# LEGAL PLURALISM IN PROTECTING THE RIGHTS OF CHILDREN BORN OF INCEST IN URBAN MUSLIM COMMUNITIES IN INDONESIA: PERSPECTIVES OF RELIGIOUS DOCTRINE AND STATE LAW

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Legal Pluralism in Protecting the Rights of Children Born of Incest in Urban Muslim Communities in Indonesia: Perspectives of Religious Doctrine and State Law Licensed Under a Creative Commons Attribution-ShareAlike 4.0 International License

**Abstract**
This article examines the legal status of children born of incest and its implications for custody (*haḍānah*) and maintenance rights within the framework of legal pluralism in urban Muslim communities in Indonesia. Grounded in the premise that multiple legal systems coexist and interact, the study argues that the regulation of children born of incest is marked by enduring normative tensions between Islamic law and state law, which ultimately leads to legal uncertainty and inadequate protection of the child's best interests. Employing a qualitative, library-based socio-legal approach, the study analyzes primary legal sources—including Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, the Indonesian Civil Code, and Constitutional Court Decision No. 46/PUU-VIII/2010—alongside relevant academic literature. The findings indicate that traditional Islamic jurisprudence restricts legal lineage strictly to the maternal line in incestuous cases, whereas state law, particularly in the wake of the Constitutional Court ruling, conditionally permits the recognition of civil relations with the biological father through scientific proof. Such divergent frameworks split existing legal norms, fostering ambiguity over a child's legal standing, maintenance obligations, and the broader scope of their civil rights. Within urban Muslim communities, these tensions are negotiated through selective legal compliance, religious moral considerations, and persistent social stigma, all of which frequently obstruct the full realization of these children's rights. The study contributes to socio-legal scholarship by demonstrating that legal pluralism is not merely a passive coexistence of norms, but a dynamic arena of ongoing negotiation over legal entitlements. Effective protection therefore requires not only legal harmonization but also targeted sociocultural interventions that can bridge the gap between formal rules and lived social practices.

**Keywords:** Legal Pluralism; Children Born of Incest; Maintenance Rights; wasathiyyah

## A. Introduction

The status of children born of incest remains one of the most complex and sensitive questions in family law, particularly in societies where religious norms, state law, and social values operate simultaneously (Rahimah et al., 2025). In Indonesia, this complexity is intensified by the concurrent operation of Islamic law, national positive law, and civil-law traditions (Tursilarini et al., 2024). Each legal order constructs lineage, custody (*hadhanah*), and maintenance obligations differently, creating a fragmented legal landscape with direct consequences for the recognition and protection of children's rights (Afifah et al., 2021).

From a normative perspective, Islamic law, including Qur'an 4:23, places the legitimacy of lineage (*nasab*) at the centre of legal relations between children and parents. In cases of incest, a child's status may become particularly contentious in relation to recognition by the biological father, maintenance rights, and other civil entitlements (Sukataman et al., 2025). Indonesian state law, shaped by child protection and human rights principles, instead tends to prioritize the best interests of the child regardless of the circumstances of birth (Efendi et al., 2025). Civil-law approaches may also differ, especially concerning legal identity and parental responsibility (Reynita, 2025). This normative diversity represents not just a passive state of legal plurality, but a collision of conflicting rules and inconsistent applications.

These issues become even more pronounced in urban Muslim communities. Urban environments are often associated with greater legal awareness, broader access to formal institutions, and more exposure to modern legal discourse. Nevertheless, religious values continue to shape social perspectives and everyday practices (Luhuringbudi et al., 2025). Individuals consequently navigate multiple normative orders, generating what may be described as plural legal consciousness (Hariri & Babussalam, 2024). John Griffiths's socio-legal approach is relevant because it treats legal pluralism not merely as the coexistence of written norms but as a social reality enacted in everyday life (Flambonita, 2021). The distance between formal legal rules and social experience becomes especially apparent in sensitive cases involving children born of incest, where stigma, moral judgment, and legal uncertainty intersect.

Although scholarship on family law and child protection in Indonesia has expanded, relatively little attention has been paid to how legal pluralism shapes the rights of children born of incest. Existing research can be grouped into three clusters. First, doctrinal studies, including Cahyadewi (2025), Djawas (2022), and Santika (2025), examine Islamic legal approaches to lineage, custody, and maintenance but often give limited attention to their interaction with other legal systems. Second, positive-law studies by Ilham (2024), Sholehudin (2025), and Putra (2024) address child protection under legislation such as Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, frequently overlooking lived religious norms. Third, socio-legal research, including Hamida (2022) and Isra (2021), treats legal pluralism as a social reality but generally does not focus specifically on children born of incest or the implications for custody and maintenance.

These three research strands reveal a gap at the intersection of doctrinal analysis, positive law, and social reality, especially in urban Muslim communities. This study addresses that gap by integrating the three approaches within a framework that understands legal pluralism as a lived social condition. Its novelty lies in focusing on children born of incest and on how normative inconsistencies affect legal certainty and the protection of their rights.

Against this background, the article argues that the regulation of the rights of

children born of incest in Indonesia's urban Muslim communities operates within a legal pluralism that is not fully harmonized. These inconsistencies generate legal uncertainty and may permit children's entitlements to go unfulfilled. Using a socio-legal approach that combines doctrinal analysis with secondary evidence, including legislation, academic literature, and court decisions, the study identifies tensions between religious doctrine and state law and examines their implications for child protection. The article thereby seeks to advance scholarship on legal pluralism and children's rights while proposing directions toward a more integrated legal framework grounded in the best interests of the child

## B. Methods

This study employs a qualitative, library-based socio-legal approach and document analysis to examine the interaction between Islamic legal norms and Indonesian state law in regulating the status and rights of children born of incest. Rather than treating legal provisions as autonomous texts, the analysis maps how distinct normative regimes define children's status, lineage and biological relationships, civil relationships with biological fathers, maintenance, custody (hadhanah), inheritance, and guardianship. Primary legal materials include Qur'anic provisions on prohibited kinship relationships; Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019; the Compilation of Islamic Law (KHI); the Indonesian Civil Code (KUHPerdata); and Constitutional Court Decision No. 46/PUU-VIII/2010. Secondary materials comprise scholarly articles, books, theses, dissertations, and academic publications addressing incest, children born outside marriage, lineage, maintenance, guardianship, inheritance, child protection, and legal pluralism. Secondary literature was searched through Google Scholar using combinations of the terms "incestuous marriage," "children's rights," "urban Muslims," and "legal pluralism" for the period 2022–2026. Sources were included if they directly addressed the status or rights of children born outside marriage or of incest, relevant Indonesian legal provisions, judicial decisions, or interactions between Islamic and state law. Conversely, duplicate sources, materials unrelated to Indonesian jurisprudence, and substantively irrelevant sources were excluded, leaving ten key secondary documents for in-depth analysis.

Data were collected through systematic documentation and classification of the selected materials. Each source was coded into eight analytical categories: (1) children's legal status, (2) lineage and biological relationships, (3) civil relations with biological fathers, (4) maintenance, (5) custody (*hadhanah*), (6) inheritance, (7) guardianship, and (8) requirements for proving biological relationships. The analysis proceeded in three stages. First, doctrinal analysis identified legal rules and their consequences within each normative regime. Second, comparative analysis mapped similarities, differences, conflicts, and regulatory silences among Islamic law, Indonesian marriage law, the Civil Code, and Constitutional Court Decision No. 46/PUU-VIII/2010. Third, thematic analysis identified patterns of normative tension, legal gaps, and uncertainty in implementation arising from those differences. The findings were then interpreted through legal pluralism, particularly the coexistence and interaction of distinct normative orders.

The credibility and traceability of the analysis were strengthened through source triangulation, comparing propositions in secondary literature against relevant primary legal materials and judicial decisions. Whenever primary sources were available, claims about children's status or rights were checked against the underlying statutory provisions or court rulings. Divergent interpretations were not eliminated but

documented and examined as manifestations of normative plurality or tension. This procedure enabled the study to identify not only differences among legal regimes but also points of conflict, regulatory gaps, and consequences for the protection of children's rights.

## C. Findings and Discussion

### 1. Findings

**Understanding the Legal Status of Children Born of Incest**

The analysis indicates that children born of incest cannot automatically be equated with all children born outside marriage. Rather, at least three distinct legal circumstances must be distinguished: children conceived through *zina* (extramarital sexual relations); children born outside a legally recognized marriage; and children born from a marriage subsequently found to involve a prohibited consanguineous relationship. Although these categories may overlap, their legal grounds and consequences are not identical. A child's status depends not only on biological parentage but also on the legal status of the parents' relationship and the applicable legal regime. An analysis of children born of incest must therefore be specific rather than relying solely on the general classification of "children born outside marriage."

Under Islamic law, incest concerns prohibited unions between persons with particular kinship ties, as established in Qur'an 4:23. These prohibitions encompass specified relationships through blood and marriage and are connected to the protection of progeny *(hifz al-nasl*) and the construction of lineage (*nasab*). The reviewed literature indicates that children born from sexual relations prohibited by Islamic law are generally assigned a different lineage status from children born within a valid marriage. This does not mean, however, that every child born of incest is legally identical to a child conceived through zina. The circumstances of the parents, the nature of their relationship, and the marital status underlying the child's birth must be assessed before determining the consequences for lineage and civil entitlements (Laily, 2021; Djawas et al., 2022; Cahyadewi & Ambarwati, 2025).

Indonesian state law distinguishes provisions governing the validity of a marriage from those regulating legal relations between parents and children. Article 8 of Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, prohibits marriage between persons with specified blood relationships. This provision governs prohibitions and the validity of the parents' marriage; it does not directly determine every civil entitlement of a child born from that relationship. Article 43(1) of the Marriage Law, by contrast, regulates the civil relationships of children born outside marriage. Thus, Articles 8 and 43 address different legal issues: the former concerns the parents' marriage, and the latter concerns the relationship between a child born outside marriage and the parents. Distinguishing these functions prevents the prohibition of incestuous marriage from becoming the sole determinant of all the child's civil rights (Saputra & Sanjaya, 2023; Haryati & Satriawan, 2024).

The Indonesian Civil Code adds complexity through rules on acknowledgment of children and differentiated legal consequences according to a child's status and legal relationship with the parents. The literature suggests that children born from legally prohibited relationships may face different legal issues from other children born outside marriage, particularly where the parents are related by prohibited degrees of consanguinity. A further complication arises when the parents discover their blood relationship only after the marriage has taken place. Accordingly, the category 'children born of incest' does not alone determine their civil status; the legal status of

the marriage at the time of birth and the surrounding circumstances must also be considered (Ahmad & Nabil, 2022; Camelia, 2023; Reynita, 2025). Biological parentage, marital status, and legal recognition must therefore be distinguished when determining civil consequences.

A significant development in Indonesian law followed Constitutional Court Decision No. 46/PUU-VIII/2010, which reinterpreted Article 43(1) of the Marriage Law. The decision permits the possibility of civil relations between a child born outside marriage and a man proven to be the biological father through science and technology and/or other legally admissible evidence. The resulting legal framework no longer excludes every possible civil relationship between such children and their biological fathers. The judgment must, however, be interpreted carefully. It specifically reviewed provisions governing children born outside marriage and did not determine all legal consequences for children born of incest. Applying it to incest cases therefore requires further analysis of the parents' relationship, proof of biological parentage, and the particular civil right being claimed.

Overall, the first finding is that the legal status of children born of incest is multidimensional and cannot be determined solely by biological parentage or the classification "born outside marriage." A biological relationship with the father is not necessarily equivalent to legally recognized *nasab*, just as recognition of a civil relationship does not automatically resolve questions of maintenance, inheritance, custody, or guardianship. Conversely, limitations on lineage under one legal regime do not necessarily extinguish all forms of civil protection under another. The child's status depends on three interrelated factors: the parents' legal relationship, the applicable legal regime, and the specific right at issue. This framework informs the subsequent comparison of lineage, civil relationships, maintenance, custody, inheritance, and guardianship.

## 2. Discussion

### Comparative Construction of Children's Rights across Legal Regimes

The preceding analysis shows that the legal status of children born of incest does not produce uniform consequences across different normative regimes. Differences become most apparent when legal status is translated into concrete rights, including lineage, civil relations with biological fathers, maintenance, custody, inheritance, and guardianship. Rather than designating one regime as inherently dominant, the comparison identifies areas of agreement, divergence, and tension. The following table synthesizes the relevant primary legal materials and reviewed scholarship.

**Table 1. Comparative Construction of Children's Rights across Legal Regimes**

| Aspect | Islamic Law | Marriage Law | Civil Code | Constitutional Court Decision No. 46/PUU-VIII/2010 |
|---|---|---|---|---|
| Child's status | Children born of unlawful sexual relations are generally treated within the category of *zina*; the legal status of children born of | Children born outside marriage originally had civil relations with their mother and maternal family under Article 43(1) | Provides categories of children born outside marriage and recognition mechanisms with particular | Expands Article 43 so that a child born outside marriage may have civil relations with a man proven to |

| Aspect | Islamic Law | Marriage Law | Civil Code | Constitutional Court Decision No. 46/PUU-VIII/2010 |
|---|---|---|---|---|
| | incest must nevertheless be distinguished according to the parents' circumstances | | civil consequences | be the biological father |
| Lineage / descent | Nasab follows relationships recognized under Islamic law; biological ties do not automatically establish nasab for children born outside marriage | The original Article 43 framework located the child's civil relations with the mother and maternal family | Civil relations with the father depend on acknowledgment mechanisms and applicable civil-law provisions | Allows civil relations with a biological father on proof of biological ties, without equating biology with every consequence of nasab |
| Civil relations with biological father | Biological connection alone does not create a nasab relationship in the classical zina construction | Originally restricted civil relations to the mother and maternal family | May arise through recognition procedures under the Civil Code | May be recognized when biological parentage is established through science, technology and/or other legally admissible evidence |
| Maintenance | Paternal maintenance is not based solely on biological ties when nasab is not recognized | The original Article 43 framework limited civil relations to the mother and her family | Civil obligations may follow legally recognized relationships under applicable rules | Provides a basis for civil relations with a biological father; maintenance consequences depend on legal application and proof in individual proceedings |
| Custody (hadhanah) | Child welfare and care remain important, but custody is not identical to the recognition of paternal nasab | Parental rights and responsibilities must be read together with child-protection law | Custody and parental responsibilities depend on the relevant civil-law construction | Does not specifically prescribe every aspect of hadhanah but allows civil relations with a biological father |

*Source: Compiled from the primary legal materials and literature analyzed in this study.*

The table highlights fundamental differences in how the legal regimes connect biological and legal relationships. In Islamic law, biological parentage does not necessarily establish *nasab* where a child is not born within a marriage valid under Islamic law. Consequently, biological ties with the father do not automatically confer all rights dependent on lineage, particularly inheritance and guardianship. Scholarship on children born of incest and children born outside marriage indicates that this framework rests on the legitimacy of lineage and the protection of progeny in Islamic family law (Laily, 2021; Djawas et al., 2022; Cahyadewi & Ambarwati, 2025).

State law has developed differently. Article 43(1) of the Marriage Law originally restricted the civil relationships of children born outside marriage to their mothers and maternal families. Constitutional Court Decision No. 46/PUU-VIII/2010 altered this construction by allowing civil relations with a man proven to be the biological father. Biological evidence thereby gained greater legal significance. Nonetheless, recognizing a civil relationship must be distinguished from conferring every legal consequence of nasab. The ruling does not automatically transfer all lineage-dependent rights, including every aspect of inheritance or guardianship, to the biological father. The reviewed literature also points to continuing disputes over the scope and implications of these civil relations (Guspita & Aemanah, 2024; Putra et al., 2024; Sulaiman, 2021).

The Civil Code provides another construction through mechanisms for acknowledging children born outside marriage. Biological and civil relationships are not wholly identical because legal relations with the father may depend on acknowledgment procedures and applicable civil-law provisions. These questions become particularly complex where the parents' relationship constitutes prohibited consanguinity. The literature distinguishes between relationships known from the outset to be prohibited and marriages in which a blood relationship was discovered only later. Children born of incest therefore cannot be placed within a single civil-law category without considering the legal circumstances of their parents (Camelia, 2023; Ahmad & Nabil, 2022; Reynita, 2025).

These divergent constructions are clearest when examining rights with different legal consequences. Proof of biological fatherhood may support recognition of civil relations, but such relations are not necessarily *nasab*; civil recognition does not automatically confer inheritance rights; and identification of a biological father does not itself confer the authority of a marriage guardian. Children's entitlements should thus be analyzed on a right-specific basis rather than as a single bundle triggered by biological proof. Some existing scholarship uses “civil relations” broadly, implying that Constitutional Court Decision No. 46/PUU-VIII/2010 resolved all legal consequences of paternity. The comparative findings instead indicate continuing distinctions among civil law, Islamic family law, and inheritance law.

The comparison identifies both convergence and fragmentation. Convergence appears in the greater possibility of protecting children through proven biological relationships, especially after Constitutional Court Decision No. 46/PUU-VIII/2010. Fragmentation persists because recognition of biological parentage has not generated a uniform legal construction for lineage, maintenance, custody, inheritance, and guardianship. The central question is therefore not simply whether the biological father can be legally recognized, but which specific rights and obligations follow from that recognition in each regime. This issue provides the starting point for identifying normative conflict, regulatory gaps, and legal uncertainty.

**Normative Conflicts and Legal Gaps**

The comparative analysis demonstrates that the legal issues affecting children born of incest encompass more than differences between Islamic and state law. Three distinct problems must be identified: normative conflict, legal gaps, and uncertainty in implementation. Normative conflict arises when different regimes prescribe divergent grounds or consequences for the same legal question. A legal gap occurs where legal developments create an issue that remains insufficiently regulated elsewhere. Implementation uncertainty arises when existing rules lack sufficiently clear mechanisms to realize rights in specific cases. Distinguishing these problems is essential because each requires a different response.

First, normative conflict is particularly visible in the relationship between *nasab* and biological proof. Under Islamic legal constructions, biological parentage does not automatically establish legitimate lineage where a child is not born within a valid marriage. The biological father therefore does not necessarily acquire every lineage-based legal consequence, especially in inheritance and guardianship. By contrast, Constitutional Court Decision No. 46/PUU-VIII/2010 permits civil relations between a child born outside marriage and a man proven to be the biological father. The regimes thus rely on different bases: Islamic law emphasizes the legitimacy of *nasab*, whereas state law affords greater significance to biological facts established by legally acceptable evidence.

The conflict becomes sharper when biological relationships are translated into specific entitlements. Recognition of a civil relationship with a biological father does not necessarily change consequences that Islamic law makes dependent on *nasab*. A proven biological tie may therefore ground certain civil claims while not conferring an equivalent position under Islamic inheritance rules or marriage guardianship. Normative conflict does not simply set "Islamic law" against "state law" as wholly separate systems. It also concerns different legal consequences attached to the same fact: proof of a biological relationship between a child and the father.

Second, legal gaps arise because wider recognition of civil relations has not been accompanied by an integrated set of rules governing their consequences. Constitutional Court Decision No. 46/PUU-VIII/2010 broadened the possibility of civil relations between children and biological fathers but did not specifically address every issue arising in cases of incest. The scope of maintenance, the relationship to inheritance law, marriage guardianship, and other legal connections still require interpretation across several regimes. A development within one provision does not automatically eliminate inconsistencies elsewhere.

This gap is particularly apparent in the distinction between recognition of civil relations and the conferral of specific rights. The Constitutional Court ruling supplies a basis for recognizing civil relations through provable biological ties, but it cannot be understood as automatically conferring every right associated with fatherhood across all areas of law. Further clarification is needed concerning which rights may be claimed, their legal basis, evidentiary mechanisms, and the institutions competent to determine their consequences. The reviewed literature likewise identifies ongoing problems of legal certainty and the scope of civil relations under the ruling.

Third, implementation uncertainty arises when legally recognized entitlements cannot be realized without additional proof and procedures. The Constitutional Court ruling makes proof of biological parentage central to establishing civil relations with the biological father. Children or their representatives must therefore be able to access legally recognized evidentiary procedures. Depending on the circumstances, these may involve DNA testing, court proceedings, administrative documentation, and other

procedures requiring time, money, and legal knowledge. Child protection thus depends not only on formal recognition of rights but also on realistically accessible means of proving and enforcing them. Scholarship on the determination of children's origins identifies evidentiary requirements as a potential barrier to legal recognition of biological parentage.

Together, these three issues fragment the protection of children's rights. A child may have grounds for recognition of civil relations with the biological father, yet the legal consequences may differ across maintenance, inheritance, and guardianship. The critical questions are not merely whether the biological father can be recognized, but which rights follow and through what procedures they can be secured. Fragmentation is particularly pronounced in incest cases because the parents' relationship falls within legally prohibited degrees, causing marital status, lineage, biology, and child protection to overlap without necessarily producing identical outcomes.

From a child-protection perspective, these conditions create a risk that children's entitlements depend on legal classifications and the capacity to obtain proof rather than on their need for protection. Children born of incest have no control over the circumstances of their conception, yet their status can affect access to legal identity, maintenance, family relations, custody, and civil protection. Non-discrimination and the best interests of the child should therefore guide the resolution of conflicts and gaps among legal regimes in concrete cases. The literature also identifies obstacles to equal protection for children born outside marriage, particularly where the circumstances of birth restrict recognition of legal parent-child relationships.

Another finding concerns barriers to access to justice. Even legally available rights may remain unrealized because of evidentiary costs, court procedures, documentation requirements, and limited knowledge of legal remedies. In incest-related cases, the sensitivity of the circumstances and stigma within families may exacerbate these obstacles. Because this is a library-based study, these social factors are presented as barriers identified in the literature, not as independent empirical findings about the behaviour of urban Muslim communities. With that limitation, the analysis demonstrates that formal recognition alone is insufficient; effective legal protection also depends on procedures that children and families can actually access.

The third overall finding is that legal pluralism in cases of children born of incest generates three interconnected levels of difficulty. Normative conflict stems from differing grounds for defining relations between children and biological fathers. Legal gaps arise because expanded civil recognition has not been followed by comprehensive regulation of all related rights. Implementation uncertainty persists because realization of certain rights depends on proof and legal procedures. Together, these challenges fragment child protection. The central problem is therefore not simply the presence of multiple legal systems but the insufficient integration of their legal consequences when applied to children's rights.

**Implications of Legal Fragmentation for Children's Rights in Urban Muslim Contexts**

The preceding findings indicate that fragmentation between Islamic law, state law, and civil law not only creates different constructions of children's legal status and family relationships but also directly impacts the practical realization of their rights. These questions take on further complexity within urban Muslim communities. Urban settings bring religious norms into contact with state institutions, greater access to information and formal justice, and changing social values. Children born of incest consequently stand at the intersection of different normative demands: on the one

hand, recognition of lineage rules and religious morality; on the other, state-law obligations to protect children without reducing their rights because of the circumstances of birth. Studies of urban Muslims in Indonesia suggest that religious life engages multiple normative frames interacting with modernity, social change, and formal institutions (Luhuringbudi et al., 2025; Rohman et al., 2024).

The first implication concerns the right to identity and certainty of family relationships. Urban Muslim communities typically enjoy broader access to legal documents, information, courts, and forensic technologies than those in environments with limited institutional infrastructure. However, such institutional access does not in itself resolve underlying normative disagreements. Establishing biological ties with a father may permit civil recognition under state law, but it does not automatically settle questions of *nasab* under Islamic law. Individuals may therefore be able to pursue formal legal proof while still confronting unresolved religious questions regarding its consequences. Evidently, access to formal justice and the religious acceptance of particular legal outcomes do not necessarily coincide

The second implication concerns maintenance and parental responsibility. Fragmented rules allow the grounds for maintenance obligations to be understood in fundamentally divergent ways. The Constitutional Court ruling opens a path to civil relations with a biological father through proof, while Islamic constructions of *nasab* do not necessarily grant biological fathers an equivalent legal position. Urban Muslim communities may have greater opportunities to pursue formal remedies because of wider institutional access and legal information. Such proceedings nevertheless intersect with religious moral judgments and the social reception of the relationship underlying the child's birth. The issue is therefore not only the existence of legal procedures but also how they interact with religious commitments and prevailing social norms.

The third implication concerns custody and family relationships. The Islamic concept of *hadhanah* is not identical to civil relations established through biological proof under state law. Recognition of biological fatherhood therefore does not automatically settle who should provide care or how family relationships should be understood socially. Urban Muslim families may have to navigate religious norms, formal legal procedures, and the child's welfare simultaneously. Effective protection requires clear distinctions among biological acknowledgment, civil recognition, caregiving responsibilities, and social acceptance within the family.

The fourth implication concerns inheritance and guardianship, which expose the limits of biological recognition more clearly. Establishing civil relations with a biological father does not automatically create inheritance rights or marriage-guardian authority under Islamic law. Within urban Muslim settings, access to different religious and legal sources may bring individuals into contact with religious courts, civil-registration institutions, and religious authorities. Yet these sources and institutions do not necessarily produce uniform consequences. A child may gain recognition in one legal domain while remaining subject to restrictions in another. Legal pluralism thus operates through intersections among authorities and rules, not merely through the existence of different written laws.

The fifth implication, especially important in urban Muslim contexts, is the tension between formal access to justice and socioreligious stigma. Urban environments can offer more information, legal assistance, courts, and technologies for establishing parentage, but this availability does not mean that incest-related stigma disappears. Studies describe incest as associated with taboo, shame, and social pressure, while research on urban Muslim identity shows the continuing interaction of

religious values with social transformation (Misrah & Sazali, 2024; Fatkhurrokhman et al., 2025; Luhuringbudi et al., 2025). Children and families may therefore face a paradox: formal legal mechanisms are more accessible, yet moral and religious stigma may still constrain their willingness or ability to use them.

These conditions also show that the protection of children in urban Muslim communities cannot be reduced to a binary opposition between "Islamic law" and "state law." At least three normative layers interact: state legal rules, Islamic legal norms, and the socioreligious norms practiced within communities. Each may point toward a different response to the same issue. State law may recognize civil ties on the basis of biological proof; Islamic law may maintain lineage requirements grounded in marital validity; and social norms may subject families seeking formal remedies to moral pressure. From a legal-pluralist perspective, children's entitlements are shaped through interactions among normative regimes rather than determined by a single isolated legal source.

A further implication is the gap between rights recognized in law and the ability to exercise them. Urban residents may have relatively greater access to legal institutions and information, but biological testing, judicial procedures, legal fees, and the sensitivity surrounding incest can still impede claims. Since this study uses no fieldwork data, such barriers are not taken as proof that all urban Muslim families encounter the same experience. The reviewed literature instead indicates that institutional access and social conditions must be assessed together when evaluating the effectiveness of legal protection for children born of incest.

From a children's rights perspective, these conditions implicate the principles of non-discrimination and the best interests of the child. Children cannot control the circumstances leading to their birth, yet those circumstances may influence their access to identity, maintenance, family relationships, custody, inheritance, and guardianship. Urban Muslim settings complicate this situation because greater access to formal legal mechanisms can coexist with strongly maintained religious norms and social control. Protecting children's rights therefore requires more than expanding recognition of biological ties; it also requires procedures capable of bridging the different consequences of state law and community-based religious norms.

The fourth finding is that legal fragmentation has distinctive consequences in urban Muslim settings: access to formal legal institutions may expand faster than harmonization among legal outcomes, religious norms, and social acceptance. Child protection can consequently remain partial and conditional. Biological parentage may be recognized in one field without securing an equivalent position regarding lineage, maintenance, custody, inheritance, or guardianship. Meanwhile, formal access to remedies does not necessarily eliminate the social and moral barriers associated with incest. The study's contribution is therefore not confined to charting differences between Islamic and state law; it also conceptualizes how legal pluralism operates where modern legal institutions coexist with continuing religious norms and moral expectations.

## D. Conclusion

This study finds that the protection of children born of incest takes place within a legally plural setting characterized by normative conflict, legal gaps, and uncertainty in implementation. The principal conflict concerns the distinction between *nasab* under Islamic law and biological recognition under state law. Constitutional Court Decision No. 46/PUU-VIII/2010 allows civil relations between children and biological fathers but does not provide an integrated account of their implications for maintenance,

custody, inheritance, and guardianship. Within urban Muslim communities, this fragmentation becomes further complicated as formal institutional access intersects with strict religious norms and persistent social stigma. Ultimately, this study demonstrates that legal pluralism in incest cases is not merely the passive coexistence of distinct legal regimes, but a dynamic interaction among competing frameworks that frequently results in only partial or conditional protection of children's rights.

In response, harmonization should prioritize Article 43 of the Marriage Law, the Compilation of Islamic Law, and legal developments following Constitutional Court Decision No. 46/PUU-VIII/2010. Specifically, statutory reforms must clarify the precise consequences of civil recognition regarding maintenance, custody, and identity rights, without inappropriately conflating civil relations with all formal implications of *nasab*. Furthermore, the Supreme Court should issue comprehensive judicial guidance (SEMA) to delineate the boundaries between biological proof, civil relations, maintenance, custody, inheritance, and guardianship. Concurrently, the Ministry of Religious Affairs and legal aid organizations should enhance public legal literacy and provide targeted support for affected families seeking formal remedies. State-subsidized access to DNA testing and biological parentage verification should also be established for economically vulnerable individuals. Such measures are critical to preventing normative discrepancies from translating into legal uncertainty and the systemic infringement of children's fundamental rights.

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## F. Author Contributions Statement

The Author Contributions Statement can be up to several sentences long and should briefly describe the tasks of individual authors. Please list only 2 initials for each author, without full stops, but separated by commas (e.g. JC, JS). In the case of two authors with the same initials, please use their middle initial to differentiate between them (e.g. REW, RSW). The Author Contributions Statement should be included at the end of the manuscript before the References.

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