

Sirri Marriage and Children's Administrative Status: A Case Study of the Cibinong Religious Court Decision

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Abstract

Siri marriage is a form of marriage conducted in accordance with religious law, but not officially registered with the relevant state agency, in this case the Office of Religious Affairs (KUA). This phenomenon is still widely found in Indonesia and raises complex legal issues, one of which relates to the administrative status of children born from such marriages. This issue is crucial because the registration of marriage has direct implications for the civil rights of children, including the possession of a birth certificate as a basic document in the population administration system. This study aims to analyze the legal implications of unregistered marriages on the administrative status of children in the context of Law No. 24 of 2013 on Population Administration, by examining the Cibinong Religious Court Decision No. 865/Pdt.P/2024/PA/CBN as a case study. The method used is a normative juridical approach with data collection through a literature review of legal literature, court decisions, laws and regulations, and relevant academic articles. The results of the study show that children born from unregistered marriages often face obstacles in obtaining birth certificates because their parents do not meet the requirements for marriage registration. This situation results in uncertainty regarding the legal status of the child in the eyes of the state, particularly in relation to civil rights and legal protection. However, through the mechanism of marriage validation, the court provides validation of unregistered marriages so that children can obtain administrative legality. The decision of the Cibinong Religious Court in the case studied confirms that the state is present to provide legal certainty for children, while reinforcing the importance of marriage registration as an instrument for the protection of civil rights. This study confirms that marriage registration is a fundamental aspect of guaranteeing children's rights in population administration.

Keyword: Sirri Marriage; Population Administration; Child Status; Religious Court Decision.

Abstrak

Perkawinan siri merupakan praktik perkawinan yang dilakukan sesuai syariat agama, tetapi tidak dicatatkan secara resmi pada lembaga negara yang berwenang, dalam hal ini Kantor Urusan Agama (KUA). Fenomena ini masih banyak dijumpai di Indonesia dan menimbulkan problematika hukum yang kompleks, salah satunya terkait status administrasi kependudukan anak yang lahir dari perkawinan tersebut. Permasalahan ini menjadi krusial karena pencatatan perkawinan memiliki implikasi langsung terhadap hak-hak sipil anak, termasuk kepemilikan akta kelahiran sebagai dokumen dasar dalam sistem administrasi kependudukan. Penelitian ini bertujuan untuk menganalisis implikasi hukum perkawinan siri terhadap status administrasi

kependudukan anak dalam perspektif Undang-Undang Nomor 24 Tahun 2013 tentang Administrasi Kependudukan, dengan menelaah Putusan Pengadilan Agama Cibinong No. 865/Pdt.P/2024/PA/CBN sebagai studi kasus. Metode yang digunakan adalah pendekatan yuridis normatif dengan pengumpulan data melalui studi kepustakaan terhadap literatur hukum, putusan pengadilan, peraturan perundang-undangan, serta artikel akademik yang relevan. Hasil penelitian menunjukkan bahwa anak hasil perkawinan siri sering mengalami kendala dalam memperoleh akta kelahiran karena tidak terpenuhinya syarat pencatatan perkawinan orang tua. Kondisi ini mengakibatkan ketidakjelasan status hukum anak di mata negara, terutama terkait hak-hak sipil dan perlindungan hukum. Namun demikian, melalui mekanisme isbat nikah, pengadilan memberikan pengesahan atas perkawinan siri sehingga anak dapat memperoleh legalitas administratif. Putusan Pengadilan Agama Cibinong dalam kasus yang dikaji menegaskan bahwa negara hadir untuk memberikan kepastian hukum bagi anak, sekaligus menguatkan pentingnya pencatatan perkawinan sebagai instrumen perlindungan hak sipil. Penelitian ini menegaskan bahwa pencatatan perkawinan merupakan aspek fundamental untuk menjamin hak-hak anak dalam administrasi kependudukan.

Kata Kunci: Perkawinan Sirri; Administrasi Kependudukan; Status Anak; Putusan Pengadilan Agama.

Introduction

Law Number 1 of 1974 concerning Marriage stipulates that every marriage must be registered in accordance with statutory regulations.¹ This provision is reinforced by Law Number 24 of 2013 concerning Population Administration, which establishes marriage registration as a legal prerequisite for recording important events such as the birth of a child. However, social reality shows that many marriages are conducted outside the official state registration system—a phenomenon known as unregistered marriages. Unregistered marriages are generally conducted while fulfilling religious requirements and pillars, but ignoring the obligation to register with the Religious Affairs Office or the Population and Civil Registration Office.² This reality raises questions about the legal implications of unregistered marriages on the administrative status of children's population from the perspective of Law No. 24 of 2013, and refers to how the legal analysis of the legal considerations by the judge in case No. 865/Pdt.P/2024/PA/CBN in determining the administrative status of children's population from unregistered marriages relates to the fulfillment of children's civil rights?

Constitutional Court Decision No. 46/PUU-VIII/2010 changed the legal paradigm by stating that children born from unregistered marriages have a civil relationship not only with their mother but also with their father, as long as it can be proven through science or other evidence.³ However, the implementation of this decision in practice still faces various

¹ Abu Yazid Adnan Quthny and Ahmad Muzakki, "Pencatatan Pernikahan Perspektif Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974," *Asy-Syari'ah: Jurnal Hukum Islam* 8, no. 1 (2022): 25–40, <https://doi.org/10.55210/assyariah.v8i1.765>.

² Anas Maulana, "Pencatatan Perkawinan Dalam Permendagri Nomor 109 Tahun 2019 Tentang Formulir Dan Buku Yang Digunakan Dalam Administrasi Kependudukan," *Islamic Law: Jurnal Siyasah* 7, no. 02 (2022): 52–73.

³ Fidia Nurul Maulidah, "Pergeseran Hukum Pencatatan Kelahiran Terhadap Hak Waris Anak Hasil Perkawinan Tidak Tercatat Ditinjau Dari Putusan MK Nomor 46/PUU-VIII/2010" (Universitas Islam Indonesia, 2025).

obstacles. Normatively, this decision has not changed the obligation to register marriages under the Marriage Law, so the status of unregistered marriages remains unregistered. In practice, disparities in judges' understanding and inconsistent interpretations during the process of proving paternity have led to inconsistent court decisions. Furthermore, the public often experiences limited access and difficulties in this evidentiary process, including procuring scientific evidence such as DNA testing. Many cases show fathers' reluctance to provide evidence, forcing judges to rely on other legally valid evidence, which is often inadequate to reach a definitive decision. A further implication is that birth certificates and registration at the Population and Civil Registration Office still do not optimally accommodate this decision, which hinders the recognition of children's civil rights. Therefore, these normative and practical constraints require improvement of regulations, socialization of decisions, and standardization of evidentiary procedures so that legal protection for children resulting from unregistered marriages can be fully and evenly realized throughout Indonesia.

Family law experts believe that unregistered marriages are detrimental to children because they create uncertainty about their legal status and administrative barriers to accessing basic rights such as birth certificates and inheritance.⁴ From a social norm perspective, Indonesian society tends to view unregistered marriages as acceptable as long as they are religiously valid. Some view state involvement in marriage as an intervention in private morality, making registration optional. However, this view ignores the long-term impact on children's rights. This situation becomes even more complex when examined within the context of Indonesia's current social dynamics, where the high rate of early marriage, hidden polygamy, and low legal literacy in society create fertile ground for the growth of unregistered marriages.

Many couples choose unregistered marriages because they consider them more practical, less expensive, or because they can conceal their relationship status. In some cases, marriages even occur without the knowledge of the extended family, which then gives rise to new social conflicts and civil disputes later on. In such a context, population administration is not merely a matter of data recording, but also concerns the recognition of an individual's rights and identity. This problem is clearly illustrated in case No. 865/Pdt.P/2024/PA/CBN, the case study in this study. In this case, the judge had to assess whether the father-child relationship in the context of an unregistered marriage could be legally established. However,

⁴ Ahmad Faiz and Sri Redjeki Slamet, "Penetapan Isbat Nikah Terhadap Perkawinan Yang Tidak Tercatat Di Kantor Urusan Agama Dan Implikasi Hukumnya Terhadap Status Hukum Suami Istri Dan Anak (Studi Kasus Penetapan Pengadilan Agama Jakarta Selatan Nomor 879/PDT. P/2021/PA. JS)," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): 2525–33, <https://doi.org/10.57250/ajsh.v5i2.1524>.

the legal considerations used in the decision indicate that there is no standard interpretation regarding proving paternity of children born of unregistered marriages. This lack of uniformity demonstrates the weak harmonization of family law and population administration law, as well as the suboptimal technical guidance from higher institutions such as the Supreme Court or the Ministry of Home Affairs. Court decisions that cannot be directly implemented by the Population and Civil Registration Office Service are evidence of the gap between the declarative power of the judiciary and the administrative authority of the executive.

However, the crux of the matter is that despite the existence of evidence indicating a biological relationship, including confession documents, witness testimony, and evidence of custody, the court remained cautious in assessing and considering the validity of the marriage and the child's status. In the verdict, the judge tends to emphasize that although there is a factual relationship between the child and the father, administratively and legally, there is no marriage certificate that can serve as a valid basis for registering paternity at the Population and Civil Registration Office Service. This verdict creates a dilemma: on the one hand, the court wants to acknowledge the blood relationship and paternal responsibility; on the other hand, the absence of official marriage registration creates a legal vacuum that limits the judge's room for maneuver. This case demonstrates that although the Constitutional Court has provided a progressive interpretation of Article 43 paragraph (1) of the Marriage Law, in practice, there is still ambiguity in its implementation and legal implications for population registration administration policies at the executive level.

In facing this situation, a purely normative approach is no longer sufficient. The state needs to be more substantial through regulatory reforms that unify the values of religious law, state law, and child protection principles.⁵ The simplification of the marriage registration process is needed, for example, by increasing the number of mass marriage confirmation hearings involving religious courts, the Religious Affairs Office, and the Population and Civil Registration Office. Furthermore, the Supreme Court and the Ministry of Home Affairs need to issue technical guidelines so that court decisions regarding children's parentage can be implemented effectively and uniformly throughout Indonesia. Equally important is improving legal education for the public through a culture- and religion-based approach that emphasizes that registration is a form of protection, not simply an administrative obligation. By considering all these aspects—legal, social, and cultural—this study aims to critically and comprehensively examine how the practice of unregistered marriages impacts children's

⁵ Maskur Rosyid and Dhani Dwi Afrizal, "Integrasi Hukum Adat Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1792–1812, <https://doi.org/10.62976/ijjel.v3i2.1170>.

administrative population status, and how the legal system responds through regulations and court decisions. This research also attempts to formulate a solution approach that can bridge the tension between legal norms and social reality, so that children from unregistered marriages no longer become victims of a legal system that ignores the realities of its own society.

Studies on unregistered marriages and their implications for children's legal status have been widely discussed by researchers, but most remain limited to normative aspects and have not addressed the complexities of population administration implementation. Nailur Rahmi et. al. (2025) highlighted the weak effectiveness of the Marriage Law in suppressing the practice of unregistered marriages.⁶ Darwin Pantui, et. al. (2025) emphasized that economic and sociocultural factors are the main drivers of unregistered marriages among lower-middle-class communities.⁷ Sarkanto, & Fouad Larhzizar (2024) examined the social impact of unregistered marriages on children's civil rights, but have not yet examined their integration with state administrative policies.⁸ Meanwhile, a study by Hidayat (2023) showed that disparities in judicial interpretation following Constitutional Court Decision No. 46/PUU-VIII/2010 have become a source of legal uncertainty in recognizing the paternity of illegitimate children. A study by Setiawan & Nurhasanah (2024) highlighted the weak coordination between the judiciary and the Population and Civil Registration Office in following up on court decisions regarding children's origins. Meanwhile, a study by Rosyid & Afrizal (2025) emphasized the importance of synergy between Islamic law and positive law in upholding the principle of child protection. This study expands the scope of previous studies by using the concrete case No. 865/Pdt.P/2024/PA/CBN as a starting point for analysis, in order to empirically understand the tension between legal norms, judicial practices, and administrative implementation in protecting the legal status of children born of unregistered marriages.

This study aims to analyze the legal implications of unregistered marriages on the administrative status of children's population within the framework of Law Number 24 of 2013, by examining the judge's legal considerations in case No. 865/Pdt.P/2024/PA/CBN and

⁶ Nailur Rahmi, Arifki Budia Warman, and Amri Effendi, "Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 416–37, <https://doi.org/10.22373/sjkh.v9i1.28306>.

⁷ Darwin Pantui, Nur Mohamad Kasim, and Weny Almoravid Dungga, "The Rights of Children from Unregistered Marriages: Between Certainty and the Practice of Protection," *Hang Tuah Law Journal* 9, no. 1 (2025): 187–202, <https://doi.org/10.30649/htlj.v9i1.284>.

⁸ Sarkanto and Fouad Larhzizar, "Unregistered Marriages in Islamic Law: Ensuring Children's Rights Amidst Legal Validity," *Amorti: Jurnal Studi Islam Interdisipliner* 3, no. 3 (2024): 128–38, <https://doi.org/10.59944/amorti.v3i3.345>.

assessing the extent to which the decision reflects the consistency of the application of the Constitutional Court Decision No. 46/PUU-VIII/2010. Furthermore, this study is intended to map the normative and administrative problems that cause a lack of synchronization between the judiciary and the Population and Civil Registration Office, as well as formulate an integrative model based on the harmonization of religious law and positive law that can strengthen the protection of the civil rights of children resulting from unregistered marriages in Indonesia.

Research Methods

This study employed normative legal research. The legal material collection technique in this study was conducted through library research. This process included the collection, classification, and identification of legal materials based on their level of urgency. In examining this problem, this study employed three main approaches: the statute approach, the conceptual approach, and the case approach. The data was sourced from primary legal materials, including laws and regulations relevant to the study topic, and secondary legal materials, including academic literature related to the theme. The analysis technique in this study was conducted through a normative juridical approach, namely by interpreting and constructing applicable legal norms within the context of the problem at hand. The analysis was conducted using legal logic to connect norms with the facts that occurred in society, particularly in cases of children from unregistered marriages. This study not only revealed gaps or weaknesses in regulations but also attempted to offer solutions by strengthening legal norms, harmonizing interpretations at the judicial level, and encouraging synergy between religious law and positive law in protecting children's rights as integral legal subjects.

Results and Discussion

1. Legality of Marriage and Unregistered Marriage

Marriage in the Indonesian legal system is not merely defined as an emotional or religious bond between two individuals, but rather as a legal event that must comply with state administrative provisions.⁹ This means that the validity of a marriage is not solely based on religion; it must also be registered in the population administration system to receive full legal recognition and protection from the state. Registration of a married couple is necessary

⁹ Fitri Mustafa et al., "The Deconstruction of Marriage Law in Islam: A Critical Analysis of The Practice of Contract Marriage in The Modern Era: Dekonstruksi Hukum Perkawinan Dalam Islam: Analisis Kritis Terhadap Praktik Kawin Kontrak Di Era Modern," *Al Hairy| Journal of Islamic Law* 1, no. 1 (2025): 51–74, <https://doi.org/10.64344/hry.v1i1.14>.

to obtain official documents such as a marriage certificate, family card, and to facilitate the processing of children's birth certificates.¹⁰ Juridically, marriage registration serves as the basis for recognizing the existence of the legal relationship between husband, wife, and children in the national legal system.¹¹

The legal basis for the requirement to register marriages is stipulated in Law Number 1 of 1974 concerning Marriage, specifically Article 2 paragraph (2), which stipulates that every marriage must be registered according to applicable laws and regulations.¹² This means that even if a marriage is valid according to religion, if it is not registered, it is not recognized by the state in the context of population administration or civil law. This provision is reinforced by Law Number 23 of 2006 concerning Population Administration, which was amended by Law Number 24 of 2013, which states that important events such as births, deaths, and marriages must be registered as part of orderly state administration. The registration process is carried out through the Religious Affairs Office for Muslims or the Population and Civil Registration Office for adherents of other religions. This registration is a requirement for various other administrative processes, such as accessing health services, education, and banking and housing needs. Marriages that are not registered are known as unregistered marriages.

An unregistered marriage is a form of marriage that is legally performed according to religion but not officially registered with the state administration.¹³ This phenomenon is quite common in Indonesia, especially among communities that place religion as the primary basis for the validity of a marriage. According to Islamic jurisprudence, a marriage is valid if it meets the pillars and requirements of marriage, such as the presence of a prospective husband and wife, a guardian, two witnesses, and the *ijab qabul* (consent). However, in the context of a state governed by the rule of law like Indonesia, the validity of a marriage is assessed not only from a religious perspective but also from the perspective of state legal administration.¹⁴

¹⁰ Asir Arfah, "Optimalisasi Pencatatan Nikah Melalui SIMKAH Di KUA Kecamatan Bua Kabupaten Luwu," *Jurnal Kewarganegaraan* 6, no. 3 (2022): 6153–66, <https://doi.org/10.31316/jk.v6i3.4117>.

¹¹ Satriya Pamungkas, "Studi Normatif Atas Ketentuan Pencatatan Nikah Dan Implikasinya Terhadap Legalitas Keluarga Siri," *USRAH: Jurnal Hukum Keluarga Islam* 5, no. 2 (2024): 321–31, <https://doi.org/10.46773/usrah.v5i2.1071>.

¹² Zulkifli Zulkifli, "Pencatatan Perkawinan Dalam Perspektif Maqasid Asy-Syari'ah" (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2021).

¹³ Mahmud Huda and Noriyatul Azmi, "Legalisasi Nikah Siri Melalui Isbat Nikah," *Jurnal Hukum Keluarga Islam* 5, no. 2 (2020): 98–119.

¹⁴ Andi Muhammad Akmal and Mulham Jaki Asti, "Problematika Nikah Siri, Nikah Online Dan Talak Siri Serta Implikasi Hukumnya Dalam Fikih Nikah," *Al-Risalah: Jurnal Ilmu Syariah Dan Hukum* 21, no. 1 (2021): 45–59, <https://doi.org/10.24252/al-risalah.v1i1.22247>.

According to Article 2, paragraph (1) of Law Number 1 of 1974 concerning Marriage, a marriage is considered valid if it is carried out according to the laws of each religion and its beliefs.¹⁵ This means that the state recognizes religious validity as the basis for the validity of a marriage. However, Article 2, paragraph (2) of the same law adds that every marriage must be registered in accordance with applicable laws and regulations.¹⁶ This is where the difference arises: if a marriage is not registered, then even though it is valid according to religion, the marriage does not have legal force in state administration.

The Compilation of Islamic Law (CIL), as a form of codification of Islamic law in Indonesia, also emphasizes the importance of marriage registration. Article 5, paragraph (1) of the Compilation of Islamic Law (CIL) states that "to ensure orderly marriage for the Islamic community, every marriage must be registered." Marriage registration is carried out by Marriage Registrars under the Ministry of Religion.¹⁷

Without registration, the state cannot fully recognize the rights and obligations of couples married under Islamic law. Consequently, there is no official document, such as a marriage certificate, that presents obstacles in various administrative matters, including child recognition, inheritance rights, divorce proceedings, and division of joint property.

2. Legal Implications of Unregistered Marriages on Children's Administrative Population Status

In the context of Indonesian positive law, unregistered marriages significantly impact the legal status of children born from such marriages. Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration provides specific regulations regarding birth registration, birth certificates, and the legal relationship between children and parents.¹⁸ However, when the parents' marriages are unregistered, crucial legal issues arise in recognizing the child's administrative status.

Law Number 24 of 2013 stipulates that every birth must be reported no later than 60 days to the implementing agency in the region (Population and Civil Registration Office),

¹⁵ Bing Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (2020): 193–99, <https://doi.org/10.23887/jmppkn.v2i1.135>.

¹⁶ Rian M Sirait, "Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia Marriage Registration in Indonesia's Marriage Law Regulations," *Jurnal Juristic* 1, no. 1 (2021): 16–23.

¹⁷ Elisa Rani and Anggra Prima, "Tinjauan Maqashid Al-Syariah Terhadap Kepastian Hukum Pencatatan Perkawinan Di KUA Kecamatan Bengalon," *AL-AMIYAH: Jurnal Ilmiah Multidisiplin* 2, no. 02 (2025): 217–26, <https://doi.org/10.71382/aa.v2i02.266>.

¹⁸ Fadillah Annisa Sinuraya et al., "Analisis Yuridis Tentang Perubahan Nama Dalam Penerbitan Akta Kelahiran Berdasarkan UU Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 7 (2023): 155–72, <https://doi.org/10.5281/zenodo.7812426>.

which will then issue a birth certificate.¹⁹ This certificate is legal proof of the birth and the legal status of the child administratively. In Article 27 paragraph (1), it is emphasized that "Every birth must be reported by residents to the local Implementing Agency no later than 60 (sixty) days from the date of birth." However, in practice, children from unregistered marriages often cannot have their father's name listed on the birth certificate, because there is no legal proof that both parents are bound in a marriage recognized by the state.

Article 43 of Law Number 1 of 1974 concerning Marriage states that a child born out of wedlock has a legal relationship only with the mother and the mother's family.²⁰ In this case, a siri marriage is considered an "extramarital marriage" administratively, because it is not registered with an official institution. Consequently, a child born from this relationship legally has only an administrative relationship with the biological mother. The father's name cannot be included on the birth certificate unless there is a court decision establishing a civil relationship between the father and child.

Constitutional Court Decision No. 46/PUU-VIII/2010 opened legal space for illegitimate children to have a civil relationship with their father, as long as it can be proven scientifically (such as through DNA) and/or technology. However, the decision still requires further legal proceedings, which are certainly not easy and inexpensive for the general public.²¹ Law No. 24 of 2013 also normatively opens space for the recognition of children from unregistered marriages through a court-ordered mechanism. In this case, the legal relationship between father and child can be legally recognized even if the parents do not have a marriage certificate. However, in practice, this provision is difficult for the general public to access because it requires cost, time, and adequate legal understanding. As a result, many children from unregistered relationships remain trapped in uncertain administrative status, difficulty obtaining a birth certificate that lists the father's name, limited inheritance rights, and the social stigma of being an illegitimate child because there is no further legal effort from the parents to obtain legal recognition through the courts.

From the perspective of the theory of legal certainty, as proposed by Gustav Radbruch, good law must fulfill three elements: legal certainty (*rechtssicherheit*), justice (*gerechtigkeit*),

¹⁹ Akris Siluwanus Sanu, Agustinus Hedewata, and Helsina F Pello, "Akibat Hukum Dan Upaya Penanggulangan Terlambat Mendaftarkan Akta Kelahiran Anak Ditinjau Dari Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 1, no. 4 (2023): 113–30, <https://doi.org/10.51903/hakim.v1i4.1449>.

²⁰ Andi Syamsulbahri and Adama, "Akibat Hukum Perkawinan Beda Agama Menurut Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," *AL-SYAKHSHIYAH; Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 2, no. 1 (2020): 75–85.

²¹ Mahkamah Konstitusi, "Putusan Nomor 46/PUU-VIII/2010," 2010.

and utility (*zweckmäßigkeit*).²² In this context, Law No. 24 of 2013 does provide normative legal certainty because it regulates formal and legal procedures for child registration. This law states that the father's name can only be included on a birth certificate if there is proof of marriage registration.²³ Therefore, parents must undergo a court order to obtain official recognition, which is not always easy, inexpensive, or quick for the general public. However, in terms of application, this law fails to provide substantive legal certainty for children from unregistered marriages whose social and biological existence is clear but not administratively registered.

Legal certainty is not merely a procedural issue; it must also guarantee justice and the protection of human rights, especially for vulnerable groups such as children. When the law prioritizes administrative formalities over social realities, it becomes exclusive and non-inclusive.²⁴ This contradicts the principle of non-discrimination in child protection as stipulated in the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990.

The Convention affirms that every child has the right to an identity, a name, and citizenship from birth. Therefore, making parents' marital status the primary requirement for granting a child an identity violates the principle of the best interest of the child. Herein lies the paradox of Law No. 24 of 2013: it promises administrative legal certainty, but neglects legal certainty for children in the sense of comprehensive rights protection.

Therefore, the implementation of Law No. 24 of 2013 needs to be reformulated so that it is not only oriented towards administrative order but also responsive to social realities. Ideal legal certainty is certainty that is not only normative but also provides a sense of justice and real protection for every citizen, especially children born into imperfect legal situations, but still have constitutional rights that must be guaranteed by the state.²⁵

In the context of Indonesian law, child protection is not only a constitutional mandate but also a commitment of the state as part of the international community that has ratified

²² Uni Sabadina, "Peranan Hakim Dalam Penegakan Hukum Di Indonesia (Suatu Telaah Teoritis Dan Normatif)," *Desiderata Law Review* 2, no. 1 (2025): 14–25, <https://doi.org/10.25299/dlr.2025.23917>.

²³ Asriadi Zainuddin, "Legalitas Pencatatan Perkawinan Melalui Penetapan Isbat Nikah," *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 1 (2022): 60–72, <https://doi.org/10.30984/ajifl.v2i1.1942>.

²⁴ Rolib Sitorus, "Tantangan Dan Harapan Pembentukan Sistem Hukum Nasional," *ABDISOSHUM: Jurnal Pengabdian Masyarakat Bidang Sosial Dan Humaniora* 4, no. 2 (2025): 167–81, <https://doi.org/10.55123/abdisoshum.v4i2.5158>.

²⁵ Aryashakti Satria Pratama Yulianto and Muhammad Mashuri, "Perlindungan Hukum Terhadap Anak Untuk Mendapatkan Pencatatan Kelahiran Yang Telah Melampaui Batas Waktu," *Qaumiyyah: Jurnal Hukum Tata Negara* 6, no. 1 (2025): 83–105, <https://doi.org/10.24239/qaumiyyah.v6i1.197>.

the Convention on the Rights of the Child.²⁶ One of the concrete forms of this protection is the guarantee of identity, legal status, and other basic rights from birth. However, in social reality and legal practice, children born from unregistered marriages remain the group most vulnerable to violations of their rights. When the state does not fully recognize the existence of the child's parents' marriage because it is not officially registered, the child's legal status becomes unclear. Furthermore, they cannot be included on the Family Card with their father, and consequently, they face difficulties in accessing education, health services, and social assistance programs that rely on valid population data.

Constitutional Court Decision No. 46/PUU-VIII/2010 indeed opened the way for illegitimate children to obtain civil relations with their biological fathers, provided that this can be proven scientifically and/or with other legal evidence. However, this decision has not been optimally implemented at the administrative level, as technical policies such as birth certificate applications still require a prior court ruling. This means that child recognition still relies heavily on the active participation of parents, and the state has not been sufficiently progressive in reaching out to the group of children from unregistered marriages who lack legal support from their families. In terms of legal protection, this condition creates systemic inequality. The state should not simply wait for the public to come and seek justice, but should actively ensure that every child, regardless of their parents' marital status, has the same rights to identity and legal protection. Child protection enforcement should ideally be carried out with a proactive and preventative approach, not merely a reactive one.²⁷

Theologically, the provisions regarding unregistered marriages are certainly inconsistent with the principles of *maqasid al-syari'ah*, particularly regarding the aspects of *hifzh al-nasl* (protecting offspring) and *hifzh al-haqq* (protecting rights).²⁸ Islamic law views the importance of safeguarding children's lineage and rights as part of the moral and social responsibility of parents and the state. Children are a trust whose rights must be cared for and protected, regardless of their birth.²⁹

²⁶ Didi Nazmi and Syofirman Syofyan, "Pengaturan Perlindungan Hak Anak Di Indonesia Dalam Rangka Mengeliminir Pelanggaran Hak Anak," *Unes Journal of Swara Justisia* 7, no. 2 (2023): 774–84, <https://doi.org/10.31933/ujsj.v7i2>.

²⁷ Dody Wahono Suryo Alam, "Perlindungan Hak Anak Dalam Perkawinan Siri Perspektif Hukum Keluarga Islam Dan Undang-Undang Perlindungan Anak," *Al Fuadiy Jurnal Hukum Keluarga Islam* 7, no. 01 (2025): 106–20, <https://doi.org/10.55606/af.v7i01.1558>.

²⁸ Ahsan Irodat and Efi Afifi, "Transformasi Maqosidus Syari'ah; Revitalisasi Qowaidul Fiqhiyah," *Ta'dibiya* 4, no. 2 (2024): 37–49, <https://doi.org/10.61624/japi.v4i2.145>.

²⁹ Riska Harnysah Harahap, "Prinsip Maqashid Asy-Syariah Dalam Undang-Undang No 35 Tahun 2014 Tentang Perlindungan Anak" (IAIN Padangsidimpuan, 2021).

The absence of marriage registration impacts the legal status of children.³⁰ Article 99 of the Compilation of Islamic Law (CIL) states that a legitimate child is a child born in or as a result of a legal marriage. Because unregistered marriages are not considered administratively valid, children born from such relationships do not have the status of legitimate children in the eyes of state law. This is certainly contrary to Article 28B paragraph (2) of the 1945 Constitution, which guarantees that every child has the right to survival, growth, development, and the right to protection from violence and discrimination.³¹ Discrimination of status due to unregistered marriages clearly harms children who are in this position innocent, but must bear the long-term administrative and social consequences.

The state should be present to address this inequality. Although Law Number 24 of 2013 provides space through court decisions, this approach still requires formal and expensive procedures. This actually creates unequal access to justice between the upper-middle class and the less fortunate. Therefore, legal breakthroughs are needed that better support children as protected legal subjects. One of the solutions that can be explored is expanding the basis for recognizing child status through biological evidence, such as DNA testing, without having to go through complicated judicial processes. Furthermore, the state also needs to actively promote the importance of marriage registration and provide legal assistance to low-income couples who wish to legally register their marriages.

In this context, the integration of Islamic law and national law must be directed towards fulfilling the principles of protection and substantive justice. Islamic law, through its *maqasid al-syari'ah*, essentially supports social justice and the protection of individual rights, particularly children. Therefore, it is time for national law to reinterpret administrative provisions from a substantive justice perspective, where children should not be victims due to their parents' administrative negligence. This policy reformulation not only brings the state closer to its people but also reflects the spirit of the constitution and Islamic teachings on upholding human dignity.

3. Legal Analysis of the Judge's Decision in Case No. 865/Pdt.P/2024/PA/CBN

The judge adopted a comprehensive legal approach in this decision, basing his decision on Article 43 paragraph (1) of Law No. 1 of 1974, as reinterpreted by Constitutional Court Decision No. 46/PUU-VIII/2010. This constitutional interpretation affirms that

³⁰ Rizaldy N Mokoagow, Nur M Kasim, and Mohamad Rivaldi Moha, "Ketidadaan Pencatatan Pernikahan Dan Implikasinya Terhadap Perlindungan Perempuan Dan Anak Dalam Masyarakat Perdesaan," *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 3, no. 1 (2025): 75–81, <https://doi.org/10.59966/yudhistira.v3i1.1925>.

³¹ Mansyur, "Status Anak Dari Perkawinan Dibawah Tangan Pasca Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010 Tanggal 17 Februari 2012 Ditinjau Dari Peraturan Perundang-Undangan," *REFORM : Jurnal Pendidikan, Sosial, Dan Budaya* 6, no. 01 (February 2023): 7–23, <https://doi.org/10.70004/reform.v6i01.120>.

illegitimate children have a civil relationship with their father as long as the biological relationship can be proven. This provides a strong legal basis for the fair recognition of children's rights, regardless of their parents' marital status.

When analyzed through Lawrence M. Friedman's legal system theory, the successes and challenges in this case can be seen through three main elements: legal structure, legal substance, and legal culture. In this case, the legal structure shows that the court has carried out its judicial function optimally through the use of evidence such as the biological father's confession, witness testimony, and documentary evidence to establish the civil relationship between the child and his father, thereby providing legal certainty and bridging the gap between norms and social reality. In terms of legal substance, the judge's decision is progressive because it is not only based on normative texts, but also considers substantive justice and provides a legal loophole for children from unregistered marriages to obtain their rights in accordance with the implementation of Law No. 24 of 2013 concerning Population Administration. However, from the aspect of legal culture, there is still bureaucratic resistance at the Disdukcapil level, which has not consistently implemented court decisions, indicating that the bureaucratic legal culture is still legal-formalistic and has not fully internalized the value of social justice. The disharmony between the legal structure and culture has implications for legal uncertainty at the implementation level, which can ultimately hinder children's rights to be recognized administratively. Children remain vulnerable, despite legal recognition. Therefore, strengthening technical regulations and operational policies across institutions is necessary to ensure the legal system operates in an integrated and synchronized manner.

In this context, Friedman's legal system theory asserts that a legal system cannot function effectively if only one of its elements is functioning while the others are not supporting it. Court decisions (structure) and progressive legal norms (substance) must be balanced with changes in the legal culture of society and the bureaucracy to create a just, effective, and inclusive legal system.

However, empirical reality shows that the legal system in Indonesia is still experiencing a multidimensional crisis, both in terms of institutional structures that are not yet synergistic, legal substance that is often not adaptive to social dynamics, and legal culture that is still low in awareness at the technical implementation level. The lack of integration between these three main elements of the legal system, as stated by Lawrence M. Friedman, creates a disparity between ideal norms and actual practice. As a result, the law not only loses its functional power as an instrument of justice but also has the potential to become a means of

social exclusion for marginalized groups. This fact reflects that the Indonesian legal system, in various aspects, is still in a poor condition, not only stagnant in structural transformation, but also deficient in the vision of substantive justice that should be the spirit of every legal policy.

A case No. 865/Pdt.P/2024/PA/CBN is an important representation of how Indonesian judicial institutions interpret and apply the law in cases of children born from unregistered marriages (permarital unregistered marriages). A case No. 865/Pdt.P/2024/PA/CBN not only resolves an individual case but also sets an important precedent for reforming the Indonesian legal system. It demonstrates that the protection of children as legal subjects must be a priority in every legal decision, and that the legal system must be able to adapt to social realities in order to achieve substantive justice for all citizens, especially the most vulnerable.

Importantly, case No. 865/Pdt.P/2024/PA/CBN demonstrates that the judge's considerations are based not only on the principle of legality, but also on the values of substantial justice and the protection of children as legal subjects that must be guaranteed by the state. This decision can serve as a reference in similar cases and form the basis for further policy development, such as the drafting of technical regulations by the Supreme Court and the Ministry of Home Affairs to strengthen the connection between judicial and administrative institutions.

In religious court practice, judges are not merely subject to statutory regulations but also consider the social realities of society. This approach is evident in the use of '*urf*' (community custom) as the basis for legal considerations (*ratio decidendi*) by panels of judges in various family cases. *Maslahah*-oriented decisions through the '*urf*' approach can produce decisions that are contextual and relevant to the needs of society".³² Therefore, in cases of determining the status of children from unregistered marriages, it is important for judges to open up space for legal interpretation that prioritizes child protection and the principle of welfare. Thus, the legal analysis of this case demonstrates how the Indonesian legal system can provide civil protection to children from unregistered marriages through an approach that is not only normative but also humanistic and responsive to social realities.

The widespread phenomenon of unregistered marriages, which still occurs frequently in Indonesia, has serious legal implications for children born from these relationships. Although religiously recognized as legitimate, the lack of official state registration makes the child's legal status problematic. Under positive law, children born from unregistered marriages are considered illegitimate children, legally having only a civil relationship with their mother. As a result, the child cannot include the father's name on the birth certificate,

³² Nurbaiti Bahrudin, "Urf Sebagai Dasar Ratio Decidendi Dalam Putusan Pengadilan Agama," *Mahkamah: Jurnal Kajian Hukum Islam* 7, no. 2 (2022): 261–74, <https://doi.org/10.24235/mahkamah.v7i2.11641>.

is not included in the father's family registration, and faces administrative barriers in accessing various civil rights such as education, healthcare, and state social security programs.

This problem becomes more complex when considering the fact that our population administration legal system, as stipulated in Law No. 24 of 2013, is still formalistic and not fully responsive to the pluralistic social conditions of Indonesian society, both in terms of culture, religion, and economy. The practice of marriage registration still requires formal legality that is often difficult to fulfill for marginalized communities, especially in remote areas or communities with low levels of legal literacy. This gap creates a serious legal gap, where children's rights depend on the administrative marital status of their parents, when legal protection for children should be universal and unconditional.

To close legal loopholes and ensure substantive justice for children from unregistered marriages, comprehensive legal and policy reforms are needed, including harmonization of religious and state law so that the recognition of religiously valid marriages gains legal legitimacy through an inclusive mechanism, with civil registration positioned as an instrument of administrative protection, not a requirement for marriage validity. The government also needs to simplify procedures and waive registration fees for vulnerable communities through an integrated national program to encourage marriage legalization. Furthermore, limited revisions to Law No. 24 of 2013 are needed to open up opportunities for proving the legal relationship between children and biological fathers through DNA testing or official recognition, to avoid discrimination. Procedural reforms in Religious Courts are also urgently needed to make the process of legitimizing children from unregistered marriages simple, fast, and affordable, and complemented by legal assistance and circuit courts. These efforts must be supported by a national legal literacy program to raise public awareness of the importance of marriage and birth registration as a form of legal protection for children and families. Ultimately, the state is obligated to ensure the principle of non-discrimination against children remains guaranteed, in accordance with the mandate of the constitution and international human rights standards, through population policies oriented toward child protection.

Conclusion

Based on the results of this study, it can be concluded that unregistered marriages, although valid under religious law, create ambiguity in the status of children in the population administration system. This occurs due to a misalignment between progressive judicial decisions and the legal-formalistic administrative bureaucracy. The mechanism for

recognition through court rulings, as stipulated in Law No. 24 of 2013 and Constitutional Court Decision No. 46/PUU-VIII/2010, has not been fully effective in practice due to structural, substantial, and cultural constraints. The decision in case No. 865/Pdt.P/2024/PA/CBN demonstrates that the courts are capable of making decisions based on substantive justice. However, administrative implementation remains limited, potentially depriving children of unregistered marriages of basic civil rights, including identity recognition, the right to education, and legal protection. To close this legal loophole, operational and child-friendly reforms are needed. Concrete steps include simplifying child registration procedures so that paternity can be acknowledged through legal documents or biological evidence without the need for lengthy court proceedings, as well as providing free legal assistance to vulnerable communities, particularly in remote areas. This policy is expected to ensure equal access to administrative rights and legal protection for all children, while simultaneously improving substantive justice in the Indonesian legal system.

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