

ABSTRACT

Mahmud Ibrahim Jarullah, NIM 10210073, 2014. **ANALYSIS STUDY OF COUNCIL OF JUDGES' REJECTION IN THE CASE ITSBAT NIKAH AND DIVORCE No.263/Pdt.G/2013/PA.Mlg CASE IN RELIGIOUS COURT OF MALANG.** Thesis. Al-Ahwal Al Syakhshiyah Department, Syariah Faculty, The State Islamic University Maulana Malik Ibrahim of Malang.

Supervisor: Ahmad Izzuddin, M.H.I.

Key Words: Judge rejection, Itsbat nikah, Maslahah

Itsbat nikah is the process of defining unregistered marriage. Basic implementation itsbat nikah described in Article 7 (1), (2), (3), and (4) Compilation of Islamic Law (KHI). Itsbat nikah case can propose as *voluntair* and *contentius*. Itsbat nikah case (*voluntair*) cumulation with divorce (*contentius*) in article 7, verse 3 (a) KHI in the Religious Court Proceedings. The authors will discuss in this study: 1) What are the strengths and weaknesses of Judge's decision on itsbat nikah and divorce judgment No. 263/Pdt.G/2013/PA.Mlg in the Malang Religious Court, 2) Review the impact of the judges decision in *maslahah* perspective. This research method is using normative research with case approach. While the techniques of data collection is documentation system and the researcher search the material source in the form of a copy document of the judgment, facts, and notes. And classified according to the source and hierarchy and studied comprehensively.

The results of the research that is the basis of the power of judge consideration in giving judgment to itsbat nikah verdict, among which are: 1) Legal standing to plaintiffs are pursuing itsbat nikah and divorce, 2) Posita (facts events and legal facts), 3) Statements of witnesses and evidence in court, 4) The reasons propose itsbat nikah. The weakness of court decisions that the verdict seems rigid, it doesn't include the arguments of Islamic law and scholars view. The impact of the decision of the Judge in perspective in *maslahah*, it is decision rejecting *itsbat nikah*. Because of the *maqasid shari'ah* on *hifdz al din* that her marriage didn't qualify and the pillars of marriage in order to maintain the Islamic religion and avoid from *mafsadah* that arise if granted because it contradicts with Islamic teachings about marriage.

The results of this study that the judge rejected (*NO / Niet Onvankelijk Verklaart*) for itsbat nikah request and divorce lawsuit rejected too. The documentary evidence are not accordance and the evidence of witnesses don't corroborate with plaintiff reasons in the examination by the judges. Plaintiff had been unregistered marriage and her marriage didn't qualify and pillars of marriage, that there are not legal guardian, and less of witnesses. The decisions of judge's rejection has found according to the evidence at trial.