Jurnal AL-AHKAM Volume 17 Nomor 1 (2026) pp.93-107
DOI:

Jurnal AL-AHKAM
pISSN 2086-8243
eISSN 2271-6549
https://ejournal.uinib.ac.id/jurnal/index.php/alahkam

CC BY SA

Disharmony or Synchronization? The Legal Status of Children Born out of Wedlock Following Constitutional Court Decision No. 46/PUU-VIII/2010 in the Perspective of MUI Fatwa No. 11 of 2012

Masna Yunita

Universitas Islam Negeri Imam Bonjol Padang
Correspondence Email: masnayunita@uinib.ac.id

Received: 19-10-2026 Revised: 23-11-2026 Accepted: 23-11-2026

Abstract

This study examines whether the relationship between Constitutional Court Decision No. 46/PUU-VIII/2010, which recognizes the civil legal relationship between a child born out of wedlock and the biological father, and MUI Fatwa No. 11 of 2012, which affirms that a child born of *zinā* holds *nasab* only with the mother, amounts to disharmony or synchronization. Using doctrinal legal research with statutory, case, conceptual, and comparative approaches, the study analyzes the legal materials through qualitative content analysis, a ten-aspect comparison matrix, and three tests (status, substance, and teleological), supplemented by journal articles published between 2021 and 2025. The findings indicate that the disharmony is partial and confined to three matters: terminological scope (children born out of wedlock versus children born of *zinā*), the basis of the legal relationship (civil legal relationship versus *nasab*), and the consequences for inheritance and marriage guardianship. On the protective function, the two norms are synchronized: both reject child neglect and oblige the man who caused the child's birth to provide for the child's needs, with the fatwa specifying mechanisms of *nafaqa* (maintenance) and *waṣiyya wājiba* (obligatory bequest). The relationship is thus a manageable partial disharmony, not a systemic one: disharmony emerges when the Decision is read as conferring *nasab*, and synchronization when it is read as affording civil legal protection. This article contributes a map of disharmony and synchronization points and a three-domain synchronization model (*nasab*, civil legal relationship, and protection of the child's fundamental rights) that can be translated into judicial guidelines and administrative practice.

Keywords

Children Born Out of Wedlock; Constitutional Court Decision 46/2010; Legal Harmonization; *Maqāṣid al-Sharī'a*; MUI Fatwa 11/2012

Introduction

Legal protection of children stands as one of the fundamental principles in the Indonesian national legal system, spanning positive law (state-enacted law), Islamic law, human rights, and the principle of the best interests of the child. The 1945 Constitution of the Republic of Indonesia expressly guarantees this protection in Article 28B(1) and (2) and Article 28D(1) (Republik Indonesia, 1945). Yet the legal regulation of children born outside a valid marriage has persistently generated complex doctrinal debate.

Before 2012, Article 43(1) of Law No. 1 of 1974 on Marriage (the Marriage Law) stipulated that a child born outside marriage had a civil legal relationship only with the mother and the mother's family (Republik Indonesia, 1974). This normative construction aligned with Article 100 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), promulgated by Presidential Instruction No. 1 of 1991, which confined the *nasab* (patrilineal filiation established through a valid marriage contract) of a child born out of wedlock to the mother and the mother's family (Presiden Republik Indonesia, 1991). Article 186 of the KHI likewise restricted mutual inheritance rights to the maternal line. These provisions rigidly severed any legal relationship between the child and the biological father, whether in terms of status recognition, maintenance, marriage guardianship, or inheritance. The resulting substantive injustice was plain: the child bore the legal consequences of an extramarital relationship that was not the child's fault, despite having no ability to choose the circumstances of birth.

The dynamics of family law in Indonesia underwent a fundamental shift when the Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi, MK) delivered Decision No. 46/PUU-VIII/2010 on 17 February 2012 (Mahkamah Konstitusi Republik Indonesia, 2012). The case originated from a petition for constitutional review filed by Machica Mochtar and her son born of her *nikāḥ sirrī* (a religiously valid but state-unregistered marriage) with Moerdiono and produced a significant legal breakthrough (Jarir et al., 2023). The Court declared Article 43(1) of the Marriage Law conditionally unconstitutional, holding that it must be read so that a child born outside marriage has a civil legal relationship not only with the mother and the mother's family but also with the man who is the child's father and with the father's family, provided that a blood relationship can be established on the basis of science and technology and/or other legally admissible evidence (Jarir et al., 2023). The most common and reliable scientific method for satisfying this criterion is DNA testing (Fadel, 2022).

In response to the Decision and to address the concerns of the Muslim community, the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), through its Fatwa Commission, enacted Fatwa No. 11 of 2012 on the Status and Treatment of Children Born of *Zinā* (No. 11/MUNAS VIII/MUI/3/2012) on 10 March 2012 (Fadli et al., 2024; Majelis Ulama Indonesia, 2012). The Fatwa reaffirmed the doctrinal principle of Islamic law that a child born of *zinā* (sexual intercourse outside a valid marriage) has no *nasab, walī nikāḥ* (marriage guardian), inheritance, or maintenance relationship with the man who caused the child's birth; *nasab* runs only to the mother and the mother's family. The Fatwa nonetheless provided civil and humanitarian protection mechanisms by recommending that the government impose *taʿzīr* (discretionary punishment imposed by the state) on the biological father in the form of an obligation to provide for the child's needs, and to allocate a share of his estate after death through *waṣiyya wājiba* (obligatory bequest) (Majelis Ulama Indonesia, 2012). Fadli et al. (2024) emphasized that the Fatwa was designed to protect the child's civil

interests without blurring or legitimizing *sharʿī* (recognized under Islamic law) *nasab*.

The near-simultaneous emergence of these two norms immediately sparked public discourse and prompted legal practitioners to perceive them as diametrically opposed. Jarir et al. (2023) concluded that the MUI Fatwa substantially clashed with the Constitutional Court Decision. Conversely, as reported by Hukumonline (2012), other quarters held that the MUI Fatwa in fact reinforced the Court's reasoning within the framework of child protection; the then Chief Justice of the Constitutional Court himself affirmed that the Decision's operative part did not touch on *nasab* at all.

This perceptual tension has had direct consequences for judicial practice and civil registration (Enggarsasi et al., 2024; Hartini, 2022). Jarir et al. (2023) noted confusion among judges adjudicating inheritance cases involving children born out of wedlock, while Sarmadi et al. (2025) concluded that such children continue to face legal uncertainty owing to doctrinal rigidity, administrative resistance, and inconsistent judicial practice.

Examined through a doctrinal lens, the legal uncertainty stems from the way the two norms are read without separating their scope, basis, and purpose. The Constitutional Court Decision operates within the framework of national positive law, grounded in constitutional rights, to protect children from discrimination and neglect, without directly altering the theological-normative law on *nasab*. The MUI Fatwa, meanwhile, operates within the framework of Islamic law, emphasizing adherence to the principle of *nasab* as the foundation of kinship, marriage guardianship, and sharʿī inheritance. The relationship between the two norms therefore ought not to be understood as an irreconcilable normative conflict but rather as a duality of regulation at different conceptual levels that calls for interpretive harmonization.

Prior studies on this issue have generally followed several patterns. A large portion has focused on defending or criticizing the Constitutional Court Decision and on the implications of the civil rights of children born out of wedlock (Ali et al., 2024; Hasyim, 2021; Jarir et al., 2023; Luthfi et al., 2023; Suhariyanto, 2022). Others have analyzed the child's rights through the lens of maqāṣid al-sharīʿa (higher objectives of Islamic law) (Abubakar et al., 2021; Husien, 2024), as well as the legal reasoning employed by judges in court (Hudiata, 2021; Rohmawati & Rofiq, 2021). Despite these contributions, the existing legal literature to date does not appear to contain a study that systematically maps the points of disharmony and the points of synchronization between Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11 of 2012 on each legal aspect, while simultaneously formulating an operational implementation model for judicial practice and civil registration.

This article argues that the relationship between Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11 of 2012 is more accurately construed as a *manageable partial disharmony* rather than a systemic disharmony in which the two norms negate each other. To fill this academic gap, the article structures its analysis around three principal research questions: (1) what are the substance and legal construction of

Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11 of 2012; (2) on which legal aspects do the two norms exhibit disharmony and on which aspects is synchronization achieved; and (3) what form should an operational synchronization model take for the domains of judicial practice and civil registration. The article contributes a comparative matrix of legal aspects and formulates a three-domain synchronization model aimed at achieving legal certainty and optimal protection for children born out of wedlock without compromising the principle of *nasab* in Islamic law.

Method

This study constitutes doctrinal legal research based on a literature review. The approaches employed include the statutory approach (the 1945 Constitution, the Marriage Law, the KHI, and the Child Protection Law), the case approach (Constitutional Court Decision No. 46/PUU-VIII/2010), the conceptual approach (the concepts of *nasab*, civil legal relationship, and synchronization and disharmony of norms), and the comparative approach between the Constitutional Court Decision and the MUI Fatwa.

The primary legal materials consist of Constitutional Court Decision No. 46/PUU-VIII/2010, MUI Fatwa No. 11/MUNAS VIII/MUI/3/2012, Law No. 1 of 1974 on Marriage, Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law, and the Child Protection Law (Republik Indonesia, 2014). The secondary legal materials comprise journal articles published between 2021 and 2025 in SINTA- or Scopus-indexed journals addressing the status of children born out of wedlock, *nasab*, and related legal reasoning, supplemented by one foundational reference on the standing of fatwas in Religious Court practice. Articles were collected through a search of journal portals using the keywords children born out of wedlock, Constitutional Court Decision 46/PUU-VIII/2010, MUI Fatwa 11/2012, *nasab*, and *waṣiyya wājiba*, then selected on the basis of topical relevance, year of publication, and journal reputation. The analysis proceeded in three stages. First, the norms in the Constitutional Court Decision and the MUI Fatwa were identified through qualitative content analysis. Second, the two norms were compared across a ten-aspect matrix (instrument, date, object, basis, relationship with the mother, relationship with the man, inheritance, marriage guardianship, provision for the child's needs, and purpose). Third, the assessment of disharmony and synchronization was carried out through three tests: (a) the status test, examining the type of authority and binding force of each norm; (b) the substance test, examining the content and legal consequences of each norm; and (c) the teleological test, examining the protective purpose pursued, including the principle of the best interests of the child, justice, and *maṣlaḥa* (public interest/welfare). A limitation of this study is the absence of empirical data from post-Decision court rulings; the findings are accordingly conceptual and doctrinal in nature.

Literature Review

Children born out of wedlock and children born of *zinā*

The Marriage Law distinguishes a legitimate child, defined as a child born within or as a result of a valid marriage (Article 42), from a child born outside marriage (Article 43(1)). Article 99 of the KHI defines a legitimate child in a similar fashion. The term “child born out of wedlock” in these

provisions is broad. Jarir et al. (2023) explained that it can refer to a child of a marriage conducted in accordance with religious requirements but not registered with the state (an unregistered marriage) as well as to a child born of a relationship that is invalid under religious law (*walad al-zinā*). The MUI Fatwa No. 11/2012, by contrast, employs a narrower term: the child born of *zinā*, defined as a child born from sexual intercourse outside a marriage valid under religious law (Majelis Ulama Indonesia, 2012). The difference in terminological scope is the key to reading the relationship between the two norms.

Nasab, civil legal relationship, and the protection of the child's fundamental rights

In the mainstream Sunnī *madhāhib* (schools of Islamic law), a child's *nasab* is established through a valid marriage, so that a child born of *zinā* holds *nasab* only with the mother (Jarir et al., 2023). The opinion of Ibn Taymiyya, by contrast, is often cited as a classical basis for establishing a legal relationship between the child and the biological father under certain conditions (Ali et al., 2024). Hasyim (2021) proposed a reinterpretation of Islamic law on the status of children born out of wedlock in Indonesia, and Abubakar et al. (2021) advanced *ḥifẓ al-nafs* (preservation of life) as the *ʿilla* (effective cause [ratio legis]) of the right of a child born outside a valid marriage against the biological father, while stressing that this right is limited to civil entitlements and does not extend to marriage guardianship. Luthfi et al. (2023) read the Constitutional Court Decision from the perspective of *maqāṣid al-sharīʿa* and affirmed that the Decision reinterprets Article 43(1) so as to allow a child born out of wedlock to establish a civil legal relationship with the father. The distinction between *nasab* (a *sharʿī* construction), civil legal relationship (a state-law construction), and the protection of the child's fundamental rights (the interest that both norms aim to serve) forms the analytical starting point of this article.

Disharmony, synchronization, and the status of norms

Normative disharmony is understood as an incongruity in the content, scope, or legal consequences of two norms regulating the same subject matter; synchronization is the effort to align those norms so that they operate coherently. Both must be distinguished from hierarchical conflict. The Constitutional Court Decision is final and binding under Article 24C(1) of the 1945 Constitution, whereas a fatwa of the MUI does not constitute one of the types of statutory instruments listed in Article 7(1) of Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 15 of 2019 and Law No. 13 of 2022 (Hukumonline, 2016; Republik Indonesia, 2011; Saleh et al., 2023). The two norms, in other words, do not sit on a single hierarchy in which one can override the other. Fatwas are nonetheless influential in practice (Menchik, 2022; Rohmah, 2025): Ilhami (2018) found that MUI Fatwa No. 11/2012 served as a clarification of and commentary on the Constitutional Court Decision, as guidance for judges, and as a gap-filler in Religious Court adjudication. The relationship

between the two norms is therefore better read within a framework of legal pluralism, where state law, Islamic law, and a constitutional decision operate concurrently (Sarmadi et al., 2025).

Prior research and novelty

Ali et al. (2024) examined the Constitutional Court Decision and its relevance to the opinion of Ibn Taymiyya. Jarir et al. (2023) compared the progressive reasoning of the Court with the conservative reasoning of the ulama. Luthfi et al. (2023) analyzed the implications of the Decision for the civil legal relationship of children born out of wedlock from the perspective of *maqāṣid al-sharī'a*. Fadli et al. (2024) situated the biological father's maintenance obligation under the Fatwa as part of child protection. Rohmawati and Rofiq (2021) identified three types of legal reasoning: pragmatic, progressive, and conservative. Nasohah et al. (2025) surveyed child welfare protection elements in Islamic family law across Southeast Asia. Sarmadi et al. (2025) stressed the need for harmonization of Islamic law and national law and for the strengthening of administrative implementation. The novelty of this article lies in its aspect-by-aspect separation of disharmony and synchronization, its articulation of the conditions under which disharmony arises, and its formulation of a three-domain model together with the mechanisms for its implementation.

Result

Substance of Constitutional Court Decision No. 46/PUU-VIII/2010

The petitioners challenged Article 2(2) and Article 43(1) of the Marriage Law. The Court held that Article 43(1), which confined the civil legal relationship of a child born out of wedlock to the mother and the mother's family, violated the child's rights to survival, growth, and development, to protection from discrimination, and to fair legal certainty (Jarir et al., 2023). A central consideration was that pregnancy cannot occur without the union of an ovum and a spermatozoon; it is therefore neither proper nor just for the law to release the man from responsibility as a father while simultaneously extinguishing the child's rights against him, particularly when technology makes it possible to prove a blood relationship. The Court also affirmed that the child bears no sin and must not carry the stigma of the parents' conduct (Jarir et al., 2023).

The new construction of Article 43(1) centers on the civil legal relationship. The then Chief Justice confirmed that the operative part of the Decision does not address *nasab* at all (Hukumonline, 2012). The Decision likewise does not explicitly regulate the consequences for inheritance, marriage guardianship, or the evidentiary procedure, leaving an open space of interpretation for the courts.

Substance of MUI Fatwa No. 11 of 2012

The Fatwa contains six substantive rulings: (1) a child born of *zinā* has no *nasab*, *walī nasab* (marriage guardian by virtue of patrilineal filiation), inheritance, or maintenance relationship with the man who caused the child's birth; (2) a child born of *zinā* holds *nasab*, inheritance, and

maintenance only with the mother and the mother's family; (3) a child born of *zinā* does not bear the sin of the act of *zinā*; (4) the person who committed *zinā* is subject to *ḥadd* (scripturally prescribed punishment) in order to safeguard legitimate lineage (*ḥifẓ al-nasl*, preservation of lineage); (5) the government has the authority to impose *taʿzīr* on the man who committed *zinā* and thereby caused the child's birth, obligating him to provide for the child's needs and to allocate property after his death through *waṣiyya wājiba*; and (6) the purpose of this punishment is to protect the child, not to legitimize a *nasab* relationship with the man who caused the child's birth (Jarir et al., 2023; Majelis Ulama Indonesia, 2012).

The Fatwa does not, therefore, eliminate the man's responsibility; it merely shifts its basis from *nasab* to *taʿzīr*. The Fatwa also includes recommendations: the House of Representatives (Dewan Perwakilan Rakyat, DPR) and the government should draft legislation imposing severe penalties on persons who commit *zinā*; the government must protect children born of *zinā* and prevent their neglect; the government must ensure accessible birth certificates for such children without attributing them to the man who caused the birth; and the public should be educated not to discriminate against children born of *zinā* (Jarir et al., 2023; Majelis Ulama Indonesia, 2012).

Comparison matrix

Table 1. Comparison of Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11/2012

Aspect	Constitutional Court Decision No. 46/PUU-VIII/2010	MUI Fatwa No. 11/2012
Instrument and binding force	Constitutional review decision; final and binding (Art. 24C(1) of the 1945 Constitution)	Religious opinion (fatwa); not a type of statutory instrument; not binding under positive law
Date	Delivered 17 February 2012	Enacted 10 March 2012 (No. 11/MUNAS VIII/MUI/3/2012)
Object	Child born outside marriage (general term in Art. 43(1))	Child born of *zinā*, i.e., born of sexual intercourse outside a religiously valid marriage
Basis	Constitutional rights of the child (Art. 28B(1) and (2), Art. 28D(1) of the 1945 Constitution)	*Naṣṣ* (scriptural text) and *fiqh*; *ḥifẓ al-nasl*
Relationship with the mother	Civil legal relationship with the mother and the mother's family	*Nasab*, inheritance, and maintenance with the mother and the mother's family

Relationship with the man	Civil legal relationship, including with the father's family, where a blood relationship is proven through science and technology and/or other legally admissible evidence	No *nasab*, *walī nasab*, inheritance, or *nasab*-based maintenance
Inheritance	Not explicitly regulated	No mutual inheritance; property allocated through *waṣiyya wājiba*
Marriage guardianship	Not explicitly regulated	No *walī nasab* from the man
Provision for the child's needs	Consequence of the civil legal relationship	Obligation as *taʿzīr*: providing for the child's needs
Purpose	Protection of the child's rights and fair legal certainty; the child must not bear stigma	Protecting the child without legitimizing *nasab*; preventing neglect; safeguarding legitimate lineage

Source: Author's analysis based on Constitutional Court Decision No. 46/PUU-VIII/2010, Jarir et al. (2023), Hukumonline (2012), and Majelis Ulama Indonesia (2012).

Reception and implementation

The scope of the Decision has not been read uniformly. Some view its legal consequences as limited to the unregistered marriage between the petitioner and the deceased; others read it as applying generally, including to children born of *zinā* (Jarir et al., 2023). Abubakar et al. (2021) concluded that the child's rights against the biological father under the Decision are confined to civil entitlements (that is, physical and mental support), while other rights such as marriage guardianship are not granted. Jarir et al. (2023) documented judicial confusion in applying the Decision to inheritance cases. Sarmadi et al. (2025) concluded that the legal uncertainty affecting children born out of wedlock remains shaped by doctrinal rigidity, administrative resistance, and inconsistent judicial practice. On the other side, Ilhami (2018) found that the Fatwa has functioned as guidance for judges in the Religious Courts.

Principal findings

First, the two norms differ in their object of regulation: the Decision regulates the civil legal relationship of a child born out of wedlock with the biological father, whereas the Fatwa regulates the *nasab* of a child born of *zinā*. Second, the two norms differ in their legal consequences: the Decision opens the child's access to the biological father's civil responsibilities, whereas the Fatwa closes *nasab*, marriage guardianship, and *nasab*-based inheritance while imposing maintenance through *taʿzīr* and *waṣiyya wājiba*. Third, the two norms differ in the type of authority they carry: the

Decision is binding as positive law, whereas the Fatwa constitutes a religious reference. Fourth, the most pronounced disharmony lies in the domain of inheritance and marriage guardianship, because the Decision opens a civil legal relationship "including with the father's family" without specifying the inheritance consequences, while the KHI and the Fatwa close that door.

Discussion

Mapping disharmony and synchronization

The analysis demonstrates that the question "disharmony or synchronization?" cannot be answered with a single word. The answer depends on the aspect under examination, as summarized in Table 2.

Table 2. Map of disharmony and synchronization

Aspect	Assessment	Explanation
Terminological scope	Limited disharmony	The Court uses the general term "child born out of wedlock"; the Fatwa uses "child born of *zinā*." By definition, a child of a marriage that is religiously valid but unregistered is not a child born of *zinā* under the Fatwa, so the Fatwa does not reach such cases. Real tension exists only with respect to the child born of *zinā*.
Basis of the legal relationship	Conceptual disharmony	The Court constructs a civil legal relationship grounded in the blood relationship and constitutional rights; the Fatwa closes *nasab* on the basis of a valid marriage. The two operate on different constructions, and the Court does not address *nasab*.
Inheritance and marriage guardianship	Manifest disharmony, as yet unresolved	KHI Articles 100 and 186 and the Fatwa close inheritance and marriage guardianship from the man; the Decision opens a civil legal relationship "including with the father's family" without specifying the inheritance consequences. This interpretive space generates uncertainty in the courts.
Economic responsibility	Synchronized	Both norms impose on the man who caused the child's birth a responsibility to provide for the child's needs; the Fatwa specifies the mechanism through *taʿzīr* in the form of maintenance and *waṣiyya wājiba*.
Protection from stigma and neglect	Synchronized	The Decision affirms that the child bears no sin and must not be discriminated against; the Fatwa states the same and recommends accessible birth certificates and public education.

Binding force	Different type of authority, not a hierarchical conflict	The Decision binds as positive law; the Fatwa does not fall within the hierarchy of statutory instruments but carries sociological influence and is cited as guidance by judges (Ilhami, 2018).
Purpose	Synchronized	Both are oriented toward protecting the child; they differ in emphasis: constitutional rights on the part of the Court, and preservation of lineage on the part of the Fatwa

Source: Author's analysis.

When disharmony arises and when synchronization holds

The disharmony debated in public discourse derives more from differences in terminology and construction (*nasab* versus civil legal relationship) than from a clash in purpose. Disharmony arises when the Decision is interpreted as full *nasab* recognition, placing the child born out of wedlock on an equal footing with a legitimate child in all legal consequences, including inheritance and marriage guardianship. Such an interpretation does come into direct confrontation with the KHI and the Fatwa. Synchronization, conversely, emerges when the Decision is understood as an instrument of civil legal protection and the Fatwa as a reference for *sharʿī nasab*. The then Chief Justice's statement that the Decision's operative part does not address *nasab* (Hukumonline, 2012) supports this second reading. The proper question, therefore, is not which norm prevails but rather which domain each norm regulates.

Functional synchronization at the level of protection

The strongest convergence appears in the protective function. The Fatwa constructs *taʿzīr* so that the man who caused the child's birth does not escape responsibility, yet without legitimizing *nasab*. This construction yields practical consequences that closely approximate the civil legal relationship envisioned by the Decision on the aspect of providing for the child's needs. Fadli et al. (2024) stressed that this policy of the Fatwa is consistent with the Child Protection Law, which regulates the child's interests. Abubakar et al. (2021) concluded that the child's rights against the biological father under the Decision are limited to civil entitlements and do not extend to *nasab*-based rights such as marriage guardianship, a boundary that aligns with the limit drawn by the Fatwa. Ali et al. (2024) added that the opinion of Ibn Taymiyya, as a classical *fiqh* reference, provides a basis for attaching responsibility to the biological father. Synchronization therefore does not require either norm to be sacrificed; what it requires is a clear demarcation of scope.

The status of norms and legal pluralism

Because the Decision and the Fatwa carry different types of authority, the question of which norm prevails is misplaced. In a plural legal system, state

law and religious norms operate concurrently, each demanding compliance from the same subjects (Sarmadi et al., 2025). The courts (the Religious Courts in particular) serve as the arena where the two norms meet. The judicial confusion documented by Jarir et al. (2023) shows that it is the absence of bridging guidelines, not a contradiction between the norms themselves, that produces uncertainty. Rohmawati and Rofiq (2021) identified different types of legal reasoning (pragmatic, progressive, and conservative), making divergent outcomes in similar cases difficult to avoid without shared guidance.

The *maqāṣid* perspective and a method of alignment

From the vantage point of *maqāṣid al-sharīʿa*, the Fatwa foregrounds *ḥifẓ al-nasl*, while the Decision foregrounds the protection of rights and the survival of the child. Abubakar et al. (2021) argued that *ḥifẓ al-nafs* can serve as the *ʿilla* for the child's right against the biological father and that *ḥifẓ al-nasl* does not fully satisfy the conditions of an *ʿilla* capable of eliminating neglect. Luthfi et al. (2023) situated the Decision within the framework of *maqāṣid al-sharīʿa*, and Jarir et al. (2023) added that the Court's reasoning can be read as *maṣlaḥa*-based reasoning. Within the framework of *uṣūl al-fiqh* (Islamic legal theory), the tension between these two objectives need not be resolved by choosing one over the other; it can be addressed by assigning *ḥifẓ al-nasl* to the domain of *nasab* (which remains safeguarded) and *ḥifẓ al-nafs* to the domain of civil legal protection (which is expanded).

Three-domain synchronization model

Drawing on the map above, this article proposes a three-domain synchronization model, summarized in Table 3. The *nasab* domain preserves the *fiqh*-based boundary: a child born of *zinā* does not hold *nasab* with the man who caused the child's birth, so that *walī nasab* and *nasab*-based inheritance remain closed. The civil legal relationship domain recognizes the man's responsibility on the basis of a blood relationship proven through scientific evidence. The domain of the child's fundamental rights serves as the convergence point: the state remains obligated to guarantee maintenance, care, education, identity, and legal protection for the child without equating *nasab* with the civil legal relationship.

Table 3. Three-domain synchronization model

Domain	Reference norm	Legal consequences	Proposed implementation instrument
Nasab (Islamic law)	MUI Fatwa No. 11/2012, rulings 1 and 2; KHI Articles 100 and 186	*Nasab*, *walī nasab*, and inheritance only with the mother and the mother's family	Preserved; not altered by the Constitutional Court Decision

Civil legal relationship (state law)	Constitutional Court Decision No. 46/PUU-VIII/2010; Article 43(1) as construed by the Court	Civil responsibility of the biological father on the basis of a proven blood relationship	Court order or judicial decision; evidentiary standards (DNA testing and other evidence)
Protection of the child's fundamental rights (convergence point)	Art. 28B of the 1945 Constitution; Art. 7 and 26 of the Child Protection Law; MUI Fatwa rulings 3, 5, 6, and recommendations	Maintenance, education, care, identity, *waṣiyya wājiba*, and protection from stigma	Court order imposing maintenance, education, and care costs; regulation of *waṣiyya wājiba*; birth certificate protecting the child

Source: Author's analysis.

In practice, synchronization can be realized through a court order establishing the biological father's obligation to provide maintenance, education, and care. Such an order need not declare the child legitimate or alter *sharʿī nasab*; it suffices to affirm the biological father's legal responsibility to meet the child's fundamental rights.

The model calls for four policy steps. First, judicial guidelines should delineate scope so that courts distinguish a child of a religiously valid but unregistered marriage, for whom a declaration of legitimacy or a parentage determination may be sought, from a child born of *zinā*. Second, *waṣiyya wājiba* should be regulated for children born out of wedlock in relation to the biological father (Nofitasari, 2021; Puspantoro, 2025), since the KHI currently provides it only for adopted children and adoptive parents (Article 209). Third, standards for proving a blood relationship and accessible, affordable litigation procedures oriented toward the best interests of the child are needed so that the phrase "science and technology and/or other legally admissible evidence" can be applied uniformly. Fourth, the civil registration system, the Ministry of Religious Affairs, and the Supreme Court should coordinate birth registration in a way that protects the child without blurring the boundary of *nasab*, in line with the Fatwa's recommendations and the child's right to know the parents under the Child Protection Law.

Sarmadi et al. (2025) recommended the harmonization of Islamic law and national law as well as the strengthening of administrative implementation; the three-domain model can be read as an operational elaboration of that recommendation. It should be noted that this model is a conceptual proposal and has not been tested against court decisions; further research should examine Religious Court and District Court decisions issued after the Constitutional Court Decision to assess the consistency of its application.

Conclusion

The legal status of children born out of wedlock following Constitutional Court Decision No. 46/PUU-VIII/2010 and MUI Fatwa No. 11 of 2012 exhibits a manageable partial disharmony, not a systemic one. Manifest disharmony is confined to terminological scope, the basis of the legal relationship (civil legal relationship versus *nasab*), and the consequences

for inheritance and marriage guardianship. On the protective function, the two norms are synchronized: both reject neglect, impose on the man who caused the child's birth a responsibility to provide for the child's needs, and affirm that the child does not bear the parents' sin. Because they carry different types of authority, the two norms are not locked in a hierarchical conflict; they coexist within a plural legal system that demands bridging guidelines. The three-domain synchronization model (*nasab*, civil legal relationship, and the protection of the child's fundamental rights) can serve as a basis for alignment. The Constitutional Court Decision functions to protect the child's civil rights and the best interests of the child within the state legal system, while the Fatwa affirms *nasab* and its inheritance consequences under Islamic law. This study recommends clarification of scope through judicial guidelines, court orders imposing maintenance, education, and care obligations, regulation of *waṣiyya wājiba* for children born out of wedlock, standards for proving a blood relationship, and coordination of birth registration administration. Further research is advised to test this model against court decisions so that the conceptual findings can be empirically verified.

Acknowledgement This research received no specific grant from any funding agency in the public, commercial, or not for profit sectors. The author declares no conflict of interest.

References

Abubakar, A., Juliana, J., & Hasan, M. R. (2021). The right of a child outside the legal marriage of a biological father: The analysis of Ḥifẓ al-nafs as law 'illat. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, *5*(1), 153–173. https://doi.org/10.22373/sjhk.v5i1.9256

Ali, B., Wulandari, N., & Erianti, N. (2024). Status of children born out of wedlock: A study of Constitutional Court decision and its relevance to the view of Ibnu Taimiyah. *El-Usrah: Jurnal Hukum Keluarga*, *7*(1), 406–426. https://doi.org/10.22373/ujhk.v7i1.24200

Enggarsasi, U., Sa'diyah, N. K., & Reformasi, M. D. (2024). Legal protection for children born out of wedlock: An Islamic justice perspective. *Lex Publica*, *11*(1), 139–160. https://doi.org/10.58829/lp.11.1.2024.260

Fadel, M. (2022). DNA evidence and the Islamic law of paternity in light of maqāṣid al-sharīʿa. *The Muslim World*, *112*(3), 311–323. https://doi.org/10.1111/muwo.12441

Fadli, A., Firdaus, F., & Hidayat, R. (2024). The position of nafkah for children born out of wedlock in MUI Fatwa No. 11/2012 and child protection. *IJTIHAD*, *40*(2), 54–62. https://doi.org/10.15548/ijt.v40i2.635

Hartini, H. (2022). Asas personalitas keislaman dalam penetapan asal-usul anak luar kawin ke pengadilan negeri. *Arena Hukum*, *15*(1), 107–134. https://doi.org/10.21776/ub.arenahukum.2022.01501.6

Hasyim, S. (2021). Reinterpreting Islamic law on the status of children born out of wedlock in Indonesia. *Al-Jami'ah: Journal of Islamic Studies*, *59*(1), 1–29. https://doi.org/10.14421/ajis.2021.591.1-29

Hudiata, E. (2021). Juridic consideration of the judgment's decision concerning the post-born of children born out of marriage after

Decision of the Constitutional Court Number 46/PUU-VIII/2010. *International Journal of Nusantara Islam*, *9*(1), 124–133. https://doi.org/10.15575/ijni.v9i1.12118

Hukumonline. (2012). *Fatwa MUI juga melindungi anak hasil perzinaan*. https://www.hukumonline.com/berita/baca/lt4f6322acd4b12/fatwa-mui-juga-melindungi-anak-hasil-perzinaan

Hukumonline. (2016). *Kedudukan fatwa MUI dalam sistem hukum Indonesia*. https://www.hukumonline.com/klinik/a/kedudukan-fatwa-mui-dalam-hukum-indonesia-lt5837dfc66ac2d

Husien, S. (2024). Legal uncertainty regarding the status of children born out of wedlock in the perspective of Hifdzu al-Nasl. *Jurnal Hukum*, *40*(2), 63–74. https://doi.org/10.26532/jh.v40i2.41290

Ilhami, H. (2018). Kontribusi Fatwa MUI No. 11 Tahun 2012 tentang anak hasil zina dan perlakuan terhadapnya dalam hukum keluarga Islam di Indonesia. *Mimbar Hukum*, *30*(1), 1–16. https://doi.org/10.22146/jmh.29048

Jarir, A., Lukito, R., & Ichwan, M. N. (2023). Legal reasoning on paternity: Discursive debate on children out of wedlock in Indonesia. *Ahkam: Jurnal Ilmu Syariah*, *23*(2), 449–472. https://doi.org/10.15408/ajis.v23i2.27005

Luthfi, M., Fajrin, Y. A., & Novianti, K. R. (2023). Implications of Indonesian Constitutional Court Ruling No. 46/PUU-VIII/2010 on the civil relations of children born out of wedlock: A maqashid asy-syariah perspective. *Kanun: Jurnal Ilmu Hukum*, *25*(3), 626–639. https://doi.org/10.24815/kanun.v25i3.34416

Mahkamah Konstitusi Republik Indonesia. (2012). *Putusan Nomor 46/PUU-VIII/2010 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

Majelis Ulama Indonesia. (2012). *Fatwa Majelis Ulama Indonesia Nomor 11/MUNAS VIII/MUI/3/2012 tentang Kedudukan Anak Hasil Zina dan Perlakuannya*. https://mui.or.id/public/storage/fatwa/cec51e9b04737a1f85dcd46cc37415d9-lampiran.pdf

Menchik, J. (2022). The politics of the fatwa: Islamic legal authority in modern Indonesia. *Indonesia*, *114*, 75–97. https://doi.org/10.1353/ind.2022.0012

Nasohah, Z., Abidin, R. Z., Saharudin, N. I. B., Khairulazwan, P. N. M., & Fikri. (2025). Elements of child welfare protection in Islamic family law in Southeast Asian countries. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, *9*(3), 1349–1370. https://doi.org/10.22373/sjhk.v9.i3.26746

Nofitasari, K. D. (2021). Wasiat wajibah kepada anak angkat, non Muslim dan anak tiri (Formulasi hukum wasiat wajibah dalam Pasal 209 Kompilasi Hukum Islam di Indonesia dan perkembangannya). *Al-Syakhsiyyah: Journal of Law and Family Studies*, *3*(2), 25–47. https://doi.org/10.21154/syakhsiyyah.v3i2.3370

Presiden Republik Indonesia. (1991). *Instruksi Presiden Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam*. https://peraturan.bpk.go.id/Details/293351

Puspantoro, W. S. (2025). Pertimbangan hakim dalam perluasan wasiat wajibah di luar ketentuan Kompilasi Hukum Indonesia. *Journal of Law, Society, and Islamic Civilization*, *13*(2), 120–131. https://doi.org/10.20961/jolsic.v13i2.109134

Republik Indonesia. (1945). *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.

Republik Indonesia. (1974). *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*. https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974

Republik Indonesia. (2011). *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan sebagaimana telah diubah dengan Undang-Undang Nomor 15 Tahun 2019 dan Undang-Undang Nomor 13 Tahun 2022*. https://peraturan.bpk.go.id/Details/39188/uu-no-12-tahun-2011

Republik Indonesia. (2014). *Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*. https://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014

Rohmah, N. (2025). Efektivitas keberlakuan fatwa MUI di Indonesia. *Al-Syakhsiyyah: Journal of Law and Family Studies*, *6*(2), 151–168. https://doi.org/10.21154/syakhsiyyah.v6i2.9645

Rohmawati, R., & Rofiq, A. (2021). Legal reasonings of religious court judges in deciding the origin of children: A study on the protection of biological children's civil rights. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, *21*(1), 1–20. https://doi.org/10.18326/ijtihad.v21i1.1-20

Saleh, A. M., Amalia, R. J., & Fathoni, K. (2023). The authoritativeness of fatwa: A study of sharia banks' compliance with the DSN-MUI fatwa on fund-raising. *Justicia Islamica*, *20*(1), 155–174. https://doi.org/10.21154/justicia.v20i1.5306

Sarmadi, A. S., Hafidzi, A., & Abd Majid, L. (2025). 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*(2), 403–427. https://doi.org/10.18592/sjhp.v25i2.16666

Suhariyanto, D. (2022). The Constitutional Court's decision on child out of wedlock is based on justice. *Jurnal Pembaharuan Hukum*, *9*(1), 49–61. https://doi.org/10.26532/jph.v9i1.20435