

## Integrating Legal Protection Strategies for Wife and Children Due to Rejection of Marriage *Isbat* Application

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### **Abstract:**

*This study explores integrative legal protection strategies for wives and children, bridging normative and sociological perspectives, in the face of Isbat Nikah application rejections. This strategy is essential because it is motivated by the facts in the field, namely that many Isbat Nikah are not registered and have legal consequences. This study uses a qualitative approach; this empirical study is drawn from observation data and interviews with judges and clerks in three religious courts (PA) in East Java, namely in Pamekasan, Probolinggo, and Pasuruan Districts. The data was further enriched by comparing it with document and literature studies, then analyzed using descriptive techniques. This article finds that the legal protection of wives and children due to the rejection of Isbat Nikah applications is to apply an integrative normative-sociological strategy. Normatively, the way that can be taken is by integrating several aspects such as aspects of the law, law enforcement, and facilities or facilities that can support the application of law, such as human resources and sophisticated tools such as tools to find out a person's DNA. Meanwhile, sociologically, two aspects of social problems are crucial to carrying out an integrated improvement strategy, namely aspects such as aspects of a religious-type society and a negative patriarchal culture. Religious communities often exhibit a strong susceptibility to dependence on religious guidance.*

## Introduction

Over the past five years, an intriguing phenomenon has emerged within the horseshoe community in East Java: a growing tendency among people to forgo registering their marriages (Kepaniteraan PA Probolinggo, 2021; Kepaniteraan PA Pasuruan 2022; Kepaniteraan PA Pamekasan, 2022). The reasons why people do not register their marriages at the Office of Religious Affairs (KUA) are ignorance and lack of understanding of marriage registration; the community considers that marriage is sufficient to be carried out based on religious provisions only as long as the legal conditions and pillars are fulfilled. The community has remained unaware that a marriage is considered valid only when the cumulative requirements outlined in Article 2 (Paragraphs 1 and 2) of Law Number 1 of 1974 on Marriage are fulfilled.

Another contributing factor is the community's reliance on Modin and the Village Head for handling marriage matters, driven by the strong belief that marriage is a "*tengka*" affair (a term in Madurese meaning urgent; failing

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to go through the Village Head or Modin is thought to cause unease or dissatisfaction) (Mashuri, 2022). Once marriage matters are handed over directly to the Modin or Village Head, there is negligence in not registering it at the KUA. If the marriage is not registered, it becomes a big problem, namely not having a marriage certificate and their children not having a birth certificate.

Another reason is that the community often resorts to unregistered marriages for their children because they have not yet reached the minimum marriageable age of 19 years for both men and women, as stipulated in Article 7 of Law Number 16 of 2019, which amended Law Number 1 of 1974 on Marriage. When the child has reached the age of 19, there are two choices made by the parents. If they do not have offspring, the first choice will be to register their marriage immediately at the KUA. Still, the second choice, if they already have offspring, is to apply for *Isbat Nikah* (Marriage Validation) with the aim that the offspring born from the marriage can be recognized as children in marriage. Of the 457 cases of *Isbat Nikah* applications in 2020, 1 (one) case was rejected, namely case Number 622/Pdt.P/2020/PA.Pmk, and there was 1 (one) case that was not accepted, namely case Number 655/Pdt.P/2020/PA.Pmk, also in 2021, there was 1 case of filing for the origin of children, and in 2022, there were 2 cases of filing for the origin of children (Pamekasan, 2022). Meanwhile, in the Pasuruan Religious Court, an astonishing fact was found, namely that 19 cases were rejected for *Isbat Nikah* (Kepaniteraan PA Pasuruan, 2022). Meanwhile, in Probolinggo, there was a case of rejected *isbat nikah* in 2021, with the case number 0169/Pdt.P/2021/PA.Prob (Kepaniteraan PA Probolinggo, 2021).

In some literature, the study of legal protection in *Isbat Nikah* focuses on four key aspects. First, it examines legal protection based on customary and religious considerations. This is done so that children can be well protected, especially from disturbances or social stigma that arise (Horii, 2020). (Horii, 2020). Second, a critical study of the legal bureaucracy related to the legal protection of children and wives. In the context of legal protection, the government allows the bureaucracy related to marriage registration regulations to be complicated. It is said to be complicated because the government seems only to try to accommodate the majority religion (Nisa, 2018). Third, a phenomenological study of *Isbat Nikah* in Muslim countries. This study is comprehensive and comparative, which tries to see the phenomenon from various sides, both in terms of the legal basis of fiqh, positive Law, how scientific proof is, and how the judge's opinion is (Dupret et al., 2023; Supraptiningsih, 2017; Mustika, 2019). Fourth, administrative studies of unregistered marriages in Muslim minority countries such as in Europe. This study focuses more on highlighting the legal status, both the legal status from the perspective of Islamic Law and the legal status from the perspective of positive Law and the implications of marriage status. The results of this study are quite astonishing; namely, to avoid the vulnerability of the consequences caused by unregistered marriages in Muslim minority countries to remove the provisions of unregistered marriages. In this context, European countries require every Muslim who wishes to marry to register their marriage. The

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primary reason for this registration is the vulnerability of divorce in economically disadvantaged families (O'Sullivan & Jackson, 2017).

This article argues that, as a result of the rejection of the Isbat Nikah (Marriage Validation) application, the child's status becomes that of an extramarital child, meaning the child only has a civil relationship with their biological mother. This is outlined in Article 43, Paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states: "Children born outside of marriage only have a civil relationship with their mother and her family." If such a situation continues, it will be very detrimental to both the wife and children. Therefore, in order to resolve the issue and find a solution, an integrative strategy can be implemented involving various parties, starting with the government and society working together, from the grassroots level, namely the community itself, up to the higher levels, including officials, legal practitioners such as judges, and relevant institutions like the Religious Affairs Office (KUA) and the Population and Civil Registration Office (Dukcapil) (Kharlie, 2021). In this community context, the role of religious and community leaders is crucial. The legal consequences faced by the wife and children following the rejection of the marriage validation (Isbat Nikah) application will undoubtedly strip them of their rights, such as inheritance rights, maintenance rights, educational rights, and other rights that children should receive from their biological father under the law (Rubenstein & Stark, 2017; Thiara & Humphreys, 2017; Tobin & Cashmore, 2020). Therefore, the significance of this article is crucial, given that Indonesia is a rule-of-law country, where legal protection for its citizens—particularly for wives and children—should be a top priority.

This paper aims to address the gaps in previous studies that overlooked the legal protection implications resulting from the rejection of Isbat Nikah applications, particularly focusing on the impact experienced by wives and children. Related to this, three things are discussed: How are the cycle and problematics of legal events and social facts, such as Isbat Nikah, unregistered marriage, and early marriage? How do judges and clerks respond to legal events and facts, especially when analyzing administrative Law? How can we create a legal protection strategy for wives and children affected by the rejection of the Isbat Nikah application, blending both legal norms and societal realities?

### **Method**

This article is the result of research conducted at three Religious Courts in East Java: Probolinggo, Pasuruan, and Pamekasan. The type of research used is empirical legal research with a qualitative approach, which is a research method that employs a naturalistic approach to understand the phenomena experienced by the research subjects, such as behaviors, perceptions, motivations, actions, and others (Moleong, 2016). The data collected will then be analyzed using descriptive analysis techniques, presenting the research findings in a detailed and explanatory manner.

This research uses two types of data: primary data and secondary data. Primary data refers to the information obtained directly from informants. In this case, several informants were selected as primary data sources, including

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the Registrar and Judges from the three Religious Courts in the region. On the other hand, secondary data includes documents relevant to the research topic, obtained from religious courts, as well as literature sources, legal studies, journal articles, and other related papers.

The data collection process starts with Focus Group Discussions (FGDs), followed by interviews, observations, and documentation. Technically, the steps are as follows: *First*, search for relevant documents as secondary data through data retrieval at the Religious Courts in the horseshoe region, literature sources, studies of regulations, journal articles, and several related papers. *Second*, conducting a Focus Group Discussion (FGD) involving clerks and judges from the Religious Courts in the horseshoe region. *Third*, interviews are conducted with informants selected as primary data sources using purposive sampling techniques, including judges and clerks. Data analysis involves three simultaneous activities: data reduction, data presentation, and drawing/verifying conclusions.

## **Results and Discussion**

### ***Isbat, Sirri, and Early Marriage: Cycles of Legal Events and Social***

In the context of legal protection for wives and children, three key variables frequently emerge: Isbat Nikah, unregistered marriages, and early marriages. These three variables are interrelated or cyclical terms (Stout et al., 2021; Mustasaari & Al-Sharmani, 2018; Jaraba, 2020). In some literature, this relationship can be found in the terms nikah sirri and nikah dini. These two variables are often equated in terms of terminology (Susilo, 2022). Meanwhile, Isbat Nikah is a term that arises when someone wants to clarify the status of marriage for divorce settlement in court, the loss of a marriage certificate, doubts regarding the validity or invalidity of one of the conditions of marriage, the existence of a marriage that occurred before the enactment of Law No. 1 of 1974, a marriage performed by those who have no obstacles (Horii, 2020) marriage according to Law No. 1 of 1974. From the description above, two key points emerge: identifying the legal issues and understanding the social realities in society. Recognizing this distinction is crucial in finding the right solution to address the situation effectively (Horii, 2020).

The following presents an overview of the legal and social facts of *Isbat Nikah* in three districts in East Java, as in Table 1 below.

Table 1. Legal facts and social facts of marriage validation in East Java

No	Religious Court (PA)	The Annual Number of Marriage Validation Cases (Accepted and Rejected)		Legal Facts	Social Facts
1	PA Pamekasan	2018	556 accepted and 2 rejected	1. Unregistered Marriage 2. Underage Marriage	1. Too neglectful in marriage administrative matters.
		2019	532 accepted		

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		2020	462 accepted and 1 rejected	3.No permission from the first wife	2. Religious factors do not require the registration of marriage.
		2021	384 accepted and 1 rejected	4.Not approved by parents.	
		2022	514 accepted and 1 rejected		
2	PA Probolinggo	2018	42 accepted	1. No marriage certificate	1. A significant number of violations related to changes in identity or identification.
		2019	32 accepted	2. Underage marriage	
		2020	52 accepted	3. Guardian does not agree	
		2021	51 accepted and 1 rejected	4. Polygamy	2. Many couples practice polygamy without registration
		2022	43 accepted		
3	PA Pasuruan	2018	202 accepted	1. No marriage book	1. The community appears indifferent to marriage registration rules;
		2019	378 accepted	2. Below the legal marriage age	
		2020	472 accepted		
		2021	239 accepted		
		2022	114 accepted and 19 rejected		2. The community is reluctant to handle administrative matters
<b>Total number of rejected cases in the last 5 years: 25 cases</b>					

Source: PA Annual Reports for Probolinggo, Pasuruan and Pamekasan Districts

Based on the data in Table 1 above, several legal issues emerge in Pamekasan, including *nikah sirri* (unregistered marriage), underage marriages, lack of consent from the first wife, and disapproval from parents. These legal facts will affect other legal facts and potentially become a vicious circle that will never end (GRIJNS, 2018). The legal fact of *nikah sirri*, for example, will also definitely affect the discretion of marriage (GRIJNS, 2018). Based on data from the registrar of PA Pamekasan in the last 3 years, there are applications for marriage discretion that have continued to increase, starting in 2020 with 261, in 2021 with 308, and in 2022 with 235 (Safiudin, 2022). The data also shows that from 2019 to 2020, there was 1 application for *isbat nikah*, which the judge rejected on the grounds stated in the legal facts above. Given these legal facts, ideally, the issue of Isbat Nikah should be addressed first to prevent it from escalating into other problems, which could lead to a rise in discretionary marriage applications.

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Additionally, in PA Probolinggo, the legal facts surrounding the issue of Isbat Nikah include the absence of a marriage certificate, underage marriages, the need for guardian approval, and polygamy. The data shows that for the Probolinggo area there are almost every year marriage Isbat Nikah rejected due to problems with the identity of the Identity Card (KTP), where the married status should be married but not recorded (Qomariyah, 2022). The data in PA Probolinggo shows that there seems to be an omission (Bedner & van Huis, 2010) in marriage practices in Indonesia, including the issue of unregistered marriages. Therefore, the marriage system in Indonesia requires a fundamental overhaul (Kharlie et al., 2021), which should include providing proper education on the importance of administrative marriage registration. This will help the public understand that addressing this administrative matter is crucial for the well-being and future stability of the family.

Meanwhile, in PA Pasuruan, the legal facts identified include the lack of a marriage book and the failure to meet the minimum marriage age. In this district, in 2022, there were 18 rejected *isbat nikah*, and in 2021, there was 1 rejected *isbat nikah*. This data on the legal facts of *Isbat Nikah* actually shows a classic reason that is full of dilemmas (GRIJNS, 2018). It is said to be a dilemma because of the issue of the age of marriage from the internal side. There are indeed differences between Law Number 1 of 1974 and the Child Protection Law. People, particularly in the Pasuruan area, often show reluctance (Rosniah, 2022) when it comes to handling administrative matters. In this administrative context, the issue of Isbat Nikah can be seen as a compromise (GRIJNS, 2018), one that continues to sustain this Islamic marriage practice.

As shown in Table 1 above, in the context of social facts, our society tends to view marriage as a simple matter (Aisyah & Parker, 2014), despite the fact that it involves a complex cycle of issues, both in terms of legal regulations (Nuralaelawati, 2019; Nuralaelawati, 2013) and the surrounding social conditions (Horii, 2020). The term social facts in the sociology of Law is often called social symptoms (Suadi, 2018). These social symptoms are targeted by the bodies involved in the administration of Law, namely lawmakers, courts, police, and advocates (Anwar & Adang, 2011). In more detail, sociologists see social facts as social control. This social control can technically be done using socialization (Anwar & Adang, 2011). With this socialization, the community can later adjust, and it turns out that in socialization, there are rules or rules that they must obey. Therefore, the issue of Isbat Nikah is not solely related to problematic legal regulations, but also involves social factors. The community plays a crucial role, as social norms contribute significantly to the ongoing cycle of Isbat Nikah practices and all the challenges associated with them to this day.

### **Analysis of the Opinions of Judges and Registrars Regarding Administrative Law Violations in the Refusal of Isbat Nikah**

Based on interviews with several judges and clerks from three PA locations in East Java-Pamekasan, Probolinggo, and Pasuruan-it was found that various administrative violations emerged as a consequence of the rejection of *Isbat Nikah* applications. These violations include the practice of

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nikah sirri or unregistered marriage, not reaching the age of marriage, not obtaining the first wife's permission, and not being approved by parents. The judge in this court thought that whatever the reason, *Isbat Nikah* clearly indicated a violation of the Marriage Law (Mashuri, 2022). Indeed, it is not only a violation of the law but also many other provisions in legislation that are automatically violated, such as KHI and PP No. 09 of 1975. This shows that the PA, as a judicial institution, is an institution that is expected to provide administrative solutions and social solutions because this institution is a central institution (Horii, 2020) as the top decision maker of the dualism of social and legal facts. Thus, the judge rejected the *Isbat Nikah* application due to a fundamental reason: the potential violation of administrative regulations.

As for Probolinggo District, the administrative violations that occur are not having a marriage certificate, not being old enough, and the guardian not approving and the reason for polygamy. The judge in PA Probolinggo rejected the application actually based on a consideration of the fact that the majority of the parties who applied for *Isbat Nikah* committed identity violations, for example, on the KTP, written as married when, in fact, they were not married (Piinga, 2022; Qomariyah, 2022). In the context of early marriage, such identity violations are an indication of weak ethics or social norms (Dickens, 2015) in the area. This weakness is influenced by many things, namely education, socio-economics, and poverty (Susanti, 2019). This fact reveals that behind what may appear to be a simple and minor issue, such as identity violations in *Isbat Nikah*, lies a complex and far-reaching set of problems. These issues touch on crucial sectors like education, socio-economic conditions, and beyond.

Furthermore, in Pasuruan District, two administrative violations were identified: the absence of a marriage book and the failure to meet the minimum marriage age requirement. In PA Pasuruan, applications submitted after 2000 will definitely be rejected (Rosniah, 2022) because it is considered that the parties who apply already understand the essence and importance of marriage registration (Muslich, 2022; Rosniah, 2022). The opinion of judges and clerks who reject *Isbat Nikah* is actually quite reasonable because, in substance, the regulation of marriage registration has actually been enforced for a long time; it is just that in its implementation, it has difficulty being carried out given the complexity of the bureaucracy (Nisa, 2018) of Muslim marriage in Indonesia. The complexity of the bureaucracy can be seen in at least four key aspects: the government or state, religious leaders, women's rights activists, and legal advocates (Nisa, 2018).

In the context of the government or state, the issue of Islamic marriage and the rejection of *Isbat Nikah* represents a dualism, caught between judicialization and bureaucracy (Nisa, 2018; Sezgin & Künkler, 2014). Judicialization here means that an Islamic marriage, including the issue of *Isbat Nikah*, is only valid if it has been carried out religiously (valid by religion or ulama authority), and bureaucracy means that an Islamic marriage is only valid if it has been registered under state law (legal by state) (Nisa, 2018). In general, Indonesia's bureaucracy, especially regarding Islamic marriage, is among the strictest among other religious countries, although there are still some weaknesses in social control (Sezgin & Künkler, 2014). This indicates that the rejection of *Isbat Nikah* by judges in the three PAs in East Java is an

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administrative issue whose resolution requires the role of community leaders or scholars in judicializing it and involves the active role of government legal experts, including judges and the entire judicial system in unraveling its bureaucratic problems. To establish a robust administrative system in Islamic marriage, particularly in addressing the rejection of *Isbat Nikah*, an integrated strategy involving all stakeholders is essential. This includes collaboration between religious scholars, who hold authority over religious matters, and legal experts, including judges and the entire judicial system, who oversee state law.

The next bureaucratic complexity is the aspect of religious leaders. Data shows that religious leaders in Pasuruan Regency, through the *Bahtsul Masail* forum, have issued a fatwa that secret marriage is forbidden (Muslich, 2022). Several literatures state that religious leaders, especially conservative religious leaders (Nisa, 2018) in several Muslim-majority countries, are the parties most responsible for all matters relating to the problems of Islamic marriage. This is because conservative religious leaders often argue that as long as the marriage is conducted according to Islamic religious principles, it is considered permissible. They also have the view that why secret marriage is prohibited, but free sex and adultery are considered basic rights, and no sanctions are given to violators (Susanti, 2019; Nisa, 2018). This shows that administrative violations in *Isbat Nikah* are possible because of the role of religious leaders who still have a conservative paradigm. This situation would likely be different if religious leaders adopted a more progressive perspective, which could help reduce marriage practices that conflict with state regulations.

Another important aspect to consider in the complexity of Indonesia's Islamic marriage bureaucracy is the role of the women's rights activist movement. Women's rights activists are a kind of movement carried out by women activists in fighting for their rights to be free from the Islamic egalitarian system (Nisa, 2018), including rights related to unregistered marriages and children from unregistered marriages. Several organizations that are quite concerned about fighting for women's rights are the National Commission on Violence Against Women (KOMNAS Perempuan), the Legal Aid Institute of the Indonesian Women's Association for Justice (LBH-APIK), Muslimat NU, and Rahima. These women's organizations even dare to claim that unregistered marriages have a negative impact on wives and children (Van Huis and Wirastrri). Concern women rights activists are actually similar to the results of legal activist studies that assess that in unregistered marriages, wives and children will be very vulnerable, and their positions and rights will be threatened (Nisa, 2018; Van Huis & Wirastrri, 2012). These facts highlight that the issue of *Isbat Nikah* has a significant negative impact on the bureaucracy of Islamic marriage in Indonesia.

In the administrative context, violations resulting from the rejection of *Isbat Nikah* in East Java have at least three key impacts: first, judicial institutions like the PA play a central role in providing legal protection for wives and children. The consequences of the rejection of *Isbat Nikah* in three regencies in East Java indicate weak ethics and social norms that have an impact on the education, socio-economic, and poverty sectors. In the bureaucratic context, this highlights a negative trend in Islamic marriage



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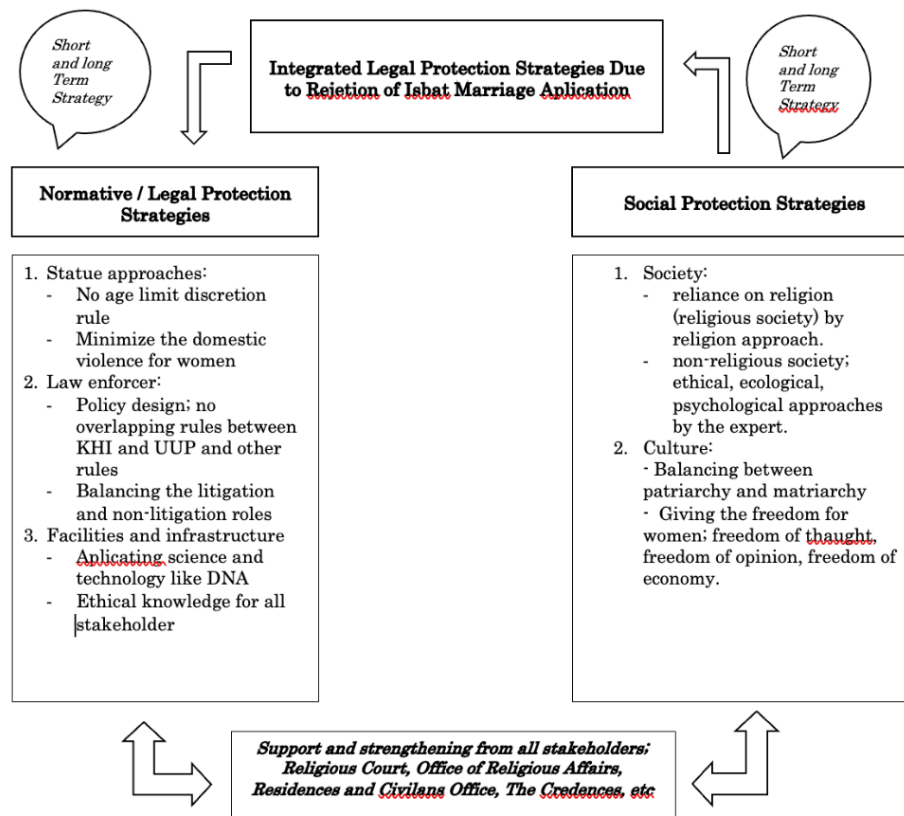
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bureaucracy in Indonesia, which also adversely affects the fate and rights of wives and children in the country.

### **Strategy of Legal Protection for Wives and Children Due to Rejection of *Isbat Nikah*: Normative and Sociological Integration**

In the context of legal protection for wives and children, an integrated strategy is required, combining both normative and sociological perspectives. A strategy with an integrative model like this is very important to be carried out so that the problem of rejected *Isbat Nikah* and other related issues, such as unregistered marriage and early marriage, can be comprehensively resolved and an appropriate solution can be found. The strategy in question is briefly illustrated in Diagram 1 below.

Diagram 1. Legal Protection Integration Strategy for Wives and Children Due to Rejection of *Isbat Nikah*



Source: Adapted from Integrated Legal Protection Strategies Gassman O, Bader MA

In the context of legal protection, wives and children are often the vulnerable parties (Suryani et al., 2015) when it comes to economic, social, and political factors, making it crucial to provide them with legal safeguards. The legal protection referred to here is such as violence (Horii, 2020) and deprivation of the rights of wives and children (Mashuri, 2022). Therefore, the government provides protection to women in the rights of wives and children through laws and other laws and regulations. Unfortunately, these regulations

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are often understood purely from a normative perspective and not interpreted sociologically, which means the community does not directly experience the benefits or solutions.

Normatively, Diagram 1 above illustrates that there are aspects of the law that serve as tools for law enforcement. Although there are various written regulations to protect women or wives and children, such as Article 41 letter c of Law Number 1 of 1974 concerning Marriage, KHI in Chapter XVII, especially Article 144, Law Number 4 of 2002 concerning Child Protection, there are still many cases of violence against women or wives (Aisyah & Parker, 2014) and children (Nuraelawati, 2016); Tobin & Cashmore, 2020). Legal protection here is very important to be carried out so that wives can continue their lives after being abandoned or divorced by their previous husbands. Likewise, children who are expected in the future to be able to obtain their rights as before their parents divorced, such as custody rights, economic rights, education, and other general rights, such as health, both physical and psychological (Nuraelawati, 2016). This demonstrates that legal issues, when viewed from a normative perspective, have far-reaching consequences. They can impact various sectors, including education, economy, health, and more.

The next aspect is law enforcement, which plays a crucial role in legal facts. This involves individuals who significantly influence outcomes, either directly or indirectly, and whose actions can lead to prosperity and historical change (Tobin & Cashmore, 2020). Currently, it is women, wives, and children who are the parties being harmed in this context. The direct role here, as conveyed by one of the judges at the Pasuruan PA, can be in the form of the role of each local religious figure (Muslich, 2022), where this role is quite effective in law enforcement, especially those related to *Isbat Nikah* and marriage registration. Law enforcement here can be translated into two things, namely policy design and advocacy or litigation (Tobin & Cashmore, 2020). In the context of policy design, the role of the government is only to ensure that there are no overlapping or conflicting regulations, such as regulations regarding the age limit for marriage, but the state is also permissive by making its discretionary regulations. Meanwhile, in terms of advocacy and litigation, ideally, there should be a suitable comparison, namely by maximizing the role of NGOs (non-governmental organizations) and accommodating the role of local community leaders who better understand the situation in their area. By ensuring the active involvement of these stakeholders, law enforcement for the protection of wives and children can be carried out effectively and comprehensively.

Furthermore, legal protection can be significantly impacted by the availability of resources and support systems for law enforcement, such as skilled human resources and advanced tools. For example, tools like DNA analysis, which were utilized in the Machica Mochtar case, can play a crucial role in ensuring justice is served (Dupret et al., 2023). This is in line with what was conveyed by the judge at the Probolinggo PA who stated that in this modern era, modern tools are also needed to solve increasingly complex problems in the future, especially in the field of marriage (Piinga, 2022). Interesting data was released in 2016 by the Transparency International Organization, which states that Indonesia is ranked 91th in the Corruption

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Perception Index. Interestingly, this data has an impact on child marriage where the large amount of corruption or falsification of data by people in power contributes to the practice of child marriage (Aditya & Waddington, 2021). This data is similar to what happened in Pasuruan Regency, the locus of this research, where parents, the community, and even the perpetrators deliberately committed administrative violations by falsifying personal identities or KTP (Piinga, 2022; Muslich, 2022). Based on these conditions, legal protection is truly a shared ethical awareness (Dickens, 2015) for all levels of society without exception. Everyone in society, whether professional or non-professional, must approach this serious issue with integrity and strong ethical principles.

In the social context, two crucial elements significantly impact legal protection. The first is society itself. Society here means the environment or place where the Law applies and is applied (Soekanto, 2012). In the locus of this research, it is known that the community is relatively religious (Mashuri, 2022; Piinga, 2022; Muslich, 2022). In the context of a religious society, it is very challenging to address issues related to *Isbat Nikah*, especially regarding the necessity of registering a marriage. The difficulty arises when this type of society is confronted with administrative matters, as there is a strong dependence on religious practices and beliefs (Butt, 2018); GRIJNS, 2018; Susilo, 2022). This dependency factor can actually be resolved by employing various approaches, such as an ethical approach, an environmental approach, and a personal religious approach (Tobin & Cashmore, 2020). These approaches are crucial in addressing administrative issues, especially a personalized approach tailored to each family, carried out by individuals who possess the ability to understand and resolve the problem effectively (Tobin & Cashmore, 2020).

The second sociological aspect that plays a significant role in influencing legal protection, particularly in the context of *Isbat Nikah*, is the cultural aspect. Culture, in this context, refers to the habits, customs, and traditions passed down from generation to generation in matters of marriage. In some literature, it is widely acknowledged that a patriarchal system dominates the culture of marriage in Indonesia. This patriarchal culture has a negative impact, as it perpetuates a hierarchy of male power that continues to be reinforced (Aisyah & Parker, 2014). This patriarchal culture was also discussed by one of the judges at the Pamekasan Religious Court, who stated that the patriarchal culture, particularly in the East Java region, and more specifically in relatively religious areas such as Madura, presents a unique challenge and can even become counterproductive (Mashuri, 2022). This is considered counterproductive because, while religious doctrine grants men authority as leaders in various aspects, including worship and muamalah, the application of this doctrine in a patriarchal marriage culture can have negative consequences. This will certainly open up the possibility of male domination in the household in all matters ranging from economics, education, freedom of thought and even vulnerable to violence (Aisyah & Parker, 2014) against family members who are female such as wives and children. Another terrible risk faced by wives and children after divorce is the uncertainty (Nuraelawati, 2016) regarding child custody and the future of both the child and the wife,

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who is at risk of losing her rights as a spouse. The uncertainty surrounding custody is also influenced by religious doctrines and the decisions of judges, who ultimately offer choices (Nuraelawati, 2016) If the child is under 12 years old, the custody rights are granted to the father, while if the child is over 12 years old, custody typically falls to the father as well. Based on this analysis, the cultural aspects that heavily influence the legal protection of wives and children in the issue of isbat nikah are complex. These themes are interconnected, linking major aspects such as culture, economy, and education with smaller, intertwined issues like the rights of women, wives, and children, as well as fundamental freedoms such as the right to freedom of thought and expression.

The five aspects that influence the legal protection of Isbat Nikah, particularly when rejected by the panel of judges, are not isolated; they are interconnected and interdependent. They form a series of interconnected problems. This series of issues requires a holistic approach to identify the root cause and find a comprehensive and appropriate solution. For instance, in the case of the *Isbat Nikah* rejection by the panel of judges, the judges rejected the request for Isbat Nikah because an underlying issue caused both the major and minor themes to exist in isolation. This underlying issue, for example, is when the rejection of *Isbat Nikah* significantly impacts the development of children's education, the economy, and even psychological well-being, as discussed earlier. Upon further examination, it is found that the dominance of patriarchal culture primarily causes this. Therefore, addressing this issue requires improving the domestic cultural system within society, fostering a more supportive and equitable environment for legal protection, especially for women and children.

### **Conclusion**

The rejection of Isbat Nikah by the judges of the Religious Courts in the three districts of East Java is not only tied to normative-legal issues but also deeply connected to social phenomena, where the community plays a pivotal role in sustaining this practice. The community's social dynamics and cultural factors contribute to the continuation of this issue.

The perspectives of judges and clerks in addressing legal events and facts, especially in the context of administrative law, highlight various violations. These include the practice of nikah sirri (unregistered marriage), underage marriage, lack of consent from the first wife, absence of parental approval, missing marriage certificates, insufficient age, unapproved guardians, polygamy, absence of a marriage book, and failure to meet the minimum legal age for marriage. In an administrative context, the rejection of *Isbat Nikah* leads to at least three significant impacts: first, on judicial institutions such as Religious Courts (PAs), which play a central role in providing legal protection to wives and children; second, this administrative violation weakens social ethics and norms, affecting sectors such as education, socio-economic conditions, and poverty; and third, it negatively impacts the bureaucratic system of Islamic marriage in Indonesia, worsening the situation and eroding the rights of wives and children. These negative impacts can be

minimized by improving four key aspects: the government or state, religious leaders, women's rights activists, and legal activists.

The legal protection for wives and children arising from the rejection of the Isbat nikah application requires the implementation of an integrative strategy that combines both normative and sociological approaches. Normatively, several aspects are essential for executing an integrated improvement strategy, including aspects of the law, law enforcement, and facilities or resources that can support the application of law, such as human resources and advanced tools such as tools to determine a person's DNA. Meanwhile, sociologically, there are two aspects that are very vital to carrying out an integrated improvement strategy, namely the aspect of a religious-type society that is highly susceptible to religious dependence or belief. Another aspect that needs to be addressed is culture. This aspect in the customs and traditions in Indonesia, the majority of which are patriarchal, is a serious challenge, especially legal protection for wives and children. This patriarchal culture negatively affects Muslim marriages, leading to issues such as increased vulnerability to violence against wives and women, child marriage, exploitation of children-particularly girls-and uncertain future rights for both wives and children.

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