

Beyond Procedural Efficiency: Cumulative *Itsbat Nikah*, Divorce Litigation, and Women's Post-Divorce Rights in Indonesia

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Abstract: Unregistered marriages in Indonesia remain a deeply rooted social reality, not merely a legal anomaly. Women and children who come from such unions occupy a precarious legal position, especially when the marriage dissolves. Indonesia's Religious Courts have responded by allowing cumulative litigation that combines *itsbat nikah* (marriage validation) with divorce in a single proceeding, as permitted under Supreme Court Circular Letter (SEMA) No. 7 of 2012. The question this study pursues is whether that procedural solution delivers justice, or whether it stops at efficiency. Using an empirical legal approach, data were gathered through in-depth interviews with three judges and one senior court clerk at the Manado Religious Court, supplemented by document analysis and triangulation. The court handles cumulative cases through an integrated electronic system and completes them in roughly one month, compared to two or three months for separate filings. Judges apply three consistent criteria drawn from SEMA guidelines: verifying that the marriage does not violate legal requirements, confirming the legal connection between *itsbat* and divorce, and establishing the marriage through witness testimony. What the data reveal, however, is that procedural consistency has not translated into reliable protection of post-divorce rights. *Nafkah iddah*, *mut'ah*, and child support are inconsistently enforced. Judges do not uniformly exercise ex officio authority, economic barriers obstruct claims, and execution processes remain slow and costly. The study argues that in a legal pluralism context where state law, Islamic law, and living law interact, institutional flexibility and normative gaps tend to develop together. Procedural reform is necessary, but it is not enough.

Keywords: *Itsbat Nikah*; Cumulative Litigation; Women's Post-Divorce Rights; Religious Court Indonesia; Islamic Family Law.

Introduction

Unregistered marriages remain a persistent challenge in Muslim-majority countries, affecting millions of women and children in terms of their legal rights (Huis & Wirastris, 2012; Jones, 2015). In Indonesia, despite Marriage Law No. 1 of 1974 mandating marriage registration, unregistered marriages (*nikah siri*) continue, creating legal vulnerabilities, particularly in divorce proceedings and child custody matters (Agustian et al., 2023; Bedner & Van Huis, 2010; Nurlaelawati, 2010). The Manado Religious Court, serving North Sulawesi province, has experienced an increasing trend of cumulative cases combining marriage validation (*itsbat nikah*) with divorce petitions, reflecting socio-legal tensions between religious practices and state law requirements (Nurlaelawati & Salim, 2017; Van Huis, 2021). This phenomenon not only raises administrative problems but also threatens the fundamental rights of women and children, including inheritance rights, maintenance, and legal status recognition (Alfitri, 2020).

The fundamental principles governing judicial proceedings in Indonesia are simplicity, expediency, and low cost, as explicitly stipulated in Article 2, paragraph (4) of Law No. 48 of 2009 concerning Judicial

Power (Akhyar, 2019). These principles are particularly relevant in the context of cumulative litigation, where handling *itsbat nikah* and divorce in a single proceeding serves both judicial efficiency and the protection of parties' rights. According to SEMA No. 7 of 2012, the combination of *itsbat nikah* and divorce is principally permissible, except when the marriage to be validated clearly violates the law, such as non-fulfillment of the pillars and conditions of marriage as stipulated in Article 14 of the Compilation of Islamic Law (KHI). It is important to note that *itsbat nikah* is not explicitly mentioned in Article 66 paragraph 5 or Article 86 paragraph 1 of Law No. 7 of 1989 concerning Religious Courts, which only permit divorce cases to be filed together with child custody, joint property, child maintenance, and spousal maintenance. The permissibility of cumulative *itsbat* and divorce therefore rests on an interpretive expansion legitimized through SEMA, which raises substantive questions about the normative basis, consistency of application, and limits of this practice across religious courts in Indonesia.

Although SEMA No. 7 of 2012 provides guidelines on this combination, empirical studies on its implementation still show variations in judicial practices (Cammack et al., 2015; Van Huis, 2021). Previous studies have examined *itsbat nikah* and divorce separately (Hamid, 2009; Setiawan, 2024), or addressed Indonesian religious court practices in general terms (Nurlaelawati, 2010; Van Huis, 2015), without investigating how judges reason through the admissibility criteria for cumulative petitions. Fauzi (2023) showed that the legalization of unregistered marriages depends heavily on judicial discretion and administrative pragmatism, producing variable outcomes. What the literature has not addressed is whether procedural compliance with SEMA criteria translates into substantive protection of post-divorce rights, particularly for women who arrive in court already without formal documentation of their marriage. This gap between procedural conformity and substantive outcome is the analytical focus of the present study.

In deciding cumulative cases of *itsbat nikah* and divorce, judges at the Manado Religious Court rely primarily on the compilation of SEMA (Results of the Plenary Meeting of the Supreme Court 2012-2022), given that cumulative *itsbat* and divorce proceedings are not explicitly regulated in statutory law. This reliance on SEMA illustrates a specific institutional challenge: judges must apply guidelines issued through a circular letter rather than binding legislation, requiring careful juridical reasoning to ensure decisions conform to both the letter and spirit of the applicable legal framework. This phenomenon raises important questions: What is the actual procedural mechanism for handling cumulative cases at the Manado Religious Court? What juridical considerations underpin judges' decisions to grant or reject cumulative petitions? How consistent is the application of SEMA No. 7 of 2012 in daily judicial practice? This research aims to: (1) analyze the resolution process of cumulative cases of *itsbat nikah* and divorce petitions at the Manado Religious Court; (2) identify the legal basis and juridical considerations used by judges in deciding cumulative cases; and (3) evaluate the consistency of SEMA No. 7 of 2012 application in judicial practice.

This study contributes to legal pluralism scholarship in Indonesia by examining, within a specific institutional setting, how Islamic law principles, state law provisions, and SEMA-based judicial directives interact in cumulative *itsbat* and divorce litigation. Rather than claiming broad generalizability, this study offers an in-depth institutional analysis of the Manado Religious Court, documented as a court with progressive judicial innovations (Alim et al., 2025; Bukido, Irwanyah, et al., 2019; J. Hasan et al., 2025; Lahilote, 2022). The central argument is that procedural efficiency is a necessary but not sufficient condition for substantive justice in Islamic family law adjudication. Practically, the findings benefit judges, legal practitioners, and policymakers in addressing regulatory ambiguities in existing provisions, particularly regarding the enforcement of women's and children's post-divorce rights (Alfitri, 2020; Lahilote, 2022).

Literature Review

Itsbat Nikah: Between Normative Foundation and Implementation Gaps

Itsbat nikah holds a distinctive position in Indonesian Islamic family law. The Qur'an and Hadith do not explicitly regulate marriage registration, though verses on *muamalat* (*mudayanah*) command recording in situations that require documentation, with *maslahah* (benefit) as the underlying rationale (Setiawan,

2024). The authority of Religious Courts to validate unregistered marriages was historically limited to pre-1974 unions, then expanded through KHI Article 7, paragraphs 2 and 3, which now covers situations where certificates are unavailable, lost, or the validity of marriage requirements is contested.

Scholars working from a *maqasid al-shari'ah* framework argue that *itsbat* serves the objectives of protecting progeny (*hifdh al-nasl*), property (*hifdh al-mal*), and life (*hifdh al-nafs*), particularly for women and children whose rights go unrecognized without registration (Hilmy & Toriqirrama, 2020; Taufiqurohman & Fauziah, 2023). Sudirman and Iskandar (2020) situate *itsbat* within the framework of *maslahah hajjiyyah*, noting that a marriage cannot achieve its social function without the administrative recognition that makes rights enforceable. Data from the Pandeglang Religious Court show annual case increases from 41 in 2012 to 135 in 2014, primarily involving marriages that met religious requirements but were not registered due to poverty (Sanusi, 2016).

The normative consensus on *itsbat*'s value runs into implementation problems that the literature has only partially confronted. Fakhria et al. (2024) found that state policy issuing family cards to unregistered couples intended to protect children's civil rights has become a source of contestation among judges and marriage registrars who see it as undermining the imperative to formalize marriages through *itsbat* proceedings. Mustika and Marlina (2019) found that integrated *itsbat* programs in Jambi may have inadvertently encouraged unregistered marriages by offering a post-hoc remedy. Nurlaelawati (2019) notes that *itsbat* reflects efforts to bridge social practices and formal legal requirements, though van Huis (2015) shows religious courts often face a dilemma between providing legal protection to women from unregistered marriages while upholding the principle of registration. The existing literature, while comprehensive in documenting the normative foundations, has not sufficiently examined the gap between these aspirations and their practical realization in court decisions, particularly when *itsbat* is combined with divorce.

Divorce, Women's Rights, and the Enforcement Gap

Divorce in Islamic jurisprudence is called *talaq* or *furqah*. Islam does not favor divorce, as the Prophet's hadith states: "The lawful act most hated by Allah is divorce." (Hamid, 2009; Soemijati, 1986). In Indonesia, divorce is valid only when conducted before a court session after reconciliation efforts have failed, as regulated in Article 39 of Law No. 1 of 1974.

The literature on divorce in Indonesian Religious Courts converges on a troubling pattern: women's financial rights after divorce are formally recognized but structurally undermined. Yazid (2019) found at the Medan Religious Court that *itsbat* cases filed for divorce purposes do produce court decisions with shariah-consistent benefits, including *mut'ah*, child maintenance, and formal registration of children. Nurlaelawati (2018) documents that *nafkah iddah*, *mut'ah*, and child support guaranteed under PERMA No. 3 of 2017 remain among the most poorly enforced provisions in family law adjudication. Alfitri (2020) identifies the interaction among Islamic law, state family law, and gender dynamics as a structural source of vulnerability that legal clarity alone cannot dissolve.

Salma et al. (2025), working specifically at the Manado Religious Court, found that *ex officio* authority is applied inconsistently: some judges exercise it proactively, others wait for parties to raise claims. This leaves women from unregistered marriages in a doubly precarious position. Yuni (2021) traces the regulatory basis for *ex officio* application to PERMA No. 3 of 2017 and SEMA Nos. 1 and 2, a framework that exists but whose application depends on individual judicial discretion. Saleh et al. (2023) and Fadil et al. (2024) confirm across multiple courts that low legal literacy, economic incapacity of ex-husbands, and absence of sanctions for non-compliance are structural barriers that decisions alone cannot overcome. Basri et al. (2025) offer comparative evidence from Malaysia, showing that dedicated institutional infrastructure at the Family Support Division produces substantially better enforcement outcomes than Indonesia's discretion-dependent system, suggesting the gap is a policy choice rather than an inevitability. Kasim et al. (2022) observe in their study of Syar'iyah Courts in Aceh that sociological factors shape outcomes in ways that formal procedural compliance cannot predict. What the literature has not examined is how these enforcement failures play out in cumulative *itsbat*-divorce cases specifically, where women enter proceedings already lacking formal documentation of their marriage.

Cumulative Litigation: Judicial Efficiency and Its Normative Limits

A lawsuit is a legal claim, not evidence, and must be proven before a panel of judges (Harahap, 2018). Cumulation of several legal issues in one lawsuit is not prohibited by Civil Procedure Law, provided there is sufficient legal connection (*koneksitas*) among the claims. The purpose is to have the case examined by the same judge to avoid conflicting decisions while saving costs, effort, and time (Akhyar, 2019; Cappelletti & Garth, 1978). Law No. 48 of 2009, Article 4, paragraph (2) affirms that courts must assist justice seekers in achieving simple, expeditious, and low-cost proceedings.

Whether *itsbat nikah* and divorce satisfy the *koneksitas* requirement is not resolved by statute. Article 86 of Law No. 3 of 2006 lists child custody, child support, wife's maintenance, and joint property as claims that may accompany a divorce petition but does not mention *itsbat*. The permissibility of the combination therefore rests on SEMA No. 7 of 2012, a circular letter carrying interpretive rather than binding authority. Terminologically, cumulative lawsuit or *samenvoeging van vorderingen* is the combination of several legal claims into one lawsuit (Departemen Pendidikan dan Kebudayaan, 2018). The word "can" in Article 86 further means that combination is not mandatory, giving judge's discretion to refuse cumulation (Pokja Perdata Agama Mahkamah Agung RI, 2010).

This normative ambiguity matters in practice. Yani et al. (2025), examining cumulative annulment and divorce claims at the Jakarta Religious High Court, found that judges had to develop their own legal construction to harmonize procedural and substantive principles in the absence of binding statutory guidance. Alfitri et al. (2024), examining validation of unregistered polygamy, found that judges adopt divergent methods with material consequences for the legal protection of wives and children. Cammack et al. (2015) confirm more broadly that cumulative litigation practices vary across courts and judges despite clear guidelines. Amnesti (2019) noted similar variation at the Magelang Religious Court. These findings point to a structural feature of cumulative *itsbat*-divorce litigation: judicial interpretation of SEMA-level guidance is the principal variable determining whether women and children receive adequate protection.

Legal Pluralism and the Dynamics of Judicial Practice

Indonesia's religious court system operates within what Bedner and Van Huis (2010) describe as a plural legal landscape, where state law, Islamic law, and customary law coexist and interact without a clear practical hierarchy. Bowen (2003) shows that judges engage in public reasoning that draws simultaneously on multiple normative sources, considering not only formal rules but also the values of justice living in society. Lindsey (2012) identifies *itsbat nikah* itself as a product of this pluralist logic, a mechanism integrating religious practice into a state legal framework without fully resolving the tension between them.

Harisudin and Choriri (2021), comparing Indonesia, Malaysia, and Brunei Darussalam, found that Indonesia's sanctions for marriage registration violations are weaker than its neighbors' because Indonesia imposes only fines rather than imprisonment, making them insufficient from a *maqasid al-shari'ah* perspective that prioritizes depth and breadth of public welfare. Mustafid et al. (2024) demonstrate how dual administration of customary and state marriage law in a Riau Malay community generates alternative legal strategies including *nikah siri* when formal procedures are perceived as burdensome. Hafidzi et al. (2022) documented a parallel dynamic in South Kalimantan's Banjar community, where *sirri* marriages acquire social legitimacy that formal law does not recognize. These community-level dynamics feed directly into cumulative litigation: parties who file *itsbat* and divorce together are often those for whom formal registration was culturally or economically impractical in the first place. Agustian et al. (2023) identify that the dynamics between formal legal norms and social practices are particularly visible in cumulative litigation, where the stakes for women without formal marriage documentation are highest.

The interaction among state law, Islamic law, and social practices documented in the literature does not always produce harmonious outcomes. Bedner and Van Huis (2010) note that legal pluralism in Indonesia creates normative spaces where judicial discretion is wide and outcomes variable. In the context of cumulative *itsbat* and divorce cases, this variability is compounded by the fact that the primary legal basis, SEMA No. 7 of 2012, is a circular letter rather than binding legislation. Van Huis (2021) identifies this judicial ambivalence as a recurring institutional feature in the application of state regulations related to

marriage. Fauzi (2023) frames it as administrative transgression, where street-level bureaucrats and judges apply pragmatic leniency to fill gaps that formal rules leave open. The empirical question this study addresses is what that process looks like at the Manado Religious Court, and whether it serves or undermines the substantive rights of the most vulnerable parties.

Method

This study employs an empirical legal research method because the issues examined encompass not only normative aspects in the form of written regulations but also the implementation of law in judicial practice. Empirical legal research combines the study of legal documents with observations of legal social realities in the field, thereby producing a comprehensive understanding of how law is applied (Huda, 2021). Document analysis serves as a fundamental qualitative research method that allows systematic examination of written materials to extract meaning, develop understanding, and generate empirical knowledge (G. A. Bowen, 2009). Normative analysis was conducted by examining various regulations, including Law Number 50 of 2009, the Compilation of Islamic Law (KHI), Article 149 R.Bg., and the Supreme Court Circular Letters (SEMA) resulting from the Religious Chamber Plenary Sessions 2012-2022.

Primary data were obtained through in-depth interviews with four informants at the Manado Religious Court: the Chief of Court, a Senior Judge, a Junior Judge, and a Senior Court Clerk. In-depth interviews provide rich, detailed insights into participants' experiences and perspectives, particularly valuable in understanding judicial decision-making processes (Salma, Alwi, et al., 2025; Yuni, 2021). Secondary data were obtained from official court documents, statutory regulations, and relevant academic literature. The selection of the Manado Religious Court was based on its documented record of progressive judicial innovations, including mobile courts and systematic mediation practices (Bukido, Solang, et al., 2019; Lahilote, 2022), making it a productive site for examining how SEMA-based guidelines are applied in an institutionally capable setting.

Data analysis was conducted through qualitative descriptive methods involving three stages: data reduction, data display, and conclusion drawing. Data reduction involved selecting, focusing, simplifying, and abstracting information from field notes and interview transcripts, enabling identification of key patterns regarding procedural mechanisms, judicial considerations, and consistency with SEMA guidelines. Data display was organized systematically, including matrices comparing cumulative versus separate case proceedings. Triangulation was employed to ensure data validity and reliability, including source triangulation, comparing information from different informants, and method triangulation, combining interviews, document analysis, and observation of court procedures (Kamarusdiana et al., 2023).

Several methodological limitations require acknowledgment. The study draws on four informants at a single court; findings describe institutional practice at the Manado Religious Court specifically and are not claimed to be representative of all religious courts in Indonesia. To strengthen analytic rigor, thematic analysis of interview data was cross-checked against official court documents and the relevant regulatory framework, including SEMA No. 7 of 2012, PERMA No. 3 of 2017, and KHI provisions. Informants hold institutional roles that may produce social desirability effects, partially mitigated by focusing questions on procedural conduct rather than personal judgments. The research adheres to ethical principles, including informed consent, confidentiality of case details, and anonymization of sensitive information.

Results and Discussion

Provisions of *Itsbat Nikah*

Islamic shariah, as reflected in the Qur'an and Hadith, did not specifically regulate marriage registration. This differs from the verses on *muamalat* (*mudayanah*), which in certain situations are commanded to be recorded, with considerations of *maslahah* (benefit) (Setiawan, 2024). Marriage registration aims to establish orderliness in marriage within society, protecting the dignity and sanctity of marriage, particularly for women in domestic life (Nurlaelawati, 2010). Through marriage registration,

evidenced by a marriage certificate, each spouse receives a copy. If disputes arise or if one party is irresponsible, the other can take legal action to maintain their respective rights.

The provisions for *itsbat* marriage in Indonesia only emerged after the enactment of Law Number 1 of 1974 concerning Marriage. During the Dutch colonial period, although the Religious Court was recognized through Stbl. 1882 Number 152 (subsequently amended by Stbl. 1937 Numbers 116, 160, 638, and 639), there was no specific regulation regarding *itsbat* marriage. The authority over *itsbat* marriage cases was initially intended only for unregistered marriages before the enactment of Law No. 1 of 1974, in conjunction with Government Regulation No. 9 of 1975 (see explanation of Article 49, paragraph 2, in conjunction with Article 64 of Law No. 1 of 1974).

This authority developed through KHI Article 7, paragraphs 2 and 3, which enables submission of *itsbat* when marriage cannot be proven by marriage certificate. Article 7 paragraph (3) of KHI limits *itsbat* to: (a) the existence of marriage in the context of divorce settlement; (b) loss of marriage certificate; (c) doubt regarding validity of one of the marriage requirements; (d) marriage that occurred before the enactment of Law No. 1 of 1974; and (e) marriage conducted by those without marriage impediments according to Law No. 1 of 1974.

The expansion of *itsbat* authority through KHI represents a significant development beyond what was granted by statutory law. Hilmy and Toriqirrama (2020) conclude that integrated marriage validation, involving both the Religious Court and KUA as stipulated in PERMA No. 1 of 2015, can be considered an effort to realize public benefit (*maslahah*) as the essence of *maqasid al-shari'ah* in marriage affairs. Mustika and Marlina (2019) however, it revealed that the implementation of integrated *itsbat* programs faces significant challenges, including the creation of opportunities for increased unregistered marriages, missed verifications of previous marital status, and insufficient socialization.

It is worth noting that according to Article 2 of TAP MPR RI No. III/MPR/2000 concerning sources of law and the hierarchy of legislation, Presidential Instruction (INPRES) is not included in the hierarchy of legislation of the Republic of Indonesia.

Divorce in Islamic Law and Indonesian Positive Law

Divorce in Islamic jurisprudence is called *talaq* or *furqah*. The meaning of *talaq* is to open bonds or cancel agreements, while *furqah* means separation (Hamid, 2009). According to Islamic Law terminology, *talaq* can mean: (a) eliminating marital bonds using specific utterances; (b) releasing marital bonds and ending the husband-wife relationship; and (c) releasing marital bonds with the utterance of *talaq* or its equivalent. Although Islam prescribes divorce, it does not mean Islam favors divorce. Islam still views divorce as contrary to the principles of Islamic Law, as evident in the Prophet's hadith: "The lawful act most hated by Allah is divorce."

In the Indonesian context, divorce can only be conducted before a court session after the court has attempted and failed to reconcile both parties (Nurlaelawati & Salim, 2017). Although Islamic Law does not stipulate that divorce must be conducted before a court, since this provision brings more benefits, it is appropriate that Muslims are obligated to follow this provision (Soemijati, 1986). Divorce is valid according to the Marriage Law when conducted at the Religious Court. Article 18 of Government Regulation Number 9 of 1975 states: "Divorce occurs effectively from the moment it is declared before the Court session." Article 39 of Law Number 1 of 1974 requires sufficient grounds for the husband and wife to be unable to live harmoniously as spouses.

Judges' decisions must be based on clear and sufficient considerations. Decisions that do not meet these requirements are categorized as decisions with insufficient considerations or *onvoldoende gemotiveerd*. Reasons used as considerations can be specific articles of statutory regulations, customary law, jurisprudence, or legal doctrine (Harahap, 2018).

Recent studies have highlighted persistent challenges in protecting women's rights in divorce cases despite clear legal provisions (Alfitri, 2020; F. Hasan & Rajak, 2024; Nurlaelawati, 2018). Yazid (2019) demonstrated that *itsbat* marriage serves as a solution for married couples not recorded by state-appointed officials, with Religious Court judges in Medan having a legal basis for issuing decisions on *itsbat* cases for divorce. Court decisions generate benefits desired by Shariah, namely legal certainty after *itsbat* marriage,

including provision of appropriate mut'ah to ex-wives, living expenses for children under 21 years old, and formal registration of children from unregistered marriages. Salma, Subeitan, et al. (2025) revealed that at the Manado Religious Court, although legal provisions exist to protect the rights of ex-wives and children, their implementation is hindered by social and economic factors, as well as difficulties in enforcing court decisions.

Cumulative Litigation

A lawsuit is a legal claim that must be proven in court proceedings before a panel of judges. Cumulation of several legal issues in one lawsuit is not prohibited by the Civil Procedure Law, provided there is a close relationship or connection (*koneksitas*) among them. To determine the existence of a connection, it is necessary to examine from the perspective of actual events that occurred and the legal facts that constitute the claim. The purpose of combining lawsuits is so that the case can be examined by the same judge to avoid the possibility of conflicting decisions (Harahap, 2018). Terminologically, a cumulative lawsuit or *samenvoeging van vorderingen* is the combination of several legal claims into one lawsuit (Departemen Pendidikan dan Kebudayaan, 2018).

Law Number 48 of 2009 concerning Judicial Power, Article 4 paragraph (2), states: "Courts assist justice seekers and endeavor to overcome all obstacles and hindrances to achieve justice that is simple, expeditious, and low-cost." Combination of lawsuits thus facilitates the examination process, saving costs, effort, and time (Akhyar, 2019; Cappelletti & Garth, 1978). According to Article 86 of Law No. 3 of 2006, lawsuits regarding child custody, child support, wife's maintenance, and joint property can be filed together with a divorce lawsuit. The phrase "can be filed together" means it is not mandatory to cumulate, so judges can refuse the combination of lawsuits (Pokja Perdata Agama Mahkamah Agung RI, 2010).

Yani et al. (2025), in their study on cumulative decisions on marriage annulment and divorce claims at the Jakarta Religious High Court, found that the legal construction applied by judges prioritizes justice, legal certainty, and human rights protection by harmonizing procedural law with substantive Islamic legal principles. The novelty lies in formulating a coherent legal solution that legitimizes selective acceptance of claims. Cammack et al. (2015) confirm that despite clear guidelines, cumulative litigation practices still vary depending on individual judges' interpretations. Alfitri et al. (2024) found that judges adopt divergent methods in *itsbat* cases with material consequences for the legal protection of wives and children, reinforcing the conclusion that judicial discretion is the operative mechanism in SEMA-dependent proceedings.

Itsbat nikah, Divorce, and Cumulative Litigation: Judicial Practice at Manado Religious Court

KHI is classified as INPRES of 1991. This classification has direct implications for how judges at the Manado Religious Court exercise discretion when applying *itsbat* provisions, since a regulation outside the formal legislative hierarchy depends more heavily on judicial acceptance than on binding obligation.

In practice, judges at the Manado Religious Court affirm that the examination process for cumulative cases between *itsbat* marriage and divorce is conducted through a relatively simple mechanism. Before entering the main case, mediation is conducted. Mediation success rates at this court have declined annually, from six successful mediations out of 106 cases in 2015 to only one out of 76 in 2017 (Bukido et al., 2019). When mediation fails, judges examine evidence related to marriage and grounds for divorce in a closed session. The decision is then read in an open session.

The entire registration process has been conducted electronically through the e-court application. After files are verified, parties receive a case number; then a panel of judges, hearing date, and bailiff are appointed. The case recording and documentation system operates through SIP (Case Information System). The main constraint faced is incomplete files from parties. Generally, incoming cumulative cases are relatively few, approximately two cases per year. Lahilote (2022) noted that successful implementation of innovative judicial services at the Manado Religious Court depends on coordination and readiness of judicial infrastructure, including socialization efforts toward related agencies. This low volume may partly reflect the need for more systematic public outreach. Arifuddin (2024) notes that many couples in unregistered marriages remain unaware that registration carries substantive rights implications rather

than merely administrative ones, which likely contributes to low awareness of the cumulative litigation option.

Judges apply three criteria aligned with SEMA No. 7 of 2012 when evaluating cumulative petitions. The first is that the marriage to be validated must not clearly violate legal requirements, including the pillars and conditions stipulated in KHI Article 14. The second is that there must be sufficient legal connection (*koneksitas*) between the *itsbat* and divorce claims to justify joint examination. The third is that the marriage must be established through material evidence, primarily witness testimony. The Chief of Court confirmed that petitions where the marriage is evidently invalid at the outset are rejected at the admissibility stage. This approach is consistent with the finding by Alfitri et al. (2024) that judicial interpretation of admissibility criteria is the principal variable determining protection outcomes in *itsbat*-related proceedings. These provisions define the normative space within which judges at the Manado Religious Court reason through cumulative petitions.

Article 50 of Law No. 48 of 2009 emphasizes that court decisions must contain specific articles of relevant statutory regulations or unwritten sources of law used as basis for adjudication. To fulfill this obligation, Article 5 commands judges to explore, follow, and understand the values of law and sense of justice living in society. These provisions define the normative space within which judges at the Manado Religious Court reason through cumulative petitions.

Judges also explore and consider local wisdom values as long as they do not contradict statutory regulations. This demonstrates the application of the living law principle, where the law living in society is used as a reference in deciding cases. This practice resonates with Bowen's (2003) concept of public reasoning in Indonesia, where state law, Islamic law, and social practices interact. Hafidzi et al. (2022) and Mustafid et al. (2024) show that this interaction plays out differently across communities, with local norms around marriage sometimes reinforcing rather than counteracting patterns of non-registration. The application of local wisdom values, while consistent with Article 5 of Law No. 48 of 2009, requires careful calibration against the standards set in PERMA No. 3 of 2017 for the protection of women's rights, to ensure that cultural considerations do not inadvertently reduce the scope of protections to which women are legally entitled.

From an effectiveness perspective, court clerks assess that inter-departmental coordination is very important for smooth cumulative processes. Monitoring is conducted routinely every month, involving external agencies such as the Civil Registry Office (Dukcapil) and Ministry of Religious Affairs (Kemenag) to verify population data and marital status. Interview results with judges and clerks demonstrate continuity between the normative legal foundation and judicial practice in the field: formal regulations provide the basis of authority, while practice shows adaptive implementation to social conditions, culture, and administrative constraints. This adaptive approach reflects what Van Huis (2021) identified as judicial ambivalence in applying state regulations related to marriage, where despite clear guidelines, judges must consider various social, cultural, and substantive justice factors.

The practice at the Manado Religious Court shows consistency with findings from previous research. As Lindsey (2012) documents, Indonesia's integration of Islamic law into the national legal system is reflected in *itsbat* marriage and cumulative litigation mechanisms. Harisudin and Choriri (2021) note, however, that this integration remains incomplete from a *maqasid al-shari'ah* standpoint, particularly regarding sanctions for non-compliance, which are weaker in Indonesia than in comparable Muslim-majority jurisdictions. Challenges in implementation remain, particularly regarding women's and children's rights protection post-divorce, as evidenced by research across multiple Religious Courts (Fadil et al., 2024; Saleh et al., 2023; Salma, et al., 2025).

The Gap Between Procedural Efficiency and Substantive Rights Protection

The findings of this study point to a distinction that is central to evaluating cumulative *itsbat* and divorce litigation: procedural efficiency and substantive justice are not equivalent outcomes. The Manado Religious Court demonstrates broad consistency with SEMA No. 7 of 2012 in procedural terms, with cases completed in approximately one month compared to two to three months for separate proceedings, and

with judicial reasoning grounded in the three criteria prescribed by SEMA. This procedural conformity is a meaningful institutional achievement.

The data from this study, read alongside findings from Salma, Subeitan, et al. (2025), Saleh et al. (2023), and Fadil et al. (2024), indicate that these procedural gains have not resolved the persistent challenges in protecting women's and children's post-divorce rights. At the Manado Religious Court specifically, *ex officio* authority to award *nafkah iddah*, *mut'ah*, and child support is not consistently applied, with some judges relying solely on what parties explicitly claim. The main barriers include claims of financial incapacity by ex-husbands and the absence of effective enforcement mechanisms. Basri et al. (2025) demonstrate through comparative analysis with Malaysia that this is not an inevitable feature of Islamic family law systems but a consequence of inadequate institutional infrastructure. Indonesia's enforcement gap reflects a policy deficit that regulatory reform could address.

From a legal pluralism perspective, the interaction among SEMA guidelines, KHI provisions, PERMA No. 3 of 2017, and living law norms produces outcomes that are institutionally flexible but normatively uneven. The flexibility explains why cumulative litigation functions procedurally in a context where the statute is silent. The unevenness explains why the same context continues to produce inadequate substantive protection. As Bedner and van Huis (2010) argue, legal pluralism creates normative spaces in which judicial discretion is wide and outcomes are variable, and it is precisely in those spaces that the most vulnerable litigants are least protected. Fauzi (2023) reinforces this point: discretion-dependent systems distribute outcomes unevenly, and parties with the least access to legal knowledge and institutional support receive the worst outcomes. These are structural constraints that require complementary efforts to strengthen legal awareness, enforcement capacity, and the statutory basis for sanctions against non-compliance with post-divorce obligations.

Conclusion

This study analyzed cumulative *itsbat* marriage and divorce litigation at the Manado Religious Court, focusing on procedural mechanisms, judges' juridical considerations, and consistency with SEMA No. 7 of 2012. The procedural mechanism functions well: cases are completed in roughly one month through an integrated e-court and SIP system, judicial reasoning is grounded in three consistent criteria, and inter-agency coordination is routine. What the procedure cannot deliver on its own is consistent enforcement of post-divorce rights. *Ex officio* authority is applied unevenly; economic barriers deter claims; execution processes remain slow and costly. The theoretical contribution of this finding is precise: procedural efficiency in cumulative *itsbat*-divorce litigation is a necessary condition for substantive justice, but not a sufficient one. Indonesia's legal pluralism generates both the institutional adaptability that makes the procedure viable and the normative gaps that leave its most important outcomes unguaranteed. Procedural reform, in this context, addresses only half the problem.

The practical implication is that reform efforts must move beyond procedural design. Strengthening *ex officio* mandates in statute, establishing clear sanctions for non-compliance with post-divorce obligations, expanding legal aid for women in unregistered marriages, and investing in public outreach so the procedure reaches those who need it most are the interventions this evidence supports. Dedicated institutional infrastructure for enforcement, rather than incremental procedural adjustment, is the missing element in Indonesia's current approach. Future research should test whether the pattern documented here holds across multiple religious courts and examine the conditions under which *ex officio* authority is more or less likely to be exercised. The answer to that question has direct consequences for how the law protects the most legally precarious women in Indonesia.

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Conflict of Interest

The authors declare that there are no conflicts of interest regarding the publication of this article.

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