

A JURIDICAL ANALYSIS OF THE LEGAL STATUS OF CHILDREN BORN BEFORE REGISTERED MARRIAGE: A CASE STUDY OF DECISION No. 202/Pdt.P/PA.Pkb

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Abstrak

Permohonan penetapan asal usul anak di Pengadilan Agama Pangkalan Balai dengan nomor perkara 202/Pdt.P/2023/PA.Pkb difokuskan pada status anak yang lahirnya lebih dahulu sebelum perkawinan tercatat. Penelitian ini bertujuan untuk mengkaji status anak yang lahir sebelum perkawinan tercatat dan pertimbangan hakim terkait hal tersebut. Rumusan masalah yang dibahas adalah bagaimana status anak yang lahir lebih dahulu dari perkawinan tercatat dalam penetapan nomor 202/pdt.p/2023/PA.Pkb dan bagaimana pertimbangan Hakim dalam memutuskan kasus penetapan status anak tersebut. Penelitian ini menggunakan metode empiris dengan data kualitatif, yang dikumpulkan melalui wawancara, dokumentasi dan studi pustaka. Hasil penelitian menunjukkan bahwa 1. Anak dinyatakan sah karena tidak ada pihak yang mempermasalahkan status anak sebagai anak pemohon, yang didukung dengan alat bukti berupa saksi 2. Pertimbangan hakim dalam memutuskan kasus penetapan status anak yang lahir sebelum perkawinan tercatat adalah dengan menilai keabsahan perkawinan yang awalnya tidak tercatat, telah sah menurut hukum Islam. Pertimbangan lainnya adalah dalam persidangan adanya alat bukti saksi ,perlindungan hak anak dan mempertimbangkan kepentingan terbaik bagi anak.

Kata Kunci: Status Anak , Perkawinan Tercatat, Penetapan Hakim

Abstract

The petition submitted to the Pangkalan Balai Religious Court under case No. 202/Pdt.P/2023/PA.Pkb sought judicial clarification regarding the legal status of a child born prior to the formal registration of the parents' marriage. The study explored how the status of such children is determined and examined the judge's reasoning in this case. Using an empirical approach with qualitative data from interviews, documentation, and literature reviews, the research found that the child was declared legitimate as no one contested the child's status as the petitioner's, with witnesses supporting the claim. In reaching its decision, the court took into account the validity of the unregistered marriage based on Islamic legal principles, supported by witness statements, while also emphasizing the safeguarding of the child's rights and placing paramount importance on the child's best interests.

Keywords: Child Status, Registered Marriage, Judge's Decision

A. Introduction

Marriage represents a pivotal social institution in human life, encompassing not only the union of the bride and groom but also the engagement and interconnectedness of their extended families. According to Article 1 of Law No. 1 of 1974, as amended by Law No.16 of 2019 concerning Marriage, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of establishing a happy and eternal family based on the belief in the One Almighty God.¹ This definition aligns with the words of Allah in the Qur'an, specifically in Surah Ar-Rum, verse 21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And among His signs is that He created for you spouses from among yourselves so that you may find tranquility in them, and He placed between you affection and mercy. Indeed, in that are signs for people who reflect".

In the context of daily life, the marital relationship stands as one of the most essential and enduring forms of human connection. The process of marriage requires thorough mental and physical preparation and must comply with the applicable legal requirements. These legal conditions constitute an inseparable part of the marriage institution.²

Article 28B of the 1945 Constitution of the Republic of Indonesia guarantees the right of every individual to establish a family and to ensure the continuation of their nasab through lawful marriage. The state also guarantees and provides legal protection for the rights of children born within a lawful marriage. This principle is

¹ Rizki Putra Pratama, Zuraidah Azkia, and A'dawiyah Bt Ismail, "Pembebanan Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Gugat Dalam Tinjauan Hukum Islam Di Indonesia Dan Malaysia," *Usroh: Jurnal Hukum Keluarga Islam* 7, no. 1 (January 1, 2023): 11-26, <http://jurnal.radenfatah.ac.id/index.php/usroh/article/view/17738>; Sri Wahyuni, "Perkawinan Adat Di Maluku: Antara Adat, Pendidikan Dan Agama (Studi Kasus Terhadap Keluarga Muslim Di Jazirah Leihitu Dan Kecamatan Sirimau Maluku)," *Indonesian Journal of Shariah and Justice* 2, no. 2 (December 29, 2022): 163-185, <https://ijsjaiinternat.id/index.php/ijsj/article/view/33>.

² Irfan Islami, "Perkawinan Di Bawah Tangan (Kawin Sirri) Dan Akibat Hukumnya," *ADIL: Jurnal Hukum* 8, no. 1 (November 23, 2017): 69-90, <https://academicjournal.yarsi.ac.id/index.php/Jurnal-ADIL/article/view/454>.

in harmony with the words of Allah in Surah Al-Furqan, verse 74

وَأَجْعَلْنَا لِلْمُتَّقِينَ إِمَامًا وَالَّذِينَ يَقُولُونَ رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ أَعْيُنٍ

And those who say, 'Our Lord, grant us from among our spouses and offspring comfort to our eyes and make us an example for the righteous.'

Marriage must be conducted in accordance with the conditions stipulated in the regulations. According to Article 1 of Law No. 1 of 1974 and Law No. 16 of 2019, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the objective of establishing a happy and lasting family founded on the belief in the One Almighty God. The ideal goal of marriage extends beyond the physical dimension to include a spiritual connection between a man and a woman, grounded in faith in Allah SWT, with the purpose of creating a family life characterized by harmony, affection, and compassion, known in Islamic tradition as *sakinah, mawaddah, and rahmah*.³

Article 99 of the Compilation of Islamic Law (KHI) defines two categories of legitimate children. First, a child born within or as a result of a lawful marriage. Second, a child conceived by a legally married couple through fertilization outside the womb and delivered by the wife. Children who are born outside the parameters established in Article 99 of the KHI are considered out-of-wedlock children. Under both Islamic law and the Indonesian Civil Code (KUHPerdata), a child born outside the bounds of a legally recognized marriage is not deemed to have a genealogical (*nasab*) connection to the biological father in the eyes of the law.

Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage further clarifies that a child born outside of a legally recognized marriage has a civil legal relationship only with the mother and the mother's family. Under Islamic law, a child

³ Amri Wahyudi, "Poligami Dalam Kurun Waktu Satu Hari Ditinjau Dari Undang-Undang Perkawinan Dan Hukum Islam," *Muqaranah* 5, no. 2 (December 23, 2021): 173-184, <https://jurnal.radenfatah.ac.id/index.php/muqaranah/article/view/10638>; Mulyadi, *Perkawinan Indonesia* (Semarang: Penerbit Universitas Diponegoro, 2018); Muhammad Idrus, "Peran Penting Arbitrase Dalam Hukum Perkawinan Islam Di Indonesia (Urgensitas Lembaga Arbitrase Islam Dalam Pengasuhan Anak Dan Sengketa Perceraian)," *Indonesian Journal of Shariah and Justice* 4, no. 2 (December 29, 2024): 247-275, <https://ijsjinternat.id/index.php/ijsj/article/view/109>; Rauf Likuwatan and Fatum Abubakar, "Disharmony Of The Legal Norm Of Interreligious Marriage; Analysis Of Pancasila Norms, Law No. 1 Of 1974 And Law No. 23 Of 2006," *Indonesian Journal of Shariah and Justice* 3, no. 2 (December 22, 2023): 169-195, <https://ijsjinternat.id/index.php/ijsj/article/view/53>.

is considered legitimate if born at least six months or 180 days after the marriage contract between the parents. A child born before the 180-day threshold is classified as a child born out of wedlock. In such cases, the child's *nasab* is linked only to the mother, and there is no legal or genealogical connection to the biological father. The concept of *nasab* refers to kinship based on blood relations established through a valid marriage contract. The status of *nasab* then gives rise to mutual rights and obligations, encompassing both the parents' responsibilities toward the child and the child's responsibilities toward the parents.

This research is classified as sociological and empirical legal research, aiming to explore the relationship between legal norms and the actual behavior of society. As an empirical legal study, it examines the extent to which law is effectively applied in community life, particularly in the context of the legal status of children born before the registration of marriage. The study employs a qualitative, descriptive approach. The data collection process employed multiple methods, namely in-depth interviews with key informants at the Pangkalan Balai Religious Court, analysis of relevant documents, and a comprehensive review of existing literature. The use of theory in this research serves as a guide to ensure that the study remains focused on facts observed in the field, while also providing a general framework for understanding the background of the issues being investigated. Primary data were obtained directly from original sources relevant to the research topic, while secondary data were drawn from documents and supporting literature. Thus, the study aims to present data that capture the phenomenon in depth, from the perspective of the research subjects.

This research was conducted at the Religious Court of Pangkalan Balai, located in Banyuasin Regency, South Sumatra. The selection of this site was based on the specific case that became the focus of the study, namely Case Decision No. 202/Pdt.P/2023/PA.Pkb concerning the legal status of a child born before the marriage was officially registered. The Religious Court of Pangkalan Balai was chosen because it handles cases directly relevant to the research topic, particularly those related to the legal status of children born prior to registered marriage. By selecting this location, the researcher was able to gain direct access to primary data, including case documents, interview results with individuals involved in the case, and

observations of legal procedures and judicial considerations applied in the decision-making process. This location also allowed for a more in-depth analysis of how Islamic family law and the Compilation of Islamic Law are implemented at the local level in the context of the case under investigation.

B. SThe Legal Status of a Child Born Prior to a Registered Marriage in Decision No. 202/Pdt.P/2023/PA.Pkb

The presence of a child within a marriage is considered an extraordinary and priceless blessing. A child is both a gift and a trust from Allah SWT, and must be protected, as every child possesses inherent dignity, worth, and human rights that must be upheld. For parents, a child represents an invaluable blessing from God, a source of comfort, a continuation of nasab, and the realization of their ideals. From the perspective of national life, children are the future of the nation and the next generation entrusted with carrying forward the aspirations of the country. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that every child has the right to life, growth, and development, to participate in society, and to receive protection from violence and discrimination, as well as to enjoy civil rights and freedoms. This provision underscores the imperative of ensuring legal protection for all children, regardless of whether they are born within a legally recognized marriage or outside of an officially registered union. The rights of children are further detailed in Articles 4 to 18 of Law No. 23 of 2002 concerning Child Protection, as amended by Law No. 35 of 2014 concerning the Amendment to Law No. 23 of 2002.

There are several significant consequences arising from unregistered marriages, commonly known as *nikah siri*, which can affect various aspects of the couple's and their children's lives:

1. Legal status of children

Children born from *nikah siri* often face legal uncertainty regarding their identity. Without official registration, these children may not have a legally

recognized birth certificate, which can impact their access to education, healthcare services, and other fundamental rights.⁴

2. Inheritance rights

In the context of *nikah siri*, wives and children typically do not possess legal inheritance rights under state law. As a result, they are not automatically entitled to inherit the estate of the husband or father in the event of his death. This situation complicates the inheritance process and frequently leads to outcomes that are considered unfair.⁵

3. Legal protection for the wife

A wife in an unregistered marriage does not enjoy the same legal safeguards as one in a formally recognized union. In situations involving domestic violence or marital conflict, a woman may face significant challenges in asserting her legal rights due to the absence of formal state recognition of the marriage.⁶

4. Access to social rights becomes limited

Couples in *nikah siri* often face challenges in obtaining social benefits typically granted to officially married couples, such as eligibility for social assistance, insurance, and pension schemes.

5. Administrative complexities

Unregistered marital status complicates the management of civil documentation, school registration for children, and access to various public services.

a. The Legal Status of Children Born Out of Wedlock under Islamic Law

The status of children born out of wedlock carries both positive and negative legal consequences. Article 99 of the Compilation of Islamic Law (KHI) outlines two categories of legitimate children. First, a child

⁴ Ika Safitri, "Dampak Pernikahan Siri Terhadap Status Hukum Anak," *Journal of Knowledge and Collaboration* 1, no. 6 (2024): 290-294.

⁵ Ury Ayu Masitoh, "Anak Hasil Perkawinan Siri Sebagai Ahli Waris Ditinjau Dari Hukum Perdata Dan Hukum Islam," *DIVERSI: Jurnal Hukum* 4, no. 2 (February 28, 2019): 125-148, <https://ejournal.uniska-kediri.ac.id/index.php/Diversi/article/view/276>.

⁶ Yudita Trisnanda, Indah Sri Utari, and Rodiyah Tangwun, "Construction Of The Application Of Domestic Violence Criminal Act In Unregistered Marriages," *International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal)* 5, no. 3 (2025): 881-892.

born within or as a result of a valid marriage. Second, a child conceived by a legally married couple through fertilization outside the womb and delivered by the wife. Children born outside these conditions as stipulated in Article 99 of the KHI are considered children born out of wedlock. Under both Islamic law and the Indonesian Civil Code (KUHPerdata), such children do not have a legal genealogical relationship (*nasab*) with their biological father. Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage further states that a child born outside of marriage has a civil legal relationship only with the mother and her family. In Islamic law, a child is recognized as legitimate if born at least six months or 180 days after the marriage contract (*akad nikah*) between the parents. A child born before the completion of this 180-day period is categorized as born out of wedlock. In such cases, the child's *nasab* is linked solely to the mother, and no genealogical relationship is established with the biological father. *Nasab* refers to *nasab* or kinship established through a legitimate blood relationship via a valid marriage contract. Such legal status establishes reciprocal rights and obligations between parents and their children, encompassing both the parental duty to care for and support the child, as well as the child's filial responsibilities toward the parents.

b. The Legal Status of Children Born Out of Wedlock under the Indonesian Civil Code

According to the Indonesian Civil Code, a child born out of wedlock is considered to have no legal relationship with either parent unless the child is formally acknowledged by the mother or the father. In cases where acknowledgment is given, the child gains inheritance rights from the parent who has provided that recognition, and the distribution of the inheritance is carried out according to the applicable statutory provisions. On the other hand, with the enactment of Law No. 1 of 1974 concerning Marriage, specifically Article 43 paragraph 1, a child born outside of marriage automatically has a civil legal relationship

with the mother and the mother's family, even without formal acknowledgment from the father.⁷

c. Legal Consequences of Unregistered Marriage under Law No. 1 of 1974 Article 1

Law No. 1 of 1974 concerning Marriage, in Article 1, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of forming a happy and everlasting family based on the belief in the One Almighty God. Marriage, under this law, is not merely a civil agreement but is also imbued with spiritual and religious significance. It is closely connected to the religious beliefs of the parties involved, particularly with respect to the legitimacy of the marriage. This is affirmed in Article 2 paragraph 1 of the same law, which stipulates that a marriage is considered valid if it is conducted in accordance with the laws of the respective religion or belief of the couple. Article 2 paragraph 2 further states that every marriage must be registered according to the prevailing laws and regulations. This provision is further elaborated in the Compilation of Islamic Law, particularly in Article 4, which affirms that a marriage is considered valid when conducted in accordance with Islamic principles, as also stipulated in Article 2 paragraph (1) of Law No. 1 of 1974. It is therefore evident that for Muslims, the validity of marriage is governed by Article 4 of the Compilation of Islamic Law. To ensure the orderliness and legal certainty of marriage, it is essential that every marriage be officially registered.⁸

Article 7 of Law No. 23 of 2002 on Child Protection stipulates that every child has the right to know his or her parents. Knowing one's parents is directly related to the issue of the child's origin. The origin of

⁷ Retno D. W., "Hak Anak Yang Terlahir Tanpa Perkawinan Yang Sah," *Kanwil Kemenkum Jogja*, last modified 2022, <https://jogja.kemenkum.go.id/pusat-informasi/informasi-lain/artikel/hak-anak-yang-terlahir-tanpa-perkawinan-yang-sah>.

⁸ Bafadhal Faizah, "Nikah Siri Dalam Perspektif Undang-Undang Perkawinan," *Jurnal Ilmu Hukum Jambi* 2, no. 2 (2011): 43263.

a child can be legally established, among other means, through a birth certificate. For children born within a lawful marriage, obtaining a birth certificate is relatively straightforward and only requires registration with the local Office of Population and Civil Registration, in accordance with the applicable procedures and requirements. As a result, children born from legal marriages enjoy full legal protection in relation to *hifz al-nasl* (the preservation of nasab), along with all associated legal consequences. In contrast, for children born outside a legally recognized marriage, establishing the child's origin requires a court decision. Not all applications for the legal determination of a child's origin are granted by the court. Therefore, children born out of wedlock may face significant challenges in obtaining legal recognition of their nasab and related rights.⁹

The law distinguishes between legitimate and illegitimate offspring. Legitimate descent is based on the existence of a lawful marriage, meaning the child is born within or as a result of such a marriage. In contrast, illegitimate descent refers to children not born from a valid marriage, commonly referred to as children born out of wedlock.⁸ From a legal standpoint, the status of a child born from an unregistered marriage (*nikah siri*) is considered weak. Legally, such a child holds the same status as a child born out of wedlock.

Therefore, a child born out of wedlock is not entitled to the same rights as a child born within a lawful marriage. The difference in legal status affects the legal relationship between the child and the parents. A child automatically has a civil legal relationship with the mother. However, this does not extend to the biological father. The absence of a legal relationship between the child and the biological father results in the child being ineligible for maintenance rights, the right to bear the

⁹ Wahyu Fajar Ramadhan, "Penetapan Asal Usul Anak Yang Lahir Di Luar Perkawinan Dan Akibat Hukumnya Ditinjau Berdasarkan Hukum Kekeluargaan Islam (Studi Kasus Penetapan Pengadilan Agama Jakarta Selatan Nomor: 298/PDT. P/2020/PA. JS)," *Indonesian Notary* 4, no. 2 (2022): 33.

father's family name, and inheritance rights. In order to establish such rights, the biological father must formally acknowledge the child. If the father marries the child's mother, the legal origin of the child must be legitimized through a court process. Regarding the legal status of a child, Article 42 of the Marriage Law states that a legitimate child is one who is born within or as a result of a lawful marriage. Furthermore, Article 43 paragraph (1) of the same law provides that a child born outside of marriage only has a civil legal relationship with the mother and the mother's family. This principle is further reinforced in Article 100 of the Compilation of Islamic Law, which stipulates that a child born outside of a legally recognized marriage possesses a genealogical link (*nasab*) solely to the mother and her *nasab*. However, on 17 February 2012, the Constitutional Court issued Decision No. 46/PUU-VIII/2010, which modified the interpretation of Article 43 paragraph (1) of the Marriage Law. In its ruling, the Court stated that a child born outside of marriage has a civil legal relationship not only with the mother and the mother's family but also with the man proven to be the biological father through science and technology and/or other legal evidence. This also encompasses the establishment of a civil legal relationship with the biological father's family.

The validity of a marriage between a man and a woman plays a crucial role in determining the legal status of a child born from that marriage, as regulated in Article 42 of Law No. 1 of 1974 concerning Marriage. In the case examined through the Decision of the Religious Court of Pangkalan Balai, under Decision No. 202/Pdt.P/2023/PA.Pkb, it was revealed that Petitioner I and Petitioner II had entered into two separate marriage contracts. The first contract was conducted in 2020 and was performed in accordance with Islamic religious law, rendering it valid under Sharia. However, this marriage was not officially registered with the Office of Religious Affairs (KUA) at the subdistrict level. The second marriage contract was carried out on 25 October 2017,

when Petitioner I and Petitioner II held a reaffirmation ceremony before a Marriage Registrar Officer at the KUA office in Banyuasin III Subdistrict. This marriage was officially recorded on 6 October 2023, as evidenced by the except of the marriage certificate.

The panel of judges examining and adjudicating case No. 202/Pdt.P/2023/PA.Pkb, in its legal reasoning, referred to the facts presented during the hearing in relation to Article 7 paragraph (1) of the Compilation of Islamic Law (KHI), which states that marriage can only be proven by a marriage certificate issued by a Marriage Registrar. In addition, the panel also linked these facts to the provisions of Article 2 paragraphs (1) and (2) of the Marriage Law. Article 2 paragraph (1) stipulates that a marriage is valid if conducted according to the laws of the respective religion or belief of the parties, while paragraph (2) states that every marriage must be registered.

The judicial panel relied on the aforementioned legal provisions as the basis for assessing the validity of the marital union between Petitioner I and Petitioner II. In this case, it is evident that, based on Articles 5, 7, and 27 paragraph (2) of Law No. 23 of 2002 on Child Protection, as last amended by Law No. 17 of 2016, every child has the right to personal identity, the right to know their parents, and the right to legal identity in the form of a birth certificate.

The provision in Article 2 of the Marriage Law clearly indicates that the validity of a marriage is determined based on the religious and belief systems of each individual. Once the marriage has been conducted in accordance with the religious rituals and procedures of the respective faith, the couple is required to sign a marriage certificate before a Marriage Registrar. This step is necessary because marriage is considered a legal act that requires state recognition and is only deemed valid when performed before an authorized official, in this case, a Marriage Registrar at the Office of Religious Affairs (KUA). In the case referenced above, the marriage conducted by Petitioner I and Petitioner

II in 2020 fulfilled all the essential elements and conditions of a valid marriage under Islamic law. With the fulfillment of these elements and requirements, the marriage is considered valid in the eyes of Islamic religious law, and therefore also satisfies the criteria outlined in Article 2 paragraph (1) of the Marriage Law. Under Islamic law, the validity of a marriage is based on the performance of the *akad nikah* that meets the essential elements and conditions prescribed. The essential elements of a valid Islamic marriage include the presence of the groom, the bride, a marriage guardian (*wali*), two witnesses, and the offer and acceptance (*ijab qabul*). These components are fundamental to the nature of the marriage, and if any one of them is absent, the marriage is deemed null and void. All five elements are both cumulative and mandatory, implying that the omission of any single component results in the marriage being deemed legally invalid.

Considering that both witnesses were present at the marriage of the Petitioners and that the witnesses were also aware of Petitioner I's pregnancy and subsequent childbirth, and further considering that there has been no objection from any third party regarding the status of the child as the biological offspring of the Petitioners, the testimony of the witnesses serves to strengthen the Petitioners' claim. Therefore, the Panel of Judges finds it necessary to present a fiqh-based argument found in *I'ānat al-Tālibīn*, Volume III, page 308, which is subsequently adopted as the opinion of the Panel:

و يُقْبَلُ إِفْرَارُ الْبَالِغِ الْعَاقِلِ بِنِكَاحِ امْرَأَةٍ إِنْ صَدَّقَتْهُ كَعَكْسِهِ

"The acknowledgment of a marriage by an adult and sane man with a woman is acceptable, provided that the woman affirms the claim. The same applies in reverse, whereby the woman's acknowledgment is accepted if confirmed by the man."

Considering that the Panel of Judges also presented the opinion of the Islamic legal scholar Shaykh Abdul Wahhab Khallaf as found in

his book *Uṣūl al-Fiqh*, page 910, which was subsequently adopted by the Panel of Judges as its legal reasoning, as follows:

مَنْ عَرَفَ فُلَانَةَ زَوْجَةَ فُلَانٍ شَهِدَ بِالزَّوْجِيَّةِ مَا دَامَ لَمْ يَفُكْ لَهُ دَلِيلٌ عَلَى انْتِهَائِهَا

“Whoever knows that a woman is the wife of a man, then they shall be considered as husband and wife unless proven otherwise by valid evidence.”

Considering also the factual circumstances of the Petitioners, who are physically healthy with no indications of infertility and who have lived together after marriage, the Court finds that Petitioner II possesses the capacity and likelihood to consummate the marriage and cause a pregnancy in his wife, Petitioner I. Establishing the nasab or nasab of the child to the father from a valid marriage is not only a requirement under Islamic law but also serves as a means to protect, preserve, and safeguard the best interests of the child both in the present and in the future.

Establishing the nasab of a child from a valid marriage is simultaneously an implementation of the objectives of Islamic law, specifically the preservation of life (*hifzh al-nafs*) and the protection of nasab (*hifzh al-nasl*). The Petitioners filed this application with the intent of securing a birth certificate and family registration card for their child, reflecting their parental responsibility to uphold the child’s right to legal identity. Therefore, the interest of the Petitioners in this petition is legitimate and not in violation of the law. Considering that the child, born on October 7, 2020, has been legally recognized as the legitimate child of the Petitioners, and based on the provision of Article 103 paragraph (3) of the Compilation of Islamic Law, this determination shall serve as a reference for the Banyuasin Regency Civil Registry Office and or other relevant agencies to issue a birth certificate on behalf of the child. However, for humanitarian reasons and to protect the best interests of the child, the biological father should still bear limited civil responsibilities toward the child. The term 'limited civil relationship' refers to the father's obligation to provide for all of the child’s needs, including financial support, education, healthcare, and other necessities until the child

reaches adulthood and becomes self-sufficient, as well as the right to inheritance in the form of a compulsory will (*wasiat wajibah*). The existence of a biological relationship does not necessarily mean that the father has a recognized *nasab* relationship with the child. Therefore, even if the father acknowledges being the biological father of the child, this does not automatically establish a legal *nasab*.¹⁰

C. Judicial Considerations on the Status of a Child Born Prior to Officially Registered Marriage in Court Decision No. 202/Pdt.P/2023/PA.Pkb

After considering the factual circumstances of the Petitioners, who are physically healthy and neither of whom is infertile, and the fact that Petitioner I and Petitioner II have cohabited as husband and wife after marriage, it is concluded that Petitioner II possesses both the capacity and the opportunity to consummate the marriage and cause a pregnancy in his wife (Petitioner I). The establishment of *nasab* of the child to the father from a valid marriage is not only a requirement under Islamic law (*shar'ī*), but also a means of protecting, preserving, and safeguarding the best interests of the child in both the present and future. The recognition of a child's *nasab* from a lawful marriage also represents the realization of the objectives of Islamic law, particularly the protection of life (*hifzh al-nafs*) and the protection of progeny (*hifzh al-nasl*). The Petitioners' objective in submitting this request is to obtain a birth certificate and family card for the child, which constitutes their duty as parents to fulfill the child's right to legal identity. Therefore, the Petitioners' interest in this petition is legitimate and does not violate the law.

Article 2 of the Marriage Law explicitly affirms that the validity of a marriage is governed by the religious laws and beliefs adhered to by the individuals involved. Once the marriage has been performed according to the respective religious or belief-based rites, both parties must sign the marriage certificate in the presence of a Marriage Registrar Officer. This procedure is mandated because marriage is regarded not only as a private religious act but also as a legal act requiring recognition by the

¹⁰ Mardani, *Hukum Keluarga Islam Di Indonesia* (Jakarta: Kencana, 2016).

state. Therefore, it is only considered valid when officiated by an authorized official, specifically the Marriage Registrar at the local Office of Religious Affairs (KUA). From a functional standpoint, the registration of marriage holds critical importance as it constitutes official legal proof of the marital relationship. The registration of marriage at a civil registry institution ensures that an individual has the legal documentation to prove the existence of a valid marital relationship. Furthermore, the Compilation of Islamic Law also affirms that a marriage can only be proven by a marriage certificate issued by a Marriage Registrar Officer.¹¹ When a marriage is registered at a civil registry office, the individuals involved possess an official document that can serve as legal evidence before a court in the event of a dispute concerning the marriage. In cases where the marriage cannot be proven by a marriage certificate, a *marriage confirmation (itsbat nikah)* may be submitted to the Religious Court. Therefore, the author asserts that marriage registration is mandatory in order to ensure orderly marital administration within the Muslim community and to provide legal protection and certainty for the wife and any children born from the marriage.

In the case between Petitioner I and Petitioner II as stipulated in Decision No. 202/Pdt.P/2023/PA.Pkb, the author argues based on the above discussion that if Petitioner I and Petitioner II registered their marriage in 2023 with the Marriage Registrar at the local Office of Religious Affairs (Kantor Urusan Agama), then in accordance with Article 53 of the Compilation of Islamic Law (Kompilasi Hukum Islam), their marriage is considered legally valid. Consequently, their child, Gazal Tabrani, would also be legally recognized, and they would face no legal obstacles in obtaining a birth certificate for their child. Since their marriage has been duly registered with the authorized Marriage Registrar, their union qualifies as a lawful marriage under Islamic family law. Therefore, their child is deemed a legitimate child (*anak sah*). With regard to the protection of the rights of children born from unregistered marriages (*nikah di bawah tangan*), as reviewed in light of Decision No. 202/Pdt.P/2023/PA.Pkb issued by the Religious Court of Pangkalan Balai and relevant Indonesian legal provisions, the matter may be analyzed from several

¹¹ Lutfiah, *Prinsip Perinsip Hukum Pencatatan Perkawinan Di Indonesia* (Media Sahabat Cindikia, 2018).

perspectives. First is the issue of obtaining a birth certificate, which serves as an authentic civil document certifying a person's legal status. This document plays a vital role in safeguarding the child's civil rights, serving as a foundational instrument for the recognition of their legal identity and nationality. The absence of such documentation can negatively affect the child's future, particularly in accessing educational services, healthcare, and in the issuance of other identity-related documents required for civil administration.

The fulfillment of civil rights for children who are born before the official registration of their parents' marriage requires thoughtful and comprehensive legal analysis. Article 28B paragraph 2 of the 1945 Constitution of the Republic of Indonesia affirms that every child has the right to life, to grow and develop, and to be protected from all forms of violence and discrimination. This provision underscores the necessity of legal safeguards not only for children born within legally recognized marriages but also for those whose births occur outside of such formalized unions. Within this framework, parents are legally and ethically obligated to provide care, education, and protection for their children to the fullest extent of their abilities. These duties are not merely personal responsibilities but constitute enforceable rights of the child under the law. In the legal case under discussion, the judges based their considerations on the religious legitimacy of the petitioners' marriage, referring to Article 2 paragraph 1 and Article 42 of Law No. 1 of 1974 concerning Marriage, as well as Article 99 of the Compilation of Islamic Law. The court ultimately approved the petition with reference to the concept of *maslahah*, which prioritizes the protection and well-being of the child within the family structure. This judicial approach ensures that the child is afforded equal legal status and entitlements as those born within formally registered marriages, thereby upholding both the legal framework and the overarching principles of justice and child welfare.¹² Article 7 of Law No. 23 of 2002 on Child Protection stipulates that every child has the right to know their parents. This right is inherently connected to the child's *nasab* and personal identity. Establishing a child's *nasab* involves proving

¹² Uutmuthmaina, "Wawancara," 2024.

parentage, which is most commonly documented through a birth certificate. The birth certificate serves as an official and authentic document that verifies an individual's legal identity and confirms their citizenship status.

Under Islamic jurisprudence and applicable legal provisions in Indonesia, a child's paternal nasab may be legally recognized based on several conditions:

- a. Through a valid marriage, this refers to a marriage that fulfills all essential and formal requirements, including the absence of any legal impediments. A marriage is deemed valid if it meets the prescribed pillars and conditions set by Islamic law.
- b. Through a defective (*fasid*) marriage, this type of union is considered flawed or incomplete due to the absence or invalidity of one or more essential elements, such as an unauthorized guardian (*wali*) or the presence of non-Muslim witnesses. In such cases, the irregularity is often discovered after the marriage has taken place, not at the outset.
- c. Through a mistaken (*syubhat*) sexual relationship, this occurs when a man engages in sexual intercourse with a woman under the mistaken belief that she is his lawful wife. Such circumstances may emerge from ambiguity or misunderstanding at the time of the marriage, particularly when the parties involved sincerely believe that their union meets the requirements for legal validity.

This consideration aligns with the *fiqh* (Islamic jurisprudence) argument found in the book *Al-Muhazzab*, Volume II, page 177, which states as follows:

الحمل في النكاح الفاسد كالحمل في النكاح الصحيح

"A pregnancy resulting from a fasid (irregular) marriage carries the same legal implications as one resulting from a valid (shohih) marriage."

In light of the factual circumstances that both Petitioners are physically healthy with no indication of infertility and that Petitioner I and Petitioner II have lived together as husband and wife following their marriage, the Court finds that Petitioner II possesses the capacity and likelihood to engage in conjugal relations and to cause a pregnancy in his spouse, Petitioner I. As such, the legal establishment of the child's nasab or nasab to the father based on a valid marriage is not only a

requirement grounded in Islamic law but also a critical step in ensuring the protection and promotion of the child's best interests both at present and in the future. Recognizing the nasab of a child within the context of a lawful marriage constitutes a concrete realization of the higher objectives of Islamic law, particularly the preservation of life and the preservation of nasab. The Petitioners' main objective in submitting this legal request is to obtain official documentation in the form of a birth certificate and a family registration card for their child. This reflects their parental duty to fulfill the child's right to legal identity, which is guaranteed under national law. Therefore, the legal standing of the Petitioners in this application is both clear and legitimate, and it does not conflict with existing legal frameworks. Furthermore, in accordance with Articles 5, 7, and 27 paragraph (2) of Law No. 23 of 2002 concerning Child Protection, as amended by Law No. 17 of 2016, every child is entitled to a legal identity and the right to know their biological parents. These rights are manifested through the issuance of an official birth certificate, which serves as the child's formal identification and a foundation for accessing broader civil rights.

In the context of child protection, the Indonesian legal system, whether derived from positive law or from the Compilation of Islamic Law, reflects a shared commitment to providing legal clarity regarding the status of children born from marriages that have not yet been formally registered.¹³ Social reality reveals that unregistered marriages remain prevalent in various regions, often driven by cultural traditions, economic limitations, or restricted access to civil registration services. However, when a child is born from such a union, legal issues frequently arise regarding the child's legal identity, access to education, inheritance rights, and other civil entitlements.

In this instance, the panel of judges employed a progressive interpretative approach by seeking to harmonize formal legal norms with the socio-religious realities encountered by the community. The determination of the child's legal

¹³ Muhammad Izzuddin, Atin Meriati Isnaini, and M. Ikhsan Kamil, "Perlindungan Hukum Terhadap Anak Yang Lahir Dari Perkawinan Tidak Tercatat Di Tinjau Dari Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan Studi Kasus Kecamatan Praya Timur," *Unizar Recht Journal (URJ)* 3, no. 3 (October 29, 2024): 464–473, <https://urj.unizar.ac.id/urj/article/view/208>.

status was not grounded solely in rigid legal formalism, but was also guided by considerations of substantive justice and the overarching welfare of the child. This approach aligns with the principles of *maqāṣid al-sharī'ah*, particularly in terms of *ḥifẓ al-nasl* (the protection of nasab) and *ḥifẓ al-nafs* (the protection of life), wherein safeguarding the identity and dignity of the child is treated as a paramount concern.

The decision to recognize the child as a legitimate child by referring to the existence of a marriage contract under Islamic law, even though it was not initially recorded in the state's administrative system, reflects the judge's effort to ensure the full protection of the child's rights. In this context, the acknowledgment of nasab is not merely a biological consequence but also a manifestation of the parents' social and spiritual responsibility toward the child. Furthermore, this legal recognition paves the way for the child to obtain a birth certificate, which in turn serves as a legal foundation for accessing various public services.

In this context the role of the judge becomes highly significant as an actor who not only enforces the law procedurally but also interprets it functionally within the framework of protecting vulnerable groups such as children. This reflects the shift of Indonesia's religious courts toward a more responsive legal approach, one that adapts to social developments and addresses the need for substantive justice within society.¹⁴

Therefore, it is recommended that every marriage conducted in accordance with religious law be promptly registered through the state's administrative system to prevent potential legal complications in the future. Registration is not merely a formality but serves as a guarantee of legal rights for all parties involved, particularly the child. The state holds a pivotal responsibility in fostering legal consciousness, expanding access to marriage registration services, and developing an inclusive legal framework to ensure that no child is denied their rights as a result of their parents' administrative shortcomings.

¹⁴ Fitika Andraini and Adi Suliantoro, "Perlindungan Hukum Terhadap Pengakuan Dan Pengesahan Anak Yang Lahir Dari Perkawinan Siri Di Kota Semarang," *al-Mawarid Jurnal Syariah dan Hukum (JSYH)* 6, no. 2 (2024).

D. Conclusion

In conclusion, the legal status of children born prior to the formal registration of their parents' marriage can still be legally recognized through a judicial determination. Based on the case study of the Religious Court of Pangkalan Balai, Decision No. 202/Pdt.P/2023/PA.Pkb, it is evident that Indonesian law, particularly the Compilation of Islamic Law (Kompilasi Hukum Islam) and the Marriage Law, provides a legal mechanism to affirm the status of such children.

This case illustrates that legal protection for children must extend beyond mere written provisions. It must be realized through judicial decisions that uphold the best interests of the child. When a child's legal status remains uncertain due to the administrative oversight of their parents, the state must take active steps to intervene. Not all families are aware of the importance of marriage registration, nor do they all have equal access to such services.

In this case, the judge's reasoning was guided by the principle of *maslahah* (public benefit) and the protection of children's rights, which reinforces the critical role of marriage registration in providing legal certainty. Through such determinations, children born before the formal registration of marriage can still access their rights without facing discrimination, in line with the principles of national law and Islamic jurisprudence. This highlights the imperative of equitable and inclusive legal recognition for all children, irrespective of their parents' marital status, as a shared responsibility of the state and society in upholding and protecting children's rights.

Therefore, the findings of this study suggest that both the state and society must work toward building a legal system that goes beyond formalistic interpretations and responds to the realities on the ground. This requires civil registration policies to be more proactive, focusing on education, accessibility, and the elimination of social stigma. Only through such approaches can the law truly serve as a protective space where children are empowered to grow and shape their futures without being disadvantaged by circumstances beyond their control.

REFERENCES

- Andraini, Fitika, and Adi Suliantoro. "Perlindungan Hukum Terhadap Pengakuan Dan Pengesahan Anak Yang Lahir Dari Perkawinan Siri Di Kota Semarang." *al-Mawarid Jurnal Syariah dan Hukum (JSYH)* 6, no. 2 (2024).
- Faizah, Bafadhal. "Nikah Siri Dalam Perspektif Undang-Undang Perkawinan." *Jurnal Ilmu Hukum Jambi* 2, no. 2 (2011): 43263.
- Idrus, Muhammad. "Peran Penting Arbitrase Dalam Hukum Perkawinan Islam Di Indonesia (Urgensitas Lembaga Arbitrase Islam Dalam Pengasuhan Anak Dan Sengketa Perceraian)." *Indonesian Journal of Shariah and Justice* 4, no. 2 (December 29, 2024): 247-275. <https://ijsjiinternate.id/index.php/ijsj/article/view/109>.
- Islami, Irfan. "Perkawinan Di Bawah Tangan (Kawin Sirri) Dan Akibat Hukumnya." *ADIL: Jurnal Hukum* 8, no. 1 (November 23, 2017): 69-90. <https://academicjournal.yarsi.ac.id/index.php/Jurnal-ADIL/article/view/454>.
- Likuwatan, Rauf, and Fatum Abubakar. "Disharmony Of The Legal Norm Of Interreligious Marriage; Analysis Of Pancasila Norms, Law No. 1 Of 1974 And Law No. 23 Of 2006." *Indonesian Journal of Shariah and Justice* 3, no. 2 (December 22, 2023): 169-195. <https://ijsjiinternate.id/index.php/ijsj/article/view/53>.
- Lutfiah. *Prinsip Perinsip Hukum Pencatatan Perkawinan Di Indonesia*. Media Sahabat Cindikia, 2018.
- Mardani. *Hukum Keluarga Islam Di Indonesia*. Jakarta: Kencana, 2016.
- Masitoh, Ury Ayu. "Anak Hasil Perkawinan Siri Sebagai Ahli Waris Ditinjau Dari Hukum Perdata Dan Hukum Islam." *DIVERSI : Jurnal Hukum* 4, no. 2 (February 28, 2019): 125-148. <https://ejournal.uniska-kediri.ac.id/index.php/Diversi/article/view/276>.
- Muhammad Izzuddin, Atin Meriati Isnaini, and M. Ikhsan Kamil. "Perlindungan Hukum Terhadap Anak Yang Lahir Dari Perkawinan Tidak Tercatat Di Tinjau Dari Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan Studi Kasus Kecamatan Praya Timur." *Unizar Recht Journal (URJ)* 3, no. 3 (October 29, 2024): 464-473. <https://urj.unizar.ac.id/urj/article/view/208>.
- Mulyadi. *Perkawinan Indonesia*. Semarang: Penerbit Universitas Diponegoro, 2018.
- Pratama, Rizki Putra, Zuraidah Azkia, and A'dawiyah Bt Ismail. "Pembebanan Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Gugat Dalam Tinjauan Hukum Islam Di Indonesia Dan Malaysia." *Usroh: Jurnal Hukum Keluarga Islam* 7, no. 1 (January 1, 2023): 11-26. <http://jurnal.radenfatah.ac.id/index.php/usroh/article/view/17738>.
- Ramadhan, Wahyu Fajar. "Penetapan Asal Usul Anak Yang Lahir Di Luar Perkawinan Dan Akibat Hukumnya Ditinjau Berdasarkan Hukum Kekeluargaan

Islam (Studi Kasus Penetapan Pengadilan Agama Jakarta Selatan Nomor: 298/PDT. P/2020/PA. JS)." *Indonesian Notary* 4, no. 2 (2022): 33.

Safitri, Ika. "Dampak Pernikahan Siri Terhadap Status Hukum Anak." *Journal of Knowledge and Collaboration* 1, no. 6 (2024): 290-294.

Sri Wahyuni. "Perkawinan Adat Di Maluku: Antara Adat, Pendidikan Dan Agama (Studi Kasus Terhadap Keluarga Muslim Di Jazirah Leihitu Dan Kecamatan Sirimau Maluku)." *Indonesian Journal of Shariah and Justice* 2, no. 2 (December 29, 2022): 163-185. <https://ijsjainternate.id/index.php/ijsj/article/view/33>.

Trisnanda, Yudita, Indah Sri Utari, and Rodiyah Tangwun. "Construction Of The Application Of Domestic Violence Criminal Act In Unregistered Marriages." *International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal)* 5, no. 3 (2025): 881-892.

Uutmuthmaina. "Wawancara," 2024.

W., Retno D. "Hak Anak Yang Terlahir Tanpa Perkawinan Yang Sah." *Kanwil Kemenkum Jogja*. Last modified 2022. <https://jogja.kemenkum.go.id/pusat-informasi/informasi-lain/artikel/hak-anak-yang-terlahir-tanpa-perkawinan-yang-sah>.

Wahyudi, Amri. "Poligami Dalam Kurun Waktu Satu Hari Ditinjau Dari Undang-Undang Perkawinan Dan Hukum Islam." *Muqaranah* 5, no. 2 (December 23, 2021): 173-184. <https://jurnal.radenfatah.ac.id/index.php/muqaranah/article/view/10638>.