

# The Status of Children Born Out of Wedlock: A Comparative Analysis of Indonesia, Morocco, and Egypt

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Children Born Out of Wedlock;  
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## Abstract

*This study aims to analyze the legal status and certainty of children born out of wedlock in Indonesia, Egypt, and Morocco. The research uses a qualitative method with a comparative-analytical library research approach. The results show that all three Muslim-majority countries (Indonesia, Egypt, and Morocco) reject assigning lineage (nasab) to the father for children born out of wedlock, limiting their legal relationship to the mother (maternity). Each country has its own approach to preventing discrimination against children born out of wedlock, such as administrative reforms and limited paternity claims. The conclusion reveals that although the legal frameworks in these three countries share similarities, such as rejecting paternal lineage, each country has developed unique methods to address and reduce discrimination faced by children born out of wedlock. This study contributes to understanding the differences in legal frameworks regarding the status of children born out of wedlock in various legal systems. It provides insights into efforts to prevent discrimination against these children.*

## Kata Kunci

Anak Luar Nikah,  
Pernikahan, Hak  
Keperdataan, Paternitas

## Abstrak

Penelitian ini bertujuan untuk menganalisis kedudukan serta kepastian hukum anak yang lahir di luar perkawinan di Indonesia, Mesir, dan Maroko. Penelitian ini menggunakan metode kualitatif dengan pendekatan library research yang bersifat komparatif-analitis. Hasil penelitian menunjukkan bahwa ketiga negara Muslim (Indonesia, Mesir, dan Maroko) semuanya menolak nasab anak luar nikah kepada ayah, membatasi hubungan hukumnya pada ibu (maternitas). Setiap negara memiliki metode tersendiri untuk mencegah diskriminasi terhadap anak luar nikah, seperti reformasi administratif dan klaim paternitas yang terbatas. Kesimpulan mengungkap bahwa meskipun kerangka hukum di ketiga negara ini memiliki kesamaan, seperti penolakan terhadap nasab paternal, masing-masing negara mengembangkan metode unik untuk mengatasi dan mengurangi diskriminasi yang dialami oleh anak luar nikah. Penelitian ini memberikan kontribusi dalam pemahaman mengenai perbedaan kerangka hukum terkait status anak luar nikah di berbagai sistem hukum, serta memberikan wawasan tentang upaya-upaya pencegahan diskriminasi terhadap anak luar nikah.

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## INTRODUCTION

The debate over the status of children born out of wedlock touches on legal, religious, and human rights aspects. In many Muslim-majority countries, including Indonesia, Morocco, and Egypt, this issue arises at the intersection of secular national law, Islamic family law, and the state's obligation to protect children's rights. The differences in approach between countries have direct implications for children's access to identity, maintenance, inheritance, civil registration, and protection from social stigma.

The legal status of children born out of wedlock is a sensitive and complex issue in both Islamic family law and national law in Muslim-majority countries. This issue concerns not only lineage (nasab) but also fundamental children's rights, including identity, maintenance, inheritance, and protection from discrimination (Utama, 2024). In this context, there are significant differences in the application of Islamic law and national law in various countries, including Indonesia, Morocco, and Egypt.

In Indonesia, Islamic law, as stated in Article 100 of the Compilation of Islamic Law (KHI), stipulates that a child born out of wedlock has only a legal connection to the mother and her family (Tim Redaksi Nuansa Aulia, 2020). However, a significant development occurred with the Constitutional Court Decision Number 46/PUU-VIII/2010, which ruled that children born out of wedlock could have a civil legal relationship with their biological father if proven through scientific knowledge and other valid evidence. This ruling marks a shift in national law toward a greater focus on child protection principles, although under Islamic law, nasab remains linked only to the mother (Mahkamah Konstitusi Republik Indonesia, 2012).

Meanwhile, Morocco, with its family law system based on the Moudawana (Code de la Famille), faces a similar debate. The 2004 Moudawana reform brought changes to the protection of women's and children's rights, but still maintains that children born out of wedlock have no nasab connection with their father (Jettou, 2004). However, the Moroccan government introduced administrative reforms in 2018 to facilitate the registration of children without fathers, allowing them to obtain national identity numbers, a requirement for education and access to social services (Hatim, 2019). These reforms reflect the country's efforts to protect the civil rights of children, even without altering the nasab principle under Islamic law.

In contrast, Egypt, which applies a mixed legal system of Islamic law and civil law, continues to uphold the classical principle that children born out of wedlock only have a maternal relationship (maternity). In practice, paternity recognition is often limited and not accepted, even with DNA evidence. Children born out of wedlock are generally registered under the mother's name, and the biological father has no legal responsibilities toward the child. This situation results in many children losing access to their identity rights and adequate legal protection (Dupret et al., 2023).

In general, children born out of wedlock face the risk of losing identity recognition and access to economic and social rights if the state does not provide mechanisms for paternity proof and civil registration (Nisa, 2024). Therefore, this study is conducted to examine how Islamic law, adopted by Muslim-majority countries such as Indonesia, Egypt, and Morocco, addresses the status of children born out of wedlock and its efforts to prevent discrimination against them.

Several previous studies have provided an important conceptual foundation for this study. Normatively, Junaidi in "Perlindungan Hukum Terhadap Hak Anak di Indonesia" explains the normative protection of children's rights by the government through ratification of the International Convention on the Rights of the Child into Indonesia's regulations (Junaidi, 2021). Baihaki in "Upaya Pemenuhan Hak-Hak Keperdataan Anak Yang Lahir di Luar Perkawinan" explains that although the constitution generally guarantees the protection of children's rights, there are still no specific laws or implementing regulations that address the civil rights of children born out of wedlock to provide them with legal certainty (Baihaki, 2023). Armi et al. in "Keabsahan Anak pada 5 Negara Islam" explain that most Muslim countries differentiate the legitimacy of children based on three marriage conditions, which in turn affects their civil rights after birth (Armi et al., 2023).

From a social perspective, Zaini et al. in "Pandangan Masyarakat Terhadap Status Anak di Luar Nikah di Desa Watupanjang Perspektif Hukum Islam" argue that a negative stigma in society persists, driving discriminatory and unfair treatment toward children born out of wedlock (Zaini et al., 2025). Dupret et al. in "Paternal Filiation in Muslim Majority Environments" explain that each country has tried to ratify CEDAW and CRC into its laws to prevent discrimination against children born out of wedlock. However, the implementation still requires attention (Dupret et al., 2023).

This study is novel as it not only discusses the legitimacy of children born out of wedlock from a normative perspective but also comparatively analyzes the civil rights of these children in Indonesia, Morocco, and Egypt. Unlike previous research focused on classifying the status of children or legal norms, this study emphasizes the legal consequences children face after birth, such as nasab, maintenance, guardianship, and legal protection. By comparing three different family law systems, this study provides a comprehensive picture of the variations in legal protection for children born out of wedlock in Muslim-majority countries.

## METHOD

This study uses a qualitative approach with a comparative-analytical library research method, aiming to compare and analyze the status and position of children born out of wedlock in Indonesia, Egypt, and Morocco. The data used comes from primary sources, including the relevant legislation and the consensus of scholars (ijma ulama) concerning the status and position of children born out of wedlock in these three countries.

This research is conducted in 2025. Data collection is carried out through literature review, library research, and searching for relevant sources through the internet. The collected data is then analyzed comparatively to identify similarities and differences in regulations and social views regarding children born out of wedlock in each country. The results of this analysis aim to provide a deeper understanding of the status of children born out of wedlock in Indonesia, Egypt, and Morocco, as well as how the laws in these countries address issues related to the basic rights of these children, such as identity, maintenance, inheritance, and protection from discrimination. This study also reveals efforts made to reduce discrimination against children born out of wedlock through legal and administrative reforms. The research is expected to make a significant contribution to the development of Islamic family law and international law studies, with a focus on comparing policies and legal implementations concerning children born out of wedlock in Muslim-majority countries.

## RESULTS AND DISCUSSION

### Result

#### 1. Indonesia

Islamic family law has gained legitimacy through various regulations that accommodate its principles. Law No. 1 of 1974 on Marriage serves as the primary foundation governing Marriage in Indonesia, which includes provisions in line with Islamic teachings, such as the requirement that the validity of Marriage be in accordance with the religion and beliefs of each party. Additionally, the existence of the Compilation of Islamic Law (KHI), which is applied within religious courts, further solidifies the position of Islamic family law within the national legal system.

The Marriage Law and the Compilation of Islamic Law have become positive law that addresses Islamic family law issues in Indonesia. Regarding the status of children born out of wedlock, this is regulated in Article 100 of the Compilation of Islamic Law, as follows:

A child born out of wedlock only has a relationship of descent with the mother and the mother's family. Meanwhile, in the Marriage Law, the status of a child is regulated in Article 43, paragraph (1), which states that a child born out of wedlock has only a civil relationship with the mother and the mother's family (Tim Redaksi Nuansa Aulia, 2020).

However, the status of children born out of wedlock changed following the Constitutional Court's Decision No. 46/PUU-VIII/2010, which reviewed Law No. 1 of 1974 on Marriage. The ruling stated:

- a) Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia Year 1974 Number 1, Supplementary State Gazette of the Republic of Indonesia Number 3019), which states, "A child born out of wedlock only has a civil relationship with the mother and the mother's family," conflicts with the Constitution of the Republic of Indonesia 1945 as long as it is interpreted as removing civil relations with the father, who can be proven by scientific knowledge and technology and/or other legal evidence to have a blood relationship as the father.
- b) Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia Year 1974 Number 1, Supplementary State Gazette of the Republic of Indonesia Number 3019), which states, "A child born out of wedlock only has a civil relationship with the mother and the mother's family," has no binding legal force as long as it is interpreted as removing civil relations with the father, who can be proven by scientific knowledge and technology and/or other legal evidence to have a blood relationship as the father, so the article must be read as, "A child born out of wedlock has a civil relationship with the mother and the mother's family, as well as with the man as the father, who can be proven by scientific knowledge and technology and/or other legal evidence to have a blood relationship, including a civil relationship with the father's family."

Based on the Constitutional Court's ruling No. 46/PUU-VIII/2010, it can be stated that the status of children born out of wedlock not only has civil relations with the mother and the mother's family, but also with the biological father if proven legally and supported by scientific evidence. It can be concluded that, before 2010, children born out of wedlock had only a legal relationship with their mother. However, after the Constitutional Court's decision, children born out of wedlock have the potential to establish a legal relationship with their biological father if scientifically proven or legally valid.

The Constitutional Court's 2012 decision serves as a form of protection for human rights. It is unjust for the law to release the responsibility of a man who caused a pregnancy and the birth of a child through extramarital sexual relations. The law should not only recognize the relationship between a child and the mother but should also recognize the child's rights to the biological father to ensure justice. The legal refusal to acknowledge the child's relationship with anyone other than the mother is an unfair action and inconsistent with the 1945 Constitution and the principle of child protection (Halilurrahman & Wahid, 2019).

The focus of the Constitutional Court's ruling, No. 46/PUU-VIII/2010, is on "marriage registration" and "marriage disputes." This is evident in the legal considerations within the decision, as stated in Consideration (3.12), which notes: "Considering that the main legal issue regarding marriage registration according to regulations is the legal meaning of marriage registration." Therefore, the phrase "a child born out of wedlock" in Article 43 paragraph (1) of the Marriage Law must be interpreted as a child born from an unregistered marriage. Thus, considering the protection of children's human rights, the Constitutional Court's ruling has the potential for children born out of wedlock to establish a legal relationship with their biological father if scientifically proven or legally valid.

The civil relationship granted to children born out of wedlock should be clarified in a limited manner. The goal is solely to ensure the welfare and fulfill the fundamental rights of the child, particularly in meeting basic needs and providing maintenance. This proof of relationship should only be understood as the biological father's (paternal biological) position and should not be extended to paternal nasab (legitimate fatherhood). Thus, the obligation of the biological father is limited to fulfilling the child's basic needs. Meanwhile, all other legal relationships, such as inheritance, marriage, guardianship, and others, remain subject to the provisions of the Compilation of Islamic Law (KHI).

Based on the Constitutional Court's decision in 2012, children born out of wedlock are recognized to have a civil relationship with their biological father, potentially. To strengthen this potential into a legal obligation, Fatwa MUI No. 11 of 2012 recommends that ta'zir decisions be made by the government

(through the court) to impose maintenance obligations. Additionally, children could potentially receive their rights through the mechanism of "wasiat wajibah" (obligatory will) if their biological father passes away. Due to this legal foundation, if the biological father refuses to provide maintenance, the child born out of wedlock now has the right to file a lawsuit in court to demand the fulfillment of their basic living needs (Baihaki, 2023).

Other rights of children born out of wedlock guaranteed by law include: First, the right to know their origin, "every child has the right to know who their parents are" (Indonesia, 2022). This emphasizes the right of every child, regardless of their birth status, whether legitimate or born out of wedlock, to know and determine the identity of their biological parents. To realize this right, the Marriage Law (UUP) and the Compilation of Islamic Law (KHI) stipulate that the child's origin can be proven through a birth certificate or other valid evidence issued by an authorized official. In Indonesia, a birth certificate can be issued for children born out of wedlock. However, the certificate will only list the mother's name, and to include the father's name, a court order is required (Pramesti, 2021).

Second, the right to maintenance and education. Juridically, the 1945 Constitution (after the fourth amendment) explicitly guarantees every child's right to maintenance, education, and survival, as well as protection from discrimination and violence. This constitutional provision is further reinforced by the Child Protection Law, which states explicitly that every child is entitled to education and instruction. It is also strengthened by the 2012 Constitutional Court ruling, which states that children born out of wedlock are entitled to maintenance and education from their biological father.

## 2. Morocco

The Moudawana regulates the legitimacy of family law in Morocco. The Moudawana, or the Moroccan Family Code, is the primary legal framework in Morocco that addresses family law issues, including marriage, divorce, child custody, and inheritance. The Moudawana 2004 remains the foundational legal document governing family law in Morocco. Concerning the status of children, Articles 154-157 outline the following:

### **Article 152**

*Paternity is established by:*

1. *The conjugal bed;*
2. *Acknowledgement;*
3. *Sexual relations by error.*

### **Article 154**

*The conjugal bed proves the paternity of a child:*

1. *If the child is born six months after the marriage contract was concluded and the opportunity for sexual intercourse has existed, whether the marriage contract is valid or defective;*
2. *When the child is born during the year that follows the date of separation.*

### **Article 155**

*If a pregnancy results from sexual relations by error and the woman delivers within the minimum and maximum statutory pregnancy period, the child's paternity shall be attributed to the author of the sexual intercourse. Paternity due to sexual relations by error is established by all legal means.*

### **Article 157**

*When paternity is proven, even if the marriage is defective, if it results from sexual relations by error, or by acknowledgment, it produces all of the effects of kinship, including the prohibition of marriage within degrees of kinship and breastfeeding relations. It creates kinship maintenance and inheritance rights (Jettou, 2004).*

At a glance, these articles indicate that paternity can result from sexual relations due to error. The term "sexual relations by error" refers to situations where sexual intercourse occurs due to a misunderstanding of the law or doubt. For example, relationships based on marriages that are later found to be invalid (a marriage deemed invalid, but the couple believed it was legitimate) or

relationships that occurred due to a mistaken belief that the marriage contract met all legal requirements (e.g., the wali or witnesses were invalid, but they were unaware of this).

However, it should be emphasized that sexual relations outside of marriage cannot be equated with sexual relations by error. These two situations are very different. Sexual relations outside of marriage are intended for adultery, which is explicitly prohibited by Moroccan law. In contrast, sexual relations by error are not intended for adultery (Schlumpf, 2016). Therefore, it is clear that children born out of wedlock are not recognized as belonging to the father but are still recognized as belonging to the mother.

The issue of *nasab* (lineage) in Morocco is critical, as it determines the legal status of a child. Furthermore, without a recognized lineage, a child is not acknowledged by the state and cannot have a name. This leads to significant discrimination against women and children born out of wedlock. Before the Moudawana 2004, it was common for children born out of wedlock to face discrimination, such as being unable to inherit Moroccan citizenship, lacking official identity documents, and being deprived of education and other state-provided rights.

The Moudawana 2004 emerged as Morocco's commitment to human rights, influenced by the UN Convention on the Rights of the Child. Article 146 of the Moudawana 2004 stipulates that a child whom the mother acknowledges has the same legal effects as a child acknowledged by the father: "Filiation to the mother produces the same effects regardless of whether the children are the result of a legitimate or illegitimate relationship." This can be linked to the child's right to nationality and administrative rights. Children born out of wedlock can be given the mother's name, provided that the family gives written consent, as per Article 16 of Morocco's Civil Status Law (Jettou, 2004). Therefore, by acknowledging the mother (maternity filiation), the state can fulfill and guarantee the child's fundamental rights, such as having a name and nationality.

Paternity filiation is viewed by Moroccan doctrine as part of public order, resulting from the ratification of the UN Convention on the Rights of the Child. By balancing Islamic law traditions and the demands of modernity, the 2011 Moroccan Constitution guarantees equal legal protection for all children. Regardless of their family situation, this provision remains limited to "legitimate marriage bonds" (Dupret et al., 2023). Paternity claims are a solution for those with evidence that their child was born in a valid marriage but not registered with the state.

Paternity claims in Morocco are explained in Articles 150-162 of the Moudawana 2004. Article 158 allows for paternity claims to be established through the father's acknowledgment, oral testimony, the testimony of two public notaries (adouls), and legal proof. "Paternity is proven by the conjugal bed, the father's acknowledgement, the testimony of two public notaries (adouls), oral testimony, and by all other legal means, including judicial expertise." In general, Article 160 of the Moudawana 2004 outlines the conditions for proving paternity through acknowledgment, which include: 1) The father must be of sound mind; 2) The father of the child is unknown; 3) The written acknowledgment statement must not contradict the truth or reasonableness; 4) The child accepts this acknowledgment when they reach adulthood according to the law. Four conditions must be met for a father to establish lineage through a paternity claim.

Paternity claims are limited to ensuring that the child's administrative rights and maintenance (such as financial support) are not obstructed. Other rights, such as inheritance, guardianship, and custody, are not automatically granted to the child. Furthermore, Article 148 of the Moudawana emphasizes that illegitimate filiation does not result in any legal consequences of legitimate filiation: "Illegitimate filiation to the father does not produce any of the effects of legitimate filiation." This means that in Morocco, children born out of wedlock, and those born from marriages that meet the requirements but were not registered with the state, have a legal remedy that the mother and child can use to avoid social discrimination and obtain their fundamental rights through a paternity claim. However, in practice, obtaining a paternity claim is difficult due to the complex requirements.

In Morocco's periodic CRC (Convention on the Rights of the Child) report, the UN Committee on the Rights of the Child urged Morocco to amend the law and remove any references to the child being born out of wedlock in identity documents, as well as repeal discriminatory provisions in the Family Code against children born out of wedlock:

The Committee urges the State party to:

- a) *Expedite the amendment, without delay, of article 16, paragraph 7, of Law No. 37-99 and remove from identity documents any mention that leads to the identification of children as born out of wedlock;*
- b) *Repeal all legal provisions, especially those contained in the Family Code, that discriminate against girls and children born out of wedlock; (CRC/C/MAR/CO/3-4: Concluding Observations on the Combined Third and Fourth Periodic Reports of Morocco, 2014)*

This is based on the fact that children born out of wedlock often do not receive legal identity documents (birth certificates) due to the difficulty of civil registration if the parents do not have a marriage certificate. Without a birth certificate, children cannot register for school, access healthcare, or obtain other basic services (Jettou, 2004).

In 2018, it was recorded that more than 83,000 children lacked birth certificates because their parents did not have a marriage certificate. A concrete step taken by the Moroccan government was to implement an administrative policy campaign aimed at facilitating civil registration for children born without official marriage documents, including those born to unmarried parents (or where the father is not registered) (Hatim, 2019). This policy is one of the steps to prevent discrimination against children born out of wedlock in accessing their fundamental rights, such as education, healthcare, and other services guaranteed by the state.

Regarding guardianship and custody, children born out of wedlock do not have a natural guardian because they are not recognized as the children of their father. Therefore, in this case, guardianship is given to the mother. The mother is responsible for the child's maintenance and marriage. However, in Morocco, guardianship can also be determined through the court. The biological father can be appointed as the guardian even if paternity/lineage has not been established. The biological father can be appointed as the guardian of an illegitimate child, provided that the father is known and willing to act in this capacity (Schlumpf, 2016).

Regarding maintenance, Article 187 of the Moudawana 2004 states that maintenance is only provided based on marriage, kinship, or commitment: "financial maintenance for others is due for reasons of marriage, kindship, and commitment." Therefore, the biological father of an illegitimate child is not obligated to provide maintenance to the child because there is no kinship relation with the father.

Concerning inheritance, since an illegitimate child does not have a legitimate blood relationship with the father, the child has no right to inherit from the father. The status of a child born out of wedlock means that the child does not inherit at all. Even for the Shia community, a child born out of wedlock is not considered anyone's relative and therefore cannot be an heir either to the mother or the father. In contrast, Sunnis recognize the lineage of an illegitimate child to the mother. Therefore, such children have inheritance rights with the mother and maternal relatives (Schlumpf, 2016).

### 3. Mesir

Kodifikasi ketentuan-ketentuan hukum keluarga pertama di Indonesia dilakukan pada tahun 1875. Kompilasi yang dijadikan rujukan hakim agama untuk memutus permasalahan pernikahan, perceraian, dan warisan. Kompilasi ini bernama *al-ahkam al-syariyya fi al-ahwal al-syakhsiyah* yang biasa disebut "personal status law" atau *qanun al-ahwal al-syakhsiyah* (Dupret et al., 2023). *Personal status law* diatur oleh hukum agama yang ketat yang tidak mengakui hubungan seksual di luar ikatan perkawinan.

Tidak ada landasan normatif di Mesir yang memperbolehkan adanya hubungan seksual di luar ikatan perkawinan. Akibatnya, anak-anak yang lahir dari hubungan tanpa ikatan nikah tidak mendapatkan pengakuan nasab dari ayahnya. Berikut adalah Pernyataan mufti Hasan al-rafi'I yang dikutip oleh Bentlage dalam artikelnya, yang mana menolak mempersamakan nasab anak luar nikah

dengan anak dalam ikatan perkawinan karena bertentangan dengan syariah, yang merupakan dasar hukum Mesir

*[T]here is no equality between a legitimate child that is the fruit of a marriage of his parents and a child that is born as a result of a non-marital relation, because the latter has no rights against anybody except his mother. [That is so] even if the man recognizes [the child] and his descent from him by declaring that [the child was born] of adultery, since the lineage would [still] not be attributed to him; his acknowledgement would not result in any rights of maintenance, custody, or inheritance [...] (Bentlage, 2015).*

Lebih lanjut, sebuah fatwa yang dikeluarkan oleh *Dar al-Ifta* menyatakan bahwa anak yang lahir di luar nikah hanya mewarisi garis keturunan ibu (maternitas) dan tidak dinasabkan kepada ayah (filiation paternitas).

*In Islamic Law, the rules of maternity are based on the biological affiliation between a child and its mother, while the Law determines paternity. This means that any child born out of wedlock is not attributed to the fornicator, though it is biologically attributed to its mother since she bore and gave birth to it. Accordingly, all the rules of maternity are established between the child and its mother, such as those concerning inheritance, the prohibition of marriage, and so forth. A child's paternity is not established except within the confines of a valid marriage, an invalid marriage [in which one of the integrals or conditions of marriage is missing], or a mistaken intercourse which the person thinks is licit (an example of this is a mistaken belief of one's marital status). There is a scholarly consensus that paternity is not established in the absence of any of the above, this being the stance of Egyptian Law. (Rabie, 2018)*

Oleh karena itu, anak yang lahir diluar nikah hanya mewarisi garis keturunan ibu (maternitas) (Rabie, 2018). Meskipun filiasi paternitas (status nasab) tidak diakui, anak tetap memperoleh beberapa hak dasar melalui ibu (dengan hubungan maternitas). Salah satunya adalah hak atas nama dan identitas. Tentang pemberian nama ini diatur dalam Undang-Undang Anak Nomor 12 Tahun 1996. Dalam undang-undang tersebut, ditetapkan bahwa anak yang lahir diluar nikah hanya bisa didaftarkan menggunakan nama ibu saja (*UNHCR and UNICEF: Background Note on Sex Discrimination in Birth Registration, 2021*). Hal ini sesuai dengan paragraph terakhir pasal 15 UU No. 12 Tahun 1996,

*"Without prejudice to the provisions of Articles 4, 21, and 22 of the present Law, the mother shall have the right to report the birth of her newborn, register him at the birth registry, and apply for a birth certificate in which her name as mother is recorded. This birth certificate is to be used only as proof of the birth and for no other purposes." (The National Council for Childhood and Motherhood Law, n.d.)*

Hak atas pencatatan kelahiran adalah hak setiap anak tidak terbatas pada anak hasil perkawinan yang sah. Realitanya, anak yang lahir diluar nikah masih menghadapi kesulitan dalam memperoleh akta kelahiran karna status sosial. Secara teoritis, untuk mendapatkan akta kelahiran, anak luar nikah dapat didaftarkan menggunakan nama ibunya, sedangkan nama ayah adalah nama acak yang digunakan pegawai pencatatan yang berupa kode bahwa anak tersebut tidak diketahui. Selanjutnya baru dapat mendapatkan akta kelahiran. Dengan akta kelahiran tersebutlah hak-hak dasar anak yang terbatas pada hak vaksinasi dan hak pendidikan dapat di penuhi oleh negara (Talal & Masrya, 2015).

Walaupun undang-undang menetapkan seorang ibu dapat mendaftarkan anak yang lahir di luar nikah (dan tanpa kehadiran sang ayah), banyak wanita yang kesulitan menghadapi hal ini. Selain itu, anak yang lahir di luar perkawinan tidak diakui secara hukum sebagai orang yang mempunyai hubungan darah dengan ayahnya, meskipun hubungan biologisnya terbukti sehingga mengakibatkan hilangnya hak-hak hukum bagi anak (Gale, 2021).

Meskipun undang-undang Mesir tidak mengkriminalisasi hubungan di luar pernikahan, undang-undang tersebut juga tidak mengakui hubungan tersebut. Untuk membuktikan status ayah biologis anak, undang-undang tersebut mengacu pada aturan hukum Islam yang mensyaratkan adanya pernikahan yang sah. Hal ini menimbulkan masalah nyata dalam membuktikan status ayah dari anak-anak yang lahir di luar pernikahan dan menciptakan stigma serta hukuman implisit bagi wanita yang melakukan hubungan seksual di luar pernikahan. Karena tidak ada hukum formal yang mengatur terkait nasab (*paternal filiation*), mahkamah kasasi mesir mengidentifikasi tiga cara penetapan nasab,

yaitu dengan adanya akad nikah, dengan pengakuan ayah, pembuktian lain yang dapat dibuktikan menurut syariah (persaksian, bukti secara langsung dll) (Dupret et al., 2023).

Lebih lanjut, sebuah fatwa yang dikeluarkan oleh *Dar al-Ifta* yang berkaitan dengan pembuktian asal-usul anak dan hak-hak anak diluar nikah,

*Illegitimate children are those born as a result of sexual immorality. Here, the rights of parentage naturally belong to the mother and not to the father. Thus, the child should only inherit from its [mother's] side because the child's relationship with her is beyond doubt.*

*Regarding the relationship between an illegitimate child and his or her father, the majority of scholars deny its legal validity, even if the father confirms that the child is his. The reason for this is that [within the framework of a legally valid marriage], parentage is a 'blessing' whereas sex outside of marriage is a moral crime, which should not lead to [or be described as] a blessing. However, if the father confirms that a child belongs to him, and does not mention that he or she was born outside of marriage, and the conditions that confirm his declaration are present, then, on these grounds, the child will be treated as his [according to Islamic Law]. This decision will rectify [the original sin], and if one of them dies, the other will inherit*

*(When Is the Parentage of the Father Proven?, 2015).*

Anak luar nikah tidak mendapatkan hak-hak yang berkaitan dengan ke-nasab-an nya, dalam hal ini, sesuai dengan hukum islam, Anak tidak dapat waris-mewarisi dengan ayahnya, juga tidak mendapatkan perwalian dan nafkah dari ayahnya. anak juga tidak dapat memakai nama keluarga ayahnya. Anak luar nikah hanya mendapatkan hak-hak yang berkaitan dengan *maternitas* (kekerabatan jalur ibu), yang mana dalam hal ini ibu memiliki tanggung jawab penuh terhadap pengasuhan, perwalian, nafkah, dan pendidikan anak. Selai itu antara ibu dan anak juga terdapat hak untuk saling waris-mewarisi.

Berkaitan dengan hak dasarnya sebagai warga negara Mesir, Anak luar nikah tetap mendapatkan hak identitas dan kewarganegaraan. Hal ini memastikan anak anak mendapatkan akses pendidikan dan kesehatan yang dijamin oleh negara tanpa adanya diskriminasi. Dalam hal perlindungan dari diskriminasi dan kekerasan, pasal 4 child Law 126/2008 dan pasal 53 Konstitusi mesir 2014 menegaskan larangan diskriminasi berdasarkan asal kelahiran dan status orang tua (*Egypt's Constitution of 2014, 2023*).

## Discussion

In general, within the context of classical Islamic family law, children born out of wedlock (illegitimate children) only have a kinship relationship through their mother (maternity). This affects their inheritance rights, marital guardianship, and financial support from the biological father. However, over time, each country has developed different legal provisions to address this issue.

Table 1. Comparative Analysis Results in Indonesia, Morocco, and Egypt

Country	Main Legal Basis	Rules Related to Paternity/Illegitimate Child	Key Information
Indonesia	Law No. 1 of 1974 on Marriage	Compilation of Islamic Law (KHI) Articles 42-43 Marriage Law: Illegitimate children have only civil relations with the mother and her family. Constitutional Court Decision 46/2010: Illegitimate children may have civil relations with the biological father if proven scientifically (DNA) and/or other technologies.	Constitutional Court Decision No. 46/PUU-VIII/2010 Articles 100 KHI: No paternal relationship with the biological father. Before Constitutional Court Decision: Only a relationship with the mother. After Constitutional Court Decision: Possible recognition of

Country	Main Legal Basis	Rules Related to Paternity/Illegitimate Child	Key Information
Egypt	Personal Status Law (Qanun al-Ahwal al-Shakhsiyah)	Fatwa of the Egyptian Ministry of Justice (Dar al-Ifta & Supreme Court Jurisprudence)	<p>relationship with the biological father (limited civil rights).</p> <p>Based on Islamic jurisprudence and Egyptian law: Illegitimate children only have lineage from the mother (nasab ilā al-umm). The biological father has no rights or obligations towards the illegitimate child.</p> <p>Civil relations are only with the mother. No legal recognition of the biological father.</p>
Morocco	Family Code (Mudawwanah al-Usrah) 2004	<p>Civil Administrative Reforms 2019–2022 (Ministry of Interior)</p> <p>Articles 150-162 Moudawana:</p> <p>Reform 2019–2022:</p>	<p>Articles 148–149 Moudawana: Illegitimate children have no paternal relationship, only with the mother.</p> <p>Illegitimate children can file for paternity claims through acknowledgment by the father, oral testimony, or proof.</p> <p>Illegitimate children can still obtain identity and access to education without having to mention the father's name.</p> <p>The government has expanded administrative rights for children (birth certificate, education, health).</p> <p>Paternity claims for illegitimate children are limited to not obstructing their administrative rights and maintenance (such as alimony).</p>

Regarding the status of children, all three countries still adhere to classical Islamic law, where children born from legitimate marriages are recognized as having lineage from their fathers and are connected to their fathers through kinship (nasab). Meanwhile, children born out of wedlock only have kinship with their mothers (maternity). However, with technological advancements, differing conditions, and applicable regulations, each country has developed provisions to fulfill the fundamental rights of children, beyond those based on kinship or lineage. This is referred to as paternity claims. It is essential to understand that these paternity claims are not related to lineage, but instead to establishing the biological relationship between the father and child, which is necessary to secure civil rights, such as child support and the child's well-being.

In Indonesia, according to the Constitutional Court Decision No. 46/PUU-VIII/2010, a child born outside of wedlock has civil relations with the mother and her family, as well as with the man identified as the biological father, provided this is proven through scientific knowledge and technology and/or other legal evidence showing a blood relationship, including civil relations with the father's family. The type of proof mentioned is biological paternity, where the biological father's relationship is interpreted in terms of providing for the child's living expenses and well-being (nafkah). In relation to other civil matters, such as inheritance, this Constitutional Court decision does not alter the legal provisions

concerning inheritance, which remain based on nasab (lineage paternity) according to the Compilation of Islamic Law (KHI).

In Morocco, the issue of nasab is of crucial importance. Unlike Indonesian law, which does not heavily focus on lineage for identity, in Egypt and Morocco, nasab determines the legal status of a child. Without a nasab, a child is not recognized by the state and cannot have a name. This leads to significant discrimination against women and children born out of wedlock in Egypt and Morocco. Thanks to the influence of the UN Convention on the Rights of the Child, many changes have been made in Egypt and Morocco to prevent discrimination against children born outside of marriage.

The right to obtain a birth certificate and be recognized by the state is a key step in the changes occurring in Egypt and Morocco. Although children born out of wedlock are not recognized as having a paternal relationship, the governments of Egypt and Morocco have implemented policies to issue birth certificates with the child's mother's name. This ensures that children born out of wedlock in both Morocco and Egypt still receive their fundamental rights guaranteed by the state. Below is a table summarizing the rights of children born out of wedlock in Indonesia, Egypt, and Morocco.

Table 2. Basic Rights of Children Born Out of Wedlock Recognized and Facilitated by the State

Indonesia	Egypt	Morocco
Nationality	✓	✓
Name	✓	✓
Education	✓	✓
Health Access	✓	✓

Table 3. Rights of Children Born Out of Wedlock Due to Kinship/Lineage

Indonesia	Egypt	Morocco
Father	Mother	Father
Child Welfare	(*)	✓
Alimony	(*)	✓
Inheritance	✗	✓
Guardianship and Custody	✗	✓

Note:

(\*) = Based on proof (paternity claim) and/or court decree.\*

The paternity claim made in the three countries is a biological paternity claim, which involves proving the biological father of a child born out of wedlock to secure welfare and financial support rights. In Indonesia, this is the result of the Constitutional Court Decision No. 46/PUU-VIII/2010, which states that children born out of wedlock can establish a civil relationship (including welfare and child support) with their biological father if it can be proven using scientific evidence.

In contrast, in Egypt and Morocco, paternity claims can only be made if it can be proven that the child was born within a valid marriage, with all the essential marriage conditions fulfilled and verified. Since the requirements for paternity claims in Egypt and Morocco are stringent, it is difficult to obtain rights associated with lineage in these two countries. However, for children born from customary marriages (urf) or unregistered marriages, they can file a paternity claim to secure rights resulting from lineage, such as maintenance, inheritance, guardianship, and care.

Egypt and Morocco share similar views on the status of children born out of wedlock. The legal strictness and social influences distinguish the two. In Egypt, children born out of wedlock are not entitled to obtain civil rights from their father, such as maintenance, inheritance, and recognition of their lineage. In contrast, Morocco still offers a possibility for these children to receive maintenance or financial support through voluntary actions and/or paternity recognition. Regarding social influence

and discrimination, both countries guarantee the fundamental rights of every child without discrimination in their constitutions.

Based on the analysis, all three countries essentially still adhere to classical Islamic law principles, which state that children born out of wedlock (children without a valid marriage) only have a maternal lineage connection. However, there are slight differences in how the law adapts to protect the fundamental rights of these children.

First, in Indonesia, the status of children born out of wedlock shifted after the Constitutional Court Decision No. 46/PUU-VIII/2010. This decision created a legal loophole, stating that children born out of wedlock can have a civil relationship (limited to maintenance and welfare) with their biological father if proven through scientific evidence (DNA). However, other legal relations, such as inheritance, guardianship, and complete paternal lineage, remain subject to the Compilation of Islamic Law (KHI).

Second, in Morocco, Moroccan family law (Moudawana, 2004) explicitly rejects the paternal lineage between children born out of wedlock and their biological father. Nevertheless, under pressure from the child rights convention, Morocco has implemented administrative reforms to simplify the registration of children without fathers, ensuring they still receive fundamental rights such as a name, nationality, education, and healthcare. Paternity claims in Morocco are rigorous and generally only apply in cases of unregistered marriages (urf), serving primarily for administrative purposes and maintenance (voluntary support), rather than for inheritance or complete paternal lineage.

Third, Egypt maintains the strictest classical legal principle. Children born out of wedlock only have maternal lineage (nasab ilā al-umm). The biological father has no legal rights or obligations toward the child, including maintenance, guardianship, or inheritance. However, like Morocco, Egypt guarantees fundamental rights to the child as a citizen (identity, education, and healthcare) through maternal recognition.

## CONCLUSION

The three Muslim countries (Indonesia, Egypt, and Morocco) all reject paternity linkage of children born out of wedlock to their fathers, limiting legal connections solely to the mother (maternity). However, the efforts for child protection vary significantly among these countries. Indonesia is the most adaptable in this regard, as it does not treat paternity as the primary factor for administrative matters, which allows for biological paternity claims to be recognized for limited civil rights. This shift became more apparent after the Constitutional Court Decision No. 46/PUU-VIII/2010, which created a legal framework allowing children born out of wedlock to establish civil relationships with their biological fathers, particularly for welfare and financial support, provided that such relationships are supported by scientific evidence. This provides a more inclusive approach in protecting the rights of children born outside of marriage, ensuring that they are not disadvantaged in civil and social aspects, unlike their counterparts in Egypt and Morocco.

In contrast, both Morocco and Egypt consider paternity to be crucial, and thus, efforts to guarantee child welfare are more focused on administrative reforms and minimal paternity claims. In Morocco, the 2004 Moudawana reforms aimed to address child rights issues by simplifying civil registration for children born out of wedlock, without a formal marriage certificate. However, paternity claims in Morocco are stringent and typically apply only in cases of unregistered or customary marriages (urf), primarily granting children administrative rights such as registration and financial support but not inheritance or complete paternal lineage. Similarly, Egypt strictly maintains the classical Islamic law stance, where children born out of wedlock have no legal connection to their biological fathers, limiting their rights to civil registration and welfare based on maternal recognition. Both countries have made strides to reduce social stigma through administrative changes, but their reliance on paternity remains limited in scope. Ultimately, for all three nations, paternity claims and administrative reforms serve as the primary methods to prevent discrimination and fulfill the fundamental rights of children born outside of marriage. However, each country's approach reflects its unique legal and cultural context.

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