

Ibnu Taimiyah's Thoughts Relevance to the Constitutional Court Decision No. 46/2012 on the Illegitimate Children Lineage

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Abstract: The societal perception of illegitimate children often carries negative connotations, despite their entitlement to clear legal rights. One of the classical scholars, Ibn Taimiyah, offers distinct perspectives on the lineage and rights of children born outside of marriage, aligning with the principles laid out in Constitutional Court Decision No. 46/2012. This study aims to analyze Ibn Taimiyah's viewpoints regarding the lineage and civil rights of illegitimate children, while also examining their relevance to the aforementioned court decision. Employing a descriptive analysis method with a literature review approach, this research draws primarily from Ibn Taimiyah's seminal work, "Majmu' al-Fatawa," alongside secondary sources from journals and relevant websites. The findings underscore the alignment between Constitutional Court Decision No. 46/2012 and Ibn Taimiyah's stance on the civil rights of illegitimate children. While both recognize the child's connection to the biological mother and her family, the Court's decision extends this recognition to include the biological father and his family without the conditions of a valid marriage. In contrast, Ibn Taimiyah's perspective offers these rights in a detailed manner, contingent upon specific conditions, as children born from adultery do not stem from a legally sanctioned marriage. Ultimately, this research concludes that illegitimate children should enjoy nearly equivalent civil rights as children born within conventional marriages, as stipulated by both Ibn Taimiyah's nuanced approach and the progressive stance of Constitutional Court Decision No. 46/2012.

Keywords: *Ibnu Taimiyah, illegitimate children, Constitutional Court, Relevance*

Abstrak: Pandangan masyarakat terhadap anak di luar nikah cenderung negatif, meskipun seharusnya mereka memiliki hak-hak hukum yang jelas di mata hukum. Salah satu ulama klasik, Ibnu Taimiyah, memberikan pandangan yang tegas tentang garis keturunan dan hak-hak anak di luar pernikahan, sejalan dengan prinsip yang diatur dalam Putusan Mahkamah Konstitusi (MK) No. 46/2012. Penelitian ini bertujuan untuk menganalisis pandangan Ibnu Taimiyah mengenai garis keturunan dan hak-hak sipil anak di luar pernikahan, serta mengkaji relevansinya dengan keputusan MK tersebut. Metode penelitian yang digunakan adalah analisis deskriptif dengan pendekatan studi literatur yang bersumber utama dari karya Ibnu Taimiyah, "Majmu' al-Fatawa," serta sumber sekunder dari jurnal dan situs web terkait. Hasil penelitian menunjukkan kesesuaian antara Putusan Mahkamah Konstitusi No. 46/2012 dengan pandangan Ibnu Taimiyah tentang hak-hak sipil anak di luar pernikahan. Sementara keduanya mengakui hubungan anak dengan ibu biologis dan keluarganya, keputusan MK memperluas pengakuan ini untuk mencakup ayah biologis dan keluarganya tanpa syarat pernikahan yang sah. Di sisi lain, pandangan Ibnu Taimiyah menawarkan hak-hak ini secara detail, tergantung pada kondisi-kondisi tertentu, karena anak yang lahir dari perzinahan tidak berasal dari pernikahan yang sah secara agama. Secara keseluruhan, penelitian ini menyimpulkan bahwa anak di luar pernikahan seharusnya menikmati hak-hak sipil yang hampir setara dengan anak yang lahir dalam pernikahan konvensional, sebagaimana yang diatur oleh pendekatan yang nuansa Ibnu Taimiyah dan sikap progresif Putusan Mahkamah Konstitusi No. 46/2012.

Keywords: *Ibnu Taimiyah, Anak di luar nikah, Mahkamah Konstitusi, Relevansi*

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Introduction

In general, society has a negative opinion on the existence of children born outside of marriage.¹ This is because their appearance in society does not come from a valid marriage according to applicable Sharia provisions. Consequently, illegitimate children tend to be treated as if they have no rights in the reality they face. This perspective is echoed by the majority of ulema (Islamic scholars), who assert that children born outside of a religiously recognized marriage have no relationship in terms of birth, support, guardianship, and inheritance with their biological father.² Children born out of wedlock have a civil relationship only with their mother³ and her family.⁴

One of the hadiths used as evidence by scholars comes from Aisyah, who reported that Sa'ad and bin Zama'ah once fought over a child. Sa'ad said, "O Messenger of Allah, this child is the son of my brother Utbah; he claimed it was his son, look at the resemblance." Zama'ah responded, "This child is my brother, O Messenger of Allah; he was born from the firasy (marriage bed) of his mother."⁵ The Prophet, upon observing the child's resemblance to Utbah, declared, "O bin Zama'ah, the child belongs to the firasy (husband) of the woman who gave birth to him, and the adulterer (punished) with a stone."⁶

Imam Shafi'i mentioned two

interpretations regarding the meaning of children being the right of the firasy (husband). First, children are the husband's right as long as he does not deny them. If the husband does not recognize them using a procedure that is acknowledged as legitimate by Sharia, such as lian, the child is declared not to be his. Second, if the husband and the adulterer dispute the child's paternity, the child becomes the husband's right. The phrase "for an adulterer with a stone" implies that the adulterer has no birth rights over the child born from his adultery.⁷

Ibn Hazm also explained that an illegitimate child is associated with the mother, not the adulterer.⁸ Thus, Ibn Nujaim opines that children of zina (adultery) and lian inherit lineage and inheritance rights only from their mother's side, with no claims from the father's side. Clarity of lineage and inheritance is only through the mother's side.⁹

Table 1: Comparative Legal Perspectives on Children Born Out of Wedlock

Aspect	Sharia Law	Indonesian Constitutional Court (46/2012)	Indonesia Marriage Law (No. 1/1974)	MUI Fatwa No. 11/2012
Paternity	Child belongs to the firasy (husband); adulterer has no birth rights.	Illegitimate child has a civil relationship with both biological parents proven	Child has a civil relationship with both biological mother and father	Men who father children only out of wedlock must provide for them,

¹ Arezo Rashidi, 'The Illegitimate Children Parentage', *International Letters of Social and Humanistic Sciences*, 21 (2014), doi:10.18052/www.scipress.com/ilshs.21.163.

² Ibn Qudamah, *Al-Mughni* (Riyadh, Saudi Arabia: Dar 'Alam al-Kutub, n.d.) 9/122.

³ RI Presidential Decree, *RI Marriage Law no. 1, 1974* (Jakarta: Government of the Republic of Indonesia, 1974).

⁴ Siti Noor Ain Aziz and others, 'Attribution of Illegitimate Child's Nasb to the Biological Father: Analysis from the Perspective of Malaysian Law, Muzakarah Fatwa Committee, State Fatwas and Maqasid Al-Shariah', *Insight Journal*, 8 (2021), doi:10.24191/ij.v8i0.104.

⁵ Ibn Hajar al-'Atsqalani, *Fathu Al-Bari Syarah Sahih Al-Bukhari* (Cairo, Egypt: Al-Mathba'ah al-Salafiyah Wa Maktabatha, 2015) 12/52

⁶ Nabilla Ayu Suraya, Akhmad Khisni, and Munsharif Abdul Chalim, 'Research on Inheritance for Children from Sirri Marriage Based on the Compilation of Islamic Law', *Sultan Agung Notary Law Review*, 3.1 (2021), doi:10.30659/sanlar.3.1.48-55.

⁷ Ibn Qudamah, *Al-Mughni* (Riyadh, Saudi Arabia: Dar 'Alam al-Kutub, n.d.) 9/123

⁸ Ibn Hazm al-Andalusy, *Al-Muhalla* (Cairo, Egypt: Dar al-Fikr li at-Thiba'ah wa at-Tauzi', 2000).

⁹ Nur Shadiq Sandimula, 'Status Dan Hak Anak Luar Nikah Perspektif Madzhab Hanafi', *An-Nizam: Jurnal Hukum Dan Kemasyarakatan*, 14.01 (2020).

Aspect	Sharia Law	Indonesian Constitutional Court (46/2012)	Indonesian Marriage Law (No. 1/1974)	MUI Fatwa No. 11/2012
		scientifically.		but no lineage link.
Support and Maintenance	No obligation from the biological father if not the husband.	Biological father must provide support if paternity is proven.	Only the mother and her family are responsible for support.	Men must bear responsibility for the child's upbringing and basic needs.
Inheritance Rights	No inheritance rights from the biological father.	Inheritance rights are acknowledged from both parents if paternity is proven.	Inheritance rights from the mother's side.	No inheritance rights from the father; the child's lineage is not linked to the father.
Guardianship	Guardianship belongs to the mother and her family.	Guardianship can be established based on the biological relationship if proven.	Guardianship belongs to the mother and her family.	Guardianship responsibility lies with the mother and her family.
Legal Recognition	Recognized only through the mother; not acknowledged by the biological father's family.	Recognized if there is scientific evidence of a blood relationship.	Recognized only through the blood mother and her family.	Recognized for the purpose of support, but no lineage recognition.

Table 1 compares legal perspectives on children born out of wedlock. Sharia Law and Indonesian Marriage Law primarily recognize these children through the mother, with no paternity or inheritance rights from the biological father. The Indonesian Constitutional Court and MUI Fatwa allow for some rights, such as support and civil relationships, if paternity is proven, but differ in the extent of recognition and lineage rights.

Meanwhile, Ibn Taimiyah stated that there are two opinions among ulema regarding adulterers who demand their illegitimate children if the adulterous woman is not married.¹⁰ The Prophet's statement, "Children born belong to the firasy (husband) and the adulterer (not husband) is punished," applies when the mother is married. However, if the woman is not married, the child born belongs to the adulterer if she acknowledges him. Therefore, Ibn Taimiyah's fatwa presents an intriguing perspective regarding the rights of children born outside of marriage.

In this context, the Constitutional Court of Indonesia (46/2012) has ruled that an illegitimate child has a civil relationship with both the mother and her family, as well as with the biological father and his family if a blood relationship can be scientifically proven. In contrast, the Marriage Law No. 1/1974 and the Compilation of Islamic Law stipulate that children born outside a legal marriage have civil relationships only with their mother and her family. However, the MUI Fatwa No. 11/2012 is somewhat more lenient, stating that men who father children out of wedlock must bear responsibility for their upbringing and basic needs, although the child's lineage is not linked to him.¹¹

Literature Review

Regarding the civil rights of children born out of wedlock, several research articles have discussed this issue extensively. One such article is titled "Legal Protection of Children in the Womb Resulting from Adultery: Positive Legal Perspective and Islamic Law."

¹² This research concludes that from a positive legal perspective, illegitimate

¹⁰ Ibn Taimiyah, *Al-Ikhtiyaraat al-Ilmiyah* (Beirut, Lebanon: Dar al-Kutub al-'Ilmiyah, 1998). p. 54.

¹¹ Ministry of Religion of the Republic of Indonesia, *MUI Fatwa Association* (Jakarta: Ministry of Religion of the Republic of Indonesia, 2003).

¹² Moh. Wahyu Al Waris and Ahmad Junaidi, "Legal Protection of Unborn Children as a Result of Adultery from a Positive Legal and Islamic Law Perspective," *Rechtenstudent Journal* 4, no. April (2023): 93–107, <https://doi.org/10.35719/rch.v4i1.110>.

children in the womb have the same legal protection rights as other children following the Constitutional Court decision No. 10/2012. These rights include the right to life, growth, development, maintenance, and inheritance, and having a civil relationship with their biological father based on recognition and proof justified by legal regulations. Therefore, the child has the right to protection by the state even when still in the mother's womb.

The second article is titled "Analysis of Constitutional Court Decision No. 46/2010 Concerning the Status of Illegitimate Children and MUI Fatwa No. 11/2012 Regarding the Position of Children Resulting from Adultery and Their Treatment from the Maqashid Syari'ah Perspective."¹³ This research concludes that the Constitutional Court's decision No. 46/2012 regarding illegitimate children aligns with the concept of maqashid hifzu al-Nafs, providing protection by requiring the biological father to fulfill the child's needs. However, from the perspective of hifzu al-Nasl, the decision is appropriate if the child is born from a legal marriage but not registered by the state. If the child is born from an illegitimate relationship, the decision is not in accordance with maqashid.

The third article, titled "Civil Status of Illegitimate Children after the Constitutional Court Decision No. 46/2012," argues that the Constitutional Court views every child born as having inherent dignity. Therefore, every child must be legally protected fairly. The Constitutional Court's decision to grant civil rights to illegitimate children is seen as a positive legal development from a human rights perspective. However, it also creates a

contradiction between positive law and Islamic jurisprudence (fiqh), given the predominantly religious sociological context of Indonesian society.¹⁴

In the author's opinion, the aforementioned research does not discuss the comparison of positive law with fiqh in dealing with illegitimate children, nor does it address the issue within the context of maqashid. Instead, these studies focus on providing civil legal protection for these children. The present research differentiates itself by providing a civil legal protection framework for illegitimate children based on Ibn Taimiyah's perspective and examining its relevance to Constitutional Court decision No. 46/2012. This unique focus aims to bridge the gap between the existing legal framework and Islamic jurisprudence, providing a comprehensive analysis of the rights and protections afforded to illegitimate children in Indonesia.

Method

This research is a normative qualitative study utilizing library research.¹⁵ The methodology involves a comprehensive review of library materials and data sources, including journals, websites, and primary sources such as Ibn Taimiyah's book "Majmu' al-Fatawa."¹⁶ Additional supporting materials include other literature and tertiary sources such as dictionaries, encyclopedias, and indexes, as well as relevant internet sites providing information to support the completeness of this article.

The research follows these steps to determine the relevance of Ibn Taimiyah's thoughts to the Constitutional Court decision

¹³ Fitriah, "Analysis of Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the Status of Children Out of Wedlock and MUI Fatwa No. 11/2012 Concerning the Position of Children Resulting from Adultery and Their Treatment in the Perspective of Maqashis Syari'ah Al-Khamsah," 2023.

¹⁴ Prianter Jaya Hairi, "Civil Status of Unwed Children

Post-Constitutional Court Decision Number 46 / PUU-VIII / 2010" IV, no. 06 (2012).

¹⁵ Ishaq, *Metode Penelitian Hukum* (Bandung: Alfabeta Bandung, 2020).

¹⁶ Soejono Soekanto, *Normative Legal Research* (Jakarta: PT Raja Grafindo Persada, 2015).

No. 46/2012:

1. **Data Collection:**

- **Primary Sources:** Gathering data on Ibn Taimiyah and his fiqh thoughts.
- **Secondary Sources:** Reviewing related legal documents, including the 1974 Marriage Law, the 1991 Compilation of Islamic Law (KHI), and MUI Fatwa No. 11/2012.
- **Tertiary Sources:** Consulting dictionaries, encyclopedias, indexes, and credible internet sites.

2. **Data Sorting and Selection:**

- Sorting and selecting data relevant to the research, focusing on the intersection between Ibn Taimiyah's jurisprudence and contemporary legal decisions.

3. **Data Analysis Techniques:**

- Organizing the collected data systematically.
- Analyzing the Constitutional Court decision No. 46/2012.
- Comparing the Constitutional Court decision with the 1974 Marriage Law, the 1991 Compilation of Islamic Law (KHI), and MUI Fatwa No. 11/2012.

4. **Presentation of Research Results:**

- Presenting the findings in a structured format that highlights the relevance and implications of Ibn Taimiyah's thoughts on the current legal framework regarding the civil rights of illegitimate children.

By meticulously following these steps, the research aims to provide a thorough analysis of how Ibn Taimiyah's fiqh thoughts¹⁷

align with or differ from contemporary legal standards and the implications for the civil rights of illegitimate children in Indonesia¹⁸

Results and Discussion

Biography

Ibn Taimiyah, whose full name is Ahmad Taqiy al-Dîn Abu al-'Abbâs Ahmad ibn 'abd al-Halim ibn Syihâb al-Dîn ibn Majd al-Dîn abi al-Barakât, hailed from a family known as the "Ibn Taimiyah family."¹⁹ He was born on Monday, 10 Rabi'ul Awal 661 Hijriah, corresponding to January 22, 1263 AD, in Harran, Syria.²⁰ Harran, the city of his birth, has been historically recognized as a center for philosophy and philosophers. Ibn Taimiyah lived in Harran until he was seven years old.

During his childhood, the Mongol Tartar troops attacked his country, forcing his family to flee to Damascus, where they found safety and settled. Young Ibn Taimiyah witnessed the brutality of the Tartars and the harrowing experience of escaping their pursuit. This early encounter fostered a deep-seated animosity towards the Tartars and their aggressions. As an adult, Ibn Taimiyah, along with his students, took up arms against the Tartars, viewing them as rebels who needed to repent and return to true Islam, despite their conversion to Islam at the time.

Historian Abu Zahrah notes that Ibn Taimiyah's qabilah lineage is not mentioned in historical records. It is known that his family originated from Harran, but their Arab qabilah affiliation is unclear. This suggests that Ibn Taimiyah might have been of Kurdish descent, similar to Saladin Ayyubi, the Muslim Kurdish hero who liberated Jerusalem from the Crusaders. Such qualities of strong

¹⁷ Suharsimi Arikunto, *Research Procedures A Practical Approach* (Jakarta: Rineka Cipta, 2011).

¹⁸ Samsu Sumadayo, *Theory and Application of Qualitative and Quantitative Research* (Jambi: Jambi Pustaka, 2017).

¹⁹ Muhammad Abu Zahrah, *Ibn Taimiyah* (Cairo, Egypt: Dar al-Fikr al-'Arabi, 2000) p. 16

²⁰ Muhammad Abu Zahrah, *Ibn Taimiyah* (Cairo, Egypt: Dar al-Fikr Al-'Araby, 2000) p. 17

Islamic spirit and resilience were evident in Ibn Taimiyah's personality.²¹ Additionally, his mother's lineage is not documented, implying that she might not have been of Arab origin.²²

Ibn Taimiyah's family environment in Damascus was highly scholarly, rooted in the Hanbali school of thought, which motivated him to pursue religious studies fervently.²³ His remarkable rhetorical skills and exceptional memorization abilities were notable, with reports stating that he had memorized the Quran eighty times by the end of his life in prison. After memorizing the Quran, he proceeded to memorize hadiths, *balāghah*, and jurisprudence laws.

Ibn Taimiyah inherited his father's scholarly attributes, excelling in scientific debates. His grandfather, Majd al-Din, was also a renowned Hanbali jurisprudence imam in Damascus, with numerous writings, including "*al-Muntaqā fi al-Ahkam*." His uncle, Fakhr al-Din, another prominent scholar, was a student of Ibn al-Jauzi, a high-ranking Imam of the Hanbali school.²⁴

According to Abu Zahrah, Ibn Taimiyah exhibited three significant qualities throughout his life: persistence and diligence in acquiring beneficial knowledge, openness to his community environment, and sharp memory coupled with dynamic intellect and straightforward thinking.²⁵ Under his father's tutelage, he delved deeply into hadith sciences, memorizing works from prominent Imams of his time.

During his studies in Damascus, where a hadith study academy was established by Imam al-Nawawi and Ibn Daqiq al-'īd, Ibn Taimiyah critically studied their hadith works,

focusing on *rijāl asanīd* and hadith matans, considering various narrations.²⁶ His methodical approach involved *mulāzamah*, *talaqqī*, and *tasmī'* techniques.²⁷ Besides hadith, Ibn Taimiyah also explored other sciences, such as geometry, language, literature, *fiqh*, and *tafsir*, mastering each discipline.

In jurisprudence, Ibn Taimiyah reached the level of *mujtahid*. In *kalam*, he emerged as the most prominent figure of his time, and in *tafsir*, he was a leading commentator, laying the foundations of *tafsir* science. His extensive knowledge earned him the title *Sheikh al-Islam*, and he was authorized to issue fatwas and teach at the young age of 21, taking over his father's position after his death.

Ibn Taimiyah's reputation as a scholar grew immensely among the people. He was known for his broad-mindedness, support for freedom of thought, critical thinking, firmness, and bravery. His free spirit and thoughts, untethered by religious belief and fanaticism, marked a significant socio-political phenomenon of his time, positioning him as a spiritual father in the movement to renew Islamic teachings.²⁸ Throughout his intellectual journey of teaching, dialogue, debating, and preaching, Ibn Taimiyah had over two hundred sheikhs as teachers and many students, including notable figures like Ibn Qayyim, Ibn Kathir, and 'Ad-Dzahabi.

Ibn Taimiyah's perspective on the lineage of illegitimate children

Ibn Taimiyah offers a nuanced perspective on the lineage of illegitimate children, particularly addressing the issue

²¹ Muhammad Abu Zahrah, *Ibn Taimiyah* (Cairo, Egypt: Dar al-Fikr al-'Araby, 2000) p. 18

²² Muhammad Abu Zahrah, *Ibn Taimiyah* (Cairo, Egypt: Dar al-Fikr al-'Araby, 2000) p. 19

²³ TM. Hasbi Ash-Siddiqy, *History of the Growth and Development of Islamic Law* (Jakarta: Bulan Bintang, 1990) p. 127

²⁴ Muhammad Abu Zahrah, *Ibn Taimiyah*, p. 21

²⁵ Muhammad Abu Zahrah, *Ibn Taimiyah*, p. 21

²⁶ Muhammad Abu Zahrah, *Ibn Taimiyah*, p. 22

²⁷ Muhammad Abu Zahrah, *Ibn Taimiyah*, p. 22

²⁸ Muhammad Hasan al-Jamal, *Biographies of 10 High Imams*, Translated by M. Khalid Mushlih (Jakarta: Pustaka Al-Kautsar, 2003). h. 215.

from both legal and ethical standpoints. His views can be summarized and explained as follows:

1. **Istibra' and Lineage Recognition:**

- **Istibra' (Purification):** Ibn Taimiyah explains that istibra' (waiting period for purification) is not for ensuring the purity of the first person's semen but for the second person's semen purity. It is not appropriate for a man to recognize a child as his own if the child is not from his semen.
- **Recognition of Illegitimate Children:** If an adulterous woman is not the man's firâsy (wife), there are differing scholarly opinions on whether the child's lineage can be attributed to the male adulterer. The Prophet's hadith states, ("The child is attributed to the bed [i.e., the husband] and for the adulterer, stones [i.e., punishment]").²⁹

2. **Two Scholarly Opinions:**

- **First Opinion:** The child's lineage is connected to the firâsy (husband). If the woman is not his firâsy (wife), the child is not connected to the adulterer as the adulterer is punished.
- **Second Opinion (Supported by Ibn Taimiyah):** The child is not connected by birth to the firâsy (husband) if the woman is not the wife. Instead, the lineage is attributed to the male adulterer who acknowledges the child. This is based on historical practices where children born during the jahiliyah era were connected to their fathers based on recognition.³⁰

3. **Concrete Evidence and Lineage**

Determination:

- Ibn Taimiyah emphasizes that a child's relationship with the mother is evident due to pregnancy. For the male adulterer, if he claims the child without stating it is from adultery, and the conditions for lineage are met, the child's lineage can be assigned to him. However, if it is declared that the child is from adultery, most ulema do not recognize the lineage due to the crime involved.³¹
- Ibn Taimiyah argues for the recognition of the child's lineage to the adulterer to prevent the child from facing neglect or shame for a sin they did not commit, citing the Quranic principle, "No bearer of burdens will bear the burden of another" (Quran 6:164).

4. **Marriage and Lineage Attribution:**

- Ibn Taimiyah states that if the mother is a wife or in 'iddah (waiting period after divorce or husband's death), the child is assigned to the firâsy (the mother and her husband). If not, the child's lineage can be assigned to the male adulterer based on confession and concrete evidence, including modern DNA testing.³²
- The opinion contrasts with more traditional views, such as Ibn Qudamah's, which maintain that the child resulting from adultery is not connected to the adulterer, even if a biological relationship is proven.

5. **Legal Protection and Ethical Considerations:**

- Ibn Taimiyah prioritizes the child's

²⁹ Ibnu Taimiyah, *Majmu' Al-Fatawa* (Damascus Syria: Dar al-Kutub al-Ilmiyah, 2002). volume 32, p. 21

³⁰ Imam Malik bin Anas, *Al-Muwaththa'* (Al-Dar al-Baidha, Morocco: Mathba'ah al-Najah al-Jadidah, 2013). volume 2, p. 730

³¹ Ibnu Qudamah, *Al-Mughni*, (Riyadh; Dar 'A'laam al-Kutub, t.th) juz 7, p. 129-130 .

³² Bukhari, *Sahih Imam Bukhari* (Cairo, Egypt: Mathba'ah Isa al-Babi al-Halabi, nd). No. 2053.

welfare and protection, aligning with the Quranic principle of not bearing others' sins. This perspective sometimes supersedes the traditional interpretation of hadith to ensure justice and prevent harm to the innocent child.³³

- He uses qiyas (analogical reasoning) to argue that since the child is biologically related to both parents, both should acknowledge the child, and the child should inherit from them, ensuring the child's rights are protected.

6. Contemporary Application:

- Ibn Taimiyah's fatwa supports the recognition of an illegitimate child's lineage to the biological father, especially when proven through modern means like DNA testing. This recognition grants the child rights to inheritance and family connections, emphasizing justice and ethical considerations over strict traditional interpretations.
- Comparative fatwas, such as those by Sheikh bin Bâz, emphasize repentance and purification before allowing marriage between adulterous couples. While they provide a traditional viewpoint, Ibn Taimiyah's approach seeks to adapt to contemporary realities, focusing on the child's rights and welfare.

Ibn Taimiyah's perspective on the lineage of illegitimate children offers a balanced approach that respects traditional Islamic jurisprudence while addressing the ethical need to protect innocent children. By considering both historical practices and

contemporary evidence, such as DNA testing, Ibn Taimiyah's views provide a framework for ensuring justice and protection for children born out of wedlock. His emphasis on not punishing children for their parents' sins and ensuring their rights reflect a compassionate and just application of Islamic principles.³⁴

The Relevance of Ibn Taimiyah's Thoughts with Constitutional Court Decision No. 46/2012 concerning the civil rights of illegitimate children

In the author's view, the classical fatwa of fuqaha that denied civil relations between illegitimate children and their biological fathers may have been acceptable in an era with limited knowledge, but in today's age of advanced technology, is such a fatwa still tenable? Or should it evolve into a fairer fatwa that better serves the interests of the child? Ibn Taimiyah's fatwa provides a framework for addressing these questions.³⁵

Under Indonesian law, specifically the 1974 Marriage Law Article 43(1), it is stipulated that "Children born outside of marriage only have a civil relationship with their mother and her mother's family." This provision mirrors the content found in Islamic Law Compilation articles regarding the rights of illegitimate children.

The Constitutional Court (MK) conducted a material review of the 1974 Marriage Law and ruled in Decision No. 46/2012, dated February 17, 2012, that Article 43(1) is unconstitutional if not interpreted to include the possibility of establishing a civil relationship with the biological father based on scientific evidence or other legal proofs of

³³ Ibnu Taimiyah, *Majmu' Al-Fatawa* (Damascus: Syiria: Dar al-Kutub al-Ilmiyah, 2002) volume, 32, p. 21

³⁴ 'Adnan al-Duqaillan, *Hukmu Ibni Al-Zaaniyah Fi al-Islam*, vol. 22 (Riyadh, Saudi Arabia: Dar 'Alam al-Kutub, nd).

³⁵ RI Presidential Decree, *RI Marriage Law no. 1, 1974* (Jakarta: Government of the Republic of Indonesia, 1974). Chapter IX, Article 42 concerning the position of children..

blood relationship.³⁶

This decision by the Constitutional Court aligns with Ibn Taimiyah's perspective, which asserts that the lineage of illegitimate children can be linked to their biological fathers when their mother was not married to him. This allowance is justified as adultery, under such circumstances, represents an exceptional (unusual) condition that requires detailed consideration (*tafshil*), unlike the automatic rights and obligations that arise from a valid marriage (*nikah*).

The MK decision emphasizes the importance of providing legal protection and certainty regarding the status and rights of illegitimate children, including those born under disputed marital validity. This stance echoes Ibn Taimiyah's fatwa, both of which underscore the need for legal protections for illegitimate children. Scientific advancements, such as DNA testing, play a crucial role in establishing biological relationships, a principle upheld by both the court's decision and Ibn Taimiyah's reasoning.

However, despite the Constitutional Court's progressive stance, there remains resistance from Religious Courts, which continue to adhere to classical *fuqaha* fatwas deemed outdated and unfair in today's context. These fatwas were formulated in an era lacking the scientific developments available today, prompting questions about their continued relevance.

Ibn Taimiyah's fatwa offers a balanced approach, advocating for the attribution of lineage to biological fathers in cases where scientific evidence supports it, thereby ensuring fair treatment and legal recognition for illegitimate children. This position not only aligns with modern legal principles but also addresses the societal need for clarity

and justice in determining the rights of children born out of wedlock.

In conclusion, while there are concerns about the broader implications of attributing lineage to biological fathers in cases of adultery, these apprehensions can be addressed through stringent evidential requirements, such as DNA testing, which provide objective proof of biological relationships. Such measures safeguard against unfounded claims while upholding the rights of innocent children to legal recognition and protection.

Table 2. Analysis Table of Fatwas and Constitutional Court Decision

Aspect	Ibn Taimiyah's Fatwa	MK Decision No. 46/2012	Sheikh bin Bâz's Fatwa	MUI Fatwa 11/2012
Lineage Recognition	Permits lineage to biological father if mother is not wife based on evidence	Recognize civil relationship with biological father if scientifically proven	Lineage only to mother, not recognizing biological father	Requires biological father to provide living support without recognizing lineage
Living Support	Yes, with evidence	Yes, if scientifically proven	Yes, after repentance and marriage	Yes, without recognizing lineage
Inheritance Rights	Yes, from biological father and mother	Yes, if scientifically proven	No, from mother only	No
Guardianship	Prefers guardians from mother's family unless no other option	Prefers guardians from mother's family or paternal relatives	Mother's family or maternal relatives	Mother's family or maternal relatives
Requirement for Rights	Scientific proof (e.g., DNA test)	Scientific proof (e.g., DNA test)	Repentance and marriage	No specific scientific requirement

³⁶ RI Presidential Decree, *RI Marriage Law no. 1, 1974*.

Table 2 provides a comparative analysis of various fatwas and the Constitutional Court decision concerning the civil rights of illegitimate children. It highlights the different approaches and requirements for recognizing lineage, living support, inheritance rights, and guardianship.

Regarding lineage recognition, Ibn Taimiyah allows for attributing lineage to the biological father if the mother was not married to him, supported by evidence. Similarly, the MK Decision mandates recognizing a civil relationship with the biological father if proven through scientific means, such as DNA testing. In contrast, Sheikh bin Bâz and MUI Fatwa 11/2012 restrict lineage recognition primarily to the mother, disregarding the biological father.

Concerning living support, Ibn Taimiyah and the MK Decision advocate for providing support if sufficient evidence, like DNA testing, establishes the biological relationship. Sheikh bin Bâz requires living support after repentance and marriage, while MUI Fatwa 11/2012 mandates it without acknowledging lineage.

In terms of inheritance rights, both Ibn Taimiyah and the MK Decision support inheritance from both biological parents if proven scientifically. Sheikh bin Bâz limits inheritance rights to the mother, while MUI Fatwa 11/2012 does not recognize inheritance rights from the biological father.

Regarding guardianship, Ibn Taimiyah and the MK Decision prefer guardians from the mother's family, with the option of paternal relatives. Sheikh bin Bâz and MUI Fatwa 11/2012 similarly prefer guardians from the mother's or maternal relatives.

In conclusion, both Ibn Taimiyah's thoughts and the MK Decision highlight a modern approach that uses scientific evidence to determine the rights of illegitimate children, contrasting with the

more traditional views of Sheikh bin Bâz and MUI Fatwa 11/2012. This shift reflects an evolving legal perspective aimed at providing fair recognition and protection to illegitimate children based on objective criteria such as DNA testing.

Table 3. relevance of Ibn Taimiyah's thoughts with Constitutional Court Decision No. 46/2012 concerning the civil rights of illegitimate children

Aspect	Ibn Taimiyah	Constitutional Court Decision No. 46/2012
Lineage Recognition	Allows attributing lineage to biological father if mother was not married to him, supported by evidence.	Mandates civil relationship with biological father if proven through scientific means (e.g., DNA testing).
Living Support	Advocates providing support with sufficient evidence establishing biological relationship (e.g., DNA testing).	Supports providing living support if biological relationship is scientifically proven.
Inheritance Rights	Supports inheritance from both biological parents if proven scientifically.	Supports inheritance if biological relationship is scientifically established.
Guardianship	Prefers guardians from mother's family, with option for paternal relatives.	Prefers guardianship from mother's family or paternal relatives.

Table 3 outlines how Ibn Taimiyah's thoughts align with the Constitutional Court Decision No. 46/2012 on various aspects related to the civil rights of illegitimate children. It emphasizes their shared emphasis on scientific evidence in determining lineage, living support, inheritance rights, and guardianship, reflecting a modern legal perspective in contrast to older, more traditional views

Conclusion

Ibn Taimiyah's perspective on the status of children born out of wedlock diverges from the majority view that attributes lineage

to the husband. Instead, he aligns with Umar's approach during the period of jahiliyah, connecting illegitimate children's lineage to their biological fathers when the mother was not married to him. This approach aims to protect innocent children from the consequences of their parents' mistakes, emphasizing that one person's sins should not burden others.

Ibn Taimiyah's thoughts resonate with Constitutional Court Decision No. 46/2012, which asserts unequivocal civil rights for illegitimate children, recognizing both biological parents and their families. However, Ibn Taimiyah's perspective introduces nuanced and conditional considerations, striving to ensure that the civil rights of children born out of wedlock are treated fairly and almost on par with those from conventional marriages.

This alignment underscores an evolving legal perspective that values fairness and protection for illegitimate children, supported by both historical precedent and contemporary legal principles upheld by the Constitutional Court

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