

Inheritance Rights of Children from Incestuous Marriages under Indonesia's Compilation of Islamic Law

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Abstract

Incest is a form of marriage that is expressly prohibited, both under Islamic law and Indonesian positive law. This prohibition does not automatically resolve the legal issues that arise when a child is born. This article aims to examine the legal status of children resulting from incestuous marriages in Indonesia and analyze their inheritance rights according to the Compilation of Islamic Law (*Kompilasi Hukum Islam*). This study uses a normative legal research method with statutory, conceptual, and case approaches, which legal material was analyzed qualitatively through descriptive-analytical techniques. The results indicate that incestuous marriage is a prohibited marriage and can be annulled based on Article 8 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 and Articles 39 to 44 of the Compilation of Islamic Law, but the child born remains a legal subject protected by the state. Based on Article 100 of the Compilation of Islamic Law, the child's lineage is limited to the mother and her mother's family, so the child does not receive inheritance rights from his biological father through Islamic inheritance mechanisms, except through other legal instruments such as a gift, will, or mandatory will.

Keywords: Children of Incest; Inheritance Rights; Compilation of Islamic Law; *Consanguineous* Marriage; Legal Protection

Introduction

Marriage is both a legal and religious institution that occupies a central position in social, national, and state life in Indonesia. Article 1 of Law Number 1 of 1974, as amended by Law Number 16 of 2019 concerning Marriage, affirms that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Almighty God (Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 1974). In the perspective of Islamic jurisprudence, marriage is even placed in a deeper position, namely as a strong contract (*mitsaqan ghalidzan*) which is not solely aimed at fulfilling biological needs, but also to build a family that is peaceful, loving and compassionate as emphasized in contemporary studies of *munakahat* jurisprudence (Suryantoro & Rofiq, 2021). Islamic law and Indonesian positive law stipulate a number of conditions and prohibitions on marriage

that must be met for a marriage to be valid and legally binding. One of the most fundamental prohibitions is the prohibition on *consanguineous* marriage, commonly known as incest, which is a marriage between a man and a woman who are related by blood (*nasab*), by marriage (*mushahahah*), or by breastfeeding (*radha'ah*) who, according to Islamic law and regulations, are not permitted to marry each other. The Qur'an, Surah An-Nisa, verse 23, specifically mentions groups of women who are forbidden to marry for these three reasons, and these provisions are then incorporated into Article 8 of the Marriage Law and further elaborated in Articles 39 to 44 of the Compilation of Islamic Law (Instruksi Presiden Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam, 1991). This prohibition is essentially a concrete manifestation of one of the main objectives of sharia (*maqāsid al-syari'ah*), namely protecting offspring (*hifz al-nasl*), and is also in line with modern genetic studies which show that marriage between close relatives increases the risk of genetic abnormalities and health problems in the offspring (Mufidah, 2025).

Despite the explicit prohibition, in practice, *consanguineous* marriages and relationships continue to occur in society, whether in unregistered marriages, extramarital affairs, or as a result of sexual violence within the family. Various studies have shown that *consanguineous* relationships are often intertwined with issues of sexual violence, unequal power relations between perpetrators and victims, and a lack of legal understanding within the family (Husin, 2023). Nuroniyah emphasized that *incestuous* sexual violence has serious psychological and social impacts, not only for adult victims but also for children born from the incident, so that Islamic law is required to provide a comprehensive response, not only in the aspect of criminalizing the perpetrator, but also in the aspect of civil protection of children (Nuroniyah, 2022). Other psychological studies also emphasize the profound traumatic impact on the victim's daughters and children born from these *consanguineous* relationships, making legal protection a necessity that cannot be postponed (Sulastri & Nurhayaty, 2021).

Legal issues become increasingly complex when a child is born from a marriage or *consanguineous* relationship. The child born is essentially not at fault for the actions of his or her parents, but he or she must bear the legal consequences in the form of unclear lineage status, potential social stigma, and uncertainty regarding his or her civil rights, including inheritance rights. On the one hand, Article 28 paragraph (2) of the Marriage Law emphasizes that the decision to annul a marriage does not apply retroactively to children born from the marriage, so that in principle the child still receives legal protection. On the other hand, Article 100 of the Compilation of Islamic Law stipulates that children born out of wedlock are only related by blood to their mother and her family. This provision has significant legal consequences for children's inheritance rights, as in the

Islamic inheritance system, inheritance rights are fundamentally derived from a legitimate blood relationship between the testator and the heirs.

This issue becomes increasingly important to study when linked to the development of family law in Indonesia following the birth of Constitutional Court Decision Number 46/PUU-VIII/2010, which opened up space for the recognition of civil relations between children and men who can be scientifically proven to be their biological father (*Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010*, 2010). The decision demonstrates a shift in the national legal paradigm towards broader child protection without distinction of birth status, in line with the principle of the best interests of the child guaranteed in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and the Convention on the Rights of the Child which has been ratified by Indonesia. However, the extent to which the decision provides implications for the relationship of lineage and inheritance rights of children according to the Compilation of Islamic Law still leaves a legal debate that requires in-depth analysis, especially because the issue of the definition of children and their civil status in positive Indonesian law itself is not completely uniform (Marhayani & al., 2024).

The ambiguity of these regulations has the potential to create injustice for children, particularly in fulfilling their civil rights, such as the right to a guardian, the right to maintenance, and the right to inheritance. A study on the relevance of guardianship regulations for children born outside of legal marriage from a human rights perspective confirms that the state has an obligation to ensure that a child's birth status does not become a basis for discrimination in fulfilling their basic rights (Salma & al., 2024). The same principle should also apply to the fulfillment of inheritance rights for children resulting from *consanguineous* marriages, considering that inheritance rights are one of the civil rights that greatly determine the economic welfare and future of children.

From a broader perspective, the issue of the legal status and inheritance rights of children born of *consanguineous* marriages is also inextricably linked to academic debates regarding the definition and classification of children in Indonesian positive law, which still contain a number of inconsistencies between one law and another. Some regulations use a purely age-based approach, while others consider the parents' marital status as part of the definition of legitimate or illegitimate children (Marhayani & al., 2024; Santoso & Batubara, 2024). This inconsistency also contributes to uncertainty in handling concrete cases in the field, including cases of children resulting from *consanguineous* marriages, so that a comprehensive and cross-legal regime study, as attempted in this article, is becoming increasingly urgent.

Based on the above description, this article is prepared to further develop the study on the legal status and inheritance rights of children resulting from *consanguineous* marriages that has been pioneered in the thesis and previous article drafts, by deepening the analysis through the approach of legal certainty theory, legal protection theory, the concept of *maqāsid al-syarī'ah*, a comparison of the views of the four schools of thought, and the implications of Constitutional Court Decision Number 46/PUU-VIII/2010. The novelty of this article lies in the effort to integrate the normative-doctrinal approach of Islamic law with the development of national law comprehensively in one complete analytical framework, so that it can provide theoretical and practical contributions to the formation of Islamic family law that is more just for children. Based on this background, this study aims to: first, analyze the legal status of children resulting from *consanguineous* marriages according to the Compilation of Islamic Law; and second, analyze the position of the child's inheritance rights based on the provisions of Islamic inheritance law applicable in Indonesia.

Based on the background description, the problem formulation in this study can be formulated into two main questions. First, what is the legal status of children resulting from incestuous marriages according to the Compilation of Islamic Law, especially in relation to the concept of lineage, the legal consequences of marriage annulment, as well as the theoretical framework of legal certainty, legal protection theory, and *maqāsid al-syarī'ah*. Second, what is the status of inheritance rights of children resulting from incestuous marriages according to the Islamic inheritance system applicable in Indonesia, including the implications of Constitutional Court Decision Number 46/PUU-VIII/2010 and the opportunity to use the *wajibah* will instrument as a just legal solution.

Methods

This study employs normative legal research, examining the legal norms, principles, doctrines, and regulations that determine the legal status of children born of incestuous marriages and the position of their inheritance rights under the Compilation of Islamic Law (Al Amin et al., 2023; Marzuki, 2022). This study adopts normative legal research because it centers on the coherence of the legal norms governing lineage and inheritance for children of incestuous marriages, rather than on behavior or empirical field data, which makes this method the most relevant for answering the formulated legal issues (Ibrahim, 2021). This study applies three complementary approaches to the incestuous-marriage inheritance problem. First, the statute approach examines Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, the Compilation of Islamic Law (Presidential Instruction Number 1 of 1991), the Civil Code, and Law Number 35 of 2014 concerning Child Protection. Second, the

conceptual approach draws on the theory of legal certainty, the theory of legal protection, and the concept of *maqāṣid al-syarī'ah*, and the doctrines of Islamic jurists regarding lineage and inheritance. Third, the case approach analyzes relevant court decisions, particularly Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the status of children born out of wedlock.

This study draws on three types of legal materials. Primary legal materials comprise legally binding laws and court decisions. Secondary legal materials comprise books, scientific journals, prior research, and other scholarly works relevant to the legal status and inheritance rights of children born of incestuous marriages. Tertiary legal materials comprise legal dictionaries, legal encyclopedias, and other supporting literature that serves to clarify technical legal terms (Fajar, 2021). This study collects legal materials through library research on relevant legal documents, then analyzes them qualitatively using a descriptive-analytical method: systematically describing the legal norms, connecting them with relevant concepts and theories, and drawing conclusions that answer the research problem. The analysis proceeds inductively-deductively: it applies general legal provisions, such as the principle of prohibition of *consanguineous* marriage and the principle of lineage in Islamic law, are analyzed for their application to concrete cases in the form of the status and inheritance rights of children from *consanguineous* marriages, to then formulate more specific legal propositions regarding the legal status of the child.

Result And Discussion

A. Legal Status of Children from Incest According to the Compilation of Islamic Law

Marriage in Islam cannot be carried out freely without limits, but is subject to a number of conditions and prohibitions aimed at maintaining the purity of lineage, human honor, and social order. One of the absolute prohibitions (*muabbad*) is the prohibition of marrying women who are included in the mahram category, as explained in detail in the Qur'an Surah An-Nisa verse 23. This verse groups the prohibitions on marriage into three causes, namely lineage relations (for example, mother, daughter, sister), in-law relations or *mushaharah* (for example, mother-in-law, stepdaughter), and breastfeeding relations or *radha'ah* (Ikhsan et al., 2023). The provisions of the Qur'an were then consistently adopted into Article 8 of the Marriage Law and explained in more detail in Articles 39 to 44 of the Compilation of Islamic Law, both of which became the positive legal basis for prohibiting *consanguineous* marriages in Indonesia.

The prohibition on *consanguineous* marriage is not merely a ritualistic religious norm, but rather a legal norm with concrete legal consequences. If this prohibition is violated, the marriage is considered

null and void or at least can be annulled by a court decision, in accordance with the mechanisms stipulated in Articles 22 to 28 of the Marriage Law. Marriage annulment is not an automatic annulment; it must be submitted through an application to the competent court, namely the Religious Court for those who are Muslim. This provision confirms that Indonesian law places the prohibition on *consanguineous* marriage as part of public order that must be enforced through the judicial process, not simply left as a moral issue.

From a positive legal perspective, this prohibition has twofold relevance: first, as an instrument for maintaining social order and family structure; second, as an instrument for protecting reproductive health. Modern genetic studies confirm that marriage between close relatives has the potential to increase the risk of autosomal recessive diseases, chromosomal abnormalities, and developmental disorders in children, so the prohibition of *consanguineous* marriage aligns with the precautionary principle in public health (Mufidah, 2025). Thus, the prohibition of *consanguineous* marriage in Islamic law and Indonesian positive law has a mutually reinforcing basis between the theological aspect, the moral-social aspect, and the scientific-health aspect.

It's also important to note that in practice, *consanguineous* marriages don't always arise from intentional violations by both parties. Some cases arise from ignorance of true kinship relationships, for example in communities with poorly structured civil registration systems, informal adoptions, or prolonged family separations that result in unrecognized blood relationships. Other cases are the direct result of sexual violence within the family, where unequal power relations prevent victims from freely refusing (Jalil, 2022). The differences in the background of the occurrence of these blood relations should ideally be taken into consideration in formulating policies to protect children born from them, even though the status of their lineage and inheritance rights according to the Compilation of Islamic Law are basically still subject to the same norms.

The most complex legal consequences of *consanguineous* marriages arise when a child is born from the marriage before the annulment decision is issued by the court. In this case, Indonesian law provides special protection through Article 28 paragraph (2) letter a of the Marriage Law, which states that the decision to annul a marriage does not apply retroactively to children born from the marriage. This provision is a concrete manifestation of the principle that children should not be burdened with legal consequences for mistakes made by their parents, and at the same time provides legal certainty for children so that their status as legal subjects is not lost solely because their parents' marriage is annulled.

However, the protection provided by Article 28 paragraph (2) of the Marriage Law is limited, because the provision only guarantees that the child's status as a legal subject is not lost, without explicitly stating the status of the child's lineage relationship with his biological father. It is at this point that the provisions of Article 100 of the Compilation of Islamic Law become very decisive, because this article stipulates that a child born outside of a legal marriage only has a lineage relationship with the mother and her mother's family (Shebaita, 2025). Because *consanguineous* marriage is classified as a marriage that is void or can be voided, the status of a child born from such a marriage is doctrinally equal to a child born outside of a legal marriage, so that the lineage relationship is only attached to the mother.

Studies on the civil rights of children resulting from incestuous marriages confirm that the severance of the lineage relationship with the biological father has a chain effect on a number of other civil rights, not only inheritance rights, but also marital guardianship rights, rights to maintenance, and the right to use the father's name in population documents (Ahmad & Nabil, 2022). Thus, the legal consequences of annulling a *consanguineous* marriage on the status of a child are dualistic: on the one hand, the child remains recognized as a legal subject who must be protected, but on the other hand, his civil relationship with his biological father experiences significant restrictions.

In religious court practice, the determination of the status of a child born of an annulled marriage is usually carried out simultaneously with or immediately after the annulment decision is issued, as part of the ruling confirming the child's custody and civil status. Studies on the determination of marriage confirmation for unregistered marriages show that Religious Court judges generally tend to be careful in formulating rulings concerning the status of children, always prioritizing the principle of the child's best interests as the primary consideration, regardless of the legal defects inherent in the parents' marriage (Faiz & Slamet, 2025). This caution reflects the judge's awareness that the decision to annul a marriage, no matter how firm the legal basis underlying it, should not be applied mechanically without considering its impact on the fulfillment of the basic rights of the child concerned.

It should also be emphasized that the protection of children's status as referred to in Article 28 paragraph (2) of the Marriage Law applies regardless of whether the *consanguineous* marriage was officially registered with a marriage registrar or not. As long as there is sufficient evidence regarding the relationship between parents and children, whether through birth certificates, recognition, or scientific evidence, the principle of protection of children's status must still be prioritized by judicial institutions, in line with the spirit of Indonesian family law's bias towards

the best interests of children as the most vulnerable party in every family dispute.

The concept of lineage in Islamic law occupies a very fundamental position, because lineage is the basis for the birth of various civil rights and obligations, including the right to maintenance, the right of marital guardianship, inheritance rights, and the prohibition of marriage due to mahram relations (Mohadi, 2023). Article 100 of the Compilation of Islamic Law firmly states that: “a child born out of wedlock has a lineage relationship only with his mother and her mother's family”. This provision is an adoption of the view of the majority of classical Islamic jurisprudence scholars who state that lineage can only arise from a valid marriage (*firasy*) or from a relationship that has a dubious basis recognized by sharia.

The doctrinal basis for this provision refers to the hadith of the Prophet Muhammad SAW which emphasizes the principle of *al-walad lil-firasy*, namely that children are assigned to the legitimate owner of the bed or husband, while perpetrators of illegitimate relationships do not receive birthright rights (Rofiq, 2019). This principle is the main basis for all schools of Islamic jurisprudence in determining that lineage relationships cannot be formed from relationships that are outside the framework of legal marriage, including prohibited incestuous relationships.

The application of Article 100 of the Compilation of Islamic Law to children resulting from *consanguineous* marriages has significant implications, as *consanguineous* marriages are considered prohibited and can be annulled. Even if the marriage formally took place, its legal status is flawed from the start (*void ab initio*) due to the violation of the *mahram* prohibition, so that children born from it are treated analogously to illegitimate children in terms of lineage. Consequently, the child's lineage relationship with his biological father, who is also a close relative on the mother's side, is severed under Islamic law, even though the biological blood relationship between the child and both parents remain.

Another implication of the application of Article 100 of the Compilation of Islamic Law to children resulting from *consanguineous* marriages is also apparent in the aspect of population administration, particularly in the issuance of birth certificates. Based on applicable provisions, the birth certificate of a child born outside of legal marriage only lists the name of the mother and her mother's family, without the name of the biological father, unless there is a recognition of the child through a legal and state-recognized civil law mechanism. This administrative provision in turn also affects the fulfillment of other child-derived rights, such as the right to identity on a family card, the right to have the father's name on school documents, and the potential psychological difficulties a child may face when learning about his or her birth origins later in life. Therefore, the handling of the lineage status of

children resulting from *consanguineous* marriages should not only be viewed as a purely technical-legal issue, but also as an issue that touches on the child's psychosocial aspects as a whole.

The severance of these family ties creates unique and complex legal issues in *consanguineous* marriages, which differ from the usual case of illegitimate children. In ordinary illegitimate children, the biological father is generally not a close relative of the mother, so the severance of the family relationship "only" impacts the relationship with one family member (Maulana et al., 2024). However, in *consanguineous* marriages, because the biological father is a close relative of the mother (for example, an uncle, grandfather, or brother), the child's kinship structure becomes very complex, where the person who is biologically the child's father is actually legally considered a relative through the mother's line, not a father with a legal relationship.

A comparative study of Islamic schools of thought is crucial for understanding the doctrinal roots of Article 100 of the Compilation of Islamic Law. The Hanafi school holds that sexual relations with a mahram woman are strictly prohibited, and therefore, children born from such relations are not related to their biological father. However, Hanafi scholars allow for exceptions in doubtful circumstances, namely unintentional errors, such as one party's ignorance of the existing mahram relationship, which under certain circumstances can open up the possibility of recognizing the lineage.

The Maliki school of thought holds a more assertive view that lineage can only arise from a legitimate marriage or a relationship with a clear sharia basis, so that children born of adultery or incest have no lineage relationship with their biological father (Zaki et al., 2025). This school places the protection of offspring (*hifz al-nasl*) as one of the primary objectives of sharia, which must be strictly upheld, including through the affirmation of the boundaries of legitimate lineage.

The Shafi'i school of thought, the most frequently cited school of thought in the Compilation of Islamic Law in Indonesia, holds that illegitimate children are only related by blood to their mother (Munir et al., 2025). The doctrinal consequences of this view include three main points: the child does not inherit from the biological father, the biological father cannot be a guardian in marriage for his daughter, and the mahram relationship due to blood relationship with the biological father does not apply (Alfarisi, 2025). This view of the Shafi'i school of thought is the direct basis for the formulation of the norms of Article 100 of the Compilation of Islamic Law which is currently in force in Indonesia.

The Hanbali school of thought is essentially in line with the views of other schools of thought, namely that inheritance relations can only arise from legitimate blood relations, so that children resulting from

adultery or *consanguineous* relations do not receive inheritance rights from their biological father. However, Hanbali scholars continue to emphasize the obligation to protect the right to life of children as part of universal humanitarian principles, so that the absence of blood relations should not be interpreted as justification for neglecting children economically or socially. Thus, the four major schools of Islamic jurisprudence in principle have the same view regarding the severance of blood relations due to illegitimate relations. They differ in the nuances of exceptions and the emphasis on the accompanying humanitarian aspects.

A comparison of the views of the four schools of thought reveals a consistent pattern, namely that all schools of thought place a valid lineage relationship as an absolute requirement for the emergence of an inheritance relationship, although there are minor variations in terms of exceptions to doubtful matters as adopted by some Hanafi scholars (Noni Kensiwi & Fiqi Restu Subekti, 2025). This consistency across schools of thought is one of the strong arguments why the Compilation of Islamic Law, as a legal product that attempts to summarize the agreement (*ijma'*) of Islamic jurisprudence applicable in Indonesia, takes a firm position in Article 100 without opening up room for multiple interpretations. However, this doctrinal consistency does not close the room for contemporary *ijtihad* to develop complementary instruments beyond the pure *faraidh* mechanism, as will be further explained in the discussion of *wajibah* wills.

The dominance of the Shafi'i school of thought in the formation of the Compilation of Islamic Law is not without historical and sociological reasons. This school has long been the most widely adopted school of thought by the Muslim community in Indonesia, so its selection as the primary reference is intended to maintain the alignment between written legal norms and the legal consciousness of the living community (living law). Consequently, any attempt to update the norms of Article 100 of the Compilation of Islamic Law, including the proposed expansion of the mandatory will proposed in this article, must continue to pay attention to its alignment with the broader framework of the Syafii school, so that the resulting reforms continue to obtain sociological legitimacy within society, in addition to formal-juridical legitimacy through legislation.

The theory of legal certainty positions law as an instrument for creating order and predictability in social life. Gustav Radbruch argued that good law must harmoniously fulfill three basic values: justice (*gerechtigkeit*), utility (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*), where all three are ideally balanced, although in practice there is often tension between them (Borowski, 2024). In the context of children resulting from *consanguineous* marriages, legal certainty is very important because it concerns legal identity, lineage status, and various other civil rights that depend on the clarity of that status, including the right to a birth certificate, the right to education, and inheritance rights.

From a legal certainty perspective, Article 100 of the Compilation of Islamic Law provides clear and firm norms regarding the lineage status of children born outside of legal wedlock, including children born of *consanguineous* marriages. This clarity of norms provides certainty for all parties, including religious courts, in resolving inheritance disputes involving children born of *consanguineous* marriages. However, this formal legal certainty does not necessarily align with a sense of substantive justice, as completely innocent children must bear the severe legal consequences of their parents' actions.

The theory of legal protection put forward by Philipus M. Hadjon explains that legal protection is given to every citizen so that their rights are not harmed, either by the actions of other parties or by the policies of state administrators. Legal protection for children is an implementation of the principle of the rule of law (*rechtsstaat*) which guarantees that every child receives protection without discrimination, including children born from prohibited marriages. Children resulting from *consanguineous* marriages are essentially victims of their parents' actions, so the state has a constitutional obligation to guarantee the fulfillment of their basic rights as regulated in Law Number 35 of 2014 concerning Child Protection, including the right to identity, the right to care, the right to education, the right to be free from discrimination, the right to welfare, and the right to legal protection.

The constitutional basis for child protection can also be traced from Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survival, growth and development, and the right to protection from violence and discrimination. This constitutional provision is binding on all branches of state power, including religious courts in deciding cases concerning children's rights, so that the interpretation of the norms of Article 100 of the Compilation of Islamic Law should always be placed within this constitutional framework, without ignoring the uniqueness of the sharia norms which are the material source of the Compilation of Islamic Law itself.

The principle of protection is also in line with the Convention on the Rights of the Child, which Indonesia has ratified through Presidential Decree Number 36 of 1990, which affirms that every child has the right to receive protection regardless of their birth status. By combining the theory of legal certainty and the theory of legal protection, it can be concluded that although the norm of Article 100 of the Compilation of Islamic Law has provided formal certainty regarding lineage status, the state remains obliged to provide substantive protection for children resulting from *consanguineous* marriages through various other legal instruments outside the lineage mechanism, so that legal certainty and justice can run in balance.

The tension between legal certainty and legal protection is not unique to the issue of *consanguineous* children, but rather a classic issue in legal philosophy in general, where certain norms do not always produce justice in every concrete case (Huang & Xue, 2024). However, in the context of Islamic family law, this tension is even more significant because it concerns the dignity and future of a child who is powerless to determine his or her own destiny. Therefore, resolving this tension cannot be achieved by sacrificing one or the other value absolutely, but must be pursued through an approach that allows the certainty of lineage norms to be maintained, while substantive justice is realized through complementary legal instruments that operate outside, but not in conflict with, the *faraidh* framework itself.

Thus, it can be concluded that the legal status of children resulting from *consanguineous* marriages in the perspective of the Compilation of Islamic Law is dual: on the one hand, from the aspect of *nasab*, their legal relationship with the biological father is severed in accordance with the provisions of Article 100 of the Compilation of Islamic Law and the views of the majority of schools of jurisprudence; but on the other hand, from the aspect of legal protection and *maqāṣid al-syarī'ah*, the child is still obliged to receive guarantees of protection and welfare as an independent legal subject, regardless of the marital status of his parents. The *maqāṣid al-syarī'ah* framework is also relevant for understanding why reforms in Islamic family law in various Muslim-majority countries tend to lead to strengthening mandatory testamentary instruments, rather than changing the concept of *nasab* itself. A number of Islamic family law jurisdictions, such as Egypt and some countries in the Middle East, have already developed the concept of *wajibah* wills more broadly than the scope regulated in the Compilation of Islamic Law in Indonesia, which is currently still limited to adopted children and adoptive parents as regulated in Article 209. The comparative legal experience shows that strengthening the *wajibah* will instrument is a middle way that has been doctrinally tested to bridge the certainty of lineage norms with the demands of substantive justice for children who are outside the scope of pure *faraidh*, so that it can be a reference for the direction of reform of Islamic inheritance law in Indonesia in the future.

This is precisely where the central contribution of this article lies. Rather than treating the severance of *nasab* under Article 100 of the Compilation of Islamic Law as the end of the inquiry, this article argues that an analogical expansion (*qiyas*) of the mandatory will provision in Article 209 of the Compilation of Islamic Law, from its current scope of adopted children and adoptive parents to children born of *consanguineous* marriages, constitutes a groundbreaking legal compromise for Indonesian Islamic inheritance law. The proposal is groundbreaking not because it alters the fixed doctrine of *nasab*, which this article maintains must

remain intact for the sake of legal certainty, but because it resolves the deadlock between doctrinal consistency and substantive justice through an instrument that Islamic jurisprudence itself already legitimizes. Where existing scholarship treats the closure of inheritance rights under Article 100 as a fixed and largely unchallengeable outcome, this article treats it as the starting point for constructing a concrete doctrinal pathway, grounded in an established precedent within the Compilation of Islamic Law itself, by which children of consanguineous marriages can obtain a determinate, judicially enforceable share of their biological father's estate without requiring any change to the *faraidh* system or the concept of *nasab*. This reframing shifts the debate from an abstract tension between legal certainty and legal protection toward a concrete, implementable legal mechanism, which is the substantive resolution this article offers to a problem that the existing literature has largely left unresolved.

The Position of Inheritance Rights of Children from Consanguineous Marriages from the Perspective of the Compilation of Islamic Law

The Islamic inheritance system (*faraidh*) is built on a highly systematic foundation, requiring three basic elements for inheritance rights to arise: the existence of a deceased heir (*muwarrits*), the existence of a living heir at the time of the testator's death (*warits*), and a legitimate inheritance relationship between the two. The absence of any one of these elements prevents inheritance rights from arising legally. Legitimate inheritance relationships in Islamic law can essentially arise through three causes, namely blood relations or lineage, legal marriage relations, and *wala'* or guardianship relations resulting from the emancipation of slaves which in the modern Indonesian context are no longer relevant (Moh Ainul Muttaqin et al., 2025). Of these three causes, lineage relations are the most dominant and broadest in scope, because they include relationships between children and parents, relationships between siblings, and relationships with more distant relatives according to the heir class system (*dzawil furudh*, *'ashabah*, and *dzawil arham*) (Ikhsan et al., 2023). Since blood relations are the main cause of the emergence of inheritance rights, the logical consequence of the provisions of Article 100 of the Compilation of Islamic Law regarding children resulting from *consanguineous* marriages is very decisive in determining their inheritance structure. If the child only has a legal blood relationship with his mother and his mother's family, then legally he can only be an heir from his mother's side, and conversely cannot be an heir from his biological father or from his paternal family, no matter how close the biological blood relationship between them.

The *faraidh* system divides heirs into three main groups, namely *dzawil furudh*, namely heirs whose share has been determined with certainty by the text, such as daughters, mothers, and husbands or wives; *'ashabah*, namely heirs who receive the remaining assets after *dzawil furudh* takes their share, such as sons and brothers; and *dzawil arham*,

namely relatives who are not included in the first two groups but still have blood relations, who only receive a share if the two previous groups are no longer there. Children resulting from *consanguineous* marriages, as long as they are children of their mother, still occupy the position of *dzawil furudh* or '*ashabah* in their mother's inheritance like children in general, so that there is no difference in treatment in terms of inheritance regarding the mother's lineage (Zuhdi et al., 2023).

The provisions regarding the causes of the emergence of inheritance relations are limited in Islamic law, in contrast to the inheritance system in the Civil Code which recognizes the concept of blood relations more broadly without requiring the validity of the parents' marital relationship as an absolute determinant. The philosophical differences between the two inheritance law systems in force in Indonesia, namely the Islamic inheritance system which applies to Muslims and the Western civil inheritance system which applies to certain groups, emphasize that the issue of inheritance rights of children resulting from *consanguineous* marriages is basically specific to the legal system adopted by the family concerned, so that the right solution for children subject to Islamic inheritance law must be sought within the framework of Islamic law itself, not by immediately adopting the principles of other inheritance law systems (Wardi et al., 2024).

Based on the principle of lineage as described above, children resulting from *consanguineous* marriages legally have inheritance rights limited only to the maternal line. They have the right to inherit from their own mother, from their maternal grandmother, from siblings on the same mother's side, or from other relatives on the maternal line in accordance with the provisions of the share of each group of heirs according to the science of *faraidh*. On the other hand, they do not receive any inheritance rights at all from their biological father, from their paternal grandfather, or from other relatives on the paternal line, because the paternal lineage relationship is not recognized in the classical Islamic inheritance system which is the reference for the Compilation of Islamic Law (Aniroh et al., 2024).

This situation raises unique justice issues in cases of *consanguineous* marriage, which differ from the general case of illegitimate children (Popescu et al., 2025). As previously explained, in cases of *consanguineous* marriage, the child's biological father is generally a close relative on the mother's side, so that biologically the child is also part of the paternal line, which is essentially a relative of the mother's own. However, because Sharia law does not recognize this lineage as a legal relationship, the child's inheritance rights to the biological father's inheritance are completely closed through the *faraidh* mechanism, regardless of the size of the assets left by the biological father.

A study on the principle of the best interests of children due to the annulment of the marriage of *consanguineous* parents confirms that the closure of inheritance rights has the potential to cause significant economic losses for children, especially if the biological father has large assets, while the mother is in a weak economic condition (Maharani et al., 2023). This kind of inequality emphasizes the urgency of finding a legal solution that can balance the certainty of *faraidh* norms with the real need for economic protection for children, without having to change the basic structure of Islamic inheritance law itself.

The closed inheritance rights for biological fathers are even more ironic when compared to the treatment of customary law in several regions of Indonesia, which in practice often accommodates forms of giving property to children outside of formal inheritance mechanisms based on considerations of propriety and real kinship relationships. Studies on the perspectives of indigenous communities on Islamic inheritance law show that in some communities, the resolution of property disputes involving children with unclear civil status tends to be achieved through family deliberations that result in the division of property amicably, even though the *faraidh* does not formally recognize such inheritance rights (Abaidata et al., 2025). This kind of practice, although it cannot be used as a formal legal basis for changing *faraidh*, provides an empirical indication that the need for substantive justice for children in similar positions has been truly felt at the community level, so that strengthening formal legal instruments such as *wajibah* wills becomes increasingly relevant to be formalized.

The risk of economic inequality becomes even more apparent when examining the structure of family wealth, which is generally inherited patrilineally or at least involves significant economic contributions from the biological father. The closure of a child's inheritance rights to his biological father's inheritance has the potential to cause the child to lose access to economic resources that should naturally be his right, while on the other hand, other relatives on the father's side, who may not even have any emotional attachment to the child, still have the right to receive a full share of the inheritance (Tedla & Mekonen, 2023). This irony is one of the strongest arguments for the need for a complementary legal instrument capable of correcting this inequality without having to change the established basic structure of *faraidh*.

Constitutional Court Decision Number 46/PUU-VIII/2010 is an important milestone in the development of family law in Indonesia. Through this decision, the Constitutional Court interpreted Article 43 paragraph (1) of the Marriage Law in such a way that children born outside of marriage not only have a civil relationship with their mother and their mother's family, but can also have a civil relationship with a man who is scientifically proven, for example through technology and/or other legal evidence, as their biological father. This decision was born from the spirit

of protecting the rights of children as legal subjects who must be treated equally before the law, without intending to legalize relationships outside of a valid marriage.

While the ruling is a breath of fresh air for the protection of children's civil rights in general, the scope of the civil relationship referred to by the Constitutional Court needs to be carefully understood. The civil relationship recognized in the ruling is essentially directed more at the biological father's responsibility for meeting the child's needs, such as the obligation to provide maintenance, care, and education costs, rather than automatically changing the concept of lineage in Islamic law that underlies the *faraidh* inheritance system (Ahmad & Nabil, 2022).

In the perspective of the Compilation of Islamic Law, lineage remains the primary basis and the only recognized reason for the emergence of inheritance rights according to the *faraidh* system. Therefore, the existence of the Constitutional Court Decision Number 46/PUU-VIII/2010 does not immediately change the provisions of Article 100 of the Compilation of Islamic Law regarding lineage relations, so that children resulting from *consanguineous* marriages still do not obtain automatic inheritance rights from their biological father through the *faraidh* mechanism, even though civil relations in the form of maintenance obligations can be recognized through general civil law channels based on scientific evidence.

This situation demonstrates a paradigm difference between national law, which continues to develop toward expanding the protection of children's civil rights, and Islamic inheritance law, which consistently bases inheritance rights on legitimate kinship relations according to sharia. This paradigm difference is not a contradiction that must be resolved by defeating one legal system or the other, but rather opens up space for synergy between the two, where general civil law plays a role in filling the gap in economic protection for children through the obligation to provide maintenance, while Islamic inheritance law maintains consistency through alternative instruments recognized by sharia, such as the mandatory will (Moh Ainul Muttaqin et al., 2025).

It should also be emphasized that proving biological relationships through technology, such as *deoxyribonucleic acid* (DNA) testing, which was one of the main pillars of Constitutional Court Decision Number 46/PUU-VIII/2010, has its own limitations in the context of *consanguineous* marriage cases. Because the biological father in this case is a close relative of the mother, such scientific proof has the potential to have broader legal and social implications, not only concerning the child's relationship with his biological father, but also concerning the disclosure of the *consanguineous* relationship itself, which may have previously been unknown to the public. Therefore, the application of the principle of

scientific proof in the context of *consanguineous* marriage requires greater procedural caution to protect the privacy and dignity of all parties involved, including the child concerned, without compromising the essence of protecting his or her civil rights.

The use of DNA testing in consanguineous-marriage cases also exposes a sharp friction between criminal law and civil family law that has not been adequately addressed in existing scholarship. In the criminal sphere, a DNA test is typically sought as evidentiary support for prosecuting incest as a criminal offense, where its function is to establish the biological link between perpetrator and victim so that a criminal sanction can be imposed; the same test result, once it exists, inevitably also proves the very biological relationship between the child and the biological father that civil family law relies upon for lineage and inheritance questions. This creates a structural tension: the criminal process treats the biological relationship as evidence of a crime to be punished, while the civil process is barred by Article 100 of the Compilation of Islamic Law from attaching any lineage or inheritance consequence to that same relationship. A DNA test obtained for criminal prosecution can therefore end up privately confirming a paternal link that the child can never invoke in a religious court to claim inheritance, while publicly it exposes the family to the stigma of a criminal case. This asymmetry places the child in a uniquely disadvantaged position compared to children born of ordinary extramarital relations: the very evidence that proves the crime against the mother is the evidence that most concretely demonstrates the child's biological connection to a man from whom Islamic inheritance law nonetheless permanently withholds him. Reconciling this friction requires, at minimum, procedural safeguards that separate the evidentiary use of DNA results in criminal proceedings from their potential misuse in civil disputes, together with a clear policy that civil consequences flowing from such evidence be channeled exclusively through the *wasiat wajibah* and maintenance mechanisms discussed below, rather than through claims of formal *nasab* that Islamic law does not recognize in these circumstances.

Because the *faraidh* inheritance mechanism is closed to children resulting from *consanguineous* marriages in relation to the biological father, Islamic law provides a number of alternative instruments that can be used to continue to provide economic protection to the child without changing the basic structure of inheritance law. These instruments include a gift, which is a voluntary gift of property by the biological father to the child during his lifetime; a will, which is a gift of property designated after the testator's death with a maximum limit of one-third of the inheritance; and a mandatory will, which is a portion of property that is required by law or through a judge's decision to certain parties who are *faraidh* not entitled to inheritance, even though the testator did not have the opportunity to make a voluntary will.

The concept of a mandatory will is not actually new in the reform of Islamic family law in Indonesia (Husni Hidayat, 2025). The regulation regarding mandatory wills for adopted children and adoptive parents as stipulated in Article 209 of the Compilation of Islamic Law shows that Islamic inheritance law in Indonesia has a progressive precedent to accommodate certain groups who are not entitled to inheritance rights according to pure *faraidh*, but are deemed worthy of economic protection based on considerations of justice and welfare. This precedent opens up an analogical argument (*qiyas*) that a similar principle can be extended to children born of *consanguineous* marriages in relation to their biological fathers, considering that both have no recognized lineage relationship, but both have a real social and biological connection to the testator.

The development of Religious Court jurisprudence in Indonesia following the birth of Constitutional Court Decision Number 46/PUU-VIII/2010 also shows a tendency for judges to be more open to considering *wajibah* wills as an instrument of justice for illegitimate children who have been scientifically proven to have a biological relationship with a man, even though the formal lineage relationship according to the Compilation of Islamic Law has not changed. This tendency, if developed consistently through formal policies, has the potential to provide a moderate legal solution to the issue of inheritance rights for children from *consanguineous* marriages, namely without changing the basic principle of lineage in *faraidh*, but still opening up space for economic justice through the *wajibah* will mechanism determined by a court decision.

In addition to the mandatory will instrument, the obligation to provide maintenance by the biological father to the child while the child still requires care is also an important complementary instrument, especially to meet the daily living needs, education costs, and health costs of the child. This instrument can be taken through general civil law based on proof of biological relationship, in line with the spirit of Constitutional Court Decision Number 46/PUU-VIII/2010, so that children from *consanguineous* marriages are not left without any economic protection at all, even though their inheritance rights according to pure *faraidh* remain closed to their biological father.

A comparison with the civil rights provisions for children born out of wedlock generally strengthens the argument for extending mandatory wills to children born out of *consanguineous* marriages. A study of the relevance of guardianship provisions for children born out of legal wedlock from a human rights perspective emphasizes that the state should provide a consistent legal framework for all children in similar civil positions, regardless of the cause of the relationship, whether due to ordinary adultery, sexual violence, or *consanguineous* marriage (Salma & al., 2024). The consistency of the legal framework is important to avoid the occurrence of multiple layers of discrimination, where children resulting

from *consanguineous* marriages have the potential to experience a heavier social stigma than children born out of wedlock in general, but actually receive equal or even weaker legal protection.

From a procedural perspective, the determination of a mandatory will for a child born of *consanguineous* marriage should ideally be achieved through a request for a determination to the Religious Court, by submitting evidence regarding the biological relationship between the child and the biological father, the *consanguineous* relationship between the two parents, and the economic conditions of the child and the mother as considerations for the judge in determining the amount of a mandatory will that is appropriate to be given (Ali et al., 2024). This mechanism is in line with the absolute authority of the Religious Court in examining and deciding inheritance cases for Muslims, as regulated in the laws and regulations concerning Religious Courts, so that it does not require the formation of a new institution, but rather sufficient through strengthening technical guidelines and consistent jurisprudence within the Religious Courts themselves.

The issue of inheritance rights for children born of *consanguineous* marriages ultimately boils down to a fundamental tension between formal-textual legal certainty and substantive justice oriented toward the welfare of the child (Glover-Thomas, 2025). From a legal certainty perspective, the provisions of Article 100 of the Compilation of Islamic Law have provided clear norms consistent with the views of the majority of Islamic jurisprudence schools, so there is no ambiguity regarding the boundaries of the lineage of children born of *consanguineous* marriages. However, from a substantive justice perspective, a fundamental question arises that continues to emerge in the discourse on reforming Islamic family law: is it fair for a child to lose all his civil rights, including inheritance rights, solely because of mistakes made by both parents?

This question becomes even more relevant when linked to the human rights principles guaranteed in the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2014 concerning Child Protection, and the Convention on the Rights of the Child, which expressly states that a child's birth status should not be a basis for discrimination in the fulfillment of their rights. This principle of non-discrimination should also inspire the interpretation and application of Islamic inheritance law in Indonesia, without negating the basic norms of *faraidh* that have been established doctrinally.

The reconstruction of Islamic inheritance law proposed in this article is not a reconstruction that changes the basic principle of lineage as a cause of inheritance, but rather a reconstruction at the level of policy and complementary mechanisms that strengthen the economic protection of children born of *consanguineous* marriages. There are at least three

directions of reconstruction that can be proposed. First, strengthening the legal basis of mandatory wills through legislation that explicitly expands the scope of mandatory will recipients to children born of *consanguineous* marriages in relation to the biological father, not just limited to adopted children as stipulated in Article 209 of the current Compilation of Islamic Law. Second, the development of technical guidelines for the Supreme Court and Religious Courts to ensure uniformity in deciding cases related to the civil rights of children born of *consanguineous* marriages, thereby preventing disparities in decisions between courts that would actually create new legal uncertainty. Third, strengthening the preventive function of the Office of Religious Affairs through stricter verification of the lineage relationships of prospective brides and grooms, so that *consanguineous* marriages can be prevented from the marriage registration stage, without reducing the state's obligation to continue protecting children if *consanguineous* marriages have already occurred and produced offspring.

The implementation of these three directions of reconstruction should be gradual and measured. Initially, strengthening can be achieved through the issuance of a Supreme Court Regulation or a Supreme Court Circular Letter providing technical guidelines for Religious Court judges in considering *wajibah* wills for children born of *consanguineous* marriages, without having to wait for formal changes to the Compilation of Islamic Law, which would require a lengthy legislative process. In the next stage, once the jurisprudential practice has demonstrated consistency and sufficient acceptance among the public and Islamic legal scholars, more permanent regulations can be considered through revisions to the Compilation of Islamic Law itself. This gradual approach aligns with the character of Islamic law, which consistently prioritizes prudence (*ih̥tiyāt*) in implementing reforms, so that the resulting changes truly reflect mature legal considerations, rather than merely reactive responses to specific cases.

In closing the discussion, it is important to emphasize that the issue of inheritance rights for children resulting from *consanguineous* marriages cannot be resolved solely through a textual approach to Article 100 of the Compilation of Islamic Law, but rather requires a holistic reading of the entire Islamic family law system, starting from the principle of prohibition of *consanguineous* marriage, the concept of lineage, the theory of legal certainty and legal protection, *maqāṣid al-syarī'ah*, to the development of constitutional jurisprudence. This holistic reading ultimately leads to a fundamental conclusion that the absence of formal inheritance rights for children resulting from *consanguineous* marriages towards their biological fathers is not a final and hopeless condition, but rather a starting point for the birth of broader legal and moral obligations for the state, family, and religious justice system to ensure that the child continues to receive a decent and dignified life.

Conclusion

Consanguineous marriage is strictly prohibited under both Islamic law and Indonesian positive law, as stipulated in Article 8 of Law No. 1 of 1974, as amended by Law No. 16 of 2019, and Articles 39 through 44 of the Compilation of Islamic Law, and thus such a marriage may be annulled by a court ruling; however, the legal status of a child born of such a marriage must be clearly distinguished from the legal status of the parents' marriage, as the child remains a legal entity entitled to state protection in accordance with the principle of non-retroactivity guaranteed by Article 28(2) of the Marriage Law. On the other hand, according to Article 100 of the Compilation of Islamic Law, a child born of a *consanguineous* marriage has a blood relationship only with the mother and her family; thus, legally, the child does not acquire inheritance rights from the biological father through the mechanism of *faraidh* a conclusion consistent with the majority view of the four schools of Islamic jurisprudence, particularly the Shafi'i school, which serves as the primary reference for the Compilation of Islamic Law, whereas Constitutional Court Decision No. 46/PUU-VIII/2010, although it expands the recognition of civil relationships between a child and a biologically proven father, addresses only the aspect of responsibility for fulfilling the child's needs without altering the concept of lineage or the fundamental structure of the *faraidh* inheritance system.

The author recommends that policymakers improve regulations regarding the legal protection and civil rights of children born of annulled marriages, particularly by expanding the scope of the mandatory bequest (*wasiat wajibah*) without altering the fundamental principles of Islamic inheritance law; that the Supreme Court and the Religious Courts develop more uniform guidelines for adjudicating similar cases; that the Office of Religious Affairs strengthen administrative verification of the kinship relationships of prospective spouses to prevent *consanguineous* marriages from the outset; and that academics conduct further research using a juridical-empirical approach through the study of court decisions and interviews with Religious Court judges

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