

Research Article

# Legal Protection for Children Born from Unregistered Marriage (Nikah Siri) in Indonesia: An Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010

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**Abstract:** Unregistered marriage (nikah siri) in Indonesia refers to marriages conducted in accordance with Islamic religious law but not officially recorded by the state. This legal gap creates significant challenges, particularly concerning the legal status of wives, children, and marital property. This study employs a normative juridical research methodology to examine the legal consequences of unregistered marriages on the positions of wives, children, and property, as well as to analyze the forms of legal protection available for children born from such marriages. The findings reveal that wives in unregistered marriages lack legal protection comparable to those in registered marriages, including rights to marital property, alimony, and inheritance. Children born from these unions initially possess legal relationships only with their mothers and maternal families. However, Constitutional Court Decision No. 46/PUU-VIII/2010 established a legal pathway for children to establish civil relationships with their biological fathers through scientific evidence such as DNA testing. Despite this judicial development, practical implementation faces considerable obstacles including evidentiary difficulties, social stigma, and limited access to legal remedies. This research concludes that active state intervention and institutional support remain essential to safeguard children's fundamental rights, including identity, inheritance, and protection from legal and social discrimination.

**Keywords:** Children's Rights; Constitutional Court; Legal Protection; Marriage Registration; Unregistered Marriage.

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## 1. Introduction

Marriage constitutes a legally binding union between a man and a woman, established with the objective of forming a harmonious and enduring family grounded in divine values. Within Islamic jurisprudence, marriage transcends its social and legal dimensions to represent a sacred form of worship. This perspective underscores human dignity and provides a respectable avenue for interpersonal relationships between men and women. In the context of Indonesian national law and Islamic legal tradition, marriage encompasses three fundamental dimensions: legal, social, and spiritual (Hasbi Ash-Shiddieqy, 1996). These dimensions are interdependent and inseparable; neglecting any component may disrupt marital harmony and impede the attainment of a peaceful, loving, and merciful family (sakinah, mawaddah, wa rahmah).

The Indonesian legal framework governing marriage is codified in Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. This legislation mandates that all marriages must be registered in accordance with prevailing statutory provisions. Government Regulation Number 9 of 1975 further elaborates that a marriage acquires legal force only when solemnized according to religious requirements and officially registered by authorized officials. Similarly, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) emphasizes marriage registration to ensure administrative order and legal protection for Muslim communities (Lestari, 2021).

In contemporary Indonesia, marriage registration at official institutions such as the Office of Religious Affairs (Kantor Urusan Agama/KUA) carries significant importance beyond mere administrative compliance. It serves as legal protection for couples in the event of conflicts or domestic issues. State law thus complements and reinforces religious norms in maintaining order and justice within the institution of marriage (Syarifuddin, 2009). Despite these legal requirements, unregistered marriage or *nikah siri*—a marriage conducted according to religious law but not officially recorded by state authorities—remains prevalent in Indonesian society.

The absence of registration generates various legal complications, particularly regarding the legal status of wives, children, and marital property. According to Indonesian positive law, children born from unregistered marriages lack civil relationships with their biological fathers, maintaining legal connections only with their mothers and maternal families. This situation deprives children of legal rights they should rightfully possess, including inheritance rights and patrilineal recognition, as stipulated in Article 43 of Law Number 1 of 1974 (Nurlaelawati, 2010). Children from unregistered marriages frequently experience legal uncertainty regarding their civil status, inheritance rights, and legal acknowledgment from their biological fathers.

However, Constitutional Court Decision Number 46/PUU-VIII/2010 marked a significant development in this legal landscape. The Court declared that children born outside marriage may establish civil relationships with their biological fathers, provided such relationships can be scientifically proven through DNA testing or other legally valid evidence. This landmark decision represented a paradigm shift in the legal protection of children from unregistered marriages, although implementation challenges persist (Hafas, 2021).

This research aims to address two fundamental legal questions: First, what are the legal consequences of unregistered marriages on the positions of wives, children, and marital property? Second, what forms of legal protection are available for children born from unregistered marriages in Indonesia? Through normative juridical analysis, this study examines the intersection of Islamic family law principles with Indonesian positive law, particularly in light of Constitutional Court jurisprudence. The findings contribute to the scholarly discourse on marriage registration requirements and children's rights protection within the Indonesian legal framework.

## 2. Literature Review

### The Concept of Unregistered Marriage (Nikah Siri)

Unregistered marriage, commonly known as *nikah siri*, refers to a marriage conducted in accordance with religious requirements but not officially registered with state authorities such as the Office of Religious Affairs (KUA) for Muslims or the Civil Registry Office (Disdukcapil) for non-Muslims. The term "siri" derives from the Arabic word "sirriy," meaning secret or hidden. While such marriages may be considered valid under religious law if they fulfill the pillars and conditions of marriage, they lack legal force under state law due to the absence of administrative registration (Kasim, 2022).

The practice of unregistered marriage in Indonesia varies significantly in its motivations and circumstances. Some couples opt for this arrangement due to personal, social, or economic factors, including the desire to conceal polygamous relationships from first wives, avoidance of registration costs and bureaucratic procedures, or lack of parental consent for underage marriages (Arsyad, 2020). According to Maliki jurisprudence, *nikah siri* specifically refers to a marriage validly conducted according to Islamic law but kept secret at the husband's request, even from close family members (Arisman, 2021).

### Legal Framework of Marriage Registration in Indonesia

Marriage registration constitutes an essential element in the solemnization of marriage in Indonesia. Article 2 of Law Number 1 of 1974 concerning Marriage establishes that a marriage is valid if performed according to the laws of each religion and belief (paragraph 1), and subsequently must be registered in accordance with prevailing statutory provisions (paragraph 2). The Compilation of Islamic Law (KHI), issued through Presidential Instruction Number 1 of 1991, further reinforces this requirement. Article 5(1) of the KHI stipulates that to ensure administrative order for marriages among Muslims, every marriage must be recorded. Article 5(2) specifies that such registration shall be conducted by marriage registrar officials as regulated under Law Number 22 of 1946 in conjunction with Law Number 32 of 1954 (Bachriani et al., 2024).

The legal significance of marriage registration extends beyond administrative compliance. It establishes the legal certainty of marital status, protects the rights and obligations of both spouses, and provides legal remedies in case of domestic disputes or dissolution. Without registration, marriages conducted solely under religious auspices cannot serve as a basis for claiming legal rights, whether for the husband, wife, or children born from such unions (Afrizal, 2023). The absence of an official marriage certificate (*akta nikah*) results in the spouse's inability to access various legal protections and social services that require proof of marital status.

### Children's Rights and Legal Protection Mechanisms

Children constitute an inseparable part of the family unit and occupy an important position within both national and international legal systems. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection guarantees children's rights without discrimination, including rights to identity, care, education, and protection from violence and exploitation. However, children born from unregistered marriages face substantial challenges in exercising these rights due to the lack of state recognition of their parents' marriage (Hanapi & Manshur, 2024).

Prior to Constitutional Court Decision Number 46/PUU-VIII/2010, Article 43(1) of Law Number 1 of 1974 stipulated that children born outside marriage only have civil relationships with their mother and maternal family. This provision effectively excluded biological fathers from legal responsibilities toward their children born from unregistered marriages. The Constitutional Court's landmark decision fundamentally altered this legal landscape by recognizing the possibility of establishing civil relationships between children and their biological fathers through scientific evidence (Uyun, 2019).

### **3. Research Methods**

This research employs a normative juridical methodology, focusing on the analysis of legal norms, statutory provisions, and judicial decisions relevant to the legal protection of children born from unregistered marriages in Indonesia. The selection of this research approach is predicated upon the examination of laws and regulations governing children born from unregistered marriages, particularly those related to marriage law, child protection, and constitutional jurisprudence.

The primary legal materials analyzed in this study include Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law (KHI), Government Regulation Number 9 of 1975, Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014, and Constitutional Court Decision Number 46/PUU-VIII/2010. Secondary legal materials comprise academic literature, journal articles, and scholarly commentaries on marriage law, family law, and children's rights in Indonesia.

The analytical approach adopts statutory and case law analysis methods. Statutory analysis examines the hierarchical relationships and coherence among various legal provisions governing marriage registration and children's rights. Case law analysis focuses on the interpretation and application of Constitutional Court Decision Number 46/PUU-VIII/2010, assessing its implications for the legal protection of children from unregistered marriages. The research findings are presented descriptively and analyzed qualitatively to draw conclusions regarding the legal consequences of unregistered marriages and available protection mechanisms for affected children.

### **4. Results and Discussion**

#### **Legal Consequences of Unregistered Marriage**

The absence of official registration for marriages conducted under religious law generates significant legal consequences for all parties involved. These consequences manifest distinctly for wives, children, and marital property, each warranting separate examination.

#### **Legal Position of the Wife**

Women who enter unregistered marriages occupy an exceptionally vulnerable legal position. The absence of a marriage certificate means that they are not legally recognized as wives under state law. This non-recognition has far-reaching implications across multiple dimensions of legal protection. First, wives in unregistered marriages cannot access legal mechanisms for claiming spousal support (*nafkah*). Under Law Number 1 of 1974 and the KHI, husbands bear the obligation to provide material and non-material support to their wives.

However, without legal recognition of the marital relationship, wives cannot enforce these obligations through judicial proceedings (Firdaus et al., 2023).

Second, inheritance rights present another significant concern. Legally recognized wives are entitled to inherit from their deceased husbands under both Islamic inheritance law (*faraidh*) and Indonesian civil law. Wives from unregistered marriages, however, cannot establish their status as legal heirs, as their marital relationship lacks documentary evidence. Third, the division of marital property (*harta gono-gini*) becomes legally impossible without proof of a valid marriage. Property acquired during an unregistered marriage cannot be classified as joint marital property under state law, leaving the wife without recourse to equitable distribution upon separation (Zubaidah, 2020).

Furthermore, wives in unregistered marriages face heightened vulnerability to domestic violence. While Law Number 23 of 2004 on the Elimination of Domestic Violence provides protection mechanisms for victims, the law's applicability presupposes a legally recognized domestic relationship. Law enforcement officers may hesitate to process complaints from women who cannot prove their marital status, effectively denying them access to justice. The psychological burden is equally significant; wives in unregistered marriages often experience social stigmatization, being perceived as mistresses or home-wreckers rather than legitimate spouses.

#### **Legal Status of Children**

Children born from unregistered marriages face unique legal challenges that distinguish their position from children of registered marriages. Prior to Constitutional Court Decision Number 46/PUU-VIII/2010, Article 43(1) of Law Number 1 of 1974 unequivocally stated that children born outside marriage possess civil relationships only with their mother and maternal family. This provision meant that children from unregistered marriages were legally classified as children born out of wedlock, despite their parents having undergone a religious marriage ceremony (Jumadi et al., 2023).

The administrative consequences are immediate and tangible. Birth certificates for children of unregistered marriages can only include the mother's name as parent, as the father's identity cannot be officially documented without proof of a valid marriage. This administrative exclusion extends to family cards (*Kartu Keluarga*), educational records, and other official documents requiring parental information. The psychological impact on children discovering their birth certificates bear only their mother's name can be profound, contributing to identity crises and feelings of social marginalization (Wahono Suryo Alam, 2025).

Inheritance rights represent another critical concern. Under Islamic inheritance law, legitimate children possess defined shares (*faraidh*) in their parents' estates. Children from unregistered marriages, lacking legal recognition of their relationship to their biological fathers, cannot claim inheritance rights from their paternal line. This exclusion can result in significant economic disadvantage, particularly in families with substantial assets. The principle of *nasab* (patrilineal lineage), fundamental to Islamic family law, cannot be formally established without state recognition of the parents' marriage (Hanapi & Manshur, 2024).

#### **Property Rights**

The treatment of property acquired during unregistered marriages presents substantial legal complications. Under Indonesian marriage law, property obtained during a valid marriage is classified as joint marital property (*harta bersama* or *gono-gini*), subject to equitable division

upon divorce or death. However, this classification is contingent upon the existence of a legally recognized marriage. Property accumulated during an unregistered marriage does not qualify as joint marital property under state law, regardless of the contributions made by either spouse (Devinda et al., 2024).

This legal position creates significant inequity, particularly for wives who contribute to household management and family welfare without formal employment. In registered marriages, such non-monetary contributions are recognized in property division calculations. Wives in unregistered marriages have no legal basis to claim shares of property titled in their husbands' names, even if acquired through joint efforts during the marriage. The remedy of marriage validation (*isbat nikah*) through Religious Courts can potentially resolve this issue, but many couples remain unaware of or unable to access this procedure (Kasim, 2022).

### **Legal Protection for Children Born from Unregistered Marriages**

#### ***Constitutional Court Decision No. 46/PUU-VIII/2010***

Constitutional Court Decision Number 46/PUU-VIII/2010 represents a watershed moment in the legal protection of children born from unregistered marriages in Indonesia. The case originated from a petition filed by Hj. Aisyah Mochtar (commonly known as Machica Mochtar), who challenged the constitutionality of Article 2(2), Article 43(1), and Article 43(2) of Law Number 1 of 1974. The petitioner argued that these provisions discriminated against children born from unregistered marriages by denying them legal relationships with their biological fathers (Uyun, 2019).

The Constitutional Court partially granted the petition, declaring that Article 43(1) of Law Number 1 of 1974 contravened the 1945 Constitution insofar as it was interpreted to exclude civil relationships between children born out of wedlock and their biological fathers. The Court held that children born outside marriage are entitled to civil relationships not only with their mothers and maternal families but also with their biological fathers and paternal families, provided that such relationships can be proven through scientific means such as DNA testing or other legally valid evidence.

This decision fundamentally altered the legal landscape for children from unregistered marriages. The Court emphasized that the rights of children should not be diminished due to circumstances of their birth over which they had no control. By recognizing the possibility of establishing paternal civil relationships through scientific evidence, the decision opened pathways for children to claim rights previously denied to them, including inheritance rights, the right to be named in official documents, and the right to receive support from their biological fathers (Hafas, 2021).

#### ***Implementation Challenges***

Despite its progressive nature, the implementation of Constitutional Court Decision Number 46/PUU-VIII/2010 encounters significant practical obstacles. First, evidentiary requirements pose substantial challenges. DNA testing, while scientifically reliable, involves considerable costs that may be prohibitive for economically disadvantaged families. The requirement to obtain biological samples from alleged fathers may also be complicated by their refusal to cooperate or physical absence (Jumadi et al., 2023).

Second, social stigma continues to affect children from unregistered marriages and their mothers. Indonesian society generally maintains traditional attitudes toward marriage and legitimacy, which can manifest in discrimination against those perceived as products of

irregular unions. This stigma operates across educational, employment, and social contexts, potentially limiting opportunities available to affected children regardless of their legal status (Syafira Aulia Nurrahmah & Ummu Sa'adah, 2025).

Third, limited access to legal remedies compounds these challenges. Many families affected by unregistered marriages reside in rural or economically disadvantaged areas with minimal access to legal aid services. The complexity of judicial procedures for establishing paternal relationships may deter those without legal knowledge or resources from pursuing available remedies. Even when aware of their rights under the Constitutional Court decision, practical barriers may prevent effective enforcement (Wahono Suryo Alam, 2025).

### ***Statutory Protection Mechanisms***

Beyond the Constitutional Court decision, several statutory provisions offer protection mechanisms for children born from unregistered marriages. Law Number 23 of 2002 on Child Protection, as amended by Law Number 35 of 2014, establishes fundamental principles of non-discrimination in children's rights. Article 1(2) defines a child as anyone under eighteen years of age, including those still in the womb, without distinction based on birth circumstances. The law guarantees children's rights to identity, including birth registration and the assignment of names, regardless of their parents' marital status (Hanapi & Manshur, 2024).

The procedure of marriage validation (*isbat nikah*) through Religious Courts provides another avenue for regularizing the legal status of unregistered marriages. Once a marriage is validated, children born from that union acquire the legal status of children from a valid marriage, with full accompanying rights. However, this procedure requires both spouses to participate and may be complicated by the death of one spouse or refusal to cooperate. Article 7 of the KHI specifies the conditions under which marriage validation may be granted, including marriages conducted before the enactment of Law Number 1 of 1974 and marriages that cannot be proven by a marriage certificate (Ombo et al., 2023).

## **5. Conclusion**

This research yields two principal conclusions regarding the legal consequences and protections associated with unregistered marriages in Indonesia. First, unregistered marriages generate substantial adverse legal consequences for wives, children, and property rights. Wives in such marriages lack legal recognition and protection equivalent to that afforded spouses in registered marriages, including rights to spousal support, inheritance, joint marital property, and protection against domestic violence. Children born from unregistered marriages initially possess civil relationships only with their mothers and maternal families, excluding them from inheritance claims, paternal recognition, and full documentary identification. Property acquired during unregistered marriages cannot be classified as joint marital property under state law, disadvantaging spouses who contribute to household welfare without formal employment.

Second, legal protection for children from unregistered marriages has evolved significantly following Constitutional Court Decision Number 46/PUU-VIII/2010. This landmark decision established that children born outside marriage may establish civil relationships with their biological fathers through scientific evidence such as DNA testing. Consequently, children from unregistered marriages now possess legal pathways to claim

inheritance rights, paternal recognition (nasab), and identity rights, although practical implementation continues to face obstacles including evidentiary difficulties, social stigma, and limited access to legal remedies. Active state intervention, enhanced legal aid accessibility, and public education regarding marriage registration remain essential to effectively safeguard children's fundamental rights, including identity, inheritance, and protection from legal and social discrimination.

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