

Itsbat Nikah in the Legality of Marriage Law in Indonesia: *Maslahah Mursalah's* Perspective

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Abstract: Itsbat nikah in Indonesia presents a surprising legal phenomenon because it raises uncertainty about the legality of marriage. The primary purpose of this study is to uncover how itsbat nikah is used as a solution to legally religious marriages that have yet to be officially recorded. The research was carried out with a qualitative approach involving the analysis of literature, legal regulations, and decisions issued by the Religious Court and the Office of Religious Affairs. The study results show that itsbat nikah plays a significant role in legally recognizing marriages that have not been recorded, maintaining legal certainty, and protecting civil rights and inheritance. Implementing itsbat nikah not only meets the legal needs of individuals but also strengthens social order by ensuring that every marriage is legally recognized in society. These findings confirm that itsbat nikah, in the context of *maslahah mursalah*, supports social justice and legal protection for all Indonesian citizens, emphasizing the importance of this legal mechanism in strengthening the foundation of the family and society.

Keywords: Itsbat nikah, legality of marriage, *maslahah mursalah*, legal order, legal recognition

1. Introduction

As a social and legal institution, marriage is essential in regulating interpersonal relationships and providing legal protection for couples and their offspring (Mudar, 2021). In Indonesia, which has a majority Muslim population, marriage law is governed by



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national civil law and Islamic legal principles that provide the basis for traditional and religious values (Asram et al., 2023). *Itsbat Nikah* is an essential concept in Indonesia's context of Islamic marriage law. This concept refers to the process of validating a marriage that complete official documents may not support or that there are differences in legal interpretation. In many cases, *Itsbat Nikah* is the solution to ensure that legal marriages according to Islamic religious teachings are also legally recognized in Indonesia, although with evidence that may only be partially complete (Lamara, 2020).

Article 1, paragraph 1 of Law of the Republic of Indonesia Number 1 of 1974 as amended by Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage states that marriage is a birth bond between a man and a woman as husband and wife to form a family (a happy and eternal household based on the One Godhead). According to Islamic law, a marriage is considered valid if the marriage has met the requirements and is in harmony with the marriage. (Sudirman & Iskandar, 2020). This means that in terms of Islamic law, the process of registering a marriage is not an absolute requirement for the validity of a marriage, so in terms of its implementation, it opens up a space for the practice of marriage under the hands (unregistered marriages) which results in invalid marriages from the legal side of the State (laws and regulations) (Sururie, 2017).

As mentioned earlier, one of the problems that often arise in the field of marriage is the existence of marriages that are carried out without being recorded by authorized institutions or officials. As a result, the legal status of the State (laws and regulations) does not have legal legality as evidenced by a marriage certificate or marriage book. (A et al., 2020). This proves that problems in the field of marriage are increasingly complex, along with the development of society as a social being. So, the solution to these problems requires concrete steps. One of the efforts in responding to the resolution of the issues that occur in the field of marriage, especially related to marriages that are not registered (marriage underhand), has been accommodated through the activities of the integrated marriage *itsbat* session as regulated through the regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2015 concerning integrated services of Mobile Sessions of District Courts and Religious/Sharia Courts in the context of the issuance of marriage certificates, marriage books and birth certificates (Sarwani, 2022).

So far, unregistered marriages have problems because they are considered to have a solution through *itsbat nikah* (Muwahid & Ramdhani, 2020). However, on the other hand, the *itsbat nikah* has caused new problems since there was a limit on *itsbat* that was only valid before 1974. However, the view that it can be done as long as the marriage is legal adds to the controversy, as if it legitimizes a marriage that is not officially registered (Sindi Rahmatika Windadewi, 2020). Therefore, hope arises that every marriage that has yet to

be registered can be registered later so that the problem of marriage registration and itsbat nikah will not be resolved.

This paper aims to offer a solution to the problem of resolving marriages without registration, which ultimately stops the itsbat nikah process. Several books and research related to itsbat nikah in Bima have been studied by scholars from various perspectives of their respective disciplines. For example, the writings of Tioma R. Hariandja and Supianto (Hariandja, 2016) Which discusses "The Effectiveness of the Implementation of Itsbat Nikah on the Legal Certainty of Marriage Status and Children's Rights in Wuluhan District, Jember Regency," provides a relevant perspective to this article. However, it has yet to delve into legal certainty based on the Islamic Law Code (KHI), which does not include itsbat nikah. In addition, Adi Nur Rohman's article on "Integrated Itsbat nikah as a solution to obtain legal identity rights, illustrates the existence of legal textualism where there is room for regulatory disharmony in marriage legislation related to marriage registration (Rohman, 2020).

However, implementing Itsbat Nikah depends on more than just the aspect of formality alone. The principle of *maslahah mursalah* also plays a vital role in this context. *Maslahah mursalah* refers to the concept of public interest that is not directly regulated in classical Islamic legal texts but is recognized as a factor that can strengthen social justice and welfare in a changing context. In the context of Itsbat Nikah, *maslahah mursalah* can provide a solid basis for recognizing a valid marriage even with incomplete evidence, as long as the public interest and the principle of justice are met.

According to Imam Malik, the concept of *maslahah* is divided into three different types, one of which is *maslahah mursalah*. *Maslahah mursalah* is considered a benefit that does not have an explicit cancellation by the text (textual evidence) and is not explicitly regulated by the law. Nevertheless, the principle of *maslahah mursalah* must remain based on Islamic law's central values and objectives. According to Imam Syatibi in his work, *al-I'tisam*, *maslahah mursalah* is a benefit that aims to eliminate difficulties or dangers, both essential (*daruriyyah*) and supporting (*hajjiyyah*). This concept has a vital role in ensuring that the policies and laws implemented not only follow the legal texts literally but also take into account the social context and the needs of the ummah. (Abu Ushaq al-Shatibi, 1975).

This article investigates the practice of Itsbat Nikah within the framework of marriage law in Indonesia, considering the perspective of *maslahah mursalah*. Taking an in-depth analytical approach, this article will explore the definition and practice of Itsbat Nikah, its legal context in Indonesia's national legal system, and the implications of the application of *maslahah mursalah* in this context.

2. Method

This study employs a library or qualitative literature research method. Library research allows researchers to analyze a wide range of secondary data sources, such as books, journal articles, legal documents, and fatwas (Benuf et al., 2019). This approach was deliberately chosen to explore the practice of *Itsbat Nikah* within the broader context of the legality of marriage law in Indonesia and to examine it from the perspective of *Maslahah Mursalah*. *Maslahah Mursalah* is a legal principle in Islamic jurisprudence that considers the public interest or welfare as a basis for legal rulings, even if no specific textual evidence from the Quran or Hadith supports it. The researchers wanted to understand how this principle might be applied to understand the legality and purpose of the *Itsbat Nikah* process in the Indonesian context.

This research method, also called "normative research," was developed by sociologist Soerjono Soekanto. Normative research involves an evaluation of the applicable legal norms and how they are applied in practice (Nilhakim, 2023). In this case, the researchers examine the legal standards and principles surrounding marriage law in Indonesia and how the *Itsbat Nikah* process fits within that framework.

By employing this approach, the research provides a descriptive account of the *Itsbat Nikah* phenomenon and explores the underlying legal theories and principles of justice that inform this practice. Through an in-depth analysis of relevant literature materials, the researchers aim to develop a comprehensive understanding of the concept of *Itsbat Nikah*, the implications of applying the principle of *Maslahah Mursalah*, and the broader dynamics of marriage law in the Indonesian context.

The decision to use a library or literature-based research method was driven by the researchers' desire to thoroughly examine the existing body of knowledge on this topic. By delving into books, journal articles, legal documents, and religious decrees (fatwas), the researchers can understand the historical development, legal foundations, and sociocultural contexts surrounding the practice of *Itsbat Nikah* in Indonesia.

Through this approach, the researchers hope to provide significant insight into Indonesia's complex and multifaceted nature of marriage law. The findings of this study will not only contribute to the academic discourse on this topic. However, they may also inform policymakers, religious authorities, and the general public about the interplay between legal norms, spiritual principles, and social realities in Indonesia's marriage and family law. Ultimately, this research seeks to shed light on the intricate relationship between the formal legal system, Islamic jurisprudence, and the lived experiences of

individuals and communities regarding the recognition and legitimization of marital unions in the Indonesian context.

3. Result and Discussion

3.1. Recital of Itsbat Nikah in the Practice of Marriage Law in Indonesia

Marriage is a fundamental right for every citizen to meet the required conditions. Therefore, a marriage must be based on the good intentions of both parties. With good intentions and good faith, it is hoped that the marriage will take place harmoniously, be blessed by Allah, and have spiritual values. The concept that marriage is a human right for every citizen can be found in Article 28 b paragraph (2) of the 1945 Constitution after undergoing the second amendment. The article affirms that individuals can form and continue offspring through legal marriage. The emphasis on "legal marriage" indicates that there are requirements and regulations that must be complied with before marriage can take place (Rohman, 2020).

Since marriage is an essential legal event such as birth and death, written evidence in the form of official registration at a designated institution is necessary to prove the existence of a valid marriage. This recording then results in a Marriage Certificate issued by an authorized official, and this document has the function of being valid and binding (authentic) evidence. Religious Courts, like other judicial institutions, are primarily responsible for receiving, examining, adjudicating, and resolving every case filed. The court is prohibited from rejecting a case only because of the law's lack of clarity or the absence of a specific law. The applicable procedures, including issues regarding itsbat nikah, should process all matters (Zaidah, 2014).

Religious Courts must receive, examine, and adjudicate itsbat nikah applications submitted by applicable provisions. (Siswomiharjo et al., 2023). In the trial process, the judge will decide whether the itsbat nikah application will be granted or rejected. The legal basis for judges in granting itsbat nikah applications is based on the following legal provisions (Siswomiharjo et al., 2023):

- a. Article 2, paragraph (1) of Law Number 1 of 1974 states, "Marriage is valid if it is carried out according to the law of each religion and its belief."
- b. Article 64 of Law Number 1 of 1974 affirms that "marriage and everything related to marriage that occurred before this Law came into force that was carried out according to the old regulations is valid."

- c. Article 7 of the Compilation of Islamic Law (KHI) regulates itsbat nikah with the following points:
1. Marriage can only be proven by a Marriage Certificate made by the Marriage Registrar.
 2. If a Marriage Certificate cannot prove the marriage, then the itsbath marriage can be submitted to the Religious Court.
 3. Itsbath nikah that can be submitted to the Religious Court is limited to several things, such as the settlement of divorce, loss of the Marriage Certificate, doubts about the terms of marriage, marriage before the enactment of Law Number 1 of 1974, and marriages carried out by those who do not have obstacles to marriage according to Law Number 1 of 1974.
 - a. The existence of marriage in the context of settling the divorce;
 - b. Loss of Marriage Certificate;
 - c. There is doubt about the validity of one of the conditions of marriage;
 - d. The existence of a marriage that occurred before the enactment of Law Number 1 of 1974;
 - e. Marriages carried out by those who do not have obstacles to marriage according to Law Number 1 of 1974.

Those who have the right to apply for itsbat nikah are the husband or wife, their children, the guardian of the marriage, and the parties interested in the marriage (Armalina & Hidayah, 2020). Regarding unregistered marriages or underhand marriages that occurred before 1974 or before Law Number 1 of 1974 came into effect, this is understandable because, at that time, there were no rules regulating nationally. For cases like this, the judge can refer to Article 64 of Law Number 1 of 1974 and Article 2, paragraph 1 of Law Number 1 of 1974. The judge has a legal basis for granting the itsbat nikah application on the condition that, in the trial process, it is proven that the marriage has been carried out by Islamic law, namely that the conditions and principles are met. No obstacles or prohibitions on marriage are violated according to religion or the law (Hanapi et al., 2021).

For underhand marriages that occur after 1974 or after the enactment of the Marriage Law, the judge refers to Article 7 of the Compilation of Islamic Law paragraph 3 letter (e). In this case, the judge can grant the itsbat nikah application if it is proven at the examination at the trial that the marriage has taken place legally, fulfilled its harmony and conditions, and there is no prohibition on marriage according to religious law or laws that have been

violated. However, if it is proven that the marriage does not meet the conditions and harmony, or there is a marriage prohibition that is violated either according to religion or law, then the *itsbat nikah* application will not be granted (Alhaidar et al., 2023).

In the context of an application for *itsbat nikah* submitted by a couple who previously had a marriage book but the marriage book was lost due to various reasons such as natural disasters, the judge will refer to the provisions of Article 7 paragraph 3 letter b of the Compilation of Islamic Law. The article states that *itsbat nikah* can be submitted to the Religious Court related to matters related to the loss of the Marriage Certificate (Sulistiani, 2018). If it is proven before the trial that the marriage has been carried out officially, recorded, meets the conditions and harmony, and does not violate the provisions of the prohibition of marriage either according to religious law or law, then the judge has a legal basis for granting the *itsbat nikah* application (Sabir et al., 2021). Furthermore, suppose there is doubt from the parties who apply for *itsbat nikah* about whether or not one of the conditions of marriage is valid at the time of marriage. In that case, they can apply for *itsbat* based on Article 7, paragraph 3, Letter C of the Compilation of Islamic Law. In this case, the Religious Court will legalize the marriage if it is proven that the marriage has fulfilled the provisions of religious sharia and there are no prohibitions or obstacles to marriage that have been violated.

In general, married couples who marry by their religious law without being recorded by the Marriage Registrar of the Religious Affairs office can submit an application for *itsbat nikah* to the Religious Court. However, an application for *itsbat nikah* can only be accepted if it meets the provisions stipulated in Article 7, paragraph (3) letters a to e of the Compilation of Islamic Law. The Religious Court will only grant the *itsbat nikah* application if the marriage is proven to meet the principles and conditions of marriage according to Islamic law and does not violate the prohibition of marriage according to religious law (Compilation of Islamic Law) and the Marriage Law (Sabir et al., 2021).

In the context of marriage, Article 39 paragraph (4) of Permenag Number 3 of 1975 stipulates that if the Office of Religious Affairs (KUA) cannot duplicate the marriage certificate because the record is damaged, lost, or for other reasons, then to determine the existence of marriage, *talaq*, divorce, or referral, it must be decided by the Religious Court. This confirms that *itsbat nikah* is not a case that can be resolved voluntarily but is part of the absolute authority of the Religious Court to handle marriage issues regulated by law. In principle, the court does not look for cases but takes care of cases that the Law has stipulated as its authority (Ohihya, 2019). In the opinion of Referee Aulawi, *itsbat nikah* is a voluntary matter that must be supported by law. If the law does not give the court the authority to marry, then the court does not have the authority to handle it. In the context of

underhand marriage that occurs after the enactment of the Marriage Law, providing space for marriage *itsbat* can encourage the occurrence of massive underhand marriage socially. Therefore, *itsbat nikah* is recognized in the Law as part of the absolute authority of the Religious Court in resolving marriage issues (Khairuddin & Julianda, 2017).

3.2. Analysis of *Itsbat Nikah* and *Maslahah Mursalah* on the Indonesian Legal System

The analysis of *maslahah mursalah* on the *Itsbat Nikah* Process is an in-depth review of how this principle of Islamic law is applied in the context of marriage legalization in religious courts. *Maslahah mursalah*, which means "a public benefit that is not canceled by clear evidence," plays a crucial role in ensuring justice and benefits for individuals who apply for *itsbat nikah* (Sudirman & Iskandar, 2020). *Maslahah mursalah* allows legal decision-making that follows the public interest or public interest, although there is no specific textual evidence in Islamic law that directly regulates the situation (Aziz, 2022). This allows religious courts to consider unique situations where the marriage is not recorded, or its administrative evidence is missing but is socially recognized or has been recognized by society. In practice, the *itsbat nikah* process in a religious court involves examining the available evidence and the testimony of the parties involved or relevant witnesses. An application for *itsbat nikah* is often submitted when administrative evidence such as an official marriage certificate is missing or absent, but the existence of the marriage is recognized by the family, community, or surrounding environment (Sudirman & Iskandar, 2020).

Religious courts, adhering to the principle of *maslahah mursalah*, thoroughly evaluate the existing facts, which are in line with the primary purpose of Islamic sharia, which is to protect the rights of individuals and society. The criteria used in assessing the application for *itsbat nikah* include the validity of the marriage according to Islamic religious teachings, compliance with Sharia terms, and ensuring that no obstacles or prohibitions on marriage are violated. The importance of *maslahah mursalah* in *itsbat nikah* is also reflected in the protection of social and economic rights obtained through marriage. For example, access to inheritance, the right to gain legitimacy from a legal perspective, and protection of social status. With a valid marriage *itsbat*, the individual may be able to obtain these rights legally and recognized. In addition, the application of *maslahah mursalah* also serves to maintain social and moral stability in Islamic society. By ensuring that marriages that have occurred and are recognized by society are legally recognized, religious courts help strengthen family institutions and society (Nasrulloh et al., 2021).

The concept of *maslahah*, which is the basis of the Court's decision regarding *itsbat nikah* for couples who perform a *sirri* marriage or where one of the parties is still a minor, is included in the concept of *maslahah mursalah*. Although Islamic law only states that this decision is taken for the benefit of the parties and their children without providing further details about *the maslahah mursalah*, this theory teaches that matters that are not explicitly regulated in the Qur'an and Hadith can be used as a basis for rules based on the values of benefit by minimizing harm. Because no provision expressly regulates the case of *itsbat nikah* for underage marriage in the Qur'an, Hadith, or laws that allow it or prohibit it, the concept of *maslahah mursalah* is applied to this kind of case (Munawaroh et al., 2023).

One of the advantages of the *itsbat nikah* process for couples who perform *nikah siri* or for whom one of the parties is still a minor is the creation of benefits, which is one of the main goals of Islamic law (Munawaroh et al., 2023). According to As-Syatibi, Allah sent down the shari'a nothing but to take benefits and avoid harm. In other words, all legal rules established by Allah are intended for the good of man himself (Sudirman & Iskandar, 2020). In this context, the provisions regarding *itsbat nikah* contained in the Marriage Law and the Compilation of Islamic Law aim to create benefits or benefits for mankind (Muwahid & Ramdhani, 2020). The marriage *itsbat* procedure allows couples who have performed a marriage without official registration or in other administratively ineligible conditions to obtain legal recognition of their marital status. This is important because, without legal approval, the couple may have difficulty accessing the rights they should have acquired, such as inheritance, insurance, and joint ownership rights.

Applying the principle of benefit in the context of *itsbat nikah* also shows the flexibility of Islamic law in handling complex and unexpected situations, such as marriages performed under the age of law or without complete administrative procedures. Although there is no provision that specifically regulates such cases in religious *nash-nash* (religious texts), the principle of *maslahah mursalah* allows for legal interpretations that take into account the interests of humanity without violating the main principles of Islamic Sharia (Aziz, 2022).

Imam Syatibi explained the conditions related to *mashlahah mursalah*, which has relevance in the context of *itsbat nikah* for couples who are married in *Cirrus* or are still underage. Here is a further explanation of this (Nasrulloh et al., 2021):

1. *Mashlahah* must be rational and not abstract. This means that the benefits applied must be clearly understood and not only in the form of irrelevant theoretical concepts. Dogmatic worship, such as worship rituals, is not included in the scope of *mashlahah mursalah* because their nature is unrelated to human relationships. *Mashlahah mursalah* only applies to non-worship matters, such as *muamalah* or socio-economic

relations that directly affect humans. It is essential to understand the correlation between the *mashlahah* of a case and the *maqasid* of Sharia to ensure that the benefits pursued are based on the main objectives of Islamic Sharia, which are to ensure justice and human welfare.

2. *Mashlahah* must be by sharia *maqasid* in general. The existence of *mashlahah* must be consistent with the main principles of *maqasid shariah*. In the face of various new cases that do not have an explicit legal basis in the Quran and hadith, *mashlahah mursalah* can be the basis for developing solutions using Islamic law principles. Ensuring that legal developments remain within the corridor of underlying Islamic values is essential.
3. *Mashlahah* must support primary interests (*dharuri*) and eliminate difficulties. This principle emphasizes that *mashlahah* has the potential to answer the primary needs of human beings and provide protection against losses that may arise. *Mashlahah* also fulfills secondary needs (*hajjiyyah*), focusing on delivering convenience and protecting human interests. Thus, *mashlahah* not only overcomes primary difficulties but also provides solutions to more secondary needs in human life.

According to the author's view, the process of *itsbat nikah* for couples who are married in secret and are still under the age limit, if analyzed using the concept of *mashlahah mursalah* as mentioned by Al-Syatibi, can be concluded as follows:

1. The provisions regarding *itsbat nikah* for marriage performed by individuals who have not reached the age of majority are not found directly or indirectly in the Qur'an and Hadith holy texts. In Islamic history and prophetic practice, there is no specific reference to marriage performed by those not of sufficient age. Therefore, the application of *mashlahah mursalah* to this case is based on the absence of extraordinary evidence that regulates or rejects it.
2. In the modern era with an ever-increasing population, recording populations such as births, marriages, divorces, and deaths is significant. Without accurate recording, there will be disorder and disorder in people's lives, which can ultimately lead to law violations. Therefore, the determination of *itsbat nikah* for marriages that are not officially recorded is by *maqasid shari'ah* (the purpose of Islamic law).
3. *Itsbat nikah* provides social benefits and justice for all Indonesian people, regardless of religion, ethnicity, or specific groups. The focus is on the public good, which is in line with the principle of *fiqh*, which states that the public interest must take precedence over the interests of individuals. This means that establishing marriage can support social stability and protect fundamental rights.

4. Without marriage registration, family members' rights, such as property rights, marital status, and personal identity, cannot be obtained clearly. This means that the primary goals of marriage, such as nurturing/perpetuating offspring (*hifz al-nasl*) and preserving property (*hifz al-mal*), cannot be achieved effectively. Therefore, itsbat nikah is essential in ensuring proper legal protection for all parties involved:
 - a. In the context of maintaining offspring (*hifz al-nasl*), itsbat nikah against underage marriage is very important because if the couple who is married secretly and is still a minor has a child, but their marriage is not legally recorded, then the status of the child born is considered invalid according to the law. In the birth certificate, only the mother's name is listed without the father's name, so the child is only civilly recognized as a child of her mother. With the existence of itsbat nikah, the marital status can be legally recognized, and the child born from the marriage can have a legal status. His rights can be guaranteed, including the right to be recognized as a legitimate child by both parents.
 - b. Meanwhile, marriage registration is very important in preserving property (*hifz al-mal*) because it protects the property rights of all family members, including husbands, wives, and children. These rights include the right to alimony, joint property, inheritance rights, and other family assets and property rights. These rights can be threatened without legal registration, and family members could risk losing or not being legally recognized. Thus, marriage rights against underage marriages ensure that legal rights to family property can be effectively maintained and protected, therefore preventing possible loss or harm to all family members.

The author agrees with the consideration of the panel of judges in Indonesia in determining the application for itsbat nikah, which considers the best benefits (goodness) even though the applicant has a serial marriage status or is still under 19 years old. This opinion is in line with the principle in the fiqh rules, which states;

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That rejecting harm must take precedence over taking advantage (Abu Ushaq al-Shatibi, 1975).

Itsbat nikah for couples undergoing a series of marriages or are still under this age is very important because, through this process, they can officially register their marriage at the Religious Affairs Office after the court grants the application. This recording is not just an administration but also to realize a broader legal goal: to create order, legal certainty, and protection for individuals and society in general. With the marriage itsbat that ends in

this recording, the value of *mursalah mashlahah* in married life can be protected (Sulistiani, 2018).

The author believes that although the marriage registration of marriages carried out by underage couples violates two rules in the Law, namely the registration of marriage and the minimum age limit of marriage as stipulated in Law number 1 of 1974, the negative impact caused by the non-registration of marriage by the authorities is much greater. This can result in significant losses in the future, especially if the couple already has children. Therefore, the step of submitting a marriage certificate to the Religious Court is considered the step that most consider the best good (benefit), even though the condition of the marriage is carried out under the age of majority (Habibi, 2023). In the context of *itsbat nikah* for couples who are married in series or are still minors, *mashlahah mursalah* can be justified as an effort to maintain the interests of individuals and society. Although there is no explicit provision in religious verses about the settlement of such cases, the principle of *mashlahah mursalah* allows for the interpretation of the law that considers the public interest and Sharia values without violating its basic principles. Thus, *itsbat nikah* can be an instrument that ensures legal protection and justice for individuals involved in complex maritime situations.

Based on the explanation above, it can be seen that the requirements affirmed in *the theory of al-maslahah al-mursalah* regarding the determination of the law of *Itsbat nikah* have been met. This means the policy is in line with *maqasid shari'ah* without any opposition. Implementing the *Itsbat nikah* policy emphasizes the presence of the state to fulfill the legal identity rights of people who do not have legal documents, especially marriage certificates (Hilmy & Toriqirrama, 2020). This aims to achieve benefits for themselves. Without the *Itsbat nikah* policy, the community will face significant losses because legal certainty and protection will not be fulfilled. Therefore, *Itsbat nikah* is a solution to ensure that people from any circle will get their legal identity rights fairly and equally.

However, *maslahah mursalah* must be used carefully, according to the principles of justice and the truth of Islamic law. Religious courts must ensure that any decision based on *maslahah mursalah* remains according to the values and objectives of Islamic law without violating the established legal principles. In the context of globalization and rapid social change, religious courts need to remain sensitive to societal developments and ensure that *maslahah mursalah* is used wisely. This requires strict scrutiny of the application of the law and adherence to the principles enshrined in Islamic law at large.

3.3. Implications of Itsbat Nikah and *Maslahah Mursalah* on the Indonesian Legal System

Itsbat nikah comes from two syllables in Arabic, namely "itsbat" and "nikah". The word "itsbat" comes from the Arabic "*atsbata-yatsbitu-itsbatan*" which means determination or determination (Aulia, 2022). In Islamic law, this term indicates the process of determining or affirming the truth or validity of a marriage. In Indonesian, the word "itsbat" is the process of establishing or affirming the truth or validity of something. In the context of itsbat nikah, this term refers to a formal process in which a marriage that has occurred factually (e.g., serial marriage or underage marriage) is recognized and determined to be valid by a court or authorized institution (Zaidah, 2014).

Itsbat nikah, according to the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/032/SK/2006 concerning Guidelines for the Implementation of Court Duties and Administration, refers to the legalization of a marriage that has been carried out by Islamic religious law but is not recorded by the Office of Religious Affairs (KUA) or the authorized Marriage Registrar (PPN) (Asram et al., 2023). The concept of itsbat nikah also includes a method or way to determine the validity of a marriage that has yet to be officially registered at the local KUA. The conditions of itsbat nikah as stipulated in the Compilation of Islamic Law Article 7 paragraph (3) include, among others:

- a. There is a marriage in the context of settling the divorce.
- b. Loss of Marriage Certificate.
- c. There are doubts about whether or not one of the marriage conditions is legal.
- d. marriage existed before Law Number 1 of 1974 was enacted.
- e. Marriages carried out by those who do not have obstacles to marriage according to Law Number 1 of 1974.

In the itsbat nikah process, not all marriage events can be declared by the Religious Court. This means that itsbat nikah applications submitted through the Religious Court will undergo a trial process (Muwahid & Ramdhani, 2020). After ensuring that these conditions have been juridically fulfilled, the panel of judges will grant the application for determination of the validity of the marriage. This aims to provide the necessary legal recognition of marriages that have not been officially registered in the KUA so that the couple obtains the same rights and protection as couples whose marriage has been legally registered (Armalina & Hidayah, 2020).

The relationship between itsbat nikah is very relevant to legal certainty related to marriage registration in state law. Marriage Law follows the following principles or principles:

- a. Marriage aims to form a happy and eternal family.
- b. Marriage is valid if it is carried out according to the law of his religion and belief.
- c. laws and regulations must record Marriage.
- d. Marriage is based on open monogamy.
- e. Prospective husband and wife must have entered their body and soul to get married.
- f. The marriage age limit is 19 years old for both men and women.
- g. Divorce is complicated and must be done before a court hearing.
- h. The rights and position of husband and wife are balanced.

The registration of marriage in Marriage Law Number 1 of 1974 needs to be explained in detail, but the concept can be understood through a general explanation in the Law. Marriage registration is considered as important as birth or death registration, all recorded in official certificates or deeds. Linguistically, note-taking refers to the process or act of writing something into a notebook for the purpose of commemoration or documentation. In the context of marriage, marriage registration is a process in which an officer or official is authorized to write marriage data into the registration list. Creating a marriage certificate complements this process as authentic evidence that certifies the validity of the marriage (Muhammad Romli Muar, 2021). Marriage registration is essential in Islamic law and positive law in Indonesia, although Islamic law does not explicitly regulate whether a marriage should be recorded. With the registration of marriage, as evidenced by a marriage certificate, married couples have valid evidence that they have carried out their marriage in accordance with Islamic law and Law Number 1 of 1974 concerning Marriage (Laksana, 2022).

The primary purpose of marriage registration is to create order in society (Laksana, 2022). This is regulated through legislation to protect the dignity and sanctity of marriage, especially protection for women in domestic life (Hanafiyah, 2022). By having a marriage certificate as authentic evidence, each married couple can use it in disputes or quarrels or enforce their rights. Law Number 1 of 1974 concerning Marriage emphasizes the importance of marriage registration in Article 2 paragraph (2), which states that every marriage must be recorded in accordance with the applicable laws and regulations. This is also regulated in the Civil Code (KHI) Articles 5 and 6, which explain that every marriage

must be held in the presence of the Marriage Registrar to ensure public order and legal validity.

Marriage registration is an essential national agreement to achieve the goal of law in society, which is to create order, certainty, and legal protection. With this recording, the value of *maslahah mursalah* in household life can be protected. If a marriage is not registered, then an application for *itsbat nikah* can be submitted to the local Religious Court. Article 7, paragraph (2) of the Civil Procedure Code (KHI) stipulates that if a marriage certificate cannot prove the marriage, an application for *itsbat nikah* can be submitted. This is closely related to Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which requires recording each marriage according to the applicable laws and regulations. This recording is important because it will produce public benefits and provide legal certainty related to the rights of husband/wife, children's rights, and other effects of marriage. Orderly marriage administration is also a guarantee of this recording. (Hanafiyah, 2022).

Thus, through *itsbat nikah*, marriage will be recognized as valid in their respective religions and beliefs and legally valid because it has been recorded at the Religious Affairs Office (KUA) or the Civil Registration Office. The legal consequences of this marriage registration include: 1). Marriage is considered valid, both according to their respective religions and beliefs and legally because it has been recorded at the KUA or Civil Registration Office. 2). Children born in such marriages have a clear civil relationship with their mother and father. The child has the right to legal inheritance from his father. Thus, *itsbat nikah* ensures the legal validity of marriage, protects family rights, and guarantees administrative order in family life.

4. Conclusion

Itsbat nikah, in Indonesia's context of marriage law, is an important mechanism to affirm the legality of marriages that have yet to be officially recorded. In practice, *itsbat nikah* recognizes the validity of marriage according to Islamic religious teachings and positive law and provides the necessary legal certainty in people's lives. The perspective of *Maslahah Mursalah*, when applied in the determination of *itsbat nikah*, prioritizes the principles of social justice and the protection of individual and family rights. Practically, *itsbat nikah* allows couples who have been married religiously but have not been registered with the Religious Affairs Office or the Civil Registry Office to obtain the same legal recognition as a marriage that has been recorded. This is especially important in terms of legal protection of the rights of children born in such marriages, including the legitimate inheritance rights of their fathers. In addition, *itsbat nikah* also shows the state's

commitment to ensuring the protection of the dignity and sanctity of marriage, especially in protecting women in domestic life. Thus, the practice of itsbat nikah fulfills not only formal legal demands but also prioritizes human values and social justice in the legal marriage system in Indonesia.

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