

# Integrating Islamic Principles with Modern Legal Frameworks: Addressing Children's Origin in Religious Courts

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## Abstract

This study investigates the legal complexities in determining the status of children born out of wedlock within the framework of Islamic family law, focusing on cases adjudicated by the Temanggung Religious Court. The research is driven by the increasing number of disputes related to birth records, the evidentiary role of DNA testing, and the legal implications for children's civil status and inheritance rights. Employing a normative legal research method, this study analyzes statutory regulations, authoritative legal literature, and selected court decisions to evaluate how legal norms are applied in actual case resolutions. The



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study aims to explore several critical issues: the implications of different birth records, the role of DNA testing in establishing paternity, and the legal recognition of children born out of wedlock in Islamic family law. Findings indicate that DNA testing has emerged as a pivotal tool in confirming biological paternity, thereby providing legal certainty and safeguarding children's inheritance rights. However, inconsistencies in birth record documentation often result in ambiguity and pose challenges in determining legal parentage. The jurisprudence of the Temanggung Religious Court demonstrates varied approaches, reflecting both the rigidity and adaptability of current legal interpretations in reconciling religious doctrine with scientific evidence. The study concludes that despite the availability of scientific methods, the absence of uniform legal standards contributes to inconsistencies in the protection of children's rights. Legal reform is therefore necessary to harmonize Islamic legal principles with modern evidentiary practices. Strengthening procedural clarity and integrating scientific proof within religious adjudication frameworks will promote a more equitable and rights-based approach in family law, particularly in matters of parentage and inheritance.

**Keywords:** *Islamic Family Law, Child Legitimacy, Legal Harmonization*

## Introduction

The determination of the origin of children is a complex and important legal issue, especially in the context of the religious justice system in Indonesia. From the perspective of Islamic law, this determination concerns not only the legal status of the child in family relationships, but is also closely related to the fulfillment of civil rights, including inheritance rights, legal identity, and legal protection as a whole<sup>1</sup>. In practice, religious courts have a mandate to ensure clarity on the status of children and maintain social order through the application of principles of justice based on sharia values and the provisions of applicable national law.

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<sup>1</sup> Rohmawati Rohmawati and Ahmad Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on the Protection of Biological Children's Civil Rights," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 2021, <https://doi.org/10.18326/ijtihad.v21i1.1-20>.

The case of determining the origin of children handled by the Temanggung Religious Court is a clear illustration of the complexity of this problem, especially when there is a discrepancy between birth administration data and substantive legal conditions. The case filed is related to an application to change the birth certificate data of out-of-wedlock children to include the identity of the biological father<sup>2</sup>. This problem shows the tension between Law Number 1 of 1974 concerning Marriage which defines legal children as children born from legal marriages, and the social and legal reality that many marriages are carried out religiously without state registration. As a result, children born of such marriages are at risk of losing their legal status as legitimate children according to positive law, even if they are religiously recognized<sup>3</sup>.

Indonesia adheres to a dual legal system, namely the Western legal system that applies in the general court, and Islamic law which is the basis in the religious court for family matters. This dualism poses challenges in terms of harmonizing religious norms with the national legal system<sup>4</sup>. The determination of the origin of children is one of the crucial spaces to see the extent to which the principles of Islamic law can be integrated with state laws and regulations. There has not been a study that has in-depth examined the integration of Islamic values in the process of determining the origin of children in the practice of religious courts, especially those that comprehensively juxtapose juridical, theological, and procedural arguments.

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<sup>2</sup> Yuliani Tarais and Hartini Hartini, "Qualification of Child Status from Unregistered Polygamous Marriage without Marriage Validation (Study of Religious Court Decisions from 2019-2022)," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 112–22, <https://doi.org/10.15294/pandecta.v18i1.45534>.

<sup>3</sup> Zainuddin Mappong and Lili Lili, "Right to Self Submission to Western Inheritance Law for the Heirs Of Islamic Religion Whom the Property Leaver Has Different Religion," *Journal of Law and Sustainable Development* 11, no. 2 (July 17, 2023): e423, <https://doi.org/10.55908/sdgs.v11i2.423>.

<sup>4</sup> Achmad Kholiq and Iim Halimatusa'diyah, "Does Gender Blindness Improve Gender Equality? Female Judges and the Glass Ceiling Effect in the Islamic Judicial System in Indonesia," *Social & Legal Studies* 32, no. 1 (February 2023): 139–58, <https://doi.org/10.1177/09646639221094153>.

courts, especially those that comprehensively juxtapose juridical, theological, and procedural arguments<sup>5</sup>. Thus, the gap in the research lies in the lack of exploration of the aspects of legal reasoning methodology used by religious judges, as well as the lack of discussion about the synchronization between the principles of *maqāṣid al-syarī'ah* and national legal norms in concrete cases<sup>6</sup>. Understanding the role of the Supreme Court and the Constitutional Court in shaping legal interpretations and decisions is crucial for ensuring consistency and fairness in family law cases. The legal reasoning of religious court judges in determining the origin of children plays a crucial role in safeguarding children's civil rights and ensuring justice in such cases<sup>7</sup>.

This research offers novelty by presenting an empirical analysis of the decision of the Temanggung Religious Court, through the statute approach and the case approach, which directly investigates how judges form legal arguments related to the determination of the origin of children. This approach will be combined with a literature review of Supreme Court and Constitutional Court decisions, in order to show the integrative dynamics between Islamic law and national law. Thus, this research is expected to expand the understanding of religious justice practices and contribute to the development of Islamic family law in Indonesia that is more responsive to the needs of children's justice and human rights protection.

The research method used in this study is a normative legal research method, which focuses on the study of the applicable positive legal norms as well as relevant Islamic legal principles. The approach used is the statute approach and the case approach, which allows researchers to evaluate the relationship between the provisions of Islamic law and their application in the religious justice system in Indonesia, especially in cases of child origin. The primary data sources in this study include applicable laws and regulations such as the Compilation of Islamic Law and Law Number 1 of 1974 concerning

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<sup>5</sup> Ulin Na'mah and Mochamad Agus Rachmatulloh, "INTERPRETATIONS OF NAFKAH, GENDER RELATIONS, AND MOTIVATIONS FOR DIVORCE: A CASE STUDY OF DIVORCE LAWSUITS AT THE KEDIRI CITY RELIGIOUS COURT," *Istinbath* 23, no. 1 (June 2024): 17–31, <https://doi.org/10.20414/ijhi.v23i1.700>.

<sup>6</sup> Dian A Wicaksono and Faiz Rahman, "Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia," *Constitutional Review* 8, no. 2 (2022): 260, <https://doi.org/10.31078/consrev823>.

<sup>7</sup> Rohmawati and Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on the Protection of Biological Children's Civil Rights."

Marriage, as well as religious court decisions, with the main focus on Decision Number 627/Pdt.G/2024/PA.Tmg. as a case study.

Secondary data sources consist of legal literature, scientific journals, as well as academic documents relevant to the principles of Islamic law and religious judicial practice. The data collection technique is carried out through document studies, by accessing and reviewing archives of court decisions, legal regulations, and supporting academic references.

Data analysis was carried out qualitatively using legal interpretation techniques, both systematically and historically, to understand the judge's considerations and legal constructions used in resolving cases of child origin. This research seeks to uncover the juridical rationality behind religious court decisions and how sharia principles are integrated into the national legal system, so that it can contribute to the understanding of contemporary Islamic family law in Indonesia.

## **Case Chronology: Multidimensional Analysis of Children's Origin Lawsuits in Religious Courts**

The plaintiff filed a lawsuit for the child's origin at the Temanggung Religious Court on June 12, 2024, registered with case number 627/Pdt.G/2024/PA.Tmg. In this lawsuit, the plaintiff explained that he gave birth to a son out of wedlock on June 15, 2007. Plaintiff married Defendant on October 9, 2007, and lived with Defendant and his child <sup>8</sup>.

In September 2008, Plaintiff went to work in Korea and entrusted her child to Defendant without taking care of the child's birth certificate. Furthermore, Plaintiff asked Defendant to make a birth certificate for his child, which Defendant then did in December 2008. However, while Plaintiff was still in Korea, Defendant divorced Plaintiff through a decision of the Temanggung Religious Court dated June 25, 2012, with the talaq pledge pronounced on August 6, 2012 <sup>9</sup>.

When Plaintiff returned to Indonesia in November 2013 and requested the birth certificate of his child, it was found that the certificate contained erroneous information, which listed Defendant as the father and the deceased Defendant's wife as the mother of the child,

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<sup>8</sup> "Putusan 627/Pdt.G/2024/PA.Tmg," 2024.

<sup>9</sup> "Putusan 627/Pdt.G/2024/PA.Tmg."

as well as the date of birth of the child that did not match. The plaintiff had difficulties in changing the birth certificate at the civil registry office, so he filed a lawsuit to obtain a religious court decision as a condition for improving his child's birth certificate <sup>10</sup>.

In the multidimensional analysis of children's origin lawsuits in Religious Courts, several key aspects come into play. Firstly, the protection of children's rights and livelihood in divorce cases is crucial. Judges in Religious Courts need to adhere not only to procedural laws but also to fundamental principles applied in General Courts <sup>11</sup>. Additionally, the determination of children's rights to inheritance, especially in cases involving adopted children, is a significant area of study <sup>12</sup>.

It is crucial to consider various dimensions when examining the legal aspects of children's origin lawsuits in religious civil cases. The judiciary plays a vital role in safeguarding the rights of women and children through favourable and enforceable decisions <sup>13</sup>. Normative legal research is essential for understanding legal practices within religious courts, particularly in areas such as child custody execution and the application of legal principles like the ultra petite partial principle. By examining library archives or secondary data, researchers can delve into the normative aspects of legal systems <sup>14</sup>. The analysis of legal decisions in religious courts, such as those related to Sharia economic disputes, underscores the importance of normative legal

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<sup>10</sup> "Putusan 627/Pdt.G/2024/PA.Tmg."

<sup>11</sup> Hotnidah Nasution, "IMPLEMENTATION OF THE PRINCIPLE OF ULTRA PETITUM PARTIUM IN DECIDING CHILDREN LIVELIHOOD IN DIVORCE LAWSUIT IN RELIGIOUS COURTS," *AHKAM: Jurnal Ilmu Syariah* 18, no. 1 (January 12, 2018), <https://doi.org/10.15408/ajis.v18i1.7488>.

<sup>12</sup> Muhammad Ibnul Hasan and Rosyidatul Khoiriyah, "Gugatan Harta Waris Terhadap Anak Angkat Analisis Yuridis Terhadap Putusan PA Situbondo No. 0371/Pdt.G/2017/PA.Sit," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (November 2019): 231, <https://doi.org/10.29240/jhi.v4i2.949>.

<sup>13</sup> Amran Suadi, "PERANAN PERADILAN AGAMA DALAM MELINDUNGI HAK PEREMPUAN DAN ANAK MELALUI PUTUSAN YANG MEMIHAK DAN DAPAT DILAKSANAKAN / THE ROLE OF RELIGIOUS COURT IN WOMEN AND CHILDREN RIGHTS PROTECTION THROUGH PARTIAL AND EXECUTABLE DECISION," *Jurnal Hukum Dan Peradilan* 7, no. 3 (December 2018): 353, <https://doi.org/10.25216/jhp.7.3.2018.353-374>.

<sup>14</sup> Nispul Khoiri and Adelina Nasution, "Ḥaḍānah Conflict Resolution through Litigation: Analysis of Sharia Court Decisions in Aceh," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 2022): 177-98, <https://doi.org/10.18326/ijtihad.v22i2.177-198>.

research in examining the effectiveness of legal mechanisms like arbitration clauses in resolving complex legal issues <sup>15</sup>. Furthermore, using ex officio judge rights and non-cumulating divorce and child custody rights emphasizes the necessity for balancing judicial powers to ensure fairness and legal certainty <sup>16</sup>.

Child maintenance obligations post-divorce are crucial for the well-being of children and the functioning of families. Failure to meet these obligations can have significant repercussions on both the children and the non-resident parent. Research indicates that child support debt can negatively impact the physical, mental, and economic well-being of fathers who are unable to fulfil these obligations <sup>17</sup>. Additionally, the legal and practical aspects of child custody, visitation, and maintenance persist even after divorce, highlighting the ongoing responsibilities of parents towards their children <sup>18</sup>. By integrating insights from normative legal research, judicial practices, and societal dynamics, a more holistic understanding of the complexities surrounding these cases can be attained. Judicial discretion plays a role in determining the amount of child support to be paid post-divorce, reflecting the complexity and variability in such cases <sup>19</sup>.

This underscores the importance of understanding cultural and religious contexts when examining post-divorce familial responsibilities. Moreover, the implementation of child maintenance schemes has become increasingly important with the rise in divorces

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<sup>15</sup> Nita Triana, "URGENCY OF ARBITRATION CLAUSE IN DETERMINING THE RESOLUTION OF SHARIA ECONOMIC DISPUTES," *AHKAM: Jurnal Ilmu Syariah* 18, no. 1 (January 2018), <https://doi.org/10.15408/ajis.v18i1.8872>.

<sup>16</sup> Moh Ali, "Measuring Ex Officio Judge Rights and Application of the Ultra Petitem Partium Principle in Deciding Cases in Religious Courts," *Journal of Law and Legal Reform* 5, no. 1 (January 2024): 383–408, <https://doi.org/10.15294/jllr.vol5i1.2314>.

<sup>17</sup> Nathan L. Robbins et al., "Child Support Debt and the Well-being of Disadvantaged Fathers of Color," *Journal of Marriage and Family* 84, no. 5 (October 2022): 1366–86, <https://doi.org/10.1111/jomf.12841>.

<sup>18</sup> Nigussie Afesha, "Legal and Practical Aspects of Child Custody, Visitation and Maintenance: A Case Study in SNNP Regional State," *Mizan Law Review* 11, no. 2 (March 2018): 275, <https://doi.org/10.4314/mlr.v11i2.2>.

<sup>19</sup> Syifa Fachrunisa, Rezki Suci Qamaria, and Nurul Hanani, "Judges' Perspectives on the Determination of the Amount of Mut'ah, Childbirth Costs, and Child Sustenance in Divorce Cases (The Study on the Court's Decision Number 808/Pdt.G/2021/Pa. Kab. Kdr)," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (September 26, 2023): 54, <https://doi.org/10.22373/ujhk.v6i1.15537>.

and lone-parent families across different countries <sup>20</sup>. These schemes aim to ensure that children receive the financial support they require even after their parents' separation.

## Legal Process

In a scenario where a plaintiff initiated a lawsuit on June 12, 2024, concerning a birth certificate error that listed different parents due to a child being born out of wedlock, several references offer insights relevant to legal documentation, birth certificates, and registration processes. Birth certificates play a crucial role in legal documentation and personal identification. They serve as a fundamental source of population knowledge and the basis for establishing personal identity <sup>21</sup>. Birth certificates not only provide legal recognition to a child but also safeguard their basic rights, including the right to identity, ensuring protection under the law <sup>22</sup>. These certificates are not only crucial for personal identification but also serve as a primary source for legal documentation. They are often required for various purposes such as obtaining passports, driver's licenses, opening bank accounts, and other legal transactions <sup>23</sup>.

Furthermore, the research by Jackson et al. underscores the significance of birth registration for ensuring legal status, which enables access to benefits like healthcare and education. This emphasises the importance of accurate birth certificates in establishing legal rights and entitlements for individuals, including children born out of wedlock <sup>24</sup>.

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<sup>20</sup> Mia Hakovirta and Merita Jokela, "Contribution of Child Maintenance to Lone Mothers' Income in Five Countries," *Journal of European Social Policy* 29, no. 2 (May 2019): 257–72, <https://doi.org/10.1177/0958928717754295>.

<sup>21</sup> Susan J. Pearson, "Introduction," in *The Birth Certificate: An American History*, ed. Susan J. Pearson (University of North Carolina Press, 2021), 1–20.

<sup>22</sup> Enis Tristiana and Fedito Anggara Putra, "Implementation of 3 in 1 Innovations for the Issuance Acceleration of Three Population Documents Through Birth and Death Registration at Surakarta Regency," in *Proceedings of the 1st International Conference on Demographics and Civil-Registration (INCODEC 2021)* (Paris: Atlantis Press SARL, 2023), 113–21, [https://doi.org/10.2991/978-2-494069-53-4\\_13](https://doi.org/10.2991/978-2-494069-53-4_13).

<sup>23</sup> Melissa Castan and Paula Gerber, "The Need for Reform of Australia's Birth Registration Systems," in *New Directions for Law in Australia* (ANU Press, 2017), 439–48.

<sup>24</sup> Michelle Jackson et al., "Thriving Beyond Survival: Understanding Utilization of Perinatal Health Services as Predictors of Birth Registration: A Cross-Sectional

Highlight key strategies employed by countries like Indonesia to enhance birth registration, including legal and policy changes, health sector involvement, and public information campaigns <sup>25</sup>. Additionally, Abay and Gebre-Egziabher point out that well-educated women are more likely to understand the importance of birth registration for their children, underscoring the role of education in raising awareness about this issue <sup>26</sup>.

Additionally, the article by Anaduaka discusses the socioeconomic and demographic factors influencing birth certification. It notes that a valid birth certificate can help mitigate long-term risks and facilitate claiming rights and privileges in various domains, including legal matters <sup>27</sup>. In conclusion, the references offer valuable insights into the importance of accurate birth registration, particularly in cases involving discrepancies in parentage details on birth certificates. Ensuring the accuracy of such legal documents is essential for establishing individual rights, accessing benefits, and reducing long-term risks associated with identity and legal status <sup>28</sup>.

## Application of Law

As recognised by the Constitutional Court Decree No. 46/PUU-VIII/2010, DNA tests' use to determine a child's origin has significant implications in various legal contexts. DNA testing plays a crucial role in establishing paternity, especially in cases of extramarital children <sup>29</sup>. These tests provide scientific evidence to establish paternity legally, influencing judicial decisions and protecting children's inheritance

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Study," *BMC International Health and Human Rights*, 2014, <https://doi.org/10.1186/s12914-014-0038-3>.

<sup>25</sup> Anaise Williams et al., "Using the Theory of Planned Behaviour to Understand Motivation to Register Births in Lombok, Indonesia," *Children & Society* 32, no. 5 (September 2018): 368–80, <https://doi.org/10.1111/chso.12262>.

<sup>26</sup> Shishay Tadesse Abay and Atakti Gebreyesus Gebre-egziabher, "Status and Associated Factors of Birth Registration in Selected Districts of Tigray Region, Ethiopia," *BMC International Health and Human Rights* 20, no. 1 (December 2020): 20, <https://doi.org/10.1186/s12914-020-00235-x>.

<sup>27</sup> Uchechi Shirley Anaduaka, "An Empirical Analysis of the Socioeconomic and Demographic Characteristics Influencing Birth Certification in Nigeria," 2020, <https://doi.org/10.21203/rs.3.rs-18158/v3>.

<sup>28</sup> Loso Judijanto, et al., 2024.

<sup>29</sup> Madhvika Patidar et al., "Molecular Insights of Saliva in Solving Paternity Dispute," *Journal of Forensic Dental Sciences* 7, no. 1 (2015): 76, <https://doi.org/10.4103/0975-1475.150325>.

rights<sup>30</sup>. Additionally, DNA testing is not only relevant in inheritance cases but also in determining paternity in situations like adultery, fornication, contested paternity in divorce proceedings, or questioned legality<sup>31</sup>. DNA testing is essential in legal contexts, particularly in establishing paternity, especially in cases involving extramarital children. DNA tests provide scientific evidence that influences judicial decisions and safeguards children's inheritance rights<sup>32</sup>. These tests are relevant not only in inheritance cases but also in scenarios like contested paternity in divorce proceedings or questioned legality<sup>33</sup>. The scientific nature of DNA testing provides a robust foundation for legal determinations of paternity, ensuring accuracy and reliability in legal proceedings.

DNA testing has become a crucial tool in legal contexts, especially in cases concerning paternity determination, including those involving extramarital children. The use of DNA tests to establish paternity has significant implications in various legal settings<sup>34</sup>. Scientific tests, such as DNA testing, have a profound impact on judicial decisions when legal paternity is at stake, highlighting the influence of science on legal outcomes<sup>35</sup>.

Islamic law permits the use of DNA evidence to establish paternity in cases of illegitimate children born to unmarried women. However, there are restrictions on its use in cases involving children born to married women due to the emphasis on paternity within the context of

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<sup>30</sup> Helena Machado, "Biologising Paternity, Moralising Maternity: The Construction of Parenthood in the Determination of Paternity Through the Courts in Portugal," *Feminist Legal Studies* 16, no. 2 (August 2008): 215–36, <https://doi.org/10.1007/s10691-008-9089-y>.

<sup>31</sup> "DNA Fingerprinting with the Goals of Researching the Charges Made by the Parents, Studying, and Analyzing the Data," *Medicon Medical Sciences*, October 2022, <https://doi.org/10.55162/MCMS.03.077>.

<sup>32</sup> Mónika Nogel et al., "Legislation of Forensic DNA Analysis in Hungary - Past, Present and Future," *Forensic Science International: Genetics Supplement Series* 7, no. 1 (December 2019): 604–6, <https://doi.org/10.1016/j.fsigss.2019.10.107>.

<sup>33</sup> J C Oosterwijk et al., "First Experiences with Genetic Counselling Based on Predictive DNA Diagnosis in Hereditary Glomus Tumours (Paragangliomas).," *Journal of Medical Genetics* 33, no. 5 (May 1996): 379–83, <https://doi.org/10.1136/jmg.33.5.379>.

<sup>34</sup> Machado, "Biologising Paternity, Moralising Maternity: The Construction of Parenthood in the Determination of Paternity Through the Courts in Portugal."

<sup>35</sup> J. Galt et al., "Isolation of Chromosome-21-Specific DNA Probes and Their Use in the Analysis of Nondisjunction in Down Syndrome," *Human Genetics* 81, no. 2 (January 1989): 113–19, <https://doi.org/10.1007/BF00293885>.

a valid marriage <sup>36</sup>. Modern technology, including DNA testing, can be employed for paternity verification at a wife's request to establish her innocence in certain cases or to prove paternity under family and civil laws for maternal and child welfare rights <sup>37</sup>. Additionally, Muslim states may utilize DNA evidence to determine the financial responsibility of adulterous fathers for their illegitimate children while withholding legal paternity benefits <sup>38</sup>. Traditional paternity testing methods rely on obtaining pure child DNA, which is essential for accurate testing both postnatally and prenatally <sup>39</sup>.

Islamic law has specific regulations concerning evidence, and both Islamic law and common law have established rules of evidence that must be followed in court proceedings <sup>40</sup>. While DNA testing can be integrated into Sharia evidence laws, its use is limited due to the unique aspects of Hudud and Sharia objectives <sup>41</sup>. The tension between biological and legal conceptions of paternity has become more pronounced with the introduction of DNA testing, prompting discussions on whether Islamic law should adopt a biological definition of paternity <sup>42</sup>.

Moreover, DNA typing is crucial in cases of blood chimerism, where additional investigations beyond blood samples may be necessary to

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<sup>36</sup> Ayman Shabana, "PATERNITY BETWEEN LAW AND BIOLOGY: THE RECONSTRUCTION OF THE ISLAMIC LAW OF PATERNITY IN THE WAKE OF DNA TESTING," *Zygon* 47, no. 1 (March 2012): 214–39, <https://doi.org/10.1111/j.1467-9744.2011.01246.x>.

<sup>37</sup> Souha Korbatiéh, "Evidence Laws in Sharia and the Impact of Modern Technology and DNA Testing," *Australian Journal of Islamic Studies* 5, no. 3 (December 2020): 4–29, <https://doi.org/10.55831/ajis.v5i3.303>.

<sup>38</sup> Mohammad Fadel, "Evidence and the Islamic Law of Paternity in Light of Maqāṣid Al-Sharī'a," *The Muslim World* 112, no. 3 (July 2022): 311–23, <https://doi.org/10.1111/muwo.12441>.

<sup>39</sup> Allison Ryan et al., "Response to Drábek and Cereda," *Genetics in Medicine* 16, no. 10 (October 2014): 794, <https://doi.org/10.1038/gim.2014.99>.

<sup>40</sup> Suhaizad Saifuddin et al., "EXAMINING THE APPLICATION OF STANDARD OF PROOF IN CRIMINAL CASES: A COMPARATIVE ANALYSIS OF ISLAMIC LAW AND COMMON LAW IN MALAYSIA," *Malaysian Journal of Syariah and Law* 12, no. 1 (March 2024): 11–22, <https://doi.org/10.33102/mjssl.vol12no1.491>.

<sup>41</sup> Korbatiéh, "Evidence Laws in Sharia and the Impact of Modern Technology and DNA Testing."

<sup>42</sup> Monika Lindbekk, "Reflections on Law, Religion, and Technology: Legal Mobilisation in the Area of Egyptian Paternity Law," in *Combining the Legal and the Social in Sociology of Law* (Hart Publishing, 2023), <https://doi.org/10.5040/9781509959419.ch-011>.

determine each child's genetic characteristics accurately <sup>43</sup>. In the legal context of Nigeria, DNA tests have revealed instances of marital infidelity leading to paternity disputes, highlighting the importance of such scientific evidence in resolving legal conflicts <sup>44</sup>. DNA testing in determining paternity involves analysing DNA profiles from children and mothers to infer information about the biological father <sup>45</sup>. The application of DNA tests in determining the origin of a child, as sanctioned by legal frameworks such as the Constitutional Court Decree No. 46/PUU-VIII/2010, has far-reaching implications in various legal proceedings. These tests provide concrete scientific evidence that can establish paternity, resolve disputes, and safeguard the inheritance rights of children in different legal contexts.

DNA tests are essential in determining the origin of a child, particularly in legal contexts. These tests offer concrete scientific evidence that can establish paternity, resolve disputes, and safeguard the inheritance rights of children <sup>46</sup>. Legal frameworks, such as the Constitutional Court Decree No. 46/PUU-VIII/2010, often authorize the use of DNA tests for such purposes. The application of DNA analysis in inherited cardiomyopathies illustrates how genetic testing can assist in diagnosing borderline cases and identifying individuals at risk through cascade screening of family members <sup>47</sup>.

## Implications of the Decision

The court's decision regarding the inheritance rights of a child born out of wedlock has significant implications for law and society. The decision impacts the child's inheritance rights and extends to

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<sup>43</sup> A Milde et al., "DNA Typing in Cases of Blood Chimerism," *International Journal of Legal Medicine*, 1999, <https://doi.org/10.1007/s004140050263>.

<sup>44</sup> Issah Abeebllahi Obalowu and Adibah Abdul Rahim, "Marital Infidelity and Paternity Dispute in Nigeria: An Islamic Perspective," *AL-HIKMAH: INTERNATIONAL JOURNAL OF ISLAMIC STUDIES AND HUMAN SCIENCES* 5, no. 5 (August 2022): 1–17, <https://doi.org/10.46722/hikmah.v5i5.299>.

<sup>45</sup> A. Dawid, "Forensic Identification with Imperfect Evidence," *Biometrika* 85, no. 4 (December 1998): 835–49, <https://doi.org/10.1093/biomet/85.4.835>.

<sup>46</sup> Rosemary Collins and Alison MacLeod, "Denials of Paternity: The Impact of DNA Tests on Court Proceedings," *Journal of Social Welfare and Family Law* 13, no. 3 (May 1991): 209–19, <https://doi.org/10.1080/09649069108415089>.

<sup>47</sup> KARIN Y. VAN SPAENDONCK-ZWARTS, MAARTEN P. VAN DEN BERG, and J. PETER VAN TINTELEN, "DNA Analysis in Inherited Cardiomyopathies: Current Status and Clinical Relevance," *Pacing and Clinical Electrophysiology* 31, no. s1 (February 2008), <https://doi.org/10.1111/j.1540-8159.2008.00956.x>.

guaranteeing and protecting the rights of illegitimate children, including the right to earn a living, guardianship rights, and child support from the biological father <sup>48</sup>. Various aspects of children's rights, including guardianship, earning a living, and receiving child support from the biological father. It also addresses the complexities surrounding children born out of wedlock, such as the need for legal recognition of paternity through technological evidence to establish lineage with the biological father <sup>49</sup>. Furthermore, the legal clarity provided by the court decision is crucial in cases concerning the child's origin, as it determines the child's civil relationship with both the mother and the biological father, especially in matters of inheritance <sup>50</sup>.

Moreover, the decision influences the distribution of inheritance, as children born out of wedlock, without a recognised family relationship, may be excluded from inheriting from the biological father and the father's family<sup>51</sup>. This underscores the importance of legal recognition and protection of the rights of such children to ensure fair treatment in matters of inheritance.

Additionally, the decision has broader social implications, directing behaviours related to marriage and family-building efforts, emphasising marriage's significance in having a family and continuing offspring <sup>52</sup>. Marriage and family-building efforts have significant social implications,

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<sup>48</sup> Hazar Kusmayanti et al., "The Justice for Illegitimate Children of Indonesian Women Workers Through Constitutional Court Decision No. 46/PUU-VIII/2010," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (July 2023), <https://doi.org/10.29303/ius.v11i2.1228>.

<sup>49</sup> Ilham Tohari, Anggit Waseso, and Erna Herawati, "Legal Protection of the Rights Children Born Out of Wedlock: A Comparative Study in Indonesia and Malaysia," *International Journal of Current Science Research and Review* 07, no. 04 (April 2024), <https://doi.org/10.47191/ijcsrr/V7-i4-18>.

<sup>50</sup> Arinie Sherlita Cholis, "THE LEGAL STANDING & INHERITANCE RIGHTS FOR OUT-OF-WEDLOCK CHILD IN RELATION TO THE CONSTITUTIONAL COURT'S DECISION IN TERMS OF CIVIL INHERITANCE LAW," *Audito Comparative Law Journal (ACLJ)* 1, no. 2 (September 2020): 71-77, <https://doi.org/10.22219/audito.v1i2.13759>.

<sup>51</sup> Fatkul Hidayat et al., "Legislation on Determining the Parentage of a Born-Out-of-Wedlock Child Based on the Perspectives of the Best Interest of Child and Progressive Fiqh," *Asian Research Journal of Arts & Social Sciences*, January 2022, 13-31, <https://doi.org/10.9734/arjass/2022/v16i130275>.

<sup>52</sup> Nurul Hikmah, "Impact of Constitutional Court Decision No. 24/Puu-Xx/2022 Regarding Marriage as a Prerequisite for Fulfilling the Right to Have a Family and Continuing Offspring: A Socio-Legal Perspective," 2023, [https://doi.org/10.2991/978-2-38476-152-4\\_144](https://doi.org/10.2991/978-2-38476-152-4_144).

influencing behaviours and emphasizing the importance of marriage for procreation and offspring continuation. Research indicates that mate selection, particularly the preference for in-group members as mates for offspring, may lead to fostering marriages with cousins to control mate choice <sup>53</sup>. The stability of parental relationships, such as remaining married, can impact children's exposure to family instability, which is crucial for child health outcomes <sup>54</sup>.

Offspring may also consider family background when selecting a spouse to establish beneficial alliances or enhance social status <sup>55</sup>. It also highlights the need for detailed provisions to ensure consistency and predictability in child custody, visitation, and support decisions <sup>56</sup>. In conclusion, the court's decision on the inheritance rights of children born out of wedlock impacts the child's legal standing and inheritance. It has wider implications for family dynamics, social norms related to marriage, and protecting children's rights within the legal system.

## Clarity of Child Status

The legal status of children, especially those born out of wedlock, is a significant issue addressed by religious courts. Various studies have delved into this topic, shedding light on the complexities surrounding determining child status in such cases. For instance, research has explored the qualification of child status in unregistered polygamous marriages not validated by the Religious Court <sup>57</sup>. Additionally, studies have examined the legislation and juridical implications of determining

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<sup>53</sup> Abraham P. Buunk and Ashley D. Hoben, "A Slow Life History Is Related to a Negative Attitude towards Cousin Marriages: A Study in Three Ethnic Groups in Mexico," *Evolutionary Psychology* 11, no. 2 (April 2013): 442–58, <https://doi.org/10.1177/147470491301100215>.

<sup>54</sup> Kristi Williams et al., "Mothers' Union Histories and the Mental and Physical Health of Adolescents Born to Unmarried Mothers," *Journal of Health and Social Behavior* 54, no. 3 (September 2013): 278–95, <https://doi.org/10.1177/0022146513497034>.

<sup>55</sup> Menelaos Apostolou, "Parent-Offspring Conflict over Mating: The Case of Family Background," *Evolutionary Psychology* 6, no. 3 (July 2008): 147470490800600, <https://doi.org/10.1177/147470490800600310>.

<sup>56</sup> Afesha, "Legal and Practical Aspects of Child Custody, Visitation and Maintenance: A Case Study in SNNP Regional State."

<sup>57</sup> Tarais and Hartini, "Qualification of Child Status from Unregistered Polygamous Marriage without Marriage Validation (Study of Religious Court Decisions from 2019-2022)."

the status of children born out of wedlock based on the best interest of the child and progressive fiqh <sup>58</sup>.

Determining the legal status of children, particularly those born out of wedlock, is a complex issue that may involve religious courts.<sup>59</sup> Research has explored various aspects of this topic, including the qualification of child status in unregistered polygamous marriages not validated by the Religious Court. Studies have shown that in cases where both parents are deceased, guardianship applications for minors need to be made to the local Religious Court or District Court <sup>60</sup>.

Polygamous marriages have been found to impact male parental investment, leading to reduced investment per child within larger families and a shift in investments from offspring towards obtaining more mates <sup>61</sup>. Poverty and low socioeconomic status have been identified as factors contributing to child marriage, emphasizing the need to address underlying economic issues to combat this practice <sup>62</sup>.

In cases of children born out of wedlock, there are philosophical considerations related to the protection of such children, encompassing ontological, epistemological, and axiological aspects, which involve state and societal protection measures <sup>63</sup>. Legal decisions have clarified the status of children born out of wedlock, establishing that they have a civil relationship with their biological father but may not have a full legal

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<sup>58</sup> Hidayat et al., "Legislation on Determining the Parentage of a Born-Out-of-Wedlock Child Based on the Perspectives of the Best Interest of Child and Progressive Fiqh."

<sup>59</sup> Judijanto, Loso, Dwanda Julisa Sistyawan, I Made Kariyasa, Amiruddin, and Muhammad Husni Abdullah Pakarti. 2024. "Gender Roles And The Redefinition Of Family Law: Toward A Modern Family With Justice". *Mawaddah: Jurnal Hukum Keluarga Islam* 2 (2):140-57. <https://doi.org/10.52496/mjhki.v2i2.37>.

<sup>60</sup> Syelvía Margretha, "Management of Property of Minors Under Guardianship," *Edunity Kajian Ilmu Sosial Dan Pendidikan*, 2023, <https://doi.org/10.57096/edunity.v2i7.125>.

<sup>61</sup> Hasan Çetin Ekerbiçer et al., "A Comparison of Sexual Function, Psychological Status, and Sociodemographic Characteristics of Turkish Men Within Polygamous and Monogamous Marriages," *Balkan Medical Journal*, 2016, <https://doi.org/10.5152/balkanmedj.2016.16459>.

<sup>62</sup> J Anitha Menon et al., "'Ring' Your Future, Without Changing Diaper – Can Preventing Teenage Pregnancy Address Child Marriage in Zambia?," *Plos One*, 2018, <https://doi.org/10.1371/journal.pone.0205523>.

<sup>63</sup> Hidayat et al., "Legislation on Determining the Parentage of a Born-Out-of-Wedlock Child Based on the Perspectives of the Best Interest of Child and Progressive Fiqh."

father-child relationship <sup>64</sup>. The legal position of children born out of wedlock has been a subject of debate, with courts making decisions to protect children from social stigma associated with non-marital pregnancies <sup>65</sup>. Additionally, child marriage is recognized as a violation of human rights, particularly affecting access to education and sexual and reproductive healthcare <sup>66</sup>.

Furthermore, the inheritance rights of children born out of wedlock have been analysed from the perspective of the Shafi'i School of Jurisprudence and civil law, highlighting the debates and interpretations surrounding the status of such children <sup>67</sup>. The protection of the rights of children born out of wedlock has been emphasised as a reflection of a society's respect for human rights, irrespective of the child's birth status <sup>68</sup>.

Moreover, the decision-making process of religious court judges in determining the origin of children has been scrutinised, revealing disparities in legal interpretations that impact children's civil rights protection <sup>69</sup>. The practice of adoption within communities has implications for marriage law, categorising adopted children based on

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<sup>64</sup> Euis Nurlaelawati and Stijn Cornelis van Huis, "The STATUS OF CHILDREN BORN OUT OF WEDLOCK AND ADOPTED CHILDREN IN INDONESIA: INTERACTIONS BETWEEN ISLAMIC, ADAT, AND HUMAN RIGHTS NORMS," *Journal of Law and Religion*, 2019, <https://doi.org/10.1017/jlr.2019.41>.

<sup>65</sup> Hoko Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," *Journal of Human Rights Practice* 12, no. 3 (February 2021): 501–23, <https://doi.org/10.1093/jhuman/huaa041>.

<sup>66</sup> Mohd Al Adib Samuri, Noor Aziah Mohd Awal, and Muhamad Abral Abu Bakar, "Curbing Child Marriage Amongst Muslims in Malaysia: Towards Legal Reform," *Uum Journal of Legal Studies*, 2022, <https://doi.org/10.32890/uumjls2022.13.1.1>.

<sup>67</sup> Nurkholis Ulwi, Masnun Masnun, and Muhammad Harfin Zuhdi, "Inheritance Rights of Children Born Out of Wedlock: Analysis from the Perspective of Shafi'i School of Jurisprudence and the Civil Law Code (Children of Zina) with an Educational Approach," *Jurnal Ilmiah Profesi Pendidikan* 9, no. 2 (May 2024): 1263–69, <https://doi.org/10.29303/jipp.v9i2.2253>.

<sup>68</sup> Tohari, Waseso, and Herawati, "Legal Protection of the Rights Children Born Out of Wedlock: A Comparative Study in Indonesia and Malaysia."

<sup>69</sup> Rohmawati and Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on the Protection of Biological Children's Civil Rights."

marital status and the presence of biological parents <sup>70</sup>. In conclusion, the legal status of children born out of wedlock is a multifaceted issue that requires careful consideration of religious, legal, and societal perspectives to ensure the protection of children's rights and well-being.

## Inheritance Rights

As recognised through court decisions, inheritance rights are influenced by a child's legal status. Court decisions impact inheritance rights and broader aspects of a child's well-being and legal standing. For example, Constitutional Court rulings are crucial in protecting the rights of illegitimate children, especially those born to migrant workers. These decisions affect inheritance rights and ensure protection in livelihood, guardianship, and child support <sup>71</sup>.

In different cultural contexts, such as within the Chinese community, children born out of wedlock must meet specific conditions and requirements to secure their inheritance rights. Customary regulations and legal stipulations govern the inheritance status of these children, demonstrating the intersection of cultural norms and legal frameworks in determining inheritance outcomes <sup>72</sup>.

Additionally, establishing inheritance rights for children born out of defective marriages involves intricate legal processes, including DNA testing to confirm biological relationships. When a child born out of wedlock is proven to be biologically related to the father and the father's family, mechanisms such as testamentary grants through notarial deeds are utilised to formalise inheritance rights within specified legal limits.<sup>73</sup>

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<sup>70</sup> Jumarim Jumarim, "The Practice of Adoption in the Sasak Community and Its Implications for Marriage Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (April 2024): 445, <https://doi.org/10.22373/sjhk.v8i1.18581>.

<sup>71</sup> Kusmayanti et al., "The Justice for Illegitimate Children of Indonesian Women Workers Through Constitutional Court Decision No. 46/PUU-VIII/2010."

<sup>72</sup> Fatsya Gita Subagia and Benny Djaja, "Legal Protection of Inheritance of Extramarital Children in the Chinese," *Edunity Kajian Ilmu Sosial Dan Pendidikan* 2, no. 7 (July 2023): 758–66, <https://doi.org/10.57096/edunity.v2i7.109>.

<sup>73</sup> Ivo Junia Imako Haris, "Children's Position on a Defective Marriage (Fasid) in Terms Establishment of Inheritance Right as an Effort for Legal Certainty," *Sociological Jurisprudence Journal* 7, no. 1 (February 2024): 40–44, <https://doi.org/10.22225/scj.7.1.2024.40-44>.

In light of Constitutional Court decisions, out-of-wedlock children are increasingly acknowledged not only in civil relationships with their mothers but also with their biological fathers, provided they can substantiate these relationships scientifically. This acknowledgement is crucial in enabling such children to inherit from their biological fathers, expanding their inheritance rights within the legal framework <sup>74</sup>.

In Islamic law, inheritance rights are determined in special circumstances. A child born alive is deemed to have possessed inheritance rights since conception. This legal standpoint ensures that children are entitled to inheritance based on their status as living beings from conception <sup>75</sup>. The legal landscape concerning inheritance rights is complex, considering factors such as recognising children born outside of marriage, the impact of void marriages on inheritance, and safeguarding children's rights post-divorce. These legal complexities underscore the significance of legal frameworks in ensuring fair inheritance outcomes and upholding the rights of all involved parties <sup>76</sup>.

In conclusion, court decisions and legal frameworks are crucial in shaping inheritance rights, especially for children from diverse family backgrounds. The evolving legal landscape demonstrates a commitment to ensuring equitable and just inheritance outcomes while navigating intricate familial and cultural dynamics.

## Protection of Children's Rights

Religious courts play a crucial role in safeguarding children's rights within the framework of Islamic law and in compliance with relevant laws and regulations. Islamic law provides a comprehensive mechanism for protecting children's rights at both strategic and operational levels <sup>77</sup>. One contentious issue related to children's rights within Islamic law

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<sup>74</sup> Cholis, "THE LEGAL STANDING & INHERITANCE RIGHTS FOR OUT-OF-WEDLOCK CHILD IN RELATION TO THE CONSTITUTIONAL COURT'S DECISION IN TERMS OF CIVIL INHERITANCE LAW."

<sup>75</sup> Mohi Uddin, "Provisions of the Rights of Inheritance in Special Circumstances in the Muslim Law: An Overview," *Beijing Law Review* 12, no. 01 (2021): 205–14, <https://doi.org/10.4236/blr.2021.121012>.

<sup>76</sup> Hijawati Hijawati and Rizayusmanda Rizayusmanda, "Hak Dan Kedudukan Anak Luar Nikah Yang Diakui Terhadap Warisan Tanah Ditinjau Dari Hukum Perdata," *Solusi*, 2021, <https://doi.org/10.36546/solusi.v19i1.333>.

<sup>77</sup> Lutf Ullah and Usman Rafiq, "Child Labour and Education Perspective of International Law, Pakistani Law and Islamic Law (A Comparative

is the minimum age for marriage, which intersects with gender equality and the interpretation of legal texts <sup>78</sup>.

Judges in Religious Courts hold significant responsibility in ensuring the protection of children's rights, particularly in divorce cases, where they have the authority to make decisions that safeguard the rights of children and wives <sup>79</sup>. Islamic law principles emphasise the importance of recognising and safeguarding property rights, which indirectly contribute to the protection of children's rights <sup>80</sup>.

Protecting children's rights is essential to prioritise their best interests. This may involve resolving child cases outside the criminal mechanism through processes like diversion to avoid human rights violations in correctional institutions <sup>81</sup>. The legal considerations in Islamic law regarding marriage aim to promote children's best interests (*maslahat*) <sup>82</sup>. However, fully contextualising the interpretation of Islamic law in Religious Courts, especially concerning child protection, is challenging <sup>83</sup>. Judges in these courts sometimes make decisions to

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Jurisprudential Approach)," *Rahatulquloob*, July 2021, 11–23, <https://doi.org/10.51411/rahat.5.2.2021/258>.

<sup>78</sup> Muhammad Shofwan Taufiq and Muhammad Fahrudin, "The Hermeneutics of Islamic Law in Reviewing Changes to the Minimum Age for Marriage," *Muhammadiyah Law Review* 7, no. 2 (August 2023): 1, <https://doi.org/10.24127/mlr.v7i2.2765>.

<sup>79</sup> Adi Nur Rohman, - Sugeng, and Hesti Widyaningrum, "INSTRUMENTATION OF EX-OFFICIO RIGHTS OF RELIGIOUS COURTS JUDGE RELATED TO FULFILLING CHILDREN AND WIFE'S RIGHTS DUE TO DIVORCE," *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 361, <https://doi.org/10.21143/jhp.vol50.no2.2581>.

<sup>80</sup> Yulia Yulia, Herinawati Herinawati, and Malahayati Rahman, "Legal Protection of Small and Medium Industry Products Through Trademark from an Islamic Law Perspective," *Proceedings of Malikussaleh International Conference on Law, Legal Studies and Social Science (MICOllS)* 3 (December 2023): 0006, <https://doi.org/10.29103/micolls.v3i-.321>.

<sup>81</sup> SAIDAH, "COUNTERPRODUCTIVE OF DIVERSION FOR CHILDREN IN CONFLICT WITH THE LAW: THE CONTEXT OF LEGAL IMPOSITION FROM THE PERSPECTIVE OF ISLAMIC LAW," *Russian Law Journal* 11, no. 3 (April 2023), <https://doi.org/10.52783/rlj.v11i3.1503>.

<sup>82</sup> Iswantoro Iswantoro and Faiq Tobroni, "Rationalization of Islamic Legal Considerations in Marriage Dispensation: A Lesson from Katingan, Central Kalimantan," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 2022, 301–14, <https://doi.org/10.24090/mnh.v16i2.7074>.

<sup>83</sup> Mhd Yazid, "Conservatism of Islamic Legal Arguments in Granting Marriage Dispensation at the Indonesian Religious Courts," *Al-Qisthu: Jurnal Kajian Ilmu-*

protect children from social stigma associated with issues like pregnancy out of wedlock <sup>84</sup>.

Overall, religious courts have a significant role in upholding and protecting children's rights through Islamic principles and relevant legal frameworks. By interpreting Islamic law in a manner that prioritises the best interests of children and by addressing contentious issues such as the minimum age for marriage, these courts contribute to ensuring the well-being and rights of children within their jurisdiction.

## Conclusion

The results of the study show that the need to balance Islamic sharia values and the development of modern law is increasingly urgent, along with increasing social dynamics and more contextual demands for justice. The reformulation of procedural legal procedures, increasing the capacity of human resources in the religious justice environment, and regulatory reform are strategic steps that can encourage this integration. The *maqāṣid al-sharī'ah*-based approach can be used as a conceptual framework for interpreting Islamic legal texts more progressively without neglecting the fundamental principles of religion. The integration of Islamic principles with the modern legal framework in determining the origins of children in religious courts is a complex challenge that requires a multidimensional approach. This study highlights the importance of using cutting-edge technology such as DNA tests as a valid means of proof in determining fate, guaranteeing inheritance rights, and providing legal certainty on the status of children, especially for those born out of wedlock. Through a study in the religious courts of the Temanggung area, this study reveals that although this technology has been scientifically recognized and positively legal, its application still faces normative resistance in judicial practice.

Although it makes theoretical and practical contributions, the study has limitations, mainly due to its limited scope to case studies in a single area of religious justice. Therefore, to broaden understanding and strengthen policy, follow-up research is recommended to involve other areas with a comparative approach as well as to enrich methodologies

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*Ilmu Hukum* 21, no. 1 (April 2023): 1-14,  
<https://doi.org/10.32694/qst.v21i1.2489>.

<sup>84</sup> Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection."

through the integration of quantitative data and insights from various stakeholders. Further research can also delve deeper into how the public, judges, and academics perceive the use of modern legal technology within the framework of Islamic values, in order to create an inclusive, adaptive, and equitable family law system.

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