

Position and Protection of Civil Rights of Unmarried Children in the Relation of Legal System, Religious Norms, and Social Structure in Indonesia

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ABSTRACT

This paper critically discusses the position of children born out of wedlock in the national family law system by highlighting their legal status and sociological implications through a qualitative literature study based on thematic analysis. Through a review of various primary references on the Marriage Law, the Civil Code, Compilation of Islamic Law, and a number of major court decisions, it presents the normative reality that illegitimate children have only been legally recognized as having a relationship with their mother, unless there is official recognition of the father as made possible after the issuance of Constitutional Court Decision Number 46/PUU-VIII/2010. This study also reveals the significant obstacles faced by children born out of wedlock due to the incompatibility of the national legal system with the religious norms and social values that dominate society. In addition to formal regulations, pressure from social structures and the power of religious interpretation create challenges in accessing rights to identity, inheritance, and social protection at both the public and private levels. This article recommends the need for simplification of administrative procedures, progressive legal reform, and public education interventions to reduce discrimination and strengthen civil protection for children born out of wedlock. The discussion emphasizes that collaboration between the state, social institutions, law enforcement agencies, and community leaders is crucial to achieving an inclusive and fair protection system. This study contributes to the expansion of academic discourse on family law transformation and the formulation of policies that are more sensitive to the protection of children's rights, particularly for children born out of wedlock.

INTRODUCTION

The topic of the status of children born out of wedlock in the Indonesian family law system has long been the subject of academic thought and discussion in various social and legal forums. Shifts in social values and the presence of legal pluralism have prompted reflection on the status of children born outside of legal marriage. In many regions, family dynamics have undergone changes influenced by social developments, the tide of globalization, and the impact of technology on human relations. As a result, more and more people are being born outside of formal marriages, giving rise to debates about their civil rights and recognition of their identity in the public sphere.

Literature studies emphasize that children born out of wedlock, who are the result of a relationship

between a man and a woman without a legal marriage bond, often encounter great difficulties in obtaining equal legal recognition. The national legal system, specifically referring to the Marriage Law and the Civil Code, normatively stipulates that children born out of wedlock only have a legal relationship with their birth mother, as long as the biological father does not make an official acknowledgement or registration before the law (Sulistiani, 2020; Husni et al., 2021). Such legal governance then affects the access of children born out of wedlock to inheritance rights, legal identity, and social protection, and even creates substantial inequality when compared to legitimate children.

The issue of the status of children born out of wedlock actually extends far beyond the legal realm into the wider social sphere. In many communities,

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children born out of wedlock are highly vulnerable to repeated social stigma, discrimination, and even exclusion from their surroundings (Platt, 2017; Hariani et al., 2022). This stigma is not only structural in nature but also affects their interpersonal relationships. As shown by Evendi et al. (2021), peer friendships play a critical role in shaping children's behavior and social development. However, for children born out of wedlock, access to healthy friendships is often hampered by social prejudice. Strong traditional norms place children born out of wedlock as symbols of moral deviance, resulting in them growing up in an atmosphere of psychological pressure and difficulty integrating into their social environment. The lack of public understanding of children's rights and the principle of universality of protection in the legal system has resulted in their limited access to public services and fair treatment.

The legal structure in Indonesia, which is based on pluralism involving Islamic law, customary law, and civil law adds to the complexity of determining the status of children born out of wedlock. Differences in interpretation and philosophical foundations between these legal systems cause inconsistencies, and even at the implementation level, often create uncertainty for children born out of wedlock in claiming their basic rights (Butt, 2010; Pongoliu, 2013; Nurhayati, 2019). For example, Islamic law traditionally limits the lineage of children born out of wedlock to the mother, while civil law opens up the possibility of recognizing the father as long as it is done through a highly procedural formal legal mechanism (Maramis, 2017; Gani, 2018; Rahajaan & Niapele, 2021). This inconsistency ultimately creates an area of injustice that affects social development and the civil rights of children.

One of the fundamental problems faced is the uncertainty of the protection of the civil rights of children born out of wedlock, which is reflected in the dualism and even multipolarity of the legal system in Indonesia. The lack of legal recognition often results in children born out of wedlock losing access to legal identity, inheritance, and financial support from their biological fathers, unless there is official recognition from the father through certain mechanisms (Sulistiani, 2020; Husni et al., 2021). In many cases, this recognition process is not carried out, either due to social constraints, family pressure, or fear of stigma that is still strong in society.

Another issue relates to social stigma, which is difficult to eradicate, even though legal provisions have attempted to regulate the protection and respect of the rights of children born out of wedlock. In various communities, public opinion often does not align with the spirit of legal non-discrimination, so that children

born out of wedlock remain in an environment that is not conducive to growth and protection (Platt, 2017; Hariani et al., 2022). This tension between socio-religious norms and legal structures is part of the dynamics of a pluralistic society. Mujito et al. (2022) analyses that the ethical encounter between religious norms and legal structures in achieving multicultural social balance is often tense, where conventional religious norms can clash with the principle of legal equality, creating space for discriminatory practices to continue. This discrimination is reinforced by religious and customary norms that still priorities conventional moral judgements over the human rights of children as citizens.

The process of harmonizing regulations between Islamic law, customary law, and civil law is still far from complete. Each legal system has its own doctrines that do not always priorities the best interests of children born out of wedlock. Islamic law restricts inheritance rights and kinship, while the Compilation of Islamic Law and the Civil Code require special mechanisms to grant inheritance rights and legal identity to children born out of wedlock (Pongoliu, 2013; Gani, 2018; Nurhayati, 2019). This ambiguity is the main source of the lack of protection for groups that should be entitled to equal rights.

The above reality indicates that the discourse on the status of children born out of wedlock is not limited to the juridical level. Social issues and regulatory inconsistencies seem to run parallel but often cause overlapping problems that are detrimental to the interests of children. Sulistiani (2020) states that the inconsistency of regulations has not been able to meet the need for comprehensive protection, especially for children who are in dire need of recognition and protection from the state and society. Low social literacy regarding the importance of children's rights, as well as restrictive moral prejudices, remain the root of the problem that has yet to be resolved to this day.

A review of the legal status of children born out of wedlock is necessary to encourage the creation of an inclusive civil and social protection system. This is related to the principles of justice and protection of children's rights, as stipulated in the Child Protection Law. Without efforts to update knowledge and harmonies the legal system, children born out of wedlock will continue to live in uncertainty, face repeated discrimination, and be at risk of losing their rights. The existence of legal pluralism necessitates efforts towards legal convergence that can guarantee the welfare of children born out of wedlock. The absence of fair and equal protection will foster a cycle of social discrimination and perpetuate the stigma that has long shackled the social lives of families throughout Indonesia. Therefore, a comprehensive review is the

basis for developing policies that favor victims of discrimination without disregarding the fundamental values of the various legal systems in force. The main questions addressed in this study are: To what extent is the national family law system capable of providing equal civil recognition and protection for children born out of wedlock? How does the lack of synchronization between legal systems, religious norms, and social structures affect the status and fulfilment of the rights of children born out of wedlock in the public and private spheres?

The purpose of this study is to examine the extent to which the national family law system is able to provide equal civil recognition and protection for children born out of wedlock, as well as to analyse the influence of overlapping legal systems, religious norms, and social structures on the fulfilment of their rights. The results of this study are expected to contribute to strengthening academic studies on the protection of children's rights and to be used as a reference for policy reforms in the field of family and social law.

RESEARCH METHOD

This research was conducted using a qualitative literature study approach aimed at disseminating and interpreting the results of published research related to the position of children born out of wedlock in the national family law system. Qualitative literature studies can provide a theoretical basis and conceptual understanding through the analysis of various documents, journal articles, key reference books, and court decisions. According to Creswell (2014), literature studies enable researchers to trace thematic patterns and discourses that develop in studies, thereby comprehensively mapping shifts in theory, regulation, and practice in the fields of law and family sociology.

The data collection process was carried out by selecting scientific sources based on thematic relevance, topicality, and depth of discussion. In line with Bungin (2020) opinion, the literature review method was carried out systematically, starting from the identification, selection, to the synthesis of various publications that have academic value and have undergone a peer review process. Data analysis was carried out using a thematic synthesis approach, which is a strategy to integrate key findings from various studies to create a new, comprehensive, and objective picture of the issue being studied.

The validity and reliability of this qualitative literature study were maintained through a process of source triangulation and critical review of each publication used. Sugiyono (2018) states that the credibility of the analysis results can be strengthened by comparing findings from various sources and

tracing the connections between arguments, both those that reinforce each other and those that contradict each other. Thus, the results of the study are not merely narrative in nature, but truly emphasize academic integrity and factual accuracy in accordance with the principles of scientific writing.

RESULT AND DISCUSSION

Recognition and Protection of the Civil Rights of Children Born Out of Wedlock

Legal recognition and protection of children born out of wedlock in Indonesia still faces significant normative and practical challenges. The national family law system in Indonesia exhibits a fairly complex normative construction for providing civil recognition and protection for children born out of wedlock. The main provisions regarding the status of children born out of wedlock are contained in Law No. 1 of 1974 on Marriage, specifically Article 43(1), which states that children born out of wedlock only have civil relations with their mother and her family. Meanwhile, the Civil Code (KUH Perdata), particularly Articles 280-285, regulates the recognition of children born out of wedlock by their fathers, provided that it is done through a formally regulated legal process. This kind of legal dynamic shows how the formal legal system interacts with the social welfare structure. Marsal et al. (2021) emphasize that the development of an effective legal system must be able to strengthen the direction and structure of social welfare policies, ensuring that legal norms do not create or exacerbate the vulnerability of certain groups. The consequence of recognizing children born out of wedlock is the establishment of a civil relationship between the child and the father or mother who recognizes them. With the establishment of this civil relationship, the status of children born out of wedlock changes to that of recognized children born out of wedlock, which is far better than that of unrecognized children born out of wedlock (Bowontari, 2019). However, this mechanism tends to be based on strict administrative requirements and is rarely implemented due to stigma and bureaucratic obstacles. This situation reflects the need for a reformulation of policies that are more inclusive so that the civil rights of children born out of wedlock can be fulfilled fairly and effectively.

An important development in the legal protection of children born out of wedlock in Indonesia has been marked by progressive judicial intervention. The significance of this change began with Constitutional Court Decision No. 46/PUU-VIII/2010, which affirmed that children born out of wedlock can also have a civil relationship with their biological father,

provided there is convincing evidence according to the law. This ruling brought about a renewal in the perception of the national legal system, which had previously closed the door on children born out of wedlock to obtain civil rights fairly. This kind of legal dynamic underlines the importance of synergy between judicial institutions, regulations, and policy implementation to protect children's rights effectively. As analyzed by Sugiono et al. (2023), the protection of children's rights in family disputes requires an integrated approach in which progressive court decisions need to be supported by clear regulations and responsive institutional mechanisms in order to be fully implemented for the sake of substantive justice for children. The implementation of this ruling requires scientific evidence, such as DNA testing, which is legally recognized to avoid disputes in the future (Sujana, 2015; Solikin & Saidah, 2021). This ruling not only expands the scope of legal protection but also marks a paradigm shift towards the recognition of children's rights based on the principles of justice and legal certainty.

The inheritance rights of children born out of wedlock highlight the tension between civil law and Islamic law in Indonesia. Prior to the Constitutional Court's ruling, children born out of wedlock were only entitled to their mother's inheritance, because according to Article 100 of the KHI, they only had a blood relationship with their mother and her family (Susanto et al., 2021), so their access to their father's inheritance was very limited (Angelin et al., 2021). This practice reinforces dualism and the lack of harmonization between the two legal systems.

Efforts to protect children born out of wedlock within the national legal framework demonstrate a strong normative commitment. Furthermore, Law No. 23 of 2002 on Child Protection places the protection of children born out of wedlock on the principle of non-discrimination and emphasizes the state's obligation to guarantee the rights to life, growth and development, protection, and participation regardless of birth status. However, implementation in the field still faces challenges due to overlapping substance and a lack of synchronization between regulations (Pancasilawati, 2014). Social reality shows that the stigma is still strong, so that children born out of wedlock do not yet have full access to their civil rights. As stated in Article 5 of Law Number 23 of 2002 concerning Child Protection, every child has the right to a name as their identity and citizenship status. Article 55 of Law Number 1 of 1974 concerning Marriage explains that the origin of a child can only be proven with an authentic birth certificate issued by the competent authority, namely

the Population and Civil Registry Office (Elita et al., 2019). The disharmony between legal norms and administrative practices shows that the protection of children born out of wedlock still does not fully address the need for substantive justice.

Although the Constitutional Court's decision normatively marks progress, implementation issues remain a major obstacle to fulfilling the rights of children born out of wedlock. Several studies reveal that the Constitutional Court's decision does open up opportunities for broader legal protection, but the process of legalizing and registering the status of children born out of wedlock does not always run smoothly due to various legal and social considerations (Nasution & Nasution, 2021; Rohman et al., 2021). Complex legal procedures and the burden of proof on the mother or child pose a particular challenge to the realization of substantive legal recognition. Without administrative reforms and changes in social attitudes, legal recognition of children born out of wedlock remains merely symbolic and has yet to bring about real justice.

Structural and cultural obstacles remain the main barriers to the implementation of legal protection for children born out of wedlock. Empirical studies have found that civil registration agencies are often slow to follow up on court decisions regarding the recognition of children born out of wedlock. This is also influenced by uneven understanding among bureaucrats and social resistance at the community level (Barkah et al., 2022). These delays and administrative difficulties not only result in the absence of legal documents, but also open the door to broader social impacts. As shown by Hariani and Masnawati (2022), barriers to accessing basic documents and services are one manifestation of poverty that directly limits children's access to quality education and perpetuates the cycle of deprivation. Therefore, the effectiveness of regulations in guaranteeing access is key. Suwito et al. (2021), in a different context, emphasize that the effectiveness of regulations to ensure access to education and health for children in low-income communities requires a proactive and equitable approach, such as through scholarship schemes, which can serve as a lesson for overcoming administrative access barriers for children born out of wedlock.

Many cases show that children born out of wedlock still face difficulties in accessing vital administrative documents such as birth certificates or family cards, which has a knock-on effect on their right to education and other social protections. This situation confirms that, without reforming bureaucratic governance and achieving a more inclusive social transformation, the

fulfilment of the basic rights of children born out of wedlock will continue to be hampered by administrative obstacles and deep-rooted stigma.

The contribution of Islamic law to the Indonesian family law system has helped shape the normative boundaries of the status of children born out of wedlock. Islamic law, as one of the pillars of the family law system in Indonesia, reinforces the limitations of the civil relations of children born out of wedlock. In *fiqh* provisions, only the mother and the mother's family have legal responsibility, so that recognition of the biological father remains closed unless there is strong and clear acknowledgement (Nasution & Nasution, 2021; Barkah et al., 2022). However, the dynamics of social development and legal paradigms have begun to encourage adjustments in interpretation in order to provide a more equitable space for children born out of wedlock. This opens up opportunities for a reinterpretation of religious norms that are more responsive to the principles of justice and child protection.

Social constructs regarding children born out of wedlock often become the main determinant of their acceptance in the community. In addition to legal aspects, the status of children born out of wedlock is also influenced by social interpretations of family morality. A study by Rohman et al. (2021) in indigenous communities noted cases where children born out of wedlock were still given a place in the family environment under certain conditions or after going through traditional ceremonies. However, access to formal rights such as inheritance and legal recognition remains hampered by normative mechanisms that limit the scope of protection. Despite cultural acceptance, without progressive and inclusive regulations, children born out of wedlock remain structurally limited in accessing recognition and their civil rights.

Special cases involving children born out of wedlock reveal serious gaps in the national legal protection system. In some specific cases, such as when a child is born as a result of violence or an unregistered marriage, the national legal system does not yet provide an efficient mechanism to bridge civil protection and legal recognition for children born out of wedlock. The stigma attached to these children and the lack of clarity in procedures reinforce their marginalized position in society (Salenda, 2016; Grijns & Horii, 2018). The absence of responsive mechanisms to deal with these vulnerable situations shows that the legal system is still not fully committed to the principle of child protection.

National legal transformation demonstrates a progressive commitment to fulfilling children's rights,

including those of children born out of wedlock. Over the past two decades, national legal developments have led to the strengthening of universal protection of children's rights through the synchronization of regulations, although bureaucratic obstacles and social resistance remain challenges (Umar et al., 2022). The importance of this systemic approach is also emphasized in studies on other family law dynamics. Sayuti et al. (2023) emphasize in their analysis that the transformation of the family regulatory system, which covers aspects of divorce and the protection of women and children, must be built through regulatory harmonization, institutional synergy, and responsiveness to changes in social structures in order to achieve substantive justice. Strengthening the role of law enforcement agencies and simplifying the procedures for registering children born out of wedlock are expected to encourage more inclusive protection practices, in line with the principle of non-discrimination promoted in international conventions on children's rights. Future legal reforms must focus on regulatory harmonization, institutional strengthening, and legal culture renewal to achieve comprehensive and equitable child protection.

The overall legal and social dynamics surrounding children born out of wedlock indicate that civil protection is not sufficient at the normative level alone. Based on theoretical and juridical analysis, the national family law system is capable of formally recognizing and providing civil protection for children born out of wedlock, although its implementation still needs improvement. Harmonization between national law, Islamic law and customary law is important to ensure that all children receive equal justice regardless of their birth status. Legal mechanisms and social education need to work together so that the civil rights of children born out of wedlock are not only textual, but are actually implemented in a real and sustainable manner. The active involvement of social institutions, religious leaders, and the government in legal advocacy and public education is a strategic step towards achieving fairer protection. Family law reform must include updating legal rules and culture so that every child is treated inclusively, fairly, and with dignity.

The success of protecting children born out of wedlock is determined by the ability of the legal system to adapt as a whole. Synergy between responsive regulations, efficient bureaucracy, and social paradigm shifts is key, requiring cross-sectoral commitment and the courage to reform discriminatory legal and social structures. The realization of justice depends not only on legal changes, but also on transforming societal perspectives through widespread education and

advocacy. Only through synergy between legal reform and collective awareness can the principle of non-discrimination be realized in inclusive and equitable child protection.

The Influence of Legal Inconsistencies, Religious Norms, and Social Structures on the Status of Children Born Out of Wedlock

The lack of synchronization between legal systems in Indonesia is a major source of uncertainty in the protection of the rights of children born out of wedlock. Discrepancies between the various legal systems in Indonesia have created a climate of uncertainty for the fulfilment of the rights of children born out of wedlock. The national legal system consists of positive law, Islamic law and customary law, each of which has a different philosophical basis for defining and regulating the status of children born out of wedlock. Positive law, as reflected in the Civil Code (KUH Perdata) and Law Number 1 of 1974 concerning Marriage, initially only recognized the civil relationship between children born out of wedlock and their mothers and maternal families. Over time, Constitutional Court Decision No. 46/PUU-VIII/2010 expanded civil recognition to biological fathers, but the reality of implementation in the field is still far from expectations due to unresolved legal fragmentation (Sujana, 2015; Solikin & Saidah, 2021). Without serious and comprehensive harmonization, inconsistencies between legal systems will remain a structural obstacle to achieving substantive justice for children born out of wedlock.

Religious interpretations play a central role in shaping the legal status of children born out of wedlock in society. Religious norms have a strong influence on the social system, particularly in determining the status of children born out of wedlock. In Islamic law, the status of a child is considered illegitimate in the eyes of the law because the marriage of the parents is only valid in religious terms but is not registered in accordance with applicable regulations, resulting in the loss of the child's status (Ginsu et al., 2022). In Islamic law, the lineage and civil rights of children born out of wedlock are limited to the mother and her family, in accordance with the interpretation of the majority of fiqh scholars. This is stipulated in Articles 99 and 100 of the Compilation of Islamic Law, which limit the inheritance rights and civil relations of children born out of wedlock to the mother's line (Aldjufri, 2016; Rohman et al., 2021). The interaction between religious interpretation and the substance of national law often gives rise to debates in judicial practice, especially when inheritance disputes or birth

certificate administration based on the mechanism of paternal recognition are not fully accepted by communities based on traditional Islamic values (Nurlaelawati & Van Huis, 2019). This condition shows that reconciliation between religious norms and positive law is key to ensuring justice for children born out of wedlock.

Social and cultural factors have a significant influence on determining the accessibility of the rights of children born out of wedlock. The social structure in Indonesia is reinforced by layered social and customary ties within society. Communities with strong social values often maintain traditional collective views regarding the legality of children's birth within formal family institutions. Social stigma and identity exclusivity often become barriers for children born out of wedlock to obtain their rights as guaranteed by state regulations. In fact, legal guarantees of children's basic rights in education and health should be universal and non-discriminatory. As emphasized by Hariani et al. (2021), the state has an obligation to provide protection and fulfil children's rights in both areas as part of its commitment to human rights. This situation has resulted in administrative barriers in the process of recognition, registration, and access to protection in the fields of education and health (Latifiani, 2014; Safira et al., 2021). The lack of change in collective attitudes makes it difficult for formal legal protection to reach children who are socially marginalized.

The diversity of Indonesia's legal system often leads to uncertainty in the legal protection of children born out of wedlock. Differences in interpretation between civil law, Islamic law, and customary law, coupled with the strong influence of religious norms and social structures, often cause confusion among policy-implementing agencies such as civil registries and religious courts. Developing practices show that decisions to recognize or reject the status of children born out of wedlock are often influenced by cultural bias and social pressure, which sometimes compel state officials to make decisions based on local customs rather than legal sentiment. Similar conditions are also reflected in Yilmaz (2016) research on legal pluralism in Muslim communities living in modern nation states. Without a clear coordination framework and uniform normative guidelines, legal pluralism risks widening the protection gap for children born out of wedlock.

Behind the formal legal framework, children born out of wedlock often face lifelong social exclusion. In the private sphere, children born out of wedlock often experience social alienation due to the repression of moral values inherited from religious

and customary norms. Limited access to family inheritance, the right to choose religion and identity, and involvement in social activities are problems that remain throughout the lives of children born out of wedlock. Salvatore (2016) study confirms that the individual experiences of children born out of wedlock in relation to social exclusion cannot be separated from the construction of inequality in the legal system and power relations built on the interpretation of religion and dominant cultural values. This condition emphasizes that substantive justice for children born out of wedlock requires not only legal reform, but also the deconstruction of exclusive and discriminatory social norms.

In the public sphere, the protection of children born out of wedlock still faces complex structural and cultural challenges. At the public level, government policies seek to promote non-discriminatory protection through the Child Protection Law, but harmonization of implementation remains hampered by social resistance and multi-level interpretations by officials who sometimes still lean towards traditional and religious values, outside the universal principles of child rights protection (Cammack & Feener, 2012; Nazar & Rismawati, 2022). Conflicting interests in the implementation of legal mechanisms are a collective obstacle to ensuring that all children's rights, especially the status of children born out of wedlock, are fully fulfilled in the public sphere. The lack of consistency in norms and the courage to place the best interests of children above narrow social interpretations means that legal protection remains partial and discriminatory.

The lack of synchronization between state law and religious norms also creates serious problems in fulfilling administrative rights of residence. The influence of legal inconsistency is evident in the birth registration process, which requires official recognition from the biological father or a court ruling, while religious norms tend to limit such recognition to the mother. Such value tensions require constructive resolution instruments at the institutional level. Khayru et al. (2021) offer the perspective that appropriate ethical values and organizational cultural structures can serve as instruments for managing internal conflicts arising from value differences, by creating more adaptive and service-oriented mechanisms. This disharmony in standards prolongs administrative resolution times and causes structural discrimination that trickles down to the individual and family levels (Setiawan & Haryadi, 2022). As a result, this regulatory disharmony continues to reproduce administrative barriers and deepen the vulnerability of affected families.

In the dynamics of modern society, the need for legal adjustments is becoming increasingly urgent. Other theoretical descriptions show the importance of reformulating laws to keep pace with social and cultural developments in society, especially to ensure substantive justice. The establishment of the principles of justice and non-discrimination in family law requires the active involvement of the state to reconcile various interests through interdisciplinary dialogue, as recommended by An-Na'im (2021) Grijns and Horii (2018) in their studies on legal pluralism and children's rights. Inclusive legal reformulation is a key prerequisite for ensuring the fulfilment of the principle of justice for all citizens, especially children.

The diversity of social practices at the local level often results in symbolic solutions for the status of children born out of wedlock. In some areas, indigenous communities sometimes establish social mechanisms to accept children born out of wedlock through certain traditional ceremonies without resolving the root causes of civil law issues regulated by national law. In the context of customary law, each region has a different view regarding the relationship between children born out of wedlock and the woman who gave birth to them or the man involved with the child (Handini, 2019). Thus, the formal rights of children remain difficult to access, even though socially these children are accepted by the local community (Nurlaelawati & Van Huis, 2019). This social acceptance is not enough to guarantee the fulfilment of the child's civil rights within the framework of national law.

The imbalance between legal regulations and administrative practices also creates real obstacles to the fulfilment of child protection. Legal inconsistencies not only have an impact in the normative legal sphere, but also affect the child protection system, which becomes suboptimal. Inconsistencies in the mechanisms for recording status, granting inheritance, and issuing family certificates have a knock-on effect on the various basic services that children need during their growth. This regulatory inconsistency ultimately places children in a position of multiple vulnerability in accessing their basic rights.

Efforts to improve child protection depend not only on legal reform but also on broader social change. Literature studies also highlight that legal system reform must go hand in hand with the reconstruction of social norms through public education, psychosocial assistance, and the dissemination of children's rights to families and village officials. Appropriate education plays a key

role. Multidisciplinary education, as analyzed by Hariani et al. (2021), has been proven to encourage the growth of social competence in children, which is an important foundation for building collective understanding and awareness of their rights from an early age. This process can involve civil society organizations, religious institutions, and the government so that change can be achieved structurally and culturally (Sujana, 2015; Safira et al., 2021). Cross-actor collaboration is key to ensuring that legal transformation truly impacts social practices at the grassroots level.

Addressing disparities between law, religion and social practices requires a collaborative approach that focuses on the best interests of the child. Reforms to bridge the gap between legal systems, religious norms and social structures can only be realized if all stakeholders are willing to engage in interactive dialogue to create a substantive and fair consensus on the protection of children born out of wedlock. These efforts are in line with the principle that every child has the right to identity and civil rights without discrimination. Inclusive reform is an important foundation for ensuring that every child obtains their identity and civil rights without discrimination. Strengthening families and providing ongoing social support are essential to creating an inclusive environment for children born out of wedlock and preventing multiple discrimination that hinders their development. Harmonization of laws, religious norms and social practices is necessary to provide comprehensive protection. Without this synchronization, systemic uncertainty arises that disregards the rights of children born out of wedlock in both the public and private spheres, thereby hindering the full realization of their rights.

CONCLUSION

The national family law system has undergone significant transformation to fight for the recognition and civil protection of children born out of wedlock,

both through regulatory adjustments such as Constitutional Court rulings and synchronization between positive law, Islamic law and customary law. However, the harmonization of rules and their implementation in the field is often hampered by inconsistencies in the legal system, strong religious norms, and social structures that still maintain a distance from the status of children born out of wedlock. This situation shows that civil protection is still uneven across the public and private spheres, creating disparities and vulnerabilities for groups of children who should have equal rights as mandated by national and international regulations.

This study indicates that regulatory changes alone are not sufficient without being accompanied by comprehensive reforms of the bureaucratic system and social interpretations. Protection for children born out of wedlock is greatly influenced by the quality of regulation implementation, the readiness of state apparatus, and the responsiveness of social actors at the local level. Strategic efforts such as simplifying administrative mechanisms, educational campaigns, strengthening the capacity of officials, and involving community institutions are important to minimize structural injustice in fulfilling the rights of children born out of wedlock.

Strengthening the protection of children born out of wedlock requires optimal integration between legal systems, improving legal literacy among the community, and the active involvement of social and religious institutions to advocate for the acceptance of children born out of wedlock in families and communities. The government and stakeholders need to priorities adaptive regulatory reform and improve bureaucratic practices so that every civil right of children can be implemented equally and without discrimination. An approach based on justice, non-discrimination, and universal children's rights must be the main foundation for the renewal of the national family law system.

REFERENCES

- Aldjufri, R. (2016). Hak Waris Anak di Luar Nikah Menurut Hukum Islam. *Lex et Societatis*, 4(1), 95-102.
- Angelin, M. S. R., Putri, F. D., & Sanduan, A. P. (2021). Dilema Hak Mewaris Anak Luar Kawin dalam Persepektif Hukum Perdata. *Jurnal Hukum Magnum Opus*, 4(2), 158-165.
- An-Na'im, A. A. (2021). *Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1*. In *Asian Perspectives on Human Rights* (pp. 31-54). Routledge, London.
- Barkah, Q., Huzaimah, A., Rochmiyatun, S., & Ramdani, Z. (2022). Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 17(2), 383-411.
- Bowontari, S. (2019). Pengakuan dan Pengesahan Anak di Luar Nikah Beserta dengan Akibat Hukumnya. *Lex Privatum*, 7(4), 5-14.
- Bungin, B. (2013). *Metodologi Penelitian Sosial & Ekonomi Format Kuantitatif dan kualitatif untuk studi sosiologi kebijakan publik komunikasi manajemen dan Pemasaran*. PT Kencana Perdana

Media Group, Jakarta.

- Butt, S. (2010). Islam, The State and the Constitutional Court in Indonesia. *Pac. Rim L. & Pol'y J.*, 19(2), 279-301.
- Cammack, M. E., & Feener, R. M. (2012). The Islamic Legal System in Indonesia. *Pac. Rim L. & Pol'y J.*, 21(1), 13-42.
- Creswell, J. W. (2014). *Research Design: Qualitative, Quantitative and Mixed Methods Approaches (4th ed.)*. SAGE Publications, Inc, New Delhi.
- Elita, D., Gofar, A., & Hamid, K. A. (2019). Prosedur Pencatatan Anak Luar Kawin di Catatan Sipil. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 8(1), 1-14.
- Evendi, W., Mujito, & Yulianis, M. S. F. (2021). Peer Friendship and the Establishment of Children's Behavior in Family Life. *Journal of Social Science Studies*, 1(1), 141-146.
- Gani, R. A. (2018). Status Anak Luar Nikah dalam Hukum Waris (Studi Komperatif antara Kitab Undang-Undang Hukum Perdata dengan Kompilasi Hukum Islam). *Al-Risalah*, 11(01), 84-109.
- Ginsu, D., Suleiman, F., & Suleman, N. H. (2022). Status Anak Luar Nikah Perspektif Hukum Islam Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *Spectrum: Journal of Gender and Children Studies*, 2(1), 1-14.
- Grijns, M., & Horii, H. (2018). Child Marriage in a Village in West Java (Indonesia): Compromises Between Legal Obligations and Religious Concerns. *Asian Journal of Law and Society*, 5(2), 453-466.
- Handini, W. P. (2019). Hak Konstitusional Anak di Luar Perkawinan Berdasarkan Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010. *Jurnal Legislasi Indonesia*, 16(1), 107-16.
- Hariani, M., & Masnawati, E. (2022). Assessing the Impact of Poverty on Children's Access to and Quality of Education: Implications for Interventions and the Breaking of the Poverty Cycle. *Journal of Social Science Studies*, 2(2), 1-6.
- Hariani, M., Aliyah, N. D., & Issalillah, F. (2021). Legal Guarantee of Children's Rights in Education and Health. *Journal of Social Science Studies*, 1(2), 177-180.
- Hariani, M., Safira, M. E., & Wahyuni, S. (2021). Multidisciplinary Education and the Growth of Social Competence in Children. *Journal of Social Science Studies*, 1(2), 253-258.
- Hariani, M., Masnawati, E., & Corte-Real, J. M. (2022). Understanding Family-Based Mechanisms in Teaching Ethics and Moral Values to Children. *Journal of Social Science Studies*, 2(1), 213-216.
- Husni, Z. M. I., Rosa, E., Handayani, L., & Putri, D. F. (2021). Analisis Status Anak Luar Kawin Terhadap Orang Tuanya: Studi Komparatif antara Hukum Positif dan Hukum Islam. *HAKAM: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam*, 1(1), 1-12.
- Khayru, R. K., Hardyansah, R., & Rojak, J. A. (2021). Ethical Values and Organizational Culture Structure as Constructive Internal Conflict Resolution Instruments. *Journal of Social Science Studies*, 1(2), 227-232.
- Kompilasi Hukum Islam Pasal 100 tentang Anak Diluar Perkawinan.
- Kompilasi Hukum Islam Pasal 99 tentang Anak Sah.
- Latifiani, D. (2014). The Consequences of an Unregistered Marriage for the Wife and Born Children According to the Legal System in Indonesia. *South East Asia Journal of Contemporary Business, Economics and Law*, 4(3), 94-98.
- Maramis, F. M. (2017). Hak Mewaris Anak di Luar Perkawinan Menurut Sistem Hukum di Indonesia. *Lex Crimen*, 6(4), 119-126.
- Marsal, A. P., Arifin, S., & Setiawan, I. (2021). Development of a Legal System to Strengthen the Direction and Structure of Social Welfare Policy. *Journal of Social Science Studies*, 1(1), 197-202.
- Mujito, Yulianis, M. S. F., Zakki, M., Abror, S., & Suwito. (2022). The Ethical Encounter Between Religious Norms and Legal Structures in Multicultural Social Equilibrium. *Journal of Social Science Studies*, 2(1), 229-234.
- Nasution, K., & Nasution, S. (2021). Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights. *Al-Jami'ah: Journal of Islamic Studies*, 59(2), 347-374.
- Nazar, T. H., & Rismawati, N. (2022). Hak Keperdataan Bagi Anak Diluar Kawin dalam Sistem Hukum di Indonesia. *Syakhshiyah Jurnal Hukum Keluarga Islam*, 2(1), 61-72.
- Nurhayati, B. R. (2019). Harmonisasi Norma Hukum Bagi Perlindungan Hak Keperdataan Anak Luar Kawin dalam Sistem Hukum Indonesia. *Ganesha Law Review*, 1(1), 55-67.
- Nurlaelawati, E., & Van Huis, S. C. (2019). The Status of Children Born Out of Wedlock and Adopted Children in Indonesia: Interactions Between Islamic, Adat, and Human Rights Norms. *Journal Of Law and Religion*, 34(3), 356-382.
- Pancasilawati, A. (2014). Perlindungan Hukum Bagi Hak-Hak Keperdataan Anak Luar Kawin. *FENOMENA*, 6(2), 171-216.
- Platt, M. (2017). *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage*,

- Divorce and Desire*. Routledge, London.
- Pongoliu, H. (2013). Kedudukan Anak Lahir di Luar Nikah dalam Perspektif Hukum Islam dan Hukum Positif. *Al-Mizan (e-Journal)*, 9(1), 115-134.
- Rahajaan, J. A., & Niapele, S. (2021). Dinamika Hukum Perlindungan Anak Luar Nikah di Indonesia. *Public Policy*, 2(2), 258-277.
- Rohman, M., Junitama, C. A., Handy, D. U., Fauzi, E. M. P., Islamiyah, L., & Mu'arif, M. (2021). Kedudukan Anak Luar Nikah dalam Masyarakat Adat Desa Jatilangkung Mojokerto Perspektif Hukum Islam. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 24(2), 417-445.
- Safira, M. E., Masfufah, & Yuliastutik. (2021). A Critical Analysis of Family Interactions on Children's Mental Health and Emotional Balance. *Journal of Social Science Studies*, 1(1), 257-262.
- Salenda, K. (2016). Abuse Of Islamic Law and Child Marriage in South-Sulawesi Indonesia. *Al-Jami'ah: Journal of Islamic Studies*, 54(1), 95-121.
- Salvatore, A. (2016). *The Sociology of Islam: Knowledge, Power and Civility*. John Wiley & Sons, West Sussex.
- Santoso, D., & Nasrudin, M. (2021). Polygamy in Indonesia and its Relevance to the Protection of Women and Children in the Perspective of Islamic Law Philosophy. *Akademika: Jurnal Pemikiran Islam*, 26(1), 121-136.
- Sayuti, Aliyah, N. D., & Mardikaningsih, R. (2023). Legal Dynamics of Divorce, Transformation of Social Structure, and Protection of Women-Children in the Family Regulatory System. *Journal of Social Science Studies*, 3(1), 223-230.
- Setiawan, P., & Haryadi, W. T. (2022). The Child Custody Status from Unregistered Marriage: An Islamic Law on the Basis of Constitutional Court Decision. *YURIS: Journal of Court and Justice*, 1(3), 1-9.
- Shaham, R. (2010). Communal Identity, Political Islam and Family Law: Copts and the Debate Over the Grounds for Dissolution of Marriage in Twentieth-Century Egypt. *Islam and Christian-Muslim Relations*, 21(4), 409-422.
- Solikin, N., & Saidah, L. (2021). Hak Keperdataan Anak Luar Kawin: Kajian Terhadap Hukum Perdata dan Kompilasi Hukum Islam Setelah Putusan Mahkamah Konstitusi (Pmk) Nomor 46/Puu-Viii/2010. *Al'Adalah*, 24(2), 129-138.
- Sugiono, Suwito, & Mujito. (2023). Analysis of the Protection of Children's Rights in Family Disputes through Regulatory and Institutional Synergies with a Justice Perspective. *Journal of Social Science Studies*, 3(1), 189-198.
- Sugiyono. (2018). *Metode Penelitian Kualitatif: Untuk Penelitian yang Berbasis Kualitatif, Kuantitatif, dan R&D*. Alfabeta, Bandung.
- Sujana, I. N. (2015). Kedudukan hukum anak luar kawin dalam perspektif putusan Mahkamah Konstitusi nomor 46/PUU-VIII/2010. Aswaja Pressindo, Yogyakarta.
- Sulistiani, S. L. (2020). Kedudukan Hukum Anak Luar Kawin Menurut Hukum Positif dan Hukum Islam. *ADHKI: Journal Of Islamic Family Law*, 2(2), 171-184.
- Susanto, M. H., Puspitasari, Y., & Marwa, M. H. M. (2021). Kedudukan Hak Keperdataan Anak Luar Kawin Perspektif Hukum Islam. *Justisi*, 7(2), 105-117.
- Suwito, Yulianis, M. S. F., Evendi, W., Zakki, M., & Mujito. (2021). Regulatory Effectiveness in Ensuring Access to Education and Child Health in Low Income Communities through Scholarship Equity. *Journal of Social Science Studies*, 1(2), 181-186.
- Umar, H., Bafadhal, H., & Rusmayanti, I. (2022). Kedudukan Hukum Anak Lahir Diluar Nikah dari Hubungan Sedarah (Incest) Menurut Hukum Islam dan Hukum Positif. *Adhki: Journal of Islamic Family Law*, 4(1), 35-45.
- Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.
- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.
- Yilmaz, I. (2016). *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Routledge, London.