



## Mashlahah's Perspective on Two Marriage Contracts for Children Out of Wedlock

Muhammad Alawy Rangkuti<sup>1</sup>, Hasan Matsum<sup>2</sup>, Dhiauddin Tanjung<sup>3</sup>

Universitas Islam Negeri Sumatera Utara, Indonesia<sup>1,2,3</sup>

[muhammad3002234030@uinsu.ac.id](mailto:muhammad3002234030@uinsu.ac.id)<sup>1</sup>, [hasanmatsum@uinsu.ac.id](mailto:hasanmatsum@uinsu.ac.id)<sup>2</sup>, [dhiauddintanjung@uinsu.ac.id](mailto:dhiauddintanjung@uinsu.ac.id)<sup>3</sup>

**Abstract:** This study aims to examine the practice of two marriage contracts for illegitimate daughters in Deli Serdang Regency from the perspective of mashlahah. This study uses a qualitative approach with a descriptive analytical method through interviews, observations, and documentation. The study results indicate that the first contract carried out by the guardian judge is legally valid under Islamic law because it fulfills the pillars and requirements of marriage. In contrast, the second contract carried out by the biological father is only symbolic and has no legal force. Implementing the second contract is intended to maintain the honor of the family and cover up past disgrace, so it is seen as a form of mashlahah mursalah that is tolerated as long as it does not conflict with the basic principles of sharia. Therefore, this phenomenon reflects a social need that demands a wise, contextual, and community-oriented Islamic legal approach.

**Keyword:** Maslahah, Two Contracts, Children Out of Wedlock, Islamic Law

**Abstrak:** Penelitian ini bertujuan untuk mengkaji praktik dua kali akad nikah bagi anak perempuan luar nikah di Kabupaten Deli Serdang dalam perspektif mashlahah. Penelitian ini menggunakan pendekatan kualitatif dengan metode deskriptif analitis melalui wawancara, observasi, dan dokumentasi. Hasil penelitian menunjukkan bahwa akad pertama yang dilaksanakan oleh wali hakim telah sah secara hukum Islam karena memenuhi rukun dan syarat nikah, sementara akad kedua yang dilakukan oleh ayah biologis hanya bersifat simbolik dan tidak memiliki kekuatan hukum. Pelaksanaan akad kedua dimaksudkan untuk menjaga kehormatan keluarga dan menutupi aib masa lalu, sehingga dipandang sebagai bentuk mashlahah mursalah yang ditoleransi selama tidak bertentangan dengan prinsip dasar syariat. Oleh karena itu, fenomena ini mencerminkan adanya kebutuhan sosial yang menuntut pendekatan hukum Islam yang bijak, kontekstual, dan berorientasi pada kemaslahatan umat.

**Kata kunci :** Mashlahah, Dua Kali Akad, Anak Luar Nikah, Hukum Islam

Corresponding Author:

Muhammad Alawy Rangkuty

Universitas Islam Negeri Sumatera Utara, Indonesia; [muhammad3002234030@uinsu.ac.id](mailto:muhammad3002234030@uinsu.ac.id)

## Introduction

The concept of *maslahah* has a central role as a basis for consideration in developing laws that are responsive to the needs and realities of the people. (Fadhila et al, 2025). *Maslahah*, which means public benefit or interest, not only reflects the normative spirit of Islamic law but also opens up space for legal considerations that are not explicitly regulated by the text (Syamsuddini, 2022); (Mujennih et al., 2024). In the modern context, *maslahah* becomes an important tool in bridging normative law and the complexity of social reality that continues to develop, especially in increasingly complex family law issues (Amri, 2018).

In the context of Muslim community life, the concept of *maslahah* is often the basis for understanding various aspects of family law, including marriage (Mujennih et al., 2024). Islam views marriage as a sacred bond that is not only physical, but must also fulfill the demands of faith and piety (Irade et al, 2024). This is in line with the definition contained in Article 1 of Law No. 1 of 1974 concerning Marriage, which emphasizes that marriage aims to form a happy and eternal family based on the One Almighty God (Waluyo, 2020).

The requirements for a valid marriage in Islamic law are quite complex. The marriage contract is an important element in the implementation of a valid marriage according to Islamic law (Nurhasnah, 2024). This contract must meet the requirements, such as the presence of both contracting parties, a guardian, two witnesses, and the pronouncement of the *ijab qabul* in one assembly (Sallom, 2022). If one of these conditions is not met, the marriage contract is considered invalid and cannot give rise to Sharia legal consequences (Raihan et al, 2024).

The Qur'an in Surah Ar-Rum verse 21 emphasizes the importance of a marital relationship based on love and affection as signs of Allah's power.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: "Among His signs is that He created for you mates from yourselves, that you may find rest in them. He has placed love and mercy between you. Verily, these are signs for people who give thought." (Kementerian Agama RI, 2015)

In addition, the hadith of the Prophet Muhammad SAW emphasizes that a marriage is not valid except with the presence of a guardian and two just witnesses.

لَا نِكَاحَ إِلَّا بِوَلِيِّ، وَشَاهِدَيْنِ عَدْلٍ

Meaning: "A marriage is not valid except with the presence of a guardian and two just witnesses."

The majority of scholars, such as Imam Syafi'i and Imam Hambali, agree that a guardian is a pillar of marriage and cannot be abandoned (Tohari, 2021). In practice, the guardian of the lineage has the main position, but if there is none, then this role is transferred to the guardian judge (Asia et al., 2024). The problem arises when a marriage contract occurs in the case of an illegitimate child. In this context, the biological father does not have the right of guardianship because, according to Islamic law, the child's lineage is not connected to his father. In the Compilation of Islamic Law Article 20 paragraph (2), it is stated that if there is no lineage guardian or if the guardian does not meet the requirements, then the role of guardian can be transferred to a guardian judge (Aspandi, 2017). The government appoints the guardian judge, usually held by the Head of the Religious Affairs Office in the local sub-district.

An interesting case was found in Deli Serdang Regency, where a biological father who did not have the right to be a guardian insisted on marrying off his daughter. Although the marriage contract had been officially carried out by a guardian judge at the Office of Religious Affairs and was considered valid according to religion and the state, the biological father still carried out a second marriage contract at a reception as a form of formality. This action was taken to maintain the family's good name and hide the child's status as an illegitimate child.

This phenomenon raises quite complex legal and social issues. In fiqh, repeating a marriage contract without canceling the first contract can be considered an act with no legal basis. If not examined critically, this practice can open up space for legal uncertainty, especially regarding the validity of the marriage, the role of the guardian, and the legal validity of the child's status in the future. From here arises the urgent need to review this phenomenon within the framework of *maslahah*, to understand whether repeating the contract can be justified according to Sharia principles within the framework of maintaining the community's welfare.

Until now, academic studies regarding plural marriage contracts for illegitimate children are still relatively limited, especially in linking them explicitly to the theories of *maslahah murlah* and *maqāṣid al-syarī'ah*. To the author's knowledge, only a few studies are relevant to this research. Research by Ahmad Muhammad Mustain Nasoha et al. (2024), "Analysis of Maslahah in the Concept of Extramarital Marriage Guardianship Based on the Compilation of Islamic Law. What distinguishes this research from the research conducted by the author is that the research entitled "Analysis of Maslahah in the Concept of Guardianship of Extramarital Marriages Based on the Compilation of Islamic Law" generally focuses on a normative study of the position of guardians in extramarital

marriages. This research examines how the provisions of the Compilation of Islamic Law, especially Article 20, position the guardian judge as a solution to the absence of a guardian lineage in extramarital marriages, and how the *maslahah* approach is used to justify the validity of the marriage carried out by the guardian judge.

This study emphasizes the aspect of legal clarity to strengthen the Sharia basis and legality of alternative guardianship in Islamic family law. The advantage of this study lies in its consistency in systematically dissecting positive texts and regulations. It can be an important reference for marriage institutions, the Office of Religious Affairs, and religious judges in handling cases of illegitimate child marriages that formally require legal and normative solutions. Meanwhile, the author's research entitled "Perspective of *Maslahah* on Two Marriage Contracts for Children Out of Wedlock" takes a more contextual and sociological approach by raising a real case that occurred in Deli Serdang Regency, where a biological father performed a remarriage contract for his legally married child through a judge. This research does not merely discuss the validity of guardians in illegitimate child marriages. However, it broadens the scope of analysis to repeated marriage contracts as a socio-cultural phenomenon that has not been explicitly regulated in Islamic jurisprudence or state regulations.

The author examines the extent to which such actions can be tolerated or justified within the framework of *maslahah mursalah* and *maqāṣid al-syarī'ah*, especially in maintaining family honor, the social status of children, and the stability of the marriage law itself. The advantages of this study lie in its novelty, the relevance of the case to today's socio-religious dynamics, and its interdisciplinary approach, which not only examines it from the perspective of Islamic law but also relates it to cultural pressures and psychological realities in society.

## **Methods**

The author uses qualitative research, field research, and library research. Qualitative research emphasizes an in-depth understanding of a problem using in-depth analysis techniques, namely examining problems on a case-by-case basis, because this qualitative method believes that the nature of one problem will be different from the nature of other problems. This research was conducted at the District Religious Affairs Office in Deli Serdang Regency, North Sumatra. The source of this research is the Head of the District Religious Affairs Office in Deli Serdang Regency.

The data collection techniques used in this study rely on field observations, in-depth interviews, and documentation. Observations were conducted to obtain a real picture of the practice of two marriage contracts for illegitimate children in

Deli Serdang Regency. Interviews were conducted directly with the parties involved, such as the Head of the Religious Affairs Office, the marriage registrar, religious figures, and the bride and groom's families, to explore their reasons, goals, and views regarding the practice. Meanwhile, documentation was used to review official documents such as marriage books, administrative records of the Religious Affairs Office, and relevant legal regulations such as the Compilation of Islamic Law and the Marriage Law, so that the data obtained is comprehensive and can be scientifically accounted for.

The data analysis technique in this study uses an interactive approach developed by Miles and Huberman (Sugiyono, 2019), which includes three main stages: data reduction, data presentation, and concluding/verification. This process is carried out simultaneously and repeatedly throughout the research activity, from data collection to the interpretation of results.

The first stage is data reduction, which is selecting, simplifying, and transforming field data obtained through observation, interviews, and documentation. At this stage, the researcher selects data relevant to the research's focus, namely the practice of two marriage contracts for illegitimate children, and groups information based on themes such as social motives, legal considerations, and religious views. Next, at the data presentation stage, researchers compile the reduced data as descriptive narratives, matrix tables, and interview quotes to facilitate understanding and identification of patterns or relationships between variables. This presentation helps researchers and readers see the relationship between legal facts and the social reality that underlies the practice.

The final stage is drawing conclusions and verification, where researchers interpret the data that has been presented to answer the problem formulation and achieve the research objectives. The conclusion's validity is tested through repeated verification by comparing information from various sources (source triangulation) or confirmation with the main informant (member checking). The Miles and Huberman model was chosen because it provides flexibility in handling complex and dynamic qualitative data, and is very suitable for studying social and legal phenomena that require in-depth understanding, such as the case of two marriage contracts that touch on aspects of Islamic law, custom, and social morality simultaneously.

## **Results And Discussion**

### **Results**

The phenomenon of the implementation of a marriage contract twice in an illegitimate child marriage in Deli Serdang Regency is a relatively complex social practice. Normatively, marriage in Islam has conditions and pillars that must be met, including in terms of appointing a guardian. In the context of illegitimate

children, the right of guardianship according to Islamic law and the Compilation of Islamic Law does not lie with the biological father, but rather with the guardian judge. However, in the field, cases were found where, after the guardian judge carried out the first valid contract, the family still carried out the second contract with the biological father as guardian, especially at wedding receptions. Implementing this re-contract was not due to fiqh needs, but solely to socio-cultural considerations.

Implementing this two-way marriage contract raises legal and social problems that are not simple. The first contract has substantially fulfilled the requirements for a valid marriage. In contrast, the second contract was carried out solely to maintain the honor of the family and avoid the status of an illegitimate child being revealed in public. This decision usually comes from the bride's parents, especially the biological father, who wants to continue to show his symbolic role as a guardian in front of the guests. This condition reflects the gap between normative religious law and the social reality of society that upholds symbolism and family honor.

The results of interviews with the penghulu and the Head of the Religious Affairs Office in several sub-districts of Deli Serdang Regency showed that this practice was not legally supported and was not proposed by the officers of the Religious Affairs Office. They explained that the Religious Affairs Office only validated the first contract carried out by the guardian judge, and the second contract only occurred because of the family's request, not because of administrative or religious needs. In an interview with AM, a marriage registrar, it was explained that "the second contract is just a formality, it is not valid according to religion, and cannot cancel the first contract." This shows that the perpetrators in the field understand the limitations of Islamic law, but are still pressured by social demands.

In general, the implementation of two marriage contracts is categorized into three forms of cases: child marriage outside marriage, marriage in a pregnant condition, and marriage of adopted children. Among the three, child marriage outside marriage occurs most often. In this case, the first contract was carried out by the judge's guardian in private and limited to only a few witnesses. In contrast, the second contract was carried out at a family reception with the biological father as the guardian. The aim was not to cancel the first contract, but to maintain the family's image and avoid social disgrace, as explained in an interview by an informant from the religious affairs office.

The second case is a marriage in a pregnant state, where the couple gets married when the woman is already pregnant. People often doubt the validity of the first contract because it was carried out during pregnancy, although in fiqh, this

does not invalidate the contract's validity. After the child is born, they ask for a repeat contract to be considered morally valid by the community. However, informants from the religious affairs office admitted that they always explained that there was no legal requirement to re-conduct the marriage contract because the first one was valid. However, the limited understanding of the community regarding marriage law caused them to still carry out the second contract as a form of "strengthening social morality".

The third case found was the marriage of an adopted child, where the adoptive parents wanted to appear as guardians. Although very rare, this practice still occurs in some places. The head of the religious affairs office explained that because the adopted child does not have a blood relationship with the adoptive parents, it is not valid if the guardian in the contract is the adoptive father. Therefore, the guardian judge still carries out his role legally. However, to maintain the comfort of the event and the feelings of the adoptive parents, the second contract is carried out symbolically. This shows a compromise between legal validity and social comfort.

The three cases have a similar background, namely, cultural pressure that requires covering up social statuses that are considered shameful or deviate from the ideal values of society. In a society that upholds the dignity of the family and the honor of a good name, the status of an illegitimate child, pregnancy before marriage, and the status of an adopted child are considered disgraceful and must be hidden. The second marriage contract becomes a symbolic tool to maintain this social order, even though the state or religion does not recognize it as a legitimate legal form.

Analysis of interview data shows that most religious affairs office officers reject the practice of two marriage contracts, but do not have the authority to completely prohibit it if the second contract is carried out outside the religious affairs office and is not administratively recorded. This opens up space for legal ambiguity in society. Therefore, researchers see the importance of intensive marriage law education for the community to understand that the judge's first contract is final and valid and that the second contract is merely a formality with no legal effect.

From the perspective of Islamic law, the implementation of two akads has no strong basis. Classical and contemporary Islamic scholars never recommend repeating the akad in a series of valid marriages. Such actions can confuse Tazwij Tsani and open up opportunities for legal uncertainty. Therefore, such practices need to be reviewed and given apparent limitations in administrative regulations under the Office of Religious Affairs. So far, the Compilation of Islamic Law has not explicitly detailed the prohibition of two marriage contracts. However, the

provisions on guardians and the validity of marriage are sufficient to explain that the contract only needs to be carried out once legally.

Therefore, the phenomenon of two marriage contracts in the context of illegitimate children needs to be positioned as part of the tension between universal Islamic legal norms and contextual social values. This practice contains an important lesson for policymakers and Islamic legal academics: society's religiosity is shaped not only by texts and fiqh but also by local social and cultural constructions. Therefore, a collaborative strategy is needed between religious institutions, community leaders, and the state to bridge the community's understanding of the correct law and reduce practices that can obscure the meaning of the validity of marriage.

### **Discussion**

#### **Legal Review of Islamic Law and Mashlahah on the Phenomenon of Two Marriage Contracts in Deli Serdang**

Marriage in Islamic law studies is a very sacred contract because it binds two people in a physical and spiritual bond that Sharia regulates (Hafas, 2021). Therefore, all forms of its implementation must be based on the principles of Islamic law, especially concerning the validity of the conditions and pillars of marriage (Tohari, 2021). In the context of repeating the marriage contract, scholars have discussed the limitations and legal basis in depth. One of the issues that emerged was implementing the second contract under the condition that the first contract had been carried out legally and entirely according to Sharia.

According to the majority of ulama, a marriage contract that is already valid according to Sharia does not need to be repeated, because the contract has already produced legal consequences (Asy'ari, 2022). Ibnu Hajar al-Haitami emphasized this in Tuhfat al-Muhtaj, that repetition of the marriage contract is only justified if it is intended for beauty (tajammul) or prudence (ihtiyath), not to invalidate the previous contract. (Haq et al., 2017). Therefore, the second contract, which is carried out after the first valid contract, has no strong legal basis.

This is in line with the fiqh rule of al-mashghuul laa yushghalu, which means that a valid legal object cannot be reused in the same legal context. In practice, if the first contract is valid and meets all the applicable pillars and requirements, the second contract will be considered invalid. It can even be a form of cancellation of a valid contract without a Sharia reason (Ningrum, 2017). Therefore, the repetition of a substantive contract carried out by an unauthorized party can damage the legal order of marriage in Islam.

This issue becomes even more complex in the case of illegitimate children. According to Islamic law, illegitimate children have no blood relationship with their biological father (Wiranty, 2023). Compilation of Islamic Law Article 186



emphasizes that blood relations only exist with the mother (Wiranti et al, 2020). Therefore, the biological father has no right to be a guardian in the child's marriage. The guardian's authority in this case is transferred to the guardian judge. If the first contract has been carried out by the guardian judge and approved by the Office of Religious Affairs, then the contract is valid according to religion and the state. (Ghafur et al., 2020).

The implementation of the second contract by the biological father in such a situation is contrary to Islamic law. A marriage guardian is a pillar in the Shafi'i and Hanbali schools, and the absence of a legal guardian invalidates the contract. If an unauthorized party still carries out the second contract, then the contract is not only invalid, but can also be considered an act that violates the principles of sharia law and national legal order as stipulated in Law Number 1 of 1974 (Asia et al, 2024).

However, in social practice, it is often found that the second contract is not carried out to invalidate the first contract, but rather to maintain the family's dignity and cover up the child's true status. In this case, the concept of *satr al-'awrah* or covering up disgrace is used as normative justification. The Hadith of the Prophet SAW states that "whoever covers up the disgrace of a Muslim, Allah will cover up his disgrace in the world and the hereafter." Although this intention is good, it raises internal contradictions in legal arguments.

The *maslahah* approach is also an important consideration in Islamic law. Al-Ghazali in his work *al-Mustashfa* states that *maslahah* is a benefit recognized by sharia and aims to maintain the five main objectives of sharia: religion, soul, mind, descendants, and property (Azhar, 2020). So, if the second contract is seen as bringing benefits in the context of protecting offspring and honor, it needs to be studied in more depth whether these benefits are truly in line with *maqashid sharia* (Masruchi, 2023). However, not all forms of benefit can be used as a legal basis. Ulama divide *maslahat* into three: *mu'tabarah maslahat* (which is recognized by the sharia), *mulghah maslahat* (which is rejected by the sharia), and *murlahah maslahat* (which is not explicitly mentioned in the text but is in line with the *maqashid* of the sharia) (Fadhila et al, 2025).

Then the main issue that needs to be criticized is: if at the beginning of the discussion it is emphasized that the second contract is invalid and has no legal basis, then justifying *satr al-'awrah* and *al-dharurat tubih al-mahzurat* opens up an interpretative gap that makes the law inconsistent. (Mawardi et al., 2021). This makes the public confused. Is the second contract justified for social reasons, or is it invalid because it violates Sharia rules? This contradiction must be clearly explained so as not to create confusion in the practice of Islamic law.

In addition, the use of the emergency argument must be criticized. The rule of *al-dharurat tubih al-mahzurat* can only be applied if there is no other choice

according to Sharia (Asy'ari, 2022). There has been a legitimate way out in this case, namely through a guardian judge. Therefore, it cannot be justified that an illegitimate guardian's implementation of the second contract is considered a form of emergency. Instead, this indicates a weak understanding of the legal solutions already available normatively and legally.

This discussion needs to clarify the legal position firmly and consistently as a form of correction and evaluation. On the one hand, it must be emphasized that the first valid contract cannot be challenged. On the other hand, social approaches such as maintaining the dignity and honor of the family remain important. However, they should not be used to justify law violations. Therefore, this discussion must balance the normative aspect (firm in law) with a humanistic and solution-oriented approach (empathy for the needs of society).

However, the dilemma lies in the conflict between rigid Islamic law and flexible social needs. In reality, society needs guidance, not just fatwas. For example, an official procedure can be prepared to hold a cultural ceremony after the legal contract, without repeating the contract. Alternatively, provide a premarital consultation room that explains the law of guardianship and its legal impacts.

It is also important for religious authorities such as the religious affairs office, the Ulema Council, and religious figures to be actively present in conveying a complete understanding to the community. Through a persuasive, dialogical, and educational approach, the community will be able to understand that maintaining family honor does not have to sacrifice sharia law. Imam Ibn Taimiyah once emphasized that a wise leader can maintain public interest without exposing personal shame if it does not cause social damage.

Therefore, the implementation of the second contract by an illegitimate guardian is an act that is not justified in Islamic law or state law. The justification given through *satr al-'awrah* or the pretext of emergency cannot be used as a strong legal basis, and instead weakens legal certainty. Therefore, there needs to be synergy between legal approaches, public education, and humanistic religious policies that remain consistent in principle. That way, Muslims can practice their religious teachings correctly without getting caught up in confusing legal contradictions.

### **Conclusion**

Based on the results of research and in-depth analysis of the practice of two marriage contracts for illegitimate daughters in Deli Serdang Regency, it can be concluded that from a *mashlahah* perspective, the implementation of the second contract is not a form of repetition that aims to cancel the first contract, but rather an effort to maintain the welfare of the individual and family. As long as there is a clear *illat*, namely covering up past disgrace to maintain honor in the eyes of

society, the practice can be understood as an action tolerated in Islamic law as long as it does not violate the basic principles of sharia. However, according to Islamic jurisprudence, a valid contract is only the first contract carried out by a guardian judge, because the lineal guardian (the biological father of an illegitimate child) does not have the legal authority as a marriage guardian.

The implementation of the second contract only has symbolic value. It does not have any legal consequences for marriage, but socially, it has benefits as a means of avoiding stigma and maintaining the peace of mind of the parties concerned. Therefore, this practice must be placed within the framework of *mashlahah mursalah*, by considering the greater *maslahah* and avoiding *mafsadah* (damage). The government, through the Office of Religious Affairs, needs to provide wise education and guidance so that the community understands the boundaries between Sharia legality and social wisdom, so that the *maslahah* in question remains in line with the *maqashid sharia* without deviating from the provisions of Islamic law.

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