

Research Article

Children's Position as a Result of Sirri Marriage Under Islamic and Positive Law in Indonesia

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Abstract.

Although registering a marriage does not determine its validity in Islam, unregistered marriages in Indonesia cause children to be unregistered by state law, which is known as a Sirri marriage. As a result, legally, Sirri marriages have a position and effect on a child's status and position. In terms of the issues raised in this article, how do children affected by Sirri marriages fare under Islamic and positive law in Indonesia? Furthermore, the purpose of research in this article is to analyze position of children affected by Sirri marriages fare under Islamic and positive law in Indonesia. The research method used, emphasizes legal normative views of the type of research (library research), then analyzed using descriptive analytical method, to provide data that is comprehensive about the people, the state, or the symptoms of the other. The study's findings show that children born from legal marriages under Islamic law and legal marriages under law are children born from legal weddings under Islamic law and following the procedures of Article 2 paragraph 1 and paragraph 2 of Law No. 1 of 1974. A kid born of a marriage that is valid in Islamic law and does not in the outside procedure in article 2 paragraph 2 is a child born of a marriage that is valid in Islamic law and does in the outside procedure. However, the status of Sirri marriage cannot be legally acknowledged because it is not recorded from the administrative side of unregistered marriages as stated in Article 2 paragraph (2) of Law No. 1 of 1974. Second, the legislation because of Sirri marriage to the position of children is to make the status and position of a kid unacknowledged if the child was born before the marriage of both parents and is registered, legally recognized, and recorded.

Keywords: status of children due to Sirri marriage, Islamic Law, positive law In Indonesia

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1. Introduction

Marriage is a gift from Allah SWT, and it is a necessary Fitr for every human being.[1] Marriages that are legal will very certainly result in legal consequences under Article 42 of Law No. 1 of 1974 addressing marriage (UUP 1974). The lineage of the child who is related to the father, the right to a living from the parents to the child, the right to care and education, the right to inherit each other, the right of marriage guardianship for the

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father over the daughter, and other civil rights are among the legal consequences in question.[2]

In contrast to a legal marriage or *Sirri*, a marriage that is not valid has no legal consequences for either of the persons who are bonded in the marriage. According to Article 2 paragraph (1) of the UUP in 1974, *a contrario* marriage is one that does not comply with the law of each religion and belief. In addition to a conjugal relationship that is not valid, it can occur as a result of consensual likes or rape, whether committed by married or unmarried people.[3]

Authentic certificates, birth certificates, and special certificates with child acknowledgments prepared by Civil Registry Office staff can all be used to recognize children born out of wedlock under Article 281 of the Criminal Code (KUHP).[4]

Regarding the status of children born out of wedlock according to the Constitutional Court Decision Number 46/PUU-VIII/2012 dated 17 February 2012 are: that according to Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) at the first and last levels whose decisions are final.[5] “Children born out of wedlock have a civil contact with his mother and her family, as well as a man as his father, which can be verified based on science and technology and/or other evidence according to law have blood relations, including civil relations with his father’s family,” he decided. Through his decision that “Children born out of wedlock have a civil relationship with his mother and his mother’s family as well as with a man as his father which can be proven based on science.

knowledge and technology and/or other evidence according to the law having blood relations, including civil relations with his father’s family.[6] According to Mahfud MD., as the chairman of the Constitutional Court at the time, stated: that what the assembly meant by the phrase “children out of wedlock” were not children resulting from adultery, but children from *Sirri* marriages that were legal according to religion even though they were not recorded. Children born from marriages that are not registered and legal according to religion do not conflict with lineage, inheritance, and marriage guardians.[7] Because the Constitutional Court’s decision granted Machica’s request, who is already married to Moerdiono, it is very nave to apply it to the adultery case. This is in conformity with Usul Fiqh regulations.[8] which states: “The order for something is also a command on the means,” and “The law is the same as the item to which it is intended for the means.” This is an unregistered marriage case that can be applicable to other instances if they are in the same situation as this one. The applicability of the Machica case to the adultery issue is incorrect.

On the other side, the Constitutional Court's ruling represents a legal milestone since it gives every kid born out of wedlock, without exception, access to what is their civic right as a citizen, whether through court proof or a series of other evidences such as DNA tests or others. This is, considering the innocence of a child who was born, so that basically there is no reason for the state in this case to thwart what is their right as a citizen. However, on the other hand, it is unavoidable that various polemics arise with the decision because in the view of Islamic norms and law, especially for adulterous children, it cannot be equated with other children outside of marriage, only in this decision the Constitutional Court does not explain which categorization of illegitimate children. referred to, thus giving rise to an understanding that this applies to all children out of wedlock in the eyes of positive law.[9] In Islamic law, a kid born from a man and a woman's relationship outside of a legal marriage has the same status as a child born from a legal marriage relationship, according to Abdul Manan. Because the kid is born in accordance with his nature, which places him in the same position as other children as servants of Allah swt. and allows him to only be responsible for his own personal good actions and evil deeds as well as his own personal bad deeds with Him, not those who are responsible for the sins of the mother and the sins of the father. Even though it should be the despicable and sinful one in front of Allah SWT., not the child but the two mothers and fathers who have committed adultery.[10] What needs to be understood is that in Islam, the nasab relationship between the child and the father is defined only by legal considerations, implying that the mother and the father have entered into a valid marriage contract, resulting in the child's birth. This legal status does not apply to either adulterous or li'an children. As a result, he only has an inheritance link with his mother and those who are related to him via his mother's ancestry, not with his father.[11]

More research in the form of scholarly publications related to the condition of children in Islamic and positive law as a result of unregistered marriages is needed, based on the foregoing.

2. Methods

The research approach adopted was a normative juridical research method to examine the amount of legal synchronization in Islamic and positive law on the position of children due to unregistered marriages, derived from bibliographical sources, either as primary legal materials or secondary materials in the form of the Qur'an, hadith, fiqh books, the Civil Code, Law no. 1 of 1974 concerning marriage, KHI, as well as books related to the title either directly or indirectly. Secondary legal materials in the form of encyclopedias,

journals, and other literature as far as supporting the object of research, so that it is more widely seen as (documentary research), then analyzed by analytical descriptive methods,[12] namely research to provide data that is as accurate as possible about humans, circumstances, or symptoms. From the standpoint of the study's purpose, it seeks to uncover simple facts (*fact finding*) about the situation of children in Islamic and positive law as a result of *Sirri* marriage.

3. Results and Discussion

3.1. Sirri Marriage based on Islamic and Positive Law

A marriage is regarded lawful if it fits the prerequisites and pillars of marriage, such as a dowry, the husband's colon, the prospective wife, the marriage guardian, two witnesses, and the agreement of the qabul.[13]

In order to strengthen and ensure that the legal certainty of the marriage of the parties can be protected, by the State, the marriage that takes place must be carried out in the presence of an authorized officer.[14] In order for the marriage to be registered as a legitimate marriage under state law.[15]

Perkawinan di bawah tangan[16] or which is commonly known as illegal marriage:[17–19] is a marriage that fulfills all the pillars and conditions stipulated in fiqh (Islamic law) but without official registration in the competent authority as regulated in the legislation of a country.[20] As previously said, marriage frequently causes harm to the wife and children born in terms of their rights, such as maintenance, inheritance, and so on.

According to Ma'ruf Amin of the Ijtima Ulama forum, the Fatwa Commission uses the phrase “*Perkawinan di bawah tangan*” to distinguish it from “publicly known” *Sirri* weddings. This phrase is more in line with the Islamic requirements. If *Sirri marriage* (*secret marriage*),[21][22][23] In the sense that a marriage that is performed solely by the two of us, without the use of other conditions and pillars of marriage, can be determined to be invalid.

Sirri marriage, according to Imam Malik's Fiqh terminology, is a marriage in which the husband's message is kept a secret for his wife or congregation by the witnesses, even if the local family knows about it.[24] *Sirri* marriages are forbidden in the Maliki school. If there has been sexual intercourse between the two or with the testimony of four witnesses, the marriage can be canceled and the two culprits can be punished with hadd (floating or stoning).

According to the majority of scholars, they expressed the opinion that when witnesses came, the marriage contract party asked them not to spread the news of their marriage to the general public or keep it a secret. So the marriage is still valid, but if the marriage contract runs there are no witnesses, then the marriage is invalid.[25]

Sirri marriages are also forbidden by the Shafi'i and Hanafi schools, respectively. Marriages performed in accordance with sharia laws are legitimate, according to the Hambali school, even if the bride and groom, guardians, and witnesses keep them hidden. Simply said, the law is makruh. According to history, Caliph Umar ibn Al-Khattab reportedly threatened *Sirri* marriage violators with death.[26] Thus, according to fiqh terminology, and the legal status of *Sirri* marriage in Caliph Umar bin Khattab's opinion, as well as the three schools stated above, *Sirri* marriage is illegal. Because *Sirri* marriage, in addition to inviting defamation and su'uzzan, is also against the Prophet SAW's traditions.[27]

Positive law state, *Sirri* marriage, as defined in the madzahab's fiqh, is likewise invalid since it violates Islamic law, as outlined in Article 2 paragraph (1) of Law No. 1 of 1974 governing marriage, Each marriage is recorded according to the applicable laws and regulations. PP No. 9/1975 article 2 paragraph (1) explains "The marriage registration of those who carry out their marriage according to the Islamic religion, is carried out by the marriage registrar as referred to in Law no. 32 of 1954 concerning the recording of marriage, divorce and reconciliation. Furthermore, Article 2 paragraph (2) explains "The marriage registration of those who carry out their marriage according to their religion and belief other than Islam, is carried out by the Employee Registrar of Marriage (PPN) at the office of civil law as referred to in various laws regarding marriage registration.[28]

Marriage registration carried out by the Employee Registrar of Marriage (PPN) has the aim of realizing marriage order in society. This is a legal endeavor to safeguard the dignity and integrity of marriage. Marriage is also a contract, contract, or engagement.[29], [30]

The provisions for registering marriages as part of the pillars of marriage are mentioned in Chapter III Article 6 CLD (*Counter Legal Draft*), conceptually is a formalization of the basic spirit of the provisions of Law no. 1 of 1974 and KHI as a measuring tool for the legality of marriage in a formal juridical manner,[31], [32] although the recording is placed as an administrative requirement. The obligation to register marriages can be placed as a preventive measure against the possibility of legal violations in the form of violence in marriage, both in the form of physical, psychological and domestic violence with an authentic and strong juridical umbrella as evidenced by a marriage certificate.[33]

Therefore, the problem of having to register marriages in the context of Islamic law methodologically can be categorized as *saddu al-dhari'ah*, namely inhibiting the possibility of negative excesses being born by adhering to the principle of *dar al-mafasid muqaddamun ala jalb al-masalih* (preventing negative impacts first) rather than attracting benefit.

In addition to the consideration of *sadd Az-Zari'ah*, the violation of *sirri* marriage is based on the necessity of obedience to the leader of the State (*Ulil amri*), as stated by ALLAH SWT

“O you who believe, obey Allah and obey the Messenger (His), and the ulil amri among you. Then if you disagree about something, then return it to Allah (the Quran) and the Messenger (his Sunnah), if you truly believe in Allah and the Last Day. That is more important (for you) and better as a result. (Qs. An-Nisa (4):59)

The essential concept of this recording provision is that marriage, in addition to being a part of Islamic religious activities, must also be viewed as an interaction with legal and sociological dimensions, requiring attention to legal factors that are juridical-formal in nature.[32]

Because they are commonly considered mistresses or illegitimate wives, married couples who undertake *Sirri* marriages find it difficult to socialize. Consequently, the child only has a civil relationship with the mother and the mother's family. This means that the child has no legal relationship with his father. Even in the birth certificate, the status is considered as an illegitimate child, so that only as a child out of wedlock and the inclusion of the father's name will have a very deep social and psychological impact on the child and the mother.[20]

3.2. Position of Children due to *Sirri* Marriage

According to Islamic marital law, children born as a result of a marriage are an integral component of their status in the family. A legitimate child is one who is deemed to be the result of his father and mother's legal marriage. In Islam, a child's validity is determined by whether or not he has a fatherly relationship (*nasab*) with a male.[34]

In Indonesia, positive law distinguishes between legitimate and illegitimate offspring. The existence of a legal marriage, in the sense that one is the progeny of the other, is the basis for legitimate offspring based on birth in or as a result of a legal marriage, such children are called legal children. While illegitimate offspring are descendants that are not based on a legal marriage, people call such a child an illegitimate child. Not

all children born outside a legal marriage can be recognized. Based on whether or not children born from Sirri marriages are legal, they can be divided into 2 types;[35]

3.2.1. Children Born from Marriages Legally Shari'a and Registered Under the Marriage Law

Children born from legal marriages are children born from marriages that follow the procedures of Article 2 paragraph 1 and paragraph 2 of Law Number 1 of 1974. The position of a legitimate child can be seen from the provisions, among others:

1. The 1945 Constitution of the Republic of Indonesia, in Article 28-B paragraph 1, states that everyone has the right to form a family and continue their offspring through legal marriage;
2. Law Number 1 of 1974 concerning Marriage in Article 42 states that "legitimate children are children born in or as a result of legal marriages.;
3. Article 2 paragraph (1) states that "marriage is legal, if it is carried out according to the law of each religion and belief; (d) and Article 2 paragraph (2), namely: "Every marriage is recorded according to the applicable laws and regulations".

This article believes there is no need to expand the conversation because children born in or as a result of legal marriages are not the topic of discussion, although there are two sorts of children that will be detailed below.

3.2.2. Children Born from Legal Marriages in Shari'a and Not Registered Under the Law

Marriage Many phrases are used in the context of marriage registration to identify an unregistered marriage, including underhanded marriage, syar'i marriage, modin marriage, and kiyai marriage.[36] Unregistered marriages are marriages that materially meet the provisions of the Shari'ah in accordance with the intent of Article 2 paragraph 1 of Law Number 1 of 1974 but do not meet the provisions of paragraph 2 of the article in conjunction with Article 10 paragraph 3 of Government Regulation No. 9 of 1975.[36]

Unregistered weddings are those that are not documented by the PPN system. Marriages that are not supervised by PPN are religiously valid, but they have no legal standing since they lack proof of a valid marriage under the applicable laws and regulations.[15]

Unregistered marriage is a legal act that is not required by law; because there is a strong tendency in terms of the history of marriage law, that unregistered marriages are illegal marriages. However, in Article 5 paragraph (1) of the KHI there is implicit information that marriage registration is not a requirement for a valid marriage; but as a tool to create marital order. Therefore, Article 7 paragraph (3) of the KHI regulates the itsbat of marriage for unregistered marriages. In other words, unregistered marriages are legal; but not perfect. This imperfection can be seen from the provisions of Article 7 paragraph (3) KHI. In the general explanation of Article 7 KHI that this article is enforced after the enactment of the law on religious courts.[37]

Aqad in unregistered marriages are usually carried out in a limited circle, in front of a Pak Kiai or religious figure, without the presence of a KUA officer, and of course not having an official marriage certificate. In Article 2 paragraph 2 of the Marriage Law Number 1 of 1974 it is emphasized that every marriage is recorded according to the applicable laws and regulations. Marriages that are not registered religiously are legal if they meet the requirements and pillars of marriage. However, because the marriage is not registered, it is considered invalid in positive law because it is not recognized by the state (basically Article 1 paragraph 2 of Law No. 1 of 1974).[38]

An unregistered marriage will eliminate the wife's right to sue legally. In other words, women do not get legal protection. Such a marriage is contrary to the aspect of gender equality. Therefore, according to M. Quraish Shihab, unregistered marriages are a form of harassment against women because they can deprive women of their rights.[39] Any marriage other than that which is officially registered in the country's law is invalid.[40]

3.2.3. Children born outside of legal marriage according to Islamic law

A kid born outside of a formal marriage is the result of a connection between a man and a woman that has no marriage bonds. Children who are fertilized before marriage and born after a legal marriage are associated with this term. Imam Malik and Imam Shafi'i are of the opinion that in such a marriage:

"If the child is born after six months of the marriage of his mother and father, then the child is assigned to his father. If the child is born before six months, then the child is assigned to his mother only".[41]

Imam Shafi'i's viewpoint differs from that of Imam Abu Hanifah, who stated:

"That a child born out of wedlock is still assigned to his father as a legitimate child, regardless of the conditions of his birth".[41]

The scholars' differing interpretations of the term "firasyy" in the Prophet's hadith "children are for the owner of the mat and for adulterers, stoning is the law" are the source of this disagreement. The majority of scholars understand "firasyy" to mean "a lady" (her mother), which is interpreted as iftirasy (sitting on her knees). However, some scholars interpret "man" in a different way (his father)"

Meaning: From 'Aisha ra. That he said: Sa'ad ibn Abi Waqqash and Abd ibn Zam'ah fought over a child and then Sa'ad said: O Messenger of Allah, this child is the son of my brother 'Utbah ibn Abi Waqqash he told me that he is his son, see the resemblance. 'Abd ibn Zam'ah also said: "This child is my brother, O Messenger of Allah, he was born from the owner of the mattress (firasyy) of my father from his mother. Then the Messenger of Allah saw the appearance of the child and he saw a clear resemblance to 'Utbah, the Messenger of Allah said: "This child is your brother, O 'Abd ibn Zam'ah. The child is for the owner of the bed of the woman who gave birth (firasyy) and for the adulterer is (punished) a stone, and veil from him, O Sauda Bint Jam'ah. Ayesha said: she never saw Sauda at all.

Scholars disagree over how to comprehend and interpret the word "firasyy" in the hadith's editorial: "The child is for the owner of the bed, and for the adulterer, stoning is the law." The majority of experts understand "firasyy" to refer to the "woman" (mother), which is derived from iftirasy action (sitting on her knees), and the child is thus ascribed to his mother's lineage. Other scholars take "man (father)" to mean "male (father)," and claim that children born of adultery are nonetheless allocated to their father's lineage.

What's important to remember is that in legal istimbat, the ulema must essentially refer to the majority's opinion in order to determine and judge a case. Because the majority's point of view is more widely accepted than the minority's point of view. As a result, according to the majority of academicians, children born of adultery should be assigned to their mothers rather than their fathers.

According to Syafi'i, a child born in this manner will face the following legal ramifications:

1. There is no kinship with his father. The child only has a kinship relationship with his mother.
2. The father is not obliged to provide maintenance for the child, but biologically he is still his son. So the relationship that arises is only human, not legal.
3. There is no mutual inheritance with his father, because the kinship relationship is one of the causes of inheritance.

4. Fathers cannot be guardians of children out of wedlock. If the child out of wedlock happens to be a woman and is an adult and will marry, then she has no right to be married off by her biological father.[42]

Meanwhile, based on article 2 paragraph 2 of the Law. No. 1/1974, if the marriage is not registered, it will have various consequences, including:

1. The state does not provide protection and is detrimental to women and children.
2. Women are considered not legal wives because they do not have authentic evidence.
3. The wife is not entitled to a living, property and inheritance.
4. Children are not entitled to a living and inheritance.
5. No acknowledgment of the relationship with the biological father.

3.3. Perspective of Islamic and Positive Law

According to Islamic law, if a husband and wife marry legally and the wife conceives and gives birth to a child, the husband can deny the existence of the child if: (1) the wife is past the maximum period of pregnancy from the time of divorce.[43]

Islamic law stipulates that in order for a child to be considered a legitimate child of his mother's husband, the child must be born at least six months after the marriage or within the 'iddah period of four months and ten days after the marriage is terminated.[44] "A child born after surpassing the 'iddah time after the marriage is terminated, is a lawful child of his ex-husband as long as it can be presumed that his birth was caused by sexual intercourse between the ex-husband and wife," a sect of fiqh scholars maintain. Given these differences of view, a maximum grace period of four years has been established, provided that it is clear that the mother did not excrete over the previous four years.[44]

Thus, even though the child was born in a lawful marriage, if the infant is born fewer than six months after the marriage, the child cannot be connected to his father through kinship. He only has a kinship relationship with his mother, this is where the difference is between fiqh views and the Indonesian Marriage Law. Because, the view of fiqh does not recognize marriage registration, the meaning of outside marriage recorded according to the Marriage Law is the same as adultery, while in fiqh (Islamic law) it is not an adulterous child as long as the pillars and conditions of marriage are fulfilled according to syar'i. Therefore, it is true that the Constitutional Court's decision Number 46/PUU- VIII/2012

dated 17 February 2012 states that: children born outside of a registered marriage cannot be equated with children born due to adultery. Children born from unrecorded marriages that meet the pillars and circumstances are considered legitimate by religion.

Meanwhile, adultery children are children born from marriages that are not valid according to religion, even though they are registered according to law.

Furthermore, the position of children according to Law No. 1 of 1974 concerning Marriage distinguishes legal and illegitimate offspring:[45]

1. Legal descendants are regulated in Article 42 of Law no. 1 of 1974 concerning Marriage: A legitimate child is a child born in or as a result of a legal marriage.
2. Illegal offspring is regulated in Article 43 of Law no. 1 of 1974 concerning Marriage:
3. Children born out of wedlock only have a civil relationship with their mother and their mother's family.
4. The position of the child in number 1 above is further regulated in a Government Regulation (However, there is currently no such government regulation).

Denial of children by the husband, regulated in article 44 of Law no. 1 Year 1974:[45]

5. A husband can deny the validity of a child if he can prove that his wife has committed adultery and the child is the result of that adultery.
6. The court makes a decision about the legality of the child at the request of the interested party.

Based on the preceding discussion, it is clear that at least the three criteria listed above each have their own legal concerns, because if it pertains to a situation in which there has never been a marriage, children born from *Sirri* marriages cannot be classified. Because the child was born in or as a result of a lawful marriage, the child was born out of wedlock. If the purpose is to have an unregistered marriage, the construction of the sentence in Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage is insufficient, because marriage and registration are two separate things, even if one influences the other.

The birth of a child that is not preceded by a marriage bond confers status on the child born out of wedlock. While the modern concept of *Sirri* marriage is a marriage in which the bride and groom fulfill all of the pillars and criteria of marriage according to Islamic law, However, because the marriage was not performed in front of a marriage registrar, it was not registered in the marriage register at the Marriage Registrar Office and no government-issued marriage certificate was produced.

The institution of recognition and ratification is not recognized by Law No. 1 of 1974 concerning Marriage; yet, such things exist in customary law. Because of the brevity of the provisions of this Marriage Law regarding the position of the child, if the previous provisions (Civil Code) described above have not been regulated in the Marriage Law and they wish to use them, they may do so under the provisions of Article 66 of Law No. 1 of 1974 concerning Marriage.

Naturally, a woman cannot become pregnant without the ovum and spermatozoa coming into contact, either through sexual intercourse (coitus) or by alternative ways based on technical advancements that result in fertilization. As a result, it is incorrect and discriminatory when the law states that a kid born from a pregnancy resulting from sexual encounters outside of marriage has solely a mother-child bond. It is also inequitable and unjust if the law absolves a man of his responsibilities as a father if he engages in sexual activity that results in pregnancy and the birth of a child while simultaneously nullifying the kid's rights against the father. Furthermore, it is feasible to show that a child is the offspring of a specific guy using current technical breakthroughs. The legal result of a legal event of birth due to pregnancy, which is preceded by sexual contact between a woman and a man, is a legal relationship with reciprocal rights and obligations, with the child, mother, and father as legal subjects.

Thus, showing the existence of a blood relationship between a child and a man as a father can be used to establish a relationship between a child and a man as a parent that is not only based on marital ties. As a result, regardless of the marriage's form or administration, the child born must be given legal protection. Though this is not the case, a kid born out of wedlock will suffer injury, even if the infant is innocent because his birth was forced upon him. Children who are born without an obvious father figure in their lives are frequently subjected to discrimination and shame in society. The law must give equitable legal protection and assurance for the status of a kid born and the rights that he possesses, especially for children born when the marriage's legitimacy is still in question.

4. Closing

1. Law Number 1 of 1974 concerning marriage states that a marriage is said to be valid if it is recorded in accordance with the provisions of Article 2 paragraph (2), therefore, a serial marriage is considered invalid because it does not fulfill the elements of the article. According to Islamic Law, a serial marriage is said to be valid if it meets the requirements for the validity of the marriage and is carried

out according to the law of each religion and belief, this is based on Article 2 paragraph (1) of Law Number 1 of 1974 and Article 4 of the Compilation of Islamic Law. Or in other words, a marriage is valid according to Islamic law if it meets the requirements and pillars of marriage.

2. Children born in Shari'a-compliant marriages who are not registered under the marriage law. Marriage which is carried out according to article 43 paragraph 1 of Law Number 1 of 1974 concerning Marriage does not stand alone, it is closely related to the existence of marriages carried out based on articles 2 paragraphs 1 and 2 of Law Number 1 of 1974 concerning marriage. This marriage is called outside marriage, because the marriage was carried out outside the procedure in Article 2 paragraph 2. However, this marriage should not be interpreted as adultery, because marriage that is included in the category of adultery is a marriage that is carried out without the fulfillment of the pillars and conditions according to Islamic law, not marriage. according to the Act. Thus, children born from legal marriages under Islamic law that are not registered under the Marriage Law are not considered adulterous children or children born out of wedlock due to adultery because the child was born from a lawful marriage that is also protected by law.

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