E-ISSN : 3048-3646
JOURNAL OF INTELLECTUAL POWER

RECONSTRUCTION OF MARRIAGE REGISTRATION POST DECISION OF THE MK RI No. 46/PUU-VIII/2010 Jo PERSPECTIVE OF SHARIA MAQOSHID & POSITIVE LAW

Oleh

Sugianto & Agus Manurung

Email :sugiantoaphi@gmail.com

ABSTRACT

Indonesia in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3 "Indonesia as a State of Law, that in Law No. 1 of 1974 in conjunction with UUM No. 16 of 2019 concerning Marriage. The position in the registration of marriages is considered to be still a legal problem that develops in the understanding that questions the urgency or importance of a marriage that is not registered. Treatment that looks down on the position of women is certainly increasingly unpopular to be accepted now and in the future.

The position of marriage without being recorded in the intention of defrauding the principle of transparency can certainly be seen as an irresponsible act in the current state of the values of public awareness. Moreover, by utilizing the syara' argument which actually does not have a correlation with the prohibition of marriage registration, even all worship activities must represent a form of protection for others.

The purpose of this writing is to find out the extent to which the application of the legal consequences of the Constitutional Court's Decision No. 46/PUU-VIII/2010 in terms of the law of marriage registration; and is there an Urgency of Legal Problems regarding the Reconstruction of the Implementation of Marriage Registration so that it can be accepted and applied in society in the Maqoshid Syariah Perspective.

***Keywords**: Marriage Registration and Decision of the Constitutional Court and Maqoshid Syariah.*

INTRODUCTION

Indonesia is a nation state so that the legal development that occurs does not adhere solely to the secular legal system and is not a religious country. However, based on the philosophy of Pancasila, the development of a developing legal system recognizes religious law, customary law, and western law of the Dutch colonial heritage. These three legal systems color the formation and implementation of marriage law that applies in Indonesia. Especially the influence of Islamic sharia is very dominant in its relevance in the formation of positive law as the number of Muslims is the largest number of citizens at 86.7% of the total population of Indonesia.[1]

[1] Ministry of Home Affairs data for June 2021

The demographic size of the Muslim population determines the formation of the applicable marriage law with the dominance of the influence of Islamic sharia in the soul and the content of the provisions of the applicable marriage law through Law No. 1/1974 on Marriage (UUP). The magnitude of this influence is intertwined in the pull of his legislative efforts so as to accommodate the distribution of existing Muslim interests. However, the provisions in the marriage law must lead to one meaning and avoid associations or divergences that can give rise to multiple interpretations that must be avoided in the ideal of universality of a law.

The dominance of Islamic values in the UUP has given rise to many multiple interpretations that lead to the determination of different fiqh in Muslims themselves when viewing or interpreting guidance based on the existing sharia'. The organic preparation of the UUP is influenced by the tug-of-war of the political forces of each supporter of the opinion of the meaning of a particular interpretation. Both the influence of individuals, community organizations, and political parties so that the content of an article is found that is actually contrary to the norm of provisions for making legislation.

The enactment of the content of the provisions in the UUP should meet the principles of the universality of the law and not rely solely on the purpose of sectarian political interests when the regulation is made. Often dwelling on deductive discussions in explaining a postulate but lacking in the long-term influence variables of a rule. This is very important to observe so that the enactment of a law is more accommodating to the differences and spectrum of changes that occur in society.

In the subsequent legal development through the establishment of new rules after 17 years of the UUP, Presidential Instruction No. 1/1991 concerning the Dissemination of the Compilation of Islamic Law (KHI) was issued which reflected the subsequent ambiguous protocol. Although the content of the KHI is very strict in determining the advanced rules regarding marriage, the position of the statute of this Presidential Instruction is not sufficient to form an order compared to the existence of the law. The coercion and social binding power of the Presidential Instruction institution have less power than the law. The sustainability of the provisions in the form of the Presidential Instruction is certainly a deliberate legal politics that has a broad dimension for the implementation of marriage rules. It is very difficult to uniformize the acceptance of a rule taken from the frame of fiqh ijtihadi, even in dogmatic textual provisions there are often differences in interpretation. The signal of convenience or practicality of making a presidential instruction as a guide for religious judges in deciding cases originating from the prerogative of residents will be much easier than making a new law.

The mechanism for changing the content of the legislation has begun to be facilitated by the judicial *review* of the 1945 Constitution at the Constitutional Court (MK) since the enactment

of Law No. 24/2003 concerning the Constitutional Court. Such a change would shorten the time and save all the resources needed rather than drafting a new law. The mechanism of this lawsuit is also relatively quick and simple which can be done by any citizen who is legally capable. This opens up an absortible dialectical space in addition to reflecting the values that are developing today rather than the values when the old law was drafted.

The value of values that develop in society, including the issue of universality, then has room to test the value in the old law. Whether the values in the old laws are still relevant or in sync with the values that have developed and prevailed in today's society. Testing the old value against the new value can produce a new value that may seem to contradict the value of fiqh when the UUP is formed. The difference in the constellation of space and time allows for a shift in the value decisions that are embraced later because the old values are the influence of the political context that is corrected by the development of the times that are increasingly transparent, open, and efficient. So that the newness of these values, although different from the old values, is not merely contradictory but a process of *development* to seek a more concrete truth.

The current development, marriage registration is considered to be an urgent need in relation to the importance of population data and the legal consequences it causes. Marriage registration is integral in the legal protection function of women and their descendants regarding their inheritance law. This is a value that is now increasingly felt to be important for the protection of acts or behaviors that can arise from marriage without registration with the authorized institution.

The view that marital affairs are purely civil elements contains problems. Even before the marriage took place, the importance of the role of the state in providing protection to parties who are not capable or able to do so such as *lex specialis,* the presence of regulations to protect children who are not old enough for marriage and the importance of protection from other illegal acts.

Especially after a marriage takes place, the presence of the state is very necessary to protect each spouse from improper treatment including a child born from the marriage. Likewise, the birth of *lex specialis* for the protection of domestic violence (KDRT) regulations was finally formed. So that the presence of the state at a certain level is needed to protect all citizens.

According to a survey by the NGO Women's Empowerment of Family Heads (Pekka), there are still about 25% of marriages that were not registered in 2012[2]. The reality in society shows that a

[2] Hendri Kori, Husna Farianti Amran, Recording as a Legal Condition for Marriage, *Al-Fikra Islamic Scientific Journal, Vol. 20, No. 2, July-December 2021*

lot of women and their descendants[3] then suffer because of the legal consequences of marriage that has not been recorded before. In addition to an increase in the understanding of independence from women that can be universally accepted. Finally, Susenas BPS 2019 – 2021, 88.42% of children aged 0 to 18 years have a birth certificate with the breakthrough of the Disdukcapil through efforts to facilitate the creation of birth certificates with the issuance of Permendagri No. 108/2019.

The novelty of these values develops to an understanding that questions the urgency or the importance of whether there is an unregistered marriage. Treatment that looks down on the position of women is certainly increasingly unpopular to be accepted for now and in the future. The position of marriage without being recorded with the intention of deceiving the principle of transparency can certainly be seen as an irresponsible act in the state of the value of public consciousness today. Moreover, by utilizing the postulates of sharia which actually do not have a correlation with the prohibition of marriage registration, even all worship activities must be showing a form of protection to others. Therefore, the act of seeking protection using the postulate that there is no obligation of sharia there can be considered an arbitrary act that can harm women and their offspring. Not to mention the discussion about the acceptance of women, women's parents, society, and even the man himself to an unregistered marriage.

The understanding of religious rules that states that marriage registration is limited to the obligation of the couple's autonomous administration is contrary to the teachings of marriage as a very sacred bond and full of religious nuances[4] so it must be reviewed for it. There is no marriage registration rule in the UUP that negates the marriage in question without being recorded. In fact, the view that states that marriage registration as a ballast for the continuation of marriage only shows a patriarchal understanding that prioritizes the interests of men by underestimating the institutional position of women.

Therefore, it must be able to be formulated in positive legal rules through the formation of certain legislation so that it is binding for all Indonesian citizens or with certain restrictions on things

[3] As many as 43 million out of a total of 86 million children in Indonesia do not have a birth certificate because problems in the upstream are less paid attention than in the downstream, said Indar Parawansa in the Seminar on Strategies for Overcoming Underage Marriage and Unregistered Marriage, Haris Hotel, Tebet, South Jakarta, December 26, 2012
[4] Khoirudin Nasution, Indonesian Islamic Civil Law (Family) and Comparison of Marriage Law in the Muslim World, *Faculty of Sharia, State Islamic University, 2009*

that need to be specifically regulated. The uniqueness or uniqueness of the interpretation of the content of the law must be able to be digested and understood by all Indonesian people so that it is able to realize *good administration* in *an effort of good governance* without any element of conflict with the existing religious law.

The main problem in the UUP in the lens of current value development is about how to make a marriage in the framework of individual interests to the interests of society and the nation. The registration of marriage is whether it is an administrative obligation that can stand alone or whether it must be attached to the shah or not of a marriage by considering the viewpoint of the interests of individuals towards the order of life in society and the nation by also considering the validity of interests for a long time.

The debate on internal fiqh among Muslims regarding the registration of marriage seems to have no end to its resolution more because of differences in interests in terms of *willingness* than the disclosure of the *holistic meaning of* a postulate. Not to mention if the conclusion of the understanding of fiqh from a postulate turns out to be contrary to the value of universal values that have developed and according to the rules in making the content of the invitation legislation. Whether this phenomenon cannot be explored and analyzed to find an understanding of the conclusion of the common thread so that there will always be a dichotomy in the UUP so that there is a divergence in the enactment of a provision in society, namely the perpetuation of legal dualism. Especially after the emergence of the Constitutional Court Decision No. 46/PUU-VIII/2010 regarding the position of children from serial marriages which fundamentally changed the position map of the UUP. In addition to the fundamental debate about the relationship between marriage and its registration in the implications of administrative law, *good governance*, protection of women and gender equality.

The Constitutional Court's decision states that Article 43 paragraph (1) of Law No. 1/1974 of the UUP is contrary to the 1945 Constitution *conditionally unconstitutional* which recognizes the novelty of the norm on the reading of the article: "*A child born out of wedlock only has a civil relationship with his mother and his mother's family*," further it must be read as: "*Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to the law to have a blood relationship including a civil relationship with their father's family*".[5]

[5] A. Mukti Arto, *Diskusi Hukum Putusan MKRI No. 46/PUU-VIII/2010 tanggal 27 Februari 2012 Tentang Pengubahan Pasal 43 UU No. 1/1974, Dirjen Badan Peradilan Agama Mahkamah Agung Republik Indonesia A. Mukti Arto,Diskusi Hukum Putusan Mahkamah Konstitusi RI Nomor 46/PUU-VIII/2010 Tanggal 27 Februari 2012, Jakarta, 2012, hlm. 213*

The Constitutional Court's decision certainly adds to *the divergence* in the content and purpose of the UUP. From the previous debatable level of interpretation of internal verses and articles to applicatives in society, it became a structural disorientation of the purpose of the lawmakers. The meaning of the validity of "*marriage according to the law of each religion and its belief*" is a straightforward description of the polarization between religions/beliefs that is subjective so that marriage registration is treated as administrative independence alone, as a passive act of the state without having an imperative relationship with the legal act of marriage. Meanwhile, from the event of marriage, childbirth is due to population administration law, inheritance law, fair deeds, protection of wives and children, and so on that demand the presence of the state. On the other hand, the phrase "*marriage according to the law of each religion and its belief*" has many dimensions, whether for men and women the religion must be the same or can be different. In terms of human values and practice, it is difficult to accept the prohibition of interfaith marriage, so this difference should be accommodated in the UUP.

The phrase "*marriage is valid if it is carried out according to the law of each religion and its belief*" is the definitive meaning, it is different from the sound "*marriage is carried out according to the legal procedures of each religion and its belief*" because in Article 1 of the UUP it has stated the definitive meaning"*Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Godhead"*.

The Constitutional Court's decision separates the legal events of marriage from the registration of marriage. It is considered that a marriage is valid if it is *"according to their respective religions and beliefs"* while the registration of a marriage is limited to the administrative event of the marriage, and is not an imperative link of the marriage. The relationship between paragraph (1) and paragraph (2) in Article 2 of the UUP is separate and has its own norms. Marriage registration that is not carried out at the same time during marriage is an absurdity in the context of the orderly population administration that is urgently needed today. However, because the Constitutional Court's decision is final, changes to the decision cannot be resubmitted and other efforts must be made to overcome the impasse.

1. Problems
    a. How is the legal relationship between paragraph (1) and paragraph (2) in Article 2 of Law No. 1/1974 of the UUP compared after the Constitutional Court Decision No. 46/PUU-VIII/2010 in terms of marriage registration ;
    b. What are the legal consequences of the Constitutional Court Decision No. 46/PUU-VIII/2010 in terms of marriage registration law ;

c. How are structural, institutional, functional, and operational reconstruction and repositioning efforts in maintaining the current value of marriage registration law so that it is easily accepted and can be applied in society in the sharia maqoshid paradigm.

3. Problem Limitation

The research problem is limited to the written law on marriage registration in Indonesia in the context of comparing the values in the UUP to the Constitutional Court Decision No. 46/PUU-VIII/2010. As well as the development of values in society towards universal values, protection of livelihoods, inheritances, status, and the lives of children and women are associated with the approach of marriage fiqh discipline and marriage registration with the paradigm of maqoshid sharia Jaser Auda.

A. RESEARCH OBJECTIVES

The objectives of the research to be achieved are:

1. An assessment of the legal journey of marriage registration in a social context that has occurred since the independence period until now ;
2. Merekonstruksi model hukum yang lebih komprehensif dalam isi dan maksud perundangan perkawinan dan pencatatan perkawinan dengan mengutamakan perlindungan berimbang kepada semua pihak ;
3. Mengkaji formulasi tawaran model hukum perkawinan dan pencatatan perkawinan dari sisi kemanfaatan hukum, perlindungan hukum, hingga kepastian hukum secara obyektif dan sesuai dengan perkembangan nilai yang terjadi.

B. USABILITY OF RESEARCH

The uses of the research are as follows :

1. For students, the author hopes that this research can spark awareness of the meaning of truth according to the context of the times and develop further research in the future ;
2. For the mujtahid, the author hopes that this research can be an input for discussion in the context of developing thinking to determine Islamic law that is weighty and in accordance

with Islamic beliefs ;

3. For the wider community, the author hopes to increase awareness in the meaning of its content and value so that it understands its benefits so that it can increase interest in participating in the drafting of laws and regulations.

C. FRAMEWORK OF THOUGHT

The legislation of a regulation in Indonesia is sourced from the substance of the law that applies and is accepted by the public. The substance of mana law can come from customary law, western law that has existed and was widely used before, and religious law. In Law No. 1/1974 this UUP is dominantly influenced by Islamic sharia where the content of this law is the embodiment of the values contained in the Islamic Religion with the legal sources of the Holy Quran, hadith, ijma, and qiyas[6]. After the legislation, the value contained in it then becomes a positive law that applies and is binding for all Indonesian citizens. Thus, the value in the source of the law, including from the source of Islamic law, will be valid and binding nationally.

The problem then is that the interpretation or understanding of a rule in the source of Islamic law can differ according to the interpretation of each person and institution, in addition to the interpretation itself in representing the desired truth is developed according to time influenced by space, technology, science, to the context that occurs today. This is related to the fact that the Qur'an, which is the main source of Islamic law as a guide for all human beings[7] in order to construct a just life based on ethics and continue *to exist* in this life, must continue to be reinterpreted[8] as an eternal need.

This growing understanding *must then be spelled into a sentence that contains a certain intention in positive law because law as a lex scripta* or written must be able to contain a legal certainty. Positive legal source input instruments that have differences between ideas (*horizontal* variants) and at the same time the necessity of meaning development (*vertical variants*) which are then applied to all heterogeneous citizens will certainly experience many obstacles in their implementation independently. Or the existing compliance is narrow and vulnerable to the development of demands for fair treatment (*equality*) in society. So it can be understood that in this case it requires a kind of *legal cluster* because of the absoluteness of existing differences such as differences in rules in each religion.

In addition, the existence of *the horizontal* and *vertical variants* before, requires more integration

[6] A Ghafar, *Sources of Iskam Law and Its Implementation, IAI-Sambas Journal, 2021*
[7] Al-quran, Albaqoroh : 185
[8] Ahmad Syukri, *Methodology of Contemporary Tafsir Al-Quran in Fazlur Rahman's Thought, Contextuality: Journal of Socio-Religious Research, IAIN Kendari, 2005*

of interpretation meanings from positive legal sources that exist in the current context so that there is a singularity in the meaning of positive legal rules. A dynamic conclusion point is needed from an interpretation of Islamic legal sources to determine a more coherent fiqh system to bring to the unification of positive law. Therefore, later in the sub-discussion of the problem, the fiqh space needed to help deepen this research on marriage, fair polygamy, marriage registration, relations between men, women and children, equality (*equality*), associated with population administration and encompassing legal responsibilities.

Permasalahan menjadi lebih rancu ketika muncul putusan MK No. 46/PUU-VIII/2010, dimana putusan tersebut merupakan hasil *judicial review* atas Pasal 2 ayat (1) dan (2) UU No. 1/1974 UUP sehingga berakibat kesatuan UUP tersebut dikaitkan dengan Kompilasi Hukum Islam (KHI) tidak memiliki kepaduan alur isi dan tujuan. Definisi dan relasi perkawinan dan kewajiban pencatatan perkawinan ditempatkan diluar ruang UUP dan KHI sehingga arti penting UUP dan KHI terkesan mandul. Disamping kewajiban mereposisi keadaan ini, namun diperlukan suatu usaha rekonstruksi bagaimana mengatur agar terjadi keterpaduan undang undang dalam usaha menata tata kehidupan masyarakat secara bermartabat, menjauhkan keburukan, dan selalu berusaha mencari manfaat atas peristiwa hukum yang terjadi. Setidaknya dapat diketahui bahwa sejak permasalahan tersebut timbul hingga adanya putusan MK dimaksud tidak terjadi upaya perbaikan hukum baik dari pemerintah maupun dari legislatif, sehingga terkesan membiarkan permasalahan ini berlarut-larut tanpa upaya perbaikan sementara disfungsi dari hukum perkawinan ini adalah nyata dan terus terjadi di masyarakat.

The historical journey of written marriage law in Indonesia can be classified into 3 periods, namely before independence to 1946, 1946 - 1973 and 1974 - present[9]. The marriage laws abandoned by the Dutch are: 1. For native Indonesians who are Muslims, the religious law that has been prepared in customary law applies. 2. For other native Indonesians, customary law applies. 3. For native Indonesians who are Christians, *Huwelijks Ordonantie Christen Indonesia (HOCI)* in *Staatsblad* 1933 No. 74 applies. 4. For Chinese foreigners and Indonesian citizens of Chinese descent, the provisions of the Civil Code with slight changes (*Burgelijk Wetboek*) apply. 5. For other foreign easterners and Indonesian citizens of other foreign eastern descent, their customary law applies. For Europeans and Indonesian citizens of European descent and those who are equated with them, the Civil Code applies[10]. In addition to the above provisions, there are still provisions that apply to people who perform mixed marriages (*Regeling op de gemengde Huwelijken*).

[9] Ahmad Rifai, Ibn Sodiq, Abdul Muntholib, *2015*
[10] Wijon Pradidiko, 1981:15

Christians and citizens of European and Chinese descent have codified marriage laws, so in practice during the colonial period until 1946 there were rarely difficult problems in their marriages. In contrast to the Islamic group which has not yet had a condisification of marriage law, the guidelines are still scattered in several books of jurisprudence Munakahat by Mujtahid from the Middle East such as Imam Shafi'I, for example. The understanding of Indonesian Muslims towards the Munakahat fiqh books is often not uniform, so that cases of marriage such as child marriage, forced marriage, and abuse of the right of talaq and polygamy have arisen.

On November 26, 1946, Law No. 22 of 1946 concerning the Registration of Marriage, Talak and Referral was issued which applied to the Java and Madura regions which was ratified in Linggarjati by President Soekarno, then by the Emergency Government of the Republic of Indonesia in Sumatra was declared to apply also to the Sumatra region [11]. In the implementation of the Law, the Instruction of the Minister of Religion No. 4 of 1947 was issued which was intended for Marriage Registration Employees (VAT). The instruction in addition to containing the implementation of Law No. 22 of 1946 also contains the necessity of VAT from the problems experienced by Muslims before. Then in 1954 through Law No. 32 of 1954, Law No. 22 of 1946 which had been passed was declared applicable to all regions in Indonesia.

In 1952, Government Regulation No. 19 of 1952 was issued regarding the unconditional permission of polygamy, which increasingly made women increasingly excluded in household affairs. However, under the leadership of President Soeharto, additional regulations were issued for civil servants to carry out marriage and polygamy which was recorded in Government Regulation No. 10 of 1983. This illustrates that the development of marriage law in the journey of the Indonesian nation is not easy and has not yet produced an ideal situation. Until the birth of Law No. 1/1974 UUP which is the work of the Indonesian Nation. It was proposed by elements of the government to be discussed and ratified through a legislation mechanism to the House of Representatives at that time which took 6 months of debate.

This effort to reposition and reconstruct the marriage law is very necessary to continue to be developed so that the resulting thematic marriage law can be more or less applied as a positive law that applies to all Indonesian people. The thinking used by examining the interrelation and causality between sub-articles and between paragraphs on all existing provisions, is integrated with existing legal sources and the development of value values in today's society. The role of the procedure for the formation of laws and the paradigm of sharia maqoshid is very necessary in order to find the desired

[11] Nani Suwondo, 1992:96

value of truth, although limited to the framework of formal positivism, breaking through the legal impasse can be justified rather than protracting in the status quo.

The sustainability of the law in the ease of application in the field is also very necessary to prove that the law also brings benefits to the community not only representing justice and legal certainty. The content of the law must be in line with the general public's perception of the matter. If there are difficulties in acceptance, an applicative, *acceptance*, and sustainable formula must be sought. If the law can then only be read for some people or certain groups, then of course there is something wrong in absorbing positive laws from existing legal sources.

Considerations include discourse in including religious values, especially Islam, which is embraced by most Indonesian citizens in the value system that will be formed in legislation. On the other hand, Islam, which is full of universal values, must be tested for all Indonesian citizens. The acceptance of these values must be in accordance with existing needs both for the present and have the resilience to be enforced in the long term. *Absorbing* values that are contrary or too special non-universal will cause a conflict of values (*non-acceptable value*) which in its implementation causes many acts of smuggling or denial of the law. At least this can also be reflected in the application for a material test at the Constitutional Court which is structurally fundamental.

The submission of a material test that is structurally fundamental indicates that the value system in the law is problematic to public expectations (expectations). Its nature is a law, so the existing value system must not contradict the generality of the value system in society so it must be formulated wisely. Its enforcement is general and binding, requiring that the established value system can bring benefits and ease of implementation to all Indonesian citizens. The value system in an *acceptable* law will produce a law-abiding society and interact synergistically with the state through its apparatus, and if it is violated, it will receive sanctions as active awareness for the sake of public order, not limited to a mere feeling of compulsion.

D. LITERATURE REVIEW

Regarding the theme of similar research conducted by the author, most of them can be classified as research on the impact of the Constitutional Court Decision No. 46/PUU-VIII/2010 in the sub-field of the status of children out of wedlock. Meanwhile, what discusses the legal aspect of legislation as a vehicle for upstream regulation is that it still needs to be developed in relation to the UUP and other regulations on the Constitutional Court's decisions in a single legislative building orientation unit.

a. Pahlevi, *Implications of the Constitutional Court's Decision No. 46/PUU-VIII/2010 Against Children from Siri Marriages, published in Journal of Legal Sciences*, 2015. The Constitutional Court's decision in question brings a new paradigm in the civil and family law system even though it reaps pros and cons from the community. Some are of the opinion that the Constitutional Court has legalized adultery because it decides that a child born out of wedlock has a civil relationship with his father as a result of a valid marriage on the condition that the blood relationship can be proven based on science and technology or other evidence according to the law. The Constitutional Court's decision has no legal implications for the provisions for marriage registration according to Article 2 paragraph (2) of the UUP, but it does have implications for the position of the child resulting from a serial marriage, namely having a good legal relationship with the mother and biological father.

b. M Nur Hasan Latif, *Reconstruction of Indonesia's Islamic Family Legal System After the Constitutional Court Decision No. 46/PUU-VIII/2010 concerning Children Out of Wedlock*, stated that the legal system that applied earlier was to position children born out of wedlock only to have a civil relationship with their mother and their mother's family only, while with their father and their father's family, children out of wedlock cannot be connected to their civil affairs. This is like what is in Law No. 1 of 1974. However, this provision was later changed by the Constitutional Court (MK) through its decision No. 46/PUU-VIII/2010 which states that children born out of wedlock have a civil relationship with their mother and their mother's family as well as with their father and their father's family.

The main problem of this study is the implications and direct or indirect impacts of the Constitutional Court's decision on the family legal system and the legal construction of children out of wedlock after the Constitutional Court's decision in the Islamic family law system in Indonesia. Non-doctrinal legal research with a hermeneutic approach, where non-doctrinal legal research is research to examine the process of occurrence and work of law in society, including the interrelation between law and legal institutions.

The results of this study, first: the Constitutional Court's decision makes a more open legal system in interpreting children out of wedlock because the Constitutional Court's decision does not yet have a specification of the type of child out of wedlock. Second: religious courts will increasingly handle applications or lawsuits for civil rights of children out of wedlock. Meanwhile, the indirect impact on the Ministry of Home Affairs (civil registry office) is related to the birth certificate of the child, the Ministry of Religion is related to services at the Office of Religious Affairs, and

the Ministry of Law and Human Rights is related to the Draft Government Regulation on Children Out of Wedlock, and the Ministry of Women's Empowerment and Child Protection is related to socialization and protection efforts for children out of wedlock. Third, the legal construction of illegitimate children after the Constitutional Court's decision has undergone a fundamental change in the structure of Islamic family law because the position of the child between the illegitimate child and the legal child is the same (who has a biological relationship with his biological father). Children out of wedlock after the Constitutional Court's decision are entitled to child custody, child maintenance rights, including the right to manage population administration (not applicable to nasab, guardianship, and inheritance rights).

c. Prianter Jaya Hariri, Civil *Status of Children Outside Marriage After the Constitutional Court Decision Number 46/PUU-VIII/2010,* stated that the contradiction between the Constitutional Court's decision regarding the material test of the Marriage Law and fiqh needs to be a serious concern. A decision that grants civil rights to children resulting from extramarital affairs is a legal development that has a positive value from the human rights aspect, but can be considered *negative* because it causes a contradiction between positive law and religious law. The House of Representatives of the Republic of Indonesia as a representative institution needs to follow up on the decision through the revision of the Marriage Law and other related laws, including the Civil Code of Colonial Heritage. Further study of these two different opinions is needed in order to find a solution by considering all aspects.

d. Busman Edyar, Status of *Children Out of Wedlock According to Positive Law and Islamic Law After the Issuance of the Constitutional Court's Decision on the Material Test of the Marriage Law*, stated that even though registering a marriage is not one of the things that determines the validity of a marriage in Islam, in its application in Indonesia, unregistered marriages cause children not to be registered under state law. Until then the Constitutional Court issued a decision that accommodated the status of all children, this caused serious problems among Indonesian scholars. Not all children born have the same status depending on the fulfillment of the harmony and marriage requirements of both parents.

e. Ni Putu Rai Yuliartini, *Arrangements for the Status of Children Outside of Marriage After the Constitutional Court Decision Number 46/PUU-VIII/2010,* this study aims to find out and analyze the arrangements for the status of children out of wedlock based on the Constitutional Court Decision and analyze the considerations of the judges. This type of normative legal research is based on a statute *approach* and a *conceptual approach*. Results of the study: (1) An

illegitimate child can have a civil relationship with a man as his father if it can be proven by science and technology that the child has a blood relationship with the man. (2) The child is the result of the relationship between the mother and father, either due to sexual relations or because of other actions in accordance with technological developments that can cause pregnancy, therefore the Constitutional Court judge granted the test against Article 43 paragraph (1) of the 1945 Constitution.

E. RESEARCH METHODOLOGY

The research methodology in this study uses a thematic juridical normative approach, which explores the relationship between regulations and regulations thematically that reflects the link of interests between them. Using this method is expected to open up an understanding of why a law and regulation needs to be developed and how it is developed along with the elements of factors that affect it so that it can be applied in society.

Research is descriptive analytical as research that aims to carefully describe the characteristics of individual facts, groups, and circumstances to determine the frequency of occurrence of something. The analysis is intended based on the description and facts obtained that are analyzed in depth to answer the research (Sunaryati Hartono, 1994).

The data sources of this research use secondary data in the form of legislation, literature reviews, judges' decisions, journals related to marriage registration law, research report papers, articles, mass media and the internet. This also includes researching primary materials through interviews with judges of the Religious Court and religious experts, as well as the Heads of KUA in the Cirebon City and Regency areas.

The data collection technique used by the author here is the library research method , where the literature method is research conducted by analyzing the contents of books or others.

F. REFERENCES

Ainun Najib. 2020. *Legislasi Hukum Islam dalam Sistem Hukum Nasional*. Jurnal Ekonomi dan Hukum Islam. Universitas Ibrahimy. Situbondo.

Euis Nurlaelawati. 2016. *Hukum Keluarga Islam ala Negara : Penafsiran dan Debat atas Dasar Hukum Kompilasi Islam di Kalangan Otoritas Agama dan Ahli Hukum*. Jurnal Ilmu Syariah dan Hukum Asy-Syir'ah Vol. 50 No. 1. UIN Sunan Kalijaga Yogyakarta.

Abd. Moqsith. *Tafsir Poligami Dalam Alquran*. Fakultas Ushuludin UIN Syarif Hidayatullah. Jakarta.

Barzah Latupono. 2018. *Pencatatan Perkawinan Di Indonesia Dikaitkan Dengan Good Governance*. Jurnal SASI Volume 24 No. 2. Fakultas Hukum Universitas Pattimura. Ambon.

Edi Gunawan. *Nikah Siri dan Akibat Hukumnya Menurut Undang-Undang Perkawinan*. Jurusan Syariah STAIN. Manado.

Hendri Kori, Husna Farianti Amran. 2021. *Pencatatan Sebagai Syarat Sah Perkawinan,* Jurnal Ilmiah Keislaman Al-Fikra, Vol. 20, No. 2, Juli-Desember 2021

Khoirudin Nasution. 2009. *Hukum Perdata (Keluarga) Islam Indonesia dan Perbandingan Hukum Perkawinan di Dunia Muslim*, Fakultas Syariah Universitas Islam Negeri.

Kurde, Nuktoh Arfani. 2005. *Telaah Kritis Teori Negara Hukum*. Pustaka Pelajar. Yogyakarta.

Mertokusumo, Sudikno. 2002. *Pengantar Hukum Perdata Tertulis (BW).* Sinar Grafika. Jakarta.

Moh. Amin. 2015. *Dualisme Hukum Nikah Siri Di Indonesia Dalam Perspektif Fiqh Indonesia (Refleksi 41 Tahun Undang-Undang N0. 1 Tahun 1974 tentang Perkawinan*. Jurnal Studi Keislaman Vol. 15 N0. 1. Fakultas Tarbiyah dan Keguruan IAIN Sultan Maulana Hasanudin. Banten.

Nuruddin, Amiur & Azhari Akmal Tarigan. 2004. *Hukum Perdata Islam di Indonesia. Studi Kritis Perkembangan Hukum Islam dan Fikih. UU No. 1/1974 Sampai KHI.* Prenada Media. Jakarta.

Nunung Rodliyah. 2013. *Pencatatan Pernikahan dan Akta Nikah Sebagai Legalitas Pernikahan Menurut Kompilasi Hukum Islam*. Pranata Hukum Volume 8 N0. 1 Januari 2013. Fakultas Hukum Universitas Lampung. Bandar Lampung.

Prodjohamidjojo, MR Martiman. 2004. *Tanya Jawab Undang-Undang Perkawinan*. Pradnya Paramita. Jakarta.

Pahlevi. 2015. *Implikasi Putusan Mahkamh Konstitusi N0. 46/PUU-VII/2010 Terhadap Anak Dari Perkawinan Siri*. Jurnal Ilmu Hukum. Universitas Jambi.

Racmadi Usman. 2017. *Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia*. Jurnal Legislasi Indonesia Vol. 14 N0. 03.

Rizal, Jawahir Gustav . *Pasangan Nikah Siri Bisa Punya Kartu Keluarga. Ini Kata Komnas Perempuan*", https://www.kompas.com/tren/read /2021/10/08 /180000065/pasangan-nikah- siri-bisa-punya- kartu-keluarga-ini-kata-komnas-perempuan?page=all

Sidharta, B. Arief. "*Kajian Kefilsafatan tentang Negara Hukum*. dalam Jentera (Jurnal Hukum). "Rule of Law". Pusat Studi Hukum dan Kebijakan (PSHK). Jakarta. edisi 3 Tahun II. November 2004.

Situmorang, Victor M. dan Cormentyna Sitanggang. 1991. *Aspek Hukum Akta Catatan Sipil di Indonesia*. Cetakan Pertama. Jakarta. Sina Grafika.

Susanto, Happy. 2007. *Nikah Siri Apa Untungnya?*. Visimedia. Jakarta.

Witanto, D.Y. 2012. *Hukum Keluarga: Hak Kedudukan Anak Luar Kawin*. Prestasi Pustaka. Jakarta.

Wahyu Wibisana. 2016. *Pernikahan Dalam Islam*. Jurnal Pendidikan Islam – Ta'lim Vol. 14 No. 2. UPI. Jakarta.

Yunus, Mahmud. 1973. *Kamus Arab Indonesia.* Yayasan Penyelenggara Penterjemah/ pentafsiran Al-Qur'an. Jakarta.