

## The Lineage Status of Children Born Out of Wedlock: A Comparative Analysis of Islamic Jurisprudence and Indonesian Law

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### **Abstract:**

*The purpose of this study is to examine the legal status of children born out of wedlock by comparing the concept of lineage (nasab) in classical Islamic jurisprudence with its interpretation under Indonesian law. The issue is complex, situated at the intersection of religious doctrine, state law, and human rights. In Islamic legal tradition, lineage is established only through a valid marriage (nikah sah), with children born outside marriage attributed solely to the mother in order to preserve the sanctity of marriage and the clarity of descent. By contrast, Indonesia's legal framework experienced a significant transformation following Constitutional Court Decision No. 46/PUU-VIII/2010, which amended the Civil Code and the 1974 Marriage Law. The ruling allows children born outside marriage to establish a civil relationship with their biological father if paternity is proven through scientific evidence or acknowledgment. This judicial interpretation diverges sharply from the Compilation of Islamic Law (KHI), which continues to uphold classical fiqh principles. Employing a doctrinal and comparative legal methodology, this study analyzes primary sources including the Qur'an, Hadith, classical fiqh, the Indonesian Constitution, statutory law, the KHI, and the Constitutional Court's ruling alongside relevant secondary literature. The findings reveal a persistent tension between Islamic law, which confines legitimate paternity to marital bonds, and Indonesia's evolving legal orientation toward the protection of children's rights and identity. This duality generates legal uncertainty and underscores the need for harmonization between religious and state frameworks. The paper concludes that a more integrative legal approach is required—one that reconciles Islamic principles with the universal imperative to safeguard every child's rights and welfare, regardless of birth circumstances.*

**Keywords:** Lineage (Nasab), Children Born Out of Wedlock, Islamic Jurisprudence (Fiqh al-Ushab), Indonesian Family Law

### **Abstrak :**

Tujuan penelitian ini adalah untuk mengkaji status hukum anak yang lahir di luar nikah dengan membandingkan konsep garis keturunan (nasab) dalam yurisprudensi Islam klasik dengan interpretasinya menurut hukum Indonesia. Masalahnya kompleks, terletak di persimpangan doktrin agama, hukum negara, dan hak asasi manusia. Dalam tradisi hukum Islam, garis keturunan ditetapkan hanya melalui pernikahan yang sah (nikah sah), dengan anak-anak yang lahir di luar nikah hanya dikaitkan dengan ibu untuk menjaga kesucian pernikahan dan kejelasan keturunan. Sebaliknya, kerangka hukum Indonesia mengalami transformasi yang signifikan menyusul Putusan Mahkamah Konstitusi No. 46 / PUU-VIII/2010 yang mengamandemen KUHPerduta dan Undang-Undang Perkawinan tahun 1974. Putusan tersebut memungkinkan anak-anak yang lahir di luar nikah untuk menjalin hubungan sipil dengan ayah kandungnya jika ayah dibuktikan melalui bukti atau pengakuan ilmiah. Penafsiran yudisial ini sangat berbeda dengan Kompilasi Hukum Islam (KHI) yang tetap menjunjung tinggi prinsip-prinsip fiqh klasik. Dengan menggunakan metodologi hukum doktrinal dan komparatif, penelitian ini menganalisis sumber-sumber primer antara lain Al-Qur'an, Hadits, fiqh klasik, UUD RI, undang-undang dasar, KHI, dan putusan Mahkamah Konstitusi beserta literatur sekunder yang relevan. Temuan ini mengungkapkan ketegangan

yang terus-menerus antara hukum Islam, yang membatasi ayah yang sah pada ikatan perkawinan, dan orientasi hukum Indonesia yang terus berkembang terhadap perlindungan hak dan identitas anak. Dualitas ini menimbulkan ketidakpastian hukum dan menggarisbawahi perlunya harmonisasi antara kerangka agama dan negara. Makalah ini menyimpulkan bahwa diperlukan pendekatan hukum yang lebih integratif—pendekatan yang mendamaikan prinsip-prinsip Islam dengan keharusan universal untuk melindungi hak dan kesejahteraan setiap anak, terlepas dari keadaan kelahirannya.

**Kata kunci:** Silsilah (Nasab), Anak yang Lahir Di Luar Nikah, Fikih Islam (Fiqih al-Ushrah), Hukum Keluarga Indonesia

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## INTRODUCTION

### Background: The Sanctity of Lineage (Nasab) and Legal Pluralism

The concept of lineage (*nasab*, meaning genealogical descent or bloodline), is a cornerstone of Islamic family law, profoundly influencing social structure, inheritance, guardianship (*wilayah*), and marriage eligibility. Islamic teachings place immense value on the preservation and clarity of lineage, viewing it as a fundamental objective of *Shariah* (*maqāṣid al-shari'ah*, or the higher objectives of Islamic law), specifically under the principle of *ḥifẓ al-nasl* (the protection and preservation of progeny) (Basri, 2024). A clear lineage is believed to ensure social stability, protect familial honor, and guarantee the rights and responsibilities that flow between parents and children. Consequently, Islamic law traditionally stipulates that a child's legitimacy and paternal lineage can only be established through a valid marriage contract between the parents (Kanwal et al., 2025). A child born from a union not sanctioned by a valid marriage is typically attributed to the mother and her family, while a legal relationship with the biological father is not recognized (Maulana et al., 2024). This principle aims to uphold the sanctity of the marital institution and to deter extramarital relations.

This classical Islamic framework operates within a complex reality in nations with pluralistic legal systems, such as Indonesia. The Indonesian legal system is a unique tapestry woven from civil law inherited from the Dutch, customary law (*adat*), and Islamic law. For its majority Muslim population, Islamic family law is formally administered through Religious Courts and guided by the Compilation of Islamic Law (KHI). The KHI largely codifies the traditional Shafi'i school of thought, affirming that a child born outside of a valid marriage only has a legal relationship with the mother and her family (Gusmarani, 2025). This religious-legal framework coexists with state law, primarily the Law No. 1 of 1974 concerning Marriage (Marriage Law), which historically mirrored this position. However, the legal landscape was irrevocably altered by a landmark decision from Indonesia's Constitutional Court, creating a dynamic and often contentious interplay between religious norms and evolving constitutional principles centered on human rights and child welfare.

### Problem Statement: The Dichotomy Between Islamic and State Law

The central problem addressed in this study is the significant legal dichotomy that has emerged in Indonesia concerning the lineage status of children born out of wedlock. This conflict arises from the divergence between the traditional interpretation of Islamic law, as codified in the KHI, and the progressive interpretation of civil rights advanced by the Indonesian Constitutional Court in its Decision No. 46/PUU-VIII/2010. Prior to this ruling, both the KHI and state law were largely aligned: a child born outside marriage had no legal claim to their biological father. The Constitutional Court, however, reinterpreted Article 43(1) of the Marriage Law, ruling that such a child has a civil relationship with their biological father if paternity can be proven by

scientific evidence or acknowledged by the father (Al-Insyirah & Sanjaya, 2025). This decision has created profound legal uncertainty (Husien, 2024). On one hand, it champions the rights of the child, ensuring their right to know their parentage and potentially receive maintenance. On the other, it directly challenges the foundational Islamic legal principle that *nasab* is contingent upon a valid marriage. This dissonance generates practical and jurisprudential challenges. For instance, while a civil relationship may be established under state law, it does not automatically confer rights under Islamic law, particularly in the critical area of inheritance, where the KHI remains the governing authority for Muslims. This leaves individuals navigating two parallel yet conflicting legal systems, leading to inconsistent court rulings and ambiguity regarding the child's rights to maintenance, inheritance, and the use of the father's name. The ensuing legal friction underscores the broader challenge of harmonizing religious law with modern constitutionalism in a democratic Muslim-majority state (Syamsidar, 2025).

### Research Questions and Objectives

To systematically investigate this legal dichotomy, this study is guided by the following research questions:

1. What are the foundational principles of Islamic jurisprudence regarding the lineage (*nasab*) of children born out of wedlock, and how have contemporary interpretations engaged with these principles?
2. How does the Indonesian legal framework, particularly the Compilation of Islamic Law (KHI) and the Constitutional Court Decision No. 46/PUU-VIII/2010, regulate the lineage status and associated civil rights of these children?
3. What are the key points of convergence and divergence between Islamic jurisprudence and Indonesian state law on this matter, and what are the primary sources of legal uncertainty?
4. How can the principles of child welfare and the protection of lineage (*hifz al-nasl*) be reconciled to formulate a more coherent and just legal framework in Indonesia?

Correspondingly, the objectives of this research are:

1. To elucidate the concept of *nasab* in classical and contemporary Islamic legal thought.
2. To analyze and contrast the provisions of the KHI with the legal reasoning and implications of the Constitutional Court Decision No. 46/PUU-VIII/2010.
3. To conduct a comparative analysis to identify the core differences, similarities, and areas of conflict between the two legal systems.
4. To propose recommendations for legal reform aimed at harmonizing religious and state law to ensure legal certainty and protect the best interests of the child.

### Significance and Scope of the Study

This study holds significant academic and practical importance. Academically, it contributes to the discourse on legal pluralism, particularly the interaction between Islamic law and state law in modern Muslim societies. It offers a critical analysis of a key area of family law reform, providing insights into how constitutional courts navigate tensions between religious tradition and human rights norms. The research will be valuable for scholars in the fields of Islamic law, comparative law, family law, and human rights. Practically, this research provides crucial clarity for legal practitioners, judges, policymakers, and civil society organizations in Indonesia. By dissecting the legal uncertainty surrounding the status of children born out of wedlock, it can inform judicial decision-making and guide legislative efforts toward creating a more consistent and equitable legal system (Syamsidar, 2025). Furthermore, it empowers

individuals and families affected by this issue with a deeper understanding of their legal standing and rights.

The scope of this study is focused on a comparative analysis of legal doctrine. Geographically, it is centered on the Indonesian legal context, while the jurisprudential scope encompasses classical Sunni Islamic jurisprudence and its modern interpretations, with specific reference to Indonesia's KHI. The analysis will concentrate on the novelty of the legal concept of lineage (*nasab*) and its direct implications for civil rights, including paternal acknowledgment, maintenance, and inheritance. While social and ethical dimensions will be acknowledged, the primary focus remains on the legal-doctrinal framework.

The novelty of this study lies in its approach that integrates the analysis of classical Islamic law with Indonesian positive law in examining the concept of *nasab* (lineage) and the status of children outside marriage. This study not only compares the two legal systems normatively, but also reveals the dynamics of interaction between classical *fiqh* that confirms the legitimacy of offspring through legal marriage with the development of Indonesian Constitutional law that emphasizes the protection of children's rights. Through the analysis of the Constitutional Court Decision No. 46/PUU-VIII / 2010 and the compilation of Islamic law (KHI), this study provides a new perspective on how the values of *maqāṣid al-sharī'ah*-in particular *ḥifz al nasl* (protection of offspring)-can be re articulated in the context of a modern legal state that upholds the principles of justice and Human Rights.

Academically, the study offers a new conceptual construction of *nasab*, not only as a religious category that determines the legitimacy of the family, but also as a basis for civil rights such as recognition of biological paternity, maintenance, and inheritance. Thus, this study broadens the discourse of Islamic law into the realm of positive law and contemporary human rights. In addition, this study provides a practical contribution to harmonization efforts between religious law and state law in Indonesia, by affirming the importance of an integrative approach that does not negate the values of Sharia, but instead places it as a moral basis in the formation of a more just and inclusive national law.

## METODOLOGI PENELITIAN

### Research Approach: Doctrinal and Comparative Legal Analysis

This study employs a qualitative research methodology grounded in a doctrinal and comparative legal approach. The doctrinal approach, also known as normative legal research, is essential for analyzing the law as it exists in primary and secondary sources. It involves a systematic examination, interpretation, and synthesis of legal rules, principles, and concepts. This method is used to dissect the foundational tenets of Islamic jurisprudence on lineage (*nasab*) by analyzing its core texts and scholarly interpretations (Alias & Al-Badi, 2025). It is also applied to scrutinize the Indonesian legal framework, including the Constitution, relevant statutes, and the Compilation of Islamic Law (KHI). Complementing the doctrinal analysis is a comparative legal approach. This method involves the systematic comparison of the two distinct legal systems under investigation: Islamic jurisprudence and Indonesian state law. By juxtaposing the principles of the KHI against the legal reforms initiated by the Constitutional Court Decision No. 46/PUU-VIII/2010, this approach allows for a nuanced understanding of their similarities, differences, and points of conflict (Syamsidar, 2025). The comparison is not merely descriptive but also analytical, aiming to explain the reasons for the divergence and to evaluate the practical consequences of their coexistence within Indonesia's pluralistic legal environment. This dual approach provides a comprehensive and rigorous framework for addressing the research questions.

Sources of Data: Primary and Secondary Legal Materials The data for this research are drawn from a wide range of primary and secondary legal materials. Primary Sources consist of authoritative legal texts that form the basis of the legal systems being studied. For Islamic jurisprudence, these include: The Qur'an and the Hadith (Prophetic traditions) as the

foundational sources of Islamic law. Classical texts of Islamic jurisprudence (*fiqh*), particularly from the Shafi'i school, which heavily influences the KHI. Contemporary fatwas and scholarly legal opinions on matters of lineage. For Indonesian law, the primary sources include: The 1945 Constitution of the Republic of Indonesia. Law No. 1 of 1974 concerning Marriage. The Compilation of Islamic Law (KHI) (Inpres No. 1 of 1991). The full text of the Constitutional Court Decision No. 46/PUU-VIII/2010 and its legal reasoning (Basri, 2024). Secondary Sources comprise materials that analyze, interpret, and critique the primary sources. These are crucial for contextualizing the legal doctrines and understanding ongoing academic debates. They include: Academic books and peer-reviewed journal articles on Islamic family law, Indonesian law, and comparative legal studies (Husien, 2024). Legal commentaries, theses, and dissertations analyzing the legal status of children and the implications of the Constitutional Court's decision. Scholarly papers and reports from legal seminars and conferences that address the harmonization of religious and state law. These sources will be gathered from academic databases, university libraries, and official government and judicial websites.

## RESULT AND DISCUSSION

This section presents a comprehensive analysis of the lineage status of children born out of wedlock, examining the foundational principles of Islamic jurisprudence and the evolving legal framework in Indonesia. It dissects the concept of *nasab* (lineage) within classical and contemporary Islamic thought and contrasts it with Indonesian state law, particularly in light of the transformative Constitutional Court Decision No. 46/PUU-VIII/2010. By juxtaposing these two legal systems, this chapter illuminates the points of divergence and convergence, setting the stage for a deeper discussion on the resulting legal complexities and the ongoing efforts to harmonize religious principles with the protection of child welfare.

### The Concept of Lineage (Nasab) in Islamic Jurisprudence

The concept of *nasab*, or lineage, is a cornerstone of Islamic family law, carrying profound legal, ethical, and social implications (Kanwal et al., 2025). It serves as the primary mechanism for establishing familial relationships, which in turn determines a host of rights and obligations, including inheritance, guardianship (*wilayah*), maintenance (*nafaqah*), and prohibitions on marriage. Islamic jurisprudence places a strong emphasis on the preservation and clarity of lineage (*hifz al-nasl*) as one of the core objectives of Shariah (*maqasid al-Shariah*), viewing it as essential for maintaining social order, protecting family integrity, and ensuring the psychological and social well-being of individuals (Basri, 2024). The legal framework governing *nasab* is meticulously structured to prevent ambiguity and disputes over parentage, thereby safeguarding the sanctity of the family unit.

### Foundational Principles and Status of Children Born Out of Wedlock

In classical Islamic jurisprudence, the establishment of legitimate paternal lineage is inextricably linked to a valid marriage contract (*nikah*) between the child's parents. The well-known legal maxim, "*al-walad li al-firash wa li al-'abir al-bajar*"—meaning "the child belongs to the marriage bed, and for the adulterer, there is the stone"—encapsulates this foundational principle derived from a Prophetic tradition. This maxim establishes a strong presumption of paternity in favor of the husband within a valid marriage, as widely recognized by classical jurists across the four Sunni schools of law, including the Hanafi, Maliki, Shafi'i, and Hanbali traditions. (Kanwal et al., 2025). This framework is designed to provide legal certainty and protect the institution of marriage as the sole legitimate basis for procreation and family formation (Maulana et al., 2024).

Conversely, classical Islamic law dictates that a child conceived and born outside of a valid marital union has no legitimate paternal affiliation (*nasab*) with the biological father (Asmawi et al., 2025). The jurists of the four primary Sunni schools of thought (Hanafi, Maliki, Shafi'i, and

Hanbali) are in consensus that sexual intercourse outside of marriage (*zina*) does not establish paternity. Therefore, the *nasab* of a child born from such a union is traced exclusively through the mother. The child is legally and socially connected only to the mother and her family, inheriting from them and carrying their name (Gusmarani, 2025).

This legal position is not intended to punish the child, who is considered sinless, but rather to uphold the structural integrity of the Islamic social and legal order. By refusing to recognize paternity outside the institution of marriage, the law creates a powerful deterrent against extramarital relations and reinforces the importance of marriage for legitimate procreation (Maulana et al., 2024). The strictness of this rule aims to prevent the confusion of lineage, which could lead to disputes over inheritance and create social instability. Islamic law emphasizes social legitimacy and the preservation of a clear and undisputed lineage, a priority that shapes its approach to children born outside the marital framework (Alias & Al-Badi, 2025). While the biological father may have a moral obligation to provide for the child, classical jurisprudence does not typically enforce a legal duty of maintenance or grant inheritance rights, as these are contingent upon the establishment of a valid *nasab* relationship (Asmawi et al., 2025). The legal status, therefore, remains firmly anchored to the maternal line, a position consistently upheld by traditional Islamic jurists who maintain that *nasab* can only be established through a legitimate marriage and not solely through biological evidence (Ali et al., 2024).

### Contemporary Interpretations and Maqasid al-Shariah

While the classical position on *nasab* remains influential, contemporary Islamic scholarship has witnessed a growing discourse that re-examines these principles through the lens of *Maqasid al-Shariah* (the higher objectives of Islamic law) and the evolving social context. Modern scholars and reformist thinkers argue that a rigid application of classical rules may, in some cases, conflict with other fundamental objectives of Shariah, such as ensuring justice (*'adl*), preventing harm (*darar*), and protecting the welfare of the child (*maslahat al-tijl*). This has led to a more nuanced discussion about the rights of children born out of wedlock, particularly concerning their right to identity, maintenance, and protection from social stigma.

One of the key arguments advanced by contemporary scholars is that while the legal mechanism for establishing *nasab* (lineage for inheritance and guardianship) remains tied to a valid marriage, this should not preclude the recognition of a biological reality for other purposes, such as enforcing the father's financial responsibility. These interpretations seek to balance the traditional emphasis on lineage preservation with the imperative to protect the child's basic rights (Asmawi et al., 2025). The argument is that the biological father, as the cause of the child's existence, bears a responsibility for their well-being, even if the formal legal bond of *nasab* is not established. This perspective draws on the broader principles of justice and compassion within Islam, advocating for a legal framework that holds biological fathers accountable for child support (Basri, 2024). Furthermore, the advancement of scientific evidence, particularly DNA testing, has introduced a new dimension to the debate. While classical jurisprudence did not have access to such technology, some modern jurists argue that DNA evidence can be used to establish biological paternity, which could then form the basis for enforcing certain rights, such as maintenance, without necessarily granting full *nasab* status for inheritance. This approach attempts to create a distinction between legal lineage (*nasab*) and biological fact, allowing the legal system to respond to the needs of the child without fundamentally altering the traditional requirements for inheritance and guardianship. This re-evaluation reflects an effort to ensure that the application of Islamic law remains relevant and just in contemporary society, prioritizing the protection and fulfillment of children's rights within the overarching framework of Shariah (Husien, 2024).

### The Indonesian Legal Framework on Child Lineage

Indonesia's legal landscape concerning the lineage of children is characterized by a dynamic interplay between state law, codified Islamic law, and constitutional principles. The primary legislation governing family matters is Law No. 1 of 1974 concerning Marriage (the Marriage Law), which is further elaborated for the Muslim population by the Presidential Instruction No. 1 of 1991, known as the Compilation of Islamic Law (KHI). For decades, this dual system provided a relatively uniform, albeit restrictive, framework for determining the status of children born out of wedlock. However, a landmark decision by the Constitutional Court in 2010 fundamentally reshaped this legal terrain, introducing a new paradigm that prioritizes the child's rights and creates a significant point of divergence from the traditional interpretations embodied in the KHI (Syamsidar, 2025). This evolution has led to a complex legal environment where different judicial bodies may apply conflicting principles, resulting in legal uncertainty for the very children the reforms were intended to protect.

### **The Compilation of Islamic Law (KHI) versus Constitutional Court Decision No. 46/PUU-VIII/2010**

The Compilation of Islamic Law (KHI) serves as the primary legal guide for Religious Courts in Indonesia when adjudicating family law cases for Muslims. In matters of lineage, the KHI largely reflects the classical Islamic jurisprudence. Article 99 of the KHI defines a legitimate child as one born within or as a result of a valid marriage. Reinforcing this, Article 100 explicitly states that a child born out of wedlock only has a civil relationship with their mother and her family (Gusmarani, 2025). This provision effectively denies the child any legal connection to the biological father, mirroring the traditional *fiqh* position that *nasab* cannot be established outside of a lawful marriage (Husni et al., 2024). Under the KHI framework, a child born out of wedlock is precluded from inheriting from the biological father, cannot use his name, and the father has no legal rights of guardianship or obligations of maintenance (Al-Insyirah & Sanjaya, 2025). This stance aligns with the principle of preserving the sanctity of marriage and ensuring clarity of lineage as understood in classical Islamic thought. This long-standing legal framework was dramatically altered by the Constitutional Court Decision No. 46/PUU-VIII/2010. The Court reviewed Article 43(1) of the Marriage Law, which originally stated that a child born outside of marriage only has a civil relationship with its mother and her family. The Court declared this article unconstitutional to the extent that it did not include the biological father. The revised article now reads: "A child born out of wedlock has a civil relationship with its mother and her family as well as with the man as its father that can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his family."

This ruling represented a monumental shift in Indonesian family law (Al-Insyirah & Sanjaya, 2025). It effectively bifurcated the concept of paternity into legal/*nasab* paternity (derived from marriage) and biological paternity (proven scientifically) (Azwar & Armi, 2024). For the first time in Indonesian state law, a formal legal pathway was created to establish a civil relationship between a child born out of wedlock and their biological father, independent of a marriage contract. The Court's reasoning was grounded in constitutional principles protecting human rights, particularly the child's right to legal identity, certainty of status, and parental care. The decision aimed to protect children from the social and legal disadvantages resulting from their parents' actions, placing the "best interests of the child" at the forefront of legal consideration (Basri, 2024). However, the decision also created a significant tension with the established principles of the KHI, as it directly contradicted the rule that a child born out of wedlock has no legal tie to the father (Nagib, 2024). This divergence has set the stage for ongoing legal debates and challenges in harmonizing state constitutional law with religious law as applied in Religious Courts (Fajarwati et al., 2024).

Feature	Compilation of Islamic Law (KHI) - Pre-2010	Constitutional Court Decision No. 46/PUU-VIII/2010
Legal Basis for Paternity	Valid Marriage Contract Only	Valid Marriage Contract OR Biological Proof (e.g., DNA)
Child's Civil Relationship	Exclusively with the mother and her family	With the mother and her family, AND with the biological father and his family if paternity is proven
Paternal Lineage (Nasab)	Not established with the biological father	Establishes a "civil relationship" but does not automatically grant full nasab status for inheritance under Islamic law
Primary Legal Principle	Sanctity of marriage and preservation of lineage (Hifz al-Nas)	Best interests of the child, right to identity, and human rights
Enforcement Body	Religious Courts	General Courts (and influences Religious Courts)

### Legal Implications for Civil Rights, Maintenance, and Inheritance

The landmark Constitutional Court Decision No. 46/PUU-VIII/2010 has had profound legal implications for the civil rights, maintenance obligations, and inheritance prospects of children born out of wedlock in Indonesia. By establishing a legal avenue for recognizing a civil relationship with the biological father, the ruling opened the door for these children to claim rights that were previously inaccessible under the strict interpretation of the KHI and the original Marriage Law. The primary and most immediate consequence is the child's right to an identity, including the possibility of having the biological father's name included on their birth certificate. This formal recognition is crucial for accessing state services such as education, healthcare, and future legal transactions. A second major implication concerns the father's obligation to provide maintenance (*nafaqah*). With the establishment of a legal civil relationship, the biological father can now be held legally responsible for the financial support of his child. This marks a significant departure from the previous framework where such support was considered a moral, rather than a legally enforceable, duty. Mothers can now initiate legal proceedings in court to compel a biological father, once his paternity is proven, to contribute to the child's upbringing and welfare. This aligns the law more closely with the principle of parental responsibility and seeks to alleviate the financial burden that historically fell solely on the mother (Azwar & Armi, 2024).

However, the area of inheritance remains the most complex and contentious implication of the Court's decision. While the ruling establishes a civil relationship, it does not automatically grant the child the status of a legitimate heir under Islamic inheritance law (*faraid*), which is strictly contingent on *nasab* established through a valid marriage (Gusmarani, 2025). The Constitutional Court's verdict did not explicitly amend or override the inheritance provisions of the KHI (Fajarwati et al., 2024). This creates a legal gray area: a child may be legally recognized as having a civil relationship with their father for maintenance purposes but may still be excluded

from inheriting from his estate under the rules applied by Religious Courts. Some legal scholars and judges have explored alternative mechanisms, such as a mandatory bequest (*wasiat wajibah*), to provide a share of the estate to the child, but this is not a universally accepted solution and its application remains inconsistent. The decision, therefore, has created a duality where civil rights are expanded, but full parity in inheritance rights remains elusive, highlighting the ongoing challenge of reconciling constitutional law with established Islamic legal doctrine in Indonesia (Fitriyadi et al., 2024).

### Comparative Analysis: Convergence, Divergence, and Legal Uncertainty

The legal status of children born out of wedlock represents a complex and often contentious intersection of religious doctrine and secular state law, particularly within a pluralistic legal system like Indonesia's. A comparative analysis of Islamic jurisprudence and the Indonesian legal framework reveals fundamental divergences in foundational principles, which in turn create significant legal uncertainty and challenges in practical application. While both systems ostensibly seek to protect family structures and ensure clarity in lineage, their approaches and ultimate priorities differ substantially, leading to a dichotomy that directly impacts the rights and welfare of the child. The primary point of divergence lies in the basis for establishing a legal parent-child relationship, particularly with the father. Islamic jurisprudence, across its major schools of thought, is unequivocal in its position: a valid marital contract (*nikah*) is the prerequisite for establishing paternal lineage (*nasab*) (Kanwal et al., 2025). The principle *al-walad li al-firash* (the child belongs to the marriage bed) is central, meaning that a child conceived and born within a legitimate marriage is legally attributed to the husband. Consequently, a child born from an extramarital relationship (*zina*) has no legal *nasab* to the biological father (Asmawi et al., 2025). This legal firewall is designed to uphold the sanctity of marriage, prevent the confusion of lineage (*hifz al-nash*), and maintain a clear and orderly system for inheritance, guardianship (*wilayah*), and marriage prohibitions (*mahram*) (Basri, 2024). The lineage of such a child is exclusively traced through the mother, who bears the legal and social connection (Maulana et al., 2024). This classical stance is reflected in Indonesia's Compilation of Islamic Law (KHI), which serves as a primary guide for religious courts and traditionally limited the child's civil relationship to the mother and her family (Gusmarani, 2025).

In stark contrast, the Indonesian legal system, particularly following the Constitutional Court Decision No. 46/PUU-VIII/2010, has pivoted towards a child-centric approach grounded in fundamental human rights. The Court's ruling amended Article 43(1) of the 1974 Marriage Law, creating a significant departure from the rigid marital prerequisite. It established that a child born out of wedlock can have a civil relationship with their biological father and his family if paternity can be proven through scientific evidence (such as DNA testing) or other means recognized by law, including the father's acknowledgment (Al-Insyirah & Sanjaya, 2025). This decision effectively bifurcated the concept of paternity in Indonesia into two distinct categories: *nasab* paternity, which remains tied to a valid marriage as per Islamic law, and biological paternity, which establishes a civil connection recognized by state law (Azwar & Armi, 2024). This introduces a legal pathway for paternal recognition that classical Islamic jurisprudence does not provide, prioritizing the child's inherent right to know their origins and receive paternal support over the formal status of the parents' relationship (Alias & Al-Badi, 2025).

This fundamental divergence creates a cascade of legal uncertainties and practical challenges, particularly in the harmonization of religious and state law. The core conflict is between the KHI, which is applied by religious courts and adheres to the classical Islamic framework, and the Constitutional Court's decision, which is binding on all state institutions, including civil courts (Syamsidar, 2025). This creates a dual legal reality where a child's rights can differ significantly depending on the judicial venue and the specific legal question at hand. For example, while a civil relationship with the biological father can be established under state law,

granting the child rights to maintenance and a paternal name, the question of inheritance remains deeply contested. Islamic inheritance law (*fara'id*) is intrinsically linked to legitimate *nasab*; without it, a child cannot inherit from their biological father (Gusmarani, 2025). The Constitutional Court's decision did not explicitly alter the KHI's provisions on inheritance, leading to a situation where a child might be legally recognized by their father for civil purposes but remains excluded from inheritance under religious law (Fajarwati et al., 2024).

The challenge of harmonizing these conflicting legal norms is immense. Religious courts may continue to uphold the traditional view that a child born outside of marriage has no legal tie to the father, as stipulated in the KHI (Husni et al., 2024). Conversely, civil courts are bound to follow the Constitutional Court's ruling, creating the potential for contradictory legal outcomes. This legal uncertainty places families in a precarious position, forcing them to navigate a fragmented system where the child's status and rights are not uniformly recognized (Husien, 2024). The situation demands a coherent legal framework that can bridge the gap between the state's commitment to child welfare and the religious principles that govern family life for a majority of the population (Syamsidar, 2025). Without such harmonization, the legal ambiguity will persist, undermining legal certainty and potentially disadvantaging the very children the Constitutional Court's ruling sought to protect.

### Reconciling Child Welfare with Legal and Religious Principles

The tension between established legal and religious principles and the evolving imperative of child welfare lies at the heart of the debate surrounding the lineage of children born out of wedlock. Reconciling these domains requires a nuanced approach that respects the foundational tenets of Islamic jurisprudence while adapting to contemporary understandings of children's rights and social justice. The guiding principle for this reconciliation is the concept of *maslahah* (public interest or general welfare), particularly as it pertains to the child (*maslahah al-thifl*), which is a core objective within the broader framework of *Maqasid al-Shariah* (the higher objectives of Islamic law).

A primary pathway for reconciliation involves reinterpreting classical Islamic legal texts through the lens of *Maqasid al-Shariah*, which prioritizes the preservation of faith, life, intellect, lineage, and property. The objective of preserving lineage (*hifz al-nasl*) has traditionally been interpreted as a mandate to protect the institution of marriage by strictly prohibiting the establishment of paternity outside its confines (Basri, 2024). However, a contemporary, progressive interpretation can argue that *hifz al-nasl* also encompasses the protection of every child's well-being and identity. Denying a child any connection to their biological father can expose them to social stigma, psychological distress, and economic hardship, which runs contrary to the overarching Islamic principles of justice (*'adl*), compassion (*rahmah*), and preventing harm (*la dharar wa la dhirar*). Therefore, ensuring a child receives financial support and care from their biological father can be framed not as a validation of the parents' extramarital relationship, but as a fulfillment of the father's responsibility and a protection of the child's fundamental right to life and sustenance (Asmawi et al., 2025). This perspective finds support in the actions of the Indonesian Constitutional Court, whose Decision No. 46/PUU-VIII/2010 can be seen as an act of *ijtihad* (independent legal reasoning) aimed at achieving justice and protecting the vulnerable. By allowing for the establishment of a civil relationship based on biological evidence, the Court prioritized the child's best interests over a rigid, formalistic application of the law (Al-Insyirah & Sanjaya, 2025). This approach does not necessarily dismantle the concept of *nasab* within its religious context (e.g., for inheritance under Islamic law) but creates a parallel civil track to ensure the child's basic rights to identity, maintenance, and care are met (Azwar & Armi, 2024). This dual-track system, while creating harmonization challenges, represents a pragmatic attempt to reconcile the state's constitutional duty to protect all its citizens, including children, with the religious norms held by a significant portion of the population.

Furthermore, reconciliation requires a clear distinction between the legal recognition of biological paternity for civil purposes and the establishment of *nasab* for religious purposes. Legal reforms could focus on explicitly defining the scope of the civil relationship established under the Constitutional Court's ruling. This relationship should guarantee the child's right to financial maintenance from the biological father, the inclusion of the father's name on the birth certificate, and other civil rights that do not directly conflict with core tenets of Islamic law, such as inheritance rules prescribed in the KHI. By separating the civil obligations of a biological father from the religious implications of *nasab*, the law can provide essential protections for the child without directly challenging the theological framework of lineage (Fajarwati et al., 2024). This approach acknowledges the reality of the biological connection and assigns responsibility accordingly, thereby mitigating the negative consequences for the child.

Ultimately, achieving a durable reconciliation depends on collaboration between legal scholars, religious authorities, policymakers, and civil society. Religious institutions can play a crucial role by promoting interpretations of Islamic law that are compassionate and prioritize the welfare of children, drawing on the flexibility inherent in principles like *maslahah* and *maqasid*. Legal reforms should aim to create greater synergy between the jurisdictions of religious and civil courts to prevent conflicting rulings and ensure that children's rights are consistently upheld (Fitriyadi et al., 2024). The goal is not to erase the distinction between children born within and outside of marriage, but to ensure that no child is unjustly deprived of their fundamental rights to identity, care, and a dignified life because of the circumstances of their birth. This balanced approach would honor both the spirit of the law and the principles of social justice, ensuring that legal and religious frameworks serve their ultimate purpose: to protect and nurture human well-being.

## CONCLUSIONS

This comparative analysis of Islamic jurisprudence and Indonesian law on the lineage status of children born out of wedlock reveals a profound legal and ideological schism. Islamic jurisprudence, rooted in the preservation of marital sanctity and the clarity of lineage (*nasab*), traditionally denies paternal legal connection to children conceived outside a valid marriage, affiliating them solely with their mother (Maulana et al., 2024). This principle is institutionalized within Indonesia through the Compilation of Islamic Law (KHI), which has historically guided judicial practice in religious courts. In contrast, the Indonesian state legal framework has undergone a transformative shift, catalyzed by the Constitutional Court Decision No. 46/PUU-VIII/2010. This landmark ruling prioritized the child's fundamental rights, creating a legal avenue to establish a civil relationship with the biological father based on scientific proof, thereby challenging the exclusivity of the marital bond as the sole determinant of paternal legal ties (Al-Insyirah & Sanjaya, 2025). The core divergence stems from a clash of foundational principles: Islamic law's emphasis on the marital contract as the basis for social and legal order versus the Indonesian Constitution's commitment to human rights and the best interests of the child. This has resulted in a dualistic legal system where a child's rights to paternal recognition, maintenance, and inheritance are subject to legal uncertainty and jurisdictional fragmentation. While the Constitutional Court's decision grants a civil relationship, it does not automatically confer rights like inheritance, which remain governed by the *nasab*-centric rules of Islamic law, thus creating a partial and often confusing legal status for the child (Fajarwati et al., 2024).

To move forward, a concerted effort toward legal harmonization is imperative. This does not necessarily require the complete assimilation of one system into the other, but rather a thoughtful reconciliation that respects religious principles while upholding the state's constitutional obligations. A promising path lies in leveraging the dynamic principles within Islamic jurisprudence itself, such as *Maqasid al-Shariah*, to argue that the protection of a child's welfare (*maslahah al-thifl*) is a paramount objective. Future legal reforms should aim to clarify the

scope of the civil relationship recognized by the state, ensuring it guarantees essential rights such as maintenance and identity, while engaging in a continuous dialogue with religious authorities to foster interpretations that are both compassionate and just. By bridging this divide, Indonesia can develop a more coherent legal framework that affirms the dignity and rights of every child, regardless of the circumstances of their birth, ensuring that justice serves the well-being of all members of society.

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