

Establishing the Obligation of Financial Support by a Biological Father Towards an Illegitimate Child: A Fatwa-Based Analysis within the Framework of Maqasid al-Shariah

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ABSTRACT

This study examines the legal and ethical basis for establishing a biological father's obligation to provide financial support for a child born out of wedlock, analysed through the dual frameworks of fatwa and Maqasid al-Shariah. Classical Islamic law generally holds that a child conceived through zina (illicit sexual intercourse) has no legitimate paternal affiliation (*nasab*) to the biological father, thereby negating any legal duty of maintenance. However, a more inclusive and welfare-oriented approach is increasingly relevant given contemporary social realities and the vulnerability of children born in such circumstances. The primary aim of this study is to reassess the prevailing legal position regarding a father's financial responsibility towards an illegitimate child by incorporating insights from contemporary fatwa rulings and aligning them with the objectives of Maqasid al-Shariah, particularly the principle of *maslahah* (public interest). This study adopts a qualitative methodology, employing document analysis of classical and contemporary juristic opinions, statutory provisions, and relevant case studies. The findings indicate that the provision of financial support by a biological father should be reconsidered as a measure to safeguard the child's welfare and uphold social justice, consistent with the higher aims of Islamic law. Integrating fatwa-based reasoning with Maqasid al-Shariah offers a balanced framework for reconciling doctrinal positions with evolving societal needs, without compromising the core principles of Islamic jurisprudence.

Keywords: Illegitimate Child, Financial Support Obligation, Biological Father, Fatwa, Maqasid al-Shariah

INTRODUCTION

Marriage is a sacred bond that unites a man and a woman through a legitimate contract, establishing a family rooted in tranquillity (*sakinah*) and compassion (*rahmah*). As Wan Ismail et al. (2022) note, marriage in Islam is a religious obligation and fulfils the natural human inclination to live in pairs. It is an act of worship highly encouraged for believers and constitutes the Sunnah of the Prophet Muhammad (peace be upon him). One of its primary purposes is to form a family guided by religious principles, through which Allah SWT bestows children who must be nurtured and educated by Islamic teachings (Wan Ismail et al., 2022).

However, acts contrary to Islamic morals, such as fornication (*zina*) or sexual assault, can result in the birth of children outside a lawful marriage, commonly referred to as illegitimate children (*anak tak sah taraf*). Rahman and Noh (2023) observe that various terms are used in society to label such children, including "child of fornication" and "illegitimate child." Under classical Islamic law, a child born without a valid marital contract is legally affiliated only with the mother. At the same time, no legal paternity (*nasab*) is established with the biological father (Meor Muaz, 2022).

In Malaysia, the rise in the number of illegitimate births has become a pressing social and moral concern. Reports of increasing teenage pregnancies out of wedlock and frequent cases of abandoned infants circulate widely on social and mainstream media. Abd Ghani (2017) highlights that cases of abandoned babies are reported at alarming rates, with the Royal Malaysia Police (PDRM) recording an average of 92 cases annually

between 2010 and 2013, which later increased to an average of 115 cases per year. Selangor consistently reports the highest incidence, followed by Sabah and Johor (Abd Ghani, 2017).

These realities prompt urgent reflection on the issue of financial maintenance (*nafkah*) for illegitimate children. Given the growing prevalence of such cases, there is an increasing call to revisit the legal stance on a biological father's financial responsibility towards children born out of wedlock. This issue is particularly sensitive because, under traditional Islamic jurisprudence, financial support is not obligatory due to the absence of legal paternity. However, from the perspective of contemporary fatwa and within the framework of *Maqasid al-Shariah*, there is a need to explore more inclusive and welfare-oriented approaches to ensure that the rights and well-being of these vulnerable children are not neglected. This study, therefore, aims to examine the obligation of a biological father to provide financial support to an illegitimate child by analysing doctrinal sources, contemporary fatwa positions, and the broader objectives of Islamic law to align legal practice with social realities and the principle of public welfare (*maslahah*).

LITERATURE REVIEW

Definition Of an Illegitimate Child

The issue of illegitimate children is longstanding within society, yet widespread misunderstanding persists regarding its legal and social implications. An illegitimate child refers to a child born out of wedlock, either due to fornication (*zina*) or rape, and excludes cases arising from *syubhah* (doubtful) relationships or slavery (Wan Ismail et al., 2022). According to Islamic jurisprudence, a child is classified as illegitimate if born less than six lunar months and two *lahzah* (moments) after the time of lawful consummation (sexual intercourse).

An illegitimate child cannot be legally attributed (*nasab*) to the biological father or to any individual who claims paternity. Consequently, the child is not entitled to inherit from the alleged father or mother, as no valid lineage (*nasab*) exists between them. Furthermore, such a child and the biological father are not considered *mahram* to each other, and the father cannot act as the child's legal guardian (*wali*) in matters such as marriage (Ayub, 2023). Conversely, suppose a child is born six lunar months or more after legally consummating a marriage. In that case, the child's lineage is legally attributed to the husband (the biological father), and all related rulings on lineage apply accordingly. However, if born under six months, the child's lineage is not connected to the woman's husband.

The Establishment of Lineage (Nasab) In Islam

The term *nasab* linguistically derives from the Arabic root *نسب – ينسب*. When expressed as *yansibuhu* (يُنْسِبُهُ), it signifies attributing a person to his father. In Arabic, *nasab* also denotes kinship (*qarabah*), with its plural form being *ansab*. According to the Dewan Bahasa Dictionary (Fourth Edition), *nasab* refers to family lineage or ancestry, particularly on the paternal side. For example, *nasab* to the father refers to familial ties from the paternal lineage, while *nasab* to the mother relates to the maternal lineage. Issues concerning *nasab* are closely linked to matters of guardianship (*wilayah*), inheritance (*mirath*), and social relations within the family structure (Pejabat Mufti Wilayah Persekutuan, 2017).

Meor Muaz (2022) explains that *nasab* and *nisbah* denote affiliation through either parent, encompassing vertical relationships, such as father and child, and horizontal relationships, such as among relatives and paternal uncles. The Department of Islamic Development Malaysia (JAKIM) clarifies that a child's lineage to the mother is established under all circumstances, irrespective of whether the birth occurred within a lawful marriage or otherwise (Jabatan Kemajuan Islam Malaysia, 2017). In contrast, a child's lineage to the father is only established through valid or irregular marriages, *syubhah* (doubtful) intercourse, or legal acknowledgement of paternity.

Islam abolished the pre-Islamic (*jahiliyyah*) practice of assigning lineage to the biological father in cases of children born through *zina* (fornication). Consequently, *nasab* is regarded as a matter of profound importance in human life, conferring honour and social identity. It can only be lawfully established through a legitimate marital relationship, safeguarding both the child's and the parents' rights and responsibilities.

The Concept of Maqasid Al-Shariah

Maqasid al-Shariah refers to the overarching objectives and purposes underlying the enactment of Islamic law. Linguistically, maqasid is the plural of maqsad or maqsid (المقصد), derived from the Arabic root qasada (قصد), meaning “to intend” or “to head towards a direction.” The term shariah denotes “a source of water from which people drink,” metaphorically representing the divinely prescribed path encompassing beliefs, rulings, and a comprehensive way of life that is clear, just, and upright.

Broadly, maqasid al-shariah can be defined as the intentions, purposes, and wisdom embedded in Islamic law, which guide the formulation of legal rulings to achieve human welfare and social good (Pejabat Mufti Wilayah Persekutuan, 2019). Classical and contemporary scholars commonly identify five fundamental objectives: the preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-‘aql), lineage (hifz al-nasl), and property (hifz al-mal) (Rosidi et al., 2022).

Within the context of children born out of wedlock, the principle of Maqasid al-Shariah particularly emphasises the preservation of lineage (hifz al-nasl) and the protection of the fundamental rights of children (Rosidi et al., 2025). This framework thus provides a holistic ethical and legal basis for addressing issues concerning illegitimate children in a manner that upholds their welfare and dignity.

RESEARCH METHODOLOGY

This study adopts a qualitative approach in the form of document analysis. This method discusses legal and social issues in depth and with greater analytical focus. It emphasises the collection and analysis of written materials related to the imposition of financial support (nafkah) on a child born out of wedlock by the biological father. This approach was chosen as it is suitable for examining issues related to Islamic rulings, social dynamics, and legal interpretations, particularly involving religious texts, scholarly opinions, and policies grounded in maqasid al-shariah and siyasah syar’iyyah. The main objective of this study is to understand and re-evaluate the legal position of a biological father's obligation to support a child born out of wedlock within the framework of siyasah syar’iyyah, focusing on justice and public interest today.

The data sources for this study comprise various secondary materials such as articles, academic journals, research reports, scholarly writings in the form of theses, and official documents, including state and national fatwas. The study refers to materials from databases such as Google Scholar and official websites like e-Fatwa JAKIM, the Department of Shariah Judiciary Malaysia (JKSM), and legal portals related to the Islamic Family Law Acts and Enactments. These sources are analysed to identify how Islamic legal rulings (fiqh) are applied in contemporary contexts.

Subsequently, the collected data are analysed using a thematic analysis method, where the findings are categorised into several key themes such as the concept of lineage (nasab), the rights of children born out of wedlock, the principles of maqasid al-shariah, and the siyasah syar’iyyah approach to complex issues. The outcomes of this analysis are then used to assess whether the obligation of nafkah by a biological father towards a child born out of wedlock should be reconsidered in today’s legal and welfare context, particularly in determining the extent to which this approach aligns with the objectives of the study and the qualitative research method employed.

FINDINGS AND DISCUSSION

The Legal Foundation for The Establishment of Lineage

Islam places profound emphasis on the purity and sanctity of lineage (*nasab*), as it serves as the foundation for numerous legal rulings, including inheritance rights, determination of *mahram* relationships in marriage, appointment of legal guardians (*wali*), and related familial matters. Islamic teachings regard lineage as a human right and a divine right bestowed by Allah SWT (Meor Muaz, 2022).

According to Abd Ghani (2017), Islamic jurists (*fuqaha*) unanimously agree that a child is considered legitimate (*sah taraf*) when born from a marriage valid under Islamic law and delivered at least six months following the marriage contract. This position is reinforced by Trigiyan's (2022) research, which identifies six months as the minimum gestation period. The ruling draws on the Quranic verse from Surah Al-Ahqaf, verse 15:

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا حَتَّىٰ إِذَا بَلَغَ أَشُدَّهُ وَبَلَغَ أَرْبَعِينَ سَنَةً قَالَ رَبِّ أَوْزِعْنِي أَنْ أَشْكُرَ نِعْمَتَكَ الَّتِي أَنْعَمْتَ عَلَيَّ وَعَلَىٰ وَالِدَيَّ وَأَنْ أَعْمَلَ صَالِحًا تَرْضَاهُ وَأَصْلِحْ لِي فِي ذُرِّيَّتِي إِنِّي تُبْتُ إِلَيْكَ وَإِنِّي مِنَ الْمُسْلِمِينَ

“And We have enjoined upon man to be kind to his parents. His mother carried him with hardship and gave birth to him with hardship. His bearing and weaning is thirty months. When he reaches maturity and reaches the age of forty, he says: ‘My Lord, inspire me always to be thankful for Your favour which You have bestowed upon me and my parents, and to do righteous deeds which please You, and make my offspring righteous. Truly, I have repented to You, and truly, I am a Muslim.’”

Based on this verse, scholars infer that the total duration of pregnancy and weaning is thirty months, with the shortest gestational period being six months, followed by a weaning period of approximately two years (Mohd & Jasni, 2021). Consequently, only a child born from a valid marriage or a foetus that reaches at least six months of gestation after the marriage solemnisation may be legally attributed (*nasab*) to the biological father and considered legitimate (*sah taraf*) (Abdullah et al., 2023).

Meor Muaz (2022) highlights that lineage (*nasab*) is a divine blessing, whereas fornication (*zina*) is a condemned act in Islam. Accordingly, the lineage of an illegitimate child (*anak tak sah taraf*) is legally attributed solely to the mother who gave birth, excluding the biological father, even if the child was conceived through his seed (Matnor & Kurniawan, 2024). This exclusion stems from the Islamic legal maxim that the unlawful act of *zina* cannot confer parental rights or lineage recognition on the perpetrator.

Attribution of Lineage to a Non-Biological Father

The question of whether Islam permits the attribution of lineage (*nasab*) to someone other than the biological father has become a matter of concern in contemporary times. This issue arises due to various factors, including the mother's remarriage, the practice of sperm donation, and the necessity of registering official documents such as birth certificates. Some argue that such attribution is permissible to protect the child's emotional well-being (Meor Muaz, 2022).

However, Islam strictly prohibits lineage attribution to anyone other than the biological father (Omar et al., 2025). This is evident from authentic hadith narrated by Ibn Majah:

It was narrated to us by ‘Alī ibn Muḥammad, who reported from Abū Mu‘āwiyah, from ‘Āṣim al-Aḥwal, from Abū ‘Uthmān al-Nahdī, who said: I heard Sa‘d and Abū Bakrah each of them say, ‘My two ears heard and my saying: ‘Whoever claims to be the son of someone other than his ﷺ heart understood the Messenger of Allah (real) father, while he knows that he is not his father, then Paradise is forbidden for him.’”

Another hadith that emphasises the prohibition of attributing the lineage of a biological child to someone other than the biological father is narrated by Imam Abu Dawud in his Sunan Abi Dawud, in the Kitab al-Adab (Book of Manners):

From Anas ibn Mālik (may Allah be pleased with him), who said: I heard the Messenger of Allah ﷺ say: “Whoever ascribes himself to someone other than his (biological) father, or claims to be a servant of someone other than his (real) master, upon him is the continuous curse of Allah until the Day of Resurrection.”

These hadiths warn against falsely attributing lineage to anyone other than the biological father. The Prophet Muhammad (peace be upon him) explicitly declared that Paradise is forbidden for those who knowingly claim such false paternity, and Allah's curse accompanies them eternally. This prohibition underscores the sacredness and inviolability of lineage within Islamic law, reflecting one of the essential objectives of Maqasid

al-Shariah, the preservation of lineage (hifz al-nasab) (Mahdum, 2023). As Abd Ghani (2017) notes, tampering with lineage undermines family integrity, disrupts inheritance rights, and erodes societal trust.

Attribution of Lineage to Adopted Children

However, the issue of attributing lineage to adopted children has also arisen. Adenin (2021) emphasized in his study that adopted children must be ascribed to their biological fathers and not to their adoptive fathers. This is supported by the words of Allah SWT in Surah al-Ahzab, verses 4–5:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ ۖ وَمَا جَعَلَ أَرْوَاجَكُمْ أَلْيَٰ تَظَاهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۖ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

“Allah has not made two hearts in his (one) body for any man. Nor has He made your wives, whom you declare to be like your (real) mothers. Nor has He made your adopted sons your (real) sons. That is but a saying of your mouths. However, Allah speaks the truth and guides to the (right) path.”

The verse above explains the prohibition of attributing an adopted child to a biological one. This is in line with the study by Meor Muaz (2022), which emphasises that adopted children must still be ascribed to their biological father, not their adoptive father. Scholars have agreed that the reason for the revelation (sabab nuzul) of this verse is the freed slave of the Prophet Muhammad SAW, Zaid bin Harithah (Yusuf & Wekke, 2019).

Zaid bin Harithah was deeply loved by the Prophet SAW, to the extent that he adopted him. Because of his status as the adopted son of the Prophet Muhammad SAW, the Quraysh began calling him Zaid bin Muhammad. However, according to Bakar and Chong (2018), this verse was revealed to prevent this practice, and Zaid was then referred to again by his biological father's name, Zaid bin Harithah. From this story, we can conclude the obligation to attribute adopted children to their biological fathers.

Fiqh Perspective On The Maintenance Of Illegitimate Children

Maintenance (nafkah) is essential to ensure the well-being and harmony of the family institution. The word maintenance (nafkah) comes from the Arabic word “nafaqa” (نَفَقَة), which means expenditure or disbursement (Jamil et al., 2023). In general, maintenance is an expense incurred by a person to meet the basic needs of others (Afrinal & Darmawan, 2022). From the perspective of Islamic Shariah, maintenance refers to the obligation fulfilled by a person towards individuals under his responsibility. This includes the provision of shelter, clothing, food and other basic needs (Syamsul, 2015). Maintenance also includes expenses related to education, religious needs, and healthcare. It is an obligation outlined in the Quran and Sunnah, and its implementation depends on several factors such as family relationships, marriage or ownership (Fudil et al., 2022). For example, in the family context, a husband is obliged to provide maintenance to his wife, even if she is financially independent. At the same time, the father is responsible for supporting his child, who cannot yet be independent.

This is supported by the words of Allah SWT in Surah Al-Baqarah, verse 233:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

"Upon the father is the mother's provision and their clothing according to what is acceptable."

This verse indicates that the father is the primary party responsible for providing for the needs of his children. However, if the father has passed away or cannot bear the child's expenses, the responsibility shifts to the mother (Mohd & Jasni, 2021). In the case of a child born out of wedlock, the obligation to provide maintenance lies entirely with the mother, as there is no legally recognised relationship between the child and the biological father (Ahmad & Hilal, 2016). In such circumstances, it is the mother who bears this responsibility, as indicated by the words of Allah SWT:

لَا تَضَارُّ وَلَدَهُ بِوَلَدِهَا

“Do not make a mother suffer because of her child.”

Based on this verse, scholars have concluded that since the fundamental obligation of providing maintenance is placed upon the father, then in cases where lineage (*nasab*) does not exist such as a child born out of wedlock, the responsibility more appropriately shifts to the mother to provide for the child's maintenance (Ahmad & Hilal, 2016).

According to the views of the *fuqaha'* (Islamic jurists), *hadhanah* refers to the responsibility of caring for, nurturing, and educating children who have not yet reached the age of *mumayyiz* (the age at which they can distinguish between right and wrong) by an individual entrusted with this duty (Supardi, 2020). This care encompasses all aspects of the child's life, including education, guidance, supervision, and managing their daily affairs until they reach a certain age (Martati & Firdaus, 2018).

Islamic law stipulates that the responsibility of caring for a child born out of wedlock lies with the mother (Ahmad & Hilal, 2016). This ruling is based on the saying of the Prophet Muhammad (peace be upon him), which means:

“The child belongs to the owner of the bed (al-firash), while the adulterer receives nothing but stones.”
(Narrated by Abu Hurairah).

This hadith forms the basis for fatwa explanations stating that a child born because of fornication cannot be attributed in lineage (*nasab*) to the man who committed the act of *zina*, even if he later marries the woman involved (Deni & Dhiauddin, 2024).

Three Parties Responsible for Providing Maintenance to an Illegitimate Child

Mother

The role of the mother in providing maintenance for a child born out of wedlock is stipulated under Section 80 of the Islamic Family Law (Federal Territories) Act 1984, as stated. This section states that if a woman refuses or neglects to provide maintenance for her illegitimate child, the Court has the authority to order her to pay a reasonable monthly allowance to cover the child's needs (Pejabat Mufti Wilayah Persekutuan, 2020).

Several conditions are set based on the *nasab* (lineage) relationship between the mother and the child. According to Ahmad & Hilal (2016), the conditions that entitle an illegitimate child to receive maintenance from the mother include:

1. The child cannot support themselves, particularly in the case of a daughter, until she marries or secures stable employment.
2. The child is financially incapable of supporting their living expenses.
3. The child suffers from physical or mental disabilities that prevent them from managing their own life independently, even after reaching puberty.
4. The child is pursuing their education.
5. The mother is financially capable of providing maintenance. If the mother is incapable, the responsibility shifts to her relatives in the order prescribed by Islamic law.

The mother's heir

According to Islamic law, if the mother cannot maintain her child, the responsibility shifts to her relatives as the second party in line (Abd Ghani, 2017). This obligation may arise due to several factors, including the mother's financial hardship, unemployment, or situations where she fled from her family out of shame for her sin or fear of facing legal action in court. This duty is also mentioned in Surah Al-Baqarah, verse 233:

وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ

“And the heir shall have the same duty (if the father is no more).”

This obligation is founded on the principles of al-qurba (kinship ties) and al-takaful al-ijtima'i (social solidarity within the family institution). This view is further supported by the Shafi'i school of thought, which recognises that close family members must care for one another, especially when no other party can shoulder the burden (Attas, 2024).

The Government

If both the mother and her relatives cannot provide for the child, the responsibility of ensuring the welfare and maintenance of the child then shifts to the government. The state holds the obligation to protect and care for children born out of wedlock, ensuring they receive maintenance and protection just like any other child (Noor, 2018).

In this context, the government refers to state institutions authorised to manage public welfare, particularly for vulnerable and defenceless groups such as children without legal guardians. In Islam, the principle of ijtima'i takaful (social solidarity) demands that authorities take an active role in upholding the welfare of all citizens, including illegitimate children. The government is responsible for ensuring that these children are not neglected in terms of basic needs (Ahmad & Hilal, 2016). This is supported by an authentic hadith, in which the Prophet Muhammad (peace be upon him) said:

“Each of you is a shepherd, and you are responsible for those under your care.”

(Sahih Bukhari, Kitab al- Itqu).

Hence, it is affirmed that the government is obliged to support and protect illegitimate children if their mother and maternal relatives are unable to provide sufficient maintenance (Noor, 2018).

The key institutions involved in this responsibility include Baitulmal, the Department of Social Welfare (JKM), and State Zakat Boards. Baitulmal manages funds for the Muslim community, including zakat, waqf, and fidyah collections (Ahmad & Hilal, 2016). In certain situations, the Shariah Court can instruct Baitulmal to bear the costs of maintaining such children when no other responsible party exists. This assistance may include monthly financial aid, shelter, or educational support.

The Department of Social Welfare (JKM) provides shelters and social assistance to children without legal guardians. These children may be placed in care institutions under JKM supervision until they reach a certain age or are adopted by foster families. Meanwhile, State Zakat Boards help if these children are categorised as asnaf specifically under the categories of the poor or needy.

The government's role is not only based on moral and humanitarian grounds but is also reinforced by Islamic legal principles. A well-known fiqh maxim states: “That which is necessary to fulfil an obligation is itself obligatory.”

Claim And Legal Enforcement Of Child Maintenance By The Biological Father

In the contemporary context of family law and child welfare, the issue of child maintenance for children born outside of a legally recognised marriage has emerged as an urgent area of concern. With rising statistics of births resulting from non-marital relationships, questions surrounding the legal responsibilities of biological fathers, particularly their obligation to provide maintenance, have become more pronounced. Within traditional Islamic jurisprudence, especially under the Shafi'i school dominant in Malaysia (Rosidi, 2024), such children are not afforded nasab (legal lineage) with their biological fathers. Consequently, these fathers are absolved of legal duties, including maintenance, since no lawful marital contract existed at conception (Ayub, 2023).

Primary Islamic legal schools, including the Shafi'i, Hanafi, Maliki, and Hanbali, traditionally hold that a child resulting from fornication (zina) cannot be affiliated by lineage to the man involved. This ruling is grounded in the hadith:

الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ

"The child belongs to the (legal) bed, and for the fornicator, there is only stone (i.e., no claim to the child)" (al-Bukhari & Muslim)

As a result, classical jurisprudence absolves the biological father of legal responsibilities such as maintenance (Noor, 2018).

However, this rigid stance has drawn increasing criticism considering the modern legal landscape, particularly where the child's welfare and fundamental rights are at stake. A child born out of wedlock remains a vulnerable party, innocent of the circumstances surrounding their birth, and yet is often left without legal or financial protection. This has prompted many contemporary scholars to argue for a more holistic approach, one that considers the objectives of Islamic law (maqasid al-shariah) and principles of siyasah syar'iyah in formulating legal obligations (Mohd & Jasni, 2021). Among these higher objectives are preserving life, dignity, and lineage and preventing harm and injustice. These values necessitate a reassessment of traditional fiqh positions considering contemporary societal needs.

In particular, the application of maslahah (public interest) has been highlighted as a key rationale for holding biological fathers accountable. Scholars argue that denying maintenance not only violates the rights of the child but also threatens their mental, emotional, and physical development (Wijayanti & Fauziah, 2020). While classical jurisprudence might absolve biological fathers of legal obligations, Islamic governance models have long endorsed the idea that rulers and judges may enact policies or directives that promote social justice, so long as these do not contradict foundational religious principles. This view is supported by the writings of Ibn Qayyim al-Jawziyyah, who asserted that public interest measures grounded in equity and compassion fall well within the scope of valid Islamic governance (Mohd & Jasni, 2021).

In Malaysia, the current legal framework under Islamic Family Law Enactments, such as those enforced in Selangor, still limits child maintenance obligations to children born from valid marriages. These laws, particularly Sections 80 through 83, mandate that only legally recognised fathers, husbands within a valid marriage, are bound to provide maintenance (Ayub, 2023). This leaves children born outside marriage in a precarious legal position, as the Shariah court cannot enforce obligations against biological fathers due to the absence of legitimate paternal linkage.

Nevertheless, the Malaysian civil court system provides a broader interpretive avenue. Under the Child Act 2001 (Act 611), mechanisms exist to ensure maintenance based on biological paternity rather than marital legitimacy. Specifically, Sections 17 and 40 of the Act allow courts to assign financial responsibility to individuals proven, often through DNA testing, to be the biological parent of a child in need (Noor, 2018). This represents a practical solution to a legal impasse, whereby civil jurisdiction complements religious law in safeguarding children's welfare, thereby ensuring that no child is left destitute due to the technicalities of nasab.

Recent developments in neighbouring Muslim-majority countries also present promising models. In certain jurisdictions, judicial decisions have upheld the child's right to maintenance even when nasab is not formally established, recognising that doing otherwise would constitute a grave miscarriage of justice. These legal innovations serve as valuable references for Malaysia and countries with similar dual legal systems, as they offer a middle ground between respecting traditional lineage laws and upholding the child's right to survival and dignity (Musawwamah, 2025).

Studies documenting the consequences of denying child maintenance further strengthen the argument for reform. Mohd and Jasni (2021) found that such neglect leads to emotional trauma, social exclusion, and often, material deprivation. They assert that these outcomes contradict the fundamental ethos of Islamic justice and

should compel the state to intervene through policy and legislative reform. Maintenance, in this sense, is not simply a private familial duty; it is a social obligation rooted in moral and legal responsibility.

Hence, reform must involve more than just interpretive flexibility; it should include structural mechanisms within the shariah and civil courts to ensure enforceability. Integrating DNA evidence as legal proof of paternity and procedural routes for civil claims would represent a step towards harmonising ethical responsibility with legal recognition. As highlighted in the findings by Musa et al. (2023), public attitudes are also gradually shifting towards a more inclusive and compassionate understanding of children's rights, further reinforcing the need for legislative updates that reflect evolving moral and social values.

In summary, the legal and moral responsibility of the biological father in cases involving children born out of wedlock must be viewed through a contemporary lens, one that harmonises the enduring principles of Islamic jurisprudence with modern-day realities. While classical fiqh remains foundational, its application must evolve to meet the demands of justice, compassion, and human dignity. The denial of maintenance based on nasab alone fails to protect the most vulnerable and contradicts the spirit of Islamic law. Legal reform both within the realm of Islamic Family Law and through supplementary civil provisions must be actively pursued to ensure that no child is deprived of their rights due to the nature of their birth.

CONCLUSION

Every child, regardless of birth status, inherently possesses the right to receive proper care, protection, and nurturing. While a child born out of wedlock may be classified as illegitimate under Islamic legal rulings and thus lack paternal nasab, this classification does not negate the child's fundamental human rights or their entitlement to a safe and healthy upbringing. Islamic principles of justice and compassion ('adl and rahmah) emphasise that the welfare and maintenance of every child must be prioritised above all

Legally, the obligation of maintenance for a child born outside lawful wedlock does not automatically rest on the biological father. Instead, responsibility initially falls on the biological mother. Suppose she is unable to fulfil this duty. In that case, it passes to her family members in a prescribed order, such as maternal brothers and grandparents who serve as guardians instead of the father. This framework reflects the exclusive attribution of lineage to the maternal side in such cases.

However, limiting maintenance obligations to traditional fiqh parameters fails to address the broader social complexities faced by illegitimate children today. Children born outside marriage frequently endure significant emotional, physical, and material hardships. These challenges have prompted concern among legal scholars, religious authorities, and social welfare advocates.

Penang has pioneered a practical and progressive approach that encourages voluntary maintenance agreements between biological parents before formal Shariah court proceedings (Mohd & Jasni, 2021). This mechanism facilitates open dialogue free from legal coercion, reduces judicial delays and expenses, and allows fathers to express remorse and moral responsibility voluntarily.

Although Islamic law does not mandate biological fathers to maintain children born out of wedlock, numerous cases demonstrate voluntary paternal support driven by awareness, repentance, and compassion. In such instances, the Shariah court may formalise these arrangements through binding court orders upon application by the mother, thereby ensuring legal recognition and enforcement of maintenance obligations (Ayub, 2023).

In conclusion, a socially responsible, consensual approach supported by strengthened institutions such as Majlis Sulh, Shariah Courts, and Islamic family counselling centres holds promise as an effective and compassionate solution. Such frameworks can address the rights and welfare of illegitimate children more equitably, even in the absence of formal legal obligations on biological fathers, aligning with the higher objectives of Maqasid al-Shariah to protect human dignity and social welfare.

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