

JURIDICAL ANALYSIS OF THE APPLICATION FOR THE ORIGIN OF CHILDREN OUT OF WEDLOCK AGAINST THE CHILD PROTECTION LAW (CASE STUDY AT THE BATAM RELIGIOUS COURT)

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Abstract

Legal matters concerning the status of children born out of wedlock remain intricate and necessitate specialized treatment within the national legal framework, particularly with the safeguarding of children's civil rights. A legal measure to secure recognition for children born out of wedlock involves applying to the establishment of parentage in the Religious Court. This study seeks to examine the legal foundations and procedures for applications concerning the status of out-of-wedlock children presented to the Batam Religious Court. It aims to assess the implementation and legal ramifications of the court's rulings on the legal status of these children and their implications for the children's civil rights, while also formulating legal solutions to enhance protection for children born outside of wedlock. This study employs normative juridical and empirical juridical methodologies by analyzing laws and regulations, specifically Constitutional Court Decision No. 46/PUU-VIII/2010, alongside five rulings on child origin cases from the Batam Religious Court as primary data sources. The theoretical framework employed includes Justice Theory as the overarching theory, Legal System Theory as the intermediary theory, and Maslahah Mursalah Theory as the practical application theory. The research findings indicate that the Batam Religious Court typically dismisses applications about a child's lineage in the absence of acceptable marital evidence under Islamic law, despite the presence of biological evidence such as DNA test results. Consequently, the child fails to establish a civil relationship with their father and forfeits certain essential legal rights. Consequently, the alignment of Islamic law, national law, and population administration law is essential, along with the formulation of a national Standard Operating Procedure that prioritizes child protection and non-discrimination principles.

Keywords: *Unmarried Children, Child Origins, Religious Court, Child Protection, Civil Rights, Non-Discrimination.*

INTRODUCTION

The legal status of children born out of wedlock constitutes a notable issue within the Indonesian legal system, particularly in relation to the protection of children's rights. Historically, both Islamic law and positive law recognized solely the civil connection between illegitimate offspring and their biological mothers. The connection with biological fathers was recognized exclusively via acknowledgment or judicial decree (Syarifuddin, 2019). This scenario raises profound issues, as children could relinquish fundamental rights, such as the right to legal identity, inheritance rights, and social protection (Ramadhani, 2020). Recent regulatory developments indicate a noteworthy transformation in the practices surrounding child protection. The Constitutional Court Decision No. 46/PUU-VIII/2010 expanded the civil connection between children born out of wedlock and their biological fathers, subject to confirmation via technological methods, including DNA testing. This decision represents a significant advancement in Indonesian family law, emphasizing the importance of child protection and the assurance of legal certainty (Nurbani, 2018). Law No. 35 of 2014 concerning Child Protection affirms the entitlement of children to legal acknowledgment devoid of discrimination and emphasizes the principle of prioritizing the child's best interests (Santoso, 2021). The rising incidence of child origin claims submitted to Religious Courts, particularly in Batam, reflects the public's demand for legal clarity concerning the status of illegitimate children. Data from the Batam Religious Court indicates that from 2020 to 2024, over 200 child origin claims were recorded, with a notable rise in 2023 (Batam Religious Court, 2024). Nonetheless, most decisions continue to reject or declare cases null and void (NO) if a valid marriage is not established, even in the presence of biological evidence such as DNA tests. This

situation illustrates a discrepancy between child protection principles and judicial practice (Mariana, 2025). In addition to legal aspects, the recognition of a child's origin also has significant social dimensions. Children who do not receive legal recognition from their biological father are vulnerable to stigma, discrimination, and limited access to public services, such as education and health care (Hidayat, 2019). Therefore, child origin claims are not only related to population administration but also serve as a crucial instrument in comprehensively guaranteeing children's rights. Within the theoretical framework, this study bases its analysis on John Rawls' Theory of Justice, which emphasizes the importance of substantive justice for vulnerable groups, including illegitimate children (Rawls, 1971); Lawrence M. Friedman's Theory of Legal Systems, which examines the relationship between structure, substance, and legal culture in the implementation of regulations (Friedman, 1975); and the Maslahah Mursalah Theory, which provides a legal basis in Islamic law for protecting children's interests (Al-Ghazali, 1991). Using this framework, this study attempts to analyze the legal basis, procedures, and legal implications of requests for the origin of illegitimate children at the Batam Religious Court and formulate legal solutions to strengthen child protection in accordance with the principle of non-discrimination. Based on this background, this study focuses on the legal analysis of requests for the origin of illegitimate children at the Batam Religious Court in relation to the Child Protection Law. This research is expected to provide academic and practical contributions to strengthening regulations and legal implementation that better support the best interests of children.

RESEARCH METHODS

This study employs a combination of normative and empirical legal methodologies. The normative juridical approach serves to analyze an array of pertinent laws and regulations, legal doctrines, and judicial rulings, with a specific focus on the status of illegitimate children and the safeguarding of children's rights. The empirical juridical approach serves to analyze the application of these regulations within judicial practice, through a review of decisions made by the Batam Religious Court and interviews conducted with pertinent parties (Soekanto, 2014; Marzuki, 2017).

Data Types and Sources

The data used are primary and secondary.

1. Primary data was obtained from five decisions on child origin petitions at the Batam Religious Court during the 2020–2024 period, as well as interviews with judges and attorneys.
2. Secondary data encompasses legislative statutes and regulations, including Law Number 35 of 2014 on Child Protection, Law Number 16 of 2019 on Marriage, and Constitutional Court Decision Number 46/PUU-VIII/2010, as well as legal literature, scholarly journals, and other pertinent materials (Soemitro, 1998).

Data Collection Techniques

Data were collected through:

1. Documentary review of laws and regulations, jurisprudence, and court decisions.
2. In-depth interviews with judges and legal practitioners handling child origin cases at the Batam Religious Court.

Data Analysis Techniques

Data were analyzed using qualitative analysis, namely describing and reviewing the data based on relevant legal theories. The analysis was conducted in three stages:

1. Data reduction, namely selecting important information according to the research focus.
2. Data presentation, in the form of case descriptions, regulations, and interview results.
3. Concluding by assessing the congruence between theory, legal norms, and judicial practice (Miles & Huberman, 1994).

Theoretical Framework

This research uses three theories as the basis for analysis:

1. The Theory of Justice (John Rawls) is a grand theory to assess the principle of substantive justice for illegitimate children.
2. The Theory of Legal Systems (Lawrence M. Friedman) is a middle theory that analyzes the legal structure, legal substance, and legal culture in the implementation of child origin cases.
3. The Maslahah Mursalah Theory is an applied theory that justifies child protection from an Islamic legal perspective that emphasizes the best interests of the child.

The research is anticipated to provide a complete analysis of the legal basis, methods, implementation, and legal ramifications of applications for the origin of illegitimate children at the Batam Religious Court. This approach will accomplish this.

RESEARCH RESULTS

1. Legal Basis and Procedures for Child Origin Applications at the Batam Religious Court

According to the research findings, Law Number 1 of 1974 regulating Marriage, as revised by Law Number 16 of 2019, the Compilation of Islamic Law (KHI), and Constitutional Court Decision Number 46/PUU-VIII/2010 serve as the legal foundation for child origin applications at the Batam Religious Court. Through a voluntary civil application process, parents or guardians submit applications to the court together with documentation of their Marriage, their biological relationship (such as DNA test results), and their child's identity. However, the Batam Religious Court tends to reject applications if there is no proof of a valid marriage under Islamic law, even if biological evidence is available. This indicates a tension between Islamic legal norms and the child protection principles enshrined in the Child Protection Law.

2. Implementation and Legal Implications of Batam Religious Court Decisions

Between 2020 and 2024, 205 cases of child origin requests were filed with the Batam Religious Court. Of these, only three were granted, while the majority were declared inadmissible (NO) or withdrawn by the applicants. Detailed data is presented in the following table:

Table 1. Implementation and Legal Implications of Batam Religious Court Decisions

Year	Number of Cases	Granted	Not Acceptable	Fall	Revoked
2020	34	0	9	4	21
2021	41	2	8	5	26
2022	33	0	6	3	24
2023	51	0	6	6	39
2024	46	1	4	4	37
Total	205	3	33	22	147

Source: Batam Religious Court Case Tracking Information System (2024).

Decisions to deny petitions typically stem from the invalidity of the marriage in Islamic law, such as an improper marriage guardian, polygamy, or non-compliance with the essential pillars and requirements of marriage. As a result, the child is considered to have no legal tie with his or her biological father. The legal consequence of such choices is that the child is unable to acquire civil rights from the father, including inheritance rights and the father's identification on the birth certificate.

3. Legal Solutions for the Civil Rights of Children Born Outside of Marriage

Research shows that the more uniform implementation of Constitutional Court Decision No. 46/PUU-VIII/2010, which establishes the foundation for acknowledging the civil relationship between an illegitimate child and their biological father, is a viable legal remedy. This recognition is contingent upon scientific evidence. Furthermore, synchronization of Islamic law, national law, and population administration is needed. This harmonization can be achieved by:

- Developing national standard operating procedures (SOPs) for child origin applications that prioritize the child's best interests.
 - Strengthen religious courts' role as protectors of children's rights, not merely as institutions that assess the validity of marriages.
 - Increasing public legal awareness regarding children's rights and procedures for recognizing child origin.
- With these steps, it is hoped that the rights of illegitimate children, including inheritance rights, identity rights, and access to social protection, can be better guaranteed in accordance with child protection principles.

DISCUSSION

1. Legal Basis and Procedures for Requests to Examine the Origin of Children Born Out of Wedlock

When it comes to requests to investigate the origin of children who were born outside of Marriage, the Constitutional Court's Decision No. 46/PUU-VIII/2010, the Compilation of Islamic Law (KHI), and Law Number 1 of 1974 concerning Marriage (as amended by Law Number 16 of 2019) serve as the legal foundation, as indicated by the findings of the study. However, the Batam Religious Court's implementation demonstrates a propensity to deny applications in the absence of biological evidence, such as DNA test results, proving a lawful marriage. From the perspective of John Rawls' Theory of Justice, this practice does not reflect the difference principle, which states that justice must favor the most disadvantaged groups, including children born out of wedlock (Rawls, 1971). Children are vulnerable because they have no control over their birth status, so the law should function as an instrument of protection, not restriction. Prior research conducted by Nurhayati (2020) revealed judicial resistance in executing Constitutional Court Decision No. 46/PUU-VIII/2010 in Yogyakarta. This led to the civil relationship between illegitimate children and their biological dads frequently being unacknowledged. This resembles findings in Batam, where favorable legislation is often regarded more formally than child protective concepts.

2. Implementation of Court Decisions and Legal Implications

During 2020–2024, only 3 out of 205 applications were granted by the Batam Religious Court. Most were rejected or declared non-recognition (NO) on the grounds of the invalidity of the marriage. As a result, children do not have a legal relationship with their biological fathers and lose important rights, such as the right to a birth certificate stating the father's identity, inheritance rights, and social security guarantees. In Friedman's Legal System Theory, this failure can be understood from three components of the legal system:

- a. The legal structure is where religious courts still interpret norms rigidly without considering the interests of children.
- b. The legal substance, namely the existence of regulatory gaps, is that the marriage law and the compilation of Islamic law (KHI) are not fully aligned with the Constitutional Court's decision.
- c. Legal culture, namely the social stigma against illegitimate children that influences the attitudes of judges and the public (Friedman, 1975).

This is consistent with research by Rosidah (2019), which found differences in legal interpretation between the Civil Code, Islamic Law, and Constitutional Court Decisions, leading to uncertainty in recognizing the inheritance rights of illegitimate children. Thus, judicial practices in Batam reflect the uneven implementation of the law, which directly impacts children's rights.

3. Legal Solutions and Principles of Child Protection

The solutions offered in this study emphasize the importance of synchronizing Islamic law, national law, and population administration. From the perspective of the Maslahah Mursalah Theory, child protection is a form of *hifzh al-nasl* (protection of offspring), which is the primary objective of sharia (*maqasid al-shari'ah*). Therefore, recognizing the parentage of illegitimate children through scientific evidence is not only legally valid but also aligns with the principle. Research by Zainuddin (2018) and Sholahuddin (2024) confirms that recognizing illegitimate children through a court decision is a crucial instrument for ensuring children have a legal identity and access to fundamental rights. Therefore, consistent implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 can be a progressive legal solution. Furthermore, a national standard operating procedure (SOP) is needed for child origin requests in religious courts to ensure more uniform application of the law and support the principle of the best interests of the child. This also supports the state's obligations under the Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990.

4. Academic and Practical Implications

Academically, this research confirms that modern legal theories such as Rawls and Friedman can be used to analyze structural injustices in the religious justice system. Practically, the research findings can serve as a reference for:

- a. Judges should consider the principle of child protection in every decision better.
- b. The public needs to understand the importance of child origin requests in guaranteeing children's rights.
- c. Policymakers should harmonize regulations and ensure more consistent implementation of the Constitutional Court's ruling.

Thus, this study demonstrates that protecting illegitimate children is not only the responsibility of the family, but also the state through fair, effective, and non-discriminatory legal mechanisms.

CONCLUSION

Based on the description, the following conclusions can be drawn:

1. Article 43, paragraph (1) of Law No. 1 of 1974, Law No. 16 of 2019, Constitutional Court Decision No. 46/PUU-VIII/2010, and relevant population administration regulations serve as the foundation for applications for the parentage of illegitimate children at the Batam Religious Court. They are conducted through civil law procedures that meet formal and material requirements. This procedure includes submitting an application, examining evidence such as a birth certificate, acknowledgment of paternity, or DNA test results, and mediation in accordance with Supreme Court Regulation No. 1 of 2016. However, in practice, technical and legal obstacles still arise, particularly in proving the validity of the child's civil relationship with their biological father if the parents' marriage is invalid under Islamic law.
2. The implementation of judicial decisions by the Batam Religious Court regarding requests for the origin of illegitimate children shows that the legal approach used is still oriented towards the formal legality of the parents' marriage as the basis for recognizing the civil relationship between the child and the biological father. Although there is a legal basis through Constitutional Court Decision Number 46/PUU-VIII/2010, which opens up space for recognition based on scientific evidence such as DNA testing, in practice, this approach has not been fully adopted by judges. This results in many requests being rejected and the child not receiving legal recognition, thus directly impacting the legal status of the child, who is still considered to have only a civil relationship with the mother. The legal implications of these decisions significantly affect the civil rights of illegitimate children, such as inheritance rights, the right to maintenance, legal identity on birth certificates, and access to social protection. When the court rejects a request because the parents' marriage is invalid, the child is legally denied recognition of his biological father, which further hinders the child from obtaining his rights in full. This demonstrates that the legal system has not fully guaranteed the principles of justice and protection for illegitimate children as mandated by the Child Protection Law, and that more progressive legal policy reforms are needed that align with the best interests of children.
3. Legal solutions to protect the civil rights of illegitimate children must be implemented through harmonization of Islamic law, positive law, and population administration, optimizing the role of religious courts and child protection institutions, and establishing national standard operating procedures (SOPs) for child origin applications. Furthermore, regulatory reforms in the form of government regulations (PP) or presidential regulations (Perpres) are needed to guarantee recognition of children's identities based on scientific evidence. A progressive legal approach and the principle of non-discrimination are the urgent basis for ensuring that every child, regardless of birth status, receives equal legal protection as mandated by the Child Protection Law and the constitution.

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