

Marriage Validation and Child Marriage: Analysis of the Effectiveness of Law Number 16 of 2019

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Abstract: This study aims to determine the mechanism of *itsbat nikah* (marriage validation) for underage marriages conducted without a marriage dispensation based on Law Number 16 of 2019 and to formulate effective and implementable legal solutions in handling cases of child marriage without dispensation through the *itsbat nikah* mechanism. **Method** This research was conducted using an empirical juridical approach, which combines various legal sources and materials. The primary legal sources used include interview results and statutory provisions. Meanwhile, secondary legal sources were obtained from relevant scientific articles. Data was collected through interviews and then analyzed qualitatively to gain a deeper understanding of the legal issues under review. **The novelty** of this research is that it analyzes the mechanism of *isbat nikah* without dispensation and underage marriage without dispensation. **The results** of the study show that even though underage marriage without dispensation is a violation of laws and regulations, the court still provides room for marriage validation under certain conditions. **The conclusion** of the study is that more massive legal socialization from the government and the active role of all parties are needed to prevent the practice of child marriage that does not comply with procedures.

Keywords: Marriage Validation; Child Marriage; Marriage Dispensation; Islamic Law

Abstrak: Penelitian ini bertujuan untuk mengetahui mekanisme *itsbat nikah* terhadap perkawinan anak di bawah umur yang dilakukan tanpa dispensasi kawin berdasarkan Undang-Undang Nomor 16 Tahun 2019 dan untuk merumuskan solusi hukum yang efektif dan implementatif dalam menangani kasus-kasus perkawinan anak tanpa dispensasi melalui mekanisme *itsbat nikah*. **Metode Penelitian** ini dilakukan dengan pendekatan yuridis empiris, yakni memadukan berbagai sumber dan bahan hukum. Sumber hukum primer yang dipakai meliputi hasil wawancara serta ketentuan peraturan perundang-undangan. Sementara itu, sumber hukum sekunder diperoleh dari artikel ilmiah yang relevan. Data dihimpun melalui wawancara, lalu dianalisis secara kualitatif untuk mendapatkan pemahaman lebih mendalam terkait persoalan hukum yang dikaji. **Kebaruan** dari penelitian ini ialah menganalisis mekanisme *isbat nikah* tanpa melakukan dispensasi serta perkawinan anak dibawah umur yang dilakukan tanpa dispensasi. **Hasil penelitian** menunjukkan bahwa meskipun secara hukum positif perkawinan anak di bawah umur tanpa dispensasi melanggar peraturan perundang-undangan, pengadilan masih memberikan ruang melalui jalur *isbat nikah* dalam kondisi tertentu. **Kesimpulan** penelitian diperlukan sosialisasi hukum yang lebih masif dari pemerintah dan peran aktif semua pihak untuk mencegah terjadinya praktik perkawinan anak yang tidak

sesuai prosedur.

Kata Kunci: *Itsbat Nikah; Perkawinan Anak; Dispensasi Kawin; Hukum Islam*

1. INTRODUCTION

Article 2 of Law Number 1 of 1974 concerning Marriage Paragraph 1 explains that "A marriage can be considered valid if it is conducted according to the laws of each religion and belief," followed by Paragraph (2) which states that "every marriage shall be registered in accordance with the applicable laws and regulations." In order to establish a noble bond, namely marriage, Article 7 of Law Number 16 of 2019 concerning Marriage explains that "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years." However, if one or both of the prospective bride and groom have not reached the minimum age, they can apply for a marriage dispensation to the local court. The granting of this dispensation is based on certain conditions or emergency circumstances experienced by the parties concerned. This policy is a government measure to reduce the number of underage marriages in order to prevent problems in the future. One issue that remains unresolved to this day is the practice of unregistered marriages, which are still widely used by the community as a way to marry off their children.

In reality, the practice of early marriage still often occurs for various reasons and perspectives, whether from a legal, religious, or cultural standpoint. Marriage Law No. 16 of 2019 sets the minimum age for marriage at 19 years for both men and women. From a religious perspective, child marriage is often justified through certain interpretations of religious texts, which actually have a positive meaning if based on considerations of moral and spiritual welfare. Therefore, some communities feel they have religious justification for marrying at a young age. Meanwhile, in the context of tradition and culture, early marriage is often influenced by social values within a community that still views women as second-class citizens, thus encouraging them to marry off their daughters early to avoid negative labels such as "old maid" and to fulfill certain social expectations.

Data from the Central Statistics Agency (BPS) shows that Indonesia still has a high rate of early marriage, with many girls marrying before the age of 18.^{1,2,3} This condition not only affects the personal lives of those involved, but also has a significant impact on society as a whole and on national development. Early marriage is influenced by various complex and interrelated factors. These include social, cultural, economic, and educational factors. Law

¹ Diakses pada 25 Juni 2025 dari <https://www.bps.go.id/statistics-table/2/MTM2MCMY/proporti-perempuan-umur-20-24-tahun-yang-berstatus-kawin-atau-berstatus-hidup-bersama-sebelum-umur-18-tahun-menurut-provinsi.html>

² Muhamad Ichrom, M. Khoirur Rofiq, and Muhammad Sholihul Muafiq, "Peningkatan Literasi Hukum Perkawinan Untuk Mencegah Perkawinan Anak," *Jurnal Inovasi Hasil Pengabdian Masyarakat (JIPEMAS)* 6, no. 2 (2023): 320-34, <https://doi.org/10.33474/jipemas.v6i2.19062>.

³ Inna Noor Inayati, "Perkawinan Anak Di Bawah Umur Dalam Perspektif Hukum, Ham Dan Kesehatan," *Midwife Journal* 1, no. 1 (2015): 46-53, www.jurnal.ibijabar.org.

Number 16 of 2019 article 7 (1) stipulates that the minimum age for marriage for men and women is 19 years old, as an effort to reduce the number of child marriages in Indonesia. Based on this provision, it can be concluded that marriage has certain rules and restrictions that must be obeyed in its implementation.

One important aspect is the obligation to register marriages by authorized officials, both from civil agencies and the Office of Religious Affairs (KUA). This registration is a crucial requirement, because in a legal context, authentic evidence is needed for the marriage status to be legally recognized by the state. The registration of marriages aims to bring order to marriages in society.⁴ This document is useful if problems arise in the household in the future, as it can be used as a basis for taking legal action in order to defend the rights of each party. The purpose of registration is to ensure orderly marriages in society, to protect the dignity and sanctity of marriage for women in particular in building a household as regulated by law. If a married couple does not have an official record of their marriage, the legal validity of the marriage may be questioned by the government. To overcome this, the government provides a mechanism of marriage validation as a legal solution for couples who have not registered their marriage at the Office of Religious Affairs (KUA) or civil registry office. Marriage validation serves as a legal step to administratively legalize marriages that were not previously officially recognized.

Isbat nikah is a government product that aims to obtain legal validity for applicants.⁵ The background to the regulation on isbat nikah (marriage validation) is the existence of marriages conducted solely on religious grounds, better known as siri marriages. These siri marriages are not registered at the Office of Religious Affairs (KUA) by authorized marriage registrars.⁶ Law No. 1 of 1974 on Marriage, Chapter 2, Article 7, Paragraph 1 states: Decree of the Minister of Religious Affairs No. 11 of 2007 on Marriage Registration Chapter 4 Article 8 "If the prospective husband has not reached the age of nineteen (19) and the prospective wife has not reached the age of sixteen (16), the above article clearly states that there is little alternative interpretation that the legal age for marriage in Indonesia is 19 years for men and 16 years for women.⁷

Many people marry their children unofficially (under the table), even though the children have not reached the minimum age for marriage. As a result, many young couples do not have legal power over their marital status. To overcome this, one step that can be taken is to apply

⁴ Rahman Cecep Permama, "Akibat Hukum Penolakan Itsbat Nikah Oleh Pengadilan Agama Terhadap Status Perkawinan Dan Status Anak Berdasarkan Kompilasi Hukum Islam Di Indonesia," *Jurnal Hukum Media Justitia Nusantara* 10, no. 2 (2020): 17–34, <https://ojs.uninus.ac.id/index.php/MJN/article/download/1908/1023>.

⁵ Rifqi Syawali, *Pandangan Hakim Terhadap Pelaksanaan Isbat Nikah Perkawinan Anak Di Bawah Umur Ditinjau Dari Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Studi Kasus Penetapan Pengadilan Agama Banyuwangi No. 2023)*.

⁶ Mahmud Huda and Noriyatul Azmi, "Legalisasi Nikah Siri Melalui Isbat Nikah" 5 (2020): 98–119.

⁷ Suciati Ningsih Hariyadi, Muthia Septarina, and Salamiah, "Tinjauan Yuridis Pernikahan Dini Dan Upaya Perlindungan Anak Di Indonesia Berdasarkan Undang-Undang No. 16 Tahun 2019 Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Hukum Dan Sosial* 1, no. 1 (2023): 35–47.

for a marriage validation to obtain legal recognition of the marriage that has taken place. The increase in cases of underage marriage has directly contributed to the increase in marriage validation applications. This phenomenon is no longer unfamiliar in society, given that many parents still choose this path. In fact, the Marriage Law of the Republic of Indonesia Number 16 of 2019 has set a minimum age limit for marriage. However, in practice, there are requests for marriage validation for underage marriages that have been granted by the court. This certainly causes inconsistencies or overlaps with applicable legal provisions.

Early marriage has become a national phenomenon, with culture being a major factor influencing lifestyles in society, including early marriage. Marriages between different ethnic groups show that the issue of early marriage needs to be given serious attention.⁸ To overcome this obstacle, Article 7 paragraph (2) of the Compilation of Islamic Law provides a solution for couples in secret marriages whose marriages are valid according to religion but not yet valid according to the state. They can legalize their marriage by submitting an application for isbat to the Religious Court so that the marriage can be registered by the Marriage Registrar (PPN) at the local Religious Affairs Office (KUA) so that it is recognized by the state and has legal force.⁹ Through the registration of marriage, as evidenced by a marriage certificate, of which each spouse receives a copy, if a dispute or conflict arises between them, or if one of them is irresponsible, the other may take legal action to defend or obtain their respective rights.¹⁰

Isbat nikah has a real legal impact in guaranteeing the rights of women and children after a couple is legally recognized as husband and wife. The institution authorized to handle isbat nikah, namely the Religious Court, has existed even before the enactment of the Marriage Law of 1974. In terms of marriage validation, Article 7 paragraph (3) letter (c) of the Compilation of Islamic Law (KHI) states that a request for marriage validation to the Religious Court can be submitted if there is doubt regarding the validity of one of the requirements for marriage.

Research conducted by Ai Pitri Nurpadilah, entitled "Legal Consequences of Marriage Validation Submitted Based on Underage Marriage at the Cibadak Religious Court" This study shows that the judge's consideration in granting a marriage validation petition for underage marriages is based on various factors, including emergency circumstances and the interests of the child, as well as factors that influence underage marriage due to social and economic factors. The legal consequences of the decision include the legitimacy of the marriage status and the protection of the rights of the child and wife. This decision also has implications for marriage registration and the civil rights of the couple.

⁸ Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin, "Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)," *Widya Yuridika* 2, no. 1 (2019): 1, <https://doi.org/10.31328/wy.v2i1.823>.

⁹ D I Pengadilan, Agama Palopo, and Iain Parepare, "INSTITUT AGAMA ISLAM NEGERI," 2021.

¹⁰ M Amin, "PENOLAKAN ITSBAT NIKAH PERKAWINAN ANAK DIBAWAH UMUR DI PENGADILAN AGAMA MANNA DALAM PENETAPAN PERKARA NOMOR 0092 / Pdt . P / 2018 / PA . Mna PERSPEKTIF HUKUM ISLAM DAN HUKUM POSITIF," 2018, 54–67.

The couple must submit an application for marriage validation to the religious court. A marriage is valid if it is conducted in accordance with the provisions of each party's religion and beliefs as stated in Article 2 Paragraph (1) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. In addition, each marriage must be recorded in accordance with applicable laws and regulations.¹¹ The judicial institution will continue to receive, examine, and adjudicate cases based on the available facts. This process is carried out with careful consideration and in-depth review in order to achieve justice in society. Under-the-table marriages will become an option for those who wish to legalize their marriage so that it is recognized by the state and has legal force by submitting a request for marriage validation. Moreover, marriage institutions such as these provide opportunities for underage marriages to occur, under the pretext of preventing extramarital relationships. Although this is a religious requirement, it does not mean that the dangers and risks it poses should be ignored.¹² Therefore, marriage institutions such as these provide opportunities for underage marriage, under the pretext of preventing extramarital relationships. Although this is a religious requirement, it does not mean that the dangers and risks it poses should be ignored.¹³

As exemplified in Case No. 37/Pdt.P/2025/PA.Srog, Salim Elmas Bin Muhammad Saleh Elmas as Petitioner I and Siti Nimran La Ayu Binti La Ayu Lasafiudin as Petitioner II. The author chose this title because of the prevalence of underage marriages that are conducted without complying with legal requirements, particularly without applying for a marriage dispensation as stipulated in Law No. 16 of 2019. In many cases, after the marriage is conducted unofficially or is not registered, the parents or couple then apply for a marriage validation to the Religious Court to obtain legal recognition.

2. METHOD

This research is a type of empirical legal research, or field research, which examines applicable legal provisions and what actually happens in society.¹⁴ Empirical legal research is legal research concerning the enforcement or implementation of normative legal provisions in action in specific legal events that occur in society.¹⁵ In this study, the author chose the city of Sorong, specifically the Sorong Religious Court, as the location for the research. The location was chosen based on the consideration that it had relevant data available that was appropriate for the substance of the issues that were the focus of this study. The data used in this paper is secondary data, which is data obtained from reference materials, such as official documents,

¹¹ Kajian Eksekusi and Madani Law, "Kajian Eksekusi Madani," *Kajian Eksekusi Madani Indonesia Law Journal* 1, no. 2 (2024): 1–16.

¹² Inayati, "Perkawinan Anak Di Bawah Umur Dalam Perspektif Hukum, Ham Dan Kesehatan."

¹³ NUZULUDDIN, "ANALISIS PUTUSAN HAKIM TERHADAP PERKARA ISBAT NIKAH POLIGAMI DI PENGADILAN AGAMA GIRI MENANG (Studi Putusan No. 225/Pdt.G/2016/PA.GM Dan No. 721/Pdt.G/2017/PA.GM)," *Program Studi Ahwal Al-Syakhshiyah Pascasarjana* 5, no. 3 (2019): 248–53.

¹⁴ Suharmini Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, 2012.

¹⁵ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, 2004.

books available in libraries, laws and regulations, scientific works, articles, and other documents relevant to the research topic.

The data collection method in this study was conducted through a literature review, which is a method used to search and examine various sources such as literature, research results, scientific magazines, scientific bulletins, journals, and the like. Legal materials were collected through the process of inventorying and identifying laws and regulations, as well as grouping and systematizing legal materials in accordance with the research issues. The data in this study was processed and analyzed qualitatively, namely by assessing the data based on its quality, then describing it verbally through the compilation of coherent, systematic, and easy-to-understand sentences. The results of the analysis were then used as a basis for drawing conclusions.

3. DISCUSSION

3.1. Mechanism for Itsbat Nikah (Marriage Validation) for Underage Marriages without Marriage Dispensation Based on Law Number 16 of 2019

Under the Indonesian legal system, a valid marriage is not only determined by religious requirements, but must also be officially registered by the state. However, not all couples are able to fulfill these administrative requirements, especially in certain cases such as underage marriages or traditional marriages that are not officially registered. In such circumstances, there is a legal mechanism known as itsbat nikah that can be submitted to the court to obtain official recognition from the state. The mechanism for filing itsbat nikah is regulated in various applicable laws and regulations. Although Law Number 16 of 2019 concerning Marriage does not explicitly regulate itsbat nikah, in practice, this law still contains provisions related to the process of legalizing marriages that have not been officially registered. One of the important provisions in this law is the regulation on the minimum age for marriage as stated in Article 7 paragraph (1), which reads "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years".

Regulations regarding itsbat nikah are not only contained in one regulation, but are scattered across several important regulations. One of the most important of these is the Compilation of Islamic Law (KHI). In the KHI, specifically in Article 7, it is stated that itsbat nikah can be submitted to the Religious Court to legalize marriages that have not been officially registered by the state. The procedure for filing a case of marriage validation for underage marriages is basically similar to other application processes. This provision is regulated in Book II of the Guidelines for the Implementation of Religious Court Duties and Administration, with the following stages: First, the applicant must request a certificate from the local Office of Religious Affairs (KUA) stating that the marriage has not been officially registered. After that, the applicant registers the marriage validation case with the Religious Court in their area. In addition to the marriage validation application letter and the letter of reference from the KUA, the applicant must also attach a letter of reference from the village or sub-district office proving that the marriage has been carried out according to religious law, as well as submit

supporting documents in the form of the husband and wife's ID cards, the identity of the guardian, and witnesses. The court will then set a hearing schedule, which generally takes place more than once. To process the case, the applicant is charged a fee in accordance with court regulations, including court fees. After the case files are received, the applicant is directed to the cashier to sign, provide a serial number, and record the date of receipt of the case. Next, the applicant makes a payment through the bank. After the case deposit is paid, the cashier will provide a receipt. The registration section then records the number from the cashier as proof that the case has been officially registered, provides a signature, and returns one copy of the registered application letter to the applicant.

Marriage validation cases related to underage marriages that have been registered at the Religious Court will then be handled by a panel of judges appointed to examine and decide on the case. The court clerk then appoints a substitute court clerk and substitute bailiff to assist the panel of judges in the trial process. After receiving the case files, the panel of judges and the associate judges study them, then determine the day, date, and time of the hearing. Next, the panel orders the parties to be summoned to appear according to the schedule that has been set. The applicant then waits for the summons from the Bailiff or Deputy Bailiff after the chief judge sets the day of the hearing.

Law No. 16 of 2019 does not directly explain the mechanism of itsbat nikah, but this law has set a minimum age for marriage. The following are the steps that need to be taken to file an application at the Sorong Religious Court:¹⁶ First: Come and register at the Sorong Religious Court office. A. Prepare a letter of request for itsbat nikah. The letter of request can be prepared by yourself (as attached). If you are unable to prepare the letter of request, applicants can seek assistance from the Legal Aid Post (Pos Bakum) at the court free of charge. B. Make 5 copies of the Itsbat Nikah application form, then fill it out and sign the completed form. Four copies of the application form are submitted to the court clerk, and the applicant keeps one photocopy. C. Attach the required documents, including a letter from the KUA stating that the marriage is not registered. Second, pay the court fees. A. Pay the court fees. If the applicant is unable to pay the court fee deposit, the applicant may submit a request for a free trial (Prodeo). B. If the applicant obtains Prodeo facilities, all costs related to the applicant's case in court will be borne by the court except for the applicant's transportation costs from home to court. If the applicant feels that these costs are still unaffordable, the applicant can apply for a Mobile Court. A. Wait for the court summons. B. Attend the trial. C. Court decision or ruling.

The mechanism for filing for itsbat nikah at the Sorong Religious Court is a series of steps that must be taken by parties who wish to obtain legal recognition and validation of their marriage, starting from the preparation of application documents to the issuance of a court decision. Article 7 paragraph (3) of the Compilation of Islamic Law (KHI) explains that there are several specific reasons that allow a person to file a marriage validation application to the Religious Court. These reasons include: Marriage in the context of divorce settlement; Loss of

¹⁶ Hasil wawancara dengan Hakim Pengadilan Agama Kota Sorong Ibu Amalia Seknun, S.H.

marriage certificate; Doubts about the validity of one of the marriage requirements; Marriages that took place before the enactment of Law Number 1 of 1974; Marriages conducted by individuals who do not have any impediments to marriage according to Law Number 1 of 1974.

In the case of marriage of minors without a dispensation from the court, the itsbat nikah process cannot be carried out because it will be rejected by the court. This is because such marriages are contrary to applicable law. Therefore, to apply for itsbat nikah, the court requires a prior dispensation from the court as a form of initial legality.¹⁷ Based on existing research, since the enactment of this new law, there has been an increase in the total number of requests submitted by the public for marriage dispensations to religious courts.¹⁸ Understanding of the importance of complying with the minimum age limit for marriage in order to prevent child marriage, and that granting this dispensation provides legality so that it has the same legal consequences as a marriage that meets all the requirements from the outset.¹⁹

Law No. 16 of 2019 was actually created to prevent child marriage. If a request for itsbat nikah is granted, it is more for the purpose of providing legal certainty and protection of the rights of children born from such marriages, not to legalize the practice of underage marriage as a whole. As exemplified by the case of the itsbat nikah petition with case number 37/Pdt.P/2025/PA.Srog, the Sorong Religious Court held a mobile court session in East Misool District, Raja Ampat Regency, West Papua Province. The petitioners submitted an itsbat nikah petition to the Sorong Religious Court. Petitioner I Salim Elmas Bin Muhammad Saleh Elmas and Petitioner II Siti Nimran La Ayu Binti La Ayu Lasafiudin were married in a secret ceremony on April 4, 2020, which was held in Yellu Village, South Misool District, Raja Ampat Regency, West Papua Province. The petition was dated May 8, 2025, and registered with the Sorong Religious Court Registry on May 9, 2025.

At the time of the marriage, Petitioner II was still under the age limit specified by law, which is contrary to the provisions of Law Number 16 of 2019. However, in his decision, the judge considered that the marriage between Petitioner I and Petitioner II was in accordance with Islamic law and that there were no prohibitions on marriage under Islamic law. Therefore, the single judge concluded that their petition had met the requirements as stipulated in Article 2 paragraph (1) of Law Number 1 of 1974, in conjunction with Article 10 paragraph (2) of Government Regulation Number 9 of 1975, as well as Article 14 and Article 7 paragraph (3) letter (e) of the Compilation of Islamic Law. Based on these considerations, their petition was granted and the marriage between Petitioner I and Petitioner II was declared valid according to the law.

¹⁷ Hasil wawancara dengan Hakim Pengadilan Agama Kota Sorong Ibu Amalia Seknun, S.H.

¹⁸ Syarifah Lisa Andriati, Mutiara Sari, and Windha Wulandari, "Implementasi Perubahan Batas Usia Perkawinan Menurut UU No. 16 Tahun 2019 Tentang Perubahan Atas UU No. 1 Tahun 1974 Tentang Perkawinan," *Binamulia Hukum* 11, no. 1 (2022): 59–68, <https://doi.org/10.37893/jbh.v11i1.673>.

¹⁹ Rubiyatul Adawiyah, "Disparitasi Pertimbangan Hukum Dalam Perkara Penetapan Isbat Nikah: Analisis Penetapan Pengadilan Agama" 4, no. 02 (2024): 7823–30.

According to the author's analysis, the reason the judge granted the marriage validation petition in Decision Number 37/Pdt.P/2025/PA.Srog was because the marriage between Petitioner I and Petitioner II had fulfilled the provisions of Article 2 paragraph (1) of Law Number 1 of 1974. This article states that a marriage is considered valid if it is conducted in accordance with the laws of religion and belief of each party. Thus, their marriage is valid according to religion. In addition, the marriage also complies with Article 14 of the Compilation of Islamic Law, which stipulates that in order to get married, there must be a prospective husband, a prospective wife, a marriage guardian, two witnesses, as well as ijab and kabul. This is reinforced by the testimony of two witnesses who stated that the marriage of Petitioner I and Petitioner II had fulfilled all the pillars and requirements of marriage.

If the decision is analyzed based on Law Number 16 of 2019, which is an amendment to Law Number 1 of 1974 concerning Marriage, then there is a clear violation of the provisions of Article 7 paragraph (1), which states that "marriage is only permitted if the man and woman have reached the age of 19." However, from an Islamic law perspective, both men and women are permitted to marry when they have reached the age of puberty. Therefore, because the marriage fulfilled the requirements under Islamic law, the court granted the petition for marriage validation (itsbat nikah).

The judge granted the request after considering certain reasons. One of them was that Petitioner I and Petitioner II did not fully understand the applicable legal provisions, especially those related to the minimum age requirement for marriage. In addition, the remote location of their residence, which was quite far from the court office, was an obstacle to filing a request for a marriage dispensation. Based on these conditions, the Sorong Religious Court held a mobile court session to facilitate access to justice, as stipulated in PERMA Number 1 of 2015 concerning Legal Services for the Poor.^{20,21,22}

The request for itsbat nikah was rejected because the judge considered the decision to be in violation of a different law, namely Decision Number 59/Pdt.P/2019/PA.Apn. The Ampana Religious Court received a marriage validation petition from Petitioner I Wiliyanto Bin Ube Awi and Petitioner II Sri Helni Binti Mahyudin Nt Jori, who were married in a secret ceremony on October 13, 2019, in Labuan Village, Ratolindo District, Tojo Una-Una Regency. At the time of the marriage, Petitioner I and Petitioner II were 18 and 16 years old, respectively.

In his consideration, the judge emphasized that Article 7 paragraph (1) of Law Number 16 of 2019, which amended Law Number 1 of 1974 concerning Marriage, clearly stipulates that marriage is only permitted if the prospective bride and groom are at least 19 years old. According to the judge, this provision must be understood as a legal restriction that must be complied with. From the applicants' statements at the hearing, it was revealed that before

²⁰ Hasil wawancara dengan Hakim Pengadilan Agama Kota Sorong Bapak Machfudz Asyari, S.H.I.

²¹ Reni Kartikawati and Djamilah, "Dampak Perkawinan Anak Di Indonesia," *Jurnal Studi Pemuda* 3, no. 1 (2014): 1–16.

²² Titing Sugiarti and Kunthi Tridewiyanti, "Implikasi Dan Implementasi Pencegahan Perkawinan Anak," *JLR - Jurnal Legal Reasoning* 4, no. 1 (2021): 81–95, <https://doi.org/10.35814/jlr.v4i1.2968>.

getting married, they did not submit a marriage plan to the Office of Religious Affairs. Even when they realized that they did not meet the age requirement, they did not submit a request for a marriage dispensation to the Religious Court. This was considered to show that the Petitioners did not make every effort to ensure that their marriage had legal certainty and recognition from the state.

According to the author's analysis, the reason the judge rejected the marriage validation petition in Decision Number 29/Pdt.P/2019/PA.Apn was because the judge considered that underage marriage was closely related to a person's ability to take responsibility for their legal actions. This reflects a person's level of competence in acting in the realm of civil law. In addition, the applicants' marriage did not meet the formal requirements, because they should have first applied for a marriage dispensation considering that neither of them met the provisions stipulated in Article 7 paragraph (1) of Law Number 16 of 2019. Marriage validation can basically only be submitted for marriages that have fulfilled the pillars and requirements and have no legal obstacles, or for marriages that took place before the 1974 Marriage Law came into effect. In this case, the marriage of the Petitioners was deemed to have legal obstacles because the bride and groom had not reached the age required by law.

In the marriage validation case at the Sorong Religious Court with Number 37/Pdt.P/2025/PA.Srog, the judge ruled that the applicants' marriage was in accordance with Islamic law and there were no prohibitions under religious law. Although the bride's age at the time of marriage was still below the age limit specified by law, this was not used as a reason to reject the application. This approach shows that the judge prioritized substantive justice, namely ensuring that the couple and the children born from the marriage obtain legal certainty. Meanwhile, in a case at the Ampaia Religious Court with Number 59/Pdt.P/2019/PA.Apn, the judge emphasized the importance of complying with the minimum age limit as stipulated in Article 7 paragraph (1) of Law Number 16 of 2019. Because the petitioners married underage without applying for a marriage dispensation, their itsbat petition was rejected. This approach illustrates a commitment to formal legal certainty, encouraging every citizen to follow the applicable legal procedures.

In comparison, the Sorong Religious Court is more inclined to resolve the legal consequences after the marriage has taken place, while the Ampaia Religious Court places more emphasis on prevention so that child marriage does not occur in the first place. Both have the goal of protection, but their focus differs. The Sorong Religious Court seeks to protect existing family status, while the Ampaia Religious Court seeks to prevent the risks arising from early marriage. Ideally, these two approaches can complement each other. Prevention is still necessary to stop child marriage from becoming more prevalent, but if a marriage has already taken place and resulted in legal consequences, a solution is needed that provides legal protection to women and children, without neglecting the spirit of protection as stipulated in the law.

3.2. Effective Legal Solutions to Address Underage Marriage Without Marriage

Dispensation in Sorong, West Papua, Through the Itsbat Nikah Mechanism

Child marriage without a court dispensation remains a complex legal issue in various regions of Indonesia, including Sorong, West Papua. In fact, Law No. 16 of 2019, which is an amendment to Law No. 1 of 1974, has explicitly raised the minimum age for marriage to 19 years for both men and women. However, in practice, child marriage still often occurs due to various factors such as customs, economic pressures, and a lack of legal understanding among the community. Marriages conducted outside of these provisions, and without going through a dispensation process from a religious court, cannot be officially registered at the Office of Religious Affairs (KUA). As a result, this raises various legal issues, especially for children born from such marriages, ranging from difficulties in obtaining birth certificates, loss of inheritance rights, to not receiving the legal protection they are entitled to.

As a form of resolution for marriages that have not been officially registered, many couples choose to apply for itsbat nikah (marriage validation) to the Religious Court. This mechanism is regulated in Article 7 paragraph (3) of the Compilation of Islamic Law (KHI), which provides an opportunity for married couples, especially those who are married religiously but not yet registered with the state, to have their marriage legally validated. This article explains that itsbat nikah can be submitted under certain conditions, for example, if valid proof of marriage is not available. Although this procedure is not intended to legalize underage marriages, itsbat nikah is often used as an alternative solution so that couples, as well as children born from these marriages, can still obtain clarity on their status and the legal protection they should receive.

In view of cases such as this, local governments should be more proactive in providing information to the community, especially those living in areas that are difficult to reach. The lack of legal education from the authorities has resulted in the community not understanding the applicable rules, so that cases of underage marriage without dispensation continue to emerge and increase in number.

One solution that can be pursued when an itsbat nikah petition is rejected is to perform tajdid or marriage renewal. This means that the couple can remarry legally and in accordance with applicable laws, so that their marriage can be officially registered by the state. If the itsbat nikah application is rejected by the court, especially because the marriage was conducted when the couple was still under the age specified by law and without a marriage dispensation, one of the solutions that can be taken is tajdid nikah or renewal of the marriage contract. This rejection usually occurs because the judge cannot legalize a marriage that from the outset was contrary to the applicable legal regulations. Tajdid nikah (renewal of the marriage contract) is permitted if there are administrative defects, such as lost marriage documents, data discrepancies, or based on an order from a religious court. This practice is very necessary to legalize unregistered marriages or to correct marriage contracts that are considered invalid,

which ultimately guarantees the legality of the couple's marriage^{23,24,25}

The couple can legally remarry before a religious official once they have reached the minimum age set by law, which is 19 years old. This process is called tajdid, and its purpose is to give the couple official legal status in the eyes of the state. This means that their marriage is not only religiously valid, but also administratively registered and legally binding, including for the purposes of inheritance rights, birth certificates, and other legal protections.

Provisions regarding marriage are regulated in Law No. 1 of 1974 concerning Marriage, specifically Article 2 paragraphs (1) and (2). Paragraph (1) explains that a marriage is considered valid if it is carried out in accordance with the religious provisions of each party. Furthermore, paragraph (2) emphasizes that a valid marriage must be recorded in accordance with applicable laws and regulations. In the context of tajdid nikah, there are various motives for its implementation. If it is done with positive intentions, for example, to legalize a secret marriage or to rectify a marriage contract that is considered invalid according to Islamic law and positive law, then it is in line with the provisions on marriage registration. Therefore, the author considers tajdid nikah to be very important because it serves as a form of legalization of the marriage of the couple concerned.

As in the case example in the Ampana Court ruling Number 59/Pdt.P/2019/PA.Apn. In which the judge considered that the judge in this case was in line with the opinion of the Supreme Court of the Republic of Indonesia and at the same time took over as the opinion of the judge in this case, namely the fatwa of the Registrar of the Supreme Court of the Republic of Indonesia addressed to the Director General of Population and Civil Registration of the Ministry of Home Affairs, Number 231/PAN/HK.05/1/2019, dated January 30, 2019, in point 1 letter b, which explains that "the administrative requirements for underage marriage must include permission and dispensation from the Court, and if the requirements are not met, then such a marriage is against the law. If they wish to register the marriage after fulfilling the requirements, they must remarry or renew their marriage (tajdid nikah) and have it registered."^{26,27}

According to the fatwa of the Registrar of the Supreme Court of the Republic of Indonesia, the marriage of the Petitioners should not be submitted through the itsbat nikah procedure, but rather through tajdid nikah or remarriage before a Marriage Registrar. This is because their marriages do not fall under the category of marriages that can be validated by

²³ Hasil wawancara dengan Hakim Pengadilan Agama Sorong Ibu Amalia Seknun, S.H.

²⁴ Wahyu Fitrianoor and Nor Fadillah, "Fenomena Tajdid Nikah Perspektif Hukum Positif Di Indonesia," *Tashwir: Jurnal Penelitian Agama Dan Sosial Budaya* 11, no. 2 (2023): 85–104, <https://doi.org/10.18592/jt.v11.i02>.

²⁵ Jessica Tiara Mai, "Tinjauan Yuridis Terhadap Perkawinan Anak Di Bawah Umur Di Lihat Dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974," *Lex Crimen* 8, no. 4 (2019): 114–21, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25661>.

²⁶ Permohonan itsbat nikah penetapan Nomor 59/Pdt.p/2019/PA.Apn.

²⁷ Mayadina Rohmi Musfiroh, "Pernikahan Dini Dan Upaya Perlindungan Anak Di Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 8, no. 2 (2016): 64–73, <https://doi.org/10.18860/j-fsh.v6i1.3192.3>.

a religious court. Upon closer examination, through his ruling, the judge actually wanted to educate the public by emphasizing the importance of the role and function of Marriage Registrars, rather than simply relying on the itsbat nikah procedure. If marriages that do not fulfill the requirements or even marriages that violate the law are still legalized through itsbat nikah, then the public may ignore the function of the Marriage Registrar in recording marriages. Furthermore, this could justify the practice of marriages that are contrary to the law. In Decision Number 37/Pdt.P/2025/PA.Srog., the judge granted the marriage validation petition based on Article 2 paragraph (1) of Law Number 1 of 1974, which states that a marriage is valid if it is conducted according to religious law and has fulfilled the pillars and requirements of marriage. In addition, there was a supporting factor in the form of the applicants' place of residence being very far from the Religious Court, so that they did not have time to apply for a marriage dispensation and ultimately conducted the marriage without going through the procedures as stipulated in the law. If the petitioners were in the same city, the judge would have rejected the marriage performed by the Petitioners, because the Petitioners had no reason not to apply for a marriage dispensation first.²⁸ From a comparison of the two cases, it is evident that there are differences in the legal considerations of the judges in deciding on the petition for marriage validation of underage marriages. In Decision Number 59/Pdt.P/2019/PA.Apn., the judge rejected the petition by referring to the fatwa of the Registrar of the Supreme Court of the Republic of Indonesia, which emphasized that underage marriages without court permission and dispensation are against the law. In such cases, registration can only be carried out if the parties remarry (tajdid nikah) after fulfilling the applicable requirements. Meanwhile, in Decision Number 37/Pdt.P/2025/PA.Srog., the judge granted the petition based on Article 2 paragraph (1) of Law Number 1 of 1974, which recognizes the validity of marriages according to religious law if the requirements are met. This consideration was reinforced by the factual circumstances, namely the fact that the applicants lived very far from the court, so they did not have time to apply for a marriage dispensation before getting married.

4. CONCLUSION

Based on research findings, the practice of itsbat nikah for underage marriages poses a legal dilemma. Law No. 16 of 2019 has clearly stipulated the minimum age for marriage, so marriages that violate this provision should not have legal force. However, in reality, the Religious Court can still use its discretion to grant itsbat nikah petitions even if the parties do not meet the age requirements, especially in order to provide legal certainty and protection for children born from such marriages. A comparison of the decisions of the Sorong Religious Court and the Ampana Religious Court shows differences in the application of the law: the Sorong Religious Court prioritizes substantive justice by legalizing marriages in order to protect established families, while the Ampana Religious Court prioritizes formal legal certainty by rejecting petitions that do not comply with the age requirement. This situation shows that

²⁸ Hasil wawancara dengan Hakim Pengadilan Agama Kota Sorong Ibu Amalia Seknun, S.H.

even though the rules are clear, their application in the field still varies and is greatly influenced by the judge's considerations, whether to enforce the minimum age limit or to consider the social impact of the marriage that has already taken place. Underage marriage is not just a legal issue, but a multidimensional problem with complex backgrounds. The contributing factors are diverse, ranging from personal factors such as promiscuity and pregnancy outside of marriage, family factors such as social concerns and pressure, to low levels of education, difficult economic conditions, and the influence of customs. In remote areas such as Sorong, the practice of marrying children in secret is still common, which ultimately raises legal issues regarding the validity of the marriage and the fulfillment of the rights of the children born from it. As a result, there has been an increase in the number of itsbat nikah (marriage validation) applications filed in an effort to legalize existing marriages. Therefore, resolving the issue of child marriage and the surge in itsbat nikah applications requires more than just strict law enforcement; it also requires addressing the root causes, namely the social, economic, and cultural factors that trigger it.

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