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## Timeline of the Concept of Child Regulations Out of Wedlock (Study of Family Law Rules in Indonesia)

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# Timeline of the Concept of Child Regulations Out of Wedlock (Study of Family Law Rules in Indonesia)

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**Abstract.**

Rules regarding children out of wedlock in Indonesia are divided into three laws starting from the Marriage Law, the Presidential Instruction on KHI, and the Civil Code. Following the Constitutional Court Decision No.46/PUU-VII/2010 the rules regarding children out of wedlock in the Marriage Law have also undergone re-reading. Each legal regulation for children out of wedlock has different legal consequences, so it is interesting to study about the concept of children out in the timeline of civil law regulations in Indonesia. This paper aims to find out the concept of children out of wedlock in the timeline of legal regulations in Indonesia. This research uses normative legal research with a statutory approach. The results of this study stated that the regulation of children out of wedlock was accommodated after the recognition of the Civil Code in the Indonesian legal system. On January 2, 1974 the provision of children out of wedlock was regulated in Article 43 paragraph (1) of the Marriage Law, after the promulgation of the Presidential Instruction on KHI the provision of children out of wedlock was regulated in Article 100 of the Presidential Instruction on KHI where children out of wedlock only had civil rights with the mother and her mother's family. And, Constitutional Court Decision No.46/PUU-VII/2010 makes children out of wedlock have civil rights with their mother and father as long as it can be proven by technology and science.

**Keywords:** timeline, concept, child regulations out of wedlock, family law, Indonesia

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## 1. INTRODUCTION

Islam is a religious rule that has the nature of regulating all aspects of human life [1], in every aspect of its teachings Islam establishes rules (read: *shari'ah*) as basic values that must be carried out in human life [2]. In an effort to maintain the *shari'ah*, Islam established *maqasid al-syariah*, Syathibi explained the value *maqasid al-syariah* consists of three classifications which are primary, secondary, and tertiary, where each of these classifications must pay attention to five aspects of life in protecting religion, which include the human soul, mind, lineage, and property [3], [4].

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Islam stipulates that in aspects of life as an effort to protect offspring, marriage is determined to be part of the solution for channeling sexual desires and is the only entity that is legalized in an effort to increase offspring [5], [6]. However, even though Islam has stipulated marriage rules, there are still many Muslims who deviate from these marriage rules, so the implication that is presented is the birth of offspring obtained outside of marriage rules (read: children out of wedlock) [7], [8].

The concept of children out of wedlock has been known by Indonesian people long before the Indonesian state was formed, in the customary law system children out of wedlock in some Indonesian customary areas consider the concept of acts that occur [9], but in the concept of other customary territories in Indonesia the process of childbirth is taken seriously by a woman and a man who does not have a partner outside the legal act of marriage, thus giving birth to the concept of forced marriage between men and women who give birth to children outside marry [10].

Indonesia as a country that upholds divine, moral and legal values as reflected in Pancasila [11], since this country was founded, it has regulated provisions for children out of wedlock in several legal regulations. The rules for children out of wedlock in law in Indonesia are legally formally regulated for the first time in Article 272 of the Indonesian Civil Code (read: Civil Code). The legal basis for the Civil Code is enforced as a rule of law in Indonesia based on Article 1 of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia which states that all laws and regulations that apply in Indonesia as long as they have not been regulated by other laws and regulations are still valid [12].

After the birth of Law Number 1 of 1974 concerning Marriage (read: Marriage Law) the rules for children outside of marriage are regulated in Article 43 paragraph (1) of the Marriage Law, the purpose of this law which was passed on January 2, 1974 is as follows: process of codification and unification of marriage law rules that apply to all Indonesian people [13].

The rules for children out of wedlock in Indonesian Islamic law are regulated in Article 100 of Presidential Instruction Number 1 of 1991 concerning the Dissemination of Presidential Instructions on KHI (read: Presidential Instructions on KHI) where the phrase "civil" in the Marriage Law is changed with the phrase "nasab" " makes the rules regarding children born out of wedlock read "Children born outside of wedlock only have a family relationship (nasab) with their mother and their mother's family".

Along with advances in technology and the problems that surround people's lives, the concept of children out of wedlock as contained in Article 43 paragraph 1 of the

20 Marriage Law has also experienced an expansion of word phrases with the Constitutional Court Decision Number: 46/PUU/VIII/2010 (read: Constitutional Court Decision No. 46/PUU/VIII/2010) in which the rules of Article 43 paragraph 1 of the Marriage Law must be read, that children out of wedlock have civil rights with the mother and the mother's family as well as the man who is the father and the father's family through the process of proving evidence with science and technology.

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The concept of extramarital children accommodated by several existing regulations in Indonesia basically makes each legal regulation regarding children out of wedlock have different implementations and cause different legal consequences. Based on this thinking, it is interesting to study the concept of extramarital children in the timeline of legal regulations in Indonesia. The purpose of this writing is to find out the concept of extramarital children in the timeline of legal regulations in Indonesia.

Husni, Rosa, Handayani, and Putri have basically conducted a study of children out of wedlock. This research focuses on the position of children out of wedlock in positive law and Islamic law, therefore this research is entitled "Analysis of the Status of Children Out of Wedlock Against Their Parents: Comparative Study Between Positive Law and Islamic Law" with the results of research on civil status in positive law children out of wedlock have civil relations with their mothers and fathers, while in Islamic law children out of wedlock only have civil relations with their mother and mother's family [14]. The difference between the research done by the author and the research done by Husni and his friends is based on the object of the study done by the author who tried to study more about the concept of children out of wedlock based on the timeline of the rule of out-of-wedlock children in Indonesia.

## 2. METHODOLOGY/ MATERIALS

This research is a normative legal research [15], about the concept of rules for children out of wedlock in the timeline of family law rules in Indonesia. This study uses a statutory approach [16] in explaining various rules regarding the concept of children out of wedlock in Indonesia so that a new legal understanding of the rules for children out of wedlock in Indonesia will be obtained.

## 3. RESULTS AND DISCUSSIONS

Children out of wedlock were known in Indonesia long before the independent Indonesian state, in the Indonesian customary law system the term child out of wedlock was

known, in Javanese customary society a woman who gave birth to a child out of wedlock caused conflict in the family and society, besides that women who gave birth to a child out of wedlock Marriage will also get gossip from society [17], the classification of the civil concept of illegitimate children in Indonesian customary law is divided into 3 forms [18]:

1. In a society that adheres to a patrilineal system, children out of wedlock have civil relations with the mother who gave birth and are related to the family, so that in this case the child out of wedlock does not have the right to inherit from the man who impregnated his mother;
2. In a society that adheres to a matrilineal system, the civil rights of children out of wedlock only materialize if the biological man of the out of wedlock child acknowledges the child by marrying the mother of the out of wedlock child. This is done because in a matrilineal society system, women who give birth to children outside of marriage are considered to be a disgraceful act;
3. In a society that adopts a bilateral system, children out of wedlock inherit the mother's and family's assets, but it does not rule out the biological father of children out of wedlock to provide inheritance.

After Indonesia's independence, the legality of children outside of marriage is regulated in Article 272 of the Civil Code which states,

"Children out of wedlock, except those born from adultery or blood desecration, are legalized by marriages that follow from their father and mother, if before carrying out the marriage they have made a legal recognition of the child, or if the recognition occurs in the marriage certificate itself".

The civil status of an illegitimate child in the Civil Code can only be recognized if later the parents of the child acknowledge the child born as explained in Article 280 of the Civil Code [19], [20].

Provisions for children out of wedlock after the promulgation of the Marriage Law, regulations for children out of wedlock are regulated in Article 43 paragraph (1) of the Marriage Law which states "Children born out of wedlock only have civil relations with their mothers and their mothers' families". There is a fundamental difference regarding the rules for children out of wedlock in the Marriage Law and the Civil Code, where the Marriage Law states that the civil rights of children out of wedlock are automatically attached to the mother who gave birth to the child, the next difference is that the Indonesian Marriage Law does not recognize child recognition institution [21].

In line with the Marriage Law, Islamic law in Indonesia, which is contained in the Presidential Instruction on KHI, explains that children out of wedlock are in a relationship lineage just tied with lineage mothers who give birth to children out of wedlock, this is stated in Article 100 of the Presidential Instruction on KHI. The Presidential Instruction on KHI is a rule made as a material rule and implementing rule of the Marriage Law, so there is a similarity of thought between the Presidential Instruction on KHI and the Marriage Law in addressing the concept of children out of wedlock [8].

The Marriage Law and the Presidential Instruction on KHI do not explain the definition of children out of wedlock in terminology, the Marriage Law and the Presidential Instruction on KHI only explain the term legitimate children. Article 42 of the Marriage Law provides a definition of a legitimate child as a child born in a legal marriage, and Article 99 of the Presidential Instruction on KHI states that there are 2 definitions of a child being considered as the first legitimate child, a child born through the consequences of a legal marriage and the second, children resulting from legal actions of husband and wife outside the wife's womb and born by the wife.

Looking at Article 99 of the Presidential Instruction on KHI to provide terminology for illegitimate children, Article 99 of the Presidential Instruction on KHI can be understood in reverse terms which in the method of discovering Islamic law is called ~~XXXXXXXX~~ ~~XXXXXXXX~~ [22], so that it can be defined that what is called a child out of wedlock is first, a child born outside of a legal wedlock, and secondly, a child born out of wedlock, but born after his parents are married.

The second definition of a child out of wedlock results from an inverted understanding process in Article 99 of the Presidential Instruction regarding KHI, in the provisions of Article 272 of the Civil Code they are still considered legitimate children as long as they are acknowledged by both parents, the provisions of Article 272 of the Civil Code are then strengthened by Article 50 of Law Number 23 of 2006 concerning Population Administration which states that child ratification must be reported to the implementing agency no later than 30 days after the father and mother of the child have married and ratified the child, but this only applies to parents whose religion justifies the child's recognition [14].

Law is an entity that will always develop following the timeline, place and circumstances in which the law operates and is applied [23], [24], the Constitutional Court based on a request for a review of Article 43 Together Article 2 paragraph (1) of the Marriage Law issues Constitutional Court Decision No. 46/PUU/VIII/2010, so that Article 43 paragraph (1) of the Marriage Law must be read,

“A child born out of wedlock has a civil relationship with his mother and his mother’s family as well as with the man as the father which can be proven based on science and technology and/or other evidence according to law to have blood relations, including civil relations with his father’s family”.

After the issuance of the Constitutional Court Decision No. 46/PUU-VIII/2010, children out of wedlock apart from having civil relations with their mother and their mother’s family, children out of wedlock also have civil relations with men as their fathers by first proving through science and technology or other evidence which states that between the child with the man who is suspected of being the father having blood relations. The legal consequence of this decision is that a child out of wedlock has the right to a living, living costs, care, education, and other forms of protection until the age when the child reaches adulthood, in other words, after the issuance of the Constitutional Court Decision No. 46/PUU-VIII/2010, parents may not abandon children born outside of legal marriage, but must be guaranteed their protection, growth and development, and their dignity and worth are upheld.

#### 4. CONCLUSION AND RECOMMENDATION

The rules for out-of-wedlock children in the civil law regulations in Indonesia are seen from the time they came into force starting with the recognition of the Indonesian Civil Code, then after the promulgation of the Marriage Law, children out of wedlock are regulated in Article 43 paragraph (1) of the Marriage Law, and also regulated in Article 100 The Presidential Instruction regarding KHI, and the rules for illegitimate children in Indonesia underwent a change in the concept of meaning after the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010. With regard to the regulation of children out of wedlock it is interesting to review the process of unifying the rules of children out of wedlock in Indonesia.

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### Timeline of the Concept of Child Regulations Out of Wedlock (Study of Family Law Rules in Indonesia)

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**Abstract.**  
Rules regarding children out of wedlock in Indonesia are divided into three laws starting from the Marriage Law, the Presidential Instruction on KHI, and the Civil Code. Following the Constitutional Court Decision No.46/PUU-VII/2010 the rules regarding children out of wedlock in the Marriage Law have also undergone re-reading. Each legal regulation for children out of wedlock has different legal consequences, so it is interesting to study about the concept of children out in the timeline of civil law regulations in Indonesia. This paper aims to find out the concept of children out of wedlock in the timeline of legal regulations in Indonesia. This research uses normative legal research with a statutory approach. The results of this study stated that the regulation of children out of wedlock was accommodated after the recognition of the Civil Code in the Indonesian legal system. On January 2, 1974 the provision of children out of wedlock was regulated in Article 43 paragraph (f) of the Marriage Law, after the promulgation of the Presidential Instruction on KHI the provision of children out of wedlock was regulated in Article 100 of the Presidential Instruction on KHI where children out of wedlock only had civil rights with the mother and her mother's family. And, Constitutional Court Decision No.46/PUU-VII/2010 makes children out of wedlock have civil rights with their mother and father as long as it can be proven by technology and science.

**Keywords:** timeline, concept, child regulations out of wedlock, family law, Indonesia

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### 1. INTRODUCTION

Islam is a religious rule that has the nature of regulating all aspects of human life [1], in every aspect of its teachings Islam establishes rules (read: *shari'ah*) as basic values that must be carried out in human life [2]. In an effort to maintain the *shari'ah*, Islam established *maqasid al-syariah*, Syathbi explained the value *maqasid al-syariah* consists of three classifications which are primary, secondary, and tertiary, where each of these classifications must pay attention to five aspects of life in protecting religion, which include the human soul, mind, lineage, and property [3], [4].

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