



# Determination of Nasab of Children Outside of Marriage in the Islamic Legal System: The Role and Decisions of Religious Courts in Indonesia

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**Abstract:** The determination of nasab for children born outside of marriage is a multifaceted legal and social issue, especially within the context of family law in Indonesia. This study delves into the critical role and decisions of Religious Courts in Indonesia concerning the nasab of such children, exploring how these courts balance national legal frameworks with the principles of Islamic law. Through a comprehensive analysis, the study highlights the legal factors, justifications, and ratio decidendi that underpin the decisions of the Religious Courts. It is imperative to understand the methodologies these courts employ in interpreting legal precedents, applying Islamic jurisprudence, and considering the broader social implications of their rulings. The investigation also looks into the procedural aspects of these cases, including the presentation of evidence, the involvement of legal and religious experts, and the impact of societal norms and pressures on judicial outcomes. It explores how the rulings influence public perceptions of legitimacy, inheritance rights, and social status, as well as their impact on the lives of children born outside of marriage and their families. The findings of this study underscore the dynamic interplay between religious norms and legal requirements in Indonesia, highlighting the challenges and opportunities in harmonizing these two systems. The study concludes by emphasizing the necessity for ongoing research to evaluate the long-term effects of these rulings on children's rights, social cohesion, and the development of a more inclusive and just legal framework.

**Keywords:** Islamic Legal; Nasab Children; Outside Marriage; Religious Courts

## 1. Introduction

Along with the development of modern society,<sup>1</sup> the family structure undergoes significant changes, creating new dynamics in the legal norms governing family relationships.<sup>2</sup> These changes can occur due to various factors, such as changes in social values, technological developments, and shifts in people's living patterns.<sup>3</sup> Changes in family structure can include various aspects, such as changes in family form (for example, the increasing number of single families or single-parent families), changes in the roles and responsibilities of family members, and changes in the

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<sup>1</sup> Abdullah M. Al-Ansi et al., 'The Islamic Organizations in Indonesia "Muhammadiyah and NU": Social Perspective Explanation', *Dirasat: Human and Social Sciences* 50, no. 5 (30 September 2023): 550–64, <https://doi.org/10.35516/hum.v50i5.1124>.

<sup>2</sup> Fadilla Syahriani, Ferdi Yufriadi, and Fismanelly, 'Empowering the Future: Innovative Education Strategies for Global Skills in the Context of the Golden Generation 2045', *International Journal of Applied Educational Research (IJAER)* 1, no. 2 (29 December 2023): 121–34, <https://doi.org/10.59890/ijaer.v1i2.1077>.

<sup>3</sup> Muhamad Taufiq, 'Nikah Sirri Perspektif Maqashid Syariah', *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (12 December 2019): 114, <https://doi.org/10.19105/al-manhaj.v1i2.3138>.

patterns of interaction and communication between family members. In the face of these changes, the legal norms governing family relationships are also undergoing changes and adjustments. Family law plays an important role in regulating marriage, divorce, the rights and obligations of parents towards children, as well as legal protection for vulnerable family members, such as children and women.<sup>4</sup> Legal arrangements relating to the family are usually made through laws or regulations that apply in a country.<sup>5</sup> In Indonesia, for example, there is Law No. 1 Year 1974 on Marriage which regulates various aspects of marriage, such as the conditions of marriage, the rights and obligations of husband and wife, and the rights and protection of children. Religious Courts also have a central role in dealing with legal issues relating to marriage and family in Indonesia. Religious Courts have the authority to decide cases relating to family law, including the determination of the nasab of children born out of wedlock.<sup>6</sup>

In determining the nasab of a child outside of marriage,<sup>7</sup> the Religious Court examines and proves relevant facts, such as evidence of pregnancy, evidence of the relationship between the child's mother and father, and testimony from witnesses who can provide information about the nasab relationship. The decision of the Religious Court in determining the nasab of a child has binding legal force and can be used as a basis for regulating the rights and obligations between the child and the father. The process of determining a child's nasab in the Religious Court is not always easy and simple. There are various legal and factual considerations that must be taken into account in this process, and each case will be assessed individually based on the available evidence. As family structures and legal norms governing family relationships change, it is important for people to understand and keep abreast of legal developments. In addition, consultation with a legal expert or lawyer experienced in the field of family law can also help in understanding the rights and obligations associated with family relationships.<sup>8</sup>

The handling of the nasab of children born out of wedlock is an issue that is increasingly taking centre stage.<sup>9</sup> This presents the question of legal recognition of offspring in this situation. Nasab is a term in Islamic law that refers to the relationship of kinship or descent between family members. Nasab serves to bind each family member with a lasting bond that is connected through the basics of blood unity between one another. In positive law, the handling of the nasab of children born out of wedlock can vary depending on the regulations that apply in each country. In Indonesia, marriage regulations state that every marriage must be registered and have formal legal validity. Children born from marriages that are not legally valid according to religion and the state can result in not having the father's nasab rights and other civil rights.<sup>10</sup> The nasab of children born out of wedlock is also a matter of debate among scholars. There are differences of opinion regarding the

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<sup>4</sup> Yubsir, 'Maqashid Al-Syari'ah Sebagai Metode Interpretasi Teks Hukum: Telaah Filsafat Hukum Islam', 2, XI (July 2013): 241.

<sup>5</sup> Birgitt Röttger-Rössler et al., 'Socializing Emotions in Childhood: A Cross-Cultural Comparison Between the Bara in Madagascar and the Minangkabau in Indonesia', *Mind, Culture, and Activity* 20, no. 3 (July 2013): 260–87, <https://doi.org/10.1080/10749039.2013.806551>.

<sup>6</sup> Siah Khosyi'ah and Ayi Yunus Rusyana, 'Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia', *Cogent Social Sciences* 8, no. 1 (31 December 2022): 2126615, <https://doi.org/10.1080/23311886.2022.2126615>.

<sup>7</sup> Muhammad Rosyid Ridlo, Imron Rosyadi, and Muthoifin Muthoifin, 'THE LAW OF NASAB FOR CHILDREN BORN OUTSIDE OF LEGAL MARRIAGE ACCORDING TO IMAM IBN QAYYIM AL-JAUZIYYAH حكم النسب الولد في نكاح الحامل من الزنا غير محصن عند الإمام ابن قيم الجوزية', *Profetika: Jurnal Studi Islam* 23, no. 2 (25 August 2022), <https://doi.org/10.23917/profetika.v23i2.19671>.

<sup>8</sup> Anke Iman Bouzenita and Feryad A Hussain, 'Psychological and Societal Impacts of Unknown Descent and The Islamic Objective of Nasab. A Preliminary Study of Chosen Biomedical Technologies', *IIUM Medical Journal Malaysia* 20, no. 1 (5 January 2021), <https://doi.org/10.31436/imjm.v20i1.1767>.

<sup>9</sup> Suci Ramadhani Putri, 'Child Protection Affected by the Covid-19 in Indonesia: Islamic Perspective', *Al Hurriyah : Jurnal Hukum Islam* 7, no. 1 (12 July 2022): 47, <https://doi.org/10.30983/alhurriyah.v7i1.5319>.

<sup>10</sup> Dörthe Engelcke, 'ESTABLISHING FILIATION ( NASAB ) AND THE PLACEMENT OF DESTITUTE CHILDREN INTO NEW FAMILIES: WHAT ROLE DOES THE STATE PLAY?', *Journal of Law and Religion* 34, no. 3 (December 2019): 408–32, <https://doi.org/10.1017/jlr.2019.45>.

status of the child. Some scholars attribute the child to the man who impregnated her, while others argue that the child has no father.<sup>11</sup>

The nasab of children outside of marriage may vary depending on the legal context of each country and religion. Therefore, it is important to study the applicable laws in a particular region or country to gain a more comprehensive understanding of the legal recognition of offspring in this situation. The handling of the nasab of children born out of wedlock is becoming an issue of increasing concern. In Islamic law, nasab serves to bind each family member with an eternal bond that is connected through the basics of blood unity between one another. However, in positive law, the handling of the nasab of children born out of wedlock may vary depending on the applicable regulations in each country. Therefore, it is important to study the applicable laws in a particular region or country to gain a more comprehensive understanding of the legal recognition of offspring in this situation.<sup>12</sup>

Religious Courts have a central role in handling family matters, including the determination of the nasab of children outside of marriage, bringing legal and religious aspects into the perspective of the court. Religious Courts in Indonesia have jurisdiction over marriages, including polygamy permits, marriage cancellations, divorce claims, settlement of joint property, and determination of the obligation to provide livelihood costs by the husband to his former wife. Religious Courts also function as providers of judicial technical services and clerical administration for first level cases as well as administrative services for appeals, cassations, and judicial review cases. In divorce proceedings in the Religious Courts, the petition must be carefully drafted in order to be granted, and it is important to discuss with legal counsel to formulate an appropriate petition. However, it is important to note that the handling of the nasab of children out of wedlock may vary depending on the applicable regulations in each country and religion. Therefore, it is important to study the applicable laws in Indonesia to gain a more comprehensive understanding of the role of the Religious Courts in handling family matters, including the determination of the nasab of children outside of marriage.<sup>13</sup>

This research aims to investigate how religious courts in Indonesia play a crucial role in determining the lineage of children born outside of marriage within the context of Islamic law. Focusing on court decisions, the study will identify the legal factors and Sharia considerations that form the legal basis for courts in handling these lineage cases. Additionally, the research will examine the social impact of these decisions on societal perceptions of child legitimacy, inheritance rights, and their social status. Through a deep analysis of legal practices used in decision-making, the study also aims to understand how these court decisions affect not only family law institutions but also broader social harmony in Indonesia. Thus, this research is expected to provide deeper insights into the dynamics of interaction between religious norms and legal requirements in resolving lineage cases outside of marriage, and its relevance within the current social and legal context in Indonesia.

## 2. Method

This study uses a qualitative approach to explore how religious courts in Indonesia determine the nasab of children born out of wedlock in the context of Islamic law. This approach allows the researcher to gain an in-depth understanding of the legal factors and sharia considerations underlying court decisions. This research is a case study that takes several cases of court

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<sup>11</sup> Andi Samsul Bahri, 'Comparative Study: The Concept of Legitimate Children in The Perspective of Positive Law and Islamic Law', *Al-Bayyinah* 5, no. 1 (28 June 2021): 43–56, <https://doi.org/10.35673/al-bayyinah.v5i1.813>.

<sup>12</sup> Melanie Guénon, 'Vaterschaftstests Zwischen Religiösem Recht Und Medizintechnik: Abstammungsklagen Im Algerischen Familienrecht', *Die Welt Des Islams* 58, no. 2 (15 May 2018): 173–205, <https://doi.org/10.1163/15700607-00582P02>.

<sup>13</sup> Imam Sujono, 'Legal Review of Marriage for Divorced Women Outside the Religious Courts', *International Journal of Islamic Thought and Humanities* 1, no. 1 (1 March 2022): 1–16, <https://doi.org/10.54298/ijith.v1i1.10>.

decisions related to nasab outside of marriage, specifically in the Religious Courts in Indonesia. The case study approach allows researchers to explore in detail the legal context and social factors that influence court decision-making. Primary data will be collected through analysis of official court decision documents, including written decisions and recorded legal proceedings. In addition, in-depth interviews will be conducted with religious court judges, Islamic law experts and family law practitioners to gain a comprehensive perspective. The qualitative data collected will be analyzed using a hermeneutic approach to interpret the legal texts and interviews. This analysis will identify the main themes, patterns, and legal arguments underlying the court decisions.

The research will adhere to the principles of research ethics, including data validity, confidentiality of information, and respect for research participants. Permission and approval will be obtained from the authorities before starting data collection. This study is expected to provide deeper insights into the dynamics of determining the nasab of children outside marriage in the Islamic legal system in Indonesia. The results of the study can make a significant contribution to the development of family law and religious court policies, as well as strengthen the understanding of the interaction between religious and legal norms in the current Indonesian social context.

### 3. Analysis or Discussion

#### 3.1. Overview of Child Nasab

Etymologically rooted in Arabic, the term "nasab" fundamentally signifies lineage and the tracing of familial descent. Its interpretations vary, with scholars like Ahmad Rofiq emphasizing its role in establishing familial relationships, particularly the legally recognized bond between a child and their father, known as "mahram." Beyond biological connections, nasab encompasses broader familial bonds rooted in blood ties, spanning relationships from fathers to sons and across generations to grandfathers and grandsons. This concept extends to encompass legal and social kinships arising from marriages, whether formal, informal, or unrecognized, illustrating the intricate intersections of legal definitions and cultural norms within familial structures. In a narrower context, nasab specifically denotes the recognition of progeny or offspring, highlighting legal and social acknowledgment within familial lineages, including those born outside formal marital unions. This multifaceted understanding underscores nasab's significance in defining not only biological lineage but also the legal rights and social frameworks that shape familial relationships in diverse societal contexts.<sup>14</sup>

The previous definition of nasab shows that it is not related to biological descent, but rather to legal ties. Because physiologically, not all blood relatives can be considered to have familial ties. For example, a child who commits adultery is related by blood to the man who is his biological father, but is not related to the parents who committed adultery. This shows that blood relationship is not the only factor that determines lineage. Thus, the idea that nasab refers to the legal relationship between two people can be changed. The Legal Basis of Nasab: The Qur'an and Hadith Prophet Muhammad recognised the importance of the conversation about nasab in Islamic law. Among the most frequently used Qur'anic arguments to emphasise the importance of lineage is a reference to Q.S al-Ahzab (33) verses 4-5.

Academics agree on three methods to identify descent. Starting with a valid marriage, fiqh scholars say that a fasid marriage is one that is performed under improper circumstances, such as when there is no guardian, witnesses, or false witnesses. A child born from a fasid marriage has the same lineage as a child born from a valid marriage. Out of an element of prudence, nasab is established through fasid nikah. If the fasid breaks the law of marriage, there are still effects such as mahr,

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<sup>14</sup> Jane Diala, 'THE CHILD IN A CHILD: CHILD MARRIAGE AND LOST IDENTITY IN SOUTHERN AFRICA', *Pravni Vjesnik* 35, no. 1 (April 2019), <https://doi.org/10.25234/pv/5729>.

nasab, and so on. Thirdly, through the use of vague or unclear connections. Misunderstanding can lead to unpleasant sexual relations.<sup>15</sup>

### 3.2. Indonesian Positive Law Child Concept Extraordinary and Legal

According to Law Number 1 Year 1974 on Marriage, "A genuine youth is a child born in or out of a legal marriage." On the other hand, Article 99 of the Aggregate Islamic Regulations stipulates two types of true youth: "Children born in or out of a valid marriage." Children born to the husband's wife as a result of an unlawful conjugal act. According to Law Number 1 Year 1974 on Marriage, a marriage is considered valid only if it is materially performed according to the law of the religion or belief concerned and officially recorded according to the relevant laws and regulations (see Article 2 paragraphs 1 and 2 UUP).<sup>16</sup> The child has an inherently legitimate relationship with the father and his family unless the father—who is the husband of the woman who gave birth to him—expressly states otherwise.

In accordance with the decision of the Constitutional Court dated 17 February 2012, 46/PUU-VIII/2010, the first paragraph of Article 43 of Law Number 1 Year 1974 on Marriage, which states that "Children born out of wedlock only have a civil relationship with their mother and their mother's family", should be changed to "Children conceived illegally have the same relationship with the mother and the mother's family and with the man as the father." DNA testing can be used in certain situations, such as when family members cannot be identified for various reasons, such as lack of real or written evidence. In its decision Number 46/PUUVII/2010 dated 17 February 2012, the Constitutional Court examined Article 43 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, which states that the mother, the mother's family, and the man as the father are related by blood.<sup>17</sup>

Technological advancements, particularly in DNA testing and other medical procedures, have revolutionized how legal systems address familial relationships, especially concerning children born to unmarried parents. Mahfud MD, the former Chief Justice of Indonesia's Constitutional Court, clarified in an interview that an "illegitimate child" is defined as one born outside of a lawful or religiously sanctioned marriage. This definition was solidified in Constitutional Court Decision 46/PUUVIII/2010, which delineates specific legal ramifications for such children. This decision serves as a guiding principle for judges, offering clear legal criteria for determining biological parentage and assisting the public in navigating the complexities of establishing legal recognition for children and their parents in non-traditional family structures.<sup>18</sup>

The Constitutional Court's amendment of Article 43, paragraph 1 of Law No. 1/1974 on Marriage marks a significant shift in legal provisions concerning children born out of wedlock. This amendment aligns legal frameworks with evolving societal norms and technological capabilities, ensuring that community practices are governed by clear legal standards. By addressing these issues, the Court aims to promote fairness and clarity in legal proceedings related to familial rights and responsibilities, thereby reinforcing the rule of law and enhancing public trust in the judiciary. The integration of advanced technologies into legal practices underscores the judiciary's

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<sup>15</sup> Ridlo, Rosyadi, and Muthoifin, 'THE LAW OF NASAB FOR CHILDREN BORN OUTSIDE OF LEGAL MARRIAGE ACCORDING TO IMAM IBN QAYYIM AL-JAUZIYYAH حكم نسب الولد في نكاح الحامل من الزنا غير محصن عند الإمام ابن قيم الجوزية'.

<sup>16</sup> Mesrain Mesraini, 'Interkoneksi Mahkamah Konstitusi Dengan Mahkamah Agung; Studi Implementasi Putusan Tentang Nasab Anak', *SALAM: Jurnal Sosial Dan Budaya Syar-i* 4, no. 1 (2 May 2017): 1–26, <https://doi.org/10.15408/sjsbs.v4i1.7866>.

<sup>17</sup> Rahmawati, 'Penetapan Status Anak Dari Perkawinan Dibawah Tangan (Studi Pada Perkara No. 77/Pdt.P/2020/Pa.Gtlo)', *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (December 2021).

<sup>18</sup> Andry Harijanto, Siti Hatikasari, and Juliet Musabula, 'The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice', *Journal of Human Rights, Culture and Legal System* 2, no. 2 (30 July 2022): 100–112, <https://doi.org/10.53955/jhcls.v2i2.33>.

adaptability to modern challenges and its commitment to upholding justice in diverse family contexts across Indonesia.<sup>19</sup>

### 3.3. Legal views on the validation of a child's nasab

Islamic law on proving the origin of children is different from positive law that legalises the origin of children. This is due to the fact that different perspectives and scholars give different interpretations to Islamic law. At least four different ways can be used to discover the origin or ancestry of children from their parents. Specific to the biological father, by recognition or claim to the child's inheritance through documentation and qiyafah techniques or, over time, by lottery.<sup>20</sup> In the absence of a birth certificate, the Religious Court can certify the origin of the child. This is in contrast to positive law, where the birth certificate serves as proof of the child's origin, among other things. Births in the absence of a father and mother whose marriage is permissible can be legitimised in a variety of ways permitted by religion, including itsbat nikah, marriage contracts, claims for the origin of children without a marriage certificate, and court evidence based on science and technology, such as DNA tests.<sup>21</sup>

Negotiations to ratify, given Islamic legal guidelines. Based on the research that has been conducted by the author in case 173/Pdt. P/PA, the author will explain the circumstances in the case as follows related to the determination of the origin of children: Candidate I for the benefit of the container Wandu Hardian Putra Zulkarnaini, Muslim, high school education, and the case of a farmer, lives in Simpang Tiga Bedeng, Jorong Simpang Tiga, Kenagarian Koto Baru, Local Couple Luhak Nan, West Pasaman Regime, West Sumatra Region. Candidate II, Anggun Rahmadani binti Siyot, is Muslim, has a high school education, and works as a housewife in Luhak Nan Duo District, West Pasaman Regency, West Sumatra Province. In a petition filed with the Registrar of the Talu Religious Court on 1 April 2021, Applicants I and II detailed their circumstances regarding their daughter, Gaury Mahveen Hardian. They explained that they were married consecutively on 10 January 2019 in Batam, at which time both applicants identified as female. Approximately four months after their marriage, on 2 May 2019, Gaury Mahveen Hardian was born in West Pasaman. Despite the child being born to Applicant II (the wife), Applicant I's name was not listed on Gaury's birth certificate due to the child being born prior to the legal date of their marriage.

To address this issue, on 30 July 2019, Applicants I and II obtained an extract of Marriage Certificate No. 0501/091/VII/2019 from the Marriage Registrar of the Religious Affairs Office in Sagulung Sub-district, Batam City, Riau Islands Province. However, they encountered difficulties when attempting to use this extract as required documentation to obtain Gaury's birth certificate from the Population and Civil Registration Office. The administrative regulations stipulated specific requirements that the marriage certificate extract did not meet, resulting in a delay in legally establishing Gaury's parentage. Applicants I and II emphasized the importance of proving Gaury's legitimacy and securing her legal rights as their child. This case illustrates the challenges faced by families when administrative processes do not accommodate non-traditional family structures or recognize legal documents that validate familial relationships outside conventional norms. It underscores the need for legal frameworks to be adaptable and inclusive to ensure equitable treatment and protection of family rights in diverse societal contexts.

Based on the case example provided above, Applicants I and II navigated significant challenges concerning the legal status of their child, whose birth certificate encountered obstacles stemming from administrative deficiencies. These difficulties resulted in uncertainties regarding the child's legal recognition and raised concerns about their access to rights and services that require official documentation of parentage. The situation underscored the vulnerability faced by families when bureaucratic processes fail to accommodate non-traditional family structures, such as same-sex

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<sup>19</sup> Sabirin, 'Putusan Mahkamah Konstitusi (MK) Tahun 2012 Tentang Kedudukan Anak Luar Nikah Menurut Hukum Islam', *Al Mizan : Jurnal Hukum Dan Ekonomi Islam* 8, no. 2 (October 2021).

<sup>20</sup> Sakirman Msi, 'Indonesia Islamic Law Study on Children Nasab', *SSRN Electronic Journal*, 2016, <https://doi.org/10.2139/ssrn.2888312>.

<sup>21</sup> Sayed Sikandar Shah Haneef, 'The Status of an Illegitimate Child in Islamic Law: A Critical Analysis of DNA Paternity Test', *Global Jurist* 16, no. 2 (1 January 2016), <https://doi.org/10.1515/gj-2015-0008>.

couples, and highlighted the need for legal reforms to ensure equitable treatment and protection of parental rights in diverse family contexts.

#### 4. Analysis of Judges' Considerations in Deciding Child Nasab Cases

Based on the description of the case situation above, the two candidates made an accommodation regarding the legal status of young people whose birth certificates could not be granted due to an authority error, which placed them in legal jeopardy. In the final judgement, the judge rejected the application and designated the child as an extramarital child of the applicants.<sup>22</sup> As a result, the child could not be related to his father because his birth did not fulfil the minimum period of six months from the marriage to be declared as a legitimate child born from the marriage of the two applicants, and they made their legal decision based on the Fiqh rules on the nasab of children. As is known, Imam Malik and Imam Shafi'i gave a six-month period to determine that the child's lineage could not be linked to the father and his family. This was the stipulation given by fiqh in the past. However, since there is no clarity on the relationship between the two, this overrides the interests of the child born and the protection of future children.<sup>23</sup>

As decided by Judge Member I, the applicants' child should be recognised as a legitimate child and entitled to be attributed to his father. The applicant's reasons were strong and could be proven during the trial. In the author's opinion, the other parts relating to the judge's efforts to protect the child's rights are in line with positive legal provisions. For example, Article 7 paragraph 1 of Law No. 35 of 2014 was amended to read as follows: "Every child has the right to know his or her parents and to be raised by them." The right of children to know who their parents are will help them understand their parental status and relationship.

Regarding the opinion of Judge Member I that this decision violates the rules of fiqh, it seems unacceptable. This is because, in essence, fiqh is determined by context and time. According to Ahmad Musthofa al-Maraghi, the traveller, these rules are made for the welfare of mankind. Human interests may change according to time and place. If a law was perceived at the time of its need but was later eliminated, the wise decision is to repeal it and replace it with another (other) law that is more in line with the current times.<sup>24</sup>

Judge Member I chose Imam Abu Hanifah's opinion that as long as the child is born after the marriage contract, the child's descent is attributed to the partner with whom he shares a valid marriage. In other words, if a husband dismisses a child born after the marriage contract is signed, the child is considered a legitimate child and has a relationship with the husband's lineage.<sup>25</sup> This is certainly in line with KHI, which states that children born of or from a valid marriage are legitimate children. Judges use KHI as a reference or guideline in making decisions about marriage and inheritance, two matters that currently do not have a legal framework. Legal requirements are considered fundamental in society, so there is no need for and more complex procedures, which would change if directed at a more contemporary society.<sup>26</sup>

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<sup>22</sup> Alfritri Alfritri, 'Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia', *Studia Islamika* 27, no. 2 (3 August 2020): 273–307, <https://doi.org/10.36712/sdi.v27i2.9408>.

<sup>23</sup> Noor Handayani and Akhmad Khisni, 'Juridical Implementation of Distribution Assets for the Inheritance to Adopted by Islamic Law Compilation', *Jurnal Akta* 6, no. 4 (10 February 2020): 763, <https://doi.org/10.30659/akta.v6i4.7578>.

<sup>24</sup> Marilang Marilang, 'LEGAL RELATIONSHIP BETWEEN ILLEGITIMATE CHILDREN AND THEIR BIOLOGICAL FATHER: The Analysis of Constitutional Court Decree No. 46/PUU-VIII/2010 in the Perspective of Civil and Islamic Law', *JOURNAL OF INDONESIAN ISLAM* 10, no. 2 (1 December 2016): 335, <https://doi.org/10.15642/JIIS.2016.10.2.335-354>.

<sup>25</sup> Apriani, 'Problematika Keluarga Akibat Hamil Diluar Nikah (Studi Kasus Di Desa Purwodadi Kutacane)', *Jurnal Tarbiyah* 1, no. 2 (2019).

<sup>26</sup> Said Amirulkamar et al., 'Administration Reagent of Aceh Family Law Qanun: Siri Marriage Motives Towards the Legality of Polygyny', *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (23 July 2023): 129–43, <https://doi.org/10.18860/j-fsh.v15i1.21352>.

Since pregnancy in KHI is deliberately stated briefly and rather generally, it is an important aspect of marriage. The aim is to give the Court the freedom to take note of new advances and establish a sound basis rationally and factually.<sup>27</sup> This will help them find new ground. The author argues that, although we are commanded to close the door that leads to prohibition (sadd adz-dzari'ah), the judge's decision to label the child as illegitimate is a legal attempt to reduce the relationship between the child and the male adulterer, which in turn will open the door to adultery. To maintain the purity of the offspring from sinful acts, such as illegitimate pregnancy. The author is more likely to agree with the decision of Judge Member I, who held that the Applicant's children were her legitimate offspring.<sup>28</sup>

The judge's ruling would preserve the status of the petitioner's children by maintaining her bond with her mother and family. In cases where the biological father is a distinct individual and is not obliged to provide financial support to the child, there is no inheritance relationship, and even if the adulterous offspring is female,<sup>29</sup> the child's biological "father" should not spend time with her alone. In Islamic law, an adulterer is not a guardian in the marriage of an adulterous offspring. DNA is currently available. DNA has a 100% accuracy rate, so this method does not allow for mixed ancestry. The hadith that tells the story of Juraij also contradicts the Jumhur argument. The fact that an adulterous child has a biological father is undeniable.<sup>30</sup>

The first step taken by the applicants to solemnise a pregnant marriage is in accordance with "(a) a woman who becomes pregnant outside of marriage may be married to the man who impregnates her; (b) a woman who becomes pregnant outside of marriage may be married to the man who impregnates her; (c) Marriage with a pregnant woman as referred to in point "a" may take place immediately after the birth of her child." In terms of KHI and UUP, the main difference between the two is related to the issue of the lineage of children born to pregnant women who marry less than six months after the marriage contract, legally binding sexual relations, or the minimum amount of time between pregnancy and childbirth, according to fiqh scholars.

## 5. Conclusion

Inheritance law, integral to both Islamic and customary traditions, governs the transfer of ownership rights to a deceased person's estate, known as tirkah in Islamic jurisprudence. This legal framework holds profound significance in human life due to its association with the inevitable event of death. Islam places great emphasis on ensuring that wealth and property are distributed equitably among heirs, regardless of gender. Upon the death of an individual, Islamic law mandates that the deceased's estate first settle all necessary expenses, including funeral costs, debts, zakat (mandatory alms), and any specific bequests. Only after these obligations are met can the remaining estate be divided among the designated heirs, adhering closely to principles of justice and fairness. Customary laws, on the other hand, exhibit significant variability across different regions and cultures. While these laws also encompass the assets and liabilities of the deceased, such as debts, they often diverge from Islamic principles in their approach to inheritance. Customary practices may dictate different shares for male and female heirs, with ratios like 2:1 prevailing in certain societies. These practices are deeply rooted in local norms and traditions, aiming to maintain social harmony and familial stability by governing how wealth and responsibilities are transferred within communities.

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<sup>27</sup> Ipandang Ipandang and Syamsul Darlis, 'Passampo Siri' in the Bugis Marriage Practices in East Kolaka, Indonesia: A Sociological Perspective of Islamic Law', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (31 December 2022): 873, <https://doi.org/10.22373/sjkh.v6i2.12874>.

<sup>28</sup> Taufik Adnan Amal and Samsu Rizal Pangabea, *Politik Syariah Islam Dari Indonesia Hingga Nigeria* (Jakarta: Pustaka Alvabet, 2004), hal. 24.

<sup>29</sup> Jae Hee Kim, 'Effect of Gender Sensitivity on Attitudes toward Marriage and Childbirth among University Students in South Korea', *International Journal of ADVANCED AND APPLIED SCIENCES* 10, no. 9 (September 2023): 150–57, <https://doi.org/10.21833/ijaas.2023.09.017>.

<sup>30</sup> Irzak Yuliyardy Nugroho and Achmad Safiudin, 'Nasab Anak Di Luar Perkawinan Perspektif Hukum Progresif Dan Maqāsid Sharī'ah', *AL-HUKAMA'* 11, no. 2 (11 December 2021): 1–28, <https://doi.org/10.15642/alhukama.2021.11.2.1-28>.



In navigating these diverse legal landscapes, it is crucial for individuals and communities to understand and respect both Islamic and customary laws regarding inheritance. For Muslims, adherence to Islamic principles ensures alignment with religious obligations and ethical standards, promoting fairness and equity among heirs. Understanding local customary practices is equally important, as it fosters cohesion within communities and upholds traditional values. Moreover, legal advice and estate planning can provide valuable guidance in navigating these complex frameworks, ensuring that individuals can manage their assets and plan for the equitable distribution of their estates in accordance with their beliefs and local customs. By embracing these insights and seeking professional advice where necessary, individuals can effectively navigate the intricacies of inheritance laws while preserving familial harmony and upholding cultural legacies.

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