



Recognition Of Children from Siri Marriages in the Perspective of Islamic Family Law: Analysis of Legal Status and Civil Rights

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ABSTRACT

A siri marriage is a marriage that is valid according to Islamic law but is not officially registered with the state, thus creating legal problems for children born from such marriages. Children from siri marriages often face difficulties in obtaining legal recognition, birth certificates, and civil rights such as lineage rights, alimony, inheritance, and guardianship. This article discusses the recognition of children from siri marriages from the perspective of Islamic family law and Indonesian national law. The analysis shows that, religiously, children remain legitimate if their parents' marriage fulfills the pillars and requirements of marriage, while state law requires official registration in order to protect the rights of children. The mechanism of marriage confirmation (marriage confirmation) validation in the Religious Court and the decision of the Constitutional Court serve as a means to bridge this difference, so that children obtain legal recognition and full protection. This study emphasizes that the recognition of children is in line with the principle of *hifz al-nasl*, which is to protect offspring so that their rights are not harmed, and is an effort to harmonize religious law and positive law.

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INTRODUCTION

Islamic family law is an essential part of the legal system that regulates family life, from marriage and divorce to the status of children. Children occupy a crucial role in family life, as their presence not only determines the continuation of generations but also demands clear legal protection (Poli et al., 2024). Islam places significant emphasis on children's rights, including lineage, maintenance, sustenance, education, and civil rights such as inheritance rights (Abdulah Pakarti et al., 2023). However, in practice, many cases still neglect children's rights, particularly those born from unregistered marriages, known as unregistered marriages.

A siri marriage is a marriage that is valid according to Islamic law because it meets the pillars and requirements of marriage, but is not registered with the Office of Religious Affairs (KUA). This phenomenon is still common in Indonesian society, both in rural and urban areas, for various reasons (Putro et al., 2024). Some couples choose to have a siri marriage for economic reasons, to avoid registration fees, or because one party is already married. There are also cases of siri marriages conducted for cultural reasons or other subjective reasons. Although religiously valid, these marriages create significant problems later in life, particularly regarding the status of children born from the marriage.

The prevalence of unregistered marriages is difficult to determine because they are not registered administratively. However, several studies and reports indicate that this practice remains quite high, especially in areas with limited access to marriage registration. The implications of unregistered marriages are complex, one of which is the lack of legal certainty for children (Rahmaniar et al., 2022). Children born from unregistered marriages often face obstacles in registering their births, have difficulty accessing inheritance rights, and even experience social discrimination. However, in principle, children should not bear the burden of their parents' choices.

SIMKAH data shows a change in the number of registered marriages in Indonesia between 2021 and 2024. Overall, the marriage trend decreased from 1,742,049 in 2021 to 1,478,302 in 2024. Marriages held at the KUA Office tended to be stable, ranging from 365,000 to 415,000 per year. Meanwhile, marriages held outside the KUA Office continued to dominate the number of registrations, with the highest number in 2021 at 1,326,945 and decreasing to 1,113,226 in 2024. This decline in total marriages could be influenced by various factors, including shifts in social patterns, economic conditions, and increased awareness of the importance of official marriage registration.

Figure 1. Marriage Data in Indonesia 2021–2024



Source: SIMKAH Ministry of Religion 2024

Several previous studies have examined the issue of unregistered marriages from various perspectives. First, research by Ishaq et al. (2025), this study focuses on the social interpretation of the Situbondo community regarding pensions as part of *tirkah*. Another focus is on the practice of negotiation between heirs in the distribution of inheritance, which is influenced by religious norms, customs, and local context. Second, Sulastri et al., (2025) examined the issue of marriage registration and emphasized the importance of administrative legality to prevent uncertainty about the status of children. This study focused more on the urgency of marriage registration, rather than on child recognition. Third, research by Fazriyah et al., (2023) examined the role of religious courts in resolving cases of unregistered marriages. The study concluded that

legalization through marriage confirmation is a solution to provide legal certainty regarding the status of marriage and children, but did not explicitly address the civil rights of children born from such marriages.

Several previous studies have identified a research gap. Most studies have focused solely on marriage registration or the social implications of unregistered marriages. However, a crucial issue that has rarely been thoroughly researched is how children from unregistered marriages are recognized from the perspective of Islamic family law, particularly in relation to their legal status and civil rights. This is crucial because a child's status under Islamic law is closely linked to their lineage rights, maintenance rights, and inheritance rights, which determine their standing within the family and society. Without legal certainty, children can be marginalized from their fundamental rights.

The novelty of this research lies in its normative analysis of the recognition of children from unregistered marriages from the perspective of Islamic family law. The focus of the study goes beyond marriage registration or administrative solutions, but rather on the child's position as a legal subject entitled to full protection. This research attempts to fill a gap in the literature by examining how Islamic family law provides protection for children born from unregistered marriages, as well as its implications for their civil rights, such as inheritance rights, maintenance, and legal identity. Thus, this research seeks to present a new perspective that emphasizes justice and child protection in accordance with the basic principles of Islamic law and Indonesian regulations.

Research methods

This study uses a qualitative approach with a normative-juridical method that focuses on the analysis of Islamic legal norms and regulations related to the recognition of children from unregistered marriages. Two approaches are used in this study: *statutes and legal frameworks approach* and *conceptual approach*. The statutory approach is used to examine Law No. 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and the Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the status of illegitimate children. Meanwhile, the conceptual approach is used to review the views of Islamic scholars and the concept of Islamic law regarding lineage, children's rights, and the position of children in unregistered marriages. The research data sources consist of primary legal materials in the form of the Qur'an, hadith, laws, KHI, and Constitutional Court decisions, secondary legal materials in the form of journals and reports from websites. Data were collected through literature studies, then the data obtained were analyzed descriptively and analytically by describing the applicable legal regulations.

RESULTS AND DISCUSSION

Recognition of Children from Unregistered Marriages from the Perspective of Islamic Family Law

A siri marriage is a common phenomenon in Indonesian society. This term refers to a marriage that is valid according to religion but not officially registered with a state institution. From an Islamic perspective, a siri marriage is considered valid as long as it meets the requirements and pillars of marriage, namely the presence of the prospective husband and wife, a guardian, two witnesses, and the *ijab kabul* (contract of marriage). (Mulya & Elimartati, 2022). However, from a state legal perspective, this marriage has no legal force because there is no administrative registration. This situation creates problems, especially if a child is born during the unregistered marriage.

Children born of unregistered marriages often face difficulties in obtaining legal recognition. Recognition means official acknowledgment of a child's status, both in relation to their parents and in terms of civil rights. Under Islamic law, children hold a very noble position. They have the right to protection, sustenance, education, and affection from their parents. A key principle of Islamic law emphasizes that children should not bear the consequences of their parents' negligence or mistakes, including in the registration of marriages.

From the perspective of Islamic family law, children from unregistered marriages are considered legitimate as long as the parents' marriage fulfills the pillars and requirements of marriage. This means the child retains their lineage to their father, is entitled to maintenance, and has inheritance rights. However, in Indonesia, the legal system is different. Under the Marriage Law, a marriage is not only legally valid but must also be registered. Without registration, the marriage is considered legally void. Consequently, children from unregistered marriages are recognized only as the mother's children, not the father's.

This issue has a real impact; many children from unregistered marriages cannot obtain birth certificates that list their father's name. Yet, birth certificates are crucial for education, civil registration, and other legal rights. Children can even lose inheritance rights if their father's name is not acknowledged. This situation demonstrates the disparity between Islamic law, which focuses on the requirements for valid marriage, and state law, which emphasizes administrative registration.

To bridge this gap, Indonesian family law provides a mechanism for marriage confirmation through the Religious Courts. According to the Compilation of Islamic Law, couples in unregistered marriages can apply for marriage confirmation to have their marriage officially recognized (Rahmah et al., 2024). Once the confirmation is granted, the child of the marriage can be registered and receive a birth certificate in the

father's name. This solution aligns with the principle of *maqashid* (Islamic law). *al-syari'ah*, namely protecting descendants (*hifz*) *al-nasl*) so that children do not lose their rights.

In addition, the Constitutional Court, through decision No. 46/PUU-VIII/2010, emphasized that children born out of wedlock also have the right to have a civil relationship with their biological father, if it can be proven scientifically, for example by a DNA test (Kusumadewi, 2018) . This decision provides broader protection for children so they do not become victims due to parental administrative errors. This shows that state law is also trying to approach the principles of Islamic law which prioritizes child protection.

Implications of Child Recognition from Siri Marriages for Civil Rights

Child recognition is the official recognition of a child's legal status, ensuring their standing in the eyes of the law and society. Children born of unregistered marriages often face challenges because their parents' marital status is not registered with state institutions. (Wahdini et al., 2022) . Although religiously valid, unregistered marriages are considered invalid under positive law, so children born from such marriages are recognized only as the mother's children. This situation has serious implications for children's civil rights.

The civil rights in question include the right to identity, the right to support, the right to inheritance, the right to use the father's name, and other rights related to the child's status within the legal family relationship. With recognition, either through the marriage confirmation mechanism or a court decision, children of unregistered marriages can obtain legal certainty regarding these rights.

a. Identity Rights and Birth Certificates

The first implication of recognition is the right to identity. Every child has the right to a clear name, citizenship, and parentage. If a non-Islamic marriage is not recognized, the child can only be registered as the mother's child, while the father's column on the birth certificate is often left blank. This creates social stigma and administrative difficulties, for example, when children want to enter school, apply for scholarships, or obtain population documents. With recognition, either through marriage confirmation or biological verification, as per Constitutional Court Decision No. 46/PUU-VIII/2010, children can obtain birth certificates that include the father's name. This provides certainty of identity and protects children from discrimination.

b. Birth Rights and Position in the Family

In Islamic law, child recognition is closely linked to lineage. Children from a legally valid marriage retain a lineage relationship with their father. This lineage is important because it determines the child's future kinship, maintenance obligations, and rights. Without recognition, a child can be legally considered "fatherless," thus severing the civil relationship with the father. With recognition, the child's position within the family becomes clear. The child is no longer viewed as an outsider, but as a legitimate part of the father's family. This impacts not only legally but also socially and psychologically, as the child feels acknowledged.

c. Right to Support

Every child has the right to receive support from their father, whether in the form of food, clothing, shelter, or educational expenses. If the marriage is unregistered, fathers often refuse to acknowledge their obligation to provide support, arguing that the child lacks a legal relationship with them. Child recognition implies that the father is obligated to provide support. With a court ruling recognizing the child's status, the mother can demand that the father fulfill his obligation to provide support. This aligns with the principles of Islamic law and national family law, which place the responsibility for support on the father.

d. Inheritance Rights

Inheritance rights are one of the most important civil rights. Under Islamic law, a legitimate child is entitled to a portion of the inheritance from the father and his father's family. If the marriage is not recognized, the child can only inherit from the mother. Consequently, the child loses the right to the father's inheritance, even if he or she is biologically a legitimate descendant. With recognition, a child's inheritance rights become clear. A child who has been recognized through a marriage confirmation or court decision has the same status as other children born of a registered marriage. They are entitled to a portion of the inheritance according to the provisions of *faraidh* and applicable Islamic inheritance law.

e. Guardianship Rights

Another implication of recognition is the right to guardianship. Under Islamic law, the father is the primary guardian for a child, especially a daughter who is about to marry. If a marriage is not recognized, the father cannot officially act as a guardian, and guardianship falls to a judicial guardian. With recognition, the father's position as legal guardian can be restored, so the child does not lose her right to paternal care.

The implications of recognizing children from unregistered marriages for civil rights are comprehensive. Recognition impacts not only legal documents such as birth certificates, but also rights to maintenance, inheritance, and guardianship. Socially, recognition reduces negative stigma against children and provides a sense of security in their lives. From an Islamic legal perspective, recognition aligns with the principle of *hifz*.

Al-nasl, namely protecting descendants so that their status is not harmed. As Allah says in QS. Al- Baqarah (2): 223:

نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنَّىٰ وَاعْلَمُوا أَنَّكُمْ مُّلْقَوَةٌ وَيَسِّرْهُ

Meaning: "Your wives are (like) a field for you, so come to your field whenever you like. And prioritize (what is good) for yourself. Fear Allah and know that you will meet Him. And convey good news to the believers."

This verse emphasizes that the husband-wife relationship is a means of preserving offspring by establishing marriage as a legitimate path to producing generations with clear lineage. The analogy of a wife as a field demonstrates her role in producing offspring, while the message of piety at the end of the verse emphasizes that preserving offspring is an act of worship and a responsibility before God. From a national legal perspective, recognition supports the principle of child protection as stipulated in the Child Protection Law. The principle that must be upheld is that children should not bear the consequences of their parents' mistakes. Both Islamic and national law agree that child protection is a top priority.

CONCLUSION

Recognition of children from unregistered marriages affirms that children are legitimate according to religion if the parents' marriage meets the pillars and requirements. However, without state registration, children are recognized only from the mother. The marriage confirmation mechanism and the Constitutional Court's ruling bridge this gap, ensuring the protection of children's rights in accordance with the principle of *hifz. Al-nasl in Islamic law. The implications of recognizing children from unregistered marriages are important for guaranteeing their legal status and civil rights.* Through marriage confirmation or a court decision, children can obtain clear identity, lineage, maintenance, inheritance, and guardianship. This is in accordance with the principle of *hifz. al- nasl* in Islam as well as national law which emphasizes that children should not bear the consequences of their parents' mistakes.

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