



## The Child's Civil Relationship under Indonesia's Compilation of Islamic Law: Reconciling Legal Legitimacy, Biological Paternity, and Guardianship Obligations

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### Artikel History

Received: June 24, 2025;

Revised: June 28, 2025;

Accepted: June 30, 2025;

### DOI:

10.46870/jhki.v6i1.1636

### Abstract

This study analyzes the determination of a child's civil status (including lineage, inheritance, guardianship, and marriage) under the Compilation of Islamic Law (KHI), by identifying inconsistencies within its provisions. The analysis applies legal interpretation to specific articles of the KHI. Article 53 paragraph (1) of the Compilation of Islamic Law states that a woman who is pregnant outside of marriage may be married to the man who caused the pregnancy. However, from a linguistic perspective, the use of the word *may* in Article 53 paragraph (1) opens the possibility for interpretation that another man, not responsible for the pregnancy, may also marry the pregnant woman. As a consequence, a man who is not the biological father of the child may still acquire a civil legal relationship with the child due to his legal marriage to the mother. Although not the biological father, the man's legal status toward the child born from his wife is recognized in civil law. This interpretation aligns with the Constitutional Court Decision Number 46/PUU-VIII/2010, which reinterprets Article 43 paragraph (1) of the Marriage Law. Furthermore, Article 53 paragraph (1) of the Compilation of Islamic Law opens new opportunities for the recognition of civil status of children born from unregistered marriages or from the marriage of a pregnant woman to a man who is not the biological father.

**Keywords:** Biological Father, Extra-marital Child, Civil Relationship, Nasab

### Abstrak

Penelitian ini menganalisis penentuan hubungan keperdataan anak (yang meliputi nasab/keturunan, warisan, perwalian, dan pernikahan) di bawah Kompilasi Hukum Islam (KHI), dengan mengidentifikasi ketidakonsistenan dalam ketentuan-ketentuannya. Analisis ini menggunakan penafsiran hukum atas pasal-pasal tertentu KHI. Pasal 53 ayat (1) Kompilasi Hukum Islam menyatakan bahwa seorang perempuan yang hamil di luar nikah dapat dinikahkan dengan pria yang menghamilinya. Namun, jika ditinjau dari aspek kebahasaan, penggunaan kata *dapat* dalam ketentuan Pasal 53 ayat (1) tersebut membuka kemungkinan penafsiran bahwa laki-laki lain yang bukan pelaku kehamilan pun dimungkinkan untuk menikahi perempuan tersebut. Akibatnya, pria yang bukan ayah biologis dari anak yang dikandung tetap dapat memiliki hubungan hukum keperdataan dengan anak tersebut karena adanya ikatan perkawinan dengan ibu anak tersebut. Meskipun bukan ayah kandung, status hukum pria tersebut terhadap anak yang lahir dari istrinya memperoleh pengakuan keperdataan. Hal ini sejalan dengan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 yang menafsirkan ulang Pasal 43 ayat (1) Undang-Undang Perkawinan. Selain itu, keberadaan Pasal 53 ayat (1)

Kompilasi Hukum Islam memberi ruang baru bagi pengakuan status hukum anak yang lahir dari pernikahan tidak tercatat maupun dari pernikahan perempuan hamil dengan pria yang bukan ayah biologis anak tersebut.

**Kata Kunci:** Ayah Biologis, Anak Luar Kawin, Hubungan Keperdataan, Nasab

## INTRODUCTION

Marriage is a significant provision in Islam. This is because marriage is a form of *taabbudiyyah* worship showing obedience to Allah. Marriage is also defined as a form of human instinct and preservation of human sustainability and efforts to create peace in social life.<sup>1</sup> Marriage in addition to forming a physical and mental bond between husband and wife, marriage is also an effort to form a happy and prosperous family based on God Almighty.

Marriage is also a form of exemplifying the sunnah of the Prophet Muhammad saw; where Rasulullah is a figure who must be used as a figure.<sup>2</sup> In relation to marriage, Law No.1 of 1974 concerning Marriage defines “marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a lasting household family based on God Almighty, in another article it is also stated “marriage is valid, if it is carried out according to the laws of their respective religions and beliefs.”<sup>3</sup>

Children are the holders of parental privileges, when parents are alive, children are a comfort and when parents have died, children are a symbol of succession and a symbol of immortality. Children inherit signs of similarity with their parents, including characteristics, good and bad, high and low. Children are the soulmates and flesh and blood of their parents. So important is the existence of children in human life, that Allah prescribed marriage. The marriage has a purpose, among others, to have good offspring (have children), maintain *nasab*, avoid disease and create a *sakinah* family.<sup>4</sup>

Therefore, Islam prohibits adultery. Islamic law imposes severe sanctions on adultery. Because adultery can lead to unclear offspring. So when a child is born as a result of adultery, there will be doubts about who the father is. With the existence of marriage every child born from the husband's bed, absolutely becomes the child of that husband, without requiring his recognition from him. Hadith Prophet, from Abu Hurairah r.a. said : The Messenger of Allah said: The child is for the owner of the bed and for the adulterer is the punishment of stoning ”<sup>5</sup>. Children born from underhand marriages (*siri* marriage) tend to get the nickname as illegitimate children in the community, as well as children from adultery. This will cause psychological disturbance for the child, even though legally the child has no legal consequences from the actions of his parents.

However, many problems arise as a result of these underhand marriages, such as the *nasab* relationship between the child and his biological father, and so on from various legal perspectives. Underhand marriage is a marriage based on religious provisions, Article 2 paragraph (1) of Law Number 1 of 1974 (here in after referred to as the Marriage Law), namely: that a marriage is valid if performed according to the laws of each religion and belief.<sup>6</sup>

<sup>1</sup> Ahmad Azhar Baasyir, *Hukum Perkawinan Islam*, (Yogyakarta : UII Press, 2000), h. 13.

<sup>2</sup> Amir Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia, Studi Kritis Perkembangan Hukum Islam Dari Fikih, UU no. 1 Tahun 1974 Sampai KHI*, (Jakarta: Kencana, 2004), h. 206.

<sup>3</sup> Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2001), h. 125.

<sup>4</sup> Ali Yafie, *Pandangan Islam terhadap Kependudukan dan Kekeluargaan Berencana* (Jakarta: Lembaga Kemaslahatan Keluarga Nahdlatul Ulama dan BKKBN, 1982), h. 1.

<sup>5</sup> Ibn Hajar al-Asqalani, *Fath al-Barry* (Beirut: Dar al-Fikr, 975), h. 127.

<sup>6</sup> Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan*, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Pasal 2 ayat (1).

Because of this provision, an underhand marriage is a valid marriage according to Indonesian marriage law.

As a result of these underhand marriages, children born from underhand marriages under the Marriage Law are considered not to have a civil relationship with their father. Based on Article 43 of the Marriage Law: Children born out of wedlock only have a civil relationship with their mother. Whereas legally, namely Article 2 paragraph (1) of the Marriage Law explains that marriage is valid if based on their religion. So in this case there is confusion in the interpretation of the law.

If the conditions and pillars of religion have been fulfilled, then the marriage is valid according to religion, and the legal consequences based on Article 2 paragraph (1) of the Marriage Law, then the child born from an underhand marriage should have a civil relationship with his father. The Compilation of Islamic Law (hereinafter referred to as KHI) as a new regulation that applies specifically, trying to bridge the civil relationship between children and their fathers, has actually provided a new wind for this problem. In fact, this has already been considered by its framers. As a result of this thinking, in February 2012 the Constitutional Court removed Article 43 paragraph (1) of the Marriage Law based on Decision No. 46/PUU-VIII/2010 from the case: 46/PUU-VIII/2010.<sup>7</sup>

## RESEARCH METHODS

This research uses a qualitative approach, which is a systematic research that describes the behavior of a person, event, or certain place in detail and in depth. The type of this research is library research, namely research that relies on reading sources, texts, and various information in the form of reading. In a different reference, library research is research undertaken to solve a problem that relies on a critical study of library materials and related research results presented in a new way.<sup>8</sup>

The data analysis technique used in this study is content analysis, which is a method for examining written documents related to the research problem.<sup>9</sup> Through this analysis, the researcher examines the content of legal sources such as the Compilation of Islamic Law, the Marriage Law, and Constitutional Court decisions, which are then interpreted critically and systematically. The analysis process involves identifying emerging legal issues, tracing normative inconsistencies, and assessing the relevance between articles in the context of the child's civil legal status. Using this approach, the data obtained from library sources are not merely quoted but are also analyzed in depth to gain a comprehensive understanding of the core issues.<sup>10</sup>

## ANALYSIS AND DISCUSSION

### 1. The Child's Civil Relationship with His Father According to the Compilation of Islamic Law

*Nasab* in the Compilation of Islamic Law can be defined as a blood relationship (descent) between a child and his father, due to a valid marriage contract. So *nasab* is closely related to *istilhaq*. Maintaining *nasab* or *nasal* is one of the main objectives of Islamic law. According to Abu Ishaq Ibrahim bin Musa ash Syathibi (died 790 H/1388 AD) the general purpose of Islamic Law (*maqashidud tasyri'*) is to realize the good and welfare of humans which includes

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<sup>7</sup>Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 46/PUU-VIII/2010* tentang Pengujian Pasal 43 ayat (1) UU No. 1 Tahun 1974 terhadap UUD 1945, diputus tanggal 17 Februari 2012.

<sup>8</sup>Sukoco admo, *Penelitian Kualitatif: Metodologi, Aplikasi, dan Evaluasi*, (Jakarta: Gunung Agung, 2002), h. 209.

<sup>9</sup>Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT Remaja Rosdakarya, 2017), h. 220.

<sup>10</sup>Zed, Mestika, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Indonesia, 2008), h. 49.

three *mashlahat*, namely: *mashlahat dharuriyah* (main benefit), *mashlahat hajjiyah* and *mashlahat tahsiniyah*.<sup>11</sup>

The issue of the child's civil relationship with his father is included in the *mashlahat dharuriyah*, which is the benefit of all matters that become the basic needs and joints of human life, which includes five things, namely: maintaining religion (*din*), maintaining the soul (*nafs*), maintaining the mind (*aql*), maintaining offspring (*nasab*) and maintaining property (*mal*). These five things are known as *maqashidut tasyri'* (the purpose of the law).<sup>12</sup>

The Compilation of Islamic Law explains the criteria for children who have a civil relationship with their father, namely children born in a legal marriage, as stated in Article 99 of the Compilation of Islamic Law, which reads: that legitimate children are:

1. Children born as a result of a legal marriage.
2. The result of fertilization of a husband and wife outside the womb and born by the wife.

The issue of the child's civil relationship is also regulated in Article 100 KHI that children born outside of marriage only have a *nasab* relationship with their mother and their mother's family.<sup>13</sup> In addition, the Compilation of Islamic Law also recognizes the civil relationship of children born outside a legal marriage, as stated in Article 100 KHI that children born outside marriage have a *nasab* relationship with their mother and their mother's family.<sup>14</sup>

Article 100 of the Compilation of Islamic Law remains in force, as it has not been formally repealed by the President. Meanwhile, Article 43 paragraph (1) of the Marriage Law has been annulled by the Constitutional Court through Decision Number 46/PUU-VIII/2010. In light of this ruling, the continued validity of Article 100 in the Compilation of Islamic Law ought to be reconsidered, given that, within the hierarchy of legal norms, the Compilation of Islamic Law functions as a derivative regulation implementing the provisions of Law Number 1 of 1974 concerning Marriage.<sup>15</sup>

In this case, the Compilation of Islamic Law serves as a legal framework specifically intended for Indonesia's Muslim population. Its legal standing is subordinate to the Marriage Law, as it was issued merely through a Presidential Instruction. Due to its nature as a directive rather than a formal statute, the Compilation of Islamic Law functions as an optional legal reference, primarily applied in the adjudication of cases concerning marriage, inheritance, and other matters within the realm of Islamic family law.<sup>16</sup>

Therefore, the Presidential Instruction is not a law that applies compulsorily to all Indonesian people, because Indonesian society is pluralistic. Therefore, the Compilation of Islamic Law *lex-specialis* applies to Muslims in Indonesia, especially in the religious courts in Indonesia.<sup>17</sup> So any decision of a religious judge, based on the provisions of the Law on the issue of children's civil rights, must also consider the decision of the Constitutional Court.

<sup>11</sup>Mas'ud, Muhammad Khalid. *Islamic Legal Philosophy, A Study of Abu Ishaq al Syathiby, Life and Thought*, diterjemahkan oleh Ahsin Muhammad, *Filsafat Hukum Islam* (Cet; I, Bandung: Pustaka, 1996), h. 244-246.

<sup>12</sup>Ahmad Syafi'i Ma'arif, *Membumikan Hukum Islam Melalui Maqashid Syari'ah* (Yogyakarta: Lembaga Studi Agama dan Filsafat [LSAF], 2005), h. 45.

<sup>13</sup>Berdasarkan putusan MK Nomor : 46/VIII/2010, Pasal 43 ayat (1) UU perkawinan telah dihapus, secara hukum UU dibawahnya harus mengikuti apa yang menjadi putusan MK, sehingga Pasal 100 KHI sampai saat ini masih menjadi perdebatan, karena hal ini akan berseberangan dan bertentangan dengan pasal-pasal yang lain, khususnya Pasal 99.

<sup>14</sup>Indonesia, *Instruksi Presiden Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam*, Pasal 100.

<sup>15</sup>Tim Literasi Nusantara Abadi, *Kompilasi Hukum Islam Beserta Penjelasannya*, edisi 1 (Malang: Literasi Nusantara Abadi, 2021), h. 114.

<sup>16</sup>M. Atho Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktek* (Yogyakarta: Tiara Wacana, 1992), h. 111.

<sup>17</sup>Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2012), h. 142.

Although the validity of Article 100 of the Compilation of Islamic Law remains a subject of debate among Islamic scholars and legal experts, its foundation is rooted in Islamic legal principles, which provide it with a strong normative basis. According to the Constitutional Court's ruling, children born out of adultery may be recognized as having a civil relationship with their biological father, provided that paternity can be established through DNA testing. However, despite this legal acknowledgment, the government has yet to follow through with clear procedural regulations. Ideally, once paternity is confirmed through DNA evidence, the court should issue a formal decree validating the test results, thereby legally affirming the child's lineage and clarifying paternal identity.<sup>18</sup>

When looking at Article 99 KHI, it is very clear that a legitimate child, who clearly has a civil relationship with his father, is a child who based on the provisions of Article 4, Article 5, and Article 6 KHI is the result of a legal marriage of his father and mother both religiously and by state law. If only based on Article 4 KHI, namely "Marriage is valid, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage, then based on the Compilation of Islamic Law, to obtain a child's civil relationship, a marriage based on Article 4 KHI, must be registered through *Itsbat Nikah*, which is regulated in Article 7 KHI.<sup>19</sup>

This is due to the fact that a marriage conducted solely under Article 4 of the Compilation of Islamic Law is categorized as an unregistered (*siri* marriage) religiously valid, yet lacking legal recognition by the State. Consequently, such a marriage does not fulfill the requirements stipulated in Articles 5 and 6 of the Compilation, as it is not accompanied by an official marriage certificate issued by a competent authority, namely the Office of Religious Affairs (KUA).<sup>20</sup>

In addition, the Compilation of Islamic Law also regulates and explains the civil rights of children from the marriage of a man with a woman he impregnated before marriage. As stated in Article 53 paragraphs (1), (2) and (3) of the Compilation of Islamic Law, which reads:

1. A pregnant woman outside of marriage can be married to the man who impregnates her;
2. Marriage with a pregnant woman mentioned in paragraph (1) can take place without waiting for the birth of her child;
3. During marriage when the woman is pregnant, there is no need for marriage after the birth of the unborn child.

Article 53 paragraph 2 of the Compilation of Islamic Law states that a marriage involving a pregnant woman may be solemnized while she is still pregnant, without the need to wait for the child to be born. According to the Compilation, a woman who becomes pregnant due to adultery is not subject to an *iddah* period. As regulated in paragraph 1 of the same article, such a woman is only permitted to marry the man who caused the pregnancy.<sup>21</sup> However, if that man refuses to take responsibility, she may marry another man who is willing to accept the pregnancy and be recognized as the legal father of the child she is carrying, even if he is not the biological father.<sup>22</sup> So based on Article 53 paragraph (1) KHI, the child's civil relationship (*nasab*) will be clear if the person who marries the pregnant woman is indeed a man who biologically impregnated the pregnant woman.

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<sup>18</sup>M. Atho Mudzhar, *Hukum Keluarga Islam di Indonesia* (Yogyakarta: Pustaka Pelajar, 2010), h. 132.

<sup>19</sup>Rifqi Qowiyul Iman, *Anak Luar Kawin: Status dan Perlindungannya dalam Tinjauan Hukum Islam*, (Malang: Literasi Nusantara Abadi, 2022), h. 136.

<sup>20</sup>Kharisudin, *Nikah Siri dalam Perspektif Hukum Islam dan Undang-Undang Perkawinan Indonesia* (Surabaya: Perspektif Press, 2022), h. 56.

<sup>21</sup>Muhammad Sabir, "Problematika Perkawinan Wanita Hamil dan Implementasi KHI Pasal 53 di Pengadilan Agama," *Hukum Islam* Vol. 21, No. 1 (2021), h. 28.

<sup>22</sup>Indonesia, *Kompilasi Hukum Islam*, Pasal 53 ayat (1).

Determining the identity of the man who impregnated a woman can be extremely challenging, particularly in the context of Islamic law, which requires the testimony of four witnesses to establish proof. This becomes even more complicated when there are deliberate efforts to conceal the act, or when the woman has engaged in sexual relations with multiple individuals. Furthermore, there appears to be an inconsistency between Article 53 paragraph 1 and paragraph 2 of the Compilation of Islamic Law.<sup>23</sup>

It is said that this is so, because when guided by Article 53 paragraph 2 KHI, it turns out that it is only guided by the formality, namely because the pregnant woman has never been married, then the provisions that apply to her are the right of virginity, despite the fact that the woman is pregnant. Then Article 53 paragraph 3 states that, with a marriage taking place when the woman is pregnant, there is no need for a remarriage after the child is born. The provision that the marriage does not need to be repeated, then it is a sign that the previous marriage has been declared valid.<sup>24</sup>

Based on Article 53 of the Compilation of Islamic Law, a child born six months or more after the marriage contract is considered to have a legitimate civil relationship with the father. This indicates that the pregnancy was approximately three months along at the time of the marriage, and no formal declaration is required to establish paternity. However, if the child is born before six months have passed since the marriage, suggesting that the pregnancy was more than three months old at the time of the marriage, then it becomes necessary for the father to make an explicit statement affirming that the child is indeed legally recognized as his.<sup>25</sup>

Related to *istilhaq* which is related to the determination of the child's nasab. In Article 99 KHI it is very clear that children who have the right to determine the nasab of their biological father are children born from a legal marriage.<sup>26</sup> And the child's nasab with his father can only be proven by a birth certificate or court decision (Article 103 KHI).

In cases involving children born out of wedlock, if paternity can be established through DNA testing, the child is legally recognized as having a lineage (*nasab*) relationship with the father. However, this recognition still requires consistency and standardization in its application across religious courts.<sup>27</sup> Regarding the issue of a pregnant woman marrying a man who is not the biological father, based on the wording of Article 53 paragraph 1 and the legal implications of Article 99 paragraph 1 of the Compilation of Islamic Law, the child born from the woman's womb is granted full civil rights and legal recognition as the child of her husband, protected under both religious and state law. Nonetheless, when viewed strictly through the lens of classical Islamic law, this position may present significant contradictions.<sup>28</sup>

## **2. Determination of the Child's Civil Relationship with His Father as Stipulated in the Articles of the Compilation of Islamic Law.**

The issue of establishing a child's civil relationship in the Compilation of Islamic Law is regulated from Article 99 to Article 103. The articles are as follows:

- a. Article 99: A legitimate child is:
  - 1) Children born in or as a result of a valid marriage.

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<sup>23</sup>Rifqi Qowiyul Iman, *Anak Luar Kawin: Status dan Perlindungannya dalam Tinjauan Hukum Islam* (Malang: Literasi Nusantara Abadi, 2022), h. 134.

<sup>24</sup>M. Atho Mudzhar, *Hukum Keluarga Islam di Indonesia* (Yogyakarta: Pustaka Pelajar, 2010), h. 145.

<sup>25</sup>Ahmad Badruddin & Aziz Maulana, "Analisis Pasal 53 Kompilasi Hukum Islam tentang Perkawinan Wanita Hamil Perspektif Maqāṣid Syarī'ah," *Jurnal Kajian Hukum Islam Hikamuna* Vol. 5, No. 2 (2024), h. 20

<sup>26</sup>Afifah Afifah, Lilik Andar Yuni, "Penetapan Nasab Anak, Hukum Islam dan Konstitusi terkait Tes DNA sebagai Dalil Keabsahan Anak", *Maqasid: Jurnal Studi Hukum Islam* Vol. 13, No. 2 (2024), h. 28.

<sup>27</sup>gatha Georgina, "Pembuktian dan Pengesahan Anak Luar Kawin serta Akibat Hukumnya setelah Putusan MK No. 46/PUU-VIII/2010" *Indonesian Notary*, Vol. 3, No. 1 (2021), h. 23.

<sup>28</sup>Mahkamah Agung Republik Indonesia, *Pedoman Pengadilan Agama dalam Menangani Perkara Nasab* (Jakarta: Badan Litbang Diklat Kumdil, 2018), h. 27.

- 2) The result of fertilization of a legitimate husband and wife outside the womb and born to the wife.”
- b. Article 100: “Children born out of wedlock only have a *nasab* relationship with their mother and their mother's family.”
- c. Article 101: A husband who denies the legitimacy of a child, while the wife does not deny it, may confirm his denial by *li'an*.”
- d. Article 102:
  - 1) A husband who wishes to deny the birth of a child born to his wife shall file a lawsuit with the Religious Court within 180 days after the birth of the child or 360 days after the dissolution of the marriage or after the husband knows that his wife has given birth to the child and is in a place where he can file the case with the Religious Court.
  - 2) A denial filed after this period has elapsed shall not be accepted.
- e. Article 103
  - 1) The origin of a child can only be proven by a birth certificate or other evidence.
  - 2) In the absence of a birth certificate or other evidence referred to in Paragraph (1), the Religious Court may issue a decree concerning the origin of a child after conducting a thorough examination based on valid evidence.
  - 3) On the basis of the decree of the Religious Court mentioned in Paragraph (2), the Birth Registrar agency within the jurisdiction of the Religious Court shall issue a birth certificate for the child concerned.

Article 99 above contains legal reform in anticipation of the possibility of IVF, which is the process of ovulation that is engineered outside the womb, through a tube prepared for it, then put back into the wife's womb and born also by the wife. So it is still limited to husbands and wives who are bound by a legal marriage.<sup>29</sup>

Article 102 of the Compilation also does not specify the minimum and maximum age of the baby in the womb as a basis for the husband to deny the legitimacy of the child born by his wife (this is different from the very detailed explanation in Article 42 of the Marriage Law).<sup>30</sup> So for the issue of determining the child's civil rights related to the child's *nasab*, based on Article 99 paragraph (1) KHI and Article 53 paragraph (1) KHI, the child can be related to his father as a result of a legal marriage.

Children born out of wedlock who are proven through DNA testing to have a biological connection with their father may establish lineage with that father. However, this recognition stands in contrast to Article 100 of the Compilation of Islamic Law, which remains in effect and has not been revoked. This is despite the fact that Article 43 paragraph 1 of the Marriage Law, which previously restricted such recognition, has already been annulled.<sup>31</sup>

In regard to the determination of a child's civil rights in the context of inheritance, a child who is not biologically related to the father as defined in Article 171 of the Compilation of Islamic Law, but is under his guardianship through marriage as referred to in Article 53 paragraph 1, may still receive an inheritance from the father. However, this is granted in the form of a compulsory will (*wasiat wajibah*), similar to the provision for adopted children as outlined in Article 209 of the Compilation. The amount received through this will must not exceed the share granted to a biological child.<sup>32</sup>

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<sup>29</sup>M. Atho Mudzhar, *Hukum Keluarga Islam di Indonesia* (Yogyakarta: Pustaka Pelajar, 2010), h. 178.

<sup>30</sup>Ahmad Zainudin, *Telaah Kritis Kompilasi Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2021), h. 67.

<sup>31</sup>Achmad Ghifari, *Hukum Keluarga Islam & Tantangan Modern* (Bandung: Remaja Rosdakarya, 2022), h. 112.

<sup>32</sup>Nadya Faizal, *Wasiat Wajibah terhadap Anak Angkat dalam Pasal 209 KHI* (Tinjauan Filsafat Hukum Islam), *Jurnal Ar-Risalah*, Vol. 2, No. 2 (2022), h. 39.

As for the guardian for the girl in the case of Article 53 paragraph (1) KHI, it cannot be a non-biological father to become a marriage guardian, it must be a judge or biological father. Determination of civil relations related to maintenance, remains the obligation of the parents, especially the father, regardless of who the child is, the most important thing is that the child is under his guardianship or care in a legal marriage, until the child is an adult or married.<sup>33</sup>

In addition, for children who are proven based on DNA tests, namely children out of wedlock, children from siri marriages, and abandoned children (Article 186 KHI), have a blood relationship with a man who is their biological father, then the child has a full civil relationship with their father, both regarding nasab, inheritance, guardianship, and maintenance. Although this contradicts Article 186 KHI. That children out of wedlock only have an inheritance relationship with their mother. This is based on the mandate of Constitutional Court Decision Number 46/PUU-VIII/2010, which has abolished Article 43 paragraph (1) of the Marriage Law.<sup>34</sup>

The legal implications of the annulment of the relevant Article should also extend to the Compilation of Islamic Law, particularly with regard to the possible revocation of Article 186. This would enable children born out of wedlock, those from unregistered (*siri*) marriages, or abandoned children who are proven through DNA testing to have a biological relationship with a man presumed to be their father, to obtain equal inheritance rights as children born within a legally recognized marriage.<sup>35</sup>

Therefore, KHI in Indonesia must be able to blend in with community life, or how the law still shows its superiority in society as a tool to change society, but the law also does not cause misery in society. The application of law in society does not have to look at the legal product, but how a product can be interpreted as much as possible and practiced in accordance with the needs of society to achieve justice.<sup>36</sup>

So related to social engineering there are 4 (four) KHI objectives related to civil relations that can be found, namely:

- a. First, based on social engineering KHI should be a social rule and norm that is not separated from the values that live and prevail in society, especially in determining the civil relationship of children.
- b. Secondly, KHI must be able to change the legal thinking of the Muslim community in Indonesia in the matter of children's civil rights in accordance with Islamic law contained in the articles of KHI.
- c. Third, the purpose of KHI in relation to children's civil relations is to provide maximum legal protection for Muslim children in Indonesia in accordance with the mandate of Law No. 23 of 2002 concerning Child Protection.
- d. Fourth, the purpose of KHI related to the determination of children's civil rights is as an alternative dispute resolution for Muslims in Indonesia in resolving issues related to children's civil rights.

## CONCLUSION

While KHI establishes a full civil relationship for legitimate children (born within a legal marriage) with both parents (Articles 53(1) & 99(1)), significant inconsistencies exist. Notably,

<sup>33</sup>M. Atho Mudzhar, *Hukum Keluarga Islam di Indonesia* (Yogyakarta: Pustaka Pelajar, 2010), h. 132.

<sup>34</sup>Nginggar Ajeng Radindi, "Pemberian Wasiat Wajibah Bagi Anak Luar Kawin Dalam Hukum Islam," *Jurnal Hukum Ius Publicum*, Vol. 4, No. 2 (2023), h. 77.

<sup>35</sup>Achmad Ghifari., *Perbandingan Kedudukan Hak Waris Anak Luar Kawin berdasarkan Hukum Islam dan Hukum Perdata* (Jember: Universitas Jember Press, 2022), h. 45.

<sup>36</sup>Satjipto Rahardjo, *Pemanfaatan Ilmu Sosial Bagi Pengembangan Ilmu Hukum* (Bandung: Alumni, 1977),h. 66.



Article 100 KHI creates a conflict by preventing children born out of wedlock from establishing *nasab* to their biological father, even with DNA proof of paternity, despite the deletion of the corresponding provision in the Marriage Law. Furthermore, inheritance rights are tied to *nasab* (Article 171), excluding non-biological children under guardianship. Regarding guardianship, a biological father cannot act as a marriage guardian for his child under Article 53(1) KHI; this role requires a judge or the biological father only under specific legal marriage contexts. Conversely, the obligation for child support (*naqkah*) rests with the parents, primarily the father, based on guardianship or care within a legal marriage until adulthood or marriage.

This study confirms that the provision of Article 53 paragraph (1) of the Compilation of Islamic Law allows for multiple interpretations regarding the civil relationship of children, particularly when a pregnant woman outside of marriage is married to a man who is not the biological father of the child. This raises concerns about the recognition of lineage and the civil rights of the child, which may not align with the principles of justice and child protection. On the other hand, the Constitutional Court Decision Number 46/PUU-VIII/2010 provides a progressive development by expanding the recognition of civil status for children born outside of legal marriage. This research implies the need for reformulation in Islamic family law, particularly in harmonizing the Compilation of Islamic Law with other national legal frameworks. However, the limitation of this study lies in its normative approach, without empirical data from religious court practices. Therefore, future research is recommended to conduct field studies on the implementation of these provisions in religious courts, make comparative analyses with the legal systems of other Muslim-majority countries, and apply interdisciplinary approaches to gain a more comprehensive understanding of civil child relationships in the context of Islamic law in Indonesia.

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