

Inheritance Rights of Children Born Out of Wedlock and Children from Unregistered Marriages: Juridical Problems and the Maqashid Shariah Approach

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Abstract

ABSTRACT

This article examines the inheritance rights of children born outside of marriage and children from unregistered (siri) marriages in the context of Islamic inheritance law and contemporary Indonesian legal developments. Using a normative-juridical approach with a maqashid shariah perspective, this study analyzes the implications of the Constitutional Court Decision No. 46/PUU-VIII/2010, which legally recognizes civil relations between biological children and their fathers under certain conditions. The article finds a legal tension between classical Islamic inheritance principles—which generally exclude such children from inheritance—and the modern legal needs to protect children's rights regardless of their birth status. The study proposes a contextual reinterpretation of Islamic law that aligns with the objectives of maqashid shariah, particularly the protection of lineage (hifz al-nasl) and justice ('adl). These findings contribute to the ongoing discourse on reforming Islamic family law to respond to the social realities of contemporary Muslim communities in Indonesia.

Keywords: *Inheritance Law, Out-of-Wedlock Child, Maqashid Shariah*

Abstrak

Artikel ini mengkaji hak waris anak luar kawin dan anak dari perkawinan siri dalam konteks hukum waris Islam dan perkembangan hukum positif di Indonesia. Dengan pendekatan yuridis-normatif berbasis maqashid syariah, penelitian ini menganalisis implikasi Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 yang mengakui hubungan perdata antara anak biologis dan ayahnya dalam kondisi tertentu. Ditemukan adanya ketegangan antara prinsip hukum waris Islam klasik—yang umumnya tidak mengakui hak waris bagi anak luar kawin—dan kebutuhan hukum modern untuk melindungi hak anak tanpa diskriminasi status kelahiran. Studi ini menawarkan reinterpretasi kontekstual terhadap hukum Islam agar selaras dengan tujuan maqashid syariah, khususnya perlindungan nasab (hifz al-nasl) dan keadilan ('adl). Temuan ini berkontribusi terhadap wacana pembaruan hukum keluarga Islam agar lebih responsif terhadap realitas sosial masyarakat Muslim kontemporer di Indonesia.

Kata Kunci: Hukum Waris, Anak Luar Kawin, Maqashid Syariah

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INTRODUCTION

The phenomenon of illegitimate children and unregistered marriages continues to present complex challenges within the domain of Islamic family law in Indonesia. In a society that remains deeply rooted in religious and cultural values, the legal status of children born out of wedlock often becomes

a source of discrimination, particularly concerning their civil rights, such as inheritance. Unregistered (siri) marriages, which are not officially recorded, further complicate legal matters, as the absence of administrative documentation makes it difficult to establish formal legal relationships between husband, wife, and child. This lack of clarity often leads to legal disputes, especially in matters of inheritance.¹

In classical Islamic legal terminology, a child born out of wedlock (walad zina) is not recognized as having a paternal lineage (nasab) with the biological father. Consequently, such a child is traditionally excluded from inheritance rights from the father. This position is upheld by the majority of Sunni scholars, including Imam Shafi'i, who maintain that a child born outside of marriage is only affiliated with the mother. However, with the advancement of science and technology, alongside growing awareness of human rights, this classical view is increasingly being re-evaluated, particularly within the framework of legal protection for vulnerable children.²

From a legal standpoint, Article 43 paragraph (1) of Law Number 1 of 1974 on Marriage previously stated that a child born out of wedlock only has civil relations with the mother and her family. This provision was later challenged through a judicial review to the Constitutional Court (Mahkamah Konstitusi), resulting in Decision No. 46/PUU-VIII/2010. The Court ruled that a child born outside of marriage has a civil relationship with the biological father, provided there is scientific and legal proof, such as DNA testing. This landmark decision expanded the scope of civil protection for children born out of wedlock.³

¹ Rakha Muyassar Y. KONSTRUKSI PUTUSAN HAKIM PENGADILAN AGAMA DALAM PERKARA HARTA BERSAMA PERSPEKTIF HUKUM ISLAM DAN PROGRESIFITAS HUKUM [Internet]. Available from: <http://pustakapedia.com>

² Muyassar YR. Judi Online dalam Bingkai Maqashidu Syari'ah. *Jurnal Cita Hukum*. 2023;2(4):23–40.

³ Astono A, Muyassar R. PENERAPAN JARINGAN SENSOR UNTUK MEMINIMALISIR KRIMINALITAS DI KABUPATEN KUBU RAYA: PERSPEKTIF HUKUM PIDANA.

The Constitutional Court's decision marked a pivotal moment in the recognition of children's rights, especially regarding lineage and inheritance claims. Nevertheless, the application of this ruling remains inconsistent in practice. Many religious court judges and family members still adhere to traditional fiqh doctrines when resolving inheritance disputes, disregarding the progressive legal recognition introduced by the Constitutional Court. This reveals a persistent tension between classical Islamic legal doctrine and the evolving demands of modern civil law.⁴

A high-profile case that brought this issue to national attention was that of Machica Mochtar in 2011. Machica, a public figure, sought legal recognition of her child's rights from an unregistered marriage with the late Moerdiono, a former State Secretary. Despite biological and social acknowledgment of the child, Moerdiono's family refused to recognize the child's status and denied inheritance rights. This case highlighted the systemic legal barriers that prevent children from unregistered or non-legally recognized relationships from claiming their rightful inheritance, even when biological ties are evident.⁵

From the perspective of maqashid syariah, or the higher objectives of Islamic law, the protection of lineage (nasl) and wealth (mal) are central principles. The denial of inheritance rights solely based on birth status contradicts the spirit of maqashid, which prioritizes justice and the welfare of individuals. A contextual reading of classical Islamic texts is therefore necessary to prevent structural injustice and to align Islamic legal interpretations with the ethical objectives of the Sharia.⁶

⁴ Muyassar YR, Arabiyah S. Itsbat Marriage: Urgency, Problems, and Practices, To Reach Law-Aware Villages in Kubu Raya, West Kalimantan. *Jurnal Analisis Hukum* [Internet]. 2022 [cited 2022 Dec 26];5:253–63. Available from: <https://journal.undiknas.ac.id/index.php/JAH/article/view/3919/1183>

⁵ Rais I, Muyassar YR. The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development. *Jurnal Cita Hukum*. 2022 Aug 25;10(2):205–22.

⁶ Satria R, Muyassar YR. *Environmental Jurisprudence and Its Implications for Mining Practices in Ngabang, West Kalimantan*. Atlantis Press. 2023;

Several studies have attempted to bridge this gap. For instance, Zaitunah Subhan (2016) proposed the need for contemporary *ijtihad* to revisit the status of illegitimate children through the lens of gender justice and child rights. Similarly, Nurul Huda (2021) emphasized the need for legal protection of children born out of wedlock through both legislative reform and public education to combat stigma. Despite these efforts, few studies have offered an integrative approach that examines inheritance rights from both the *maqashid syariah* framework and the legal effects of the Constitutional Court ruling.⁷

The research gap lies in the limited discourse that combines *maqashid syariah* with inheritance law and the post-decision legal landscape shaped by the Constitutional Court. Much of the existing literature remains normatively descriptive or is confined to formal legal analysis without engaging with the philosophical and sociological dimensions of Islamic law. In fact, *maqashid syariah* has the potential to offer a progressive legal interpretation that bridges the gap between traditional doctrine and contemporary legal realities.⁸

This issue becomes increasingly urgent in light of the rising number of unregistered marriages and children born out of wedlock over the past decade. According to data from the Ministry of Religious Affairs, the number of unregistered marriages remains high, particularly in rural areas but also in urban communities with relatively higher levels of education. This leads to many children being denied legal documentation such as birth certificates, which in turn restricts their access to civil rights, including inheritance,

⁷ Astono A, Muyassar YR, Wagner I. Perempuan Dayak dalam Peran Menjaga Lingkungan Hidup Perspektif Ekofeminisme terhadap Hukum Lingkungan di Kalimantan Barat (Studi Kasus: Kecamatan Sengah Temila, Kabupaten Landak). *Arus Jurnal: Jurnal Sosial dan Humaniora* [Internet]. 2024;4(1). Available from: <http://jurnal.ardenjaya.com/index.php/ajsh><http://jurnal.ardenjaya.com/index.php/ajsh>

⁸ Penulis Ya' I, Muyassar R, Mastiurlani AP, Dawi K. Implementasi Islam Washatiyyah dalam Pendidikan Karakter untuk Memperkokoh Nilai-Nilai Kebangsaan di Era Digital. 2024;4(1). Available from: <http://almufi.com/index.php/AJPKM>

education, and public services. Such conditions cannot be left unaddressed without a comprehensive legal solution.⁹

Based on the above context, this article aims to analyze the inheritance rights of illegitimate children and children from unregistered marriages in the framework of Islamic and national law by employing the maqashid syariah approach. It seeks to formulate a normative and argumentative foundation that ensures fair legal protection for children without disregarding the fundamental principles of Islamic law.¹⁰



A. METHODS

This study employs a normative juridical method, focusing on legal norms and principles derived from both statutory regulations and Islamic legal doctrines. The research adopts a conceptual and philosophical approach to analyze the legal status and inheritance rights of illegitimate children and children from unregistered (siri) marriages in the Indonesian context. The analysis is conducted through the lens of maqashid syariah, aiming to provide

⁹ Muyassar YR, Purwanto P, Satria R, Yuliastini A, Hazdan MF. Environmental Jurisprudence and Its Implications for Mining Practices in Ngabang, West Kalimantan. In 2023. p. 1528–34.

¹⁰ Arabiyah S, Hazdan F, Yus T, Pratiwilayan R, Astono A, Kom J, et al. Penyuluhan Hukum: Perlindungan Anak dari Pernikahan Dini, Perceraian, dan Stunting. Vol. 5, Jurnal Pengabdian Aceh. 2025.

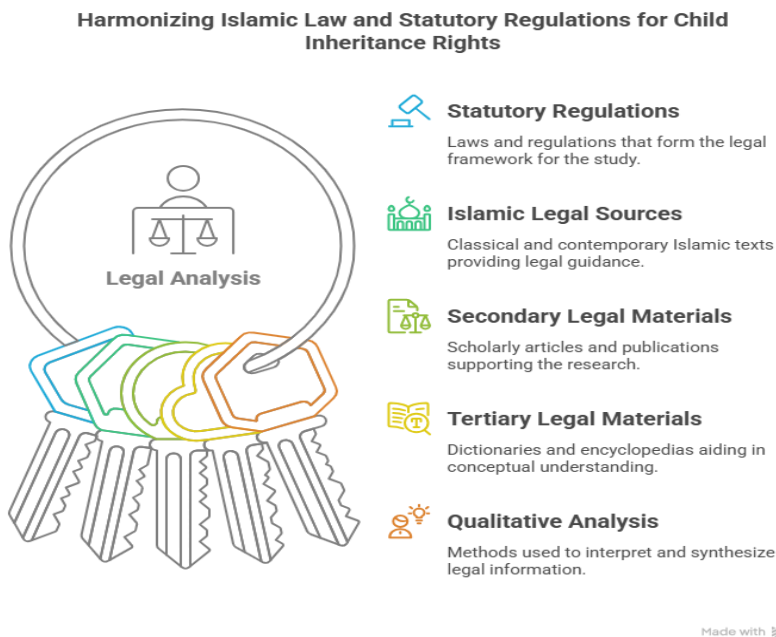
a substantial and just legal interpretation in line with the objectives of Islamic law.

The primary legal materials used in this study consist of statutory regulations such as Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and the Constitutional Court Decision No. 46/PUU-VIII/2010. These are supplemented by classical and contemporary Islamic legal sources, including fiqh books, fatwas, and the writings of prominent scholars on Islamic family law and inheritance.

Secondary legal materials include scholarly journal articles, dissertations, books, legal commentaries, and other publications relevant to the topic. Tertiary materials such as legal dictionaries, encyclopedias, and official documents are also utilized to support the conceptual framework of the analysis. Legal material collection techniques involve a document-based literature study, focusing on qualitative analysis. Data collection is conducted through the identification, classification, and synthesis of relevant legal sources and precedents, including case law and legal interpretations from both civil courts and religious courts in Indonesia.

The analysis of legal materials is conducted using a qualitative descriptive method, with a focus on normative interpretation and contextual reasoning. Hermeneutic and deductive approaches are applied to interpret Islamic legal texts and national laws, considering the ethical framework of maqashid syariah, especially the objectives of protecting lineage (hifz al-nasl) and property (hifz al-mal).

This methodological approach is intended to construct a normative argument that reconciles the tensions between classical Islamic jurisprudence and contemporary legal demands, especially in providing justice and legal certainty for children who are often marginalized in inheritance disputes due to their birth status.



B. RESULT AND DISCUSSION

The Results and Discussion section of this study explores the evolving legal recognition of inheritance rights for children born out of wedlock and those from unregistered (*siri*) marriages in Indonesia. This issue is particularly significant in the context of Indonesia's pluralistic legal system, which accommodates positive (state) law, Islamic law, and customary law (*hukum adat*). At the center of this legal discourse is the landmark case of *Machica Mochtar v. Mahkamah Agung*, which challenged conventional interpretations of child legitimacy and inheritance.¹¹

In the *Machica Mochtar* case, the claimant sought legal acknowledgment of a child born from a non-registered marriage to a prominent public figure. The case brought into question the traditional reading of Article 43(1) of Law No. 1 of 1974 on Marriage, which previously denied civil relations between children and their biological fathers unless the

¹¹ Tambi MF. *Studi Komparasi Pembagian Warisan Menurut Hukum Islam dan Hukum Adat*. Lex Privatum. 2018 Sep;(VI).

marriage was legally registered. The Constitutional Court's decision marked a pivotal moment by declaring that such children could indeed establish a civil relationship with their biological fathers if paternity was proven, thus opening the path to inheritance and other civil rights.¹²

Legal instruments for child protection in Indonesia



Photo with by Nuzul

This ruling reflects a harmonization between positive law and constitutional mandates. Article 28B(2) of the 1945 Constitution guarantees children's rights to protection and non-discrimination. Interpreting the Marriage Law in light of these

constitutional values, the Court shifted towards a child-centered approach. Moreover, the decision aligns with international human rights standards that Indonesia has ratified, including the Convention on the Rights of the Child.¹³

From an Islamic perspective, the concept of lineage (*nasab*) is central to determining inheritance rights. Traditionally, Islamic law restricts these rights to children born within a valid marriage. However, contemporary interpretations rooted in *Maqashid Shariah*—the objectives of Islamic law—offer a more flexible and justice-oriented view. The principle of *hifz al-nasl* (protection of lineage) must be balanced with *hifz al-'ird* (protection of dignity) and *hifz al-nafs* (protection of life), emphasizing the child's welfare. Scholars argue that if paternity can be proven biologically, denying the child's rights contradicts the very ethical foundations of Islamic law.¹⁴

¹² Amina S, Tinggi S, Islam A, Ulum B, Indonesia L. Nusantara Journal of Islamic Studies HUKUM KEWARISAN ISLAM (Studi Pelaksanaan Kewarisan di Desa Wotgalih Kecamatan Yosowilangun Kabupaten Lumajang). 2021;2(2). Available from: <http://ejournal.kopertais4.or.id/tapalkuda/index.php/NJIS/index>

¹³ Akhiruddin Siregar P, Pertiwi Viranda E, Mayang Kencana Sirait N, Muhammadiyah Sumatera Utara U, Panca Budi Perdagangan S. PEMAHAMAN MASYARAKAT MUSLIM DESA MANGKAI BARU TENTANG HUKUM PEMBAGIAN KEWARISAN. Vol. 07. 2022.

¹⁴ Tidak D, Warisan M, Hukum M, Islam W, Sullivan J. KAJIAN HUKUM SEBAB-SEBAB MENDAPAT. Vol. VII. 2019.

Customary law, on the other hand, exhibits a more pragmatic approach. Many indigenous communities, such as the Minangkabau or Dayak, acknowledge the status and rights of children from informal unions. These communities value social fatherhood and kinship, offering the child a place in inheritance and familial identity regardless of legal documentation. This demonstrates the local wisdom and adaptive capacity of adat systems in responding to social realities.¹⁵

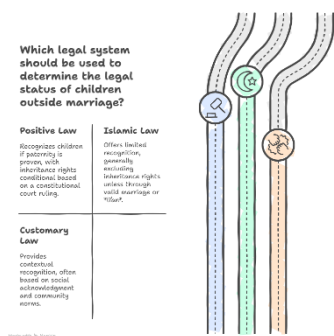
The Machica Mochtar decision thus stands as a bridge connecting these three legal streams. The Court's reasoning incorporated constitutional principles, Islamic ethics through Maqashid Shariah, and the sociological reality reflected in customary practices. This interdisciplinary legal reasoning enables a more inclusive legal framework that prioritizes justice over formalism.¹⁶

However, challenges remain. The implementation of the ruling is uneven across jurisdictions. Religious courts, which handle most family law cases in Indonesia, may hesitate to apply the decision uniformly, especially where conservative interpretations prevail. This leads to inconsistencies in judgments and potential denial of rights to children in similar circumstances. Moreover, the lack of procedural guidelines for verifying paternity and distributing inheritance in siri cases adds to the complexity.¹⁷

¹⁵ Pangaribuan M, Yohana R, Hutasoit A, Sinaga E, Hadiningrum S, Pancasila P, et al. Indonesian Journal of Multidisciplinary Scientific Studies (IJOMSS) Hukum Kewarisan Islam Dalam Sistem Kedudukan Dan Pembagian Wasiat [Internet]. Available from: <https://ojs.staira.ac.id/index.php/IJOMSS/index>

¹⁶ Ristiah K, Rahmawati N, Adawiyah R, Astuti W, Pancasila P, Kewargenaraan D, et al. Hak Waris Dan Kedudukan Hukum Anak Diluar Nikah Dalam Hukum Perdata. Vol. 1, Jurnal Mahasiswa Karakter Bangsa.

¹⁷ Harsya MI. HAK WARIS ANAK LUAR KAWIN DALAM SISTEM KEKERABATAN ADAT LAMPUNG PERSPEKTIF 'URF. Al Maqashidi. 2022;



A critical point of discussion is how legal institutions interpret and reconcile conflicting norms. Positive law may embrace constitutional mandates, but religious adjudicators often remain bound by classical interpretations unless actively trained in progressive jurisprudence. Therefore, judicial

training on the use of Maqashid Shariah and legal harmonization is crucial to promote consistent and equitable decisions. ¹⁸

The significance of this legal evolution is further illustrated by the increasing role of fatwas from progressive Islamic organizations. Institutions like Muhammadiyah and Nahdlatul Ulama have issued positions recognizing the need to uphold children's rights beyond rigid legal constructs. These fatwas provide theological legitimacy to court decisions like Machica Mochtar, facilitating broader societal acceptance.¹⁹

At the same time, policy reform is necessary. Lawmakers should consider amending relevant family laws to clearly reflect the Constitutional Court's position. The addition of procedural clarity and support systems-such as child-friendly courts and public legal education-would help bridge the gap between judicial theory and everyday practice.²⁰

Furthermore, local customary institutions should be integrated into the legal protection framework. Many communities already practice inclusive kinship systems. Recognizing and formalizing such practices through legal

¹⁸ Hidayatullah S. AKTUALISASI KEWARISAN PADA NIKAH DI BAWAH TANGAN PERSEKTIF HUKUM DI INDONESIA [Internet]. Available from: <http://ejournal.billfath.ac.id/index.php/projustice/article/view/57>

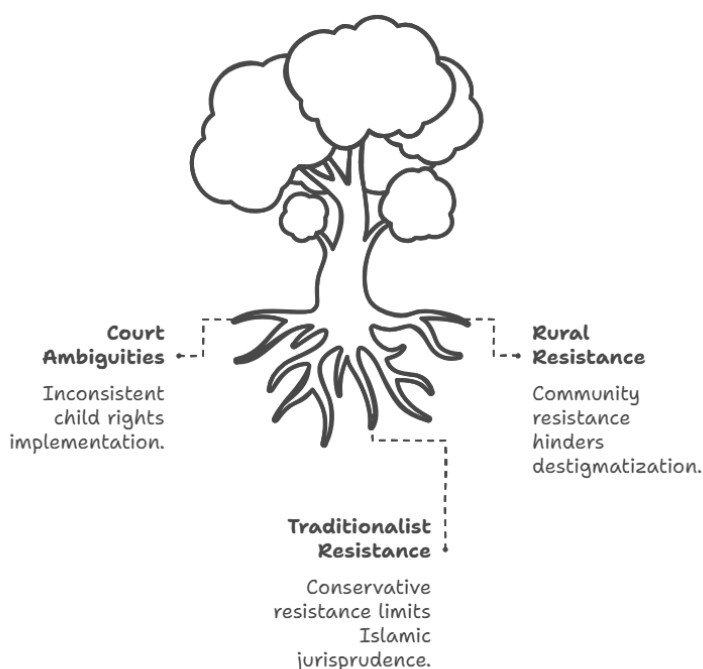
¹⁹ Bukhori I, Rizal M, Ainiyah Qurrotul. Kedudukan dan Proses Penetapan Ahli Waris Anak Luar Nikah Pasca Putusan MK No. 46/PUU-VIII/2010 di Pengadilan Agama Jember. *Mabahits: Jurnal Hukum Keluarga*. 2023 Apr;(2).

²⁰ Ainiyah Q, Marwiyah S, Sa'adah SL. Pembagian Waris Etnis Madura terhadap Anak Luar Nikah di Dusun Kebonan Kecamatan Yosowilangun Kabupaten Lumajang. *Al-Ihkam: Jurnal Hukum & Pranata Sosial*. 2017 Jan 2;11(2):335.

pluralism could serve as a model for culturally sensitive and context-aware family law reform.²¹

Tables presented in this study compare the recognition of children born outside marriage across the three legal domains, summarize the legal provisions referenced in the Machica Mochtar decision, and map out its social and legal impacts. These visual aids help clarify the alignment and contradictions among the legal systems, reinforcing the need for doctrinal and institutional reform.²²

Inconsistent Child Rights Recognition



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In conclusion, the Machica Mochtar ruling represents a progressive step toward legal justice in Indonesia. It exemplifies the judiciary's potential to

²¹ Azhari AF, Yani JA, Kartasura P. Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi.

²² Sarip S, Fitriana D, Azhari AF, Absori A, Dewi EK, Adiantika HN, et al. POLICY AND LINGUISTIC CONSIDERATIONS IN THE PROPOSED RENAMING OF WEST JAVA PROVINCE TO TATAR SUNDA. Cepalo. 2024 Jun 10;8(1):31–48.

uphold constitutional values, reinterpret religious law with compassion, and acknowledge the realities of social life. The comparative analysis of positive law, Islamic law, and customary law in this study highlights the possibility of harmonization, offering hope for a legal system that is not only legally coherent but also ethically responsive and socially inclusive.²³

C. CONCLUSION

The conclusion of this study presents the key findings and addresses the main issues explored in the article. It is a synthesis of the research findings and provides answers to the problems outlined at the beginning of the study. The conclusions are drawn in alignment with the objectives of the research and directly correspond to the legal issues discussed throughout the paper.

Based on the analysis of the Machica Mochtar case and the examination of the intersection between positive law, Islamic law, and customary law in Indonesia, it can be concluded that the legal system in Indonesia is gradually evolving to accommodate the inheritance rights of children born out of wedlock and from unregistered marriages. The Constitutional Court's ruling in the Machica Mochtar case marks a significant shift in recognizing the civil rights of children, regardless of the formality of their parents' marriage. This decision harmonizes constitutional mandates with Islamic legal principles grounded in Maqashid Shariah, as well as customary practices that prioritize social kinship over formal legal recognition.

However, challenges remain in the consistent application of the ruling across all regions of Indonesia, particularly in areas where traditional or conservative interpretations of family law dominate. The varying interpretations of Islamic law by religious courts and the lack of clear procedural guidelines for implementing such rulings hinder the full realization of these legal reforms. Additionally, local customary laws, although progressive in some communities, have not been fully integrated into the

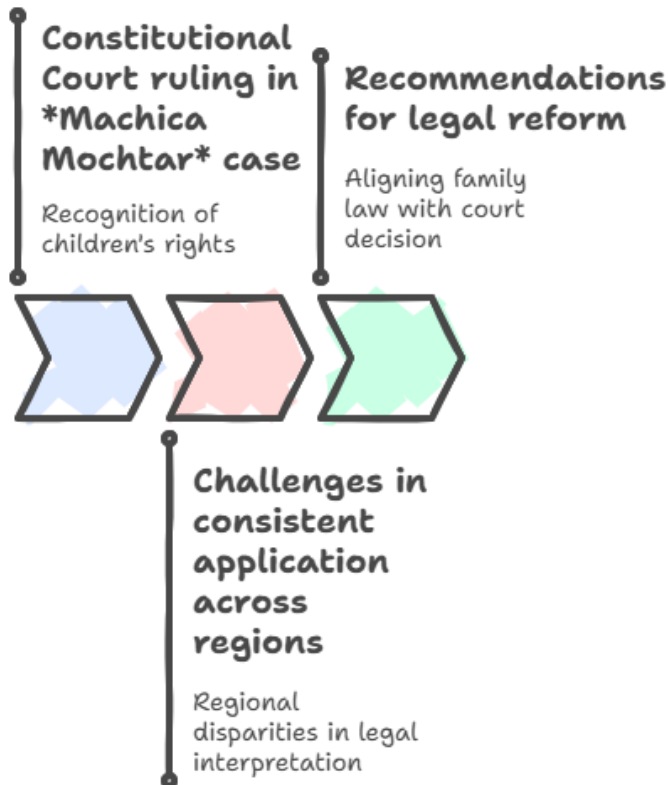
²³ Rakha Muyassar Y. KONSTRUKSI PUTUSAN HAKIM PENGADILAN AGAMA DALAM PERKARA HARTA BERSAMA PERSPEKTIF HUKUM ISLAM DAN PROGRESIFITAS HUKUM. Available from: <http://pustakapedia.com>

formal legal system, limiting their potential to offer a comprehensive legal solution.

In light of these findings, it is recommended that lawmakers consider amending family law provisions to align more clearly with the Constitutional Court's decision. Judicial training on progressive Islamic jurisprudence, particularly in the application of Maqashid Shariah, should be prioritized to ensure that judges and legal practitioners can interpret family law in a manner that is both consistent and just. Furthermore, the formal recognition of local customary laws within the national legal framework should be encouraged to ensure that the legal rights of all children, regardless of the form of their parents' marriage, are protected.

In conclusion, while significant progress has been made in acknowledging the rights of children born outside formal marriages, continued efforts are necessary to fully integrate these principles into Indonesia's legal system. By doing so, Indonesia can ensure that its legal framework is not only just and inclusive but also reflective of the diverse socio-cultural realities within the country.

Evolution of Inheritance Rights in Indonesia



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