

**PROBLEMS IN REGULATING CHILD NEGLECT: REGULATORY LIMITATIONS IN INDONESIA**

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*Abstract*

*The issue of child abandonment in Indonesian marriage law has significant implications for legal certainty and the protection of children's rights. Law Number 1 of 1974 concerning Marriage (as amended by Law No. 16/2019) regulates the status of legitimate and illegitimate children through the provisions of Articles 42, 43, and 44, while the Compilation of Islamic Law views marriage as a contract that creates a legal relationship and parental obligations towards children. Constitutional Court Decision Number 46/PUU-VIII/2010 expanded access to proof of kinship by including scientific and technological evidence. However, the practice of abandonment—including cases that have attracted public attention—demonstrates gaps in the evidentiary system, the risk of subordination of children's rights, and the impact on children's inheritance rights and social status. This study uses a normative juridical approach and case studies to analyze regulations, judicial decisions, and the implications of the practice of abandonment for children's interests. The results of the study indicate: (1) a misalignment between formal legal provisions and evidentiary mechanisms in practice; (2) The Constitutional Court's decision opens up opportunities for rights restoration through scientific evidence, but its implementation is still hampered by access and understanding by relevant parties; and (3) child protection requires more responsive legal mechanisms and supporting policies to ensure legal certainty and the fulfillment of children's rights. It is recommended to strengthen procedures for proving kinship, educate the public about the law, and improve access to forensic/medical services to support fair court decisions that support the best interests of children.*

**Keywords:** *child abandonment, marriage law, legal certainty, children's rights.*

**Abstrak**

Permasalahan pengingkaran anak dalam hukum perkawinan Indonesia menimbulkan implikasi kepastian hukum dan perlindungan hak anak yang signifikan. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (sebagaimana diubah dengan UU No.16/2019) mengatur kedudukan anak sah dan anak luar kawin melalui ketentuan Pasal 42, 43, dan 44, sementara Kompilasi Hukum Islam memandang perkawinan sebagai akad yang menghasilkan hubungan hukum dan kewajiban orang tua terhadap anak. Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 memperluas akses pembuktian hubungan kekerabatan dengan memasukkan bukti ilmu pengetahuan dan teknologi. Namun praktik pengingkaran termasuk kasus yang sempat menjadi sorotan publik menunjukkan adanya celah pembuktian, risiko subordinasi hak anak, serta dampak terhadap hak waris dan status sosial anak.



Penelitian ini menggunakan pendekatan yuridis normatif dan studi kasus untuk menganalisis regulasi, putusan yudisial, dan implikasi praktik pengingkaran terhadap kepentingan anak. Hasil penelitian menunjukkan: (1) adanya ketidakselarasan antara ketentuan hukum formal dan mekanisme pembuktian dalam praktik; (2) putusan MK membuka peluang pemulihan hak melalui bukti ilmiah, tetapi implementasinya masih terhambat akses dan pemahaman pihak terkait; dan (3) perlindungan anak membutuhkan mekanisme hukum yang lebih responsif serta kebijakan pendukung untuk menjamin kepastian hukum dan pemenuhan hak anak. Disarankan penguatan prosedur pembuktian kekerabatan, sosialisasi hukum bagi masyarakat, serta perbaikan akses layanan forensik/medis untuk mendukung putusan pengadilan yang adil dan berpihak pada kepentingan terbaik anak.

**Kata kunci:** pengingkaran anak, hukum perkawinan, kepastian hukum, hak anak.

## **I. INTRODUCTION**

Based on Law Number 1 of 1974 concerning Marriage, which has been amended to Law Number 16 of 2019, hereinafter referred to as the Marriage Law, Chapter 1, Article 1, states that marriage is a relationship that unites a man and a woman as husband and wife, with the aim of creating a happy and eternal family (household) based on the One Almighty God. The Compilation of Islamic Law in Indonesia also states that marriage in Islamic law is a marriage, which is a very strong contract or *mitsaaqan ghalidhan* to follow God's commands, and its implementation is an act of worship. Living a family or living a married life is a natural and healthy hope and intention for every young person and adolescent in their developmental phase. This hope is strengthened and the motivation increases if they are physically healthy and have other support for their future life, such as a permanent job or a desired future partner.

Meanwhile, Article 2 paragraph (1) of the Marriage Law emphasizes that a marriage is considered valid if it is conducted in accordance with the rules of each religion and belief. As a form of legal act, marriage carries legal consequences that are closely related to the validity of that act. Marriage not only binds a man and a woman into one household, but also implies legal consequences for the husband and wife who are legally married.

In the context of marriage law applicable in Indonesia, various legal consequences are regulated, including the reciprocal rights and obligations between husband and wife, parental responsibilities towards children, as well as the impact on marital assets and the implications for third parties. Given that marriage carries legal risks and consequences, it is important for the public to understand marriage law, which regulates its conditions, implementation, continuation, and dissolution. The explanation of Article 1 of the Marriage Law states that as

a country based on Pancasila, with the first principle emphasizing the One and Only God, marital relations are closely linked to religious and spiritual aspects. Therefore, marriage involves not only physical aspects, but also spiritual aspects, which play a crucial role. Building a happy family is closely related to the continuation of offspring, which is one of the goals of marriage; and nurturing and educating are the rights and obligations of parents.

The ideal goal of the Marriage Law is that it views marriage not only from a physical perspective but also prioritizes the spiritual bond between husband and wife to build a happy and lasting family, without ending in divorce and producing good and healthy children. Children born of a marriage play a crucial role in the family, so parents have full responsibility to educate and care for their children as well as possible until they reach adulthood and become independent or marry. In the Marriage Law and the Compilation of Islamic Law, children are divided into two categories: legitimate children and children born out of wedlock.

In the Marriage Law and the Compilation of Islamic Law, legitimate children are children born from or as a result of a legally recognized marriage. The position of children in the Marriage Law is described in Article 42 and Article 43.

However, not all children born in a marriage can be considered official children, because there are unlucky children whose birth is denied or not acknowledged by the father. In Article 44 of the Marriage Law, it is stated that a husband can dispute the legitimacy of a child which is the result of his wife if he can show evidence that his wife has committed an act of adultery and the child was born as a result of that act of adultery. In a legal marriage, if a father denies a child born to a wife who is proven to have committed adultery, then legally, the child will be seen as an illegitimate child, which could cause various difficulties in his life in the future due to the rejection of his birth. This research will investigate in more depth the legal issues surrounding child abandonment in Indonesia.

This study aims to analyze the challenges faced in regulating child abandonment within the context of family law in Indonesia, which is a crucial issue in the country's family law field. In this study, the researcher in-depth analyzed the Marriage Law and the Compilation of Islamic Law. The findings of this study indicate that the regulation of child abandonment in Indonesia has multiple layers of complexity, particularly in determining the status of a child rejected by the father. This in-depth study also discusses the requirements and

procedures for child abandonment, as well as the legal consequences for children who are not recognized by their fathers.

Furthermore, the researcher conducted a comparative analysis between the Marriage Law and the Compilation of Islamic Law, which provides new insights into the differences and similarities between the two regulations. I found that both regulations have different perspectives on regulating the issue of child abandonment, which can impact the rights of children and families.

This study differs significantly from previous research, including the first and second studies. The two previous studies did not specifically address child abandonment, while this study focuses on the challenges in regulating child abandonment in Indonesia, thus providing a more focused and in-depth contribution to family law.

Furthermore, although the first study also uses a regulatory analysis approach, its focus is very different. The first study focused more on early marriage and its social impacts, while this study emphasizes the issue of child abandonment and related legal issues.

The second study also differs from this study in its scope. The second study is more general in nature and discusses marriage law in Indonesia broadly, while this study focuses more on the issue of child abandonment and its accompanying regulations, allowing it to provide a more comprehensive and detailed view of the issue of child abandonment in Indonesia.

Considering the number of studies relevant to this topic, the researcher formulated a legal question: What are the legal consequences of child abandonment in the context of marriage in Indonesia?

## **II. RESEARCH METHODS**

Using normative research with an orientation that is not based on conceptually obligatory attitudes but rather on a combination of laws and regulations that constitute fundamental beliefs. This belief is essential for producing objective research results.

## **III. RESEARCH RESULTS**

### **Legal Consequences of Child Abandonment in Marriage**

A husband who believes his wife has committed adultery and that the child they are carrying is not his, despite insufficient evidence, can file for divorce and deny the child's

right to recognition. The husband can accuse his wife of adultery and/or reject the child, whether still unborn or born, even if the wife denies the accusation.

The concept of child abandonment in Indonesia cannot be separated from the dialectic of three basic legal values proposed by Gustav Radbruch: Justice (*Gerechtigkeit*), Benefit (*Zweckmassigkeit*), and Legal Certainty (*Rechtssicherheit*). This paper finds that the main problem with child abandonment is the inability of positive law to accommodate these three values simultaneously.

Based on the Theory of Justice (Aristotle & Thomas Aquinas), a husband has the right to distributive justice and is not burdened with the obligation to support a child who is proven not to be his own. However, the Legal Certainty Theory, embodied in Articles 42 and 44 of the Marriage Law, demands time limits and rigid procedures (evidence of adultery) to maintain order in population administration. Meanwhile, the Benefit Theory (Jeremy Bentham) demands that the law must bring the greatest happiness, which in this context is the mental and future protection of the child (the best interest of the child). This conflict often leaves judges in a dilemma: upholding the text of the law (Certainty) or upholding the truth of the DNA (Material Justice).

According to Sjachran Basah, protection for citizens is granted when the state administration's actions cause harm to them. Meanwhile, protection for the state administration itself is provided for actions taken properly and correctly according to the law, both written and unwritten.

A husband can deny the legitimacy of a child born to his wife due to adultery, and the court will then issue a decision regarding the child's legitimacy. In the case of a husband's denial of a child born of his wife's adultery with another man, the burden of proof under this provision falls on the husband who denies the child. He must prove that the child is the result of the wife's adultery with another man, which caused the child's birth.

If the husband or father cannot provide strong evidence, the denial cannot be granted. In fact, the court requires the parties to take an oath regarding the decision to be issued regarding the legitimacy of the child (Article 44 (1) and (2) of the Marriage Law). The Marriage Law does not regulate the methods of denial. Whether this is solely based on the husband's admission of denial or is left to the discretion of the court. If this is the case, the denial of a child based on adultery automatically applies to those who are Muslim.

The denial of a child is a form of legal protection for a husband's rights. A child disowned by a husband as a result of a wife's adultery is considered, under state law, to be a legitimate child born within the marriage. Because the husband is considered the legal parent of a child born of a wife's adultery, disowning a child constitutes a form of legal protection for a husband.

The current regulations, which grant a father the right to disown a child born to his wife, constitute an injustice not only to the mother but especially to the child. A child disowned by the father is considered illegitimate. As explained in Article 43 paragraph (1) of the Marriage Law, a child born out of wedlock has only a civil relationship with the mother and her mother's family.

A child disowned by the father does not have any civil relationship with or from the father, such as inheritance rights. Therefore, a child disowned by the father has only the right to inherit from the mother and her mother's family. Similarly, under the Marriage Law, a child born out of wedlock has only a kinship relationship with the mother and her mother's family.[26] So a child who is born in a marriage but is denied/rejected by his/her father, is also an illegitimate child, meaning: he/she does not have a father, in the sense that there is no relationship between the child and the father with various rights and obligations such as:

- a. The Right of Radla, which is the child's right to receive basic food through breastfeeding. During this breastfeeding period, the closest relative, according to the lineage, is responsible for financing the child's needs, and in this case, the father holds this position;
- b. The Right of Hadlanah, which is the duty to care for, nurture, and educate an infant or small child from birth until they are able to care for and manage themselves;
- c. The Right of Walayah (guardianship), which is the responsibility for the care of a child from infancy to puberty. In Islamic law, child guardianship is divided into three categories:
  - 1) Guardianship over the care and education of a child;
  - 2) Guardianship over property; and
  - 3) Guardianship over marriage.

d. The Right to Maintenance

The right to maintenance is a child's right directly related to lineage. As soon as a child is born, their right to maintenance must be fulfilled. This right to maintenance is interconnected with each of the rights mentioned above.

According to Islamic jurisprudence experts, the primary person responsible for a child's support is the closest relative in the lineage, and in this case, the biological father. Therefore, a disowned child only has a mother, namely the woman who gave birth to him, in the sense that there is the same legal relationship between the child and the mother as there is with a legitimate child, who has a father.

The husband's denial (rejection) is in accordance with the provisions of Article 42 of the Marriage Law, which states that a child born in a legal marriage between husband and wife is considered the legitimate child of both parents. However, Article 44 Paragraph (1) of the Marriage Law gives the husband the right to deny the legitimacy of a child born in wedlock. This right to deny is also recognized and regulated more specifically in the Civil Code (KUH), which limits the grounds for such denial. In detail, the denial of the legitimacy of a child according to the Civil Code can be done in several conditions: first, if the child is born before the 180th day, calculated from the day of the marriage (according to Article 251 of the Civil Code); second, if the husband, either due to separation or due to coincidence, is in a real impossibility to have sexual intercourse with his wife in the period between the 300th and 180th days before the child's birth (regulated in Article 252 of the Civil Code); third, if the wife commits adultery and hides the birth of her child from her husband (Article 253 of the Civil Code); and fourth, if the child is born 300 days after the date of the separation decision has obtained absolute legal force (as stated in Article 254 of the Civil Code). These provisions indicate the existence of a legal mechanism that accommodates the husband's doubts about the child's paternity, although the basic principle is the presumption of the legitimacy of children born within a valid marriage.

A husband can deny the legitimacy of a child born to his wife due to adultery, and the court will issue a decision on the child's legitimacy. The question arises as to whether the term "adultery" or "fornication" in the Marriage Law equates to the definition of adultery (overspel, bermukah) in Article 284 of the Criminal Code, which is linked to Article 27 of the Civil Code (the principle of monogamy), or whether adultery is defined as customary or

religious law. If Article 44 of the Marriage Law is linked to Article 63 concerning the courts, then adultery is defined as defined by the Civil Code for Christian or Chinese marriages, which will be resolved in the State Court.

For Hindu-Buddhist marriages, adultery is defined according to the respective religions and is resolved by the respective priest/Pandita Council or the State Court. For Islamic marriages, adultery is defined as defined by Islamic law and resolved by the Religious Court. In the case of denial by a husband of a child born from his wife's adultery with another man, the burden of proof under this provision is placed on the husband who denies the child. What must be proven is that the child is the result of the adultery committed by the wife with another man which caused the child's birth. If the husband or the father of the child cannot provide strong evidence, then denial cannot be carried out.

Even the Court requires the parties concerned to take an oath in relation to the decision to be issued regarding the legitimacy of the child (Article 44 paragraph (1) and (2) of the Marriage Law). However, Article 254 of the Civil Code also gives the wife the right to present all evidence, whether from events, witnesses, or other evidence that can prove that her husband is the father of the child. [29] In relation to proving the legitimacy of a child, especially in cases of denial by the husband, there are several pieces of evidence that are recognized and used in legal proceedings. The most important and strongest evidence is the child's birth certificate that has been officially recorded and entered into the Civil Registry, which definitively confirms the child's legal status. However, if the birth certificate does not exist or cannot be used as sole evidence, then proof can be provided through witnesses. The use of these witnesses has strict limitations, namely that it is only permitted if there is initial written evidence or there are allegations and clues concluded from events whose truth cannot be denied. Furthermore, the Court also has the authority to require interested parties to take an oath, as explained in the Explanation of Article 44 of the Marriage Law, as additional evidence to strengthen or negate claims. Furthermore, as a highly accurate modern form of evidence, a DNA (Deoxyribonucleic Acid) test can be performed. This test is scientific and can provide strong evidence regarding the blood types of the denying party and the denied child, which can then be precisely used to determine and estimate the legitimate blood relationship between the two. Overall, these forms of evidence are legal instruments used to achieve certainty and material truth regarding the legal status of children in a marriage.



Islamic law also has an institution of denial known as "li'an." This involves a husband accusing his wife of adultery with another man, with the aim of denying the pregnancy she is carrying as not the result of the husband's fertilization. The purpose of li'an is also to deny that the child the wife is bearing is not legitimate but is the result of her adultery with another man.

Now, if we ask how the denial is carried out, the Marriage Law does not regulate the methods of denial in question. For those who are Muslim, the provisions of the li'an (law of denial) explained above automatically apply to the denial of a child on the basis of adultery. This is because matters concerning marriage, divorce, and the status of children, according to Law No. 32/1954, fall under the jurisdiction of the Religious Courts. Therefore, the legal provisions for denial that will be used are the li'an institutions regulated by Islamic Sharia law. For those who are subject to jurisdiction outside the Religious Courts, the methods and procedures are the jurisdiction of the District Court. Therefore, it is best if the methods and procedures are in accordance with the procedures regulated in civil law, placing the burden of proof on the husband, considering that Article 44 paragraph (1) of the Marriage Law stipulates that the burden of proof in denying a child of adultery lies with the denying party. Although the Indonesian Marriage Law does not explicitly stipulate a specific timeframe within which a father may file a denial of his child's legitimacy, the Civil Code (KUH Perdata) provides a clear time limit for a husband to file such a denial suit. This time limit is determined by the husband's whereabouts at the time of the child's birth. First, if the husband resides at or near the child's birthplace, the time limit is one month from the date the child's birth is discovered. Second, if the husband is absent (outside the child's residence or far away), the time limit is two months from the date he returns to his residence or returns home. Third and finally, if the child's birth was concealed from him through deception, the time limit is two months from the date he becomes aware of the deception or after the deception is revealed. These strict time limits aim to provide legal certainty and prevent arbitrary denials after a long period of time, while also protecting the child's legal status and best interests.

Based on the Indonesian Islamic Law (KHI), the time limit given to a husband to file a petition for child disownment with the Religious Court is as follows: first, the time limit is 180 days after the child's birth. Second, if the child is born after the marriage has broken down, the time limit is 360 days after the marriage has broken down. Third, and most

importantly, the time limit is calculated from the time the husband learns that his wife has given birth and is in a place where he can file the case with the Religious Court. This provision demonstrates a degree of leniency that takes into account aspects of justice and the husband's actual circumstances (for example, if he is not present) in exercising his right to disown the child, which legally aims to provide certainty of lineage status.

**A Husband's Disownment of a Child Born to His Wife:** Although the Indonesian Marriage Law does not explicitly regulate the procedure for a husband to disown a child born to his wife, the procedural mechanism is regulated in the Civil Code (KUH Perdata), specifically in Article 256 and related articles. The denial procedure requires the husband to file a civil suit with the court within two months of learning or having the opportunity to file the denial (according to the time limits stipulated in the previous articles). It is important to note that if the husband dies before the case is finalized, his heirs may continue the suit. Furthermore, this denial must be made within the time limits stipulated by the Civil Code, such as one or two months depending on the husband's circumstances at the time of the child's birth or when the deception was discovered. Furthermore, regarding prosecution before a judge, the child must be represented by a guardian appointed in advance by the judge, who then acts as the defendant. The child's mother must be legally summoned to the case for a hearing (as stipulated in Article 260 of the Civil Code), to ensure a fair and complete legal process.

As stipulated in Article 42 of the Marriage Law, a child born within a valid marriage between a husband and wife is considered the legitimate child of both parents. However, Article 44 paragraph (1) of the Marriage Law gives a husband the right to deny the legitimacy of a child born during the marriage.

#### **Article 44 paragraph (1) of the Marriage Law**

"A husband may deny the legitimacy of a child born to his wife if he can prove that his wife has committed adultery and that the child is the result of that adultery."

A husband may deny the legitimacy of a child born to his wife due to adultery, and the court will impose the burden of deciding whether the child is legitimate. If a husband denies a child born from his wife's adulterous relationship with another man, the burden of proof under this provision falls on the husband who denies the child. He must prove that the child is the result of his wife's adultery with another man, which caused the child's birth.

Articles 101 and 102 of the Compilation of Islamic Law address the circumstances under which a husband denies the legitimacy of a child and the process he must follow, as follows:

**Article 101 of the Compilation of Islamic Law**

"A husband who denies the legitimacy of a child, while the wife does not deny it, may confirm his denial with a statement of faith (li'an).

**Article 102 of the Compilation of Islamic Law**

1. A husband who wishes to deny a child born to his wife must file a lawsuit with the Religious Court within 180 days of the child's birth or 360 days after the dissolution of the marriage, or after the husband learns that his wife has given birth and is in a location where he can file his case with the Religious Court.
2. Denials filed after this time are not acceptable.

Islamic law has a denial mechanism called "li'an." This means the husband accuses his wife of committing adultery with another man, with the aim of denying the pregnancy as not the result of a seed implanted by the husband in his wife's womb. "Lian also aims to deny. Li'an causes the dissolution of the marriage between husband and wife forever.

In the Indonesian legal system, although Article 42 of the Marriage Law establishes the basic principle that a child born in a legal marriage is the legitimate child of the husband and wife, the husband has the right guaranteed by Article 44 Paragraph (1) of the Marriage Law to deny the legitimacy of the child, the reasons for which are regulated in a limited manner in the Civil Code (KUH Perdata), such as the child being born before the 180th or 300th day after the marriage is dissolved, or the husband is in a condition where it is actually impossible for him to have sexual intercourse (Articles 251-253 KUH Perdata); in addition, proof of the legitimacy of the child in this dispute case is supported by various forms of evidence, the main of which is the Birth Certificate from the Civil Registry, but can also be strengthened by testimony that must be supported by written preliminary evidence, the obligation to take an oath in court (Explanation of Article 44 Marriage Law), to modern, highly accurate evidence such as DNA Tests to determine blood relations scientifically. In addition, the Civil Code specifically regulates the time limit for filing a denial, namely one month if the husband is at the child's birthplace, two months after his return if he is not present, or two months after the discovery of the birth concealment trick, the filing procedure (Article 256 of the Civil Code)

is carried out through a civil suit to the Court within a two-month period, where the child must be represented by a guardian appointed by the judge as the defendant, and the child's mother must be summoned to be heard (Article 260 of the Civil Code). Meanwhile, for Muslim couples, the Compilation of Islamic Law (KHI) regulates denial through the Li'an mechanism (Article 125 of the KHI), which occurs when the husband accuses the wife of adultery or disowning the child and the wife rejects it, resulting in the permanent dissolution of the marriage; this Li'an has a time limit for filing with the Religious Court (Article 103 KHI), namely 180 days after birth or 360 days after the dissolution of the marriage, and procedurally (Article 127 KHI), Li'an requires the husband to swear four times with a fifth oath of curse, which must be followed by the wife swearing four times with a fifth oath of wrath as an inseparable whole to annul the child's lineage.

In the Compilation of Islamic Law, regarding proof of a child's parentage, Article 103 regulates as follows:

**Article 103 KHI**

- 1) A child's parentage can only be proven by a birth certificate or other evidence;
- 2) If a birth certificate or other evidence as referred to in paragraph (1) is not available, the Religious Court may issue a determination regarding the child's parentage after conducting a thorough examination based on valid evidence;
- 3) Based on the Religious Court's determination as referred to in paragraph (2), the Birth Registration Agency within the jurisdiction of the Religious Court shall issue a birth certificate for the child in question.

In Islamic law, a husband can refuse to admit that the child his wife gave birth to is not his own, as long as the husband can prove that:

- a. The husband has never given birth to his wife but the wife suddenly gives birth;
- b. The child was born less than six months after he adopted his wife, while the baby was born like a mature baby;
- c. "A baby is born after more than four years and the wife has not had sexual intercourse with her husband."

Article 102 of the Compilation of Islamic Law stipulates that the time limit for filing a child denial complaint with the Religious Court is 180 days after the child's birth and 360

days after the dissolution of the marriage, or after the husband learns that his wife has given birth and is in a location where he can file his case with the Religious Court.

Article 252 of the Civil Code also stipulates that a husband may deny the legitimacy of a child if he can prove that from 300 to 180 days after the child's birth, whether due to separation or accidental circumstances, he was unable to have sexual relations with his wife. If the child is born as a result of adultery, the husband cannot deny the child's legitimacy unless the child's birth was concealed from him. In this case, he must prove beyond a reasonable doubt that he is not the child's father (Article 253 of the Civil Code).

However, Article 254 of the Civil Code also grants the right to The wife has the right to present all evidence, whether from events, witnesses, or other evidence that can prove that her husband is the father of the child. Meanwhile, Article 251 of the Civil Code states that the legitimacy of a child born before the one hundred and eightieth day of marriage can be denied by the husband. Under this article, denial is not possible if:

- a. The husband knew before the marriage that his wife was pregnant;
- b. The husband was present when the birth certificate was issued and signed the certificate or contained a statement from him stating that he was unable to sign it.

As we know, Islamic law can be broadly divided into two areas: worship and social relations. The field of worship does not require worldly courts, such as violations by Muslims who do not perform worship, such as prayer, fasting, and so on. These are not adjudicated by a human court in this world but by a court in the afterlife. Meanwhile, disputes within the field of social relations/social law require a judicial process. Disputes in the areas of marriage, divorce, and child abandonment include disputes over child abandonment. These are resolved through the courts.

Religious Courts are a crucial institution in the social order, particularly for Muslims. Philosophically, Religious Courts were established and developed to meet the demands of upholding God's law and justice in social interactions, which is a manifestation of divine monotheism for organizing Indonesian society. Legally, Religious Courts are part of the political superstructure in national and state life.

According to Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, Religious Courts are one of the executors of judicial

power for ordinary Muslim justice seekers regarding certain cases regulated by this Law. In this regard, Religious Courts only have jurisdiction over certain cases and only for Muslims.

The affirmation of the authority of the Religious Courts is intended to provide a legal basis for the Religious Courts in resolving certain cases, including violations of the Marriage Law and its implementing regulations. The authority of the Religious Courts is stated in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, namely in Article 49 of Law Number 3 of 2006. Religious Courts are tasked with and authorized to examine, decide, and resolve cases at the first level between Muslims in the following areas: a. marriage; b. inheritance; c. wills; d. gifts; e. waqf; f. zakat; g. infaq; h. sadaqah; and i. sharia economics.

Article 50 of Law Number 3 of 2006 (1) In the event of a property rights dispute or other dispute in a case as referred to in Article 49, specifically regarding the object of the dispute, it must first be decided by a Court within the General Courts. (2) If a property rights dispute as referred to in paragraph (1) arises between Muslim individuals, the dispute shall be decided by the Religious Court, along with the case referred to in Article 49.

Based on the duties and authorities of the Religious Court, one of these is to examine, decide, and resolve cases related to marriage and all its legal consequences. Marriage is a frequently occurring issue in society. However, in this case, the researcher only took one example of a case/case decided by the Probolinggo Religious Court, namely the denial/denial of paternity of a child born of a legitimate marriage.

Islamic law, which is described as a comprehensive and flexible legal system, gives rise to the assumption and understanding that Islamic law is appropriate to the situation and conditions. Islam is considered to be able to meet the demands of human needs. This assumption is not incorrect, because in principle, Islamic law is able to meet the needs of all diverse levels of society. Not only that, Islamic law is capable of anticipating all emerging problems in various regions of the world with the fairest, best, and most harmonious provisions.

The responsiveness of Islamic law lies in its comprehensiveness and solid foundation of thought and reasoning. It is also based on considerations that align with the highest standards of human morality and nature and always takes into account everything that is currently happening and developing in society. The development of legal forms and structures within a

society always follows a path consistent with developments within that society itself. This is essential because changes occur constantly. Sometimes these legal changes are due to the expiration of a legal rule or the societal need for a new, more modern law that can guarantee the interests of that society itself.

To better understand the legal consequences of child abandonment in marriage in Indonesia, an analysis of judicial decisions regarding child abandonment is essential. In this regard, researchers have analyzed several decisions obtained from the Supreme Court's website.[37] There are two cases that are nearly identical, but differ in their decisions: the Tabanan District Court's case number 107/Pdt.P/2021/PN Tab and the Kediri Regency Religious Court's decision number 1549/Pdt.G/2024/PA.Kab.Kdr.

In Decision Number 1549/Pdt.G/2024/PA.Kab.Kdr, the Panel of Judges was faced with the legal fact that a child was born in a legal marriage, but DNA testing results proved 99.9% that the child was the biological child of another man (a Taiwanese citizen).

Rather than focusing on the complicated formalities of proving adultery, as conventionally stipulated in Article 44 of the Marriage Law, the Panel of Judges in this ruling made a legal discovery (*rechtsvinding*) by using DNA test results as the primary authentic evidence. From a legal perspective, this move reflects a paradigm shift from Formal Truth to Material Truth. The judges recognized that maintaining the status of "legitimate child" for a child who was biologically proven not to be the Defendant's child constituted a "legal sham" that actually violated the sense of justice.

While the Kediri Regency Religious Court Decision No. 1549/Pdt.G/2024/PA.Kab.Kdr demonstrates a progressive legal stance by accepting the mother's lawsuit, the Tabanan District Court Decision No. 107/Pdt.P/2021/PN Tab demonstrates a contradictory legal reality.

In a case at the Tabanan District Court, the applicant (a mother) filed a birth certificate amendment to remove her legal husband's name from the child's birth certificate, on the grounds that the child was the biological child of another man (as proven by DNA testing). However, the examining judge at the Tabanan District Court adopted a strict positivist stance by refusing to grant the applicant legitimacy.

The Tabanan District Court Judge's legal reasoning (*ratio decidendi*) explicitly highlighted the formal flaws in the applicant's legal standing. The judge firmly adhered to

Article 44 paragraph (1) of Law Number 1 of 1974 concerning Marriage and Article 251 of the Civil Code (KUHPerdota). Both articles restrictively stipulate that the right to deny the legitimacy of a child (child disownment) is the exclusive right of the husband (father).

In his reasoning, the Tabanan District Court Judge emphasized that positive law in Indonesia does not allow a wife (mother) to disown a child she has born to herself as long as she is legally married. The legal logic established is the principle of *pater est quem nuptiae demonstrant* (the father is the one designated by marriage), which was created to protect children. Therefore, only the husband—who feels aggrieved—is given the right to undermine this principle. As a result, even though the mother presented material evidence in the form of a DNA test showing biological incompatibility between the child and her husband, this evidence was futile because the formal entry point (legal standing) was firmly closed by the text of the law.

A comparison between the Kediri Regency High Court Decision (2024) and the Tabanan District Court Decision (2021) reveals a sharp disparity in decisions that leads to legal uncertainty (*rechtsonzekerheid*):

- Kediri Regency High Court Decision (Progressive Approach): The judge broke through the rigidity of the statutory text for the sake of material justice. The mother's legal standing was accepted (*ius curia novit*) because biological facts (DNA) were deemed more dominant than formal procedures.
- Tabanan District Court (Legalism/Positivism Approach): The judge refrained from exceeding his authority. The judge argued that as long as the Marriage Law remains unchanged, the mother does not have the right to sue/apply to disown the child, in order to ensure legal certainty (*rechtssicherheit*) in the statutory text.

The legal facts in the Tabanan District Court's ruling confirm the textual rigidity of Article 44 of the Marriage Law, which is no longer relevant to the development of modern legal principles. This article reflects a legal construction that contains gender bias because it limits the legal standing for disowning a child to the husband. Normatively, this limitation contradicts the principle of equality before the law, considering that a mother also has a legitimate legal interest in rectifying her child's civil status. This legal interest is closely related to preventative protection of lineage, prevention of erroneous mahram relationships



(incest), and certainty of future inheritance rights, which should be accommodated by law regardless of the applicant's gender.

#### IV. CONCLUSION

The legal implications of child abandonment are a form of legal protection for a husband's rights. A child suspected by a husband of being born as a result of a wife's adultery is considered a legitimate child born within the marriage. A husband can deny the legitimacy of a child born to his wife due to adultery, and the court will issue a decision on the child's legitimacy.

The current regulation of child abandonment in Indonesia is characterized by a sharp conflict between legal certainty (birth certificates and the time limit for denial) and material justice (DNA biological facts). Law Number 1 of 1974 concerning Marriage has proven outdated in response to advances in DNA testing technology, forcing judges to choose one value at the expense of the other.

There has been a paradigm shift in the evidentiary system in religious courts, from evidence based on eyewitnesses to adultery (as stipulated in Article 44 of the Marriage Law) to scientific evidence through DNA testing. While this approach brings closer to material truth, the lack of a specific legal framework means that DNA evidence remains purely case-by-case and highly dependent on the judge's conviction (*rechterlijk overtuiging*).

In child abandonment disputes, the child is the most disadvantaged party (double victim). First, they are victims of dishonesty regarding their parents' parentage. Second, they are victims of a legal system that, upon the granting of the lawsuit, immediately terminates their civil rights (lineage, maintenance, inheritance) from their legal father, with no guarantee of automatic restoration of their rights to their biological father. This demonstrates that the utility aspect has not been optimally fulfilled in current judicial practice.

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