



Child support beyond marriage in Islamic law: Revisiting Ibn Taimiyah's perspective

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ABSTRACT

This study explores the obligation of biological fathers to provide financial support for children born outside marriage, focusing on the groundbreaking views of classical jurist Ibn Taimiyah and their relevance to the modern law of child rights adopted in Indonesia. Traditional fiqh generally denies all civil rights of illegitimate children, such as maintenance, inheritance, or guardianship, assigning responsibility for their welfare to the mother or the state. Ibn Taimiyah, however, challenges this consensus by proposing a recognition mechanism (istilhaq) that can establish a paternal bond under specific conditions, with which a certain kind of child support can be imposed on the biological father. Using a juridical-normative approach, this research draws on Ibn Taimiyah's writings and classical fiqh texts as primary sources, while contemporary journals in Islamic family law and Indonesian legislation are secondary. The findings reveal that Ibn Taimiyah's concept should be considered progressive, aligns with maqāsid al-sharī'ah, and emphasizing the protection of children's socio-economic rights, lineage, and welfare. His ideas resonate with modern legal developments in Indonesia, including the Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11/2012. This study argues that integrating Ibn Taimiyah's insights can contribute to a more equitable and child-centered framework in contemporary Islamic family law.

Keywords: Maintenance Obligation; Biological Father; Istilhaq; Ibn Taimiyah's Child-Right Perspective.

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ABSTRAK

Artikel ini mengkaji kewajiban nafkah ayah biologis terhadap anak yang lahir di luar ikatan perkawinan dengan menelisik pandangan revolusioner fuqaha klasik Ibn Taimiyah serta relevansinya dengan perkembangan hukum hak anak kontemporer di Indonesia. Dalam fiqh klasik, jumhur fuqaha bersepakat bahwa anak luar kawin tidak mendapatkan seluruh jenis hak, termasuk nafkah, waris, dan perwalian dari ayah biologisnya dan membebaskan tanggung jawab untuk kesejahteraan anak kepada ibu atau negara. Akan tetapi, Ibn Taimiyah membedakan diri dari pandangan mayoritas tersebut dengan mengajukan pendapatnya mengenai mekanisme pengakuan (istilhaq), yang memungkinkan pengaitan hubungan anak luar kawin kepada ayah biologisnya dengan syarat tertentu, yang dengan data (saintifik) ini hak tertentu anak dapat ditimpakan tanggungjawabnya kepada ayah biologis. Dengan menggunakan pendekatan yuridis-normatif, penelitian ini menggali tulisan-tulisan Ibn Taimiyah dan kitab-kitab fiqh klasik sebagai sumber primer, dan tulisan-tulisan tentang hukum keluarga Islam dan peraturan perundang-undangan Indonesia sebagai sumber sekunder. Temuan penelitian ini menginformasikan bahwa pemikiran Ibn Taimiyah sangat progresif, berorientasi maqāṣid al-sharī'ah, khususnya perlindungan jiwa dan hak sosial ekonomi anak. Juga, memiliki relevansi dengan perkembangan hukum positif Indonesia, seperti Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 dan Fatwa MUI Nomor 11 Tahun 2012. Dengan demikian, pandangan Ibn Taimiyah layak dijadikan landasan konseptual bagi pengembangan hukum keluarga Islam kontemporer yang lebih adil, humanis, dan berorientasi pada perlindungan hak anak.

Kata Kunci: Kewajiban Nafkah; Ayah Biologis; *Istilhaq*; Perspektif Hak Anak Ibn Taimiyah.

1. INTRODUCTION

In classical *fiqh* discourse, the legal relationship between a man and a child born outside of a lawful marriage is considered severed, and there is no legal pathway or justification to establish such a connection. For instance, Imam al-Nawawi's statement reflects this position.

فإن حكم ولد الزنا حكم ولد الملاعنة لأنه ثابت النسب من أمه وغير ثابت النسب من أبيه فكان حكمه حكم ولد الملاعنة.

Meaning: “Indeed, the legal ruling concerning a child born from zina is the same as that of a child affected by *li‘ān*, because such a child is legally affiliated with the mother but not with the father. Therefore, the legal status of the child is identical to that of a child resulting from *li‘ān*”.

In Islamic jurisprudence, a father and a child born outside a lawful marriage generally do not share a legally recognized lineage (*nasab*). As a result, the biological father has no legal status or obligations toward the child, including responsibilities related to maintenance, inheritance, guardianship, or other legal matters. Classical scholars such as Jalal al-Din al-Mahalli explain that a child born outside marriage is legally affiliated only with the mother and

her family, and therefore the biological father is not required to provide financial support. According to the analysis of classical *fuqahā'*, lineage is established exclusively through a valid marriage contract (*'aqd al-nikāh*) or lawful relations within that marriage. Once lineage is legally recognized, various legal consequences arise, including obligations of maintenance, inheritance rights, and guardianship. Conversely, in the absence of a valid marriage contract, lineage is not legally acknowledged, even if a biological relationship between the father and the child exists (Anwar J. A.-M., Terjemahan Kanz al-Raghibin, 2010).

Consequently, the child falls under the responsibility of the Muslim community or the state, as stated by Imam al-Nawawi in al-Majmū':

الْوَالِدُ وَلَدُ زِنَا؛ لَا يَلْحَقُهُ نَسَبُهُ عِنْدَ الْأَئِمَّةِ الْأَرْبَعَةِ؛ وَلَكِنْ لَا بُدَّ أَنْ يُنْفِقَ عَلَيْهِ الْمُسْلِمُونَ؛ فَإِنَّهُ يَتِيمٌ مِنَ
الْيَتَامَى وَنَفَقَةُ الْيَتَامَى عَلَى الْمُسْلِمِينَ مُؤَكَّدَةٌ

Meaning: "As for children born from zina, their lineage (*nasab*) is not legally connected to their biological father according to the four Sunni Imams. Nevertheless, Muslims are obligated to provide maintenance for such children, because they are regarded as orphans, and the maintenance of orphans is the responsibility of the state". (Nawawi, 2009).

This view has constituted the dominant position among classical *fuqahā'* for centuries. However, among these juristic opinions there exists a view articulated by Ibn Taymiyyah suggesting the possibility of imposing an obligation of financial maintenance upon the biological father toward a child born outside of marriage, even though such a child is not legally recognized as a child of lineage (*nasab*).

Ibn Taymiyyah emphasized that a child should not bear the consequences of their parents' actions. This principle is consistent with modern human rights frameworks that guarantee protection for children regardless of their birth status. Assigning responsibility to parents helps prevent the marginalization of children born outside marriage. Sociological studies also show that neglecting such children increases the risks of poverty, delinquency, and social exclusion. His view reflects the broader Islamic values of justice and compassion, while contemporary research on child welfare indicates that equal treatment supports healthier psychological and social development. Many modern legal systems likewise recognize children's rights irrespective of legitimacy, and comparative studies suggest that enforcing parental responsibility contributes to stronger family cohesion and reduced social inequality.

Perspective of Ibn Taymiyyah becomes significant in bridging this gap. Although he did not fully recognize legal lineage between the biological father and the child, his suggestion that the father may still bear financial responsibility represents an important juristic innovation that acknowledges ethical responsibility beyond strict legal affiliation (Ahmad Sukris Sarmadi, 2025).

A significant gap in classical jurisprudence lies in the rigid separation between legal lineage and moral responsibility. Once lineage is legally denied, classical doctrine generally releases the biological father from further obligations. In contrast, the reasoning of Ibn Taymiyyah suggests that moral and social responsibilities may remain even without formal lineage. His view reflects broader Islamic values of justice (*'adl*) and compassion (*rahmah*),

supported by the Qur'ānic principle that no individual bears the burden of another. Accordingly, a child should not suffer the consequences of parental wrongdoing. By proposing financial responsibility without establishing full legal lineage, Ibn Taymiyyah's approach seeks to balance the preservation of lineage with the prevention of harm to the child. This perspective also resonates with modern legal systems that increasingly recognize financial obligations based on biological parenthood, even in the absence of marital legitimacy.

The identified gap highlights the importance of revisiting minority juristic opinions such as that of Ibn Taymiyyah. His perspective demonstrates that classical Islamic jurisprudence contains conceptual resources capable of addressing contemporary legal and ethical challenges. By recognizing financial responsibility without altering the doctrine of lineage, his view offers a middle path between classical doctrine and modern child-rights frameworks.

Recent developments in Indonesian positive law also reflect this orientation, particularly through the possibility of establishing civil relations and financial responsibility based on biological identification. Through examining Ibn Taymiyyah's reasoning, this article aims to evaluate the obligation of a biological father toward a child born outside marriage. His legal reasoning suggests a concept that may be described as "accidental lineage" (*nasab i'tidārī*), based on biological relations without a marriage contract, while maintaining "essential lineage" (*nasab aṣlī*) established through lawful marriage.

Therefore, this article first reviews the views of classical *fuqahā'* on the issue and then examines the evolution of the legal status of children born outside marriage in Indonesian positive law, demonstrating the contemporary relevance of Ibn Taymiyyah's thought in promoting justice and the protection of children's rights.

2. LITERATURE REVIEW

Research on the rights of children born outside marriage has been widely discussed in contemporary Islamic law studies. Ridwansyah (2015) highlights the obligation of financial support for children born outside marriage from the perspective of *maqāṣid al-sharī'ah*, particularly the principle of *hifẓ al-nafs*, which emphasizes the protection of human life and welfare. The study shows that, although classical *fiqh* generally does not establish a lineage relationship between an illegitimate child and the biological father, the protection of the child's basic rights and welfare remains an important consideration in Islamic law. Furthermore, Tanjung (2024) examines the concept of lineage (*nasab*) of children born outside marriage from the perspective of Islamic jurisprudence and its relevance to child protection. The study explains that the majority of classical scholars restrict the establishment of lineage to a valid marriage, thereby limiting the legal relationship of such children to their mothers and maternal families. Nevertheless, the study emphasizes the need for a more responsive interpretation of *fiqh* that considers principles of justice and child protection in modern social contexts. Meanwhile, Zainal Abidin (2024) discusses the recognition of the legal status of children born outside marriage from the perspectives of Islamic law and Indonesian positive law. The study indicates that modern legal developments have begun to provide space for recognizing civil relationships between children born outside marriage and their biological fathers through biological evidence. However, most existing studies focus primarily on the issue of lineage status, while discussions on the financial responsibility of biological fathers from the perspective of Ibn Taymiyyah remain limited. Therefore, this study revisits Ibn Taymiyyah's view on the financial

responsibility of biological fathers toward children born outside marriage within the framework of contemporary Islamic family law.

3. METHOD

This study adopts a juridical–normative methodology to examine Islamic law and establish the legal basis for obligating biological fathers to provide financial support for children born outside of marriage. The analysis centers on Ibn Taymiyyah, a classical jurist whose progressive views on paternal responsibility are particularly relevant. A historical–conceptual approach is employed to trace the intellectual and social contexts shaping his reasoning.

Research data comprise primary sources, including Ibn Taymiyyah's writings and classical *fiqh* texts on lineage (*nasab*) and child maintenance, alongside secondary sources such as scholarly works on Islamic family law, journals, prior studies, and statutory regulations. Data are collected through documentary research and analyzed using descriptive–analytical and comparative methods, juxtaposing Ibn Taymiyyah's views with those of the majority jurists (*jumhūr al-fuqahā'*). Conclusions are drawn deductively to assess the relevance of Ibn Taymiyyah's legal thought for contemporary Islamic family law.

4. FINDINGS AND DISCUSSION

4.1. Islamic Jurists' Views on the Financial Maintenance of Children Born Outside Marriage

The establishment of a marital relationship gives rise to both rights and obligations. Obligations refer to duties that must be fulfilled or discharged, whereas rights denote entitlements that ought to be possessed or obtained. Parents hold specific rights and responsibilities toward their children, and, correspondingly, children bear certain responsibilities toward their parents. Within the framework of marriage, these reciprocal rights and obligations extend to the relationship between parents and their children, and vice versa.

Providing maintenance to others constitutes a legal obligation borne by an individual. For those who are responsible for providing such maintenance, *nafaqah* entails covering essential living expenses, including food, housing, and basic utilities such as water, fuel, and electricity (Rambe, 2018). The obligation of maintenance in Islamic law is explicitly regulated in Qur'an, Surah al-Baqarah (2:233).

Parents are responsible for providing financial support to their children; however, this responsibility is confined to children born within a lawful marriage. A legitimate child is defined as one who is born from a valid marital union between a man and a woman (Abbas Mahmud al-Aqqad, 1995). As established, marriage constitutes a covenant that legally legitimizes the cohabitation of a man and a woman in the capacity of husband and wife. The legitimacy of the child determines the establishment of a *nasab* (lineage) relationship with the man recognized as the father. Lineage (*nasab*) can only be established through three means: a valid marriage, an irregular (*fasid*) marriage, or sexual relations conducted under a mistaken presumption of legality (*shubhah*) (Anwar A.-M. d., 2010). In contrast, according to prophetic traditions and the opinions of classical scholars, the financial maintenance concerning a child born out of wedlock is borne by and imposed upon the mother (Ridwansyah, 2015).

With regard to the maintenance of children born outside of marriage, the prevailing consensus among classical scholars holds that no legal relationship exists between such children

and their biological fathers; consequently, no corresponding legal rights or obligations are recognized.

وَوَلَدُ الزَّانَا لَا يُلْحَقُ الزَّانِي فِي قَوْلِ الْجُمْهُورِ

Meaning: “According to the majority of scholars, a child born from zina is not legally affiliated (through nasab) with the man who committed zina”.

In classical *fiqh*, particularly in al-Maḥallī authored by Jalāl al-Dīn al-Maḥallī, it is explained that a child born outside of marriage is legally affiliated only with the mother and her family, while the biological father is not burdened with the obligation of financial maintenance. Jalāl al-Dīn al-Maḥallī further states that a child born from *zina* (that is, a child born outside a valid marriage) may be lawfully married by the biological father, on the grounds that such a child does not possess legal sanctity (*ḥurmah*) arising from lineage.

The jurists of the Islamic legal schools also differ in their opinions regarding the establishment of lineage (*nasab*) for children born outside of a marital bond. The majority of scholars (*jumhūr al-‘ulamā’*), comprising the Shāfi‘ī, Mālikī, and Ḥanbalī schools, require the existence of a real possibility of biological relations (*imkān al-waṭ’*) as the basis for establishing a child’s lineage.

الشافعية والمالكية والحنابلة: لا يثبت النسب بمجرد العقد، بل لا بد من إمكان الوطاء

Meaning: “Imams al-Shāfi‘ī, Mālik, and the Ḥanbalī jurists maintain that lineage (*nasab*) cannot be legally established in the absence of a valid marriage contract, even though a biological relationship may exist”. (Jaziri, 1986).

The terminology of “being born within or outside of marriage” has generated scholarly debate among academics. Customarily, a child born at least six months after the conclusion of a marriage is regarded as legally affiliated with the father, as articulated by Imam Mālik and Imam al-Shāfi‘ī. Conversely, the mother is considered the lawful guardian of any child born within the first six months of the marriage (Hasan, 1997). Although such a child may be the biological offspring of the father, the bond that exists between them is purely familial in nature and does not give rise to legally binding obligations (Qosim, 2022).

4.2. Ibn Taymiyyah’s View on the Maintenance of Children Born Out of Wedlock

Ibn Taymiyyah maintains that a father’s claim or intention to establish lineage, known as *istilhāq al-nasab*, may give rise to a legal relationship between a child born outside of marriage and the biological father. For such a claim to be valid, the mother must be unmarried (during the period of *firāsh*) and not in a waiting period (*‘iddah*). Where these conditions are met and the claim is accurate, the child’s lineage may be traced to the biological father. However, even if the biological father asserts or seeks to establish lineage, such a claim does not attach the child to him if the mother was married at the time and the child was born as a result of adultery involving her husband.

According to Ibn Taymiyyah, as long as a man acknowledges himself as the biological father, a child born from *zina* may be legally affiliated with him. Upon such acknowledgment, the child is entitled to the rights accorded to a legitimate child, including the right to financial

maintenance. Because it departs from the views of the majority of classical scholars, Ibn Taymiyyah's position regarding the affiliation of children born outside of marriage with their biological fathers may be regarded as revolutionary. Ibn Taymiyyah argues that such children should be legally connected to their biological fathers in order to prevent the loss or negation of lineage, a linkage that would yield significant benefits for the child (Bahrudin, 2025).

According to Islamic teachings, proper upbringing and education protect children from going astray, being deceived, or being neglected. In essence, inherited kinship ties constitute a divine blessing bestowed by Allah (SWT) upon His faithful servants (Zaini, 2011). Ibn al-Qayyim identifies four factors that may establish lineage (*nasab*): conflict (*tanāzu*), attribution (*intisāb*), evidence (*bayyinah*), and *al-qaṭ'ah* (certainty or definitive congruence). Scholarly consensus has been reached with respect to the first three factors.

قال ابن القيم: كَانَ إِسْحَاقُ بْنُ رَاهَوَيْهِ يَذْهَبُ إِلَى أَنَّ الْمَوْلُودَ مِنَ الرَّبِّي إِذَا لَمْ يَكُنْ مَوْلُودًا عَلَى فِرَاشِ
يَدَّعِيهِ صَاحِبُهُ وَادَّعَاهُ الرَّبِّي الْحَقُّ بِهِ.

Meaning: "Ibn al-Qayyim reports that Ishāq ibn Rāhawayh held the view that if a child is born as a result of zina and no other party claims the child, while the man who committed the act of zina acknowledges the child, then the child may be legally attributed to the biological father". (Nawawi, 2009).

Sociolegal research conducted in recent years also shows that legal systems that recognize at least limited paternal responsibilities, such as financial maintenance, tend to reduce the risk of social marginalization for children born outside of marriage. Scholars have therefore argued that assigning financial obligations to biological fathers can function as a preventive legal mechanism, discouraging paternal abandonment while safeguarding the rights and welfare of vulnerable children.

These contemporary findings strengthen the argument that Ibn Taymiyyah's position, although historically a minority opinion within classical jurisprudence, possesses considerable relevance for modern legal discourse. His approach demonstrates that Islamic legal reasoning has historically contained interpretive possibilities capable of addressing social realities that have become increasingly prominent in modern societies.

According to Zakariya Ahmad al-Barry in *Al-Ihkām al-Awlād fī al-Islām*, Ibn Taymiyyah recognized, by taking into account the realities of the situation, that a child born as a result of fornication with an unmarried woman may continue to exist permanently within society. Such a child is not subject to punishment, as the legal sanction is imposed solely upon the perpetrator of fornication (Zakariya Ahmad al-Barry, 1997).

The right to maintenance and protection also extends to children born outside marriage. Scholars such as Ishaq ibn Rahawayh and Ibn Taymiyyah argue that biological paternity may be recognized even without a lawful marriage if the act of fornication is acknowledged by both parents. Establishing this link helps prevent the neglect of the child's lineage and creates reciprocal rights and responsibilities between parents and children. Moreover, Ibn Qayyim al-Jawziyya states that determining lineage involves the rights of God, the child, and the father and carries legal consequences intended to preserve public welfare (Fauzan, 2025).

Istilhāq is considered permissible for children born outside of marriage according to various Salaf scholars cited by al-Qaraḍāwī. He states that, on the assumption that the woman is not married to another man, if a man and a woman commit fornication and a child is born as a result of that act, and the man acknowledges the child as his own, then the child may be legally attributed to him.

فقد فهموا مما ذكره الفقهاء أن لكل أحد أن يستلحق أو يقر بنسب من يشاء. والفقهاء إنما أرادوا الإقرار بنسب حقيقي وبنوة حقيقية مبني على نكاح سري أو نكاح فيه خلاف أو وطء شبهة أو غير ذلك. بل أجاز جماعة من السلف استلحاق ولده من الزنا إذا لم يكن فراش ورجحه ابن تيمية

Meaning: “They understood from the statements of the jurists that not everyone is entitled to acknowledge or establish the lineage of whomever they wish. Rather, the jurists intended only to permit the acknowledgment of lineage in legally valid cases, namely with respect to a lawful father based on a disputed marriage, a doubtful marriage, *wati’ shubhat* (intercourse under a mistaken assumption of legality), or similar circumstances. Nevertheless, a group of early scholars permitted the acknowledgment of a child born of fornication when there is no valid marital relationship. This opinion was reinforced by Ibn Taymiyyah”. (Al-Qordhawi, 1996).

With regard to pregnancy outside of marriage, this approach stands in contrast to the positions of the four Sunni schools of Islamic law. According to Imam Aḥmad ibn Ḥanbal, Imam al-Shāfi‘ī, and Imam Mālik, a child born out of wedlock has no legal relationship with the man who caused the pregnancy. Legally, the child’s only recognized kinship is with the mother and her immediate family. By contrast, the school of Imam Abū Ḥanīfah maintains that a child born outside of marriage may still be regarded as legally legitimate if the parents subsequently marry and have children within that marriage. Nevertheless, from a legal perspective, the lineage of a child born out of wedlock is severed from that of the biological father (Sampuju, 2022). Consequently, the child is considered *ajnabiyyah*, that is, a person without a legally recognized bond. As a result, a man who is not lawfully married to the child’s mother bears no legal responsibility toward the child.

Many children born outside of marriage are denied their civil rights, including the right to adequate maintenance, largely because this issue has generated prolonged debate within society. Nevertheless, the author of the relevant *fatwa*, Ibn Taymiyyah, together with other scholars, agrees based on the framework of *Maqāṣid al-Sharī‘ah* that there are tangible benefits for both the mother and the child when a child born out of wedlock is affiliated with his or her biological father.

According to the authors, the spirit underlying the concept of *istilhāq*, which had already been implemented by ‘Umar ibn al-Khaṭṭāb, who is widely recognized for his progressive and innovative legal reasoning, constitutes an application of humanitarian values and human rights. Moreover, *istilhāq* represents a social value system that protects society from identity disorder, economic vulnerability, and the misconduct of irresponsible individuals. The application of *istilhāq* to a person who refuses to acknowledge his child and seeks to abandon that child can be justified through an analysis based on the principle of *mafhum muwāfaqah*. In other words, if mere acknowledgment is accepted as sufficient to affiliate a child with the father, then, a

fortiori, stronger evidence such as DNA test results should be even more acceptable. Accordingly, the practices of the Companions provide normative legitimacy for assigning responsibility to the biological father in cases involving children born out of wedlock.

Some juristic opinions maintain that the obligation to provide maintenance for such children lies with the mother and the state, on the grounds that the child is treated as an orphan. However, this approach is neither effective nor fundamental nor comprehensive. It may be argued that such a rule could be modified so that the child's expenses are initially covered by state funds, which are, in essence, public funds. Since the biological father is undeniably part of the public, he is more appropriately required to bear this financial burden than other members of society. Consequently, the biological father's assets should take precedence in supporting the child, first in his capacity as a citizen and second as a person who has a direct biological and genetic relationship with the child.

4.3. The Relevance of Ibn Taymiyyah's Views to the Development of Contemporary Child Rights Law

Ibn Taymiyyah and several other scholars who acknowledge the concept of *istilhāq* reflect a line of reasoning that prioritizes the fulfillment of children's rights and aligns with the needs of contemporary global society. Efforts to protect and realize children's rights have also become a significant concern within Indonesian positive law, which continues to evolve through regulatory reform and legal interpretation. One notable example of this development is Constitutional Court Decision No. 46/PUU-VIII/2010, which emerged in response to these dynamics. This decision arose from a conflict between two legal norms in Indonesian law. On the one hand, article 43, paragraph (1) of Law No. 1 of 1974 on Marriage stipulates that a child born outside of marriage has a civil relationship only with the mother and her family. On the other hand, the 1945 Constitution of the Republic of Indonesia has been interpreted to mean that a child may also have a civil relationship with a man who can be proven, through scientific and technological means or other lawful evidence, to be the biological father. As a result of this normative conflict, Constitutional Court Decision No. 46/PUU-VIII/2010 was issued.

In this regard, Ibn Taymiyyah's reasoning can be interpreted as an early articulation of an approach that balances doctrinal fidelity with social responsibility. Contemporary scholarship suggests that such perspectives may serve as valuable resources for modern legal reform efforts seeking to harmonize Islamic jurisprudence with contemporary standards of child protection and social justice. Pursuant to Constitutional Court Decision No. 46/PUU-VIII/2010, the Constitution affirms that, in principle, a child born outside of marriage has a legal relationship with the mother and her family. However, the decision marked a substantial change by acknowledging that a child may possess a civil relationship with the biological father if paternity is established through scientific and technological evidence, such as DNA testing. Furthermore, if the biological parents subsequently marry and acknowledge the child, the child may be regarded as legally legitimate, even though he or she was born outside of marriage.

In addition to the Constitutional Court's decision, the Indonesian Council of Ulama (*Majelis Ulama Indonesia*, MUI) has also issued a fatwa regulating the status and treatment of children born outside a lawful marriage. These provisions are set forth in MUI Fatwa No. 11 of 2012 concerning "Children Born as a Result of Zina and Their Treatment" (Fatwa Majelis

Ulama Indonesia Nomor 11 Tahun 2012 tentang Anak Hasil Zina dan Perlakuan Terhadapnya, 2012).

In accordance with the principle of *hifz al-nasl*, this *fatwa* reaffirms that lawful marriage is the sole legitimate basis for establishing lineage. This is the only method for establishing lineage, thereby ensuring that children born as a result of a man's act of fornication have no legal bond with him, including in matters of guardianship or inheritance. This position is consistent with Ibn Taymiyyah's reasoning. Moreover, this *fatwa* reflects Ibn Taymiyyah's view that children born of fornication must not be subjected to injustice, as they should not bear the burden of their parents' sins. Instead, the state, through *ta'zīr*, may compel the man who committed fornication to set aside sufficient funds and property to support the child. This approach aligns with Ibn Taymiyyah's methodology, which is based on *maqāṣid al-sharī'ah* and *siyāsah shar'īyyah*; specifically, it aims to preserve the purity of lineage (*hifz al-nasab*) while also ensuring the protection and welfare of the child, who is considered an innocent party.

Legally, the familial relationship between a child born outside marriage and the biological father is generally not recognized. This difference of opinion influences the regulation of children's rights, particularly regarding maintenance, which can lead to disparities in financial support and legal recognition compared to children born within marriage. Nevertheless, children born outside marriage possess the same dignity and human rights as others. Therefore, in the interest of justice and non-discrimination, positive law seeks to provide legal protection as well as legal certainty regarding identity and social status for children who are not responsible for the circumstances of their birth.

The results of the research conducted by Aprilia Mega Rosdiana highlight the importance of initiating empowerment programs for parents and the community to improve family digital literacy. These programs can contribute to protecting children from various risks in the digital world, such as cyberbullying and exposure to inappropriate content, and to building a safe, adaptive, and healthy environment for children's development. Interventions involving families, communities, and stakeholders are important strategies in developing digital literacy programs that are relevant and sustainable. This study also emphasizes the important role of parents in initiating such empowerment programs to create a safe, adaptive, and healthy environment for children. In addition to protection and guidance in the use of technology, the fulfillment of children's basic needs, including financial support, is also essential in supporting children's optimal growth and development (Aprilia, 2025).

Based on Constitutional Court Decision No. 46/PUU-VIII/2010, it is evident that the ideas advanced by Ibn Taymiyyah and other scholars regarding an indirect kinship relationship between children born outside of marriage and their biological fathers have profound implications for the development of modern child rights legislation in Indonesia. Civil relations between a child born out of wedlock and the biological father are now legally possible pursuant to Constitutional Court Decision No. 46/PUU-VIII/2010. In light of this decision and the related *fatwa*, it is essential to establish a new paradigm within Indonesian law concerning the legal construction of kinship determination, one that is more oriented toward the welfare of the mother and the child, capable of protecting their rights and ensuring justice, and that recognizes the status of children born outside of marriage as equal to those born within a lawful marital union in a state of *fiṭrah*. This is because children are regarded as pure and as a blessing for the Muslim community. In particular, parents bear the responsibility to protect and safeguard their

children, as they constitute their most valuable asset as well as an asset of the nation (Waqiah, 2020). Throughout its history, Islam has consistently prioritized the protection of children, a commitment that must always be upheld, since inherent within every child are rights, dignity, and human worth that must be respected and honored. Article 1 of Law No. 23 of 2002 on Child Protection defines a child as “a person who has not yet reached the age of eighteen years, including a child who is still in the womb”.

In family law, the status of children born outside marriage remains complex. Many do not receive recognition or financial support from their biological fathers, limiting their ability to exercise basic rights such as maintenance. Legal recognition that restricts their civil relationship solely to the mother often leads to social stigma and negatively affects their social and psychological well-being. These conditions highlight the need for legal frameworks that consider not only legal consequences but also the social and psychological impacts on the child.

The various forms of hardship (*mafsadah*) experienced by children born outside a lawful marriage illustrate the application of the following principles of *uṣūl al-fiqh*:

د رء المفاصد مقدم على جلب المصال.

Meaning: “Preventing harm takes precedence over attaining benefit”. (Jalaluddin as-Suyuthi, 1990).

Affiliating a child born outside of marriage solely with the mother may cause significant harm (*mafsadah*), including social stigma and the loss of fundamental rights such as maintenance, education, and protection. From this perspective, Ibn Taymiyyah's view, which allows the acknowledgment of paternity and the affiliation of the child with the biological father, offers an approach that prioritizes the welfare and dignity of the child. This line of thought is in line with changes in Indonesian law, especially the Compilation of Islamic Law, which says that a child can be legally recognized if the father agrees to it under certain conditions. Such recognition not only helps prevent neglect but also ensures the protection of children's rights within the broader objectives of Islamic law (*maqāṣid al-sharī'ah*), especially the preservation of lineage, life, and socio-economic welfare. Recent studies emphasize that the determination of lineage for children born outside marriage remains a complex issue in Islamic law, as it involves balancing classical doctrinal principles with the need to protect children's rights in modern legal systems (Husni et al., 2024). Recognizing the child's lineage with the biological father therefore functions as a mechanism to reduce harm, uphold justice, and prevent children from bearing the consequences of actions committed by their parents (Tanjung, 2024).

5. CONCLUSION

The analysis demonstrates that children born outside of marriage require a more equitable legal framework centered on the protection of their rights. Limiting a child's legal relationship to the mother alone creates serious consequences for maintenance, protection, and psychological well-being, while assigning full responsibility to the state risks undermining parental accountability. A purely formalistic legal approach is therefore insufficient.

Prioritizing the best interests of the child has become essential in family law development. Ibn Taymiyyah's affirmation of the biological father's responsibility for such children aligns with contemporary demands for justice and child protection. His thought

remains relevant to modern positive law and consistent with *maṣlaḥah* (public welfare) and the *maqāṣid al-sharī'ah* (objectives of Islamic law). Regulatory reform that incorporates these principles can ensure comprehensive child protection and mitigate the social and psychological burdens historically endured by children born outside of marriage.

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