



Legal Protection and Rights of Children Born of Rape: Islamic and Indonesian Legal Perspectives

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Abstract

Children born as a result of rape occupy a complex legal position involving issues of lineage, guardianship, inheritance, identity, and legal protection. While Indonesian Child Protection Law guarantees equal rights for all children without discrimination, Islamic Family Law imposes specific legal consequences related to lineage (*nasab*) and family relations. Despite increasing scholarship on children born outside marriage, comparative studies examining the status and rights of children born of rape from both legal perspectives remain limited. This study aims to analyze and compare the legal status, rights, and protection mechanisms afforded to children born of rape under Islamic Family Law and Indonesian Child Protection Law. Employing a normative juridical approach, the research uses a comparative legal analysis based on the Qur'an, Hadith, the Compilation of Islamic Law, Law Number 35 of 2014, Constitutional Court Decision Number 46/PUU-VIII/2010, and relevant legal literature. The findings indicate that Islamic Family Law limits legal affiliation to the maternal lineage, affecting guardianship and inheritance rights, whereas Indonesian Child Protection Law adopts a rights-based approach emphasizing equality, identity rights, and broader legal protection. The study identifies a normative tension between lineage preservation and child-rights protection and proposes a *maqāṣid al-sharī'ah* oriented, child-centered framework to strengthen legal protection for children born of rape in Indonesia.

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Introduction

Sexual violence remains one of the most pressing social and legal challenges in Indonesia. In recent years, cases of rape have continued to increase and have generated multidimensional consequences that extend beyond the direct victims to children born as a result of such crimes. Rape is legally defined in Article 285 of the Indonesian Criminal Code as sexual intercourse committed through violence or threats against a woman who is not the perpetrator's spouse (Setyawati et al., 2020). The term rape itself derives from the Latin *rapere*, which implies seizure, coercion, or force, reflecting the coercive nature of the act (Adinda et al., 2025). Beyond constituting a criminal offense, rape produces profound social, psychological, and legal consequences that often persist across generations.

The urgency of this issue is reflected in national statistics. Data from the Ministry of Women Empowerment and Child Protection (KemenPPPA) indicate that sexual violence remains the most dominant form of violence against children in Indonesia. During 2024, reported cases of sexual violence against children reached 11,771 cases, surpassing physical and psychological violence (KemenPPPA, 2025). Similarly, the National Commission on Violence Against Women (Komnas Perempuan) documented 20,471 cases of sexual violence against women, representing 36.43% of all reported cases during the same year (Komnas Perempuan, 2025). These figures demonstrate that sexual violence has become a serious national concern affecting individuals regardless of age, social status, education, or occupation (Putri & Ramadi, 2023).

The consequences of rape extend beyond the victim and often affect children conceived as a result of the crime. Victims commonly experience severe psychological trauma, including fear, shame, anxiety, social withdrawal, and long-term emotional distress (Ekandari et al., 2001). In some cases, rape results in unwanted pregnancies that create additional social and legal dilemmas. Children born from rape frequently encounter neglect, stigma, discrimination, and challenges in accessing their fundamental rights because their existence is often associated with the traumatic event experienced by their mothers (Maghfiroh & Gusnita, 2024). Such conditions may even encourage abortion attempts motivated by social pressure, family honor, and societal stigma (Fatahaya & Agustanti, 2021).

From the perspective of positive law, Indonesia recognizes the rights of every child without discrimination. Through the Child Protection framework, particularly Law Number 35 of 2014 and its related regulations, the state guarantees the protection of children's fundamental rights, including identity, care, education, welfare, and protection from violence (Mujiati, 2020; Indriati, 2017). Consequently, children born as a result of rape are recognized as legal subjects entitled to equal protection and human rights regardless of the circumstances of their birth.

However, the issue becomes more complex when viewed through the lens of Islamic Family Law. Islamic jurisprudence classifies sexual relations outside a lawful marriage as *zina* (Syarifah, 2021). As a consequence, questions arise concerning the legal status (*nasab*), guardianship, maintenance, inheritance, and other family rights of children born from rape. Although Islamic law strongly emphasizes child welfare and parental responsibilities through the concept of *hadanah* (Nurfitrani, 2022), children born outside marriage are generally associated with specific legal consequences regarding lineage and inheritance rights (Rahman & Abidin, 2024). This situation creates a significant legal and ethical debate regarding how Islamic legal principles can be harmonized with contemporary child protection norms.

Previous studies have examined various aspects of children born outside marriage and children resulting from sexual violence. Maghfiroh and Gusnita (2024) focused on the handling of neglected

children born to rape victims. Simanjuntak (2022) examined the legal status, protection, and inheritance rights of children resulting from incestuous rape. Umar et al. (2023) analyzed the legal status of children born from incest from the perspectives of Islamic and positive law. Baihaki (2023) discussed the fulfillment of civil rights for children born outside marriage. Mutriadi (2022) explored inheritance rights of extramarital children, while Harlina (2014) examined lineage status across various forms of birth circumstances, including rape. Although these studies contribute significantly to the literature, they predominantly focus on specific legal issues such as lineage, inheritance, civil status, or child welfare. Few studies have comprehensively examined both the legal status and the broader spectrum of children's rights resulting from rape through a comparative analysis between Islamic Family Law and Indonesia's Child Protection Law.

This gap is particularly important because legal status and rights are inseparable dimensions in determining the protection afforded to children born from rape. Differences between Islamic Family Law and positive law may create legal ambiguities regarding lineage, guardianship, maintenance obligations, inheritance, identity rights, and state protection mechanisms. Consequently, a comprehensive comparative analysis is necessary to identify areas of convergence, divergence, and potential legal tensions between the two legal frameworks.

Therefore, this study aims to analyze the legal status and rights of children born of rape from the perspectives of Islamic Family Law and Indonesian Child Protection Law. The study specifically examines how both legal systems regulate lineage, guardianship, maintenance, inheritance, identity rights, and legal protection. The novelty of this research lies in its integrated comparative approach that simultaneously analyzes the status and rights of children born of rape within two different legal systems while identifying legal gaps and challenges in the implementation of child protection principles in Indonesia.

Methods

This study employed a normative juridical legal research design with a comparative legal approach. Normative legal research focuses on examining legal norms, principles, doctrines, and statutory regulations relevant to a particular legal issue (Soekanto, 2014). The comparative approach was adopted to analyze similarities, differences, and legal implications regarding the status and rights of children born of rape under Islamic Family Law and Indonesian Child Protection Law. This research was conducted through library research by examining primary and secondary legal materials. Primary legal materials consisted of the Qur'an, Hadith, the Compilation of Islamic Law (KHI), Law Number 35 of 2014 concerning Child Protection, relevant provisions of the Indonesian Criminal Code, Constitutional Court Decision Number 46/PUU-VIII/2010, and other relevant legal regulations. Secondary legal materials included scholarly books, journal articles, legal commentaries, and previous studies related to children's rights, lineage (*nasab*), guardianship, maintenance, inheritance, and child protection.

Data were collected through document analysis and legal literature review. The collected materials were analyzed qualitatively using a comparative legal analysis technique. The analysis involved three stages: (1) identifying legal norms governing the status and rights of children born of rape in Islamic Family Law and Indonesian positive law; (2) comparing the legal provisions, principles, and protections offered by both legal systems; and (3) evaluating areas of convergence, divergence, and normative gaps to assess the adequacy of legal protection provided to children born of rape. The findings were then interpreted systematically to formulate conclusions regarding the legal status, rights, and protection mechanisms available within both legal frameworks.

Results and Discussions

1. Legal Status and Rights of Children Born of Rape in Islamic Family Law

From the perspective of Islamic Family Law, every child is born in a state of purity (*fītrah*) and does not bear the sins committed by his or her parents (Sulistiani, 2021). Consequently, children born as a result of rape remain entitled to human dignity and fundamental rights that must be protected. This principle reflects the Islamic doctrine of individual accountability, whereby legal and moral responsibility is borne solely by the perpetrator of wrongdoing. Therefore, a child conceived through rape cannot be subjected to discrimination or deprivation of rights based on circumstances beyond his or her control. Such an understanding forms the ethical foundation for the protection of children within Islamic legal thought and underscores the importance of ensuring their welfare regardless of the conditions of their birth.

The protection afforded to children in Islam is closely related to the concept of *nasab* (lineage), which occupies a central position in Islamic jurisprudence. Lineage is not merely a biological connection but also a legal institution that determines rights and obligations within the family, including maintenance, guardianship, inheritance, and social identity. The preservation of lineage constitutes one of the essential objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the protection of progeny (*ḥifẓ al-nasl*) (Ferdiana et al., 2024). For this reason, Islamic law places significant emphasis on the legitimacy of family relationships and the legal recognition of parentage. The determination of lineage serves not only to protect individual rights but also to maintain social order and legal certainty within the broader community.

In classical Islamic jurisprudence, paternal lineage can only be established through a valid marriage. Children born outside a lawful marriage are generally categorized as children born out of wedlock (*walad al-zinā*) and consequently do not possess a legally recognized lineage relationship with their biological fathers (Seprina et al., 2026). This principle is reflected in Article 100 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*), which stipulates that children born outside marriage maintain lineage only with their mothers and maternal relatives (Kompilasi Hukum Islam, 2018). Accordingly, children born of rape are legally affiliated with their mothers rather than with the perpetrators. This legal status remains unchanged even when the perpetrator expresses willingness to assume responsibility or marry the victim after the crime has occurred, since rape constitutes a grave violation of Islamic legal and moral norms and remains subject to legal sanctions (Positive Law et al., 2014).

Although Islamic law limits paternal lineage in such circumstances, it does not negate the child's entitlement to protection and care. Islamic Family Law recognizes a broad spectrum of children's rights, including the right to life, identity, affection, education, maintenance, and protection from harm (Farahdiba et al., 2021; Sharia et al., 2023). These rights originate from the broader Islamic principle that children are a trust (*amanah*) entrusted by God and therefore deserve comprehensive care and protection. Consequently, the legal status of a child born of rape does not diminish the obligation of society, family members, and public authorities to ensure the fulfillment of the child's fundamental needs and welfare.

A central mechanism for safeguarding children's welfare in Islamic Family Law is the institution of *ḥadānah* (custody and child care). The concept of *ḥadānah* extends beyond physical custody and encompasses the child's physical, emotional, intellectual, and moral development (Muhajir, 2017). In cases involving children born of rape, the primary responsibility for child care generally falls upon the mother and her family because lineage is legally attributed to them. This arrangement seeks to

guarantee continuity of care and emotional support during the child's formative years. Nevertheless, Islamic legal principles emphasize that custody arrangements should always prioritize the best interests of the child, ensuring that the child receives adequate protection, education, and opportunities for healthy development.

More complex legal issues arise with regard to maintenance, guardianship, and inheritance. Contemporary Islamic legal discourse increasingly recognizes that biological fathers may bear moral and financial responsibilities toward children born outside marriage. This development is reflected in Fatwa of the Indonesian Council of Ulama (MUI) Number 11 of 2012, which authorizes the state to impose *ta'zir* sanctions on a man whose actions result in the birth of a child, requiring him to provide financial support and allocate assets through the mechanism of *wasiat wajibah* (mandatory bequest) after his death (Sanjaya et al., 2024). Nevertheless, in matters of guardianship, the biological father does not possess legal authority to act as the marriage guardian (*wali nikah*) of a daughter born of rape. Such authority is transferred to a judicial guardian (*wali hakim*) in accordance with the Compilation of Islamic Law (Indriyana et al., 2022). Similarly, the majority of Islamic jurists maintain that no reciprocal inheritance relationship exists between the child and the biological father due to the absence of legally recognized lineage. To mitigate potential disadvantages, some scholars advocate the use of *hibah* (inter vivos gifts) and *wasiat wajibah* as mechanisms to protect the child's economic interests (Bilalu et al., 2025).

The findings of this study indicate that Islamic Family Law fundamentally seeks to protect children born of rape through the principles of justice (*'adl*), compassion (*rahmah*), and public welfare (*maṣlahah*). However, the legal consequences arising from the absence of paternal lineage continue to affect guardianship and inheritance rights, potentially placing these children in a less favorable position than those born within a lawful marriage. Furthermore, social stigma associated with birth status often exacerbates the psychological and social challenges experienced by both the child and the mother. These findings reveal a tension between the classical doctrine of lineage and contemporary child-protection concerns. Therefore, a *maqāṣid al-sharī'ah*-oriented approach that prioritizes the protection of life (*ḥifẓ al-nafs*), dignity (*ḥifẓ al-'ird*), and lineage (*ḥifẓ al-nasl*) is essential to ensure that the application of Islamic law remains responsive to the best interests of children born as a result of rape while preserving the fundamental objectives of the *Sharī'ah*.

2. Legal Status and Rights of Children Born of Rape under Indonesian Child Protection Law

The enactment of Law Number 35 of 2014 concerning Child Protection reflects the Indonesian government's commitment to safeguarding children's rights as mandated by the 1945 Constitution of the Republic of Indonesia. The law was established to ensure children's rights to survival, growth, development, participation, and protection from violence and discrimination. Within this framework, children are recognized as rights-bearing individuals whose welfare constitutes a constitutional responsibility of the state. Consequently, child protection is not merely a family obligation but also a legal and social responsibility shared by parents, communities, and public institutions.

The concept of a child within Indonesian law is influenced by both international and national legal instruments. Internationally, the Minimum Age Convention No. 138 of 1973, the Convention on the Rights of the Child (1989), and UNICEF define children as individuals below the age of eighteen years. Similarly, Article 1 paragraph (1) of Law Number 35 of 2014 defines a child as every person under the age of eighteen, including children still in the womb (Republik Indonesia, 2014).

This definition demonstrates the legislator's intention to extend legal protection from the prenatal stage through childhood, thereby emphasizing the state's responsibility to protect vulnerable individuals regardless of their social or family background.

A fundamental principle of Indonesian Child Protection Law is the recognition that children's rights constitute an inseparable part of human rights. Article 1 paragraph (12) of Law Number 35 of 2014 stipulates that children's rights must be guaranteed, protected, and fulfilled by parents, families, communities, the state, central government, and regional governments. This principle is reinforced by Article 2 of the United Nations Convention on the Rights of the Child, which prohibits discrimination against children on any grounds, including circumstances related to the status, beliefs, or actions of their parents (Humas Kemenko PMK, 2019). From this perspective, children born of rape possess the same legal status and entitlement to protection as any other child and therefore cannot be subjected to discriminatory treatment because of the circumstances of their conception.

In relation to family rights, Indonesian Child Protection Law recognizes every child's right to identity, parental care, citizenship, and family relationships. Children are entitled to know their parents and, as far as possible, to be raised by them. They also have the right to obtain legal identity through birth registration and other civil documents. The government is further obligated to facilitate the fulfillment of these rights and to ensure that all policies affecting children are guided by the principle of the best interests of the child (Herwanto et al., 2026). This rights-based approach represents a significant shift from traditional legal frameworks that primarily emphasized legitimacy of birth toward a framework centered on the protection of children's welfare and dignity.

Unlike classical Islamic jurisprudence, Indonesian positive law has experienced important legal developments regarding the civil status of children born outside marriage. Article 43 paragraph (1) of Law Number 1 of 1974 initially provided that a child born outside marriage only had a civil relationship with the mother and the mother's family. However, Constitutional Court Decision Number 46/PUU-VIII/2010 expanded this interpretation by recognizing the possibility of a civil relationship between a child and the biological father when such a relationship can be proven through scientific evidence, including DNA testing, or other legally recognized forms of proof (Ibrahim, 2010). This landmark decision significantly strengthens the legal position of children born outside marriage, including children born of rape, particularly in matters concerning identity, maintenance, and civil rights.

From the perspective of Law Number 35 of 2014, children born of rape are entitled to a broad range of protections. These include protection from violence and discrimination as stipulated in Article 13 paragraph (1), the right to legal identity under Article 27 paragraph (1), the right to proper care and upbringing, and the right to medical, social, and psychological rehabilitation as provided under Article 59. These provisions demonstrate that Indonesian Child Protection Law adopts a child-centered approach that prioritizes the fulfillment of children's rights regardless of their family circumstances. Furthermore, the state is required to ensure access to health care, education, social services, and legal protection through institutions such as the Indonesian Child Protection Commission (KPAI), the Witness and Victim Protection Agency (LPSK), and the Ministry of Women's Empowerment and Child Protection (KPPPA).

The findings of this study indicate that Indonesian Child Protection Law provides a more inclusive framework for protecting children born of rape by emphasizing equality, non-discrimination, and the best interests of the child. Nevertheless, significant challenges remain in the implementation of these principles. Children born of rape frequently encounter social stigma, exclusion, and neglect, while victims of rape may experience psychological trauma that affects their ability to provide

adequate care for the child. In addition, Law Number 35 of 2014 does not explicitly regulate the specific legal status and protection mechanisms for children born of rape, resulting in legal uncertainty in certain cases. Therefore, stronger implementing regulations, greater public legal awareness, and enhanced coordination among child protection institutions are necessary to ensure that the rights guaranteed by law are effectively realized in practice. These findings suggest that although Indonesian positive law has made substantial progress in recognizing and protecting the rights of children born of rape, further legal and policy reforms are required to bridge the gap between normative protection and social reality.

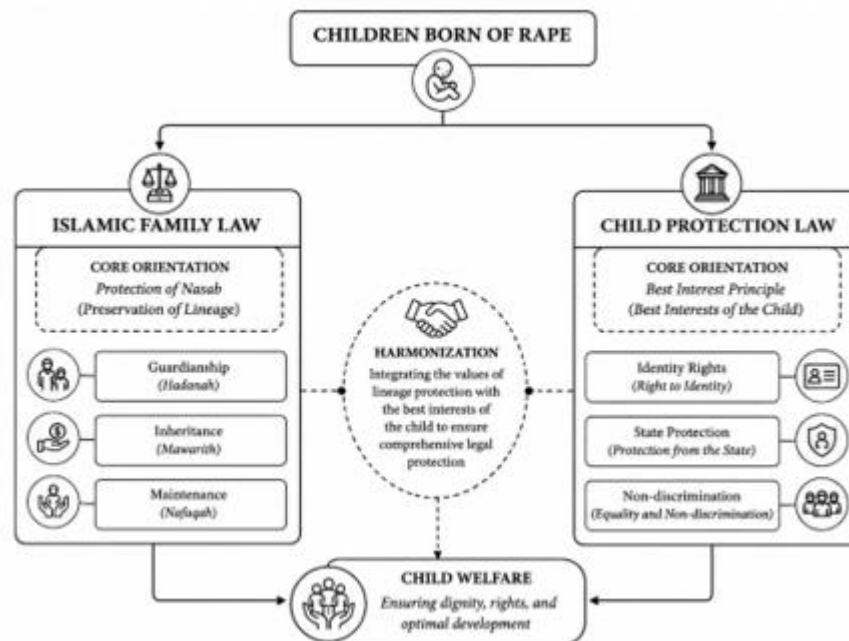


Figure 1. Conceptual Framework for the Harmonization of Islamic Family Law and Indonesian Child Protection Law in Protecting Children Born of Rape

Figure 1 illustrates the conceptual relationship between Islamic Family Law and Indonesian Child Protection Law in addressing the legal status and rights of children born of rape. The framework demonstrates that although both legal systems originate from different normative foundations, they ultimately pursue the same objective, namely the protection and welfare of the child. Islamic Family Law emphasizes the preservation of lineage (*hifz al-nasl*) through legal regulations concerning guardianship, inheritance, and maintenance, whereas Child Protection Law prioritizes the best interests of the child through the protection of identity rights, non-discrimination, and state-supported protection mechanisms. The harmonization of these approaches provides a conceptual basis for integrating lineage protection with contemporary child-rights principles, thereby promoting comprehensive child welfare and ensuring that children born of rape receive adequate legal protection and equal opportunities for development.

3. Comparative Analysis of the Legal Status and Rights of Children Born of Rape in Islamic Family Law and Indonesian Child Protection Law

The legal status and rights of children born of rape constitute a complex legal issue because they involve the intersection of religious norms, family law, human rights principles, and child protection policies. Both Islamic Family Law and Indonesian Child Protection Law seek to safeguard the welfare of children; however, they employ different legal foundations and approaches in determining the status and rights of children born as a result of rape. While Islamic Family Law primarily emphasizes the preservation of lineage (*hifz al-nash*) as one of the objectives of the *Shari'ah*, Indonesian Child Protection Law adopts a rights-based approach that prioritizes equality, non-discrimination, and the best interests of the child. These differing orientations significantly influence how each legal system regulates the legal status, family relations, and rights of children born of rape.

A fundamental point of convergence between the two legal systems is the recognition that children should not bear the consequences of crimes committed by their parents. Islamic law upholds the principle that every child is born in a state of purity (*fitrab*) and is not responsible for the actions of others (Putri et al., 2026). Similarly, Law Number 35 of 2014 guarantees the rights of every child without discrimination and recognizes children as holders of fundamental human rights that must be protected by the state, family, and society (Republik Indonesia, 2014). Consequently, both legal systems affirm the child's right to life, protection, care, education, and human dignity regardless of the circumstances of birth.

Despite this shared commitment to child protection, significant differences emerge concerning the legal status of children born of rape (Putri & Kusmayadi, 2025). In Islamic Family Law, lineage (*nasab*) plays a central role in determining family relationships and legal consequences. Children born outside a valid marriage are generally affiliated only with their mothers and maternal families, resulting in the absence of a legally recognized paternal lineage (Sarnadi et al., 2025). In contrast, Indonesian positive law has evolved toward broader recognition of children's civil rights. Through Constitutional Court Decision Number 46/PUU-VIII/2010, children born outside marriage may establish a civil relationship with their biological fathers if biological paternity can be proven through scientific or legal evidence (Ramadhan et al., 2026). This development reflects a shift from a lineage-centered approach toward a child-rights-oriented framework.

Differences are also evident in matters of guardianship and inheritance. Under Islamic Family Law, the absence of legally recognized paternal lineage prevents the biological father from acting as a marriage guardian (*wali nikah*) and generally excludes reciprocal inheritance rights between father and child. Consequently, guardianship authority is transferred to a judicial guardian (*wali hakim*), while economic protection may be provided through mechanisms such as *hibah* and *wasiat wajibah* (Anugerahayu & Setiawan, 2026). Conversely, Indonesian Child Protection Law does not focus on lineage as the primary determinant of legal protection (Jamaludin, 2021). Instead, it emphasizes the fulfillment of children's rights and recognizes the possibility of imposing legal responsibilities upon biological fathers, particularly regarding maintenance and civil obligations. This approach broadens the scope of legal protection available to children born of rape.

Another important distinction concerns the role of the state in protecting children's rights. Islamic Family Law generally regulates children's rights through family-based responsibilities and moral obligations derived from religious principles. Although contemporary Islamic legal thought increasingly recognizes the state's role in protecting vulnerable children, the primary responsibility remains within the family structure. In contrast, Law Number 35 of 2014 establishes a comprehensive

state-centered protection system involving governmental institutions, social services, legal assistance mechanisms, rehabilitation programs, and child protection agencies such as KPAI, LPSK, and KPPPA (Davies & Robson, 2016). This institutional framework provides broader legal and social support mechanisms for children born of rape and their mothers.

The comparative analysis further reveals a normative tension between the protection of lineage and the protection of children's rights. Islamic Family Law seeks to preserve the integrity of family lineage and the legal framework governing kinship relations, whereas Indonesian Child Protection Law prioritizes substantive justice and the best interests of the child. While the former aims to maintain legal certainty regarding descent and family relations, the latter seeks to eliminate discrimination and ensure equal access to rights and legal protection. This divergence demonstrates that the two legal systems operate from different normative priorities, even though both ultimately seek to promote child welfare.

The findings of this study indicate that neither legal system is inherently contradictory; rather, each addresses different dimensions of child protection. Islamic Family Law provides a strong ethical and moral foundation grounded in justice, compassion, and the objectives of the *Shari'ah*, whereas Indonesian Child Protection Law offers a more comprehensive legal framework for ensuring the practical fulfillment of children's rights. Therefore, a harmonization approach is necessary to bridge the gap between lineage-based legal doctrines and contemporary child-rights principles. Such an approach would enable the protection of children's dignity, identity, welfare, and legal rights without disregarding the fundamental values underlying Islamic Family Law. In this regard, the integration of *maqāṣid al-shari'ah* with modern child protection principles may provide a more balanced framework for addressing the legal status and rights of children born of rape in Indonesia.

Table 1. Comparative Analysis of the Legal Status and Rights of Children Born of Rape in Islamic Family Law and Indonesian Child Protection Law

Aspect	Islamic Family Law	Child Protection Law
Legal Status	Affiliated with mother	Recognized as full legal subject
Lineage	Maternal lineage only	Civil relationship may extend to biological father
Identity Rights	Through maternal lineage	Guaranteed by the state
Maintenance	Primarily maternal responsibility	May involve biological father
Guardianship	Judicial guardian (<i>wali hakim</i>)	Not specifically regulated
Inheritance	No inheritance from biological father	Civil rights may be recognized
Non-discrimination	Normative principle	Explicit legal guarantee
State Protection	Limited institutional framework	Comprehensive institutional protection

Table 1 demonstrates that both Islamic Family Law and Indonesian Child Protection Law recognize children born of rape as rights-bearing individuals who must be protected from discrimination. Both legal systems affirm the child's right to life, care, education, and protection despite differences in the legal treatment of lineage. This convergence reflects a shared commitment to safeguarding child welfare and preventing children from bearing legal or social consequences arising from the criminal acts of their parents.

4. Legal Harmonization Challenges and Child Protection Implications

Although Islamic Family Law and Indonesian Child Protection Law share a common objective of protecting children, the comparative analysis reveals several challenges in harmonizing these legal frameworks when addressing the status and rights of children born of rape. These challenges emerge from differing normative foundations, legal constructions of family relations, and practical mechanisms for implementing child protection. While Islamic Family Law is primarily concerned with preserving lineage (*ḥifẓ al-nasl*) and maintaining legal certainty regarding kinship relations, Indonesian Child Protection Law emphasizes equality, non-discrimination, and the best interests of the child as the primary basis for legal protection. As Putri et al. (2026) argue, contemporary family law increasingly requires a balance between religious legal doctrines and child-centered legal protection to ensure that children's welfare remains the primary consideration. As a result, tensions may arise when legal doctrines concerning lineage intersect with contemporary child-rights principles.

One of the most significant areas of tension concerns the recognition of paternal affiliation. Under Islamic Family Law, children born outside a valid marriage generally establish lineage only through their mothers, resulting in legal consequences regarding guardianship and inheritance (Rahman et al., 2024; Sarmadi et al., 2025). Conversely, Indonesian positive law, particularly following Constitutional Court Decision Number 46/PUU-VIII/2010, recognizes the possibility of establishing a civil relationship between the child and the biological father through scientific evidence (Ibrahim, 2010; Ramadhan et al., 2026). This difference illustrates a broader normative divergence between lineage-based legal protection and rights-based legal protection. While the former seeks to preserve the integrity of family lineage, the latter prioritizes the fulfillment of children's civil rights regardless of the circumstances of birth. Such differences may generate legal uncertainty when cases require simultaneous consideration of religious norms and state legal obligations.

Beyond doctrinal differences, the implementation of legal protection for children born of rape faces considerable social and institutional challenges. In practice, these children often experience stigma, discrimination, and social exclusion because their birth is associated with sexual violence and social dishonor (Maghfiroh & Gusnita, 2024). Such stigma may affect access to education, social acceptance, psychological well-being, and even the fulfillment of civil rights. Furthermore, mothers who become pregnant as a result of rape frequently suffer severe psychological trauma, which may influence their capacity to provide adequate care and support for the child (Ekandari et al., 2001; Putri & Ramadi, 2023). Consequently, legal protection must extend beyond formal recognition of rights and include psychological assistance, social rehabilitation, and long-term welfare support for both the child and the mother.

Another challenge concerns the gap between normative protection and practical enforcement. Indonesian Child Protection Law provides a comprehensive institutional framework involving governmental agencies and child-protection bodies. Nevertheless, the effectiveness of such protections often depends on institutional coordination, legal awareness, and accessibility of support services (Jamaludin, 2021; Herwanto et al., 2026). Children born of rape may encounter difficulties in obtaining identity documents, accessing legal remedies, or receiving adequate social assistance. Therefore, legal protection requires not only substantive legal recognition but also effective implementation mechanisms capable of ensuring that children's rights are realized in practice.

From a broader perspective, the findings suggest that the apparent conflict between Islamic Family Law and Child Protection Law should not be understood as an irreconcilable contradiction. Contemporary Islamic legal scholarship increasingly argues that the objectives of Islamic law (*maqāṣid*

al-sharī'ah) provide a normative basis for strengthening child protection. The principles of protecting life (*ḥifẓ al-nafs*), dignity (*ḥifẓ al-irḍ*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) collectively support the welfare of children and can be interpreted in a manner consistent with modern child-rights standards (Sanjaya et al., 2024). In this regard, the protection of children born of rape should not be viewed solely through the lens of lineage preservation but also through the broader objectives of safeguarding human dignity, welfare, and social justice. This interpretation is consistent with the argument of Putri et al. (2026) that Islamic family law can accommodate child-centered protection without abandoning its normative foundations. A *maqāṣid*-oriented approach enables Islamic law to accommodate substantive justice and vulnerable groups without abandoning its normative foundations (Husni et al., 2026).

This finding extends the argument of Pirgo and Yul (2026), who emphasize the importance of harmonizing religious validity and administrative recognition in determining child lineage. While their study focuses on lineage determination in cases of legally complex marriages, the present study demonstrates that similar harmonization challenges arise in the protection of children born of rape. In both contexts, legal certainty, child identity, and the protection of fundamental rights emerge as central considerations that require an integrated approach between Islamic legal principles and state law. Accordingly, a harmonized legal framework should prioritize the best interests of the child while remaining consistent with the ethical foundations of Islamic law. Such an approach would allow legal protection to extend beyond questions of lineage and civil status toward a more comprehensive understanding of child welfare. Strengthening implementing regulations, improving institutional cooperation, expanding access to psychological and social services, and promoting public awareness are essential measures for ensuring that children born of rape receive equal protection and opportunities for development. Ultimately, harmonization between Islamic Family Law and Child Protection Law can contribute to a more inclusive legal system that protects children's dignity without undermining the fundamental objectives of the *Sharī'ah* (Putri et al., 2026; Sanjaya et al., 2024).

Conclusion

This study demonstrates that both Islamic Family Law and Indonesian Child Protection Law recognize children born of rape as rights-bearing individuals who are entitled to legal protection, care, and human dignity. However, the two legal systems differ in their normative foundations and legal approaches. Islamic Family Law emphasizes the preservation of lineage (*ḥifẓ al-nasl*) as a fundamental objective of the *Sharī'ah*, resulting in the legal affiliation of children born of rape with their mothers and maternal families. Consequently, legal consequences arise in relation to guardianship, inheritance, and civil relations with biological fathers. In contrast, Indonesian Child Protection Law adopts a rights-based approach that prioritizes equality, non-discrimination, and the best interests of the child. Through Law Number 35 of 2014 and Constitutional Court Decision Number 46/PUU-VIII/2010, Indonesian positive law provides broader legal protection by recognizing children's rights to identity, care, rehabilitation, and, under certain circumstances, civil relations with their biological fathers. The comparative analysis reveals that the principal challenge lies not in the existence of differences between the two legal systems but in the absence of an integrated framework capable of harmonizing lineage protection with child-rights protection. While Islamic Family Law provides a strong ethical and moral foundation based on justice, compassion, and public welfare, Indonesian Child Protection Law offers a more comprehensive institutional framework for ensuring the practical fulfillment of children's rights. Therefore, greater harmonization between Islamic legal principles and child protection policies is necessary to ensure that children born of rape receive adequate legal

protection without compromising the fundamental objectives of Islamic law. Such harmonization should be accompanied by clearer implementing regulations, strengthened institutional support, and broader public awareness to eliminate stigma and discrimination against children born as a result of rape.

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