

Normative Differences Between the 2020 Supreme Court's Landmark Decision and SEMA Number 3 of 2018 Regarding Polygamy *Isbat*

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Abstract

This study aims to (a) analyse the position of Landmark Decision in the current Indonesian legal system, (b) examine and analyse the contradiction between SEMA Number 3 of 2018 and 2020 Landmark Decision or religious civil law decision Number 223K/Ag/2020, and (c) explore ideal solutions for the case of validating unregistered polygamous marriages when there are different legal principles between SEMA Number 3 of 2018 and 2020 Landmark Decision. This research is normative legal research using secondary data obtained through

a literature study as well as statute approach, case approach, and conceptual approach. The results show that (a) theoretically, landmark decisions are stronger than jurisprudence because they have significant values that change the textual meaning of positive law and contain legal rules that will have implications for the development of law in Indonesia compared to the power of jurisprudence. (b) The contradiction between SEMA Number 03 of 2018 and the 2020 Landmark Decision occurs because SEMA establishes legal norms that completely isolate efforts to validate unregistered marriages due to polygamy by targeting the core procedural law related to formal procedural requirements, with the term “not admissible” or *niet ontvankelijke verklaard*, while the cases brought to the court are certainly causal in nature and cannot be generalized. (c) The settlement of the cases of marriage validation due to unofficial polygamy is by adhering to SEMA Number 03 of 2018 through discretion while referring to the 2020 Landmark Decision with some strict conditions.

KEYWORDS Landmark Decision; Marriage *Isbat*; SEMA (Supreme Court Circular Letter); *Siri* Polygamy.

Introduction

In 2018, the Supreme Court introduced a positive development in efforts to limit *siri* (unregistered) polygamy by issuing the Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung* or SEMA) No. 3 of 2018 regarding the Implementation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as Guidelines on the Implementation of Duties for the Court (hereinafter referred to as SEMA No. 3 of 2018) that provides guidance for courts in carrying out their duties.¹ In this SEMA, the guidelines on marriage *isbat* for *siri* polygamous marriages are set in point 8 of the Religious Courts section, under the subheading “Petitions for Marriage *Isbat* in Polygamous Marriages Based on Unregistered (*Siri*) Marriages.” This point states that “*a petition for marriage isbat in a polygamous marriage based on an unregistered (siri) marriage, even if submitted for the benefit of the child, must be declared*

¹ Ridwan Anwar, “Results of Palembang PTA Legal Discussion: Judges Must Understand Sema Number 3 of 2018,” Directorate General of Religious Courts, 2019, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/hasil-diskusi-hukum-pta-palembang-hakim-wajib-pahami-sema-nomor-3-tahun-2018-30-4>.

inadmissible. To safeguard the interests of the child, an application regarding the child's lineage may be submitted instead." From this SEMA No. 3 of 2018, two important points can be drawn. First, inadmissible or *Niet Ontvankelijke Verklaard* (N.O.) decisions are court decisions that dismiss a lawsuit due to formal defects.² Therefore, an *isbat* petition for a *siri* polygamous marriage, even when submitted for the child's best interests, is deemed to be a case that is classified as having formal defects and must be held inadmissible, and the judges therefore do not have to examine the substantive dispute.³

Second, SEMA No. 3 of 2018 adds that, to safeguard the best interests of the child, instead of submitting a marriage *isbat*, the petitioner shall file a child lineage claim. Accordingly, in situations where children are born from *siri* polygamous marriages and an application for marriage *isbat* is held inadmissible, the protection of the children's rights may still be pursued through a petition on the child's lineage before the court.⁴ Therefore, the issuance of SEMA No. 3 of 2018 provides guidance for judges under the Supreme Court when dealing with petitions on *isbat* for *siri* polygamous marriages. Consequently, if the judges follow this SEMA, such marriage will not receive legal recognition. Meanwhile, the children born from a *siri* polygamous marriage still have the possibility of obtaining limited civil status with their biological father, including the entitlement to child support until adulthood or independence and the potential to receive a *wasiat wajibah* (mandatory bequest) of up to one-third following the biological father's death.⁵

In 2020, a new development occurred in the Supreme Court when it issued the Decision No. 223 K/Ag/2020 (*the 2020 Marriage Isbat Decision*), which appears to be contrary to the efforts to provide certainty and protection for valid marriages and to limit *siri* polygamous marriages. The Supreme Court then labelled the 2020 Marriage *Isbat* Decision a 'Landmark Decision' under

² Afandi Ma'unah Widyah, Wardah, Moh Muhibbin, "Pertimbangan Hukum Oleh Hakim Pengadilan Agama Atas Putusan Niet Ontvankelijke Verklaard Pada Perkara Kewarisan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (Studi Putusan Hakim Nomor 878/Pdt.G/2020/PA.Pra)," *Jurnal DINAMIKA* 30, no. 1 (2024): 9404–6, <https://doi.org/https://jim.unisma.ac.id/index.php/jdh/article/view/23673>.

³ Suhendar, "Decision NO (Niet Ontvankelijk Verklaard) Regarding the Act of Default," *Jurnal Yustitia* 5, no. 2 (2019): 242–62, <https://yustitia.unwir.ac.id/index.php/yustitia/article/view/92>.

⁴ H.Yayan Liliyana Mukhlis, "Determining the Origin of Children: An Alternative in Child Protection," Directorate General of Religious Courts, 2013, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penetapan-asal-usul-anak-sebuah-alternatif-dalam-perlindungan-anak-oleh-h-yyan-liyana-mukhlis-259>.

⁵ Rahmad Romadon Nasution, *Support for Children from Unregistered Marriages: A Study of Religious Court Decisions*, ed. M. Muslimin and Imam Sujoko, 1st ed. (Yogyakarta: Penerbit KBM Indonesia, 2022).

the Civil Religious Chamber, with a case classification of marriage *isbat* involving a *siri* wife with children.⁶ The case started with a petition for marriage *isbat* concerning a polygamous marriage resulting from a *siri* marriage, which took place on 7 May 2017, while Petitioner I (the husband) was still legally married to his lawful wife even though the divorce proceedings were ongoing. The divorce was finalised and formalised by the Cilacap Religious Court on 17 January 2019. From the *siri* marriage, the petitioners had two children. Regarding the petition for the marriage *isbat* submitted by the petitioners, the Cilacap Religious Court, through the Decision No. 430/Pdt.G/2019/PA.Clp., dated 4 November 2019, held the petition inadmissible. Subsequently, at the cassation stage, the Supreme Court judges granted the petitioners' marriage *isbat* and overturned the Decision of Cilacap Religious Court No. 430/Pdt.G/2019/PA.Clp. The Supreme Court held it in the interests of the children born to the *siri* wife while the marriage *isbat* for the *siri* marriage might be approved if the petition was submitted following the divorce from the first wife.⁷

Previous research indicates that after the issuance of SEMA No. 3 of 2018, which requires a petition for marriage *isbat* in polygamous unions to be declared unacceptable, and the compliance of most judges with the SEMA, the religious court judges rarely granted petitions for marriage *isbat* in polygamous cases. Even when exceptions occurred, by the time the research was conducted in 2021, only a few instances (fewer than five decisions) were found in the Supreme Court Decision Directory. The judges who nonetheless granted petitions for marriage *isbat* in unregistered polygamous marriages reasoned that the polygamy per se did not produce adverse consequences, the lawful wife from the prior marriage had given her consent, and broader welfare considerations supported the approval.⁸ Research by Hartini also demonstrates that the reason for SEMA No. 3 of 2018, philosophically, is to place justice and protection on the parties who ought to receive it, namely those who comply with the law and enter into marriage in accordance with the proper procedures (the lawful wife and children) rather than on those involved in *siri* polygamous marriages.

⁶ See *Landmark Decisions* for Civil Religious Chamber in Tim Pokja Laporan Tahunan MARI, *Laporan Tahunan 2020 Mahkamah Agung Republik Indonesia* (Mahkamah Agung Republik Indonesia, 2021), https://bsdk.mahkamahagung.go.id/images/PUSLITBANG/Landmark-Decisions/Tahun-2020/Landmark_Decision_2020.pdf.

⁷ *Ibid.*, b. 291.

⁸ Hartini, "Implementation of the 'Inadmissible' Rule for Petitions for Marriage Isbat in *Siri* Polygamous Unions at the Religious Courts" (National Journal of Law Research Grant Research Report UGM, 2021).

From the legal perspective, the issuance of SEMA No. 3 of 2018 deeming such petitions inadmissible can be understood as an attempt to reinforce the role of law in maintaining social order and guiding societal adaptation to evolving circumstances. At present, it is time for society to comply with marriage procedures. This means that marriages should not only be conducted according to the religious law but also be formalised through an official marriage registration.⁹ Meanwhile, according to the research of Niswah Nilam Qonita, *the 2020 Marriage Isbat Decision* possesses *maslahah* (common good) that encompasses *daruri* (necessary), *qat'i* (definitive), and *kulli* (comprehensive) elements, which mean that it can be applied universally to circumstances similar to the case.¹⁰ Regarding the protection of women and children, *the 2020 Marriage Isbat Decision* is widely regarded as a significant legal breakthrough.¹¹

Based on the discussion and existing regulations, several issues can be identified related to the relationship between SEMA No. 3 of 2018 and *the 2020 Marriage Isbat Decision*. The two appear to establish differing normative approaches to petitions for marriage *isbat* in *siri* polygamous marriages. On the one hand, SEMA No. 3 of 2018 requires such petitions to be declared inadmissible. On the other hand, the 2020 Landmark Decision holds that, in the interests of the children born to the unregistered (*siri*) wife, a marriage *isbat* may be approved provided that the petition is submitted after the divorce from the first wife. This situation raises questions about the divergent perspectives of SEMA No. 3 of 2018 and *the 2020 Marriage Isbat Decision* and what they mean for the way subsequent judges should respond to marriage *isbat* petitions for *siri* polygamous marriages.

Accordingly, this study aims to explore some resolutions of marriage *isbat* cases involving *siri* polygamous marriages. Before discussing the resolution, this study first examines the concept of 'landmark decisions' within the Indonesian legal system and what this 'labelling' means. Secondly, this study discusses the competing perspectives on SEMA No. 3 of 2018 and *the 2020 Marriage Isbat Decision*. Thirdly, this study examines potential methods for resolving petitions for marriage *isbat* in *siri* polygamous cases before concluding the study.

⁹ *Ibid.*

¹⁰ Niswah Nilam Qonita, "Terobosan Hukum Isbat Nikah Poligami Siri Dalam Landmark Decisions Perdata Agama Tahun 2014 Dan 2020, Perspektif Maslahah Imam Al-Ghazali Dan Teori Perlindungan Perempuan Dan Anak" (UIN Syarif Hidayatullah Jakarta, 2023), <https://repository.uinjkt.ac.id/dspace/handle/123456789/74072>.

¹¹ *Ibid.*

This research also has relevance to the Sustainable Development Goals (SDGs) agenda¹², particularly SDGs 5 (Gender Equality)¹³ and SDGs 16 (Peace, Justice, and Strong Institutions).¹⁴ From a procedural justice perspective, the fairness of legal processes, meaningful participation of the parties, and the legitimacy of judicial decisions are essential considerations.¹⁵ In the context of Islamic family law, judicial policies and practices regarding marriage validation not only concern the certainty of the legal status of marriage but also carry significant consequences for the protection of the rights of women and children from such marriages.¹⁶ The formal closure of access to marriage validation through the *niet ontvankelijke verklaard* (N.O.) decision, as mentioned in SEMA No. 03 of 2018, has the potential to increase the vulnerability of women and children born from *siri* polygamous marriages, especially concerning the legal status of children and inheritance rights. This condition contradicts SDG 5, the gender equality, which emphasizes the eradication of all forms of discrimination against women through gender-responsive policies and institutions.

In addition, the conflicting norms between SEMA No. 03 of 2018 and the 2020 Landmark Decision also reflect challenges in realizing SDGs 16, especially in terms of legal certainty, consistency of decisions, and strengthening of religious court institutions. Therefore, this study argues that, in the best interests of the legal wife and children in a *siri* polygamous marriage, the guidance from SEMA No. 3 of 2018 is ideal in a normative sense, but this does not mean hindering judges' independence within the Indonesian judiciary. Hence, judges should also be able to examine the issue on a case-by-case basis, and *the 2020 Marriage Isbat Decision* can serve as a starting point since the *siri*

¹² The Sustainable Development Goals (SDGs) agenda also known as the 2030 Agenda for Sustainable Development was adopted by the United Nations General Assembly in 2015. It is a comprehensive framework designed to stimulate sustainable economic, social, and environmental development globally. F. Soltan, *The 2030 Agenda for Sustainable Development: What Are Its Implications for Future Generations?, Giving Future Generations A Voice Normative Frameworks Institutions and Practice*, 2021, <https://doi.org/10.4337/9781839108259.00014>.

¹³ M. Gigliotti, G. Schmidt-Traub, and S. Bastianoni, *The Sustainable Development Goals, Encyclopedia of Ecology Volume 1 4 Second Edition*, vol. 4, 2019, <https://doi.org/10.1016/B978-0-12-409548-9.10986-8>.

¹⁴ D. Radin, "Sustainable Development Goal 16: Focus on Public Institutions, World Public Sector Report 2019," *Public Sector Economics* 43, no. 4 (2019): 478–82, <https://doi.org/10.3326/pse.43.4.8>.

¹⁵ Umar Mubdi, "Reforming Civil Court In Indonesia: The Dialectics Of Procedural Justice And Digital Justice," *Jurnal Mimbar Hukum* 38, no. 1 (2026): 27–28, <https://doi.org/https://doi.org/10.22146/mh.v38i1.25415>.

¹⁶ S. Fakhria et al., "Securing Muslim Children's Civil Rights: Debate on State Legal Policy towards The Issuance of Family Cards for Unregistered Marriage Couples," *El Mashlahah* 14, no. 2 (2024): 303–22, <https://doi.org/10.23971/el-mashlahah.v14i2.8008>.

wife and the children are also deemed as legally vulnerable parties, especially children born from *siri* polygamous marriages, to balance legal certainty and substantive justice.

This study employs a normative juridical approach, primarily examining secondary data through a literature study.¹⁷ The secondary data analysed and evaluated consists of primary, secondary, and tertiary legal materials. The primary legal materials include the Marriage Law and its implementing regulations, the Religious Courts Law (Law No. 7 of 1989 on Religious Courts as amended by Law No. 3 of 2006 and Law No. 50 of 2009), the Compilation of Islamic Law, and *the 2020 Marriage Isbat Decision*. The secondary legal materials consist of articles, research findings, other relevant scholarly works, and other documents that can explain primary legal materials, including state institutions' documents. In this study, the Supreme Court's official documents are referred to, such as the Supreme Court's Book II regarding the Guidelines for the Performance of Duties and Administration of the Religious Courts (2013 edition) and SEMA No. 03 of 2018 regarding the Implementation of the Formulations of the 2018 Plenary Chamber Meeting of the Supreme Court as Guidelines for Judicial Practice. The tertiary legal materials include dictionaries and encyclopaedias, which provide supplementary clarification to the primary and secondary legal sources¹⁸ related to the research topic, such as sources that can explain the meanings of marriage *isbat*, inadmissible decisions (*niet ontvankelijke verklaard*), polygamy, *siri* marriages, determinations of child parentage, landmark decisions, jurisprudence, and other pertinent terms. This study employs three approaches: the statute approach, case approach, and conceptual approach.¹⁹ To analyse the secondary data, qualitative and content analyses along with descriptive-analytical writing methods are employed.²⁰

'Landmark Decisions' of the Supreme Court and Their Position in the Indonesian Legal System

¹⁷ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: Universitas of Indonesia Press, 2010).

¹⁸ Soerjono Soekanto and Sri Mamudi, *Normative Legal Research: A Brief Overview* (Jakarta: Raja Grafindo Persada, 2003).

¹⁹ Peter Mahmud Marzuki, *Legal Research*, First Edition (Jakarta: Kencana, 2006).

²⁰ N. Preston and S. Payne, *Qualitative Methods of Data Collection and Analysis, Research Methods in Palliative Supportive and End of Life Care Second Edition*, 2025, <https://doi.org/10.1093/9780191924644.003.0011>.

The *2020 Marriage Isbat Decision* is labelled by the Supreme Court as a ‘landmark decision’ in its Annual Report in 2020. Hence, providing a brief explanation of what this labelling means is essential for the course of this study, especially to clarify what it means for subsequent petitions on marriage *isbat* and how judges shall respond to such cases. Some questions might arise regarding whether it differs from ‘normal’ decisions or how it relates to the idea of ‘jurisprudence’ within the Indonesian judiciary.

Since 2010, the Supreme Court has routinely featured landmark decisions in its Annual Report.²¹ However, no definition or criteria were found in the first report explaining what “landmark decisions” mean.²² In some articles, landmark decisions are simply referred to as important decisions.²³ Some call a landmark decision a chosen decision.²⁴ Theoretically, there are two dominant conceptions related to ‘landmark decisions’. The first looks at “*whether and how they have overruled or departed from precedents, enunciated important new rules or principles, or modified or systematized existing rules or principles in important ways*”.²⁵ This means that a case receives ‘landmark’ status based on an examination of its internal merits. The second conception examines the biographical, genealogical, political, economic, social, and cultural contexts in which a case is decided.²⁶ This illustrates that, to examine whether a case receives ‘landmark’ status, it must be viewed in the historical context in which the case is decided. Criticising these two dominant conceptions, Lim argues that the canonicity of a case is constructed by subsequent courts, thus underscoring the

²¹ Nor Hasanuddin, “Landmark Decisions (Putusan Penting) Tahun 2016: Pertimbangan Dan Kaidah Hukum 11 Putusan Mahkamah Agung Ri,” Direktorat Jenderal Badan Peradilan Agama Pengadilan Tinggi Agama Samarinda, 2021, <https://pa-bontang.go.id/publikasi/arsip-artikel/423-8-10-2021-landmark-decisions-putusan-penting-tahun-2016-pertimbangan-dan-kaidah-hukum-11-putusan-mahkamah-agung-ri-oleh-nor-hasanuddin-lc-m-a>.

²² Normand Edwin Elnizar, “Kekuatan Yurisprudensi, Landmark Decision, Dan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung,” Hukum Online, 2021, <https://www.hukumonline.com/stories/article/lt60d8596a23f12/kekuatan-yurisprudensi-landmark-decision-dan-rumusan-hasil-rapat-pleno-kamar-mahkamah-agung/>.

²³ Editorial, “Dictum Landmark Decision MA,” *Jurnal Kajian Putusan Pengadilan*, no. 10 (2015): 2, <https://leip.or.id/dictum-edisi-10-landmark-decisions-ma/>.

²⁴ Aida Mardatillah, “2018, MA ‘Cetak’ 5 Putusan Terpilih,” Hukum Online, 2019, <https://www.hukumonline.com/berita/a/2018--ma-cetak-5-putusan-terpilih-lt5c7d1d53cb33e/>.

²⁵ Ernest Lim, “Of ‘Landmark’ or ‘Leading’ Cases: Salomon’s Challenge,” *Journal of Law and Society* 41, no. 4 (2014): 526–27, <https://doi.org/10.1111/j.1467-6478.2014.00684.x>. See also Donald E. Lively, *Landmark Supreme Court Cases: A Reference Guide* (Greenwood Press, 1999), vii.

²⁶ Lim, “Of ‘Landmark’ or ‘Leading’ Cases: Salomon’s Challenge.”

importance of judicial reception. This means that ‘landmark’ status is not immutable but contingent and provisional.²⁷

In the Indonesian context, Mahfud MD argues that a landmark decision is one established as a precedent because it is not accommodated by existing regulations, or a judgment that departs from statutory provisions when such deviation is necessary to achieve justice provided that the decision is accepted by the public in the application of the law.²⁸ According to MD, the background to the creation of landmark decisions lies in the pursuit of substantive justice through the application of progressive law. MD further explains that progressive law refers to the dynamisation of existing laws, which occurs when judges confront a case and base their judgment on their own conviction even when such guidance is absent from written law as an abstract standard.²⁹ This concept is heavily influenced by the Anglo-Saxon legal thought, commonly known as the Common Law system, which emphasises that judges are entrusted with the authority to seek and uncover justice through their own creativity and conviction.³⁰ Consequently, it is possible for one judge’s decision to differ from another’s, particularly when the circumstances of time and place vary.³¹ Judicial independence is essential to ensure that decisions are not merely an implementation of the text of the law, but also reflect the justice that exists in society.³²

It is undeniable that the criteria for what constitutes a good judge differ between the common law system and the civil law system.³³ In the civil law tradition, especially among adherents of legalism, a good judge is one who can apply and ascertain the meaning of statutory provisions in every case brought before him. In contrast, under the common law conception, a good judge is one who possesses the creativity to explore and discover the underlying values of justice in each case submitted for adjudication.³⁴ Given that Indonesia is known as a country adhering to prismatic law, a system that incorporates beneficial

²⁷ Lim.

²⁸ Moh. Mahfud MD, “Landmark Decisions Mahkamah Konstitusi” (Bogor, 2017).

²⁹ MD.

³⁰ MD.

³¹ MD.

³² Dharma Setiawan and Erwin Susilo, “Independensi Kekuasaan Kehakiman Dalam Menjatuhkan Putusan Ditinjau Dari Perspektif Undang-Undang Sebagai Perjanjian,” *Jurnal Mimbar Hukum* 37, no. 1 (2025): 83–84, <https://doi.org/10.22146/mh.v37i1.18891>.

³³ Novendri Nggilu et al., “Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia,” *Lex Scientia Law Review* 8, no. 1 (2024): 261–98, <https://doi.org/10.15294/lslr.v8i1.1901>.

³⁴ MD, “Landmark Decisions Mahkamah Konstitusi.”

elements from both civil and common law traditions, its landmark decisions are expected to draw on the strengths of both systems. By employing a combined approach that integrates the prismatic law with the progressive legal theory, the law enforcement in Indonesia can proceed in accordance with the statutory provisions enacted by the legislature. However, when a particular case is not regulated by the existing legislation or when the content of a statutory provision is deemed incapable of fulfilling society's sense of justice, judges may render decisions independently without being strictly bound to the provisions of the law and regulations.³⁵ This perspective reflects the first dominant conception of 'landmark decisions' explained earlier, emphasising the broader impact of a case. According to MD, in progressive law, the desired law is a sense of justice that lives in society.³⁶

A decision can become a landmark decision if it represents a legal breakthrough and eventually serves as a reference for subsequent cases.³⁷ According to Syamsul Arief, the Head of *Badan Strategi Kebijakan dan Pendidikan dan Pelatihan Hukum dan Peradilan* (*Badan Strajak Diklat Kumdil*/BSDK or the Agency for Legal and Judicial Policy Strategy and Training) of the Supreme Court, during the Activity on the Preparation of Summaries and Translation of Important Decisions (Landmark Decisions) and the Drafting of Chapter V of the 2025 Supreme Court Annual Report, the main indicators for a decision to be considered a landmark decision are that the decision provides benefits to society and it establishes a new legal principle or interpretation, whether in the formal domain or in the substantive domain.³⁸ In addition, Danny Agus Setiantio, the Head of the Program and Evaluation Division at *Pusat Strategi Kebijakan Hukum dan Peradilan* (Center for Legal and Judicial Policy Strategy), explains that the formulation of legal principles in landmark decisions aims to serve as a key mechanism for ensuring uniformity in the application of the law and legal certainty across all levels of the courts.³⁹

³⁵ MD.

³⁶ MD.

³⁷ Sudikno Mertokusumo, *Sejarah Peradilan Dan Perundang-Undangannya Di Indonesia Sejak 1942 Dan Apakah Kemanfaatannya Bagi Kita Bangsa Indonesia* (Universitas Atmajaya, 2011), 56. See in Enrico Simanjuntak, "The Roles of Case Law in Indonesian Legal System," *Jurnal Konstitusi* 16, no. 1 (2019): 83–104, <https://doi.org/https://doi.org/10.31078/jk1615>.

³⁸ Catur Alfath S, "These are 2 examples of decisions that can be categorized as landmark decisions according to the Head of BSDK MA," *DANDAPALA Majalah Badan Peradilan Umum*, 2025, <https://dandapala.com/article/detail/ini-2-contoh-putusan-dapat-dikategorikan-landmark-decision-menurut-kepala-bsd-ma>.

³⁹ Tim Redaksi Dandapala, "Pustrajak Kumdil Holds Resume Preparation and Landmark Decision Interpretation," *DANDAPALA General Justice Agency Magazine*, 2025,

Apart from ‘landmark decisions’, the term ‘jurisprudence’ has also been consistently applied to various decisions by the Supreme Court. However, unlike ‘landmark decisions’, the criteria for ‘jurisprudence’ are far clearer. These include: (a) there is a legally binding decision, (b) there is no legal regulation or the law regarding the case or a case being decided is unclear, (c) it contains truth and justice, (d) it has been repeatedly followed by subsequent judges when deciding the same case, (e) it has undergone an examination or notation test by the Supreme Court’s jurisprudence team, and (f) it has been recommended as a decision that qualifies as permanent jurisprudence.⁴⁰

In essence, the difference between ‘landmark decision’ and ‘jurisprudence’ can be explained as follows:

TABLE 1. *Similarities and Differences between Jurisprudence and Landmark Decision*

Aspect	Jurisprudence	Landmark Decision
Origin	Legally binding decision ⁴¹	Legally binding decision
Repeatability	It should have been repeatedly referred to by subsequent judges ⁴²	It does not have to be repeatedly referred to by subsequent judges
Substance	It provides a legal breakthrough for cases with unclear laws or decisions that substantially affect the law’s status quo	It provides a legal breakthrough for cases with unclear laws or decisions that substantially affect the law’s status quo ⁴³
Status Granting	By the Supreme Court, after passing the examination processes involving the Supreme Court’s research and development center and a dedicated Jurisprudence Examination Team consisting of Supreme Court Judges.	By the Supreme Court after the examination processes involving the Supreme Court’s research and development center.
Publication	In the Supreme Court Jurisprudence Book	In the Supreme Court Annual Report

<https://dandapala.com/article/detail/pustrajak-kumdil-gelar-penyusunan-resume-dan-pengalihbahasaanlandmark-decision>.

⁴⁰ Teguh Satya Bhakti, *Pembangunan Hukum Administrasi Negara Melalui Putusan-Putusan Peradilan Tata Usaha Negara* (Puslitbang Hukum dan Peradilan, Badan Litbang Diklat Kumdil, Mahkamah Agung, Republik Indonesia, 2017), <https://ebook.bsdk.mahkamahagung.go.id/index.php/product/58-pembangunan-hukum-administrasi-negara-melalui-putusan-putusan-peradilan-tata-usaha-negara/>. Also see in Simanjuntak, “The Roles of Case Law in Indonesian Legal System.”

⁴¹ Camarena Rodrigo González, “From Jurisprudence Constante to Stare Decisis: The Migration of the Doctrine of Precedent to Civil Law Constitutionalism,” *Transnational Legal Theory* 7, no. 2 (2016): 257–86, <https://doi.org/https://doi.org/10.1080/20414005.2016.1205871>.

⁴² Vincy Fon and Francesco Parisi, “Judicial Precedents in Civil Law Systems: A Dynamic Analysis,” *International Review of Law and Economics* 26, no. 4 (2006): 519–35, <https://doi.org/https://doi.org/10.1016/j.irle.2007.01.005>.

⁴³ B. A. Garner, *Black’s Law Dictionary*, 10th ed. (Thomson Reuters, 2014).

Source: Processed by the Authors, 2026.

Regarding the applicability, Andi Samsan Nganro states that a landmark decision is merely an important Supreme Court ruling potentially because its principle contains an element of novelty. However, its authority for judges is not as strong as that of jurisprudence or the Formulations of the Plenary Chamber Meeting of the Supreme Court.⁴⁴ A landmark decision will only acquire legal authority equivalent to jurisprudence if its principle is consistently and repeatedly followed by judges in similar cases. In other words, a landmark decision has the potential to become jurisprudence if its principle is subsequently applied repeatedly by judges.⁴⁵ Therefore, landmark decisions are not mandatory for the judges in Indonesia to follow, but they can serve as guidelines when the judges adjudicate cases with similar legal facts.⁴⁶

On the other hand, according to Sidharta, both jurisprudence and landmark decisions contain breakthroughs in positive law although the degree of their significance may differ.⁴⁷ A landmark decision will significantly alter the existing interpretation of a regulation (for example, changing an action previously prohibited to no longer prohibited, or vice versa), whereas in jurisprudence the significance of the interpretive change may be less pronounced (for example, expanding a previously narrow interpretation, or vice versa).⁴⁸ A landmark decision must fall within the category of jurisprudence. In addition to containing substantive differences from positive law provisions, the decision must also have been affirmed by a higher court (generally the Supreme Court) and have obtained permanent legal force. The ability of a decision to significantly change positive law will certainly not occur from a single ruling issued by a *judex factie* alone because, if that were the case, the decision would only apply casuistically to that case.

Referring to the definition in the Black's Law Dictionary, Sidharta argues that a landmark decision can originate from rulings that result from the review of statutory regulations, whether submitted through the Constitutional Court

⁴⁴ Normand Edwin Elnizar, "Ini 3 Sumber Acuan Dalam Putusan Hakim Selain Undang-Undang," Hukum Online, 2022, <https://www.hukumonline.com/berita/a/ini-3-sumber-acuan-dalam-putusan-hakim-selain-undang-undang-lt62cba91b1d0d2?page=all>.

⁴⁵ Muhammad Sarifudin, Imawan Sugiharto, and Moh Taufik, "Korelasi Hukum Antara Putusan Mahkamah Agung Yang Bersifat Landmark Decisions Dengan Yurisprudensi," *ELQONUN: Jurnal Hukum Ketatanegaraan* 2, no. 1 (2024): 69–78, <https://doi.org/https://doi.org/10.19109/frp2w842>.

⁴⁶ S, "Ini 2 Contoh Putusan Dapat Dikategorikan Landmark Decision Menurut Kepala BSDK MA."

⁴⁷ Shidarta, "Jurisprudence And 'Landmark' Rulings." 2018.

⁴⁸ *Ibid.*

(MK) or the Supreme Court (MA).⁴⁹ Therefore, these decisions do not merely influence judges but also institutions outside the judiciary, including executive bodies, which should also take these landmark decisions into account when making discretionary decisions. In the context of landmark decisions originating from Constitutional Court (MK) rulings, such decisions or selected rulings that have a significant impact on the governance and societal order of the state are considered important and should be observed by all stakeholders.⁵⁰ Several opinions suggest that decisions with landmark status contain legal principles that will have implications for the development of law in Indonesia.⁵¹

To date, the Supreme Court has not provided clear criteria that define what constitutes a landmark decision or how it differs from jurisprudence. In practice, a decision claimed as a landmark decision is interpreted as an important ruling issued annually and referred to as a selected or “important” decision. This is evident, for example, from the title of the special edition published by the Supreme Court in 2013, entitled *Jurisprudence: Important Decisions (Landmark Decisions) of 2012 and 2013*.

Based on the above discussions, it can be concluded that while there seems to be a similarity in the objectives of both ‘landmark decisions’ and ‘jurisprudence’ in the context of legal breakthroughs that fill the legal gap in statutory provisions and regulations as well as achieve substantial justice in society,⁵² the emphasis for the ‘jurisprudence’ here is on the repeated reference to the legally binding decisions by subsequent judges. Furthermore, to attain the status of either ‘jurisprudence’ or ‘landmark decision’, certain administrative processes are conducted within the Supreme Court. Considering the substance and objectives of both, it is highly possible for a ‘landmark decision’ to become ‘jurisprudence’ when it is repeatedly referred to by subsequent judges and passes the substantial examination by the Jurisprudence Team.

Theoretically, the position of a landmark decision is stronger than that of jurisprudence because it carries a significant value in altering the textual meaning of positive law and contains legal principles that will have implications for the development of law in Indonesia compared with the authority of

⁴⁹ *Ibid.*

⁵⁰ Ferinda K Fachri, “Begini Kaidah Hukum 7 Landmark Decisions Dalam Laporan Tahunan MA 2021e,” Hukum Online, 2022, <https://www.hukumonline.com/berita/a/begini-kaidah-hukum-7-landmark-decisions-dalam-laporan-tahunan-ma-2021-lt624166b346157/?page=all>.

⁵¹ Aida Mardatilah, “Mengurai Kumpulan Putusan Landmark MK,” Hukum Online, 2018, <https://www.hukumonline.com/berita/a/mengurai-kumpulan-putusan-landmark-mk-lt5b98de0ce4e3d/>.

⁵² Shidarta, “Jurisprudence And ‘Landmark’ Rulings.” 2018.

jurisprudence. Therefore, the selection of several decisions each year as landmark decisions by the Supreme Court from various judicial environments (general, religious, military, and administrative courts) should be reconsidered, unless the Supreme Court intends to introduce a new breakthrough. This is because some sources indicate that selected decisions designated as landmark decisions are, in fact, rulings intended to be reserved or prepared to become jurisprudence.

Contradiction between SEMA No. 3 of 2018 and 2020 Landmark Decision regarding *Siri Polygamous Marriage Isbat*

The term "poligami siri" (unregistered polygamy) is not a technical legal term found within statutory regulations; rather, it is a colloquial term that has emerged within society in response to the legal framework and societal legal practices.⁵³ According to the Great Dictionary of the Indonesian Language (*Kamus Besar Bahasa Indonesia*/KBBI), polygamy is defined as a marriage system in which one party has or marries multiple spouses of the opposite sex simultaneously.⁵⁴ The word polygamy originates from the Greek *polygamy* with the term *poly* from *polys* or *polu*, meaning many,⁵⁵ and *gamy* from *gamos*, meaning marriage. This word underwent a transition to Latin as *polygamia* before being adopted into English in the late 16th century (around the 1590s).⁵⁶ In English, the word polygamy refers to a marriage where a spouse of either sex may have more than one partner at the same time. The term polygamy is a general term referring to a plural marriage, which is strictly divided into polygyny (a form of marriage where a man has more than one wife simultaneously) and polyandry (a form of marriage where a woman has more than one husband simultaneously). The most common form of polygamy practiced is polygyny, whereas polyandry is rarely found. In practice, the use of

⁵³ M. Yazid Fathoni, "Kedudukan Pernikahan Poligami Secara Sirri Ditinjau Dari Hukum Keluarga," *Jurnal Ius Kajian Hukum Dan Keadilan* 6, no. 1 (2018): 128–42, <https://doi.org/https://doi.org/10.29303/ius.v6i1.525>.

⁵⁴ Kamus Besar Bahasa Indonesia (KBBI), "Poligami," accessed June 11, 2026, <https://kbbi.web.id/poligami>.

⁵⁵ Merriam Webster Dictionary, "Polygamy," accessed June 13, 2026, <https://www.merriam-webster.com/dictionary/polygamy>.

⁵⁶ Oxford English Dictionary, "Polygamy," accessed June 16, 2026, https://www.oed.com/dictionary/polygamy_n?tl=true&tl=true.

the term polygamy in Indonesia refers to the practice of polygyny as it is more frequently practiced while polyandry is strictly prohibited under the Indonesian law.

The Indonesian law regulates polygamy by using the technical statutory phrase “beristeri lebih dari seorang” (having more than one wife). The Marriage Law enacted in 1974 (Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law) fundamentally adheres to the principle of monogamy; however, polygamy is permitted provided that a man obtains judicial authorization from the court after fulfilling specific procedures and requirements. The prerequisites for obtaining court authorization to enter a polygamous marriage, or to have more than one wife, are divided into alternative requirements and cumulative requirements. The alternative requirements, as stipulated in Article 5 paragraph (1), are: (a) the wife is unable to perform her duties as a wife, (b) the wife suffers from a physical disability or an incurable disease, and (c) the wife is unable to bear offspring. If one of the alternative requirements is met, the husband must then fulfil other requirements that are cumulative in nature, including: (a) the consent of the wife/wives, (b) certainty that the husband can guarantee the living necessities of his wives and their children, and (c) a guarantee that the husband will act justly toward his wives and their children. Meanwhile, specifically for Civil Servants to engage in polygamy, one must obtain permission from a superior (Government Regulation Number 10 of 1983 on Marriage and Divorce Permits for Civil Servants as amended by Government Regulation Number 45 of 1990).

The validity of marriage under the Indonesian marriage law rests upon the laws of each respective religion or belief system (Article 2 paragraph (1) of the Marriage Law). The separation of regulations concerning the validity of marriage from the registration of marriage makes a marriage be performed solely according to the laws of one’s religion or belief, a practice that is widely accepted and understood as customary. This contributes to the practice of unregistered marriage (*nikah siri*). The existence of a marriage that has only been performed according to the religious law (specifically the Islamic law) but has not been registered before a Marriage Registration Officer at the Office of Religious Affairs (PPN KUA) is what gives rise to the term *nikah siri*. The term *nikah siri* per se carries diverse meanings. In the jurisprudence (*fiqh*) perspective, according to the Shafi’i school of thought, *nikah siri* is understood as a marriage contract (*akad nikah*) concluded without the presence of witnesses. Therefore, *nikah siri* within this school of thought is defined as a marriage that fails to fulfil

the witness requirement, which is a pillar (*rukun*) of marriage as determined by the Shafi'i school of thought. Al-Mawardi asserts that the prohibition against *nikah siri* relates to the failure to meet the required presence of two just witnesses rather than solely because the marriage contract is conducted in secret.⁵⁷ Meanwhile, in the Hanafi school of thought, *nikah siri* is understood as a marriage that is validly performed with all the pillars (*rukun*) and conditions fulfilled, including the presence of two witnesses, but is intentionally kept unannounced or hidden from the public. According to the view of Al-Kharashi, *nikah siri* is a contract where the witnesses are requested not to disclose information regarding the marriage. He asserts that according to the Maliki school of thought, this type of marriage remains valid as long as the witness requirement is fulfilled.⁵⁸

The term *nikah siri* has undergone a shift in meanings under the Indonesian law. In the context of Indonesian law, *nikah siri* is frequently understood as a marriage that has fulfilled the religious pillars (*rukun*) and conditions but is not officially registered with the state institutions such as the Office of Religious Affairs (Kantor Urusan Agama/KUA) or the Civil Registry Office (Kantor Catatan Sipil). Because it is unregistered, the marriage is deemed to lack legal force; consequently, the spouses and any children born from the marriage do not receive legal protection, which weakens their standing before the state law. The provisions of Article 2 of Law No. 1 of 1974 clarify that Paragraph (1): "A marriage is valid if it is performed according to the laws of each respective religion and belief system" and Paragraph (2): "Every marriage shall be registered in accordance with the applicable statutory regulations." From a legal perspective, the failure to fulfil the provisions in Article 2 Paragraph (2) of Law No. 1 of 1974 gives rise to two consequences. First, marriages that are not in accordance with religious teachings are considered to violate the material law, and they are deemed void by law or at the very least flawed (*fasid* or *batil*). Second, marriages that are not registered or are not under the supervision of an authorized official are considered to violate the formal or administrative law. Consequently, the couple may be subject to administrative sanctions, such as not obtaining a Marriage Certificate, a Family Card, or Birth Certificates for their children.

⁵⁷ Imam Al Mawardi, "Al-Hawi Al-Kabir," *Beirut, Darul Kutub Ilmiah IX* (1999): 59.

⁵⁸ Syaikh Ahmad bin Muhammad As-Shawi Al-Maliki, "Hasyiyah As-Shawi'ala Sharhis Shaghir," *Darul Ma'arif: T.T II* (n.d.): 282.

For Muslims who have performed a marriage that is valid according to religion but has not been registered by a Marriage Registration Officer at the KUA, a legal mechanism known as *isbat nikah* (marriage validation) is provided. *Isbat nikah* is a legal mechanism within the Indonesian religious court system aimed at validating marriages that are religiously valid but have not been administratively registered by the state. *Isbat nikah* provides a solution by granting state recognition to the marriage, thus ensuring that the rights of the husband, wife, and children, such as inheritance rights, alimony/maintenance, and civil administration, can be fulfilled. The term validation/confirmation in marriage originates from the Arabic word “isbat” which means proof and the word “nikah” which means the marriage bond. According to the decisions of the Religious Court, the validation of a marriage encompasses the confirmation of the core elements of marriage, namely the *ijab qabul* (acceptance), the *wali* (legal guardian), the witnesses, and the *mahar* (dowry/bridal gift). However, it must be noted that such marriages have not been registered at the Office of Religious Affairs (KUA) or the Civil Registry Office.

Isbat nikah consists of two words in Arabic, “isbat” and “nikah”. *Isbat* means establishment, certainty, registration, or verification⁵⁹, whereas *nikah* in this context means coitus, contract, and union.⁶⁰ In the Great Dictionary of the Indonesian Language (KBBI), *isbat* means confirmation, establishment, or determination.⁶¹ In addition, *Isbat Nikah* is defined as the establishment of the truth (validity) of a marriage.⁶² Therefore, *isbat nikah* is the determination of a marriage petitioned to the Religious Court to validate a marriage that has taken place but cannot be proven with a marriage certificate.⁶³

The history of the authority of religious courts to handle marriage validation cases is designated for those who performed unregistered marriages prior to the enactment of Law Number 1 of 1974 concerning Marriage (Article 64) in conjunction with the Government Regulation Number 9 of 1975. The authority to handle marriage validation cases is expanded by the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) contained in the Presidential

⁵⁹ Ahmad Warson Munawwir, *Al-Munawwir Kamus Arab-Indonesia* (Surabaya: Pustaka Progresif, 1997), 1461.

⁶⁰ Atabik Ali and Ahmad Zuhdi Muhdlor, *Kamus Kontemporer Arab-Indonesia*, 8th, 2nd ed. (Yogyakarta: Multi Karya Grafika, 1998).

⁶¹ Kamus Besar Bahasa Indonesia (KBBI), “Isbat,” accessed June 15, 2026, <https://kbbi.web.id/isbat>.

⁶² Ahmad AK, *Kamus Besar Bahasa Indonesia* (Jakarta: Reality Publisher, 2006), 338.

⁶³ Department of Religious Affairs, *Bahan Penyuluhan Hukum*, Directorate General of Islamic Religious Institutional Development, 2001.

Instruction Number 1 of 1991. The complete text of Article 7 of the KHI is as follows:

....etc

(2) In the event that a marriage cannot be proven with a marriage certificate, a petition for marriage validation (*isbat nikah*) may be submitted to the Religious Court.

(3) Marriage validation (*isbat nikah*) that can be submitted to the Religious Court is limited to the matters concerning:

- 1) The existence of a marriage within the context of settling a divorce;
- 2) The loss of a Marriage Certificate;
- 3) The existence of doubt regarding the validity of one of the marriage requirements;
- 4) The existence of a marriage that occurred prior to the enactment of Law Number 1 of 1974; and
- 5) The marriage performed by those who have no marriage impediments under the Law Number 1 of 1974.

In practice, marriage validation (*isbat nikah*) is petitioned to the court when two parties have performed a marriage according to the Islamic law but have not registered it with a Marriage Registration Officer at the Office of Religious Affairs (KUA); consequently, the parties do not possess a Marriage Certificate, which serves as the basis for issuing civil documents such as Children's Birth Certificates, Family Cards, and Identity Cards. Initially, petitions for marriage validation with various reasons tend to be granted provided that the marriages fulfil the pillars and requirements of marriage according to the Islamic law, including the validation of unregistered polygamous marriages.

Parties who choose to engage in unregistered polygamous marriages have diverse reasons and backgrounds, such as (1) avoiding the complicated bureaucracy associated with the requirements for practicing polygamy, particularly among Civil Servants because it requires grounds for polygamy, the wife's consent, and court authorization; for Civil Servants, it is mandatory to obtain permission from a superior, (2) being constrained by the inability to obtain consent from the previous wife or wives, (3) avoiding adultery and

infidelity⁶⁴, and (4) the apathy of a segment of society toward the law, wherein perpetrators feel indifferent to the provisions of Indonesian law that require marriages to be registered and consider that, as long as it is religiously valid, it poses no issues for them.⁶⁵ Meanwhile, the reason why individuals engage in unregistered polygamy, particularly among women, is the economic factor, namely the assumption that by entering into a polygamous marriage, even if unregistered, there will be a financial guarantee for their lives.⁶⁶

In the development of regulations, the validation of unregistered marriages (*isbat nikah siri*) resulting from polygamy began to face stricter regulations, such as through the issuance of the Supreme Court Circular Letter (SEMA) Number 03 of 2018, which states that marriage validation arising from unregistered polygamy must be declared inadmissible (*niet ontvankelijk verklaard* /N.O.). This aims to provide legal certainty, prevent legal smuggling, and provide maximum protection for the rights of women and children from the abuse of unregistered (*siri*) polygamous marriage practices.⁶⁷

In Indonesia, for the purpose of judicial-technical guidance, the Supreme Court is authorised to issue such instruments as Supreme Court Regulations (PERMAs) and Supreme Court Circulars (SEMA).⁶⁸ A SEMA is a circular issued by the Supreme Court's leadership to all levels of judicial bodies to provide guidance on the administration of justice and is primarily administrative in nature.⁶⁹ Some scholars categorise SEMA as a policy regulation

⁶⁴ Muhammad Naufal Hadiyan and Wafiah Rafifatun Nida, "Polygamy: A Solution to Overcome Infidelity? (A Masalah Mursalah Perspective)," *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 16, no. 2 (2022): 84–98, <https://doi.org/https://doi.org/10.56997/almabsutjurnalstudiislamdansosial.v17i1.862>.

⁶⁵ Badrul Munir, Syeh Ihsan, and Warsono, "Hak-Hak Istri Dalam Poligami Sirri Menurut Hukum Positif Dan Hukum Islam Studi Khusus Di Desa Srigading Kecamatan Labuhan Maringgai," *Jurnal Syariahu: Jurnal Hukum Keluarga Dan Manajemen Haji Umrah* 1, no. 1 (2023): 1–9, <https://journal.an-nur.ac.id/index.php/demo2/article/view/1845>. Munir, Ihsan, and Warsono.

⁶⁶ Erika Isnaini Maulida, "Poligami Secara Sirri (Studi Deskriptif Makna Poligini Secara Sirri Bagi Istri Muda Yang Di Nikah Secara Sirri)." (Airlangga University, 2015), <https://repository.unair.ac.id/15946/>.

⁶⁷ Nadhifa Salsabilla Syafa' and Nur Lailatul Musyafaah, "Isbat Nikah Pernikahan Poligami Secara Siri Dalam Putusan Nomor 3401/Pdt.G/2022/PA.Sby," *MA'AL Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 50–72, <https://doi.org/https://doi.org/10.15642/mal.v5i1.325>.

⁶⁸ S. Endang Prasetyawati, "Kedudukan Produk Hukum Dari Fungsi Pengaturan Mahkamah Agung Dalam Sistem Perundang-Undangan Nasional," *Pranata Hukum* 14, no. 1 (2019): 16–22, <https://jurnal.ubl.ac.id/index.php/PH/article/view/1138>.

⁶⁹ Suparto and Zulkifli, "Kedudukan Putusan Mahkamah Konstitusi Dalam Hukum Ketenagakerjaan (Kajian Terhadap Putusan Mahkamah Konstitusi No.37/PUU-IX/2011)," *Jurnal Hukum & Pembangunan* 52, no. 1 (2022): 101, <https://doi.org/10.21143/jhp.vol52.no1.3325>.

(*beleidsregel*)⁷⁰. According to Bagir Manan, a policy regulation is a rule created not by a statutory law, delegation, or mandate, but rather by the authority arising from *freies Ermessen* inherent in state administration to achieve a specific objective justified by law.⁷¹ Therefore, a SEMA is essentially internal, directed at judges under the Supreme Court at all court levels, to provide guidance and instructions to all elements of the judiciary in carrying out their duties.⁷² In its development, since a SEMA is a form of discretion categorised as a policy regulation, its substance is generally limited to guidance, direction, policy instructions, and arrangement of administrative tasks.⁷³

A SEMA is not a regulation under the Law No. 12 of 2011 on the Formation of Laws and Regulations and therefore cannot have substances that implicitly regulate the operation of the judiciary. The Supreme Court Law has provided a form of regulation for such objectives, which is the PERMA. Although a SEMA merely provides guidance and direction to judges in carrying out their duties and is internal in nature, it nevertheless exerts a ‘persuasive influence’ on judges when deciding cases. Psychologically and culturally, judges tend to comply with and follow the directions issued by higher-ranking judges, especially those of the Supreme Court.⁷⁴ Judges in the lower courts often feel reluctant to disregard instructions or guidance from their superiors. In addition, the Supreme Court also exercises a supervisory function consisting of administrative, organisational, financial, and technical-judicial aspects over the judges and courts within its jurisdiction. The ‘persuasive influence’ also applies to SEMAs related to the implementation of the results of the Supreme Court Chambers meeting, in which one of the substances is the ‘instruction’ for judges in dealing with marriage *isbat* for *siri* polygamous marriages.

⁷⁰ Hendra Catur Putra, “The Position of SEMA in the Hierarchical System of Legislation in Indonesia,” *ELQONUN: Jurnal Hukum Ketatanegaraan* 1, no. 2 (2023): 3–4, <https://doi.org/https://doi.org/10.19109/hajpk454>.

⁷¹ Bagir Manan and Kuntana Magnar, *Some Problems of Indonesian Constitutional Law*, Revisi (Bandung: Alumnus, 1997).

⁷² Meirina Fajarwati, “Validitas Surat Edaran Mahkamah Agung (SEMA) Nomor 7 Tahun 2014 Tentang Pengajuan Peninjauan Kembali Dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan,” *Jurnal Legislasi Indonesia* 14, no. 2 (2017): 146, <https://doi.org/10.54629/jli.v14i2.97>. The utilisation of SEMA as an instrument of guidance and supervision originated from Article 12, paragraph 2 of Law No. 12 of 1950 on the Structure and the Authority of the Indonesian Supreme Court, which essentially states that the Supreme Court can issue circular letters to give warnings and necessary guidance deemed necessary for courts and judges.

⁷³ *Ibid.*

⁷⁴ Sulistyowati Irianto et al., *Problematika Hakim Dalam Ranah Hukum, Pengadilan, Dan Masyarakat Di Indonesia: Studi Sosio-Legal* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2017), 169–71.

Essentially, marriage *isbat*⁷⁵ is a legal mechanism available in the Religious Courts to validate or formally confirm a marriage performed solely according to religious rites and not registered with the Marriage Registrar at the Office of Religious Affairs.⁷⁶ It is widely acknowledged that the institutionalisation of marriage *isbat* is regarded as a legal remedy that provides both benefits and legal certainty for *siri* marriages, particularly regarding the rights of the wife and the children born of such unions.⁷⁷ As will be discussed shortly, scholarly opinions on the marriage *isbat* for *siri* polygamous marriage diverge. Some advocate stricter limits or tighter controls while others argue that such petitions should be rejected or deemed inadmissible. This is because marriage *isbat* for polygamous marriages is often used to legitimise unregistered polygamous unions that previously failed to meet legal requirements, such as the wife's consent, permission from a superior, or authorisation from the court.

For the proponent of the stricter limits, for instance, Mukhtaruddin Bahrum argues that, although *siri* polygamy is permitted, it does not mean that it should be promoted or supported through legitimisation by means of *siri* polygamous marriage *isbat*.⁷⁸ Greater recognition must be given to lawfully conducted and duly registered marriages rather than to unregistered marriages.

⁷⁵ The term *itsbat nikah* is a combination of two Arabic words, *itsbat* and *nikah*. The word *itsbat* derives from the root “*atsbata, yutsubitu, itsbatan*”, meaning “to determine” or “to establish”. See Ahmad Warson Munawwir, 1984, *Kamus Al-Munawwir Arab-Indonesia Terlengkap*, Pustaka Progresif, Surabaya. The concept of *itsbat nikah* was first introduced in the *Compilation of Islamic Law*, where it is written as “*itsbat nikah*”. This transliteration continued to be used in subsequent regulations, including in Book II of the Supreme Court's *Guidelines for the Implementation of Duties and Court Administration in the Religious Courts*, 2007 edition. See Supreme Court, 2009, *Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan Dalam Empat Lingkungan Peradilan*, Supreme Court of the Republic of Indonesia, Jakarta, p. 460. The use of the transliteration “*itsbat*” was retained in the revised 2010 and 2013 editions of Book II. The change in transliteration from “*itsbat*” to “*isbat*” occurred in Supreme Court Circular Letter (SEMA) No. 03 of 2018 concerning the Application of the Formulated Results of the 2018 Plenary Chamber Meeting of the Supreme Court as Guidelines for Judicial Duties. Furthermore, according to the *Kamus Besar Bahasa Indonesia*, *itsbat* has been absorbed into the Indonesian language and is written as *isbat*. <https://kbbi.web.id/isbat>, accessed on 16 Juni 2026. In this article, the differences in transliteration will not be discussed and the author will continue to use the term *isbat*.

⁷⁶ Faisal Bafadhal, “*Itsbat Nikah Dan Implikasinya Terhadap Status Perkawinan Menurut Peraturan Perundang-Undangan Indonesia*,” *Jurnal Ilmu Hukum* Maret (2014): 1–15, <https://www.neliti.com/id/publications/43298/itsbat-nikah-dan-implikasinya-terhadap-status-perkawinan-menurut-peraturan-perun#cite>.

⁷⁷ Asasriwarni, “*Kepastian Hukum “Itsbat Nikah” Terhadap Status Perkawinan, Anak, dan Harta Perkawinan*”, Penelitian dan Diskusi Terbatas di Hadapan Kalangan Hakim Lingkungan Peradilan Agama Wilayah Padang, 24 Mei 2012. See Meita Djohan Oelangan, “*Isbat Nikah Dalam Hukum Islam Dan Perundang-Undangan Di Indonesia*,” *Pranata Hukum* 8, no. 2 (2013): 138–45, <https://jurnal.uhl.ac.id/index.php/PH/article/view/194>.

⁷⁸ Mukhtaruddin Bahrum, “*Problematika Isbat Nikah Poligami Sirri*,” *Jurnal Al-Adalah: Jurnal Hukum Dan Politik Islam* 4, no. 2 (2019): 194–213, <http://jurnal.iain-bone.ac.id/index.php/aladalah>.

Accordingly, polygamous marriage *isbat* should not undermine or sacrifice the validity of earlier lawful and registered marriages. Granting marriage *isbat* in polygamous cases tends to prioritise the rights of the second and subsequent *siri* wives and their children over the rights of the children and the lawful, registered wife from the initial marriage.⁷⁹

For the opponent views that continue to support the granting of marriage *isbat* for *siri* polygamous marriages, Cik Basir, for example, argues that applications for marriage *isbat* in cases of unregistered polygamous unions cannot automatically be deemed inadmissible based on SEMA No. 03 of 2018. This is because Book II of the Supreme Court, enacted through the Decree of the Chief Justice of the Supreme Court (KMA/032/SK/IV/2006) dated 6 April 2006, also regulates marriage *isbat* for polygamous cases, and that regulation remains in force.⁸⁰ Therefore, cases involving marriage *isbat* for polygamy must be assessed on a case-by-case basis.⁸¹

The 2020 Marriage Isbat Decision, which gains status as a ‘landmark decision’, contains a legal principle centred on the best interests of the child. It states that, for the sake of protecting the child of a *siri* wife, marriage *isbat* for an unregistered union may be granted if the application is submitted after the divorce from the first wife. According to Soemitro, juridical protection of children encompasses all the legal rules that directly affect a child’s life, including the legal norms governing the child’s life and welfare.⁸² According to Made Sadhi Astuti, child protection in Indonesia, in addition to being grounded in written law, also encompasses unwritten norms or customary law, which likewise ensures the protection of children in accordance with their needs to allow them to exercise their rights properly.⁸³

The definition of child protection may also be formulated as follows. First, it becomes an embodiment of justice within society, referring to social justice

⁷⁹ Muhammad Muchlis, Hasim Purba, and Uтары Maharany Barus, “Granting Marriage Isbat in Polygamous Cases Tends to Prioritise the Rights of the Second and Subsequent Siri Wives and Their Children over the Rights of the Children and the Lawful, Registered Wife from the Initial Marriage,” *Indonesian Journal of Humanities and Social Sciences* 6, no. 3 (2025): 526, <https://doi.org/https://doi.org/10.33367/>.

⁸⁰ Cik Basir, “Penanganan Perkara Permohonan Isbat Nikah Poligami Secara *Siri* dan Hubungannya Dengan Permohonan Asal-Usul Anak di Pengadilan Agama,” *Makalah Diskusi Hakim Peradilan Agama se-Wilayah PTA Palembang*, Pengadilan Tinggi Agama Palembang, 26 April 2019, <https://badilag.mahkamahagung.go.id/artikel/penanganan-perkara-permohonan-isbat-nikah-poligami-secara-siri-dan-hubungannya-dengan-permohonan-asal-usul-anak-di-pengadilan-agama-oleh-drs-cik-basir-s-h-m-h-i-3-5>.

⁸¹ Basir.

⁸² Irma Setyawati Soemitro, *Aspek Hukum Perlindungan Anak* (Jakarta: Bumi Aksara, 1990).

⁸³ Made Sadhi Astuti, *Hukum Pidana Anak Dan Perlindungan Anak* (Malang: UM Press, 2003).

which constitutes the primary foundation of child protection.⁸⁴ Second, it is a collective effort to safeguard children that enables them to exercise their rights and fulfil their obligations humanely and constructively.⁸⁵ Third, it is a social reality.⁸⁶ Fourth, it becomes the outcome of interaction among parties, arising from the interrelation of existing phenomena and their mutual influence.⁸⁷ Therefore, it is necessary to study, understand, and appreciate all parties, both legal subjects and legal objects, who constitute the components underlying the very existence of child protection. In addition, it is also necessary to examine, understand, and internalise the various factors that influence the existence of child protection. Child protection is a complex and difficult issue, and its resolution must therefore be pursued simultaneously and collectively. Fifth, it may constitute an individual act influenced by certain social elements that serve as motivating factors.⁸⁸ To understand and accurately appreciate the reasons why individuals engage in child protection, either independently or collectively, it is essential to comprehend the relevant elements of social structure. Sixth, it may also take the form of a legal (juridical) act that carries legal consequences.⁸⁹ In relation to this final point, the juridical actions undertaken in Indonesia by the courts within the Religious Judiciary regarding the children born from *siri* polygamous marriages and marriage *isbat* for unregistered polygamous unions remain partial. There is a risk that the child protection afforded to children born from such *siri* polygamous marriages may, in fact, undermine fairness for the children of the earlier lawful marriage.

Ideal Resolution for Marriage *Isbat* Cases Involving *Siri* Polygamous Marriages: Reconciling the Differing Perspectives of SEMA No. 3 of 2018 and the 2020 Marriage *Isbat* Decision

⁸⁴ Arif Gosita, "Aspek Hukum Perlindungan Anak Dan Konvensi Hak-Hak Anak," *Era Hukum Jurnal Ilmiah Ilmu Hukum*, no. 4 (1999): 264–65, <https://journal.untar.ac.id/index.php/hukum/article/view/5403/3445>.

⁸⁵ Gosita.

⁸⁶ Gosita.

⁸⁷ Gosita.

⁸⁸ Gosita.

⁸⁹ Gosita.

In resolving civil cases in court, whether in religious or general courts, the judges operating within the civil law tradition prioritise the use of written sources of law (with an emphasis on codification), namely the legal norms contained in clear, written, and structured statutory regulations.⁹⁰ In contrast, the common law system places judicial precedent or court decisions as the primary source of law.⁹¹ The long historical development of civil law has significantly shaped the legal systems of many countries, including Indonesia.⁹² Although the civil law system also makes use of jurisprudence, such jurisprudence serves only as a non-binding source of law.⁹³ Consequently, a panel of judges is under no obligation to follow previous decisions; instead, statutory provisions remain the central reference point. In issuing a judgment, judges are not bound by precedent or the doctrine of *stare decisis*, and therefore legislation becomes the principal basis for judicial consideration.

In the civil law judicial system, the approach is inquisitorial, which means that the judge plays a central role in directing and deciding the case and is actively involved in evaluating the evidence. The judge seeks to obtain a comprehensive understanding of the events from the outset of the proceedings.⁹⁴ This system relies on the professionalism and integrity of the judge. Judges in the civil law tradition endeavour to form a complete picture of the case from the beginning, relying on their professional competence and honesty.⁹⁵

Based on the civil procedure system described above, particularly when examining a marriage *isbat* case arising from *siri* polygamy, the judge in the religious court will first assess the case in its entirety. The judge will then refer to the written regulations that govern the resolution of marriage *isbat* for

⁹⁰ L. Ramírez-Ludeña, *Statutory Interpretation and Binding Precedents in the Civil Law Tradition, Philosophical Foundations of Precedent*, 2023, <https://doi.org/10.1093/oso/9780192857248.003.0032>.

⁹¹ J.H. Matheson, *Common Law, Encyclopedia of Civil Liberties in America Volumes One Three*, vol. 1, 2015, <https://doi.org/10.4324/9781315699868-152>.

⁹² A. Budiono et al., "The Anglo-Saxon System of Common Law and the Development of the Legal System in Indonesia," *Wseas Transactions on Systems* 22 (2023): 207–13, <https://doi.org/10.37394/23202.2023.22.21>.

⁹³ A. Jakubecki, *A Precedent as a Doctrinal and Jurisdictional Category of Civil Law, Lex Et Res Publica, Potential of Precedent in the Statutory Legal Order*, 2019, <https://urn.ub.unibe.ch/urn:ch:slsp:9783631790182:ihv:pdf>.

⁹⁴ J.M. Marshall, "Examining Judicial Decision-Making: An Axiological Analytical Tool* | Badanie Podejmowania Decyzji Sądowej – Aksjologiczne Narzędzia Analizy," *Studia Iuridica Lublinensia* 29, no. 3 (2020): 55–65, <https://doi.org/10.17951/sil.2020.29.3.55-65>.

⁹⁵ Khoidarulloh, "Akomodasi Common Law System Dalam KUHP Baru: Konsep Hukuman Kerja Sosial Sebagai Alternatif Pidana," *El-Dusturie* 2, no. 2 (2023): 117–29, <https://doi.org/10.21154/eldusturie.v2i1.6746>. See also Nurul Qamar, *Perbandingan Sistem Hukum Dan Peradilan Civil Law System Dan Common Law System* (Makassar: Pustaka Refleksi, 2010).

unregistered polygamous unions. Accordingly, several legal provisions to be examined are as follows. The first is Article 2 paragraphs (1) and (2) and Article 5 paragraph (1) of Law No. 1 of 1974 on Marriage, which outline the validity of a marriage and the requirements for polygamy. The second is Article 1 paragraph (1) and Article 3 paragraph (1) of Law No. 22 of 1946 on the Registration of Marriage, Divorce, and Reconciliation, which focus on the supervision and registration of marriages and their legal consequences. The third is Article 7 paragraph (1) of Law No. 1 of 1974 on Marriage that regulates the minimum age requirements for spouses to marry. The fourth is Article 65A of Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 on Marriage, which essentially provides certainty for applications for marriage submitted based on the previous law to be processed based on that law instead of Law No. 16 of 2019. The fifth is Article 4, Article 5 paragraph (1), Article 6 paragraphs (1) and (2), Article 7 paragraph (3), and Article 56 paragraphs (1), (2), and (3) of the Compilation of Islamic Law, which outline the validity of marriage, registration, supervision of marriage, marriage *isbat*, and polygamy authorisation. Furthermore, Article 4 and Article 52 of the Minister of Religious Affairs Regulation No. 30 of 2024 on Marriage Registration give information on marriage registration and changes to marriage status, respectively, including a requirement for a court decree that grants permission for polygamy.

Aside from laws and regulations, the Supreme Court has issued several SEMAs that outline the guidelines for judges when handling marriage *isbat* cases that involve *siri* marriages, with the most recent being SEMA No. 3 of 2018. This SEMA states that an application for marriage *isbat* based on polygamy must be declared inadmissible, and, for the interest of the child, a child's lineage claim must be filed instead. Furthermore, when the judge considers that the case under examination bears similarities to several matters that have previously been addressed in 'Landmark Decisions' in religious civil cases, the judge may refer to those decisions as guidance or reference. However, there is no obligation to follow them where the judge has already identified the applicable law on the same issue.

There are two decisions designated by the Supreme Court as 'landmark decisions' concerning marriage *isbat*, namely Supreme Court Decision No. 329 K/Ag/2014 and Supreme Court Decision No. 223 K/Ag/2020. The first decision addresses an application for the determination of the validity of a marriage conducted according to the Islamic law as well as an application for the

determination of the legal relationship between a child born outside marriage and his biological father. The marriage between the petitioner and the respondent is valid but cannot be officially registered. The Constitutional Court, in its Decision No. 46/PUU-VIII/2010 issued on 17 February 2012, rules that Article 43(1) of the Marriage Law should not be applied in a legally binding manner, therefore affirming that a child born outside a legally recognised marriage may have a legal relationship with his biological father as long as such paternity can be established through scientific methods and other forms of legally admissible evidence. The Supreme Court Decision No. 329 K/Ag/2014 expressly clarifies that applications for marriage *isbat* arising from *siri* polygamous unions must be denied. Consequently, where such legal recognition is refused, a child born from a *siri* polygamous marriage cannot be legally recognised as a legitimate child.

Meanwhile, the second decision was issued and designated as a ‘landmark decision’ of the Supreme Court in 2020, introducing a distinct legal principle where a petition for marriage *isbat* in cases involving *siri* polygamous unions may be approved as long as the husband has already legally terminated his marriage with his lawful wife at the time the application for polygamous marriage *isbat* is filed before the court. The decision is made to ensure legal certainty and safeguard the rights of the second wife and the children born from such union. Should this ruling be relied upon as a reference by judges in comparable cases, it would be appropriate to incorporate and assess several further criteria, including the following:

- 1) It must be ensured that the *siri* marriage arising from polygamy fulfils the pillars and substantive requirements of a valid marriage under the Islamic law.
- 2) An application for marriage *isbat* arising from a *siri* polygamous marriage must still be declared inadmissible if, at the time the application is filed, the husband remains legally married to his lawful wife or wives.
- 3) An application for marriage *isbat* relating to a *siri* polygamous union may be approved solely when the husband is no longer legally bound to his former wife whether due to a divorce that has obtained final and binding legal force or as a result of the wife’s death on the condition that the prior marriage does not produce any children or descendants.
- 4) Granting marriage *isbat* for a *siri* polygamous marriage solely on the basis that the husband’s prior marriage has been dissolved without considering whether the previous marriage produces children or not will severely

compromise the sense of justice, particularly for the children from the earlier marriage, especially with respect to the protection of their rights.

Therefore, in examining applications for marriage *isbat* arising from *siri* polygamous marriages, the judge must continue to rely primarily on written law to ensure legal certainty.⁹⁶ Landmark decisions, including *the 2020 Marriage Isbat Decision*, may serve as guidance insofar as the judge does not find a governing legal rule in written legislation.⁹⁷ An application for marriage *isbat* in a *siri* polygamous marriage may be granted if the husband's marriage to his previous wife has already been terminated and no children or descendants were born from that earlier marriage at the time the application is filed. Conversely, if the husband applies for marriage *isbat* arising from a *siri* polygamous marriage after his marital bond with the previous wife has ended, whether due to death or divorce, but that earlier marriage produces children, then the judge must revert to the normative provisions of Supreme Court SEMA No. 3 of 2018 under which the application must be declared inadmissible. Such requirement is essential to ensure legal certainty and protect the rights of children arising from a prior legally valid marriage. In addition, to secure legal recognition and protection for children born from a *siri* polygamous union, a petition for judicial determination of the child's lineage may be filed with the religious court.

Conclusion

The 2020 Marriage Isbat Decision has further developed the dynamics in the way judges handle marriage *isbat* involving *siri* polygamous marriages, especially since the issuance of SEMA No. 3 of 2018. The designation of 'landmark decision' status for *the 2020 Marriage Isbat Decision* also raises an important question on the societal impact of such decision, despite providing a 'legal breakthrough' amid the current marriage legal framework. However, the potential for repeatability will depend on the subsequent judges and their judicial receptions. What is clear for now is the 'administrative process' behind

⁹⁶ N.D. Masyithoh et al., "Unregistered Polygamous Marriage of Civil Servants and Its Implication for Wives' Financial Problem, Social Fate and Loss of Children's Welfare," *International Journal of Early Childhood Special Education* 13, no. 2 (2021): 312–18, <https://doi.org/10.9756/INT-JECSE/V13I2.211067>.

⁹⁷ M. DerIn and J. Lindholm, "Characteristics of Precedent: The Case Law of the European Court of Justice in Three Dimensions," *German Law Journal* 16, no. 5 (2015): 1073–98, <https://doi.org/10.1017/S2071832200021040>.

the designation, which is entirely dependent on the relevant Supreme Court bodies in examining the decisions.

Given the divergence between SEMA No. 3 of 2018 and *the 2020 Marriage Isbat Decision*, this paper suggests that judges must first decide such cases by relying on written law and regulations. While the existence of SEMA may help to guide judges in deciding marriage *isbat* cases, it should not hinder the judges' independence when examining such cases. The judges should emphasise the goal of achieving substantial justice rather than mere procedural justice and protect those in vulnerable positions. This can include the lawful wife and her children, the *siri* wife and her children, or even the husband, depending on the facts of each case. According to *the 2020 Marriage Isbat Decision*, an application for marriage *isbat* arising from a *siri* polygamous marriage in which the husband is no longer bound by marriage to his previous wife or wives, whether due to death or divorce, may be considered for approval as long as the earlier lawful marriage produces no descendants or legitimate children. If the court's examination reveals that the husband has children from a prior legally valid marriage, the petition for marriage *isbat* must remain inadmissible even though the earlier marriage has already been dissolved at the time of adjudication.

Another possibility is to suggest that petitioners apply for both the marriage *isbat* and the child's lineage simultaneously, either in a single petition or two different petitions, to reduce the administrative burden on the petitioners. Therefore, even if the marriage *isbat* may be declared inadmissible, the children's lineage petition can still be processed without requiring the petitioner to resubmit the petition or to start the process anew.

References

- (KBBI), Kamus Besar Bahasa Indonesia. "Isbat." Accessed June 15, 2026. <https://kbbi.web.id/isbat>.
- . "Poligami." Accessed June 11, 2026. <https://kbbi.web.id/poligami>.
- Al-Maliki, Syaikh Ahmad bin Muhammad As-Shawi. "Hasyiyah As-Shawi'ala Sharhis Shaghir." *Darul Ma'arif: T.TII* (n.d.): 282.
- Ali, Atabik, and Ahmad Zuhdi Muhdlor. *Kamus Kontemporer Arab-Indonesia*. 8th, 2nd ed. Yogyakarta: Multi Karya Grafika, 1998.
- Anwar, Ridwan. "Hasil Diskusi Hukum PTA Palembang: Hakim Wajib

- Pahami Sema Nomor 3 Tahun 2018.” Direktorat Jenderal Badan Peradilan Agama, 2019.
<https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/hasil-diskusi-hukum-pta-palembang-hakim-wajib-pahami-sema-nomor-3-tahun-2018-30-4>.
- Astuti, Made Sadhi. *Hukum Pidana Anak Dan Perlindungan Anak*. Malang: UM Press, 2003.
- Bafadhal, Faisal. “Itsbat Nikah Dan Implikasinya Terhadap Status Perkawinan Menurut Peraturan Perundang-Undangan Indonesia.” *Jurnal Ilmu Hukum* Maret (2014): 1–15.
<https://www.neliti.com/id/publications/43298/itsbat-nikah-dan-implikasinya-terhadap-status-perkawinan-menurut-peraturan-perun#cite>.
- Bahrum, Mukhtaruddin. “Problematisasi Isbat Nikah Poligami Sirri.” *Jurnal Al-Adalah: Jurnal Hukum Dan Politik Islam* 4, no. 2 (2019): 194–213.
<http://jurnal.iain-bone.ac.id/index.php/aladalah>.
- Bhakti, Teguh Satya. *Pembangunan Hukum Administrasi Negara Melalui Putusan-Putusan Peradilan Tata Usaha Negara*. Puslitbang Hukum dan Peradilan, Badan Litbang Diklat Kumdil, Mahkamah Agung, Republik Indonesia, 2017.
<https://ebook.bsdk.mahkamahagung.go.id/index.php/product/58-pembangunan-hukum-administrasi-negara-melalui-putusan-putusan-peradilan-tata-usaha-negara/>.
- Budiono, A., W. Yuspin, S.S. Nurani, F. Fairuzzaman, S.W.A. Pradnyawan, and S.D. Sari. “The Anglo-Saxon System of Common Law and the Development of the Legal System in Indonesia.” *Wseas Transactions on Systems* 22 (2023): 207–13. <https://doi.org/10.37394/23202.2023.22.21>.
- Dandapala, Tim Redaksi. “Pustrajak Kumdil Gelar Penyusunan Resume Dan Pengalihbahasaan Landmark Decision.” *DANDAPALA Majalah Badan Peradilan Umum*, 2025.
<https://dandapala.com/article/detail/pustrajak-kumdil-gelar-penyusunan-resume-dan-pengalihbahasaanlandmark-decision>.
- Derln, M., and J. Lindholm. “Characteristics of Precedent: The Case Law of the European Court of Justice in Three Dimensions.” *German Law Journal* 16, no. 5 (2015): 1073–98. <https://doi.org/10.1017/S2071832200021040>.
- Dictionary, Merriam Webster. “Polygamy.” Accessed June 13, 2026.
<https://www.merriam-webster.com/dictionary/polygamy>.
- Dictionary, Oxford English. “Polygamy.” Accessed June 16, 2026.

- https://www.oed.com/dictionary/polygamy_n?tl=true,&tl=true.
- Editorial. "Dictum Landmark Decision MA." *Jurnal Kajian Putusan Pengadilan*, no. 10 (2015): 2. <https://doi.org/https://leip.or.id/dictum-edisi-10-landmark-decisions-ma/>.
- Elnizar, Normand Edwin. "Ini 3 Sumber Acuan Dalam Putusan Hakim Selain Undang-Undang." *Hukum Online*, 2022. <https://www.hukumonline.com/berita/a/ini-3-sumber-acuan-dalam-putusan-hakim-selain-undang-undang-lt62cba91b1d0d2?page=all>.
- . "Kekuatan Yurisprudensi, Landmark Decision, Dan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung." *Hukum Online*, 2021. <https://www.hukumonline.com/stories/article/lt60d8596a23f12/kekuatan-yurisprudensi-landmark-decision--dan-rumusan-hasil-rapat-pleno-kamar-mahkamah-agung/>.
- Fachri, Ferinda K. "Begini Kaidah Hukum 7 Landmark Decisions Dalam Laporan Tahunan MA 2021e." *Hukum Online*, 2022. <https://www.hukumonline.com/berita/a/begini-kaidah-hukum-7-landmark-decisions-dalam-laporan-tahunan-ma-2021-lt624166b346157/?page=all>.
- Fajarwati, Meirina. "Validitas Surat Edaran Mahkamah Agung (SEMA) Nomor 7 Tahun 2014 Tentang Pengajuan Peninjauan Kembali Dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Legislasi Indonesia* 14, no. 2 (2017): 146.
- Fakhria, S., K.N. Mustofa, M. Ma'mun, A. Wahidi, and M.A. Rachmatulloh. "Securing Muslim Children's Civil Rights: Debate on State Legal Policy towards The Issuance of Family Cards for Unregistered Marriage Couples." *El Mashlahah* 14, no. 2 (2024): 303–22. <https://doi.org/10.23971/el-mashlahah.v14i2.8008>.
- Fathoni, M. Yazid. "Kedudukan Pernikahan Poligami Secara Sirri Ditinjau Dari Hukum Keluarga." *Jurnal Ius Kajian Hukum Dan Keadilan* 6, no. 1 (2018): 128–42. <https://doi.org/https://doi.org/10.29303/ius.v6i1.525>.
- Fon, Vincy, and Francesco Parisi. "Judicial Precedents in Civil Law Systems: A Dynamic Analysis." *International Review of Law and Economics* 26, no. 4 (2006): 519–35. <https://doi.org/https://doi.org/10.1016/j.irle.2007.01.005>.
- Garner, B. A. *Black's Law Dictionary*. 10th ed. Thomson Reuters, 2014.
- Gigliotti, M., G. Schmidt-Traub, and S. Bastianoni. *The Sustainable Development Goals. Encyclopedia of Ecology Volume 1 4 Second Edition*. Vol.

- 4, 2019. <https://doi.org/10.1016/B978-0-12-409548-9.10986-8>.
- González, Camarena Rodrigo. "From Jurisprudence Constante to Stare Decisis: The Migration of the Doctrine of Precedent to Civil Law Constitutionalism." *Transnational Legal Theory* 7, no. 2 (2016): 257–86. <https://doi.org/https://doi.org/10.1080/20414005.2016.1205871>.
- Gosita, Arif. "Aspek Hukum Perlindungan Anak Dan Konvensi Hak-Hak Anak." *Era Hukum Jurnal Ilmiah Ilmu Hukum*, no. 4 (1999): 264–65. <https://journal.untar.ac.id/index.php/hukum/article/view/5403/3445>.
- Hadiyan, Muhammad Naufal, and Wafiah Rafifatun Nida. "Polygamy: A Solution to Overcome Infidelity? (A Maslahah Mursalah Perspective)." *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 16, no. 2 (2022): 84–98. <https://doi.org/https://doi.org/10.56997/almabsutjurnalstudiislamdansosi> al.v17i1.862.
- Hartini. "Implementasi Aturan 'Tidak Dapat Diterima' Terhadap Permohonan Itsbat Nikah Poligami Siri Di Pengadilan Agama." aporan Penelitian Hibah Penelitian Jurnal Nasional Fakultas Hukum UGM, 2021.
- Hasanuddin, Nor. "Landmark Decisions (Putusan Penting) Tahun 2016: Pertimbangan Dan Kaidah Hukum 11 Putusan Mahkamah Agung Ri." Direktorat Jenderal Badan Peradilan Agama Pengadilan Tinggi Agama Samarinda, 2021. <https://pa-bontang.go.id/publikasi/arsip-artikel/423-8-10-2021-landmark-decisions-putusan-penting-tahun-2016-pertimbangan-dan-kaidah-hukum-11-putusan-mahkamah-agung-ri-oleh-nor-hasanuddin-lc-m-a>.
- Irianto, Sulistyowati, Widodo Dwi Putro, Fajri Nursyamsi, Ikhsan Azhar, Munafrizal Manan, Nurkholis Hidayat, Elsa Faiz, Hendro Sukmono, Muhamad Ilham, and Nur Aini Fatmawati. *Problematika Hakim Dalam Ranah Hukum, Pengadilan, Dan Masyarakat Di Indonesia: Studi Sosio-Legal*. Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2017.
- Jakubecki, A. *A Precedent as a Doctrinal and Jurisdictional Category of Civil Law. Lex Et Res Publica* potential of Precedent in the Statut Leg Order, 2019.
- Khoidarulloh. "Akomodasi Common Law System Dalam KUHP Baru: Konsep Hukuman Kerja Sosial Sebagai Alternatif Pidana." *El-Dusturie* 2, no. 2 (2023): 117–29. <https://doi.org/10.21154/eldusturie.v2i1.6746>.
- Lim, Ernest. "Of 'Landmark' or 'Leading' Cases: Salomon's Challenge." *Journal of Law and Society* 41, no. 4 (2014): 523–50. <https://doi.org/10.1111/j.1467-6478.2014.00684.x>.

- Lively, Donald E. *Landmark Supreme Court Cases: A Reference Guide*. Greenwood Press, 1999.
- Ma'unah Widyah, Wardah, Moh Muhibbin, Afandi. "Pertimbangan Hukum Oleh Hakim Pengadilan Agama Atas Putusan Niet Ontvankelijk Verklaard Pada Perkara Kewarisan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (Studi Putusan Hakim Nomor 878/Pdt.G/2020/PA.Pra)." *Jurnal DINAMIKA* 30, no. 1 (2024): 9404–6. <https://doi.org/https://jim.unisma.ac.id/index.php/jdh/article/view/23673>.
- Manan, Bagir, and Kuntana Magnar. *Beberapa Masalah Hukum Tata Negara Indonesia*. Revisi. Bandung: Alumni, 1997.
- Mardatillah, Aida. "Mengurai Kumpulan Putusan Landmark MK." Hukum Online, 2018. <https://www.hukumonline.com/berita/a/mengurai-kumpulan-putusan-landmark-mk-lt5b98de0ce4e3d/>.
- Mardatillah, Aida. "2018, MA 'Cetak' 5 Putusan Terpilih." Hukum Online, 2019. <https://www.hukumonline.com/berita/a/2018--ma-cetak-5-putusan-terpilih-lt5c7d1d53cb33e/>.
- Marshall, J.M. "Examining Judicial Decision-Making: An Axiological Analytical Tool* | Badanie Podejmowania Decyzji Sądowej – Aksjologiczne Narzędzia Analizy." *Studia Iuridica Lublinensia* 29, no. 3 (2020): 55–65. <https://doi.org/10.17951/sil.2020.29.3.55-65>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Pertama. Jakarta: Kencana, 2006.
- Masyithoh, N.D., Suteki, Yunanto, B. Ernawati, and N. Hidayati. "Unregistered Polygamous Marriage of Civil Servants and Its Implication for Wives' Financial Problem, Social Fate and Loss of Children's Welfare." *International Journal of Early Childhood Special Education* 13, no. 2 (2021): 312–18. <https://doi.org/10.9756/INT-JECSE/V13I2.211067>.
- Matheson, J.H. *Common Law. Encyclopedia of Civil Liberties in America Volumes One Three*. Vol. 1, 2015. <https://doi.org/10.4324/9781315699868-152>.
- Maulida, Erika Isnaini. "Poligami Secara Sirri (Studi Deskriptif Makna Poligini Secara Sirri Bagi Istri Muda Yang Di Nikah Secara Sirri)." Airlangga University, 2015. <https://repository.unair.ac.id/15946/>.
- Mawardi, Imam Al. "Al-Hawi Al-Kabir." *Beirut, Darul Kutub Ilmiah* IX

- (1999): 59.
- MD, Moh. Mahfud. "Landmark Decisions Mahkamah Konstitusi." Bogor, 2017.
- Mertokusumo, Sudikno. *Sejarah Peradilan Dan Perundang-Undangannya Di Indonesia Sejak 1942 Dan Apakah Kemanfaatannya Bagi Kita Bangsa Indonesia*. Universitas Atmajaya, 2011.
- Mubdi, Umar. "Reforming Civil Court In Indonesia: The Dialectics Of Procedural Justice And Digital Justice." *Jurnal Mimbar Hukum* 38, no. 1 (2026): 27–28. <https://doi.org/https://doi.org/10.22146/mh.v38i1.25415>.
- Muchlis, Muhammad, Hasim Purba, and Utary Maharany Barus. "Granting Marriage Isbat in Polygamous Cases Tends to Prioritise the Rights of the Second and Subsequent Siri Wives and Their Children over the Rights of the Children and the Lawful, Registered Wife from the Initial Marriage." *Indonesian Journal of Humanities and Social Sciences* 6, no. 3 (2025): 526. <https://doi.org/https://doi.org/10.33367/>.
- Mukhlis, H.Yayan Liliyana. "Penetapan Asal Usul Anak : Sebuah Alternatif Dalam Perlindungan Anak." Direktorat Jenderal Badan Peradilan Agama, 2013. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penetapan-asal-usul-anak-sebuah-alternatif-dalam-perlindungan-anak-oleh-h-yyan-liyana-mukhlis-259>.
- Munawwir, Ahmad Warson. *Al-Munawir Kamus Arab-Indonesia*. Surabaya: Pustaka Progresif, 1997.
- Munir, Badrul, Syeh Ihsan, and Warsono. "Hak-Hak Istri Dalam Poligami Sirri Menurut Hukum Positif Dan Hukum Islam Studi Khusus Di Desa Srigading Kecamatan Labuhan Maringgai." *Jurnal Syariahku: Jurnal Hukum Keluarga Dan Manajemen Haji Umrah* 1, no. 1 (2023): 1–9. <https://journal.an-nur.ac.id/index.php/demo2/article/view/1845>.
- Nasution, Rahmad Romadon. *Nafkah Anak Hasil Pernikahan Sirri Kajian Putusan Pengadilan Agama*. Edited by M. Muslimin and Imam Sujoko. 1st ed. Yogyakarta: Penerbit KBM Indonesia, 2022.
- Nggilu, Novendri, Mohamad Rivaldi Moha, Muhammad Ridho Sinaga, and Adelia Rachmaniar. "Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 261–98. <https://doi.org/https://doi.org/10.15294/lslr.v8i1.1901>.
- Oelangan, Meita Djohan. "Isbat Nikah Dalam Hukum Islam Dan

- Perundang-Undangan Di Indonesia.” *Pranata Hukum* 8, no. 2 (2013): 138–45. <https://jurnal.ubl.ac.id/index.php/PH/article/view/194>.
- Prasetyawati, S. Endang. “Kedudukan Produk Hukum Dari Fungsi Pengaturan Mahkamah Agung Dalam Sistem Perundang-Undangan Nasional.” *Pranata Hukum* 14, no. 1 (2019): 16–22. <https://jurnal.ubl.ac.id/index.php/PH/article/view/1138>.
- Preston, N., and S. Payne. *Qualitative Methods of Data Collection and Analysis. Research Methods in Palliative Supportive and End of Life Care Second Edition*, 2025. <https://doi.org/10.1093/9780191924644.003.0011>.
- Putra, Hendra Catur. “Kedudukan SEMA Dalam Sistem Hierarki Perundang-Undangan Di Indonesia.” *ELQONUN: Jurnal Hukum Ketatanegaraan* 1, no. 2 (2023): 3–4. <https://doi.org/https://doi.org/10.19109/hajpk454>.
- Putra, I Gusti Agung Ketut Bagus Wira Adi, Ida Ayu Putu Widiati, and Ni Made Puspasutari Uj. “Gugatan Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Dalam Gugatan Cerai Gugat Di Pengadilan Agama Badung.” *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 305–9. <https://doi.org/10.22225/jkh.2.1.2565.305-309>.
- Qamar, Nurul. *Perbandingan Sistem Hukum Dan Peradilan Civil Law System Dan Common Law System*. Makassar: Pustaka Refleksi, 2010.
- Qonita, Niswah Nilam. “Terobosan Hukum Isbat Nikah Poligami Siri Dalam Landmark Decisions Perdata Agama Tahun 2014 Dan 2020, Perspektif Masalah Imam Al-Ghazali Dan Teori Perlindungan Perempuan Dan Anak.” UIN Syarif Hidayatullah Jakarta, 2023. <https://repository.uinjkt.ac.id/dspace/handle/123456789/74072>.
- Radin, D. “Sustainable Development Goal 16: Focus on Public Institutions, World Public Sector Report 2019.” *Public Sector Economics* 43, no. 4 (2019): 478–82. <https://doi.org/10.3326/pse.43.4.8>.
- Ramírez-Ludeña, L. *Statutory Interpretation and Binding Precedents in the Civil Law Tradition. Philosophical Foundations of Precedent*, 2023. <https://doi.org/10.1093/oso/9780192857248.003.0032>.
- S, Catur ALfath. “Ini 2 Contoh Putusan Dapat Dikategorikan Landmark Decision Menurut Kepala BSDK MA.” *DANDAPALA Majalah Badan Peradilan Umum*, 2025. <https://dandapala.com/article/detail/ini-2-contoh-putusan-dapat-dikategorikan-landmark-decision-menurut-kepala-bsdk-ma>.
- Sarifudin, Muhammad, Imawan Sugiharto, and Moh Taufik. “Korelasi Hukum

- Antara Putusan Mahkamah Agung Yang Bersifat Landmark Decisions Dengan Yurisprudensi.” *ELQONUN: Jurnal Hukum Ketatanegaraan* 2, no. 1 (2024): 69–78. <https://doi.org/https://doi.org/10.19109/frp2w842>.
- Setiawan, Dharma, and Erwin Susilo. “Independensi Kekuasaan Kehakiman Dalam Menjatuhkan Putusan Ditinjau Dari Perspektif Undang-Undang Sebagai Perjanjian.” *Jurnal Mimbar Hukum* 37, no. 1 (2025): 83–84. <https://doi.org/https://doi.org/10.22146/mh.v37i1.18891>.
- Shidarta. “Yurisprudensi Dan Putusan ‘Landmark.’” Binus University, 2018. <https://business-law.binus.ac.id/2018/07/07/yurisprudensi-dan-putusan-landmark/>.
- Simanjuntak, Enrico. “The Roles of Case Law in Indonesian Legal System.” *Jurnal Konstitusi* 16, no. 1 (2019): 83–104. <https://doi.org/https://doi.org/10.31078/jk1615>.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia Press, 2010.
- Soekanto, Soerjono, and Sri Mamudi. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2003.
- Soemitro, Irma Setyawati. *Aspek Hukum Perlindungan Anak*. Jakarta: Bumi Aksara, 1990.
- Soltau, F. *The 2030 Agenda for Sustainable Development: What Are Its Implications for Future Generations? Giving Future Generations A Voice Normative Frameworks Institutions and Practice*, 2021. <https://doi.org/10.4337/9781839108259.00014>.
- Suhendar. “Putusan No (Niet Ontvankelijk Verklaard) Terhadap Perbuatan Wanprestasi.” *Jurnal Yustita* 5, no. 2 (2019): 242–62. <https://yustitia.unwir.ac.id/index.php/yustitia/article/view/92>.
- Suparto, and Zulkifli. “Kedudukan Putusan Mahkamah Konstitusi Dalam Hukum Ketenagakerjaan (Kajian Terhadap Putusan Mahkamah Konstitusi No.37/PUU-IX/2011).” *Jurnal Hukum & Pembangunan* 52, no. 1 (2022). <https://doi.org/10.21143/jhp.vol52.no1.3325>.
- Syafa’, Nadhifa Salsabilla, and Nur Lailatul Musyafaah. “Isbat Nikah Pernikahan Poligami Secara Siri Dalam Putusan Nomor 3401/Pdt.G/2022/PA.Sby.” *MA’AL Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 50–72. <https://doi.org/https://doi.org/10.15642/mal.v5i1.325>.
- Tim Pokja Laporan Tahunan MARI. *Laporan Tahunan 2020 Mahkamah Agung Republik Indonesia*. Mahkamah Agung Republik Indonesia, 2021.

https://bsdk.mahkamahagung.go.id/images/PUSLITBANG/Landmark-Decisions/Tahun-2020/Landmark_Decision_2020.pdf.

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