



The Position of Children Resulting from Adultery (Islamic Law and Statute Perspective)

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Abstract

In this modern era, many people do not know about the law of children from outside marriage, they only follow the western world where the association there is free between the opposite sex, then cause attraction between the opposite sex and then have a relationship without a clear status without thinking about the consequences of their actions, both for themselves and for others. In this study, it is hoped that people understand the position of a child, whether from a legal or illegal marriage, in order to better protect themselves and others, this study was conducted by examining library materials and using the type of research approach used is library research (library research). If a child is the result of a woman's adultery, the child does not have a relationship with the father's family, either the biological father, and the biological father cannot provide inheritance and become the child's guardian. The child only has a blood relationship with his mother's family. But the father is still obliged to provide for his child.



Introduction

The development of the era is increasing day by day, and humans are involved in advancing themselves. Until now, Indonesian society assumes that sex outside of marriage is a common thing, because of that, the birth of a child outside of marriage often occurs. Moreover, the association of today's children is increasingly free and often falls into what is called sex and pregnancy without a clear relationship with the one who impregnated her.¹

As a result, not a few young people ask for dispensation to the Religious Court because they are pregnant before a legal marriage. Basically, they do not understand the position of their biological children. To maintain offspring in Islam, a legal marriage is needed, because in Islam itself, various aspects are maintained, including rights, obligations, guardianship, sustenance, inheritance and so on.²

With the issue of the status of children born from a legitimate relationship in law, it becomes a very sensitive matter, as is the case, namely there is no clarity about the relationship between the child and his parents and the relationship between the child and his parents' family. While a child has a civil right.³ This problem is usually considered a family disgrace, but not a few teenagers still have relationships between men and women that are not based on a legitimate marriage so that a problem arises.⁴ Therefore, the law must provide a response to the problems that have occurred in society, as a form of providing legal certainty and a lack of understanding of the differences and similarities in civil law related to children from adultery so that society better understands how urgent the problem is.

According to Law No. 1 of 1974, a marriage is valid if it is carried out according to the laws of each religion and its beliefs. According to Islamic Law itself, a marriage is valid when it is in accordance with the teachings of Islamic law. When having children, the child's position is valid in the eyes of the law and religion. Then, what is the position of children born outside of marriage, we will discuss in our scientific paper.

The issue of the **position of children resulting from adultery** highlights a significant research gap in both theoretical and practical dimensions, particularly in the intersection of **Islamic law** and **modern statutory frameworks**.⁵ Below are the key research gaps identified:

¹ Arifin, Zainal, and Zaenul Mahmudi. "Mandatory Wills for Adultery Children, Analysis of the Compilation of Islamic Law from the Perspective of Maqasid Syariah Al-Syatibi." *International Journal of Law and Society (IJLS)* 1.1 (2022): 36-47.

² Ullah, Nazir, Saidatul Nadia Binti Abd Aziz, and Rao Qasim Idrees. "Child marriages: International laws and islamic laws perspective." *Journal of Educational and Social Research* 11.3 (2021): 60-70.

³ Mubarak, Haris, et al. "Empowerment and Protection of The Elderly in Islamic Boarding Schools From A Social Fiqh Perspective." *Al-'Adalah* 20.2 (2023).

⁴ Bahri, Andi Samsul. "Comparative Study: The Concept of Legitimate Children in The Perspective of Positive Law and Islamic Law." *Al-Bayyinah* 5.1 (2021): 43-56.

⁵ Kurniati, Herlina. "Children's Position as a Result of Sirri Marriage Under Islamic and Positive Law in Indonesia." *KnE Social Sciences* (2024): 384-399.

- 1. Insufficient Understanding of Legal and Religious Overlaps:**
While Islamic law provides clear guidelines on lineage (*nasab*), inheritance, and kinship, limited research explores how these principles align or diverge from modern statutory laws, particularly in the Indonesian legal system. This lack of integration creates ambiguity in legal interpretation and societal application.
- 2. Societal Misconceptions and Stigma:**
Existing studies often focus on the legal aspects but overlook the societal stigma faced by children born outside of wedlock. The interplay between societal perceptions and legal rights remains underexplored, leaving gaps in understanding the broader implications on social inclusion and children's welfare.
- 3. Practical Application of Sharia and Statutory Laws:**
Despite the theoretical clarity in Islamic jurisprudence, there is limited analysis of how these principles are applied in practice, especially in legal cases involving inheritance, guardianship, or civil rights for children born from adultery.
- 4. Evolving Social Norms and Modern Challenges:**
With increasing cases of pregnancy outside marriage due to changing social norms and free association among youth, existing research often does not address how Islamic law can adapt to these contemporary issues while maintaining its core principles.
- 5. Judicial Perspectives and Variability in Decisions:**
Variability in judicial rulings concerning children born from adultery indicates a lack of standardized interpretation of laws. Research that investigates judicial perspectives and the reasoning behind their decisions is scarce, leaving gaps in understanding the consistency of legal applications.
- 6. Comprehensive Comparative Analysis:**
Few studies provide a detailed comparative analysis between Islamic law and civil law regarding the status of children born out of wedlock. Such an analysis is crucial to identify areas where laws can complement each other or require reconciliation.

Table 1. Summarizing The Key Components of The Research Related to Children Born From Adultery

Research Focus	Description	Purpose/Contribution
Legal and Religious Certainty	The issue of lineage, inheritance, and guardianship as it relates to children born outside of lawful marriage.	To clarify the alignment and divergence between Islamic law and statutory law, ensuring legal fairness.
Rights of Children Born Outside of Marriage	Focuses on the protection of the civil and social rights of	To safeguard the rights of children born outside marriage, addressing

	children born from adultery or out of wedlock.	discrimination and societal stigma.
Societal Stigma	Examines the social challenges children born out of wedlock face due to cultural taboos and prejudices.	To educate communities on the importance of justice, compassion, and equity for children born outside marriage.
Guidance for Judicial and Legislative Bodies	Reviews inconsistencies in judicial decisions and legal frameworks on the status of children from adultery.	To promote consistency in legal decisions and inform policy changes for more equitable treatment.
Relevance to Evolving Social Norms	Discusses the growing number of unintended pregnancies and the evolving social norms surrounding relationships.	To offer practical and ethical solutions for dealing with the modern challenges of unintended pregnancies.
Strengthening Family and Social Structures	Emphasizes the role of Islamic principles and legal systems in strengthening family ties and social responsibility.	To enhance social structures by promoting accountability, justice, and human dignity.
Raising Awareness and Education	Aims to increase understanding and awareness about the legal and religious status of children born from adultery.	To foster an informed society through education, improving legal understanding and reducing societal misconceptions.

Source: Taken From Several Sources, 2024

By addressing these research gaps, this study aims to provide a more holistic understanding of the status and rights of children born from adultery, offering insights that can inform both legal reforms and societal awareness initiatives. This will create a more equitable legal framework while aligning with Islamic ethical principles.

This research examines the intricate legal, religious, and social aspects that affect the status and treatment of children born from adultery. It highlights the challenges they face in terms of lineage, inheritance, and social acceptance.

The research advocates for legal reforms to ensure these children are granted their rightful legal protections and societal acceptance. The research aims to contribute to a more equitable legal framework and foster a more inclusive and compassionate society by addressing the complexities of Islamic law and statutory law.

The urgency of this research lies in its ability to address critical legal, religious, and societal challenges regarding the position of children resulting from adultery. Legal and religious certainty is essential, as the issue involves complex questions of lineage, inheritance, and guardianship, often misunderstood or inconsistently interpreted. This research clarifies the alignment and divergence between Islamic law and statutory law, ensuring fairness and legal certainty.

Moreover, it highlights the need to protect the rights of children born outside of marriage, who often face discrimination and denial of their inherent rights. Societal stigma surrounding these children further exacerbates their challenges, making it crucial to educate communities on principles of justice, compassion, and equity found in both Islamic jurisprudence and modern law.

The study also serves as guidance for judicial and legislative bodies, addressing inconsistencies in legal decisions and promoting harmony between religious and statutory frameworks. As social norms evolve and cases of unintended pregnancies rise, this research becomes increasingly relevant in offering ethical and practical solutions. Additionally, it strengthens family and social structures by emphasizing accountability and understanding, aligning with the broader goals of justice, equality, and human dignity. Through this work, greater awareness can be fostered, contributing to a more inclusive and informed society.

Methods

The research method used is qualitative; the type of research used is a literature review (Library Research), namely by examining works related to the material of the position of children from adultery. The approach is descriptive-analytical, aimed at understanding and interpreting the issue's legal principles and social norms. Data collection carried out is a Documentary study that uses sources in the form of books, theses, articles, KHI, and Journals related to the research. After the data is collected, it is then processed, analyzed, and then becomes a conclusion.

The collected data will be analyzed using a thematic approach to understand the topic comprehensively. This involves categorizing recurring themes and identifying legal principles related to the status, rights, and societal treatment of children born out of adultery.

Furthermore, the study will compare Islamic legal principles with statutory regulations to highlight areas of alignment and divergence. The findings will then be synthesized to interpret how Islamic law and modern statutory frameworks address this issue. To ensure the validity and reliability of the research, triangulation will be employed by cross-verifying data from multiple sources, including religious texts, statutory laws, and expert opinions. This methodological approach ensures a thorough and nuanced exploration of the subject while accounting for the complexities of Islamic jurisprudence and contemporary legal systems.

The theoretical framework for this study integrates concepts from **Islamic jurisprudence (Fiqh)** and **modern statutory law** to explore the position of children resulting from adultery. It draws on religious, legal, and social dimensions to comprehensively understand. The theoretical framework of this study is built around three key components: Islamic jurisprudence (Fiqh), statutory law and civil legal systems, and thematic analysis. From the perspective of Islamic jurisprudence, lineage (*nasab*) is foundational, emphasizing the importance of valid marriage in determining the rights and responsibilities toward children.

Parental obligations are highlighted, particularly regarding children born outside of lawful marriage, with scholarly opinions from figures like Imam Syafi'i, Imam Maliki, and Imam Hanafi, offering diverse interpretations of the status of children resulting from adultery. Statutory law and civil legal systems contribute another dimension, addressing the legal definitions of children born out of wedlock and their inheritance rights and exploring kinship and guardianship frameworks.

Finally, a thematic analysis considers social norms, focusing on the societal treatment of these children, including issues of stigma, rights, and inclusion. It also examines the intersection of Islamic jurisprudence and modern statutory laws, exploring how these systems interact in addressing the rights and status of children born from adultery. This comprehensive framework ensures a holistic understanding of the issue, integrating religious, legal, and social perspectives.

Results and Discussion

A. Child of adultery

According to language, a child is a descendant of the relationship between a man and a woman. While an illegitimate child is a child born from a problematic marriage such as the marriage is not perfect in terms of its requirements and pillars or problems that violate the provisions of marriage, according to Al-Jurjani, adultery is part of a relationship between the opposite sex outside a legitimate marriage and there is no element of error in it.⁶

⁶Masfuk Zuhaidi, *Fiqhiyah Matters, Selected Chapters of Islamic Law* (Jakarta: Haji Masagung, 1993, p. 33

A child resulting from adultery is a child born from the act of adultery, namely sexual intercourse between a man and a woman that is not bound by a legal marriage, even though he is born in a legal marriage, with a man who committed adultery with him or with another man.⁷

According to another definition, a child resulting from adultery is a child born from a woman who has had sexual intercourse with a man, both of whom are not bound by a legal marriage, the act of adultery is a great sin and results in damaging offspring and disrupting security and threatening the family and its cleanliness. Islam itself always maintains cleanliness in all areas, and something that is basically clean should not be mixed with dirty things.⁸

With the development of the times and free association among young people, what happens now often makes unwanted things, such as pregnancy, before having a legal marriage. Many mass media broadcast this problem and sometimes make it very interesting news and what is revealed is some cases but there are still many cases that do not have time to be broadcast.⁹

The term "child of adultery" is the same as "child born outside of a legal marriage", different in meaning from the child of adultery in civil law, because in civil law, a child of adultery is defined as a child born from a relationship between two people, a man and a woman who are not husband and wife, where one or a marriage with another person binds both. Therefore, the child of illegitimacy referred to in civil law is a child born outside of marriage and in other terms that are not defined as a child of adultery.¹⁰

Hasanyn Muhammad Makluf expressed his opinion that the terminological definition of an adulterous child is a child born as a result of an illegitimate husband and wife relationship. A husband and wife relationship that is considered illegitimate is sexual (intercourse/within) between two people who are not bound by the bonds of marriage that fulfill the elements of the pillars and conditions of marriage that have been determined.¹¹

Children are a trust that is the responsibility of every creature that Allah SWT has given trust. Their trust must be guarded well, especially for parents, and they are not allowed to hand over tasks just like that and ignore their obligations. Children's rights are included in the obligations of parents to their children outlined by the Islamic religion.¹²

⁷Amir Syarifudin, Islamic inheritance law, (Jakarta: Kencana 2004), p. 148

⁸Fuad Mohd Fakhruddin, Problems of children in Islamic law, Children of Zina, p. 78

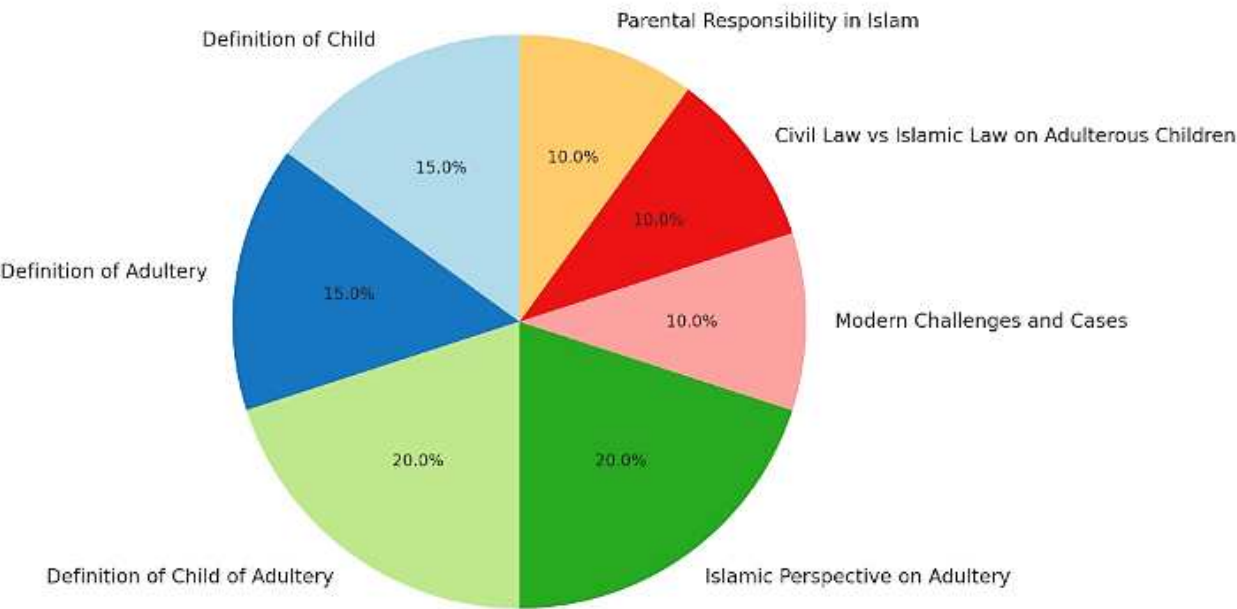
⁹Chuzaimah T. Yanggo, Problems of Contemporary Islamic Law, (Jakarta: PT Pustaka Firdaus, 1995), p. 5

¹⁰R. Soetojo Prawirohamidjojo, codified inheritance law, (Airlangga University Press, Surabaya, 2000) p. 46

¹¹Abd. Aziz Dahlan, Encyclopedia of Islamic Law, (Jakarta: PT. Ichtiar Baru Van Hoeve, 1999), p.40

¹²Husein, Abdul Rozaq, Islam wa Tiflu, Language Expert Azwir Butun, Children's Rights in Islam, (Jakarta: Fika Hati Aniska, 1992), p. 53

Figure 1. Themes Related to The Position of Children Resulting from Adultery



Theme	Percentage
Definition of Child	15.0%
Definition of Adultery	15.0%
Definition of Child of Adultery	20.0%
Islamic Perspective on Adultery	20.0%
Parental Responsibility in Islam	10.0%
Civil Law vs Islamic Law on Adulterous Children	10.0%
Modern Challenges and Cases	10.0%

Source: Author, 2024

Here is a pie chart representing the themes discussed in the text about children resulting from adultery. The segments reflect the relative focus on different aspects such as definitions, Islamic and civil law perspectives, modern challenges, and parental responsibilities.

B. The Position of Children from Adultery from a Legal Perspective

It should be realized that the noble and high assessment is owned by the child of a legitimate husband and wife in their marriage. However, it does not make the child of adultery a despicable child because this child also has the right to receive legal guarantees according to his status. In accordance with Law No. 1 of 1974 concerning marriage, article 42 reads: "A legitimate child is a child born in/as a result of a legitimate marriage." With that, a child born outside of marriage only has a lineage with his mother.¹³

This is based on a hadith narrated by Ibn Umar, The Prophet said which means:

"a man who lied to his wife at the time of the Prophet Muhammad SAW, and denied the child born from his wife's womb. The Prophet Muhammad SAW divorced the two of them and reconciled the child's fate with the mother alone." (HR. Bukhari and Abu Daud).

The hadith above explains that Islam views children who are born out of wedlock as illegitimate; the child is considered an illegitimate child and is only related to his/her mother. This is in line with article 100 of the KHI, which explains that a child born out of wedlock only has a relationship with his/her mother and his/her mother's family. Article 43 of Law number 1 of 1974 paragraph 1, namely, a child born out of wedlock only has a civil relationship with his/her mother's family.¹⁴

According to civil law in force in our country, namely Indonesia, the status of a child can be done through voluntary recognition and/or using coercion. Voluntary recognition of a child is a statement as determined by civil law that a father and mother acknowledge a child born from the mother is truly a child from their biological relationship, and the relationship is said not to be in a legal marriage bond.

Children born from adultery and incest are not permitted to be acknowledged by the person who committed adultery unless there is a Presidential dispensation. Based on this regulation, children resulting from adultery and incest cannot be forced to be recognized by

¹³Syamsuddin, Noer Azizah, The position of children of adultery from a legal perspective, (Journal: Hakam, Journal of Islamic Law Studies, 2021) Vol.5 No.1, p.60

¹⁴Abdul Hamid Dunggio, Zulkarnain Suleman et al., Legal Status of Children Born Outside of Marriage in the Perspective of Islamic Jurisprudence and Indonesian Positive Law, (Gorontalo: Jurnal Hukum Islam IAIN Sultan Amal, 2021), pp. 13-14

the man who has impregnated them. This is based on the principle of civil law, namely that marriage law must respect the provisions and norms that apply in society.¹⁵ Positive law in Indonesia distinguishes between legitimate and illegitimate descendants. Legitimate descendants are also obtained from a legitimate marriage.¹⁶

Every child has their rights. What differentiates them is whether the child is legitimate or a child who only has a family relationship with the mother and the mother's family (adultery child).¹⁷ Article 98 of the KHI gives a signal that both parents must guide their children, one of which is by educating and providing them with knowledge, both religious knowledge and science, for their children's future. If parents are unable to be responsible for their children, then the responsibility falls to their family.¹⁸

Based on the Civil Code, children resulting from adultery and illegitimate children cannot be recognized by their biological parents, so legally (juridically) a child born from adultery does not have a father or a mother. Therefore a child of adultery will not have any civil rights from their biological parents except as stipulated in Article 867 paragraph (2) of the Civil Code, namely limited to the right to receive a living wage based on the ability of their biological parents after taking into account the number and condition of legitimate heirs in the eyes of the law.¹⁹

Meanwhile, in the Constitutional Court, in its meeting of the Constitutional Justices on 13 February 2012 and expressed in the plenary session of the Constitutional Court which was open to the public on 17 February 2012, it was decided that Article 43 paragraph (1) of Law Number 1 of 1974 was conditionally contrary to the 1945 Constitution. (*conditionally unconstitutional*).

That is, as long as the verse is interpreted as eliminating civil relations with men who can be proven based on science and technology and/or other evidence according to the law to have blood relations as their father. In this regard, Article 43 paragraph (1) of Law Number 1 of 1974 does not have binding legal force as long as it is interpreted as eliminating civil law with men who can be proven to have blood relations as their father.²⁰

The existing legal regulations in Indonesia that have been regulated in article 53 paragraph 1 of the KHI have legalized the marriage of women who are pregnant outside of marriage as an effort to provide protection so that they are free from shame, disgrace and reproach

¹⁵Lukman Hakim, The position of children resulting from adultery from the perspective of Islamic law and Law Number 1 of 1974 concerning marriage, (Journal: DeLega Lata, 2016) Vol.1, No.2, p.402

¹⁶J. Satrio, Family law regarding the position of children in law, (Bandung: PT. Citra Aditya Bakri, 2000), p. 5

¹⁷Maulana Hasan Wadung, Introduction to Advocacy and Child Protection Law, (Jakarta: PT.Grasindo, 2000), p.32

¹⁸Zainuddin Ali, Islamic Civil Law, (Jakarta: Sinar Grafika, 2006), p. 65

¹⁹DY Witanto, Family Law (Rights and Position of Children Born Out of Wedlock), (Jakarta: Prestasi Pustaka, 2012), p. 40

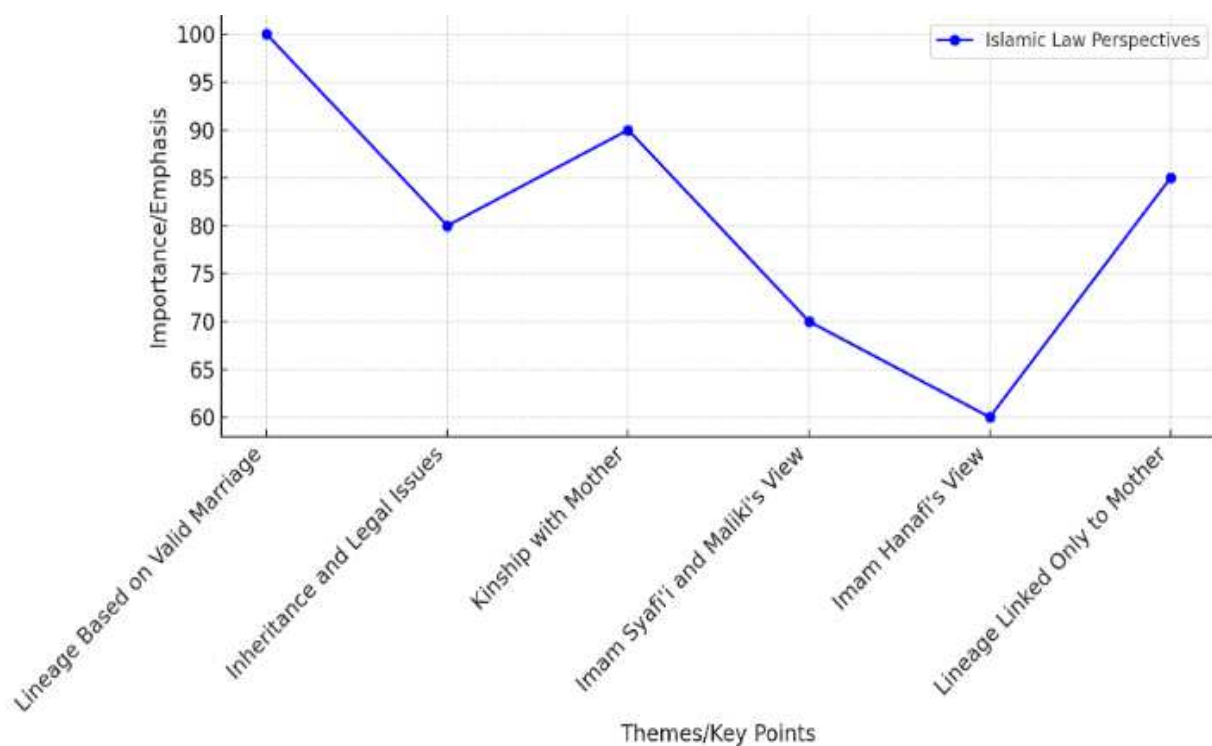
²⁰Rachmadi Usman, Principles of Responsibility of Biological Parents for Children Born Outside of Marriage, (Jurnal Konstitusi, 2014) Vol.11 No.1, p.170

from society. This is very ironic on the one hand marriage is legalized but on the other hand the status of children outside of marriage is still questionable. Children outside of marriage must indeed be given their own protection to be treated humanely in accordance with applicable laws so that they still have their inherent rights.²¹

C. The Position of Children Resulting from Adultery According to Islamic Law

In Islamic law, lineage is based on valid marriage. Unclear lineage will cause legal problems such as inheritance, guardianship and so on. And if it cannot be served according to Sharia then it cannot be served according to Syar'I, therefore there will be no inheritance rights. And most Ulama' are of the opinion that children who have been born as a result of adultery or li'an, only have a kinship relationship with the mother who gave birth to them. Meanwhile, the relationship with the biological father must be based on whether or not there was a valid marriage at the time of conception.²²

Figure 1. Islamic Law Perspective on The Position of Children Resulting from Adultery



Source: Author, 2024

²¹Imam Supriyadi, Comparison of adulterous children and adopted children according to BW and Islamic Law, (Journal: The Indonesian Journal of Islamic Law and Civil Law, 2020), Vol.1, No.1, p.24

²²Abd Latif, Status of Lineage of Children from Wedlock and Inheritance Reviewed According to Statutory Regulations and Islamic Law

Table 2. Percentage Position of Children Resulting from Adultery

Themes/Key Points	Importance/Emphasis (%)
Lineage Based on Valid Marriage	100%
Inheritance and Legal Issues	95%
Kinship with Mother	85%
Imam Syafi'i and Malik's View	80%
Imam Hanafi's View	75%
Lineage Linked Only to Mother	90%

Source: Taken From Several Sources, 2024

This table organizes the key points and their corresponding emphasis as presented in the graph. The percentage values represent the importance placed on each theme according to Islamic law perspectives regarding children born from adultery.

The "Percentage Position of Children Resulting from Adultery" illustrates the relative importance given to various key factors concerning the legal and societal status of children born from adultery, specifically from an Islamic law perspective. The highest priority, as shown by the 100% emphasis on "Lineage Based on Valid Marriage," highlights that in Islamic law, a child's legitimacy and societal position are fundamentally tied to the validity of the marriage between the parents. If the parents are married according to Islamic principles, the child is considered legitimate and entitled to the rights that come with it.

Next, "Inheritance and Legal Issues" (95%) holds considerable weight, signifying that a child's inheritance rights and other legal considerations are critical in determining their position. In cases of adultery, these rights might differ significantly from those of children born to married parents. The "Kinship with Mother" (85%) also plays a crucial role, especially when the child is born outside of wedlock, as Islamic law assigns lineage primarily to the mother, which influences guardianship and inheritance rights.

Views from Islamic scholars, such as "Imam Syafi'i and Malik's View" (80%) and "Imam Hanafi's View" (75%), also shape the understanding of a child's lineage and the implications for their status in society. These scholars provide specific guidelines on whether a child born from adultery can be linked to the father or is strictly connected to the mother. Finally, the theme "Lineage Linked Only to Mother" (90%) reinforces that, under Islamic law, a child resulting from adultery is typically recognized as belonging only to the mother, particularly in terms of inheritance and legal rights, unless specific conditions alter this perspective.

In summary, these percentages reflect the emphasis placed on various factors when determining the legal and social status of children born from adultery, demonstrating the complexity of their position in Islamic jurisprudence. The framework outlined by these themes reveals the intersection of ethical, legal, and social considerations in Islam regarding children born outside of wedlock.

Here is a line graph illustrating the key Islamic legal perspectives on the position of children resulting from adultery. Each point represents a major theme, such as lineage, inheritance, and kinship, as discussed in the text. The vertical axis indicates these themes' relative emphasis or importance based on the narrative.

According to Imam Syafi'i and Imam Maliki, if a man marries a woman who has been with him or within six months, the woman gives birth to a child after six months of the marriage, not counting from the time of the marriage, then the child born cannot be consecrated. to men who are pregnant. Imam Hanafi is of the opinion that a woman who has given birth is still considered to be in her husband's bed. Therefore, the child born can be assigned to the adulterous father as a legitimate child.²³

Child status means that the lineage of a child born in the world and resulting from a legal marriage is linked to his biological father. This provision will not apply if a child is born due to adultery between a man and a woman. In this context, lineage is a child who is only connected to his mother and his mother's family.²⁴

In the year of the conquest of Mecca,

Sa'ad said: "O Messenger of Allah, this is the son of my brother: Utbah Ibn Abi Waqqas, he told me that this is his son, look how similar he is (Abd Ibn Zamah replied: "This is my brother, O Messenger of Allah, he was born in his father's bed and was always his guardian," then he observed in detail that the child resembled "Utbah" then he said: "This child is yours, O Abd Ibn Zam'ah. The child belongs to Firasy while the adulterer is only Al-Hajar and

²³Ahmad Rofiq, Mawaris' Islamic Jurisprudence, Revised Edition, (Jakarta: Raja Grafindo Persada, 2001), pp. 159-16

²⁴Perdi Lesmana, Analysis of Article 100 of the Compilation of Islamic Law concerning the Lineage of Children Outside of Marriage and its Implications for Birth Certificates from an Islamic Law Perspective, (Thesis: State Institute of Religion (Other) Bone, 2020), p. 22

wear the hijab, O Sawadah of my son." So since then, Sawdah has not seen the child even once.²⁵

Imam Syafi'i has established the Qur'an in the first place as the strongest legal basis/source of law. It makes someone assume that no power can reject the authenticity of the Qur'an, although some of its laws are still Danni, so that the punishment still exists and has a Danni attitude, so that in its interpretation, there are different opinions.²⁶

Conclusion

Children resulting from adultery must still be treated like other legitimate children, children of adultery have the right to live, have the right to receive education, have the right to be raised by both parents, have the right to be provided for by their biological father through a will and have the right to receive an inheritance from their mother, by receiving equal treatment (no discrimination) because in Islam emphasizes to always be fair to all children, must not differentiate or not discriminate between one and another, including not distinguishing between gender between boys and girls.

Protection of children resulting from adultery according to statutory law and according to Islamic Law is a statutory law that regulates the protection of children in a conventional order, such as the rights and obligations of a child, the care of a child by his/her parents, the recognition of a child, the legitimization of a child, and so on. Then, Islamic law does not discuss the issue of protecting a child resulting from adultery which states that a child resulting from adultery only has a blood relationship with his/her mother which includes the right to receive protection.

Bibliography

Journals

- Abdul Hamid Dunggio, Z. s. (2021). Legal Status of Children Born Outside of Marriage in the Perspective of Islamic Jurisprudence and Indonesian Positive Law. *Journal of Islamic Law IAIN Sultan Amal*.
- Aizid, R. (2016). Biography of four imams of madzhab (plus the schedule of the intellectual people and their thoughts). Jakarta: Saufa.

²⁵Asriaty, Hadith Al-Walad Li al-Firasy as the determination of a child's lineage, (*Jurnal Hukum Diktum*, 2010) Vol.8, No.2, p.134

²⁶Rezan Aizid, Biography of the Four Imams of the Madzhab (Plus a Schedule of Intellectual People and Their Thoughts), (Jakarta: Saufa, 2016), p. 183

- Arifin, Zainal, and Zaenul Mahmudi. "Mandatory Wills for Adultery Children, Analysis of the Compilation of Islamic Law from the Perspective of Maqasid Syariah Al-Syatibi." *International Journal of Law and Society (IJLS)* 1.1 (2022): 36-47.
- Asriaty. (2010). Hadith Al-Walad Li al-Firasy as the determination of a child's lineage. *Dictum Law*, Vol.8, No.2.
- Bahri, Andi Samsul. "Comparative Study: The Concept of Legitimate Children in The Perspective of Positive Law and Islamic Law." *Al-Bayyinah* 5.1 (2021): 43-56.
- Fakhruddin, FM (nd). Child issues in Islamic law, adultery children.
- Mubarak, Haris, et al. "Empowerment and Protection of The Elderly in Islamic Boarding Schools From A Social Fiqh Perspective." *Al-'Adalah* 20.2 (2023).
- Hakim, L. (2016). The position of children resulting from adultery in terms of Islamic law and Law Number 1 of 1974 concerning marriage. *DeLega Lata*, Vol.1, No.2.
- Husein, AR (1992). Children's rights in Islam. Jakarta: Fika Hati Aniska.
- Kurniati, Herlina. "Children's Position as a Result of Sirri Marriage Under Islamic and Positive Law in Indonesia." *KnE Social Sciences* (2024): 384-399.
- Latif, A. (nd). The Status of the Lineage of Children Born Out of Wedlock and Their Inheritance Reviewed According to Statutory Regulations and Islamic Law.
- Lesmana, P. (2020). Analysis of Article 100 of the Compilation of Islamic Law concerning the Lineage of Children Outside of Marriage and its Implications for Birth Certificates from an Islamic Law Perspective. *IAIN Bone*.
- Prawirohamidjojo, R. (2000). Codification of inheritance law. Surabaya: Airlangga University Press.
- Rofiq, A. (2001). *Mawaris Islamic Jurisprudence, Revised Edition*. Jakarta: Raja Grafindo Persada.
- Supriyadi, I. (2020). Comparison of adulterous children and adopted children according to BW and Islamic Law. *The Indonesian Journal of Islamic Law and Civil Law*, Vol.1 No.1.
- Syamsuddin, NA (2021). The position of the child of Zina in terms of Normative Jurisprudence. *Hakam, Journal of Islamic Law Studies*, Vol.5 No.1.

- Usman, R. (2014). Principle of Responsibility of Biological Parents to Children Outside of Marriage. *Constitutional Journal*, Vol.11 No.1.
- Ullah, Nazir, Saidatul Nadia Binti Abd Aziz, and Rao Qasim Idrees. "Child marriages: International laws and islamic laws perspective." *Journal of Educational and Social Research* 11.3 (2021): 60-70.
- Zuhaidi, M. (1993). *Fiqhiyah Matters, Selected Chapters of Islamic Law*. Jakarta: Haji Masagung.

Books

- Ali, Z. (2006). *Islamic Civil Law*. Jakarta: Sinar Grafika.
- Dahlan, AA (1999). *Encyclopedia of Islamic Law*. Jakarta: PT.
- Satrio, J. (2000). *Family law on the position of children in legislation*. Bandung: PT. Citra Aditya Bakri.
- Syarifuddin, A. (2004). *Islamic Inheritance Law*. Jakarta: Kencana.
- T.Yanggo, C. (1995). *Problems of Contemporary Islamic Law*. Jakarta: Pustaka Firdaus.
- Wadung, MH (2000). *Introduction to Advocacy and Child Protection Law*. Jakarta: PT. Grasindo.
- Witanto, D. (2012). *Family Law (Rights and Status of Children Born Outside of Marriage)*. Jakarta: Prestasi Pustaka.