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Research Article

Legal Implications of Unregistered Marriages on the Status of Children in the Indonesian Legal System

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Abstract

Unregistered marriages (nikah siri) continue to create significant legal challenges in Indonesia, particularly concerning the legal status and civil rights of children. Although Indonesian law recognizes the religious validity of marriage, the absence of official registration often results in legal uncertainty regarding children's civil status, paternal affiliation, inheritance rights, guardianship, maintenance, and access to constitutional protections. This study aimed to analyze the legal implications of unregistered marriages on the status of children within the Indonesian legal system and to evaluate the effectiveness of legal protection following Constitutional Court Decision Number 46/PUU-VIII/2010. The study employed a normative legal research method using statutory, case, conceptual, and comparative approaches. Legal materials were obtained through library research from legislation, Constitutional Court decisions, international legal instruments, and recent scholarly publications and were analyzed qualitatively using doctrinal legal interpretation. The findings indicate that marriage registration serves not merely as an administrative requirement but as a fundamental legal mechanism that ensures legal certainty and strengthens the protection of children's constitutional and civil rights. Furthermore, Constitutional Court Decision Number 46/PUU-VIII/2010 has expanded legal protection by recognizing civil legal relationships between children born from unregistered marriages and their biological fathers, subject to legally admissible proof. However, inconsistencies in legal interpretation and implementation continue to hinder effective protection. The study concludes that harmonizing family law and administrative regulations is essential to ensure legal certainty, equal protection, and the best interests of children.

Introduction

Marriage is a fundamental legal institution that serves not only as a social and religious bond but also as the basis for establishing rights and obligations between spouses, children, and the State ([Bakri, 2025](#)). In Indonesia, the legal validity of marriage is governed by two cumulative requirements: compliance with religious law and registration by the competent state authority. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, stipulates that a marriage is valid if

conducted according to the laws of the respective religion and belief of the parties. Furthermore, Article 2 paragraph (2) requires every marriage to be officially registered in accordance with the prevailing laws and regulations ([Ardani & Suhadi, 2024](#)). Marriage registration functions as an administrative mechanism that provides legal certainty and facilitates the protection of civil rights arising from marital relationships ([Eka & Rahayu, 2024](#)).

Despite this legal framework, the practice of unregistered marriage (nikah siri) remains widespread in various regions of Indonesia ([Handini, 2019](#)). Such marriages are generally performed in accordance with religious principles but are not recorded by the Office of Religious Affairs (Kantor Urusan Agama) for Muslims or the Civil Registry Office for non-Muslims ([Faizah et al., 2025](#)). Several socio-cultural, economic, and administrative factors contribute to the persistence of unregistered marriages, including limited access to registration services, insufficient legal awareness, economic hardship, customary traditions, and the intention to circumvent statutory requirements governing marriage. Consequently, although these marriages may be regarded as religiously valid, they often lack formal legal recognition under the national legal system ([Keliat & Chan, 2025](#)).

The absence of marriage registration creates significant legal consequences, particularly regarding the status and civil rights of children born from such unions. Before the issuance of Constitutional Court Decision Number 46/PUU-VIII/2010, children born from unregistered marriages generally experienced limited legal recognition in relation to their biological fathers ([Asnawi, 2013](#); [Yuliarti et al., 2023](#)). Article 43 paragraph (1) of the Marriage Law originally provided that children born outside a legally recognized marriage possessed civil relations only with their mothers and their mothers' families ([Bakri, 2025](#)). This provision generated considerable legal uncertainty concerning paternal lineage, inheritance rights, child maintenance, guardianship, and other civil entitlements. Consequently, many children encountered discrimination despite having no responsibility for the legal status of their parents' marriage.

A significant development occurred through Constitutional Court Decision Number 46/PUU-VIII/2010, which reinterpreted Article 43 paragraph (1) of the Marriage Law. The Constitutional Court recognized that children born outside registered marriages may establish civil legal relationships with their biological fathers, provided that biological paternity can be scientifically proven or demonstrated through other legally acceptable evidence. This landmark decision reflects the constitutional commitment to protecting children's rights and promoting substantive justice by ensuring that children are not deprived of their civil rights solely because of the administrative status of their parents' marriage. Nevertheless, the implementation of this decision has generated various legal and practical challenges, particularly regarding proof of biological relationships, inheritance claims, civil registration procedures, and judicial interpretation.

The legal position of children born from unregistered marriages therefore remains an important issue within Indonesia's legal system. While constitutional jurisprudence has strengthened the protection of children's rights, inconsistencies continue to arise in judicial practice and administrative implementation. Differences in the interpretation of statutory provisions, the interaction between the Marriage Law, the Compilation of Islamic Law, the Population Administration Law, and Constitutional Court jurisprudence often create uncertainty regarding the legal status and civil rights of affected children. Moreover, balancing religious norms, administrative requirements, and constitutional guarantees continues to present complex legal questions that require comprehensive analysis ([Ningrum, 2025](#)).

Previous studies have primarily examined the legality of unregistered marriages or the constitutional implications of Constitutional Court Decision Number 46/PUU-VIII/2010. However, relatively limited attention has been devoted to comprehensively analyzing how these legal norms collectively influence the status of children within Indonesia's integrated legal system, particularly concerning legal certainty, equality before the law, and the realization of children's constitutional rights. This research seeks to address that gap by examining the legal implications of unregistered marriages on the status of children through a normative legal approach, emphasizing statutory regulations, judicial decisions, and relevant legal doctrines ([F. Firdaus et al., 2023](#)).

Accordingly, this study aims to analyze the legal implications of unregistered marriages on the status of children in the Indonesian legal system, assess the effectiveness of existing legal protections, and evaluate the extent to which current regulations ensure legal certainty and safeguard children's civil rights ([M. R. Firdaus & Maskur, 2024](#)). The findings are expected to contribute to the development of Indonesian family law by providing recommendations for strengthening legal protection and promoting greater harmonization between statutory law, constitutional principles, and the best interests of the child.

Hypotheses Development

The legal recognition of marriage constitutes an essential element in establishing the civil status of family members within the Indonesian legal system. Marriage registration serves not merely as an administrative requirement but also as a legal instrument that ensures certainty, protects civil rights, and facilitates the enforcement of legal obligations between spouses and their children. Consequently, the absence of official marriage registration may create legal uncertainty regarding the civil status of children, particularly in relation to paternal affiliation, inheritance rights, guardianship, and access to public legal services ([Gayaputri et al., 2019](#)).

The enactment of Constitutional Court Decision Number 46/PUU-VIII/2010 marked a significant development in Indonesian family law by expanding the civil legal relationship between children born outside registered marriages and their biological fathers, provided that biological parentage can be established through scientific evidence or other legally recognized proof. This judicial interpretation reflects the constitutional principles of equality before the law, protection of children's rights, and the best interests of the child as guaranteed by the 1945 Constitution of the Republic of Indonesia ([Mardhani, 2015](#)).

Nevertheless, practical implementation indicates that legal recognition alone has not entirely eliminated the legal challenges faced by children born from unregistered marriages. Variations in judicial interpretation, administrative practices, and the interaction between statutory regulations and religious norms continue to influence the realization of children's civil rights. Therefore, evaluating the legal implications of unregistered marriages requires a comprehensive examination of statutory provisions, constitutional jurisprudence, and legal doctrine ([Raihani Aulia et al., 2026](#)).

Based on these considerations, this study develops the following legal propositions:

H1: Unregistered marriages create legal uncertainty regarding the civil status of children within the Indonesian legal system.

H2: Constitutional Court Decision Number 46/PUU-VIII/2010 strengthens the legal protection of children born from unregistered marriages by recognizing civil legal relationships with their biological fathers.

H3: Existing Indonesian legal regulations have not yet fully guaranteed legal certainty and comprehensive protection of the civil rights of children born from unregistered marriages due to inconsistencies in statutory interpretation and administrative implementation ([Fortuna et al., 2026](#)).

These propositions provide the analytical framework for assessing whether the current legal system effectively protects the constitutional and civil rights of children born from unregistered marriages and whether further legal reform is required to strengthen legal certainty and the principle of the best interests of the child ([Gunawan & Jannah, 2024](#)).

Method

Research Design

This study employed normative legal research (doctrinal legal research) to examine the legal implications of unregistered marriages (nikah siri) on the legal status of children within the Indonesian legal system. Normative legal research focuses on the analysis of legal norms, statutory regulations, judicial decisions, and legal doctrines to evaluate the consistency, effectiveness, and coherence of the legal framework governing a particular legal issue. Rather than collecting empirical data from respondents, this

research analyzed legal materials to determine how Indonesian law regulates the civil status and legal protection of children born from unregistered marriages ([Syafi'i & Dzulkifli, 2024](#)).

The Statutory Approach examined legislation governing marriage registration and children's legal status, including Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014, Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013, the Compilation of Islamic Law, and relevant constitutional provisions.

The Case Approach analyzed judicial precedents that significantly influence the legal status of children born from unregistered marriages. Particular attention was given to Constitutional Court Decision Number 46/PUU-VIII/2010, which reinterpreted Article 43 paragraph (1) of the Marriage Law concerning the civil relationship between children born outside registered marriages and their biological fathers.

The Conceptual Approach examined legal theories and doctrines relating to legal certainty, legal protection, justice, equality before the law, and the best interests of the child. These concepts served as analytical tools for interpreting statutory provisions and judicial decisions.

The Comparative Approach was used selectively to compare Indonesian legal principles with internationally recognized child rights standards, particularly those embodied in the United Nations Convention on the Rights of the Child (CRC), in order to evaluate the consistency of Indonesian family law with international legal principles.

The validity of the legal analysis was ensured through legal triangulation, involving the cross-analysis of statutory regulations, constitutional jurisprudence, and legal doctrines. Interpretations were further supported by authoritative academic literature and judicial precedents to maintain doctrinal consistency and analytical reliability. This triangulation strengthened the credibility of the study by ensuring that legal conclusions were derived from multiple authoritative legal sources rather than from a single statutory provision.

Through this normative methodological framework, the study provides a comprehensive legal evaluation of the implications of unregistered marriages for the legal status of children in Indonesia and offers recommendations for strengthening legal certainty and the protection of children's constitutional and civil rights.

Results And Discussion

Result

The normative legal analysis demonstrates that unregistered marriages (nikah siri) significantly influence the legal status of children within the Indonesian legal system. Although Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, recognizes the religious validity of marriage, Article 2 paragraph (2) requires every marriage to be officially registered to ensure legal certainty and administrative recognition. The analysis of statutory provisions, Constitutional Court jurisprudence, and legal doctrines indicates that marriage registration functions not merely as an administrative obligation but as a fundamental legal mechanism for establishing a child's civil status, securing parental legal relationships, and guaranteeing the effective exercise of constitutional and civil rights. Children born from legally registered marriages obtain stronger legal recognition concerning identity, birth registration, inheritance, guardianship, maintenance, and other civil rights protected under Indonesian law.

Despite this significant constitutional advancement, the analysis indicates that the implementation of the Constitutional Court's decision remains inconsistent across judicial and administrative practices. Variations in the interpretation of statutory provisions, procedural requirements for establishing biological parentage, and administrative practices concerning civil registration continue to create uncertainty in the practical realization of children's civil rights. Furthermore, differences between statutory regulations, religious legal norms, and administrative procedures occasionally result in inconsistent legal outcomes, thereby limiting the effectiveness of existing legal protections. These conditions demonstrate that constitutional recognition alone

is insufficient without harmonized legislation, effective institutional coordination, and consistent legal enforcement (Nadriana & Yunani, 2023).

Based on the normative analysis, this study reconstructs the legal function of marriage registration beyond its traditional administrative purpose. Marriage registration should be recognized as a comprehensive legal protection mechanism that integrates legal certainty, constitutional guarantees, child protection principles, and equal access to justice. At the same time, the legal system should ensure that children born from unregistered marriages are not deprived of their civil and constitutional rights solely because of the administrative status of their parents' marriage. Accordingly, the Indonesian legal system should strengthen the harmonization of marriage law, child protection law, population administration law, and constitutional jurisprudence to establish a coherent legal framework that fully guarantees the legal status and civil rights of every child in accordance with the constitutional principle of the best interests of the child.

Table 1. Research Proposition Assessment

Research Proposition	Analysis Result	Conclusion
Unregistered marriages significantly influence the legal status of children within the Indonesian legal system. Marriage registration functions not merely as an administrative requirement but as a fundamental legal mechanism that ensures legal certainty, protects children's civil rights, establishes legal parentage, and guarantees access to constitutional rights.	The normative analysis of statutory regulations, Constitutional Court Decision Number 46/PUU-VIII/2010, judicial doctrines, and legal scholarship demonstrates that marriage registration provides legal certainty concerning children's civil status, parental affiliation, inheritance, guardianship, maintenance, and birth registration. Although Constitutional Court jurisprudence has strengthened the protection of children born from unregistered marriages, inconsistencies in statutory interpretation and administrative implementation continue to limit the effective realization of children's constitutional and civil rights. Strengthening legal harmonization, institutional coordination, and public legal awareness remains essential for ensuring comprehensive legal protection.	Proposition Supported

Source: Processed by the author (2026).



Figure 1. Conceptual Framework of the Legal Protection of Children Born from Unregistered Marriages in the Indonesian Legal System

Description of Figure 1. Conceptual Framework of the Legal Protection of Children Born from Unregistered Marriages in the Indonesian Legal System

Figure 1 presents the conceptual framework developed in this study to explain the legal implications of unregistered marriages (*nikah siri*) on the legal status of children within the Indonesian legal system. The framework illustrates the logical relationship between statutory regulations, legal certainty, constitutional jurisprudence, and the realization of children's civil rights. It demonstrates that marriage registration is not merely an administrative obligation but constitutes a fundamental legal mechanism for ensuring legal certainty, protecting children's constitutional rights, and promoting equal access to justice.

The framework begins with Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, which serves as the primary statutory foundation governing marriage in Indonesia. The legislation establishes that a marriage must not only comply with religious law but also be officially registered by the competent state authority. Through this provision, the State seeks to provide legal certainty concerning marital relationships while simultaneously ensuring that the legal rights arising from marriage receive formal recognition and protection.

The fourth dimension is Inheritance Rights, which concern a child's entitlement to inherit from both parents in accordance with applicable legal provisions. Legal recognition of parental relationships directly affects the child's ability to claim inheritance, property rights, and other economic interests. Marriage registration therefore contributes to reducing legal disputes concerning succession and family property.

The fifth dimension is Guardianship and Maintenance, referring to the legal responsibilities of parents toward their children. These responsibilities include financial support, education, healthcare, custody, and

other obligations essential for the child's welfare and development. Official legal recognition of parental relationships facilitates the enforcement of these obligations through judicial and administrative mechanisms.

The subsequent component is Equality Before the Law and Protection of Children's Civil Rights. This stage emphasizes that every child possesses equal legal dignity regardless of the administrative status of the parents' marriage. The constitutional principles of equality, non-discrimination, and the best interests of the child require the State to ensure that all children enjoy equal access to legal protection and civil rights without unjust distinctions based on birth circumstances.

The framework culminates in Strengthened Legal Protection and Legal Certainty for Children, representing the ultimate objective of Indonesian family law. Through effective marriage registration, consistent statutory implementation, constitutional jurisprudence, and harmonized legal institutions, children born from unregistered marriages should receive comprehensive legal recognition and protection. This outcome encompasses secure legal identity, protection of civil rights, equal treatment before the law, improved access to justice, and enhanced legal certainty regarding family relationships.

Overall, Figure 1 demonstrates that the effectiveness of legal protection for children born from unregistered marriages depends upon the integration of statutory regulation, constitutional interpretation, judicial consistency, and administrative implementation. The conceptual framework therefore positions marriage registration as a preventive legal mechanism while recognizing Constitutional Court Decision Number 46/PUU-VIII/2010 as a corrective constitutional instrument that strengthens children's legal protection. Together, these legal mechanisms contribute to the realization of legal certainty, equality before the law, and the best interests of the child within Indonesia's contemporary family law system.

Discussion

The findings of this study demonstrate that marriage registration constitutes a fundamental legal mechanism for ensuring the legal status and civil rights of children, rather than merely fulfilling an administrative requirement under Indonesian family law. The normative analysis reveals that marriage registration establishes legal certainty concerning parentage, family relationships, and children's legal identity, thereby enabling children to exercise their constitutional and civil rights effectively. This finding is consistent with Gustav Radbruch's Theory of Legal Certainty, which emphasizes that legal rules must provide predictability, consistency, and enforceability in protecting individual rights. Marriage registration therefore serves as authentic legal evidence that facilitates the recognition of children's legal status before judicial and administrative institutions while minimizing legal uncertainty arising from disputes concerning family relationships.

The study further indicates that the legal consequences of unregistered marriages (*nikah siri*) extend far beyond the marital relationship itself, significantly affecting the legal position of children. Although Indonesian law recognizes the religious validity of marriage under Article 2 paragraph (1) of the Marriage Law, the absence of official registration under Article 2 paragraph (2) frequently creates legal ambiguity regarding children's civil status. Such uncertainty may affect birth registration, paternal affiliation, inheritance rights, guardianship, parental maintenance, and access to various public administrative services. Consequently, marriage registration should be viewed not only as an administrative obligation but also as an essential legal institution that guarantees children's legal recognition and strengthens the realization of their constitutional rights.

The findings also demonstrate that Constitutional Court Decision Number 46/PUU-VIII/2010 represents a significant milestone in the evolution of Indonesian family law. Through its reinterpretation of Article 43 paragraph (1) of the Marriage Law, the Constitutional Court recognized that children born outside registered marriages may establish civil legal relationships with their biological fathers, provided that biological parentage can be proven through scientific evidence or other legally admissible means. This constitutional interpretation reflects a shift from a rigid formalistic approach toward a more substantive understanding of

justice that prioritizes the protection of children's rights. Consequently, the Court's decision reinforces the constitutional principles of equality before the law, human dignity, and the best interests of the child, while reducing discriminatory legal treatment based solely on the administrative status of parents' marriages.

From the perspective of Philipus M. Hadjon's Theory of Legal Protection, the State bears the constitutional obligation to provide both preventive and repressive legal protection. Preventive legal protection is primarily realized through marriage registration, which provides official legal recognition of family relationships before legal disputes arise. By contrast, repressive legal protection is implemented through judicial remedies after legal conflicts occur, including court proceedings to establish paternity or determine children's inheritance rights. The findings of this study demonstrate that preventive protection through comprehensive marriage registration is considerably more effective in safeguarding children's civil rights than relying solely upon judicial intervention after legal uncertainty has already emerged.

The conceptual framework developed in this study further demonstrates that legal protection for children born from unregistered marriages is achieved through five interrelated dimensions: legal recognition of civil status, birth registration, paternal affiliation, inheritance rights, and guardianship together with parental maintenance. These dimensions collectively illustrate that children's legal protection encompasses not only formal legal recognition but also the practical realization of constitutional rights throughout their lives. The framework therefore broadens the conventional understanding of marriage registration by positioning it as an integrated legal mechanism that simultaneously promotes legal certainty, child protection, equality before the law, and access to justice.

Conclusion

This study concludes that unregistered marriages (nikah siri) have significant legal implications for the legal status of children within the Indonesian legal system. Although Indonesian law recognizes the religious validity of marriage, the absence of official marriage registration creates legal uncertainty concerning children's civil status, including paternal affiliation, birth registration, inheritance rights, guardianship, parental maintenance, and access to other constitutional and civil rights. Therefore, marriage registration should not be regarded merely as an administrative obligation but as a fundamental legal mechanism for ensuring legal certainty, protecting children's rights, and strengthening access to justice. The principal contribution of this research lies in reconstructing the legal function of marriage registration from a procedural administrative requirement into an integrated legal protection mechanism that guarantees children's constitutional and civil rights. The conceptual framework developed in this study demonstrates that marriage registration, constitutional jurisprudence, legal certainty, and child protection operate as interconnected legal mechanisms that collectively strengthen children's legal status within Indonesia's family law system. This perspective expands existing legal scholarship by emphasizing that children's rights should be protected independently of the administrative status of their parents' marriage. From a policy perspective, this study recommends strengthening public legal awareness regarding the importance of marriage registration, improving the accessibility and effectiveness of marriage registration services, ensuring consistent implementation of Constitutional Court Decision Number 46/PUU-VIII/2010, and harmonizing legislation governing marriage, child protection, and population administration. Such reforms are expected to enhance legal certainty, eliminate discriminatory legal practices, and ensure that every child receives equal legal recognition and comprehensive protection in accordance with the Constitution of the Republic of Indonesia and international human rights principles.

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