

The Lineage Status of the Child Born from *Zina*: A Comparative Analysis of Islamic Law and Indonesian Positive Law

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Abstract:

The development of the times and the influence of Western culture have altered the patterns of behavior in society, particularly among the younger generation, who increasingly neglect legal norms and religious values. One of the impacts of this change is the rise in cases of extramarital sexual relations, which give rise to social and legal issues, especially concerning the status and position of children born from *zina*. This study aims to examine in depth the lineage status (*nasab*) of children born from *zina* on the perspective of Islamic law and Indonesia's positive law, with a focus on the dynamics following the controversial Constitutional Court Decision No. 46/PUU-VIII/2010 regarding the recognition of the status of such children. The research method used is library research with a qualitative descriptive approach, in which data were obtained from various sources such as books, scholarly journals, legislation, and court decision documents. The findings show a significant difference between Islamic law and positive law regarding the status of children born from *zina*. Islamic law explicitly states that such a child only has a lineage relationship with the mother and her family, without any rights to inheritance, financial support, or guardianship from the biological father. Meanwhile, Indonesian positive law, particularly after the Constitutional Court's ruling, allows for the recognition of civil relationships between a child born out of wedlock and the biological father through legal channels,



which carries implications for inheritance rights, financial support, and legal status. This study argues that the decision is not in line with the principles of Islamic teachings and potentially undermines the sanctity of the institution of marriage. Therefore, a regulation is needed that can bridge the interests of positive law and the values of sharia.

Keywords:

Lineage Status, Child Born *Zina*, Islamic Law, Positive Law

Abstrak:

Perkembangan zaman dan pengaruh budaya barat telah mengubah pola perilaku sosial masyarakat, khususnya di kalangan generasi muda yang semakin mengabaikan norma hukum dan nilai-nilai agama. Salah satu dampak dari perubahan tersebut adalah meningkatnya kasus hubungan seksual di luar nikah yang menimbulkan persoalan sosial dan hukum, terutama terkait status dan kedudukan anak hasil *zina*. Penelitian ini bertujuan untuk mengkaji secara mendalam kedudukan nasab anak *zina* dalam perspektif hukum Islam dan hukum positif Indonesia, dengan fokus pada dinamika pasca putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 yang kontroversial mengenai pengakuan status anak luar nikah. Metode yang digunakan adalah penelitian kepustakaan (*library research*) dengan pendekatan deskriptif kualitatif, di mana data diperoleh dari berbagai sumber seperti buku, jurnal ilmiah, peraturan perundang-undangan, dan dokumen putusan pengadilan. Hasil penelitian menunjukkan adanya perbedaan yang signifikan antara hukum Islam dan hukum positif terkait kedudukan anak *zina*. Hukum Islam secara tegas menyatakan bahwa anak *zina* hanya memiliki hubungan nasab dengan ibu dan keluarga ibunya, tanpa hak terhadap waris, nafkah, maupun perwalian dari ayah biologis. Sementara itu, hukum positif Indonesia, terutama setelah keluarnya putusan Mahkamah

Konstitusi, memberikan peluang pengakuan hubungan perdata antara anak luar nikah dan ayah biologis melalui jalur hukum, yang membawa implikasi terhadap hak waris, nafkah, dan status hukum anak. Penelitian ini menunjukkan bahwa putusan tersebut tidak sejalan dengan prinsip-prinsip ajaran Islam dan berpotensi menurunkan kehormatan institusi perkawinan, sehingga diperlukan regulasi yang mampu menjembatani kepentingan hukum positif dengan nilai-nilai syariah.

Kata Kunci:

Kedudukan Nasab, Anak *Zina*, Hukum Islam, Hukum
Positif

Introduction

Islam encourages the establishment of family as a social and spiritual institution that upholds sacred values¹. Time continues to progress each day, and the accompanying notion of freedom increasingly influences Western culture. This has led to the development of social patterns among today's younger generation, many of whom tend to neglect legal and religious norms, often resulting in negative consequences, such as engaging in premarital sexual relations². According to Islamic law, engaging in sexual relations with someone who is not a lawful spouse is called *zina* (adultery or fornication). Whether the perpetrator is a woman, a married individual, or a widower, there is no distinction in this regard. Those who commit *zina* are categorized into two commonly used terms: *zina muhsan* and *zina ghairu muhsan*. *Zina* committed by a

¹ Halum Musthafa et al., "From Counsel to the Aisle: The Practice of Markobar within the Framework of 'Urf and the Ideal Concept of Marriage in Mandailing," *Ahlika: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2025): 91-124, <https://doi.org/10.70742/ahlika.v2i1.249>.

² Lukman Hakim, "Kedudukan Anak Hasil Zina Ditinjau Dari Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *De Lega Lata* 1, no. 2 (2016).

person who is already married is referred to as *zina muhsan*³. Meanwhile, zina committed by an unmarried person is referred to as *zina ghairu muhsan*⁴.

When a relationship results in pregnancy, it creates problems and anxiety for all parties in society, especially for the parents involved, as such actions bring shame to the family. One of the most crucial factors is the child's place of birth, as it serves as the basis for establishing family lineage or a legitimate connection to the child's biological father⁵.

According to the law, the legitimacy of a marriage determines whether its offspring are considered legitimate or not. Law Number 1 of 1974 states that a marriage is deemed valid if it is conducted in accordance with the regulations of each religion and belief system⁶. Islamic law states that a marriage is valid if it is conducted in accordance with Islamic principles. Meanwhile, there are no specific regulations regarding the status of a child within marriage explicitly detailed in *fiqh* itself⁷. On the other hand, Islam views marriage as a means to fulfill the command of Allah SWT to produce lawful offspring. The relationship between a man and a woman is what leads

³ Aisyah Cinta Putri Wibawa et al., "Islamic Law and National Law in the Perspective of Zina Crime Settlement in Indonesia," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam* 05, no. 1 (2023): 57-68, <https://doi.org/10.56593/khuluqiyya.v5i1.99>.

⁴ Farah Edhar Khaerunisa, "Adultery in the Perspective of Islamic Religious Law and Positive Law in the Indonesian Community," *HUNAFA: Jurnal Studia Islamika* 18, no. 2 (2021): 158-74, <https://doi.org/10.24239/jsi.v18i2.614.158-174>.

⁵ Syamsuddin Syamsuddin and Noer Azizah, "Kedudukan Anak Zina Ditinjau Dari Yuridis Normatif," *HAKAM: Jurnal Kajian Hukum Islam* 5, no. 1 (July 2021): 57-69, <https://doi.org/10.33650/jhi.v5i1.2740>.

⁶ Republik Indonesia, "Undang Undang No. 1 Tahun 1974 Tentang Perkawinan" (Jakarta: Salinan UU No 1 Tahun 1974 Tentang Perkawinan, 1974).

⁷ Dkk Shofiyullah Mz, "E-Commerce Dalam Hukum Islam (Studi Atas Pandangan Muhammadiyah Dan NU)," *Jurnal Penelitian Agama* XVII, no. 3 (2008).

to the birth of a child; this relationship may occur within the context of a valid marriage contract (*akad nikah*), but it may also occur purely based on a biological relationship outside a lawful marriage contract, which is referred to as *zina* (fornication or adultery).

Sexual intercourse outside of a lawful marriage is referred to as *zina* (adultery or fornication). It is considered a grave sin in Islam, one that can bring harmful consequences not only to the individuals involved but also to society. Two of the major consequences of *zina* are the loss of honor for the perpetrators and the birth of a child whose legal status is unclear. Islam firmly emphasizes that a child born from *zina* is innocent and pure. The child should not be held accountable for the sinful acts of their parents. Offspring of parents who committed *zina* are entitled to the same rights and responsibilities in worship and religious life as any other child. The term "illegitimate child" is used to describe those born to parents who were not legally married at the time of conception⁸.

Such incidents often occur among teenagers who are just entering adulthood. Rapid technological advancements have significantly affected the flow of information, which in turn greatly influences their behavior. Unwanted pregnancies are one of the many negative impacts of the modern era that affect adolescents⁹. In situations where an unmarried woman becomes pregnant, she may choose either to ask the man responsible to marry her or to terminate the pregnancy. As a result, pregnancy is sometimes followed by marriage. The views of the state and the child's parents often determine the status and position of a child born outside a lawful

⁸ Kahar Muzakir, "Zina Dalam Perspektif Hukum Islam Dan Kitab Undang-Undang Hukum Pidana," *FJST: Formosa Journal of Science Adn Technology* 1, no. 1 (2022).

⁹ Ester Irmania, "Upaya Mengatasi Pengaruh Negatif Budaya Asung Terhadap Generasi Muda Indonesia," *Jurnal Dinamika Sosial Budaya* 23, no. 1 (2021).

marriage. However, every child has the right to live a happy and prosperous life.

Therefore, a child born as a result of *zina* (illicit sexual relations) may not be granted the same rights as a legitimate child, particularly in matters related to interpersonal legal relationships. The core issue lies in whether the child has a legal relationship with both parents, despite the fact that the child shares a biological bond with both of them.

The status of a child can be determined based on the validity of the marriage carried out by the parents. According to Law Number 1 of 1974, a marriage is considered legally valid if it is conducted in accordance with the laws of each individual's religion and belief. In Islamic law, a marriage is valid if it is carried out in accordance with Islamic *sharia*. However, within *fiqh* itself, there are no specific provisions that directly regulate the status of children within the context of marriage¹⁰. Nevertheless, in Islamic teachings, the primary purpose of marriage is to fulfill the trust of Allah SWT by producing legitimate offspring.

Article 43 paragraph (1) of the Compilation of Islamic Law (KHI) states that "A child born outside of marriage has a civil relationship with his or her mother and the mother's family, as well as with the man as the father if it can be proven, based on science and technology and/or other legal evidence, that there is a blood relationship including a civil relationship with the father's family". Article 272 of the Indonesian Civil Code (KUHPer) explains that a child born out of wedlock, except one born from adultery or incest, can be legitimized by the subsequent marriage of the parents, provided that before the marriage they have made a legal

¹⁰ Fatkul Hidayat et al., "Legislation on Determining the Parentage of a Born-Out-of-Wedlock Child Based on the Perspectives of the Best Interest of Child and Progressive Fiqh," *Asian Research Journal of Arts & Social Sciences*, 2022, <https://doi.org/10.9734/arjass/2022/v16i130275>.

acknowledgment of the child, or if such acknowledgment is made within the marriage certificate itself.¹¹

The category of child born out of *zina* is not explicitly stated in the Compilation of Islamic Law (KHI), as the KHI uses the term "*anak luar kawin*" (child born out of wedlock). In contrast, the Indonesian Civil Code (KUHPer) provides a different definition altogether. Therefore, a narrative-based study is necessary to contribute to the intellectual discourse regarding the position of children born out of *zina* in both the KHI and the KUHPer. This aims to provide a clearer understanding to the public about the legal systems and regulations concerning the status of such children as viewed from the perspectives of both the Compilation of Islamic Law and the Indonesian Civil Code.

In their study titled "*Anak Zina Ditinjau dari Yurisprudensi Normatif*" ("Illegitimate Children from the Perspective of Normative Jurisprudence"), Syamsuddin and Noer Azizah argue that children born from illicit relationships (*zina*) cannot be legally recognized by their biological father under either the Compilation of Islamic Law (KHI) or the Indonesian Civil Code (KUHPer). However, from the perspective of the Criminal Code (KUHP), such children have no legal relationship with either parent. In contrast, the KHI shows greater empathy by allowing the child to have familial ties with the mother and her family. In this context, the mother and her relatives are considered the sole source of the child's legal rights. According to the Indonesian Civil Code, a child born from an extramarital affair is only entitled to minimal financial support, depending on the financial capability of the biological parent. Beyond that, the child is not permitted to demand or claim anything more than what has been provided¹².

¹¹ Please see Compilation of Islamic Law article 43 and Indonesiaon Civil Code (KUHPer) Article 272.

¹² Syamsuddin and Azizah, "Kedudukan Anak Zina Ditinjau Dari Yuridis Normatif."

The status and position of children born from incestuous relationships, whether the marriage is legally valid or not, are classified as children born out of *zina*, according to the study by Muh Jufri Ahmad and Fahmi Nabil on the civil rights of children resulting from incestuous unions. Regarding the status of out-of-wedlock children, the Constitutional Court Decision related to Article 43 paragraph (1) of the Marriage Law states that a child who has a civil relationship only with the mother and her family may also have a civil relationship with the biological father and his family. The Indonesian Civil Code (KUHPer) notes that certain civil rights such as guardianship and custody –cannot be transferred. Nevertheless, Islamic law continues to recognize the importance of granting inheritance rights for the welfare (*maslahah*) of the child. This is typically done through obligatory wills (*wasiat wajibah*), as regulated in the Compilation of Islamic Law (KHI), which provides inheritance rights not through standard inheritance law but specifically applies to children born out of wedlock¹³.

In their article “*Hak atas Akta Kelahiran bagi Anak Hasil Zina Menurut Kompilasi Hukum Islam*” (“The Right to a Birth Certificate for Children Born from *Zina* According to the Compilation of Islamic Law”), Mei Sugiarto and Muhammad Wildan explain that, based on Article 55 of the Marriage Law and Article 103 of the Compilation of Islamic Law (KHI), a child born out of wedlock may be issued a birth certificate that is only linked to the mother and cannot be used as proof of the biological father’s identity. However, the status of a child born from *zina* can now be extended to include a legal relationship with the father and his family under Article 53 paragraph (1) of the KHI, as expressed in the following provision: once the child is born, no additional marriage is required. Therefore, even if a married woman is pregnant with a child conceived outside the marriage (i.e.,

¹³ Muh Jufri Ahmad and Fahmi Nabil, “Hak Keperdataan Anak Hasil Perkawinan Incest,” *COURT REVIEW: Jurnal Ilmu Hukum* 2, no. 1 (2022).

through zina), as long as the child has not yet been born at the time the marriage contract is signed, the child may be recognized as legitimate. Nevertheless, for children born from zina, only legal validation (*itsbat*) of the child's status can be conducted; the birth certificate cannot serve as legal verification of the father's identity¹⁴

In this article titled "*Kedudukan dan Hak Anak Luar Nikah dalam Perspektif Mazhab Hanafi*" ("The Status and Rights of Illegitimate Children from the Hanafi School Perspective"), Nur Shadiq Sandimula concludes that even if a child is born outside of marriage, they share the same lineage as the biological father who impregnated the mother. This means that from the moment a child is born from the father's semen, they are, in essence, his biological child. However, under Hanafi jurisprudence, the biological father is still not permitted to marry the child's mother, nor is he recognized as the child's legal father. As a result, the child does not have the right to inherit from the father's family an aspect that is often practically overlooked. This limitation also affects the father's responsibility to provide financial support, as he is not legally required to support the child. Regarding guardianship, since the biological father has no legal authority over the child, the responsibility for guardianship falls to the court-appointed guardian (*wali hakim*) in such cases¹⁵.

The legal issue surrounding the financial responsibility (*nafkah*) for children born from zina (illicit sexual relations) continues to provoke fundamental and sharp differences of opinion. This is the central discussion in the article by Imas Bagus Putra titled "*Studi Perbandingan Kedudukan Hukum Penghasilan Anak Hasil Zina Menurut*

¹⁴ Mei Sugiarto, Sanusi, and Muhammad Wildan, "Hak Atas Akta Kelahiran Bagi Anak Zina Menurut Kompilasi Hukum Islam," *Jurnal Studi Islam Indonesia* (JSII) 1, no. 1 (2023), <https://doi.org/https://doi.org/10.61930/jsii.v1i1.127>.

¹⁵ Nur Shadiq Sandimula, "Status Dan Hak Anak Luar Nikah Perspektif Madzhab Hanafi," *AN-NIZAM: Jurnal Hukum Dan Kemasyarakatan* 14, no. 1 (2020), <https://doi.org/http://dx.doi.org/10.44633/an-nizam.v14i1.314>.

Fatwa MUI dan Kitab Suci Hasyiah Al-Bajury” (“A Comparative Study on the Legal Status of Financial Support for Children Born from Zina According to the MUI Fatwa and the Sacred Text Hasyiah Al-Bajury”). The Indonesian Council of Ulama (MUI) issued a fatwa in response to a Constitutional Court decision, which mandates that a man who commits zina must provide financial support to the child he has fathered. The court based this ruling on the argument that scientific evidence can still establish a biological relationship between the man and the child. In contrast, Sheikh Ibrahim al-Bajury, in his commentary *Hasyiah al-Bajury*, affirms that a child born from zina only has lineage and legal ties to the mother and her family not to the man who impregnated her. According to his view, there is no legal or religious connection between the man and the child born from *zina*, even if science can prove a biological relationship¹⁶.

This study intends to complement previous research on children born from zina by examining the status of lineage (*nasab*) of illegitimate children through the dialectic between Islamic law and Indonesian positive law, even though the issue of children born from *zina* has already been extensively studied by other researchers. Therefore, the research questions of this study are First, how the status of a child born from zina According to Islamic Law, Second, how the legal status of illegitimate children according to positive law. Third, how to determine the lineage of a child born from *zina*.

Method

This research is library research utilizing a qualitative descriptive method by focusing the discussion on the topic of the lineage status of child born from *zina*: a comparative analysis of islamic law and Indonesian positive law. Data sources are compiled from journals,

¹⁶ Imas Bagus Putra, “Studi Komparatif Kedudukan Hukum Nafkah Anak Zina Menurut Fatwa MUI Dan Kitab Hasyiah Al-Bajury,” *PRO JUSTICIA : Jurnal Hukum Dan Sosial* 2, no. 1 (2020).

books, and websites, making the presentation of the research more varied and comprehensive. This research applied to examine 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 a systematic comparison between two distinct legal systems under investigation: Islamic jurisprudence and Indonesian state law.¹⁷

Result and Discussion

The Status of a Child Born from Zina According to Islamic Law

In general, individuals tend to aspire to experience marriage only once in their lifetime¹⁸. Islam teaches its followers that a child born lawfully in accordance with Islamic principles holds a noble and honorable status. Therefore, such children have both parents and are entitled to financial support, education, and proper care¹⁹, counseling, and other essential needs until they reach an age where they are capable of living independently²⁰. There are mutual rights and responsibilities between parents and children. As long as a child is not instructed to commit immoral acts or harm others physically or emotionally, they are obligated to respect and obey their parents. It is the mother's responsibility to provide nourishment or breastfeed her

¹⁷ Marilang, "Legal Relationship between Illegitimate Children and Their Biological Father the Analysis of Constitutional Court Decree No. 46/PUU-VIII/2010 in the Perspective of Civil and Islamic Law," *Journal of Indonesian Islam*, 2016, <https://doi.org/10.15642/JIIS.2016.10.2.335-354>.

¹⁸ Halum Musthafa, Firdaus, and Zainal Azwar, "Analysis Of The Lajnah Bahtsul Masail NU Fatwa Method On Divorce Jokes," *El-Ahli: Jurnal Hukum Keluarga Islam* 6, no. 1 (2025): 24–44, <https://doi.org/10.56874/el-ahli.v6i1.2032>.

¹⁹ Rahmat Hidayat, "Tanggung Jawab Dan Peran Orang Tua Terhadap Pendidikan Anak Dalam Pandangan Islam," *Al Hikmah: Journal of Education* 1, no. 2 (2020): 141–52, <https://doi.org/10.54168/ahje.v1i2.17>.

²⁰ Shofiyah and Abd Kholiq, "Perlindungan Hak Anak Dalam Keluarga Dan Tantangan Global Dalam Prespektif Al-Qur'an," *Jurnal Imu Al Quran Dan Tafsir*, 3, no. 2 (2020): 281–96.

child to support healthy growth and development²¹. Meanwhile, the father's general responsibility is to provide for his wife and children. When a child is born within a lawful marriage, they are entitled to receive those rights and responsibilities²².

Islamic legal studies classify illegitimate children (*anak haram*) into two categories. First, a child who is born within a valid marriage but was conceived outside of that lawful union. Second, a child who is born entirely outside of a valid marriage this includes children resulting from *li'ān* (mutual cursing) and *zina* (illicit sexual relations). According to Imam al-Shafi'i, a child can be attributed to the father if the child is born at least six months after the marriage between the mother and the father.

However, this (lineage attribution) applies only to the mother if the child is born in less than six months. Alternatively, Imam Abu Hanifah holds the view that if a child born out of wedlock is later followed by a valid marriage contract (*akad nikah*), the child may still be attributed to the biological father as a legitimate child. His reasoning is based on the principle that every child must have a biological father, and the term "marriage" essentially implies a sexual relationship. Imam Malik, on the other hand, emphasizes that children born from *zina* are more strongly connected to their mothers rather than their fathers. Those who argue that an illegitimate child has lineage (*nasab*) only through the mother and not through the man who impregnated her share the same stance as Imam Ahmad ibn Hanbal²³.

²¹ Nooreen Zaidi, "Human Rights of Children," *International Journal of Criminal, Common and Statutory Law* 2, no. 1 (2021): 58-64, <https://doi.org/10.1542/9781581109726-human>.

²² Ali Mohtarom, "Kedudukan Anak Hasil Hubungan Ziba Menurut Hukum Islam Dan Hukum Positif," *Al-Murabbi: Jurnal Pendidikan Agama Islam* 3, no. 2 (2018).

²³ Asman Asman, "Hamil Di Luar Nikah Dan Status Nasab Anaknya," *Jurnal Kajian Ekonomi Hukum Syari'ah* 6, no. 1 (2020).

It is important to consider all aspects of the reality that some children are born outside of marriage, including the well-being of the child and the behavior of the parents. Nevertheless, many scholars firmly assert that a child born out of wedlock does not have a legal relationship with the biological father. This position has been formalized as a scholarly consensus (*ijma'*). However, this does not mean that the biological father is absolved of his parental responsibilities. Even though Sharia law may not recognize a legal lineage (*nasab*) between the child and the father, the child still possesses inherent human rights. The father has a moral obligation to fulfill the child's basic needs. Religion does not excuse the abandonment of a child²⁴.

In Islam, a child born lawfully within a valid marriage holds an honorable status and is entitled to full parental care, including financial support, education, and emotional well-being, with mutual rights and responsibilities between parents and children. However, Islamic scholars differ on the legal status of children born out of wedlock. While Imam al-Shafi'i limits lineage attribution to the father only if the child is born at least six months after marriage, Imam Abu Hanifah allows for the possibility of *nasab* if a valid marriage follows the birth. Imam Malik and Imam Ahmad ibn Hanbal emphasize that such children are only connected to their mothers. Despite a scholarly consensus (*ijma'*) that illegitimate children do not legally belong to their biological fathers, Islam still upholds the child's human rights, and fathers retain a moral duty to provide for their needs, regardless of legal lineage.

The Legal Status of Illegitimate Children According to Positive Law.

²⁴ M.Hajir Susanto, Yonika Puspitasari, and Muhammad Habibi Miftakhul Marwa, "Kedudukan Hak Keperdataan Anak Luar Kawin Perspektif Hukum Islam," *Justisi* 7, no. 2 (2021).

A child born from *zina* refers to one who is conceived and delivered outside the bounds of a lawful marriage. Both the Marriage Law and the Compilation of Islamic Law (KHI) include provisions that address this matter:²⁵ First, according to Article 43 paragraph 1 of Law No. 1 of 1974, a child born outside of marriage is legally recognized as having a civil relationship only with the mother and her family. However, following judicial review, a child born out of wedlock who has a proven biological connection to both parents may file a legal claim to seek acknowledgment from the father through the mother.

Second, based on Article 99 of the Compilation of Islamic Law (KHI), a child born within or as a result of a valid marriage is considered a legitimate child. Additionally, a child born to a wife after a lawful marital relationship is also considered legitimate, even if the conception occurred outside the womb (*i.e.*, through lawful means). Finally, Article 100 of the KHI affirms that a child born outside of marriage has a lineage (*nasab*) relationship only with the mother and her family.

According to the provisions of the Marriage Law, if a child is formally acknowledged, they may be treated as a legitimate child. This legal recognition gives rise to mutual rights and responsibilities between the child and the parents. In essence, the act of acknowledgment validates the child's legal standing within the family unit.

Article 281 of the Indonesian Civil Code (KUHPerdara) outlines three main ways in which a child born out of wedlock may be legally recognized: (1) through the child's birth certificate, (2) through an authentic certificate or official legal document, or (3) through an existing marriage certificate. A common practice in civil law is for the

²⁵ Busman Edyar, "Status Anak Luar Nikah Menurut Hukum Positif Dan Hukum Islam Pasca Keluarnya Putusan MK Tentang Uji Materil Undang-Undang Perkawinan," *Al-Istinbath* 1, no. 2 (2016).

father's name to be listed on the child's birth certificate, which serves as an official acknowledgment of paternity.²⁶

Another approach applies when a pregnant woman and the man who impregnated her marry legally and acknowledge the child as being born from *zina* (an unlawful sexual relationship). This scenario includes children born out of wedlock or as a result of fornication, where the father has not acknowledged the child at the time of birth registration. According to the Fatwa of the Indonesian Council of Ulama (MUI), a child born from *zina* is defined as: "*a child born as a result of sexual intercourse outside a valid marriage according to religious law, and such an act is classified as a jarimah (criminal offense).*" Likewise, J. Satrio defines a child born from *zina* as one resulting from an extramarital affair between a man and a woman, in which either one or both are already married to someone else.

In another reference, a child born from *zina* is defined as one who is conceived or born from a relationship between a man and a woman where either one or both are legally married to other individuals. According to Munir Fuady, author of *Konsep Hukum Perdata* (The Concept of Civil Law), under the Indonesian Civil Code (KUH Perdata), a child of *zina* is the result of an intimate relationship (outside of marriage) between a man and a woman, where one or both parties are bound by marriage to someone else. In such cases, the child cannot be legally recognized as an acknowledged child nor can they be adopted (*anak angkat*) under civil law provisions. This exclusion underscores the strict legal boundaries regarding the status and rights of children born from illicit relationships.²⁷

In this context, the term *anak zina* in positive law refers to a child born as a result of *zina muhsan*, where one or both individuals involved in the illicit relationship are already bound by a legal marriage to someone else. Meanwhile, when the child is born from an

²⁶ See Indonesian Civil Code (KUHPerdata Article 281.

²⁷ Munir Fuady, *Konsep Hukum Perdata*, (Jakarta: Rajagrafindo Persada, 2015).

illicit relationship between two unmarried individuals (*zina ghairu muhsan*), the child is generally referred to as an child born from zina.

The concern of the Muslim community regarding the impact of the Constitutional Court of the Republic of Indonesia's Decision No. 46/PUU-VIII/2010 on children born out of wedlock was addressed by the Indonesian Council of Ulama (MUI) by issuing a fatwa titled "*The Status of Children Born from Zina and Their Treatment*." This fatwa aims to eliminate confusion (*syubhat*) among Muslims and firmly clarify the status of children born from zina according to Islamic teachings. With this fatwa, Muslims are encouraged to fully adhere to Shari'a law established by Allah SWT, rather than rely on man-made laws.

On March 10, 2012, MUI reaffirmed its position on the legal status of children born from *zina*. According to the fatwa, a child born from *zina* is defined as one who is born as a result of sexual intercourse outside a valid marriage as recognized by religious law, and the act is considered a *jarimah* (criminal offense). In this context, *hadd* refers to a punishment for specific crimes whose form and severity are explicitly outlined in Islamic texts (*nash*), while *ta'zir* refers to a punishment whose form and severity are left to the discretion of the governing authority (*ulil amri*). The fatwa also introduces the concept of *wasiat wajibah* (mandatory bequest), a policy requiring a man who fathered a child through *zina* to allocate a portion of his wealth to the child upon his death, even though the child is not legally entitled to inheritance under standard Islamic law.

The legal provision in the MUI fatwa states that a child born from *zina* has no lineage (*nasab*), marriage guardianship (*wali nikah*), inheritance rights (*waris*), or financial support (*nafaqah*) relationship with the man responsible for the child's birth²⁸. A child born from *zina* has a lineage, inheritance rights, and financial support relationship

²⁸ Putri Hurriah Lubis and Rica Gusmarani, "Inheritance Status of Unmarried Children from the Perspective of Islamic Law," *Internasional Journal of Law and Sharia* 1, no. 2 (2025): 7-10.

only with the mother and the mother's family²⁹. A child born from *zina* does not bear the sin of the illicit act committed by the person responsible for their birth. The perpetrator of *zina* is subject to *ḥadd* punishment imposed by the competent authority, in order to preserve legitimate lineage (*ḥifẓ al-nasl*). The government also has the authority to impose a *ta'zīr* punishment on the man who committed *zina* resulting in the birth of a child, by requiring him to provide for the child's living needs and allocate part of his wealth to the child through a *wasiat wajibah* (mandatory bequest) after his death. This punishment is intended to protect the child, not to legitimize the lineage (*nasab*) between the child and the man who caused the child's birth.

The third method of legal acknowledgment is through a notarized declaration recorded in an official document (*akta otentik*). Once this acknowledgment is made, the Civil Registry Office is notified so that the acknowledgment can be officially recorded on the child's birth certificate. However, according to Islamic law, such a child is still not considered a legitimate child (*anak sah*), and this status carries specific legal consequences.

First, there is no lineage (*nasab*) between the man and the child if the man had unlawful sexual relations with the child's mother. A legitimate child has the right to be associated with their father, but a child born from *zina* (illegitimate relationship) can only be linked to the mother, not the biological father. Legally, the father is not obligated to provide financial support to the child, even though biologically and genealogically the child is his. As a result, the relationship between the father and the child is recognized on a humanitarian basis only, not as a legal kinship³⁰.

²⁹ Ayu Indriani Amalia Martoredjo, "Status Nasab Anak Lahir Di Luar Perkawinan Perspektif Hukum Islam Dan Hak Asasi Manusia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 1-13, <https://doi.org/10.30984/jifl.v1i1.1640>.

³⁰ Ali Mohtarom, "Kedudukan Anak Hasil Hubungan Zina Menurut Hukum Islam Dan Hukum Positif," *Jurnal Al-Murabbi* 3, no. 2 (2018).

Second, inheritance rights are not reciprocal. One of the legal consequences of a child born from *zina* is that the child and the man who had unlawful relations with the mother cannot inherit from each other due to the absence of a recognized lineage (*nasab*) between them. In Islamic inheritance law, one of the primary bases for inheritance is blood relation or descent. According to A. Hasan, the only rightful heirs in such a case are the mother, the mother's siblings, and the mother's children. He further emphasizes that since the child is not considered the legitimate child of the father, the father does not qualify as the child's heir and vice versa. Thus, no inheritance relationship exists between the child and the biological father³¹

Third, an illegitimate father cannot act as the legal guardian (*wali*) for the child. In terms of legal consequences, this specifically relates to the domain of guardianship in marriage. In the case of an illegitimate daughter, she does not have the legal right to be married off by the man who had an unlawful relationship with her mother, nor can she be married through guardianship based solely on biological lineage. In Islamic law, a wali in marriage is not taken from the group known as *dzawil arham* (kin through non-inheriting ties), but rather from those who fall under the category of '*asabah* (male relatives entitled to inheritance). Thus, the man involved in *zina* with the mother has no legal standing to act as a marriage guardian for the child.

Therefore, a woman born out of wedlock is considered to have no lineage (*nasab*) with the man who had an unlawful relationship with her mother, since inheritance and guardianship are both based on legal descent. As a result, she can only be married by a judge-appointed guardian (*wali hakim*) and not by the man involved with her mother. According to Mohtarom, this situation is equivalent to the absence of a legal guardian (*wali nasab*) altogether. Hence, the legal

³¹ Al-Ahsan, *Al-Faraid* (Surabaya: Pustaka Progresif, 1979).

system treats the father as having no standing in matters of guardianship over the child.³²

The author uncovered several cases involving guardianship in the marriage of children born out of wedlock in Nagari IV Koto Mudiek. In August 1998, Mr. E and Mrs. D were married, followed by the birth of their daughter in January. Feeling ashamed of public opinion, Mr. E still acted as the marriage guardian for his daughter. When she grew up and was about to get married, the marriage contract was conducted twice: once officially at the Office of Religious Affairs (KUA) with the presence of a judge-appointed guardian, and a second time privately at home. This was because the community was unaware that the child was born out of wedlock, as Mr. E and Mrs. D had married abroad, not in their hometown.

Under Islamic law, a child born from *zina* meaning from a man who is not legally married to the mother does not have a recognized lineage relationship with that man. As a result, the biological father is only permitted to give or receive inheritance or bequests voluntarily. He is not allowed to act as a marriage guardian (*wali*) for his daughter, and neither the father nor the child can inherit from one another under Islamic inheritance law³³. According to Article 171 letter f of the Compilation of Islamic Law (KHI) in Indonesia, a will (*wasiat*) is defined as the transfer of property by a testator to another person or organization, which takes effect after the testator's death. The legal provisions governing wills are comprehensively regulated in Articles 194 to 209, which detail all aspects related to the law of inheritance through wills.

³² Mohtarom, "Kedudukan Anak Hasil Hubungan Zina Menurut Hukum Islam Dan Hukum Positif."

³³ Neng Djubaedah, *Pencatatan Perkawinan Dan Perkawinan Tidak Tercatat Menurut Hukum Tertulis Di Indonesia Dan Hukum Islam* (Jakarta: Sinar Grafika, 2012).

Determining the Lineage of a Child Born from Zina

According to divine law, human development begins with the establishment of a marriage contract. Within this contract, there are essential components known as the pillars of marriage, which include the bride, the groom, a guardian (*wali*), two witnesses, and the formal offer and acceptance (*ijab and kabul*). Each of these pillars carries specific conditions that must be met. For example, one of the requirements for the bride and groom is that there must be no prohibited familial relationship between them. This is why knowing a person's lineage (*nasab*) is crucial. Without a clear understanding of one's lineage, an individual may face difficulties in entering into a lawful marriage with someone else.

Establishing lineage (*nasab*) is essential not only for matters of marriage but also for many other legal and social concerns. For instance, it is necessary to determine the rights and responsibilities between a child and an adult—whether from adult to child or vice versa especially in matters of financial support, caregiving, and inheritance. Without clear lineage, it becomes difficult to determine who is obligated to provide for the child's needs, or who is entitled to inherit from the child if they pass away leaving behind wealth. Similarly, it would be challenging to determine whether someone is permitted to marry the child without knowing their lineage.

This highlights the critical importance of confirming a child's ancestry. Because of this, Islam places great emphasis on the issue of lineage. A person is prohibited from claiming descent from someone who is not their biological parent, just as they are forbidden from denying ties to someone who is in fact related to them by blood.³⁴ The Prophet Muhammad (peace be upon him) affirmed this in a hadith narrated by Sa'id bin Abi Waqqas:

³⁴ M. Jamil, "Nasab (Family Relationship) in Perspective of Tafsir Ahkâm (Legal Qur'anic Interpretation)," *Ahkam: Jurnal Ilmu Syariah*, 2016, <https://doi.org/10.15408/ajis.v16i1.2902>.

“Anyone who knowingly attributes their lineage to someone who is not their biological father, claiming him as such within the context of Islam, will be forbidden from entering Paradise.” (HR. Muslim 95).

Whoever attributes himself to a man other than his father, while knowing that he is not his father, then Paradise is forbidden for him.” (HR. Bukhari)

According to a narration reported by Abu Dawud, an-Nasa’i, al-Hakim, Ibn Majah, and Ibn Hibban from Abu Hurairah, the Prophet Muhammad (peace be upon him) stated that any woman who knowingly gives birth to a child from an illicit relationship will be forsaken by Allah and will not enter Paradise. Likewise, any man who knowingly denies the lineage of his own child will be barred from Paradise by Allah.

“Lineage is established through a lawful marriage, and for the adulterer, there is only the punishment of stoning. (HR. Muslim 2646)

From the hadiths mentioned above, it can be concluded that determining lineage is extremely important. Whoever claims to be descended from someone with whom they have no actual lineage, Allah will forbid them from entering Paradise. Conversely, whoever denies a lineage that truly exists between them and someone else will also be forbidden from entering Paradise. Furthermore, a man who has committed *zina* (fornication or adultery) is not permitted to claim as his own the child born from the woman with whom he committed the act.

Islam strictly regulates the issue of lineage (*nasab*) due to its central role in ensuring clarity and legal certainty within society, particularly in matters such as marriage, inheritance, and familial

responsibility.³⁵ Any falsification or denial of *nasab* is met with severe religious consequences, including threats of hellfire or being barred from paradise, because such confusion can disrupt social harmony and legal order. In Islamic law, a valid marriage results in a legitimate child, whereas a child born of *zina* (fornication) a sexual relationship outside of lawful marriage without proper consent, witnesses, or guardianship is considered illegitimate and only affiliated with the mother and her family, as outlined in Article 43 of Law No. 1 of 1974.

This distinction is also applied in cases of void marriages (*nikah batil*), where an attempt to fulfill marriage pillars may render the child legitimate, unlike *zina*, which is motivated solely by sexual gratification. Nevertheless, Islam obligates parents to love and care for their children while expecting children to honor their parents in return, emphasizing a reciprocal but duty-first ethic. Criticism has been raised against the Indonesian Constitutional Court's Ruling No. 46/PUU-VIII/2010, which equates the civil rights of children born out of wedlock with those born within lawful marriage.

According to Islamic jurisprudence, such children categorized as child of *zina* or child of *li'an* do not have legal paternity, cannot inherit from their biological father, nor can the father act as a guardian. This position is reinforced by authentic hadiths of Prophet Muhammad (PBUH), such as the one stating, "The child belongs to the (legal) bed, and for the adulterer is the stone," indicating the child should follow the mother. The Court's ruling, however, extends beyond its original intent by acknowledging civil ties even in cases of *zina*, leading the Indonesian Ulema Council (MUI) to deem the decision excessive and in violation of Islamic doctrine and constitutional principles. The legal implications are serious, potentially undermining the institution of marriage by allowing

³⁵ Agustin Hanapi, Imanuddin, and Khairuddin Hasballah, "Kedudukan Metode Al-Qāfah Dalam Penetapan Nasab Anak Menurut Ulama Perspektif Maqashid Al-Syariah," *De Jure: Jurnal Hukum Dan Syar'iah*, 2022, <https://doi.org/10.18860/j-fsh.v14i1.15875>.

similar rights to children born from *zina*, thus blurring the line between lawful and unlawful unions.³⁶

Practically, it complicates inheritance distribution, particularly when biological children born out of wedlock make retroactive claims. While the ruling offers protections like financial support and inheritance rights to out-of-wedlock children, it also triggers ideological, legal, and religious conflicts, prompting suggestions that such recognition should be limited to children from unregistered but legitimate marriages (*nikah siri*), excluding those born through *zina* to preserve both legal coherence and Islamic moral foundations.

Conclusion

There are some fundamental differences between the perspective of Islamic law and Indonesian positive law regarding the lineage status (*nasab*) of children born out of wedlock. Islamic law strictly limits the child's lineage connection only to the mother and her family in order to preserve the purity of genealogical lines, while still ensuring the child's right to protection and affection. In contrast, Indonesian positive law has evolved to recognize a civil relationship between a child born out of wedlock and their biological father, especially following Constitutional Court rulings and the use of modern evidence such as DNA testing. This divergence creates legal and social implications, including uncertainty in the legal status of the child, potential inheritance disputes, and persistent social stigma. Therefore, a harmonious synergy between these two legal systems is necessary to realize justice that is not only normative and formal but

³⁶ Ahmad Muhammad Sa'dul Kholqi, "PETUNJUK DAN LANDASAN DALAM PENETAPAN GARIS NASAB PESPEKTIF HUKUM ISLAM," *MASADIR: Jurnal Hukum Islam*, 2024, <https://doi.org/10.33754/masadir.v3i01.803>.

also prioritizes public welfare and the protection of children's rights as a vital part of the nation's future.

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