

Child Lineage Rights and Paternity Determination from the Perspective of the Four Schools of Islamic Jurisprudence and Indonesian Positive Law

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ABSTRACT

The issue of child lineage rights represents a significant topic in both Islamic law and Indonesian positive law studies. Lineage not only relates to a child's personal identity but also concerns civil, social, and religious rights. Although previous studies have discussed child lineage either from the perspective of classical Islamic jurisprudence or Indonesian positive law separately, limited attention has been given to a systematic comparative analysis that identifies the legal tension, convergence, and normative development between the four Sunni schools of jurisprudence and contemporary Indonesian legal regulations. This research aims to identify classical fiqh perspectives on child lineage, analyze Indonesian positive law regulations regarding child lineage, and compare the convergences and differences between classical fiqh and positive law. Using a normative-comparative approach, this study analyzes classical fiqh texts from four schools (Hanafi, Maliki, Shafi'i, Hanbali) and Indonesian legal regulations including Marriage Law No. 1/1974, Islamic Law Compilation, and Constitutional Court Decision No. 46/PUU-VIII/2010. The findings reveal that classical fiqh emphasizes valid marriage contracts as the basis for lineage, while Indonesian positive law has begun accommodating scientific evidence such as DNA testing. The novelty of this study lies in its integrated comparison of classical fiqh doctrines and Indonesian positive law by highlighting how evidentiary standards for determining child lineage have shifted from a purely marital-contract-based framework toward a more child-protection-oriented legal approach. This study contributes to comparative understanding between classical fiqh and Indonesian positive law, emphasizing child protection as part of *maqāṣid al-sharī'ah* and the best interests of the child principle.



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INTRODUCTION

The issue of child lineage rights constitutes one of the topics with significant importance in Islamic law and Indonesian positive law studies. Lineage relates not only to a child's personal identity but also to civil, social, and religious rights inherent to them. From an Islamic law perspective, lineage determines the validity of family relationships, inheritance rights, marriage guardianship, and a child's social legitimacy (Mukhlis, 2025a; Mukhlis & Saidah, 2025). Meanwhile, in Indonesian positive law, lineage closely relates to child recognition in the family law system, civil registration, and protection of children's rights as citizens.

The study of child lineage becomes increasingly relevant when confronted with modern social and technological developments, such as the use of DNA testing as evidence in lineage determination. This raises debates between classical fiqh authority and contemporary legal practice. Some scholars accept scientific evidence as reinforcement for lineage claims, while others maintain adherence to traditional fiqh principles that emphasize valid marriage contracts as the primary basis for lineage determination (Afifah, 2024).

In the Indonesian context, child lineage issues become more complex due to interactions among Islamic law, customary law, and national law. Constitutional Court Decision No. 46/PUU-VIII/2010, for instance, opened space for recognizing children born out of wedlock with their biological fathers, provided it can be scientifically and technologically proven. This decision sparked new discourse regarding how Islamic law and positive law can synergize in protecting children's rights without neglecting sharia principles.

Recent research demonstrates that child lineage issues have garnered extensive academic attention. Afifah (2024) highlighted DNA testing as evidence for child legitimacy in Islamic law and Indonesian positive law, emphasizing the need for harmonization between religious norms and state law norms. Meanwhile, Riady and Chandra (2024) examined Yusuf al-Qaraḍawi's views regarding child lineage in *li'an* cases, showing *fiqh* flexibility in accepting modern scientific evidence (Mukhlis, 2025b; Mukhlis, Suradi, et al., 2023). Another study by Rahmadani (2024) emphasized the application of *usul fiqh* in determining lineage for children born out of wedlock, arguing that *maqāṣid al-sharī'ah* principles can be used to protect children's rights even when born outside valid marriage.

Research by Saputra (2025) explicitly compared classical *fiqh* perspectives with Indonesian positive law, finding common ground in child protection despite differences in normative foundations. Additionally, a study by Husni et al. (2024) on Indonesian religious court decisions showed that judicial practice has begun accommodating protection for children born out of wedlock, though resistance remains from some judges adhering to traditional *fiqh* views. Bibliometric research by Maimun et al. (2024) also revealed increasing trends in Indonesian Islamic family law studies, particularly regarding child and lineage issues.

From a positive law perspective, child protection forms part of the internationally recognized best interests of the child principle. Azis et al. (2025) emphasized that this principle must underlie every family law policy, including lineage determination. Kusmayanti et al. (2024) also demonstrated that child protection in marriage policies in Indonesia, Malaysia, and India has different dynamics but continues emphasizing the importance of children's rights as legal subjects.

Despite the growing body of literature, previous studies have generally focused on specific aspects of child lineage, such as DNA evidence, judicial decisions, *maqāṣid al-sharī'ah*, or the views of particular scholars. Existing studies have not comprehensively examined how the four major Sunni schools of Islamic jurisprudence conceptualize child lineage and how these doctrines compare systematically with contemporary Indonesian positive law. Consequently, the normative convergence and divergence between classical *fiqh* doctrines and modern legal developments, particularly regarding children born out of wedlock and the use of scientific evidence, remain insufficiently explored.

This gap raises an important research problem: to what extent do the doctrines of the Hanafi, Maliki, Shafi'i, and Hanbali schools correspond with or differ from Indonesian positive law in determining child lineage rights, and what are the implications of these similarities and differences for child protection? Addressing this problem is crucial because the increasing use of scientific evidence and the evolving legal recognition of children born out of wedlock require a clearer normative framework that balances Islamic legal principles with contemporary child protection standards.

Therefore, this research has urgency to examine child lineage rights from the perspective of four *fiqh* schools (Hanafi, Maliki, Shafi'i, Hanbali) and compare them with Indonesian positive law (Mukhlis, Janwari, et al., 2023; Mukhlis & Abdullah, 2025). The main objectives of this research are to identify classical *fiqh* perspectives on child lineage, particularly in cases of children born out of wedlock, analyze Indonesian positive law regulations regarding child lineage including Marriage Law, Islamic Law Compilation, and court decisions, and compare convergences and differences between classical *fiqh* and positive law, along with their implications for child protection.

This research is expected to contribute academically through comparative understanding between classical *fiqh* and Indonesian positive law, offering new perspectives on child protection in the context of Islamic law and national law.

RESEARCH METHODS

This research employs a normative-comparative approach aimed at analyzing child lineage rights from the perspective of four fiqh schools (Hanafi, Maliki, Shafi'i, Hanbali) and positive law in Indonesia. The normative approach was chosen because the research object consists of legal norms sourced from both classical fiqh texts and Indonesian legislation. Meanwhile, the comparative approach is used to compare classical fiqh perspectives with positive law, enabling discovery of significant convergences and differences.

This research falls within the normative legal research category. The main focus is on legal texts encompassing classical fiqh books, laws, Islamic law compilations, and court decisions. This normative research does not use field data but emphasizes document and literature analysis (Marzuki, 2019). The approaches used are fiqh approach and positive law approach. The fiqh approach examines the views of four schools regarding child lineage, particularly in cases of children born out of wedlock. The positive law approach analyzes Indonesian family law regulations, such as Law No. 1 of 1974 on Marriage, Islamic Law Compilation, and Constitutional Court Decision No. 46/PUU-VIII/2010.

Primary data includes classical fiqh books such as *Al-Fiqh al-Akbar* (Hanafi), *Al-Muwatta'* (Maliki), *Al-Umm* (Shafi'i), *Al-Mughni* (Hanbali), and legislation including Law No. 1 of 1974 on Marriage, Islamic Law Compilation, and Constitutional Court Decision No. 46/PUU-VIII/2010. Secondary data consists of Scopus-indexed journal articles from 2019-2025 relevant to child lineage issues, including studies by Afifah (2024), Riady and Chandra (2024), Rahmadani (2024), Saputra (2025), Husni et al. (2024), Maimun et al. (2024), Azis et al. (2025), and Kusmayanti et al. (2024).

The legal materials were selected based on three criteria: their normative authority, their direct relevance to child lineage determination, and their representativeness for each legal tradition examined in this study. Classical fiqh materials were selected because they represent doctrinal positions of the Hanafi, Maliki, Shafi'i, and Hanbali schools regarding nasab, legitimacy, marriage, and children born outside valid marriage. Indonesian positive legal materials were selected because they constitute binding or authoritative sources governing marriage, family relations, civil status, and child protection in Indonesia. Contemporary journal articles were selected to provide recent academic interpretations and debates concerning DNA evidence, children born out of wedlock, *maqāṣid al-sharī'ah*, and the best interests of the child principle.

Data was collected through literature study by tracing classical fiqh books, legislation, and Scopus-indexed journal articles. Searches were conducted through official databases including Scopus, DOAJ, Google Scholar, and national legal portals. After collection, the legal materials were classified into three categories: primary legal materials, consisting of classical fiqh texts and Indonesian statutory or judicial sources; secondary legal materials, consisting of scholarly journal articles and academic books; and analytical materials, consisting of conceptual frameworks such as *maqāṣid al-sharī'ah* and the best interests of the child principle. The materials were then further classified thematically into several issues: the legal basis of lineage, the status of children born out of wedlock, evidentiary standards for determining lineage, civil consequences of lineage, and child protection implications.

Data analysis employed descriptive-analytical methods. First, the views of four schools regarding child lineage were systematically described. Second, Indonesian positive law regulations were analyzed to examine how child lineage is regulated in the national legal system. Third, comparison was made between classical fiqh and positive law to find convergences and differences. The analysis was conducted through legal interpretation and comparative mapping. Each fiqh doctrine and Indonesian legal rule was examined by identifying its legal basis, normative reasoning, evidentiary requirement, and legal consequence for the child. These findings were then compared to determine areas of convergence, such as the protection of children's welfare, and areas of divergence, such as the role of valid marriage contracts and scientific evidence in establishing lineage. This analysis uses *maqāṣid al-sharī'ah* framework focusing on lineage protection and best interests of the child principle as normative foundations (Auda, 2008).

To maintain validity, this research uses authoritative sources including recognized classical fiqh books in Islamic tradition, official legislation, and Scopus-indexed journal articles. Additionally,

triangulation was conducted by comparing classical fiqh perspectives, positive law, and contemporary literature. This triangulation was intended to ensure that the conclusions were not derived from a single doctrinal source, but from cross-verification among classical jurisprudential texts, Indonesian legal norms, and contemporary scholarly discourse.

RESULTS AND DISCUSSION

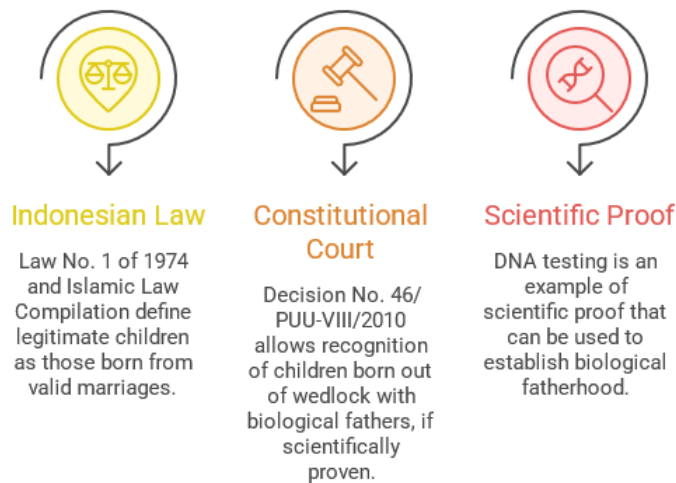
This research found fundamental differences between classical fiqh perspectives of the four schools and Indonesian positive law regarding child lineage rights, particularly for children born out of wedlock. To present these differences more systematically, the four schools may be compared based on three main aspects: the legal basis of lineage, the possibility of paternal recognition, and the evidentiary standard used to establish lineage. Hanafi school asserts that children can only be lineaged to fathers if born from valid marriages, with children born out of wedlock having lineage relations only with their mothers (Abu Hanifah, n.d.). Thus, in the Hanafi view, the decisive element is the existence of a valid marital relationship rather than biological connection alone. Maliki school holds similar views but is stricter in rejecting lineage recognition for children born out of wedlock with biological fathers, even with acknowledgment (Malik ibn Anas, n.d.). The Maliki position gives stronger emphasis to the protection of marital legitimacy and the prevention of lineage confusion. Shafi'i school emphasizes the importance of valid marriage contracts as the basis for lineage but opens space for recognition through *istilhaq* or lineage acknowledgment under certain conditions (Al-Syafi'i, n.d.). This indicates that the Shafi'i school maintains the centrality of marriage while still allowing limited recognition mechanisms when they do not contradict established lineage rules. Hanbali school is relatively more flexible, accepting lineage recognition with strong evidence, including paternal acknowledgment or testimony (Ibn Qudamah, n.d.). Compared with the other schools, the Hanbali position provides a broader evidentiary space, although it still operates within the normative framework of Islamic family law.

Based on this comparison, the four schools share a common doctrinal foundation: lineage is not treated merely as a biological fact but as a legal-religious status connected to marriage, legitimacy, inheritance, guardianship, and social order. However, they differ in the degree of flexibility given to paternal acknowledgment and supporting evidence. The Maliki school tends to be the most restrictive, the Hanafi and Shafi'i schools occupy a more moderate position with different doctrinal qualifications, while the Hanbali school appears relatively more accommodative toward recognition supported by strong evidence.

Meanwhile, Indonesian positive law through Law No. 1 of 1974 and Islamic Law Compilation affirms that legitimate children are those born from valid marriages. However, Constitutional Court Decision No. 46/PUU-VIII/2010 opened space for recognizing children born out of wedlock with biological fathers, provided it can be scientifically proven, for instance through DNA testing.

This development shows a significant normative shift in Indonesian positive law. While classical fiqh generally prioritizes the validity of marriage as the basis of lineage, Indonesian positive law increasingly recognizes biological and scientific evidence as a basis for establishing a civil relationship between the child and the biological father. The tension, therefore, does not merely lie in different legal conclusions, but in different epistemological foundations: classical fiqh derives lineage from the normative validity of marriage, whereas Indonesian positive law increasingly combines marital status, biological fact, scientific proof, and child protection principles.

Children's Legal Status



The difference between classical fiqh and Indonesian positive law lies in the normative basis for lineage determination. Classical fiqh emphasizes valid marriage contracts as the main requirement, while Indonesian positive law has begun accommodating scientific evidence (Mukhlis, Maryam, et al., 2023; Mukhlis et al., 2024). This demonstrates a paradigm shift from normative-religious approaches to scientific-legal approaches. Afifah (2024) emphasized that DNA testing can serve as evidence for child legitimacy in both Islamic law and Indonesian positive law. Riady and Chandra (2024) also showed that Yusuf al-Qaradawi accepts DNA testing as evidence in li'an cases, while still emphasizing the importance of marriage contracts.

Critically, the acceptance of DNA evidence creates both an opportunity and a doctrinal challenge. On the one hand, DNA testing strengthens the protection of children by preventing biological fathers from avoiding civil responsibility. On the other hand, if biological evidence is used without clear normative limits, it may be viewed as weakening the classical fiqh principle that lineage must be protected through lawful marriage. Therefore, the main issue is not whether science should be accepted or rejected, but how scientific evidence can be integrated into legal reasoning without eliminating the moral and institutional function of marriage in Islamic law.

Contemporary studies emphasize child protection as part of *maqāṣid al-sharī'ah*. Rahmadani (2024) argued that *maqāṣid* principles can be used to protect the rights of children born out of wedlock, even though classical fiqh rejects lineage with biological fathers. Saputra (2025) found that Indonesian positive law is more progressive in protecting children's rights, despite differing from classical fiqh. Husni et al. (2024) demonstrated that Indonesian religious court practice has begun accommodating protection for children born out of wedlock, though resistance remains from some judges. This shows dynamics between fiqh norms and positive law practice.

The deeper tension emerges between *hifz al-nasl*, which in classical fiqh protects lineage through marital legitimacy, and the best interests of the child principle, which in Indonesian positive law prioritizes the child's civil protection regardless of the parents' marital status. Classical fiqh seeks to preserve lineage certainty and prevent the normalization of unlawful sexual relations, whereas Indonesian positive law seeks to prevent children from bearing legal and social consequences for circumstances beyond their control. These two orientations are not necessarily contradictory, but they require careful reconciliation.

Differences between classical fiqh and Indonesian positive law perspectives have major implications for child protection. In classical fiqh, children born out of wedlock often experience social discrimination due to non-recognition of their lineage with biological fathers. However, Indonesian positive law has begun accommodating children's rights through Constitutional Court decisions. Maimun et al. (2024) showed that research trends in Indonesian family law increasingly emphasize

child protection. Azis et al. (2025) emphasized the best interests of the child principle as the basis for child protection in family law. Kusmayanti et al. (2024) also demonstrated that child protection in marriage policies in Indonesia is increasingly strengthened.

From a critical perspective, Indonesian positive law may be understood not as a rejection of classical fiqh, but as an attempt to respond to contemporary legal needs that classical fiqh did not formulate in the same institutional context. The Constitutional Court's approach does not necessarily equate children born out of wedlock with legitimate children in all religious-law consequences, but it expands civil responsibility to protect the child from legal neglect. This distinction is important because it allows a possible middle path: maintaining the religious significance of valid marriage while ensuring that children still receive recognition, maintenance, identity rights, and civil protection from their biological fathers.

Convergences between classical fiqh and positive law include that both equally emphasize the importance of child protection, albeit with different normative foundations (Mukhlis, Arifin, Ridwan, & Zulfaidah, 2025; Mukhlis, Arifin, Ridwan, Zulfaidah, et al., 2025). Differences show that classical fiqh rejects lineage of children born out of wedlock with biological fathers, while Indonesian positive law accepts recognition of children born out of wedlock with biological fathers through scientific evidence.

Accordingly, the comparative analysis demonstrates that the relationship between classical fiqh and Indonesian positive law should not be reduced to opposition between religious law and state law. Rather, it reflects a complex negotiation between doctrinal continuity and legal reform. Classical fiqh provides a normative framework for preserving lineage, marriage, and family order, while Indonesian positive law offers mechanisms to protect children in modern legal contexts. The main challenge is to develop a harmonized model that preserves the maqāṣid of lineage protection while preventing children from becoming victims of legal exclusion.

CONCLUSION

This research found that child lineage rights issues constitute important problems in Islamic law and Indonesian positive law. From a classical fiqh perspective, four major schools (Hanafi, Maliki, Shafi'i, Hanbali) generally affirm that child lineage can only be established through valid marriage. Children born out of wedlock have no lineage relationship with biological fathers, but only with their mothers. This view is rooted in the principle of protecting lineage as part of maqāṣid al-sharī'ah.

However, contemporary developments show paradigm shifts. Studies by Afifah (2024) and Riady and Chandra (2024) emphasize that scientific evidence such as DNA testing can serve as evidence for child legitimacy in both Islamic law and positive law. This demonstrates fiqh flexibility in responding to modern challenges. Rahmadani (2024) even emphasized that maqāṣid al-sharī'ah can be used to protect the rights of children born out of wedlock, despite classical fiqh rejecting lineage with biological fathers.

In Indonesian positive law context, Law No. 1 of 1974 and Islamic Law Compilation affirm that legitimate children are those born from valid marriages. However, Constitutional Court Decision No. 46/PUU-VIII/2010 opened space for recognizing children born out of wedlock with biological fathers, provided it can be scientifically proven. Studies by Saputra (2025) and Husni et al. (2024) showed that Indonesian religious court practice has begun accommodating protection for children born out of wedlock, though resistance remains from some judges.

This research contributes by providing comparative understanding between classical fiqh and Indonesian positive law. Their convergence lies in both emphasizing child protection, albeit with different normative foundations. Classical fiqh adheres to valid marriage contracts, while Indonesian positive law has begun accommodating scientific evidence.

Theoretically, this study demonstrates that the contemporary discourse on child lineage cannot be understood solely through the dichotomy between classical fiqh and modern state law. Instead, the findings indicate the emergence of a dynamic interaction between the principle of *ḥifẓ al-naṣl*

(protection of lineage) and the best interests of the child principle. This interaction suggests that child lineage determination is evolving from a purely marriage-based legal framework toward a more integrative framework that combines religious norms, scientific evidence, and child-rights considerations. Consequently, this study contributes to the development of comparative Islamic family law scholarship by showing that *maqāsid al-sharī'ah* can serve as a bridge for reconciling doctrinal continuity with contemporary legal reforms.

Research limitations include not deeply examining judicial practice at local levels and not comprehensively analyzing contemporary scholars' views outside the four major schools. Another limitation is that this study focuses primarily on normative legal materials and therefore does not capture how legal actors, including judges, religious leaders, and affected families, interpret and implement lineage regulations in practice.

Future research should therefore expand beyond normative analysis by employing empirical and socio-legal approaches to investigate the implementation of child lineage regulations in religious courts and civil registration institutions. Comparative studies involving other Muslim-majority countries may also provide broader insights into how Islamic legal traditions respond to scientific developments such as DNA testing. In addition, future research should examine the perspectives of contemporary Muslim scholars, legal practitioners, and policymakers to explore possible models for harmonizing classical *fiqh* principles with modern child protection frameworks.

Practically, this research recommends that child protection be made the top priority in every family law policy. The best interests of the child principle as affirmed by Azis et al. (2025) must become the foundation in child lineage determination. Thus, Islamic law and Indonesian positive law can synergize in protecting children's rights without neglecting sharia principles. Policymakers, judges, and Islamic legal scholars should also develop clearer guidelines regarding the use of scientific evidence in lineage determination to ensure legal certainty while preserving the fundamental objectives of Islamic law. Such efforts may contribute to a more balanced legal framework that simultaneously safeguards lineage integrity, parental responsibility, and children's civil rights.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest.

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