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FORMULATING CRITERIA FOR THE CIVIL RELATIONSHIP OF CHILDREN BORN OUT OF WEDLOCK AFTER CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010 FROM THE PERSPECTIVE OF *MASLAHAH* ACCORDING TO ‘IZZ AL-DĪN IBN ‘ABD AL-SALĀM

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ABSTRACT

This article examines the formulation of criteria for the civil relationship of children born out of wedlock after Constitutional Court Decision Number 46/PUU-VIII/2010 from the perspective of legal certainty and the *maslahah* theory of Izzuddin ibn Abdissalam. The study is grounded in the ambiguity of the phrase “children born outside marriage” and the clause “civil relationship” in the Constitutional Court decision, which has led to diverse interpretations and disparities in judicial decisions. This research is a normative juridical study employing statutory and conceptual approaches. The legal materials consist of primary, secondary, and tertiary sources, including statutory regulations, Constitutional Court decisions, court decisions, Islamic legal doctrines, and relevant legal literature. The findings show that children born out of wedlock should not be treated as a single legal category. They need to be classified into three categories: children born from religiously valid but unregistered marriages, children born from defective marriages or relationships involving legal doubt, and children born from relationships without any marital bond. Each category produces different legal consequences, ranging from full, proportional, to limited civil relationships. This formulation aims to realize legal certainty, justice, utility, and *maslahah* while protecting children without undermining the legal order of lineage in Islamic family law.

Keywords: *Children born out of wedlock; civil relationship; Constitutional Court; legal certainty; maslahah.*

ABSTRAK

Artikel ini mengkaji formulasi kriteria hubungan perdata anak luar kawin pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dalam perspektif kepastian hukum dan *maslahah* Izzuddin bin Abdissalam. Kajian ini berangkat dari kekaburan frasa “anak yang dilahirkan di luar perkawinan” dan klausul “hubungan perdata” dalam putusan Mahkamah Konstitusi, yang menimbulkan perbedaan tafsir dan disparitas putusan pengadilan. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan meliputi bahan hukum primer, sekunder, dan tersier, berupa peraturan perundang-undangan, putusan Mahkamah Konstitusi, putusan pengadilan, doktrin hukum Islam, dan literatur hukum yang relevan. Hasil kajian menunjukkan bahwa anak luar kawin tidak dapat diperlakukan sebagai satu kategori hukum yang tunggal. Anak luar kawin perlu diklasifikasikan menjadi tiga kategori, yaitu anak yang lahir dari perkawinan sah secara agama tetapi tidak tercatat, anak yang lahir dari perkawinan cacat atau mengandung syubhat, dan anak yang lahir dari hubungan tanpa ikatan perkawinan. Setiap kategori melahirkan akibat hukum yang berbeda, mulai dari hubungan perdata penuh, proporsional, hingga terbatas. Formulasi ini diarahkan untuk mewujudkan kepastian hukum, keadilan, kemanfaatan, dan *maslahah*, sekaligus melindungi anak tanpa merusak tertib nasab dalam hukum keluarga Islam.

Kata Kunci: *Anak luar kawin; hubungan perdata; Mahkamah Konstitusi; kepastian hukum; maslahah.*

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INTRODUCTION

Every child is, in principle, born in a state of innocence and has no capacity to determine the legal status of his or her parents' marriage. Therefore, the circumstance of a child's birth should not become a basis for reducing, restricting, or eliminating legal protection for the child. In the context of Indonesian family law, the issue of children born outside marriage is significant because it is directly related to legal status, identity, lineage, maintenance, custody, education, health, guardianship, inheritance, and child protection. This issue becomes increasingly complex when the constructions of positive law, Islamic law, and judicial practice do not always move in the same direction in interpreting the legal position of children born out of wedlock and the form of their civil relationship with their biological fathers.(Botu, 2022, pp. 143–159; Khan & Syarafudin, 2023, pp. 443–449)

Prior to Constitutional Court Decision Number 46/PUU-VIII/2010, a child born outside marriage had a civil relationship only with his or her mother and the mother's family. This legal construction placed the biological father beyond the reach of legal responsibility, even though he biologically had a blood relationship with the child. Such a condition raised a serious question of justice, since the child bore the legal consequences of the parents' conduct, while the man who caused the child's birth could be released from civil liability. From the perspective of child protection, this restriction was not only juridically problematic but also inconsistent with the principle that every child is entitled to protection, identity, care, and the fulfilment of basic needs without discrimination.(Rosyid et al., 2023, pp. 85–106; Winarso et al., 2024, pp. 358–366)

Constitutional Court Decision Number 46/PUU-VIII/2010 subsequently introduced an important shift in Indonesian family law. The decision affirmed that a child born outside marriage has a civil relationship with his or her mother and the mother's family, as well as with the man as his or her father, insofar as it can be proven, based on science and technology and/or other legally admissible evidence, that they have a blood relationship, including a civil relationship with the father's family.(Arfi Hilmiati & Kartika Yusrina, 2023, pp. 48–57; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 35–37) Normatively, this decision constitutes a legal breakthrough because it expands child protection and opens a space for imposing responsibility on the biological father. At the same time, however, the decision leaves unresolved conceptual problems because it does not clearly define the phrase "child born outside marriage" and does not specify the scope, form, and legal consequences of the clause "civil relationship".(Salma et al., 2023, pp. 764–781)

This ambiguity gives rise to several fundamental problems. *First*, the phrase "child born outside marriage" may be understood in different ways: whether it includes a child born from a religiously valid but unregistered marriage, a child born from a defective marriage or a relationship involving legal doubt, or a child born from a relationship without any marital bond at all. These three circumstances have different legal characters and should not be treated as a single legal category. A child born from a religiously valid but unregistered marriage has a marital basis that differs from that of a child born from a relationship without any marital bond. Likewise, a child born from a defective marriage or a relationship involving shubha has its own legal dimension in Islamic jurisprudence, particularly because the existence of legal presumption or a defect in the contract may produce certain legal consequences for the child.(Nurcholis & Iqbal, 2021, pp. 259–274; Rofiq & Hamidah, 2021, p. 129)

Second, the clause "civil relationship" in the Constitutional Court decision also creates a broad space for interpretation. A civil relationship may be understood broadly as encompassing lineage, maintenance, identity, custody, education, health, guardianship, and inheritance.(Ni'matul Huda, 2018, p. 142; Tim Penyusun Buku Hakim Konstitusi Prof. H.A.S Natabaya, SH, LLM, 2008, pp. 286–287) Conversely, it may also be understood in a limited sense as an obligation to fulfil living needs, provide protection, and grant access to property through certain legal instruments without establishing lineage and inheritance rights. This lack of clarity has affected judicial practice, particularly within the religious courts, where disparities have emerged in cases concerning child recognition, determination of a child's legal origin, and the establishment of a civil relationship between children born out of wedlock and their biological fathers.(Nasution et al., 2024, pp. 1–20) Some decisions have opened the possibility of recognising a civil relationship; others have limited it to living expenses and mandatory bequest, while some have rejected petitions for the determination of a child's legal origin.

Third, the expansion of the civil relationship of children born out of wedlock also creates normative tension with the construction of Islamic law, particularly in relation to lineage, inheritance, and guardianship. According to the majority view in Islamic jurisprudence, a child born from zina is not attributed by lineage to the biological father and therefore does not give rise to inheritance and guardianship rights. Fatwa of the Indonesian Ulema Council Number 11 of 2012 also affirms that a child born from zina has no lineage, marriage guardianship, inheritance, or maintenance relationship with the man who caused

his or her birth, although the state may impose a ta'zīr sanction in the form of an obligation to fulfil the child's living needs and provide property through a mandatory bequest.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, pp. 1–2, 9–10) Therefore, the Constitutional Court decision cannot be read simplistically as abolishing the boundaries of lineage in Islamic law. Rather, it must be formulated proportionally so that child protection can be realized without disrupting the legal order of marriage and lineage.

A number of previous studies have discussed the issue of children born out of wedlock after Constitutional Court Decision Number 46/PUU-VIII/2010. Zaki Satria, for instance, examined the legal status of children born out of wedlock by focusing on a comparison between the views of Islamic jurists and the Constitutional Court decision.(Zaki Satria, 2023) His study indicates the possibility of reinterpretation in Islamic law for the sake of the child's welfare, but it does not specifically formulate practical criteria for the civil relationship of children born out of wedlock within the framework of Indonesian positive law. Toha Ma'arif also discussed the status of children born outside marriage from the perspective of progressive Islamic law and its relevance to the reform of Indonesian family law.(Toha Ma'arif, 2023) However, his analysis is broader in scope, focusing on family law reform rather than mapping the forms of civil relationship between children born out of wedlock and their biological fathers based on the categories of their birth. Meanwhile, Moh. Asyiq Amrulloh examined the position of children born out of wedlock after the Constitutional Court decision from the perspective of maqāṣid al-sharī'ah, but placed greater emphasis on the philosophical dimension of Islamic law than on the normative and applicable formulation of civil relationships.(Moh Asyiq Amrulloh, 2021) These positions show that most previous studies remain focused on legal status, general protection, or philosophical analysis, and have not yet reached the formulation of criteria for civil relationships that operationally distinguish the categories of children born out of wedlock.

Other studies have also made important contributions, yet they still leave an academic gap that remains unanswered. Syarief Husien discussed the uncertainty of the status of children born out of wedlock from the perspective of hifz al-nasl, while Abdullah Jarir and his colleagues highlighted the debate on legal reasoning concerning the paternity of children born out of wedlock in Indonesia.(Husien, 2024) Padma D. Liman and Aulia Rifai examined the legal status of children born out of wedlock within the inheritance system of the Burgerlijk Wetboek after the Constitutional Court decision, concluding that inheritance

protection for such children remains inadequate because it has not been regulated in detail.(Vílchez & Rifai, 2023) Nevertheless, these studies have not comprehensively connected three aspects at once: the ambiguity of the civil relationship clause, the categorisation of children born out of wedlock, and the formulation of different legal consequences in the form of full, proportional, and limited civil relationships. Accordingly, the novelty of this article lies in formulating criteria for the civil relationship of children born out of wedlock after the Constitutional Court decision through the integration of Gustav Radbruch's theory of legal certainty and 'Izz al-Dīn Ibn 'Abd al-Salām's concept of *maslahah*, thereby producing a model that is more applicable, proportional, and compatible with both Islamic family law and Indonesian positive law.

On this basis, this article proceeds from the academic concern that children born out of wedlock cannot be positioned as a homogeneous legal category. Treating all categories of children born out of wedlock in the same manner may instead produce new forms of injustice, both for children who were in fact born from marriages valid under religious law and for the Islamic family law system, which must continue to preserve the order of lineage and marriage. Therefore, it is necessary to formulate criteria capable of distinguishing the categories of children born out of wedlock and determining the form of civil relationship appropriate to the legal character of each category. Such a formulation is important to avoid two extreme positions: releasing the biological father from all forms of responsibility, or equating all legal consequences of children born out of wedlock with those of legitimate children without considering the basis of marriage and the order of lineage.

This article employs Gustav Radbruch's theory of legal certainty and 'Izz al-Dīn Ibn 'Abd al-Salām's concept of *maslahah* as its analytical framework. Radbruch's theory of legal certainty is used to assess whether the clause on civil relationship in the Constitutional Court decision satisfies the demands of certainty, justice, and legal utility. Meanwhile, Ibn 'Abd al-Salām's concept of *maslahah* is used to formulate a balance between child protection as an effort to realize benefit and the preservation of lineage as an effort to prevent harm. Through these two frameworks, the civil relationship of children born out of wedlock is not understood merely as a formal legal issue, but also as a matter of child rights protection, biological paternal responsibility, and the preservation of the Islamic family law structure.

Based on this background, this article addresses three main questions. First, what are the meaning and essence of children born out of wedlock in Constitutional Court Decision Number 46/PUU-VIII/2010? Second, how should the clause on the civil relationship of

children born out of wedlock in that decision be analysed under Gustav Radbruch's theory of legal certainty? Third, how can the criteria for the civil relationship of children born out of wedlock be formulated to realise legal certainty from the perspective of 'Izz al-Dīn Ibn 'Abd al-Salām's *maslahah*? These three questions are directed toward building the argument that the expansion of the civil relationship of children born out of wedlock must be accompanied by clear legal categorisation, definite limits on legal consequences, and a proportional formulation of norms.

RESEARCH METHOD

This research is a normative juridical study that examines legal norms, doctrines, court decisions, and concepts of Islamic law relating to the civil relationship of children born out of wedlock following Constitutional Court Decision Number 46/PUU-VIII/2010. This study employs statutory and conceptual approaches. The statutory approach is used to analyse relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, the Marriage Law, the Child Protection Law, the Compilation of Islamic Law, the Indonesian Civil Code, Constitutional Court Decision Number 46/PUU-VIII/2010, court decisions, and Fatwa of the Indonesian Ulema Council Number 11 of 2012. Meanwhile, the conceptual approach is used to examine the concepts of children born out of wedlock, civil relationship, legal certainty, lineage, biological relationship, and *maslahah*. The legal materials used in this research consist of primary, secondary, and tertiary legal materials collected through library research. All legal materials are processed by identifying, classifying, and interpreting relevant legal norms and doctrines, and are then analysed qualitatively and critically using Gustav Radbruch's theory of legal certainty and 'Izz al-Dīn Ibn 'Abd al-Salām's concept of *maslahah*. This analytical framework is employed to formulate criteria for the civil relationship of children born out of wedlock in a proportional manner by balancing child protection, legal certainty, justice, legal utility, and the preservation of the order of lineage in Islamic family law.

FINDING AND DISCUSSION

The Construction of 'Izz al-Dīn Ibn 'Abd al-Salām's *Maslahah* in the Islamic Legal Framework

All provisions of the Sharī'ah within Islam contain *maslahah*, both in this world and in the hereafter. According to 'Izz al-Dīn Ibn 'Abd al-Salām, the realisation of *maslahah* may

be achieved through two principal mechanisms: *dar'u al-mafāsid* (the prevention or removal of harm) and *jalb al-maṣāliḥ* (the attainment or promotion of benefit).('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, p. 3, 1996, p. 30) These two key concepts may even be reduced to a single legal maxim, namely *jalb al-maṣāliḥ*, because, according to Ibn 'Abd al-Salām, *dar'u al-mafāsid* is already included within the essence of attaining *maslahah*.(Jalāl al-Dīn al-Suyūṭī, 2010, p. 5) Thus, according to the scholar known as *Sultān al-'Ulamā'*, there is no legal act that contains harm except that the Sharī'ah commands its abandonment. Conversely, there is no legal act that contains benefit except that the Sharī'ah commands its realisation. Based on these two key concepts, there are two principal themes at the centre of Ibn 'Abd al-Salām's theoretical framework: *maslahah* and *mafsadah*.

The term *maslahah*, as the first principal theme, is divided by 'Izz al-Dīn Ibn 'Abd al-Salām into two categories: real *maslahah* (*haqīqī*) and metaphorical *maslahah* (*majāzī*). Real *maslahah* (*maslahah haqīqiyyah*) includes *lazzah* (pleasure or enjoyment) and *afrah* (happiness or delight). By contrast, metaphorical *maslahah* (*maslahah majāziyyah*) refers to all acts that serve as means leading to the realisation of real *maslahah*.(Abdurrahman bin Ahmad Al-Iji, 2000, p. 239; Abu Abdillah Muhammad bin Umar bin al-Husain bin al-Hasan bin Ali al-Taimi al-Bakri al-Tabari al-Razi, 1999, p. 230; 'Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1996, p. 35, 2003, p. 3 dan 137) Such intermediary acts may, at times, themselves contain benefit; yet in some circumstances, they may even involve harm, injury, or *mafsadah*. Nevertheless, a harmful act that serves as a means to the realisation of a particular *maslahah* must be undertaken, or at least may be permitted, not because of the intrinsic nature of the act itself, but because of its potential to bring about that *maslahah*.

A concrete example may be found in the medical practice of amputating a limb of a patient suffering from diabetes. In such a case, the preservation of the patient's life, which represents *hifẓ al-nafs* (the protection of life) constitutes real *maslahah* (*maslahah haqīqiyyah*). Meanwhile, the doctor's effort to amputate the injured limb in order to prevent the condition from worsening constitutes metaphorical *maslahah* (*maslahah majāziyyah*), even though the act itself contains *mafsadah* or harm. This is because the surgical intervention undertaken by the medical team functions as an intermediary act aimed at realising real *maslahah* for the diabetic patient.

Similarly, *mafsadah* constitutes the second principal theme in the thought of 'Izz al-Dīn Ibn 'Abd al-Salām. He divides *mafsadah* into two categories: real *mafsadah* (*mafsadah ḥaqīqiyyah*) and metaphorical *mafsadah* (*mafsadah majāziyyah*). Real *mafsadah* consists of *al-*

ghumūm (grief or sorrow) and *al-ālām* (pain or suffering). Metaphorical *mafsadah*, by contrast, refers to all acts that may serve as means leading to the realisation of real *mafsadah*.(Abdurrahman bin Ahmad Al-Iji, 2000, p. 239; Abu Abdillah Muhammad bin Umar bin al-Husain bin al-Hasan bin Ali al-Taimi al-Bakri al-Tabari al-Razi, 1999, p. 240; 'Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1996, p. 35, 2003, p. 3 dan 137) However, the means that lead to the realisation of *mafsadah* are not always harmful acts in themselves; they may also consist of acts that contain benefit. Nevertheless, a beneficial act that serves as a means to the realisation of *mafsadah* is prohibited by the Sharī'ah, not merely because of the intrinsic nature of the act itself, but because of its potential to bring about that *mafsadah*.

An example may be seen in polyandrous marriage practices, which are referred to as a tradition among certain communities on the island of Bali. As is generally understood, the preservation of the dignity of lineage, as represented by *hifẓ al-nasl* within marriage, constitutes real *maslahah* (*maslahah haqīqiyyah*). By contrast, the practice of polyandrous marriage has a strong potential to create difficulty in identifying the child born as a result of such a marriage and to undermine the dignity of lineage (*hifẓ al-nasl*). This is because it cannot be determined with certainty which husband contributed to the fertilisation process within the wife's womb. Accordingly, this form of marital practice may be categorised as metaphorical *mafsadah* (*mafsadah majāẓiyyah*), even though marriage, in its original legal nature, is an act that contains benefit.

Furthermore, Ibn 'Abd al-Salām further classifies both *maslahah* and *mafsadah*, whether real or metaphorical, into two typologies: worldly *maslahah* or *mafsadah* and otherworldly *maslahah* or *mafsadah*. Worldly *maslahah* and *mafsadah* may be apprehended through the optimal use of sound reason by observing empirical facts and conducting inquiry, even prior to the advent of Islamic law. For those endowed with sound reason, the pursuit of benefit and the avoidance of harm are commendable and morally valuable acts, even before the revelation of the Sharī'ah. The above statement of 'Izz al-Dīn Ibn 'Abd al-Salām in fact affirms the significant role of reason in apprehending what is good and distinguishing it from what is harmful. This is in line with the view of Imām al-Shāfi'ī as cited by Abū Nu'aym Aḥmad ibn 'Abd Allāh al-Aṣfahānī.(Abu Nu'aim Ahmad bin Abdullah Al-Ashfihani, 1996, p. 124) By contrast, otherworldly *maslahah* and *mafsadah* cannot be comprehensively known by reason alone, but only through the transmission of revealed texts and Shar'ī proofs, such as the Qur'an, the Sunnah, qiyās, and valid methods of legal inference agreed upon by Muslim jurists.

Having identified the various forms of *maslahah* and *mafsadah* that are worldly and otherworldly in nature, Ibn ʻAbd al-Salām provides a further and more detailed explanation concerning the possibility of attaining such *maslahah* and *mafsadah*. He explains that *maslahah* may be attained in several forms. First, otherworldly *maslahah* is characterised as *mutawaqqa'ah al-husul*, namely a benefit whose attainment is based on expectation or presumption. From this, it may be understood that not all human acts oriented toward the hereafter are certainly accepted or necessarily result in reward, for they may be nullified at the reckoning of deeds due to self-admiration, ostentation, or arrogance. Second, worldly *maslahah* may take the form of *nājiz al-husul*, namely a benefit that is immediately obtained or experienced in this world, such as satiety resulting from eating, the quenching of thirst through drinking, and happiness arising from marriage. It may also take the form of *mutawaqqa'ah al-husul*, such as profit expected from commercial transactions and similar activities. Third, there are acts that are, on the one hand, worldly in character and, on the other hand, otherworldly in orientation. In this third category, *maslahah* may simultaneously take the form of *nājiz al-husul*, which is directly obtained or experienced, and *mutawaqqa'ah al-husul*, which is attained on the basis of expectation. Examples include the obligation to pay zakat or expiatory payments (*kaffārah*). On the one hand, these acts provide immediate benefit to the recipients; on the other hand, they also contain the promise of divine reward from Allah for those who perform them.(ʻIzz al-Dīn ʻAbd al-'Azīz ibn ʻAbd al-Salām al-Sulamī, 1991, p. 46)

The subsequent discussion in ʻIzz al-Dīn Ibn ʻAbd al-Salām's theory of *maslahah* concerns the realisation of *maslahah* itself. According to him, the success of realising a particular *maslahah* through the attainment of benefit and the prevention of harm is presumptive (*zanni*) rather than definitive (*qath'i*). For instance, in the context of worldly *maslahah*, a person who goes to the market to trade certainly expects to obtain profit from his commercial activity. However, there is no certainty as to whether he will actually gain such profit or not. This assessment is based only on general probability, namely that a person who engages in trade usually obtains profit. The same applies to otherworldly *maslahah*. A servant who performs prayer or other acts of worship does so on the basis of a strong presumption (*zann*) that his worship will bring about *maslahah* in the form of divine reward and Paradise.(Abu Al-Husain Muhammad bin Ali bin Al-Thayyib, 1964, p. 378; Ali bin Abdul Kafi Al-Subki, n.d., p. 39; Mahfudz bin Ahmad bin Al-Hasan Abu Al-Khattab Al-Kaludzani, 1985, p. 338; Umar bin Shalih bin Umar, 2003, p. 203)

Thus, although there is no definitive guarantee (*qath'i*) that such *maslahah* will be realized, a servant may not be reluctant or negligent in pursuing it. This is because every command of the Sharī'ah must be carried out, not only as a manifestation of obedience, but also as an expression of positive presumption (*husn al-ẓann*) toward Allah Almighty, namely the belief that Allah will not break His promise. This should not be understood, however, as a form of self-assurance that human beings will certainly receive reward for every good deed they perform. The view of *Sulṭān al-'Ulamā'*, 'Izz al-Dīn Ibn 'Abd al-Salām, is grounded in the theological construction of Sunni thought as well as in the spiritual framework of Sufism.

Furthermore, according to 'Izz al-Dīn Ibn 'Abd al-Salām, *maslahah* and *mafsadah* are divided into several categories, namely *darūrī*, *hājī*, and *takmīlī*. This classification serves as a consideration in determining the hierarchy of metaphorical *maslahah* and *mafsadah* in relation to the legal rulings of obligatory (*wājib*), recommended (*mandūb*), and permissible (*mubāḥ*).('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, p. 7, 1996, p. 437; Umar bin Shalih bin Umar, 2003, p. 144) It is therefore unsurprising that 'Umar Salih ibn 'Umar, in his dissertation, states that the classification of *darūrī*, *hājī*, and *takmīlī* also reflects the hierarchy of *maqasid al-sharī'ah*, although this is not explained explicitly and concretely. In addition, within his minor legal maxims (*al-qawā'id al-ṣughrā*), Ibn 'Abd al-Salām further classifies the levels of *maslahah* and *mafsadah* into three degrees: high (*'āliyah*), intermediate (*mutawassitah*), and low (*daniyyah*).

As explained above, the realisation of *maslahah* and *mafsadah* is presumptive (*ẓannī*) in nature. This opens the possibility of the convergence of several forms of *maslahah*. In this regard, Ibn 'Abd al-Salām explains that when the converging benefits are otherworldly in character, an effort should be made to realise all of them collectively. However, if it is difficult to realise all of them, priority should be given to the *maslahah* that occupies a higher hierarchical level. If, however, the competing benefits are of the same level and cannot be realised simultaneously, the legally responsible person (*mukallaf*) is given discretion to choose among them in accordance with his or her own ijtihād.

With regard to the convergence of several forms of harm (*mafsadah*), if it is possible to avoid them entirely, then doing so becomes obligatory. However, if a legally responsible person (*mukallaf*) encounters difficulty in avoiding all of them, Ibn 'Abd al-Salām provides several qualifications. First, when the hierarchical difference among the potential harms becomes clear, it is obligatory to give priority to preventing the greater harm. One example is the consumption of prohibited animals out of necessity. In this situation, consuming

prohibited animal food constitutes a lesser harm than the loss of human life. Second, if the potential harms are of the same level, while avoiding all of them is difficult, then the choice may be made in accordance with one's respective ijtihād, although such a situation is, in reality, almost impossible to occur.

A different situation arises when *maslahah* and *mafsadah* converge, that is, when a servant seeks to realise benefit but is confronted with a contradictory situation between attaining benefit and preventing harm, requiring him to choose one of the two. To resolve this issue, Ibn 'Abd al-Salām provides the following explanation. First, when it is possible to achieve both objectives namely, attaining benefit while simultaneously preventing harm then both must be pursued. Second, if it is difficult to realize both and one must be chosen, priority should be given to preventing harm. This is consistent with the substance of the legal maxim: *dar'u al-mafāsid muqaddam 'alā jalb al-masalih* (preventing harm takes precedence over attaining benefit).(Jalāl al-Dīn al-Suyuti, 2010, p. 98)

An example of the second point is the case of a person performing prayer at a time when its prescribed period is about to expire, while at the same time he sees another person whose life is under threat. If he continues his prayer, a human life will be endangered. However, if he rescues the person in danger, he will miss the prescribed time for prayer. In such a case, saving the person whose life is threatened takes precedence, even though it results in missing the prescribed time of prayer. Third, if the *maslahah* is evidently greater than the *mafsadah*, then the attainment of benefit must be given priority, even though such a situation rarely occurs.(Ibnu Qayyim Al-Jauziyyah, 1423, p. 25; Mustafa Ahmad Al-Zarqa', 2004, pp. 95–96; Umar bin Shalih bin Umar, 2003, p. 253)

Formulating Criteria for the Civil Relationship of Children Born Out of Wedlock to Realise Legal Certainty from the Perspective of 'Izz al-Dīn Ibn 'Abd al-Salām's *Maslahah*

The need for such criteria arises from the fact that the Constitutional Court decision has opened the possibility of a civil relationship between a child born out of wedlock and the man who can be proven to be his or her biological father, yet it does not clearly define the scope of the civil relationship in question. As a result, the civil relationship may be interpreted broadly as encompassing lineage, identity, maintenance, custody, guardianship, and inheritance. Conversely, it may also be interpreted narrowly as referring only to certain forms of civil responsibility. This lack of clarity has the potential to generate disparities in

implementation, both at the judicial level and in population administration practice. Therefore, the formulation of criteria becomes an urgent necessity to ensure that the protection of children is carried out on the basis of clear standards, rather than depending on the subjective interpretation of each law enforcement authority.

From the perspective of Gustav Radbruch's theory of legal certainty, criteria for determining civil relationships are necessary so that law does not merely embody the value of justice, but also provides certainty and legal utility. Justice requires that a child should not be deprived of protection merely because of the fault or negligence of his or her parents. Legal certainty requires that the forms of civil relationship be formulated in a clear, measurable, and predictable manner, so that each category of child receives legal consequences appropriate to the basis of his or her birth.(1950, pp. 107–109; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–36; Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945, p. Pasal 28 B ayat (2); Muthmainah, 2024, pp. 25–27; Yohanes & Djaja, 2024, pp. 139–145) Meanwhile, legal utility requires that the expansion of civil relationships should not generate new forms of harm, such as the obscuring of lineage boundaries, uncertainty in inheritance, confusion in guardianship, or the weakening of the institution of marriage. Accordingly, the criteria for civil relationships must be constructed as a point of equilibrium between child protection and the legal order of the family.

From the perspective of 'Izz al-Dīn Ibn 'Abd al-Salām's *maslahah*, the formulation of such criteria must also be directed toward attaining benefit and preventing harm. The benefit to be realised is the protection of the child's identity, maintenance, custody, education, health, dignity, and future. The harm to be prevented, on the one hand, is the severance of the biological father's responsibility and, on the other hand, the equalization of all children born out of wedlock with legitimate children.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Hukum angka 1–5; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–37; Undang-Undang (UU) Nomor 23 Tahun 2002, 2002, p. Pasal 4, Pasal 5, Pasal 8, Pasal 9, Pasal 13 ayat (1), dan Pasal 26 ayat (1); 'Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, pp. 11–12, 98–99; Mushodiq et al., 2021, pp. 16–17, 37) Therefore, full civil relationships and limited civil relationships should not be understood as forms of discrimination against children. Rather, they constitute proportional instruments for placing legal consequences in accordance with the basis of birth, the validity of marriage, and proof of biological relationship. On this basis,

the following discussion formulates two main models: the criteria for full civil relationships and the criteria for limited civil relationships.

First, the formulation of criteria for a full civil relationship. A full civil relationship must be understood as a legal relationship between a child and his or her father and the father's family that gives rise to comprehensive family-law consequences. This relationship is not limited to the biological father's obligation to provide maintenance, but also encompasses the child's position within the paternal family structure, including lineage, identity, custody, education, health, guardianship, and inheritance. Therefore, a full civil relationship should not be granted loosely on the basis of a blood relationship alone. Rather, it must rest on a stronger legal foundation, namely the existence of a marriage valid under religious law between the child's father and mother.(Kompilasi Hukum Islam, 1991, p. Pasal 99, Pasal 100, Pasal 171 huruf c, Pasal 174, dan Pasal 186; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 42 dan Pasal 43 ayat (1); Undang-Undang (UU) Nomor 23 Tahun 2002, 2002, p. Pasal 4, Pasal 5, Pasal 7 ayat (1), Pasal 8, Pasal 9, dan Pasal 26 ayat (1)) Under this construction, the child is not merely recognised as the result of a biological relationship, but is positioned as a child who is substantively born from a valid marital relationship, even though that relationship has not been perfected administratively.

The primary basis for a full civil relationship is the existence of a marriage that is valid under religious law, even though it has not been registered under state law. In this category, the legal issue does not lie in the absence of marriage, but in the absence of marriage registration. Therefore, a child born from a religiously valid but unregistered marriage should not be treated in the same manner as a child born from a relationship with no marital bond at all. An unregistered marriage may indeed create evidentiary and administrative problems, but it does not automatically eliminate the substantive validity of the marriage where the religious pillars and requirements have been fulfilled.(Bafadhal, 2014, pp. 8–10; Kompilasi Hukum Islam, 1991, p. Pasal 4–7; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 30–35; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 2 ayat (1)–(2)) On this basis, limiting the child's relationship only to the mother and the mother's family would produce substantive injustice, because the state would be using the parents' administrative deficiency as a reason to reduce the child's civil rights.

At this point, it is necessary to emphasise the distinction between a full civil relationship and a merely biological relationship. A biological relationship is indeed important, but it is not sufficient to give rise to a full civil relationship in the absence of

marital validity. A full civil relationship arises from the combination of two essential elements: the existence of a marriage valid under religious law and proof that the child was born from, or as a consequence of, that marriage. In other words, a child acquires a full civil relationship not merely because he or she is proven to have a blood relationship with a man, but because that blood relationship arises within the framework of a valid marriage. Without the foundation of a valid marriage, a biological relationship is more appropriately understood as giving rise to a limited civil relationship as a form of responsibility imposed on the biological father, rather than a full civil relationship within the structure of family law. This distinction is important to ensure that Constitutional Court Decision Number 46/PUU-VIII/2010 is not interpreted as equalising all categories of children born out of wedlock.

Therefore, the validity of the marriage and the child's connection to that marriage must be legally provable. In the Islamic context, a marriage must fulfil its pillars and requirements, including the presence of a prospective husband, a prospective wife, a guardian, two witnesses, the offer and acceptance (*ījāb* and *qabūl*), and the absence of any legal impediment that would render the marriage contract void. In addition, it must also be proven that the child was born from, or as a consequence of, that marriage. Such proof may be established through marriage legalisation (*ithbāt al-nikāḥ*), determination of the child's legal origin, family documents, witness testimony, paternal acknowledgment, socio-religious evidence, or DNA testing in the event of a dispute over blood relationship. Where the marriage is valid under religious law and the child's connection to that marriage is proven, the legal consequences must be clear: the child is entitled to a full civil relationship, encompassing lineage, paternal identity, maintenance, custody, education, health, guardianship, and inheritance.(Kompilasi Hukum Islam, 1991, p. Pasal 19–25, Pasal 39–44, dan Pasal 70; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34, 36–37; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 42 dan Pasal 55 ayat (1)–(2); Undang-Undang (UU) Nomor 23 Tahun 2002, 2002, p. Pasal 4, Pasal 5, Pasal 7 ayat (1), Pasal 8, Pasal 9, dan Pasal 26 ayat (1)) From the perspective of Gustav Radbruch's theory of legal certainty, this formulation is important because law must be capable of being applied with certainty, consistency, and predictability, so that judges and administrative officials have clear standards for determining when a child born out of wedlock is entitled to a full civil relationship.(1950, pp. 107–109; Muthmainah, 2024, pp. 25–27; Sudikno Mertokusumo, 2010, pp. 160–162, 2014, p. 49; Yohanes & Djaja, 2024, pp. 139–145, 149–150)

Through this construction, a full civil relationship not only has a constitutional and juridical basis in positive law, but also obtains strong legitimacy from the perspective of ‘Izz al-Dīn Ibn ‘Abd al-Salām’s *maslahah*. Within Ibn ‘Abd al-Salām’s framework, all provisions of the Sharī’ah are essentially directed toward realising human welfare, both in this world and in the hereafter. Such welfare is pursued through two principal mechanisms: the attainment of benefit (*jalb al-maṣāliḥ*) and the prevention of harm (*dar’u al-mafāsid*). Indeed, Ibn ‘Abd al-Salām views the prevention of *mafsadah* as, in essence, part of the effort to attain *maslahah*. This is because there is no act containing harm except that the Sharī’ah commands its abandonment, and there is no act containing benefit except that the Sharī’ah commands its realisation.(‘Izz al-Dīn ‘Abd al-’Azīz ibn ‘Abd al-Salām al-Sulamī, 1991, pp. 5–6, 11–12, 14 dan 98–99; Kompilasi Hukum Islam, 1991, p. Pasal 99, Pasal 100, dan Pasal 186; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–37; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 42 dan Pasal 43 ayat (1); *Muhammad Sa’id Ramadan al-Buti*, 2000, pp. 23–25) On this basis, granting a full civil relationship to a child born from a marriage that is valid under religious law but unregistered under state law constitutes a concrete manifestation of *jalb al-maṣāliḥ*, as it brings about benefit in the form of clarity of lineage, identity, maintenance, custody, guardianship, and inheritance. At the same time, it also constitutes a form of *dar’u al-mafāsid*, because it prevents harm in the form of the child’s severance from his or her father, the loss of familial protection, and the emergence of legal uncertainty merely due to the administrative deficiency of marriage registration.

The relevance of Ibn ‘Abd al-Salām’s theory becomes even stronger because a full civil relationship in this category is not intended to legitimise relationships outside marriage. Rather, it is intended to preserve the legal consequences of a marriage that is substantively valid under religious law. Thus, granting a full civil relationship does not constitute an act that disrupts the order of marriage, but rather a measure to avoid greater *mafsadah*. In Ibn ‘Abd al-Salām’s terms, worldly benefit and harm may be recognised through sound reason, empirical facts, and inquiry.(‘Izz al-Dīn ‘Abd al-’Azīz ibn ‘Abd al-Salām al-Sulamī, 1991, p. 7) In this context, legal reason can apprehend that allowing a child born from a religiously valid marriage to lose lineage, paternal identity, maintenance, guardianship, and inheritance merely because the parents’ marriage has not been registered constitutes a manifest form of *mafsadah*. Conversely, establishing a full civil relationship after the existence of a religiously

valid marriage has been proven constitutes a rational and proportional *maslahah*, and is consistent with the objectives of the Sharī'ah in protecting children and the family.

In addition, the concepts of *maslahah ḥaqīqiyyah* and *maslahah majāziyyah* in Ibn 'Abd al-Salām's thought may also be employed to strengthen this formulation. *Maslahah ḥaqīqiyyah* refers to benefit that is directly experienced, such as happiness, safety, protection, and the removal of suffering. By contrast, *maslahah majāziyyah* refers to all means that lead to the realisation of such real benefit.('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, pp. 11–12; *Muhammad Sa'id Ramadan al-Buti*, 2000, pp. 23–25) In the context of children born out of wedlock from marriages that are valid under religious law but unregistered under state law, a full civil relationship constitutes *maslahah majāziyyah* because it functions as a legal means for realising *maslahah haqīqiyyah* for the child. Through a full civil relationship, the child obtains clarity of legal status, family protection, paternal responsibility, guaranteed care, and certainty over his or her civil rights. Conversely, denying a full civil relationship in this category would give rise to *mafsadah ḥaqīqiyyah*, in the form of social suffering, uncertainty of identity, loss of paternal protection, and the severance of legal rights that should attach to the child.('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991; Kompilasi Hukum Islam, 1991, p. Pasal 99, Pasal 103, Pasal 171 huruf c, Pasal 174, dan Pasal 186; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–36; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 42; Undang-Undang (UU) Nomor 23 Tahun 2002, 2002, p. Pasal 4, Pasal 5, Pasal 7 ayat (1), Pasal 8, Pasal 9, dan Pasal 26 ayat (1)) Therefore, in practical terms, Ibn 'Abd al-Salām's theory requires the law not to stop at the formality of registration, but to examine whether such formality instead becomes the cause of the loss of more fundamental benefit.

However, the application of *maslahah* in the context of a full civil relationship must still be understood in a measured manner. Ibn 'Abd al-Salām emphasises that when an act which, in its original nature, contains benefit has the potential to lead to harm, such an act may be prevented because of its harmful consequences.('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, p. 12) Therefore, a full civil relationship should not be granted to all children born out of wedlock in general and without criteria, because doing so may generate *mafsadah* in the form of obscuring the boundary between a valid marriage and a relationship without marriage. A full civil relationship is appropriate only where there exists a marriage valid under religious law, the child's connection to that marriage is proven, and there is no Shar'ī impediment that renders the contract void. With these limits, *maslahah* does

not become a justification for indiscriminate equalisation. Rather, it functions as an instrument for placing legal consequences in a proportional manner.

Thus, from the perspective of 'Izz al-Dīn Ibn 'Abd al-Salām, the formulation of a full civil relationship for children born from marriages that are valid under religious law but unregistered under state law constitutes the most welfare-oriented legal choice. It secures the child's benefit through the protection of lineage, identity, maintenance, custody, guardianship, and inheritance, while at the same time preventing *mafsadah* in the form of neglect, uncertainty of status, and the severance of paternal responsibility. This formulation is also consistent with the hierarchy of *maslahah*, since child protection, clarity of lineage, and preservation of the family belong to the level of fundamental needs, rather than merely complementary interests. At this point, Ibn 'Abd al-Salām's theory of *maslahah* intersects with Gustav Radbruch's theory of legal certainty: law must be clear in its criteria, just in protecting children, and beneficial in preserving the order of the family. Therefore, a full civil relationship must be formulated as a legal consequence for children who are proven to have been born from marriages valid under religious law, even though such marriages have not been administratively registered.

Second, the formulation of criteria for a limited civil relationship. Unlike a full civil relationship, which rests on the validity of marriage, a limited civil relationship must be formulated as a legal relationship arising from a proven biological relationship, but without the support of a valid marital basis. Under this construction, the child retains the right to obtain protection from the man proven to be his or her biological father. However, such a relationship does not automatically give rise to all family-law consequences, such as full lineage, automatic inheritance, and guardianship. Therefore, a limited civil relationship is not intended to equate a child born from a relationship without marriage with a child born from a valid marriage. Rather, it is more appropriately understood as a mechanism of civil responsibility for the birth of the child.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Hukum angka 1–5; Kompilasi Hukum Islam, 1991, p. Pasal 100 dan Pasal 186; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–37; *Muhammad* ibn Ismāʿīl al-Bukhārī, 1422b, pp. 153, hadis nomor 6749; Usman, 2014, pp. 190–191; Yohanes & Djaja, 2024, pp. 139–145, 149–150) Accordingly, the emphasis of a limited relationship lies not in conferring the status of fatherhood in the sense of Sharʿī lineage, but in imposing legal obligations so that the child is not neglected. This formulation is important to ensure that Constitutional Court Decision

Number 46/PUU-VIII/2010 is not interpreted too broadly, while at the same time preventing it from being emptied of its child-protection spirit.

The first criterion for a limited civil relationship is the absence of a valid marriage between the man and the woman who gave birth to the child, or the existence of a relationship that does not satisfy the requirements necessary to serve as a basis for full lineage. This category primarily applies to children born from relationships without any marital bond at all. In certain circumstances, a limited relationship may also be applied to children born from relationships that are invalid under religious law, where no element of *shubha*, good faith, or contractual basis can be identified as a ground for broader protection.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Umum angka 1–2 dan Ketentuan Hukum angka 1–5; Kompilasi Hukum Islam, 1991, p. Pasal 99 dan Pasal 100; Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 2 ayat (1), Pasal 42, dan Pasal 43 ayat (1); Ibn Qudāmah, 1986, pp. 122–123) Thus, the basis of a limited relationship is neither *firāsh* nor a valid marriage, but a blood relationship that can be legally proven. This distinction is important because a relationship without marriage cannot be given the same legal consequences as a valid marriage. Nevertheless, the absence of marriage cannot be used as a justification for releasing the man who caused the child's birth from all forms of responsibility. It is at this point that a limited civil relationship functions as a middle path between the rejection of full lineage and the obligation to protect the child.

The formulation of a limited civil relationship must clearly distinguish between a biological relationship and full lineage. A biological relationship refers to the scientific fact that a child originates from the genetic contribution of a particular man, whereas lineage is a family-law relationship which, under positive Islamic law, remains grounded in a valid marriage. Therefore, a proven biological relationship may serve as a basis for responsibility, but it does not automatically constitute a basis for inheritance and guardianship in the same manner as a legitimate child. Article 100 of the Compilation of Islamic Law affirms that a child born outside marriage has lineage only with the mother and the mother's family, while Article 186 limits the child's inheritance relationship to the mother and the mother's family.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Hukum angka 1–5; Kompilasi Hukum Islam, 1991, p. Pasal 100 dan Pasal 186; Ibn Qudāmah, 1986, pp. 122–123) These provisions indicate that positive Islamic law in Indonesia continues to preserve valid marriage as the principal gateway to

lineage and inheritance. However, following the Constitutional Court decision, such limitation must not be interpreted as a total release of the biological father from responsibility. Accordingly, a limited civil relationship must be directed toward civil obligations that protect the child, rather than toward the equalisation of lineage status.

The next criterion is the existence of lawful proof of a biological relationship. Since there is no marriage serving as the basis of the legal relationship, biological proof becomes the principal gateway for imposing responsibility on the biological father. Such proof may be established through DNA testing, acknowledgment by the man concerned, witness testimony, documents, correspondence, facts revealed during trial, or other legally admissible evidence. The phrase in the Constitutional Court decision referring to "science and technology and/or other evidence according to law" must be understood as a basis for ensuring that a limited civil relationship does not arise from a unilateral claim, but from an objective evidentiary process. In civil procedural law, evidence such as written documents, witnesses, presumptions, acknowledgments, and oaths remains relevant, while DNA testing may be positioned as scientific evidence that strengthens the judge's conviction.(KUHPerdata, 1847, p. Pasal 1866; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–37; Rechtsreglement Voor de Buitengewesten (RBg), n.d., p. Pasal 284; Lisasih & Wahyudi, 2024, pp. 240–243; M. Yahya Harahap, 2017, pp. 496–498) Accordingly, a limited civil relationship may only be imposed where the biological relationship has been legally proven. Without proof, a limited civil relationship would lose its foundation of legal certainty.

The scope of a limited civil relationship must be formulated concretely so as not to fall back into ambiguity. Under this model, the child's rights include biological identity, maintenance, custody, education, health, and protection. Biological identity is important to enable the child to know his or her origins and to avoid living in social and psychological uncertainty regarding his or her status. Maintenance, custody, education, and health constitute basic responsibilities that must be borne by the biological father as a consequence of the child's birth. In this context, the concept of alimentation becomes relevant, namely the obligation to provide care or living support to a party who is legally in need and has a certain relationship with the person bearing the responsibility. Alimentation in a limited civil relationship does not have to be understood as a consequence of full lineage. Rather, it should be understood as a civil obligation based on biological responsibility and child protection.(*Convention on the Rights of the Child*, n.d., p. Article 7 dan Article 8; Fatwa Nomor

11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Hukum angka 1-5; KUHPerdata, 1847, p. Pasal 321; *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–37; Undang-Undang (UU) Nomor 23 Tahun 2002, 2002, p. Pasal 4, Pasal 5, Pasal 8, Pasal 9, Pasal 13 ayat (1), dan Pasal 26 ayat (1); Subekti, 2019, pp. 52–53; Usman, 2014, pp. 190–191; Yohanes & Djaja, 2024, pp. 139–145, 149–150) Accordingly, the biological father cannot enjoy a position free from responsibility merely because his relationship with the child's mother was not established through a valid marriage.

In addition to alimentation, a limited civil relationship may also include the transfer of property through a mandatory bequest (*waṣiyyah wājibah*) or other compensatory mechanisms, provided that it does not exceed one-third of the estate. This one-third limitation has a strong basis in Islamic law through the general principle of bequest, as reflected in the Prophet's statement to Sa'd ibn Abī Waqqāṣ: "*One-third, and one-third is already substantial*".(*Muhammad* ibn Ismā'īl al-Bukhārī, 1422a, pp. 3, hadis nomor 2742; Muslim ibn al-Hajjaj, t.t., pp. 1250, hadis nomor 1628)

inheritance system. This approach may also be strengthened comparatively by reference to Article 863 of the Indonesian Civil Code, which recognises a more limited share for acknowledged children born out of wedlock than for legitimate children, namely a certain portion of what they would have received had they been legitimate children. Article 865 of the Indonesian Civil Code further indicates that, in the absence of certain legitimate heirs, acknowledged children born out of wedlock may receive a broader share.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Hukum angka 5; KUHPerdata, 1847, p. Pasal 863 dan Pasal 865; Kompilasi Hukum Islam, 1991, p. Pasal 100 dan Pasal 186; Subekti, 2019, pp. 98–100) These two provisions need not be adopted directly into Islamic law. However, they may serve as a justification that civil law systems also recognise a limited and proportional model of property protection for children born out of wedlock. Nevertheless, the boundaries of a limited civil relationship must be clearly stated. Such a relationship does not give rise to full Shar'ī lineage, does not create automatic inheritance rights equivalent to those of legitimate children, and does not make the biological father a marriage guardian in the sense of Islamic law. These limitations are necessary to ensure that child protection does not turn into an obscuring of the basic structures of lineage, inheritance, and guardianship, which are founded upon a valid marriage.

This formulation of a limited civil relationship also obtains legitimacy from positive law. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that every child has the right to survive, grow, and develop, and to be protected from violence and discrimination. Article 28D paragraph (1) of the 1945 Constitution guarantees every person the right to recognition, security, protection, and fair legal certainty. Under Law Number 39 of 1999 on Human Rights, Article 52 affirms that every child has the right to protection by parents, family, society, and the state, while Articles 53 to 66 affirm children's rights to life, identity, care, education, protection from exploitation, and treatment consistent with human dignity. Article 45 of the Marriage Law also affirms the obligation of parents to care for and educate their children in the best possible manner.(*Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2012, pp. 34–37; Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945, p. Pasal 28B ayat (2), Pasal 28D ayat (1); Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974, p. Pasal 45 ayat (1)–(2); Undang-Undang (UU) Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, 1999, p. Pasal 52–66) These norms demonstrate that, although a limited civil relationship does not give rise to full lineage, the state remains obliged to ensure that a child does not lose his or her fundamental rights merely because of the status of the parents' relationship. From the perspective of Gustav Radbruch's theory of legal certainty, this formulation fulfils three legal values at once: certainty, because the criteria are clear; justice, because the child remains protected; and legal utility, because such protection does not disrupt the order of lineage, inheritance, guardianship, or the institution of marriage.

Through the formulation of a limited civil relationship, it becomes evident that the protection of children born out of wedlock is not only justifiable under positive law, but also has a strong foundation from the perspective of 'Izz al-Dīn Ibn 'Abd al-Salām's *maslahah*. Within Ibn 'Abd al-Salām's framework, the fundamental objective of the Sharī'ah is to realise benefit and prevent harm through two principal principles: the attainment of benefit (*jalb al-maṣāliḥ*) and the prevention of harm (*dar'u al-mafāsid*). Indeed, *dar'u al-mafāsid* is understood as part of the very essence of *jalb al-maṣāliḥ*, because every effort to remove harm is, in substance, a path toward realising benefit.('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, pp. 5–6, 11–12; *Muhammad Sa'id Ramadan al-Buti*, 2000, pp. 23–25) In the context of a child born from a relationship without the basis of a valid marriage, a limited civil relationship constitutes a concrete manifestation of *jalb al-maṣāliḥ*, as it brings about benefit in the form of biological identity, maintenance, custody, education, health, protection,

and access to property through a mandatory bequest (*waṣiyyah wājibah*). At the same time, a limited relationship also constitutes a form of *dar'u al-mafāsid*, because it prevents child neglect, the release of the biological father from responsibility, and the transfer of the entire burden of the child's life solely to the mother and the mother's family.

The application of *maslahah* in the context of a limited civil relationship must be understood in an applicable rather than abstract manner. Ibn 'Abd al-Salām emphasises that most worldly benefits and harms can be recognised through sound reason, empirical facts, and inquiry, as reflected in his statement: "*Most worldly benefits and harms can be known through reason*".('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, p. 7) In this context, legal reason can apprehend that a child born without a marital bond will suffer manifest *mafsadah* if the proven biological father is allowed to remain free from alimentary obligations. The absence of maintenance, educational expenses, health care, custody, and protection is not merely a moral problem, but a social and legal harm that directly affects the child. Therefore, a limited civil relationship becomes both a Shar'ī and juridical instrument for transferring part of the responsibility to the man who biologically caused the child's birth, without necessarily establishing all legal consequences of full lineage.

Within Ibn 'Abd al-Salām's theory, a limited civil relationship may also be understood through the distinction between *maslahah ḥaqīqiyyah* and *maslahah majāziyyah*. Concrete protection for the child, in the form of the fulfilment of living needs, education, health care, custody, and security, constitutes *maslahah ḥaqīqiyyah* because it is directly experienced by the child. Meanwhile, the establishment of a limited civil relationship, the imposition of alimentary obligations on the biological father, and the transfer of property through a mandatory bequest (*waṣiyyah wājibah*) not exceeding one-third of the estate constitute *maslahah majāziyyah*, namely legal means that lead to the realisation of such real benefit. The one-third limitation in the mandatory bequest is important because it protects the child without disrupting the Islamic inheritance system, which places automatic inheritance on the basis of valid lineage.(Fatwa Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina Dan Perlakuan Terhadapnya, 2012, p. Ketentuan Hukum angka 5; Undang-Undang (UU) Nomor 23 Tahun 2002, 2002, p. Pasal 4, Pasal 8, Pasal 9, Pasal 13 ayat (1), dan Pasal 26 ayat (1); 'Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, pp. 11–12; Subekti, 2019, pp. 52–53) Accordingly, a limited civil relationship is not a form of equalising children born out of wedlock with legitimate children. Rather, it is a proportional mechanism to ensure that the child obtains fundamental rights and a limited form of property protection. It is at this point

that the principle of *maslahah* operates in a balanced manner: the child is not neglected, while the structures of lineage and inheritance are not dismantled indiscriminately.

However, Ibn 'Abd al-Salām's theory of *maslahah* also provides limits to ensure that protection does not turn into a new source of *mafsadah*. Ibn 'Abd al-Salām cautions that something which initially appears to contain benefit may be prohibited if it becomes a means leading to harm, as reflected in his statement: "*The causes of mafsadah may sometimes take the form of acts that contain maslahah; the Sharī'ah prohibits them not because they are beneficial, but because they may lead to mafsadah*".('Izz al-Dīn 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, 1991, p. 12) Therefore, a limited civil relationship must not be expanded into full lineage, automatic inheritance, or marriage guardianship for the biological father in cases involving relationships without a valid marriage. This limitation is consistent with the following legal maxim: "*dar'u al-mafāsid muqaddam 'alā jalb al-maṣāliḥ*".(Jalāl al-Dīn al-Suyūṭī, 2010, p. 87; Muṣṭafā Aḥmad al-Zarqā, 1989, p. 205)

Under this construction, a limited civil relationship becomes the most proportional formulation. On the one hand, it secures benefit for the child through biological identity, alimentation, custody, education, health care, protection, and a limited mandatory bequest (*waṣiyyah wājibah*). On the other hand, it simultaneously prevents *mafsadah* in the form of child neglect and the obscuring of lineage, inheritance, and guardianship.

CONCLUSION

Based on the foregoing discussion, this article concludes that the ambiguity of the phrase "child born outside marriage" and the clause "civil relationship" in Constitutional Court Decision Number 46/PUU-VIII/2010 can only be resolved through the formulation of criteria that proportionally distinguish the categories of children born out of wedlock and their respective legal consequences. Children born from marriages that are valid under religious law but unregistered under state law are entitled to a full civil relationship because the marital basis is substantively valid. Children born from defective marriages or marriages involving *shubha* may obtain a proportional civil relationship in accordance with the degree of validity of their legal cause. Meanwhile, children born from relationships without any marital bond are entitled only to a limited civil relationship in the form of biological identity, maintenance, custody, education, health care, protection, and access to property through a limited mandatory bequest (*wasiyyah wājibah*), without giving rise to full lineage, automatic inheritance, or marriage guardianship.

This formulation responds to the gap in previous studies, which have not operationally connected the categorisation of children born out of wedlock, the boundaries of the civil relationship clause, and the differentiated legal consequences within a single normative construction. From the perspective of Gustav Radbruch's theory of legal certainty, this formulation provides clear, just, and useful standards for judges and policymakers. Meanwhile, from the perspective of 'Izz al-Dīn Ibn 'Abd al-Salām's *maslahah*, this construction realises *jalb al-maṣāliḥ* through child protection while simultaneously fulfilling *dar'u al-mafāsid* by preventing child neglect, the obscuring of lineage, uncertainty in inheritance, and confusion in guardianship within Islamic family law.

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