinking. As for the difference, if Yasin Jetta's work focuses on the thinking of Ibn Taymiyyah, what the author studies is more focused on thematic studies, especially the issue of Itsbāt Nikāh.

Widya Sari et al., in a study entitled; *"Pemikiran Ibrahim Hosen Tentang Konsep Pernikahan dan Kontribusinya Terhadap Pembaruan Hukum Perkawinan di Indonesia,"* The work has revitalized the legal marriage system in Indonesia and mapped the contributions of Ibrahim Hosen's thoughts to the study of family law in Indonesia (Sari, 2021). The work concludes that the compilation of Islamic law in Indonesia, especially in the context of husband-wife relationships in Article 80 paragraph (5) of the KHI, needs to be revised. Widya's publication has similarities to what the author discusses in the context of Islamic law thinking about marriage. The difference is that if Widya discusses the thoughts of one figure, the author discusses the thoughts of many figures, especially among Shafi'i scholars.

M. Alfar Redha, in his work entitled; *"Isbat Nikah Pasangan Mualaf dalam Hukum Islam dan Hukum Positif di Indonesia,"* The author has described impressively how the marriage of a convert couple is studied comparatively in Islamic law and positive law. This study will certainly provide insights for readers, especially in distinguishing legal formulations based on classical Islamic literature and modern legal literature studies (Redha, 2023). M. Alfar's work has similarities with what the author examines in the dimension of Itsbāt Nikāh. The significant difference is that, while M. Alfar conducts a comparative study between Islamic law and positive law, the author focuses more on comparing legal thinking among fiqh scholars.

The three publications above are examples of many literature reviews that the author includes. There are still many similar works that are close and relevant to the author's study, especially on themes related to Islamic legal thought. After reviewing and exploring various literature reviews, not a single work has been found that discusses Islamic legal thought, especially the comparison between the Shafi'i Ulama and the Compilation of Islamic Law. The reality above shows that this

study has originality and novelty values. The benefit of this research gap is to describe to readers that Itsbat Nikah in the study of Islamic legal thought is closely related to the implementation of Islamic law in Indonesia, which is predominantly Shafi'i.

Research Method

This article belongs to a literature study with a qualitative approach. The methodology used is a comparative study between the compilation of Islamic law and the thoughts of Shafi'i scholars. The primary source in this article is literacy on the compilation of Islamic law regarding Itsbāt Nikāh and other narratives about marriage. In addition, the primary sources are scientific journals and classic books that discuss Itsbāt Nikāh from the perspective of Shafi'i scholars. The secondary source in this study is scientific journals published in the last 5 years that have themes close to and relevant to the author's title. The tertiary source is other literature, such as books, magazines, online news, and other reference sources. In the process of drafting, the author triangulated data on the thoughts of Shafi'i scholars in studying Itsbāt Nikāh. Then compared with the compilation of Islamic law to draw conclusions from the research findings.

Teminology of *Itsbāt Nikāh*

The word *isbat* comes from the أثبت,يثبت,إثبات which means determination, confirmation, and approval (Munawar, 1997). Moreover, in Indonesian, *isbat* means confirmation, determination, and determination (Setiawan, 2019). Meanwhile, *nikah* means an agreement between a man and a woman to marry (Poerwadarminta, 1982). From these two words, the meaning of *isbat nikah* is the determination of a marriage that husband and wife have carried out. *Isbat nikah* cases regulated in the KHI are cases like a request. The *Isbat nikah* submitted by interested parties to the Religious Court is a determination regarding the marriage that a man and a woman as husband and wife have carried out. The marriage that occurred was by the provisions contained in Islamic law (religiously valid), namely the fulfillment of the terms and conditions of marriage.

Isbat nikah, or determination of marriage, is carried out in connection with the civil element, namely the existence of authentic evidence of the marriage that has taken place. This is because marriage can only be proven by a marriage certificate by applicable regulations. With this marriage certificate, the parties involved will be protected by law because they have taken legal action and received legal recognition.

This marriage certificate will be helpful to maintain the benefit of the family and to avoid the possibility of denial of the marriage that has occurred in the future. Marriages recognized by law are only registered marriages. As stipulated in Article 2 of Law no. 1 of 1974, paragraph 1 reads: marriage is valid if it is carried out according to the laws of each religion and belief, and paragraph 2 reads: every marriage is registered according to the applicable laws and regulations. And KHI articles 4, 5, 6, and 7, in general, contain the rules that a valid marriage must be carried out according to Islamic law, every marriage must be recorded, a marriage is only good if it takes place in the presence of PPN (Marriage Registrar Officer), marriages outside PPN are "illegal marriages" so they do not have Legal and marital

strength can only be proven by a Marriage Certificate made by PPN (Suherman, 2014).

KHI has acknowledged the existence of government interference in every marriage. For those who do not comply, KHI does not hesitate to impose sanctions or punishments for invalid and non-binding marriages. This emphasizes the legal certainty and order of marriage in Islamic families. For those who do not register their marriage or are reluctant to enter into a marriage before the PPN, their marriage is qualified as an "illegal marriage" in the form of an unregistered marriage or a "*kumpul kebo*" (Lutfi, 2016). This is the factor in the existence of an article that contains *isbat nikah*, namely article 7 KHI.

Article 7 paragraph (2) KHI explains that if a marriage certificate cannot prove the marriage, the *isbat nikah* can be submitted to the Religious Court. Meanwhile, paragraph (3) describes the *isbat nikah* that can be submitted to the Religious Court relates to the existence of a marriage in the context of resolving a divorce loss of marriage certificate; there is doubt about whether one of the conditions of marriage is valid or not; a marriage that occurred before the enactment of Law no. 1 in 1974; and marriages carried out by those who do not have marriage obstacles according to Law no. 1 of 1974 (Sarwani, 2022). At first glance, the KHI formulation can bring relief to those who engage in illegal marriages or illegal polygamy (Yusmi et al., 2022). Because even though a marriage certificate cannot prove marriage, the *isbat nikah* can be submitted to the PA (religious justice) to obtain a determination from the PA.

The formulation of Article 7, paragraph (3) letter a KHI needs to be limited. These restrictions are necessary so that everything runs smoothly when they are implemented. What is meant by marriage in the KHI formulation is that it occurred after October 1, 1975, and was carried out according to Law no. 1 of 1974 jo. PP No. 9 of 1975. Not illegal marriage or illegal polygamy. However, the marriage was not registered for other reasons (for example, negligence/forgetfulness of the Assistant Marriage Registrar (P3N), so a marriage certificate cannot prove it. Article 7 paragraph (3) letter *e* states that marriages are carried out by those who do not have obstacles to marriage according to Law no. 1 of 1974. With the existence of this article, perpetrators of unregistered marriages or underhand marriages will later take advantage. So, restrictions and caution are always needed from PA judges in handling the issue of *isbat nikah* (Siswomiharjo et al., 2023).

Paying close attention to the parties with the right to apply for *isbat nikah* must also refer to the parties involved in the marriage. Article 7 paragraph (4) KHI explains that the parties who have the right (*persona standi in judicio*) to submit a *isbat nikah* application who have the right to submit a *isbat nikah* application are the husband or wife, their children, the marriage guardian and parties who have an interest in the marriage. The provisions regarding husband or wife and marriage guardian are explicit. Because they are directly involved in the marriage, provisions regarding other parties interested in marriage can be interpreted for certain people or certain officials because of their position (Fauzi, 2021). What is meant by a particular person is a person who has an inherited relationship with the person whose marriage they want to associate with, such as because of a direct downward, upward or lateral blood relationship (Aziz & Rafidah, 2023).

What is meant by a particular official is an official who, because of his or her position, supervises marriages, namely a Registrar's Officer as intended by Law no. 22 of 1046 jo—UU no. 32 of 1954. Thus, the prosecutor cannot act as a party with the right to submit a *isbat nikah* application (Hilmy & Toriqirrama, 2020). Therefore, if the Registrar's Officer has the right to apply for a *isbat nikah*, then the *isbat nikah* institution is not solely intended to ensure the orderly administration of marriage but also to uphold marriage law as regulated in Law no. 1 of 1974 jo—PP No. 9 of 1975.

Observing the issue of *isbat nikah* cannot be separated from the marriage legal system as regulated and stipulated in Law no. 1 of 1974 Jo—PP No. 9 of 1975. Before the enactment of Law No. 1 of 1974 in Indonesia, there were various marriage laws, namely, for native Indonesians who are Muslim, religious law applies, which has been enshrined in customary law. For other native Indonesians, customary law applies. For native Indonesians who are Christians, *Huwelijksordonantie Christen Indonesia* (Stbl. 1933 No. 74) uses. For Eastern Chinese and Indonesian citizens of Chinese descent, the provisions of the Civil Code apply with slight changes. For other foreign easterners and Indonesian citizens of further foreign eastern descent, their customary law applies, and for Europeans and Indonesian citizens of European descent and equated with them, the Civil Code applies (Sapriadi et al., 2022).

After the enactment of Law No. 1 of 1974 concerning marriage, the various marriage laws were merged so that all groups of citizens must comply with one marriage law, namely as regulated in Law No. 1 of 1974 Jo—PP No. 9 of 1975. As is known, marriage from the perspective of Law No. 1 of 1974 is not just a contractual relationship between two individuals of different sexes but also includes eternal physical and spiritual ties and is based on religious beliefs. An act of marriage or new marriage can be said to be a legal act or according to the law if the favourable provisions of applicable law carry it out (Rofi'atun et al., 2020).

The legal provisions governing marriage procedures justified by law are as regulated in Law No. 1 of 1974 and PP No. 9 of 1975. Article 2 paragraph (1) Law no. 1 of 1974 determines that a marriage can only be said to be legally valid if the marriage is carried out according to the laws of each respective religion and belief. Then, article 2, paragraph (2), determines that every marriage is recorded according to the applicable laws and regulations. Marriages carried out by these provisions will receive authentic proof in the form of a Marriage Certificate. A marriage certificate is legal proof of a marriage carried out by the community. This marriage certificate will be helpful for the parties involved in the marriage if problems arise in the future and will be helpful for their children if they take care of administrative and other civil matters. For example, the child's parents must have a marriage certificate shown to the civil registry office to obtain a child's birth certificate (Taufiq, 2019).

This differs from unregistered marriages or private marriages, which are only carried out according to fiqh law. The marriage is already legal according to fiqh. However, a marriage certificate cannot prove this marriage, so KHI provides an opportunity to submit a *isbat nikah* application to obtain a marriage certificate. Siri marriage is a secret, meaning it has not been announced publicly. Usually, the marriage ceremony is carried out in a limited circle, in the presence of ulama or

religious figures, without the presence of KUA officers, and, of course, without having an official marriage certificate (Sukardi, 2019). Article 2, paragraph 2 of the Marriage Law Number 1 of 1974 confirms that every marriage must be recorded according to the applicable laws and regulations. This provision implies that unregistered marriages are invalid (Sukardi, 2019).

Thus, because unregistered marriages are not registered under positive law, unregistered marriages are considered invalid because the state does not recognize them. Of course, there is a reason why unregistered marriages are carried out; perhaps the first wife should not know about it. According to Islamic law, if the marriage meets the pillars of marriage, such as guardianship and consent, and there are no religious obstacles, such as not being a *mahram* or others, the marriage is valid (Mafiah & Zumrotun, 2023).

However, because the marriage was not witnessed by a government official (KUA employee/penghulu), the marriage violated the Marriage Law. Both those who marry and those who are married can be prosecuted before the Court for the violation and are threatened with a fine of up to Rp. 7,500,- (Article 45 Paragraph (1) a Government Regulation No. 9/1975) (Kharisudin, 2021). As is known, according to the Marriage Law, it is explained: "A marriage is only valid if it is carried out according to religion and belief, and is recorded according to the applicable registration regulations." (Article 2 Paragraphs 1 and 2). For those Muslims at the KUA and others at the Civil Registry office. (PP No. 9/1975, Article 2 Paragraphs (1) and (2).

Regarding his child, he is a legitimate child according to religious law. However, because the marriage still needs to be legal according to the Marriage Law, which means they do not have an official marriage certificate, the child does not have legal proof according to positive law. Regarding inheritance matters, they are difficult to prove, or there needs to be valid proof. If the person is a civil servant or in the armed forces, obtaining family benefits is difficult because they need valid proof of their marriage (Jannah & Halim, 2022). Siri marriage is a form of marriage that has become a modern fashion, emerging and developing secretly in some Indonesian Islamic communities. They are trying to avoid the system and method of regulating the implementation of marriage according to Law 18 of Law Number 1 of 1974, which is bureaucratic and complicated and takes a long time to process.

For this reason, they took their way, which did not conflict with Islamic teachings. In legal science, this method is known as legal smuggling, which is a way of avoiding legal requirements determined by applicable laws and regulations with the aim of the act in question being able to avoid an undesirable legal consequence or to realize a desired legal consequence (Aprila Sandi et al., 2022).

Itsbāt Nikāh in Perspective According to Syafi'iyah Fiqh

As explained in the previous chapter, in classical fiqh, there is no explanation of the isbat of marriage. However, the provisions for *isbat nikah* are a product of religious court volunteers rather than an actual court because, in this case, there is only the applicant. In contrast, the opponent, in this case, is not found. In a solid court case, two parties are in dispute (Yusmi et al., 2022). In classical fiqh, especially the Syafi'i School, there is no particular discussion regarding *isbat nikah*. When studied carefully, the issue of *isbat nikah* can be understood as marriage itself

because the behaviour between the two is similar. Therefore, all provisions relating to marriage also apply to the *isbat nikah*. The *isbat nikah* first appeared in the Compilation of Islamic Law in article 7, paragraphs 1, 2, 3 and 4. This article explicitly regulates the provisions for marriage. Among other factors that require an *isbat nikah* according to the Compilation of Islamic Law are there is a marriage in the context of settling a divorce, the loss of a marriage certificate, there are doubts about whether or not one of the marriage conditions is valid, there is a marriage that occurred before the enactment of Law Number 1 of 1974 and marriages carried out by those who do not have obstacles to marriage according to Law Number 1 of 1974 (Sabir et al., 2021).

The emergence of *isbat nikah* in the Compilation of Islamic Law can be confirmed after the emergence of Law Number 1 of 1974 concerning marriage. Before this law appeared, *isbat nikah* cases were not found. However, marriage that applies in Indonesian Muslim society refers to the marriage provisions in the classical fiqh books written by school imams and their followers. According to *Shafi'iyah Fiqh*, the provisions for *isbat nikah* as regulated in the Compilation of Islamic Law cannot be found. Every valid marriage fulfils all the requirements and is harmonious according to Islamic legal marriage provisions. It has been completed, and there is no need for a *isbat nikah* in the future. This is understood from the explanation of Shafi'iyah fiqh regarding the legal requirements for marriage (Al-Haitami, 1994).

A marriage is considered valid if it meets the requirements and is harmonious. According to Imam Al-Mawardi, in the Book *Al-Iqna Fil Fiqh Syafi'i*, al Mawardi explains the legal conditions for marriage as follows;

ولا يصح النكاح إلا بولي مرشد وشاهدي عدل وإذن الثيب وصمت البكر إلا أن يكون وليها أبا وجدا فلا يلزمهما استئمارها.

A marriage is valid if there is a murshid guardian, two fair witnesses, permission from the widowed woman and the silence of the virgin girl. Unless the girl's guardians are the father and grandfather, they can marry without the daughter's consent. (Al-Mawardi, 1999). According to Imam Al-Mawardi's explanation above, there are three conditions for a valid marriage. *First*, there is a guardian who is a murshid. What is meant by murshid here, as explained by fiqh scholars, is someone prosperous in two things, namely religion and wealth. Religious prosperity implies that people who maintain their religion by never committing major sins perpetuate themselves in minor sins. Prosperous wealth means that the person is not wasteful or wasteful in using their assets. Other scholars usually describe the term murshid as fair (al-Malibari, 2001).

Second, there are two fair witnesses. The meaning of fairness to witnesses is that a person who is a witness to a marriage is a person who maintains his religion; he is not classified as a passive person. The criteria for someone to be called fair to the witness are that they have never committed significant sins and have not been accustomed to minor sins. *Third*, there is permission from the widowed woman if the guardian wants to marry her off. The need for permission from a widowed woman is that because she has already been married, the guardian's responsibility towards her has been completed. The following marriage is his right. Therefore, the

guardian must ask permission if he wants to marry her. Meanwhile, a girl who is still a virgin permission to marry him only needs to respond silently; this shows that she agrees. For *mujbir* guardians, they can force their daughters to marry off to someone they deem suitable (Al-Ghazi, 1996). The requirements for a valid marriage made by Imam al-Mawardi above still need to be completed because his conditions do not include the grooming of husband and wife and the marriage contract. According to Imam Al-Ramli, in the book *al-Nihayah*, it is stated that there are five pillars of marriage, namely: groom, bride, guardian, two witnesses and *sighat* (Al-Ramlī, 2003).

The pillars of marriage proposed by Imam al-Ramli are more complete and complete than al-Mawardi's explanation above. Al-Ramli's explanation of the pillars of marriage is the same as other scholars. From the explanation above, we can understand that marriage is formed by five elements, namely the male and female bridesmaids, guardians, witnesses and marriage vows. These five elements must be fulfilled for a marriage to be valid. (Al-Ramlī, 2003).

Each pillar above has its requirements. Regarding these requirements, as stated by one of the scholars of the Syafi'i Al-Haitami;

ولا يصح النكاح إلا بإيجاب وقبول بلفظ التزويج أو الإنكاح غير مؤقت ولا معلق بحضور ولي مرشد وشاهدي مقبول شهادة نكاح لا مستور إسلام وحرية ولا يفتقر نكاح الذمية إلى إسلام الولي ولا نكاح الأمة إلى عدالة السيد.

A marriage is valid with an ijab and consent with the wedding ceremony and a marriage that is not timed and done, with the presence of a murshid guardian and two witnesses who are accepted as testimony at the marriage. It is not permissible for those who are masters (closed) to Islam and are independent. There is no need to marry a zimmi infidel to an Islamic guardian and a servant's marriage to *adil sayid* (Al-Haitami, 1994).

As explained above, the pillars of marriage have their requirements. The *sighat nikah* (promise and consent) must be with the pronunciation of marry or *nikah*; this shows that other pronunciations are not valid for use in the marriage contract. Furthermore, the marriage contract (mut'ah) may not mention a time limit for marriage (*mut'ah*), and it should not be tied to something such as the arrival of sifulan or the occurrence of an event. These two things cannot be done in a marriage contract.

The marriage guardian must have *murshid* or fair characteristics. The two marriage witnesses required are witnesses whose testimony is accepted in the marriage in the sense that these witnesses are part of the fine people. Furthermore, the witness must be clear about his Islamic or independent status. The marriage witness must genuinely be a person who has no doubts about Islam and independence. The way to convince these two things is by having witnesses and unmistakable evidence.

Regarding *isbat nikah*, it is not found in Syafi'iyah Fiqh if what is meant by this *isbat nikah* is repeating a marriage that is already valid or whose validity is doubtful. In the discussion of classical fiqh, a marriage that is valid according to law does not have to be remarried at a later date. However, if the marriage doubts its validity, it must be repeated until it is valid (Rahmat & Hadrizal, 2019).

In classical fiqh, the requirements or pillars of marriage revolve around five things, as explained above. If one of these pillars is not fulfilled, the marriage contract is invalid and must be repeated when the conditions are complete. Nothing can be found regarding the requirements for having to repeat the marriage as required now, such as it must be recorded, the marriage certificate is lost and so on.

The requirements for marriage, according to classical fiqh, are pretty simple. There are no administrative requirements like those that exist today. A person who wants to marry only needs to be matched by his in-laws or someone appointed by his in-laws. A person does not have to report themselves when they want to get married to a government official who has authority in the field of marriage. Likewise, the note-taking requirement is not found in classical fiqh explanations (Nasrulloh et al., 2021).

Comparative Analysis Between KHI and Syafi'iyah Fiqh

The differences between the two are visible if you look closely at the explanation of each *isbat nikah* according to Syafi'iyah Fiqh and the Compilation of Islamic Law. Although the two have similarities in specific ways, In the following, the author will explain the comparison between two components of Islamic law (Shafi'iyah Fiqh and KHI) regarding the issue of *isbat nikah*. After careful analysis, the author found similarities regarding the *isbat nikah* according to Syafi'iyah Fiqh and the Compilation of Islamic Law. Even though the Syafi'iyah Fiqh does not discuss the *isbat nikah*, there are several things according to the Syafi'iyah Fiqh that it is necessary to carry out the *isbat nikah*, for example, when in doubt about the validity of the marriage, or whether the terms and conditions of the marriage are perfect or not. This is understood from the strict requirements set out in Syafi'iyah Fiqh regarding the conditions and pillars of marriage.

Similarities in the terms and conditions of marriage are also found in the provisions of the *isbat nikah* according to the Compilation of Islamic Law. According to the Compilation of Islamic Law, one of the factors that can be submitted for marriage isbat is the existence of doubt about whether the marriage is valid or not. There are quite a lot of differences between Syafi'iyah Fiqh and the Compilation of Islamic Law (KHI) regarding the provisions for *isbat nikah*; in the KHI, it is stated that *isbat nikah* is carried out for divorce, meaning that someone who wants to divorce in the Religious Court but does not have a marriage certificate, is required to do the *isbat nikah* first, after that, the judge can decide the divorce case. In Syafi'iyah Fiqh, provisions like this are not found.

In the KHI, if someone loses their marriage certificate, they must submit a *isbat nikah* to the Religious Court to obtain a new marriage certificate. This kind of *isbat nikah* provision is not found in Syafi'iyah Fiqh. It is stated in the KHI that marriages that occurred before the emergence of Law Number 1 of 1974 concerning marriage must be *isbat nikah*. They must be returned to the Religious Court. Provisions like this are also not found in Syafi'iyah Fiqh (Sari et al., 2021). A person who enters a marriage does not comply with Law Number 1 of 1974, even though he is not prevented from following it. So the person's marriage must be *isbat nikah* return. Such provisions are also not found in Syafi'iyah Fiqh.

The differences in views regarding *isbat nikah* according to these two types of law are due to different situations and places. Syafi'iyah Fiqh is a formulation of

Islamic law that has been prepared for quite a long time; at that time, the marriage issue was still simple, and the various marriage problems that arise today have yet to be discovered. So there are no provisions for *isbat nikah*. Meanwhile, the Compilation of Islamic Law (KHI) is Islamic law legislation adapted to the conditions of Indonesian society today, especially after the birth of Law Number 1 of 1974 concerning marriage, where every marriage event must be under the supervision and recording of authorized officials. So, the marriage laws in the Compilation of Islamic Law (KHI) refer to this law and the socio-cultural conditions of Indonesian society.

Conclusion

Isbat nikah is the determination of a marriage that husband and wife have carried out before the Religious Court due to the following factors: the existence of a marriage in the context of resolving a divorce, loss of a marriage certificate, doubts about the validity or not of one of the terms of the marriage, the existence of a marriage that occurred before enactment of Law no. 1 of 1974 and marriages carried out by those who do not have obstacles to marriage according to Law no. 1 of 1974. Syafi'iyah fiqh and Compilation of Islamic Law (KHI) have similar views on the *isbat nikah*, but the differences between the two are significant.

The differences in opinions regarding *isbat nikah* according to these two types of law are due to different situations and places. Syafi'iyah Fiqh is a formulation of Islamic law that has been prepared for quite a long time; at that time, the marriage issue was still simple, and the various marriage problems that arise today have not yet been discovered. So there are no provisions for *isbat nikah*. Meanwhile, the Compilation of Islamic Law (KHI) is Islamic law legislation adapted to the conditions of Indonesian society today, especially after the birth of Law Number 1 of 1974 concerning marriage, where every marriage must comply with this law. The marriage laws regulated in the Compilation of Islamic Law (KHI) refer to Law Number 1 of 1974 concerning Marriage and the socio-cultural conditions of Indonesian society.

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