

The Legal Status of Children Not in Marriage from The Perspective of Positive and Islamic Law

(Case Study of the Determination of the Cirebon Religious Court No. 13/Pdt.P/2022/PA. CN)

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Abstract

The study aims to present the phenomena, their contributing variables, and the effects of children's legal status outside of marriage. In this instance, the author presents the Cirebon Religious Court's Determination No. 13/Pdt.P/2022/PA—CN case study. Three methods are used to acquire data: documentation, interviews, and observation. Editing, classification, verification, and analysis are among the methodical steps used in data processing and analysis. Based on the findings of this study, it can be said that children lose some of their rights to their biological parents when a marriage fails or is harmed because it does not meet Islamic law's conditions for marriage harmony. The fact that Petitioner I married Petitioner II within the iddah period from her ex-husband is one of the most deadly reasons for marital dissolution in this instance. The child is the most disadvantaged party. Except for a required will, a child cannot be assigned to his biological father, loses guardianship status, and is not entitled to an inheritance in the event of his father's death. The Constitutional Court stepped in to provide clarification in response to this debate by ruling that biological fathers must continue to pay for their children's upbringing, education, and medical care until adulthood.

I. Introduction

The goal of marriage, which is an inborn connection between a man and a woman, is to provide a tranquil, cozy, and familial environment (Saebani, 2008). Marriage is also an effort to achieve the goal of Islamic law, namely *hifdz an-nasl* (protecting offspring), in order to preserve offspring and avoid damage in determining the destiny that is entrusted to the father. Therefore, the fulfillment of human biological needs must be under religious norms, to avoid adultery (Yazid, 2004). Meanwhile, the purpose of marriage in Islamic teachings is to fulfill the physical and spiritual needs of humans, as well as to establish a family order and maintain the continuity of life in the world. In addition, marriage serves as a means to prevent adultery, enabling the attainment of both individual and inner peace within the family and society (Armia & Nasution, 2020).

Allah SWT has commanded His servants to stay away from the practice of adultery, because it is a heinous act and should not be done by a reasonable human being, as Allah SWT says.

وَلَا تَقْرَبُوا الزِّنَا إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: "And do not approach adultery, indeed adultery is an abominable act and a bad way" (QS Al Isro verse 17).

If approaching adultery is prohibited, then committing adultery is forbidden. This practice is strictly prohibited and may result in severe sanctions, as it can cause harm to the perpetrator, their descendants, and families, as well as bring embarrassment. The relationship between a man and a woman living in the same house as husband and wife, commonly referred to as a couple in European countries, is ubiquitous. Even though they had children as a result of the relationship, they then separated because there was no match; this phenomenon is also considered normal.

Therefore, in order to protect rights and obligations, Islam has set norms to fend off this. Marriage is a very appropriate solution to overcome this problem, as well as the commandment from Allah that has been stated in His Kalam:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً
إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And among His signs is that He has created for you couples of your kind, so that you may be inclined and at peace with him, and He has made love and affection among you. Indeed, in such a thing, there are signs (of Allah's greatness) for the people who think." (QS Ar Rumm (30):21)

With this marriage of a man and a woman, if they are given offspring, then the child's destiny is entrusted to the sperm owner (husband) until the child's destiny is fulfilled. The child will also obtain guardianship rights from the father, such as a marriage guardian. Not only that, but children are also entitled to inheritance rights if the father dies.

With children born out of adultery, the situation is different because only the woman

and her family are responsible for their future. If his daughter were to marry in the future, the sperm donor could not be appointed guardian. Similarly, the child cannot inherit if the father passes away.

Legal and illegitimate children are the two categories into which family law divides the status of children. First, Article 42 of Law No. 1 of 1974 defines a legal child as follows: "A legitimate child is a child born in or as a result of a valid marriage" (Syarifudin, 2009). In the meantime, marriages performed under the relevant religious laws or beliefs are accepted in Indonesia. According to Article 2 of Law No. 1 of 1974, they are recorded in accordance with the relevant rules and regulations.

The Islamic religion has stipulated in fiqh that the child has the status of a legitimate child if born to a married couple by meeting the minimum limit of gestation. According to the agreement of scholars of jurisprudence, the minimum gestation period for a woman is six months. As stated in the Qur'an:

وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا

Meaning: "*Conceive and weaning it for thirty months*" (Al-Ahqaf (46): 15).

In addition to the above verse, Allah 'Azza wa Jalla has also given an affirmation in a verse:

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَى وَهْنٍ وَفِصَالُهُ فِي عَامَيْنِ أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ إِلَيَّ الْمَصِيرُ

Meaning: "*And We command man against his parents; His mother had become pregnant in a weakened and weakened state, and weaned him within two years. Thank you for your return.*" Luqman (31): 14.

The issue of children arising from extramarital affairs is highly complicated in terms of their civil status and legal standing. The Compilation of Islamic Law (KHI) is the reference material used by the State of Indonesia to govern the establishment of Religious Courts. Article 100 of the KHI specifically states that "Children born outside the marital relationship only have a nasab relationship with their mother and their mother's family." Therefore, the child's only legal identity is that of the mother who gave birth to him. The statement "Children born out of wedlock only have a civil relationship with their mother and their mother's family" (Nurudin & Tarigan, 2006) is another clear explanation of it found in Article 43, paragraph (2) of Law No. 1 of 1974. In actuality, the child only states the name of the woman who gave birth on a birth certificate issued by the government in the administrative sector. Moreover, the biological father's name will never appear. The child must also deal with the psychological effects of being born fatherless (Nurul, 2012).

2. Research Method

Particularly for the case study research, the Cirebon Religious Court serves as the research site. A case study, according to John W. Creswell, is a research technique where researchers closely examine a program, event, activity, or procedure that is carried out by a group of people. In certain situations, time and activity constraints force researchers to use a variety of data collection techniques to unearth information in full terms within predefined time frames (Creswell & John, 2008). In the meantime, field research is the type of research that is employed; in this instance, it is defined as a research method that aims to observe phenomena in real terms in order to recognize the reality that occurs in the location and apply a qualitative approach type (Gunawan, 2014).

Descriptive data, such as people's written or spoken statements or observed behaviors, are typically produced using the qualitative approach. Additionally, it uses primary and secondary data sources as its foundation for analysis. The author of this study used a random sampling approach, which is one in which the researcher chooses how to select participants. There are two categories of data sources: primary and secondary. Informants who have direct interaction with the research item serve as the study's main source of data. Through library research, which entails gathering information from a variety of sources pertaining to the research topic, such as books, journals, the internet, and other pertinent literature, the author acquires secondary data sources in the interim. information that has been fully gathered from the study site using methods such as documentation and interviews. The data is then assembled and processed through a number of steps in accordance with the goal of the research study in order to enable a suitable analysis. Researchers go through several phases of data processing and analysis, including: 1) Editing, 2) Classification, 3) Verification, and 4) Analysis (Sugiyono, 2017).

The Miles and Huberman data analysis approach, which includes the following steps: data reduction, data presentation, and conclusion and verification, was used by the author to collect data continuously during the investigation. In theory, categorization and classification are two steps in the data analysis process. By employing qualitative descriptive data analysis, the researcher aims to address the issues raised by the study object. In particular, the researcher initially examines the findings from open-ended interview questions with respondents that were gathered during the data collection period. After that, it is divided and categorized for comparison, and then examined and confirmed. This is done to derive precise and practical implications from the findings of several study sites (Moleong, 2015).

3. Results and Discussion

The marriage of the mother and father frequently reflects the status of the children. Generally speaking, there are two categories of children's status: legally recognized children and children born outside of marriage. An attempt is being made to determine the significance of children out of wedlock by combining Islamic and civil law. An out-of-wedlock child is equivalent to an adulterous child, which is defined by Islamic law as a child born to a woman who is not legally married to the man who has intercourse with her. This male-female sexual activity is applicable to both single and married individuals (Supramono, 1998).

Islam strongly condemns the act of adultery, even approaching the practice of adultery is prohibited, because it has very detrimental consequences for the perpetrator, family, community, and children resulting from adultery. As Allah SWT says:

وَلَا تَقْرُبُوا الزَّانِيَ ۚ إِنَّهُ كَانَ فَحِشَةً وَسَاءَ سَبِيلٌ

Meaning: *"And do not approach adultery, indeed adultery is an abominable act. And a bad way (QS. Al-Isro' (17): 32.*

In the meantime, civil law distinguishes between three types of unmarried children: acknowledged unmarried children, incestuous children, and adulterous children. A child of a man and a woman who have one or both a marriage link with another individual is referred to as an adulterous child. offspring born from sexual connections between men and women who are not allowed to marry, specifically those who still have blood relations or incest, are referred to as incestuous offspring (Hartanto, 2015). Children born outside of marriage may be allowed if both parents agree, in addition to crooked and adulterous children (Witanto, 2012). According to Article 272 of the BW, a child born to a mother who was not conceived by a man who was legally married to the kid's mother is considered to be out-of-wedlock. Children of this type are not classified as incestuous or adulterous.

Human nature does not distinguish between a child born out of wedlock and a child born in a lawful marriage. The State and the law provide sufficient protection for both kinds of children as legal subjects. Since no single religion upholds the concept of heredity, the stigma associated with unmarried children—often referred to as haram children, kampang children, incestuous children, kowar children, astral children, and so forth—must be eliminated. The community has to broaden their perspectives; up until now, they have used derogatory language to casually discuss unmarried children, as though they will bring about calamity. This is due to the fact that these youngsters were not born into their families. Naturally, if these children are born into their families and relatives' wombs, they will likewise make a valiant effort to eradicate the negative stigma associated with unwed children (Nurhayati, 2015).

The act of adultery and haram that his parents have committed cannot give the

stigma of haram to the child either. Children who are born because of any relationship must still be seen as a holy child and free from the sins of both parents. Before the law, they must be granted equal rights and status as legal children in general. Children face legal prejudice outside of marriage in addition to social discrimination in society. Children are divided into lawful and out-of-wedlock categories by the legislation itself. However, there is no precise definition of an out-of-wedlock child in the law. Article 250 of the Civil Code states that "Every child born or raised during the marriage acquires the husband as his father," which is the definition of a legal child. A legal child is defined as "a legitimate child is a child born in or as a result of a legal marriage" in Article 42 of the Marriage Law. Children born outside of a legal marriage and children born outside of a valid marriage are therefore considered out-of-wedlock from the perspective of a scenario.

Universally, Article 52, paragraph (2) of Law Number 39 of 1999 concerning Human Rights (UUHAM) contains the human rights regulations governing children's rights. According to the article, a child's rights are human rights, and they are legally recognized and safeguarded for their benefit from the moment of conception onward. Furthermore, it states that all children, regardless of where they are from, have the right to be protected by their families, communities, and the government. According to the 1945 Constitution's 28 B paragraph (2), "Every child has the right to survival, growth, and development and has the right to protection from violence and discrimination." This Human Rights Law's provisions fall within this paragraph.

The right to life and the right to liberty have been recognized as fundamental human rights. Based on these Human Rights, other human rights have been developed to ensure that human beings live properly as whole human beings in society and receive the same treatment and services. In principle, human beings, including children, have the right to freedom, commonly referred to as liberty, which leads to the goal of a more prosperous life and better education (Dardji, 1979). Article 53 of the Human Rights Law explains:

1. Every unborn child has the right to life, to sustain life, and to raise their quality of life.
2. All children are entitled to a name and citizenship status from the moment of birth.

According to the international agreement enshrined in the United Nations Convention on the Rights of the Child, children's rights are human rights. An international agreement known as the Convention on the Rights of the Child governs children's civil, political, economic, and cultural rights. According to Presidential Decree Number 36 of 1990, concerning the Ratification of the Convention on the Rights of the Child, the Indonesian government has ratified the convention. The 54 articles that comprise the Convention on the Rights of the Child are based on legal documents that specify laws regarding children's rights and the procedures by which participating States that have signed the Convention can implement such laws. The content falls into four categories, which are as follows:

a. *Survival Rights*

This right to survival encompasses the right to preserve and maintain life, health, and

access to quality care. Because children are the buds of the nation, the government has adopted the Convention on the Rights of the Child.

b. Protection *Rights*

Protection from violence, neglect, and discrimination is part of the right to protection. The state works to eliminate the stigma associated with unmarried children and children with physical and mental disabilities because these groups frequently face discrimination in their families and communities.

c. Right to Development *Rights*

To achieve physical, mental, spiritual, moral, and social development, the right to grow and develop encompasses both formal and informal education. In this instance, the government's implementation entails the launch of package A, package B, and package C education services in addition to a nine-year mandatory education program..

d. Participation *Rights*

A child's right to participate includes the ability to voice their opinions on any issue that impacts them.

The 54 articles that make up the Convention on the Rights of the Child can be divided into the following 10 categories of children's rights:

- 1) The right to play.
- 2) The entitlement to an education.
- 3) The entitlement to safety.
- 4) The entitlement to an identity, or name.
- 5) The ability to acquire nationality status.
- 6) The right to food.
- 7) The entitlement to health care.
- 8) The right to leisure.
- 9) The Equality Right.
- 10) The entitlement to participate in development.

Ijtihad of the Panel of Judges in handling Case Number. 13/Pdt.P/2022/PA. CN

The Panel of Judges has reviewed the witnesses' testimony and the evidence in this case. Accordingly, the ruling declares that the two petitioners' marriage is void since it does not satisfy Islamic law's standards for marital harmony. Children born from Petitioner I and

Petitioner II's marriage cannot be recognized as their legal children in order to lessen the detrimental effect on their children's status.

One of the justices of the Cirebon Religious Court, Mr. Muhammad Nurmadani, contended that the sexual relationship between Petitioner I and Petitioner II was not a component of the act of adultery at the time the author interviewed him. He cited the Criminal Code's article 284 paragraph (1), which states that a man who is single and has an unmarried lady with him cannot be found guilty of adultery. Adultery is defined by the Criminal Code as any sexual activity carried out by a man or woman who has married a woman or man who is not his spouse. He claimed that because Petitioner I married Petitioner II while she was still going through the iddah period after her divorce from her ex-husband, their marriage was ruined (fasid) because they did not adhere to the standards and harmony of matrimony. Their marriage is a fasid because of this (Nurmadani, 2022).

It is illegal to get married while a lady is going through the iddah phase. The statement "marriage is valid, if it is carried out according to the law of each religion and its beliefs" is emphasized in article 2 paragraph (1) of Law number 1 of 1974 about Marriage. According to KHI article 40 letter (b), which forbids the marriage of women who are still in the time of iddah with another man, the marriage is against the rules of Islamic teachings.

It is prohibited for women going through the first and second talaq phases of iddah talak raj'i to propose to or accept a male proposal from someone other than their ex-husband. Since talaq raj'i does not instantly end a husband and wife's relationship, the marriage is either shari'ah or kinayah. As long as the iddah period hasn't passed, the lady is essentially still her husband's legal wife, which he may regain at any time. Only until the iddah season ended did their marriage truly fall apart. The same is true for bereaved women who have filed for divorce from their husbands (talak teran), or who were divorced prior to interference. This phenomenon is a result of the possibility of reunification through the creation of a new marriage contract and a new dowry. Only ladies who are widowed due to their death or rejected by three people are permitted to enter into a covert marriage. This approach is used to prevent conflicts between the wedded widow and the deceased husband's relatives.

The prohibition of marrying a woman during the time of iddah has been affirmed in the words of Allah SWT:

وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ
يَبْلُغَ
إِلَّا بِأَذْنِ
بِ
أَجَلِهِ

Meaning: *And do not establish a marriage contract before the end of the iddah period* (QS. Al-Baqarah (2): 235).

The Compilation of Islamic Law in Indonesia, Article 40, Paragraph (2), accepted the aforementioned paragraph: "It is forbidden to marry a woman who is still in the period of iddah

with another man." The qiyas aulawi technique, which applies legal logic, was used by Indonesian scholars at the time this decision was made. It is forbidden to propose, but it is also forbidden to

marry a widow who is going through the iddah period.

The Panel of Judges is using *ijtihad* in this case by drawing on a number of legal sources, including both Islamic law and positive legislation established by the Indonesian government. These include the Third Amendment to Law Number 17 of 2016 concerning Child Protection, which declares that every child has the right to know their parents and to be raised and cared for by them, and Article 7 of Law Number 23 of 2002, as updated by Law Number 35 of 2014.

Children greatly need the presence of parents. In general, children who do not know the origin of their parents can experience a loss of confidence when socializing with their peers, even more so if a friend of their age acts as a bully against them. Excessive shame and fear, as well as excessive embarrassment, can foster insecure behavior in children. If this trait cannot be restored, it will impact the growth and development of children throughout their lives, extending into adulthood.

Similarly, excessive fear sometimes gives rise to a rebellious nature in the child's soul. Typically, children exhibit inappropriate speech and behavior. Essentially, their speech and behavior are designed to elicit sympathy from those around them. Raising children requires the involvement of both mothers and fathers in order for children to fulfill their anticipated role as the country's future generation. Childcare is the provision of ongoing supervision, upkeep, care, and instruction, together with financial support and/or other resources, to guarantee children's healthy physical, mental, spiritual, and social development. Children born to unmarried parents frequently have to deal with this reality. The status of the children is based on this unlawful marriage.

Law Number 35 of 2014 and the third amendment to Law Number 17 of 2016 concerning Child Protection amend Article 1 Paragraph 4 of Law Number 23 of 2002, which states that parents are the child's biological father and/or mother, father and/or stepmother, or father and/or adoptive mother. As a result, the existence of the father of each child must be legally recognized solely for the child's benefit and protection. This is another *ijtihad* of the Panel of Judges. Children and other laws are designed to safeguard children, their welfare, and their interests, especially unmarried children.

According to the Cirebon Religious Court, children born out of wedlock only have a civil relationship with their mother and her family, in accordance with Islamic law and the stipulations of Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage. However, in order for the wellbeing of children who are not married to receive the same treatment as children in general,

the child must have all of their interests and wants satisfied.

The Constitutional Court's ruling is one of the legal tools the panel of justices used to handle this matter. Islamic law is neither broken nor disregarded in this decision by offering an alternate law about unmarried children. The Directorate General of the Religious Judiciary, Religious Chamber, Religious High Court, and Aceh Sharia Court held a coordination meeting on September 17, 2019, as mentioned in Letter C of the Material Law Field Formulation of the Results of the Judicial Technical Affairs Commission Meeting. In Constitutional Court Decision Number 46/PUU-VII/2010, the term "civil relations" has been interpreted by this conference to include only civil ties and is deemed not to contradict religious values. Some of the following are included in the limited civil relationship:

1. Meet the needs of children's lives

Children are early human beings who are vulnerable to bullying and pressure from those around them. Children are considered weak physically, mentally, spiritually, and materially. The Constitutional Court is present to provide a defense to an out-of-wedlock child against his biological father related to alimony, education, health costs, and housing. Thus, no out-of-wedlock children are abandoned, as expected by the government (Nurmadani, 2022).

Even though the judge has ruled on the biological father's obligations to children out of wedlock, sometimes the father is still absent, in the sense that he does not fulfill his obligations. If that happens, then the out-of-wedlock child can file a maintenance execution lawsuit in the Religious Court by submitting details of the child's expenses or life financing. The out-of-wedlock child pleaded with the clerk to execute in the form of objects, such as houses, land, cars, and so on. The defendant can settle all of these lawsuits if the person concerned can fulfill them. The weakness of this ruling is that it lacks criminal sanctions that could have a deterrent effect on the biological father if he defaults on the Panel of Judges' decision (Brilyansyah, 2022). The government should protect children out of wedlock and prevent neglect, mainly by providing sanctions that cause deterrent effects to men who have caused the birth of the child to meet their living needs.

2. Giving a will.

The Constitutional Court (MK) issued Decision Number 46/PUU-VIII/2010 dated February 17, 2012 amending the provisions of Article 43 paragraph (1) of the Marriage Law so that it becomes: "A child born out of wedlock has 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 and technology

and/or other evidence according to the law to have a blood relationship, including civil relations with his father's family".

This decision creates a brand-new, previously unheard-of marital law provision. The following are the Constitutional Court's reasons:

- a. It is unjust and improper for the law to absolve a man of his paternal responsibilities in cases when his sexual activity results in pregnancy and childbirth.
- b. A legal relationship with reciprocal rights and obligations, involving children, mothers, and fathers as legal subjects, results from the legal event of birth owing to pregnancy, which is preceded by sexual contact between a woman and a man.
- c. According to Constitutional Court Decision No. 46/PUU-VIII/2010, dated February 17, 2012, the law must give a child's status and rights fair legal protection and certainty, even if the marriage's validity is still up for debate.

The Indonesian Ulema Council (MUI) believes that in order to protect the rights of children born out of adultery, *ta'zir*—the duty to provide for the child's living expenses and to leave property after his death through a mandatory will—should be imposed on the man who gave birth to the child, rather than granting him a civil relationship.

In its fatwa Number 10 of 2012, which was published on March 10, 2012 AD, the 18th of Rabi'ul Akhir 1433 H, the Indonesian Ulema Council (MUI) concluded that:

- a. The child of adultery has no *nasab*, *wali nikah*, heirs, or *nafaqah* relationship with the father who gave birth to him.
- b. The only relationships a child born of adultery has with his mother and her family are *nasab*, heir, and *nafaqah*.
- c. The sin of adultery committed by the person who gave birth to them is not carried by children born as a result of adultery.
- d. In order to protect legitimate kids, the government penalize adulterers (*hifz al-nasl*).
- e. The government can penalize adulterous males who give birth to children by requiring them to: a. provide for the child's necessities; and b. leave property in a will upon his death.
- f. The goal of the punishment mentioned in number five is to safeguard the child, not to make the child's *nasab* relationship with the guy who gave birth to him lawful.

In its Decision dated October 31, 2012, the National Meeting of the Supreme Court of the

Republic of Indonesia in Manado decided that children born from extramarital affairs and marriages under the hand (nikah sirri and including nikah muth'ah) are entitled to alimony and the distribution of a portion of their biological father's inheritance through a mandatory will, in accordance with the MUI's mandate. Following a deliberation, Commission II for Religious Justice made the conclusion. The legal breakthrough is a result of the Constitutional Court's ruling in a material test on article 43 paragraph (1) of Law Number 1 of 1974 respecting Marriage, Number 46/PUU-VIII/2010, dated February 17, 2012.

If we take a detailed look, we find that all three legal institutions share the following consensus:

- a. The biological father who caused the birth of an unwed child should be sentenced to ta'zir since it is unfair for him to be absolved from accountability.
- b. It is equally unjust if an innocent child, despite being born in a state of fitrah, is not granted the protections of a child.
- c. As a result, the government has the power to penalize ta'zir by forcing an adulterous man who gives birth to a child to meet the child's necessities and to leave property through a mandatory will upon his passing.

Nurmadani asserts that an out-of-wedlock child does not inherit if the biological father passes away. Only a maximum of 1/3 (one-third) is required of the child. Conversely, the biological father is entitled to the same rights in the event that the unwed child passes away. He went on to say that children born outside of marriage have a greater claim to the deceased's will if other individuals who are not genetically related can inherit one-third of it (Interview with Ramadani, 2022). We can conclude that the issue of children born outside of marriage is no different from that of other individuals who are not blood relatives.

Islamic inheritance law already has its own set of regulations and a legal framework, according to Asrorun Ni'am Sholeh, who served as the secretary of the MUI Fatwa Commission in 2012. Therefore, it cannot be altered just by state laws or decrees. "Religion, not state law, governs the question of nasab, guardians, and heirs. It will be a different issue if a legitimate child is compared to an out-of-wedlock or adulterous child in terms of inheritance.

Mahfud, MD, the Chief Justice of the Constitutional Court at the time, clarified that the Court's ruling on unmarried children solely addressed civil disputes between unmarried children and their biological fathers. He claims that there is no mention of Nasab in the Constitutional Court's

ruling. As a Muslim, nonetheless, I also urge Muslims to heed the ulama's fatwa (Salmande & Syahbani, 2012).

In essence, the Panel of Judges makes the above-described decisions because they are in the best interest of the child. Even if the child is born out of wedlock, Islamic law explains that he is born in a state of fitrah and does not carry any inherited sins. In Islam, inherited sins resulting from the behavior of the child's parents are not acceptable (Nurmadani, 2022).

As Allah SWT says:

وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ثُمَّ إِلَىٰ رَبِّكُم مَّرْجِعُكُمْ
فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ

Meaning: *Every sinful act of a person is one for which they are responsible. Furthermore, one will not bear the burden of another's sin. Then you will return to your Lord, and He will tell you what you have been disputing about in the past.* Al-An'am (6): 164).

4. Conclusion

Islamic law and Article 43 Paragraph (1) of Law Number 1 of 1974 concerning Marriage serve as the panel of judges' guidelines in the Cirebon Religious Court No. 13/Pdt.P/2022/PA. CN determination. On the one hand, an unmarried child has only a civil relationship with his mother and her family, but he must also fulfill all of his interests and welfare as a child. Islamic law is not violated or disregarded as a result of the Constitutional Court's decision on unmarried children. In its ruling No. 46/PUU-VII/2010, the Constitutional Court interpreted a "civil relationship" that does not contravene religious norms as a limited one that is restricted to: a) providing for the child's needs (housing, education, and medical expenses), and b) transferring property upon the death of the biological father through a required will. According to Islamic law, it has nothing to do with nasab or inheritance.

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