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Legal Protection for Wives and Children Through the Legality of Itsbat Nikah at the Soasio Religious Court of Tidore Kepulauan City

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Abstract

This study examines legal protection for wives and children through the legality of itsbat nikah (marriage legalization) at the Soasio Religious Court (Pengadilan Agama Soasio), Tidore Kepulauan City, North Maluku, Indonesia. The phenomenon of unregistered marriages (nikah siri) persists due to geographic constraints, limited legal awareness, and socio-economic factors, leaving wives and children without formal legal protection. Using an empirical legal research methodology, data were collected through semi-structured interviews with judges, court registrars, and petitioners, supplemented by documentary analysis of 200 court decisions from 2020 to 2024. Findings reveal that administrative needs for children's documentation were the primary motivation (38.4%), followed by civil registration requirements (28%) and educational needs (14.5%). Judges base their decisions on three considerations: fulfillment of Islamic marriage pillars (rukun nikah), compliance with positive law, and the principle of maslahah guided by the fiqh maxim 'dar'ul mafasid muqaddam ala jalbil mashalih'. The legalization of marriage through itsbat nikah produces significant legal effects: granting wives rights to alimony, inheritance, and legal protection, while legitimizing children's civil status and enabling access to birth certificates, education, and public services. The study concludes that itsbat nikah serves as a critical legal instrument integrating Islamic law with Indonesia's national legal system, and recommends

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expansion of mobile court services (sidang keliling) and intensified legal literacy campaigns in remote areas.

Keywords: Itsbat Nikah; Legal Protection; Unregistered Marriage; Religious Court; Wives and Children Rights.

INTRODUCTION

Marriage registration is a fundamental requirement in Indonesia's legal system, serving as the primary mechanism through which the state extends legal protection to spouses and their children. Under Article 2 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 on Marriage, and Article 5 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), all marriages must be recorded at the Office of Religious Affairs (Kantor Urusan Agama/KUA) to obtain legal force. However, the reality in many parts of Indonesia, particularly in remote areas like Tidore Kepulauan City in North Maluku Province, presents a stark contrast, where a significant proportion of the population continues to conduct marriages without formal registration (Jannah et al., 2021).

Unregistered marriages, commonly referred to as nikah siri in Indonesian Islamic tradition, are conducted in accordance with Islamic law but without state registration. While considered valid under Islamic jurisprudence when the requisite pillars (rukun nikah) are fulfilled, these marriages lack legal recognition from the state, thereby exposing wives and children to significant legal vulnerability(Asriadi Zainuddin, 2022). Wives in such marriages cannot claim alimony, inheritance rights, or invoke state legal protection in cases of domestic violence, while children face difficulties obtaining birth certificates, accessing education, and asserting inheritance claims(Ningrum, 2025)

To address this legal gap, Indonesian law provides the mechanism of itsbat nikah, a court proceeding through which the Religious Court (Pengadilan Agama) formally recognizes and validates marriages that were not previously registered. The term itsbat nikah derives from the Arabic itsbat (إثبات), meaning establishment or affirmation, and nikah, meaning marriage(Zuhdi, 2016). Article 7 of the KHI provides the legal basis for this process, specifying limited circumstances under which itsbat nikah petitions may be filed, including marriages conducted before the Marriage Law, loss of the marriage certificate, doubt regarding the validity of marital conditions, and marriages where there is no legal impediment.

The Soasio Religious Court processed 200 itsbat nikah cases between 2020 and 2024,

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reflecting both the prevalence of unregistered marriages in the region and growing legal awareness among communities seeking to formalize their marital status. Despite the significance of this phenomenon, empirical research specifically examining the implementation of itsbat nikah in Eastern Indonesia and its concrete legal effects on protection of wives and children remains limited. This study addresses three research questions: (1) How is itsbat nikah implemented at the Soasio Religious Court? (2) What considerations guide judges in adjudicating petitions? (3) What are the legal effects of itsbat nikah on protection of wives and children?

OVERVIEW OF ITSBAT NIKAH IN ISLAMIC AND INDONESIAN LAW

Itsbat nikah is formally defined as a legal proceeding before the Religious Court aimed at establishing the validity of a marriage solemnized according to Islamic law but never registered with the competent state authority (Sopyan, 2012). The procedure is classified as voluntary jurisdiction (jurisdictio voluntair), meaning it involves a petition without an adversarial party unless contested by an interested party (Arto, 1996)

The legal basis for itsbat nikah in Indonesia rests on multiple sources: Article 64 of Law No. 16 of 2019 validating marriages conducted before the law's enactment; Article 7(2) and 7(3) of the KHI specifying conditions for applications; Law No. 3 of 2006 on the Religious Court granting jurisdiction over marriage matters; and Supreme Court Regulation (PERMA) No. 1 of 2015 on Integrated Mobile Court Services for Itsbat Nikah. The latter is particularly significant as it established a framework for courts to conduct mobile hearings in collaboration with the Civil Registration Office (Disdukcapil) and KUA, extending access to remote communities (Zainuddin & Nur Jaya, 2018)

KHI Article 7(3) specifies that itsbat nikah may only be filed for: (a) marriages in the context of divorce proceedings; (b) loss of the marriage certificate; (c) doubt about the validity of marital conditions; (d) marriages conducted before Law No. 16 of 2019; and (e) marriages with no legal impediment. KHI Article 7(4) further specifies that petitions may be filed by either spouse, their children, the marriage guardian (wali nikah), or any interested party(Ali Mahfud, 2019).

OVERVIEW OF LEGAL PROTECTION THEORY

The theoretical foundation of this study draws on Satjipto Rahardjo's concept of legal protection, which emphasizes that law must function as both a preventive and repressive shield for individuals whose rights are threatened. Preventive protection involves legal rules that preclude violations before they occur, while repressive protection provides remedies after

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violations have taken place(Satjipto Rahardjo, 2006). In the context of itsbat nikah, the mechanism serves both functions: it preventively secures the legal status of wives and children going forward, while restoring rights denied due to the absence of state recognition.

Philipus M. Hadjon's framework distinguishes between preventive protection—allowing subjects to challenge decisions before they become definitive and repressive protection through judicial resolution of disputes(Hadjon, 2005). This study applies both frameworks to assess how itsbat nikah simultaneously prevents future legal harm and remedies existing vulnerabilities faced by wives and children. The principle of state law (negara hukum) further underpins this analysis: under Articles 28B and 28D of the 1945 Constitution, the state is obligated to guarantee every citizen's right to recognition, protection, and legal certainty(Fadli Andi Natsif, 2019).

From an Islamic jurisprudential perspective, itsbat nikah is analyzed through maqāṣid al-syarī'ah (objectives of Islamic law). The five essential objectives include protection of religion (hifẓ al-din), life (hifẓ al-nafs), intellect (hifẓ al-'aql), lineage (hifẓ al-nasl), and property (hifẓ al-mal) (Taha Jabir Al ’Alwani, 1990). (Lenny Guspidawati & Jumni Nelli, 2025) Marriage registration and its formalization through itsbat nikah directly serve hifẓ al-nasl and hifẓ al-mal, ensuring children's genealogical lineage and inheritance rights are protected within the family structure (Mubarok & Tri Wahyu Hodayati, 2022)

RESEARCH METHOD

This study employs an empirical legal research methodology, examining law as a social practice embedded in institutional and community contexts (Amiruddin, 2016). The research was conducted at the Soasio Religious Court, Tidore Kepulauan City, North Maluku Province, from January to November 2025.

Primary data were collected through semi-structured interviews with three categories of informants: (1) judges (hakim), including the Chief Judge Dr. Zahra Hanafi S.HI., MH., and panel judges Chairul Isnan S.H., Tarmizi Kabalmay, and Zakiyudin Abdul Adhim; (2) the court registrar (panitera) Mursal Ayub S.Ag. and bailiff Nurahman Sukima; and (3) twelve petitioners (pemohon) including both successful and rejected cases. Secondary data comprised court decisions, institutional documents, statistical records, and applicable legislation.

Data analysis followed three stages: data reduction (identifying significant patterns from field notes and interview transcripts), data presentation (organizing findings systematically), and conclusion drawing through deductive reasoning (Miles et al., 2014). The research applied triangulation of sources and methods to ensure validity, cross-checking interview data with

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documentary evidence from court records and judicial decisions (Case numbers: 45/Pdt.P/2023/PA.SS; 12/Pdt.P/2023/PA.SS; 24/Pdt.P/2024/PA.SS).

RESULT AND DISCUSSION

Profile and Trends of Itsbat Nikah at Soasio Religious Court (2020–2024)

The Soasio Religious Court holds jurisdiction over the entire territory of Tidore Kepulauan City, comprising four sub-districts on Tidore Island (Tidore, Tidore Selatan, Tidore Utara, Tidore Timur) and four sub-districts on the mainland Halmahera portion (Oba, Oba Utara, Oba Tengah, Oba Selatan). Based on institutional data, the court processed 200 itsbat nikah cases from 2020 to 2024, as detailed in Table 1.

Table 1. Annual Distribution and Primary Reasons for Itsbat Nikah Cases (2020–2024)

Year	Cases	Primary Reason (%)	Secondary Reason (%)	Notes
2020	40	Birth certificate (37.5%)	Civil admin KK/KTP (25%)	Oba Tengah & Tidore Utara majority
2021	49	Birth certificate (36.7%)	Civil admin KK/KTP (28.6%)	Post-PERMA 1/2015 socialization impact
2022	29	Birth certificate (37.9%)	Civil admin KK/KTP (27.6%)	Decline due to pandemic restrictions
2023	53	Birth certificate (37.7%)	Civil admin KK/KTP (30.2%)	Highest; peak inter-agency synergy
2024	29	Birth certificate (41.4%)	Civil admin KK/KTP (27.6%)	Data up to September 2024
Total: 200	*Source: Official Records, Soasio Religious Court (2025)*			

Across the five-year period, the dominant pattern is consistent: the need to obtain children's birth certificates accounted for 38.4% of cases (76 of 200), followed by civil administration needs (KK/KTP) at 28% (56 cases), children's educational requirements at 14.5% (29 cases), legal certainty of marital status at 11% (22 cases), and other needs (social welfare and

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inheritance) at 8.5% (17 cases). The peak year of 2023, with 53 cases, coincided with intensified inter-agency collaboration between the Soasio Religious Court, Disdukcapil, and local KUA offices under the PERMA 1/2015 framework for integrated mobile court services.

These findings align with national research indicating that administrative needs related to children's documentation are primary drivers of itsbat nikah petitions in Indonesia(Gunawan & Hakim, 1974). The concentration of cases from the Oba Tengah, Oba Selatan, and Tidore Timur sub-districts reflects the geographic isolation challenges faced by communities on the Halmahera mainland, where limited transport infrastructure historically restricted access to KUA registration services. Chief Judge Dr. Zahra Hanafi confirmed: 'Many couples in Tidore Kepulauan City married by siri (unregistered) due to geographic, cultural, and limited legal understanding factors. This impacts their inability to obtain official marriage certificates, which hampers other legal administrative processes such as birth certificate issuance, inheritance rights, and access to social services from the government.'

Implementation Procedures at Soasio Religious Court

The implementation of itsbat nikah at the Soasio Religious Court follows an eight-stage procedural framework: (1) Filing a written petition at the court secretariat with supporting documents including identity cards, a village certificate (surat keterangan), and evidence of non-registration at KUA; (2) Case registration and fee payment; (3) Appointment of a judicial panel by the Chief Judge; (4) Summons issued to all parties and witnesses through the court bailiff (jurusita); (5) Hearing sessions examining parties' identities, written evidence, and witness testimony; (6) Judicial deliberation assessing fulfillment of Islamic marriage pillars and absence of legal impediments; (7) Issuance of a court decision (penetapan); and (8) Transmission of the decision to the local KUA for formal marriage registration and buku nikah issuance.

Court Registrar Mursal Ayub S.Ag. explained: 'The itsbat nikah filing procedure begins with a written petition submitted by the married couple or one of them. The petition must include the reason for the application, evidence that the marriage was not registered, and supporting documents such as a marriage certificate from a religious leader or village head. After verification, the petition is scheduled for a hearing and the parties are summoned through the bailiff.'

A distinctive feature of implementation at the Soasio Religious Court is the active use of PERMA No. 1 of 2015 mobile court sessions (sidang keliling terpadu). These hearings are conducted at village locations including Desa Balbar (Oba Tengah), Desa Akesai and Toseho (Tidore Timur), and Desa Lifofa and Maidi (Oba Selatan), in partnership with Disdukcapil and local KUA.

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This geographic reach is essential for enabling petitioners in remote communities to avoid the financial and logistical burden of traveling to the court office in Kelurahan Tuguwaji, Tidore. Through these mobile sessions, families simultaneously benefit from marriage legalization, birth certificate issuance for children, and family card (KK) updates.

Judicial Considerations in Adjudicating Itsbat Nikah Petitions

Analysis of three court decisions—Cases No. 45/Pdt.P/2023/PA.SS, No. 12/Pdt.P/2023/PA.SS, and No. 24/Pdt.P/2024/PA.SS—reveals a consistent tripartite framework of judicial reasoning integrating positive law, socio-legal context, and Islamic jurisprudential principles.

First, from a juridical perspective, judges evaluate whether the marriage fulfills the essential conditions of Islamic marriage law: presence of the groom (calon suami), bride (calon istri), guardian (wali nikah), two witnesses (dua saksi), and the offer-acceptance formula (ijab dan kabul), as required by KHI Article 14. Judges also verify the absence of legal impediments under KHI Articles 39–43 and Marriage Law Articles 8–10, and confirm court jurisdiction under Law No. 3 of 2006 Article 49.

Second, from a sociological perspective, judges consider factual circumstances of the parties' marriage, including evidence of cohabitation, children born from the marriage, and community recognition as a married couple. In Case No. 12/Pdt.P/2023/PA.SS, Judge Tarmizi Kabalmay emphasized that geographic limitations on access to KUA services and limited legal knowledge constitute mitigating factors distinguishing non-registration from intentional law-breaking: 'The state through its judicial institutions is obligated to provide legal protection to citizens acting in good faith, including recognition of marriages that are valid under religious law.' This approach reflects Satjipto Rahardjo's 'living law' thinking, where legal compliance is understood in the context of actual social conditions (Satjipto Rahardjo, 2006).

Third, from an Islamic jurisprudential perspective, judges consistently invoke the maslahah principle and the fiqh maxim 'dar'ul mafasid muqaddam ala jalbil mashalih' (preventing harm takes precedence over procuring benefit). In Case No. 45/Pdt.P/2023/PA.SS, the panel held: 'If the itsbat nikah application of the Petitioners is not granted, it is potentially creating greater harm, especially related to the legal status of children, the wife's and children's right to maintenance, as well as inheritance rights within the family.' This reasoning is consistent with the maqāṣid al-syarī'ah framework, specifically protecting lineage (hifẓ al-nasl) and property (hifẓ al-mal)(Mubarok & Tri Wahyu Hodayati, 2022). In Case No. 24/Pdt.P/2024/PA.SS, Judge Zakiyudin Abdul Adhim

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confirmed that consistent and non-contradictory witness testimony constitutes the primary evidentiary standard: 'If the Petitioners can prove that the marriage truly occurred validly according to Islamic law with the presence of a guardian, two witnesses, dowry, and valid ijab kabul, then substantively the marriage was valid.'

Rejected petitions, as experienced by informants Ibu Tatui Umagapi and Bapak Taqdir Amir, illustrate the limits of judicial discretion. Rejection occurs where evidentiary standards cannot be met particularly when key witnesses have deceased or documentary evidence is absent or where petitions involve unauthorized polygamous marriages. Judge Chairul Isnan explained: 'In examining itsbat nikah cases, the judicial panel is guided by KHI Article 7 and procedural law regarding evidence. Each application must meet formal and material requirements, including sufficient evidence such as witnesses, supporting documents, or convincing legal facts.' Consistent with Mahkamah Agung's SEMA No. 3 of 2018, petitions for itsbat of unauthorized polygamous marriages are declared inadmissible, and alternative routes determination of a child's origin under Constitutional Court Decision No. 46/PUU-VIII/2010—are recommended for child protection (Muchlis et al., 2025)

Legal Effects of Itsbat Nikah on Protection of Wives and Children

When itsbat nikah petitions are granted, the court's decision produces five categories of legal effects that directly enhance protection of wives and children. State Recognition of Marriage. The court's decision transforms a marriage valid under Islamic law but invisible to the state into a formally recognized legal status. Petitioner Ibu Ramla Manui articulated this distinction: 'Before the itsbat, we were only recognized by religion, not by the state, so we often faced difficulties in administrative matters.' This recognition is foundational to all subsequent legal effects (Wazzan et al., 2024).

Issuance of Marriage Certificate. The court's decision enables the KUA to officially register the marriage and issue a buku nikah (marriage booklet) as the primary evidentiary document for all subsequent legal proceedings. Petitioner Ibu Rukmana Salim confirmed: 'The itsbat nikah decision greatly helps in the process of issuing the buku nikah... with the marriage certificate, we no longer have difficulties handling administration, because we already have valid proof of marriage.'

Protection of Wives' Rights. Itsbat nikah grants wives a legally enforceable basis for claiming the full range of matrimonial rights: nafkah (marital maintenance), protection under Law No. 23 of 2004 on Elimination of Domestic Violence (PKDRT), rights to marital property (Joint

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Property), and the right to initiate divorce proceedings. Petitioner Ibu Mariyana noted: 'After the itsbat, I feel far more legally protected because our marriage is recognized by the state... I have legal certainty over my rights as a wife, such as the right to receive adequate maintenance, the right to household protection, and the right to obtain justice if problems arise in the future.' Field data from 10 cases (2021–2024) show that 40% of female petitioners reported that the absence of a marriage certificate had previously obstructed their access to inheritance rights and child maintenance (Rahmah et al., 2024).

Legal Status of Children. Itsbat nikah legitimizes children's civil status under Marriage Law Article 42, granting them full civil rights: the right to a birth certificate bearing both parents' names, inheritance rights from both parents, rights to parental maintenance and education, and access to civil institutions. Petitioner Bapak Dayat Iksan stated: 'After the decision, our children are recognized as legitimate children and have civil rights including inheritance rights, maintenance, and it became easier to obtain birth certificates listing both parents.' Cases reported in this study confirm that itsbat nikah enables children to overcome administrative barriers in school enrollment, social security (BPJS) registration, Hajj pilgrimage documentation, and state institution recruitment (TNI/Polri selection).

Administrative and Social Access. Formal recognition of marriage enables families to access the full range of public services. Informants reported that itsbat nikah facilitated enrollment in national health insurance (BPJS), conditional cash transfer programs (PKH), Hajj pilgrimage registration, civil servant and honorary teacher family allowances, school enrollment, and security force recruitment eligibility. These findings confirm that the effects of itsbat nikah extend beyond formal legal status to encompass the material welfare and life opportunities of the entire family unit, consistent with welfare law theory's premise that law must deliver social justice and community wellbeing(Tahir et al., 2023)

Itsbat Nikah as Integration of Islamic Law and National Law

The findings illuminate itsbat nikah as a distinctive institutional mechanism integrating Islamic law with Indonesian national law in service of family protection. Unlike systems treating these as parallel but separate orders, itsbat nikah embodies 'legal pluralism in practice'a process whereby Religious Court adjudication reconciles Islamic validity criteria with state administrative requirements (Jufri, 2014). The mechanism operationalizes Roscoe Pound's concept of 'law as a tool of social engineering' by using judicial authority to realign social practice (widespread unregistered marriages) with the normative requirements of both Islamic and national law (Fauzi,

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2018)

The pragmatic motivations identified Hajj requirements, salary claims, school enrollment, and career opportunities in state institutions reflect what Cappelletti and Garth (Garth, 2009) identified as the 'access to justice' dimension of legal protection. When formal registration procedures are inaccessible due to geographic, economic, or informational barriers, itsbat nikah serves as a restorative mechanism reopening access to justice for marginalized communities(Ibrahim, 2018). Hans Kelsen's recognition theory further supports this analysis: a matrimonial relationship acquires legal consequences only when recognized by the operative legal system, making itsbat nikah the essential gateway to full legal personhood for previously invisible family members (Kelsen, 2017).

However, the study identifies significant limitations. Evidentiary requirements can be difficult to meet for decades-old marriages with deceased witnesses. Furthermore, SEMA No. 3 of 2018's prohibition on itsbat for unauthorized polygamous marriages while legally soundleaves wives and children in such situations without a direct route to formal recognition, necessitating more complex alternative processes. These limitations underscore the need for complementary interventions: strengthened public legal literacy, systematic mobile court programs, and simplified administrative pathways for long-standing unregistered marriages.

CONCLUSION

This study demonstrates that the implementation of *itsbat nikah* at the Religious Court of Soasio, Tidore Islands City, has been conducted in accordance with applicable legal procedures and principles of Islamic law. The process involves a structured judicial mechanism, beginning from case registration to court decision, with a strong emphasis on verifying the validity of marriage based on Islamic legal requirements. Beyond its procedural function, *itsbat nikah* also operates as an accessible legal service, particularly through integrated court services aimed at facilitating public access to legal recognition of marriage.

The findings further reveal that judges in deciding *itsbat nikah* cases adopt a comprehensive approach that integrates legal norms, Islamic principles, and sociological considerations. Judicial reasoning is not limited to formal legal compliance but extends to the principle of *maslahah* (public benefit), particularly in preventing greater harm to wives and children. This reflects a shift toward substantive justice, where legal decisions prioritize the protection of vulnerable parties.

Moreover, the legalization of marriage through *itsbat nikah* significantly strengthens legal

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protection for wives and children. It ensures legal certainty regarding marital status, enables access to civil rights such as inheritance and legal identity, and provides a stronger foundation for the enforcement of rights within the family. Therefore, *itsbat nikah* should be understood not merely as an administrative legalization process but as a strategic legal instrument for achieving substantive justice and protecting family rights within the Indonesian legal system.

FUTURE DIRECTIONS

This study provides a foundational understanding of the role of *itsbat nikah* in strengthening legal protection for wives and children. However, several avenues remain open for further research to deepen and expand the scope of this topic. First, future studies are encouraged to adopt a comparative approach by examining the implementation of *itsbat nikah* across different Religious Courts in various regions of Indonesia. Such comparisons would reveal regional variations, institutional challenges, and best practices, thereby contributing to a more comprehensive national perspective on marriage legalization and legal protection.

Second, further research should incorporate a quantitative or mixed-method approach to measure the broader impact of *itsbat nikah*, particularly in terms of its effectiveness in improving legal awareness, reducing unregistered marriages, and enhancing access to civil rights. Empirical data at a larger scale would strengthen the generalizability of findings and support evidence-based policy formulation.

Third, there is a need to explore the long-term socio-legal impact of *itsbat nikah*, especially regarding its influence on family stability, gender relations, and child welfare. Longitudinal studies could provide deeper insights into how legal recognition of marriage affects the well-being of families over time.

Fourth, future research may also examine *itsbat nikah* within a broader human rights and gender equality framework, focusing on how legal mechanisms can better protect women and children from vulnerabilities associated with unregistered marriages. This perspective would contribute to strengthening the alignment between national legal practices and international human rights standards.

Finally, it is important for future studies to analyze the role of digitalization and legal innovation in improving access to *itsbat nikah* services. The integration of technology in court administration and civil registration systems has the potential to simplify procedures, increase efficiency, and expand access to justice, particularly in remote areas. In conclusion, advancing research in these directions will not only enrich academic discourse but also provide practical

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insights for policymakers, legal practitioners, and institutions in optimizing *itsbat nikah* as an effective instrument of legal protection in Indonesia.

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