



Qualification of Child Status from Unregistered Polygamous Marriage without Marriage Validation (Study of Religious Court Decisions from 2019-2022)

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DOI: <http://dx.doi.org/10.15294/pandecta.v18i1.45534>

Article Info

Article History:

Submitted: June 27th 2023

Revised: July 10th 2023

Accepted: August 28th 2023

Keywords:

qualifications of child status, determination of child origin, marriage validation, unregistered polygamous marriage

Abstract

This study aims to analyze the qualification of child status carried out by the Religious Court in cases of determining the origin of children in unregistered polygamous marriages that are not validated from 2019-2022. The second objective is to analyze the legal implications of the qualification of the child's status. The research method used is normative juridical research, which is carried out by studying secondary data and conducting interviews. The collected data is analyzed qualitatively. The research results show that there are three qualifications of child status made by judges in the request for determining the origin of children from unregistered marriages without marriage validation, namely (1) determined as a legitimate child, (2) determined as a biological child, and (3) determined as a child of Applicant I (biological father) with Applicant II (Mother). The legal implications of this qualification are to provide different legal consequences for the rights of children, even if they originate from similar cases. The existence of different court rulings has an impact on the rights received by children from unregistered polygamous marriages that are not validated, on the one hand, it is seen as a form of legal discovery by judges, but on the other hand, it creates a disparity in decisions because it ignores the principle of *similia similibus*.



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ISSN 1907-8919 (Print)

ISSN 2337-5418 (Online)

A. Introduction

In recent decades, there has been an increasing effort to enforce and protect the rights of women and children in Indonesia by executive, legislative, and judicial institutions. In 2018, the Supreme Court issued a Circular Letter of the Supreme Court (Surat Edaran Mahkamah Agung/SEMA) Number 03 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for Courts. The SEMA instructs that requests for *itsbat* (validation) of unregistered polygamous marriages submitted to religious courts must be declared inadmissible (*Niet Onvankelijk Verklaard*) (Hartini, 2021). This, of course, has a positive impact on women and children who undergo legal and recorded marriages so that their rights are protected and do not become victims of unrecorded marriages due to unregistered polygamous marriages. On the other hand, some parties feel that their rights cannot be fully guaranteed due to the issuance of the above SEMA, including for women who have already undergone unregistered marriages and become second, third, or fourth wives and children who have already been born in such unregistered polygamous marriages.

Although the validation (*itsbat*) of unregistered polygamous marriages must be declared inadmissible by religious courts as stated in the SEMA document, the document also regulates the form and manner of protecting the rights of children born, namely by applying for determination of the origin of the child to the religious court. Although this method will not provide the same and maximum protection to children born from unregistered polygamous marriages as children born in legal marriages, at a minimum it provides clarity on the status of the child and the rights that can be obtained from their relationship with both parents.

Although this SEMA has been issued, there is a fact that in some cases judges still grant the determination of *itsbat* of unregistered polygamous marriages. Research results by Ta, Cahyano, & Prihatini (2020) suggest that there are decisions of the Religious Court

on *itsbat* of unregistered marriages that are contrary to SEMA No. 3 of 2018, KHI, and UUP, namely by granting *itsbat* of unregistered polygamous marriages for the sake of children, which should not be done. Judges must be assertive and declare that the validation (*itsbat*) of the marriage cannot be accepted because if granted it would deviate from the applicable regulations. The research results of Bahmid & Podungge (2022) suggest that, with the existence of SEMA No. 3 of 2018, it becomes a guideline in resolving all cases of *itsbat* of unregistered polygamous marriages submitted to the court by declaring that the application cannot be accepted, thus avoiding different legal interpretations and realizing uniformity of judges' decisions in handling cases of validation (*itsbat*) of unregistered polygamous marriages.

This research no longer discusses unregistered polygamous marriages because it is considered to have been resolved due to existing clarity stating that requests or lawsuits for unregistered polygamous marriages must be declared invalid/inadmissible based on SEMA No. 3 of 2018. Therefore, the main topic of this research is the fate of children from such marriages.

Based on the research conducted, there are several cases of requests for determination of the origin of children as a result of unregistered polygamous marriages whose marriages were not validated from 2019-2022. From these rulings, various reasons and results of religious court decisions were obtained after the issuance of SEMA Number 3 of 2018. Researchers have found that the determination of the origin of children born from unregistered polygamous marriages often varies and is inconsistent. Some examples include the following: a judge in a ruling determined the child to be legitimate from Petitioner I (husband) and Petitioner II (wife) in the Ciamis Religious Court Decision Number 278/Pdt.P/2019/PA.Cms, a judge's ruling determined the child to be biological from the Petitioners in the Bojonegoro Religious Court Decision Number 24/Pdt.P/2021/PA.Bjn, and a judge's ruling determined the child to be Petitioner I with Petitioner II in the Balikpapan Religious Court Decision Num-

ber 427/Pdt.P/2021/PA.Bpp. These decisions show that there are different judge's rulings and judges give different qualifications for the status of children in the determination/decision submitted by the parties. This condition needs attention because it will have implications for the differences in children's rights even though they come from similar cases and matters. This does not represent the principle of *similia similibus* which means that the same case must be decided with the same decision (Sidartha, 2006).

Based on the above explanation, this study aims to analyze the judge's considerations in qualifying the status of children submitted for Determination of Child Origin when their parents are married in unregistered polygamy and to determine the legal implications of the qualification of children's status made by the Religious Court Judge in the Determination of Child Origin.

B. Methods

This research is a normative legal study that examines secondary data in the form of library materials (Soekanto & Mamuji, 1995). The library materials were obtained by studying primary legal materials, secondary legal materials, and tertiary legal materials. After obtaining the secondary data, this research was further complemented by interviews with informants.

The arrangement in this study is carried out by analyzing decisions related to the determination of the origin of children when their parents are married in unregistered polygamy and are associated with applicable laws and regulations. The study is then continued with an in-depth analysis and review and ends with the preparation of a conclusion. For the selection of court decisions, the researcher uses the purposive sampling method, which is a technique for selecting sample data based on certain considerations or criteria (Singarimbun & Effendi, 1989). The author sets the criteria for court decisions based on several criteria. First, the court decisions studied refer to the Circular Letter of the Supreme Court (SEMA) Number 03 of 2018 which stipulates that the application for validation (*itsbat*) of unregistered

polygamous marriages cannot be accepted. Thus, the collecting process of the court rulings/decisions data is not limited to a particular religious court because court decisions can now be accessed through the Supreme Court's decision directory website. Second, the court decisions studied range from 2019 to 2022 because SEMA No. 3 of 2018 came into effect in 2018 and is usually effectively seen in court rulings or decisions starting in 2019. Based on the two criteria above, the author analyzed 20 (twenty) determinations of child origin under the criteria for the decisions mentioned above. The details of the 20 determinations of the qualification of the origin of children because of unregistered polygamous marriages are 7 (seven) determinations of the child's status as legitimate, 7 (seven) determinations of the child's status as biological, and 6 (six) determinations of the child's status as a child of Petitioner I (husband) with Petitioner II (wife). As for the rulings/decisions of the origin of children as a result of unregistered polygamous marriages whose marriages are not validated (*itsbat*), as seen in Table 1.

C. Results and Discussions

Qualification of a Child's Status as a Legitimate Child

The qualification of a legitimate child in an unregistered polygamous marriage can be examined from the contents of the decree issued by the religious court. For example, the verdict of the Ciamis Religious Court Number 278/Pdt.P/2019 PA.Cms which states that: Granting the request of Applicant I and Applicant II; Decided that the child named Child I, a daughter born on December 2, 2015, and Child II, a daughter born on October 23, 2018, are "legitimate children" of the marriage between Applicant I and Applicant II.

In addition, the verdict that decides a child from an unregistered polygamous marriage as a legitimate child can also be seen in the decisions of the Pasir Pengaraian Religious Court Number 63/Pdt.P/2020/PA.Ppg, the Tuban Religious Court Number 426/Pdt.P/2021/PA.Tbn, the Tuban Religious Court Number 768/Pdt.P/2019/PA.Tbn, the Selong Religious Court Number 412/

Table 1. List of Cases for Determining the Origin of Children as Due to Unregistered Polygamous Marriages

Decision Number	Court Decision
278/Pdt.P/2019/ PA.Cms	Decided that the child named Child I, a female child born on December 2, 2015, and Child II, a female child born on October 23, 2018, are the "legitimate children" of the marriage between Applicant I and Applicant II.
63/Pdt.P/2020/ PA.Ppg	Decided that the child named Child I, born in Bangun Purba, on July 9, 2014, and Child 2, born in Bangun Purba, on December 9, 2016, are the "legitimate children" of the marriage between Applicant I and Applicant II.
426/Pdt.P/2021/ PA.Tbn	Decided that two children named MHP (initial), born in Tuban on November 21, 2017, and SAM (initial), born in Tuban on February 13, 2021, are the "legitimate children" of Applicant I and Applicant II.
768/Pdt.P/2019/ PA.Tbn	Deciding that the child named TNK, born in Tuban on January 23, 2010, is the "legitimate child" of Applicant I and Applicant II.
412/Pdt.P/2020/ PA.Sel	Decided that a child named LMIZ, a boy born on June 15, 2014, is the "legitimate child" of the Applicants.
52/Pdt.P/2021/ PA.Sak	Decided that the child of the applicants, born on March 19, 2014, residing in Siak Regency, Riau Province is a "legitimate child" from the marriage of the applicants.
426/Pdt.P/2022/ PA.Smn	Decided that a child named RLP, female, born in Kulon Progo, September 15, 2010, and RVP, male, born in Sleman, January 08, 2019, are the "legitimate children" of Applicant I and Applicant II who were born in a lawful marriage that took place on December 5, 2009 but was not recorded.
24/Pdt.P/2021/ PA.Bjn	Decided that a child named RATTD born in Bojonegoro on January 09, 2019, is the "biological child" of the applicants.
81/Pdt.P/2021/ PA.Bkt	Decided that a child named xxxx born on xxxx is the "biological child" of Applicant I with Applicant II.
146/Pdt.P/2022/ PA.YK	Decided that the children named: (a) MSZN, male, place of birth Sleman, January 20, 2017, (b) PPN, male, place of birth Sleman, March 31, 2018, (C) RGLN, male, place of birth Sleman, October 10, 2019 are the "biological children" of the Applicants.
252/Pdt.P/2019/ PA.Smn	Declaring that a child named KAS, born in Sleman, on April 07, 2016, is the "biological child" of Applicant I, born by Applicant II
389/Pdt.P/2020/ PA.Kra	Decided that the child named the child of the applicants born in Surakarta on 04-06-2020 is the "biological child" of Applicant I and Applicant II.
501/Pdt.P/2021/ PA.Pbg	Decided that a child named IKN born on August 01 in xxxx is the "biological child" of Applicant I with Applicant II.
39/Pdt.P/2022/ PA.Pbg	M Decided that a child named DNA, female, born in Purbalingga on April 9, 2005, is the "biological child" of Applicant I and Applicant II.
311/Pdt.P/2019/ PA.Kab.Kdr	Decided that a child named xxxx, female born in Kediri on November 17, 2013 is the "child of Applicant I and Applicant II".
427/Pdt.P/2021/ PA.Bpp	Decided that a child named xxxx, born in Balikpapan on November 3, 2015, is the "child of Applicant I with Applicant II".
9/Pdt.P/2022/ PA.Pga	Decided that a boy named xxxx, born on August 03, 2002, is the "child of Applicant I with Applicant II".
583/Pdt.P/2020/ PA.Mr	Decided that a child named xxx born on August 21, 2017, is the "child of Applicant I with Applicant II".
50/Pdt.P/2021/ PA.Ptk	Decided that a child named AAE (male), born in Pontianak on January 03, 2017, is the "child of Applicant I with Applicant II".
39/Pdt.P/2022/ PA.Tbn	Decided that a child named RA aged 20 years 4 months, born in Tuban, on September 29, 2001, and RAS aged 11 years 7 months, born in Tuban, on June 02, 2012, are the "children of Applicant I and Applicant II".

Source: Supreme Court Decision Directory 2019-2022 (Supreme Court, 2022)

Pdt.P/2020/PA.Sel, the Siak Sri Religious Court Number 52/Pdt.P/2021/PA.Sak., and the Sleman Religious Court Number 426/Pdt.P/2022/PA.Smn.

The judge determines a child as a legitimate child because he believes that the polygamous marriage of the applicants is legitimate because it fulfills the pillars and conditions of marriage according to Islamic law as stipulated in Article 14 of the Compilation of Islamic Law (KHI). When an unregistered polygamous marriage has been declared legitimate, the child born in that polygamous marriage is declared a legitimate child (Article 42 of the Marriage Law in conjunction with Article 99 of the Compilation of Islamic Law). Based on an interview with Dr. H. Ahmad Zuhdi, S.H., M.Hum (Judge of the Yogyakarta Religious Court), a child is considered a legitimate child because the marriage has fulfilled the material law, namely, it has fulfilled the pillars and conditions of marriage even though it violates formal law as it is not registered at the Office of Religious Affairs. It is also explained that if an act committed by a legal subject violates formal law, it will not affect the legal act so that it remains valid. On the other hand, if what is violated is material law, the legal act is considered invalid (Zuhdi, 2023). Therefore, if someone violates formal law, the applicant's polygamous marriage is established as a legitimate marriage and results in the child born in that marriage being declared a legitimate child (Zuhdi, 2023).

By stipulating that a child from an unregistered polygamous marriage that is not validated (not *itsbat*) as a legitimate child by the Religious Court, it has the following legal implications: A child has a blood relationship with his mother, so he becomes his mother's heir (Bowontari, 2019); A child has a blood relationship with his father, so he automatically becomes his father's heir and has a guardian relationship with his father. If the child is a girl, then the father can become her marriage guardian (Zuhdi, 2023); The child obtained a birth certificate from the mother because the child was born from an illegitimate marriage, namely born from a polygamous marriage that was not validated, and the birth certificate was given a marginal note

containing the contents of the verdict so that the father's name was listed, and they were given an acknowledgment certificate (Pramuwardhani, 2023).

Qualification of Child Status as a Biological Child

The qualification of the biological child's status in an unregistered polygamous marriage that is not validated can be observed from the contents of the verdict of the decision issued by the religious court. For example, the verdict of the Bojonegoro Religious Court Number 24/Pdt.P/2021/PA.Bjn stating: Granting the petitioners' request; Judged that the child named RATTD, born in Bojonegoro on January 9, 2019, is the 'biological child' of the petitioners.

In addition, the verdict that determines the child of an unregistered polygamous marriage that is not confirmed as a biological child is also seen in the Decision of the Bukittinggi Religious Court Number 81/Pdt.P/2021/PA.Bkt, Decision of the Yogyakarta Religious Court Number 146/Pdt.P/2022/PA.YK, Decision of the Sleman Religious Court Number 252/Pdt.P/2019/PA.Smn, Decision of the Karanganyar Religious Court Number 389/Pdt.P/2020/PA.Kra, Decision of the Purbalingga Religious Court Number 501/Pdt.P/2021/PA.Pbg, and Decision of the Purbalingga Religious Court Number 39/Pdt.P/2022/PA.Pbg

The judge determines the child as a biological child because he believes that the polygamous marriage of the petitioners is only valid religiously because it meets the pillars and conditions of marriage in Islamic *munakahat* law, namely those listed in Article 14 of the Compilation of Islamic Law. Although such marriage is religiously valid, it is not in accordance with the law because it is not registered with the Office of Religious Affairs, thus violating the provisions of Article 2 paragraph (2) of the Marriage Law in conjunction with Article 5 of the Compilation of Islamic Law. In addition, the marriage did not obtain a polygamy permit from the Religious Court, thus violating the provisions of Article 3 paragraph (2) of the Marriage Law, Article 4 of the Marriage Law in conjunction with Article 56

of the Compilation of Islamic Law. This results in the child born from a polygamous marriage not being considered a legitimate child. However, the child must still be protected because he is not automatically separated from his biological relationship with his father as the cause of the pregnancy. The judge also based his decision on the provisions of the Constitutional Court Decision Number 46/PUU-VIII/2010, which means that illegitimate children have a civil relationship with both their mother and father. However, this must be proven by science and technology and/or other evidence according to the law that they have a blood relationship. This results in the child born from a polygamous marriage being the biological child of the petitioners. Based on an interview with Mr. Dr. H. Ahmad Zuhdi, S.H., M.Hum, the judges who believe that the child is a biological child because of the judge's view that marriage registration is a legal obligation, not a religious obligation. If the marriage does not meet the legal requirements, it has no legal consequences and is therefore declared as a biological child (Zuhdi, 2023). This is based on the Qur'an Surah An-Nissa' verse 59 which reads: 'O you who believe, obey the Messenger (Prophet Muhammad) and those in authority among you...' Based on the Qur'an Surah An-Nissa' verse 59, a marriage registration which is a policy of the ruler (government), must be obeyed as obeying the ruler means obeying the religion because the command to obey the ruler is also a religious command (Zuhdi, 2023). Considering that marriage registration is part of religious teachings, the registration must be done (Zuhdi, 2023).

By ruling that the child of an unregistered polygamous marriage is not validated (no *itsbat*) as a biological child by the Religious Court, it has the following legal implications: A child has a biological relationship with their mother, making them an heir to their mother (Utami & Yahya, 2022); A child has a legal relationship with their father, but it is a limited civil law relationship and does not make the father a biological father. The consequence of this limited civil law relationship is that the child does not become an heir to their biological father because they do not

have a blood relationship with their father, so they are not entitled to an inheritance share, but they can be given a mandatory will from their biological parents. The child does not have a guardian relationship with their biological father. If the biological child is female, then the biological father will not be able to become her marriage guardian because he is not a legal father (Zuhdi, 2023). This is in line with the Indonesian Ulema Council Fatwa Number 11 of 2012 concerning the Position of Children Out of Wedlock and Their Treatment, which explains that such children do not have a blood relationship, marriage guardian, heir, and living expenses obligation (*nafaqah*) with their father, but the father must provide for the child's living expenses and can be given a mandatory will. The MUI Fatwa uses the term living expenses instead of *nafaqah* because *nafaqah* only arises from a valid marriage relationship. This is also supported by research by Susanto, Puspitasari, & Marwa (2021) which states that the relationship of children born out of wedlock with their fathers is that they do not have the right to personal data like legitimate children in the form of blood relationships, mutual inheritance relationships, and becoming a marriage guardian.

The child obtained a birth certificate even though they were born from a mother with an unregistered polygamous marriage. According to a source from the Yogyakarta Population and Civil Registration Office, it was stated that the child could be given a birth certificate with a marginal note containing the contents of the court decision so that the father's name is listed, and they are given an acknowledgment certificate (Pramuwardhani, 2023). The statement from this source differs from the form of the Child Birth Certificate issued after the issuance of the Minister of Home Affairs Regulation Number 109 of 2019. There are four forms of Child Birth Certificates currently issued: (1) Child Birth Certificate from a Recorded Marriage, (2) Child Birth Certificate for a husband and wife whose parents' marriage is not recorded. In the certificate, the following phrase is written: "whose marriage has not been recorded in accordance with the laws and regulations,"

(3) Child Birth Certificate for a Mother whose marital status is “not married,” and (4) Child Birth Certificate for a child of unknown origin. Based on the birth certificate model, a child with biological child status should receive model certificate number (2), which is the Child Birth Certificate for a husband and wife whose parents’ marriage is not recorded. In the certificate, it is written with the phrase “whose marriage has not been recorded in accordance with the laws and regulations.”

The Qualification of A Child’s Status as the Child of Applicant I with Applicant II

The qualification of the status of the child of Applicant I with Applicant II in an unvalidated polygamous marriage can be observed from the contents of the decree issued by the religious court. An example is the decree of the Kediri Regency Religious Court Number 311/Pdt.P/2019/PA.Kab.Kdr: Granting the application of Applicant I and Applicant II; Determining that the child named xxxx, a female born in Kediri on November 17, 2013, is “the child of Applicant I and Applicant II”.

In addition, the decision that determines the child of an unregistered polygamous marriage that is not validated as the child of Applicant I and Applicant II can also be seen in the Balikpapan Religious Court Decision Number 427/Pdt.P/2021/PA.Bpp, Pagar Alam Religious Court Decision Number 9/Pdt.P/2022/PA.Pga, Mojokerto Religious Court Decision Number 583/Pdt.P/2020/PA.Mr, Pontianak Religious Court Decision Number 50/Pdt.P/2021/PA.Ptk, and Tuban Religious Court Decision Number 39/Pdt.P/2022/PA.Tbn.

The judge’s consideration in determining the child as the child of Applicant I and Applicant II is divided into two categories of legal considerations: first, even though the judge in his decree states the child as the child of Applicant I and Applicant II, but in his consideration he states it as a legitimate child. The reason is that the judge considers the unregistered (siri) polygamous marriage of the Applicants to be valid because it meets the pillars and requirements of mar-

riage according to Islamic law as stipulated in Article 14 of the Compilation of Islamic Law so that the child born in a valid marriage is a legitimate child. This can be seen in the Balikpapan Religious Court Decision Number 427/Pdt.P/2021/PA.Bpp and Pagar Alam Religious Court Decision Number 9/Pdt.P/2022/PA.Pga. Secondly, in the decree, the judge states the child is the child of Applicant I and Applicant II. The judge decided not to declare the child as legitimate because the Applicants’ polygamous marriage was not recorded and did not obtain permission from the Religious Court. Although it meets the pillars and requirements according to Islamic law, this violates the provisions of Article 2 paragraph (2) of the Marriage Law in conjunction with Article 5 of the Compilation of Islamic Law, Article 3 paragraph (2) of the Marriage Law, Article 4 of the Marriage Law in conjunction with Article 56 of the Compilation of Islamic Law. In the decree, the judge determined that Applicant I and Applicant II were the child. This can be seen in several Religious Court decisions, such as the Kediri Regency Religious Court Decision Number: 311/Pdt.P/2019/PA.Kab.Kdr, Mojokerto Religious Court Decision Number 583/Pdt.P/2020/PA.Mr, Pontianak Religious Court Decision Number 50/Pdt.P/2021/PA.Ptk, and Tuban Religious Court Decision Number 39/Pdt.P/2022/PA.Tbn. In response to this difference, Dr. H. Ahmad Zuhdi, S.H., M.Hum, argues that if the child is not declared legitimate in legal considerations, then the child can be said to be a biological child. Therefore, in the decree, the status must be linear and stated as a biological child. Furthermore, if the child is declared legitimate in legal considerations, then in the decree, the child should be declared as a legitimate child, not just the child of Applicant I and Applicant II (Zuhdi, 2023). In facing such cases, the applicants can apply for a correction of the decree so that the decree is in accordance with and in line with its legal considerations (Zuhdi, 2023).

In the Balikpapan Religious Court Decision Number 427/Pdt.P/2021/PA.Bpp and the Pagar Alam Religious Court Decision Number 9/Pdt.P/2022/PA.Pga, the child is

declared as a legitimate child. This has the same legal implications as a legitimate child in general, namely: A child has a blood relationship with their mother, making them an heir to their mother (Bowontari, 2019).; A child becomes an heir to their father and has a guardian relationship with their father. In the case of a daughter getting married, the father can become the guardian of the child's marriage. (Zuhdi, 2023); The child obtains a birth certificate as the child of a mother because they were born from an illegitimate marriage, namely being born from an unregistered polygamous marriage that is not validated. On the birth certificate, there is a marginal note that contains the contents of the court's decision and the name of the father is listed, and they are given a recognition or acknowledgement certificate. (Pramuwardhani, 2023).

Based on several Religious Court decisions, such as the Kediri Regency Religious Court Decision Number 311/Pdt.P/2019/PA.Kab.Kdr, Mojokerto Religious Court Decision Number 583/Pdt.P/2020/PA.Mr, Pontianak Religious Court Decision Number 50/Pdt.P/2021/PA.Ptk, and Tuban Religious Court Decision Number 39/Pdt.P/2022/PA.Tbn, the child can be said to be a biological child. This has the same legal implications as a child who has been determined to be a biological child, namely: A child has a blood relationship with their mother, so they become their mother's heir (Utami & Yahya, 2022); According to Zuhdi (2023), the child has a limited civil relationship with their father, which does not include inheritance relationships, guardianship in marriage, and *nafaqah* (alimony) relationships. However, the child can be given a mandatory will and the father is obliged to provide for the child's living expenses. This is also supported by Jarcho's (2020) research, which states that children born out of wedlock can be given a mandatory will of up to 1/3 of the share.

The child obtains a birth certificate as the child of a mother because they were born from an illegitimate marriage, namely an unregistered and unvalidated polygamous marriage. There are two possible types of birth certificates given to this child, namely model

(2) with the note 'whose marriage has not been recorded in accordance with the law' (Fakhrulloh, 2021), or model (3) as a Birth Certificate of a Mother's Child with the marital status 'unmarried'. They can also be given a child recognition certificate (Pramuwardhani, 2023).

The Principle of *Similia Similibus* in the Case of Determining the Origin of a Child in an Unregistered and Unvalidated Polygamous Marriage

The principle of *similia similibus* requires judges to make the same decisions in the same cases to maintain consistency (Mertokusumo, 1999). In the case of this study, namely the existence of children born from unregistered polygamous marriages but decided differently, the principle of *similia similibus* can be used to analyze it. The parents of the child in question were not legally married at the time of the child's birth, as the husband was still legally married to his first wife. The couple had only undergone a religious marriage ceremony (unregistered marriage). One of the reasons for this discrepancy in all cases is the need to create or amend a birth certificate, leading to applications for establishing the origin of the child. Judges made different decisions in their rulings of the 20 decisions examined, with the same case positions and reasons. These decisions were qualified as legitimate children, biological children, and children of Petitioner I with Petitioner II. This indicates that judges disregarded the principle of *similia similibus*, resulting in a disparity of decisions that impacted the differences in rights that would be received by these children. As a result of the legal consequences for children from unregistered polygamous marriages who had been determined to be legitimate, they will have the same rights as children born from legal marriages. On the other hand, the legal consequences for children from unregistered polygamous marriages who had been determined to be biological children only have limited civil relations with their biological father.

Although on the one hand, there is a disparity in the decisions made due to the disregard of the principle of *similia similibus*,

this difference in decisions can be viewed as a legal discovery by the judge. This refers to the judge's decision to determine the child as legitimate by considering that the unregistered polygamous marriage of the petitioners has fulfilled the pillars and requirements of marriage according to Islamic law (there is a prospective husband, prospective wife, marriage guardian, two witnesses, and *ijab-kabul*/ marriage vows). This decision provides a favorable status for children born from unregistered marriages. On the other hand, the judge who determined the child as a biological child considered that it is not enough to judge a marriage only by its validity according to Islamic law, but other aspects must also be considered, such as whether the marriage has been carried out in accordance with the regulations (Marriage Law and Compilation of Islamic Law), whether it has been registered at Office of Religious Affairs, and whether polygamy permission has been obtained from the court. The judge's decision for this last case provides protection for legal marriages and legitimate children from the first marriage, but children from unregistered marriages only receive limited civil rights.

D. Conclusions

Based on the discussion that has been conducted, it can be concluded that the application for determining the origin of a child because their parents married in unregistered polygamy is divided into three qualifications of child status namely as follows: Qualified as a legitimate child, so the child will receive the same rights as a legitimate child born from a legal marriage. Qualified as a biological child, so the child only has limited civil relations with their father but does not make the father a biological father.

Qualified as a child of Applicant I with Applicant II with two categories of legal considerations, namely: The judge who determined the child of Applicant I with Applicant II as a legitimate child, then their rights are the same as those of a legitimate child in general. If the judge does not determine the child as legitimate, then the child can be considered a biological child, thus having only limited civil relations with their father.

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