

Legal Protection for Children Born out of Wedlock: Ensuring the best Interests of Children through Judge Decisions

Rohmawati¹ & Syahril Siddik²

Abstract: This article examines the protection of out of wedlock children's rights in the Religious Courts. The ambiguity of the concept of the best interests of the children has prompted judges to interpret this concept in order to realize legal protection for the children. This study reveals the application of the principle of best interests of children by religious court judges in providing protection for the out of wedlock children. This study uses a case approach and legal philosophy. The results of this study indicate that the Religious Courts, in determining the genealogy of children, generally provide proportional protection for the children. In obtaining the best interests of the children, the judges grant recognition and provide a limited legal relationship with his biological father. The existence of this legal relationship has provided legal certainty regarding their status as biological children of both parents. Judges have also realized distributive justice by providing benefits for the children, without ignoring the norms of Islamic law regarding lineage purity.

Keywords: protection of Children born out of wedlock, the best interests of the child, the judge's decision

Abstrak: Artikel ini mengkaji perlindungan hak-hak anak luar nikah di Pengadilan Agama. Ambiguitas konsep kepentingan terbaik bagi anak telah mendorong hakim untuk melakukan penafsiran terhadap konsep tersebut guna merealisasikan perlindungan hukum bagi anak luar nikah. Studi ini mengungkap penerapan prinsip kepentingan terbaik bagi anak oleh hakim Pengadilan Agama dalam memberikan perlindungan terhadap anak luar nikah. Studi ini menggunakan pendekatan kasus dan filsafat hukum. Hasil dari studi ini menunjukkan bahwa Pengadilan Agama, dalam menetapkan asal-usul anak, pada umumnya telah memberikan perlindungan hak-hak anak luar nikah secara proporsional. Demi kepentingan terbaik bagi anak, para hakim mengabulkan pengakuan anak dan memberikan hubungan hukum anak luar nikah dengan ayah biologisnya secara terbatas. Adanya hubungan hukum tersebut telah memberikan kepastian hukum tentang status anak luar nikah sebagai anak biologis dari kedua orang tuanya. Hakim juga telah mewujudkan keadilan distributif dengan memberikan kemaslahatan bagi anak luar nikah, tanpa mengabaikan norma hukum Islam tentang kemurnian nasab.

Kata kunci: perlindungan anak luar nikah, kepentingan terbaik bagi anak, putusan hakim

¹Universitas Islam Negeri Sayyid Ali Rahmatullah Tulungagung, Indonesia

²Faculty of Humanities, Leiden University, Netherland

E-mail: rahma.ringinpitu@gmail.com, s.siddik@hum.leidenuniv.nl

Introduction

The issuance of Constitutional Court Decision Number 46/PUU-VIII/2010 concerning children born out of wedlock has become the trigger for the emergence of Islamic family law reform in Indonesia, especially concerning the legal status and civil rights of children born out of wedlock. The definition of a child out of wedlock as referred to in this paper is a child resulting from adultery. MUI Fatwa No. 11 of 2012 defines a child resulting from adultery as a child born as a result of a legal relationship outside of marriage according to religious provisions.¹

The Constitutional Court Decision Number 46/PUU-VIII/2010, at a practical level, has increased legal protection and justice for illegitimate children in religious courts. The legal effect of the Constitutional Court Decision is that religious court judges in determining the origin of children born out of wedlock generally consider the best interests of the child which is one of the principles of child protection as stated in the Convention on the Rights of Children and Law No. 23 of 2002 concerning Child Protection. Unfortunately, even though the decision is a progressive legal breakthrough in protecting children's constitutional rights and has provided for a civil relationship between an illegitimate child and his biological father, this decision still leaves problems because it contains ambiguity in the legal substance regarding the phrase "a child born out of wedlock." It is unclear whether what is meant by this term is children born from unregistered marriages or whether it also includes children born as a result of adultery.²

The absence of further explanation regarding these two phrases has given rise to various understandings among the Indonesian Muslim community. Apart from that, the absence of a detailed explanation regarding the concept of the best interests of the child has prompted judges to make interpretations of which decision they view can fulfill

¹ Majelis Ulama Indonesia, "Fatwa MUI Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya" (2012).

² Sabilah Rosyad, "Status Hukum Anak di Luar Perkawinan dalam Hukum Islam dan Implementasinya dalam Perkembangan Peraturan Perundang-Undangan di Indonesia (Studi Tentang Putusan Mahkamah Konstitusi)," *Jurnal Hukum Islam*, 15.1 (2017): 155–79.

the best interests of the child. the best for the child in the legal cases faced by him.

Some studies related to the protection of children born out of wedlock in Muslim countries have been written by researchers. Eva Schlumpf, who studies child protection out of wedlock in Morocco, points to legal reforms. Even though the children born out of wedlock in Moroccan family law do not have a family relationship with their father, the father can acknowledge the child through the court.³ In contrast to Morocco, in Malaysia, as stated by Paizah Hj Ismail, Md Zawawi and Abu Bakar, legal instruments in Malaysia have not yet provided legal protection for children born out of wedlock because they are still guided by classical fiqh norms, so many out of wedlock children are found living abandoned.⁴

In Indonesia, research by Euis Nurlaelawati and Stijn Cornelis Van Huis shows that the Constitutional Court Decision No. 46/PUU-VIII/2010 has contributed to the reform of Indonesian Islamic family law. The Religious Courts have recognized the existence of a limited civil relationship between illegitimate children and their biological fathers. According to the authors, child recognition is permissible as long as it does not conflict with the concept of lineage.⁵ According to Ali Abu Bakar et al, the Constitutional Court's decision which gives civil relations to children born out of wedlock with their fathers is relevant to the concept of *hifz al-nafs* in Islamic teachings.⁶

³ Eva Schlumpf, "The Legal Status of Children Born Out of Wedlock in Morocco," *Electronic Journal of Islamic and Middle Eastern Law (EJIMS)*, 4 (2016): 1–26.

⁴ Paizah Hj Ismail, "Illegitimate Child from The Perspektif Sharia and Islamic Law in Malaysia," *Jurnal Fiqh*, 10 (2013): 77–90. See also Md Zawawi Abu Bakar, Wan Ibrahim Wan Ahmad, and Mahyuddin Abu Bakar, "Registration Problems of Illegitimate Children among Muslims in Malaysia," *Journal of Islamic Studies and Culture*, 5.1 (2017): 9–15, <https://doi.org/10.15640/jisc.v5n1a2>.

⁵ Euis Nurlaelawati and Stijn Cornelis Van Huis, "The Status of Children Born Out of Wedlock and Adopted Children in Indonesia: Interactions Between Islamic, Adat, and Human Rights Norms," *Journal of Law and Religion*, 34.3 (2019): 356–82, <https://doi.org/10.1017/jlr.2019.41>.

⁶ Ali Abubakar, Juliana, and Maisyarah Rahmi Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of *Hifz al-Nafs* as Law Illat', *Samarah*, 5.1 (2021), 153–73 <<https://doi.org/10.22373/sjhh.v5i1.9256>>.

A slightly different view came from Muhammad Isna Wahyudi and Sarifudin. According to them, the recognition of children in religious courts should have implications for the legitimacy of children, so that children born out of wedlock receive legal protection as legitimate children, and obtain full rights from their parents.⁷

So far, no in-depth study has been found on the application of the principle of best interests for the child in determining the origin of children born out of wedlock in terms of the theory of legal objectives which is interconnected with the theory of *maqâshid al-sharî'a*. This study is important to provide an overview of legal practices related to the determination of the origin of children born out of wedlock in a religious court based on the best interests of the child. Related to this, Gustav Radbruch put forward three basic values of legal purposes which are called priority principles, namely legal certainty, justice, and expediency.⁸ The theory of the purpose of law in Islamic law has relevance to *maqâshid al-sharî'a*, namely the value and meaning behind law-making, whose end is a benefit.⁹

This article discusses how the application of the principle of best interests for children is carried out by religious court judges in protecting children born out of wedlock. Based on this principle, religious courts in determining the origin of children born out of wedlock must consider the best interests of the child.¹⁰ The principle of the best interests of the child is realized by providing legal certainty regarding the existence of a legal relationship between an illegitimate child and his parents through a child recognition mechanism.

⁷ Muhamad Isna Wahyudi, "Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage," *Al-Jami'ah: Journal of Islamic Studies*, 55.1 (2017): 127, <https://doi.org/10.14421/ajis.2017.55.1.127-154>. See Sarifudin, "Teori *Maslahat* al-Tufi dan Penerapannya, dalam Analisis Kasus Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Status Anak di Luar Perkawinan" (UIN Sunan Kalijaga Yogyakarta, 2015).

⁸ Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Crepido*, 1.1 (2019): 14, <https://doi.org/10.14710/crepido.1.1.13-22>.

⁹ Jasser Auda, *Fiqh al-Maqâshid Inâthab al-Abkâm al-Syar' iyyah bi Maqâshidihâ* (USA: International Institute of Islamic Thought, 2006), p. 15.

¹⁰ Mahkamah Agung Republik Indonesia, "Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin" (2019).

In addition, this article also examines several judges' decisions regarding the status of children born out of wedlock which include different perspectives including the application of the concept of best interests for children born out of wedlock, aspects of legal certainty, and upholding distributive justice for them, as well as judges' efforts to protect their rights born out of wedlock proportionally to realize the benefit for them.

Research Method

This research is a normative legal study with a legal philosophy and case study approach. The legal philosophy approach is used to examine the legal values contained in the decisions of religious court judges in determining the origin of children born out of wedlock. Meanwhile, case studies are used as input for the analysis of the protection of the rights of children born out of wedlock in Indonesia. The primary data source used in this research is the decision of the religious court regarding the origin of children born out of wedlock after the Constitutional Court Decision No. 46/PUU-VIII/2010 downloaded from the directory page of Supreme Court decisions and laws and regulations related to the protection of children's rights. While the secondary data sources consist of legal journals, books, theses, and dissertations that discuss the protection of the rights of children born out of wedlock. The collected data is then processed and analyzed critically and in depth by using the theory of legal objectives and *maqâsid al-shari'ah*.

Implementation of the Best Interest for Children through Legal Certainty Principle

Legal products produced by judges are part of the law enforcement process which aims to create legal certainty. The absence of legal certainty in the judge's decision means that it has violated the purpose of the law. The law will be meaningful if it contains the value of legal certainty because it can be used as a guideline for society. Legal certainty requires that the law must be implemented strictly for every concrete event, and there should be no deviation. Legal certainty provides protection to justice

seekers from the arbitrary actions of other parties, which are related to efforts to maintain order in society.¹¹

From various cases of determining the origin of children born out of wedlock in the religious courts, it can be seen that the application for determining the origin of children was filed by a married couple who already had a child from sexual relations outside of marriage before the marriage between the two occurred. They submit an application for child recognition to the religious court so that the child born out of wedlock has a clear legal status as a child of both parents. This is the case in Decree No. 0010/Pdt.P/2015/PA.Mgt., Determination No. 0005/Pdt.P/2016/PA.Kdr., Determination No. 0016/Pdt.P/2016/PA.JP., Determination No. 104/Pdt.P/2020/PA.Wt., Determination No. 197/Pdt.P/2020/PA.Tng., Determination No. 115/Pdt.P/2021/PA.Ngw., and Determination No. 25/Pdt.P/2021/PA.Ngw. Without recognition, children born out of wedlock will experience difficulties in obtaining a birth certificate that includes the names of both parents, thus causing the child's constitutional rights to be unprotected.

Judges are one of the parties that contribute greatly to ensuring the protection of children's rights.¹² In resolving cases of determining the origin of children born out of wedlock, the majority of religious court judges have protected by granting the request for recognition of children from both parents. This is reflected in various judges' decisions regarding the origins of children, as reflected in the seven decisions above. In the stipulation, it is stated that the child is the biological child of his mother's father. However, the recognition of a child by a religious court does not make a child out of wedlock a legitimate child, because the birth of the child outside of marriage is legal according to religion and state.¹³

¹¹ Julyano and Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," p. 14.

¹² Khoiruddin Nasution, "Perlindungan Terhadap Anak dalam Hukum Keluarga Islam Indonesia," *Al-Adalah*, 13.1 (2016): 1–10.

¹³ "Undang-Undang Nomor 24 Tahun 2013 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan," Kementerian Hukum dan Hak Asasi Manusia, (2014) Pasal 50 ayat (2).

The granting of the request for recognition of a child constitutes the provision of clarity on the origin of the child and legal certainty regarding the existence of a legal relationship between a child out of wedlock and both parents. The existence of legal certainty means that the rights of children born out of wedlock for physical, emotional, and intellectual care from both parents can be guaranteed and protected by law.¹⁴

Upholding Distributive Justice for Children Born out of Wedlock

Religious court judges in Indonesia in deciding cases regarding the determination of the origin of children have provided justice for children born out of wedlock through the determination of the recognition of children by both parents as reflected in the seven provisions mentioned above. In making decisions, the judges used Constitutional Court Decision No. 46/PUU-VIII/2010 as a legal consideration for giving civil relations to children born out of wedlock with biological fathers. The civil relationship in question does not include family relations but is limited to the obligation of parents to meet the needs of the child's life and the obligatory will of the biological father after death.

Determination of the civil relationship of children born out of wedlock with their biological fathers shows that the judges have applied distributive justice as Aristotle's theory of justice, namely justice that gives each person a share proportionally.¹⁵ Aristotle is of the view that justice does not mean equality, or that everyone gets the same share. According to him, it is necessary to distinguish between numerical similarity and proportional similarity. Numerical equality means that all people are equal before the law, while proportional equality means that everyone has the right to what is due.¹⁶

¹⁴ Michael Freeman, *A Commentary on The United Nations Convention on The Rights of The Child Article 3: The Best Interest of The Child* (Leiden: Martinus Nijhoff Publisher, 2007), p. 27.

¹⁵ Agus Yudha Hernako, *Asas Proporsionalitas dalam Kontrak Komersial* (Jakarta: Kencana PrenadaMedia Group, 2010), pp. 84–85.

¹⁶ Mashuril Anwar, Rini Fathonah, and Niko Alexander, "Menelaah Keadilan dalam Kebijakan Penanggulangan *Illegal Fishing* di Indonesia: Perspektif Konsep Keadilan Thomas Aquinas," *Sasi*, 27.2 (2021): 129, <https://doi.org/10.47268/sasi.v27i2.357>.

A similar opinion was expressed by John Rawls who emphasized that equality of rights and position is a means of creating justice.¹⁷ In creating justice, it is necessary to emphasize the importance of the original position which is based on rationality, freedom, and equal rights to govern the structure of society. These three are the main principles that must be used as the basic attitude of all parties involved in the process of creating justice.¹⁸ In the original position, children born out of wedlock should have the same rights as legitimate children in obtaining civil rights from their biological father. But John Rawls emphasized that justice does not mean that everyone should always get something in the same amount. Differences in terms of economy and social distribution can be justified as long as these differences have been regulated in laws and regulations so that these differences guarantee and provide benefits for everyone, and there is status, position, and space open to everyone.¹⁹ According to him, justice allows for differences in treatment as long as these differences benefit everyone.²⁰

Based on the theory above, it can be understood that justice aims to give every one what is their right proportionally. Enforcing justice for children born out of wedlock does not mean having to equate the rights of children born out of wedlock with legitimate children. It is appropriate that the legal status and civil rights obtained by children born out of wedlock are different from legitimate children. Equating the rights of children born out of wedlock with legitimate children will only cause injustice to legitimate children.

The recognition of children in the Indonesian context is different from the recognition of children in fiqh literature. The acknowledgment of a child in fiqh is called *istilhâq*, namely the acknowledgment of an adult male that he is the father of a child whose ancestry is unknown.²¹

¹⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2014), pp. 173–75.

¹⁸ John Rawls, *Teori Keadilan: Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial dalam Negara* (Yogyakarta: Pustaka Pelajar, 2006), p. 13.

¹⁹ John Rawls, *A Theory of Justice*, Revised Ed (Cambridge Massachusetts: The Belknap Press of Harvard University, 1999), p. 53.

²⁰ Rawls, p. 88.

²¹ Abû al-Abbâs ibn Muhammad al-Shâwî Ahmad, *Hâsiyah al-Shâwî 'alâ al-Syarh al-Shaghîr*, Juz III (t.tp.: Dâr al-Ma'ârif, n.d.), p. 540.

With the recognition of the child (*istilhâq*), a lineage relationship arises between the child who is recognized and the man who recognizes the child. The family relationship gives rise to rights and obligations in terms of maintenance, guardianship, and inheritance. Meanwhile, the recognition of children in the Indonesian context does not always make children have a family relationship with their fathers but only builds on a civil relationship between the two. To establish a family relationship between a child and his father, he must go through the mechanism of child ratification, namely legalizing someone as his child. Population Administration Law No. 24 of 2013 in Article 50 stipulates that child validation applies to children born from legal marriages according to religious law and state law.

Realizing Benefits for the Children Born out of Wedlock

The law was created to provide benefits to everyone. Gustav Radbruch, an adherent of the utilitarian school, argues that law must be useful for the people.²² A similar opinion was expressed by Jeremy Bentham²³ who stated that laws are made for humans, so laws must be implemented and enforced to provide benefits, pleasure, and satisfaction for society. The utilitarianism school always emphasizes the application of law to the aspect of benefit for people's lives because the law is made to achieve people's welfare. The benefits of the judge's decision can be seen from two aspects; first, the benefits for the community at large, meaning that the judge's decision can provide satisfaction to the community about the importance of the existence of law enforcement. Second, the benefits that can be felt by the litigants (applicant or plaintiff).

Based on the study of the rulings of the religious courts regarding the origins of children, it can be understood that the judges of the religious courts have generally provided benefits to all parties. This means that the court's decision has provided benefits in a balanced and proportionate

²² Rommy Haryono Djojorahardjo, "Mewujudkan Aspek Keadilan dalam Putusan Hakim di Peradilan Perdata," *Jurnal Media Hukum dan Peradilan* ISSN: 2654 (2019): 91.

²³ Antonius dan E. Fernando Manullang Cahyadi, *Pengantar Ke Filsafat Hukum* (Jakarta: Kencana PrenadaMedia Group, 2007), pp. 62–63.

manner to the litigants in particular and society in general. The benefit that is obtained by the child is the clarity of the origin of the child with both parents. This effort was made by religious court judges to provide legal certainty so that children have a clear status, have human dignity, and have civil rights inherent in children can be protected. In the theory of *maqâshid al-shar'i'a*, this effort is a manifestation of *hifzh al-nasl* and *hifzh al-'irdh*.

According to al-Ghazâli, *hifzh al-nasl* (caring for offspring) is the goal of Islamic law at the level of necessity.²⁴ As an implementation of the concept of *maqâshid* in the realm of *hifzh al-nasl*, the judges do not give an illegitimate child a bloodline relationship with his biological father. However, to protect the dignity of the child and fulfill the child's civil rights to know and be cared for by his parents, the judge gives recognition to the child from his biological father. This is following the mandate of Article 7 of the 1989 Convention on the Rights of the Child.

The use of the term "biological child" in determining the origin of children born out of wedlock indicates a distinction in legal status between children born legally according to religion and children born from relationships without marriage. The mention of the term "biological child" finds its relevance to the opinion of Ibn Abidin who divides children into two, namely *al-walad al-shar'iy* (legitimate children) and *al-walad al-haqiqiy* (true children). Children born out of wedlock are categorized as real (biological) children because they are *makhlûqah* born from the sperm of their biological father.²⁵

As for the proof of the results of the DNA test (Deoxiribo Nucleic Acid) in the case of Determination No. 0016/Pdt.P/2016/PA.JP. and Determination No. 104/Pdt.P/2020/PA.Wt. is not used as a judge as a consideration in giving a child's illegitimate relationship with his biological father, but only as subsidiary evidence in giving a civil relationship for an illegitimate child with a biological father. This shows that in Islamic

²⁴ Abû Hamid al-Ghazâli, *al-Mustashfâ fî 'Ilmi al-Ushûl*, Juz II (Beirut: Dâr al-Kutub al-Ilmiyah, 1983), p. 258.

²⁵ Ibn Abidin, *Radd al-Muhtâr 'Alâ al-Dur al-Mukhtâr Syarh Tanwîr al-Abshâr*, Juz IV (Riyadh: Dâr 'Alam al-Kutub, 2003), p. 102.

law not all cases of lineage determination can be proven by science and technology.

The judge's decision found its relevance to the objectives of Islamic law in the realm of *hifz al-'irdh*. Jasser Auda interprets *hifz al-'irdh* by protecting human dignity and human rights.²⁶ The need for recognition of children apart from authentic evidence regarding legal certainty of the child's status as a biological child of both parents, is also to provide guarantees and protection for children related to the child's social welfare.

The judge's decision not to provide for an illegitimate child's kinship with a biological father shows the tendency of judges to avoid religious violations. This is done in the context of *sad al-zharî'a* or efforts to close the possibility of negative impacts occurring in the future. According to Ibrahim Hosen, *sad al-zharî'a* can be applied to anything that can be considered harmful to religion and society in general.²⁷ It is feared that giving bloodline relations to children born out of wedlock with biological fathers could damage the sacredness of marriage and spread sexual relations without marriage (adultery). They are guided by the principle that the way to obtain legitimate children is through marriage, as explained in Q.S. Al-Furqan verse 54. Al-Qurthûbî interprets the lineage in the verse by mixing male and female sperm based on shari'ah provisions.²⁸ Whereas sexual relations carried out without marriage (adultery) can cause lineage damage.²⁹

The above judge's view is also following the hadith "*al-walad li al-firâsy wa li al-'âhiri al-hajar*" (children are the owners of *firâsy*, and adulterers are stones).³⁰ The majority of scholars believe that what is meant by *firâsy* in this hadith is a woman/wife, while the owner of *firâsy*

²⁶ Jasser Auda, *Maqâshid al-Syari'ah as Philosophy of Islamic Law: A System Approach* (London-Washington: The International Institute of Islamic Thought, 2007), p. 23.

²⁷ Muhammad Wahyuni Nafis, *Kontekstualisasi Ajaran Agama* (Jakarta: IPHI-Paramadina, 1995), p. 272.

²⁸ Al-Qurthûbî, *al-Jâmi' Li Ahkâm Al-Qur'ân*, Juz XIII (Kairo: Dâr al-Kutub al-Mishriyyah, 1964), p. 59.

²⁹ Abû Bakr Ibn Abdillah Ibn 'Araby, *Ahkâm al-Qur'ân*, Juz VI (Beirut: Dâr al-Fikr, n.d.), p. 166.

³⁰ 30 Abû Abdillah Muhammad bin Ismail al-Bukhârî, *Shâhib al-Bukhârî*, Jilid VIII (Beirut- Libanon: Mu'assasah al-Târikh al-'Arabi, n.d.), p. 210.

is a man/husband. The wife becomes the *firâsy* of the husband after the marriage contract takes place (both legal and *fâsid* marriages) and allows for sexual relations between the two of them.³¹ Imam Ahmad ibn Hanbal even requires that there must be sexual relations between the two of them.³² The Hanâfiyah scholars are of the view that a wife becomes *firâsy* only because of a contract, not requiring sexual relations.³³ Thus, children who are born from a legal marriage directly obtain lineage rights from their fathers without requiring recognition or other ways of determining lineage.

If a child is born without the marriage of his parents, the fiqh scholars agree that the child is assigned to the mother who gave birth to him, just like *li' ân* children. They base their opinion on the hadith *fi waladi al-zinâ li ahli ummihî man kânû*.³⁴ As for the child's lineage with his father, they are of the view that adultery does not cause a child's lineage with his father, even though biologically the child is born from the seed of a man who committed adultery with his mother. They argue that lineage is a blessing, while adultery is a disgraceful act and a crime that does not deserve a favor in return.³⁵

The absence of a kinship relationship between the child and the biological father has implications for the absence of guardianship and inheritance relations between the two. This opinion is followed by the majority of Muslim scholars and the Indonesian Muslim community because it has many supporting arguments and is seen as more relevant to be implemented in Indonesia. Thus, considering the validity of the parent's marriage by referring to the Marriage Law, KHI, fiqh doctrine, and MUI Fatwa No. 11 of 2012, as well as fulfilling children's human rights is an effort to realize a universal benefit.

³¹ Ibn Hajar al-Asqalani, *Fath al-Bâri Syarh Shahîh al-Bukhârî*, Juz XII (Beirut: Dâr al-Kutub al-Ilmiyyah, 1997), pp. 36–37.

³² Al-Asqalani, p. 41.

³³ Wahbah al-Zuhaili, *al-Fiqh al-Islâmi Wa 'Adillatuh*, Juz VII (Damaskus: Dâr al-Fikr, 1985), p. 675.

³⁴ Ibn Rusyd, *Bidâyah al-Mujtabid Wa Nihâyah al-Muqtashid*, Juz II (Beirut-Lebanon: Beirut-Lebanon: Dâr al-Ma'rifah, 1982), p. 58.

³⁵ Ahmad al-Syarbasi, *Yas'alûnaka Fi al-Dîn Wa al-Hâyah*, Jilid IV (Beirut: Dâr al-Jayl, 1977), p. 103.

Other children's rights are to obtain maintenance, guarantee education, and good health. To realize this interest, the panel of judges granted the right to provide for children born out of wedlock from biological fathers. Giving a living contains three aspects of meeting the basic needs of children. First, fulfilling the child's physiological needs, such as nutritious food, clothing, shelter, and health care costs. Providing a living in the form of the physiological needs of the child finds its relevance to the *maqâshid* concept in the realm of soul care (*hifzh al-nafs*) which includes the fulfillment of the rights to life, namely the right to a decent and good life. The maintenance of survival allows children to achieve social welfare. If the right to subsistence is not fulfilled, it can result in a threat to the existence of the child's soul, such as children living abandoned, starving, or malnutrition. Elimination of child neglect is a protection for the soul of the child (*hifzh al-nafs*).³⁶

Second, meeting the spiritual or spiritual needs of children is part of the implementation of *maqâshid* in the realm of *hifzh al-dîn* (maintaining the right to religion and worship). Parents must facilitate children to become more empowered and stronger in terms of spirituality through good religious education and actualizing it in their daily behavior. This is following religious teachings which order men (fathers) to look after their families, including their children, as stated in Q.S. al-Tahrîm verse 6 which calls on humans to protect themselves and their families from the fires of hell.

Third, fulfilling the intellectual needs of children, namely providing good education and knowledge to children. This is the implementation of benefits in the realm of intellectual protection (*hifzh al-'aql*). Education is an instrument to realize *hifzh al-'aql*. As stated by Jasser Auda, the manifestation of *hifzh al-'aql* is the development of a scientific mind or a journey to study.³⁷ Quality education is the goal of protecting the mind in the context of contemporary times.³⁸

³⁶ Ali Abubakar, Juliana, and Maisyarah Rahmi Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of *Hifz al-Nafs* as Law Illat," *Samarah*, 5.1 (2021): 153–73, <https://doi.org/10.22373/sjhk.v5i1.9256>.

³⁷ 37 Auda, *Maqâtsid al-Syari'ah as Philosophy of Islamic Law: A System Approach*, p. 22.

³⁸ Mohamad Anang Firdaus, "Maqâshid al-Syari'ah: Kajian Mashlahah Pendidikan dalam Konteks UN Sustainable Development Goals," *JRTIE: Journal of Research and Thought of Islamic Education*, 1.1 (2018): 73–95.

Regarding the issue of property protection, the judges have made an interesting legal breakthrough. The judge did not provide an inheritance relationship between the illegitimate child and the biological father because the two were seen as having no kinship relationship. The judges are guided by fiqh literature. The majority of scholars think that children born out of wedlock have no inheritance relationship with the biological father and biological father's family based on the hadith "*ayyumâ rajulin 'âhara bi hurratin au 'amatin fa al-waladu waladu al-zinâ, lâ yaritsu wa lâ yûratsu*".³⁹ However, to protect children, judges make efforts to find the law by using a teleological-sociological approach by granting an obligatory will from the biological father based on MUI Fatwa No. 11 of 2012.⁴⁰

In the context of applying the obligatory will to children born out of wedlock, it can be said that the judge has implemented the principle of *hifzh al-mâl* (maintenance and development of assets). Preservation of assets in Islam also necessitates the protection of assets that should be owned by children, so that children can live prosperously and prosper others.

The judge's decision that does not provide for lineage, guardianship, and inheritance between children born out of wedlock and biological fathers does not contradict the principle of basic human benefit, because these three do not threaten the existence of human needs. This means that the child is still able to live and carry out his life even though there is no kinship relationship with the biological father because the child has received recognition or status as a biological child from his father. Likewise, with guardianship rights, children born out of wedlock will still be able to carry out marriages even without the presence of a nasab guardian, because their presence can be replaced by a judge's guardian. The provisions for guardians of judges for children born out of wedlock in Indonesian Islamic law have been regulated in Article 23 paragraph

³⁹ Wahbah al-Zuhaili, *al-Fiqh al-Islâmi Wa 'Adillatub*, Juz VIII (Damaskus: Dâr al-Fikr, 1985), pp. 431–32.

⁴⁰ Rohmawati and Ahmad Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children : A Study on the Protection of Biological Children's Civil Rights," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 21.1 (2021): 1–19, <https://doi.org/10.18326/ijtihad.v21i1.1-19>.

(1) KHI which states that those who act as guardians for marriages for children whose ancestry is unknown are judges' guardians. This legal provision refers to the opinion of fiqh scholars that the guardian of marriage for children born out of wedlock is the ruler (sultan).⁴¹

In the matter of inheritance, the author agrees with Suryati that inheritance is no longer *al-dharûriy* (emergency) need for children born out of wedlock because children can obtain the inheritance of their biological father through the *wasiat wajibah* (obligatory will).⁴² The implementation of the obligatory will can be carried out in ways as stipulated in KHI Articles 195 and 196, namely, it must be carried out in the presence of two witnesses or before a notary, and a maximum of one-third of the deceased's inheritance is given unless all the heirs agree.

Proportional Protection of Children out of Wedlock's Rights

The construction of protecting the civil rights of children born out of wedlock in religious courts generally reflects the best interests of the child without ignoring the norms of Islamic law regarding lineage purity. The author agrees with Euis Nurlelawati and Stijn Cornelis van Huis that the determination of child recognition and the granting of legal relations between illegitimate children and their biological fathers is permissible as long as they do not conflict with the concept of lineage in Islamic teachings.⁴³

The judge's considerations in determining the civil relationship of an illegitimate child with his biological father in determining the origin of the child are in the context of providing legal certainty, justice, and the benefit of the child, as well as the general benefit based on the principle "*al-hukmu yattabi'u al-maslahah al-râjihah*" (the law follows a stronger interest or benefit) and the need for a legal solution that does not

⁴¹ Ibrahim al-Baijuri, *Hâsiyyah al-Baijuri*, Juz II (Beirut: Dâr al-Kutub al-'Ilmiyyah, 1999), p. 189.

⁴² Suryati, "Rekonstruksi Perlindungan Hukum Atas Hak-Hak Keperdataan Anak Hasil Perzinahan yang Berbasis Nilai Keadilan" (Universitas Islam Sultan Agung (UNISSULA, 2016), p. 50.

⁴³ Nurlelawati, Euis; Huis, Stijn Cornelis Van, "The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions Between Islamic, Adat, and Human Rights Norms" (Cambridge - Crime), 2019 p. 370.

contain any harm. This means that the judge in carrying out a benefit for one party may not cause harm or *mafsadah* for the other party. The consideration of benefit realized by religious court judges is still in the corridor of *nash*, as is the criterion of *maslahah* raised by al-Bûthi.⁴⁴ The judge's considerations are also heavily influenced by the traditions and needs of the Indonesian Muslim community which are very strong in adhering to the sacredness of the institution of marriage.

The proportional fulfillment of legal protection has provided happiness and satisfaction for the litigants and has not created a new polemic or conflict because it does not equate the status and civil rights of children born out of wedlock with legitimate children. Legal protection for children born out of wedlock can still be carried out without having to equate their legal status with legitimate children. This is following John Rawls's theory which states that the law must create an ideal society, namely a society that tries to increase happiness and reduce unhappiness.⁴⁵

Determination of a different legal status between children born out of wedlock and legitimate children is relevant to the *fiqh* rules *dar'u al- mafâsid muqaddam 'alâ jalb al-mashâlih* (avoiding evil takes precedence over bringing good) and the rules *izâ ta' âradhat mafsadatâni aw dhararaini rû' iya a'zhamuhuma dhararan birtikâbi akhaffihimâ* (if there are two conflicting damages or dangers, then the greater damage or danger is avoided by doing the action with the smaller risk of danger).

The construction of protection for children born out of wedlock above is different from the views of M. Isna Wahyudi and Sarifudin. In his research, M. Isna Wahyudi argues that the limited establishment of a civil relationship for illegitimate children with biological fathers is considered to reduce the protection of children's rights. According to him, *maslahah*-based child protection is in the form of fulfilling the full rights of the child from both parents, including living, caring, inheritance, and

⁴⁴ Muhammad Said Ramadhan al-Bûthi, *al-Dhawâbith al-Mashlahah Fi al-Syarî'ah al-Islâmiyyah* (Beirut: Mu'asasah al-Risâlah, 1977), pp. 119–248.

⁴⁵ La Ode Muhammad Iman Abdi Anantomo Uke, "Teori Keadilan Kontemporer (Sebuah Kajian Teori Hukum)," *AL-'Adl*, 10.1 (2017): 84–103. See Also Abdul Qodir Zaelani. "Politik Hukum 'Umar Bin al-Khaththâb dan Relevansinya dengan Pengembangan Hukum Keluarga di Indonesia." (PhD diss., UIN Raden Intan Lampung, 2020), pp. 21-27.

guardianship.⁴⁶ In line with M. Isna Wahyudi, Sarifudin in his thesis argues that efforts to protect children born out of wedlock based on *maslahah* are giving kinship relations to children born out of wedlock with their fathers so that children have full civil rights from their fathers.⁴⁷

The second argument that equates the rights of children born out of wedlock with legitimate children is relevant to the concept of *maslahah* al-Thûfi which states that if there is a conflict between *maslahah* and the texts of the Qur'an, and *ijma'*, *maslahah*, is the priority.⁴⁸ However, in judicial practice in Indonesia, the concept of *maslahah* al-Thûfi is not used as a philosophical basis for religious court judges in determining the status of children born out of wedlock because they are seen as not following the reality of Indonesian society who live in a religious character that upholds the sacredness of marriage.

Determination of the recognition of children born out of wedlock as biological children in a court decision is a manifestation of the application of the principle of the best interests of the child. This determination has provided benefits and benefits for children born out of wedlock. The judge did not use the term "adultery child" as in MUI Fatwa No. 11 of 2012 and fiqh literature, because psychologically the mention of "adultery" can hurt a child's heart. Therefore, the judge uses the term "biological child" which is seen as more humane and friendly for children born out of wedlock. Nonetheless, MUI Fatwa No. 11 of 2012 has contributed to the development of the substance of contemporary Islamic family law in Indonesia,⁴⁹ to fill legal voids and as a source of material law in religious courts.⁵⁰

⁴⁶ Wahyudi, "Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage."

⁴⁷ Sarifudin, "Teori Maslahat al-Tufi dan Penerapannya, dalam Analisis Kasus Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Status Anak di Luar Perkawinan".

⁴⁸ Musthafa Zaid, *al-Mashlahah Fi al-Tasyri' al-Islâmi Wa Najmuddin al-Thûfi* (Kairo: Dâr al-Fikr al-'Arab, 1964), p. 132.

⁴⁹ 49 La Jamaa, "Fatwas of The Indonesian Council of Ulama and Its Contributions to The Development of Contemporary Islamic Law in Indonesia," *IJIMS: Indonesian Journal of Islam and Muslim Societies*, 8.1 (2018), 29–56. <https://doi.org/10.18326/ijims.v8i1>.

⁵⁰ Haniah Ilhami, "Kontribusi Fatwa Majelis Ulama Indonesia Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya dalam Hukum Keluarga di Indonesia," *Mimbar Hukum*, 30.1 (2018), 171–86.

Thus, the determination of the status of children born out of wedlock as biological children and limited civil relations with their fathers is a solution to the legal problems of children born out of wedlock which at the level of law in books are still being debated between the provisions in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law which does not provide legal protection for children born out of wedlock and the Constitutional Court Decision No. 46/PUU-VIII/2010 which seems to equate the rights of children born out of wedlock with legitimate children.

The application of the best interest principle for children in determining the origin of Children born out of wedlock can have several implications. First, children born out of wedlock have a clear legal status; Second, the rights of children born out of wedlock are guaranteed and protected; Third, children born out of wedlock can live, grow, and develop normally; Fourth, children born out of wedlock are protected from neglect, violence, and discrimination; Fifth, children born out of wedlock are avoided from the negative stigma in society as children of adultery or illegitimate children; Sixth, children born out of wedlock have confidence because they have a clear legal status; Seventh, children born out of wedlock have the opportunity to become useful and responsible human beings.

Conclusion

This study shows that religious courts in Indonesia, in general, have recognized the existence of civil relations between children born out of wedlock and their biological fathers, while adhering to the fiqh doctrine which places lineage as the most important element in human life. Determination of the origin of a child as a biological child of both parents is a form of legal protection for the rights of children born out of wedlock proportionally. Based on the best interests of the child, the judge has provided legal certainty regarding the child's status. The judge has also placed human dignity (*hifzh al-'irdh*) in the form of clarity on the child's status and civil relations with both parents as the main consideration. This legal status has implications for fulfilling the child's

rights to survival (*hifzh al-nafs*), spiritual development (*hifzh al-dîn*), proper education (*hifzh al-'aql*), and the right to his father's inheritance in the form of a mandatory will (*hifzh al-mâl*).

Based on various religious court decisions regarding the origin of children born out of wedlock, shows that the Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11 of 2012 has implications for the protection of the rights of children born out of wedlock. Determination of recognition of children and limited civil relations between children born out of wedlock and biological fathers has provided distributive justice, benefits, and benefits for children born out of wedlock, because the civil rights of children from their biological fathers, in the form of parental rights, maintenance, and obligatory wills, can be guaranteed and protected.

This research is still limited to studying the protection of the rights of children born out of wedlock through documents of religious court decisions regarding the determination of the origin of the children. Accordingly, more in-depth empirical research is needed. Thus, more comprehensive information can be found, so that it can contribute to the implementation of child protection out of wedlock based on the best interests of the child in the family law system in Indonesia.

Author Contributions

Both authors worked together on this research project. *Rohmawati* led the planning, data collection, analysis, and initial writing of the paper, while *Syahril Siddiq* assisted in the plan refinement and contributed to data collection, especially in comprehensively reviewing the literature and data from Court Decision. *Rahmawati* did the data analysis, and both authors reviewed and improved the paper.

Bibliography

Abu Bakar, Md Zawawi, Wan Ibrahim Wan Ahmad, and Mahyuddin Abu Bakar. "Registration Problems of Illegitimate Children among Muslims in Malaysia." *Journal of Islamic Studies and Culture*, 5.1 (2017): 9–15. <https://doi.org/10.15640/jisc.v5n1a2>.

- Abubakar, Ali, Juliana, and Maisyarah Rahmi Hasan. "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of *Hifz al-Nafs* as Law Illat." *Samarah*, 5.1 (2021): 153–73. <https://doi.org/10.22373/sjhc.v5i1.9256>.
- Ahmad, Abû al-Abbâs ibn Muhammad al-Shâwî. *Hâsiyah al-Shâwî 'alâ al-Syarh al-Shaghîr*. Juz III. Ttp.: Dâr al-Ma'ârif, n.d.
- Asqalani, Ibn Hajar al-. *Fath al-Bâri Syarh Shahîh al-Bukhâri*. Juz XII. Beirut: Dâr al-Kutub al-Ilmiyyah, 1997.
- Anwar, Mashuril, Rini Fathonah, and Niko Alexander. "Menelaah Keadilan dalam Kebijakan Penanggulangan *Illegal Fishing* di Indonesia: Perspektif Konsep Keadilan Thomas Aquinas." *Sasi*, 27.2 (2021): 126. <https://doi.org/10.47268/sasi.v27i2.357>.
- Auda, Jasser. *Fiqh al-Maqâshid Inâthah al-Ahkâm al-Syar' iyyah Bi Maqâshidihâ*. USA: International Institute of Islamic Thought, 2006.
- . *Maqâshid al-Syarî'ah as Philosophy of Islamic Law: A System Approach*. London-Washington: The International Institute of Islamic Thought, 2007.
- Baijuri, Ibrahim al-. *Hâsiyah al-Baijuri*. Juz II. Beirut: Dâr al-Kutub al-Ilmiyyah, 1999.
- Bukhâri, Abû Abdillâh Muhammad bin Ismâil al-. *Shâhih al-Bukhâri*. Jilid VIII. Beirut-Libanon: Mu'assasah al-Târikh al-'Arabi, n.d.
- Bûthi, Muḥammad Said Ramadhân al-. *al-Dhawâbith al-Mashlahah Fî al-Syarî'ah al-Islâmiyyah*. Beirut: Mu'assasah al-Risâlah, 1977.
- Ghazâli, Abû Hamid al-. *al-Mustashfâ Fî Ilmi al-Ushûl*. Juz II. Beirut: Dâr al-Kutub al-Ilmiyyah, 1983.
- Cahyadi, Antonius dan E. Fernando Manullang. *Pengantar Ke Filsafat Hukum*. Jakarta: Kencana PrenadaMedia Group, 2007.
- Djojarahardjo, Rommy Haryono. "Mewujudkan Aspek Keadilan dalam Putusan Hakim di Peradilan Perdata." *Jurnal Media Hukum dan Peradilan* ISSN: 2654 (2019).
- Firdaus, Mohamad Anang. "Maqâshid al-Syarî'ah: Kajian Mashlahah Pendidikan dalam Konteks UN Sustainable Development Goals."

- JRTIE: Journal of Research and Thought of Islamic Education*, 1.1 (2018): 73–95.
- Freeman, Michael. *A Commentary on The United Nations Convention on The Rights of The Child Article 3: The Best Interest of The Child*. Leiden: Martinus Nijhoff Publisher, 2007.
- Hernako, Agus Yudha. *Asas Proporsionalitas dalam Kontrak Komersial*. Jakarta: Kencana PrenadaMedia Group, 2010.
- Ibn ‘Araby, Abu Bakr Ibn Abdillah. *Abkâm al-Qur’ân*. Juz VI. Beirut: Dâr al-Fikr, n.d.
- Ibn Abidin. *Radd al-Muhtâr ‘Alâ al-Dur al-Mukhtâr Syarh Tanwîr al-Abshâr*. Juz IV. Riyâdh: Dâr ‘Alam al-Kutub, 2003.
- Ilhami, Haniah. “Kontribusi Fatwa Majelis Ulama Indonesia Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya dalam Hukum Keluarga di Indonesia.” *Mimbar Hukum*, 30.1 (2018): 171–86.
- Ismail, Paizah Hj. “Illegitimate Child from The Perspektif Sharia and Islamic Law in Malaysia.” *Jurnal Fiqh* 10 (2013): 77–90.
- Jamaa, La. “Fatwas of The Indonesian Council of Ulama and Its Contributions to The Development of Contemporary Islamic Law in Indonesia.” *IJIMS: Indonesian Journal of Islam and Muslim Societies*, 8.1 (2018): 29–56. <https://doi.org/10.18326/ijims.v8i1.29-56>.
- Julyano, Mario, and Aditya Yuli Sulistyawan. “Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum.” *Crepido*, 1.1 (2019): 13–22. <https://doi.org/10.14710/crepido.1.1.13-22>.
- Mahkamah Agung Republik Indonesia. Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin (2019).
- Majelis Ulama Indonesia. Fatwa MUI Nomor 11 Tahun 2012 tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya (2012).
- Marilang. "Legal Relationship Between Illegitimate Children and Their Biological Father: The Analysis of Constitutional Court Decree No. 46 / PUU-VIII / 2010 in the Perspective of Civil and Islamic

- Law." *Journal of Indonesian Islam*, 10.02 (2016): 335–54. <https://doi.org/10.15642/JIIS.2016.10.2>.
- Nafis, Muhammad Wahyuni. *Kontekstualisasi Ajaran Agama*. Jakarta: IPHI-Paramadina, 1995.
- Nasution, Khoiruddin. "Perlindungan Terhadap Anak dalam Hukum Keluarga Islam Indonesia." *Al-Adalah*, 13.1 (2016): 1–10.
- Nurlaelawati, Euis, and Stijn Cornelis Van Huis. "The Status of Children Born Out of Wedlock and Adopted Children in Indonesia: Interactions Between Islamic, Adat, and Human Rights Norms." *Journal of Law and Religion*, 34.3 (2019): 356–82. <https://doi.org/10.1017/jlr.2019.41>.
- Qarâfi, al-Imâm Syihâb al-Dîn Abû al-Abbâs Ahmad bin Idris al-. *Syarh Tanqîh al-Fushûl Fî Ikhtishâr al-Mahshûl Fî al-Ushûl*. Beirut-Libanon: Dâr al-Fikr, 2004.
- Qurthûbî al-. *al-Jâmi' Li Ahkâm al-Qur'ân*. Juz XIII. Kairo: Dâr al-Kutub al-Mishriyyah, 1964.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2014.
- Rawls, John. *A Theory of Justice*. Revised Ed. Cambridge Massachusetts: The Belknap Press of Harvard University, 1999.
- . *Teori Keadilan: Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial dalam Negara*. Yogyakarta: Pustaka Pelajar, 2006.
- Rohmawati and Ahmad Rofiq. "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children : A Study on the Protection of Biological Children s Civil Rights." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 21.1 (2021): 1–19. <https://doi.org/10.18326/ijtihad.v21i1.1-19>.
- Rosyad, Sabilal. "Status Hukum Anak di Luar Perkawinan dalam Hukum Islam dan Implementasinya dalam Perkembangan Peraturan Perundang-Undangan di Indonesia (Studi Tentang Putusan Mahkamah Konstitusi)." *Jurnal Hukum Islam*, 15.1 (2017): 155–79.
- Rusyd, Ibn. *Bidâyah al-Mujtahid Wa Nihâyah al-Muqtashid*. Juz II. Beirut-Lebanon: Dâr al-Ma'rifah, 1982.

- Sarifudin. "Teori Maslahat al-Tufi Dan Penerapannya, dalam Analisis Kasus Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Status Anak di Luar Perkawinan." UIN Sunan Kalijaga Yogyakarta, 2015.
- Schlumpf, Eva. "The Legal Status of Children Born Out of Wedlock in Morocco." *Electronic Journal of Islamic and Middle Eastern Law (EJIMS)*, 4 (2016): 1–26.
- Suryati. "Rekonstruksi Perlindungan Hukum Atas Hak-Hak Keperdataan Anak Hasil Perzinahan yang Berbasis Nilai Keadilan." Universitas Islam Sultan Agung (UNISSULA), 2016.
- Syarbasi, Ahmad al-. *Yas'alûnaka Fi al-Dîn Wa al-Hâyah*. Jilid IV. Beirut: Dâr al-Jayl, 1977.
- Uke, La Ode Muhammad Iman Abdi Anantomo. "Teori Keadilan Kontemporer (Sebuah Kajian Teori Hukum)." *AL-'Adl*, 10.1 (2017): 84.
- Undang-Undang Nomor 24 Tahun 2013 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan, Kementerian Hukum dan Hak Asasi Manusia (2014).
- Wahyudi, Muhamad Isna. "Judges' Legal Reasoning on Child Protection: Analysis of Religious Courts' Decisions on the Case of Child Parentage." *Al-Jami'ah: Journal of Islamic Studies*, 55.1 (2017): 127. <https://doi.org/10.14421/ajis.2017.551.127-154>.
- Zaid, Musthafa. *al-Mashlahah Fi al-Tasyri' al-Islâmi Wa Najmuddin al-Thûfi*. Kairo: Dâr al-Fikr al-'Arab, 1964.
- Zaelani, Abdul Qodir. "Politik Hukum 'Umar Bin al-Khaththâb dan Relevansinya dengan Pengembangan Hukum Keluarga di Indonesia." PhD diss., UIN Raden Intan Lampung, 2020.
- Zuhaily, Wahbah al-. *al-Fiqh al-Islâmi Wa 'Adillatuh*. Juz VII. Damaskus: Dâr al-Fikr, 1985.
- . *al-Fiqh al-Islâmi Wa 'Adillatuh*. Juz VIII. Damaskus: Dâr al-Fikr, 1985.

Religious Court Decisions

Penetapan No. 0010/Pdt.P/2015/PA.Mgt.

Penetapan No. 0005/Pdt.P/2016/PA.Kdr.

Penetapan No. 0016/Pdt.P/2016/PA.JP.

Penetapan No. 104/Pdt.P/2020/PA.Wt.

Penetapan No. 197/Pdt.P/2020/PA.Tng.

Penetapan No. 115/Pdt.P/2021/PA.Ngw.

Penetapan No. 25/Pdt.P/2021/PA.Ngw.