



Invisible from Birth: A Critical Review of Illegitimate Children from the Malaysian Legal Perspective

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Abstract. The issue of child legitimacy continues to spark legal and social debates in Malaysia, especially due to the dual legal system comprising civil and Shariah laws. The distinction in how each system defines and treats illegitimate children presents significant implications for their rights, welfare, and legal recognition. This article critically examines the current legal frameworks governing the status of illegitimate children in Malaysia and assesses their legal and social impact. Employing a qualitative research design through library research, supported by content analysis of selected legal texts, academic writings, statutes and case laws, this study identifies key differences between the civil and Shariah approaches, particularly in areas of legal identification, custody, maintenance, inheritance and social acceptance. The findings reveal that while civil law offers more inclusive protections under statutory reforms and judicial interpretation, Shariah law remains rooted in classical interpretations that may limit the legal standing of such children. However, the literature also highlights increasing discourse around *ijtihad* and *Maqasid al-Shariah* as tools for reform within Islamic jurisprudence. The review underscores the need for legal harmonization and child-focused policies that prioritise welfare and dignity, irrespective of birth status.

Keywords: Illegitimate Children, Legal Identification, Social Impact, Malaysia.

1 Introduction

Premarital pregnancies have become an increasingly pressing social and legal concern in Malaysia, contributing significantly to the rising number of children born out of wedlock. It has been reported that between 2006 and 2017, a total of 543,363 illegitimate children were registered in Malaysia, with the highest numbers recorded in Sabah (4,795) and Sarawak (3,396), followed by Selangor (1,486), Johor (1,408), and Pahang (1,032) [1]. In parallel, teenage pregnancies have further exacerbated the issue, with 44,263 cases recorded nationwide between 2019 and 2023, of which 17,646 involved unmarried adolescents [2]. In Selangor alone, 555 out-of-wedlock pregnancies involving minors were reported in the first nine months of 2024, with 799 cases recorded in 2023, including children as young as 10 years old [3]. This phenomenon has raised critical concerns regarding the implications for the legal status, rights and overall welfare of illegitimate children.

In Malaysia, civil law defines a child as legitimate if born during a valid marriage. A child born after a divorce remains legitimate if conceived during the marriage. Conversely, a child born outside of marriage is considered illegitimate. However, legitimacy can be acquired through the subsequent marriage of the parents under Section 3(1) of the Legitimacy Act 1961, or through legal adoption under the Adoption Act 1952, which grants adopted children the same rights as biological children [4][6]. Despite these provisions, the Legitimacy Act 1961 primarily addresses legitimation following marriage and does not explicitly provide for the rights of illegitimate children [4].

In relation to birth registration, under civil law, Section 13 of the Births and Deaths Registration Act 1957 provides that the father's name shall not be entered in the birth certificate of an illegitimate child unless both parents jointly request it [9][11]. This legal requirement reflects the principle that paternity is not automatically attributed to the father of an illegitimate child. In practice, this often results in only the mother's name appearing on the birth certificate, which may affect the child's access to certain legal rights and social benefits.

Under Islamic law, legitimacy depends on the validity of marriage at the time of conception and birth. Legitimacy is tied to the child's lineage (*nasab*), which is essential in determining rights such as custody, maintenance, and inheritance. A legitimate child's *nasab* is attributed to the father, whereas an illegitimate child's lineage is recognised only through the mother. Islamic jurisprudence considers a child as legitimate if born at least six months after marriage or within two years following divorce or the father's death [4][5][19]. Thus, *nasab* and legitimacy in Islam are determined by specific rules governing conception timelines and the marital status of the parents.

In the Malaysian Shariah legal framework, this principle is strictly upheld. The *nasab* of an illegitimate child is not attributed to the biological father but solely to the mother. This is reinforced by various fatwas, including one issued by the National Fatwa Committee (MKI), which ruled that a child born less than six months from the date of marriage cannot be affiliated with the husband and must bear the mother's surname. This fatwa has been adopted by numerous state muftis and implemented by state Islamic religious authorities, shaping both legal determinations of *nasab* and the administrative procedures of birth registration in Shariah matters [5].

However, this creates a dual legal situation in Malaysia where civil and Shariah laws operate side by side, often leading to confusion or inconsistent outcomes in determining the legal status and rights of illegitimate children. While civil law may allow for legal adoption or later legitimation through marriage, Shariah law remains more restrictive. This legal duality continues to raise important questions about the child's identity, status, and access to rights, especially when Shariah and civil authorities interpret and apply the law differently.

2 Problem Statement

Despite existing legal frameworks under both civil and Shariah law in Malaysia, the issue of child legitimacy remains complex and contested, particularly in cases involving children born out of wedlock. The dual legal system results in differing definitions and consequences of legitimacy, especially concerning the attribution of *nasab*, legal identification and access to social benefits. While civil law permits legitimisation through subsequent marriage [37] or adoption [38], Shariah law maintains stricter criteria tied to marital timelines and conception. Moreover, *fatwas* issued by state religious authorities often influence administrative practices, further complicating matters of legal identity and rights. This fragmented and inconsistent legal treatment leads to practical challenges and legal uncertainty for illegitimate children and their families, raising concerns about their access to justice, equality before the law, and social inclusion.

3 Research Question

This article is driven by the following research questions: 1) What is the legal status of illegitimate children under civil and Shariah laws in Malaysia?, and 2) What are the implications of illegitimacy on the child's rights and welfare in Malaysia?

4 Purpose Of Study

The purpose of this study is to examine how the dual legal system in Malaysia, comprising civil law and Shariah law, defines and regulates the status of illegitimate children, with a particular focus on the legal implications and social benefits for the child.

5 Research Methodology

This study adopts a qualitative research design based on a review of the existing literature on the concept of legitimacy within the Malaysian legal framework, covering both civil law and Shariah law. Employing a content analysis approach, the study critically reviews selected legal texts, academic writings, statutes, and case laws to identify the differences between the civil and Shariah approaches, particularly in areas such as legal identification, custody, maintenance, inheritance, and social acceptance.

6 The Legal Status Of Children In Malaysia

6.1 Legitimacy under the Civil Law

Under the legal framework governing the presumption of legitimacy in Malaysian civil law, Section 112 of the Evidence Act 1950 establishes a conclusive presumption

of legitimacy based on specific factual circumstances [6]. While the Act does not explicitly define illegitimacy, it states:

“The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten”

To invoke the presumption of legitimacy, two conditions must be fulfilled. First, the child must be born during a subsisting valid marriage or within 280 days following its dissolution, and second, the mother must not have remarried during that period. Once these conditions are met, the law establishes a conclusive presumption that the child is legitimate, unless it can be proven that there was no opportunity for sexual relations between the spouses during the probable period of conception [6].

The term ‘valid marriage’ under Section 112 must be interpreted within the framework of the Law Reform (Marriage and Divorce) Act 1976, which governs the formal registration and legal recognition of civil marriages. In the context of birth registration, the National Registration Department (NRD) requires official documentation, typically a marriage certificate, as proof of a child’s legitimacy. Where such documentation is unavailable, due to circumstances such as an unregistered foreign marriage, an informal union, or the absence of a marital relationship, the child may be classified as illegitimate in official records. Hence, the inability to establish a valid marriage may significantly impact a child’s legal status. The first scenario typically involves cases where the parents were married abroad, either in accordance with Shariah law or civil procedures, but failed to register the marriage with Malaysian authorities. As a result, they are unable to provide official documentation during the birth registration process. The second scenario pertains to situations where the child is born out of wedlock, or where the parents do not possess a legally recognised marital status at the time of registration, nor satisfy the necessary criteria for the recognition of marriage under Malaysian law [6].

These circumstances highlight that while the non-registration of marriage is a primary factor contributing to a finding of illegitimacy, important legal distinctions exist between different case types. Children born out of wedlock thus represent a particular subset within the broader classification of illegitimate children, shaped by the specific legal and marital circumstances of their parents as summarised in **Table 1**.

Table 1. Categories of Illegitimate Children.

No	Categories	Description	Example
1	Child born out of wedlock	Parents were never married, or had been born after 280 days after its dissolution	Couples had no marriage or late registration.

2	Abandoned child	No proof of parentage during registration	Stateless children.
3	Children born out of a void marriage	Marriage is void	Inter-religious marriage.

In addressing cases of illegitimacy, civil law provides mechanisms for a child to be recognised as legitimate. These mechanisms are outlined in the Legitimacy Act 1961, which prescribes procedures for legitimising and re-legitimising children previously recorded as illegitimate at birth registration with the NRD [6]. Section 4 of the Legitimacy Act 1961, which provides that:

“Subject to section 3, where the parents of an illegitimate person marry or have married one another, whether before or after the prescribed date, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Malaysia, render that person, if living, legitimate from the prescribed date or from the date of the marriage, whichever is the later”.

This provision enables an illegitimate child to be rendered legitimate through the subsequent marriage of the biological parents, subject to specific legal conditions. First, the father must be domiciled in Malaysia at the time of the marriage; failing which, legitimation under the Act does not take effect. Second, the child must be alive at the time the marriage takes place. Therefore, if the child has died before marriage, legitimation cannot be invoked. The law provides that legitimation takes effect either from the prescribed date or the date of the marriage, whichever is later. Consequently, if the marriage takes place after the child's birth and after the prescribed date, the child acquires legitimacy only from the date of the marriage, rather than retroactively from birth. This provision applies not only to children born out of wedlock but also to those whose parents failed to register their marriage [6].

On the other hand, abandoned children retain their status as illegitimate until they are legally adopted. According to the Adoption Act 1952, a child adopted in accordance with its provisions is deemed to be a child born in lawful wedlock to the adoptive parents [6].

6.2 Legitimacy under the Shariah law

With the advent of the constitutional amendment in 1989, the provisions of the Evidence Act 1950 and the Legitimacy Act 1961 became applicable solely to non-Muslims. With the introduction of Article 121(1A) of the Federal Constitution, issues concerning legitimacy of Muslim children falls exclusively under the jurisdiction of Shariah law, as governed by the respective Islamic Family Enactments or Ordinances in the states of Selangor, Perak, Pahang, Johor, Perlis, Kelantan, Terengganu, Pulau Pinang, Melaka, and the Federal Territories, as well as Sabah and

Sarawak. The jurisdictional separation is clearly illustrated in Article 121(1A), which provides:

“The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts”.

Additionally, Muslims in Malaysia are subject to both federal laws enacted by Parliament and Shariah laws enacted by the respective State Legislative Assemblies. This dual legal framework is supported by Article 74(2) of the Federal Constitution, which states:

“Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List”.

This position was affirmed in the majority judgment of *Jabatan Pendaftaran Negara & Ors v Seorang Kanak-Kanak & Ors* [2020] [7], where the Federal Court held that the NRD may apply the relevant Shariah law of a particular state, provided that such law has been gazetted. The presumption of legitimacy is a standard provision included in all Islamic Family Law Acts, Enactments, and Ordinances. Although the section numbers may differ slightly across jurisdictions, the substance of the provision remains consistent and is uniformly accepted across the respective states.

The provision on legitimacy under Shariah law is closely linked to the validity of *nasab* in the formulation of marriage-related legislation. These laws are enacted in accordance with the Shāfi‘ī school of thought, which is the predominant madhhab followed by the majority of religious authorities and institutions in Malaysia. For instance, under the Islamic Family Law (State of Selangor) Enactment 2003, the issue of presumption of legitimacy and its underlying criteria is addressed under the heading ‘Legitimacy’. One of the key provisions is found in Section 111, which stipulates:

“When a child is born to a woman who is married to a man more than six qamariah months from the date of the marriage or within four qamariah years after dissolution of the marriage either by the death of the man or by divorce, and the woman not having remarried, the nasab or paternity of the child is established in the man, but the man may, by way of li’an or imprecation, disavow or disclaim the child before the court”.

According to the provision, the criteria mentioned pertain to the ruling (*ḥukm*) on children born out of wedlock. This is because the determination of a child’s legitimacy is fundamentally based on the validity of *nasab*. A man may be legally attributed as the father of a child only under specific conditions, which are articulated in the provision as follows:

1. A valid marriage must exist.

2. The child must be born:
 - (a) At least six lunar months after the date of marriage; or
 - (b) Within four lunar years from the date of dissolution of the marriage, either due to the husband's death or divorce, and the woman must not have remarried within that period.

Based on the provision above, a child is deemed illegitimate if the stipulated criteria are not met. In essence, the legal outcome under Shariah law mirrors that of the Evidence Act 1950, in that both frameworks prescribe specific conditions under which legitimacy may be either affirmed or denied. The codification of Islamic rulings on the establishment of *nasab* has led to the requirement that a marriage must not only be juristically valid but also duly registered under Malaysian law to be recognised as legally binding.

Another important aspect of Shariah law that must be considered is the role of *fatwas* issued by the respective State Mufti Departments. These fatwas provide further clarification on the concept of illegitimacy from the perspective of Shariah law. The term 'illegitimate children' is treated as synonymous with children born out of wedlock or resulting from acts of adultery, as reflected in the 1981 fatwa issued by MKI. This fatwa defines illegitimate children accordingly and stipulates that such children should bear the patronymic 'bin/binti Abdullah' or another name derived from the *Asma' al-Husna* (Most Beautiful Names of Allah). This ruling was further elaborated in a guideline issued by the MKI on 25 June 1998, which sets out the rationale behind the use of 'bin Abdullah' and its implications on various aspects of the child's life, including social interaction, financial maintenance, inheritance, guardianship (*wali*), marriage, custody, religious status upon death, and overall welfare [8].

Table 2. MKI Fatwas on Illegitimate Children between 1981 – 2005.

Categories	Content of Fatwas
Naming Children Born out of Wedlock (28-29 Januari 1981)	A child born out of wedlock or through <i>zina</i> (illegitimate relations), whether or not followed by the subsequent marriage of the biological parents, must be given the patronymic 'bin' or 'binti' Abdullah.
Naming Illegitimate Children (25 Jun 1998)	Guidelines on the Naming and Legal Status of Illegitimate Children According to Islamic Law (<i>Garis Panduan Penamaan dan Kedudukan Anak Tak Sah Taraf Dari Segi Syarak</i>).
Illegitimate Children (10 Jun 2003)	1. A Child Born Out of Wedlock (ATST) refers to: A child born outside of a valid marriage, either as a result of <i>zina</i> (illicit

	intercourse) or rape, and not from <i>shubhah</i> intercourse or slavery. 2. This ATST is also defined as a child born less than six lunar months and two <i>lahzah</i> (moments) from the date of <i>tamkin</i> (possibility of intercourse). 3. An ATST cannot be attributed in <i>nasab</i> to the man who caused the birth or to anyone claiming to be the father. Therefore, the child and the man cannot inherit from one another (no mutual inheritance), are not considered <i>mahram</i> (unmarriageable kin), and the man cannot act as the child's legal guardian (<i>wali</i>) in marriage.
27 July 2004	1. Illegitimate children are those who is born outside of a valid marriage, either as a result of fornication or rape, and not from doubtful intercourse (<i>syubhah</i>) or from slavery. 2. Illegitimate children also refer to a child born less than six lunar months and two moments (<i>lahzat</i>) according to the <i>Takwim Qamariyat</i> (Islamic lunar calendar) from the date of <i>tamkin</i> (intercourse). 3. It also refers to a child born more than six lunar months and two <i>lahzat</i> from the time of <i>tamkin</i> (intercourse) after a valid marriage contract, but with Shariah-based evidence that the child is not a legitimate child—such as an <i>iqrar</i> (acknowledgement) by the relevant parties (husband and wife or either one of them), or four witnesses who meet the conditions according to Shariah (as decided by the Muzakarah of the National Fatwa Committee 2004).
14 October 2005	1. Illegitimate children refer to a child born out of wedlock, meaning one born as a result of fornication or rape. 2. Illegitimate children also refer to a child born less than six lunar months and two <i>lahzat qamariyat</i> from the time of a valid marriage contract and not resulting from doubtful intercourse (<i>syubhah</i>). 3. A child born more than six lunar months and two <i>lahzah qamariyat</i> from the time of a valid marriage contract, with evidence according to Shariah that the child is born out of wedlock—such as an <i>iqrar</i> (acknowledgement) by the relevant parties (husband and wife or either one), or four witnesses who meet the conditions according to Shariah (as decided by the Muzakarah of the National Fatwa Committee 2004).

Subsequent fatwas issued by the MKI in 2004 and 2005 reaffirmed earlier positions regarding the status of illegitimate children. However, these fatwas were not gazetted

due to the absence of legal authority to enforce them; therefore, they do not have binding legal effect [8].

The failure of some states to gazette the fatwa concerning the use of 'Bin Abdullah' has affected registration procedures for illegitimate children at the NRD. In a landmark case, the Federal Court ruled that the label be removed from a child's name as the fatwa was not gazetted in Johor. However, the Court upheld the exclusion of the biological father's name in accordance with Johor's Islamic Family Law Enactment. It further held that the Section 13 notation in the child's birth certificate was administrative in nature rather than discriminatory. Future rulings could adopt the more pragmatic approach of the Terengganu Syariah High Court, which allows partial administrative recognition without conferring full legal rights, particularly in matters such as inheritance and guardianship [9].

Perlis offers a notable example of the implementation of a fatwa aligned with the provisions of the Islamic Family Law (Perlis) Enactment. In 2013, Perlis gazetted a fatwa that dissented from Section 111 of the Islamic Family Law (Perlis) Enactment by permitting children born out of wedlock to be attributed to their biological fathers, provided the father does not deny paternity [8]. This fatwa adopts the opinion of a minority group of *fuqaha* (Islamic jurists) who allow such attribution of *nasab* in specific cases. The move has sparked significant scholarly debate regarding its legal soundness and conformity with established Islamic legal principles. Nonetheless, this approach has led to the child being registered as legitimate at the NRD office in Perlis.

Since both gazetted fatwas and state Shariah enactments are considered during the registration of children born out of wedlock, a study further highlights the application of the Bin Abdullah fatwa within the legal framework [10]. The Syariah High Court of Terengganu, in this context, permitted a child to be attributed to his biological father. However, it ruled that the father could not transmit inheritance rights nor act as *wali nikah*, in accordance with the restrictions outlined in the decision. While this appears to contradict the original fatwa, which prohibits ascription of lineage to the biological father, the judgment was shaped by the generality of the fatwa issued by the Terengganu State Fatwa Committee. The court accordingly interpreted the ruling in light of Dr. Abdul Karim Zaidan's opinion. Once interpreted judicially, the matter of ascription became one of legal technicality. Moreover, the 1995 fatwa requiring attribution to the mother or the use of 'Abdullah' as a patronymic was never gazetted and, therefore, lacked binding legal force [10].

While both the civil and Shariah legal systems in Malaysia provide mechanisms for determining a child's status, their approaches to legitimacy and *nasab* reflect distinct legal philosophies, one rooted in statutory presumptions and the other in religious jurisprudence, leading to divergent outcomes in certain cases.

7 The Implication Of Legitimacy On The Children's Rights And Welfare In Malaysia

7.1 Legal Identification

The registration of births for children born out of wedlock in Malaysia is governed by distinct legal frameworks. Sections 13 and 13A of the Births and Deaths Registration Act 1957 (BDRA), along with corresponding ordinances in Sabah and Sarawak, apply specifically to non-Muslims [11]. For Muslims, birth registration is governed by the respective Islamic Family Law enactments and fatwas issued by the State Mufti Departments. Where both biological parents are present, the father's name may be included on the birth certificate as a 'person acknowledging paternity'. However, the child cannot be legally attributed to the father, and a notation under Section 13 is inserted to reflect this. This legal arrangement has significant implications for the child's legal identity, particularly concerning citizenship, which is derived from the mother's nationality [11].

The birth registration of illegitimate children in Malaysia also encounters several legal and socio-cultural barriers. These include the absence of marriage documentation, societal stigma, and lack of public awareness, all of which hinder registration under Islamic law. Parents who are unable to produce proof of a valid marriage often face procedural hurdles, resulting in the non-registration of the child. Furthermore, the fear of exposure and discrimination, particularly in Syariah court proceedings, discourages registration. In response to these challenges, various legal reforms have been proposed. These include the establishment of a dedicated registry for illegitimate children, the simplification of registration procedures, and nationwide awareness campaigns to educate the public on the importance of birth registration [12].

Further compounding the issue, many illegitimate children are effectively rendered stateless due to the non-registration of their parents' marriages. This is particularly problematic in cases where children are born to non-citizen mothers and Malaysian fathers, as legal barriers to paternity recognition often result in the denial of citizenship. The situation has been exacerbated by the 2024 constitutional amendments, which removed the provision granting automatic citizenship to foundlings and abandoned children—thereby increasing the vulnerability of children born out of wedlock. In this context, fatwas are playing an increasingly influential role in shaping legal outcomes, especially following the Federal Court's recognition of fatwas as a form of customary law. A notable example is a decision by the Terengganu Syariah High Court, which permitted limited paternal recognition, reflecting a more pragmatic and adaptive application of Islamic rulings. This development signals the potential for greater harmonisation between civil and Shariah law in safeguarding the legal and social rights of illegitimate children [13].

The religious status of illegitimate children also carries significant legal implications. In the absence of recognised paternity, the child assumes the religion of the mother at the time of registration with the NRD, as the mother retains full legal and religious authority. Accordingly, if the mother is Muslim, the child is registered as a Muslim; if the mother is non-Muslim, the child follows her religion. This principle was formally acknowledged in a 1998 MKI guideline, which affirmed that such children shall follow the mother's religion until they reach puberty [14].

This position is consistent with the Shāfi'ī school of law. In his commentary on Minhāj al-Tālibīn, Sheikh Shihāb al-Dīn al-Ramlī opined that a child born to a *dhimmī* (non-Muslim) woman through fornication with a Muslim man is considered non-Muslim, as the paternal lineage is not legally recognised in such cases [15]. This interpretation is further supported by al-Sharwānī in his supercommentary on Tuhfah al-Muhtāj [16]. These classical legal principles have been applied in Malaysian case law. For example, in *Rosliza binti Ibrahim v Government of the State of Selangor & Another* [2021][17], the Federal Court held that the plaintiff, born out of wedlock to non-Muslim parents, was an illegitimate child who inherited the religion of her Buddhist mother. Consequently, the Court ordered the removal of the 'Islam' designation from her identity card. Similarly, in *Azmi bin Mohammad Azam v Director of Jabatan Agama Islam Sarawak & Ors* [2016] [18], the court reiterated the principle that in the absence of recognised paternity, the child follows the mother's religion.

The legal definition of an illegitimate child in Malaysia also extends to those born to parents who married overseas but failed to register the marriage under Malaysian law. Nonetheless, such situations may allow for subsequent amendments to the child's birth certificate upon submission of valid documentation. Meanwhile, children born entirely out of wedlock remain classified as illegitimate under the law. This status carries significant legal and administrative implications, as birth certificate details are routinely required for civil processes such as school enrolment, marriage registration, and other official applications

7.2 Custody

Under civil law, as governed by the Guardianship of Infants Act 1961 and the Law Reform (Marriage and Divorce) Act 1976, custody of an illegitimate child is automatically granted to the mother. The father has no legal rights [4] unless he applies to the court for custody or access, which may be granted in the child's best interests, including emotional, financial, and developmental considerations [40][41].

In contrast, under Islamic family law, the principle of *ḥaḍānah* (custody) dictates that the biological mother retains full custody rights over an illegitimate child, as the biological father holds no legal status or guardianship over the child [4][5][19]. This position has been consistently upheld in Syariah court decisions in Malaysia, including *NFSA v TMS* [20] and *Zubaidah Othman & Mohd Nor Mohamad v Sofiah Elam & Johan Hans Weiss Abdullah* [21]. In both cases, the courts affirmed that

custody is the exclusive right of the biological mother, even in situations where the biological father petitions for custody. Notably, the latter case presented an unusual development. On appeal to the Johor Bahru Syariah Court of Appeal, the court ruled that neither the mother nor the biological father was suitable to be granted custody. As a result, custody was transferred to the Sultan of Johor, exercising his authority as the ruler of the state.

While both legal systems prioritise the welfare of the child, civil law offers a more discretionary route to paternal involvement, whereas Syariah law strictly adheres to the child's illegitimacy status in determining custodial rights.

7.3 Maintenance

For non-Muslims, the Legitimacy Act 1961 provides a legal avenue to legitimize a person through the subsequent marriage of their parents, thereby conferring a new legal status upon an illegitimate child and protecting their interests. Under civil law, the Law Reform (Marriage and Divorce) Act 1976 and the Married Women and Children (Maintenance) Act 1950 enable the court to compel the biological father of an illegitimate non-Muslim child to provide maintenance, provided paternity is established. Failure to comply with a court order may result in imprisonment of up to one month for each month of unpaid maintenance. However, the amount awarded for maintenance of illegitimate children is often lower than that granted to legitimate children, as the latter are not subject to the same statutory limitations. Furthermore, the Married Women and Children (Enforcement of Maintenance) Act 1968 empowers the court to issue an attachment of earnings order, allowing deductions from the father's salary to facilitate maintenance payments. This mechanism serves to safeguard the child's welfare, particularly in cases of non-compliance [22].

Whereas for Muslims, under Islamic law, responsibility for the illegitimate child falls solely on the mother or her maternal relatives. Consequently, the burden of raising and supporting the child rests entirely on the mother, who is often left to cope with these responsibilities without financial support from the biological father or his family [22]. In most states, Islamic Family Law Enactments, there is no clear statutory provision for when the mother is financially incapable. An exception was found in the Islamic Family Law Enactment (Negeri Sembilan) 2003, which empowered the Baitul Mal to provide maintenance upon a court order. However, such provisions have been repealed in many states due to concerns that they might encourage *zina* (illicit sexual relations). Additionally, procedural delays and limited public awareness further hinder access to this form of support, leaving many mothers without effective remedies.

7.4 Inheritance

In terms of inheritance, the civil law provides only limited circumstances in which an illegitimate child may inherit from a parent's estate. An illegitimate child is entitled to

inherit from the mother's estate only if she dies intestate (without a will) and does not leave behind any legitimate children. However, if the mother dies intestate and leaves legitimate children either from a prior or subsequent marriage, the illegitimate child's right to inherit is effectively extinguished [39]. This position was illustrated in the *Tan Ying case* [23], where legal action was initiated by the lawful wife of the deceased seeking, among other things, a declaration that the child fathered by the deceased with another woman was illegitimate and, therefore, not entitled to any share in the deceased's estate. The High Court granted the declaration, affirming the exclusion of the illegitimate child from inheritance rights.

Under Islamic law, an illegitimate child (*walad al-zina*) does not inherit from the biological father, as there is no legal *nasab* established between them [24]. This is based on the hadith, "*The child belongs to the bed (of marriage), and for the adulterer is nothing*," and is the position held by all four Sunni schools of thought. However, the child can inherit from the mother and vice versa, as the maternal relationship is recognised. While inheritance from the father is not allowed, financial provisions may be made through instruments such as *wasiat* (Islamic will; restricted to one-third of the estate), *hibah* (gift), or *takaful* (protection). In Malaysia, the Syariah Courts follow this classical view, although alternative mechanisms like *wasiat* or maintenance orders may be used to provide some form of support [25].

Wasiat (Islamic will) is seen as the most suitable financial tool to support illegitimate children, as all four Sunni schools agree that legitimacy is not required for a valid *wasiat*. Since illegitimate children are excluded from inheritance, *wasiat* does not create legal conflict [26]. However, most Malaysian states do not permit such a *wasiat*, except for Perak under the Islamic Wills Enactment (2023). In Penang, some biological fathers have been ordered to provide maintenance for their illegitimate children through mutual agreement or court decisions. *Majlis Sulh* (conciliation) plays an important role in these cases, with some fathers voluntarily accepting responsibility, offering hope of better financial protection for this vulnerable group [27].

Despite existing legal limitations, there remains ample room for *ijtihad* in inheritance matters to prioritise the welfare of illegitimate children, aligning legal outcomes with the higher objectives of Shariah (*Maqāṣid al-Sharīah*).

7.5 Social Acceptance

Children born out of wedlock often face significant psychological and social challenges, particularly when their legal status becomes known, affecting their self-esteem, mental health, and social acceptance [12][14][28]. In the Muslim context, assigning the patronym 'Bin Abdullah' has been linked to distressing outcomes such as depression, identity crises, and behavioural issues, including truancy and aggression [29][30]. These effects are often worsened by institutional care, which can lead to long-term behavioural problems like hyperactivity and antisocial tendencies. Many unwed mothers experience fear and anxiety due to the stigma and pressure to

conceal the child's birth, while families may respond with either support or rejection, sometimes resulting in the child being placed in care homes [31][32].

Several studies highlight the complex challenges faced by children born out of wedlock and their mothers. Unwed mothers often experience deep anxiety about keeping their child's birth a secret, while family responses vary, some offer support, others turn to institutional care due to social or economic pressures [31][32][33]. These children and their mothers face not only psychological and emotional burdens but also a serious lack of financial and social support, which negatively affects the child's overall development [34]. While Islamic teachings differentiate between the sins of the parents and the innocence of the child, stigma remains widespread, often rooted more in culture than in religion [35].

Some studies suggest that public attitudes are shifting, with growing support for treating illegitimate children fairly [36]. However, many parents still struggle with legal and societal recognition, especially in seeking paternal acknowledgement through the courts. This contrast between increasing societal acceptance and persistent legal barriers raises a critical question: is stigma truly the core problem, or do deeper structural issues—such as gaps in law, weak family support, and insufficient state policies—play a more decisive role in shaping these children's futures?

8 Conclusion

In conclusion, the issue of illegitimate children in Malaysia reveals a complex interplay between civil and Shariah legal systems, each shaped by distinct philosophical and jurisprudential underpinnings. The civil law adopts a more rights-based approach, particularly in areas such as inheritance and identity, while the Shariah framework remains bound to traditional *fiqh* interpretations, especially regarding lineage and legal status. Despite these differences, both systems ultimately aim to protect the child's best interests. As Malaysia continues to evolve socially and legally, it is imperative that both legal traditions converge toward a more holistic, child-centric model. Grounded in the principles of *Maqasid al-Shariah* and universal human rights, the welfare of the child must take precedence—ensuring that every child, regardless of birth circumstances, is granted dignity, legal recognition, and equal access to care, protection, and opportunity.

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