

The Status of Children Outside of Marriage and Its Relevance to the Reform of Islamic Family Law in Indonesia

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Abstract

*This research discusses the Status of Children Outside of Marriage and its Relevance to the Renewal of Islamic Family Law in Indonesia. This research aims to find out specifically how the status of children outside of marriage and its relevance to the reform of Islamic Family Law in Indonesia. The method used in this research is the method of collecting data through library research. Data is collected by collecting information from various sources of literature, such as books, journals, magazines, and so on. From this research, it can be concluded that the scholars agree that children born out of wedlock have family ties both with the mother and her family. This is also the case in the laws and regulations governing marriage law in Indonesia which stipulate that the only civil relationship of children born out of wedlock is with the mother and her family. Nevertheless, the plaintiff permitted the Constitutional Court to conduct a judicial review, especially to ensure that her child was given permanent legal status and accepted by the defendant's family. After the respondent disputed the existence of the child and ignored the child's civil rights, including payment of monthly living expenses and school fees, the plaintiff was forced to take legal action. Thus, the Constitutional Court decided to partially grant the petitioners' claims based on the reasoning of the Panel of Judges. It was an extraordinary *ijtihad* when the Constitutional Court issued a new ruling on the status of children born out of wedlock. The Constitutional Court's decision is supported by arguments that are in the public interest (*al-mashlahah al-'ammah*), including protecting the future of children and providing a deterrent effect on men who have free sex so that adultery does not become commonplace. At least today, we can observe that legal progress in Indonesia also considers vulnerable groups, especially children.*

Keywords: Status, Children, Marriage, Relevance, Family Law

Abstrak

Penelitian ini membahas mengenai Status Anak di Luar Perkawinan dan Relevansi pada Pembaharuan Hukum Keluarga Islam Di Indonesia. Penelitian ini bertujuan untuk mengetahui secara spesifik bagaimana status anak diluar Pernikahan dan Relevansinya Pada pembaharuan Hukum Keluarga Islam di Indonesia. Adapun metodologi penelitian yang digunakan pada penelitian ini yaitu metode pengumpulan data melalui riset pustaka. Data dikumpulkan dengan cara mengumpulkan informasi dari berbagai sumber literatur, seperti Buku, Jurnal, majalah dan lain sebagainya. Dari penelitian ini maka dapat disimpulkan bahwa, Para ulama sepakat bahwa anak yang lahir di luar nikah mempunyai ikatan kekeluargaan baik dengan ibu maupun keluarganya. Hal serupa juga terjadi dalam undang-undang dan peraturan yang mengatur hukum perkawinan di Indonesia yang menetapkan bahwa satu-satunya hubungan perdata anak luar nikah adalah dengan ibu dan keluarganya. Meski demikian, Penggugat memberikan izin kepada Mahkamah Konstitusi untuk melakukan uji materi, terutama untuk memastikan anaknya

diberikan status hukum tetap dan diterima oleh keluarga tergugat. Setelah tergugat memperlakukan keberadaan anak tersebut dan mengabaikan hak-hak keperdataan anak tersebut, termasuk pembayaran biaya hidup bulanan dan biaya sekolah, maka penggugat terpaksa menempuh jalur hukum. Dengan demikian, Mahkamah Konstitusi memutuskan mengabulkan sebagian tuntutan para pemohon berdasarkan pertimbangan Majelis Hakim. Suatu ijtihad yang sangat luar biasa ketika Mahkamah Konstitusi mengeluarkan putusan baru mengenai status anak yang lahir di luar nikah. Putusan Mahkamah Konstitusi ini didukung oleh dalil-dalil yang bersifat kemaslahatan umum (al-mashlahah al-'ammah), termasuk menjaga masa depan anak dan memberikan efek jera terhadap laki-laki yang melakukan hubungan seks bebas agar perzinahan tidak menjadi hal yang lumrah. Setidaknya saat ini, kita dapat mengamati bahwa kemajuan hukum di Indonesia juga mempertimbangkan kelompok rentan, khususnya anak-anak.

Kata Kunci: Status, Anak, Perkawinan, Relevansi, Hukum Keluarga

Introduction

Islamic law is one of Indonesia's three legal systems, along with Western law and customary law. It is considered one of the living laws. Along with the existence of religion, there will also be religious ideals or conventions. Although it has developed over several centuries along with societal processes, Islamic law, especially family law in Indonesia, does not preclude approaches that truly consider local interests, or the local culture of Indonesian society. It is not surprising that Muslim scholars in Indonesia have championed Islamic law since the beginning, as it has always been in line with the country's socio-cultural norms. As such, Islamic law is a component of social structure that functions to interact with and influence other social structures. Greater knowledge of the sociocultural context in which law is applied in society is possible thanks to the relationship between social structure and law (Gunawan, 2016, p. 78).

Having children is a requirement from Allah SWT that married couples accept (Al-Mufarraj, 2003, p. 5). Because children have human dignity and rights as human beings, children must always be protected and preserved. The 1945 Constitution and the UN Convention on the Rights of the Child both include children's rights as one component of human rights. In the life of the nation, children are the present and future of a nation. Therefore, every child has the right to live, grow and develop, participate, be safe from violence and discrimination, and enjoy civil liberties and freedoms (Alam & Fauzan, 2008, p. 1). It is the collective responsibility of parents, families, and communities to uphold and protect these human rights following legal requirements (Thaib & Jauhari, 2004, p. 5).

Legitimate and illegitimate offspring are distinguished by law. The existence of a valid marriage is necessary for there to be valid offspring, because offspring are based on birth as a result of a valid marriage. We refer to these children as true children. Offspring that do not come from an invalid marriage is referred to as illegitimate children (Zein & Aripin, 2004, p. 5), (Satrio, 2000). Therefore, illegitimate children are children born to a woman who is not legally married to the man with whom she had sex (adulterous children in Islamic ideas) (Hum et al., 2022).

As the Hadith of the Prophet Muhammad PBUH narrated by Imam al-Bukhari in his Sahih book, namely:

Meaning: *Abu Hurairah reported that the Messenger of Allah (SAW) said that the child is for the one who has a legal bed, while the adulterer has no right to the nasab (the child) (Shahih al-Bukhari, n.d.).*

The objectives of the marriage law include childbearing, maintaining genealogy, preventing disease, and building a happy family (Az-Zuhaili, 2016), (Al-Zuhaili, 1997, p. 182). As Allah says, in Surah al-Rūm (30): verse 21:

Meaning: *And among the signs of His power is that He created for you wives of your kind so that you tend to them and feel at ease, and He made between you love and affection. Indeed, in such things, there are signs for those who think (Ramulyo, 2006, p. . 22-23).*

The Constitutional Court believes that as long as Article 43 paragraph (1) of the Marriage Law is read to mean the termination of a child's civil relationship with a man who can be proven to be the father's biological child through advances in science and technology or other legally acceptable evidence, it has no binding legal effect.

Furthermore, the Court determined that the paragraph should read:

"A child born out of wedlock has a civil relationship with his mother and his mother's family and with the man as his father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family." (Ardine, n.d.)

This decision also stipulates that children born outside of marriage have a civil relationship with the mother and her family, as well as with the man whom they can legally identify as the father and can be established through science, technology, and/or other evidence that can prove that the children were born outside of marriage. have blood relations, including blood relations.

The Constitutional Court's decision to recognize illegitimate children has both positive and negative social impacts. Nurul Irfan, an Islamic criminal expert, claims the ruling was made to protect the rights of children, not to legalize adultery. Moreover, the Constitutional Court's ruling has become state legislation, which is a means for the government to safeguard the rights of babies born without the knowledge of their parents.

Article 99 of the Compilation of Islamic Law in Indonesia and fiqh stipulates that legitimate children are children born or the result of a legal marriage. (2) offspring resulting from legal fertilization outside the womb between husband and wife, born to the wife (Abdurrahman & di Indonesia, 2007, p. 60), (Moh. Idris Romulyo, 2002).

Why mothers are assigned to their children is an interesting topic. What prevents a child from being given to his father? Meanwhile, it is the mother and father who carry it out. Moreover, newborns believe that the law does not recognize their innate right as flawless human beings to have a mother and father. In addition, this also violates the rights of the child.

In contrast, the decision of the Constitutional Court regarding the fate of children born outside of marriage is a breakthrough in Indonesian marriage law because it not only has an impact on the legal recognition of children as children of their fathers but also other legal obligations such as maintenance and other matters.

The following are previous articles whose themes are related to the theme of this research, namely as follows, Sabilal Rosyad (Rosyad, 2017), Zainal Faizin (Faizin, 2016), IY Nugroho (Nugroho & Safiudin, 2021), Lina Oktavia (Oktavia, 2011), Septiayu Restu Wulandari, et al. (Wulandari et al., 2023), Abigail Prasetyo, et al. (Prasetyo et al., 2023), Sarah Qosim (Qosim,

2022). From some of these studies, there are differences regarding the Status of Children Outside of Marriage and the Relevance of Islamic Family Law reform.

The objectives of the research entitled "Status of Children outside Marriage and Relevance to the Renewal of Islamic Family Law in Indonesia" are: To find out how the status of children's nasab according to Islamic law and National Marriage law in Indonesia, To find out how the consideration of judges in the Constitutional Court's decision to conduct a Judicial review of article 43 paragraph (1) of Law No.1 of 1974, To analyze the legal consequences of the decision on marriage law in Indonesia and its relevance to the reform of Islamic Family law in Indonesia.

Research method

This research is a type of library research that is included in the category of library research. This research entitled Status of Children Outside of Marriage and Relevance to the Renewal of Islamic Family Law in Indonesia whose data is collected through library research, namely collecting information from various literature sources related to divorce and referral which refer to books, documentaries materials, journals, magazines, and newspapers. The main focus of library research is to find various theories, laws, postulates, principles, opinions, ideas, and other information that can be used to analyze and solve the problem under study (Sarjono, 2008).

Result and Discussion

A. Nasab Status of Children According to Islamic Law and National Marriage Law in Indonesia

1. Nasab In Islamic Law

Etymologically, "hannasab" (meaning descent, kinship) is where the word "nasab" comes from. As a by-product of a valid marriage, nasab is also believed to refer to blood relations within the family (Islam, 1997). In contrast, the term "nasab" refers to a person's lineage or kinship as a blood relationship, either horizontally (brothers, uncles, and so on) or upwards (father, grandfather, mother, grandmother, and so on) (Faizin, 2016), (Alam & Fauzan, 2008, p. 175).

The greatest benefit that Allah SWT gives to his people is Nasab, as said in Surah Al-Furqan verse 54:

Meaning: *"And he also created man from water, then he made man (have) descendants of mushaharah (family relations originating from marriage) and is your god the most powerful."*

The explanation of genealogy as a gift from Allah can be seen in the above passage. The phrase *fa ja'alah nasabaa* makes this clear. Nasab is one of the five *maqasid al-syariah*, besides (Al-Syatibi, 2003, pp. 12–23), (Djalaluddin, 2015).

a. Definition Nasab

In language, "nasab" means relationship, descent, or determination of ancestors. While the definition of nasab is according to the expression there are several, such as:

- 1) Lineage is the descendants of heirs or families who are entitled to receive inheritance due to descent or blood relations (Mujieb, 2010).

- 2) The basis for the formation of family ties based on the unity of blood or the understanding that one is a member of the other is nasab Wahbah al-Zuhaili (Al-Zuhaili, 1997, p. 7247), (Az-Zuhaili, 2016).

Based on the above definitions of nasab, it can be concluded that nasab refers to the validity of blood kinship as a result of a valid marriage, invalid marriage, or subhatic intercourse. According to sharia law, nasab recognizes a child's kinship with his father's family, making the child a member of that lineage and giving him privileges based on that bond.

The term "nasab" meaning "descent or family ties" has entered the Indonesian language and is included in the extensive Indonesian lexicon. According to the Islamic Encyclopedia, nasab is the offspring or relatives of a family bound by a valid marriage contract. Similarly, one of the consequences of a valid marriage is nasab, or family ties based on blood relations, according to the Islamic Encyclopedia. People who have a nasab relationship acquire rights and obligations as a result of the relationship, including nasab rights and civil rights.

Islamic law places great importance on tracing the origins of a child as it enables an understanding of the father-child bond of the child. However, children born outside a legal marriage are not entitled to be called legitimate offspring; instead, they are usually referred to as children of adultery or children born outside a legal marriage, and their only family connection is through their mother.

b. Basics of lineage according to Islamic Fiqh

All scholars believe that a person's bond with his or her mother arises from the fact that sexual contact with a man, whether through marriage or adultery, leads to fertilization (al-Asqalany & al-Asqalani, 1991, p. 127). Implicitly, in the Qur'an surah al-Aḥqāf (46) Verses 5-6 mentions:

Meaning: *And those who guard their private parts, except against their wives or the slaves they own; then surely they are not blameworthy in this.*

Surah al-Isrā' (17) verse 32 also explains

Meaning: *And do not approach adultery; indeed, adultery is an abominable act and a bad way.*

The act of adultery results in the violation of Allah's commandment, which leads to the birth of a child.

c. Status of out-of-wedlock children according to Islamic Law

Every child, according to Wahbah Zuhaili, has rights that must be upheld by parents. These rights include nasab, raḍāmah, haḍānah, guardianship, and maintenance. Nasab is very important for determining lineage. Since guardianship and maintenance are related to a child's life, property, and education, they are also important for children.

Scholars agree that children born out of wedlock have family ties to both the mother and her family. It is the responsibility of the mother and her family to fulfill all his needs, financial and spiritual. The same applies to inheritance rights (bin Ahmad & Rusyd, 1995, p. 357).

2. Nasab in Indonesian Marriage Law

All laws and regulations relating to marriage in Indonesia are collectively referred to as Indonesian marriage law. Indonesian marriage law consists of:

a. Law Number 1 of 1974

With the enactment of Law Number 1 Year 1974, all laws relating to marriage are declared void (Moh. Idris Romulyo, 2002), (Mardani, 2011). Article 66 of the Marriage Law explains as follows: If the marriage and everything related to it is based on this law, then the civil law (Burgerlijk wet Book).

b. Government Regulation No. 9 of 1975

In order to effectively implement Law Number I of 1974 on Marriage, which was promulgated on January 2, 1974, there is still a need for regulations. These regulations address various topics, such as marriage registration, divorce procedures, the time limit for filing a divorce suit by a woman, annulment of marriage, and what happens if a husband has multiple wives.

c. Compilation of Islamic Law

Religious Court judges make the Compilation of Islamic Law a reference in examining and deciding cases under their authority. The public can also make KHI a reference to Islamic law relating to them because it is a collection of formulations from many fiqh texts that they could not previously study directly (Abdurrahman & di Indonesia, 2007).

The compilation of Islamic law applies as material law in religious courts, namely Muslim courts based on Presidential Instruction No. 1 of 1991, Decree of the Minister of Religious Affairs of the Republic of Indonesia No. 154 of 1991, and Circular Letter. for the development of Islamic religious judicial bodies on behalf of the director general of the development of Islamic religious institutions No. 3694/EV/HK.003/AZ/91 addressed to the chairman of the religious high court and chairman of religious courts throughout Indonesia. According to Law No. 1 of 1974 article 63 paragraph (1):

a. Religious Courts for Those who are Muslims

b. General Court for Others

According to the Indonesian Marriage Law, a child has a direct relationship with the mother. Law Number 1 Year 1974 Article 43 Paragraph 1, which states that children born out of wedlock only have a civil relationship with their mother and her family, helps to explain this. Under Indonesian marriage law, the paternity of a child can be determined through:

a. Legal Marriage

b. A marriage that is annulled

3. Status of children outside of marriage according to National Marriage Law

The Indonesian National Marriage Law distinguishes two categories of child status: first, legitimate children. Illegitimate offspring come second. According to Article 42 of Law Number 1 of the Year 1974, legitimate children are those who are born in a marriage or as a result of a legal marriage. Moreover, Article 99 of the Compilation of Islamic Law (KHI) states that legitimate children are:

a. Children born in or as a result of a legal Marriage.

- b. The result of fertilization by a legitimate husband and wife outside the womb and born to that wife.

According to national laws and regulations, among others, a child conceived and born outside a legal marriage is considered an illegitimate child:

- a. Children born outside marriage only have a civil relationship with the mother and her family, according to Law Number 1 Year 1974 Article 43 Paragraph 1.
- b. According to Article 100 of the Compilation of Islamic Law (KHI), children born out of wedlock only have a blood relationship with their mother and her family.

Ultimately, the status of children born out of wedlock only gives them a civil bond with the mother and her family, in accordance with the laws and regulations governing marriage law in Indonesia. The emergence of rights and obligations between parents and children is sometimes referred to as parental authority. From the description above, it can be concluded that the definition of mukhalafah is that the child and his biological father do not have a civil relationship characterized by kinship or reciprocal rights and obligations.

B. Basic Considerations of Judges in the Constitutional Court Decision in Conducting Judicial Review of Article 43 Paragraph (1) of Law No. 1 of 1974

The plaintiff wanted the Constitutional Court to grant her judicial review rights so that her child could be granted permanent legal status and accepted by the respondent's family. After the respondent disputed the child's existence and neglected his civil rights, including the payment of monthly living expenses and school fees, the plaintiff was forced to take legal action. The following is a review of the material presented by the application:

1945 CONSTITUTION	Law Number 1 Year 1974 About Marriage
Article 28 B paragraph (1) "Every person has the right to form a family and continue their descendants through legal marriage."	Article 2 paragraph (2) "Every marriage shall be recorded in accordance with the applicable laws and regulations."
Article 28 B paragraph (2) "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination."	Article 43 paragraph (1) "Children born out of wedlock only have a civil relationship with their mother and their mother's family."
Article 28 D paragraph (1) "Everyone has the right to recognition guarantees, protection, and certainty of a fair law and equal treatment before the law."	

Therefore, the Constitutional Court granted the Applicant's petition with the following considerations after much debate:

1. Considering that the legal definition of the term "born out of wedlock" is the main legal dispute regarding children born out of wedlock.

2. In essence, the egg and spermatozoa must meet during sexual intercourse (coitus) or in other ways that depend on the progress of science to produce fertilization so that a woman can become pregnant.
3. The legal consequences of birth events related to pregnancy, which are preceded by women and men having sexual intercourse, have legal relationships that have reciprocal rights and obligations, whose legal subjects are children, mothers and fathers.

The Panel of Judges of the Constitutional Court decided to partially grant the petitioners' request by considering these factors. Article 2 Paragraph 2 of the Marriage Law is invalid because the purpose of marriage registration is to ensure administrative efficiency

Article 43 paragraph 1 of the Marriage Law was granted, the Constitutional Court held that the wording of Article 43 paragraph (1) of Law No. 1 Year 1974 should read: "children born out of wedlock have a civil relationship with their mother and their mother's family and with the man as their father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with the father's family".

C. Legal Effects of the Constitutional Court Decision on Marriage Law in Indonesia and its Relevance to the Reform of Islamic Family Law in Indonesia

The subject matter of the petition was a request for judicial review of Article 2(1) and Article 43(1) of Law No. 1/1974 on Marriage. The petition began on December 20, 1993, with a serial marital relationship, and a son was born. The plaintiff wanted the Constitutional Court to grant her the right to a judicial review, namely so that her child could be granted permanent legal status and accepted by the respondent's family. After the respondent disputed the existence of the child and ignored the child's civil rights, including payment of monthly living expenses and school fees, the plaintiff was forced to take legal action.

Prior to the court review, "Children born out of wedlock only have a civil relationship with their mother and their mother's family" was stated in Article 43 paragraph (1) of Marriage Law Number 1 Year 1974. The requirement that a child born out of wedlock only has a maternal bond with the mother is unfair. As a result, the young child suffers injustice. Unmarried children are not evil, but they are in a vulnerable situation. However, as stated in Article 43 paragraph (1) of Marriage Law Number 1 Year 1974, moral obligations must be borne by the child and his mother, as well as his biological father.

In addition, Article 43 paragraph (1) removes a man's fatherly responsibility if he has sexual intercourse that results in pregnancy and childbirth, as well as depriving the child of her rights against her father. This is not fair. The definition of "born outside marriage" is the main legal issue relating to children born outside marriage. Children born outside a valid marriage and children born within a valid marriage are legally distinguished prior to the judicial review process under Article 43 paragraph (1) of Marriage Law Number 1 Year 1974. This is contrary to Article 28B paragraph (2) of the Law on Legal Marriage. Constitution of the Republic of Indonesia Year 1945.

Children born outside a valid marriage and children born in a valid marriage are legally distinguished before the judicial review process under Article 43 paragraph (1) of Marriage Law Number 1 Year 1974. This is contrary to Article 28B paragraph (2) of the Law on Legal Marriage. Constitution of the Republic of Indonesia Year 1945.

“Every child has the right to survival, growth, and development and the right to protection from violence and discrimination”.

Article 4 of Law Number 23 of 2002 concerning Child Protection states:

“Every child has the right to live, grow, develop, and participate reasonably following human dignity, and to receive protection from violence and discrimination”

The Constitutional Court's decision on Friday, February 17, 2012, amended Article 43(1) of Law No. 1/1974 on Marriage which mentions children out of wedlock. These changes must be interpreted carefully and objectively to ensure that they benefit rather than harm society. These changes do not mean that prostitution and adultery are now allowed by the Constitutional Court. The purpose of the Constitutional Court's *ijtihad* is simply to ensure that children born out of wedlock have the same rights and status as other children and are not discriminated against.

Reading Satria Efendi's opinion (Zein & Aripin, 2004), regarding the legal consequences for those who perform *Siri* marriages, he says the Religious Courts should not consider their marriages to have no legal effect because of Islamic beliefs. The application of legal restrictions for no legitimate purpose other than to advance the interests of society has caused one of the parties in this instance, namely the woman and her child, to suffer an unfavorable outcome.

This rule states that one is not justified in simply wanting to enjoy something without taking any of the risks associated with it. A man may feel relieved to be relieved of his duties and live happily with another wife when his wife and children have to suffer all their lives. A man who enters into a marriage (*Siri*) can escape all responsibility for his unlawful actions, while a woman who commits carelessness that results in the marriage not being registered, must bear the punishment both for herself and for the children she gives birth to.

Ultimately, the Constitutional Court's decision on illegitimate offspring is likely to spark debate for some time to come. Despite the differences of opinion, all parties recognize the right to legal protection for illegitimate children. Knowing their parents' names is one of them. Law No. 23/2002 on Child Protection, specifically states in Article 7 paragraph (1) that "Every child has the right to know his or her parents, to be raised and cared for by his or her parents." Of course, the term "parents" does not only refer to the mother. In addition, Article 28 B paragraph (2) of the 1945 Constitution states that "every child has the right to survival, growth and development, and the right to protection from violence and discrimination."

The plaintiff in this case is not the only woman fighting for her child to have legal standing, despite the debate.

It was an extraordinary *ijtihad* when the Constitutional Court (MK) issued a new ruling on the status of children born out of wedlock. The Constitutional Court's decision is supported by arguments that are in the public interest (*al-mashlahah al-'ammah*), including protecting the future of children and providing a deterrent effect on men who have free sex so that adultery does not become commonplace. Previously, the child did not have a civil relationship with his biological father and only had a civil relationship with the mother and her family; as a result, the biological father often failed to identify the child and abandoned him. With this choice, the child's biological father should be responsible for the child's fate and not just leave him alone.

The Indonesian Ulema Council needs to issue Fatwa No. 11/2012 on the treatment of children out of wedlock. The MUI Fatwa Commission chaired by Prof. Hasanuddin AF conveyed at least six points of legal regulations based on the fatwa issued on March 10, 2012 (Faizin, 2016), (*Fatwa MUI No 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya*, n.d.) among others:

1. The man who caused the birth of the child has nothing to do with the child born as a result of adultery.
2. The bond of kinship, inheritance, and nafaqah that the child of adultery has is only with the mother and her family.
3. The offspring of adulterers are not obliged to bear the guilt of adultery committed by their parents.
4. The authorities punish adulterers with hadd to protect the validity of their offspring (hifd al-nasl).
5. If a man who commits adultery causes a child to be born, the government can force him to serve a ta'zir punishment, which means he must:
 - a. Provide for the needs of the child.
 - b. Give the child his property after his death through a mandatory will.

The content of the fatwa seems to contradict the decision of the Constitutional Court. Regarding the second point of the fatwa, the Constitutional Court argues that unmarried children still have a legal relationship with their fathers, while MUI remains The view is that children born of adultery only have a relationship with their mother and family through birth, inheritance and nafaqah, which are biological. Asrorun Ni'am Sholeh, Secretary of the MUI Fatwa Commission, denied that MUI failed to protect babies born of adultery.

The Constitutional Court's ruling on children born out of wedlock was solely to resolve a civil dispute between the child and his biological father. According to him, the Court's decision has nothing to do with offspring. However, I also encourage Muslims to heed the fatwa of scholars because I am a Muslim. For the record, children born outside of marriage are listed as an objective in the Constitutional Court's ruling.

MUI emphasized that adultery is prohibited in its fatwa. The House of Representatives and the government received five recommendations from the MUI Fatwa Commission regarding adulterous behavior that causes problems for children as a result of adultery. It is suggested that the current government and DPR be tasked with making controlling legislation:

1. Strict punishment for adultery offenders, which serves as *zawajir* and *mawani* (detering the perpetrator and causing fear in those who do not).
2. Since adultery is a crime that degrades human dignity, make it a public offense and not a complaint offense.
3. The government should enforce the law firmly and strictly to prevent adultery.
4. The state should protect the children of adulterers and stop the abuse, especially by punishing men who use their pregnancies as a means to obtain children.
5. It is requested that the government assist children born as a result of adultery to obtain a simple birth certificate; however, the father of the child should not be forced to comply.
6. It is the responsibility of the government to instruct society to treat children born of adultery with equal respect and dignity.

The fatwa warns, among other things, that children born of adultery have no inheritance, no lineage, no marriage guardian, and no support from the man who gave birth to them. In addition, the child of adultery has no inheritance or ties other than lineage with the mother and her family. Therefore, it does not mean approving the adulterous child's relationship with the man who conceived her.

God, the State, and the law give equal rights to children; therefore, although legally a child born out of wedlock does not have a biological relationship with the biological father, this does not absolve the father of all human obligations towards the child he fathered.

Conclusion

The author of this study can draw the following conclusions from all of these justifications. According to Islamic law, the nasab of legitimate children, namely children born in a marriage that fulfills the harmony and conditions of marriage, is given to the father and mother before there is a Constitutional Court decision regarding the nasab of illegitimate children. Conversely, children born in a marriage recognized by religion and recorded following applicable laws and regulations are considered legitimate children according to national marriage law. This means that the offspring of adultery and Siri children are included in the group of children born outside of marriage. Therefore, children born outside of marriage are given exclusively to the mother. The reason a born child needs legal protection stems from the decision of the Constitutional Court which states that illegitimate children and their biological father have a civil relationship. Otherwise, it is the out-of-wedlock child who suffers, even though he is innocent because he was born against his will. The Constitutional Court's decision on the status of illegitimate children is an astonishing *ijtihad* and is in line with the purpose of Islamic law, which is to provide the benefit of mankind and prevent misfortune. It seems that legal progress in Indonesia has taken into account vulnerable groups, especially children. Besides, there must be advantages and disadvantages, but in this case, we consider the common interest of all parties in protecting legally unmarried children and holding their biological father accountable.

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