

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

The Existence of Child Recognition and Attestation Institutions in The Perspective of Maqashid Shari'ah Theory

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Abstract. *A valid marriage will give birth to a legitimate child, meaning that the interests of the child will be legally protected. But the reality is that not a few children are born outside of legal marriage. This, of course, will have legal consequences for the status and rights of children. Basically, every child must get legal protection, including children born out of wedlock. This is because children's rights are protected by the state as stipulated in Article 28B paragraph (2) of the 1945 Constitution, which means that the provisions of the 1945 Constitution give birth to a constitutional norm that children also have the right to their legal status. To protect the rights of these children, there is known to be a child recognition and attestation institution. The Civil Code regulates the institution of recognition and legalization of children, while in national law the institution of recognition and endorsement of children is regulated in Article 49 and Article 50 of Law No. 24 of 2013 concerning Population Administration. This institution of recognition and attestation of children is very important because with the recognition and endorsement of children, it will be clear the fate of children. In the perspective of Islamic law the purity of nasab is very important, because it is closely related to the family structure, both in the law of marriage, inheritance and other civil rights. Keeping this offspring belongs to one of the maqashid of sharia. The purpose of this study is to determine the provisions for recognition and endorsement of children, as well as the relevance of sharia maqashid theory in child recognition and attestation institutions. The research method uses the object of research on the existence of child recognition and attestation institutions in the perspective of maqashid sharia, normative juridical approach, the type of data used in this study is secondary data in the form of primary legal material, secundair legal material, tertiary legal material. The data is obtained by conducting a literature review, while the data analysis method is*

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analyzed in a qualitative descriptive manner. The results showed that this provision of recognition and attestation of children is known in the Western legal system regulated in the Civil Code. This recognition and legalization of children applies to children born out of wedlock except adulterous children and discordant children. With this recognition and ratification can change the position of the child into a legitimate child, which will have legal consequences, namely the emergence of civil rights and other rights for children. As for Islamic law, there is no known institution of recognition and legalization of children as the Civil Code. Islamic law recognizes an institution of recognition of children known as istilhaq whose concept is different from the Civil Code. Meanwhile, in the national legal system, it is known that the institution of recognition and legalization of children is regulated in Article 49 and Article 50 of Law No. 24 of 2013 concerning Population Administration which is limited to children born as a result of legal marriages but whose marriages are not recorded. The relevance of the maqashid theory of sharia to the institution of recognition and legalization of children remains based on children born as a result of legal marriage. Maqashid shari'ah to protect offspring or nasab is essential in the life of the human child.

Keywords: Child Endorsement; Existence; Maqashid Shari'ah; Recognition.

1. Introduction

Children are gifts as well as commissions from Allah SWT, which must always be maintained because in him attached dignity, dignity, and rights as human beings that must be upheld. For parents, children are invaluable assets and gifts of God, and in terms of national and state life, children are the future of the nation and the next generation of national ideals. This right of children is protected by the state as stipulated in Article 28B paragraph (2) of the 1945 Constitution, which reads: "Every child has the right to survival, growth, and development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms". Furthermore, this child's rights are described in Law Number 13 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in Articles 5 to 18.

Thus, every child must get legal protection, including children born out of wedlock, namely by way of recognition of children. It's just that the slightly ambiguous understanding of extramarital children turns out to be diverse, some interpret extramarital children as children born to parents who are not bound by legal marriage ropes, some interpret children born to

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parents who carry out legal marriages according to religious law, but are not registered in the state.

It should be understood that marriage registration is not a factor that determines the validity of marriage, registration is an administrative obligation based on laws and regulations (Article 2 paragraph (2) of the Marriage Law). The factors that determine the validity of marriage are the harmony and conditions determined by the religious law of each prospective bride and groom. The importance of administrative obligations in the form of recording, according to the Constitutional Court there are two perspectives, namely first in the perspective of the state, registration is intended to provide protection, enforcement and fulfillment of human rights, while the second, administrative registration carried out by the state is intended so that future marriages can be proven by a marriage certificate in the form of a marriage book. Thus, a marriage that is valid and recognized by the state is a marriage that is performed under religious law and registered. With this recording deed, proof of marriage will be issued, namely a marriage book. Marriages that meet the requirements of being valid according to religion and registered will protect the wife and children born i.e. provide the right of nasab, the right of bread, the right of guardianship, the right of custody (hadhanah) and the right of inheritance. While children born outside of legal marriage to get the protection and rights of children, through institutions of recognition and attestation.

Talking about the right of nasab related to offspring which in Islamic law is one of the purposes of Islamic law (maqashidshari'ah) for the benefit of yatu by maintaining and maintaining the relationship of nasab, where in the Qur'an Allah has affirmed the importance of maintaining nasab. Nasab is the foundation of kinship in the family, so Islam pays great attention to protecting nasab from anything that causes mixing or insulting the honor of nasab. To safeguard these offspring, Islam requires Shari'a-compliant marriages that will give birth to legitimate children and have their civil rights protected. This study will analyze the institution of recognition and legalization of children in order to protect children's rights associated with the objectives of Islamic law (maqashid shari'ah).

2. Research Methods

Based on the background of the problems mentioned above, this study is focused on child recognition and attestation institutions to pay attention to and provide protection of the best interests of children. The problems to be analyzed in this study are: What are the provisions for regulating the recognition and legalization of children and their legal consequences? What is the relevance of the maqashid theory of sharia in the institution of recognition and attestation of children?

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3. Results and Discussion

3.1. Provisions for Regulating the Recognition and Attestation of Children and Their Legal Effects

Provisions for Regulating the Recognition of Children and Their Legal Effects

Marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One True Godhead. A marriage is said to be valid if it is carried out according to the laws of each religion and belief. Reviewing the two articles that marriage law in Indonesia adheres to religious law. This means that the marriage performed by the parties is based on the provisions of their religion. If both prospective brides are Muslims, then the marriage is carried out according to the provisions of Islam, which is fulfilled by the pillars and conditions determined by Islam. Likewise, if the bride and groom are non-Muslims, such as Christians, then the marriage is carried out according to the provisions of Christianity. This is what is meant by the validity of marriage according to the laws of each religion as stated in Article 2 paragraph (1) of Law No. 1 of 1974. In addition, in order for marriage to be recognized by the state, it must be registered in the KUA for Muslims and the Civil Registration Office for non-Muslims. Thus this marriage is valid according to religious law and recognized by the state. The legal consequences of this legal marriage will provide legal certainty, and legal protection for the husband and wife and children born. The child born from this legal marriage automatically has a sexual relationship with his father and father's family and his mother, the child will get his civil rights. A valid marriage according to the Marriage Law is a marriage that is materially performed according to the laws of each religion and belief, and is formally recorded according to applicable laws and regulations (Article 2 paragraphs (1) and (2) of the Marriage Law).

Children born of legal marriages receive perfect protection with regard to "hifdlunnas" (maintenance of offspring) with all its legal consequences. Children will get their civil rights perfectly, namely the right to nasab, guardianship rights, the right to inherit, the right to provide and education. This right of children is constitutionally guaranteed and protected in the 1945 Constitution, which is stated in Article 28 paragraph (2) of the 1945 Constitution that: "Every child has the right to survival, growth and development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms". This child's right is more detailed regulated in Article 5 to Article 18 of Law Number 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014.

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That every child has the right to a name as self-identity and citizenship status. (Article 5 of Law No. 35 of 2014). Every child has the right to worship according to his religion, think, and express according to his level of intelligence and age, under the guidance of his parents (Article 6 of Law No. 35 of 2014). Every child has the right to know his parents, be raised, and be cared for by his own parents (Article 7 paragraph (1) of Law No. 35 of 2014). In the event that for some reason the parents cannot guarantee the growth and development of the child, or the child is in an abandoned state, then the child has the right to be taken care of or adopted as a foster child or adopted child by another person in accordance with the provisions of the applicable laws and regulations (Article 7 paragraph (2)). Every child has the right to receive health and social security services in accordance with their physical, mental, spiritual, and social needs (Article 8 of Law No. 35 of 2014). Every child has the right to education and instruction in the context of his personal development and level of intelligence in accordance with his interests and talents. (Article 9 paragraph (1) of Law No. 35 of 2014). In addition to children's rights as referred to in paragraph (1), specifically for children with disabilities are also entitled to extraordinary education, while children who have excellence are also entitled to special education (Article 9 paragraph (2)). Thus the state has given such attention to the rights of children that have a purpose for the benefit of children, considering children as the next generation of the nation.

But the reality that exists in society, not all children are born from legal marriages and are registered in the state, which results in children's rights, especially civil rights are not perfect or even do not obtain civil rights. The question is what is the legal protection for children born from illegitimate marriages or so-called extramarital children. To answer this, it is necessary to examine the status of children, namely when viewed from their birth status, there are three types of child status, namely: Children born in or as a result of legal marriage (legal children); Children born out of wedlock; and Children born without marriage (adulterous children).

Children born in or as a result of a valid marriage are referred to as legal children, as stipulated in Article 42 of Law No. 1 of 1974 concerning Marriage. Likewise, the limits on the status of legal children are regulated in Article 99 of the Compilation of Islamic Law, namely: a). Children born in or as a result of legal marriage; b) the result of the legitimate acts of the husband and wife outside the womb and born by the legal wife. With this status as a legitimate child, it has legal consequences that automatically attach to the child civil rights, namely fate, inheritance, parental power or guardianship, livelihood and education.

Meanwhile, the so-called child born out of wedlock is interpreted as a child born from a marriage according to a valid religion, because it has fulfilled the requirements of harmony and the legal requirements of marriage, but it has not been recorded. Examining this

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understanding, it may not be appropriate that a child born from a marriage according to a valid religion, but has not been recorded in the country is called a child outside marriage. This will more or less affect the stigma for children who are referred to as extramarital children, because in reality the marriage of both parents is valid according to religion so that the legal consequences for children born from such marriages are called legitimate children. Marriages that are materially valid, but have not been formally fulfilled, namely registered either at the Office of Religious Affairs (KUA) for Muslims or at the Civil Registry Office for non-Muslims, have the effect that this marriage has no legal force. As a result, as stipulated in Article 43 paragraph (1) of Law No. 1 of 1974 that: "A child born out of wedlock has a civil relationship with his mother and his mother's family". This was considered unfair for children with the status of children outside marriage, until finally the Constitutional Court issued a decision Number 46 / PUU-VIII / 2010 results Judicial Review at the request of a mother who wants to fight for the status of her child, so that Article 43 paragraph (1) must read: "A child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family".

In the event that the marriage has fulfilled the material requirements, but the formal conditions are not carried out, then the solution is given so that the marriage has legal force which will also have an impact on the status of children, namely by conducting marriage itsbat to the religious court (Article 7 paragraph (2) of the Compilation of Islamic Law). As a result of this marriage istbat, the child born has the position of a legal child and can obtain a birth certificate as a legal child and will obtain civil rights.

The recognition of children according to national law is regulated in Article 49 of Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration, which in the explanation of Article 49 paragraph (1) states that: "What is meant by recognition of a child is a father's recognition of his child born from a marriage that has been valid according to religious law and approved by the child's biological mother". From the explanation of Article 49, it can be understood that recognition of children can only be made to children who are valid marriages according to religious law, but the marriage has not been or has not been recorded. Thus, a child born without a marital bond, such as adultery, cohabitation without marital ties (samen leven) cannot be recognized by his biological father.

While what is meant by a child born without marriage or commonly called an adulterous child is a child born due to a biological relationship between a man and a woman without marital ties. Speaking of adultery children in the Western legal system (Civil Code) with Islamic law there is a difference in definition. According to the Civil Code, adultery is a child born as a

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result of a biological relationship between a man and a woman, one or both of whom are still bound in another marriage. According to Islamic law, an adulterous child is a child born of a biological relationship between a man and a woman who are not bound by marriage, even if the child is born in a legal marriage with the man who committed adultery or with another man. The relationship is without distinction whether the perpetrator is a married woman or widow, a married man or a widower. According to Islamic law there are two kinds of terms commonly used for adulterers, namely zina muhsan and zina ghairumuhsan. The meaning of zina muhsan is adultery committed by people who have been or have been married, while zina ghairu muhsan is adultery committed by people who have never been married. Both in Islamic law are forbidden to be practiced. The wise prohibition against adultery begins with the command not to approach adultery, this is found in QS. Al-Isra:23: "And do not approach adultery, indeed adultery is a heinous deed and a bad way".

Examining the definition of the status of the child, according to Article 283 of the Civil Code that children born due to adultery or blood desecration (incest, discord) must not be recognized. Thus, an adulterous child according to the KUHPdt has no juridical relationship with his parents, either his father or mother, but can obtain rights from his mother and his mother's family. An adulterous child can only earn as much as his biological parents can, he cannot claim more than he has earned (Article 867 paragraph (2) of the Civil Code). Children resulting from adultery according to either the KUHPdt or Islam, the position is the same, that is, there can be no recognition or endorsement that aims to change the status of the child and give rise to civil rights.

Based on the status of children, namely there are legitimate children, extramarital children, and adulterous children, then those who need legal attention are extramarital children and adulterous children. Why is that? Because children born from the "guilt" of their masters, basically they are born in a state of purity and do not carry hereditary sin, so that as children have the right to survival, grow and develop and are entitled to protection from harmful actions and children have the right to know their parents and have the right to be cared for by their parents. In this regard and to protect the right to life and civil rights of children, the applicable law in Indonesia is known as the institution of recognition and legalization of children, namely Law Number 1 of 1974 concerning Marriage, Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, and the Civil Code.

In a formal sense, legal recognition of a child is a form of giving information from a man who expresses recognition of his children. While in a material sense, what is meant by recognition of children is a legal act to cause a family relationship between the child and those who

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recognize it. This child recognition institution is intended to provide legal protection against the status of extramarital children. A confession event is a legal action in which a person has accepted his position as the biological father and mother of a recognized child. With this recognition, the family relationship between the party who recognizes and the recognized party will be created as stated in Article 280 of the Civil Code, namely: "With the recognition of an extramarital child, a civil relationship is born between the child and his father or mother". Looking at the sound of the article, it means that the one who can recognize someone as his son can be his father or mother. With this recognition will arise a family relationship with all legal consequences between the child and the parent who recognizes it. Article 281 of the Civil Code specifies that: "Recognition of an extramarital child may be made by an authentic certificate, if it has not been established on the birth certificate or at the time of the execution of the marriage".

The recognition of the child does not require the father to marry the mother who gave birth to him, simply by acknowledging the father with the consent of the child's biological mother, then a legal (civil) relationship arises of an extramarital child with his father. If the biological mother is not married by the father, then the extramarital child is called a recognized extramarital child, and the father has no civil relationship with the biological mother of the child. The legal consequences of the recognition of extramarital children, just as legitimate children are entitled to use the name of their father's descendants. However, if it is not recognized, the extramarital child only uses the name of his mother's descendants. However, this recognition of extramarital children cannot be applied to adulterous children and discordant children, as stipulated in Article 283 of the Civil Code. Although adulterous children according to the Civil Code do not receive juridical protection, they can obtain rights from their mothers and their mothers' families. An adulterous child can only earn as much as his biological parents can, he cannot claim more than he has earned (Article 867 paragraph (2) of the Civil Code). Thus the recognition of extramarital children and their legal consequences according to the concept of the Civil Code, it must be remembered that the Civil Code concept of adultery is a child born as a result of a biological relationship between a man and a woman who one or both are bound by marriage with the other party. It is in such a concept that the child is called adultery and who should not be recognized. Unlike the concept of adultery according to Islamic law, which does not distinguish whether biological relations are carried out by a married man and woman or carried out by single men and women, it is still called adultery and the child born is called adultery.

According to the Civil Code, an extramarital child who does not receive recognition from his biological father and mother is still considered an illegitimate child, and the child only has a

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civil relationship with the mother and the mother's family. A child who is positioned as an illegitimate child, will have adverse juridical consequences for the child himself. The consequences include:

- a). The position of the child born will be considered as an illegitimate child, with the consequence that the child born will only have a civil relationship with the mother and his mother's family and have no legal relationship with his biological father.
- b). Administratively, the child's birth certificate is considered an out-of-wedlock child, so that the certificate only includes the name of the mother who gave birth. This will have an impact on children both socially and psychologically.
- c). There is uncertainty in the status and position of the child born in the eyes of the law which results in no strength of the relationship between father and son, so that the man who results in his birth can deny it.
- d). The child has no right to the expenses of living and education, and the inheritance of the man who caused his birth.

The position of this unrecognized extramarital child is worse than that of an adulterous child, why? Although adulterous children cannot be recognized, they can earn as necessary according to the ability of their biological parents (Article 867 paragraph (2) of the Civil Code). Thus, the institution of recognition of children adopted by the Civil Code provides legal protection and changes the status of children and raises their civil rights.

In the Civil Code provides regulations on the recognition of children there are two versions, namely 1). confession made by a man before marrying someone else, 2). Confession is made by a man when he is married to someone else. Both of these recognitions have an impact on the child's inheritance rights. If the confession is made before the man marries another woman, then this recognized child gets a share of the inheritance, but if this extramarital child is recognized after the man has married another woman, then this recognized child is likely to inherit, probably not, because the principle is that the presence of a recognized child in the family of the man who recognizes it should not prejudice the rights of the wife and children born into the man's family.

This shows that the main purpose of the child recognition institution is to protect the interests of children from various unfair and discriminatory treatments in society towards children born outside of legal marriage, because children born from any relationship are still considered

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chaste regardless of the sins committed by their parents, so that children as legal subjects should be protected and get rights and positions like other children

In contrast to Islamic law which does not recognize the institution of recognition as the concept of recognition of children according to the Civil Code. In Islamic law, it is known as the institution of recognition of children with the term *istilhaq* which is generally used to provide legal protection for the status of children who are not known to their parents, such as children victims of war, victims of natural disasters, children found (*laqith*) due to abandonment of their parents. This legal protection of the status of children is an implementation of the *maqashid* theory of sharia, which is to maintain offspring. In practice only *istilhaq* for this *laqith* applies in religious courts, whereas *istilhaq* for extramarital children there are differences among scholars. The majority of scholars are of the opinion that an extramarital child cannot be linked to his biological father, this is based on a hadith whose translation is "the child is proclaimed to the husband of the mother who gives birth to the child, and for the adulterer there is an obstacle to the recognition of the child". Looking at the hadith, it can be seen that Islamic law does not recognize the institution of recognition of children born as a result of biological relations between a man and a woman without the bond of marriage.

This is because in Islam considers that the validity of the *nasab* is important, from which the clarity of this *nasab* children will have civil rights from both parents. Thus, in order to maintain this offspring (*maqashid* sharia), the teachings of Islam require its people to perform marriage as a legal way to maintain the clarity of *nasab*. Therefore, adultery is forbidden because adultery causes the observance of *nasab*. The child born of adultery does not lust for his biological father but on his mother. As a result of the law, this adulterous child cannot inherit each other with his biological father and his father's family, because this crime is one of the factors for obtaining inheritance.

In the Compilation of Islamic Law there is no written word *zina*, written in Article 100 of the KHI is an extramarital child. These two terms have a fundamental difference. Extramarital children referred to in the KHI are children born from marriages that are valid according to religion but the marriage is not recorded in the Marriage Registration Officer (KUA). Basically, in IHL, extramarital children who come from men without a valid marriage bond are considered to have no legal consequences, no inheritance rights, and only have a sexual relationship with their mother.

The reality that exists in society, not a few children are born without marriage from their biological parents. This of course will have an unfair effect on these children, because they are born not of their volition but these children are denied civil and other rights. In order to

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provide protection of the basic rights of adulterous children, the Indonesian Ulema Council (MUI) has issued Fatwa Number 11 of 2012 which states: "The government has the authority to impose ta'zir punishment on adulterers who result in the birth of children by obliging to: a) meet the needs of the child's life, b) give away property after he dies through a mandatory will".

In the fatwa, what is meant by "adulterous child" is a child born as a result of biological relations outside marriage that is legal according to religious provisions, and is a jarimah (criminal offense). Hadd is a type of punishment for a criminal offense whose form and level have been determined by the nash. Ta'zir is a type of punishment for criminal acts whose form and degree are handed over to ulil amri (the authority that determines punishment). A compulsory will is a will intended for his biological son, who does not get a share of the estate from the biological father due to sharia obstacles. The sentencing provision is not intended to validate the sexual relationship between the child and the biological father.

The limitation of the definition of recognition of children according to national law is formulated in the Explanation of Article 49 paragraph (1) of Law Number 24 of 2013 which reads: "What is meant by recognition of a child is a father's recognition of his child born from a marriage that has been valid according to religious law and approved by the biological mother of the child". While Article 49 paragraph (2) states that: "Child recognition only applies to children whose parents have performed a valid marriage according to religious law, but not yet valid according to state law". In other words, this recognition of children is carried out against children born from unrecorded legal marriages. If we look at the provisions mentioned above, the norm has accommodated the institution of recognition of extramarital children, but is limited only to children born from marriages that are valid according to religion, but have not been registered with the Marriage Registration Officer. Thus Article 49 is in agreement with Islamic law, which does not recognize the recognition of children born outside the legal bonds of marriage.

This institution of child recognition in reality is still rarely used by Muslim parents who perform marriages under the hands (society calls nikah siri) whose marriages are not recorded, because there is another legal route that is usually often taken, namely by submitting an application for legalization of marriage (itsbat nikah) to the religious court. In the event that a marriage certificate is granted, and the child is born as a result of a legalized marriage, then the status of the child legally becomes a legal child and can obtain a birth certificate as a legal child.

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Child Probate Provisions and Legal Effects An out-of-wedlock child can be legalized as a legal child through the marriage of both parents. According to KBBI, attestation is defined as "process, method, act of ratification, recognition based on law, inauguration, justification". Thus, child endorsement can be interpreted as an act based on the law to certify someone to be his child. The legalization of extramarital children is a legal effort to provide legalization to someone with the status and rights of a legal child. According to Article 277 of the Civil Code, this legalized child is as if the same was born into a legal marriage.

This child legalization action is a follow-up to the child's recognition carried out before the parents entered into marriage. This recognition of the child must be done no later than in the marriage certificate, meaning that when both parents hold a marriage can make a recognition of the child which is then recorded in the marriage certificate, after which the child attestation is carried out. According to Article 272 of the Civil Code which states that an extramarital child will have the status of a legal child if the parents are married and before they marry, they have recognized the child, or this recognition is made when both parents enter into marriage and recorded in the marriage certificate. According to the Civil Code, an extramarital child is considered a legal child after being recognized and at the same time legalized as a child. As a result of the recognition and endorsement of this child, there will arise reciprocal rights and obligations between father and child.

This is different from Islamic law which in terms of the concept of extramarital children is different from the Civil Code, so in Islamic law extramarital children are not considered legitimate children. Illegitimate children will have the following legal consequences:

There is no sexual intercourse with a man that results in his birth illegally.

Does not inherit each other.

In the absence of a nasab relationship between the child and the father that causes his birth illegitimately, they do not inherit each other, including with the biological father's family, because nasab is one of the causes of inheritance

Unable to be guardian of an extramarital child

If the extramarital child is a woman, then if she is going to consummate the marriage, the man who caused the unlawful birth is not entitled to be the guardian, so the guardian of this woman is the guardian of the judge.

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Islamic law does not recognize child legalization as espoused by the Civil Code because Islamic law does not recognize extramarital children from children born outside the legal marriage bond.

While ratification according to National law, namely according to Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, is contained in Article 50, where in the explanation of Article 50 paragraph (1) it is stated that: "What is meant by "child legalization" is an endorsement of the status of a child born from a marriage that has been valid according to religious law, at the time the marriage registration of both parents of the child is valid according to the law of the country". Thus, what can be legalized as a legal child is a child born from a marriage that according to religious law is legal, only that the marriage has not been registered in the state, or what people usually call marriage under the hand.

The deadline for reporting child endorsement is regulated in Article 50 paragraph (1) of Law Number 24 of 2013 which reads: "Every child attestation must be reported by parents to the Implementing Agency no later than 30 (thirty) days since the father and mother of the child concerned perform marriage and obtain a marriage certificate". Article 50 paragraph (2) states that: "Child legalization only applies to children whose parents have performed a valid marriage according to religious law and state law". Furthermore, Article 50 paragraph (3) states that: "Based on the report referred to in paragraph (1), the Civil Registration Officer records in the register of child probate deeds and issues excerpts of child probate deeds".

The legalization of a child born from a marriage that has been valid according to religious law, is carried out when the marriage registration of both parents of the child has been valid according to state law. If at the time of legalization of marriage registration, the legalization of children is not carried out, then the probate of children can be requested by the court. With this court determination, it will be the basis for recording child endorsement reporting for Disdukcapil.

3.2. The Relevance of Sharia Maqashid Theory in Child Recognition and Attestation Institutions

The essence of the theory of maqashid ash-shari'ah is the meaning and purpose desired by shari'a in proclaiming a law for the benefit of mankind. Scholars agree that Islamic law was established in order to realize and maintain human benefit, both individually and collectively. Maslahat is defined as the acquisition of benefits and rejection of damage. The benefit to be realized is the whole aspect of human interest. As for maqashid shari'ah or the purpose of

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Islamic law, there are five, namely in order to maintain religion, guard the soul, maintain reason, guard property, and guard offspring.

One of the purposes of Islamic law (maqashid shari'ah) is to preserve offspring or nasab, this is important because nasab is one of the solid foundations in fostering a bonded home life based on blood descent. Nasab or this descent will refer to a very close family relationship, namely the relationship of children with parents, especially male parents. In order to maintain this fate, the teachings of Islam require marriage, because with this legal marriage is the cause in the decree of the nasab of a child which is the first right that a child bears in order to avoid humiliation, sorrow and neglect in his life.

Islamic Sharia considers that the purity of nasab is very important, because Islamic law is closely related to family structure, both marriage law and inheritance law with its various derivations which include civil rights in Islamic law, both including the right of nasab, guardianship rights, the right to inherit, the right to earn a living, and also about mahraman or muhrim. Along with the marriage order, in Islamic law it is also forbidden to approach adultery, because zina causes the lawlessness of the preservation of nasab. Adultery that results in the birth of a child on this earth will also have an impact on the child. The first impact that this child will receive is not having a sexual relationship with his biological father which later this child cannot receive inheritance, guardianship rights, livelihood rights, education rights, loss of a father figure, and affection as well as negative stigma received from society.

A child born as a result of biological relations between a man and a woman who are not bound by a legal marriage cord is called adultery in Islamic law. The concept of adultery in Islamic law and the Civil Code is very different, so the legal consequences are different. As discussed earlier, the Civil Code is known as the institution of recognition and legalization of children for extramarital children in the context of legal protection for children, in contrast to Islamic law which does not recognize the institution of recognition and attestation as in the Civil Code. If the institution of recognition and endorsement is enacted, it will result in a shift in moral values that will bring sexual deviation, prostitution, promiscuity that has a negative impact on human life, and this is contrary to the theory of maqashid sharia whose purpose is to maintain offspring / nasab which will place a person in an honorable place and fulfill civil rights and other rights.

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Thus, the question arises how relevant is the theory of maqashid sharia in the existence of child recognition institutions and child attestation institutions. As is known that the National law, namely Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration which in Article 49 paragraph (2) states that: "Child recognition only applies to children whose parents have carried out a legal marriage according to religious law, but not yet valid according to state law". Article 50 paragraph (2) states that: "Child legalization only applies to children whose parents have performed a valid marriage according to religious law and state law". Looking at the two articles, it can be seen that the state has accommodated the institution of recognition and institution of child endorsement of children born from legal marriages according to religion, but have not been or have not been registered. Thus, the status of a child born from a marriage that is valid according to religion, but has not been or is not recorded in the marriage registration officer is a legal child of both parents, which means that the child is devoted to his parents.

Thus, the relevance of the maqashid theory of sharia to the institution of recognition and legalization of children remains based on children born as a result of legal marriage. Maqashid shari'ah to protect offspring or nasab is essential in the life of the human child.

4. Conclusion

1. Child Recognition and Attestation Provisions and Legal Effects: This institution of recognition and legalization of children is known in the Western legal system regulated in the Civil Code that is still valid in Indonesia. The institution of recognition and legalization of children contained in the Civil Code is treated against extramarital children other than adulterous children and discordant children. Adulterous children and discordant children cannot be recognized by their biological fathers. While the concept of extramarital children according to the Civil Code that can be recognized and legalized is a child born due to a biological relationship between a single man and a single woman without a legal marriage bond. While the concept of adultery according to the Civil Code is a child born due to a biological relationship between a man and a woman in which one or both are still bound by marriage with other people. This institution of recognition and endorsement is a form of legal protection for extramarital children, which with this recognition and endorsement will give the child a position as a legal child, which results in civil rights arising law. Whereas in Islamic law, this institution of recognition or legalization of children is not known, because Islamic sharia teaches its followers to approach adultery and advocates marriage as an honorable way to maintain and maintain the purity of the nasab. In Islamic law, it is known as the institution of recognition of children with the term *istilhaq* which is generally used to provide legal protection for the status of children who are not known to their parents, such as children

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victims of war, victims of natural disasters, children found (laqith) due to abandonment of their parents. This legal protection of the status of children is an implementation of the maqashid theory of sharia, which is to maintain offspring. In practice only istilhaq for this laqith applies in religious courts, whereas istilhaq for extramarital children there are differences among scholars. Looking at the hadith, it can be seen that Islamic law does not recognize the institution of recognition of children born as a result of biological relations between a man and a woman without the bond of marriage. As for according to national law, namely Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration, child recognition and legalization institutions are regulated in Article 49 and Article 50. According to both articles, recognition and legalization of a child is the recognition and endorsement of the status of a child born from a marriage that has been valid according to religious law, when the marriage registration of both parents of the child has been valid according to state law". Thus, what can be recognized and legalized as a legal child is a child born from a marriage that according to religious law is legal, only that the marriage has not been registered in the state, or what people usually call marriage under the hand.

2.Relevance of Maqashid Shari'ah Theory in Child Recognition and Attestation Institutions One of the purposes of Islamic law (maqashid shari'ah) is to preserve offspring or nasab, this is important because nasab is one of the solid foundations in fostering a bonded home life based on blood descent. Nasab or this descent will refer to a very close family relationship, namely the relationship of children with parents, especially male parents. In order to maintain this fate, the teachings of Islam require marriage, because with this legal marriage is the cause in the decree of the nasab of a child which is the first right that a child bears in order to avoid humiliation, sorrow and neglect in his life. Islamic Sharia considers that the purity of nasab is very important, because Islamic law is closely related to family structure, both marriage law and inheritance law with its various derivations which include civil rights in Islamic law, both including the right of nasab, guardianship rights, the right to inherit, the right to earn a living, and also about mahraman or muhrim. Thus, the relevance of the maqashid sharia theory to the institution of recognition and legalization of children remains based on children born as a result of legal marriage, because maqashid shari'ah to protect offspring or nasab is important in the life of human children.

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