

**Comparison of Supporting Laws for Children Born Out of Wedlock**  
(Study of Aceh MPU Fatwa No. 18/2015 and MUI Fatwa No. 11/2012 from  
the *Maqasid Shari'ah* Perspective)

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**Abstract:** This study examines the differences in legal reasoning between MPU Aceh Fatwa No. 18 of 2015 and MUI Fatwa No. 11 of 2012 regarding the maintenance rights of children born out of wedlock in Indonesia. The main issue addressed in this research concerns the legal responsibility of biological fathers toward children born from non-marital relationships and the extent to which Islamic law can address contemporary demands for child protection without undermining the principle of lineage (*nasab*). This research aims to analyze the methodological framework of both fatwas and evaluate their relevance within the framework of Islamic family law and Indonesian positive law in light of Constitutional Court Decision No. 46/PUU-VIII/2010. The study employs normative legal research using statutory, conceptual, and comparative approaches. Primary legal materials include the two fatwas, legislation, court decisions, classical Islamic jurisprudence, and contemporary scholarly opinions, while secondary materials consist of books, journal articles, and previous studies. The findings reveal that both fatwas agree that children born outside of marriage have lineage relations only with their mothers and maternal families. However, they differ significantly regarding financial

**Keywords:** Children Born Out of Wedlock, Right to Custody, Islamic Family Law, Fatwa of the MUI and MPU Aceh, *Maqasid Syari'ah*

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responsibility. The MPU Aceh strictly denies the biological father's obligation to provide child support, whereas the MUI introduces ta'zir and wasiat wajibah as mechanisms to ensure the child's welfare without recognizing lineage. The study concludes that the MUI's approach is more contextually appropriate and aligned with the objectives of Islamic law (maqasid al-syari'ah) and contemporary child protection principles in Indonesia.

**Abstract:** Penelitian ini mengkaji perbedaan konstruksi hukum antara Fatwa MPU Aceh Nomor 18 Tahun 2015 dan Fatwa MUI Nomor 11 Tahun 2012 terkait nafkah anak di luar nikah dalam konteks hukum Islam di Indonesia. Permasalahan utama penelitian ini terletak pada tanggung jawab ayah biologis terhadap anak yang lahir di luar perkawinan sah serta bagaimana hukum Islam merespons tuntutan perlindungan anak tanpa menghilangkan prinsip nasab dalam syariat. Penelitian ini bertujuan menganalisis metodologi kedua fatwa dan menilai relevansinya terhadap perkembangan hukum keluarga Islam dan hukum positif Indonesia pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan. Bahan hukum primer meliputi kedua fatwa, peraturan perundang-undangan, putusan pengadilan, kitab fikih klasik, serta pandangan ulama kontemporer, sedangkan bahan hukum sekunder berupa buku, jurnal ilmiah, dan penelitian terdahulu. Hasil penelitian menunjukkan bahwa kedua fatwa sama-sama menetapkan anak di luar nikah hanya memiliki hubungan nasab dengan ibu dan keluarga ibunya. Namun, keduanya berbeda dalam persoalan nafkah. MPU Aceh menolak kewajiban nafkah dari ayah biologis, sedangkan MUI Pusat memperkenalkan konsep ta'zir dan wasiat wajibah sebagai bentuk tanggung jawab finansial tanpa mengakui hubungan nasab. Penelitian ini menyimpulkan bahwa pendekatan MUI Pusat lebih kontekstual, responsif, dan sejalan dengan maqasid al-syari'ah serta prinsip perlindungan anak dalam hukum Indonesia.

**Keywords:** Anak Lahir di Luar Nikah, Hak Pemeliharaan, Hukum Keluarga Islam, Fatwa MUI and MPU Aceh, *Maqasid Syari'ah*

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## INTRODUCTION

In classical Islamic law, a child born out of a valid marriage (*walad al-zina*) has no legal lineage to his biological father and is therefore not formally entitled to financial support from the father. This reality creates a serious tension with the Indonesian legal system, which guarantees the protection of children without discrimination. In their study, Sarmadi et al. concluded that although there has been a normative shift toward child-oriented justice, structural discrimination against children born out of wedlock persists due to the rigidity of classical fiqh doctrine and administrative resistance.<sup>1</sup> The issue of child support for children born out of wedlock is a fundamental one because it concerns the right to life and development of a human being who has absolutely no say in the circumstances of their birth.

This tension is concretely manifested in the differing fatwas issued by the Central Indonesian Ulema Council (MUI) and the Aceh Ulema Consultative Council (MPU). Through Fatwa No. 18 of 2015, the Aceh MPU affirmed that a biological father has no sharia obligation to provide financial support for a child born out of wedlock, he bears only a moral responsibility. This fatwa runs counter to the Central MUI's Fatwa No. 11 of 2012, which allows the biological father to bear the financial burden of the child's support through the mechanisms of ta'zir and wasiat wajibah in order to prevent harm and achieve the greater good.<sup>2</sup>

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<sup>1</sup> Sarmadi et al., "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 (2025): 403–27.

<sup>2</sup> Hidayah and U. Solihah, "From Normative Authority to Contextual Responsiveness: Theoretical and Empirical Analysis of DSN–MUI's Transformation in Fatwa Formulation within Indonesia's Islamic Finance Ecosystem," *Samarah* 9, no. 3 (2025): 1908–33.

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This difference actually stems from differences in methodological approaches (*manhaj*). The literal-textual approach, as explained by Saeed and Akbar (2021), emphasizes the explicit meaning of the sacred text and tends to produce rigid legal rulings, while the contextual-maqāsidī approach integrates the objectives of sharia to achieve public interest and prevent harm.<sup>3</sup> However, in the application of maqasid, issues often arise when ijtiḥad relies solely on a literal understanding or, conversely, goes beyond the limits without a solid textual foundation. The balance between text and context becomes crucial.

Maqāsid al-sharī‘ah which aims to preserve religion, life, reason, lineage, and property provides a normative framework for assessing the extent to which a fatwa supports child protection. Maqasid-based fatwas that emphasize context, the public interest, and collective ijtiḥad lead to the central question: how to preserve the purity of lineage (*ḥifẓ al-nasl*) without sacrificing the lives and futures of innocent children (*ḥifẓ al-nafs*).

Unfortunately, previous studies on child protection in Islamic law whether focusing on the role of the courts,<sup>4</sup> the psychological dimensions of child custody,<sup>5</sup> or the integration of maqasid into classical norms.<sup>6</sup> have not specifically addressed a comparative analysis of the methodological frameworks between fatwas issued by the Central MUI and the Aceh MPU regarding child support for children born out of wedlock.

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<sup>3</sup> Saeed and A. Akbar, “Contextualist Approaches and the Interpretation of the Qur’ān,” *Religions* 12, no. 7 (2021), <https://doi.org/10.3390/rel12070527>.

<sup>4</sup> Nasution and S. Nasution, “Implementation Of Indonesian Islamic Family Law To Guarantee Children’s Rights,” *Al-Jami’ah* 59, no. 2 (2021): 347–74.

<sup>5</sup> F. N. Nazah et al., “Gender Justice in Child Custody Disputes: The Maqāsid al-Sharī‘ah Approach in Contemporary Judicial Practice,” *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1328–58.

<sup>6</sup> A. Kadarisman et al., “Best Interest Of The Child In Islamic Family Law: Integrating Maqāsid Al-Sharī‘ah And Double Movement Theory In Ḥaḍānah Cases,” *Jurnal Al-Dustur* 8, no. 2 (2025): 155–74.

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Syafei's (2017) study indicates that the MUI has indeed employed maqāsid in some of its fatwas; however, its application is considered limited and has not yet addressed this issue in a comparative manner.<sup>7</sup> Meanwhile, in-depth studies on the fatwas of the Aceh MPU are virtually nonexistent in the relevant literature.

This gap is the focus of this study. No study has yet specifically compared these two fatwas from the perspective of maqāṣid al-syarī'ah to uncover the roots of their methodological differences and propose a common ground that is responsive to the needs of child protection and legal certainty. As a scientific innovation, this article does not merely map out the differences but interprets them as a spectrum of ijtihad that can be bridged through a contextual-maqāṣidī approach.

Using the maqāṣid al-syarī'ah framework and Saeed and Akbar's (2021) contextualist approach to the Qur'an, this study aims to conduct a comparative analysis of the methodological constructs of the two fatwas and to formulate their implications for the harmonization of Islamic family law in Indonesia. This article is expected to offer a middle ground between two methodological poles that have long been at odds, as emphasized by Sarmadi, Hafidzi, and Majid (2025) regarding the need for a reconstructed legal approach based on constitutional justice and maqāṣid.<sup>8</sup>

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<sup>7</sup> Z. Syafei, "Tracing Maqāṣid Al-Shari'ah in the Fatwas of Indonesian Council of Ulama (MUI)," *Journal of Indonesian Islam* 11, no. 1 (2017): 99–124.

<sup>8</sup> Sarmadi et al., "Revisiting Paternity And Inheritance In Islamic Law: Legal Recognition And The Status Of Children Born Out Of Wedlock In Indonesia."

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## METHODS

This study is a normative legal study (juridical-normative) that employs the statutory approach, the conceptual approach, and the comparative approach. The primary legal sources consist of the Aceh MPU Fatwa No. 18 of 2015, the MUI Fatwa No. 11 of 2012, Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, Constitutional Court Decision No. 46/PUU-VIII/2010, classical fiqh texts, and the views of contemporary scholars. Secondary legal sources include books, scientific journals, previous research findings, and relevant academic articles, while tertiary legal sources consist of legal dictionaries and fiqh encyclopedias. Data collection was conducted through a documentary study using an inventory sheet and a comparative analysis matrix as instruments.

To sharpen the comparative analysis, systematic indicators were developed to dissect the two fatwas, namely: (1) legal basis the primary arguments drawn from the Qur'an, hadith, and fiqh principles that serve as the foundation; (2) istinbath method the approach to deriving legal rulings, including literal-textual, contextual-maqāsidī, and the use of the principles of maṣlaḥah or sadd al-ẓarī'ah; and (3) legal implications the legal consequences arising from each fatwa regarding kinship, maintenance rights, inheritance rights, and guardianship. This comparative framework is presented visually in the following analytical table to facilitate the analytical identification of similarities and differences.

Table 1. Comparison Matrix of MPU Aceh Fatwa No. 18/2015 and MUI Fatwa No. 11/2012

Indicator	Aceh MPU Fatwa No. 18/2015	MUI Fatwa No. 11/2012
<b>Legal Basis</b>	Hadith "al-walad li al-firāsy" (Narrated by Muslim); the legal principle that a ruling	Hadith "al-walad li al-firāsy"; Quran 6:164 (one does not bear the sins of others); the

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	follows its underlying cause; complete rejection of Constitutional Court Decision No. 46/PUU-VIII/2010	principle of “dar’ al-mafāsīd muqaddam ‘alā jalb al-mašāliḥ”; adaptation of the mandatory bequest
<b>Method of Istinbath</b>	Strictly literal-textual; severing lineage as an absolute “sadd al-ẓarī‘ah” to prevent the normalization of adultery; leaving no room for financial “ta‘zīr”	Contextual-maqāsidī; combining the protection of lineage (ḥifẓ al-nasl) and the protection of life/children (ḥifẓ al-nafs); using ta‘zīr and mandatory bequests as forms of mašlahah ijtiḥad that do not recognize lineage
<b>Legal Implications</b>	The biological father has no lineage relationship, is not obligated to provide financial support, does not inherit from the child, and is not entitled to act as a marriage guardian ( ); the entire burden of financial support falls on the mother or the mother’s family; the child’s lineage is traced solely through the mother	The biological father has no blood relationship, they do not inherit from one another, and he cannot serve as a marriage guardian, however, he is obligated to provide child support as a ta‘zīr and is subject to a wasiat wajibah; the child retains a blood relationship with the mother, but their basic needs are guaranteed through these measures

Qualitative content analysis was conducted in four stages: (1) data reduction by sorting the content of the two fatwas related to lineage and financial support; (2) classification into predetermined categories; (3) in-depth analysis using the maqāsid al-syarī‘ah perspective to assess substantive justice and public interest; and (4) inductive conclusion-drawing. The validity of the data was strengthened through source triangulation (comparing the content of the fatwas with legislation and fiqh literature across different schools of thought), theoretical triangulation (confronting the findings with the maqāsid framework

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and contextualist approaches), and peer debriefing with experts in Islamic family law to ensure the objectivity of the interpretation.

## **RESULTS AND DISCUSSION**

### **Analysis of the Aceh Ulama Council (MPU) Fatwa No. 18 of 2015 on the Status and Rights of Children Born Out of Wedlock**

Fatwa No. 18 of 2015 issued by the Aceh Ulama Consultative Council (MPU) arose from the concerns of the Acehnese public following the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010.<sup>9</sup> The Constitutional Court's decision, which opened the door to civil relations between a child and his or her biological father, raised significant questions among the Acehnese public, a community known for its strong adherence to Islamic Sharia law. The Aceh MPU, as the official institution with religious authority in the region, felt it necessary to provide legal certainty so that the public would not be left adrift in confusion and misunderstanding.

#### **Analysis of the First Point: Definition of a Child Born Out of Wedlock**

The first point of this fatwa states that a child born out of wedlock is a child conceived through a relationship outside of a valid marriage. However, upon closer examination, this formulation leaves considerable room for interpretation because it does not explicitly specify the nature of the relationship in question.<sup>10</sup> Does every relationship outside of marriage automatically constitute adultery that results in a child born out of wedlock?

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<sup>9</sup> Muksal Mina, "A Review of Aceh MPU Fatwa No. 18 of 2015 on the Lineage of Children Born Out of Wedlock (Children of Adultery) in Light of Constitutional Court Decision No. 46/PUU/-VIII/2010 on the Status of Children Born Out of Wedlock" (UIN Ar-Raniry, Banda Aceh, 2017).

<sup>10</sup> Fatwa of the Aceh Ulama Consultative Council No. 18 of 2015 on the Lineage of Children Born Out of Wedlock (Children of Adultery) (2015).

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Advances in medical technology have also raised new issues that remain unaddressed by this fatwa. What is the status of a child born through in vitro fertilization (IVF) or artificial insemination performed outside of a marital relationship? In the medical field, the technique known as *In Vitro Fertilization* (IVF) allows an egg and sperm to be fertilized outside the human body, after which the resulting embryo is implanted into a woman's uterus.<sup>11</sup>

Thus, there are at least three possible interpretations of the first point of this fatwa.

1. First, a child born from consensual sexual relations outside of a valid marriage.
2. Second, a child born as a result of sexual relations outside of marriage involving coercion of one of the parties, such as a rape victim.
3. Third, a child conceived before marriage but born after a valid marriage.

The ambiguity of these boundaries has the potential to cause misunderstandings among the general public who have not received a direct explanation from the Aceh MPU. Given that this fatwa has been disseminated primarily through oral means without being accompanied by adequate interpretive documentation, the scope for independent interpretation by the public is wide open.<sup>12</sup>

### **Analysis of the Second Point: Severing the Line of Descent from the Biological Father**

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<sup>11</sup> Muh. Idris, "In Vitro Fertilization from an Islamic Perspective," *Al-'Adl Journal* 12, no. 1 (2019).

<sup>12</sup> Novendri Eka Saputra, "The Legal Dilemma of the Lineage of Children Born Out of Wedlock in a Valid Marriage: A Study of Maqāṣid al-Syarī'ah and the Compilation of Islamic Law," 2026, <https://www.pta-pekanbaru.go.id/55438/dilema-hukum-nasab-anak-zina-dalam-pernikahan-yang-sah.html>.

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The second point of this fatwa states that a child born out of wedlock has no blood relationship with the man who fathered the child. This ruling is based on the following argument:

1. A hadith of the Prophet Muhammad (peace be upon him) narrated by Imam Muslim, which reads: “Indeed, the Messenger of Allah (peace be upon him) said: ‘A child is attributed to the owner of the bed (the husband), and the adulterer shall be stoned’” (Narrated by Muslim, No. 3600). The word *firasy* in this hadith literally means “bed,” but in the context of fiqh, this term refers to a wife or female slave who has been lawfully consummated by her husband or master. Since an adulterer is not a lawful husband, he does not have a *firasy* recognized by Islamic law; therefore, a child born of adultery cannot be attributed to him.<sup>13</sup>
2. Scholars agree that lineage can only be established through a valid marriage, and a child born outside of such a union is related by lineage only to the mother. Imam Malik, Imam Shafi'i, and the majority of scholars even require the possibility of sexual intercourse after the marriage contract as a condition for establishing paternity. This means that if it is factually impossible for a husband to have impregnated his wife, then the child born cannot be attributed to him.<sup>14</sup>

What has been established by the Aceh MPU is, in fact, a continuation of the thinking of classical scholars who were extremely cautious in preserving the purity of lineage. From this perspective, lineage is not merely a biological matter, but a matter of Sharia that carries far-reaching legal consequences, such

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<sup>13</sup> Ahmad Jamal Luthfi, “The Legal Status of Marriage Guardianship for Children Born to a Pregnant Woman (A Case Study at the Wedung Subdistrict Religious Affairs Office, Demak Regency)” (IAIN Kudus, 2021).

<sup>14</sup> An-Nawawi, *Commentary on Sahih Muslim* (Darus Sunnah, 2012).

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as inheritance rights, guardianship in marriage, and mahram relationships. Therefore, protecting lineage from being tainted by illegitimate relationships is part of upholding the objectives of Islamic law (*maqāṣid al-syarī'ah*), particularly in the aspect of *hifz al-nasl* (preserving the lineage).

**Analysis of Points Three and Five: The Burden of Financial Support Falls on the Mother**

The third point of this fatwa stipulates that a child born out of wedlock has no right to inheritance, child support, or a marriage guardian from the man who fathered the child. The fifth point then reiterates that the financial support for a child born out of wedlock is the responsibility of the mother and/or her family. In essence, this fifth point is a repetition of the third point, so it does not offer much that is new. However, what poses a serious problem is the implication of this provision on justice for women and children.

In understanding justice, the Qur'an provides guidance through Surah An-Nisa, verse 58, which commands people to administer justice fairly. Justice can be interpreted in several ways. First, justice means equality—that is, treating everyone without discrimination. Second, justice means balance or proportionality, where rights and obligations are tailored to each individual's role and needs. Third, justice means granting rights to those who are entitled to them and putting things in their proper place. Fourth, justice is a divine attribute that maintains the balance of all creation. Based on these four meanings, it is very difficult to say that the Aceh MPU's fatwa reflects justice especially proportional justice and justice that assigns responsibility in accordance with one's actions.<sup>15</sup>

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<sup>15</sup> Law of the Republic of Indonesia No. 23 of 2004 on the Elimination of Domestic Violence (2004), <https://peraturan.bpk.go.id/Details/40597/uu-no-23-tahun-2004>.

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It is interesting to compare this with the approach taken by the Central MUI in Fatwa No. 11 of 2012. Although the Central MUI also stipulates that a child born out of wedlock has no legal lineage (*nasab*) to his biological father, the MUI allows for the provision of maintenance and a mandatory bequest (*wasiat wajibah*) by the man as a form of moral responsibility and punishment for his actions. This approach is more in line with the principles of *maṣlahah* and *daf' al-darar*, which are among the key pillars in the development of contemporary Islamic law.

Similarly, Indonesian positive law provides very strong protection for children's rights. Law No. 35 of 2014 on Child Protection, in Articles 76B and 77B, imposes criminal penalties on parents who neglect their obligations toward their children. The same applies to Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 1 of 2023 on the Criminal Code, which addresses the criminal offense of abandonment.<sup>16</sup>

#### **Analysis of the Fourth Point: The Equality of Children Before God**

The fourth point of this fatwa affirms that the status of a child born out of wedlock before Allah is the same as that of a child born within a valid marriage. This is a very important and commendable affirmation, as it reinforces the fundamental principle in Islam that every human being is born in a state of *fitrah* and purity. The Qur'an, in Surah Al-An'am, verse 164, explicitly states that no one will bear the burden of another's sin. This verse serves as a solid theological foundation that a child must not bear the sins of their parents.

This clarification provides a balanced perspective for understanding this fatwa as a whole. On the one hand, the Aceh MPU adheres to classical fiqh

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<sup>16</sup> Law of the Republic of Indonesia No. 1 of 2023 on the Criminal Code (2023), <https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023>.

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provisions that sever the lineage of a child born out of wedlock from that of his or her biological father. On the other hand, however, the Aceh MPU also protects the dignity of the child as a human being equal to other children. This means that in matters of worship and one's relationship with Allah, there is no difference between a child born within a lawful marriage and a child born outside of it. What distinguishes human beings is only their piety, not their birth origins.

However, it should be noted that this affirmation of equality has not yet been fully reflected in the preceding points, which actually limit children's rights regarding child support, inheritance, and guardianship. There is a gap between spiritual recognition and the socioeconomic reality faced by children born out of wedlock. They are recognized as equal in the eyes of God, but in their daily lives, they do not enjoy the same rights as legitimate children. This is the dilemma that this fatwa has yet to resolve.

### **Provisions on Child Support for Children Born Out of Wedlock According to the Central MUI Fatwa**

The issuance of Constitutional Court Decision No. 46/PUU-VIII/2010 has sparked a broad discourse on the legal status of children born out of wedlock, including within the realm of Islamic law in Indonesia. Concerns over the erosion of the boundaries of lineage protection prompted the Indonesian Ulama Council (MUI) to respond through a fatwa.

This fatwa was issued in response to public concerns that Constitutional Court Decision No. 46/PUU-VIII/2010 could potentially legitimize extramarital relationships. The MUI responded by reaffirming the principle that a child born out of wedlock cannot, biologically speaking, be traced back to the man who fathered the child, while clearly distinguishing between lineage and financial

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responsibility. In line with the fatwa issued by the Aceh Ulama Council (MPU), which also attributes lineage solely to the mother and her family, the MUI added a groundbreaking provision: a man who commits adultery is subject to a mandatory takzir penalty requiring him to provide financial support as a consequence of his actions.<sup>17</sup>

MUI Fatwa No. 11 of 2012 consists of four sections: general provisions, legal provisions, recommendations, and closing provisions.

1. General Provisions: Children Born Out of Wedlock, Had, Ta'zir, and Mandatory Bequests.

MUI Central Fatwa No. 11 of 2012 contains four key sections of concern: general provisions regarding children born out of wedlock, the crime of adultery, ta'zir, and mandatory bequests. The general provisions section explains that a child born out of wedlock is a child conceived as a result of sexual relations outside a valid marriage according to religious law. This definition indicates that a child born from premarital sexual relations is still categorized as a child born out of wedlock, even if the parents later marry. This provision is viewed as contradicting Article 99(a) of the Compilation of Islamic Law (KHI), which states that a child born within or as a result of a valid marriage has a legal lineage (nasab) to both parents.

Normatively, the KHI provision grants full legal recognition to the status of a child born after the marriage contract has been concluded without explicitly linking it to the timing of the biological union; thus, if a woman marries while pregnant and gives birth after the marriage contract, the child is still considered a legitimate child and has a blood relationship with her husband. The second

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<sup>17</sup> Fatwa of the Indonesian Ulema Council No. 11 of 2012 on the Status of Children Born Out of Wedlock and Their Treatment (2012).

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point explains that adultery is a criminal offense (*jarimah*) subject to *hadd* punishment in accordance with Sharia provisions. From the perspective of Islamic law, a “*jarimah*” is understood as any act prohibited by Sharia and subject to specific sanctions prescribed by Allah, whether in the form of *hudud*, *qishash*, or *ta’zir*. Thus, any violation of Sharia norms that results in criminal consequences can be categorized as a “*jarimah*.”

In Islamic law, perpetrators of adultery are divided into two categories: *zina muhshan* and *zina ghairu muhshan*. *Zina muhshan* is adultery committed by a man and a woman who are bound by a valid marriage, punishable by stoning to death. As for *zina ghairu muhshan*, it is adultery committed by an unmarried man and woman, punishable by one hundred lashes and one year of exile, as explained in Surah an-Nur, verse 2.

In Tafsir al-Munir, Sheikh Wahbah az-Zuhaili explains that this verse specifies the application of the *hadd* punishment for perpetrators of adultery who are free, of legal age, of sound mind, and not yet married. The fact that women are mentioned first in the verse is understood as an affirmation that women are often viewed as having a greater role in the occurrence of adultery and bear heavier social and psychological consequences compared to men.

Furthermore, the third point explains that *ta’zir* is a type of punishment for criminal offenses, the form and severity of which are left to the discretion of *ulil amri* or the competent authorities. However, when considered in light of the previous point which states that perpetrators of adultery are subject to *hadd* punishment an inconsistency arises in the application of the law, as it is not explicitly clarified whether the crime of adultery allows for a choice between *hadd* and *ta’zir* or is entirely left to the discretion of the government. The fourth point explains *wasiat wajibah*, which is a policy by the *ulil amri* requiring a man

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who fathered a child born out of wedlock to bequeath property to that child. The concept of wasiat wajibah is not found in classical fiqh; in fact, in the history of modern law, it was first introduced by the Egyptian government as a form of family law reform. Nevertheless, the concept of wasiat wajibah as applied in Indonesia differs from the concept that developed in Egypt.

## 2. Legal Provisions

Under Islamic law, a child born out of a valid marriage has a status of nasab that is severed from the man who fathered the child. This severance carries far-reaching legal consequences, including the loss of inheritance rights and the right to financial support from the biological father. If the child is a girl, the man also has no authority to act as her guardian in her future marriage, as his legal status is equivalent to that of a stranger. This provision reaffirms that the lineage of a child born out of wedlock is connected only to the mother and her family, so that all responsibility for financial support and inheritance falls entirely on the mother.

Nevertheless, Sharia affirms the fundamental principle that every child is born in a state of purity and fitrah, as emphasized in the hadith of the Prophet Muhammad (peace be upon him). No child bears the sin of another person's actions that led to their birth. This principle guarantees equal rights and equality for every child regardless of their birth status or background, and rejects all forms of discrimination and stigmatization against children as free and dignified individuals.

Within the framework of Maqashid al-Shari'ah, the preservation of lineage, or hifzl al-nasl, is one of the primary objectives that must be safeguarded. To achieve this, Sharia law enforces the preservation of legitimate lineage by imposing hadd punishments as a form of retribution for the crime of

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adultery. These punishments serve to protect the institution of the family while also acting as a deterrent to ensure that the purity of the lineage is maintained in accordance with the guidance of the Qur'an and the hadith.

In addition to the prescribed hadd punishments such as stoning for a married person (muhsan) or one hundred lashes along with one year of exile for an unmarried person (ghairu muhsan) the government has the authority to impose takzir punishments that prioritize humanitarian considerations and justice. There are two forms of takzir that can be imposed on perpetrators of adultery resulting in the birth of a child: the obligation to provide for the child's needs for the duration of the child's life and the provision of a mandatory bequest after the perpetrator's death. It is important to emphasize that this takzir is solely a form of protection for the child, not a means to reestablish the legal parentage between the child and the man responsible for the child's birth.

### 3. Recommendations

Recommendations are merely suggestions and input compiled by the Central MUI to serve as legal considerations for executive bodies in drafting laws or regulations related to children born out of wedlock. Essentially, fatwas are not part of positive law in Indonesia but rather Islamic law derived from the Qur'an and the hadith. Therefore, the laws set forth in the fatwas issued by the Central MUI cannot be enforced as stated in the fatwas themselves.

### 4. Closing Provisions

The concluding section of this fatwa serves as a reminder that this ruling is effective as of the date of its issuance and may be amended in the future if necessary. The essence of this Central MUI fatwa is to clarify the status of the child and the punishment for perpetrators of adultery resulting in the birth of a child. The takzir punishment is a form of educational sanction in Islamic law

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imposed to serve as a deterrent and for rehabilitation, with a flexible nature in accordance with the discretion of the authorities or judge, such as a reprimand, censure, boycott, expulsion, or other forms of punishment deemed proportionate.

Takzir sanctions are applied to acts of sin for which the punishment is not explicitly specified in *the textual sources* of Islamic law (*Nash*) and for which no expiation (*kafarat*) is prescribed. Examples include theft that has not reached the *nisab* threshold for the punishment of amputation, touching or kissing a woman who is not a *mahram*, insulting a fellow Muslim other than through a false accusation of adultery (*qadzif*), as well as minor physical assaults that do not cause injury or bodily harm, and other similar acts. The authorities (government) must be diligent in imposing takzir punishments in all appropriate circumstances.<sup>18</sup>

**The Relevance of the Aceh Fatwa and the Central MUI Fatwa on Child Support for Children Born Out of Wedlock to Islamic Law in Indonesia**

The author views the discourse on child support for children born out of wedlock as both a clash and a dialogue among three major currents: classical Islamic law, local and national fatwas, and Indonesian positive law. The fatwas issued by the Aceh MPU and the Central MUI, although rooted in the same *fiqh*, exhibit different approaches to *ijtihad* when confronting the reality of child protection. The relevance of both lies in their ability to respond to Constitutional Court Decision No. 46/PUU-VIII/2010 without sacrificing the principles of *sharia*, while also demonstrating that Islamic law remains vibrant and adaptable to contemporary issues.

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<sup>18</sup> Abu Bakar Jabir Al-Jazairi, *\*Minhajul Muslim: A Guide to Living as a Devout Muslim* (Pustaka Arafah, 2014).

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In Islam, marriage is a religious obligation aimed at establishing a family characterized by *sakinah*, *mawaddah*, and *rahmah*, as well as preserving the lineage and upholding honor. The responsibility to provide for a child rests firmly with the father as a consequence of a valid marriage bond. Conversely, extramarital relationships constitute *zina*, which is strongly condemned, and children born from such relationships have no legal or theological lineage to the man responsible for their birth.<sup>19</sup>

This severance of lineage is by no means intended to punish the child, but rather to preserve the purity of the institution of lineage as one of the pillars of *maqāsid al-syarī'ah*. It should be noted that not all children born without a registered marriage are considered children of adultery. Law No. 1 of 1974 affirms that the validity of a marriage depends on religious law, while registration is merely administrative in nature. The Compilation of Islamic Law even provides a mechanism for the validation of marriages that have not yet been registered, so that a child born of a marriage that is valid under religious law even if not yet registered still has a legal lineage and full rights from his or her father.

Constitutional Court Decision No. 46/PUU-VIII/2010 marked an important turning point by establishing that children born out of wedlock have a civil relationship with their biological father as long as this can be scientifically proven. Although grounded in the spirit of child protection, this decision sparked controversy because the phrase was seen as blurring the line between children born out of wedlock and legitimate children, and as potentially normalizing

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<sup>19</sup> Yulianti Yulianti, "Konsekuensi Sosial-Ekonomi Anak Dari Hubungan Non-Marital Dalam Tinjauan Islam," *JURNAL EKONOMI DAN BISNIS (EKOBIS-DA)* 6, no. 1 (2025).

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extramarital relationships.<sup>20</sup> Amid this confusion, the two fatwas emerged as Sharia guidelines. Both the Aceh MPU and the Central MUI affirmed that children born out of wedlock are descended only from their mothers and their mothers' families; the severance of lineage is understood as a sanction against the adulterous man, not as discrimination against the child. The fundamental difference lies in the issue of financial support: the Aceh MPU treats the severance of lineage as a release from all financial obligations, while the Central MUI adopts a progressive *ijtihad* by imposing a *ta'zīr* in the form of an obligation to provide for the child's basic needs and to leave a mandatory bequest upon the father's death.

The concept of the “*wasiat wajibah*” adopted by the Central MUI is an adaptation of a legal reform in Egypt that was originally intended for orphaned grandchildren who were barred from inheriting; it was subsequently incorporated into Article 209 of the Indonesian Islamic Family Law (KHI) for adoptive parents and adopted children, and has now been extended to include children born out of wedlock as a form of humanitarian compensation. In this way, Islamic law in Indonesia demonstrates its flexibility without losing its substance. The mandatory bequest serves as a bridge between the moral imperatives of Sharia and contemporary legal needs in protecting innocent children.

There is common ground between the Constitutional Court's ruling and the MUI fatwa in recognizing the responsibility of the man who fathered the child. However, in principle, the tension remains sharp: the Constitutional Court's ruling opens the possibility of a full civil relationship with the biological

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<sup>20</sup> Wahyu Wibisana, “Pernikahan Dalam Islam,” *Jurnal Pendidikan Agama Islam - Ta'lim* 14, no. 2 (2016).

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father, while the MUI fatwa firmly rejects the establishment of lineage and imposes only financial obligations as *ta'zīr*. The Aceh MPU even completely rejected the Constitutional Court's ruling because it was considered to interfere with religious matters.<sup>21</sup> Positive law itself treats children born of unregistered marriages and children born out of wedlock equally in terms of the absence of civil relations prior to a court ruling, thus, the Constitutional Court's ruling actually creates a paradox between child protection and a threat to the stability of Sharia law. It is in this situation that these fatwas serve as an ideological and moral bulwark for the Muslim community.

In essence, both fatwas serve to protect the rights of children born out of wedlock so that they do not become double victims. The approach taken by the Central MUI which combines the purity of lineage with the fulfillment of financial support through *ta'zīr* and *wasiat wajibah* offers a more just solution, in line with the *maqāṣid al-syarī'ah*, and contextual to the challenges of our time. This approach demonstrates that child protection can be upheld without sacrificing the fundamental principles of Islamic law, while also paving the way for harmony between religious law and the demands of contemporary justice.

## CONCLUSION

This study concludes that although the Aceh MPU Fatwa No. 18 of 2015 and the Central MUI Fatwa No. 11 of 2012 both adhere to the classical fiqh doctrine stipulating that a child born out of wedlock is related only to the mother and her family, the two differ sharply regarding financial support obligations. The Aceh MPU completely rejects the biological father's financial obligations by treating the severance of lineage as nullifying all rights and obligations, whereas the Central MUI adopts a progressive *ijtihad* by imposing *ta'zir* and

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<sup>21</sup> Pelu and J. Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 307–16.

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*wasiat wajibah* as sanctions against the man responsible for the child's birth and as a form of child protection. The Central MUI's approach has proven to be more contextual, responsive to demands for substantive justice following Constitutional Court Decision No. 46/PUU-VIII/2010, and aligned with *the maqāṣid al-syarī'ah*, particularly *ḥifẓ al-nafs* and *ḥifẓ al-nasl*, as it allows for the fulfillment of the child's needs without acknowledging a biological relationship. This model offers a middle ground between two seemingly opposing methodological poles, by framing material responsibility as a form of punishment and humanitarian compensation, rather than as an acknowledgment of biological descent.

In practical terms, this approach by the Central MUI can serve as a reference for harmonizing Islamic family law policies in Indonesia for example, by integrating the concept of *wasiat wajibah* for children born out of wedlock into the Compilation of Islamic Law or other legislation and as a moral guide for judges in Religious Courts to ensure that rulings are more oriented toward the best interests of the child. Meanwhile, further research should focus on empirical studies of the implementation of fatwas in courts and their impact on children's well-being; comparisons with other Muslim countries that have adopted the *wasiat wajibah*; the formulation of more concrete operational parameters for *maqāṣid*; and interdisciplinary dialogue between fatwa methodology, Constitutional Court rulings, and scientific developments such as DNA testing. Thus, the protection of children born out of wedlock can go hand in hand with fair legal certainty, without sacrificing the fundamental principles of Sharia.

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