



**PRINCIPLES OF MARRIAGE IN CREATING A SAKINAH FAMILY (THE PROBLEM SIDE OF CHILDREN WHO ARE BORN, CHILDREN WHO ARE NOT FORBIDDEN, TRUE AND UNTRUE JIMAS)**

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**Abstract**

*The rising divorce rate, issues surrounding the legal status of children born out of wedlock, and the limited understanding of proper jimak (sexual relations) indicate a gap between the principles of Islamic marriage and socio-legal practices in Indonesia. This study aims to examine the principles of Islamic marriage in realizing a sakinah (harmonious) family, focusing on the status of children, the ethical understanding of jimak, and the validity of marital relations. This research employs a normative-empirical qualitative approach through a literature review of Islamic jurisprudence (fiqh) and positive legal regulations such as the Marriage Law, the Compilation of Islamic Law (KHI), and the Law on Sexual Violence Crimes (UU TPKS). The findings reveal that the principles of Islamic marriage include the validity of the marriage contract (akad), the protection of children's rights, and sexual relations based on mutual consent. The study also identifies a lack of comprehensive understanding regarding ethical and lawful jimak, as well as the persistence of stigma against children born out of wedlock, despite Constitutional Court rulings and protective provisions within the UU TPKS.*

**Keywords:** Marriage Principles, Sakinah Family, Out-Of-Wedlock Children, Jima', Sexual Consent

**Abstrak**

Meningkatnya angka perceraian, problem status anak luar nikah, serta rendahnya pemahaman mengenai jimak yang benar menunjukkan adanya kesenjangan antara prinsip perkawinan Islam dan praktik sosial-hukum di Indonesia. Tulisan ini bertujuan mengkaji prinsip perkawinan Islam dalam mewujudkan keluarga sakinah dengan fokus pada problem status anak, pemahaman jimak yang etis, dan keabsahan relasi perkawinan. Penelitian ini menggunakan pendekatan kualitatif normatif-empiris melalui telaah literatur fikih dan regulasi hukum positif seperti Undang-Undang Perkawinan, Kompilasi Hukum Islam (KHI), serta Undang-Undang Tindak Pidana Kekerasan Seksual (UU TPKS). Hasil penelitian menunjukkan bahwa prinsip perkawinan Islam mencakup keabsahan akad, perlindungan hak anak, serta relasi seksual berbasis persetujuan (consent). Ditemukan adanya kekosongan pemahaman mengenai jimak yang etis dan legal, serta masih kuatnya stigma terhadap anak luar nikah meskipun telah ada putusan Mahkamah Konstitusi dan ketentuan perlindungan dalam UU TPKS.

**Kata kunci:** Prinsip Perkawinan, Keluarga Sakinah, Anak Luar Nikah, Jimak, Persetujuan Seksual



## **I. INTRODUCTION**

The phenomenon of marriage and a harmonious family continues to be a topical issue due to the continued presence of various social and legal problems. National research shows that divorce cases in Indonesia are increasing annually, partly due to couples' weak understanding of the principles of a harmonious, loving, and compassionate marriage.<sup>1</sup> Furthermore, the status of children born out of wedlock remains a long-standing debate in both Islamic and positive law; international studies state that "children born out of wedlock face legal discrimination and social stigma, which affect their rights and psychological well-being."<sup>2</sup> On the other hand, nonconsensual intercourse is a serious problem, even within the marriage sphere, indicating a lack of understanding of right and wrong sexual intercourse.<sup>3</sup> This fact underscores the need for in-depth study of how the principles of marriage can serve as a foundation for realizing a harmonious family that is not only religiously valid but also socially just.

Literally, the concept of a harmonious family is understood as a household based on tranquility, affection, and the maintenance of the rights of family members. In the jurisprudence of *munakahat*, the principle of *sakinah* is based on the pillars of mutual benefit (*mu'āsarah bil ma'ruf*), justice, and responsibility between husband and wife. <sup>4</sup> Modern family law literature emphasizes that the principles of marriage involve not only ritual dimensions but also protection for children and spouses, including aspects of the civil rights of children born within or outside of marriage. <sup>5</sup> Thus, marriage principles are not merely ritualistic obligations but frameworks for ensuring justice, protection, and mutual respect within family life. <sup>6</sup>

Existing solutions include the enactment of the 2022 Law on the Crime of Sexual Violence (UU TPKS), which expands protection for victims, including recognizing various forms of improper sexual intercourse (coercion, violence, exploitation) as criminal offenses. <sup>7</sup> Regarding children born out of wedlock, the Constitutional Court, through Decision Number 46/PUU-VIII/2010, affirmed that the child retains a civil relationship with their biological father, thus providing broader protection for the child's civil rights. <sup>8</sup> In addition, the *sakinah* family guidance program, which initiated by the Ministry of Religious Affairs as an effort to socialize Islamic marriage values and resolve domestic conflicts based on the principle of *sakinah*.<sup>9</sup>

However, several shortcomings remain apparent in the existing solutions. The TPKS Law, although progressive, still faces implementation obstacles, particularly limited understanding among law enforcement officials and a societal culture that tends to blame the victim. The Constitutional Court's ruling regarding illegitimate children has also not been fully implemented in practice, as some civil registration officials remain hesitant to recognize the child's relationship with the biological father. The sakinah family guidance program is also considered ceremonial and does not address in-depth aspects such as healthy sexual communication and children's rights literacy.<sup>10</sup> In other words, despite the existence of a legal framework and programs, there remains a gap between normative ideals and actual implementation.

Based on these conditions, this paper aims to examine the principles of marriage in realizing a sakinah family by highlighting three main aspects: the problem of children born, children who are not forbidden, and the understanding of correct and incorrect sexual intercourse. The purpose of this paper is to offer an integrative framework in the form of a consent-centered and child-rights-based marriage principle, namely an understanding of marriage that emphasizes not only the validity of rituals but also ensures the fulfillment of children's rights and the protection of healthy, fair, and ethical sexual practices within the family. Thus, the concept of a harmonious family can be realized not only theologically, but also socially, psychologically, and legally.

## **II. RESEARCH METHODS**

This paper employs both normative and empirical qualitative research methods. Data were collected through a literature review of relevant classical and contemporary international and national fiqh literature spanning approximately the past 10 years (approximately 2015-2025), including Arabic and English-language journals as well as national articles; and through field interviews or case observations, where possible, specifically regarding the practice of unregistered marriage, marriage confirmation, and the experiences of families whose children are affected by their lineage status. The analysis was conducted using a descriptive-analytical approach, comparing sharia texts (the Qur'an, Hadith, works of scholars) and positive legal regulations (the Marriage Law, the Compilation of Islamic Law, administrative regulations for marriage registration), and using the *maqâshid al-syarî'ah* framework to assess the extent to which the principles of lineage and valid

intercourse have been protected in practice. This research employed a qualitative approach with data collection techniques including literature review (analysis of classical fiqh books, commentaries, and contemporary literature related to lineage, the validity of child birth, and the provisions of sexual intercourse), documentation of regulations and fatwas (e.g., the Compilation of Islamic Law (KHI), the Marriage Law, religious fatwas), in-depth interviews with religious leaders/headmasters/academics to gain practical and jurisprudential perspectives, and limited participant observation of Muslim family practices to enrich field data and verify literature findings.

Table: Literature Review (Classical & Contemporary Fiqh, ±2015–2025)

No	Referensi	Tipe	Tahun / Asal Bahasa	Keterangan relevansi
1	Imam al-Nawawī — <i>Al-Majmū‘ Syarḥ al-Muhadzdzab</i> / karya-karya fiqh klasik lain (rujukan nasab & hukum kelamin)	Klasik (fikih)	Abad ke-7–8 H (Arab)	Sumber rujukan klasik mengenai kaidah nasab, hukum jimak, dan ketentuan perkawinan dalam mazhab Syafi‘i; dipakai untuk landasan teks klasik.
2	Ibn Qayyim al-Jawziyyah — pembahasan soal nasab & hukum persetubuhan dalam karya-karya beliau	Klasik (fikih/ushul)	Abad ke-8 H (Arab)	Pandangan Ibn al-Qayyim sering dikutip dalam diskusi nasab anak di luar nikah dan implikasi hukum moral.
3	Oscar Maulana — “Penetapan Nasab Anak Di Luar Nikah Menurut Pendapat Ibn al-Qayyim al-Jauziyyah” (ejournal UIN)	Kontemporer (artikel nasional)	2022 (Bahasa Indonesia).	Analisis historis-fiqh terhadap posisi Ibn al-Qayyim terkait nasab anak luar nikah; relevan untuk bagian <i>anak yang dilahirkan / anak tidak diharamkan.</i> )
4	N. Aziz — “Nasab Anak yang Lahir di luar Nikah: Analisis Fatwa” (Jurnal Samarāh / Ar-Raniry)	Kontemporer (jurnal nasional)	2017 (Bahasa Indonesia).	Pembahasan tentang praktik penetapan nasab dan harmonisasi dengan KHI/UU → relevan untuk aspek legal dan yurisprudensial.
5	D. Purnama — “Tinjauan Fikih terhadap Nasab Anak di Luar Nikah” (Jurnal, 2024)	Kontemporer (jurnal nasional)	2024 (Bahasa Indonesia).	Kajian mutakhir yang menelaah pandangan klasik vs. interpretasi kontemporer terhadap nasab anak luar kawin.
6	I. Afkarina — “Status	Kontemporer	2024	Studi komparatif KHI dan UU

	Anak di Luar Nikah: Komparasi Hukum Islam” (Jurnal, 2024)	(jurnal nasional)	(Bahasa Indonesia).	Perkawinan ttg status anak luar nikah; berguna untuk analisis kebijakan dan implikasi praktis.
7	<i>Sexual Ethics in Islam</i> — panduan/paper (Islamic sexual ethics overview, English)	Kontemporer (booklet/article, English)	ed. 2016 (English).	Sumber ringkasan etika seksual dalam Islam yang membahas hal-hal jimak: apa yang diperbolehkan/terlarang; membantu kerangka etis/praktis.
8	R. Benhalim — “Contract Customization, Sex, and Islamic Law” (Minnesota Law Review / working paper)	Kontemporer (English, hukum komparatif)	2024 (English).	Menyajikan perspektif modern tentang pengaturan kontrak/relasi seks dalam konteks hukum Islam — berguna untuk aspek keabsahan hubungan suami-istri dan implikasi yuridis.
9	Artikel-artikel jurnal lokal (contoh: studi KUA, fatwa MPU, analisis akta kelahiran anak luar kawin) — beberapa terbit 2018–2024 (UIN, UIN Suska, UIN SBY, dsb.)	Kontemporer (Bahasa Indonesia)	2018–2024	Koleksi artikel yang mengulas praktik pendaftaran kelahiran, pengakuan nasab, dan fatwa lokal terkait anak luar nikah; penting untuk data lapangan dan konteks nasional.

### III. RESEARCH RESULTS

#### Principles of Marriage

In Islam, marriage is understood not simply as a biological relationship, but as a sacred contract (*‘aqd al-nikāḥ*) that has social, spiritual, and legal functions. Its basic principles are directed at safeguarding religion (*ḥifẓ al-dīn*), honor (*‘ird*), and progeny (*ḥifẓ al-nasl*). Classical literature, such as al-Nawawī’s *al-Majmū‘*, emphasizes the validity of a marriage contingent on the fulfillment of its pillars and conditions, while contemporary thought emphasizes the psychological and social dimensions of the family, such as communication, justice, and the involvement of spouses in decision-making. Research by Fauzan and Amroni emphasizes that the concept of a modern *sakinah* family cannot be separated from the couple's readiness to face social and cultural challenges.<sup>11</sup> International studies also highlight the importance of personalizing marriage contracts to regulate sexual and reproductive rights in accordance with modern Islamic law.<sup>12</sup>

Physics in the field demonstrate a gap between Islamic jurisprudence norms and contemporary marital practices. Research by Husni et al. shows an increase in cases of lineage determination in religious courts, where judges are faced with the dilemma of using DNA evidence versus classical Islamic jurisprudence.<sup>13</sup> Meanwhile, Nasution's research uncovered the phenomenon of determining the status of "biological children" due to invalid marriages, which has implications for limiting children's civil rights.<sup>14</sup> On the other hand, Hariyanto et al.'s study emphasized the importance of the BP4 institution in empowering families to reduce domestic conflict and strengthen the foundation of *sakinah* (peace and blessings of Allah be upon them).<sup>15</sup> This demonstrates that the principles of marriage must be understood not only as a legal bond, but also as an instrument for child protection and strengthening family resilience.

The implementation of marriage principles in the Indonesian context is based on Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), which emphasize the validity of marriage registration, lineage determination, and guaranteeing children's rights. However, challenges in modern practices such as the rise of unregistered marriages, the increase in cases of illegitimate children, and demands for the protection of children's rights require new *ijtihad*. Umar and Hafidzi's study shows that the use of DNA testing has become an important instrument in proving the status of children and is relevant to the principle of *maqāṣid al-sharī'ah*.<sup>16</sup> The novelty of this discussion lies in the emphasis on the integration of three domains: the normative foundations of *fiqh*, the empirical reality of religious courts, and modern legal innovations. With this integrative model, the principle of marriage can be understood not only as the validity of the contract, but also as a mechanism for realizing social justice, child protection, and the sustainability of a harmonious family in the contemporary era.

### **Sakinah Family**

The concept of a *sakinah* family is the ideal goal of marriage in Islam. The term *sakinah* refers to the tranquility, peace, and serenity that couples achieve through the bonds of marriage. Classical Islamic jurisprudence (*fiqh*) literature emphasizes that a *sakinah* family is not only built through fulfilling the requirements of the marriage contract, but also through noble morals, responsibility, and loyalty between partners. Research by Fauzan and Amroni demonstrates that *sakinah* in the contemporary era is closely related to a couple's ability to

adapt to modern social and economic dynamics.<sup>17</sup> Research by Hariyanto et al. emphasizes that the BP4 institution plays a crucial role in premarital guidance, domestic conflict resolution, and fostering communication between couples, which significantly supports the achievement of a harmonious family.<sup>18</sup>

At the international level, Benhalim's research shows that contract customization, or restructuring of marriage contracts to suit modern socio-cultural contexts, can help create more just and harmonious relationships within the family.<sup>19</sup> Meanwhile, other international studies emphasize that the concept of a harmonious family is relevant to women's rights, reproductive health, and child protection.<sup>20</sup> This demonstrates that a harmonious family is not merely a normative concept, but also a social construct that can be adapted to the needs of the times, without losing its fundamental religious values.

Thus, the discussion on the harmonious family emphasizes that the principles of marriage do not stop at the validity of the contract but must be realized in real life through guidance, legal regulation, and social awareness. The novelty of this discussion lies in the emphasis on integrating classical Islamic jurisprudence concepts with empirical realities on the ground, both nationally and globally.

### **Problems of Unborn Children**

Unborn children face multidimensional challenges, particularly in terms of perinatal health and socio-legal status. From a health perspective, neonatal mortality remains a significant burden in Indonesia; for example, the Determinants of Neonatal Deaths in Indonesia study found that low utilization of perinatal (antenatal and postnatal) services and complications during childbirth significantly increase the likelihood of neonatal death.<sup>21</sup> The Determinants of Early Neonatal Mortality study showed that neonatal mortality has indeed declined over several decades, but it still constitutes a significant proportion of overall infant mortality.<sup>22</sup>

Factors such as low birth weight, premature birth, and poor access to health services are major determinants of neonatal mortality and morbidity in newborns.<sup>23</sup> From a socio-legal perspective, the status of children born out of wedlock faces legal uncertainty and stigma. The article "The Status of Children Born Out of Wedlock and Adopted Children in Indonesia" explains that although the Constitutional Court has ruled that illegitimate children

have a civil relationship with their biological fathers, customary norms and sharia interpretations often limit the full legal effect of this recognition.<sup>24</sup>

Furthermore, the study "Discrimination against Children Born Outside of Marriage" notes that illegitimate children are often referred to as "illegitimate children," "kampang children," and "kowar children" in society, which leads to discriminatory treatment in their access to social and psychosocial rights.<sup>25</sup> The relationship between these two domains is highly relevant. A weakened legal status can restrict children's access to basic health services (e.g., immunization registration, social security), thereby exacerbating existing health risks. Therefore, innovative interventions with integrated maternal-legal services need to be developed to prevent administrative barriers from blocking access to basic health care for children born outside of marriage.

### **The Problem of Illegitimate Children**

In a literature review, the term illegitimate child frequently appears in social and cultural discourse, but from an Islamic perspective, children are born in a state of purity and it is not justified to label them as despicable due to the actions of their parents.<sup>26</sup> The study "The Phenomenon of the Term Illegitimate Children from the Perspective of the Lay and Islamic Communities" shows that this label is passed down through generations in society and causes children to lose self-confidence and feel isolated.<sup>27</sup> From the perspective of Indonesian positive law, the Marriage Law (Article 43 of Law No. 1/1974 as amended) and the jurisprudence of the Constitutional Court (Decision 46/PUU-VIII/2010) have changed the legal relationship of illegitimate children by adding the possibility of recognizing paternal lineage if it can be proven scientifically/technologically.<sup>[3]</sup> The dominant view in contemporary Islamic legal literature emphasizes the child's dignity and protection regardless of the parents' marital status.<sup>28</sup>

Empirical data analysis reveals that illegitimate children often experience practical discrimination: biological fathers often disown or support the child, resulting in the child losing inheritance rights or maintenance. For example, the study "Discrimination against Children Born Outside of Marriage" states that there are no strict sanctions if biological fathers neglect their responsibilities to illegitimate children.<sup>29</sup> Studies document measurable negative outcomes (social exclusion, lower school retention, identity issues) for children labeled as illegitimate in many contexts. On the other hand, the article "Legal Certainty of the



Rights of Children Born Out of Wedlock" reveals that illegitimate children have no formal legal ties to their fathers except for legal recognition, thus stifling their rights (education, inheritance).<sup>30</sup> In a social context, qualitative studies in several regions also documented that society stigmatizes "illegitimate children," leading to the exclusion of children and parents, for example, "I'm told I'm not a good woman... my child is often called... an illegitimate child."<sup>31</sup>

The relationship between academic findings and practice can be seen in the implementation of legal policies and child protection. Constitutional Court Decision 46/PUU-VIII/2010 affirmed that Article 43 of Law No. 1/1974, if interpreted as eliminating the father-child relationship, is unconstitutional. Therefore, current law allows for a limited legal relationship between illegitimate children and their fathers if there is scientific evidence. However, in practice in religious courts, there are still differences in judges' understanding of the recognition of illegitimate children and inheritance.<sup>32</sup> In terms of social protection, community intervention programs that educate about stigma are needed to reduce discriminatory social treatment. The tension between inheritance/lineage rules and child-rights norms creates policy dilemmas that require integrative solutions.

The novelty of this study lies in the need for long-term quantitative research documenting the psychosocial impact of stigma surrounding illegitimate children on outcomes such as academic achievement, mental health, and economic mobility. Furthermore, very few experimentally tested intervention studies (e.g., anti-stigma programs in schools) have evaluated their effectiveness in Indonesia. Therefore, recommendations for action research and integration of administrative data (population data, lineage recognition) are necessary new steps to ensure that policies and laws are not only progressive in normative terms but also effective in practice.

### **Right and Wrong Sexual Intercourse**

Sexual intercourse (*jimak*) is an interpersonal activity with ethical, social, and legal implications. In the literature on sexual ethics and legal theory, sexual intercourse is classified as right (that is, that which occurs with conscious, voluntary, and legal consent) versus wrong (that which is non-consensual, under duress, or falls outside a recognized legal framework). The concept of "consent" is often used as a primary basis: "the freely given verbal or nonverbal communication of a feeling of willingness to engage in sexual activity" is

an explicit definition widely used in modern sexual consent research.<sup>33</sup> A review of the ethical literature confirms that consent is not simply “not refusing” but must be active and informed, taking into account the power dynamics and capacities of the parties involved.<sup>34</sup> Within the framework of autonomy theory, the morality of a legitimate sexual relationship depends largely on the ability of the parties to make free decisions without external or internal pressure.<sup>35</sup>

Empirically, international research has found that reporting of nonconsensual sexual experiences is not insignificant: in the Sexual Consent Across Diverse Behaviors and Contexts study, approximately 31% of participants reported having experienced at least one type of nonconsensual sexual behavior, with an average of 3.1 types of nonconsensual behavior per participant.<sup>36</sup> In another study on barriers to consent communication, nearly a quarter of respondents stated that communicating consent can trigger negative emotional reactions (anxiety, guilt, shame).<sup>37</sup> The relationship between previous nonconsensual experiences and attitudes toward consent has also been demonstrated in research that individuals with a history of nonconsensual behavior are more likely to have rape-supportive attitudes and have difficulty negotiating consent in the future.

In the Indonesian context, legal studies on sexual violence indicate that the old Criminal Code (KUHP) regulations limited the scope of protection for victims and did not fully accommodate the concept of explicit consent or violence in personal relationships. Juridical-sociological research indicates that the legal system still has a legal system (substance, structure, and legal culture) that does not favor justice for victims.<sup>39</sup> Following the enactment of Law No. 12 of 2022 concerning the Prevention and Handling of Criminal Acts of Sexual Violence (UU TPKS), regulations became broader (for example, including non-physical sexual harassment, forced contraception, sexual exploitation, etc.) and provided a specific legal framework (*lex specialis*) for criminal acts of sexual violence not regulated in the old Criminal Code.<sup>40</sup> However, empirical studies indicate that implementation challenges remain, such as minimal reporting, barriers to evidence, social stigma against victims, and inadequate capacity of law enforcement officials.<sup>41</sup>

Regarding the relationship between theory, data, and implementation, it is clear that a strong concept of consent (ethics/theory) must be incorporated into legal regulations and practices so that proper sexual intercourse is not merely an abstract ideal but is actually

protected. Relevant implementations include: (a) reviewing the legal definition of sexual violence to include elements of explicit consent and the ability to choose freely (e.g., regulating nonconsensual intercourse and marital rape), (b) training law enforcement officers, health workers, and service institutions to be sensitive to indicators of nonconsent, (c) social campaigns and sexual education so that the public understands the concept of active consent and sexual rights, and (d) an effective and sensitive support system for victims (reporting, psychological recovery, legal protection). The novelty of this approach is the idea of a consent-centered legal framework that proposes that the legal definition of legitimate sexual relations (true intercourse) does not only depend on marital status or moral norms, but must be measured based on active communication, the context of power relations, and the psychological capacity of the parties involved so that cases that have been ambiguous (e.g., marital relationships, emotional distress, passive consent) can be considered more fairly in the legal and clinical realms.

#### **IV. CONCLUSION**

This study found that the principles of marriage in Islam, when understood comprehensively, can serve as the primary foundation for realizing a just, harmonious, and peaceful family that protects all family members. Key findings indicate that there remains a gap between Islamic jurisprudence norms and the implementation of positive law, particularly regarding the status of children born out of wedlock, the social stigma against children who are not forbidden, and public understanding of proper and improper sexual intercourse. Regulatory efforts such as the Marriage Law, Constitutional Court Decision No. 46/PUU-VIII/2010, and the 2022 TPKS Law have provided a progressive legal basis, but implementation still faces cultural and structural barriers and limited ethical understanding.

This paper emphasizes the importance of an integrative approach based on the consent-centered and child-rights-based marriage principle, which combines classical Islamic jurisprudence values, the principles of *maqāṣid al-shari'ah*, and human rights norms to strengthen protection for children and spouses. With this approach, proper sexual intercourse is determined by conscious and equal consent, while children born in both legal and out-of-wedlock marriages must receive equal recognition and protection before the law and society.

The limitations of this research lie in the predominance of literature and the lack of in-depth empirical field data, particularly regarding the real-life experiences of families and law

enforcement officials in implementing these principles. Furthermore, the research is limited to the Indonesian context and lacks a comparative review with legal practices in other Muslim countries.

Suggestions for future research include the need for broader field studies to explore the social, psychological, and legal impacts on illegitimate children and victims of improper sexual intercourse, as well as testing the implementation of policies based on community education and law enforcement training. The government and religious institutions are also advised to strengthen programs for fostering harmonious families by incorporating materials on children's rights literacy and consent-based sexual education so that the goal of harmonious families can be achieved holistically—religiously, socially, and legally.

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