

Reconstructing Maintenance Rights for Children Born of Rape: Beyond Nasab Doctrine toward State Responsibility

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Abstract

Children born of rape face persistent uncertainty regarding long-term maintenance because Indonesian law separates child protection, criminal restitution, and family-based maintenance. While positive law emphasizes restitution and compensation, Islamic family law traditionally associates paternal maintenance with legally recognized nasab, creating a protection gap when paternal lineage cannot be established or enforced. This study examines the limitations of the nasab-based maintenance doctrine and formulates a maqāṣid-based model of responsibility for children born of rape. It employs doctrinal legal research using statutory, conceptual, comparative, and maqāṣid al-sharī'ah approaches. Legal materials include Indonesian legislation, court decisions, classical Islamic jurisprudence, and scholarly studies on children's rights, lineage, and victim protection. The findings demonstrate that existing restitution mechanisms do not ensure continuous maintenance, while the dependence of maintenance on nasab may leave affected children without an effective responsible party. A purposive interpretation of ḥifẓ al-nafs, ḥifẓ al-nasl, and ḥifẓ al-māl supports treating maintenance as an independent child-protection entitlement rather than merely a consequence of legal lineage. This study proposes a layered responsibility model in which the perpetrator or proven biological father bears primary liability, while the state serves as a subsidiary guarantor when private responsibility cannot be identified or enforced. The model requires a state-managed child maintenance guarantee, periodic judicial assessment, and a right of recourse against the perpetrator. This reconstruction aligns

Islamic legal reasoning with the best interests of the child and provides a sustainable framework for protecting children born of rape.

Keywords: Nasab Doctrine; Maintenance Rights; Children Born of Rape; Maqāṣid-Based Reconstruction; State Responsibility

Introduction

Children born of rape occupy a particularly vulnerable position within both child-protection law and Islamic family law. In addition to experiencing the social stigma associated with the circumstances of their birth, they may encounter uncertainty regarding identity, family relations, and long-term financial support.¹ Although Indonesian law recognizes every child's right to survival, development, and protection without discrimination, the practical realization of these rights remains problematic when the biological father cannot be identified, when paternity cannot be legally established, or when a convicted perpetrator is unable or unwilling to provide support.² Restitution awarded through criminal proceedings may compensate for particular losses resulting from sexual violence, but it does not necessarily establish continuous maintenance until the child reaches adulthood. Consequently, the children concerned may remain dependent on their mothers or maternal families, even though their circumstances originated from a criminal act for which they bear no responsibility.³

The problem arises from the fragmentation of the legal foundations governing children's maintenance. Indonesian child-protection law imposes obligations upon parents and the state, while legislation concerning sexual violence provides mechanisms of restitution and compensation for victims.⁴ Meanwhile, Islamic family law generally treats maintenance as a legal consequence of marriage, kinship, and recognized paternal lineage or nasab.⁵ This doctrinal

¹ Robbie Gilligan, Hoa Thi Nguyen, and Nga Hanh Do, "Life beyond the Care Center: The Lived Experience of Care Leavers in Vietnam," *Children and Youth Services Review* 178 (November 1, 2025): 108542, <https://doi.org/10.1016/J.CHILDYOUTH.2025.108542>.

² Maemunah et al., "Legal Protection System for Children Left Behind by Indonesian Migrant Workers: A Multilevel SCII Strategy Approach," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (December 28, 2025): 580–601, <https://doi.org/10.29303/IUS.V13I3.1845>.

³ Shona Minson, "Direct Harms and Social Consequences: An Analysis of the Impact of Maternal Imprisonment on Dependent Children in England and Wales," *Criminology and Criminal Justice* 19, no. 5 (November 1, 2019): 519–36, <https://doi.org/10.1177/1748895818794790;WEBSITE=WEBSITE:SAGE;WGROU:STRIN G:PUBLICATION>.

⁴ Niken Sylvia Puspitasari et al., "Tinjauan Yuridis Normatif Perlindungan Anak Dalam Perspektif Konsep Hadhanah Dan Undang-Undang Nomor 35 Tahun 2014," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 5, no. 2 (2024): 309–21, <https://doi.org/10.36701/bustanul.v5i2.1377.PENDAHULUAN>.

⁵ Mawloud Mohadi, "Normative Islamic Conceptualizations of Families and Kinship through Maqasid Perspectives: A Comprehensive Literature Study," *Malaysian Journal of Syariah and*

structure creates a protection gap when a child is born outside a valid marriage as a result of rape and paternal lineage cannot be established according to conventional rules of Islamic law. Although Constitutional Court Decision No. 46/PUU-VIII/2010 recognizes the possibility of civil relations between a child born outside marriage and a biological father proven through science, technology, or other legally admissible evidence, such recognition does not automatically ensure that maintenance will be effectively provided. Legal recognition, proof of biological paternity, criminal restitution, and the actual enforcement of long-term maintenance therefore remain separate legal processes.⁶

From the perspective of Indonesian positive law, child protection is constitutionally guaranteed as part of the state's obligation to uphold human dignity and social justice.⁷ The Child Protection Law and related legal instruments provide a general framework for protecting children's rights, including the right to survival, development, and welfare.⁸ Nevertheless, these protections become normatively fragmented when applied to children born from sexual violence, particularly concerning the continuity of financial support and legal responsibility. Although existing mechanisms such as restitution and compensation focus primarily on victim recovery, they do not clearly establish a sustainable framework for securing child maintenance rights as an independent legal entitlement.

The issue becomes more complex when examined through the lens of Islamic family law. Classical Islamic legal doctrine generally links maintenance obligations (*nafaqah*) to legally recognized kinship relationships (*nasab*), in which paternal obligations arise from legitimate lineage.⁹ This framework presents doctrinal difficulties when applied to children born outside lawful marriage, especially in cases involving sexual violence. While the classical approach was developed within a distinct socio-legal context aimed at preserving lineage integrity, its rigid application in contemporary contexts may create protection

Law 11 (2023),
<https://heinonline.org/HOL/Page?handle=hein.journals/mlsnjl11&id=298&div=&collection=>.

⁶ Ulrike Babusiaux, "Claim to Compensation between the Legal and the Genetic Father: A Testcase for the Dogmatics of Unjust Enrichment," *European Review of Private Law* 31, no. 6 (December 1, 2023), <https://doi.org/10.54648/ERPL2023065>.

⁷ Sekaring Dyah Ika Wulan et al., "Justice for Child Offenders: A Humanistic Legal Approach," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (November 20, 2025): 749–79, <https://doi.org/10.53955/JHCLS.V5I3.773>.

⁸ M. Rezaul Islam, "Child Protection in South Asia: Assessing the Current Status, Progress, and Obstacles of the Legal Framework," *SN Social Sciences* 2025 5:4 5, no. 4 (April 2, 2025): 45–, <https://doi.org/10.1007/S43545-025-01082-0>.

⁹ Zurifah Nurdin, Suryani, and Agustien, "From Classical Kafā'ah to Contemporary Economic Justice: A Hadith-Based Legal Reassessment in Islamic Family Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (November 23, 2025): 809–30, <https://doi.org/10.29240/JHI.V10I2.12880>.

deficits for children who bear no moral or legal responsibility for the circumstances of their birth.¹⁰

Contemporary Islamic legal thought, however, provides interpretive space for a more substantive approach.¹¹ The framework of *maqāṣid al-sharīʿah*, particularly the protection of life (*ḥifẓ al-naḥs*), lineage (*ḥifẓ al-nasl*), and human welfare, offers a normative basis for rethinking maintenance obligations beyond formal lineage constructs.¹² Rather than treating *nasab* as the sole determinant of legal entitlement, a *maqāṣid*-based approach enables legal interpretation that prioritizes child protection, justice, and the best interests of the child as central objectives of the law.¹³

Existing scholarship relevant to this issue can be classified into three principal strands. The first examines the legal status and civil rights of children born outside marriage, particularly following Constitutional Court Decision No. 46/PUU-VIII/2010. These studies predominantly discuss biological paternity, inheritance, guardianship, and the legal consequences of relationships with biological fathers.¹⁴ The second strand focuses on restitution, compensation, and victim recovery under Indonesian criminal and child-protection law. It generally evaluates the accessibility and effectiveness of remedies for victims of sexual violence but rarely distinguishes between compensation for the immediate victim and long-term maintenance for a child born as a consequence of the offence. The third applies *maqāṣid al-sharīʿah* and the best-interests principle to children's rights, emphasizing the protection of life, lineage, dignity, and property. While these bodies of scholarship provide important foundations, they largely examine *nasab*, criminal restitution, and child protection as separate legal questions.

What remains insufficiently examined is how the limitations of *nasab*-based maintenance, the weaknesses of criminal restitution, and the state's constitutional responsibility can be integrated into a continuous maintenance framework for children born of rape. Previous studies have not adequately explained whether

¹⁰ Ahmad Zaini et al., "Adaptation of Islamic Law in the Dutch Colonial Era: Fiqh Al-Aqalliyāt, Maqasid Al-Shariah, and Its Legacy for Modern Indonesian Islamic Legal Institutions," *Jurnal Ilmiah Al-Syir'ah* 23, no. 2 (December 23, 2025): 265–78, <https://doi.org/10.30984/JIS.V23I2.2758>.

¹¹ Ummu Aemanah et al., "Rethinking Maqāṣid Al-Sharīʿa in Marital Relations: A Systems Approach to Female Migrant Worker Families," *Jurnal Ilmiah Mizani* 13, no. 1 (January 1, 2026): 62–78, <https://doi.org/10.29300/MZN.V13I1.8938>.

¹² Muhamad Jazil Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqāṣid Al-Sharīʿah through Marriage Isbat Applications by the Second Generation in Pasuruan," *El-Mashlahah* 15, no. 1 (2025): 125–48, <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.

¹³ Aslati et al., "Utilizing Science and Maqāṣid Al-Sharīʿah in Resolving Contemporary Issues of Islamic Family Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (March 14, 2024): 17–36, <https://doi.org/10.24090/MNH.V18I1.10571>.

¹⁴ Wenting You, "Parent-Child Relationship in the Civil Code of China," *Laws* 2023, Vol. 12, Page 1 12, no. 1 (December 22, 2022): 1, <https://doi.org/10.3390/LAWS12010001>.

maintenance should remain dependent upon legally recognized paternal lineage or may instead be reconstructed as an autonomous right arising from the child's need for protection. Nor have they developed an operational framework that determines the respective responsibilities of the perpetrator, biological father, maternal family, and state when private maintenance cannot be enforced. This study addresses that gap by moving the legal basis of maintenance beyond an exclusively lineage-derived obligation. Its principal contribution is a layered responsibility model that treats maintenance as an independent child-protection entitlement, places primary liability upon the perpetrator or proven biological father, and assigns the state a subsidiary responsibility when the primary obligation cannot be identified or enforced.

The research adopts several approaches. First, the statutory approach is applied to examine relevant Indonesian legal instruments, including constitutional provisions, child protection legislation, family law regulations, and laws concerning sexual violence. Second, the conceptual approach is used to analyze legal concepts related to child maintenance rights, legal responsibility, victim protection, and state obligations. Third, the comparative approach is employed to assess the relationship between classical Islamic legal doctrines on *nafaqah* and contemporary legal protection frameworks. Fourth, the *maqāṣid al-sharī'ah* approach is utilized as an analytical framework to evaluate whether existing legal doctrines adequately reflect the broader objectives of Islamic law, particularly the protection of life, lineage, and child welfare.

The legal materials used in this study consist of primary and secondary sources. Primary legal materials include statutory regulations, relevant judicial decisions, and authoritative Islamic legal sources concerning maintenance obligations and child status. Secondary materials comprise scholarly books, peer-reviewed journal articles, and contemporary academic discussions relevant to Islamic family law, child protection, and victim-oriented legal reform. Data were analyzed qualitatively through legal interpretation, doctrinal analysis, and normative reasoning to identify gaps in the existing legal framework and to formulate a more protective legal approach toward the fulfillment of maintenance rights for children born from sexual violence.

Against this background, this article examines two interrelated questions. First, why do Indonesian law and the classical nasab-based maintenance doctrine fail to provide sustainable maintenance protection for children born of rape? Second, how can *maqāṣid al-sharī'ah* be employed to reconstruct a layered model of responsibility involving the perpetrator, biological father, and state? This article argues that a child's right to maintenance should not be treated exclusively as a derivative consequence of legally recognized nasab. Rather, it should be understood as an independent entitlement grounded in the best interests of the child and the protection of life, lineage, and property under *ḥifẓ al-nafs*, *ḥifẓ al-*

nasl, and ḥifẓ al-māl. Under the proposed model, the perpetrator or legally proven biological father remains the primary obligor, whereas the state serves as a subsidiary guarantor when private responsibility cannot be enforced. The analysis first identifies the fragmentation of maintenance protection under Indonesian law, then evaluates the limitations of nasab-based doctrine, and finally formulates a maqāṣid-based model of layered responsibility.

Discussion

Legal Protection Framework for Children Born from Sexual Rape in Indonesian Law

The protection of children's rights in Indonesia is constitutionally grounded in the broader framework of human dignity, equality before the law, and the state's obligation to ensure social justice.¹⁵ As a constitutional democracy founded upon the principles of welfare and legal protection, Indonesia recognizes children as rights-bearing subjects entitled to special protection due to their inherent vulnerability.¹⁶ This constitutional commitment becomes particularly significant when addressing children born as a result of sexual violence, whose legal position is often shaped not only by their status as children but also by the complex legal consequences arising from the circumstances of their birth.¹⁷ In such cases, the issue extends beyond general child welfare and enters the domain of legal identity, civil entitlement, and sustainable socioeconomic protection.¹⁸

At the constitutional level, the Indonesian legal system affirms the protection of children as part of fundamental human rights obligations.¹⁹ The Constitution recognizes every child's right to survival, growth, development, and

¹⁵ Rifdah Alifiyah and Isa Anshori, "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households," *El-Ushab: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 348–61, <https://doi.org/10.22373/UJHK.V6I2.19153>.

¹⁶ Bonny Ibhawoh, "For Their Own Ends: Universalist Idealism and Political Pragmatism in Late Colonial Human Rights Reforms," *Itinerario* 49, no. 3 (2025): 548–64, <https://doi.org/10.1017/S016511532510017X>.

¹⁷ Ciara Lavery and Dieneke De Vos, "Reproductive Violence as a Category of Analysis: Disentangling the Relationship between 'the Sexual' and 'the Reproductive' in Transitional Justice," *International Journal of Transitional Justice* 15, no. 3 (January 3, 2022): 616–35, <https://doi.org/10.1093/IJTJ/IJAB022>.

¹⁸ Kelley Fong and Nora McCarthy, "Child Protective Services as Gateway and Gatekeeper in the New Welfare State," *RSF* 12, no. 1 (2026): 122–43, <https://doi.org/10.7758/RSF.2026.12.1.05>.

¹⁹ Alfitri et al., "Constitutionalizing Islamic Law in Indonesia: Sharia Courts & the Legitimate Child Clause," *AHKAM: Jurnal Ilmu Syariah* 25, no. 2 (December 28, 2025): 395–414, <https://doi.org/10.15408/AJIS.V25I2.41896>.

protection from violence and discrimination.²⁰ These guarantees establish an important normative foundation that places child protection within the sphere of state responsibility rather than merely private familial obligation. From this perspective, children born from sexual violence should not be treated differently from other children in accessing legal protection, particularly where their welfare and development are concerned. However, while constitutional principles provide broad protection, their implementation in specific legal contexts remains uneven, especially concerning the continuity of economic support for children whose paternal responsibility is uncertain or unenforceable.

The primary statutory framework governing child protection in Indonesia is Law Number 35 of 2014 concerning Child Protection, which emphasizes the principle of the best interests of the child and affirms the rights of children to life, development, care, and protection from discrimination.²¹ This legal instrument adopts a child-centered rights framework consistent with international child protection standards. Within this framework, the state, family, and society are collectively positioned as responsible actors in ensuring child welfare.²² Such a formulation appears normatively progressive, as it recognizes that child protection cannot be reduced solely to parental obligations.

Nevertheless, a closer examination reveals that the Child Protection Law primarily articulates general normative guarantees rather than specific mechanisms for the enforcement of long-term maintenance rights in exceptional legal circumstances.²³ While the law recognizes children's rights to care and welfare, it does not explicitly regulate how maintenance should be secured when conventional family-based responsibility structures collapse, particularly in cases where children are born as a result of sexual violence. This creates a practical legal gap: the right to welfare is recognized in principle, but the mechanism for ensuring continuous economic support remains unclear.

This problem becomes more visible when considered alongside the legal framework governing sexual violence. The enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes represents a significant development in

²⁰ Anak Agung et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Putu Aras Samsithanrati and I Gede Agus Kurniawan Srivijaya Law Review* 6 (2022), <https://doi.org/10.28946/slrev.Vol6.Iss2>.

²¹ Yanuar Farida Wismayanti et al., "Child Sexual Abuse in Indonesia: A Systematic Review of Literature, Law and Policy," *Child Abuse & Neglect* 95 (September 1, 2019): 104034, <https://doi.org/10.1016/J.CHIABU.2019.104034>.

²² Philip S. Goldman et al., "Institutionalisation and Deinstitutionalisation of Children 2: Policy and Practice Recommendations for Global, National, and Local Actors," *The Lancet Child and Adolescent Health* 4, no. 8 (2020): 606–33, [https://doi.org/10.1016/S2352-4642\(20\)30060-2](https://doi.org/10.1016/S2352-4642(20)30060-2).

²³ Dmitriy Galushko and Yun Zhao, "Constitutionalization on a Spectrum: Balancing Sovereignty and Integration in Eurasia (EU, EAEU, and ASEAN Compared)," *Journal of Eurasian Studies*, 2026, <https://doi.org/10.1177/18793665261447303>.

Indonesian victim protection law.²⁴ The legislation marks a paradigm shift from a purely punitive model toward a victim-oriented legal framework emphasizing protection, recovery, restitution, and compensation. It acknowledges the multidimensional harms suffered by victims of sexual violence and introduces legal instruments intended to facilitate both material and psychological recovery.

Within this framework, restitution and compensation constitute important innovations. Restitution places financial responsibility on perpetrators to compensate victims for losses arising from criminal conduct, while state compensation may function as a substitute where restitution cannot be effectively realized.²⁵ These mechanisms reflect a growing recognition that criminal justice should not focus exclusively on punishing offenders but must also address victim recovery.

However, despite this normative advancement, significant limitations remain regarding children born from sexual violence. The central orientation of restitution and compensation mechanisms is victim recovery, particularly concerning direct victims of criminal conduct.²⁶ The long-term maintenance needs of children born from such acts remain only indirectly addressed. In practical terms, while compensation may assist immediate recovery, it does not establish a structured legal mechanism ensuring sustained fulfillment of maintenance rights until the child reaches adulthood.

This distinction is crucial. Child maintenance is not merely an extension of victim recovery; it constitutes a continuing socioeconomic entitlement linked to the child's survival, development, education, healthcare, and overall welfare. A one-time compensation framework cannot adequately substitute for sustained maintenance obligations. Consequently, while the Sexual Violence Law strengthens victim protection, it does not fully resolve the specific legal problem of continuous economic protection for children born from sexual violence.

The issue becomes even more complex when examined through the framework of family law and civil legal responsibility. Indonesian family law traditionally associates parental obligations with legally recognized family

²⁴ Topo Santoso and Hariman Satria, "Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 1 (2023): 59–79, <https://doi.org/10.22304/pjih.v10n1.a4>.

²⁵ Mahrus Ali et al., "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2069910>.

²⁶ Masahiro Suzuki, "Victim Recovery in Restorative Justice: A Theoretical Framework," *Criminal Justice and Behavior* 50, no. 12 (2023): 1893–1908, <https://doi.org/10.1177/00938548231206828>.

relationships, particularly marriage and filiation.²⁷ Under conventional legal construction, maintenance obligations primarily arise from established parental status and recognized civil relationships. This creates difficulties in cases where the child's paternal relationship is legally disputed, uncertain, or socially contested.

One important legal development in this area is the Constitutional Court Decision Number 46/PUU-VIII/2010, which significantly altered the legal understanding of children born outside marriage.²⁸ The decision expanded civil legal recognition by allowing children born outside lawful marriage to establish civil relationships with their biological fathers through scientific evidence and other lawful proof. This represented a major shift away from rigid exclusionary approaches and reflected broader constitutional commitments to equality and child protection.

At first glance, this decision appears highly relevant to the issue of children born from sexual violence, as it opens legal possibilities for establishing paternal responsibility beyond formal marriage. However, practical and doctrinal limitations remain. First, establishing biological paternity may be procedurally difficult, especially in cases involving unidentified perpetrators, absent offenders, or situations where criminal prosecution fails to produce effective legal enforcement. Second, even where paternity is established, actual enforcement of maintenance obligations may remain weak due to economic incapacity, institutional barriers, or inadequate implementation mechanisms. While the Constitutional Court's decision expands legal recognition, it does not automatically guarantee substantive fulfillment of maintenance rights. Legal recognition and practical enforcement remain distinct issues.²⁹ A child may be legally acknowledged yet remain economically unprotected.

This reveals a deeper structural issue within Indonesian legal protection: the system largely assumes that maintenance protection can be secured through identifiable private legal responsibility, typically that of the father. Where this assumption fails, the legal architecture becomes fragmented. Child protection law recognizes welfare rights, sexual violence law recognizes victim recovery, and constitutional doctrine recognizes equality, yet no fully integrated legal framework

²⁷ Wawan Hermawan et al., "DNA Testing and Nafyu Al-Nasab : A Comparative Study of Ali Jum ' Ah ' s Fatwa and Its Socio-Legal Implications in Global Jurisdictions" 8, no. 2 (2026): 243–58, <https://doi.org/10.15575/kh.v8i2>.

²⁸ Titik Triwulan Tutik et al., "Inheritance Rights of Children Born Outside Marriage in Mixed Marriages: Normative Conflicts and Harmonization under Indonesian Law," *El-Mashlahah* 16, no. 1 (2026): 231–58, <https://doi.org/10.23971/el-mashlahah.v16i1.10485>.

²⁹ Alamsyah et al., "Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority and Peaceful Settlement in Indonesian Religious Courts," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 671–99, <https://doi.org/10.29240/jhi.v10i2.12755>.

ensures sustainable maintenance protection for children born from sexual violence.³⁰

From a legal policy perspective, this gap raises fundamental questions regarding the scope of state responsibility.³¹ If child welfare constitutes a constitutional obligation and child protection is recognized as a collective responsibility involving the state, then reliance solely on private paternal enforcement appears insufficient in exceptional cases involving sexual violence.³² The vulnerability of children born under such circumstances demands a broader conception of legal protection that extends beyond conventional civil responsibility structures.³³

The existing Indonesian legal framework therefore reflects both progress and limitation.³⁴ On one hand, important normative developments have strengthened constitutional child protection, victim recovery mechanisms, and civil legal recognition.³⁵ On the other hand, these instruments remain insufficiently integrated to address the sustained maintenance needs of children born from sexual violence.³⁶ The result is a legal protection gap in which formal rights exist, yet practical mechanisms for long-term economic protection remain uncertain.

This limitation provides the foundation for broader doctrinal inquiry.³⁷ If Indonesian positive law remains structurally fragmented in addressing maintenance rights under exceptional circumstances, the question then arises

³⁰ Meha Bhushan, *Child Protection in India: Examining Institutional Governance and Legal Frameworks Under the Protection of Children from Sexual Offences Act in Light of Global Commitments* (Atlantis Press SARL, 2025), https://doi.org/10.2991/978-2-38476-416-7_14.

³¹ Ann Katrien Oimann, "The Responsibility Gap and LAWS: A Critical Mapping of the Debate," *Philosophy and Technology* 36, no. 1 (2023): 1–22, <https://doi.org/10.1007/s13347-022-00602-7>.

³² Wismayanti et al., "Child Sexual Abuse in Indonesia: A Systematic Review of Literature, Law and Policy."

³³ Yanuar Farida Wismayanti et al., "The Problematicization of Child Sexual Abuse in Policy and Law: The Indonesian Example," *Child Abuse & Neglect* 118 (August 1, 2021): 105157, <https://doi.org/10.1016/J.CHIABU.2021.105157>.

³⁴ Euis Nurlaelawati and Stijn Cornelis van Huis, "THE STATUS OF CHILDREN BORN OUT OF WEDLOCK AND ADOPTED CHILDREN IN INDONESIA: INTERACTIONS BETWEEN ISLAMIC, ADAT, AND HUMAN RIGHTS NORMS," *Journal of Law and Religion* 34, no. 3 (December 1, 2019): 356–82, <https://doi.org/10.1017/JLR.2019.41>.

³⁵ Eva F. Nisa, "THE BUREAUCRATIZATION OF MUSLIM MARRIAGE IN INDONESIA," *Journal of Law and Religion* 33, no. 2 (August 1, 2018): 291–309, <https://doi.org/10.1017/JLR.2018.28>.

³⁶ Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217–31, <https://doi.org/10.1093/ojlr/rwad015>.

³⁷ Jo Anne Wemmers, Isabelle Parent, and Marika Lachance Quirion, "Restoring Victims' Confidence: Victim-Centred Restorative Practices," *International Review of Victimology* 29, no. 3 (September 1, 2023): 466–86, <https://doi.org/10.1177/02697580221128830;WGROU:STRING:PUBLICATION>.

whether classical legal doctrines governing maintenance obligations are similarly constrained.³⁸ This issue becomes particularly relevant within Islamic family law, where maintenance obligations have historically been linked to legally recognized lineage structures. It is precisely this doctrinal question that requires closer examination in the following discussion.

The Limitations of Nasab-Based Maintenance Doctrine in Classical Islamic Family Law

Within Islamic family law, the obligation of maintenance (*nafaqah*) has long been recognized as a central legal mechanism for protecting dependent family members, particularly wives, children, and other legally recognized dependents.³⁹ Classical jurists developed maintenance doctrine not merely as an economic obligation, but as part of a broader legal structure intended to preserve family stability, social order, and the welfare of vulnerable individuals.⁴⁰ In this framework, the father generally occupies the primary position as the party responsible for providing maintenance to his children. However, this obligation is traditionally constructed upon the existence of a legally recognized kinship relationship (*nasab*), creating important doctrinal limitations when applied to children born under legally exceptional circumstances, including sexual violence.

Classical Islamic jurisprudence generally treats *nasab* as the legal foundation for paternal rights and obligations. The recognition of lineage carries significant legal consequences, including inheritance rights, guardianship, family identity, and maintenance obligations. In this structure, maintenance is not merely a humanitarian duty but a juridical consequence arising from recognized legal parenthood. As a result, the entitlement of a child to paternal maintenance is closely linked to whether the child is legally attributed to the father within accepted lineage rules.⁴¹

This framework developed within a historical legal context where preservation of lineage (*hifz al-nasl*) was regarded as one of the central objectives

³⁸ Clare McGlynn, Nicole Westmarland, and Nikki Godden, "I Just Wanted Him to Hear Me": Sexual Violence and the Possibilities of Restorative Justice," *Journal of Law and Society* 39, no. 2 (June 1, 2012): 213–40, <https://doi.org/10.1111/J.1467-6478.2012.00579.X>.

³⁹ Fatin Nasihah Jamal Abd. Nasir and Mustafa Mat Jubri@Shamsuddin, "The Husband's Obligation in Providing Nafaqah To the Wife During the Pandemic Hardship: An Analysis From an Islamic Perspective," *Jurnal Syariah* 32, no. 2 (2024): 300–349, <https://doi.org/10.22452/syariah.vol31no2.4>.

⁴⁰ Euphrasie Kaningini Wamunzila and Frieda Vandeninden, "Support for Children Born of Rape in the Democratic Republic of the Congo: Mother's Experiences and Challenges," *Conflict and Health* 19, no. 1 (2025), <https://doi.org/10.1186/s13031-025-00674-0>.

⁴¹ Myriam Denov and Antonio Piolanti, "Identity Formation and Change in Children and Youth Born of Wartime Sexual Violence in Northern Uganda," *Journal of Youth Studies* 24, no. 9 (October 21, 2021): 1135–47, <https://doi.org/10.1080/13676261.2020.1801994>.

of Islamic law. Protecting lineage served not only genealogical purposes but also broader concerns relating to legal certainty, inheritance order, family legitimacy, and moral regulation of sexual conduct. Consequently, classical jurists established relatively strict standards regarding the recognition of paternity, typically linking legal fatherhood to valid marriage or other legally recognized forms of affiliation.

Under this classical construction, children born outside lawful marriage were frequently placed in a complex legal position regarding paternal attribution. In many juristic interpretations, a child born outside a valid marital relationship would not automatically establish a full legal lineage connection with the biological father.⁴² This had direct implications for maintenance obligations, since paternal financial responsibility was understood to follow legally recognized *nasab*, not merely biological causation.⁴³

From a doctrinal standpoint, this logic reflects internal consistency within classical jurisprudence. If legal responsibility is tied to lawful family relations, then obligations arising from those relations are similarly limited. However, difficulties emerge when this framework is applied to situations fundamentally different from consensual sexual misconduct, particularly cases involving coercion, exploitation, or violence.

The legal category of sexual violence raises a distinct normative issue because the underlying factual and moral circumstances differ significantly from consensual illicit sexual relations. In Islamic criminal jurisprudence, coercive sexual acts are not treated identically to consensual zina, since criminal culpability depends upon voluntariness and intent. A victim of sexual violence is not regarded as morally responsible for the offense. Yet when the legal consequences concerning children are assessed through rigid lineage doctrine, distinctions between coercive and consensual circumstances may become insufficiently reflected in practical outcomes.

This creates a significant doctrinal tension. If Islamic law recognizes the absence of moral culpability on the part of the victim, then the resulting child's legal vulnerability becomes difficult to justify when protection mechanisms remain dependent on formal lineage constructs designed for different legal contexts. The child, who bears no responsibility for the circumstances of birth, may nevertheless face diminished access to maintenance protection because

⁴² Mohammad Fadel, "DNA Evidence and the Islamic Law of Paternity in Light of Maqāṣid Al-Sharī'a," *Muslim World* 112, no. 3 (July 1, 2022): 311–23, <https://doi.org/10.1111/MUWO.12441>;WGROU:STRING:PUBLICATION.

⁴³ Nurlaelawati and van Huis, "THE STATUS OF CHILDREN BORN OUT OF WEDLOCK AND ADOPTED CHILDREN IN INDONESIA: INTERACTIONS BETWEEN ISLAMIC, ADAT, AND HUMAN RIGHTS NORMS."

classical legal doctrine prioritizes formal lineage recognition over substantive vulnerability.

The four major Sunni schools of Islamic jurisprudence provide nuanced but generally restrictive approaches regarding lineage attribution outside valid marriage.⁴⁴ While doctrinal differences exist, the dominant legal tendency has been to treat paternal affiliation cautiously where formal marital legitimacy is absent. Consequently, maintenance obligations toward children born outside legally recognized family structures often remain contested or limited.

The Hanafi school is sometimes viewed as comparatively more flexible in matters of legal reasoning, particularly where broader social considerations are involved. Nevertheless, classical Hanafi doctrine generally preserves the principle that paternal legal obligations arise through recognized legal affiliation rather than mere biological connection.⁴⁵ The Maliki school, while emphasizing welfare considerations in certain family law contexts, similarly prioritizes legal lineage structures in determining paternal obligations. Shafi'i and Hanbali jurisprudence generally maintain stricter formal requirements concerning lineage attribution, reinforcing the legal relationship between paternal maintenance and recognized *nasab*.

These doctrinal positions reflect coherent historical legal reasoning, but their direct application to contemporary child protection contexts presents serious challenges. Modern legal systems increasingly treat child welfare as an independent legal priority, distinct from questions of parental moral status or family legitimacy. This shift creates friction between formalistic lineage-based constructions and contemporary child-centered legal norms.

The challenge becomes particularly pronounced in jurisdictions such as Indonesia, where Islamic family law operates within a plural legal environment shaped by constitutional child protection principles, human rights norms, and evolving victim protection frameworks. In such contexts, strict reliance on lineage-based maintenance doctrine may produce outcomes inconsistent with broader commitments to equality, dignity, and the best interests of the child.

⁴⁴ Khoirul Amru Harahap, Najhan Parluhutan Harahap, and Mohamad Toha Umar, "The Dilemma of Gender and Marital Validity in Khuntha Cases: A Comparative Legal Study of the Four Sunni Schools," *El-Aqwal: Journal of Sharia and Comparative Law* 4, no. 2 (2025): 81–102, <https://doi.org/10.24090/el-aqwal.v4i2.15026>.

⁴⁵ Baudouin Dupret et al., "Paternal Filiation in Muslim-Majority Environments: A Comparative Look at the Interpretive Practice of Positive Islamic Law in Indonesia, Egypt, and Morocco," *Journal of Law, Religion and State* 10, no. 2–3 (April 21, 2023): 167–217, <https://doi.org/10.1163/22124810-20230002>.

A central conceptual limitation of the *nasab*-based approach lies in its formal legal orientation.⁴⁶ Classical doctrine asks whether a recognized legal relationship exists between father and child; contemporary child protection frameworks ask whether a vulnerable child requires protection. These are fundamentally different legal questions. The former focuses on legal status classification, while the latter emphasizes substantive welfare outcomes.

This distinction becomes critical in cases involving sexual violence. A child born from such circumstances does not emerge from a morally blameworthy relationship initiated by consenting parties, but from an act of coercion that itself constitutes a grave violation of human dignity. To apply rigid legal consequences derived from lineage formalism without considering the coercive context risks transferring the burden of legal exclusion onto the child.⁴⁷

Moreover, the practical consequences of exclusion are substantial. Maintenance is not a symbolic entitlement; it concerns access to food, shelter, healthcare, education, and long-term development. When maintenance protection is denied or uncertain, the child's vulnerability becomes materially intensified. Thus, the doctrinal issue is not merely theoretical but directly connected to lived social harm.

It is important, however, not to reduce classical Islamic law to a simplistic narrative of rigidity. Classical jurisprudence contains broader ethical and legal principles concerned with justice, prevention of harm, and protection of vulnerable persons. The challenge lies not in dismissing the classical tradition, but in determining whether formal lineage doctrine should remain the exclusive determinant of maintenance entitlement in legally exceptional circumstances.

Indeed, Islamic legal history includes concepts suggesting broader social responsibility where private family protection fails. The institution of *bayt al-māl*, for example, historically functioned as a public welfare mechanism capable of supporting vulnerable individuals lacking familial support.⁴⁸ Although not directly identical to modern child maintenance systems, this tradition demonstrates that Islamic legal thought has recognized collective responsibility in situations where ordinary family structures prove inadequate.

⁴⁶ Fadel, "DNA Evidence and the Islamic Law of Paternity in Light of Maqāṣid Al-Sharīʿa."

⁴⁷ Kitab Fath Al-qarib, Fath Al- M U In, and D A N I Anah Al, "MEDIA SOSIAL PEMICU PERCERAIAN DALAM PRESFEKTIF," 2026, 2189–2202.

⁴⁸ Azka Raghdah Daulay et al., "PERLINDUNGAN HAK PEREMPUAN DALAM PERKAWINAN MENURUT PERSPEKTIF HUKUM ISLAM," *Elbayyinah : Jurnal Ilmu Hukum Dan Humaniora* 1, no. 01 (June 28, 2025): 2025, <https://journal.tabayanu.com/index.php/elbayyinah/article/view/160>.

This indicates that the limitation lies less in Islamic legal ethics themselves than in overly narrow doctrinal application. A purely *nasab*-centered reading risks reducing maintenance law to a technical question of lineage classification, rather than understanding it as a legal instrument for protecting vulnerable human life. Thus, the principal limitation of classical *nasab*-based maintenance doctrine is its insufficient responsiveness to exceptional contexts involving coercion, victimization, and structural vulnerability. While historically coherent, the doctrine does not fully address the normative demands of contemporary child protection where the child's welfare, dignity, and survival must occupy central legal priority.

This doctrinal limitation does not necessarily require rejection of Islamic legal principles. Rather, it invites reinterpretation through frameworks internal to Islamic legal methodology itself. It is within this context that *maqāṣid al-sharī'ah* becomes particularly significant, offering a jurisprudential foundation for reconstructing maintenance rights beyond formal lineage constraints toward a more substantive child protection model.

Maqāṣid al-Sharī'ah as a Framework for Reconstructing Maintenance Rights

The limitations of classical *nasab*-based maintenance doctrine do not necessarily imply that Islamic law lacks the normative capacity to protect children born from sexual violence. Rather, such limitations reveal the need for interpretive reconstruction grounded in broader Islamic legal objectives. In this regard, *maqāṣid al-sharī'ah* provides an important jurisprudential framework for re-evaluating legal doctrines whose formal application may no longer adequately address contemporary realities. By shifting legal analysis from rigid formal classifications toward the substantive objectives of the law, *maqāṣid* offers a principled basis for reconstructing maintenance rights in a manner more responsive to child protection concerns.

The concept of *maqāṣid al-sharī'ah* refers to the overarching objectives and wisdom underlying Islamic legal norms.⁴⁹ Classical jurists understood Islamic law not merely as a collection of isolated rules, but as a coherent legal system aimed at preserving essential human interests. These objectives are commonly articulated through the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).⁵⁰ While these categories emerged within classical legal theory, contemporary Islamic scholarship

⁴⁹ Ahmad Rajafi, "The Contemporary Ushul Fiqh in Indonesia: An Idea and Practice," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 19–34, <https://doi.org/10.30984/jis.v21i1.2260>.

⁵⁰ Alamsyah et al., "Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority and Peaceful Settlement in Indonesian Religious Courts."

increasingly interprets them as dynamic normative principles capable of guiding responses to modern legal challenges.

This interpretive flexibility is particularly significant in cases involving children born from sexual violence, where rigid application of traditional lineage doctrine risks undermining broader legal and ethical commitments embedded within Islamic law itself. If the purpose of the law is ultimately to secure justice, prevent harm, and protect vulnerable persons, then maintenance doctrine cannot be evaluated solely through formal lineage status without considering its practical consequences for child welfare.

Among the core objectives of Islamic law, the protection of life (*ḥifẓ al-nafs*) occupies a central position in reconstructing maintenance rights. Maintenance is fundamentally connected to human survival. It concerns access to food, shelter, healthcare, education, and other necessities required for dignified existence. A child deprived of economic protection faces risks not merely of financial hardship but of deeper structural vulnerability affecting physical and psychological development.

From this perspective, maintenance should not be reduced to a technical consequence of paternal lineage recognition. Rather, it should be understood as a legal instrument for preserving life and ensuring human dignity. A child born from sexual violence remains fully entitled to protection of life regardless of the circumstances of conception. Denying or limiting maintenance protection based solely on formal lineage constructs risks subordinating substantive human welfare to procedural legal categorization.

The principle of *ḥifẓ al-nafs* therefore supports a reinterpretation of maintenance obligations as part of broader protective justice rather than exclusively private family duty. This approach aligns with the ethical structure of Islamic law, which consistently prioritizes prevention of harm and protection of vulnerable individuals. Equally important is the principle of *ḥifẓ al-nasl*, often translated as protection of lineage. At first glance, this objective may appear to support strict lineage-based maintenance doctrine, since classical jurists frequently associated lineage preservation with formal legal regulation of family relationships. However, a broader reading reveals that *ḥifẓ al-nasl* should not be understood merely as preservation of genealogical purity. Rather, it encompasses protection of human continuity, family integrity, social identity, and the welfare of future generations.

A narrow formalistic interpretation risks transforming *ḥifẓ al-nasl* into a mechanism of exclusion rather than protection.⁵¹ If preserving lineage results in denying legal protection to a child who bears no responsibility for the circumstances of birth, the objective itself becomes distorted. The principle should function to protect children, not to reinforce structural vulnerability.

This is particularly relevant in cases of sexual violence, where the child emerges not from consensual misconduct but from coercive criminal conduct. Equating such circumstances with ordinary lineage disputes ignores essential moral and legal distinctions. A *maqāṣid*-oriented interpretation requires the legal system to distinguish between protecting lineage as a legal institution and imposing exclusionary consequences upon innocent children.⁵²

Thus, *ḥifẓ al-nasl* can be reinterpreted not as rigid insistence upon formal paternal attribution, but as commitment to safeguarding the legal and social welfare of children as members of the human community. The principle of protection of property (*ḥifẓ al-māl*) also provides relevant support for reconstructing maintenance rights. Economic security forms an indispensable component of child welfare. Without access to financial support, children face material deprivation that may undermine education, health, and future social participation.

In this context, maintenance rights represent more than family financial arrangements; they reflect the child's legitimate entitlement to material conditions necessary for development. A legal framework that leaves economically vulnerable children without enforceable protection contradicts the broader Islamic commitment to preventing material harm and ensuring social justice.

Moreover, contemporary *maqāṣid* scholarship has increasingly emphasized values extending beyond the classical five necessities, including human dignity, justice, freedom, and welfare. Thinkers such as Jasser Auda argue that Islamic legal interpretation must move beyond atomistic textual formalism toward systems-based reasoning attentive to social complexity and human consequences. This approach is particularly useful in addressing legal problems not explicitly anticipated within classical doctrine.

Applying this reasoning to maintenance rights suggests that formal lineage categories should not function as absolute barriers where doing so would produce unjust outcomes inconsistent with Islamic legal objectives. Instead, the legal

⁵¹ Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqāṣid Al-Syarī'ah through Marriage Isbat Applications by the Second Generation in Pasuruan."

⁵² Minson, "Direct Harms and Social Consequences: An Analysis of the Impact of Maternal Imprisonment on Dependent Children in England and Wales."

question should be reframed: not merely whether a classical lineage relationship exists, but whether denying protection serves or undermines the purposes of the law.

A *maqāṣid*-based reconstruction also aligns closely with the contemporary principle of the best interests of the child.⁵³ Although this concept originates in modern child rights discourse, its substantive logic resonates strongly with Islamic legal ethics emphasizing protection of vulnerable persons and prevention of harm. The best interests principle requires that legal decisions affecting children prioritize welfare outcomes rather than formalistic abstractions detached from lived consequences. In cases involving children born from sexual violence, this principle strongly supports maintenance protection regardless of contested paternal legal status. The child's developmental needs remain immediate, concrete, and morally compelling.

Importantly, this reconstruction does not require abandonment of Islamic legal methodology. On the contrary, it operates within established jurisprudential logic by employing *maqāṣid* as an internal interpretive tool. The objective is not to replace Islamic law with external norms, but to activate Islamic law's own normative resources in addressing contemporary child protection challenges.

The resulting conceptual shift is significant: maintenance rights move from being understood solely as derivative consequences of paternal lineage toward recognition as instruments of substantive child protection. Legal entitlement becomes grounded less in formal status classification and more in the objectives of justice, welfare, and prevention of harm. Such reconstruction is particularly necessary where conventional private enforcement mechanisms fail. If biological paternity cannot be established, the father cannot be located, or maintenance obligations remain unenforceable, a purely lineage-dependent framework leaves the child legally vulnerable. A *maqāṣid*-based approach avoids this outcome by broadening the normative basis for protection.

However, reconstructing doctrine alone is insufficient unless translated into institutional legal responsibility. If maintenance protection is redefined as a substantive child welfare obligation rather than merely a private lineage consequence, the question inevitably arises as to who bears responsibility when conventional paternal enforcement fails. This issue directs attention to the broader role of state responsibility within child protection systems, which forms the focus of the following discussion.

⁵³ Achmad Kadarisman, Alfarid Fedro, and Zainal Arifin, "Best Interest of the Child in Islamic Family Law: Integrating Maqāṣid Al-Sharī'ah and Double Movement Theory in Ḥaḍānah Cases," *Jurnal Al-Dustur* 8, no. 2 (2025): 155–74, <https://doi.org/10.30863/aldustur.v8i2.10459>.

Reconstructing State Responsibility in Child Maintenance Protection

The reconstruction of maintenance rights through a *maqāṣid al-shari'ah* framework inevitably raises a fundamental legal question: who bears responsibility when conventional paternal maintenance obligations cannot be effectively enforced? In ordinary family law structures, maintenance is generally treated as a private obligation arising from legally recognized parental relationships. However, in cases involving children born from sexual violence, this assumption frequently collapses due to the absence of identifiable fathers, non-enforcement of legal obligations, economic incapacity of perpetrators, or institutional barriers in securing effective remedies. Under such circumstances, reliance solely on private legal responsibility creates a protection vacuum that directly undermines the child's welfare.

This limitation necessitates a broader reconstruction of legal responsibility one that does not abandon parental accountability but recognizes that exceptional cases require supplementary public protection mechanisms. In this context, the state must be reconceptualized not merely as a regulator of family relations, but as an active guarantor of child protection where private enforcement fails.

Modern constitutional legal systems increasingly recognize child protection as a public legal responsibility rather than an exclusively private family matter.⁵⁴ The rationale is straightforward: children are inherently vulnerable legal subjects whose welfare cannot depend entirely upon the capacity or willingness of private actors. Where family structures fail, state intervention becomes both legally justified and morally necessary.

This logic is particularly compelling in cases involving sexual violence. A child born from such circumstances occupies a uniquely vulnerable position because the legal problem originates not from ordinary family breakdown, but from criminal victimization and structural coercion. The child's economic insecurity therefore cannot be understood merely as a private familial issue; it is directly connected to broader failures of legal protection and justice enforcement.

In such cases, the state's role extends beyond prosecuting offenders. Criminal punishment alone does not secure the child's long-term developmental needs. A perpetrator may be imprisoned, unidentified, deceased, financially incapable, or otherwise beyond effective enforcement. Yet the child's need for food, healthcare, education, housing, and social support remains immediate and

⁵⁴ You, "Parent-Child Relationship in the Civil Code of China."

continuous. Legal systems that focus exclusively on punishment while neglecting sustained child welfare leave a significant gap in substantive justice.⁵⁵

Indonesian law already provides partial normative foundations for expanded state responsibility through victim compensation mechanisms. Under the framework of sexual violence legislation, compensation may be provided where restitution from perpetrators cannot be effectively obtained. This reflects an important legal acknowledgment that private liability alone is sometimes insufficient to secure justice.

However, the current compensation framework remains conceptually limited. It is primarily designed as a victim recovery mechanism within criminal justice, rather than a structured child maintenance system. Compensation generally addresses harms arising from criminal victimization, but child maintenance involves a broader and continuing obligation tied to survival, development, and long-term welfare.

This distinction is critical. Compensation tends to function as a corrective response to harm already suffered, whereas maintenance is preventive and developmental in nature. Maintenance ensures continuity of care, educational access, healthcare stability, and protection against future vulnerability. One-time or limited compensation cannot adequately replace sustained maintenance protection.

Accordingly, a reconstructed legal framework should move beyond viewing state financial intervention as exceptional victim assistance and instead recognize child maintenance protection as part of the broader architecture of child welfare obligations. Such reconstruction is not foreign to Islamic legal reasoning. Historical Islamic governance recognized circumstances in which public institutions assumed protective responsibilities where private familial support was absent or insufficient. The institution of *bayt al-māl* functioned as a public welfare mechanism supporting vulnerable members of society, including orphans, the poor, and individuals lacking family-based support structures.

Although historical *bayt al-māl* cannot be mechanically equated with modern welfare states, the normative principle remains relevant: where private responsibility fails, collective public responsibility may be legitimately activated to prevent harm and protect vulnerable persons. This principle aligns closely with

⁵⁵ Mahlet A. Woldetsadik, Grace Acan, and Okwir Isaac Odiya, "The Enduring Consequences of Conflict-Related Sexual Violence: A Qualitative Study of Women Survivors in Northern Uganda," *Conflict and Health* 2022 16:1 16, no. 1 (April 11, 2022): 16-, <https://doi.org/10.1186/S13031-022-00448-Y>.

maqāṣid al-sharī'ah, particularly the protection of life, welfare, and human dignity.⁵⁶ A *maqāṣid*-based reconstruction therefore supports a significant conceptual shift. Rather than asking whether maintenance must remain exclusively tied to formal paternal lineage, the legal inquiry should focus on whether vulnerable children are receiving adequate protection consistent with the purposes of the law. Where private mechanisms fail, public responsibility becomes not merely permissible but normatively justified.

This approach also aligns with modern child rights principles emphasizing the best interests of the child. Child protection law increasingly recognizes that legal systems must prioritize practical welfare outcomes over rigid formal classifications. A child's entitlement to protection cannot reasonably depend upon circumstances beyond their control, particularly where those circumstances arise from criminal violence.

A state responsibility model would not eliminate paternal accountability. Where perpetrators can be identified and legal enforcement is feasible, primary financial responsibility should remain with the responsible party. However, where enforcement proves impossible or ineffective, the child's welfare should not be suspended indefinitely pending uncertain legal outcomes.

Instead, a layered protection model becomes necessary. Under such a model, private responsibility remains the first line of protection, while state intervention functions as a supplementary guarantee ensuring continuity of care where private enforcement fails. This structure preserves legal accountability while preventing protection gaps.

Institutionally, this could be implemented through integration with existing compensation, victim assistance, and child welfare mechanisms, rather than creating entirely separate legal regimes. For example, child maintenance guarantees could be incorporated into broader state-supported child protection frameworks, with recovery mechanisms allowing the state to pursue reimbursement from liable parties where possible.

Such a model would produce several advantages. First, it would ensure continuity of child protection independent of uncertain private enforcement outcomes. Second, it would harmonize criminal justice, child protection, and family law principles into a more coherent legal architecture. Third, it would

⁵⁶ Muhammad Habibul Amin and Dhiauddin Tanjung, "Maqashid Syariah: Perbandingan Antara Pemikiran Al - Ghazali Dan Najmuddin At - Thufi," *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 5 (2024): 2417–29, <https://doi.org/10.47467/elmujtama.v4i5.3497>.

reduce the risk of secondary victimization, where children suffer prolonged deprivation due to legal procedural limitations.

From the perspective of Indonesian legal reform, this reconstruction offers a bridge between constitutional child protection obligations, evolving victim-centered legislation, and Islamic legal principles emphasizing welfare and justice. It avoids false dichotomies between religious legal doctrine and modern state responsibility by demonstrating their potential normative compatibility.

The reconstruction proposed in this study therefore repositions maintenance rights from a narrowly lineage-dependent entitlement toward a substantive child protection guarantee supported by both Islamic legal reasoning and modern state responsibility. In this model, the state does not replace family responsibility but fulfills its protective obligation where ordinary legal mechanisms prove insufficient.

Conclusion

This study concludes that the existing legal framework has not yet provided sustainable maintenance protection for children born of rape. Indonesian child-protection law recognizes children's rights, criminal law provides restitution and compensation, and Islamic family law regulates maintenance primarily through legally recognized kinship. However, these mechanisms remain fragmented. Restitution generally addresses losses arising from sexual violence without necessarily guaranteeing continuous support until adulthood, while the nasab-based doctrine may restrict paternal maintenance when legal lineage cannot be established or effectively enforced. Consequently, children may be left dependent upon their mothers or maternal families despite having no responsibility for the circumstances of their birth.

The principal theoretical contribution of this study is the reconstruction of maintenance from a nasab-derived obligation into an independent child-protection entitlement. A purposive reading of *ḥifẓ al-nafs*, *ḥifẓ al-nasl*, and *ḥifẓ al-māl* demonstrates that *maqāṣid al-sharīʿah* should not be confined to preserving the formal status of lineage. It must also ensure the child's survival, development, dignity, and material security. On this basis, the absence or legal uncertainty of paternal nasab should not eliminate the child's substantive right to maintenance. This reconstruction integrates Islamic legal reasoning with the best-interests principle and shifts the focus from the circumstances of the child's birth to the protection required by the child.

This study therefore proposes a layered responsibility model. The perpetrator or legally proven biological father should bear primary financial

liability, while the state should act as a subsidiary guarantor when that responsibility cannot be identified, imposed, or enforced. Its implementation requires periodic judicial assessment of the child's needs, a state-managed maintenance guarantee, and a right of recourse allowing the state to recover payments from the liable perpetrator. Because this study is doctrinal and prescriptive, further empirical research is needed to examine the enforcement of restitution, the experiences of affected children and their caregivers, and the institutional feasibility of such a guarantee. Legislative reform should ultimately integrate criminal restitution, child protection, and family maintenance into a continuous support mechanism that safeguards children until they attain legal and economic independence.

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