



## LEGAL UNCERTAINTY REGARDING THE STATUS OF CHILDREN BORN OUT OF WEDLOCK IN THE PERSPECTIVE OF HIFDZU AL-NASL

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### ABSTRACT

*The concept of hifzu al-nasl in maqasid sharia emphasizes the importance of protecting one's nasab, providing legal protection, and fulfilling children's rights to achieve a prosperous life in this world and the hereafter. The aim of the resulting research is to analyze the concept of hifdzu al-nasl in maqasid as-syariah in legal certainty regarding the status of children outside of marriage. This research uses a doctrinal research approach. In the context of hifzu al-nasl, the principles of maqasid as-syariah emphasize the need to protect the nasab, uphold the rights of children, and guarantee the welfare of descendants to achieve justice in this world and the hereafter. The novelty of this research highlights the importance of an integrative approach between positive law and Islamic law to overcome legal uncertainty surrounding illegitimate children, as well as expanding the meaning of hifzu al-nasl by including recognition of children's rights without linking them directly to biological birth.*

## 1. Introduction

Children are a mandate from Allah SWT that is given to married couples. It must always be looked after and protected because in children there is inherent dignity and rights as human beings which must be upheld. Children are an important part of the family. The meaning of children is different for everyone.<sup>1</sup> Children's rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on Children's Rights. Viewed from the perspective of national and state life, children are heirs and at the same time portraits of the nation's future, so that every child has the right to survival, growth and development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms.<sup>2</sup> Parents, families and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law.

1 Ahdiyatul Hidayah, Nur Hapizah., Legal Protection for Children Out of Wedlock in The Perspective of Islamic Family Law, *Sakena: Jurnal Hukum Keluarga*, Vol.9 No.1, 2024, page. 43-52

2 Andi Syamsu Alam dan M. Fauzan., *Hukum Pengangkatan Anak Perspektif Islam*, Cet. Ke-1, Jakarta, Kencana, 2008, page.1

Children in Indonesia can grow and develop naturally, but instead have various problems which result in dealing with the law.<sup>3</sup> The law differentiates between legitimate and illegitimate descendants. Legitimate descent is based on the existence of a valid marriage in the sense that descent is based on birth as a result of a valid marriage. Such children are called legitimate children. Illegitimate offspring are descendants that are not based on an invalid marriage.<sup>4</sup> Thus, a child born to a woman while the woman is not in a legal marriage with the man who is having sex with her is categorized as an illegitimate child.<sup>5</sup>

A legal marriage will give rise to legal consequences, including the husband being obliged to support the life of his wife and their children, the father being the guardian of the marriage for his daughter, the husband and wife having the right to inherit from each other as well as the children born from a marriage with their parents being able to inherit from each other, the child born as a result of the marriage relationship becomes a legitimate child.<sup>6</sup>

The presence of a child outside of marriage will give rise to many conflicts between families and within society regarding the position of the child's rights and obligations. Apart from that, legally it is also a problem in itself. The birth of a child out of wedlock is not only caused by a relationship outside of wedlock, in certain circumstances it can also give birth to a child out of wedlock, such as a marriage that is carried out only according to custom and is not registered in accordance with the provisions of the applicable laws and regulations.<sup>7</sup> According to the provisions of article 80 of the Civil Code, before the Marriage Law came into force, it was stated that marriages had to be performed before a Civil Registry Office official. In article 81 of the Civil Code, it is stated that a religious marriage must be performed after the marriage before the Civil Registry Office.

Current regulations, such as Law Number 16 of 2019 concerning Marriage, do not fully accommodate the needs and rights of children outside of marriage. In many cases, these children do not receive proper recognition as legal subjects, which impacts their rights, such as inheritance rights, education rights, and the right to obtain legal protection. This creates injustice that is contrary to the principles of Pancasila, especially the principles of social justice for all Indonesian people.

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3 M. Hasballah Thaib dan Iman Jauhari., *Kapita Selekta Hukum Islam*, Medan, Pustaka Bangsa Press, 2004, page. 5

4 J. Satrio., *Hukum Keluarga Tentang Kedudukan Anak dalam Undang-undang*, Bandung, PT Citra Aditya Bakti, 2005, page. 5

5 Abdul Manan., *Aneka Masalah Hukum Perdata Islam di Indonesia*, Cet. Ke-2, Jakarta, Kencana, 2008, page. 82

6 M Idris Ramulyo, *Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam*, Jakarta, Sinar Grafika, 2006, page. 22-23

7 Aris Dwi Susanti., Tinjauan Yuridis Mengenai Kedudukan Dan Pembinaan Anak Luar Kawin Dilihat Dari Segi Hukum Perdata, *Jurnal Ilmu Hukum Legal Opinion*, Vol.1 Edisi.4, Tahun 2013, page,1-8

The concept of Hifzu al-Nasl is one of the five basic universal objectives of sharia law, maqasid al-syari'ah. Some people interpret it as merely protecting the genealogy of a child's lineage to his father, although this is also one of its meanings. When explored further, the actual meaning of hifzu al-nasl is very broad. There are several meanings that can be mentioned, including: giving birth to a new generation (injab), maintaining the genealogy of human race (hifzu al-nasab), protecting and educating children (ri'ayah). These five fundamental rights will not be achieved if there is no good planning in the family. Parents' income should be harmonized with their children's rights. Having many children will of course require parents to have a lot of income too. If the minimum target for the five rights of children is not met, let alone the maximum target. Not just restrictions on children, but how to have a measurable plan to create a prosperous family.<sup>8</sup>

Imam As-Syatibi uses the word al-maslahat while al-Syatibi uses the term maqashid sharia to represent what is revealed by Allah has a maqashid to realize the benefit of every human being both in the life of the world and the hereafter.<sup>9</sup> The concept of caring for offspring (hifzu al-nasl) Maintaining offspring is one of the primary human needs. Descendants are generations prepared to lead the next world on earth. In Islam, marriage matters are regulated with various conditions and Islam prohibits adultery which can tarnish human glory.<sup>10</sup>

In previous research, Suud Sarim Karimullah wrote that in the concept of hifdzu al-nāsl (looking after descendants) in maqashid al-syari'ah maqashid al-syari'āh from the aspect of hifdz al-dīn (guarding religion) because the Prophet himself ordered his people to multiplying offspring for the sake of realizing benefits in preserving the Islamic religion. Then, in hifdz nāfs it is not only related to protecting the soul from destruction but also various efforts towards improving the quality of life and ensuring the best quality of life for children.<sup>11</sup> Furthermore, research conducted by Zakyyah also states that the civil relations referred to children outside of marriage are only reciprocal obligations limited to providing support, with the theory of hifzhu nafs in maqāṣid al-syar'iyyah, because it protects the child's soul (hifzu nafs) from adversity and Suffering is a benefit of al-ḍarūriyyah that must be maintained.<sup>12</sup> Previous research conducted by Sabilal Rosyad also mentioned the principle of masalih al-

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8 Imam Amrusi., *Konstruksi Fikih Demokratis*, Surabaya, Dakwah Digital Press, 2009, page.9

9 Ahmad Rusyaid Idris (etc)., Contemporary Islamic Law in Indonesia: The Fulfillment Of Child Custody Rights In Divorce Cases Caused by Early Marriage, *MILRev : Metro Islamic Law Review*, Vol.3 No.1, Januari-Juni 2024, page.1-21

10 Muhammad Zainuddin Sunarto., Putri Nur Afrida, Ulfia Nurianti, *Kajian Maqashid Al-Shari'ah Terhadap Nilai-Nilai Islami Pada Sebuah Transaksi*, *HAKAM; Jurnal Kajian Hukum Islam*, Vol.6 No.1, Juni 2022, page.72-88

11 Suud Sarim Karimullah., *Poligami Dalam Tinjauan Hifdz Al-Nasl*, *Maddika: Journal of Islamic Family Law*, Vol.4 No.2, 2023, page.11-26

12 Zakyyah., *Consanguinity Of A Child Born Out Of Wedlock In The Concept of "Hifzhu Nasl" An Analysis of the Constitutional Court's Decision Number 46/PUU-VIII/2010*, *Jurnal Yudisial*, Vol.9 No.2, Agustus 2016, page.195 - 214

'ammah (public benefit) which protects children's civil rights (hifz an-nasl) as part of the aim of establishing Islamic law (maqasid asy-syari'ah).<sup>13</sup>

The aim of the resulting research is to analyze the concept of hifdzu al-nasl in maqasid as-syariah in legal certainty regarding the status of children outside of marriage. In the context of family law in Indonesia, legal certainty is not yet regulated.

## 2. Research Methods

The type of research used in this research uses doctrinal research which is basically an activity that will examine aspects to resolve problems that exist internally in positive law.<sup>14</sup> By identifying, concepts or opinions as a theoretical basis, which will be used as a basis for analyzing problems in research.<sup>15</sup>

## 3. Results and Discussion

### 3.1 The concept of Maqasid ash-syari'ah Hifz An-Nasl as Protection of Nasab.

Maqasid asy-syari'ah is a method of formulating Islamic law that experiences the development of dialectical thought. One of the figures who is concerned in explaining maqāṣid asy-syarī'ah is Abu Ishaq al-Syatibi who is published in his work entitled *Al-Muwafāqāt*. According to Asy-Syatibi, the purpose of enshrining Islamic law is to realize human benefit.<sup>16</sup>

The aim of maqashid sharia is to provide benefits to humans and prevent them from all evil. Al-Ghazali stated that maqashid sharia is an expression that contains protection for one's existence and efforts to create means of benefit.<sup>17</sup>

The ushul al-fiqh expert who discusses the concept of Maqāshid al-Syariah specifically, systematically and clearly is Abu Ishaq al-Syathibi. Through his work entitled *al-Muwafaqat* he stated emphatically that the purpose of Allah subhanahu wata'ala in enacting His laws is for the benefit of humans, both in this world and in the hereafter.<sup>18</sup>

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13 Sabilal Rosyad, Status Hukum Anak di Luar Perkawinan dalam Hukum Islam dan Implementasinya dalam Perkembangan Peraturan Perundang-Undangan di Indonesia (Studi Tentang Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010), *Jurnal Hukum Islam*, Vol. 15, No. 1, Juni 2017, page.155-179

14 Kornelius Benuf, Muhamad Azhar., Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer, *Jurnal Gema Keadilan*, Vol.7 Edisi.I, Juni 2020, page.20-33

15 Ahmad Rosidi, (etc)., Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research), *Journal Law and Government*, Vol.2 No.1, Februari 2024, page. 46-58.

16 Ali Mutakin., Teori Maqashid Syariah dan Hubungannya dengan Metode Istinbath Hukum, *Kanun: Jurnal Hukum Islam*, Vol.19 No.3. 2017, page.553.

17 Abu Hamid al-Ghazali., *Syifa' al-Ghalil fi Bayan asy-Syabh wa al-Mukhil wa Masalik at-Tahlil*, Baghdad, Penerbit al-Irsyad, 1390 H, page.234

18 Ali Mutakin., Teori Maqashid Syariah dan Hubungannya dengan Metode Istinbath Hukum, *Kanun Jurnal Hukum Islam*, Vol.19, Agustus, 2017, page.553.

After Imam Asy-Syatibi, the study of maqasid asy-syariah experienced a hiatus for six centuries. Then Muhammad At-Tahir Bin Asyur emerged as a figure who became Ash-Syatibi's successor, so he was nicknamed the second teacher or mu'alim tsāni with his monumental work Maqāṣid al-Syarī'ah al-Islamiyah. In his work, maqāṣid syarī'ah according to Ibn Asyur is divided into two, namely: Maqāṣid al-Syarī'ah al-Āmmah and Maqāṣid al-Syarī'ah al-khāṣṣah.<sup>19</sup>

The interesting thing about Ibn Asyur's ideas related to maqāṣid asy-syarī'ah khassah is that it is related to kinship (ḥifẓ an-nasl). Ḥifẓ an-Nasl in the view of scholars before Ibn Assyria was more inclined towards protective efforts (self-preservation), because ḥifẓ an-nasl was interpreted as a prohibition on committing adultery. In contrast to other scholars, Ibn ḌĀsyūr interprets ḥifẓ an-nasl actively because ḥifẓ an-nasl is not only interpreted as a prohibition on committing adultery but is more oriented towards family welfare. Because according to Ibn ḌĀsyūr ḥifẓ an-Nasl includes the concept of kinship. If this concept is not fulfilled, there will be many bad consequences that will disrupt family order and disrupt family resilience.<sup>20</sup>

Protecting offspring (Ḥifẓ al-nasl) is one of the pillars for the universal target of syar'i law, maqāṣid asy-syarī'ah. Some people interpret it as merely protecting the genealogy of a child's lineage to his father, even though this is one of the meanings. When explored further, the meaning of ḥifẓ an-nasl is actually very broad. There are several meanings that can be mentioned, including cultivating new successors (injab), protecting the genealogy of human descendants (ḥifẓ al-nasab), educating and nurturing children (ri'āyah). So far, many have interpreted ḥifẓ an-Nasl (protecting offspring) in a micro way with ḥifẓ alnasab (guarding one's lineage) so as not to be contaminated or mixed up with one's lineage genealogy and to avoid mistakes when children call their father.<sup>21</sup>

The determination of a child's lineage towards his biological father can occur in three ways, namely through a legal marriage, through a false or false marriage including a private marriage and through dubious sexual relations.

The term ḥifẓ an-Nasl or preserving offspring is a form of effort to safeguard human survival from extinction by referring to the goodness of this world and the hereafter. Broadly speaking, the law that emerged from the protection of nasab has two aspects,<sup>22</sup> that is Maintaining the existence of NASL so that it continues with efforts that can maximize good and ideal offspring as well as sharia laws which have been regulated as follows: It is recommended to marry by choosing a good partner, having the potential to give birth to children,

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19 Bektı Cikita Setiya Ningsih., Comparison of Al-Syatibi and Thahir Ibn Asyria's Thoughts On Maqashid Shari'ah, *MIZANI: Wacana Hukum, Ekonomi dan Keagamaan*, Vol.8 No.1, 2021, page.11-22

20 Muhammad Aṭ-Ṭahir Bin ḌĀsyūr., Maqāṣid al-Syarī'ah al-Islamiyyah, Dar al-Nafais, Amman, 2001, page.304-305.

21 Humaeroh., Keluarga Berencana Sebagai Ikhtiar Hifzh Al-Nasl (Upaya Menjaga Keturunan Menuju Kemaslahatan Umat), *Ahkam*, Vol.12 No.1, 2016. page.136

22 Achmad Beadie Busyroel Basyar., Perlindungan Nasab Dalam Teori Maqashid Syariah, *Maqashid Jurnal Hukum Islam*, Vol.3 No.1, 2020, page.5-6.

practicing polygamy which is permitted, and so on. It is mandatory for parents to educate their children, especially about the main principles of Islam. It is recommended to maintain the health of reproductive organs.

Protect your *nasl* from damage that comes your way by avoiding things that can damage your offspring, such as: Single life continues. Abuse of reproductive organs such as adultery, Sodom, and other prohibited things. Damaging the reproductive organs/taking drugs that can cause infertility, for both men and women. Having an abortion, *Nasab* protection or also termed *hifz an-nasl*, in various literature there are differences in the mention of this term regarding *nasab* protection. Some say the word *nasl*, some say *nasab*, some also say the word *budh'*.<sup>23</sup> The differences between the three terms are: a) *nasl* means upward lineage, for example father, father's father, mother's father, and so on, b) *nasab* means downward lineage, children, grandchildren, and so on, c) *budh'* means gender Woman.

Judging from the meaning of each term used, the most appropriate term is the first term (*nasl*). Because the protected charge basically lies in the lineage. The main benefit that the Shari'a protects through this point is the survival of a human generation, to prevent it from extinction, with efforts that refer to goodness in this world and the hereafter. And this benefit is stated more clearly in the term *nasl*, which means offspring. Meanwhile, in the term lineage, the image seen is a person's lineage from above. Almost nothing to do with the benefit in question. Likewise, the term *budh'* has almost no direct connection with the benefit in question, because the genitals are only a means for human survival. That's why Ar-Raisuni explained that the use of the word *nasl* is better than the word *nasab*, because *nasl* is the goal and *nasl* also reaches the priority level (*dharuriyat*) to be maintained, while *nasab* is only part of the intermediary to achieve *nasl* preservation.<sup>24</sup>

### **3.2 Legal uncertainty regarding the position of illegitimate children from Hifdzu al-Nasl's perspective**

Children born out of wedlock have a destiny only with their mother and their mother's family.<sup>25</sup> This means that children born outside of marriage only have a civil relationship with the woman who gave birth to them, a reciprocal relationship between the child and the mother, such as the mother's respective rights and obligations towards the child and vice versa. The same thing is also regulated in Islamic law, the law imposes parental obligations towards children only on the mother and ignores the responsibility of the man who caused the pregnancy or the child's biological father. This understanding is in accordance with Article 43 paragraph (1) of the Marriage Law which Children born outside

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23 Muhammad Sa'ad al-Yubi., *Maqashid as-Syariah al-Islamiyah wa Alaqatuha bi al-Adillah as-Syar'iyah*, Riyadh, Dar al-Hijrah, 1998, page.245-247.

24 Ahmad Ar-Raisuni., *Nadzariyat al-Maqashid Inda as-Syatibi*, Riyadh, an-Najah, 1411 H, page.42

25 Zakyyah, *Nasab Anak Luar Kawin Menurut Hifzhu Nasl.*, *Jurnal Yudisial*, Vol.9 No.2, Agustus 2016, page 195 - 214

of marriage have a civil relationship with their mother and her mother's family. As for the legal status, the child does not have a lineage relationship with his biological father but has relation to his mother because the child was born outside of a legal marriage.<sup>26</sup>

Discussions regarding illegitimate children are classified under family law, which in the Civil Code is regulated in Book One on Persons. Discussions regarding the family, namely the relationship between parents and their children, are regulated in Articles 42-52 of the Marriage Law, which contain the position of children, the rights and obligations of parents and the obligations of children and guardianship. Apart from that, provisions regarding illegitimate children are also regulated in Islamic law. So that the creation of an illegitimate child's relationship with his biological father is interesting to discuss, especially the provisions that come from these four legal sources.<sup>27</sup>

Conceptually, the meaning of illegitimate children can be divided into two, namely in a narrow and broad sense. In a narrow sense, an illegitimate child is a child born as a result of a relationship between a man and a woman, neither of whom is married to another person and there is no prohibition on marriage. Meanwhile, in a broad sense, it is divided into adulterous children (i.e. where one of the parents is married to another person) and discordant children (i.e. where both parents are prohibited from continuing the marriage according to law).<sup>28</sup>

The Civil Code, as the main reference source in civil law, provides the term for illegitimate children as *natuurlijke kind* or natural<sup>29</sup> which is regulated in Articles 272-289 of the Civil Code. This provision provides an understanding that an illegitimate child is a child born outside a valid marriage. The child was born from a mother, but was not seeded in a legal marriage. So it can be called a natural child. What is meant by a natural child according to Sri Harini is: "A natural child is a child born to parents who have no obstacles to marriage."<sup>30</sup> Meanwhile, another type of out-of-wedlock children are discordant children, namely children born to parents who have obstacles to marriage. Apart from that, there are also children of adultery, which are children born in an invalid marriage, because one of the parents is married to another party.

As a consequence of not being born in a legal marriage, this illegitimate child has no legal relationship with the father and mother who gave birth to him. In this case, a child must have a civil relationship before he or she has legal

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26 Nyrza Rizka A. R, M. Taufan B, Yuni Amelia., The Legal Status of a Child Born Out of Wedlock in The Perspective of Syafi'i and Hanafi Schools, *Comparativa*, Vol.4 No.1, Januari-Juni 2023, page.77-92

27 Abigail Prasetyo (etc)., Kedudukan Anak Luar Kawin Dalam Sistem Hukum di Indonesia, *Jurnal Kertha Patrika*, Vol.45 No.3, Desember 2023, page. 354-373

28 Ahmad Dedy Aryanto., Perlindungan Hukum Anak Luar Nikah Di Indonesia, *Bilancia*, Vol.9 No.2, Juli-Desember 2015, page.122-134

29 Hamiyuddin., Kedudukan Anak di Luar Nikah di Indonesia, *Jurnal Musawa*, Vol.10 No.1, 2018, page.159-190.

30 Harini S., *Pengantar Hukum Indonesia*, Bogor, Ghalia Indonesia, 2023, page. 45.

standing. An illegitimate child does not have the legal status of a legitimate child or a recognized child because he does not have a civil relationship with his biological father or with the mother who gave birth to him. To have this civil relationship, a child must be recognized by the mother who gave birth to him and/or recognized by his biological father, namely the father who brought the illegitimate child into existence.

Regarding recognition, it is regulated in Article 280 of the Civil Code,<sup>31</sup> which states that recognition can only be made for illegitimate children other than those due to adultery. This recognition is made by the parents who gave birth to them by including the parents' names on the birth certificate or at the time of the marriage. If this cannot be done, another alternative is to use an authentic deed, or a deed made by a Civil Registry Officer and registered. If there is negligence in recording this confession, then it cannot be used as a reason to deny that there was a confession. All such recognition must be approved by the mother who gave birth to an illegitimate child.

The legal effect of the Constitutional Court Decision is that religious court judges in determining the origin of children born out of wedlock generally consider the best interests of the child which is one of the principles of child protection as stated in the Convention on the Rights of Children and Law No. 23 of 2002 concerning Child Protection.<sup>32</sup> In the legal system in Indonesia, the position of illegitimate children is regulated in Article 43 Paragraph (1) of the Marriage Law no. 1 of 1974 which states that illegitimate children only have a legal relationship with their mother and their mother's family. However, the Constitutional Court through Decision Number 46/PUU-VIII/2010 emphasized that illegitimate children also have a civil relationship with their biological father, if it can be proven scientifically, such as through a DNA test.

In the perspective of *hifdzu al-nasl*, protection of offspring/children<sup>33</sup> includes children's rights to receive proper recognition, lineage and care. This principle aims to maintain the integrity of the bloodline and provide fair legal protection to children. However, legal uncertainty often arises due to the overlap between religious law, customary law and positive law. In the context of Islamic law, illegitimate children do not have a lineage with their biological father, but only with their mother, so they are not entitled to inheritance or support responsibility from the biological father.

This uncertainty has a negative impact on the legal status of children, especially in terms of inheritance rights, family recognition and social protection. From the perspective of *hifdzu al-nasl*, illegitimate children still need protection because

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31 I Kadek Adi Surya., Implementasi Pasal 280 Kitab Undang Undang Hukum Perdata Atas Hak Waris Anak Luar Kawin, *Raad Kertha*, Vol.6 No.2, 2023, page 11-19.

32 Rohmawati & Syahril Siddik., Legal Protection for Children Born out of Wedlock: Ensuring the best Interests of Children through Judge Decisions, *Al-'Adalah*, Vol.19 No.2, December 2022, page.315-338

33 Ahmad Ropei., Maqashid Syari'ah Dalam Pengaturan Batas Usia Pernikahan Di Indonesia, *As Syariah*, Vol.23 No.1, 2021, page 1-20.



they should not bear the consequences of their parents' actions.<sup>34</sup> This principle requires the state and society to provide legal protection mechanisms that guarantee the rights of illegitimate children, such as access to legal recognition, fulfillment of a living, and equal opportunities in social life.

Reconstruction of regulations on the status of illegitimate children as Protection of illegitimate children in this case includes legal protection. Before the issuance of the Constitutional Court's decision on illegitimate children according to the Marriage Law Article 43 Paragraph 1, illegitimate children only had a civil relationship with their mother and their mother's family. However, after the Constitutional Court Decision, it provided protection for civil rights that had not been recognized by the State.<sup>35</sup>

An integrative approach between positive law and Islamic law needs to be implemented to reduce this legal uncertainty. The state can adopt policies that protect the rights of illegitimate children without ignoring the principle of *hifdzu al-nasl* in Islamic law. For example, recognizing children's rights in terms of maintenance and protection, without having to link their lineage directly to the biological father. Apart from that, there needs to be wider socialization regarding the importance of protecting the rights of illegitimate children so that society has a more inclusive understanding and does not discriminate against the status of children.<sup>36</sup> With a holistic approach, legal uncertainty regarding illegitimate children can be minimized, so that the principle of *hifdzu al-nasl* as part of *maqashid as-syariah* is maintained, while fulfilling the demands of justice and humanity in the context of modern law.

#### 4. Conclusion

The concept of *hifdzu al-nasl* in *maqashid as-syariah* emphasizes the protection of offspring to maintain the integrity of the lineage, children's rights, and family welfare. In the context of illegitimate children, legal uncertainty arises due to differences between religious law, customary law, and positive law in Indonesia. Illegitimate children often do not have a clear legal relationship with their biological father, which has an impact on inheritance rights, family recognition, and social protection. Reconstruction of regulations on the status of illegitimate children is needed as Protection for illegitimate children in this case includes legal protection. Before the issuance of the Constitutional Court's decision on illegitimate children according to Article 43 Paragraph 1 of the Marriage Law, illegitimate children only had a civil relationship with their mother and their mother's family. The *hifdzu al-nasl* perspective requires the state and society to protect the rights of illegitimate children, including legal recognition, maintenance, and social equality, without burdening the child with the fault of

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34 Azzahro Khulaifah, M.Mukhid Mashuri, Wiwin Ainis Rohtih, & Miftara Ainul Mufid., Urgensi Kesetaraan Pasangan Sekufu' Dalam Al-Qur'an (Tinjauan Tematik Konseptual Perspektif Tafsir Maqashidi), *Triwikrama: Jurnal Ilmu Sosial*, Vol.1 No.2, 2023, page.106–119.

35 Muhammad Syarif Hidayat & Salwa Nida., *Rekonstruksi Hukum Hak Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi*, Semarang, Rafi Sarana Perkasa, 2021, page.100

36 Amdaryono Saputra., Status Hukum Anak Diluar Nikah Dalam Perspektif Fikih Islam Dan Hukum Positif Indonesia, *Vifada Assumption Journal of Law*, Vol.2 No.1, 2024, page. 44-53.

their parents. To overcome this uncertainty, an integrative approach is needed between positive law and Islamic law that emphasizes the principles of justice, recognition of rights, and inclusive protection. In this way, *hifdzu al-nasl* as part of *maqasid as-syariah* is maintained, while fulfilling the demands of modern law that is oriented towards justice and humanity.

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