

Maintaining Nasab in the Flow of Legal Reform: An Analysis of Saddu Dzariah and the Inheritance Rights of Children from Unrecorded Marriage in Indonesia

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Received:	Revised:	Accepted:	Available Online:	Published:
22/5/2025	31/7/2025	1/8/2025	1/8/2025	17/8/2025

Abstract

Marriages that are not officially registered (sirri) cause problems in the national legal system, especially regarding the determination of the nasab and inheritance rights of children born. The Constitutional Court Decision No. 46/PUU-VIII/2010 grants civil recognition to out-of-wedlock children against their biological fathers, which juridically expands legal protection. However, this provision creates normative tension with the principles of Islamic law that emphasize the importance of clarity of nasab through legal marriage. This study aims to analyze the relevance and application of the concept of saddu dzariah in the context of the distribution of inheritance for children from unrecorded marriage. The method used is qualitative with a normative and descriptive-analytical approach. Data was collected through literature studies that included court decisions, laws and regulations, classical fiqh books, and contemporary legal literature as primary, secondary, and tertiary sources. The results of the study show that the concept of saddu dzariah plays a preventive mechanism in maintaining the clarity of the nasab and preventing the social harm (mafsadah) caused by the practice of unrecorded marriage. Although national law prioritizes substantive justice, this principle remains relevant as a moral and spiritual basis in the formation of Islamic inheritance norms that are in line with the main purpose of sharia (maqasid sharia). These findings underscore the importance of integration between positive law and Islamic law principles in building a fair and sustainable inheritance law system.

Keywords: *Saddu Dzariah, Inheritance Rights, Out-of-wedlock Children, Islamic Law, Substantive Justice.*

Abstrak

Pernikahan yang tidak tercatat secara resmi (sirri) menimbulkan problematika dalam sistem hukum nasional, khususnya terkait penetapan nasab dan hak waris anak yang dilahirkan. Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 memberikan pengakuan keperdataan kepada anak luar nikah terhadap ayah biologisnya, yang secara yuridis memperluas perlindungan hukum. Namun, ketentuan ini menimbulkan ketegangan normatif dengan prinsip-prinsip hukum Islam yang menekankan pentingnya kejelasan nasab melalui pernikahan sah. Penelitian ini bertujuan untuk menganalisis relevansi dan penerapan konsep saddu dzariah dalam konteks pembagian warisan bagi anak dari pernikahan tidak tercatat. Metode yang digunakan adalah kualitatif dengan pendekatan normatif dan deskriptif-analitis. Data dikumpulkan melalui studi pustaka yang mencakup putusan pengadilan, peraturan perundang-undangan, kitab fiqh klasik, serta literatur hukum kontemporer sebagai sumber primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa konsep saddu dzariah berperan sebagai mekanisme preventif dalam menjaga kejelasan nasab dan mencegah kemudharatan (mafsadah) sosial yang ditimbulkan oleh praktik pernikahan tidak tercatat. Meskipun hukum nasional mengutamakan keadilan substantif, prinsip ini tetap relevan sebagai dasar moral dan spiritual dalam pembentukan norma waris Islam yang sejalan dengan tujuan utama syariat (maqasid syariah). Temuan ini mempertegas pentingnya integrasi

antara hukum positif dan prinsip-prinsip hukum Islam dalam membangun sistem hukum waris yang adil dan berkelanjutan.

Kata Kunci: *Saddu Dzariah*, Hak Waris, Anak Luar Nikah, Hukum Islam, Keadilan Substantif.

INTRODUCTION

Marriage is a very basic institution in Islamic teachings and is an integral part of the social order of society.¹ In the Islamic perspective, marriage is not just a bond born between a man and a woman, but also a sacred covenant (*mitsaqan ghalizha*) that has a worshipful and social dimension.² Through marriage, a legitimate family structure is formed, which aims not only to meet the biological, emotional, and spiritual needs of the couple, but also to protect offspring from negative impacts and build a civilized society.³ Therefore, Islam strongly emphasizes the importance of legally carrying out marriage according to sharia and the state.

In national law, the urgency of the legality of marriage is accommodated in Law Number 1 of 1974 concerning Marriage, which in Article 2 emphasizes that a marriage is considered valid if it is carried out according to the laws of each religion and belief, and must be recorded in accordance with the applicable laws and regulations.⁴ This provision emphasizes that the registration of marriage by the state is not only administrative, but also a formal requirement to obtain legal recognition of the rights and obligations in terms of positive law and Islamic law for the parties involved, including for children born from the relationship.⁵

Children born with Indonesian citizenship status must be recorded. This registration is intended to provide legal certainty on the child's civil status and ensure recognition of his or her legal identity by the state. This is in line with the provisions of Article 27 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that every child has the right to obtain self-identity, including citizenship. In addition, Article 5 letter a of the law affirms that every child has the right to be recognized as a subject of law from birth.⁶ Therefore, birth registration cannot be seen as a mere administrative formality, but as an essential legal mechanism in ensuring the protection and fulfillment of children's rights in the national legal system.

¹ Pertiwi Rini Nurdiani, "The Concept of Family Institutions in Islam," *Tarbiyah Wa Ta'lim: Journal of Education and Learning Research* 6, no. 3 (2019): 130–157.

² A S Chaniago, "Interpreting Mitsaqon Ghalizha as the Key to Islamic Family Harmony," *Landraad Journal* 2, no. September (2023): 197–207, <https://jurnal.islahiyah.ac.id/index.php/jl/article/view/409>.

³ Suara Merdeka, "Mitsaqan Ghalidza in Marriage," <https://www.suaramerdeka.com/religi/0410163665/mitsaqan-ghalidza-dalam-pernikahan>. Retrieved 27 May 2025

⁴ Republic of Indonesia, "Law No. 11 of 1974 concerning Irrigation" (2012): 1–5.

⁵ Dwi Arini Zubaidah, "Marriage Registration as Legal Protection in the Perspective of Maqāṣid Ash-Syarī'Ah," *Al-Ahwal* 12, no. 1 (2019): 15–28.

⁶ Ministry of Internal Affairs of the Republic of Indonesia, "Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection," *Child Protection Law* (2014): 48, <https://peraturan.bpk.go.id/Home/Details/38723/uu-no-35-tahun-2014>.

However, social reality shows that the practice of unrecorded marriage or known as *nikah sirri* is still rampant in various regions in Indonesia.⁷ This phenomenon is caused by various factors, ranging from lack of legal knowledge, economic limitations, to cultural and religious reasons.⁸ Some people consider that it is enough to fulfill the conditions and pillars of marriage according to religion, the marriage is valid in its entirety, even though it has not been recorded at the Office of Religious Affairs (KUA) or other official state institutions.⁹ Because without registration, the marriage has no formal legal force, which ultimately has implications for the non-recognition of civil rights in the national legal system.¹⁰

One of the most serious problems arising from the practice of unregistered marriage (*sirri marriage*) is related to the legal status of the child who is born. This problem not only has an impact on the population administration aspect, but also has implications for the fulfillment of children's basic rights as citizens in the form of difficulties in obtaining recognition of nasab, birth certificates, and the fulfillment of inheritance rights from the biological father.¹¹

From the perspective of Islamic law, nasab is a condition that determines a person to have a position as an heir.¹² This means that the child born outside the legal marriage does not have a nasab relationship with his biological father. As a result, the child is not entitled to inheritance from his father and only has a civil relationship with his mother. Thus, the issue of inheritance law for children from marriage is not recorded as a strategic issue that requires serious attention in order to find synergy between Islamic law norms and national law in order to ensure comprehensive legal protection for children.¹³

This view begins with the principle of prudence (*ihtiyat*) in maintaining the lineage (*hifz al-nasl*), which is one of the core parts of the main purpose of the sharia (*maqasid sharia*).¹⁴ However, in the context of a legal country such as Indonesia, a new dynamic has emerged in the regulation of children's rights outside of legal marriage. In the

⁷ Pardianto, "Examining the Phenomenon of Sirri Marriage (A Thematic Study in Islamic Communication)," *Journal of Islamic Thought and Social Sciences* / 11, no. 02 (2018): 117–132, www.nikahsirri.com.

⁸ Qurrotul A, Yoyo H, and Suprihatin, "Factors Causing the Practice of Serial Marriage in Cibuntu Village, Cibitung District" 14, no. 1 (2023): 25–33.

⁹ Detik Hikmah, "Siri Marriage Requirements, Procedures, and Laws in Islam, <https://www.detik.com/hikmah/khazanah/d-7064313/syarat-nikah-siri-tata-cara-beserta-hukumnya-dalam-agama-islam>. Retrieved June 16, 2025

¹⁰ Abdul Waid, "NIKAH SIRI AND ITS IMPACT ON THE FAMILY ECONOMY (A Critical Study of Maqashid al-Sharia'ah and the Urgency of Marriage Registration on Family Economic Welfare)," *Labatila* 4, no. 2 (2020): 120–137, <https://doi.org/10.33507/lab.v4i01>.

¹¹ Dispermadesdukcapil, "The Impact of Siri Marriage in Population Administration, <https://dispermadesdukcapil.jatengprov.go.id/berita/31-dampak-nikah-siri-dalam-administrasi-kependudukan>. Retrieved June 16, 2025

¹² Wahbah al-Zuhaili, "Islamic Fiqh Wa Adillatuhu / Wahbah Az-Zuhaili ; Translator, Abdul Hayyie Al-Kattani, et al; Editor, Budi Permadi" (2007): 523.

¹³ Sungai Raya Religious Court, "THE STATUS OF THE NASAB OF CHILDREN OUT OF WEDLOCK AND THEIR INHERITANCE IS REVIEWED IN ACCORDANCE WITH ISLAMIC LAWS AND REGULATIONS, <https://www.pa-sungairaya.go.id/wp/status-nasab-anak-luar-nikah-dan-warisannya-ditinjau-menurut-peraturan-perundang-undangan-dan-hukum-islam-i-oleh-abd-latif-s-h-m-h/>. Retrieved 20 June 2025

¹⁴ A. Halil. Thahir, *Ijtihad Maqâsidi: The Reconstruction of Islamic Law Based on Maslahah Interconnectivity*, 2015.

decision, the Constitutional Court (MK) began to recognize the existence of biological children from unrecorded marriage, such as the Constitutional Court's decision no. 46/PUU-VIII/2010, especially regarding the fulfillment of their civil rights in the form of inheritance rights for them from their father's inheritance. The change shows that the legal orientation is no longer only focused on formal rules, but more emphasis on justice and protection of children. This problem is a normative tension between the strict principles of Islamic law in determining the legality of nasab and a more flexible national law.¹⁵

This tension demands critical and contextual thinking from academics, legal practitioners, and scholars, in order to formulate a fair and solution-based legal approach.¹⁶ On the one hand, the principles of sharia must still be respected as part of the religious values of the majority of the Indonesian population. And on the other hand, the state is obliged to guarantee the basic rights of every child without discrimination, including the right to identity, legal protection, and recognition of his or her civil relationships.¹⁷ Therefore, research on the inheritance rights of children resulting from marriage is very important and requires an in-depth study, not only from the perspective of formal legal provisions, but also from the dimension of *sharia maqashid*, especially *saddu dzariah*, in order to find a meeting point between Islamic law and national law that is fair and beneficial.

Maqasid sharia is the main goal of Islamic sharia which focuses on the maintenance of 5 fundamental aspects, namely religion, soul, intellect, descent, and property in order to achieve benefits and prevent harm.¹⁸ *Saddu dzariah* is a preventive effort that functions to close roads or facilities that have the potential to cause violations of the goals of the sharia. Thus, *saddu dzariah* has a strategic role in realizing *sharia maqasid* through the prevention of the risk of damage, for example in maintaining the clarity of the nasab by preventing practices that can damage the legitimacy of the descendants.

This approach emphasizes that Islamic law not only deals with violations, but also prevents them from the beginning, so that *the principle of saddu dzariah* becomes an important instrument in maintaining a balance between sharia values and the needs of the ummah.¹⁹ Therefore, the correlation between *maqasid sharia* and *saddu dzariah* shows the synergy between normative goals and operational mechanisms in Islamic law to ensure the effectiveness of the application of the law for the achievement of the benefits of society as a whole.

Based on the information already mentioned, this study aims to examine and analyze the concept of *saddu dzariah* in the context of the distribution of inheritance for children from unrecorded marriages, as well as to examine the implications of the values of the Constitutional Court Decision No. 46/PUU-VIII/2010. This research uses a

¹⁵ Constitutional Court Decision No. 46/PUU-VIII/2010.

¹⁶ Ratna Puspitasari, Abdul Hamid, and Urip Giyono, (2023) 'The Status of Children from Unrecorded Marriage in Indonesia', 7.02, pp. 42–54.

¹⁷ Islamic Law, "Rights and Legal Status of Children Out of Wedlock, <https://www.hukumonline.com/berita/a/hak-dan-status-hukum-anak-luar-perkawinan-lt5b1fb50fceb97/>. Retrieved 20 June 2025

¹⁸ A. Halil. Thahir, 2015. *Ijtihad Maqâsidi: Reconstruction of Islamic Law Based on Masalahah Interconnectivity*, PT. LKiS Pelangi Aksara.

¹⁹ Yusep Rafiqi, Heni Sukmawati, and Agus Ahmad Nasrulloh, (2019). Implementation of Sadd and Fath Al-Dzari'Ah in Marketing Product Strategy of Embroidery in Tasikmalaya City Embroidery Industry Center, *Al-Mashlahah: Journal of Islamic Law and Islamic Social Institutions*, 07(2), 158.

qualitative method with a normative approach and descriptive analysis, thus it is expected to contribute to the development of Islamic family law that is responsive to social realities, but still based on the principles of *sharia maqashid*, especially *saddu dzariah*. In addition, the results of this study are also expected to provide a clearer understanding to the public about changes in children's rights outside of legal marriage, as well as input for policymakers in formulating laws that favor the values of benefit.

RESEARCH METHODS

This research method uses a normative and qualitative approach. A normative approach is used to analyze regulations and positive legal norms, especially the Constitutional Court (MK) Decision No. 46/PUU-VIII/2010 regarding the legal status of out-of-wedlock children and their implications for inheritance rights. In addition, a descriptive-analytical approach is used to systematically describe and compare the legal concept in the Constitutional Court's decision with the concept of *saddu dzariah* in Islamic law.

Primary data sources are in the form of Constitutional Court Decision No. 46/PUU-VIII/2010, Law No. 1 of 1974 concerning Marriage, and the Civil Code (KUHPercivil) which is relevant to the legal status of children. Secondary data sources include scientific journals, legal articles, results of previous research, as well as academic books that discuss inheritance rights and the status of children from the perspective of positive law and Islamic law. Meanwhile, tertiary data sources include legal encyclopedias, dictionaries of legal terms, and sources from official websites of credible legal and Islamic institutions as supporting materials for theoretical and conceptual studies.

Data collection is carried out through library *research*, by tracing and reviewing legal documents, scientific literature, and works of scholars who discuss *saddu dzariah* and inheritance rights in Islam. The data that has been collected is then analyzed using *content analysis* and comparative methods, to examine the relationship between positive legal norms in the Constitutional Court's decisions and the principles of Islamic law. This analysis is also aimed at identifying the conformity or conceptual differences between classical Islamic legal thought and modern regulations related to the protection of children's rights from unofficially recorded marriages.

RESULTS AND DISCUSSION

Legal Pledge on the Relationship of Children with Biological Fathers in Constitutional Court Decision No. 46/PUU-VIII/2010

A valid marriage is a marriage that meets the requirements and the harmony of the Islamic religion and the marriage is administratively in KUA, then if the marriage has a child, then the child is a legal child and has national legal protection.

In contrast to the status of children born from unrecorded marriage, as stipulated in the Constitutional Court Decision No. 46/PUU-VIII/2010, which affirms that the child still has a civil relationship with his biological father, as long as it can be proven through science and/or technology and supported by legal evidence.²⁰ This ruling shows that there is legal recognition of the rights of children out of wedlock in civil matters, including the right to legal protection and recognition, even though the marriage of the parents is not officially recorded by the state. Thus, this Constitutional Court Decision reflects a change in perspective in national law that emphasizes more on justice and protection of children

²⁰ Constitutional Court Decision No. 46/PUU-vIII/2010.

as parties who should not be harmed by their birth conditions, especially inheritance issues.

The Constitutional Court's decision confirms that the inheritance status for children from marriages that are not officially recorded is still a debate.²¹ Although the civil relationship between the child and the biological father can be recognized through scientific evidence, such recognition does not necessarily make the child entitled to inheritance under national law. In the context of Islamic law, inheritance rights are only given to children born from a legally valid marriage.²² However, if the marriage is not administratively recorded, the state does not recognize the child's inheritance rights, even though the marriage is religiously valid.²³

This reflects the difference in principle between national law and Islamic law.²⁴ National law emphasizes the protection of children's rights from a humanitarian perspective, while Islamic law focuses on clarity of nasab as the main condition in inheritance matters.²⁵ As a result, civil recognition granted by national law is not always in line with the conditions of inheritance in Islamic law.

This difference is evident in terms of the requirements for the validity of the nasab relationship. Islamic law stipulates that only children of a valid marriage according to the sharia are entitled to inheritance. If the marriage is not valid according to religion, then the relationship of nasab is considered ineligible to get an inheritance.²⁶ This is done in order to maintain the purity of the nasab.

Meanwhile, national law, especially after the Constitutional Court Decision No. 46/PUU-VIII/2010, opens up space for children born out of wedlock to be recognized in civil law, including the potential to obtain inheritance, provided there is scientifically or legally valid evidence. This suggests that national laws are more flexible and oriented towards the protection of individual rights.²⁷

Saddu Dzariah's Role in Maintaining Family Nasab and Honor in Unrecorded Marriage Cases

The Constitutional Court Decision Number 46/PUU-VIII/2010 decides that children born out of wedlock, including from unregistered marriages, can have a civil relationship with their biological father if scientifically proven.²⁸ In this context, the

²¹ Habib Shulton Asnawi, "The Legal Politics of Decisions on the Status of Children Out of Marriage: An Effort to Dismantle Positivism," *Journal of the Constitution* 10, no. 2 (2013): 240–260.

²² Ministry of Law and Justice Yogyakarta, "Inheritance Rights and Living Expense Rights for Children Out of Wedlock in Indonesia,

<https://jogja.kemenum.go.id/pusat-informasi/informasi-lain/artikel/hak-waris-dan-hak-biaya-hidup-bagi-anak-di-luar-nikah-di-indonesia>. Retrieved 04 July 2025

²³ Ihsan Helmi Lubis, "Inheritance of Out-of-Wedlock Children (Study of the Constitutional Court Decision No. 46/Puu-VIII/2010)," *Al-Mazaahib: Journal of Legal Comparison* 5, no. 1 (2017): 133–149.

²⁴ Anton et al., 'National Inheritance Law; Comparison Between Islamic Heritage, Burgerlijk Wetboek, and Customary Inheritance Law', *MISTER : Journal of Multidisciplinary Research in Science, Technology and Education*, 2.1 (2025), pp. 2529–40.

²⁵ Sugeng Aminudin, Abdurrahman Hakim, and Muhammad Thoriq, "AS-SYAR ' I : Journal of Family Guidance & Counseling :P national protection of children's rights in Islamic Family Law: A comparative study between Islamic law and national law," *AS-SYAR ' I : Journal of Family Guidance & Counseling* 5, no. 3 (2023): 533–544.

²⁶ Ibn Qudamah, 'Mughni Li Ibn Qudamah', *Azzam Library*, 1 (1997), pp. 757.

²⁷ Constitutional Court Decision No. 46/PUU-VIII/2010.

²⁸ Said Rizal, "Legalization of Out-of-Wedlock Children Recognized by the Biological Father through the Court," *Ilmu Hukum Prima (IHP)* 6, no. 2 (2023): 266–278.

concept of *saddu dzariah* becomes very relevant. *Saddu dzariah* is a principle of fiqh that closes the path to destruction, even if the thing that is the means has not directly caused mafsadah.²⁹ The application of this principle in the case of unrecorded marriage aims to prevent chaos of the nasab, conflicts of inheritance rights, and neglect of legal responsibilities between husbands, wives, and children.³⁰ Therefore, marriage registration is not just an administrative formality, but a way to prevent problems for the sake of sharia and social protection.

Unregistered marriages also have the potential to cause social problems, especially for women and children born from these relationships. The status of a child who has no legal proof of his biological father can damage the personal dignity and honor of the family. In Islam, maintaining honor (*al-'irdh*) and posterity (*al-nasl*) is part of the main goal of the sharia (*maqasid sharia*). Therefore, marriage registration is a concrete form of *saddu dzariah*, to close all gaps that can damage the moral and social order in family life.³¹

The evidence that supports the importance of maintaining nasab is found in QS. Al-Furqan verse 54,

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا

"And it is He (Allah) who created man from water, and He made man (having) offspring and kinship; and your Lord is Almighty." This verse shows the importance of clarity of nasab as part of the social system maintained by the sharia.³² In addition, in QS. In An-Nur verse 2, Allah affirms the sanction for adultery, which indirectly shows the importance of distinguishing between legitimate and illegitimate relationships so as not to be mixed in terms of nasab and honor.³³

The scholars also emphasized the importance of recording and arranging marriages to avoid mafsadah. Imam Malik in the book *al-Muwaththa'*

عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَتَى بِنِكَاحٍ لَمْ يَشْهَدْ عَلَيْهِ إِلَّا رَجُلًا وَامْرَأَةً فَقَالَ هَذَا نِكَاحٌ السِّرِّ وَلَا أُجِيزُهُ وَلَوْ كُنْتُ تَقَدَّمْتُ فِيهِ لَرَجَمْتُ

"From Abu Az Zubair Al Maki said: Once before Umar Ibn al-Khatthab a marriage was witnessed only by a man and a woman, then Umar said: "This is a nikah sirri, I do not allow it. If I find him, I will definitely stone him". This atsar emphasizes the importance of having guardians and witnesses so

²⁹ NU Online, "Ushul Fiqih: The Saddudz Dzari'ah Method and Its Legal Classification, <https://islam.nu.or.id/syariah/ushul-fiqih-metode-saddudz-dzari-ah-dan-klasifikasi-hukumnya-LCjrT>. Retrieved 05 July 2025

³⁰ Dwi Astuti, "Juridical Study of Article 43 Paragraph 1 of Law Number 1 of 1974 concerning Marriage after the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Position of Children Out of Wedlock" (2016): 1–23.

³¹ A. Halil. Thahir, 2015. *Ijtihad Maqâsidi: Reconstruction of Islamic Law Based on Masalahah Interconnectivity*, PT. LKiS Pelangi Aksara.

³² QS. Al-Furqon: 54.

³³ QS. An-Nur: 2.

that the marriage is not carried out secretly which can cause slander.³⁴ The Indonesian Ulema Council (MUI) in its various fatwas Fatwa Number 10 of 2008 stated that unregistered marriages, even though they are religiously valid, have the potential to cause harm, especially in the aspect of protecting the rights of women and children, and open up opportunities for denial of the husband's responsibility.³⁵

Thus, the application of *saddu dzariah* in preventing unrecorded marriages is an important part that is in line with Islamic values and state law. Marriage registration not only guarantees legal protection, but also maintains the clarity of the family and honor. This concept emphasizes the importance of public awareness to not only pursue religious legitimacy, but also ensure legality and legal protection for a safer and more dignified future generation.³⁶ Therefore, the role of *saddu dzariah* is important as a moral and legal protection to maintain social stability in the family institution.

Although the Constitutional Court has pledged recognition of children out of wedlock through decision No. 46/PUU-VIII/2010, in principle *saddu dzariah* is not suitable because this is not because it ignores child protection, but because this leniency can make it easier for people to ignore legal and social responsibilities in marriage.³⁷ If the marriage is not officially recorded, then it can take place secretly without supervision, and ultimately risks resembling a hidden act of adultery, especially if the man does not carry out his responsibilities.³⁸

As explained by Yusuf al-Qaradawi, the principle of *saddu dzariah* does not only apply to things that are haram in substance, but also to things that are mubah that can lead to damage.³⁹ So, if the marriage is not administratively recorded, in fact leads to harm such as neglect of children's rights, denial of alimony, and destruction of the nasab, then fiqh this practice must be prevented.⁴⁰

CONCLUSION

The application of the concept of *saddu dzariah* in the problem of inheritance distribution for children from marriage is not recorded as having an important role in maintaining the clarity of nasab and the order of family law in an Islamic perspective. Although the Constitutional Court Decision No. 46/PUU-VIII/2010 provides recognition of the civil relationship between the child out of wedlock and his biological father, including the possibility of obtaining inheritance rights, this is incompatible with the

³⁴ Malik, *Translation of Al Muwattha'*, ed. Nasrullah, 1st ed. (Jakarta: Saheeh, 2016).

³⁵ Muhammad Yunus Hidayatullah et al, 'Sirri Marriage According to the Fatwa of Indonesian Ulama. The Bureaucratization of Muslim Marriage in Indonesia', *Journal of Law and Religion*, 33.2 (2022), pp. 291–309.

³⁶ SITTI RAHMATIKA SYAMSIR NALI, "Unrecorded Marriage Perspective of Adz-Dzari'Ah (Case Study in Ujung District, Parepare City)" (2024): 10.

³⁷ A Zamakhsyari Baharuddin, "Review of the Constitutional Court's Decision on the Status of Children Out of Wedlock," *Journal of Al-'Adl* 12, no. 1 (2019): 154–166, <http://ejournal.iainkendari.ac.id/al-adl/article/view/1388>.

³⁸ Manshuruddin, "Unregistered Marriages (Sirri) in the Medan Estate Community, Percut Sei Tuan District, Deli Serdang Regency," *Focus: Journal of Islamic and Community Studies* 1, no. 2 (2016): 120–134.

³⁹ Ipandang, *Fiqh & Social Reality Al Qaradhawi, Bildung* (Yogyakarta, 2019).

⁴⁰ Ibn Qudamah, 'Mughni Li Ibn Qudamah', *Azzam Library*, 1 (1997), pp. 757.

principles of Islamic law which stipulate that inheritance rights can only be given to children of a valid marriage according to the sharia.

In the context of fiqh, saddu dzariah aims to prevent all forms of damage that may arise from unrecorded marriages, such as neglect of children's rights, denial of alimony, and unclear status of nasab which has direct implications for inheritance rights. Therefore, marriage registration cannot be seen as merely an administrative obligation, but is an integral part of the protection of law and sharia in line with the purpose of maqasid sharia, especially in safeguarding nasab (hifz al-nasl) and property (hifz al-mal). The principle of saddu dzariah is not a form of neglect of child protection, but rather as a way to prevent legal leniency from being abused by society to avoid legal and social responsibilities in marriage. If the marriage is not officially recorded, then it can take place secretly without supervision, and ultimately risks resembling a hidden act of adultery, especially if the man does not carry out his responsibilities.

Thus, although the national legal approach emphasizes more on substantive justice and the protection of children's rights, the saddu dzariah approach is still relevant to be applied to ensure that there is no abuse of legal loopholes that can damage the family order and inheritance system in society. Therefore, the synergy between religious norms and state policies needs to be strengthened so that the protection of children continues, without ignoring the principles of Islamic law that have been structured to maintain the common good.

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