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Child Maintenance Without Paternal Filiation: A Comparative Analysis of Indonesian Law, Aceh's Qanun, and Contemporary Islamic Jurisprudence

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Abstract

This study examines the legal construction of paternal maintenance obligations toward children born outside marriage by comparing Indonesian law, Aceh's Qanun, and contemporary Islamic jurisprudence. It aims to identify the normative divergences among these legal frameworks and develop a child-protection approach that distinguishes maintenance obligations from the legal recognition of paternal filiation. This study employs normative legal research using statutory, conceptual, and comparative approaches. The primary legal materials include the 1945 Constitution of Indonesia, the Marriage Law, Constitutional Court Decision No. 46/PUU-VIII/2010, Aceh's family law regulations, and Indonesian Council of Ulama Fatwa No. 11 of 2012, supplemented by classical and contemporary Islamic legal scholarship. The findings reveal a fundamental divergence in the construction of paternal responsibility. Indonesian law, as interpreted through Constitutional Court Decision No. 46/PUU-VIII/2010, recognizes civil relations between a child born outside marriage and a biologically related father when established through legally admissible evidence. Aceh's Qanun, by contrast, reflects a more restrictive approach to paternal filiation and maintenance obligations. Contemporary Islamic jurisprudence provides an alternative framework through taʿzīr, potentially enabling state-imposed maintenance obligations without establishing paternal lineage. This study argues that a taʿzīr-based model offers a promising normative framework for reconciling child protection with Islamic legal principles, although its implementation requires a clear legal basis and procedural safeguards. It recommends developing explicit regulations governing evidentiary standards, maintenance assessment, enforcement mechanisms, and the child's best interests while preserving the distinction between biological paternity, legal filiation, and financial responsibility.

Keywords: *Child Maintenance; Paternal Filiation; Children Born Outside Marriage; Taʿzīr; Islamic Family Law.*

Abstrak

Studi ini meneliti konstruksi hukum kewajiban nafkah ayah terhadap anak yang lahir di luar pernikahan dengan membandingkan hukum Indonesia, Qanun Aceh, dan yurisprudensi Islam kontemporer. Studi ini bertujuan mengidentifikasi perbedaan normatif di antara kerangka hukum tersebut dan mengembangkan pendekatan perlindungan anak yang membedakan kewajiban nafkah dari pengakuan hukum atas hubungan paternal. Studi ini menggunakan penelitian hukum normatif menggunakan pendekatan undang-undang, konseptual, dan komparatif. Materi hukum utama meliputi Undang-Undang Dasar Indonesia 1945, Undang-Undang Perkawinan, Keputusan Mahkamah Konstitusi No. 46/PUU-VIII/2010, peraturan hukum keluarga Aceh, dan Fatwa Dewan Ulama Indonesia No. 11 tahun 2012, yang dilengkapi dengan kajian hukum Islam klasik dan kontemporer. Temuan tersebut mengungkapkan perbedaan mendasar dalam konstruksi

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tanggung jawab paternal. Hukum Indonesia, sebagaimana ditafsirkan melalui Keputusan Mahkamah Konstitusi No. 46/PUU-VIII/2010, mengakui hubungan sipil antara anak yang lahir di luar nikah dan ayah yang memiliki hubungan biologis ketika ditetapkan melalui bukti yang dapat diterima secara hukum. Sebaliknya, Qanun di Aceh mencerminkan pendekatan yang lebih ketat terhadap kewajiban filiasi dan nafkah ayah. Hukum Islam kontemporer menyediakan kerangka kerja alternatif melalui taʿzīr, yang berpotensi memungkinkan kewajiban tunjangan yang ditetapkan negara tanpa menetapkan garis keturunan ayah. Studi ini berargumen bahwa model berbasis taʿzīr menawarkan kerangka normatif yang menjanjikan untuk mendamaikan perlindungan anak dengan prinsip hukum Islam, meskipun pelaksanaannya memerlukan dasar hukum yang jelas dan perlindungan prosedural. Studi ini merekomendasikan pengembangan regulasi eksplisit yang mengatur standar pembuktian, penilaian pemeliharaan, mekanisme penegakan, dan kepentingan terbaik anak sambil mempertahankan perbedaan antara ayah biologis, hubungan hukum, dan tanggung jawab keuangan.

Kata Kunci: Tunjangan Anak; Hubungan Paternal; Anak yang Lahir Di Luar Pernikahan; Taʿzīr; Hukum Keluarga Islam.

INTRODUCTION

The protection of children born out of wedlock is a family law issue that brings together the principles of protection of children's rights, the certainty of civil relationships, and the legitimacy of parental responsibility. The issue becomes complex when the birth status of a child has implications for determining the fate, maintenance rights, maintenance obligations, and the possibility of obtaining economic protection from the man who is biologically the father.[1] In this context, legal issues are not enough to be resolved through the determination of the status of nasab alone, but also require an analysis of the basis and mechanism of accountability for the fulfillment of the child's life needs. Children have no control over the circumstances that led to their birth, so determining the legal consequences of their birth status needs to consider the protection of the child's interests without ignoring applicable legal principles. This issue is increasingly relevant in the pluralistic Indonesian legal system, because national law, Islamic family law norms in Aceh, and fiqh doctrines do not always provide uniform answers regarding the relationship between the biological father and children born out of wedlock.[2]

[1] Sifa Mulya Nurani, "Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)," *Al-Syakhsiyyah: Journal of Law & Family Studies* 3, no. 1 (July 30, 2021): 98–116, https://doi.org/10.21154/syakhsiyyah.v3i1.2719; Muhammad Syahrizan et al., "Budaya Patriarki Dalam Rumah Tangga Menurut Perspektif Hukum Islam," *Journal of Shariah and Islamic Economics* 5, no. 1 (2024).

[2] Nur Syakirah Binti Mohd Adnan et al., "Wasiat Wajibah and Islamic Inheritance Philanthropy: A Socio-Legal Study In Indonesia," *Mawaddah: Jurnal Hukum Keluarga Islam* 4, no. 1 (2026): 631–51, https://doi.org/10.52496/mjhki.v4i1.75; Umi Enggarsasi, Nur Khalimatus Sa'diyah, and Muhammad Dhany Reformasi, "Legal Protection for Children Born Out of Wedlock: An Islamic Justice Perspective," *Lex Publica* 11, no. 1 (June 30, 2024): 139–60, https://doi.org/10.58829/lp.11.1.2024.260; Ahmad Sukris Sarmadi, Anwar Hafidzi, and Latifah Abd Majid, "Revisiting Paternity and Inheritance in Islamic Law: Legal Recognition and the Status of Children Born Out of Wedlock in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 25, no. 2 (January 21, 2026): 403–27, https://doi.org/10.18592/sjhp.v25i2.16666; Eunike Loist Hutasoit et al., "Perlindungan Hukum Bagi Anak Luar Nikah Di Indonesia; Studi Komparasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Dan Hukum Islam," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (August 31, 2024): 420–37, https://doi.org/10.32505/jurisprudensi.v16i2.8938; Ilham Tohari, Anggit Waseso, and Erna Herawati, "Legal Protection of the Rights Children Born Out of Wedlock: A Comparative Study in Indonesia and Malaysia," *International Journal of Current Science Research and Review* 07, no. 04 (April 9, 2024),

To maintain the accuracy of the analysis, this study uses the term out-of-wedlock child to refer to a child born as a result of an adulterous relationship, not a child born from a marriage that is legally valid according to religion but not administratively recorded. This distinction is important because the term "child born out of wedlock" in Indonesian positive law has a broader interpretive scope and is not always synonymous with children resulting from adultery.[3] These differences in characteristics have an effect on the analysis of blood relations, civil relations, and legal consequences that can be attached to the biological father. The literature on the Constitutional Court Decision No. 46/PUU-VIII/2010 also shows that there is a debate on the application of the decision to various categories of children born out of wedlock, including the distinction between children from unregistered marriages and children resulting from adultery.[4] Therefore, these conceptual restrictions are a prerequisite to avoid generalization to the category of children who have different legal backgrounds.

In Indonesian national law, an important development regarding the status of children born out of wedlock is marked by the Constitutional Court Decision Number 46/PUU-VIII/2010. The decision gives a constitutional meaning to Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage by emphasizing that the civil relationship with a man who is proven to have a blood relationship as his father cannot be eliminated solely because the birth of a child occurs outside of marriage. The proof must be based on science and technology and/or other evidence according to the law, and

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https://doi.org/10.47191/ijcsrr/V7-i4-18; Elis Yesika br Rajagukguk, Roida Nababan, and Sovia Simamora, "Legal Review of Legal Protection for Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU-VIII/2010," *International Journal of Law, Crime and Justice* 2, no. 3 (September 1, 2025): 106–14, https://doi.org/10.62951/ijlcj.v2i3.755; Rohmawati Rohmawati and Syahril Siddik, "Legal Protection for Children Out of Wedlock: Ensuring the Best Interests of Children Through Judge Decisions," *Al-'Adalah* 19, no. 2 (December 25, 2022): 315–38, https://doi.org/10.24042/adalah.v19i2.11761.

[3] Sarmadi, Hafidzi, and Majid, "Revisiting Paternity and Inheritance in Islamic Law: Legal Recognition and the Status of Children Born Out of Wedlock in Indonesia"; Enggarsasi, Sa'diyah, and Reformasi, "Legal Protection for Children Born Out of Wedlock: An Islamic Justice Perspective"; Rohmawati and Siddik, "Legal Protection for Children Out of Wedlock: Ensuring the Best Interests of Children Through Judge Decisions"; Elis Yesika br Rajagukguk, Roida Nababan, and Sovia Simamora, "Legal Review of Legal Protection for Children Born Out of Wedlock Based on Constitutional Court Decision Number 46/PUU-VIII/2010."

[4] Robert Libra and Jumni Nelli, "KEDUDUKAN ANAK PASCA-PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010," *Jotika Research in Business Law* 3, no. 1 (January 17, 2024): 36–43, https://doi.org/10.56445/jrbl.v3i1.129; Romlatust Naini, Trisadini Prasastinah Usanti, and Sukardi Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin," *Notaire* 6, no. 3 (December 4, 2023): 413–36, https://doi.org/10.20473/ntr.v6i3.51349; Rahmad Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan," *Ahwaluna | Jurnal Hukum Keluarga Islam* 5, no. 1 (September 10, 2024): 318–37, https://doi.org/10.70143/ahwalunajurnalhukumkeluargaislam.v1i1.337; Maria Widiastuti, Ni Ketut Sari Adnyani, and I wayan Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN," *Jurnal Ilmu Hukum Sui Generis* 4, no. 2 (April 23, 2025), https://doi.org/10.23887/jih.v4i2.5025; 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 (January 13, 2017): 74–83, https://doi.org/10.18860/j-fsh.v8i2.3778; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam," *Jurnal Riset Hukum Keluarga Islam*, July 11, 2022, 49–52, https://doi.org/10.29313/jrhki.vi.902.

the scope of the civil relationship mentioned in the decision also includes the father's family. Thus, this decision opens up space for the protection of the civil rights of children who were previously limited by the formal interpretation of the marital relationship of their parents.[5] However, the recognition of a civil relationship cannot be directly equated with the determination of nasab according to Islamic law nor is it considered to automatically establish the obligation of alimony in every case of an adulterous child. The fundamental problem lies in how legally proven biological relationships can be the basis for economic liability, as well as how these consequences are limited by the characteristics of the case and the relevant legal framework.

This issue becomes even more complex when compared to the fiqh doctrine regarding the fate of children resulting from adultery. In the dominant view of classical jurisprudence, the paternal relationship is not determined through biological relationships solely if the birth of the child comes from an adulterous relationship. Consequently, the relationship between the nasab and the biological father cannot simply be used as a basis for imposing all the legal consequences that usually follow the relationship between father and son, including the obligation of maintenance that comes from the relationship of the nasab. However, the rejection of the determination of the nasab does not by itself close all the room for argument regarding legal responsibility for the child.[6] It is necessary to distinguish between the obligation of maintenance arising from the relationship of nasab and the liability that may be built through other legal grounds, including state policies to protect the interests of the child. This distinction opens up space for a more in-depth study of the possibility of developing an economic accountability mechanism without directly changing the doctrine of nasab. In this framework, the concept *of taʿzīr* in contemporary jurisprudence is relevant to be studied as a possible basis for state intervention against acts that cause harm or neglect of responsibility, but its application to the obligation to support children resulting from adultery requires clear normative arguments and cannot be assumed to be an opinion agreed upon by all scholars.[7]

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[5] Robert Libra and Jumni Nelli, "KEDUDUKAN ANAK PASCA-PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010"; Naini, Usanti, and Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam."

[6] Hazim Alnemari, "God's Law, King's Court: Ḥudūd Jurisprudence under Saudi Monarchical Decrees," *Journal of Islamic Law* 6, no. 1 (June 30, 2025), https://doi.org/10.53484/jil.v6.alnemari; Diah Retna Yuniarti and Iqbal Nurul Azhar, "REKONSEPTUALISASI TAʿZĪR SEBAGAI INSTRUMEN DISIPLIN PEDAGOGIS DALAM MERESPON TREND KRISIS KRIMINALISASI GURU, DAN KONTESTASI NORMATIF DALAM PENDIDIKAN INDONESIA KONTEMPORER," *Pendas : Jurnal Ilmiah Pendidikan Dasar* 11, no. 02 (June 20, 2026): 150–77, https://doi.org/10.23969/jp.v11i02.53339; Yannis Mahil, "Contemporary Mechanisms to Reform Islamic Criminal Law: Between Legal Doctrine and Positive Law The Case of Morocco," *Journal of Islamic Law* 6, no. 1 (June 30, 2025), https://doi.org/10.53484/jil.v6.mahil.

[7] Alnemari, "God's Law, King's Court: Ḥudūd Jurisprudence under Saudi Monarchical Decrees"; Yuniarti and Azhar, "REKONSEPTUALISASI TAʿZĪR SEBAGAI INSTRUMEN DISIPLIN PEDAGOGIS DALAM MERESPON TREND KRISIS KRIMINALISASI GURU, DAN KONTESTASI NORMATIF DALAM PENDIDIKAN INDONESIA KONTEMPORER"; Mahil, "Contemporary

In the context of Aceh, legal comparisons need to be carried out carefully by distinguishing the norms that have been in force from the development of legislation that is still in the form of drafts. The Aceh Qanun Draft on Family Law, which in the research source is referred to as the Qanun Draft Number 14 of 2019, cannot be treated as a regulation that has been promulgated if the status has not changed. Therefore, the draft is more appropriate to be placed as the object of the legislative policy analysis or as a representation of the proposed normative construction, rather than as a positive law that has bound the community.[8] This distinction has methodological consequences for comparison with contemporary national law and jurisprudence: the three are not entirely at the same level of normativity.[9] The analysis needs to explain whether a proposition comes from the applicable regulations, draft regulations, court decisions, fiqh doctrines, or the author's arguments. This precision is necessary so that comparative conclusions do not produce excessive claims about the applicability of norms or their legal consequences.

A number of previous studies have discussed the civil status of children born out of wedlock, the implications of the Constitutional Court Decision Number 46/PUU-VIII/2010, and the position of children resulting from adultery from the perspective of Islamic law. Hamzani's (2016) study, for example, highlights the issue of nasab after the Constitutional Court's ruling, while other Islamic family law literature discusses the relationship between the status of children and civil consequences and the doctrine of nasab. However, based on the literature that is the starting point of this research, there is still a need for a comparative study that specifically makes alimony obligations the focus

Mechanisms to Reform Islamic Criminal Law: Between Legal Doctrine and Positive Law The Case of Morocco"; Suryadin Suryadin et al., "FORMULATION OF ISLAMIC CRIMINAL LAW POLICY AS A JURIDICAL INSTRUMENT FOR MAINTAINING THE BALANCE OF POWER AMONG STATE INSTITUTIONS," *Istinbath* 24, no. 2 (November 14, 2025): 237–49, https://doi.org/10.20414/ijhi.v24i2.1043; Topo Santoso, "IMPLEMENTATION OF ISLAMIC CRIMINAL LAW IN INDONESIA: TAʿZĪR PUNISHMENT AS A SOLUTION?," *IIUM Law Journal* 19, no. 1 (June 23, 2012), https://doi.org/10.31436/iiumlj.v19i1.6; Mohammad Adnan et al., "The Concept of Taʿzir in Fiqh Jinayat and Its Relevance to Traffic Ticket Sanctions in Indonesian Traffic Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (November 27, 2025): 853–72, https://doi.org/10.29240/jhi.v10i2.12626.

[8] Ridwan Nurdin, "KEDUDUKAN QANUN JINAYAT ACEH DALAM SISTEM HUKUM PIDANA NASIONAL INDONESIA," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 42, no. 2 (February 4, 2019): 356, https://doi.org/10.30821/miqot.v42i2.542; Syaiful Mubarok, "Penegakan Hukum Qanun Jinayat Di Aceh Kaitannya Dengan Pluralisme Hukum," *Jurnal Hukum Lex Generalis* 6, no. 2 (February 22, 2025), https://doi.org/10.56370/jhlg.v6i2.637; C T Ditya and I Jauhari, "TINJAUAN HUKUM TERHADAP CERAI GUGAT (Studi Kasus Di Wilayah Hukum Mahkamah Syar'iyah Kota Banda Aceh)," *Jurnal Ilmiah Mahasiswa Bidang Hukum*, 2020; Rachmatika Lestari et al., "Penyusunan Rancangan Qanun Pengelolaan Satwa Liar Di Aceh," *Jurnal Pengabdian Masyarakat: Darma Bakti Teuku Umar* 2, no. 1 (August 1, 2020): 123, https://doi.org/10.35308/baktiku.v2i1.2323.

[9] Fauza Andriyadi and Sekolah Tinggi Agama Islam Al Washliyah Banda Aceh, "Syariat Islam Dan Kontroversial (Studi Syariat Islam Di Aceh)," *Edulaw : Journal of Islamic Law and Yurisprudance* 2, no. 5 (2023); Jamaluddin Jamaluddin et al., "Dengar Pendapat Rancangan Qanun Kabupaten Aceh Utara Tentang Satu Gampong Satu Perawat," *Jurnal SOLMA* 14, no. 2 (July 31, 2025): 2750–57, https://doi.org/10.22236/solma.v14i2.19068; Fadli Fadli and Muammar Muammar, "RANCANGAN QANUN HUKUM KELUARGA ACEH DALAM HIRARKI PERUNDANG-UNDANGAN INDONESIA," *JURNAL AL-IJTIMAIYYAH* 5, no. 2 (December 30, 2019): 75–93, https://doi.org/10.22373/al-ijtimaiyyah.v5i2.5357; Bakillani Bakillani, Mukhlis Mukhlis, and Yusrizal Yusrizal, "KEBERADAAN NASKAH AKADEMIK DALAM PEMBENTUKAN QANUN ACEH," *Suloh:Jurnal Fakultas Hukum Universitas Malikussaleh* 10, no. 1 (July 16, 2022): 1, https://doi.org/10.29103/sjp.v10i1.7932; Rencana Tata Ruang Wilayah Aceh, "Rancangan Qanun Aceh," *Provinsi Aceh* 11, no. 1 (2025).

of analysis across legal systems, not just as an additional consequence of the debate on the status of children.[10] The research gap covers at least three aspects. First, there is an inadequate analytical separation between the recognition of biological relationships, the determination of nasab, and the imposition of maintenance obligations. Second, there has been no systematic mapping of the basic differences in the legitimacy of alimony in national law, the draft of Acehnese family legislation, and contemporary fiqh arguments. Third, there is still an open conceptual question about whether economic responsibility for children can be built through a legal mechanism that is different from the determination of nasab, as well as what are the sharia and positive legal boundaries for such constructions.[11] Thus, the research gap of this research is not solely limited to the comparison of the three legal systems, but the incomplete explanation of the legal basis that allows the economic protection of children without equating the obligation of maintenance with the recognition of nasab.

Departing from these gaps, this study asks two main questions: first, how is the construction and basis of the legitimacy of the biological father's maintenance obligation to the child resulting from adultery in Indonesian national law, the Acehnese family law draft, and contemporary fiqh; second, how are the similarities, differences, and normative limits of the three frameworks in building economic accountability without equating biological relationships with nasab relationships? This research uses normative legal methods with legislative, conceptual, and comparative approaches. The analysis materials include relevant laws and regulations and court decisions, documents of Acehnese draft legislation with their explicitly explained legal status, and classical and contemporary fiqh literature. These materials are analyzed descriptively-analytically and comparatively to identify the basis, scope, and limits of maintenance obligations in each legal framework.

This research offers a conceptual contribution by distinguishing three analytical categories, namely biological paternity, legal filiation, and financial responsibility. This distinction is used to assess the possibility of establishing child economic protection through a basis of responsibility that does not necessarily depend on the determination of

[10] Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Naini, Usanti, and Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam"; Alnemari, "God's Law, King's Court: Ḥudūd Jurisprudence under Saudi Monarchical Decrees."

[11] Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Naini, Usanti, and Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam"; Alnemari, "God's Law, King's Court: Ḥudūd Jurisprudence under Saudi Monarchical Decrees."

paternal destiny. In particular, this article evaluates *taʿzīr* as one of the possible arguments of Islamic law for state intervention, while still examining its normative basis, application requirements, and conformity with positive law. The novelty thus offered lies in the reconstruction of the relationship between child protection, the doctrine of nasab, and economic responsibility through a comparative analysis that takes into account the different levels of applicability of legal sources. Theoretically, this study is expected to enrich the Islamic family law discourse regarding the boundary between nasab and legal responsibility. Practically, this research is expected to provide an argumentative basis for the formulation of a clearer, proportionate, and more actionable child protection policy, without assuming that the recognition of nasab and alimony obligations must always have an identical legal basis.

RESEARCH METHODS

This research uses normative *legal research* which is oriented towards the study of legal norms, legal principles, doctrines, and juridical arguments regarding the maintenance obligation of the biological father to children born as a result of adultery. This research applies three approaches, namely the *statute approach*, the conceptual approach, and the comparative approach. The statutory approach is used to examine constitutional provisions, laws and regulations regarding marriage and child protection, Compilation of Islamic Law, Constitutional Court Decision No. 46/PUU-VIII/2010, and Acehnese family law legislation documents by paying attention to their status of enforcement. A conceptual approach is used to analyze the relationship between the concepts of nasab, alimony, legal responsibility, and the protection of the best interests of the child. Meanwhile, a comparative approach is used to identify similarities, differences, and normative tensions between Indonesian national law, the construction of Acehnese family law, and contemporary fiqh in determining the basis and scope of alimony obligations without equating economic responsibility with the recognition of nasab.

The research materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Constitution of the Republic of Indonesia of 1945, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Compilation of Islamic Law, Constitutional Court Decision Number 46/PUU-VIII/2010, Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Status of Children Resulting from Adultery and Treatment of Them, as well as relevant Aceh regulatory documents or draft legislation. The status and position of each legal instrument are verified to distinguish applicable norms, court decisions, fatwas, and draft regulations. Secondary legal materials include academic books, scientific journal articles, research results, and other scientific works that discuss family law, the doctrine of nasab, maintenance obligations, child protection, and the development of contemporary jurisprudence. Tertiary legal materials in the form of legal dictionaries, encyclopedias, and terminological reference sources are used to clarify the meaning and use of legal concepts. Material collection is carried out through literature studies by searching, selecting, inventorying, and classifying sources based on relevance, authority, validity status, and their relevance to the formulation of the research problem.

The analysis of legal materials is carried out in a descriptive-analytical, comparative, and prescriptive manner using legal reasoning to evaluate the construction of maintenance obligations in each legal framework. The first stage is to identify and interpret the norms, doctrines, and legal arguments that govern biological relationships, the determination of fate, and economic responsibility for children. The second stage is

to compare the legitimacy, scope, and legal consequences of alimony obligations in Indonesian national law, the construction of Acehnese family legislation, and contemporary jurisprudence, including examining the relevance *of the concept of taʿzīr* as a possible basis for state intervention. The third stage is to prepare a prescriptive argument to assess the possibility of constructing child economic protection that is in line with the principles of legal certainty, justice, the best interests of the child, and the principles of Islamic law. Through these stages, this study not only maps the normative differences between legal systems, but also formulates conceptual recommendations regarding the mechanism of alimony accountability that has a clear legal basis without assuming that economic obligations must always have implications for the recognition of paternal nasab.

RESULTS AND DISCUSSION

The Concept of Child Support Out of Wedlock in the Perspective of Islamic Law and Positive Law

Alimony is one of the instruments of protection and fulfillment of basic needs in family law, both from the perspective of Islamic law and positive law. Conceptually, alimony is not only related to the transfer or disbursement of property, but also reflects legal responsibility to ensure the survival and welfare of the party who is entitled to receive it. In family fiqh, alimony obligations can be distinguished based on the legal relationship between the giver and the receiver, including the maintenance of the wife (*nafaqah al-zawjah*), the maintenance of relatives of the upward lineage (*nafaqah al-uṣūl*), and the maintenance of descendants downwards (*nafaqah al-furūʿ*), including children. The division shows that the basis of the maintenance obligation is related to the character of the underlying legal relationship.[12] Therefore, the discussion of child support born as a result of adultery is not enough to explain the material needs of the child, but also to identify the legal basis that allows the obligation to be imposed on the biological father, especially when the biological relationship does not automatically give birth to a nasab relationship according to the doctrine of classical fiqh.

Etymologically, the word alimony is related to the meaning of spending or spending wealth. *Al-Jazīrī* defines alimony as an expenditure allocated to meet the needs of the dependent party, while Wahbah al-Zuḥailī elaborates its scope through basic needs, such as food, clothing, and shelter, along with other relevant needs. Thus, alimony in the sense of family law includes the fulfillment of reasonable living needs according to the circumstances of the recipient and the ability of the obligated party.[13] In the context of

[12] Muhammad Aslam Sameem, Khalil ul Rahman Rahmani, and Abdul Rasheed Hilal, "Nafaqah of a Wife in Islam: The Concept of Maintenance in Islamic Jurisprudence," *Cognizance Journal of Multidisciplinary Studies* 5, no. 4 (April 30, 2025): 912–33, https://doi.org/10.47760/cognizance.2025.v05i04.024; Ahmad Yani Anshori and Landy Trisna Abdurrahman, "History of the Development of Mażhab, Fiqh and Uṣūl Al-Fiqh: Reasoning Methodology in Islamic Law," *Samarah* 9, no. 1 (2025), https://doi.org/10.22373/sjhk.v9i1.25355; Ridwan Ridwan and Hidayatullah Ismail, "Reformulation of Livelihood in Islamic Family Law: Qur'anic Basis and Women's Dual Roles," *Jurnal El-Thawalib* 6, no. 5 (October 28, 2025): 647–60, https://doi.org/10.24952/el-thawalib.v6i5.17651; Firdaus Firdaus et al., "Post-Divorce Child's Nafaqah Māḍiyah: An Analysis of the Shifting from Fulfilment to the Assertion of Ownership Rights," *Al-Ahkam* 33, no. 1 (April 30, 2023): 45–62, https://doi.org/10.21580/ahkam.2023.33.1.14566; Abdurrohman Awalul et al., "Maqāṣidī's Approach to Qiwāmah and Nafaqah," *Al Hairy | Journal of Islamic Law* 1, no. 2 (October 18, 2025): 161–79, https://doi.org/10.64344/hry.v1i2.69.

[13] DWI ARINI ZUBAIDAH Rini, "STATUS ANAK DI LUAR NIKAH DALAM PERSPEKTIF HUKUM POSITIF DAN HUKUM ISLAM (TELAAH PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010)," *Familia: Jurnal Hukum Keluarga* 4, no. 2 (December 26, 2023): 91–106,

children, such coverage may include food, clothing, shelter, education, health, and other developmental needs. The determination of the amount of alimony should not be done in the abstract, but it is necessary to consider the actual needs of the child, the level of living that is decent, and the economic ability of the responsible party. This approach is in line with the principle of the best interests of the child that places the fulfillment of the child's needs and development as the main consideration in decisions that affect his or her life.[14]

The term child in Islamic literature has a variety of scopes. The Qur'an uses a number of terms related to the stages of human development, such as ṭifl, rushd, and ashudd, while fiqh discusses the status of children in relation to legal skills, upbringing, guardianship, and kinship relationships. Therefore, the age limit for children cannot be determined based on just one term in Islamic sources, but must be adjusted to the legal context being analyzed. In positive Indonesian law, Article 1 number 1 of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 defines a child as a person who is not yet 18 years old, including a child who is still in the womb.[15] These limitations provide clear parameters for determining the groups of recipients of protection under the law. However, the age limit of 18 years in child protection law does not by itself determine all the conditions for the termination of alimony obligations under each family law regime. The two issues must be distinguished because the definition of a child for the purposes of legal protection is not always identical to the criteria for the termination of alimony in jurisprudence or civil law.

The main problem of child support born as a result of adultery lies in the difference between biological relationships, nasab relationships, and legal liability. In the dominant classical fiqh construction, biological relationships due to adultery generally do not stipulate paternal fate, so maintenance obligations that are traditionally based on nasab relationships are not necessarily imposed on the biological father. However, the conclusion that there is no nasab relationship should not be immediately expanded to the

https://doi.org/10.24239/familia.v4i2.87; M. Rasikhul Islam ZH Andra Ahmad Imani1, "Perlindungan Anak Di Luar Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 9 (2024); Lindi Kartika Dewi et al., "Persepsi Masyarakat Tentang Dispensasi Nikah Dalam Perspektif Hukum Islam," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2 (May 18, 2025): 657–71, https://doi.org/10.61104/alz.v3i2.1131; Muhammad Hajir Susanto, Yonika Puspitasari, and Muhammad Habibi Miftakhul Marwa, "Kedudukan Hak Keperdataan Anak Luar Kawin Perspektif Hukum Islam," *JUSTISI* 7, no. 2 (July 15, 2021): 105–17, https://doi.org/10.33506/js.v7i2.1349.

[14] Nur Muhammad Saifurrijal and Muhammad Ali Wafa, "Family Resilience and the Prevention of Radicalism: A Maqāṣid Al-Sharī'ah Approach Based on Jasser Auda," *Legitima : Jurnal Hukum Keluarga Islam* 8, no. 1 (December 31, 2025): 62, https://doi.org/10.33367/legitima.v8i1.8067; Nur Faezah Musthapar, Raihanah Hj Azahari, and Bahiyah Ahmad, "SAKĪNAH, MAWADDAH DAN RAḤMAH DALAM PERHUBUNGAN SUAMI ISTERI: ANALISIS LITERATUR," *Jurnal Syariah* 28, no. 1 (April 30, 2020): 81–104, https://doi.org/10.22452/js.vol28no1.4; Almadison et al., "IMPLEMENTASI KONSEP MAWADDAH WA RAHMAH DALAM KELUARGA ISLAM MODERN," *ANDREW Law Journal* 4, no. 1 (June 30, 2025): 118–30, https://doi.org/10.61876/alj.v4i1.66; Achmad Tohari, "Religious Moderation in the Perspective of Maqasid Syariah Jasser Auda," *MODERATIO: Jurnal Moderasi Beragama* 4, no. 1 (May 30, 2024): 52, https://doi.org/10.32332/moderatio.v4i1.9037.

[15] RI Kemensesneg, "Undang - Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *UU Perlindungan Anak*, 2014; Elshadai Saerang, "Pemidanaan Perbuatan Kekerasan Terhadap Anak Menurut Pasal 80 Ayat (1) Jo 76c Uu No. 35 Tahun 2014 Tentang Perubahan Atas Uu No. 23 Tahun 2002 Tentang Perlindungan Anak," *Lex Crimen* 12, no. 4 (2024); Tizza Ihfada Faizal Dalag Patepa, "PERLINDUNGAN KHUSUS BAGI ANAK MENURUT UNDANG-UNDANG NOMOR 35 TAHUN 2014 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK," *LEX ET SOCIETATIS* 8, no. 4 (October 20, 2020), https://doi.org/10.35796/les.v8i4.30914.

statement that any form of legal liability for children must be closed. This assessment requires a separate analysis of the basis of the obligation, the source of state authority, and the protection mechanisms that can be justified according to Islamic law. The Fatwa of the Indonesian Ulema Council Number 11 of 2012 concerning the Status of Children Resulting from Adultery and the Treatment of Them, for example, distinguishes the issue of nasab from the possibility of imposing *the punishment of taʿzīr* on men who cause the birth of a child through an authorized mechanism. The fatwa also discusses the possibility of the obligation to provide for the child's living needs and to provide property after death through a mandatory will as a form of protection.[16] This provision needs to be read carefully: the fatwa is not a law, and its argument does not by itself establish a civil maintenance obligation that can be executed without an appropriate legal basis and procedure.

In national law, Article 43 paragraph (1) of the Marriage Law as interpreted through the Constitutional Court Decision Number 46/PUU-VIII/2010 opens up the possibility of civil relations between a child born out of wedlock and a man who is proven to have a blood relationship with him, including a civil relationship with his father's family. The decision provides an important basis for examining the civil protection of children based on valid evidence. However, the scope of its application to children resulting from adultery and the specific consequences in the form of maintenance obligations still require careful legal interpretation. The recognition of a civil relationship should not automatically be equated with the determination of nasab in fiqh, while the rejection of nasab is also not sufficient as an excuse to ignore the analysis of all possible legal protections.[17] Therefore, the concept of child support resulting from adultery in this study is understood as fulfilling the basic needs of children whose basis of burden must be tested separately from the determination of paternal nasab.

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[16] Achmad Arnold and Mulyono Jamal, "CIVIL RIGHTS OF CHILDREN RESULTING FROM ADULTERY AND CHILDREN OUT OF WEDLOCK FROM A POSITIVE LEGAL PERSPECTIVE AND ISLAMIC LAW," *Journal of Indonesian Comparative of Law* 2, no. 1 (June 20, 2019): 1, https://doi.org/10.21111/jicl.v2i1.4484; Muhammad Rifky Rizani, "The Status and Position of Children Resulting from Adultery in the Perspective of Fiqh Madhhab Shafi'I," *Al Dalil; Journal of Social, Political, and Legal Sciences* 3, no. 2 (2025); Apifah Delisa and Ramlah Ramlah, "The Relationship and Legal Position Between Children Who Have Committed Adultery and Their Fathers and Mothers According to Islamic Law," *Socio-Religious: Journal of General Education Studies* 22, no. 2 (September 30, 2024): 25–32, https://doi.org/10.17509/sosioreligi.v22i2.76648; A. Malthuf Siroj, Moh. Zainuddin Sunarto, and Ismail Marzuki, "Legal Analysis of the Position of Surrogate Heirs, Children Resulting from Adultery, and Children Resulting from Out of Marriage," *TRILOGI: Journal of Technology, Health, and Humanities* 3, no. 1 (April 30, 2022): 38–47, https://doi.org/10.33650/trilogi.v3i1.3787; Siti Aliyatul Maulidia and Rohman Kusmayadi, "MUI Fatwa No. 11 of 2012: Solution to the Legal Void of Obligatory Wills for Children Resulting from Adultery," *Al-Zayn: Journal of Social Sciences & Law*, 2026; Putri Cahyani Manise, "PROTECTION OF CHILDREN RESULTING FROM ADULTERY IN THE PERSPECTIVE OF THE CHILD PROTECTION LAW (LAW NO. 35 OF 2014)," *Lex Privatium* 10, no. 3 (2022).

[17] Robert Libra and Jumni Nelli, "KEDUDUKAN ANAK PASCA-PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Naini, Usanti, and Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam."

Based on this description, child support resulting from adultery can be examined through two normative constructions that need to be distinguished. First, alimony as an obligation arising from the relationship of the nasab according to the provisions of applicable family law. Second, economic responsibility that may be built through other legal bases to protect the needs of the child, as long as it has normative legitimacy and a clear implementation mechanism. This distinction is the basis for assessing whether the concept of taʿzīr, state policy, and the principle of the best interests of the child can be formulated in a protection model that does not equate biological relations with the relationship of nasab. Thus, the main problem of the research is not solely to determine who has a nasab relationship with the child, but to test the basis, limits, and mechanisms of economic accountability that can be accounted for according to national law and the principles of Islamic law.

The Construction of Biological Father's Maintenance Obligations in Indonesian Law, Acehnese Family Law, and Contemporary Fiqh

In the Indonesian legal system, the construction of the maintenance obligation of the biological father has undergone an important development after the Constitutional Court Decision Number 46/PUU-VIII/2010. Prior to the ruling, Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulated that a child born out of wedlock only has a civil relationship with his mother and his mother's family. The formulation is then declared to have no binding legal force as long as it is interpreted as eliminating the civil relationship with a man that can be proven based on science and technology and/or other evidence according to the law to have a blood relationship as his father. Consequently, a child born out of wedlock can obtain a civil relationship with his biological father and his father's family if the blood relationship is legally proven.[18]

The ruling shows a shift in legal orientation from an approach that focuses on the marital status of parents to one that also considers biological responsibility and the protection of the child's rights. The Constitutional Court essentially rejected the construction of law that causes a child to lose a civil relationship with his biological father simply because his birth took place outside of a legal marriage. From a substantive justice perspective, children should not suffer legal losses due to acts or circumstances beyond their control.[19] Therefore, proving a biological relationship is an important instrument to open up the possibility of parental responsibility for children.

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[18] Robert Libra and Jumni Nelli, "POSITION OF CHILDREN AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "JURIDICAL ANALYSIS OF THE CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-VIII/2010 CONCERNING THE STATUS OF CHILDREN OUTSIDE MARRIAGE AS A BASIS FOR JUDGES' CONSIDERATION IN DECIDING THE CASE OF INHERITANCE RIGHTS OF CHILDREN OUTSIDE MARRIAGE"; Setyawan, Nur Sholikin, and Al-Robin, "Implications of the Constitutional Court Decision Number 46/PUU-VIII/2010 on the Status of Children Outside Marriage"; Naini, Usanti, and Sukardi, "The Establishment of Presidential Regulation as an Implementing Rule of the Constitutional Court Decision Number 46/PUU-VIII/2010 for the Protection of Children Out of Wedlock"; Elridsa Nur Azizah and Amrullah Hayatudin, "The Legal Status of Children Resulting from Incest According to the Decision of Mk No. 46/PUU-VIII/2010 and Islamic Law."

[19] Robert Libra and Jumni Nelli, "KEDUDUKAN ANAK PASCA-PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Naini, Usanti, and Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan

However, the Constitutional Court Decision is not properly interpreted as equating the entire status of children born out of wedlock with children born in legal marriages for every aspect of the law. The decision provides a constitutional basis for civil relations with the biological father, but the exercise of certain rights must still take into account the relevant legal provisions, the character of the family relationship, and the applicable evidentiary mechanism. Thus, the recognition of biological relationships does not automatically resolve all issues regarding the nasab according to fiqh, inheritance rights, or the position of the biological father as the guardian of the marriage.[20]

In the context of alimony, the civil relationship has an important meaning because the maintenance and financing of children's living needs is part of the protection that can be demanded through legal mechanisms. Alimony should not be narrowed down to incidental money giving, but includes the fulfillment of basic needs according to the child's age, condition, and interests, such as food, clothing, shelter, education, health, and growth and development needs. The amount and form of the obligation need to consider the real needs of the child and the economic ability of the party burdened with the obligation.

The foundation of child protection is also found in Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014. Article 26 paragraph (1) regulates the obligations and responsibilities of parents to nurture, maintain, educate, and protect children, develop children according to their abilities, talents, and interests, and prevent marriage at a young age.[21] However, the application of these

Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam."

[20] Robert Libra and Jumni Nelli, "KEDUDUKAN ANAK PASCA-PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Naini, Usanti, and Sukardi, "Pembentukan Peraturan Presiden Sebagai Aturan Pelaksana Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Untuk Perlindungan Anak Luar Kawin"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010."

[21] Manise, "PERLINDUNGAN ANAK HASIL ZINA DALAM PERSPEKTIF UNDANG-UNDANG PERLINDUNGAN ANAK (UU NO. 35 TAHUN 2014)"; Dody Wahono Suryo Alam, "Perlindungan Hak Anak Dalam Perkawinan Siri Perspektif Hukum Keluarga Islam Dan Undang-Undang Perlindungan Anak," *Al Fuadiy Jurnal Hukum Keluarga Islam* 7, no. 1 (June 17, 2025): 106–20, https://doi.org/10.55606/af.v7i01.1558; Mohammad Yasir Fauzi, "Pergeseran Paradigma Pembatasan Usia Perkawinan Dan Penerapannya Dalam Penyelesaian Perkara Dispensasi Kawin," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, no. 1 (June 25, 2022): 33–49, https://doi.org/10.24042/el-izdiwaj.v3i1.11244; Ni Luh Gede Yogi Arthani, "PERLINDUNGAN ANAK DALAM PRAKTIK PERKAWINAN USIA DINI," *VYAVAHARA DUTA* 13, no. 2 (January 14, 2019): 92, https://doi.org/10.25078/vd.v13i2.691; Yosmar Wungow, Josepus J. Pinori, and Nixon Wulur, "Kajian Hukum Terhadap Perkawinan Di Bawah Umur Tinjauan Dari UU No. 16 Tahun 2019," *Lex Administratum*, no. 16 (2022); Nurul Aini, "Perlindungan Hak Anak Dalam Perkawinan Poligami Di Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 9, no. 2 (December 30, 2017): 73–87, https://doi.org/10.18860/j-fsh.v9i2.6830; Tri Rizky Analiya and Ridwan Arifin, "Perlindungan Hukum Bagi Anak Dalam Kasus Bullying Menurut Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Di Indonesia," *Journal of Gender And Social Inclusion In Muslim Societes* 3, no. 1 (2022); Endang Prastini, "Kekerasan Terhadap Anak Dan Upaya Perlindungan Anak Di Indonesia," *Jurnal Citizenship Virtues* 4, no. 2 (August 7, 2024): 760–70, https://doi.org/10.37640/jcv.v4i2.2043.

provisions to biological fathers in the case of children born out of wedlock must be read together with the provisions on the legal relationship between parents and children and the Constitutional Court Decision Number 46/PUU-VIII/2010. This means that the norms of child protection provide a substantive orientation, while the basis and mechanism of imposing obligations on the biological father still require an appropriate legal construction.[22]

In practice, the issue of proof is one of the critical points. DNA tests can provide scientific evidence of biological relationships, but the determination of legal consequences remains within the framework of applicable legal procedures. The court needs to consider the evidence submitted, the context of the case, and the claim requested.[23] If the biological father refuses to provide maintenance, the party representing the child's interests can take legal action in accordance with the court's authority and the relevant basis of the claim. With such a mechanism, the child's rights do not only depend on the voluntary willingness of the biological father, but can also obtain protection through legal institutions.

From a progressive legal perspective, this construction suggests that family law needs to move beyond status formalism to ensure effective protection for vulnerable parties. However, a progressive approach does not mean ignoring positive legal boundaries. The principle that needs to be emphasized is that maintenance responsibility must be based on an accountable legal basis, adequate evidence, and consideration of proportionality between the needs of the child and the ability of the obligated party.[24]

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[22] Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan."

[23] Ayu Aftika Diani, "Deoxyribo Nucleic Acid (DNA) Test as Evidence in Proving Children Out of Wedlock," *Journal of Scientific Law Students [JIMHUM]* 5, no. 1 (2025); Indana Zulfah, Idha Aprilyana Sembiring, and Rosmalinda, "The Legal Position of Child Psychology Test Results as Evidence in a Divorce Trial to Determine Child Custody (Study of Decision Number 57/Pdt.G/2022/Pta.Mdn)," *Unes Journal of Swara Justisia* 9, no. 1 (April 25, 2025): 86–92, https://doi.org/10.31933/5eqemg83; Muhammad Dodi Oktafianur, Erna Susanti, and Amsari Damanik, "Determination of the Status of Out-of-Wedlock Children Without DNA Test: An Analysis of the Supreme Court Decision Number 1055 K/Pdt/2023," *Journal of Innovative and Creativity* 6, no. 1 (2026).

[24] Muhamad Beni Kurniawan, "The Legal Politics of the Constitutional Court on the Status of Children Out of Wedlock: The Application of Progressive Law as a Protection of Children's Human Rights," *Journal of Human Rights* 8, no. 1 (July 27, 2017): 67–78, https://doi.org/10.30641/ham.2017.8.67-78; Asep Lukman Daris Salam, "Legal Analysis of the Rights of Out-of-Wedlock Children According to the Constitutional Court Decision Number 46/Puu/VIII/2010," *As-Sakinah : Journal of Islamic Family Law* 1, no. 1 (May 31, 2023): 35–60, https://doi.org/10.51729/sakinah11132; Saifullah Saifullah, "A Critical Study of Progressive Legal Theory on the Status of Children Out of Wedlock in the Decision of the Constitutional Court No. 46/PUU-VIII/2010," *Al-Manahij: Journal of Islamic Law* Studies 8, no. 2 (January 1, 1970): 307–28, https://doi.org/10.24090/mnh.v8i2.415; Emy Handayani and Alfarado, "Legal Discovery by Judges in the Perspective of Progressive Law," *Legal Horizons: Scientific Magazine of the Faculty of Law, Wijayakusuma University* 27, no. 1 (March 10, 2025): 10–18, https://doi.org/10.51921/chk.p6mncb10; Patrick Corputty, Yunanto Yunanto, and Andri Sutrisno, "Normative Gaps in the Protection of Civil Rights of Out-of-wedlock Children in the Indonesian Legal System," *IBLAM LAW REVIEW* 5, no. 2 (May 8, 2025): 125–36, https://doi.org/10.52249/ilr.v5i2.615.

The analysis of Acehnese family law requires a distinction between the specificity of the application of Islamic law in Aceh and the existence of positive legal norms that specifically regulate the maintenance obligations of the biological father to children born out of wedlock. The specificity of Aceh based on Law Number 11 of 2006 concerning the Government of Aceh provides space for the formation of qanun and the implementation of Islamic sharia in the field under its authority.[25] However, this specificity does not necessarily mean that all family law issues in Aceh are regulated exclusively through its own qanun.

Therefore, the discussion of the maintenance obligation of the biological father cannot immediately conclude that there is a special Aceh rule that negates such obligations only based on the classical fiqh view. Tracing the status of the applicable qanun, its content, and its position in the national legal system are methodological prerequisites.[26] The draft qanun, the opinions of scholars, fatwas, and the provisions of the qanun that have been promulgated have different legal positions so that they cannot be treated as equal sources of law.[27]

In the practice of Islamic family law, the Compilation of Islamic Law (KHI) is one of the important references for religious courts. Article 100 of the KHI stipulates that children born out of wedlock only have a nasab relationship with their mother and their mother's family. This provision reflects the construction of nasab that traditionally limits paternal relationships for children who do not have a nasab relationship basis according to Islamic law. However, this provision needs to be read systematically together with the Constitutional Court Decision Number 46/PUU-VIII/2010, especially when the issues raised concern civil relations and child protection, not solely the determination of nasab in the sense of fiqh.[28]

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[25] Faisal F, Jamaluddin J, and Nanda Amalia, "URGENCY OF THE PRESENCE OF FAMILY LAW IN ACEH," *Rombar Hukum* 29, no. 2 (September 30, 2017): 248, https://doi.org/10.22146/jmh.16690; Muhammad Nasir, "FAMILY LAW LEGISLATION IN ACEH POST-SPECIAL AUTONOMY," *Jurisprudence: Journal of Sharia Science, Islamic Legislation and Economics* 10, no. 1 (June 30, 2018): 97–108, https://doi.org/10.32505/jurisprudensi.v10i1.873; Yessi Aswita, "Family Law in the Period of the Aceh Darussalam Kingdom," *Pena Aceh: Journal of Community Service* 2, no. 1 (2023).

[26] Wilnan Fatahillah, Ririh Krishnani, and Zaenal Mukhid, "PEMENUHAN HAK NAFKAH ANAK PASCA PERCERAIAN MENURUT KOMPILASI HUKUM ISLAM DAN UNDANG-UNDANG PERKAWINAN," *Ar Rasyiid: Journal of Islamic Studies* 1, no. 2 (July 30, 2024): 79–88, https://doi.org/10.70367/arrasyiid.v1i2.11; Pitriani Pitriani and Syamsul Bahri, "Pemenuhan Hak Nafkah Anak Pasca Perceraian Menurut Undang-Undang Perkawinan Dan Hukum Adat," *Jurnal Sosial Dan Sains* 5, no. 1 (January 22, 2025): 65–82, https://doi.org/10.59188/jurnalsosains.v5i1.31966; Arvhico Nasution, Reka Acintya Saditri, and Zaqia Salsabillah, "Penerapan Hukum Perikatan Dan Sanksi Hukum Terhadap Ayah Yang Kewajiban Nafkah Anak Pasca Perceraian (Studi Di Pengadilan Agama)," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 1 (2025); Sofia Gussevi, Ira Novianty, and Pebi Supiana, "Implementasi Putusan Pengadilan Agama Purwakarta Mengenai Kewajiban Ayah Atas Hak Nafkah Anak Pasca Perceraian," *Muttaqien; Indonesian Journal of Multidiciplinary Islamic Studies* 4, no. 1 (January 30, 2023): 29–46, https://doi.org/10.52593/mtq.04.1.03.

[27] Sudjah Mauliana, Agustin Hanapi, and Soraya Devy, "MENILIK RANCANGAN QANUN HUKUM KELUARGA TENTANG POLIGAMI DI ACEH," *AHKAMUL USRAH: Jurnal S2 Hukum Keluarga Dan Peradilan Islam* 4, no. 1 (May 3, 2024): 53–78, https://doi.org/10.22373/ahkamulusrah.v4i1.4573; Aswita, "Hukum Keluarga Pada Masa Kerajaan Aceh Darussalam"; Nasir, "LEGISLASI HUKUM KELUARGA DI ACEH PASCA OTONOMI KHUSUS"; F, J, and Amalia, "URGENSI KEHADIRAN HUKUM KELUARGA DI ACEH."

[28] Robert Libra and Jumni Nelli, "KEDUDUKAN ANAK PASCA-PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Maria

Thus, in the context of Aceh, there are two layers of analysis that need to be maintained. The first layer is related to Islamic family law which places nasab as the basis of kinship relationships and certain legal consequences. The second layer is related to national law that provides protection for the civil relationship of children with biological fathers based on valid evidence. The two layers should not be contradicted simplistically, because the issue of alimony is not always synonymous with the determination of nasab, inheritance, or guardianship.[29]

From the perspective of child protection, the application of family law in Aceh should consider that children are subjects of law who have material and developmental needs that must be protected. The principles of benefit, justice, and prevention of harm can be used to evaluate how children's rights are fulfilled without blurring the conceptual boundaries in nasab law. This approach also requires prudence so that the law does not result in a situation where a child loses access to the fulfillment of his or her basic needs simply because of his or her birth status.

Therefore, the construction of the maintenance obligation of the biological father in Aceh needs to be formulated based on the harmonization between national law, the applicable provisions of Islamic family law, and the principle of child protection. If there is a difference in interpretation between the nasab approach and the civil relationship, the solution requires a legal argument that explains the basis of authority, the norms applied, and the legal consequences applied. Such an approach is more academically accurate than stating that all Acehnese family law absolutely rejects or accepts the maintenance obligation of the biological father.

In classical fiqh, the relationship of nasab is one of the main bases for the occurrence of maintenance obligations between relatives. In the case of a child born as a result of an adulterous relationship, the dominant view in fiqh stipulates that the child is not assigned to the man who caused the birth, but to the mother and his mother's family. Consequently, the legal relationship that is usually attached to the paternal nasab, including alimony based on the father-child relationship, is not enforced in the same way as for a child who has a legal nasab.[30] This view is also reflected in the Fatwa of the Indonesian Ulema

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Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010."

[29] Nurdin, "KEDUDUKAN QANUN JINAYAT ACEH DALAM SISTEM HUKUM PIDANA NASIONAL INDONESIA"; Mubarok, "Penegakan Hukum Qanun Jinayat Di Aceh Kaitannya Dengan Pluralisme Hukum"; Andriyadi and Tinggi Agama Islam Al Washliyah Banda Aceh, "Syariat Islam Dan Kontroversial (Studi Syariat Islam Di Aceh)"; Dian Ayu Safitri and Muh. Jufri Ahmad, "TANGGUNGJAWAB ORANGTUA ATAS NAFKAH ANAK PASCA PERCERAIAN," *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 4, no. 06 (June 26, 2024): 38–59, https://doi.org/10.69957/cr.v4i06.1610.

[30] Juniarti, Iksan, and Syarif Hidayatullah, "The Legal Consequences of the Giving and Receiving of Donor Breast Milk on the Nasab Relationship and Its Implications for the Law of Marriage," *NALAR: Journal Of Law And Sharia* 1, no. 3 (December 30, 2023): 179–99, https://doi.org/10.61461/nlr.v1i3.47; Raja Ritonga and Martua Nasution, "Determination of Heir Status through Nasab Relationship; An Analysis of Grandparents' Inheritance," *Al Yasini : Journal of Islamic, Social, Legal and Education* 7, no. 2 (November 27, 2022): 188, https://doi.org/10.55102/alyasini.v7i2.4599; Muhadi Khalidi, "A Study of Islamic Law on the Provisions of the Inheritance Rights of Children from Blood Marriage," *Supremasi Hukum: Journal of Legal Studies* 11, no. 1 (July 30, 2022): 105–23, https://doi.org/10.14421/sh.v11i1.2549; Akhmad Jalaluddin, "Nasab: Between the Relationship of Blood and Law and Its Implications for Inheritance," *Ishraqi* 10, no. 1 (2012).

Council Number 11 of 2012 concerning the Position of Children Resulting from Adultery and the Treatment of Them.

However, the position of the fiqh cannot be simplified into the assumption that Islam justifies the neglect of children born out of wedlock. MUI Fatwa Number 11 of 2012 explicitly distinguishes between the relationship of nasab and the responsibility to protect the child. The fatwa states that a child resulting from adultery does not have a relationship of nasab, inheritance, guardianship of marriage, and alimony with the man who caused his birth. However, at the same time, the fatwa provides room for the government to impose *ta'zīr* punishment on the man by requiring him to provide for the child's living needs and provide property after his death through a mandatory will. The determination is aimed at protecting the child, not to validate the relationship of the paternal nasab.[31]

This distinction is an important foundation for the development of contemporary fiqh. The obligation to provide maintenance can be built through a mechanism of legal responsibility that is different from the obligation to provide maintenance born due to nasab. In this framework, the state does not have to change the status of the child's nasab to establish corrective action against the man who is proven to have caused the birth. State intervention can be directed at the prevention of neglect, the fulfillment of basic needs, and the protection of the best interests of the child.[32]

Such an approach can be analyzed through the concept *of maqāṣid al-syarī'ah*, especially the protection of the soul (*ḥifẓ al-nafs*), the protection of offspring (*ḥifẓ al-nasl*), and the protection of property (*ḥifẓ al-māl*). The protection of the life requires that the child obtain food, shelter, health services, and decent living conditions. The protection of the offspring requires the arrangement of family relationships that provide certainty while preventing neglect. Meanwhile, the protection of property is related to the availability of resources to support the needs of the child's life and education. These three goals can be an evaluative framework to develop a mechanism of responsibility without having to equate maintenance obligations with the recognition of nasab.[33]

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[31] Rini, "STATUS ANAK DI LUAR NIKAH DALAM PERSPEKTIF HUKUM POSITIF DAN HUKUM ISLAM (TELAAH PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010)"; Maulidia and Kusmayadi, "Fatwa MUI NO 11 Tahun 2012 : Solusi Kekosongan Hukum Wasiat Wajibah Bagi Anak Hasil Zina"; Manise, "PERLINDUNGAN ANAK HASIL ZINA DALAM PERSPEKTIF UNDANG-UNDANG PERLINDUNGAN ANAK (UU NO. 35 TAHUN 2014)"; Siroj, Sunarto, and Marzuki, "Analisis Hukum Terhadap Kedudukan Ahli Waris Pengganti, Anak Hasil Zina, Dan Anak Hasil Luar Nikah"; Elridsa Nur Azizah and Amrullah Hayatudin, "Kedudukan Hukum Anak Hasil Incest Menurut Putusan Mk No. 46/Puu-VIII/2010 Dan Hukum Islam"; Arnold and Jamal, "HAK-HAK KEPERDATAAN ANAK HASIL ZINA DAN ANAK LUAR NIKAH PERSPEKTIF HUKUM POSITIF DAN HUKUM ISLAM"; Rizani, "Status Dan Kedudukan Anak Hasil Zina Dalam Perspektif Fiqh Mazhab Syafi'I."

[32] Safitri and Ahmad, "TANGGUNGJAWAB ORANGTUA ATAS NAFKAH ANAK PASCA PERCERAIAN"; Nurani, "Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)"; Pitriani and Bahri, "Pemenuhan Hak Nafkah Anak Pasca Perceraian Menurut Undang-Undang Perkawinan Dan Hukum Adat"; Gussevi, Novianty, and Supiana, "Implementasi Putusan Pengadilan Agama Purwakarta Mengenai Kewajiban Ayah Atas Hak Nafkah Anak Pasca Perceraian."

[33] Suriah Pebriyani Jasmin, Rahmatiah HL, and Lomba Sultan, "Logika Maqāṣid Al-Syarī'ah Sebagai Paradigma Kritik Dalam Rekonstruksi Hukum Islam," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 24, no. 2 (November 22, 2025): 349–62, https://doi.org/10.30863/ekspose.v24i2.10575; Andi Silva Quadsajul et al., "Reformasi Hukum Keluarga Islam Berbasis Maqasid Al-Syari'ah : Upaya Perlindungan Terhadap Anak Di Bawah Umur," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 4, no. 4 (December 31, 2025): 107–17, https://doi.org/10.55606/jhpis.v4i4.5765; Ulfa Fauziah Hidayati,

The study of Asmawi et al. (2025) also shows the relevance of the rereading of the biological father's maintenance obligations through the analysis of fatwa and *maqāṣid al-syarī'ah*. The authors place welfare and social justice as important considerations to respond to the vulnerability of children born out of wedlock. This approach shows that contemporary debates do not solely revolve around the acceptance or rejection of classical doctrine, but also on the search for legal mechanisms that allow the goal of child protection to be realized without ignoring the basic principles of Islamic law.

Nevertheless, *maqāṣid al-syarī'ah* should not be used as an excuse to state that the obligation of paternal support has become an agreement of all schools or that the relationship of the nasab can be established solely on the basis of genetic relationships. Contemporary approaches need to explain the normative basis used, whether it is in the form of obligations arising from nasab, responsibility for deeds, *ta'zīr* policies, or state intervention to protect the welfare. This basic distinction is important so that the recommendations for legal reform have theoretical legitimacy and do not confuse different categories of law.[34]

Thus, the contribution of contemporary fiqh lies in its ability to develop protection instruments that are responsive to social problems. The state can formulate biological proof mechanisms, determine the obligation to meet the needs of children, supervise the implementation of decisions, and sanctions for neglect of responsibility, as long as it has an adequate legal basis and legal basis. This construction allows child protection to be carried out as a stand-alone legal objective without automatically changing all the consequences of nasab law.

The comparison of these three perspectives shows that the fundamental difference lies in the source and consequences of the maintenance obligation. Indonesian law opens up space for the civil relationship of children and biological fathers through the Constitutional Court Decision No. 46/PUU-VIII/2010. In the context of Aceh, the analysis must pay attention to the interaction between national law, KHI, and local provisions that actually apply. Meanwhile, contemporary jurisprudence, especially as reflected in MUI Fatwa Number 11 of 2012, provides an approach that distinguishes the

Mesraini, and Rosdiana, "Sita Harta Suami Sebagai Jaminan Nafkah Anak Pasca Cerai: Perspektif Maqasid Al-Syari'ah Dan Perlindungan Anak," *JOURNAL of LEGAL RESEARCH* 8, no. 1 (June 30, 2026): 17–56, https://doi.org/10.15408/jlr.v8i1.50391; Achmad Suhaili, "INTEGRASI MAQĀṢID AL-SYARĪ'AH DALAM PRAKTIK PERADILAN AGAMA DI INDONESIA: STUDI ALTERNATIF PENYELESAIAN SENGKETA KELUARGA," *Mabahits : Jurnal Hukum Keluarga Islam* 6, no. 01 (May 18, 2025): 29–42, https://doi.org/10.62097/mabahits.v6i01.2236; Nur Hikmah, Ahmad Ahmad, and Rusnam Rusnam, "DAMPAK POLIGAMI TERHADAP KESEJAHTERAAN ISTRI DAN ANAK PERSPEKTIF MAQASID AL-SYARI'AH STUDI DI KECAMATAN MOWILA KABUPATEN KONAWE SELATAN," *KALOSARA: Family Law Review* 1, no. 1 (August 7, 2021), https://doi.org/10.31332/.v1i1.2985; Ilah Nurilah, A. Suganda, and Moch. A. Dunuraeni, "Dispensasi Kawin Berbasis Kehamilan Tidak Diinginkan: Analisis Maqāṣid Al-Syarī'Ah, Perlindungan Anak, Dan Teori Hukum," *Student Research Journal* 4, no. 2 (April 25, 2026): 110–25, https://doi.org/10.55606/srj-yappi.v4i2.2495.

[34] Fatahillah, Krishnani, and Mukhid, "PEMENUHAN HAK NAFKAH ANAK PASCA PERCERAIAN MENURUT KOMPILASI HUKUM ISLAM DAN UNDANG-UNDANG PERKAWINAN"; Nasution, Saditri, and Salsabillah, "Penerapan Hukum Perikatan Dan Sanksi Hukum Terhadap Ayah Yang Kewajiban Nafkah Anak Pasca Perceraian (Studi Di Pengadilan Agama)"; Gussevi, Novianty, and Supiana, "Implementasi Putusan Pengadilan Agama Purwakarta Mengenai Kewajiban Ayah Atas Hak Nafkah Anak Pasca Perceraian"; Pitriani and Bahri, "Pemenuhan Hak Nafkah Anak Pasca Perceraian Menurut Undang-Undang Perkawinan Dan Hukum Adat."

relationship between nasab and the responsibility to meet the needs of the child through the *mechanism of ta'zīr*.[35]

An important implication of this comparison is the need for a legal construction that expressly separates the determination of biological origins, the recognition of civil relations, and the determination of legal consequences of inheritance. This separation can prevent two mistakes at once: first, it considers biological evidence to automatically determine all consequences of family law; second, it considers the absence of paternal inheritance as a sufficient reason to negate all forms of protection for children. In concrete cases, the basis of the claim and the legal consequences applied for must be specifically formulated so that the court can provide appropriate protection.

At the policy level, harmonization can be directed towards the preparation of guidelines for proving biological relationships, maintenance determination mechanisms that take into account the needs of the child and the economic capabilities of the biological father, as well as effective decision-making procedures. In Aceh, the development of such policies needs to be aligned with the prevailing authority and legal framework, not solely based on the assumption that regional specificity negates the applicability of national law. Meanwhile, *the perspective of maqāṣid al-syarī'ah* can serve as an evaluation framework to ensure that the policy safeguards the interests of the child while maintaining conceptual clarity regarding the fate.

Ultimately, the construction of the biological father's maintenance obligation should not be constructed through a binary choice between the recognition of the nasab and the denial of responsibility. A more proportionate approach is to recognize that biological relationships, the status of the nasab, and the obligation to protect have different legal bases and consequences. By distinguishing between these three categories, Indonesian law, family law practices in Aceh, and contemporary jurisprudence can be examined in a more integrative framework. The ultimate orientation is not to remove doctrinal differences, but to ensure that these differences do not constitute justification for child neglect and that each obligation imposed has a clear legal basis, evidentiary mechanism, and protection purpose.

Separation of Destiny and Economic Responsibility: A Comparative Analysis

In the construction of Islamic family law, nasab (al-nasab) is a hereditary relationship that has legal and social consequences in the formation of the family structure. Nasab not only serves to identify a person's origins, but also serves as the basis for a number of legal provisions, including mahrara, inheritance, guardianship, and family relations. Therefore, the determination of nasab has an important position in maintaining the order of family law and realizing the purpose of sharia, especially *ḥifẓ al-nasl* (protection of posterity). Wahbah al-Zuḥaylī in Al-Fiqh *al-Islāmī wa Adillatuhu* explains various provisions regarding the determination of nasab, marital relationships, and the

[35] Hutasoit et al., "Legal Protection for Out-of-Wedlock Children in Indonesia; A Comparative Study of the Constitutional Court Decision No. 46/PUU-VIII/2010 and Islamic Law"; Saifullah, "A Critical Study of Progressive Legal Theory on the Status of Out-of-Wedlock Children in the Constitutional Court Decision No. 46/PUU-VIII/2010"; Farahi and Ramadhita, "Justice for Out-of-wedlock Children in the Constitutional Court Decision No. 46/PUU-VIII/2010"; Robert Libra and Jumni Nelli, "THE POSITION OF CHILDREN AFTER THE CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010"; Elridsa Nur Azizah and Amrullah Hayatudin, "The Legal Position of Children Resulting from Incest According to the Decision of Mk No. 46/PUU-VIII/2010 and Islamic Law."

legal consequences it causes.[36] The framework shows that nasab is not solely a matter of biological relationships, but a relationship whose determination and legal consequences are determined based on the principles of sharia.

However, nasab needs to be distinguished from economic responsibility or maintenance obligation (nafaqah). Nafkah in Islamic family law is an instrument to meet the living needs of the entitled party, including the needs of food, clothing, shelter, education, and proper maintenance according to the conditions and abilities of the obligated party. In the context of children, these obligations are related to the principles of protection of the soul (*ḥifẓ al-nafs*), the maintenance of offspring, and the fulfillment of benefits. Thus, nasab and alimony have a conceptual relationship, but are not entirely identical in legal basis or consequences.[37]

This distinction can be explained through two different legal questions. First, who is legally recognized as having a nasab relationship with a child? Second, who is obliged by law to ensure the maintenance and welfare of the child? The first question is oriented to the status of the offspring, while the second question is oriented to legal obligations and the protection of the interests of the child. The two can be interrelated, but the answer to the first question does not always solve the second question automatically.

In the perspective *of maqāṣid al-syarī'ah*, such a distinction is important so that the application of the law does not stop at the classification of family status, but also considers the protection of the life and welfare of the child. The principle *of jalb al-maṣāliḥ wa dar'u al-mafāsid* (realizing benefits and preventing harm) requires that the determination of the law consider the consequences for the vulnerable. However, the orientation of the benefit does not mean that all provisions regarding the fate can be set aside in the name of child protection. The benefit must be sought through an interpretation consistent with the sources of Islamic law and the applicable positive legal provisions.[38]

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[36] Wahbah Az-Zuhaili, "Fiqh Al-Islami wa adillatuhu volume 9," *translated by Abdul Hayyie al-Kattani et al*. Volume 9 (2011); Wahbah al-Zuhaili, "Al-Fiqh al-Islāmī wa adillatuhu 1," *Damascus: Dar Al-Fikr*, 2002; Wahbah az-Zuhaili, "Alfiqhu al-Islami wa adillatuhu," *Damascus: Dar Al-Fikr*, 2006.

[37] Intan Nur Fajriyah and Nur Lailatul Musyafaah, "Implementation of Integrated Isbat Nikah in Gresik Regency from the Perspective of Maqāṣid Al-Sharī'ah," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 6, no. 4 (August 30, 2025): 365–87, https://doi.org/10.15642/mal.v7i5.498; Bambang Tri Bawono et al., "Human Trafficking and the Relevance of Hifz Al-Nafs and Hifz Al-'ird in Contemporary Islamic Legal Ethics," *MILRev: Metro Islamic Law Review* 4, no. 1 (June 30, 2025): 597–618, https://doi.org/10.32332/milrev.v4i1.10694; Saifurrijal and Wafa, "Family Resilience and the Prevention of Radicalism: A Maqāṣid Al-Sharī'ah Approach Based on Jasser Auda"; Hasanudin and Moh. Jeweherul Kalamiah, "The Problematic Nature of Marriage Dispensation from the Perspective of Maqāṣid Al-Sharī'Ah," *Al-Hikmah: International Journal of Islamic Studies* 1, no. 2 (October 19, 2025): 55–72, https://doi.org/10.64540/alhikmah192; Ilah Nurilah, A. Suganda, and Moch. A. Dunuraeni, "Dispensasi Kawin Berbasis Kehamilan Tidak Diinginkan: Analisis Maqāṣid Al-Syarī'Ah, Perlindungan Anak, Dan Teori Hukum."

[38] Zulfan Efendi and Abdul Waid, "Nikah Siri In Maqāṣid Al-Sharī'ah Review: A Critical Study of the Urgency of Marriage Registration in Islam," *El-Sirry: Jurnal Hukum Islam Dan Sosial* 3, no. 2 (January 20, 2026): 243–54, https://doi.org/10.24952/ejhis.v3i2.17551; Nur Afifah HS et al., "PERTIMBANGAN HUBUNGAN SUAMI ISTRI DALAM PUTUSAN HAKIM CERAI GUGAT PERSPEKTIF MASLAHAH MURSALAH," *AL-SYAKHSHIYYAH Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 7, no. 2 (December 5, 2025): 254–69, https://doi.org/10.30863/as-hki.v7i2.10659; Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (October 17, 2024): 1818, https://doi.org/10.22373/sjhk.v8i3.24918; Andi Indra Puteri, Nur Fia, and Suhaila, "Tren Flat Piercing Bagi Wanita: Tinjauan Kaidah Dar'u Al-Mafāsid AwlĀ Min Jalbi Al-Maṣāli," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 7, no. 2 (August 30, 2026): 470–88, https://doi.org/10.36701/bustanul.v7i2.3614.

Comparatively, Islamic jurisprudence provides a normative framework to distinguish the determination of nasab from the obligation of alimony. In classical discussion, the relationship of nasab is generally determined through marriage that meets the legal requirements, the recognition of the nasab in conditions recognized by the sharia, and the relevant evidentiary mechanism. The principle *of al-walad li al-firāsy* of the child is attributed to the owner of a valid marital relationship according to the applicable provisions is one of the important foundations in the discussion of nasab. However, its application must take into account the context of the case, including marital status, time of birth, the possibility of disputes, and relevant evidentiary provisions.

In the case of children born out of wedlock, the majority of classical jurisprudence constructions distinguish biological relationships from nasab that are recognized in shari'i. Consequently, proving that a man is the biological father does not always produce all the consequences of the law of nasab, especially in the matter of inheritance and guardianship. However, it is incorrect to conclude that all schools and thought of Islamic law have a completely uniform view of each legal consequence of biological relationships.[39] There are differences of opinion on a number of issues, especially regarding the recognition of nasab in certain circumstances and its implications for the legal relationship of the child.

In Indonesian Islamic family law, this distinction is reflected in the Compilation of Islamic Law. Article 99 of the KHI regulates the category of legitimate children, while Article 100 states that children born out of wedlock only have a nasab relationship with their mother and their mother's family. The provisions of Article 186 of the KHI also regulate the inheritance relationship of children born out of wedlock with the mother and the mother's family. The provision shows that the recognition of nasab and inheritance relationships have a specific normative basis in the Indonesian Islamic family law system.

However, the provisions regarding the fate need to be read together with the development of constitutional law, especially the Constitutional Court Decision Number 46/PUU-VIII/2010. This decision gives a new dimension to the civil relationship between a child and his biological father. The Constitutional Court interpreted Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage so that a child born out of wedlock can have a civil relationship with a man who is proven based on science and technology and/or other evidence according to the law to have a blood relationship as his father, including a civil relationship with his father's family.[40]

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[39] ERLIN FARIDHA et al., "Juridical Analysis of the Protection of the Inheritance Rights of Children Born Out of Wedlock in Indonesia," *Riau Law Journal* 10, no. 1 (May 31, 2026): 88–99, https://doi.org/10.30652/sa75b714; Gusti Ayu Ade Diah Gamatri, Ni Luh Made Mahendrawati, and I Made Arjaya, "The Legal Status of Children Born Outside Marriage Legally According to Law Number 1 of 1974," *Journal of Legal Construction* 4, no. 3 (December 16, 2023): 281–86, https://doi.org/10.22225/jkh.4.3.8041.281-286; Syahnan Habibi Nasution et al., "The Position of Children Born Out of Wedlock Legally According to Civil Law and Islamic Law," *Journal of Friends of ISNU-SU* II, no. I (2025); Ahmad Baihaki, "Efforts to Fulfill the Civil Rights of Children Born Out of Wedlock," *Sasana* Law Journal 9, no. 1 (June 13, 2023): 187–209, https://doi.org/10.31599/sasana.v9i1.2428.

[40] Indri Annisa Hasanah and Salim HS, "Analisis Yuridis Pencatatan Nama Orang Tua Pada Akta Kelahiran Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010," *Private Law* 5, no. 1 (February 28, 2025): 51–61, https://doi.org/10.29303/prlw.v5i1.6405; Maria Widiastuti, Adnyani, and Landrawan, "ANALISIS YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 46/PUU-VIII/2010 TENTANG STATUS ANAK DI LUAR PERKAWINAN SEBAGAI DASAR PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA HAK WARIS ANAK DI LUAR PERKAWINAN"; Setyawan, Nur Sholikin, and Al - Robin, "Implikasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Terhadap Kedudukan Anak Di Luar Perkawinan"; Lukman Daris Salam,

Analytically, the decision is not properly understood as the automatic elimination of all differences between nasab according to fiqh and civil relations according to state law. The term civil relationship has a scope that must be analyzed based on the legal context and the form of the claim submitted. The relationship can be the basis for the protection of children's interests, including in the issue of maintenance, but it does not mean that all consequences of nasab, inheritance, and guardianship according to Islamic law are immediately applicable regardless of their respective provisions.

Thus, the position of Indonesian law shows the need for harmonization between the norm of nasab in the KHI and the principle of protection of children's rights in constitutional decisions. This harmonization does not mean eliminating conceptual differences, but rather developing the application of laws that can provide certainty of status while preventing children from losing protection just because the status of their parental relationship is disputed.

The Constitutional Court Decision No. 46/PUU-VIII/2010 is an important point in the analysis of the relationship between fate and economic responsibility. The important substance of the ruling is that the absence of a formally recognized marital relationship cannot be used as an absolute reason to close the possibility of a civil relationship between the child and his biological father if the blood relationship can be proven according to the law. This approach shifts attention from the mere marital status of the parents to the recognition of relevant biological facts and the protection of the rights of the child.[41]

From the perspective of economic responsibility, the decision opens up space for children to claim civil protection based on proven biological relationships. In practice, the issue of maintaining and financing children's needs needs needs to be assessed based on the legal basis used, the evidence submitted, the concrete circumstances of the child, and the court's considerations. In other words, the decision provides a constitutional basis for expanding protection, but the implementation of economic obligations still requires a juridical assessment in accordance with the case being examined.

These developments show that biological relationships and economic responsibility can have legal relevance even though the status of nasab in the sense of fiqh does not

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"Analisis Hukum Hak-Hak Nasab Anak Luar Nikah Menurut Putusan Mahkamah Konstitusi Nomor 46/Puu/Viii/2010"; Widya Kirana Septiani Putri, "AKIBAT HUKUM PENGAKUAN ANAK LUAR KAWIN SETELAH BERLAKUNYA PUTUSAN MK NOMOR 46/PUU-VIII/2010," *Jurnal Akta Notaris* 1, no. 1 (November 22, 2022): 123–38, https://doi.org/10.56444/aktanotaris.v1i1.195; Faisal Afda'u, Husnia Hilmi Wahyuni, and Febryan Alam Susatyo, "Perlindungan Hak Dan Status Anak Luar Nikah Perspektif Hukum Perdata Dan Islam Di Indonesia," *Nomos : Jurnal Penelitian Ilmu Hukum* 5, no. 1 (May 14, 2025): 155–62, https://doi.org/10.56393/nomos.v5i1.3093.

[41] Hasanah and HS, "Juridical Analysis of the Registration of Parents' Names on the Birth Certificate of Out-of-Wedlock Children after the Constitutional Court Decision No. 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "JURIDICAL ANALYSIS OF THE CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010 CONCERNING THE STATUS OF CHILDREN OUT OF WEDLOCK AS THE BASIS FOR JUDGES' CONSIDERATION IN DECIDING THE CASE OF INHERITANCE RIGHTS OF CHILDREN OUT OF WEDLOCK"; Setyawan, Nur Sholikin, and Al-Robin, "The Implications of the Constitutional Court Decision No. 46/PUU-VIII/2010 on the Position of Children Out of Wedlock"; Lukman Daris Salam, "Legal Analysis of the Rights of Out-of-Wedlock Children According to the Constitutional Court Decision No. 46/PUU/VIII/2010"; Widya Kirana Septiani Putri, "LEGAL CONSEQUENCES OF THE RECOGNITION OF OUT-OF-WEDLOCK CHILDREN AFTER THE ENACTMENT OF THE CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010"; Afda'u, Wahyuni, and Susatyo, "Protection of the Rights and Status of Out-of-wedlock Children from a Civil and Islamic Law Perspective in Indonesia"; Wahid Yaurwarin, "INDONESIAN LEGAL STUDIES ON THE INHERITANCE RIGHTS OF CHILDREN OUT OF WEDLOCK," *Journal of Multidisciplinary Research*, November 1, 2024, 43–56, https://doi.org/10.56943/jmr.v3i2.639.

necessarily change. Research on the consequences of the Constitutional Court Decision Number 46/PUU-VIII/2010 also highlights the importance of protecting child custody rights and the issue of harmonization between constitutional decisions and the provisions of Islamic family law.[42]

However, economic responsibility should not be formulated simplistic as an automatic obligation whose amount and form are always the same for each biological father. The determination must take into account the applicable legal basis, proof of biological relationship, economic ability of the party held accountable, and the real needs of the child. These needs include living expenses, education, health, housing, and social protection. The principle of proportionality is needed so that the obligations set can be implemented in a real way and do not stop at normative recognition.

At this point, it is also necessary to distinguish between moral obligations, social obligations, and legal obligations. Morally, a person can have responsibility for the consequences of his actions on the life of a child. Socially, these responsibilities can be realized through support and maintenance. As for the law, the imposition of obligations must have a normative basis and adequate evidence. These three dimensions complement each other, but cannot be exchanged just like that. Careful analysis is needed so that the demand for justice for children does not ignore the principles of legality and legal certainty.

A comparison between Islamic jurisprudence, KHI, and positive Indonesian law shows the difference in pressure points in regulating hereditary relations and economic responsibility. Islamic jurisprudence places the determination of nasab in the framework of sharia legitimacy and the consequences of family law. KHI codifies some of these provisions in the Indonesian Islamic family law system. Meanwhile, the Constitutional Court Decision No. 46/PUU-VIII/2010 strengthens the orientation of civil protection of children by opening up the possibility of recognition of a legal relationship with a proven biological father.

Table 1. Comparison of Islamic Fiqh Perspectives and Positive Law After the Constitutional Court's Decision on the Status and Rights of Children

Aspect of comparison	Islamic Fiqh and KHI	Positive law after the Constitutional Court's decision

[42] Hasanah and HS, "Juridical Analysis of the Registration of Parents' Names on the Birth Certificate of Out-of-Wedlock Children after the Constitutional Court Decision No. 46/PUU-VIII/2010"; Maria Widiastuti, Adnyani, and Landrawan, "JURIDICAL ANALYSIS OF THE CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010 CONCERNING THE STATUS OF CHILDREN OUT OF WEDLOCK AS THE BASIS FOR JUDGES' CONSIDERATION IN DECIDING THE CASE OF INHERITANCE RIGHTS OF CHILDREN OUT OF WEDLOCK"; Setyawan, Nur Sholikin, and Al-Robin, "The Implications of the Constitutional Court Decision No. 46/PUU-VIII/2010 on the Position of Children Out of Wedlock"; Lukman Daris Salam, "Legal Analysis of the Rights of Out-of-Wedlock Children According to the Constitutional Court Decision No. 46/PUU/VIII/2010"; Widya Kirana Septiani Putri, "LEGAL CONSEQUENCES OF THE RECOGNITION OF OUT-OF-WEDLOCK CHILDREN AFTER THE ENACTMENT OF THE CONSTITUTIONAL COURT DECISION NO. 46/PUU-VIII/2010"; Afda'u, Wahyuni, and Susatyo, "Protection of the Rights and Status of Out-of-wedlock Children from a Civil and Islamic Law Perspective in Indonesia"; Yaurwarin, "A STUDY OF INDONESIAN LAW ON THE INHERITANCE RIGHTS OF OUT-OF-WEDLOCK CHILDREN."

The basis of determining nasab	Shari'a provisions and the mechanism for determining recognized nasab	The status of the child and legal relationship based on applicable regulations and evidence
Biological relationship	It is not always synonymous with nasab that is recognized by shari'i	It can be the basis of civil relations if it is proven according to the law
Economic obligations	Analyzed based on the basis of alimony obligations and relevant legal relationships	Can be prosecuted through legal mechanisms based on proven civil relationships
Inheritance	Following the provisions of the nasab and Islamic inheritance law	It must be analyzed based on the applicable inheritance law regime; it is not automatically identical to the maintenance obligation
Child protection	Based on the principle of the benefit and preservation of the soul and offspring	Strengthened through the protection of constitutional rights and legal mechanisms

The table shows that the most fundamental difference lies in the scope of legal consequences attached to biological relationships. In the construction of fiqh and KHI, the relationship of nasab has an important position in determining family rights and obligations. On the other hand, the constitutional approach pays attention to the possibility of the emergence of a civil relationship based on proof of blood relationship. Therefore, the analysis should not equate all civil relations with nasab, but also should not assume that the absence of recognition of nasab always closes all forms of legal protection for children.

These differences have significant practical consequences. If a child is viewed only through the category of nasab status without considering the issue of his or her upbringing, there is a risk that the child's basic needs will not be adequately addressed. Conversely, if the biological relationship is directly equated with all the consequences of the law of nasab, uncertainty can arise regarding the application of inheritance, guardianship, and other family relationships. Therefore, a more appropriate comparative approach is to distinguish each legal consequence based on its normative basis, while ensuring that the interests of the child continue to receive the proper protection.

This approach is in line with the Convention on the Rights of the Child, in particular Article 27, which recognizes the right of every child to an adequate standard of living for his or her physical, mental, spiritual, moral, and social development. The article also affirms the primary responsibility of parents or those responsible for the child to meet the needs of life according to their financial ability and capacity. This principle reinforces the argument that the issue of child welfare should be analyzed as an issue of rights protection, not solely as a consequence of the classification of family relationships.

However, the Convention on the Rights of the Child cannot be used as a basis for stating that every biological father automatically has all the same obligations as the father in a legal marriage under all legal regimes. The instrument needs to be applied in conjunction with national provisions, evidentiary mechanisms, and rules on parental

responsibility. Its relevance lies in the affirmation that the child has an independent legal interest and should not bear all the negative consequences of the actions or decisions of adults.[43]

Within the framework *of maqāṣid al-syarī'ah*, the separation of nasab and economic responsibility can be analyzed through the relationship between *ḥifẓ al-nasl* and *ḥifẓ al-nafs*. The protection of offspring requires certainty about the origin and family relationship, while the protection of the soul requires attention to the survival and welfare of the child. These two goals are not mutually exclusive. On the contrary, they need to be applied proportionately so that the certainty of family law can go hand in hand with the protection of children's rights.[44]

From this perspective, the determination of the nasab should not be reduced to an administrative instrument, because the status of the descendants carries wide legal consequences. However, the determination of the nasab should also not be used as the only parameter in assessing whether or not the interests of the child must be protected. There is an analytical space to separate the question of the status of the offspring from the question of the fulfillment of the basic needs of the child, as long as the separation does not conflict with the applicable legal provisions.

The principle of justice in Islamic law demands that any legal consequences be based on relevant grounds and not arbitrarily imposed on those who should not bear them. In this context, children cannot be blamed for the circumstances of their birth. Therefore, the protection of their basic needs should be placed as an important consideration in the formation and implementation of legal policies. On the other hand, the protection of children needs to be carried out through fair evidentiary procedures, so that the determination of biological relationships and the imposition of economic responsibility do not ignore the rights of the party held accountable.

The theoretical consequence is the need for an analysis model that distinguishes three layers. First, the status layer, which is the determination of the relationship between the children according to the relevant legal provisions. Second, the layer of liability, which is the identification of the parties who are legally responsible for the maintenance of the child. Third, the recovery layer, which is a mechanism to ensure that children's rights can be realized, including through the judicial process in the event of a dispute. The model helps to avoid categorical errors that equate biological proof, recognition of fate, and economic obligations as one legal issue that cannot be separated.

Overall, this comparative analysis confirms that the separation of nasab and economic responsibility is not an attempt to detach family obligations from the structure of Islamic law. Rather, it is an analytical instrument to explain that each legal consequence has a different basis, scope, and enforcement mechanism. This approach can strengthen the dialogue between Islamic jurisprudence, KHI, and Indonesian positive law,

[43] Corputty, Yunanto, and Sutrisno, "Kesenjangan Normatif Dalam Perlindungan Hak Keperdataan Anak Luar Kawin Dalam Sistem Hukum Indonesia"; Safitri and Ahmad, "TANGGUNGJAWAB ORANGTUA ATAS NAFKAH ANAK PASCA PERCERAIAN"; Maulidia and Kusmayadi, "Fatwa MUI NO 11 Tahun 2012 : Solusi Kekosongan Hukum Wasiat Wajibah Bagi Anak Hasil Zina"; Farahi and Ramadhita, "Keadilan Bagi Anak Luar Kawin Dalam Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010."

[44] Efendi and Waid, "Nikah Siri In Maqāṣid Al-Sharī'ah Review: A Critical Study of the Urgency of Marriage Registration in Islam"; Dahlia Haliah Ma'u et al., "Interfaith Marriage Involving Muslims in Indonesia," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 10, no. 2 (December 30, 2025): 155–69, https://doi.org/10.22515/alahkam.v10i2.11069.

while encouraging a more responsive resolution of cases to the needs of children without obscuring the principle of legal certainty.

Reconstruction of Taʿzīr-Based *Maintenance Obligations* for Child Protection

Child support obligations from the perspective of Islamic law are not solely a consequence of the biological relationship between parents and children, but are also a manifestation of the legal, moral, and religious responsibilities inherent in the position of parents. Maintenance serves to ensure the fulfillment of children's basic needs, including food, clothing, shelter, health, education, and other needs that support the child's proper growth and development. In this framework, maintenance obligations must be understood as an integral part of the protection of children's rights, not as a form of parental generosity that can be given or stopped based on one's own will.[45] Therefore, deliberate neglect of maintenance, especially when parents have adequate economic capabilities, is not enough to be seen as a domestic problem, but rather as an action that has the potential to eliminate the child's basic rights and cause legal consequences.

This problem becomes even more complex when maintenance obligations are not fulfilled after divorce. In practice, children are often in the most vulnerable position because they do not have the independent ability to meet their needs, while parents who hold financing responsibilities actually ignore these obligations. As a result, the burden of parenting and meeting the needs of children can be concentrated on the parents who care for them, while children face the risk of disruption of access to education, health services, nutritional fulfillment, and psychosocial stability. This condition shows that the existence of norms that stipulate maintenance obligations does not necessarily guarantee the fulfillment of children's rights if it is not accompanied by effective monitoring, enforcement, and consequences mechanisms for parties who deliberately evade their obligations.[46]

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[45] Mohamad Hamim, "DETERMINATION OF HUSBAND'S OBLIGATION IN PROVIDING POST-DIVORCE MAINTENANCE (MUT'AH) AT THE RELIGIOUS COURT OF TASIKMALAYA CITY," *Ahwaluna | Journal of Islamic Family Law* 6, no. 1 (March 31, 2025): 66–88, https://doi.org/10.70143/ahwalunajurnalhukumkeluargaislam.v6i1.464; Nurhadi Nurhadi and Alfian Qodri Azizi, "PHILOSOPHICAL CHILD MAINTENANCE OBLIGATIONS IN INDONESIAN ISLAMIC UP," *Ahwal Syakhshiyyah Scientific Journal (JAS)* 1, no. 2 (December 30, 2019): 55, https://doi.org/10.33474/jas.v1i2.3707; Dewa Cahya Maretna, Asmaniar Asmaniar, and Mutiarany Mutiarany, "Protection of Post-Divorce Child Support Rights: An Analysis of Religious Court Decisions," *Krisna Law: Student Journal of the Faculty of Law, Krisnadwipayana University* 8, no. 1 (February 10, 2026): 49–61, https://doi.org/10.37893/krisnalaw.v8i1.1293; Meria Husnaldi et al., "Wives Maintenance in Modern Households: An Analysis of Maqāṣid Syarī'ah on the Status of Maintenance of Working Wives," *Al-Mashlahah Journal of Islamic Law and Social Institutions* 13, no. 02 (2025); Pratiwi Uly Romadhoni, Nadila Putri Pramesti, and Muhamad Sofian, "The Dynamics of the Division of Gender Roles and Maintenance Obligations in Modern Muslim Families," *Proceedings of Islamic Family Law*, 2025; Ahmad gofur Sutabri, "The Position of Alimony in Islamic Family Law: Between Responsibility and Social Realities," *El-Qisth Journal of Islamic Family Law* 8, no. 01 (June 1, 2025): 32–38, https://doi.org/10.47759/zcje8g90; Samsul Bahri, "Alimony Obligations in the Family (A Comparative Study of Islamic Law and Law in Indonesia on Wives Who Earn Bread)," *Yustisi Journal of Islamic Law and Law* 11, no. 1 (2024).

[46] Hamim, "DETERMINATION OF HUSBAND'S OBLIGATION TO PROVIDE POST-DIVORCE ALIMONY (MUT'AH) AT THE RELIGIOUS COURT OF TASIKMALAYA CITY"; Nurhadi and Azizi, "PHILOSOPHY OF CHILD MAINTENANCE OBLIGATIONS IN INDONESIAN ISLAMIC LAW"; Maretna, Asmaniar, and Mutiarany, "Protection of Post-Divorce Child Support Rights: An Analysis of Religious Court Decisions"; Husnaldi et al., "Wife's Maintenance in Modern Households: An Analysis of Maqāṣid Syarī'ah on the Status of Working Wives"; Romadhoni, Pramesti, and Sofian, "The Dynamics of the Division of Gender Roles and Alimony Obligations in Modern Muslim Families"; Sutabri, "The Position of Alimony in Islamic Family Law: Between Responsibility and Social Realities"; Bahri,

In this context, the concept of *taʿzīr* can be developed as a conceptual instrument to reconstruct the enforcement of child support obligations. In general, taʿzīr is a form of sanction whose type and application are within the authority of the lawful authority for acts that according to Islamic law deserve corrective action or punishment, while still paying attention to the provisions of sharia, justice, and benefits. [47] Unlike *ḥudūd* and *qiṣāṣ* which have special provisions in the doctrine of fiqh, *taʿzīr* provides space for the competent authorities to consider the character of the act, the degree of error, the circumstances of the perpetrator, and the interests that must be protected. However, its application cannot be based on subjective will, but must meet the principles of legality, proportionality, proof, and fair procedure.

The reconstruction of *taʿzīr-based maintenance obligations* in this study is not intended to replace maintenance obligations with sanctions, but rather to establish a stronger relationship between substantive obligations, mechanisms for forcing the fulfillment of rights, and the consequences of deliberate neglect. Thus, there are two dimensions that must be distinguished. First, the dimension of fulfillment of rights, namely ensuring that children receive the maintenance to which they are entitled. Second, the dimension of law enforcement, which is to provide proportionate consequences to parties who unlawfully evade these obligations. This distinction is important because the imposition of sanctions on parents does not automatically restore the child's economic rights. On the other hand, the payment of outstanding alimony does not always eliminate the need for legal action if deliberate disobedience is found and meets the elements of violation based on applicable provisions.[48]

The normative basis of this approach can be traced through the principle of responsibility for maintenance in the Qur'an. Surah al-Baqarah verse 233 emphasizes the obligation of the father to provide food and clothing to the mother in an appropriate manner, and relates the imposition of responsibility to the ability of the obligated party. This verse also prohibits the occurrence of harm to the mother or father due to the affairs of the child.[49] Meanwhile, Surah al-Ṭalāq verse 7 emphasizes that those who have spaciousness should provide sustenance according to their spaciousness, while those who

"Alimony Obligations in the Family (A Comparative Study of Islamic Law and Law in Indonesia on Wives Seeking Bread)."

[47] Yuniarti and Azhar, "RECONCEPTUALIZATION of TAʿZĪR AS AN INSTRUMENT OF PEDAGOGICAL DISCIPLINE IN RESPONDING TO THE TREND OF TEACHER CRIMINALIZATION CRISIS, AND NORMATIVE CONTESTATION IN CONTEMPORARY INDONESIAN EDUCATION"; Santoso, "IMPLEMENTATION OF ISLAMIC CRIMINAL LAW IN INDONESIA: TAʿZĪR PUNISHMENT AS A SOLUTION?"; Suryadin et al., "FORMULATION OF ISLAMIC CRIMINAL LAW POLICY AS A JURIDICAL INSTRUMENT FOR MAINTAINING THE BALANCE OF POWER AMONG STATE INSTITUTIONS."

[48] Safitri and Ahmad, "PARENTAL RESPONSIBILITY FOR POST-DIVORCE CHILD SUPPORT"; Nurani, "The Relationship of Husband and Wife Rights and Obligations in the Perspective of Islamic Law (An Analytical Study of the Relevance of Husband and Wife Rights and Obligations Based on Ahkam Tafsir and Ahkam Hadith)"; Pitriani and Bahri, "Fulfillment of Post-Divorce Child Support Rights According to Marriage Law and Customary Law"; Fatahillah, Krishnani, and Mukhid, "FULFILLMENT OF POST-DIVORCE CHILD SUPPORT RIGHTS ACCORDING TO A COMPILATION OF ISLAMIC LAW AND MARRIAGE LAW"; Hazarul Aswat and Arif Rahman, "The Husband's Obligation to Provide for Maintenance in the Compilation of Islamic Law," *JURNAL AL-IQTISHOD* 5, no. 1 (2021); Husnaldi et al., "Wife's Maintenance in the Modern Household: An Analysis of Maqāṣid Syarī'ah on the Status of Dependent Wives Who Work."

[49] Abdul Hakim, Akhmad Supriadi, and Nor Faridatunnisa, "Analisis Surah Al-Baqarah Ayat 233: Studi Tafsir Ilmi Dan Tafsir Tematik Kementerian Agama," *Syams: Jurnal Kajian Keislaman* 3, no. 1 (August 23, 2022): 26–34, https://doi.org/10.23971/js.v3i1.4623.

have limited sustenance provide sustenance according to what Allah has bestowed upon them.[50] Both provisions indicate that alimony must be determined by considering needs, propriety, and economic ability, not solely based on a uniformly determined nominal.

This principle has two legal implications. First, a truly demonstrable economic limitation cannot be immediately equated with a disobedience to an obligation. Second, adequate economic ability, but accompanied by a deliberate refusal to provide for a living, can be an important factor in determining the need for law enforcement action. Therefore, *taʿzīr-based* reconstruction must avoid an approach that generalizes all non-compliance. Fair enforcement of the law requires an examination of income, assets, other dependents, working conditions, children's real needs, payment history, and reasons given by the obligated party.

The reconstruction of *taʿzīr-based* maintenance obligations needs to be placed within the framework of integration between Islamic law and Indonesian positive law. In the national legal system, Article 41 letter (b) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, affirms the responsibility of the father for the cost of child maintenance and education after divorce. This provision also opens up the possibility for the court to determine the mother's involvement if the father is in fact unable to fulfill his obligations. Furthermore, Article 45 paragraph (1) and paragraph (2) stipulate that both parents are obliged to maintain and educate the child as well as possible, and this obligation remains valid even if the parent's marriage has broken down. Thus, divorce ends the marital relationship between husband and wife, but does not remove parental responsibility for children.

In the context of Islamic family law in Indonesia, the Compilation of Islamic Law (KHI) provides a more specific basis for the responsibility of child financing. Article 105 letter (c) affirms that the cost of child maintenance is the responsibility of the father. Article 149 letter (d) regulates the obligation of the ex-husband to provide ḥaḍānah expenses for his children who have not reached the age of 21 years in the context of divorce due to talaq. Meanwhile, Article 156 letter (d) affirms that the cost of ḥaḍānah and child maintenance are the responsibility of the father according to his ability, at least until the child is an adult and able to take care of himself, which in this provision is associated with the age of 21. These norms show that the obligation of maintenance does not depend on whether the child lives with the father or mother, but on the legal responsibilities inherent in the parents.

Nevertheless, the affirmation of obligations in laws and regulations does not in itself answer the problem of non-compliance. Legal reconstruction needs to be directed at how the judgment on maintenance can be effectively implemented, how the economic ability of the obligated party is verified, and how actions that deliberately impede the fulfilment of the child's rights can be dealt with proportionately. It is at this point that *taʿzīr* can make a conceptual contribution as a basis for thinking about accountability for the neglect of legally established obligations.

However, there are conceptual limits that must be affirmed. *Taʿzīr* in the treasures of fiqh cannot be automatically equated with administrative sanctions or criminal sanctions in positive Indonesian law. The application of sanctions by courts and state

[50] Eldine Hanifah Salsabila, "Kajian Talak Dalam Al-Qur'an (Studi Penafsiran Surah Aṭ- Ṭalāq Ayat 1-7 Dalam Tafsir Al-Mishbah Karya M. Quraish Shihab)," *Skripsi, UIN Raden Mas Said Surakarta*, 2022; Mutiara Fahliza et al., "Asbabun Nuzul Surah Al Zalzalah Ayat 7-8 Dan Hubunganya Dengan 'Mata Keberhasilan,'" *Mauriduna: Journal of Islamic Studies* 5, no. 2 (January 7, 2025): 1086–95, https://doi.org/10.37274/mauriduna.v5i2.1380.

institutions must still have a basis of authority and a valid legal basis. Therefore, the use of the term *taʿzīr* in this reconstruction is more appropriately understood as a normative framework for developing corrective, preventive, and child-oriented enforcement mechanisms, rather than as a statement that judges have unlimited authority to create new types of punishment based on purely religious considerations.

The orientation of child protection must also be in line with the principle of the best interests of the child. The United Nations Committee on the Rights of the Child through General Comment No. 14 (2013) places the best interests of the child as substantive rights, principles of legal interpretation, and procedural rules in every decision that affects the child. This principle requires decision-makers to consider the concrete conditions of the child, including the needs of their health, education, security, vulnerability, and the environment of their care.

The implication is that the success of maintenance enforcement is not sufficiently measured based on whether or not there are sanctions against negligent parents. The main measure is whether the child's needs are truly met and whether the legal mechanism is able to prevent the recurrence of neglect. This approach also requires that actions against those who do not fulfill their obligations do not actually reduce the resources needed to finance the child. For example, actions that disproportionately eliminate all the productive abilities of those who are obliged to pay alimony have the potential to be counterproductive if they result in children losing more sources of financing.[51] Therefore, child protection should be the main goal, while sanctions serve as an instrument to achieve this goal.

Substantively, a *taʿzīr-based reconstruction of alimony* obligations can be developed through a phased enforcement model that distinguishes between economic incapacity, negligence, and willful disobedience. Such a distinction is important to prevent injustice while ensuring that sanctions do not become a punitive instrument that ignores the factual circumstances of the parties.

First, the stage of verification of obligations and economic capabilities. Before corrective actions or sanctions are considered, it is necessary to ensure that the maintenance obligations have been clearly determined, including the amount of payment, the duration, the needs of the children, and the responsible party. The verification must also include income, assets, employment, family dependents, and payment history. This stage serves to distinguish non-compliance caused by real economic hardship from the act of avoiding obligations despite having the means. Such an approach is in line with the principles of the Qur'an in Surah al-Ṭalāq verse 7, which connects the imposition of maintenance to the economic ability of the obligated party.

Second, the warning stage and the order for the fulfillment of obligations. In cases of non-compliance that can still be remedied, the obligated party needs to obtain clear notice of the amount of arrears, the payment period, and the legal consequences if the obligation is still ignored. A warning should not be treated as a mere administrative formality, but should be a means of encouraging compliance and opening up the possibility of a settlement oriented towards the restoration of children's rights. If there is a demonstrable economic hardship, adjustments to the payment mechanism can be

[51] Pitriani and Bahri, "Fulfillment of Post-Divorce Child Support Rights According to Marriage Law and Customary Law"; Nasution, Saditri, and Salsabillah, "Application of Covenant Law and Legal Sanctions to Fathers Who Are Obliged to Provide Child Support After Divorce (Study in Religious Courts)"; Sutabri, "The Position of Alimony in Islamic Family Law: Between Responsibility and Social Reality."

considered through legal procedures, without depriving the child of the child's right to the fulfillment of his or her basic needs.

Third, the stage of corrective action against proven disobedience. If the obligated party has economic means, is aware of its obligations, but deliberately and repeatedly refuses to perform them without justifiable reasons, a more strict enforcement mechanism needs to be considered in accordance with applicable law. This form may include the enforcement of the judgment through available enforcement mechanisms, payment supervision, and other legal measures that have a clear basis for authority. In the framework of *taʿzīr*, the corrective principle emphasizes that the consequences of the violation must be directed at the cessation of disobedience, the prevention of repetition, and the restoration of the rights of the aggrieved party.

Fourth, the recovery stage and continuous supervision. Maintenance enforcement should not stop at the determination of arrears or the imposition of legal consequences. A monitoring mechanism is needed to ensure that payments run regularly and the needs of the child are met. Such supervision can involve the court, relevant institutions, and caregivers as long as they are in accordance with their respective authorities. If the income of the obligated party changes significantly, payment adjustments must be made through a legitimate mechanism so that child protection is maintained without neglecting the principle of justice.

The gradual model suggests that *taʿzīr* should not be understood as a purely repressive approach to punishment. In a benefit-oriented legal construction, preventive, corrective, and remedial functions must be placed in a balanced manner. Firmness is needed against willful disobedience, while proportionality is needed so that the legal response does not ignore the actual economic conditions. Thus, this reconstruction can build an enforcement mechanism that is more responsive to the needs of the child while still ensuring procedural protection for the obligated party.

Theoretically, the development of *taʿzīr-based maintenance obligations* needs to be integrated with maqāṣid al-syarīʿah, especially the protection of the soul (*ḥifẓ al-nafs*), the protection of reason (*ḥifẓ al-ʿaql*), the protection of offspring (*ḥifẓ al-nasl*), and the protection of property (*ḥifẓ al-māl*). These four goals have direct relevance to the fulfillment of children's rights. The fulfillment of food, shelter, and health services support the protection of life; education financing supports the development of intellect; continuity of parenting strengthens the protection of offspring; while the certainty of financing and payment of arrears is related to the protection of children's economic rights.[52]

In this perspective, alimony is not enough to be reduced to the nominal amount of money paid every month. Alimony is an instrument to maintain the survival and development of children as a whole. If these obligations are ignored, the impact can extend from household economic difficulties to hampered education, deteriorating health,

[52] Fajriyah and Musyafaah, "Implementation of Integrated Isbat Nikah in Gresik Regency from the Perspective of Maqāṣid Al-Sharī'ah"; Bima Ahadi and Siti Djazimah, "PRESERVING RELIGION AND REASON THROUGH MARRIAGE PROCESSION: Memorization of Qur'anic Verses as a Marriage Dowry," *Al-Ahwal: Journal of Islamic Family Law* 13, no. 2 (December 10, 2020): 153–62, https://doi.org/10.14421/ahwal.2020.13205; Abdul Azim, Abdul Khair, and Elvi Soeradji, "ISBAT NIKAH IN THE PERSPECTIVE OF MAQASID SHARIAH: A CASE STUDY OF THE PANGKALAN BUN RELIGIOUS COURT," *Hikmah: Journal of Islamic Studies* 21, no. 1 (March 13, 2025): 17, https://doi.org/10.47466/hikmah.v21i1.321; Suhaili, "INTEGRATION OF MAQĀṢID AL-SYARĪ'AH IN THE PRACTICE OF RELIGIOUS JUSTICE IN INDONESIA: AN ALTERNATIVE STUDY OF FAMILY DISPUTE RESOLUTION."

increased social vulnerability, and disruption of children's psychological development. Therefore, the assessment of alimony neglect must take into account not only the value of arrears, but also the real consequences or risks posed to the child's life.

The *maqāṣid al-syarīʿah approach* also provides a basis for assessing the effectiveness of an enforcement action. Severe sanctions do not necessarily reflect benefits if they do not result in the fulfillment of maintenance. On the contrary, effective payment mechanisms, adequate supervision, and proportionate consequences can be more in line with the goal of child protection if they are able to ensure the continuity of their living needs. This principle does not mean that sanctions must always be light, but that the degree of firmness must be determined on the basis of proven errors, applicable legal provisions, and the objectives of protection to be achieved.

In the framework of maslaḥah, the interests of the child should be placed as the primary orientation without eliminating the principle of justice for the parties. The child's right to obtain maintenance should not be sacrificed simply because of the conflict between the father and mother after the divorce. Similarly, the obligation of maintenance should not be used as a bargaining tool in custody disputes. A separation between custody issues and financing obligations is necessary so that the child does not become a victim of parental conflict. Law enforcement should be oriented to the rights of the child as an independent interested holder, not to the interests of one of the parties to the dispute.[53]

Thus, the conceptual contribution of maqāṣid al-syarīʿah lies in the provision of substantive parameters for evaluating whether maintenance enforcement policies actually achieve the goal of protection. Meanwhile, *taʿzīr* provides a framework of thought regarding the consequences of the breach of qualified obligations. The integration of the two forms a construction that places the fulfillment of rights, prevention of violations, procedural justice, and the welfare of the child as interrelated elements.

The reconstruction of *taʿzīr-based maintenance obligations* has important implications for the development of Islamic family law in Indonesia, especially in strengthening the relationship between the determination of obligations and the effectiveness of their implementation. Normatively, positive law has provided a basis for parental responsibility for children, including after divorce. The issue that needs further attention is how to ensure that the obligations that have been established can be implemented consistently, especially when the obligated party refuses to pay or avoids the implementation of the judgment.

On that basis, policy updates can be directed at strengthening the clarity of the judgment regarding alimony, the transparency of the calculation of children's needs, the assessment of the economic capabilities of the parties, and the provision of a payment monitoring mechanism. A judgment that determines alimony should explain the amount of liability, the payment period, the components of the needs to be taken into account, and the adjustment mechanism in the event of a change in relevant circumstances. This clarity can reduce disputes in the implementation of the judgment and provide a more measurable basis for assessing whether non-compliance has occurred.

[53] Muh Sholihuddin, Saiful Jazil, and Syamsun Ni'am, "Remarriage in The 'Iddah Perspective of Maqāṣid Al-Usrah: Study in Wedoro Waru, Sidoarjo, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (May 11, 2024): 726, https://doi.org/10.22373/sjhk.v8i2.15061; Jasmin, HL, and Sultan, "Logika Maqāṣid Al-Syarīʿah Sebagai Paradigma Kritik Dalam Rekonstruksi Hukum Islam"; Busriyanti et al., "Marriage Law Reform in Indonesia A Maqasid Al-Usrah Perspective on Legal Adaptation," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025), https://doi.org/10.29240/jhi.v10i2.12739.

In addition, institutional coordination needs to be strengthened in accordance with the authority of each institution. Religious courts, advocates, legal aid institutions, and child protection institutions can play a role in providing legal information, assisting in the process of filing claims, and ensuring that the interests of children are not neglected in family disputes. The development of documented payment administration mechanisms can also help identify arrears and facilitate proof when disputes occur. However, any form of supervision or enforcement action must still pay attention to the protection of personal data, the rights of the parties, and applicable legal provisions.

It is also important to distinguish policy reform recommendations from positive laws that are already in force. A special sanctions model that is explicitly based on the concept *of taʿzīr* cannot be applied immediately without an adequate basis of authority and regulation. If policymakers want to develop additional legal consequences for child support neglect, the arrangements need to be clearly formulated, including the elements of the violation, the standard of proof, the warning stages, the permissible forms of action, the objection mechanism, and the protection of the child. Without such clarity, approaches intended to strengthen protection risk creating legal uncertainty and the application of non-uniform sanctions.

Overall, the *taʿzīr-based reconstruction of maintenance obligations* offers the perspective that child protection requires more than just a normative recognition of the right to maintenance. An enforcement system is needed that is able to link obligations, proof of non-compliance, proportionate consequences, and restoration of children's rights. The integration of the principles of *taʿzīr*, *maqāṣid al-syarīʿah*, and the best interests of the child can be the basis for the development of an Islamic family law model that is more responsive to post-divorce maintenance issues. While respecting the limits of positive legal authority, the main orientation of this reconstruction is to ensure that children do not lose their basic rights as a result of conflict or neglect of parental responsibilities.

CONCLUSION

Based on the results of the analysis, this study found that the regulation of maintenance obligations for children out of wedlock shows fundamental differences between Indonesian law, Qanun Aceh, and contemporary fiqh, especially in determining the basis of biological father's liability. Indonesian law, through the Constitutional Court Decision No. 46/PUU-VIII/2010, opens the recognition of civil relationships between children born out of wedlock and their biological father as long as the relationship can be proven based on science and technology and/or other evidence according to the law. On the other hand, the classical fiqh construction that is a reference in the regulation of Islamic family law in Aceh does not in principle establish the relationship of nasab between the child resulting from adultery and his biological father, so that it does not give birth to the obligation of maintenance based on the relationship of the nasab. Meanwhile, contemporary jurisprudence offers an alternative approach through the taʿzīr mechanism, which is the imposition of responsibility based on the authority of the state without having to equate the responsibility of maintenance with the recognition of the nasab. This finding confirms that the recognition of nasab and the responsibility of the maintenance are two related but conceptually differentiated legal issues.

Substantively, the three approaches show differences in balancing legal certainty, the principle of nasab in Islamic law, and the protection of children's rights. Indonesian law emphasizes proving biological relationships as the basis for the emergence of civil relationships, while the classical fiqh approach places the validity of nasab relationships

as the main basis for determining maintenance obligations. The contemporary fiqh approach based on *taʿzīr* allows the development of accountability mechanisms that are oriented towards the best interests and interests of the child without automatically establishing the relationship of nasab. Thus, the main contribution of this research lies in the formulation of a conceptual framework that separates the consequences of nasab law from the responsibility of meeting the basic needs of children. However, the application of the taʿzīr mechanism in the Indonesian legal system requires a normative foundation, clarity of institutional authority, and enforcement procedures that are in accordance with positive law, so that it cannot be treated as a sanction that automatically applies based on fiqh doctrine alone.

Based on these findings, this study recommends the development of an Islamic family law policy that explicitly distinguishes between the determination of nasab, civil relations, and the obligation to fulfill child support out of wedlock. The formulation of the policy needs to consider the principles of child protection, proportionality of responsibility, legal certainty, and its conformity with the applicable sharia norms and laws and regulations, including in the context of the specificity of the law in Aceh. The research further needs to examine the feasibility of the implementation of the taʿzīr-based maintenance model through a comparative study of court decisions, regulatory analysis, and empirical research on the practice of enforcing maintenance obligations. The study is important to formulate the elements of accountability, evidentiary standards, forms of corrective action, and authorized institutions, while ensuring that the mechanisms developed do not stop at the punishment of the biological father, but actually ensure the fulfillment of the needs and protection of children's rights.

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