

## **Judicial Reasoning on Children's Lineage in *Fasid* Marriages: Reconciling Islamic Law and Indonesian Marriage Law**

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### **Abstract:**

The legal status of children born from *fasid* marriages reveals a tension between Indonesian marriage law and Islamic legal doctrines governing lineage (*nasab*). This issue is illustrated by Decision No. 7/Pdt.P/2022/PA.Talu, where the judges reached different conclusions on a child's lineage after a marriage was contracted while the mother remained legally bound to her previous husband. This study examines the judicial reasoning underlying the dissent and evaluates how Indonesian positive law and Islamic jurisprudence regulate the consequences of *fasid* marriage for children's legal status. Using normative legal research with statutory and conceptual approaches, the study analyses the Marriage Law, the Compilation of Islamic Law, relevant judicial principles, and Islamic doctrines of *fasid* marriage, *firāsh*, and *nasab*. The findings show that the judicial disagreement concerned not only the validity of the parents' marriage but also competing approaches to the relationship between marital validity and lineage protection. Indonesian law regulates marriage validity, annulment, and children's status but provides no sufficiently specific standard for determining lineage arising from *fasid* marriages. Islamic jurisprudence, however, recognises circumstances in which an irregular marriage may still produce legal consequences for *nasab*. The case therefore exposes a normative gap between marital invalidity and the protection of children's legal status. This study argues for a clearer doctrinal framework that separates the legal consequences of an invalid marriage from the independent determination and protection of children's lineage and civil rights, thereby strengthening legal certainty and the best interests of the child.

**Keywords:** *Fasid marriage*; children's lineage; judicial reasoning; Islamic family law; Indonesian marriage law



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## Introduction

In matters of marriage, it is important to understand the social and cultural context of a community when determining the validity of a marriage. Many marriages in Indonesian society are conducted without official state registration due to local traditions or limited access to administrative services. This phenomenon gives rise to complex legal consequences, particularly concerning the status of children, inheritance, and other civil rights.<sup>1</sup> Within the context of Islamic law, a “fasid” marriage may still give rise to certain legal consequences for children, even though it is formally considered invalid under state law.<sup>2</sup> This study aims to examine this ambiguity and provide a comprehensive understanding of how differing legal interpretations affect the protection of children's rights.

A marriage that meets the substantive law requirements for validity is considered valid. However, if the marriage is not registered with a registrar authorized to issue a marriage certificate, it is not formally valid.<sup>3</sup> Therefore, even if the marriage is materially valid, it is not formally valid and is therefore considered to have never existed unless proven by a marriage certificate issued by a marriage registrar. An unregistered marriage is not recognized by the state and is not protected by law. Consequently, any offspring or children born from the marriage are considered illegitimate.<sup>4</sup>

However, according to Wahbah al-Zuhaili, the determination of the lineage of an invalid marriage is different, maintaining the same legal status as a valid marriage, despite its different legal status.<sup>5</sup> This is a precautionary measure to ensure the child's lineage continues through the father, even though the marriage is legally invalid. The requirements for determining lineage in an invalid marriage require that the husband

<sup>1</sup> Ivo Junia Imako Haris, “Children's Position on a Defective Marriage (Fasid) in Terms Establishment of Inheritance Right as an Effort for Legal Certainty,” *Sociological Jurisprudence Journal* 7, no. 1 (2024): 40–44, <https://doi.org/10.22225/scj.7.1.2024.40-44>.

<sup>2</sup> Tegus Basuki, “Analysis of Positive Law on the Origin of Children from Fasid Marriage: Case Study of Stipulation No. 040/Pdt.P/2017/Pa.Sal in Salatiga Religious Court,” *QURU: Journal of Family Law and Culture* 2, no. 3 (2024): 394–415, <https://doi.org/10.59698/quru.v2i3.224>.

<sup>3</sup> Muhammad Kasim et al., “Marriage Validation and Child Marriage: Analysis of the Effectiveness of Law Number 16 of 2019,” *Journal of Law Justice (JLJ)* 4, no. 1 (2026): 1–15, <https://doi.org/10.33506/jlj.v4i1.4948>.

<sup>4</sup> Dahris Siregar, “Illegitimate Children's Place in Marriage Law,” *IJOSPOL - International Journal of Social, Policy and Law* 6, no. 4 (2025): 46–51, <https://doi.org/10.8888/ijospl.v6i4.216>.

<sup>5</sup> Fitriyadi Fitriyadi et al., “Redefining Legal Frameworks: Progressive Methods in Ascertaining Children's Lineage from Fasid Marriages in Religious Court Proceedings,” *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (May 2024): 148–71, <https://doi.org/10.18592/sjhp.v24i1.12894>.

be capable of impregnating a child, that there be marital relations,<sup>6</sup> and that the woman give birth six months or more after the marriage contract.<sup>7</sup> In reality, there are still marriages in society that do not comply with applicable regulations. These marriages are considered invalid because the pillars and requirements are not met, making them legally invalid.<sup>8</sup> A void marriage can be defined as a marriage where a woman married to a man is still the wife of another man. Legally, such a marriage is invalid because the requirements are not met.

Recent studies have increasingly examined the legal consequences of defective or irregular marriages for children's lineage and civil status. Hasanudin and Fatimatuzzahro analyse the determination of *nasab* arising from a *fasid* marriage through Wahbah al-Zuhaily's doctrine and show that defects in the marital relationship do not necessarily eliminate paternal lineage when the conditions recognised in Islamic jurisprudence are fulfilled.<sup>9</sup> Fitriyadi et al., through an examination of Religious Court decisions concerning children born from *fasid* marriages in South Kalimantan, identify considerable inconsistency in judicial reasoning: some judges emphasise statutory requirements concerning marital validity, while others prioritise child protection and progressive Islamic legal interpretation.<sup>10</sup> Haris approaches the issue from the perspective of inheritance and demonstrates that uncertainty regarding defective marriages extends to the child's legal position and inheritance rights.<sup>11</sup> Beyond *fasid* marriage specifically, Syafruddin et al. show that lineage determination in irregular marriages may involve progressive judicial reasoning that considers juridical and sociological factors rather than relying exclusively on formal requirements.<sup>12</sup> Hanapi et al. similarly identify a shift in Indonesian Religious Court decisions from rigid reliance on classical *fiqh* toward an

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<sup>6</sup> Patria Utama, "Inheritance Rights of Children from Unregistered Marriages," *El Mudawanat* 2, no. 1 (2025): 43–54, <https://doi.org/10.20414/mudawanat.v2i1.89>.

<sup>7</sup> Mushthafa Mushthafa et al., "Validity of Biological Father As Marriage Guardian Against Syubhat's Son," *Jurnal Elsyakhshi* 1, no. 1 (2023): 47–56, <https://doi.org/10.69637/jelsy.v1i1.32>.

<sup>8</sup> Aditya Luriza Kanza, "Criteria of Mistake as Grounds for Annulment of Marriage in Indonesian Law," *Causa: Jurnal Hukum Dan Kewarganegaraan* 16, no. 3 (2026), <https://cibinstitute.id/index.php/causa/article/view/7050>.

<sup>9</sup> Hasanudin Hasanudin and Fatimatuzzahro Fatimatuzzahro, "The Implementation of Lineage Determination Methods in Illegal Marriages Based on Wahbah Al-Zuhaily in the Determination of Banjarbaru Religious Court No. 80/Pdt.P/2017/PA.Bjb," *Al-Ahkam* 18, no. 2 (2023), <https://doi.org/https://doi.org/10.37035/ajh.v18i2.6618>.

<sup>10</sup> Fitriyadi Fitriyadi et al., "Redefining Legal Frameworks: Progressive Methods in Ascertaining Children's Lineage from Fasid Marriages in Religious Court Proceedings," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024), <https://doi.org/https://doi.org/10.18592/sjhp.v24i1.12894>.

<sup>11</sup> Haris, "Children's Position on a Defective Marriage (Fasid) in Terms Establishment of Inheritance Right as an Effort for Legal Certainty."

<sup>12</sup> Rezki Amaliah Syafruddin et al., "Child Lineage Determination in Underage Marriages: A Progressive Judicial Perspective," *Al-Risalah Jurnal Ilmu Syariah dan Hukum* 24, no. 1 (2024): 42–60, <https://doi.org/10.24252/al-risalah.vi.44186>.

approach that attempts to reconcile *fiqh*, positive law, and the best interests of the child.<sup>13</sup>

More recent scholarship confirms that the difficulty lies not simply in determining whether the parents' marriage was formally valid, but in identifying a coherent judicial standard for protecting the child's legal status. Yazid and Nuroniyah, for example, identify continuing disparities between formalistic and responsive judicial approaches in determining the status of children born from unregistered marriages.<sup>14</sup> Taken together, these studies establish that Indonesian courts increasingly confront tensions between marital validity, Islamic legal doctrine, positive law, and child protection. However, the existing literature largely focuses on whether lineage should be recognised, the consequences of marriage non-registration or invalidity, inheritance rights, or inconsistencies among judicial decisions. It has not sufficiently examined the more specific doctrinal problem arising when a *fasid* marriage overlaps with a pre-existing legally subsisting marriage and therefore creates competing juridical bases for the attribution of *nasab*. This unresolved issue is central to Decision No. 7/Pdt.P/2022/PA.Talu, where Applicant II remained legally bound to her previous husband when the subsequent marriage occurred, raising the additional question of whether the existing *firāsh* continued to determine the child's lineage.

This study addresses this gap by analysing the majority and dissenting opinions in Decision No. 7/Pdt.P/2022/PA.Talu as competing constructions of marital validity, *firāsh*, and *nasab*. Its novelty lies in distinguishing the legal consequences of the parents' defective marital relationship from the independent juridical determination of the child's lineage. Rather than treating the invalidity of a later marriage as automatically establishing or extinguishing paternal lineage, this study examines how Indonesian positive law and Islamic jurisprudence should respond when a *fasid* marriage overlaps with an earlier legally subsisting marital relationship. In doing so, the article shifts the discussion from the general protection of children born from defective marriages to the more specific problem of competing lineage attribution arising from overlapping marital relationships.

## Method

This study employs doctrinal legal research to examine the legal status of children born from *fasid* marriages and the judicial reasoning reflected in Decision No. 7/Pdt.P/2022/PA.Talu. The doctrinal approach is appropriate because the research focuses on the interpretation, coherence, and interaction of legal rules, judicial reasoning, and Islamic legal doctrines governing marriage validity and

<sup>13</sup> Agustin Hanapi et al., "Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia," *Juris* 23, no. 2 (2025), <https://doi.org/https://doi.org/10.31958/juris.v23i2.10712>.

<sup>14</sup> Najwa Yazid and Wardah Nuroniyah, "Between Legal Formalism and Responsiveness: Judicial Reasoning on the Status of Children from Unregistered Marriages | El-Aqwal : Journal of Sharia and Comparative Law," *El-Aqwal: Journal of Sharia and Comparative Law* 5, no. 1 (2026), <https://doi.org/https://doi.org/10.24090/el-aqwal.v5i1.15413>.

children's lineage. Rather than merely describing the court decision, the study evaluates the normative foundations underlying the majority and dissenting opinions and examines their consistency with Indonesian marriage law and relevant principles of Islamic jurisprudence.

The study applies statutory, case, and conceptual approaches. The statutory approach is used to examine the legal framework governing marriage validity, divorce, annulment, children's status, and judicial decision-making, particularly Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Law No. 48 of 2009 on Judicial Power, the Compilation of Islamic Law, and relevant provisions of the Indonesian Civil Code. The case approach focuses on Decision No. 7/Pdt.P/2022/PA.Talu, with particular attention to the legal issues identified by the judges, the legal authorities relied upon, and the reasoning distinguishing the majority opinion from the dissenting opinion. The conceptual approach is employed to analyse the legal concepts of *fasid* marriage, *nasab* (lineage), *firāsh*, marriage validity, and the protection of children's rights as developed in Islamic jurisprudence and Indonesian family law.

The legal materials consist of primary and secondary sources. Primary legal materials include legislation, the Compilation of Islamic Law, and Decision No. 7/Pdt.P/2022/PA.Talu. Islamic jurisprudential authorities relevant to *fasid* marriage, lineage, and *firāsh* are also examined as normative sources used to understand the Islamic legal reasoning reflected in the judgment. Secondary legal materials include scholarly books, peer-reviewed journal articles, and previous studies concerning defective marriages, judicial reasoning, children's lineage, and child protection.

Legal materials were collected through document-based legal research and were analysed qualitatively using legal interpretation and doctrinal comparison. The analysis was conducted in three stages. First, the study identified the applicable legal norms governing the validity and consequences of marriage and the determination of children's legal status. Second, it reconstructed the reasoning of the majority and dissenting judges by identifying the factual premises, legal provisions, and Islamic legal doctrines on which each opinion was based. Third, the competing interpretations were compared to determine how Indonesian positive law and Islamic jurisprudence address the relationship between defective marital status and the legal protection of a child's lineage. This analytical framework enables the study to identify areas of normative ambiguity and to assess the extent to which existing legal rules provide legal certainty and protect the best interests of the child.

## **Discussion**

### **Analysis of Judges' Dissenting Opinion on the Status of Children in Fasid Marriage Cases**

Dissenting opinions among judges demonstrate the significant dynamics of legal interpretation in family law.<sup>15</sup> Dissenting opinions not only reflect personal differences of opinion but also provide insight into the flexibility of the law in dealing with complex cases.<sup>16</sup> In the context of invalid marriages, dissenting opinions serve as a check and balance mechanism, ensuring that decisions taken remain in the best interests of the child. This analysis demonstrates that the recognition of children from invalid marriages is multidimensional, encompassing formal legal aspects, Islamic jurisprudence principles, and ethical considerations to comprehensively protect children's rights.

Legally, if a judge dissents from a decision, the decision is made by majority vote. This also results in judges with high integrity losing the vote. Therefore, a platform is provided for expressing dissenting opinions, accompanied by legal arguments.<sup>17</sup> The judges' differences will also be included in the decision, even if they disagree with the decision. If a dissenting opinion is not applied in the decision, it will simply be a conclusion without a strong explanation. When applying a dissenting opinion in a decision, legal certainty, expediency, and justice must be weighed against the balance between individual and collective rights.<sup>18</sup>

In the case of the determination of a child's parentage in the Religious Court, Case No. 7/Pdt.P/2022/PA.Talu, a dissenting opinion occurred among the judges in their legal considerations when deciding a case requesting a determination of a child's parentage.<sup>19</sup> The applicant's problem begins with the marital status, where the marriage is truly invalid. Legally, the applicants are still bound to their previous partners, making one or both of them prohibited from entering into marriage, as provided in Article 9 of Law Number 1 of 1974 and Article 40 of the Compilation of Islamic Law (KHI), unless they obtain permission from the Religious Court. Member Judge I considers that the argument regarding the applicants' legal status is unclear (vague). Because the applicants' marriage occurred in 2014, each of them is still married to another person. Therefore, it is clear that the applicants' marriage is invalid, as there is a prohibition on marriage and violations by the applicants.

The status of the applicants' informal divorce from their previous spouses arose from a lack of awareness that divorce must be carried out through the court, as well

<sup>15</sup> Muhammad Rusdi, "Implikasi Dissenting Opinion Hakim Mahkamah Konstitusi Terhadap Kesadaran Hukum Masyarakat," *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum* 1, no. 1 (2019): 89–107, <https://doi.org/10.37631/widyapranata.v1i1.257>.

<sup>16</sup> Urbanus Ura Weruin, *Dissenting Opinion Para Hakim Dalam Pengadilan: Fungsi Dan Ancamannya* | *JiIP - Jurnal Ilmiah Ilmu Pendidikan*, n.d., accessed June 26, 2026, <http://www.jiip.stkipyapisdompnu.ac.id/jiip/index.php/JiIP/article/view/6183>.

<sup>17</sup> Marina Matic Boskovic and Marko Novakovic, "Freedom of Expression of Judges and the Influence of Social Media," *Bratislava Law Review* 9, no. 1 (2025): 135–50, <https://doi.org/10.46282/blr.2025.9.1.886>.

<sup>18</sup> Suhartini et al., "Eksistensi Dissenting Opinion Dalam Putusan Perdata: Cerminan Dinamika Keadilan Di Meja Hijau," *Lex Journal: Kajian Hukum Dan Keadilan* 10, no. 2 (2026): 301–15, <https://doi.org/10.25139/lex.v10i2.11839>.

<sup>19</sup> Decision Number: 7/Pdt.P/2022/PA.Talu.

as the perception held by some members of the community that divorce is a legal event governed solely by religious law. Accordingly, when a husband divorces his wife outside the court or through an informal divorce, the divorce is considered to have taken effect and the marriage is deemed to have ended, provided that the divorce fulfills the prescribed religious pillars and requirements. However, pursuant to Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage, whose provisions have not been amended by subsequent amendments to the law, in conjunction with Article 115 of the Compilation of Islamic Law (KHI), divorce must be pronounced before a court in order to have legal effect. Therefore, a divorce conducted outside the court cannot be regarded as legally valid or produce legal consequences. The applicants' circumstances constitute a consequence of the positive law that prohibits informal divorce. This conclusion indicates that, in the absence of a divorce certificate issued by the Religious Court, a person remains legally bound to their former spouse.

Regarding the validity of the child's lineage, any child born from the biological relationship between the applicants may be regarded as a child born from a relationship whose legal status remains questionable. However, such a questionable relationship is further complicated by the administrative requirement of marriage registration, which is not explicitly stipulated in the Marriage Law as a requirement for the validity of a marriage. Furthermore, the Islamic Encyclopedia explains the concept of syubhat as a matter whose legal status is not clearly established, whether it is permissible or prohibited, and therefore lacks definitive legal force.<sup>20</sup> The child's status remains legally connected to the firasy between Applicant II and her previous husband. The marriage between Applicant II and her previous husband was only legally terminated through divorce, as evidenced by the issuance of a divorce certificate in 2021. This is because, at the time Applicant II became pregnant, she was still legally married and had neither obtained a divorce nor had her marriage terminated by a judicial decision. Accordingly, the firasy relationship with her previous husband could still be legally attributed to the child, such that, from a legal perspective, the child's status was initially regarded as that of a child born during or as a result of the marriage between Applicant II and her previous husband.

The case of the child's origin petition in the Talu Religious Court's decision Number 7/Pdt.P/2022/PA.Talu, which resulted in a dissenting opinion: the Chief Justice and Member Judge II granted the petition, and Member Judge I rejected the petitioners' petition regarding the child's status. From this, the author views the petition's determination stating that the child is a legitimate child as inappropriate, because it has previously been proven that the marriage between the petitioners is a fasid marriage, and the law in Indonesia also does not recognize polyandry. In addition, the petitioners' statement with legal ignorance regarding divorce that must be carried out in court is not included as a reason where the marriage of petitioner II

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<sup>20</sup> Dahlan Abdul Aziz, "Ensiklopedi Hukum Islam," *Jakarta: Ihtiar Baru Van Hoeve*, 1996.

with her previous husband in 2009, then decided to divorce underhand, this has a long period of time, which ultimately resulted in a legal divorce in court in 2021. Therefore, the author's opinion is inappropriate regarding the status of the petitioners' children.

### **The Legal Position of Children Born from Fasid Marriage in the Perspective of Decision Number 7/Pdt.P/2022/PA.Talu**

The legal status of children born of a void marriage is a central issue because the law has not yet provided clear guidelines on this matter. Law No. 1 of 1974 on Marriage sets forth the grounds for annulment of a marriage and the rights of children in the context of a valid marriage, but does not specifically address children born of a void marriage. From a fiqh perspective, the principles of *maslahah al-mursalah* and the protection of a child's lineage affirm that a child retains equal legal and social rights, even if the parents' marriage is not formally valid.

The Talu Religious Court's decision demonstrates that judges may refer to classical fiqh and contemporary doctrine to determine a child's status.<sup>21</sup> The Chief Justice and Member Judge II cited classical texts, which state that lawful sexual relations within a fasid marriage produce legal consequences equivalent to those of a valid marriage.<sup>22</sup> This analysis reinforces the argument that children should not be harmed as a result of their parents' failure to comply with formal procedures, while also safeguarding social stability and children's rights within society.

Many cases have shown that out-of-court divorces can result in a void marriage if they do not follow proper procedures, leaving children born during that period in an ambiguous legal position.<sup>23</sup> Therefore, judicial practice and fiqh must complement one another: formal law provides administrative certainty, while Islamic law ensures the protection of lineage and children's rights

The articles in the Marriage Law, the Compilation of Islamic Law, and the Civil Code, detailed above, address the status of children. Article 28, paragraph 2 of Law Number 1 of 1974 concerning Marriage, explains that a court decision regarding the annulment of a marriage does not apply retroactively to the status of children born of the marriage. Therefore, in the case of the determination of the child's parentage petition at the Talu Religious Court, case No. 7/Pdt.P/2022/PA. Talu, the applicants were married, and the marriage contained an element of intent. This was because the applicants were aware of their relationship or marital status with their previous partners before their marriage. Therefore, the applicants' marriage also

<sup>21</sup> Muhamad Isna Wahyudi, "Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage," *Al-Jami'ah: Journal of Islamic Studies* 55, no. 1 (2017): 127–54, <https://doi.org/10.14421/ajis.2017.551.127-154>.

<sup>22</sup> Decision Number: 7/Pdt.P/2022/PA.Talu.

<sup>23</sup> Parizal Parizal et al., "Telaah Hukum Islam Mengenai Pertimbangan Hakim Dalam Menetapkan Status Anak Akibat Pernikahan Yang Fasid Pada Putusan Nomor:83/PDT.P/2022/PA.KPH" (undergraduate, Institut Agama Islam Negeri Curup, 2023), <https://e-theses.iaincurup.ac.id/2646/>.

constitutes a fasid marriage, meaning it is invalid due to the failure to fulfill the requirements and pillars of marriage itself.

Wahbah Al-Zuhaili explains that both valid and invalid marriages can be the basis for determining lineage in a case.<sup>24</sup> Therefore, even if a marriage is invalid or carried out according to custom with a certain (traditional) contract without being registered in an official marriage certificate, if the marriage is proven to have occurred, then the lineage of the child born to the woman can be determined as the child of the husband and wife. This is because sexual intercourse in a void marriage has the same legal consequences as sexual intercourse in a valid marriage, and the legal consequences of all void contracts are the same as those of valid contracts with regard to whether or not there is an obligation to provide compensation.

The law of a non-permanent marriage is equivalent to a legitimate marriage. If a child is born as a result of a non-permanent marriage, the child can be considered legitimate if the husband and wife have consummated or fulfilled the following conditions:<sup>25</sup>

- a. The husband has the ability to conceive, which is puberty according to the Maliki and Shafi'i schools of thought, and puberty and mushrif according to the Hanafi and Hanbali schools of thought.
- b. Sexual intercourse actually occurs and is practiced by the couple.
- c. The child is born within six months or more of the non-permanent marriage contract.

Scholars agree that the lineage of a child with doubtful parents is considered equivalent to the lineage of a legitimate child.<sup>26</sup> This is because a child with doubtful parents is a child born from a doubtful marriage, where a doubtful marriage is understood as a biological relationship between a man and a woman outside of a marriage contract, whether a legal or non-permanent marriage.<sup>27</sup> However, such a relationship cannot be considered adultery, which is prohibited by sharia, because its legal status is unclear. Based on the explanation above, invalid marriages are only regulated in Islamic jurisprudence. However, the Marriage Law and the Civil Code do not clearly and specifically regulate invalid marriages. In reality, invalid marriages are important to regulate in legislation because they are the cause of the marriage becoming defective, damaged, or invalid, and ultimately impact the status of

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<sup>24</sup> Luqman Abdulhakim et al., "Komparasi Fatwa Wahbah Zuhaili Dan Muhammad Zuhaili Tentang Perkawinan Misyār," *As-Syar i: Jurnal Bimbingan & Konseling Keluarga* 7, no. 1 (2025): 185–93, <https://doi.org/10.47467/as.v7i1.6121>.

<sup>25</sup> Neli Fatmasari and Syifa'ul Umam, "Batas Minimal Usia Perkawinan Menurut Empat Imam Madzhab," *AL MUNAZHZHARAH* 2, no. 2 (2018): 78–85.

<sup>26</sup> Fitriyadi Fitriyadi et al., "Redefining Legal Frameworks: Progressive Methods in Ascertaining Children's Lineage from Fasid Marriages in Religious Court Proceedings," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 148–71, <https://doi.org/10.18592/sjhp.v24i1.12894>.

<sup>27</sup> Parizal et al., "Telaah Hukum Islam Mengenai Pertimbangan Hakim Dalam Menetapkan Status Anak Akibat Pernikahan Yang Fasid Pada Putusan Nomor."

children.<sup>28</sup> Therefore, the status of children in invalid marriages is also not regulated in the Marriage Law, and in reality, many people still apply for child status resulting from invalid marriages.

Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage provide detailed regulations regarding the validity of marriage, stipulating that the validity of a marriage must fulfill the requirements set forth in both paragraphs in order to be fully recognized. Therefore, a marriage must not only be valid according to religious law but must also possess administrative validity and full legal protection before the state.

Meanwhile, Islamic law (fiqh) also regulates marriage and the lineage of children. The principles of Islamic law serve as guidelines and a legal basis for judges in adjudicating cases concerning the status of children born from invalid marriages. This is similar to the case concerning the determination of the application for the origin of a child, Number 7/Pdt.P/2022/PA.Talu, in which the Chief Justice and Second Member Judge relied more heavily on Islamic law as a source of law in rendering their decision. Therefore, the status of the child in Court Decision Number 7/Pdt.P/2022/PA.Talu, who was born from an invalid marriage, was considered equivalent to that of a child born from a valid marriage. Accordingly, the application for the determination of the child's origin submitted by the applicants was granted, and the child was declared to be the legitimate child of the applicants.

## Conclusion

This study demonstrates that the judicial disagreement in Decision No. 7/Pdt.P/2022/PA.Talu arose from competing legal constructions of marital validity, *firāsh*, and *nasab*, rather than from a simple disagreement over whether a child born from a *fasid* marriage should receive legal protection. The majority of the panel accepted the application concerning the child's status, while the dissenting judge emphasised that Applicant II remained legally bound to her previous husband and that the pre-existing marital relationship continued to have consequences for the attribution of lineage. The case therefore reveals that the central legal issue lies in determining which normative basis should govern a child's lineage when a subsequent *fasid* marriage overlaps with an earlier legally subsisting marriage.

The analysis further shows that Indonesian positive law and Islamic jurisprudence do not necessarily attach the same legal consequences to the invalidity of a marriage and to the status of a child born from that relationship. Indonesian marriage law provides important protections, particularly through the principle that the annulment of a marriage does not retroactively affect children born from that marriage, while Islamic jurisprudence recognises that a *fasid* marriage may, under

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<sup>28</sup> Ivo Junia Imako Haris, "Childrens Position on a Defective Marriage (Fasid) in Terms Establishment of Inheritance Right as an Effort for Legal Certainty," *Sociological Jurisprudence Journal* 7, no. 1 (February 2024): 40–44, <https://doi.org/10.22225/scj.7.1.2024.40-44>.

certain conditions, still produce legal consequences for *nasab*. However, these principles do not by themselves resolve cases involving competing lineage claims arising from overlapping marital relationships. The existing legal framework therefore requires a more coherent doctrinal approach capable of distinguishing the legal consequences imposed on the parents' defective marriage from the independent determination of the child's lineage.

The principal contribution of this study lies in that distinction. Rather than treating the invalidity of a later marriage as automatically establishing or extinguishing paternal lineage, the determination of *nasab* should be undertaken through a separate juridical assessment that considers the status of the prior marriage, the operation of *firāsh*, relevant principles of Islamic jurisprudence, applicable statutory rules, and the legal interests of the child. Such an approach would reduce inconsistency in judicial reasoning and provide greater legal certainty in cases where marital invalidity and lineage attribution intersect. Accordingly, the protection of children born from *fasid* marriages should not be understood merely as an extension of the legal status of their parents' marriage, but as an independent question of lineage and civil rights requiring its own coherent legal reasoning.

### Declaration of AI Tool Usage

During the preparation of this manuscript, the authors used Chat GPT and Grammarly to assist with language editing, grammar correction, and readability improvement. All AI-generated content was critically assessed and substantially edited to ensure factual accuracy, clarity, and academic integrity. The authors take full responsibility for the final content of this manuscript.

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