LEGAL CHILDREN IN PREGNANT MARRIAGE: A JURIDICAL ANALYSIS OF INDONESIAN POSITIVE LAW

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Abstract

The discourse of pregnant marriage is always interesting to study from a legal perspective, both Islamic and civil law, the different views of the fuqoha and also the controversy in understanding whether or not pregnant marriage is permissible. Different understandings are found in KHI which on one side is a normative backing and on the other side opens the room for adultery. As a result of being pregnant before, it was not a problem because children born during marriage became legal children, regardless of the age of the child's womb when both parents performed the marriage contract, while SE Director General of Islamic Guidance and Hajj Affairs No: D/ED/PW.01/03/1992 Regarding the Instructions for Completing Marriage, Divorce, Divorce and Referral Forms (NTCR), it is stated that a legitimate child is a child born at least more than six months from marriage, if the child born less than six months is interpreted as the child of the mother.One of the requirements for marriage administration is a birth certificate, if the first child is a girl, must be accompanied by a quote from the marriage book of both parents at the time of registration, this is to check the marriage date of both parents and also be equipped with a birth certificate to check when the child was born. So far, even if the birth certificate contains the names of both parents, but when confronted at the time of the examination the child was born less than six months after the marriage contract, the father's name was not listed in the marriage certificate. In line with this, from a legal perspective, the binding force between KHI and the Circular Letter is stronger than the KHI or Circular in the Registration and Implementation of Marriages.
Keywords : KHI, Circular, Marriage Registration

Abstrak

Diskursus kawin hamil senantiasa menarik untuk dikaji dari sisi hukum baik hukum Islam maupun Perdata. Surat Edaran Dirjen Bimas Islam dan Urusan Haji No: D/ED/PW.01/03/1992 Tentang Petunjuk Pengisian Formulir Nikah, Talak, Cerai dan Rujuk (NTCR) menegaskan anak yang sah adalah anak yang dilahirkan sekurang-kurangnya lebih dari enam bulan dari perkawinan, bila anak lahir kurang dari enam bulan ditafsir sebagai anak ibunya.Salah satu syarat administrasi nikah adalah akta kelahiran jika anak yang pertama itu perempuan harus dilengkapi dengan adanya kutipan buku nikah kedua orangtuanya pada waktu pendaftaran, hal ini untuk mengecek kapan tanggal nikah kedua orangtuanya dan juga dilengkapi dengan akta kelahiran untuk mengecek kapan anaknya lahir. Dalam pencatatan perkawinan selama ini kalaupun dalam akta kelahiran sudah tercantum nama kedua orang tua tetapi ketika dikonfrontir pada waktu pemeriksaan anaknya lahir kurang dari enam bulam dari akad nikah maka nama ayah tidak tercantum dalam akta nikah. Selaras dengan hal tersebut dari perspektif hukum sebenarnya daya ikat antara KHI, Surat Edaran, dan Putusan Mahkamah Konstitusi menarik untuk dikaji dengan melihat bagaimana keabsahan anak dari kawin hamil dalam hukum positif Indonesia?.Dengan menggunakan penelitian Pustaka dipahami bahwa anak luar nikah tetap menjadi anak tidak sah, tetapi dapat memiliki hubungan dengan ayah biologisnya.
Kata Kunci : *KHI, Surat Edaran, Pencatatan Perkawinan*

Introduction

Law is a daily rule always dealing with the rules that apply in society, both rules related to morals and regulations related to law. The existence of these rules contains the hope that life in society can run well and orderly based on the demands of norms that contain certain basic values. A good situation in society occurs because of mutual respect and respect between each other and the establishment of orderly relationships is essentially human nature. Moral rules and legal rules basically have different basic values, but they are inseparable in social life.[1]

In line with this, it becomes true that in the context of Indonesian law on marriage cannot be separated from the moral and legal side. Positive law on the implementation of marriage in Indonesia is inseparable from the influence of various religions, it becomes natural when religious law affects certain people in the implementation of marriage. Article 2 paragraph (1) of Law Number 1 of 1974 specifies that a marriage is valid if it is carried out according to the laws of each religion and belief. This juridical basis carries the consequence that the marriage must meet the conditions prescribed by religion and the conditions that are the provisions of the law in accordance with the affirmation in Article 2 paragraph (2) of the act.[2]

Marriage is the basis for the formation of the family and from marriage the family will be formed and developed, even in religions the same marriage position is very important and honorable. Marriage is the call of human nature and character. God created man with the fitrah of preservation, by performing marriages to be able to obtain clear offspring while being able to realize the nasab of the people who passed down the grandchildren of his descendants.

The phenomenon of marriage should depart from careful preparation both physical and psychic is not always directly proportional because there are people who fall into and are affected by the pattern of promiscuity. Among them then there are those who become pregnant even though they are not yet bound by a valid marriage. As in Yogyakarta, for example, since the COVID-19 pandemic, there have been 462 people who have become pregnant out of wedlock. In society, various views have emerged about the status of children born as a result of pregnant marriage. Some say the status of the child remains legal, and there are also those who judge that the status of the child due to pregnant marriage still needs to be questioned.

Based on the description above, researchers are interested in studying and analyzing the consequences of pregnant marriage on the validity of the child born (KHI Juridical Review, Circular Letter, and Constitutional Court Decision on the District Kua in Purwokerto)

Method

This type of research is library research or library research that is unearthed through a variety of literature information such as books, encyclopedias, newspaper scientific journals, magazines and doccumies The legal materials used in this research consist of primary, secondary and tertiary legal materials. The method of collecting legal materials is carried out by identifying those who seek to collect and sort out relevant documents and laws and regulations as well as materials related to research materials.[3]

Analysis of results contains a description of the ways of analysis by utilizing the collected legal materials to be used in solving problems. The legal materials that have been

[1]Endang Darini Asdi, *Pidato Pengukuhan Guru Besar Ilmu Hukum* (Yogyakarta: Kreasi Total Media, 2008), 67.

[2]Fahrul Fauzi, "Tinjauan Kawin Hamil Dalam Perspektif Hukum Islam," *Journal of Islamic Law Studies* 3, no. 2 (2021), 22.

[3] Matthew B Miles, *Analisis Data Kualitatif* (Jakarta: UI Press, 2009), 12.

collected will be analyzed qualitatively, namely in conducting research will be based on norms, legal rules and doctrinal theories in legal science so that aspects outside the law are not used.

Discussion

The Quran gives a sign that before marriage occurs a person is not allowed to have biological relations, of course this doctrine (read Islam) provides rules or values so that there is no marriage that is not in accordance with religious norms, if there is a deviation of religious norms it can have implications for the validity of marriage and the validity of children. The Word of God in (QS. Al Isra, 17: 32) reads :

> *"Walaa taqrobuz zinaa innahuu kaana faakhisyatan wasaa'a sabiilaa"*
> *Never approach adultery (unmarried sex), in fact adultery is something dirty and unkind as a result.*[4]

Normative provisions affirm biological relationships before marriage occurs so that they are avoided, but when there are couples who are trapped and fall into the pattern of promiscuity as mentioned above and among them there are those who are pregnant even though they are not yet bound by a valid marriage, it can be a problem to then find alternative solutions.

Actually pregnant marriages get the arrangements in the Compilation of Islamic Law (KHI) Article 53.[5]More or less departs from a compromising approach to customary law. The compromise, indeed, gives rise to a difference (ikhtilaf) between fiqh when it is linked to sociological and psychological factors. From various factors, there is a consideration of benefit to be the basis for the ability to mate pregnant.

Pregnant marriage is indeed allowed as stipulated in KHI Article 53 states:

1. A pregnant woman out of wedlock can be mated with the man who impregnated her.
2. The marriage with a pregnant woman referred to in paragraph (1) may take place without first waiting for the birth of her child.
3. By carrying out marriage at the time when the woman is pregnant, no remarriage is required after the conceived child is born.

As a reference in the application of maternity mating, among others: (1) with a man who impregnates her or provided that whoever wants to marry is considered correct as a man who impregnates, unless the woman refutes (denies). (2) Direct marriage may be performed without waiting for the birth of the child, and (3) that the child in the womb is deemed to have a valid blood and legal relationship with the man who married. Such a presumption is a compromise with the value of customary law which establishes the principle that every plant that grows in one's field he is the owner of the crop even though he is not the one who plants. This compromise of values is necessary, because one of the main objectives of the principle of the ability to marry pregnant is to provide definite legal protection to the child in the womb, for what it is permissible to marry pregnant if the child in the womb remains an adulterous child.[6]

Based on what is decomposed, it gives an understanding that for the benefit of marriage pregnant women out of wedlock get the Juridical backing of Article 53 the derivative contained in Article 99 relates to the legal child which states:

> *"A legitimate child is a child born in or as a result of a legal marriage".*

[4] Departemen Agama, *Al-Qur'an Dan Terjemahannya* (Jakarta: CV. Nala Dana, 2007), 388.

[5] R. Tetuko Aryo Wibowo and Thohir Luth, "Akibat Hukum Anak Yang Dilahirkan Dalam Kawin Hamil," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 5, no. 2 (2020), 233.

[6] Yahya Harahap, *Materi Kompilasi Hukum Islam* (Yogyakarta: UII Press, 1991), 101.

The above article is an adoption of Article 42 of Law Number 1 of 1974 concerning Marriage, hereinafter abbreviated as UUP, Article 99 of the Compilation of Islamic Law (KHI) and Article 42 of the Marriage Law, in both articles making tolerance for children born in legal marriages. Although the distance between marriage, and the birth of a child is less than the minimum time limit of gestational age.

So as long as the baby conceived is born is a legitimate child. The compilation of Islamic Law and the Marriage Law does not provide for a minimum age of pregnancy, neither in its articles nor in its explanation.[7]

Meanwhile, in the beleidregels in the form of a Circular Letter of the Director General of the Islamic Milky Way and Hajj Affairs Number D / ED / PW / 01/03/1992 concerning Instructions for Filling out Marriage, Talak, Divorce and Reference Forms (NTCR) chapter III Examination Techniques for Guardians and Brides which is actually SE is an elaboration of the Regulation of the Minister of Religion (PMA) No. 2 of 1990 concerning the Obligations of Marriage Registrar Employees (VAT) mentioned in point 1 letter b:

> *"If the bride-to-be is the first child and the guardian is the father's guardian, it is necessary to ask the date of marriage and the date of birth of her first child. If there is an unnaturalness, such as only five (5) months of marriage the first child has been born, then the child belongs to the category of the mother's child, thus it is necessary to take the path of takhim (guardian of the judge)."*

In line with this, Subekti stated, if a child is born before 180 days after the marriage of his parents, then the father has the right to deny the validity of the child, unless he already knows that his wife was pregnant before the marriage took place or if he was present at the time of the birth certificate and the birth certificate was also signed by him. In both cases the father is presumed to have accepted and recognized the born child as his own.[8]

According to Ibn Abbas in Ahmad Rofiq states that the Quran gives clear instructions on this issue. The age limit for babies in the womb is 6 months calculated from the time the marriage contract is held. This provision is taken from the word of Allah (Q.S. Al Ahqaaf : 46: 15) which reads :

> *"Wa khamluhuu wa fihsaaluhuu tsalaatsuuna syahraa …".*[9]
> *Containing it until weaning it is 30 (thirty) months (two and a half years).*

And in QS Luqman, 31:14 it is mentioned :

> *"khamalathu ummuhu wahnan 'alaa wahnin wa fishaaluhuu fii aamaini…"*[10]
> *His mother had conceived him in an increasing state of weakness-¬add and weaned him off in two years (twenty-four months).*

Both verses by Ibn Abbas and agreed upon by scholars, it is interpreted that the first verse indicates that the grace period of conceiving and weaning is 30 months. The second verse explains that weaning it after the baby is perfectly breastfed takes two years or twenty-four months. Means that the baby takes 30 - 24 months = 6 months in the womb.

Therefore, if the baby is born less than 6 (six) months, it cannot be linked to the father even though it is in a legal marriage bond. He only has a nasab relationship with his mother and his mother's family.[11] In line with this, Shirazi in the book of Al-Muhadzdzab explains that a child is legal in the sense that having a nasab relationship with the man who passed him down (silencing him) is born at

[7] Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2003), 222.

[8] Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Instrumen, 2003), 49.

[9] Agama, *Al-Qur'an Dan Terjemahannya*, 726.

[10] Agama, 581.

[11] Rofiq, *Hukum Islam Di Indonesia*, 244.

least 6 months from the marriage of both parents.[12]

If the wife gives birth to a child less than 6 months from the time of the marriage contract, then the child has no nasab relationship with the husband without a li'an way.

Based on that explanation, it can be understood that the provisions for a legal child in KHI and UUP have no difference, meaning that as long as the child is born in a legal marriage, regardless of the grace period of birth, he is a legitimate child. While in the practice of Registration and Implementation of Marriage which is based on beleidregels in the form of a Circular Letter (SE), a child born less than six (6) months is interpreted as an invalid child.

The existence of this contradiction is first based on KHI and UUP and the second beleidregels, actually in the context of recording and executing its binding force is more to KHI which gets UUP or precisely to beleidregels in the form of SE.

Pregnant marriage in KHI's View

KHI's position in the Indonesian Legal System there are several different views among legal experts regarding its position as a regulation.[13]Cik Hasan Basri mentioned that : KHI which is based on Presidential Instruction Number 1 of 1991 concerning its dissemination, relates to the plurality of laws in the national legal order. [14] KHI relates to judicial bodies, in this case courts within the Religious Courts. KHI also deals with the plurality of family law, including marriage law that recognizes differentiation based on religion as reflected in the provisions of Article 2 paragraph (1) of Law Number 1 of 1974. Briefly the KHI was conceived and disseminated to meet substantial legal vacancies for people who are Muslims, especially with regard to the settlement of family disputes in courts within the Religious Court environment.[15]

The selection of the Inpres instrument gives rise to two opinions: on the one hand in the experience of implementing the national legislative program the Inpres has an independent ability to be effective in addition to other instruments and therefore has regulatory power in the national positive legal system, while on the other hand the Inpres instrument is not seen in the order of laws and regulations.[16]

There are at least three things that can be recorded from Presidential Instruction No. 1 of 1991 and KMA No. 154 of 1991, namely:

a. The order to disseminate the KHI is nothing but the obligation of the Islamic community to function the exploration of Islamic teachings as long as it is about normative as a law that must live in society.
b. The legal formulation in the KHI seeks to end the dual perception of the applicability of Islamic law appointed by Article 2 paragraph (1) of the UUP with the obligation to implement state administrative law such as marriage registration and in terms of formal law according to Law No. 7 of 1989 as far as divorce is concerned.
c. Explicitly designate the area of applicability of KHI with the designation of government agencies and the community that enforces it in

[12] Shirazi, *Al Muhadzzhab Fi Fiqhi Al Imam Al Syafr'i* (Semarang: Toha Putra, n.d.), 120.

[13] Edi Gunawan, "Eksistensi, Kompilasi, Hukum Islam," 2006, 1–15.

[14] Dadang Hermawan Sumardjo, "Kompilasi Hukum Islam Sebagai Hukum Meteriil Peradilan Agama," *Yudisia* 6 (2015): 25–46.

[15] Cik Hasan Basri, *Peradilan Islam Dalam Tatanan Masyarakat Indonesia* (Bandung: PT. Remaja Rosdakarya, 1997), 27.

[16] Mutaqien, *Peradilan Agama Dan Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Yogyakarta: UI Press, n.d.), 142–43.

a position as a guideline for explaining problems in three areas of law.[17]

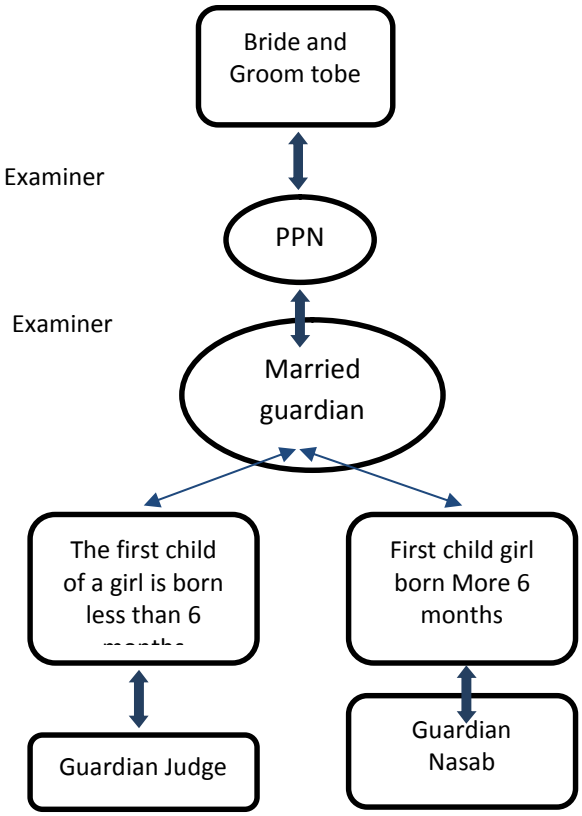
Pregnant Marriage in Customary Law and Fuqaha's View'

The view of pregnant marriage from customary law has various colors but in the explanation there are several terms for marrying a pregnant woman because of adultery and can be explained by describing it as follows: there is a term for holding a father so that the child born has a father in Sundanese society while in Jakarta to explain so that the child becomes clear.

While the fuqaha' differed in opinion regarding pregnant women due to adultery with their various arguments. Some allow on condition that they have repented and not repeated their deeds, some do not allow them at all, and some allow them unconditionally because women are pregnant except for women who are divorced by their husbands or left for dead.

In this discussion, the focus is on children born due to adultery according to the KHI and the circular can be described as follows: referring to the provisions of KHI article 53, when the child is born in a status in accordance with the provisions of Article 99 which states that "a legitimate child is a child born in or as a result of a legal marriage". Article 100 states "a child born out of wedlock only has a nasab relationship with his mother and his mother's family". As long as the child is born in a legal marriage, it becomes a legal child. Meanwhile, the circular applies that the child must be born more than six months and if it is less than six months it is interpreted to be an illegitimate child. And every first child marriage is required to attach a marriage certificate if the child is a girl. This does not apply to boys even though he is the first child.

Bagan Penentuan Wali



Regulations in KHI and Circular Letter Regarding Provisions for Valid Children

Actually, in the UUP, the provision of a valid child is clearly regulated in Article 42 which states "a legal child is a child born in or as a result of a valid marriage" and in the KHI regarding the provision of a valid child is regulated in Article 99 which states that a legal child is a child born in or as a result of a valid marriage, and the result of the conception of the husband and wife who is legal outside the womb and born by the wife.

Based on these provisions regarding legal children between UUP and KHI there is no difference because the KHI material about legal children adopts as a whole which is regulated by UUP. This provision gives an understanding that the legal measure of whether a child is valid is seen at the time of birth, namely during birth in marriage to be the child of both parents.

Relating to the origin of children or the determination of nasab in the KHI is regulated in Article 103 paragraph (1) which states:

[17]Mutaqien, 143.

The origin of a child can only be proved by a birth certificate or other evidence

This proves by birth certificate and other evidence showing the validity of a child, and the birth certificate is perfect proof of the validity of the child. Meanwhile, in marriage registration, PPN is guided by a Circular Letter from the Director General of the Islamic Milky Way and Hajj Affairs No: D/ED/PW/01/03/1992 concerning Instructions for Filling out Marriage Forms which is regulated in Chapter III of the technique for filling in the guardian and bride which is still valid until now.

Before filling out the form, VAT or PPPN outside Java and Madura, first conduct a careful examination of the guardian, prospective bride and groom-to-be. The examination is carried out through interviews with the person concerned as well as researching the existing papers. Inspections are carried out one by one or together according to the needs, the important thing is that VAT can dig and obtain accurate and convincing data. The examination technique is described as follows:

a. The guardian, the bride-to-be is examined by herself by asking for the genealogy (nasab), the number of children complete with their names, and if the guardian is not the father's guardian, asked the number of his brothers by name, his brother's child, his father's brother and so on, the results are matched with the bride-to-be, if not re-examined.
b. If the bride-to-be is the first child and the guardian is the father's guardian, it is necessary to ask the date of marriage and the date of birth of the first child. If there is any impropriety, such as just five months into marriage his first child was born, then the child is in the category of his mother's child.

Understanding the provisions of point b, a child born less than six months from marriage is interpreted to be an invalid child, and if the child is a girl then in the marriage registration it is considered that he has no civil relationship with his father.

Technically there are two different rules, and which rules should be chosen KHI or Circular relating to the registration of marriages. If you choose SE, it means that it is not in line with KHI which in the provisions of the child is legal in accordance with the UUP. In principle, the Circular is a complementary rule that must not conflict with the Law. However, if VAT chooses to use KHI, it is not in accordance with the Circular Letter which is usually carried out in the practice of recording and implementing marriages.

From the perspective of legal implementation, the politics of Islamic law in Indonesia still has a facultative character. The legal instrument that serves as the formal justification for the existence of KHI is Presidential Instruction No.1 of 1991. The binding legal force of KHI is still very weak. In line with this, the content of Presidential Instruction No.1 of 1991 is an instruction for its dissemination, not the application or implementation of Islamic law, nor is it expressly stated as a legal provision that must be implemented. Considering this, it can be said that the politics of implementing Islamic law in Indonesia is still facultative. This means that it does not a priori have to be obeyed and forces citizens, especially Muslims, to implement the provisions of Islamic law. Its existence is merely an alternative offer of a collective ijtihad.

Relating to the Circular Letter which is a policy regulation is a general regulation on the exercise of government authority over its citizens based on its own power by the authorized government agencies.

Bagir Manan, quoted by Sadijono, stated that policy regulations are not laws and regulations made based on Freis emerssen (free will), because there is no administrative authority to make laws and regulations. Therefore policy regulation cannot be wetmatigheid tested but rather directed at doelmatigheid, whose touchstone is the general principles of good government.[18]

In relation to the existing provisions, the Circular Letter is one of the policy regulations, obviously not a provision of laws and regulations, so the Circular letter of the Islamic Milky Way and Hajj Affairs No: D/ED/PW.01/03/1992 dated March 9, 1992 concerning NTCR Form Filling Instructions was implemented inappropriately in confrontation with KHI. But it is noteworthy that the statute must not violate the principles of law, especially the principle of equality, the principle of legal certainty and the principle of trust. It needs to be reiterated that in the administration of the state applies the principle of obeying one's own decisions and carrying out in earnest the policies set hierarchically, of course, the Circular is intended to regulate, direct, give juklak and juknis with regard to the recording and execution of marriages. So with the principle of complying with one's own decision as VAT is required technically to comply with and follow technical provisions that have been hierarchically regulated by the authorized superior become mandatory to be implemented.

The consequence of the use of the Circular is that if the person born is a daughter and less than six months then the father cannot be a guardian and the father's name is not recorded in the marriage register even though on the birth certificate the name of the parents listed in the marriage register is the name of a mother. In addition, it is necessary to understand that the intended in the Circular letter is a daughter so that if the person who gets married is the first child of the woman, she must attach the marriage certificate of both parents.

Extramarital Children in Constitutional Court Decisions

The Constitutional Court in decision No. 46/PUU-VIII/2010 determined that a child born outside of marriage has a civil relationship with the mother and his mother's family, as well as with the man as his father which can be proven based on science and technology or other evidence that according to law has a blood relationship, including having a civil relationship with his father's family.[19]

As a result of the recognition of the child outside of marriage in the form of a civil relationship between the child and the father and mother who recognize it. With the emergence of this civil relationship, the status of the out-of-wedlock child changes to the recognized out-of-wedlock child, and its position is better than that of the unrecognized out-of-wedlock child.[20]

Children born outside of marriage are contextually understood for children born from sirri marriages, in the form of marriages that have been in accordance with the pillars and conditions but have not been formally legal in the state. When it comes to the Constitutional Court's ruling, children born outside of marriage must be understood as children of sirri marriages as long as they can be proven by science and technology. Meanwhile, children born without marital ties are not included in this Constitutional Court Decision.[21]

[18] Sadijono, *Memahami Beberapa Bab Pokok Administrasi* (Yogyakarta: Yaks Bang Pesindo, 2008), 71.

[19] Aisyah Rasyid, "Hukum Perkawinan Nasional Dan Putusan Mk . Nomor 46 Tahun 2010" 2, no. 2 (2010): 219–38.

[20] Eddo Febriansyah, "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 46/Puu–Viii/2010 Tentang Kedudukan Anak Diluar Nikah Yang Diakui Dalam Pembagian Warisan," *Unnes of Law Journal - Jurnal Hukum Universitas Semarang* 4, no. 1 (2015): 1–19.

[21] Sari Pusvita, "Keperdataan Anak Diluar Nikah Dalam Putusan Mahkamah Konstitusi Dan

The Chief Justice of the Constitutional Court at that time affirmed the phrase child out of wedlock, not a child resulting from adultery, but a child from a sirri marriage. The civil relationship granted to an extramarital child does not conflict with the nasab and the guardian of the marriage, and the ruling does not speak of a hereditary genealogical relationship.[22]

In addition, the amendment to article 43 paragraph (1) of Law Number 1 of 1974 which has been decided by the Constitutional Court is not related to the ratification of the child, but is only limited to the determination that the out-of-wedlock child can have a relationship with his biological father, so that the child can demand rights from his biological father. Therefore, an extramarital child remains an illegitimate child but has equal rights with a legal child.[23]

Conclusion

The compilation of Islamic Law is a regulation in the form of an Inpres that implementatively applies as an alternative offer. The order is more interpreted as a directive, while the Circular is understood as a policy regulation in which case it applies the principle of obeying one's own decisions and carrying out in earnest the hierarchically established policy. So with the principle of complying with one's own decision as VAT is technically required to comply with and follow the technical provisions that are hierarchically made by the authorized superior.

Based on the study, the binding force between the KHI and the Circular, then as VAT cannot come out of the Circular on the basis of the adagium of the government's decision must be considered correct as long as it has not been revoked by the authorized official or annulled by the court. Although the KHI is a government decision in favor of a Circular Letter but more specifically it can be placed as a special rule, it becomes correct to follow the provisions of the Circular in the Registration and Implementation of Marriage to be mandatory. Meanwhile, with the Constitutional Court ruling that an extramarital child remains an illegitimate child, but in terms of rights, it can be equivalent to a legal child.

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[22]Ramadhita and Ahmad Farahi, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *De Jure: Jurnal Hukum Dan Syari'ah* 8, no. 2 (2016): 74–83.

[23] Busman Edyar, "Status Anak Luar Nikah Menurut Hukum Positif Dan Hukum Islam Pasca Keluarnya Putusan MK Tentang Uji Materiil Undang Undang Perkawinan," *Al-Istinbath : Jurnal Hukum IslamJurnal Hukum Islam* 1, no. 2 (2016): 181–208, http://journal.iaincurup.ac.id/index.php/alistinbath/article/view/115.

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