

Isbat Nikah as a Legal Alternative for Underage Marriages in Indonesia: A Maqāṣid al-Sharī'ah Analysis of Judicial Practice at the Ujung Tanjung Religious Court

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Abstract

This study examines isbat nikah (judicial legalization of marriage) as a legal mechanism for addressing unregistered underage marriages in Indonesia, focusing on the Ujung Tanjung Religious Court, Rokan Hilir Regency, Riau Province. Existing studies have largely discussed child marriage and marriage legalization separately, while limited attention has been given to how isbat nikah functions as a judicial response to underage marriages within the framework of maqāṣid al-sharī'ah. This study fills that gap by analyzing the legal practice, regulatory basis, and Islamic legal implications of isbat nikah in cases involving underage marriages. Employing a qualitative empirical-juridical approach, data were collected through court observations, interviews with judges and court officials, and document analysis. The findings reveal that isbat nikah serves as an important legal instrument for securing the civil status and legal protection of spouses and children from unregistered underage marriages. Judicial considerations are primarily grounded in the substantive validity of marriage, child welfare, and the principle of *maslahah mursalah* as reflected in Article 7 of the Compilation of Islamic Law. Furthermore, analysis through the lens of maqāṣid al-sharī'ah demonstrates that isbat nikah contributes to the protection of religion, life, intellect, lineage, and property. The study contributes to the broader discourse on Islamic family law by showing how judicial legalization can reconcile legal certainty, child protection, and Islamic legal objectives. Nevertheless, stronger preventive policies remain necessary to reduce the incidence and social normalization of child marriage in Indonesia.

1. Introduction

Marriage occupies a central position in Islamic teachings as a sacred institution intended to establish a family characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion) (Maulidi, 2022). Beyond its religious significance, marriage also serves important social and legal functions, including the protection of spouses' rights, the legitimacy of offspring, and the preservation of social order. In Indonesia, marriage is regulated through Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, which establishes marriage as both a religious and legal institution (Afrilian et al., 2024). Consequently, the validity of marriage is not solely determined by compliance with religious requirements but is also closely linked to state registration procedures that ensure legal certainty and access to civil rights (Adriyeni et al., 2024).

Marriage registration constitutes a fundamental element of Indonesia's family law system. Through registration, married couples obtain official recognition from the state and gain access to various legal protections, including inheritance rights, child birth registration, marital property claims, and social welfare services (Alfitri et al., 2024). Nevertheless, despite the existence of a comprehensive legal framework, unregistered marriages (*nikah siri*) remain widespread across various regions of Indonesia. This phenomenon is particularly prevalent among underage marriages, where couples frequently circumvent statutory age requirements and formal registration procedures (Armalina & Hidayah, 2022). As a result, many marriages are conducted according to religious norms but remain legally undocumented, creating significant challenges for the protection of women and children (Asmuni & Adikara, 2024).

One legal mechanism developed to address this problem is isbat nikah. Etymologically, the term derives from the Arabic words isbat (إثبات), meaning affirmation, establishment, or validation, and nikah, meaning marriage. In the Indonesian legal system, isbat nikah refers to a judicial process through which the Religious Court validates a marriage that was previously conducted according to Islamic law but was not officially registered with the Office of Religious Affairs (Kantor Urusan Agama) (Auda, 2007). Once granted, the court's determination serves as the legal basis for obtaining a marriage certificate and securing the civil status of spouses and children. Consequently, isbat nikah functions not only as a procedural remedy for administrative deficiencies but also as an instrument of legal protection for vulnerable family members (Aziz & Islamy, 2022).

The significance of isbat nikah has increased considerably in recent years. Data from the Directorate General of Religious Courts indicate that applications for isbat nikah remain consistently high throughout Indonesia (Azni & al., 2023). Simultaneously, child marriage continues to pose a serious legal and social challenge despite legislative reforms that raised the minimum marriage age to nineteen years for both men and women under Law Number 16 of 2019. Although the number of marriage dispensation applications has fluctuated following the enactment of the new law and Supreme Court Regulation (PERMA) Number 5 of 2019, the persistence of unregistered underage marriages demonstrates that legal reform alone has not eliminated the practice. Instead, many underage marriages continue to occur outside formal legal procedures and later seek judicial recognition through isbat nikah (Bachtiar & Daim, 2023). This phenomenon reflects an ongoing tension between state efforts to prevent child marriage and social realities within local communities.

Scholarly discussions regarding isbat nikah have expanded significantly over the past decade. Previous studies have primarily examined isbat nikah from three perspectives. First, a number of studies focus on its procedural and administrative functions in providing legal certainty for unregistered marriages and protecting civil rights (Bate et al., 2023). Second, research on child marriage has generally concentrated on its socio-economic causes, legal consequences, and implications for women's and children's welfare (Billah, 2024). Third, several scholars have employed *maqāṣid al-sharī'ah* to evaluate contemporary family law reforms, particularly concerning marriage age regulations and child protection (Budiyanto, 2023). While these studies provide valuable insights, they tend to examine isbat nikah, child marriage, and *maqāṣid al-sharī'ah* as separate issues.

A significant gap remains in understanding how Religious Courts utilize isbat nikah as a judicial response to underage marriages and whether such judicial practices align with the objectives of Islamic law. Existing literature has rarely combined empirical investigation of court practices with normative analysis based on *maqāṣid al-sharī'ah*. Moreover, limited attention has been given to examining how judges reconcile the competing demands of legal certainty, child protection, social realities, and Islamic legal principles when deciding isbat nikah cases involving underage marriages (Burgess et al., 2023). As a result, the broader implications of isbat nikah for contemporary Islamic family law and child marriage prevention remain insufficiently explored (Darmawan et al., 2022).

This study seeks to address that gap by examining isbat nikah as a legal alternative for unregistered underage marriages through an empirical case study of the Ujung Tanjung Religious Court in Rokan Hilir Regency, Riau Province. Unlike previous studies

that focus primarily on legal procedures or social impacts, this research integrates empirical court-level data, analysis of Indonesia's legal framework, comparative perspectives on marriage age regulations in Muslim-majority countries, and a systematic evaluation based on *maqāṣid al-sharī'ah*. The study therefore contributes a more comprehensive understanding of how judicial legalization functions within the intersection of state law, Islamic law, and child protection policies.

The theoretical framework of this study is grounded in *maqāṣid al-sharī'ah*, particularly the five essential objectives (*al-ḍarūriyyāt al-khams*): the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). This framework is employed to assess whether the judicial validation of underage marriages through *isbat nikah* promotes public welfare (*maṣlaḥah*) or potentially undermines broader objectives related to child protection and social justice.

Accordingly, this study addresses three principal research questions: (1) How does *isbat nikah* function as a legal alternative for underage marriages in Indonesia? (2) What legal norms and procedural mechanisms govern the implementation of *isbat nikah* in cases involving underage marriages? and (3) How can the practice of *isbat nikah* be evaluated through the perspective of Islamic law and *maqāṣid al-sharī'ah*? By answering these questions, the study aims to contribute to contemporary debates on Islamic family law reform, judicial practice, and strategies for preventing child marriage in Indonesia.

2. Research Method

This study employs a qualitative research design using an empirical-juridical approach. The empirical dimension focuses on examining how *isbat nikah* is implemented in judicial practice, while the juridical dimension analyses the legal norms governing

marriage registration, underage marriage, and marriage legalization within the Indonesian legal system. As a form of field research (penelitian lapangan), the study combines primary empirical data obtained directly from legal actors and court practices with normative analysis of relevant statutory and Islamic legal sources.

The research was conducted at the Ujung Tanjung Religious Court (Pengadilan Agama Ujung Tanjung), located in Rokan Hilir Regency, Riau Province, Indonesia. The court was selected purposively due to its experience in handling isbat nikah petitions, including cases involving marriages conducted below the statutory minimum age. This institutional setting provides a relevant empirical context for examining the interaction between judicial practice, family law regulation, and child marriage issues.

Data Sources and Participant Selection

The study utilized both primary and secondary data sources. Primary data were obtained through interviews, observations, and document analysis. Interview participants were selected using purposive sampling based on their direct involvement and expertise in isbat nikah cases. The participants consisted of judges responsible for adjudicating isbat nikah petitions, court registrars (panitera), and petitioners whose applications involved the legalization of unregistered marriages. The selection criteria included: (1) direct experience in handling or participating in isbat nikah proceedings; (2) familiarity with the legal and procedural aspects of marriage legalization; and (3) willingness to participate voluntarily in the research process.

A total of interviews were conducted with key informants representing judicial, administrative, and litigant perspectives. Semi-structured interview guides were employed to ensure consistency while allowing participants to elaborate on their

experiences, legal reasoning, and perceptions regarding the role of isbat nikah in cases involving underage marriages. Interviews focused on judicial considerations, procedural requirements, legal challenges, and the broader implications of marriage legalization for child protection and family welfare.

Secondary data consisted of legal and documentary materials relevant to the research topic. These included Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019 concerning Amendments to the Marriage Law, the Compilation of Islamic Law (Kompilasi Hukum Islam), Supreme Court Regulations (Peraturan Mahkamah Agung), court decisions, official judicial statistics, and scholarly literature on Islamic family law, child marriage, and *maqāṣid al-sharīʿah*.

Data Collection Procedures

Data collection was conducted over a period of several months through three complementary techniques: interviews, observation, and document review. First, semi-structured interviews were carried out with selected participants to obtain detailed information regarding the practical implementation of isbat nikah and the judicial considerations underlying court decisions. Second, non-participant observation was undertaken within the court environment to examine procedural practices, interactions among court actors, and the administrative handling of isbat nikah petitions. Third, documentary analysis was conducted on relevant case files, judicial determinations, legislation, and institutional reports to provide contextual and legal understanding of the phenomenon under investigation. The use of multiple data collection methods enabled the researcher to capture both normative and practical dimensions of isbat nikah while minimizing reliance on a single source of information.

Data Validation and Trustworthiness

To enhance the credibility and reliability of the findings, the study employed source triangulation, method triangulation, and document verification. Source triangulation was achieved by comparing information obtained from judges, court registrars, and petitioners. Method triangulation involved cross-checking findings derived from interviews, observations, and documentary evidence. In addition, documentary materials such as court decisions and legal regulations were used to verify factual statements and procedural descriptions provided by participants.

Member checking was also conducted where necessary by confirming key interpretations with selected informants to ensure the accuracy of the information and to reduce potential researcher bias. These procedures strengthened the trustworthiness and consistency of the research findings.

Data Analysis

The collected data were analysed using an interactive qualitative analysis model consisting of data reduction, data display, and conclusion drawing. Interview transcripts, observation notes, and documentary materials were first organized and coded according to emerging themes relevant to the research objectives. The coding process focused on categories such as the legal function of *isbat nikah*, judicial reasoning, child marriage practices, legal protection, and public welfare considerations.

Subsequently, thematic categorization was conducted to identify patterns, similarities, and differences across data sources. The findings were then interpreted through both normative and empirical lenses. Normative analysis examined the consistency of judicial practice with Indonesian family law regulations, while interpretive

analysis employed the concepts of *maslahah mursalah* and *maqāṣid al-sharī‘ah* to evaluate the broader implications of *isbat nikah* for child protection, legal certainty, and social welfare. This analytical framework enabled the study to assess not only how *isbat nikah* operates in practice but also whether its implementation aligns with the objectives of Islamic law.

Ethical Considerations

Ethical principles were observed throughout the research process. Participation in interviews was voluntary, and informed consent was obtained from all participants prior to data collection. Participants were informed about the objectives of the study, the use of research data, and their right to withdraw from the study at any stage. To protect confidentiality and privacy, personal identifiers were removed from interview transcripts and research reports. Furthermore, access to court documents was conducted in accordance with applicable judicial regulations, ensuring that sensitive information related to litigants and judicial proceedings remained protected.

3. Results and Discussion

Definition, Legal Basis, and Contemporary Function of Isbat Nikah

Isbat nikah constitutes a legal mechanism within the jurisdiction of the Religious Courts that enables the formal recognition of marriages previously conducted according to Islamic law but lacking official state registration (Djamil, 2022). Procedurally, *isbat nikah* falls under *jurisdictio voluntaria* (voluntary jurisdiction), as it generally involves no opposing parties and seeks judicial confirmation rather than adjudication of a dispute (Dupret et al., 2022). Article 7 paragraph (2) of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) provides that where a marriage cannot be proven by a marriage

certificate, the parties may submit a petition for isbat nikah to the Religious Court. Article 7 paragraph (3) further limits its application to specific circumstances, namely: (i) settlement of divorce proceedings involving an unregistered marriage; (ii) loss of a marriage certificate; (iii) doubts concerning the validity of a marriage requirement; (iv) marriages conducted before the enactment of Law Number 1 of 1974; and (v) marriages between parties who faced no legal impediment under the Marriage Law.

From the perspective of Islamic legal theory, the legitimacy of isbat nikah is closely associated with the doctrine of *maslahah mursalah*, namely the consideration of public benefit in situations not explicitly regulated by primary Islamic legal sources (Fadel, 2022). Marriage registration itself is not specifically mandated in classical Islamic jurisprudence; however, contemporary scholars argue that registration serves broader objectives of Islamic law (*maqāṣid al-sharīʿah*), particularly the protection of lineage (*hifẓ al-nasl*), legal rights, and social order (Fadhli & Kahfi, 2023). In this regard, isbat nikah functions as a corrective legal instrument designed to prevent harm (*mafsadah*) arising from undocumented marriages (Fajriyyah & Alfitri, 2022).

The significance of this mechanism is reinforced by the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI) Fatwa Number 10 of 2008 concerning *nikah siri*. The fatwa affirms that a marriage fulfilling the pillars and conditions of Islamic law remains religiously valid, yet emphasises the necessity of official registration to safeguard the rights of spouses and children (Fakhria et al., 2024). Consequently, isbat nikah operates as a bridge between religious validity and state legality, ensuring that marriages recognised within the religious sphere also obtain legal recognition within the national legal system (Fan & Koski, 2022).

However, contemporary developments indicate that the function of isbat nikah has evolved beyond its original remedial purpose. In practice, it increasingly serves as a legal instrument through which marriages that initially failed to comply with statutory requirements can subsequently acquire legal status (Fauzi, 2023). This evolution raises important questions regarding the balance between substantive justice, legal certainty, and regulatory compliance, particularly in cases involving underage marriage.

Isbat Nikah as a Legal Alternative for Underage Marriages: Between Legal Protection and Regulatory Circumvention

Field research at the Ujung Tanjung Religious Court reveals that a considerable number of isbat nikah petitions involve marriages conducted when one or both parties were below the minimum legal age for marriage (Febrianty et al., 2023). Most petitions are submitted several years after the marriage has taken place, usually when legal documentation becomes necessary for obtaining birth certificates, family cards, inheritance rights, educational registration, healthcare access, or other civil administrative services (Febrianti & Hidayat, 2024).

Judicial examination in these cases demonstrates a clear preference for substantive validity over formal legality. Judges primarily assess whether the marriage fulfilled the essential requirements of Islamic law, namely the existence of mutual consent, a lawful guardian (wali), two competent witnesses, and a valid marriage contract (ijab qabul) (Ferguson et al., 2024). Where these elements are proven, courts frequently grant legal recognition through isbat nikah despite the fact that the marriage originally contravened statutory age requirements (Fitra et al., 2025).

This judicial approach reflects a broader orientation toward substantive justice (al-

'adalah al-jawhariyyah). From the judges' perspective, refusal to recognise an existing marital relationship may generate greater harm than recognition itself (Brides, 2024). Denying isbat nikah may leave spouses without legal status and deprive children of access to important civil rights. In this context, judges invoke principles of *maslahah mursalah* and the *maqāsid* objective of protecting lineage (*hifz al-nasl*) to justify legal recognition (Grijns & Horii, 2018).

Nevertheless, the findings also reveal a significant normative tension. While granting isbat nikah protects existing families, it may simultaneously weaken the deterrent function of child-marriage regulations. Law Number 16 of 2019 was enacted with the explicit objective of reducing child marriage and strengthening child protection. Yet when underage marriages that bypass the statutory dispensation procedure can later be legitimised through isbat nikah, a perception may emerge that legal requirements can be postponed rather than obeyed (Hasanah et al., 2023).

This creates what may be described as a "legal paradox." On one hand, denying isbat nikah could undermine children's rights and expose families to prolonged legal uncertainty. On the other hand, routinely granting isbat nikah may unintentionally incentivise non-compliance with marriage-age regulations (Hayati et al., 2023). Families may perceive religious marriage followed by later judicial confirmation as a more practical pathway than pursuing a formal marriage dispensation before the marriage takes place (Hayatudin, 2023).

From a policy perspective, this finding suggests that isbat nikah occupies a dual and sometimes contradictory position within Indonesia's legal framework. It functions both as a mechanism of legal protection and as a potential avenue through which child-marriage

prevention policies can be indirectly circumvented (Hidayat et al., 2023). This tension reflects a broader challenge faced by legal systems attempting simultaneously to uphold existing social realities and promote normative social change (Ilhami et al., 2023).

The findings therefore support the argument that judicial discretion in *isbat nikah* cases must be exercised carefully. Courts should not merely verify the fulfilment of religious requirements but should also evaluate the broader circumstances surrounding the marriage, including the reasons for non-registration, the age of the parties at the time of marriage, and the potential implications for child protection policies. Such an approach would enable courts to balance individual welfare with broader regulatory objectives.

From the perspective of *maqāṣid al-sharī'ah*, this balancing exercise involves reconciling multiple objectives that may occasionally conflict. While legal recognition protects lineage and family stability, preventing child marriage serves the equally important objectives of protecting life (*hifz al-nafs*), intellect (*hifz al-'aql*), and future welfare (Ingratubun & Hamid, 2024). Consequently, judges are required not only to consider immediate benefits but also to assess long-term social consequences.

Minimum Marriage Age in Indonesia: Comparative and Theoretical Perspectives

The enactment of Law Number 16 of 2019 marked a significant shift in Indonesian marriage law by raising the minimum marriage age for women from 16 to 19 years and equalising it with that of men. The amendment reflects growing recognition of the social, educational, health, and economic risks associated with child marriage (Julianto et al., 2025). Furthermore, the law restricts marriage dispensation to exceptional situations and requires judges to verify the existence of urgent circumstances supported by sufficient evidence (Kafidhoh et al., 2024).

However, empirical evidence demonstrates that legal reform alone has not eliminated child marriage. Instead, many Religious Courts have experienced increased applications for marriage dispensation following the amendment (Kasim, 2022). This trend illustrates the complex relationship between legal norms and social realities. While legislation seeks to transform behaviour, cultural traditions, economic pressures, family expectations, and religious interpretations continue to influence marriage practices in many communities.

A comparative examination of Muslim-majority countries reveals that Indonesia's minimum marriage age is relatively progressive. Tunisia requires both men and women to be at least 18 years old, reflecting a strong state-centred approach to family regulation. Turkey similarly adopts higher age thresholds and limits judicial exceptions (Kurniawan et al., 2023). In contrast, countries such as Jordan and Iran continue to permit marriage at younger ages under certain circumstances. These variations demonstrate that contemporary Muslim legal systems have adopted diverse approaches despite sharing common Islamic legal foundations (Kusmayanti et al., 2024).

The comparative evidence is particularly important because it challenges the assumption that Islamic law necessarily supports early marriage. In reality, most modern Muslim-majority states have reinterpreted classical legal doctrines in light of contemporary social needs and child-protection concerns (Lahilote et al., 2022). The principle of *maslahah* has often been used to justify higher minimum marriage ages, suggesting that legal reform can be fully compatible with Islamic jurisprudence (Marzuki, 2024).

Classical jurists generally associated marriage eligibility with puberty (*bulugh*)

rather than a fixed numerical age. However, modern states increasingly recognise that biological maturity alone does not guarantee psychological, emotional, educational, or economic readiness for marriage (Mera, 2024). Contemporary legal reforms therefore reflect an expanded understanding of maturity that extends beyond traditional physiological criteria.

The findings of this study indicate that Indonesia currently faces a transitional legal situation. On one side, the state seeks to reduce child marriage through stricter age requirements and dispensation procedures. On the other side, *isbat nikah* remains available as a mechanism to resolve the legal consequences of marriages already conducted outside the formal regulatory framework. This coexistence reflects an ongoing negotiation between legal idealism and social reality.

Viewed through a socio-legal lens, the persistence of underage marriage demonstrates that legal effectiveness depends not only on statutory reform but also on broader social transformation (Mohammed, 2024). Strengthening public legal awareness, expanding educational opportunities, addressing economic vulnerabilities, and improving access to reproductive health information are essential complements to legal regulation. Without such measures, courts will continue to confront petitions for *isbat nikah* arising from child marriages, thereby placing judges at the intersection of competing objectives: protecting vulnerable families while simultaneously supporting national efforts to eliminate child marriage (Muhasim et al., 2023).

Accordingly, the findings suggest that *isbat nikah* should not be understood merely as a procedural mechanism for legalisation. Rather, it represents a strategic site where Islamic legal principles, state law, judicial discretion, child protection policy, and social

realities intersect (Munawaroh et al., 2022). The challenge for future legal development is to ensure that isbat nikah remains a tool of legal protection without undermining the broader objective of preventing child marriage and promoting the welfare of children in accordance with both national law and the *maqāṣid al-sharī'ah* (Nugroho & Zulaecha, 2024).

Maqasid al-Shariah Analysis of Isbat Nikah for Underage Marriages: Between Child Protection and Legal Recognition

The findings of this study indicate that the practice of granting isbat nikah for underage marriages cannot be evaluated solely through a formal legal lens. Rather, it requires a multidimensional analysis that considers the higher objectives of Islamic law (*maqāṣid al-sharī'ah*), contemporary child protection norms, and the broader social consequences of judicial decisions. In this regard, Jasser Auda's systems approach to *maqāṣid al-sharī'ah* provides a particularly useful analytical framework because it emphasizes interconnectedness, multidimensionality, and the need to assess legal outcomes in their wider social context (Purwanti & Natalis, 2022). Auda argues that Islamic legal reasoning should not focus exclusively on the legality of individual acts but must also consider the systemic impacts of legal decisions on society (Rohman & al., 2025). Consequently, the assessment of isbat nikah for underage marriages must extend beyond the question of whether a marriage satisfies the formal pillars of Islamic law and examine whether judicial recognition advances or undermines the broader objectives of justice, welfare, and child protection (Rozikin & Fathonih, 2024).

Tajrid's genealogical analysis further demonstrates that *maqāṣid al-sharī'ah* is not a static doctrine but an evolving framework responsive to changing social realities (Safira &

al., 2025). This perspective is particularly relevant in contemporary Indonesia, where Religious Courts face the challenge of reconciling classical Islamic legal concepts with modern statutory commitments to children's rights and gender equality (Saujan et al., 2024).

1. Hifz al-Nasl (Preservation of Lineage)

Among the five principal objectives of Islamic law, *hifz al-nasl* is the maqāṣid principle most directly served by *isbat nikah*. Judicial recognition of an unregistered marriage establishes legal certainty regarding family relationships and ensures the protection of children's civil status. Through *isbat nikah*, children gain legal access to birth registration, inheritance rights, parental recognition, and various state administrative services.

From a practical perspective, this function is particularly important in cases involving underage marriages, where children are often the most vulnerable parties. Without judicial recognition, children may experience long-term disadvantages affecting their legal identity and social protection. Therefore, Religious Court judges frequently justify the granting of *isbat nikah* on the basis that refusing recognition would generate greater harm (*mafsadah*) than granting it.

However, a deeper maqāṣid analysis reveals a significant tension. While *isbat nikah* protects lineage after the marriage has occurred, it does not necessarily prevent the conditions that produced the child marriage in the first place. Consequently, the mechanism operates primarily as a curative rather than preventive instrument. This distinction is crucial because maqāṣid theory

does not merely seek to remedy harm but also to prevent its occurrence. Thus, the protection of lineage should not be interpreted narrowly as legitimizing existing marriages; it should also encompass efforts to ensure that children enter marriage only when they are physically, psychologically, and socially prepared.

2. Hifz al-Nafs (Preservation of Life and Well-Being)

The objective of hifz al-nafs requires legal systems to protect human life, health, and welfare. Extensive empirical research demonstrates that child marriage is associated with increased maternal mortality, reproductive health complications, domestic violence, and psychological vulnerability. Girls who marry before reaching adulthood face substantially higher risks during pregnancy and childbirth compared to adult women.

From this perspective, a critical tension emerges between the immediate and long-term implications of isbat nikah. On the one hand, granting isbat nikah may enhance the welfare of women and children already living within an established family unit by enabling access to healthcare, social assistance, and legal protection. On the other hand, if judicial recognition is perceived as easily obtainable, it may weaken the preventive function of child-marriage regulations and indirectly contribute to the persistence of practices that threaten children's wellbeing.

This finding highlights a fundamental dilemma within Islamic legal policy (*siyāṣah shar'īyyah*): whether greater public benefit is achieved through protecting existing families or through stricter enforcement of child-marriage prevention measures. The evidence suggests that both objectives are important

and should not be treated as mutually exclusive. Rather, courts must seek a balance that protects affected families while simultaneously reinforcing the state's commitment to preventing child marriage.

3. Hifz al-'Aql (Preservation of Intellect and Human Development)

The principle of hifz al-'aql extends beyond intellectual capacity in a narrow sense and encompasses educational attainment, personal development, and the ability of individuals to make informed life decisions. Numerous studies have demonstrated that child marriage frequently leads to school dropout, reduced educational opportunities, and restricted economic mobility, particularly for girls.

Viewed through this maqāṣid lens, the widespread occurrence of underage marriage represents a structural challenge to the protection of children's developmental rights. Although isbat nikah may provide legal certainty after marriage has occurred, it does not reverse the educational losses or developmental disadvantages often associated with early marriage.

This observation suggests that judicial reasoning should incorporate a broader understanding of hifz al-'aql. Rather than focusing exclusively on validating past marital relationships, courts should consider whether granting recognition contributes to or undermines long-term developmental outcomes for children. Such an approach aligns with Auda's argument that maqāṣid analysis must evaluate systemic consequences rather than isolated legal events.

4. Hifz al-Din (Preservation of Religion)

The objective of hifz al-din is frequently invoked to justify isbat nikah

because marriages conducted according to Islamic requirements are generally considered religiously valid even when they lack state registration. From this perspective, judicial recognition harmonizes religious legitimacy with state legality and prevents the emergence of conflicting normative systems.

Nevertheless, a critical reading of *hifz al-din* suggests that the preservation of religion should not be interpreted solely as validating religiously contracted marriages. Contemporary *maqāṣid* scholars increasingly argue that preserving religion also entails promoting justice, protecting vulnerable groups, and preventing social harm. Accordingly, child protection legislation can be understood not as a restriction on religious freedom but as an implementation of Islamic ethical commitments to welfare and human dignity.

This interpretation is consistent with developments in several Muslim-majority countries where state regulation of marriage age has been justified through *maqāṣid* reasoning. Countries such as Tunisia, Morocco, and Turkey have progressively strengthened child-protection measures while maintaining their commitment to Islamic legal values. These experiences demonstrate that preventing child marriage and preserving religious principles are not inherently contradictory objectives.

5. *Hifz al-Mal* (Preservation of Property and Economic Rights)

The objective of *hifz al-mal* is clearly advanced through *isbat nikah*. Judicial recognition enables spouses and children to assert inheritance rights, access marital property, obtain maintenance, and participate in various social protection programs. In the absence of legal recognition, family members often

encounter significant barriers in protecting their economic interests.

However, economic considerations also reveal a broader structural dimension of child marriage. In many cases, economic hardship functions as one of the primary drivers of early marriage. Families may perceive marriage as a strategy for reducing financial burdens or securing economic stability. Consequently, the legalisation of underage marriages through *isbat nikah* addresses the legal consequences of poverty-driven marriages without addressing their underlying causes.

This finding suggests that effective child-marriage prevention requires not only legal regulation but also broader socioeconomic interventions. Without addressing structural poverty, educational inequality, and limited social opportunities, legal remedies alone are unlikely to achieve sustainable reductions in child marriage rates.

Overall, the *maqāṣid* analysis demonstrates that *isbat nikah* embodies a complex legal and ethical paradox. The mechanism successfully protects children and families from the harmful consequences of legal invisibility, thereby fulfilling several objectives of Islamic law. At the same time, its routine application may inadvertently weaken the preventive goals of child-marriage legislation. Therefore, from a *maqāṣid* perspective, *isbat nikah* should be understood as an exceptional remedial mechanism rather than an alternative pathway for legitimising marriages that circumvent statutory requirements.

Procedures, Judicial Practice, and Reform Imperatives

Article 7 paragraph (4) of the Compilation of Islamic Law grants standing to submit

an isbat nikah petition to spouses, children, marriage guardians, and other parties possessing a legitimate legal interest. Procedurally, applicants must provide documentary and testimonial evidence demonstrating the existence of the marriage and its compliance with Islamic legal requirements. Following public announcement of the petition and examination of evidence, the Religious Court determines whether judicial confirmation should be granted (Suleman & al., 2023).

Field findings indicate that judges at the Ujung Tanjung Religious Court generally prioritize substantive validity over procedural irregularities. The existence of a valid Islamic marriage contract, witness testimony, and evidence of an established family relationship frequently become the central considerations in judicial decision-making (Susfita et al., 2023). This approach reflects a commitment to substantive justice and legal protection for vulnerable family members, particularly children.

However, the findings also reveal the need for a more critical assessment of the long-term policy implications of judicial practice. While the courts play an essential role in protecting civil rights, their decisions inevitably influence public perceptions of legal compliance. If isbat nikah is consistently perceived as a reliable post hoc solution for underage marriages, the deterrent effect of marriage-age regulations and marriage-dispensation procedures may be weakened (Paputungan & al., 2023).

This challenge is not unique to Indonesia. Comparative studies from several Muslim-majority jurisdictions demonstrate that family courts frequently face similar tensions between legal pragmatism and regulatory enforcement (Fathia & Septiandani, 2023). In Morocco, judicial discretion in family law has increasingly been accompanied by stricter scrutiny of underage marriage applications to align court practice with national child-

protection policies. Likewise, reforms in Tunisia and Turkey have progressively limited judicial exceptions to minimum marriage-age requirements in order to strengthen legal certainty and discourage child marriage.

These comparative experiences suggest that Indonesia may benefit from adopting a more integrated approach. Rather than viewing isbat nikah solely as a procedural mechanism, courts could employ a child-centred framework that explicitly evaluates the broader social implications of each case. Such an approach would require judges to consider not only the validity of the marriage under Islamic law but also factors relating to education, health, psychological wellbeing, and future developmental prospects (Yuda & Yufrizal, 2025).

Furthermore, the findings support calls for a stronger gatekeeping role by Religious Courts. Judicial scrutiny should extend beyond verification of religious requirements and include careful examination of whether parties intentionally bypassed marriage-dispensation procedures. Enhanced scrutiny would help prevent the misuse of isbat nikah while preserving its essential function as a legal remedy for genuinely vulnerable families.

Finally, the study demonstrates that reducing child marriage cannot be achieved through legal reform alone. Sustainable change requires collaboration among Religious Courts, marriage registrars, religious leaders, educational institutions, and local governments. Public legal education, community engagement, poverty reduction initiatives, and the promotion of child rights must accompany judicial reforms. In this context, isbat nikah should be positioned within a broader child-protection framework that balances legal recognition of existing families with the national commitment to reducing child marriage and advancing the welfare objectives embodied in both

Indonesian law and *maqāṣid al-sharīʿah*.

4. Conclusion

This study has examined *isbat nikah* as a legal alternative for underage marriages in Indonesia through an empirical investigation of judicial practice at the Ujung Tanjung Religious Court, supported by comparative analysis of marriage regulations in Muslim-majority countries and a normative evaluation based on *maqāṣid al-sharīʿah*. The findings demonstrate that *isbat nikah* occupies a complex position within Indonesia's legal system, functioning simultaneously as a mechanism for protecting civil rights and as a legal instrument that may inadvertently affect broader efforts to prevent child marriage.

First, *isbat nikah* remains an indispensable legal remedy for marriages that are religiously valid but lack official state registration. Grounded in the principle of *maslahah mursalah* and regulated under Article 7 of the Compilation of Islamic Law, it provides legal certainty for spouses and children by enabling access to identity documents, inheritance rights, family registration, and other forms of legal protection. The findings reveal that judges at the Ujung Tanjung Religious Court tend to prioritize the substantive validity of a marriage under Islamic law—particularly the fulfilment of the pillars and conditions of marriage—over formal considerations related to the age of the parties at the time of marriage. This judicial orientation reflects a commitment to substantive justice and the protection of vulnerable family members, especially children who may otherwise suffer the consequences of legal invisibility.

Second, the study demonstrates that the enactment of Law Number 16 of 2019 has generated a new legal dynamic in the regulation of underage marriage. While the equalisation of the minimum marriage age at nineteen years represents a significant step

toward strengthening child protection, the continued availability of isbat nikah creates a normative tension between legal recognition and preventive regulation. On the one hand, granting isbat nikah serves important humanitarian and legal objectives by protecting families that already exist. On the other hand, the possibility of post-hoc legalisation may weaken the deterrent effect of marriage-age restrictions and encourage some families to bypass formal marriage-dispensation procedures. This finding highlights the need to understand isbat nikah not merely as a procedural mechanism but as part of a broader socio-legal framework in which judicial decisions interact with public perceptions of legal compliance and child protection.

Third, the *maqāṣid al-sharī'ah* analysis reveals that isbat nikah generates both protective and problematic consequences. While it promotes the preservation of lineage (*hifẓ al-nasl*), religion (*hifẓ al-dīn*), and property rights (*hifẓ al-māl*) for existing families, the social conditions associated with child marriage frequently undermine the objectives of preserving life (*hifẓ al-nafs*), intellect (*hifẓ al-'aql*), and overall human welfare. Consequently, the study argues that isbat nikah should be viewed as an exceptional remedial mechanism intended to mitigate legal harm rather than as an alternative pathway for legitimising marriages that circumvent statutory requirements.

Theoretically, this study contributes to the growing scholarship on Islamic family law by demonstrating how *maqāṣid al-sharī'ah*, particularly through Jasser Auda's systems approach, can be employed as an analytical framework for evaluating the broader social consequences of judicial decisions. Rather than treating isbat nikah solely as a matter of legal validity, the study highlights the need to assess its implications for child protection, legal certainty, and social welfare. The findings also contribute to socio-legal

discussions concerning the relationship between state law, religious norms, and judicial discretion in contemporary Muslim societies.

Practically, the study provides insights for policymakers, Religious Courts, and other stakeholders involved in child-marriage prevention. The findings suggest that judicial scrutiny in both marriage-dispensation and isbat nikah proceedings should be strengthened to ensure that legal remedies do not unintentionally undermine the objectives of child-protection legislation. In addition, efforts to reduce child marriage should extend beyond legal reform and include community-based education, engagement with religious leaders, improved access to education, and economic support programmes aimed at addressing the structural factors that contribute to early marriage.

This study is not without limitations. The empirical analysis is based primarily on judicial practices at a single Religious Court, namely the Ujung Tanjung Religious Court. While the findings provide valuable insights into judicial reasoning and the implementation of isbat nikah, they may not fully represent practices across other Religious Courts in Indonesia, where local socio-cultural conditions, judicial approaches, and case characteristics may differ. Furthermore, the study focuses primarily on the perspectives reflected in court decisions and legal frameworks, without incorporating extensive interviews with litigants, families, religious leaders, or other stakeholders directly affected by underage marriage.

Future research should therefore expand the geographical scope of investigation by conducting comparative studies across multiple Religious Courts in different regions of Indonesia. Further studies may also adopt interdisciplinary approaches that combine legal analysis with sociological, anthropological, or public policy perspectives to better

understand the lived experiences of families involved in underage marriages. In addition, longitudinal research examining the long-term effects of isbat nikah on children's welfare, educational attainment, and family stability would contribute significantly to the development of evidence-based policies aimed at balancing legal protection with the national commitment to reducing child marriage. Ultimately, achieving this balance requires a comprehensive approach that integrates Islamic legal principles, child-protection norms, and broader social welfare objectives within Indonesia's evolving family law framework.

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