

Examining Disparities in Religious Court Decisions on Voluntary *Itsbat Nikah* and Underage *Siri* Marriages

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Article	Abstract
How to cite: Hadi Nur Ikhwan, et.al, 'Examining Disparities in Religious Court Decisions on Voluntary <i>Itsbat Nikah</i> and Underage <i>Siri</i> Marriages' (2024) Vol. 5 No. 2 Rechtenstudent Journal, Sharia Faculty of KH Achmad Siddiq Jember State Islamic University. DOI: 10.35719/rch.v5i2.377 Article History: Submitted: 21/06/2024 Reviewed: 29/06/2024 Revised: 10/07/2024 Accepted: 23/07/2024 ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)	This study examines two Religious Court decisions in Indonesia, Case Number 9/Pdt.P/2025/Pa.Ngr and Case Number 23/Pdt.P/2025/Pa.Klp, both concerning applications for marriage validation (<i>itsbat nikah</i>). The two cases share similar characteristics because the marriages were unregistered and the wife was underage at the time of marriage. Although both cases were decided by a single judge, their rulings and legal considerations differ, offering insight into judicial discretion and legal interpretation in voluntary cases. This research uses a normative juridical approach focusing on the analysis of Indonesian positive law, including legislation, judicial decisions, and literature. The study aims to identify the legal basis, reasoning, and implications behind the different judicial outcomes. Findings show that in cases of unregistered marriages, judges may either grant or reject marriage validation requests depending on their interpretation of legal norms and the specific circumstances. These differences may create legal uncertainty and disadvantage parties seeking recognition of their marital status. Therefore, it is important for individuals to comply with the legal marriage age requirement of 19 years to ensure the legality and protection of their marital rights under Indonesian law. Keywords: <i>Religious Court, Siri Marriage, Underage.</i> Abstrak Penelitian ini mengkaji dua putusan Pengadilan Agama di Indonesia, Perkara Nomor 9/Pdt.P/2025/Pa.Ngr dan Perkara Nomor 23/Pdt.P/2025/Pa.Klp, keduanya mengenai permohonan pengesahan perkawinan (<i>itsbat nikah</i>). Kedua perkara tersebut memiliki karakteristik yang serupa karena perkawinan tersebut tidak dicatatkan dan istri masih di bawah umur pada saat perkawinan. Meskipun kedua perkara tersebut diputuskan oleh hakim tunggal, putusan dan pertimbangan hukumnya berbeda, sehingga memberikan wawasan tentang diskresi hakim dan penafsiran hukum dalam perkara sukarela. Penelitian ini menggunakan pendekatan yuridis normatif yang berfokus pada analisis hukum positif Indonesia, termasuk peraturan perundang-undangan, putusan pengadilan, dan literatur. Penelitian ini bertujuan untuk mengidentifikasi dasar hukum, penalaran, dan implikasi di balik hasil peradilan yang berbeda-beda tersebut. Temuan menunjukkan bahwa dalam kasus perkawinan yang tidak dicatatkan, hakim dapat mengabulkan atau menolak permohonan pengesahan perkawinan tergantung pada penafsiran mereka terhadap norma hukum dan keadaan khusus. Perbedaan-perbedaan ini dapat menimbulkan ketidakpastian hukum dan merugikan pihak-pihak yang mencari pengakuan status perkawinan mereka. Oleh karena itu, penting bagi individu untuk mematuhi persyaratan usia perkawinan yang sah yaitu 19 tahun untuk memastikan legalitas dan perlindungan hak perkawinan mereka di bawah hukum Indonesia. Kata kunci: <i>Pengadilan Agama, Nikah Siri, Anak di Bawah Umur.</i>

Introduction

According to Marriage Law Number 1 of 1974, Article 1, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a family in a happy and eternal household based on the one and only God.¹ Then, Article 2, which is regulated in the Compilation of Islamic Law, defines marriage as a very strong contract (*mistaqan ghalidan*) to obey the commands of Allah SWT, by carrying out worship in the essence of being a Muslim.²

The purpose of marriage itself is to fulfill part of the worship in order to establish a happy and harmonious family.³ Meanwhile, according to a religious figure named Imam al Ghozali as quoted by Abdul Rohman Ghozali, the purpose of marriage includes, first, to continue a lineage, second, to vent human desires in channeling lust and cultivating affection, third, to carry out sunnah worship as a religious person, by protecting oneself from evil and damage, fourth, to create a serious nature to be responsible in carrying out the rights and obligations as a husband and wife with the aim of obtaining halal wealth, fifth, to build a family as a social being in a peaceful society based on affection.⁴

A siri marriage is a marriage that meets the pillars and requirements as regulated in fiqh, which means that the marriage is considered valid based on the provisions of the Islamic religion. Siri marriages are not carried out in the presence of a marriage registrar, in this case the headman at the Office of Religious Affairs. Siri marriage is a marriage that does not fulfill the pillars, because every marriage must fulfill the pillars consisting of the prospective husband and wife, the marriage guardian, and two witnesses and there is a qobul agreement. Meanwhile, unregistered marriages sometimes do not pay attention to these pillars.⁵ In Indonesia, a siri marriage cannot be considered valid until it is registered with the Office of Religious Affairs. To register a siri marriage with the Office of Religious Affairs, a married couple must first submit a request for *itsbat nikah* (marriage confirmation) to the Religious Court.⁶

The definition of marriage confirmation according to Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2015 concerning Integrated Services for Mobile Courts of District Courts and Religious Courts/Sharia Courts in the Context of Issuing Marriage Certificates, Marriage Books, and Birth Certificates, is the validation of marriage for the Muslim community carried out by the Religious Court/Sharia Court for those in the Aceh region, in accordance with applicable provisions.⁷ A marriage confirmation application submitted to a Religious Court is also called a voluntary case. A marriage

¹ Law Number 1 of 1974 on Marriage

² Compilation of Islamic Law, Article 2

³ Moh. Hidayatullah, "Analisis Masalah Mursalah terhadap Isbat Nikah Terpadu di Pengadilan Agama Situbondo" *Rechtenstudent Journal*, 3 (1), (2022), 109, <https://doi.org/10.35719/rch.v3i1.99>

⁴ Mesta Wahyu Nita, *Hukum Perkawinan di Indonesia* (Metro, Lampung: CV. Laduny Alifatama, 2021), 1–2.

⁵ Yuliatin and Baharuddin Ahmad, *Hukum Perkawinan di Indonesia dalam Bingkai Kompilasi Hukum Islam dan Undang-Undang Perkawinan* (Malang: PT. Literasi Nusantara Abadi Grup, 2024), 154.

⁶ Dinanda Junia Rismantika, Djanuardi, and Rai Mantili, "Itsbat Nikah terhadap Perkawinan di Bawah Umur tanpa Dispensasi Kawin Ditinjau dari Undang-Undang Perkawinan dan Hukum Islam," *Jurnal* (2022). <https://doi.org/10.46799/syntax-idea.v4i10.1927>

⁷ Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2015 concerning Integrated Services for Mobile Courts of District Courts and Religious Courts/Sharia Courts in the Context of Issuing Marriage Certificates, Marriage Books, and Birth Certificates.

confirmation is a petition or request to the chief justice. The request can be written or verbal and contains a civilrights claim by one interested party regarding an undisputed matter.⁸

In court, the party filing the petition must prove their claim with the aim of having it granted by the judge. Supreme Court Circular Letter Number 3 of 2014 concerning the procedures for serving and examining voluntary marriage validation cases in integrated services explains that voluntary marriage validation cases must be filed by both parties, namely the married couple. Voluntary cases can be filed in the jurisdiction where the applicants reside. Specifically, if a marriage validation case is granted by the panel of judges, meaning all evidence is considered and the marriage is deemed registerable, the case immediately has permanent legal force without waiting 14 (fourteen) days after the voluntary decision is read.⁹

In addition to examining the pillars and requirements of marriage in the examination of marriage validation cases by the Panel of Judges, there are other factors the Panel of Judges considers in deciding whether the case should be granted, rejected, or even rejected. In handling and examining voluntary marriage validation cases, the Panel of Judges has differing views on the legal facts in the marriage validation case.¹⁰

Research Method

The type of research used by the author in this thesis is normative juridical research. Normative research is also known as doctrinal legal research.¹¹ Normative research itself encompasses law in its broadest sense. This research was conducted through a study of applicable laws and regulations in Indonesia, or Indonesian positive law regulations, and through the search for related data through literature reviews.

Results and Discussion

The Essence of the Judge's Ratio Decidendi in Deciding on Marriage Confirmation Cases Due to the Secret Marriage of an Underage Wife

The author's analysis of the Religious Court's ruling in case number 23/Pdt.P/2025/Pa.Klp. is based on the trial facts. The case was registered and registered at the Religious Court on May 20, 2025, electronically through the e-court application. The case was filed by two applicants: Applicant I, as husband, and Applicant II, as wife. At the time of filing the case, Applicant I was 30 years old, while Applicant II was 22 years old.

The background to the application for itsbat nikah (marriage confirmation) in the Religious Court for Applicants I and II was the occurrence of a marriage under Islamic law, or a siri marriage, between Applicants I and II. The siri marriage took place on April 20, 2020, in Sungai Perlu Village, Seruyan Hilir District, Seruyan Regency. The marriage ceremony was officiated by a village registrar and the biological father of Applicant II, who served as the marriage guardian. It was also witnessed by two male witnesses. At the time of the marriage

⁸ Aldianto Ilham and Zainal Azwar, "Penolakan Permohonan Itsbat Nikah oleh Hakim di Pengadilan Agama Kelas 1A Padang," *Jurnal Kajian Ilmu-Ilmu Hukum* (2022).

⁹ Circular Letter of the Supreme Court Number 3 of 2014 concerning procedures for serving and examining voluntary marriage confirmation cases in integrated services.

¹⁰ Compilation of Islamic law article 14

¹¹ Fona Kartika Listiyapuji, et.al, "Shifting Meaning of State Losses in BUMN Based on the Business Judgment Rule Principle" *Rechtenstudent Journal*, 6 (2), (2025), 186. <https://doi.org/10.35719/rch.v6i2.361>

process on April 20 2020, the age of Applicant I was around 25 years, while the age of Applicant II was 17 years.

Based on Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is stated that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years. Based on this provision, the unregistered marriage carried out by Petitioner I and Petitioner II was initially not against the law because both had met the age limit stipulated in the law. However, after the enactment of Law Number 16 of 2019 which is an amendment to Law Number 1 of 1974, there was a revision to the provisions on the age limit for marriage. In Article 7 paragraph (1) of the amended law, it is emphasized that marriage is only permitted if the man and woman have reached the age of 19 years. This change indicates a standardization of the age limit for marriage for men and women as a form of protection for children's rights and an effort to reduce the number of early marriages in Indonesia.¹²

The sole judge's legal standing considerations for case number 23/Pdt.P/2025/Pa.Klp. explained that Petitioner I and Petitioner II had been married but had not yet registered it with the religious affairs office, thus fulfilling the requirements for legal standing for this voluntary marriage confirmation application. The basis for this legal standing is regulated in Article 7 paragraph (4) of the Compilation of Islamic Law.

The sole judge's evidentiary analysis outlined that the judge had considered all the evidence from Petitioner I and Petitioner II. The evidence had been stamped and stamped by the post office. Every civil document used as evidence in court must use a stamp.¹³ The Judge then considered the documentary evidence valid as evidence based on Article 1888 of the Civil Code in conjunction with Article 3 paragraph (1) letter b and Article 5 of Law Number 10 of 2020 concerning Stamp Duty in conjunction with Article 3 of Regulation of the Minister of Finance of the Republic of Indonesia Number 70/PMK.03/2014 concerning Stamping Procedures.

The Judge stated in his consideration that the evidence of Petitioner I and Petitioner II was authentic evidence. An Authentic Deed is a deed or letter that was intentionally and officially made from the beginning for the purpose of proof.¹⁴ Therefore, in accordance with the provisions of Article 285 of the R.Bg. in conjunction with Article 1870 of the Civil Code, the evidence has complete and binding evidentiary force (*volledig en bindende bewijskracht*);

The witnesses presented by Petitioner I and Petitioner II in case number 23/Pdt.P/2025/Pa.Klp. were considered by the judge to be adults, of sound mind, and not precluded from being witnesses under the law. They were sworn in before providing their testimony. Therefore, both witnesses fulfilled the formal requirements as witnesses as stipulated in Articles 172 and 175 of the R.Bg.

Witnesses who provide testimony in court are required to take an oath according to applicable regulations. In this case, the obligation of a witness is to take an oath before giving

¹² Holijah & Jariyah Binti Abd Manaf, "The Importance of Increasing Minimum Age For Marriage In Indonesian Marriage Law" *Al-Adalah*, 16 (2), (2019), DOI:10.24042/adalah.v16i2.4546.

¹³ Febia Salwa Pandora & Edmon Makarim, "Implications of Using Electronic Stamp Duty as Proof of Authenticity of Electronic Documents in Indonesia" *Cepalo*, 6 (2), (2022), DOI:10.25041/cepalo.v6no2.2722

¹⁴ Fauziah Lubis, Khairani, Maulidin, Maulana Kesuma, M. Dwika Ardhana Daulay, and Marwah Syaifani, "Analisis Alat Bukti Perkara Perdata," *Jurnal Multidisiplin Inovatif* (2025).

testimony, but this does not always mean that a witness can only give testimony after taking an oath.¹⁵

The author's analysis of the voluntary decision or ruling of the Religious Court in case number 9/Pdt.P/2025/Pa.Ngr. is based on the trial facts. The case was registered and registered at the Religious Court on January 30, 2025, electronically through the e-court application. The case was filed by two applicants: Applicant I, as husband, and Applicant II, as wife. At the time of filing the case, Applicant I was 36 years old, while Applicant II was 20 years old.

The background to Petitioner I and Petitioner II's application for marriage confirmation at the religious court is the occurrence of a marriage under Islamic law, or a siri marriage, between Petitioner I and Petitioner II. The siri marriage took place on August 2, 2020, in Banjar Ketapang, Pengambangan Village, Negara District, Jembrana Regency. The marriage ceremony was officiated by a local religious figure, and Petitioner II's biological father acted as the marriage guardian. It was also witnessed by two male witnesses. At the time of the marriage on August 2, 2020, Petitioner I was approximately 31 years old, while Petitioner II was 15 years old.

The legal analysis of case number 9/Pdt.P/2025/Pa.Ngr. is similar to the analysis described above regarding case number 23/Pdt.P/2025/Pa.Klp. The Marriage Law serves as the basis for deciding this case. Based on Law Number 16 of 2019, concerning amendments to Law Number 1 of 1974 concerning Marriage, the marriage in case number 9/Pdt.P/2025/Pa.Ngr. has violated marriage law norms because the age of Petitioner II, in this case the wife, was around 15 years old at the time of the marriage.

A marriage age of 15 is still considered very young. To create balance in equitable economic development, policies that support equal welfare are needed, such as access to education, training, and social protection programs for vulnerable groups. The most likely impacts of early marriage are interrupted education, low income, and, most dangerously, psychological and physical health impacts: forced maturity.¹⁶

The legal considerations used by the sole judge in deciding the voluntary marriage validation case number 9/Pdt.P/2025/Pa.Ngr. included consideration of authority. The Religious Court has the authority to adjudicate civil religious cases. Based on Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, the a quo case falls under the absolute authority of the Religious Court. Materially, it is stated that Petitioner I and Petitioner II reside within the jurisdiction of the Religious Court and possess complete and binding evidence. Therefore, in accordance with Article 142 of the RBg., the Religious Court has the authority to examine and adjudicate the a quo case.

Although Islamic law does not explicitly regulate the age limit for marriage, based on positive law in Indonesia, the Marriage Law determines this with special considerations for the law makers.¹⁷ Therefore, if you want to maintain legal order and avoid future problems, you can adhere to the regulations that have been issued.

¹⁵ Deni Mulyadi, "Witness Position in Court and How to Judge According to Ibnu Rusyd (Reinterpretation in the Book of Bidayatul Mujtahid Wa Nihayatul Muqtasid)" *Al Mashaadir Jurnal Ilmy Syariah*, 3(1) (2022), 10.52029/jis.v3i1.85.

¹⁶ Yusup Hidayat, et.al, "Is Early Marriage a Problem in Indonesia? Maqashid A-Shariah, Economic and Quadruple Helix Analysis," *Jurnal Afkaruna*, 20 (1), (2022). <https://doi.org/10.18196/afkaruna.v20i1.19493>

¹⁷ Anton, Muhammad Fadhlán, Nurlia, Henti Fauziah, and Yudina Anggita, "Analisis Syarat Pernikahan dalam Hukum Islam dan Implementasinya di Indonesia," *Jurnal Intelek Insan Cendikia* (2025).

Given the differences in the results of the Religious Court Decisions No. 23/Pdt.P/2025/Pa.Klp and No. 9/Pdt.P/2025/Pa.Ngr, the author cannot confirm or deny these decisions. Decisions are the essence of justice, the core and goal of all activities or judicial processes, which include the resolution of cases that have burdened the parties from the beginning.¹⁸ Therefore, decisions must be followed as a guideline because they are the basis for fulfilling the goals of society. The judge's decision is the final act of a case process, and the judge's decision is called a verdict, which is based on the judge's final conclusions regarding the law and also includes its consequences.¹⁹

Legal Consequences of the Religious Court's Decision to Decide on Marriage Validation Cases Due to Underage Marriages of Underage Wives and/or Husbands

The legal consequences of the voluntary decisions/court rulings in cases number 23/Pdt.P/2025/Pa.Klp and number 9/Pdt.P/2025/Pa.Ngr have different follow-ups because, despite the same legal event, the judges have different legal views. Therefore, the author would like to outline the legal consequences of these voluntary decisions/court rulings for guidance and further understanding.

The legal consequence of the voluntary decision or ruling of the Religious Court in case number 23/Pdt.P/2025/Pa.Klp, in which the petitioners' petitions were granted by the judge, is that the marriage between Petitioner I and Petitioner II, which took place on April 20, 2020, in Sungai Perlu Village, Seruyan Hilir District, Seruyan Regency, is declared legally valid. In the ruling, the court also ordered Petitioner I and Petitioner II to register their marriage with the Marriage Registrar of the Religious Affairs Office of Seruyan Hilir District, Seruyan Regency, as a form of administrative legalization of the marriage in accordance with applicable laws and regulations. In addition, the court charged both applicants to pay court costs of Rp195,000.00 (one hundred and ninety-five thousand rupiah). Thus, this decision has legal consequences in the form of state recognition of the marriage after official registration at the Religious Affairs Office.

Based on court ruling number 23/Pdt.P/2025/Pa.Klp, the marriage between Petitioner I and Petitioner II was declared valid under Islamic law and positive law in Indonesia. With this ratification, Petitioner I and Petitioner II do not need to remarry at the local Religious Affairs Office. The next follow-up, based on court ruling number 23/Pdt.P/2025/Pa.Klp., point (3), Petitioner I and Petitioner II were ordered to register the marriage with the Marriage Registrar of the Religious Affairs Office. Therefore, the term "ordered" can be interpreted as the result of being "obliged" to report to the Marriage Registrar of the Religious Affairs Office. Essentially, the validity of a marriage can be determined based on the religious views of each individual.²⁰ However, in this case, the Religious Court is the assessor of whether the marriage can be considered valid or not.

Based on the legal consequences and regulatory basis outlined above, the state provides a solution for Indonesians who believe they have married but have not yet registered it with

¹⁸ Achmad Fausi, "The Principle of Justice in the Executorial Tittle of Court Decisions and Its Relevance to Strengthening the Integrity of Judges" *Al-Qalam*, 19 (1) (2025), DOI : 10.35931/aq.v19i1.4084

¹⁹ I. Rubini and Chaidir Ali, *Pengantar Hukum Acara Perdata* (Bandung: Alumni, 1974), 105.

²⁰ Muhamad Rizal Firdaus and Ali Maskur, "Pernikahan Sirri dalam Perspektif Hukum Islam dan Pencatatan Perkawinan menurut Ketentuan yang Berlaku di Indonesia (Hukum Positif)," *Jurnal Studi Hukum Islam* (2024). <https://doi.org/10.34001/ijshi.v11i1.6418>

the Religious Affairs Office (KUA), ensuring legal certainty and orderly administration. This also impacts subsequent legal consequences, such as child lineage, inheritance, and other matters related to marriage law.

On the other hand, marriage confirmation provides legal protection, particularly for women and children. Protecting children and women is a collective responsibility of the state, society, and individuals, in establishing a just and humane legal system.²¹ By registering the marriage, legal rights, particularly for women and children, can be safeguarded, such as inheritance rights and lineage rights for children.

The legal consequence of the voluntary decision/court ruling in case number 9/Pdt.P/2025/Pa.Ngr, if the case is not accepted (*Niet Ontvankelijke Verklaard*) by the judge, is that the marriage is deemed null and void by the judge. This is because it violates applicable laws and regulations. Therefore, in considering the Religious Court ruling number 9/Pdt.P/2025/Pa.Ngr, the judge in the hearing proposed a solution for Petitioners I and II to conduct the remarriage ceremony and registration at the local Religious Affairs Office. If Petitioners I and II already have children, to ensure legal protection and certainty for the children, they can file a petition to determine the origin of the child with the Religious Court.

The judge's decision to reject the petition could close the opportunity for people to engage in legal smuggling due to the constraints of the minimum age for marriage under the Marriage Law. As a result of the non-validation of unregistered marriages, people can no longer circumvent the law by first entering into an unregistered marriage and then legalizing it through *itsbat nikah* after reaching adulthood. Besides the rejection or non-acceptance of the petition in court, there are other equally important impacts: first, a woman lacks legal rights as a wife, second, she lacks inheritance rights from her unregistered husband, and third, she cannot claim joint property.²² This is very detrimental for women. Furthermore, children born from unregistered marriages cannot list their father in civil registration.

Conclusion

Based on the Marriage Law and the Compilation of Islamic Law, it is clear that a marriage can be considered valid and guaranteed legal protection and certainty if it is performed at a religious affairs office and has proof of marriage, namely a marriage certificate. However, if the marriage is conducted secretly or secretly, or through a *sirri* marriage, it will be detrimental to the woman and the child and require a lengthy process to obtain legalization in the Religious Court.

For example, from court decisions number 23/Pdt.P/2025/Pa.Klp and number 9/Pdt.P/2025/Pa.Ngr, if the marriage is conducted through a *sirri* marriage, there are two possibilities: the request for *itsbat nikah* (marriage confirmation) will be granted, rejected, or even rejected by the judge. This can be detrimental to the community experiencing and undergoing legal events involving a *sirri* marriage.

²¹ Muhammad Arya Syandika, Rahmayanti, Irfan Aditya Harahap, Try Aditya Suhardiman, and Jadelmar Purba, "Perlindungan Anak dan Perempuan dalam Perspektif Hukum Islam dan Hukum Positif Indonesia," *Jurnal Studi Hukum Islam* (2025). <https://doi.org/10.34001/ijshi.v12i1.8116>

²² Fitria Wahyu Ningrum "Nikah Siri dan Dampaknya terhadap Hak Perempuan dan Anak dalam *Itsbat Nikah*," *Jurnal Terapan Islam dan Kajian Filsafat Syariah* (2025). <https://doi.org/10.59841/tadhkirah.v2i1.85>

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