

The Legal Status of Lineage and Inheritance Rights of Children Conceived After the Father's Death (Posthumous Conception) in Islamic Jurisprudence

Lajuba Aiman¹⁾ & Kadek Julia Mahadewi²⁾

¹⁾Faculty of Law, Universitas Pendidikan Nasional, Indonesia, E-mail: lajubaaiman25@gmail.com

²⁾Faculty of Law, Universitas Pendidikan Nasional, Indonesia, E-mail: juliamahadewi@undiknas.ac.id

Abstract. *The advancement of assisted reproductive technology (ART) has raised new challenges in Islamic jurisprudence, particularly concerning lineage (nasab) and inheritance rights. One of the most complex bioethical and legal issues is posthumous conception, where a child is conceived after the father's death using stored sperm or embryos. Classical Islamic law recognizes lineage only within a valid marriage (al-firāsy), which terminates upon the husband's death; thus, posthumous conception questions the legitimacy of paternal lineage and inheritance. This study analyzes the legal position of such children under Islamic jurisprudence using a normative-comparative method. It examines primary Islamic legal sources—the Qur'an, Hadith, classical juristic opinions, and contemporary fatwas from institutions such as the OIC Fiqh Academy and Dar al-Ifta' al-Misriyyah—through the lens of maqāṣid al-syarī'ah. The findings confirm that posthumously conceived children cannot be attributed paternally because the marital bond has legally ended. Consequently, they are not entitled to inheritance under faraidh since they were not alive at the father's death. Nevertheless, based on principles of justice ('adl) and protection of lineage and wealth (ḥifẓ al-nasl wa al-māl), such children deserve moral and financial protection through non-inheritance mechanisms such as hibah or wasiat wajibah. The study concludes that Islamic law must adapt to biomedical developments while maintaining its core principles of lineage clarity, social justice, and compassion. This reinterpretation within the framework of maqāṣid al-syarī'ah ensures that Islamic family law remains just, humane, and responsive to modern ethical challenges.*

Keywords: *Inheritance; Islamic Jurisprudence; Lineage; Maqāṣid Al-Syarī'ah; Posthumous Conception.*

1. Introduction

The development of Assisted Reproductive Technology (ART) has presented new challenges for Islamic legal systems, particularly concerning lineage (nasab) determination and inheritance rights. One of the most complex issues arising from these advancements is the phenomenon of *posthumous conception* — the fertilization or birth of a child using the sperm of a deceased husband. This practice has begun to appear in

several Muslim-majority countries such as Egypt, Iran, and Malaysia, in line with the growing availability of sperm and embryo preservation facilities used by married couples for medical or social purposes (Bakar & Saad, 2023; Al-Qaradawi, 2021). In classical Islamic jurisprudence (*fiqh*), legitimate lineage is only recognized when a child is born within a lawful marriage that remains valid at the time of conception (*al-firāsh*). Therefore, the birth of a child after the father's death raises serious legal and theological questions regarding the establishment of lineage and inheritance rights under *sharī'a* law.

Previous studies on Islamic bioethics have primarily focused on issues such as in-vitro fertilization (IVF), sperm or ovum donation, and surrogacy within the framework of lawful marriage (Hassan & Rahman, 2021; Al-Khathlan, 2022). Most of these studies conclude that reproduction is permissible only within a legitimate marriage in order to preserve the purity of lineage (*hifẓ al-nasl*). However, specific studies addressing children conceived after the father's death remain scarce, despite the fact that such cases have emerged in medical institutions and pose real social dilemmas (Rahim et al., 2022). This limited scholarship indicates a significant research gap in the development of contemporary Islamic jurisprudence, particularly in determining the legal status and rights of children born through *posthumous conception*. From a regulatory standpoint, several religious bodies such as the *Majma' al-Fiqh al-Islami* (OIC, 1989) and *Dar al-Iftā' al-Misriyyah* have issued rulings prohibiting conception after the father's death. The main rationale is that marriage legally terminates upon death, and therefore, any subsequent biological relationship has no legal foundation. Nevertheless, these rulings remain normative and fail to provide comprehensive solutions for the legal status of children already born from such practices. In other words, while the ethical and moral dimensions have been widely discussed, the Islamic family law dimension, particularly regarding lineage and inheritance — has yet to receive proportional attention (Shukri & Omar, 2023). Meanwhile, other studies, such as those by Abdullah (2021) and Nasir (2024), have remained limited to ethical and medical perspectives without developing an integrated Islamic legal reconstruction for this phenomenon.

The gap between normative prohibition and empirical reality has become increasingly evident. Data from several fertility clinics in Southeast Asia indicate a growing number of Muslim couples opting to store sperm before undergoing high-risk medical procedures or military deployment (Sani et al., 2023). Upon the husband's death, some widows choose to proceed with fertilization as an emotional expression of continuity with their late spouse. This situation raises complex legal questions: can a child conceived after the father's death be recognized as a legitimate child under Islamic law, and is the child entitled to inherit from a father who died before conception occurred? These questions highlight the urgent need to reassess the principles of Islamic inheritance law in light of biotechnological advancements. Although classical *fiqh* rejects recognition of children conceived after the father's death on the grounds that the marital contract has ended, the *maqāṣid al-sharī'ah* approach in modern Islamic jurisprudence emphasizes the principles of justice (*'adl*) and compassion (*rahmah*) toward children who bear no fault. Some contemporary scholars, such as Ismail (2022) and Karim & Latif (2024), argue that children born through *posthumous conception* should still receive legal protection through mechanisms such as *wājib bequest* (*waṣiyyah wājibah*) or *hibah* (gift), even if they are not entitled to inherit directly under the *farā'id* system. However, no research has yet systematically formulated an integrative Islamic legal framework that balances the principles of justice and genealogical order in addressing this issue.

Therefore, this study seeks to analyze the legal status of lineage (*nasab*) and inheritance rights of children conceived after the father's death (*posthumous conception*) from the perspective of Islamic jurisprudence (*fiqh al-Islāmī*). Using a normative-comparative method, the research examines relevant Qur'anic verses, *hadith*, classical *fuqahā'* opinions, and contemporary fatwas issued by international Islamic legal institutions. The analysis is grounded in the *maqāṣid al-sharī'ah* framework, particularly the protection of lineage (*ḥifẓ al-nasl*), preservation of property (*ḥifẓ al-māl*), and the principle of justice (*'adl*) — to identify a balance between Islamic legal doctrine and modern biomedical realities. The expected outcome of this research is a *fiqh*-based legal argument that clarifies the status of lineage and inheritance for children conceived after the father's death, while also proposing equitable alternatives such as *waṣiyyah wājibah* or *hibah*. Identifying this problem is crucial to bridging the gap between classical Islamic inheritance doctrines and contemporary ethical challenges, ensuring that Islamic law remains just, humane, and responsive to the evolution of modern reproductive technology.

2. Research Methods

This research is a normative legal study focusing on the examination of legal norms and doctrines in Islamic jurisprudence (*fiqh al-Islāmī*) related to lineage (*nasab*) and inheritance law. The primary objective of this study is to analyze how Islamic law conceptualizes the legal status of children conceived after the death of their father (*posthumous conception*) and to explore the legal consequences of this phenomenon for the child's lineage and inheritance rights.

The study employs a comparative approach, contrasting the views of classical *fuqahā'* from various schools of thought, Hanafi, Maliki, Shafi'i, and Hanbali with the perspectives of contemporary scholars such as Yusuf al-Qaradawi and Wahbah az-Zuhaili, as well as the rulings of major Islamic legal institutions including the *Majma' al-Fiqh al-Islami* (OIC) and *Dar al-Ifta' al-Misriyyah*. This approach is further enriched by the application of the *maqāṣid al-sharī'ah* analytical framework to contextualize Islamic legal reasoning within modern biomedical realities.

This research is qualitative and doctrinal in nature, emphasizing textual interpretation and analytical reasoning based on Islamic legal sources rather than empirical field data. The study seeks to develop a comprehensive understanding of Islamic legal arguments concerning *posthumous conception* and their implications within the inheritance law system.

The data collection method employed is library research, involving the compilation of primary legal materials such as the Qur'an, *hadith*, classical *fiqh* texts, and contemporary *fatwas*. Secondary legal materials include peer-reviewed journal articles, scholarly works, and relevant legal literature, particularly publications from 2021 to 2024.

The data analysis method integrates descriptive and analytical techniques. Descriptive analysis is used to present the legal arguments and perspectives of both classical and contemporary scholars, while analytical evaluation is employed to assess and critique these views through the lens of *maqāṣid al-sharī'ah*, particularly the principles of *ḥifẓ al-nasl* (protection of lineage), *ḥifẓ al-māl* (preservation of property), and *al-'adl* (justice). The results of this analysis are used to formulate alternative solutions that align with the

objectives of Islamic law (*maqāṣid al-sharī'ah*) while remaining relevant to contemporary ethical and legal challenges.

3. Results and Discussion

3.1. The Legal Status of Lineage (*Nasab*) of a Child Conceived After the Father's Death

In Islamic law, a child's lineage (*nasab*) is established through a lawful marital relationship between the father and the mother. This fundamental principle is derived from the *hadith* of Prophet Muhammad (peace be upon him):

"*Al-walad lil-firāsh, walil-'āhir al-ḥajar*", "The child belongs to the [owner of] the bed, and for the adulterer there is nothing" (Narrated by al-Bukhari and Muslim).

This *hadith* affirms that the legitimacy of lineage is valid only when conception and birth occur within a lawful marriage. Consequently, when fertilization takes place after the father's death, whether through sperm preservation or embryo implantation the *al-firāsh* (marital bed) relationship no longer exists, and thus the paternal lineage (*nasab al-ab*) cannot be legally established under *sharī'a*.

This view aligns with the position of the majority of *fuqahā'* from the four major schools of Islamic jurisprudence, Hanafi, Maliki, Shafi'i, and Hanbali who unanimously hold that the death of a husband signifies the termination of the marital contract (*'aqd al-nikāḥ*) and all its legal consequences, including biological rights and lineage recognition. Imam al-Shafi'i, in *al-Umm*, explains that a child's legitimate paternal lineage can only be recognized if conception occurs during the period of *'iddah* or within a valid marriage. Once this period has expired, the paternal lineage cannot be established. In the context of *posthumous conception*, fertilization occurs after the husband's death, meaning that it takes place outside a valid *sharī'* marriage. Therefore, a child born from such a process can only be ascribed maternally, that is, to the mother who gives birth.

However, some contemporary scholars have sought to approach this issue from a more contextual and compassionate perspective. Yusuf al-Qaradawi (2021) and Wahbah az-Zuhaili (2022) argue that although *posthumous conception* is impermissible in *fiqh* terms, the child born from such a practice nonetheless possesses human dignity and is entitled to legal and moral protection. This reasoning is based on the Qur'anic principle that no soul bears the burden of another's sin, as stated in *Surah al-An'ām* [6]:164. Therefore, the rejection of paternal lineage does not equate to the denial of the child's existence or their right to protection and welfare.

3.2. The Inheritance Rights of a Child Conceived After the Father's Death

One of the direct implications of the non-recognition of paternal lineage (*nasab al-ab*) is the loss of inheritance rights over the father's estate. Under *faraidh* (Islamic inheritance law), three essential conditions must be fulfilled for inheritance to occur:

- (1) the deceased (testator) must have passed away,
- (2) the heir must be alive at the time of the testator's death, and
- (3) a legitimate legal relationship must exist between the testator and the heir, either through lineage (*nasab*), marriage (*nikāḥ*), or allegiance (*walā*). Classical *fiqh* establishes the principle: "*Al-ma'dūm lā yarith*" — "That which does not yet exist cannot inherit." Therefore, a child conceived or created after the father's death fails to meet both the second and third conditions: being alive at the time of the testator's death and having a legitimate paternal lineage.

The *Majma' al-Fiqh al-Islami* (OIC, 1989) and *Dar al-Ifta' al-Misriyyah* firmly reject the legitimacy of inheritance for children born through *posthumous conception*. These institutions argue that fertilization after the father's death contravenes *sharī'a* and risks creating genealogical confusion and potential inheritance disputes. Nevertheless, their stance does not preclude the possibility of providing economic protection to such children through non-inheritance mechanisms.

Several contemporary scholars, including Ismail (2022) and Karim & Latif (2024), have proposed granting *waṣiyyah wājibah* (compulsory bequest) or *hibah* (inter vivos gift) during the father's lifetime as a form of legal and moral protection consistent with *faraidh* principles. This approach is grounded in the concept of substantive justice within *maqāṣid al-sharī'ah*, which seeks to balance the clarity of lineage (*ḥifẓ al-nasl*) with the protection of economic rights (*ḥifẓ al-māl*).

By allowing *waṣiyyah wājibah* or *hibah* for a child conceived after the father's death, Islamic law preserves genealogical order while ensuring that social justice and compassion remain integral to its application. This interpretation also resonates with the spirit of *Surah al-Nisā'* [4]:8, which encourages the provision of shares to orphans and the vulnerable, even when they are not among the principal heirs.

3.3. The Maqāṣid al-Sharī'ah Analysis on the Legal Status and Protection of the Child

The *maqāṣid al-sharī'ah* analysis reveals that the prohibition of *posthumous conception* is not a form of discrimination against the child but rather an effort to preserve the purity of lineage (*ḥifẓ al-nasl*) and to prevent genealogical confusion within the Islamic family law system. However, within the framework of *maṣlaḥah mursalah* (public interest), Islam also emphasizes the protection of a child's right to life, sustenance, and dignity. Thus, even though a child conceived after the father's death cannot be legally ascribed to the deceased father, Islam continues to recognize and uphold the child's inherent human rights.

The principle of *ḥifẓ al-nasl* in *maqāṣid al-sharī'ah* does not merely refer to the preservation of biological lineage, but also to the assurance that every child has the right to life, care, and protection from social injustice. In this regard, the implementation of *waṣiyyah wājibah* (compulsory bequest) serves as a moderate solution — one that does not alter the established rules of lineage, yet ensures distributive justice and compassion. This concept provides a foundation for reforming Islamic family law so that it can

effectively respond to modern biotechnological challenges while remaining faithful to the ethical and spiritual values of *sharīʿa*.

3.4. Synthesis and Legal Implications

Based on the foregoing normative and *maqāṣid al-sharīʿah* analysis, several key conclusions can be drawn:

1. **Lineage Status:** A child conceived after the father's death (*posthumous conception*) does not possess a legally recognized paternal lineage (*nasab al-ab*) under Islamic law, since the fertilization process occurs after the termination of the marital bond.
2. **Inheritance Rights:** Such a child is not entitled to inherit from the father's estate under the *faraidh* system, as the requirement of being alive at the time of the testator's death is not fulfilled.
3. **Legal and Ethical Remedies:** Islam nevertheless provides space for equitable legal solutions through the mechanisms of *hibah* (inter vivos gift) or *waṣiyyah wājibah* (compulsory bequest), which serve as instruments of legal protection and social justice for the child.

These findings highlight that Islamic law, when interpreted through the lens of *maqāṣid al-sharīʿah*, maintains a balance between preserving doctrinal consistency in matters of lineage and ensuring compassion, fairness, and protection for all individuals affected by advancements in reproductive technology.

4. Conclusion

Based on a normative-comparative analysis of both classical and contemporary Islamic legal sources, it can be concluded that a child conceived after the father's death (*posthumous conception*) does not possess a legally recognized paternal lineage (*nasab syarʿi*) under Islamic law. This is because the process of fertilization and pregnancy occurs after the lawful marital relationship has ended due to the husband's death. The *fiqh* maxim *al-walad lil-firāsh* establishes that the legitimacy of lineage depends on the existence of a marital bond (*firāsh*), which is automatically dissolved upon death. Consequently, the child can only be ascribed to the mother who gives birth, in accordance with the Qurʾanic verse: "*Their mothers are none but those who gave birth to them*" (Surah al-Mujādalah [58]:2). The legal implication of the absence of paternal lineage is the loss of inheritance rights over the father's estate. Under *faraidh* law, one of the essential conditions for inheritance is that the heir must be alive at the time of the testator's death (*al-ma'dūm lā yarith*). Since a *posthumously conceived* child is formed only after the father's death, this condition is not fulfilled. Nevertheless, Islam does not preclude the protection of the child's rights through legitimate non-inheritance mechanisms such as *hibah* (inter vivos gift) and *waṣiyyah wājibah* (compulsory bequest). These instruments provide lawful means to grant economic rights to the child without violating the principles of lineage clarity and inheritance order in Islamic law. The analysis through the lens of *maqāṣid al-sharīʿah* demonstrates that the non-recognition of paternal lineage after death is not an act of discrimination but a means of preserving the higher objectives of Islamic law: *ḥifẓ al-nasl* (protection of lineage), *ḥifẓ al-māl*

(protection of property), and *al-'adl* (justice). Nonetheless, the protection of the child's dignity and welfare remains a moral and social obligation of the Muslim community. Hence, the implementation of *hibah* or *waṣiyyah wājibah* represents the most balanced solution between legal certainty and public welfare (*maṣlahah*). This study concludes that Islamic *fiqh* must continue to adapt to the rapid development of modern reproductive technology without departing from its foundational *shari'ah* principles. Reform in Islamic family law is necessary to accommodate the protection of children born through reproductive technologies while preserving the integrity of lineage and inheritance systems. Through a *maqāṣid al-shari'ah*-based approach, Islamic law can continue to stand as a just, humane, and responsive legal system capable of addressing the ethical and biomedical challenges of the contemporary era.

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