

# RECONSTRUCTION OF REGULATIONS FOR MAKING BIRTH CERTIFICATES FOR CHILDREN BORN OUT OF WEDLOCK WITHOUT A MARRIAGE CERTIFICATE BASED ON ISLAMIC JUSTICE VALUES

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## ABSTRACT

*Marriage is an important moment in human life that involves not only individuals, but also society. In the legal context, marriage creates a legal bond, resulting in a number of obligations and rights between husband, wife, and children. Birth certificates of illegitimate children are a crucial issue, especially in the context of legal justice in Indonesia. This study aims to analyze the implementation of regulations related to birth certificates of illegitimate children without a marriage certificate, with a focus on existing weaknesses and how Islamic justice values can be integrated. The research method used is a descriptive analytical approach with primary and secondary data collection, including interviews and observations. The results of the study indicate that there are still many illegitimate children in Semarang City who do not have birth certificates, caused by factors such as inconsistencies in Family Card data, low public awareness, and slow administrative processes. In addition, the social stigma that considers illegitimate children as illegitimate children hinders the protection of their rights. Therefore, it is necessary to increase legal awareness and improve the administrative system by the government to ensure justice and protection for all children, in accordance with the values of Pancasila which emphasize social justice. This study is expected to contribute ideas to the development of civil law in Indonesia.*

**Keywords:** Marriage, Birth Certificate, Illegitimate Children, Legal Justice, Legal Culture.

## INTRODUCTION

The presence of a child outside of marriage causes many problems in the family and in society. Every community, however modern or primitive, must be based on a kind of order of rules. It is unimaginable if there is a community that does not recognize a kind of order in this case the law that regulates their way of life. Laws exist anywhere or throughout the world as long as there are still humans in society, only the form of the law varies from one law to another, depending on the level of civilization of the community (Soeroso, 1993). Law plays a very important role in human life, law (inherent in Islamic law) interferes in human affairs before he is born, and still interferes after he dies. The law protects the seed in the mother's womb (fetus) and still guards the bodies of people who have died (Judiasih et al., 2020). For example, a fetus in the womb of the mother who is carrying it may not (is forbidden) be

aborted without a legally justified reason. The absolute prohibition of adultery in Islamic law implies protection and legal guarantees for human rights from an early age.

In the opening of the 1945 Constitution of the Republic of Indonesia, it is stated that the State aims to protect all Indonesian people and all Indonesian territory, advance public welfare, educate the nation's life, participate in world peace efforts based on independence, eternal peace and social justice. The objectives of the Republic of Indonesia include protection for the Community and the rights of the Community that are guaranteed in every aspect of their lives. However, in reality, what happens in the Community is inversely proportional to the objectives of our country. If we look at the framework of the Indonesian state, realizing quality Indonesian human resources who are able to lead and maintain the unity and unity of the nation in the framework of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, then child development is an integral part of these efforts.

Indonesia is a country that upholds the dignity of fellow human beings and guarantees the welfare of all its citizens, which is stated in the rule of law. This is also included in the right to guarantee protection for children, because children also have the right to receive protection as stated in Human Rights (Tijow, 2010). The marriage law in this discussion is everything in the form of rules that can and are used as guidelines by Muslims in matters of marriage and are used as guidelines for judges in certain institutions in examining and deciding marriage cases whether officially stated as state laws or not (Yunus, 1964). Marriage is a very important event in human life and this event is not only submitted by the parties concerned, but also by society. Marriage is a contract (agreement) that makes sexual relations as husband and wife between a man and a woman halal (Hudafi, 2020).

A legitimate marriage will have legal consequences, including: the husband is obliged to finance the life of his wife and children, the father becomes the guardian of marriage for his daughter, between husband and wife have the right to inherit each other, as well as between children born from the marriage and their parents can inherit each other, children born from the marriage relationship become legitimate children (Aisyah, 2018). Marriage is a legal act that is private in nature but has a broad impact on human life (Sommaliagustina, 2020). Theoretically, this study is expected to provide a contribution of thought and become a scientific concept that can provide color in the development of legal knowledge, especially in this case related to civil law related to the making of birth certificates for children outside of marriage without a marriage certificate based on the value of justice. The government is also expected to be able to develop a modern, innovative and independent concept of thinking so that it can follow the provisions and customary rules that have been set by the Indonesian indigenous people so that it can always be a guideline for legal considerations. To know and analyze how to implement the regulation of birth certificates for illegitimate children based on Islamic justice values. To know and analyze what are the weaknesses in making birth certificates for illegitimate children without a marriage certificate based on Islamic justice values. To know the reconstruction of the regulation of making birth certificates for illegitimate children without a marriage certificate based on Islamic justice values.

## LITERATURE REVIEW

The enactment of Law Number 16 of 2019 concerning Marriage makes this regulation the first law in Indonesia that regulates marriage on a national scale. Before that, marriage had been regulated through several laws such as laws for general citizens, Islamic law for

Muslim and Christian citizens of Indonesia, marriage regulations for Christians in Java, Minahasa and Ambon, the Civil Code for citizens of European and Chinese descent, marriage regulations for interfaith marriages (Agustin, 2018). Marriage is a contract that justifies association and limits the rights and obligations between a man and a woman who are not mahram. Marriage is a (Indonesian) language that is commonly used with the same meaning as marriage or *zawaj* in *fiqh* literature. According to the terminology of *fiqh*, marriage means a contract (agreement) that contains the permissibility of having sexual intercourse using the term marriage or *tazwij*. Marriage or *zima'* according to its linguistic terminology, comes from the word "al-wath" which means having intercourse or having sexual intercourse. Marriage is a contract that contains the permission to have sex with the phrase *an-nikah* or *at-tazwij*, meaning to have intercourse with the meaning of marrying a woman, the real meaning is to have intercourse with the wife and the word "munakahat" means to have intercourse with each other. According to language, recording is the process, method, or act of recording (Dewi et al., 2021).

Recording is usually related to a process of recording or writing data, either manually in a draft book or in the form of a soft file on a computer, one of which aims to record and facilitate searches when the data is needed or the data can be used as written evidence of a case. In order to ensure orderly marriage for the Islamic community, every marriage must be recorded. Marriage registration is carried out by the Marriage Registrar Article 5 of the KHI. Thus, every marriage must be carried out in the presence of and under the supervision of the Marriage Registrar. Marriages that are carried out outside the supervision or not in the presence of the Marriage Registrar then the marriage has no legal force Article 6 of the KHI. The definition of legal protection according to Law Number 23 of 2004 is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court decision. Meanwhile, child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity, and receive protection from violence without discrimination (Fanani, 2018). Sharia stipulates that a legitimate child is a child born from a legitimate marriage or as a result of a legitimate marriage. Islamic sharia prohibits adultery, among other things to maintain the religion of the parties concerned, avoid evil and protect the child's lineage.

Attention and protection of children is not only the responsibility of the family, but also the responsibility of the government and society. The absence of child protection will cause various social problems that can disrupt order, security, and national development. Legal efforts to protect children in criminal acts related to child neglect can be prosecuted under the articles in Law No. 23 of 2002 (amended to Law No. 35 of 2014) concerning Child Protection, namely Article 76B which reads "Everyone is prohibited from placing, allowing, involving children in situations of mistreatment and neglect." And Article 77B reads "Anyone who violates the provisions as referred to in Article 76B shall be punished with a maximum imprisonment of 5 years and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah).

Birth registration is part of the civil rights inherent in a person since birth. The state is obliged to respect, fulfill and protect this right. The state recognizes a person after a person registers himself, and he has officially become a legal subject and is obliged to protect his civil rights. Birth registration functions to determine and establish a person's civil status within the jurisdiction of a country (Putri et al., 2023; Markus, 2021). According to the Big Indonesian Dictionary, a certificate is a letter of evidence containing a statement (information, confession, decision, and so on) about a legal event made according to

applicable regulations, witnessed and approved by an official (Hafidati & Rahmaddani, 2020). According to the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 06 of 2012 concerning Guidelines for Accelerating Birth Certificate Ownership in the Framework of Child Protection, a birth certificate is an official document issued by the civil registration implementing agency containing official records of the place and time of the child's birth, the child's name and the child's parents' names, and the child's citizenship status (Ayuniar & Ridwan, 2023). In the Regulation of the Minister of Home Affairs No. 9 of 2016 concerning the Acceleration of Increasing the Coverage of Birth Certificate Ownership, there is a definition of a birth certificate register as a list containing authentic data regarding birth events, which is issued and signed by authorized officials based on the provisions of laws and regulations. In addition, there is also a definition of a birth certificate extract, namely an extract of authentic data taken in part from the birth certificate register, which is issued and signed by authorized officials based on the provisions of laws and regulations (Sukranatha & Dewi, 2018). A birth certificate is a very important document for everyone who lives in a country.

## RESEARCH METHODS

The research method used in this study is a descriptive analytical approach with a qualitative research type. This method aims to describe systematically and factually the phenomenon of the application of learning communication strategies at SMPS Islam an Nur Kodak Sampang. Through this approach, researchers can collect in-depth data from various sources to understand in more detail the communication process between teachers and students in the context of learning. The data in this study were obtained from two types of sources: primary data and secondary data. Primary data is data obtained directly from the field through interviews and observations. Interviews were conducted with teachers and students to determine their perceptions of the communication strategies used in the learning process. Meanwhile, observations were conducted directly in the classroom to observe the interaction between teachers and students during teaching and learning activities.

Secondary data is data obtained from relevant written sources, such as school policy documents, books, scientific journals, and laws and regulations related to education. The 1945 Constitution as the constitutional basis for education in Indonesia. Law No. 20 of 2003 concerning the National Education System, which provides general guidelines for the implementation of education in Indonesia. Law No. 14 of 2005 concerning Teachers and Lecturers, which regulates the rights and obligations of teachers, including in terms of communication competence. Data collection techniques include structured interviews, participant observation, and document studies. All data collected are analyzed qualitatively through an inductive approach, which means that data is processed from specific to general to produce more comprehensive conclusions regarding the effectiveness of communication strategies in learning. The results of this analysis are expected to be a reference in improving the quality of learning communication in the school, as well as providing input for educators in designing more effective communication strategies.

## RESEARCH RESULT

Children who due to inability, dependency and immaturity, both physically, mentally and intellectually need protection, care and guidance from parents (adults). Care, upbringing and education of children are religious and humanitarian obligations that must be carried out starting from parents, family, society, nation and state. Attention to children must be in line

with civilization itself which is increasingly developing (Innash, 2024). Children are a gift from God given to humans. The presence of children will make you happy when you look at them, your heart will feel calm and full of joy every time you joke with them. Therefore, children need special guidance and guidance so that they can develop physically, mentally and spiritually to the maximum. Therefore, Islam prohibits adultery. Islamic law imposes severe sanctions on the act of adultery. Because adultery can result in unclear heredity. So when a child is born as a result of adultery, there will be doubts about who the biological father is. With marriage, every child born from the husband's bed, absolutely becomes the child of that husband, without requiring recognition from him.

In Article 43, paragraph (2) of the Marriage Law, it is explained that the position of illegitimate children will be further regulated in a Government Regulation. However, the Government Regulation that regulates and discusses the position of illegitimate children has not been issued by the government until now. Of course, this raises problems and legal uncertainty regarding the position of illegitimate children themselves. This happens because the regulation regarding illegitimate children is only regulated in one article, even though it has never been codified like national law. In February 2012, the Constitutional Court decided regarding the judicial review application against Law Number 1 of 1974, the latest being Law Number 16 of 2019 concerning Marriage. The existence of a material test that has been carried out by the Constitutional Court is a sign that there is unrest and discomfort regarding the formulation of regulations regarding the position of illegitimate children contained in the Marriage Law, especially those stated in Article 2 paragraph (2) and in Article 43 paragraph (1).

In accordance with the Constitutional Court Decision Number 46/PUU-VIII/2010 which has decided that Article 43 paragraph (1) of the Marriage Law which states a child born out of wedlock only has a civil relationship with his/her mother and his/her mother's family, does not have binding legal force as long as it is interpreted as being able to eliminate the civil relationship with a man who can prove that he has a blood relationship as his/her father based on science. After the decision (Fitria et al., 2023). The paragraph must be read as follows: a child born out of wedlock only has a civil relationship with his/her mother and his/her mother's family and with a man as his/her father who can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his/her father's family (Apreliasari et al., 2023). Therefore, based on the decision issued by the Constitutional Court, a child born out of wedlock can later have a civil relationship with a man who is his/her father as long as this can be proven based on science and technology and/or other evidence that the child is indeed related by blood to the man.

Taking care of a birth certificate or birth certificate is actually not a difficult and complicated problem. The government even encourages every citizen who has just had a child to immediately take care of the birth certificate and not delay it for too long. However, this recommendation is actually contrary to the practice in the field (Novi & Usman, 2024). Difficulties will occur if the Family Card does not match the father's and mother's data. In fact, various possibilities can occur with a Family Card (KK) that does not match. The father or mother (or both) may not have been included in the Family Card (KK) list because their name is still recorded in another Family Card (KK) (Domicile) before they got married, there are also couples who have experienced transfers to other cities or provinces and have not had time to take care of their KTP and Family Card (KK). Low public knowledge of the importance of birth certificates for children (Setyaningsih et al., 2020). Some residents of Semarang City, especially those on the outskirts and the less fortunate, assume that they do

not have to report the birth of their child immediately, because they feel they do not need the birth certificate yet, so some of them report the sudden birth of their child when their child is about to register for school or register for Social Security services.

Because they are late in reporting, they will be subject to administrative fines and this becomes a burden for the community. So, the community should not be subject to fines if the reporting is done not exceeding the specified time. The incompleteness of the applicant's required files is also an obstacle or weakness in the process of issuing certificates so that there are slight obstacles, to prevent this from happening, applicants are expected to be able to prepare completely and re-check the required files more carefully so that the birth certificate issuance process can run smoothly and does not take a long time. The obstacles that occur do not always occur due to the applicant's negligence, but can also occur due to internal factors. What often happens is when the Population Administration Information System (SIAK) database becomes slow to access. This can happen because the server used has poor performance, uses an earlier version of the program, or too much data storage on the server can affect the speed of access. If this happens, it certainly becomes an obstacle and becomes a weakness in the process of issuing civil certificates so that it takes a little longer.

Weaknesses in making birth certificates for illegitimate children without a marriage certificate are still a serious problem, especially in the city of Semarang (Husni et al., 2021). Although based on Islamic justice values, this problem remains concerning because many children do not have birth certificates. The causes include inconsistencies in Family Card (KK) data, low public awareness, and slow administrative processes such as the Population Administration Information System (SIAK). There are many cases where people, especially the underprivileged, postpone the processing of birth certificates because they are considered not urgent until the child needs a certificate to register for school or social services (Sona et al., 2024). This often results in delays, administrative fines, and additional hardship for families. Low awareness of the importance of birth certificates worsens the situation. Local governments need to pay more attention and conduct outreach and improve the administrative system so that illegitimate children can obtain their full rights. Child protection and welfare are fundamental rights that must be prioritized to ensure social justice for all, especially children whose legal status is unclear.

Law is not just a formal regulation, but also reflects social phenomena that occur in society, in the form of attitudes, behavior, values, views, and expectations of society towards the law. The relationship between law and non-legal factors is often referred to as legal culture. Legal culture plays an important role in determining how, when, and where the law is applied or accepted, ignored, or even rejected by society. In this context, law enforcement can vary from one society to another because it is influenced by the prevailing social values and norms. The legal culture in an area can influence whether the law is accepted actively or passively, or even ignored altogether. The attitude of society towards the law plays a role in the effectiveness of the implementation of legal rules. Therefore, understanding the legal culture in a society is very important in determining the success of implementing the law in the field. If society does not have adequate awareness or understanding of the importance of the law, then the implementation of the law can be disrupted, even though formally there are rules that regulate it.

The weakness of legal culture in society influences the view on the civil rights of illegitimate children. An illegitimate child is only recognized as having a civil relationship with the mother and her family, not with the biological father (Usman & Rahmawati, 2018). This attitude raises various problems, especially in recognizing the rights of children towards their fathers. The inability of illegitimate children to have civil rights with their biological

fathers complicates the situation, creating legal confusion that is detrimental to the child. The negative view of society towards the status of illegitimate children also worsens the situation. These children are often looked down upon by their surroundings, so that their civil rights are increasingly neglected. This attitude shows the low level of public awareness regarding the importance of legal protection for illegitimate children. Such a legal culture needs to be changed so that illegitimate children can have their rights fully recognized, including civil rights towards their biological fathers (Mardiyanto, 2024). Efforts to change public opinion and increase legal awareness are essential for social justice for all children, including illegitimate children. In the legal culture of society, there are often negative opinions about the status of illegitimate children. These views generally come from the surrounding environment, which often considers illegitimate children as illegitimate children.

This stigma arises without considering that the child has no control over the condition of his/her parents who may be involved in relationship or marriage problems. This negative opinion creates social challenges for illegitimate children, because they are often treated unfairly and socially excluded. This stigma ignores the civil rights of children and limits their access to legal recognition that should protect them. On the other hand, in the legal culture of society, there is a hope that the rules regarding the civil rights of illegitimate children will be clarified and better enforced. This hope includes fairer legal protection for illegitimate children, so that they are not only recognized as their mother's children, but can also have legal rights against their biological father. Increasing legal awareness and changing public attitudes towards illegitimate children are very necessary for social justice and the protection of children's rights as a whole. Where the intention of this hope is because this problem cannot be considered serious, both in terms of structure, substance and culture must be able to provide protection for children born outside of marriage, where this protection aims to create the 5th principle of Pancasila, namely "social justice for all Indonesian people" from the 5th principle we can interpret that justice must be upheld by all groups.

## CONCLUSION

The issuance of a birth certificate for an illegitimate child without a marriage certificate faces a number of legal weaknesses, especially in the unclear legal status of the child. Although the Constitutional Court through Decision No. 46/PUU-VIII/2010 has clarified the civil relationship of an illegitimate child with his/her biological father, the government has not issued more detailed regulations, so that legal uncertainty remains. Technical weaknesses in the issuance of this certificate also arise from the inconsistency of Family Card data, low public awareness of the importance of birth certificates, and slow access to the Population Administration Information System. This condition often slows down the process of making certificates, increases its complexity, and burdens the community. Improvements in the administration system and more effective socialization are needed so that this service becomes more efficient and ensures the welfare of children. From the aspect of legal culture, the community tends to underestimate the civil rights of illegitimate children, accompanied by negative opinions about their status. Low awareness and acceptance of the law worsens legal protection for illegitimate children. Therefore, changes in the legal culture are needed to ensure social justice, in line with the principle of the fifth principle of Pancasila, namely "Social justice for all Indonesian people," to ensure that the rights of illegitimate children are properly protected.

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