

# LEGAL REVIEW OF MARRIAGE ITSBAT TO DETERMINE ORIGIN OF CHILDREN

Sixson  
Universitas Deliserdang

## ABSTRACT

The provisions of Marriage and positive law in Islam are designed to validate marriages conducted without proper evidence as provided by Marriage Law No. 1 of 1974. The reason for the isbat of marriage can be done by showing that the marriage was conducted before the marriage certificate, or it can be done for reasons such as the loss of the marriage certificate or marriage record, confirming the child's status for divorce and inheritance, and many more. The marriage process to determine the child's guardian in the study of Islamic law and positive law is carried out after the trial judge receives the application and examines the requested materials and hears the witnesses. The opinion of the scholar Abdullah Ali Husein and the fiqh experts regarding the itsbat of marriage to determine the parentage of a child if it is not intended for marriage, then a child is called an illegitimate child. This is related to the legal rights received by children from their parents. Illegitimate offspring have a civil relationship only with the mother and the mother's family.

**Keywords: Marriage Confirmation, Origin, Child.**

## A. INTRODUCTION

Children's rights are detailed in Articles 5-18 of Law No. 35 of 2014 concerning Child Protection, which states that "children have the right to know their parents." Parental knowledge is related to the child's background. The child's origins, etc., can be proven by a birth certificate. Obtaining a birth certificate for a child born out of wedlock is not difficult; simply caring for them according to the criteria and conditions above will provide full protection for foster children and children born out of wedlock.

For children born out of wedlock, parental rights must be determined by court order, and the court will not grant all parental requests. The court will determine the source of the child if the application is legally certified. If the application is frivolous and without legal basis, it will be denied.

Marriage itsbat, or marriage decree, opens the possibility of itsbat being implemented in Religious Courts. This is an advantage of suppressing marriage registration. It is intended to help the public consider not only Islamic law issues but also the civil aspects of marriage. Therefore,

registering new marriages represents a government effort to protect the public and ensure security and justice.

## B. LITERATURE REVIEW

### 1. Marriage

The provisions of Article 1 of the Marriage Law No. 1 of 1974 state: "Marriage is a physical and spiritual union between a man and a woman as husband and wife with the intention of forming a family."

### 2. Marriage Confirmation

The word "isbat" (marriage contract) or "marriage agreement" (akad nikah) comes from two letters: "isbat" and "nikah" (marriage). "Isbat" in Arabic is "ismu masdhar," meaning readiness, confirmation, or note. Linguistically, "isbat" (marriage agreement) is the correct meaning (legal marriage). The term "isbat" (marriage agreement) refers to the marriage of a man and a woman as a marriage contract according to the Islamic system, fulfilling the requirements and pillars of marriage. However, this marriage took place earlier and was not registered with government officials, namely civil servants.

### 3. Child

Children, including youth, are part of a free society and inheritors of the nation's ideals, possessing strategic roles and unique characteristics. Children require guidance and protection to demonstrate their physical and mental potential, as well as to promote social development and progress. Achieving development and providing protection for children requires strong and adequate institutional support and legal resources.

### **C. RESEARCH METHODS**

This type of research is normative legal research, also known as doctrinal legal research. The author used descriptive analysis to compile this code. The data used in this study is a literature review. The sources of information in this study are available in the second publication. In this study, data analysis was conducted qualitatively .

### **D. RESEARCH RESULTS AND DISCUSSION**

#### **1. Provisions for Confirmation of Marriage in Islamic Law and Positive Law**

Based on Article 2 paragraph (1) of Marriage Law No. 1 of 1974 and its explanation, Hazairin defines this as:

So , the legal provisions that apply according to Marriage Law no. 1 of 1974 is the first and foremost law for every religion and belief for its followers. So for Islam, it is impossible for them to marry other religions .

The validity of a marriage depends on the religion and beliefs of both parties, whether the pillars and conditions of marriage (for Muslims) or the rites and blessings fulfilled by the imam/cleric are marriage. is true. But, of course, a valid marriage must be recorded according to religion and beliefs according to Article 2 paragraph (2) of the Marriage Law No. 1 of

1974. The correct law states that a legal relationship also runs with legal consequences, so that a marriage between a man and a woman proves that they have been legally married with legal consequences in terms of property, inheritance and so on.

Registration of marriage according to Article 2 paragraph (2) of the Marriage Law Number 1 of 1974 does not regulate the conditions for equality of valid marriages according to religion and registration of marriages, so that registration of marriages can dissolve marriages according to religion. Bagir Manan said that marriage according to their religion (religious prayer) is the only condition for a valid marriage.

It can be said that marriage registration is no longer a legal act or legal status, but is valid according to religion and belief, once the pillars and requirements of marriage are fulfilled. Marriage registration cannot dissolve a marriage according to religious law. According to Article 4 of the Compendium of Islamic Law, "a marriage is valid if it is conducted in accordance with Islamic law as Article 2 Paragraph (1) Marriage Law no. 1 of 1974".

Article 2 paragraph (2) of Marriage Law No. 1 of 1974 states: "Every marriage must be registered according to applicable law." This is how marriage registration is carried out:

- a. This is based on the principles set out in Articles 3 to 9 of the 1975 Constitution.
- b. The writing system is specifically codified in the relevant laws and for Muslims as regulated in Law Number 32 of 1954 in conjunction with Decree of the Minister of Religious Affairs No. 1 of 1955. The Non-Muslim Registration Scheme is regulated in the Guidelines for Registration of Indonesian Christian Citizens Stbl. 1933 no. 327, Registration Rules for Chinese Stbl. 1919 no. 81 in

China and Stbl. 1849 no. 25 for those in the European community.

For Muslims, the Registrar of Marriages, Divorces and Reconciliation, while for non-Muslims, registration is carried out at the Marriage Registration Office. This is in accordance with Article 8 paragraph (2) of Law No. 24 of 2013 concerning State Administration as amended by Law No. 23 of 2006, the Regency KUA has special duties and authority to organize the registration of marriages, divorces, separations and reconciliation for Muslims.

This is contained in the provisions regulated by the Compilation of Islamic Law in Article 5 paragraph (1) which states that : "To guarantee a safe marriage for Muslims, every marriage must be registered." In addition, Article 6 paragraph (1) states: "To fulfill the requirements of Article 5, every marriage must be conducted before a Marriage Registrar and under the leadership of a Marriage Registrar." Because paragraph (2) stipulates that a marriage outside the authority of a registrar is not valid according to law. Therefore, if it is not legally valid, then a valid marriage according to Islamic Law has legal consequences that arise after the marriage which returns to Marriage Law. 1 of 1974 Article 2 paragraph (2) concerning marriage registration. marriage and other supporting orders.

The definition of Marriage Law No. 1 of 1974 as reviewed from General Explanation 4 (b) states: And then every marriage must be registered according to the relevant laws. Any marriage record is equivalent to a record of important events in a person's life, such as births and deaths, which are recorded on a certificate of title, which is also in the register.

First, the existence of a marriage in the province of divorce constitutes a unity of marriage *itsbat* in divorce cases. Therefore,

the demand for marriage *itsbat* is conflicting, namely the plaintiff and the plaintiff in it. Good law in Indonesia does not serve as a guideline in the implementation of criminal/law enforcement. Neither HIR nor R.Bg. does it. Likewise, civil law does not clearly regulate whether the prohibition in Article 103 of the Criminal Code dt only applies to combinations or applications used in patent processes ( *Bezit* ) and property rights claims. Therefore, *in contrario* (meaning the opposite), Rv., allows for the joining of applications .

This application has been carried out by jurisprudence since Indonesian independence, such as the decision of the Jakarta Raad Justisie on June 20, 1939, which allows prosecution, if there is a close relationship between the charges (*innerlijke samenhang*). The same view is expressed in Decision No. 575 K/Pdt/1983, and No. 880 K/Sip/1970 of the Supreme Court of the Republic of Indonesia explains, among other things :

- a. Although Article 393 paragraph (1) HIR states that only HIR is mentioned in procedural law, but to obtain benefits from the event ( *doelmatigheid* ) it is possible to apply ritual conditions. outside of these. specified in HIR, if the application guides the procedural measures:
  - 1) greatly simplify or speed up the assessment process.
  - 2) avoid conflicting decisions.
- b. For this reason, it is possible to combine ( *samenvoeging* ) both collective and subjective goals, as long as there is an inner similarity or close relationship between them.

According to Article 7 paragraph (3) letter a of the KHI, an application for the determination of *itsbat nikah* can be submitted simultaneously with the divorce process because the two elements are closely

related, namely divorce-marriage, so it is considered that no divorce has occurred. . the marriage becomes valid. Combining 2 (two), 3 (three), or more cases may make sense if there is a close relationship between each case to simplify the process and avoid conflicting decisions. In addition, by combining several cases into one case, several cases can be resolved through one process, tried, and determined in one decision. According to this view, the resolution of the case will use the legal rules: "easy, fast and cheap. In accordance with paragraph (2) of Article 4 of Law Number 48 concerning Judicial Power.

There are two ways to send a marriage certificate for divorce, namely:

- a. Couples who wish to divorce must first submit their marriage to itsbat and after receiving the marriage itsbat decision, then file a divorce suit or submit the marriage itsbat decision as proof of marriage.
- b. A marriage confirmation application can be submitted as part of the divorce process. Therefore, when a marriage confirmation application is submitted, it is usually made in a society where it is clear that a marriage without a marriage certificate is valid only through a marriage certificate.

Applying for marriage confirmation due to loss of marriage certificate. The way to register a marriage is by issuing a marriage certificate. According to Article 1, Article 6, Law of the Minister of Religious Affairs No. 11 of 2007 concerning Marriage Registration (Permenag 11/2007), a marriage certificate is a real document that records the events of a marriage. After the marriage is registered, the couple is given a marriage certificate. The marriage certificate is part of the marriage certificate as one form of legal proof of the existence of a marriage (Article 7 paragraph (1) of Government Regulation No. 1 of 1991

concerning the Division of Islamic Law (KHI).

For Muslims, marriage registration will be carried out at the Religious Affairs Office (KUA). The marriage certificate is made in duplicate, one kept by the clerk and the other kept by the clerk at the marriage registry office, and a marriage certificate is issued to each couple as required by law. Article 13 of Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning marriage. However, of course, there can be various reasons for the loss of a marriage certificate, such as heat, loss, theft/damage, and flooding. Therefore, if the certificate is needed later to handle special requirements that require a marriage certificate as part of the requirements, it will cause problems. According to Article 35 of the Minister of Religious Affairs Regulation 11/2007, for the registration of a lost marriage, a copy of the marriage record can be provided to the marriage registrar through a loss or damage report from the local police.

If it turns out that their names are not registered at the local KUA, cannot be verified or their validity is in doubt and they cannot provide a photocopy of the marriage certificate, then an application for recognition of the marriage certificate must be made as long as the marriage has legal validity.

Article (3) letter b of Article 7 of the Compendium of Islamic Law is the basis for an application for recognition (acknowledgement) of marriage in the Religious Court based on the place of residence of the person concerned. At the same time, those who can submit an application for itsbat marriage, spouse or one of the parties, children, marriage officers, and other people who are interested in getting married in the Religious Court whose jurisdiction is within the applicant's jurisdiction, and the application for itsbat

marriage. must be accompanied by a clear statement. meaning and facts and interests.

There is debate about whether there are requirements for a valid marriage or not. Article 2 paragraph (1) of the Marriage Law No. 1 of 1974 determines whether a marriage is valid or not according to religion and belief. In the context of Article 2 paragraph (1) of the Marriage Law. 1 of 1974, it has been stated that no marriage follows the laws of any religion and belief as regulated in the 1945 Constitution. In addition, there are negative aspects. administration of each marriage, namely incomplete marriage registration, so that many marriages are not subject to law and the obligations of the KUA are not far-reaching. Let it be unclear that the marriage will affect issues related to marriage, such as the status of children, inheritance, marital property, and so on.

## **2. The Form of Marriage Confirmation to Determine the Origin of Children in the Study of Islamic Law and Positive Law**

The government oversees marriage registration and its confirmation with a marriage certificate, which is processed systematically through a bad news process. This is because, although there is no holy book or Sunnah governing marriage registration, the contents of the benefit meet the desired requirements for the benefit of the community. Alternatively, considering the verse above, a comparison can be made, as there are similarities, namely to avoid the hassle of unregistered marriages.

Based on the above analysis, it is clear that marriage registration requires universal acceptance and practice. Having a solid methodological foundation, qiyas, or the benefit of mursalah, is a topic based on inductive learning.

A legitimate child under positive law, including Indonesian Islamic law, is a

child born of or within a legal marriage. If the child is born to a legally married mother, the child is considered legitimate. The Compendium of Islamic Law also does not explicitly mention this lineage, except for children born out of wedlock.

The sunnatullah (lawful) law of marriage applies to all of God's creation, be they humans, animals, or plants. Everything God created is in pairs and looks equal, and this applies to men. Marriage is part of the constitution. Marriage involves kinship, property, children, education, money, and so on. In Islam, marriage is not merely a relationship between a man and a woman, but is in accordance with human nature, indicating a person's purpose for marriage. Therefore, the laws of marriage have changed.

Because marriage, as previously mentioned, is part of civil law, the elements of marriage must also be legally valid. This is done to guarantee the legitimate individual rights of husband and wife, as well as the ongoing obligations of marriage, including marriage after the birth of children. Children born out of wedlock must be permitted or must be given foster care status, so that the child's rights are protected by law. On the other hand, a child born out of wedlock must have a certificate, one of which is a birth certificate. This birth certificate establishes the child's legal status in the eyes of the law and, of course, the law protects their civil rights.

Public law, loosely interpreted, encompasses all subordinate laws affecting private interests. Therefore, civil law is considered an independent element, considered in conflict with criminal law. Civil law is also called property law. However, because the term "civil" is often used in contrast to the term "military," the term "civil law" is more commonly and conveniently used for certain property laws.

Therefore, a birth certificate is crucial in a child's life as proof of their parentage, valid from infancy to adulthood. A valid birth certificate demonstrates the child's status under Article 44 of the 1974 Marriage Law No. 1 and Article 99, which stipulates "Islamic legal entity." This is even if the relationship between the parents was politically unclear at the time of the marriage (due to a staged marriage).

Children, from the earliest stages of life until the age of one, need other people in their lives, whether in their place or in shaping their behavior. People who fulfill a nurturing role are crucial for this. Therefore, the issues of these children receive special attention in Islamic education. This responsibility rests with both parents. Furthermore, it is the parents' responsibility to safeguard the child's place of origin. Obtaining a birth certificate at the national office is a parental responsibility to ensure the child's legal status and ensure their civil rights are not violated.

Children's rights are also regulated in the Compendium of Islamic Law. The Compendium of Islamic Law was compiled with the aim of perfecting Marriage Law and attempting to establish it as valid law, albeit in a different position. The body of Islamic law is based on Marriage Law in its role as an application of Marriage Law, so matters must not conflict with Marriage Law. Therefore, all elements of Marriage Law have been translated into the Compendium of Islamic Law, albeit in slightly different ways. Furthermore, the Compendium of Islamic Law has included new provisions whose principles conflict with Marriage Law. We can see this from the numerous headlines between the two.

The texts of the Marriage Law are regulated by the Compilation of Islamic Law. Society follows the structure of the Marriage Law, and additional non-statutory articles are added to complement it. Direct

regulation of the instruments of marriage in the Marriage Law exists only within the body of Islamic law.

If we examine the elements of the Compilation of Islamic Law and compare them with the Marriage Law, including marriage law, the provisions of Law Number 9 of 1975, which is the law applicable under Law Number 7 of 1989 concerning Administrative Law, are also included. With the enactment of Law Number 32 of 1954 concerning Registration Procedures, all of its provisions are contained in the Compendium of Islamic Law. The articles in the Compendium of Islamic Law, in addition to those covered in the aforementioned law, almost completely cover the jurisprudence of *munakahat*.

When analyzing the meaning of the origin of children in unregistered marriages, it was found that the basic rules for understanding the origin of children are based on the Compilation of Islamic Law and the Marriage Law No. 1 of 1974, which complement each other. Then, children born from a legitimate marriage whose marriage is not registered in the Marriage Book must maintain their identity so that the child's origin can be legally recognized on the birth certificate they will receive.

According to the study Regarding the determination of the source of children in unregistered marriages, the complexity of Islamic law lies in Article 99 paragraph (2) and Article 103, as well as Marriage Law No. 1 of 1974. Article 55 paragraph (2); the decision of. in the case of a child born from an invalid (unregistered) or unregistered marriage, such as an unregistered marriage, the child can still show his/her identity card/birth certificate. Through an application to the Religious Court, and depending on the decision of the Religious Court, parents can re-apply for a birth certificate at the Civil Service. According to

the Religious Court, the clerk must issue a birth certificate.

Marriage is practiced not only for the fulfillment of human needs and the fulfillment of service, but also for procreation, as a means of love and a better life for everyone. Children, as a trust from God, have a significant place in the home and family. Therefore, child protection is one of the objectives of Islamic law, inseparable from other objectives of Islamic law, such as the protection of religion, life, intellect, and property.

Protecting offspring also means preserving religion. This is why Islam regulates marriage, including choosing a partner, proposing, conducting a marriage contract, household practices in society, divorce, and determining the status of illegitimate children. Raising children also means raising the soul. This includes prohibiting activities that are unsafe for children.

In fact, for birth certificates, the couple's marriage certificate is the most important requirement. Marriage registration, according to Marriage Law No. 1 of 1974, is defined as a physical and spiritual relationship between a man and a woman to create a happy and eternal family based on the One Almighty God. A marriage based on God is a marriage based on religion.

Marriage Law No. 1 of 1974 applies to all Indonesian citizens. However, the Marriage Law also has exceptions, meaning that it is only valid if it is carried out according to the accompanying Religious Law. A marriage that is contrary to any religious law based on paragraph (1) of Article 2 is valid. A legal act cannot be canceled after the occurrence of material events as regulated in paragraph (2) of Article 2 that every marriage is recorded according to applicable law.

Any religious and belief regulations, including provisions relating to religious organizations and beliefs, if they are not in accordance with marriage or are otherwise determined in this code, must be in accordance with the meaning of marriage in Article 1 and the law taking into account the time of delivery of marriage according to paragraph (1) of Article 2 of the Marriage Law.

What is meant by religious law, including laws related to its organization, as long as it does not conflict with or is not regulated in this Law for Muslims, is religious law as referred to in Article 1 paragraph 1 letter a of Marriage Law No. 1 of 1974 in conjunction with paragraph (1) of Article 29 of the 1945 Constitution. Islamic religious law has been abolished or recognized in common law. Thus, in the legal aspect of Islamic marriage in Indonesia, the concept of Ijab Kabul is based on Article 1 and Article 2 Paragraph (1) of Marriage Law. 1 of 1974. Marriage is valid if it is carried out in accordance with Islamic law, but photography is only a professional obligation.

The validity of a marriage certificate and a marriage certificate is stated in general instructions number 4 letter b. The registration of a married name according to general information number 4 letter b is the same as the registration of important information in life, for example the registration of a birth certificate in a birth certificate (birth certificate); the certificate also includes registration. Thus, it is clear that a marriage registered according to Marriage Law No. 1 of 1974 is a registration of an important event, not a legal event.

Article 2 of the Comprehensive Islamic Law (KHI) stipulates that marriage according to Islamic law is a marriage, which is a binding contract in obedience to God's commands and is performed as an act of worship. Article 3 of the Comprehensive

Islamic Law states the purpose of marriage, namely to achieve a family life that is peaceful, loving, and compassionate.

Regarding the validity of marriage, Article 4 of the Compendium of Islamic Law states that a marriage is valid, as long as it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of the Marriage Law. 1 of 1974 as defined as a valid marriage according to paragraph (1) of Article 2 of the Marriage Law Number 1 of 1974 is a marriage contract according to religious law (mariage siri). Marriage according to religious law is a valid act and cannot be canceled according to paragraph (2) of Article 2 of the Marriage Law Number 2. 1 of 1974 concerning marriage registration. Thus we can conclude that criminal law in Article 4 of Islamic law confirms that a valid marriage is a marriage that according to Islamic law includes unregistered marriages, in accordance with Article 2 paragraph (1) of Law Number 1 of 1974 indicating to him about marriage.

Article (1) Article 5 states that marriages must be registered, this explains the meaning of number 4 letter b of the Marriage Law. 1 of 1974 as mentioned above. However, the word "must be registered" in line b of the General Explanation Number 4 does not mean that the registration of the marriage is the same as or fulfills the requirements for a valid marriage as regulated in paragraph (1) of Article 2 concerning Marriage. The first practical rule. 1 of 1974 as explained. Article 2 paragraph (2) of the Marriage Law No. 1 of 1974 does not invalidate a marriage if it is not registered. Therefore, it is necessary to pay attention to Article 5 paragraph (1) of the Criminal Code which aims to validate marriages only for Muslims.

Even unregistered marriages are valid under Islamic law and are recognized as legitimate in Indonesia. This is because registering a marriage on paper is not a

requirement for marriage under Islamic law. A marriage is considered valid if it complies with the rules of any religion, and unregistered marriages meet these requirements in Islam. The following requirements can be used to verify the source/documentation of the child's registration/birth certificate.

In addition to the absence of a marriage certificate for both parents, in this case the child's birth certificate is also separate and can be issued for the child in question. If both parents have adopted their child in an unregistered marriage, then the parents can first apply to the Religious Court for a decision to issue a birth certificate for the child, and then to the employee. but the child's birth certificate can be issued. Orders issued by the Religious Court regarding the law of origin of the child also serve as a strong basis for submitting an application for a birth certificate from the authorized agency. According to Article 49 of Law Number 23 of 2006 concerning Population.

### **3. Views of Islamic Scholars and Legal Experts Regarding Marriage Confirmation to Determine the Origin of Children**

In Islamic law, family is seen as the strongest bond, binding a son and his father, each of whom is an inseparable part of the family. Without kinship, there can be no good family relationships. As it develops, oral evidence becomes physical evidence in the event of a child's passing, as stipulated in Comprehensive Islamic Law, Article 103, which reads:

- a. The identity of a child cannot be proven by a birth certificate or other evidence.
- b. In the absence of a birth certificate or other evidence as referred to in paragraph (1), the Religious Court may decide on the parentage of the child after conducting a thorough examination

based on evidence that can be reasonably calculated.

- c. Based on the decision of the Religious Court as referred to in paragraph (2), the Religious Court Birth Registrar issues a birth certificate to the child concerned.

According to Islamic law, a child's lineage can be determined by one of three factors :

- a. Through al-Firashi, which is based on adoption and not legal marriage.
- b. Through iqrar, which is a commitment made by a person to a child who claims to be his child.
- c. With bayyinah, namely by confirming that a child is someone's child, someone accepts it based on strong evidence.

It is not easy to prove that a child based on the information on the birth certificate can be proven to be a legitimate child. Because in practice The birth certificate shows the names of the mother and father, as well as the child's birth date. If there's any question as to whether the mother is indeed the man's wife, their marriage certificate can be used to prove it. Therefore, both the child's birth certificate and the parents' marriage certificates play a crucial role in verifying the child's authenticity.

Adoption in Islamic law is called 'istilhag' or 'iqrar', meaning the voluntary acceptance of a child into a blood relationship by a man. This contract is often similar to the child contract regulated by the Civil Code, which is referred to as a biological child (*natuurlijk kinderen* ).

A child is something special and a couple's dream. This child must have a mother. However, sometimes people doubt and question the child's authenticity. Whether the child is truly theirs or not. Of course, this issue isn't difficult to prove. While they do have a mother, proving their lineage to the father is certainly no easy task.

From an Islamic legal perspective, determining the line of custody is crucial

because it allows the child to be traced between the child's parents and their grandchildren. This decision determines the child's status, including other relationships such as inheritance, custody, and other rights. Marriage with a mahram (a relative) without proof of parentage is considered legitimate. A child can be considered legally related to their father if they are legitimate, born in a valid marriage, and registered with the Ministry of Religious Affairs. However, children born out of wedlock cannot be considered legitimate.

In the evolutionary era, oral evidence has become physical evidence, in terms of proving the origin of children as regulated by the Marriage Law no. 1 of 1974 in Article 55 which reads:

- a. The child's identity cannot be proven by a birth certificate or other evidence.
- b. In the event that a birth certificate or other evidence as referred to in paragraph (1) is not available, the Religious Court will decide on the child's parentage after conducting a thorough examination based on evidence that can be reasonably calculated.
- c. As regulated in paragraph (2), the Religious Court Birth Registrar issues the birth certificate of the person concerned.

Birth certificates, according to Stbl. 1920 No. 751, are issued by every district or city registration office in Indonesia. Proof of a child's parentage is provided by a birth certificate issued by the parish or village.

The birth of a child must be notified because it is important and will result in changes to the Family Card, ID Card, etc. A child knows their parents through a birth certificate. The birth certificate is the child's identity and parentage, and a person's identity extends beyond the birth certificate. It can also be used to take legal action if problems arise. A marriage certificate is

required to include the names of both parents.

A registered marriage that meets the requirements and the pillars of marriage is closely related to the role of children. However, a birth certificate is not the most essential requirement, as many children still lack one. However, if the parents marry before the Ministry of Religious Affairs and this can be verified, the sole proof of the child's lineage is the birth certificate.

An illegitimate child is legitimate only if the parents wish to recognize the child as their own. According to Erna Sofwan Sukri, legal adoption is a new form of gift commemorating the adoption. Adoption is a legal act to create a familial relationship between the child and the recipient, regardless of who gave the gift.

According to the law, an illegitimate child whose mother is not recognized will not have a civil relationship with the mother, even if the mother does not recognize the child as her own. In this case, a child born out of wedlock can only inherit from their parents if they have received their parents' legal consent.

According to Abdullah Ali Hussain, the purpose of child recognition in Islamic law is to address the benefits the child receives, as well as to address significant losses to the child's future, and to cover possible shame, as a result of a child's birth. Marriage is a social responsibility. Adoption can now be carried out under Western law by legally obligated couples who live together outside of marriage.

A contract can be said to be valid and can have legal consequences for peace and the father, if four conditions are met, namely.

- a. The child's parentage is unknown, so it can be proven that the child is a descendant of the adoptive father. If the father is known, the recognition is void by law.

- b. There may be an age factor, but the confession is valid.

- c. The child acknowledges the confession if the child is mature enough to accept it. If the child is not mature enough, only the father is granted permission.

- d. In terms of permissibility, most scholars (speaking in public) believe that a person who has a child must prove that it is not the result of sexual intercourse or abuse before he is married because having a child is not permissible, which is the basis for adultery.

According to Islamic law, acknowledging a child's parentage is valid if the requirements are met. However, if these requirements are not met, the application cannot be approved and will be rejected. If the child is legitimate, but the husband denies the child's legitimacy, the husband must prove that the child is not the child of the person born to his wife.

A judge who accepts a child's refusal must appoint a special guardian who will appoint the child's refusal. The child's mother, who knows the facts about her child and cares deeply for him, must be brought to justice. However, if the refusal is deemed valid despite reconciliation between the spouses, if she cancels the removal of the table and bed, the child will not receive legal status. Because the child's refusal is absolute and cannot be contested.

According to Taufiq, a child born out of wedlock is a child. This has two meanings: broadly encompassing all illegitimate children, and narrowly encompassing only children born out of privilege and sexuality. Under civil law, it is legal for children to have social relations with their parents only with their voluntary consent ( *legally granted consent* ) or by coercion (court order to determine the child's mother or father).

If both parents are married and unaware of their illegitimate child, then recognition of the child can be done with a letter of approval from the head of state, and before the marriage contract can be carried out, he must be the head of state. A request for judicial review to the Supreme Court. Also, adoption of an illegitimate child, so that there is a civil relationship between the illegitimate child and the mother and father who adopted him as a legitimate child.

## E. CONCLUSION

1. The provisions of marriage confirmation in Islamic law and Positive Law are made Confirmation of marriage carried out by the applicant without any evidence as referred to in Article 2 of the Marriage Law. 1 of 1974. The reason for issuing a marriage certificate can be because the marriage occurred before the Marriage Law, or it can also be because the marriage certificate or marriage book is lost in the event of a divorce. and evidence. the condition of the child due to hereditary factors and many other factors.
2. The marriage itsbat process to determine the parentage of a child in the study of Islamic Law and Good Law is carried out after the trial judge receives the application and examines the requested materials and hears witnesses. The judge's basis for deciding on the marriage itsbat application is to examine the purpose of the Marriage Certificate application and complete requirements as well as witness statements, the marriage can be confirmed before a marriage clerk and martyr, there is no objection to the marriage and the marriage fulfills the pillars of marriage.

3. According to the opinion of cleric Abdullah Ali Husein and legal experts regarding itsbat marriage, if the child is not intended for marriage, the child is considered illegitimate. This relates to the legal rights a child receives from his parents. An illegitimate child only has a civil relationship with the mother and her family. This relationship is often referred to as parental authority, meaning that parents and children have rights and obligations. A son has no affiliation, rights, or ownership relationship with his biological father, and he bears no personal responsibility.

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