

## Judicial Invalidation of *Ithbāt Nikāh* Underage in the View of Religious Court Judges in Madura

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### Abstract

Underage *ithbāt nikāh* creates a legal loophole in Indonesia's Islamic marriage system. Child marriages that should require a dispensation are often legalized through *ithbāt nikāh* without such approval. This practice is prevalent in the Religious Courts of Madura, where most judges tend to grant petitions despite recognizing its contradiction with efforts to prevent child marriage. This study adopts a juridical-sociological approach through case analysis and in-depth interviews with judges. The findings show that rejection of underage *ithbāt nikāh* is rare, as judges prioritize protecting children's civil rights, such as birth certificates and legal family status. However, this generates a dilemma: granting applications risks legitimizing child marriage, while rejecting them may be seen as denying legal certainty for the community. As a middle path, some judges suggest alternatives, including recognition of children born out of wedlock, determination of child origin, and civil registration without marriage certificates. The study highlights the urgent need for clear legal guidelines to prevent misuse of *ithbāt nikāh* while ensuring child protection.

**Keywords:** child marriage; child protection; *ithbāt nikāh*; Religious Court

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*Ithbāt nikāh* di bawah umur menimbulkan celah hukum dalam sistem perkawinan Islam di Indonesia. Perkawinan anak yang seharusnya hanya dapat dilakukan melalui dispensasi kawin kini kerap dilegalkan lewat *ithbāt nikāh* tanpa dispensasi. Fenomena ini marak di Pengadilan Agama Madura, di mana mayoritas hakim cenderung mengabulkan permohonan meskipun menyadari dampaknya terhadap pencegahan perkawinan anak. Penelitian ini menggunakan metode yuridis-sosiologis melalui analisis kasus dan wawancara mendalam dengan hakim. Hasilnya menunjukkan bahwa penolakan jarang terjadi karena hakim lebih mengutamakan perlindungan hak perdata anak, seperti akta kelahiran dan status hukum keluarga. Namun, kondisi ini menimbulkan dilema: mengabulkan berarti membuka ruang legalisasi perkawinan anak, sedangkan menolak dianggap menghambat kepastian hukum bagi masyarakat. Sebagai jalan tengah, sebagian hakim menyarankan alternatif seperti pengakuan anak luar kawin, penetapan asal usul anak, dan pengurusan administrasi kependudukan tanpa akta nikah. Penelitian ini menegaskan perlunya pedoman hukum yang jelas untuk mencegah penyalahgunaan *ithbāt nikāh* sekaligus menjamin perlindungan anak.

**Kata kunci:** perkawinan anak; perlindungan anak; *ithbāt nikāh*; Pengadilan Agama

## Introduction

Islamic law does not explicitly address the minimum marriage age limit, neither in the Qur'an nor in Ḥadīth. According to scholars of Islamic jurisprudence, matrimony should be contracted only when the prospective bride and groom have attained physical and intellectual maturity, which allows them to understand the commitments required in marriage. In accordance with certain juridical traditions, such as al-Shāfi'ī School, the matrimonial union of minors who have not yet attained the age of majority is permissible, contingent upon the authorization of their legal guardian and the fulfillment of specific criteria.<sup>1</sup> Unlike the flexible standards found in Islamic marriage law concerning the decision of marriage age, Indonesian positive law has clearly defined a fixed marriage age limit. Based on Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, the legal marriage age limit for both marriage couple candidates is set at 19 years. The age limit is intended to safeguard children from the deleterious consequences of early marriage, including school dropout rates, reproductive health complications, domestic violence, and inadequate preparation for household management, which can lead to financial and mental instability.<sup>2</sup>

The primary purpose of the minimum age of marriage, both in the view of Islamic law, which emphasizes maturity, and Indonesian positive law, which is regulative in nature, is to realize the benefits for individuals who will marry and society in general.<sup>3</sup> Early marriage tends to bring more negative impacts than positive ones. Therefore, the establishment of this age limit is expected to ensure that prospective couples have sufficient maturity to live a married life, fulfill their respective rights and obligations, and be able to give birth and educate a quality next generation.<sup>4</sup>

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<sup>1</sup> Neng Djubaedah, "Child Marriage and Zina in Indonesian Legislation in Islamic Law," *Jurnal Hukum & Pembangunan* 49, no. 1 (March 31, 2019): 202–23, <https://doi.org/10.21143/jhp.vol49.no1.1917>.

<sup>2</sup> Iwan Setiawan et al., "Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (July 31, 2024): 179–98, <https://doi.org/10.24090/MNH.V18I2.11134>.

<sup>3</sup> Vania Zulfa, Uswatun Hasanah, and Fitriana Kusaini, "The Phenomenon of Early Marriage and Its Impact on Family Resilience," *Journal of Family Sciences*, February 29, 2024, 48–58, <https://doi.org/10.29244/JFS.VI.49929>.

<sup>4</sup> Pitrotussaadah, Eva Fadhilah, and Faisal Zulfikar, "Islamic Law and Gender: A Misconception of Roles and Responsibilities in Parenting," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 2 (December 31, 2023): 331–42, <https://doi.org/10.18860/J-FSH.V15I2.23868>.

Underage marriage causes multifaceted negative consequences. From a social perspective, it frequently leads to experiences of isolation, mental health challenges such as depression and anxiety, and a heightened vulnerability to domestic abuse, particularly among girls. In terms of education, early marriage typically compels children to leave school prematurely, thereby restricting their opportunities for personal development and access to critical life skills.<sup>5</sup> Economically, such marriages often trap couples in poverty due to a lack of maturity and income-generating ability.<sup>6</sup> Culturally, early marriage is often driven by misguided norms that view marriage as a solution to life's problems, ignoring the need for preparation and mutual consent.<sup>7</sup> In Indonesia, child marriage rates have declined over the past three years (2022–2024), with BPS data showing a significant drop in women marrying before 19. This positive trend reflects growing public awareness, the impact of Law No. 16/2019, raising the marriage age to 19 for both sexes, and widespread campaigns on the harms of child marriage.<sup>8</sup> However, a new challenge has emerged in the form of *ithbāt nikāḥ* (marriage legalization) underage, where underage *sirri* marriages are later legalized without prior court-issued marriage dispensations.<sup>9</sup> These unregistered marriages occur outside state oversight and are only formalized after children reach legal age, effectively bypassing the marriage age restriction. This loophole undermines legal protections and highlights the need for more comprehensive and preventive strategies to uphold children's rights.

The high number of cases of underage *ithbāt nikāḥ* can be seen in the Religious Courts in the Madura region, starting from the Religious Courts of Bangkalan, Pamekasan, and Sumenep. A significant indication that the Religious

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<sup>5</sup>Umriyeh, Dian Eka Indriani, and Anindita Trinura Novitasari, "Dampak Pernikahan Dini terhadap Pendidikan Anak dalam Keluarga di Dusun Laok Songai Kec. Kokop," *Pendas: Jurnal Ilmiah Pendidikan Dasar* 9, no. 3 (September 22, 2024): 280–306, <https://doi.org/10.23969/JP.V9I3.17229>.

<sup>6</sup>Jennifer Parsons et al., "Economic Impacts of Child Marriage: A Review of the Literature," *Review of Faith and International Affairs* 13, no. 3 (July 3, 2015): 12–22, <https://doi.org/10.1080/15570274.2015.1075757;CTYPE:STRING:JOURNAL>.

<sup>7</sup>Nurhasanah Bakhtiar et al., "The Impact of Early Marriage on Early Childhood Parenting Among Malay Communities," *KINDERGARTEN: Journal of Islamic Early Childhood Education* 7, no. 1 (May 13, 2024): 33–40, <https://doi.org/10.24014/KJIECE.V7I1.28963>.

<sup>8</sup>Biro Hukum dan Humas KemenPPPA, "Kementerian Pemberdayaan Perempuan dan Perlindungan Anak," 2024, <https://www.kemenpppa.go.id/page/view/NTE3MA==>.

<sup>9</sup>Dinada Junia Rismantika, Djanuardi Djanuardi, and Rai Mantili, "Itsbat Nikah terhadap Perkawinan di Bawah Umur Tanpa Dispensasi Kawin Ditinjau dari Undang-Undang Perkawinan dan Hukum Islam," *Syntax Idea* 4, no. 10 (October 21, 2022): 1447–62, <https://doi.org/10.46799/SYNTAX-IDEA.V4I10.1927>.

Courts in the Madura region are one of the locations that receive the most applications for *ithbāt nikāh* for children is evidenced by the annual report data of the East Java Religious High Court from 2022-2024, where the Religious Courts in the Madura region have the highest number of *ithbāt nikāh* compared to other cities in East Java. This phenomenon, according to Nurul Laily, a judge at the Bangkalan Religious Court, is due to the strong influence of customs and traditions and a strong religious understanding in Madura, often encouraging the practice of sirri marriage at an early age.<sup>10</sup> When these sirri marriages need to be legalized for civil administration matters such as children's birth certificates, the individuals involved typically submit a petition for *ithbāt nikāh* to the Religious Court.<sup>11</sup> Although *ithbāt nikāh* is supposed to be a solution for legal but unrecorded marriages, in this context, it has become a loophole for the practice of child marriage, which should be prohibited by Law No. 16/2019 on Marriage.

Although ideally the decision on *ithbāt nikāh* should be harmonized with the spirit of rejection of child marriage, the reality in the field shows that most decisions on child *ithbāt nikāh* grant the application, and only a few are rejected. This phenomenon indicates that there is a tendency for judges in the Madura Religious Courts area to accept child *ithbāt nikāh*, not solely because they support child marriage, but based on several pragmatic considerations and legal dilemmas. One of the main reasons why judges tend to grant child *ithbāt nikāh* applications is to protect the civil rights of children who have been born from the sirri marriage. If the application is rejected, the child's status becomes unclear in the eyes of the law, which has implications for difficulties in obtaining a birth certificate, access to education and health, and recognition of family lineage. Based on survey activities and interviews with stakeholders carried out on Robeth Amrullah Jurjani,<sup>12</sup> a judge at the Pamekasan Religious Court states that judges often face intense social and cultural pressures from local communities who still consider sirri marriage a religiously valid practice. In this situation, judges tend to take a middle ground to maintain social order and avoid conflict,

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<sup>10</sup> Deni Setiyawan et al., "Exploring Abhakalan Culture (Early Marriage) in Madura: A Dialogue of Customary Law, Religion, and The State," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 345-64, <https://doi.org/10.15408/AJIS.V24I2.36070>.

<sup>11</sup> Interview with Nurul Laily, Judges in Bangkalan Religious Court, Bangkalan, June 07, 2024.

<sup>12</sup> Interview with Robeth Amrullah Jurjani, Judges in Pamekasan Religious Court, Pamekasan, June 14, 2024.

rather than rejecting applications that could lead to resistance. In addition, judges are allowed to explore facts and interpret the law based on their capacity.<sup>13</sup>

Several previous studies have discussed the issue of *ithbāt nikāh* for underage marriages. Ranti Rafika Dewi et al. analyzed Decision No. 4/Pdt.P/2022/PA.PP focuses on judges' considerations from a *maṣlaḥa mursala* perspective.<sup>14</sup> Dinada Junia Rasmantika et al. argued that the *ithbāt nikāh* for underage couples does not necessarily require prior marriage dispensation, reviewing it through the lens of Islamic and national marriage law.<sup>15</sup> Agus Pranoto explored the views of KUA officers in West Kutai on judicial legalization of underage *sirri* marriages.<sup>16</sup> Hanif Fauzi examined the principles applied by judges in the Purwakarta Religious Court when granting or rejecting underage *ithbāt nikāh* applications.<sup>17</sup> Muhammad Rifqi Jazil discussed the reconstruction of *ithbāt nikāh* through *maqasid al-shari'ah* to protect children's legal identity in Pasuruan.<sup>18</sup> Paradika Rhassely focused on children's legal status after rejecting *ithbāt nikāh*, emphasizing the importance of child origin determination.<sup>19</sup> Similarly, Rizky Amelia Fathia examined how rejected *ithbāt nikāh* cases affect the fulfillment of children's rights. These studies reflect various legal, philosophical, and child protection perspectives on underage *ithbāt nikāh*, showing the complexity and

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<sup>13</sup> Euis Nurlaelawati, "Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?," *Musāwa Jurnal Studi Gender dan Islam* 12, no. 2 (July 1, 2013): 262, <https://doi.org/10.14421/MUSAWA.2013.122.261-277>.

<sup>14</sup> Ranti Rafika Dewi et al., "Isbat Nikah terhadap Pernikahan Dibawah Umur Perspektif Mashlahah Mursalah (Studi Analisis Penetapan Nomor 4/Pdt.P/2022/PA.PP)," *Jurnal Hukum, Politik dan Ilmu Sosial* 2, no. 3 (June 9, 2023): 89–104, <https://doi.org/10.55606/JHPIS.V2I3.1845>.

<sup>15</sup> Rismantika, Djuardi, and Mantili, "Isbat Nikah terhadap Perkawinan di Bawah Umur Tanpa Dispensasi Kawin Ditinjau dari Undang-Undang Perkawinan dan Hukum Islam."

<sup>16</sup> Agus Pranoto et al., "Problematisasi Pernikahan Siri Bawah Umur di Kabupaten Kutai Barat," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (May 4, 2025): 1099–1115, <https://doi.org/10.62976/IJIEL.V3I2.1086>.

<sup>17</sup> Hanif Fauzi, "Isbat Nikah Pasangan di Bawah Umur di Pengadilan Agama Purwakarta," *Asy-Syari'ah* 23, no. 1 (August 13, 2021), <https://doi.org/10.15575/as.v23i1.11005>.

<sup>18</sup> Muhamad Jazil Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqasid Al-Syari'ah through Marriage Isbat Applications by the Second Generation in Pasuruan," *El-Mashlahah* 15, no. 1 (June 25, 2025): 125–48, <https://doi.org/10.23971/EL-MASHLAHAH.V15I1.9068>.

<sup>19</sup> Paradika Rhassely Adi Pratama et al., "Determination of the Origin of Children Strengthens Legal Protection of the Status of Children Due to the Rejection of Itsbat Nikah," *Interdisciplinary Social Studies* 4, no. 3 (May 30, 2025): 231–39, <https://doi.org/10.55324/ISS.V4I3.846>.

multidimensionality of the issue within Islamic and national legal frameworks.<sup>20</sup> Previous studies on underage *ithbāt nikāh* have explored the issue from various perspectives but mostly remain descriptive or normative in nature. This research focuses on the views of Religious Court judges in Madura, particularly regarding the consequences of rejecting underage *ithbāt nikāh* and the legal remedies available to ensure justice and legal certainty. It also investigates why judges often prefer to grant such applications despite conflicting with legal provisions and potentially causing public concern, revealing a deeper tension between legal norms and socio-cultural realities.

This research adopts a qualitative methodology grounded in a juridical-sociological approach, which examines legal norms in written form and investigates how these norms are applied in practice by judges in the Religious Courts of Madura. This method is suitable for exploring the reasoning and considerations of judges in settled *ithbāt nikāh* cases involving underage marriages. The study recognizes that judges' decisions are shaped not only by formal legal provisions but also by local social values, cultural norms, and moral judgments. A qualitative approach enables a deeper understanding of the meaning behind judicial decisions and the interaction between legal norms and contextual realities within the religious justice system. The research further explores the dilemmas faced by judges in balancing justice and legal certainty in underage marriage cases. The study applied two model data sources, primary and secondary. The first is obtained through in-depth interviews with judges experienced in handling such cases and an examination of judicial reasoning reflected in court decisions. Secondary data includes a review of relevant legal frameworks, academic literature, and scholarly articles. All data are gathered systematically to present a comprehensive picture of how judges interpret and apply the principles of *al-maṣlahah* and child protection in their rulings.

### ***Ithbāt Nikāh* Underage as a Legal Loophole for Child Marriage**

The legal marriage minimum age in Indonesia is 19 years for both marriage couple candidates, as stipulated in Law Number 16 of 2019, which revises the provisions of Law Number 1 of 1974 on Marriage. This regulation is intended to safeguard children's rights and serve as a preventive measure against child marriage. By establishing this age limit, the law aims to protect children from the

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<sup>20</sup> Rizky Amelia Fathia and Dian Septiandani, "Dampak Penolakan Itsbat Nikah terhadap Pemenuhan Hak Anak," *Jurnal USM Law Review* 5, no. 2 (November 3, 2022): 606–17, <https://doi.org/10.26623/JULR.V5I2.5681>.

negative consequences related to early marriage, including threats to their physical and mental well-being as well as disruptions to their educational development.<sup>21</sup> With this age limit, the state aims to ensure that prospective brides and grooms possess adequate biological, psychological, and social maturity to build a household responsibly. In addition, this policy is expected to reduce divorce rates, domestic violence, and mother-child mortality, which are often higher in couples who marry underage. More broadly, reducing child marriage improves the quality of a country's human resources (HR), maternal and infant mortality rates, and the human development index.<sup>22</sup>

Determining a minimum marriage age in Indonesia is grounded in philosophical and juridical considerations. Philosophically, it reflects a commitment to upholding human dignity, particularly that of children, by ensuring they can mature physically, mentally, and socially before entering marital life. This policy embodies the principles of justice, benefit (*maṣlaḥa*), and responsibility in fostering family institutions as the foundation of society. Juridically, the marriage age limit is regulated by Law No. 16/2019, which revises the earlier provisions of Law No. 1 of 1974, and is reinforced by other national laws such as the Child Protection Law (35/2014) and the Health Law (36/2009).<sup>23</sup> Making the minimum age 19 for both genders also aligns Indonesia's legal framework with international human rights standards. The international instruments, like CEDAW, urge states to prohibit child marriage as a means of upholding children's rights to health, education, and protection from all forms of violence.<sup>24</sup>

Despite the legal minimum marriage age of 19 under Law No. 16/2019, underage marriage remains possible through a court-granted dispensation. Parents or guardians may submit a request for exemption to the Religious Court or the District Court (for non-Muslims) if the prospective marriage couple is below the minimum legal age. This provision permits judicial authorization of

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<sup>21</sup> Qodariah Barkah et al., "The Manipulation of Religion and The Legalization of Underage Marriages in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (March 31, 2023): 1–20, <https://doi.org/10.22373/SJHKV7I1.13316>.

<sup>22</sup> Diana Teresa Pakasi, "Child Marriage in Indonesia: Practices, Politics, and Struggles," *Masyarakat: Jurnal Sosiologi* 24, no. 1 (January 25, 2019): 1, <https://doi.org/10.7454/MJS.v24i1.10956>.

<sup>23</sup> Rosdalina Bukido et al., "Muslim Society's Response to the New Rule of Marriage Age," *Al-Istinbath: Journal of Islamic Law* 8, no. 1 May (May 16, 2023): 135–54, <https://doi.org/10.29240/JHI.V8I1.5521>.

<sup>24</sup> Zulfa Zuhriyyah Ayudiputri et al., "Determinants of Child Marriage in Indonesia: A Systematic Review," *Journal of Community Medicine and Public Health Research* 5, no. 2 (November 12, 2024): 216–27, <https://doi.org/10.20473/JCMPHR.V5I2.45777>.

child marriage under specific circumstances.<sup>25</sup> Applying for a marriage dispensation is difficult and requires strong and urgent reasons. The court will consider various factors before deciding, such as the condition of the maturity of the expected marriage couple, health, mental readiness, and unavoidable reasons such as pregnancy outside marriage. In other words, the marriage dispensation program serves as a legal mechanism for individuals who wish to marry but have not yet reached the minimum age required by law.<sup>26</sup>

The procedures for requesting a marriage dispensation are outlined in detail in Perma 5/2019 on Guidelines for Examining Marriage Dispensation Administration. This regulation was introduced following a surge in early marriage requests after raising the legal marriage age to 19. According to the Perma, only a prospective couple's parents or legal guardians without the minimum age are authorized to submit a dispensation application.<sup>27</sup> The application must be accompanied by urgent reasons, such as pregnancy outside marriage, and supported by valid evidence, including birth certificates, the identity of the parties, and certificates from relevant institutions such as medical personnel, psychologists, or social workers. Judges in questioning marriage dispensation cases must pay attention to the principle of child protection and consider the psychological, physical, reproductive health, mental readiness, and social impact of the marriage.<sup>28</sup>

Meanwhile, in recent years, a new model of child marriage has been found that does not go through the official channels provided by law. Along with the decline in marriage dispensation cases in the Religious Courts, several *ithbāt nikāḥ* or marriage validation cases were filed by couples who had not reached 19 years of age at the time of the marriage. It indicates that there is a legal loophole that is utilized by the community to avoid applying for a marriage dispensation

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<sup>25</sup> Hernawan and Mohamad Syifa Amin Widigdo, "The Role of Judges' Considerations in Determining Marriage Dispensation from the Perspective of Children's Best Interest: Case Study of Wonosari Religious Court," *Al Qalam: Scientific Journal of Religion and Society* 17, no. 5 (September 25, 2023): 3491–3506, <https://doi.org/10.35931/AQ.V17I5.2652>.

<sup>26</sup> Darlin Rizki, Frina Oktalita, and Ali Sodikin, "Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019," *Al-Istinbath: Journal of Islamic Law* 7, no. 2 November (December 1, 2022): 487–508, <https://doi.org/10.29240/JHIV7I2.4016>.

<sup>27</sup> Hernawan and Widigdo, "The Role of Judges' Considerations in Determining Marriage Dispensation from the Perspective of Children's Best Interest: Case Study of Wonosari Religious Court."

<sup>28</sup> Melinda Rahmawati and Heni Ani Nuraeni, "The Role of Marriage Dispensation in Increasing Early Marriage Rates in the West Jakarta Municipality," *Al-Istinbath: Journal of Islamic Law* 6, no. 1 May (May 25, 2021): 1–14, <https://doi.org/10.29240/JHIV6I1.1578>.



to enter into an underage marriage. *Ithbāt nikāh* should be used as a legal remedy by people who have entered into a sirri marriage that has fulfilled all the requirements in Islamic law, not used as a legal remedy option for child marriage.<sup>29</sup>

The application for *ithbāt nikāh* is regulated in the Compilation of Islamic Law and Perma No. 3/2007 on Guidelines for Filing *Ithbāt nikāh*. According to Article 7 (3) of the KHI, an application for *ithbāt nikāh* can be applied to the Religious Court for several purposes, such as marriage registration, determining the origin of children, inheritance, and the legal status of husband and wife. This application can be initiated by one or both of the husband and wife whose marriage has been carried out religiously but has not been officially recognized by the Office of Religious Affairs. The administrative requirements that must be attached include an application letter, photocopies of KTP and KK, the child's birth certificate, and other evidence such as a certificate from a religious figure or witness to the marriage.<sup>30</sup> *Ithbāt nikāh* cases are not immediately granted, because the judge will assess the validity of the marriage based on the principles and conditions of marriage in Islam, and ensure that there are no things that violate the law, such as underage marriage without dispensation or polygamy without permission.<sup>31</sup>

Based on the explanation of the requirements for filing marriage dispensation and *ithbāt nikāh* applications regulated by the laws and other regulations, marriage dispensation applications have more difficult and complex requirements. For example, the dispensation application may only be filed by the legal guardian of the prospective bride, or a person appointed by the guardian through a power of attorney. In contrast, the *ithbāt* application can be submitted by the applicant himself. In the case of marriage dispensation, the applicant must attach proof of health and expert recommendations for the application to be granted. At the same time, this is not required in *ithbāt nikāh*. In the marriage dispensation trial process, all parties concerned, from the applicant (guardian) to the child proposed to be granted dispensation, must be present at the hearing in

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<sup>29</sup> Anwar Hafidzi et al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam* 32, no. 2 (October 30, 2022): 153–68, <https://doi.org/10.21580/AHKAM.2022.32.2.12789>.

<sup>30</sup> Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "Dispensasi Kawin dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (June 8, 2021): 86–98, <https://doi.org/10.14421/ahwal.2021.14107>.

<sup>31</sup> Firman Wahyudi, "Ithbāt Talāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia," *Al-Ahkam* 32, no. 2 (October 30, 2022): 211–32, <https://doi.org/10.21580/AHKAM.2022.32.2.11720>.

front of the panel of judges. At the same time, in the case of *ithbāt nikāh*, more emphasis is placed on presenting evidence and witnesses to the validity of the sirri marriage that has been carried out.<sup>32</sup>

The essence of the existence of *ithbāt nikāh* is to bridge between religious norms and positive law, so that marriages that are valid according to religion can obtain legal marriage and be recognized administratively by the state. The primary aim of *ithbāt nikāh* is to ensure legal certainty and protection for the husband, wife, and their children, particularly concerning inheritance, guardianship, maintenance, and civil registration rights. *Ithbāt nikāh* is also essential to ensure that unregistered marriages do not cause legal and social harm in the future.

The history of the emergence of *ithbāt nikāh* in Indonesia stems from the many practices of sirri marriages in the community, especially in rural or remote areas. Seeing this social reality, the government and religious courts then formulated a legal mechanism to legalize these marriages, which was formally strengthened through the Compilation of Islamic Law (KHI) in 1991, as well as other technical regulations such as Perma 1/2015 covering guidelines for integrated services for mobile sessions of the Religious Courts in the setting of issuing marriage certificates and marriage legal receipt. *Ithbāt nikāh* was initially introduced to provide legal certainty for married couples before the Marriage Law was enacted in 1974.<sup>33</sup> However, as time progressed, especially after 2000, it was almost impossible to find married couples who 1974 had not officially registered their marriage. Today, the *ithbāt nikāh* function is mainly utilized by married couples who face various obstacles in recording their marriage, such as economic obstacles, time constraints, geographical distance, and other factors.<sup>34</sup>

The law stipulates that *ithbāt nikāh* should only be reserved for couples who have not formally registered their marriage at the Religious Affairs workplace,<sup>35</sup>

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<sup>32</sup> Sonny Dewi Judiasih, Susilowati Suparto Dajaan, and Bambang Daru Nugroho, "The Contradiction Between Marriage Dispensation and Efforts to Minimize Underage Marriage in Indonesia," *Acta Diurnal Journal of Kenotariatan Legal Science* 3, no. 2 (June 29, 2020): 203-22, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221>.

<sup>33</sup> Gema Mahardhika Dwiasa, K. N. Sofyan Hasan, and Achmad Syarifudin, "The Function of Itsbat Nikah for Wives Married Unregistered (Nikah Sirri) in the Event of Divorce," *Repertorium: Scientific Journal of Kenotariatan Law* 7, no. 1 (April 6, 2019): 17, <https://doi.org/10.28946/rptv7i1.265>.

<sup>34</sup> Dwiasa, Hasan, and Syarifudin, 18.

<sup>35</sup> Siti Nurul Fatimah Tarimana, "Pencantuman Status Perkawinan dalam Administrasi Perkawinan di Kantor Urusan Agama Perspektif Maqāshid Syarī'ah," *Al'Adalah* 23, no. 1 (April 26, 2020): 79-92, <https://doi.org/10.35719/ALADALAH.V23I1.28>.

as defined in Article 7 paragraphs 1 to 3 of the KHI. However, in practice, there are still many applications for *ithbāt nikāh* that do not comply with legal provisions, such as *ithbāt nikāh* in cases of polygamy or underage marriage.<sup>36</sup> The Indonesian marriage law system stipulates that every marriage must be registered before an authorized official, because without such registration, all legal consequences of marriage will not be recognized by the state. It emphasizes the importance of marriage registration as an essential element in the legality of marriage, which can even be sanctioned if ignored.<sup>37</sup> In practice, however, obstacles such as limited public access to Religious Affairs Offices in remote areas, or the perceived high cost of legal marriages, make it difficult for marriage registration to be carried out thoroughly in many places.

Currently, the purpose of *ithbāt nikāh* has expanded, resulting in a shift in its function from a mechanism for legalizing legal sirri marriages to a forum for legitimizing underage marriages. Historically, *ithbāt nikāh* was designed to provide legal certainty for couples who had married religiously but had not registered their marriage at the Office of Religious Affairs (KUA) or the Population and Civil Registration Office, for example, due to administrative difficulties or limited access. However, with the increase in the age of marriage to 19 years, *ithbāt nikāh* is now often used as a legal loophole to legalize marriages performed when one or both of the bride and groom are underage and without going through the rigorous marriage dispensation procedure.<sup>38</sup> This practice effectively circumvents the spirit of the law that aims to protect children from the adverse effects of early marriage, as if sirri marriages that violate the age limit can be cleaned up afterwards through court decisions. It creates the paradox that a mechanism that is supposed to uphold legal order is a means for lawlessness, placing the courts in a dilemma between protecting children's rights and enforcing marriage age regulations.<sup>39</sup>

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<sup>36</sup> Khairuddin Khairuddin and Julianda Julianda, "The Implementation of Itsbat Nikah Keliling and Its Impact on the Orderliness of Nikah Registration (Case Study in Bireuen Regency)," *SAMARAH: Journal of Family Law and Islamic Law* 1, no. 2 (December 30, 2017): 330, <https://doi.org/10.22373/sjhl.v1i2.2384>.

<sup>37</sup> Shofiatal Jannah et al., "The Urgency of Marriage Registration in the Perspective of Islamic Law and Positive Law in Indonesia," *Al-Ulum Journal of Islamic Thought and Research* 8, no. 2 (July 25, 2021): 197, <https://journal.uim.ac.id/index.php/alulum/article/view/1052>.

<sup>38</sup> Ageng Subekti, "Juridical Review of Underage Marriage Dispensation in the Perspective of Indonesian Islamic Law," *USRAH: Journal of Islamic Family Law* 5, no. 2 (October 23, 2024): 242–55, <https://doi.org/10.46773/USRAH.V5I2.1344>.

<sup>39</sup> Dian Afrianti, Helwan Kasra, and Arief Wisnu Wardhana, "Penyelundupan Hukum Perkawinan Anak Dibawah Umur Melalui Pengesahan Nikah di Pengadilan Agama Baturaja (Studi Analisis Pasal 7

## Analysis of Judges' Deliberation of the Madura Religious Court in Deciding Cases of *Ithbāt Nikāh* Underage

*Ithbāt nikāh* underage is not included in the special requests that can be systematically traced in the directory of Religious Court decisions. It is because the initial registration does not distinguish between couples applying for ordinary *ithbāt nikāh* or underage *ithbāt nikāh*.<sup>40</sup> *Ithbāt nikāh* underage can be detected after the applicant explains the chronology and legal facts relating to the case.<sup>41</sup> The judge in the trial process will examine the date of birth of each couple applying for *ithbāt nikāh*, the date they entered the sirri marriage, and their age when they entered the sirri marriage. Therefore, judges examining *ithbāt nikāh* cases are required to pay more attention to the facts related to the applicants who apply for *ithbāt nikāh*, especially in the aspects of age and date of execution of the sirri marriage, so that it can be detected whether the proposed *ithbāt nikāh* is in accordance with Islamic law and the applicable laws and regulations in Islamic marriage law in Indonesia.<sup>42</sup>

The consideration of judges in the Madura region when examining and deciding underage *ithbāt nikāh* cases prioritizes the benefits for the applicant, especially those who have children and are hampered by their citizenship rights because they do not yet have population data. For instance, in Decision No. 476/Pdt.P/2023/PA.Bkl, the Bangkalan Religious Court approved an *ithbāt nikāh* request from a couple who had married religiously on July 29, 2021, but had not officially registered the marriage with the Office of Religious Affairs (KUA). Despite the bride being only 17 then, the judges ruled the marriage valid under Islamic law, as it fulfilled the essential elements and conditions of marriage, with no legal impediments. The couple supported their claim with witness

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Ayat (3) Huruf (E) Kompilasi Hukum Islam)," *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (2023).

<sup>40</sup> Ramdani Wahyu Sururie, "Isbat Nikah Terpadu Sebagai Solusi Memperoleh Hak Identitas Hukum," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 1 (June 30, 2017): 113, <https://doi.org/10.18326/IJTIHAD.V17I1.113-133>.

<sup>41</sup> Dewi et al., "Isbat Nikah Against Underage Marriage from the Perspective of Mashlahah Mursalah (Study of Analysis of Determination Number 4/Pdt.P/2022/PA.PP)."

<sup>42</sup> Novi Nandiatius Solekah and Siti Zulaicha, "Implications of the Rejection of Isbat Nikah on the Status of Children," *Sakina: Journal of Family Studies* 8, no. 1 (February 28, 2024): 135–49, <https://doi.org/10.18860/JFS.V8I1.5706>.

testimony and documents confirming their marital relationship, residency, marital status, and child birth.<sup>43</sup>

The applicants' request for *ithbāt nikāh* was to obtain legal certainty over their marriage status and to use it as a legal basis for processing the children's birth certificates and issuing marriage certificate citations. With these legal considerations, the court determined that the applicants' marriage was legally valid and ordered the registration of the marriage at the local KUA. The judge explained that one of the aspects taken into consideration in granting the case was the benefit of the parties, especially the child who had been born to the parents' irregular marriage. This ruling highlights the significant role of the Religious Courts in harmonizing religious practices with state legal provisions to safeguard the rights of families and children. The judicial panel can interpret and apply substantive principles of justice and legal certainty in adjudicating cases, even when such considerations are not expressly stipulated within the formal provisions of positive law.<sup>44</sup>

Then in decision number 947/Pdt.P/2023/PA.Pmk, the Pamekasan Religious Court granted the Petitioners' *Ithbāt nikāh* application. In the facts of the court, it was found that the male applicant was 25 years old when he entered a secret marriage, and the female applicant was 16 years old. From the marriage, one child was born on December 1, 2022, and was 1 year old when the petition was filed. The applicant stated that during the marriage, the applicants had never divorced, remained Muslim, and there was no prohibition on marriage. The applicants applied for a *ithbāt nikāh* for legal certainty of their marriage and to obtain family documents and the child's birth certificate. The judge declared Applicant I and Applicant II's marriage valid on July 30, 2020, in Pamekasan Regency. The judge also ordered the Plaintiffs to register their marriage with the Marriage Registrar of the Kadur District Religious Affairs Office (KUA), Pamekasan Regency, to be recorded in the list provided.

This decision directly protects the primary interests (*al-ḍarūriyyāt*) of children born from these sirri marriages, namely *hifẓ al-nasl* (protection of

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<sup>43</sup> Umar Haris Sanjaya and Dita Fadillah Putri, "Konstruksi Legitimasi Dan Akibat Perkawinan Dibawah Tangan: Mengulang Kawin Atau Itsbat Nikah?," *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 3 (September 30, 2024): 490–511, <https://doi.org/10.20885/IUSTUM.VOL31.ISS3.ART1>.

<sup>44</sup> Bayu Setiawan, "The Application of Progressive Law by Judges to Realize Transcendence Substantive Justice," *Cosmic Law* 18, no. 1 (January 31, 2018), <https://doi.org/10.30595/KOSMIKHUKUM.V18I1.2338>.

progeny) and *ḥifẓ al-māl* (protection of valuables).<sup>45</sup> With *ithbāt nikāḥ*, the child will have a clear legal status, birth certificate, inheritance rights, and legal recognition as a child of both parents. Without *ithbāt*, children will be vulnerable to administrative and legal problems in the future, such as difficulties in accessing education, health, and inheritance. Although this decision can be justified from the point of view of the benefit of children and legal certainty for families that have been formed, it raises the potential for criticism due to legal smuggling. This decision could indirectly set a precedent or shortcut for the practice of underage marriage, by granting *ithbāt nikāḥ* for couples who marry underage without dispensation. This decision tends to prioritize short-term benefits (protection of existing children's rights) over long-term benefits (law enforcement and prevention of future child marriage). Based on the concept of Jasser Auda's *maqāṣid*, which prioritizes long-term and multidimensional benefits, the judge's decision still does not meet the provisions of the *maqāṣid al-sharī'a*.

The number of decisions refusing to grant the application for *ithbāt nikāḥ* underage is minimal because judges themselves tend not to have options for the applicant couple if their civil rights are hampered because their irregular marriage fails to be decided.<sup>46</sup> Nevertheless, referring to the *ithbāt nikāḥ* decisions in the decision repository, the Religious Courts in Madura have rejected several underage *ithbāt nikāḥ* applicants. The applicant who was denied *ithbāt nikāḥ* was not dismissed because of the age at which the irregular marriage took place, but the age at which the application was submitted was still underage or had not yet reached 19 years. The panel of judges had two variations in responding to the rejection of this underage *ithbāt nikāḥ*, firstly giving the applicant the option to withdraw the case during the first hearing and reapply when the age of each applicant had reached 19 years. Secondly, the panel of judges continued the *ithbāt nikāḥ* hearing, but with a final decision that the application could not be accepted. Both models of rejection of *ithbāt nikāḥ* have the same reasons and objectives, namely to continue to accommodate underage applicants, but when applying, the age of each applicant must have reached 19 years, so that they are considered capable of acting legally.

An example of a decision that does not accept an application for *ithbāt nikāḥ* underage is Decision Number 546/Pdt.P/2023/PA.Smp. The Sumenep Religious

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<sup>45</sup> Mayadina Rohmi Musfiroh, "Family Law in the Perspective of Child Protection," *De Jure: Journal of Law and Shar'iah* 8, no. 2 (January 13, 2017): 64–73, <https://doi.org/10.18860/j-fsh.v8i2.3731>.

<sup>46</sup> Interview with Moh. Jatim, Judge of the Sumenep Religious Court, Sumenep, June 21, 2024.

Court rejected the application for *ithbāt nikāh* submitted by a married couple who married religiously on August 30, 2021. The main reason for the rejection was that Applicant II was still 18 years old, so she had not passed the minimum age of marriage stated in the legislation, namely 19 years, as mentioned in Law Number 16 of 2019. The Panel of Judges also considered that Applicant II was not legally competent to act in the judicial process, so the application was declared inadmissible (*niet ontvankelijk verklaard*). The panel of judges did not examine the case's merits because one of the applicants was deemed not legally competent. The applicants could resubmit their petition when each of them had reached the minimum age of legal capacity in the field of civil or marriage, which is 19 years old.<sup>47</sup>

This rejection shows that the emphasis of the facts used as the reason for rejecting the case is the absence of legal capacity to apply for *ithbāt nikāh*, not because the sirri marriage was conducted when they were underage. Even though the marriage had been conducted religiously and there was no prohibition according to Sharia, the court still adhered to the formal legal provision that there is a minimum age limit for a person to be considered legally competent as a form of legal protection for children. This decision also confirms the religious court's commitment to upholding the principles of benefit and protection of children's rights. It is part of the effort to reduce the practice of underage marriage in the Madura region. Although the benefit prioritized at this time is a short-term benefit model, the judges still think about long-term benefit options that the community always aspires to.

Meanwhile, a decision rejecting the *ithbāt nikāh* with a revoked case model can be seen in case number 66/Pdt.P/2023/PA.Bkl was issued by the Bangkalan Regency Religious Court, which states that the applicant revoked the application for *ithbāt nikāh*. The copy of the decision states that the panel of judges directed the applicants to withdraw the case that had been filed because one of the applicants' ages was considered insufficient to attend hearings and litigate in the Religious Court. The panel of judges directed the applicants to wait for some time to reapply so that each of the parties who would apply for *ithbāt nikāh* had reached the age of 19 years. The terms revoked and not accepted by the court are

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<sup>47</sup> Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Journal of Family Law* 6, no. 2 (December 30, 2023): 362–80, <https://doi.org/10.22373/UJHK.V6I2.20262>.

different in the procedural law system in the Religious Courts.<sup>48</sup> The revoked case comes from the applicant's initiative before the judge examines the case. In contrast, the judge decides the unaccepted case after the initial examination is carried out and a formal defect is found. The similarities between the two are that there is no examination of the subject matter of the case by the panel of judges.<sup>49</sup>

Underage marriage has legal legitimacy because it can protect some of the rights of children. However, this practice risks hitting other *maqāṣid* such as *ḥifẓ al-naḥs* (protection of women's souls) and *ḥifẓ al-'aql* (protection of children's education). Therefore, *ithbāt nikāḥ* should be positioned as an emergency measure, not a shortcut to legitimize child marriage. Within the framework of *maqāṣid*, family law policy must be more visionary by balancing short-term and long-term benefits to protect future generations comprehensively.

### **Views of Religious Court Judges in Madura on the Rejection of *Ithbāt Nikāḥ* Underage**

Although the court granted most decisions on *ithbāt nikāḥ* underage, the judges agreed that this was only a short-term benefit that the judge could provide the applicant. The long-term benefit is to continue to restore the function of *ithbāt nikāḥ* as it should be and return underage marriages to marriage dispensation applications. Nurul Laily,<sup>50</sup> one of the judges at the Bangkalan Religious Court explained that the judges granted the underage nikah not without a strong legal basis, but because there is currently no regulation that clearly addresses this issue. The judges also consider that the rejection of *ithbāt nikāḥ* is not a form of indifference to social reality, but rather a form of legal commitment to ensure justice and order, and to encourage the community to comply with the legal procedures that apply in every marriage. However, the rejection of *ithbāt* is still very rare because the judges are still unable to provide options for other legal remedies that the applicant can take to obtain the citizen rights they are fighting for.

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<sup>48</sup> Erfaniah Zuhriah et al., "Dispen-Ku Android-Based Application: Assisting Religious Court Judges in Deciding for Marriage Dispensation," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 31, 2023): 519–43, <https://doi.org/10.19105/AL-LHKAM.V18I2.8773>.

<sup>49</sup> Sufirman Rahman et al., "Revocation of Lawsuit in General Court Practice According to Civil Procedure Law," *Journal of Lex Philosophy (JLP)* 5, no. 2 (August 12, 2024): 715–31, <https://pasca-umi.ac.id/index.php/jlp/article/view/1830>.

<sup>50</sup> Interview with Nurul Laily, Judges in Bangkalan Religious Court, Bangkalan, Juni 07, 2024.



The head of the Sumenep District Religious Court, Moh. Jatim<sup>51</sup> explained that normatively, Law Number 16 of 2019, which amends the Marriage Law, stated that the age limit for marriage is 19 years for both men and women. The granting of *ithbāt nikāḥ* underage without going through a valid dispensation procedure can lead to legal uncertainty in the Indonesian legal system. Suppose the court validates underage marriage without dispensation from the district court as required. In that case, this creates inconsistencies between substantive legal norms and judicial practice, ultimately undermining the principles of legality and legal certainty. Legal certainty is one of the fundamental principles in legal science that ensures that the law can be enforced fairly, consistently, and predictably. When court decisions are not in line with the age limit set by the law, it will have a negative impact and open up opportunities for the practice of legal deviations that ignore child protection. It also has the potential to undermine efforts to prevent child marriage that have been encouraged through national policies, education, and child rights advocacy.<sup>52</sup>

Meanwhile, one of the judges at the Pamekasan Religious Court, Robeth Amrullah Jurjani,<sup>53</sup> stated that the granting of *ithbāt nikāḥ* underage is often considered a practical solution for couples who have married religiously but have not met the age requirements according to state law. However, this can lead to false justice and benefit for the applicant and the wider community. On the face of it, this kind of marriage validation provides legal legitimacy and administrative access, such as the issuance of marriage or children's birth certificates. However, the decision ignores the more detrimental long-term impacts, such as unclear data on child marriages due to legal loopholes, the risk of domestic violence, and the disconnection of children's education due to marriages that are not based on physical and psychological maturity. In addition, a permissive policy towards child marriage will bias people's understanding of justice, as if the law can be compromised by custom, culture, or social pressure, even though the law aims to protect the weak and guarantee the future of the nation's generation. Therefore, granting *ithbāt nikāḥ* underage without careful consideration results in imitation-justice that looks good formally, but is detrimental substantively to child protection and the social future of society.

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<sup>51</sup> Interview with Moh. Jatim, Judges in Sumenep Religious Court, Sumenep, June 21, 2024.

<sup>52</sup> Sudirman and Iskandar, "Isbat Marriage Resolution in Indonesia: A Maslahah Approach," *Journal of Islamic Law* 1, no. 1 (February 28, 2020): 100–114, <https://doi.org/10.24260/JIL.V11I.16>.

<sup>53</sup> Interview with Robeth Amrullah Jurjani, Judges in Pamekasan Religious Court, Pamekasan, June 14, 2024.

Judge Robeth Amrullah Jurjani added that the short-term benefit reasoning that is often used as the basis for granting applications for *ithbāt nikāḥ* underage, even though the majority of judges, including himself, have done it, still needs to be critically refuted because it tends to consider momentary solutions without taking into account the far more complex long-term impacts. For example, the pretext of protecting the rights of families and citizens due to unrecorded marriages or social pressure for marriages to be legalized immediately to avoid social disgrace, even though the decision actually ignores aspects of child protection and the principle of legal prudence. From the perspective of *maqāṣid al-sharīʿa*, the primary purpose of establishing regulations and efforts to obtain actual benefits is not only seen from the interests of the moment, but also from the continuity of benefits and prevention of damage in the future. By legalizing underage marriage, the state risks legitimizing practices that contradict children's rights to education, health, and proper growth and development. Therefore, the excuse of short-term benefits must be rejected, because it sacrifices more fundamental long-term benefits, both for individuals and the social structure of society as a whole.<sup>54</sup>

Meanwhile, Nurul Laily clarified that the reason that the application for *ithbāt nikāḥ* underage needs to be granted to give citizenship rights or legal status to children is actually a weak argument, because it uses children as a justification for legalizing practices that violate the law.<sup>55</sup> Children are indeed entitled to a clear identity and legal status. However, the protection of children should not be done in a way that compromises the best interests of the child, such as justifying early marriage. In the Indonesian legal system, other mechanisms can be taken to ensure that children's rights are still fulfilled, such as the recognition of extra-marital children, the determination of the origin of children, and population administration records that are still possible without having to legitimize underage marriage. Therefore, granting a child's *ithbāt nikāḥ* to give legal status to the child is a wrong step that disguises a violation of the law as a form of protection, even though children's rights can be guaranteed without having to legalize a marriage that is not legally valid.

The attitude of judges who are more inclined to grant applications for *ithbāt nikāḥ* underage can also cause serious polemics in the community, because it

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<sup>54</sup> Isnaini Isnaini, "Mashlahah Al-Mursalah as Evidence and Method of Ijtihad," *Hikmah: Journal of Islamic Studies* 16, no. 2 (December 29, 2020): 203–18, <https://doi.org/10.47466/hikmah.v16i2.175>.

<sup>55</sup> Interview with Nurul Laily, Judges in Bangkalan Religious Court, Bangkalan, June 07, 2024.

creates a contradiction between the state's efforts to eliminate the practice of child marriage and the decisions of the judiciary, which actually open a loophole for its legalization. On the one hand, the government, via the Office of Religious Affairs, actively campaigns against child marriage as part of the protection of children's rights in seminars and socialization activities on marriage in the regions.<sup>56</sup> But on the other hand, when the Religious Courts grant *ithbāt nikāḥ* to underage couples without strict legal considerations, this will be perceived as judicial legitimization of a practice that is actually prohibited.<sup>57</sup> This situation not only confuses the public but also undermines the consistency of law enforcement and weakens efforts to educate the public about the importance of delaying marriage until a mature age. As a result, the public may perceive that the law is negotiable for reasons of custom, social pressure, or momentary interests, thus encouraging the normalization of child marriage in disguise. Therefore, the courts must maintain their position as guardians of constitutional values and child protection, not as an opening for compromise on violations of children's rights.

The rejection of underage *ithbāt nikāḥ* provides essential benefits for the applicant and society because it aligns with the principles of child protection and long-term social development. It was conveyed by Judge Robeth Amrullah Jurjani when responding to a question about the ultimate benefit of child marriage procedures.<sup>58</sup> The ultimate benefit is not simply solving an administrative problem or momentary social pressure. However, it includes comprehensive protection of children's rights to education, health, and a decent future. By rejecting child marriage appeals, the court indirectly encourages the community to obey the provisions of the law, respect the age limit for marriage set by law, and delay marriage until children reach physical and psychological maturity. It is also a form of legal education and strong social control, so people no longer use early marriage to solve cultural problems or economic pressures. This rejection can be a starting point for the applicants to take more responsible and legal steps, such as applying for a legal dispensation or building a comprehensive household readiness plan.

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<sup>56</sup> Kartika Septian Amiri and Rahmat Paputungan, "Efforts of the Religious Affairs Office in Preventing Early Marriage in Lolak District, Bolaang Mongondow," *Al-Mujtahid: Journal of Islamic Family Law* 3, no. 2 (December 29, 2023): 141–51, <https://doi.org/10.30984/AJIFL.V3I2.2830>.

<sup>57</sup> Pranoto et al., "Problems of Underage Sirri Marriage in West Kutai Regency."

<sup>58</sup> Interview with Robeth Amrullah Jurjani, Judges in Pamekasan Religious Court, Pamekasan, June 14, 2024.

The rejection of the *ithbāt nikāh* underage can also provide comprehensive justice for the Islamic marriage law system in Indonesia because it strengthens the synchronization between sharia principles and positive law in protecting human dignity, especially children.<sup>59</sup> Judge Robeth Amrullah Jurjani stated that marriage is not only a social contract between the marrying couple, but also a strong contractual mandate that demands each partner's physical and mental readiness. By rejecting the *ithbāt nikāh* of underage couples, the Religious Courts are protecting and safeguarding the practice of Islamic law from being misused to justify actions that could harm children's futures. On the other hand, this rejection is also consistent with the Marriage Law and the Compilation of Islamic Law, which uphold the values of justice and benefit in every decision. It prevents legal disparities between religious and state norms. It confirms that Islamic law applied in Indonesia is adaptive, progressive, and in favor of protecting human rights. Thus, the decision to refuse *ithbāt nikāh* underage not only enforces the law textually, but also reflects substantive justice, which includes the protection of generations, social stability, and the integrity of the Islamic legal system itself.

Judge Robeth Amrullah Jurjani added that after rejecting the child's *ithbāt nikāh* application, the applicant still has several options for legal remedies to be taken so that the rights of children as citizens remain protected and not neglected.<sup>60</sup> One of the steps that can be taken is to apply for a marriage dispensation to the District Court, per the provisions in Law No. 16/2019, to obtain legalization of a marriage if urgent reasons can be proven, such as pregnancy or child protection interests. Suppose the problem to be solved is only related to children's rights. In that case, the parents or guardians of the child can apply for a determination of the child's origin to the Religious Court as a legal basis for birth registration, so that the child can still have a birth certificate and clear legal status without having to legalize a sirri marriage.<sup>61</sup> Through the Population and Civil Registry Office, local governments also provide a mechanism for recognizing extra-marital children to guarantee children's rights to identity, education, and public services. With the right legal approach, the community can still maintain children's rights as citizens without having to sacrifice legal

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<sup>59</sup> Dewi et al., "Itsbat Nikah Against Underage Marriage from the Perspective of Mashlahah Mursalah (Study of Analysis of Determination Number 4/Pdt.P/2022/PA.PP)."

<sup>60</sup> Interview with Robeth Amrullah Jurjani, Judges in Pamekasan Religious Court, Pamekasan, June 14, 2024.

<sup>61</sup> Interview with Nurul Laily, Judges in Bangkalan Religious Court, Bangkalan, June 07, 2024.

principles that prohibit child marriage, so that the values of justice and protection are kept within the framework of the rule of law.

## Conclusion

Rejection of underage *ithbāt nikāh* in Madura's Religious Courts is rare, as most judges choose to grant such applications. The court is the final resort to guarantee justice and legal certainty. Judges recognize that approving *ithbāt nikāh* for minors risks legitimizing child marriage, yet rejecting it may deny access to essential civil rights like birth registration. This situation drives judges to emphasize short-term legal validation, even if it creates long-term legal inconsistencies. Despite this, efforts to close legal loopholes must continue, primarily through reforming laws on *ithbāt nikāh* and underage marriage. When *itsbat* applications are rejected, individuals still have legal alternatives: applying for marriage dispensation, seeking determination of a child born out of wedlock, or requesting recognition of a child's origin. These mechanisms enable access to civil documentation while upholding legal norms and protecting children's rights. Thus, rejection of underage *ithbāt nikāh* should not be seen as denying justice but as part of a broader legal framework aimed at preventing child marriage. Legal certainty must support marital validation and align with justice and child protection. Raising public awareness about this balanced approach is crucial for developing Indonesia's fairer and more consistent legal system.[a]

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## Author Contribution Statement

**M. Faiz Nashrullah:** Conceptualization; Data Curation; Methodology; Validation; Writing Original Draft.

**Abdul Rohim Al Wafi:** Conceptualization; Formal Analysis; Resources; Writing, Review & Editing.

**Siah Khosyiah:** Conceptualization; Formal Analysis; Visualization.

**Frilla Gunariah:** Formal Analysis; Visualization.

**Affan Najih Alghifary:** Formal Analysis; Investigation; Validation.

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