

Financial Responsibility for Out-of-Wedlock Children by Underage Parents: An Islamic Law and Indonesian Legislative Perspective

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Abstract

Out-of-wedlock pregnancies involving underage parents create complex legal, social, and moral challenges, particularly concerning the financial responsibility for children born from such relationships. This issue is crucial, as out-of-wedlock children constitute a vulnerable group entitled to legal protection, including the fulfillment of their basic needs, while underage parents do not yet possess full legal capacity. This study employs a normative juridical method with statutory, conceptual, and comparative approaches. The findings reveal that under Islamic law, financial responsibility for out-of-wedlock children is normatively borne by the mother, as there is no recognized lineage (*nasab*) with the biological father. Meanwhile, Indonesian legislation—through Constitutional Court Decision No. 46/PUU-VIII/2010—has opened the possibility of establishing a civil relationship between an out-of-wedlock child and the biological father, including the obligation to provide financial support. This study recommends strengthening regulations and developing a more responsive family law model that upholds children's rights while considering the sociological conditions of underage parents.

Keywords: Out-of-Wedlock Children, Financial Support, Underage Parents



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Abstrak

Kehamilan di luar nikah yang melibatkan orang tua di bawah umur menimbulkan tantangan hukum, sosial, dan moral yang kompleks, terutama terkait dengan tanggung jawab finansial terhadap anak yang lahir dari hubungan tersebut. Isu ini sangat penting karena anak luar nikah merupakan kelompok rentan yang berhak mendapatkan perlindungan hukum, termasuk pemenuhan kebutuhan dasarnya, sementara orang tua di bawah umur belum memiliki kapasitas hukum yang penuh. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif. Hasil penelitian menunjukkan bahwa dalam hukum Islam, tanggung jawab finansial terhadap anak luar nikah secara normatif dibebankan kepada ibu, karena tidak adanya hubungan nasab yang diakui dengan ayah biologis. Sementara itu, peraturan perundang-undangan di Indonesia—melalui Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010—telah membuka kemungkinan adanya hubungan perdata antara anak luar nikah dengan ayah biologisnya, termasuk kewajiban untuk memberikan nafkah. Penelitian ini merekomendasikan penguatan regulasi dan pengembangan model hukum keluarga yang lebih responsif terhadap pemenuhan hak-hak anak, dengan tetap mempertimbangkan kondisi sosiologis orang tua di bawah umur.

Kata Kunci: Anak Luar Nikah, Tanggung Jawab Finansial, Orang Tua di Bawah Umur

Introduction

The phenomenon of pregnancy and childbirth outside of a legal marriage is a complex social issue that continues to increase, particularly among adolescents.¹ Data from various social and health institutions indicate that the rate of teenage pregnancies in Indonesia is increasingly concerning, both in terms of numbers and the social impacts they generate.² Unwanted teenage pregnancies not only create psychological and social problems for the adolescents involved but also result in children born out of wedlock who are at

¹ Rani Zulmikarnain, "Pernikahan Usia Muda Akibat Hamil Di Luar Nikah Di Desa Benua Baru Kecamatan Muara Bengkal Kabupaten Kutai Timur," *EJournal Sosiatri-Sosiologi* 2019, no. 1 (2019): 116–28, <https://ejournal.ps.fisip-unmul.ac.id>.

² Alvin Telaumbanua Miranda Afriza¹, Rindy Mashadi Muliyaningrum², Kaniwa Silvyani³, "Kehamilan Di Luar Nikah Sebagai Bentuk Penyimpangan Sosial Di Daerah Kecamatan Medan Kota Out," *Articel*, 2024, 6886–92.

risk of facing discrimination and neglect, particularly in the fulfillment of their basic rights such as financial support.³

The birth of a child from a relationship outside of marriage creates a dilemma, particularly regarding who bears the responsibility for fulfilling the child's basic needs. The issue becomes even more complex when the parents themselves are underage, lacking legal capacity and economic means to fully perform their parental roles.⁴ At this point, an important question arises as to the extent to which underage parents can be held legally responsible for providing financial support to an out-of-wedlock child, and how both Islamic law and the Indonesian national legal system address this situation—considering that Islamic law has also undergone transformation within Indonesia's legal framework.⁵ Unlike Saudi Arabia, for instance, which operates under a monarchical system where the legal framework is entirely based on Islamic Sharia law.⁶

There have been efforts to harmonize the values of justice, humanity, and child protection concerning the legal status of out-of-wedlock children in both Islamic law and Indonesian national law.⁷ From the perspective of Islamic law, the main foundational principle lies in the concept of *nasab* (lineage) and moral responsibility, whereby, according to classical *fiqh*, an out-of-wedlock child is only affiliated with the mother. However, the *maqāṣid al-syarī'ah* (objectives of Islamic law) approach opens new avenues of *ijtihād*,⁸ emphasizing that the protection of the child (*ḥifẓ al-nafs* and *ḥifẓ al-nasl*) represents a higher legal objective than the formalistic application of lineage norms.⁹ Therefore, the fulfillment of children's rights including financial support and caregiving can be

³ Alifah Anisa P., Apsari Nurliana C., and Taftazani Budi M., "Faktor Yang Mempengaruhi Remaja Hamil Di Luar Nikah," *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 3 (2021): 529–37, <https://mediaindonesia.com/humaniora/>.

⁴ Heidy Amelia Neman, "Pertanggungjawaban Hukum Wali Tidak Melaksanakan Kewajiban Pada Anak Di Bawah Perwaliannya," *Jurnal Ilmu Hukum: ALETHEA* 4, no. 2 (1970): 147–64, <https://doi.org/10.24246/alethea.vol4.no2.p147-164>.

⁵ Chamim Tohari, "Fiqh Keindonesiaan : Transformasi Hukum Islam Dalam Sistem Tata Hukum Di Indonesia," *ANALISIS: Jurnal Studi Keislaman* 15, no. 2 (2015): 403–32, <https://www.neliti.com/id/publications/57238/fiqh-keindonesiaan-transformasi-hukum-islam-dalam-sistem-tata-hukum-di-indonesia>.

⁶ Nurhayati Agustina, "Politik Hukum (Legislasi) Hukum Keluarga Di Saudi Arabia," *Jurnal Pengembangan Masyarakat* 7, no. 1 (2014): 76–79.

⁷ Hervin Yoki Pradikta, Aan Budianto, and Habib Shulton Asnawi, "History of Development and Reform of Family Law in Indonesia and Malaysia," *KnE Social Sciences* 2024 (2024): 316–31, <https://doi.org/10.18502/kss.v9i12.15863>.

⁸ Fathul Mu, Relit Nur Edi, and Rudi Santoso, "A Review of Maqāṣid Sharī'a on Handling the COVID-19 Pandemic in Lampung and West Java Province," *Al-'Adalah*, 2024, 221–44.

⁹ Raudlatul Jannah et al., "Analisis Hukum Islam Dan Hukum Positif Bagi Ayah Yang Tidak Menafkahi Anak Pasca Perceraian," *Aurelia: Jurnal Penelitian Dan Pengabdian Masyarakat Indonesia* 3, no. 2 (2024): 882–88.

regarded as part of the public welfare (*maṣlahah*) that must be safeguarded by both the state and society.

Meanwhile, Indonesia's national law has moved toward a more inclusive paradigm through Constitutional Court Decision No. 46/PUU-VIII/2010, which expands the civil relationship between an out-of-wedlock child and the biological father based on scientific evidence.¹⁰ This step represents the application of the principle of *maṣlahah mursalah* within the context of positive law: although it is not explicitly derived from classical *fiqh*, its substance aligns with the spirit of Islam, which emphasizes the protection of human rights particularly the rights of children.

The integration between the two legal systems can be viewed as a form of *taṭbīq al-qānūnī* (legal adjustment), in which the universal values of Islam are translated into the framework of positive law to ensure substantive justice. In practice, challenges arise when the parents of an out-of-wedlock child are themselves underage and lack economic independence. In this context, Islamic law promotes a concept of collective social responsibility (*farḍ kifāyah*) through extended family or social institutions, while national law can reinforce this through state social protection mechanisms, such as child support programs or welfare interventions. The synergy between the two creates a comprehensive and equitable approach to fulfilling children's rights without neglecting moral values and social responsibility. Here, the roles of the state, the extended family, and social institutions become crucial in filling this gap.

This issue is not merely a matter of law but also concerns morality, social values, child protection, and family responsibility in the context of societal change. Therefore, a comprehensive and critical study is needed on the legal responsibility of underage parents to provide financial support for out-of-wedlock children examined from the perspective of Islamic law based on *maqāṣid al-syarī'ah* principles and Indonesia's positive legal system, using both normative and sociological approaches. This topic is particularly significant in analyzing the legal status of out-of-wedlock children under Islamic and national law, as well as determining the extent to which underage parents hold legal responsibility for providing such financial support.

This research is a continuation of several previous studies that have examined the issue of out-of-wedlock children from various perspectives, such as the protection of children born outside of marriage,¹¹ the financial responsibility of underage parents, the *fiqh*-based approach to social stigma,¹² as

¹⁰ Ahmad Farahi and Ramadhita Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010," *De Jure: Jurnal Hukum Dan Syar'iah* 8, no. 2 (2017): 74–83, <https://doi.org/10.18860/j-fsh.v8i2.3778>.

¹¹ Andra Ahmad Imani and M. Rasikhul Islam Z.H., "Perlindungan Anak Di Luar Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif," *Sekolah Tinggi Agama Islam Negeri (STAIN) Parepare* 1, no. April (2020): 111–23.

¹² Muh Kadafi and Muhammad Shuhufi, "Perlindungan Dan Kedudukan Anak Di Luar Nikah Perspektif Fikih," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 11 (2024): 401–5.

well as the role of parents in exercising authority over their children within the family.¹³ In contrast to these studies, this research broadens the scope of discussion by comparing Islamic law and positive law in order to provide more comprehensive protection for the rights of out-of-wedlock children.

This study seeks to fill a gap that has received little attention in legal scholarship on out-of-wedlock children in Indonesia. Previous studies generally focused on a single aspect—such as the classical fiqh perspective, the social-stigma dimension, or the financial responsibility of underage parents—without integrating a normative and maqāṣid al-syarīʿah analysis with positive law in a comprehensive manner. As a result, a gap remains between religious norms, which emphasize lineage (nasab), and state law, which prioritizes the protection of children’s rights. This research aims to bridge that gap by offering a conceptual framework that combines the values of Islamic justice with the principle of non-discrimination within national law.

The normative approach in this study is applied through an analysis of primary legal sources (the Qur’an, Hadith, and fiqh), as well as legislation such as Constitutional Court Decision No. 46/PUU-VIII/2010, to assess the compatibility between Islamic law and positive law in protecting out-of-wedlock children. Meanwhile, the maqāṣid al-syarīʿah approach is employed to interpret the moral and social objectives underlying these legal provisions, particularly in the contexts of ḥifẓ al-nafs (protection of life), ḥifẓ al-nasl (protection of lineage), and ḥifẓ al-māl (protection of children’s economic rights). Through the integration of these two approaches, the study not only explains the differences between Islamic and national law but also proposes a model of family law harmonization that is more humanistic, adaptive, and oriented toward the welfare of the child.

This study employs a normative juridical method with statutory, conceptual, and comparative approaches. The analysis focuses on the provisions of Islamic law and national legislation that regulate financial responsibility for out-of-wedlock children, particularly by parents who are still underage. Data were collected through library research, examining primary sources such as the Qur’an, Hadith, fiqh texts, and national regulations including the 1945 Constitution, the Child Protection Law, the Marriage Law, the Compilation of Islamic Law (KHI), and Constitutional Court decisions. The data were analyzed descriptively and analytically to identify legal issues and formulate normative solutions aimed at strengthening family law that is just and responsive to children’s rights.

Discussion

¹³ Fawzia Hidayatul Ulya, Fashi Hatul Lisaniyah, and Mu’amaroh Mu’amaroh, “Penguasaan Hak Asuh Anak Di Bawah Umur Kepada Bapak,” *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 1 (2021): 101–17, <https://doi.org/10.51675/jaksya.v2i1.176>.

The Legal Status of Out-of-Wedlock Children and the Protection of Their Rights

The legal status of out-of-wedlock children within both the Islamic and national legal systems in Indonesia is a complex issue that encompasses moral, religious, social, and legal dimensions. Out-of-wedlock children are generally defined as those born outside a lawful marriage recognized by the prevailing legal framework.¹⁴ In classical Islamic law (fiqh), a child born as a result of a relationship outside of marriage does not have a lineage (nasab) connection with the biological father. The child's lineage is linked only to the mother; therefore, the father has no legal obligation to provide financial support, inheritance rights, or guardianship in the child's marriage.¹⁵

This view is based on a hadith of the Prophet Muhammad (peace be upon him), which states that “the child belongs to the marital bed (the husband of the woman), and for the adulterer, there is nothing but stones,” meaning that a child born from an illicit relationship has no legal affiliation with the biological father.¹⁶ Classical scholars such as Imam al-Shafi‘i and Imam Malik held the view that a child born of zina (illicit sexual relations) is affiliated only with the mother. This position serves as both a legal limitation and a moral consequence of violating the norms of Islamic law (shari‘ah).¹⁷ However, although this approach is theologically valid, it has been criticized by modern Islamic scholars for neglecting the rights of children who have no choice over the circumstances of their birth. Such children should not bear the consequences of their parents' actions. In contemporary developments, a more humanistic approach has emerged one that is oriented toward child protection (ḥifẓ al-nafs wa al-nasl) within the framework of maqāṣid al-syarī‘ah. This approach emphasizes that safeguarding a child's life, dignity, and future takes precedence over maintaining the legal stigma attached to birth status. Several Muslim-majority countries, such as Morocco and Tunisia, have expanded legal recognition for out-of-wedlock children, including granting them rights to financial support and care from their biological fathers when the relationship can be scientifically proven.

In Indonesia, the legal construction regarding out-of-wedlock children has also undergone significant developments. The Civil Code (Kitab Undang-Undang Hukum Perdata, or KUHPerdata), which remains partially in effect,

¹⁴ Tri Eka Saputra Amdaryono Saputra, “Status Hukum Anak Diluar Nikah Dalam Perspektif Fikih Islam Dan Hukum Positif Indonesia,” *Vifada Assumption Jurnal Of Law* 2, no. 1 (2024): 44–53.

¹⁵ Khairul Jannah et al., “Konstruksi Hukum Kewarisan : Anak Di Luar Nikah , Anak Angkat , Dan Perbedaan Agama,” *Al-Fatah: Jurnal Hukum Dan Pranata Sosial* 1, no. 1 (2024): 60–96.

¹⁶ Siti Nurbaeti, “Hadis Tentang Nasab Anak Zina Dalam Perspektif Ibnu Qayyim Al-Jauziyyah,” *Holistic Al-Hadis* 4, no. 2 (2018): 114, <https://doi.org/10.32678/holistic.v4i02.3232>.

¹⁷ Rosikhoh Umdatul Ulya Noor Arini Haq, “Analisis Mengenai Nasab Dan Hak Waris Anak Hasil Perkawinan Bawah Tangan (Anak Luar Kawin) Menurut Hukum Islam,” *Https://Jurnal.Uns.Ac.Id/JoLSIC* 16, no. 2 (2023): 39–55.

stipulates that an out-of-wedlock child has no civil relationship with the father unless the father formally acknowledges the child (a process known as pengakuan anak luar kawin or acknowledgment of an out-of-wedlock child).¹⁸ However, a significant change emerged through Constitutional Court Decision No. 46/PUU-VIII/2010, which states that an out-of-wedlock child has a civil relationship not only with the mother but also with the biological father, provided that the relationship can be scientifically and/or technologically proven (for example, through DNA testing) and is either voluntarily acknowledged or established by a court ruling.¹⁹

This Constitutional Court ruling fundamentally transformed the paradigm of child protection for out-of-wedlock children in Indonesia. The state no longer views a child's birth solely through the lens of formal marital legality but also considers the child's inherent human rights, which must be protected from conception. Consequently, a biological father may bear responsibilities for financial support, education, protection, and other civil rights of the child he has fathered, even if he is not bound by a lawful marriage.

Furthermore, Law No. 35 of 2014 on Child Protection affirms that every child, without discrimination, has the right to parental and family care, education, health, and protection from violence and neglect.²⁰ This provision applies universally, including to out-of-wedlock children. The emphasis on the principles of non-discrimination, the best interests of the child, and the right to survival and development represents a significant milestone in the advancement of child protection law in Indonesia.²¹

The harmonization between Islamic law and national law in the protection of children born out of wedlock can be realized through various regulations and practical policies.²² One example is the Constitutional Court Decision No. 46/PUU-VIII/2010, which expands the civil relationship of children born out of wedlock with their biological fathers based on scientific evidence such as DNA testing. This decision demonstrates the application of

¹⁸ Ruslan Abdul Gani, "Status Anak Luar Nikah Dalam Hukum Waris (Studi Komperatif Antara Kitab Undang-Undang Hukum Perdata Dengan Kompilasi Hukum Islam)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 11, no. 01 (2011): 84–109, <https://doi.org/10.30631/alrisalah.v11i01.477>.

¹⁹ Yufi Wiyos Rini Masykuroh, "IMPLIKASI HUBUNGAN PERDATA ANAK LUAR PERKAWINAN DENGAN LAKI-LAKI SEBAGAI AYAHNYA," *Jurnal Pengembangan Masyarakat Islam* 3, no. 1 (2016): 1–15.

²⁰ Syarifuddin Ali, Siti Husniyyah and Susilawati, "Prinsip Kepentingan Terbaik Bagi Anak Berhadapan Dengan Hukum Tindak Pidana Kejahatan Seksual (Studi Putusan Pengadilan Negeri No.116/Pid.Sus-Anak/2023/PN.Mdn)," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 4, no. 3 (2023): 852–71.

²¹ Elsa Safitri Wulandari, Muhammad Mashuri, and Kristina Sulatri, "Asas Kepentingan Terbaik Bagi Anak Terkait Pengajuan Permohonan Dispensasi Kawin," *Yurijaya, Jurnal Ilmiah Hukum* 4, no. 2 (2022): 138–49, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec61d7f3278718c0de30343031>.

²² Rachmadi Usman, "Prinsip Tanggung Jawab Orangtua Biologis Terhadap Anak Di Luar Perkawinan," *Jurnal Konstitusi* 11, no. 1 (2016): 168, <https://doi.org/10.31078/jk11119>.

the principles of *maqāṣid al-syarī'ah* in the context of national law, where the protection of lineage (*hifẓ al-nasl*) and the child's economic rights (*hifẓ al-māl*) are guaranteed by the state without neglecting Islamic moral values. In addition, policies such as the Ministry of Home Affairs Regulation No. 108 of 2019 on Civil Registration also provide space for children born out of wedlock to obtain birth certificates even without the inclusion of the father's name, representing an administrative step toward a more inclusive recognition of children's civil rights.

However, in practice, there are still many social and administrative obstacles in the implementation of the rights of children born out of wedlock. Birth status often becomes a barrier in obtaining identity documents, access to social security, education, and health services. Some biological fathers are also reluctant to acknowledge children born out of wedlock due to social reasons and family reputation. This situation places children born out of wedlock in a vulnerable position, facing double discrimination from family, society, and legal institutions. Therefore, a synergy between Islamic justice values and the constitutional principles of the state is needed to create a child protection system that is fair, humane, and *rahmatan lil-ʿālamīn* oriented, so that every child can obtain equal rights and dignity before the law and society.

Parental Obligation to Provide Maintenance for Minor Children

The obligation of parents to provide maintenance, including for children born out of wedlock, is a moral, social, and legal duty that cannot be neglected.²³ However, complexity arises when the parents are individuals who are still minors, meaning they have not yet reached the legal age of adulthood. In this context, there is an intersection between religious norms, state law, and social realities that requires in-depth analysis to find a point of justice that favors the child.

In Islamic law, the responsibility to provide maintenance for a child is primarily the obligation of the father.²⁴ This obligation is based on the principles of justice and the continuity of the child's life as a trust from Allah. The Qur'an emphasizes in QS. Al-Baqarah verse 233 that parents are required to provide proper maintenance and clothing for their children.²⁵ However, in the case of children born out of wedlock, there are differing views among scholars regarding the linkage of lineage (*nasab*) and the father's responsibility to provide

²³ Neman, "Pertanggungjawaban Hukum Wali Tidak Melaksanakan Kewajiban Pada Anak Di Bawah Perwaliannya."

²⁴ Syafaatin Fransiska Yuliandra Dkk, "Peran Istri Sebagai Pencari Nafkah Utama Perspektif Mubaadalah Dan Undang-Undang No. 1 Tahun 1974," *Jurnal Hikmatina Universitas Islam Negeri Malang*, 2, No. 3, 2020.

²⁵ Muhamad Bisri Mustofa, "Hukum Nafkah Terhadap Keluarga Pada Gerakan Dakwah Jama'Ah Tabligh," *Nizham Journal of Islamic Studies* 07, no. 7 (2019): 57–79.

maintenance.²⁶ Although many classical scholars did not obligate biological fathers to provide maintenance for children born out of wedlock, the contemporary maqāṣid al-syarī'ah approach emphasizes that a child's right to live and grow must still be guaranteed, regardless of the parents' marital status.

When the parents of a child born out of wedlock are minors, the issue becomes even more complex. On one hand, they have become parents biologically, but on the other hand, they are not legally considered adults and do not yet possess full capacity to fulfill legal responsibilities, including providing maintenance. Law No. 1 of 1974 on Marriage and Law No. 35 of 2014 on Child Protection do not explicitly regulate the responsibilities of minor parents, yet the principle of child protection remains the fundamental basis.²⁷ Children still have the right to be cared for and have their lives financially supported, regardless of whether their parents are capable legally or economically.

In practice, many minor parents do not yet have employment, steady income, or sufficient family support to fulfill maintenance obligations.²⁸ They are also still in a phase of psychological and emotional development that is not yet stable, making them vulnerable to stress or even abandoning parental responsibilities. Therefore, under Indonesian positive law, the burden of responsibility for minor parents is generally managed collectively with the involvement of extended family, especially grandparents from either the mother's or father's side, as part of the strong kinship system still prevalent in society.

However, Constitutional Court Decision No. 46/PUU-VIII/2010 reinforces the legal principle that children born out of wedlock maintain a civil relationship with their biological father if it can be proven scientifically and/or technologically. Thus, even if the father is still a minor, he retains moral and legal responsibility toward the child. This necessitates a system of guidance and protection from the state so that the responsibility is not merely symbolic but carried out with adequate social support.

It must be acknowledged that regulations regarding the responsibilities of minor parents still contain normative gaps. In many cases, there is a tension between protecting children from out-of-wedlock relationships and safeguarding the educational rights and personal development of parents who are still minors. The state has not yet fully provided comprehensive policy solutions. Ideally, in

²⁶ Fathul Mu'in and Hendriyadi Hendriyadi, "Analisis Perbandingan Batas Usia Perkawinan Di Mesir Dan Indonesia," *El-Iqdimaj: Indonesian Journal of Civil and Islamic Family Law* 1, no. 1 (2020).

²⁷ Mutia Syawalistiani Putri, Kristiana Maryani, and Atin Fatimah, "Peran Lembaga Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak (P2TP2A) Terhadap Kasus Kekerasan Anak Usia Dini," *Jurnal Ilmiah Potensia* 8, no. 2 (2023): 361–70, <https://doi.org/10.33369/jip.8.2.361-370>.

²⁸ Gandhi Liyorba and Fathul Mu, "Family Conflict Resolution Based on Lampung Customary Local Wisdom and Its Implications for Household Harmony," *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya*, 2024, 1–14, <https://journal.iaimnumetrolampung.ac.id/index.php/jf>.

such situations, the government through child protection agencies, the Social Service, and religious or civil courts can establish an alternative system of responsibility that involves family, state, and community more collectively.²⁹

From the perspective of progressive Islamic family law, the resolution of this issue needs to be based on the principles of the child's welfare (*maslahah al-tifl*) and the continuity of the family.³⁰ Islam not only emphasizes formal legal status but also encourages solutions that are just, empathetic, and oriented toward the protection of life, equality, and reciprocity (*mubādalāh*).³¹ Therefore, the guidance of minor parents, legal counseling, and economic empowerment are strategic steps to ensure that children's rights to maintenance are fulfilled, without imposing psychological burdens that could harm the future of these young parents.

The obligation of minor parents to provide maintenance is a responsibility that must still be met, even though its implementation requires an adaptive approach and intervention from various parties, including measures to prevent underage marriage.³² The law must take into account the social reality that minor parents do not yet possess full economic and legal capacity, making regulations that bridge the child's rights with the circumstances of young parents highly necessary. The state, through responsive and socially just regulations, needs to ensure that every child, including those born out of wedlock, continues to receive proper maintenance and care.

Comparison of Islamic Law and Indonesian Legislation on the Maintenance Responsibility of Minor Parents for Children Born Out of Wedlock

The issue of maintenance responsibility for children born out of wedlock by parents who are still minors presents a complex legal dilemma. The two legal systems in force in Indonesia Islamic law and national legislation adopt different approaches, yet intersect in their efforts to protect children's rights.³³ In classical Islamic law, a child born out of wedlock (resulting from *zina*) does not have a recognized lineage (*nasab*) with the biological father. Therefore, the responsibility for maintenance rests entirely with the mother, according to the

²⁹ Choirul Maromi et al., "Membangun Masa Depan Aman: Strategi Efektif Dalam Perlindungan Anak," *Jurnal Ilmu Pendidikan* 1, no. 3 (2024): 141–52, <https://doi.org/10.62383/hardik.v1i2.442>.

³⁰ Ridwan, Kurniati, and Misbahuddin, "Relevansi Fungsi Dan Tujuan Hukum Islam Dalam Era Modern," *Al-Mutsla* 5, no. 2 (2023): 390–404, <https://doi.org/10.46870/jstain.v5i2.838>.

³¹ Efa Rodiah Nur, Fathul Mu'in, and Hamsidar Hamsidar, "The Reconstruction of The Livelihood Concept from A Mubadalah Perspective in Lampung Province," *Samarah* 7, no. 3 (2023): 1897–1920, <https://doi.org/10.22373/sjhk.v7i3.17613>.

³² Marsela Claudia Umboh, "Pencegahan Terhadap Perkawinan Anak Di Bawah Umur Dalam Perspektif Hukum Kesehatan" 1, no. 1 (1974): 303–35.

³³ Putri, Maryani, and Fatimah, "Peran Lembaga Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak (P2TP2A) Terhadap Kasus Kekerasan Anak Usia Dini."

majority opinion of the scholars of the schools of thought (madhhab).³⁴ This view is based on the principle that adultery does not produce legally recognized consequences in terms of lineage, inheritance, and maintenance obligations. However, in the context of contemporary Islamic law, particularly through the maqāṣid al-syarī'ah approach (the objectives of Islamic law),³⁵ there is a progressive perspective that emphasizes the need for comprehensive protection of children's rights. A child, as a vulnerable being who cannot meet their own needs, has the right to care and maintenance, regardless of their legal birth status.³⁶

Several contemporary scholars, such as Yusuf al-Qaradawi and Amina Wadud, emphasize the importance of prioritizing children's rights over social stigma. Although classical Islamic law does not link lineage (nasab) to the biological father in cases of zina, the principles of justice and compassion still guide that the father should bear responsibility if scientifically proven to be the biological parent. This is also relevant in the context of children born from non-marital relationships among adolescents.

Under Indonesian national law, the legal framework regarding responsibility for children born out of wedlock has undergone significant development following Constitutional Court Decision No. 46/PUU-VIII/2010. In this decision, the Court ruled that a child born outside of marriage maintains a civil relationship with both the mother and the biological father, as long as it can be scientifically and/or technologically proven (e.g., through DNA testing). With this ruling, maintenance responsibility for children born out of wedlock is not solely imposed on the mother but can also be extended to the biological father, including cases where the father is still a minor.

However, as legal subjects who are not yet fully competent (according to the Civil Code and the Child Protection Law), minor parents cannot be fully burdened with legal responsibility except through representation by guardians or family members.³⁷ Therefore, in practice, the maintenance responsibility of underage parents often involves the parents of the parents (grandparents) or is managed through the intervention of social institutions.

³⁴ Adinda Alda Indriyana, Ramziati R, and Jumadiah J, "KEABSAHAN AYAH BIOLOGIS SEBAGAI WALI NIKAH TERHADAP ANAK ZINA SETELAH BERLAKUNYA KOMPILASI HUKUM ISLAM (Studi Kasus Di Kecamatan Cot Girek Kabupaten Aceh Utara)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 5, no. 2 (2022): 110–19, <https://doi.org/10.29103/jimfh.v5i2.7502>.

³⁵ Mu, Edi, and Santoso, "A Review of Maqāshid Sharīa on Handling the COVID-19 Pandemic in Lampung and West Java Province."

³⁶ Wafda Lyinna, "Pemberian Hak Hadhanah Yang Diberikan Oleh Ayah Bagi Anak Yang Belum Mumayiz Akibat Terjadinya Perceraian Menurut Perspektif Hukum Islam," *Reformasi Hukum* XXI, no. 2 (2017): 312–41.

³⁷ Ahmad Tang, "Hak-Hak Anak Dalam Pasal 54 UU No. 35 Tahun 2014 Tentang Perlindungan Anak," *Jurnal Al-Qayyimah* 2, no. 2 (2020): 98–111, <https://doi.org/10.30863/aqym.v2i2.654>.

Table 1:
Points of Convergence and Differences

Aspect	Islamic Law	Legislation (Indonesian Law)
Lineage (Nasab)	Child does not have recognized nasab with the biological father (majority of scholars)	Child born out of wedlock can have a civil relationship with the biological father if proven scientifically
Maintenance Responsibility	Only the mother; father is not obligated (classical view)	Can be imposed on the biological father through legal mechanisms
Status of Minor Parents	Not explicitly discussed, but not fully accountable (not mukallaf)	Considered legally incompetent; responsibility may be transferred to guardian or family
Focus of Protection	Based on maqāṣid al-syarī'ah : protection of life and lineage	Based on children's rights and the principle of non-discrimination

The comparison between Islamic law and national law concerning the principle of restorative justice can be operationalized in both policy and legal practice to ensure fair protection for children born out of wedlock. Indonesian legislation, particularly after Constitutional Court Decision No. 46/PUU-VIII/2010, demonstrates a progressive step in recognizing the biological father's responsibility and granting civil rights to children born out of wedlock, although its implementation remains limited by the age and legal capacity of the parents. Conversely, classical Islamic law remains bound by the norms of lineage (nasab) and the validity of marriage; however, the *maqāṣid al-syarī'ah* approach opens space for new interpretations that place child protection as the primary objective of the law (*ḥifẓ al-nafs* and *ḥifẓ al-nasl*).

The harmonization between the two legal systems can be directed toward applying the principle of restorative justice, which emphasizes the restoration of the child's rights and well-being rather than punishment of the parents. Within this framework, the state acts as a facilitator, ensuring the involvement of the extended family, social institutions, and legal authorities in supporting the fair and humane fulfillment of the rights of children born out of wedlock.

Its implementation can be realized through cross-sectoral policies such as social assistance, psychological counseling, and family mediation grounded in Islamic and humanitarian values. Thus, the principle of restorative justice becomes a concrete bridge between the moral foundations of Islamic law and the national legal system in achieving a fair and compassionate protection of children.

Conclusion

Maintenance responsibility for children born out of wedlock to underage parents is a complex issue situated at the intersection of religious norms, social realities, and positive law. From the perspective of classical Islamic law, children born out of wedlock do not have a recognized lineage (*nasab*) with their biological father, so the maintenance responsibility rests solely with the mother. However, a more contextual *maqāṣid al-syarī'ah* approach emphasizes the comprehensive protection of children's rights, including the right to maintenance, regardless of the parents' marital status. Meanwhile, Indonesian positive law has recognized the civil relationship between children born out of wedlock and their biological fathers through Constitutional Court Decision No. 46/PUU-VIII/2010. This paves the way for enforcing maintenance responsibility on the father, including fathers who are still minors. Yet, due to the limited legal capacity of underage parents as legal subjects, this responsibility is often delegated or assisted by guardians, extended family, or even through the involvement of the state and child protection agencies. A comparison of the two legal systems shows that the protection of children's rights is the primary point of convergence. Therefore, it is necessary to develop an adaptive and integrative family law model that is not only based on normative justice but also responsive to the needs of children as the most vulnerable party. Maintenance responsibility for children born out of wedlock by underage parents must be placed within the framework of child rights protection to ensure their survival, growth, development, and a better future.

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