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The Intersection of Court Jurisdiction in Handling Cases Involving Children Born out of Wedlock Amidst Family Law Pluralism in Indonesia

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Abstract: *The purpose of this study is to analyze (1) the consistency of the absolute authority limits of Religious Courts and General Courts in handling cases of illegitimate children, and (2) the application of the Principle of Islamic Personality in resolving cases of illegitimate children in judicial practice in Indonesia. This study uses a normative (doctrinal) legal research method to examine the norms and regulations of judicial authority related to handling cases of illegitimate children. The approaches used include the statute, conceptual, and case approaches. The legal materials analyzed consist of primary legal materials and secondary legal materials. First, the pluralism of family law in Indonesia has given rise to a dualism in jurisdiction between Religious Courts and General Courts regarding handling cases of illegitimate children. This has the potential for violations of the absolute authority of the Religious Court institution found in several decisions, including those related to illegitimate children submitted by Muslim parties handled by the District Court. This is influenced by several factors, including historical factors, similarities in disputed objects in civil law, legal vacuum in regulating illegitimate children, as well as different interpretations of the Court Decision No. 46/PUU-VIII/2010. In addition, Religious Courts tend to use a stricter approach in granting requests/lawsuits related to illegitimate children. The results of the second study showed that violations of the absolute jurisdiction of Religious Courts not only violate the provisions of the law but also ignore the Principle of Islamic Personality as the basis of the authority of the Religious Courts, which has the potential to be revoked. Moreover, there are decisions that contradict the substance of Islamic Law.*

Keywords: *court authority; illegitimate children; Islamic Personality Principle*

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INTRODUCTION

Family Law in Indonesia is a unique and sensitive area of law that is different from other areas of law. This is due to the existence of family law pluralism that still applies in Indonesia. In society, there are three legal systems that apply side by side with national law, namely, Islamic family law, customary family law, and Western family law (BW). Legal pluralism in a country is a situation wherein more than one legal system applies at the same time and interacts with the other legal systems for regulating various community activities and legal relationships that exist in a certain area.[1] Plurality has the potential to create tension in societal relations. Legal pluralism does not necessarily mean that diverse legal systems can coexist peacefully.[2] Plurality has the potential to create tension in societal relations. Legal pluralism does not necessarily mean that diverse legal systems can coexist peacefully. During the colonial period, legal pluralism was primarily characterized by the application of customary and religious law alongside colonial law. After Indonesian independence, the development of legal pluralism underwent a shift, with the state and religious law becoming increasingly influential in shaping national law, particularly in the regulation of marriage legislation.[3]

According to Woodman, legal pluralism is a situation wherein more than one legal system applies simultaneously in a society. This concept is reflected in the Indonesian legal system, where society is not only subject to state law but also to other living and developing legal systems, such as religious law and customary law. The existence of these various legal systems demonstrates that legal pluralism is an integral part of legal practice in Indonesia.[4]

The existence of Religious Courts and District Courts demonstrates a concrete manifestation of legal pluralism in the Indonesian justice system. Although both are part of the judicial branch, the two institutions are based on different legal traditions. Religious Courts developed from the long-standing Islamic legal tradition in society, whereas District Courts are rooted in Western legal traditions inherited from the colonial era. These differences give rise to distinct characteristics of authority and legal basis, reflecting the state's recognition of the diversity of legal systems. Furthermore, this situation also raises potential problems in the division of authority, particularly in cases involving elements of both civil and religious law.[5]

Even though the division of authority has been formulated normatively, in practice there are still cases in the handling of certain cases that create gaps in competence among judicial environments. This situation causes more than one judicial body to feel authorized to examine and try the same case, giving rise to a problem that in procedural law is known as the point of

[1] Hairun Tri Wahyuni Sagala, "Kajian Teori Pluralisme Hukum terhadap Sistem Hukum di Aceh," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 3, no. 2 (2022): 119, https://doi.org/10.19184/idj.v3i2.35095.

[2] Wahyu Prijo Dajatmiko, *Budaya Hukum dalam Masyarakat Pluralistik* (Yogyakarta: Thafa Media, 2021), 70–72.

[3] Rayi Kharisma Rajib, A. Dhiya'ul Haq, and Muhammad Abidin, "Pluralisme Hukum Waris dan Konflik Keluarga: Analisis Putusan No. 284/Pdt.G/2014/PN Jkt.Sel," *Jurnal Media Akademik* 4, no. 5 (2026), https://jurnal.mediaakademik.com/index.php/jma/article/view/5944.

[4] Dedy Yudhistira S., "Pluralisme Hukum dalam Penyelesaian Sengketa Tanah Wakaf di Indonesia," *Jurnal Paradigma Hukum Pembangunan* 7, no. 1 (2022): 88, https://doi.org/10.25170/paradigma.v7i1.3019.

[5] Ahmad Arif Khoirul Muttaqin and Nur Kholis Majid, "Pergeseran Kompetensi Yurisdiksi antara Pengadilan Agama dan Pengadilan Negeri: Kajian Sosiologi dan Pluralisme Hukum," *Jurnal Serambi Hukum* 19, no. 1 (2026): 425, https://journal.uniba.ac.id/index.php/SH/article/view/1475.

intersection of authority.[6] In the Indonesian judicial system, the division of judicial authority is a fundamental principle that ensures legal certainty and the effective administration of justice. Each judicial environment is assigned jurisdiction based on the type of case determined by law to prevent overlapping authority among judicial bodies. General courts are authorized to examine and adjudicate civil and criminal cases in general, while Religious Courts are authorized to resolve specific cases involving Muslims, as stipulated in the Law on Religious Courts. The purpose of establishing court jurisdiction is to avoid overlapping authority among judicial institutions. However, in practice, there is overlapping authority and violations of authority among judicial bodies. One frequent occurrence in judicial practice is overlapping competence between the General Courts and the Religious Courts. This is because both judicial institutions have the same authority to examine, decide, and adjudicate cases in certain areas of civil law.[7]

In practice, the handling of cases of illegitimate children still faces problems owing to the incomplete regulation of illegitimate children, and there are differences in the understanding of the Constitutional Court Decision Number 46/PUU-VIII/2010, which changed the provisions of Article 43 paragraph (1) of the Marriage Law by providing opportunities for illegitimate children to have a civil relationship with their biological father and their father's family . The impact of this decision, in addition to giving rise to pros and cons, is that the expansion of civil relations between illegitimate children and their biological fathers without a clear explanation of the civil relations referred to in judicial practice has the potential to give rise to legal problems regarding the limits of the authority of the Religious Court and the General Court. This is seen in several cases of district court decisions that accept and decide the applications for the validation/recognition of illegitimate children in the context of making birth certificates and lawsuits for responsibility against biological fathers filed by Muslim people.

This problem is further complicated because the authority of the Religious Court is based on the Principle of Islamic Personality, whereas the General Court uses a general civil law approach. In some cases, parties file lawsuits with the General Court even though the substance of the dispute is closely related to family relationships, which fall within the jurisdiction of the Religious Court. This phenomenon indicates that the absolute limits of authority between the two courts have not been fully understood and consistently applied. Violations of absolute authority cannot be viewed merely as a procedural issue but concern the validity of the judicial process and the legitimacy of court decisions. Therefore, a firm and clear limit of authority is needed between the General Court and the Religious Court, especially in handling cases of illegitimate children. In the case of applications for recognition or legalization of illegitimate children or lawsuits for biological father responsibility, there is an urgent need to ensure legal certainty, avoid jurisdictional conflicts, and build an effective judicial system. Based on this, this article will discuss the consistency of the absolute authority limits of religious courts and

[6] Ilham Thohari, "Konflik Kewenangan antara Pengadilan Negeri dan Pengadilan Agama dalam Menangani Perkara Sengketa Waris Orang Islam," *Universum* 9, no. 2 (2015): 182, https://doi.org/10.30762/universum.v9i2.84.

[7] Mustating Daeng Maroa and Arianti A. Ogotan, "Batas Persinggungan Kewenangan Mengadili Sengketa Hak Milik antara Pengadilan Agama dengan Pengadilan Negeri," *Jurnal Yustisiabel* 4, no. 2 (2020): 158, https://doi.org/10.32529/yustisiabel.v4i2.734.

general courts in handling cases of illegitimate children and will further discuss the consistency of the application of the Principle of Islamic Personality in resolving cases of illegitimate children in judicial practice in Indonesia.

METHOD

This research is a normative (doctrinal) legal research that focuses on the analysis of legal norms, legal principles, and statutory regulations governing judicial authority in the field of family law, particularly in resolving cases of illegitimate children. To answer the research questions, statutory, conceptual, and case approaches are used. The legal materials used in this research consist of primary and secondary legal materials. The collection of legal materials was conducted through a literature study, which involved tracing, inventorying, and reviewing various legal sources relevant to the research problem. These sources included laws and regulations, court decisions, legal literature, books, scientific articles, journals, and previous research findings related to judicial authority in handling cases of illegitimate children. All of these legal materials were then inventoried, selected, and analyzed as a basis for addressing the legal issues that were the focus of the research.

ANALYSIS AND DISCUSSION

Court Authority in Handling Cases of Illegitimate Children in Indonesia

Indonesia is known as a country with a pluralistic legal system, where more than one legal system applies simultaneously, such as National Law, Customary Law, Religious Law, and Western Civil Law. These legal systems not only coexist but also influence each other in their implementation, especially in the realm of family law. In practice, situations often arise wherein several legal regulations and legal institutions operate concurrently. Although they can coexist, they often give rise to differences of opinion and even conflict owing to overlapping authority and applicable regulations within society.[8]

The concept of legal pluralism is a condition in which there are two or more legal systems that are running and coexisting in the same social dimension. This theory emphasizes that customary norms/social norms, state norms (state law), and religious/ethical laws can be implemented together.[9] The implication of the pluralism of the family law system in Indonesia, especially in handling cases in the field of family law, is resolved through two judicial institutions, namely, the General Court and the Religious Court, each of which has absolute and relative authority in handling the cases submitted. Historically, the birth of Religious Courts in Indonesia has existed since the time of Islamic kingdoms such as Samudera Pasai in Aceh, the Islamic kingdom of Mataram in Central Java, and the Islamic kingdom in Banjarmasin. At the time, the authority of this court included civil and criminal cases. During the Dutch East Indies government, courts developed rapidly in various regions in the archipelago. The Dutch government established Religious Courts based on Staatsblad No. 152/1882 Concerning the Establishment of Religious Courts in Java and Madura. Their power and authority were limited to private muamalah matters. At this time, three types of legal rules

[8] Dajatmiko, *Budaya Hukum*, 111.

[9] Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum dan Politik Islam* 6, no. 1 (2021): 7, https://doi.org/10.35673/ajmpi.v6i1.1129.

were implemented, namely, Islamic law, customary law, and customary law. These three laws were applied as long as they did not conflict with the values of justice and truth.[10]

When the Religious Court was established in 1855, it had the authority to handle cases in the fields of marriage, inheritance, and waqf. Then, the Dutch East India Company was taken over by the Dutch Colonial government, which had the view that Islamic teachings were an obstacle in carrying out its political agenda in Indonesia. In 1937, Staatsblad 1937-116 was issued, which changed several provisions in Staatsblad 1882 No. 152. After. A Indonesia's independence , changes in the authority of the Religious Court began to be implemented after the birth of Law Number 7 of 1989 on Religious Courts, which aims to create. This aimed legal unity in the national legal system, both in the legal regulations that form the legal basis and related to its authority. Article 49 of the law clearly and firmly regulates the authority of the religious court, which is tasked and authorized to examine, decide, and resolve cases at the first level between people who embrace Islam in the fields of marriage, inheritance, wills and Islamic gifts, waqf, and *sadaqah*.[11]

The authority of religious courts was further strengthened with the enactment of Law No. 3/2006 concerning the First Amendment to Law No. 7/1989 on Religious Courts. It expressly states that Religious Courts are "one of the executors of judicial power for the people seeking justice who are Muslim regarding certain cases as referred to in this law." Furthermore, Law No. 50/2009 concerning the Second Amendment to Law No. 7/1989 on Religious Courts reaffirmed what is meant by Religious Courts: "courts for people who are Muslim." In the first amendment, the right of option or choice of law was eliminated for resolving inheritance disputes, which previously provided two options to resolve: through the Religious Court or District Court. This was removed to make Religious Courts the absolute authority for resolving inheritance disputes, especially for heirs who are Muslim. These two changes to the legislation further strengthened the existence of Religious Courts by giving more authority to the judicial body. Thus, the position of the Religious Courts as a judicial institution whose function is to provide justice for the Indonesian Muslim community in resolving certain cases, as stipulated by the law, is clear.[12]

The different authorities of the General Courts are regulated in Article 50 of Law Number 2 of 1986 on General Courts, which was later amended by Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 on General Courts. The last amendment was Law Number 49 of 2009 concerning the second Amendment to Law Number 2 of 1986 on General Courts, which has the authority to examine, decide, and settle general civil cases.[13]

Based on the above, there are two types of authorized courts that handle civil cases in Indonesia, namely, General Courts and Religious Courts. Civil cases handled by General Courts can be classified into two main categories, namely, default disputes and unlawful acts disputes, as well as divorce issues and their legal consequences. On the other hand, Religious

[10] Cindera Permata and Zezen Zainul Ali, "Implikasi Asas Personalitas Keislaman terhadap Penyelesaian Sengketa antara Muslim dan Non-Muslim di Pengadilan Agama," *Jurnal Dialog* 45, no. 2 (2022): 184, https://doi.org/10.47655/dialog.v45i2.663.

[11] Susylawati, "Sengketa Kewenangan Pengadilan," 85.

[12] Abdullah Tri Wahyudi, "Kewenangan Absolut Peradilan Agama di Indonesia pada Masa Kolonial Belanda hingga Masa Pasca-Reformasi," *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 7, no. 2 (2016): 286, https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/2156.

[13] Maroa and Ogotan, "Batas Persinggungan Kewenangan," 158.

Courts also have authority over civil cases that include matters in the fields of marriage, inheritance, wills, grants, waqf, *zakat*, *infaq*, *sadaqah*, and sharia economics, including related ownership rights disputes, as long as the legal subject is Muslim. However, in the implementation of this authority, there is potential for jurisdictional conflict between the General Court institution and the General Court institution, which can give rise to a dispute over authority between the two.[14]

In Indonesia, the division of jurisdiction between General Courts and Religious Courts is designed to provide clear boundaries for resolving cases within their respective areas of authority. However, in practice, these boundaries often become blurred when dealing with both civil and religious disputes. This overlapping authority occurs particularly in cases arising in the context of family law and inheritance, where aspects of Islamic law and general civil law intersect. As a result, jurisdictional conflicts arise, which can create legal uncertainty and prolong the dispute resolution process for the parties.[15] The enactment of the Marriage Law further strengthens the legal basis for Religious Courts to examine and decide cases related to marriage, divorce, reconciliation, and various issues related to marital relations. By integrating Islamic legal principles into the national legal system, this law provides a stronger substantive basis for Religious Courts to apply Islamic family law more uniformly and consistently.[16]

The birth of the Religious Court body as a form of implementation of constitutional rights guarantees the freedom of the Indonesian people to practice their respective religious teachings and the fulfillment of the right to obtain justice based on Pancasila and the 1945 Constitution. Therefore, the existence of the Religious Court has an important role in guaranteeing the protection of the constitutional rights of Muslims seeking to implement their beliefs in social and state life, while at the same time opening access to obtain justice in accordance with the beliefs and teachings they adhere to.

Thus, the Religious Courts were born in Indonesia as a special judicial institution that provides opportunities for Indonesian Muslims to resolve the legal issues they face, especially in the field of family law. This institution was born as a form of state recognition to meet the legal needs of the Muslim community, which has its own characteristics, so that the resulting decisions are not only based on positive law but also reflect the values and principles of religious teachings/beliefs adhered to. In addition, the existence of Religious Courts also shows the recognition of the pluralistic nature of the Indonesian legal system with the side-by-side application of religious law, customary law, western civil law, and national law in society.

Law No. 1/1974 itself does not regulate the absolute competence of the court that is absolutely authorized to determine the origin of a child, whether it is the authority of the District Court or the Religious Court. However, Law No. 7/1989 Jo., Law No. 3/2006, and Law No. 50/2009 is explicitly one of the areas of marriage that is the absolute authority of the Religious Court and includes the legitimacy (or not) of a child. The determination of the origin of a child is found in the Explanation of Article 49 number 14 and number 20 of Law No.

[14] Maroa and Ogotan, "Batas Persinggungan Kewenangan," 158–59.

[15] Renaldi Zainullah and Riesta Yogahastama, "Titik Singgung Pengadilan Umum dan Pengadilan Agama Terkait Sengketa Hak Milik," *Hukum Dinamika Ekselensia* 6, no. 4 (2024): 176, https://journalversa.com/s/index.php/hde/article/view/3407.

[16] Achmad Rizky Airlangga, Faiq Muhammad Zufar, and Syahputra Aditya Kusrin Surbakti, "Transformasi Kewenangan Peradilan Agama Pasca Undang-Undang Perkawinan Tahun 1974," *Presidensial* 2, no. 4 (2025): 239, https://doi.org/10.62383/presidensial.v2i4.1375.

3/2006, and then clarified again with the birth of the Decree of the Chief Justice of the Republic of Indonesia Number KMA/032/SK/IV/2006. Regarding the implementation of Book II of the Guidelines and Technical Administration and Technical Religious Courts, the application for the origin of a child is linked to Article 42 of the UUP and Article 99 of the Kompilasi Hukum Islam, which regulates the denial of children and the recognition of children (*anak istilhaq*).[17]

An implication of the Constitutional Court Decision No. 46/PUU-VIII/2010//, which has amended the provisions of Article 43 paragraph 1 of the UUP, is that it opens the way or provides an opportunity for illegitimate children to have a civil relationship with their biological father and their biological father's family as long as it can be proven by science, technology, and other evidence that there is a blood relationship between the biological father and the illegitimate child. This change in provisions also has the potential to open up a point of conflict of authority in adjudicating cases of illegitimate children, regarding requests for the determination of legalization of illegitimate children or if there is a dispute or lawsuit regarding the biological father's responsibility toward the illegitimate child.

The incomplete regulation of the status of children born outside of marriage, as regulated in Article 43 paragraph 1 of the UUP, coupled with the existence of the Constitutional Court decision No. 46/PUU-VIII/2010 has created legal uncertainty regarding the concept of children born outside of marriage and the civil relationship referred to in the provisions of Article 43 paragraph 1 of the UUP. Although the Chief Justice of the Constitutional Court Mahfud MD clarified that the Constitutional Court decision was aimed at children born outside of marriage, that is, not children of *zina* but children born from unregistered marriages. The civil relationship referred to is a civil relationship in the broad sense and not a civil relationship in the sense of a relationship born owing to a legitimate lineage/lineage relationship along with its legal consequences. Even the explanation of the Chief Justice of the Constitutional Court states that the civil relationship can also be related to "Unlawful Acts" for which compensation can be submitted for children born outside of marriage .[18]

Since the concept of illegitimate children that exists in the UUP applies not only to children born in unregistered marriages but also children born without a legal marriage bond between their parents or child born from adultery, this can lead to confusion and legal uncertainty in interpreting civil relations regarding what rights can be granted to illegitimate children. In practice, differences in interpretation exist among religious court judges in deciding cases of determining the parentage of children or legitimizing illegitimate children. In practice, Religious Courts generally interpret children born from a marriage as legally religious, where the marriage of both parents does not violate the Marriage Law, which can be legalized. Children born out of wedlock—that is, who are born of parents without a legally religious marriage bond—or born out of a marriage of parents that is legally religious but violates the provisions according to the Marriage Law, such as polygamy, are not recorded in practice; these applications are often rejected by the Religious Court, such as the lawsuit filed by Machica Muchtar to the Religious Court after the Constitutional Court's decision was rejected by the Religious Court, even though the marriage was proven to be legally religious.

[17] Hartini, "Asas Personalitas Keislaman dalam Penetapan Asal-Usul Anak Luar Kawin ke Pengadilan Negeri," *Arena Hukum* 15, no. 1 (2022): 109–10, https://doi.org/10.21776/ub.arenahukum.2022.01501.6.

[18] Achmad Irwan Hamzani, "Nasab Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *Jurnal Konstitusi* 12, no. 1 (2015): 67, https://doi.org/10.31078/jk1214.

After the Constitutional Court Decision No. 46/PUU-VIII/2010//, a search of the Supreme Court Directory found several decisions and decisions submitted by Muslims in the District Court to obtain the ratification and recognition of children born outside marriage, including the status of children born from unregistered marriages (*siri* marriage) and children born before their parents had a legal marriage according to religious law (children) were born of adultery). These then granted by the judge in the District Court. This was found in several Decisions and Decisions of the District Court, including the Decision of the Jombang District Court No. 151/Pdt/2017/PN.Jbg, which granted the application for the ratification of a child born from both parents who are Muslims in a *siri* marriage for the purpose of making a birth certificate. Likewise, in the Determination of the Porwokerto District Court No. 245/Pdt.P/2019/PN.Pwt on June 26, 2014, the court handled the case of the legitimization of a child born from an unregistered marriage, where a religious marriage had previously been carried out by a Muslim couple. Then, in order to change the birth certificate that previously only mentioned the mother's name, both parents of the child officially registered their marriage at the KUA and submitted a request for a Court Determination for child legitimation, which was then granted.

In addition, it was also found that the Supreme Court had annulled the District Court's decision in Supreme Court Decision No. 1874 K/Pdt/2013 against the Sleman District Court's decision No. 21556/Pdt.P/PN.Slmn in the case of the legitimization of a child born from an unregistered marriage. The case was examined and tried, and the child's application for legitimization was rejected on the grounds that the child was born from an unregistered marriage, even though the child's parents had received a marriage certificate, which had been recorded at the KUA. Furthermore, by considering the reasons submitted by the cassation applicant, including stating that the Sleman District Court had ignored the Constitutional Court Decision No. 46/PUU-VIII/2010, the Supreme Court in its legal considerations was of the opinion that the *judex facti* of the Sleman District Court was not authorized to try and decide on the aquo case, and therefore the Sleman District Court's decision must be annulled based on Article 49 paragraph 2 of Law No. 7/1989 on Religious Courts in conjunction with Law No. 3 of 2000 on Religious Courts 2006, whereby handling cases regarding the legitimacy or illegitimacy of children from marriages carried out according to Islamic law is the absolute authority of the Religious Court.

Furthermore, several District Court Decisions were also found that granted requests from Muslim couples to validate the recognition of illegitimate children in the concept of children born without a marriage bond or in the concept of Islamic Law called *zina* children who were born before their parents had a legal marriage according to religion and state. Among them is in the Salatiga Court Decision No. 24/Pdt.P/2021/PN Slt dated February 25, 2021: the judge granted it by declaring the applicant's child legitimate and determining the applicant's permission to issue an extract of the birth certificate of the illegitimate child based on Article 43 paragraph 1 of the Marriage Law and Constitutional Court Decision No. 46/PUU-VIII/2010. In addition, in the same case, the Sleman District Court Decision No. 482/Pdt.P/2021/PN Slmn also granted the application for the determination of an illegitimate child in the concept of a child born of adultery according to Islamic Law from a Muslim couple. The same decision was also found in the Decision on the ratification of the recognition of the child in the Klaten District Court No. 89/Pdt/2015/PN.Klaten dated December 3, 2015.

Then, in one of the legal disputes related to illegitimate children that once captured public attention in Indonesia, there was a civil lawsuit filed by Wenny Ariani against actor Rezky Aditya. The plaintiff requested legal recognition of her child, who was born outside of a legal marriage, as the defendant's biological child. In this case, there was also a debate regarding absolute competence between the Religious Court and the Tangerang District Court. Then, on February 3, 2022, the Tangerang District Court Decision No. 7466/Pdt.G/2021/PN.Tng rejected the lawsuit. Furthermore, Wenny Aryani as the plaintiff filed an appeal to the Banten High Court. Finally, the Banten High Court won the Appellant and accepted the Application Appeal by canceling the Tangerang District Court's decision by granting the plaintiff's appeal based on the consideration of the Constitutional Court Decision No. 46/PUU-VIII/2010.[19]

Several court rulings and decisions above indicate that in judicial practice, there are still problems in the implementation of the absolute competence of the two judicial institutions, namely, the District Court and the Religious Court, examining and deciding cases regarding the determination of the status of illegitimate children and the responsibility of biological fathers, especially for applicants who are Muslim. This phenomenon arises because, in practice, Religious Courts often use a deeper, strict approach in granting requests for determination *marriage isbat* and the child's origin . In addition to relying on Islamic legal norms, the Religious Court also considers the validity of the marriage of the child's parents based on the provisions of the Marriage Law. The Religious Court's attitude in handling cases involving children born outside of marriage, whether from unregistered marriages or children born from adultery, is a form of this institution's commitment to upholding Islamic law, which only provides recognition of lineage relationships if the child is born from a marriage that is valid according to religious and state law standards. However, the legal approach used is sometimes too strict; it does not yet can give protection through necessary laws for the child born outside marriage, since the judge's decision is only based on norms and formalism without considering the context of the best protection for children born outside of marriage in a broader concept.

Sometimes this kind of approach results in decisions that cannot fully protect the rights of children born out of wedlock, especially in situations where children are born out of a religiously valid marriage but are born from wedding polygamy. This is recorded in the case of Macicha Mochtar's child. Although the marriage was valid under Islamic law, the child's legal status and rights were ignored simply because of the parents' mistake in conducting the marriage in violation of statutory regulations. In this case, for ratification, SEMA No. 3 of 2018 in the formulation of the religious chamber law, point 8, states that "A request for confirmation of a polygamous marriage based on a siri marriage, even if it is for the benefit of the child, must be declared inadmissible. To ensure the child's interests, a request for the child's origin can be submitted." Apart from that, there are still many disparities in the decisions of the Religious Courts regarding the origin of children, which has implications for the diversity of protection of children born outside marriage, including adultery.[20] Religious Courts also do not

[19] "Wenny soal MA Tolak Kasasi Rezky Aditya: Hadiah Terindah bagi Anak," CNN Indonesia, June 13, 2023, accessed September 20, 2023, https://www.cnnindonesia.com/hiburan/20230613175032-234-961371/wenny-soal-ma-tolak-kasasi-rezky-aditya-hadiah-terindah-bagi-anak.

[20] Nadzirotus Sintya Falady, "Polemik Hukum Islam dan Hak Asasi Manusia Terkait Perlindungan Hak-Hak Anak Luar Kawin dan Peran Penting Pengadilan Agama," Pengadilan Agama Probolinggo, April 2020, accessed

yet provide space for illegitimate children born without the existence of a legal marriage bond to obtain justice, such as compensation for losses caused by the fault of the biological father.

For children who are born from a private marriage, which is materially valid under Islamic law, but which are not registered and therefore do not have legal force, the birth certificate of the child whose birth relationship is linked to the father and mother who gave birth to him can be done through a *marriage isbat* or submitting a request for the origin of the child. Meanwhile, for children resulting from adultery, or those born without a marriage bond, the birth certificate is only linked to the mother and a request for the origin of the child cannot be submitted because the birth was without a marriage bond. Even if a child parentage application is submitted for a child resulting from adultery, it will certainly be rejected by the Religious Court.[21] In fact, specifically for children born of adultery, the 2012 Indonesian Ulema Council Fatwa provides space and a way out to provide protection for children born from adultery without having to violate the provisions of Islamic law, which can be used as a guideline for judges in handling cases of illegitimate children in this category.

Therefore, bear in mind that there are still requests for decrees or decisions that have not been granted for children born from unregistered marriages as they do not meet the formal requirements; and requests for illegitimate children born without marriage to obtain responsibility for biological fathers have also been rejected. To fight for the rights of illegitimate children who are unsuccessful in Religious Courts, an alternative route is to file a lawsuit with the Constitutional Court or District Court. This phenomenon shows the need for renewal in the approach to resolving cases in the field of Family Law, especially regarding illegitimate children, in order to provide protection and justice for illegitimate children, both those born from unregistered marriages and those born without marital ties.

Religious courts in Indonesia play a strategic role in meeting the legal needs of the Muslim community, particularly in resolving family disputes that are closely linked to Islamic values. As society evolves, Religious courts are required to continually adapt to provide fair and responsive legal services. Synergy between Religious courts, other judicial institutions, and the government is a crucial factor in realizing an effective judicial system that reflects the spirit of Bhinneka Tunggal Ika (Unity in Diversity). Thus, Religious Courts function not only as implementers of Islamic law but also play a role in delivering justice through the harmonization of sharia values and national positive law.[22]

For this reason, the role of judges in Religious Courts is needed in handling cases of illegitimate children with a more progressive legal approach by implementing progressive law in deciding cases that require judges to dare to go beyond the normative legal order, which is one way to escape rigidity in creating justice and upholding human rights to obtain justice.[23]

February 1, 2024, https://pa-probolinggo.go.id/article/Polemik-Hukum-Islam-dan-Hak-Asasi-Manusia-terkait-Perlindungan-Hak-Hak-Anak-Luar-Kawin-dan-Peran-Penting-Pengadilan-Agama.

[21] Asrofi, "Penetapan Asal Usul Anak dan Akibat Hukumnya dalam Hukum Positif," Pengadilan Agama Mojokerto, June 7, 2022, accessed November 18, 2023, http://www.pa-mojokerto.go.id/surve-kepuasan/263-penetapan-asal-usul-anak.

[22] Azizah Yasmin, Hurriyah Aqilah Ramadhoifah, and Aura Rista Afifah, "Peradilan Agama sebagai Lembaga Penegak Hukum Islam di Indonesia," *Sriwijaya Journal of Private Law* 1, no. 1 (2024): 85, https://journal.fh.unsri.ac.id/index.php/SJPL/article/view/3373.

[23] Mansur, Atoillah, and Saefullah Yamin, "Penerapan Hukum Progresif untuk Penegakan Hukum di dalam Putusan Hakim yang Berkeadilan," *Yustitia* 10, no. 2 (2024): 284, https://doi.org/10.31943/yustitia.v10i2.285.

This way, children born out of wedlock are not burdened by the mistakes of both parents, while remaining within the corridor of not conflicting with Islamic law.

The Principle of Islamic Personality as a Benchmark for the Court's Authority in Handling Cases of Children Born Out of Wedlock

The principle of Islamic Personality is a primary principle, meaning that only those who are Muslim are subject to and can be subjected to the authority of the Religious Courts. It is on the basis of a person's Islam that the scope of the Religious Court's authority differs from that of other courts. Therefore, the authority of the Religious Courts specifically applies only to individuals who are Muslim. A citizen's Islamic identity serves as the legal basis that limits the scope of jurisdiction or absolute authority of these judicial institutions. The authority of the Religious Courts is not based on domicile or jurisdiction, but rather on the personal relationship between the individual who embraces Islam and the Islamic legal norms applicable to the Islamic community.[24]

The principle of Islamic personality is one of the general principles inherent in Religious Courts. The key word in this concept is "Islam." This means that only those who claim to be Muslims are subject to and can be subjected to the authority of Religious Courts. Adherents of religions other than Islam, or non-Muslims, are not subject to and cannot be forced to submit to the authority of Religious Courts.[25]

The birth of the Principle of Islamic Personality is historically and sociologically based on the development of the Theory of *Receptio in Complexu* put forward by Van de Berg. This theory states that the law that applies to every individual or a society is the law of the religion they adhere to. From this principle, a doctrine was born stating that for Muslims, Islamic Law applies, and if a dispute arises among Muslims, the settlement is applied based on Islamic law, which will be implemented by the Islamic Religious Court. Based on the historical reality and sociological conditions of society in Indonesia, the Dutch government legitimized the application of Islamic Law and established Religious Court in Indonesia.[26]

Amidst the pluralism of family law in Indonesia, the Principle of Islamic Personality serves as a crucial foundation for the application of family law to Muslims. The application of this personal principle provides space for the normative application of Islamic law for the Muslim community in Indonesia. This principle not only recognizes human rights in practicing one's religious life but also paves the way for obtaining substantive justice in accordance with one's beliefs, while also acknowledging the pluralism of family law and respecting and appreciating the existence of other legal systems in Indonesia.

In the current Indonesian legal system, the existence of the principle of Islamic personality is closely related to the provisions of Article 1 number 1 of Law No. 7 of 1989 on Religious Courts, which states that "Religious Courts are courts for Muslims." This was then reinforced in Law No. 3 of 2006 and Law No. 50 of 2009 on Amendments to Law No. 7 of

[24] Etika Rahmawati, "Penerapan Asas Personalitas Keislaman di Pengadilan Agama Pontianak dalam Perkara Perkawinan bagi Pasangan yang Beralih Agama," *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 161–62, https://doi.org/10.31602/al-adl.v10i2.1361.

[25] Zulkarnain Suleman, "Asas Personalitas Keislaman dalam Kompilasi Hukum Islam (KHI)," *Al-Mizan* 9, no. 1 (2013): 182, https://journal.iaingorontalo.ac.id/index.php/am/article/view/142.

[26] Rahmawati, "Penerapan Asas Personalitas Keislaman," 166–67.

1989. This provision is an abstraction of the principle of Islamic personality. Therefore, through this provision, it is emphasized that Religious Courts are binding and restrictive for every Muslim. The perfection and absoluteness of the principle of Islamic personality must be supported by elements of legal relations based on Islamic law.[27]

In order to understand the meaning of the principle of Islamic Personality, it is first necessary to understand the meaning of "people who are Muslim as the basis" of the principle of Islamic personality. In the explanation of number 37 of article 49 of Law Number 3 of 2006, it is stated that "between people who are Muslim includes" people or legal entities who voluntarily submit themselves to Islamic Law regarding matters that are the authority of Religious Court in accordance with the provisions of this article. [28]Then Articles 2 of the General Explanation number 2, paragraph three of Article 49 paragraph 1, state that those who are subject to the authority of Religious Court are only those who are Muslim and are not required to adhere to other religions to submit to the jurisdiction of the Religious Court. This means that the Principle of Islamic Personality is specifically related to certain data cases that are the authority of the Religious Court. This means that the obligation for a Muslim to file a case with the Religious Court does not cover all areas of civil law but only certain areas in predetermined civil cases.[29]

Based on this explanation, those considered to be Muslims are those who formally profess Islam (based on their identity and religious practices) and individuals or legal entities that voluntarily submit to Islamic law in matters that fall within the absolute authority of Religious Courts. Although the explanation of the law does not explicitly state the meaning and nature of Muslims' submission to Islamic law, it only explains the voluntary nature of non-Muslims' and other legal entities' submission to Islamic law.[30]

The submission of Muslims to Islamic law and its legal consequences, owing to the binding nature of practicing Islamic law, means that even in resolving disputes, Muslims are required to submit to Islamic law. This is different from non-Muslims, whose submission is voluntary. Because this provision establishes the law on Muslims' submission to Islamic law, it implies that Muslims must resolve issues in the field of family law or inheritance based on Islamic law. This is because Muslims do not have the option to choose a resolution other than Islamic law, as regulated by law.[31]

The existence of Article 2 of Law No. 7/1989 has provided a new nuance to for the Muslim community in Indonesia, where the Religious Court is the judicial authority given authority specifically to handle cases or resolve disputes, especially for the Muslim community. Meanwhile, Article 49 defines the cases or disputes within the scope of the Religious Court's authority.[32] Then, with the enactment of Law No. 3 of 2006 as an amendment to Law No. 7/1989 has provided expanded authority to Religious Courts, which was previously

[27] Cindera Permata and Zezen Zainul Ali, "Implikasi Asas Personalitas Keislaman terhadap Penyelesaian Sengketa antara Muslim dan Non-Muslim di Pengadilan Agama," *Jurnal Dialog* 45, no. 2 (2022): 181–194, https://doi.org/10.47655/dialog.v45i2.663.

[28] M. Nasir Asnawi, *Hukum Acara Perdata: Teori, Praktik, dan Permasalahannya di Peradilan Umum dan Peradilan Agama* (Yogyakarta: UII Press, 2017), 67.

[29] Serlika Aprita, Reny Okprianti, and Yudistira, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2024), 370.

[30] Asnawi, *Hukum Acara Perdata*, 68–69.

[31] Asnawi, *Hukum Acara Perdata*, 69–70.

[32] Dahwadin and M. Hasanudin, *Peradilan Agama di Indonesia* (Wonosobo: Mangkubumi, 2020), 66.

regulated in Article 49, where the authority of Religious Courts not only covers the field of marriage and inheritance, *zakat*, *infaq*, alms, *waqf*, and others but also includes disputes in the field of sharia economics, which was previously categorized as a general civil case.

The existence of the Principle of Islamic Personality is a general principle that has become the spirit of Law Number 7 of 1989, which cannot be separated, where the Indonesian people submit and can submit themselves in resolving their legal problems to the authority within Religious Courts. This principle is binding for those who recognize themselves as adherents of Islam as their religion, whereas adherents of other religions do not submit and are not obliged to submit to the authority of Religious Courts. However, specifically in the field of sharia economic law, which has become one of the authorities of Religious Courts in the field of *mumalah*, people who are not Muslim can resolve disputes through Religious Courts.[33]

According to M. Yahya Harahap, the application of the Principle of Islamic Personality can be measured through several criteria: first, based on formal criteria that are considered common, for example, based on a person's confession that he/she is Muslim, the Principle of Islamic Personality automatically applies to him/her. Second, the benchmark used for the legal relationship that has occurred will be seen from two things, namely:

1. The religion of the parties, namely, both parties involved in the legal relationship are Muslim; and;
2. The form of legal relationship or agreement made, namely, if the legal relationship made is included in the scope of Islamic Law.

In this case, determining whether the Principle of Islamic Personality applies is not based on the religion of the parties at the time of the dispute but rather on the legal basis underlying the previously established legal relationship. Therefore, if both conditions are met, the Principle of Islamic Personality automatically applies to both parties. Therefore, if a dispute arises in the future between the two parties, its resolution falls under the jurisdiction of the Religious Court.[34] Thus, the Religious Court is an institution for seeking justice in resolving certain cases for Muslims. However, with the enactment of Article 49 of Law Number 3 of 2006, the authority of the Religious Court has been expanded, namely, giving authority to Religious Courts to resolve disputes in the field of Islamic economics.

In current practice, the authority of the District Court and the Religious Court has the potential for a point of intersection owing to several things, including historical factors, incomplete—, regulation of illegitimate children in national law, also, and the Constitutional Court Decision No. 46/PUU-VIII/2010, which2010, still does not provide legal certainty regarding civil relations and clear criteria for illegitimate children in the provisions of Article 43 paragraph 1 of the UUP. This can give rise to different interpretations among judicial institutions . This is proven by several cases that have received a decision/decision from the District Court regarding illegitimate children, where there are still violations of absolute competence, even though the case is within the jurisdiction or absolute competence of the Religious Court as stipulated in the Religious Court Law related to determining the legitimacy of a child and the issue of the origin of a child for people who are Muslim, which must be resolved within Islamic Law so that it becomes the absolute authority of the Religious Court.

[33] M. Yahya Harahap, *Kedudukan Kewenangan dan Acara Peradilan Agama: UU No. 7 Tahun 1989* (Jakarta: Sinar Grafika, 2009), 57–58.
[34] Ibid.

Violation of the absolute competence of the Religious Courts, apartReligious Courts from being contrary to the law, can also harm the Principle of Islamic Personality, which is the basis for the formation of Religious Courts in Indonesia. In addition, this violation has the potential to give rise to decisions/determinations that can be revoked and can give rise to court decisions/determinations that are contrary to the substance of Islamic law in maintaining clarity and purity of lineage, which is a fundamental aspect that must be maintained in Islamic society as a form of state respect for the existence of pluralistic family law in force in Indonesia.

CONCLUSION

The existence of Pluralism of Family Law System in Indonesia causes the existence of two judicial institutions, namely, Religious Courts and General Courts, in handling cases of illegitimate children. This has the potential for a point of intersection of absolute jurisdiction of the two judicial institutions, which is caused by historical factors, having the same object of case in the field of civil law and the unfinished regulation of illegitimate children in national law, as well as the birth of Constitutional Court Decision No. 46/PUU-VII/2010, which still gives rise to different interpretations. These factors can be a potential for a point of intersection of absolute authority among judicial institutions in handling cases of illegitimate children, which can also be a violation of the principle of Islamic Personality.

To avoid violations of absolute competence in handling cases of illegitimate children, stricter regulations are needed regarding the limits of authority of Religious Courts and General Courts. The determination of this authority is not only based on the religion of the parties but also on the legal relationship that is the object of the case. It needs to be clearly regulated to avoid overlapping authority between judicial environments. In addition, harmonization of the Marriage Law and the Constitutional Court Decision No. 46/PUU-VIII/2010 with the Religious Court Law and the General Court Law is necessary to realize justice and legal certainty, guarantee the protection of children's rights, and prevent differences in interpretation in judicial practice. In addition, to minimize violations of absolute competence of Religious Courts and the Principle of Islamic Personality, judges in General Courts should refuse cases in handling cases of illegitimate children that touch on the beliefs of the parties who are Muslim. Judges in the Religious Court environment also need to develop a more progressive interpretation by prioritizing the best interests of the child and providing wider space for the burden of civil responsibility on the biological father, as long as it does not conflict with the principles of Islamic law.

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