

Legal Protection of the Status and Rights of Biological Children (Case Study of Determination Number 114/Pdt.P/2025/Pa.Bi)

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ABSTRACT

This study aims to analyze the legal protection of the status and rights of biological children according to Islamic law and the Child Protection Law, especially in assessing the suitability of the judge's legal considerations in Determination Number 114/Pdt.P/2025/PA. Bi to the principles of child justice and the fulfillment of civil rights without burdening children due to parental errors. The method used is normative juridical by examining Islamic legal norms through sharia maqasid and national laws and regulations, through literature studies on primary legal materials in the form of court decisions and secondary, analyzed qualitatively with normative interpretation. The results of the study show that Islamic law places biological children as a divine mandate that is protected by nasab for the sake of *hifz al-nasl*, even though the legal status is limited to sharia marriage so that the right of inheritance of *faraidh* does not fully apply to children of serial polygamy as in the case of Determination 114/Pdt.P/2025/PA. However, the rights to alimony, education, and affection must still be fulfilled by the father reasonably to be independent; The Child Protection Law guarantees the right to identity, health, and participation without discrimination through a complete birth certificate after biological attestation via DNA test, although judges' considerations often limit legal status due to administrative violations of parental marriage, so that children only receive partial rights such as alimony through a district court lawsuit without full guardianship or inheritance priority, which has the potential to cause social stigmatization and difficulty accessing public services such as scholarships or BPJS in areas such as Kediri; This gap creates a subjective injustice because the child is innocent, as the Constitutional Court's Decision expands biological civil relations in the best interests of the child, but the implementation of religious courts is still formalistic so that optimal protection requires harmonization through progressive fatwas and restorative mediation to ensure family reintegration and long-term psychological stability of children.

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1. INTRODUCTION

Children are a mandate that has a noble position both in the perspective of Islamic law and in the national legal system, so that the fulfillment of their rights is the responsibility of the family, society, and the state from the moment the child is born. The clarity of a child's status has a direct effect on the fulfillment of civil rights, legal protection, and the guarantee of the child's future, including the right to identity, upbringing, maintenance, and fair treatment without discrimination. The principle of child protection places the best interests of children as the top priority, so that every policy and legal decision should be in favor of the fulfillment of children's rights in its entirety (Afda'u et al., 2025).

Islamic law pays great attention to the maintenance of nasab as part of maqāṣid al-syarī'ah, because nasab is closely related to honor, rights, and responsibilities in the family. The determination of a child's status does not only touch on biological aspects, but also concerns legal consequences such as inheritance rights, guardianship, and parental responsibility. In practice, differences in interpretation of the validity of marriage and its implications for the status of children often raise legal problems, especially when there is a marriage that does not meet administrative provisions or is carried out under certain disputed conditions (Halim et al., 2023).

Laws and regulations in Indonesia also affirm the state's obligation to protect children through the Child Protection Law which guarantees children's rights to identity, legal status, and fair treatment without stigma. The arrangement is in line with the values of justice in Islamic law which places children as subjects who must be protected from the impact of adult actions. When the determination of the status of a child has the potential to reduce certain rights, the question arises about the extent to which the law has provided optimal protection for the child as a party who has no fault (Gurning & Syawali, 2025).

The practice of religious justice shows that there are variations in legal considerations in determining the position of children, including in cases of determining the origin of children. One example can be found in Determination Number 114/Pdt.P/2025/PA. Bi who designates a child as a biological child because it is born from a parental relationship whose marriage is related to the issue of polygamy without legal procedures. The judge's legal considerations in the decision based the status of the child on the violation of the provisions of marriage, so that the child did not obtain the status of a legitimate child, which indirectly had implications for the limitation of his civil rights.

The purpose of this research is directed to examine and analyze legal protection of the status and rights of biological children from the perspective of Islamic law and the Child Protection Law, especially in assessing the suitability of judges' legal considerations in Determination Number 114/Pdt.P/2025/PA. Bi to the principles of justice, child protection, and the fulfillment of children's rights without placing children as parties who bear the consequences of their parents' mistakes.

2. METHOD

This research uses a normative juridical approach that places law as a norm or rule that applies in society. This approach is used to examine the provisions of Islamic law and laws and regulations, especially the Child Protection Law, as well as other relevant regulations in assessing the position and rights of biological children as reflected in Determination Number 114/Pdt.P/2025/PA. Bi. The source of legal materials consists of primary legal materials in the form of laws and regulations and court

decisions, as well as secondary legal materials in the form of books, scientific journals, and legal literature related to child protection and Islamic family law.

The data collection technique is carried out through a literature study of relevant books and journals to obtain a theoretical and normative understanding of child protection and justice in Islamic law. The data that has been collected is analyzed using qualitative analysis techniques by interpreting legal norms, legal principles, and expert opinions, then relating them to the judge's legal considerations in the studied decision in order to draw logical and systematic conclusions.

3. FINDINGS AND DISCUSSION

Legal Protection of the Status and Rights of Children According to Islamic Law and Child Protection Law

Islamic law places children as a mandate from Allah SWT which must be protected from the womb to adulthood, as mentioned in the Qur'an Surah Al-Isra' verse 31 which prohibits the killing of children due to poverty, as well as the hadith of the Prophet Muhammad PBUH which states that every child is born in a state of fitrah. The position of children includes the role of solace in the world, the jewel of the world, and the successor of the ummah, so that parents are fully responsible for their physical, spiritual, and educational maintenance according to the principles of maqasid sharia which guarantees hifz al-nafs (protection of the soul), hifz al-nasl (protection of offspring), and hifz al-mal (protection of property). Children's rights include the right to life, the right to maintenance which includes food, clothing, shelter, and medical care from the father as the main breadwinner, the right to religious and general education to form noble morals, and the right to be treated meekly without physical or psychological violence, as the Prophet PBUH said: "Whoever does not love, is not loved." The protection of Islamic law also includes the right of a fair inheritance based on the Qur'an Surah An-Nisa' verses 7 and 11, the right to marry that is maintained until the age of puberty with consent, as well as the prohibition of exploitation such as forced early marriage or hard work that is detrimental to growth, with hudud or ta'zir sanctions for violators (Insyirah & Sanjaya, 2025).

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection defines children as individuals under 18 years of age including in the womb, with the human rights to live, grow, develop, and be free from violence and discrimination. This legal protection guarantees the position of children as the nation's strategic next generation, so that the state, government, local government, family, parents, and society are obliged to fulfill, protect, and respect their rights without discrimination based on ethnicity, religion, race, gender, or physical condition. Parents are responsible for nurturing, educating, protecting children, cultivating talents according to interests, preventing early marriage, and instilling character and ethics education, with the obligation to switch to family or guardians if parents are unable to afford it. Children's rights include identity through a free birth certificate no later than 30 days after birth, the right to religion with parental guidance, the right to education for at least 9 years free for poor families, the right to comprehensive health from the womb including immunization, and the right to participate in expressing opinions according to age and intelligence.

Islamic law guarantees the right to life of children from the fetus, where abortion is prohibited except for medical emergencies such as threats to the mother's life according to the fatwa of contemporary scholars, while the right to maintenance must be fulfilled by the father reasonably (adequately) until the child is independent or married, with the mother responsible for daily care. Children have the right to affection, the first hug from the father at birth as the sunnah of aqiqah, the education of monotheism and morals from an early age, and protection from bad associations through hisbah (social supervision). Offenses such as neglect or violence are severely punished, for example qisas if they cause permanent injury or diyat if they are death, with an emphasis on the rehabilitation of the perpetrator through repentance and counsel (Junaidi, 2021).

The Child Protection Law prohibits abortion except for legitimate medical reasons, requires the state to provide free promotive, preventive, curative, rehabilitative health care for poor families, and

protects children from illegal organ transplantation, the buying and selling of body tissues, or medical research without parental consent. Article 45A expressly prohibits abortion, while Article 47 protects the integrity of the child's body, with criminal sanctions for perpetrators including parents or corporations. Special protection is given to children with disabilities through social rehabilitation and inclusive education, abandoned children through institutional maintenance, and children facing the law with priority of criminal diversification such as education rather than prison.

A comparison of the two legal systems shows alignment in the priority of the protection of life and posterity, where Islam emphasizes divine mandate while human rights-based laws are constitutional, both require parents to prioritize the best interests of the child. Islamic law is more detailed on spiritual sustenance such as compulsory religious education, while the law adds modern protections such as from pornography (Article 67A), economic-sexual exploitation, terrorism, and stigmatization, with the Indonesian Child Protection Commission as an independent watchdog. Sharia-based Islamic sanctions are flexible through *qadha*, while the law adopts general punishment with restitution for victims and cross-sectoral coordination for effectiveness (Kurniawan & Retnowulandari, 2019).

The two legal frameworks complement each other in Indonesia as a Pancasila country with a majority of Islam, where Law No. 35/2014 reflects Islamic values such as family priorities in parenting (Articles 14, 26) and religious protection (Articles 6, 43), as well as inheritance rights that are in harmony with *faraidh*. The protection of children with advantages or minorities is guaranteed equality, similar to the Islamic principle of justice regardless of status, with an emphasis on social reintegration through institutions such as Islamic boarding schools or orphanages. Implementation requires synergy, such as the MUI fatwa supporting the law for child sexual violence cases punishable by up to 15 years in prison plus rehabilitation.

This legal protection reaches its peak through the role of society, where Islam encourages collective *amar ma'ruf nahi mungkar*, while Law Article 72 requires people to report violations, participate in rehabilitation, and create a conducive environment without negative labels. The state funds it through the State Budget/APBD plus CSR, with periodic evaluations through the Child Protection Commission to ensure that children grow optimally as quality caliphs or successors of the nation. This harmonization strengthens the position of children as the top priority, preventing social disintegration through sustainable preventive, curative, and restorative approaches (Marhayani et al., 2024).

Judge's Legal Considerations in Determination Number 114/Pdt.P/2025/PA. Bi on Biological Child Status

The judge's legal considerations in Determination Number 114/Pdt.P/2025/PA. Bi shows the tendency of formal assessment of the validity of the marriage of the child's parents as the main basis for determining the status of the child. The judge placed the serial marriage performed when Petitioner I was still bound by a legal marriage as a violation of the marriage law and an indication of smuggling of polygamous laws, so that the child born from the relationship was qualified only as a biological child. This approach emphasizes the mistakes of adult legal subjects without deeply unraveling the position of the child as a party who does not have a role in the legal act (Nadia & Nurhayani, 2025).

The principle of child protection as stipulated in Law Number 35 of 2014 emphasizes that every child has the right to identity recognition, legal status, and protection from all forms of discrimination. The judge's consideration of determining the status of a biological child has implications for the restriction of certain civil rights, particularly with regard to status as a legal child, even though the child was in fact born from a relationship recognized by both parents and was raised in a wholesome family environment. The emphasis on parental administrative and procedural errors has the potential to shift the essence of child protection which should be oriented towards the best interests of the child.

Islamic law basically places the protection of *nasab* as part of *maqāṣid al-syarī'ah* which aims to maintain the dignity and certainty of the status of descendants. The opinion of Wahbah al-Zuhaili quoted by the panel of judges actually opened up the space for the recognition of the fate of children born from *fasid* or *syubhat* marriages. The use of this opinion in this determination does not seem to be completely consistent, because even though it is recognized that there is a religious marriage

contract, children are still not given the status of legal children, even though Islamic law recognizes the principle of preventing greater harm to children (Ramadana & Talli, 2021).

Justice in Islamic law is not only interpreted as compliance with formal norms, but also as substantive justice that considers the legal consequences for the weak. Children as incompetent legal subjects should not bear the consequences of their parents' transgressions. The determination of the status of biological children without strengthening the guarantee of civil rights in its entirety can be considered less in line with the concept of 'adl in Islam which demands proportionate and benefit-oriented treatment.

The use of the polygamy provision as the basis for the judge's argument in the case of the origin of children also raises normative problems. The dispute examined is not an application for a polygamous license or marriage legalization, but a determination of the status of the child. The withdrawal of the issue of polygamy into the main consideration has the potential to obscure the focus of child protection and make the child an indirect object of moral and legal sanctions for the actions of his father (Ramadana & Talli, 2021).

The Constitutional Court Decision Number 46/PUU-VIII/2010 has expanded the civil relationship of an out-of-wedlock child with his biological father as long as it can be proven that there is a blood relationship. The direction of this policy actually prioritizes restorative justice for children. The judge's consideration of restricting the status of children to the biological category without maximum exploration of the protection of children's rights shows that there is a gap between the spirit of constitutional decisions and their implementation in the practice of religious justice.

Based on the principles of child protection and justice in Islamic law, the judge's legal considerations in this determination can be considered to be less fully reflective of the best interests of the child. The enforcement of repressive marriage norms against parents should be separated from the fulfillment of children's rights as legal subjects whose dignity and future must be protected. The determination of the status of biological children without strengthening the consequences of protection has the potential to give birth to substantive injustices that are contrary to the values of mercy and justice that are the spirit of Islamic law (Saleh et al., 2020).

The Impact of the Determination of the Biological Child Status on the Fulfillment of Children's Rights

The determination of the status of biological children through court decisions such as based on DNA tests or other scientific evidence opens access to civil relations with the biological father in accordance with Article 43 paragraph (1) of Law No. 1 of 1974 after the Constitutional Court Decision No. 46/PUU-VIII/2010, so that the child obtains the right to living support, education costs, and basic legal protection which was previously limited only to the mother and her family. This process removes identity ambiguities that often lead to social stigmatization, allowing the issuance of complete birth certificates with father's name for access to public services such as BPJS Kesehatan or Smart Indonesia Cards without administrative barriers. The biological father is obliged to provide alimony until the child is an adult or independent, with a lawsuit in the district court if refused, which increases the economic stability of the family and reduces the risk of structural poverty in out-of-wedlock children (Rohmawati & Rofiq, 2021).

The status of biological children significantly affects the fulfillment of identity and population rights, where ratification through the Religious or District Court ensures that the child is registered in the Dukcapil with a proven blood relationship, so that they are entitled to future political rights such as voting at the age of 17 or obtaining an ID card without the discriminatory label of "out-of-wedlock child". A positive impact can be seen on access to formal education, as the clear status facilitates registration for public schools or poor family-based scholarships, as well as prevents rejection from institutions due to lack of complete parental documents. However, this right does not automatically equate to legal children in terms of guardianship or day-to-day care, so the mother remains dominant in emergency medical decisions unless there is an additional ruling.

In the realm of health, the determination of biological status strengthens the child's right to free immunizations, *posyandu*, and hospital care through biological parents' insurance, as the father is now legally bound to finance chronic treatments such as autism or thalassemia that require long-term costs. [page:1 from before] Biological children are protected from public health service discrimination, where hospitals are not allowed to refuse due to birth status, and fathers are responsible for the cost of post-accident surgery or rehabilitation. This process also facilitates a complete family medical history for genetic diagnosis, reducing the risk of congenital diseases being detected too late due to uncertainty of origin (Saputra & Saputra, 2024).

The right to alimony becomes more guaranteed after the determination, with the biological father required to pay proportionately based on financial ability through an enforceable court decision such as the confiscation of salary or assets, so that the child meets the primary needs of food, clothing, and decent housing. The impact includes improved long-term well-being, where biological children rarely experience malnutrition or school dropout due to economically burdened single mothers. Pre-trial mediation is often recommended for a peaceful agreement, avoiding prolonged conflict that is traumatic for the child.

The inheritance of the biological father's inheritance remains limited to biological children, because Islamic law through the Compilation of Islamic Law Article 99 rejects the *nasab* of adultery so that it is not entitled to *faraidh*, although the Civil Law allows mandatory wills of up to one-third of the assets based on the 2012 Supreme Court National Meeting. Status determination allows for partial civil inheritance claims through the courts, but biological children only get a minimum share of grants or *legitiem portie*, which sometimes triggers legal paternity family disputes that require the mediation of the Child Protection Commission. Potential negative effects arise if the father remarries, where the priority of the legal child's inheritance predominates, leaving the biological child with secondary rights (Supraptiningsih, 2018).

Protection from exploitation and violence increases because biological status connects children with paternal family networks for social supervision, reducing the risk of child prostitution or forced labor due to single-mother poverty. The court can order regular visits from the father for emotional bonding, fulfilling the child's right to complete family affection in accordance with Article 7 of the Child Protection Law. A positive psychological impact can be seen in the reduction of adolescent depression due to clear identity, with access to free counseling through the Social Service.

The implementation of status determination faces the challenge of DNA test costs of up to Rp 10-20 million which burdens poor families, even though free legal aid is available via LBH or Posbakum, so that accessibility remains low in rural areas such as Kediri. Synergy between the Religious and District Courts is needed to accelerate the verdict within 30 days, ensuring that children's rights are not delayed until adulthood. Overall, this ruling revolutionized the fulfillment of rights with the principle of the best interests of the child, although harmonization with Islamic law requires a progressive *fatwa* for full inheritance.

4. CONCLUSION

Determination Number 114/Pdt.P/2025/PA. Bi showed that the judge's legal considerations still focused on violating parental marriage norms as the basis for determining the status of children, so that children were only placed as biological children without recognition as legal children. This approach has implications for restricting children's civil rights and does not reflect the principles of child protection as stipulated in the Child Protection Law as well as the value of justice in Islamic law which emphasizes the protection of the *nasab*, the benefit, and the protection of the weak. Children as legal subjects who are not involved in parental wrongdoing should receive maximum protection, so that the determination of the status of children that results in reduced rights can be considered not fully aligned with the best interests of the child.

Judges in examining and deciding cases of determining the origin of children need to prioritize the principles of child protection and substantive justice in Islamic law, so that the main focus is

directed to the fulfillment of children's rights without making the child a party who bears the legal consequences of the actions of his parents. Policymakers and religious justice institutions are also expected to strengthen harmonization between Islamic law, the Child Protection Law, and the development of jurisprudence so that every determination of a child's status provides a guarantee of protection that is complete, fair, and oriented towards the future of children.

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