

Islamic Legal Perspectives on The Protection of Unborn Children from Unmarried Mothers: An Analysis of *Maslahah Mursalah*

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Abstract:

The increasing complexity of non-marital pregnancy raises urgent legal and ethical questions regarding the protection of unborn children within Islamic law. This study aims to analyze Islamic legal perspectives on safeguarding unborn children from unmarried mothers through the framework of *maslahah mursalah*. Employing a qualitative, normative-juridical design and limited empirical inquiry, the research draws on classical and contemporary *fiqh* literature and semi-structured interviews with six experts in Islamic law, the judiciary, and child rights. The findings reveal that child protection from conception constitutes a daruriyyah interest under *hifz al-nafs* and *hifz al-nasl*, and that *maslahat*-based reasoning allows financial support, recognition of legal identity, and anti-discrimination measures without negating classical lineage doctrine. The study's novelty lies in integrating maqasid theory with empirical insights to reformulate the discourse on child protection. It recommends contextual *ijtihad* and policy harmonization to ensure non-discriminatory legal safeguards consistent with *Sharia* objectives.

Keywords: *Maslahah Mursalah*; *Maqasid al-Shari'ah*; *Unborn Child Protection*; *Islamic Family Law*

INTRODUCTION

The phenomenon of premarital pregnancy is an increasingly complex social issue in modern society, including in Indonesia, a Muslim-majority country. The main point of this research is the importance of legal protection for unborn children of unmarried mothers (Abdullah et al., 2024; Muhammad et al., 2023; Nabilah et al., 2025). The rationale lies in the fact that unborn children already face potential social discrimination and unclear legal status, which impacts their future. Evidence shows cases of refusal to include the father's name in administrative documents, social stigma, and Islamic jurisprudence (*fiqh*) debates regarding lineage and children's civil rights (Sahrin et al., 2025; Saniah et al., 2023). This situation creates unequal treatment for children who are morally innocent of their birth. In conclusion, a study of Islamic law is needed that can provide justice-based protection and the welfare of unborn children from non-marital relationships.

A common problem faced by society is the tension between classical Islamic jurisprudence norms and the need for child protection in contemporary social realities. On the one hand, some classical Islamic scholars do not recognize the lineage relationship between children of adultery and their biological father, which impacts inheritance rights, guardianship, and legal identity (Arini Zubaidah, 2023; Fannani et al., 2024). On the other

hand, social practices show that these children often experience stigmatization, exclusion, and even administrative obstacles in obtaining official documents. This phenomenon creates structural injustice as children bear the legal and social consequences of their parents' actions. The state faces a dilemma between religious norms and child protection principles within the national legal system (Az-Zahra et al., 2025). Therefore, a more contextual approach to Islamic law is needed that can bridge normative texts with social realities to prevent double harm to children.

Several studies have addressed the status of illegitimate children from the perspective of Islamic law and positive law. Akil et al. (2024) and Dalmızrak (2023) emphasized the importance of harmonizing classical Islamic jurisprudence and national law in determining children's civil status. Shahin (2020), Zartab et al. (2025), and Rehman et al. (2024) highlighted the problematic implementation of the Compilation of Islamic Law in protecting the rights of illegitimate children. Meanwhile, Zamroni Abdussamad (2021) examined the status of unborn children according to law and the Compilation of Islamic Law (KHI), and Mustafid et al. (2025) discussed the status of illegitimate children from a global Islamic legal perspective. Although these studies make important contributions, the majority remain normative-textual and focus on aspects of lineage and inheritance. Approaches based on *maqasid al-shari'ah* and *maşlahah mursalah* have not been explored in depth as primary analytical frameworks (Anggraeni, 2023; Awaluddin, 2025). This research gap highlights the need for more holistic and humanistic studies in examining child protection from the moment of conception.

The novelty of this research lies in the use of the principle of welfare as the primary argumentative framework in analyzing the protection of unborn children of unmarried mothers. This approach allows for adaptive legal formulations to social change without neglecting the basic principles of *Sharia*. In contemporary issues such as Islamic banking and bioethics, the principle of welfare has been used to respond to the needs of the times, but its application to the issue of illegitimate children remains very limited (Kasim et al., 2022; Moelyono et al., 2022). This research positions child protection as an integral part of the *maqasid al-shari'ah*, specifically *hifz al-nafs* (protection of life) and *hifz al-nasl* (protection of offspring). Thus, this study offers a progressive perspective in social *fiqh* that emphasizes the dimensions of substantive justice and the protection of children's human rights within the framework of contemporary Islamic law.

Based on this background, the main research question in this study is: What is the perspective of Islamic law on the protection of unborn children of unmarried mothers when analyzed through the *maşlahah mursalah* approach? This question encompasses several derivative issues, such as the position of lineage, civil rights, and social protection of children within the *maşlahah* framework, and the extent to which this approach can address the tension between classical Islamic jurisprudence norms and modern child protection needs. This study also questions whether the *maşlahah* principle can serve as the basis for new *ijtihad* in formulating more inclusive and non-discriminatory legal policies. With this focus, the research aims to produce a normative-contextual analysis relevant to the dynamics of contemporary Muslim society.

The main argument of this study is that the protection of unborn children of unmarried mothers must be based on the principle of *maşlahah* and the universal objectives of *Sharia*, not solely on the legality of parental relationships. Tentatively, this study hypothesizes that the *maşlahah mursalah* approach can produce legal formulations that are more just, humanistic, and aligned with the *maqasid al-shari'ah*. The originality of

this contribution lies in integrating analysis of classical Islamic jurisprudence, the principle of benefit, and the social context of Indonesia, a country with a mixed legal system. This study not only expands the academic discourse on illegitimate children but also offers conceptual recommendations for policymakers, religious scholars, and legal practitioners in formulating more comprehensive protections for children from conception.

RESEARCH METHODS

This study employs a qualitative research design that combines a normative juridical approach with library research (Wiradirja et al., 2021). The qualitative design was selected because the research seeks to explore, interpret, and construct legal arguments grounded in Islamic legal principles rather than to measure variables statistically. A normative approach is appropriate as the object of analysis concerns legal doctrines, particularly the concept of *maṣlaḥah mursalah* within Islamic jurisprudence. This design enables in-depth interpretation of classical and contemporary legal texts while contextualizing them within current social realities. The selection of this method is grounded in the objective of formulating a conceptual and argumentative framework for protecting unborn children from unmarried mothers, based on *maqāṣid al-syarī'ah* and broader principles of justice in Islamic law.

Although primarily doctrinal, this study is complemented by limited empirical insights to enrich contextual understanding. The research was conducted in Indonesia, chosen due to its dual legal system that integrates Islamic law and national law, making it a relevant setting for examining tensions between religious norms and child protection principles. The informants consisted of six individuals selected purposively: two Islamic law scholars (specializing in *uṣūl al-fiqh* and family law), one judge from a Religious Court, one legal practitioner focusing on child rights, and two academics researching *maqāṣid al-syarī'ah*. These informants were selected for their expertise and direct engagement with Islamic legal discourse and child protection issues, ensuring credible and relevant perspectives.

Data collection was conducted through two main techniques (Tahir et al., 2024). First, comprehensive library research was conducted to gather primary sources, including classical *fiqh* and *uṣūl al-fiqh* texts that discuss *nasab*, lineage, and *maṣlaḥah mursalah*. Secondary sources included scholarly books, peer-reviewed journal articles, and relevant statutory regulations concerning child protection and family law in Indonesia. Second, semi-structured interviews were conducted with the selected informants to obtain interpretative insights and contemporary applications of *maṣlaḥah*-based reasoning. All collected data were systematically documented, categorized by thematic relevance, and cross-referenced to ensure coherence between doctrinal foundations and current legal practices.

Data analysis followed the interactive model of qualitative analysis, comprising data condensation, data reduction, data display, and data verification (Gupta et al., 2021). In the condensation stage, relevant legal arguments and doctrinal concepts were selected and simplified without losing substantive meaning. Data reduction involved organizing the information into thematic categories such as *nasab* status, child protection principles, and the application of *maṣlaḥah mursalah*. Data display was carried out through systematic narrative explanation and comparative tables to illustrate relationships between classical doctrines and contemporary interpretations. Finally, data verification was conducted by continuously reviewing interpretations, comparing doctrinal sources with interview

findings, and ensuring logical consistency in the formulation of legal arguments.

To ensure data validity, the study applied several criteria for trustworthiness. Credibility was maintained through the triangulation of sources, including comparisons of classical texts, contemporary literature, statutory regulations, and expert interviews. Transferability was addressed by providing detailed contextual descriptions of the Indonesian legal framework. Dependability was ensured through transparent documentation of research procedures and analytical steps. Confirmability was strengthened by maintaining an audit trail of references and interpretative decisions, minimizing researcher bias. Through these measures, the study aims to produce a reliable and academically rigorous analysis of Islamic legal perspectives on the protection of unborn children from unmarried mothers based on *maṣlaḥah mursalah*.

RESULTS AND DISCUSSION

Result

This section presents the study's empirical findings on the protection of nonmaritally conceived unborn children within the framework of *Maslahah Mursalah*. It outlines how normative Islamic legal principles interact with contemporary social realities, highlighting patterns derived from field data and document analysis, and then elaborates each thematic result in greater analytical depth.

Protection of Unborn Children Born Nonmaritally

Child protection from conception reflects the Islamic perspective, which honors human life at all stages of development. The fetus is not merely considered a potential human being, but is positioned as a being with dignity and a fundamental right to life. This is affirmed in the word of God:

من قتل نفسا بغير نفس او فساد في الارض فكأنما قتل الناس جميعا

“Whoever kills a human being, not because that person killed another person or not because that person caused mischief on earth, it is as if he had killed all mankind” (QS. al-Ma’idah: 32).

This verse emphasizes that every soul, including a fetus, has equal human value. Therefore, protecting a child in the womb, even if born to an unmarried mother, is a *Sharia* obligation that must not be neglected. The urgency of this protection extends beyond the biological aspect of safeguarding the fetus's survival, but also to social and psychological aspects. A child born without protection is vulnerable to stigma, discrimination, and even neglect. This clearly contradicts the principles of *Sharia*, which emphasize the fulfillment of the *maqasid al-shari’ah* (obligatory purposes of *Sharia*), namely, safeguarding the soul (*hifz al-nafs*) and safeguarding offspring (*hifz al-nasl*). If protection is neglected solely because of the parents' status, the next generation, innocent of their parents' actions, will suffer. Therefore, Islamic justice demands that children's rights be guaranteed without discrimination. Furthermore, protecting from the time a child is still in the womb has a high moral and spiritual dimension. Islam rejects the concept of the inheritance of sins from parents to children, as affirmed in Allah's words:

و لا تكسب كل نفس الا عليها

“And a person who sins will not bear the sins of others” (QS. al-An’am: 164).

This means that children are born with a natural disposition, and society has a collective obligation (*fardu kifayah*) to ensure their lives are protected. The urgency of protecting children in the womb is thus not only related to Islamic jurisprudence (*fiqh*) but also concerns the collective morality of Muslims in safeguarding generations and building a just civilization. Child protection is strictly regulated through various legal instruments oriented towards the best interests of children. Law Number 35 of 2014 concerning Child Protection, which amends Law Number 23 of 2002, affirms that children have the right to survival, growth and development, protection from violence and discrimination, and to acquire a sense of identity. This demonstrates that the state positions children as legal subjects whose existence must be guaranteed from the moment they are born. Therefore, even if a child is born to an unmarried mother, their rights must still be protected and should not be diminished simply because of their parents' marital status.

Law Number 39 of 1999 on Human Rights also emphasizes that every child has the right to protection from the moment of conception. Article 52 paragraph (2) emphasizes that children's rights are inherent human rights and must be guaranteed, protected, and fulfilled by parents, family, society, and the state. This provision strengthens the legal basis for the state's obligation to eliminate all forms of discrimination against children, including children of unmarried mothers. This protection extends not only to civil rights but also to the right to education, health, and social welfare. In addition, Indonesia has also ratified the Convention on the Rights of the Child (CRC) through Presidential Decree Number 36 of 1990. This ratification emphasizes the state's commitment to providing comprehensive protection to children regardless of their birth background. Thus, the state has an international obligation to ensure that every child receives the same legal and social protection. The implementation of this regulation aligns with the spirit of Islamic law, which places child protection as a universal obligation, as Islam affirms that *Sharia* exists to safeguard human well-being. Thus, the integration of religious and state law can be harmonious and serve the best interests of children.

Therefore, both society and the state are obligated to fulfill their moral, spiritual, and legal responsibilities to provide equal protection without discrimination. This obligation reflects the value of universal justice affirmed by Islamic *Sharia* and recognized in positive law. Child protection from conception should be viewed as a long-term investment in civilization. Children who fully exercise their rights will grow up healthy and educated, and have the potential to become the next generation, bringing benefits to society. Conversely, neglecting children's rights can lead to structural injustice that undermines the quality of life for future generations. Therefore, the urgency of child protection does not stop at the normative realm but must be realized in practice through the synergy of state legal instruments and the community's collective moral consciousness. The integration of these two aspects ensures that child protection is a reality, not just discourse, thereby fostering a just, civilized society in accordance with the noble goals of *Sharia* and the constitution.

Maslahah Mursalah as Juristic Framework

Maslahah Mursalah, terminologically, means benefit which is neither explicitly approved nor rejected by specific arguments, but is recognized by the *Shari'a* in principle. True benefit is everything that maintains the five main objectives of the *Shari'a* (*maqasid al-syari'ah*), namely the protection of religion, soul, mind, lineage, and property. Thus, *maslahah mursalah* is a method of establishing law that emphasizes efforts to provide

benefits and avoid harm, as conceived by Imam Al-Syatibi. (Hirsanuddin et al., 2021) In Islamic law, this concept serves as a bridge between revealed texts and social reality, ensuring that Islamic teachings remain contextual and relevant to the dynamics of human life. The application of *Maslahah Mursalah* is important because human life is constantly evolving and presents new problems that are not explicitly explained in the text.

In situations like this, *Sharia* requires an *ijtihad* instrument capable of considering the universal benefit. This statement shows that the benefit is the spirit of every Islamic legal establishment. Through *maslahah mursalah*, ulama strive to ensure that Islamic law is not stagnant, but rather adaptive to changing times. This approach ensures that *Sharia* continues to function as a blessing for all people, including in protecting the rights of unborn children. *Maslahah Mursalah* allows ulama and lawmakers to establish rules whose aim is to protect the main goal of the *Shari'a* (*Maqasid Shari'ah*), namely the protection of life and offspring. So, this is a way for Islamic law to remain relevant and fair throughout time.

Ulama who accept the *Maslahah Mursalah* set three strict conditions so that the *maslahah* can be legally used as a legal basis. If one of these conditions is not met, then the *maslahah* is considered void (*mulgha*) or unimportant (*wahmiyyah*). Firstly, the *maslahah* must be in harmony with the objectives of the *Shari'a* (*Maqasid as-Syari'ah*), meaning that the *maslahah* must not conflict with the *Sharia* principles that have been established by the *qath'i* propositions or general rules of the *Shari'a*. This means that *Maslahah Mursalah* must be directed to support the maintenance of religion, soul, mind, lineage, or property, which is the main goal of *Sharia*. Furthermore, the problem that is used as a legal basis must be real and reasonable (*Haqiqiyyah wa Ma'qulah*), not just an illusion or mere conjecture. It must be ensured that it can bring benefits or prevent harm. *Maslahah* that is weak, unfounded, and does not produce clear benefits is considered futile *maslahah* (*wahmiyyah*) and cannot be used as a proof. Lastly, legal decisions must be based on the general benefit of the wider community (*Maslahah' Ammah*). *Maslahah Mursalah* is not valid if it serves only personal interests, or the interests of a ruler, his relatives, or certain groups. *Sharia* law is universal, so the benefit used as the basis must be comprehensive.

To ensure that *Maslahah Mursalah* remains in line with the objectives of the *Sharia* (*Maqasid as-Syari'ah*), it must be within the framework of recognized *maslahah*, which is divided into three levels, namely *dhoruriyat* (primary), which are all essential things whose absence is detrimental to religious and worldly life. This includes five main goals: maintaining religion, preserving the soul, preserving the mind, preserving offspring, and preserving property. The second level is *hajiyyat* (Secondary), which includes things needed to eliminate difficulties and provide convenience, such as allowing the purchase and sale of contracts and various forms of relief (*rukhsah*) in worship. *Tahsinat* (Tertiary) is the last level of *maslahah*, which is related to perfecting morals and manners, such as the recommendation to purify, dress neatly, and avoid unclean food.

Analysis of *Maslahah Mursalah* on the Protection of Unborn Children from Unmarried Mothers

From an Islamic perspective, the right to life is the most fundamental right possessed by every individual, even from the time they are in the womb. This principle is explained in the *maqasid Shari'ah* (obligatory purposes of *Sharia*), where the protection of the soul (*hifz al-nafs*) is categorized as *maslahah daruriyyah*, namely basic interests that

include preserving religion, life, intellect, lineage, and property, which are the basis for survival. In the case of a child born to an unmarried mother, the right to life should not be taken away simply because of the parents' mistakes. Allah says:

ويترتب الضروريات: حفظ الدين, ثم النفس, ثم العقل, ثم النسب أو العرض, أو المالولا تقتلوا اولادكم خشية املاق نحن نرزقهم وايكم

“And do not kill your children for fear of poverty. We provide sustenance for them and for you.” (QS. al-Isra': 31).

This verse embodies the universal principle that God guarantees every child's life, regardless of heredity. Aborting a fetus after the soul has been breathed into it is a grave sin, as it violates God's will to grant life. Therefore, protecting the life of the fetus is a *Sharia*-compliant responsibility based on the good of the community. According to the perspective of *Maslahah Mursalah*, all policies and laws aimed at protecting the life of a child, regardless of their origin, are part of the obligations of *Sharia*. Therefore, protecting the fetus, including from the possibility of abortion, is a legal imperative that cannot be postponed. If a fetus is denied protection simply because it is born from an unlawful relationship, it will result in double harm: the unnecessary loss of life and a violation of the principle of justice. Therefore, *Maslahah Mursalah* serves as a bridge connecting legal ethics with compassion for fellow human beings. In this context, positive law and *Sharia* must support the rights of children, because they do not bear the blame for their parents' mistakes, but rather are part of a divine trust that must be safeguarded.

After the right to life, a child's basic need for sustenance is a crucial aspect of *maslahah hajiyyah* (additional needs). Islam not only requires existence but also ensures a decent life. A baby in the womb has the right to receive financial support for its care, nutrition, and health, as all of these are part of protecting its life. According to the majority of scholars, children of adultery are not held responsible for the adulterous man or their biological father:

فإن حكم ولد الزنا حكم ولد الملائنة لانه ثابت النسب من أمه وغير ثابت النسب من أبيه فكان حكمه حم ولد الملائنة

This means that a child born of adultery has a similar legal status to a child born of a *li'an* (a vow of mutual curse) with the mother due to accusations of adultery. From a *fiqh* perspective, both are similar because their lineage is traced only through the mother, not through the biological father. Therefore, the child of adultery retains basic rights such as protection of life, support from the mother, and inheritance rights from the mother. Meanwhile, on the father's side, he has no lineage, inheritance, or obligation to provide support because there is no legal marriage bond. This explanation demonstrates the principle of justice in Islamic law: children do not bear the sins of their parents' actions, and *Sharia* safeguards their welfare and dignity by establishing the mother's lineage as a form of protection for their existence.

Therefore, a child born of adultery is not linked to his biological father, and thus, his inheritance and support rights are also lost. However, from the perspective of *Maslahah Mursalah*, this provision can be understood not as a sanction for the child, but as a way to protect the authenticity of the lineage. In a modern context, the policy requiring biological fathers to provide financial support to illegitimate children is actually a

manifestation of *Maslahah Mursalah*, not a violation of the text. This is because the purpose of the law is to achieve *maslahah*, to provide benefits to children who lack power.

Furthermore, establishing lineage is a highly sensitive issue in Islamic law. According to Islamic jurisprudence (*fiqh*), children born out of wedlock are only related to their mother, not their biological father. However, from the perspective of *Maslahah Mursalah* (objectives of morality), a child's identity should not be left unclear, as this would lead to social and psychological harm. In the context of *maqasid* (objectives of morality), preserving lineage (*hifz al-nasl*) is not only about maintaining lineage but also about ensuring that children have legal and social recognition. Therefore, the state can provide legal identity through stigma-free birth registration to safeguard the child's dignity.

Children born to unmarried mothers often experience social stigma and psychological distress. From the perspective of *maṣlaḥah mursalah*, protecting honor (*hifz al-'ird*) is an element of *maqasid Sharia*. Every child is born pure, free from the sins of others. Therefore, labeling a child negatively because of their parents' mistakes is a form of social injustice that contradicts *maqasid*. Protecting a child's honor means maintaining the dignity of the whole person. States and social institutions have an ethical responsibility to create a just and compassionate environment so that children can grow up without the burden of their parents' history.

The next right is the right to receive education and care, because education is the main means of protecting the mind (*hifz al-'aql*). Children of unmarried mothers need more in-depth guidance to avoid social isolation. *Maslahah Mursalah* wants education to function as a bridge to justice and the distribution of rights, not just formal rights. Children's education is a major responsibility that shapes society's future. Therefore, education for children born out of wedlock is not only the mother's duty, but also the collective responsibility of society and the state. With a good education, children can overcome stigma, develop moral character, and contribute to social good.

In traditional law, children resulting from extramarital relations have no right to inherit from their biological father. However, under the *maslahah mursalah* approach, children's basic needs must still be ensured through alternatives such as mandatory wills, grants, or social protection. The aim is not to challenge birth control laws, but rather to ensure justice in the distribution of assets to preserve the lives of children. If rigid inheritance laws are implemented without considering social realities, injustice and harm will arise for innocent children. Therefore, a social system that offers financial protection for vulnerable children is a concrete application of the principle of *Maslahah Mursalah*.

Maslahah Mursalah sees children as legal subjects who need to be protected, not just objects of sin. Protection of the rights to life, livelihood, lineage, education, honor, and identity reflects the integrity of *maqasid syari'ah*. Islam has never been against life; rather, it exists to honor humans in all their forms. Thus, the analysis of *Maslahah Mursalah* on protecting children from unmarried mothers shows that Islamic law has a dynamic, adaptive character and prioritizes humanity. It is not limited to literal texts, but dives into social reality to realize profound justice. Therefore, implementing *Maslahah Mursalah* is not just a theory but also a practical strategy for realizing universal benefits for children who grow up amid vulnerable social conditions.

Discussion

The findings of this study demonstrate that the protection of unborn children born nonmaritally constitutes a *daruriyyah* interest within the framework of *maqasid al-shari'ah*, particularly under the principle of *hifz al-nafs* (protection of life). This result aligns with the classical formulation of *maqasid* developed by Abu Ishaq al-Shatibi, who positioned the preservation of life as an essential objective of the *Sharia*. However, while classical juristic discussions primarily focused on the prohibition of unlawful killing and abortion, the present study expands this protection into the socio-legal domain, emphasizing anti-discrimination and equal recognition of the fetus regardless of parental marital status (Ahmad et al., 2024). This broader interpretation resonates with contemporary *maqasid* scholars such as Wahbah al-Zuhaili, who argue that *maqasid* must operate within evolving social realities. The study therefore confirms the continuity of classical doctrine while extending its application to inclusive child protection in modern contexts.

Regarding lineage (*nasab*), the findings reveal a normative tension between classical *fiqh* and contemporary child protection frameworks. Traditional jurists, including Ibn Qudamah, maintained that a child born out of wedlock is legally affiliated only with the mother, primarily to safeguard *hifz al-nasl* (protection of lineage) (Mariani, 2022; Widiyanto et al., 2024). The present research acknowledges this doctrinal position but finds that contemporary application requires distinguishing between theological lineage and socio-legal responsibility. This position diverges from purely textual interpretations yet remains consistent with *maqasid* reasoning, as it seeks to prevent greater social harm (*mafsadah*) such as identity exclusion and structural discrimination (Suleman et al., 2023). The study thus identifies an interpretive shift: preservation of lineage is not limited to biological purity but also includes safeguarding a child's legal identity and dignity within society.

In the matter of financial support, the findings suggest that obligating biological fathers to provide maintenance does not contradict *Sharia* objectives but rather fulfills *maslahah hajiyyah* that may escalate into *daruriyyah* under conditions of vulnerability. Classical jurisprudence generally denied paternal financial obligations in the absence of lawful marriage; however, this study finds support for adaptive reasoning within the doctrine of *Maslahah Mursalah* (Hidayat, 2025; Rohayati, 2025). This interpretation parallels reformist legal thought in several contemporary Muslim jurisdictions, in which courts impose child support obligations based on welfare considerations. So, this contributes to *maqasid* discourse by demonstrating that financial justice can coexist with lineage doctrine without nullifying classical principles. It offers policymakers a juristically grounded basis for enforcing child welfare policies without being perceived as contravening Islamic law (Abdullah et al., 2024; Burhanudin et al., 2025).

The findings further highlight that stigma and social discrimination against children born nonmaritally contradict the Qur'anic principle that no soul bears the burden of another. This aligns with the ethical dimension of *maqasid* articulated by Ibn Ashur, who emphasized human dignity (*karamah insaniyyah*) as a central objective of Islamic law (Zahra & Yenti, 2024). However, while earlier scholarship often discussed dignity abstractly, this study operationalizes it through concrete administrative practices such as birth registration, access to education, and anti-discrimination measures (A'in, 2024; Fatarib et al., 2025). The implication is significant: safeguarding honor (*hifz al-'ird*) must extend beyond moral exhortation to institutional reform. In practice, this requires harmonizing

Islamic jurisprudence with national child protection systems to eliminate structural barriers that perpetuate inequality.

Overall, this study contributes theoretically by positioning *Maslahah Mursalah* as a dynamic juristic framework that can reconcile classical doctrine with contemporary human rights norms without undermining scriptural authority. Unlike previous studies that confined the issue to debates on inheritance or *nasab* validity, this research situates unborn child protection within an integrated maqasid model encompassing life, lineage, dignity, intellect, and welfare. In practice, the findings guide legislators, judges, and religious authorities in Muslim-majority contexts on formulating policies that protect vulnerable children while remaining faithful to Islamic legal principles. Thus, the study affirms that Islamic law, when interpreted through *Maslahah Mursalah*, functions not as a rigid textual system but as a value-oriented framework committed to substantive justice and intergenerational well-being.

CONCLUSION

This study concludes that the protection of unborn children from unmarried mothers constitutes a daruriyyah interest within the framework of maqasid al-shari'ah, particularly under *hifz al-nafs* and *hifz al-nasl*. The most significant finding is that through the doctrine of *Maslahah Mursalah*, Islamic law provides a principled yet adaptive mechanism to prevent double victimization of innocent children. Empirical insights from Indonesian Islamic law scholars, judges, and child rights practitioners confirm that rigid textual application often produces structural injustice. At the same time, *maslahat*-based reasoning enables the protection of identity, maintenance, education, and dignity without negating classical doctrine. The hikmah of this research lies in reaffirming that *Sharia* fundamentally aims to safeguard life and justice, not to perpetuate stigma. Thus, the study demonstrates that contextual *ijtihad* grounded in maqasid can harmonize religious norms with contemporary child protection principles.

The strength of this article lies in its integration of classical *fiqh* analysis, maqasid theory, and empirical perspectives within Indonesia's plural legal system, offering a holistic, humanistic reformulation of the child protection discourse. By positioning *Maslahah Mursalah* as the primary analytical framework, the study contributes to contemporary Islamic legal thought both theoretically and practically. Nevertheless, this research is limited by its qualitative scope and the small number of informants, which may not reflect broader regional variations within Muslim societies. Future research should expand empirical engagement through comparative studies across jurisdictions, incorporate quantitative socio-legal data, and examine judicial decisions to assess further the operationalization of *maslahat*-based reasoning in diverse legal contexts.

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