

PROTECTION OF LINEAGE (HIFZ AL-NASL) IN DETERMINING THE LEGAL PARENTAGE OF CHILDREN BORN OUT OF WEDLOCK: A NORMATIVE ANALYSIS AND JUDICIAL PRACTICE OF THE PRINGSEWU RELIGIOUS COURT

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ABSTRACT

Focused on the Islamic principle of *hifz al-nasl*, this study has a dual aim: first, to analyze the framework for establishing the legal parentage of children born out of wedlock, and second, to scrutinize related judicial practices at the Pringsewu Religious Court. The research applies a normative juridical method, utilizing statutory, conceptual, and case study approaches to examine laws, the Compilation of Islamic Law, and court decisions. Analysis is conducted through grammatical and systematic interpretation. According to the study, judicial practice at the Pringsewu Religious Court involves two distinct methods for establishing parental lineage. The first, a normative-preventive method, ties the child's legal status directly to the lawful nature of the parents' marriage, effectively preventing children born from invalid unions from being recognized as legitimate. In contrast, the normative-progressive approach grants legal protection by affirming the child's biological parentage, ensuring legal certainty, identity, and safeguarding the child's rights. This practice is concretely reflected in Case Number 57/Pdt.P/2024/PA.Prw and Case Number 28/Pdt.P/2025/PA.Prw, and demonstrates the court's effort to balance the enforcement of Islamic family law norms with child protection in accordance with the principles of *maqasid shariah*, specifically *hifz al-nasl*.

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INTRODUCTIONS

Indonesia as a constitutional state based on Pancasila and the 1945 Constitution has the obligation to guarantee legal certainty, justice, and protection of citizens' rights (Ali, 2012). In the national legal system, the Religious Court has absolute authority to resolve certain civil matters of Muslims, including the determination of a child's origin as regulated in Article 49 of Law Number 7 of 1989 and its amendments (Nursadi, 2008; Sudirman, 2021). However, in social practice, children can be born from legitimate marriages, unregistered religious marriages (*nikah siri*) that are not recorded by the state, or relationships outside of marriage (Mahendra & Yustiawan, 2023). Unregistered marriages,

although valid religiously, do not have administrative legal force and thus impact the legal status of children born from them (Nugroho et al., 2025).

Problems arise when children born from unregistered marriages or outside of marriage experience legal status uncertainty that impacts the weakness of child rights protection, such as legal identity, maintenance, inheritance, and guardianship (Wiweka et al., 2024). Yet, Law Number 23 of 2002 concerning Child Protection guarantees children's rights to grow, develop, obtain protection from discrimination, and know the origin of their parents (Lestari, 2017). An important development occurred through Constitutional Court Decision Number 46/PUU-VIII/2010 which reinterpreted Article 43 paragraph (1) of the Marriage Law, by recognizing the existence of civil relations between children born out of wedlock and their biological fathers as long as it can be proven scientifically and legally (Setyawan et al., 2024). Nevertheless, derivative regulations such as the Compilation of Islamic Law (KHI) Articles 100–103 have not fully provided comprehensive protection for children born out of wedlock, thus creating tension between positive law and demands for substantive justice.

The concept of maqasid shariah is a value framework aimed at realizing the welfare and balance of human life as established by the lawmaker (Allah SWT) through the Qur'an and Sunnah, which is then studied by mujtahids (Shidiq, 2009; Toriquddin, 2014). One of the main objectives of maqasid shariah is *hifdz al-nasl*, namely the protection of lineage and clarity of nasab (lineage) as the foundation for the continuity of family and social order. This principle emphasizes that the protection of lineage is not only related to formal legal aspects, but also includes the fulfillment of children's rights to identity, care, and social dignity. In the context of Islamic law, the determination of a child's origin (*isbat al-nasab*) is classically associated with the existence of a valid marriage, as explained by Al-Qurtubi, Ibn al-'Arabi, and Wahbah al-Zuhayli who view nasab as a blood tie born from a marriage in accordance with sharia. According to fiqh, the determination of nasab can be done through the mechanism of acknowledgment (*istilhaq*) or proof (*al-bayyinah*) (Ramadhan, 2017).

In the national legal system, a child is defined as every individual who has not yet reached 18 years of age, including children in the womb, as regulated in Law Number 32 of 2002 concerning Child Protection, while in civil law the limit of legal capacity is set at 21 years of age as stated in Article 330 of the Civil Code, although there is discourse on harmonizing the age limit of legal adulthood (Rofiq, 2021). On the other hand, Law Number 1 of 1974 defines marriage as a physical and spiritual bond between a man and a woman to form a happy and eternal family, which affirms that marriage is not only oriented toward physical relationships, but also spiritual dimensions and broader social purposes (Saleh, 1976). This difference in construction between Islamic law and positive law regarding the basis for determining nasab then raises normative and practical problems in determining the legal status of children born out of wedlock, thus strengthening the urgency of studies on the protection of lineage based on maqasid shariah in religious court practice.

From the perspective of Islamic law, the protection of lineage is part of maqasid shariah through the principle of *hifdz al-nasl* which emphasizes the importance of protecting lineage, dignity, and children's basic rights, including identity, care, and social welfare (Sofyan, 2024). This lack of synchronization between positive legal norms and maqasid shariah principles widens the gap in legal protection for children born from unregistered marriages or outside of marriage. On the other hand, religious court practice still faces technical constraints in the form of the absence of parents' marriage certificates, limited witness evidence, and the expensive and difficult nature of scientific proof such as DNA testing, which affects judges' considerations in determining a child's lineage status.

The phenomenon of increasing requests for determination of children's origin at the Pringsewu Religious Court shows an increasingly strong social need for legal certainty regarding children's status, especially in cases of unregistered marriages and relationships outside of marriage. This condition shows the existence of two developing approaches to judges' decisions, namely the normative-preventive approach which still strictly adheres to positive legal texts, and the normative-progressive approach which attempts to accommodate substantive justice, children's human rights, and maqasid shariah values. However, there has not been much research specifically examining how

the protection of lineage based on the principle of *hifdz al-nasl* is implemented in religious court practice, especially at the Pringsewu Religious Court.

Based on this research gap, this study aims to analyze normatively the concept of lineage protection (*hifdz al-nasl*) in determining the origin of children born out of wedlock and to examine its implementation in the practice of decisions at the Pringsewu Religious Court. Thus, this research is expected to identify gaps in children's legal protection between positive regulations, substantive justice values, and judicial practice, while contributing to strengthening child rights protection in Indonesia. Therefore, this study aims to analyze the protection of lineage (*hifdz al-nasl*) in determining the origin of children born out of wedlock through a normative approach and to examine its implementation in judicial practice at the Pringsewu Religious Court.

METHODS

This research uses a normative juridical approach, considering that the research focus is normative analysis and practice of determining the origin of children born out of wedlock at the Pringsewu Religious Court based on the *maqasid shariah* principle of *hifz al-nasl*. According to Soerjono Soekanto, normative juridical research is legal research based on literature that emphasizes the use of secondary legal materials as the main source, and conducts analysis of legal norms and doctrines to answer research problems (Soekanto & Mamudji, 2001). This approach was chosen because it is capable of providing a systematic analytical framework for examining legislation, court decisions, and Islamic legal principles relevant to the object of study.

The sources of legal materials in this study consist of three types, namely primary, secondary, and tertiary legal materials. Primary legal materials include legislation, Constitutional Court Decision Number 46/PUU-VIII/2010, determinations of the Pringsewu Religious Court regarding children's origin, and other official legal documents. Secondary legal materials include books, scientific journal articles, research results, expert opinions, and legal literature that provide conceptual and theoretical explanations of primary legal materials. Meanwhile, tertiary legal materials consist of legal dictionaries, encyclopedias, and other reference sources used to help understand legal terms and strengthen the conceptual framework of the research.

The collection of legal materials was conducted through library research and documentation study. This process includes searching for legal materials in libraries, legal documentation centers, online databases, and official archives of related institutions. Documentation techniques are used to obtain data from written sources such as books, journals, court decisions, official reports, and archival documents. According to Arikunto (2013), documentation is an effective data collection method because it is sourced from records or documents that are systematically arranged and can be scientifically accounted for.

The analysis of legal materials in this study was conducted using the legal interpretation method to examine unclear norms, ambiguous terms, and potential norm conflicts in legislation. This research uses grammatical interpretation to understand the meaning of legal provisions based on linguistic rules so that the intent of norms can be understood appropriately. In addition, systematic interpretation is applied by connecting one article with other related articles or regulations in order to obtain a comprehensive and complete understanding of the legal system governing the determination of children's origin (Arikunto, 2013). Through these analytical techniques, this research is expected to produce a normative study that is harmonious between positive law and *maqasid shariah* principles.

RESULTS

The legal status of children born out of wedlock in national legislation (Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and Constitutional Court decisions) reviewed from the perspective of *maqasid shariah*, specifically *Hifz al-Nasl* (protecting lineage)

The legal status of children born outside of marriage in the Indonesian national legal system was initially regulated restrictively through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law

(KHI). Article 43 paragraph (1) of the Marriage Law and Article 100 of KHI limit the civil relationship of children born out of wedlock only to the mother and the mother's family. This provision reflects the principle of caution in Islamic law which emphasizes the importance of clarity of lineage to prevent chaos in lines of descent and legal uncertainty. However, in practice, these regulations impact the limitations on fulfilling children's basic rights, such as recognition of legal identity, access to social protection, and potential fulfillment of maintenance and inheritance rights, thus creating risks of discrimination based on birth status (Putri & Kusmayadi, 2025).

From the perspective of *maqasid syariah*, especially the principle of *hifz al-nasl*, the normative purpose of this limitation is to maintain the orderliness of the family system and social structure of the ummah. However, the meaning of lineage protection cannot be limited only to biological aspects and legal formalities. The limitation of children's legal relationships only to the mother actually has the potential to ignore the dimensions of protection for welfare, dignity, and children's survival. Therefore, the contemporary *maqasid* approach emphasizes that the protection of lineage must be understood more broadly, namely including the protection of rights and the best interests of children as the next generation (Zakyyah, 2016).

An important development occurred through Constitutional Court Decision Number 46/PUU-VIII/2010 which reinterpreted Article 43 paragraph (1) of the Marriage Law. The Court affirmed that children born outside of marriage can have civil relations with their biological fathers as long as it can be proven through scientific technology or valid legal evidence. This decision marks a paradigm shift from a formalistic approach to an approach more oriented toward substantive justice and child rights protection (Cholifah et al., 2025; Meuraksa, 2024)

From the perspective of *maqasid syariah*, the Constitutional Court's decision is in line with strengthening the protection dimension in the principle of *hifz al-nasl*. The recognition of civil relations with the biological father provides stronger guarantees for the fulfillment of maintenance rights, legal identity, social protection, and potential inheritance rights for children. At the same time, this decision is not intended to legitimize *syar'i* lineage resulting from relationships outside of marriage, but is limited to civil legal relations. Thus, the goal of maintaining the purity of lineage is preserved, while the principle of social justice for children can also be realized.

A number of studies assess this change as a form of recognition of children's human rights that should not be reduced only because of their birth status, and as an effort to expand children's access to civil rights that were previously difficult to obtain without recognition from the biological father (Manueke, 2019; Pratiwi et al. 2020). However, the implementation of the Constitutional Court decision still faces administrative and procedural constraints, especially regarding the complexity and cost of proving biological relationships and differences in application practices in courts (Rajagukguk et al., 2025). This shows that normative legal protection needs to be followed by policy reform and regulatory harmonization so that the goal of child protection can be achieved effectively.

In the perspective of classical *fiqh*, children born from relationships outside of valid marriage are generally only connected to the mother's lineage, because *nasab* is considered to be established only through valid marriage (Dunggio et al., 2021; Saputra & Saputra, 2024). Nevertheless, there are views of certain scholars that open space for recognition of children by their biological fathers under certain conditions, as long as there is no conflict with *sharia* principles and there is clear acknowledgment from the father. Opinions put forward by figures such as Urwah ibn al-Zubayr, Hasan al-Bashri, and Ishaq bin Rahawaih show flexibility in the *fiqh* tradition to consider children's welfare, including in aspects of inheritance rights and certain legal protections (Purnama & Tanjung, 2024).

From the perspective of *maqasid syariah*, children born outside of marriage should not bear structural disadvantages due to conditions they did not choose. The protection of lineage in the contemporary sense includes the protection of dignity, legal identity, access to education, economic security, and children's social integration. Therefore, the recognition of civil relations based on biological evidence can be understood as an effort to prevent *mafsadah* and realize *maslahah* for children (Zakyyah, 2016). Although the legal basis has been strengthened, social and administrative barriers remain the main challenges. Social stigma against children born out of wedlock is still strong and impacts children's limited access to education, health services, and social acceptance (Rahman & Abidin,

2024; Zaini & Wagianto, 2025). In addition, complicated and expensive biological proof procedures also become a burden for underprivileged families (Rajagukguk et al., 2025). Therefore, strengthening public policy, simplifying legal procedures, and providing legal aid and social protection are important factors in optimizing the implementation of the Constitutional Court decision (Nazar & Rismawati, 2022).

Overall, developments in national regulations show a convergence between constitutional principles, Islamic legal values, and child rights protection. If in the early stage positive law narrowly limited the civil relations of children born out of wedlock, then Constitutional Court Decision Number 46/PUU-VIII/2010 presents a more inclusive approach without ignoring the basic principle of lineage protection. In the perspective of *maqasid shariah*, this development reflects efforts to balance between clarity of lineage and fulfillment of children's basic rights as part of social justice.

The practice of religious courts in adjudicating cases on determining the origin of children born out of wedlock at the Pringsewu Religious Court, and the extent to which this practice aligns with the principles of *maqasid shariah* (Hifz al-Nasl)

The judicial practice at the Pringsewu Religious Court in cases of determining the origin of children born out of wedlock shows a relatively consistent and structured pattern of legal considerations. This is reflected in Decision Number 57/Pdt.P/2024/PA.Prw and Decision Number 28/Pdt.P/2025/PA.Prw. In both cases, the panel of judges made the validity of parents' marriage the starting point of examination to determine the child's civil status. The examination begins with verification of the court's absolute authority, classification of the case as a voluntary request, and examination of evidence in the form of population documents, birth certificates, marriage certificates, and witness statements who directly know the relationship of the parties (Hidayatulloh & Suhartatik, 2023; Purnama & Suriani, 2025).

This approach reflects a normative-preventive orientation that places the validity of marriage as the main prerequisite for determining lineage. In Decision Number 57/Pdt.P/2024/PA.Prw, the request for determination of a legitimate child was rejected because there was insufficient evidence regarding the existence of a valid marriage. Meanwhile, in Decision Number 28/Pdt.P/2025/PA.Prw, the marriage was declared invalid because one party was still bound by a previous marriage even though a religious marriage contract had been performed. This stance shows consistency in applying the classical fiqh principle that lineage can only be established through valid marriage (*al-nasab yutsbatu bi al-nikah al-sahih*), while performing a preventive function to prevent chaos in lines of descent.

However, judicial practice does not stop at the normative-preventive approach. The panel of judges also applies a normative-progressive approach by still providing legal protection to children through recognition of biological relationships as long as it can be legally proven. In Decision Number 57/Pdt.P/2024/PA.Prw, protection is realized in the form of limited recognition of biological relationships to ensure certainty of the child's legal identity. A more progressive approach is seen in Decision Number 28/Pdt.P/2025/PA.Prw, where the panel of judges explicitly refers to Constitutional Court Decision Number 46/PUU-VIII/2010 and Supreme Court Circular Letter Number 3 of 2023 to emphasize the importance of protecting the rights of children born out of wedlock.

The difference in the level of legal argumentation in both decisions shows a shift in judicial orientation from a formalistic approach to an approach more centered on the best interests of the child. While maintaining the basic principles of Islamic family law, the panel of judges strives to ensure that children do not bear legal and social impacts due to errors or negligence of their parents (Husni, et al., 2024).

To clarify the pattern of similarities and differences in judges' considerations, the following comparative summary is presented:

Table 1. Comparison of Pringsewu Religious Court Decisions

Comparison Aspect	Decision No. 57/Pdt.P/2024/PA.Prw	Decision No. 28/Pdt.P/2025/PA.Prw
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Parents' Marriage Status	Cannot be proven	Invalid because still bound by previous marriage
Determination of Legitimate Child	Rejected	Rejected
Recognition of Biological Relationship	Recognized in a limited manner	Recognized explicitly
Reference to CC Decision No. 46/PUU-VIII/2010	Not dominant	Used as main basis
Basis of Child Protection	Legal identity certainty	Identity certainty and strengthening of civil rights
Judges' Approach	Normative-preventive	Normative-preventive and normative-progressive

Based on Table 1, it can be seen that both Pringsewu Religious Court decisions equally place the validity of parents' marriage as the main parameter in determining the child's legal status. In Decision Number 57/Pdt.P/2024/PA.Prw, the parents' marriage status could not be proven legally, while in Decision Number 28/Pdt.P/2025/PA.Prw the marriage was declared invalid because one party was still bound by a previous marriage. Consequently, in both cases the panel of judges consistently rejected the determination of the child as a legitimate child. This shows uniformity in applying the normative principle of Islamic family law which affirms that lineage can only be established through valid marriage.

Although both reject the determination of a legitimate child, there are differences in the level of legal protection provided to children. In Decision Number 57/Pdt.P/2024/PA.Prw, recognition of biological relationships was given in a limited manner and more focused on fulfilling the child's legal identity certainty. Conversely, in Decision Number 28/Pdt.P/2025/PA.Prw, recognition of biological relationships was done more explicitly and strengthened by direct reference to Constitutional Court Decision Number 46/PUU-VIII/2010 as the main basis for legal considerations. This difference shows the development of more progressive juridical argumentation in protecting children's rights.

From the aspect of the basis of child protection, Decision Number 57/Pdt.P/2024/PA.Prw tends to be oriented toward minimal protection in the form of recognition of legal identity, while Decision Number 28/Pdt.P/2025/PA.Prw shows a broader orientation by emphasizing the strengthening of children's civil rights. This is reflected in the judges' approach used. In the first decision, the dominant approach is normative-preventive, namely maintaining the order of family law and purity of lineage. Meanwhile, in the second decision, the normative-preventive approach is combined with a normative-progressive approach that places the best interests of the child as the main consideration.

Overall, the comparison of both decisions shows consistency in maintaining the basic principles of Islamic family law, while indicating the direction of development of judicial practice toward an approach more responsive to child rights protection. This shift reflects the efforts of religious courts to balance between legal certainty, lineage protection, and fulfillment of substantive justice for children as the most vulnerable party in cases of origin.

In addition to administrative aspects, the panel of judges also emphasizes the search for material truth regarding the biological relationship between children and parents. This substantive approach is in line with religious court practice that seeks to integrate positive law and fiqh principles to fulfill the best interests of children (Husni et al. 2024). The use of the Marriage Law and the Compilation of Islamic Law as normative bases is combined with academic considerations that affirm that the determination of children's origin has a strategic role in fulfilling children's civil rights in the national legal system (Amaliya, 2022).

In the perspective of maqasid shariah, especially the principle of *hifz al-nasl*, the practice of the Pringsewu Religious Court reflects two dimensions of protection. First, the preventive dimension aimed at maintaining the purity and clarity of lineage through enforcement of valid marriage requirements. This approach is in line with al-Shatibi's view which places the protection of lineage as part of the *daruriyyat* objectives in maintaining social order and family

law. In addition, the principle of sadd al-dhara'i' is also reflected in the court's stance of rejecting the legitimization of children from invalid marriages to prevent legal impacts that potentially damage the lineage system.

Second, the protective dimension aimed at protecting children as the next generation through recognition of legal identity and fulfillment of basic rights. This approach is in line with Ibn 'Ashur's thinking which emphasizes that the protection of lineage does not only concern genealogical structure, but also the protection of human dignity and generational continuity morally. In addition, Jasser Auda views maqasid as an open system that must be responsive to social context, including protection of vulnerable groups such as children born out of wedlock (Ahmad & Sumanto, 2024).

The decisions of the Pringsewu Religious Court also reflect the orientation of maqasid shariah in preventing mafsadah and realizing maslahah. By establishing children's biological relationships, the court opens access to population documents such as birth certificates and family cards which are prerequisites for fulfilling educational, health, and social protection rights (Andraini & Suliantoro, 2024). In this context, judges not only act as enforcers of legal norms, but also as actors of social protection that guarantee the continuity of generational rights.

Overall, judicial practice at the Pringsewu Religious Court shows harmonization between positive law, sharia values, and child rights protection. This approach maintains classical principles of lineage protection while adopting a contemporary maqasid perspective that places children's welfare as the main orientation. Thus, the application of the principle of hifz al-nasl is not only interpreted as maintaining genealogical structure, but also as a comprehensive effort to protect dignity, rights, and generational continuity in society.

CONCLUSION

The research results show that the Pringsewu Religious Court applies a consistent and structured approach in determining children's origin by placing the validity of marriage as the main benchmark for determining children's civil status, while recognizing biological relationships to ensure protection of children's civil rights. Analysis of Case Number 57/Pdt.P/2024/PA.Prw and Case Number 28/Pdt.P/2025/PA.Prw shows the development of judicial practice toward a more progressive approach oriented to the best interests of children, which is reflected in the simultaneous application of normative-preventive and normative-progressive frameworks. This approach allows the court to maintain the basic principles of Islamic family law regarding the purity of lineage, while preventing children from bearing social and legal impacts due to the invalidity of their parents' marriage. From the perspective of maqasid al-shari'ah, this practice reflects the substantial implementation of the principle of hifz al-nasl, not merely as an effort to preserve lineage formally, but also as protection for generational continuity, legal identity, and children's dignity, thus showing jurisprudential character that is integrative, adaptive, and welfare-oriented.

It is recommended that the government harmonize regulations related to the status of children born outside of marriage and facilitate access to proof of biological relationships to strengthen legal protection for children. Religious Courts also need to continue to prioritize substantive justice oriented toward the best interests of children and the principle of hifz al-nasl in every decision on determining children's origin. In addition, raising public awareness regarding the importance of official marriage registration needs to be strengthened through legal education, while further research is expected to examine empirical aspects to support the development of sustainable child protection policies.

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