

The Legal Paradox of Marriage Dispensation and Itsbat Nikah in Indonesia: Reconstructing Child Marriage Protection through Maqāṣid al-Sharī'ah

Hardiyanti Alimuddin¹, Muhammad Rizal², M. Napis Djuaeni³, Andi Ahmad Zahri Napis⁴

¹STAI DDI Majene, Indonesia

²Universitas Islam Negeri Alauddin Makassar, Indonesia

^{3,4}STAIN Majene, Indonesia

Email: ¹hardiyantianti68@gmail.com, ²rizalsebatik04@gmail.com, ³napisdj@stainmajene.ac.id, ⁴andizahri81@gmail.com

*Corresponding Author

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Abstract

The increase in Indonesia's minimum marriage age through Law No. 16 of 2019 was intended to strengthen child protection by restricting child marriage through a judicial marriage dispensation mechanism. However, a legal paradox emerges when applications for itsbat nikah are submitted after underage marriages have been conducted religiously without prior judicial authorization, including in cases where marriage dispensation has been rejected. This phenomenon raises a critical question: can itsbat nikah, originally designed to provide legal recognition for existing marriages, inadvertently create an alternative pathway that undermines the preventive objective of child marriage restrictions? This study examines the legal relationship between rejected marriage dispensations and subsequent itsbat nikah applications and explores how judicial discretion negotiates the competing imperatives of child protection, legal certainty, and family welfare. Using a qualitative socio-legal approach, the research draws on in-depth interviews with judges and court officials, observations, and documentary analysis of court decisions, legislation, and relevant legal materials at the Sungguminasa Religious Court. The findings reveal that the relationship between marriage dispensation and itsbat nikah reflects not merely a normative gap but a structural tension between preventive and curative mechanisms within Indonesia's marriage law. Judges face a legal dilemma between refusing recognition to discourage child marriage and granting legal status to protect the rights of women and children within families already formed. This study argues that maqāṣid al-sharī'ah provides a normative framework for reconstructing child marriage protection by prioritizing the integrated protection of life, lineage, dignity, and welfare. The study contributes a framework for harmonizing preventive marriage regulation with curative judicial protection in Indonesian Islamic family law.

Kata Kunci: Dispensation of Marriage; Isbat Nikah; Child Marriage; Protection of Children; Maqashid al Syariah.

Abstrak

Kenaikan batas usia minimum pernikahan di Indonesia melalui Undang-Undang Nomor 16 Tahun 2019 dimaksudkan untuk memperkuat perlindungan anak dengan membatasi pernikahan anak melalui mekanisme dispensasi pernikahan secara yudisial. Namun, muncul paradoks hukum ketika permohonan itsbat nikah diajukan setelah pernikahan di bawah umur telah dilangsungkan secara agama tanpa izin yudisial sebelumnya, termasuk dalam kasus-kasus di mana dispensasi pernikahan telah ditolak. Fenomena ini memunculkan pertanyaan kritis: dapatkah itsbat nikah, yang awalnya dirancang untuk memberikan pengakuan hukum atas pernikahan yang sudah ada, secara tidak sengaja menciptakan jalur alternatif yang merongrong tujuan preventif dari pembatasan pernikahan anak? Penelitian ini mengkaji hubungan hukum antara permohonan dispensasi perkawinan yang ditolak dan permohonan itsbat nikah yang diajukan setelahnya, serta mengeksplorasi bagaimana diskresi yudisial menyeimbangkan tuntutan yang saling bertentangan antara perlindungan anak, kepastian hukum, dan kesejahteraan keluarga. Dengan menggunakan pendekatan sosiologis-hukum kualitatif, penelitian ini mengandalkan wawancara mendalam dengan hakim dan pejabat pengadilan, observasi, serta analisis dokumen terhadap putusan pengadilan, undang-undang, dan bahan hukum terkait di Pengadilan Agama Sungguminasa. Temuan penelitian menunjukkan bahwa hubungan antara dispensasi perkawinan dan itsbat nikah tidak hanya mencerminkan kesenjangan normatif, tetapi juga ketegangan struktural antara mekanisme preventif dan kuratif dalam hukum perkawinan Indonesia. Para hakim dihadapkan pada dilema hukum antara menolak pengakuan untuk mencegah perkawinan anak dan memberikan status hukum guna melindungi hak-hak perempuan dan anak-anak dalam keluarga yang telah terbentuk. Penelitian ini berpendapat bahwa maqāṣid al-sharī'ah menyediakan kerangka normatif untuk merekonstruksi perlindungan terhadap perkawinan anak dengan memprioritaskan perlindungan terpadu atas kehidupan, keturunan, martabat, dan kesejahteraan. Penelitian ini menyumbangkan sebuah kerangka kerja untuk menyelaraskan regulasi perkawinan preventif dengan perlindungan yudisial kuratif dalam hukum keluarga Islam Indonesia.

Keywords: Dispensasi Nikah; Isbat Nikah; Pernikahan Anak; Perlindungan Anak; Maqashid al-Syariah.

Introduction

Marriage constitutes a legal institution of strategic importance in family formation, the protection of human rights, and sustainable social development. Within Islamic law, marriage is understood not merely as a contract that legitimizes the relationship between a man and a woman, but also as a solemn bond aimed at establishing a family characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion).¹ The realization of these principles requires the balanced fulfillment of the rights and obligations of both parties.² At the same time, the state recognizes marriage as a legal event that must comply with applicable statutory provisions to ensure legal certainty, protect civil rights, and secure administrative recognition.³ The Indonesian legal framework governing marriage

¹ Sri Hariati, Moh. Jamin, and Adi Sulistiyono, "The Legal Status of Marriage (Merariq) Implementation Within The Indigenous People of Sasak Lombok," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (2024): 406–22, <https://doi.org/10.29303/ius.v12i2.1475>.

² Faizal Kurniawan et al., "The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia," *Lex Scientia Law Review* 6, no. 1 (2022): 121–56, <https://doi.org/10.15294/lesrev.v6i1.55468>.

³ Imron Rosyadi, Helmy Ziaul Fuad, and Ashlaha Baladina Zaimuddin, "Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman's Theory," *Al-'Adalah* 22, no. 1 (2025): 147–80, <https://doi.org/10.24042/adalah.v22i1.22779>; Imron Rosyadi and Aisyah Kahar, "Analysis of Legal Certainty Aspects in Indonesian Marriage Registration Rule," *Jurnal Hukum Dan Peradilan* 12, no. 3 (2023): 469–88, <https://doi.org/10.25216/jhp.12.3.2023.469-488>; Imaro Sidqi and Mhd. Rasidin, "Prohibition of Interfaith Marriage in

reflects an integration of religious values, human rights principles, and the state's responsibility to ensure orderly civil registration and legal certainty for all citizens.

In the development of national law, child protection has become one of the primary objectives of family law reform. The amendment to Law No. 1 of 1974 on Marriage through Law No. 16 of 2019, which established the minimum legal age of marriage at 19 for both men and women, represents the state's response to growing concerns regarding children's rights, gender equality, and Indonesia's commitment to implementing various child protection instruments.⁴ This policy reflects an awareness that child marriage has implications not only for reproductive health but also for educational continuity, psychological well-being, family economic welfare, and the quality of human resources in the future.⁵ Efforts to strengthen child protection were further reinforced by the enactment of Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.⁶ This regulation emphasizes that marriage dispensation is not merely a procedural formality but an exception that may be granted only when compelling circumstances exist and are supported by sufficient evidence. In examining applications for marriage dispensation, judges are required to consider various factors, including the child's psychological condition, reproductive health, continuity of education, economic preparedness, and the potential adverse consequences for the child's future. This regulatory framework reflects a shift in Indonesian marriage law from an approach primarily concerned with the legal authorization of marriage toward one that places child protection at the center of legal norm formation.

In practice, however, the implementation of minimum marriage age restrictions does not always achieve the intended objectives. Various studies have shown that child marriage persists in different regions for a range of reasons, including cultural factors, economic pressures, low levels of education, premarital pregnancy, and religious understandings prevalent within local communities.⁷ These

Indonesia: A Study of Constitutional Court Decision Number 24/PUU-XX/2022,” *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 154–72, <https://doi.org/10.30984/jis.v21i1.2337>.

⁴ Asrul Hamid, Andri Nst, and Idris Idris, “Problematisasi Perkawinan Di Bawah Umur Pada Masyarakat Mandailing Natal: Analisis Terhadap Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan,” *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 10, no. 1 (2025): 111–31, <https://doi.org/10.31538/adllh.v10i1.6825>.

⁵ Azam Sukri and Aris Fauzan, “Maqasid Al-Shariah and Child Protection: A Holistic Approach to Preventing Early Marriage,” *KARSA Journal of Social and Islamic Culture* 33, no. 2 (2025): 600–636, <https://doi.org/10.19105/karsa.v33i2.21696>; Joaquim M. Nhampoca and Jeanette E. Maritz, “Early Marriage, Education and Mental Health: Experiences of Adolescent Girls in Mozambique,” *Frontiers in Global Women's Health* 5 (2024): 1278934, <https://doi.org/10.3389/fgwh.2024.1278934>.

⁶ Aman and Gugun Gumilar, “Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia,” *SMART: Journal of Sharia, Traditon, and Modernity* 5, no. 2 (2025): 80–97, <https://doi.org/10.24042/smart.v5i2.20014>.

⁷ Stephanie R. Psaki et al., “What Are the Drivers of Child Marriage? A Conceptual Framework to Guide Policies and Programs,” *Journal of Adolescent Health* 69, no. 6 (2021): S13–22, <https://doi.org/10.1016/j.jadohealth.2021.09.001>; Asma Pourtaheri et al., “Socio-Ecological Factors of Girl Child Marriage: A Meta-Synthesis of Qualitative Research,” *BMC Public Health* 24, no. 1 (2024): 428, <https://doi.org/10.1186/s12889-023-17626-z>; Ayako Kohno et al., “Investigation of the Key

circumstances indicate that regulatory changes have not been fully accompanied by corresponding changes in societal legal behavior. In many cases, families continue to arrange marriages even when the prospective spouses do not meet the statutory minimum age requirements. This phenomenon demonstrates that the effectiveness of a legal regulation depends not only on the quality of its legal norms but also on the legal culture of the society in which those norms are implemented.

The complexity of marriage law implementation becomes increasingly apparent when minimum marriage age restrictions intersect with the mechanism of *isbat nikah* in religious court proceedings.⁸ From a normative perspective, marriage dispensation and *isbat nikah* serve distinct legal functions. Marriage dispensation operates as a preventive mechanism through which judicial authorization may be granted before a marriage takes place under certain circumstances,⁹ whereas *isbat nikah* serves as a mechanism for obtaining judicial recognition of a marriage that has already been solemnized in accordance with Islamic law but has not been registered by the state.¹⁰ These distinct functions indicate that the two legal mechanisms operate at different stages. Nevertheless, applications for *isbat nikah* are still filed in practice after marriages have taken place without the applicants first obtaining a marriage dispensation. This phenomenon raises questions about how the legal system responds to the relationship between these two mechanisms and how judges balance legal certainty, child protection, and the pursuit of *maslahah* (public interest and welfare) in their decision-making.

The Sungguminasa Religious Court provides a concrete setting in which these dynamics can be examined. Based on case data and field research findings, applications for *isbat nikah* continue to be submitted in circumstances where marriages have already been solemnized in accordance with religious requirements without prior recourse to the marriage dispensation mechanism. This situation cannot simply be interpreted as an attempt to circumvent statutory minimum marriage age requirements or as evidence of deficiencies in the legal norms themselves. Rather, it illustrates the complex interaction between minimum marriage age policies, societal legal behavior, and religious court practices in addressing the legal consequences of family relationships that have already been established. Therefore, the central issue examined in this study is not whether legal provisions governing *isbat nikah* exist, but how the law is implemented when preventive legal norms encounter social realities that have already given rise to family relationships with legal consequences.

Factors That Influence the Girls to Enter into Child Marriage: A Meta-Synthesis of Qualitative Evidence,” ed. Jonathan Jong, *PLOS ONE* 15, no. 7 (2020): e0235959, <https://doi.org/10.1371/journal.pone.0235959>.

⁸ Busriyanti et al., “Marriage Law Reform in Indonesia A Maqasid Al-Usrah Perspective on Legal Adaptation,” *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 631–649, <https://doi.org/10.29240/jhi.v10i2.12739>.

⁹ Wardatun Nabilah et al., “Between Protection and Permissiveness: A Fiqh Siyasah Reexamination of Marriage Dispensation in Indonesia,” *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 137–51, <https://doi.org/10.31958/juris.v24i1.11882>.

¹⁰ Nailur Rahmi, Arifki Budia Warman, and Amri Effendi, “Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 416–37, <https://doi.org/10.22373/sjhc.v9i1.28306>.

Previous studies on child marriage and marriage validation in Indonesia have examined several related issues. Research on the normative framework has focused on the implementation of Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019, particularly regarding minimum marriage age requirements, marriage dispensation, and child protection.¹¹ Other studies have investigated the social factors contributing to child marriage, including cultural traditions, economic pressures, educational disadvantages, premarital pregnancy, and religious understandings within local communities.¹² Research on religious court practices has also explored *isbat nikah* in relation to marriage registration, legal certainty, and the protection of family rights.¹³ Despite these contributions, the relationship between marriage dispensation as a preventive legal mechanism and *isbat nikah* as a means of obtaining judicial recognition of an unregistered marriage remains insufficiently examined, particularly in cases where a marriage involving individuals below the statutory minimum age has taken place without prior judicial authorization.

This study examines *isbat nikah* applications at the Sungguminasa Religious Court involving marriages conducted without prior marriage dispensation. It focuses on how judges interpret the applicable legal provisions and consider minimum marriage age requirements, legal certainty, child protection, and *maṣlahah* when deciding such cases. The study also explores how the court addresses the legal consequences of marriages that have already taken place within the framework of Indonesian marriage law. By examining judicial practice in relation to the relevant legal provisions, this research seeks to clarify the legal relationship between marriage dispensation and *isbat nikah*. It is expected to contribute to discussions on the implementation of Islamic family law in Indonesia, particularly

¹¹ Ahmad Muqaffi, Rusdiah Rusdiah, and Diana Rahmi, "Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan," *Journal Of Islamic And Law Studies* 5, no. 3 (2022): 361–77, <https://doi.org/10.18592/jils.v5i3.5914>; Dini Shantya, Riyan Ramdani, and Ali Khosim, "Disparitas Dispensasi Kawin Dan Perlindungan Anak: Analisis Kritis Terhadap Undang-Undang Nomor 16 Tahun 2019 Dan Undang-Undang Nomor 35 Tahun 2014," *As-Syar i: Jurnal Bimbingan & Konseling Keluarga* 7, no. 3 (July 22, 2025): 365–383, <https://doi.org/10.47467/as.v7i3.9120>; Muh. Sahli Sahli and Rohani Inta Dewi, "Marriage Dispensation After Law No. 16 of 2019: Between Child Protection and Social Reality in Montong Gading District," *Politea : Jurnal Politik Islam* 8, no. 1 (June 10, 2025): 65–84, <https://doi.org/10.20414/politea.v8i1.13491>.

¹² Diana Teresa Pakasi et al., "Young Women's Agency and the Social Navigation of Divorce from Child Marriage in West Java, Central Java, and West Lombok, Indonesia," *Asian Women* 40, no. 2 (2024): 95–121, <https://doi.org/10.14431/aw.2024.6.40.2.95>; Takdir Takdir et al., "Islamic Law and Local Traditions in Preventing Early Marriage in the Toraja Muslim Minority Community," *Jurnal Ilmiah Al-Syir'ah* 22, no. 2 (2024): 274–87, <https://doi.org/10.30984/jis.v22i2.2931>; Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia," *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 241–58, <https://doi.org/10.15294/jils.v4i2.34708>.

¹³ Alfitri, Rijal Imanullah, and Aulia Rahman, "Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts," *Ulumuna* 28, no. 1 (2024): 313–44, <https://doi.org/10.20414/ujis.v28i1.639>; Muhammad 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>; Ammalia Hidayati, Moh Muhibbin, and Suratman, "Legal Consequences Of Decision To Refuse Marriage/Isbat Nikah On Marriage Status And Child Status (Case Study of Pasuruan Religious Court Decision Number: 0360/Pdt.P/2022/PA.Pas)," *Al-'Adl* 18, no. 1 (2025): 1–10, <https://doi.org/10.31332/aladl.v18i1.9505>.

regarding the balance between enforcing statutory marriage requirements and addressing the legal status of marriages that have already been solemnized.

Research Methods

This study employs empirical legal research with a qualitative approach informed by a socio-legal perspective. This approach was chosen because the study examines not only the legal provisions governing marriage dispensation and *isbat nikah*, but also how these provisions are implemented in religious court proceedings and interact with social realities. The socio-legal perspective helps explain the relationship between legal substance, institutional practices, and legal culture in the implementation of minimum marriage age policies, providing a broader understanding of the application of Islamic family law.

The research was conducted at the Sungguminasa Religious Court in Gowa Regency, South Sulawesi, Indonesia. The site was selected purposively because the court handles marriage dispensation and *isbat nikah* cases that reflect the implementation of marriage law following the enactment of Law No. 16 of 2019. The availability of case records and access to informants directly involved in case proceedings were also considered in selecting the research location.

The study draws on primary and secondary data. Primary data were collected through in-depth interviews with judges at the Sungguminasa Religious Court, court personnel involved in case services, and other informants directly connected to the examination of marriage dispensation and *isbat nikah* applications. Semi-structured interviews were used to ensure systematic data collection while allowing informants to explain their experiences and legal reasoning in detail. Observations of case administration and court proceedings were also conducted to understand how legal procedures operate in practice.

Secondary data were obtained through document analysis of relevant legislation, court decisions, the Compilation of Islamic Law, Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, and Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage. Relevant national and international books and journal articles on Islamic family law, child protection, judicial discretion, and socio-legal studies were also reviewed. Case records relating to marriage dispensation and *isbat nikah* were examined to identify patterns in judicial reasoning and the application of legal norms.

Informants were selected through purposive sampling based on their expertise, experience, and direct involvement in the issues under investigation. This technique was appropriate because the study required detailed information about judicial reasoning, case administration, and legal implementation that could not be adequately obtained through random sampling. Data credibility was strengthened through source and methodological triangulation by comparing interview findings, observations, case documents, and statutory provisions.

Data were analyzed using the interactive model developed by Miles, Huberman, and Saldaña, which comprises data condensation, data display, and conclusion drawing and verification. During data condensation, interview transcripts, observation notes, and documents were selected, classified, and coded according to the research themes. The data were then organized into matrices, synthesis tables, and narrative descriptions to identify relationships among the findings. Conclusions were drawn and verified by relating the empirical findings to the applicable legal framework, socio-legal theory, Lawrence M. Friedman's legal system theory, Eugen Ehrlich's concept of *living law*, and the principles of *maqāṣid al-sharī'ah*. This analytical process was intended to explain the implementation of *isbat nikah* following the rejection of marriage dispensation applications. Beyond describing judicial practice, the study seeks to develop a conceptual understanding of the adaptive implementation of marriage law through judicial discretion, particularly in relation to legal certainty, public welfare, and child protection.

Results and Discussion

The Dynamics of Isbat Nikah Implementation Following the Rejection of Marriage Dispensation Applications in Religious Court Practice

The reform of Indonesian marriage law through Law No. 16 of 2019 represents an important effort to strengthen child protection within the national legal system.¹⁴ Raising the minimum marriage age to 19 for both men and women was intended not only to eliminate the disparity in the previous age requirements but also to prevent child marriage, which has been associated with various social, health, educational, and child protection concerns. This commitment was further reinforced by Supreme Court Regulation No. 5 of 2019, which establishes marriage dispensation as an exception that may be granted only when compelling circumstances exist and are supported by sufficient evidence.¹⁵ These reforms reflect a shift in the objectives of marriage law from merely providing legal authorization for marriage toward prioritizing the best interests of the child.

In judicial practice, however, the implementation of this policy is more complex than the normative framework established by the legislature might suggest. Field research at the Sungguminasa Religious Court indicates that stricter requirements for granting marriage dispensation do not necessarily correspond to a reduction in child marriage. Some members of the community continue to solemnize marriages in accordance with Islamic law even when they have not obtained a marriage dispensation or have not submitted an application before the marriage takes place. After the marriage

¹⁴ Muhamad Kholid et al., "Preventing Child Marriage in Indonesia: An Analysis of Government Policies, Institutional Challenges, and Strategic Efforts," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 1 (2025): 107–28, <https://doi.org/10.32505/qadha.v12i1.11205>; Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362–80, <https://doi.org/10.22373/ujhk.v6i2.20262>.

¹⁵ Adella Astari and Sa'adatul Maghfira, "Legal Assessment Of Marriage Dispensation Applications: Insights From The Painan Religious Court," *Al Ushuliy: Jurnal Mahasiswa Syariah Dan Hukum* 4, no. 1 (2025): 61–73, <https://doi.org/10.31958/alushuliy.v4i1.15715>.

has occurred, the couple may subsequently apply for *isbat nikah* to obtain judicial recognition of their marriage. This finding suggests that regulatory changes have not fully transformed how communities respond to statutory minimum marriage age requirements.

Interviews with judges at the Sungguminasa Religious Court indicate that *isbat nikah* applications submitted after a marriage has taken place are not treated as a continuation of marriage dispensation proceedings. Rather, the two types of proceedings concern different legal questions. In marriage dispensation cases, judges assess whether permission should be granted before a marriage takes place, taking into account the child's age, psychological readiness, reproductive health, educational continuity, and best interests. In *isbat nikah* cases, by contrast, judges must consider the fact that a marital relationship has already been established and has given rise to legal consequences for the parties. The examination therefore focuses on determining the legal status of an existing marital relationship rather than assessing whether the marriage should have been permitted in the first place.

This difference in focus demonstrates that marriage dispensation and *isbat nikah* operate at distinct stages of the legal process. Marriage dispensation serves a preventive function by providing judicial authorization for a marriage involving a prospective spouse who has not reached the statutory minimum age.¹⁶ *Isbat nikah*, meanwhile, provides a means of obtaining judicial confirmation of a marriage that has already been solemnized in accordance with Islamic law but has not been registered with the state. The two mechanisms are therefore not interchangeable; they address different legal circumstances within Indonesia's marriage law system.

The findings also indicate that decisions to proceed with religious marriages are influenced by several interrelated factors. In addition to premarital pregnancy, concerns about family honour, social pressure, cultural practices, and religious understandings may encourage families to proceed with a marriage even when the statutory minimum age requirements have not been met. In this context, regulatory reform has not been fully accompanied by changes in the community's legal culture.¹⁷ When marriage dispensation is unavailable or has not been sought, some families turn to another legal mechanism by filing an *isbat nikah* application after the marriage has taken place.

This phenomenon can be examined through Lawrence M. Friedman's legal system theory, which explains legal effectiveness through the interaction of legal substance, legal structure, and legal culture.¹⁸ In terms of legal substance, Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019

¹⁶ Rudi Mayandra, "Regulation of Marriage Dispensation Against Marriage of Children Under The Age of Post Decision of The Constitutional Court Number 22 / Puu-Xv / 2017," *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 2 (2020): 187–200, <https://doi.org/10.18592/sjhp.v20i2.4160>; Salma Mursyid and Nasruddin Yusuf, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 975–96, <https://doi.org/10.22373/sjhk.v6i2.12439>.

¹⁷ Ana Fauzia, Fathul Hamdani, and Deva Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law," *Progressive Law Review* 3, no. 1 (2021): 12–25, <https://doi.org/10.36448/plr.v3i01.46>.

¹⁸ Henny Saida Flora, Mac Thi Hoai Thuong, and Ratna Deliana Erawati, "The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1

demonstrate a strengthened regulatory commitment to child protection. Regarding legal structure, the Sungguminasa Religious Court examines marriage dispensation applications in accordance with the applicable guidelines, including more rigorous scrutiny of the grounds for the application and the child's circumstances. At the level of legal culture, however, the findings suggest that some families continue to regard marriage as a solution to social problems confronting their households. Regulatory changes have therefore not fully displaced established social practices.

Table 1.

Analysis of Legal Implementation through Lawrence M. Friedman's Legal System Theory

Component of the Legal System	Research Findings	Implications
Legal substance	Minimum marriage age requirements were strengthened through Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019.	The preventive function of child protection is reinforced through a stricter regulatory framework.
Legal structure	Judges apply more rigorous scrutiny to marriage dispensation applications and examine <i>isbat nikah</i> applications according to their distinct legal subject matter.	Each legal mechanism is implemented within its respective judicial function and scope of authority.
Legal culture	Some families continue to solemnize marriages in accordance with religious requirements before seeking <i>isbat nikah</i> .	Regulatory reform has not fully transformed community attitudes and legal behaviour concerning minimum marriage age requirements.

This analysis suggests that the principal challenge in implementing minimum marriage age restrictions lies not necessarily in the ambiguity of the legal provisions, but in the interaction between legal norms and community legal culture. The regulations establish clear minimum age requirements and procedures for marriage dispensation, while the courts exercise their authority within the applicable legal framework.¹⁹ Nevertheless, a gap remains between the legislature's child protection objectives and the ways in which some communities respond to these policies. This gap helps explain the continued use of *isbat nikah* to address the legal consequences of marriages that have already taken place.

(2023): 113–25, <https://doi.org/10.29303/ius.v11i1.1169>; Lawrence M. Friedman and Harry N. Scheiber, "Legal Cultures and the Legal Profession," *Bulletin of the American Academy of Arts and Sciences* 48, no. 5 (1995): 6–13, <https://doi.org/10.2307/3824301>.

¹⁹ Kholifatun Nur Mustofa, "Adjudicating Underage Marriages At Religious Courts: A Progressive Collaboration between Judiciary and Health Authority," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 342–63, <https://doi.org/10.14421/ahwal.2023.16208>; Afif Muamar et al., "Marriage Dispensation: An Analysis from the Perspective of Islamic Marriage Law and the Sustainable Development Goals," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 58, no. 1 (2024): 119–40, <https://doi.org/10.14421/ajish.v58i1.1327>.

The findings also indicate that the filing of *isbat nikah* applications should not automatically be interpreted as evidence of a regulatory vacuum or misuse of legal mechanisms. Rather, the phenomenon reflects the complex interaction between child protection objectives, the community's need for legal certainty, and the role of religious courts in addressing existing family relationships. The effectiveness of marriage law reform should therefore not be assessed solely by the number of marriage dispensation applications granted or rejected. It should also be evaluated in terms of the legal system's capacity to address the consequences that arise when the policy is implemented in practice.

These findings provide a basis for understanding why *isbat nikah* proceedings following the rejection of marriage dispensation applications do not necessarily establish a direct legal contradiction between the two mechanisms. Instead, they reveal the challenges religious courts face when applying preventive marriage regulations to circumstances in which a marital relationship has already been established. The following discussion examines how *isbat nikah* operates as an adaptive mechanism in judicial practice, particularly in addressing legal certainty while maintaining the commitment to child protection.

The Adaptive Implementation of *Isbat Nikah* in Ensuring Legal Certainty and Child Protection

The findings indicate that the practice of *isbat nikah* at the Sungguminasa Religious Court can no longer be understood solely as an administrative mechanism for registering marriages that are valid under Islamic law. In judicial practice, it also serves a broader function in addressing the legal consequences arising from marital relationships that have already been established.²⁰ This development does not alter the normative purpose of *isbat nikah* as provided for in the Compilation of Islamic Law.²¹ Rather, it reflects the adaptation of legal implementation to the social realities encountered by the court. This study uses the concept of adaptive implementation of marriage law to explain how an existing legal mechanism may address a broader range of practical circumstances without departing from the framework of positive law.

From a normative perspective, *isbat nikah* provides a means of obtaining state recognition for a marriage that fulfils the essential requirements of Islamic law but has not been registered by the competent authority.²² Such recognition is important because marriage registration underpins legal

²⁰ Denys Sydorenko et al., "Legal Framework and Practical Dimensions of Marital and Family Rights: A Doctrinal and Comparative Legal Review," *Premier Journal of Science* 14 (October 15, 2025): 100127, <https://doi.org/10.70389/PJS.100127>.

²¹ Vito Dasrianto and Elva Mahmudi, "Marriage Registration and Judicial Legal Protection in Indonesia: Navigating Normative Tensions in Isbat Nikah," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (2025): 744–60, <https://doi.org/10.32505/qadha.v12i2.12418>.

²² Abd. Basit Misbachul Fitri and Ahmed Hassan, "Determination of Child Origins in a Siri Marriage: Perspectives of Islamic Law and Positive Law in Indonesia," *VRISPRAAK: International Journal of Law* 9, no. 1 (2025): 1–12, <https://doi.org/10.59689/vris.v9i1.1153>; Saifullah Alfirdaus, Mufid Arsyad, and Haris Santoso, "The Practice of Isbat

relations concerning marital status, children's legal status, inheritance, maintenance, guardianship, and other civil rights.²³ The primary function of *isbat nikah* is therefore to connect the religious validity of marriage with legal certainty within the national legal system.

The findings, however, reveal that *isbat nikah* cases at the Sungguminasa Religious Court arise in more complex social circumstances. Interviews with judges indicate that applications are submitted not only by couples whose marriages were registered late for administrative reasons, but also by couples who solemnized their marriages in accordance with Islamic law after their applications for marriage dispensation had been rejected or without having applied for dispensation beforehand. In such circumstances, judges are no longer considering whether permission should be granted for a future marriage. Instead, they must address the legal status of an existing marital relationship and its consequences for the parties, including the woman and any children born of the marriage.

These circumstances suggest that the practical application of *isbat nikah* has expanded in response to emerging social needs. This expansion does not necessarily change the legal norms governing *isbat nikah*; rather, it concerns the contexts in which those norms are applied.²⁴ The distinction is important because changes in judicial practice do not automatically constitute changes in the law itself. The court continues to apply the relevant legal provisions, but the circumstances presented before it differ, requiring the legal consequences of an existing marital relationship to be addressed within the applicable framework.

This phenomenon demonstrates that the implementation of law does not always follow the linear course envisaged by the legislature. Restrictions on the minimum marriage age strengthen the preventive function of marriage law through the marriage dispensation mechanism.²⁵ At the same time, however, marriages conducted outside that mechanism may give rise to legal consequences that require resolution. In such circumstances, *isbat nikah* becomes relevant to determining the legal status of an existing marital relationship and addressing the rights and obligations arising from it. The court is no longer dealing merely with the possibility of a marriage taking place, but with an established relationship

Nikah and Its Implications for Family Status in the Study of Maslahah Mursalah,” *Al-Rasikh: Jurnal Hukum Islam* 14, no. 2 (2025): 235–53, <https://doi.org/10.38073/rasikh.2814>.

²³ Romesh Silva, Tawheeda Wahabzada, and Priscilla Idele, “Advancing Legal Identity, Gender Equity and Women’s Empowerment via Inclusive Civil Registration and Vital Statistics Systems,” *Statistical Journal of the LAOS* 41, no. 3 (2025): 613–32, <https://doi.org/10.1177/18747655251368376>; Fatima Osman, “Family Formations in Contemporary South Africa: Does South African Marriage Law Protect Lived Realities?,” *International Journal of Law, Policy and the Family* 34, no. 3 (January 25, 2021): 272–88, <https://doi.org/10.1093/lawfam/ebaa009>.

²⁴ Baihaqi Baihaqi et al., “Legal Non-Compliance and Kiai Hegemony: The Practice of Unregistered Marriages among the Madurese Muslim Community of Kubu Raya,” *Journal of Islamic Law* 5, no. 2 (2024): 242–68, <https://doi.org/10.24260/jil.v5i2.2819>.

²⁵ Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, “Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (2023): 313–30, <https://doi.org/10.24090/volksgeist.v6i2.9844>.

whose legal consequences, particularly those affecting women and children, cannot simply be disregarded.

Eugen Ehrlich's concept of *living law* helps explain this dynamic. Ehrlich emphasizes the importance of social practices and relationships in understanding how law operates in everyday life.²⁶ In the context of this study, the continuation of religious marriages despite statutory age restrictions illustrates that changes in formal legal norms do not necessarily transform deeply rooted social practices. Religious courts consequently face the challenge of applying formal legal provisions to the social realities brought before them while maintaining legal certainty and protecting vulnerable parties. This perspective helps explain the relationship between formal regulation and social practice without assuming that established social behaviour automatically overrides statutory requirements.

From the perspective of *maqāṣid al-sharī'ah*, these circumstances also raise questions about balancing different objectives of Islamic law.²⁷ Judicial recognition of an existing marriage may help protect lineage and family relationships (*ḥifẓ al-nasl*) by clarifying children's legal status and kinship relations. It may also support the protection of property (*ḥifẓ al-māl*) by establishing greater legal certainty concerning inheritance, maintenance, and related civil rights. At the same time, the protection of children remains a central objective of minimum marriage age restrictions, with marriage dispensation serving as a preventive mechanism. These considerations must be assessed within the applicable legal framework; the protection of rights arising from an existing relationship does not, by itself, remove the statutory requirements governing marriage.

The findings contribute to existing discussions of *isbat nikah*, which have often emphasized its role in obtaining judicial recognition of unregistered marriages. They show that, in religious court practice, the mechanism also raises broader questions about how the legal system responds when preventive marriage regulations intersect with family relationships that have already been established. The concept of adaptive implementation developed in this study helps explain this interaction. It highlights that the effectiveness of Islamic family law depends not only on the substance of legal regulations but also on how judicial institutions apply them to changing social circumstances while maintaining the objectives of child protection.

Taken together, these findings suggest that the adaptive implementation of marriage law should not be understood as a compromise that legitimizes violations of statutory requirements. Rather, it concerns the legal handling of consequences arising from existing marital relationships within the

²⁶ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge, Massachusetts: Harvard University Press, 1936); Ikhsan Ikhsan, Rahayu Rahayu, and RB Sularto, "Bridging Law and Society: Reorienting Sociological Jurisprudence for Progressive Legal Reform in Indonesia," *Jurnal Hukum Progresif* 13, no. 2 (2025): 313–50, <https://doi.org/10.14710/jhp.13.2.313-350>.

²⁷ Agus Sunaryo and Ahmad Hadidul Fahmi, "Evaluation of the Maqāṣid Al-Sharī'ah Liberalization: An Examination of the Notion of 'Prioritizing Public Interest over Textual Evidence,'" *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 1–16, <https://doi.org/10.24090/mnh.v18i1.9886>.

boundaries of applicable law. This understanding provides the basis for the next discussion, which examines how judges exercise judicial discretion in balancing legal certainty, *maṣlaḥah*, and child protection when adjudicating *isbat nikah* applications.

Judicial Discretion in Balancing Legal Certainty, *Maṣlaḥah*, and Child Protection

The findings indicate that the central issue in examining *isbat nikah* applications following the rejection of marriage dispensation is not simply whether the marriage is valid under Islamic law, but how judges address the legal consequences of an existing family relationship. In this context, judges at the Sungguminasa Religious Court must consider not only the applicable legal provisions but also the consequences that have arisen from the marriage, including the wife's legal status, the child's legal status, maintenance obligations, inheritance rights, and other civil matters. Judicial decisions in such cases therefore involve more than the textual application of positive law; they require legal reasoning that takes into account the relationship between legal certainty, justice, and the practical consequences of a decision.

Interviews with judges indicate that each *isbat nikah* application is examined individually, based on the facts established during the proceedings, the available evidence, the parties' statements, and the legal consequences that have already arisen. The previous rejection of a marriage dispensation application is not treated as an automatic ground for either granting or rejecting an *isbat nikah* application. Instead, judges distinguish between the legal questions addressed by the two mechanisms. Marriage dispensation concerns judicial authorization before a marriage takes place, whereas *isbat nikah* concerns the legal recognition of a marriage that has already occurred. This distinction provides the basis for judicial reasoning and helps ensure that decisions remain within the authority conferred by applicable legislation.

This approach demonstrates that judicial discretion does not give judges unrestricted freedom to disregard legal requirements.²⁸ Rather, it operates within the scope permitted by the legal system, allowing judges to determine an appropriate response to the specific circumstances established in court.²⁹ In the cases examined, discretion becomes relevant when judges must consider competing legal interests: the state's responsibility to prevent child marriage and the need to protect women and children who are already affected by an existing family relationship.

The findings further indicate that judges must address two distinct but interrelated dimensions of legal protection. On the one hand, minimum marriage age restrictions represent a state policy aimed at preventing child marriage through a more selective marriage dispensation process. On the other hand,

²⁸ Kelly A McLaughlin, "Balancing Discretion and Fairness: The Potential Pitfalls of Allowing Judges Too Much Discretion in Sentencing," *Mo. L. Rev.* 88 (2023): 1211, <https://scholarship.law.missouri.edu/mlr/vol88/iss4/10>.

²⁹ Pawel Marcin Nowotko, "AI in Judicial Application of Law and the Right to a Court," *Procedia Computer Science* 192 (2021): 2220–28, <https://doi.org/10.1016/j.procs.2021.08.235>.

when a marriage has already been solemnized in accordance with Islamic law and a family relationship has been established, the state must also address the legal consequences arising from that relationship. At this stage, child protection is no longer concerned solely with preventing the marriage from taking place; it also involves safeguarding the child's legal status, identity, and civil rights. The form of protection required therefore depends on the legal circumstances before the court, while remaining subject to the applicable statutory framework.

Conclusion

This study demonstrates that the practice of *isbat nikah* following the rejection of marriage dispensation applications at the Sungguminasa Religious Court does not indicate a normative vacuum or a legal loophole in Indonesia's marriage law system. Rather, this development reflects the distinct functions of marriage dispensation as a preventive mechanism and *isbat nikah* as a remedial mechanism, each operating at a different stage of the legal process. Marriage dispensation serves to prevent marriages that do not meet the statutory minimum age requirement, whereas *isbat nikah* seeks to establish legal certainty for marriages solemnized in accordance with Islamic law but not yet formally recognized through state registration. The relationship between these two mechanisms is therefore not contradictory; instead, they serve complementary functions within Indonesia's Islamic family law system.

The study also finds that the implementation of *isbat nikah* has developed adaptively in response to the social realities encountered by religious courts. This adaptation does not entail a change in the substance of legal norms but reflects an expanded practical role in addressing the legal consequences of marriages that have already taken place. In practice, judges consider not only the administrative aspects of marriage registration but also the protection of women's and children's civil rights, the legal certainty of family status, and broader considerations of *maṣlahah* (public welfare). These findings underscore that the effectiveness of Islamic family law depends not only on the quality of its regulatory framework but also on the capacity of the judicial system to reconcile the normative objectives of the law with evolving social realities.

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