



Juridical Analysis of Unregistered Marriages' Effects on Children's Legal Status and Civil Rights

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Abstract: Unregistered marriages, commonly known as *Nikah Siri*, remain widespread in Indonesia despite conflicting with formal legal norms. Although religiously valid, such marriages do not provide legal protection for women and children born from these unions. This paper aims to examine the legal consequences of unregistered marriages on the status and rights of children. Using a qualitative descriptive method with statutory and case study approaches, this research analyzes legal protections available to children from these marriages. The study finds that Constitutional Court Decision No. 46/PUU-VIII/2010 enables children born out of wedlock to establish civil relations with their biological fathers if scientifically proven. The findings reflect a shift in legal perspective toward a more humanistic and justice-oriented approach in protecting children's rights.

Keywords: Marriage Registration, Nikah Siri, Child Status, Children's Rights, Civil Relationship.

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How to cite (Chicago Style):

Rifki Ismail and Agil Mustapa. "Juridical Analysis of Unregistered Marriages' Effects on Children's Legal Status and Civil Rights." *Estudiante Law Journal*, 7 (3), (October 2025): 757-771. <http://dx.doi.org/10.33756/eslaj.v7i3.32282>

1. Introduction

Humans are inherently created in pairs male and female who are then united through a legitimate bond known as marriage. The terms marriage (*perkawinan*) and wedding (*pernikahan*) carry similar meanings, referring to the union of two individuals in a relationship recognized socially, legally, and religiously. However, their contextual usage differs: the term *perkawinan* is predominantly used within the realm of Indonesia's positive law, while *pernikahan* is more commonly employed in religious contexts. For instance, in everyday social customs, terms such as *mas kawin* (bridal dowry) and *buku nikah* (marriage certificate) reflect how terminology is shaped by specific contexts. Although these terms are semantically equivalent, *perkawinan* has often undergone a narrowing of meaning in public perception due to negative connotations, which frequently lead to misunderstandings regarding its true definition.¹

According to Article 1 of Law of the Republic of Indonesia Number 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law), marriage is defined as a physical and spiritual bond between a man and a woman, intended to form a happy and eternal family, based on the principle of the belief in the One and Only God. In this context, marriage is both a legally and religiously recognized institution. The term *siri* is derived from the Arabic word *sirr* or *israr*, meaning "secret," and thus *nikah siri* refers to a form of marriage conducted in secrecy and not publicly declared before the community or authorized officials. This practice often bypasses official registration as mandated by Article 2(2) of the Marriage Law, which explicitly requires that all marriages be registered in accordance with prevailing laws and regulations. Consequently, although *nikah siri* may be deemed religiously valid, it contradicts formal legal provisions from an administrative standpoint. The absence of official registration has serious implications, particularly for the wife and children born from such unions, as they may be deprived of legal entitlements such as inheritance, financial support, and formal legal status in civil registries. This phenomenon illustrates how women, as the most vulnerable party in unregistered marriages, often bear disproportionate social and legal consequences.²

The state recognizes marriage registration as part of its legal protection efforts aimed at ensuring the welfare of every citizen. Through formal regulation, such registration serves as a legal instrument that secures the rights and obligations of both parties within a marital bond. However, in the case of unregistered marriages particularly when committed by irresponsible male parties there is a significant risk of neglecting the husband's duties toward his wife and children. The absence of valid legal documentation enables individuals to easily evade responsibility and, in some cases, to enter into additional marital relationships arbitrarily, without any oversight

¹ Alse Hawana, Hasnah Aziz, and Putri Hafidati, "Perlindungan Hukum Bagi Anak Kawin Siri Dalam Memperoleh Dokumen Administrasi Kependudukan," *JURNAL PEMANDHU* 5, no. 1 (May 26, 2024): 151-73, <https://www.ejournal.unis.ac.id/index.php/JM/article/view/4751>.

² Ahdiana Yuni Lestari et al., "Pemahaman Hukum Generasi Muda Islam Masjid Nur Jannah Tentang Perkawinan Beda Agama Menurut Hukum Perkawinan Indonesia," *Jurnal Dedikasi Hukum* 3, no. 2 (2023), <https://doi.org/10.22219/jdh.v3i2.29803>.

mechanism or clear legal accountability.³ Legal issues concerning the status of children born outside formal marriages remain a critical concern within Indonesia's legal system, as reflected in Article 43(1) of the Marriage Law, which states that children born out of wedlock have a civil relationship only with their mother and her family. This provision implies that without official marriage registration, as regulated under Article 2(2) and Article 43(2) of the Marriage Law, such children are not legally recognized as legitimate.⁴ However, with the evolution of legal thought and principles of justice, a more progressive view has emerged, emphasizing the importance of scientific evidence, such as DNA testing, to establish civil relations between the child and the biological father. This reflects a paradigm shift toward more comprehensive protection of children's rights. Based on this background, the research question addressed in this study is: How is legal protection provided to children born from unregistered marriages in securing recognition of their civil relationship with their biological fathers?

2. Method

Based on the background described earlier, it is evident that unregistered marriages such as *nikah siri* generate significant legal consequences, particularly for children born from these unions. The lack of formal legal recognition often results in ambiguity regarding a child's legal status, especially in terms of establishing a civil relationship with the biological father. This situation exposes a clear gap between normative legal provisions and the social realities encountered by many individuals, highlighting the need for a more responsive and equitable legal approach.

This study adopts a qualitative descriptive methodology aimed at providing a comprehensive portrayal of the legal phenomena as they manifest in society. Rather than relying on numerical data, the research emphasizes an in-depth exploration of the meanings, contexts, and legal frameworks that shape the issue. To enrich the analysis, this study incorporates both statutory and case study approaches. This combination enables a thorough examination of how legal norms are interpreted and applied in practice, particularly in ensuring the protection of children's rights within the civil registration system. Accordingly, the research seeks to assess how effectively the Indonesian legal system safeguards the rights of children born out of unregistered marriages and whether existing legal instruments are adequate to uphold their civil entitlements.

3. Analysis and Discussion

3.1. Marriage According to Positive Law in Indonesia

The legal framework governing the institution of marriage in Indonesia has undergone a long and gradual development. Initially, marriage regulations were

³ Imam Faishol, "Implementasi Pencatatan Perkawinan Di Indonesia (Studi Atas Undang-Undang Perkawinan No. 1 Tahun 1974)," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum Dan Syariah* 8, no. 2 (2020), <https://doi.org/10.52051/ulumulsyari.v8i2.53>.

⁴ Suwito et al., "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (2023): 10, <https://doi.org/10.55908/sdgs.v11i10.1261>.

derived from the *Burgerlijk Wetboek* (BW) the civil code legacy of Dutch colonial law.⁵ However, in response to the need for national laws more aligned with Indonesian societal values, Law Number 1 of 1974 on Marriage was enacted as a cornerstone of modern positive law in the field of marriage. Over time, this law was amended by Law Number 16 of 2019, which serves as a revision of Law No. 1 of 1974. This updated legislation is commonly referred to as the Marriage Law. To facilitate the technical implementation of the provisions within this law, the government also issued Government Regulation Number 9 of 1975 as an implementing regulation. According to Article 1 of the Marriage Law, the primary purpose of marriage is to establish a physical and spiritual bond between a man and a woman as husband and wife, aimed at building a happy, prosperous, and everlasting household founded upon the principle of belief in the One and Only God.⁶

Marriage is not only viewed as a civil legal relationship but also as a spiritual bond with strong religious significance. However, in practice, the phenomenon of *nikah siri* (unregistered marriage) has emerged, referring to marriages conducted according to religious teachings but not officially registered with the state. Such marriages are recognized as valid under religious norms but lack administrative acknowledgment from the government, as they are not registered at the Office of Religious Affairs (Kantor Urusan Agama, KUA) or other civil registration authorities. Although unregistered in the state administrative system, there are certain mechanisms that allow couples in *nikah siri* marriages to obtain civil documents such as the Family Card (Kartu Keluarga, KK). To access these documents, couples must fulfill several administrative requirements, including providing proof of religious marriage, submitting a Statement of Absolute Responsibility (Surat Pernyataan Tanggung Jawab Mutlak, SPTJM), and presenting two witnesses with valid civil identification.⁷

From the perspective of Indonesian national law, marriage is not merely regarded as a civil relationship grounded in worldly and individual satisfaction. Instead, marriage is recognized as a sacred union imbued with profound spiritual values. This view is reflected in Article 2(1) of the Marriage Law, which states that a marriage is considered valid if it is conducted in accordance with the religious laws and beliefs of the respective individuals involved. In other words, the legality of a marriage depends not only on state regulations but must also respect the religious values upheld by the marrying parties.⁸

⁵ Hidayat Hidayat et al., "Determination of Marriage Dispensation at Gorontalo Religious Court in Accordance with the Child Protection Law No. 35 of 2014," *Estudiante Law Journal* 6, no. 3 (2024): 663–80, <https://doi.org/10.33756/eslaj.v6i3.29567>.

⁶ Murendah Tjahyani, "Batas Minimal Usia Perkawinan Berdasarkan Undang-Undang Perkawinan Baru," *Begawan Abioso* 12, no. 2 (2022), <https://doi.org/10.37893/abioso.v12i2.18>.

⁷ Rusman Rusman et al., "Religious Marriage in Indonesia in the Perspective of Islamic Law and Positive Law in Indonesia : Legal Complexities and the Issuance of Supreme Court Circular Letter No. 2 of 2023," *Indonesian Journal of Innovation Studies* 25 (2023), <https://doi.org/10.21070/ijins.v25i.975>.

⁸ Asni Asni, "Urgensi Sinkronisasi Hukum Perkawinan Di Indonesia Perspektif Perlindungan Perempuan Dan Anak," *Jurnal Sipakaleb* 3, no. 2 (December 31, 2019): 180–203, <https://doi.org/10.24252/jsipakaleb.v3i2.11896>.

In addition to religious validity requirements, Indonesian positive law also regulates several formal and material conditions as prerequisites for a valid marriage. These provisions are outlined in Articles 6 through 12 of the Marriage Law. R. Soetojo Prawirohamidjojo, in his explanation, categorizes these requirements into two groups: material requirements concerning the personal conditions of the prospective spouses, and formal requirements related to the administrative procedures that must be fulfilled before and during the marriage ceremony. Specifically, the internal requirements include:

1. Voluntary consent of both parties, which is an absolute basis for the marriage to take place.
2. If one of the prospective spouses is under 21 years old, parental permission is required in accordance with Article 6(2) of the Marriage Law.
3. The minimum age for marriage is 19 years for men and 16 years for women.
4. The prospective spouses must not be currently married to others, except in cases where their religion permits polygamy, as regulated in Articles 3(2), 4, and 9 of the Marriage Law.
5. For women intending to remarry after divorce or widowhood, a waiting period (*iddah*) applies, which is a minimum of 90 days after divorce and 130 days if the husband has passed away, as stipulated in Articles 10 and 11 of the Marriage Law.
6. If the parents have passed away or are unable to give permission, consent may be granted by a guardian, close relative, or another legally recognized adult (Article 6(4) of the Marriage Law).
7. In cases where one parent refuses to give permission, proof of consent from the surviving parent may serve as an alternative, as regulated in Article 6(3).
8. Under certain circumstances, the court may grant dispensations or approvals regarding some of the above conditions, such as age and parental permission, following a preliminary examination in accordance with applicable legal procedures.⁹

3.2. Motives Behind Unregistered Marriages in Indonesia

Within the Indonesian positive legal system, the concept of *nikah siri* or unregistered marriage is not formally recognized.¹⁰ Nonetheless, the practice remains widespread

⁹ Sheanny Scolastika Et Al., “Perkawinan Campuran , Pencatatan Keabsahan Pencatatan Perkawinan Diluar Indonesia Berdasarkan Peraturan Perundang-Undangan,” Kertha Wicaksana 14, No. 2 (July 23, 2020): 139-46, <https://doi.org/10.22225/Kw.14.2.1789.139-146>.

¹⁰ Frizzy Dhafin Bachri, “Pemenuhan Hak Anak Hasil Pernikahan Campuran Yang Dilakukan Secara Sirri Antara Warga Negara Indonesia Dengan Warga Negara Malaysia” (bachelorThesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2024), <https://repository.uinjkt.ac.id/dspace/handle/123456789/80505>; Asep Ubaidillah, “Untung Rugi

and has become a common social phenomenon. *Nikah siri* is often chosen as a practical and swift alternative, especially by couples seeking to avoid adultery accusations or facing certain legal and social constraints. Generally, *nikah siri* refers to a marriage conducted solely under religious authority without official registration at government institutions such as the Office of Religious Affairs (Kantor Urusan Agama, KUA). The *Kamus Besar Bahasa Indonesia* (KBBI) defines *nikah siri* as a marriage solemnized before a religious figure and witnesses but without going through state registration procedures. According to the Ministry of Women's Empowerment and Child Protection (KemenPPPA), *nikah siri* is further categorized into two forms: marriages that are completely unregistered and those that are administratively recorded but deliberately concealed from the social environment.¹¹

According to an official report by the Ministry of Women's Empowerment and Child Protection (KemenPPPA), there are ten primary factors that trigger the practice of *nikah siri*:

- 1. Economic Pressure**

Some couples choose *nikah siri* as a means to improve the family's financial situation, treating it as a survival strategy rather than solely based on love.

- 2. Low Social Awareness**

In certain regions, adequate social values related to the protection of women have not developed. As a result, the legal consequences for wives and children born from *nikah siri* marriages are often neglected.

- 3. Polygamy Loopholes**

Nikah siri is used as an alternative for men who want to have multiple wives but are hindered by the consent of the first wife or by professional regulations, such as those applicable to civil servants.

- 4. Avoidance of Adultery**

Parental concerns about promiscuity lead them to marry off their children through *nikah siri* to preserve family honor.

- 5. Cultural and Religious Perspectives**

Some communities view marriage as a private matter that only needs to comply with religious law, without requiring state involvement.

Perjanjian Pra-Nikah: Analisis Yuridis Islam Dan Hukum Positif," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3, no. 2 (2023): 2, <https://doi.org/10.59833/qonuni.v3i2.1663>.

¹¹Imam Hafas, "Pernikahan Sirri Dalam Perspektif Hukum Islam Dan Hukum Positif," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 4, No. 1 (April 7, 2021): 41-58, <https://doi.org/10.29313/Tahkim.V4i1.7018>.

6. Role of Religious Leaders

The practice of *nikah siri* often involves religious figures who not only act as officiants but also serve as facilitators or even marriage brokers.

7. Marriage Tourism Motive

In certain areas, *nikah siri* has become part of a tourist attraction where marriage is commodified for social and economic purposes.

8. Weak Local Government Oversight

The lack of intervention or firm action from local authorities has allowed this practice to persist for decades, as seen in areas like Cisarua and Sukaresmi.

9. Parental Exploitation

In some cases, parents encourage their children to enter *nikah siri* marriages for economic gain or social status.

10. Absence of Legal Protection for Women

Because *nikah siri* marriages are not officially recorded, wives lack strong legal standing. This results in the loss of rights to inheritance, alimony, or joint property in cases of divorce.

Nikah siri is often viewed as a shortcut to legitimize the relationship between a man and a woman within the bounds of marriage without undergoing official legal procedures. This practice remains prevalent in Indonesian society due to various factors. Economically, financial constraints are frequently the primary reason, as *nikah siri* is perceived as simpler and does not require complex administrative processes. From a religious perspective, it is often considered a means to avoid immoral behavior resulting from free association, thus seen as a step toward spiritual tranquility and inner harmony. However, many women still choose to enter into *nikah siri* marriages for personal comfort, often without considering the long-term legal consequences. This indicates that awareness of gender justice in society has yet to fully address the root issues. The National Commission on Violence Against Women (Komnas Perempuan) even categorizes *nikah siri* as a form of violence within marriage because it disregards the legal rights of women and children born from such unions.¹²

3.3. Legal Implications of Unregistered Marriages

One juridical implication of a legally valid marriage is the establishment of the child's legal status as a legitimate child. Within the legal framework, this status creates binding rights and obligations between parents and the child. A child born from a marriage that is both religiously valid and officially registered with the state holds full

¹² M. Yusuf M. Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga," *At-Taujih: Bimbingan Dan Konseling Islam* 2, no. 2 (October 13, 2020): 96, <https://doi.org/10.22373/taujih.v2i2.6530>.

civil status in relation to both parents, as stipulated in Article 42 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI). Legitimate child status entails several important rights, including recognition of lineage (*nasab*), entitlement to financial support (*nafkah*) from parents, inheritance rights, as well as rights to custody and education (*hadhanah*). In Islamic law, the legal bond between father and child also carries clear legal consequences, such as guardianship responsibilities and custody rights, especially for female children. Conversely, in the context of marriages that are invalid or not legally recognized such as those failing to meet the requirements of Article 2 paragraph (1) of the Marriage Law, which mandates legality according to religious and personal beliefs the child's status is not automatically deemed legitimate under the law. Such marriages are legally considered nonexistent, thereby creating no legal rights or obligations between the child and the father in civil terms. Consequently, children born from invalid marriages do not obtain the full civil rights accorded to children from lawful marriages.¹³

1. Regarding the Status of the Child

The Constitutional Court Decision Number 46/PUU-VIII/2010 brought significant changes to the national legal concept concerning the status of children born out of wedlock. Prior to this ruling, Indonesia's legal system imposed strict limitations on the status of illegitimate children, which directly affected their legal standing within the family and society. Before the Constitutional Court issued this ruling, a child born out of wedlock was considered to have no civil relationship with their biological father. This was explicitly regulated in Article 43 paragraph (1) of Law Number 1 of 1974 on Marriage, which stated that a child born outside of marriage only had a legal relationship with their mother and the mother's family. In practice, this meant that such a child was not legally recognized as part of the father's lineage. As a result of this provision, civil registry documentation, such as a birth certificate, would list only the mother's name as the parent. The child's legal status was that of an illegitimate child without recognition from the father, even though the father was biologically the parent. Thus, the child's legal identity was limited and did not reflect biological reality, as the legal system prioritized the existence of a lawful marriage as the basis for determining a child's status.

This legal framework led to a series of practical and ethical issues. Without official recognition, children born out of wedlock were often denied access to essential legal rights, including maintenance support, inheritance, and legal guardianship from their biological fathers. Moreover, the stigma attached to illegitimacy created social disadvantages that affected the child's psychological well-being and societal acceptance. The rigidity of the legal framework not only marginalized children but also contravened the principle of non-discrimination, as enshrined in numerous international human rights instruments, including the United Nations Convention on the Rights of the Child (CRC), to which Indonesia is a signatory.

¹³ Article 42 of the Compilation of Islamic Law (KHI)

The Constitutional Court's decision substantively altered the interpretation of Article 43 paragraph (1) of the Marriage Law. In its ruling, the Court stated that a child born out of wedlock can still have a legal relationship with their biological father, provided that the relationship can be proven through science and technology, as well as legally admissible evidence. With this change, the status of a child born out of wedlock is no longer confined to having a legal bond solely with the mother, but can also be legally recognized as the child of the biological father.

This means the child's status has shifted from previously being considered only as the mother's child to being legally acknowledged as the offspring of both biological parents, even in the absence of a formal marriage. This legal transformation legitimizes the existence of a child based on biological facts rather than solely on formal marital ties. The Constitutional Court emphasized that a child's legal protection should not be constrained by the legal status of their parents' relationship. As a result, the national legal system now recognizes the existence of children born out of wedlock as legal subjects who originate from a biological relationship between two individuals, which can be lawfully proven, regardless of the presence or absence of a formal marriage.

This development represents a progressive and equitable step forward, promoting the protection of children's rights as autonomous individuals entitled to full recognition and legal standing in society. By centering legal identity on biological parentage rather than marital formalities, the decision has helped eliminate discriminatory practices that previously marginalized children born out of wedlock. Consequently, children now have better access to critical legal entitlements, such as child support, inheritance rights, and the right to be acknowledged on legal documents like birth certificates.

Additionally, the ruling holds practical implications for civil administration. With legal recognition of the father-child relationship now permissible through scientific and legal evidence, it compels public institutions such as the civil registry to accommodate this change. Birth certificates and other legal records are increasingly required to reflect the biological truth rather than being restricted to outdated legal doctrines. This facilitates the child's integration into legal, social, and familial structures, enhancing their sense of belonging and legal security.

Moreover, the ruling is not only a matter of legal formalism but reflects a paradigm shift in family law and the philosophy of legal subjectivity. Children are no longer regarded merely as extensions of marital institutions but as independent rights-holders whose dignity and humanity warrant full legal recognition. In this light, the decision advances the broader constitutional mandate to protect all citizens equally and to uphold the values of social justice.

Nonetheless, the implementation of this ruling is not without challenges. Issues such as lack of awareness among the public, resistance from bureaucratic institutions, and socio-cultural stigmas continue to obstruct full realization of the rights granted by the decision. For example, there have been reports of civil registry offices hesitating or refusing to update birth records unless the parents were legally married. Additionally,

not all judges and legal practitioners apply the Court's interpretation consistently, leading to disparities in the legal outcomes for children in similar circumstances.

Therefore, continuous public education, legal reform initiatives, and institutional training are crucial to ensuring consistent application and enforcement of the Court's ruling across various levels of government and society. Legislative amendments to harmonize all related laws and regulations with the Constitutional Court's interpretation are also essential. Without such systemic adjustments, the progressive potential of the ruling may remain underutilized or unevenly applied.

2. Regarding the Rights of the Child

The Constitutional Court Decision No. 46/PUU-VIII/2010 marked a pivotal shift in the legal recognition and protection of children born outside a legally registered marriage in Indonesia.¹⁴ Before this landmark ruling, the prevailing legal framework significantly limited the civil rights of children born out of wedlock, leaving them in a vulnerable legal and social position. The court's decision, however, reoriented Indonesian legal doctrine toward a more humane, inclusive, and child-centered approach, reflecting a growing alignment with international human rights standards and the principle of the best interests of the child.

Under the previous interpretation of Article 43 paragraph (1) of Law Number 1 of 1974 on Marriage, children born outside of a legally recognized marriage were considered to have a civil relationship only with their mother and the maternal family. This meant that, despite the existence of a biological relationship, the law denied such children legal ties to their biological fathers unless the father had formally acknowledged or legitimized the child through specific legal mechanisms. As a consequence, these children were unable to exercise certain fundamental rights, including the right to financial support, inheritance, and even the right to use the father's name. In many cases, the inability to establish a paternal link led to long-term social and economic disadvantages, thereby perpetuating discrimination and inequality.

The 2010 Constitutional Court ruling addressed this inequality by reinterpreting Article 43 of the Marriage Law. The court emphasized that every child, regardless of the marital status of their parents, has the right to legal recognition and protection from both parents. The decision acknowledged that denying a child access to civil rights based solely on the lack of marriage registration between the parents violated

¹⁴ Ahmad et al., "Constitutional Dialogue in Judicial Review at the Indonesian Constitutional Court: The Future Prospects," *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1S (2021): 1S, <https://www.abacademies.org/abstract/constitutional-dialogue-in-judicial-review-at-the-indonesian-constitutional-court-the-future-prospects-13248.html>; Ahmad Ahmad, "Analysis of Abuse of Authority by Government Apparatus in the State Administrative Legal System," *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 1; Ahmad Ahmad et al., "Convergence of Constitutional Interpretation to the Test of Laws Through a Constitutional Dialogue Approach: Konvergensi Penafsiran Konstitusional Terhadap Pengujian Undang-Undang Melalui Pendekatan Constitutional Dialogue," *Jurnal Konstitusi* 20, no. 3 (2023): 3, <https://doi.org/10.31078/jk2038>; Hidayat et al., "Determination of Marriage Dispensation at Gorontalo Religious Court in Accordance with the Child Protection Law No. 35 of 2014."

not only the child's dignity but also the constitutional guarantees of equality before the law. The Court held that, provided there is scientific evidence such as DNA testing and legal verification through judicial processes, a biological relationship between the child and the father could form the basis for civil rights, including financial support, inheritance, and legal status.

This shift in legal interpretation represents more than just a technical amendment to family law; it reflects a broader transformation in Indonesian legal culture toward prioritizing human rights and child welfare. By allowing biological evidence to establish civil relationships, the Court opened the door for thousands of children to access rights that had long been denied to them. The decision also places greater accountability on biological fathers, who can no longer evade responsibility by simply denying the existence of a legal marriage.

Importantly, the ruling has also had implications for civil registration procedures. In practice, many children born from unregistered marriages face challenges in obtaining official documents, such as birth certificates that include the father's name. These documents are critical for accessing public services like education, healthcare, and social assistance. The Constitutional Court's decision strengthens the legal foundation for recognizing paternal identity in civil records, especially following a court ruling that confirms the biological link. This improves the child's legal identity and ensures that they are not rendered invisible in the eyes of the law.

However, while the decision has brought about legal reform, its implementation still faces obstacles. Cultural stigma, administrative barriers, and limited public awareness continue to hinder the full realization of children's rights under the new legal standard. Many families remain unaware of the procedural steps required to obtain legal recognition, and some local civil registration offices may resist applying the decision due to entrenched bureaucratic practices or conflicting interpretations of the law. Thus, continued efforts in legal education, administrative reform, and community outreach are essential to ensure that the Constitutional Court's progressive ruling is translated into real protections on the ground.

The significance of Decision No. 46/PUU-VIII/2010 lies not only in its legal ramifications but also in its philosophical shift. It articulates a vision of justice that is inclusive and child-oriented, where legal identity and rights are based on biological reality and moral responsibility, rather than rigid formalities. This perspective aligns with international conventions to which Indonesia is a party, such as the Convention on the Rights of the Child (CRC), which mandates that all children, without discrimination, are entitled to protection and recognition under the law.

4. Conclusion

The marriage law in Indonesia has undergone significant development from the colonial period to the modern era, governed by Law Number 1 of 1974 and its revision in 2019. Marriage is not merely regarded as a formal legal relationship but also as a spiritual bond that must fulfill religious requirements and state procedures to be considered valid. However, despite the enforcement of positive law, the practice of

unregistered marriage (nikah siri) remains widespread, where the marriage is recognized only religiously without official state registration. This situation presents legal challenges, particularly regarding the status and legal protection for wives and children born from such marriages, as they lack strong legal standing and are vulnerable to various limitations in rights and protections. This phenomenon highlights the gap between religious norms and state legal provisions, emphasizing the need for regulatory adjustments and increased public awareness about the importance of official marriage registration.

The legal implications of both registered and unregistered marriages directly affect the status of children born from these unions. Children born from legally recognized marriages obtain full legal status as legitimate children, including recognition of lineage, rights to support, inheritance rights, and custody rights. Conversely, children born from unregistered or out-of-wedlock relationships previously had limited legal standing, maintaining legal ties only with their mother and maternal family, without formal recognition from their biological father. This caused injustice toward children born out of wedlock, as their civil rights and legal protections were far more restricted compared to children from lawful marriages, reflecting discrimination based on the marital status of their parents previously legitimized by Indonesian positive law.

The Constitutional Court Decision Number 46/PUU-VIII/2010 marked a crucial turning point in addressing this injustice by allowing children born out of wedlock to obtain legal recognition from their biological fathers, provided that the relationship can be proven scientifically and legally. This ruling expanded the scope of rights for children born outside of marriage, granting them equal rights as legitimate children, such as rights to support, inheritance, and identity recognition that were previously limited to children from official marriages. This transformation indicates a paradigm shift in national law, prioritizing the best interests of the child by acknowledging innate rights regardless of the parents' marital status. Thus, this decision promotes a more inclusive and humanistic Indonesian legal system that protects children's rights and strengthens the legal position of children born out of wedlock in pursuit of social justice.

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